

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000320-MR

PAUL D. YORK

APPELLANT

v. APPEAL FROM BRACKEN CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NO. 88-CR-00003

COMMONWEALTH OF KENTUCKY

APPELLEE

TO BE HEARD WITH
NO. 2002-CA-000331-MR

PAUL D. YORK

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NO. 88-CR-00006

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * **

BEFORE: JOHNSON, KNOPF, AND McANULTY, JUDGES.

McANULTY, JUDGE: These are appeals from the denials of Paul D. York's (York) motions to expunge the criminal records associated with indictments in actions in the Bracken and Mason Circuit

Courts. Concluding the trial court did not abuse its discretion, we affirm.

In appeal number 2002-CA-000320 from the Bracken Circuit Court, the underlying facts are as follows: a jury acquitted York on one count of second-degree burglary. Subsequently, on May 22, 1999, York filed a motion under KRS 431.076 to expunge all records relating to the indictment. On May 28, 1999, the trial court denied the motion on a form order. York appealed, and this Court vacated the trial court's order and remanded the matter for further factual findings. In so doing, this Court held "that the trial court's denial of the motion without elucidation and in the absence of any evidence in the record constituted an abuse of discretion."

On remand, the trial court conducted a hearing on the motion to expunge on October 26, 2001. On January 18, 2002, the trial court denied York's motion. The trial court reasoned that it had discretion under KRS 431.076 to deny York's motion. Further, the trial court found that York was charged with three separate incidents in three adjoining counties (Bracken, Fleming and Mason) of second-degree burglary within a five-day period in January of 1988, all with the same co-defendant. The trial court noted the similarities of the incidents. Moreover, the trial court remarked on a false statement that York gave to the police in connection with his co-defendant's identity. The

trial court believed that this false statement was relevant to York's credibility and reputation for truthfulness; therefore, expunging evidence of York's false statement would lead to the destruction of potentially relevant evidence in the future and would not serve the interests of justice. In addition, the trial court found:

The record further indicates that Paul Dwayne York took the stand in his own defense in Mason County, Kentucky. Said sworn statements, if proven false, could potentially form the basis of perjury charges or for casting doubt on the defendant's credibility. To make said statements unavailable by expungement would not serve the interests of justice in this case.

As additional justification for denying York's motion for expungement, the trial court cited York's inconsistent representations as to whether he owned land in Clay County, Kentucky. In two sworn affidavits in support of obtaining representation by a public defender, York denied having any interest in real estate, yet in the October 26, 2001 hearing, York stated that he had sixty-two acres of land in Clay County, Kentucky. The trial court reasoned that expungement of these proceedings would defeat possible future attacks on York's credibility, future recoupment to the public defender's office or future criminal charges.

Finally, the trial court considered the fact that York had been convicted of breaking and entering a dwelling in 1970 and second-degree burglary in 1982. In addition, York has been convicted of a crime or crimes since 1998 as he was incarcerated at the time of the October 26, 2001 hearing.

Based on the trial court's findings, it concluded as follows:

On balance, this Court feels that the allegations in the crimes charged are eerily similar to each other. The defendant has made sworn statements, contained in the files, which are of potential value. Even if the facts of each case have not yet been numerous enough to establish a pattern of behavior, or sustain a conviction, there is a possibility that the defendant's continued improper behavior in the future may be such that a court could properly admit the testimony of witnesses or evidence which would establish a pattern of conduct. To expunge these records would deprive law enforcement of a valuable tool in investigating further crimes. Finally, it is the opinion of this Court that the Legislature enacted KRS 431.076 to repair and restore the good reputation and record of those one time defendants who were wrongfully charged with crimes and were later acquitted of those charges. This defendant is not such a person.

In appeal number 2002-CA-000320 from the Mason Circuit Court, a jury convicted York of second-degree burglary and of being a first-degree persistent felony offender. These charges stemmed from the incidents in January of 1988 that are briefly set out above. Subsequently, in June of 1989, the Kentucky

Supreme Court held that the evidence was insufficient to sustain York's Mason County conviction and reversed the conviction and sentence.

On July 20, 1998, York filed a pro se motion to expunge the records associated with the Mason County indictment. The trial court ordered the Commonwealth to respond to York's motion, which it did. On September 15, 1998, the trial court denied York's motion.

On May 25, 1999, York filed a second pro se motion to expunge the records associated with the Mason County indictment. On June 4, 1999, the trial court denied the motion on a form order. On August 13, 1999, York filed a renewed pro se motion to expunge the records associated with the Mason County indictment. On January 18, 2002, the trial court denied York's motion for reasons identical to those expressed in the Bracken Circuit Court order of the same date.

In both appeals, York argues that the trial court failed to apply the criteria of KRS 431.076 in determining York's eligibility for expungement of records. York further contends that the trial court abused its discretion in impermissibly speculating as to the legislature's intent in enacting KRS 431.076. In response, as to the case in the Mason Circuit Court, the Commonwealth argues that this Court should not consider York's appeal from his second motion to expunge

because York previously filed a motion to expunge and failed to appeal the trial court's ruling. As such, principles of res judicata and the "law of the case" doctrine bar further review by this court. In addition, the Commonwealth argues that KRS 431.076 is discretionary. Moreover, the trial court adequately set forth its reasons in denying York's motions, and York has failed to show that the trial court abused its discretion.

The appropriate standard of review in this case is whether the trial court abused its discretion. "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles." Goodyear Tire & Rubber Co. v. Thompson, Ky., 11 S.W.3d 575, 581 (2000).

In relevant part, KRS 431.076 states:

- (1) A person who has been charged with a criminal offense and who has been found not guilty of the offense, or against whom charges have been dismissed with prejudice, and not in exchange for a guilty plea to another offense, may make a motion, in the District or Circuit Court in which the charges were filed, to expunge all records including, but not limited to, arrest records, fingerprints, photographs, index references, or other data, whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge.
- (2) The expungement motion shall be filed no sooner than sixty (60) days following the order of acquittal or dismissal by the court.
- (3) Following the filing of the motion, the court may set a date for a hearing. If the court does so, it shall notify the county or Commonwealth's attorney, as appropriate, of an opportunity for a

response to the expungement motion. . . .

(4) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the motion and order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency, with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the expungement order, that the required sealing action has been completed. All orders enforcing the expungement procedure shall also be sealed.

(5) After the expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(6) Inspection of the expunged records may thereafter be permitted by the court only upon a motion by the person who is the subject of the records and only to those persons named in the motion.

(7) This section shall be retroactive.

As a preliminary matter, we address the Commonwealth's argument as to York's appeal from the Mason Circuit Court. Specifically, the Commonwealth argues that York previously litigated this issue and failed to appeal the court's order denying his motion. Further, York is not entitled to renewed consideration of the issue by simply filing another motion to expunge.

We believe York is entitled to some latitude in the Mason Circuit Court proceedings because he filed his motions pro se. See generally Beecham v. Commonwealth, Ky., 657 S.W.2d 234, 236 (1983) ("Pro se pleadings are not required to meet the standard of those applied to legal counsel." Pro se pleadings, however, must give fair notice of the claim for relief.) In addition, the trial court denied York's first motion to expunge without elucidation, the very reason this Court vacated the order in Bracken Circuit Court. Finally, the trial court considered York's second motion in the Mason Circuit Court notwithstanding the procedural defects.

We move to the merits of York's arguments. Despite York's assertions that expungement is required if a movant meets certain statutory criteria, the plain language of KRS 431.076 vests considerable discretion with the trial court to deny motions for expungement. See KRS 431.076(4). Specifically, the language is that a trial court "may" grant the motion for expungement, not "shall" grant the motion for expungement. KRS 431.076(4). Although we are inclined to agree with York that the trial court's reasons for denying York's motions in these two cases are too attenuated to support the conclusion reached given the amount of time that has passed, we cannot conclude that the trial court's decision constituted an abuse of discretion. In short, we cannot conclude that the trial court

clearly erred or made an error of law. See City of Louisville v. Allen, Ky., 385 S.W.2d 179, 184 (1964), overruled on other grounds by Nolan v. Spears, Ky., 432 S.W.2d 425 (1968).

The transcript of the hearing and the trial court's orders reflect that it carefully considered the matter on remand before it reached a decision. The trial court balanced the interests implicated in granting York's motion for expungement and found that the state interest in maintaining the records relating to the charges outweighed York's interest in expunging them. We believe this was within the range of conclusions based upon the evidence and proper application of KRS 431.076, therefore, we affirm the orders denying expungement in both the Bracken and Mason Circuit Courts.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lisa Clare
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky