

NOTICE
Decision filed 09/19/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180050-U

NO. 5-18-0050

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 01-CF-2078
)	
RA'YCE L. MARTIN,)	Honorable
)	Jennifer L. Hightower,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Overstreet and Justice Welch concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because the defendant's conviction for attempted first degree murder is not eligible for expungement and her petition is untimely for sealing, the circuit court correctly denied the defendant's petition.
- ¶ 2 The defendant, Ra'yce L. Martin, appeals *pro se* the denial of her petition to expunge and/or seal the record of her attempted first degree murder conviction, arguing that the court failed to give a reason for the denial of her petition, failed to provide a court reporter at the hearing, did not know the timeline for filing expungement/sealing, and told the defendant that if she could not afford an attorney, one would be provided. The State argues that the judgment of the circuit court should be affirmed because the defendant's conviction

is not eligible for expungement and that her petition to seal was premature. We agree with the State. Consequently, the judgment of the circuit court is affirmed.

¶ 3

BACKGROUND

¶ 4 In August 2001, the defendant was charged with attempted first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)) for attacking Bridget Brown with an aluminum baseball bat. On June 18, 2002, the defendant was found guilty but mentally ill after a bench trial and was sentenced to 25 years' incarceration.

¶ 5 On April 17, 2003, the defendant filed a posttrial motion to vacate the judgment or in the alternative to reduce sentence, arguing that her waiver of a jury trial was not knowing, voluntary, and intelligent, and that she received ineffective assistance of counsel. Her motion for new trial was granted, and on January 28, 2004, the defendant pled guilty to attempted first degree murder and was sentenced to 16 years and 6 months' incarceration with credit for time served. Her sentence was later reduced to 13 years and 6 months' imprisonment. The defendant's mandatory supervised release period ended on March 10, 2015.

¶ 6 On November 30, 2017, the defendant filed a request to expunge and impound and/or seal criminal records in this case, utilizing a preprinted form approved by the Illinois Supreme Court. She sought expungement on the basis that "[a]t least 2 years have passed since [she] completed her supervision successfully." She sought to have the record of her conviction sealed on the basis that "[a]t least 2 years have passed since [she] successfully completed [her] supervision, for eligible offenses." A hearing was held on February 13, 2018, after which the defendant's petition was denied. Defendant filed this timely appeal.

¶ 7

ANALYSIS

¶ 8 Section 5.2 of the Criminal Identification Act (Act) (20 ILCS 2630/5.2 (West 2016)) provides for the expungement and/or sealing of criminal records. Section 5.2(b) provides that a petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest when he or she has never been convicted of a criminal offense and each arrest or charge not initiated by arrest sought to be expunged resulted in: "(iii) an order of supervision and such supervision was successfully completed by the petitioner, unless excluded by subsection (a)(3)(A) or (a)(3)(B) ***." *Id.* § 5.2(b)(1).

¶ 9 The defendant has confused "supervision" with *mandatory supervised release*. Section 5.2(a)(1)(A) of the Act provides the term "supervision" shall have the meaning associated to it by section 5-1-21 of the Unified Code of Corrections (730 ILCS 5/5-1-21 (West 2016)) as used therein. 20 ILCS 2630/5.2(a)(1)(A) (West 2016). " 'Supervision' means a disposition of conditional and revocable release without probationary supervision, but under such conditions and reporting requirements as are imposed by the court, at the successful conclusion of which disposition the defendant is discharged and a judgment dismissing the charges is entered." 730 ILCS 5/5-1-21 (West 2016). Supervision is not available for individuals charged with a felony. *Id.* § 5-6-1(c)(iii). In this case, the defendant was convicted of a felony and served a period of imprisonment and *mandatory supervised release*.

¶ 10 As noted above, the defendant utilized the preprinted form provided by the Illinois Supreme Court, and the instructions state the types of offenses that cannot be expunged as being "[c]onvictions for misdemeanors and felonies unless they were reversed, vacated,

pardoned by the Governor, or approved by the Prisoner Review Board." [http://www.illinoiscourts.gov/Forms/approved/expungement/ExpungementSealing Instructions Approved.pdf](http://www.illinoiscourts.gov/Forms/approved/expungement/ExpungementSealing_Instructions_Approved.pdf) (last visited June 25, 2019). Since there has been no reversal, vacation, pardon, or approval by the prisoner review board, the defendant's conviction is not eligible for expungement.

¶ 11 As for the sealing of her felony conviction, section 5.2(c)(3)(C) of the Act states: "Except as otherwise provided in subparagraph (E) of this paragraph (3), records identified as eligible under subsections (c)(2)(D), (c)(2)(E), and (c)(2)(F) may be sealed 3 years after the *termination* of the petitioner's last sentence (as defined in subsection (a)(1)(F)). Convictions requiring public registration under the Arsonist Registration Act, the Sex Offender Registration Act, or the Murderer and Violent Offender Against Youth Registration Act may not be sealed until the petitioner is no longer required to register under that relevant Act." (Emphasis added.) 20 ILCS 2630/5.2(c)(3)(C) (West Supp. 2017).

¶ 12 According to the record, the defendant completed her term of mandatory supervised release on March 10, 2015, which marks the end of her sentence. *People v. Whitfield*, 217 Ill. 2d 177, 185 (2005). Therefore, she was ineligible to petition for sealing prior to March 10, 2018. Because her petition was filed on November 30, 2017, and denied on February 13, 2018, it was premature.

¶ 13

CONCLUSION

¶ 14 As the conviction for attempted murder is ineligible for expungement and the sealing petition was premature, the judgment of the Madison County circuit court is affirmed.

¶ 15 Affirmed.