

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY W. WOODBECK,

Defendant-Appellee.

UNPUBLISHED
October 31, 1997

No. 197284
Oakland Circuit Court
LC No. 81-051310 FY

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

The Oakland County Prosecutor appeals by right from an Oakland Circuit Court order, granting defendant's motion to expunge his 1982 conviction for breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305. This case is being decided without oral argument pursuant to MCR 7.214(E).

At the hearing on the motion, defendant's counsel forthrightly acknowledged that defendant was ineligible for expunction of his conviction under the statute, MCL 780.621(1); MSA 28.1274(101)(1), because he had a second conviction in a Florida court on a plea of guilty for a misdemeanor drug offense. Whether the second conviction was for a felony or a misdemeanor, the statute by its terms bars expunction. *People v Dudas*, 134 Mich App 66; 350 NW2d 834 (1984). Accordingly, as the circuit court proceeded in the absence of statutory authority, its order is in derogation of separation of powers principles, Const 1963, art 3, §2, inasmuch as the powers of pardon and commutation are exclusively within the executive branch. *People v Erwin*, 212 Mich App 55; 536 NW2d 818 (1995). But for the statute, the judiciary is without power to expunge a conviction. *People v Jones*, 94 Mich App 516; 288 NW2d 411 (1979).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly
/s/ Roman S. Gribbs

