

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1996 SESSION

**FILED**  
May 24, 1996  
Cecil W. Crowson  
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

TERRENCE LIDDLE,

Appellant.

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C.C.A. NO. 01C01-9508-CR-00280

WILSON COUNTY

HON. J. O. BOND ,  
JUDGE

(Petition to Expunge Records)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**REVERSED AND REMANDED**

**JOHN H. PEAY,**  
Judge

## OPINION

The petitioner was indicted, in a single indictment, for six separate counts of aggravated sexual battery. He entered a guilty plea to count one, and as part of the plea agreement the remaining counts were nollied. The petitioner filed a petition requesting expungement of the public records in connection with the dismissed counts. This petition was denied by the trial court without a hearing.

In this appeal as of right, the petitioner contends that he is entitled, by statute, to have the public records expunged as to the five counts of the indictment that were dismissed. From our review of the record, the applicable statute, and case law, we agree with the petitioner and reverse the judgment of the trial court.

The trial court, in ruling on the petition, found that the petitioner was not entitled to expungement of the public records. This ruling appears to be based on the fact that the petitioner had pled guilty to count one of a multi count indictment. The State contends that because the nollied counts are “inextricably intertwined with the count to which the [petitioner] pled guilty,” destruction of the records is impossible. To accept the State’s argument is to allow the district attorney general to control a defendant’s right to expungement by indicting on multiple charges by separate counts in a single indictment.

Our statute provides that upon petition in the court where a nolle prosequi is entered, all public records shall be expunged. T.C.A. § 40-32-101(a)(3). This Court has previously held that a defendant is entitled to expungement and the trial judge is without discretion in denying this petition. See State v. McCary, 815 S.W.2d 220, 222 (Tenn. Crim. App. 1991). The expungement statute simply provides that when a “charge

has been dismissed . . . [it] shall, upon petition . . . be removed and destroyed.” T.C.A. § 40-32-101(a)(1). We find no indication that this applies only to indictments. It expressly applies to “charges”. Here, five “charges” were nollied.

We, therefore, reverse the judgment of the trial court in dismissing the petition and remand this matter to the trial court for expungement pursuant to the statute.

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JOHN H. PEAY, Judge

CONCUR:

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JOE B. JONES, Presiding Judge

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DAVID G. HAYES, Judge