

[Cite as *State v. B.J.*, 2018-Ohio-177.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105764

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**B.J.**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
REVERSED AND REMANDED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-03-439646-ZA

**BEFORE:** Kilbane, J., E.A. Gallagher, A.J., and Keough, P.J.

**RELEASED AND JOURNALIZED:** January 18, 2018

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, B.J., appeals from the trial court's denial of his motion for expungement. For the reasons set forth below, we reverse and remand.

{¶2} In 2008, B.J. was convicted of one count of assault on a peace officer and one count of resisting arrest. The trial court sentenced him to a 90-day suspended jail sentence, one year of community control, 400 hours of community service, anger management and a mental health assessment, and fines and court costs.

{¶3} In March 2017, B.J. filed a motion for expungement. The state filed its opposition on April 11, 2017. On April 21, 2017, the trial court denied B.J.'s motion without first holding a hearing.

{¶4} B.J. now appeals from the trial court's denial of his expungement motion, raising the following single assignment of error for review.

#### Assignment of Error

The trial court committed reversible error by finding [B.J.] ineligible for the expungement and/or sealing of his felony conviction arising out of a misunderstanding with an off-duty police officer working security at a Sam's Club.

{¶5} As an initial matter, we note and the state of Ohio concedes that the trial court denied B.J.'s expungement motion without holding a hearing as required by R.C. 2953.32(B), which provides that

[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.

{¶6} As we recently stated in *State v. M.R.*, 8th Dist. Cuyahoga No. 104712, 2017-Ohio-973,

[a] trial court commits error by 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*], 75 Ohio St.3d 636, 1996-Ohio-440, 665 N.E.2d 669 (1996); *State v. Saltzer*, 14 Ohio App.3d 394, 14 Ohio B. 500, 471 N.E.2d 872 (8th Dist.1984), followed. Accordingly, this court has repeatedly held that “an oral hearing on an expungement motion is mandatory, and failure to hold one is cause for reversal and remand.” *State v. J.K.*, 8th Dist. Cuyahoga No. 96574, 2011-Ohio-5675, ¶ 15, citing *State v. Hann*, 173 Ohio App.3d 716, 718, 2007-Ohio-6201, 880 N.E.2d 148 (8th Dist.). See also *State v. Nowden*, 8th Dist. Cuyahoga No. 88605, 2007-Ohio-2914; *State v. Poston*, 8th Dist. Cuyahoga No. 87216, 2006-Ohio-4125; *State v. Powers*, 8th Dist. Cuyahoga No. 84416, 2004-Ohio-7021; *State v. Davis*, 8th Dist. Cuyahoga No. 81940, 2003-Ohio-363; *State v. Rebello*, 8th Dist. Cuyahoga No. 77076, 2000 Ohio App. LEXIS 1924 (May 4, 2000). The rationale that a trial court must first hold a hearing is “obviously predicated upon the fact that, under normal circumstances, a trial court would be required to hear evidence prior to rendering its decision in order to make several determinations pursuant to [R.C. 2953.32(C)(1)(a) through (e)].” *J.K.* at ¶ 15, citing *State v. Haney*, 10th Dist. Franklin No. 99AP-159, 1999 Ohio App. LEXIS 5524 (Nov. 23, 1999).

*Id.* at ¶ 10.

{¶7} In the instant case, the state concedes and the record demonstrates that no hearing was held on B.J.’s motion for expungement as required by R.C. 2953.32(B). As a result, we reverse the trial court’s denial and remand the matter. *M.R.* at ¶ 10.

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

{¶9} Judgment is reversed and the matter is 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. *M.R.* at ¶ 18.

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 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.

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MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, A.J., and  
KATHLEEN ANN KEOUGH, P.J., CONCUR