

[Cite as *State v. Webb*, 2010-Ohio-5743.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 23892
vs. : T.C. CASE NO. 02CR2211
MARK L. WEBB : (Criminal Appeal from
Defendant-Appellant : Common Pleas Court)

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O P I N I O N

Rendered on the 24th day of November, 2010.

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GRADY, J.:

{¶1} Defendant, Mark Webb, appeals from a judgment denying
his application for expungement for a criminal conviction.

{¶2} On or about July 31, 2002, Defendant pled guilty to one
count of arson involving a motor vehicle valued at over five hundred

dollars, R.C. 2909.03(A)(1), a felony of the fourth degree. The trial court sentenced Defendant to five years of community control sanctions that included restitution. Defendant successfully completed his community control, which the trial court terminated on October 27, 2006.

{¶3} On December 23, 2009, Defendant filed an application to seal the records of his arson conviction pursuant to R.C. 2953.32. The State objected, arguing that because of the premeditation involved in committing that offense, the State has a legitimate interest in maintaining the records of Defendant's conviction. On January 26, 2010, the trial court denied Defendant's application for expungement. The court held that Defendant is not eligible for expungement because his offense, arson, is an offense of violence.

{¶4} Defendant timely appealed to this court from the trial court's decision denying his application for expungement.

ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED BY FINDING THAT THE APPELLANT WAS STATUTORILY INELIGIBLE TO HAVE HIS PRIOR CONVICTION FOR ARSON EXPUNGED.

{¶6} The sole issue, as Defendant acknowledges, is whether he is statutorily ineligible to have his conviction for arson expunged. That is purely an issue of law, and no hearing is

necessary to resolve that question. We review the matter de novo.

State v Futrall, 123 Ohio St.3d 498, 2009-Ohio-5590, at ¶6-7.

{¶ 7} Defendant filed his application for expungement pursuant to R.C. 2953.32. However, R.C. 2953.36, which exempts or bars certain convictions from being expunged provides, in relevant part:

{¶ 8} "Sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following:

{¶ 9} "(C) Convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section 2917.03 of the Revised Code and is not a violation of section 2903.13, 2917.01 or 2917.31 of

{¶ 10} the Revised Code that is a misdemeanor of the first degree." (Emphasis supplied).

{¶ 11} R.C. 2953.36(C) imposes a bar against expungement that applies to a conviction for any offense which is an "offense of violence" and which is neither the sole felony offense specified, R.C. 2917.03, nor one of the three first degree misdemeanor offenses, R.C. 2903.13, 2917.01, and 2917.31, that R.C. 2953.36(C) identifies.

{¶ 12} Arson in violation of R.C. 2909.03(A)(1) is a felony offense and is not a violation of R.C. 2917.03. Per R.C. 2953.36(C), Defendant's conviction for arson may not be expunged

if the offense of arson is an "offense of violence." Defendant concedes that R.C. 2901.01(A)(9) states: "'Offense of violence' means any of the following: (A) A violation of section . . . 2909.03" Defendant argues that, nevertheless, he should not be subject to the bar against expungement that R.C. 2953.36(C) imposes because that section "does not state that the 'offense of violence' is to be defined as set forth at R.C. 2901.01(A)(9)." Defendant relies on *State v. Hilbert* (2001), 145 Ohio App.3d 824, which held that the expungement statutes are to be liberally construed.

{¶ 13} The holding in *Hilbert* concerns application of the expungement statutes to the merits of the particular grounds for relief on which expungement is sought. That holding does not read into R.C. 2953.36(C) any ambiguity regarding what the term "offense of violence" means. R.C. 2901.01(A)(9) expressly states that it "means" a violation of a number of sections of the Revised Code, including R.C. 2909.03, the section defining the offense of which Defendant was convicted. It was not necessary to again state in the text of R.C. 2909.03 that it is an offense of violence. To do so would be superfluous.

{¶ 14} Defendant's assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, J., And FROELICH, J., concur.

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Hon. Barbara P. Gorman