

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-223

NOVEMBER TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
	}	
Scott Huminski	}	DOCKET NO. 167-1-99 Wmcr

Trial Judge: Katherine A. Hayes

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

Scott Huminski appeals pro se from the trial court's order striking the adjudication of his guilt and expunging the record of the criminal proceedings against him pursuant to 13 V.S.A. § 7041(d). Defendant raises numerous arguments, all of which are without merit. We affirm the court's decision.

This case is before the Court for at least the fourth time. The facts underlying this matter are largely set forth in our earlier decisions in this case. See, e.g., State v. Huminski, No. 1999-445 (Vt. Dec. 13, 2000) (unreported mem.); State v. Huminski, No. 2001-330 (Vt. Jan. 30, 2002) (unreported mem.). Nonetheless, we must repeat them here. Defendant was charged with two felony counts of obstruction of justice in February 1997 based on allegations that he created false evidence and threatened a potential witness. Pursuant to a March 1998 plea agreement, the State dismissed the first count without prejudice and defendant pled no contest to an amended charge of disorderly conduct on the second count. See Huminski, No. 1999-445, slip op. at 1. The punishment for this latter charge appears to have been a \$100 fine with a \$17.50 surcharge, which defendant paid. Defendant also agreed to dismiss without prejudice two civil actions that he had filed in superior court, and he agreed not to refile a certain civil action in federal court. The State agreed not to recharge defendant as long as he did not pursue the three civil actions. Id.

Shortly thereafter, defendant's wife filed an amended complaint in the federal litigation, without defendant, and the State moved to vacate defendant's plea. The trial court granted its request, vacating the plea agreement and reinstating the two felony counts. In response, defendant moved to dismiss the charges and expunge his record. A different trial judge considered defendant's request, and it dismissed the reinstated obstruction-of-justice charges with prejudice. Id. at 2. The court denied defendant's expungement request. On appeal, we affirmed the dismissal of the charges against defendant and remanded for further consideration

of defendant's motion to expunge, and specifically an evaluation of defendant's claim that the State acted in bad faith in bringing the charges. See *id.* at 4 (explaining that in his motion to expunge, defendant argued that "the State's bad faith conduct in his case demonstrated that this was an unusual and extreme case in which expunction was appropriate").

On remand, the trial court denied defendant's motion to expunge. *Huminski*, No. 2001-330, slip op. at 2. It rejected defendant's claims that the obstruction charges were unfounded and the result of improper collusion between the police and prosecutors. As it explained, a competent trial judge had found probable cause for the obstruction charges and there was no evidence to support defendant's claim of bad faith. *Id.* The court also found no basis to expunge the record of defendant's conviction for disorderly conduct. *Id.* In balancing the need for the arrest record against the harm to the person arrested, the trial court noted that defendant failed to show any financial or personal loss or liability as the result of the record. Accordingly, the court concluded that defendant failed to demonstrate any unusual or extreme circumstances requiring expungement. Defendant moved to reconsider, and the court denied his request, reiterating that there was no credible evidence to support defendant's motion for expunction. We affirmed the trial court's decision on appeal, rejecting defendant's argument that the court failed to address his claims of prosecutorial misconduct and bad faith, and finding that defendant adduced no credible evidence at the hearing to show that the prosecution was brought in bad faith or that the police and prosecutors engaged in other misconduct. *Id.*

Five years later, in March 2007, defendant filed a motion to vacate the case "from its inception" as well as a motion entitled "objection to further prosecution." The court treated defendant's motions as a request to expunge, and granted his request in an April 2007 order. The court struck defendant's adjudication of guilt pursuant to 13 V.S.A. § 7041(d). It ordered the destruction of any documentation specifically referring to the obstruction of justice charges; it stated that the proceedings with respect to these charges would be considered never to have occurred, and that all index references to proceedings on the above charge would be deleted. The court also indicated that if any request for information was made of court, prosecutorial, and law enforcement personnel, they would reply that no record existed with respect to the proceeding.

Defendant moved for reconsideration, indicating that he was seeking to vacate the entire action rather than expunge his record. The court denied his request, explaining that the order of expungement made all further requests for relief moot, and full relief had been granted. In response to defendant's motion for clarification, the court stated that the request for expungement had been granted because the charges against defendant were dismissed in 1999, no party was prejudiced by the requested relief, and because recent statutory changes had expanded the circumstances under which expungement could be ordered. The court stated its hope that granting the requested relief would result in significant savings in judicial resources by avoiding the filing of additional and repeated requests for relief by defendant. This appeal followed.

On appeal, defendant asserts that the court should have declared the prosecution void ab initio rather than issuing an order expunging the record. He raises numerous assertions in connection with this main argument. He also states that the court's expungement order contains

inconsistencies. Defendant reiterates in great detail his assertions about alleged prosecutorial misconduct, conflicts of interests, and bad faith.

We find no basis to disturb the court's order. Although the trial court cited an incorrect statute in its expungement order,^{*} the trial court has inherent power to expunge the record and it acted within its discretion in doing so here. See State v. Motchnik, 149 Vt. 113, 113-14 (1987) (court has inherent power to order the expunction of arrest records and in deciding if expunction is appropriate, court should balance State's need for arrest record against harm resulting to person arrested from maintaining the records). As the trial court explained, it expunged the record because the charges against defendant were dismissed in 1999, no party was prejudiced by the requested relief, and because recent statutory changes had expanded the circumstances under which expungement may be ordered. Indeed, we note that the State does not challenge the order of expungement. Defendant has been granted full relief. He asked the court to "vacate" the case in its entirety, and the court ordered that the proceedings in this case "shall be considered never to have occurred." There is no other legal relief available to defendant and no basis for him to challenge the court's order.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

^{*} 13 V.S.A. § 7041 addresses the availability of a deferred sentence which, although providing for expungement, is not at issue in this case.