

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
WILLIAMS COUNTY

State of Ohio

Court of Appeals No. WM-11-007

Appellee

Trial Court No. 09 CR 159

v.

Joseph C. Bates

**DECISION AND JUDGMENT**

Appellant

Decided: March 30, 2012

\* \* \* \* \*

Thomas A. Thompson, Williams County Prosecuting Attorney, and  
Katherine J. Middleton, Assistant Prosecuting Attorney, for appellee.

John C. Filkins for appellant.

\* \* \* \* \*

**SINGER, P.J.**

{¶ 1} Appellant appeals an order of the Williams County Court of Common Pleas, denying his petition to seal records and return personal property. Because we conclude that the trial court acted properly, we affirm.

{¶ 2} Appellant, Joseph C. Bates, is a Jerry City business operator who was alleged to have obtained the email addresses and other identifying information of a Bryan woman and her juvenile daughter. According to police, in 2009 appellant used this information to portray himself as the woman and her daughter on various internet web sites.

{¶ 3} On September 24, 2009, the Williams County Grand Jury handed down a 43 count indictment charging appellant with 38 counts of identity fraud, two counts of menacing by stalking, and one count each of disseminating matter harmful to juveniles, tampering with evidence and possession of criminal tools. Appellant pled not guilty, sought discovery and interposed several pretrial motions.

{¶ 4} On October 6, 2010, with leave of the court, the state entered a *nolle prosequi* of the September indictment, “\* \* \* without prejudice, by reason that the matter will be presented to a future Grand Jury for consideration of a new indictment.” Shortly thereafter, appellant brought a civil defamation suit against the Bryan woman and the investigating Bryan police officer.

{¶ 5} On February 25, 2011, appellant petitioned the court to seal the records of the criminal case and return a laptop computer that had been seized from him in execution of a search warrant. Initially, the state did not oppose sealing the records, but did oppose return of the computer on the ground that it was evidence in a continuing investigation. At the hearing on appellant’s petition, however, the state altered its

position, opposing both return of the computer and sealing of the records. The state argued that sealing the records of the criminal case might give appellant an advantage in the civil case. Appellant argued that the record should be sealed to protect his business interests and that the state had deprived him of the use of his computer for long enough.

{¶ 6} On consideration, the trial court found appellant's petition not well-taken and denied appellant's motion. From this judgment, appellant now brings this appeal. Appellant sets forth a single assignment of error:

The trial court erred when it dismissed appellant's petition to seal the record of the dismissed indictment and when it refused to return appellant's property.

{¶ 7} R.C. 2953.52(A)(1) provides that any person who is a named defendant in a dismissed complaint or indictment may apply to the court to seal the official records in his or her case. At a hearing on the application, the court must determine whether the application is timely, that there are no criminal actions pending against the applicant and that the applicant's interests outweigh the legitimate needs, if any, of the government to maintain those records. R.C. 2953.52(B)(2)(b),(c), and (d), *State v. Baker*, 6th Dist. App. No. OT-09-016, 2010-Ohio-933, ¶ 6.

{¶ 8} The decision of whether or not to seal criminal records pursuant to R.C. 2953.52 rests in the sound discretion of the court and will not be disturbed absent an abuse of that discretion. *Id.* at ¶ 7, citing *State v. Haney*, 70 Ohio App.3d 135, 138, 590 N.E.2d 445 (10th Dist.1991). An abuse of discretion is more than an error of law or a

mistake of judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} Appellant argues that the trial court must weigh the interest articulated by the applicant and the interest articulated by the state. Only if the legitimate interest articulated by the state is greater than that of the applicant may the court deny the application to seal. Moreover, appellant insists, citing *In re Dumas*, 10th Dist. No. 06AP-1162, 2007-Ohio-3621, ¶ 8, the court is required to set forth its findings. According to appellant, the state failed to articulate any legitimate reason to deny the application to seal and that the court's findings lacked specificity. As a result, appellant maintains, he was entitled to have the record of his criminal case sealed.

{¶ 10} The state disagrees. The state denies that a court is required, in weighing competing interests, to specify exactly what interests it deems more compelling. As to the state's articulated interests, the state suggests it would be inherently unfair to deprive access to the records to defendants in a civil defamation suit. Additionally, the state points out that the case against appellant was dismissed without prejudice with an expressly stated intention by the state to re-indict him.

{¶ 11} With respect to a requirement of specificity in the judgment entry, we find nothing in *Dumas* or the other cases that mandates the degree of detail that appellant suggests. The paragraph cited from *Dumas* states that it is an abuse of discretion not to

balance the requisite factors, but makes no rule concerning the degree to which such balancing is reflected in the judgment entry.

{¶ 12} The state attaches to its brief a copy of a new indictment subsequently brought against appellant. This is not a part of the record in this proceeding and may not be considered. *State v. Ishmail*, 54 Ohio St. 2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. There is, however, ample documentation in the record that it was the state's intent to resubmit appellant's case to the grand jury. That intent, although not constituting pending criminal proceedings, *see State v. Z. J.*, 8th Dist. No. 87912, 2007-Ohio-552, ¶ 17, is a state interest that the trial court may legitimately weigh in balancing the interests of the parties. The same is true of the potential effect that sealing the record might have on civil litigation. Given these valid state interests competing with appellant's interest in privacy, we cannot say that the trial court abused its discretion when it concluded that the state's interest in maintaining the records outweighed appellant's interest in sealing these records.

{¶ 13} Concerning the return of appellant's laptop computer, this item was seized pursuant to a search warrant properly issued in a criminal investigation. R.C. 2981.11(A)(1) provides that,

Any property that has been \* \* \* seized pursuant to a search warrant  
\* \* \* and that is in the custody of a law enforcement agency shall be kept  
safely by the agency, pending the time it no longer is needed as evidence or  
for another lawful purpose \* \* \*.

{¶ 14} Although this provision is part of the law of forfeiture, it is applicable to any property seized in the execution of a search warrant and held prior to its final disposition. It also sets circumstances during which such property should be held. If an item is potentially needed for evidence or for some other lawful purpose, it may be held. Alternatively, if the item is no longer needed, it may be returned or otherwise disposed.

{¶ 15} Logically, items being held as part of a criminal investigation are being held to be used as evidence or for the lawful purpose of assisting the investigation. If, during consideration of a motion for return of property, the court properly finds that seized property is being held for evidence or as part of an ongoing investigation, it may properly deny the motion.

{¶ 16} In this matter, the state advised the court that the computer at issue was being held for evidence and to aid an ongoing investigation. This assertion was essentially unchallenged. Accordingly, the court was within its discretion in denying appellant's application for return of the computer.

{¶ 17} Appellant fails to show error in either prong of his assignment of error, which is found not well-taken.

{¶ 18} On consideration whereof, the judgment of the Williams County Court of Common Pleas is affirmed. It is ordered that appellant pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

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| <p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:<br/><a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p> |
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