In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00346-CV

CHESTER WILLIAM INGRAM, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. CIV 25734

MEMORANDUM OPINION

On appellant's motion for rehearing, we withdraw the opinion of August 25, 2011, and substitute this opinion to address the additional arguments made in the appellant's supplemental brief.

Chester William Ingram, Jr. appeals the denial of his petition for expunction of criminal records that are related to his arrests for aggravated sexual assault, sexual assault, aggravated perjury, and aggravated kidnapping. On appeal, Ingram contends that his trial testimony and the admissions of the Texas Department of Criminal Justice (the

Department) proved that he was qualified to have the arrest records in issue expunged. Ingram also argues the trial court erred by not allowing him to amend his pleadings, and by failing to judicially notice dismissal orders in its amended findings of fact. We affirm the trial court's judgment.

Standard of Review

Article 55.01 of the Texas Code of Criminal Procedure allows a trial court to expunge the arrest records of a person who is arrested, but who is later acquitted or had the charges dropped. Tex. Code Crim. Proc. Ann. art. 55.01(a) (West Supp. 2010). A statutory expunction proceeding is a civil rather than criminal proceeding, and the petitioner has the burden of proving that he has complied with the requirements of the expunction statute. *Houston Police Dep't v. Berkowitz*, 95 S.W.3d 457, 460 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *Collin Cnty. Criminal Dist. Attorney's Office v. Dobson*, 167 S.W.3d 625, 626 (Tex. App.—Dallas 2005, no pet.).

We review a trial court's ruling on a petition for expunction under an abuse of discretion standard. *Tex. Dep't of Pub. Safety v. J.H.J.,* 274 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Heine v. Tex. Dep't of Pub. Safety*, 92 S.W.3d 642, 646 (Tex. App.—Austin 2002, pet. denied). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without any reference to any guiding rules or principles. *Cire v. Cummings,* 134 S.W.3d 835, 838-39 (Tex. 2004).

Analysis

In this case, Ingram sought to expunge all criminal records and files pertaining to his arrests for aggravated sexual assault, sexual assault, aggravated perjury, and aggravated kidnapping. In issue one, Ingram contends that the trial court's decision was based, in part, on his having filed a defective petition, and he argues the trial court abused its discretion by not allowing him to file an amended petition. However, the record before us demonstrates that the trial court did not dismiss Ingram's petition because it was defective. The trial court's findings and conclusions state that "[t]he opposition cured the petition's technical defects by providing omitted information." Because the trial court found that the defects in Ingram's petition had been cured, and because the trial court did not dismiss Ingram's petition based on any claim that it contained defects, we overrule Ingram's first issue.

In issue two, Ingram contends that he proved he was entitled to have the arrest records in issue expunged. Based on the evidence adduced during the hearing on his petition, Ingram argues that article 55.01(a)(2) of the Texas Code of Criminal Procedure requires the records of his arrests to be expunged. *See* Tex. Code Crim. Proc. Ann. art. 55.01(a)(2). Article 55.01(a) provides, in relevant part:

> (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:
>
> . . .
>
> (2) each of the following conditions exist:

> (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:
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> (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 because the person completed a pretrial intervention program authorized under Section 76.011, Government Code, or because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;
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> (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.

Id.

Ingram introduced evidence during the hearing designed to satisfy the requirements of article 55.01(a). During the expunction hearing, Ingram testified that the "four charges against [him] were presented by indictment[,]" and the charges had "been dismissed." Ingram further notes that the arrest records in issue were on charges for "crimes [that] have been pending now for 19 years[,] [s]o the statute of limitations for all these four crimes have long since expired." Ingram argues that he has been released of all four charges related to the arrests in issue, the arrests did not result in final convictions, the arrests are no longer pending, and that he was not placed on community supervision

due to these arrests. Finally, Ingram testified that he had not been convicted of a felony in the five years preceding the dates of the arrests in issue.

Additionally, Ingram relies on requests for admission that the Department failed to answer.[1] The Department contends that Ingram failed to properly serve his requests for admission on the Department. In its findings regarding whether the requests were served, the trial court found that the requests had not been served, and that Ingram failed to sign his requests.

The requests for admission in the record do not bear Ingram's signature. When a party receives requests that are not signed, the Rules of Civil Procedure do not require the party to take any action. *See* Tex. R. Civ. P. 191.3(d) ("A party is not required to take any action with respect to a request or notice that is not signed."); *see also* Tex. R. Civ. P. 191.5 (requiring every discovery request to be served on all parties of record). Because Ingram's requests for admission do not bear his signature, the trial court did not err by failing to consider them as having been deemed admitted.

Although Ingram argues that the evidence proves that he is entitled to have the records of his arrests expunged, the Department argues that Ingram does not qualify under the provisions of Chapter 55 to have the records of the arrests in issue expunged.

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[1]The Department has not argued that the discovery rules, which give parties the right to serve requests for admission, are inapplicable to expunction proceedings. Thus, although we evaluate the Department's argument that it was never properly served with Ingram's requests, we reserve and do not address whether the discovery procedures available under the Texas Rules of Civil Procedure are available to petitioners filing for expunction under Chapter 55 of the Texas Code of Criminal Procedure.

The Department contends that Ingram was convicted for kidnapping B.D.S. with the intent to sexually abuse her, and that the aggravated kidnapping charge arose from the same criminal episode as the charges that were dismissed. The trial court made findings of fact,[2] wherein the trial court expressed its view that the aggravated kidnapping conviction and the arrests in issue arose from the same criminal episode. With respect to this finding, the trial court specifically found: "As the offenses for which expunction is sought are part of a criminal episode, expunction is not available to Petitioner as a matter of law." The trial court also found that its conclusions of law could be deemed to be a finding of fact. *See* Tex. R. Civ. P. 299. In its findings, the trial court defined the term

[2]Ingram's brief, filed in February 2011, complained that the trial court failed to make any findings of fact or conclusions of law. We abated the appeal in March 2011, and remanded the case to the trial court to allow it to make findings of fact and conclusions of law. Later that month, the trial court issued findings of fact and conclusions of law. Because the trial court corrected its failure with respect to having made no findings, Ingram's complaint about the trial court's failure to file findings and conclusions is now moot. *See* Tex. R. App. P. 44.4(a)(2) (court of appeals may not reverse if the trial court can correct its failure to act). After the trial court filed its findings, we reinstated the appeal, and then Ingram filed a request for the trial court to amend its findings of fact and conclusions of law. In his request for amended findings, Ingram asked the trial court to take judicial notice of the fact that the four indictments were dismissed. In his supplemental brief, Ingram argues that the trial court erred in failing to correct its findings and conclusions. On April 15, 2011, after we reinstated Ingram's case on the docket of the Court of Appeals, the trial court issued amended findings of fact and conclusions of law. At the time the trial court filed its amended findings, it no longer had jurisdiction over Ingram's case. As a result, we view the trial court's judicial act in making amended findings as a nullity, and we consider the appeal as though the amended findings and conclusions were never filed. *See Sonnier v. Sonnier*, 331 S.W.3d 211, 214-16 (Tex. App.—Beaumont 2011, no pet.). Further, we decline to judicially notice that the four arrests in issue were dismissed, as Ingram requests, because doing so would not alter the trial court's determination that Ingram's conviction for aggravated kidnapping and the four arrests in issue arose from the same criminal episode. *See* Tex. Code Crim. Proc. Ann. art. 55.01(a) (West Supp. 2010).

"criminal episode" as meaning that "[t]he offenses were committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan, or [] [t]he offenses are the repeated commission of the same or similar offenses." *See* Tex. Penal Code Ann. § 3.01 (West 2011) (using the same terms to define the meaning of "criminal episode"). The trial court also found that the "offenses for which expunction is sought and the offense for which convicted are the repeated commission of the same or similar offenses." Based on its findings, the trial court concluded: "As the offenses for which expunction is sought are part of a criminal episode, expunction is not available to [Ingram] as a matter of law."

In Ingram's original and supplemental briefs, Ingram failed to specifically attack the trial court's determination that the aggravated kidnapping charge arose out of the same criminal episode as his other arrests. *See* Tex. Code Crim. Proc. Ann. art. 55.01(a)(2)(A) (allowing for expunction of an arrest if an indictment has not been presented against the person for an offense arising out of the transaction for which the person was arrested). In a civil case, if the trial court's factual findings are unchallenged, they are binding on the appellate court unless the contrary is established as a "matter of law," or there is "no evidence" to support the finding. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986); *Wade v. Anderson*, 602 S.W.2d 347, 349 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.) ("Unless the trial court's findings are challenged by a point of error on appeal, they are binding upon the appellate court."). In his briefs,

Ingram does not argue that no evidence supports the trial court's determination that Ingram's aggravated kidnapping conviction and his arrests were all part of the same criminal episode.

Because the trial court determined that Ingram's aggravated kidnapping conviction and the arrests in issue arose from the same criminal episode, and that finding is not specifically challenged, and because the record does not establish that Ingram's aggravated kidnapping conviction and the arrests in issue are not, as a matter of law, part of the same criminal episode, Ingram has failed to show the trial court erred in denying his request to expunge the records of his arrests. On this record, we agree with the trial court that Ingram did not meet the requirements of article 55.01(a)(2)(A) of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 55.01(a)(2)(A). We overrule Ingram's issues, and we affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on July 14, 2011
Opinion Delivered November 3, 2011
Before McKeithen, C.J., Kreger and Horton, JJ.