

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRICIA MARIE WHITEHEAD,

Defendant.

Case No. 05-40155-JAR

MEMORANDUM AND ORDER

This case is before the Court on Defendant Tricia Whitehead's Motion for Expungement of her conviction (Doc. 40). On October 16, 2006, Defendant pled guilty to one count of possession with the intent to distribute crack cocaine.¹ This Court sentenced Defendant to 37 months' imprisonment.² That sentence was subsequently reduced to 30 months, pursuant to 18 U.S.C. § 3582(c) and § 2D1.1 of the Sentencing Guidelines, which amended the crack cocaine quantity table and was deemed retroactive.³ Defendant now seeks expungement of her conviction, citing her volunteer work in the community since her release from prison, her gainful employment, and her plan to enroll in online classes to make a better life for herself and her children.

The Tenth Circuit Court of Appeals has held that there is no statutory authority for an order expunging a conviction, but that federal courts have equitable powers to expunge a conviction only when there is a finding that the conviction was "unconstitutional, illegal, or

¹Doc. 30.

²Doc. 34.

³Doc. 38.

obtained through government misconduct.”⁴ Here, there is no allegation that the conviction was in any way improper. Defendant’s sole contention is that she has led an exemplary life after her release from prison and wishes to rebuild her life. While the Court commends Defendant on her efforts, it is simply without power to grant her the relief she requests.⁵

The Court notes there is a procedure to seek a Presidential pardon through an application with the United States Department of Justice.⁶ Such pardons are rarely granted, however, and the Court expresses no opinion on the appropriateness or availability of such a remedy in this case.

IT IS THEREFORE ORDERED BY THE COURT that Defendant Tricia Whitehead’s Motion for Expungement (Doc. 40) is **denied**.

IT IS SO ORDERED.

Dated: November 22, 2017

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

⁴See *United States v. Pinto*, 1 F.3d 1069, 1070 (10th Cir. 1993) (citing *Bromley v. Crisp*, 561 F.2d 1351 1364 (10th Cir. 1977)).

⁵See *United States v. Green*, No. 90-20012-02-JWL, 2007 WL 2316920, at *1 (D. Kan. Aug. 8, 2007) (following *Pinto* to find that the court lacked authority to expunge a criminal conviction that has not been invalidated); *United States v. Nedelcu*, No. 2:05-CR-330-TS, 2011 WL 2972077, at *2 (D. Utah July 20, 2011) (same).

⁶See, e.g., information at www.justice.gov/pardon