

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**In Re: Petition of John R. Zsigray for  
Expungement of Criminal Record**

**No. 35645** (Gilmer County 09-P-37)

**FILED**

February 11, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

This appeal arises from an Order entered in the Circuit Court of Gilmer County on November 24, 2009, denying the expungement of the criminal record of Appellant, John R. Zsigray. The appeal was timely perfected by counsel and the entire record was designated for purpose of the appeal. No response was filed by the State. Appellant seeks a reversal of the circuit court's decision and an order from this Court directing the expungement of the criminal charges from his record.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Upon consideration of the standard of review, as well as the parties' briefs and the record, the Court finds no substantial question of law nor does the Court disagree with the decision of the lower tribunal as to the question of law. Moreover, the Court finds no prejudicial error. For these reasons, and having reviewed the relevant decision of the circuit court, the Court is of the opinion that the decisional process would not be significantly aided by oral argument and that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On October 21, 2005, appellant was found not guilty of first offense driving under the influence following a jury trial in magistrate court. Appellant filed his "Petition for Expungement of Criminal Record" in the circuit court on September 23, 2009. In the "Order Denying Expungement"<sup>1</sup> entered on November 29, 2009, the circuit court found that it did not believe that expungement was appropriate.

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<sup>1</sup>

The circuit court also denied the expungement of Appellant's records with the Division of Motor Vehicles on the basis of *Mullen v. Division of Motor Vehicles*, 216 W. Va. 731, 613 S.E.2d 98 (2005). Appellant's counsel indicates that this ruling appears to be correct under *Mullen*; therefore, this portion of the circuit court's Order is neither contested nor appealed.

Under West Virginia Code §61-11-25, the expungement of a criminal record is entirely at the discretion of the circuit court. The Court is unable to state that the circuit court abused its discretion in this instance.

The circuit court's order denying expungement is affirmed.

Affirmed.

**ISSUED:** February 11, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum  
Justice Thomas E. McHugh