

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL CRAIG PASTOOR,

Defendant-Appellant.

UNPUBLISHED

November 23, 2021

No. 352404

Allegan Circuit Court

LC No. 09-016314-FH

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In 2009, defendant was operating a motor vehicle with a blood-alcohol content of 0.092% when he ran a stop sign at an intersection, struck an SUV, injured its driver, and killed a passenger in the SUV. Defendant was 18 years old at the time of the crash. He eventually pleaded guilty to manslaughter, MCL 750.321, and was sentenced to 12 months' incarceration and 60 months' probation. After successfully completing his sentences, defendant sought expungement of the conviction, petitioning the court to set aside the manslaughter conviction under MCL 780.621. The trial court denied the petition following a short hearing in which defendant testified. The court determined that expungement would be contrary to the public welfare. This Court denied defendant's delayed application for leave to appeal for lack of merit. *People v Pastoor*, unpublished order of the Court of Appeals, entered April 24, 2020 (Docket No. 352404). Our Supreme Court, however, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *People v Pastoor*, 506 Mich 961 (2020). We reverse and remand for further proceedings.

This Court reviews for an abuse of a discretion a trial court's decision on a motion to set aside a conviction. See *People v McCullough*, 221 Mich App 253, 256; 561 NW2d 114 (1997). Issues of statutory construction, however, are subject to de novo review. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). In *Slis v Michigan*, 332 Mich App 312, 335-336; 956 NW2d 569 (2020), this Court recited the well-established principles of statutory construction, stating:

This Court's role in construing statutory language is to discern and ascertain the intent of the Legislature, which may reasonably be inferred from the words in the statute. We must focus our analysis on the express language of the statute because it offers the most reliable evidence of legislative intent. When statutory language is clear and unambiguous, we must apply the statute as written. A court is not permitted to read anything into an unambiguous statute that is not within the manifest intent of the Legislature. Furthermore, this Court may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature. [Citations omitted.]

At the time of defendant's petition and the trial court's ruling, MCL 780.621(14) provided as follows:

If the court determines that the circumstances and behavior of an applicant . . . , from the date of the applicant's conviction or convictions to the filing of the application[,] warrant setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions. [See 2016 PA 336.¹]

"The nature of the offense itself does not preclude the setting aside of an offender's conviction. That reason, standing alone, is insufficient to warrant denial of an application to set aside a conviction." *People v Rosen*, 201 Mich App 621, 623; 506 NW2d 609 (1993).

MCL 780.621(3)(d) provided that a court was not permitted to set aside a conviction for a "traffic offense, including, but not limited to, a conviction for operating while intoxicated." See 2016 PA 336. A "traffic offense" is defined as "a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws" MCL 780.621a(b). Accordingly, defendant's conviction for manslaughter under MCL 750.321 is not a "traffic offense" for purposes of MCL 780.621.

In this case, the trial court ruled:

The Prosecutor notes in their response to this motion that criminal convictions . . . that are traffic offenses are not to be set aside. And this conviction technically is not a traffic offense although it certainly references a conviction for using a motor vehicle. It's not a conviction under the motor vehicle code so technically it can be set aside under the statute.

But in order to set the conviction aside the Court has to make a determination that setting aside the conviction is consistent with the public welfare. And in this case the Court is not able to make that determination.

¹ MCL 780.621 was later amended pursuant to 2020 PA 191 and 2021 PA 78.

The Court is making the determination that it would not be consistent with the public welfare to set aside the conviction at this point. And primarily because it really is a traffic offense in this Court's opinion. Not under the statute but the reason that traffic offense[s] are not able to be set aside [is] because it's a matter of public policy that people who are going to be operating motor vehicles that there should be a record of their past involvement. And especially a case like this involving alcohol . . . where someone lost their life the Court feels that it is consistent with the public welfare to have the conviction remain on Mr. Pastoor's record.

The trial court's ruling suffers from multiple flaws. The court effectively found that expungement was inconsistent with the public welfare because although the conviction did not constitute a traffic offense as defined by our Legislature, it was a traffic offense, because there should be a record of the conviction, and because the offense involved driving, alcohol, and the loss of life. First, it was not up to the trial court to accept or reject the legislative decision that traffic offenses shall only encompass violations of the Michigan vehicle code and comparable ordinances, MCL 780.621a(b). The fact is, the court did not have the authority to redefine the term "traffic offense" as used for purposes of expungement in MCL 780.621.

Second, the court improperly focused solely on the nature of the offense, i.e., driving while intoxicated causing loss of life, in denying the petition to set aside defendant's manslaughter conviction. See *Rosen*, 201 Mich App at 623. There was uncontested testimony by defendant that he entered the workforce after being released from jail, that he has been self-employed in the construction field for the last six or seven years, that he has been married for four years and has a two-year-old daughter, that he has been a law-abiding citizen since the accident, with no felony or misdemeanor convictions, and that he stopped drinking alcohol after the crash. The victim's husband, after listening to defendant's testimony, stated on the record, "I guess I'm with you on your expungement," and he wished defendant the "[b]est of luck." The trial court engaged in no discussion whatsoever of this testimony and evidence.

Third, and finally, we find problematic the trial court's observation "that there should be a record" of defendant's involvement in an offense resulting from the operation of a motor vehicle so as to serve "public policy." MCL 257.732(22) provides that "[e]xcept as provided in this act and notwithstanding any other provision of law, a court shall not order expunction of any violation reportable to the secretary of state under this section." And MCL 257.732(4)(c) states that "[t]he clerk of the court . . . shall forward an abstract of the court record to the secretary of state upon a person's conviction . . . involving . . . [n]egligent homicide, *manslaughter*, or murder resulting from the operation of a vehicle." (Emphasis added.) In *People v Droog*, 282 Mich App 68, 72-74; 761 NW2d 822 (2009), this Court held that MCL 257.732(22) does not concern or speak to expungement of a criminal conviction under the Code of Criminal Procedure; rather, it pertains to expunging records maintained by the Secretary of State. Accordingly, there can be no expungement of defendant's manslaughter conviction with respect to his driving record maintained by the Secretary of State. It will remain intact. Although the trial court appeared to acknowledge this fact at the very end of the hearing, the court failed to give any explanation why maintenance of a record by the Secretary of State reflecting that defendant's operation of a motor vehicle caused a death was inadequate to satisfy the court's perceived view of public policy.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Michael J. Riordan