VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF BRISTOL

KIMBERLY DAWN COMPTON

v. **Case No.: CL07-472-00**

COMMONWEALTH OF VIRGINIA

FINAL ORDER

This matter came on for hearing on April 18, 2008 on the Petition filed by Kimberly Dawn Compton and the Answer filed by the Commonwealth of Virginia. The Court heard evidence from the Petitioner and argument of counsel.

Upon which, the Court found from the evidence that on November 3, 2002, Kimberly Dawn Compton was charged with a violation of Title 18.2-371.1, namely, while being a parent, guardian or a person responsible for the care of a child under 18 years of age, commit a willful act or omission in the care of such child so gross and wanton as to show a reckless disregard for human life, a class 6 felony; that on February 10, 2003, Juvenile and Domestic Relations Court Judge Charles F. Lincoln,

without taking a plea or hearing evidence, took the matter under advisement for six months, requiring the submission of a written parenting plan and twenty hours of community service; that no finding of facts sufficient to sustain a conviction was made by the Juvenile Court; that no finding of probable cause was made by the Juvenile Court; that on August 18, 2003, the felony charges were dismissed by Judge Charles F. Lincoln; that Kimberly Dawn Compton has no criminal convictions and has no other criminal charges on her record; that Kimberly Dawn Compton is a certified teacher; that the continued presence of the charge on her record has created an inability for Kimberly Dawn Compton to find permanent employment in her chosen field, and that Kimberly Dawn Compton has been denied several teaching opportunities as a result of the nature of the charge on her criminal record.

In light of the above findings, the Court does hereby ORDER, ADJUDGE and DECREE that the aforementioned charges against Kimberly Dawn Compton were otherwise dismissed in accordance with Title 19.2-392.2 of the Code of Virginia, 1950, as amended. In light of the same, the Court further finds that the continued existence and possible dissemination of information relating to the arrest and charges placed against the petitioner have caused, and continue to cause circumstances which constitute a

manifest injustice to the petitioner. Therefore, it is accordingly ORDERED, ADJUDGED and DECREED that the police and court records, including electronic records relating to the above mentioned charge against Kimberly Dawn Compton be expunged.

It appearing that nothing remains to be done in this cause, this matter is accordingly stricken from the docket of this Court.

The Clerk is directed to forward an attested copy of this Final Order to counsel of record and to the Virginia Department of State Police.

ENTER this the 16 day of May, 2008.

JUDGE

REQUESTED:

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VSB# 34241
Counsel for the Petitioner

SEEN AND OBJECTED TO FOR THE FOLLOWING REASONS:

1. The petitioner, Kimberly Dawn Compton, was charged with Felony Child Neglect, with the offense date of November 18, 2002. On February 10, 2003, Ms. Compton appeared before the Juvenile and Domestic Relations Court for the City of Bristol, at which time by agreement of the Commonwealth and the defendant, and without requiring the defendant to enter a plea to the charge, the Court took the matter under advisement for a period of six months stating that "Mrs. Compton will submit a written parenting plan to the court and perform 20 hours community service to be monitored by the CSU (Court Service Unit)." The court order further noted that "[i]f at the end of period and no other adverse reports the case shall be dismissed without appearance." On August 18, 2003, the court order stated: "Matter Dismissed. All requirements met. No additional charges."
2. Virginia Code § 19.2-392.1, *et seq.*, was enacted to restore the records of "innocent" citizens who have been "absolutely pardoned for crimes for which they have been unjustly convicted." The Commonwealth does not believe this section was intended for petitioners, such as Kimberly Dawn Compton, who were rightly and justly accused and who by her acceptance of court sanctions and a period of good behavior tacitly admitted that the Commonwealth possessed sufficient evidence to sustain the charge if the matter proceeded to

trial.

3. Virginia Code § 19.2-392.2 allows for the expungement of records of those who (1) are acquitted, or (2) in cases where a *nolle prosequi* is taken, or (3) the charge is otherwise dismissed. Ms. Compton was not acquitted nor was a *nolle prosequi* entered. Therefore, the defendant is asserting that her charge should be expunged because it was "otherwise dismissed." The Supreme Court of Virginia held in Commonwealth v. Jackson, 255 Va. 552 (1998), that "a dismissal following satisfaction of the terms of that deferral [does not] render the case 'otherwise dismissed' for purposes of expungement." *Id.* at 557.
4. To allow the Ms. Compton the right to have her conviction and records expunged has the effect of keeping the Commonwealth or any other law enforcement agency from knowing of, or using the knowledge of her prior charge in considering how to proceed with any future problems. Her expungement also prevents any prospective employer from knowing of, or considering the effects of this previous charge in considering whether to offer employment opportunities involving children. This would make the process of doing background checks on prospective employees worthless if the court expunges matters where Ms. Compton by her very petition admits there was some amount of child neglect that took place.

COMMONWEALTH OF VIRGINIA

COLETTE M. WILCOX,
Assistant Commonwealth's Attorney

A COPY TESTE:
Terry G. Rohr, Clerk
Circuit Court City of Bristol, VA
By _____ Dep. Clerk

ASSIGNMENTS OF ERROR

1. The trial court erred by finding that Ms. Compton was innocent of the charge, qualifying her dismissal for expungement.
2. The trial court erred by holding that taking a case under advisement conditioned upon completion of terms and subsequent dismissal was a case that was "otherwise dismissed" pursuant to Virginia Code § 19.2-392.2(A)(2).
3. The trial court erred by finding that the continued existence of the charge on Ms. Compton's record constitutes manifest injustice.