

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

J.F.T., A CHILD,

Appellant,

v.

Case No. 5D20-907
CORRECTED

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 28, 2020

Appeal from the Circuit Court
for Marion County,
S. Sue Robbins, Judge.

Kathryn E. Bennett, of Law Office of
William E. Ramputi, Ocala, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Roberts J. Bradford, Jr.,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

J.F.T., a child, was arrested in Marion County, Florida. The State subsequently filed a notice of no petition, indicating its intent not to pursue the case. J.F.T. then filed a petition seeking to expunge his non-judicial criminal history records and the official court records relating to his arrest. As required by section 943.0585, Florida Statutes (2019),

and Florida Rule of Criminal Procedure 3.692,¹ the petition was accompanied by a certificate of eligibility for expunction issued by the Florida Department of Law Enforcement. The State opposed J.F.T.'s petition. Although it did not dispute J.F.T.'s eligibility for expunction, the State contended that the petition should be denied so that his records would be available in the event J.F.T. committed a crime in the future. In an unelaborated order, the trial court denied J.F.T.'s petition.

In Kanji v. State, 4 So. 3d 65 (Fla. 5th DCA 2009), we addressed an identical situation. In reversing the trial court's order denying Kanji's petition to expunge, we explained the trial court's discretion, writing:

Although section 943.0585 provides that "any request for expunction of a criminal history record may be denied at the sole discretion of the court," Florida courts have consistently held that such discretion is not unfettered. See, e.g., S.L.P. v. State, 949 So. 2d 1150 (Fla. 3d DCA 2007); Cole v. State, 941 So. 2d 549 (Fla. 1st DCA 2006); Godoy v. State, 845 So. 2d 1016 (Fla. 3d DCA 2003); Oymayan v. State, 765 So. 2d 812 (Fla. 1st DCA 2000); Anderson v. State, 692 So. 2d 250 (Fla. 3d DCA 1997). The words "sole discretion" as used in this section do not permit the arbitrary denial of expunction. Anderson, 692 So. 2d at 253. In exercising its discretion, the trial court must consider all the facts and circumstances and may not deny the petition based solely on the nature of the crime. See Cole; Godoy; Oymayan; Anderson.

Kanji, 4 So. 3d at 66–67.

The State concedes remand is necessary. Here, as in Kanji, we are unable to determine if the trial court properly exercised its discretion because no reason was given for the denial of J.F.T.'s petition. Accordingly, we remand the case to the trial court with

¹ Although the Florida Rules of Criminal Procedure do not generally pertain to juvenile proceedings, rule 3.692 is expressly applicable to "all" petitions to seal or expunge. See State v. S.A.B., 65 So. 3d 1160, 1161 (Fla. 5th DCA 2011).

instructions to either grant the petition or provide the reason(s), based on all the facts and circumstances, for denying the petition.

REVERSED and REMANDED with instructions.

ORFINGER, COHEN and TRAVER, JJ., concur.