



**In the
Missouri Court of Appeals
Western District**

R.G.,)
)
 Respondent,) **WD82176**
)
 v.) **OPINION FILED: May 28, 2019**
)
 MISSOURI STATE HIGHWAY)
 PATROL,)
)
 Appellant.)

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

Before Division One: Victor C. Howard, Presiding Judge, Lisa White Hardwick, Judge
and Gary D. Witt, Judge

The Missouri State Highway Patrol ("MSHP") appeals from the circuit court's judgment granting R.G.'s¹ petition for expungement for his 2010 conviction for peace disturbance. The MSHP argues that the circuit court erred in granting R.G.'s petition for

¹ We refer to this party by initials to protect the identity of the party. It would defeat the spirit of the expungement statute to refer to a party by name in a public opinion which includes details of the offenses contained within the record, such that any order of expungement would be defeated by the public record made in the published opinion from the appeal. To do otherwise would encourage a party which opposed the expungement to appeal the decision in order to create a readily available public record of the now expunged offenses and would discourage a party seeking expungement from appealing the denial of that request due to the readily available public record created by the appeal.

expungement for his 2010 conviction because he did not meet the necessary requirements under section 610.140.5(1)-(2)². We affirm.

Statement of Facts

On May 10, 2018, R.G. filed a petition in the Circuit Court of Cole County seeking the expungement of two convictions in 2010 and 2012, both for the crime of peace disturbance. On June 6, 2018, the MSHP filed an Answer and Motion to Dismiss.

A hearing was held on July 16, 2018. At the hearing, R.G. testified that on October 15, 2010 he pled guilty to the crime of peace disturbance, and was sentenced to pay a \$500.00 fine, which he paid that day. R.G. also testified that he pled guilty to the crime of peace disturbance on October 22, 2012.

The circuit court entered its judgment granting R.G.'s petition on August 30, 2018. The circuit court found that R.G. plead guilty to an amended charge of peace disturbance on October 15, 2010 and the court imposed a fine of \$500.00 which was paid that day. The circuit court found that R.G. plead guilty to an amended charge of peace disturbance on October 22, 2012. The court suspended the imposition of R.G.'s sentence and placed him on two years of probation which he successfully completed. The certified records of each case were admitted into evidence without objection.

The circuit court found that following the sentencing on October 22, 2012, R.G. has had no other findings of guilt on any misdemeanor or felony charges and had no criminal charges pending at the time of the hearing in this case. The circuit court found that it had

² All statutory references are to RSMo 2016, as currently updated.

been more than three years since R.G. had completed his sentence for the 2010 conviction and his probation for his 2012 conviction. The circuit court found that the expungement of R.G.'s arrest and conviction in both cases is consistent with the public welfare and is warranted by the interests of justice.

This timely appeal followed. The MSHP is solely appealing the expungement of the 2010 conviction.

Standard of Review

As this is a court-tried case, our review is governed by *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). "Accordingly, we will affirm the trial court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law." *W.C.H. v. State*, 546 S.W.3d 612, 614 (Mo. App. E.D. 2018). "The trial court's application of statutory requirements is a question of law rather than fact; therefore, we review the trial court's application of statutory requirements *de novo*." *Doe v. St. Louis Cty. Police Dep't*, 505 S.W.3d 450, 453 (Mo. App. E.D. 2016).

Analysis

The MSHP raises one point on appeal. In its sole point MSHP argues that the circuit court erred in expunging R.G.'s 2010 conviction because section 610.140.5 provides that a necessary requirement for expungement of a misdemeanor is that R.G. has not been found guilty of any other disqualifying misdemeanor or felony for at least three years from the date he completed any authorized disposition and R.G. pled guilty to a subsequent misdemeanor less than three years after completing the disposition of his 2010 conviction.

The MSHP argues that the time frame the circuit court should consider is the three years following the completion of the sentence for each conviction, rather than focus on the three years immediately prior to the filing of the petition for expungement.

The facts in this case are undisputed. The sole issue before this Court is a matter of statutory interpretation. "The primary rule of statutory interpretation is to effectuate the General Assembly's intent." *W.C.H.*, 546 S.W.3d at 614 (citing *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013)). "If the words are clear, the [c]ourt must apply the plain meaning of the law" and refrain from using canons of statutory construction. *State v. Bazell*, 497 S.W.3d 263, 266 (Mo. banc 2016) (superseded by statute).

The relevant portion of section 610.140.5 reads:

If the prosecuting attorney, circuit attorney, or municipal prosecuting attorney objects to the petition for expungement, he or she shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon by the parties, the court shall hold a hearing within sixty days after any written objection is filed, giving reasonable notice of the hearing to the petitioner. If no objection has been filed within thirty days after receipt of service, the court may set a hearing on the matter and shall give reasonable notice of the hearing to each entity named in the petition. At any hearing, the court may accept evidence and hear testimony on, and may consider, the following criteria for each of the offenses, violations, or infractions listed in the petition for expungement:

(1) At the time the petition is filed, it has been at least seven years if the offense is a felony, or at least three years if the offense is a misdemeanor, municipal offense, or infraction, from the date the petitioner completed any authorized disposition imposed under section 557.011 for each offense, violation, or infraction listed in the petition;

(2) The person has not been found guilty of any other misdemeanor or felony, not including violations of the traffic regulations provided under chapters 304 and 307, during the time period specified for the underlying offense, violation, or infraction in subdivision (1) of this subsection.

Section 610.140.5.

In the circuit court's findings, it implicitly explains how it applied section 610.140.5 by finding that it had been more than three years since R.G. had completed his sentence and/or probation in each of the underlying convictions, and since completing his sentence for the latter offense, his 2012 conviction, R.G. had no other findings of guilt on any misdemeanor or felony charge for more than three years. The circuit court properly interpreted and applied the statutory provisions in questions. Looking only at the relevant language in the statute, a petitioner meets the criteria in subsections 610.140.5(1) & (2) if "*[a]t the time the petition is filed, it has been at least...three years if the offense is a misdemeanor... from the date the petitioner completed any authorized disposition imposed under section 557.011 [and] [t]he person has not been found guilty of any other misdemeanor or felony...during the [three year] time period[.]*" Section 610.140.5 (emphasis added). We find that the plain language of the statute is unambiguous. When the plain and ordinary language of a statute is clear, "there is no need to resort to tools of interpretation." *Bazell*, 497 S.W.3d at 266. The language makes clear the trial court first takes the date a petition for expungement is filed and looks back three years to determine if the conviction seeking to be expunged occurred within or prior to that time period. The language makes clear that the trial court then looks at that same three year time period to make sure that no other felonies or disqualifying misdemeanors have been committed therein.

Thus, "the time period specified for the underlying offense in subdivision (1) of [section 610.140.5]," as applied to R.G.'s case, would be between May 5, 2018, the day


R.G.'s filed his petition for expungement, and May 5, 2015, three years prior to the filing of his petition for expungement. There was no other findings of guilt on any misdemeanor or felony charge during that time period.

This reading of the statute is also consistent with the legislative intent in adopting this statute. The purpose of expungement is to provide a second chance to persons who have had prior criminal offenses but have shown by their more recent conduct that they have rehabilitated themselves and deserve the second chance provided for in the statute. If the petitioner can establish that their "habits and conduct demonstrate that the petitioner is not a threat to the public safety of the state", and that "[t]he expungement is consistent with the public welfare and the interests of justice warrant the expungement." Section 610.140.5(5)-(6). Further, Section 610.140.1 specifically allows expungement of multiple offenses charged in the same indictment or information. There would be no rational explanation for the legislature to determine that expungement is appropriate in one case where a petitioner had multiple offenses charged in the same indictment and more than three years later had additional misdemeanor offenses but want to deny expungement to an identical petitioner solely because it was less than three years between the first set of charges and the latter charge. The legislature was focused on the time immediately prior to the filing of the petition for expungement because that is the period of time that would determine if the petitioner had changed their behavior so as to meet the statutory qualifications for expungement and deserve the second chance provided by the statute.

The trial court did not err in granting R.G.'s petition for expungement. Point One is denied.

Conclusion

The circuit court's judgment is affirmed.



Gary D. Witt, Judge

All concur