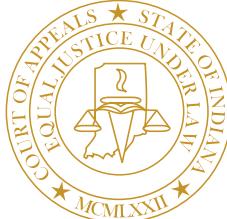


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



# IN THE Court of Appeals of Indiana

C.H.,  
*Appellant-Petitioner*

v.

State of Indiana,  
*Appellee-Respondent*



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June 4, 2025  
Court of Appeals Case No.  
24A-XP-1829  
Appeal from the Elkhart Superior Court  
The Honorable Karen A. Springer, Judge Pro Tempore  
Trial Court Cause No.  
20D04-2305-XP-59

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**Memorandum Decision by Judge Scheele**  
Judges May and Weissmann concur.

**Scheele, Judge.**

## **Case Summary**

[1] C.H. appeals the trial court's denial of his petition to expunge his 2013 conviction of Class C felony operating a vehicle after lifetime forfeiture of driving privileges.<sup>1</sup> C.H. raises one issue on appeal which we restate as whether the trial court abused its discretion in denying his petition. Finding no abuse of discretion, we affirm.

## **Facts and Procedural History**

[2] On May 9, 2023, C.H. filed his Verified Petition for Expungement of Records seeking to expunge: (1) a July 2013 Class A misdemeanor possession of marijuana conviction; (2) a July 2013 Class C felony operating a vehicle after lifetime forfeiture of driving privileges conviction; and (3) an April 1999 Class D felony operating a vehicle as an habitual traffic violator (HTV) conviction.<sup>2</sup> The trial court held a hearing on the petition on April 16, 2024, after C.H. was granted five continuances.<sup>3</sup>

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<sup>1</sup> C.H. and the State caption this appeal as an appeal from the St. Joseph Superior Court. The record is clear: this is an appeal from the Elkhart Superior Court in cause number 20D04-2305-XP-59.

<sup>2</sup> C.H.'s petition is not in the record on appeal. Based upon the contents of Appellant's App., we were able to ascertain which records C.H. sought to expunge. Still, "[i]t is the appellant's duty to provide the reviewing court with an adequate record for review." *See Johnson v. State*, 747 N.E.2d 623, 627 (Ind. Ct. App. 2001) (citations omitted).

<sup>3</sup> The first four continuances were granted by Elkhart Superior Court 5, where the case was originally docketed; after transfer to Elkhart Superior Court 4, C.H. was granted a fifth continuance.

[3] At the roughly eleven-minute hearing, C.H. provided minimal testimony, including confirmation of: his name and address; the cause numbers he sought to expunge; the number of years passed since his convictions were entered and sentences completed; and payment of all fees, fines, and restitution in each case. C.H. also confirmed he did not have any pending cases and had “not committed any other crime in any other jurisdiction as far as [he] underst[oo]d[.]” Tr. Vol. II p. 4. Upon the court’s inquiry, C.H.’s counsel revealed C.H. had been granted specialized driving privileges in Elkhart and St. Joseph Counties for separate convictions in each county, and C.H. planned to petition for reinstatement of his driver’s license if his convictions were expunged. C.H. did not present any additional evidence.

[4] At the conclusion of the hearing, the trial court granted mandatory expungements for C.H.’s misdemeanor possession of marijuana conviction and his Class D felony operating a vehicle as an HTV conviction.<sup>4</sup> The court exercised its discretion and denied expungement of the Class C felony operating a vehicle after lifetime forfeiture of driving privileges conviction, reasoning it was “not going to expunge with that kind of a record” and “there was an awful lot out there that’s not in this petition that’s important for the Court to know.” *Id.* at pp. 7-8.

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<sup>4</sup> See *Allen v. State*, 159 N.E.3d 580, 581 (Ind. 2020) (“For certain minor convictions, expungement is mandatory if the petitioner meets certain criteria. For more serious convictions, the trial court retains the discretion to determine whether the circumstances warrant an expungement.”).

[5] C.H. filed a motion to reconsider on May 15, alleging the court failed to make a “fact-intensive gathering” and “did not discuss the basis of its decision” to deny the expungement of C.H.’s Class C felony. Appellant’s App. Vol. II p. 23. In considering C.H.’s motion, the trial court reviewed the record for the expungement and related cases, including a “Records Check” filed by the Elkhart County Probation Office on June 20, 2023. *Id.* at 32.

[6] The court observed C.H. was charged with Class C misdemeanor violation of specialized driving privileges in LaPorte County on June 15, 2023—just over one month after C.H. petitioned for expungement in the present case. By the time the April 2024 expungement hearing was held, C.H. had completed a pre-trial diversion program in the LaPorte County case, and the misdemeanor violation of specialized driving privileges charge was dismissed.<sup>5</sup> The court also noted the order granting C.H.’s specialized driving privileges in St. Joseph County “specifically excluded” any mention of the specialized driving privileges C.H. sought and received in his Elkhart County Class C felony operating a vehicle after lifetime forfeiture of driving privileges case. *Id.* at 33.

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<sup>5</sup> We note, while the LaPorte case was pending, C.H. did not meet the expungement eligibility requirements in the present case. His eligibility was restored once the charge in the LaPorte County case was dismissed. *See* Ind. Code § 35-38-9-4(e) (2021) (providing in relevant part, “If the court finds by a preponderance of the evidence that: . . . no charges are pending against the person . . . the court may order the conviction records . . . marked as expunged[.]”)

On July 9, the court issued a twenty-four-page order denying C.H.’s motion to reconsider.<sup>6</sup> This appeal ensued.

## Discussion and Decision

[7] C.H. alleges the trial court “went against [the] logic and the effect of the purpose of expungement of records when considering what facts were brought forth during the hearing.” Appellant’s Br. p. 6. C.H. sought to expunge his Class C felony operating a vehicle after lifetime forfeiture of driving privileges conviction under the permissive expungement statute. In pertinent part, that statute provides a trial court *may* order conviction records expunged

(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

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<sup>6</sup> As a part of its order, the trial court vacated its prior expungement of the Class D felony operating a vehicle as an HTV, inasmuch as closer review of that case revealed no such conviction existed; the original Class D felony charge had been amended to a Class A infraction driving while suspended, so there was no Class D felony conviction to expunge. Appellant’s App. Vol. II. p. 31.

The court also observed: “Should [C.H.’s] Motion to Reconsider be construed as a Motion to Correct Errors on a final appealable order, the same is likewise respectfully denied.” *Id.* at p. 47. On appeal, the State concedes that C.H.’s motion was a mislabeled motion to correct error, citing *Hubbard v. Hubbard*, 690 N.E.2d 1219 (Ind. Ct. App. 1998), and does not challenge the timeliness of C.H.’s appeal. Appellee’s Br. p. 9.

(4) the person has not been convicted of a felony or misdemeanor within the previous eight (8) 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))[]

I.C. § 35-38-9-4(e).

[8] “The use of the term ‘may’ in a statute ordinarily implies a permissive condition and a grant of discretion.” *Cline v. State*, 61 N.E.3d 360, 362 (Ind. Ct. App. 2016) (internal citations omitted), *abrogated on other grounds*. “Thus, the court may, in its discretion, grant an unopposed petition for expungement.” *Id.* We review the denial of a permissive expungement for an abuse of discretion which occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Allen*, 159 N.E.3d at 583. We review a trial court’s denial of a motion to correct error for an abuse of discretion. *Ott v. State*, 997 N.E.2d 1083, 1084 (Ind. Ct. App. 2013).

**The trial court did not abuse its discretion.**

[9] C.H. contends the *Allen* court’s ruling requires the trial court to “examine the facts and circumstances of the crime leading to the conviction.” Appellant’s Br. p. 7. Yet, C.H. acknowledges he did not offer evidence about the circumstances of his crimes. Rather, C.H. maintains the discussion of his specialized driving privileges and lack of convictions since 2013 support the inference that he is a safe driver, so the trial court erred in denying an expungement. We disagree.

[10] “Courts considering whether to grant a discretionary expungement are tasked with looking at the unique facts of each case to determine whether the individual has demonstrated that his case merits a fresh start.” *Allen*, 159 N.E.3d at 581-82. “This grant of discretion necessarily requires the court to engage in a fact-intensive inquiry to determine whether the circumstances of the case warrant expungement of the conviction.” *Id.* at 585. But “[i]n issuing its decision, a trial court may consider a broad array of information, including the nature and circumstances of the crime and the character of the offender.” *Id.* at 586.

[11] Here, C.H. did not offer any evidence about his character or the nature of his crimes. C.H. only testified about the eligibility requirements under Indiana Code Section 35-38-9-4(e). The court inquired further about C.H.’s record and only then did C.H.’s counsel reveal C.H. had specialized driving privileges in multiple counties due to separate convictions. The trial court verbally denied C.H.’s petition to expunge his Class C felony because of the contents of “that kind of a record.” Tr. Vol. II p. 7.

[12] In considering C.H.’s motion to reconsider, the court painstakingly reviewed all the evidence it had before it, including: minimal factual testimony from C.H. about his expungement eligibility; information from the causes C.H. sought to expunge; and the contents of the Elkhart County Probation Office’s records check. The court could not “find, from the unique facts of [C.H.’s] cases, that [he] ‘deserves a fresh start.’” Appellant’s App. Vol. II p. 44. That finding was

not against the logic and effect of the facts and circumstances before the court.

The trial court did not abuse its discretion. We affirm.

[13] Affirmed.

May, J., and Weissmann, J., concur.

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