

Court of Appeals, State of Michigan

ORDER

People of MI v Joshua Ryan Donoho

Docket No. 330599

LC No. 15-000509-AR

Douglas B. Shapiro
Presiding Judge

Jane M. Beckering

Mark T. Boonstra
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the Court VACATES the district court's August 12, 2015 order denying defendant's motion to set aside his conviction and REMANDS with direction that the district court enter an order granting the motion. That court inaptly used federal case law regarding expungement because that case law indicates that the federal courts have struggled with conflicting policy considerations in determining, on an equitable basis, whether to expunge a conviction. However, in Michigan, those policy conflicts have been resolved in the expungement statutes, MCL 780.621 through MCL 780.624, which expressly allow for expungement under certain specified conditions.

Furthermore, the district court's findings that defendant has had success in employment and as an author are clearly erroneous when the whole record is considered, as it must be. *Hughes v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453 (2009). That leaves only the nature of the offense as a factor identified by the district court as a reason for denying the motion, but that factor, by itself, is insufficient to warrant denial of an application to set aside a conviction. *People v Rosen*, 201 Mich App 621, 506 NW2d 609 (1993), citing *People v Boulding*, 160 Mich App 156, 158; 407 NW2d 613 (1986).

We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR - 5 2016

Date

Chief Clerk