

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
September 16, 2025 Session

FILED

11/21/2025

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JOSHUA LEE SHAW

Appeal from the Criminal Court for Sumner County
No. 293-2006 Dee David Gay, Judge

No. M2024-01359-CCA-R3-CD

In 2006, the Defendant, Joshua Lee Shaw, pleaded guilty to attempted possession of a Schedule II substance with intent to deliver, a Class C felony, and simple possession of a Schedule VI substance, a Class A misdemeanor. The trial court sentenced him to four years of supervised probation. He violated his probation by testing positive for methamphetamine, amphetamine, and marijuana. The trial court ordered the Defendant's punishment for the violation to be for "time served" and returned him to probation. The Defendant successfully completed the remainder of his probation. In 2024, the Defendant filed a petition to expunge his record of his two offenses pursuant to Tennessee Code Annotated section 40-32-101(k). After a hearing, the trial court declined his request. The Defendant appeals, contending the trial court erred. We conclude that the Defendant does not meet the plain language requirements of an "eligible petitioner" in Tennessee Code Annotated section 40-32-101(k), and thus we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, P.J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and KYLE A. HIXSON, JJ., joined.

G. Jeff Cherry and Amber N. Schlatter Lebanon, Tennessee (on appeal), Christopher Beauchamp Lebanon, Tennessee (at hearing), for the Appellant, Joshua Lee Shaw.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth H. Evan, Assistant Attorney General; Thomas B. Dean, District Attorney General; and Tara Wyllie, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
I. Facts

This case arises from the Defendant's conviction for drug related offenses. In 2006, a Sumner County grand jury indicted him for two counts of possession with intent to sell or deliver .5 grams or more of methamphetamine, a Schedule II narcotic, one count of possessing marijuana, a Schedule VI controlled substance, one count of possession of drug paraphernalia, one count of failing to stop at a stop light, one count of driving without a seat belt, and one count of driving without a seat belt with a prior conviction for driving without a seat belt.

On August 24, 2006, the Defendant entered a plea of guilty to attempted possession with the intent to sell or deliver .5 grams of cocaine (as amended), a Class C felony and possession of a Schedule VI substance, a Class A misdemeanor. The remaining charges were dismissed. The trial court sentenced the Defendant to four years for the Class C felony conviction and to eleven months and twenty-nine days for the misdemeanor conviction. It ordered the sentences be run concurrently and be suspended to probation, effective immediately. The trial court's judgment required that the Defendant have a drug and alcohol assessment and obtain a GED.

On June 16, 2008, the Defendant's probation officer filed an affidavit of probation violation, asserting that he had tested positive for methamphetamine, amphetamine and marijuana on June 3, 2008.

On January 8, 2009, the trial court filed an order acknowledging the Defendant's plea of guilty to violating his probation. It revoked his probation to "time served," as he had been incarcerated from June 17, 2008, to January 5, 2009, and returned the Defendant to supervised probation.

On May 1, 2024, the Defendant filed a petition to expunge the record of his convictions, contending that his record was eligible to be expunged according to Tennessee Code Annotated section 40-32-101(k). The supporting memorandum noted that the Defendant was a forty-year-old successful business owner. It stated that, since his 2009 probation violation and since completing his probation in 2010, he had obeyed all Tennessee laws. He noted that, after he violated his probation, he received eight months of rehabilitation and had since received no other violations or committed any other offenses.

At a hearing on the petition, the trial court noted that the Defendant had been given a sentence pursuant to Tennessee Code Annotated section 40-35-313, the judicial diversion statute, that allowed for the discharge, dismissal, and expunction of offenses from an official record upon completion of probation. It posited that, since the Defendant did not successfully complete his probation, he was not eligible for the 40-35-313 relief he had been offered.

The trial court noted that the Defendant now sought expunction pursuant to Tennessee Code Annotated section 40-32-101(k). It asked the Defendant's attorney if the Defendant was still eligible considering that he failed to successfully meet the requirements for expunction pursuant to 40-35-313. The Defendant's attorney noted that there was no case law on point but argued that the expunction should still be available to the Defendant pursuant to Tennessee Code Annotated section 40-32-101.

The trial court noted that the Defendant had been given multiple benefits. The first benefit was that he was allowed to enter a plea to a lesser offense, despite the quantity of drugs he possessed at the time of his arrest. The second benefit was that he was allowed probation and was not required to serve any portion of his sentence. He was then given a conditional conviction and allowed judicial diversion if he successfully completed probation. He violated his probation by testing positive for methamphetamine and marijuana. As another benefit, instead of revoking his probation and ordering him to serve his sentence, the trial court allowed the Defendant to return to probation.

The trial court noted that the Defendant was not eligible for expungement pursuant to 40-35-313 because he had violated his probation. The trial court reasoned that if the Defendant was not eligible then to expunge his record, then he should not be eligible now to expunge his record.

The Defendant's counsel argued that he still met the statutory definition of an eligible petitioner. The State posited that the Defendant was not an eligible petitioner by statute, because one of the conditions for expunction is that all conditions of supervised or unsupervised release have been met. The State argued that the Defendant's probation violation, to which the Defendant pleaded guilty, meant that he did not meet all the requirements of his supervised release, rendering him ineligible for expunction pursuant to Tennessee Code Annotated section 40-32-101(k). It asked the court to deny the Defendant's request for expunction.

The Defendant's counsel responded that, after the guilty plea to violating his probation, the Defendant completed an eight-month drug treatment program and had maintained his sobriety since 2010. He was a successful business owner and had assisted others in need. He had letters from members of the community written on his behalf.

The trial court denied the petition and filed a written order dated August 14, 2024. In it, the trial court made the following findings:

That the Petitioner had several chances with respect to his criminal convictions. The Petitioner entered a plea in 2006 to the amended charge of

attempted possession of cocaine for resale less than .5 grams and one count of simple possession of a [S]chedule VI pursuant to Tenn. Code Ann. § 40-35-313. As a result of his conditional plea, the Petitioner received a four-year sentence, which was suspended all to probation.

During his time on probation, the Petitioner violated the conditions of probation, to which he pled guilty. As a result of this violation, the Petitioner served 45 days and was furloughed to a rehabilitation facility, where he spent the next 8 months.

With the exception of the aforementioned violation, the Court finds that the Petitioner completed all of the requisite terms of his probation and has paid all court costs and assessed fines. The Court further finds that the Petitioner has had no other criminal convictions since completing his probationary term.

Finally, the Court finds that although an individual is eligible for expunction of a criminal conviction(s) pursuant to Tenn. Code Ann. § 40-32-101 and its subsections, the statute does not require this Court to grant the relief sought in the Petitioner, that is expunction of the criminal conviction(s).

It is therefore ORDERED, ADJUDGED and DECREED that the Petitioner's request for expunction of this conviction stemming from the plea in 2006 and in the above styled matter is hereby denied.

It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that the trial court erred when it denied an expungement of his record. He contends that the trial court erred because it found that he was eligible for expungement, but did not grant it, relying on an improper basis: namely, that the Defendant had already been given too many chances and that the trial court was not required to grant expungement. The Defendant asserts that whether an individual entered a plea pursuant to the judicial diversion statute in Tennessee Code Annotated section 40-35-313 has no bearing on whether he is entitled to expungement pursuant to Tennessee Code Annotated section 40-32-101(k). He states that since he met the statutory requirements of 40-32-101, he is "entitled to expunction." The Defendant further asserts he is eligible for 40-32-101(k) expunction despite his probation violation because the probation violation was not a new crime.

The Defendant also asserts that the trial court erred when it denied his oral motion to expunge his record pursuant to Tennessee Code Annotated section 40-35-313. He states that he successfully completed a probationary period, thus he is entitled to expunction pursuant to that statute as well.

The State maintains on appeal, as it did in the trial court, that the Defendant was ineligible for expunction pursuant to section 101(k) because he did not meet all the conditions of his probation, thus the trial court properly denied the expunction. Even if he was an eligible petitioner, the State asserts, the trial court correctly found that the interests of justice weighed against granting the expunction. Finally, the State asserts that it is unclear whether the Defendant was actually sentenced pursuant to the judicial diversion statute, section 40-35-313, and that, if he was, he violated the terms of that diversion and was no longer eligible for expunction pursuant to -313.

A. Tennessee Code Annotated § 40-32-101(k)

A person who satisfies the criteria in Tennessee Code Annotated section 40-32-101 (2018 & Supp. 2024)¹ is entitled to removal and destruction of public records. The expungement statute is “designed to prevent citizens from being unfairly stigmatized” by criminal charges. *State v. L.W.*, 350 S.W.3d 911, 916 (Tenn. 2011) (citing *State v. Adler*, 92 S.W.3d 397, 403 (Tenn. 2002), *superseded by statute as stated in State v. Rowland*, 520 S.W.3d 542 (Tenn. 2017)).

The first issue we must determine is whether the Defendant is an “eligible petitioner” pursuant to that statute. The trial court’s order does not affirmatively indicate whether the Defendant is an “eligible petitioner,” but states that, although an “individual” is eligible for expunction, he or she is not entitled to the same. Therefore, we review first whether the Defendant is an eligible petitioner as defined by statute.

This issue presents a matter of statutory interpretation to which we apply a *de novo* standard of review with no presumption of correctness. *State v. Marshall*, 319 S.W.3d 558, 561 (Tenn. 2010); *see State v. Welch*, 595 S.W.3d 615, 621 (Tenn. 2020); *State v. Tolle*, 591 S.W.3d 539, 543 (Tenn. 2019). The court’s role in interpreting a statute is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Welch*, 595 S.W.3d at 621; *State v. Howard*, 504 S.W.3d 260, 269 (Tenn. 2016). Legislative intent is found in the plain and ordinary meaning of the statute. *L.W.*, 350 S.W.3d at 916. Thus, “courts are to give effect to the ordinary meaning of the words used in the statute and presume that each word used was purposely chosen by the legislature to

¹ We note that any amendments to the statute do not affect our analysis.

convey a *specific* meaning.” *State v. Marise*, 197 S.W.3d 762, 766 (Tenn. 2006). “When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language[.]” *See Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009) (citation omitted).

In the 2024 supplement² to Subsection (k), the Legislature codified the following language:

(k)(1) Notwithstanding subsection (g)(2), for purposes of this subsection (k), an “eligible petitioner” means a person who was convicted of no more than two (2) offenses and:

(A) Each of the offenses for which the petitioner seeks expunction:

- (i) Are offenses that are eligible for expunction under subdivision (g)(1); and
- (ii) Occurred prior to any conviction for a criminal offense that is ineligible for expunction including convictions for federal offenses

(B) The offenses were:

- (i) Two (2) misdemeanors; or
- (ii) One (1) felony and one (1) misdemeanor;

(C) At the time of the filing of the petition for expunction at least:

- (i) Five (5) years have elapsed since the completion of the sentence imposed for any misdemeanor or Class E felony the person is seeking to have expunged; and
- (ii) Ten (10) years have elapsed since the completion of the sentence imposed for any Class C or D felony offense the person is seeking to have expunged;

(D) The person has fulfilled all the requirements of the sentences imposed by the court for each offense the petitioner is seeking to expunge, including:

- (i) Payment of all fines, restitution, court costs, and other assessments for each offense;

²As previously noted, any amendments to the statute do not affect our analysis.

- (ii) Completion of any term of imprisonment or probation for each offense;
- (iii) *Meeting all conditions of supervised or unsupervised release for each offense; and*
- (iv) Remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year, if so required by the conditions of any of the sentences imposed.

(E) The person has not previously been granted expunction under subsection (g), this subsection (k), or subsection (m) for another criminal offense.

T.C.A. § 40-32-101(k)(1) (2024) (emphasis added).

In the statutory definition of “eligible petitioner,” the Legislature clearly states that an “eligible petitioner” is one who has fulfilled all the requirements of the sentences imposed by the court for each offense the petitioner is seeking to expunge, including . . . [m]eeting all conditions of supervised or unsupervised release for each offense . . .” The Defendant contends that his probation violation does not constitute “a new crime,” so it did not disqualify him from eligibility for expunction. He contends that “Tennessee law does not require an unblemished probation period – it requires successful completion, which [he] achieved.”

While sympathetic to the argument, we are constrained to disagree. “When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language[.]” *See Carter*, 279 S.W.3d at 564. The plain language of the statute states that an eligible petitioner has met “all” of the conditions of supervised and unsupervised release. The Defendant’s conditions of release included Rule #8 that he would not use illegal substances. On June 16, 2008, the Defendant’s probation officer filed an affidavit of probation violation, asserting that he had tested positive for methamphetamine, amphetamine and marijuana on June 3, 2008. On January 8, 2009, the trial court filed an order acknowledging the Defendant’s plea of guilty to violating his probation. It revoked his probation to “time served,” as he had been incarcerated from June 17, 2008, to January 5, 2009, and returned the Defendant to supervised probation.

Under these facts, we conclude that the Defendant was not an “eligible petitioner” because he had not met all the conditions of supervised release for the offense for which he sought expunction. The Defendant is not entitled to relief.

B. Tennessee Code Annotation section 40-35-313 Motion

The Defendant next contends that the trial court erred when it denied his oral motion to expunge his record pursuant to Tennessee Code Annotated section 40-35-313. He asserts that, because he was sentenced pursuant to the judicial diversion statute and because he successfully completed his probationary period, he was entitled to an expungement. He posits that the trial court improperly found that his probation violation precluded his eligibility.

We first note that, at the hearing, the Defendant's counsel stated that the judgment "wasn't properly notated . . . that it was under 40-35-313." He further stated that "as one of the sanctions that may have resulted from that violation of probation . . . the judge at the time may have revoked that 40-35-313 aspect" but that there was no record to indicate either way. He explained that this was the reason that the Defendant was proceeding pursuant to 40-32-101. The trial court noted that the judge who revoked the probation said nothing in the order with regard to judicial diversion. The Defendant's counsel stated:

[I]f [the Defendant] did not have a sanction for 40-35-313 to be removed from his record, then I would submit to the Court that he would be eligible for expungement pursuant to the judicial diversion statute.

It is not clear in the record where the Defendant made an "oral motion to expunge his record pursuant to Tenn. Code Ann. § 40-35-313." The Defendant's brief does not point to that portion of the transcript, and we are unable to find such a motion in the record. Issues raised for the first time on appeal are waived. *See* Tenn. R. App. P. 36(a); *State v. Johnson*, 970 S.W.2d 500, 508 (Tenn. Crim. App. 1996).

Further, it is not clear from the record whether the Defendant was granted judicial diversion, but, because judgments of conviction were entered against him, it is clear that he did not successfully meet the requirements of the judicial diversion statute.

Judicial diversion . . . is a unique legislative construct separate and distinct from such alternative sentences. "Judicial diversion is a form of 'legislative largess' available to qualified defendants who have entered a guilty or nolo contendere plea or have been found guilty of an offense without the entry of a judgment of guilt." *State v. King*, 432 S.W.3d 316, 323 (Tenn. 2014) (footnote omitted) (quoting *State v. Schindler*, 986 S.W.2d 209, 211 (Tenn. 1999)). Under Tennessee Code Annotated section 40-35-313(a)(1)(A), the trial court "may defer further proceedings against a qualified defendant and place the defendant on probation upon such

reasonable conditions as it may require without entering a judgment of guilty.” . . .

Upon successful completion of the probationary period under judicial diversion, “the court shall discharge the person and dismiss the proceedings against the person.” Tenn. Code Ann. § 40-35-313(a)(2). Following such a dismissal, a defendant may seek to have her record expunged, thereby “restor[ing] the person, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information.” Tenn. Code Ann. § 40-35-313(b); *see also Schindler*, 986 S.W.2d at 211. However, should the defendant violate the terms of her probation pursuant to judicial diversion, “the court may enter an adjudication of guilt and proceed as otherwise provided.” Tenn. Code Ann. § 40-35-313(a)(2).

State v. Dycus, 456 S.W.3d 918, 925 (Tenn. 2015).

While the parties agreed he was offered judicial diversion, judgments of conviction were actually entered on August 30, 2006, and became final on September 29, 2006. If the Defendant had successfully completed his probationary period, and thereby fulfilled the requirements of judicial diversion, no judgments of conviction would have been entered. As such, the Defendant is not entitled to relief pursuant to the judicial diversion statute.

III. Conclusion

In accordance with the aforementioned reasoning and authorities, we affirm the trial court’s denial of the Defendant’s petition for expunction of his record.

s/ **Robert W. Wedemeyer**

ROBERT W. WEDEMEYER, PRESIDING JUDGE