



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE v. SANTILLANES  
CR-23-0042-PR**

**PARTIES:**

*Petitioner:* The State of Arizona

*Respondent:* Daniel Louis Santillanes

*Amici Curiae:* Arizona Attorneys for Criminal Justice & NORML

**FACTS:**

In 2011, Santillanes pleaded guilty to Facilitation to Commit Sale or Transportation of Marijuana and was sentenced to probation. The trial court eventually discharged him from probation in 2013 and issued a criminal restitution order for outstanding fines and fees, which Santillanes satisfied in 2021.

After satisfying the order, Santillanes petitioned for expungement of his marijuana conviction. The State, however, opposed expungement on the ground that the amount of marijuana involved in Santillanes's offense exceeded the two-and-a-half ounce maximum allowed for expungement under A.R.S. § 36-2862(A)(1). In support, it attached the presentence and police reports. The State did not request an evidentiary hearing. The trial court granted Santillanes's petition without holding a hearing or making factual findings.

The State noticed an appeal pursuant to A.R.S. § 13-4032(1) and (4). Among other things, it argued that the trial court erred by failing to hold an evidentiary hearing on disputed material facts and by failing to make any factual findings. Santillanes argued that the trial court did not err and that the State is not otherwise permitted to directly appeal an expungement order.

The court of appeals first examined its jurisdiction to review the State's direct appeal. It determined that expungement proceedings were criminal in nature despite being codified in Title 36 and that the statute governing state appeals in criminal cases, A.R.S. § 13-4032, might therefore apply. However, it held that § 13-4032(4), which provides that the State may appeal from "[a]n order made after judgment affecting the substantial rights of the state," ultimately did not provide a basis for the State to appeal an expungement order.

The court of appeals reasoned that although the State has a substantial right to see a sentence carried out, expungement does not interfere with that right because expungement applies to the records of a defendant's charge, arrest, or conviction after the defendant has completed his sentence. And, it found, "[t]he State's ability to preserve records of prior convictions to potentially enhance a defendant's future sentence if he is convicted of another crime [would be] an unreasonable expansion of the State's right to see lawful sentences carried out." Additionally, the court determined that an expungement order does not affect the State's substantial rights because it does not prevent the State from exercising some other right it can ordinarily exercise.

The court of appeals also held that the State could not appeal under § 13-4032(1) or (7), which, respectively, permit an appeal from “an order dismissing an indictment, information or complaint” and a “judgment of acquittal.” This was because, unlike those orders, expungement orders do not turn on underlying guilt or innocence, and they “occur[] after a case is resolved.” Finally, the court rejected the State’s argument that § 36-2862(F), which allows a petitioner to directly appeal an order denying expungement, gives the State, as the non-petitioning party, a right to appeal an order granting expungement.

The court of appeals went on, however, to treat the State’s appeal as a special action, which it exercised its discretionary jurisdiction to review, and vacated the expungement order because the trial court failed to hold an evidentiary hearing regarding the quantity of marijuana involved in Santillanes’s offense, a disputed material fact, and failed to make factual findings as required by the expungement statute.

The State petitioned this Court for review, which was granted as to the following issue phrased by the State:

**ISSUE:**

Whether the Court of Appeals erroneously held that the State did not have the right to appeal an expungement order under A.R.S. § 36-2862 despite the fact an expungement order affects the substantial rights of the State under A.R.S. § 13-4032(4).

**STATUTES:**

A.R.S. § 13-4032 provides:

An appeal may be taken by the state from:

1. An order dismissing an indictment, information or complaint or count of an indictment, information or complaint.
2. An order granting a new trial.
3. A ruling on a question of law adverse to the state when the defendant was convicted and appeals from the judgment.
4. An order made after judgment affecting the substantial rights of the state or a victim, except that the state shall only take an appeal on an order affecting the substantial rights of a victim at the victim's request.
5. A sentence on the grounds that it is illegal, or if the sentence imposed is other than the presumptive sentence authorized by § 13-702, § 13-703, § 13-704 or § 13-706, subsection A.
6. An order granting a motion to suppress the use of evidence.
7. A judgment of acquittal of one or more offenses charged in an indictment, information or complaint or count of an indictment, information or complaint that is entered after a verdict of guilty on the offense or offenses.

A.R.S. § 36-2862 provides:

A. Beginning July 12, 2021, an individual who was arrested for, charged with, adjudicated or convicted by trial or plea of, or sentenced for, any of the following offenses based on or arising out of conduct occurring before the effective date of this section may petition the court to have the record of that arrest, charge, adjudication, conviction or sentence expunged:

1. Possessing, consuming or transporting two and one-half ounces or less of marijuana, of which not more than twelve and one-half grams was in the form of marijuana concentrate.
2. Possessing, transporting, cultivating or processing not more than six marijuana plants at the individual's primary residence for personal use.
3. Possessing, using or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana.

B. If the court receives a petition for expungement pursuant to this section:

1. The court shall notify the prosecuting agency of the filing of the petition, and allow the prosecuting agency to respond to the petition within thirty days.

2. The court may hold a hearing:

(a) On the request of either the petitioner or the prosecuting agency.

(b) If the court concludes there are genuine disputes of fact regarding whether the petition should be granted.

3. The court shall grant the petition unless the prosecuting agency establishes by clear and convincing evidence that the petitioner is not eligible for expungement.

4. The court shall issue a signed order or minute entry granting or denying the petition in which it makes findings of fact and conclusions of law.

C. If the court grants a petition for expungement:

1. The signed order or minute entry required pursuant to subsection B, paragraph 4 of this section shall do all of the following:

(a) If the petitioner was adjudicated or convicted of an offense set forth in subsection A of this section, vacate the judgment of adjudication or conviction.

(b) State that it expunges any record of the petitioner's arrest, charge, conviction, adjudication and sentence.

(c) If the petitioner was convicted or adjudicated of an offense set forth in subsection A of this section, state that the petitioner's civil rights, including the right to possess firearms, are restored, unless the petitioner is otherwise not eligible for the restoration of civil rights on grounds other than a conviction for an offense set forth in subsection A of this section.

(d) Require the clerk of the court to notify the department of public safety, the prosecuting agency and the arresting law enforcement agency, if applicable, of the expungement order.

(e) Require the clerk of the court to seal all records relating to the expunged arrest, charge, adjudication, conviction or sentence and allow the records to be accessed only by the individual whose record was expunged or the individual's attorney.

2. The department of public safety shall seal and separate the expunged record from its records and inform all appropriate state and federal law enforcement agencies of the expungement. Unless the petitioner is indigent, the department of public safety may charge the successful petitioner a reasonable fee determined by the director of the department of public safety to research and correct the petitioner's criminal history record.

3. The arresting and prosecuting agencies shall clearly identify in each agency's files and electronic records that the petitioner's arrest, charge, conviction, adjudication and sentence are expunged and shall not make any records of the expunged arrest, charge, conviction, adjudication or sentence available as a public record to any person except to the individual whose record was expunged or that individual's attorney.

D. An arrest, charge, adjudication, conviction or sentence that is expunged pursuant to this section may not be used in a subsequent prosecution by a prosecuting agency or court for any purpose.

E. An individual whose record of arrest, charge, adjudication, conviction or sentence is expunged pursuant to this section may state that the individual has never been arrested for, charged with, adjudicated or convicted of, or sentenced for the crime that is the subject of the expungement.

F. If the court denies a petition for expungement, the petitioner may file a direct appeal pursuant to § 13-4033, subsection A, paragraph 3.

G. On motion, the court shall dismiss with prejudice any pending complaint, information or indictment based on any offense set forth in subsection A of this section, to include charges or allegations based on or arising out of conduct occurring before the effective date of this chapter. The individual charged may thereafter petition the court to expunge records of the arrest and charge or allegation as provided in this section. A motion brought pursuant to this subsection may be filed with the court before July 12, 2021.

H. The supreme court may adopt rules necessary to implement this section, and may also sponsor public service announcements or other notifications intended to provide notice to individuals who may be eligible to file petitions for expungement pursuant to this section.

I. A prosecuting agency may file a petition for expungement pursuant to this section on behalf of any individual who was prosecuted by that prosecuting agency, and the attorney general may file a petition for expungement pursuant to this section on behalf of any individual.

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