

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROY SMITH,

Defendant-Appellee.

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UNPUBLISHED

March 16, 2006

No. 259143

Oakland Circuit Court

LC No. 68-003658-FX

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to expunge his conviction. We reverse and remand for reinstatement of defendant's conviction. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In July 1968, defendant pleaded guilty of attempted rape, MCL 750.520; MCL 750.92. The offense of rape carried a maximum penalty of life in prison, while the attempt offense carried a maximum penalty of five years in prison. The trial court sentenced defendant to five years' probation, with the first six months in jail. In July 2004, defendant moved to have his conviction expunged. The trial court granted the motion.

At the time defendant pleaded guilty of attempted rape, MCL 780.621 did not prohibit the expungement of a conviction for an attempt to commit a felony for which the maximum punishment was life in prison. However, 1996 PA 573, effective April 1, 1997, amended MCL 780.621(2) to provide that "a conviction for a felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment" cannot be set aside.

In *People v Link*, 225 Mich App 211; 570 NW2d 297 (1997), the defendant pleaded nolo contendere to criminal sexual assault in the third degree (CSC III), MCL 750.520d, in 1989. The trial court denied the defendant's motion to expunge his conviction. At the time the defendant entered his plea and at the time the trial court ruled on the motion, MCL 780.621 did not prohibit the expungement of a conviction of CSC III. However, 1996 PA 573 amended MCL 780.621(2) to prohibit the expungement of a conviction of CSC III. In *Link, supra* we held that the 1997 amendment of the expungement statute operated retroactively to prohibit expungement of the defendant's 1989 conviction. *Id.* at 215-218.

Here, defendant was convicted of attempting to commit a felony for which the maximum punishment was life in prison. MCL 780.621(2), as amended, expressly prohibits the expungement of such a conviction. *Link, supra*, is directly on point, and mandates the conclusion that the trial court erred by granting defendant's motion to expunge his 1968 conviction for attempted rape.

Reversed and remanded for reinstatement of defendant's conviction. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra