

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: James N. Betsacon,	:	
	:	No. 18AP-515
Appellant,	:	(C.P.C. No. 18MS-0086)
	:	(ACCELERATED CALENDAR)
[Petition Qualification Employment,	:	
	:	
Appellee].	:	

D E C I S I O N

Rendered on December 31, 2018

On brief: *Mindy K. Yocum*, for appellant.

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Petitioner-appellant, James N. Betsacon, appeals from the judgment of the Franklin County Court of Common Pleas denying his petition for a Certificate of Qualification for Employment ("CQE") pursuant to R.C. 2953.25. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} On January 30, 2018, appellant filed with the trial court a petition for a CQE pursuant to R.C. 2953.25. In his petition, appellant indicated he had been previously convicted of a misdemeanor criminal trespass offense, a violation of R.C. 2911.21, a misdemeanor vandalism offense, a violation of R.C. 2909.05, both offenses committed in 2011, and a felony possession offense committed in 2015. Appellant indicated he was working to get back into an IT project management career, and he had been denied work due to his criminal record for jobs he was qualified for at Teleperformance and The Ohio

State University. Appellant indicated he had previously worked for JP Morgan Chase. In response to the question regarding why he was requesting a CQE, appellant listed the following Ohio Revised Code sections requiring criminal records check requirements in the financial and banking industry:

Impact Detail for: ORC 109.572(C), E BCII notification to a public office about an employee

ORC 1121.23 Criminal records checks of bank organizers, incorporators directors, and controlling shareholders

ORC 1121.13 Criminal Records check of bank executives

1155.03 Criminal records check of savings & loan organizers, directors and controlling persons

ORC 1155.03 Criminal records check of savings & loan executives

ORC 1163.05 Criminal records check of savings bank organizers, directors and controlling persons

ORC 1321.54(B), (H) Residential second mortgage lender or broker -- revocation, suspension, non-renewal of registration

ORC 1121.23 Criminal records check of bank executives

ORC 1121.23 Criminal records check of bank executives

(Compl. at 3.) Finally, appellant provided information regarding his efforts to rehabilitate himself subsequent to his convictions and two recommendation letters in support of his request.

{¶ 3} On May 24, 2018, the trial court denied appellant's request for a CQE. The court's entry revealed the court found appellant had not suffered a collateral sanction. The entry further revealed the court also found appellant had not established by a preponderance of the evidence that: (1) granting the petition will materially assist the individual in obtaining employment/occupational license, (2) the petitioner has a substantial need for the relief requested in order to live a law-abiding life, and (3) granting the petition would not pose an unreasonable risk to the safety of the public or any

individual. The entry indicated the trial court did not impose any conditions on subsequent filings by the appellant for a CQE.

II. Assignments of Error

{¶ 4} Appellant appeals and asserts the following two assignments of error:

[I.] The Trial Court's decision is without analysis or reasoning resulting in a boilerplate decision that cannot be clear to subsequent reviewers. As such the decision is arbitrary and an abuse of the Court's discretion.

[II.] The Trial Court's determination that Mr. Betsacon has not established by a preponderance of the evidence that he has suffered a collateral sanction as a result of his prior convictions is erroneous and an abuse of discretion.

III. Analysis

{¶ 5} Upon denial of a petition for CQE, "the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion on the part of the court of common pleas." R.C. 2953.25(C)(6). Therefore, our standard of review is abuse of discretion.

{¶ 6} In support of his first assignment of error, appellant argues that the trial court's entry is a "bare bone response" and "boilerplate decision." (Appellant's Brief at 2.) According to appellant, the trial court's entry fails to rise to the level required by due process and cannot provide subsequent reviewers any idea as to how or why the decision was made, making it difficult to review for appeal.

{¶ 7} Initially, regarding appellant's assertion of due process rights, we do not find that R.C. 2953.25 implicates due process rights. "A due process right would arise only where the applicant has a 'legitimate claim of entitlement' to the CQE, not a mere 'unilateral expectation.'" *In re Bailey*, 8th Dist. No. 101108, 2015-Ohio-413, ¶ 21, quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). "The issuance of a CQE is a privilege enacted by the General Assembly, not a right. * * * A CQE does not involve a cognizable liberty interest." *Id.* at ¶ 22.

{¶ 8} Appellant points us to no authority, statutory or otherwise, that supports his argument that the trial court was required to explain its reasons for denying the petition for CQE or provide a more detailed analysis of its determination to deny the petition. The text of R.C. 2953.25 does not include such a requirement. Rather, after fulfilling its obligations

under R.C. 2953.25(B)(5), R.C. 2953.25(C) requires that upon receiving a petition for CQE, the court of common pleas shall do the following:

(1) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, the court shall review the individual's petition, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the division of parole and community services, the applicant's military service record, if applicable, and whether the applicant has an emotional, mental, or physical condition that is traceable to the applicant's military service in the armed forces of the United States and that was a contributing factor in the commission of the offense or offenses, and all other relevant evidence. The court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a certificate of qualification for employment.

(2) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, except as otherwise provided in this division, the court shall decide whether to issue the certificate within sixty days after the court receives or is forwarded the completed petition and all information requested for the court to make that decision. Upon request of the individual who filed the petition, the court may extend the sixty-day period specified in this division.

(3) Subject to division (C)(5) of this section, a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section may issue a certificate of qualification for employment, at the court's discretion, if the court finds that the individual has established all of the following by a preponderance of the evidence:

(a) Granting the petition will materially assist the individual in obtaining employment or occupational licensing.

(b) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(c) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

* * *

(6) If a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the court shall provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition for a certificate of qualification for employment. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a certificate of qualification for employment.

{¶ 9} Furthermore, we note appellant did not request a hearing¹ prior to the court making its determination on his application for CQE. Consequently, no transcript was provided which may or may not have provided some additional insight into the trial court's analysis. Nevertheless, the trial court's entry specifically outlined the elements required for granting the petition for CQE. First, the trial court determined appellant did not suffer a collateral sanction as required by the statute. Having made this threshold determination, it was not necessary for the trial court to further consider the elements required by R.C. 2953.25(C)(3)(a) through (c). The trial court did, however, consider these additional elements, one by one, finding appellant did not establish the elements by a preponderance of the evidence.

{¶ 10} Taking all this into consideration, we cannot find the trial court abused its discretion in not providing additional analysis or reasoning in support of its determination to deny the petition for CQE. Accordingly, the first assignment of error is overruled.

¹ "R.C. 2953.25 makes no express provision for a hearing, nor is the right to a hearing implied in the statute. The procedure set forth in the statute provides for a summary proceeding, as demonstrated by the requirement that the court 'shall decide whether to issue the certificate within sixty days after the court receives or is forwarded the completed petition and all information requested for the court to make that decision.' R.C. 2953.25(C)(2). * * * None of this is to say that a petitioner may not request a hearing. Although the statute does not require the court to hold a hearing on a petition, it does not expressly forbid one." *Bailey* at ¶ 18-19.

{¶ 11} In his second assignment of error, appellant challenges the trial court's substantive determination that appellant did not suffer a collateral sanction. As noted above, whether a petitioner suffered a collateral sanction as a result of his prior convictions is a threshold determination which a trial court must make before proceeding to determine if the elements outlined in R.C. 2953.25(C)(3)(a) through (c) are met. *See Tanksley v. O'Brien*, 10th Dist. No. 15AP-1085, 2016-Ohio-7068, ¶ 12 ("[Petitioner's] petition fails at the threshold, as he does not point to any 'collateral sanction.' ").

{¶ 12} We find it is not necessary for us to determine appellant's second assignment of error. Assuming, arguendo, that the trial court did abuse its discretion in finding appellant did not suffer a collateral sanction, we still could not find the trial court abused its discretion in denying the petition as appellant did not challenge the trial court's determination that he did not establish by a preponderance of the evidence the elements outlined in R.C. 2953.25(C)(3)(a) through (c).

{¶ 13} Actions are moot:

[W]hen they are or have become fictitious, colorable, hypothetical, academic or dead. The distinguishing characteristic of such issues is that they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations. * * * "A moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, *or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.*"

(Emphasis added.) *State ex rel. Cincinnati Enquirer v. Hunter*, 141 Ohio St.3d 419, 2014-Ohio-5457, ¶ 4, quoting *In re L.W.*, 168 Ohio App.3d 613, 2006-Ohio-644, ¶ 11 (10th Dist.).

{¶ 14} We find the second assignment of error is moot as a determination regarding whether appellant suffered a collateral sanction cannot have any practical legal effect on appellant's application for CQE given the trial court's determination he had not met the required elements in R.C. 2953.25(C)(3)(a) through (c) and his lack of objection to the same.

{¶ 15} Accordingly, the second assignment of error is rendered moot.

IV. Conclusion

{¶ 16} Appellant's first assignment of error is overruled and second assignment of error is rendered as moot. Accordingly, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRUNNER, J., concurs.
HORTON, J., concurs in judgment only.
