



ARGUMENT DOCKET
WVU COLLEGE OF LAW
FEBRUARY 28, 2017

Argument #2
In Re: Petition of A.N.T. for Expungement of Records, No. 16-0147

Case Summary

(In order to protect the privacy of the parties involved, the documents in this case are not available online. The case summary was prepared by the Clerk’s Office for general informational purposes only.)

In this direct appeal, the State of West Virginia appeals a circuit court order granting the respondent’s petition to expunge certain arrest and conviction records. The respondent was involved in a domestic incident with her husband in which she discharged a revolver. She was arrested and charged with domestic assault in violation of W.Va. Code § 61-2-28. The State later dismissed the domestic assault charge, with prejudice, and charged the respondent with the misdemeanor offense of discharging a firearm within 500 feet of a dwelling house in violation of West Virginia Code § 61-2-28. The respondent pleaded no contest to the charge and was fined \$50.

One year later the respondent filed a petition for expungement of both her arrest and conviction. Although there is a statutory procedure for expungement in this circumstance, West Virginia Code § 61-11-26, the respondent is not a candidate for that procedure because she was convicted of an offense “involving the use or exhibition of a deadly weapon” and because the statute limits application to persons who were convicted between the ages of eighteen and twenty-six. *See* W. Va. Code §§ 61-11-26(i) and 61-11-26(a). In the absence of specific statutory authority, the respondent relied upon the authority set forth in the syllabus of *State ex rel. Barrick v. Stone*, 201 W.Va. 569, 499 S.E.2d 298 (1997). In that case the Supreme Court granted a writ of

prohibition to prevent enforcement of an order requiring the expungement of criminal records from the State Police Criminal Investigation Bureau. The single syllabus point states: “A circuit court, absent extraordinary circumstances and to protect constitutional rights or some other compelling public policy imperative, does not in the absence of statutory authority have the power to order the expungement of criminal history record information regarding a valid criminal conviction maintained by the State Police Criminal Investigation Bureau pursuant to W.Va. Code § 15-5-24.”

The circuit court granted the petition for expungement after concluding that extraordinary circumstances exist, because respondent’s actions were by a person in emotional crisis and demonstrated no criminal intent, and she has since sought treatment. The circuit court analogized the case to a petition for writ of coram nobis, and concluded that respondent’s constitutional rights were implicated because the initial criminal complaint was not founded upon probable cause, because the conviction has produced lingering economic implications that amount to civil disabilities, and because the error in her initial conviction is the type of error that would typically have resulted in habeas corpus relief. Finally, the circuit court held that the public policy implications of lifetime economic consequences that result from criminal convictions weigh in favor of granting the relief.

On appeal, the State argues that no statutory authority exists for the circuit court to grant the relief requested, because the respondent is not qualified under the relevant statute. She is not within the age range identified in the statute, and her conviction involved use of a deadly weapon. The State further argues that the circuit court inappropriately converted the expungement petition into a coram nobis proceeding and then re-examined the basis of her conviction. Even if that were appropriate, the State contends that there were no flaws in the original criminal complaint or the conviction. Furthermore, the State argues that the circuit court misapplied *Barrick*, which actually held that there is no basis for a circuit court to involve inherent authority for expungement, a holding that has also been reached by courts in several other states. Even if that authority did exist, there are no extraordinary circumstances here.

The respondent contends that the circuit court was correct. She notes that the State argues for the first time on appeal that she is not entitled to statutory expungement because of the use of a deadly weapon. According to the respondent, the State advised the circuit court at the hearing that the offense of discharging a weapon within 500 feet of a dwelling house is not a crime excluded from expungement. Moreover, the statute’s age restriction is an unconstitutional violation of the due process and equal protection clauses because there is no rational basis to discriminate between a twenty-six and twenty-seven year old. The respondent urges that *Barrick* is applicable here because extraordinary circumstances do exist. Finally, the respondent argues that because the circuit court granted the expungement, she was able to obtain a teaching certificate, which ultimately is a vindication of her protected liberty interest in working at her chosen vocation.