

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2019-250

State of New Hampshire

v.

Laura Williams

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Appeal Pursuant to Rule 7 from Judgment  
of the Sixth Circuit Court – District Division

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REPLY BRIEF FOR THE DEFENDANT

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### QUESTION PRESENTED

Whether the court erred by denying Williams's petitions to annul her convictions and the record of arrests and charges that did not result in convictions.

Issue preserved by petitions to annul, the motion to reconsider the denial of the petitions, and the court's rulings. DB 32-57; A26-A28.\*

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\* Citations to the record are as follows:

"A" refers to the appendix filed with Williams's opening brief, containing relevant pleadings;

"DB" refers to the designated page in Williams's opening brief or in the supplement attached to that brief;

"SB" refers to the designated page in the State's brief or in the appendix attached to that brief.

## STATEMENT OF THE CASE AND FACTS

In her opening brief, Williams contends that the Circuit Court erred in denying her petitions to annul, except with respect to the petition relating to her May 2007 conviction. DB 15-28. In its brief, the State advances essentially three kinds of argument. First, it argues that this Court should regard Williams's arguments as not preserved and review them under plain-error analysis. Second, it argues that the Circuit Court denied the petitions not on the timeliness ground addressed in Williams's brief, but on the alternative, discretionary basis that annulment would not contribute to Williams's rehabilitation or protect public safety. Third, it addresses on the merits the statutory interpretation arguments set out in Williams's opening brief.

This reply brief responds to the State's non-preservation and alternative-grounds arguments. Section A below addresses the non-preservation arguments. Section B addresses the idea that the Circuit Court's ruling rested on grounds other than the timeliness of the annulment petitions.

I. THE COURT ERRED IN DENYING WILLIAMS'S PETITIONS TO ANNUL.

A. The Court must reject the State's non-preservation and associated plain-error arguments.

The State argues that this Court should reject Williams's claims as not preserved and as not satisfying the plain-error standard. SB 15-19, 34. For at least two reasons, this Court should reject the State's argument.

First, the State did not preserve any of its arguments in the Circuit Court. See, e.g., State v. Willis, 165 N.H. 206, 223 (2013) (applying preservation obligation to State, with respect to arguments it makes on appeal); State v. Boyle, 148 N.H. 306, 309 (2002) (same). Indeed, there is no indication that the State, in the Circuit Court, even opposed any of Williams's annulment petitions. The failure of the State to oppose the petitions or to articulate any reason why they should be denied left Williams in the position initially of having no counter-arguments to which to respond.

After the Circuit Court denied the petitions in a one-line order, Williams filed a motion to reconsider. Because the State again failed to object or file any memorandum in support of the Circuit Court's order, the adversary process never engaged with respect to Williams's annulment petitions. At that time, Williams had only the Circuit Court's one-line order to which to react. Under these circumstances, the State occupies an untenable position when on appeal it insists on

an ordinary application of this Court's preservation doctrines. Having failed to oppose the petitions in the Circuit Court, and thus having failed to activate the adversary process's capacity to sharpen and focus a court's analysis, the State should not now be heard to complain that Williams's arguments lacked precision or missed the crux of the issue as framed on appeal.

Second, even if the State had participated in the annulment litigation in the Circuit Court, this Court should reject the State's non-preservation arguments on prudential grounds. In State v. Kardonsky, 169 N.H. 150, 152 (2016), this Court noted that "preservation is a limitation upon the parties to an appeal, not upon the reviewing court. . . ." In that case, "because the appeal issue constitute[d] a discrete question of statutory interpretation, requiring no further factual development," this Court chose to address it. Williams's case also raises only questions of statutory interpretation.

Other considerations justify addressing Williams's claims on the merits. In annulment proceedings, petitioners have no right to counsel. If indigent, petitioners therefore must proceed *pro se*, or with the assistance of *pro bono* counsel whose inability to bill may limit the amount of time they can devote to the case. Often, as happened here, *pro bono* counsel may expect the State not to oppose annulment, and budget counsel's time accordingly. Perhaps because of these considerations limiting the availability of counsel in

annulment proceedings, this Court has issued relatively few published decisions interpreting the statute.

Moreover, as shown by the statutory interpretation arguments made in the briefs, the annulment statute deserves no commendation for clarity or excellence in legislative draftsmanship. Because of the complexity and difficulty of the statute, important questions of annulment procedure remain unresolved. See SB 34 (“the issues the defendant has briefed are of first impression”). If it relied on the State’s non-preservation argument, therefore, this Court would leave unresolved important questions of annulment law, pending the day some non-indigent petitioner retains counsel, encounters State opposition, and then receives an adverse ruling. Unless preservation is an end-in-itself, there is no reason to defer resolution of these questions of law to that future day.

B. The Circuit Court did not rely on alternative, discretionary grounds to deny Williams’s petitions.

This Court should also reject the State’s contention that the Circuit Court “considered all the relevant criteria and found that annulling [Williams’s] records would be inconsistent with the public welfare.” SB 14. In making that argument, the State proposes that “there is no reasonable basis to conclude that the trial court denied the petitions as



untimely or that it failed to consider whether granting them would assist in the defendant's rehabilitation or be consistent with the public welfare." SB 18. The record belies the State's argument.

As the State acknowledges, "the plain language" of the annulment statute "makes it clear that a sentencing court has the authority to annul a person's record only if the petition was timely brought." SB 21. In other words, timeliness constitutes a threshold requirement a court must consider before evaluating whether annulment might aid rehabilitation or endanger the public safety. Moreover, as the State also acknowledges, the statute makes clear that, in the context of a petitioner with multiple convictions, that threshold timeliness question turns on the nature and timing of the petitioner's other convictions. See SB 22 (citing court form, arguing that "the Judicial Branch has interpreted paragraph III as making the subsequent entry of any applicable conviction a bar to the annulment").

Here, the entirety of the Circuit Court's analysis appears in its terse orders, all of which explicitly cite other convictions as the basis for the denial of the annulment petition. See DB 35, 38, 42, 45, 49, 53-57 (court's orders). Given both the threshold nature of the timeliness requirement and the Circuit Court's invocation of Williams's other convictions as the basis for denying the annulment petitions, the only

reasonable conclusion is that the court relied on its interpretation of the statute's timeliness requirement.

Corroboration of that interpretation appears in the fact that the Department of Corrections ("DOC") supplied a report to the Circuit Court recommending the denial of the petitions, citing only a timing concern associated with the 2012 Salem and Laconia convictions. SB 57. In its order, the Circuit Court relied on those two convictions, and only those two convictions, as its ground for denying the petitions. DB 54-57. The Circuit Court had no reason to think that the DOC, in performing its duty of supplying the court with the petitioner's criminal record, undertook an inquiry into broader issues of rehabilitation and public safety. Thus, this Court must conclude that, in parroting the reasoning of the DOC report, the Circuit Court likewise relied only on a threshold timeliness finding.

The State thus errs in supposing that the Circuit Court ignored the threshold timeliness requirement and denied the petitions on the basis of broader concerns about rehabilitation and public safety, in orders citing as conclusive only the presence of a subsequent conviction. Had the Circuit Court held a hearing at which it received evidence bearing on those broader issues of rehabilitation and public safety, the State's interpretation might have more force. The Circuit Court, however, held no such hearing on the annulment

petitions.<sup>1</sup> Thus, if it agrees with Williams's position on the proper interpretation of the statute's threshold timeliness requirement, this Court must remand to the Circuit Court for consideration and decision of those broader issues.

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<sup>1</sup> While Williams did not request a hearing when she filed the petitions, she did include a request for a hearing among the prayers for relief in her motion to reconsider. A28.

## CONCLUSION

WHEREFORE, for the reasons stated above as well as those given in Ms. Williams's opening brief and those to be offered at oral argument, Ms. Williams requests that this Court vacate the denial of all petitions except that relating to her May 2007 conviction.

This brief complies with the applicable word limitation and contains fewer than 1700 words.

Respectfully submitted,

*/s/ Christopher M. Johnson*

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief is being timely provided to Susan P. McGinnis, Senior Assistant Attorney General and the Criminal Bureau of the New Hampshire Attorney General's office through the electronic filing system's electronic service.

*/s/ Christopher M. Johnson*

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Christopher M. Johnson

DATED: February 3, 2020