

# Federal Circuit Court Rules Judge Doesn't Have Power To Expunge Valid Conviction

A U.S. District Court judge doesn't have the authority to expunge a person's legally valid conviction. That was the ruling of the U.S. Second Circuit Court of Appeals on August 11, 2016. The person involved in the case was identified as "Jane Doe" in the court's decision.

In 1997 Jane Doe joined an automobile insurance fraud scheme, and she participated in a staged car accident in Brooklyn, New York. Doe feigned being injured, and she was paid \$2,500 from an injury claim.

Doe and others involved in the insurance scam were indicted by a federal grand jury for "knowingly and willfully" participating in a "scheme . . . to defraud any health care benefit program," in violation of 18 U.S.C. § 1347.

Doe was convicted by a jury in 2001.

Doe was a single mother with no prior criminal history who worked as a home health aide. She was sentenced to five years probation on March 25, 2002.

Doe completed her probation and she had no further legal problems. She found that because of her felony fraud conviction she was unable to keep a job in the health care field. Some employers disqualified her after

---

## Wolfson cont. from p. 12

The Supreme Court has the authority to act on its own initiative to correct the injustice of rewarding DA Wolfson, AG Masto, and the State of Nevada for their extreme dishonesty. The Supreme Court can revise its ruling by granting Ground 58, and order that Ms. Lobato be granted a new trial in light of the new evidence the justices were deliberately lied to in order to manipulate their decision.

The existence of the "Liar's List" was exposed in an article about the *Cooney* case in a *Las Vegas Tribune* article published on September 27, 2016, "Lawsuits Against Metro's Phony Leaders."

(Note: This article was published in the December 12, 2016 issue of the *Las Vegas Tribune* ([www.lasvegastribune.net](http://www.lasvegastribune.net)).



U.S. District Court Judge John Gleeson

learning of her criminal history before hiring her, and she was let go by other employers when they learned of it after she was hired.

On October 30, 2014 Doe filed a *pro se* motion in the District Court requesting expungement of her conviction, "because of the undue hardship it has created for her in getting — and especially keeping — jobs."

The U.S. Attorney's Office opposed Doe's motion, arguing that the District Court lacked jurisdiction to expunge a valid conviction.

U.S. District Court Judge John Gleeson, who presided over Doe's trial in 2001, granted her motion on May 21, 2015. Gleeson ordered the "Government to seal all hard copy records and to delete all electronic records of Doe's conviction."

Gleeson determined he had the jurisdiction to consider Doe's motion and issued his order based on the Second Circuit's ruling in *United States v. Schnitzer*, 567 F.2d 536 (2d Cir. 1977) and the U.S. Supreme Court's ruling in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). The appeals court ruled in *Schnitzer* that "[a] court, sitting in a criminal prosecution, has ancillary jurisdiction to issue protective orders regarding dissemination of arrest records," and that "expungement . . . usually is granted only in extreme circumstances." The Supreme Court ruled in *Kokkonen* that under certain conditions a District Court has "limited ancillary jurisdiction of collateral proceedings ..."

Gleeson found that Doe's conviction was "extreme" enough to warrant expungement of her criminal record and cited three reasons. First, her offense was in 1997, and she has not been arrested since her conviction in 2001. Second, Doe's "criminal record has had a dramatic adverse impact on her ability to work." Third, "[t]here is no specter now that she poses a heightened risk to prospective employers in the health care field."

The U.S. Attorney's Office appealed Gleeson's order.

On August 11, 2016 the Second Circuit Court of Appeals vacated Gleeson's order, and remanded the case for dismissal of Doe's motion for lack of jurisdiction by the

District Court. In *Doe v. United States*, No. 15-1967-cr (2nd Cir., 08-11-2016) the Court ruled that Gleeson misapplied the two cases he relied on to grant Doe's motion: *Schnitzer* only applies to the "expungement" of arrest records — not a valid conviction; and *Kokkonen* doesn't apply to the circumstances of Doe's case.

Although they ruled the District Court was powerless to consider Doe's motion, the appeals court was sympathetic for her plight. The court noted:

First, our holding that the District Court had no authority to expunge the records of a valid conviction in this case says nothing about Congress's ability to provide for jurisdiction in similar cases in the future. As described above, Congress has done so in other contexts. It might consider doing so again for certain offenders who, like Doe, want and deserve to have their criminal convictions expunged after a period of successful rehabilitation.

Second, only a few months ago (while this appeal was pending), the Attorney General of the United States recognized and aptly described the unfortunate life-long toll that these convictions often impose on low-level criminal offenders: ... "[T]oo often, the way that our society treats Americans who have come into contact with the criminal justice system . . . turns too many terms of incarceration into what is effectively a life sentence."

[Click here to read](#) *Doe v. United States*, No. 15-1967-cr (2nd Cir., 08-11-2016).

Sources:

[Doe v. United States](#), No. 15-1967-cr (2nd Cir., 08-11-2016) (Reversing district court's order expunging valid conviction.)



**2016 Innocents Database Exoneration Report**

Read on Justice Denied's website at [www.justicedenied.org](http://www.justicedenied.org)

Or purchase from from Amazon.com. In Amazon.com's Search box enter:

**2016 Innocents Database**

Click on the book cover to go to the book's page.