In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00346-CV

CHESTER WILLIAM INGRAM, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. CIV 25734

MEMORANDUM OPINION

Chester William Ingram, Jr. appeals the denial of his petition for expunction of criminal records pertaining to his arrests for the aggravated sexual assault, sexual assault, aggravated perjury, and aggravated kidnapping. On appeal, Ingram contends that he established his right to expunction through his trial testimony and through requests for admissions that he served on the Texas Department of Criminal Justice. Ingram also argues that the trial court abused its discretion by not allowing him to amend his

pleadings, and he contends that he is entitled to Findings of Fact and Conclusions of Law. We affirm the trial court's judgment.

Standard of Review

Article 55.01 of the Texas Code of Criminal Procedure creates a procedure allowing a person who is arrested, but who is later acquitted or had the charges dropped, to obtain an order from a trial court expunging records related to the arrest. Tex. Code Crim. Proc. Ann. art. 55.01(a) (West Supp. 2010). A statutory expunction proceeding is a civil rather than criminal proceeding, and the petitioner has the burden of proving that he has complied with the requirements of the expunction statute. *Houston Police Dep't v. Berkowitz*, 95 S.W.3d 457, 460 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *Collin Cnty. Criminal Dist. Attorney's Office v. Dobson*, 167 S.W.3d 625, 626 (Tex. App.—Dallas 2005, no pet.).

We review a trial court's ruling on a petition for expunction under an abuse of discretion standard. *Tex. Dep't of Pub. Safety v. J.H.J.* 274 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.; *Heine v. Tex. Dep't of Pub. Safety*, 92 S.W.3d 642, 646 (Tex. App.—Austin 2002, pet. denied). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without any reference to any guiding rules or principles. *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004).

Analysis

In this case, Ingram petitioned for expunction of all criminal records and files pertaining to his arrests for aggravated sexual assault, sexual assault, aggravated perjury, and aggravated kidnapping. In issue one, Ingram contends that the trial court's decision was based, in part, on a claimed defect in his petition, and that, if his petition was defective, the trial court abused its discretion in not allowing him to amend his petition at trial. However, the trial court's findings and conclusions contradict Ingram's argument that the trial court dismissed his claims due to defects in his petition, as the trial court found that "[t]he opposition cured the petition's technical defects by providing omitted information." We conclude that the trial court did not dismiss Ingram's petition on the basis that it was defective. We overrule issue one.

In issue two, Ingram contends that he established his right to expunction through his trial testimony and through deemed admissions. Ingram argues that the evidence establishes that he qualified for expunction of the records concerning the arrest in issue under article 55.01(a)(2) of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 55.01(a)(2). Article 55.01(a) 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) each of the following conditions exist:
> (A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment

> or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed, and:
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> (i) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02; or
>
> (ii) the court finds that the indictment or information was dismissed or quashed because the person completed a pretrial intervention program authorized under Section 76.011, Government Code, or because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;
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> (B) 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 Article 42.12 for any offense other than a Class C misdemeanor; and
>
> (C) the person has not been convicted of a felony in the five years preceding the date of the arrest.

Id.

During the expunction hearing, Ingram testified that he has satisfied article 55.01(a)(2)(A) because the "four charges against [him] were presented by indictment[,]" and the charges had "been dismissed." Ingram contends that he has satisfied subsection (a)(2)(A)(i) because "these crimes have been pending now for 19 years[,] [s]o the statute of limitations for all these four crimes have long since expired." Ingram also contends that he has been released of all four charges related to the arrests in issue, the arrests did not result in final convictions, the arrests are no longer pending, and the arrests did not result in his being placed on community supervision. Finally, Ingram testified that he had not been convicted of a felony in the five years preceding the date of the arrests that were the subject of his petition.

To establish that he complied with the expunction statute's requirements, Ingram relies, in part, on requests for admissions that the Texas Department of Corrections failed to answer.[1] However, the attorney representing the Texas Department of Criminal Justice contends that Ingram failed to properly serve his request for admissions on the entities that she represented. With respect to whether Ingram properly served the requests in issue, the trial court found that the requests were not served, and that Ingram failed to sign his requests. The requests for admissions that are in the record were not signed. When a party receives requests that are not signed, we note that the Rules of Civil Procedure do not require a party to take any action. *See* Tex. R. Civ. P. 191.3(d) ("A party is not required to take any action with respect to a request or notice that is not signed."); *see also* Tex. R. Civ. P. 191.5 (requiring every discovery request to be served on all parties of record). The trial court's findings specifically reflect that it refused to deem Ingram's requests as having been admitted.

[1]As the issue is not argued, and by evaluating whether the State was bound by the admissions in issue, we do not intend to imply that the discovery generally available to parties to lawsuits was intended to be made available to a petitioner seeking to expunge his records. While requests for admissions may be served on a party to a suit, the entities in an expunction proceeding are served with notice of the expunction hearing and in this case, it does not appear they were served with Ingram's expunction petition. *Compare* Tex. R. Civ. P. 198.1 *and* Tex. Code Crim. Proc. Ann. art. 55.02 § 2(c) (West Supp. 2010) (requiring the court to set a hearing on a matter after petitioner files the expunction petition and to "give to each official or agency or other governmental entity named in the petition reasonable notice of the hearing[.]"). Because Ingram attached his requests to his petition for expunction, it does not appear that the agencies were ever served with Ingram's expunction petition or with his requests.

Under the circumstances here, the trial court correctly determined that Ingram's requests were not properly served. We agree with the trial court that Ingram was not entitled to rely on his requested admissions during the expunction hearing.

The trial court's record also reflects that Ingram had been convicted of another sexually related offense which occurred in November 1989, and that Ingram's conviction involved his kidnapping of B.D.S. with the intent to sexually abuse her. The trial court's findings[2] with respect to this conviction are relevant to Ingram's claim that he established that he was entitled to have the arrests in issue expunged. The trial court's conclusions include the following: "As the offenses for which expunction is sought are part of a criminal episode, expunction is not available to Petitioner as a matter of law." The trial court also found that its conclusions of law could be deemed to be a finding of fact. *See* Tex. R. Civ. P. 299.

In his appeal, Ingram failed to specifically attack any of the trial court's specific findings or conclusions. In a civil case, if the trial court's factual findings are unchallenged, they are binding on the appellate court unless the contrary is established as

[2]Ingram's brief, filed in February 2011, complained that the trial court failed to make any findings of fact or conclusions of law. We abated the appeal in March 2011, and remanded the case to the trial court to allow it to make findings of fact and conclusions of law. Later that month, the trial court issued findings of fact and conclusions of law, and in April 2011, the trial court issued amended findings of fact and conclusions of law. Ingram did not file a supplemental brief after the trial court filed its findings and conclusions. Because the trial court corrected its failure with respect to making findings and conclusions, Ingram's complaint about the trial court's failure to file findings and conclusions is now moot. *See* Tex. R. App. P. 44.4(a)(2) (court of appeals may not reverse if the trial court can correct its failure to act).

a "matter of law," or there is "no evidence" to support the finding. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986); *Wade v. Anderson*, 602 S.W.2d 347, 349 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.) ("Unless the trial court's findings are challenged by a point of error on appeal, they are binding upon the appellate court."). Ingram does not contend that there is no evidence to support the trial court's finding that the four arrests in issue were part of the same criminal episode. The trial court's conclusions of law reflect its view that all of the arrests in issue, as well as Ingram's conviction for aggravated kidnapping, arose from a criminal episode, which the trial court defined in its conclusions as meaning that "[t]he offenses were committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan, or [] [t]he offenses are the repeated commission of the same or similar offenses." *See* Tex. Penal Code Ann. § 3.01 (West 2011) (using the same terms to define the meaning of "criminal episode"). Based on its findings, the trial court concluded: "As the offenses for which expunction is sought are part of a criminal episode, expunction is not available to [Ingram] as a matter of law."

Because the trial court's findings are not specifically challenged, and the record is insufficient to establish that the arrests in issue, as a matter of law, were not part of the same criminal episode, we conclude that the trial court did not commit error when it concluded that Ingram failed to show that he was entitled to have the arrests in issue expunged. Based on the trial court's unchallenged findings, we conclude that Ingram's

petition fails to meet the requirements of article 55.01(a)(2)(A) of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 55.01(a)(2)(A) (allowing expunction where there is never an indictment of the person for an offense arising out of the transaction for which the person was arrested). Because the trial court's findings, on this record, are binding, we conclude that Ingram has failed to demonstrate that he meets all of the conditions required by statute to obtain an order expunging his records of his four related arrests. We overrule issue two, and we affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on July 14, 2011
Opinion Delivered August 25, 2011
Before McKeithen, C.J., Kreger and Horton, JJ.