

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEPHEN OLIVER HILL,

Defendant-Appellee.

UNPUBLISHED

April 6, 1999

No. 207057

Wayne County Circuit Court

LC No. 89-006777

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

The people appeal by right¹ an expungement order entered pursuant to MCL 780.621; MSA 28.1274(101), setting aside defendant's June 30, 1989, guilty plea conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). We reverse and remand for reinstatement of defendant's conviction. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court lacked authority to set aside defendant's conviction because MCL 780.621; MSA 28.1274(101), as amended by 1996 PA 573 effective April 1, 1997, no longer permits expungement of second-degree criminal sexual conduct convictions. Although the lower court reasoned that the amended version did not apply because defendant allegedly sought to apply for expungement prior to the effective date of the statutory amendment, this Court has held that the amended statute applies retrospectively. *People v Link*, 225 Mich App 211; 570 NW2d 297 (1997). In fairness to the lower court, it should be noted that this Court's opinion in *Link* was issued just weeks before the lower court's decision in this case, and none of the parties called the lower court's attention to the *Link* decision.

We reject defendant's argument that that applying the 1997 amendment to MCL 780.621 in his case violates the Ex Post Facto Clause of the Michigan Constitution, Const 1963, art 1, § 10. See, e.g., *New Jersey v T.P.M.*, 189 NJ Super 360; 460 A2d 167 (1983) and *Oregon v Burke*, 109 Ore App 7; 818 P2d 511 (1991), review denied, 312 Or 589; 824 P2d 418 (1992), cited with approval in *Link*, 225 Mich App at 216.

Reversed and remanded for reinstatement of defendant's conviction. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff

¹ Defendant's argument that the order appealed is not a "final order" as defined by MCR 7.202(8) is unavailing. Even if this Court lacked jurisdiction to consider the appeal as an appeal by right, we would exercise our discretion to consider the appeal as if it were by leave granted. *Waatti & Sons Electric Co v Dehko*, 230 Mich App 582, 585; 584 NW2d 372 (1998); *Jackson Printing Co, Inc v Mitani*, 169 Mich App 334, 336 n 1; 425 NW2d 791 (1988).