[Cite as *State v. C.E.*, 2010-Ohio-1743.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 92516 and 92517

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

C.E.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-405860-A and CR-391318-B

BEFORE: Dyke, J., Gallagher, A.J., and Stewart, J.

RELEASED: April 22, 2010

JOURNALIZED:

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22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

ANN DYKE, J.:

{¶ 1} Defendant-appellant, C.E.[1] ("appellant"), appeals the trial court's judgment denying her application for expungement. For the reasons set forth below, we affirm.

{¶ 2} On August 22, 2000, in Cuyahoga County Court of Common Pleas Case No. CR-391318, appellant pled guilty to one count of theft as a result of a check kiting scheme that occurred in February of 2000. As admitted by appellant, she and Robin Pruitt opened accounts by depositing a check at a bank located in Brecksville, Ohio. Soon thereafter, but before the deposited check cleared, appellant wrote checks and withdrew cash against the account. Later, the deposited check was returned for insufficient funds and the account was closed. As a result of appellant's guilty plea in this case, the court sentenced her to two years of community control sanctions and ordered her to pay full restitution.

{¶ 3} On July 9, 2001, in Cuyahoga County Court of Common Pleas Case No. CR-405860, appellant pled guilty to grand theft, theft, forgery, and taking an identity of another. As acknowledged by appellant, these charges arose after she and Pruitt created a fictitious company as well as a fake state of Ohio identification card in the name of Tawana Moore in order to obtain a vehicle from a car dealership and a couch from a furniture store in the city of North Olmsted,

[1] The anonymity of appellant is preserved in accordance with this court's Guidelines for Sealing Records on Criminal Appeals and, in the exercise of caution, in the event of Supreme Court review.

Ohio. As a result of her actions, the trial court sentenced her on August 20, 2001 to two years community control sanctions and ordered her to pay restitution.

{¶ 4} On June 25, 2008, appellant filed an application for sealing of the records of conviction pursuant to R.C. 2953.32(A)(1) in both cases, CR-291318 and 405860. The court held a hearing concerning this motion on October 29, 2008 and afterwards denied her application.

{¶ 5} Appellant now appeals and presents the following three assignments of error for our review:

{¶ 6} "I. The Trial Court improperly determined appellant was ineligible for expungement, relying on an erroneously narrow interpretation that appellant could not meet the requirement of having no prior offenses as the crimes were indicted and plead at different times, though the crimes involved common defendants, common criminal elements and occurred within three months of each other."

{¶ 7} "II. The appellant should not be barred from pursuing expungement because the initial Trial Court failed to treat the criminal activity as one single criminal enterprise or a single criminal conspiracy."

{¶ 8} "III. The Trial Court abused its discretion in failing to find a basis for expungement, when those completing prison terms face daunting employment and societal reentry challenges."

{¶ 9} In all three assignments of error, appellant argues that the trial court erred in failing to grant her application for expungement because, despite the trial

court's findings to the contrary, she met the statutory requirement of being a "first offender." Appellant argues that while she was convicted in two cases, the cases should be considered in conjunction with each other and one criminal act because the two crimes involved the same criminal conduct, the same co-defendant, were committed within a three month period, and each conviction was addressed through community control sanctions, which were applied concurrently. For the reasons that follow, we are unpersuaded by appellant's argument.

{¶ 10} 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.

{¶ 11} Our review of the record indicates that appellant is not a "first

offender" for purposes of expunging her records in Case Nos. CR-391318 and CR-405860. R.C. 2953.31(A) defines "first offender" as the following:

{¶ 12} "(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."

{¶ 13} Whether an applicant is a first offender is a question of law to be reviewed de novo by an appellate court. *State v. McGinnis* (1993), 90 Ohio App.3d 479, 481, 629 N.E.2d 1084.

{¶ 14} For purposes of determining whether an applicant is a "first offender," offenses that are logically or coherently linked are considered connected and thus, one criminal act. Id. at 482. The theory is that individuals with a single criminal infraction may be rehabilitated. *State v. Petrou* (1984), 13 Ohio App.3d

456, 456, 469 N.E.2d 974; *State v. Derugen* (1996), 110 Ohio App.3d 408, 411, 674 N.E.2d 719. On the other hand, this court has routinely held that "separate but similar criminal acts, at different times, involving different victims, even if temporally related, do not convert separate convictions into a single offense for purposes of expungement." *State v. Gerber*, Cuyahoga App. No. 87351, 2006-Ohio-5328, ¶12. See, also, *State v. Iwanyckyj* (Oct. 14, 1993), Cuyahoga App. No. 65462.

{¶ 15} In *State v. Alandi* (Nov. 15, 1990), Cuyahoga App. No. 59735, Alandi pled guilty to three separate counts of forgery and one count of theft. In that case, Alandi fraudulently reported the loss of travelers checks but later forged those "lost" checks at different stores. Id. The court determined that these crimes were not a single course of conduct and Alandi was not a "first offender." Id. The court reasoned that the theft occurred three weeks before the forgeries and each forgery was committed at three different establishments. Id.

{¶ 16} Likewise, in *State v. Burks* (Aug. 22, 1991), Cuyahoga App. No. 59040, Burks was convicted of five counts of receiving stolen property after removing food stamps from the mail that were intended for different individuals and then redeeming those stamps. The court determined that Burks was not a "first offender" and was not eligible for expungement because these counts resulted from five distinct transactions, taking place at different times, and each involved different victims. Id.

{¶ 17} Finally, in *State v. Bradford* (1998), 129 Ohio App.3d 128, 717 N.E.2d

376, the court of appeals affirmed the trial court's denial of Bradford's application for expungement, finding he was not a "first offender." Id. at 130. In that case, Bradford stole a credit card one day and the next day used the card to make various purchases. Id. In reaching its conclusion, the court reasoned that the convictions could not be considered one for expungement purposes when Bradford committed separate offenses — theft and forgery, over the course of two days, and in three distinct locations. Id.

{¶ 18} In this case, appellant was not a "first offender" because she was convicted of separate and unrelated offenses that occurred in separate cities located miles apart and involved numerous victims. In this instance, the record demonstrates that appellant, in two different criminal cases, Case Nos. CR-391318 and CR-405860, pled guilty to two counts of theft and one count of grant theft, forgery, and taking an identity of another. Each of these five convictions are very different and separate crimes that appellant acknowledges occurred on different days. Additionally, the crimes involved different victims and were committed in different locales. The victim of the theft offense in Case No. CR-391318 was a bank that was located in Brecksville, Ohio. In Case No. CR-405860, there were three separate victims, the furniture store, the car dealership, and Tawana Moore, the victim of the identity theft. The furniture store and car dealership were located in North Olmsted, a city located about 20 miles from Brecksville. Accordingly, we cannot find that these two cases are related and may be considered as one for purposes of determining whether

appellant is a "first offender" under R.C. 2953.31. As such, we overrule appellant's assignments of error and affirm the judgment of the lower court denying her application for expungement.

Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas 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.

ANN DYKE, JUDGE

SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR