

Cite as 2010 Ark. 419
SUPREME COURT OF ARKANSAS
No. CR-09-1409

FREDDIE JOE MONTOYA
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: November 4, 2010

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
NO. CR-2004-051-2

HON. DAVID CLINGER, JUDGE,

REVERSED AND REMANDED.

RONALD L. SHEFFIELD, Associate Justice

Appellant Freddie Joe Montoya entered guilty pleas to possession of methamphetamine, possession of marijuana, and endangering the welfare of a minor. On February 3, 2005, a judgment was entered pursuant to Act 346, Arkansas's first-offender statute, codified at Arkansas Code Annotated sections 16-93-301 et seq., deferring his guilty plea and placing him on three years' probation. Montoya fulfilled the terms of his probation, and on August 7, 2008, he filed a petition to seal his record.

On January 14, 2009, the State filed a response alerting the circuit court to two deferred guilty pleas by Montoya in New Mexico under that state's first-offender statute. On January 15, 2009, the circuit court denied Montoya's petition to seal, and after a subsequent hearing on a motion to reconsider, the circuit court entered a judgment finding that Montoya had previously availed himself of the benefits of New Mexico's version of Act 346 and, therefore, voided his first-offender status in Arkansas. Montoya argues on appeal that the circuit court erred when it voided his first-offender status under Act 346 and that

the circuit court's order should be reversed, and his file should be sealed in accordance with the Act. This case involves an issue of first impression in the State of Arkansas: whether an expunged guilty plea under another state's first-offender statute is a prior conviction for purposes of Act 346. Therefore, our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1) (2010). We reverse the circuit court's order and remand this case for consideration of the merits of Montoya's petition to seal.

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, 593, 269 S.W.3d 352, 354 (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.*, 269 S.W.3d at 355. The basic rule of statutory interpretation is to give effect to the intent of the legislature. *Id.*, 269 S.W.3d at 355. Where the language of the statute is plain and unambiguous, we determine the legislative intent from the ordinary meaning of the language used. *Id.*, 269 S.W.3d at 355. 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.*, 269 S.W.3d at 355. We will not interpret a statute to yield an absurd result that defies common sense. *State v. Owens*, 370 Ark. 421, 426, 260 S.W.3d 288, 292 (2007). We construe the statute so that no word is left void, superfluous or insignificant, and we give meaning and effect to every word in the statute, if possible. *Id.* at 424, 260 S.W.3d at 291.

In 1998, Montoya pled guilty to two felonies in New Mexico, and his pleas were deferred without an adjudication of guilt pursuant to New Mexico Statutes Annotated

section 31-20-13 (1978). In March 2009, a New Mexico court dismissed the matter with prejudice and without an adjudication of guilt or conviction. Montoya asserts that because the matters were dismissed without an adjudication of guilt or conviction, the out-of-state deferred guilty pleas cannot be viewed as prior convictions under Arkansas Code Annotated section 16-93-303, and the circuit court erred in holding otherwise.

The State argues that even though they were deferred and later expunged, Montoya's deferred guilty pleas in New Mexico must operate as prior convictions under Arkansas Code Annotated section 16-93-303(a)(1)(A)(i), which states:

Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit or district court, *in the case of a defendant who has not been previously convicted of a felony*, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court.

Ark. Code Ann. § 16-93-303(a)(1)(A)(i) (Supp. 2007) (emphasis added).

We have previously defined “conviction” as “the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged.” *Garling v. State*, 334 Ark. 368, 372, 975 S.W.2d 435, 437 (1998) (quoting *Black's Law Dictionary* 333 (6th ed. 1990)). At the time of Montoya's Act 346 disposition, no judgment or sentence of guilt had been entered against him. Therefore, Montoya's prior deferred pleas of guilt were not prior convictions rendering him ineligible under the statute.

The State, however, asserts that a defendant is only permitted to use the benefits of Act 346 once, as a first-time offender, and by reaping the benefits of New Mexico's first-offender statute, Montoya did not qualify for sentencing under Act 346 in Arkansas. But, section 16-93-302 states that “[n]o person may avail himself or herself of the provisions of

this section and §§ 16-93-301 and 16-93-303 on more than one (1) occasion.” Ark. Code Ann. § 16-93-302(a)(1) (Repl. 2006). The plain language of this section only limits eligibility to individuals having never previously availed themselves of the Arkansas first-offender statute.

This intent is further indicated by subsection (a)(2), providing:

Any person seeking to avail himself or herself of the benefits of this section and §§ 16-93-301 and 16-93-303 who falsely testifies, swears, or affirms to the court that he or she has not previously availed himself or herself of the benefits of this section and §§ 16-93-301 and 16-93-303 is guilty of a Class D felony.

Id. § 16-93-302(a)(2). Again, the General Assembly made clear that the statute contemplated only Arkansas’s provision. Therefore, a person who has availed himself or herself of another state’s first-offender statute is not precluded from sentencing under the Arkansas statute.

In addition, the State urges that the General Assembly clarified the phrase “previously convicted of a felony” in a 2007 amendment to Arkansas Code Annotated section 16-93-303. Act of March 30, 2007, No. 744, § 2, 2007 Ark. Acts 3911, 3913–14. Subsections (c) and (d) now permit a deferred guilty plea under Act 346 to constitute a felony conviction for purposes of criminal history. Ark. Code Ann. § 16-93-303 (Supp. 2009). However, this amendment was not in effect at the time Montoya was sentenced under Act 346 and, therefore, is not relevant to the instant matter.

Finally, the State argues that a strict interpretation of Arkansas Code Annotated sections 16-93-302 and 16-93-303 would result in situations where a defendant who had previously availed himself of expungement under a first-offender statute in another state would be eligible for a second expungement. The State asserts that this interpretation would permit absurd situations where criminals could travel throughout the country taking

advantage of first-offender laws once their prior records were expunged.

We disagree. While this may be an undesirable consequence, the language of the statute is plain and unambiguous. When a guilty plea is deferred under Act 346, it is not accepted, *see Duncan v. State*, 308 Ark. 205, 206–07, 823 S.W.2d 886, 887 (1992), and, as already set forth, does not constitute a conviction.¹ Likewise, in New Mexico, once Montoya completed his probation under the New Mexico statute, the matter was dismissed without adjudication or conviction. Therefore, we hold that under the plain language of the statutes, Montoya had never before availed himself of the benefits of Act 346, nor had he been convicted of a felony; therefore, his status under Act 346 should not have been voided and the circuit court erred in doing so. We reverse and remand for a consideration of the merits of Montoya’s petition to seal.

Reversed and remanded.

Robert M. “Robby” Golden, for appellant.

Leslie Rutledge, Att’y Gen., by: *Rachel M. Hurst*, Ass’t Att’y Gen., for appellee.

¹Alternatively, the State argues that under *McGhee v. State*, 334 Ark. 543, 975 S.W.2d 834 (1998), a plea of guilty, when coupled with a fine and probation, constitutes a conviction. The State argues that because Montoya entered a plea of guilty and was sentenced to probation and restitution in lieu of a fine, the circuit court effectively entered a judgment of guilt prohibited by section 16-93-303(a)(1)(A). Such a sentence, the State argues, is illegal. This argument fails because Montoya’s guilty plea was deferred and never accepted.