

## Review of Recent Juvenile Cases (2010)

by  
The Honorable Pat Garza  
Associate Judge  
386th District Court  
San Antonio, Texas

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### **Expungement of 17 year-old's record was improper where plea bargain stated that he had waived his right to expunge his record. [In the Matter of Expunction of D.R.R.](10-2-13)**

**On February 10, 2010, the El Paso Court of Appeals held that even though defendant was 17 at the time of his plea, he could not later use his status as a minor to attack a condition of his plea agreement he didn't like.**

¶ 10-2-13. **In the Matter of Expunction of D.R.R.**, No. 08-08-00064-CV, --- S.W.3d ----, 2010 WL 456851 (Tex.App.-El Paso, 2/10/10).

**Facts:** This appeal centers upon the filing by Appellee of a petition to expunge the records of his arrest on November 29, 2002 for possession of marijuana under two ounces. On November 28, 2007, a hearing was held regarding the expungement petition. The evidence adduced at the hearing revealed that Appellee, represented by counsel, and the State of Texas entered into a plea bargain agreement whereby Appellee would enroll in the Pre-Trial Diversion Program, and upon completion of that program, the charge for possession of marijuana under two ounces would be dismissed. The District Attorney, however, has a policy requiring defendants, including Appellee, to waive their right to an expunction if they want to enroll in the Pre-Trial Diversion Program as part of a plea bargain agreement. Appellant was seventeen years old at the time, and he was charged as an adult.

In order to enroll in the program, Appellee went to the offices of the Adult Probation Department to sign the requisite forms. He was not accompanied by counsel. Appellee stated there was a provision in the document indicating he was waiving his right to an expunction.<sup>FN1</sup> That waiver language indicated that Appellee was voluntarily waiving his right to an expunction. The last line of the document indicated that he read and understood the document fully. Appellee signed both the waiver portion and the last part of the document indicating he fully understood the document.

Upon his successful completion of his participation in the Pre-Trial Diversion Program, the charge of possession of marijuana under two ounces was dismissed by the court. Appellee testified that the purpose of seeking the expunction was to enlist in the United States Navy. He stated that he was unfamiliar with the word "expunction" when he signed the forms, and the rights that he waived were not explained to him.

The court granted the petition for expunction. The court stated that as Appellee was seventeen years old at the time he waived his right to expunction, he did not have the capacity to contract for himself regarding that right.

**Held:** Reversed and rendered

**Opinion:** In its sole issue on appeal, the County asserts the court abused its discretion in granting Appellee's petition for expunction by ruling that Appellee lacked the capacity to contract; thereby invalidating his waiver of his right to expunge his criminal records. We review a trial court's ruling on a petition for expunction under an abuse of discretion standard. *Ex parte Jackson*, 132 S.W.3d 713, 715 (Tex.App.-Dallas 2004, no pet.); *see also Tex. Dep't of Pub. Safety v. J.H.J.*, 274 S.W.3d

803, 806 (Tex.App.-Houston [14th Dist.] 2008, no pet.). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles. *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex.2004); *Bowie Memorial Hospital v. Wright*, 79 S.W.3d 48, 52 (Tex.2002).

Appellee was charged as an adult for committing the offense of possession of marijuana under two ounces. He was seventeen years old at the time of the offense. TEX. PENAL CODE ANN. § 8.07(b) (Vernon Supp. 2009) provides in relevant part:

Unless the juvenile court waives jurisdiction under Section 54.02, Family Code, and certifies the individual for criminal prosecution or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age....

A negotiated plea agreement has been equated to a contract. *Ex parte Williams*, 637 S.W.2d 943, 948 (Tex.Crim.App.1982). As part of this contract, Appellee agreed to waive his right to expunge his misdemeanor conviction. Plea bargaining consists of the prosecutor's concessions regarding punishment, lesser charges or reduction in counts in exchange for a defendant's plea of guilty or nolo contendere. *Id.* at 947. When a defendant agrees to a plea bargain agreement, he becomes a party to a contract that becomes operative when the court announces it will be bound by the plea agreement. *Id.* Once the court makes this announcement, the State becomes bound by its side of the bargain. *Id.* When a plea bargain is not kept, the proper relief is either specific enforcement of the plea agreement or withdrawal of the plea. *Id.*

Appellee contends that as a minor, one younger than eighteen, he could not make a contract or waive a legal right; accordingly, as his minority disability has not been removed, the waiver is voidable, and he has the option to disallow it. Appellee maintains that in invoking his right to set aside the contract, he has not cancelled out the entire plea agreement. He cites *Ex parte White*, 50 Tex.Crim. 473, 474, 98 S.W. 850, 851 (1906) for the proposition that his minority status allows him to plead guilty, but that same disability prevents him from entering into a contract, waiving his rights or forming a contract that may be in contravention of the law or public policy. However, the cited case stands for no more than the proposition that a minor may plead guilty to an offense. *Id.* Logically, if Appellee can disallow one portion of the contractual plea agreement, he can disavow any portion of the agreement. This cannot be the intent of the legislature in providing that one has adult status with regard to criminal liability at the age of seventeen. When one who becomes involved with the criminal justice system is considered in his or her majority at age seventeen, that majority status carries over into the attendant contractual agreements. We find that when Appellee entered into a plea bargain contract legally at the age of seventeen, he was bound by that contract and its attendant provisions. He cannot absolve himself from those portions of the contract that he, at some later time, finds unsuitable. We predicate this finding on the concept of estoppel by contract. A party who accepts benefits under a contract is estopped from questioning the contract's existence, validity, or effect. *Rhodes v. State*, 240 S.W.3d 882, 891 (Tex.Crim.App.2007). As is true with most contracts, it is typical that both parties to a plea bargain will benefit from the judgment. *Id.* A defendant cannot enter a plea agreement that imposes an allegedly illegal sentence, or in this case, waiver, benefit from that sentence, and then attack the judgment later when it is suddenly in his interests to do so.<sup>FN2</sup> *Id.* Issue One is sustained.

**Conclusion:** We reverse and render judgment denying Appellee's petition for expunction.