

**Wisconsin Supreme Court**  
**9:45 a.m.**  
**Wednesday, January 11, 2017**

2015AP1877-CR

[State v. Ozuna](#)

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District II

**Circuit Court:** Walworth County, Judge Kristine E. Drettwan, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Lazaro Ozuna, Defendant-Appellant-Petitioner.

**Issues presented:**

This case examines the expungement statute, due process rights and the requirements for determining whether a defendant has successfully satisfied the conditions of probation for expungement purposes.

The Supreme Court reviews two issues:

- Whether to “satisf[y] the conditions of probation” under Wis. Stat. § 973.015(1m)(b), a probationer must perfectly comply with every probation condition, or whether under State v. Hemp, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, it is enough that the probation agent determines that the probationer has “successfully completed . . . probation.”
- Whether defendant Lazaro Ozuna’s procedural due process rights were violated when the circuit court failed to provide him with notice or a hearing before denying expungement.

**Some background:** In May 2014, Ozuna pled guilty to two misdemeanors for criminal damage to property and disorderly conduct. The circuit court imposed and stayed jail terms and placed Ozuna on probation for a period of one year. The court imposed a number of conditions of probation, including that Ozuna had to pay the DNA surcharge and court costs, that Ozuna could not possess weapons, and that he could not possess or consume alcohol or illegal drugs.

The judgment of conviction also contains the following provision regarding expungement of the convictions: “IT IS ORDERED, pursuant to Wis. Stat. § 973.015, that upon successful completion of the sentence imposed, as evidenced by receipt by this Court of a Certificate of Discharge from the probationary authority, AND WITH NO VIOLATIONS OF PROBATION OR LAW ENFORCEMENT CONTACTS RISING TO THE LEVEL OF PROBABLE CAUSE, the Clerk of Court shall issue an order expunging the record.”

On June 5, 2015, Ozuna’s probation agent filed a document entitled “Verification of Satisfaction of Probation Conditions for Expungement,” attached to which was a “Balance Inquiry” showing that Ozuna had paid \$600 and had a balance due of \$1,042.05. The verification form contained check boxes with apparently conflicting indications about whether Ozuna had met all of the requirements of his probation. One box was checked to indicate he successfully completed his probation, while checked boxes on other parts of the form indicated he had not met all the court-ordered conditions of probation.

Walworth County Circuit Court Judge Kristine E. Drettwan denied Ozuna’s expungement on June 12, 2015.

Ozuna appealed unsuccessfully, arguing that according to the Department of Corrections' (DOC) verification form, he had successfully completed his sentence (his one-year term of probation) and was therefore entitled to automatic expungement.

The Court of Appeals focused on whether Ozuna had "successfully completed" his sentence, as that phrase is defined in Wis. Stat. § 973.015(1m)(b): "A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation."

The Court of Appeals stated that even where a person completes probation without revocation and does not have a new conviction, the person still fails to complete probation successfully if the person does not satisfy all of the conditions of probation.

The Court of Appeals said the DOC verification noted that Ozuna had been cited for underage drinking after giving a preliminary breath test of 0.102 percent. This violated the condition that he not consume alcohol while on probation. Consequently, the Court of Appeals concluded that Ozuna had not been entitled to expungement.

Ozuna argues that the automatic denial of expungement based solely on a blind acceptance of the DOC's representations on the verification form violated his due process rights. Ozuna also asserts that a probationer does not need to comply with 100 percent of the conditions to successfully complete probation and be entitled to expungement.

A decision by the Supreme Court could build on its decision in Hemp by clarifying what is meant by satisfying all conditions of probation in the expungement statute.