[Cite as *State v. Draper*, 2015-Ohio-1781.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
		No. 14AP-791
v.	:	(M.C. No. 2013 CR B 003795)
Jeanetta N. Draper,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 12, 2015

Richard C. Pfeiffer, Jr., City Attorney, and *Melanie R. Tobias*, for appellant.

APPEAL from the Franklin County Municipal Court

SADLER, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from a judgment of the Franklin County Municipal Court granting the application, under R.C. 2953.52, to seal records of dismissed charges filed against appellee, Jeanetta N. Draper. For the reasons that follow, the judgment of the trial court is reversed.

I. BACKGROUND

{¶ 2} On July 10, 2014, appellee filed with the Franklin County Municipal Court an application to seal the records of her dismissed charges of domestic violence and assault, both first-degree misdemeanors. The application in total consisted of the trial court's standard one-page "Application for Sealing of Records" form. On the application form, appellee filled in basic personal identification information, the case number and charges at issue, and information about the case disposition. The application also

included the pre-printed statement, "[t]he above-named applicant states that s/he qualifies for a sealing of records under the applicable provisions of R.C. Chapter 2953."

{¶ 3} On August 29, 2014, the state filed an objection to appellee's application and mailed a copy of the objection to appellee. In its objection, the state asserted that the government had legitimate interests in maintaining appellee's records because of the statutory necessity of police being able to access the past histories of violence of the people they are investigating and the statutory necessity of courts being able to access the past histories of violence of the people appearing in arraignment in order to set bond on crimes of violence. The state contended that these interests outweighed appellee's interests in having the records sealed.

{¶ 4} On July 11, 2014, the trial court issued appellee a notice of the scheduled expungement hearing to consider her application. According to the judgment entry, the trial court held an expungement hearing on September 8, 2014, which the prosecuting attorney attended.[1] Appellee did not attend the hearing and did not present any evidence to the court in support of her application.

{¶ 5} On the same day as the hearing, the trial court granted appellee's application to seal her records. On the entry, the trial court judge checked the box stating, in pertinent part, "[t]he Court finds that * * * the interests of the applicant in having the records sealed are not outweighed by any legitimate governmental need to maintain the records." (Sept. 8, 2014 Entry, 1.) The state filed a timely appeal on October 7, 2014.

II. ASSIGNMENT OF ERROR

{¶ 6} The state submits one assignment of error for our review:

> The trial court abused its discretion when it granted appellee's application to seal her record where appellee failed to demonstrate that her interest in sealing her records was equal to or outweighed the government's interests in maintaining the records.

III. DISCUSSION

{¶ 7} An appellate court generally reviews a trial court's disposition of an application for an order sealing the records of dismissed criminal charges under an abuse

[1] A transcript of the hearing is not available.

of discretion standard. *In re: Application for Sealing of Record of Brown*, 10th Dist. No. 07AP-715, 2008-Ohio-4105, ¶ 12. A trial court abuses its discretion when its "attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 8} In the context of sealing criminal records, a trial court abuses its discretion when it fails to make the necessary statutory determinations prior to issuing an order to seal records. *See State v. Wilson*, 10th Dist. No. 13AP-684, 2014-Ohio-1807, ¶ 15; *State v. Boykin*, 138 Ohio St.3d 97, 2013-Ohio-4582, ¶ 11, quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639 (1996) ("The sealing of a criminal record * * * is an 'act of grace created by the state' [that] should be granted only when all [statutory] requirements for eligibility are met.") (citation omitted).

{¶ 9} R.C. 2953.52 codifies the statutory requirements for sealing records after not guilty findings, dismissals or no bills by grand jury. Under R.C. 2953.52(A), a person who is the defendant named in a dismissed complaint, indictment or information may apply to the court for an order to seal the person's official records in the case. Upon filing of such an application to seal the records of a dismissed case, R.C. 2953.52(B) requires the court to hold a hearing to (1) determine that the case was indeed dismissed and if the case was dismissed without prejudice, determine whether the relevant statute of limitations expired, (2) determine whether criminal proceedings are pending against the person, (3) consider the reasons against granting the application specified in the prosecutor's objection, if applicable, and (4) ultimately weigh the interest of the applicant in having her records sealed against the legitimate need of the government to maintain those records. *State v. Newton*, 10th Dist. No. 01AP-1443, 2002-Ohio-5008, ¶ 7. If the trial court determines that the applicant's interest in having the records sealed is not outweighed by the government's interest in maintaining the records, then the trial court must issue an order sealing the records. *Id.*; R.C. 2953.52(B)(4).

{¶ 10} A trial court abuses its discretion when it grants an application to seal a criminal record without sufficient information to support the trial court's findings. *See Wilson* at ¶ 15; *State v. Porter*, 10th Dist. No. 14AP-158, 2014-Ohio-4068, ¶ 12-14; *State v. Suel*, 10th Dist. No. 02AP-1158, 2003-Ohio-3299, ¶ 14. The applicant bears the burden of providing the trial court with information sufficient to demonstrate that her interest in

having the records of her dismissed charges sealed is at least equal to any legitimate government interest in maintaining those records. *In re: Application for Sealing of Record of Brown* at ¶ 13.

{¶ 11} An application that merely recites the statutory requirements is insufficient to satisfy an applicant's burden to establish her interest in having the records of the case sealed. *Id*. (finding applicant failed to meet her burden under R.C. 2953.52 where her application to seal the records of her dismissed misdemeanor charges merely stated she met all the statutory requirements, and she did not provide other evidence or testimony to the trial court); *Wilson* at ¶ 17 (finding recitation of statutory requirements on an application to seal records of a no bill insufficient to sustain applicant's burden under R.C. 2953.52 where applicant did not attend the hearing or otherwise present any evidence to demonstrate his interest in having the records sealed); *Newton* at ¶ 11 (finding applicant "failed to show any interest" in having his record of acquittal sealed where applicant only provided written request stating that he met all the requirements of R.C. 2953.52); *Porter* at ¶ 13-14 (finding applicant "did not put forth any evidence to establish her interests" in having her record of conviction sealed under R.C. 2953.32, which is analogous to R.C. 2953.52,[2] where applicant did not appear at the hearing or otherwise present any evidence to demonstrate his interest in having the records sealed). Moreover, "there is no requirement that the state present any evidence at this hearing." *Newton* at ¶ 10; *In re: Application for Sealing of Record of Brown* at ¶ 13; *Porter* at ¶ 11.

{¶ 12} Here, like the applicants in *In re: Application for Sealing of Record of Brown* and *Wilson*, appellee did not present testimony or any evidence to demonstrate her interest in having the record of her dismissals sealed. Appellee merely provided an application stating that she qualified for a sealing of records under R.C. 2953.52, and therefore failed to meet her burden of proof under R.C. 2953.52. Under these circumstances, the trial court had insufficient evidence before it to engage in the weighing process contemplated by R.C. 2953.52(B)(2)(d), much less grant an application to seal appellee's record.

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[2] *State v. Evans*, 10th Dist. No. 13AP–158, 2013-Ohio-3891, ¶ 11.

{¶ 13} Because appellee failed to meet her burden under R.C. 2953.52 to provide information supporting her interest in sealing her records beyond asserting, without evidentiary support, that she qualifies for sealing under the statute, and based on precedent, we find the trial court abused its discretion in granting appellee's application to seal the records of her dismissed charges. Accordingly, the state's sole assignment of error is sustained.

IV. CONCLUSION

{¶ 14} Having sustained the state's sole assignment of error, we reverse the judgment of the Franklin County Municipal Court and remand the matter with instructions to deny appellee's application to seal the records.

Judgment reversed;
cause remanded with instructions.

LUPER SCHUSTER, J., concurs.
TYACK, J., dissents.

TYACK, J., dissenting.

{¶ 15} I strongly disagree with the majority's decision in two regards. I, therefore, dissent.

{¶ 16} First and foremost, the case filed originally against Jeanetta N. Draper was dismissed. Thus, she is and always will be presumed innocent of the allegations against her. The presumption of innocence has to count for something in our criminal justice system.

{¶ 17} Second, there was a time when the Columbus City Attorney's Office would allow both parties in an argument which got physical to file assault and domestic violence charges. The city attorney's office would then act as prosecutor in both cases. Thus, the city was charging one party and using the other party as a witness to pursue the criminal charges. At the same time, the latter party was a defendant under another case being prosecuted by the city and the first defendant was the primary witness. The ethics of that system is open to serious questions on several grounds. The most serious ground is that representatives of the Columbus City Attorney's Office were expected to communicate

directly with persons whom they were prosecuting about the facts of the incident for which a separate prosecution was proceeding.

{¶ 18} As can be inferred from the above, the city of Columbus is very slow to dismiss domestic violence cases. The trial court judge who allowed the sealing of the records of Jeanetta N. Draper's case has made his whole career serving in the Franklin County Municipal Court, first as a prosecutor in the Columbus City Attorney's Office and now as a judge. This judge can take judicial notice of a wide range of facts about the history and procedures in that court. He also knows that for many years the applicants were not required to appear for the hearing on sealing of records of dismissals because the value of keeping records of dismissed cases is so minimal. Applicants used to be expressly told their presence at the hearing was not required when the applicants received notice of their hearing on the issue of sealing.

{¶ 19} This judge conducted the proceedings required by R.C. Chapter 2953. The city of Columbus presented no evidence at the time of the scheduled hearing. Instead, the city merely appealed the results which did not suit it.

{¶ 20} To me the assertion that a dismissed case is a past history of violence is absurd. The dismissed case is more likely an indication that a criminal case was filed which should not have been filed in the first place. If the dismissal is proof of anything, it is proof of a prosecutorial mistake, not a history of actual violence by the accused.

{¶ 21} The majority decision alleges that the trial court judge failed to make the necessary statutory determination before sealing the record. The majority decision is simply wrong on that point. The trial court judge did in fact make the required findings based upon his knowledge from 40 years of working in the Franklin County Municipal Court. The Columbus City Attorney's Office presented no evidence to weigh against what the judge knew from his experience. Instead, the city relied on its memorandum contra containing what to me is a specious argument—dismissed cases are proof of past violence.

{¶ 22} The majority of this panel compounds its mistakes by presuming to tell this experienced Franklin County Municipal Court judge how he has to rule in this case despite the fact the city has presented no evidence to support its argument that it somehow benefits from keeping records of dismissals. If the majority feels the procedure here was flawed, we should tell the trial court judge what is the correct procedure and

return the case to that judge for him to follow what the majority views as being the correct procedure. Thus, the judge could then reach a decision on the merits following the majority's guidance as to procedure and perhaps with the benefit of some evidence in the record. We should not be ordering judgment based upon a silent evidentiary record.

{¶ 23} In short, I believe the majority is doubly wrong in its decision. I dissent.
