

CR-15-1223

*In the COURT of CRIMINAL APPEALS
of ALABAMA*

BURTON WHEELER NEWSOME,

Appellant,

v.

STATE OF ALABAMA,

Appellee.

*On Appeal From the Circuit Court
of Shelby County
(CC-15-121)*

BRIEF OF APPELLEE

Luther Strange
Attorney General

Ferris W. Stephens
Assistant Attorney General

State of Alabama
Office of the Attorney General
501 Washington Avenue
Montgomery, Alabama 36130
Phone: (334) 242-7300
Fax: (334) 242-2848
docketroom@ago.state.al.us

STATEMENT REGARDING ORAL ARGUMENT

The State does not request oral argument. "The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Ala. R. App. P. 34(a)(3).

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STATEMENT OF THE CASE AND FACTS

The State adopts the procedural history of this case as described by Shelby County Circuit Judge H.L. "Sonny" Conwill in his order reversing Newsome's expungement in Case No. CC 2015-000121:

"1. On or about December 19, 2012, Defendant Newsome alleges that he was scheduled to appear in court in Pell City, Alabama.

2. On the same date, Victim John Bullock had a scheduled appointment with a dentist whose office is next door to Newsome's law practice. Bullock apparently parked next to Newsome's vehicle in the parking lot shared by and between the two businesses.

3. As Newsome exited his office heading towards his vehicle, Bullock exited his vehicle and began walking towards dentist's office. Newsome, who alleged that he felt threatened by Bullock, produced and brandished a pistol. Newsome then entered his car and left for Pell City.

4. Bullock subsequently filed a criminal complaint against Newsome for the crime of menacing.

5. On May 2, 2013 Newsome was stopped for speeding and arrested on the menacing warrant.

6. On November 12, 2013, the District Court of Shelby County accepted a deferred prosecution agreement reached between the State and Defendant Newsome and entered a "Dismissal & Release Order." Defendant Newsome and Victim Bullock both signed the order. The order continued the case until April 1, 2014, and provided that the case would be dismissed with prejudice at that time "if the defendant had no further incidents/arrests." The order also contained a general release of all

civil claims of any nature related to the underlying incident and all parties related thereto.

7. On April 4, 2014, the criminal prosecution against Newsome was dismissed with prejudice pursuant to the deferred prosecution and the terms of the Dismissal & Release Order.

8. On January 14, 2015, Newsome filed a civil suit in the Circuit Court of Jefferson County against John Bullock, Claiborne Seier, Clark Cooper and the law firm of Balch & Bingham, LLP. Newsome alleged that Seier and Bullock had staged the event that led to his arrest for the purpose of fabricating a false charge of menacing. He asserted claims against them for malicious prosecution, abuse of protection, false arrest, and outrage. He additionally asserted claims against Cooper and Balch & Bingham related to Cooper's sending an email containing Newsome's mugshot and other information related to the criminal case to a mutual banking client or clients.

9. On February 13, 2015, Seier filed a motion to dismiss the civil suit based on the dismissal-release order.

10. On February 24, 2015, Bullock filed a motion to dismiss the civil suit based on the dismissal-release order.

11. On February 19, 2015, Newsome filed the instant action to expunge the records of his prosecution for menacing.

12. On July 10, 2015, the state filed an objection to Newsome's Petition for Expungement pursuant to Ala. Code 1975 § 15-27-5.

13. On August 24, 2015, Bullock filed a separate objection to the expungement petition through his attorney, James E. Hill, Jr.

14. Newsome's Petition for Expungement was set for a hearing on August 31, 2015.

15. The State filed a second objection to the petition on the date of the hearing. In this second objection, the State argued that menacing was a 'violent crime' and that a charge of menacing was not subject to expungement.

16. Following the August 31, 2015 hearing, this Court entered an order denying Newsome's petition.

[On August 31, 2015, the Jefferson County circuit court granted Seier's and Bullock's motion to dismiss Newsome's civil suit against them. (Exhibit 10 and 11, p. 110 and 111)]¹

17. On September 2, 2015, Newsome filed a post-trial motion in this Court related to the denial of his expungement petition. He argued that (a) the misdemeanor of menacing is not excluded by the expungement statute, (b) that neither the State nor the victim had filed a timely objection to the petition for expungement, and (c) that he had satisfied the statutory requirements for expungement.

18. On September 10, 2015, a now-retired judge of this Court granted Newsome's post-trial motion and entered an order of expungement.

19. On September 28, 2015, Newsome filed a post-trial motion in his civil case, and he attached a copy of the expungement order to the motion. He argued that the expunged release was 'not a lawful basis' for dismissing his civil action. He also argued that any defensive use of the expunged release or other documents from the criminal court file by the Victim/Civil Defendant or any other party to that action was 'now a criminal offense.'

¹ In lieu of resubmitting the same pleadings in this case, all references are to the Petitioner's exhibits.

20. The civil case remains pending against both Bullock and Seier at this time."

(Petitioner's Exhibit 1)

Motions were filed in the Circuit Court of Judge Conwill by the victim, John Bullock, and Claiborne Porter Seier, Esq., a non-party named as a defendant in civil litigation filed by Newsome arising out of the same operative facts as the instant criminal matter. Mr. Bullock filed a Motion to Use Contents of Expunged File, while Attorney Seier filed a Petition to Set Aside an expungement previously granted by the Circuit Court through another, now-retired judge pursuant to Ala. Code 1975 § 15-27-15. Both movants joined orally and/or in writing in the others' respective motions. Having received written briefs and oral argument from the various parties and considered same, Judge Conwill reversed Newsome's expungement pursuant to Ala. Code 1975 § 15-27-15; the Court found that the requirements of Ala. Code 1975 §15-27-17 had been shown, and that the Defendant's expungement was filed and obtained upon false pretenses. The Clerk of Court was ordered to vacate the previously-entered order expunging this file, and take all other necessary steps to restore the Court

record related to the subject charge. Judge Conwill also ordered that the movants are free to utilize all records related to the Defendant's prosecution, plea and the case's disposition as they may find appropriate and necessary.

On June 28, 2016, Newsome filed a motion to alter, amend, or vacate judgment, or the alternative, a motion for new trial. Those motions as of this date have not been ruled upon.²

On July 13, 2016, Newsome filed the present petition for writ of certiorari or, in the alternative, petition for writ of mandamus. These proceedings follow.

² Newsome's Petition for Writ of Certiorari appears to be premature given his post-judgment motion to alter, amend or vacate the judgment vacating his expungement is pending before the trial court. See Ala. R. Crim. P. 24.4 (post-judgments motions are deemed denied by operation of law on the sixtieth day). Because the trial court still has time to rule on Newsome's motions, the present petition for writ of certiorari is prematurely filed. See Smith v. State, 1060427, 2007 WL 1519869, at *15 (Ala. May 25, 2007); State v. King, 122 So.2d 158 (Ala. 1960). Also, since Newsome has an adequate remedy at law, namely his motion to alter, amend, or vacate judgment or in the alternative petition for writ of mandamus should be denied, because he has not exhausted his remedies at law. Ex parte Thompson, 38 So. 3d 119, 125 (Ala. Crim. App. 2009).

ISSUES PRESENTED FOR REVIEW

I. Did the circuit court have jurisdiction to reverse its previous order of expungement when power was vested to the court under statute?

II. Did the trial court abuse its discretion when it reversed its order of expungement when it determined Newsome filed his petition for expungement under false pretenses?

STANDARDS OF REVIEW

I. The trial court's subject matter jurisdiction over a case is derived from the Alabama Constitution and the Code of Alabama. Ex parte Jenkins, 992 So. 2d 1248, 1250 (Ala. 2007) (quoting Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006)).

II. This Court will not reverse the trial court's decision to grant or deny a petition for expungement absent an abuse of discretion. See Bell v. State, CR-15-0618, 2016 WL 1728787, at *1 (Ala. Crim. App. Apr. 29, 2016) (quoting Ala. Code § 15-27-5(c) (1975)).

SUMMARY OF THE ARGUMENT

Newsome's contention that the circuit court improvidently reversed its previous decision to grant his petition for expungement on jurisdictional grounds is without merit because that subject matter jurisdiction is vested with the trial court under the expungement statute itself. Newsome bases his arguments on the manner under which his expungement came under judicial review and the procedure the court ultimately used for such review. A trial court's subject matter jurisdiction over a case, however, is derived from the Alabama Constitution and the Code of Alabama. Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006).

In this case, the statute vests the circuit court with authority to: "Upon determination by the court that a petition for expungement was filed under false pretenses and was granted, the order of expungement shall be reversed and the criminal history record shall be restored to reflect the original charges." Ala. Code § 15-27-17 (1975). Newsome's procedural complaints about the filing of a petition for reversal and other related matters does

not affect the circuit court's statutory jurisdiction to consider the reversal of his expungement.

Since the victim in this case, John Bullock filed a petition in a reasonable time after Newsome's false pretenses were apparent to him and affected him, the trial court properly heard the matter and granted him the relief for the purposes for which the statute was created.

Regarding the merits of the case, Newsome has not shown the circuit court abused its discretion when the court determined Newsome's petition for expungement was filed under false pretenses and reversed the previous decision to grant the expungement petition. The trial court's decision to reverse the expungement order was justified when it found Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement); the court correctly found that all terms and conditions of the underlying deferred prosecution agreement, which included an agreement not to file a civil lawsuit against Bullock, which was made during Newsome's criminal menacing proceedings, were not satisfied in full at the time that the petition for expungement was filed. To the extent that Newsome represented otherwise to the circuit court, the court did not abuse its discretion

in finding that these representations were "necessarily false by virtue of Newsome's pending civil action against, among other persons, the victim of the underlying offense." The Court could certainly determine that the Defendant's false representation that he had fulfilled all terms and conditions of the underlying deferred prosecution agreement when he was concurrently prosecuting a civil action against the victim in violation of the Release and Dismissal Order of the District Court of Shelby County constituted "false pretenses" within the meaning of Ala. Code 1975 § 15-27-17. Accordingly, Newsome's petition is without merit and should be denied by this Court.

ARGUMENT

Newsome contends that the circuit court improvidently reversed its previous decision to grant his petition for expungement. His argument is twofold: first, he argues that the court was without subject-matter jurisdiction to consider reversal; and second, he alleges that, if the court had jurisdiction, it erred when it determined his petition for expungement was filed under false pretenses.

A. The circuit court has jurisdiction to reverse its previous order of expungement when power was vested to the court under statute.

Newsome argues that the circuit court was without subject-matter jurisdiction to reverse its previous decision to grant his motion for expungement. His arguments focus on the manner under which his expungement came under judicial review and the procedure the court ultimately used for such review. A trial court's subject matter jurisdiction over a case, however, is derived from the Alabama Constitution and the Code of Alabama. Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006).

In this case, the statute vests the circuit court with authority to: "Upon determination by the court that a petition for expungement was filed under false pretenses and was granted, the order of expungement shall be reversed and the criminal history record shall be restored to reflect the original charges." Ala. Code § 15-27-17 (1975). Thus, Newsome's challenges to the method by which the proceeding originated or the manner in which the trial court handled the proceeding did not affect the trial court's jurisdiction to consider reversal. At most, the timeliness of the court's consideration of the matter could

have affected the trial court's authority to consider reversal. But, as shown below, the claim that Newsome filed his expungement petition under false pretenses was raised to the trial court within a reasonable time after such claim was discovered. Therefore, the trial court had jurisdiction to consider the issue.

This Court has held that expungement proceedings are governed by Rule 21(c) of the Alabama Rules of Appellate Procedure. Bell v. State, CR-15-0618, 2016 WL 1728787, at *1 (Ala. Crim. App. Apr. 29, 2016) (the decision to deny a petition for expungement is reviewed under a petition for writ of certiorari). Rule 21(c) provides that proceedings under other extraordinary writs must conform to Rule 21(a) and (b). Under Rule 21(a)(3), the time for seeking review of a trial court's order is within "a reasonable time." Typically, the "presumptively reasonable time for filing a petition [for extraordinary writ] is 'the same as the time for taking an appeal'" Ex parte Sharp, 893 So. 2d 571, 574 (Ala. 2003). Generally, a notice of appeal must be filed within forty-two days after an order is entered. Ala. R. App. P. 4.

In this case, Newsome's exhibits show that, once Newsome received an expungement of his menacing records, he used it to request a reinstatement of the civil suit against the victim in the menacing case, John Bullock. (Petitioner's Exhibit 10, p. 208-31) The civil lawsuit on December 16, 2015 (Petitioner's Exhibit 10, p. 232); and, on January 19, 2016, Bullock notified the circuit court of the reinstatement.³ (Petitioner's Exhibit 6) Thus, Bullock notified the circuit court within a reasonable time after Newsome's false pretenses were apparent to and affected him. Accordingly, the trial court had jurisdiction to consider reversing Newsome's expungement.

Additionally, to the extent Newsome attempts to make the broad statement that time requirements set forth in the Alabama Rules of Civil Procedure apply to the specific statutory provisions of the expungement statute, the motions filed in this case were pursuant to the specific statutory provisions. The Legislature did not create provisions to use expunged records or reverse an expungement that were merely cumulative of existing post-

³ Another affected party, Claiborne Seier, filed a separate motion from Bullock at a later time to set aside Newsome's expungement, and Bullock also joined in that motion. (Petitioner's Exhibit 11)

judgment remedies. The existence of these independent provisions clearly means that they are in addition to, and not merely cumulative of the Rules of Civil Procedure as Newsome implies.

Obviously, Section 15-27-17 would not provide for reversal of an expungement if the statute did not intend to allow for the court use the authority provided. A case does not "cease to exist" as Newsome implies for purposes of the court having the authority to reverse his expungement.

(Newsom Br. 17) The records in question obviously exist, but are merely not made public under qualified circumstances. Under Section 15-27-17 the records are digitally kept in storage and archived by the Alabama Criminal Justice Information Center; one apparent purpose would be for hearings for reversal.⁴

⁴ Newsome's records do not "cease to exist" under 15-27-10 for use in investigative files of state County and municipal law enforcement agencies, municipal, district attorneys, the Department of Forensic Sciences, the Department of Human Resources. Under 15-27-6, the fact of the record must be disclosed by a former defendant to "a governmental regulatory or licensing agency, any utility its agents and affiliates, or any bank or other financial institution" these entities "shall have the right to inspect the expunged records after filing notice with the court".

Any civil pleading of course may include documents that are otherwise not public, and where appropriate the court receiving it may choose not to disclose to the public. See Ex parte Birmingham News Co., Inc., 624 So. 2d 1117, 1135 (Ala. Crim. App. 1993) (if there is a question of sealed or private material such as in a summary judgment motion, the judge "should accept submissions under seal, in camera or in any other manner designed to permit a party to make a prima facie showing without public disclosure of said matter.")⁵

⁵ Furthermore, even without a court order that would otherwise be required to divulge the records of Newsome's menacing charge under 15-27-16(a), Newsome's records should be allowed to be received in the civil circuit court of Jefferson County with no potential liability because of the privilege of court pleadings. See O'Barr v. Feist, 292 Ala. 440, 445-46, 296 So.2d 152, 156-57 (1974). (Pertinent statements made in the course of judicial proceedings are absolutely privileged.) The circuit judge in that county may use her authority to seal or otherwise not publicize the signed release and all records related to Newsome's menacing case as she saw fit. There would appear to be minimal issues about potential publicity, in particular in a motion for summary judgment or a motion for dismissal. Judge Reeves' order regarding expungement of the records and related data applicable to Newsome's menacing charge applied to the circuit clerk and district clerk's offices, of Shelby County as well as "any other agency or official" pursuant to Section 15-27-6. However, the release order already "existed" and was filed as part of the pleadings with the circuit clerk of Jefferson County before the expungement order. Hence the contents of the release, which evidences a meeting of the minds between Newsome,

In addition, the procedural rules Newsome attempts to impose on the court, such as filing deadlines, filing procedure, filing case numbers⁶, and the like, are not required under the expungement reversal statute, Section 15-27-17.

Newsome additionally attempts to imply that the only person capable of bringing either a challenge or a motion to use the contents of an expunged file are the parties to the underlying case, which he attempts to categorize as the state and defendant. That position has no legal support, and such a construction would render the statute (particularly the portion regarding the use of the expunged file) effectively meaningless.

Newsome's lawyer, the victim, and the prosecutor, and executed by way of the district court's Order, would be immune because the documents are privileged.

⁶ According to Shelby County Deputy Circuit Clerk Jill Smitherman, in a conversation with the below-signed counsel, on the day the trial court issued its order reversing Newsome's expungement, she forwarded the order to the appropriate department at the Administrative Office of Courts for the purpose of allowing the Clerk's office to have access to SJIS and AlaCourt to receive the order and open the records.

B. Newsome has not shown the circuit court abused its discretion when it determined Newsome's petition for expungement was filed under false pretenses and reversed the previous decision to grant the petition.

Newsome's petition contains no specific request that this Court reverse Judge Conwill's order on its merits, but challenges the order on procedural grounds. The trial court's decision to reverse the expungement order was just and well-grounded. The court did not abuse its discretion in finding on the facts that Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement) as all terms and conditions of the underlying deferred prosecution agreement were not satisfied in full at the time that the petition for expungement was filed. To the extent that Newsome represented otherwise to the circuit court, these representations were "necessarily false by virtue of Newsome's pending civil action against, among other persons, the victim of the underlying offense." The Court could certainly determine that Newsome's false representation that he had fulfilled all terms and conditions of the underlying deferred prosecution agreement when he was concurrently prosecuting a civil action against the victim in violation of the Release and Dismissal Order

of the District Court of Shelby County constituted 'false pretenses' within the meaning of Ala. Code 1975 § 15-27-17. It was proper for the court to find this conclusion was further supported and confirmed by the subsequent motions filed by the Newsome alleging that the Bullock's defensive use of the deferred prosecution agreement in the civil action filed against him by Newsome was supposedly criminal.

Newsome also alleges that his petition for expungement was not filed under false pretenses because the existence of a pending civil action was raised by the victim in prior proceedings. First, when Judge Reeves granted Newsome an expungement, there was no active civil case pending against the victim. The Jefferson County civil suit against the Bullock and others had been dismissed on August 31, 2015. Though Judge Reeves did not refer to the dismissed civil case in his order granting expungement, he had different circumstances before him, especially as regards Bullock when he granted the petition. This essential fact was different from when he originally considered Newsome's expungement petition.

When Judge Conwill later considered the case for reversal of the expungement, there was a reinstated and active case against Bullock and others in the civil case, which was reinstated on December 16, 2015. Newsome used his expungement as a tool to reinstate the civil case. Judge Conwill stated in his order of reversal on June 8, 2016, that he was not present for any of the prior proceedings in the matter and had not been provided with a transcript of those proceedings to study. Regardless, he found it was "abundantly clear that the statutory prerequisites for expungement were not met in this case." (Petitioner's Exhibit 1)

A valid expungement requires an affirmance under oath by the Petitioner that all requirements of the underlying sentence had been met. Ala. Code 1975 § 15-27-3. The prosecution of a civil lawsuit against a victim that was released from liability in conjunction with the Defendant's execution of a deferred prosecution agreement or Dismissal and Release Order clearly indicated to the court that the terms of that agreement and order were not followed and fulfilled. Further, Newsome's renewed and continued prosecution of the civil action against Bullock (and by

extension, his continuing violation of the Dismissal and Release Order) was sufficient proof to support a finding by the judge that Newsome was still not in compliance with the terms of the agreement and Order.

Furthermore, the trial court correctly exercised its discretion in affirmatively authorizing the use of civil proceedings instituted by Newsome arising out of the same events made the basis of his criminal charges. Judge Conwill's appealed-from Order additionally and/or alternatively allowed the Defendants in the civil case instituted by Newsome to affirmatively use records related to his underlying criminal charges in their defense of his civil allegations. As pointed out by Judge Conwill in his June 8, 2016 Order:

The expungement statute was enacted to provide a "shield" to first-time and non-violent offenders. It was not intended to be a "sword" for those engaged in civil litigation over the same transaction made the basis of their criminal offense, and the Court will not construe the statute as such.

(Petitioner's Exhibit 1)

Because Newsome improperly attempted to employ the expungement statute in the context of subsequent civil proceedings arising out of the same operative facts as his

previously-expunged criminal case, Judge Conwill's June 8, 2016 Order should be upheld.

To be clear, there is no dispute that Newsome's petition for expungement was not filed until *after* the Defendants in the subsequent civil case moved for a dismissal of his case based on the "Dismissal and Release Order" that allowed for the ultimate disposition of the criminal case. (Petition at p. 4.) Newsome then filed motions in the civil case arguing that the "Dismissal and Release Order" was "not a lawful basis for dismissing his civil case. (Petition at p. 7.) He further filed various pleadings in the civil case and presented oral arguments in court that, because of the expungement, "it was like [the criminal case] never even happened." See Tab 10 to Plaintiff's Petition.

Ala. Code 1975 § 15-27-16 provides that:

(a) Notwithstanding any other provision of this chapter, an individual who knows an expungement order was granted pursuant to this chapter and who intentionally and maliciously divulges, makes known, reveals, gives access to, makes public, uses, or otherwise discloses the contents of an expunged file *without a court order*, or pursuant to a provision of this chapter, shall be guilty of a Class B misdemeanor.

(Emphasis added).

This portion of the expungement statute explicitly contemplates that a court of competent jurisdiction such as the circuit court of Shelby County may deem it necessary and/or appropriate to allow for the disclosure of records related to a previously-expunged in its discretion. With the inclusion of the conjunction "or" in the Code section, this court-sanctioned disclosure provision is clearly intended to be in addition to those rights provided to certain persons or entities under Ala. Code 1975 § 15-27-6. Further, § 15-27-16 contains no time limitations, and prescribes no particular form or venue in which the motion for use of expunged records must be made.

As stated, Newsome's petition for writ of mandamus contains no specific request that this Court overturn that portion of Judge Conwill's Order on its merits. Instead, Newsome's arguments appear to be directed procedurally to the alleged untimeliness of Judge Conwill's action. Therefore, any merits argument related to that portion of Judge Conwill's Order related to the use of Newsome's expunged records has been waived. See Ex parte Navistar, Inc., 17 So. 3d 219, 221 n. 1 (Ala. 2009) ("Arguments not made as a basis for mandamus relief are waived.").

Further, because Section 15-27-16 contains no time limitation, and common sense dictates that the need to use expunged records may not arise within thirty or one-hundred and twenty days of an expungement order being entered, Newsome's Petition (at least as it relates to Judge's Conwill's Order allowing the use of Newsome's expunged records in the defense of his civil claims) should not be disturbed.

Because Newsome's Petition does make at least some mention of Section 15-27-16 in Section (6) of the Petition dealing with timeliness, however, it will be addressed by the State out of an abundance of caution. See Petition p. 24. Alabama appellate courts have not yet addressed the circumstances in which expunged records can be utilized in subsequent civil cases arising out of the same operative facts as the expunged criminal case. Other states' appellate court have, however, uniformly denied requests by parties such as Newsome to exclude expunged records from subsequent civil litigation. Said case law clearly supports Judge Conwill's decision to allow the disclosure and use of Newsome's expunged file by the Defendants in his subsequent civil case.

In Batterton v. Thurman, 105 Ill.App.3d 798, 801 (Ill. App. Ct. 1982), for example, the appellate court found that an admission made a defendant in his expunged criminal case was properly admitted in a later civil trial seeking damages for assault and battery arising out of the same transaction or occurrence despite the party's plea that the expungement of those criminal proceedings barred the introduction of that admission into evidence.

In fact, courts have found that a person can, in effect, "unexpunge" his records by putting those records at issue in another proceeding. See, e.g., In re State Bar of Texas, 440 S.W.3d 621, 625 (Tex. 2014) (the appellate court finding that a trial court's denial of a party's request to use expunged criminal records in related administrative disciplinary action arising out of the same occurrence was an abuse of discretion). See also W.V. v. State, 669 S.W.2d 376, 379 (Tex. App.-Dallas 1984) ("If the petitioner should file a civil action arising out of his arrest, he necessarily by his own allegations makes the materials contained in the expunged records, as well as the contents of the expunction file, a matter of public record subject to discovery proceedings.").

One state appellate court went so far as to compel its trial court to dismiss the underlying action if the criminal defendant/civil plaintiff was unwilling to sign a release for the disclosure of his previously-expunged criminal file. See Ulinsky v. Avignone, 148 N.J.Super. 250, 372 A.2d 620 (1977). In so ruling, that appellate court held: "The remedy of expungement was never intended as a device by which a plaintiff in a malicious prosecution suit could control the availability of evidence relative thereto." 372 A.2d at 622.

The State believes that the Court should determine that Newsome waived any substantive opposition to that portion of Judge Conwill's June 8, 2016 Order allowing the civil defendants to utilize records from Newsome's underlying criminal case. Moreover, the unanimity of national precedent is clear that "expungement was never intended as a device by which a plaintiff in a [later civil] suit [arising out of the same alleged events] could control the availability of evidence relative thereto." Finally, procedurally, there is no evidence that a party need bring a Motion to Use Expunged Records within the statutory time for a motion under either Rule 59 or 60 Ala. R. Civ. P.,

and/or that a party need bring an entirely new and separate action. Instead, § 15-27-16 of the expungement statute expressly provides that a court may simply enter an Order as Judge Conwill has done allowing the use of an expunged file in his discretion. There is no evidence that Judge Conwill abused that discretion in the instant case.

Among his procedural challenges, Newsome alleges that a challenge of any sort to an expungement or a request to use expunged records requires the filing of a separate petition and action. There is no statutory requirement for this to occur. Rather, the statute (both in terms of using records and reversing an expungement filed under false pretenses) refers to "the court." This clearly references the court that had original jurisdiction. Further, there are not established procedures in place. While these may need to be created, the Court should not deprive people who are being harassed by a litigant with an expunged file from having access to the courts to remedy that like we have in this case. As instructed by the circuit clerk, the pleadings were provisionally accepted and delivered to Judge Conwill.

Addressing the arguments of Newsome in opposition to the Petition to Set Aside the Expungement, the trial court

recognized that Attorney Seier had questionable standing to bring such a Petition in the circuit court. However, Attorney Seier's petition had been joined by the victim who the legislature clearly intended to have standing under the expungement statute. Further, the trial court did not abuse its discretion in finding that since the matter was brought to the Court's attention by an officer of the Court, the Court was within its purview to investigate and act as may be necessary and appropriate. This is particularly true given that the judge knew Newsome was himself a member of the Shelby County Bar.

What Newsome asks this Court to do by way of a precedent is not what was intended by the statute or address any consideration of fairness. Newsome does not come into this Court or any court below with clean hands. As stated in the hearing before Judge Conwill, the primary purpose of the expungement statute is to "let bygones be bygones". (Petitioner's Exhibit 13, page 19) Newsome's counsel all but admitted to the trial court in the hearing for reversal that his client was coming to the court not on the merits of whether there was fair play, but using what he contended was a procedural advantage on his client's

part. (Petitioner's Exhibit 13, p. 22) However as stated above, this procedural advantage does not exist under the reversal section of the statute. Newsome has perverted the use of the new expungement law, attempting to manipulate procedure, the details of which were unaddressed by the legislature, by breaking the agreement he entered into to become eligible for expungement and "using the shield as a sword" against his alleged victim. (Petitioner's Exhibit 1) Bullock has had to spend over \$40,000 on attorney's fees, even though Newsome has admitted he is violating the provision of the agreement which constituted his eligibility to even be considered for expungement.

(Petitioner's Exhibit 13, page 21) This interpretation as to how this statute should be applied can even be seen as a "trick" on the victims of a similar crime, that is to induce a victim to dismiss a case by signing a form promising not to sue him; there being a meeting of the minds between all parties, and the judge so ordering; the victim relying upon the criminal defendant's representations; once this is done then filing a motion for an expungement to wipe away the protection of that agreement as well vestiges of the facts in the record of

the crime committed; and then sue the victim personally for defamation or a like tort. The victim of Newsome's alleged menacing crime has now had to spend substantial legal fees every step of this process because he relied on Newsome's representations not to sue him and his subsequent unethical use of the expungement statute. Clearly, the application in this case of the statute's reversal section, Ala. Code 1975 § 15-27-17, and the prerequisites to expungement section, Ala. Code 1975 § 15-27-12, is an application of the type the legislature intended for the circuit court to be able to consider when an expungee provides untruthful representations to the Court.

CONCLUSION

The circuit court has jurisdiction to reverse its previous order of expungement because this power was vested to the court under the expungement statute. The victim as well as others who filed the pleadings to have the Court's expungement order reversed were diligent in so seeking the appropriate relief from the trial court. The trial court did not abuse its discretion when it reversed its order of expungement after it determined Newsome filed his petition for expungement under false pretenses. Therefore, Newsome's petition, and in the alternative his petition for writ of mandamus should be denied.

Respectfully submitted,

Luther Strange
Attorney General
By -

/s/Ferris W. Stephens
Ferris W. Stephens
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of August, 2016, I electronically filed the foregoing with the Clerk of this Court and served a copy on Newsome's attorney, by e-mail to the e-mail address listed on the Alabama State Bar's website:

G. Houston Howard, III
ghowardii@aol.com

/s/Ferris W. Stephens
Ferris W. Stephens
Assistant Attorney General

ADDRESS OF COUNSEL:

Office of the Attorney General
Criminal Appeals Division
501 Washington Avenue
Montgomery, Alabama 36130
(334) 242-7300

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