

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

February 19, 2010

Opinion No. 10-18

Authority of Judge Exercising General Sessions Court Jurisdiction to Expunge Defendant's Criminal Record

QUESTION

Is a general sessions judge or a municipal court judge exercising general sessions court jurisdiction authorized, upon petition by a defendant, to order the expungement of the defendant's public records in connection with a charge that has been retired, retired upon payment of costs, or dismissed, when a year or more has passed since the disposition of the case?

OPINION

A general sessions judge or a municipal court judge exercising general sessions court jurisdiction is authorized, upon petition of a defendant, to order the expungement of the defendant's public records in connection with a charge that has been dismissed if the court had jurisdiction in the previous action. The court's authority to order the expungement is not limited by the passage of any period of time. However, the court is without authority to order the expungement if the charge has been only retired or retired upon payment of costs.

ANALYSIS

The general expungement statute, Tenn. Code Ann. § 40-32-101 (Supp. 2009),¹ provides, in pertinent part:

(a)(1)(A) All public records of a person who has been charged with a misdemeanor or a felony shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

- (i) The charge has been dismissed;
- (ii) A no true bill was returned by a grand jury;

¹ Tennessee's statutes also provide for expungement of public records in other contexts that do not appear to be pertinent to this request. *See* Tenn. Code Ann. §§ 40-32-101(a)(2) (Supp. 2009) (upon the expiration of certain bail bonds); 40-32-101(a)(3) (Supp. 2009) (upon the entry of a nolle prosequi in the defendant's case); 40-32-101(f)(1) (Supp. 2009) (in connection with a misdemeanor or felony committed "while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or racial discrimination"); 40-15-105(e) (Supp. 2009) (pre-trial diversion); 40-35-313(b) (Supp. 2009) (post-trial diversion).

- (iii) A verdict of not guilty was returned, whether by the judge following a bench trial or by a jury; or
- (iv) The person was arrested and released without being charged.

Thus, if a general sessions court or a municipal court exercising general sessions court jurisdiction had jurisdiction in an action in which the defendant was charged with a misdemeanor or a felony, and the charge has been dismissed, that court is not only authorized, but is required, upon petition of the defendant, to remove and destroy, i.e., expunge, all public records in connection with the charged offense. The statute imposes no time limitation on either the filing of the petition or the court's action ordering expungement.

However, the public records of a charge that has been only retired or retired upon payment of costs are not a proper subject for expungement.

When a trial court retires a case from the docket, the case is not dismissed and may be subject to further prosecution. *State ex rel. Underwood v. Brown*, 244 S.W.2d 168, 171 (Tenn. 1951); *State ex rel. Lewis v. State*, 447 S.W.2d 42, 43 (Tenn. Crim. App. 1969). A retired case, which has not been dismissed, is not listed as subject to expungement under Tenn. Code Ann. § 40-32-101.

Mauldin v. State, No. M1999-00532-CCA-R3-CD, 2000 WL 284179, at *1 (Tenn. Crim. App. Mar. 17, 2000) (no app. filed) (construing Tenn. Code Ann. § 40-32-101(a) (Supp. 1999)).² Thus, a general sessions court or a municipal court exercising general sessions court jurisdiction is not authorized to order the expungement of the public records in connection with a charge that has been only retired or retired upon payment of costs.

ROBERT E. COOPER, JR.
Attorney General & Reporter

GORDON W. SMITH
Associate Solicitor General

² Section 40-32-101(a)(1) (Supp. 1999) provided, in pertinent part: "All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, or a no true bill returned by a grand jury, or a verdict of not guilty returned by a jury or a conviction which has by appeal been reversed, and all public records of a person who was arrested and released without being charged, shall, upon petition by that person to the court having jurisdiction in such previous action, be removed and destroyed without cost to such person. . . ."

Requested by:

The Honorable Roger E. Brandon
City Judge
Lewisburg City Court
101 Water Street
Lewisburg, Tennessee 37091