



**NUMBER 13-15-00518-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**EX PARTE MARIA MARCOS HERNANDEZ**

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**On appeal from the 332nd District Court  
of Hidalgo County, Texas.**

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**MEMORANDUM OPINION**

**Before Chief Justice Valdez and Justices Rodriguez and Hinojosa  
Memorandum Opinion by Justice Hinojosa**

Appellant, the Texas Department of Public Safety (the Department), brings this restricted appeal from the trial court's order expunging the arrest records of appellee Maria Marcos Hernandez. By four issues, the Department argues that the trial court erred in expunging records of an arrest for driving while intoxicated (DWI). We reverse and render judgment denying Hernandez's petition for expunction.

## I. BACKGROUND<sup>1</sup>

Following her arrest on November 9, 2008, Hernandez was charged with DWI, a class B misdemeanor. See TEX. PENAL CODE ANN. § 49.04 (West, Westlaw through 2015 R.S.). Pursuant to Hernandez's plea of guilty, the trial court entered a judgment adjudicating Hernandez guilty, suspending her sentence, and placing her on community supervision for a period of 180 days.

On January 6, 2015, Hernandez filed a petition to expunge the records of the 2008 arrest under article 55.01(a)(2) of the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2) (West, Westlaw through 2015 R.S.). The Department filed an answer asserting that Hernandez was not entitled to expunction because the arrest resulted in a final conviction and Hernandez was required to serve community supervision for the offense. The judgment of conviction ordering community supervision was attached to the Department's answer and incorporated by reference.

The trial court set the hearing on Hernandez's petition for April 29, 2015; however, there is no reporter's record for the proceedings. The trial court later granted Hernandez's petition for expunction. This restricted appeal followed.<sup>2</sup>

## II. DISCUSSION

The Department argues the trial court erred in granting Hernandez's petition for expunction for the following reasons: (1) Hernandez received a final conviction and

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<sup>1</sup> Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. See TEX. R. APP. P. 47.4.

<sup>2</sup> Hernandez has not filed a brief to assist us in the resolution of this matter.

served a term of community supervision as a result of her arrest; (2) the evidence supporting expunction was legally insufficient; (3) the trial court did not hold a hearing; and (4) even if there was a hearing, no reporter's record was prepared.

**A. Restricted Appeal**

To attack an order by restricted appeal, the appellant must show: (1) it was a party who did not participate in the hearing that resulted in the judgment complained of; (2) it filed a notice of appeal within six months after the order was signed; (3) it did not timely file a post-judgment motion or request findings of fact and conclusions of law; and (4) error is apparent on the face of the record. TEX. R. APP. P. 26.1(c), 30; *Pike-Grant v. Grant*, 447 S.W.3d 884, 886 (Tex. 2014); *Bazan v. Canales*, 200 S.W.3d 844, 846–47 (Tex. App.—Corpus Christi 2006, no pet.).

The Department was a party to the proceeding but did not participate in the expunction hearing.<sup>3</sup> See *Tex. Dep't of Pub. Safety v. Moore*, 51 S.W.3d 355, 357 (Tex. App.—Tyler 2001, no pet.) (concluding that the Department, as a State agency with records subject to expunction, was a party to the expunction suit entitled to bring a restricted appeal). The Department filed no post-judgment motions, did not request findings and conclusions of law, and filed its notice of restricted appeal within six months of the expunction order. We therefore must determine if error is apparent from the face of the record. See *Pike-Grant*, 447 S.W.3d at 886; *Bazan*, 200 S.W.3d at 846–47. The “face of the record” includes all papers on file in the appeal and the reporter's record, if

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<sup>3</sup> The clerk's record reflects that a hearing was scheduled. However, the official court reporter for the 332nd Judicial District Court filed with this Court an affidavit in which she states, “Although the case was set on the docket, the hearing was not held; therefore, there is no Reporter's Record available[.]”

any. *Norman Commc'ns v. Tex. Eastman Co.*, 955 S.W.2d 269, 270 (Tex. 1997). A restricted appeal affords the appellant the same scope of review as an ordinary appeal—in other words, the entire case. *Id.*

## **B. Expunction Requirements**

By its first issue, the Department argues that error is apparent from the face of the record because Hernandez's arrest resulted in a final conviction for which she served a term of community supervision. We agree.

"The expunction statute was created to allow persons wrongfully charged to expunge their arrest records." *Tex. Dep't of Pub. Safety v. Williams*, 76 S.W.3d 647, 649 (Tex. App.—Corpus Christi 2002, no pet.). The petitioner has the burden of proving that all statutory requirements have been satisfied in order to be entitled to expunction. *Id.* at 650. The trial court must strictly comply with the statutory procedures for expunction, and neither an appellate court nor the trial court has any equitable power to extend the protections of the expunction statute beyond its stated provisions. *Tex. Dep't of Pub. Safety v. M.R.S.*, 468 S.W.3d 553, 555 (Tex. App.—Beaumont 2015, no pet.).

As relevant here, a petitioner seeking expunction must demonstrate that "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 the offense, unless the offense is a Class C misdemeanor. . . ." TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2). The expunction statute was "not intended to allow a person who is arrested, pleads guilty to an offense, and receives probation after pleading guilty, to expunge his record." *State v. Knight*, 813 S.W.2d 210, 212 (Tex.

App.—Houston [14th Dist.] 1991, no writ); see also *Tex. Dep't of Pub. Safety v. Salazar*, No. 13-12-00771-CV, 2013 WL 4399185, at \*4 (Tex. App.—Corpus Christi Aug. 15, 2013, no pet.) (mem. op.).

Article 55.01 does not permit expunctions for an arrest resulting in a final conviction or court-ordered community supervision. See TEX. CODE CRIM. PROC. ANN. art. 55.01; *Knight*, 813 S.W.2d at 212. The record clearly reflects that Hernandez's arrest resulted in both. Pursuant to Hernandez's guilty plea, the trial court entered a judgment adjudicating Hernandez guilty,<sup>4</sup> suspending her sentence, and placing her on community supervision for a period of 180 days. Therefore, we conclude that error is apparent on the face of the record. See *Pike-Grant*, 447 S.W.3d at 886; see also *Texas Dep't of Pub. Safety v. Fredricks*, 235 S.W.3d 275, 282 (Tex. App.—Corpus Christi 2007, no pet.) (concluding that error was apparent from the face of the record where the petitioner was placed on probation as a result of his guilty plea); *Heine v. Texas Dep't of Pub. Safety*, 92 S.W.3d 642, 647 (Tex. App.—Austin 2002, pet. denied) (distinguishing regular probation and deferred adjudication and concluding that for purposes of the expunction statute, a conviction is final at the time the defendant was sentenced to regular probation). We sustain the Department's first issue.<sup>5</sup>

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<sup>4</sup> We note that Hernandez did not receive deferred adjudication community supervision. Deferred adjudication community supervision differs from regular probation by allowing a defendant who pleads guilty to an offense and who successfully completes community supervision to avoid conviction. See *Reed v. State*, 702 S.W.2d 738, 740 (Tex. App.—San Antonio 1985, no writ); see also *Preston v. State*, No. 05-14-01131-CR, 2015 WL 4241406, at \*2 (Tex. App.—Dallas July 14, 2015, no pet.) (mem. op., not designated for publication).

<sup>5</sup> Due to our disposition of this issue, we need not address the Department's remaining issues. See TEX. R. APP. P. 47.1.

### III. CONCLUSION

We reverse the trial court's order and render judgment denying Hernandez's petition for expunction. Pursuant to the Department's prayer for relief, we order any documents surrendered to the trial court or to Hernandez returned to the submitting agencies. See *Fredricks*, 235 S.W.3d at 282; see also *Ex Parte Elliot*, 815 S.W.2d 251, 252 (Tex. 1991) (per curiam) (providing that reversal of the order of expunction applies to all respondents, even if they do not participate in the appeal).

LETICIA HINOJOSA  
Justice

Delivered and filed the  
4th day of May, 2017.