

2014 IL App (2d) 140489-U  
No. 2-14-0489  
Order filed November 12, 2014

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE CITY OF NAPERVILLE,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff,	)	
	)	
v.	)	No. 10-DT-4019
	)	
CAROL S. JABLONSKY,	)	
	)	
Defendant and Petitioner-Appellant	)	
	)	Honorable
(Department of State Police,	)	Anthony V. Coco,
Respondent-Appellee).	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because the Criminal Identification Act excluded DUI arrest records from expungement, we affirmed the circuit court's denial of petitioner's petition to expunge her DUI arrest record.

¶ 2 Petitioner, Carol S. Jablonsky, was arrested for driving under the influence (DUI) of drugs in October 2010. She pleaded guilty to the offense and received court supervision for one year. In January 2014, she petitioned to have her DUI arrest records expunged. The City of Naperville did not object, but the Department of State Police (DSP) filed an objection that

section 5.2(a)(3)(A) of the Criminal Identification Act (Act) (20 ILCS 2630/5.2(a)(3)(A) (West 2012)) excluded her arrest records from expungement. The circuit court agreed and denied the petition to expunge. Petitioner then filed a *pro se* appeal, and for the reasons set forth herein, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 On October 25, 2010, Officers Stock and Zegadlo of the Naperville police department responded to a dispatch that advised them that an intoxicated or ill subject had called asking for assistance. The following is from Officer Stock's report. The person requesting assistance was petitioner, and the officers drove to her home. They observed a gray Hyundai in the driveway and met her at the front door of her house. She was swaying in the doorway of her home and appeared "sleepy or intoxicated." Her eyelids were drooping and her eyes appeared bloodshot and glassy. Petitioner did not initially respond to the officers' greetings, and when she did respond, her speech was slurred. She eventually communicated that she did not need the officers' help, and the officers left.

¶ 5 After leaving petitioner's home, Stock was driving and observed a gray car turn at a stop sign without stopping or signaling. She pursued the gray vehicle, a Hyundai, and activated her siren. The Hyundai started to slow, then swerved to the right and struck a curb. The car drove up onto the curb, returned to the street, and then stopped. Stock exited her vehicle and approached the Hyundai.

¶ 6 Stock immediately identified the driver as petitioner. Stock told her that she had just been to her house and asked where she was going. Petitioner did not answer; her eyelids were drooping and she was slouching in her seat. When asked for identification, she began to rummage through the glove box. In doing so, she lifted her foot off the brake, and the car began

to roll forward. Stock ordered petitioner to stop the car and put it in park, but she only continued to rummage through the glove box. After three more verbal commands, petitioner stopped the car and slowly looked up. However, she did not put the car in park; she only stared at the shifter. After three more commands to put the stopped car in park, she finally did so. When asked where she was going, petitioner responded that she was “going to Home Depot to see if there’s any credit,” which Stock told her made no sense.

¶ 7 When Officer Fletcher arrived on scene, Stock told him she believed petitioner was impaired “based on her driving behavior, slurred/mumbled speech, drooping eyelids, bloodshot/glassy eyes, slouched posture, incoherent statement, slow physical movements/responses, and her inability to follow commands.” Stock directed her to exit the car, but she did not respond. When she finally exited the vehicle, she stumbled and staggered. Officer Fletcher had to help her keep her balance multiple times.

¶ 8 Petitioner told the officers she had taken medication. She said she took her “9PM” medication, which included Respitrol, Trileptal, and Lorazepam. Stock asked her if she would take a field sobriety test, and petitioner responded, “I’m sober! I love sober drivers,” pointing to a bumper sticker on her car that said “I love sober drivers”. When asked about the test again, she responded, “I’m sober! Where’s your proof?” She agreed to the Horizontal Gaze Nystagmus test but was unable to smoothly follow Stock’s finger. She declined to take the “Walk & Turn” test. On the portable breath test, she scored a BAC of .000.

¶ 9 The officers arrested petitioner for DUI. In her car they found a clear baggie of crushed orange and white pills. They also found packages of Protonix and Meclizine and a prescription bottle of Lorazepam.

¶ 10 After Stock's report and traffic citations against petitioner, the City of Naperville filed a DUI complaint against her on October 26, 2010. The complaint charged that she committed the offense of driving while under the influence of drugs in violation of section 11-501(a)(4) of the Municipal Code of the City of Naperville, which adopted section 11-501(a)(4) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(a)(4) (West 2010)). Her driver's license was suspended for one year.

¶ 11 On December 28, 2010, petitioner, represented by counsel, pleaded guilty to the DUI charge, and she received court supervision for 12 months. Pursuant to her plea agreement, the suspension of her license was rescinded and the traffic citations non-suited. After the 12-month court supervision ended, the case closed.

¶ 12 On January 6, 2014, petitioner, again represented by counsel, filed a petition to expunge her DUI arrest records. In support of her petition to expunge, she stated that Lorazepam, the drug that was the subject of the arrest, was a prescribed anti-anxiety medication used to treat petitioner's stress disorder. At the time of her arrest, she had "inadvertently taken too much medication." She continued that Lorazepam was not a recreational drug or narcotic taken to become intoxicated, and therefore while she was technically "under the influence" while driving, she did not drive knowingly under the influence. She also emphasized that she was harmed because her arrest record hindered her attempts to find a job; she alleged she had already been denied several positions after the prospective employer discovered the DUI arrest. On the other hand, she argued, there was no harm to the public in expunging her record.

¶ 13 The DSP filed an objection to the petition on February 20, 2014. The objection stated that pursuant to section 5.2(a)(3)(A) of the Act (20 ILCS 2630/5.2(a)(3)(A) (West 2012)), courts

could not order the expungement of the records of arrest that resulted in an order of supervision pursuant to section 11-501 of the Vehicle Code or a similar local ordinance.

¶ 14 On April 23, 2014, the circuit court held a brief hearing on the petition. The court stated, “you can’t expunge a DUI. That’s basically the bottom line, what it comes down to. It’s listed as an exclusion, any 11-501 type offense whether it’s written under state, IVC, or under local ordinance.” Petitioner’s counsel asked “for an exception,” arguing this was “an incredibly unique situation.” Counsel continued that she did not believe petitioner understood the ramifications of a guilty plea, not believing the arrest would be a permanent mark on her record. Petitioner did not drink or do drugs, and her arrest was an isolated incident. Yet petitioner’s arrest record hindered her ability to find and secure a job long after completing her court supervision. She argued the purpose of the statute was never to prevent someone like petitioner from having a clean record and getting a job.

¶ 15 The court did not judge “whether [petitioner was] a good person or bad person \*\*\* [L]ots of people get DUI’s.” However, the court’s “hands [were] tied” by the statute. The court did not have the authority to expunge the record, and therefore it denied the petition to expunge.

¶ 16 Petitioner filed a timely *pro se* appeal.

¶ 17 II. ANALYSIS

¶ 18 While we generally review a denial of a petition to expunge for an abuse of discretion (*People v. Laguna*, 2014 IL App (2d) 131145, ¶ 14), here, the only issue is whether the trial court had authority under the Act to expunge petitioner’s arrest record. This is an issue of statutory construction, which is an issue of law that we review *de novo*. *Mahoney v. Gummerson*, 2012 IL App (2d) 120391, ¶ 13.

¶ 19 Petitioner raises two issues on appeal. First, she questions whether Lorazepam, which was prescribed to her by a licensed physician, is a “drug” under section 11-501(a)(4) of the Vehicle Code (625 ILCS 5/11-501(a)(4) (West 2010)). Second, she asks whether we should create an exception to allow the expungement of a DUI arrest record when the drug was legally prescribed and not intentionally misused.

¶ 20 Petitioner first argues that Lorazepam should not be a “drug” under the Vehicle Code. She argues that she was not impaired but was capable of driving safely the night she was arrested. Petitioner continues that the law, as written with respect to “drugs,” is “unconstitutionally broad and extremely vague.” She argues the law was only meant to include illegal drugs, not prescription medications. She also claims that had she known that expungement was disallowed under current law, she would not have pleaded guilty. She cites *People v. Workman*, 312 Ill. App. 3d 305, 311 (2000), where we held that the State failed to present sufficient evidence to support a DUI conviction for allegedly driving while under the influence of Lorazepam.

¶ 21 However, this appeal is from the denial of her petition to expunge her arrest record, not an appeal from the DUI charge and subsequent plea agreement. As such, we cannot consider the arguments that Lorazepam was not a “drug” and that she did not receive adequate counsel as those are attacks on the original charge and not the order denying her petition to expunge. See 20 ILCS 2630/5.2(b)(2) (West 2012) (providing the time frames in which to file a petition for expungement after an arrest or charge); *cf. People v. Ambrosio*, 339 Ill. App. 3d 709, 710 (2003) (court had jurisdiction to entertain appeal from the denial of a petition to expunge filed more than 30 days after order entering plea of guilty because the order denying expungement was a separate, appealable order). There is but one issue before us: whether the Act prohibits the

expungement of petitioner's DUI arrest record. Accordingly, we do not revisit petitioner's DUI charge or plea on this appeal, and we need not examine the meaning of "drugs" under the Vehicle Code to determine the application of the Act in this case.

¶ 22 Petitioner's second argument is that we should, in essence, amend the Act for her so that she may expunge her DUI arrest record, or at the very least allow an exception for expungement in her case. However, we cannot afford her the relief she seeks. "[A]n individual is eligible for expungement only where the legislature has authorized expungement." *People v. Thon*, 319 Ill. App. 3d 855, 859 (2001). The legislature promulgated the Act, which provides for the sealing and expungement of criminal records under certain circumstances. *Wakefield v. Department of State Police*, 2013 IL App (5th) 120303, ¶ 5. The plain language of section 5.2(a)(3)(A) of the Act is clear in excluding the "expungement of the records of arrests \*\*\* that result in an order of supervision for \*\*\* Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance." 20 ILCS 2630/5.2(a)(3)(A) (West 2012). Petitioner was arrested for a DUI under section 11-501(a)(4) of the Vehicle Code that resulted in an order of supervision. Her case falls squarely into one of the legislature's exceptions to expungement. The relief petitioner seeks is with our legislature, not with the courts.

¶ 23

### III. CONCLUSION

¶ 24 For the reasons stated herein, the order of the Du Page County circuit court is affirmed.

¶ 25 Affirmed.