

31543

SUPREME COURT
STATE OF SOUTH DAKOTA
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Clerk

STATE OF SOUTH DAKOTA

IN THE SUPREME COURT

IN RE: EXPUNGEMENT OF RECORDS
RELATED TO CHRISTINA ZUCCARO

Supreme Court No. _____

Appeal from the Circuit Court
Sixth Judicial Circuit
Jones County, South Dakota

APPELLANT'S BRIEF

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Appellant

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Jurisdictional Statement

This appeal arises from the Memorandum Decision and Order Denying Motion for Expungement entered by the Circuit Court for the Sixth Judicial Circuit, Jones County, South Dakota, on June 9, 2026.

The order denied Appellant's Motion for Expungement relating to records in Case No. 37CRI24-6 and fully resolved all issues presented to the circuit court.

Notice of Entry of the Order was served on June 10, 2026.

Appellant filed a Notice of Appeal pursuant to SDCL § 15-26A-4 and SDCL § 15-26A-6.

This Court has appellate jurisdiction pursuant to Article V, Section 5 of the South Dakota Constitution and SDCL § 15-26A-3(2), authorizing appeals from final orders affecting a substantial right and effectively determining the action.

Because the order denied expungement and left no further issues for determination by the circuit court, it constitutes a final appealable order.

Statement Of The Issues

Issue I

Whether the circuit court properly applied the individualized analysis required by SDCL § 23A-3-30 and *In re Expungement of Jones*, 2025 S.D. 54 ¶¶ 25-26, when it denied Appellant's Motion for Expungement.

Issue II

Whether the circuit court improperly relied upon Appellant's continued litigation activity, record-preservation efforts, and pursuit of legal remedies concerning an acknowledged ongoing dispute as evidence that Appellant presents a future danger to the public.

Issue III

Whether the circuit court's finding that Appellant presents a potential risk of future criminal conduct was supported by clear and convincing evidence where the record reflected no criminal conviction, no Deferred Prosecution Agreement violations, no subsequent criminal charges, stable employment, and no identified post-dismissal criminal conduct.

Statement Of The Case

On February 7, 2024, a criminal complaint was filed against Appellant Christina Zuccaro in Case No. 37CRI24-6 alleging simple assault arising from events alleged to have occurred on or about February 3, 2024.

At the time of the criminal proceedings, separate civil disputes and litigation existed concerning possession, access, use, and control of property associated with Zuccaro LLLP. Those disputes continued after dismissal of the criminal charge and formed part of the factual background referenced in Appellant's subsequent filings.

In December 2024, Appellant and the State entered into a Deferred Prosecution Agreement. The agreement required Appellant to have no law violations for one year, submit to a mental health evaluation, and comply with the conditions set forth in the Deferred Prosecution Agreement (App. B-2).

On December 9, 2024, the State filed a dismissal of the criminal case. No conviction was entered.

Appellant thereafter complied with the conditions imposed under the Deferred Prosecution Agreement and was not alleged to have committed any violations during its term (App. B-2).

Following dismissal, Appellant filed various motions, notices, and other documents relating to matters she believed remained unresolved. The circuit court subsequently denied those requests.

On February 10, 2026, Appellant filed a Motion for Expungement pursuant to SDCL §§ 23A-3-26 through 23A-3-30. The State took no position on the motion. Katherine Sammons opposed the request.

The circuit court conducted a hearing on March 11, 2026. In considering the motion, the court took judicial notice of Case No. 37CRI24-6 and reviewed the evidence, testimony, and filings before it.

On June 9, 2026, the circuit court entered its Memorandum Decision and Order Denying Motion for Expungement, concluding that Appellant had failed to establish by

clear and convincing evidence that expungement would serve the interests of justice and the best interests of the public.

Notice of Entry of the Order was served on June 10, 2026. Appellant appeals from that order.

Statement Of Facts

Appellant Christina Zuccaro is a retired educator who has continued to work as a teacher in South Dakota. At the time of the expungement hearing, Appellant had no criminal convictions and no other criminal history.

At the March 11, 2026 hearing, Appellant testified that the allegations and criminal charge arose within the context of a continuing dispute concerning possession, access, and use of property associated with Zuccaro LLLP.

At the time of the allegations giving rise to Case No. 37CRI24-6, and throughout the subsequent criminal proceedings, disputes existed concerning possession, access, use, and control of property associated with Zuccaro LLLP. Those disputes involved multiple parties and gave rise to separate civil litigation and related proceedings. The circuit court acknowledged the existence of continuing disputes between the parties.

Rather than proceed to trial, Appellant entered into a Deferred Prosecution Agreement with the State (App. B-1). The agreement required Appellant to have no law violations for one year, submit to a mental health evaluation, and comply with the conditions set forth in the Deferred Prosecution Agreement (App. B-2).

On December 9, 2024, the State filed a dismissal of the criminal charge. No conviction was entered against Appellant (App. C-1).

Appellant thereafter complied with the conditions imposed under the Deferred Prosecution Agreement and was not alleged to have committed any violations during its term (App. B-2).

Following dismissal of the criminal charge, Appellant continued to pursue legal remedies and participate in ongoing litigation and related proceedings concerning matters she believed remained unresolved. Appellant filed motions, notices, requests for records, and other documents relating to those matters.

The circuit court reviewed Appellant's filings and took judicial notice of the criminal file in considering the motion for expungement.

On February 10, 2026, Appellant filed a Motion for Expungement pursuant to SDCL §§ 23A-3-26 through 23A-3-30 (App. D-1). The State took no position on the motion. Katherine Sammons opposed the request.

At the March 11, 2026 hearing, evidence was presented concerning Appellant's completion of the Deferred Prosecution Agreement, her employment history, her lack of criminal history, and her activities following dismissal of the criminal charge.

No evidence was presented that Appellant violated the Deferred Prosecution Agreement, committed any subsequent criminal offense, or incurred any additional criminal charges following dismissal of Case No. 37CRI24-6.

On June 9, 2026, the circuit court denied expungement, concluding that Appellant had failed to establish by clear and convincing evidence that expungement would serve the interests of justice and the best interests of the public (App. E-1).

Standard Of Review

A circuit court's decision granting or denying expungement under SDCL §§ 23A-3-26 through 23A-3-30 is reviewed for an abuse of discretion.

A court abuses its discretion when it exercises its discretion to an end or purpose not justified by, and clearly against, reason and evidence. A court also abuses its discretion when it misapplies the governing law or bases its decision upon findings unsupported by the record.

In *In re Expungement of Jones*, 2025 S.D. 54, ¶¶ 25-26, the South Dakota Supreme Court held that expungement determinations require an individualized analysis of the petitioner and the record presented. The Court identified factors that may be relevant to that analysis, including criminal history, employment history, post-disposition conduct, rehabilitation, adverse consequences resulting from the record, and the risk of future criminal conduct (*Jones*, 2025 S.D. 54, ¶¶ 39, 47-49).

Accordingly, this Court reviews whether the circuit court properly applied the standards set forth in SDCL § 23A-3-30 and *Jones* and whether the findings supporting denial of expungement are supported by clear and convincing evidence in the record.

Argument

I. The Circuit Court Misapplied the Individualized Analysis Required by SDCL § 23A-3-30 and *In re Expungement of Jones* ¶¶ 25-26.

In re Expungement of Jones, 2025 S.D. 54, ¶¶ 25-26, held that expungement decisions must be based upon an individualized analysis of the petitioner and the record presented. Relevant considerations may include criminal history, employment history, post-disposition conduct, rehabilitation, adverse consequences resulting from the record, and the risk of future criminal conduct (See *Jones*, 2025 S.D. 54, ¶¶ 39, 47-49).

The record before the circuit court demonstrated that Appellant had no criminal conviction, no criminal history, stable employment as a teacher, compliance with the Deferred Prosecution Agreement, and no subsequent criminal charges (App. B-2). The State took no position opposing expungement and confirmed at the hearing that, under the Deferred Prosecution Agreement, it was not in a position to oppose expungement (Tr. 2:14-18.). The Deferred Prosecution Agreement further provided that, upon successful completion of one year without new law violations, the State would stipulate to Appellant's motion for expungement (App. B-2). The circuit court also acknowledged that Appellant had no other criminal cases in South Dakota and had maintained a consistent employment history (App. E-4). The circuit court further recognized that no conviction had been entered in the case (Tr. 16:14-16). These are among the individualized considerations identified in *Jones* and weighed in favor of expungement (See *Jones*, 2025 S.D. 54, ¶¶ 39, 47-49).

Although the circuit court correctly recognized that no conviction was entered in Case No. 37CRI24-6 (App. E-2), the court later concluded that Appellant had presented no evidence of any adverse consequence resulting from the "conviction" (App. E-5). The record before the court involved a dismissed criminal case, not a conviction. The relevant inquiry under SDCL§ 23A-3-30 was whether continued retention of the criminal record served the interests of justice and the best interests of the public. By focusing on the absence of consequences flowing from a conviction that did not exist, the court's analysis failed to fully account for the unique posture of this case as a dismissed criminal proceeding following successful completion of a Deferred Prosecution Agreement.

The record further demonstrated that Appellant continued to participate in ongoing civil litigation and related proceedings concerning disputes involving property associated with Zuccaro LLP. The circuit court itself acknowledged the existence of continuing disputes concerning possession, access, and control of property associated with Zuccaro LLP (Tr. 3:15-22), yet relied upon Appellant's continued efforts to address those unresolved disputes as evidence supporting a finding of future risk.

Rather than focusing upon whether the evidence demonstrated rehabilitation, compliance, lawful post-disposition conduct, and an absence of subsequent criminal activity, the circuit court relied heavily upon Appellant's continued filings and efforts to document and explain matters relating to those disputes.

Nothing in *Jones* suggests that participation in ongoing litigation diminishes evidence of rehabilitation or transforms lawful conduct into evidence of future criminal risk (See *Jones*, 2025 S.D. 54, ¶¶ 39, 47-49). To the contrary, *Jones* requires an

individualized examination of the petitioner's actual conduct and the evidence contained in the record.

Because the record reflected no criminal conviction, no criminal history, compliance with the Deferred Prosecution Agreement, stable employment, and no subsequent criminal conduct, the circuit court's application of the *Jones* factors was unsupported by the record and constituted an abuse of discretion.

II. The Circuit Court Improperly Treated Appellant's Lawful Litigation Activity As Evidence Of Future Dangerousness.

The circuit court reviewed Appellant's filings and took judicial notice of the criminal file. In denying expungement, the court relied heavily upon Appellant's continued filings and efforts to document matters relating to disputes that remained ongoing after dismissal of the criminal charge (App. E-2 to E-3).

However, the record demonstrates that Appellant's filings did not occur in a vacuum. At the time of the criminal proceedings and thereafter, multiple disputes and legal proceedings existed concerning possession, access, use, and control of property associated with Zuccaro LLP. Those disputes involved Appellant, Katherine Sammons, Sammons' employer, and other interested parties.

The circuit court itself acknowledged the existence of continuing disputes concerning property ownership, possession, and lease rights, and expressly stated that those issues would not be decided in the expungement proceeding (Tr. 3:15-22). Having recognized that such disputes remained unresolved and were outside the scope of the

expungement hearing, the court nevertheless relied upon Appellant's continued efforts to address those disputes through lawful judicial processes as evidence supporting a finding of future risk (App. E-4 to E-5).

Following dismissal of the criminal charge, Appellant continued to pursue legal remedies, obtain records, preserve issues for review, document events, and participate in ongoing litigation and related proceedings. These activities occurred through lawful judicial processes and reflected Appellant's continued involvement in unresolved civil matters.

Nothing in *In re Expungement of Jones* suggests that a citizen's participation in litigation, pursuit of legal remedies, preservation of issues, requests for records, or efforts to document ongoing disputes constitutes evidence of future criminal conduct. To the contrary, such conduct reflects reliance upon lawful institutions and legal processes rather than unlawful behavior.

The existence of multiple ongoing disputes may explain the volume and subject matter of Appellant's filings, but it does not constitute clear and convincing evidence that Appellant presents a future danger to the public. By treating Appellant's continued use of lawful court procedures as evidence supporting denial of expungement, the circuit court improperly transformed lawful litigation activity into proof of future criminal risk.

Because the court's analysis relied upon lawful litigation activity rather than evidence of unlawful conduct, the denial of expungement was inconsistent with the

individualized analysis required by SDCL § 23A-3-30 and *In re Expungement of Jones* (Jones, 2025 S.D. 54, ¶¶ 25-26).

III. The Record Does Not Contain Clear And Convincing Evidence Of Future Risk.

The circuit court concluded that Appellant presented a potential risk of future criminal conduct. However, the record contains no evidence of post-dismissal criminal activity. Appellant likewise testified that she had fulfilled the obligations of the Deferred Prosecution Agreement (Tr. 13:8-9).

No Deferred Prosecution Agreement violations were alleged (App. B-2). At the hearing, the State confirmed that Appellant had complied with the requirement of one year without new law violations (Tr. 2:24-25; 3:1). No additional criminal charges were filed. No evidence established that Appellant engaged in unlawful conduct after dismissal of the criminal case.

Jones recognizes that post-disposition conduct, rehabilitation, and risk of reoffending may be relevant considerations (Jones, 2025 S.D. 54, ¶¶ 39, 47-49). Here, the evidence demonstrated continued employment, compliance with the Deferred Prosecution Agreement, and the absence of subsequent criminal conduct (App. B-2). The record therefore weighs against, rather than in favor of, a finding of future risk. Moreover, the circuit court's finding of future risk rested primarily upon Appellant's continued filings concerning ongoing disputes rather than any identified post-dismissal misconduct, Deferred Prosecution Agreement violation, or subsequent criminal offense (App. E-5).

The circuit court's conclusion rests primarily upon Appellant's continued efforts to pursue legal remedies regarding matters she believed remained unresolved. Such conduct does not constitute criminal activity and does not, standing alone, establish a likelihood of future criminal behavior.

The circuit court further concluded that **any potential risk of reoffending had not been mitigated** (App. E-5). However, the order does not identify what additional mitigation was required beyond Appellant's successful completion of the Deferred Prosecution Agreement, continued employment, lack of criminal history, and absence of subsequent criminal conduct. The record contains no evidence that Appellant failed to comply with any condition imposed by the State or the court (App. B-2). To the contrary, the record reflects successful completion of all conditions required under the Deferred Prosecution Agreement (App. B-2).

Because the record contains no objective evidence of post-dismissal criminal conduct, Deferred Prosecution Agreement violations, or subsequent criminal charges, the finding of future risk was not supported by clear and convincing evidence. The denial of expungement therefore constituted an abuse of discretion.

Conclusion And Relief Requested

The circuit court's denial of expungement rested primarily upon speculation concerning Appellant's future conduct rather than objective evidence contained in the record.

The record reflects that Appellant had no criminal conviction, no criminal history, successfully complied with the Deferred Prosecution Agreement, maintained stable employment as a teacher, and was not alleged to have engaged in any subsequent criminal conduct (App. B-2; Tr. 16:14-16).

The circuit court acknowledged during the hearing that there was "no conviction here" (Tr. 16:14-16). The State did not oppose expungement and confirmed at the hearing that, under the Deferred Prosecution Agreement, it was not in a position to oppose expungement (Tr. 2:14-18).

Nevertheless, the circuit court concluded that Appellant presented a potential future risk based largely upon her continued efforts to pursue legal remedies, preserve issues, obtain records, and document matters arising from ongoing multi-party disputes concerning possession, access, use, and control of property associated with Zuccaro LLLP and involving multiple interested parties (App. E-5).

The allegations giving rise to Case No. 37CRI24-6 arose within the context of continuing disputes concerning possession, access, use, and control of property associated with Zuccaro LLLP. The circuit court acknowledged the existence of those disputes and declined to resolve them within the expungement proceeding (Tr. 3:15-22). Having recognized that such matters remained unresolved, the court nevertheless treated Appellant's continued efforts to address and document those disputes through lawful judicial processes as evidence supporting a finding of future risk (App. E-5).

In *In re Expungement of Jones*, 2025 S.D. 54 ¶¶ 25-26, the Supreme Court emphasized that expungement determinations require an individualized analysis based upon evidence contained in the record. The considerations identified in *Jones* weigh in favor of expungement here because the record reflects stable employment, successful compliance with the Deferred Prosecution Agreement, and the absence of any subsequent criminal conduct (App. B-2). These considerations weigh in favor of expungement under the individualized analysis required by *Jones* ¶¶ 25-26.

At the time of the expungement proceedings, Appellant was in her sixties, had no criminal history, maintained stable employment, successfully complied with the Deferred Prosecution Agreement, and was not alleged to have engaged in any criminal conduct following dismissal of the charge (App. B-2).

The record contains no Deferred Prosecution Agreement violations, no subsequent criminal charges, and no objective evidence demonstrating that Appellant presents a future danger to the public (App. B-2; Tr. 2:24-25; 3:1). Courts decide cases based upon evidence contained in the record, not unsupported predictions concerning what a person might do in the future.

Because the finding of future risk was not supported by clear and convincing evidence and because the circuit court improperly relied upon lawful litigation activity as evidence of future dangerousness, the denial of expungement constituted an abuse of discretion.

For these reasons, Appellant respectfully requests that this Court reverse the Memorandum Decision and Order Denying Motion for Expungement and remand the matter to the circuit court with instructions to grant the Motion for Expungement.

In the alternative, Appellant requests that this Court remand the matter for further proceedings consistent with this Court's opinion and for such other and further relief as the Court deems just and proper.

Dated this 22 day of June, 2026.

Respectfully submitted,


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Certificate Of Compliance

I, Christina Zuccaro, Appellant appearing pro se, certify that this brief complies with the applicable requirements of the South Dakota Rules of Appellate Procedure concerning formatting, typeface, and length.

I further certify that this brief was prepared using a proportionally spaced font and complies with the applicable word-count (2752) or page-limit requirements of the South Dakota Rules of Appellate Procedure.

Dated this 22 day of June, 2026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Christina M. Zuccaro', is written over a horizontal line.

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Certificate Of Service

I, Christina Zuccaro, certify that on the 22 day of June, 2026, I served a true and correct copy of the foregoing Appellant's Brief and Appendix upon the following by depositing the same in the United States Mail, postage prepaid, and email addressed as follows:

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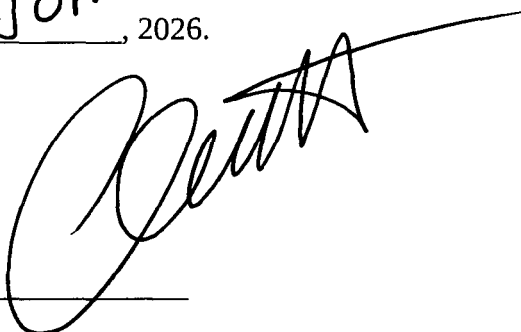
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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31543

IN THE MATTER OF
THE EXPUNGEMENT OF THE RECORD OF
CHRISTINA MARIE ZUCCARO,
Petitioner and Appellant.

APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
JONES COUNTY, SOUTH DAKOTA

THE HONORABLE BOBBI J. RANK
Circuit Court Judge

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PETITIONER AND APPELLANT

Notice of Appeal filed June 15, 2026

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31543

IN THE MATTER OF
THE EXPUNGEMENT OF THE RECORD OF
CHRISTINA MARIE ZUCCARO,

Petitioner and Appellant.

PRELIMINARY STATEMENT

Christina Zuccaro was charged with simple assault, but the State dismissed her charge. She filed a motion for expungement, which the circuit court denied. She asks this Court to reverse that decision. But the circuit court's order should be affirmed for two independent reasons. First, Zuccaro misstates the governing legal standard by improperly shifting the statutory burden of proof from herself to the circuit court. But SDCL 23A-3-30 requires the petitioner—not the court—to establish by clear and convincing evidence that the ends of justice and the best interest of the public as well as the arrested person will be served. Second, the circuit court correctly denied the expungement request because Zuccaro failed to satisfy that burden. She did not show that expungement would serve the public interest or the ends of justice. The circuit court properly applied the statute when it denied Zuccaro's motion.

In this brief, references to documents are designated as follows:

Settled Record (Jones County 37CIV26-5).....SR

Appellant’s BriefAB

All designations are followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

Christina Marie Zuccaro appeals from a final order entered by the Honorable Bobbi J. Rank, Circuit Court Judge, Sixth Judicial Circuit. A notice of entry of that order was filed on June 10, 2026. SR: 48. Zuccaro filed a Notice of Appeal on June 15, 2026. SR: 56. This Court has jurisdiction under SDCL 15-26A-3(4).

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT PROPERLY DENIED
ZUCCARO’S MOTION FOR EXPUNGEMENT.

The circuit court found Zuccaro did not meet her burden of proof and denied the motion.

Matter of Jones, 2025 S.D. 54, 26 N.W.3d 567

People v. Carroccia, 352 Ill. App. 3d 1114, 817 N.E.2d 572 (2004)

SDCL 23A-3-27

SDCL 23A-3-30

STATEMENT OF THE CASE

In February 2024, Jones County filed a criminal complaint against Christina Marie Zuccaro for simple assault. *Complaint*, Jones County 37CRI24-6, filed February 7, 2024.¹

On December 9, 2024, the prosecuting attorney dismissed Zuccaro's simple assault charge without prejudice. *Dismissal*, Jones County 37CRI24-6, filed December 9, 2024.

Despite the formal dismissal of her charge, Zuccaro moved to dismiss her charge four months later. *Motion to Dismiss*, Jones County 37CRI24-6, filed April 7, 2025. The magistrate court denied Zuccaro's motion. *Order Denying*, Jones County 37CRI24-6, filed April 14, 2025.

Nearly two years after the original complaint and over a year after the dismissal, Zuccaro filed a Motion to Dismiss and Expunge Upon Completion of Deferred Prosecution Agreement in her criminal file.²

¹ Zuccaro made a formal request that her expungement case incorporate her criminal file, 37CRI24-6, by reference. SR: 15. The court took judicial notice of 37CRI24-6 only—not any other civil or protection order cases between Zuccaro and the alleged victim, Katherine (Katie) Sammons. SR: 43, fn. 1.

² Zuccaro repeatedly references a Stipulation for Deferred Prosecution. The only copy available in the record was unsigned by the prosecutor. SR: 11. But the prosecutor proceeded as if the agreement were valid and in full effect. SR: 22.

In the stipulation, Zuccaro agreed she would not violate the law for one year, would provide proof to the State that she took a mental health evaluation, and would pay all costs associated with indicting her criminal charges. SR: 12. In exchange, and upon successful completion of those
(continued. . .)

Motion to Dismiss and Expunge, Jones County 37CRI24-6, filed January 6, 2026. She asked again that the underlying charge be dismissed. *Id.* She also asked for expungement under SDCL 23A-3-34 because, in her words:

No adjudication of guilt occurred;
Defendant poses no risk to public safety;
The continuation of a criminal record would result in unjust harm to Defendant's reputation, property interests, and livelihood; and
The circumstances surrounding this prosecution have been fully preserved in the docket without the need for further factual litigation.

Id. No action was taken on that motion in the magistrate court's criminal file.

Nearly a month after that, Zuccaro filed a Motion for Expungement in a separate civil file. SR: 1. She reiterated the bases for her request:

This matter was resolved without adjudication of guilt, without entry of a conviction, and without imposition of sentence. Continued retention of the criminal record serves no legitimate public purpose and instead imposes ongoing collateral consequences, including impairment of Petitioner's access to employment, housing, and professional opportunities—outcomes inconsistent with the remedial intent of the expungement statutes.

Expungement is particularly appropriate where prosecution was deferred and dismissed, ensuring that a non-adjudicated matter does not continue to operate as a de facto conviction.

Granting expungement will not compromise public safety. As provided by statute, sealed records remain accessible to law-

terms, the State agreed it would dismiss Zuccaro's simple assault charge. SR: 12. The State also agreed it would "stipulate to [Zuccaro's] Motion for Expungement at the end of the one year." SR: 12. The stipulation was signed on November 22, 2024. SR: 12-13.

enforcement and prosecuting authorities for authorized purposes.

SR: 7-8. As for the public's interest in her motion, Zuccaro argued:

The public interest is served by expunging records of cases resolved through deferred prosecution without conviction, consistent with the Legislature's intent to prevent lasting collateral consequences where criminal liability was never adjudicated. Expungement in such circumstances promotes fairness, accuracy of public records, and confidence in the justice system.

SR: 8.

A hearing was held on the motion on March 11, 2026. SR: 21.

Zuccaro represented herself. SR: 21. The State did not oppose the motion.³ SR: 21. The court permitted the alleged victim of the assault, Katherine (Katie) Sammons, to appear with her counsel. SR: 21. The court invited Zuccaro to show she met her burden. SR: 23-24. Zuccaro responded that she "signed the deferred prosecution agreement and completed all of its conditions." SR: 24.

After Sammons lodged her objection, the court invited Zuccaro a second opportunity to show her burden:

³ The prosecuting attorney at the hearing, different from the one named in the Stipulation for Deferred Prosecution, said the State was obligated to not oppose the motion. SR: 21. But as referenced in footnote 2, there is no fully executed stipulation in the record. Nor is there legal authority for the State and an accused to "stipulate" to a "motion for expungement" when the arrested person has the burden of proof and the circuit court has discretion to grant it. *See* SDCL 23A-3-30 (stating an order of expungement *may* be entered by the court only if the *arrested* shows "by clear and convincing evidence that the ends of justice and the best interest of the public as well as the defendant or the arrested person will be served by the entry of the order.").

Ms. Zuccaro, you're more than a year past dismissal but in this case, I mean, the fact that you have complied with your deferred prosecution agreement, that's not the end game in this case. Okay? So you tell me why expunging your criminal record would be in the ends of justice and the best interests of the public as well as the Defendant.

SR: 28. Zuccaro responded that the "alleged incident didn't take place in public. . . I was actually inside of my home." SR: 28. She then explained "one incident" of contention between she and Sammons. SR: 28-32.

For the third time, the court requested Zuccaro "explain . . . in [her] own words why an expungement of this criminal record will serve the ends of justice, the best interests of the public, as well as the best interests of [Zuccaro.]" SR: 32-33. Zuccaro said, "I've fulfilled the obligations of the deferred prosecution agreement. And there wasn't – there was no adjudication of guilt and there was no conviction." SR: 33. And "in reference to the public part," Zuccaro argued "[i]t happened inside my house, inside." SR: 33.

In opposition, Sammons argued "the public has the right to know and look at her record because she is very erratic. She has an obsession, obviously, with me. That is my place of employment" SR: 34. She continued, "people have the right to know what she is capable of, especially being a school teacher." SR: 35. "As a mother, I believe parents have a right to know if somebody has a criminal record." SR: 36. The court stated it would defer its findings and decision and concluded the hearing. SR: 37.

Three months later, the circuit court entered its decision and order. SR: 42. The court found Zuccaro's motion was timely under SDCL 23A-3-27(2). SR: 44. It also found:

- Zuccaro was sixty-four years old;
- Zuccaro had consistent employment history;
- Zuccaro had no other criminal history at the time;
- The allegation in the probable cause affidavit for the underlying case was that "Zuccaro was trying to get into the door in question with an ax";
- "[T]here is an ongoing history of tension and disputes between Zuccaro and Sammons";
- "Zuccaro continues to harass [Sammons] even after dismissal of the criminal case";
- Zuccaro "continued to file legally baseless motions in the criminal case long after all charges against her had been dismissed";
- "Zuccaro is obsessed with winning the various civil battles between her and Sammons";
- "[T]here is a potential for Zuccaro to reoffend which has not been mitigated";
- Zuccaro's "generic statements are insufficient to meet her burden"; and
- "Zuccaro provided no specific evidence to support any of [her] conclusory allegations."

SR: 45-46.

The circuit court denied Zuccaro's motion. It concluded that "when asked by the [c]ourt why expungement would be in the interests of justice, [Zuccaro] argued and testified that she completed the deferred prosecution agreement and that no conviction was entered" and "all incidents happened on private property, not public property." SR: 46. Further, "Zuccaro presented no evidence of any adverse consequence resulting from the conviction or how the conviction has in any way impeded her from leading a productive, law-abiding life." SR: 46. These

arguments were not enough. SR: 46-47. The court determined Zuccaro “failed to prove by clear and convincing evidence that expungement is in the interest of justice or the best interest of the public.” SR: 46-47.

STATEMENT OF THE FACTS

On February 3, 2024, at approximately 3:39 p.m., law enforcement received a report from Katie Sammons, an employee of Bad River Cattle Company, regarding an incident at a cabin located on the property. *Probable Cause Affidavit*, Jones County 37CRI24-6, filed February 5, 2024. Sammons reported that Christina Zuccaro was attempting to break into the cabin with an ax. *Id.* Sammons said that earlier in the day, Zuccaro had attempted to enter the cabin by using a shovel to break the exterior doorknob. *Id.* When Zuccaro returned, Sammons went inside the cabin for her own safety. *Id.* According to Sammons, Zuccaro attempted to force the door open while Sammons remained inside, holding the interior door shut with her foot and body. *Id.* Sammons stated she feared what Zuccaro might do if she gained entry. *Id.*

During the incident, Zuccaro also called 911 and reported that she was attempting to enter the cabin with an ax. *Id.* Unable to get into the cabin, Zuccaro left and returned to her residence. *Id.*

At approximately 5:56 p.m., law enforcement contacted Zuccaro at her residence. *Id.* After advising Zuccaro of her *Miranda* rights, officers interviewed her. *Id.* Zuccaro acknowledged she tried to enter the cabin

and that she believed she had a lease for the cabin and that Sammons was “squatting there illegally.” *Id.* Law enforcement advised Zuccaro that the dispute over possession of the cabin was a civil matter to be resolved through the courts. *Id.* At approximately 6:11 p.m., officers arrested Zuccaro for simple assault, transported her to the Jones County Sheriff’s Office for booking, and, following her release on bond, transported her to her father’s residence in Murdo. *Id.*

ARGUMENT

Zuccaro argues the circuit court misapplied SDCL 23A-3-30 because, according to her “individualized analysis,” the court “failed to fully account for the unique posture of this case as a dismissed criminal proceeding . . .” AB: 7, 8. She argues she showed evidence of rehabilitation by having no conviction, no criminal history, stable employment, and no subsequent criminal conduct. AB: 9. But Zuccaro’s argument is skewed. She cannot shift the clear and convincing burden from herself to the circuit court. The court’s determination should be affirmed because Zuccaro did not show that expunging her record would serve the ends of justice, nor the best interest of the public, nor did she show it had any effect on her ability to resume a productive, law-abiding life. She is not entitled to an expungement of her arrest record simply because the prosecutor dismissed her charge. The circuit court properly held Zuccaro to her burden, which was unmet.

A. Zuccaro carried the burden at the circuit court level and this Court reviews the circuit court for an abuse of discretion.

An arrested person in South Dakota can seek expungement of their record in four circumstances. SDCL 23A-3-27. One of those, under which Zuccaro qualified, is “[a]fter one year from the date the prosecuting attorney formally dismisses the entire criminal case on the record.” SDCL 23A-3-27(2).

State statute sets out the discretionary nature of an order of expungement, the legal burden that must be met, and who must meet it:

The court may enter an order of expungement upon a showing by the defendant or the arrested person by clear and convincing evidence that the ends of justice and the best interest of the public as well as the defendant or the arrested person will be served by the entry of the order.

SDCL 23A-3-30.

“[I]t is clear from the use of the term ‘may’ in SDCL 23A-3-30 that a court’s decision to grant an expungement is discretionary.” *Matter of Jones*, 2025 S.D. 54, ¶ 20, 26 N.W.3d 567, 572. “An abuse of discretion occurs when the court ‘exercises its discretion to an end or purpose not justified by, and clearly against, reason and evidence.’” *Id.* (quoting *State v. Abraham-Medved*, 2024 S.D. 14, ¶ 13, 4 N.W.3d 436, 440) (citation modified). When reviewing “a court’s discretionary determination of whether an expungement is warranted under SDCL 23A-3-30, it is necessary to individualize each case, to give that careful, humane, and comprehensive consideration to the particular situation of each offender

which would be possible only in the exercise of a broad discretion.” *Id.* ¶ 25, 26 N.W.3d at 574 (citation modified).

Simply applying under a subsection of SDCL 23A-3-27 is, on its own, not enough to grant an expungement. Rather, “the inclusion of an evidentiary burden indicates that the mere fact a defendant [met a listed condition] is not a sufficient basis for granting an expungement. To hold otherwise would render the language of SDCL 23A-3-30 meaningless with respect to an entire category of individuals who may apply for expungement under SDCL 23A-3-27.” *Id.* ¶ 26, 26 N.W.3d at 574.

Further, “the fact that the Legislature set a high burden that each applicant must meet—‘clear and convincing evidence that the ends of justice and the best interest of the public as well as the defendant will be served’—signals that the Legislature did not intend expungements to be routine.” *Id.* (*quoting* SDCL 23A-3-30).

And finally, “a decision regarding whether to grant an expungement should be based on the individualized circumstances of the defendant and the underlying record at issue.” *Id.* Thus, “[i]t was [Zuccaro’s] burden to prove by clear and convincing evidence that an order expunging [her] arrest and court records would serve the ends of justice, the best interest of the public, and [her] own best interest.” *Id.* ¶ 28, 26 N.W.3d at 575. In summary, the circuit court had the discretion to grant Zuccaro’s motion for expungement if Zuccaro showed 1) the ends of justice; 2) the best interest of the public; and 3) the best

interest of the arrested person would all be served by the entry of the order. SDCL 23A-3-30. The court properly found she did not meet any of the three.

On appeal, Zuccaro proposes the circuit court—not she—should have proven the three-fold showing by clear and convincing evidence.

AB: 6. She reiterates this suggestion throughout her brief:

- “The relevant inquiry under SDCL 23A-3-30 was whether continued retention of the criminal record served the interests of justice and the best interests of the public.” AB: 8.
- “The existence of multiple ongoing disputes . . . does not constitute clear and convincing evidence that Appellant presents a future danger to the public.” AB: 10.
- “[T]he [circuit court’s] finding of future risk was not supported by clear and convincing evidence . . .” AB: 14.

But it was Zuccaro’s burden at the circuit court level to make a showing of clear and convincing evidence. SDCL 23A-3-30. On appeal, this Court need only find whether the circuit court abused its discretion in finding Zuccaro did not carry her burden.

B. The circuit court did not abuse its discretion in denying Zuccaro’s motion.

“South Dakota’s expungement statute . . . tasks a petitioner with proving all three [bases under SDCL 23A-3-30], and not simply with general arguments, but by clear and convincing evidence.” *Jones*, 2025 S.D. 54, ¶ 41, 26 N.W.3d at 578. Factors to be considered when determining whether a petitioner has proven by clear and convincing

evidence that an expungement would serve the ends of justice can include:

the strength of the [State's] case against the petitioner, the reasons the [State] gives for wishing to retain the records, the petitioner's age, criminal record, and employment history, the length of time that has elapsed between the arrest and the petition to expunge, and the specific adverse consequences the petitioner may endure should expunction be denied.

Jones, 2025 S.D. 54, ¶ 39, 26 N.W.3d at 577 (citing *People v. Carroccia*, 352 Ill. App. 3d 1114, 817 N.E.2d 572, 576–77 (2004)). “[A] defendant’s ‘postdisposition behavior’” is another relevant factor. *Id.*

The circuit court made corresponding findings that Zuccaro was sixty-four years old, had no other criminal history, had consistent employment, and had moved for expungement less than two years after the dismissal of the criminal case. SR: 45. Yet as to the strength of the State’s case, the court found the allegation underlying the crime “was that Zuccaro was trying to get into the door in question with an ax.” SR: 45. That was seemingly uncontested, as Zuccaro also told law enforcement that she was attempting to enter the cabin with an ax while Sammons was inside. And regarding Zuccaro’s post disposition behavior, the court noted the ongoing harassment Zuccaro continued to pursue, Zuccaro’s “legally baseless motions,” her “obsession” with Sammons, and Zuccaro’s potential to reoffend. SR: 45-46. While Zuccaro disagrees with the latter finding on appeal, she lodged no objection at the hearing, nor has she offered factual evidence mitigating

the court's findings besides her opinion that her continued litigation is legal. AB: 8-12.

In support of the ends of justice argument, Zuccaro stated in her motion and at the hearing that the case was resolved without adjudication of guilt, without entry of a conviction, and without imposition of sentence. SR: 7-8, 24, 33. Expungement, Zuccaro suggested, "is particularly appropriate where prosecution was deferred and dismissed, ensuring that a non-adjudicated matter does not continue to operate as a de facto conviction." SR: 7-8. But her argument ended there. She offered no evidence or further explanation besides that the "alleged incident didn't take place in public. . .," SR: 28, "[i]t happened inside [her] house, inside." SR: 33.

The circuit court properly found "these generic statements are insufficient to meet her burden." SR: 46 (citing *Jones*, 2025 S.D. 54, ¶ 31, 26 N.W.3d at 575). Indeed, "Zuccaro provided no specific evidence to support any of these conclusory allegations." SR: 46. The same is true for her appellate brief. For the most part, Zuccaro merely reiterates that she completed her deferred prosecution agreement and she is not likely to reoffend. *See* AB: 7, 11-12 (stating she complied with the agreement, has maintained consistent employment, and has no subsequent criminal charges); AB: 8-12 (disagreeing with the court's conclusion that Zuccaro's continued disputes with Sammons were evidence supporting a possible future risk of criminal activity). Her

urgings do not offer clear and convincing evidence the court could rely on.

As to the best interest of the public, Zuccaro made the following argument in her motion:

Continued retention of the criminal record serves no legitimate public purpose and instead imposes ongoing collateral consequences, including impairment of Petitioner's access to employment, housing, and professional opportunities—outcomes inconsistent with the remedial intent of the expungement statutes.

...

Granting expungement will not compromise public safety. As provided by statute, sealed records remain accessible to law-enforcement and prosecuting authorities for authorized purposes.

...

The public interest is served by expunging records of cases resolved through deferred prosecution without conviction, consistent with the Legislature's intent to prevent lasting collateral consequences where criminal liability was never adjudicated. Expungement in such circumstances promotes fairness, accuracy of public records, and confidence in the justice system.

SR: 7-8.

Yet again, Zuccaro did not support her argument. As to the “impairment of Petitioner's access to employment, housing, and professional opportunities,” Zuccaro reiterated the contrary—that she has been able to hold a consistent job as a teacher for several years.

SR: 31, 35; AB: 7, 9, 11, 12, 13, 14.

Nor did Zuccaro offer support for her statement that the public interest is served by expunging records that do not result in a conviction.

SR: 8. This Court has addressed such a statement before. Just as in

Jones, if the Legislature wanted expungement to be automatic after a dismissal, it would have said so in the statute. *Jones*, 2025 S.D. 54, ¶ 13, 26 N.W.3d at 571. Instead, in addition to the dismissal of a criminal charge as here, it gave a petitioner the burden of proving the three-fold bases by clear and convincing evidence. SDCL 23A-3-30. “[This Court’s] disposition here hinges primarily on the *absence* of evidence pertinent to a determination of whether the public’s best interest would be served by an expungement.” *Jones*, 2025 S.D. 54, ¶ 33, 26 N.W.3d at 576 (emphasis original).

Finally, as to Zuccaro’s own best interests, she relied heavily on her completion of the deferred prosecution agreement. SR: 24, 33. Beyond that, however, she did not show that the arrest record affected her in any way. She reiterated her ability to lead “a productive, law-abiding life,” just as the circuit court found. SR: 46. The circuit court faithfully applied the governing statute and reached the only conclusion supported by the record: Zuccaro “failed to prove by clear and convincing evidence that expungement is in the interest of justice or the best interest of the public.” SR: 46-47.

CONCLUSION

Zuccaro’s appeal rests on a fundamental misstatement of the law, asking this Court to shift the statutory burden from the petitioner to the judiciary. But SDCL 23A-3-30 requires the petitioner—not the court—to

prove by clear and convincing evidence that expungement serves the interests of justice and the best interests of the public.

Zuccaro did not meet that burden. She presented no evidence that expungement would benefit the public or that retention of her arrest record prevented her from resuming a productive, law-abiding life. The State respectfully requests the order denying Zuccaro's motion be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12 point type. Appellee's Brief contains 3,772 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365.

Dated this 24th day of August, 2026.

/s/ Sarah L. Thorne
Sarah L. Thorne
Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of August, 2026, a true and correct copy of Appellee's Brief in *In the Matter of the Expungement of the Record of Christina Marie Zuccaro* was served via electronic mail and by United States mail, first class postage prepaid, upon:

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/s/ Sarah L. Thorne
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Deputy Attorney General

AUG 26 2026

Shirley A. Johnson Legal
Clerk

31543

IN THE SUPREME COURT

STATE OF SOUTH DAKOTA

No. 31543

IN THE MATTER OF THE EXPUNGEMENT OF THE RECORD OF CHRISTINA

MARIE ZUCCARO,

Petitioner and Appellant.

APPELLANT'S REPLY BRIEF

INTRODUCTION

The State's brief reframes this appeal as though Appellant contends that the circuit court bore the burden of proving that expungement was warranted. Appellant makes no such contention.

Appellant accepts that SDCL 23A-3-30 placed upon her the burden of establishing by clear and convincing evidence that expungement would serve the ends of justice, the best interest of the public, and her own best interest. *Matter of Jones*, 2025 S.D. 54, ¶ 28, 26 N.W.3d 567.

The issue on appeal is different. The question is whether the circuit court abused its discretion in determining that Appellant failed to satisfy that burden when its determination of future dangerousness rested substantially upon Appellant's continued participation in related civil litigation and upon characterizations of that litigation as “harassment,” “legally baseless motions,” and an “obsession” with winning civil disputes. (Mem. Decision at 4–5).

The record, however, presents a materially different picture. The circuit court expressly found that Appellant had “no other criminal cases in South Dakota” and “a consistent employment history.” (Mem. Decision at 4). The court also found that Appellant complied with all conditions of the deferred prosecution agreement, that the State dismissed the criminal case, and that “[t]herefore, there was no conviction in the criminal case.” (Mem. Decision at 1–2).

At the hearing, the State expressly stated that, based upon the deferred prosecution agreement, it was “not in a position where it's able to oppose” expungement. (Tr. 2:7–18). The State further confirmed that Appellant had complied with one year without new law violations. (Tr. 2:23–3:1). The State also expressly agreed that Appellant qualified under SDCL 23A-3-27(2). (Tr. 7:25–8:2).

Most importantly, continued resort to the courts to resolve an ongoing property dispute is not equivalent to subsequent criminal conduct. The circuit court's reliance upon that activity to infer an unmitigated potential to reoffend is the central abuse of discretion challenged in this appeal.

ARGUMENT

I. Appellant Bears the Burden of Proof, but the Circuit Court's Exercise of Discretion Remains Subject to Review

The State devotes substantial attention to the proposition that Appellant—not the circuit court—had the burden of proof under SDCL 23A-3-30. Appellee's Brief at 10–12.

There is no disagreement concerning that proposition. Appellant's references in her opening brief to the absence of clear and convincing evidence supporting particular findings were directed to whether the circuit court's exercise of discretion had a reasonable evidentiary foundation. They were not intended to assign the statutory burden to the circuit court.

The distinction matters. A petitioner bears the burden of proof, but a circuit court's determination that the burden was not satisfied remains subject to appellate review

for abuse of discretion. Otherwise, the abuse-of-discretion standard would be effectively unreviewable whenever the petitioner bore the underlying burden.

The State itself recognizes that this Court must determine whether the circuit court abused its discretion in finding Appellant failed to carry her burden. Appellee's Brief at 12. That is precisely the review Appellant requests.

The question therefore is not who had the burden. Appellant did. The question is whether the circuit court permissibly evaluated the record in deciding that she failed to meet it.

II. The State's Position at the Expungement Hearing Is Significant

The Appellee's Brief now urges affirmance. But the State took a materially different position at the March 11, 2026 hearing.

Before taking evidence, the circuit court specifically asked the prosecutor whether the State opposed expungement. State's Attorney Anna Maher explained that the criminal matter had been resolved through a deferred prosecution agreement and stated, "Based on that agreement, the State's not in a position where it's able to oppose." (Tr. 2:7–18).

The court then asked whether Appellant had "complied with one year of no new law violations." (Tr. 2:23–25). The prosecutor answered, "That's correct." (Tr. 3:1).

Later, when eligibility under SDCL 23A-3-27 was questioned by counsel for Sammons, the prosecutor expressly stated, "Judge, it's the State's position that she does

qualify under subsection (2) and there was a dismissal filed on December 9th of 2024.” (Tr. 7:25–8:2).

The circuit court's written decision independently confirms that Appellant “complied with all conditions of the deferred prosecution agreement,” that the State filed a dismissal, and that “[t]herefore, there was no conviction in the criminal case.” (Mem. Decision at 2). The decision further acknowledges that “[t]he State took no position on the Motion.” (Mem. Decision at 3).

This does not mean the State's non-opposition required the circuit court to grant expungement. *Jones* makes clear that the ultimate statutory determination remained with the court. But the State's position is relevant to the individualized analysis.

The prosecuting authority—the governmental entity responsible for the underlying criminal case—did not argue at the hearing that retention of Appellant's record was necessary for public safety. (Tr. 2:7–18). The opposition instead came from Sammons, through her counsel, who argued that Appellant's alleged continuing behavior created public-interest concerns. (Tr. 4:8–6:24).

That distinction is particularly important because *Jones* identifies among the relevant considerations the reasons given for opposing expungement. Here, the State gave no reason for retaining the record because it did not oppose expungement. (Tr. 2:7–18; Mem. Decision at 3).

III. The State's Description of the Underlying Incident Does Not Resolve the Expungement Question

The Appellee's Brief emphasizes the probable-cause allegations concerning Appellant's attempt to enter the cabin and characterizes the State's case as strong.

But probable-cause allegations are not adjudicated facts establishing guilt. The prosecution was deferred and ultimately dismissed. (Mem. Decision at 1–2). Appellant testified that there was no adjudication of guilt and no conviction. (Tr. 13:8–14). The circuit court itself stated, “It's clear there's no conviction here.” (Tr. 16:12–16). Its written decision likewise expressly concludes, “[T]here was no conviction in the criminal case.” (Mem. Decision at 2).

Nor did Appellant deny attempting to gain entry. At the hearing, Appellant explained that she regarded the location as her home and property. (Tr. 8:11–20). More importantly, the circuit court itself recognized at the outset that there was a dispute among the parties “regarding who owns specific property and a lease and things like that,” and expressly stated that it would not decide that dispute during the expungement proceeding. (Tr. 3:13–23).

That characterization was reinforced later in the hearing. When Sammons disputed Appellant's characterization of the house, the circuit court again recognized that the parties had a dispute concerning the house. Sammons then acknowledged, “it's not my property” and “I am an employee there.” (Tr. 14:13–24).

The court appropriately declined to adjudicate those property questions during the expungement proceeding. (Tr. 3:13–23). But that limitation cuts both ways. If the expungement proceeding was not the forum for determining the ultimate merits of the property dispute, the unresolved dispute could not simply be treated as though Appellant's position concerning the property was necessarily illegitimate.

Appellant does not ask this Court to determine who ultimately possessed superior rights to the cabin. The relevant point is narrower: the underlying incident occurred in the context of a property dispute that the circuit court itself expressly recognized but declined to adjudicate. (Tr. 3:13–23).

IV. The State's Assertion That Appellant Offered Only Her "Opinion" About Her Continued Litigation Overlooks the Judicially Noticed Criminal Record

The State argues that Appellant "offered [no] factual evidence mitigating the court's findings besides her opinion that her continued litigation is legal." Appellee's Brief at 14.

That characterization overlooks the record the circuit court actually considered. The Memorandum Decision expressly states that the circuit court "takes judicial notice of 37CRI24-6." (Mem. Decision at 1). The court further explained that all facts referenced in its decision came from the records in 37CIV26-5 and 37CRI24-6. (Mem. Decision at 2 n.1).

The court's own description of CRI-24-6 confirms that the criminal file contained materials concerning the continuing controversy. The decision identifies Appellant's

November 26, 2025 *Notice to Court Regarding Prosecutorial Inaction, Misrepresentation to Law Enforcement, and Continuing Loss of Property Rights* and describes that filing as addressing allegations concerning livestock, law enforcement, and continuing property rights. (Mem. Decision at 2).

The decision also expressly identifies Appellant's *Notice of Filing Affidavit for Record and Potential Judicial Notice*, cross-referencing the criminal file number. (Mem. Decision at 2). Thus, the existence of that filing within CRI-24-6 is established by the very decision under review.

Indeed, the circuit court itself characterized the criminal filings as reflecting that “the civil dispute between Zuccaro and Sammons revolves around control of property by Sammons' employer that Zuccaro claims is illegal.” (Mem. Decision at 2). The court therefore recognized from the judicially noticed criminal file that Appellant's continuing filings arose within an ongoing dispute concerning property and claimed authority.

The record of the hearing similarly reflects that the circuit court had reviewed Appellant's filings and recognized that “there's some dispute between all of you regarding who owns specific property and a lease and things like that.” (Tr. 3:13–23).

Appellant does not contend that allegations contained in her filings became adjudicated facts merely because she filed them. Nor does Appellant ask this Court to determine the ultimate merits of those collateral disputes.

The significance is narrower. The State's characterization of Appellant's position as merely her unsupported “opinion” overlooks that the judicially noticed criminal file

contained documented material explaining why the underlying controversy and resulting litigation continued. The circuit court's own decision acknowledges both the existence and subject matter of those filings. (Mem. Decision at 2–3).

The State may disagree with Appellant's position in those disputes. But disagreement with a litigant's position does not convert the litigant's resort to judicial process into evidence of a propensity to commit another crime.

V. The Circuit Court's Reliance Upon "Legally Baseless Motions" and an "Obsession" With Civil Litigation Does Not Establish Future Criminality

This is the central issue. The circuit court expressly found that Appellant had "no other criminal cases in South Dakota" and "a consistent employment history." (Mem. Decision at 4). Nevertheless, after referencing Sammons's allegation of continuing harassment and the parties' ongoing disputes, the court found that Appellant "continued to file legally baseless motions," was "obsessed with winning the various civil battles," and therefore presented "a potential for Zuccaro to reoffend which has not been mitigated." (Mem. Decision at 4–5).

The State relies upon those findings in defending the decision. But the conclusion does not logically follow merely from the existence or persistence of litigation.

Indeed, the Memorandum Decision itself recognizes that the filings in CRI-24-6 reflected an ongoing civil dispute concerning control of property by Sammons's employer that Appellant claimed was illegal. (Mem. Decision at 2). The decision also expressly

identifies Appellant's Notice of Filing Affidavit for Record and Potential Judicial Notice as having been filed in the criminal case. (Mem. Decision at 2).

Appellant's filings were not criminal acts. Some were unsuccessful. Some may have been procedurally incorrect. Some may have been repetitive. But an unsuccessful or even legally meritless motion is not equivalent to assaultive conduct and does not, without more, establish a likelihood of future criminal behavior.

This distinction is particularly important because the circuit court simultaneously recognized favorable objective circumstances. Appellant had “no other criminal cases in South Dakota” and had “a consistent employment history.” (Mem. Decision at 4). The court also found that Appellant “complied with all conditions of the deferred prosecution agreement.” (Mem. Decision at 2). The State expressly confirmed at the hearing that Appellant had completed the required year without new law violations. (Tr. 2:23–3:1).

The hearing itself illustrates the disconnect. Appellant explained that allegations concerning her continuing conduct involved such matters as gates, hay bales, security cameras, and conduct occurring on property where she claimed to reside. (Tr. 8:11–9:25). Sammons likewise testified concerning gates, net wrap, access to a tractor shed, and Appellant's 911 calls. (Tr. 14:25–15:10).

Significantly, after hearing those allegations, the circuit court itself asked Sammons, “But what does that have to do with the interests of justice on this particular matter?” (Tr. 15:11–14).

Yet the written decision ultimately relied upon the continuing disputes and Appellant's persistence in litigation to infer an unmitigated potential for future offending. (Mem. Decision at 4–5).

Thus, the adverse future-risk determination did not rest upon another South Dakota criminal case or a subsequent conviction. The court's own findings establish the opposite: no other South Dakota criminal cases, successful compliance with all conditions of deferred prosecution, dismissal, and no conviction. (Mem. Decision at 2, 4).

The question is therefore whether continued civil litigation and persistence in disputed property matters, without more, reasonably support the conclusion that Appellant presented an unmitigated potential to commit another criminal offense. On this individualized record, they do not.

VI. The State's Reliance on *Jones* Supports, Rather Than Defeats, Individualized Review

The State relies heavily upon *Matter of Jones*. Appellant agrees that *Jones* controls the statutory framework.

But *Jones* does not establish that expungement must be denied whenever a petitioner cannot prove a concrete lost job, denied apartment, or similar economic injury. Nor does dismissal alone automatically require expungement. Rather, *Jones* requires consideration of the individualized circumstances and underlying record.

Here, those circumstances included successful compliance with all conditions of deferred prosecution and dismissal of the criminal case. (Mem. Decision at 1–2). The State confirmed that Appellant completed one year without new law violations. (Tr.

2:23–3:1). There was no conviction. (Mem. Decision at 2; Tr. 16:12–16). The court found that Appellant had no other criminal cases in South Dakota and a consistent employment history. (Mem. Decision at 4). The State did not oppose expungement. (Mem. Decision at 3; Tr. 2:7–18). And both the transcript and Memorandum Decision recognize the existence of the continuing underlying property dispute. (Tr. 3:13–23; Mem. Decision at 2–3).

Yet the circuit court's public-interest analysis ultimately turned heavily upon its characterization of Appellant's continued litigation as “legally baseless,” an “obsession,” and evidence of an unmitigated potential to reoffend. (Mem. Decision at 4–5).

That is precisely where the individualized analysis became unreasonable. The court was entitled to consider Appellant's post-disposition conduct, but the nature of that conduct matters. Resort to legal process in a continuing civil dispute is materially different from subsequent criminal conduct.

VII. Absence of a Lost Job Does Not Establish That Expungement Is Against Appellant's Best Interest

The State argues that Appellant failed to demonstrate that the record impaired her employment because she remained consistently employed as a teacher. Appellee's Brief at 15–16.

The circuit court similarly concluded that Appellant presented no specific evidence that the record had impaired employment, housing, or professional

opportunities. (Mem. Decision at 5). But the same decision expressly found that Appellant had “a consistent employment history.” (Mem. Decision at 4).

The hearing record likewise establishes that Appellant remained employed as a teacher. When the circuit court asked about employment, Appellant explained that she taught at North Middle School in Rapid City and had taught there for the preceding four years. (Tr. 15:18–16:2).

Stable employment is a favorable individualized circumstance, not evidence of future dangerousness. The fact that Appellant maintained employment demonstrates her continued participation in a productive life despite the existence of the criminal record.

SDCL 23A-3-30 does not state that an arrested person must first lose employment, housing, or professional opportunities before expungement can serve that person's best interest. Nor does the statute require a petitioner to demonstrate economic catastrophe.

The question is whether expungement serves the person's best interest together with the ends of justice and the public interest. The absence of an already-realized employment loss does not, standing alone, establish that retaining a dismissed criminal record serves those interests.

VIII. Appellant Does Not Claim That Dismissal Automatically Entitles Her to Expungement

The State correctly observes that *Jones* rejected automatic expungement following dismissal. Appellee's Brief at 15–16. Appellant does not request an automatic rule.

Dismissal is one circumstance among several. If dismissal alone were Appellant's argument, *Jones* would foreclose it.

But this record contains substantially more. Appellant complied with all conditions of the deferred prosecution agreement, and the criminal case was dismissed. (Mem. Decision at 1–2). The State confirmed one year without new law violations. (Tr. 2:23–3:1). There was no conviction. (Mem. Decision at 2). The court found no other criminal cases in South Dakota and a consistent employment history. (Mem. Decision at 4). The State took no position against expungement. (Mem. Decision at 3). And the record documented a continuing property dispute that supplied context for the civil litigation upon which the circuit court relied in assessing future risk. (Mem. Decision at 2–3; Tr. 3:13–23).

The cumulative effect of those circumstances—not dismissal standing alone—is Appellant's argument under SDCL 23A-3-30.

CONCLUSION

The State is correct that Appellant bore the burden under SDCL 23A-3-30 and that the circuit court's determination is reviewed for abuse of discretion. Those propositions do not resolve this appeal.

The circuit court's own decision establishes that Appellant complied with all conditions of deferred prosecution, the criminal case was dismissed, and no conviction resulted. (Mem. Decision at 1–2). It further establishes that Appellant had no other criminal cases in South Dakota and maintained a consistent employment history. (Mem. Decision at 4). The State did not oppose expungement. (Mem. Decision at 3; Tr. 2:7–18).

Nevertheless, the circuit court concluded that Appellant presented an unmitigated potential to reoffend substantially because she continued litigating intertwined property and civil disputes and filed motions the court characterized as legally baseless. (Mem. Decision at 4–5).

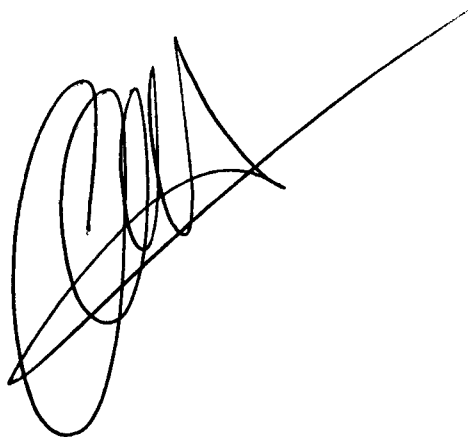
The court's own decision recognizes that those filings arose from a continuing dispute concerning property and claimed authority. (Mem. Decision at 2–3). The right to seek judicial resolution of a continuing dispute cannot reasonably be equated, without more, with a propensity to engage in future criminal conduct.

Appellant therefore respectfully requests that this Court reverse the order denying expungement and remand the matter for reconsideration under the proper individualized analysis required by SDCL 23A-3-30 and *Matter of Jones*.

Respectfully submitted,

Christina Marie Zuccaro

Petitioner and Appellant, Pro Se

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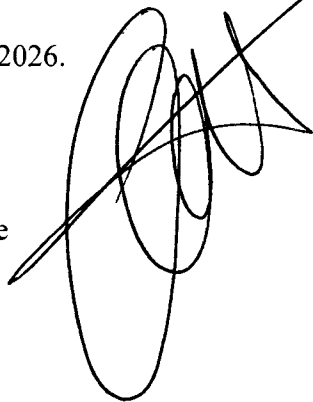
CERTIFICATE OF COMPLIANCE

1. I certify that Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A-66(b), using Times New Roman typeface in 12-point type. Appellant's Reply Brief contains 2996 words.
2. I certify that the word-processing software used to prepare this brief is Google Docs.

Dated this 26th day of August, 2026.

Christina Marie Zuccaro

Petitioner and Appellant, Pro Se

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, crossing over the signature itself.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of August, 2026, a true and correct copy of **Appellant's Reply Brief** in *In the Matter of the Expungement of the Record of Christina Marie Zuccaro* was served via electronic mail and by United States mail, first class postage prepaid, upon:

Sarah L. Thorne

Deputy Attorney General

Office of the Attorney General

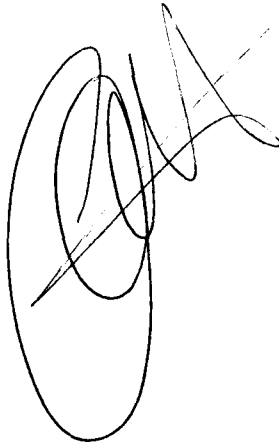
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Petitioner and Appellant, Pro Se

A handwritten signature in black ink, appearing to be "S. Thorne", written over a large, loopy oval shape.