



1 THE COURT: Let me ask the parties this. What about  
2 takedown for the hearing? Do you all want to share? Do  
3 you want this reported?

4 MR. MCWILLIAMS: I'll be happy to have it recorded,  
5 your Honor.

6 THE COURT: You want to share?

7 MR. WALKER: I'd like to have it recorded as well.

8 THE COURT: Let's reflect you all are going to share  
9 on the takedown on that. Are you all ready for me to call  
10 the case?

11 MR. WALKER: Sure.

12 THE COURT: This is the Superior Court of Cherokee  
13 County and this is the case of Kerry Craig Walker, the  
14 plaintiff, versus Cherokee County, Georgia, et al., Civil  
15 Action 07-CV-3325-MCM, and this judge is sitting here by  
16 appointment.

17 I have the procedural history of the case. In this  
18 matter an order was entered on March the 3rd of this year  
19 on the motion for judgment on the pleadings of certain  
20 defendants in this case, which was granted. What remains  
21 is with respect to the damages and civil rights claims,  
22 which essentially were in the nature of 42 U.S.C. 1983  
23 claims, but was denied. The defendant's motion was denied.

24 As to the plaintiff's expungement claim, there was a  
25 claim for expungement in the underlying action here related

1 to the arrest and I think the prosecution of Mr. Walker in  
2 this court and Mr. Walker filed a notice to seek  
3 expungement on April the 22nd of this year per the order of  
4 the Court and it was entered on that issue; and then on May  
5 the 25th, 2010, this Court issued a rule nisi to the  
6 parties that were left in the case to appear today for the  
7 purpose of hearing on the plaintiff's amended motion to  
8 seek expungement, which was the underlying I guess either  
9 accusation or indictment that was filed in this court and  
10 was prosecuted or attempted to prosecute Mr. Walker for  
11 certain offenses way back in the beginning of 2000.

12 MR. WALKER: Beginning of what, sir? I'm sorry.

13 THE COURT: So we're here on Mr. Walker's amended  
14 notice to seek expungement. And are you ready to proceed,  
15 Mr. Walker?

16 MR. WALKER: Yes, sir.

17 THE COURT: All right. And Mr. McWilliams, are you  
18 ready to proceed on behalf of the defendants?

19 MR. MCWILLIAMS: I am, your Honor.

20 THE COURT: I believe the defendant would be Cherokee  
21 County Sheriff's Office for the purposes of his expungement  
22 request.

23 MR. MCWILLIAMS: That's correct.

24 THE COURT: Which was timely made pursuant to my  
25 order. What's the defendant's position?

1 MR. MCWILLIAMS: The defendant's position on the  
2 expungement, your Honor, are the defendants are not  
3 opposing the expungement at this time. If your Honor sees  
4 fit to issue the order of expungement, we will not oppose  
5 it at this time.

6 MR. WALKER: Fantastic.

7 THE COURT: Mr. Walker, I believe you're going to  
8 prevail on that. Who's going to present the order? An  
9 order will need to be presented, will need to go back  
10 through GCIC, and then make clear why we're all here. Is  
11 that going to include the fingerprints or the photographs  
12 as well?

13 MR. MCWILLIAMS: Your Honor, I'm not opposing any  
14 request on the expungement at this time. I'd be happy to  
15 prepare an order to that extent and also prepare an order  
16 on final resolution of the underlying civil action under  
17 07-CV-3325, which will completely close the case, pursuant  
18 to the Court's previous order on the motion on the  
19 pleadings.

20 THE COURT: Okay. Now, Mr. Walker, the code section,  
21 which is 35-3-37, essentially they don't destroy the  
22 incident reports or the jail arrest records because those  
23 are records that they have to maintain. With respect to  
24 everything else, we're going to include in the order, I  
25 guess, whatever fingerprints and fingerprint cards were

1 taken in conjunction with the arrest, any kind of  
2 photographs, I guess what would typically be like a book-in  
3 photo. We're going to include all those records,  
4 Mr. McWilliams, because we want a complete expungement for  
5 the underlying cases, which I don't think there's any  
6 question. It was two separate cases. I think there's one  
7 that started out as a misdemeanor indictment, two separate  
8 case numbers. We want all those. There's only one arrest.  
9 Is that right, Mr. Walker?

10 MR. WALKER: Only one arrest, but there was an  
11 indictment, your Honor, for aggravated assault based on --  
12 based on tainted evidence, but it was indicted for  
13 aggravated assault, but I was never arrested for that, but  
14 I would like that expunged, that indictment, because it's  
15 showing up on a background search, it's coming up as if I  
16 was arrested for aggravated assault.

17 THE COURT: What -- this is going to go to the GCIC,  
18 which is the Georgia Crime Information Center. They pull  
19 your sheet. We're going to show this is expunged, okay?

20 As far as the indictment, I can't order an indictment  
21 expunged, but the underlying arrest records, if there's  
22 ever a question, you can say that's been expunged, you  
23 don't have that arrest on your record.

24 MR. WALKER: Like I said, your Honor, for some reason  
25 they never arrested me, but there apparently was an arrest

1 warrant issued, but the arrest was never made on that case  
2 and for reasons I believe that the judge knew something was  
3 going on by that time on this case, so I was never  
4 arrested. But when a record is pulled by any corporate  
5 structure or anyone that I'm trying to get, you know, hired  
6 through, I'm running into three simple assault -- I mean,  
7 three misdemeanor charges on the 25th of September of 2001  
8 and an aggravated assault arrest charge and an arrest in  
9 2003. I need to have all that cleared from my record.

10 THE COURT: What's left here, sir, is your expungement  
11 record, which the Court has granted by the consent of  
12 defendants.

13 MR. WALKER: Correct.

14 THE COURT: The record should reflect that those  
15 charges were resolved in your favor and your arrest record  
16 has been expunged and that's what we're all trying to do.  
17 So all that should be as a matter of record and that's the  
18 extent of what I can grant you at this time. Once that  
19 order is prepared, that will resolve all the issues that  
20 are still left in this civil action and then you can pursue  
21 whatever appeal of the underlying order. I think you've  
22 already been to the court of appeals one time and they said  
23 you still have this remaining claim that had to be resolved  
24 before you can take it up and have their review. Once this  
25 order is entered, this case will be closed here in this

1 court pending remand or further instruction from a higher  
2 court.

3 Any other questions?

4 MR. MCWILLIAMS: Well, and your Honor, to just go to  
5 what was filed, this notice to seek expungement by the  
6 plaintiff, the only arrest that is ever mentioned is  
7 September 25th, 2001. I just want to be clear about what  
8 we're --

9 MR. WALKER: Again, let me point out that I was also  
10 indicted for an upgraded charge of felony aggravated  
11 assault by tainted evidence through Detective Preston  
12 Peavy.

13 THE COURT: Wait a minute, now. You all go through  
14 the Court. Don't argue with him. What I'm telling you is  
15 that case, we've already addressed that with the order,  
16 okay?

17 MR. WALKER: Okay.

18 THE COURT: Because there was some timeliness problems  
19 with that or at least I determined that. Somebody else may  
20 have a different view and you're certainly willing and able  
21 to go pursue that.

22 The request you had in your pleadings was expungement.  
23 That's what we're doing here and then the other issues may  
24 be addressed in the other proceedings that I expect that  
25 you're going to be pursuing.

1 MR. WALKER: That would be fine, your Honor.

2 THE COURT: What's going to happen here next is we're  
3 going to get from Mr. Kendrick McWilliams, if you would,  
4 sir, I want to include the fingerprints and photographs as  
5 complete expungement, enter that as an order, go into GCIC,  
6 make sure the sheriff's office gets that down to the  
7 Georgia Crime Information Center so they will take action  
8 so at some point it's going to be on you to verify that  
9 that's been done after they've had a reasonable time to  
10 process it. I'm not going to oversee that. Once the order  
11 is entered, it goes to them. I mean, you have to take some  
12 kind of -- you have to monitor it to make sure that it was  
13 done.

14 MR. WALKER: I will do that, your Honor.

15 THE COURT: For some reason if that doesn't after a  
16 reasonable amount of time, if it's not cleared up for you  
17 pursuant to the order, then we'll come back and talk about  
18 it.

19 MR. WALKER: May I ask, your Honor, what kind of time  
20 frame are we talking about to get the record clear?

21 THE COURT: I think -- I want to say that there's a  
22 60-day time frame just from my recollection of the statute.  
23 This is an agency and, you know, they'll have the order,  
24 they should do it, and if for some reason they don't act on  
25 it, you may have a remedy there, okay? Let's get it to

1           them first. Take it one step at a time.

2           Is there any other business to come before the Court  
3           on this case.

4           MR. MCWILLIAMS: No, your Honor. I'll prepare the  
5           order and send it to you and a copy to the plaintiff as  
6           well for your approval before, and if you need to make any  
7           adjustments to the order, I'll be happy to do it.

8           MR. WALKER: Like I say, one more thing, your Honor.  
9           I heard counsel say -- for the defendant say something  
10          about closing this case, and the fact that I'm getting an  
11          expungement on this case will not close my right to pursue  
12          my legal remedy for this matter.

13          THE COURT: Well, your remedy is going to appeal --  
14          you've already been up to the court of appeals once.

15          MR. WALKER: Mm, hmm.

16          THE COURT: What they said, and correctly in my view,  
17          is that you still had pending claims in this court. Your  
18          pending claim is going to be resolved once that order is  
19          entered, and then it's going to be on you, sir, to take  
20          whatever further action that you deem appropriate at that  
21          time.

22          MR. WALKER: Right.

23          THE COURT: Any question about that?

24          MR. WALKER: No, sir.

25          THE COURT: All right. Very well, gentlemen. I'm

1 glad we got this resolved and we can move this case along,  
2 and with that, we'll be adjourned.

3 MR. WALKER: Thank you, your Honor.

4 (PROCEEDINGS REPORTED WERE CONCLUDED.)  
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CERTIFICATE OF COURT REPORTER

STATE OF GEORGIA )

COUNTY OF UNION )

I, Carol Glazier, Certified Shorthand Reporter,  
Registered Diplomate Reporter, do hereby certify that  
proceedings were held in the above-entitled case at the time  
and place set forth in the caption hereof; that I was  
authorized to, and did, report in shorthand the testimony and  
proceedings had in said proceedings, and that the foregoing  
pages constitute a true and correct transcription of my said  
shorthand report.

WITNESS MY HAND THIS 16t day of September, 2010, at  
Union County, Georgia.

  
\_\_\_\_\_  
Carol Glazier, RDR  
Certified Shorthand Reporter,  
Georgia Certificate #B-1873