

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 14AP-916
Plaintiff-Appellant,	:	(C.P.C. No. 14EP-362)
v.	:	
	:	(REGULAR CALENDAR)
Dashawn E. Sanders,	:	
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on May 28, 2015

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

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APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals a decision of the Franklin County Court of Common Pleas to seal the criminal records of the state relating to crimes committed by defendant-appellee, Dashawn E. Sanders. The procedure appealed by the state is commonly known as an expungement. While the record of Sanders' rehabilitation is compelling, the statutes governing expungement in Ohio do not permit the records of his criminal convictions to be sealed. We reverse the decision of the trial court.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} On May 9, 2014, Sanders filed an application for an order sealing all official records of criminal convictions in case Nos. 96CR-5084, 96CR-6640, and 97CR-3203. The state filed a written objection on August 18, 2014, in which it argued that Sanders was ineligible, attaching records of Sanders' convictions. According to those records, Sanders has four convictions: June 26, 2007, negligent assault, a third-degree misdemeanor; October 17, 1997, attempted carrying of a concealed weapon, a fifth-degree felony;

February 21, 1997, unauthorized use of a motor vehicle, a first-degree misdemeanor; and February 21, 1997, obstructing justice, a first-degree misdemeanor.

{¶ 3} The trial court held a hearing on Sanders' expungement application on October 23, 2014. Sanders testified at the hearing that he attempted to carry a concealed weapon, made unauthorized use of a motor vehicle, and obstructed justice when he was 19, almost 2 decades earlier. He testified that since that time he has worked hard in jobs no one else wanted, put himself through school at Zane State, and is attempting to better himself and provide for his three children. He testified that the convictions are making it difficult for him to take advantage of educational programs and internships that might allow him to improve the standard of living for his children. He argued that if the trial court were to consider the two misdemeanors from February 21, 1997 as a single misdemeanor, he would be eligible.

{¶ 4} The trial court acknowledged that it would be a stretch to consider Sanders eligible and that any finding of eligibility probably would not survive an appeal. However, it decided, based on the equities of the situation, that it would make the attempt and it merged two of the misdemeanors and then granted the expungement. The state now appeals.

## **II. ASSIGNMENT OF ERROR**

{¶ 5} The state advances a single assignment of error:

THE TRIAL COURT ERRED IN GRANTING THE APPLICATION TO SEAL THE RECORD OF CASE NOS. 96CR-5084, 96CR-6640, AND 97CR-3203, AS IT LACKED JURISDICTION TO DO SO, BASED UPON DEFENDANT'S FAILURE TO QUALIFY AS AN "ELIGIBLE OFFENDER."

## **III. DISCUSSION**

{¶ 6} If an applicant is not an eligible offender, the trial court lacks jurisdiction to grant the application. *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744, ¶ 6. Whether an applicant is an eligible offender is an issue of law that we review de novo. *State v. Tauch*, 10th Dist. No. 13AP-327, 2013-Ohio-5796, ¶ 7.

{¶ 7} In addition to other requirements that are not relevant in this case, in order to meet the statutory requirements of being an eligible offender an applicant must have "not more than one felony conviction, not more than two misdemeanor convictions if the

convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction." R.C. 2953.31(A).<sup>1</sup> However, a court may, if certain circumstances are satisfied, consider two or three convictions as one:

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 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 \* \* \*.

R.C. 2953.31(A); *see also* R.C. 2953.32(C)(1)(a).

{¶ 8} The trial court was correct to count Sanders' two convictions from February 21, 1997 as a single misdemeanor. That is, the underlying offenses occurred within three months of one another. Then they were resolved before the same court, the same judge, on the same day, in what was apparently the same hearing. We have previously addressed the same situation in *Tauch*. In that appeal, we held that such offenses were properly considered as a single offense under R.C. 2953.31(A) and (D). *Id.* at ¶ 10-14. The trial court here correctly considered the misdemeanors for unauthorized use of a motor vehicle and obstructing justice as a single misdemeanor.

{¶ 9} However, Sanders still has a fifth-degree felony for attempting to carry a concealed weapon and an additional third-degree misdemeanor for negligent assault. Even with the two February 1997 convictions merged for purposes of sealing their records, the resulting record is still in excess of the number of convictions permitted for him to be found an eligible offender. The resulting merger of the two February 1997 convictions still leaves Sanders with a fifth-degree felony and two misdemeanors. Assuming other requirements were met, he would be eligible if his criminal record to be expunged included just one felony, or just two misdemeanors, or one felony and one

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<sup>1</sup> Effective September 19, 2014, the legislature deleted the language "if the convictions are not of the same offense" from the statute. However, as Sanders filed his application before that effective date, we use the prior version of the statute.

misdemeanor. R.C. 2953.31(A). However, even counting the February 1997 convictions as one, he has too many convictions to be eligible.

{¶ 10} While Sanders (who is now nearly 40) committed these offenses in his late teens and has shown a sustained period of time without criminal convictions, along with significant effort to improve himself and an articulated need for granting his application, because he is not an eligible offender under R.C. 2953.32, the trial court lacked jurisdiction to grant his application. *Id.* at ¶ 6-9. We, therefore, are constrained to sustain the state's assignment of error and reverse the trial court's decision.

#### **IV. CONCLUSION**

{¶ 11} We sustain the state's single assignment of error. The judgment of the Franklin County Court of Common Pleas is reversed and remanded with instructions to deny the expungement.

*Judgment reversed and  
cause remanded with instructions.*

BROWN, P.J., and KLATT, J., concur.

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