

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 15AP-1017 (C.P.C. No. 15EP-455)
Melody D. Taylor,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 30, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Michael P. Walton*, for appellant. **Argued:** *Michael P. Walton*.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Appellant, State of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas that granted the application of appellee, Melody D. Taylor, to seal the record of her misdemeanor conviction pursuant to R.C. 2953.32. Because appellee failed to comply with the statutory one-year waiting period following the date of final discharge of her sentence, the trial court erred when it granted her application. Therefore, we reverse.

Facts and Procedural History

{¶ 2} On July 8, 2014, appellee was convicted for attempted receiving stolen property, a first-degree misdemeanor in case No. 14CR-1084. In addition to restitution in the amount of \$834.57, appellee was sentenced to two months in jail. The jail sentence

was suspended "provided no new offenses for a period of One (1) year." The sentencing entry reflects that appellee paid restitution in full prior to sentencing.

{¶ 3} On June 24, 2015, appellee filed an application to seal the record of her conviction in case No. 14CR-1084 pursuant to R.C. 2953.32. The state filed an objection to appellee's application arguing that she was not yet eligible to apply for the sealing of her criminal record in this case. On October 30, 2015, the trial court held a brief hearing to address appellee's application and the state's objection. Neither appellee nor an attorney acting on her behalf attended the hearing and no evidence was presented. The trial court granted appellee's application.

{¶ 4} The state timely appealed and assigns the following errors for our review:

[1.] THE TRIAL COURT LACKED JURISDICTION TO GRANT THE APPLICATION TO SEAL THE RECORD OF CRIMINAL CONVICTION, AS DEFENDANT HAD NOT FULFILLED THE MANDATORY ONE-YEAR WAITING PERIOD.

[2.] THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING AN APPLICATION TO SEAL A FELONY CONVICTION WHERE THE DEFENDANT FAILED TO DEMONSTRATE ANY PARTICULAR NEED.

{¶ 5} In its first assignment of error, the state contends that the trial court erred in determining that appellee fulfilled the mandatory one-year waiting period after final discharge of her sentence for her misdemeanor criminal conviction. We agree.

{¶ 6} "The sealing of a criminal record is an act of grace created by the state, and so is a privilege, not a right." *State v. Gainey*, 10th Dist. No. 14AP-583, 2015-Ohio-3119, ¶ 9, citing *State v. Black*, 10th Dist. No. 14AP-338, 2014-Ohio-4827, ¶ 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 expungement only when all statutory requirements for eligibility are met. *State v. Brewer*, 10th Dist. No. 06AP-464, 2006-Ohio-6991, ¶ 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. *Black* at ¶ 6. An abuse of discretion connotes more than an error of law or judgment; it requires that the court's decision is "unreasonable, arbitrary or unconscionable." *State v. Norfolk*, 10th Dist. No. 04AP-614, 2005-Ohio-336, ¶ 4, quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

Whether an applicant is eligible for purposes of sealing a criminal record is an issue of law. *Gainey* at ¶ 7. We review questions of law de novo. *Black* at ¶ 6.

{¶ 7} Because appellee sought to seal the record of her misdemeanor conviction, she could apply for the sealing of the record at the expiration of one year after the final discharge of her sentence in that case. R.C. 2953.32(A)(1). In order to determine when this one-year waiting period expires, it is necessary to determine when appellee received a final discharge. "[T]he final discharge required by R.C. 2953.32(A)(1) does not occur until an offender satisfies all sentencing requirements." *State v. Aquirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, ¶ 28.

{¶ 8} Here, appellee's sentence in Case No. 14CR-1084 indicates that her two-month jail term was suspended provided she did not receive any new convictions for a period of one year. Appellee was sentenced on July 8, 2014. Therefore, at the earliest, appellee could not satisfy all the requirements of her sentence and obtain a final discharge until July 8, 2015. Appellee then had to wait one year after that date before she would be eligible to file an application to seal her criminal record for the misdemeanor conviction. Appellee filed her application to seal her criminal record on June 24, 2015. Because appellee filed her application prior to the expiration of the one-year waiting period following appellee's satisfaction of all the requirements of her sentence, appellee was not eligible to have her criminal record sealed. Therefore, the trial court erred when it granted her application, and we sustain the state's first assignment of error.

{¶ 9} Having sustained the state's first assignment of error, the second assignment of error is rendered moot. We reverse the judgment of the Franklin County Court of Common Pleas and remand the matter to the trial court with instructions to deny appellee's application.

Judgment reversed; cause remanded with instructions.

DORRIAN, J., concurs.

BRUNNER, J., concurs in judgment only.

BRUNNER, J., concurring in judgment only.

{¶ 10} I concur with the decision of the majority but would reach the decision based on several of our more recent decisions on the sealing of criminal records pursuant to R.C. 2953.31 and 2953.32. *See State v. Black*, 10th Dist. No. 15AP-539, 2015-Ohio-

4256, ¶ 1-14, (referenced in this concurring opinion as "*Black II*" so as not to confuse it with the *State v. Black*, 10th Dist. No. 14AP-338, 2014-Ohio-4827, cited by the majority); *State v. Schoenberger*, 10th Dist. No. 15AP-451, 2015-Ohio-4870.

{¶ 11} The majority emphasizes the "act of grace" nature of the sealing of criminal records, citing *State v. Gainey*, 10th Dist. No. 14AP-583, 2015-Ohio, 3119. While the statute, itself, may be characterized as such, the statutes in question, R.C. 2953.31 and 2953.32, upon the finding of jurisdiction and the making of favorable discretionary findings, mandate granting an application to seal criminal records. *Id.*¹ Several of our more recent decisions specifically state this and recognize the more contemporary changes in the criminal sealing statutes as a result of amendment pursuant to 2012 Am.Sub.S.B. No. 337. Therefore, I would conduct our de novo² review of the trial court's granting of Taylor's application according to two steps, consistent with those decisions. *Black II* at ¶ 6-10; *Schoenberger* at ¶ 6.

{¶ 12} The first step of our review calls for a determination of jurisdiction; that is, whether Taylor is an eligible offender. R.C. 2953.31(A) and 2953.32(C)(1). This issue is squarely addressed by the State's first assignment of error. I would specifically find that Taylor was not an eligible offender at the time of her application, and therefore, the trial court lacked jurisdiction. Based on this holding, we need make no further determinations on review.

{¶ 13} The trial court lacked jurisdiction to seal Taylor's records because a full year from the date of her discharge for her misdemeanor had not yet elapsed when she filed her application. Even though she paid her restitution before sentencing, an additional condition of her sentence was that she was required to have no new offenses for a one-year period from sentencing. This was also a condition of her two-month jail sentence being suspended. The question of what is her discharge date under these circumstances is

¹ "Except as provided in divisions (G), (H), or (I) of R.C. 2953.32, if the trial court finds that a person is eligible and using its discretion determines that the facts supporting the other required findings should be construed to favor sealing the records of conviction, the trial court '*shall* order all official records of the case that pertain to the conviction or bail forfeiture sealed.' (Emphasis added.) R.C. 2953.32(C)(2). The sealing statutes are remedial and are, therefore, to be construed liberally to promote their purpose and assist the parties in obtaining justice. *State ex rel. Gains v. Rossi*, 86 Ohio St.3d 620, 622, (1999), citing R.C. 1.11; *Barker v. State*, 62 Ohio St.2d 35, 42, (1980)." *Black II* at ¶ 10.

² "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; *Black II* at ¶ 8.

not before us (that is, whether under these circumstances, her discharge date is the date of her sentencing or whether it is two years from the date of her sentencing, because of the condition that one year had to elapse with no new convictions). Regardless, the statutes require that she wait to apply at least one year from the date of her discharge.

{¶ 14} I would rely on the *Gainey* case, cited by the majority, for its holding that an applicant for the sealing of criminal records does not obtain "final discharge" until the applicant has "served all components of his or her sentence." *Id.* at 11, citing *State v. Aguirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, ¶ 18; *State v. Hoover*, 10th Dist. No. 12AP-818, 2013-Ohio-3337, ¶ 7; *State v. Pettis*, 133 Ohio App.3d 618, 619 (8th Dist.1999); *Black* at ¶ 10; *State v. Jordan*, 10th Dist. No. 07AP-584, 2007-Ohio-6383, ¶ 7; *In re White*, 165 Ohio App.3d 288, 2006-Ohio-233, ¶ 7 (10th Dist.). In *Gainey*, the applicant for the sealing of records had not completed her community service at the time she filed her application for sealing of records. *Id.* at ¶ 5. We explained in *Gainey* that one of the requirements for sealing the records of a conviction is that the application is made at the expiration of the requisite period following final discharge.

{¶ 15} For the purposes of reviewing the trial court's grant of Taylor's application, not even one year had elapsed from the date of her sentencing when Taylor filed her application. Thus, I agree with the majority in sustaining the State's first assignment of error that the trial court lacked jurisdiction to grant Taylor's application to seal the record of her criminal conviction.

{¶ 16} I also concur with the majority that, because we sustain the State's first assignment of error, the second assignment of error is moot. I further concur that the judgment of the trial court should be reversed with the case remanded with instructions to deny Taylor's application.
