COURT OF APPEALS
DECISION
DATED AND FILED

December 4, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1520-CR **Cir. Ct. No. 2013CM3**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW R. GEURTS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County: STEVEN G. BAUER, Judge. *Affirmed*.

¶1 BLANCHARD, P.J.[1] Andrew Geurts appeals an order of the circuit court dismissing his postjudgment motion requesting that the circuit court

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

expunge from court records all references to a case in which Geurts entered a plea of no contest to disorderly conduct, after Geurts successfully fulfilled his obligations under a deferred prosecution agreement with the State to resolve the charge. The State fulfilled its side of the bargain by dismissing the disorderly conduct charge, but court records reflecting the charge, the no contest plea, and resolution of the case remain publicly available. The circuit court did not reach the question of whether the court would exercise its discretion to expunge Geurts's record, because the court concluded that Geurts was not eligible for expunction under the expunction statute, WIS. STAT. § 973.015, and that the court lacked inherent or equitable authority to expunge his record under the facts here. Geurts appeals. For the following reasons, I affirm.

BACKGROUND

¶2 The following facts are not in dispute. The State charged that Geurts committed the offense of disorderly conduct with a domestic abuse enhancer at a time when he was younger than 25. Negotiations led to the State and Geurts entering into a written agreement, filed with the circuit court, under which the State would defer prosecution of the charge.

¶3 Under the agreement, Geurts's obligations included his commitment to enter a plea of guilty or no contest to the charge. The State reserved the right to move the court to revoke the agreement if Geurts violated any of its terms, and, if the agreement were revoked, "then the Court will find [Geurts] guilty of the offense as charged and proceed to sentence the defendant." On the other hand, the agreement provided, if Geurts complied with all conditions of the agreement, the court "shall dismiss with prejudice the action herein 12 months after this agreement is executed and approved by the Court."

¶4 Consistent with the agreement, Geurts entered a plea of no contest to the charge. The court accepted the plea but deferred a finding of guilt pursuant to the deferred prosecution agreement. The court explained that, if Guerts satisfied the terms of the agreement, "this case gets dismissed at the end of it." Thus, pursuant to the joint request of the parties, the court stayed entry of a judgment of conviction in order to allow Geurts a chance to earn the right to dismissal of the action without a conviction.

¶5 At this hearing, Geurts's attorney sought to "reserve" his "rights" to request that the court consider "expunging the file" after Geurts satisfied his obligations under the agreement. The State objected that the court lacked authority "to expunge a dismissed charge." The court stated that "at this point" the court "is going to allow the defendant to keep that issue open and I'll entertain any arguments that you want to make at the time that he completes the deferred prosecution agreement…. I'll reserve [Geurts's] right to make that argument, okay?" The court stated that the State's position "would be" the same as the court's view, "but I've got an open mind and I'm willing to listen to what anybody tells me, so I'm willing to hear it." While neither party nor the court referred to it explicitly, it is clear that this discussion involved expunction under the terms of WIS. STAT. § 973.015.

¶6 Approximately one year later, on a motion of the State asserting that Geurts had successfully completed the terms of the agreement, the court dismissed the charge against Geurts. Geurts then filed a motion "appl[ying] for expungement pursuant to s. 973.015." In a memorandum accompanying this motion, Geurts argued that the court should grant expunction pursuant to WIS. STAT. § 973.015, or, alternatively, that the circuit court should use its "inherent authority" to "order expungement in this matter."

¶7 The circuit court denied the motion. The court concluded that WIS. STAT. § 973.015 did not apply because Geurts "has not been found guilty in this case." As to the court's inherent authority to expunge its own records, the court explained that "th[is] inherent authority arises from an invasion of legally protected rights," and found that Geurts had failed to identify a legally protected right. On this basis, the court concluded that it "lacks the authority" to expunge Geurts's record. Geurts now appeals.

DISCUSSION

¶8 I first address potential application of WIS. STAT. § 973.015, then turn to the inherent and equitable authority arguments.

I. WISCONSIN STAT. § 973.015

¶9 The only questions posed here call for statutory interpretation, which are reviewed de novo. *See* ***Rogers v. Rogers***, 2007 WI App 50, ¶7, 300 Wis. 2d 532, 731 N.W.2d 347.

¶10 "[S]tatutory interpretation 'begins with the language of the statute,'" and if the meaning of that language is plain, the inquiry stops there. ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoted source omitted). "Statutory language is given its common, ordinary, and accepted meaning," and interpreted in the context of the statute as a whole. ***Id.***, ¶¶45-46. Statutory language must be interpreted "reasonably, to avoid absurd or unreasonable results." ***Id.***, ¶46.

¶11 WISCONSIN STAT. § 973.015 provides in pertinent part that

> when a person is under the age of 25 at the time of the commission of an offense *for which the person has been*

> *found guilty* in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines that the person will benefit and society will not be harmed by this disposition.

Sec. 973.015(1)(a) (emphasis added).

¶12 Geurts acknowledges that (1) under a plain language interpretation of the terms of WIS. STAT. § 973.015(1)(a), when considered alone, expunction is not available to any person who has not "been found guilty," and (2) he was never found guilty. This would appear to settle the question.

¶13 However, Geurts argues that the language of WIS. STAT. § 973.015(1)(a) becomes ambiguous when read in the context of WIS. STAT. § 971.37, which governs aspects of certain deferred prosecution programs, at least as this court has interpreted § 971.37 in ***State v. Daley***, 2006 WI App 81, 292 Wis. 2d 517, 716 N.W.2d 146. Geurts argues that the only reasonable interpretation of the expunction statute, when read in light of § 971.37 as interpreted in ***Daley***, is that a circuit court has discretion to expunge the record of a person who has successfully completed a deferred prosecution program contemplated in § 971.37.

¶14 This argument is meritless for reasons that include at least the following. First, Geurts fails to explain why I should conclude that the legislature intended to modify or define the phrase "for which the person has been found guilty" in WIS. STAT. § 973.015(1)(a) through the use of any term in WIS. STAT. § 971.37. Second, the holding in ***Daley*** referred to by Geurts has nothing remotely to do with expunction. Discussion in that case involves the requirements the State can attach to a deferred prosecution agreement and plea withdrawal standards in

the context of a deferred prosecution. ***Id.***, ¶¶6-18. In ***Daley***, this court was narrowly focused on two questions: (1) whether the State can require a plea as part of a deferred prosecution agreement; and (2) when "sentencing" occurs in a case involving a deferred prosecution agreement for purposes of setting the standard for evaluating a motion to withdraw a plea agreement. ***Id.*** Without reference to any expunction concept, the court determined that a deferred prosecution agreement can include a requirement that the defendant enter a plea and that, in the deferred prosecution-plea withdrawal context, "'sentencing' … encompasses the initial disposition of the case after the parties enter the agreement and the agreement is ratified by the trial court." ***Id.***, ¶¶6-13, 16.[2]

¶15 Geurts argues that interpreting WIS. STAT. § 973.015(1)(a) to allow expunction for persons who have been found guilty of crimes, but not persons who have complied with all of the obligations contained in deferred prosecution agreements, is "unreasonable." However, absent a claim of a constitutional violation, which Geurts does not make, the legislature is free to pick among options that prosecutors and defendants may use in resolving potential criminal liability through negotiations, with each available option presumably resulting from a weighing of potential social benefits and costs. Geurts's view as to how "reasonable" the options are does not constitute a legal argument. I observe that

[2] Geurts cites to an unpublished opinion of one judge of this court, ***State v. Melody P.M.***, No. 2009AP2994, unpublished slip op. (WI App June 10, 2010). However, in an opinion recommended for publication this court has rejected the basis for the holding in ***Melody P.M.*** *See* ***Kenosha Co. v. Frett***, No. 2014AP6, recommended for publication (WI App Nov. 19, 2014). If anything, the logic of ***Frett*** undermines the argument now advanced by Geurts, which effectively invites me to insert into the expunction statute a mechanism for expunction despite the absence of a finding of guilt. *See* ***id.***, ¶7 (noting that the legislature "provided no mechanism for expunction" of a civil forfeiture, where "neither detention nor probation could have been ordered").

the record here does not reflect whether the parties' negotiation at any point included an alternative route that would have included the expunction option, but it does reflect that the State opposed expunction based on the agreement that was struck. Geurts was presumably not prevented from at least seeking an alternative settlement that would have left the door open to expunction, if that was his strong preference.

II. Inherent or Equitable Authority to Expunge

¶16 Turning to the circuit court's inherent or equitable authority to expunge court records, Geurts argues that the court improperly concluded that it lacked either authority on the facts here. The question of judicial authority is an issue of law reviewed de novo. ***Breier v. E.C.***, 130 Wis. 2d 376, 381, 387 N.W.2d 72 (1986).

A. Inherent Authority

¶17 An inherent power "'is one without which a court cannot properly function.'" ***Id.*** at 387 (quoted source omitted). A circuit court may use its inherent power "to limit public access to judicial records when the administration of justice requires it." ***State ex rel. Bilder v. Township of Delavan***, 112 Wis. 2d 539, 556, 334 N.W.2d 252 (1983). However, "the party seeking to close court records bears the burden of demonstrating, with particularity, that the administration of justice requires that the court records be closed." ***Id.*** at 556-57.

¶18 Geurts's argument regarding the court's inherent authority to expunge is entirely undeveloped, and I reject it on that basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App 1992). He cites ***Breier*** and ***State ex rel. Bilder***, but he does not explain how those cases apply to the potential

expunction of his record or of records of the type at issue here, nor why the "administration of justice" requires expunction here. Instead, he speaks in general terms about the damage that typically results to a person's reputation from being accused of a crime.

¶19 Geurts also cites a petition from the Wisconsin State Bar seeking modification of Chapter 72 of the Supreme Court Rules to, as Geurts explains, "codify the inherent authority of Wisconsin courts to manage their own files and determine when they ought be made public." *See* State Bar of Wisconsin, Amended Petition to Modify Chapter 72 of the Wisconsin Supreme Court Rules (Oct. 27, 2009). However, as Geurts concedes, the modification to Chapter 72 sought by this petition was referred to the Legislative Committee of the Wisconsin Judicial Conference for legislative action, but it has not been implemented at this time. *See* SCR 72.06; *see also* ***State v. Matasek***, 2014 WI 27, ¶6 n.4, 353 Wis. 2d 601, 846 N.W.2d 811.

B. Equitable Authority

¶20 As to equitable authority, a court has the authority to "grant equitable remedies to private litigants in situations in which there is no explicit statutory authority or in which the available legal remedy is inadequate to do complete justice." ***Breier***, 130 Wis. 2d at 388. However, a court's authority to grant equitable relief "must be in response to the invasion of legally protected rights." ***Id.*** at 389.

¶21 Geurts apparently intends to argue that the circuit court had "equitable expunction" authority because a legally protected right of his—to a reputation free of court record references to the disorderly conduct charge—has been invaded. Geurts now argues that "[t]here is a legal interest in protecting

someone's reputation" and that "[t]he defendant has the right to restore his reputation upon successful completion of" the defendant's obligations under a deferred prosecution agreement. However, as the State points out Geurts has forfeited this argument. Before the circuit court, Geurts did not point to any legally protected right that had been invaded, and the circuit court concluded that it did not have the authority to expunge Geurts's record due to this failure. Geurts has forfeited his right to present an argument related to reputational harm on appeal by failing to raise it in front of the circuit court, and I reject it on that basis. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 ("Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal."). Geurts does not present me with a compelling reason to ignore this forfeiture, when engagement on this issue before the circuit court might have developed the record in meaningful ways.

CONCLUSION

¶22 For these reasons, I affirm the order of the circuit court dismissing Geurts's motion for expunction.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.