

to the parts of the complaint where they were pled and requested a money judgment.

V. CONCLUSION

Accordingly, the Ehsas' motion for relief from judgment is denied as untimely, and even if it were not untimely, it would be denied on the merits. The default judgment against Perdus I. Ehsa and Timakyo I. Ehsa a/k/a Timakio I. Ehsa is not void.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2003-1508
)	
Plaintiff,)	
)	
vs.)	
)	
SIMEON R. INNOCENTI,)	
)	
Defendant.)	
_____)	

ORDER DENYING EXPUNGEMENT

Dennis K. Yamase
Chief Justice

Hearing: December 14, 2015
Decided: January 19, 2016

APPEARANCES:

For the Plaintiff:	Clayton M. Lawrence, Esq. Assistant Attorney General FSM Department of Justice P.O. Box PS-105 Palikir, Pohnpei FM 96941
For the Defendant:	Julius J. Sapelalut, Esq. (motion) Lorrie Johnson-Asher, Esq. (argued) Office of the Public Defender P.O. Box PS-174 Palikir, Pohnpei FM 96941

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HEADNOTES

Criminal Law and Procedure – Expungement of Records

A court's power to expunge criminal records falls into three categories: 1) expungement pursuant

to a statute, 2) expungement when it is necessary to preserve basic legal rights, and 3) expungement based on an acquittal, although, in the case of an acquittal, the court doubts that expungement can be ordered based solely on the acquittal. FSM v. Innocenti, 20 FSM R. 293, 295 (Pon. 2016).

Criminal Law and Procedure – Expungement of Records

The FSM counterpart to the United States "All Writs Act," 4 F.S.M.C. 117, does not give the court the power to order expungement unless the court already has jurisdiction to do so, and, absent a specific statute or invalid conviction, the court lacks such jurisdiction. FSM v. Innocenti, 20 FSM R. 293, 295 n.1 (Pon. 2016).

Criminal Law and Procedure – Pardon

A Presidential pardon restores a person's basic civil rights. FSM v. Innocenti, 20 FSM R. 293, 295 (Pon. 2016).

Criminal Law and Procedure – Expungement of Records

Courts can exercise the power to expunge records to preserve basic legal rights only when the defendant's conviction stems from the unlawful conduct of law enforcement agents. In the absence of a statute, a court's jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error. FSM v. Innocenti, 20 FSM R. 293, 295-96 (Pon. 2016).

Criminal Law and Procedure – Expungement of Records; Criminal Law and Procedure – Pardon

The court lacks the authority to order expungement of the record of a valid and unchallenged conviction even though the defendant has been pardoned since a pardon does not create the factual fiction that the crime was never committed. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

Criminal Law and Procedure – Expungement of Records; Separation of Powers – Judicial Powers; Separation of Powers – Legislative Powers

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

Criminal Law and Procedure – Expungement of Records

Since the FSM Supreme Court does not have the power to alter or amend another country's entry requirements, the United States could still decide to require a person to apply to its Embassy in order to travel to United States territory even if the court ordered expungement of FSM records because the court cannot order the alteration of another country's records. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On December 14, 2015, the court heard defendant Simeon Innocenti's June 11, 2015 Motion to Expunge Criminal Records. The motion is denied for the following reasons.

1.

On April 4, 2006, Simeon R. Innocenti, having already pled guilty, was convicted of committing

acts affecting personal financial interest by using \$25,000 of government funds to pay his personal medical bills in violation of 11 F.S.M.C. 1305. He completed his sentence. On May 5, 2015, President Mori granted Innocenti a pardon.

Innocenti then moved to expunge his criminal records, including his conviction, because he had successfully completed his sentence and was pardoned; because this had been his first and only conviction and there is no pending criminal case against him; and because he has been a law-abiding citizen and respected member of the community ever since. Innocenti argues that his Presidential pardon entitles him to have his criminal records expunged, and he contends that the court has the inherent power to order expungement. He relies on several Nineteenth Century U.S. Supreme Court cases for the propositions that a pardon removes the penalties and disabilities; restores the pardoned person to his or her civil rights; and makes that person, in the eyes of the law, as innocent as if he had never committed the crime.

II.

A court's power to expunge criminal records falls into three categories: 1) expungement pursuant to a statute, 2) expungement when it is necessary to preserve basic legal rights, and 3) expungement based on an acquittal, FSM v. Erwin, 16 FSM R. 42, 43 (Chk. 2008); FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998), although, in the case of an acquittal, the court doubts that expungement can be ordered based solely on the acquittal, see United States v. Dunegan, 251 F.3d 477, 480 (3d Cir. 2001) (in absence of an applicable statute or an allegation that the criminal proceedings were invalid or illegal, no expungement would be granted based on an acquittal); United States v. Linn, 513 F.2d 925, 927-28 (10th Cir. 1975) ("an acquittal, standing alone, is not in itself sufficient to warrant an expunction of an arrest record").

Innocenti acknowledges that no FSM statute¹ authorizes the expungement of records and that he was not acquitted. He asserts that his case falls squarely within the remaining category of an expungement necessary to preserve basic legal rights. Innocenti argues that expungement is needed to preserve his basic rights. Innocenti asks the court to restore his civil rights so that his criminal records will not be a hindrance.

The Presidential pardon has, however, already restored Innocenti's basic civil rights. At the hearing, his counsel mentioned two specific "rights" that Innocenti cannot exercise now even though he has been pardoned. One, is that he must apply to the United States Embassy whenever he wants to enter and travel in United States territory, which is of some concern to him since he is currently receiving medical care on Guam. He also feels that he should also be eligible to run for Congress. He argues that court-ordered expungement would restore these "rights."

Innocenti misunderstands the nature of the court's power to order expungement when it is necessary to preserve basic legal rights. Courts can exercise the power to expunge records to preserve basic legal rights only where the defendant's conviction stems from the unlawful conduct of law enforcement agents. Erwin, 16 FSM R. at 44; Kihleng, 8 FSM R. at 325. In the absence of a statute,

¹ Innocenti does suggest that 4 F.S.M.C. 117, the FSM counterpart to the United States "All Writs Act," could be a source of power to expunge records. Mot. to Expunge at 3 (June 11, 2015). However, that statute does not give the court the power to order expungement unless the court already has jurisdiction to do so, and, absent a specific statute or invalid conviction, the court lacks such jurisdiction. See United States v. Rowlands, 451 F.3d 173, 178-79 (3d Cir. 2006) (All Writs Act, 28 U.S.C. § 1651, does not grant courts the authority to expunge the record of a legal and valid criminal conviction).

a "court's . . . jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error." United States v. Sumner, 226 F.3d 1005, 1014 (9th Cir. 2000). Innocenti does not allege that his conviction was obtained through unlawful conduct by law enforcement or was a clerical error.

The appellate court in United States v. Noonan, 906 F.2d 952 (3d Cir. 1990), discussed the historical U.S. cases Innocenti relies upon (particularly Ex parte Garland, 71 U.S. (4 Wall.) 333, 18 L. Ed. 366 (1866)), as well as British cases. It concluded that a Presidential pardon did not entitle a defendant to an expungement, and that expungement is not proper either when the circumstances of the conviction have not been challenged or when a pardon has followed an unchallenged or otherwise valid conviction. Noonan, 906 F.2d at 957. The Noonan court held that the executive branch did not have the power, directly or indirectly, to expunge a judicial branch record. *Id.* at 955. It also concluded that the long-held traditional view of an executive pardon's effect was that it did not create a factual fiction that no crime had been committed, *id.* at 960, or that a pardon had blotted out the guilt, as had been suggested in dictum in Ex parte Garland, 71 U.S. (4 Wall.) at 380, 18 L. Ed. at 371, but later rejected in Burdick v. United States, 236 U.S. 79, 91, 35 S. Ct. 267, 269, 59 L. Ed. 476, 480 (1915) (acceptance of pardon constitutes an acceptance of guilt). Noonan, 906 F.2d at 958.

Because Innocenti's conviction is valid and unchallenged, the court lacks the authority to order expungement. And Innocenti's pardon did not create the factual fiction that the crime was never committed. Noonan, 906 F.2d at 960.

Furthermore, the FSM Supreme Court lacks the power to restore the two "rights" that Innocenti seeks restored but which the pardon did not. The court does not have the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, FSM Const. art. IX, § 9, and the court cannot exercise a power that only Congress has. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994) (pardoned felons not eligible to run for Congress unless Congress changes that). The court also does not have the power to alter or amend another country's entry requirements. The United States could still decide to require Innocenti to apply to the United States Embassy in order to travel to United States territory even if the court ordered expungement of FSM records. The court cannot order the alteration of another country's records.

III.

Accordingly, since the court lacks the authority to order Innocenti's records expunged, his motion is denied.

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