

Criminal Record Expungement: A saving grace or catastrophic lack of judgement?

Another stark reminder of how seriously our justice system takes qualifications fraud presented itself earlier this month when former police spokesperson, Vincent Mdunge was sentenced to five years imprisonment by the Durban Regional Court.

Last year, Mdunge was caught red-handed on two counts of fraud and one of forgery when he presented a fake matric certificate in order to further his studies at UNISA and gain promotion in the police. While the Judge acknowledged that he was a first time offender, she still threw the proverbial book at him during sentencing when she simply stated that there was nothing respectable about a high-ranking officer committing white collar crime in an already corruption-rife society.

How then is it possible that the criminal record expungement debate has reared its head again with the possibility of even further amendments to the law? In 2009, changes to sections 2 and 3 of the Criminal Procedure Amendment Act, allowed for the expungement of criminal records relating to certain criminal convictions. What this basically means is that if a person meets certain criteria, they can apply to have their name cleared. Any background checks performed on that individual in future will not show any trace of prior convictions.

One of the reasons cited for this change in the law at the time, was that it would be “helpful” to people needing a clean record when applying for employment. With thousands of job applicants citing their criminal records as a reason for not being gainfully employed, a nationwide debate has ensued.

It seems contradictory to allow for more criminal record expungement while we deliver a rightfully heavy blow to those that lie to get the jobs that they aren’t qualified for.

We live in a country where almost 600 000 learners who entered the schooling system 12 years ago, dropped out at some point and are walking around without a matric certificate. Add to that research done by the Council of Higher Education (CHE), which shows that well over 40% of students drop out of university.

So there are already hundreds of thousands of individuals who do not meet the criteria for the jobs they want, and you can put money on the fact that many of these individuals, will eventually, in desperation, pretend to hold those qualifications they never received.

If we're terrified at the thought of an unqualified surgeon operating on our loved ones, we should be equally terrified of convicted negligent driver behind the wheel of a 10-ton truck, or even a convicted rapist lurking in an office full of female co-workers.

Yes, these are extreme examples. But our question is this: How far will the criminal record expungement process go? How will we distinguish between people who have been rehabilitated by the justice system or not?

No company needs the disastrous consequences of hiring a fraudster as a financial director, or the unimaginable, a sexual offender at an educational institution.

We are not saying that every single person with a criminal record is unemployable – not at all. There are thousands of excellent candidates walking around, who may have practiced poor judgement at some point, which lead to a criminal conviction. There are also thousands of people who have paid for their crimes, served their time, and have been successfully rehabilitated?

The point is this - an employer still has every right to be presented with *all* the facts before deciding if the candidate is the right choice for their organisation or not. A poorly thought out criminal record expungement process could have disastrous consequences. Let's hope that this one gets handled carefully.