

**IN THE COURT OF APPEALS OF IOWA**

No. 0-427 / 09-1374  
Filed July 28, 2010

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**SAMUEL RUSSELL MYERS,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge.

The State of Iowa appeals the district court's ruling granting Samuel Myers exoneration of two public intoxication convictions. **REVERSED IN PART AND REMANDED.**

Thomas J. Miller, Attorney General, Mary E. Tabor (until withdrawal), Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant County Attorney, for appellant.

Samuel Russell Myers, Fairbank, pro se.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor, J., takes no part.

**MANSFIELD, J.**

The State of Iowa appeals a district court order granting Samuel Myers exoneration of two public intoxication convictions pursuant to Iowa Code section 123.46(5) (2009). On appeal, the State argues the district court misinterpreted the law as allowing exoneration of a public intoxication conviction that was followed by another conviction within less than two years. We agree with the State's argument, and accordingly reverse the exoneration of Myers's 2006 conviction.

**I. Background Facts and Proceedings**

On May 23, 2006, Myers was convicted of first-offense public intoxication in Black Hawk County in violation of Iowa Code section 123.46(2). Less than a year later, on May 14, 2007, Myers was convicted of second-offense public intoxication in violation of sections 123.46(2) and 123.91, again in Black Hawk County.

On June 3 and 8, 2009, Myers filed applications for exoneration of both convictions pursuant to section 123.46(5). In sworn statements accompanying the applications, Myers stated he had reached the age of twenty-one, graduated from college, completed substance abuse treatment, and made positive changes in his life. The district court held a hearing on the applications on June 26, 2009. At the hearing, the State conceded the court should exonerate Myers from the 2007 second-offense public intoxication conviction,<sup>1</sup> but argued the 2006 first-

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<sup>1</sup> On appeal, the State now urges this concession was erroneous. The State contends that exoneration pursuant to Iowa Code section 123.46(5) is available only for first-offense convictions under section 123.46, not subsequent convictions under section 123.46 that have been enhanced pursuant to section 123.91. We need not reach this

offense public intoxication conviction was ineligible for exoneration. Section 123.46(5) provides in relevant part:

Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the person shall be deemed exonerated of the offense as a matter of law.<sup>2</sup>

The State argued that section 123.46(5) requires the defendant to have “no other criminal convictions” (other than the exception noted in the text) during the “two years following” the public intoxication conviction for which exoneration was sought. Hence, the State maintained that because Myers’s May 14, 2007 conviction occurred within two years of his previous May 23, 2006 conviction, Myers could not be exonerated from the former conviction. Myers, however, argued section 123.46(5) authorizes the court to exonerate a defendant from public intoxication conviction if he or she goes two years without criminal convictions, regardless of when the two-year period may be. Since Myers had gone from May 2007 to June 2009 without any criminal convictions, he argued he was entitled to exoneration of both convictions.

In its order dated August 13, 2009, the district court adopted Myers’s interpretation of the section and granted the defendant’s petition for exoneration

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issue because, as the State admits in its brief, the State waived objection to exoneration of the 2007 conviction and thus error was not preserved in the district court proceedings.

<sup>2</sup> The Iowa Legislature amended section 123.46(5) by House File 2233, which was signed into law by the governor on March 19, 2010. 83d General Assem., 2d Reg. Sess. (Iowa 2010). The amendment makes some wording changes to the section, so that a conviction will henceforth be “expunged” rather than the person being “exonerated.” However, the changes do not affect the statutory language that is the basis for our decision today.

on both public intoxication convictions. The State sought discretionary review, which was granted on November 6, 2009.

## II. Analysis

On appeal from a district court's interpretation of a statute, we review for correction of errors of law. *State v. Garcia*, 756 N.W.2d 216, 220 (Iowa 2008). When interpreting a statute, the ultimate goal "is to discover the true intention of the legislature. *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003).

Upon our review, we agree with the State's interpretation of section 123.46(5). As noted, that section provides:

*Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the person shall be deemed exonerated of the offense as a matter of law.*

(Emphasis added.) As we read the language of the statute, we think it more logically refers to a particular two-year time period starting with the date of conviction and ending two years thereafter. The phrase "the two-year period" implies a specific two-year period, as opposed to "a" or "any" two-year period. The presence of the word "expiration" further supports this view. "Expiration" is a word commonly used to denote the end point of a specific time period, e.g., here the actual two-year time period beginning with the date of the conviction. If Myers's interpretation had been intended, we think it would have made more sense for the legislature to say, "A person who has been convicted for a violation of this section may obtain exoneration of the conviction if the person has no criminal convictions, other than simple misdemeanor violations of chapter 321,

during any two-year period.” That is not what the Iowa General Assembly wrote into law.

The district court acknowledged that it was “not aware of any case authority directly on point,” but drew some support for its position from *State v. Simmons*, 500 N.W.2d 58 (Iowa 1993). There the supreme court concluded that an exonerated offense could not be used to enhance the penalty for a subsequent offense so long as the exoneration occurred before the second conviction. *Simmons*, 500 N.W.2d at 60. The court cited, among other things, the principle that “a statute which effects punishment must be construed strictly with doubts resolved in favor of the accused.” *Id.* However, *Simmons* simply does not address the issue presented here, namely, whether the defendant has to remain crime-free during the two-year period commencing on the date of conviction in order to qualify for exoneration in the first place. We think that issue is more properly resolved by focusing on the language of the statute, rather than by employing a rule of construction.

Our interpretation of this section is consistent with the Montana Supreme Court’s interpretation of a similar type of statute. In *State v. Beckman*, 944 P.2d 756 (Mont. 1997), the Montana court had to determine the meaning of Montana Code section 61-8-714(5) (1981),<sup>3</sup> which provided in part, “If there has been no additional conviction for an offense under this section [i.e., driving under the influence] for a period of 5 years after a prior conviction hereunder, then such

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<sup>3</sup> The Montana legislature amended this law in 1989 to eliminate the possibility of expunction. However, the Montana Supreme Court had to apply the pre-1989 law to the defendant’s pre-1989 DUI convictions. In subsequent cases, the Montana Supreme Court continued to follow the same interpretation. See, e.g., *State v. Weldele*, 69 P.3d 1162, 1170 (Mont. 2003); *State v. Thibert*, 965 P.2d 251, 253 (Mont. 1998).

prior offense shall be expunged from the defendant's record." In *Beckman*, as here, the defendant argued expunction should be available so long as he avoided another conviction during any five-year period. *Beckman*, 944 P.2d at 759. Thus, the defendant maintained his 1983, 1987, and 1988 driving under the influence convictions were all eligible for expunction because after 1988 he went five years without a DUI conviction. *Id.* The court rejected that argument and found that a conviction would only be eligible for expunction under the section when it was followed by no other DUI convictions during the specific five-year time period commencing with the date of conviction. *Id.* at 760.

Accordingly, because we find the district court's interpretation of the statute was erroneous, we reverse that part of the district court's order granting exoneration to Myers for the May 23, 2006 conviction for first-offense public intoxication and remand for further proceedings consistent herewith.

**REVERSED IN PART AND REMANDED.**