

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 1769

STATE OF LOUISIANA

VERSUS

GREGORY CARMEN

Judgment Rendered: MAR 27 2009

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ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF EAST BATON ROUGE,  
DOCKET NUMBER 7-05-905, SECTION VIII  
STATE OF LOUISIANA

THE HONORABLE WILSON FIELDS, JUDGE

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**BEFORE: PETTIGREW, McDONALD, HUGHES, JJ.**

Handwritten signatures and initials in the left margin, including what appears to be 'MM' and 'J.P.'.

**McDONALD, J.**

On July 25, 2005, Gregory P. Carmen was charged with domestic abuse battery of his wife, a violation of La. R.S. 14:35.3. The Office of the Public Defender was appointed to represent Mr. Carmen, and at the trial, Mr. Carmen was represented by the Southern University Law Clinic.

The case was tried with Judge Leon Cannizzaro, Jr. presiding. Judge Cannizzaro was sitting pro tempore for Section 8 of the Nineteenth Judicial District Court by appointment of the Louisiana Supreme Court. On February 7, 2006, Mr. Carmen was found guilty of domestic abuse battery and was sentenced to six months in the parish jail, with credit for time served and the balance of the jail term suspended, one year of supervised probation, and a \$500.00 fine. Further, Mr. Carmen was ordered not to own or possess a firearm while on probation, to continue working full time, and to have no contact with Mrs. Carmen. He was further ordered to perform 40 hours of community service work and to complete a domestic abuse prevention program. Judge Cannizzaro advised Mr. Carmen that as a first offender, he was eligible to have the conviction taken off his record if he did everything he was required to do.

Thereafter, Mr. Carmen satisfactorily completed all of the requirements of his sentence, and on November 2, 2006, Judge Cannizzaro ordered that his probation be terminated satisfactorily.

On April 27, 2007, Mr. Carmen filed a request for expungement of his criminal record in accordance with La. R.S. 44:9, asserting that his probation had been terminated satisfactorily. On May 15, 2007, the district attorney's office filed an opposition to the motion to expunge.

On September 20, 2007, Judge Wilson Fields, presiding over Section 8 of the Nineteenth Judicial District Court, resentenced Mr. Carmen under La. C.Cr.P. art. 894 to one year probation with all the same conditions as previously imposed,

determined that all assigned conditions were completed, and ordered the conviction set aside and the prosecution dismissed in accordance with Article 894. He then granted Mr. Carmen's motion for expungement. The district attorney's office filed a devolutive appeal from that judgment.

The district attorney's office asserts that Mr. Carmen's conviction was final, that the expungement amounted to an improper resentencing, and asked that the defendant's conviction and sentence as imposed by Judge Cannizzaro be reinstated.

Louisiana Revised Statute 44:9 provides in part:

A. (1) Any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record, under either of the following conditions:

(a) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

(b) If prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal.

The trial court judge expressly told Mr. Carmen that he would qualify for an expungement if he satisfied the terms of his probation. Mr. Carmen thereafter successfully completed his probation, and four months later, filed for an expungement of the record.

The district attorney's office asserts that Mr. Carmen was not entitled to an expungement because he was convicted of the charged offense. However, La. R.S. 44:9E(3)(a) provides in pertinent part:

A court may order the destruction or the expungement of the record of a misdemeanor conviction dismissed pursuant to Article 894 of the Code of Criminal Procedure.

Louisiana Code of Criminal Procedure article 894 provides in pertinent part:

A. (1) Notwithstanding any other provision of this Article to the contrary, when a defendant has been convicted of a misdemeanor, except criminal neglect of family, or stalking, the court may suspend the imposition or the execution of the whole or any part of the sentence imposed, provided suspension is not prohibited by law, and place the defendant on unsupervised probation or probation supervised by a probation office, agency, or officer designated by a probation office, agency or officer designated by the court, other than the division of probation and parole of the Department of Public Safety and Corrections, upon such conditions as the court may fix. Such suspension of sentence and probation shall be for a period of two years or such shorter period as the court may specify.

In this case, Mr. Carmen was convicted of a misdemeanor, domestic abuse battery. The trial court sentenced him to six months in jail, suspended, and placed him on probation for one year with various conditions. After the successful completion of the probation, the trial court ordered the case dismissed. The facts of this case comply with the requirements of Article 894.

It is clear that the trial judge was of the opinion, and conveyed to Mr. Carmen, that he could have the charge dismissed if he successfully completed his probation. Judge Cannizzaro told Mr. Carmen that he could get “this thing taken off your record if you do everything you are suppose[d] to do.” However, for some reason when Judge Cannizzaro satisfactorily terminated Mr. Carmen’s probation, he failed to dismiss the charge under Article 894. Therefore, under the limited, particular facts of this case, we find that it was proper for Judge Fields to correct the sentence that Judge Cannizzaro forgot to impose.

Thus, for the foregoing reasons, the trial court judgment granting the motion for expungement is affirmed, and appeal costs in the amount of \$387.00 are assessed against the district attorney’s office.

**AFFIRMED.**