

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Johanningsmeier,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 11, 2022

Court of Appeals Case No.
21A-XP-571

Appeal from the Shelby Superior
Court

The Honorable Chris D. Monroe,
Senior Judge

Trial Court Cause No.
73D01-1911-XP-59

Mathias, Judge.

- [1] James Johanningsmeier appeals the Shelby Superior Court's denial of his pro se petition to expunge his criminal conviction for Class C Felony robbery. Noting

on appeal that an insufficient record may have led the trial court to erroneously conclude the conviction was ineligible for expungement, we remand with instructions for the court to reconsider its decision consistent with this opinion.

Facts and Procedural History

- [2] In 1985, Johanningsmeier was charged in Shelby Superior Court with Class B Felony armed robbery. However, he pleaded guilty to and was ultimately convicted of Class C Felony robbery, as a lesser included offense, under [Indiana Code section 35-42-5-1 \(1985\)](#). Appellant’s Conf. App. p. 18. At the time of his conviction, that statute provided: “A person who knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any person in fear; commits robbery, a Class C felony.” [Ind. Code § 35-42-5-1 \(1985\)](#). In 1991, on unrelated charges filed in Marion Superior Court, Johanningsmeier was convicted of Class B Felony armed robbery.¹
- [3] Twenty-eight years later, in November 2019, Johanningsmeier petitioned the Shelby Superior Court to expunge his Class C Felony robbery conviction “pursuant to Indiana Code § 35-38-9-4.”² Appellant’s Conf. App. p. 9. The

¹ The Marion Superior Court ultimately expunged this conviction on January 6, 2020. Appellant’s Conf. App. p. 21.

² Johanningsmeier also separately petitioned to expunge unrelated convictions in both Hendricks County and Morgan County. Appellant’s Conf. App. p. 8.

court held a hearing on the petition on January 10, 2020, during which the following exchange occurred:

[STATE]: Mr. Johanningsmeier, what is the offense that you're wanting to expunge in this particular case?

[JOHANNINGSMEIER]: The Class C, Robbery.

[STATE]: The armed robbery?

[JOHANNINGSMEIER]: Yes.

[STATE]: And you had an armed robbery in Marion County as well?

[JOHANNINGSMEIER]: Yes, sir.

Tr. Vol. II, p. 5. Johanningsmeier also stated that he sought expungement so that he “can go back to work and get off Social Security,” *id.*, and he submitted a written list of his prior convictions indicating that the last conviction he had received was for Class D Felony operating a vehicle while intoxicated in 2011.

The State then asserted that because Johanningsmeier committed “two armed robberies” and his criminal behavior has been “[o]bviously . . . substantial and ongoing until a few years ago,” Johanningsmeier is “just not eligible” for expungement. *Id.* at 7.

The trial court summarily denied Johanningsmeier’s petition, entering an order on January 30, 2020, which stated, without more: “Comes now the Court, after

taking the matter under advisement January 10, 2020, and DENIES Petitioner's Verified Petition To Expunge Conviction Records." Appellant's Conf. App. p. 15.

[4] Thereafter, on June 30, Johanningsmeier filed a motion for relief from the court's judgment pursuant to [Indiana Trial Rule 60\(B\)](#). The motion articulated that Johanningsmeier is eligible for expungement because he "has only one conviction for a felony offense that involves the use of a deadly weapon." *Id.* at 16. The motion further explained that "[w]hile [Johanningsmeier] was *charged* with Armed Robbery as a Class B Felony . . . his *conviction* was for robbery, as a Class C Felony, a lesser included offense." *Id.* at 17.

[5] Johanningsmeier attached to the motion a copy of the guilty plea and sentencing order from his conviction, which noted that he had "enter[ed] a plea of guilty to the offense of robbery, as a lesser included offense, a Class C Felony." *Id.* at 18. He also attached a copy of the Marion Superior Court's January 6 order granting his petition to expunge his unrelated conviction for Class B Felony armed robbery in Marion County. Appellant's Conf. App. pp. 21.

[6] On October 16, the trial court held a hearing on Johanningsmeier's motion. During this hearing, Johanningsmeier's counsel expressed to the court that its denial of the expungement petition was "based upon what appeared to be a misstatement or misunderstanding of the facts." Tr. Vol. III, p. 5. He further explained that "the Shelby County conviction that we're seeking to be

expunged here did not actually use, involve the use of a deadly weapon.” *Id.* at 7.

[7] The State, which submitted no evidence during this hearing, maintained in response that even if Johanningsmeier is eligible for expungement, the court should deny his petition because Johanningsmeier is “somebody who disregards the safety of others, who takes advantage of others . . . and puts them in harms [*sic*] way.” *Id.* at 8. The court summarily denied his [Trial Rule 60](#) motion on March 3, 2021.

[8] Johanningsmeier now appeals.

Discussion and Decision

[9] Johanningsmeier argues that the trial court misapprehended the facts supporting his expungement petition and erroneously concluded that his conviction was ineligible for expungement. To be sure, Johanningsmeier did not help matters when he mistakenly told the court that he sought to expunge a felony conviction for “armed robbery,” although in fact he was convicted of Class C Felony robbery as a lesser included offense. Other than this misstatement, the parties presented little evidence for the trial court to consider in issuing its decision, and the court did not articulate any of its reasons for denying Johanningsmeier’s petition. As a result, we cannot discern which evidence the court considered, or if its summary denial was based on a misunderstanding as to Johanningsmeier’s eligibility.

[10] The expungement statutes are found in [Indiana Code chapter 35-38-9](#) and are inherently remedial. *Allen v. State*, 159 N.E.3d 580, 585 (Ind. 2020). The statutes manifest the legislature’s intent to grant relief from stigma associated with criminal convictions. *Id.*; see also *Key v. State*, 48 N.E.3d 333, 336 (Ind. Ct. App. 2015) (“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.”). Accordingly, to accomplish the statutes’ remedial purpose, courts must construe them liberally. *Allen*, 159 N.E.3d at 584; see also *Ball v. State*, 165 N.E.3d 130, 136 (Ind. Ct. App. 2021).

[11] Expungement for certain offenses is mandatory.³ However, “some convictions require a more detailed examination before they are expunged.” See *Allen*, 159 N.E.3d at 585. Thus, [Indiana Code section 35-38-9-4](#), the “Permissive Expungement Statute,” see *Allen*, 159 N.E.3d at 585, “necessarily requires the court to engage in a fact-intensive inquiry to determine whether the circumstances of the case warrant expungement of the conviction,” *id.* Here, Johanningsmeier’s petition requested expungement pursuant to the Permissive

³ The Mandatory Expungement Statute, provides that if a “person convicted of [a] Class D felony or Level 6 felony” petitions for expungement, and “a preponderance of the evidence” demonstrates that certain requirements have been met, “the court **shall** order the conviction records described . . . expunged.” [Indiana Code section 35-38-9-3](#) (emphasis added).

Expungement Statute,⁴ and we review the denial of a petition for expungement under that statute for an abuse of discretion. *Id.* at 583.

[12] In *Allen v. State*, our supreme court explained that the Permissive Expungement Statute recognizes both “the possibility that the crime might be too serious to expunge” and that “the same crime might be a serious but isolated event and the petitioner might prove deserving of a second chance.” *Id.* at 585. Thus, “[b]ecause the Permissive Expungement Statute excludes from eligibility persons convicted of certain offenses, but vests in the court discretion to either grant or deny a petition, a trial court should engage in a two-step process when considering a petition for expungement.” *Id.* Specifically, the trial court must first determine whether the conviction is eligible for expungement. *Id.* Then, if the conviction is eligible, the court must collect enough information to determine whether the conviction merits expungement. *Id.*

[13] The Permissive Expungement Statute lists petitioners whose convictions are not eligible:

- (1) An elected official convicted of an offense while serving the official’s term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).

⁴ Johanningsmeier sought to expunge a Class C Felony conviction. Thus, he was not eligible for expungement under the Mandatory Expungement Statute, which “applies only to a person convicted of a Class D felony . . . or a Level 6 felony.” *Ind. Code* § 35-38-9-3.

(3) A person convicted of a felony that resulted in serious bodily injury to another person.

(4) A person convicted of a felony that resulted in death to another person.

(5) A person convicted of official misconduct (IC 35-44.1-1-1).

(6) A person convicted of an offense described in:

(A) IC 35-42-1;

(B) IC 35-42-3.5; or

(C) IC 35-42-4.

(7) A person convicted of two (2) or more felony offenses that:

(A) involved the unlawful use of a deadly weapon; and

(B) were not committed as part of the same episode of criminal conduct.

[Ind. Code §§ 35-38-9-4\(b\)](#).

[14] Here, the State insisted pursuant to [subsection \(b\)\(7\)](#) that Johanningsmeier’s two “armed robbery” convictions render him ineligible for expungement. The State likely adopted this position due to Johanningsmeier’s mistaken reference to his Class C Felony robbery conviction as “the armed robbery.” However, during the hearing on Johanningsmeier’s motion for relief, his counsel pointed out that the trial court’s denial appeared to have relied on that mistake. To correct it, Johanningsmeier explained that his conviction was, in fact, for robbery, as a Class C Felony, which did not involve the use of a deadly weapon, rendering [Indiana Code section 35-38-9-4\(b\)\(7\)](#) inapplicable. In

support, he submitted a copy of the guilty plea and sentencing order which the court had entered at the time of his conviction.

[15] On appeal, the State does not repudiate Johanningsmeier's eligibility. It reasons instead, without having submitted any evidence to the trial court, that "on the record presented . . . there is not enough information to determine whether a firearm was involved in the commission of Johanningsmeier's Class C felony." Appellant's Br. at 6 n.1. We agree that the record is thin. It does not support the State's initial suggestion that Johanningsmeier's "two armed robberies" render him ineligible.

[16] At that point, the trial court should have moved to the second step of the analysis to determine based on the available evidence whether Johanningsmeier's conviction merited expungement. *Allen*, 159 N.E.3d at 585.

[17] A conviction merits expungement under the Permissive Expungement Statute if the court finds by a preponderance of the evidence that:

- (1) the period required . . . has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a felony or misdemeanor within the previous eight (8) years

I.C. § 35-38-9-4(e). Additionally, “[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.” *Allen*, 159 N.E.3d at 586.

[18] The State does not assert on appeal that Johanningsmeier fell short of the requirements listed in subsection (4)(e), and the State concedes that the trial court “had before it no evidence regarding either the nature and circumstances of the crime or Johanningsmeier’s character” because “none of that type of information was presented.” Appellee’s Br. at 7, 8.

[19] Nonetheless, despite this dearth of evidence, the trial court summarily denied both Johanningsmeier’s expungement petition and his subsequent motion for relief, without explanation.⁵ Consequently, lacking any indication as to the trial court’s rationale, we are unable to determine what consideration the court gave to the modest evidence it did receive or whether the court overlooked certain documents under a mistaken belief that Johanningsmeier’s conviction was ineligible for expungement.

Conclusion

[20] For all of these reasons, we remand with instructions for the trial court to reconsider its decision consistent with this opinion.

⁵ We note that [Indiana Code section 35-38-9-9](#) permits trial courts to “summarily deny a petition.” However, that provision of the expungement statutes further provides that courts may only do so “if the petition does not meet the requirements of section 8 . . . or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief under [Indiana Code section 35-38-9-8](#).”

Bailey, J., and Altice, J., concur.