

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1760

STATE OF LOUISIANA

VERSUS

EDYTHE D. CENTEIO

Judgment rendered: June 8, 2007

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Case Number 09-03-0581; Sec. VIII
The Honorable Wilson Fields, Judge Presiding**

**Hon. Doug Moreau
District Attorney
Stephen N. Pugh
Monisa L. Thompson
Assistant District Attorneys
Baton Rouge, LA**

**Counsel for Plaintiff/Appellant
State of Louisiana**

**Frederick Kroenke
Baton Rouge, LA**

**Counsel for Defendant/Appellee
Edythe D. Centeio**

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

Hughes, J., concurs with reasons

DOWNING, J.

This appeal concerns whether the trial court entered judgment improperly expunging a felony conviction pursuant to La. R.S. 44:9B. The East Baton Rouge District Attorney appealed. For the following reasons, we reverse and vacate the trial court judgment.

Ms. Edythe Darlene Centeio was arrested on multiple charges. She unconditionally pled guilty to Simple Burglary and received two years probation, with conditions.

Ms. Centeio filed a petition to expunge all charges in accordance with La. R.S. 44:9. In two separate documents, the trial court ordered the expungement of an Improper Telephone Communication charge and the Simple Burglary charge. The District Attorney appealed the Simple Burglary expungement.

At all times pertinent hereto, La. R.S. 44:9E provided for expungement of felony charges when the defendant had received a deferred sentence in accordance with La. Code of Crim. P. art. 893, and at all pertinent times, provided as follows:

E. (1)(a) No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure.

(b) After a contradictory hearing with the district attorney and the arresting law enforcement agency, the court may order expungement of the record of a felony conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure.

G. "Expungement" means removal of a record from public access but does not mean destruction of the record. An expunged record is confidential, but remains available for use by law enforcement agencies, criminal justice agencies, the Louisiana State Board of Medical Examiners, and the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry or the Louisiana State Board of Examiners of Psychologists.

Under La. R.S. 44:9E(1)(a), the trial judge cannot order the destruction of any record of the arrest and prosecution of any person convicted of a felony. Therefore, we conclude that the trial court's order to destroy the record of defendant's felony conviction was in error.

Next, we address whether the record can be expunged. According to La. R.S. 44:9(E)(1)(b), the court may order expungement of the record of a felony conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure after a contradictory hearing with the district attorney and the arresting law enforcement agency.

Here, Ms. Centeio pled guilty to Simple Burglary. She did not take this plea subject to La. Code of Crim. P. art 893. While we are sympathetic to Ms. Centeio, the law does not provide us discretion in this situation. Since her conviction was not dismissed pursuant to La. C.Crim.P. 893, the record of her felony conviction cannot be expunged. Therefore, the trial court erred when it signed the Order of Expungement.

Accordingly, for the foregoing reasons, we vacate and set aside the trial court's order granting expungement and destruction of the felony conviction of Simple Burglary.

This memorandum opinion is rendered in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B. The cost of this appeal is assessed to the appellee, Ms. Edythe Darlene Centeio.

REVERSED; JUDGMENT VACATED

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HUGHES, J., concurring

I respectfully concur.

Code of Criminal Procedure article 893 E. (2) may be invoked even at the conclusion of the probationary period. But there is no evidence in the record before us that its provisions have ever been ordered.