[Cite as *In re C.L.*, 2017-Ohio-7253.]

[Please see vacated opinion at 2017-Ohio-2654.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104661

IN RE: C.L.
A MINOR CHILD

[Appeal by the State of Ohio]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL 04106908

BEFORE: E.T. Gallagher, J., McCormack, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: August 17, 2017

ATTORNEYS FOR APPELLANT

Michael C. O'Malley
Cuyahoga County Prosecutor

BY: Theodore Parran
Gregory J. Ochocki
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Mark Stanton
Cuyahoga County Public Defender

BY: Cullen Sweeney
John T. Martin
Assistant Public Defenders
Courthouse Square, Suite 200
310 Lakeside Avenue
Cleveland, Ohio 44113

ON RECONSIDERATION[1]

EILEEN T. GALLAGHER, J.:

{¶1} Plaintiff-appellant, the state of Ohio ("the state"), appeals from the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division, granting defendant-appellee, C.L.'s ("C.L."), motion to seal his juvenile record. The state raises the following assignment of error for our review:

> 1. The juvenile court erred in sealing appellee's delinquency adjudication, as Ohio courts are prohibited from granting motions to expunge and seal records of aggravated murder, murder, and rape delinquency.

{¶2} After careful review of the record and relevant case law, we affirm the juvenile court's judgment.

I. Procedural History

{¶3} In July 2004, a complaint was filed in the Cuyahoga County Juvenile Court, alleging that C.L. was delinquent of rape in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree if committed by an adult. In October 2004, C.L. was adjudicated delinquent following a knowing and voluntary admission to the amended offense of attempted rape in violation of R.C. 2923.02 and 2907.02(A)(1)(b).

{¶4} In March 2016, C.L. filed an application to seal the official records of his juvenile delinquency pursuant to R.C. 2151.356(C)(1)(b)(ii). The state filed a

---

[1] The original decision in this appeal, *In re C.L.*, 8th Dist. Cuyahoga No. 104661, 2017-Ohio-2654, released May 4, 2017, is hereby vacated. This opinion, issued upon reconsideration, is the court's journalized decision in this appeal. *See* App.R. 22(C); *see also* S.Ct.Prac.R. 7.01.

responsive brief, arguing that because C.L. "was found delinquent of attempted rape under R.C. 2907.02, he is statutorily barred from having his delinquency sealed according to R.C. 2151.356(A)." Following a hearing, the juvenile court granted C.L.'s application to seal his juvenile record, stating in pertinent part:

> The person was not adjudicated delinquent for committing an act that is a violation of O.R.C. 2903.01, 2903.02, or 2907.02.
>
> The person is not under the jurisdiction of the court relative to a complaint alleging the person to be a delinquent child.
>
> The applicant is eighteen years old or older.
>
> Upon due consideration, the court finds that the person has been rehabilitated to a satisfactory degree. In making the finding that the person has been rehabilitated to a satisfactory degree, the court considered the following: the age of the person; the nature of the case; the cessation or continuation of delinquent, unruly or criminal behavior; the education and employment history of the person; and other circumstances that may relate to the rehabilitation of the person who is the subject of the records that are under consideration.

{¶5} The state now appeals the juvenile court's judgment.

II. Law and Analysis

{¶6} In its sole assignment of error, the state argues the juvenile court erred in granting C.L.'s application to seal his juvenile record because his delinquency adjudication for attempted rape was ineligible for sealing pursuant R.C. 2151.356.

{¶7} It is well settled that "'[e]xpungement 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, 721 N.E.2d 1041 (2000), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639, 665 N.E.2d 669 (1996).

{¶8} R.C. 2151.356 sets forth the procedure for the sealing of records in juvenile cases. The statute places certain restrictions on a juvenile offender's eligibility for the sealing of records, stating, in relevant part:

> (A) The records of a case in which a person was adjudicated a delinquent child for committing a violation of section 2903.01 [aggravated murder], 2903.02 [murder], or 2907.02 [rape] of the Revised Code *shall not be sealed under this section.*
>
> * * *
>
> (C)(1) The juvenile court shall consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than a violation of section 2903.01 [aggravated murder], 2903.02 [murder], or 2907.02 [rape] of the Revised Code, an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.

(Emphasis added.)

{¶9} Relying on the language set forth under R.C. 2151.356(A) and (C)(1), the state argues that C.L.'s delinquency adjudication for *attempted* rape in violation of R.C. 2923.02 and 2907.02(A)(1)(b) is "expressly barred from sealing." The state contends that although C.L. was adjudicated delinquent for the offense of *attempted* rape, his juvenile record is still ineligible for expungement pursuant to R.C. 2151.356(A) because the "main" offense of rape is on the list of excepted offenses. In contrast, C.L. argues that because "R.C. 2151.356 never uses the term 'attempt' or makes any mention of [R.C.] 2923.02," the restrictions set forth under R.C. 2151.356(A) and (C)(1) only apply to the offenses of aggravated murder, murder, and rape, and do not apply to the offense of *attempted* rape.

{¶10} Statutory interpretation is a question of law that we review de novo. *State v. Bates*, 8th Dist. Cuyahoga No. 105062, 2017-Ohio-4445, ¶ 6. With respect to the parties' proposed interpretations of R.C. 2151.356(A) and (C)(1), we note that "[t]he primary goal in construing a statute is to ascertain and give effect to the intent of the legislature." *State ex rel. Cordray v. Midway Motor Sales, Inc*., 122 Ohio St.3d 234, 2009-Ohio-2610, 910 N.E.2d 432, ¶ 15. In so doing, the court must first look to the plain language of the statute and the purpose to be accomplished. *State ex rel. Pennington v. Gundler*, 75 Ohio St.3d 171, 173, 661 N.E.2d 1049 (1996). Words used in a statute must be accorded their usual, normal, and customary meaning. *Id*., citing R.C. 1.42. If the words in a statute are "'free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.'" *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus. "An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus. "It is only where the words of a statute are ambiguous, uncertain in meaning, or conflicting that a court has the right to interpret a statute." *In re Brooks*, 136 Ohio App.3d 824, 829, 737 N.E.2d 1062 (10th Dist.2000), citing *State ex rel. Burrows v. Indus. Comm*., 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997).

{¶11} After careful consideration, we adopt C.L.'s position and reject the state's interpretation of R.C. 2151.356. In this case, R.C. 2151.356 is unambiguous and definite. The language used in the statute is certain in meaning and is not susceptible to

more that one reasonable interpretation. *See State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St.3d 508, 513, 668 N.E.2d 498 (1996). Thus, we must apply the plain meaning of the statute as written, and are not required to resort to any other means of interpretation.

{¶12} Contrary to the state's interpretation, R.C. 2151.356 does not include the word "attempt" in any of its provisions or definitions. Rather, a plain meaning of the statute demonstrates that the eligibility restrictions set forth under R.C. 2151.356(A) and (C)(1) are expressly limited to adjudications for the offenses of aggravated murder, murder, or rape — offenses for which C.L. was not adjudicated delinquent. *See generally State v. Beckwith*, 8th Dist. Cuyahoga No. 104683, 2017-Ohio-4298, ¶ 18-24 (applying the "plain meaning" doctrine). Accordingly, we find no basis to conclude that the legislature intended to incorporate the attempt statute into R.C. 2151.356. To hold otherwise, would insert language into the statute that is not present. *Beckwith* at ¶ 24.

{¶13} Had the General Assembly wanted to make the scope of ineligible offenses broader under R.C. 2151.356, it would have simply included the language found in R.C. 2953.31 et seq., the adult expungement statute, concerning "offense[s] of violence."[2] *See State v. V.M.D.*, 148 Ohio St.3d 450, 2016-Ohio-8090, 71 N.E.3d 274 (addressing an application to seal the records of an attempted robbery conviction under R.C. 2953.32). Such language would have rendered C.L.'s attempted rape adjudication ineligible for

---

[2] R.C. 2953.36(A)(3) provides that records of felony convictions for "offenses of violence" cannot be sealed. In turn, R.C. 2901.01(A)(9)(d) provides that "[a] conspiracy *or attempt to commit* * * * any offense under division (A)(9)(a)" also meets the definition of an "offense of violence." (Emphasis added.)

expungement.[3] Thus, it is evident that the General Assembly chose its words carefully in constructing R.C. 2151.356.

{¶14} We recognize the state's reliance on this court's decision in *State v. M.R.*, 8th Dist. Cuyahoga No. 94591, 2010-Ohio-6025, wherein we reversed the trial court's order that granted the defendant's application to seal the records of his attempted pandering of obscenity convictions. In *M.R.*, this court analyzed the adult expungement procedure set forth in R.C. 2953.31 et seq., in an effort to determine whether the defendant's attempted pandering of obscenity convictions were eligible for expungement under R.C. 2953.36.[4] In reversing the trial court's judgment, we held, in part, that "the addition of the attempt statute to the offense did not affect R.C. 2953.36's application because the 'main' offense was on [the] list of excepted offenses." *Id.* at ¶ 25-26, citing *State v. Burnside*, 7th Dist. Mahoning No. 08 MA 172, 2009-Ohio-2653, ¶ 20-21, citing *State v. Reid*, 2d Dist. Greene No. 2005CA0028, 2006-Ohio-840, ¶ 13.

{¶15} Upon reconsideration, however, we reluctantly find the state's reliance on case law interpreting the adult expungement statute to be unpersuasive given the differences between an adult conviction and a juvenile adjudication. As stated by the Ohio Supreme Court:

> The overriding purposes for juvenile dispositions "are to provide for the care, protection, and mental and physical development of children subject to [R.C. Chapter 2152], protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and

---

[3] An "offense of violence" under R.C. 2901.01(A)(9)(a) includes an "attempt to commit" rape in violation of R.C. 2907.02.

[4] R.C. 2953.36 sets forth a list of offenses that are not eligible for expungement.

> rehabilitate the offender." R.C. 2152.01(A). In contrast, the purposes of felony sentencing "are to protect the public from future crime by the offender and others and to punish the offender." R.C. 2929.11(A). In summary, juvenile adjudication differs from criminal sentencing— *one is civil and rehabilitative, the other is criminal and punitive.*

(Emphasis added.) *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 14. Recognizing the legislative intent of R.C. 2151.356, the Ohio Supreme Court has explained that R.C. 2151.356 "promotes [the] goals of rehabilitation and reintegration into society by permitting rehabilitated offenders to apply to have their records sealed so that they can leave their youthful offenses in the past." *State v. Bloomer*, 122 Ohio St.3d 200, 212, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 54 (overturned on other grounds).

{¶16} Collectively, the language and purpose of R.C. 2151.356 demonstrates that the General Assembly intended to grant juvenile offender's broader access to expungement than that provided to adult offenders under R.C. 2953.31 et seq. Accordingly, we find *M.R.*, 8th Dist. Cuyahoga No. 94591, 2010-Ohio-6025, to be inapplicable to the arguments raised in this appeal.

{¶17} Based on the foregoing, we find C.L. was not statutorily barred from sealing the records of his delinquency adjudication for attempted rape under R.C. 2151.356. We note that the state does not challenge the trial court's discretion in finding that C.L. has "been rehabilitated to a satisfactory degree." Thus, our holding only goes to a juvenile's eligibility under R.C. 2151.356 and must not be interpreted as an indication of how a trial court should exercise its discretion in considering the merits of such applications in the future.

{¶18} The state's sole assignment of error is overruled.

{¶19} 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 be sent to the Cuyahoga County Common Pleas Court, Juvenile Division, 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.

EILEEN T. GALLAGHER, JUDGE

MELODY J. STEWART, J., CONCURS;
TIM McCORMACK, P.J., DISSENTS WITH SEPARATE ATTACHED OPINION

TIM McCORMACK, P.J., DISSENTING:

{¶20} I respectfully dissent.

{¶21} The first order of business for this court in answering the question of whether Ohio law either allows for or prohibits the granting of an expungement under these facts is to closely follow Ohio's statutory dictates as they apply. Our challenge in this matter is that the statute does not provide us with clear, unambiguous direction. The applicable statute neither directly allows for nor directly prohibits the trial court granting an expungement in the matter of a juvenile who was adjudicated delinquent following an admission to the offense of attempted rape. I do find though that R.C. 2151.356 gives us sufficient direction to be able to understand the General Assembly's intent.

{¶22} The sealing of the record of a conviction "is an act of grace created by the state." *State v. Hamilton*, 75 Ohio St.3d 636, 639, 665 N.E.2d 669 (1996). The General Assembly was as clear as crystal in drawing a broad line that no court shall cross. In enacting H.B. 137 setting forth the procedure for sealing juvenile records, the General Assembly specified that juvenile offenders who commit one or more of three categories of violent offenses — aggravated murder, murder, or rape — would never be eligible to expunge that offense. The applicable adult law differs from juvenile law in that the offenses of attempted acts of aggravated murder, murder, and rape are explicitly identified as being ineligible to be expunged. Whether purposefully or by oversight, the General Assembly has not, however, written explicit language in the juvenile code relating to "attempt" that provides a clear answer to the question as if we were presented with adult offenses.

{¶23} Of necessity, we are, therefore, left with reviewing the most closely related applicable language in relevant sections of the Revised Code to best understand legislative intent on the day this language faced a roll call. There are two reasonable interpretations of that language.

{¶24} The first interpretation, to which I adhere, is that the General Assembly never intended that the offense of rape could not be eligible to be expunged but an admission to committing an *attempted* rape could be expunged.

{¶25} In good faith, an argument is made that the absence of subcategory language of "attempted" rape should be interpreted as a mindful, purposeful act to exclude attempted rape from those most heinous violent crimes that are ineligible for

expungement. The absence of such explicit exclusionary language makes this task more difficult. I find though that a fuller reading of R.C. 2953.36 would preclude one who has admitted to the elements of attempted rape from subsequently seeking to have that violent offense expunged.

{¶26} Today, I follow the position taken by this court in *State v. M.R.*, 8th Dist. Cuyahoga No. 94591, 2010-Ohio-6025 (the addition of the attempt statute to the offense did not affect R.C. 2953.36's application because the main offense was on the list of excepted offenses); the Seventh District in *State v. Burnside*, 7th Dist. Mahoning No. 08 MA 172, 2009-Ohio-2653 (convictions for rape are precluded from sealing pursuant to R.C. 2953.36(B) and even though defendant was convicted of attempted rape and not rape, the rape offense exception contained in the statute still applies); and the Second District in *State v. Reid*, 2d Dist. Greene No. 2005CA0028, 2006-Ohio-840 (having been convicted of an attempted violation of R.C. 2907.06 (sexual imposition), defendant was not eligible as a matter of law to have the record of the conviction sealed).

{¶27} Others in good faith look and do not find explicit language that excludes for consideration of expungement not just rape, murder, and aggravated murder but the related offense of attempted rape. They are correct in bringing to our attention the absence of an explicit "attempt" prohibition. Despite this absence, I find sufficient guidance in R.C. 2151.356 to understand that a juvenile offender who has admitted to the offense of attempted rape would not be eligible to remove that offense from the records.