

Supreme Court of Florida

No. SC13-2066

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE.

[April 24, 2014]

PER CURIAM.

In the Court's December 12, 2013, opinion, the Court amended the Florida Rules of Criminal Procedure in response to out-of-cycle, fast-track proposals by The Florida Bar's Criminal Procedure Rules Committee (Committee).¹ See In re Amends. to Fla. Rules of Crim. Pro., 132 So. 3d 123 (Fla. 2013). The amendments to the various criminal rules were in response to 2013 legislation. Because the amendments were not published for comment prior to adoption, the Court allowed sixty days in which interested persons could file comments. Id., 132 So. 3d at 124.

A comment was filed by the Florida Department of Law Enforcement pertaining to the amendments to rules 3.692 (Petition to Seal or Expunge) and 3.989 (Affidavit, Petition, and Order to Expunge or Seal Forms), suggesting that

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.

all references to “human trafficking expunction” be removed from rules 3.692 and 3.989.² The Committee responds that the comment’s distinction between section 943.0583 and sections 943.0585-943.059 expungements is well-taken.

Accordingly, we add a new subdivision to rule 3.692 to clearly delineate the requirements for a petition to expunge under section 943.0583, Florida Statutes.

We further delete the requirement in the forms, rules 3.989(e) and (g), for a “certificate of eligibility to expunge from FDLE.” Finally, we amend rule 3.989(g) to include the language that “a conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.” We amend rules 3.692 and 3.989(e) and (g) as proposed by the Committee and as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately upon release of this opinion.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA,
and PERRY, JJ., concur.

**THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THESE AMENDMENTS.**

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2. A separate comment was filed by the Honorable O. H. Eaton, Jr., solely addressing additional problems with rule 3.121, which the Committee responds will be the subject of its next regular-cycle report.

Melanie L. Casper, Chair, Criminal Procedure Rules Committee, West Palm Beach, Florida; John F. Harkness, Jr., Executive Director and Heather Savage Telfer, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

O. H. Eaton, Jr., Senior Circuit Judge, Sanford, Florida,

Responding with Comments

Thomas Francis Kirwin, General Counsel, and John P. Booth, Assistant General Counsel, Florida Department of Law Enforcement, Tallahassee, Florida,

Responding with Comments

APPENDIX

RULE 3.692. PETITION TO SEAL OR EXPUNGE

(a) Requirements of Petition.

(1) All relief sought by reason of sections ~~943.0583~~943.0585–943.059, Florida Statutes, shall be by written petition, filed with the clerk. The petition shall state the grounds on which it is based and the official records to which it is directed and shall be supported by an affidavit of the party seeking relief, which affidavit shall state with particularity the statutory grounds and the facts in support of the motion. A petition seeking to seal or expunge nonjudicial criminal history records must be accompanied by a certificate of eligibility issued to the petitioner by the Florida Department of Law Enforcement. A copy of the completed petition and affidavit shall be served on the prosecuting attorney and the arresting authority. Notice and hearing shall be as provided in rule 3.590(c).

(2) All relief sought by reason of section 943.0583, Florida Statutes, shall be by written petition, filed with the clerk. The petition shall state the grounds on which it is based and the official records to which it is directed; shall be supported by the petitioner’s sworn statement attesting that the petitioner is eligible for such an expunction; and to the best of his or her knowledge or belief that the petitioner does not have any other petition to expunge or any petition to seal pending before any court; and shall be accompanied by official documentation of the petitioner’s status as a victim of human trafficking, if any exists. A petition to expunge, filed under section 943.0583, Florida Statutes, is not required to be accompanied by a certificate of eligibility from the Florida Department of Law Enforcement. A copy of the completed petition, sworn statement, and any other official documentation of the petitioner’s status as a victim of human trafficking, shall be served on the prosecuting attorney and the arresting authority. Notice and hearing shall be as provided in rule 3.590(c).

(b)-(f) [No changes]

Committee Notes

[No changes]

RULE 3.989.

**AFFIDAVIT, PETITION, AND ORDER TO
EXPUNGE OR SEAL FORMS**

(a)-(d) [No changes]

(e) Petition to Expunge; Human Trafficking Victim.

In the Circuit Court of the
_____Judicial Circuit,
in and for _____
County, Florida

Case No.: _____
Division _____

State of Florida,)
)
Plaintiff,)
)
v.)
)
_____,)
)
Defendant/Petitioner.)
)

PETITION TO EXPUNGE/HUMAN TRAFFICKING VICTIM

The petitioner,, by and through the undersigned attorney, petitions this honorable court, under Florida Rule of Criminal Procedure 3.692 and section 943.0583, Florida Statutes, to ~~....~~expunge~~....~~ all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning the petitioner’s arrest and/or conviction on(date(s))....., by(arresting agency and/or prosecuting authority)....., for(charges and/or offenses)....., and as grounds therefor shows:

1. On(date(s))....., the petitioner,, a(race/sex)....., whose date of birth is(date of birth)....., was arrested by(arresting agency)....., and charged with(charges)..... or was convicted by(name of prosecuting authority)..... of(offenses).....

2. The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed an offense, other than those offenses listed in 775.084(1)(b)1, which was committed as a part of a human trafficking scheme of which he/she was the victim or at the direction of an operator of the scheme as evidenced by the attached official documentation of his/her status, or may be shown by clear and convincing evidence presented to the Court.

~~3. A Certificate of Eligibility forexpunction..... of nonjudicial criminal history records issued by the Florida Department of Law Enforcement accompanies this petition.~~

WHEREFORE, the petitioner moves toexpunge any criminal history record information and any official court records regarding his/her arrest and/or conviction by(arresting agency and/or name of prosecuting authority)....., for(charges and/or offenses)....., on(date(s)).....

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served on(name of prosecuting authority)....., (check one) State Attorney for the Judicial Circuit, in and for County, Special Prosecutor, Statewide Prosecutor;(arresting agency).....; (Sheriff of county in which defendant was arrested, if different); and the Florida Department of Law Enforcement, on(date).....

Name:
Address:
City/State:
Telephone Number:
E-mail Address:
Fla. Bar No.:

..... or produced identification

Type of identification produced ..

(f) [No changes]

(g) **Order to Expunge; Human Trafficking Victim.**

In the Circuit Court of the
_____ Judicial Circuit,
in and for _____
County, Florida

Case No.: _____
Division _____

State of Florida,)
)
Plaintiff,)
)
v.)
)
_____,)
)
Defendant/Petitioner.)
)

**ORDER TO EXPUNGE, HUMAN TRAFFICKING VICTIM,
UNDER SECTION 943.0585, FLORIDA STATUTES,
AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.692**

THIS CAUSE, having come on to be heard before me this date upon a petition to expunge certain records of the petitioner’s arrest and/or conviction on(date(s))....., by(arresting agency and/or name of prosecuting authority)....., for(charges and/or offenses)....., and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

~~1.~~ The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed an offense, other than those offenses listed in 775.084(1)(b)1, which was committed as a part of a human trafficking scheme of which he/she was the victim, or at the direction of an operator of the scheme. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

~~2. A Certificate of Eligibility issued by the Florida Department of Law Enforcement accompanied the petition for expunction of nonjudicial criminal history records. Whereupon it is~~

ORDERED AND ADJUDGED that the petition to expunge is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) state attorney, special prosecutor, statewide prosecutor,(arresting agency)....., and the Sheriff of County, who will comply with the procedures set forth in section 943.0583, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that(arresting agency)..... shall expunge all information concerning indicia of arrest, conviction, or criminal history record information regarding the arrest, conviction, or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the
.....

DONE AND ORDERED in Chambers at County, Florida, on
.....(date).....

Circuit Court Judge

Committee Notes

[No Changes]