

# THE SAN ANTONIO DEFENDER

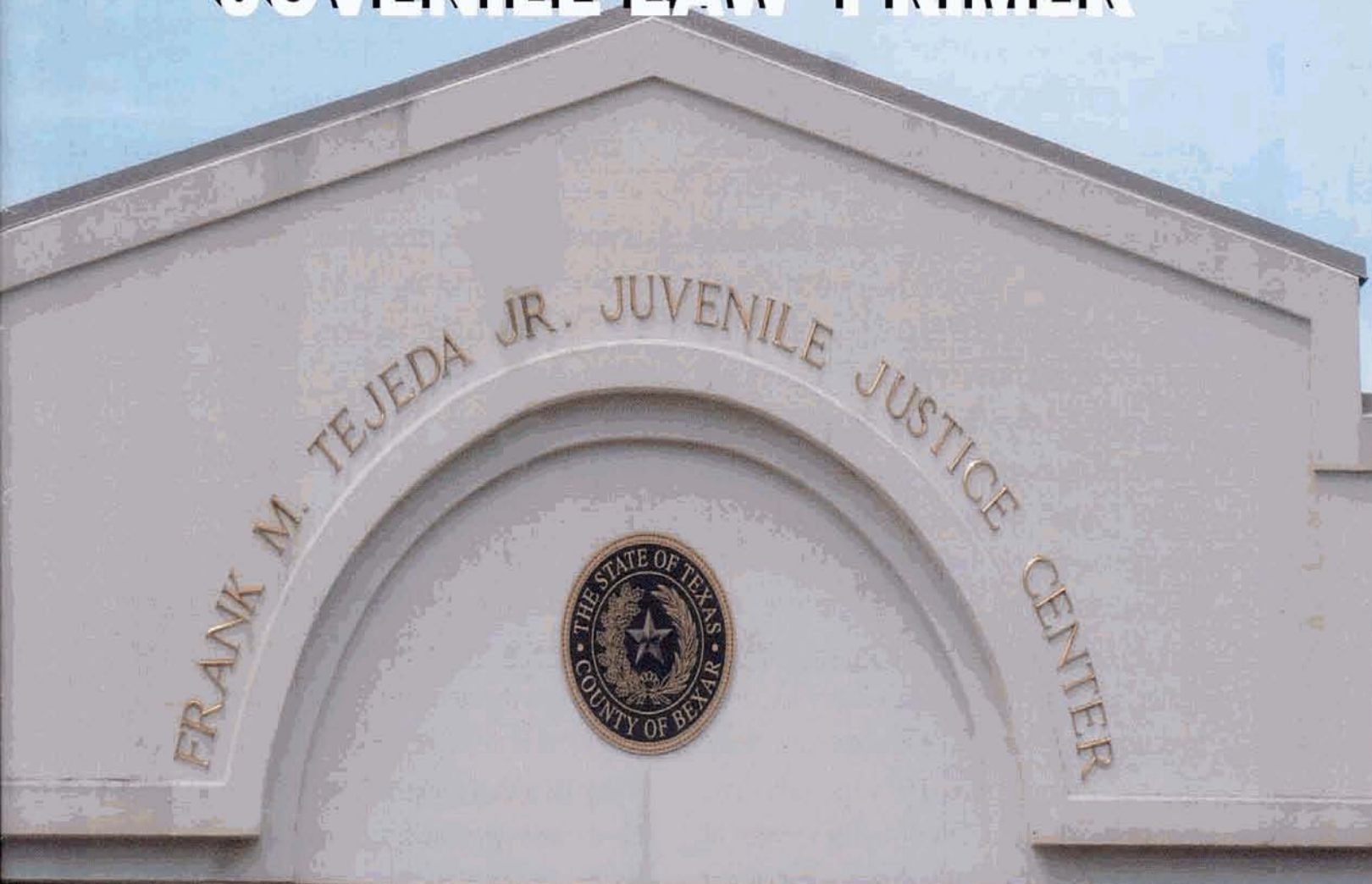
A Publication of The San Antonio Criminal Defense Lawyers Association

JULY/AUGUST 2008

Volume X Issue 2

## THIS IS YOUR ORGANIZATION!

### JUVENILE LAW PRIMER





# LESSONS LEARNED ABOUT CLASS "C" EXPUNGEMENTS

by Robert H. Featherston

## BEWARE

For anyone who files an Expungement with a Texas District Court, beware "*Vasilas*," [*State of Texas v. James Vasilas*, 187 S.W.3d 486, 491 (Tex. Crim. App. 2006)].

James Vasilas is an attorney whose client was charged with the state jail felony of delivery of marijuana. Vasilas's client was convicted of the lesser-included offense of possession of marijuana. After this conviction, Vasilas signed and filed a petition for expunction of the records relating to his client's arrest on the delivery charge.

Well, the State took exception to that and subsequently charged Vasilas with "Tampering With a Governmental Record," T.P.C. §37.10. The indictment alleged that Vasilas made, presented, and used a governmental record, i.e., the petition for expunction of records, with knowledge of its falsity, intending to defraud and harm the State of Texas.

To date the state has prevailed on separate appeals and Mr. Vasilas case is currently set for trial in October 2008.

## STRICTLY STATUTORY

A petitioner is entitled to expunction only on proof of satisfaction of each statutory requirement found in article 55.01 of the Texas Code of Criminal Procedure. See *Tex. Dep't of Pub. Safety v. Williams*, 76 S.W.3d 647, 650 (Tex. App.-Corpus Christi 2002, no pet.); see also *Tex Code Crim. Proc. Ann. art 55.01* (Vernon 2006).

Strictly speaking, for Class "C" offenses you start with the relevant statutory provision of Texas Code of Criminal Procedure Article 55.01(a)(2)(B):

"the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision under Article 42.12 for any offense other than a Class C misdemeanor,"...(emphasis added).

There is an *opinion* of the Texas Attorney General's Office, JC-0320 (2000) which essentially states that a

opinion (decided in 2000), governs.

In *State of Texas v. Beam*, the Texas Supreme Court goes to great lengths to analyze the plain meaning of the statutory language and gives weight to the statutory interpretation of that analysis. Use that same analysis to urge that the plain meaning of 55.01(a)(2)(B) means just that and applies to any Court in Texas where a plea is entered to a Class C misdemeanor, resulting in community supervision or deferred adjudication community supervision.

Additionally, 55.01(a)(2)(B) was amended by the 78th legislature, effective on 01 September 2003 to add the following language: "for any offense other than a Class C misdemeanor,." The addition of this language defeats the Attorney General opinion JC-0320.

## FELONY IN LAST 5 YEARS

Next look to see if the requirements of 55.01 (a)(2)(C) have been met. "the person has not been convicted of a felony in the five years preceding the date of the arrest."

## STATUTE OF LIMITATIONS

In *Texas v. Beam*, 226 S.W.3d 392 (X2007), the Texas Supreme Court examined the current Expungement statute, Article 55.01 (a)(2) and concluded that the statute of limitations requirement applies to both Felony and Misdemeanor offenses. Just a note, for acquittals or pardons, I do not believe that *Beam* applies.

## THE PETITION AND ORDER

A sample Petition and Order, tailored for a Class C expungement, is attached. It never hurts to look at S.S.P. Article 55.02 prior to filing to ensure your documents contain all of the necessary facts. Remember *Vasilas* and don't get caught in that trap!

CAUSE NO. 2008-CR-9999

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs.	§	227 <sup>TH</sup> JUDICIAL COURT
	§	
BUBBA GUMP	§	BEXAR COUNTY, TEXAS

PETITION FOR EXPUNCTION OF RECORDS

TO THE HONORABLE JUDGE OF SAID COURT:

BUBBA GUMP, petitioner, petitions the court to order the expunction of all records and files arising out of petitioner's arrest on 07 November, 2000, and subsequent prosecution under Bexar County Court at Law # 9 cause number 999999. In support of this petition petitioner shows:

I.

Petitioner is a white male whose full name is, BUBBA GUMP, SID # 999999, JN # 999999, G.J. # 999999. Petitioner was born on 31 October, 1968, and was living at 9326 Gump Road, San Antonio, Texas 78240, at the time of the arrest at issue. Petitioner's Driver's license number is 99999999, and his Social Security number is 999-99-9999.

III.

On 07 November, 2000, petitioner was arrested in the city of San Antonio, County of Bexar Texas, by officers of the San Antonio Police Department under, SAPD Case # 07-999999. Petitioner entered a plea of no contest to possession of drug paraphernalia, Texas Controlled Substances Act §481.125. The offense arising out of conduct alleged to have occurred on or about 07<sup>th</sup> day of November 2000. A complaint and Information under, cause number 999999 was filed against him in Bexar County Texas County Court at Law #9 on 30 October 2000. The Complaint/Information was based on San Antonio Police Department case # 07-999999 filed and investigated by Detective R. Shrimp, SAPD # 9423, Officer Stephen Crab, SAPD # 9033-R and Officer Rudolfo Aguilar Shark, Jr., SAPD # 9180.

IV.

Petitioner has reason to believe that the following agencies, officials, or other public entities of this state have records concerning the arrest:

**MARGART G. MONTEMAYOR**  
Bexar County District Clerk  
100 Dolorosa St.  
San Antonio, Texas 78205-3002

**SAN ANTONIO POLICE  
DEPARTMENT**  
214 West Nueva  
San Antonio, Texas 78207

**BEXAR COUNTY CLERK**  
Bexar County Justice Center  
300 Dolorosa, Suite 300  
San Antonio, Texas 78205

**BEXAR COUNTY SHERIFF'S**  
200 N. Comal  
San Antonio, Texas 78207-3536

**TEXAS CRIME INFORMATION CENTER**  
P.O. Box 4143  
Austin, Texas 78765-4145

**BEXAR COUNTY ADULT  
DETENTION CENTER**  
200 N. Comal  
San Antonio, Texas 78207-3536

**SAN ANTONIO MUNICIPAL COURT/  
NIGHT MAGISTRATE**  
401 S. Frio  
San Antonio, Texas 78207-4432

**FEDERAL BUREAU OF  
INVESTIGATION**  
P.O. Box 1630  
San Antonio, Texas 78296-1630

**JUSTICE OF THE PEACE, PRECINCT  
ONE**  
218 S. Laredo Street  
San Antonio, Texas 78207-4530

**TEXAS DEPARTMENT OF  
PUBLIC SAFETY**  
P.O. Box 4087  
Austin, Texas 78773-0001

**BEXAR COUNTY PERSONAL BONDS**  
600 N. Leona, Suite 100  
San Antonio, Texas 78207-3536

**TEXAS DEPARTMENT OF  
PUBLIC SAFETY**  
5805 N. Lamar  
Austin, Texas 78751

**BEXAR COUNTY DISTRICT ATTORNEY JUSTICE OF THE PEACE**  
Bexar County Justice Center  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205-3004

**PRECINCT TWO**  
6715 Bandera Road  
San Antonio, Texas 78238

**JUSTICE OF THE PEACE  
PRECINCT THREE**  
8918 Tesoro Drive, Suite 300  
San Antonio, Texas 78217

**NATIONAL CRIME  
INFORMATION CENTER**  
Criminal Justice Information  
Division FBI Complex  
1000 Custer Hollow Road  
Clarksburg, WV 26306

**(AND ANY OTHER AGENCIES THAT APPLY TO YOUR CASE)**

**V.**

Pursuant to Chapter 55 of the Code of Criminal Procedure , petitioner is entitled to have all records and files concerning the arrest expunged for the following reasons:

1. The petitioner entered a plea of no contest in a Texas County Court at Law to a Class C misdemeanor and received a \$500.00 fine and one day of deferred adjudication Community Supervision.
2. The Statute of Limitations ran as of the 07<sup>th</sup> day of November 2002. The Class C charges against petitioner arising out of the transaction for which petitioner was arrested have not resulted in a final conviction and are no longer pending.
3. Pursuant to CCP Article 55.01(a)(2)(B) Court-ordered Community Supervision was for a Class C misdemeanor.
4. Petitioner was not released on a conditional discharge under former Section



481.109 of the Health and Safety Code.

5. Petitioner has not been convicted of a felony in the five years preceding the date of the arrest.

WHEREFORE, the petitioner prays the court:

1. To set this matter for hearing.
2. To give reasonable notice of the hearing to each official, agency, or other public entity named in paragraph III of this petition pursuant to Article 55.02, Section 2 of the Texas Code of Criminal Procedure .
3. After the hearing on this matter, to order each official, agency, or other public entity that there is reason to believe possesses records or files concerning the arrest to:
  - a) Return all records and files concerning the arrest to the court, or if removal is impracticable, obliterate all references to petitioner and notify the court of its action.
  - b) Request each central federal depository to which it supplied information concerning the arrest of petitioner to return all such records and files to the court, or if removal is impracticable, to obliterate all references to petitioner and notify the court of its action.
  - c) Delete from its public records all index references to the above-mentioned arrest of the petitioner.
4. To direct the clerk of the court to send a certified copy of the order by certified mail, return receipt requested, to the Department of Public Safety and to each official, agency, or other entity named in paragraph IV of the petition; and to direct the Department of Public Safety to send to each central federal depository an explanation of the effect of the order as well as a request for the return or destruction of the records held by the central federal depository.
6. To return to the petitioner all records, files, and notifications of the disposition of records and files returned to the court pursuant to its expunction order within a reasonable time of the receipt of same.

Respectfully submitted,

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ROBERT H. FEATHERSTON  
CORREA & FEATHERSTON, P.C.  
405 North St. Mary's St., Ste. 340  
San Antonio, Texas 78205  
Telephone: (210) 838-8582  
Facsimile: (210) 479-3205  
State Bar No.: 24004641  
ATTORNEY FOR DEFENDANT

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CAUSE NO. **2008-CR-9999**

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs.	§	227 <sup>TH</sup> JUDICIAL COURT
	§	
BUBBA GUMP	§	BEXAR COUNTY, TEXAS

**AFFIDAVIT**

BEFORE ME, the undersigned authority, on this day personally appeared BUBBA GUMP, who after being duly sworn stated:

"I am the petitioner in this cause. I have read the petition for expunction of records and swear that all of the allegations of fact contained in the petition are true and correct."

\_\_\_\_\_ [signature of affiant]

SUBSCRIBED AND SWORN TO BEFORE ME on the \_\_\_\_\_ day of \_\_\_\_\_, to certify which witness my hand and official seal.

[Seal] \_\_\_\_\_ [signature]  
\_\_\_\_\_ [typed name]

Notary Public in and for  
the State of Texas

My commission expires

\_\_\_\_\_ [date]

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CAUSE NO. **2008-CR-9999**

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs.	§	227 <sup>TH</sup> JUDICIAL COURT
	§	
BUBBA GUMP	§	BEXAR COUNTY, TEXAS

ORDER SETTING HEARING DATE

IT IS ORDERED that the hearing on the Petition for Expunction of Records is hereby set for \_\_\_\_\_ [time ], on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 in the courtroom of the 227<sup>th</sup> Judicial District Court, in San Antonio, Texas.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
JUDGE PRESIDING

**CAUSE NO. 2008-CR-9999**

**STATE OF TEXAS**

**vs.**

**BUBBA GUMP**

§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**227<sup>TH</sup> JUDICIAL COURT**

**BEXAR COUNTY, TEXAS**

**ORDER OF EXPUNCTION**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2008 came to be heard petitioner's Petition for expunction of Records, and it appears to the court that this petition should be **GRANTED.**

**IT IS THEREFORE ORDERD** that:

1. Any and all records and /or files of BUBBA GUMP , date of birth 31 October, 1968, Texas Drivers license number 999999999, Social Security number 999-99-9999, concerning the arrest on 07 November, 2000, in Bexar County, Texas, for alleged illegal conduct that occurred on or about the 07<sup>th</sup> day of November 2000, under SID # 999999, JN # 999999, G.J. # 999999, cause # 999999, SAPD case # 07-999999 filed and investigated by Detective R. Shrimp, SAPD # 9423, Officer Stephen Crab, SAPD # 9033-R and Officer Rudolfo Aguilar Shark, Jr., SAPD # 9180, are hereby expunged.
2. Any official, agency, or other entity listed below that has sent information concerning the arrest to a central federal depository of criminal records request the agency to return the records to the court, or if removal is impracticable, to obliterate all references concerning the petitioner and notify the court of its action.
3. Each official, agency, or other entity listed below return all records and files concerning the arrest to the court, or if removal is if removal is impracticable, to obliterate all references to petitioner and notify the court of its action.
4. Each official, agency, or other entity listed below delete from its public records all index references to the arrest of the petitioner that is the subject of the cause.
5. The clerk of the court send a certified copy of this order by certified mail, return receipt requested, to the Department of Public Safety and to the following:

**MARGART G. MONTEMAYOR**

Bexar County District Clerk  
100 Dolorosa St.  
San Antonio, Texas 78205-3002

**BEXAR COUNTY CLERK**

Bexar County Justice Center  
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214 West Nueva  
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Clarksburg, WV 26306

**(AND ANY OTHER AGENCIES THAT APPLY TO YOUR CASE)**

**IT IS FURTHER ORDERED**, that the DEPARTMENT OF PUBLIC SAFETY shall send a copy by certified mail, return receipt requested of this Order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of this Order and a request that the records in possession of the depository, including any information with respect to this proceeding, be destroyed. These agencies as noted above.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
JUDGE PRESIDING