

Circuit Court for Baltimore County
Case No. 03-K-09-002770

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 00207

September Term, 2018

BRIAN WARREN EBERHARDT

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Shaw Geter,

JJ.

Opinion by Arthur, J.

Filed: March 1, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

At a bench trial in the Circuit Court for Baltimore County in November of 2009, appellant Brian Warren Eberhardt was found guilty of three misdemeanor counts of violating Maryland Code (2002), § 11-208 of the Criminal Law Article, but acquitted of four other, related charges. On January 19, 2010, the court merged the three convictions and sentenced appellant to two years of supervised probation.

Appellant filed a timely motion to reconsider the sentence and asked that the motion be held *sub curia* to allow for additional time to gather mitigating information. In an order dated April 15, 2010, and docketed the following day, the court granted the motion and ordered that the case be held *sub curia* for up to five years from the date of sentencing, as allowed by Md. Rule 4-345.

On October 7, 2014, the court held a hearing on appellant's motion for reconsideration. As a result of the hearing, the court granted the motion, struck the finding of guilt, stayed the entry of judgment, and ordered probation before judgment under Maryland Code (2001, 2018 Repl. Vol.), § 6-220(b) of the Criminal Procedure Article.

Under § 10-105(a)(3) of the Criminal Procedure Article, appellant had the right to petition the court to expunge the police records, court records, or other records maintained by the State or a political subdivision of the State regarding the charges for which he had received probation before judgment. Because the circuit court did not impose a term of probation when it ordered probation before judgment, § 10-105(c)(2) of the Criminal Procedure Article required appellant to wait three years after probation was

granted before filing a petition for expungement. He filed a petition three years and 20 days later, on October 27, 2017.

The State opposed the petition. Consequently, under § 10-105(e)(1) of the Criminal Procedure Article, the court was required to conduct a hearing.

At the hearing, on February 28, 2018, the circuit court denied the petition. In explaining the basis for its decision, the court stated: “The legislature does not mandate or require the court to grant the petition for expungement in this matter, and the court is not willing to exercise it’s [sic] discretion to expunge this matter.” Appellant noted a timely appeal.

Appellant argues that the circuit court had no discretion to deny his petition for expungement. The State agrees, as do we.

Section 10-105(e) of the Criminal Procedure Article dictates what a court must do in a hearing on a petition for expungement:

- (2) If the court at the hearing finds that the person is entitled to expungement, the court shall order the expungement of all police records and court records about the charge.
- (3) If the court finds that the person is not entitled to expungement, the court shall deny the petition.
- (4) The person is not entitled to expungement if:
 - (i) the petition is based on the entry of probation before judgment, . . . and the person within 3 years of the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation . . .; or
 - (ii) the person is a defendant in a pending criminal proceeding.

In other words, if a person has otherwise complied with the requirements of § 10-105 (e.g., by waiting for three years after probation was granted), he is entitled to expungement unless he “is a defendant in a pending criminal proceeding” or has been convicted of a crime other than a minor traffic violation. If he is not entitled to expungement, the court must deny the petition. If, however, he is entitled to expungement, the court must grant the petition. The statute lodges no discretion in the court. *See, e.g., Reid v. State*, 239 Md. App. 1, 13 (2018).

In this case, there was no dispute whatsoever that appellant was entitled to expungement: he waited the requisite amount of time before filing his petition, he was not a defendant in a pending criminal proceeding, and he had not been convicted of any other crimes. The circuit court, therefore, had no discretion to deny the petition.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY REVERSED.
CASE REMANDED TO THE CIRCUIT
COURT FOR BALTIMORE COUNTY
WITH DIRECTIONS TO GRANT
APPELLANT’S PETITION TO EXPUNGE.
BALTIMORE COUNTY TO PAY ALL
COSTS.**