

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1899

September Term, 2016

EXPUNGEMENT PETITION OF JOHN W.

Kehoe,
Leahy,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 8, 2017

*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.

John W., appellant, appeals the denial by the Circuit Court for Baltimore City of his petition requesting expungement of the nolle prossed charges in a criminal indictment filed against him. The State agrees that the lower court erred in denying the petition request, as do we. Accordingly, we shall reverse the lower’s court’s ruling.

FACTS

On September 1, 1988, appellant robbed, roughly twenty-one hours apart, two different cabbies at gunpoint within a couple of blocks of each other. He robbed James Jihad at around 12:30 a.m., and he robbed Roy Faulcon at around 9:40 p.m. that same day. The State filed a criminal information in the Circuit Court for Baltimore City in the first robbery, docketed as Circuit Court No. 58830522, charging appellant with armed robbery; wearing, carrying, and transporting a handgun; and use of a handgun in a felony or crime of violence. On April 14, 1989, a jury found him guilty of all three counts, and he was subsequently sentenced to a total of 40 years of imprisonment. The State also filed a criminal information in the Circuit Court for Baltimore City in the second robbery, docketed as Circuit Court No. 58830521, charging appellant with the same offenses as those in the first criminal information: armed robbery; wearing, carrying, and transporting a handgun; and use of a handgun in a felony or crime of violence. On May 15, 1989, the State nolle prossed the charges in the second case.

Roughly 27 years later, on June 30, 2016, appellant filed a petition to expunge all criminal records pertaining to the second case. Although the State initially objected to the petition, arguing that the case was not eligible for expungement because it was part of “a unit” with Case No. 58830522, the State withdrew its objection, noting that the cases

involved two different victims. The court nevertheless denied the petition, believing that the two cases “are connected [] because it’s all one day, and it’s a continuing act.” It is from this denial that appellant appeals.

DISCUSSION

Md. Code Ann., Criminal Procedure (CP) § 10-105(a)(4), provides that a person charged with a crime for which a term of confinement may be imposed, may file a petition for expungement of police and court records, if the charge is nolle prossed. However, if two or more charges “arise from the same incident, transaction, or set of facts, they are considered to be a unit[,]” and if a person is not entitled to expungement of one charge in the unit, the person is not entitled to expungement of any other charge in the unit. CP § 10-107(a)(1), (b)(1). In *Stoddard v. State*, 395 Md. 653 (2006), the Court of Appeals held that the descriptive words “incident, transaction or set of facts” refer to separate, discrete, and distinct occurrences. *Stoddard*, 395 Md. at 668-72. The Court therefore concluded that the word, “unit,” does not include offenses that are part of a “continuing scheme,” meaning that even if the offenses are of a “similar character” they are not a unit if the crimes are committed at different times. *Id.* at 671-72. Accordingly, when crimes are committed at different times they are not a unit for expungement purposes. *Id.* at 669-70.

The lower court believed that the crimes charged in the second case, Circuit Court No. 58830521, were part of a continuing scheme with the first case because they occurred on the same day, and therefore, the crimes charged in the second case were not entitled to expungement. Because the crimes charged in the two cases occurred at different times, the lower court’s reasoning is incorrect in light of *Stoddard*. The State agrees, and

acknowledges, after a full scrutiny of the record, that there is nothing to suggest that the two cases are part of the same incident, transaction, or set of facts, and therefore, they are not a unit. Accordingly, we shall reverse the lower court’s ruling rejecting appellant’s request for expungement on the nolle prossed charges in Circuit Court No. 58830521.

JUDGMENT REVERSED.

**COSTS TO BE PAID BY THE
MAYOR AND CITY COUNCIL
OF BALTIMORE.**