

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY LINDSEY, a/k/a ANTHONY
LINDSAY,

Defendant-Appellee.

UNPUBLISHED
November 19, 2009

No. 283481
Wayne Circuit Court
LC No. 98-011978-01

Before: Talbot, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s denial of its motion requesting relief from judgment. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of carrying a concealed weapon (CCW), MCL 750.227, on December 8, 1998. On February 17, 2004, defendant requested expungement of that conviction from his record pursuant to MCL 780.621. The Michigan State Police searched defendant’s state and FBI criminal records and, as of March 16, 2004, found only defendant’s CCW conviction. Pursuant to MCL 780.621(1), defendant therefore appeared eligible for expungement of his CCW conviction from his record, and this information was reported to the trial court pursuant to MCL 780.621(5). On April 2, 2004, the trial court set the conviction aside, issuing an order granting the expungement.

However, in 2002, defendant had actually been convicted of misdemeanor driving with a suspended license, MCL 257.904. The Michigan State Police did not receive notice of defendant’s misdemeanor conviction until after entry of the expungement order. Upon learning of it, the Michigan State Police issued a new criminal history report and informed the Attorney General’s Office. On March 17, 2005, plaintiff moved for relief from judgment from the order granting expungement. The trial court denied plaintiff’s motion.

Plaintiff argues first that, because of defendant’s multiple convictions, the trial court lacked jurisdiction to expunge defendant’s record. This is incorrect: jurisdiction refers to a court’s power to adjudicate a class of cases or, put another way, the power to exercise any kind of authority over a particular kind of case. See *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826, 829 (1992); see also *In re Waite*, 188 Mich App 189, 199; 468 NW2d 912 (1991).

The circuit court has jurisdiction to consider a request for expungement and to enter an order granting or denying that request, irrespective of whether the trial court knew of a second prior conviction. See, e.g., *People v McCullough*, 221 Mich App 253; 561 NW2d 114 (1997). The fact that, as plaintiff accurately points out, parties may neither waive nor stipulate to jurisdiction is immaterial here, because the trial court had jurisdiction over this kind of action.

Nonetheless, it is readily apparent that plaintiff's real argument is not truly that the trial court lacked jurisdiction. Rather, the relevant statutory authority did not allow the trial court discretion whether to grant the expungement request under the circumstances. We agree.

Generally, the executive branch is the only branch of our governmental system that may exercise the power of pardon or commutation. *People v Erwin*, 212 Mich App 55, 63; 536 NW2d 818 (1995). In the absence of a grant of statutory authority, the trial court – e.g., the judicial branch – is therefore not free to do so. See *Id.* at 63-64; *People v Upshaw*, 91 Mich App 492, 494; 283 NW2d 778 (1979). The statutory authority permits “a person *who is convicted of not more than 1 offense* may file an application” for expungement. MCL 780.621(1) (emphasis added). An “offense,” for the purposes of MCL 780.621, includes misdemeanors. *People v Grier*, 239 Mich App 521, 523; 608 NW2d 821 (2000). Consequently, defendant is not a “person who is convicted of not more than 1 offense.” A trial court abuses its discretion in granting expungement if the applicant has more than one conviction. See *People v Manning*, 153 Mich App 516, 519; 396 NW2d 468 (1986); see also *People v Bosma*, 186 Mich App 556, 559, 465 NW2d 24, 25 (1991). The trial court would not have been permitted to grant defendant's request for expungement had it known of defendant's misdemeanor conviction at the time of defendant's request.

Notwithstanding the impermissibility of defendant's expungement, plaintiff may only be relieved from the trial court's order for one of the reasons set forth in MCR 2.612(C)(1). Plaintiff argues that defendant misrepresented his prior criminal record, constituting fraud or misconduct by a party under MCR 2.612(C)(1)(c). We disagree, and we instead agree with the trial court's finding that defendant did not deliberately misrepresent his eligibility for record expunction. We also disagree with plaintiff's argument that the order was void due to lack of jurisdiction under MCR 2.612(C)(1)(d). We again disagree, because the trial court had subject matter and personal jurisdiction, so its judgment was merely voidable, not void. See *Abbott v Howard*, 182 Mich App 243, 247-248; 451 NW2d 597 (1990); *LeClaire*, *supra* at 660.

Finally, plaintiff argues relief from judgment is justified based on mistake pursuant to MCR 2.612(C)(1)(a). We agree. Prior to the order of expungement, both plaintiff and defendant believed that defendant actually was eligible for the expungement. Both parties proceeded under a misapprehension of a critical fact, and neither party's mistake was due to their own lack of diligence. See *Farm Bureau Mutual Ins Co v Buckallew*, 471 Mich 940, 690 NW2d 93 (2004). Rather, the mistake was due to a third party. The incomplete information initially provided to the parties by the Michigan State Police constitutes the extraordinary circumstances necessary for relief to be granted based on mistake. See *Lark v Detroit Edison Co*, 99 Mich App 280, 283-284; 297 NW2d 653 (1980). Accordingly, relief is warranted.

Finally, MCR 2.612(C)(2) provides that a motion for relief from judgment must be made within a reasonable time, limited to one year at the most for relief based on a mistake. Plaintiff's

motion was filed on March 17, 2005, which is less than a year after the order of expungement. The motion was therefore timely, and we conclude that the trial court should have granted plaintiff's motion for relief from judgment under MCR 2.612(C)(1)(a).

Reversed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis