

[Cite as *State v. Williams*, 2010-Ohio-4520.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-166
v.	:	(C.P.C. No. 09EP12-738)
	:	
Donald L. Williams,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 23, 2010

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

Donald L. Williams, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, the state of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting an application to seal the record of defendant-appellee, Donald L. Williams, under R.C. 2953.32. For the following reasons, we reverse that judgment and remand.

{¶2} In 1996, Williams was convicted of one count of theft. The trial court suspended a one and a half-year prison sentence and placed Williams on probation for a five-year period. In 1999, Williams was convicted of one count of non-support of

dependents. The trial court again suspended a prison sentence and placed Williams on probation. The trial court also ordered Williams to pay his child support arrearages.

{¶3} In 2010, Williams filed an application to seal the records of his 1996 theft conviction. The state objected to Williams' application. Specifically, the state argued that Williams was not eligible to have his records sealed because he was not a first offender as that term is defined in R.C. 2953.31(A) because of his 1999 non-support conviction. Notwithstanding that conviction, the trial court granted Williams' application to seal his records.

{¶4} The state now appeals and assigns the following error:

THE TRIAL COURT ERRED WHEN IT GRANTED
DEFENDANT'S APPLICATION FOR EXPUNGEMENT AS
DEFENDANT WAS NOT A "FIRST OFFENDER."

{¶5} In its assignment of error, the state argues that the trial court erred by granting Williams' application to seal his records. We agree.

{¶6} " '[E]xpungement is an act of grace created by the state,' and so is a privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533, 2000-Ohio-474 (quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639, 1996-Ohio-440). In light of its nature, "[e]xpungement should be granted only when all requirements for eligibility are met." *Simon* at 533.

{¶7} R.C. 2953.32 permits a "first offender" to apply to the sentencing court for sealing of a conviction record. If the applicant is not a first offender, the trial court lacks jurisdiction to grant the requested expungement. *In re White*, 10th Dist. No. 05AP-529, 2006-Ohio-1346, ¶5 (citing *In re Barnes*, 10th Dist. No. 05AP-355, 2005-Ohio-6891, ¶12). Whether an applicant is considered a first offender is an issue of law for a reviewing

court to decide de novo. *State v. Hoyles*, 10th Dist. No. 08AP-946, 2009-Ohio-4483, ¶4.

{¶8} R.C. 2953.31(A) defines a "first offender" as "anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction." It is not disputed that Williams was convicted of non-support of dependents after his 1996 theft conviction. Thus, he is not a first offender as defined by R.C. 2953.31(A). Therefore, the trial court did not have jurisdiction to grant his application. *In re White* at ¶8.

{¶9} Because Williams was not a first offender, the trial court erred by sealing the records of his 1996 conviction. Accordingly, we sustain the state's assignment of error. The judgment of the Franklin County Court of Common Pleas is reversed, and we remand this case to that court to enter judgment denying Williams' application to seal his records.

*Judgment reversed and cause remanded
with instructions.*

BRYANT and McGRATH, JJ., concur.
