

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

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

MICHAEL J. WHITE,

Defendant-Appellant.

CASE NO. 2026-A-0011

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2016 CR 00141

OPINION AND JUDGMENT ENTRY

Decided: October 26, 2026
Judgment: Reversed and remanded

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

William C. Livingston, Berkman, Gordon, Murray & DeVan, 55 Public Square, Suite 2200, Cleveland, OH 44113 (For Defendant-Appellant).

JOHN J. EKLUND, J.

{¶1} Appellant, Michael J. White, appeals from the judgment of the Ashtabula County Court of Common Pleas after the court denied his R.C. 2953.32 Motion to Seal and Expunge Record of Conviction.

{¶2} Appellant has raised two assignments of error arguing that the trial court erred because it applied the wrong statutory test and erred in denying his motion to seal his record of conviction.

{¶3} Having reviewed the record and the applicable caselaw, we reverse the judgment of the trial court and remand for further consideration. The trial court abused its

discretion because it applied the wrong legal standard to weigh the statutory factors that govern Appellant's Motion and whether the government's interest in maintaining Appellant's record of conviction outweighed his interest in having his record sealed. The trial court also failed to determine whether Appellant had been rehabilitated as R.C. 2953.32 commands.

{¶4} Therefore, we reverse the judgment of the Ashtabula County Court of Common Pleas and remand the matter for the trial court to issue a judgment entry compliant with the requirements set forth in R.C. 2953.32(D).

Substantive and Procedural History

{¶5} On March 10, 2016, Appellant was indicted on one count of Forgery, a third-degree felony in violation of R.C. 2913.31(A)(1), and one count of Theft, a second-degree felony in violation of R.C. 2913.02(A)(3) and (B)(3).

{¶6} On July 7, 2017, Appellant pled guilty to one count of Forgery and the State dismissed the Theft count. Appellant was sentenced to 120 days incarceration, a \$1,500.00 fine, and five years of community control. Appellant successfully completed his community control on August 11, 2022.

{¶7} On August 19, 2025, Appellant filed a Motion to Seal and Expunge Record of Conviction pursuant to R.C. 2953.32. The State did not file objections. The State did submit six victim letters opposing sealing the record.

{¶8} A hearing on the motion pursuant to R.C. 2953.32 was initially scheduled for October 7, 2025. However, it was rescheduled to ensure compliance with Marsy's Law. The hearing was rescheduled for January 12, 2026.

{¶9} At the hearing, the trial court said that it had reviewed the Sealing of Record Investigative Report submitted by the Adult Probation Department and the victim letters. Appellant argued that he completed all community control requirements, made restitution in full, and that he had been law abiding since his conviction.

{¶10} The State took no position at the hearing other than to indicate that the victims were Appellant's family members, including his mother, who was now deceased and that they strongly objected to the sealing of Appellant's record. One of Appellant's siblings, James White, was present in court. He asked the trial court to deny Appellant's Motion and reviewed the circumstances of his brother's offense, to wit: he had taken advantage of his mother while she was sick and used money he stole from her to go on "gambling trips and ski trips and lived the high life while she laid dying. Instead of grieving on the day she died, he went to the bank and made a final money grab by forging a check . . . and depositing it into his own account, less than two hours after she passed." James opined that Appellant had shown no remorse and said he had not apologized to the family.

{¶11} James felt that sealing Appellant's record would give him an opportunity to victimize others and noted that Appellant took checks his mother had made out to various entities and business, fraudulently endorsed them, and deposited them into his own account. This included one check made out to the Ashtabula County Treasurer, which he fraudulently endorsed as the elected official, Dawn Marie Cragon.

{¶12} The trial court took the matter under advisement.

{¶13} On January 13, 2026, the trial court issued its Judgment Entry on Appellant's Motion. The trial court stated that it had reviewed "the record and the factors in this matter, including the facts and circumstances of the offense"

{¶14} The trial court made no finding regarding Appellant’s rehabilitation. It concluded that “due to the Objection by [James] and victim representative,” it determined that “the interest of [Appellant] in having the record sealed and expunged is *not outweighed* by the government/public interest in maintaining those records.”¹ (Emphasis added). Therefore, the trial court denied Appellant’s Motion.

{¶15} Appellant timely appealed asserting two assignments of error.

Assignments of Error and Analysis

{¶16} We address Appellant’s assignments of error together.

{¶17} Appellant’s first assignment of error states: “The trial court erred in denying Appellant’s motion to seal because it applied the wrong statutory test.”

{¶18} Appellant’s second assignment of error states: “The trial court erred in denying Appellant’s motion to seal the record of his conviction.”

{¶19} At a hearing held pursuant to R.C. 2953.32(C) on a motion to seal a record of conviction, the trial court shall do each of the following:

- (a) Determine whether the applicant is pursuing sealing or expunging a conviction of an offense that is prohibited under division (A) of this section . . . ;
- (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;

1. The trial court’s Judgment Entry contains a clerical error erroneously stating that Appellant’s interest was “not outweighed” by the government’s interest. This is plainly inconsistent with the court’s ultimate decision to deny the motion. Given our disposition of this case, we note this clerical error and resolve the case on its merits.

- (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;
- (h) . . .
- (i)

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

{¶20} “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.), quoting *State v. LaSalle*, 2002-Ohio-4009, ¶ 19. The sealing of a criminal record is “an act of grace created by the state,” which is “a privilege, not a right.” *State v. Simon*, 2000-Ohio-474, ¶ 7, quoting *State v. Hamilton*, 1996-Ohio-440, ¶ 14. Courts “must liberally construe R.C. 2953.32 in favor of promoting the individual’s interest in having the records sealed.” *State v. Talameh*, 2012-Ohio-4205, ¶ 19 (11th Dist.), quoting *State v. M.D.*, 2012-Ohio-1545, ¶ 7 (8th Dist.).

{¶21} We review the trial court’s decision on a motion to seal or expunge a record of conviction for an abuse of discretion. *Id.* at ¶ 20. 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* (8th Ed. 2004). “[A]n abuse of discretion may be found when the trial court ‘applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.’”

Carson v. Holmes, 2010-Ohio-4199, ¶ 23 (11th Dist.), quoting *Thomas v. Cleveland*, 2008-Ohio-1720, ¶ 15 (8th Dist.)

{¶22} Applicants bear the burden of demonstrating that their interest in having the record of conviction sealed is equal to or greater than the government's legitimate need, if any, to maintain those records. *State v. Shaffer*, 2010-Ohio-6565, ¶ 18 (11th Dist.).

{¶23} In addition to weighing the interests of the applicant and the State's needs, a trial court also must determine "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*, 2012-Ohio-3278, ¶ 15 (2d Dist.), quoting R.C. 2953.32(D)(1)(c). An applicant bears this burden, and "[f]ailure 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.

{¶24} "[T]here is no requirement that the state present any evidence at this hearing." *Shaffer* at ¶ 25, quoting *State v. Newton*, 2002-Ohio-5008, ¶ 10 (10th Dist.). However, nothing prevents the State from stating and arguing its position on the petition.

{¶25} Appellant argues that the trial court did not make any findings regarding the sealing of his record. The trial court's Judgment Entry stated that it considered all of the material before it and weighed that material in light of the statutory factors set forth in R.C. 2953.32. The Adult Probation Department prepared a Sealing of Record Investigative Report. That report included Appellant's criminal history, details of the underlying offense, community control performance, and social summary.

{¶26} The trial court reviewed the record including the Investigative Report and the statements provided to the court and appellant's testimony. Although the trial court did not explicitly determine several factors listed in the statute, based on those materials, several of the statutory requirements resolve in favor of granting Appellant's motion to seal. First, there is no question that Appellant is an eligible offender. See R.C. 2953.32(D)(1)(a). His Motion was timely. Sealing or expunging records of a conviction of Appellant's offense is not prohibited. The Investigative Report revealed no criminal charges pending against Appellant. See R.C. 2953.32(D)(1)(b). The prosecutor did not file an objection. See R.C. 2953.32(D)(1)(d). Victims did; the trial court reviewed their objections, and we may infer, considered them.

{¶27} There are two questions before us. First, did the trial court properly apply R.C. 2953.32(D)(1)(f), which requires the trial court to "[w]eigh the interests of the applicant in having the records pertaining to the applicant's conviction . . . sealed or expunged against the *legitimate needs*, if any, of the government to maintain those records." (Emphasis added.) Second, did the trial court comply with R.C. 2953.32(D)(1)(c), which requires the court to determine whether Appellant has been rehabilitated.

{¶28} The trial court's Judgment Entry applied the wrong legal standard in two ways. The first error: The trial court weighed Appellant's interest in having his record sealed against "the *governmental/public interest* in maintaining those records." (Emphasis added.) The correct legal standard is to weigh Appellant's interests against the *government's* "legitimate need," if any, to maintain the records, not its "interests," and not a *public* interest. There may always be some interest in maintaining a record of

conviction, but whether that interest constitutes a legitimate governmental need is a separate question—one that, as will be discussed in more detail below, the trial court failed to address.

{¶29} Neither the record before us nor the Judgment Entry set forth any needs the government has to maintain the records. Indeed, the State took no position on the question when it had every right to take one. The victims' objections were heartfelt but largely personal to them, not the government. But, the trial court did not say how, if at all, the victims' objections established any government need to maintain the records. They do not speak to the government's needs at all. James' statements in opposition were (perhaps understandably so) punitive and vindictive in nature. They reflected a desire to have Appellant continue to bear the adverse collateral consequences of a public record of conviction and to hold Appellant accountable for his criminal conduct. James framed Appellant's effort to seal his record as one more effort "to get out of and deny what he has done." He said that he opposed sealing Appellant's record because he wanted "[t]o honor my mother and hold [Appellant] accountable still for what he did to her, his own mother Our family gave him a break during his plea negotiations. If we had known this would later keep trying to get out of it, we would have gone to trial and had him face the full sentence he would have faced for his crimes against his mother."² Each of James' examples of Appellant's behavior related to his conduct at the time of the offense or during the execution of his sentence.

2. The maximum penalty for third-degree felony forgery in Ohio is three years in prison and a \$10,000.00 fine. Had it been imposed, it would have been fully served in 2020, two years before he successfully completed the community control under his actual sentence.

{¶30} The second substantive error: Courts are to liberally construe R.C. 2953.32 in favor of promoting applicants' interest in having their records sealed. Denying an application for punitive reasons relating to the underlying offense, rather than the government's need to maintain the records is a misapplication of the statute's legal standard.

{¶31} The trial court stated that it considered "the facts and circumstances of the offense which involved forging the signature of the defendant's elderly mother to steal from her." However, nothing in the Judgment Entry connected how the facts and circumstances of the underlying offense (for which Appellant was convicted, served jail time, and completed all community control requirements, including full restitution) related to the government's current "need" to maintain that record of conviction.

{¶32} In *State v. M.J.*, 2019-Ohio-1420 (11th Dist.), the State objected to the sealing of a record based solely on the "facts and circumstances of the case" and the use of a deadly weapon in its commission. *Id.* at ¶ 22. The State's objection contended that, based on the facts that led to the charge, the application to seal should be denied. *Id.* We held that this argument "fail[ed] to highlight a legitimate need to keep the record public. By arguing the severity of the circumstances of the crime justifies denying the motion, the state is essentially arguing that, based upon the charge, [the applicant] should be ineligible." *Id.* at ¶ 23. We said this argument was implicitly aimed at negating the "eligible offender" element of the statute, which the applicant had satisfied. *Id.* We said that "to establish a need, the state is required to set forth a legitimate basis *other than* the circumstances and nature of the crime to provide the court with the necessary evidence to conduct the weighing process." (Emphasis in original.) *Id.*

{¶33} In this case, the trial court's Judgment Entry highlighted the circumstances of the underlying offense rather than the legitimate needs of the government to maintain Appellant's record of conviction. By doing so, the trial court applied the wrong legal analysis.

{¶34} Next, the trial court did not specifically make a determination regarding whether Appellant was rehabilitated pursuant to R.C. 2953.32(D)(1)(c). In a proceeding on a motion to seal a conviction the trial court shall do so. Thus, an applicant's motion to seal may not be properly overruled unless the trial court finds the applicant failed to establish her rehabilitation, that her interests are outweighed by the government's need to keep the record public, or both of these required factors. Here, the trial court made no finding on the former and applied the wrong legal standard as to the latter. Thus, there are no determinations in the record that we can rely on to evaluate the trial court's Judgment Entry. As a court of review, we cannot apply the proper legal standard to weigh Appellant's interest and the government's needs or determine whether Appellant was rehabilitated in the first instance.

{¶35} Finally, the State argues that the circumstances of this case are similar to *State v. Brown*, 2023-Ohio-411 (11th Dist.), where we affirmed the judgment of the trial court despite the trial court making no explicit rehabilitation finding. See *id.* at ¶ 11, 26. However, *Brown* is inapposite here. In *Brown*, we held that the trial court had properly found that Brown failed to meet his burden of demonstrating his interest in having the record sealed was equal to or greater than the government's need to maintain those records. *Id.* at ¶ 19. Although the trial court did not make an explicit rehabilitation finding, it was not required to do so, because that is an independent ground upon which to deny

a motion to seal. *Id.* at ¶ 20, 26. Despite the trial court not making this finding, we reviewed the record and noted that the “record below supports a conclusion that Appellant was not rehabilitated. *This buttresses our conclusion* that the trial court did not abuse its discretion in denying Appellant’s motion.” (Emphasis added) *Id.* at ¶ 26.

{¶36} This differs from the case before us because we have determined that the trial court applied the wrong legal standard to the question of the competing interests of Appellant and the government’s needs. In *Brown*, the trial court properly weighed the interests and found that Brown had not met this burden. In addition to this failure, the trial court also failed to make a rehabilitation determination, which is an independent ground upon which to deny a motion to seal. Because of these failures, we must remand the matter for further consideration. The trial court abused its discretion by applying the wrong legal standard and failing to make a statutorily mandated decision regarding rehabilitation.

{¶37} Accordingly, appellant’s assignments of error have merit.

{¶38} For the foregoing reasons, the judgment of the Ashtabula County Court of Common Pleas is reversed, and the matter is remanded to the point of error for the trial court to comply with the requirements set forth in R.C. 2953.32(D)(1). The trial court shall do so by weighing Appellant’s interest in having his record sealed against the legitimate needs of the government, if any, to maintain those records rather than considering the circumstances of the underlying offense, and the trial court shall determine whether Appellant has been rehabilitated.

ROBERT J. PATTON, 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 of Common Pleas is reversed, and the matter is remanded to the point of error for the trial court to comply with the requirements set forth in R.C. 2953.32(D)(1). The trial court shall do so by weighing Appellant's interest in having his record sealed against legitimate needs of the government, if any, to maintain those records rather than considering the circumstances of the underlying offense, and the trial court shall determine whether Appellant has been rehabilitated.

Costs to be taxed against Appellee.

JUDGE JOHN J. EKLUND

JUDGE ROBERT J. PATTON,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY
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A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
