



NUMBER 13-19-00398-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

EX PARTE F.M.J.

**On appeal from the 404th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Tijerina**

The Texas Department of Public Safety (DPS) appeals the trial court's order expunging records and files relating to three 2017 charges against F.M.J.: felony assault, terroristic threat, and criminal mischief.¹ See *generally* TEX. CODE CRIM. PROC. ANN. arts.

¹ The trial court's expunction order addresses multiple charges stemming from two different dates—March 19, 2013, and August 30, 2017—but DPS only challenges the expunction of the criminal mischief, terroristic threat, and felony assault charges that occurred in 2017. Because DPS does not challenge the expunction of the March 2013 charges, we do not address that portion of the expunction order.

55.01–.06. By four issues, DPS contends that: (1) the expunction ruling was not supported by legally sufficient evidence; (2) the trial court misinterpreted the expunction statute; (3) the trial court erred by not holding a hearing; (4) alternatively, if a hearing was held, F.M.J. failed to have it transcribed.² We affirm the trial court’s order in part and reverse and render in part.

I. BACKGROUND

On August 30, 2017, F.M.J. was charged with the following offenses: (1) assault of a family/household member by impeding breathing/circulation (felony assault), a third-degree felony; (2) assault with bodily injury to a family member (assault), a Class A misdemeanor; (3) terroristic threat of a family member/household member, a Class A misdemeanor; and (3) criminal mischief, a Class B misdemeanor. See TEX. PENAL CODE ANN. §§ 22.01(b), (b)(2), .07(c); 28.03(b)(2). These four charges were based on the same arrest, involved the same victim, and arose from the same transaction, which occurred on May 3, 2017. Pursuant to a plea agreement on January 18, 2018, F.M.J. pleaded guilty to assault, and the trial court placed him on community supervision for that offense. The remaining three charges—felony assault, terroristic threat, and criminal mischief—were dismissed pursuant to the plea agreement.

On April 5, 2019, F.M.J. filed a petition for expunction requesting expunction of records and files pertaining to his felony assault, terroristic threat, and criminal mischief charges pursuant to Texas Code of Criminal Procedure article 55.01(a)(2). See TEX. CODE CRIM. PROC. ANN. arts. 55.01. DPS filed an answer asserting principally that

² F.M.J. did not file a brief to assist us in the resolution of this matter.

because F.M.J. pleaded guilty and received community supervision for the assault charge stemming from the same arrest, he was not entitled to have records expunged relating to the felony assault, terrorist threat, and criminal mischief offenses under article 55.01(a)(2).

The trial court sent notice that the case was set for a hearing on May 1, 2019, reset for May 15, 2019, and reset again for June 19, 2019, although there is no record that a hearing was held. On June 31, 2019, the trial court ordered that the records pertaining to F.M.J.'s felony assault, terroristic threat, and criminal mischief charges be expunged. This appeal followed.

II. EXPUNCTION

DPS argues that the trial court erred in interpreting the expunction statute to allow the destruction of records of individual offenses, as opposed to records of the arrest.

A. Standard of Review

A trial court's ruling on a petition for expunction is reviewed for an abuse of discretion. *State v. T.S.N.*, 547 S.W.3d 617, 620 (Tex. 2018). Under this standard, we afford no deference to the trial court's legal determinations recognizing that the trial court has no discretion in deciding what the law is or in applying it to the facts. *Id.* Thus, a trial court's legal conclusions are reviewed de novo. *Id.* When conducting our review, however, we may not substitute our judgment for that of the trial court with respect to resolution of factual issues committed to the trial court's discretion. *In re A.G.*, 388 S.W.3d 759, 761 (Tex. App.—El Paso 2012, no pet.). A trial court abuses its discretion if it acts arbitrarily or unreasonably without reference to guiding rules and principles of law. *Id.*

B. Applicable Law

The remedy of expunction allows a person who has been arrested for the commission of an offense to have all information about the arrest removed from the State's records if the person meets the statutory requirements set out in Chapter 55 of the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. arts. 55.01–06; *Tex. Dep't of Pub. Safety v. Nail*, 305 S.W.3d 673, 674 (Tex. App.—Austin 2010, no pet.). Expunction is neither a constitutional nor a common-law right. *Travis Cty. Dist. Attorney v. M.M.*, 354 S.W.3d 920, 923 (Tex. App.—Austin 2011, no pet.) (citing *Ex parte S.C.*, 305 S.W.3d 258, 260 (Tex. App.—Houston [14th Dist.] 2009, no pet.)). Rather, a petitioner's right to expunction is purely a matter of statutory privilege, and the petitioner bears the burden of demonstrating that each of the required conditions has been met. *Nail*, 305 S.W.3d at 674; *Ex parte Wilson*, 224 S.W.3d 860, 862 (Tex. App.—Texarkana 2007, no pet.). The trial court has no power to extend equitable relief beyond the clear meaning of the expunction statute. *M.M.*, 354 S.W.3d at 923 (citing *Tex. Dep't of Pub. Safety v. J.H.J.*, 274 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.)).

C. Analysis

The relevant portion of the expunction statute applicable here provides 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 (1) the person has been released, (2) the charge, if any, has not resulted 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 for the offense, unless the offense is a class C misdemeanor. TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2). DPS contends that F.M.J. failed to establish that the charge did not

result in a final conviction because F.M.J. pleaded guilty to a charge resulting from the arrest. We agree with DPS.

Texas courts, including our own, have held that article 55.01 requires an “arrest-based” approach to an expunction because it authorizes expunging only the records and files relating to an arrest rather than an individual charge that resulted from an arrest. *Ex Parte Vega*, 510 S.W.3d 544, 551 (Tex. App.—Corpus Christi—Edinburg 2016, no pet.) (holding that the statute is arrest-based); see *T.S.N.*, 547 S.W.3d at 622 (observing that “several courts of appeals have interpreted article 55.01(a)(2) as being arrest-based”); *Matter of J.G.*, 588 S.W.3d 290, 293 (Tex. App.—El Paso 2019, no pet.); *In re Expunction*, 465 S.W.3d 283, 292 (Tex. App.—Houston [1st Dist.] 2015, no pet.); *Ex Parte S.D.*, 457 S.W.3d 168, 172 (Tex. App.—Amarillo 2015, no pet.); *S.J. v. State*, 438 S.W.3d 838, 845–46 (Tex. App.—Fort Worth 2014, no pet.); *Tex. Dep’t of Pub. Safety v. Dicken*, 415 S.W.3d 476, 481 (Tex. App.—San Antonio 2013, no pet.). Thus, a petitioner is not entitled to an expunction under article 55.01(a)(2) if the petitioner’s arrest resulted in a final conviction on any charge. See *Ex Parte Vega*, 510 S.W.3d at 551.

The record reflects that F.M.J. was arrested on four charges—all stemming from the same course of events that occurred on May 3, 2017. Three charges were dismissed pursuant to a plea agreement, and F.M.J. pleaded guilty to and was placed on community supervision for the remaining assault charge. F.M.J. does not contest that he pleaded guilty to or was placed on community supervision for one of the four offenses for which he was arrested. Thus, the charge resulted in a final conviction rendering F.M.J.’s arrest records ineligible for expunction. See TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2); *Ex Parte Vega*, 510 S.W.3d at 551 (providing that a petitioner is not entitled to expunction if

the petitioner received community supervision for any charge stemming from an arrest); see also *Ex parte De La Garza*, No. 13-16-00522-CV, 2018 WL 1417450, at *3 (Tex. App.—Corpus Christi–Edinburg March 22, 2018, no pet.) (mem. op.) (concluding that the 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); *Ex parte Davila*, No. 13-15-00202-CV, 2016 WL 872997, at *5 (Tex. App.—Corpus Christi–Edinburg Feb. 18, 2016, no pet.) (mem. op.) (providing that the statute is arrest-based and therefore does not permit expunction when the applicant pleaded guilty to one charge in exchange for a dismissal). Because F.M.J. failed to establish all conditions required for expunction under article 55.01(a)(2), F.M.J. was not entitled to an expunction as a matter of law. We sustain DPS’s second issue.³

III. CONCLUSION

We affirm the portion of the trial court’s order expunging F.M.J.’s criminal records relating to the March 19, 2013 arrest, reverse the portion of the trial court’s order expunging F.M.J.’s criminal records relating to the August 30, 2017 offenses, and render judgment denying expunction as it relates to the 2017 arrests.

JAIME TIJERINA,
Justice

Delivered and filed the
30th day of July, 2020.

³ This issue is dispositive, and we need not address DPS’s remaining issues. See TEX. R. APP. P. 47.1.