IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. KENNETH JOHN CHESEBRO, JENNA LYNN ELLIS, SIDNEY KATHERINE POWELL, and SCOTT GRAHAM HALL.	Indictment No. 23SC188947- CHESEBRO 23SC190514- ELLIS 23SC190370- POWELL 23SC189829- HALL

ORDER UNSEALING FIRST OFFENDER RECORDS AND DOCKET

Each of the above-listed Defendants recently entered negotiated guilty pleas. During the change of plea and sentencing hearings, each Defendant also requested that their respective sentences be entered under the First Offender Act, O.C.G.A. § 42-8-60 *et seq*., and immediately sealed pursuant to O.C.G.A. § 42-8-62.1(b). The State did not oppose the requests, which the Court orally granted.

Upon further consideration, the Court finds that it did not sufficiently address the demands of the sealing statute. O.C.G.A. § 42-8-62.1(b)(1) permits a defendant to seek limitations on the public access of his or her first offender sentencing information at the time of sentencing. However, before doing so, the trial court "shall weigh the public's interest in the defendant's criminal history record information being publicly available and the harm to the defendant's privacy and issue written findings of fact thereupon." O.C.G.A. § 42-8-62.1(b)(2); *see also* O.C.G.A. § 42-8-62.1(d) (instructing the trial court to use a preponderance of the evidence standard when weighing these factors for a sealing request made after exoneration and discharge). The Court did not, until now, issue any written findings of fact, nor specifically address the public interest.

While all parties have maintained their position that the records be sealed, none have particularized how sealing would satisfy this balancing requirement. In particular, the Defendants

have not explained how leaving the docket unsealed could possibly result in further harm to their privacy. The exact conditions and circumstances of each plea have been widely covered by the media and appear likely to remain in some easily accessible digital form in perpetuity. On the other hand, it is hard to conceive of a subject matter more pertinent to the public interest than a criminal case addressing the circumstances of a presidential election. *See*, *e.g.*, *Hayes v. State*, 355 Ga. App. 213, 214 (2020) (public interest established by State's receipt of two Open Records requests); *Austin v. State*, 343 Ga. App. 118, 123 (2017) ("repeated violations of public trust in connection with [the defendant's] dental profession authorized the lower court to be inclined by the superior weight of evidence toward allowing the record to be available to the public"). Recognizing the considerable and reasonable public interest in this case, the Court does not find that the harm otherwise resulting to the privacy of the Defendants outweighs the public interest in the criminal history record information and docket being publicly available. Upon successful completion and discharge of their sentences, the Defendants remain able to renew their sealing request pursuant to O.C.G.A. § 42-8-62.1(c)-(d).

The Clerk of Court is therefore ORDERED to unseal any records previously sealed pursuant to the final dispositions entered.

SO ORDERED, this 27th day of October 2023.

Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit