

No. 1-16-0400

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
STEVEN IVY,)	
)	No. 00 CR 24242-01
Defendant-Appellee,)	
)	
_____)	
ILLINOIS STATE POLICE,)	Honorable
)	Evelyn B. Clay and
Appellant.)	Leroy K. Martin,
)	Judges Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed in part and reversed in part. Juvenile Court Act authorized sealing but not expungement of records of defendant’s adjudication of delinquency for aggravated criminal sexual assault.

¶ 2 At defendant Steven Ivy’s request, the circuit court ordered the Illinois State Police (ISP) to “seal” and “purge *** from its computer system” the records of defendant’s 2002 adjudication of delinquency for aggravated criminal sexual assault. ISP appeals from that order, claiming the

circuit court lacked statutory authority to order the records sealed or expunged. We affirm the sealing provision of the circuit court's order and reverse the expungement provision.

¶ 3

BACKGROUND

¶ 4 In September 2000, when he was 17 years old, defendant was arrested and charged with nine counts of felony sex offenses against a minor. In August 2002, when he was 19 years old, defendant was adjudicated delinquent on one count of aggravated criminal sexual assault, against a minor between 9 and 13 years of age. 720 ILCS 5/12-14(B)-(II) (West 2000), renumbered as 720 ILCS 5/11-1.30 (eff. July 1, 2011). (Although defendant's case was captioned as a criminal matter, rather than a juvenile one, the records maintained by ISP, and included in the common-law record on appeal, confirm that this was an adjudication, not an adult conviction.) Defendant was sentenced to 24 months on probation, and 12 months on home confinement, to run concurrently. The State *nol prossed* the remaining charges.

¶ 5 As required by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Criminal Identification Act (20 ILCS 2630/1 (West 2014)), ISP has since maintained records of defendant's case. See 705 ILCS 405/5-901(11); 20 ILCS 2630/2, 5.2. Those records include information regarding his arrest, his adjudication and sentence for aggravated criminal sexual assault, and the *nol pros* of the other charged offenses.

¶ 6 In May 2015, defendant petitioned the circuit court for an order directing ISP to seal those records. At the hearing in the circuit court, defendant was represented by Assistant Public Defender (APD) Cynthia Bauman. Defendant's petition was never served on ISP, and as a result, ISP did not appear. After the hearing, on July 10, 2015, the circuit court entered the following order: "The Illinois State Police Department shall SEAL the records and file regarding the above captioned case [i.e., 00 CR 24242-01] and PURGE it from its computer system."

¶ 7 The circuit court's docket indicates that in August 2015, defendant also filed a motion "to get a release so that the Illinois State Police may issue a FOID card."

¶ 8 After receiving a copy of the circuit court's order, ISP filed a motion to reconsider and vacate. (ISP's motion is missing from the record on appeal, but ISP provided a file-stamped copy in the appendix to its brief. We may take judicial notice of motions and pleadings filed in the circuit court. *Turner-El v. West*, 349 Ill. App. 3d 475, 481 (2004)). ISP contended that the Criminal Identification Act did not authorize the circuit court to seal or expunge the records of defendant's case, because it involved a sex offense against a minor victim.

¶ 9 When the circuit court heard argument on ISP's motion, neither APD Bauman (who was served) nor defendant appeared. Courtney Kelleves, an attorney from Cabrini Green Legal Aid, "stepp[ed] up as a friend of the Court." Ms. Kelleves stated that she had tried to contact APD Bauman regarding the motion and hearing, but her calls were never returned.

¶ 10 Ms. Kelleves noted that defendant was adjudicated delinquent, not convicted as an adult. Thus, she argued, the Juvenile Court Act, rather than the Criminal Identification Act, controlled whether his records could be sealed or expunged. And pursuant to the Juvenile Court Act, she continued, defendant's records "should not be expunged, but the sealing order should stand." Counsel for ISP responded, "It looks like Counsel is correct." The circuit court immediately denied ISP's motion, without giving any explanation for that ruling.

¶ 11 ISP timely appealed. On February 19, 2016, the circuit court ordered APD Bauman to represent defendant on appeal. We granted ISP several extensions as it tried to locate documents that were missing from the record prepared by the clerk's office. ISP filed its opening brief, and served APD Bauman, on January 12, 2017. About a year and a half passed, with no brief or

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motion for extension of time filed on defendant's behalf. On July 17, 2018, we allowed ISP's motion to decide the appeal based solely on its opening brief.

¶ 12 On August 10, 2018, APD Diane Slocum, of the Legal Resources Division of the Cook County Public Defender's Office, filed a motion to reconsider our order. APD Slocum stated that (at some unspecified time) she had been assigned to represent defendant and was currently "working on" his brief. We allowed APD Slocum's motion and set a due date of September 28, 2018, for defendant's response brief.

¶ 13 To date, no response brief has been filed. Given the already excessive delays in briefing this case, and the straightforward legal questions it presents, further delay would not be justified. Thus, we decide the case based solely on ISP's opening brief.

¶ 14 ANALYSIS

¶ 15 ISP argues that the circuit court had no authority to order it to expunge or seal the records of defendant's adjudication, because neither action was authorized by the relevant provisions of the Criminal Identification Act or the Juvenile Court Act.

¶ 16 The circuit court has no inherent authority to expunge the record of a criminal conviction or adjudication of delinquency; rather, that authority is created by statute, and is thus limited by the authorization expressly provided by the legislature. *People v. Howard*, 233 Ill. 2d 213, 217-18 (2009); *People v. Bushnell*, 101 Ill. 2d 261, 268 (1984); *Wakefield v. Dep't of State Police*, 2013 IL App (5th) 120303, ¶ 5; *People v. Holland*, 374 Ill. App. 3d 121, 125 (2007). These same principles apply to petitions to seal (as opposed to expunge) a criminal record. See, e.g., *Duncan v. People ex rel. Brady*, 2013 IL App (3d) 120044, ¶¶ 12-18.

¶ 17 Whether the circuit court had authority to order a record sealed or expunged thus presents a question of statutory interpretation we review *de novo*. *Id.* ¶ 12.

¶ 18 We begin with two preliminary points. First, we must interpret the circuit court’s order, which directed ISP to “SEAL the records and file regarding [defendant’s adjudication] and PURGE it from its computer system.” The sealing provision is clear enough, as the term “seal” is defined by statute. 20 ILCS 2630/5.2(a)(1)(K) (“seal” means to “physically and electronically maintain records” but make them “unavailable without a court order”). But neither the Juvenile Court Act nor the Criminal Identification Act uses the term “purge.” Both ISP and the legal aid attorney understood this as an expungement order when addressing ISP’s motion in the circuit court, and the circuit court never corrected that understanding. And in its ordinary usage, to “purge” means “to get rid of.” See <https://www.merriam-webster.com/dictionary/purge> (last visited January 23, 2019). To “expunge,” as defined by statute, means to “physically destroy the record” and/or “obliterate the petitioner’s name from any official index or public record.” 20 ILCS 2630/5.2(a)(1)(E); 705 ILCS 405/5-915(0.05). Thus, we agree that the order to “purge” defendant’s records from ISP’s electronic files is akin to an order to expunge them. We will treat it as such.

¶ 19 Second, in its brief on appeal, ISP analyzed the circuit court’s order under the provisions of the Criminal Identification Act and the Juvenile Court Act that were in effect at the time of the proceedings below. Some of those provisions, particularly in the Juvenile Court Act, have been amended since ISP filed its brief. See, *e.g.*, 705 ILCS 405/5-915(2) (West 2018), amended by P.A. 100-1162 (eff. December 20, 2018) (amending expungement-by-petition provisions of Juvenile Court Act). But since defendant has failed to file a brief, we have not been presented with any analysis of those amended provisions. Nor have we been presented with any argument that those amended provisions apply to a case that was pending on direct appeal when the

amendments took effect. Thus, we likewise will apply the statutory provisions that were in effect when the circuit court granted defendant's petition.

¶ 20 With these points in mind, we turn to the merits of ISP's arguments. Because sealing and expungement are distinct remedies, we address these provisions of the order separately. We begin with expungement, the more significant of the remedies granted by the circuit court.

¶ 21 The expungement provisions of the Criminal Identification Act are set forth in section 5.2 of that act. 20 ILCS 2630/5.2 (West 2014). (No relevant amendments to these provisions have been enacted since the proceedings below.) These expungement provisions generally apply to (adult) "convictions," not (juvenile) adjudications of delinquency. *Id.* §§ 5.2(a)(1)(C), (a)(3)(A), (a)(3)(C), (b)(1)(ii), (b)(1.5), (b)(4)-(6), (b)(8); see also 705 ILCS 405/1-8(A) ("A juvenile adjudication shall never be considered a conviction.").

¶ 22 The one provision in section 5.2 that does apply to juveniles requires that "[t]hose records maintained by [ISP] for persons arrested prior to their 17th birthday shall be expunged as provided in Section 5-915 of the Juvenile Court Act of 1987." 20 ILCS 2630/5.2(b)(3). This provision does not apply to defendant, since he was arrested after his 17th birthday. And even if it did apply, it simply incorporates by reference the expungement provisions of the Juvenile Court Act. Thus, the Juvenile Court Act is the controlling statute in the expungement context.

¶ 23 Section 5-915 of the Juvenile Court Act provides for two types of expungement: automatic expungement, and expungement by petition. 705 ILCS 405/5-915 (West 2014) (eff. January 1, 2015 to December 31, 2016). Defendant's records were not expunged automatically. Nor were they eligible to be. Automatic expungement is addressed in subsections (1.5) and (1.6). Subsection (1.5) applies only to "law enforcement records" pertaining to an arrest that did not result in a delinquency petition being filed. *Id.* § 5-915(1.5)(a); see *id.* § 5-915(0.05) (defining

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“law enforcement record”). Here, a delinquency petition was filed against defendant. And both subsections apply only when the minor committed an “eligible offense.” *Id.* §§ 5-915(1.5)(a), (1.6). Aggravated criminal sexual assault is not an eligible offense, because it is both “a Class 2 felony or higher offense” and “an offense under Section *** 12-14 *** of the Criminal Code of 1961.” *Id.* § 5-915(1.8); see 720 ILCS 5/12-14(B)-(II) (West 2000), renumbered as 720 ILCS 5/11-1.30 (eff. July 1, 2011) (aggravated criminal sexual assault).

¶ 24 Subsections (1) and (2) of section 5-915 provide for expungement by petition in certain enumerated circumstances. Subsection (1) permits expungement by petition when the minor was either (a) arrested, but no petition for delinquency was filed; (b) found not delinquent of the charged offense; (c) placed under an order of supervision that has since been successfully terminated; or (d) adjudicated for an offense that would be a Class B misdemeanor or lesser offense if committed by an adult. 705 ILCS 5-915(1)(a)-(d) (West 2014). Here, none of these enumerated circumstances apply: Defendant was charged, found delinquent, and sentenced to probation; and his offense would have been a Class X felony if it had been committed by an adult.

¶ 25 Subsection (2) also specifically bars expungement of the juvenile court records of any adjudication that was “based upon *** sex offenses which would be felonies if committed by an adult.” *Id.* § 5-915(2); see *In re M.T.*, 221 Ill. 2d 517, 529 (2006). Defendant committed a sex offense, and as we just noted, it would have been a Class X felony if it had been committed by an adult.

¶ 26 The only other expungement provision in the Juvenile Court Act is found in section 5-622, which applies to a minor “charged with a misdemeanor as a first offense.” 705 ILCS 405/5-

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622, repealed by P.A. 100-285 (eff. Jan. 1, 2018). Because defendant was charged with a felony, this provision does not apply to him.

¶ 27 In sum, the Juvenile Court Act did not authorize the expungement provision of the circuit court's order. That provision must be reversed.

¶ 28 We turn now to the sealing provision. The Criminal Identification Act "authorizes the sealing of criminal records of adults and of minors prosecuted as adults," but it says nothing of the records of juvenile adjudications. 20 ILCS 2630/5.2(c)(1). Rather, the controlling statute, as in the expungement context, is section 5-915 of the Juvenile Court Act. At the time the trial court entered its order, section 5-915(5) provided that "[r]ecords which have not been expunged are sealed, and may be obtained only under the provisions of Section 5-901, 5-905 and 5-915." 705 ILCS 405/5-915(5) (West 2014). Thus, as the legal aid attorney noted at the hearing below, defendant's records were not entitled to expungement, "but the sealing order should stand."

¶ 29 We note, in closing, that nothing we have said here precludes defendant from filing a new petition for expungement in the circuit court under the recently amended provisions of the Juvenile Court Act. See 705 ILCS 405/5-915, amended by P.A. 100-1162 (eff. December 20, 2018). We express no view as to whether the amended provisions authorize expungement of defendant's records.

¶ 30 CONCLUSION

¶ 31 For these reasons, we affirm the sealing provision of the circuit court's order and reverse the expungement provision.

¶ 32 Affirmed in part and reversed in part.