

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
)
)

CHARLES F. BURTON,

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Civil Action No. 2018-CP-32-00047

Petitioner SEP 06 2019

AMENDED ORDER

SC Court of Appeals

This matter is before the Court upon the State of South Carolina's Motion for Summary Judgment. Harley C. Kirkland, Esq. of the South Carolina Attorney General's Office appeared on behalf of the State and Charles Brooks, Esq. appeared on behalf of the Petitioner. Counsel for both parties stipulated that there were no facts in controversy and that the issue before the Court is a matter of law suitable for disposition by way of Summary Judgment.

FACTS

On February 18, 2005, Petitioner pled guilty under the Youthful Offender Act under S.C. Code 16-15-140 to one count of Lewd Act on a Minor. Petitioner was sentenced by the Honorable William P. Keesley to a suspended sentence not to exceed six (6) years upon five (5) years probation. Petitioner successfully completed his probationary sentence and applied to have his charge expunged. The Eleventh Circuit Solicitor's Office refused to consent to the expungement request. This action followed.

At the time of the Petitioner's plea, he was and is still required to register as a sex offender, however, the version of S.C. Code Ann. 22-5-920 at the time did not bar his ability to have his record expunged.

Subsequent to Petitioner's plea, S.C. Code Ann. 16-15-140 was recodified under S.C. Code Ann. 23-3-430(c)(6) and recognized as Criminal Sexual Conduct With A Minor, Third degree.

S.C. Code Ann. 23-3-430(c)(6) continues to require an offender to register as a sex offender. This offense is now classified as a violent crime under S.C. Code Ann. 16-1-60.

S.C. Code Ann. 22-5-920 was amended with an effective date of December 28, 2018. S.C. Code Ann. 22-5-920 currently provides in relevant part that "...a person who was convicted prior to June 2, 2010, and was a youthful offender as that term is defined in Section 24-19-10(a) is eligible to have his record expunged..."

When the Legislature amended S.C. Code Ann. 22-5-920, it also amended the "Uniform Expungement of Criminal Records Act, specifically S.C. Code Ann. 17-22-910(c), which provides that "the provisions of this section apply retroactively to allow expungement as provided by law to each offense delineated in subsection (A) by persons convicted prior to the enactment of this section or the addition of a specific item contained in S.C. Code Ann. 17-22- 910(c)(A)." The Legislature passed amendments to both statutes at the same time and in the same legislative act.

Under the current statutory scheme, Criminal Sexual Conduct with a Minor, Third Degree, formerly known as Lewd Act Upon a Minor is considered a violent crime. The current version of the Expungement Statute provides that violent crimes are not eligible for expungement under S.C. Code Ann. 22-5-920(b)(2). Additionally, the current version of S.C. Code Ann. 22-5-920(B)(2)(d) makes Petitioner ineligible for expungement because of his continuing sex offender registration requirement.

ISSUE

Is Petitioner entitled to have his February 18, 2005 guilty plea to Lewd Act Upon a Minor expunged?

DISCUSSION

Summary Judgment is appropriate when the pleadings, deposition, affidavits and discovery on file show there is no genuine issue or material fact such that the moving party must prevail as a matter of law. Rule 56, SCRPC, Knight v. Austin, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012). As referenced above, both the Petitioner and the State stipulate that this is a matter of law and there are no facts in controversy.

“Courts routinely confront ambiguities in legislative drafting and have developed default rules for such occasions. Both federal and South Carolina courts employ a robust presumption against statutory retroactivity. Under this assumption, Courts assume that statutes operate prospectively only, to govern future conduct and claims, and do not operate retroactively, to reach conduct and claims arising before the statute’s enactment.”

Kirven v. Central States Health & Life Co. of Omaha, 409 S.C. 30, 39, 760 S.E.2d 794, 799 (2014).

However, “a Court must first determine whether [the legislature] has expressly proscribed the statute’s proper reach. If so, there is no need to resort to judicial default rules and hence the presumption against retroactivity does not apply.” Ward v. Dixie National Life Ins. Co., 595 F.3d 164 (4th Cir. 2010); Kirven, 409 S.C. at 37, 760 S.E.2d at 798.

In this case, the legislature clearly and equivocally has provided that the Expungement Act shall operate retroactively. Accordingly, under the current version of the Expungement Act, Petitioner is barred from seeking expungement because of the classification of his charge as being violent and because of his sex offender registration requirement. Accordingly, the State of South Carolina’s Motion for Summary Judgment shall be and is hereby GRANTED.

IT IS SO ORDERED This _____ Day of July, 2019.

R. LAWTON McINTOSH, JUDGE
TENTH (10TH) JUDICIAL CIRCUIT

_____, South Carolina.



Lexington Common Pleas

Case Caption: Charles F Burton VS Lexington County Solicitor

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