

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 112428
T.C.N.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: September 7, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-641415-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Alan F. Dowling, Assistant Prosecuting Attorney, *for appellee*.

Law Office of John T. Forristal and John T. Forristal, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1. Defendant-appellant T.C.N. appeals from the trial court's order denying her application to seal the record of her conviction pursuant

to R.C. 2953.32. For the reasons that follow, we reverse the trial court's decision and remand for further proceedings.

Factual and Procedural Background

{¶ 2} On July 30, 2019, T.C.N. was indicted by a Cuyahoga County Grand Jury for robbery, a felony of the second degree, with a one-year firearm specification (Count 1), and theft, a misdemeanor of the first degree (Count 2). On August 13, 2019, T.C.N. pleaded not guilty.

{¶ 3} The pertinent facts of the case are as follows. The state alleged that T.C.N. attempted to exit a Walmart self-checkout counter on two occasions and failed to scan all the items placed in her bag. On one of the occasions, she was dressed in her Cleveland Division of Police uniform and carried her work-issued firearm. After the case progressed in court, the state advised that one of the incidents may have occurred during T.C.N.'s work hours, which sparked an internal affairs investigation for theft in office charges.

{¶ 4} Upon this advisement, T.C.N. entered into a negotiated plea agreement, where Count 1, robbery with a gun specification, was amended to misdemeanor theft. T.C.N. pleaded guilty to Count 1 as amended and Count 2, i.e., two counts of misdemeanor theft. As part of the plea agreement, T.C.N. agreed to: (1) resign from the Cleveland Division of Police; (2) pay restitution to Walmart of \$80.25; (3) have no contact with Walmart; and (4) voluntarily surrender her Ohio Peace Officer Training Academy ("OPOTA") certification, relinquishing her peace officer status.

The trial court imposed six months of community-control sanctions on each count and payment of court costs.

{¶ 5} On July 22, 2021, the Ohio Attorney General’s office accepted T.C.N.’s surrender of her OPOTA certification and permanently barred her from performing peace officer functions in the state of Ohio. On July 28, 2021, the trial court docketed a journal entry that found Norris in compliance with the plea and sentencing agreement and granted her motion to terminate community-control sanctions.

{¶ 6} On November 5, 2021, T.C.N. filed a motion to withdraw the guilty plea. The trial court denied the motion. T.C.N. appealed that decision to this court. Because T.C.N. had completed all requirements of her sentence and this court could provide her no relief, her appeal was dismissed as moot. Almost a year later on October 26, 2022, T.C.N. filed a motion for expungement, which the trial court denied without a hearing. On November 14, 2022, T.C.N. filed a motion for reconsideration clarifying that her motion was to seal her record, not expunge it. On January 11, 2023, an “expungement report/investigation” was ordered. The state of Ohio (“state”) filed a response on January 24, 2022, indicating it did not object to the motion for reconsideration and waiving a hearing, and then withdrew it. On January 27, 2023, the state filed a brief in opposition to the application to seal records. After a hearing on the motion, the trial court denied T.C.N.’s application on February 9, 2023. T.C.N. appealed and assigns the following error for our review.

Assignment of Error

The trial court abused its discretion when it denied T.C.N.'s motion to seal the conviction because that decision failed to properly weigh the competing interests involved and is not supported by the record.

Standard of Review

{¶ 7} Generally, the abuse of discretion standard is applied when a trial court's decision to grant or deny a motion to seal records is reviewed. *State v. C.K.*, 8th Dist. Cuyahoga No. 99886, 2013-Ohio-5135, ¶ 10, citing *In re Fuller*, 10th Dist. Franklin No. 11AP-579, 2011-Ohio-6673, ¶ 7. An abuse of discretion describes an exercise of discretion that is "unreasonable, arbitrary or unconscionable." *State v. Hill*, Slip Opinion No. 2022-Ohio-4544 ¶ 9, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

Law and Analysis

{¶ 8} T.C.N. argues the trial court's denial of her application to seal is not supported by the record and the state's interest in keeping her record public fails to outweigh her interest in pursuing her education and a career in nursing. The state counters that normally it takes a liberal approach to "expungements" but this is one of those limited instances where the state's interest to maintain T.C.N.'s record of conviction outweighs T.C.N.'s interest to have her record sealed. Additionally, the state challenges whether T.C.N. has been rehabilitated.

{¶ 9} Preliminarily, we note that the Ohio Revised Code makes a distinction between the sealing of a record and the expungement of a record. Expungement often refers to the destruction, deletion, or erasure of records so they are no longer

retrievable. See *Capital One Bank United States, N.A. v. Essex*, 2d Dist. Montgomery No. 25827, 2014-Ohio-4247, ¶ 11, referencing former R.C. 2953.37(A)(1) and 2953.38(A)(1). Sealing, to the contrary, does not require destruction of the records but limits access to the records to specific persons/entities. Former R.C. 2953.32(D)(1) through (13)¹ lists who may access a sealed record:

(D) Inspection of the sealed records included in the order may be made only by the following persons or for the following purposes:

(1) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;

(3) Upon application by the person who is the subject of the records, by the persons named in the application;

(4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(5) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;

(6) By any law enforcement agency or any authorized employee of a law enforcement agency or by the department of rehabilitation and correction or department of youth services as part of a background

¹ The sealing language has been renumbered to R.C. 2953.34(D) effective April 4, 2023.

investigation of a person who applies for employment with the agency or with the department;

(7) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, section 2953.321 of the Revised Code;

(8) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

(9) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in section 109.77 of the Revised Code is to be awarded;

(10) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of conducting a criminal records check of an individual pursuant to division (B) of section 109.572 of the Revised Code that was requested pursuant to any of the sections identified in division (B)(1) of that section;

(11) By the bureau of criminal identification and investigation, an authorized employee of the bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in section 311.41 of the Revised Code;

(12) By the attorney general or an authorized employee of the attorney general or a court for purposes of determining a person's classification pursuant to Chapter 2950. of the Revised Code;

(13) By a court, the registrar of motor vehicles, a prosecuting attorney or the prosecuting attorney's assistants, or a law enforcement officer for the purpose of assessing points against a person under section 4510.036 of the Revised Code or for taking action with regard to points assessed.

When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense. As we will discuss further below, this court finds that sealing T.C.N.'s record will still satisfy the state's desire to maintain T.C.N.'s record of conviction. Also,

the state's contention that T.C.N. has not been rehabilitated is unsubstantiated.

{¶ 10} The sealing of a conviction record allows an eligible rehabilitated applicant to have their record of conviction sealed when their interest outweighs the government's interest in keeping the conviction public. Pursuant to former R.C. 2953.32(C)(1),² at the hearing, the court must do, in pertinent part, each of the following:

(C)(1) The court shall do each of the following:

(a) Determine whether the applicant is an eligible offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. * * *.

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

(c) If the applicant is an eligible offender who applies pursuant to division (A)(1) of this section, 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 (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

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

{¶ 11} "The purpose of expungement or sealing a record of conviction is to recognize that people may be rehabilitated." *State v. M.H.*, 8th Dist. Cuyahoga No. 105589, 2018-Ohio-582, ¶ 10, citing *State v. Petrou*, 13 Ohio App.3d 456, 456, 469

² Renumbered effective April 4, 2023, to R.C. 2953.32(D)(1).

N.E.2d 974 (9th Dist.1984). Moreover, this purpose is somewhat akin to the concept of sin, punishment, atonement, and forgiveness that is manifested in traditional western civilization. *Id.*, citing *State v. Boddie*, 170 Ohio App.3d 590, 2007-Ohio-626, 868 N.E. 2d 699, ¶ 8 (8th Dist). Recognition of the real-life consequences of having a criminal record, including obstacles in employment, higher education, housing, loans, and credit can aid in contextualizing an applicant's interest in having their records sealed. *State v. A.S.*, 2022-Ohio-3833, 199 N.E.3d 994, ¶ 8 (1st Dist.). To promote the purposes and benefits of the sealing statutes, the provisions of R.C. 2953.32 must be liberally construed. *State v. W.C.*, 8th Dist. Cuyahoga No. 105353, 2018-Ohio-1182, ¶ 11, citing *Gaines v. Rossi*, 86 Ohio St.3d, 670, 716 N.E.2d 204 (1999). In this case, the denial of T.C.N.'s application to seal focuses primarily on the competing interests of the applicant to seal the record and the government's interest to maintain a public record.

{¶ 12} In an application to seal, it is well settled that the applicant bears the burden to demonstrate that her interest in having her record of conviction sealed is equal or greater than the legitimate need of the state to preserve the record. *State v. Shaffer*, 11th Dist. Geauga No. 2009-G-2929, 2010-Ohio-6565, ¶ 18, citing *State v. Haney*, 70 App.3d 135, 139, 590 N.E.2d 445 (10th Dist.1991.). To meet her burden, T.C.N. testified at the hearing. She discussed the difficulty in securing employment to provide for her two children in college and two boys who attend elementary school. She indicated that most places would not hire her and the few places that did hire her, terminated her upon receiving her background check.

Additionally, T.C.N. shared that she is enrolled at Tri-C and had been accepted to nursing school. However, T.C.N.'s advisor told her she would be unable to complete clinical classes or to sit for the nursing license because of her conviction. Clearly, T.C.N. has demonstrated her interest in having her record sealed and the burden of maintaining the record public.

{¶ 13} Nevertheless, despite these expressed hardships, the state contends that its interest in keeping T.C.N.'s record public outweighs her need to seal it. The state contends that it needs to “protect the public from future duplicitous actions from an offender who has borne the highest level of public trust, enforcing the laws, and violated that trust.” Brief of Appellee p. 7. Notably, the sealing statute provides multiple avenues for the state to access T.C.N.'s conviction to address future malfeasance. Despite T.C.N. having already agreed to surrender her OPOTA certification, resigning from the police force, and serving a period of community control for stealing \$80.25, the state maintains that it has a legitimate interest in, “preserving public access to information that will allow the members of our community to choose for themselves, eyes wide open, about whether they want to associate with appellant.” *Id.* The state further claims that it “holds and must continue to hold, police officers to the highest standards, and do so in the most transparent way.” *Id.*

{¶ 14} The state made a similar argument and was overruled by this court in *M.H.*, 2018-Ohio-582, for a defendant whose conduct was more concerning than T.C.N.'s. In that case, this court reversed a trial court's denial of an application to

seal where the applicant was the “officer on duty” on three occasions, collecting parking fees and kept \$660. In *M.H.*, the state argued that sealing was inappropriate “because of the nature of the crimes [and] the applicant was a police officer, who violated the public trust.” *M.H.* at ¶ 15. This court noted that multiple courts had rejected the argument that the nature of the crime could be the sole basis to deny an application to seal. *Id.* at ¶ 16. The trial court’s sole basis for denying the application to seal was the crime of theft in office. This court found that the trial court abused its discretion in the denial of M.H.’s application to seal his record. *Id.* at ¶ 20.

{¶ 15} Strikingly, the circumstances in *M.H.* and this case are very similar. However, the dissimilarities are worth noting as we continue our analysis. First, M.H. was the “officer on duty,” while T.C.N. was shopping at Walmart when the thefts occurred. There is nothing in the record to establish T.C.N. was acting in her official capacity as a police officer, except for the reference that T.C.N. was wearing her uniform during one of the thefts. Second, M.H. engaged in three acts of theft, while T.C.N. acted in two thefts. Finally, the value of M.H.’s theft was \$660, while the value of T.C.N.’s theft was \$80.25. Clearly, T.C.N.’s conduct was less serious than M.H.’s. Nonetheless, the state’s reasoning was rejected by this court. Consequently, M.H.’s interest in sealing his record was found to have outweighed the state’s interest in keeping his record public.

{¶ 16} We must also consider the state’s concern of whether T.C.N. has been adequately rehabilitated. Despite T.C.N.’s enrollment in school, efforts in securing

employment, and no further criminal activity, the state argues that the trial court expressed valid concerns whether T.C.N. has been rehabilitated. The state claims that when T.C.N. filed her motion to withdraw her guilty plea, she rejected her former admission to and responsibility for the offenses underlying her conviction. The state posits, “[T]his rejection weighs heavily against appellant’s statement that she has truly rehabilitated sufficiently to earn the privilege of sealing or expungement.” Brief of Appellee p. 8.

{¶ 17} Preliminarily, we note that the motion to withdraw guilty plea was filed more than a year prior to the hearing on T.C.N.’s application to seal her record. Furthermore, at the hearing, the state elected not to question T.C.N. The trial court asked T.C.N. a singular question; however, it did not pertain to rehabilitation or the earlier motion to withdraw her guilty plea. At no time did either the state or the court address the motion to withdraw the plea, or T.C.N.’s current thoughts on that matter.

{¶ 18} One of T.C.N.’s lawyers from the original case appeared at her request to testify on her behalf at the hearing. He testified that he was extremely impressed with T.C.N. He noted that he had represented police officers for decades and found T.C.N. to be an exceptional individual who had almost single-handedly raised two children who were entering college. He also suggested that T.C.N.’s struggle in the case was with the belief that she had intentionally taken the items and that was why she struggled, initially, with coming to a resolution. T.C.N. also testified, noting that her actions in this case were contrary to her upbringing, contrary to the example she

wanted to set for her children, that she wants to raise her children to take responsibility for their actions. T.C.N. also diligently tried to maintain work but was often discharged when her employer did a background check. She then enrolled at Tri-C to obtain a nursing degree.

{¶ 19} Rehabilitation can be established by an admission of guilt and a promise to never commit future offenses, or by evidence of good character or citizenship since the conviction. *State v. Evans*, 10th Dist. Franklin No. 13AP-158, 2013-Ohio-3891, ¶ 11. The suggestion that T.C.N.'s filing of a motion to withdraw plea weighs heavily against her statement of rehabilitation fails to acknowledge T.C.N.'s actions. The mere fact that T.C.N. filed a motion to withdraw cannot and should not overshadow her actions and statement to the court. To do otherwise would penalize T.C.N. for exploring all her legal rights. The fact that she filed the motion does not demonstrate she has not been rehabilitated in light of all she has done to move forward positively. This is especially true since T.C.N. completed all terms of her sentence prior to filing the motion.³ The uncontested testimony at the hearing established that T.C.N. admitted her guilt and had taken multiple positive steps to rehabilitate herself. Based upon the record, this court finds that T.C.N. met her burden of production on the issue of rehabilitation. T.C.N.'s decision to challenge the conviction does not weigh against her efforts to rehabilitate herself. Further, the state failed to rebut T.C.N.'s testimony at the hearing. The trial court

³ T.C.N.'s community control was terminated on July 28, 2021, after she had completed all other terms of her sentence. The motion to withdraw her guilty plea was filed on November 5, 2021.

mentioned the motion to withdraw, but for all the foregoing reasons, the filing of a motion to withdraw guilty plea is insufficient to counter T.C.N.'s evidence of rehabilitation.

{¶ 20} Based on the foregoing, we find that the trial court abused its discretion when it denied T.C.N.'s application to seal her record. Further, we find that there is no need for further factfinding at the trial-court level, and therefore reverse the trial court's decision and remand for the limited purpose of sealing T.C.N.'s record. *State v. S.J.*, 2020-Ohio-183, 151 N.E.3d 1021 (8th Dist.).

{¶ 21} Judgment reversed and remanded to the trial court to seal the record of conviction.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EMANUELLA D. GROVES, JUDGE

ANITA LASTER MAYS, A.J., and
MARY EILEEN KILBANE, J., CONCUR