



NUMBER 13-18-00657-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

EX PARTE W.T.M.

**On appeal from the 377th District Court
of Victoria County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Tijerina**

Appellant the Texas Department of Public Safety (the Department) appeals the trial court's order expunging all files and records relating to the arrest of appellee W.T.M. *See generally* TEX. CODE CRIM. PROC. ANN. arts. 55.01–.06. By three issues, the Department contends that (1) the trial court misinterpreted the expunction statute in granting the expunction, (2) W.T.M. failed to present legally sufficient evidence showing he was entitled to an expunction, and (3) there is no reporter's record of the expunction hearing which requires reversal and remand. We reverse and render.

I. BACKGROUND

On January 24, 2015, W.T.M. was arrested for possession of marihuana, a Class B misdemeanor, possession of a controlled substance in penalty group three, a Class A misdemeanor, and tampering/fabricating physical evidence with intent to impair, a third-degree felony. See TEX. HEALTH & SAFETY CODE ANN. § 481.121(b)(1), .104, TEX. PENAL CODE ANN. § 37.09. The State rejected the Class A possession of a controlled substance charge¹, and it dismissed the tampering with evidence charge.² W.T.M. pleaded guilty to the Class B possession of marihuana charge. The trial court deferred adjudication and placed W.T.M. on community supervision for a period of six months. W.T.M. completed his community supervision on October 19, 2016.

On October 30, 2018, W.T.M. filed a petition for expunction of the tampering with evidence charge pursuant to article 55.01(a)(2) of the Texas Code of Criminal Procedure, which the trial court granted on November 28, 2018.³ See TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2). This appeal followed.

II. STANDARD OF REVIEW AND APPLICABLE LAW

We review a trial court's expunction order under an abuse of discretion standard. *Ex Parte Vega*, 510 S.W.3d 544, 547 (Tex. App.—Corpus Christi–Edinburg 2016, no pet.); *Heine v. Tex. Dep't of Pub. Safety*, 92 S.W.3d 642, 646 (Tex. App.—Austin 2002, pet. denied). The trial court commits reversible error if it does not strictly comply with the

¹ The State did not proceed with the charge because W.T.M. had a prescription.

² It appears from the record that the tampering with evidence charge was refiled with the possession of marihuana charge only.

³ The trial court held a hearing on November 27, 2018, but according to the court reporter's affidavit, a record was not made.

statutory procedures for expunction. *Ex parte Stiles*, 958 S.W.2d 414, 418 (Tex. App.—Waco 1997, pet. denied); see also *Tex. Dep’t. of Pub. Safety v. Zuniga*, No. 13–09–00611–CV, 2010 WL 2543935, at *2 (Tex. App.—Corpus Christi–Edinburg Jun. 24, 2010, no pet.) (mem. op.).

A person who was arrested for a criminal offense and who meets other statutory conditions may file a petition for expunction to have all records and files related to that arrest removed from the State’s records. TEX. CODE CRIM. PROC. ANN. art. 55.01; *Vega*, 510 S.W.3d at 548. A petitioner who fails to satisfy any of the statutory requirements is not entitled to expunction as a matter of law. *Collin Cty. Dist. Attorney’s Office v. Fourrier*, 453 S.W.3d 536, 539 (Tex. App.—Dallas 2014, no pet.). Thus, a trial court abuses its discretion if it grants an expunction when the petitioner has not met all statutory conditions. *Vega*, 510 S.W.3d at 548. Trial courts possess “no equitable power to permit expunction where it is not allowed” by statute. *Id.* at 547.

Article 55.01(a)(2)(A) of the Texas Code of Criminal Procedure governs when a petitioner has a right to expunction of an arrest due to dismissal of the charge. TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(2)(A). Article 55.01(a)(2) sets out that a person who has been placed under arrest of either a felony or a misdemeanor may have records and files relating to the arrest expunged if the person proves that (1) the person was released, (2) the charge, if any, did not result in a final conviction, (3) the charge, if any, is no longer pending, and (4) there was no court-ordered community supervision under article 42.12 of the Texas Code of Criminal Procedure. *Id.* Court-ordered community supervision includes deferred-adjudication community supervision. *Tex. Dep’t of Pub. Safety v. Nail*, 305 S.W.3d 673, 681 (Tex. App.—Austin 2010, no pet.); *Tex. Dep’t of Pub. Safety v.*

Butler, 941 S.W.2d 318, 321 (Tex. App.—Corpus Christi–Edinburg 1997, no writ); *State v. Knight*, 813 S.W.2d 210, 212 (Tex. App.—Houston [14th Dist.] 1991, no writ) (explaining that the expunction statute is “not intended to allow a person who is arrested, pleads guilty to an offense, and receives probation after pleading guilty, to expunge his record”).

All charges stemming from an arrest must meet the article’s requirements for a petitioner to be entitled to an expunction. *Ex parte Vega*, 510 S.W.3d at 547; *S.J. v. State*, 438 S.W.3d 838, 845 (Tex. App.—Fort Worth 2014, no pet.). Expunction under 55.01(a)(2) is not available when the dismissal of the charged offense results in a final conviction of any charge. *Ve v. Travis Cty. Dist. Attorney*, 500 S.W.3d 652, 656 (Tex. App.—Austin 2016, no pet.); *see also Ex parte De La Garza*, No. 13–16–00522–CV, 2018 WL 1417450, at *2 (Tex. App.—Corpus Christi–Edinburg Mar. 22, 2018, no pet.) (mem. op.). Stated another way, “individual charges within an arrest” are not subject to expunction, and the trial court may only grant the expunction of an arrest if every offense *arising from* that arrest meets the requirements of article 55.01. *S.J.*, 438 S.W.3d at 845. This includes a charge that results in deferred adjudication community supervision. *Id.* at 846.

III. DISCUSSION

By its first issue, the Department contends that W.T.M. failed to establish that the charge did not result in a final conviction because W.T.M. pleaded guilty to one of the charges, and the trial court placed him on community supervision. We agree with the Department.

In *State v. T.S.N.*, the Texas Supreme Court held that the petitioner was entitled

to expunction pursuant to article 55.01(a)(1) because the petitioner had been acquitted of one of the offenses, even though she pleaded guilty to another of the offenses. 547 S.W.3d 617, 623 (Tex. 2018); see TEX. CODE CRIM. PROC. ANN. art. 55.01(a)(1) (setting out that a petitioner may be entitled to expunction of all records and files relating to the arrest if the petitioner is tried for the offense for which the person was arrested is acquitted, convicted and subsequently pardoned or “otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person’s actual innocence”). The *T.S.N.* court clarified, however, that “[t]he expunction scheme under subsection (a)(2) [was] not at issue, and [it] express[ed] no opinion about it. See *id.* Here, W.T.M. did not claim he was entitled to expunction pursuant to article 55.01(a)(1) because he was acquitted or pardoned of the tampering with evidence charge. Instead, W.T.M. sought expunction of his records pursuant to article 55.01(a)(2). Thus, our Court’s analysis pursuant to article 55.01(a)(2) is not implicated by *T.S.N.*, and *T.S.N.* has no bearing on our analysis under these facts. See *id.*

The Department claims that the State dropped the tampering with evidence charge in exchange for W.T.M.’s plea of guilty to possession of marihuana charge. However, the plea papers do not indicate that this occurred. Nonetheless, “where an arrest is made pursuant to a charge or charges for multiple related offenses as part of a criminal episode, the statute just as clearly does not entitle the person to expunction of any files and records relating to the episode if the person either is convicted of one of the offenses or charges for one of the offenses remain pending.” *Id.* at 621. Here, it is clear from the record that W.T.M. was arrested pursuant to charges for multiple related offenses as part of a criminal

episode, pleaded guilty to one of those charges, and placed on community supervision; thus, clearly he is not entitled to expunction of any files and records relating to that episode. *See id.*; *Ex parte Vega*, 510 S.W.3d at 547; *S.J.*, 438 S.W.3d at 846.

We conclude that W.T.M. failed to meet the requirements of article 55.01(a)(2) because the record shows that, although the tampering with evidence charge was dismissed, W.T.M. pleaded guilty to the charge of possession of marihuana, an offense which arose out of the same criminal transaction, and he received deferred adjudication community supervision. *See Ex parte Vega*, 510 S.W.3d at 547; *S.J.*, 438 S.W.3d at 846 (concluding that the appellant was not entitled to expunction of arrest records because he received court-ordered community supervision for a charge arising from the arrest); *see also Tex. Dep't of Pub. Safety v. J.B.R.*, 510 S.W.3d 610, 618 (Tex. App.—El Paso 2016, no pet.) (explaining that the petitioner “ was not entitled to expunction under Article 55.01(a)(2) because he failed to adduce legally sufficient evidence that he did not serve a term of court-ordered community supervision under Article 42.12 for the Class A misdemeanor offense of assault); *Tex. Dep't of Pub. Safety v. Crawford*, No. 12-12-00072-CV, 2013 WL 776618, at *2 (Tex. App.—Tyler Feb. 28, 2013, no pet.) (mem. op.) (explaining that “the public policy of expunctions, which is, as we have stated, to prevent those who have pleaded guilty and received deferred adjudication community supervision from expunging the offense”). Thus, W.T.M.’s arrest records are ineligible for expunction. *See Ex parte Vega*, 510 S.W.3d at 547; *S.J.*, 438 S.W.3d at 845; *Rodriguez v. State*, 224 S.W.3d 783, 785 (Tex. App.—Eastland 2007, no pet.) (concluding that the appellant failed to meet the requirements of expunction under article 55.01(a)(2) because the records showed that although a theft charge was dismissed, the appellant was convicted of a

Class C offense for issuing a bad check); *see also Ex parte P.D.H.*, 823 S.W.2d 791, 793 (Tex. App.—Houston [14th Dist.] 1992, no writ) (“In the instant case, appellee pled guilty and by doing so admitted that she was not wrongfully arrested.”); *Ex parte De La Garza*, 2018 WL 1417450, at *3 (concluding that the expunction petitioner failed to meet the requirements of article 55.01(a)(2) because the record showed that although the petitioner’s assault charge had been dismissed, as part of his plea agreement with the State, the petitioner was convicted of a Class C offense for disorderly conduct). Therefore, the trial court abused its discretion when it granted W.T.M.’s expunction. *Ex Parte Vega*, 510 S.W.3d at 547. We sustain the Department’s first issue.

IV. CONCLUSION

We reverse the trial court’s judgment and render judgment that W.T.M.’s petition for expunction is denied.⁴

JAIME TIJERINA,
Justice

Delivered and filed the
11th day of June, 2020.

⁴ As it is not dispositive of this appeal, we need not address the Department’s other issues. See TEX. R. APP. P. 47.1.