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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS
AUTHORIZED. ARIZ. R. SUP. CT. 111(c).

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ROOSEVELT T. GAYSUE, *Plaintiff/Appellee*,

v.

CITY OF GLENDALE, *Defendant/Appellant*.

No. 1 CA-CV 12-0861

FILED 12-26-2013

Appeal from the Superior Court in Maricopa County
No. CV 2012-003980
The Honorable George H. Foster, Jr., Judge

AFFIRMED

COUNSEL

Brian J. Smith Attorney at Law, Chandler
By Brian J. Smith

And

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By Kristopher R. Califano

Counsel for Plaintiff/Appellee

Glendale City Prosecutor's Office, Phoenix
By Kurt W. Christianson

Counsel for Defendant/Appellant

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kenton D. Jones joined.

N O R R I S, Judge:

¶1 The City of Glendale appeals the superior court's entry of a notation of clearance upon Roosevelt T. Gaysue's official records pursuant to Arizona Revised Statutes ("A.R.S.") section 13-4051 (Supp. 2013), a statute that authorizes a person who has been "wrongfully arrested, indicted or otherwise charged" for a crime to petition the court to enter a notation on his or her court records that he or she has been cleared. For the following reasons, we affirm the entry.

¶2 In August 2009, Gaysue was arrested for assault and disorderly conduct, both domestic violence offenses, following an altercation with his son. The State moved to dismiss the charges shortly thereafter because his son "[did] not desire prosecution." In July 2012, Gaysue petitioned the superior court for entry of clearance of records pursuant to A.R.S. § 13-4051. As relevant here, A.R.S. § 13-4051 provides:

A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry on all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.

B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records, with accompanying justification therefor

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¶3 After conducting an evidentiary hearing, the superior court granted Gaysue’s petition.

¶4 On appeal, the City first argues the superior court incorrectly held that “wrongfully” only applied, that is, pertained to being arrested. We disagree. The record reflects the superior court understood and appreciated “wrongfully” applies not only to “arrested” but also to “indicted or otherwise charged.”

¶5 In opposing Gaysue’s petition, the City argued “clearance of an arrest record[] is only available to those ‘wrongfully arrested.’” At the evidentiary hearing, the court rejected the City’s argument and in so doing acknowledged “wrongfully” applies to a charge or indictment. The court stated:

[T]he position of the City of Glendale is that the Court should not grant relief to the Petitioner because the arrest in this case was based on probable cause. The Court does not disagree with that. The Court agrees that the arrest was based on probable cause. Disorderly conduct and perhaps assault.

...

The statute doesn’t stop at wrongfully arrested. The statute says, any person who is wrongfully arrested, indicted or otherwise charged for any crime[.] It doesn’t mean -- and I think the [City] may have erroneously interpreted it this way, wrongfully charged for any crime. That’s not how you read that statute. It’s wrongfully arrested, indicted or otherwise charged for any crime.

¶6 Next, the City argues the superior court misapplied the law because it failed to find Gaysue had been wrongfully arrested, indicted, or otherwise charged. We disagree.

¶7 As a preliminary matter, we note that in making that argument, the City focuses almost exclusively on the circumstances surrounding Gaysue’s arrest, emphasizing that probable cause existed for the arrest. But, as discussed, a court may grant clearance if a person has

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been wrongfully charged -- which was the basis for the superior court's ruling here.

¶8 We review a ruling on a § 13-4051 petition for an abuse of discretion. *See State v. Mohajerin*, 226 Ariz. 103, 108-10, ¶¶ 18-23, 244 P.3d 107, 112-14 (App. 2010) (applying abuse of discretion standard to § 13-4051 challenge). The superior court abuses its discretion if it bases its decision on an incorrect legal standard; however, “we naturally defer to a trial court with respect to any factual findings it has made, given its superior position to assess the credibility of witnesses and resolve conflicts in the evidence.” *Id.* at 108, ¶ 18, 244 P.3d at 112.

¶9 As used in the statute, the term “wrongfully” encompasses “‘unfairness or injustice.’” *Id.* at 107, ¶¶ 11-12, 244 P.3d at 111 (quoting Black’s Law Dictionary 1644 (8th ed. 2004)).¹ A petitioner must “demonstrate both that his arrest or charge was ‘wrongful’ and that justice requires the entry of a notation of clearance.” *Id.* at 104, ¶ 1, 244 P.3d at 108.

¶10 Here, the superior court found Gaysue and his son were involved in an altercation over a computer part in which his son “assaulted his father. Pushed him, causing him to fall down and hit his head.” The altercation escalated “without question [into] a situation where [the son] is now destroying property that belongs to his father.” The court found that the charges were unfair given that Gaysue “had a colorable claim for justification” and that justice required granting the petition:

[Gaysue] wanted his property. He’s in his own home. He has the right to get his property in his own home. His son has no ownership interest in his home. His son has no business pushing him down causing him to injure his head. His son has no right to destroy his property, which he did.

...

¹An unlawful or illegal arrest, indictment, or charge may also be a ground for relief. *State v. Franco*, 153 Ariz. 424, 426, 737 P.2d 400, 402 (App. 1987); *see also Mohajerin*, 226 Ariz. at 104, 109, ¶¶ 1, 22, 244 P.3d at 108, 113.

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There are some matters, and this is a classic example, where although there may have been probable cause for the arrest making it a good arrest, under the circumstances, when you look at all of them and understand the justification defenses that clearly exist in this case, does justice require this person to walk around for the rest of their life, with this charge? . . . He shouldn't have to bear that burden.

¶11 Given these findings, we cannot say the superior court abused its discretion in granting Gaysue's § 13-4051 petition. The court appropriately applied the test set forth in *Mohajerin*. It first found the charges were unfair given the factual circumstances of the case. It then found that justice required granting the petition. Accordingly, we affirm.



Ruth A. Willingham · Clerk of the Court
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