



*Baldwin, J.*

{¶1} Appellant, A.C., appeals the decision of the Guernsey County Common Pleas Court, Juvenile Division, denying his motion to seal and expunge the record of his admission to four counts of rape in Juvenile Court. The Appellee is the State of Ohio.

### **STATEMENT OF FACTS AND THE CASE**

{¶2} In 2006, Appellant admitted to four counts of rape of his adoptive sister when Appellant was fourteen and the victim was eight. Appellant completed residential treatment, continued with outpatient treatment, reconciled with his family and made such progress that the juvenile court was persuaded to terminate his obligation to register as a juvenile sex offender in 2014, more than two years early.

{¶3} On October 30, 2017, Appellant filed a motion to seal and expunge the juvenile record of his offenses pursuant to R. C. 2151.356 and 2151.358. The State opposed the motion and, on December 8, 2017, the trial court denied the request, holding that it had no authority to grant it, finding that "R.C. 2151.356(A) does not permit sealing of records for juveniles who commit violations of R.C. 2907.02." Appellant filed his notice of Appeal on January 8, 2018 and submitted two assignments of error:

{¶4} "I. THE GUERNSEY COUNTY JUVENILE COURT ERRED WHEN IT DENIED A. C.'S APPLICATION TO SEAL AND EXPUNGE HIS RAPE ADJUDICATION PURSUANT TO R.C. 2151.356(A), IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION."

{¶5} "II. THE GUERNSEY COUNTY JUVENILE COURT VIOLATED A.C.'S RIGHT TO EQUAL PROTECTION WHEN IT DENIED HIS APPLICATION TO SEAL AND

EXPUNGE HIS ADJUDICATION FOR RAPE UNDER R.C. 2151.356 (A) BECAUSE THE STATUTE TREATS CLASSES OF SIMILARLY SITUATED CHILDREN DIFFERENTLY, WITHOUT ANY RATIONAL BASIS. EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.”(SIC)

### STANDARD OF REVIEW

{¶6} The standard of review for Equal Protection and Due Process claims differs with the classification and right at issue. In the case of *Jones v. Bruce*, 921 F.Supp. 708, 710, (D.Kan.1996) the court addressed the applicable standard of review concerning equal protection challenges to a new state sentencing scheme. The court held as follows:

Varying standards of review apply to an equal protection challenge depending on the type of classification at issue. Where fundamental rights or a suspect classification are involved, strict scrutiny is the appropriate standard of review. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 17, 93 S.Ct. 1278, 1288, 36 L.Ed.2d 16 (1973). An intermediate standard has been applied to gender-based classifications. *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451, 456-57, 50 L.Ed.2d 397 (1976). Absent classifications which implicate such special interests, the rational basis test is employed. *Rodriguez, supra*, 411 U.S. at 17, 93 S.Ct. at 1288. *Id.* at 710.

{¶7} Appellant is not a member of a protected classification and no fundamental right is addressed in this case, *State v. Simon*, 87 Ohio St.3d 531, 533, 2000-Ohio-474, 721 N.E.2d 1041 (2000), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639, 1998-Ohio-

264, 665 N.E.2d 669 (1996), so we must apply a rational basis analysis to Appellant's assignments.

{¶8} “Laws limiting rights, other than fundamental rights, are constitutional with respect to substantive due process and equal protection if the laws are rationally related to a legitimate goal of government.” See *State v. Thompkins* (1996), 75 Ohio St.3d 558, 560–561, 664 N.E.2d 926. *Toledo v. Tellings*, 114 Ohio St.3d 278, 2007-Ohio-3724, 871 N.E.2d 1152, ¶ 33 (2007).

This deferential rational-basis standard is “a paradigm of judicial restraint,” *Fed. Communications Comm. v. Beach Communications, Inc.*, 508 U.S. 307, 314, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993), and “not a license for courts to judge the wisdom, fairness, or logic of legislative choices,” *Id.* at 313, 113 S.Ct. 2096. “The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.” (Footnote omitted.) *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979). Therefore, a legislative classification must survive so long as a court can conceive of any “plausible” policy justification—regardless of whether the court views that reason as unwise, unfair, or illogical. *Beach Communications* at 313, 314, 113 S.Ct. 2096.

*State v. Bevly*, 142 Ohio St.3d 41, 2015-Ohio-475, 27 N.E.3d 516, ¶ 35 (2015)

{¶9} In the context of a rational basis review, “a state has no obligation to produce evidence to sustain the rationality of a statutory classification.” *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, 882 N.E.2d 400, ¶ 91, citing *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter*, 87 Ohio St.3d at 58, 60, 1999-Ohio-248, 717 N.E.2d 286. “[S]tatutes are presumed to be constitutional and \* \* \* courts have a duty to liberally construe statutes in order to save them from constitutional infirmities.” \*\*379 *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, 908 N.E.2d 401, ¶ 12, citing *Desenco, Inc. v. Akron*, 84 Ohio St.3d 535, 538, 1999-Ohio-368, 706 N.E.2d 323 (1999). The party challenging the constitutionality of a statute “bears the burden to negate every conceivable basis that might support the legislation.” *Columbia Gas Transm. Corp.* at ¶ 91, citing *Lyons v. Limbach* (1988), 40 Ohio St.3d 92, 94, 532 N.E.2d 106, as cited in *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 27 (2016), *reconsideration denied*, 146 Ohio St.3d 1516, 2016-Ohio-7199, 60 N.E.3d 8, ¶ 27 (2016).

### ANALYSIS

{¶10} Appellant contends that R.C. 2151.356 is unconstitutional because it excepts three offenses from the statutory sealing and expungement process. The language at issue in this case is found in R.C. 2151.356(A):

The records of a case in which a person was adjudicated a delinquent child for committing a violation of section 2903.01, 2903.02, or 2907.02 of the Revised Code shall not be sealed under this section.

{¶11} Appellant was found delinquent as a result of a violation of R.C. 2907.02 and, therefore, this language prohibited the sealing of his records. Because the records

cannot be sealed, they cannot be expunged under the terms of R.C. 2151.358 as that statute provides expunction only for records that have been sealed under the terms of R.C. 2151.356.

{¶12} The Appellant's constitutional rights are limited in the context of an application for sealing and expungement. "The Ohio Supreme Court has made clear that Due Process rights are limited in expungement proceedings because "expungement hearings are not structured on the adversarial model." *State v. Haas*, 6th Dist. Lucas No. L-04-1315, 2005-Ohio-4350, ¶ 10 (citations omitted). "Neither the United States Constitution nor the Ohio Constitution endows one convicted of a crime with a substantive right to have the record of a conviction expunged. *Bird v. Summit Cty.* (C.A.6, 1984), 730 F.2d 442, 444. Instead, expungement is an act of grace created by the state." *State v. Hamilton*, 75 Ohio St.3d 636, 1996-Ohio-440, 665 N.E.2d 669 (1996).

{¶13} The Eleventh District Court of Appeal concluded, that neither adults nor juveniles possess a substantive right to have a conviction expunged:

[a]s a result a criminal defendant is not entitled in an expungement proceeding to the same degree of due process as normally accorded in the original criminal proceeding. Even though the differences between a juvenile offender and a criminal defendant sometimes warrant the application of different standards, this court cannot discern any reason why the foregoing holdings would not apply to a juvenile offender for purposes of the sealing or expungement of prior convictions.

*In re Rovtar*, 11th Dist. Geauga No. 2005-G-2678, 2006-Ohio-6697, ¶ 27.

{¶14} A similar argument regarding the analogous statute for adult criminal convictions was rejected by the court in *State v. Lafever*, 1st Dist. Hamilton No. C-880697, 1989 WL 146434, \*1:

LaFever contends that he was denied equal protection of the law because expungement is foreclosed for his third-degree felony offense of selling a controlled substance, while it is otherwise made available to those who have served the same term of imprisonment for such offenses as arson, gross sexual imposition or aggravated assault of a police officer. We are unable to say, however, that the statute in question creates a classification that is manifestly arbitrary or unreasonable, and that is beyond the scope of legislative discretion.

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This court may not usurp the legislature's inherent power to create classifications among what it reasonably believes to be crimes of varying severity. See *State v. Martin* (1958), 168 Ohio St. 37, 151 N.E.2d 7; *Murphy v. Toledo* (1923), 108 Ohio St. 342, 140 N.E.2d 626.

{¶15} We find that the application of the rational basis test to the facts of this case supports a conclusion that R.C. 2151.356 does not violate Appellant's Due Process or Equal Protection Rights. The Statute has a plausible purpose of restricting the availability of expungement in cases where the Legislature has found the crimes sufficiently serious to warrant not extending the privilege of expungement to those who have committed those offenses. Appellant presents an argument regarding juvenile recidivism and the

underlying purpose of the juvenile court system, but, even if we would accept the validity of those arguments, we are unable to conclude that there is no plausible policy justification for the exception of rape, aggravated murder or murder. We will not question the wisdom, fairness, or logic of legislative choices when there is a rational relationship to a plausible legislative goal. *Bevly, supra*.

{¶16} Appellant argues the distinction between the adult system and the juvenile system warrants a finding the statute is unconstitutional. However, the Appellant's argument relies primarily on the holding of *In re C. P.*, 131 Ohio St. 3d 513, 2012-Ohio-1446, 967 N.E. 2d 729 (2012), a case distinguishable on its facts.

{¶17} The focus in *C.P.* was the imposition of automatic, lifelong registration and notification requirements on juvenile sex offenders tried within the juvenile system by R.C. 2152.86. The statute imposed an adult punishment on a juvenile offender and the trial court had no discretion to modify the requirement. This lack of discretion in the context of imposing a lifetime punishment on a juvenile offender served as the foundation for the Court's decision. The Court found that "[t]he public punishments required by R.C. 2152.86 are automatic, lifelong, and contrary to the rehabilitative goals of the juvenile system. We conclude that they "shock the sense of justice of the community" and thus violate Ohio's prohibition against cruel and unusual punishments." *In re C.P.* at ¶ 69 The Court also found a violation of Due Process arising from the automatic imposition of punishment:

The requirement in R.C. 2152.86 of automatic imposition of Tier III classification on a juvenile offender who receives an SYO dispositional sentence undercuts the rehabilitative purpose of Ohio's juvenile system and

eliminates the important role of the juvenile court's discretion in the disposition of juvenile offenders and thus fails to meet the due process requirement of fundamental fairness.

*In re C.P.* at ¶ 85.

{¶18} The Court held that “[f]undamental fairness is the overarching concern” used to evaluate due process in the context of the juvenile system” and that “[f]undamental fairness requires that the judge decide the appropriateness of the penalty imposed” by R.C. 2152.86. *Id.* at ¶¶ 71, 78.

{¶19} In the context of the Eighth Amendment prohibition against cruel and unusual punishment, the court held:

S.B. 10 forces registration and notification requirements into a juvenile system where rehabilitation is paramount, confidentiality is elemental, and individualized treatment from judges is essential. The public punishments required by R.C. 2152.86 are automatic, lifelong, and contrary to the rehabilitative goals of the juvenile system. We conclude that they “shock the sense of justice of the community” and thus violate Ohio's prohibition against cruel and unusual punishments.

*Id.* at ¶ 69.

{¶20} Further, R.C. 2152.86 imposed an adult punishment that frustrated “two of the fundamental elements of juvenile rehabilitation: confidentiality and the avoidance of stigma” by requiring the publication of the juveniles name, offence and address on the internet. *Id.* at ¶¶ 66-67.

{¶21} The Supreme Court noted the different goals of the adult system versus the juvenile system and that distinction played a role in the evaluation of R.C. 2152.86, but it was automatic mandatory and lifetime punishment imposed by the Statute, and not the distinction between the different systems that was the focus of the decision. Revised Code 2152.86 imposed an automatic adult punishment upon a juvenile that violated C.P.'s Due Process and Eighth Amendment rights. Revised Code 2151.356 imposes no penalty, public exposure or stigma, but provides relief to qualified juvenile offenders. This distinction between the Code Sections renders the analysis of *In Re: C.P.* inapposite.

{¶22} The Legislature has chosen to extend the privilege of expungement to juvenile offenders with specific limitations, and we shall not extend that privilege beyond that provided by the statute. “[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.” *Natl. RR. Passenger Corp. v. Natl. Assn. of RR. Passengers*, 414 U.S. 453, 458, 94 S.Ct. 690, 38 L.Ed.2d 646 (1974), as cited in *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446, ¶ 73 (2013).

{¶23} The Legislature has made a policy decision considering the exempt offenses more serious and not warranting sealing and expungement. The juveniles who have violated these statutes are treated differently than juveniles that have violated other sections of the Code. “Equal protection requires that similarly situated persons be treated similarly under the law. “But the Equal Protection Clause ‘does not require things which are different in fact \* \* \* to be treated in law as though they were the same.’” *GTE North, Inc. v. Zaino*, 96 Ohio St.3d 9 (Feb. 27, 2002), ¶ 22, quoting *Tigner v. Texas*, 310 U.S. 141, 147, 60 S.Ct. 879, 84 L.Ed. 1124 (1940), as cited in *State v. Lawson*, 10th Dist.

Franklin No. 12AP-771, 2013-Ohio-2111, ¶¶ 18. Juveniles found delinquent for commission of the exempted offenses are not similarly situated because they have committed different offenses. “Moreover, “rational-basis review in equal protection analysis ‘is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.’” *Id.* at ¶18. The statute serves a plausible purpose of protecting the public from offenders that commit serious offenses and simultaneously broadens the availability of the privilege of sealing and expungement compared to a similar adult offender. Because we can conceive of a plausible policy justification, this Code section must survive Appellant’s constitutional challenge. *Bevly, supra* at 142 ¶ 35.

{¶24} As noted by the Eleventh District in *In re Rovtar*, 11th Dist. Geauga No. 2005-G-2678, 2006-Ohio-6697, ¶ 27, where it addressed the application of the predecessor of R.C. 2151.356: “Even though the differences between a juvenile offender and a criminal defendant sometimes warrant the application of different standards, this court cannot discern any reason why the foregoing holdings would not apply to a juvenile offender for purposes of the sealing or expungement of prior convictions.” We likewise conclude that the analysis of claims for expungement in the criminal system would generally be applicable to the juvenile system as expungement is a privilege, and not a right, in both systems, and we will not expand the remedy beyond that provided in the statute. *Id.* at ¶28.

{¶25} Finally, we interpret the relevant Revised Code sections to show the Legislature has acknowledged the differences between adults and juveniles by broadening the availability of sealing and expungement for juvenile offenders versus adult defendants. Revised Code 2953.36, addressing adults, contains a lengthy list of offenses

which are not subject to sealing, including convictions of a felony of the first or second degree, rape, sexual battery, certain offenses of violence, and several other offenses. Revised Code 2151.356(A) prohibits sealing of records for juvenile offenses only for Aggravated Murder (R.C. 2903.01), Murder (R.C. 2903.02) or Rape (R.C. 2907.02). This abbreviated list of restrictions can be plausibly interpreted as the Legislature's recognition of the difference between a criminal conviction and a juvenile adjudication as well as the different goals of the two systems.

{¶26} We conclude expungement is a privilege and not a fundamental right, that Appellant is not a member of a suspect class and that R.C. 2151.356 need only satisfy the rational basis test. We hold that the application of R.C. 2151.356 in this matter satisfies the rational basis test in this case and that, therefore, Appellant's Due Process and Equal Protection Rights have not been violated. Appellant's assignments of error are overruled and the decision of the Guernsey County Court of Common Pleas, Juvenile Division is affirmed.

By: Baldwin, J.

Hoffman, P.J. and

Wise, Earle, J. concur.