

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-411 (C.P.C. No. 08CR-4797)
C. R.,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

---

D E C I S I O N

Rendered on December 20, 2011

---

*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for  
appellant.

---

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Plaintiff-appellant, State of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting the application of defendant-appellee to seal his records reflecting not guilty verdicts on charges of rape and gross sexual imposition. The state assigns a single error:

THE TRIAL COURT ERRED BY GRANTING APPELLEE'S APPLICATION TO SEAL ACQUITTAL RECORDS WITHOUT FIRST WEIGHING THE GOVERNMENT'S INTEREST IN MAINTAINING THE RECORDS AGAINST APPELLEE'S INTEREST IN CONCEALING THEM FROM THE PUBLIC.

Because the trial court considered the government's, or public's, interest before granting the application, we affirm.

### **I. Facts and Procedural History**

{¶2} On January 8, 2011, defendant filed an application to seal his record reflecting not guilty verdicts on charges of rape and gross sexual imposition. The state responded with an objection filed on February 11, 2011.

{¶3} In its objection, the state acknowledged the not guilty verdict on all counts in defendant's indictment but contended its interest in keeping the records open outweighed any interest defendant asserted. To support its argument, the state noted the information in the records would be valuable to law enforcement if defendant were charged in the future. The state further asserted the information not only could be considered in any future sentencing but also would be essential to the judicial system's functioning because the records provide a thorough history of defendant's contact with that system. Lastly, the state contended the public has a legitimate interest in examining criminal records, if for no other purpose than allowing employers to determine whether a prospective employee has had contact with the criminal justice system.

{¶4} The trial court held a hearing, as required under R.C. 2953.52(B), to consider defendant's application. An assistant prosecuting attorney appeared on behalf of the state of Ohio, and defendant appeared without counsel. Defendant explained why he wanted the record sealed, referring to his work, his homelessness, and his personal relationships. The trial court agreed to grant the request and filed an entry sealing the record in defendant's criminal case.

## II. Assignment of Error

{¶5} The state's single assignment of error asserts the trial court erred in granting defendant's application to seal his records when the trial court failed to weigh the government's interest in maintaining the records against defendant's interest in having them sealed.

### A. Applicable Law

{¶6} Pursuant to R.C. 2953.52(A)(1), any person whom a jury or court finds "not guilty of an offense \* \* \* may apply to the court for an order to seal his official records in the case." When a defendant files such an application, the trial court, as pertinent here, must hold a hearing to (1) determine whether the applicant was found not guilty, (2) determine whether criminal proceedings are pending against the applicant, (3) consider any objections of the prosecutor, and (4) weigh the interests of the applicant to seal the record against the legitimate needs, if any, of the government to maintain those records. R.C. 2953.52(B)(2); see also *State v. Streets*, 10th Dist. No. 09AP-453, 2009-Ohio-6123, ¶4. If resolution of the four points supports sealing the defendant's records, then "the court shall issue an order directing that all official records pertaining to the case be sealed." R.C. 2953.52(B)(3).

{¶7} "The decision whether to grant or deny an application to seal criminal records lies within the sound discretion of the trial court." *Streets* at ¶6, citing *State v. Haney* (1991), 70 Ohio App.3d 135, 138. An appellate court may reverse such a decision only upon a showing of an abuse of the trial court's discretion. *Id.*, citing *Haney*;

*Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219 (stating the test for an abuse of discretion).

*B. Trial Court Proceeding*

{¶8} At the hearing on defendant's application, the trial court spoke with defendant about his reasons for seeking to have his records sealed. Although the state did not set forth reasons at the hearing for opposing the application, its written objections filed prior to the hearing listed the state's reasons. On appeal, the state contends the trial court failed to consider the government's legitimate interest in maintaining open records on defendant and instead applied a bright-line policy of "acquittal equals expungement," thereby ignoring R.C. 2953.52(B)(2)(d) and its requirement that courts "[w]eigh the interest of the person in having the official record pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records." See *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, ¶10 (noting the court's "discretion to seal records is not unfettered" but "balances the public's right of access and the acquitted defendant's constitutional right to privacy").

{¶9} The trial court's entry belies the state's contentions. It specifically states that "the sealing of the record of the applicant's finding of not guilty \* \* \* is consistent with the public interest." In so stating, the trial court indicated it balanced defendant's personal interest against those of the government, or public, interest. Accordingly, contrary to the state's contentions, the trial court's entry reflects the balancing of interests R.C. 2953.52 requires.

{¶10} Moreover, the abuse of discretion standard that applies here provides the trial court with some latitude in weighing the various factors, regardless of what a different court may have done. See, e.g., *Streets* at ¶11 (holding that where the trial court complied with the statute "by holding a hearing, asking questions, considering the arguments and evidence, and weighing the interests of appellant against those of the government \* \* \* we are unable to conclude that the trial court abused its discretion"). See also *State v. Hilbert* (2001), 145 Ohio App.3d 824, 828, appeal not allowed, 94 Ohio St.3d 1430, 2002-Ohio-5651 (stating the expungement statutes "are to be liberally construed, the relief available is to be liberally granted, and it is an abuse of discretion not to do so").

{¶11} Indeed, were the public interest the state posits in its filed objections enough to require the court to conclude the public's interest outweighed defendant's interests, records seldom would be sealed, as the state's reasons could be asserted against most requests to seal criminal records. Although the state's desire to protect law enforcement is significant and vitally important, the state's argument fails to articulate how, in these circumstances, sealing defendant's records would inhibit that protection. See *Cleveland v. Cooper-Hill*, 8th Dist. No. 84164, 2004-Ohio-6920, ¶15, appeal not allowed, 105 Ohio St.3d 1562, 2005-Ohio-2447 (holding defendant's interest "clearly outweighs the state's interests in some hypothetical, potential crime enhancement" when "there are no indicators whatsoever of any likelihood of reoffending").

{¶12} Accordingly, the trial court did not abuse its discretion in granting defendant's application to seal his criminal record, we overrule the state's single

assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

FRENCH and CONNOR, JJ., concur.

---