

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 15AP-510
v.	:	(C.P.C. No. 15EP-93)
	:	
Peaches N. Paige,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on November 17, 2015

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

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from an entry of the Franklin County Court of Common Pleas granting the application of defendant-appellee, Peaches N. Paige, to seal the record of her prior convictions. Because appellee is not an "eligible offender" due to her failure to pay the fine required by her sentence, the trial court erred in granting appellee's application to seal her criminal record. Therefore, we reverse.

**Facts and Procedural History**

{¶ 2} In March 2008, appellee pled guilty to aggravated possession of drugs and tampering with evidence, both third-degree felonies. The trial court accepted appellee's plea and sentenced her to community control and a mandatory \$5,000 fine pursuant to R.C. 2929.18. It is undisputed that appellee has never paid the fine imposed by her sentence.

{¶ 3} On February 9, 2015, appellee filed an application to seal the record of her convictions. The state objected contending that appellee was not an eligible offender due to her failure to pay the fine imposed by her sentence. Nevertheless, the trial court granted appellee's application.

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

The trial court erred in granting an application to seal a conviction, when the offender had not received a final discharge.

### **Standard of Review**

{¶ 5} An appellate court generally reviews a trial court's disposition of an application to seal a record of conviction under an abuse of discretion standard. *State v. Black*, 10th Dist. No. 14AP-338, 2014-Ohio-4827, ¶ 6. However, whether an applicant is an eligible offender for purposes of sealing a criminal record is an issue of law. *State v. Hoyles*, 10th Dist. No. 08AP-946, 2009-Ohio-4483, ¶ 4. We review questions of law de novo. *Black* at ¶ 6.

### **Law of Expungement**

{¶ 6} The state contends in its sole assignment of error that the trial court erred as a matter of law when it granted appellee's application to seal the record of her prior convictions because appellee was not eligible under the statute due to her failure to complete the terms of her sentence. We agree.

{¶ 7} The sealing of a criminal record is an act of grace created by the state, and so is a privilege, not a right. *Black* at ¶ 8; *State v. Simon*, 87 Ohio St.3d 531, 533 (2000), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639 (1996). A court may grant an application to seal a criminal record only when all statutory requirements for eligibility are met. *State v. Brewer*, 10th Dist. No. 06AP-464, 2006-Ohio-6991, ¶ 5.

{¶ 8} Pursuant to R.C. 2953.32(A)(1), "an eligible offender may apply to the sentencing court \* \* \* for the sealing of the record of the case that pertains to the conviction." Further, where the offender was convicted of a felony " '[a]pplication may be made at the expiration of three years after the offender's final discharge.' " *Black* at ¶ 9, quoting R.C. 2953.32(A)(1). A court can grant an application to seal a criminal record only to an "eligible offender." *Id.* If an applicant is not an eligible offender, a trial court lacks jurisdiction to grant the application. *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744, ¶ 6.

{¶ 9} The first considerations in determining eligibility under the statute are whether the offender has obtained a final discharge and whether three years have elapsed since that event. *State v. Aguirre*, \_\_\_ Ohio St. 3d \_\_\_, 2014-Ohio-4603, ¶ 18. An offender is not eligible to have his or her record sealed unless he or she satisfies these two prerequisites. *Id.* Moreover, for purposes of determining eligibility, an offender is not finally discharged until the offender has served all components of his or her sentence previously imposed by the court. *State v. Hoover*, 10th Dist. No. 12AP-818, 2013-Ohio-3337, ¶ 7; *State v. Pettis*, 133 Ohio App.3d 618, 619 (8th Dist.) ("[a]n offender is not finally discharged until he has served any sentence previously imposed by the court"). This court has reaffirmed this principle on multiple occasions in the context of restitution. *Black* at ¶ 10 (noting the offender has made only partial restitution and stating "[f]inal discharge under the statute does not occur until restitution has been satisfied"); *State v. Jordan*, 10th Dist. No. 07AP-584, 2007-Ohio-6383, ¶ 7 (concluding that where "it is undisputed that appellant had not been finally discharged \* \* \* because he had not paid the ordered restitution," Jordan thus "was not yet eligible to apply to seal his conviction records"); *In re White*, 165 Ohio App.3d 288, 2006-Ohio-233, ¶ 7 (10th Dist.) (holding "[a]n offender is not finally discharged for purposes of R.C. 2953.32(A)(1) if the offender still owes restitution").

{¶ 10} We have applied the same principle to the completion of any community service component of an offender's sentence. *State v. Gainey*, 10th Dist. No. 14AP-583, 2015-Ohio-3119, ¶ 14.

{¶ 11} Here, it is undisputed that appellee has not paid the \$5,000 fine imposed by her sentence. Therefore, appellee has not received a final discharge and is not an eligible offender for purposes of sealing her criminal record. Because appellee is not an eligible offender, the trial court erred in granting appellee's application to seal her criminal record, and we sustain the state's assignment of error.

{¶ 12} We reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to the trial court with instructions to deny appellee's application.

*Judgment reversed; cause remanded with instructions.*

TYACK and DORRIAN, JJ., concur.

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