

COURT OF APPEALS
HOLMES 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-17
KIRK STOTLER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Holmes County Court of Common Pleas, Case No. 97-CR-026

JUDGMENT: Vacated and Remanded

DATE OF JUDGMENT ENTRY: May 19, 2010

APPEARANCES:

For Plaintiff-Appellee

STEPHEN D. KNOWLING
HOLMES COUNTY PROSECUTOR
164 E. Jackson St.
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For Defendant-Appellant

JASON B. MIZAK
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Gwin, P.J.

{¶1} Appellant, Kirk Stotler, appeals from the judgment of the Holmes County Court of Common Pleas denying his motion for relief from weapons disability pursuant to R.C. 2923.14 or, in the alternative to seal the official records in his case pursuant to R.C. 2923.32. The plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE¹

{¶2} On or about May 16, 2007, appellant was found, guilty of Aggravated Assault, pursuant to R.C. 2903.12(A) (1). On or about July 17, 2009, the Court sentenced appellant to fifteen (15) months in prison. Appellant served his time in prison, was released and thereafter served parole, and has now been fully discharged.

{¶3} On June 19, 2009, appellant filed an “Application for Relief from Weapons Disability or in the Alternative, Application for Expungement and Sealing of Record.” On November 17, 2009, the Trial Court found that the application was not well taken, and was therefore dismissed.

{¶4} Appellant has timely appealed and presents two assignments of error for our review:

{¶5} “I. THE TRIAL COURT ERRED BY DISMISSING THE DEFENDANT KIRK STOTLER'S APPLICATION FOR RELIEF FROM WEAPONS DISABILITY OR IN THE ALTERNATIVE APPLICATION FOR EXPUNGEMENT AND SEALING OF RECORD WITHOUT HEARING.

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} “II. THE TRIAL COURT ERRED IN FINDING THAT THE DEFENDANT KIRK STOTLER IS NOT ENTITLED TO RELIEF FROM WEAPONS DISABILITY OR IN THE ALTERNATIVE EXPUNGEMENT AND SEALING OF RECORD.”

I.

{¶7} In its first assignment of error, appellant contends that the trial court erred by denying the application without first holding a hearing. We agree.

{¶8} An appellate court reviews a trial court's decision to grant or deny a motion to seal records pursuant to R.C. 2953.32 for an abuse of discretion. *State v. Widder*, 146 Ohio App. 3d 445, 766 N.E. 2d 1018, 2001-Ohio-1521 at ¶ 6.

{¶9} R.C. 2953.32(B) provides that “[u]pon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application.”

{¶10} “* * * The requirement of a hearing is mandatory and each application for expungement must be set for hearing.” *State v. Saltzer* (1984), 14 Ohio App.3d 394, 395; *State v. Minch*, Cuyahoga App. No. 87820, 2007- Ohio-158.

{¶11} Appellant further argues that the trial court abused its discretion by denying his application for relief from R.C. 2923.13's statutory disability to possess a firearm, without holding a hearing, as required by R.C. 2923.14(D).

{¶12} R.C. 2923.14(D) states:

{¶13} “Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

{¶14} “(1) The applicant has been fully discharged from imprisonment, probation, and parole, or, if he is under indictment, has been released on bail or recognizance;

{¶15} “(2) The applicant has led a law-abiding life since his discharge or release, and appears likely to continue to do so;

{¶16} “(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.”

{¶17} R.C. 2923.14(D) mandates that a trial court hold a hearing on any application for relief from disability imposed by virtue of R.C. 2923.13(A) (2) or (3). *State v. Hairston*, Cuyahoga App. No. 92716, 2009-Ohio-3382 at ¶16; *In re Hensley*, Warren App. No. CA2003-01-004, 2003-Ohio-4619 at ¶ 41.

{¶18} In the case at bar, the trial court summarily denied appellant’s motion for relief from weapons disability pursuant to R.C. 2923.14 or, in the alternative to seal the official records in his case pursuant to R.C. 2953.32 without conducting a hearing. The State concedes that this was error.

{¶19} Accordingly, appellant’s first assignment of error is sustained.

II.

{¶20} Pursuant to our disposition of appellant's first assignment of error, appellant’s second assignment of error is rendered moot under App. R. 12(A) (1) (c) and any discussion there under would be superfluous.

{¶21} Therefore, the judgment of the Holmes County Court of Common Pleas overruling appellant's motion for relief from weapons disability pursuant to R.C. 2923.14 or, in the alternative to seal the official records in his case pursuant to R.C.

2953.32 is vacated and this case is remanded for proceedings in accordance with our opinion and the law².

By Gwin, P.J.,
Hoffman, J., and
Wise, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

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² It should be noted however, that this court is not stating that appellant's application for relief has merit or should be granted. We are only stating that the lower court needs to provide appellant with a hearing in order to determine the merit of his application for relief.

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
KIRK STOTLER	:	
	:	
Defendant-Appellant	:	CASE NO. 09-CA-17

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Holmes County Court of Common Pleas overruling appellant's motion for relief from weapons disability pursuant to R.C. 2923.14 or, in the alternative to seal the official records in his case pursuant to R.C. 2953.32 is vacated and this case is remanded for proceedings in accordance with our opinion and the law. Costs to appellee.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE