

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

DEC 31 2015

TRICIA MAULDIN,

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Plaintiff/Appellant,

)

)

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vs.

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)

STATE OF OKLAHOMA,

)

)

Defendant/Appellee.

)

**MICHAEL S. RICHIE**  
**CLERK**

Case No. 112,674

APPEAL FROM THE DISTRICT COURT OF  
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE THOMAS E. PRINCE, TRIAL JUDGE

**REVERSED AND REMANDED WITH INSTRUCTIONS**

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OPINION BY JOHN F. FISCHER, PRESIDING JUDGE:

Tricia Mauldin appeals the district court's order denying her petition for expungement of records related to a 2010 charge for grand larceny. Mauldin is entitled to expungement pursuant to the terms of a plea agreement negotiated with the Oklahoma County District Attorney and accepted by the district court. The order appealed is reversed, and the case is remanded with instructions to grant Mauldin's petition and enter the order previously tendered by Mauldin and approved by the District Attorney.

**BACKGROUND**

Tricia Mauldin was arrested on August 27, 2010, and charged with grand larceny, a nonviolent felony as defined in 57 O.S.2011 § 571. After negotiating a plea agreement with the Oklahoma County District Attorney's office, Mauldin pled guilty on January 20, 2011. The terms of the plea agreement included a provision for a six-month deferred sentence after the successful completion of which Mauldin would be permitted to withdraw her guilty plea and enter a plea of not guilty. In the event of that occurrence, the District Attorney agreed to move for dismissal of the case. The six-month length of the deferred sentence was specifically negotiated so that Mauldin would have the right to expungement and qualify as a person "authorized to file a motion for expungement" of the records

relating to her arrest for grand larceny pursuant to 22 O.S. Supp. 2009 § 18, which was in effect at the time of her plea. Section 18 provided, in pertinent part:

Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

....

5. The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested are filed or charges are dismissed within one (1) year of the arrest, or all charges are dismissed on the merits.

22 O.S. Supp. 2009 § 18(5).<sup>1</sup>

Mauldin successfully completed the terms of her deferred sentence. She appeared in district court and was permitted to withdraw her guilty plea and enter a plea of not guilty to the charge of grand larceny. The District Attorney then moved for dismissal of the case pursuant to the terms of Mauldin's previously negotiated plea agreement. The above-quoted language of section 18(5) remained in effect when the district court dismissed Mauldin's case on July 20, 2011. *See* 22 O.S. 2011 § 18(5).

On October 28, 2013, Mauldin filed a petition requesting that all records related to the Oklahoma County grand larceny case be sealed. *See* 22 O.S.2011

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<sup>1</sup> Amended by Laws 2012, HB 3091, ch. 18, § 2, eff. November 1, 2012; amended by Laws 2014, SB 2140, ch. 374, § 1, eff. November 1, 2014; amended by Laws 2015, SB 412, ch. 397, § 2, eff. November 1, 2015.

§ 19.<sup>2</sup> In her petition, she also sought the same relief regarding any similar records maintained by the City of Oklahoma City Police Department or the Oklahoma State Bureau of Investigation. A hearing on Mauldin’s petition was held on December 13, 2013. The Oklahoma County District Attorney did not appear, but had previously approved and signed a proposed order prepared by Mauldin’s counsel granting the petition and ordering that the records related to the 2010 criminal case filed against Mauldin be sealed. The City and the OSBI objected to expungement on grounds that Mauldin was not entitled to that relief pursuant to 22 O.S. Supp. 2012 §18, in effect at the time Mauldin’s petition was filed, the terms of which did not authorize expungement until “at least ten (10) years have passed since the charge was dismissed.” 22 O.S. Supp. 2012 § 18(9). The City and OSBI argued that the current version of the section 18 controlled Mauldin’s qualification to seek an expungement, “regardless of the fact that she may have been charged, entered a plea, and/or completed her deferred sentence while a prior version of the law was in effect.” They also argued that the section 18 amendment was “procedural in nature” and could be “applied retroactively.”

Following a hearing, the district court found that “the triggering event” which allows a person to seek an expungement “is the date of filing the Motion for

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<sup>2</sup> “Any person qualified under Section 18 of this title may petition the district court of the district in which the arrest information pertaining to the person is located for the sealing of all or any part of the record, except basic identification information.” 22 O.S.2011 § 19(A) (amended eff. Nov. 1, 2015).

Expungement,” not the date on which that person became eligible for the expungement. Mauldin appeals the order denying her petition for expungement.

### STANDARD OF REVIEW

This appeal involves issues of statutory construction and the constitutional rights of a party to a plea agreement. A legal question involving statutory interpretation is subject to de novo review. *Heffron v. Dist. Ct. of Okla. Cnty.*, 2003 OK 75, ¶ 15, 77 P.3d 1069. And “[w]here a case involves a violation of constitutional rights, an appellate court shall exercise its own independent judgment on questions of both law and interpretation of facts.” *Tsotaddle v. Absentee Shawnee Hous. Auth.*, 2001 OK CIV APP 23, ¶ 15, 20 P.3d 153 (quoted and cited with approval in *Fields v. Saunders*, 2012 OK 17, n.3, 278 P.3d 577). Therefore, we apply the independent, non-deferential, de novo standard in reviewing the district court’s order. *Id.*

### ANALYSIS

The district court found, and no party disputes, that Mauldin entered her guilty plea to the grand larceny charge pursuant to an agreement negotiated with the Oklahoma County District Attorney. The critical term of that agreement, pertinent to this appeal, is the length of the deferred sentence Mauldin would receive. The district court specifically found that Mauldin and the District Attorney had agreed to imposition of a six-month deferred sentence expressly for

the purpose of permitting Mauldin to qualify as a person entitled to file a petition for expungement of the grand larceny case records upon successful completion of the deferred sentence. The district court judge in the criminal case had previously accepted this agreement, allowed Mauldin to plead guilty on January 20, 2011, and imposed a deferred sentence for the length of time agreed to by Mauldin and the District Attorney. After Mauldin successfully completed the deferred sentence, the district court permitted her to withdraw her guilty plea and enter a plea of not guilty. Then, on July 20, 2011, the district court dismissed the criminal case at the request of the District Attorney.

When Mauldin negotiated her plea agreement with the District Attorney, and also on the date when the district court dismissed the criminal case against her, the expungement statute provided that if the charges against a person arrested “are dismissed within one (1) year of the arrest,” that person was authorized to file a petition to have the records of the arrest sealed. 22 O.S. Supp. 2009 § 18(5). Mauldin and the District Attorney negotiated the plea agreement in contemplation of the time period in that statute. As the district court found, Mauldin “was to receive a deferred sentence that would expire within a year of her arrest and thus she would be given the opportunity to seek full expungement through 22 O.S. sections 18 and 19.” When Mauldin filed her petition seeking expungement, the District Attorney kept his part of the agreement and signed the proposed order that

would grant Mauldin's petition and seal the records related to her arrest for grand larceny.

However, by the time Mauldin filed her petition for expungement on October 28, 2013, section 18 had been amended and the dismissal-within-one-year-of-arrest provision had been deleted. The provision as amended provided that a person in Mauldin's position would have to wait ten years after dismissal of the charge before filing a petition for expungement. 22 O.S. Supp. 2012 § 18(9). The City and the OSBI contend this is the controlling provision because that was the law "in effect on the date [Mauldin] filed the Petition."<sup>3</sup> In their appellate briefing, the parties focus on statutory interpretation and the law governing the retroactivity of statutory amendments in general. That analysis is unnecessary.

Section 18 is found within the "General Provisions" chapter of the Code of Criminal Procedure of the State of Oklahoma. The Code has provided, since 1910: "No part of this code is retroactive unless expressly so declared." 22 O.S.2011 § 3. Neither the 2009 version of section 18, nor the amendments thereafter, contain retroactivity provisions.

Further, a guilty plea has constitutional dimensions. *See Santobello v. New York*, 404 U.S. 257, 261-62, 92 S. Ct. 495, 498-99 (1971). "No person shall be

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<sup>3</sup> Neither the City nor the OSBI argue that Mauldin is not entitled to expungement because "the harm to privacy of the person in interest or dangers of unwarranted adverse consequences [do not] outweigh the public interest in retaining the records . . . ." 22 O.S.2011 § 19(C).

deprived of life, liberty, or property, without due process of law.” Okla. Const. Art. 2, § 7. Negotiation of a plea agreement requires “fairness” on the part of the prosecutor “and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances.” *Santobello*, 404 U.S. at 262, 92 S. Ct. at 499. The terms of a plea agreement form a contract that, when accepted by the district court, is “binding upon the state.” *Scribner v. State*, 1913 OK CR 131, 132 P. 933. If the prosecutor offers a promise in exchange for the plea and the plea agreement is accepted by the court, “such promise must be fulfilled.” *Santobello*, 404 U.S. at 262, 92 S. Ct. at 499.

In this case, the Oklahoma County District Attorney has kept his promise. All of the law enforcement entities involved in Mauldin’s case constitute “a unit and each member must be presumed to know the commitments made by any other member.” *Id.* at 263, 92 S. Ct. at 499 (Douglas, J., concurring). To permit the City and OSBI to now circumvent the agreement on which Mauldin’s plea was based would jeopardize the integrity of the government’s prosecutorial authority and be inconsistent with “the interests of justice and [the] appropriate recognition of the duties of the prosecution in relation to promises made in the negotiation of pleas of guilty.” *Id.* at 262, 92 S. Ct. at 499.



The Oklahoma County District Attorney has adhered to the terms of the court-approved and accepted agreement it made with Mauldin. What now remains is for the district court to enforce the terms of that bargain. Further, the expungement statute provides no impediment to that process. Title 22 O.S.2011 § 19(A), in effect when Mauldin’s expungement petition was filed, provides: “Any person qualified under Section 18 of this title may petition the district court . . . for the sealing of all or any part of the record . . . .” (superceded eff. Nov. 1, 2015). At the time Mauldin’s guilty plea was withdrawn and the grand larceny case dismissed, Mauldin was a person “qualified under Section 18.” There is no time limit in section 19 regarding when the petition of a person “qualified” must be filed.

Despite the arguments to the contrary from the City and the OSBI, any amendment to section 18 after this plea agreement was accepted cannot affect the fact that when her grand larceny case was dismissed, Mauldin was a person qualified to file a petition for expungement. “It is well settled that the law in force when a contract is made becomes a part of such contract as fully as if its provisions had been incorporated in said contract.” *Bd. of Comm’rs v. R. J. Edwards Inc.*, 1928 OK 413, ¶ 5, 282 P. 1090 (Opinion on Rehearing). The City’s and the OSBI’s argument would reach a constitutionally prohibited result. “No . . . law impairing the obligation of contracts, shall ever be passed.” Okla. Const. Art. 2,

§ 15. That argument, to the extent it seeks to apply the 2012 amendment to section 18 retroactively, is also precluded by section 3 of the Oklahoma Code of Criminal Procedure.

### **CONCLUSION**

Pursuant to a plea agreement between Mauldin and the Oklahoma County District Attorney, Mauldin pled guilty to a charge of grand larceny in order to obtain a deferred sentence that would permit her to have the records related to the case sealed. Mauldin successfully completed the deferred sentence and the district court dismissed the case. Mauldin then filed a petition to have all records related to the grand larceny case sealed. Mauldin is entitled to that relief. The order appealed is reversed. This case is remanded to the district court with instructions to grant Mauldin's petition and enter the order previously proposed by Mauldin and approved by the Oklahoma County District Attorney.

By separate order we have instructed the Clerk of this Court to seal the records related to this appeal pursuant to Oklahoma Supreme Court Rule 1.260. 12 O.S.2011, ch. 15, app. 1.

**REVERSED AND REMANDED WITH INSTRUCTIONS.**

GOODMAN, V.C.J., and WISEMAN, J., concur.

December 31, 2015