

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-027

JULY TERM, 2003

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| | } | APPEALED FROM: |
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| State of Vermont | } | District Court of Vermont, Unit No. 1, |
| | } | Windsor Circuit |
| v. | } | |
| | } | DOCKET NO. 454-9-99 WrCr |
| Daniel T. Quinn | } | Trial Judge: Amy M. Davenport |
| | } | |
| | } | |

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a district court order denying his motions to dismiss and to expunge all records relating to this criminal proceeding. We affirm.

On April 12, 1999, the State charged defendant with violating an abuse prevention order protecting his minor daughter. On July 1, 1999, the State exercised its discretion under V.R.Cr.P. 48(a) to dismiss the charge, without prejudice,. On October 16, 2002, defendant moved to dismiss the charge with prejudice and to have records related to the charge expunged. He argued that the family court erred by entering the abuse prevention order and he never should have been prosecuted for violating it.

By order dated January 7, 2003, the district court denied defendant' s motions. It held that the court lacked authority to dismiss the charge with prejudice because there was no justiciable issue considering that the prosecution had terminated upon the State' s notice of dismissal. As to defendant' s request to expunge the records of the proceeding before the district court, the court did not find unusual or extreme circumstances existed in this case to justify using its inherent power to order expunction. Defendant' s appeal to this Court followed.

On appeal, defendant accuses various state officials of conspiring to deprive him of a relationship with his minor daughter, alleges bias against fathers in what he calls the " destructive, out-of-control Divorce Industry," and asserts that maintaining records in this case will cause him and his daughter " unfair harm." In essence, defendant challenges in a criminal proceeding the family court' s decision to issue the abuse prevention order, a challenge we have held is impermissible absent a due process violation. State v. Mott,166 Vt. 188, 191-92 (1997). Whether or not an abuse prevention order is invalid, a defendant cannot seek to overturn the order by violating it. Id. at 191.

In any event, the court disposed of defendant' s motions appropriately. As part of its prosecutorial prerogative, the State may dismiss a criminal indictment or information before trial " and the prosecution shall thereupon terminate." V.R.Cr.P. 48(a). There was, therefore, no proceeding to dismiss when defendant filed his motion.

The court' s denial of defendant' s motion for expunction was likewise correct given the record. The court' s inherent power to order expunction must be exercised in unusual or extreme cases only upon a showing that the harm to the defendant outweighs the State' s interest in maintaining the records. State v. Motchnik, 149 Vt. 113, 113-14 (1987). Defendant did not make that showing before the district court, and fails to do so here. Therefore, we find no error in the district court' s order.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned