

[Cite as *State v. Williamson*, 2012-Ohio-5384.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 12AP-340
v.	:	(C.P.C. No. 07CR-12-8936)
	:	
Chad Williamson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on November 20, 2012

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Tyack, Blackmore, Liston & Nigh Co., LPA, Jonathan T. Tyack*, and *Ryan L. Thomas*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Chad Williamson ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his application, pursuant to R.C. 2953.32, for an order sealing the record of his prior criminal conviction.

**I. BACKGROUND**

{¶ 2} In 2007, when he was 18 years old, appellant pled guilty to one count of illegal conveyance or possession of a deadly weapon in a school safety zone, a felony of

the fifth degree, in violation of R.C. 2923.122(A). The trial court convicted him of that offense and placed him on community control, which ended in 2008.

{¶ 3} In 2011, appellant filed an application for an order sealing (or "expunging") the record of his conviction pursuant to R.C. 2953.32. In it, he argued that he was a first offender, three years had passed since his conviction, and he met all requirements of the statute.

{¶ 4} Plaintiff-appellee, state of Ohio ("the state"), objected. The state contended that R.C. 2953.36 bars expungement where the victim of the offense was under 18 years of age. Here, the state argued, appellant's conviction arose from his actions of bringing a deadly weapon (a knife) onto school property and threatening a juvenile. The state relied on *State v. Ritchie*, 174 Ohio App.3d 582, 2007-Ohio-6577, ¶ 23 (5th Dist.), in which the Fifth District Court of Appeals declined to expunge the record of an individual convicted of R.C. 2923.122(A). The court noted the presence of children on the bus he was driving and stated that the Ohio General Assembly "enacted R.C. 2923.122(A) \* \* \* to protect children occupying school property against the dangers of weapons." *Id.*

{¶ 5} Here, the trial court held a hearing. Appellant's counsel argued that the court should ignore *Ritchie* because the term "victim," as used in the expungement statute, did not apply to an offense such as possession of a weapon on school property because "[t]here is no victim to this crime by definition." (Tr. 3.) The prosecutor pointed out, however, that appellant had also been charged with aggravated menacing. Reading from the police report, the prosecutor explained that the charge arose when appellant argued with another student at their high school, and appellant pulled a "lock blade knife" on the other student. (Tr. 6.) Since there was a juvenile victim of the offense, the prosecutor argued, appellant was ineligible for expungement.

{¶ 6} The court asked if appellant had pled guilty to the menacing charge. Appellant's counsel responded that the charge had been dismissed, and the dismissal had been expunged.

{¶ 7} On March 26, 2012, the court issued an entry denying appellant's application for an order sealing the record. The entry stated: "Said application is

hereby **DENIED** pursuant to *State v. Ritchie*, 1[]74 Ohio App.3d 582, 2007 Ohio 6477, 883 N.E.2d 1092 (5th Dist.)." (Emphasis sic.)

## II. ASSIGNMENT OF ERROR

{¶ 8} Appellant filed a timely appeal, and he raises the following assignment of error:

THE TRIAL COURT ERRED IN RULING THAT DEFENDANT-APPELLANT WAS LEGALLY INELIGIBLE FOR THE EXPUNGEMENT AND SEALING OF HIS CRIMINAL CONVICTION PURSUANT TO THE CASE OF STATE V. RITCHIE (2007), 174 Ohio App.3d 582 (5th Dist.).

## III. DISCUSSION

{¶ 9} In his assignment, appellant contends that the trial court erred by determining he is ineligible for expungement of his 2008 conviction for violating R.C. 2923.122. We disagree.

{¶ 10} Our beginning principle is that expungement is a state-created act of grace and "is a privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533 (2000). A trial court may only grant expungement when an applicant meets all of the statutory requirements. *State v. Hamilton*, 75 Ohio St.3d 636, 640 (1996).

{¶ 11} R.C. 2953.32 allows an eligible offender to apply to the sentencing court for the sealing of the conviction record. R.C. 2953.36 provides certain exceptions, however. At the time of appellant's sentencing, R.C. 2953.36(F) excluded the following from expungement: "Convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony." Former R.C. 2953.36(F). Because appellant was convicted of a felony, the question is whether he is ineligible because the offense was in circumstances in which there was a minor victim. We review that question de novo, as it is a question of law. *State v. Futrall*, 123 Ohio St.3d 498, 499, 2009-Ohio-5590, ¶ 6.

{¶ 12} In *Simon*, the Supreme Court of Ohio considered whether a defendant who was ineligible for probation pursuant to R.C. 2951.02 is ineligible to have his record sealed pursuant to R.C. 2953.36(A), which precludes expungement of conviction records of offenders subject to a mandatory prison term. The defendant in *Simon* was indicted

on two charges, both of which contained a firearm specification, the conviction for which carried a mandatory prison term. After a plea bargain, the defendant pled guilty to an amended charge without a firearm specification. He was sentenced to a suspended jail term and placed on three years probation. Thereafter, he moved for expungement of his conviction record. The sentencing court refused, based on R.C. 2953.36(A). Although the amended charge to which the defendant pled guilty did not subject him to a mandatory prison term, the original charges would have. The appeals court affirmed.

{¶ 13} In affirming, the Supreme Court of Ohio held that, "when considering whether an applicant is ineligible to have a conviction record sealed under R.C. 2953.36 because the applicant may have been 'armed with a firearm or dangerous ordnance' (R.C. 2951.02) at the time of the offense, a trial judge must examine the entire record to determine whether the applicant was so armed." *Simon* at 535. Because the record showed that the defendant had used a firearm in committing the offense, he was ineligible for expungement as a matter of law. This court reached a similar conclusion in *State v. Launer*, 107 Ohio App.3d 42, 43 (10th Dist.1995) (determining that, had the trial court gone "behind the judgment entry," it would have discovered that the defendant used a firearm in committing the offense; therefore, he was ineligible for expungement).

{¶ 14} Applying those principles here, we conclude that the trial court, after examining the entire record, could only have determined that appellant is ineligible for expungement as a matter of law because he committed his offense in circumstances in which there was a victim, and the victim was under 18. While the trial court reached the same conclusion by relying on *Ritchie*, which does not clarify whether a minor victim was present or impacted directly by the defendant's actions that led to his conviction under R.C. 2923.122, we conclude that we need not rely on *Ritchie* because the undisputed evidence in the case before us shows that there was a minor victim, i.e., the other student. Accordingly, we overrule appellant's assignment of error.

#### **IV. CONCLUSION**

{¶ 15} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

**BRYANT and KLATT, JJ., concur.**

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