

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO/CITY OF FAIRFIELD,	:	
Plaintiff-Appellee,	:	CASE NOS. CA2014-08-176 CA2014-09-188
- vs -	:	<u>OPINION</u> 3/9/2015
SHANNON LONG,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAIRFIELD MUNICIPAL COURT
Case No. 12 CRB 00776

Stephen J. Wolterman, 530 Wessel Drive, Suite 2A, Fairfield, Ohio 45014, for plaintiff-appellee

Fred S. Miller, Baden & Jones Bldg., 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, Shannon Long, appeals a decision of the Fairfield Municipal Court denying her request to seal her record.

{¶ 2} Long was employed by Meijer as a cashier, and used her position as cashier to provide her friend with free groceries or lower prices on items. Long would void certain items, use coupons presented by other customers, or use fictitious coupons to further lower her friend's bill. Long was charged with theft for depriving Meijer of \$815.26.

{¶ 3} Long pled no contest to the charge, was convicted, and sentenced to 180 days. The trial court suspended 120 days, and Long served the other 60 days through electronic monitoring. The trial court also required Long to pay Meijer restitution, and serve three years of reporting probation with other requirements. Once Long abided by each of the trial court's orders, her probation was terminated early.

{¶ 4} Long then filed an application to have her record sealed, and a hearing was held on the matter. The trial court denied the motion without explanation or analysis. Long now appeals the trial court's denial of her motion to seal, raising the following assignment of error.

{¶ 5} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT REFUSED TO SEAL HER CONVICTION FOR THEFT.

{¶ 6} Long argues in her assignment of error that the trial court erred by denying her motion to seal.

{¶ 7} According to R.C. 2953.32, a convicted defendant may move to seal his or her record under certain circumstances. The statute requires the trial court to hold a hearing on the offender's motion, and to ask the appropriate probation department to complete a report on the offender's eligibility. R.C. 2953.32(C)(1) then requires the trial court to,

(a) Determine whether the applicant is an eligible offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. * * *;

(b) Determine whether criminal proceedings are pending against the applicant;

(c) If the applicant is an eligible offender who applies pursuant to division (A)(1) of this section, determine whether the applicant has been rehabilitated to the satisfaction of the court;

(d) If the prosecutor has filed an objection in accordance with division (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed against the legitimate needs, if any, of the government to maintain those records.

{¶ 8} We review a trial court's decision granting or denying an application to seal a criminal record for an abuse of discretion. *State v. Gross*, 12th Dist. Warren No. CA2010-03-030, 2011-Ohio-55, ¶ 4. An abuse of discretion connotes that the court's decision was unreasonable, arbitrary, or unconscionable, rather than a mere error of law or judgment. *Id.*

{¶ 9} While the statute does not require a trial court to make delineated findings of fact or conclusions of law, this court and others have held that in applying R.C. 2953.52, the trial court, at a minimum, should indicate on the record that it considered the requisite statutory factors before denying an offender's motion. *State v. Orth*, 12th Dist. Clermont No. CA93-03-020 (Dec. 27, 1993); *State v. Haas*, 6th Dist. Lucas No. L-04-1315, 2005-Ohio-4350. A discussion of the statutory factors or some indication as to how the factors were analyzed would comport with the language of the statute and also facilitate a meaningful review of the lower court's decision by an appellate court. *Gross* at ¶ 13.

{¶ 10} The record indicates that the trial court held a hearing and that the probation department prepared a report indicating that Long was eligible to have her record sealed. However, the trial court issued an entry denying Long's motion without any indication whatsoever that the trial court engaged in an analysis of the statutory factors required by R.C. 2953.32(C)(1). In its entirety, the trial court's entry states, "motion denied." The hearing also fails to provide this court with a basis for reviewing the trial court's decision for an abuse of discretion where the trial court did not address the statutory factors or indicate any weighing of evidence.

{¶ 11} Stated again, the trial court was required to determine whether Long was an eligible offender, determine whether criminal proceedings were pending against Long,

determine whether Long had been rehabilitated to the satisfaction of the court, consider the reasons why the state was objecting to the sealing, and weigh the interests of Long and the state in having Long's record sealed. While the trial court questioned Long as to why she wanted the sealing to occur, and how Long viewed her crimes against Meijer, the record does not indicate that the trial court weighed the evidence in a way that addressed each of the statutory factors.

{¶ 12} During the hearing, the trial court stated its belief that Long's theft of \$815.26 indicated that it was not Long's "first time at the rodeo," and that "future employers might want to know that you're the kind of person that if they put you in a position of trust, there is a likelihood that you will take from them." However, these statements do not indicate that the trial court considered the evidence of Long's rehabilitation, including that she had performed each of the court's orders, had paid restitution to Meijer, had completed a course on the repercussions of theft offenses, had not committed any crimes since her conviction, pursued and obtained college degrees, and had procured positive references from current employers.

{¶ 13} The trial court's only statement in regard to Long's rehabilitation was that it would take the matter under advisement, but there is no indication in the record that the trial court engaged in a weighing of the evidence as it applied to the statutory factors, or that the trial court considered the statutory factors before making its determination. In fact, the trial court's limited statements at the hearing did not address Long's rehabilitation evidence in any manner.

{¶ 14} The state argues that Long failed to fulfill her burden to prove that she was entitled to have her record sealed. However, we are unable to determine from the trial court's decision if it denied Long's motion because she failed to carry her burden where the trial court never articulated its reasoning for denying the motion. The state's brief asks this court to apply the facts to the statutory factors and reach a decision on our own as to whether

Long fulfilled her burden of proof. However, we are not permitted to do as much given that our standard of review is to determine whether the trial court abused its discretion in ruling upon Long's motion. To do otherwise would be to supplant our judgment for that of the trial court, something we are not permitted to do when reviewing a trial court's judgment for an abuse of discretion.

{¶ 15} While the trial court was not under a statutory obligation to set forth specific findings of fact or conclusions of law, the trial court should have indicated on the record that it considered the requisite statutory factors before denying Long's motion because without such a discussion of the statutory factors or some indication as to how the factors were analyzed, this court cannot conduct a meaningful review of the trial court's denial of Long's motion.

{¶ 16} Having found that the trial court abused its discretion in failing to address the statutory factors and render a decision that permits appellate review, we sustain Long's single assignment of error. On remand, the trial court shall address the statutory factors and issue an entry that provides this court with a meaningful basis for review.

{¶ 17} Judgment reversed and the cause is remanded for further proceedings.

HENDRICKSON and M. POWELL, JJ., concur.