



**NUMBER 13-18-00255-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**THE STATE OF TEXAS,**

**Appellant,**

**v.**

**DESIREE SARAH BANDROWSKI,**

**Appellee.**

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**On appeal from the 197th District Court  
of Cameron County, Texas.**

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**MEMORANDUM OPINION**

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

Appellant the Texas Department of Public Safety (the Department) appeals the trial court's order expunging all files and records relating to the arrest of appellee Desiree Sarah Bandrowski. *See generally* TEX. CODE CRIM. PROC. ANN. arts. 55.01–.06 (West, Westlaw through 2017 1st C.S.). By three issues, the Department contends that (1) the

trial court misinterpreted the expunction statute in granting the expunction, (2) Bandrowski failed to present legally sufficient evidence showing she was entitled to an expunction, and (3) the trial court failed to notify the Department of the expunction hearing. We reverse and render.

## I. BACKGROUND

Bandrowski was charged with Class B misdemeanor theft of property from a Kohl's department store in the amount of \$100 or more but less than \$750 occurring on March 6, 2016. See TEX. PENAL CODE ANN. § 31.03 (West, Westlaw through 2017 1st C.S.). On August 7, 2017, the prosecutor dismissed the Class B misdemeanor theft charge and charged Bandrowski with Class C misdemeanor theft of property in the amount of less than \$100 from a Kohl's department store occurring on March 6, 2016. Pursuant to a plea agreement with the State, Bandrowski pleaded nolo contendere to the Class C theft of property charge, and the trial court convicted her of that offense.

On September 13, 2017, Bandrowski filed a petition for expunction of the Class B theft of property charge because it had been dismissed on August 7, 2017. The trial court held a hearing on Bandrowski's petition on April 11, 2018.<sup>1</sup> The trial court granted Bandrowski's petition, and this appeal followed.

## II. APPLICABLE LAW AND STANDARD OF REVIEW

A person who was arrested for a criminal offense and who meets other statutory conditions may file a petition for expunction to have all records and files related to that arrest removed from the State's records. TEX. CODE CRIM. PROC. ANN. art. 55.01; *Ex Parte Vega*, 510 S.W.3d 544, 548 (Tex. App.—Corpus Christi 2016, no pet.); see also *Ex parte*

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<sup>1</sup> Bandrowski presented no evidence at this hearing, and the Department did not appear.

*Gaytan*, No. 13-16-00591-CV, 2018 WL 3062473, at \*3 (Tex. App.—Corpus Christi June 21, 2018, no pet.) (mem. op.). A petitioner who fails to satisfy any of the statutory requirements is not entitled to expunction as a matter of law. *Collin Cty. Dist. Atty’s Office v. Fourrier*, 453 S.W.3d 536, 539 (Tex. App.—Dallas 2014, no pet.); see also *Texas Dep’t of Pub. Safety v. Clark*, No. 13-17-00636-CV, 2018 WL 3655441, at \*3 (Tex. App.—Aug. 1, 2018, no pet. h.) (mem. op.) (concluding that the petitioner was not entitled to expunction of her records because she had not established each statutory requirement).

We review a trial court’s expunction order under an abuse of discretion standard. *Vega*, 510 S.W.3d at 547; *Tex. Dep’t of Pub. Safety v. Ibarra*, 444 S.W.3d 735, 738 (Tex. App.—Corpus Christi 2014, pet. denied); *Heine v. Tex. Dep’t of Pub. Safety*, 92 S.W.3d 642, 646 (Tex. App.—Austin 2002, pet. denied); see also *Ex parte Gaytan*, 2018 WL 3062473, at \*3. The trial court commits reversible error if it does not strictly comply with the statutory procedures for expunction. *Vega*, 510 S.W.3d at 548; see also *Tex. Dept. of Pub. Safety v. Zuniga*, No. 13-09-00611-CV, 2010 WL 2543935, at \*2 (Tex. App.—Corpus Christi Jun. 24, 2010, no pet.) (mem. op.). A trial court abuses its discretion if it grants an expunction when the petitioner has not met all statutory conditions. *Vega*, 510 S.W.3d at 548; see also *Ex parte Gaytan*, 2018 WL 3062473, at \*3.

Article 55.01(a)(2)(A) of the Texas Code of Criminal Procedure governs when a petitioner has a right to expunction of an arrest due to dismissal of the charge. TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2)(A). Article 55.01(a)(2) sets out that a person who has been placed under arrest of either a felony or a misdemeanor may have records and files relating to the arrest expunged if the person proves that (1) the person was released, (2) the charge, if any, did not result in a final conviction, (3) the charge, if any, is no longer

pending, and (4) there was no court-ordered community supervision under article 42.12 of the Texas Code of Criminal Procedure. *Id.*

### III. DISCUSSION

By its first and second issues, the Department contends that the trial court misinterpreted the expunction statute and the evidence is insufficient to support the expunction. Specifically, the Department argues that Bandrowski failed to establish that the charge did not result in a final conviction because Bandrowski pleaded guilty to a lesser-included charge. We agree with the Department.

In *Ex parte Vega*, this Court explained that the statutory language of article 55.01(a) “contemplates expunging all of the records related to an arrest but makes no provision for expunging records related to a particular charge that resulted from an arrest.” 510 S.W.3d at 550. We determined that had “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,” the Legislature “would have included language with that meaning in the statute.” *Id.* We concluded that when viewed as a whole, “article 55.01(a) contemplates expunging only the records and files relating to an arrest rather than an individual charge that resulted from an arrest.” *Id.* In other words, an expunction under 55.01(a)(2) is not available when the dismissal of the charged offense results in a final conviction of any charge. *Ve v. Travis Cty. Dist. Att’y*, 500 S.W.3d 652, 656 (Tex. App.—Austin 2016, no pet.); *see also 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.).

Here, Bandrowski was originally arrested for Class B theft. As part of the plea agreement, she pleaded guilty to Class C theft, and the State dismissed the Class B theft

charge. We conclude that Bandrowski failed to meet the requirements of article 55.01(a)(2) because the record shows that, although the Class B theft charge was dismissed, as part of her plea agreement with the State, Bandrowski was convicted of a Class C offense for theft. Thus, the charge resulted in final conviction rendering Bandrowski's records ineligible for expunction. See *Rodriguez v. State*, 224 S.W.3d 783, 785 (Tex. App.—Eastland 2007, no pet.) (concluding that the appellant failed to meet the requirements of expunction under article 55.01(a)(2) because the records showed that although a theft charge was dismissed, the appellant was convicted of a Class C offense for issuing a bad check); see also *Ex parte De La Garza*, 2018 WL 1417450, at \*3 (concluding that the expunction petitioner failed to meet the requirements of article 55.01(a)(2) because the record showed that although the petitioner's assault charge had been dismissed, as part of his plea agreement with the State, the petitioner was convicted of a Class C offense for disorderly conduct). We sustain the Department's first and second issues because Bandrowski failed to establish that the charge did not result in a conviction.<sup>2</sup>

#### IV. CONCLUSION

We reverse the trial court's judgment and render judgment denying Bandrowski's petition for expunction. Pursuant to the Department's prayer for relief, we order any documents surrendered to the trial court or Bandrowski returned to the submitting agencies. See *Ex parte Elliot*, 815 S.W.2d 251, 252 (Tex. 1991) (per curiam); *Tex. Dep't*

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<sup>2</sup> As it is not dispositive of this appeal, we need not address the Department's final issue. See TEX. R. APP. P. 47.1.

of *Pub. Safety v. Fredricks*, 235 S.W.3d 275, 278 (Tex. App.—Corpus Christi 2007, no pet.).

**/s/ Rogelio Valdez**  
ROGELIO VALDEZ  
Chief Justice

Delivered and filed the  
27th day of August, 2018.