

Circuit Court for Howard County
Case No. 13-K-87-016761

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 341

September Term, 2018

FLOYD HAMILTON BYRNS, JR.

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Beachley,

JJ.

Opinion by Fader, C.J.

Filed: March 8, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Floyd Hamilton Byrns, the appellant, asks us to find that his 1988 felony conviction for forgery under Article 27, Section 44 of the Maryland Code is subject to expungement. We agree with the Circuit Court for Howard County and the State that it is not.

BACKGROUND

Factual Background

Mr. Byrns pleaded guilty to the forgery count he now seeks to have expunged in March of 1988.¹ The circuit court initially granted Mr. Byrns probation before judgment, but later sentenced him to serve 180 days of a three-year sentence after he pleaded guilty to violating his probation.

Due to the age of Mr. Byrns's offense and conviction, no records from the case currently exist in the court file. On appeal, Mr. Byrns has provided a copy of a police incident report he obtained from the Howard County Police Department through a public information request. According to the report, on August 9, 1987, at 1:40 p.m., a police officer arrested him at a Safeway Food Store when he "tried to pass a forged check." According to the officer's report, the store manager approached him with a complaint "that a forgery had just occurred." After the officer stopped a vehicle in which Mr. Byrns and Dina Ann Byrns were passengers, the manager identified Mr. Byrns as "the one in the store who tried to pass the check." The check, made out for \$71.95, was drawn on an account

¹ Mr. Byrns also pleaded guilty to (1) one count of uttering in the same case, which the circuit court merged into the forgery conviction for purposes of sentencing at the time, and (2) three counts of theft in three other cases, which the circuit court subsequently expunged.

in the name of Mark Strucko² and Sandra Ningard. It was purportedly signed by Mr. Strucko, although the phone number written by hand on the check was associated with an address that was not where Mr. Strucko lived. The officer subsequently found Mr. Strucko's checkbook "stuffed in [Mrs. Byrns's] pants." A supplemental incident report states that a latent fingerprint on the check at issue was later identified as that of Mr. Byrns.

Statutory Background

At the time of his offense, forgery was proscribed by § 44 of Article 27 of the Maryland Code, which made it a felony, subject to imprisonment of up to ten years and a fine of up to \$1,000, to "falsely make, forge or counterfeit . . . any . . . bill of exchange, promissory note for the payment of money or property" Md. Code Ann. Art. 27, § 44(a) (1987).

In 2002, as part of the recodification process, the General Assembly adopted the new Criminal Law Article. In doing so, the General Assembly attempted to simplify and clarify various aspects of the criminal statutes. One such change was to define the single word "counterfeit" to mean: "to forge, counterfeit, materially alter, or falsely make." Md. Code Ann., Crim. Law § 1-101(c). A Revisor's Note explains that the change was made "to avoid repetition of the terms 'forge', 'materially alter', and 'falsely make' and their grammatical variations throughout this article." *Id.* § 1-101, Revisor's Note. Thus, the

² The incident report alternates the spelling of the victim's last name as "Strucko" and "Struckos." We use the spelling that appears on the check.

Note explains, the term counterfeit “includes both altering a genuine document or object to make it false, and creating a new false document or object.” *Id.*

Using the newly defined term, the General Assembly recodified the former § 44(a) as the new § 8-601 of the Criminal Law Article. That statute makes it a felony, subject to imprisonment of up to ten years and a fine of up to \$1,000, to “counterfeit . . . any . . . check . . .” with the intent to defraud. Md. Code Ann., Crim. Law § 8-601(a)(2).³ A Revisor’s Note to that section identifies the substitution of “counterfeit” for “the former reference to ‘falsely mak[ing], forg[ing] or counterfeit[ing]’” and states that “[n]o substantive change is intended.” *Id.* § 8-601, Revisor’s Note.

Mr. Byrns’s Petition for Expungement

Mr. Byrns petitioned the Circuit Court for Howard County to expunge his forgery conviction. He argued that if he were to be prosecuted today for the same conduct, he would have been charged with a misdemeanor for either passing a bad check or for theft under \$100, both offenses that are eligible for expungement. After a hearing, the court denied Mr. Byrns’s request, reasoning that the General Assembly had not intended changes to the law made during the code revision process “to alter substantive law” and, therefore, the court had no legal basis on which to grant his request.

³ As originally enacted in 2002, § 8-601, like its predecessor, did not specifically mention a check among the list of items it made it a felony to counterfeit. Md. Code Ann., Crim. Law § 8-601(a) (2002). In 2004, the General Assembly added “check” to the list. 2004 Laws of Md. ch. 484.

DISCUSSION

We review a circuit court’s interpretation of law for legal correctness. *Noble v. State*, 238 Md. App. 153, 161 (2018). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly.” *Bottini v. Dept. of Fin.*, 450 Md. 177, 187 (2016) (quoting *Wagner v. State*, 445 Md. 404, 417 (2015)). To determine the General Assembly’s purpose, “we look first to the language of the statute, giving it its natural and ordinary meaning.” *Thompson v. State*, 229 Md. App. 385, 417 (2016) (quoting *Maryland-Nat’l Capital Park and Planning Comm’n v. Anderson*, 395 Md. 172, 182 (2006)). Where “the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written” and we do “not look beyond the statutory language to determine the [General Assembly]’s intent.” *Bottini*, 450 Md. at 187 (quoting *Wagner*, 445 Md. at 418). If the statutory language is unambiguous, “the inquiry as to legislative intent ends.” *Id.*

THE CIRCUIT COURT DID NOT ERR IN DENYING MR. BYRNS’S PETITION FOR EXPUNGEMENT.

Mr. Byrns contends that his 1988 conviction for forgery should be eligible for expungement. He argues that the offense for which he was convicted would not currently be subject to prosecution under § 8-601 of the Criminal Law Article but would instead be prosecuted under either § 8-103 or § 7-104 of that article and, as a result, would be eligible for expungement. We disagree.

As an initial matter, we agree with the State that eligibility for expungement is based on the statute under which one was convicted, not on the conduct underlying the conviction. Mr. Byrns contends he is eligible for expungement under § 10-110 of the Criminal Procedure Article (Repl. 2008; Supp. 2018). At the time he filed his expungement petition, § 10-110 allowed a person to file a petition for expungement “if the person is convicted of a misdemeanor that is a violation of” a list of specific statutory sections and common law offenses. Md. Code Ann., Crim. Proc. § 10-110. Under the plain language of the statute, eligibility for expungement thus depends on the statute the person was convicted of violating, not the underlying conduct. Section 8-601, the successor to the former § 44(a) of Article 27, is not one that is eligible for expungement. Therefore, the circuit court properly denied Mr. Byrns’s petition.

Moreover, even if we were to accept that eligibility for expungement should depend on the underlying conduct charged as opposed to the conviction itself, we would not agree with Mr. Byrns that the circuit court erred. Notably, Mr. Byrns did not present the circuit court with any evidence at all regarding the underlying conduct, thus making it impossible for the circuit court to have assessed his claims. The facts disclosed in the incident report and discussed above were all presented for the first time on appeal. As a result, they were not before the circuit court and are not properly before us on appeal.

And even if those facts were properly before us, we disagree with Mr. Byrns that forgery of the type described in the incident report is no longer a crime chargeable under

§ 8-601 of the Criminal Law Article.⁴ Mr. Byrns makes two basic arguments for why his conduct in signing Mr. Strucko’s name on one of Mr. Strucko’s checks and attempting to pass it at a supermarket would not be a violation of § 8-601 if committed today. First, he contends that when the General Assembly adopted the word “counterfeit” to describe the conduct proscribed in § 8-601 in place of the several terms in the former § 44, it intended to do away with forgery as a crime. However, the definition of counterfeit as expressly including forgery, along with the Revisor’s Notes discussed above, demonstrates that contention is incorrect.

Second, Mr. Byrns contends that the Court of Appeals accomplished effectively the same end—i.e., eliminating forgery as a separate crime—in its decision in *State v. Reese* when it stated that “the falsity required by the common law and statutes [to constitute forgery] refers to the genuineness of the execution of the document itself; that is, there must be a false making. The instrument must purport to be what it is not.” 283 Md. 86, 94 (1978) (internal citations omitted). In *Reese*, the Court considered whether false entries in the tax rolls of a county government could be prosecuted as forgery. *Id.* at 87. The Court decided that they could not because although the “tax rolls contained false and fraudulent information,” that “did not alter their authenticity.” *Id.* at 94. In other words, the tax rolls were still the tax rolls, they just were not accurate. *Id.* at 94-95.

⁴ Mr. Byrns argues that his conduct would now be more appropriately chargeable under § 8-103 of the Criminal Law Article, relating to passing a bad check, or under § 7-104(g)(3)(i) of the Criminal Law Article, for theft under \$100. Of course, whether the conduct *could be* charged under those misdemeanor statutes is irrelevant if it could also be charged under § 8-601.

We agree with the State that Mr. Byrns overreads *Reese*. In that case, the Court of Appeals reiterated the three elements of forgery: “First, there must be a writing which is the proper subject of forgery. Secondly, this writing must be false. Finally, the writing must have been rendered false with intent to defraud.” *Id.* at 90. Placing a false signature on another person’s check with the intent to pass the check to a recipient for value, as Mr. Byrns was accused of doing, meets all three elements of a forgery. The check is the writing, signing the false signature of the owner renders the writing false, and the intent is to defraud the recipient. A check that is properly signed by the owner of the account on which it is drawn is “a draft . . . payable on demand and drawn on a bank.” Md. Code Ann., Comm. Law § 3-104 (Repl. 2013); *Messing v. Bank of Am., N.A.*, 373 Md. 672, 678 (2003). Unlike a log book containing false entries—which is still a log book—a check on which another has forged the account owner’s signature is not a draft payable on demand by the bank. Instead, it is a false and inauthentic writing; it is not what it purports to be.⁵ For that reason, we would have affirmed the circuit court’s judgment even if the circuit court had had the opportunity to consider the incident report Mr. Byrns has provided on appeal.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁵ Indeed, under § 1-201(b)(41) of the Commercial Law Article, the term “Unauthorized signature” expressly “includes a forgery.”