Circuit Court for Prince George's County
Case No. CJ074071

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0550

September Term, 2021

IN RE EXPUNGEMENT PETITION OF
TREY H.

Fader, C.J.,
Berger,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: February 1, 2022

This appeal concerns the interpretation and application of two grounds for expungement. One generally permits expungement of criminal records related to a charge for which "a probation before judgment is entered," provided, as relevant here, (1) that the petition is filed no earlier than three years after probation was granted and (2) that, within three years of the entry of the probation before judgment, the petitioner was not "convicted of a crime other than a minor traffic violation" or a crime that "is no longer a crime." Md. Code Ann., Crim. Proc. § 10-105(a)(3), (c)(2), (e)(1)(4) (2018 Repl.; 2019 Supp.). The second generally permits expungement of criminal records where "the person was convicted of possession of marijuana under § 5-601 of the Criminal Law Article," provided, as relevant here, that the petition is not "filed within 4 years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later." Crim. Proc. § 10-105(a)(12), (c)(8).

The appellant, Trey H., petitioned the Circuit Court for Prince George's County to expunge records related to a 2007 marijuana possession charge for which he received a disposition of probation before judgment. The circuit court treated the relevant expungement provision as that applicable generally to probations before judgment and determined that Mr. H. was not eligible for expungement because he had been convicted of two other offenses within three years after entry of the probation before judgment. For that reason, we agree that Mr. H. is not eligible for expungement under the provision generally applicable to probation before judgment dispositions. However, we conclude that Mr. H. is eligible for expungement under the provision generally applicable to

marijuana possession convictions. Accordingly, we will reverse and remand the case with instructions to grant Mr. H.'s expungement petition.[1]

BACKGROUND

In November 2007, Mr. H. received a citation for possession of marijuana in violation of § 5-601 of the Criminal Law Article and consumption of alcohol in a public place in violation of then-Article 2B, § 19-202 (recodified as § 6-321 of the Alcoholic Beverages Article by 2016 Md. Laws, ch. 41 § 1). Mr. H. pleaded guilty to possession of marijuana and received probation before judgment, pursuant to which he was ordered to serve six months of unsupervised probation.

Within the three years following entry of probation before judgment, Mr. H. pleaded guilty to two other offenses. In May 2008, Mr. H. pleaded guilty to one count of possession of marijuana in violation of § 5-601 of the Criminal Law Article. That conviction has since been expunged, although apparently not until after the circuit court proceedings in this case. In March 2009, Mr. H. pleaded guilty to one count of possession of paraphernalia in violation of § 5-619 of the Criminal Law Article. As of the date of this opinion, that conviction has not been expunged.

In 2019, Mr. H. filed a petition in the Circuit Court for Prince George's County in which he sought expungement of his probation before judgment disposition on the 2007

[1] Based on our conclusion that Mr. H. was entitled to have his probation before judgment disposition expunged, we need not and do not address his alternative contention that we should remand this matter for consideration of whether the offense for which he received that disposition is no longer a crime and therefore eligible for expungement under § 10-105(e)(4)(i) of the Criminal Procedure Article.

marijuana possession charge. The circuit court denied the petition because of Mr. H.'s 2008 and 2009 convictions.

In March 2020, Mr. H. filed another expungement petition. The State again objected on the grounds of Mr. H.'s two subsequent convictions, which it argued precluded expungement of a probation before judgment disposition. In a reply to the State's opposition, Mr. H. argued that even if he did not meet the criteria for expungement of a standard probation before judgment disposition, he met the criteria for expungement of a marijuana possession conviction. In May 2021, the court denied Mr. H.'s petition based on his two subsequent convictions.

Mr. H. noted this timely appeal.

DISCUSSION

Under the expungement provisions at issue in this appeal, an individual who is eligible for expungement of a criminal record is entitled to expungement of that record. *See Reid v. State*, 239 Md. App. 1, 13 (2018). Indeed, "[t]he statute seems to lodge no discretion in the court, but to mandate either granting or denying the relief, based upon statutorily defined entitlement, or the lack of it." *Ward v. State*, 37 Md. App. 34, 36 (1977). "It follows that, on appeal, a person's eligibility for expungement is a question of law that is subject to de novo review." *In re Expungement Petition of Dione W.*, 243 Md. App. 1, 3 (2019).

MR. H.'S PROBATION BEFORE JUDGMENT RECORD IS ELIGIBLE FOR EXPUNGEMENT UNDER CRIMINAL PROCEDURE § 10-105(A)(12).

A. The Relevant Statutory Scheme

In recent decades, the General Assembly has expanded the types of criminal records individuals are entitled to have expunged. *See, e.g.*, 2017 Md. Laws, ch. 801 (authorizing expungement of marijuana possession charges under § 10-105(a)(12) of the Criminal Procedure Article); 2015 Md. Laws, ch. 374 (authorizing expungement of records where the basis for the conviction is no lunger a crime under § 10-105(a)(11) of the Criminal Procedure Article); 2015 Md. Laws, ch. 314 (amending provisions of the expungement statute related to probation before judgment); *see also* 2020 Md. Laws, ch. 21 (prohibiting Judiciary Case Search from including reference to certain marijuana possession charges).

Subtitle 1 of Title 10 of the Criminal Procedure Article provides rights of expungement based on both type of charge and disposition of charge. Section 10-110 of the Criminal Procedure Article permits a person to seek expungement of 27 different categories of misdemeanor offenses and three different categories of felony offenses. Crim. Proc. § 10-110(a). Such petitions may not be filed earlier than ten, or in some instances, 15 years after the person "satisfies the sentence or sentences imposed . . . including parole, probation, or mandatory supervision." *Id.* § 10-110(c). Such petitions may not be granted if the person has been convicted of a new crime, unless that conviction is also eligible for expungement, and the court must find that "the person is not a risk to public safety" and "that an expungement would be in the interest of justice." *Id.* § 10-110(f). Section 10-110 applies to violations of § 5-601 of the Criminal Law Article,

but only to the extent that they do not involve "the use or possession of marijuana."[2] *Id.* § 10-110(a)(1)(viii).

The primary provision permitting expungement based on the disposition of charges is Criminal Procedure § 10-105, which provides for expungement of criminal records relating to charges leading to the following dispositions: acquittal, dismissal of charges, probation before judgment, nolle prosequi, stet, transfer to juvenile court, and not criminally responsible of certain offenses. Crim. Proc. § 10-105(a)(1), (2), (3), (4), (5), (6), (7), (10). Section 10-105 also provides for expungement of records where there was a guilty verdict but the offense was non-violent and the defendant received a full pardon, the act on which the conviction was based is no longer a crime, or the conviction was vacated because the defendant was a victim of human trafficking. *Id.* § 10-105(a)(8), (11), (13).

Only two provisions of § 10-105 permit expungement based exclusively on the specific type of charge. First, § 10-105(a)(9) provides for expungement where the person was convicted of or found not criminally responsible for one of the following offenses:

> (i) urination or defecation in a public place;
> (ii) panhandling or soliciting money;
> (iii) drinking an alcoholic beverage in a public place;
> (iv) obstructing the free passage of another in a public place or a public conveyance;
> (v) sleeping on or in park structures, such as benches or doorways;
> (vi) loitering;
> (vii) vagrancy;

[2] Section 5-601 of the Criminal Law Article criminalizes, among other things, the possession or administration to another of any "controlled dangerous substance" not legally procured "by prescription or order from an authorized provider." Crim. Law § 5-601(a)(1).

(viii) riding a transit vehicle without paying the applicable fare or exhibiting proof of payment; or

(ix) except for carrying or possessing an explosive, acid, concealed weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation Article, any of the acts specified in § 7-705 of the Transportation Article;

Second, § 10-105(a)(12) provides for expungement where "the person was convicted of possession of marijuana under § 5-601 of the Criminal Law Article."

Here, we are concerned with § 10-105(a)(3), which permits expungement of records where the charges resulted in a disposition of probation before judgment; and § 10-105(a)(12), which permits expungement of possession of marijuana convictions.

A petition for expungement based on § 10-105(a)(3) must be filed by the later of "the date the petitioner was discharged from probation" or "3 years after the probation was granted." Crim. Proc. § 10-105(c)(2). Notably, unless the crime of which the person was convicted is no longer a crime, a person is not eligible for expungement based on the entry of a probation before judgment if "the person within 3 years of the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime." *Id.* § 10-105(e)(4)(i).

Criminal records related to charges resulting in a probation before judgment disposition have been eligible for expungement since 1975.[3] *See* 1975 Md. Laws, ch. 260

[3] As the Court of Appeals has described the evolution of the disposition of probation before judgment, in 1955, the General Assembly gave Maryland courts "the authority to place a person accused of crime on probation without finding a verdict." *Myers v. State*, 303 Md. 639, 645-46 (1985). In 1972, this Court "held that if a person were placed on probation without finding a verdict and a court subsequently revoked the probation, the court would be required to conduct a *de novo* trial on the original offense before the court

(adding §§ 735 – 741 to Article 27 of the Maryland Code) ("If a person is charged with the commission of a crime and . . . a judgment of probation without finding a verdict is entered . . . he may file a petition setting forth the relevant facts and requesting expungement of both the police records and the court records pertaining to the charge."). Although there is no applicable legislative history, *see Mora v. State*, 123 Md. App. 699, 710 (1998), it is notable that the General Assembly first permitted expungement of charges leading to a probation before judgment and other dispositions not resulting in a final judgment of conviction the year after the Court of Appeals, in *Doe v. Wheaton Police Department*, decided that the constitutional right to privacy did not entitle a person to expungement of records of nolle prossed charges, 273 Md. 262 (1974). In 2001, as part of the code revision process, the statutory ground for expungement of a charge resulting in a disposition of probation before judgment was re-codified in § 10-105 of the new Criminal Procedure Article. *See* 2001 Md. Laws, ch. 10.

The Justice Reinvestment Act, enacted in 2016, added § 10-110 to the Criminal Procedure Article. *See* 2016 Md. Laws, ch. 515. Before that, expungements in Maryland were generally available when charges ended in dispositions other than guilty verdicts resulting in final judgments, to address "society's concern with individual privacy . . . that persons formally accused, but not convicted, of a crime should not be tainted with that

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could sentence the person." *Myers*, 303 Md. at 646 (discussing *Bartlett v. State*, 15 Md. App. 234, 240-41 (1972), *aff'd per curiam*, 267 Md. 530 (1973)). In response, to avoid the need for a new trial, the General Assembly changed the statute in 1975 to permit circuit courts to place a person on probation "after determination of guilt or acceptance of a nolo contendere plea," instead of "without finding a verdict." *Myers*, 303 Md. at 646 (quoting 1975 Md. Laws, ch. 527).

arrest record in the pursuit of employment, education, licensing, financial transactions, or the like." *Mora*, 123 Md. App. at 712. With the addition of § 10-110, the General Assembly made a broad list of misdemeanor and some felony conviction records eligible for expungement. However, those records are not eligible for expungement until a minimum of ten years after the completion of a person's sentence, including any period of probation or parole.

The General Assembly's addition of Criminal Procedure § 10-105(a)(12) is best understood in the context of other contemporaneous developments in its treatment of criminal offenses relating to the possession of marijuana. In 2012, the General Assembly reduced the maximum criminal penalties associated with the crime of possession of marijuana under § 5-601 of the Criminal Law Article. *See* 2012 Md. Laws, chs. 193 & 194. In 2014, the General Assembly reclassified the use or possession of less than ten grams of marijuana from a criminal offense to a civil offense. *See* 2014 Md. Laws, ch. 158. The following year, in an act seemingly targeted at prior convictions for the possession of less than ten grams of marijuana, the General Assembly added § 10-105(a)(11) to the Criminal Procedure Article, which made expungement available for convictions "where the person was convicted of a crime and the act on which the conviction was based is no longer a crime." 2015 Md. Laws, ch. 374. Also in 2015, and again seemingly targeted at changes in the treatment of marijuana possession, the General Assembly amended § 10-105(e)(4) to provide, in cases involving a disposition of probation before judgment, that subsequent criminal convictions would not preclude expungement if

the crime on which the probation before judgment disposition was based is no longer a crime or if the same is true of the subsequent convictions. 2015 Md. Laws, ch. 314.

In 2017, the General Assembly added Criminal Procedure § 10-105(a)(12), which permits the expungement of records where "the person was convicted of possession of marijuana under § 5-601 of the Criminal Law Article." 2017 Md. Laws, ch. 801. Before 2014, prosecutors had no reason to delineate in a statement of charges whether the amount of marijuana in a defendant's possession was more or less than ten grams and neither party had incentive to establish that amount at trial or in a plea agreement. As a result, many people who may otherwise have been eligible for expungement under § 10-105(a)(11)—based on conviction of a charge the basis of which was no longer a crime—may have found it difficult or impossible to prove their entitlement to expungement under that provision. Accordingly, § 10-105(a)(12) was enacted to "allow a portion of this population . . . technically eligible under the current statute . . . to actually obtain expungements." S.B. 949, 2017 Leg., Reg. Sess. (Md. 2017), Revised Fiscal and Policy Note, at 6; *see also* S.B. 651, 2015 Leg., Reg. Sess. (Md. 2015), Fiscal and Policy Note, at 2 (observing that although § 10-105(a)(11), which § 10-105(a)(12) was meant to complement, applies by its terms to additional offenses, "the most likely former crime to which the bill applies is the use or possession of less than 10 grams of marijuana.").

A petition for expungement of a marijuana possession conviction "may not be filed within 4 years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later." *Id.* § 10-105(c)(8). Notably, however, subsequent convictions are not a bar to expungement of a marijuana

possession conviction pursuant to Criminal Procedure § 10-105(a)(12). That stands in contrast both to expungements based on a probation before judgment disposition under § 10-105(a)(3) and to all expungements of convictions under § 10-110.

B. Section 10-105(a)(12) of the Criminal Procedure Article Permits Expungement of Records Relating to a Marijuana Possession Charge that Resulted in a Probation Before Judgment Disposition.

The circuit court analyzed Mr. H.'s expungement petition pursuant to § 10-105(a)(3) of the Criminal Procedure Article, applicable to records related to charges resolved by a probation before judgment disposition. We agree with the circuit court's analysis that, based on the record before that court, Mr. H. was not eligible for expungement under that statutory provision based on the two convictions he sustained, and that remained on his record at the time of the circuit court proceedings, during the three years following entry of his probation before judgment.

More complicated is the question of whether Mr. H. qualified for expungement pursuant to § 10-105(a)(12) as a person "convicted of possession of marijuana." Mr. H. argues that, for purposes of that provision, a probation before judgment should qualify as a conviction. The State responds that probation before judgment constitutes a conviction only if the defendant subsequently violates probation and receives a sentence. Thus, the State contends, a probation before judgment that is not violated is not a conviction and is not eligible for expungement under § 10-105(a)(12).

To determine whether Mr. H., by virtue of receiving a probation before judgment on his marijuana possession charge, qualifies as a person "convicted of possession of

marijuana" for purposes of § 10-105(a)(12), we turn to our familiar principles of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly." *Bellard v. State*, 452 Md. 467, 481 (2017) (quoting *Wagner v. State*, 445 Md. 404, 417 (2015)). "[T]o determine [the General Assembly's] purpose or policy, we look first to the language of the statute, giving it its natural and ordinary meaning. We do so on the tacit theory that the General Assembly is presumed to have meant what it said and said what it meant." *Peterson v. State*, 467 Md. 713, 727 (2020) (quoting *Bellard*, 452 Md. at 481). In interpreting a statute's plain language, we "read[] the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Berry v. Queen*, 469 Md. 674, 687 (2020) (quoting *Brown v. State*, 454 Md. 546, 551 (2017)). In doing so, "[o]ur inquiry is not confined to the specific statutory provision at issue on appeal. Instead, '[t]he plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute.'" *Berry*, 469 Md. at 687 (internal citation and some quotation marks omitted) (quoting *Johnson v. State*, 467 Md. 362, 372 (2020)).

"When the statutory language is clear, we need not look beyond the statutory language to determine the General Assembly's intent." *Peterson*, 467 Md. at 727 (quoting *Bellard*, 452 Md. at 481). "If the language of the statute is ambiguous, however, then courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives, and the purpose of the enactment under consideration." *Peterson*, 467 Md. at 728 (quoting *Bellard*, 452 Md. at 481). In that case,

this Court's role "is to resolve that ambiguity in light of the legislative intent, using all the resources and tools of statutory construction at our disposal." *Id.*

The word "convicted" is not defined in Title 10, nor do we discern any definitive meaning from the structure of the relevant statutory provisions. The State points out, accurately, that in crafting the expungement provisions of § 10-105, the General Assembly used the word "convicted" in some places and the term "probation before judgment" in others, suggesting that the General Assembly intended different meanings. *See Lawrence v. State*, 475 Md. 384, 406 (2021) ("It is a common rule of statutory construction that, when a legislature uses different words, especially in the same section or in a part of the statute that deals with the same subject, it usually intends different things."). Notably, however, there is at least one provision within § 10-105 in which the General Assembly used the term "conviction" unambiguously in reference to a probation before judgment disposition. Subsection 10-105(e)(4)(i) provides that a "person is not entitled to expungement if . . . the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which *the conviction* is based is no longer a crime, and the person within 3 years of the entry of the probation before judgment has been convicted of a crime . . . ." (Emphasis added).

Fortunately, we are not without guidance in determining whether a probation before judgment disposition falls within the meaning of the term "convicted." As the Court of Appeals first explained in *Myers v. State*, "the meaning of 'convicted' and 'conviction' turns upon the context and purpose with which those terms are used." 303 Md. 639, 642 (1985). The issue before the Court in *Myers* was whether a witness who had been found

guilty of perjury but had received probation before judgment was subject to the statutory prohibition against testimony by "[a] person convicted of perjury." *Id.* at 640 (quoting Md. Code Ann., Cts. & Jud. Proc. § 9-104, *repealed by* 2016 Md. Laws, ch. 530)). The Court recognized that the word "convicted" generally has two different meanings: (1) a "general and popular sense" referring to "the establishment of guilt prior to, and independent of, the judgment of the court"; and (2) a "legal and technical sense" referring to "the final judgment and sentence rendered by a court pursuant to a verdict or plea of guilty[.]" *Id.* at 642-43. Reviewing caselaw, the Court observed that in cases where a conviction "imposes a legal disability, courts have defined 'conviction' in its legal and technical sense." *Id.* at 643. Thus, the Court held, "unless the context in which the word is used indicates otherwise, a 'conviction' is the final judgment and sentence rendered by a court pursuant to a verdict or plea of guilty." *Id.* at 645. The Court further noted that the statute authorizing imposition of a probation before judgment disposition expressly provided that the successful discharge of probation "shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of crime." *Id.* at 647 (quoting Art. 27, § 641, later recodified as Crim. Proc. § 6-220). The statute treated a probation before judgment disposition as a conviction for such purposes only upon a violation of probation. *Id.*

Five years later, in *Shilling v. State*, 320 Md. 288 (1990), the Court concluded that in a different context—one not involving a legal disability—"conviction" carried a different meaning that encompassed probation before judgment. There, the defendant had previously been found guilty of operating a motor vehicle while intoxicated and received

a probation before judgment. *Id.* at 290. In the case before it, with knowledge of that prior disposition, the trial court again found the defendant guilty of operating a motor vehicle while intoxicated and, notwithstanding a statute prohibiting successive probation before judgment dispositions, again imposed probation before judgment. *Id.*

After concluding that the trial court had erred in imposing the second probation before judgment, the Court addressed whether the defendant had been entitled to notice before sentencing under Rule 4-245(a) as "a defendant who, because of a prior *conviction*, [wa]s subject to additional or mandatory statutory punishment for the offense charged." *Id.* at 292 (quoting Md. Rule 4-245(a)) (emphasis added). The State argued that the defendant was not entitled to such notice because his prior disposition was a probation before judgment, not a conviction, and the rule expressly applied only "[w]hen the law prescribes a mandatory sentence because of a specified previous *conviction*[.]" 320 Md. at 296-97 (quoting Md. Rule 4-245(c)) (emphasis added). The Court of Appeals disagreed. The Court observed that the purpose of the rule is to provide a defendant with notice that the State intended "to seek enhanced punishment" so that the defendant would have "an opportunity to be heard." Because the prior probation before judgment disposition subjected the defendant to an enhanced punishment, the Court treated it as a conviction for the purpose of the Rule and held that notice was required. 320 Md. at 297.

In *Abrams v. State*, this Court concluded that a probation before judgment disposition should be treated as a "conviction" for purposes of determining a defendant's eligibility to seek coram nobis relief. 176 Md. App. 600, 617 (2007). There, an individual who had received probation before judgment after being found guilty of three counts of

uttering was faced with collateral consequences when he later pleaded guilty to distribution of cocaine charges in federal court. *Id.* at 606. The State argued that coram nobis relief was "available only to persons *convicted* of a crime," which the individual was not because he had successfully discharged his probation. *Id.* at 609. After reviewing *Myers*, *Shilling*, and other cases, this Court determined that, based on context and purpose, a person "facing significant collateral consequences because of having been found guilty of a criminal offense" was "convicted" of the offense for purposes of eligibility for coram nobis relief, regardless of whether there was a final judgment of conviction. *Id.* at 616-17. Because "the overriding public policy behind coram nobis relief in Maryland is to afford a remedy to a person who is faced with significant collateral consequences of [a] 'conviction,'" it would be contrary to public policy not to treat a probation before judgment disposition carrying such consequences as a conviction. *Id.* at 617. Two years later, the Court of Appeals confirmed that this Court's analysis in *Abrams* "accurately reflects Maryland law" in holding that a defendant who received probation before judgment after a guilty plea with immigration consequences had standing to pursue coram nobis relief. *Rivera v. State*, 409 Md. 176, 192 (2009).

In sum, a probation before judgment disposition is generally not a conviction for purposes of statutes or rules that impose legal disabilities as a result of a conviction, *see Myers*, 303 Md. at 643, but our appellate courts have interpreted the word conviction to include that disposition where doing so furthers the purpose of the applicable statute or rule, *see Shilling*, 320 Md. at 297; *Abrams*, 176 Md. App. at 617.

We therefore turn to the purpose of the provision permitting expungement of records where "the person was convicted of possession of marijuana under § 5-601 of the Criminal Law Article." Crim. Proc. § 10-105(a)(12). As discussed above, that provision became law amid a series of enactments that have substantially reduced the penalties and repercussions associated with the possession of marijuana. Thus, whereas possession of marijuana was previously treated as an offense akin to the possession of other controlled dangerous substances, conviction of that offense now is among the handful of offenses eligible for expungement under the relatively lenient provisions of § 10-105. The apparent public policy behind § 10-105(a)(12) is to clear the records of those previously found guilty of an offense that the General Assembly has determined to be significantly less culpable than it was previously, such that petitioners are not forced to "forever bear [the conviction's] stigma in terms of both social relationships and economic opportunities." *Mora*, 123 Md. App. at 714 (quoting *Doe v. Webster*, 606 F.2d 1226, 1239 (D.C. Cir. 1979)). For that purpose, it is immaterial whether the finding of guilt was accompanied by a sentence and final judgment or, as here, a probation before judgment. Indeed, if anything, a probation before judgment disposition suggests that, at the time it was entered, the court found the conduct less culpable than conduct that would have resulted in a sentence and judgment.

The State argues that where the General Assembly has spoken and limited the availability of expungement to "convictions," this Court cannot expand that eligibility to reach probation before judgment dispositions. In doing so, the State focuses on the holding in *Myers* that a probation before judgment becomes a conviction in the "legal and technical

sense" only if the defendant subsequently violates the terms of the probation and receives a sentence for the violation. *Myers*, 303 Md. at 643. We reject that argument for three reasons. First, the exercise in which we are engaged is one of statutory interpretation, to determine what the General Assembly intended by its use of the word "convicted" in § 10-105(a)(12), not an effort to expand or contract the statute. Second, the State's argument misreads *Myers* and ignores *Shilling*, *Abrams*, and *Rivera*. *Myers* did not determine that a probation before judgment is a conviction only upon a violation for all purposes or in all contexts. To the contrary, *Myers* made that determination in the context of the application of a conviction-based legal disability and while expressly acknowledging that the outcome depended on context and purpose. *Id.* at 642-48. In the other referenced cases, our appellate courts have concluded that a probation before judgment is a conviction when doing so furthers the purposes of the relevant statute or rule. Third, the result of adopting the State's position would be that a person who complied with the terms of their probation would not be eligible for expungement while a person who violated those terms would be.[4] We, of course, avoid interpretations of statutory provisions that would be illogical or absurd. *See Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 122 (2014) (internal citation and quotation marks omitted) ("Whenever possible, the various parts of a statute

[4] The State posits that it is conceivable that the General Assembly might have intended to treat individuals who received a probation before judgment for marijuana possession more harshly than those who received a conviction because of the benefit the first group had received at the time of their sentencing. We have reviewed the statute and its applicable legislative history and see no indication of such an intent.

should be reconciled and harmonized to be consistent with the statute's object and scope. Our interpretation should avoid illogical, absurd, or anomalous results.").

Notably, § 10-105 reflects dual intentions, with respect to the availability of expungement, to treat: (1) probation before judgment dispositions more favorably than dispositions involving a final judgment of conviction; and (2) convictions for marijuana possession more favorably than nearly all other convictions. We find it implausible that the General Assembly intended to make it more difficult to expunge a finding of guilt of marijuana possession where the defendant received probation before judgment than where the defendant received a final judgment of conviction. Based on context and purpose, we hold that "convicted" as used in § 10-105(a)(12) includes a disposition of probation before judgment.

In their briefs, the parties offer dueling interpretations of the applicability of this Court's prior decision in *In re Nancy H.*, 197 Md. App. 419 (2011). There, Nancy H. sought an expungement of her juvenile criminal record. *Id.* at 420. She had originally been tried as an adult but, before sentencing, the court had transferred her case to juvenile court pursuant to § 4-202.2 of the Criminal Procedure Article. *Id.* at 421. She later filed a petition for expungement under Criminal Procedure § 10-106(c) which, at the time, permitted expungement if charges had been transferred under Criminal Procedure § 4-202 (which permits transfer to juvenile court before trial or before a plea is entered) but made no mention of § 4-202.2 (which permits transfer after trial or plea but before sentencing). *Id.* Declining to stop at the unambiguous statutory language omitting § 4-202.2, this Court

determined, based on legislative history and statutory purpose, that records from cases transferred pursuant to § 4-202.2 were also eligible for expungement. *Id.* at 428-29.

Mr. H. contends that *Nancy H.* supports his position because the Court in that case engaged in a "liberal interpretation" of the statute "'to effectuate the legislative policy of confidentiality and the juvenile court's purpose of rehabilitation.'" (Quoting *Nancy H.*, 197 Md. App. at 428). The State contends that *Nancy H.* is inapposite because whereas there was no reason in that case to distinguish between categories of juveniles based on when their cases were transferred, here, "there is a significant difference between people who receive probation before judgment and commit later crimes and those who do not."

We agree with the State that *Nancy H.* is distinguishable, but for a different reason. In *Nancy H.*, the plain language of the statute rendered expungement available only for cases transferred pursuant to § 4-202. The Court interpreted it to reach § 4-202.2 only to avoid "an arguably absurd result . . . by keeping a child's juvenile court disposition confidential to protect the child yet leaving the same child's record of charges and guilt in the circuit court available to the public." *Id.* at 425. Here, by contrast, the plain language favors neither party because whether the word "convicted" encompasses a disposition of probation before judgment is subject to interpretation based on context and purpose. *See Rivera*, 409 Md. at 192 ("Whether a probation before judgment qualifies as a conviction in the context of a coram nobis petition depends on the circumstances presented in the case."). Our interpretation of § 10-105(a)(12) does not require that we add or delete any words from the statute or otherwise alter its text. This is thus an easier case than *Nancy H.* was.

Nonetheless, we agree with Mr. H. that *Nancy H.* is generally supportive of his contentions because, as in that case, our interpretation of the term "convicted" furthers the statutory purpose of § 10-105(a)(12) and avoids a potentially absurd result. Moreover, the State's argument that the General Assembly may have intended to treat those who receive probation before judgment and commit later crimes different from those receiving the same disposition who do not reoffend misses the point. We agree, as set forth above, that Mr. H. does not qualify for expungement under § 10-105(a)(3), based on his receipt of probation before judgment, precisely because of his subsequent criminal offenses. But that is irrelevant to whether Mr. H. is entitled to expungement under § 10-105(a)(12) because the offense for which he was found guilty is possession of marijuana, which the General Assembly has determined should be expungable four years after completion of the sentence or probation, regardless of any subsequent convictions.

CONCLUSION

We hold that the court erred in denying Mr. H.'s petition for expungement because a probation before judgment entered for possession of marijuana in violation of § 5-601 of the Criminal Law Article falls within the scope of Criminal Procedure § 10-105(a)(12). Accordingly, we will reverse the order of the circuit court and remand so that the court can grant Mr. H.'s petition for expungement.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED WITH DIRECTIONS TO GRANT APPELLANT'S PETITION TO EXPUNGE IN CASE NO. CJ074071. PRINCE GEORGE'S COUNTY TO PAY COSTS.