

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael F. Drankus,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

July 22, 2021

Court of Appeals Case No.
20A-XP-2376

Appeal from the Clinton Superior
Court

The Honorable Justin H. Hunter,
Judge

Trial Court Cause No.
12D01-2005-XP-330

Crone, Judge.

Case Summary

- [1] Michael F. Drankus, pro se, appeals the denial of his petition for expungement of his 2005 conviction for class D felony operating while intoxicated (OWI). We affirm.

Facts and Procedural History

- [2] In 1987, Drankus was convicted in Mississippi of capital murder, robbery by assault, and burglary of a dwelling. He was sentenced to life in prison. In 2001, he was released on parole and made his way to Indiana. Early in 2005, he was convicted of class A misdemeanor operating while intoxicated (OWI) in Porter County. In October 2005, he was convicted of class D felony OWI in Clinton County. Not long after, the Mississippi Parole Board revoked his parole. In 2007, he was released on parole and, at some point, returned to Indiana. In 2012, he was convicted of class A misdemeanor domestic battery in Lake County. His parole was revoked a second time, and he has remained incarcerated in a Mississippi penitentiary.
- [3] In May 2020, Drankus filed pro se petitions for expungement of his three Indiana convictions. The present case involves his petition to expunge his October 2005 class D felony OWI conviction in Clinton County. The prosecuting attorney filed an objection, claiming that Drankus is a violent offender and is ineligible for relief under Indiana's expungement law absent prosecutorial consent. Ind. Code Ch. 35-38-9. Drankus filed a response,

essentially claiming that the mere passage of eight years without any further convictions or charges entitled him to expungement.

- [4] In November 2020, the trial court conducted a telephonic factfinding hearing, and Drankus participated from the Mississippi penitentiary. He acknowledged that he was scheduled for a parole hearing soon and also testified that he would be applying for clemency from the Mississippi governor and was hoping that expungement of his three Indiana offenses would increase his chances of success. Tr. Vol. 2 at 22. The trial court took the matter under advisement and issued an order denying Drankus’s petition, finding that he was prohibited by law from seeking expungement. Drankus now appeals. Additional facts will be provided as necessary.

Discussion and Decision

- [5] Drankus asserts that the trial court erred in denying his petition to expunge his 2005 conviction for class D felony OWI. As a preliminary matter, we note that Drankus has elected to proceed pro se both below and on appeal. “[P]ro se litigants are held to the same legal standards as licensed attorneys.” *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021) (quoting *Basic v. Amouri*, 58 N.E.3d 980, 983 (Ind. Ct. App. 2016)).
- [6] We generally review the denial of a petition for expungement for an abuse of discretion, which occurs if the trial court’s decision is clearly against the logic of the facts and circumstances before it. *Allen v. State*, 159 N.E.3d 580, 583 (Ind. 2020). Where, as here, our review involves the interpretation of a statute, we

apply a de novo standard, with the goal of determining and giving effect to the legislature’s intent. *Id.* If the statutory language is unambiguous, we apply the plain meaning of its words and phrases, being “mindful both of what a statute says and what it does not say.” *Id.* “[W]e may not add new words to a statute which are not the expressed intent of the legislature.” *Id.* (quoting *Ind. Alcohol & Tobacco Comm’n v. Spirited Sales, LLC*, 79 N.E.3d 371, 376 (Ind. 2017)).

[7] Drankus claims that he is entitled to expungement of his class D felony OWI conviction pursuant to Indiana Code Chapter 35-38-9. Indiana’s expungement statutes allow for expungement of a class D or a level 6 felony conviction in certain circumstances where eight years have elapsed since that conviction, the petitioner has not been convicted of any new offenses, and he is not subject to any pending charges. Ind. Code § 35-38-9-3 (mandatory expungement); Ind. Code § 35-38-9-4 (permissive expungement). Both statutes include a nearly identical list of persons ineligible for expungement. Indiana Code Section 35-38-9-3(b) reads, in pertinent part,

(b) This section does not apply to the following:

(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).

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

(4) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).

(5) *A person convicted of an offense described in:*

(A) *IC 35-42-1 [murder.]*

....

(6) *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.*

(Emphases added.)

[8] Indiana Code Section 35-38-9-4 includes a similar list of ineligible persons, with identical exclusions for “[a] sex or violent offender” and “[a] person convicted of an offense described in “IC 35-42-1” (murder). Ind. Code § 35-38-9-4(b)(2), - (b)(6). While it is unclear from Drankus’s petition whether he seeks expungement under Section 3 or Section 4, it is of no import when examining the relevant exclusions, as they are identical in both sections.

[9] Drankus maintains that the statutory exclusions pertain only to convictions that are ineligible to be expunged, not to the petitioner’s status or the nature of the other convictions on his record. In this vein, he claims that we must focus on whether his class D felony OWI conviction involved violence or resulted in bodily injury to another person. He zeroes in on language in Section 8.5 that states that if the offense for which he seeks expungement “is not substantially similar to” an offense described in the exclusions, he may file a petition under

Section 3. Ind. Code § 35-38-9-8.5(c)(1), -(2). Thus, he asserts that because he waited eight years from his last conviction to file his petition, he has no pending charges, and his class D felony OWI offense was not substantially similar to his capital murder offense, he is entitled to expungement of the OWI.

[10] We disagree with Drankus’s reading of Section 8.5 and find that it does not create eligibility where eligibility does not otherwise exist. Rather, Section 8.5 provides a roadmap for determining whether an eligible petitioner should file his petition under Section 3, 4, or 5. Ind. Code § 35-38-9-8.5(c), -(d), -(e). By and large, the exclusions found in Sections 3 and 4 pertain not to the offense for which a petitioner seeks expungement but to the status and criminal record of the *offender* himself, e.g., “[a] sex or violent offender” and “[a] *person* convicted of [murder].” Ind. Code § 35-38-9-3(b)(2), -(b)(5); Ind. Code § 35-38-9-4(b)(2), -(b)(6) (emphases added). In *Kelley*, 166 N.E.3d at 938-39, another panel of this Court held that the petitioner’s murder conviction rendered him ineligible for expungement of any of his felony convictions. In *Burton v. State*, 71 N.E.3d 24, 26-27 (Ind. Ct. App. 2017), another panel held that the petitioner’s convictions in another state for rape, child molesting, and sexual exploitation of a minor rendered him a “sex or violent offender” ineligible for expungement of his felony theft and fraud offenses.¹

¹ Drankus claims that his case is more akin to *Allen*, 159 N.E.3d at 584-85, where our supreme court held the petitioner eligible for expungement of his conspiracy to commit burglary conviction despite the State’s argument that he was ineligible based on the bodily injury that Allen’s confederates had inflicted on the victim during a home invasion. *Id.* at 582. Notably, there, in exchange for Allen’s guilty plea to conspiracy, the State had dismissed six counts against Allen, including burglary, aggravated battery, and attempted

[11] Like Kelley, Drankus is a person convicted of murder. Like Burton, Drankus is a sex or violent offender. *See* Ind. Code § 11-8-8-5(20) (listing murder as violent felony in Indiana); *see also* Tr. Vol. 2 at 17 (Drankus’s testimony that “[i]n Mississippi [murder is] classified as a violent offense.”). Drankus falls squarely within the plain language of two statutory exclusions and therefore is ineligible for expungement of his class D felony OWI conviction. Accordingly, we affirm.

[12] Affirmed.

Riley, J., and Mathias, J., concur.

robbery. The *Allen* court reasoned that Allen’s only conviction, conspiracy, did not involve bodily injury. *Id.* at 583. *Allen* is distinguishable, as Drankus is ineligible based on the exclusions for violent offenders and persons convicted of murder.