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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-005

APRIL TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
	}	
Larkin A. Forney	}	DOCKET NOS. 2812-5-03 CnCr, 6772-10-02 CnCr, 6954-11-02 CnCr, 7069-11-02 CnCr, 7170-11-02 CnCr & 7378-11-02 CnCr
		Trial Judge: Geoffrey W. Crawford

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

Defendant appeals a district court order denying his request to expunge a plea agreement defendant made in 2005. We affirm.

Between October 2002 and May 2003, defendant was charged with several offenses. On March 30, 2005, defendant entered a global plea agreement with the State and pled guilty to driving while intoxicated-third offense, sexual assault on a minor, reckless endangerment, and four violations of conditions of release. The court accepted the plea and entered judgment against defendant. On July 13, 2005, the court sentenced defendant to five to twelve years, all suspended except nineteen months. Defendant was placed on probation with various conditions including no contact with his victim. In December 2005, defendant was charged with violating his probation. Following a hearing on the merits, the court found defendant had contact with his victim and violated defendant's probation. Defendant appealed, and this Court affirmed the violation. State v. Forney, No. 2006-500 (Vt. Aug. 17, 2007) (unreported mem.).

Defendant then moved to withdraw his plea agreement. On appeal from the district court's denial, this Court dismissed the case, concluding that the district court lacked jurisdiction to consider the motion to withdraw because defendant was on probation at the time he filed his motion to withdraw. State v. Forney, No. 2007-392 (Vt. April 11, 2008) (unreported mem.).

On November 10, 2008, defendant filed a motion to expunge the plea deal. Defendant argued that there was new evidence, which showed that the sexual-assault-on-a-minor charge resulted from a conspiracy between his child's mother and the victim. Defendant further argued that he had ineffective assistance of counsel when he entered the plea agreement. The district court denied the request, explaining that there was no legal basis to expunge defendant's record. In its order, the district court explained that defendant has a right "to seek a pardon through the governor's office if he wishes."

On appeal, defendant reiterates the arguments made in his original motion and argues that his plea agreement should be expunged because of "mitigating circumstances and discoveries that arose revealing [defendant] to be the victim of a conspiracy from people involved in the charges." Much of defendant's brief relates to why, in his opinion, his plea agreement should be invalidated. Defendant argues that: (1) he had ineffective assistance of counsel when he accepted the plea agreement; (2) the State reneged on the terms of the plea deal; and (3) he is the victim of a conspiracy between his victim and his daughter's mother to keep him away from his daughter. We do not address the merits of these arguments, however, because a motion to expunge is not a method for attacking the validity of the underlying conviction. Expunction of criminal records results in the destruction or sealing of "the records of the fact of the defendant's conviction and not the conviction itself." United States v. Rowlands, 451 F.3d 173, 176 (3d Cir. 2006) (quotation omitted).

We conclude that the district court did not err in denying defendant's motion to expunge his plea agreement. Defendant cites no statutory basis to expunge his conviction. Cf. State v. Putvain, 2006 VT 20, ¶¶ 2-5, 179 Vt. 619 (mem.) (concluding that 13 V.S.A. § 7041 requires expunction of a criminal record once deferred sentence is completed). In addition, defendant has not demonstrated that expunction is appropriate in his case under the "narrow" power courts have to expunge arrest records in "unusual or extreme case[s]." State v. Motchnik, 149 Vt. 113, 113 (1987). First, defendant's request goes beyond the authority we recognized in Motchnik because he seeks to expunge a closed-case criminal conviction based on a plea agreement, rather than erasure of a pre-conviction arrest record. Second, even if we were to agree that courts had inherent power to expunge conviction records, the district court was within its discretion to conclude that defendant has not demonstrated why the circumstances claimed were so "unusual or extreme" as to warrant expunction. The reasons defendant submits for expunction, such as ineffective assistance of counsel, violations of discovery obligations, noncompliance with terms of a plea deal and lack of witness credibility, are not extraordinary. Such challenges are usually and typically raised in conventional, post-appeal collateral attacks to negate criminal convictions. Whatever expungement authority the trial court may have, it is not a substitute for the avenues of relief particularly provided for by law.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice