

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 12AP-375
 : (C.P.C. No. 11EP-09-727)
 Annette Black, : (REGULAR CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on December 20, 2012

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

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 the application of defendant-appellee, Annette Black, to have her criminal records sealed. Because Black did not qualify to have her conviction sealed, we reverse the judgment and remand the matter to the trial court with instructions to deny Black's application to seal her records.

I. Factual and Procedural Background

{¶ 2} In 2002, Black entered a guilty plea and was found guilty of a felony charge of misuse of a credit card. The trial court ordered her to serve a five-year term of community control and to pay restitution in the amount of \$12,742.44.

{¶ 3} In 2011, Black applied to the trial court to have the records of her conviction sealed pursuant to R.C. 2953.32. The state objected, claiming that Black was not eligible to have her records sealed under R.C. 2953.32(A)(1) because she had not paid the court-

ordered restitution amount. The state submitted evidence indicating that Black still owed over \$9,000 in restitution. The trial court held a hearing on Black's application, during which she claimed to have paid \$9,035 of the \$12,742.44 in restitution ordered. Based on this testimony, the trial court decided to modify Black's original restitution amount to the amount that she had paid and, in light of that modification, granted Black's application to seal her records.

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

The trial court erred when it granted the defendant's prematurely filed application for expungement.

II. Did Black Qualify to have her Criminal Records Sealed?

{¶ 5} " '[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), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639 (1996). In light of its nature, expungement should be granted only when all requirements for eligibility are met. *Simon* at 533; *State v. Brewer*, 10th Dist. No. 06AP-464, 2006-Ohio-6991, ¶ 5. The state argues that the trial court could not grant Black's application because she was not yet eligible for such relief. We agree.

{¶ 6} R.C. 2953.32(A)(1) permits an eligible offender to apply for the sealing of conviction records. However, because Black's conviction was for a felony, she had to wait three years after her final discharge before she could file her application. *Id.* Final discharge under the statute does not occur until restitution has been satisfied. *State v. Jordan*, 10th Dist. No. 07AP-584, 2007-Ohio-6383, ¶ 6.

{¶ 7} Here, it is undisputed that Black had not made full restitution when she filed her application. Therefore, at that time, she had not received a final discharge for purposes of the statute and was not eligible to have her records sealed. Even assuming for purposes of this decision that the trial court could lawfully reduce Black's restitution order to the amount she had paid,¹ her final discharge would have occurred on the day of the hearing. Black still had to wait at least three years after that date before she was eligible to apply for sealing of her records. *In re Hopson*, 10th Dist. No. 12AP-67, 2012-Ohio-4509, ¶ 5-6 (the existence of a final discharge only begins the running of the three-year waiting

¹ We note that there is a serious question regarding whether the trial court has the authority to modify the restitution order. See *State v. Bell*, 10th Dist. No. 03AP-1282, 2004-Ohio-5256, ¶ 13 (trial court has no authority to reconsider its own valid final judgments in criminal cases).

period in the statute). Under either circumstance, the trial court erred by sealing Black's records because her application was premature under R.C. 2953.32(A)(1). Therefore, we sustain the state's assignment of error.

III. Conclusion

{¶ 8} Having sustained the state's assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand the matter to the trial court with instructions to deny Black's application.

Judgment reversed; cause remanded with instructions.

BRYANT and FRENCH, JJ., concur.
