

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Andrea L. Tobin
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James Seward,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

April 27, 2023

Court of Appeals Case No.
22A-XP-1147

Appeal from the
St. Joseph Superior Court

The Honorable
Stephanie E. Steele, Judge

Trial Court Cause No.
71D01-2104-XP-288

Memorandum Decision by Judge Foley
Judges Robb and Mathias concur.

Foley, Judge.

- [1] James Seward (“Seward”) appeals the trial court’s denial of his petition to expunge a prior conviction of Class C felony battery. Concluding that we are unable to assess which factors the trial court weighed in arriving at its judgment, we reverse and remand with instructions to the trial court to reconsider its order.

Facts and Procedural History

- [2] On April 12, 2021, Seward filed a petition to expunge a conviction from eleven years prior. The conviction was for battery resulting in bodily injury. The trial court initially determined that the conviction was ineligible for expungement, but reconsidered Seward’s eligibility and held a hearing on December 15, 2021. The State consented to the expungement with two caveats: that restitution payments be confirmed and that the victim be notified.¹ Both conditions were satisfied, and the trial court held a second hearing on February 24, 2022.
- [3] At the hearing, Seward’s counsel argued that: (1) in the eleven years since the conviction, Seward had not been arrested or charged with any crimes; (2) Seward had held the same job² for fourteen years and been steadily promoted throughout that time; and (3) Seward regretted the incident leading to the conviction. Seward’s counsel also indicated that she brought printouts of glowing reviews of Seward regarding his salesmanship and friendliness and

¹ “[T]he State of Indiana supports the Court granting this petition.” Appellant’s App. Vol. II p. 41 (emphasis in the original).

² The record suggests that Seward may be a car salesman, though it is not entirely clear.

indicated that his social media accounts were replete with positive messaging about being peaceful and learning from his mistakes.

- [4] Seward also addressed the trial court. He described the details of the incident for which he was charged: consuming alcohol along with his girlfriend and the argument that ensued. The victim fell and broke her wrist, but the record does not make clear whether the injury was, in fact, a result of being pushed by Seward. The victim and Seward apparently remain on good terms. Though notified of the expungement hearing, she did not appear. Seward further indicated that he had been trained to become the general manager of his own store. He expressed remorse for his crime and a desire to be a role model.
- [5] The State read from the police report from the original incident, providing details from the victim's statement to police at the time: that Seward had thrown her into a coffee table, instructed her not to go to the hospital, then retrieved a kitchen knife and made death threats. According to the victim, Seward then feigned that he had stabbed himself. In response, Seward admitted to most of the salient facts, expressing that he did not wish to argue or cover anything up. The State then indicated that it did not object to the expungement petition, and did not withdraw the "support" it expressed in its initial filing in response to the petition. Tr. Vol. II p. 22. The trial court took the matter under advisement, stating that "[t]his Court takes crimes of violence very, very seriously. And I think that it's important for all parties involved to understand how carefully I want to look through this and think about this[.]" *Id.* at 23.

[6] On April 18, 2022³ the trial court denied Seward’s petition without making any formal findings in support of its judgment. The one-page order simply stated that Seward is eligible for expungement, that he has fully paid the outstanding restitution fee, and that “[a]fter careful consideration of the record and arguments, the Court denies the Petitioner’s Motion for Expungement.” Appellant’s App. Vol. II p. 34. Seward now appeals.

Discussion and Decision

[7] “When a person is convicted of a crime, the conviction is a stigma that follows him or her through life, creating many roadblocks to rehabilitation.” *Key v. State*, 48 N.E.3d 333, 336 (Ind. Ct. App. 2015) (citing *Jordan v. State*, 512 N.E.2d 407, 409 (Ind. 1987)). “Through the expungement statute, the ‘legislature intended to give individuals who have been convicted of certain crimes a second chance’ by providing an opportunity for relief from the stigma associated with their criminal convictions.” *Id.* (quoting *Taylor v. State*, 7 N.E.3d 362, 367 (Ind. Ct. App. 2014)). Ordinarily, if the prosecutor does not object, a trial court may summarily grant a mandatory expungement without a hearing. Ind. Code. § 35-38-9-9(a). However, unlike some species of expungement, felonies resulting in bodily injury to another person are not eligible for mandatory expungement. I.C. § 35-38-9-3. For this category of

³ The order was as issued on March 3, 2022, but due to a “clerical error” was not actually entered until this later date. Appellant’s App. Vol. II p. 35. The trial court subsequently issued a nunc pro tunc order clarifying that its prior order was effective as of the later date for purposes of filing deadlines in this court.

crimes, the trial court enjoys discretion. “Courts considering whether to grant a discretionary expungement are tasked with looking at the unique facts of each case to determine whether the individual has demonstrated that his case merits a fresh start.” *Allen v. State*, 159 N.E.3d 580, 581–82 (Ind. 2020). We therefore review denials of petitions for expungement, where the petition is filed pursuant to the permissive expungement statute, under an abuse of discretion standard. *Id.* at 583. “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Id.* (quoting *Cline v. State*, 61 N.E.3d 360, 362 (Ind. Ct. App. 2016), *abrogated on other grounds*).

[8] We find the *Allen* decision to be particularly instructive here. In *Allen*, the petitioner sought expungement for convictions resulting from felonies causing bodily injury to another. The *Allen* Court noted that such crimes warrant “a more detailed examination before they are expunged.” *Id.* at 585. Pertinent here, the *Allen* Court noted that “[i]n issuing its decision, a trial court may consider a broad array of information, including the nature and circumstances of the crime and the character of the offender.” *Id.* at 586. There was “significant evidence supporting Allen’s petition” *Id.* Nevertheless, the Court concluded that “because the trial court in this case did not articulate why it denied Allen’s petition, we’re unable to determine what consideration the court gave the evidence presented at the hearing” *Id.*

[9] Here, as in *Allen*, the trial court “didn’t discuss the basis of its decision.” *Id.* at 585. We conclude that the lack of findings by the trial court inexorably hampers our review. As the *Allen* Court did, we reverse the trial court’s

decision and remand with instructions for the trial court to reconsider its decision consistent with this opinion.

[10] Reversed and remanded with instructions.

Robb, J., and Mathias, J., concur.