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# Newsroom: A Student Attorney, the Criminal Defense Clinic and the R.I. Supreme Court

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# ***Newsroom***

## **A Student Attorney, the Criminal Defense Clinic and the R.I. Supreme Court**

Two years of Criminal Defense Clinic work culminated when 3L Juliana McKittrick argued in the R.I. Supreme Court on behalf of a client who sought the clinic's assistance with the sealing of her records.

**FROM the PROVIDENCE JOURNAL:** "High court weighs sealing of records" by Katie Mulvaney

**PROVIDENCE, Oct. 29, 2012:** In February 2003, the state police charged Eileen Morrice with obtaining more than \$500 under false pretenses. The charge — her first and only — stemmed from the state's over-calculation of her unemployment payments.

Morrice entered into an agreement with state prosecutors that April in which she admitted the extra money wasn't rightfully hers. She pleaded no contest, agreed to pay \$7,873 in restitution and received a five-year deferred sentence with the understanding the charge would be expunged after she completed the sentence, her lawyers say.

Morrice worked full-time and juggled three to four part-time jobs to pay her debt seven months before the five years elapsed.

Morrice learned, however, in 2007 that she was no longer eligible to have her case expunged due to a state Supreme Court ruling. The court said because a no-contest plea was the equivalent of a guilty plea to the court system, those cases couldn't be automatically sealed.

At the urging of then-Attorney General Patrick C. Lynch, state lawmakers passed a law in 2010 intended to remedy the Supreme Court ruling. It allowed for the automatic sealing of the record of a first-time felony offender who received a deferred sentence, provided the defendant stayed out of trouble for five years after he or she pleaded no contest or guilty.

Morrice filed a motion to seal her record after the law's passage. Superior Court Judge Kristin E. Rodgers ruled that the 2010 law could not be applied retroactively. That meant that defendants entering into deferred sentences before 2010, such as Morrice, could not have their records sealed after the successful completion of their sentences.

The state Supreme Court last week heard arguments concerning whether Morrice, and two other defendants in the same situation, are entitled to have their records sealed under the 2010 law.

**Juliana McKittrick, a third-year student at Roger Williams University School of Law**, told the court that prosecutors “promised” Morrice at the time of her plea agreement that her record would be sealed.

“How do we know that was the common understanding?” Chief Justice Paul A. Suttell asked.

**McKittrick** noted that Morrice had submitted a sworn affidavit attesting to her understanding of the plea-agreement terms.

The justices struggled with a section of the 2010 law that sets out that the person “shall be exonerated of the charges” for which the sentence was deferred.

“Exonerated is the key word,” Justice Maureen McKenna Goldberg said. Doesn’t that raise a separation of powers concern since, in effect, the legislature is altering a sentence imposed by a judge?

**McKittrick** replied that the sentence was technically never imposed since it was deferred.

“What the legislature has done is provide statutory authority to follow through with a deferred-sentencing agreement,” **McKittrick** said. The court maintains the authority to determine if the case should be sealed, she said.

The clear language of the law, too, dictates that Morrice’s case should be sealed because she sought relief following the passage of the 2010 law, **McKittrick** said.

Attorney General Peter F. Kilmartin’s office objected to the records being sealed in Morrice’s case as well as the others.

“We argue exoneration certainly runs afoul of separations of powers,” Special Assistant Attorney General Christopher R. Bush said. Plus, Morrice “made no factual showing” that the rug was pulled from under her, so to speak, he said.

He said that, absent clear language saying the law should be applied retroactively, it should only be applied prospectively.

The felony charge has remained on Morrice's record, making it impossible for her to get a job, according to her lawyers. They argue she is just the type of defendant who deserves a second chance, as she has proven herself rehabilitated.

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