

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-1066 (C.P.C. No. 12EP-595)
Nakea J. Reedus,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 27, 2013

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.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, Nakea J. Reedus, under former R.C. 2953.32. For the following reasons, we reverse and remand this matter with instructions.

I. Factual and Procedural Background

{¶ 2} On August 1, 2012, Reedus filed an application in the trial court to seal the record of a 2008 felony conviction for attempted assault on a police officer. The state objected, claiming that Reedus did not satisfy the "first offender" requirement of former R.C. 2953.32, which mandates that only a "first offender," as defined in former R.C.

2953.31(A), is eligible to have records of a conviction sealed.¹ The state argued that Reedus did not qualify as a first offender because, in addition to the felony conviction, she had a number of other misdemeanor convictions.

{¶ 3} After a hearing at which Reedus twice told the trial court that her felony conviction and misdemeanor convictions were from different events, the trial court granted her application to seal the record of her felony conviction. The state appeals, and assigns the following error:

The Trial Court erred in Granting the Application to Seal the Record of Conviction.

II. Assignment of Error—Did Reedus qualify to have her Records Sealed?

{¶ 4} "'[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, "[e]xpungement should be granted only when all requirements for eligibility are met." *Simon* at 533.

{¶ 5} Former R.C. 2953.32 permitted 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 Barnes*, 10th Dist. No. 05AP-355, 2005-Ohio-6891, ¶ 12. "As a result, an order expunging the record of one 'who is not a first offender is void for lack of jurisdiction and may be vacated at any time.'" *Id.* at ¶ 13, quoting *State v. McCoy*, 10th Dist. No. 04AP-121, 2004-Ohio-6726, ¶ 11. 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.

{¶ 6} Former R.C. 2953.31(A) defined 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. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same

¹ The former version of R.C. 2953.31 through 2953.36 applies to Reedus's motion because she filed her motion before September 28, 2012, the effective date of changes to those statutes. See *State v. Porter*, 2d Dist. No. 2012 CA 4, 2012-Ohio-5541, ¶ 9 (applying former version of statute to application filed before effective date of new version).

plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they shall be counted as one conviction, provided that a court may decide as provided in division (C) (1) (a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

{¶ 7} Reedus does not qualify as a first offender under this definition.² Reedus told the trial court that her misdemeanor convictions did not result from the same acts as her felony conviction. Nor do her misdemeanor convictions appear to result from acts committed within a three-month period. Accordingly, because Reedus does not qualify as a first offender under former R.C. 2953.31, the trial court erred by sealing the records of her felony conviction because it lacked jurisdiction to do so. *In re White*, 10th Dist. No. 05AP-529, 2006-Ohio-1346, ¶ 8. 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 this case to that court to enter judgment denying Reedus's application to seal her records.

Judgment reversed; cause remanded with instructions.

TYACK and BROWN, JJ., concur.

² We need not decide whether Reedus would qualify under the current version of the statute.