

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS
Plaintiff)
Vs.)
CARLTON HEZEKIAH CREQUE
Defendant)

CASE NO. ST-06-CR-0000426

ACTION FOR: 14 V.I.C. 1709

**NOTICE OF ENTRY OF
MEMORANDUM
OPINION & ORDER**

TO: ORDER BOOK
LIBRARIAN
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT
LIT DIVISION
DOUGLAS DICK, ESQ.

Please take notice that on February 26, 2010 a(n) MEMORANDUM OPINION & ORDER dated February 23, 2010 was entered by the Clerk in the above-entitled matter.

Dated: February 26, 2010

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT


LORI TYSON
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
CARLTON HEZEKIAH CREQUE **Defendant**)

CASE NO. ST-06-CR-0000427

ACTION FOR: 14 V.I.C. 1708(1)

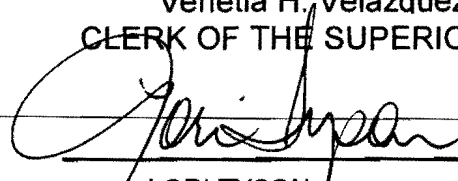
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION & ORDER**

TO: ORDER BOOK
LIBRARIAN
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT
IT DIVISION
DOUGLAS DICK, ESQ.

Please take notice that on February 26, 2010 a(n) MEMORANDUM OPINION & ORDER dated February 23, 2010 was entered by the Clerk in the above-entitled matter.

Dated: February 26, 2010

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT



LORI TYSON
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS
Plaintiff)
Vs.)
CARLTON HEZEKIAH CREQUE
Defendant)

CASE NO. ST-06-CR-0000428

ACTION FOR: 14 V.I.C. 1051

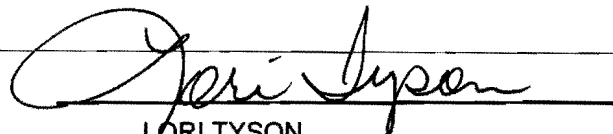
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION & ORDER**

TO: ORDER BOOK
LIBRARIAN
JUDGES AND MAGISTRATES OF THE SUPERIOR COURT
IT DIVISION
DOUGLAS DICK, ESQ.

Please take notice that on February 26, 2010 a(n) MEMORANDUM OPINION & ORDER dated February 23, 2010 was entered by the Clerk in the above-entitled matter.

Dated: February 26, 2010

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT


LORI TYSON
COURT CLERK II

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,)	CASE NO. ST-06-CR-426
)	CASE NO. ST-06-CR-427
)	CASE NO. ST-06-CR-428
Plaintiff.)	
)	
vs.)	
)	
CARLTON HEZEKIAH CREQUE)	
)	
Defendant.)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

This matters comes before the Court on Defendant's *pro se* Renewed Motion for Expungement filed on January 13, 2009. No response has been received from the People.

FACTS AND PROCEDURAL HISTORY

An October 30, 2006, Information in Case No. ST-06-CR-426 alleged that on or about July 13, 2006, Defendant perpetrated an act of sexual intercourse with a person under eighteen years of age in violation of V.I.C. ANN. tit. 14 § 1700(a), aggravated rape second degree and 14 V.I.C. § 1709, unlawful sexual contact second degree. On April 12, 2007, the People moved to dismiss the case against Defendant by filing a Motion to Dismiss Without Prejudice ("Motion") stating that the People have very limited evidence and cannot prove the case beyond a reasonable doubt.¹

Additionally, an October 31, 2006, Information in Case No. ST-06-CR-427 alleged that on or about September 16, 2006, Defendant attempted to perpetrate an act of sexual intercourse with a person under the age of eighteen years but thirteen years or

¹ See People's Motion to Dismiss Without Prejudice in Case No. ST-06-CR-426, p. 1.

older in violation of 14 V.I.C. 1700(a)(a) and 14 V.I.C. 331, attempted aggravated rape in the second degree. Defendant also was charged with false imprisonment pursuant to 14 V.I.C. 1051 in the same Information. However, on June 22, 2007, the People moved to dismiss the matter against Defendant by filing a Motion to Dismiss Without Prejudice stating that the minor victim and her guardian have requested dismissal and are unwilling to pursue the case.

Lastly, an October 31, 2006, Information in Case No. ST-06-CR-428 alleged that on or about September 27, 2006, Defendant was charged with false imprisonment in violation of 14 V.I.C. 1051 and charged with first degree unlawful sexual contact in violation of 14 V.I.C. 1708(1). Then again, on June 22, 2007, the People moved to dismiss the matter against Defendant in a Motion to Dismiss Without Prejudice because the minor victim and her mother requested that the matter be dismissed and were unwilling to pursue the case against Defendant.

STANDARD OF REVIEW

The Virgin Islands legislature adopted Bill No. 28-0151, on October 28, 2009, permitting expungement of criminal records in certain circumstances. Title 5 of the Virgin Islands Code was amended by adding chapter 314 containing 5 V.I.C. § 3733(a), which delineates instances in which the Court is required to expunge a record upon Petition to the Court, and 5 V.I.C. § 3733(b), which provides that:

The records of an arrest, complaint or information that does not result in a conviction **may** be expunged by petition to the court except:

- (1) Where a person flees the jurisdiction to avoid prosecution; or

(2) Where a person has a subsequent arrest, unless there are extraordinary circumstances to which the court finds expungement in the best interest of public policy. (emphasis added).

Defendant meets neither exception, but it is still within the Court's discretion to determine whether expungement in this matter is warranted. See 5 V.I.C. § 3733(b).

“Retaining and preserving arrest records serves the important function of promoting effective law enforcement. Such records help to meet the ‘compelling public need for an effective and workable criminal identification procedure.’” *Gov't of V.I. v. Richardson*, 45 V.I. 326, 328 (Terr. Ct. 2004). (quoting *United States v. Schnitzer*, 567 F.2d 536, 539 (2d Cir. 1977)) (citations omitted). Therefore, “[t]he government’s need to maintain arrest records must be balanced against the harm that the maintenance of arrest records can cause citizens.” *Id.* As a result, there is a presumption in favor of the government maintaining arrest records and the petitioner seeking expungement must overcome this presumption. *Id.* (citing *Sealed Appellant v. Sealed Appellee*, 130 F.3d 695 (5th Cir. 1997)) (citations omitted). Expungement is within the Court’s discretion and is reserved for only extreme cases. *Id.* at 329.

DISCUSSION

In these cases, the People moved to dismiss the charges against Defendant.

However, it is important to note that automatic expungement of criminal records is not granted simply because a defendant has been absolved from criminal charges. See 5 V.I.C. § 3333(b); *Richardson, supra*, at 329. In *Richardson* at 328, the Government decided not to prosecute the defendant for aggravated assault and battery, resulting in the

defendant moving for an expungement of his arrest record. The court held that there was no “compelling or extraordinary circumstances to justify expunging Defendant’s arrest record.” *Id.* at 332. The court reasoned that the Government never stated that the defendant was innocent of the charges, there was no evidence that defendant’s “Constitutional Rights were violated when he was arrested, or that his arrest was constitutionally infirmed [sic].” *Id.*

Similarly, in the present matter, Defendant failed to offer any evidence establishing that his Constitutional Rights were violated during his arrest nor did the People concede that they were dropping the charges because Defendant was innocent. On the other hand, the People attached affidavits to their Motions stating that counselors were concerned that it would be harmful for the minor victims to testify in the trial. In Case No. ST-06-CR-426, the People stated that they did not have enough evidence to prove their case beyond a reasonable doubt, not that Defendant was innocent. Furthermore, probable cause was found to support each of Defendant’s arrests and Defendant did not submit any evidence demonstrating extraordinary circumstances warranting expungement of his arrest record. See *Richardson, supra*, at 331.

Defendant also asserts that his record should be expunged because he seeks employment with the National Guard. However, “[l]egal precedent instructs that absent extraordinary circumstances, the prosecutor aborting an action is not a basis for expungement.” *Santiago v. People of the V.I.*, S.Ct.Crim. Nos. 2007-052, 2007-053, 2007-051, 2009 WL 79267, at *5 (V.I. March 18, 2009). In *Gov’t of V.I. v. Nugent*, No.


People of the V.I. v. Creque
Case No. ST-06-CR-426
Case No. ST-06-CR-427
Case No. ST-06-CR-428
Memorandum Opinion
5 of 5

SX-05-CR-69, 2007 WL 1394014, at *2 (Super. Ct. April 2, 2007), the court determined that defendant's argument that his arrest may impede his plans of joining the U.S. Marines did not qualify as "extraordinary circumstances nor [did] it outweigh the Government's interests

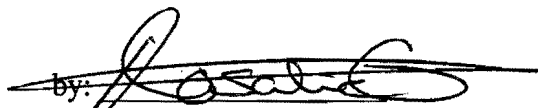
Moreover, in *U.S. v. Schnitzer*, *supra* at 540, the defendant moved to have his arrest record expunged because it would create problems for him as a rabbinical student. The court refused to expunge defendant's arrest record because "the situation [was] not harsh or unique. Such an explanation may be expected from those about to enter a profession, such as a religious or legal profession." *Id.* The court further reasoned that "[t]he harm, if any, which may result does not fall within the narrow bounds of the class of cases where expungement has been declared appropriate." *Id.*

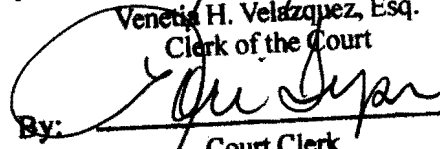
The Court finds that Defendant's argument does not demonstrate the presence of extraordinary circumstances that outweigh the Government's need to preserve arrest records. A separate Order shall follow.

Dated: February 23, 2010


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:
Venetia H. Velazquez, Esq.
Clerk of the Court / /

by: 
Rosalie Griffith
Court Clerk Supervisor 2/24/10

CERTIFIED A TRUE COPY
Date: 2/20/10
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,)
)
)
 Plaintiff.)
)
 vs.)
)
 CARLTON HEZEKIAH CREQUE)
)
 Defendant.)
)
)
)


CASE NO. ST-06-CR-426
 CASE NO. ST-06-CR-427
 CASE NO. ST-06-CR-428

The Court having rendered a Memorandum Opinion this date, in accordance with that opinion it is

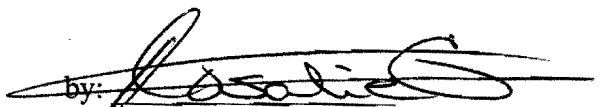
ORDERED that Defendant's Renewed Motion for Expungement is **DENIED WITHOUT PREJUDICE**; and it is further

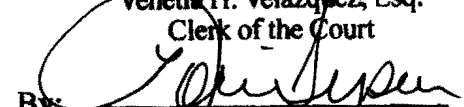
ORDERED that a copy of this Order shall be personally served on the Defendant Carlton Hezekiah Creque, and that a copy thereof shall be directed to Assistant Attorney General Douglas Dick, Esq.

Dated: February 23, 2010


 HON. MICHAEL C. DUNSTON
 JUDGE OF THE SUPERIOR COURT
 OF THE VIRGIN ISLANDS

Attest:
 Venetia H. Velazquez, Esq.
 Clerk of the Court ___ / ___ / ___

by: 
 Rosalie Griffith
 Court Clerk Supervisor 2/24/10

CERTIFIED A TRUE COPY
 Date: 2/24/10
 Venetia H. Velazquez, Esq.
 Clerk of the Court
 By: 
 Court Clerk