

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

ALLAN LEE WELKER, II,

Defendant-Appellant.

CASE NOS. 2025-A-0070

2025-A-0071

2025-A-0072

2025-A-0073

Criminal Appeals from the
County Court, Eastern Division

Trial Court Nos. 2006 CRB 00410 E

2007 CRB 00525 E

2004 CRB 00749 E

2023 CRB 00175 E

OPINION AND JUDGMENT ENTRY

Decided: August 24, 2026

Judgment: Affirmed in part, reversed in part, remanded

April R. Grabman, Ashtabula County Prosecutor, and *Dane R. Hixon*, Assistant Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Margaret Brunarski, Ashtabula County Public Defender, and *Phillip L. Heasley*, Assistant Public Defender, 22 East Jefferson Street, Jefferson, OH 44047 (For Defendant-Appellant).

ROBERT J. PATTON, J.

{¶1} Defendant-appellant, Allan Lee Welker, II (“Welker”), appeals from the judgments of the Ashtabula County Court, Eastern Division denying his motions to seal records.

{¶2} On appeal, Welker asserts that the trial erred or otherwise abused its discretion when it denied his motions to seal the records of his convictions. Upon review, we conclude that the trial court did not err or otherwise abuse its discretion in denying

Welker's motions to seal the records of his convictions in Case Nos. 2004 CRB 00749 E, 2007 CRB 00525 E, and 2023 CRB 00175 E. The record indicates that the trial court determined that Welker had not been rehabilitated to the satisfaction of the court. Accordingly, the judgments in Case Nos. 2004 CRB 00749, 2007 CRB 00525, and 2023 CRB 00175 are affirmed.

{¶3} Conversely, we conclude that the trial court abused its discretion when it denied Welker's motion to seal the records regarding the dismissal of charges in Case No. 2006 CRB 00410 E. The record is devoid of any indication that the trial court complied with the statutory requirements of R.C. 2953.33. As such, the judgment in Case No. 2006 CRB 00410 is reversed and the matter is remanded for the trial court to comply with R.C. 2953.33.

{¶4} For the reasons set forth below, the judgments of the Ashtabula County Court, Eastern Division in Case Nos. 2004 CRB 00749, 2007 CRB 00525, and 2023 CRB 00175 are affirmed. The judgment of the Ashtabula County Court, Eastern Division in Case No. 2006 CRB 00410 is reversed and that matter is remanded to the county court.

Substantive and Procedural Facts

{¶5} This appeal arises from Welker's requests to seal records of his criminal convictions in the following criminal cases from the Ashtabula County Court, Eastern Division: 2004 CRB 00749, 2007 CRB 00525, and 2023 CRB 00175, and his request to seal the records regarding dismissed charges in Ashtabula County Court, Eastern Division dismissal in Case No. 2006 CRB 00410.

Case No. 2004 CRB 00749 E¹

{¶6} On November 11, 2004, a complaint was filed charging Welker with criminal trespass, a fourth-degree misdemeanor, in violation of R.C. 2911.21(A)(1). Welker was arraigned the same day. He entered a plea of not guilty to the offense and bond was set at \$2,500 cash or 10 percent.

{¶7} On January 19, 2005, Welker pleaded guilty to criminal trespass as charged in the complaint. The trial court found Welker guilty and imposed a \$100 fine plus court costs. Welker did not appeal his conviction.

Case No. 2006 CRB 410²

{¶8} On June 21, 2006, a complaint was filed charging Welker with failure to comply with order of police, a first-degree misdemeanor, in violation of R.C. 2921.331(B). Welker was arraigned the following day, on June 22, 2006. He pleaded not guilty to the offense and bond was set at \$2,500.

{¶9} On August 28, 2006, the charge was dismissed upon motion of the State. The dismissal entry did not specify whether the dismissal was with prejudice.

Case No. 2007 CRB 525³

{¶10} On September 11, 2007, a complaint was filed charging Welker with aggravated disorderly conduct, a fourth-degree misdemeanor, in violation of R.C. 2917.11(B)(1) and (2). Welker was arraigned on September 25, 2007, and entered a plea of not guilty to the offense. Bond was set at \$3,500 cash or 10 percent.

1. This is the underlying case in Case No. 2025-A-0072 on appeal.
2. This is the underlying case in Case No. 2025-A-0070 on appeal.
3. This is the underlying case in Case No. 2025-A-0071 on appeal.

{¶11} On September 28, 2007, Welker pleaded guilty to aggravated disorderly conduct as charged in the complaint. The trial court found Welker guilty and sentenced him to 30 days in jail with 29 days suspended, with credit for 1 day. The trial court imposed a \$50 fine and ordered Welker to be placed on supervised probation for one year. As a term of his probation, he was ordered to attend, complete, and comply with recommendations of Lake Area Recovery Center.

{¶12} Welker did not appeal his conviction or sentence.

Case No. 2023 CRB 175⁴

{¶13} On June 28, 2023, a complaint was filed charging Welker with obstructing official business, a second-degree misdemeanor, in violation of R.C. 2921.31(A). Welker failed to appear for his initial appearance, a warrant was issued, and bond was set at \$7,500 cash or surety or 10 percent.

{¶14} On July 13, 2023, Welker pleaded guilty to offense. A presentence investigation (“PSI”) was ordered. On August 28, 2023, the trial court sentenced Welker to 90 days in jail with 90 days suspended and imposed a \$150 fine, plus court costs.⁵ Welker did not appeal his conviction or sentence.

Motions to Seal Records

{¶15} On September 25, 2025, Welker filed motions to seal the record of his convictions and the dismissal in each of the above cases. A hearing on the motions was held on December 8, 2025.

4. This is the underlying case in Case No. 2025-A-0073 on appeal.

5. The entry on sentence indicates that the sentence was ordered to be served consecutive to the sentence imposed in Case No. 2023 TRC 590 and that the terms of probation were the same as those imposed in Case No. 2023 TRC 590.

{¶16} At the hearing, defense counsel told the trial court that Welker had maintained his sobriety for the last five years and is eligible to have his records sealed. Defense counsel expressed that Welker wished “to get on with his life.” The State did not object to the motions and recognized that Welker was eligible for certain offenses. The State also noted that defense counsel’s office had filed “a whole host” of motions in the Western County Court and that Welker had requests that were also pending in the City of Geneva. According to the State, the other courts were holding the motions in abeyance.

{¶17} Welker made a statement at the hearing informing the court that he is trying to fix his life. Welker explained that he has a chance to be a father figure to a child. Welker explained that he is a self-employed landlord responsible for two-to-three rental properties. After the trial court inquired why Welker did not have additional employment, Welker explained that he was struggling to find a job, other than physical labor, with his record.

{¶18} The trial court disagreed with Welker and defense counsel’s statements that Welker had been sober for 5 years and had not been in trouble for 10 years. The trial court noted Welker’s conviction for operating a vehicle while intoxicated and obstruction of justice occurred in 2023 in the Western Division County Court and also had a criminal trespass in the Ashtabula Municipal Court in 2018.

{¶19} The trial court denied Welker’s motions stating “[y]ou are nowhere near the point in your life where you need to have these expunged, and if you are truly getting your life back together . . . find a job where you don’t have to do physical labor.” Welker then stated that “they won’t accept me at a gas station . . . I just want a job at a gas station.”

{¶20} The trial court continued explaining. “[y]ou are also, by the loss of your temper and train of thought, are also not anywhere near being a role model for another - - for a child. You’re not giving anybody anything . . . You are not working . . . I don’t know if I believe this about the rental properties. I think you’re quite frankly, a scam artist.” The trial court also warned Welker not to “dress like a vagabond” the next time he comes into court. Welker responded: “Lawsuit.” The trial court then stated on the record that Welker’s behavior was “immature” and was another reason for the denial of his motions to seal. The trial court then told Welker to work on his temper and check into anger management.

{¶21} Welker appeals.

The Appeal

{¶22} Welker raises a single assignment of error for review:

[1.] The trial court erred by failing to follow proper procedure in denying [Welker]’s Motions to Seal Record.

{¶23} Specifically, Welker asserts that the judge failed to indicate that he was aware of the balancing test between the public interest and Welker. Welker contends “the judge cited no statute or case law of any kind as a basis for his denials of the sealing [and] . . . cited no reasons at all in the judgment entry in these matters.” According to Welker, “it is clear by the record here that other factors, including [Welker]’s appearance, perceived dishonesty, and alleged parental unfitness, influenced the trial judge’s decision to deny the sealing motions, rather than the factors required by statute.”

{¶24} In Case Nos. 2004 CRB 749, 2007 CRB 525 and 2023 CRB 175, Welker moved to seal his convictions. In Case No. 2006 CRB 410, Welker sought to seal the record of a dismissal. The procedure by which an offender may apply to have their

convictions sealed in provided by R.C. 2953.32. The procedure to seal the records of the dismissal is outlined in R.C. 2953.33. We first address Welker's motion as to the three convictions.

{¶25} After an application has been filed under R.C. 2953.32, a court is required to set a date for a hearing. R.C. 2953.32(C). At the hearing, the trial court is required to

(a) Determine whether the applicant is pursuing sealing or expunging a conviction of an offense that is prohibited under division (A) of this section or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case, and determine whether the application was made at the time specified in division (B)(1)(a) or (b) or division (B)(2)(a) or (b) of this section that is applicable with respect to the application and the subject offense;

(b) Determine whether criminal proceedings are pending against the applicant;

(c) Determine whether the applicant has been rehabilitated to the satisfaction of the court;

(d) If the prosecutor has filed an objection in accordance with division (C) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection;

(f) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed or expunged against the legitimate needs, if any, of the government to maintain those records;

(g) Consider the oral or written statement of any victim, victim's representative, and victim's attorney, if applicable;

R.C. 2953.32(D)(1).

{¶26} As for Welker’s motion to seal the records in Case No. 2006 CRB 410, the trial court was required to follow the procedure in R.C. 2953.33. Although similar to the statutory guidelines of R.C. 2953.32, under R.C. 2953.33(B)(2), the trial court is required to

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) If the person was granted a pardon upon conditions precedent or subsequent for the offense for which the person was convicted, determine whether all of those conditions have been met;

(e) Weigh the interests of the person in having the official records pertaining to the case sealed or expunged, as applicable, against the legitimate needs, if any, of the government to maintain those records.

{¶27} An appellate court reviews a lower court’s decision to deny a motion to seal for abuse of discretion. *State v. J.B.*, 2026-Ohio-1405, ¶ 12; *State v. Brown*, 2023-Ohio-411, ¶ 18 (11th Dist.), citing *State v. Talameh*, 2012-Ohio-4205, ¶ 20 (11th Dist.); accord *State v. Miller*, 2023-Ohio-2651, ¶ 13 (11th Dist.), citing *State v. Torres*, 2020-Ohio-5390, ¶ 13 (11th Dist.). An abuse of discretion is the trial court’s “failure to exercise sound,

reasonable, and legal decision-making.” *State v. Beechler*, 2010-Ohio-1900, ¶ 62, quoting Black’s Law Dictionary 11 (8th Ed. 2004). “When an appellate court is reviewing a pure issue of law, ‘the mere fact that the reviewing court would decide the issue differently is enough to find error[.]’ * * * By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *State v. Raia*, 2014-Ohio-2707, ¶ 9 (11th Dist.), quoting *Beechler* at ¶ 67.

{¶28} As this court explained in *Brown*:

The sealing of a criminal record is “an act of grace created by the state,” which is “a privilege, not a right.” *State v. Talameh*,. . . 2012-Ohio-4205 [(11th Dist.)], quoting *State v. Simon*, 87 Ohio St.3d 531, 533 . . . quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639 . . . (1996). R.C. 2953.32 emphasizes the applicant’s “interest in having the record sealed” against the public’s interest in being able to review the record, which is a relevant, legitimate government need. *Id.*, citing *State v. M.D.* . . . , 2012-Ohio-1545, ¶ 7 [(8th Dist.)] and *State v. Hilbert*, 145 Ohio App.3d 824, 827. . . (8th Dist. 2001). Courts “must liberally construe R.C. 2953.32 in favor of promoting the individual’s interest in having the records sealed.” *Id.*, citing *Hilbert*. “Sealing of a record of conviction pursuant to R.C. 2953.32 is a postconviction remedy that is civil in nature.” *State v. Potts*, 2020-Ohio-989, ¶ 20 [(11th Dist.)], citing *State v. LaSalle*,. . . 2002-Ohio-4009, ¶ 19. There is no requirement that the court set forth its reasoning when granting or denying a motion to seal. *State v. Krutowsky*,. . . , 2003-Ohio-1731, ¶ 14[(8th Dist.)].

Brown at ¶ 17.

{¶29} The trial court did not specifically determine that Welker was eligible to have his records sealed or determine if there were any pending criminal proceedings against him. However, neither point was disputed by the parties. Both defense counsel and the State indicated that Welker was eligible. The record confirms that there were not any pending criminal proceedings against Welker. While Welker also explained to the court

that he had not been in trouble for ten years, the record does not support this statement. Indeed, the trial court noted that Welker “had an OVI in 2023 in Western County Court, which also came with an obstruction of justice” and also had “a criminal trespass conviction in Ashtabula Muni[cipal] in 2018.”

{¶30} While it is best practice that the trial court explicitly make the determinations required by R.C. 2953.32, we recognize that the trial court is not required to set forth its *reasoning* in its decision on a defendant’s motion to seal. *Brown*, 2023-Ohio- 411, at ¶ 26 (11th Dist.), citing *Krutowsky*, 2003-Ohio-1731, ¶ 14 (8th Dist.).

{¶31} Pursuant to R.C. 2953.32(D)(1)(f), the trial court is required to consider the interests of the applicant, and weigh those interests against the legitimate needs, if any, of the government to maintain those records. The applicant bears the burden of demonstrating that the interest in having the record of conviction sealed is equal to or greater than the government's need to maintain those records. *Brown* at ¶ 19, citing *State v. Shaffer*, 2010-Ohio-6565, ¶ 18 (11th Dist.). Because the burden is on the applicant, “[t]here is no requirement that the state present any evidence at this hearing.” *Shaffer* ¶ 29, quoting *State v. Newton*, 2002-Ohio-5008, ¶ 10 (10th Dist.).

{¶32} As this court recognized in *Brown*:

In addition to considering the interests of the applicant, a trial court also considers “whether the rehabilitation of the movant ‘has been attained to the satisfaction of the court.’ This highlights that the issue of rehabilitation is peculiarly subjective, requiring great deference to the trial court on the part of a reviewing court.” *State v. Brooks*, 2nd Dist. Montgomery No. 25033, 2012-Ohio-3278, ¶ 15, quoting R.C. 2953.32. “Failure of proof of rehabilitation is an independent ground upon which to deny a motion to seal, since the trial court must make both findings in the movant's favor before it seals the records.” *Id.* at ¶ 28. “The most common way of proving rehabilitation is to offer proof along the lines of ‘I

learned my lesson, I regret having committed my criminal act, and I will never do this again,’ which necessarily involves an admission of guilt. It is not, however, the only possible way to prove rehabilitation.” *Id.* at ¶ 21.

Brown at ¶ 20.

{¶33} During the hearing, Welker explained that he was having difficulty in obtaining additional employment that was not physical labor and his counsel stated that Welker was ready to move on with his life. Welker pleaded guilty to the offenses in three of the four underlying cases. While the record is devoid of any indication that the trial court engaged in the balancing considerations as outlined in R.C. 2953.32(D)(1)(f), it is clear from the record that the trial court determined that Welker was not sufficiently rehabilitated. *Brown*, 2023-Ohio-411 at ¶ 26 (11th Dist.).

{¶34} As this court recently recognized in *State v. M.J.*, 2026-Ohio-2464, a trial court shall order the records of the applicant sealed or expunged “if the trial court finds *all* of [the factors in R.C. 2953.32(D)(1)] are met in favor of the applicant.” (Emphasis added.) *Id.* at ¶ 16 quoting R.C. 2953(D)(2)(a).

{¶35} The trial court noted during the hearing that Welker was dishonest about the length of his sobriety or the length of time without involvement in the criminal justice system. Specifically, the trial court stated Welker was “no where near the point” in his life to have the cases sealed. The trial court also noted Welker’s temper. After arguing with the trial court, the trial court denied Welker’s motion. The trial court commented on Welker’s attire and informed him to dress appropriately the next time Welker came before the court. Welker subsequently uttered a single word, “[l]awsuit” before leaving the courtroom. The trial court had Welker return and informed him that his lack of maturity was another basis for the denial of Welker’s motion.

{¶36} Despite the record lacking any indication that the trial court considered Welker's interest, or the State's interest as required, in order to grant Welker's motion to seal his convictions, the trial court must find that Welker had been rehabilitated to a satisfactory degree *and* weigh Welker's interests in having the records sealed or expunged against the legitimate needs, if any, of the government to maintain those records.

{¶37} Here, the trial court determined that Welker was not rehabilitated to a satisfactory degree based upon Welker's misrepresentations to the trial court about the length of his sobriety and of his ability to stay out of trouble, as well as the trial court's observations that Welker had a temper and that his actions at the hearing illustrated his lack of maturity. While the trial court did not expressly make all of the determinations required, such flaw in compliance with R.C. 2953.32 was harmless in this instance as the record before this court clearly indicates that the trial court did not find all of the prongs in R.C. 2953.32(D) in favor of Welker. "[A] lack of express findings is harmless error when it does not prevent an appellate court from actually reviewing the issues on appeal." *State v. R.M.M.*, 2021-Ohio-3314, ¶ 30 (10th Dist.) quoting *State v. Johnson*, 2008-Ohio-1183 at ¶ 16. Therefore, we find that the record contains sufficient evidence for appellate review in these circumstances. Accordingly, we affirm the trial court's denial of Welker's motions in Case Nos. 2004 CRB 00749, 2007 CRB 00525 and 2023 CRB 00175. We reach a different decision as to Welker's motion to seal the record in Case No. 2006 CRB 00410. As noted above, the trial court was required to follow the procedure in R.C. 2953.33, which does not include the consideration of rehabilitation.

{¶38} As such, the record before this court does not reflect that the trial court considered the statutory requirements under R.C. 2953.33. “An appellate court cannot determine whether an abuse of discretion occurred if there is no demonstration of that discretion.” *State v. Bell*, 2020-Ohio-3750, ¶ 21 (6th Dist.) citing *State v. Haas*, 2005-Ohio-4350, ¶ 21 (6th Dist.). “[W]e cannot simply presume the regularity of the proceedings on a silent record.’ The trial court is required to place findings made pursuant to R.C. 2953.32 on the record for review.” *Bell*, citing *Hass* at ¶ 26.

{¶39} The record fails to show that the trial court engaged in the balancing test as required by R.C. 2953.33(B)(2)(e). As such, we cannot review the trial court’s exercise of discretion. See *M.J.*, 2026-Ohio-2464, at ¶ 24 (11th Dist.). As such, we are required to reverse the trial court’s decision in Case No. 2006 CRB 00410 and remand the matter to the trial to consider Welker’s motion and make the required determinations pursuant of R.C. 2953.33.

{¶40} Accordingly, Welker’s first assignment of error is sustained as to Case No. 2006 CRB 00410, and overruled as to Case Nos. 2004 CRB 00749, 2007 CRB 00525, and 2023 CRB 00175.

Conclusion

{¶41} For the reasons set forth above, the judgments of the Ashtabula County Court, Eastern Division, in Case Nos. 2004 CRB 00749, 2007 CRB 00525 and 2023 CRB 00175 are affirmed. The judgment of the Ashtabula County Court, Eastern Division, in Case No. 2006 CRB 00410 is reversed and the matter is remanded for further proceeding consistent with this opinion.

JOHN J. EKLUND, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Ashtabula County Court, Eastern Division, is affirmed in part and reversed in part. The judgments in Case Nos. 2004 CRB 00749 E, 2007 CRB 00525 E, and 2023 CRB 00175 E are affirmed. The judgment in Case No. 2006 CRB 00410 E is reversed. This case is remanded for further proceedings consistent with the opinion.

Costs to be taxed against the parties equally.

JUDGE ROBERT J. PATTON

JUDGE JOHN J. EKLUND,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
--