

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA)

Plaintiff,)

v.)

BURTON WHEELER NEWSOME)

Defendant.)

CASE NO. CC 2015-000121

ORDER

This matter came before the Court on various Motions filed by the victim, John Bullock, and Clalborne Porter Seier, Esq. -- a non-party named as a defendant in civil litigation filed by Defendant Newsome arising out of the same operative facts as the instant criminal matter. Mr. Bullock has filed a Motion to Use Contents of Expunged File, while Attorney Seier has filed a Petition to Set Aside an expungement previously granted by this Court (through another, now-retired judge) pursuant to Ala. Code 1975 § 15-27-15. Both movants have joined (orally, in writing, or both) in the others' respective motions. Having received written briefs and oral argument from the various parties and considered same, the Court hereby sets aside the expungement pursuant to Ala. Code 1975 § 15-27-15, and further gives the movants leave to use the contents of Defendant Newsome's charge, plea and disposition as they may deem necessary and appropriate.

EXHIBIT

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RELEVANT BACKGROUND AND FACTS

1. On or about December 19, 2012, Defendant Newsome alleges that he was scheduled to appear in court in Pell City, Alabama.
2. On the same date, Victim John Bullock had a scheduled appointment with a dentist whose office is next door to Newsome's law practice. Bullock apparently parked next to Newsome's vehicle in the parking lot shared by and between the two businesses.
3. As Newsome exited his office heading towards his vehicle, Bullock exited his vehicle and began walking towards dentist's office. Newsome, who alleged that he felt threatened by Bullock, produced and brandished a pistol. Newsome then entered his car and left for Pell City.
4. Bullock subsequently filed a criminal complaint against Newsome for the crime of menacing.
5. On May 2, 2013 Newsome was stopped for speeding and arrested on the menacing warrant.
6. On November 12, 2013, the District Court of Shelby County accepted a deferred prosecution agreement reached between the State and Defendant Newsome and entered a "Dismissal & Release Order." Defendant Newsome and Victim Bullock both signed the order. The order continued the case until April 1, 2014, and provided that the case would be dismissed with prejudice at that time "if the defendant had no further incidents/arrests." The order also contained a general release of all civil claims of any

nature related to the underlying incident and all parties related thereto.

7. On April 4, 2014, the criminal prosecution against Newsome was dismissed with prejudice pursuant the deferred prosecution and the terms of the Dismissal & Release Order.

8. On January 14, 2015, Newsome filed a civil suit in the Circuit Court of Jefferson County against John Bullock, Claiborne Seier, Clark Cooper and the law firm of Balch & Bingham, LLP. Newsome alleged that Seier and Bullock had staged the event that led to his arrest for the purpose of fabricating a false charge of menacing. He asserted claims against them for malicious prosecution, abuse of protection, false arrest, and outrage. He additionally asserted claims against Cooper and Balch & Bingham related to Cooper's sending an email containing Newsome's mugshot and other information related to the criminal case to a mutual banking client or clients.

9. On February 13, 2015, Seier filed a motion to dismiss the civil suit based on the dismissal-release order.

10. On February 24, 2015, Bullock filed a motion to dismiss the civil suit based on the dismissal-release order.

11. On February 19, 2015, Newsome filed the instant action to expunge the records of his prosecution for menacing.

12. On July 10, 2015, the state filed an objection to Newsome's Petition for Expungement pursuant to Ala. Code 1975 § 15-27-5.

13. On August 24, 2015, Bullock filed a separate objection to the expungement

petition through his attorney, James E. Hill, Jr.

14. Newsome's Petition for Expungement was set for a hearing on August 31, 2015.

15. The State filed a second objection to the petition on the date of the hearing. In this second objection, the State argued that menacing was a "violent crime" and that a charge of menacing was not subject to expungement.

16. Following the August 31, 2015 hearing, this Court entered an order denying Newsome's petition.

17. On September 2, 2015, Newsome filed a post-trial motion in this Court related to the denial of his expungement petition. He argued that (a) the misdemeanor of menacing is not excluded by the expungement statute, (b) that neither the State nor the victim had filed a timely objection to the petition for expungement, and (c) that he had satisfied the statutory requirements for expungement.

18. On September 10, 2015, a now-retired judge of this Court granted Newsome's post-trial motion and entered an order of expungement.

19. On September 28, 2015, Newsome filed a post-trial motion in his civil case, and he attached a copy of the expungement order to the motion. He argued that the expunged release was "not a lawful basis" for dismissing his civil action. He also argued that any defensive use of the expunged release or other documents from the criminal court file by the Victim/Civil Defendant or any other party to that action was "now a criminal offense."

20. The civil case remains pending against both Bullock and Seier at this time.

ANALYSIS

21. Alabama's expungement statute states in relevant part:

Section 15-27-3 (Submission of sworn statement and records; service).

(a) A petition filed under this chapter shall include a sworn statement made by the person seeking expungement under the penalty of perjury stating that the person has satisfied the requirements set out in this chapter and whether he or she has previously applied for an expungement in any jurisdiction and whether an expungement has been previously granted.

Section 15-27-12 (Prerequisites to expungement).

No order of expungement shall be granted unless all terms and conditions, including court ordered restitution, are satisfied and paid in full, including interest, to any victim, or the Alabama Crime Victim's Compensation Commission, as well as court costs, fines, or statutory fees ordered by the sentencing court to have been paid, absent a finding of indigency by the court.

Section 15-27-17 (Filing under false pretenses).

Upon determination by the court that a petition for expungement was filed under false pretenses and was granted, the order of expungement shall be reversed and the criminal history record shall be restored to reflect the original charges.

22. On the facts before the Court, it is clear that Defendant Newsome did not satisfy Section 15-27-12 (Prerequisites to expungement) as all terms and conditions of the underlying deferred prosecution agreement were not satisfied in full at the time that the Petition for Expungement was filed. To the extent that the Defendant represented

otherwise to this Court, said representations were necessarily false by virtue of his pending civil action against, among other persons, the Victim of the underlying offense.

23. The Court hereby determines that the Defendant's false representation that he had fulfilled all terms and conditions of the underlying deferred prosecution agreement when he was concurrently prosecuting a civil action against the victim in violation of the Release and Dismissal Order of the District Court of Shelby County constitutes "false pretenses" within the meaning of Ala. Code 1975 § 15-27-17. This conclusion is further supported and confirmed in the Court's mind by the subsequent motions filed by the Defendant alleging that the Victim's defensive use of the deferred prosecution agreement in the civil action filed against him by the Defendant as supposedly criminal.

24. Addressing the arguments of Defendant Newsome in opposition to the Petition to Set Aside the Expungement, the Court agrees with the Defendant that Attorney Seier has questionable standing to bring such a Petition in this Court. However, Attorney Seier's Petition has been joined by the Victim. Further, the matter having been brought to the Court's attention by an officer of the Court, the Court is obligated to investigate and act as may be necessary and appropriate. This is particularly true given that the Defendant is himself a member of the local Bar.

25. Defendant Newsome additionally alleges that the Release and Dismissal Agreement itself should be declared void. In making this assertion, however, Defendant Newsome does not volunteer to have this case placed back on the active criminal docket. Furthermore, even assuming the validity of Defendant Newsome's argument that one clause of the Agreement (which purports to contain a release of criminal claims) is

unenforceable, that clause is not at issue here. The Court finds that the general civil release of claims contained in the Agreement is valid under Alabama law.

26. Defendant Newsome also alleges that the various motions filed in this case are untimely, or are barred by the doctrines of res judicata and/or collateral estoppel. Ala. Code 1975 § 15-27-17, upon which the Court bases its ruling herein, does not contain any specific time period during which the Court must act, and there has been no authority presented that this Court's jurisdiction to act pursuant to Ala. Code 1975 § 15-27-17 is limited to a proscribed time period. Likewise, Defendant Newsome has presented no evidence or authority that the Court must enter an order allowing for a party to use previously-expunged records within some definite time period under Ala. Code 1975 § 15-27-16. In fact, such an argument flies in the face of common sense, which dictates that such requests for orders to use expunged records would often necessarily be filed well after an order of expungement was entered. Regardless, due to the lack of any supporting legal authority, the Court finds that any such timeliness or waiver argument has been waived.

27. Finally, Defendant Newsome alleges that his Petition for Expungement was not filed under false pretenses because the existence of a pending civil action was raised by the victim in prior proceedings. The undersigned was not present for any of the prior proceedings in this matter and has not been provided with a transcript of those proceedings to study. Regardless, it is abundantly clear that the statutory prerequisites for expungement were not met in this case. A valid expungement requires an affirmation under oath by the Petitioner that all requirements of the underlying sentence have been

met. The prosecution of a civil lawsuit against a victim who was released from liability in conjunction the Defendant's execution of a deferred prosecution agreement or Dismissal and Release Order clearly indicates to the Court that the terms of that agreement and Order have not been followed and fulfilled. Further, the Defendant's continued prosecution of the civil action against the Victim (and thus, by extension, his continuing violation of the Dismissal and Release Order) shows that Defendant is still not in compliance with the terms of the agreement and Order.

28. As such, the Court finds that the requirements of Ala. Code 1975 § 15-27-17 have been shown, and that the Defendant's expungement was filed and obtained upon false pretenses. The Clerk of Court is accordingly ordered to vacate the previously-entered order expunging this file, and take all other necessary steps to restore the Court record related to the subject charge.

29. The movants are further free to utilize all records related to the Defendant's prosecution, plea and the case's disposition as they may find appropriate and necessary. The expungement statute was enacted to provide a "shield" to first-time and non-violent offenders. It was not intended to be a "sword" for those engaged in civil litigation over the same transaction made the basis of their criminal offense, and the Court will not construe the statute as such.

DONE AND ORDERED this the 2nd day of June 2016,

Howard
CIRCUIT COURT JUDGE

Name: BURT W. NEWSOME

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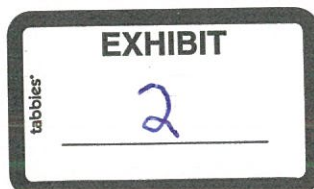
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