IN THE SUPREME COURT OF OHIO

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| Guy Mettle<br><br>Appellant<br><br>v.<br><br>State of Ohio,<br><br>Appellee | : | Case No. 08-0921<br><br>On Appeal from the Franklin County Court of Appeals, Tenth Appellate District<br><br>Court of Appeals Case No. 07AP-892 |

# MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT GUY METTLE


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SUPREME COURT OF OHIO

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## STATEMENT OF CASE AND FACTS

Statement of the Case can be summarized quickly, but the constitutional ramifications are complex and include 9 Propositions of Law. In order to maintain clarity, avoid repetition, and stay within the 15 page limit, this short Statement of Case is placed first.

In the Supreme Court, Mettle is the Appellant, but in the Appellate Court, Mettle was the Appellee. In order to avoid confusion, Supreme Court Appellant Mettle will be identified simply by his name when discussing actions in the lower courts.

In the Court of Common Pleas, Mettle applied to have his records sealed for one offense of non-support. The State opposed based on State's claim that Ohio R.C. 2953.36 (D) prevents sealing convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age.

However, the Act Summary of Am. Sub. S.B. 13, 123rd General Assembly, carries different wording, which allows the record to be sealed unless the conviction is for an offense of violence: "Excludes from the Criminal Conviction Records Sealing Law all convictions of an offense of violence when the offense is (1) a misdemeanor of the first degree or a felony and when the offense is not riot and is not assault, inciting to violence, or inducing panic that is a misdemeanor of the first degree, (2) an offense of which the victim was under 18 years of age when the offense is a misdemeanor of the first degree or a felony, or (3) a felony of the first or second degree."

In Common Pleas court hearing and in his brief, Mettle raised constitutional issues, legislative intent, and 13 rules of construction. The State made no response to these issues and said nothing about them at the hearing. Judge Schneider ordered Mettle's record sealed, and

stated that he did not believed that the Legislative Act intended to prevent the sealing of records for the offense of nonsupport.

State appealed. Appearing pro se, Mettle filed a timely motion for extension of time to file his brief. Appellate court denied the extension of time, and Mettle was prevented from filing an appellate brief or presenting oral arguments.

The Appellate court reversed the Common Pleas court, and ordered Mettle's record to be unsealed. The 10th Appellate court did not address constitutional issues, legislative intent, or rules of construction, but merely cited State v. Schiavo, 10th Dist., 2008 Ohio 298, 208 Ohio App. Lexis 251. However, State v. Schiavo merely cited State v. Westendorf from another district Appellate Court.

This chain of cases extended the geographic effect of unconstitutional rulings from the Appellate courts. However, In State v. Westendorf, 1st Dist. No. C-020114, 2003-Ohio-1019, Appellate Judge Painter stated: {¶11} "Everyone involved with this case must know that this result is unfortunate, and obviously not what the legislature intended."

The opinion worth addressing is State v. Westendorf, because its opinion includes an explanation, while State v. Schiavo does not. Fortunately, Mettle aimed much of his Common Pleas brief at State v. Westendorf, and so it is part of the Appellate court record.

## EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES SUBSTANTIAL CONSTITUTIONAL QUESTIONS

This case is of broad general interest because it affects thousands of parents who were, or will be, convicted of one offense of non-support. If affects their ability to find good employment because their criminal record remains unsealed, which affects their ability to support their children. Consequently, it affects thousands of children along with each child's second parent.

Also, the Appellate court's interpretation broadens the prohibition against sealing records to a huge number of offenses beyond those intended by the Legislative Act. At this point it affect tens (or hundreds) of thousands of people.

The particulars of this case and rulings of the Appellate court involve constitutional questions including due process, equal protection, separation of powers, rights of pro se litigants, rights of in forma pauperis litigants, court responsibility for their staff, the unconstitutional creation of privileged classes, and the courts' obligation to determine legislative intent. The two issues, that Appellate courts are ignoring rules of construction and ignoring legislative intent, will create complete chaos in Ohio's legal system, and in Ohio's legal interface to other states and the federal government.

To avoid repetition and stay within the 15 page limit, Appellant's detailed explanation of constitutional issues will be presented with the associated Proposition of Law. Additional statement of facts will be identified as needed. This concise form of organization is required by the fact that this memorandum contains 9 propositions of law.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law #1 - Supreme Court is obligated to determine legislative intent. Lower courts are similarly obligated.**

Ohio Const. Art. 4.1. Legislative Intent -- Where two legislative enactments are in apparent conflict, the supreme court's constitutional role under OConst art IV, § 1 is to interpret the intent of the general assembly: State v. Smorgala, 50 Ohio St. 3d 222, 553 N.E.2d 672, 1990

Ohio Const. Preamble: The rules for construing a constitution and a statute are substantially the same: : State ex rel. Greenlund v. Fulton, 99 Ohio St. 168, 124 N.E. 172 (1919).

Ohio Const Preamble: A technical meaning of a constitutional provision may be resorted to, if such meaning is in harmony with the manifest intention of the people in enacting such provision: State ex rel. Sylvania Home Tel. Co. v. Richards, 94 Ohio St. 287, 114 N.E. 263 (1916). Also quoted in Ohio Const. Art. 1.1.

Ohio Const. Art. 1.10 - Cumulative Error Doctrine. Pursuant to the cumulative error doctrine, the existence of multiple errors which may not individually require reversal may violate a defendant's right to a fair trial: State v. Karl, 142 Ohio App. 3d 800, 757 N.E.2d 30, 2001 Ohio App. LEXIS 2373, 2001 Ohio 3273, (2001).

Ohio Const. Art. 2.1 - Separation of Powers. The legislative power of the state is vested in the general assembly by OConst art II, § 1 and that body may not abdicate or transfer to others the essential legislative functions with which it is vested: Belden v. Union Cent. Life Ins. Co., 143 Ohio St. 329, 55 N.E.2d 629 (1944).

Ohio Const. Art. 2.1 - The grant of legislative power in OConst art II, § 1, is limited only by express constitutional provisions in the Ohio and United States Constitutions: Williams v. Scudder, 102 Ohio St. 305, 131 N.E. 481 (1921).

Ohio Const. Art. 4.1 - The jurisdiction of the common pleas court is limited to judicial power under OConst art IV, § 1, and, except in the special instances in which the constitution expressly confers nonjudicial power, it has no nonjudicial power and cannot be invested with such power by the legislature

Ohio Const. Art. 4.1 - Independence of Judicial Branch -- The administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers: State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 423

When courts ignore legislative intent, they will enforce errors, including clerical errors, which is the case with R.C. 2953.36 (D).

**Proposition of Law #2 - Purpose of Rules of Construction is to determine Legislative Intent. Supreme Court and lower courts must use rules of construction.**

In State V. Liffring, 61 Ohio St. 39; 55 N.E. 168; 1899; the Supreme Court stated: "It should always serve the rule that the object of construction is to ascertain intention." Also, see Proposition of Law #1, above.

Rules of construction ignored by the Appellate courts, in this case alone, include:

a) Purpose of rules of construction is to determine lawmakers' intent

b) Specific provisions rule over general provisions to determine intent

c) Intent is determined from the Legislative Act.

d) Consider the whole, *in pari materia,* to determine intent

e) In seeking the meaning of an act, all of its words must be considered.

f) A fragment of the truth is not assumed to be the universal truth

g) Must assume the lawmaker intended to be consistent with himself

h) Consider even the title of the Act to determine intent

i) Remedial law, especially, the court should determine intent.

j) Remedial law, especially, court should harmonize the law with intent and the whole.

k) Penal law, especially, the court should use "strict" construction against the state

l) Penal law, especially, strict construction means in favor life and liberty

m) Penal law, especially, use liberal interpretation in favor of accused

Appellant will provide case citations for each these rules of construction in his Merit Brief. The citations are omitted now due to the 15 page limit on this memorandum, but they were included in Mettle's Common Pleas brief, which is in the Appellate Court record.

**Proposition of Law #3 - A cause of action exists when an official's failure to train or supervise personnel leads to deprivation of the litigant's constitutional rights. This applies to Ohio Courts.**

See 1995 U.S. App. LEXIS 12617: "A plaintiff cannot bring a cause of action under the theory of respondeat superior under 42 U.S.C.S. § 1983, but a cause of action exists when an official's failure to train or supervise personnel leads to deprivation of the plaintiff's constitutional rights. See Denton, 112 S. Ct. at 1733."

In Haines v. Kerner, 404 U.S. 520 (1971), the U.S. Supreme Court found that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.

In April, 2006, the Supreme Court published their "Report And Recommendations Of The Supreme Court Of Ohio Task Force On Pro Se & Indigent Litigants," which states: "The 52 recommendations of this report are based on one simple premise: to fulfill its duty of "justice for all", our legal system must become "user friendly" to the pro se litigant and afford timely access to effective legal counsel for indigent parties."

That report recommends "Although there is no substitute for competent legal counsel, some litigants will represent themselves, either voluntarily or involuntarily. Incomprehensible forms, as well as complex court rules and procedures, impair the ability of self-represented litigants to present their cases."

Ohio Const. Art. 1.16. -- Due Process - Trial court violated due process and committed plain error by finding the defendant guilty of the charged offense without offering him an opportunity to present a defense: State v. Litreal, 170 Ohio App. 3d 670, 868 N.E.2d 1018, 2006 Ohio App. LEXIS 5410, 2006 Ohio 5416, (2006), criticized by Bryan-Wollman v. Domonko, 115 Ohio St. 3d 291, 2007 Ohio 4918, 874 N.E.2d 1198, 2007 Ohio LEXIS 2227 (2007).

STATEMENT OF FACTS FOR PROPOSITION OF LAW #3 - Two Appellate court actions deprived Mettle of his constitutional rights. (This information is part of the court record.) First, the 10th Appellate Court local rules state: "A party claiming to be indigent shall file with their complaint a motion for leave to proceed in forma pauperis supported by an affidavit showing indigency and indicating their actual financial condition and the disposition of any request for similar leave sought in any other court." When Mettle asked the Appellate Court Administration for their form to file for "In Forma Pauperis" status, the court administration said they did not have one, and directed Mettle to file an affidavit stating that his income fell below the guidelines used by the Public Defender's Office. When Mettle did so, the Appellate court denied his motion to proceed in forma pauperis.

The Appellate court does not have a form which mentions "in forma pauperis" to conform with the wording in their local rules. The Court administration was also confused by this term, and misdirected this pro se litigant, which is part of a consistent pattern of Appellate court abuse of this pro se litigant, and by logical extension, other pro se litigants.

Similarly, 10th Appellate Court did not have a form for extension of time, which is arguably one of the most common motions for pro se litigants at the Appellate level. At the very beginning of the appeal, the Appellate Court Deputy Administrator, Mr. Douglas W. Eaton told Mettle, face to face, "If you need more time, just ask." When Mettle filed a timely motion for an extension of time to file his brief, the Appellate court denied the motion. Consequently, Mettle was prevented from filing an Appellate Court brief and from presenting oral arguments. Mettle was denied due process and equal protection. By contrast (as shown in Proposition of Law #7, below), the Appellate court abused its discretion and granted extensive leeway to the Prosecutor, which also violated Mettle's constitutional rights to due process and equal protection.

**Proposition of Law #4 -- A cause of action exists when Ohio courts have not implemented a systematic and comprehensive program to protect the constitutional rights of pro se and indigent litigants.**

See Proposition of Law #3, above. In particular, see the "Report And Recommendations Of The Supreme Court Of Ohio Task Force On Pro Se & Indigent Litigants" that was published two years ago, in April 2006, and remains without systematic and comprehensive implementation. This case is evidence of that. And Mettle was further victimized by plea bargain fraud during the non-support trial, which is evidenced by an affidavit filed during that time period. The Supreme Court's own report provides extensive evidence to support this Proposition of Law #4.

**Proposition of Law #5 - R.C. 2953.36 (D) violates Constitutional rights of due process and equal protection due to selective and vindictive enforcement.**

Ohio Const. Article 1.2, 1.16; U.S. Const. 14th Amendment - The equal protection clause applies not only to duly enacted statutes and ordinances, but also to local customs, policies, or usages which have the force of law: Stengel v. Columbus, 737 F. Supp. 1457 (S.D. 1988).

Ohio Const. Article 1.2 -- The equal protection clause of the United States Constitution is violated when public officials intentionally, deliberately or systematically discriminate by not enforcing municipal zoning ordinances against a class of violators expressly included within the terms of such ordinances: Columbiana v. Keister, 5 Ohio App. 3d 81, 449 N.E.2d 465

Ohio Const. Article 1.2 -- Equal protection guarantees are violated where a municipal licensing ordinance ostensibly applies to all massage businesses, but it is only enforced against businesses that advertise in "adult" publications: State v. Norris, 147 Ohio App. 3d 224, 769 N.E.2d 896, 2002 Ohio App. LEXIS 977, 2002 Ohio 1033, (2002).

STATEMENT OF FACTS AS APPLIED TO PROPOSTION OF LAW #5 -- State's Appellate brief cited 10 cases that involved sex, drugs, or violence. All of these cases would have been ineligible to have their records sealed without the requirement that the victim be under age 18. By contrast, the State could only cite one type of case that involved non-violent offenses against victims under the age of 18. That one type of offense is nonsupport. R.C. 2953.36 became effective in January 2004. After four years, the only non-violent, non sex, non drug examples found by the State and presented in their brief were nonsupport cases. This is prima facie evidence of the State's selective and vindictive prosecution/opposition to nonsupport cases which apply to have their records sealed.

**Proposition of Law #6 - The State/Prosecutors must be held to equally, or more, strict standards as pro se litigants, otherwise it violates equal protection and due process. This is a corollary to the U.S. Supreme Court finding that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.**

See Haines v. Kerner, 404 U.S. 520 (1971) -- In finding plaintiff's complaint legally sufficient, Supreme Court found that *pro se* pleadings should be held to "less stringent standards" than those drafted by attorneys.

Also, see Proposition of Law #7, below.

**Proposition of Law #7 - The State/Prosecutor should not be allowed to manipulate the court docket resulting in a case schedule to his advantage.**

See Proposition of Law #6, above.

STATEMENT OF CASE AND FACT FOR PROPOSITION OF LAW #7 -- Prosecutor's manipulation of court calendar and fraud on the court are shown as follows. Normally, the Appellate case would have been placed on the Court's accelerated calendar. However the Prosecutor filed a Docketing Statement declaring that:

a) "This appeal should be assigned to the regular calendar"

b) "Although the appeal meets one or more of the reasons for being assigned to the accelerated calendar, it should not be assigned to the accelerated calendar because: 1. Brief in excess of 15 pages (see Loc.R. 7(B)) is necessary to set forth adequately the facts and argue to issues in the case."

In fact, the Prosecutor filed a brief only 6 pages in length. Prosecutor committed fraud on the Court in his false justification for the regular calendar instead of the accelerated calendar.

The motivation of the Prosecutor to commit calendar fraud came to light when the Prosecutor filed his "Supplemental Authority" citing State v. Schiavo, which was rendered on January 29, 2008, while State v. Mettle was still in progress. The Prosecutor was privy to both Schiavo's and Mettle's briefs. Prosecutor knew that Mettle's brief was much stronger with many citations, constitutional issues, and arguments from the Ohio Supreme Court. The Prosecutor was highly motivated to conclude State v. Schiavo first, in order to cite it as an authority in State v. Mettle. This locked the 10th Appellate Court into a decision that was adverse to Mettle, no matter the merits of Mettle's case. Prosecutor accomplished this by filing a fraudulent Docketing Statement and fraudulently placing State v. Mettle on the regular calendar.

It should be noted that the State/Prosecutor's Appellate brief was practically identical to brief he used in the Common Pleas court, and it contained the same arguments and issues. There were no issues of length or complexity that required the Prosecutor to use the regular calendar in the Appellate Court.

On this basis, Mettle filed a motion to strike the State's Appellate brief. However, the Appellate court denied Mettle's motion. This represents favoritism in favor of the State in comparison to the Court's previous strict judgment of Mettle's own motion for an extension of

time, which the Appellate court denied. This was abuse of discretion and violated due process and equal protection.

**Proposition of Law #8 - R.C. 2953.36 (D) creates privileged classes in violation of constitutional rights of due process and equal protection.**

Ohio Const. Art 1.2. -- A city ordinance prohibiting loitering for the purpose of engaging in drug-related activity violates the federal and Ohio due process clauses because it can only be interpreted as impermissibly vague or overbroad: City of Akron v. Rowland, 67 Ohio St. 3d 374, 618 N.E.2d 138, 1993 Ohio LEXIS 1861, 1993 Ohio 222, (1993).

Ohio Const. Art 1.2. -- RC § 2921.15 violates freedom of speech and equal protection by singling out peace officers and placing them in a special, privileged category: State v. English, 120 Ohio Misc. 2d 16, 776 N.E.2d 1179, 2002 Ohio Misc. LEXIS 33, 2002 Ohio 5440, (MC 2002).

R.C. 2953.36 states "Sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following: ... (D) Convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony;..."

Ohio R.C. contains many clauses that give extra protection to minors and vulnerable groups of people. Similarly, the legislative intent of R.C. 2953.36(D) is to provide an extra level of protection (deterrence against offenses) for an allegedly vulnerable class of people, namely youths under the age of 18. However, "under 18 years of age" is overbroad and creates a privileged class of people, specifically, emancipated youths under the age of 18.

Generally, Ohio R.C. does not give extra protection to able, emancipated persons. Even child support laws provide less support and protection for emancipated youths. In our present

time of the War on Terror, we have thousands of emancipated youths who are in the military, are combat trained, and combat hardened. Similarly, thousands of emancipated youths are gang members and hardened criminals. None of them deserve extra protection. However, R.C. 2953.26(D) is overbroad and does just that. This creates a large group of able, emancipated persons receiving extra protection at the expense of parents, who must still earn a living to support their own children.

Experts say that the War on Terror and gangs will go on for generations; hence there is no end in sight for the unconstitutionally privileged classes created by R.C.2953.36 (D). Arguably, social scientists and attorneys could give more examples of privileged classes created by R.C.2953.36 (D), which is therefore unconstitutional due to violation of due process and equal protection.

The unconstitutional, privileged classes can only increase in scope when R.C. 2953.36(D) is interpreted to ignore the legislative intent that limits the prohibition on sealing records to offenses of violence. See the Act Summary of Am. Sub. S.B. 13, 123rd General Assembly. It carries wording which allows the record to be sealed unless the conviction is for an offense of violence: "Excludes from the Criminal Conviction Records Sealing Law all convictions of an offense of violence when the offense is (1) a misdemeanor of the first degree or a felony and when the offense is not riot and is not assault, inciting to violence, or inducing panic that is a misdemeanor of the first degree, (2) an offense of which the victim was under 18 years of age when the offense is a misdemeanor of the first degree or a felony, or (3) a felony of the first or second degree."

**Proposition of Law #9 - R.C. 2953.36 (D) does not prohibit sealing of records for nonviolent offenses when the victim is under age 18.**

See Propositions of Law # 1, 2, 5, and 8.

The legislative intent is clear from Am. Sub. S.B. 13, Act Summary, which stipulated "offenses of violence" when the victim is under age 18.

Note that Am. Sub. S.B. 13, Act Summary provides another complete suite of prohibitions to sealing records of offenses, which never mention "offenses of violence." If the limitation to "offenses of violence" is not used, then Am. Sub. S.B. 13 already has specified which offenses are covered, without the condition of the victim being under age 18.

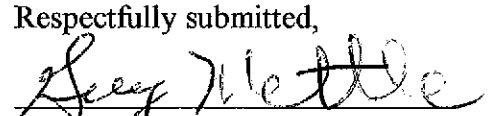
If well known rules of construction are applied (See Propositions of Law # 1, 2, 5, and 8), then R.C.2953.36 (D) must be restricted to offenses of violence.

## CONCLUSION

For the reason discussed above, this case involves matters of public and great general interest and substantial constitutional questions. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

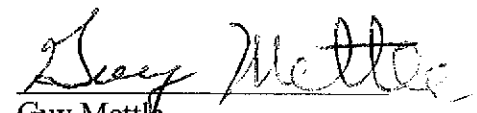
Date___May 11, 2008_____



Guy Mettle
Pro Se

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees, Ron O'Brien, Franklin County Prosecuting Attorney, 373 S. High Street, 13th Floor, Columbus, OH 43215, on Date: May 11, 2008.



Guy Mettle,
2715 Collinford Drive, #K
Dublin, Oh 43016

## APPENDIX

Journal Entry of Franklin County Court of Appeals, Tenth District
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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| In the Matter of: | : | |
| Guy L. Mettle, | : | |
| (State of Ohio, | : | No. 07AP-892 |
| Appellant). | : | (REGULAR CALENDAR) |

JOURNAL ENTRY

Appellee not explaining the basis for his request for an extension of time, appellee's January 3, 2008 motion is denied.

JUDGE

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| | | |
|---|---|---|
| In the Matter of: | : | |
| Guy L. Mettle, | : | |
| (State of Ohio, | : | No. 07AP-892 |
| Appellant). | : | (REGULAR CALENDAR) |

JOURNAL ENTRY

Appellee's February 8, 2008 request for oral argument is denied, oral argument not available to a party who does not file a brief. Appellee's February 8, 2008 motion to strike supplemental authority filed by appellant is denied. Appellee's February 8, 2008 motion for leave to proceed, *in forma pauperis*, is denied, appellee's motion and affidavit not providing the court sufficient financial information to determine whether appellee is indigent.

JUDGE

cc: Deputy Court Administrator

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| | | |
|---|---|---|
| In the Matter of: | : | |
| Guy L. Mettle, | : | |
| (State of Ohio, | : | No. 07AP-892 |
| Appellant). | : | (REGULAR CALENDAR) |

JOURNAL ENTRY

Appellee has demonstrated no good cause to strike appellant's brief. Accordingly, appellee's February 22, 2008 motion to strike appellant's brief and dismiss this appeal is denied.

Judge Lisa L. Sadler

Judge Judith L. French

Judge William A. Klatt

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| State of Ohio, | : | |
| Plaintiff-Appellant, | : | No. 07AP-892 |
| v. | : | (C.P.C. No. 07EP-05-229) |
| Guy L. Mettle, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2008 MAR 27 PM 1:17
CLERK OF COURTS

O P I N I O N

Rendered on March 27, 2008

*Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*, for appellant.

*Guy L. Mettle*, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, the State of Ohio ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas granting the motion of appellee, Guy L. Mettle ("appellee"), to seal the record of his criminal conviction. For the reasons that follow, we reverse the trial court's judgment.

{¶2} In case No. 96CR-05-2848, appellee was charged with three counts of failure to provide support for dependents in violation of R.C. 2919.21. Each of the counts

alleged that the dependent was under the age of 18 years. On January 4, 2001, appellee pled guilty to count three of the indictment, a fourth-degree felony, with the other two counts being dismissed. On February 14, 2001, the court sentenced appellee to a period of incarceration of 18 months, with the entire sentence stayed on the condition that appellee complete five years of probation.

{¶3} On May 7, 2007, appellee filed an application seeking to seal the record of his conviction pursuant to R.C. 2953.32. Appellant objected, arguing that appellee was not eligible to have the record of his conviction sealed under the then-existing version of R.C. 2953.36(D), which provided that the sections governing the sealing of a record of conviction do not apply to "[c]onvictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony."[1] The trial court held a hearing, and concluded that the General Assembly did not intend the exclusion for offenses where the victim was under 18 years old to apply to convictions for failing to provide support to dependents. The trial court therefore granted appellee's application to seal the record of his conviction.

{¶4} Appellant filed this appeal, alleging as the sole assignment of error:

> THE TRIAL COURT ERRED BY GRANTING APPELLEE'S APPLICATION TO SEAL THE RECORD OF HIS CONVICTION AS APPELLEE WAS INELIGIBLE UNDER R.C. 2953.36(D).

{¶5} In a recent decision, we held that a conviction for failing to provide support to dependents under R.C. 2919.21 is covered by the exclusion in R.C. 2953.36 of

[1] Effective October 10, 2007, R.C. 2953.36 was amended. Under the amendment, paragraph (D) is now paragraph (F), but the amendment did not otherwise alter the wording of the exclusion for offenses where the victim was less than 18 years old.

convictions where the victim of the offense was under the age of 18 years. *In re Schiavo*, Franklin App. No. 07AP-699, 2008-Ohio-298, citing *State v. Westendorf*, Hamilton App. No. C-020114, 2003-Ohio-1019. Consequently, the trial court erred when it granted appellee's application to seal the record of his conviction.

{¶6} Accordingly, appellant's assignment of error is sustained, we hereby reverse the trial court's judgment, and remand this matter to the trial court for further proceedings consistent with this opinion.

*Judgment reversed;*
*cause remanded.*

KLATT and FRENCH, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| State of Ohio, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 07AP-892<br>(C.P.C. No. 07EP-05-229) |
| Guy L. Mettle, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on March 27, 2008, appellant's assignment of error is sustained, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court for further proceedings in accordance with law consistent with said opinion. Costs shall be assessed against appellee.

SADLER, KLATT, and FRENCH, JJ.

By _____
Judge Lisa L. Sadler

FILED
COURT OF APPEALS
FRANKLIN COUNTY, OHIO
2008 MAR 27 PM 1:20
CLERK OF COURTS

Guy L. Mettle

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| State of Ohio, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 07AP-892<br>(C.P.C. No. 07EP-05-229) |
| Guy L. Mettle, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2008 APR 29 PM 1:00
CLERK OF COURTS

MEMORANDUM DECISION

Rendered on April 29, 2008

*Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*, for appellant.

*Guy L. Mettle*, pro se.

ON MOTIONS

SADLER, J.

{¶1} Appellee, Guy L. Mettle ("appellee"), has filed an application seeking reconsideration of our opinion. In that opinion, we reversed the decision of the Franklin County Court of Common Pleas granting appellee's application to seal the record of his conviction pursuant to R.C. 2953.32. Appellee has also filed a pleading entitled "MOTION FOR HEARING BEFORE RELEASE OF OPINION" in which he expresses concern that release of our opinion, which was rendered on March 27, 2008, will disclose

his identity. Since our opinion was released on the same date it was rendered, that motion is denied as moot.

{¶2} The proper standard for our consideration of an application for reconsideration is whether the application "calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 523 N.E.2d 515, citing *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 5 OBR 320, 450 N.E.2d 278. However, "[a]n application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court." *State v. Owens* (1997), 112 Ohio App.3d 334, 336, 678 N.E.2d 956, dismissed, appeal not allowed, 77 Ohio St.3d 1487, 673 N.E.2d 146.

{¶3} The conviction for which appellee sought to have the record sealed was for failing to provide support to dependents in violation of R.C. 2919.21. In reversing the trial court's decision to grant the application, we found that appellee's conviction was subject to the exclusion set forth in R.C. 2953.36 that prohibits sealing records of conviction where the victim of the offense was under the age of 18 years. *State v. Mettle*, Franklin App. No. 07AP-892, 2008-Ohio-1425. In reaching this decision, we followed our decision in *In re Schiavo*, Franklin App. No. 07AP-699, 2008-Ohio-298, in which we held that convictions under R.C. 2919.21 are covered by the exclusion for offenses where the victim is under the age of 18 years.

{¶4} Appellee's application for reconsideration does not call to our attention any obvious error in our decision, or otherwise raise any issue that was either not considered

at all or not fully considered by us when it should have been. Therefore, we deny appellee's application for reconsideration.

*Motions denied.*

KLATT and FRENCH, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| State of Ohio, | : | |
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| Defendant-Appellee. | : | |

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on April 29, 2008, it is the order of this court that the motion for hearing before release of opinion, and the motion for reconsideration is denied.

SADLER, KLATT, and FRENCH, JJ.

By_____
Judge Lisa L. Sadler

2008 APR 29 PM 4:40
CLERK OF COURTS