

DA 22-0417

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 91N

IN RE THE EXPUNGEMENT OF MISDEMEANOR
RECORDS OF: WILLIAM JAMES HAMMERQUIST,

Petitioner and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-2022-203(A)
Honorable Amy Eddy, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David G. Tennant, Kaufman Vidal Hileman Ellingson PC, Kalispell,
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For Appellee:

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Submitted on Briefs: March 15, 2023

Decided: May 16, 2023

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court’s quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 William James Hammerquist appeals an Order of the Montana Eleventh Judicial District, Flathead County, dismissing his petition to expunge misdemeanor convictions. Flathead County opposed Hammerquist’s petition, citing Hammerquist’s failure to specify the offenses for which he was seeking expungement.

¶3 Noting that Hammerquist’s petition did not specifically identify any misdemeanor conviction he sought to have expunged, the District Court issued an order in which it denied the petition¹ “consistent with the Misdemeanor Expungement Clarification Act and controlling jurisprudence from the Montana Supreme Court.” The District Court quoted our Opinion in *In re Expungement of Misdemeanor Records of Dickey*, 2021 MT 3, 402 Mont. 409, 478 P.3d 821, in which we noted, in pertinent part, that “if the petitioner has the burden of proving that he is entitled to relief under the Expungement Act, he must

¹ The District Court’s order did not specify whether the denial and dismissal of Hammerquist’s petition was with or without prejudice. Because the District Court did not reach the merits of Hammerquist’s petition due to his failure to specify the misdemeanors for which he was seeking expungement, and it expressly premised its denial on our holding in *Dickey*, in which we affirmed a denial without prejudice, we determine Hammerquist is not foreclosed from refiling a future petition in compliance with the Expungement Act.

specifically identify each ‘offense for which expungement is being requested.’” *Dickey*, ¶ 11.

¶4 On appeal, Hammerquist asserts that “[t]o the extent [his] petition was denied and dismissed because he did not list every offense in his petition, such ruling should be reversed and remanded.” Hammerquist asserts that this Court “should overrule the statement in *Dickey* to the contrary.”

¶5 Hammerquist argues that “[t]here simply is no rule within the Act or notice pleading rules requiring a petitioner to identify each offense for which expungement is requested.” Notice pleading requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” M. R. Civ. P. 8(a)(1). Entitlement to the relief of expungement is not automatic as a matter of right. If the petitioner has convictions for any of several enumerated crimes, expungement is not presumed. Section 46-18-1108(1), MCA. In determining whether expungement should be granted, the district court is required to consider: (a) the age of the petitioner at the time the offense was committed; (b) the length of time between the offense and the request; (c) the rehabilitation of the petitioner; (d) the likelihood that the person will reoffend; and (e) any other factor the court considers relevant. Section 46-18-1108(2), MCA. “A court’s expungement determination is based on the preponderance of the evidence.” *Dickey*, ¶ 8 (citing § 46-18-1109(1), MCA). A petition that fails to even identify the convictions for which expungement is sought cannot facially demonstrate entitlement to relief. Hammerquist’s interpretation of notice pleading would be like a personal injury plaintiff arguing that a complaint alleging only that he

sustained unidentified injuries, in an unidentified manner, on an unidentified date, in an unidentified county was nevertheless sufficient to show entitlement to relief. The District Court did not err by denying Hammerquist’s petition and did not incorrectly interpret *Dickey*.²

¶6 Hammerquist contends that the District Court denied him due process by improperly issuing the Order of Dismissal sua sponte without a hearing.³ This argument is incorrect on both points. First, the denial of Hammerquist’s petition was not sua sponte—it was issued after considering the responses of Flathead County and the City of Billings.⁴ Second, contrary to Hammerquist’s assertion, the Expungement Act does not require a district court to conduct a hearing as to whether or not a petitioner is entitled to expungement. While the statutes Hammerquist cites—§ 46-18-1109(5)(a), MCA, and § 46-18-1106(2), MCA—certainly contemplate that a hearing may be held, neither statute mandates a hearing. As it pertains to this case, if the petition on its face fails to show entitlement to relief, a hearing serves no purpose. *See Dickey*, ¶ 10 (“To satisfy that evidentiary burden, a petitioner must produce more than a cursory petition with a general

² Hammerquist argues that listing each offense for which expungement is sought in the petition creates a public record of those offenses, potentially defeating the point of expunging an individual’s criminal record. This concern is unfounded. As the State acknowledges on appeal, a petitioner may request that the expungement record, including the expungement petition, be sealed if a district court grants the petition.

³ Hammerquist also argues that “the District Court was incorrect when it assumed which prosecution offices were served.” Whether or not the District Court assumed which prosecution offices were served is irrelevant to our disposition of the issues on appeal.

⁴ The City of Billings did not object to expungement of Hammerquist’s conviction that was within its jurisdiction.

demand that all misdemeanors be expunged by providing sufficient information to allow an adequate response.”).

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. Affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ BETH BAKER

/S/ JIM RICE