

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: CJAP 06-16
LOWER COURT CASE NO: 2006-MM-19118-O

**BEVERLY BERTRAM,
VIVIAN FOXX,**
Appellants,

vs.

STATE OF FLORIDA,
Appellee.

_____ /

Appeal from the County Court for Orange County,
Florida, Wilfredo Martinez, County Court Judge

John Notari, Sigman, Sigman, Notari & Sigman,
for Appellants

Lawson Lamar, State Attorney,
Lamya Henry, Assistant State Attorney,
for Appellee

Before THORPE, BRONSON, and PERRY, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellants appeal the trial court's summary denials of their amended petitions to expunge their criminal records. We reverse and remand.

On December 20, 2003, authorities arrested Appellants for petit theft. The State filed charges on January 12, 2004. Both Appellants completed a pre-trial diversion program. The State dropped the charges against Vivian Foxx on January 21, 2005, and on January 25, 2005, it dropped the charges against Beverly Bertram. Appellants each filed a "Petition to Expunge Records" on September 22, 2005. The State filed an opposition to the expunction petitions on October 3, 2005 for Ms. Foxx and on October 6, 2005 for Ms. Bertram.

The court heard argument on December 1, 2005 regarding the expunctions. At the December 1, 2005 hearing, the court granted Appellants thirty days to file amended petitions that comply with the statute. Appellants had not provided factual bases for the unusual circumstances of the petitions. Ms. Bertram filed an “Amended Petition to Expunge Records” on December 15, 2005. Ms. Foxx filed an amended petition on March 15, 2006. The State responded in opposition to both petitions on January 6, 2006.

On March 15, 2006, the court summarily denied the amended petitions for expunction. Ms. Foxx filed a “Motion for Reconsideration” on March 29, 2006, and Ms. Bertram filed a “Motion for Reconsideration” on March 30, 2006. The court did not rule on the motions for reconsideration. This timely appeal follows.

On October 31, 2006, the court consolidated 06-18-AP (*Vivian Foxx v State*) into 06-16-AP (*Beverly Bertram v. State*). The cases involve the same parties, facts and circumstances.

Appellants argue that the trial court erred when it summarily denied their petitions for criminal record expunction. They contend that the trial court must give them an opportunity to be heard on the petitions’ merits, as they complied with all pre-requisites before filing them. At a minimum, they request an opportunity to refile their petitions.

The State counters that the court granted them a hearing, yet one of the Appellants (Foxx) failed to appear. Further, at the hearing, the court explained that it would grant Appellants an additional thirty days to amend their petitions. The State argues that after the Appellants filed their amended petitions, the court properly exercised its discretion when it denied the petitions without an additional hearing.

Appellants respond that the trial court should grant them another hearing, as they complied with all requirements and filed amended petitions.

When a petition for expunction meets the pre-requisites as defined by Florida Statute § 943.0585 and Florida Rules of Criminal Procedure 3.692 and 3.989, the court must afford the

petitioner a meaningful hearing. *Wells v. State*, 807 So.2d 206, 207 (Fla. 5th DCA 2002) (citing *Smith v. State*, 614 So.2d 525, 528 (Fla. 5th DCA 1993)). Although a petitioner is entitled to a hearing, she is not automatically entitled to relief. *Id.*; see also Fl. Stat. § 943.0585 (2005).

At the December 1, 2005 hearing, the court stated that the original petitions failed to comply with the statutory requirements. The court then gave Appellants thirty days in which to re-file their petitions. Within thirty days, Ms. Bertram made the requested corrections the court suggested and filed an amended petition. It seemingly met all statutory pre-requisites, yet the court held no hearing and denied the petition. Ms. Foxx filed her amended petition beyond the thirty-day extension granted to her by the court.

When the trial court denied the petitions, it provided no reason(s). When a petition meets all statutory requirements, a petitioner is presumptively entitled to relief. *Oymayan v. State*, 765 So.2d 812, 815 (Fla. 1st DCA 2000). Yet a trial court has discretion to deny a petition when it provides “a good reason for the denial based on the facts and circumstances of the individual case.” *Id.* (quoting *Anderson v. State*, 692 So.2d 250, 252 (Fla. 3rd DCA 1997)).

Although Florida Statute § 943.0585 provides the trial court with “sole discretion” to deny an expunction petition, the court must provide reason(s) for doing so. When an expunction order only states, “denied,” an appellate court has nothing to review. *Wells*, 807 So.2d at 207. It cannot determine whether or not the trial court used “reasonable discretion” in deciding whether or not to grant the petition.

Although the court gave the Appellants an opportunity to be heard on their (flawed) original petitions, it should have either granted relief based on Ms. Bertram’s amended petition or stated the reason(s) for both petitions’ denials. By failing to do either, the trial court abused its discretion.

Based on the foregoing, it is **ORDERED AND ADJUDGED** that the trial court's orders are hereby **REVERSED**. The cases are **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED on this __5th__ day of __January____ 200_7_.

_____/S/_____
JANET THORPE
Circuit Court Judge

_____/S/_____
THEOTIS BRONSON
Circuit Court Judge

_____/S/_____
BELVIN PERRY, JR.
Circuit Court Judge

Certificate of Service

I hereby certify that a copy of the foregoing Final Order Reversing Trial Court has been provided to **John Notari**, 55 East Washington Street, Orlando, Florida 32801; and to **Lamya Henry**, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801 this __5th__ day of __Jan.____ 200_7_.

_____/S/_____
Judicial Assistant