

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI****REBECCA HENTZ****APPELLANT****VS.****NO. 2013-CA-1217****STATE OF MISSISSIPPI****APPELLEE****BRIEF FOR THE APPELLEE****APPELLEE DOES NOT REQUEST ORAL ARGUMENT****JIM HOOD, ATTORNEY GENERAL**

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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**REBECCA HENTZ**

**APPELLANT**

**VS.**

**NO. 2013-CA-1217**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

This appeal proceeds from the denial of a Motion to Expunge Record filed by Rebecca Hentz in the Circuit Court of Tallahatchie County. After denial of a motion to amend the judgement and for a new trial, Rebecca Hentz appealed raising the issue of whether recipients of a Governor's pardon are entitled to have their criminal history record expunged.

**STATEMENT OF FACTS**

A Tallahatchie County Grand Jury returned a three count indictment against Rebecca Hentz for one count of conspiracy to manufacture methamphetamine and two counts of attempting to manufacture methamphetamine. [CP 6-7]. On September 25, 2000, Hentz entered a guilty plea to one count of attempt to manufacture and received a thirty-year sentence, suspended, unsupervised probation and a \$5,000.00 fine. [CP 8-10]. The court remanded the two remaining charges to the file. On January 10, 2012, Governor Haley Barbour granted Hentz a full pardon on the crime and conviction. [CP 15]. Hentz filed a motion and amended motion to expunge all official records relating to her arrest and conviction, pursuant to Mississippi Code Annotated Section 99-15-26(5). [CP 13-21]. The Circuit Court of Tallahatchie County, the honorable Jimmy McClure presiding, denied the expungement on June 6, 2013. [CP 24-30]. After denial of a motion to amend the

judgment denying her expungement or a new trial, Hentz appealed.

### **SUMMARY OF THE ARGUMENT**

The Circuit Court of Tallahatchie County did not have the inherent power to expunge Rebecca Hentz's conviction for attempt to manufacture methamphetamine. A court's authority to expunge criminal records is statutory. While there are several statutes that provide for the expungement of criminal records, under limited circumstances, none of the statutes provide for expungement upon the conviction and the subsequent grant of an executive pardon.

**PROPOSITION: The court did not err in denying expungement of Hentz's conviction after receiving a pardon.**

Hentz contends that she is entitled to expunge her conviction for attempt to manufacture methamphetamine based on the grant of a lawful pardon by the Governor. The power to issue pardons is granted to the Governor in Article 5, Section 124 of the Mississippi Constitution, which provides in part: “[i]n all criminal and penal cases, excepting those of treason and impeachment, the governor shall have power to grant reprieves and pardons....”

Hentz petitioned the circuit court for expungement pursuant to Mississippi Code Annotated Section 99–15–26(5) which states “Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.” After hearing argument of counsel, the Circuit Court held it did not have any authority to expunge Ms. Hentz's record pursuant to the statute or based upon a pardon. [CP 26, 27].

On appeal, Hentz concedes that the Mississippi Code is void of any language that expressly gives a court the authority to expunge a criminal record after a pardon by the Governor. The State agrees and will not list the numerous statutes authorizing expungements under specific

circumstances. Hentz contends the pardon obliterates the fact of conviction so the court should grant her expungement.

While the Mississippi Constitution vests the Governor with the power to grant pardons, it does not address the effects of a pardon on the expungement of criminal records. The control of the use, retention and dissemination of criminal records is properly a legislative function, not a judicial function. See *Underwood v. State*, 529 S.W. 2d 45, 47 (Tenn. 19 75). Mississippi records of criminal offenses are kept pursuant to statute:

§ 45–27–1. Legislative findings and declaration of purpose. The legislature finds and declares that a more effective administrative structure now is required to control the collection, storage, dissemination and use of criminal offender record information. These improvements in the organization and control of criminal offender record keeping are imperative both to strengthen the administration of criminal justice and to assure appropriate protection of rights of individual privacy. The legislature further finds that vigorous protection of such rights of individual privacy is an indispensable element of a fair and effective system of criminal offender record keeping. The purposes of this chapter are (a) to control and coordinate criminal offender record keeping within this statute; (b) to assure periodic reporting to the governor and legislature concerning such recordkeeping; and (c) to establish a more effective administrative structure of the protection of individual privacy in connection with such recordkeeping.

Miss. Code Ann. § 45–27–1.

Expungement of these criminal records is by statutory enactment. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases. *Caldwell v. State* 564 So.2d 1371 (Miss. 1990). This Court has held that a circuit court lacks the inherent power to order the expungement of criminal records. *Caldwell v. State*, 564 So.2d 1371, 1373 (Miss.1990); *Turner v. State*, 876 So.2d 1056, 1059 (¶ 11) (Miss. Ct. App. 2004); *Eubanks v. State* 53 So.3d 846, 848 (Miss.Ct. App. 2011).

Hentz cites to the 1879 case of *Jones v. Board of Registrars of Alcorn County*, 56 Miss. 766, 31 Am. Rep. 385 (1879) for support. However, *Jones* dealt with restoring the civil rights of a

pardoned felon not expunging criminal records. Jones was convicted of embezzlement in the Federal Court for Mississippi. Even though Jones received a presidential pardon, the board of registrars of Alcorn County refused to allow Jones to register to vote. The Mississippi Supreme Court disagreed and held that the pardon restored Jones to his right to be registered as a voter of this State. In the case sub judice there is no denial of a civil right because the circuit court did not expunge Hentz's conviction.

Hentz also cites to *Ex Parte Crisler*, 159 Miss. 247, 132 So. 103 (1931) for support. It too can be distinguished from the present case. Crisler was a licensed and practicing attorney who was convicted of embezzlement. The trial court, as part of his mandatory punishment, disbarred Crisler from practicing law. Subsequent to receiving a full pardon from the Governor, Crisler petitioned the trial court to annul the disbarment. The trial court denied his petition and he appealed. The Supreme Court held that the pardon absolved Crisler from all legal consequences of the crime and conviction, direct and collateral, including punishment and entitled him to be reinstated to the bar. In its opinion, the Supreme Court noted that the sentencing court was statutorily required to disbar Crisler upon his conviction, thereby making the disbarment a part of his punishment. *Id.* at 104. More specifically, this Court pointed out "What we here hold, and all that we do hold, is that a full pardon absolves an attorney at law from the consequences of an order of disbarment made under the statute . . . , as a part of the punishment for the commission of a crime." *Id.* at 104. (Emphasis added). In simpler terms, the disbarment was part of the mandatory punishment and the pardon absolved Crisler of the punishment, so the pardon absolved Crisler of the disbarment. In this case, Hentz's actual record is not part of the punishment and does not entitle her to an expungement of that record.

There is no constitutional or statutory authority for expungement of criminal records upon conviction and the subsequent grant of an executive pardon. As stated in Hentz's brief, the

legislature can remedy the situation by amending the expungement statutes.

**CONCLUSION**

Based upon the arguments presented herein as supported by the rulings of the trial court and record on appeal, the State would ask this reviewing Court to affirm the order of the Circuit Court of Tallahatchie County denying Hentz's motion for expungement.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Lisa L. Blount, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

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This the 12th day of March, 2014.

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