

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92018

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

A.H.

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-433861

BEFORE: Jones, J., Rocco, P.J., and Dyke, J.

RELEASED: July 16, 2009

JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, A.H., appeals the trial court's denial of her motion to seal her arrest record.¹ Finding merit to the appeal, we reverse and remand.

{¶ 2} In 2003, A.H. was charged with menacing by stalking. Later that year, the State recommended that the court dismiss the case and the trial court dismissed the indictment. In 2006, A.H. filed a motion to seal her arrest record pursuant to R.C. 2953.52. The State filed a brief in opposition and the trial court denied A.H.'s motion without holding a hearing.

{¶ 3} A.H. now appeals, raising two assignments of error for our review. In her first assignment of error, A.H. argues that the trial court erred in ruling on her motion for expungement without first holding a hearing. In the second assignment of error, A.H. claims the trial court erred because there is no indication the court considered the requisite statutory factors.

{¶ 4} First, A.H. requests that the court's ruling be reversed and remanded because the court failed to hold a hearing as required by statute.

{¶ 5} The sealing of records is governed by R.C. 2953.52, which provides that "[a]ny person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal [her] official records in the case." R.C. 2953.52(A)(1). When such a person files an application to have her records sealed, "the court shall

¹The anonymity of the defendant is preserved in accordance with this court's Guidelines for Sealing Records on Criminal Appeals.

set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application.” R.C. 2953.52(B)(1).

{¶ 6} As it pertains to this case, the statute further mandates the trial court to determine the following: (1) whether the indictment in the case was dismissed, and a period of two years or a longer period has expired; (2) determine whether criminal proceedings are pending against the person; (3) if the State filed an objection, consider the reasons against granting the application specified by the State in the objection; and (4) weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records. R.C. 2953.52(B)(2)(a)-(d).

{¶ 7} The legislature’s use of the word “shall” in R.C. 2953.52(A)(1) signifies that a hearing on the application is mandatory; a trial court must hold an oral hearing prior to issuing a decision on an application for sealing of records. See *State v. Davis*, 175 Ohio App.3d 318, 886 N.E.2d 916, 2008-Ohio-753; *State v. Stoica*, Franklin App. No. 06AP-176, 2006-Ohio-4990.

{¶ 8} In the instant case, the State concedes that no hearing was held as mandated by the statute and agrees that the case must be remanded.

{¶ 9} Therefore, this matter is reversed and remanded with instructions that a hearing be scheduled with the appropriate notice to all parties. Upon remand, the trial court shall determine whether the sealing of A.H.’s arrest record is proper in this case.

{¶ 10} Accordingly, the first assignment of error is sustained.

{¶ 11} In the second assignment of error, A.H. argues that the trial court erred in denying her motion without considering the requisite statutory factors. Because the trial court failed to hold a hearing, its ruling denying A.H.'s motion is invalid. As a result, the second assignment of error is not ripe for our review. Therefore, the second assignment of error is overruled.

{¶ 12} Judgment is reversed, and case is remanded.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

LARRY A. JONES, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR