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IN THE
COURT OF APPEALS OF INDIANA

Jason Ball,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2021

Court of Appeals Case No.
20A-XP-1521

Appeal from the Elkhart Superior
Court

The Honorable Teresa L. Cataldo,
Judge

Trial Court Cause No.
20D03-1912-XP-95

Pyle, Judge.

Statement of the Case

- [1] Jason Ball (“Ball”) appeals the trial court’s denial of his petition seeking the expungement of his criminal convictions. The sole issue for our review is whether the trial court abused its discretion in denying Ball’s petition.

Concluding that the trial court abused its discretion, we reverse the trial court's judgment and remand with instructions for the trial court to grant Ball's expungement petition.

[2] We reverse and remand with instructions.

Issue

Whether the trial court abused its discretion in denying Ball's expungement petition.

Facts

[3] In April 1996, when he was sixteen years old, Ball and his brother broke into a retail sporting goods store while the store was closed and stole several guns. Ball and his brother also attempted to break into a bank's ATM machine while the bank was closed. In August 1996, Ball pleaded guilty to one count of Class C felony burglary and one count of Class C felony attempted burglary. In September 1996, the trial court sentenced Ball to eight (8) years with no time suspended for the Class C burglary conviction and eight (8) years with five (5) years suspended for the Class C felony attempted burglary conviction. The trial court further ordered the sentences to run consecutively to each other. In addition, the trial court ordered the following restitution: (1) \$8,036.48 to Discount Sporting Stores and American States; (2) \$575 to Lynn Barnard; and (3) \$1,000 to Society Bank. Ball served four years in the Department of Correction (the "DOC") for these convictions. Following his release from the DOC, Ball was convicted of four alcohol-related misdemeanor offenses in 2000.

[4] In November 2015, Ball filed a petition to expunge: (1) his four alcohol-related misdemeanor convictions pursuant to INDIANA CODE § 35-38-9-1 and -2; and (2) his two felony convictions pursuant to INDIANA CODE § 35-38-9-4. Following a February 2016 hearing, the trial court issued an order granting Ball's request to expunge the misdemeanor convictions. However, the trial court denied Ball's request to expunge the felony convictions. The trial court gave the following reasons for denying Ball's request to expunge the felony convictions: (1) Ball had been convicted of four additional offenses after he had been released from the DOC; and (2) Ball had failed to show the court that he had paid all fines, fees, and court costs or had satisfied the restitution imposed as part of his sentence for the felony convictions.

[5] In March 2016, Ball filed a motion to reconsider. Ball attached to his motion a letter from the assistant chief probation officer. The letter provides, in relevant part, as follows: "Mr. Ball paid probation fees in full. Probation records indicate restitution was paid in full by Mr. Ball's co-defendants." (Trial Court's CCS, Cause Number XP-37, April 7, 2016 entry). In April 2016, the trial court issued the following order denying Ball's motion to reconsider: "[I]t is [Ball's] burden to prove to the court by a preponderance of the evidence that all fines, fees, court costs, and restitution obligations were paid. In the court's discretion the court does not find that [Ball] has done so." (Trial Court's CCS, Cause Number XP-37, April 7, 2016 entry). Ball did not appeal the trial court's denial of his 2015 petition to expunge his felony convictions.

- [6] Nearly four years later, in December 2019, Ball filed a second petition to expunge his felony convictions pursuant to INDIANA CODE § 35-38-9-4. The petition clearly stated that Ball was seeking to expunge the following two convictions: (1) Class C felony burglary; and (2) Class C felony attempted burglary. The petition further stated that both convictions were listed under Cause Number 20D03-9604-CF-000051 (“Cause Number CF-51”). The petition also stated that Ball, by counsel, had contacted the county clerk’s office “in an attempt to provide the court with a record of payment of all fees and restitution. Counsel was advised that no restitution or fees were due by at least two different staff members. Counsel requested a certified copy showing [no] balance due[.]” (App. Vol. 2 at 9).
- [7] The State filed a written response objecting to the expungement, and the trial court denied Ball’s petition without a hearing. The trial court’s order stated that the trial court was denying Ball’s petition on the basis of res judicata because it had considered the merits of his case and had denied his petition in 2016.
- [8] In January 2020, Ball filed a motion to reconsider. In this motion, Ball pointed out that res judicata is inapplicable to expungement matters because INDIANA CODE § 35-38-9-9(j) specifically states that “a petition for expungement may be refiled . . . after the elapse of three (3) years from the date on which the previous expungement was denied.” (App. Vol. 2 at 11). Also in this motion, Ball did not specifically set forth the two convictions as he had done in his petition. Rather, he stated that he was “seek[ing] expungement of [Cause Number CF-51][.]” (App. Vol. 2 at 11). Ball then referred to a singular “offense”

throughout his motion. (App. Vol. 2 at 11). Ball further contended that this offense was not violent.

[9] Thereafter, the trial court scheduled a March 2020 hearing on Ball's petition. Ball was the only witness to testify at the hearing. He explained that twenty-four years ago, when he was sixteen years old, he had burglarized a closed commercial store and had subsequently served four years in the DOC. According to Ball, following his release from the DOC, he had spent his free time "partying," which had "led to a handful of misdemeanor arrests for alcohol related offenses." (Tr. Vol. 2 at 5). Ball further testified that, following his fourth misdemeanor conviction, the trial court "gave him the very good advice to discontinue the use of alcohol, and was kind enough . . . and didn't return [him] to prison and didn't . . . provide any stiff penalty for the mistakes [he had] made after being released . . . that were ultimately violations of probation[.]" (Tr. Vol. 2 at 6). Ball testified that he had accepted the trial court's advice and that "[t]hat was the end of all involvement with the court system." (Tr. Vol. 2 at 6).

[10] Ball further testified he has been a real estate agent and broker for the past eighteen years and that he has owned a heating and air conditioning business for the past twelve years. According to Ball, his 1996 felony convictions have prevented him from servicing specific clients that require all persons working on these accounts to be free of felony convictions.

[11] Ball further testified that he is married and has four children. His oldest child is sixteen years old, and his youngest child is eight years old. Ball's felony convictions have prevented him from volunteering at his children's schools and participating in class field trips.

[12] In addition, Ball testified that, although he currently does volunteer work, there are certain agencies that will not allow him to volunteer because of his felony convictions. Ball explained that he is particularly interested in volunteering for Angel Flight, which "provides free travel to children needing to visit medical facilities that aren't in the area [where] they live, and their parents don't have the means to be able to take them to these facilities." (Tr. Vol. 2 at 7).

According to Ball, many of his friends volunteer for the agency, and Ball "would start immediately" if his convictions were expunged. (Tr. Vol. 2 at 7).

[13] Ball also testified that he had contacted the county clerk's office as well as the assistant director of the probation department in an attempt "to locate any record whatsoever that would indicate there [was] any restitution owed." (Tr. Vol. 2 at 8). According to Ball, neither the county clerk nor the probation department was able to locate any record of restitution owed. Ball tendered Petitioner's Exhibit 1, a certified letter from the county clerk showing no restitution balance due in Ball's case. Ball further testified that his co-defendant in the cases is his brother, whose conviction had previously been expunged.

[14] The trial court admitted into evidence letters of recommendation from Ball's wife, father, mother, and business partner, each of whom attested to Ball's good

character and strong work ethic. The State did not cross-examine Ball or present any evidence.

[15] Following the presentation of evidence, Ball’s counsel argued as follows:

I’ve been doing expungements since this law passed, nearly, maybe, a thousand of them. And this case, I think, is exactly what this expungement statute was meant to portray for somebody just like Mr. Ball, who had an extensive criminal history a long time ago[.] And I think the evidence before the court is 20 years has passed and he has done everything in his power to stay away from any type of criminal activity and lifestyle. He doesn’t drink. He doesn’t commit crimes. He’s had four children. He’s got married. He runs a successful business. I just think that this case is the poster child for expungements.

(Tr. Vol. 2 at 12).

[16] The State objected to the expungement “based upon the nature of the offense[s.]” (Tr. Vol. 2 at 12). The State specifically argued that these were serious offenses that were “inappropriate for expungement.” (Tr. Vol. 2 at 12).

[17] The trial court told the parties that it would take the case under advisement. Because of numerous procedural delays, Ball did not receive the trial court’s order denying his expungement reconsideration petition until August 2020. In its order, the trial court explained that it “appreciate[d] [Ball’s] growth and the life he now leads, and realize[d] the difficulty associated with reaching certain goals based on his criminal history.” (App. Vol. 2 at 25). However, the trial court further explained that it was denying Ball’s petition for the following three reasons: (1) although Ball “contends that he paid all fines, fees, court costs and

satisfied any restitution[,] . . . [the] probation records indicate the restitution was paid in full by [Ball's] co-defendants[;]" (2) Ball was "seek[ing] to expunge two Felony convictions, not one, as characterized by [Ball] throughout his Motion to Reconsider as "the offense[;]" and (3) "even though [Ball] considers that his offenses were not 'violent in nature,' the mere fact that handguns valued at over \$16,000.00 were stolen during a burglary is significant to the Court." (App. Vol. 2 at 25).

[18] Ball now appeals the denial of his expungement petition.

Decision

[19] Ball argues that the trial court abused its discretion in denying his expungement petition. We agree.

[20] "When a person is convicted of a crime, the conviction is a stigma that follows him or her through life, creating many roadblocks to rehabilitation." *Key v. State*, 48 N.E.3d 333, 336 (Ind. Ct. App. 2015). By enacting the expungement statutes, our legislature intended to give individuals who have been convicted of certain crimes a second chance by providing an opportunity for relief from the stigma associated with their criminal convictions. *Burton v. State*, 71 N.E.3d 24, 25 (Ind. Ct. App. 2017). The expungement statutes are inherently remedial and, as such, should be liberally construed to advance the remedy for which they were enacted. *Id.*

[21] The expungement statutes are found in INDIANA CODE Chapter 35-38-9. Expungement is not available to sex or violent offenders or persons convicted of

official misconduct, homicide offenses, human and sexual trafficking offenses or sex crimes. *See* I.C. § 35-38-9-3(b); I.C. § 35-38-9-4(b); I.C. § 35-38-9-5(b). For qualifying offenses, the requirements for expungement generally depend on the level of offense of which the person was convicted. *See* I.C. § 35-38-9-2 (misdemeanors); I.C. § 35-38-9-3 (Class D or Level 6 felonies); I.C. § 35-38-9-4 (felonies not covered under section 3); I.C. § 35-38-9-5 (offenses committed by elected officials while in office and felonies that resulted in serious bodily injury). Depending on the offense level, expungement may be either mandatory or discretionary. *Trout v. State*, 28 N.E.3d 267, 269 (Ind. Ct. App. 2015).

[22] Here, Ball filed his petition to expunge his Level C felonies pursuant to INDIANA CODE § 35-38-9-4, which is a discretionary, or permissive, expungement statute. The Indiana Supreme Court recently explained that “[b]ecause the Permissive Expungement Statute excludes from eligibility persons convicted of certain offenses, but vests in the court the discretion to either grant or deny a petition, a trial court should engage in a two-step process when considering a petition for expungement.” *Allen v. State*, 159 N.E.3d 580, 585 (Ind. 2020). First, the trial court must determine whether the conviction is eligible for expungement and whether the petitioner has met the requirements. *Id.* (citing I.C. §§ 35-38-9-4(b), -4(e)). If the conviction is ineligible, the trial court’s inquiry ends there. *Allen*, 159 N.E.3d at 585. However, if the trial court determines that the conviction is eligible for expungement, it must then collect

enough information to determine whether it should grant or deny the expungement petition. *Id.*

[23] Pursuant to *Allen*, we turn first to the statute’s eligibility requirements.

INDIANA CODE § 35-38-9-4 provides, in relevant part, as follows:

- (e) If the court finds by a preponderance of the evidence that:
 - (1) the period required by this section has elapsed;
 - (2) no charges are pending against the person;
 - (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
 - (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney had consented to a shorter period under subsection (c));

the court may order the conviction records described in subsection (c), including any records relating to the conviction and any records concerning a collateral action, marked as expunged in accordance with section 7 of this chapter[.]

[24] Here, the trial court essentially found that Ball’s convictions were ineligible for expungement because Ball’s brother, who was Ball’s co-defendant, rather than Ball, had paid the restitution in the case. Ball argues that the trial court misinterpreted the statute, and we agree.

[25] When interpreting a statute, we apply a *de novo* standard of review. *Allen*, 159 N.E.3d at 583. Under this standard, the goal is to determine and give effect to the legislature’s intent. *Id.* We presume “the legislature intended for the

statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals.” *State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008). We also presume that the legislature intended the language used in the statute to be applied logically and not to bring about an absurd or unjust result. *Nash v. State*, 881 N.E.2d 1060, 1063 (Ind. Ct. App. 2008), *trans. denied*.

[26] Here, as a result of the trial court's construction of the statute, the convictions of a co-defendant who pays the restitution are eligible for expungement, leaving the convictions of his or her co-defendant or co-defendants ineligible for expungement. This is an absurd result that the legislature surely did not intend. *See id.*

[27] Our review of the record reveals that, in 2016, Ball tendered to the trial court a probation department letter, which stated that Ball had paid his probation fees and that restitution had been paid by the co-defendants. Nearly four years later, in his second petition seeking expungement of his felony convictions, Ball tendered to the trial court a certified letter from the county clerk stating that there was no restitution balance due in his case.

[28] Restitution serves to compensate the victim. *Baker v. State*, 70 N.E.3d 388, 390 (Ind. Ct. App. 2017), *trans. denied*. We hold that where, as here, a co-defendant in the same case has compensated the victim, the statutory restitution obligation has been satisfied. *See* Ind. Code § 35-38-9-4(e)(3). As a result, Ball has proven by a preponderance of the evidence that the restitution in his case has been

satisfied. Therefore, the trial court clearly erred in concluding that his convictions were ineligible for expungement.

[29] Having determined that Ball's convictions were eligible for expungement, we now review the trial court's remaining reasons for denying Ball's petition. *See Allen*, 159 N.E.3d at 585. As previously noted, INDIANA CODE § 35-38-9-4(e) provides, in relevant part, that the trial court may order the expungement of an eligible petitioner's convictions. "The term 'may' in a statute ordinarily implies a permissive condition and a grant of discretion." *Tongate v. State*, 954 N.E.2d 494, 496 (Ind. Ct. App. 2011), *trans. denied*. Therefore, the trial court is allowed discretion when deciding whether to grant or deny an expungement petition. *Key*, 48 N.E.3d at 337. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Conley v. State*, 972 N.E.2d 864, 871 (Ind. 2012).

[30] This grant of discretion necessarily requires the trial court to engage in a fact-sensitive inquiry to determine whether the circumstances of the case warrant expungement of the conviction or convictions. *Allen*, 159 N.E.3d at 585. The Indiana Supreme Court has explained that "the statute recognizes the possibility that the crime might be too serious to expunge." *Id.* "In other cases, the same crime might be a serious but isolated event and the petitioner might prove deserving of a second chance." *Id.* When deciding whether to grant or deny an expungement, the trial court may consider the facts of the incident leading to the conviction, even if the conviction itself does not require proof of those facts. *Id.*

[31] Here, our review of the record reveals that the trial court’s remaining reasons for denying Ball’s petition were that: (1) Ball was “seek[ing] to expunge two Felony convictions, not one, as characterized by [Ball] throughout his Motion to Reconsider as ‘the offense’[;]” and (2) “handguns valued at over \$16,000.00 were stolen during a burglary[.]” (App. Vol. 2 at 25).

[32] Regarding the trial court’s identification of convictions, we note that Ball’s December 2019 expungement petition clearly stated that Ball was seeking to expunge the following two convictions: (1) Class C felony burglary; and (2) Class C felony attempted burglary. The petition further stated that both convictions were listed under Cause Number CF-51. In his motion to reconsider, Ball did not specifically set forth the two convictions as he had done in his petition. Rather, he stated that he was “seek[ing] expungement of [Cause Number CF-51][.]” (App. Vol. 2 at 11). Ball then referred to a singular “offense” throughout his motion. (App. Vol. 2 at 11). Because Ball’s expungement petition clearly stated that Ball was seeking to expunge two convictions, which were listed under the same specified cause number, and that same cause number was set forth in his motion to reconsider, it was clear that he was seeking to expunge two convictions. His use of the term “offense” when speaking of a singular cause number appears to have been a matter of semantics rather than an attempt to deceive the trial court, which would have known from the petition to expunge that Ball was seeking expungement of two convictions.

[33] The trial court’s other reason for denying Ball’s petition was that the value of the guns that he stole was more than \$16,000. The trial court had the discretion

to consider this fact in determining whether to grant or deny Ball's petition to expunge his convictions. *See Allen*, 159 N.E.3d at 585. However, this fact alone is simply not enough to support the denial of Ball's expungement petition when "all [other] evidence presented to the trial court militated toward expungement." *Cline v. State*, 61 N.E.3d 360, 363 (Ind. Ct. App. 2016), *abrogated in part on other grounds in Allen*, 159 N.E.2d at 585. Specifically, although Ball committed two felony offenses when he was sixteen years old, for the past twenty years, Ball has been a law-abiding citizen. The letters that he tendered to the trial court attest to his good character and strong work ethic. Ball is married and has four children, and his convictions have prevented him from volunteering at his children's schools and participating in class field trips. In addition, Ball has owned a real estate business for eighteen years and a heating and air conditioning business for twelve years. His convictions have prevented him from servicing specific clients. Further, although Ball is an active volunteer in the community, there are certain agencies that will not allow him to volunteer because of his felony convictions. Ball explained that he is particularly interested in volunteering for Angel Flight and would start immediately if his convictions were expunged.

[34] "Although the trial court is granted discretion, this does not extend to disregard the remedial measures enacted by our lawmakers. As previously observed, such statutes should be liberally construed to advance the remedy for which they were enacted." *Cline*, 61 N.E.3d at 363. Based on the foregoing, we conclude that the trial court abused its discretion in denying Ball's petition for

expungement. *See Cline*, 61 N.E.3d at 363 (reversing the denial of an expungement petition where the petitioner had obtained advanced education and had been promoted at work). Accordingly, we reverse the trial court's judgment and remand with instructions for the trial court to grant Ball's petition and to order his records to be marked as expunged pursuant to INDIANA CODE § 35-38-9-7.

[35] Reversed and remanded with instructions.

Vaidik, J., and Brown, J., concur.