

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO)
)
 Appellee,)
)
 vs.)
)
 DOUGLAS FUTRALL)
)
 Appellant.)
)
)
)
)

SUPREME COURT CASE
NO. 2008-2391

ON APPEAL FROM THE
COURT OF APPEALS,
NINTH APPELLATE
DISTRICT 08CA009388

LORAIN COUNTY
COMMON PLEAS
COURT CASE NO.
01CR057973

MERIT BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

On May 30, 2001, the Lorain County Grand Jury indicted Douglas Futrall, hereinafter Appellant, on one (1) count of Aggravated Menacing, a violation of R.C. 2903.21(A), a misdemeanor of the first degree; one (1) count of Improper Handling of a Firearm in a Motor Vehicle, a violation of R.C. 2923.16(B), a misdemeanor of the first degree; one (1) count of Carrying a Concealed Weapon, a violation of R.C. 2923.12(A), a felony of the fourth degree; one (1) count of Domestic Violence, a violation of R.C. 2919.25(A), a misdemeanor of the fourth degree; and one (1) count of Telephone Harassment, a violation of R.C. 2917.21(A), a misdemeanor of the first degree.

On November 2, 2001, Appellant entered a plea of guilty to an amended indictment; the charge of Carrying a Concealed Weapon was amended to a misdemeanor of the first degree before Judge Thomas W. Janas of the Lorain County Court of Common Pleas. On March 1, 2002, Appellant was sentenced to two (2) years probation with a suspended jail sentence. On July 29, 2002, Appellant was successfully terminated from probation.

On March 12, 2007, Appellant filed an application to seal his record. On April 10, 2008, the trial court, through Judge Raymond J. Ewers, filed its judgment denying Appellant's application to seal his record.

On April 18, 2008, Appellant filed notice of appeal with the Ninth District Court of Appeals. On November 3, 2008, the court of appeals issued its decision, affirming the decision of the trial court wherein Appellant's application to seal his record was denied. *State v. Futrall*, 9th Dist. No. 08CA009388, 2008 Ohio 5654. On December 15, 2008, Appellant filed a notice of discretionary appeal with this Honorable Court as well as a memorandum in support of jurisdiction. Appellee responded with a memorandum in opposition to jurisdiction on January

14, 2009. On March 25, 2009, this Honorable Court accepted jurisdiction. On May 15, 2009, Appellant filed his merit brief. Appellee hereby responds.

LAW AND ARGUMENT

RESPONSE TO SOLE PROPOSITION OF LAW

I. THE NINTH DISTRICT COURT OF APPEALS ACTED PROPERLY WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT, DENYING APPELLANT'S APPLICATION TO SEAL HIS RECORD.

Appellant first argues that the court of appeals improperly reviewed this case under the abuse of discretion standard of review. Appellee disagrees with this contention. In a long line of Ohio cases courts of appeal have applied the abuse of discretion standard to sealing/expungement decisions. See *State v. Silver*, 8th Dist. No. 87022, 2006 Ohio 3151; *State v. Rittner*, 6th Dist. No. L-04-1368, 2006 Ohio 1114; *State v. Haas*, 6th Dist. No. L-04-1315, 2005 Ohio 4350; *State v. Krutowsky*, 8th Dist. No. 81545, 2003 Ohio 1731; *State v. Tyler*, 10th Dist. No. 01AP-1055, 2002 Ohio 4300; *State v. Hilbert*, (2001) 145 Ohio App.3d 824; *State v. Abdullah*, (April 26, 1999), 12th Dist. No. CA98-08-065; *State v. McGinnis*, (1993), 90 Ohio app.3d 479, 481; *State v. Orth* (December 27, 1993), 12th Dist. No. CA93-03-020; and *State v. Lesinski*, (1992), 82 Ohio App.3d 829, 830-831.

It is interesting to note that on appeal Appellant framed his assigned error as abuse of discretion by the trial court. However, at oral argument before the Ninth District Court of Appeals he argued that the trial court erred as a matter of law and that the standard of review should be *de novo*. In rendering its decision, the Ninth District Court of Appeals properly reviewed this case under the abuse of discretion standard. The court noted that since expungement is an act of grace and is a privilege and not a right, denial of an application to seal a conviction is to be reviewed for an abuse of discretion. *State v. Futrall*, 9th Dist. No. 08CA009388, 2008 Ohio 5654 at ¶ 6.

An abuse of discretion connotes more than a mere error in judgment, it signifies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *State v. Girard*, 9th Dist. No 02CA0057-M, 2003 Ohio 7178, citing, *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Girard*, supra, citing, *Berk v. Matthews* (1990), 53 Ohio St. 3d 161. In the case at hand, a simple review of R.C. 2953.32, which provides for the sealing of records, reveals that the trial court did not act unreasonably or arbitrarily but properly denied Appellant's application to seal due to his ineligible conviction for Aggravated Menacing under R.C. 2903.21. The appeals court properly reviewed this decision for an abuse of discretion and correctly upheld the trial court decision.

Appellant next argues that the State of Ohio, Appellee, should not have been allowed to be heard on appeal because Appellee did not object to the expungement in the trial court. This argument is without merit.

Appellant claims that Appellee is essentially asserting error which was not called to the attention of the trial court. This contention is incorrect. Appellee did not appeal an adverse decision of the trial court, it merely responded to Appellant's appeal of the trial court's decision denying his application for sealing. The Ninth District Court of Appeals properly allowed Appellee to brief the issue and respond to Appellant's argument that the trial court incorrectly denied his application for sealing of his record. Moreover, even if Appellant's application to seal his record had been granted, the State of Ohio would not be precluded from exercising its right to direct appeal. *State v. Leers* (1992), 84 Ohio App.3d 579.

Appellant contends that the trial court erred in denying his application for sealing where all but one offense was eligible for sealing. This assertion lacks merit.

At the outset, Appellant mischaracterizes the threshold issue for sealing by arguing that because the trial court indicated that he was sufficiently rehabilitated and Appellant's interests in having his record sealed outweighed any legitimate governmental needs to maintain his record of convictions, his application for sealing should have been granted. This argument is without merit.

As the Ninth District Court of Appeals correctly pointed out, the trial court's analysis of the merits of Appellant's application to seal his record pursuant to R.C. 2953.32 is surplusage. *State v. Futrall*, 9th Dist. No. 08CA009388, 2008 Ohio 5654, ¶8. The Court of Appeals correctly determined that the narrow issue to be addressed was whether multiple convictions arising out of a single incident may be treated separately for purposes of R.C. 2953.32. The Court of Appeals correctly held that such convictions cannot be treated separately. *Id.* It is Appellee's position that Appellant fails to meet the statutory requirements for sealing his record because one (1) of his convictions, arising out of a single incident, is ineligible for sealing. Therefore, all of the convictions arising out of the same facts and circumstances are ineligible to be sealed.

Sealing of a record of conviction pursuant to R.C. 2953.32 is a postconviction remedy that is civil in nature. *State v. Lasalle*, 96 Ohio St. 3d 178, 2002 Ohio 4009, citing *State v. Bissantz* (1987), 30 Ohio St.3d 120, 121. "Expungement is an act of grace created by the state," and so is a privilege and not a right. *State v. Hamilton*, 75 Ohio St.3d 636, 639, 1996 Ohio 440. Expungement should be granted only when all requirements for eligibility are met. *Id.*

Specific statutory provisions govern the sealing of a record of conviction. See R.C. 2953.31 through 2953.36. In particular, R.C. 2953.36 provides that the conviction records of some offenders cannot be sealed. As relevant in this case, R.C. 2953.36 provides, *inter alia*, that "[s]ections 2953.31 to 2953.35 of the Revised Code do not apply" to "[c]onvictions of an offense

of violence when the offense is a misdemeanor of the first degree...” A conviction for Aggravated Menacing, a violation of R.C. 2903.21 is defined in R.C. 2901.01(A)(9)(a) as an “offense of violence.”

In the present case, Appellant was convicted of one (1) count of Aggravated Menacing, a violation of R.C. 2903.21(A), a misdemeanor of the first degree; one (1) count of Improper Handling of a Firearm in a Motor Vehicle, a violation of R.C. 2923.16(B), a misdemeanor of the first degree; one (1) count of Carrying a Concealed Weapon, a violation of R.C. 2923.12(A), a misdemeanor of the first degree; one (1) count of Domestic Violence, a violation of R.C. 2919.25(A), a misdemeanor of the fourth degree; and one (1) count of Telephone Harassment, a violation of R.C. 2917.21 (A), a misdemeanor of the first degree. Because Appellant was convicted of Aggravated Menacing under R.C. 2903.21, he was ineligible for the relief that he sought: namely, a sealing of the record.

R.C. 2953.32(A) provides that under specific circumstances, a first offender may apply to the sentencing court “for the sealing of the conviction record.” A review of what “sealing a record” actually entails affirms that the trial court properly denied Appellant’s request to “seal” *some* of the charges in his case but not the ineligible charge. Upon sealing, the court “...shall order all official records pertaining to the case sealed and... **all** index references to the **case** deleted...” See R.C. 2953.32(C)(2). [Emphasis added] It would be impossible for the trial court to order that “**all** official records pertaining to the **case**” be sealed, while at the same time, requiring that a record of the case be retained because of Appellant’s Aggravated Menacing conviction. It would be impossible for the trial court to order that “**all** index references to the **case**” be “deleted,” while at the same time, ordering that index references to the case be maintained because of Appellant’s Aggravated Menacing conviction.

A plain reading of R.C. 2953.32(A) indicates that the legislature did not intend for multi count convictions to be partially sealed. The legislature clearly stated all index references and all official records pertaining to the case are to be deleted and sealed. This is clear in light of the sheer impossibility of deleting portions of official records such as police reports where a multi count conviction results from one single incident.

In addition, R.C. 2953.32(C)(2) states that upon sealing “[t]he proceedings in the case shall be considered not to have occurred and the conviction...of the person who is the subject of the proceedings shall be sealed.... *Id.* [Emphasis added] Again, Appellant seeks a legal impossibility in asking that the proceedings in the case “be considered not to have occurred,” while, at the same time, asking that the proceedings in the case be considered to have occurred for a portion of the case. Here again the legislative intent is clear. The expungement statutes contemplate sealing an entire case, not just portions of the case.

Moreover, a request for sealing of a record of conviction imposes a duty on law enforcement agencies and any public agency with a record pertaining to the case. *State v. S.R.*, (1992), 63 Ohio St.3d 590. Law enforcement agencies as well as other public agencies are required to seal all records pertaining to a case which has been ordered sealed. R.C. 2953.32(C)(2). It would be impossible for a law enforcement agency to delete all index references to a conviction where the conviction involved multiple offenses arising out of the same set of facts and circumstances. It is important to note that R.C. 2953.32(C) refers to deleting all index references to the “case”, and not to individual counts within a case. A common sense reading of the statute indicates that the legislature did not intend for multi count convictions arising out of one incident to be partially sealed. It is simply impossible for part of a conviction based on the same events to be sealed without sealing the ineligible offense as well.

In the case of *State v. Vale*, the Eighth District Court of Appeals offered some guidance in this matter. *State v. Vale*, 8th Dist. No. 85425, 2005 Ohio 3725. In *Vale*, the State appealed the trial court's decision granting Vale's application under R.C. 2953.32 to seal the record of his convictions for Aggravated Trespassing and Aggravated Menacing. The Eighth District Court of Appeals stated that the trial court lacked jurisdiction to consider Vale's application due to his conviction for Aggravated Menacing and found that Vale was ineligible for the relief he sought. *State v. Vale*, 8th Dist. No. 85425, 2005 Ohio 3725, citing *State v. Simon*, 87 Ohio St.3d 531, 2000 Ohio 474; *State v. Salim*, 8th Dist. No. 82204, 2003 Ohio 2024. Although Vale also sought to seal his conviction for Aggravated Trespassing, (which, if alone, could have been eligible for sealing) the Eighth District Court of Appeals stated that, because of Vale's conviction for Aggravated Menacing, the trial court lacked jurisdiction to consider Vale's application to seal and had no authority to order the record of Vale's convictions sealed. *Salim* at 11, 12.

In similar fashion, because Appellant was convicted of Aggravated Menacing under R.C. 2903.21, the trial court properly denied Appellant's motion to seal his record as the trial court lacked jurisdiction to consider Appellant's application to seal and had no authority to order that Appellant's convictions be sealed.

In addition, although R.C. 2953.61 is not directly applicable to this case, it is instructive on the issue of how sealing of multi count convictions should be dealt with. R.C. 2953.61 provides in relevant part:

[w]hen a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of his record in any of the cases until such time as he would be able to apply to the court and have all of the records in all of the cases pertaining to those charges sealed pursuant to divisions (A)(1) and (2) of section 2953.32 and divisions (A)(1) and (2) of section 2953.52 of the Revised Code.

R.C. 2953.61. In other words, the Legislature has determined that individual counts may not be parsed out and the multiple charges must be viewed as a whole case.

In *State v. Selesky*, 11th Dist. No. 2008-P-0029, 2009 Ohio 1145, the Eleventh District Court of Appeals was faced with a very similar situation to the facts of the instant case. In *Selesky* the defendant was charged with two traffic offenses. *Selesky* entered a plea of no contest to one of the charges, was found guilty by the trial court, and the other charge was dismissed by the trial court. Immediately thereafter, the defendant moved to have the record of the dismissed charge sealed. The trial court granted the application for sealing and sealed the record of the dismissed charge. *Id.*

On appeal, the Eleventh District Court of Appeals held that the trial court abused its discretion in sealing the record of the dismissed charge. The court of appeals reasoned that because the defendant was charged with multiple counts arising from the same incident he was subject to the requirements of R.C. 2953.61 requiring him to wait to apply for sealing until he was eligible on all counts. The court further found that the defendant could not satisfy the requirements of R.C. 2953.61 because the charge of which he was convicted was a violation under section 4511 of the Ohio Revised Code which, pursuant to R.C. 2953.36(B), was ineligible to be sealed. *Id.*

In fact, the Eleventh District Court of Appeals held in *Selesky* that the trial court was without statutory authority to consider the defendant's request for sealing/expungement as to the dismissed charge. The court so held because *Selesky* had multiple counts subjecting him to R.C. 2953.61, and one of the counts was a violation of section 4511 of the Ohio Revised Code which is statutorily excluded from sealing/expungement. *Id.*

In the present case, Appellant was charged with multiple counts arising out of the same incident. R.C. 2953.61 defines how multi-count requests for sealing/expungement are to be treated where the final disposition as to one of the counts is different from the others. Although R.C. 2953.61 is not directly applicable to the present case, the rationale is helpful. R.C. 2953.61 requires that a defendant with different dispositions as to multiple counts from the same incident wait until he is eligible for sealing/expungement on all counts before applying for sealing/expungement as to any of the counts. In applying R.C. 2953.61, the *Selesky* court reasoned that because the defendant was statutorily ineligible for sealing/expungement as to one count of a multi-count complaint, he was ineligible for sealing/expungement as to any of the counts. This reasoning is directly on point with the issue to be decided in the present case.

In the instant case, Appellant was charged in a multi-count complaint. Although the final disposition as to each count was the same, the rationale of R.C. 2953.61 and *Selesky* should be applied to the facts of this case. Appellant, a multi-count offender, applied for sealing of counts which ordinarily would be eligible for sealing. However, another count for which Appellant did not seek sealing is statutorily ineligible for sealing. Applying the reasoning of *Selesky* the trial court in the instant case was without statutory authority to seal Appellant's record as to any offenses where one of the offenses was statutorily ineligible for sealing.

Likewise, the rationale of R.C. 2953.31(A), although not directly applicable to the within case, is helpful in determining Appellant's eligibility for expungement. R.C. 2953.31 defines a first offender for sealing/expungement purposes and provides as follows: "[w]hen two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction." Clearly the legislature intended multi-count convictions arising from the same set of facts and circumstances to be treated as a single

conviction. Accordingly, Appellant is considered to be a first offender pursuant to R.C. 2953.31(A) and his multiple convictions are to be treated as one conviction for purposes of sealing/expungement. Applying this rationale to the within case supports Appellee's position that multiple convictions arising from a single incident, which are to be treated as one conviction for sealing purposes, cannot be sealed where one of the convictions is statutorily ineligible to be sealed. Because one (1) of Appellant's convictions out of multiple convictions arising from the same incident cannot be sealed, none of his convictions is eligible to be sealed.

Thus, the Ninth District Court of Appeals correctly ruled that Appellant was ineligible to have any of his multi count conviction sealed. Appellant's sole proposition of law is without merit and should be overruled.

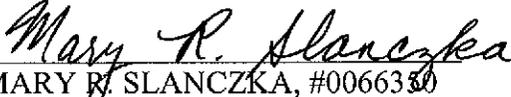
CONCLUSION

For the foregoing reasons the State of Ohio respectfully requests that this Honorable Court overrule Appellant's sole proposition of law and affirm the decision of the Ninth District Court of Appeals, affirming the trial court's denial of his application for sealing of his record of convictions.

Respectfully Submitted,

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PROOF OF SERVICE

A copy of the Merit Brief of Appellee was mailed via regular U.S. Mail to D. Chris Cook, esq., Counsel for Appellant, 520 Broadway Avenue, Second Floor, Lorain, Ohio 44052

this 12th day of June, 2009.


MARY R. SLANCZKA
Assistant Prosecuting Attorney

APPENDIX

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
SEALING OF RECORD OF CONVICTION

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ORC Ann. 2953.32 (2009)

§ 2953.32. Sealing of record of conviction or bail forfeiture

(A) (1) Except as provided in section 2953.61 of the Revised Code, a first offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the conviction record. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor.

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

(B) Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

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

(a) Determine whether the applicant is a first offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. If the applicant applies as a first offender pursuant to division (A)(1) of this section and has two or three convictions that result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, in making its determination under this division, the court initially shall determine whether it is not in the public interest for the two or three convictions to be counted as one conviction. If the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction, the court shall determine that the applicant is not a first offender; if the court does not make that determination, the court shall determine that the offender is a first offender.

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

(c) If the applicant is a first 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 sealed against the legitimate needs, if any, of the government to maintain those records.

(2) If the court determines, after complying with division (C)(1) of this section, that the applicant is a first offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of an applicant who is a first offender applying pursuant to division (A)(1) of this section has been attained to the satisfaction of the court, the court, except as provided in division (G) of this section, shall order all official records pertaining to the case sealed and, except as provided in division (F) of this section, all index references to the case deleted and, in the case of bail forfeitures, shall dismiss the charges in the case. The proceedings in the case shall be considered not to have occurred

and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury. It shall pay twenty dollars of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.

(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 as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the department as a corrections officer;

(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 [2953.32.1] 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 [109.57.2] 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 the 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.

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.

(E) In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing previously was issued pursuant to sections 2953.31 to 2953.36 of the Revised Code.

(F) The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed pursuant to this section may maintain a manual or computerized index to the sealed records. The index shall contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records, and shall not contain the name of the crime committed. The index shall be made available by the person who has custody of the sealed records only for the purposes set forth in divisions (C), (D), and (E) of this section.

(G) Notwithstanding any provision of this section or section 2953.33 of the Revised Code that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under this section to seal the record of a conviction does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order issued under this section to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 [3301.12.1] and 3313.662 [3313.66.2] of the Revised Code, any school employee in possession of or having access to the sealed conviction records of an individual that were the basis of a permanent exclusion of the individual is subject to section 2953.35 of the Revised Code.

HISTORY:

135 v S 5 (Eff 1-1-74); 137 v H 219 (Eff 11-1-77); 138 v H 105 (Eff 10-25-79); 140 v H 227 (Eff 9-26-84); 142 v H 8 (Eff 7-31-87); 142 v H 175 (Eff 6-29-88); 143 v S 140 (Eff 10-2-89); 144 v H 154 (Eff 7-31-92); 145 v H 571 (Eff 10-6-94); 146 v H 566 (Eff 10-16-96); 146 v S 160 (Eff 1-27-97); 148 v S 13. Eff 3-23-2000; 149 v H 490, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04*; 152 v S 10, § 1, eff. 7-1-07; 152 v H 104, § 1, eff. 3-24-08; 152 v H 195, § 1, eff. 9-30-08.

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ORC Ann. 2953.36 (2009)

§ 2953.36. Exceptions to preceding sections

Sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following:

- (A) Convictions when the offender is subject to a mandatory prison term;
- (B) Convictions under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former section 2907.12, or Chapter 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;
- (C) Convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section 2917.03 of the Revised Code and is not a violation of section 2903.13, 2917.01 or 2917.31 of the Revised Code that is a misdemeanor of the first degree;
- (D) Convictions on or after the effective date of this amendment under section 2907.07 of the Revised Code or a conviction on or after the effective date of this amendment for a violation of a municipal ordinance that is substantially similar to that section;
- (E) Convictions on or after the effective date of this amendment under section 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311 [2907.31.1], 2907.32, or 2907.33 of the Revised Code when the victim of the offense was under eighteen years of age;
- (F) 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;
- (G) Convictions of a felony of the first or second degree;
- (H) Bail forfeitures in a traffic case as defined in Traffic Rule 2.

HISTORY:

135 v S 5 (Eff 1-1-74); 142 v H 175 (Eff 6-29-88); 145 v H 335 (Eff 12-9-94); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 353 (Eff 9-17-96); 148 v S 13. Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 152 v S 18, § 1, eff. 10-10-07.

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SEALING OF RECORDS AFTER NOT GUILTY OR DISMISSAL

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ORC Ann. 2953.61 (2009)

§ 2953.61. Sealing of records in cases of multiple charges

When a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of his record in any of the cases until such time as he would be able to apply to the court and have all of the records in all of the cases pertaining to those charges sealed pursuant to divisions (A)(1) and (2) of section 2953.32 and divisions (A)(1) and (2) of section 2953.52 of the Revised Code.

HISTORY:

142 v H 175. Eff 6-29-88.