

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2010-AP-12
Lower Court Case No: 2007-MM-9065

MARK W. NORRIS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

/

Appeal from the County Court,
for Orange County, Florida,
Jerry L. Brewer, County Court Judge

Eric J. Dirga, Esq., for Appellant

No Appearance for Appellee

Before POWELL, MIHOK, and THORPE, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Mark Norris appeals an order denying his petition to seal his criminal records. Pursuant to a written plea agreement, Norris had entered a plea of nolo contendre to a misdemeanor of Disorderly Conduct, adjudication of guilt was withheld, and he was placed on a period of six months supervised probation transferred to his home state of Wyoming which he successfully completed. The State did not file an answer brief. We have carefully reviewed the record on appeal,¹ read the transcript of the hearing and considered the controlling statutes, rules and case law. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

¹ We note that Norris' petition, accompanying affidavit and certificate of eligibility met all of the statutory and rule requirements.

At the hearing, which lasted a total of nine minutes, no witness testified. No documentary evidence was presented. The prosecutor argued in opposition to the petition and Norris' attorney argued in favor of the petition. The trial judge admitted he was unfamiliar with the case, said he would take the matter under advisement and would issue a ruling that afternoon.

The trial judge denied the petition. The initial order in pertinent part merely said

: * * * *

**“... it is ORDERED and ADJUDGED as follows:
The Defendant’s Petition To Seal is hereby DENIED.”**

* * * * *

Reminding the trial judge that the case law required that a denial order must “provide the reason(s) based on all the facts and circumstances,” *Kanji v. State*, 4 So. 3d 65, 66 (Fla. 5th DCA 2009), we relinquished jurisdiction directing that the trial judge issue an amended order for that purpose. It was issued and stated in pertinent part

* * * * *

**“...it is hereby
ORDERED and ADJUDGED as follows:
Based upon the nature of the offense and the totality of the circumstances,
the Court exercises its discretion and Denies the Defendant’s Petition to seal.”**

* * * * *

In deciding to deny Norris’ petition, the trial court abused its discretion. Simply because a trial court has statutory authority to “exercise its discretion” does not in and of itself allow the denial of a petition without a finding of good reason(s) based on evidence presented at a hearing. *See Fisher v. State*, 20 So. 3d 1032 (Fla. 2nd DCA 2009). Also, the amended order was deficient in two other respects. Such an order must state specifically what the reason or reasons are which support the denial. It is not enough for the order to just to say, as this one did,

that it was based on “the totality of the circumstances” without specifically setting forth what those facts and circumstances were. *See Baker v. State*, 53 So. 3d 1147 (Fla. 1st DCA 2011); *Harman v. State*, 12 So. 3d 898 (Fla. 2d DCA 2009). Here the trial court was unable to set forth specific reasons because there was *no evidence*, testimonial or documentary, presented at the hearing. The prosecutor’s statements in her argument were not evidence. *See Baker*, 53 So. 3d 1147; *Harman*, 12 So. 3d 898. The “nature of the offense” was the only other reason stated in his amended order. It is well settled that the nature of the charge or offense by itself is not a legally sufficient reason to deny a petition to seal. *See Kanji*, 4 So.3d 65; *Godoy v. State*, 845 So. 2d 1016 (Fla. 3d DCA 2003); *Cole v. State*, 941 So. 2d 549 (Fla. 1st DCA 2006).

Based upon the foregoing reasons and authorities, we conclude that the trial court abused its discretion in denying Norris’ petition to seal. Consequently, we **REVERSE** the amended order and **REMAND** this case with directions to grant the petition.

DONE AND ORDERED at Orlando, Florida this __25th__ day of
____April_____, 2011.

/S/
ROM W. POWELL
Senior Judge

/S/
A. THOMAS MIHOK
Circuit Judge

/S/
JANET C. THORPE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Eric J. Dirga, Esq.**, P.O. Box 3591, Orlando, Florida 32802-3591; **Lawson Lamar, State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801; and **Honorable Jerry L. Brewer**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this __27th__ day of April_____, 2011.

/S/
Judicial Assistant