[Cite as *State v. L.W.*, 2026-Ohio-4377.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 116242
v.	:	
L.W.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 5, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-04-454495-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Tasha L. Forchione, Assistant Prosecuting Attorney, and Matthew Bedell, Certified Legal Intern, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Aaron T. Baker, Assistant Public Defender, *for appellant*.

TIMOTHY W. CLARY, J.:

{¶ 1} L.W. appeals from the trial court's denial of his application to expunge his criminal record. For the following reasons, we affirm the lower court's decision.

I. Factual and Procedural History

{¶ 2} The underlying case stems from events that took place in 2004. At that time, L.W. allegedly threatened and harassed his ex-girlfriend ("victim") and was indicted for menacing by stalking and telecommunications harassment. The case proceeded to a bench trial, and the court convicted L.W. of telecommunications harassment, in violation of R.C. 2917.21, a misdemeanor of the first degree. The trial court imposed and suspended a six-month jail sentence and placed L.W. on three years of community-control sanctions. L.W.'s community-control sanctions were terminated four months later when he began serving a 36-month federal prison sentence stemming from drug charges.

{¶ 3} In 2009, L.W. was charged with and pleaded no contest to disorderly conduct, a minor misdemeanor. In 2012, L.W. pleaded no contest to a trafficking offense and drug possession, felonies of the third degree, and possession of criminal tools, a felony of the fifth degree; the court sentenced him to two years of community-control sanctions. In 2012, L.W. was also convicted of contempt of court in one case and carrying a concealed weapon in a separate case. Pursuant to probation violations related to the trafficking, drug-possession, and concealed-weapon charges, L.W. served 12 months in prison starting in April 2014. Additionally, L.W. pleaded guilty to a new trafficking offense in April 2014 and was sentenced to nine months in prison, to be served consecutively to his probation violation sentence.

{¶ 4} On April 10, 2025, pursuant to R.C. 2953.32, L.W. filed an application for expungement of the telecommunications-harassment conviction. The court ordered an expungement investigation report ("EIR"). The EIR noted that L.W. had two cases, in addition to the instant matter, under review for expungement. Five months later, the State filed a brief in opposition to the motion in which it conceded that L.W.'s offenses were eligible for expungement under the statute and attached the EIR. The State further argued in its brief that the victim opposed the application and, thus, "the State conditionally oppose[d] the application." L.W. filed a reply brief, and the court conducted a hearing on February 11, 2026.

{¶ 5} At the hearing, L.W.'s counsel addressed the court, stating:

> Thank you very much, Your Honor. As the Court stated, [L.W.] is here to seek the expungement of a record from a matter that is from 2004, so over 20 years ago.
>
> I think the most important thing — as I understand, there is victim opposition in this case. Given the nature of the allegations, there is no suggestion that there has been any ongoing problems between these two parties in all of these years.
>
> As set out in my reply brief, life really couldn't be more different for [L.W.]. I recognize what the EIR suggests about a number of years ago, but he has been married. He's married. He has children. He has one child on her way to college soon.
>
> His wife works for the county in corrections at the Juvenile Justice Center. They are as a family interested in starting a small business. I know for practical reasons, as well as simply because of his interest, the Court is always interested to see what impact an expungement would make on his overall record.
>
> I did put a footnote in my reply brief that some of the cases that are on the expungement investigation report, two have been expunged and one has been sealed. So at least for the purposes of Cuyahoga County,

> that doesn't leave very much left. It does sort of have an outsized impact on a review of his record.
>
> I think also the last matter of any significance is over — it is almost 12 years ago now. I think that [L.W.] is living a completely different life and would very much like to put various chapters of his life behind him.
>
> I know that primarily we are here today because the victim opposes it. I just always like to sort of reorient the question as being about competing interests. Not about how to resolve the case, right? But whether or not his record needs to be available to the public.
>
> He has already answered for this crime, as well as other things that he had to put behind him, so we would very much respectfully ask the Court to allow him to continue to move forward and expunge this record.
>
> Thank you very much, Your Honor.

Tr. 3-5.

{¶ 6} The assistant prosecuting attorney described the events that had occurred in 2004, conceded L.W.'s 2004 conviction was eligible for expungement under the statute, referenced the EIR, asked the court to consider whether L.W.'s criminal history showed he had been rehabilitated, and deferred to the victim's statement. The assistant prosecuting attorney also noted that she could "see that [L.W.] is smiling, smirking while I'm saying this, so that is concerning. Perhaps he can speak to that." Tr. 6.

{¶ 7} The victim opposed L.W.'s application for expungement and made an oral statement via Zoom. The victim testified that she could not move on from the 2004 incident for which she continues to receive therapy:

> So just listening in on when [L.W.'s counsel] was talking about him moving on and wanting to, you know, like erase this, I'm not able to do that. I still am in therapy for the trauma that he caused me.
>
> I go to — I do EMDR therapy, which is trauma-based therapy, because of the things that he did. So I'm not able to just move on. I haven't been able to just move on.
>
> Even though it's years later, I still, like I said, am in trauma therapy from the times of the stalking, of the physical abuse, him, you know, wanting to kill me and throw my body in Lake Erie, so no one can find me. You know, I'm still dealing with those things.
>
> My husband deals with those things. He's not able to walk up on me from behind without announcing hisself, you know. My kids — I don't play hide and go seek with my kids because I don't like to get scared because of all of the times he jumped out of the closet on me in pitch blackness.
>
> Like the things that he put me through I don't feel like it's fair that he's just able to have it erased like it never happened yet me, being the victim, I'm still having to deal with it. My kids are dealing with it. My husband is dealing with it.

Tr. 8-9. The victim further testified that she suffers from post-traumatic stress disorder and anxiety that have resulted in her being disabled.

{¶ 8} L.W. addressed the court, via Zoom:

> L.W.: Okay. Your Honor, I'm actively — when the [assistant prosecuting attorney] was talking, my wife was saying something to me. She's sitting next to me, because that's my support. That's who knows everything.
>
> I wasn't laughing at the situation, because the situation is not a laughing matter. . . .

Tr. 13-14

> [My wife] had said something to me about what was going on today, so it wasn't anything to be disrespectful or anything to you guys.

COURT: All right. So what are you doing these days?

L.W.: Right now I am an active business owner. I own a convenience store.

COURT: Okay.

L.W.: Okay. So, you know, I have my two wonderful, beautiful daughters, you know, I'm with every day. I take care of my business. I have my wife by my side.

This is the past. This is just like — I didn't want to go back and forth, Your Honor, but a lot of the things that was said did not even happen. Now, if you could — if you wanted to, Your Honor, you could read your transcripts to this case. Some of that stuff didn't happen. Then if I was familiar with what happened, she got on the stand and literally told them that she didn't have no problem and that's why they gave me the misdemeanor.

COURT: Well, I'm not retrying the case —

L.W.: Yes, ma'am.

COURT: — from 20 years ago. We had a trial and the jury made their decision.

L.W.: Yeah, right. That's correct.

COURT: My only question is are we expunging —

L.W.: Yes, ma'am, because I don't have anything — I'm doing real well. All them cases, it was only one active case. Everything's been expunged. I ain't been in trouble at all.

It was 20 years ago, ma'am. I take care of my business. I take care of my kids. I go to community services and stuff like that. I take care of my business, ma'am.

I just — this is the past. I was young. I was only 19. This is 20 — I'm 42 years old right now, ma'am. I'm fixing to be 43 in another month. I have my beautiful wife next to me.

> Ma'am, I take care of my business and my responsibilities and plus also I help the community every day, so all of those things that was done, I was young, you know, young and dumb. I didn't know no better, but some of them the things, they wasn't right.
>
> It wasn't — it just wasn't right, Your Honor. I want this to be in my past, not to keep carrying on through my future, because it's not right. It's not right.
>
> COURT: All right. Well, very good. The Court takes into consideration the remarks of both counsel and the remarks we have heard here on Zoom by the defendant and the victim in the case.

Tr. 14-17.

{¶ 9} On February 11, 2026, the trial court issued a judgment entry that summarily denied L.W.'s application for expungement. L.W. filed a timely appeal, presenting a sole assignment of error for our review: The trial court abused its discretion when it denied L.W.'s motion for expungement because that decision did not properly weigh the competing interests involved and is not supported by the record.

II. Legal Analysis

{¶ 10} Generally, we review a trial court's disposition of an application for expungement under an abuse-of-discretion standard. *N. Olmsted v. J.S.*, 2025-Ohio-1460, ¶ 7 (8th Dist.), citing *State v. M.E.*, 2018-Ohio-4715, ¶ 6 (8th Dist.).[1] The

[1] Expungement and record sealing are both governed by R.C. 2953.32 but provide different forms of relief. "Expungement often refers to the destruction, deletion, or erasure of records so they are no longer retrievable." *State v. T.C.N.*, 2023-Ohio-3156, ¶ 9 (8th Dist.), citing *Capital One Bank United States, N.A. v. Essex*, 2014-Ohio-4247, ¶ 11 (2d Dist.), referencing former R.C. 2953.37(A)(1) and 2953.38(A)(1). "Sealing, to the contrary, does not require the destruction of the records but limits access to the records to specific persons/entities." *Id.* Law enforcement and prosecuting attorneys are among those with access to sealed records. *Id.* Here, L.W. sought to expunge a prior criminal conviction.

term abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219 (1983). An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 11} Trial courts apply a two-step analysis when determining whether to grant an application to expunge or seal a record of conviction. *State v. Campbell*, 2025-Ohio-5119, ¶ 22 (1st Dist.). "'First, the trial court "determines whether the offender is an eligible offender, including whether the offender has waited the requisite time before filing."'" *Id.*, quoting *State v. T.W.C.*, 2025-Ohio-2890, ¶ 9, citing *State v. J.L.*, 2020-Ohio-3466, ¶ 9 (10th Dist.). Second, the trial court "'weighs a number of substantive considerations for and against the sealing [or expunging].'" *Id.*, quoting *id.* at ¶ 9. Here, the parties did not dispute L.W.'s eligibility to apply for expungement. L.W. contends on appeal that the trial court did not properly weigh the relevant statutory considerations.

{¶ 12} Under R.C. 2953.32(C), when an offender files an application to expunge their record of conviction, the trial court must set the matter for a hearing to be held between 45 and 90 days after the filing of the application.

> At the hearing, the trial court determines whether the applicant is seeking to have eligible convictions sealed [or expunged] and whether the applicant has waited the appropriate period before applying. R.C. 2953.32(D)(1)(a). The court also determines whether the applicant has criminal charges pending. R.C. 2953.32(D)(1)(b). And the statute instructs the court to consider any objection by the State or a victim and

> any statement submitted by a victim. R.C. 2953.32(D)(1)(d), (e), and (g). The applicant must show [his or] her rehabilitation "to the satisfaction of the court," R.C. 2953.32(D)(1)(c), and that [his or] her interests in having [his or] her convictions sealed outweigh any governmental interest to maintain the records, R.C. 2953.32(D)(1)(f).

State v. J.B., 2026-Ohio-1405, ¶ 11.

{¶ 13} L.W. argues that the trial court abused its discretion when it denied his application for expungement because the court did not properly weigh the competing interests and the decision is not supported by the record. Specifically, he argues that "the State never made its interest in maintaining the record known." Appellant's brief, p. 2. L.W. also argues that the victim testified to her ongoing problems related to the 2004 incident, but she did not state why L.W. should not receive an expungement. L.W. argues that the evidence shows he has not committed a crime in over ten years and several of his recent convictions have been sealed or expunged. L.W. further argues that "he has moved on from committing crimes, started a family, and is seeking to start a business. His interest in clearing his record as much as possible is evident." Appellant's brief, p. 4. L.W. contends that because the State did not provide any evidence or testimony supporting the State's interest in not having the record expunged, the only option was for the trial court to grant his application for expungement.

{¶ 14} We note that the trial court summarily denied L.W.'s application for expungement and, therefore, did not place its findings on the record. Such a decision would normally result in a reversal of the trial court's order and a remand for the court to state, on the record, its findings and reasons for its ruling. *State v.*

B.H., 2018-Ohio-2649, ¶ 16 (8th Dist.). However, L.W. does not cite this infirmity as an assignment of error. Under this unique set of facts and in accordance with the party-presentation principle, we cannot analyze the case on this basis. *Snyder v. Old World Classics, L.L.C.*, 2025-Ohio-1875, ¶ 4, quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("Under the principle of party presentation, 'we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'").

{¶ 15} At the expungement hearing, the State referenced L.W.'s criminal record and deferred to the court's decision as to whether he had been rehabilitated. The trial court could consider all convictions in the EIR, including those which had been expunged. *State v. R.L.*, 2026-Ohio-4286, ¶ 26 (8th Dist.) ("R.C. 2953.32(D)(2)(b) specifically allow[s] the trial court to consider 'a sealed record of prior conviction . . . .'"). The State also deferred to the victim's statement and noted that L.W. smirked during defense counsel's statements to the court. L.W. denied that he had been smirking at the assistant prosecuting attorney and stated the hearing was not "a laughing matter." Tr. 14. L.W. further testified that his past crimes were committed when he was young and "he didn't know [any] better." Tr. 16. L.W. stated that he had not been involved with the law in over 20 years, he has a family that he supports, and he currently owns and operates a convenience store. L.W. concluded his testimony by stating it is not right that his criminal history remains on his record: "I want this to be in my past, not to keep carrying on through my future, because it's not right. It's not right" Tr. 16. The victim testified that

over 20 years after L.W.'s conviction for telecommunications harassment she continues to experience ongoing, disabling post-traumatic stress disorder and anxiety for which she receives therapy.

{¶ 16} The trial court, as the factfinder, assessed the credibility of the witnesses, including L.W. and the victim. Pursuant to the EIR, the trial court had access to L.W.'s criminal history; he had been convicted of numerous charges, with his last conviction in 2014. "'[T]he applicant ha[d] the burden of establishing his [or her] rehabilitation and that his [or her] privacy interests [we]re equal to or greater than the government's interest to maintain the record of conviction.'" *State v. S.D.F.*, 2025-Ohio-1832, ¶ 16 (8th Dist.), citing *State v. A.V.*, 2019-Ohio-1037, ¶ 9 (9th Dist.), citing *State v. Shaffer*, 2010-Ohio-6565, ¶ 30, 32 (11th Dist.).

{¶ 17} We recognize that trial courts are to apply a liberal construction of the expungement statute to promote the legislative purpose of allowing expungement. *State v. Aguirre*, 2014-Ohio-4603, ¶ 18. Nonetheless, expungement of a criminal record is an "act of grace created by the state." *State v. Hamilton*, 75 Ohio St.3d 636, 639 (1996). It should be granted only when all requirements for eligibility are met, because it is a "privilege, not a right." *State v. Futrall*, 2009-Ohio-5590, ¶ 6. Further, the Ohio Supreme Court recently stated that the expungement statute "places no burden on the State to submit evidence concerning the application. And the lack of objection on the part of the prosecutor does not relieve the trial court of its duty to weigh the governmental interest against the applicant's interest." *State v. J.B.*, 2026-Ohio-1405, ¶ 17.

{¶ 18} Based upon the record, we do not find the trial court's decision that L.W. did not meet his burden was unreasonable, arbitrary, or unconscionable and, accordingly, we conclude there was no abuse of discretion by the trial court in denying L.W.'s application to expunge his records. Appellant's assignment of error is overruled.

{¶ 19} 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.

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TIMOTHY W. CLARY, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR