[Cite as *State v. Washington*, 2015-Ohio-4970.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
		No. 15AP-538
v.	:	(C.P.C. No. 15EP-102)
Antonio L. Washington, II,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 19, 2015

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

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} The State of Ohio is appealing from the granting of an application to seal a conviction. It assigns a single error for our consideration:

> THE TRIAL COURT ERRED IN GRANTING AN APPLICATION TO SEAL A CONVICTION WHEN THE OFFENDER DID NOT MEET THE DEFINITION OF "ELIGIBLE OFFENDER."

{¶ 2} In October 2008, Antonio L. Washington, II, was convicted of a single count of carrying a concealed weapon. Over six years later, he applied to have the records of the conviction sealed. The state opposed the application, asserting that Washington had multiple convictions and that the multiple convictions barred him from being an "eligible offender" as defined in R.C. 2953.31(A), which reads:

> "Eligible offender" means anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two

> misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction 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 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.
>
> For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. However, a conviction for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or 4511.196 of the Revised Code, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a conviction.

{¶ 3} The state argues that Washington had a conviction for domestic violence in 2009 and two convictions for fourth-degree misdemeanors, namely, violation of R.C. 4503.11. R.C. 4503.11(A) reads:

> Except as provided by sections 4503.103, 4503.172, 4503.41, 4503.43, and 4503.46 of the Revised Code, no person who is the owner or chauffeur of a motor vehicle operated or driven upon the public roads or highways shall fail to file annually the application for registration or to pay the tax therefor.

{¶ 4} Stated more simply, the state argues that conviction for failure to register your motor vehicle should work as a bar to having a felony expunged. The state argues that our earlier cases of *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904, and *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744, were wrongly decided. The state makes no argument with respect to the domestic violence conviction.

{¶ 5} We are not prepared to fault the trial court for following our binding decision. We overrule the sole assignment of error. We therefore affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., concurs.
DORRIAN, J., concurs in judgment only.

DORRIAN, J., concurring in judgment only.

{¶ 6} Given the precedent of this court, and based on the doctrine of stare decisis, I concur. However, consistent with my dissent in *State v. J.M.*, 10th Dist. No. 15AP-77, 2015-Ohio-2669, I note that I believe our precedent contradicts the plain language of the relevant statutes.

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