[Cite as *State v. Derison*, 2011-Ohio-1570.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95225

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LESLIE DERISON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-469523

BEFORE: Celebrezze, J., Boyle, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: March 31, 2011

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Leslie Derison, appeals the denial of her motion to expunge her 2006 conviction for assault against a police officer. After a thorough review of the record and law, we affirm the determination of the trial court.

{¶ 2} Appellant, a resident of New Jersey, is a season-ticket-holding fan of the New York Yankees. Being a die-hard fan, she traveled to Cleveland with her husband to watch the Yankees battle the Indians on August 4, 2005. While at the game, appellant had too much to drink and

was raucously supporting her Yankees. She was ringing a cow bell and shouting. Appellant was advised by security to settle down, stop using offensive language, and stop ringing her cow bell. Appellant refused and was asked to leave. She refused to leave, and the Cleveland police were called to escort her out. Like all good Yankees fans, she refused to miss a minute of the game, and a struggle ensued between appellant and the police. Appellant kicked, punched, and even bit an officer's leg. She was then arrested and charged with three counts of assaulting a police officer. Upon sobering up, appellant was shocked to learn what she had done. She had never been in trouble with the law before and was immediately contrite.

{¶ 3} On December 12, 2005, appellant agreed to plead guilty to one count of assaulting a police officer in violation of R.C. 2903.13. She received one year of community control, which she completed without incident.

{¶ 4} On January 3, 2010, appellant filed a motion to have this conviction expunged pursuant to R.C. 2953.32(A)(1). The state filed an objection, and the matter proceeding to a hearing. At the conclusion of the brief hearing, the court advised appellant that a decision would be forthcoming. On May 18, 2010, the trial court issued an entry denying appellant's motion without explanation. Appellant then filed the instant appeal raising two assignments of error.

Law and Analysis

Offense of Violence

{¶ 5} In her first assigned error, appellant argues that "[t]he trial court erred by failing to consider the mandatory factors at the expungement hearing and failed to make the necessary findings in its journal entry." Appellant also argues in her second error that "[t]he court's denial of [her] motion for expungement was an abuse of discretion." Because appellant was not eligible for expungement, these errors will be addressed together.

{¶ 6} R.C. 2953.32(A)(1) sets forth a method whereby persons convicted of certain crimes may have the records of those convictions sealed if they meet certain criteria. This statute states, in part, "a first offender may apply to the sentencing court if convicted in this state * * * for the sealing of the conviction record. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor." Once an application for expungement is made, this statute directs the trial court to "(a) determine whether the applicant is a first offender * * *; (b) [d]etermine whether criminal proceedings are pending against the applicant; (c) determine whether the applicant has been rehabilitated to the satisfaction of the court; (d) consider the reasons against granting the application specified by the prosecutor in the objection; (e) [w]eigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed

against the legitimate needs, if any, of the government to maintain those records."

{¶ 7} While the state raised objections based only on their interest in maintaining the records because of the nature of the offense and the fact that the victims were police officers, a more compelling argument would have been that appellant is not eligible for expungement.

{¶ 8} R.C. 2953.36(C) states, "Sections 2953.31 to 2953.35 of the Revised Code do not apply to * * * [c]onvictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section 2917.03 [riot] of the Revised Code and is not a violation of section 2903.13 [assault], 2917.01[inciting violence] or 2917.31 [inducing panic] of the Revised Code that is a misdemeanor of the first degree[.]"

{¶ 9} Assault is defined as an offense of violence in R.C. 2901.01(A)(9)(a). Therefore, according to R.C. 2953.36(C), in order for appellant to qualify for expungement, her conviction must be a misdemeanor of the first degree. While this statutory provision is not the paragon of clarity as this court has previously recognized,[1] we are bound by the rules of statutory construction to give the words used their full effect. *State v. Wilson*, 77 Ohio St.3d 334, 336-337, 1997-Ohio-35, 673 N.E.2d 1347. As we

noted in *El-Zant*, "subsection (C) * * * conjunctively excepts four specific violent offenses from the general preclusion: riot (R.C. 2917.03), and misdemeanor violations of assault (R.C. 2903.13), inciting violence (R.C. 2917.01), and inducing panic (R.C. 2917.31)." Id. at 547.

{¶ 10} Here, because assault of a police officer is a fourth degree felony,[2] the specific exceptions found in R.C. 2953.36(C) to the general rule precluding expungement of offenses of violence does not apply. In *State v. Ventura*, Butler App. No. CA2005-03-079, 2005-Ohio-5048, ¶12, the Twelfth District, agreed with this interpretation. Further, if this interpretation were incorrect, then the legislature is free to amend this section to clarify its meaning. The fact that it has amended R.C. 2953.36(C) after the decisions in *El-Zant* and *Ventura,* but left it as is, bolsters this court's interpretation. See former R.C. 2953.36; Am.S.B. No. 18.

{¶ 11} The trial court did not ignore any mandatory factors or abuse its discretion as appellant argues. Because appellant was not eligible for expungement, the trial court committed no error in denying her expungement request.

Judgment affirmed.

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

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[1] *Euclid v. El-Zant* (2001), 143 Ohio App.3d 545, 758 N.E.2d 700.

[2] R.C. 2903.13(C)(3).

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.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and
JAMES J. SWEENEY, J., CONCUR