



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-16-00358-CV

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**EX PARTE T.P.B.**

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On Appeal from the 16th District Court  
Denton County, Texas  
Trial Court No. 16-00309-16, Honorable Sherry Shipman, Presiding

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November 15, 2017

**MEMORANDUM OPINION**

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

The Texas Department of Public Safety (Department) filed this restricted appeal from an order granting T.P.B.'s petition to expunge certain records related to her arrest. The Department advances four issues challenging said order. Addressing only the first since it is dispositive of the appeal, we reverse.<sup>1</sup>

*Background*

On June 11, 2012, T.P.B. was arrested on suspicion of and subsequently charged with driving while intoxicated, three counts of possession of a controlled

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<sup>1</sup> Because this appeal was transferred from the Second Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this Court. See TEX. R. APP. P. 41.3.

substance, and two counts of possession of dangerous drugs. Ultimately, she pleaded guilty to one charge of possession of a controlled substance. In exchange for her plea, she was placed on deferred adjudication community supervision for two years. After pleading no contest to the charge of driving while intoxicated, she was also convicted of that offense, sentenced, and eventually placed on community supervision.

On January 14, 2016, T.P.B. filed her petition seeking to expunge the record of documents relating to the charges which were dismissed. The trial court granted her petition, and the Department appealed.<sup>2</sup>

### *Analysis*

In its first issue, the Department contends that the trial court abused its discretion because T.P.B. failed to prove she met the statutory requirements. We agree.

An expunction of criminal records is governed by the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 55.01(a) (West Supp. 2017). Though various grounds permit expungement, the one found in article 55.01(a)(2) of that Code is at play here. It states that 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 . . . the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending

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<sup>2</sup> Because this is a restricted appeal, our review is limited to the face of the record. See *In re B.C.*, No. 02-16-00431-CV, 2017 Tex. App. LEXIS 10084, at \*4–5 (Tex. App.—Fort Worth Oct. 26, 2017, no pet. h.) (mem. op.) (stating that to prevail in a restricted appeal, one must show that (1) he filed a notice of appeal within six months of the date the complained-of judgment was signed; (2) he was a party to the suit but did not participate in the hearing that resulted in the judgment; (3) he did not timely file a post-judgment motion, request findings of fact and conclusions of law, or file a notice of appeal within the time permitted under rule of appellate procedure 26.1(a); and (4) the complained-of error is apparent from the face of the appellate record). The face of the record consists of all papers on file in the appeal, including the reporter’s record. See *Norman Commc’ns v. Tex. Eastman Co.*, 955 S.W.2d 269, 270 (Tex. 1997) (per curiam); *Chen v. Johnson*, No. 02-12-00428-CV, 2013 Tex. App. LEXIS 6619, at \*2 (Tex. App.—Fort Worth May 30, 2013, no pet.) (mem. op.) (stating that the “face of the record, for purposes of a restricted appeal, consists of all the papers on file in the appeal, including the clerk’s record and the reporter’s record”).

and there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor.” *Id.* art. 55.01(a)(2).

The focal point of the statute is the arrest, not the individual charges emanating from the arrest. See *S.J. v. State*, 438 S.W.3d 838, 841–46 (Tex. App.—Fort Worth 2014, no pet.); see also *Ex parte Brown*, No. 12-16-00332-CV, 2017 Tex. App. LEXIS 8870, at \*4 (Tex. App.—Tyler Sept. 20, 2017, no pet.) (mem. op.) (stating that the expunction statute is “arrest-based” and expunction is not available for less than all offenses arising from one arrest). That is, it must be shown (1) that no felony or misdemeanor offense arising from the arrest resulted in a final conviction and (2) that community supervision was not court-ordered for any offense arising from the arrest. For instance, if the arrest gives rise to multiple charges and the accused is convicted of or placed on court-ordered community supervision for any one of them (assuming, of course, it is not a Class C misdemeanor), then the expunction of any records arising from the arrest is impermissible. See *Ex parte Brown*, 2017 Tex. App. LEXIS 8870, at \*6 (holding that “because all three charges arose from the same arrest and the aggravated assault with a deadly weapon charge resulted in community supervision, Brown is not entitled to expunction of any records relating to her April 29, 2008 arrest” despite the other charges having been dismissed); *S.J.*, 438 S.W.3d at 846 (wherein the appellant sought expunction of records relating to the charge of aggravated assault and the reviewing court held that he was not entitled to same because he was placed on court-ordered community supervision for terroristic threat “which [was] a ‘charge’ that arose from” the same arrest from which the aggravated assault charge arose).

Here, the face of the record (that is, the Department's answer) disclosed that the June 11th arrest of appellant resulted in numerous charges being levied against her. Most were dismissed. However, one resulted in deferred adjudication coupled with court-ordered community supervision and another in a conviction, a 340-day jail sentence, the suspension of that sentence, and court-ordered community supervision. Furthermore, neither were Class C misdemeanors. Consequently, none of the records arising from the arrest were subject to expunction even though some of the charges were dismissed. In ordering the expunction of the records relating to the charges which were dismissed, the trial court abused its discretion.

We sustain the Department's first issue, reverse the trial court's order of expunction, and render judgment denying T.P.B.'s petition for expunction of records. Disposing of the first issue as we do relieves us from having to address the remaining issues posed by the Department.

Brian Quinn  
Chief Justice