

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 21, 2014 at Knoxville

STATE OF TENNESSEE v. TRISH WOOLEY

Appeal from the Circuit Court for Chester County
No. 03CR239 Nathan Pride, Judge

No. W2014-00556-CCA-R3-CD - Filed December 18, 2014

In February 2004, the Petitioner, Trish Wooley, pleaded guilty to three counts of theft of property valued under \$500 and two counts of vandalism under \$500, and further proceedings were deferred pursuant to Tennessee Code Annotated section 40-35-313. In September 2004, the trial court revoked judicial diversion, sentenced the Petitioner to concurrent terms of 11 months and 29 days on each conviction, and placed the Petitioner on supervised probation. In 2013, the Petitioner sought the expunction of her criminal convictions. The trial court granted the expunction. The State appealed. Upon review, we reverse the judgment of the trial court because the Petitioner was convicted of more than one offense in a multi-count indictment and therefore was not an “eligible petitioner” under Tennessee Code Annotated section 40-32-101(g)(1).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Reversed and Remanded**

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Senior Counsel; James G. Woodall, District Attorney General; and Jim Thompson, Assistant District Attorney General, for the appellant, State of Tennessee.

Trish Wooley, pro se, Henderson, Tennessee, Appellee.

OPINION

I. Background and Facts

This case arises from the Petitioner's oral motion¹ to expunge the record of her convictions. In November 2003, the Petitioner was indicted by the Chester County Grand Jury on the following offenses:

Count	Offense	Offense Date	Victim
1	Theft under \$500	July 12, 2003	Sheila Montgomery
2	Vandalism under \$500	July 12, 2003	Sheila Montgomery
3	Theft under \$500	August 23, 2003	Dwight Bingham
4	Theft under \$500	September 26, 2003	Ricky Ramey
5	Vandalism under \$500	September 26, 2003	Ricky Ramey

In February 2004, the Petitioner entered a conditional guilty plea pursuant to Tennessee Code Annotated section 40-35-313 to all counts. The Petitioner was placed on probation for 11 months and 29 days. The Petitioner was ordered to comply with the terms of probation, pay costs and fines, complete eight hours of community service work per month, and have no contact with the victims.

In September 2004, the trial court determined that the Petitioner had violated the conditions of judicial diversion by failing a drug screen and continuing to use drugs while on probation. The court revoked judicial diversion and ordered judgments of conviction to be entered. Additionally, the court ordered the Petitioner to serve 60 days in jail and complete in-patient drug treatment. After serving the sentence, the Petitioner completed a 28-day in-patient treatment program at Serenity House and then attended Hope Center for additional treatment. In February 2005, due to some "irregularities in the nature of [the Petitioner's] furloughs and work release" while at Hope Center, the Petitioner's probation

¹ At various places in the record, the pleading that brought the matter before the trial court is referred to as "pro se oral motion for expunction" (order signed March 19, 2014), "Motion or Petition" (form order signed March 13, 2013), "written Petition To Expunge Records of Conviction" (typed order signed March 13, 2013), "motion for expungement" (January 29, 2013 hearing), and "application" (various places). The record does not contain a separate, written pleading for expunction. The form order signed March 13, 2013 and entered on March 19, 2014, was completed in part by the Petitioner and was referred to by the trial judge as the "initial application."

was revoked and reinstated. The trial court added as a condition of her probation that the Petitioner successfully complete treatment at Hope Center. Ultimately, the Petitioner completed her sentence and was released from supervision.

January 29, 2013, Expunction Hearing

On January 29, 2013, the Petitioner appeared in court seeking to expunge the record of her convictions. The State was not notified prior to the hearing of the motion for expunction. Daniel J. Taylor, an attorney who previously represented the Petitioner and who helped her fill out the form expunction order, agreed to represent her *pro bono*. At the hearing, the State argued that the Petitioner was not eligible to have her convictions expunged because she had not met all the conditions of her supervised release and because her offenses did not occur at the same time or represent a single continuous criminal episode. After noting that this was a case of first impression, the trial court granted “the application.” The court stated it would wait until the “transcript” from the prior case was prepared before filing its order. Prematurely, on March 13, 2013, the court signed the form order that had been partially completed by the Petitioner as well as a typed order. Both orders granted expunction and were entered on March 19, 2013.

November 18, 2013, Expunction Hearing

On July 3, 2013, the State moved to vacate the March 2013 orders claiming they were never served with a copy of the order and that they were entered in direct contradiction of the court’s instructions. On November 18, 2013, a second hearing took place with the Petitioner represented by Anna Cash. The court noted that the March orders were “erroneously and incorrectly entered.” Several documents were to be late-filed as exhibits to the hearing: a letter from the Madison County Department of Community Corrections stating that the Petitioner had successfully completed her sentence, copies of the judgments of conviction, the Community Correction Revocation Order, the guilty plea form, and the indictments. The Petitioner asserted that because her charges had been filed in one indictment and pleaded at the same time, she was eligible for expunction of all offenses. The State argued she was not an “eligible petitioner.”

On March 19, 2014, the order from the November 18 hearing was entered. The March 2013 orders were vacated, and the State was allowed to introduce documents from the November 18 hearing into evidence. The court found that the Petitioner was an “eligible petitioner” and that she met all the requirements for expunction under Tennessee Code Annotated section 40-32-101(g)(2). Thereafter, the State filed a timely notice of appeal.

II. Analysis

Tennessee Code Annotated section 40-32-101(g), which became effective on July 1, 2012, allows certain nonviolent offenders to file a petition for expunction of their criminal records if they are otherwise eligible. The statute permits expunction of Class E felonies listed in subsection (1)(A) and misdemeanors that are not excluded by subsection (1)(B). See Tenn. Code Ann. § 40-32-101(g)(1)(A)-(B). Additionally, a petitioner must meet the following criteria to be eligible for an expunction:

(A) Except as provided in subdivision (g)(1)(D), at the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses in other states, other than the offense committed for which the petition for expunction is filed, provided, however, that any moving or non-moving traffic offense shall not be considered a criminal offense as used in this subdivision (g)(2)(A);

(B) At the time of the filing of the petition for expunction at least five (5) years have elapsed since the completion of the sentence imposed for the offense;

(C) The person has fulfilled all the requirements of the sentence imposed by the court in which the individual was convicted of the offense, including:

(I) Payment of all fines, restitution, court costs and other assessments;

(ii) Completion of any term of imprisonment or probation;

(iii) Meeting all conditions of supervised or unsupervised release; and

(iv) If so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year.

Tenn. Code Ann. § 40-32-101(g)(2)(A)-(C) (2014).

The State contends that the plain language of Tennessee Code Annotated section 40-32-101(g)(2)(A) prohibits expunction when a defendant is convicted of more than one offense in a multi-count indictment. We agree with the State.

Issues of statutory construction present questions of law that this court reviews *de novo* without a presumption of correctness. State v. Edmonson, 231 S.W.3d 925, 927 (Tenn. 2007). This Court should give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope. State v. Sherman, 266 S.W.3d 395, 401 (Tenn. 2008). When the language of a statute is clear and unambiguous, this Court “must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language and, in that instance, we enforce the language without reference to the broader statutory intent, legislative history, or other sources.” Carter v. Bell, 279 S.W.3d 560, 564 (Tenn. 2009).

Tennessee Code Annotated section 40-32-101(g)(2)(A) states that a person may be an “eligible petitioner” for expunction of his or her public records involving a criminal offense if “at the time of filing [of the petition], the person has never been convicted of any criminal offense ... other than the offense committed for which the petition for expunction is filed[.]” Id. In determining whether the Petitioner is an “eligible petitioner,” we must determine what is meant by “the offense for which the petition for expunction is filed.” Earlier this year, the General Assembly clarified the eligibility requirements by adding subsection (g)(1)(D), which states:

(D) A person who was convicted of more than one (1) of the offenses listed in subdivision (g)(1), if the conduct upon which each conviction is based occurred contemporaneously, at the same location, represented a single continuous criminal episode with a single criminal intent and all such convictions are eligible for expunction under this part. The offenses of a person who is an eligible petitioner under this subdivision (g)(1)(D) shall be considered a single offense for the purposes of this section so that the person is eligible for expunction consideration if all other requirements are met.

2014 Tenn. Pub. Acts. ch. 671, § 1.² Thus, a petitioner is not eligible for the expunction of

² The trial court did not have the benefit of this additional language when it ruled on the Petitioner’s application for expunction, because the act did not take effect until July 1, 2014. 2014 Tenn. Pub. Acts. ch. (continued...)

records of multiple criminal convictions unless the conduct upon which each conviction is based occurred contemporaneously, at the same location, and represented a single continuous criminal episode with a single criminal intent.

In this case, the record shows that at the time of her application for expunction, the Petitioner was convicted of more than one offense of a multi-count indictment. Moreover, the Petitioner's convictions cannot be considered a single offense under the statute because the indictment indicates that the conduct forming the basis of the convictions occurred on differing dates, was committed against different victims, and did not represent a single continuous criminal episode with a single criminal intent. See Tenn. Code Ann. § 40-32-101(g)(1)(D). Therefore, we conclude that the Petitioner was not an eligible petitioner for expungement under the statute, and that the trial court erred in granting the Petitioner's request.

III. Conclusion

For the foregoing reasons, the judgment of the trial court is reversed and remanded to the trial court for further proceedings consistent with this opinion.

ROBERT L. HOLLOWAY, JR., JUDGE

²(...continued)

671, § 1. Nevertheless, the act specifically provides that the amendment “shall apply to petitions for expunction pursuant to Tennessee Code Annotated, § 40-32-101(g), *filed prior to or after* [July 1, 2014].” *Id.*, § 5 (emphasis added).