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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2015-2016

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CR-15-0612

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Labarron Terrain Levins

v.

State of Alabama

Appeal from Mobile Circuit Court  
(CC-15-7103; CC-15-7104)

PER CURIAM.

On March 3, 2016, Labarron Terrain Levins filed a notice of appeal attempting to appeal the Mobile Circuit Court's denial of his petition for expungement. This Court issued an order directing Levins to show cause why his appeal should not

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be dismissed as being from a nonappealable order. Levins has responded to this Court's order, and this Court has considered Levins's response.

According to Levins's response to this Court's show-cause order, Levins pleaded guilty to two counts of first-degree theft of property, a Class B felony, on January 26, 2001. On October 8, 2013, Levins received a full pardon of the offenses from the Alabama Board of Pardons and Paroles. On December 15, 2015, Levins filed a petition in the Mobile Circuit Court seeking expungement of his record pursuant to Section 15-27-1 et seq., Ala. Code 1975. On February 5, 2016, the Mobile Circuit Court denied Levins's petition.

Act No. 2014-292, which became effective on July 7, 2014, permits an individual charged with a nonviolent felony, a misdemeanor, a violation, a traffic violation, or a municipal-ordinance violation to petition the circuit court in which the charges were filed to have the records relating to the charge expunged. That act was codified at § 15-27-1 et seq. Section 15-27-2, Ala. Code 1975, provides that an individual charged with a nonviolent felony may petition for expungement of the records relating to the charge in the following circumstances:

"(1) When the charge is dismissed with prejudice.

"(2) When the charge has been no billed by a grand jury.

"(3) When the person has been found not guilty of the charge.

"(4)a. The charge was dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran's court, or any court-approved deferred prosecution program after one year from successful completion of the program.

"b. Expungement may be a court-ordered condition of a program listed in paragraph a.

"(5) The charge was dismissed without prejudice more than five years ago, has not been refiled, and the person has not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous five years.

"(6) Ninety days have passed from the date of dismissal with prejudice, no-bill, acquittal, or nolle prosequi and the charge has not been refiled."

In its order denying Levins's petition for expungement, the trial court found:

"As to the criteria from Section 15-27-2 ..., [Levins] here argues that the pardon in CC-00-3318 should be, or ought to be, effectively treated the same as a dismissal or a no-bill by a grand jury. However, in Section 15-27-2 it is clear that a 'pardon' or 'parole' are not listed among the 'circumstances' under which a petition to expunge may be filed. Further, it is clear from the statute

that expungement is not an express option where the petitioner was adjudicated guilty. That is, the 'circumstances' listed in 15-27-2 for which a petition 'may' be filed only expressly include dispositions that do not result in a conviction.

"....

"In these Levins Petitions this Circuit Court finds that the language of the statute is unambiguous -- that is, the statute does not expressly include a 'pardon' or 'parole' as a 'circumstance' under which a petition for expungement 'may' be filed.

"This Circuit Court notes that under existing Alabama law a Defendant who is in fact convicted does have a remedy other than expungement to address that conviction -- i.e., a pardon. This point was specifically argued by the State at the Hearing in Circuit Court on February 4, 2016 as to the conviction in CC-00-3318. This is a 'factor' and a 'matter' which 'the court deems relevant.' See Ala. Code Section 15-27-5(a)(10)."

Section 15-27-5(c), Ala. Code 1975, provides:

"(c) There is no right to the expungement of any criminal record, and any request for expungement of a criminal record may be denied at the sole discretion of the court. The court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter. The court shall have discretion over the number of cases that may be expunged pursuant to this chapter after the first case is expunged. The ruling of the court shall be subject to certiorari review and shall not be reversed absent a showing of an abuse of discretion."

(Emphasis added.) Although Section 15-27-5(c) provides that review of a circuit court's ruling on an expungement petition shall be by certiorari, Levins filed a notice of appeal. In response to this Court's show-cause order, Levins argues that he "will assign as error a question of pure law<sup>1</sup>, rather than an abuse of discretion." Therefore, he argues, an appeal instead of a petition for a writ of certiorari is the proper avenue by which to challenge the trial court's denial of his petition.

An appeal and a petition for a writ of certiorari are not synonymous. An appeal is "[a] proceeding undertaken to have a decision reconsidered by a higher authority, especially the submission of a lower court's ... decision to a higher court for review and possible reversal." Black's Law Dictionary 117 (10th ed. 2014). In an appeal, the appellate court examines the record of the trial court to determine if the trial court committed reversible error. See 5 Am. Jur. 2d Appellate Review § 441. The writ of certiorari, however, is "[a]n

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<sup>1</sup>According to his docketing statement, Levin intends to raise on appeal the issue of "[w]hether a case is subject to expungement where a defendant pleads guilty but subsequently receives a full pardon."

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extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review." Black's Law Dictionary 275 (10th ed. 2014).

A party may appeal only if he or she has a right to appeal. In Dixon v. City of Mobile, 859 So. 2d 462 (Ala. Crim. App. 2003), this Court noted:

"As we stated in State v. Bibby, 47 Ala. App. 240, 243, 252 So. 2d 662, 664 (Ala. Crim. App.1971):

''[T]here is no inherent or inalienable right of appeal. Appeals ... were unknown to the Common Law at the time of the migration of our forebears. Hence, it has become a familiar saw among legal writers to say that appeals are solely the creatures of statute.'

''The right of appeal is wholly statutory and is authorized in criminal cases from a judgment of conviction.' McCray v. State, 46 Ala. App. 588, 589, 246 So. 2d 475, 476 (Ala. Crim. App. 1971). 'Appeals lie only from judgments of conviction, and then only on those counts upon which there is a finding of guilt.' Thornton v. State, 390 So. 2d 1093, 1096 (Ala. Crim. App. 1980). 'An appeal cannot be taken from an order subsequent to the judgement of conviction unless authorized by statute.' Harris v. State, 44 Ala. App. 632, 632, 218 So. 2d 285, 286 (1969). All statutes that authorize appeals are to be strictly construed. See Wood v. Birmingham, 380 So. 2d 394 (Ala. Crim. App. 1980).''

Dixon, 859 So. 2d at 463.

In establishing a procedure by which an individual may petition to have his or her record expunged, the Alabama Legislature did not create a statutory right to appeal. Instead, it established a right to seek certiorari review of the circuit court's ruling on the expungement petition. Even though Levins intends to raise only questions of law before this Court, he does not have a statutory right to appeal. The only way he may seek review of the trial court's decision on his expungement petition is by way of a petition for a writ of certiorari.<sup>2</sup> Accordingly, this appeal is due to be, and is hereby, dismissed as nonappealable.

APPEAL DISMISSED.

Windom, P.J., and Welch, Kellum, Burke, and Joiner, JJ., concur.

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<sup>2</sup>As noted in this Court's opinion in Bell v. State, [Ms. CR-15-0618, April 29, 2016] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2016), which is being released the same date as this opinion, certiorari review may be sought by filing a petition for a common-law writ of certiorari pursuant to Rule 21(c), Alabama Rules of Appellate Procedure.