

STARTING THE NEW YEAR WITH A CLEAN SLATE: INDIANA'S EXPUNGEMENT STATUTE ENCOMPASSES SOME CIVIL FORFEITURES

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At the close of 2015, a divided Indiana Court of Appeals ruled that an individual with a civil forfeiture action that is related to a criminal conviction could seek to expunge not only the criminal records but the civil records based on the underlying conviction. This (albeit limited) development is important because of the increasing scrutiny on the use of civil forfeiture in the face of criticism over its inequities. (See a previous Government Enforcement Exposed blog post on civil forfeiture [here](#).) Civil forfeiture actions often arise when the government locates money or items during an investigation or search based on alleged criminal activity. The case before the court was no exception. In *D.A. v. State of Indiana*, D.A. sold cocaine to a Madison County Drug Task Force confidential informant in three different controlled buys. Case No. 48A02-1504-MI-215 (Ind. Ct. App., Dec. 31, 2015). When the officers arrested D.A., they seized an additional \$720. The government charged D.A. with dealing and possession offenses, but also separately filed a civil forfeiture action against the seized \$720. D.A. was convicted of the underlying offenses and the court ordered the \$720 be forfeited because it was used to commit the underlying offenses or were proceeds from the offenses. In 2013, Indiana overhauled its criminal code, including the issuance of new expungement statutes allowing certain offenders the opportunity to remove certain offenses from their record. See Ind. Code § 35-38-9 *et seq.* In 2014, D.A. filed a petition to have his criminal conviction expunged, which was granted. Thirteen days later, however, D.A. asked the court to amend its order to include his civil forfeiture proceeding as well, despite the fact that the Indiana expungement statutes do not explicitly list civil forfeitures as being within its reach. The trial court denied D.A.'s request and D.A. appealed its ruling. On appeal, a divided court overturned the lower court's ruling. The arguments centered on statutory interpretation and whether the expungement statute was limited to "conviction records" or whether it encompassed all records "related" to the criminal conviction whether civil or criminal in nature. Judge Najam, writing for the majority, disagreed with the government's argument to limit the expungement to "conviction records" because doing so would ignore the statutory directive to "expunge all records 'contained in[] a court's files . . . *related* to the person's felony conviction.'" Furthermore, the statute makes "no distinction between criminal records related to a conviction and civil records that relate to a conviction," and only allowing the expungement of criminal records would frustrate the statutes purpose by providing partial relief. As a result, the majority held that the expungement statutes apply where the "civil forfeiture is *ancillary* to a criminal conviction and the *nexus* between the civil forfeiture

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and the criminal conviction is established.” (emphasis added). The government failed to produce any evidence at the trial court level that the forfeiture was not based on the criminal conviction and, therefore, D.A. was entitled to have his civil forfeiture records expunged. The dissent, written by Judge Michael P. Barnes, disagreed with the majority because the statute does not list civil forfeiture as being applicable, but also agrees such exclusion is “not conclusive.” Furthermore, the dissent notes that D.A.’s civil records would remain public with an annotation of expungement and, even if sealed, in this day and age it is practically impossible to stop someone with internet access from accessing someone’s criminal record. Although the court was split on statutory interpretation, all the judges agreed the purpose behind the Indiana expungement statutes were to give individuals convicted of certain crimes a “second chance” that relieves the individual of the “stigmas associated with a criminal conviction.” See also *Brown v. State*, 947 N.E.2d 486, 490 (Ind. Ct. App. 2011) (“The expungement statutes are inherently remedial and, as such, should be liberally construed to advance the remedy for which they were enacted”). Allowing the expungement of the civil forfeitures that the government claims is associated with the underlying criminal convictions and would not have occurred but for the facts underlying criminal conviction is certainly a step in the right direction. At this time, it is unknown whether the state will ask the Indiana Supreme Court to review the ruling. For now at least, the court’s ruling is a small victory for criminal defendants facing civil forfeiture.