

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00159-CV

KEVIN SMITH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. X-867**

MEMORANDUM OPINION

Appellant Kevin Smith appeals the trial court’s order denying his petition for expunction. Smith’s *pro se* brief provides a list of “reasons” the trial court should have granted Smith’s petition for expunction in Smith’s three cases, but does not provide any argument or record references. *See* TEX. R. APP. P. 38.1(i).

In response to Smith’s petition, the State contended that “[r]ecords indicate Petitioner pled either no contest or guilty in each offense. Therefore, this petition does not comply with terms of the statute.” In his brief, Smith acknowledges that each of the criminal cases involved misdemeanor charges to which he pled either guilty or no contest. The trial court conducted a hearing on Smith’s petition; however, we do not have a record of the hearing

before us. In its order denying Smith’s petition for expunction, the trial court found “that the Petitioner is not entitled to expunction of any records and files that are the subject of this petition.” In its letter brief on appeal, the State contended that “[t]he State’s defense in the trial court was based entirely on computer records showing Appellant’s pleas of either no contest or guilty in the three subject cases.”

Article 55.01 of the Texas Code of Criminal Procedure provides as follows:

- (a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:
 - (1) the person is tried for the offense for which the person was arrested and is:
 - (A) acquitted by the trial court . . . ; or
 - (B) convicted and subsequently pardoned; or
 - (2) each of the following conditions exist[s]:
 - (A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed, and:
 - (i) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02; or
 - (ii) the court finds that the indictment or information was dismissed or quashed . . . ;
 - (B) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there

was no court ordered community supervision under Article 42.12 for any offense other than a Class C misdemeanor; and

- (C) the person has not been convicted of a felony in the five years preceding the date of the arrest.

TEX. CODE CRIM. PROC. ANN. art. 55.01(a) (Vernon 2006). As discussed above, Smith admitted in his brief to this Court that he pled guilty or nolo contendere in each of the cases referenced in his petition for expunction. Therefore, he does not meet the requirements of article 55.01. *See id; see also Harris County Dist. Attorney's Office v. D.W.B.*, 860 S.W.2d 719, 721 (Tex. App.–Houston [1st Dist.] 1993, no pet.) (The expunction statute was not intended to allow a person who pled guilty or nolo contendere to an offense to expunge the records regarding that offense.). Accordingly, we affirm the trial court's order.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on May 27, 2009
Opinion Delivered June 11, 2009
Before McKeithen, C.J., Gaultney and Horton, JJ.