

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX

GOVERNMENT OF THE VIRGIN ISLANDS,

Plaintiff,

MAG. No. 91-033

v.

KEVIN KING,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO EXPUNGE RECORD**

THIS MATTER came for consideration on defendant's motion to expunge his arrest record. Defendant's motion is premised upon the government's voluntary dismissal of the criminal complaint herein.

In *Government of the Virgin Islands v. Frankie Smith*, 14 V.I. 462, 465 (D.V.I. 1977), Chief Judge Almeric Christian found that the plenary power of district courts includes the authority to order expunction of criminal records. He noted, however, that the power to expunge an arrest record "is a narrow one and should not be routinely used whenever a criminal prosecution ends in an acquittal or dismissal, but should be reserved for the unusual or extraordinary case involving constitutional violations." *See also G.V.I. v. McCarthy*, 18 V.I. at 247.

The Court of Appeals for the Third Circuit recently held that, absent statutory authority, a district court does not have the jurisdiction to expunge a criminal record, even when ending in acquittal. *U.S. v. Dunegan*, 251 F.3d 477, 480 (3d cir. 2001). In *Dunegan*, the issue was court records and not defendant's police arrest record, but the holding would seemingly encompass

police records.¹

Defendant has made no showing that this matter constitutes the unusual or extraordinary case involving constitutional violations as required in the above cited cases. Accordingly, it is hereby

ORDERED AS FOLLOWS:

1. Defendant's motion to expunge his arrest record is DENIED.

Dated: July 21, 2003

E N T E R:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:
Wilfredo F. Morales, Clerk of Court
by: _____
Deputy Clerk

cc: G. Luz A. James, Esq.
Cornelius Evans, AAG

¹The Court did not consider expungement based on constitutional or statutory infirmity in the underlying proceedings or based upon an unlawful arrest or conviction.