COURT OF APPEALS
DECISION
DATED AND FILED

April 13, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1877-CR **Cir. Ct. No. 2013CM458**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAZARO OZUNA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County: KRISTINE E. DRETTWAN, Judge. *Affirmed*.

¶1 HAGEDORN, J.[1] This appeal concerns the circuit court's refusal to expunge Lazaro Ozuna's criminal convictions for criminal damage to property

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

and disorderly conduct. WISCONSIN STAT. § 973.015 provides for expungement in certain circumstances as long as the sentence is successfully completed, which means in part satisfying "the conditions of probation." Sec. 973.015(1m)(b). One of the conditions of Ozuna's probation was that he refrain from consuming alcohol. According to the Department of Corrections (DOC), Ozuna did not comply with this condition. Ozuna now argues that the circuit court was required to order expungement because he was successfully discharged from probation. We disagree. Because Ozuna did not comply with the conditions of his probation, he did not successfully complete his sentence and was not entitled to expungement.

Background

¶2 Ozuna entered guilty pleas to one count of criminal damage to property and one count of disorderly conduct. The circuit court accepted the guilty pleas and imposed and stayed a jail sentence. The court then placed Ozuna on probation for one year. Among the conditions of probation the court imposed, Ozuna was not to consume any alcohol. The judgment also reflected that Ozuna's convictions would be expunged if the sentence was successfully completed pursuant to WIS. STAT. § 973.015.

¶3 Ozuna was discharged from probation and the DOC filed a form with the circuit court entitled Verification of Satisfaction of Probation Conditions For Expungement. Although the form indicated that Ozuna had "successfully completed" his probation, the form also reported that Ozuna did not meet all court ordered conditions, including that he "[f]ailed to comply with the no alcohol condition." Specifically, according to the DOC form, Ozuna had been cited for underage drinking. The form also noted that Ozuna still owed financial

obligations to the court. The circuit court denied expungement by writing "Expungement DENIED" on the DOC form. Ozuna appeals the circuit court's decision.

Discussion

¶4 Circuit courts may order expungement of convictions at the time of sentencing if certain conditions are met. WIS. STAT. § 973.015(1m)(a)1.; ***State v. Matasek***, 2014 WI 27, ¶6, 353 Wis. 2d 601, 846 N.W.2d 811. If ordered, expungement is automatic after the sentence has been successfully completed; the circuit court has no discretion in the matter. ***State v. Hemp***, 2014 WI 129, ¶¶16, 27, 36, 359 Wis. 2d 320, 856 N.W.2d 811. The issue in this case is whether Ozuna "successfully completed" his sentence under the statute. This presents a question of statutory interpretation which we review de novo. ***State v. Bodoh***, 226 Wis. 2d 718, 724, 595 N.W.2d 330 (1999).

¶5 Ozuna argues that he did successfully complete his sentence and was entitled to automatic expungement once the circuit court received the DOC form that stated he "successfully completed" his probation. The State's response is simple: Ozuna did not satisfy all the conditions of his probation, so he is not entitled to expungement. We agree with the State.

¶6 What it means for a person to "successfully complete[]" his or her sentence is defined in WIS. STAT. § 973.015(1m)(b):

> A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation.

Therefore, one who completes probation without revocation or another conviction still fails to "successfully complete[]" his sentence if he does not satisfy all conditions of probation. ***Id.***

¶7 According to the DOC form, Ozuna was cited for underage drinking after giving a preliminary breath test of 102. Both the written judgment of conviction and the circuit court's oral ruling confirm that one of the conditions of Ozuna's probation was that he refrain from consuming alcohol. Thus, according to the statutory definition, Ozuna did not successfully complete his sentence and was not entitled to expungement.[2]

¶8 Ozuna suggests this is not the end of the matter, however, and raises two principal objections.[3] First, he argues that the automatic denial based on DOC's representations raises due process concerns. Second, he proffers a sort of substantial compliance theory of what the statute requires. Neither will win him the day.

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[2] Ozuna relies heavily on ***Hemp*** to support his contention that—regardless of his shortcomings on probation—once the circuit court had the DOC form indicating that he had "successfully completed" his probation, it was required to order expungement. ***State v. Hemp***, 2014 WI 129, ¶¶16-17, 27, 36, 359 Wis. 2d 320, 856 N.W.2d 811. By denying expungement, Ozuna claims that the circuit court ran afoul of ***Hemp*** by revisiting its decision to order expungement. However, ***Hemp*** stands for the proposition that once the sentence is *successfully* completed, then the expungement is effectuated automatically. *See* ***id.***, ¶27. ***Hemp*** affirmed that the statute requires compliance with the conditions of probation in order for a probationer to be entitled to expungement. ***Id.***, ¶22. The court did not revisit its decision to order expungement; it followed that decision. Both the circuit court's judgment and the statute required Ozuna to comply with the no alcohol condition prior to his record being expunged. Because Ozuna did not comply, the judgment and WIS. STAT. § 973.015(1m)(a)1. dictated that there would be no expungement of his criminal record.

[3] Ozuna also argues that his citation for alcohol and unpaid fees did not violate the first two requirements of WIS. STAT. § 973.015(1m)(b) and that denying expungement on the basis of unpaid fees would violate equal protection. Because we find that he violated the third requirement with respect to alcohol, we need not address these arguments.

¶9 We decline to address his argument that to "blindly accept [DOC's] assertions as true raises due process concerns." The State claims—and the DOC form confirms—that Ozuna violated the no alcohol condition of his probation. Nowhere in the briefs does Ozuna contest this crucial fact. More importantly, Ozuna fails to properly develop a due process argument or theory. Mere citations to general due process notions or procedural unfairness are insufficient. At a minimum, a developed argument would explain what mechanisms are available in DOC or in court and what sort of remedy should be put in its place. This court will not strike down a statutory scheme for expungement denials and create a new one from whole cloth without more. *See* ***Cemetery Servs., Inc. v. Wisconsin Dep't of Regulation & Licensing***, 221 Wis. 2d 817, 831, 586 N.W.2d 191 (Ct. App. 1998) ("A one or two paragraph statement that raises the specter of [constitutional] claims is insufficient to constitute a valid appeal …. We cannot serve as both advocate and court.").

¶10 Finally, Ozuna suggests that a probationer need not comply with 100% of the conditions to be entitled to expungement. This line of reasoning, however, has no support in the statutory language; he must "satisfy the conditions of probation." WIS. STAT. § 973.015(1m)(b). Although applicable to horseshoes and hand grenades, "close enough" does not appear to cut it. Ozuna invites this court to create a new, lower bar with no clear delineation or foundation in the statute. If Ozuna's lone drinking citation is considered acceptable, how about two? Or three? While grace and mercy are indispensable components of justice, the real tragedy here is that Ozuna found the grace of expungement not worth the price of abstinence from alcohol during probation. That choice was his, and this court finds nothing in the statute granting it liberty to extend a third chance when Ozuna chose to spurn the second.

Conclusion

¶11 Ozuna was entitled to expungement only if he successfully completed his sentence. Ozuna did not do so because he did not satisfy the conditions of probation. He was, therefore, properly denied expungement.

By the Court.—Order affirmed.

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