

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1731

STATE OF LOUISIANA, EX REL. SHAWN D. THOMPSON

VERSUS

STATE OF LOUISIANA

DATE OF JUDGMENT: APR - 1 2010

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 16154, DIVISION "D," PARISH OF LIVINGSTON
STATE OF LOUISIANA

HONORABLE M. DOUGLAS HUGHES, JUDGE

Shawn D. Thompson
Angola, Louisiana

Appellant
In Proper Person

Scott M. Perrilloux
District Attorney
David Guidry
Assistant District Attorney
Livingston, Louisiana

Counsel for Appellee
State of Louisiana

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Disposition: AFFIRMED.

CEH
RKB
JMM

KUHN, J.

This appeal arises from the trial court's denial of plaintiff's motion to expunge his criminal arrest record with respect to two felony offense counts. We affirm.

On September 5, 2001, the district attorney for Livingston Parish filed a bill of information against the appellant, Shawn D. Thompson, charging him with two counts of obscenity, a violation of La. R.S. 14:106A(1). At that time, a separate charge was pending against Thompson for one count of contributing to the delinquency of a juvenile, a violation of La. R.S. 14:92. During a December 3, 2003 hearing, Thompson plead "no contest" to the misdemeanor charge of contributing to the delinquency of a juvenile, he was sentenced to serve six months in the parish jail with credit for time served, and the state entered a *nolle prosequi* with respect to the felony obscenity charges.¹ In May 2008, Thompson filed a motion in Livingston Parish, seeking expungement of the two obscenity counts from his arrest record. After a contradictory hearing, the trial court denied Thompson's motion. Thompson appeals, claiming he is entitled to the requested relief.

At all times pertinent to these proceedings, La. R.S. 44:9B provided, in pertinent part, as follows:

(1) Any person who has been arrested for the violation of a felony offense ... may make a written motion to the district court for the parish in which he was arrested for the expungement of the arrest record if:

(a) The district attorney declines to prosecute, or the prosecution has been instituted, and such proceedings have been

¹ The record further reflects that Thompson was convicted of a homicide in East Baton Rouge Parish that was related to the charges against him in Livingston Parish.

finally disposed of by acquittal, dismissal, or sustaining a motion to quash; and

(b) The record of arrest and prosecution for the offense is without substantial probative value as a prior act for any subsequent prosecution.

(2) If, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge the record of the same in accordance herewith....

In this case, the State effectively dismissed the obscenity charges against Thompson by entering a *nolle prosequi*. See *In re Jackson*, 09-2354, p. 2 (La. 2/12/10), ___ So.3d ___. But in connection with his motion to expunge, Thompson failed to introduce any evidence establishing that the record of arrest and prosecution for the obscenity charges was without substantial probative value as a prior act for any subsequent prosecution. In a civil case, the mover must prove his case by a preponderance of the evidence. See *Rabalais v. St. Tammany Parish School Bd.*, 06-0045, p. 7 (La. App. 1st Cir. 11/3/06), 950 So.2d 765, 769-70, *writ denied*, 06-2821 (La. 1/26/07), 948 So.2d 177. As mover, Thompson failed to establish both evidentiary requirements of La. R.S. 44:9B(1). Thus, he did not establish that he was entitled to the relief he requested, and the trial court properly denied his motion for expungement. Accordingly, we affirm the trial court's judgment. Appeal costs are assessed against appellant, Thompson.²

AFFIRMED.

² Although Thompson was allowed to proceed in the trial court *in forma pauperis*, because he has unsuccessfully litigated this appeal, appeal costs may be assessed against him. See *Johnson v. State Dep't of Social Services*, 05-1597, p. 11 n.10 (La. App. 1st Cir. 6/9/06), 943 So.2d 374, 381 n.10, *writ denied*, 06-2866 (La. 2/2/07), 948 So.2d 1085.