

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001611-MR

JACK SHAFFER

APPELLANT

v. APPEAL FROM RUSSELL CIRCUIT COURT
HONORABLE VERNON MINIARD, JR., JUDGE
INDICTMENT NOS. 89-CR-00351-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, SCHRODER, AND VANMETER, JUDGES.

DYCHE, JUDGE: Appellant, Jack Shaffer, was indicted by the Grand Jury of the Russell Circuit Court in 1989 for first-degree rape, first-degree sodomy, and murder. The indictment was eventually dismissed, and further prosecution was barred. Shaffer v. Morgan, 815 S.W.2d 402 (Ky. 1991).

In July 2004 Shaffer moved the Russell Circuit Court, pursuant to KRS 431.076, to expunge the record in the case. The motion was denied without appointment of counsel or a hearing. Shaffer appeals. We affirm.

KRS 431.076 reads, in pertinent part, as follows:

(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.

Shaffer complains that the court did not appoint counsel for him, and did not conduct a hearing on his motion. He cites us to no entitlement to either. The court was not required to appoint counsel or conduct a hearing.

Shaffer also complains that the court erred in denying his motion. The statute makes the disposition of the motion discretionary with the court. We find no abuse of that discretion. Although Shaffer cites us to language in KRS 17.142 relating to segregation of records, that statute has nothing to do with the present case.

The order of the Russell Circuit Court is affirmed.

ALL CONCUR.

APPELLANT *PRO SE*:

Jack Shaffer
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Matthew D. Nelson
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Frankfort, Kentucky