

[Cite as *State v. Kasulaitis*, 2011-Ohio-852.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 95423

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STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

MICHAEL KASULAITIS

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-385187

**BEFORE:** Stewart, J., Blackmon, P.J., and Jones, J.

**RELEASED AND JOURNALIZED:** February 24, 2011

**ATTORNEYS FOR APPELLANT**

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MELODY J. STEWART, J.:

{¶ 1} Plaintiff-appellant, the state of Ohio, appeals the judgment of the Cuyahoga County Court of Common Pleas granting defendant-appellee Michael Kasulaitis's, application for expungement and ordering his records sealed. Finding merit to the appeal, we reverse and remand.

{¶ 2} Kasulaitis did not file a brief with this court; therefore, we can accept the state's facts and issues of this case as correct and reverse the judgment if the state's brief reasonably appears to sustain that action.

App.R. 18(C); *State v. Hann*, 173 Ohio App.3d 716, 2007-Ohio-89240, 880 N.E.2d 148.

{¶ 3} In March 2000, Kasulaitis pled guilty to a violation of certain drug laws.<sup>1</sup> On June 28, 2010, the trial court granted Kasulaitis's application for sealing of the records without first holding a hearing on the matter. It is from this judgment that the state appeals and raises the following assignment of error:

{¶ 4} "A trial court errs in ruling on a motion for expungement filed pursuant to R.C. 2953.32 without first holding a hearing. R.C. 2953.32(B); *State v. Hamilton* (1996), 75 Ohio St.3d 636; *State v. Saltzer* (1984), 14 Ohio App.3d 394, followed."

{¶ 5} The state argues that the trial court erred by failing to hold a hearing on Kasulaitis's motion for expungement and, therefore, the matter must be reversed and remanded for the trial court to hold the hearing required by statute. We find this argument to be well taken.

{¶ 6} The Ohio Supreme Court has held that "expungement is an act of grace created by the state,' and so is a privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533, 2000-Ohio-474, 721 N.E.2d 1041, quoting, *State v.*

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<sup>1</sup>Because the record is currently sealed in the underlying case, we refer to the charge in general terms only.

*Hamilton* (1996), 75 Ohio St.3d 636, 639, 665 N.E.2d 669. “Moreover, the government possesses a substantial interest in ensuring that expungement is granted only to those who are eligible.” *Hamilton*, 75 Ohio St.3d at 640.

{¶ 7} To protect that substantial interest, the statute authorizing expungement mandates there first be a hearing with notice to the state. Under R.C. 2953.32(B), “[u]pon the filing of the application, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for hearing.”

{¶ 8} The state claims that it did not receive an expungement report from the probation department, that Kasulaitis does not meet the eligibility requirements for expungement, and that the trial court failed to hold a hearing prior to granting expungement. This court has consistently held that a hearing on an expungement motion is mandatory, and failure to hold one is cause for reversal and remand. *Hann*, 173 Ohio App.3d at 718, citing, *State v. Nowden*, 8th Dist. No. 88605, 2007-Ohio-2914; *State v. Poston*, 8th Dist. No. 87216, 2006-Ohio-4125; *State v. Powers*, 8th Dist. No. 84416, 2004-Ohio-7021; *State v. Davis*, 8th Dist. No. 81940, 2003-Ohio-1363; *State v. Rebello* (May 4, 2000), 8th Dist. No. 77076; *State v. Saltzer* (1984), 14 Ohio App.3d 394, 395, 471 N.E.2d 872.

{¶ 9} In the instant case, the June 28, 2010 journal entry states as follows:

{¶ 10} “This matter came to be heard upon the application for expungement of applicant’s conviction under R.C. 2953.32.

{¶ 11} “The court has given notice of this hearing to the prosecutor for the case and the probation department and a report has been received from the probation department as to the defendant.

{¶ 12} “The court has considered the evidence and the reasons against granting the application specified in the objection, if any, filed by the prosecutor.”

{¶ 13} Although the entry states that the matter was “heard,” the record before us on appeal gives no indication of a hearing date or that the parties were in court and a formal hearing held.

{¶ 14} Therefore, the judgment is reversed and the cause remanded with instructions to the trial court to schedule a hearing on the matter, provide notice to all parties, and hold the hearing to determine whether expungement is proper in this case.

{¶ 15} Accordingly, the sole assignment of error is sustained.

{¶ 16} This cause is reversed and remanded for proceedings consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

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MELODY J. STEWART, JUDGE

PATRICIA ANN BLACKMON, P.J., and  
LARRY A. JONES, J., CONCUR