

SUPREME COURT OF WISCONSIN

State v. Kearney W. Hemp

359 Wis. 2d 320 (2014) · No. 2013AP1163-CR · Decided December 18, 2014

SUMMARY

The Wisconsin Supreme Court held that Kearney Hemp's successful completion of probation automatically entitled him to expungement because the circuit court had determined eligibility at sentencing. The court further held that the probationary authority, rather than the defendant, had the duty to forward the discharge certificate and that the circuit court could not later reverse its expungement determination.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Michael J. Gableman
JURISDICTION	Wisconsin
DECIDED	December 18, 2014
DOCKET	2013AP1163-CR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hemp petitioned for review of a published court of appeals decision affirming the Milwaukee County circuit court's denial of his petition for expungement.
STANDARD OF REVIEW	The interpretation of Wis. Stat. § 973.015 is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Kearney W. Hemp v. State of Wisconsin

TOPICS

- statutory interpretation
- remedies
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal law
- criminal procedure
- statutory interpretation
- expungement
- appellate procedure

QUESTIONS PRESENTED

1. Whether successful completion of probation automatically entitled Hemp to expungement when the circuit court had ordered expungement conditioned on successful completion of the sentence.
2. Whether Wis. Stat. § 973.015 imposed a time limit or required Hemp to petition the circuit court and forward his certificate of discharge to effectuate expungement.
3. Whether the circuit court could revisit and reverse its sentencing decision finding Hemp eligible for expungement after Hemp successfully completed probation.

HOLDINGS

1. When a circuit court orders expungement upon successful completion of the sentence, a defendant who satisfies the statutory conditions for successful completion automatically earns and is entitled to expungement.
2. Wis. Stat. § 973.015 imposes no duty on the defendant to petition for expungement or to do so within a particular period. The detaining or probationary authority must issue and forward the certificate of discharge to the court of record, and that forwarding effectuates expungement.
3. The circuit court could not revisit or reverse its sentencing determination that Hemp was eligible for expungement upon successful completion of probation. After Hemp successfully completed probation, the court lacked discretion to deny expungement.

KEY QUOTATIONS

“Wisconsin Stat. § 973.015(2) places no burden on the individual defendant to forward his certificate of discharge to the court of record and petition for expungement within a certain period of time.” (¶ 25)

“The expungement statute simply does not require a person who successfully completes his sentence to take any affirmative action to obtain expungement.” (¶ 32)

“If the circuit court exercises its discretion in ordering expungement upon the successful completion of the sentence, and the defendant successfully completes that sentence, then the defendant has earned, and is automatically entitled to, expungement.” (¶ 40)

FACTUAL BACKGROUND

Hemp pleaded guilty to possession with intent to deliver 200 grams or less of THC, a Class I felony. The circuit court sentenced him to a stayed one-year House of Corrections term and 18 months of probation, finding him eligible for expungement upon successful completion of probation. The Department of Corrections discharged Hemp from probation after he satisfied its conditions and forwarded a certificate of discharge to the court, but the record was not expunged. After Hemp was charged with new offenses in Walworth County, he sought expungement, which the circuit court denied as untimely.

PROCEDURAL HISTORY

Hemp pleaded guilty to possession with intent to deliver THC. At sentencing, the circuit court found him eligible for expungement conditioned on successful completion of probation. After Hemp completed probation, the

circuit court denied his later expungement petition as untimely, and the court of appeals affirmed. The Wisconsin Supreme Court reversed and remanded with instructions that the clerk of courts expunge Hemp's record.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Milwaukee County circuit court with instructions that the clerk of courts expunge Hemp's record.

CASES CITED

- State v. Hemp, 2014 WI App 34, 353 Wis. 2d 146, 844 N.W.2d 421
- State v. Matasek, 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811
- State v. Horn, 226 Wis. 2d 637, 594 N.W.2d 772 (1999)
- State v. Leitner, 2002 WI 77, 253 Wis. 2d 449, 646 N.W.2d 341
- Village of Shorewood v. Steinberg, 174 Wis. 2d 191, 496 N.W.2d 57 (1993)
- Alberte v. Anew Health Care Services, Inc., 2000 WI 7, 232 Wis. 2d 587, 605 N.W.2d 515
- State v. Hanson, 2012 WI 4, 338 Wis. 2d 243, 808 N.W.2d 390
- State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- Brauneis v. State, Labor & Industry Review Commission, 2000 WI 69, 236 Wis. 2d 27, 612 N.W.2d 635
- Ball v. District No. 4, Area Board of Vocational, Technical & Adult Education, 117 Wis. 2d 529, 345 N.W.2d 389 (1984)
- State ex rel. Rupinski v. Smith, 2007 WI App 4, 297 Wis. 2d 749, 728 N.W.2d 1
- Rotfeld v. Wisconsin Department of Natural Resources, 147 Wis. 2d 720, 434 N.W.2d 617 (Ct. App. 1988)