

STATE OF OHIO                    )  
  )ss:  
COUNTY OF LORAIN            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       09CA009630

Appellee

v.

SUSAN K. PINTNER

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.     91CR040866

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 8, 2010

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BELFANCE, Judge.

{¶1} Appellant, Susan Pintner, nka Gallo, appeals from the decision of the Lorain County Court of Common Pleas denying her motion to expunge her 1993 conviction. For the reasons that follow, we affirm.

FACTS

{¶2} In 1993, Gallo was convicted by a jury of one count of sexual battery in violation of R.C. 2907.03(A)(6), a third-degree felony. Gallo was sentenced to one year in prison. However, the trial court suspended her prison sentence and ordered her to complete one year of probation and 100 hours of community service. Gallo was discharged from probation in June 1994.

{¶3} At the time of Gallo's conviction, Gallo's sexual battery offense was eligible for expungement. However, the statute was later amended to exclude a sexual battery conviction from expungement.

{¶4} On April 1, 2009, Gallo filed a motion to expunge her sexual battery conviction. The Adult Parole Authority interviewed Gallo and filed a report with the Lorain County Court of Common Pleas. The trial court held a hearing to consider Gallo's motion. The trial court indicated that Gallo was a proper candidate for expungement because she had not reoffended and had satisfied the requirements under the expungement statute. However, it denied her motion because at the time Gallo filed her motion for expungement, her conviction was ineligible for expungement.

{¶5} Gallo filed the instant appeal. On appeal, Gallo argues that (1) the trial court committed reversible error in denying her motion for expungement, (2) the section of the Ohio Revised Code that currently precludes expungement of her conviction violates the Due Process Clause of the Ohio Constitution, and (3) the section of the Ohio Revised Code that currently precludes expungement of her conviction violates the Retroactivity Clause of the Ohio Constitution.

#### EXPUNGEMENT

{¶6} We can resolve Gallo's first and third assignments of error by applying *State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, where the Ohio Supreme Court considered and rejected the arguments Gallo makes here. The version of the statute in effect at the time the motion is filed is the version that must be applied to the motion. *Id.* at paragraph two of the syllabus. Accordingly, the trial court did not err as a matter of law when it denied her motion because her offense is not eligible for expungement. *LaSalle* also held that the amended expungement statute does not violate the Retroactivity Clause of the Ohio Constitution. *Id.* at ¶¶13-15. Gallo's first and third assignments of error are overruled.

{¶7} We observe that Gallo’s merit brief contained word-for-word text contained in *LaSalle*, but did not attribute that text to *LaSalle*. We are thus perplexed that Gallo’s counsel failed to recognize *LaSalle* as controlling case law and appreciate its impact on the case at bar. Additionally, in Gallo’s merit brief, her counsel cited to this Court’s decision in *State v. Jett*, 9th Dist. No. 22299, 2005-Ohio-1277, in which we applied *LaSalle* to conclude that the trial court must apply the version of the expungement statute in effect at the time the motion is filed. *Id.* at ¶6. However, in reviewing the transcript, we note that counsel told the trial court that he researched the expungement issue. Thus, although it appears that counsel was aware of both *LaSalle* and *Jett*, he nonetheless failed to recognize the controlling nature of this precedent.

{¶8} In her second assignment of error, Gallo argues that the amended expungement statute violates her right to due process. Gallo did not present this argument to the trial court and, therefore, has forfeited it on appeal. *Id.* at ¶4, fn.1. Thus, Gallo’s second assignment of error is overruled.

### CONCLUSION

{¶9} In light of the above analysis, we conclude that the Lorain County Court of Common Pleas did not err in denying Gallo’s application for expungement. Gallo’s assignments of error are overruled and the trial court’s judgment is affirmed.

Judgment affirmed.

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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 Lorain, 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.

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EVE V. BELFANCE  
FOR THE COURT

CARR, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

ROBERT CABRERA, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.