

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Milton P. Muckenfuss,)
)
)
Plaintiff,)
)
)
v.)
)
South Carolina Law Enforcement Division,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-10-2359

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

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SC Court of Appeals

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J. ARMSTRONG
CLERK OF COURT


On April 9, 2014, Plaintiff filed the instant action alleging that his criminal conviction for housebreaking should be expunged. On May 9, 2014 the State Law Enforcement Division ("SLED") filed an Answer to the Complaint. SLED filed a Motion for Summary Judgment ("Motion") on July 18, 2014 stating as a matter of law, Mr. Muckenfuss is not entitled to have his prior conviction expunged as he was not sentenced under the Youthful Offender Act ("YOA"). After extensive research by all parties, this Court finds that it cannot expunge Mr. Muchenfuss's conviction under Section 22-5-920(B) because there is no tangible evidence that he was sentenced under the Youthful Offender Act.

FACTUAL SUMMARY

On May 9, 1974, Plaintiff Milton P. Muckenfuss was arrested on charges of Grand Larceny and Housebreaking. Mr. Muckenfuss was 17 at the time, being born on July 16, 1956. On September 9, 1974, Mr. Muckenfuss, then 18 years old, pled guilty to Housebreaking. Mr. Muckenfuss claims that he believed at the time that he would be sentenced under the Youthful Offender Act and would be eligible for expungement. Whether or not he was actually sentenced under the Youthful Offender Act is disputed by the South Carolina Law Enforcement Division.

Mr. Muckenfuss was sentenced to eighteen (18) months of confinement suspended on the service of two (2) years' probation.

On January 29, 2013 Mr. Muckenfuss submitted the requisite information to the Ninth Judicial Circuit Solicitor seeking an expungement of his Housebreaking conviction. By letter dated February 9, 2013, the Solicitor's Office notified Mr. Muckenfuss that his expungement application was deemed ineligible by SLED. Mr. Muckenfuss then requested that the South Carolina Attorney General's Office make a final determination as to his eligibility for expungement. In an opinion dated October 29, 2013, the Office of the Attorney General concluded that Mr. Muckenfuss was not entitled to expungement under the Youthful Offender Act as he was not sentenced under the Act.




Mr. Muckenfuss appealed his eligibility determination to the South Carolina Administrative Law Court, but withdrew his appeal by consent order. On April 9, 2014, Mr. Muckenfuss filed the instant action naming SLED as the Defendant, to have this Court determine his eligibility for expungement pursuant to Section 22-5-920(B) of the South Carolina Code. SLED filed its Motion for Summary Judgment on July 18, 2014. The Court heard oral arguments on the Motion on November 19, 2014, and took the matter under advisement to conduct independent research on this issue.

ANALYSIS

South Carolina Code Section 22-5-920(B), provides that a first time youthful offender may, under certain circumstances, have their criminal record expunged. However, the statute specifically provides that "a person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have his record expunged pursuant to the provisions of this section." S.C. Code

Ann. Section 22-5-920(B). Section 24-19-10(d)(ii) of the South Carolina Code defines a “youthful offender” as “*seventeen but less than twenty-five years of age* at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a class D, class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less.” S.C. Code Ann. § 24-19-10(d)(ii) (1976 Code, as amended) (emphasis added).

 This Court conducted extensive research on Mr. Muckenfuss's records to determine if he was sentenced under the Youthful Offender Act. The Court was able to locate Mr. Muckenfuss's original sentence terms from the Charleston County Clerk of Court in the General Sessions Journal Entry. Mr. Muckenfuss was sentenced by Judge Theodore Stoney to eighteen (18) months of confinement suspended on the service of two (2) years' probation. Nowhere on the document does it indicate that Mr. Muckenfuss was sentenced under the Youthful Offender Act. This Court contacted the South Carolina Department of Probation, Parole and Pardon Services, as well as the South Carolina Department of Corrections, both of whom were unable to locate the records of Mr. Muckenfuss.¹ After exhaustive review, this Court determines that there is no documented evidence that Mr. Muckenfuss was sentenced under the Youthful Offender Act.

Notwithstanding the evidence (or lack thereof) available to the Court, Mr. Muckenfuss's argues that he should be eligible for expungement because he fits the criteria for a youthful offender, as defined in Section 24-19-10(d)(ii), at the time of his arrest. Mr. Muckenfuss appears to meet the definition of a youthful offender, since he was seventeen (17) or eighteen (18) years

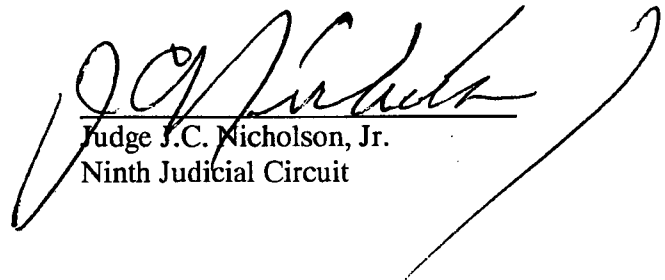
¹ Counsel for the South Carolina Department of Corrections did state that revocation orders from the same time period would indicated a YOA revocation.

old² at the time of his conviction for housebreaking.³ However, Section 22-5-920(B) is clear that a person cannot have his arrest and conviction records expunged if he was *not* sentenced under the Youthful Offender Act. Therefore, even though Mr. Muckenfuss meets the definition of a youthful offender, he is not eligible for his housebreaking conviction to be expunged because he was *not sentenced* under the Youthful Offender Act despite his claims to the contrary.

Accordingly, it is hereby,

ORDERED for the reasons set forth above, Defendant's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.



Judge J.C. Nicholson, Jr.
Ninth Judicial Circuit

March 19, 2015
Charleston, South Carolina

² The conviction was presented as occurring in either May or September 1974, and Mr. Muckenfuss's birthday is in July 16, 1956. Under either date, the answer is the same – no expungement is permitted.

³ At the time the offense was committed, housebreaking was a felony punishable by imprisonment for fifteen (15) years or less. See S.C. Code § 16-332 (1952) (repealed 1985).