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IN THE
COURT OF APPEALS OF INDIANA

Pranav Mishra,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

March 9, 2021

Court of Appeals Case No.
20A-XP-1726

Appeal from the Tippecanoe
Superior Court

The Honorable Kristen E. McVey,
Judge

Trial Court Cause No.
79D05-2008-XP-391

Bradford, Chief Judge.

Case Summary

- [1] Pranav Mishra was convicted of misdemeanor offenses in Tippecanoe County, Hamilton County, and Monroe County in 2007, 2009, and 2016, respectively. In March of 2020, the Monroe County prosecutor gave consent for Mishra to file an expungement petition before the expiration of the statutory five-year waiting period. After his Monroe County conviction was expunged, Mishra filed a petition to expunge his 2007 Tippecanoe County conviction. The trial court denied Mishra's petition, finding that the expungement of Mishra's Monroe County conviction did not alter the fact that he had been convicted of a crime within the previous five years. On appeal, Mishra argues, and the State

agrees, that the trial court erred in considering Mishra’s expunged Monroe County conviction in denying his petition to expunge his 2007 Tippecanoe County conviction. Because we agree with Mishra and the State, we reverse the judgment of the trial court and remand with instruction for the trial court to enter an order granting Mishra’s petition.

Facts and Procedural History

- [2] Mishra was convicted of Class A misdemeanor public indecency in Tippecanoe County in 2007, Class B misdemeanor reckless driving in Hamilton County in 2009, and Class A misdemeanor operating while intoxicated (“OWI”) in Monroe County in 2016. On March 5, 2020, the Monroe County prosecutor gave his consent to allow Mishra to file an expungement petition relating to the 2016 Monroe County conviction before the expiration of the five-year statutory waiting period. After receiving the Monroe County prosecutor’s consent, on March 10, 2020, Mishra filed petitions for the expungement of each of his misdemeanor convictions in each of the respective counties. On July 31, 2020, the trial court denied Mishra’s petition for the expungement of his 2007 Tippecanoe County conviction, finding that Mishra had failed to meet all of the statutory requirements under [Indiana Code section 35-38-9-2\(e\)](#) because he had been convicted of a crime within the previous five years, namely his 2016 conviction for OWI in Monroe County.
- [3] On August 24, 2020, the Monroe Circuit Court granted the pending petition to expunge Mishra’s 2016 OWI conviction. A week later, Mishra re-filed his

expungement petition in Tippecanoe County, noting the expungement of the Monroe County conviction and asserting his resulting eligibility for expungement of the 2007 Tippecanoe County conviction. The trial court again denied the expungement petition, finding that despite Mishra’s claim to the contrary, he had been convicted of a crime within the previous five years.¹

Discussion and Decision

[4] Mishra contends, and the State agrees, that the trial court erred in considering Mishra’s expunged Monroe County conviction in denying his expungement petition on the grounds that he had been convicted of a crime during the previous five years. Specifically, the State asserts that “[b]ecause [Mishra’s] 2016 Monroe County conviction has been expunged, he must be treated as if that conviction never occurred, which means that he no longer has any criminal convictions within the previous five years” and Mishra “therefore satisfies all of the requirements of [Indiana Code section 35-38-9-2\(e\)](#) and is entitled to expungement of his 2007 Tippecanoe County misdemeanor conviction.” Appellee’s Br. p. 7.

[5] We have previously noted that in adopting the expungement statutes, “[t]he legislature intended to give individuals who have been convicted of certain

¹ While the Hamilton Superior Court also initially denied the expungement petition filed in Hamilton County on the basis of Mishra’s 2016 Monroe County conviction, the Hamilton Superior Court subsequently granted Mishra’s re-filed petition, finding that Mishra was now entitled to expungement of the 2009 Hamilton County conviction because he no longer had a conviction within the previous five years.

crimes a second chance by not experiencing many of the stigmas associated with a criminal conviction[.]” *Taylor v. State*, 7 N.E.3d 362, 367 (Ind. Ct. App. 2014). As both Mishra and the State note, [Indiana Code section 35-38-9-10\(e\)](#) generally provides that a “person whose record is expunged shall be treated as if the person had never been convicted of the offense.” Recognizing that there are a few enumerated exceptions to this general rule, the State further notes that “[n]one of the enumerated exceptions authorize a court to consider an expunged conviction in the context of an expungement proceeding for purposes of determining whether the person has a conviction within the previous five years.” Appellee’s Br. p. 9. We further agree with the State that under the doctrine of *expressio unius est exclusio alterius*, the specification of some exceptions in a statute means that other matters not specified are excluded, and courts are not free to graft additional exceptions onto a statute. See *A.A. v. Eskenazi Health/Midtown CMHC*, 97 N.E.3d 606, 614 (Ind. 2018). The trial court therefore erred when it considered Mishra’s previously-expunged 2016 Monroe County conviction in relation to Mishra’s petition to expunge his 2007 Tippecanoe County conviction.

[6] Furthermore, [Indiana Code section 35-38-9-2\(e\)](#) provides that a trial court “shall” grant an expungement petition if the following four requirements are satisfied: (1) the period required by the statute has elapsed (five years after the date of conviction, unless the prosecutor consents to an earlier filing); (2) no charges are pending against the person; (3) the person has paid all fees, fines, and court costs, and has satisfied any restitution obligations; (4) the person “has

not been convicted of a crime within the previous five (5) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c)).” [Indiana Code section 35-38-9-2\(e\)](#) “unambiguously requires expungement when all of the statutory requirements are satisfied.” *Taylor*, 7 N.E.3d at 365. As we stated in *Taylor*, “[h]ad the legislature intended the expungement of conviction records under [[Indiana Code section 35-38-9-2\(e\)](#)] to be discretionary, it would have used the word ‘may’ instead of the word ‘shall.’” *Id.*

[7] The State concedes on appeal that “[b]ecause [Mishra’s] 2016 Monroe County conviction has been expunged, the plain language of [Section 35-38-9-10\(e\)](#) commands that he be treated as if that 2016 conviction had never occurred.” Appellant’s Br. p. 10. The State further acknowledges that Mishra “now satisfies all four requirements in [Section 35-38-9-2\(e\)](#) and is therefore entitled to expungement of his 2007 Tippecanoe County conviction.” Appellee’s Br. p. 10. We agree and therefore reverse the judgment of the trial court and remand with instructions for the trial court to grant Mishra’s petition to expunge his 2007 Class A misdemeanor conviction.

[8] The judgment of the trial court is reversed, and the matter is remanded with instructions.

Kirsch, J., and May, J., concur.