

**Affirmed; Opinion Filed June 7, 2018.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

**No. 05-16-01363-CV**

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**IN THE MATTER OF BRYANT BARTLEY HOOVER, Appellant**

**On Appeal from the 296th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 296-03734-2014**

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**MEMORANDUM OPINION**

Before Justices Francis, Brown, and Stoddart  
Opinion by Justice Stoddart

Appellant Bryant Bartley Hoover appeals the denial of his petition to expunge records related to three indictments that the State dismissed. In a single issue, Hoover argues the trial court abused its discretion by denying his petition for expunction.<sup>1</sup> We affirm the trial court's judgment.

Hoover's petition for expunction stated he was arrested on May 25, 2006, for three charges of making false statements to obtain property or credit. He subsequently was "released" from the charges, which did not result in a final conviction. At the time the petition was filed, the three charges were no longer pending, there was no court-ordered community supervision for them, and prosecution was no longer possible because the statute of limitations expired. Hoover attached his affidavit to the petition in which he swore all of the factual allegations in the petition were true

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<sup>1</sup> Initially appellant asserted a second issue arguing the trial court erred by failing to hold a hearing on his petition for expunction. However, in his reply brief, Hoover acknowledged his trial counsel and the State entered into an agreement allowing the trial court to decide the matter based upon the pleadings and record of a prior hearing. Appellant no longer urges his second issue.

and correct. The State filed its answer in which it asserted Hoover was arrested for “False Statement to Obtain Property or Credit” in four cause numbers: 380-80974-06, 380-80975-06, 380-80976-06, and 380-80977-06. Pursuant to a plea agreement, Hoover pleaded guilty to making a false statement to obtain property or credit (cause number 380-80976-06). The trial court deferred adjudication and placed him on community supervision for four years. In exchange, the State dismissed the other charges (cause numbers 380-80974-06, 380-80975-06, and 380-80977-06). At a hearing on Hoover’s petition, the trial court took judicial notice of his affidavit and admitted certified copies of the indictment, warrant, and bond for each charge. The trial court denied Hoover’s petition for expunction and this appeal followed.

We review a trial court’s ruling on a petition for expunction for abuse of discretion. *State v. T.S.N.*, No. 17-0323, 2018 WL 2169785, at \*2 (Tex. May 11, 2018). However, to the extent a ruling on expunction turns on a question of law, we review any legal conclusions de novo. *See id.*; *see also Collin Cty. Dist. Attorney’s Office v. Fourrier*, 453 S.W.3d 536, 539 (Tex. App.—Dallas 2014, no pet.).

Expunction is a statutorily—created remedy that allows a person who has been arrested for the commission of an offense to have the records and files relating to the arrest expunged if the person meets the statutory requirements of article 55.01 of the code of criminal procedure. *Fourrier*, 453 S.W.3d at 539; *see also* TEX. CODE. CRIM. PROC. ANN. art. 55.01. The purpose of the expunction statute is to “protect wrongfully—accused people by eradicating their arrest records.” *In re State Bar of Texas*, 440 S.W.3d 621, 622 (Tex. 2014). Because the cause of action is created by statute, all of its provisions are mandatory and require strict compliance for the action to be sustained. *Fourrier*, 453 S.W.3d at 539; *see also T.S.N.*, 2018 WL 2169785, at \*2 (“A person is not entitled to expunction until all of the statutory conditions are met.”). The trial court has no equitable power to extend the protections of the expunction statute beyond the statute’s stated

provisions. *Fourrier*, 453 S.W.3d at 539. Although the expunction statute appears in the code of criminal procedure, an expunction proceeding is civil in nature and the petitioner carries the burden of proving compliance with the statutory requirements. *Id.*; see also *Texas Dep't of Pub. Serv. v. Velazquez*, No. 05-16-01326-CV, 2017 WL 4003427, at \*1 (Tex. App.—Dallas Sept. 12, 2017, no pet.) (mem. op.).

Hoover sought expunction pursuant to 55.01(a)(2), which provides, in relevant part:

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor, provided that:

(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2)(B). Hoover argues the trial court should have granted his petition for expunction because he was arrested four times for four separate indictments, but he only pleaded guilty to one of those indictments. He asserts the trial court should have expunged the three indictments that were dismissed. Effectively, Hoover urges us to adopt an “offense-based” approach to analyzing article 55.01(a)(2).

In its recent opinion *State v. T.S.N.*, 2018 WL 2169785, the Texas Supreme Court stated article 55.01 “is neither entirely arrest-based nor offense-based.” *T.S.N.*, 2018 WL 2169785, at \*6. Interpreting article 55.01(a)(1), the supreme court used an offense-based approach. *Id.* However, the court specifically stated the expunction scheme in subarticle (a)(2) was not at issue and it expressed no opinion about it. *Id.* The court did, however, discuss at length an opinion from the Austin Court of Appeals, *Texas Department of Public Safety v. G.B.E.*, 459 S.W.3d 622 (Tex. App.—Austin 2014, pet. denied) (en banc), which considered subarticle (a)(2). *Id.* at \*5.

*G.B.E.* concerned a defendant arrested and charged with the offense of driving while intoxicated. *G.B.E.*, 459 S.W.3d at 624. The charge was dismissed and refiled as a misdemeanor reckless driving charge to which the defendant pleaded no contest. *Id.* In response to the defendant’s petition to expunge records related to the DWI charge, the Department argued that *G.B.E.* failed to present sufficient evidence supporting the statutory requirements for expunction under article 55.01(a)(2). *Id.* The court of appeals concluded that *G.B.E.*’s arrest for DWI, although that charge was dismissed, resulted in a final conviction, albeit for reckless driving and *G.B.E.* was not entitled to expunge records related to the arrest. *Id.* at 630. However, the court stated,

Under the circumstances presented in this case, we need not decide whether subarticle (a)(2) as a whole is “charge-based”—that is, whether subarticle (a)(2) generally permits the expunction of records related to individual charges. For example, we need not decide whether a petitioner may expunge records related to a single charge arising from a multi-charge arrest when the charge for which expungement is sought is wholly unrelated to any final conviction arising from the arrest. Instead, we hold that under the circumstances presented in this case and the plain language of subarticle (a)(2), *G.B.E.* is not entitled to expunge any records related to his arrest.

*Id.* at 629 n.3.

Several courts have cited *G.B.E.* when concluding that subarticle (a)(2) is arrest-based and a person seeking expunction must meet the requirements of article 55.01(a)(2) for all charges arising from an arrest, including showing there was no court-ordered community supervision. *See, e.g., Ex parte C.E.A.*, No. 12-17-00311-CV, 2018 WL 1940377, at \*2 (Tex. App.—Tyler Apr. 25, 2018, no pet.) (mem. op.) (“a person is not entitled to have any arrest records expunged under Article 55.01(a)(2) when a charge is dismissed, but that dismissal results in community supervision for any charge arising from the same arrest.”); *S.J. v. State*, 438 S.W.3d 838, 846 (Tex. App.—Fort Worth 2014, no pet.) (appellant not entitled to expunction because he was placed on court-ordered community supervision for a charge arising from the arrest); *Tex. Dep’t of Pub. Safety v.*

*Crawford*, No. 12–12–00072–CV, 2013 WL 776618, at \*1 (Tex. App.—Tyler Feb. 28, 2013, no pet.) (mem. op.) (“A person is not entitled to an expunction if she was placed on ‘court ordered community supervision’ . . . , which includes deferred adjudication community supervision.”). “If the Legislature wished to permit persons to expunge records related to a particular charge resulting from an arrest without expunging all records of the arrest itself, we presume that it would have included language with that meaning in the statute.” *Ex parte De La Garza*, No. 13-16-00522-CV, 2018 WL 1417450, at \*2 (Tex. App.—Corpus Christi Mar. 22, 2018, no pet.) (mem. op.) (citing *S.J.*, 438 S.W.3d at 843; *Ex parte S.C.*, 305 S.W.3d 258, 263 (Tex. App.—Houston [14th Dist.] 2009, no pet.)).

Like the court in *T.H.*, we too conclude that article 55.01(a)(2) “maintains an arrest as the unit of expunction and that, consequently, a petitioner must prove that each charge arising from the arrest satisfies the requirements” of article 55.01(a)(2). *T.H.*, 2016 WL 5874869, at \*4. Considering the language of article 55.01(a)(2), the Texas Supreme Court’s recent opinion in *T.S.N.*, the prevailing case law from our sister courts, and keeping in mind the statute’s general purpose of permitting expunction of wrongful arrests, we conclude that a person is not entitled to have any arrest records expunged under article 55.01(a)(2) when any charge resulted in court-ordered community supervision under article 42.12 of the code of criminal procedure. *See, e.g.*, *G.B.E.*, 459 S.W.3d at 629; *Ex parte C.E.A.*, 2018 WL 1940377, at \*2; *S.J.*, 438 S.W.3d at 846; *Crawford*, 2013 WL 776618, at \*1.

The record shows Hoover was arrested on May 25, 2006, for four offenses. Although three of the four indictments were dismissed, Hoover pleaded guilty to false statement to obtain property or credit. The trial court deferred adjudication and placed him on community supervision. Thus, Hoover failed to meet his burden to show he satisfied the requirements of article 55.01(a)(2) because the record shows that although three indictments were dismissed, one indictment resulted

in Hoover receiving community supervision. *See* TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2)(B).

We overrule Hoover's sole issue. We affirm the trial court's judgment.

/Craig Stoddart/  
CRAIG STODDART  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

IN THE MATTER OF BRYANT  
BARTLEY HOOVER, Appellant

No. 05-16-01363-CV

On Appeal from the 296th Judicial District  
Court, Collin County, Texas  
Trial Court Cause No. 296-03734-2014.  
Opinion delivered by Justice Stoddart.  
Justices Francis and Brown participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 7<sup>th</sup> day of June, 2018.