

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: :
Toi L. Santamaria, : No. 11AP-31
(State of Ohio, : (C.P.C. No. 10EP-657)
Appellant). : (ACCELERATED CALENDAR)

D E C I S I O N

Rendered on June 23, 2011

Toi L. Santamaria, pro se.

Ron O'Brien, Prosecuting Attorney, and Kimberly M. Bond,
for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, state of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting an application to seal the record of defendant-appellee, Toi L. Santamaria, filed pursuant to R.C. 2953.32.

{¶2} On September 22, 2010, appellee filed, pursuant to R.C. 2953.32(A), an application to seal the record of her conviction for attempted tampering with evidence entered in Franklin County Court of Common Pleas case No. 07CR-5832 on October 15,

2007. The state objected to appellee's application. Specifically, the state argued appellee was not eligible to have her record sealed because she was not a first offender as that term is defined in R.C. 2953.31(A) due to her 2009 conviction for operating a vehicle while intoxicated. A hearing was held on December 21, 2010, and notwithstanding appellee's prior conviction, the trial court granted appellee's application to seal her record.

{¶3} Appellant filed an appeal of the trial court's judgment, and brings the following assignment of error for our review:

THE TRIAL COURT ERRED WHEN IT GRANTED
DEFENDANT'S APPLICATION FOR EXPUNGEMENT AS
DEFENDANT WAS NOT A "FIRST OFFENDER."

{¶4} " '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, quoting *State v. Hamilton* (1996), 75 Ohio St.3d 636, 639. In light of its nature, "[e]xpungement should be granted only when all requirements for eligibility are met." *Simon* at 533.

{¶5} R.C. 2953.32 permits a "first offender" to apply to the sentencing court for sealing of a conviction record. R.C. 2953.31(A) defines a "first offender" as "anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction."

{¶6} If the applicant is not a first offender, the trial court lacks jurisdiction to grant the requested expungement. *State v. Williams*, 10th Dist. No. 10AP-166, 2010-Ohio-4520, ¶7, citing *In re White*, 10th Dist. No. 05AP-529, 2006-Ohio-1346, ¶5, citing *In re Barnes*, 10th Dist. No. 05AP-355, 2005-Ohio-6891, ¶12. Whether an applicant is

considered a first offender is an issue of law for a reviewing court to decide de novo. *Williams* at ¶7, citing *State v. Hoyles*, 10th Dist. No. 08AP-946, 2009-Ohio-4483, ¶4.

{¶7} It is undisputed that appellee was convicted on June 26, 2009 of operating a vehicle while intoxicated. Thus, when appellee filed her September 22, 2010 application to seal the record of her 2007 conviction, she was not a first offender as defined by R.C. 2953.31(A). *State v. Sandlin*, 86 Ohio St.3d 165, 1999-Ohio-147 (a conviction for driving under the influence always bars expungement of the record of a conviction for another criminal offense); *In re White*. Therefore, the trial court did not have jurisdiction to grant appellee's application. *Id.* at ¶8.

{¶8} Because appellee was not a first offender, the trial court erred by sealing the record of her 2007 conviction for attempted tampering with evidence. Accordingly, we sustain the state's assignment of error.

{¶9} The judgment of the Franklin County Court of Common Pleas is reversed, and we remand this case to that court to enter judgment denying appellee's application to seal her record.

*Judgment reversed;
cause remanded with instructions.*

KLATT and CONNOR, JJ., concur.
