

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-330

JANUARY TERM, 2002

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	
Scott Huminski	}	Unit No. 1, Windham Circuit
	}	
	}	DOCKET NO. 167-1-99 Wmcr
	}	
	}	Trial Judge: Paul F. Hudson
	}	

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a district court order denying a motion to expunge his criminal record relating to a prosecution for obstruction of justice. Defendant contends the court erred in: (1) denying the motion; and (2) failing to address certain collateral motions. We affirm.

This is the third appeal in this matter to reach the Court. The background is set forth at length in State v. Huminski, No. 99-445 (Dec. 13, 2000) (unpublished mem.), and may be briefly summarized. Defendant was charged with two counts of obstruction of justice, arising out of allegations that he had created false evidence and threatened a potential witness in a landlord-tenant dispute. Defendant entered into a plea agreement in which the State dismissed the charge on Count 1, and defendant pled no contest to an amended charge of disorderly conduct on count 2. He was fined \$100 with a surcharge. In a collateral agreement, defendant also agreed to dismiss several civil actions he had filed in superior and federal court in connection with the landlord-tenant dispute. After defendant's wife filed an amended complaint in federal court, however, the State moved to vacate the plea and reinstate the obstruction charges.

Although the court (Judge Corsones) initially granted the State's motion, it later (Judge Hudson, presiding) denied the motion and dismissed the obstruction charges. This Court affirmed, concluding that double jeopardy had attached to bar reinstatement of the charges. See id. slip op. at 4. We also remanded to the district court to address defendant's motion to expunge the criminal record based on his claim that the State had acted in bad faith in bringing the charges.

In the meantime, in response to the State's reinstatement of the obstruction charges, defendant filed a superior court action against the State, the prosecutors, and police officers involved in the case, alleging that they had conspired to concoct false charges and ruin him financially. The trial court granted the State's motion to dismiss on the basis of sovereign and prosecutorial immunity. Defendant appealed, and we reversed, concluding that the court had dismissed the complaint on grounds not raised in the State's motion. Huminski v. Lavoie, 12 Vt. L.W. 281, 282-83 (2001) (mem.).

Following our remand in State v. Huminski, the trial court held a hearing on the motion to expunge and issued a written decision denying the motion. The court noted that although it has the inherent power to expunge a criminal record, "this power is a narrow one and its exercise should be reserved for the unusual or extreme case." State v. Motchnik, 149 Vt. 113, 113 (1987). With respect to defendant's claims that the obstruction charges were unfounded and the result of improper collusion between the police and prosecutors, the court noted that probable cause for the obstruction charges had been found by a competent trial judge, and no evidence supported the claim of bad faith. Nor was there any basis to

expunge the record of conviction of disorderly conduct. In balancing the need for the arrest record "against the harm to the person arrested," *id.* at 114, the court also observed that defendant had not shown any financial or personal loss or liability as a result of the record. Accordingly, the court concluded that defendant had not demonstrated any unusual or extreme circumstances requiring expungement.

Defendant contends on appeal that the trial court failed to address his claims of prosecutorial misconduct and bad faith, and overlooked the evidence supporting his claims. The record discloses, however, that the court did address these contentions. Furthermore, defendant adduced no credible evidence at the hearing showing that the prosecution was brought in bad faith or that the police and prosecutors engaged in other misconduct. Accordingly, we discern no basis to disturb the court's conclusion that defendant failed to demonstrate extreme or unusual circumstances warranting expungement.

Defendant also contends the court erred in ruling, in response to defendant's motion requesting the status of certain other pro se motions, that no other viable pending motions were properly before it. Defendant offers no argument to support the claim of error. Furthermore, we note that our remand was limited to the issue of expungement, which was the only issue properly before the court.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice