

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-VS-	:	
	:	Case No. 09-CA-128
SETH H. MORRIS	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Criminal appeal from the Licking County Court of Common Pleas, Case No. 2004CR00178
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	May 27, 2010
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APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
KENNETH W. OSWALT	SCOTT MERGENTHALER
20 S. Second Street	366 E. Broad Street
Newark, OH 43055	Columbus, OH 43215

Gwin, P.J.

{¶1} Appellant, Seth H. Morris, appeals from the judgment of the Licking County Court of Common Pleas denying his application for sealing records of conviction pursuant to R.C. 2953.32. The plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE¹

{¶2} On March 26, 2004, a two count indictment was filed against defendant-appellant alleging violations of Breaking and Entering, R.C. 2911.13(A) and Vandalism, R.C. 2909.05(B) (1) (a) or (b); both felonies of the fifth degree. On August 11, 2004, appellant pled guilty to the indictment and was found guilty of both felony charges. The trial court sentenced appellant on September 20, 2004, to five years of community control, together with court costs and restitution. One year later, on September 28, 2005, the trial court ordered an early termination of appellant's community control.

{¶3} On March 13, 2009, appellant filed an Application for Sealing of Records of Conviction with the Licking County Court of Common Pleas. On or about March 26, 2009, the Prosecuting Attorney for Licking County filed and served his objection to appellant's application. Appellant filed and served a Reply Brief in support of the application on April 3, 2009.

{¶4} Pursuant to Judgment Entry dated October 9, 2009, the Licking County Common Pleas Court denied appellant's application for sealing of records.

{¶5} Appellant has timely appealed and presents one assignment of error for our review:

¹ A Statement of the Facts underlying Appellant's original conviction is unnecessary to our disposition of this appeal. Any facts needed to clarify the issues addressed in Appellant's assignment of error shall be contained therein.

{¶6} “I. THE TRIAL COURT ERRED, TO THE PREJUDICE OF DEFENDANT-APPELLANT, IN DENYING DEFENDANT-APPELLANT'S APPLICATION FOR SEALING OF RECORDS OF CONVICTION WHERE AMBIGUITY EXISTS IN THE LANGUAGE OF O.R.C. §2953.31(A) AS TO WHETHER A PRIOR OR SUBSEQUENT OUT-OF-STATE CONVICTION FOR OPERATION OF A MOTOR VEHICLE WHILE INTOXICATED SERVICE [SIC] AS A BAR TO SEALING OF RECORDS OF CONVICTION IN THE STATE OF OHIO.”

I.

{¶7} In his sole assignment of error, appellant contends that the trial court erred by denying the application to seal records. Appellant argues that the trial court erred in failing to grant his application for expungement because, despite the trial court's findings to the contrary, he met the statutory requirement of being a "first offender. We disagree. Appellant asserts that the language in R.C. 2953.31(A) is ambiguous as to whether an out-of-state conviction can be a bar to sealing the records of in-state convictions

{¶8} Because expungement is a privilege and not a right, a trial court shall only grant expungement to an applicant who meets all the requirements presented in R.C. 2953.32. *State v. Simon* (2000), 87 Ohio St.3d 531, 533, 2000- Ohio-474, 721 N.E.2d 1041. Pursuant to R.C. 2953.32(C), before ruling on a motion to seal a record of conviction, the court must determine whether the applicant is a first offender, whether criminal proceedings are pending against him or her, and whether the applicant has been rehabilitated to the court's satisfaction. Additionally, the court must consider any objections of the prosecutor and weigh the interests of the applicant in having the

records pertaining to his or her conviction sealed against the legitimate needs, if any, of the government to maintain those records. R.C. 2953.32(C). If the applicant fails to meet one of the requirements in R.C. 2953.32(C), the trial court must deny the motion for expungement. *State v. Krantz*, Cuyahoga App. No. 82439, 2003-Ohio-4568, ¶ 23.

{¶9} Our review of the record indicates that appellant is not a "first offender" for purposes of expunging his records.

{¶10} R.C. 2953.31(A) defines "first offender" as the following:

{¶11} "(A) 'First offender' means anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense 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."

{¶12} An appellate court reviews a trial court's decision to grant or deny a motion to seal records pursuant to R.C. 2953.52 for an abuse of discretion. *State v. Widder*, 146 Ohio App.3d 445, 766 N.E.2d 1018, 2001-Ohio-1521 at ¶ 6.

{¶13} In *State v. Sandlin* (1999), 86 Ohio St.3d 165, the Supreme Court of Ohio considered "whether a conviction for violation of R.C. 4511.19 which shall be considered a previous or subsequent conviction pursuant to R.C. 2953.31(A), precludes a defendant from satisfying the statutory definition of a 'first offender' contained in R.C. 2953.31(A) even if the conviction sought to be expunged resulted from or was connected with the R.C. 4511.19 violation." Id. at 167. (Footnote and internal quotation marks omitted). Construing a former version of R.C. 2953.31(A), the *Sandlin* court held that "R.C. 2953.31 and 2953.32 bar the sealing or expungement of the record of any other conviction when a person has been convicted of a violation of R.C. 4511.19, regardless of whether the R.C. 4511.19 conviction and the other conviction resulted from the same act." Id. at syllabus.

{¶14} The *Sandlin* court observed that its interpretation of former R.C. 2953.31 was consistent with the General Assembly's intent as expressed through the expungement statutes. Id. at 168. The *Sandlin* court explained, "[p]rior to 1984, R.C. 2953.31 defined the 'first offender' as 'anyone who had not been convicted of *any* offense, which must be construed to include traffic violations and drunk driving.'" Id., quoting *State v. Yackley* (1989), 43 Ohio St.3d 181, 182. (Emphasis sic.) Thus, according to *Sandlin*, "a relatively minor conviction (such as speeding) could act as a bar to expungement of another conviction." *Sandlin*, at 168, citing *Yackley*, at 182. However, as explained by the *Sandlin* court, "[w]hen the General Assembly amended the statute, it exempted minor traffic offenses from acting as such a bar, but it specified that a conviction under R.C. 4511.19 would continue to bar a conviction under another offense." Id. at 168, citing 140 Ohio Laws, Part I, 2382, 2383. The *Sandlin* court further

explained that "[t]he exemption found in R.C. 2953.31(A) and the specific bar to expungement of any convictions of DUI contained in R.C. 2953.36 show how seriously the General Assembly considers the offense of driving while under the influence of alcohol." *Id.* at 168.

{¶15} In the case at bar, appellant had a conviction in the State of Michigan for operation of a motor vehicle while under the influence in 2008. Clearly, pursuant to the holding in *Sandlin*, the trial court was not permitted under the statute to grant an expungement in this case. We fail to see the reason for a distinction between a conviction for operation of a motor vehicle while under the influence committed in this state and a conviction for a similar statute committed in another state. The statute is not ambiguous in that regard, and therefore there is nothing for this court to construe or interpret. *Fairborn v. DeDomenico* (1996), 114 Ohio App.3d 590, 683 N.E.2d 820. Courts may not construe words that need no construction or interpret language that needs no interpretation. *State v. Rose* (1914), 89 Ohio St. 383, 389, 106 N.E. 50, 52, cited in *State v. Taniguchi* (1995), 74 Ohio St.3d 154, 656 N.E.2d 1286. Under Ohio law, when a statute is unambiguous, a court must only read and follow it. *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, 36 O.O. 554, 78 N.E.2d 370; *Fairborn v. DeDomenico* (1996), 114 Ohio App.3d 590, 593, 683 N.E.2d 820, 822. We find nothing ambiguous in the terms of R.C. 2953.31 or R.C. 2953.36.

{¶16} Appellant's sole assignment of error is overruled.

{¶17} For the foregoing reasons, the judgment of the Licking County Court of Common Pleas is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

WSG:clw 0507

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

SETH H. MORRIS

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 09-CA-128

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Licking County Court of Common Pleas is affirmed. Costs to appellant.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE