IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
APRIL SESSION, 1996

FILED

July 26, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 01C01-9508-CC-00271
Appellee	)	
	)	GRUNDY COUNTY
vs.	)	
	)	Hon. J. Curtis Smith, Judge
NEIL EDWARD BRIDGES,	)	
	)	(Expunction of Records)
Appellant	)	

For the Appellant:

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Neil Edward Bridges, appeals from an order of the Circuit Court of Grundy County denying expunction of records maintained by the district attorney general and the police department. The appellant also raises the issue of whether distribution of information from either the files of the district attorney or the police to other state agencies, including the Department of Correction and Board of Paroles, violates his constitutional rights and is contrary to the legislative intent of the expunction statute.

After a review of the record, the judgment of the trial court is affirmed.

BACKGROUND

On July 8, 1991, the appellant was indicted for the offenses of aggravated burglary and theft of property. On October 25, 1993, the State entered a *nolle prosequi* as to these charges. On March 14, 1994, the appellant filed a petition for expunction of the records. The petition requested the destruction of all public records relating to the dismissed charges, including records of the district attorney general, police department, and "documents. . .that were forwarded to other state agencies, Tennessee Department of Correction, Tennessee Board of Paroles, etc." On June 19, 1995, the trial court ordered expunction of all court records in the nolled case, finding, however, that the appellant was not entitled to expunction of the district attorney or police department records.

ANALYSIS

Tennessee Code Ann. § 40-32-101 provides as follows:

> (a)(1) "[a]ll public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, . . . shall, upon petition by said person to the court having jurisdiction in such previous action, be removed and destroyed."
>
> (a)(3) Upon petition of a defendant in the court which entered a nolle prosequi in his case, the court shall order all public records expunged.
>
> (b) "Public records," for the purpose of expunction only, does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public . . .

Thus, the statute, on its face, excludes "arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general" from expunction, when maintained as confidential records and when not open for public inspection. State v. Norris, 684 S.W.2d 650, 653 (Tenn. Crim. App. 1984); State v. Doe, No. 155 (Tenn. Crim. App. at Knoxville, Aug. 6, 1986).

The appellant concedes that Tenn. Code Ann. § 40-32-101(b) and case law do not permit expunction of district attorney general files or police files. However, he urges that the better rule of law would be that all records should be expunged. Given the legislative purpose of the statute[1], we decline the invitation

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[1]The purpose of the expunction statute is to prevent a citizen from bearing the stigma of having been charged with a criminal offense, where he was acquitted of the charge or prosecution of the charge was abandoned. State v. Doe, 588 S.W.2d 549, 552 (Tenn. 1979). In accordance with this purpose, our supreme court, in Doe, interpreted the "public records" provision of the expunction statute to include district attorney general and police files regardless of whether such records be for public inspection or for internal use. Doe, 588 S.W.2d at 552. In light of this decision, the Tennessee legislature amended the expunction statute to exempt certain law enforcement agency records and district attorney files that are not open to the public. "The [amended] statute was explicitly designed to 'overrule' that portion of the [Doe] opinion that would prohibit law enforcement agencies and prosecuting attorneys from maintaining their own internal, confidential records. . . . There was concern that Doe was too far-reaching and would hamper law enforcement." Doe, No. 155.

to so rule. This court, construing the language of the statute and giving it its ordinary and natural meaning, explicitly held that the records of the district attorney and police were exempt from expunction. Doe, No. 155. This issue is without merit.

In his second issue, the appellant questions the constitutional implications arising from the distribution of information contained in the files of a law enforcement agency to other state agencies. Moreover, he asserts that dissemination of such information is contrary to the legislative intent of the expunction statute. The appellant makes no argument nor cites to any authority in support of this position. The issue is, therefore, waived. Tenn. R. App. P. 27(a)(7), (h); Tenn. Ct. Crim. R. App. 10(b). Moreover, there is nothing in the record which remotely indicates that the district attorney general or police have distributed information from their files to the Tennessee Department of Correction, Board of Paroles, or any other state agency. Nor is there before us any allegation that the appellant has suffered any deprivation of liberty as a result of any improper dissemination of information.[2] Thus, the record does not establish that the appellant has standing to raise this constitutional issue or that the issue is ripe for consideration. State v. Vanzant, 659 S.W.2d 816, 819 (Tenn. Crim. App. 1983) (holding that a person lacks standing to challenge the constitutionality of a statutory provision unless the provision he claims to be deficient has been used to deprive him of his rights).

For the foregoing reasons, the judgment of the trial court is affirmed.

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[2]No transcript is included in the record, presumably because no hearing was held on the appellant's petition for expunction. Accordingly, no facts are before us to review. The record does reflect that the appellant is currently confined at the Riverbend Maximum Security facility of the Department of Correction.

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DAVID G. HAYES, Judge

CONCUR:

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JOE B. JONES, Presiding Judge

_____
JOHN H. PEAY, Judge