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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1157

Ex parte Drew James Steinberg

PETITION FOR WRIT OF CERTIORARI

(In re: State of Alabama v. Drew James Steinberg)

Appeal from Covington Circuit Court
(CC-18-215; CC-18-216; CC-18-217; CC-18-218; CC-18-219)

CR-17-1159

Ex parte Carl Edward Romero

PETITION FOR WRIT OF CERTIORARI

(In re: State of Alabama v. Carl Edward Romero)

Appeal from Covington Circuit Court
(CC-18-78; CC-18-79; CC-18-80)

CR-17-1160

Ex parte Samuel A. Maloney

PETITION FOR WRIT OF CERTIORARI

(In re: State of Alabama v. Samuel A. Maloney)

Appeal from Covington Circuit Court
(CC-18-73 and CC-18-74)

CR-17-1181

Ex parte Whalen Reid Merrill

PETITION FOR WRIT OF CERTIORARI

(In re: State of Alabama v. Whalen Reid Merrill)

Appeal from Covington Circuit Court
(CC-18-282 and CC-18-283)

CR-17-1182

Ex parte Ryan Thomas Pickel

PETITION FOR WRIT OF CERTIORARI

(In re: State of Alabama v. Ryan Thomas Pickel)

Appeal from Covington Circuit Court

(CC-18-280 and CC-18-281)

CR-17-1183

Ex parte Luke Patrick Valle

PETITION FOR WRIT OF CERTIORARI

(In re: State of Alabama v. Luke Patrick Valle)

**Appeal from Covington Circuit Court
(CC-18-284; CC-18-285; CC-18-286)**

McCOOL, Judge.

In six separate petitions, Drew James Steinberg, Carl Edward Romero, Samuel A. Maloney, Whalen Reid Merrill, Ryan Thomas Pickel, and Luke Patrick Valle each seek certiorari review of the Covington Circuit Court's denial of their petitions for expungement. The circuit court's orders denying the petitions for expungement are identical, and the arguments in each certiorari petition are identical. Thus, we address all six cases in this single opinion. Based on the following, this Court grants all six certiorari petitions and issues the writs.

Facts and Procedural History

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The following facts are set forth in the certiorari petitions.

A. Facts Underlying Appeal No. CR-17-1157

On March 14, 2015, Steinberg and four other college students from Indiana University were traveling through Covington County on their way to Florida when they were stopped for speeding. Following a search of their vehicle, Steinberg and the others were charged with one felony -- possession of hashish -- and four misdemeanors -- possession of drug paraphernalia, second-degree possession of marijuana, illegal possession of alcohol, and being a minor in possession of alcohol. Following completion of a pretrial diversion program, the charges were dismissed with prejudice.

Steinberg filed a petition for expungement for each of the five charges. The prosecuting authority did not file an objection to the petition. On July 19, 2018, the circuit court denied the petition without conducting a hearing.

B. Facts Underlying Appeal No. CR-17-1159

On March 12, 2016, Romero, a 21-year-old college student from the University of South Carolina, was traveling through Covington County on his way to Florida when he was stopped for

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speeding. Following a search of his vehicle, Romero was charged with second-degree possession of marijuana, possession of drug paraphernalia, and possession of untaxed alcohol. Following completion of a pretrial diversion program, the charges were dismissed with prejudice.

Romero filed a petition for expungement as to all three charges. The prosecuting authority did not file an objection to the petition. On July 19, 2018, the circuit court denied the petition without conducting a hearing.

C. Facts Underlying Appeal No. CR-17-1160

On May 5, 2016, Maloney, a 21-year-old college student, was traveling through Covington County to Florida at night when he was stopped for failing to dim his headlights. Following a search of his vehicle, Maloney was charged with second-degree possession of marijuana and possession of drug paraphernalia. Following completion of a pretrial diversion program, the charges were dismissed with prejudice.

Maloney filed a petition for expungement as to both charges. The prosecuting authority did not file an objection to the petition. On July 19, 2018, the circuit court denied the petition without conducting a hearing.

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D. Facts Underlying Appeal No. CR-17-1181

On March 17, 2017, Merrill, a 19-year-old traveling through Covington County on his way to Florida, was stopped at a driver's license checkpoint. An officer asked Merrill if there was anything illegal in the vehicle. Merrill admitted that there was marijuana in the vehicle and handed the marijuana to the officer. Merrill was charged with second-degree possession of marijuana and possession of drug paraphernalia. Following completion of a pretrial diversion program, the charges were dismissed with prejudice.

Merrill filed a petition for expungement as to both charges. The prosecuting authority did not file an objection to the petition. On July 31, 2018, the circuit court denied the petition without conducting a hearing.

E. Facts Underlying Appeal No. CR-17-1182

On September 5, 2016, Pickel, a 35-year-old IT consultant from Ohio, was traveling through Covington County when he was stopped for speeding. Following a search of his vehicle, Pickel was charged with second-degree possession of marijuana and possession of drug paraphernalia. Following completion of a pretrial diversion program, the charges were nolle prossed.

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Pickel filed a petition for expungement as to both charges. The prosecuting authority did not file an objection to the petition. On July 31, 2018, the circuit court denied the petition without conducting a hearing.

F. Facts Underlying Appeal No. CR-17-1183

On March 12, 2016, Valle, an 18-year-old college student from Clemson University, was traveling through Covington County on his way to Florida when the vehicle in which he was a passenger was stopped for failing to come to a complete stop at a stop sign. Following a search of the vehicle, Valle was charged with second-degree possession of marijuana, possession of drug paraphernalia, and being a minor in possession of alcohol. Following completion of a pretrial diversion program, the charges were dismissed with prejudice.

Valle filed a petition for expungement as to all three charges. The prosecuting authority did not file an objection to the petition. On July 31, 2018, the circuit court denied the petition without conducting a hearing.

Standard of Review

This Court has recognized:

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"There is no provision in Chapter 27 of Title 15, 'Expungement,' for a direct appeal of the denial of a petition for expungement. Rather, § 15-27-5(c), Ala. Code 1975, states: 'The ruling of the court shall be subject to certiorari review and shall not be reversed absent an abuse of discretion.' Levins v. State, [Ms. CR-15-0612, April 29, 2016] ___ So. 3d ___ (Ala. Crim. App. 2016)."

Bell v. State, 217 So. 3d 962, 963 (Ala. Crim. App. 2016).

Further, "[a] judge abuses his discretion only when his decision is based on an erroneous conclusion of law or where the record contains no evidence on which he rationally could have based his decision." Albarran v. State, 96 So. 3d 131, 198 (Ala. Crim. App. 2011).

Discussion

In the present case, the circuit court entered separate but identical orders denying all the petitions for expungement. Those orders stated:

"The above styled causes are before the Court upon the Petitions of the Defendant to expunge from his record certain criminal charges that were subsequently dismissed. A review of the pleadings reveals that the dismissals of the charges in this cause were for some reason other than a finding that the Defendant was not guilty of the charge that he is now seeking to expunge. Additionally, the Defendant has filed more than one petition for expungement and this Court will not consider more than one charge for expungement in cases where the

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charges were dismissed for some reason other than the Defendant being not guilty of the charge.

"The expungement statute is a legal vehicle that allows a person, who is charged with an offense that the person is subsequently found not guilty of committing, to have the record of him/her being charged with that offense expunged. It is not, in this Court's opinion, a proper use of the expungement statute to clear the record of a person who has not been found not guilty of the crime, but instead, had the charge dismissed by some lawful manner (plea bargain, diversion program, etc...) which in no way represents a finding that the person was charged with an offense which the person did not commit. While it is certainly fair, reasonable and the right thing to do, to clear the record of an innocent person who was charged with a crime that he/she did not commit, it is not fair, reasonable or the right thing to do or the intent of the expungement statute, to clear the record of someone who is charged with a criminal offense that was only dismissed because the person was willing to plead guilty to committing another offense or because he/she was financially able to pay for and participate in a program which is only available to those with sufficient financial resources to afford it. To allow the latter would be tantamount to allowing those who can financially afford to do so, to buy their way out of the consequences of their actions and to allow either, would bring about a myriad of other consequences which were no doubt not understood and hopefully not intended and/or not foreseen by the drafters of the expungement statute.^[1] Such unintended consequences would

¹We note that § 15-27-4(b), Ala. Code 1975, states that "a person seeking relief under this chapter may apply for indigent status by completing an Affidavit of Substantial Hardship and Order which shall be submitted with the petition.

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include, but are not limited to, allowing, and in fact judicially authorizing, a person to give false testimony under oath during jury voir dire when questioned about whether he/she has ever been charged with a criminal offense.

"For the reasons stated above and based upon the specific provision of the expungement statute that provides that 'any request for expungement of a criminal record may be denied at the sole discretion of the Court,' the Petition for Expungement in this cause is Denied."

The petitioners argue that the circuit court abused its discretion in denying their petitions for expungement. Specifically, they argue that the circuit court failed to consider the factors set forth in the applicable statutes -- § 15-27-1 et seq., Ala. Code 1975 -- and, instead, improperly considered factors such as whether the petitioners were actually innocent of the charges and the financial status of the petitioners. The State responds by conceding that "the circuit judge based his denial of the petitions for expungement, it appears, on an erroneous conclusion of law," and the State asks this Court to issue a decision clarifying

If the court finds the petitioner is indigent, the court may set forth a payment plan for the petitioner to satisfy the filing fee over a period of time, which shall be paid in full, prior to any order granting an expungement."

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the application of the applicable statutes. The State's brief,
at 12.

Section 15-27-1 et seq. "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" in certain circumstances. Levins v. State, [Ms. CR-15-0612, April 29, 2016] ___ So. 3d ___, ___ (Ala. Crim. App. 2016). One such circumstance is "when the charge is dismissed with prejudice." §§ 15-27-1(a) and 15-27-2(a), Ala. Code 1975.

Further, § 15-27-5, Ala. Code 1975, provides:

"(a) If the prosecuting authority or victim files an objection to the granting of a petition under this chapter, the court having jurisdiction over the matter shall set a date for a hearing no sooner than 14 days from the filing of the objection. The court shall notify the prosecuting authority and the petitioner of the hearing date. In the discretion of the court, the court shall consider the following factors:

"(1) Nature and seriousness of the offense committed.

"(2) Circumstances under which the offense occurred.

"(3) Date of the offense.

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"(4) Age of the person when the offense was committed.

"(5) Whether the offense was an isolated or repeated incident.

"(6) Other conditions which may have contributed to the offense.

"(7) An available probation or parole record, report, or recommendation.

"(8) Whether the offense was dismissed or nolle prossed as part of a negotiated plea agreement and the petitioner plead[ed] guilty to another related or lesser offense.

"(9) Evidence of rehabilitation, including good conduct in prison or jail, in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful business or employment history, and the recommendation of his or her supervisors or other persons in the community.

"(10) Any other matter the court deems relevant, which may include, but is not limited to, a prior expungement of the petitioner's records.

"(b) A hearing under subsection (a) shall be conducted in a manner prescribed by the trial judge and shall include oral argument and review of relevant documentation in support of, or in objection to, the granting of the petition. The Alabama Rules of Evidence shall apply to the hearing. Leave of the court shall be obtained for

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the taking of witness testimony relating to any disputed fact.

"(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.

"(d) If no objection to a petition is filed by the prosecuting authority or victim, the court having jurisdiction over the matter may rule on the merits of the petition without setting the matter for hearing. In such cases, 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."

In construing the expungement statutes, we are guided by the following principles of statutory construction:

"[I]t is this Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent is manifested in the wording of the statute. Bean Dredging[, LLC v. Alabama Dep't of Revenue], 855 So. 2d [513] at 517 [(Ala. 2003)].... ""If the language of the

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statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'"" Pitts v. Ganqi, 896 So. 2d 433, 436 (Ala. 2004) (quoting DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998), quoting in turn earlier cases). In determining the intent of the legislature, we must examine the statute as a whole and, if possible, give effect to each section. Employees' Retirement Sys. of Alabama v. Head, 369 So. 2d 1227, 1228 (Ala. 1979).'

"Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). Further,

"'when determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute. Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1045 (Ala. 1991). When the language is clear, there is no room for judicial construction. Employees' Retirement System [v. Head], 369 So. 2d [1227,] 1228 [(Ala. 2002)].'

"Water Works & Sewer Bd. of Selma v. Randolph, 833 So. 2d 604, 607 (Ala. 2002)."

Ex parte Birmingham Bd. of Educ., 45 So. 3d 764, 767 (Ala. 2009).

Further,

""'ambiguous criminal statutes must be narrowly interpreted, in favor of the accused.' United States v. Herring, 933 F.2d 932, 937 (11th Cir. 1991). '[I]t is well established that criminal statutes

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should not be "extended by construction." Ex parte Evers, 434 So. 2d 813, 817 (Ala. 1983)...." D.A.D.O. v. State, 57 So. 3d 798, 802 (Ala. Crim. App. 2009) (quoting Carroll v. State, 599 So. 2d 1253, 1264 (Ala. Crim. App. 1992), aff'd, 627 So. 2d 874 (Ala. 1993)). "'No person is to be made subject to penal statutes by implication and all doubts concerning their interpretation are to predominate in favor of the accused. Fuller v. State, [257 Ala. 502, 60 So. 2d 202 (1952)]."' D.A.D.O., 57 So. 3d at 803 (quoting Hankins v. State, 989 So. 2d 610, 618 (Ala. Crim. App. 2007))."

Collier v. State, 212 So. 3d 268, 273 (Ala. Crim. App. 2015).

On the other hand, procedural or remedial statutes are liberally construed to effectuate their objectives. See Brasher v. State, 555 So. 2d 184, 187 (Ala. Crim. App. 1988) ("Procedural statutes, on the other hand, should be liberally construed with a view to the effective administration of justice and to effectuate their purpose.").

Section 15-27-5, Ala. Code 1975, is not clear. Section 15-27-5 states that "any request for expungement of a criminal record may be denied at the sole discretion of the court," but it also states, in two places, that "[t]he 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." (Emphasis added.) As the

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Alabama Supreme Court has clearly stated, "[t]he word 'shall,' when used in a statute, is mandatory," i.e., not discretionary. Ex parte Nixon, 729 So. 2d 277, 278 (Ala. 1998). Thus, because the statute is unclear, this Court must examine the statute as a whole and attempt to give effect to the legislature's intent in enacting the statute. Regardless of whether the statute is considered penal, procedural, or remedial, the statute must be construed in favor of the petitioners in the present case because they are "the accused" concerning the criminal charges they are attempting to have expunged and because the objective of the statute is to give individuals in the petitioners' position, i.e, individuals charged with a nonviolent felony or misdemeanor who have had the charge dismissed with prejudice, the opportunity to expunge their record of the criminal charges.

In the present case, there is no evidence indicating that the prosecuting authority or a victim filed an objection to the granting of the petitions for expungement or that a hearing was held. Section 15-27-5(d) is the only subsection that contemplates that specific situation. Section 15-27-5(d) states:

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"If no objection to a petition is filed by the prosecuting authority or victim, the court having jurisdiction over the matter may rule on the merits of the petition without setting the matter for hearing. In such cases, 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."

(Emphasis added.)

Thus, in this particular situation -- when no objection is filed and no hearing is held -- the circuit court is required to grant the petition in the first case "if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter," i.e., Chapter 27 of Title 15. Those requirements include the applicable requirements set forth in § 15-27-1 or § 15-27-2, the submission of documents and service requirements set forth in § 15-27-3, the fee requirements set forth in § 15-27-4, and the prerequisites to expungement set forth in § 15-27-12. However, the "requirements" of this chapter do not include the "factors" set forth in § 15-27-5(a), unless § 15-27-5(a) is applicable. On its face, § 15-27-5(a) is applicable only "[i]f the prosecuting authority or victim files an objection

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to the granting of a petition under this chapter." In the present case, it appears that no objection was filed; thus, § 15-27-5(a) does not apply. Also, as the petitioners contend and the State concedes, the factors that the circuit court considered, such as the ability to pay for pretrial diversion and the actual innocence of the petitioners, are not requirements found in Chapter 27 of Title 15.

Furthermore, we note that, on its face, § 15-27-5(d) gives the circuit court "discretion over the number of cases that may be expunged pursuant to this chapter after the first case is expunged." That wording further supports our conclusion that the court does not have discretion before the first case is expunged, but that language clearly gives the court discretion after the first case is expunged. Therefore, in sum, when no objection is filed, the circuit court must grant the petition if it is reasonably satisfied that the petitioner has satisfied the requirements of Chapter 27 of Title 15, but the court has discretion over the number of cases that may be expunged after the first case is expunged.

In the present case, as the petitioners assert and the State concedes, the circuit court imposed requirements that

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are not found in Chapter 27 of Title 15. Accordingly, the circuit court based its decision on an erroneous conclusion of law and, thus, abused its discretion. Therefore, we grant the certiorari petitions, order the circuit court to vacate its orders denying the petitions for expungement, and remand the cases to the circuit court for proceedings consistent with this opinion. The circuit court must consider whether the petitioners have complied with the requirements of Chapter 27 of Title 15, as explained above. If the court is reasonably satisfied that the petitioners have complied with those requirements, the court shall grant the petition in the first case if no previous expungements have been ordered, see § 15-27-3(a), Ala. Code 1975. If the first case is expunged or if previous expungements have been ordered, then the court has discretion over the number of cases that may be expunged thereafter.

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CR-17-1159 -- PETITION GRANTED; WRIT ISSUED.

CR-17-1160 -- PETITION GRANTED; WRIT ISSUED.

CR-17-1181 -- PETITION GRANTED; WRIT ISSUED.

CR-17-1182 -- PETITION GRANTED; WRIT ISSUED.

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CR-17-1183 -- PETITION GRANTED; WRIT ISSUED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.