

SUPREME COURT OF LOUISIANA

No. 2019-KK-0338

STATE OF LOUISIANA

VERSUS

STEVEN STILES

ON SUPERVISORY WRITS TO THE CRIMINAL DISTRICT COURT,

PARISH OF ORLEANS

JOHNSON, Chief Justice, concurs and assigns reasons.

Mr. Stiles seeks review of the district court judgment which denied his motion to expunge his record of arrest and conviction. He contends that he is entitled to an expungement under La.C.Cr.P. art. 978(A)(1) because the district court granted his February 26, 2014 Motion to Set Aside and Dismiss Prosecution. Because his conviction was not validly dismissed, I agree with the decision of the Court to deny his application.

Under La.C.Cr.P. art. 978(A), a person may file a motion to expunge his or her record of arrest and conviction of a felony offense if one of the two situations apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to Article 893(E).
- (2) More than ten years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, and the person has not been convicted of any other criminal offense during the ten-year period, and has no criminal charge pending against him. The motion filed pursuant to this Subparagraph shall include a certification obtained from the district attorney which verifies that, to his knowledge, the applicant has no convictions during the ten-year period and no pending charges under a bill of information or indictment.

On March 16, 2012, Mr. Stiles pleaded guilty under *State v. Crosby* and La.C.Cr.P. art. 893 to possession with intent to distribute marijuana, a violation of

R.S. 40:966(A)(2). He was sentenced to serve five years at hard labor, and his sentence was suspended and he was placed on five years of active probation. Mr. Stiles thus received the benefit of La.C.Cr.P. art. 893(A)(1), pursuant to his plea agreement, which allowed the district court to fully suspend his five-year sentence. Likewise, Mr. Stiles was not eligible to have his sentence deferred because La.C.Cr.P. art. 893(E)(1)(b) prohibits a court from deferring a sentence for a violation of R.S. 40:966(A)(2), the offense to which he pleaded guilty. Accordingly, Mr. Stiles is not eligible to expunge his record pursuant to La.C.Cr.P. art. 978(A)(1) because his conviction was not validly dismissed.

On the other hand, while currently ineligible, Mr. Stiles may nonetheless file a motion in the future to expunge his record of arrest and conviction pursuant to La.C.Cr.P. art. 978(A)(2). For these reasons, I agree with the decision of the Court to deny Mr. Stiles' application.