

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 851

September Term, 2021

MONIQUE KEISHA THOMAS

v.

STATE OF MARYLAND

Reed,
Wells,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: March 14, 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.

Monique Keisha Thomas, appellant, challenges an order of the Circuit Court for Washington County denying her petition for expungement of records. In her petition, Ms. Thomas sought to expunge a January 2006 guilty finding for driving on a suspended license. She presents the following questions for our review, which we have rephrased slightly:

1. Did the circuit court err in determining that Ms. Thomas' conviction did not meet the statutory criteria for expungement?
2. Did the circuit court err in concluding that the rule of lenity did not apply to the determination of Ms. Thomas' petition for expungement?

For the reasons that follow, we shall affirm.

BACKGROUND

On January 17, 2006, Ms. Thomas was convicted, in case number 21K05036657, driving on a suspended license in connection with an incident that occurred on August 2, 2005. On June 21, 2021, Ms. Thomas filed a petition for expungement of records, which the circuit court denied without a hearing. On July 16, 2021, the State filed an objection to Ms. Thomas' petition for expungement of records. On July 25, 2021, Ms. Thomas filed a motion for new trial and/or reconsideration of her petition for expungement. Following a hearing on August 10, 2021, the court denied Ms. Thomas' motion for new trial and/or reconsideration of her petition for expungement. Ms. Thomas noted a timely appeal.

DISCUSSION

Ms. Thomas contends that her conviction is eligible for expungement because the act on which her conviction was based is no longer a crime. Specifically, she argues that because she has never had a driver's license, she should not have been convicted of driving

on a suspended license. Alternatively, Ms. Thomas contends that the expungement statute is ambiguous and the rule of lenity requires that the statute be construed in her favor.

The State responds that Ms. Thomas is not entitled to expungement of her records because the act on which her conviction was based, driving without a license, remains a crime in Maryland. The State further argues that the rule of lenity does not apply in this case because the expungement statute is unambiguous.

I.

Ms. Thomas was convicted of violating Md. Code (1997, 2020), § 16-303(c) of the Transportation Article (“TR”), which states in relevant part, “[a] person may not drive a motor vehicle on any highway . . . while the person’s license or privilege to drive is suspended in this State.” Before the circuit court, Ms. Thomas introduced into evidence a certified Maryland Department of Transportation (“MDOT”) record showing that she held a Maryland identification card, not a driver’s license.

Ms. Thomas relies on the Court of Appeals’ decision in *Sullivan v. State*, 407 Md. 493 (2009), in support of her position that her conviction should be expunged because she could not be convicted of driving on a suspended license because she never possessed a driver’s license. In *Sullivan*, the defendant was charged with driving while his license to drive was revoked. *Id.* at 494. The defendant did not have a Maryland driver’s license and there was no evidence that he had ever been licensed to drive in Maryland. *Id.* At trial, he argued that he was wrongfully charged and that he should have been charged with driving without a license under TR § 16-101(a). *Id.* at 496. The trial court rejected the defendant’s argument, concluding that the privilege to drive was different from a license to drive. *Id.*

This Court reversed, determining that Sullivan could not be convicted of driving while his “privilege to drive” was revoked unless he once had a license or qualified for a statutory exemption.¹ *Id.* at 498.

The Court of Appeals affirmed. *Id.* at 502-03. The Court explained that “the phrase ‘privilege to drive’ as found in 16-303(d) [applies] to a person who is authorized to drive in this State pursuant to a valid Maryland driver’s license or an exemption from the Maryland driver’s license requirement, as set forth in 16-102 of the Transportation Article.” *Id.* The Court held that Sullivan’s conviction for driving on a revoked license was improper because he was not privileged to drive in Maryland. *Id.* at 503.

Ms. Thomas’ reliance on *Sullivan* is misplaced. Though *Sullivan* addressed the sufficiency of the evidence required for a conviction of driving with a suspended or revoked license, *Sullivan* did not decide whether the defendant’s conviction in that case was eligible for expungement. *Sullivan* is not, therefore, dispositive of our analysis of whether Ms. Thomas’ conviction for driving with a suspended license is eligible for expungement where her underlying conduct constituted a crime.

The relevant provision of the expungement statute, Md. Code (2001, 2018), § 10-105(a)(11) of the Criminal Procedure Article (“CP”), provides that a person is entitled to expungement if “the person was convicted of a crime and the act on which the conviction was based is no longer a crime.” A person’s eligibility for expungement is a question of

¹ Section 16-102 excludes certain drivers from the licensing requirement of § 16-101. The § 16-102 exemptions do not apply to Ms. Thomas’ case.

law subject to *de novo* review. *In re Dione W.*, 243 Md. App. 1, 3 (2019). The expungement statute “lodge[s] no discretion in the court, but to mandate either granting or denying the relief, based upon statutorily defined entitlement, or the lack of it.” *Reid v. State*, 239 Md. 1, 13 (2018) (citations and internal quotation marks omitted). Accordingly, we review the circuit court’s ruling on Ms. Thomas’ petition for expungement for legal correctness, without giving deference to the court’s legal conclusion. *Robert B. v. State*, 193 Md. App. 620, 626 (2010).

In this case, Ms. Thomas’ conviction was based on the act of driving without a license. As she acknowledges, “driving without a license continues to be a crime in the State of Maryland.” *See* TR § 16-101(a) (“An individual may not drive . . . a motor vehicle on any highway in this State unless . . . [t]he individual holds a driver’s license[.]” There is no dispute that Ms. Thomas was not licensed to drive at the time of her conviction, and that her action of driving without a license remains a crime in Maryland. Because Ms. Thomas was unable to demonstrate that driving without a license is no longer a crime, the trial court did not err in concluding that her conviction was not eligible for expungement under CP § 10-105(a)(11).

II.

Ms. Thomas asserts that the trial court erred in failing to apply the rule of lenity in its interpretation of CP § 10-105(a)(11). The rule of lenity applies “[w]here a statute is ambiguous, and where the means of statutory interpretation fail to resolve the ambiguity[.]” *Nichols v. State*, 461 Md. 572, 602 (2018). In that case, “the rule of lenity compels a court to resolve the ambiguity in the defendant’s favor.” *Id.*

Where, however, “the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written.” *Bottini v. Dep’t. of Fin.*, 450 Md. 177, 187-88 (2016) (quoting *Wagner v. State*, 445 Md. 404, 418 (2015)). If there is no ambiguity in the language of the statute, the rule of lenity does not apply. *See Johnson v. State*, 467 Md. 362, 391 (2020) (holding that the rule of lenity did not apply to a criminal statute, where the statute did not expressly state a maximum sentence); *see also Stoddard v. State*, 395 Md. 653, 672 (2006) (holding that because the language of the expungement provision contained in CP § 10-107 was “clear and unambiguous,” the court “need not and should not, look beyond that provision”).

Ms. Thomas fails to point to any specific ambiguity in the text of CP § 10-105(a)(11), and we perceive none in the plain language of the statute. “The [r]ule of [l]enity is intended to resolve an ambiguity, not create one where none exists.” *Jackson v. State*, 124 Md. App. 59, 63-64 (1998) (holding that the rule of lenity was inapplicable where the relevant provision of the expungement statute pertaining to expungement of a conviction following a nolle prosequi was not ambiguous) (citation omitted).

In this case, the circuit court did not err in determining that CP § 10-105(a)(11) was unambiguous and, therefore, it was unnecessary to resort to the rule of lenity to decide her petition for expungement. Because Ms. Thomas did not meet the statutory criteria for expungement of her conviction for driving on a suspended license, the trial court did not err in denying her petition for expungement.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED. APPELLANT TO PAY THE
COSTS.**