

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-01178 COA**

**STATE OF MISSISSIPPI EX REL. MISSISSIPPI
BUREAU OF NARCOTICS**

APPELLANT

v.

JAMES VELTON KNIGHT

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	10/13/95
TRIAL JUDGE:	HON. RICHARD WAYNE MCKENZIE
COURT FROM WHICH APPEALED:	FORREST COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF THE ATTORNEY GENERAL BY: MARY JANE LEMON
ATTORNEY FOR APPELLEE:	J. B. VAN SLYKE JR.
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	RECORD ORDERED EXPUNGED
DISPOSITION:	REVERSED AND RENDERED - 10/21/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/12/97

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

THOMAS, P.J., FOR THE COURT:

The State of Mississippi by and through the Mississippi Bureau of Narcotics appeals an order entered by the Circuit Court of Forrest County, Mississippi expunging all records of the conviction and sentence of Defendant James Velton Knight. The Bureau assigns the following issue as error, to-wit:

I. WHETHER THE TRIAL COURT ERRED IN ORDERING THE EXPUNGEMENT OF THE DEFENDANT'S RECORDS PERTAINING TO HIS CONVICTION FOR THE SALE OF A CONTROLLED SUBSTANCE WHEN MISS. CODE ANN. SECTION 41-29-150 EXPRESSLY LIMITS THE AVAILABILITY OF EXPUNGEMENTS TO CERTAIN POSSESSION OF CONTROLLED SUBSTANCE OFFENSES.

Finding that the trial court erred in expunging Knight's record of conviction and sentence, we reverse, render, vacate, and hold for naught the order of expungement.

FACTS OF THE CASE

James Velton Knight was charged with selling 108.2 grams (approximately a quarter pound) of marijuana, a Schedule I control substance, to an undercover Forrest County deputy sheriff on or about June 24, 1988. On October 20, 1989, Knight appeared before the Circuit Court of Forrest County with his attorney, Travis Buckley, and entered a plea of guilty to the sale charge. The circuit judge, after carefully and meticulously determining that Knight's plea was knowingly, intelligently and voluntarily entered and that he was pleading guilty because he was in fact guilty, accepted Knight's plea, adjudicated him guilty of the sale of a controlled substance and proceeded to sentence him to serve a term of three years in the custody of the Mississippi Department of Corrections; however, the court thereupon suspended Knight's incarceration and ordered probation after successful completion of certain other conditions which Knight thereafter successfully completed. On April 22, 1992, a petition for termination of Knight's probation was filed and a discharge order was entered that same day terminating Knight's probation.

On September 5, 1995, Knight filed a petition to expunge his records with the circuit court requesting that the court enter an order expunging the record of the defendant. The State of Mississippi by and through the Mississippi Bureau of Narcotics pled a response to the petition requesting that the petition be denied.

A hearing on Knight's petition was held before the circuit judge on October 11, 1995. After taking testimony, the court recessed the hearing so that the court reporter could review her notes from the original plea hearing and Knight could obtain an affidavit from Travis Buckley, his attorney at the time of the acceptance and entry of his guilty plea in 1989, concerning an alleged promise of an expungement made by the office of the district attorney as part of the plea bargain. Thereafter, on October 13, 1995, the circuit judge entered an order expunging all record of Knight's charge, plea, conviction, and sentence.

Miss. Code Ann. Section 41-29-150 (Rev. 1993) controls the expungement of criminal records for convictions of violations of the Uniform Controlled Substance Law. Subsection (d)(2) of said code section authorizes expungement only in cases of possession. Persons convicted of the sale of a controlled substance are not eligible for expungement. Our legislature has not authorized expungement of the record of the particular type of criminal offender in the case *sub judice* and no case authority exists for the trial court to have ordered expungement in this case. Neither do our trial courts possess inherent power to expunge records. *Caldwell v. State*, 564 So. 2d 1371 (Miss. 1990) (containing an excellent discussion of the availability of expungements).

THE JUDGMENT OF THE CIRCUIT COURT OF FORREST COUNTY IS HEREBY REVERSED AND RENDERED. THE ORDER EXPUNGING JAMES VELTON KNIGHT'S PLEA, CONVICTION AND SENTENCE IS HEREBY VACATED AND HELD FOR NAUGHT. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE.

McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., CONCURS WITH SEPARATE WRITTEN

OPINION JOINED BY BRIDGES, C.J., AND HERRING, J.

KING, J., CONCURRING:

I concur with the result reached herein but write to offer an additional reason.

A review of the plea transcript indicates that in response to questioning by the trial judge, Knight indicated his plea was entered of his own volition, without promise of preferential treatment.

Subsequently to this testimony from Knight, the district attorney made a sentencing recommendation. All parties indicated that this recommendation was the total agreement and an understanding that the court was not bound by this recommendation. Based upon these representations from the parties, the plea was accepted and sentence imposed.

Knight now states, and the trial court found, that there was a promise to expunge this conviction from his record. Such a finding would seem to indicate that contrary to the testimony offered at the plea hearing, this plea was not freely and voluntarily given. If such an agreement was made, Knight's remedy should be pursued as a matter of post-conviction relief, seeking to vacate the conviction, rather than by direct appeal.

The denial of relief to Knight should not be taken as an indication that the State may use one agency, the district attorney, to make an agreement, and subsequently use another agency, the Bureau of Narcotics, to challenge the agreement. Under other facts, it may be appropriate to preclude such a challenge by the State.

THIS OPINION IS JOINED BY BRIDGES, C.J., AND HERRING J.