

The Supreme Court Of Ohio

State ex. Rel. Justin Johnson

Relator/Petitioner

V.

Judge Taryn Heath

Judge Frank Forchione

Defendants/Respondents

21-0093

**Complaint for
Peremptory Mandamus
and Procedendo**

Complaint for Writ of Mandamus and Procedendo

Peremptory Writ of Mandamus and Procedendo Requested

Justin Johnson

1844 Brewster Creek Drv

Akron Ohio 44306

Relator/Plaintiff/Pro se

Judge Taryn Heath

115 Central Plaza N. #400

Canton Ohio 44702

Respondent/Defendant

Judge Frank Forchione

115 Central Plaza N. #400

Canton Ohio 44702

Respondent/Defendant

Stark County Prosecutor's Office

110 Central Plaza S #510

Canto Ohio 44702

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Attorney for Respondents

FILED

JAN 21 2021

CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED

JAN 21 2021

CLERK OF COURT
SUPREME COURT OF OHIO

Justin Johnson being duly sworn makes the following affirmation under penalty of perjury:

I Justin Johnson am the Relator in the above captioned case and respectfully invoke this court's jurisdiction pursuant to article IV Section II to review the following complaint for peremptory writ of Mandamus and Procedendo

Statement of Relief Sought

Mr. Johnson respectfully ask this court to grant peremptory mandamus and procedendo against the defendant's asking them to grant the relief he is entitled to as an eligible offender seeking to have his felony convictions expunged.

Statement of the Facts

This original action is properly before the court pursuant to Article IV Section Two of the Ohio constitution. This action is brought by the relator Justin Johnson and is in regard to the inaction or refusal of Judge Heath and Judge Forchione to grant him the relief that he is entitled to as an "eligible offender" seeking to have his record expunged pursuant to Section 2953.32 of The Ohio Revised Code.

On September 11th of 2020, Mr. Johnson filed a motion for the expungement of his felony convictions in the courts of Judge Heath and Judge Forchione in The Stark County Court of Common Pleas. This motion is still pending in the courts of those judges.

Mr. Johnson filed his motion for expungement pro se and as an indigent filer. In the original criminal proceedings against him, he was indigent and represented by court appointed counsel.

Section 2953.32 holds that an eligible offender is someone convicted of not more than five felonies and no crimes of violence. Mr Johnson has only been convicted of three felonies and it has been eight years since his last conviction. He has paid his court cost and has been discharged from his sentence. He is by definition an "eligible offender".

Section 2953.32 states that an applicant applying for the expungement of between three to five felony convictions may do so no earlier than three years after his final discharge and that upon filing of the application the court shall set a hearing date and notify the prosecutor of the case for the hearing on the application.

Section 2953.32 allows the prosecutor to object to granting of the application by filing an objection prior to the court date and requires that the objection specify reasons why the application should not be granted.

The court is also required to do the following:

1. Direct its probation officer or county office of probation to make inquiries and written reports regarding the applicant.
2. Determine whether criminal proceedings are pending against the applicant.
3. Determine whether the applicant has been rehabilitated to the satisfaction of the court.
4. Consider any reasons against granting the application specified by a prosecutor whom has filed an objection.
5. Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed against the legitimate needs, if any, of the government to maintain those records.

Judge Heath has informed Mr Johnson via her bailiff that she would grant expungement if he paid his court cost. Judge Forchione's bailiff informed Mr. Johnson that his court would not make a decision until Judge Heath's court made one.

Statement of the Case

About two months after his application was filed, Mr Johnson contacted the court rooms of Judge Heath and Judge Forchione to get information on the status of his expungement applications. He spoke to the bailiffs for those courts who told him that the next step was giving notice to the prosecutor and forwarding the information to Stark County Pre Trial Release for purposes of determining his eligibility.

Two weeks after that phone call, Mr. Johnson reached out to the office of Pre Trial Release to ask if he could get a copy of their report on the matter. He was told that he met the requirements of an eligible offender and that they forwarded this determination to Judge Heath's court with a suggestion

that if the court should decide to expunge his record that it waive his court cost before and in order to do so.

Three months after the filing of his motion for expungement, Mr. Johnson again reached out to those courtrooms to check on his application for expungement. The bailiff for Judge Heath's court said that the prosecutor had made an oral objection to the court granting expungement of his records but informed Mr. Johnson that Judge Heath said she would expunge his record if he paid off the balance of his court cost.

The bailiff for Judge Forchione's courtroom said that a judgement in that court on the matter was pending a decision in the motion for expungement in Judge Heath's courtroom.

Mr. Johnson explained to Melanie John, the bailiff for Judge Heath's court, that though he was employed at the moment he was indigent, that he and his employer had been further negatively impacted financially by the coronavirus pandemic, and that as an indigent filer he would be unable to pay the cost at the time or any time soon. He explained to her that court cost were not a bar to the expungement of his record and that he had an opportunity for gainful employment and a new life pending in another state which was dependent on expungement of his record. Mr. Johnson asked if it were possible for Judge Heath to waive all or a portion of the court cost he owed for that reason and others. Mr. Johnson also questioned the ability of the prosecutor to make oral objections and asked if the report as to his eligibility made by Pre Trial Release, the objection made by the prosecutor, and Judge Heath's request for payment of his court cost could be docketed and forwarded to him. Mr.s John told Mr Johnson that the prosecutor had the right to make oral objections, that the court was not required to docket and forward the report made by pre trial, and that if he wasn't SSI or SSD than he was not indigent and could pay his court costs.

Argument

Mr. Johnson meets the requirements to be considered an eligible offender and the Stark County Prosecutor's Office has not filed an objection to his request for expungement. He has been convicted of three felony offenses, has paid all fines associated with the convictions, and it has been eight years since his final discharge from sentencing.

Section 2953.32 requires that Judges considering an application for objections set a hearing date and that any objections made by a prosecutor be

filed prior to that hearing date. The prosecutor has filed no objection and Judge Heath's court has not docketed any written reports made by its investigating probation department nor set a hearing date despite the applicant's request that she do both.

Section 2953.32 requires that an offender applying for expungement have paid all of his fines but makes no mention of preclusion to expungement for non-payment of court costs.

"court costs are not a part of a criminal sentence. Therefore, defendant's failure to pay the court costs does not result in his sentence not being served. As such, the record indicates he was entitled to the granting of his application for expungement." STATE v. SUMMERS 71 Ohio App.3d 1 592 N.E.2d 905

"the duty to pay court costs is a civil obligation arising from an implied contract." *Strattman v. Studt* (1969), 20 Ohio St.2d 95, 49 O.O.2d 428, 253 N.E.2d 749

The bailiff of Judge Forchione's court room informed Mr. Johnson that his motion for expungement was dependent upon and pending the decision of Judge Heath's court but the statute makes no mention of different judges whom are considering the same application of an eligible offender for expungement containing multiple convictions make their decisions in based upon the decisions of each other.

It has been 8 years since the final discharge of Mr. Johnson's criminal convictions. He has less than the maximum amount of felonies permitted to be expunged by the section and none of his offenses are crimes of violence. He has completed all community service obligations and completed or been discharged from any programs related to his sentences and is therefore by definition an eligible offender entitled to the relief specified in section 2953.32.

A writ of mandamus is a writ issued by the Supreme Court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly and Mr. Johnson believes the court should issue such a writ to compel Judge Heath and Judge Forchione to expunge his felony offenses, not for the purposes of influencing or controlling the reviewing court's decisions but because as an eligible offender, he is already entitled to such relief.

A writ of procedendo is a writ issued by the Supreme Court directing a lower court to enter a judgment in a case and Mr Johnson believes such a writ is necessary to get the defendants to set hearings, notify the prosecutor, and request that if any objections made by that prosecutor be filed so that Mr Johnson can obtain the remedy he seeks.

Issues Presented for Review

1. Whether court cost are civil sanctions or a part of criminal sentencing and if non-payment of them precludes a court from granting an indigent eligible offender's motion for expungement.
2. Whether hearings should be held on the applications of eligible offender's for expungement of their records as stated in section 2953.32 of The Ohio Revised Code.
3. Whether decisions by different courts on duplicate applications for the expungement of multiple convictions are dependent upon the decisions by each court in which the application was filed.
4. Whether judges should consider ex parte oral objections made by prosecutors and whether or not those objections should be in writing, filed, and docketed.

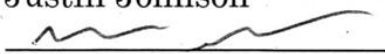
Conclusion

Wherefore Mr. Johnson respectfully ask that the court issue peremptory writs of mandamus and procedendo to encourage the defendants to grant him the relief that he is entitled to as a matter of law. Granting this relief would be in the interest of justice and equity because the court in The State of Ohio V. Summers held that Summers was an eligible offender entitled to expungement even with unpaid court costs.

I, Justin Johnson, affirm, to the best of my recollection, under penalties of perjury that the foregoing statements are true

Respectfully Submitted,

Justin Johnson 01/11/2021


1844 Brewster Creek Drv
Akron Ohio 44306

Affidavit of Justin Johnson

Justin Johnson being duly sworn makes the following affirmation under penalty of perjury.

- 1. I am the relator in the above captioned case and respectfully submit this petition for a peremptory writ of mandamus and procedendo**
- 2. On September 11th of 2020 I filed motions for expungement of my felony convictions.**
- 3. On December 16th 2020, bailiff's for the courts of the defendants said that expungement was dependent on payment of court cost on the matters in Judge Heath's Courtroom and the decisions of Judge Heath.**
- 4. I have personal knowledge of the facts herein:**
- 5. I am competent to testify to all matters stated in this affidavit.**
- 6. Every claim and statement in this Petition for Peremptory Writ of Mandamus and Procedendo is true and accurate, and supported by the record.**
- 7. I am indigent and unable to afford the filing fees for the matters at hand.**

Justin Johnson 1-07-2021