

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of:	:	
Stenio A. Schiavo,	:	
	:	
Appellee,	:	
	:	
(State of Ohio,	:	No. 07AP-699
	:	(C.P.C. No. 07EP-50)
Appellant.)	:	
	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on January 29, 2008

Samuel Shamansky, for appellee.

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} The State of Ohio is appealing from the granting of an application to seal the record of Stenio A. Schiavo. The State of Ohio assigns a single error for our consideration:

THE TRIAL COURT ERRED WHEN IT GRANTED APPELLEE'S APPLICATION TO SEAL THE RECORD OF HIS CONVICTION AS APPELLEE WAS INELIGIBLE UNDER R.C. 2953.36(D).

{¶2} Stenio A. Schiavo was convicted of a first degree misdemeanor violation of non-support of dependents, in violation of R.C. 2919.21. The trial court granted an

expungement of this conviction over the objection of the State of Ohio. The State of Ohio contended that R.C. 2953.36(D) barred an expungement because the victims were under 18 years of age. The State of Ohio has made this contention on appeal. Counsel for Stenio A. Schiavo has waived the filing of a brief to dispute this contention.

{¶3} The information in the record indicates that Stenio A. Schiavo is the father of two children, both of whom are under the age of 18. Mr. Schiavo was ordered to pay child support for the benefit of his children and did not do so. R.C. 2953.36(D) states that a person convicted of a first degree misdemeanor in which the victim was under 18 years of age is not eligible for expungement. Mr. Schiavo's children are the victims of his failure to pay support. *State v. Westendorf*, Hamilton App. No. C-020114, 2003-Ohio-1019, at ¶3. Accordingly, R.C. 2953.36(D) bars expungement of his conviction.

{¶4} The sole assignment of error is sustained. The trial court's order granting an expungement is vacated and this cause is remanded to the Franklin County Court of Common Pleas with instructions to enter an order denying the application to seal the record in this case.

*Judgment reversed and
remanded with instructions.*

BRYANT and KLATT, JJ., concur.
