

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	Nos. 115738, 115740
v.	:	115783, and 115917
K.N.,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 10, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-02-430658-A, CR-00-400035-A, CR-12-569308, and
CR-00-394570

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Kristen Hatcher and Brian Callahan,
Assistant Prosecuting Attorneys, *for appellant.*

Justin Mackin, *for appellee.*

EILEEN A. GALLAGHER, J.:

{¶ 1} The State of Ohio appeals the trial court's granting K.N.'s motions to seal the records of two dismissed cases and motions to expunge the records of two convictions. For the following reasons, we affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 2} In September 2000, K.N. pled guilty to drug possession, a fifth-degree felony and in November 2025, the court granted K.N.’s motion for expungement of his record regarding this conviction. In April 2003, K.N. pled guilty to drug possession, a fifth-degree felony, and in September 2025, the court granted K.N.’s motion for expungement of his record regarding this conviction. In April 2003, a felony indictment against K.N. was dismissed and, in September 2025, the court granted K.N.’s motion to seal that record. In February 2013, a felony indictment against K.N. was dismissed and, in October 2025, the court granted K.N.’s motion to seal the record regarding that dismissed case.

{¶ 3} The State appeals the trial court’s rulings in these four consolidated expungement and record-sealing cases, raising one assignment of error for our review.

The trial court erred when it granted Appellee’s application to seal the records of his dismissed cases and expunge the record of his convictions.

II. Law and Analysis

{¶ 4} Appellate courts review decisions to grant or deny motions for expungements and to seal records for an abuse of discretion. *State v. H.M.*, 2018-Ohio-2946, ¶ 14. However, “a trial court’s interpretation of a statute is a question of law that is subject to a de novo review.” *State v. W.A.R.*, 2024-Ohio-256, ¶ 16. A de novo review is an independent analysis, “without any deference to the trial court’s determination.” *Id.*

{¶ 5} R.C. 2953.32 applies to the sealing or expungement of a record of conviction and R.C. 2953.33 applies to the sealing or expungement of a record after an acquittal or a dismissal of the indictment. Both statutes require the court to, among other things, “[d]etermine whether criminal proceedings are pending against the” person applying to have their record sealed or expunged. R.C. 2953.32(D)(1)(b); R.C. 2953.33(B)(2)(b). If the applicant has pending criminal proceedings against them, the court cannot grant the application for expungement or record-sealing. *State v. L.M.*, 2025-Ohio-3076, ¶ 7.

{¶ 6} According to the records in K.N.’s cases, it is undisputed that, at the time of the hearings on his motions, he was subject to community-control sanctions for a misdemeanor conviction in East Cleveland Municipal Court and federal supervised release for a felony conviction in the United States District Court for the Northern District of Ohio (collectively, “supervision”). Whether being under supervision is a pending criminal proceeding under R.C. 2953.32(D)(1)(b) and 2953.33(B)(2)(b) is the only issue properly raised in this appeal.

{¶ 7} We note that the State raises on appeal another statutory determination in expungement and record-sealing cases, namely whether K.N. “has been rehabilitated to the satisfaction of the court,” pursuant to R.C. 2953.32(D)(1)(c). However, a careful review of the records in all four cases in this appeal, including the transcripts from the three hearings on K.N.’s motions for expungement and to seal the records, reveals that the State did not raise this rehabilitation issue in the trial court and the trial court did not make any findings regarding that issue.

{¶ 8} For example, at one of the hearings, the prosecutor conceded, on the record, that “the State agrees that this can be sealed if it wasn’t for [K.N.] being on probation.” At another hearing, K.N.’s defense counsel stated on the record, “I believe the only issue the State is objecting [to] now is the issue of whether or not an ongoing criminal proceeding is affected by ongoing probation from another case.” The State responded by stating, “I think the defense has accurately framed the issue. The objection here is related to the ongoing criminal proceedings in the Northern District of Ohio and the East Cleveland Municipal Court.” At the third hearing, defense counsel stated on the record, “So the only thing I will be addressing is the issue of pendency as it relates to the expungement statute I do want to note that the State did not argue that [K.N.] was ineligible on any other issues or [for] any other reason.” In response, the prosecutor stated, “I think that was actually outlined quite well.”

{¶ 9} The Ohio Supreme Court has held that a “first principle of appellate jurisdiction is that a party ordinarily may not present an argument on appeal that it failed to raise below.” *State v. Wintermeyer*, 2019-Ohio-5156, ¶ 10. As such, we disregard any argument the State makes concerning whether K.N. has been rehabilitated. We turn to the “pending criminal proceeding” argument that the State properly preserved for appeal.

{¶ 10} The State argues that K.N.’s supervision is a pending criminal proceeding as a matter of law under R.C. 2953.32 and 2953.33, “due [to] the court’s continuing jurisdiction.” To support this argument, the State cites *State v. J.M.S.*,

2019-Ohio-3383, ¶ 16 (10th Dist.) (“Because the court retains jurisdiction for the duration of the community control sanction, the case remains pending.”); *State v. Jones*, 2021-Ohio-2499, ¶ 19 (7th Dist.) (“Since a trial court retains jurisdiction over a community control sanction that is currently being served by a defendant, the underlying criminal case upon which that community control is based remains pending.”); and *State v. C.S.*, 2021-Ohio-2858, ¶ 17-20 (2d Dist.) (finding that the “analytical framework” in *J.M.S.* and *Jones* was correct, concluding that there was a pending criminal proceeding because status conferences and collections hearings were continuing to be held and reversing the trial court’s granting of the application to seal the record of conviction).

{¶ 11} K.N., on the other hand, argues that his supervision does not constitute a pending criminal proceeding under R.C. 2953.32 and 2953.33. To support his argument, K.N. cites *State v. Floyd*, 2018-Ohio-5107, ¶ 11 (1st Dist.) (finding that once a sentence is imposed and the conviction is final, the proceeding is no longer pending even if the defendant is under community control sanctions).

{¶ 12} Despite the district split on this issue, this court has not spoken on whether a person under supervision has a pending criminal proceeding for the purpose of having their record sealed or expunged. We have, however, reviewed an analogous issue in *State v. Z.J.*, 2007-Ohio-552 (8th Dist.). In *Z.J.*, the defendant was found not guilty by reason of insanity and civilly committed to a mental hospital. *Id.* at ¶ 2. After receiving treatment at this hospital for 13 years, Z.J. filed a motion to seal her record while she was still committed. *Id.* at ¶ 3. The court granted the

motion and the State appealed. *Id.* This court noted that “R.C. 2945.401 grants the trial court continuing jurisdiction over a person found not guilty by reason of insanity until final termination of the commitment.” *Id.* at ¶ 16. The basis of the State’s appeal in *Z.J.* was that “until [the] appellee’s commitment is finally terminated, criminal proceedings are ‘still pending’ against her and the trial court cannot order her records sealed.” *Id.*

{¶ 13} On appeal, this court concluded that the “continuing jurisdiction of the trial court over [the] appellee’s court-ordered commitment is not a pending ‘criminal proceeding’ for the purpose of” sealing records of conviction. *Id.* at ¶ 17. This court found that its conclusion was “derived from basic principles of statutory construction.” *Id.*

{¶ 14} Following the guidance of *Z.J.*, we apply basic principles of statutory construction in this case to determine whether being under supervision is a pending criminal proceeding.

{¶ 15} “When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said.” *Jones v. Action Coupling & Equip.*, 2003-Ohio-1099, ¶ 12. If a statute is plain and unambiguous “there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and

tends only to obscurity.” *Janinsky v. Potts*, 153 Ohio St. 529, 534 (1950), quoting 50 Am.Jur.2d, Statutes, § 225.

{¶ 16} In *Z.J.*, this court concluded that the term “criminal proceedings” is not defined in the Ohio Revised Code. In *State ex rel. Unger v. Quinn*, 9 Ohio St.3d 190, 191 (1984), the Ohio Supreme Court stated as follows: “Black’s Law Dictionary (5 Ed. 1979), defines ‘prosecution’ as ‘[a] criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with [a] crime.’” *See also State v. Malone*, 2009-Ohio-310, ¶ 17 (more recently citing with approval *Unger*’s definition of prosecution and concluding that a “‘criminal action or proceeding’ implies a formal process involving a court”).

{¶ 17} Therefore, we conclude that the four cases against K.N. at issue in this appeal are “criminal proceedings” under the plain meaning of the expungement and record-sealing statutes. This is also to say that K.N.’s supervision is not, in and of itself, a separate criminal proceeding. *See State v. Schreiber*, 2019-Ohio-2963, ¶ 17 (12th Dist.) (“A community control revocation hearing is not a criminal trial”); *State v. Solomon*, 2019-Ohio-1841, ¶ 9 (11th Dist.), quoting *State v. Dockery*, 2010-Ohio-2365, ¶ 10 (1st Dist.) (“A community-control-revocation hearing, like a parole-revocation hearing, is not a stage of the criminal prosecution”); *State v. Peters*, 2009-Ohio-5836, ¶ 14 (8th Dist.), quoting *United States v. Miller*, 797 F.2d 336, 340 (6th Cir. 1986) (“[A] finding that a defendant violated the terms and conditions of

community control is not the equivalent of a criminal prosecution in that it does not result in a conviction, nor does it constitute punishment.”).

{¶ 18} Having determined that K.N.’s cases in municipal and federal court, and not his supervision, are criminal proceedings, we turn to the word “pending” to determine if K.N.’s supervision renders his criminal proceedings ongoing.

{¶ 19} In *McNeil v. Kingsley*, 2008-Ohio-5536, ¶ 46 (3d Dist.), the court cited the Ohio Supreme Court’s holding in *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 104 (1988) and stated the following: “The Court looked to the definition of ‘pending’ as stated in Black’s Law Dictionary, and held that a case remains ‘pending in any court’ until the court of appeals renders its final judgment.”

{¶ 20} In *Van Fossen* at 103, the Ohio Supreme Court concluded that “[t]he word ‘pending’ is defined in Black’s Law Dictionary (5 Ed. 1979) 1021, as: ‘Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment.’ Thus, an action or suit is ‘pending’ from its inception until the rendition of final judgment.”

{¶ 21} In *State ex rel. Russell v. O’Shaughnessy*, 2023-Ohio-3949, ¶ 7 (10th Dist.), the Tenth District Court of Appeals found that the word “pending” was not defined in the Franklin County Common Pleas Court’s Local Rules and turned to Black’s Law Dictionary, which “defines ‘pending’ as ‘[r]emaining undecided; awaiting decision.’ *Black’s Law Dictionary* 1314 (10th Ed. 2014).”

{¶ 22} In addition to the cases cited by the parties on this issue, with *J.M.S.*, *Jones* and *C.S.* on one side and *Floyd* on the other side, our research revealed the following cases concerning pending criminal proceedings.

{¶ 23} In *State v. Baston*, 2021-Ohio-3228 (1st Dist.) and *State v. Quinn*, 2026 Ohio App. LEXIS 1340 (1st Dist.), the First District extended the rationale in *Floyd* to situations beyond community control sanctions. In *Baston* at ¶ 1, the court held that there was no pending criminal proceeding, despite the defendant still serving a 40-year prison sentence. The *Baston* Court held that “[o]nce [the defendant] was convicted of the child-molestation offense and sentenced, the proceeding was no longer ‘pending.’” *Id.* at ¶ 11. In *Quinn*, the court held as follows: “Like ordering a defendant to serve a term of community service, fines are criminal sanctions that are imposed after a defendant is found guilty of an offense Therefore, under this court’s precedent, unpaid fines in unrelated offenses are not pending criminal proceedings; they are criminal sanctions.” *Id.* at *4.

{¶ 24} Given the plain and unambiguous meaning of “pending criminal proceeding” we follow the First District’s conclusion in *Floyd* and its progeny and hold that being under supervision is not a pending criminal proceeding and does not render an applicant ineligible for expungement or record-sealing under R.C. 2953.32 and 2953.33. Accordingly, the State’s sole assignment of error is overruled.

{¶ 25} Judgment affirmed.

It is ordered that appellee recover from appellant 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.

EILEEN A. GALLAGHER, JUDGE

LISA B. FORBES, P.J., and
EMANUELLA D. GROVES, J., CONCUR