

2018 IL App (2d) 170700-U
No. 2-17-0700
Order filed November 6, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CM-1246
)	
MICHAEL T. BURTON,)	Honorable
)	James J. Konetski,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied defendant's petition to expunge his arrest, as the arrest did not result in a disposition authorizing expungement.
- ¶ 2 Defendant, Michael T. Burton, appeals the trial court's denial of his petition to expunge his arrest for Class A misdemeanor unlawful display of a license plate (625ILCS 5/4-104(a)(4) (West 2014)), filed under the Illinois Criminal Identification Act (Act) (20 ILCS 2630/5.2 *et seq.* (West 2014)). Defendant pleaded guilty to an amended minor traffic charge of no proper evidence of vehicle registration (625 ILCS 5/3-701 (West 2014)). The trial court found that,

because the amended charge was of a minor traffic offense, it lacked authority to expunge the arrest. We affirm, because the record does not show that defendant's arrest ever led to an acquittal, dismissal, or release without charging, a conviction that was vacated or reversed, or an order of supervision or qualified probation that was successfully completed.

¶ 3

I. BACKGROUND

¶ 4 On April 30, 2014, defendant was arrested for unlawful display of a license plate. He later pleaded guilty to the amended minor traffic charge of no proper evidence of vehicle registration and was fined \$300. The sentencing order stated "Conviction is entered." There was no mention of probation or supervision. The docket notes do not mention probation or supervision. Illinois State Police records state that the disposition was a \$300 fine and do not mention probation or supervision. There is no transcript or substitute of the guilty plea and sentencing in the record.

¶ 5 On November 24, 2015, defendant filed a petition to expunge his arrest. He used a form on which he checked a box stating: "The Defendant /Petitioner was released without conviction following a sentence of court supervision *** and it has been TWO years since the successful discharge and dismissal from court supervision."

¶ 6 The State filed an objection, also using a form, alleging that defendant had been convicted of the criminal offense of possession of a firearm and that expungement was unauthorized because "[t]he arrest/charge was a minor traffic offense, unless the petitioner was arrested and released without charging." On January 11, 2016, the Illinois State Police also objected.

¶ 7 On April 3, 2017, the petition to expunge was denied. Defendant moved to reconsider, arguing that, while his conviction of a minor traffic offense could not be expunged, he should be entitled to expunge his arrest. He argued that the portion of the statute prohibiting expungement where a defendant had other convictions had been removed. He also noted statutory language

that “[o]rders of supervision or convictions for minor traffic offenses shall not affect a petitioner’s eligibility to expunge or seal records.” 20 ILCS 2630/5.2(a)(2) (West 2014). Defendant asked the court to essentially bifurcate the arrest from the conviction in order to expunge the arrest. The court found that it lacked authority to expunge the arrest and denied the motion. Defendant appeals.

¶ 8

II. ANALYSIS

¶ 9 Defendant first contends that the court erred because provisions of the Act prohibiting expungement when the defendant has other criminal convictions was removed from the Act by the time that he filed his petition. The State does not dispute this, but the matter is not dispositive on appeal. Instead, the pertinent issue involves interpretation of statutory language prohibiting expungement of minor traffic offenses, while also stating in another section that “[o]rders of supervision or convictions for minor traffic offenses shall not affect a petitioner’s eligibility to expunge.” *Id.* Defendant argues that he should be able to expunge his arrest despite being convicted of a minor traffic offense. The State contends that arrests cannot be separated from convictions. Neither defendant nor the State clearly addresses the fact that the record does not show that defendant’s arrest ever led to an acquittal, dismissal, or release without charging, a conviction that was vacated or reversed, or an order of supervision or qualified probation that was successfully completed.

¶ 10 “As a general matter, expungement of criminal records is a creature of legislative enactment.” (Internal quotation marks omitted.) *Wakefield v. Department of State Police*, 2013 IL App (5th) 120303, ¶ 5. “Consequently, an individual is eligible for expungement only when the legislature has authorized such expungement.” *Id.* “Likewise, a court cannot expunge a record of conviction, absent specific statutory authorization.” *Id.*

¶ 11 The Act provides:

“A petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest when each arrest or charge not initiated by arrest sought to be expunged resulted in: (i) acquittal, dismissal, or the petitioner’s release without charging, unless excluded by subsection (a)(3)(B); (ii) a conviction which was vacated or reversed, unless excluded by subsection (a)(3)(B); (iii) an order of supervision and such supervision was successfully completed by the petitioner, unless excluded by subsection (a)(3)(A) or (a)(3)(B); or (iv) an order of qualified probation (as defined in subsection (a)(1)(J)) and such probation was successfully completed by the petitioner.”
20 ILCS 2630/5.2(b)(1) (West 2014).

¶ 12 The ability to expunge is limited by various exclusions, including “the sealing or expungement of records of minor traffic offenses (as defined in subsection (a)(1)(G)), unless the petitioner was arrested and released without charging.” *Id.* § 5.2(a)(3)(B). However, the Act also provides that “[o]rders of supervision or convictions for minor traffic offenses shall not affect a petitioner’s eligibility to expunge or seal records pursuant to this Section.” *Id.* § 5.2(a)(2). There is no dispute that defendant’s conviction was of a minor traffic offense. See *id.* § 5.2(a)(1)(G) ; 625 ILCS 5/3-834(b) (West 2014).

¶ 13 The primary objective of statutory interpretation is to give effect to the intent of the legislature, and the most reliable indicator of legislative intent is the language of the statute given its plain, ordinary, and popularly understood meaning. *Gardner v. Mullins*, 234 Ill. 2d 503, 511 (2009). The statute “ ‘should be read as a whole with all relevant parts considered.’ ” *Id.* (quoting *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990)). “When the statutory language is clear, a reviewing court need not resort to extrinsic aids of construction, such as legislative

history.” *Northern Kane Educational Corp. v. Cambridge Lakes Education Ass’n*, 394 Ill. App. 3d 755, 758 (2009). “A court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent.” *Landheer v. Landheer*, 383 Ill. App. 3d 317, 321 (2008). Nonetheless, when reviewing a statute, we also consider the subject it addresses and the legislature’s apparent objective in enacting it, while presuming that the legislature did not intend to create absurd, inconvenient, or unjust results. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006). We review *de novo* matters of statutory interpretation. *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 370 (2007).

¶ 14 Here, defendant’s argument might have been rather compelling had he met the requirements of section 5.2(b)(1) for expungement by showing that his arrest led to an acquittal, dismissal, or release without charging, a conviction that was vacated or reversed, or an order of supervision or qualified probation that was successfully completed. However, while defendant checked a box on his petition asserting that he was released without conviction following a sentence of court supervision, the record belies that. Defendant’s arrest resulted in a charge that was amended and then led to a conviction. The charge was not dismissed, the conviction was not vacated or reversed, and nothing shows that defendant actually received or completed supervision or qualified probation. As a result, regardless of the language about minor traffic offenses in the Act, there is no authority to expunge the arrest under the plain language of the statute as his arrest did not satisfy the requirements of section 5.2(b)(1) for expungement. While section 5.2(a)(2) provides that “[o]rders of supervision or convictions for minor traffic offenses shall not affect a petitioner’s eligibility to expunge or seal records” (20 ILCS

2630/5.2(a)(2) (West 2014)), defendant still had to meet the requirements of section 5.2(b)(1) in order to be eligible to do so.

¶ 15 Had the legislature wished to allow expungement of arrests leading to convictions of amended charges, it could have done so. But it did not. Instead it required that the arrest led to an acquittal, dismissal, or release without charging, a conviction that was vacated or reversed, or an order of supervision or qualified probation that was successfully completed. Illinois has narrow criteria for expungement of arrest records, and we presume that these limited criteria are consistent with the government's interest in keeping a record of an individual's past convictions for the purposes of tracking recidivism, given that penalties often increase in severity with each added conviction. *Wakefield*, 2013 IL App (5th) 120303, ¶ 6. Because defendant failed to show that his arrest was eligible for expungement under section 5.2(a)(2), the trial court properly denied his petition to expunge.

¶ 16

III. CONCLUSION

¶ 17 The trial court was without authority to expunge defendant's arrest. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.