

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24919

Appellee

v.

KURTIS R. CAMPBELL

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 03 04 0987

Appellant

DECISION AND JOURNAL ENTRY

Dated: January 20, 2010

CARR, Judge.

{¶1} Appellant, Kurtis Campbell, appeals the judgment of the Summit County Court of Common Pleas, which denied his motion to seal his criminal record. This Court affirms.

I.

{¶2} On July 18, 2003, Campbell was convicted of one count of aggravated assault in violation of R.C. 2903.12, a felony of the fourth degree. He was sentenced to two years of community control. The Adult Probation Department subsequently requested an early termination of community control. The trial court denied the request on August 4, 2004, and Campbell completed the entire term of community control.

{¶3} On August 29, 2008, Campbell moved the trial court for an order sealing his criminal record pursuant to R.C. 2953.32. On December 8, 2008, he requested a hearing on his motion. The State did not respond to either the motion or request for hearing. On July 17, 2009, the trial court summarily denied the motion for sealing. Campbell filed a timely appeal, raising

two assignments of error for review. This Court consolidates the assignments of error to facilitate review.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING APPELLANT WAS ‘INELIGIBLE’ TO HAVE HIS CRIMINAL CONVICTION EXPUNGED PURSUANT TO [R.C.] 2953.32.”

ASSIGNMENT OF ERROR II

“THE TRIAL COURT INCORRECTLY REFUSED TO CONDUCT A HEARING PRIOR TO DENYING APPELLANT’S REQUEST TO EXPUNGE HIS CRIMINAL CONVICTION PURSUANT TO [R.C.] 2953.32.”

{¶4} Campbell argues that the trial court erred by denying his motion to seal his record and by doing so without a hearing. This Court disagrees.

{¶5} Both Campbell and the State assert that the applicable standard of review in this case is whether the trial court abused its discretion. The Ohio Supreme Court, however, recently clarified that, while “expungement is a privilege and not a right,” the abuse of discretion standard of review is not appropriate when “the matter in dispute is purely a question of law.” *State v. Futrall*, 123 Ohio St.3d 498, 2009-Ohio-5590, at ¶6. Because the matter in dispute concerns the applicability of R.C. 2953.32 to Campbell’s aggravated assault conviction, it implicates purely a question of law. Accordingly, this Court reviews the matter de novo. See *id.* at ¶6-7.

{¶6} “The statutory law in effect at the time of the filing of an R.C. 2953.32 application to seal a record of conviction is controlling.” *State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, at paragraph two of the syllabus. Campbell moved for an order sealing his record pursuant to R.C. 2953.32(A). R.C. 2953.32(B) requires the trial court to set a date for hearing on the

application. R.C. 2953.32(C) requires the trial court to make certain determinations in consideration of the application.

{¶7} R.C. 2953.36 expressly exempts certain convictions and bail forfeitures from the scheme of the sealing statute. This provision states, in relevant part:

“Sections 2953.31 to 2953.25 of the Revised Code do not apply to any of the following:

“(C) Convictions 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 of the Revised Code and is not a violation of section 2903.13, 2917.01 or 2917.31 of the Revised Code that is a misdemeanor of the first degree.” R.C. 2953.36(C).

{¶8} Campbell was convicted of aggravated assault in violation of R.C. 2903.12, a felony of the fourth degree. R.C. 2901.01(A)(9)(a) defines aggravated assault as an “offense of violence.” Accordingly, the very nature of the offense for which Campbell was convicted renders the sealing provisions of R.C. 2953.32 inapplicable to him. It is axiomatic that, if R.C. 2953.32 does not apply to his conviction of record, then the requirements that the trial court set a hearing and make certain determinations pursuant to R.C. 2953.32(B) and (C) are not implicated. Because Campbell’s felony offense of violence was expressly excluded from the statutory sealing law, the trial court had no authority to hear the motion to seal the record. Campbell’s assignments of error are overruled.

III.

{¶9} Campbell’s assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
MOORE, J.
CONCUR

APPEARANCES:

BRIAN D. SULLIVAN, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.