

Circuit Court for Baltimore County
Case No. 03-K-10-005465

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1723

September Term, 2019

JAMAL LARON GRAHAM

v.

STATE OF MARYLAND

Reed,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: October 16, 2020

*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.

On April 18, 2019, Jamal Graham (“Appellant”) filed a Petition for Expungement of Records under Md. Code Ann, Crim. Proc. § 10-105(a)(3). Appellant sought to expunge a probation before judgment entered against him on or about October 6, 2010. Following a hearing on the matter, the court denied Appellant’s expungement request, citing Appellant’s conviction for first degree assault on April 04, 2015. Notably, however, Md. Code Ann, Crim. Proc. § 10-105(a)(3) only precludes expungement of probation before judgment entries in cases where the individual seeking expungement is convicted of a qualifying crime “within 3 years of the entry of the probation before judgment.” Accordingly, Appellant timely filed this appeal.

In bringing his appeal, Appellant presents one question for appellate review:

- I. Did the trial court err in concluding that, under Md. Code Ann., Crim. Proc. § 10-105(e)(4)(i), Appellant’s subsequent conviction, occurring more than three (3) years after an entry of a probation before judgment, precluded expungement of Appellant’s probation before judgement record?

For the following reasons, we reverse the Circuit Court’s decision and remand for further proceedings consistent with this opinion.

FACTUAL & PROCEDURAL BACKGROUND

On or about October 6, 2010, a disposition of probation before judgment was entered for one count of Dangerous Weapon-Conceal. Pursuant to the probation before judgment, Appellant completed six (6) months of unsupervised probation. On April 18, 2019, Appellant filed a Petition for Expungement of Records, as permitted under Md. Code Ann, Crim. Proc. § 10-105(a)(3). In response to Appellant’s Petition, the State argued that pursuant to Md. Code Ann, Crim. Proc. § 10- 105(c)(4) the records were precluded from

expungement based on Appellant’s subsequent convictions and pending traffic citations:

5. “On April 4, 2013, in the District Court for Baltimore City, the Defendant received a probation before judgment for CDS: Poss— Marijuana (4B02201861).”
6. “On April 14, 2015, in the Circuit Court for Baltimore County, the Defendant was found guilty for Assault-First Degree (K 14 6389).”
7. “On June 9, 2017, in the Circuit Court for Harford County, the Defendant was found guilty of Driving Motor Veh. On Suspended License and Privilege, TA.16.303.c (12-K—17-000719).”
8. “On January 2, 2018, in the Circuit Court for Harford County, the Defendant was found guilty for Driving Motor Veh. On Suspended License and Privilege, TA.16.303.c (12-K—17-000714).”
9. “The Defendant is currently pending charges in the District Court for Harford County, citation number 0060TVD (Person Driving Motor Vehicle on Highway or Public Use Property on Suspended License and Privilege).”
10. “The Defendant is currently pending charges in the District Court for Harford County, citation number 0090TVD (Operating Unregistered Motor Vehicle on Highway).”
11. “The Defendant is currently pending charges in the District Court for Harford County, citation number 00BOTVD (Knowingly Driving Uninsured Vehicle).”

On August 14, 2019, during a hearing on the matter the Court and the State accepted Appellant’s proffer that all the outstanding traffic matters “had been adjudicated and were no longer pending.” The Court further acknowledged Appellant’s October 6, 2010, probation before judgment would have been eligible for expungement on October 6, 2013. Moreover, the Court determined that Appellant’s April 3, 2013 probation before judgment for CDS: Poss-Marijuana (4B02201861) had been expunged and would not preclude expungement of his probation before judgment.

Thus, the sole conviction considered by the Court during the hearing was

Appellant’s April 4, 2015 conviction for first degree assault (K 14 63 89). At the conclusion of the hearing, the Court held the matter *sub curia* for consideration. The Court considered whether Appellant’s charge would have been eligible notwithstanding his subsequent conviction outside the statutory time period. Moreover, the Court considered whether a subsequent conviction outside the statutory time period would nonetheless preclude expungement. On September 9, 2019 the Court issued an Order holding:

“Defendant’s Petition for Expungement is hereby DENIED without prejudice, as the Defendant is not eligible at this time due to the statutory period of time has not lapsed since the last finding of guilt was entered against Defendant, as required under Criminal Procedure Article § 10-105(e)(4).”

Additionally, the Order contained a footnote in reference to the last finding of guilt entered against Defendant:

“The Court finds that on April 14, 2015 this Defendant was found guilty of First Degree Assault by a Judge of the Circuit Court for Baltimore County in Case Number O3-K-14-006389.”

Appellant timely filed an appeal for reconsideration, challenging the Circuit Court’s legal application of Md. Code Ann, Crim. Proc. § 10-105.

STANDARD OF REVIEW

This case involves a straightforward statutory application of Md. Code Ann, Crim. Proc. § 10-105(e)(4)(i). This Court has stated that Md. Code Ann., Crim. Proc. § 10-105 “seems to lodge no discretion in the court, but to mandate either granting or denying relief, based upon statutorily defined entitlement or lack of it.” *Ward v. State*, 37 Md. App. 34, 375 A.2d 41 (1977). Moreover, “[i]t is well established that pure conclusions of law are reviewed de novo.” *Bartlett v. Portfolio Recovery Assocs., L.L. C.*, 438 Md. 255, 272, 91

A.3d 1127 (2014) (citing *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72, 854 A.2d 879 (2004)). Accordingly, we undertake a De Novo review of the Circuit Court's application of Md. Code Ann., Crim. Proc. § 10-105.

DISCUSSION

A. Parties' Contentions

Both parties agree that the Circuit Court erred in its' application of Md. Code Ann., Crim. Proc. § 10-105. Likewise, both parties agree that this Court should reverse the Circuit Courts decision.

B. Analysis

Appellant and the State are correct. As Appellant stated in his brief, “[t]he language of Md. Code Ann., Crim. Proc. § 10-105(e)(4) is clear and unambiguous:”

- (4) The Person is not entitled to expungement if:
- (i) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person within 3 years of the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime; or
 - (ii) the person is a defendant in a pending criminal proceeding.

The language in § 10-105(e)(4) is clear that to be precluded from expungement under § 10-105(e)(4)(i), the individual seeking expungement must have been “convicted of a crime” within three years of the entry of probation before judgment they seek to expunge. As Appellant has established, he was not. It is likely, as Appellant and the State has suggested, that the Circuit Court unknowingly applied an outdated form of Md. Code Ann., Crim. Proc. §10-105 in reaching its decision. However, the correct application of the

expungement requirements of the current form of §10-105 dictates that Appellant's probation before judgment charge is entitled to expungement.

CONCLUSION

Accordingly, we hold that the trial court erred in concluding that, under Md. Code Ann., Crim. Proc. § 10-105(e)(4)(i), Appellant's subsequent conviction, occurring more than three (3) years after an entry of a probation before judgment, precluded expungement of Appellant's probation before judgement record. We therefore reverse the judgment of the Circuit Court and remand for further proceedings consistent with this opinion.

**JUDGEMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY REVERSED.
CASE REMANDED TO THAT COURT
FOR ADJUDICATION. COSTS TO BE
PAID BY BALTIMORE COUNTY.**