

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000182-MR

RICKY DEAN MARTIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 93-CR-001000

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, NICKELL, AND THOMPSON, JUDGES.

MOORE, JUDGE: Ricky Dean Martin appeals an order of the Jefferson Circuit Court denying his motion to expunge his criminal record. After a thorough review of the record, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 12, 1993, Martin pled guilty to one count of receiving stolen property over \$100. Martin was placed on probation for a period of five years. It appears from the record that Martin successfully completed his probation.

In November 2004, Martin sought to have his record expunged. For reasons undisclosed in the record before us, the trial court denied Martin's request. On October 7, 2010, Martin again filed a motion to expunge his record. Martin argued that he was entitled to expungement of his "misdemeanor conviction of Receiving Stolen property over \$300.00" because

[m]ore than five (5) years have elapsed since the completion of [Martin]'s probation, [Martin] has been convicted of no felonies, misdemeanors or violations since the date of conviction, no proceeding concer[n]ing a felony, misdemeanor or violation is pending or being instituted against him, further, that the cause was not a crime involving sex or an offense against a child. [Martin] has since redeemed himself through work and living in a stable family environment. The underlying offense was an act of receipt and the ensuing plea was entered in a costsaving effort to avoid attorney fees despite the possibility of a defense.

The trial court first noted that Martin's conviction was in fact a felony; therefore, it lacked the authority to expunge Martin's record. The trial court explained that while KRS¹ 431.076 allows for expungement of a felony charge where a party has been found not guilty and KRS 431.078 allows misdemeanor convictions and violations to be expunged, no statute permits

¹ Kentucky Revised Statute.

expungement of a felony for which a party has been convicted. The trial court likewise rejected Martin's argument that he was entitled to an expungement pursuant to KRS 218A.275(8) because this statute pertains solely to first time offenders of illegal possession of a controlled substance. Martin now appeals.

II. ANALYSIS

On appeal, Martin's entire argument centers upon KRS 218A.275(8). Specifically, he argues that the trial court's refusal to "exercise the discretion granted to it" to authorize an expungement pursuant to KRS 218A.275(8) violated his due process and equal protection rights. Martin asserts that

[i]n granting the judiciary the power to void single felony convictions for nonviolent D felons [pursuant to KRS 218A.275(8)], the General Assembly attempted to positively set forth the laudible goal of setting forth a scheme whereby redemption for youthful mistakes could occur, further, even then the matter of voiding convictions is under the overall equitable jurisdiction of a trial court. . . .

Although Martin represents that his arguments were "posited" to the trial court, nothing in the record before us indicates that these issues were raised before the trial court.² Martin also fails to point to any portion of the record where these arguments are preserved. It is the appellant's duty to certify the portions of the record which support his argument on appeal and to reference the portion of the record in which the argument was preserved. *Copley v. Commonwealth*, 854

² Although it is apparent that the entire record is not before us on review, absent the full record, we are to assume that the remainder of the record supports the trial court's ruling. *Moody v. Commonwealth*, 170 S.W.3d 393, 398 (Ky. 2005).

S.W.2d 748, 750 (Ky. 1993); *Davis v. Commonwealth*, 795 S.W.2d 942, 949 (Ky. 1990); *Commonwealth v. Thompson*, 697 S.W.2d 143, 144 (Ky. 1985). Therefore, having failed to properly preserve his arguments, they are not properly before the Court. See *Dolomite Energy, LLC v. Commonwealth of Kentucky Office of Financial Institutions*, 269 S.W.3d 883, 888 (Ky. App. 2008).

Even if Martin's arguments were properly preserved, we nevertheless conclude that the trial court correctly determined that it lacked authority to expunge Martin's felony conviction, pursuant to *Clements*. *Clements v. Commonwealth*, 203 S.W.3d 710, 711-12 (Ky. App. 2006). At the time Martin committed the crime, receiving stolen property over \$100 constituted a Class D felony. See *Bybee v. Commonwealth*, 904 S.W.2d 244, 245 (Ky. App. 1994) (quoting KRS 514.110 as formerly enacted). Contrary to Martin's argument that the trial court should have exercised its equitable powers and expunged his conviction, a trial court does not have the inherent authority to expunge a conviction. *Clements*, 203 S.W.3d at 711-12 (declining to "adopt [appellant's] notion that circuit courts have the inherent power to expunge felony convictions since, in this Commonwealth, circuit courts only have the power to expunge certain criminal charges that have been dismissed and certain misdemeanor convictions"). Instead, a trial court is limited to the authority derived from statute. *Id.* No statute authorizes the expungement of a felony conviction. *Id.*; *Harscher v. Commonwealth*, 327 S.W.3d 519, 523 (Ky. App. 2010). Under the current state of the law, it makes no difference that the General Assembly amended KRS 514.110,

making Martin’s prior crime a misdemeanor rather than a felony. *See Clements*, 203 S.W.3d at 711.

As mentioned, KRS 218A.275(8) only permits a court to void a first time offense “[i]n the case of any person who has been convicted for the first time of a *misdemeanor* possession of controlled substances.” (Emphasis added). Thus, the statute limits the trial court’s discretion to allow only for the expungement of a first time conviction of possession of a controlled substance. KRS 431.076 and KRS 431.078 provide similar limiting provisions. Therefore, we discern no “scheme” whereby the General Assembly has granted the trial court authority to void a conviction under the “overall equitable jurisdiction of a trial court.” *See id.* at 711-12. Accordingly, we AFFIRM.

ALL CONCUR.

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