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DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

APPEAL NO. 2015AP001877-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LAZARO OZUNA,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM THE JUDGMENT OF CONVICTION
THE HONORABLE KRISTINE E. DRETTWAN, CIRCUIT COURT JUDGE
CIRCUIT COURT FOR WALWORTH COUNTY

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STATEMENT OF THE ISSUES

Did the Defendant-Appellant, hereinafter Ozuna, successfully complete his probation entitling him to automatic expungement?

The trial court answer: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither publication of this court's opinions nor oral argument is necessary in this case. The issues presented are adequately addressed in the brief and under the rules of appellant procedure, publication of this decision is not appropriate because it is a one-judge appeal. See Wis. Stat. § 809.23(1)(b)4, Wis. Court Rules and Procedures, 2013-2014.

STATEMENT OF THE FACTS

The State charged Ozuna with one count of criminal damage to property and disorderly conduct for his actions on July 28, 2013 (R1). On May 27, 2014 Ozuna pled guilty to both charges (R24:7-8). As part of Ozuna's plea agreement, the State agreed to expungement if, during Ozuna's probation, there were "no violations of probation and no law enforcement contacts rising to the level of probable cause." (R24:2-3).

In accordance with the parties' agreement, the sentencing court ordered the following:

I will impose 120 days in the Walworth County jail with Huber on Count 1, 30 days with Huber on Count 2 concurrent. Imposed and stayed. Probation for 12 months with the following conditions; pay a \$250 fine plus costs that should be paid in monthly installments through the Department of Corrections...Have an AODA assessment, follow through. Counseling as recommended by agent. Possess no weapons...Not to possess or consume alcohol, illegal drugs or paraphernalia. If he has a prescription for some condition, he must make that known to the agent immediately. DNA sample and surcharge. A full one year probation. It may not be terminated early. And the State agrees to expungement and I will allow expungement if there is **no violation of probation**, no law enforcement contacts rising to the level of probable cause of illegal conduct I image that means.

(R24:9-10) [Emphasis Added].

Prior to accepting his plea, the Court explained to Ozuna that the two charges would remain on his record until he successfully completes his sentence and it is expunged (R24:7). Ozuna indicated that he understood (R24:7).

The Department of Corrections ("DOC") discharged Ozuna from probation on May 27, 2015 and sent a "Verification of Satisfaction of Probation Conditions for Expungement" form to the Court on June 5, 2015 (R14). The form indicated that "the offender has successfully completed his/her probation". The form further indicated that "all court ordered conditions have not been met" and stated:

December 2014. Failed to comply with the no alcohol condition. Lake Geneva PD went to Harbor Shores Hotel for noise complaint. Mr. Ozaro (sic)

cited for underage drinking (102 pbt) and marijuana odor in the halls.

(R14).

The circuit court denied Ozuna expunction (R14).

ARGUMENT

I. The Circuit Court's Denial Of Ozuna's Expungement Should Be Affirmed.

A. Standard of Review.

Ozuna argues that Judge Drettwan improperly denied expunction after receiving Ozuna's certificate of discharge from probation. Ozuna, however, is mistaken. Because Ozuna did not satisfy all of his conditions of probation, he did not successfully complete his probation. This issue involves the interpretation of Wis. Stat. § 973.015. Statutory interpretation and the application of a statute to specific facts are questions of law that this court reviews independently but benefitting from the analysis of the circuit court and court of appeals. *State v. Matasek*, 2014 WI 27, ¶ 10, 353 Wis. 2d 601, 846 N.W.2d 811 (citation omitted).

B. Legal Principles.

"[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 44,

271 Wis. 2d 633, 681 N.W.2d 110. This court examines the language of the statute. *Matasek*, 353 Wis. 2d 601, ¶ 12. The context and structure of the statutory language is important to meaning. *Id.* This court interprets words according to their common and approved usage, and interprets technical words and phrases according to their technical meaning. *Id.*

This court gives effect to each word in order to avoid surplusage, and to avoid absurd, unreasonable, or implausible results. *Id.* ¶¶ 12-13. It also considers the purpose of the statute, and avoids results that are clearly at odds with the legislature's purpose. *Id.* ¶ 13.

C. Relevant Statute.

Wisconsin Stat. § 973.015 states:

(1m) (a) Subject to subd. 2. And except as provided in subd. 3., when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. This subsection does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under s. 343.23 (2) (a).

2. The court shall order at the time of sentencing that the record be expunged upon successful completion of the sentence if the

offense was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under the age of 18 when he or she committed it.

3. No court may order that a record of a conviction for any of the following be expunged:

a. A Class H felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 940.32, 948.03 (2) or (3), or 948.095.

b. A Class I felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

(b) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record. If the person has been imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department.

Wis. Stat. § 973.015.

D. Because Ozuna Failed To Successfully Complete Probation, The Circuit Court Properly Denied Ozuna Expunction.

The circuit court exercised its discretion at sentencing to make Ozuna eligible for expunction under Wis. Stat. § 973.015(1). *State v. Matasek*, 2013 WI App 63, ¶44, 348 Wis.2d 243, 831 N.W.2d 450. Ozuna served his probation.

The State agrees with Ozuna that the issue here is whether he "successfully completed" his probation such that he is entitled to automatic expungement. This issue is controlled by *State v. Hemp*, 2014 WI 129, 359 Wis.2d 320, 856 N.W.2d 811. In *Hemp*, 2014 WI 129, ¶¶ 22-23 the Court explained:

Wisconsin Stat. § 973.015(2) explains how an individual successfully completes a sentence. "A person has successfully completed [a] sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation." Wis. Stat. § 973.015(2). Thus, an individual defendant... who is on probation successfully completes probation if (1) he has not been convicted of a subsequent offense; (2) his probation has not been revoked; and (3) **he has satisfied all the conditions of probation**. These (and these alone) are the only requirements Wis. Stat. § 973.015(2) places on an individual defendant...to successfully complete probation.

If a probationer satisfies these three criteria, he has earned expungement, and is automatically entitled to expungement of the underlying charge. See *Matasek*, 353 Wis.2d 601, ¶ 45, 846 N.W.2d 811.

[Emphasis Added].

Here, contrary to Ozuna's assertion, he has not satisfied all three enumerated requirements of Wis. Stat. § 973.015(2) for expungement. A condition of Ozuna's probation was no alcohol, no illegal drugs, and no drug paraphernalia (R10:2. R24:10). Although Ozuna was discharged from probation, his papers clearly state that

all court ordered conditions of probation were not met (R14). While on probation Ozuna consumed alcohol and was cited for underage drinking after giving a PBT of .102. This occurred after the City of Lake Geneva Police were dispatched to the Harbor Shores Hotel for a noise complaint. There was also the odor of marijuana in the halls (R14). To satisfy means "to comply with the requirements of (a standard or rule). See "Satisfy." Def. 4. *Webster's II New Riverside Dictionary, revised edition*. 1996. Print. Clearly, Ozuna has not complied with the no alcohol condition of his probation; thus, despite being discharged from probation, Ozuna has not satisfied all the conditions of his probation. The legislature, by enacting Wis. Stat. § 973.015 "provide[d] a break to young offenders who demonstrate the ability to comply with the law" by successfully completing and being discharged from their sentences. See *Hemp*, 2014 WI 129, ¶18, 20. By failing to comply with the rules of his probation, Ozuna has not demonstrated this ability.

Thus, because Ozuna has did not successfully complete his probation, he is not automatically entitled to expungement of his conviction. *Hemp*, 2014 WI 129, ¶ 40.

CONCLUSION

For the foregoing reasons, the State respectfully requests this court affirm the circuit court's order denying expunction.

Dated this ____ day of January, 2016.

Respectfully submitted,

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CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c).

_____ Monospaced font: 10 characters per inch; double spaces; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides.

The length of the brief is _____ pages.

I also certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: _____

Signed,

Attorney