

[Cite as *Maple Heights v. Taylor*, 2002-Ohio-1412.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 79762

CITY OF MAPLE HEIGHTS	:	
	:	JOURNAL ENTRY
PLAINTIFF-APPELLEE	:	
	:	AND
v.	:	
	:	OPINION
ROBERT W. TAYLOR	:	
	:	
DEFENDANT-APPELLANT	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	MARCH 28, 2002
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CHARACTER OF PROCEEDING:	Criminal appeal from Garfield Heights Municipal Court, Case No. 96 CRB 06142.
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JUDGMENT:	AFFIRMED.
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DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-appellee:	MICHAEL G. CIARAVINO, Esq. MYRA SEVERYN, Esq. City of Maple Heights Prosecutor 5005 Rockside Road Crown Centre - Suite 600 Independence, Ohio 44131-2155
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For Defendant-appellant:	PATRICIA KOCH WINDHAM, Esq. Assistant Public Defender 1200 West Third Street, N.W. 100 Lakeside Place Cleveland, Ohio 44113
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SWEENEY, JAMES D., P.J.:

{¶1} Defendant-appellant Robert Taylor appeals from the vacation of an order granting his motion for expungement. For the reasons adduced below, we affirm.

{¶2} A review of the record on appeal indicates that appellant, upon entering a plea of guilty with the municipal trial court, was convicted on September 23, 1996 of one count of domestic violence in violation of R.C. 2919.25(A), a misdemeanor of the first degree. Thereafter, appellant completed his sentence and paid the assessed fine.

{¶3} On March 2, 2000, appellant, acting *pro se*, filed a motion for expungement with the trial court. Subsequent to a hearing on March 22, 2000, expungement was granted on May 4, 2000 (journalized on May 18, 2000). This order of expungement was endorsed as approved by the municipal prosecutor.

{¶4} On January 3, 2001, the municipal prosecutor filed a motion to vacate the order of expungement, arguing that the underlying domestic violence conviction is not amenable to expungement, which is a remedial measure, because the underlying offense is an offense of violence. See R.C. 2919.25(A) and 2953.36(C). Thus, it was argued that the order of expungement was agreed to, and entered, in error, and was void *ab initio* due to the appellant being statutorily ineligible for expungement relief.

{¶5} The county public defender filed a brief in opposition on March 27, 2001 to the motion to vacate arguing that the version of R.C. 2953.36(C) relied upon by the prosecution was amended

effective March 23, 2000 (before the order of expungement was journalized). It was this amendment which excluded offenses of violence which are misdemeanors of the first degree or a felony from being expunged. The public defender argued that the amended version of R.C. 2953.36(C), which he conceded was a remedial statute, could not be applied retroactively to appellant because the General Assembly did not affirmatively provide that the statute being amended was to apply to past events and/or pending cases.

{¶6} On April 11, 2001, without benefit of an oral hearing, the municipal court granted the motion to vacate the order of expungement. Appellant filed a timely notice of appeal on May 10, 2001 from this order of April 11. Two assignments of error, which will be discussed jointly, are presented for review. These assignments provide:

{¶7} THE GARFIELD HEIGHTS MUNICIPAL COURT HAD THE AUTHORITY TO GRANT APPELLANT'S REQUEST FOR AN EXPUNGEMENT WHEN SUCH REQUEST BROUGHT THE ISSUE BEFORE THE COURT PRIOR TO THE EFFECTIVE ENACTMENT OF THE AMENDED R.C. 2953.36.

{¶8} THE GARFIELD HEIGHTS MUNICIPAL COURT VIOLATED APPELLANT'S CONSTITUTIONAL RIGHT AGAINST THE RETROSPECTIVE APPLICATION OF R.C. 2953.36.

{¶9} In *City of Euclid v. Sattler* (Cuyahoga, Apr. 5, 2001), 142 Ohio App.3d 538, 756 N.E.2d 201, this court addressed a remarkably similar factual pattern to the one *sub judice*. Also see *City of South Euclid v. Drago* (Apr. 19, 2001), Cuyahoga App. No. 79030, unreported, 2001 Ohio App. LEXIS 1783. Sattler, like the appellant herein, was convicted of domestic violence, a misdemeanor of the first degree, in a municipal court. There is no indication

that Sattler did not complete his sentence. Sattler filed for expungement approximately six weeks prior to the amendment of R.C. 2953.36, which amendment would preclude his expungement because of his conviction for a first degree misdemeanor act of violence. Sattler's motion for expungement was denied approximately seven weeks after the amendment of R.C. 2953.36 based on the change in the law which now precluded expungement relief to Sattler.

{¶10} Sattler, like the appellant herein, argued the same general issue presented herein, namely, that he filed his motion for expungement prior to the amendment of the statute and, therefore, the trial court erred in denying his motion for expungement by improperly applying retrospectively the amended R.C. 2953.36.

{¶11} In *Sattler*, we adopted the holding of *State v. Heaton* (1995), 108 Ohio App.3d 38, 669 N.E.2d 885, and found the appellant's argument to be without merit because expungement relief, a remedial measure, was, irrespective of when the motion for expungement was filed, exempt from the constitutional prohibition on retroactivity. Thus, "[B]ecause appellant never had a right to an expungement, the trial court did not violate the rule against retroactive application of the law." 142 Ohio App.3d at 541.

{¶12} Assignments overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Garfield Heights Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, J., CONCURS;

ANNE L. KILBANE, J., CONCURS WITH
SEPARATE CONCURRING OPINION.

JAMES D. SWEENEY
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

ANNE L. KILBANE, J., CONCURRING SEPARATELY:

{¶13} On this appeal from an order of Garfield Heights Municipal Judge Deborah Nicastro unsealing the criminal record of Robert Taylor, I concur but write separately to explain that, contained in the record is a court-generated card containing the following information in the judge's handwriting, under the caption "PROCEEDINGS":

{¶14} 19273 Stafford MAH 44137 [Taylor's address]

{¶15} 3-22-00 Motion for expungement granted Clerk

{¶16} to prepare entry. [judge's initials]

{¶17} The pre-printed "Order Expunging Record," however, was not filled in by the Clerk (presumably Clerk of Courts) until May 4, 2000, thereafter signed by *both* the judge and the Maple Heights Prosecutor and then journalized May 18, 2000. Had the form been completed, signed and journalized on March 22, 2000, the amendment effective March 23, 2000, would not have prevented the sealing of Taylor's record.