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SUPREME COURT OF ARKANSAS

No. CR 11-1232

STATE OF ARKANSAS APPELLANT V. HARRIS MARTIN APPELLEE	**Opinion Delivered** May 3, 2012 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CR-1992-2594] HONORABLE JAMES LEON JOHNSON, JUDGE REVERSED AND REMANDED.

COURTNEY HUDSON GOODSON, Associate Justice

Appellant, the State of Arkansas, appeals an order of the Pulaski County Circuit Court to seal the criminal record of appellee, Harris Martin. For reversal, the State argues that the circuit court erred as a matter of law by entering an order to seal Martin's record. We have jurisdiction pursuant to Arkansas Supreme Court Rule 1-2(b)(6) (2011), as this appeal presents an issue of statutory interpretation. We reverse and remand.

On September 10, 1992, Martin was involved in a drunk-driving accident resulting in the death of his nephew, a passenger in the vehicle. On October 12, 1993, the circuit court found Martin, the driver, guilty of negligent homicide and sentenced him to five years' probation conditioned upon compliance with written rules of conduct, a $1,000 fine, court costs, and a two-year suspension of driving privileges.

On April 9, 2009, Martin filed a petition to seal the record of his negligent-homicide conviction. In his petition, Martin stated that he was sentenced under the provisions of the negligent-homicide statute, found at Arkansas Code Annotated section 5-10-105 (Supp. 1991). The State filed its response to Martin's petition to seal, stating that he was not sentenced under any expungement provision. On October 5, 2011, the circuit court conducted a hearing where the court inquired whether Martin wished to proceed pursuant to Act 531, codified at Arkansas Code Annotated sections 16-93-1201 *et seq.* (Repl. 2006). Defense counsel indicated that he did. Martin further argued that negligent homicide was a nonviolent, target offense subject to expungement. Additionally, Martin submitted a letter from his sister, his deceased nephew's mother, who supported his expungement application. In response, the State argued that section 5-10-105 did not indicate whether negligent homicide was a target offense and that Martin had two subsequent DWIs. From the bench, the circuit court granted the petition, finding that the offense was neither violent nor reckless and was not excluded among the target offenses under Act 531. On October 5, 2011, the circuit court entered its order to seal the negligent-homicide offense, noting section 5-10-105 as the court's authority for the expungement. The State timely filed its notice of appeal and now seeks reversal of the circuit court's order to seal.

While we typically consider whether the State's appeal is proper under Arkansas Rule of Appellate Procedure–Criminal 3, we need not do so in the present appeal. We have held that the State's appeal from an order to seal criminal convictions, despite its criminal

designation, is civil in nature and does not require satisfaction of, or compliance with, Rule 3. *State v. Tyler*, 2010 Ark. 307. Therefore, we accept this appeal without engaging in a Rule 3 analysis.

For the sole point on appeal, the State argues that the circuit court erred as a matter of law by entering an order to seal Martin's record. Specifically, the State contends that section 5-10-105 at the time of Martin's offense did not provide for the sealing of Martin's record and, as a result, the circuit court's order should be reversed. Alternatively, the State asserts that Act 531 became effective on January 1, 1994, and because Martin's offense in 1992 occurred prior to the enactment of Act 531, Martin was ineligible for expungement pursuant to the Act. The State maintains that, even if Act 531 had applied, negligent homicide was not a target offense under the Act. In response, Martin asserts that the only issue preserved for appeal is whether his conviction for negligent homicide, a Class D felony, was a target offense.

The key issue is whether the circuit court erred in ruling that section 5-10-105 provided for the sealing of Martin's record. We review issues of statutory interpretation de novo, because it is for this court to determine the meaning of a statute. *Solis v. State*, 371 Ark. 590, 269 S.W.3d 352 (2007). Although this court is not bound by a circuit court's decision, in the absence of a showing that the circuit court erred, its interpretation will be accepted as correct on appeal. *Id.* The basic rule of statutory interpretation is to give effect to the intent of the legislature. *Montoya v. State*, 2010 Ark. 419. Where the language of the statute is plain

and unambiguous, we determine the legislative intent from the ordinary meaning of the language used. *Id*. In considering the meaning of a statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id*. We will not interpret a statute to yield an absurd result that defies common sense. *State v. Owens*, 370 Ark. 421, 260 S.W.3d 288 (2007).

Given our rules of statutory construction, we note that the circuit court's order to seal "shall contain . . . [t]he provision under which the individual was sentenced that provides for sealing or expungement of the record[.]" Ark. Code Ann. § 16-90-905(a)(3)(B)(v) (Repl. 2006). In his petition to seal, Martin claimed that he was eligible for expungement pursuant to section 5-10-105. The circuit court also cited section 5-10-105 as the basis for the sealing of Martin's record. Specifically, the court's order states that "[t]he [c]ourt further finds that [Martin] was sentenced under the provisions of [Arkansas Code Annotated section] 5-10-105 [felony D], which provides for the sealing of [Martin's] record." Keeping our rules of statutory construction in mind, we turn to section 5-10-105 to determine whether the statute authorized the circuit court to seal appellant's record.

A sentence must be in accordance with the statutes in effect on the date of the crime. *State v. Burnett*, 368 Ark. 625, 249 S.W.3d 141 (2007). At the time of Martin's offense, section 5-10-105 provided as follows:

> (a)(1) A person commits negligent homicide if he negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft:

> (A) While intoxicated; or
>
> (B) If at that time there is one-tenth of one percent (0.10%) or more by weight of alcohol in the person's blood as determined by a chemical test of the person's blood, urine, breath, or other bodily substance.
>
> (2) A person who violates subdivision (a)(1) of this subsection is guilty of a Class D felony.
>
> (b)(1) A person commits negligent homicide if he negligently causes the death of another person.
>
> (2) A person who violates subdivision (b)(1) of this subsection is guilty of a Class A misdemeanor.
>
> (c) For the purpose of this section, "intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof to such a degree that the driver's reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself and other motorists or pedestrians.

Id.

Here, the statute offers the elements of negligent homicide for both felony and misdemeanor offenses in subsections (a) and (b), while subsection (c) includes a definition of the word "intoxicated." However, given the plain meaning of section 5-10-105, the statute lacks any provision for the expungement of appellant's record. Thus, the circuit court's order does not provide a proper basis for expungement. Based on our de novo review of section 5-10-105, we hold that the circuit court erred by sealing appellant's negligent-homicide conviction pursuant to that statute. Accordingly, we reverse and remand for the entry of an order consistent with our opinion. Because we dispose of the State's appeal on this basis, we decline to reach the merits of its remaining arguments regarding Act 531.

Reversed and remanded.