

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEVIN MARCUS HORNE,

Defendant-Appellee.

UNPUBLISHED

December 22, 2009

No. 291453

Eaton Circuit Court

LC No. 96-020101-FH

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

MEMORANDUM.

In this prosecutor's appeal, plaintiff appeals as of right the trial court's order setting aside defendant's 1996 conviction of possessing less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant served two years of probation for his cocaine conviction, ending in 1998. He filed an application to set aside that conviction in 2006. At the initial hearing in the matter, plaintiff informed the trial court that there was a bench warrant for defendant stemming from his having committed the misdemeanor of driving on a suspended license. See MCL 257.904(1) and (3). The trial court expressed concern that defendant was not eligible to have his conviction expunged, encouraged defendant to try to "clear it up without getting a misdemeanor on your conviction," and adjourned the proceeding. When the matter was next heard, plaintiff reported that defendant now had a second conviction, for driving while license suspended, and was thus ineligible to have his earlier conviction expunged. The trial court spoke of certain pending legislation that might improve defendant's position, and again adjourned the proceeding.

When the matter was again heard, the trial court summarized that defendant had received a ticket for the misdemeanor driving offense in 1997, and then over ten years later, after defendant went to court and paid what was owed, the conviction was entered. Defendant confirmed that he had settled the matter. The court stated that defendant had been convicted of more than one criminal offense, but nonetheless granted the request for expungement.

MCL 780.621(1) states that, but for exceptions not applicable here, "a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside the conviction." Subsection (3) specifies the timing requirements, and subsection (9) adds that the "setting aside of a conviction . . . is a privilege . . . not a right."

The threshold requirement for taking advantage of the expungement act is that the applicant must have been convicted of not more than one offense. *People v McCullough*, 221 Mich App 253, 256; 561 NW2d 114 (1997). The purpose of the act is “to expunge the entire criminal record of one-time offenders.” *Id.* Thus, “only those persons whose criminal records are blemished by a single conviction for a single crime . . . committed on a single occasion meet the threshold requirement and are eligible for expungement.” *Id.* at 257. Misdemeanors count along with felonies for this purpose. *People v Grier*, 239 Mich App 521, 523; 608 NW2d 821 (2000).

Because defendant’s two criminal convictions deprive him of the status of a one-time offender, the trial court erred in granting the application to set aside the cocaine conviction. We thus vacate the order setting aside the conviction and reinstate the conviction.

Reversed. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck