Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00457-CV

EX PARTE C.D.R.

From the 63rd Judicial District Court, Val Verde County, Texas
Trial Court No. 33751
Honorable Enrique Fernandez, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 24, 2020

AFFIRMED

C.D.R. appeals the trial court's denial of his petition for expunction of the records related to his arrest for Driving While Intoxicated. We affirm the trial court's order.

BACKGROUND

On October 2, 2012, C.D.R. was arrested for the Class B misdemeanor offense of Driving While Intoxicated. *See* TEX. PENAL CODE ANN. § 49.04. He was never charged with the DWI, but was charged with committing the traffic offense of Failure to Maintain a Single Lane, a Class C misdemeanor, on or about October 2, 2012. *See* TEX. TRANSP. CODE ANN. § 545.060. C.D.R. later pled guilty and was convicted of the traffic offense. His punishment consisted of a fine plus court costs.

On March 1, 2018, C.D.R. filed a petition for expunction of all records and files related to his October 2, 2012 arrest for DWI under article 55.01(a)(2). *See* TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2). In his petition, C.D.R. asserted he was entitled to an expunction because: (1) no misdemeanor or felony charge arising from the arrest was presented against him and any waiting period had expired; (2) he had been released and the charge, if any, did not result in a final conviction and there was no court-ordered community supervision for any offense other than a Class C misdemeanor; and (3) the two-year statute of limitations had passed. The Texas Department of Public Safety filed an answer opposing the expunction, asserting C.D.R. did not meet the statutory requirements because his conviction for Failure to Maintain a Single Lane arose out of the same arrest as the DWI. After a hearing, the trial court denied C.D.R's petition for expunction. C.D.R. appealed.

ANALYSIS

Expunction is a statutory privilege, not a right. *In re State Bar*, 440 S.W.3d 621, 624 (Tex. 2014). The petitioner bears the burden to prove compliance with all the mandatory statutory requirements and an expunction may not be granted if he fails to do so. *Tex. Dep't Public Safety v. Dicken*, 415 S.W.3d 476, 479 (Tex. App.—San Antonio 2013, no pet.). We review a trial court's ruling on a petition for expunction for an abuse of discretion. *State v. T.S.N.*, 547 S.W.3d 617, 620 (Tex. 2018). Under that standard, we afford no deference to the trial court's legal determinations because a trial court has no discretion in deciding what the law is or in applying the law to the facts. *Id.* If the trial court's ruling on a petition for expunction hinges on statutory interpretation, it is reviewed *de novo* as a question of law. *Id.*

C.D.R. sought to expunge the records and files related to his October 2, 2012 arrest for DWI under article 55.01(a)(2), which authorizes an expunction when no final conviction arose from the arrest and certain other criteria are met. TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2).

On appeal, C.D.R. argues he is entitled to an expunction under article 55.01(a)(2) because his conviction for the traffic offense was not "based on" the same arrest as the DWI. He contends the record does not establish any connection between the two offenses and there is nothing but the circumstantial evidence of the same "on or about" date to connect the traffic offense to the arrest for DWI.

We disagree. A copy of C.D.R.'s certified criminal history was attached to his petition for expunction. Under "offense data," it lists a "driving while intoxicated, Class B misdemeanor" on October 2, 2012 for which disposition was "held." Directly below, under "prosecution data," it states "reduced to Class C." In addition, the complaint and final judgment for the traffic offense attached to the Department's answer show that C.D.R. was charged with the traffic offense of Failure to Maintain a Single Lane which occurred "on or about October 2, 2012," and that he pled guilty and was convicted of that offense, a Class C misdemeanor, on February 28, 2013. Thus, in addition to the traffic offense having the same "on or about" date as the DWI arrest, the documents presented to the trial court indicated the Class B misdemeanor DWI was "reduced to" a Class C misdemeanor, which matches the final judgment of conviction for the traffic offense. In denying the petition for expunction, the trial court reasoned that the arrest "did result in a final conviction" and "[i]t was a lesser or reduced to failure to maintain a single lane." The record supports the trial court's ruling. C.D.R. failed to meet his burden to show that his conviction for the traffic offense did not arise out of the same arrest as the DWI he sought to expunge. *See In re J.O.*, 353 S.W.3d 291, 293-94 (Tex. App.—El Paso 2011, no pet.) (arrest for possession of marijuana "resulted" in a final conviction when the petitioner entered a guilty plea to a reduced charge of disorderly conduct); *see also Rodriguez v. State*, 224 S.W.3d 783, 785 (Tex. App.—Eastland 2007, no pet.) (petitioner failed to meet article 55.01(a)(2)'s requirement of no final conviction arising out of the arrest where record showed Class B misdemeanor theft charge was dismissed but petitioner pled

nolo and was convicted of Class C misdemeanor bad check offense). "The expunction statute was not intended to allow an individual who is arrested, and enters a plea of guilty arising from the arrest, to expunge the arrest . . . ." *Dicken*, 415 S.W.3d at 480-81.

C.D.R. also argues that because his final conviction was for a Class C misdemeanor it is exempted from consideration under the exception stated in article 55.01(a)(2). However, C.D.R. misreads the statute as requiring him to show that he has "not been convicted ***or*** placed on community supervision 'for any offense other than a Class C misdemeanor.'" (emphasis added). The text of the statute requires a petitioner to show that he "has been released and the charge, if any, has not resulted in a final conviction and is no longer pending ***and*** there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor, provided that . . . ." TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2). C.D.R.'s argument is based on the false premise that the exception for a Class C misdemeanor applies to a final conviction, rather than to an order for community supervision. Under the plain language of the statute, reading it as a whole and giving effect to punctuation, the exception for a Class C misdemeanor modifies the phrase "no court-ordered community supervision," not the phrase "final conviction." *See T.S.N.*, 547 S.W.3d at 620-21 (under principles of statutory construction, courts construe a statute as a "contextual whole" and according to the plain meaning of the statutory language unless a different meaning is apparent from the context or the plain meaning leads to an absurd result). The exception for a Class C misdemeanor does not apply in this case because C.D.R. did not receive community supervision for the traffic offense.

We conclude that C.D.R. failed to show that he met all the statutory requirements of article 55.01(a)(2) and was therefore not entitled to an expunction as a matter of law. Therefore, we hold the trial court did not abuse its discretion in denying C.D.R.'s petition for expunction of the records related to the DWI arrest.

CONCLUSION

Based on the foregoing reasons, we overrule C.D.R.'s issue on appeal and affirm the trial court's order denying his petition for expunction.

Liza A. Rodriguez, Justice