

Circuit Court for Baltimore County  
Case No.: 03-K-90-002795

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 527

September Term, 2021

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DAVID ROSS FULCO

v.

STATE OF MARYLAND

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Kehoe,  
Zic,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: January 31, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

David Ross Fulco, appellant, challenges an order entered by the Circuit Court for Baltimore County denying his petition for expungement. In his petition, filed in April 2020, Mr. Fulco sought to expunge 1) an August 1990 guilty finding for following too closely in violation of § 21-310 of the Transportation Article and 2) a probation before judgment entered for an assault stemming from the same incident. On appeal, Mr. Fulco contends that he was falsely arrested and charged in the underlying incident, that he was not guilty of following too closely, and that he was entitled to expungement by law.

For the reasons that follow, we shall affirm.

#### **DISCUSSION**

We decline to consider Mr. Fulco’s claims of error that the initial arrest was “false,” that the filing of the charges was “false, misleading and a misrepresentation of the facts,” and that the evidence did not support a finding that he was following too closely. These arguments were not raised in Mr. Fulco’s petition for expungement and were, therefore, not preserved for this Court’s consideration. *See Baltimore Cty., Maryland v. Aecom Servs., Inc.*, 200 Md. App. 380, 421 (2011) (“[a] contention not raised below...and not directly passed upon by the trial court is not preserved for appellate review.”). Moreover, an appeal from an expungement proceeding is not an appropriate vehicle for contesting an arrest, nor the sufficiency of evidence underlying a conviction.

We are further satisfied that the court did not err in denying Mr. Fulco’s petition for expungement. Under § 10-105 of the Criminal Procedure Article, a court has no discretion to deny the remedy of expungement if a person has demonstrated his or her statutory

entitlement to it. *See Reid v. State*, 239 Md. App. 1, 13. It follows that, on appeal, a person’s eligibility for expungement is a question of law that is subject to de novo review.

First, with respect to Mr. Fulco’s conviction for following too closely, pursuant to § 10-102 of the Criminal Procedure Article, “a record about a minor traffic violation” is not a record subject to expungement. Because Mr. Fulco’s conviction for following too closely was a “nonincarcerable violation of the Maryland Vehicle Law<sup>1</sup>[,]” it constituted a minor traffic violation and was not subject to expungement. *See* Md. Code Ann., Transp. §§ 21-310; 27-101. Moreover, Mr. Fulco’s conviction for following too closely, does not fall under § 10-110 of the Criminal Procedure Article governing the expungement of certain misdemeanors from records, and Mr. Fulco does not direct this Court to any provision which would allow for the expungement of this conviction.

With respect to the probation before judgment for assault, Mr. Fulco might have been entitled to expungement had he not been “convicted of a crime other than a minor traffic violation” within 3 years of its entry. Md. Code Ann., Crim. Proc. § 10-105(e)(4). Though his conviction for following too closely was not subject to expungement, “the existence of a minor traffic violation does not prevent a court from expunging other charges that arose from the same incident, transaction, or set of facts.” *In re Dione W.*, 243 Md. App. 1, 5 (2019) (citing § 10-107 of the Criminal Procedure Article). The following too closely conviction, therefore, did not serve as an automatic bar to the expungement of the probation before judgment entered with respect to the assault arising from the same

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<sup>1</sup> Transportation, § 11-101 et seq., §27-101(b)

incident. Moreover, pursuant to § 10-105(a)(4), Mr. Fulco was permitted to file for an expungement of the probation before judgment. However, § 10-105(e)(4)(i) specifies that a “person is not entitled to expungement if...the petition is based on the entry of probation before judgment...and the person within 3 years of the entry...has been convicted of a crime other than a minor traffic offense.” In its response to Mr. Fulco’s petition, the State identified sixteen subsequent convictions attributable to Mr. Fulco since August 1990. Pertinently, within three years of the subject probation before judgment, Mr. Fulco pled guilty in January 1993 to possession of an unregistered rifle or shotgun in violation of § 5-203 of the Public Safety Article and possession of a handgun in a vehicle traveling on a public road or parking lot in violation of § 4-203(a)(1)(ii). These convictions disqualified Mr. Fulco from an expungement of the assault probation before judgment pursuant to § 10-105(e)(4)(i).

**JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**