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SUPREME COURT OF ARKANSAS

No. CR-21-310

DUANE JEFFERSON GONDER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: March 31, 2022

PRO SE APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NOS. 22CR-09-99; 22CR-10-53]¹

HONORABLE CREWS PURYEAR,
JUDGE

AFFIRMED.

COURTNEY RAE HUDSON, Associate Justice

Duane Jefferson Gonder appeals from the circuit court’s denial of his petition to partially seal his criminal record. In the petition, which was filed in the court where he was convicted, Gonder asked the circuit court to seal two charges for kidnapping and burglary that were nolle prossed as part of his plea agreement. Because Gonder relied on a law that was not in effect when he committed the crimes that were charged and subsequently dismissed, we affirm.

Gonder was charged with capital murder, aggravated assault, aggravated residential burglary, kidnapping, and furnishing prohibited articles. *Gonder v. Spain*, 2016 Ark. 141, 489 S.W.3d 133 (per curiam). In 2010, as part of a negotiated plea agreement, the capital-murder charge was reduced to first-degree murder, and the kidnapping and burglary charges

¹The prepared record erroneously lists several postconviction appellate numbers on its title page.

were nolle prossed. As a result, Gonder pleaded guilty to one count of first-degree murder, one count of aggravated assault, and one count of attempting to furnish a prohibited article. *Id.* Gonder was sentenced to an aggregate term of 552 months' imprisonment. *Id.*

On July 27, 2020, Gonder filed a petition to seal the nolle prossed charges. He filed the petition pursuant to Arkansas Code Annotated section 16-90-1410 (Repl. 2016). The circuit court denied the petition, finding that section 16-90-1410 did not allow for partial sealing of a case where some charges were dismissed, and others resulted in convictions. Gonder filed a timely appeal.

On appeal, Gonder asserts that the circuit court abused its discretion because section 16-90-1410 does not limit the circuit court's authority to partially seal a record. The State responds that Gonder committed his offenses prior to the effective date of section 16-90-1410, and that section does not apply retroactively. Alternatively, the State contends that the circuit court did not abuse its discretion. The correct application and interpretation of an Arkansas statute is a question of law, which we decide de novo. *Harmon v. State*, 2019 Ark. 34.

Gonder requested the partial sealing of his record pursuant to Arkansas Code Annotated section 16-90-1410. That statute is a part of Act 1460 of 2013, which is known as the Comprehensive Criminal Record Sealing Act (CCRSA). The CCRSA, which became effective on January 1, 2014, created a uniform procedure for sealing a person's record and details the circumstances in which the individuals are eligible to have their records sealed. *See Bolin v. State*, 2015 Ark. 149, 459 S.W.3d 788. However, this court has made clear that, in the absence of a clear expression that it applies retroactively, the CCRSA

is generally not to be applied retroactively to crimes committed before it was enacted. *Id.* Section 16-90-1410 contains no clear expression of retroactive application. On de novo review, we therefore affirm the circuit court's denial of Gonder's petition because section 16-90-1410, which became effective in January 2014, is not applicable to the charges that Gonder seeks to have sealed.²

Affirmed.

Duane Gonder, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.

²We do not address whether any portion of Gonder's records may be sealed pursuant to other statutes that may apply.