

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
CITY OF AKRON

Appellees

On Appeal from the Summit
County Court of Appeals, Ninth
Appellate District

v.

Case Nos. 2012-0808
2012-1216

MONTOYA BOYKIN

Appellant

APPELLANT MONTOYA L. BOYKIN'S MERIT BRIEF

SHERRI BEVAN WALSH (0030038)
Summit County Prosecutor
53 University Avenue, 6th Floor
Akron, Ohio 44308
(330) 643-2800
State of Ohio

JOANN SAHL (0037265) (Counsel
of Record)
University of Akron School of Law
Legal Clinic
Akron, Ohio 44325-2901
(330) 972-7189
Fax: (330) 972-6326
jsahl1@uakron.edu
COUNSEL FOR APPELLANT

HEAVEN DIMARTINO (0073423)
Assistant Summit County Prosecutor
53 University Avenue, 6th Floor
Akron, OH 44308
(330)643-2800
COUNSEL FOR APPELLEE
State of Ohio

MICHAEL DEFIBAUGH (0072683)
Assistant Director of Law
161 S. High Street, Suite 202
Akron, OH 44308
(330) 375-2030
Facsimile: (330) 375-2041
COUNSEL FOR APPELLEE
City of Akron



TABLE OF CONTENTS

	Page
Table of Authorities	iv
Statement of the Facts	1
Argument	4
PROPOSITION OF LAW – WHETHER A PARDON CONCLUSIVELY ENTITLES THE RECIPIENT TO HAVE HER PARDONED CONVICTIONS SEALED.	4
Appendix	
Entry of the Supreme Court of Ohio (Case No.: 2012-0808) (September 5, 2012)	1
Entry of the Supreme Court of Ohio (Case No.: 2012-1216) (September 5, 2012).....	2
Notice of Certified Conflict (July 20, 2012)	3
Journal Entry of the Ninth District Court of Appeals (July 5, 2012)	5
Notice of Appeal (May 9, 2012)	7
Decision and Journal Entry of the Ninth District Court of Appeals (March 30, 2012)	9
Order of Akron Municipal Court (February 14, 2011)	20
Journal Entry of Summit County Common Pleas Court (December 10, 2010)	32

Pardon Decision of Governor Ted Strickland (November 23, 2009)	33
Ohio Parole Board Clemency Report (September 28, 2007)	34
Ohio Constitution, Section III, Article 5.....	45
Ohio Constitution, Section III, Article 11.....	45
R.C. § 2953.32	46
R.C. § 2953.52	50
R.C. §2967.03	52
R.C. § 2967.04	53
R.C. §2967.06	54
R.C. §2967.07	55
R.C. §2967	56
O.A.C. 5120-1-15	58

TABLE OF AUTHORITIES

Cases	Page
<i>Cleveland Hts. v. Lewis</i> , 129 Ohio St. 3d 389, 2011-Ohio-2673, 953 N.E.2d 278.	9
<i>Com. v. C.S.</i> , 534 A.2d 1053 (Pa. 1987)	4
<i>Commonwealth v. Vickey</i> , 412 N.E.2d 877 (Mass. 1980)	8
<i>Connecticut Bd. of Pardons v. Dumschat</i> , 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981)	10
<i>Ex parte Garland</i> , 71 U.S. 333, 32 How. Pr. 241, 18 L.Ed. 366 (1866)	5
<i>Hale v. The State</i> , 55 Ohio St. 210, 45 N.E. 199 (1896)	13
<i>Knapp v. Thomas</i> , 39 Ohio St. 377, 48 Am.Rep. 462 (1883)	5, 7, 10, 19
<i>Mount v. Campbell</i> , 63 Ky. 93, 1865 WL 2274 (Ky. 1865)	6
<i>Ohio Adult Parole Authority, et al. v. Eugene Woodard</i> , 523 U.S. 272, 280, 118 S.Ct.1244, 140 L.Ed.2d 387(1998).	10
<i>People v. Glisson</i> , 372 N.E.2d 669 (Ill. 1978).	8
<i>Pepper Pike v. Doe</i> , 66 Ohio St.2d 374, 421 N.E. 1303 (1981).	13, 14
<i>R.J.L. v. State</i> , 887 So.2d 1268 (Fla. 2004).	8
<i>State ex rel. Atty. Gen. v. Peters</i> , 43 Ohio St. 629, 4 N.E. 81 (1885).	5, 6
<i>State ex rel. Cincinnati Enquirer v. Winkler</i> , 101 Ohio St.3d 382, 805 N.E.2d 1094 (2004).	15, 16
<i>State ex rel. Gordon v. Zangerle</i> , 136 Ohio St. 371, 26 N.E.2d 190 (1940).	6, 8, 18
<i>State ex rel. Johnson v. Taulbee</i> , 66 Ohio St.2d 417, 423 N.E.2d 80 (1981).	13
<i>State ex rel. Maurer v. Sheward</i> , 71 Ohio St.3d 513, 644 N.E.2d 369 (1994)	<i>passim</i>
<i>State v. Aguirre</i> , 871 P.2d 616 (Wash.App. 1994)	8
<i>State v. Bachman</i> , 675 S.W.2d 41 (Mo.App. 1984)	8

State v. Blanchard, 100 S.W.3d 226 (Tenn.App. 2002) 8

State v. Boykin, 9th Dist. No. 25752, 25845, 2012-Ohio-1381 4, 7

State v. Bodyke, 126 Ohio St. 3d 266, 933 N.E.2d 753 (2010) 11, 12

State v. Cope, 111 Ohio App.3d 309, 676 N.E.2d 141 (1st Dist. 1996) 2, 4

State v. Martin, 59 Ohio St. 212, 52 N.E. 188 (1898) 5, 6, 18

State v. Morris, 55 Ohio St.2d 101, 378 N.E.2d 708 (1978) 6, 7, 8

State v. Radcliff, ___ Ohio App. ___, 2012-Ohio-4732,
___ N.E.2d ___ (10th Dist.) 12

Taylor v. Tainter, 83 U.S. 366, 16 Wall. 366, 21 L.Ed. 287 (1872)..... 14

U.S. v. Noonan, 906 F.2d 952 (3rd Cir. 1990) 8

Woods v. Telb, 89 Ohio St.3d 504, 733 N.E.2d 1103 (2000) 12

Work v. Corrington, 34 Ohio St. 64, 32 Am.Rep. 345 (1877) 14

Constitutional Provisions

Ohio Constitution, Article III, Section 5..... 15

Ohio Constitution, Article III, Section 11..... 4, 11

Statutes

R.C. § 2953.32 14

R.C. § 2953.52 12, 14

R.C. § 2967.03 15

R.C. §2967.04(B) 6

R.C. §2967.06 9

R.C. § 2967.07 15

Administrative Rules

O.A.C. 5120:1-1-15 11

Secondary Sources

McCarty, *Criminal Records Keeping Millions of Ohioans Jobless*, Dayton Daily News (June 25, 2011) A1

STATEMENT OF THE FACTS

On January 22, 2007, Montoya Boykin filed a pardon application with the Ohio Parole Board (hereafter OPB) requesting a pardon for four convictions. (Record, Case No.: CA-25845, 16. Joint Stipulation of Filing (May 20, 2011).) These convictions were a 1992 receiving stolen property conviction in Summit County Common Pleas Court, two first-degree misdemeanor theft charges in Akron Municipal Court that occurred in 1991 and 1996, and a 1990 theft conviction in Cuyahoga Common Pleas Court.¹

On June 26, 2007, the OPB conducted a clemency hearing to consider the pardon request. It issued a report to the governor unanimously recommending that the governor grant Appellant Boykin's pardon request. (Appendix, hereafter Appx., 34.)

Governor Ted Strickland granted a full and unconditional pardon to Appellant Boykin on November 23, 2009. (Appx. 33.) The governor determined that "Montoya Boykin has demonstrated that she has been rehabilitated and has assumed the responsibilities of citizenship." (Appx. 33.) The governor then "direct[ed] that the conviction of Montoya Boykin for the crimes of Theft and Receiving Stolen Property be pardoned." (Appx. 33.)

Upon receiving the governor's pardon, Appellant Boykin filed a motion in the Akron Municipal Court on June 22, 2010, to seal her two pardoned misdemeanor convictions. (Record, Case No.: 91CRB7522, 7. Motion to Seal Criminal Record filed (June 22, 2010).) On February 14, 2011, the trial court denied Ms. Boykin's motion to seal her pardoned convictions. (Appx. 20.) The court concluded that while "a criminal record may prevent Defendant from pursuing some activities or employment it does not overcome the State's significant interest in keeping records [public] of a repeat offender, who demonstrated a disregard of the law." (Appx. 31.)

¹ The Cuyahoga County theft conviction is not at issue in this appeal.

On June 23, 2010, Appellant Boykin filed a motion in the Summit County Common Pleas Court to seal her pardoned receiving stolen property conviction. (Record, Case No.: 1992-03-0635, 17. Motion to Seal Criminal Record (June 23, 2010).) The State of Ohio filed no response to the motion. The trial court conducted no hearing. On December 10, 2010, the trial court denied the motion to seal stating that the governor had pardoned Appellant Boykin's convictions "for reasons unknown to this Court," and finding that her conviction was "technically eligible for sealing." (Appx. 32.) The trial court then concluded that the State's interests in maintaining the conviction in the public record outweighed Ms. Boykin's interest in having her pardoned conviction sealed. (Appx. 32.)

Ms. Boykin timely appealed the decisions from both courts to the Ninth District Court of Appeals. The court of appeals consolidated the cases on May 27, 2011. (Record, Case No.: CA-25752, 23. Journal Entry (May 27, 2011).) In a 2-1 decision on March 30, 2012, the Ninth District affirmed, concluding that a trial court may exercise its authority to seal a pardoned conviction through a judicial sealing, but a pardon does not require that the pardoned conviction be sealed. (Appx. 16.) The dissenting judge found that "to give full effect" to the pardon, a pardoned conviction must be sealed. (Appx. 19.)

On April 12, 2012, Ms. Boykin filed a Motion to Certify Conflict arguing that the Ninth District Court of Appeals' decision was in conflict with *State v. Cope*, 111 Ohio App.3d 309, 676 N.E.2d 141 (1st Dist. 1996). The court of appeals certified the conflict on July 5, 2012. (Appx. 5.) This Court determined on September 5, 2012 that a conflict existed and ordered the parties to brief the issue "[w]hether a pardon conclusively entitles the recipient to have her pardoned convictions sealed." (Appx. 2.)

Ms. Boykin also filed a jurisdictional memorandum with this Court on May 9, 2012. (Record, Case No.: 2012-0808, Appellant Montoya L. Boykin's Memorandum in Support of Jurisdiction (May 9, 2012).) This Court accepted that appeal on September 5, 2012. (Appx. 1.)

This Court consolidated both cases for appeal. (Appx. 1.)

ARGUMENT

PROPOSITION OF LAW: A pardon conclusively entitles the recipient to have her pardoned convictions sealed.

Montoya Boykin filed her pardon application with the OPB on January 22, 2007, seeking a pardon of three theft convictions and one receiving stolen property conviction. (Appx. 37.) She appeared before the OPB on June 26, 2007. (Appx. 37.) After a review of her application, and her testimony at the hearing, the OPB issued a report to former Governor Strickland unanimously recommending that she receive a pardon. (Appx. 44.) Strickland agreed with the board, and on November 23, 2009, pardoned Ms. Boykin's convictions. (Appx. 33.)

Armed with the governor's pardon, Ms. Boykin sought to have her pardoned convictions sealed. Ms. Boykin took this step to alleviate the collateral consequences that attended her pardoned convictions. Specifically she needed the sealing to assist her with employment opportunities. (Appx. 42.) As courts have recognized, "[a] pardon without expungement is not a pardon." *State v. Cope*, 111 Ohio App.3d 309, 312, 676 N.E.2d 141 (1st Dist. 1996), quoting *Com. v. C.S., Com. v. C.S.*, 534 A.2d 1053, 1054 (Pa. 1987); *State v. Boykin*, 9th Dist. No. 25752, 25845, 2012-Ohio-1381 ¶20, (March 30, 2012) (Belfance, J., dissenting).

The trial courts refused to seal Appellant Boykin's pardoned convictions. They questioned the grant of the pardon in the first instance, dissected the pardon process, and determined that the government's interest in maintaining the pardoned convictions as a public record outweighed Appellant Boykin's privacy interests. (Appx. 20-32.)

The trial courts' analysis invaded the governor's exclusive constitutional authority to grant pardons pursuant to Section 11, Article III, of the Ohio Constitution. The governor determined that Appellant Boykin had been rehabilitated and deserved a pardon of her

convictions. (Appx. 33.) To allow a trial court to reexamine this decision through the sealing process is improper and unconstitutional. This Court should hold that once the governor has issued a pardon, the trial court should automatically seal that pardoned conviction.

I. THE HISTORY OF PARDONS IN OHIO LAW

For over a century, this Court has recognized that the term pardon covers both the conviction and sentence of the pardoned offense. In 1883, this Court stated, “a pardon reaches both the punishment prescribed for the offense and the guilt of the offender.” *Knapp v. Thomas*, 39 Ohio St. 377, 381, 48 Am.Rep. 462 (1883), quoting *Ex parte Garland*, 71 U.S. 333, 380, 32 How. Pr. 241, 18 L.Ed. 366 (1866). This Court further opined that a pardon “is, in effect, a reversal of the judgment, a verdict of acquittal, and a judgment of discharge thereon, to this extent, that there is a complete estoppel of record against further punishment pursuant to such conviction.” *Id.* Two years later in *State ex rel. Atty. Gen. v. Peters*, 43 Ohio St. 629, 650, 4 N.E. 81 (1885), this Court stated that “a full and absolute pardon releases the offender from the entire punishment prescribed for his offense, and from all the disabilities consequent on his conviction.”

Thirteen years after the *Peters* decision, this Court added substance to the definition of a pardon. In *State v. Martin*, 59 Ohio St. 212, 52 N.E. 188 (1898), it addressed the question of whether a court could consider a pardoned conviction in determining if the pardoned person was a habitual criminal. This Court held “[i]f imprisonment for a felony is terminated by an unconditional pardon it is not [to] be regarded as one of the two former imprisonments for [a] felony required by section 7388-11, Revised Statutes, to place the accused in the category of habitual criminals.” *Id.* at syllabus. This Court reached this conclusion because it recognized that the first conviction was “obliterated,” because it was pardoned. *Id.* at 218.

This Court's decision in *Martin* also made clear that a pardon is not confined to the punishment of the offense, but also includes the "obliteration" of guilt related to the underlying conviction. In the legal analysis in *Martin*, this Court rejected a case standing for the proposition that a pardon only reaches punishment and not guilt, stating the "case of *Mount v. Commonwealth*, 2 Duvall, 93, has not been accepted as a correct statement of the law." *State v. Martin*, 59 Ohio St. at 218. That case, *Mount v. Campbell*, 63 Ky. 93, 1865 WL 2274 (Ky. 1865), determined a pardon "relieved the convict of the entire penalty incurred by the offense pardoned, and nothing else or more."

In 1940, this Court reaffirmed that a pardon under the Ohio Constitution "purges away all guilt and leaves the recipient from a legal standpoint, in the same condition as if the crime had never been committed." *State ex rel. Gordon v. Zangerle*, 136 Ohio St. 371, 376, 26 N.E.2d 190 (1940). Similarly, in 1978, this Court reiterated the definition from *State ex rel. Atty. Gen. v. Peters*, 43 Ohio St. 629, 650, 4 N.E. 81 (1885), that a "full and absolute pardon releases the offender from the entire punishment the law prescribed for his offense, and from all the disabilities consequent on his conviction." *State v. Morris*, 55 Ohio St.2d 101, 105, 378 N.E.2d 708 (1978). It then further explained, "[i]n other words, "a full pardon not only results in a remission of the punishment and guilt, but also a remission of the crime itself. *Id.*

This Court stated again in *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d 513, 520-521, 644 N.E.2d 369 (1994), that a "full and absolute pardon releases the offender from the entire punishment prescribed for his offense, and from all the disabilities consequent on his conviction," quoting *State ex rel. Atty. Gen. v. Peters*, 43 Ohio St. 629, 650, 4 N.E. 81 (1885). The legislature has adopted this same definition. R.C. §2967.04(B) states, "[a]n unconditional

pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted.”

The court of appeals below ignored this Court’s long-standing definition of a pardon when it held that Appellant Boykin’s pardon did not entitle her to have those pardoned convictions sealed. The court opined that a pardon operates only as a “remission of penalty” but “does not eradicate the fact of the underlying conduct.” *State v. Boykin* at ¶ 12. (Appx. 14.) To support its conclusion the court relied on *Knapp v. Thomas*, 39 Ohio St. 377, 381, 48 Am.Rep. 462 (1883). In interpreting *Knapp*, the court of appeals reasoned as follows:

Context is key to understanding the Court’s explanation in *Knapp*, which Boykin cites in support of her assignment of error. A careful reading of the Court’s language, however, leads to the conclusion that a pardoned individual is “a new man” insofar as the restoration of competency and the further imposition of punishment are concerned. *See id.* A pardon, so understood, does not wipe away all traces of the criminal case.

State of Ohio v. Montoya Boykin; City of Akron v. Montoya Boykin, 9th Dist. Nos. 25752, 25845, 2012-Ohio-1381, ¶10. (Appx. 13-14.) The court of appeals’ interpretation of *Knapp* is simply incorrect and is contrary to a century of this Court’s case law that finds a pardon reaches the punishment and the conviction. *See e.g. State v. Morris*, 55 Ohio St.2d at 105, 378 N.E.2d 708; *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d at 520, 644 N.E.2d 369.

Rather than citing the relevant case law from this Court, the court of appeals referred to a list of cases from other jurisdictions that have held that pardons in their states do not require the sealing of the convictions. *Id* at ¶ 13. A careful reading of those cases reveals that those courts

have determined a pardon has a different meaning under their particular constitutions. Specifically, unlike Ohio, which recognizes that a pardon operates to remit guilt, (*State v. Morris*, 55 Ohio St.2d at 105), the cited opinions find that a pardon does not remove the conviction. *U.S. v. Noonan*, 906 F.2d 952, 960 (3rd Cir. 1990) (A presidential pardon does not eliminate conviction); *R.J.L. v. State*, 887 So.2d 1268, 1280 (Fla. 2004) (“While a pardon removes the legal consequences of a crime, it does not remove the historical fact that the conviction occurred; a pardon does not mean the conviction is gone.”); *State v. Blanchard*, 100 S.W.3d 226, 228 (Tenn.App. 2002) (A “pardon does not obliterate the fact of the commission of the crime and conviction thereof.”); *State v. Aguirre*, 73 Wash. App.682, 690, 871 P.2d 616, 620 (Wash.App. 1994) (A pardon “merely forgives the individual for the crime committed.”) *State v. Skinner*, 632 A.2d 82, 85 (Del. 1993) (A “pardon does not erase guilt.”); *State v. Bachman*, 675 S.W.2d 41, 51 (Mo.App. 1984)(A pardon obliterates the conviction but not the fact of conviction.); *Commonwealth v. Vickey*, 381 Mass. 762, 770, 412 N.E.2d 877, 882 (Mass. 1980) (A pardon does not wipe out guilt); *People v. Glisson*, 69 Ill.2d 502, 506, 372 N.E.2d 669, 670 (Ill. 1978) (A pardon provides official forgiveness but does not expunge the record.).

The decisions in these cases rest on the fact that since the pardon does not reach the guilt of the offense, the pardoned conviction should not be sealed. However, it is noteworthy that one of the decisions cited by the court of appeals recognizes that if the pardon reaches guilt, the applicant is eligible to have the pardoned conviction expunged. *R.J.L.*, 887 So.2d at 1281.

Ohio law is unequivocal. A full and absolute pardon operates as a remission of the crime itself and places the offender in the same position "as if the crime had never occurred." *State ex rel. Gordon v. Zangerle*, 136 Ohio St. at 376. To give meaning to this definition, a court sealing must accompany the pardon.

II. MANDATORY SEALING GIVES FULL EFFECT TO THE PARDON

The current pardon process does not result in the pardoned conviction being sealed. Once the governor grants a pardon, he is required to send the warrant of pardon to the clerk of courts where the conviction occurred. R.C. §2967.06. The clerk must file and record the pardon. R.C. §2967.06. The statutory provision requires no further action by the court. The pardoned convictions remain in the public record, and anyone conducting a public record search will be able to access the pardoned convictions. Further, unless the searching party examines the court file, or reviews the docket, he will not even know that the governor has pardoned the conviction.

Allowing the pardoned conviction to remain in the public record undermines the impact of the granted pardon. Specifically, the pardon will not release the offender from “all disabilities consequent on his conviction.” *Maurer* at 520-521; R.C. § 2967.04(B). An estimated 1.9 million Ohioans, nearly 16 percent of the residents of this state, have a felony or misdemeanor conviction. *McCarty, Criminal Records Keeping Millions of Ohioans Jobless*, Dayton Daily News (June 25, 2011) A1. These Ohioans suffer real and lasting consequences from their convictions, including difficulty finding employment, locating housing and being eligible for public benefits.² As Justice Lundberg Stratton noted in her concurring opinion in *Cleveland Hts. v. Lewis*, 129 Ohio St. 3d 389, 395, 2011-Ohio-2673, 953 N.E.2d 278, ¶ 34 (2011), “[g]one are the days when a misdemeanor conviction resulted in little or no real collateral consequences. Rather, the collateral consequences resulting from a misdemeanor conviction today are real and significant.”

To give full effect to a gubernatorial pardon so it releases the offender from “all disabilities consequent on his conviction,” the trial court must seal the pardoned conviction. This

² For a thorough analysis of the collateral consequences ex-offenders face, see Merit Brief of Amici Curiae, Advocates for Basic Legal Equality, et al., in support of Appellant Montoya Boykin.

sealing must be automatic. To allow the trial court to have any discretion to seal encroaches on the governor's exclusive constitutional authority to issue a pardon.

This court has determined a court's role once the governor has issued a pardon, and that role is very limited. As a general matter, "the Governor's exercise of discretion in using the clemency power is not subject to judicial review." *State ex rel. Maurer v. Sheward* (1994), 71 Ohio St. 3d 513, 518, 546, 644 N.E.2d 369, This court further explained in *Knapp v. Thomas*, 39 Ohio St. 377, 391, 48 Am.Rep. 462 (1883),

any attempt of the courts to interfere with the governor in the exercise of the pardoning power, would be manifest usurpation of authority. The nature of our government forbids it. The long contest as to the rightful authority of government is in some respects ended. In our national and state constitutions the powers of the three branches of government, the legislative, the executive, and the judicial, are clearly defined and limited, and the important truth is at length understood, that each can best preserve the jurisdiction and power confided to it, by carefully abstaining from all interference with the rightful authority of the others.

Accord Ohio Adult Parole Authority, et al. v. Eugene Woodard, 523 U.S. 272, 280, 118 S.Ct.1244, 140 L.Ed.2d 387(1998), quoting *Connecticut Bd. of Pardons v. Dumschat* (1981), 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981). ("[P]ardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review.")

While a court may not review the governor's substantive pardon decision, it may determine whether the governor, in issuing the pardon, complied with the limitations contained in the Ohio Constitution. *State ex rel. Maurer v. Sheward* (1994), 71 Ohio St. 3d 513, 519-21, 644 N.E.2d 369. The Ohio Constitution imposes three limits on the governor's pardon power: 1) the pardon must be granted after conviction; 2) the pardon may not be granted for treason or impeachment; and 3) the pardon applicant must comply with all application requirements. Section 11, Article III, Ohio Constitution. This Court has defined the third limitation as a "procedural safeguard" to allay any concern that the "[g]overnor might grant pardons without thorough consideration or might be too easily influenced by political factors to grant or deny clemency for reasons other than the merits of an inmate's claim." *Id.*

There is no question in this case that the governor fully complied with the constitutional limitations placed on his pardon power. He granted the pardon after conviction, the convictions did not involve treason or impeachment, and Appellant Boykin complied with all application requirements imposed by Ohio law. She filed her application with the OPB and the OPB recommended the pardon grant to the governor. R.C. §2967.03; O.A.C. 5120:1-1-15. (Appx. 52, 58) Given that the governor's pardon complied with the Ohio constitution, it was a valid exercise of his exclusive constitutional authority, and the trial court should be required to honor that decision.

Further, to require a trial court to seal a pardoned conviction in no way intrudes on the functioning of the judicial branch. As this Court stated in *State v. Bodyke*, 126 Ohio St. 3d 266, 277, 933 N.E.2d 753, ¶ 48 (2010), "the Constitution permits each branch to have some influence over the other branches in the development of the law." *Id.* (citations omitted). This understanding of the separation of powers doctrine reflects, "our government is composed of

equal branches that must work collectively toward a common cause.” *State v. Bodyke*, 126 Ohio St. 3d at 277, ¶48.

Sealing the governor’s pardon is a perfect example of the interdependence discussed in *Bodkye*. When the governor issues the pardon, he has determined that the applicant is rehabilitated and deserving of a second chance. The trial court’s sealing of that pardoned conviction simply gives full effect to the governor’s decision to pardon. There is nothing in the mandatory sealing process that would “impede the function of the judicial branch.” *See Woods v. Telb*, 89 Ohio St.3d 504, 512, 733 N.E.2d 1103 (2000). (Adult Parole Authority’s discretion to manage post-release control did not violate court’s ability to impose sentence.).

III. A LEGISLATIVE MECHANISM FOR SEALING PARDONED CONVICTIONS IS UNNECESSARY

The court of appeals below concluded that the general assembly needs to provide a statutory mechanism to seal a pardoned conviction. *State of Ohio v. Montoya Boykin; City of Akron v. Montoya Boykin*, 9th Dist. Nos. 25752, 25845, 2012-Ohio-1381, ¶14. Similarly, the 10th District Court of Appeals recently relied on the lack of a legislative enactment to deny a request to seal a pardoned conviction. *State v. Radcliff*, ___ Ohio App. ___, 2012-Ohio-4732, ___ N.E.2d ___, ¶ 52 (10th Dist.). It concluded, “if a pardon truly rendered the defendant innocent as if the crime were never committed, the General Assembly should have included pardons with the other innocence-based reasons for expungement contained in R.C. 2953.52.” *Id.* This Court need not defer to the legislature to find that a trial court must automatically seal the pardoned conviction.

The trial court does not need legislative authority to seal a pardoned conviction. This power to seal stems from the inherent powers of the court.

The difference between the jurisdiction of courts and their inherent powers is too important to be overlooked. In constitutional governments, their jurisdiction is conferred by the provisions of the constitutions and of statutes enacted in the exercise of legislative authority. That, however, is not true with respect to such powers as are necessary to the orderly and efficient exercise of jurisdiction. Such powers, from both their nature and their ancient exercise, must be regarded as inherent. They do not depend upon express constitutional grant, *nor in any sense upon the legislative will.* * * *

When constitutional governments were established upon this continent there was general familiarity with the course of judicial proceedings in the administration of the common law. This power had long been exercised by courts as inherent. It was within every conception of a judicial court. * * *

State ex rel. Johnson v. Taulbee, 66 Ohio St. 2d 417, 421-422, 423 N.E.2d 80 (1981), quoting *Hale v. The State*, 55 Ohio St. 210, 213-214, 45 N.E. 199 (1896) (Emphasis in original).

This Court already has recognized that a judicial sealing remedy exists in Ohio absent legislative authorization. In *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 421 N.E. 1303 (1981), paragraph one of the syllabus (1981), this Court concluded that a court had the authority to seal “records in a criminal case where the charges are dismissed with prejudice prior to trial by the party initiating the proceedings.” Prior to the *Pepper Pike* decision, the statutory sealing scheme did not provide a mechanism to seal a dismissal. As this court recognized, the trial court did not

need statutory authority to seal the dismissal. The trial court already possessed the inherent power to seal. *Id.* This is equally true for a trial court faced with sealing a pardoned conviction. *Pepper Pike* permits a trial court to seal absent a specific statute allowing the remedy. *See Pepper Pike*, 66 Ohio St.2d at 376-77.

This Court acknowledged in *Pepper Pike* that for a judicial sealing there must be a balancing of interests to determine if sealing is appropriate. This balancing “weighs the privacy interest of the defendant against the government’s legitimate need to maintain records of criminal proceedings.” *Pepper Pike v. Doe*, 66 Ohio St.2d at 374, paragraph two of the syllabus. The sealing statutes require a similar balancing, directing the trial court to “[w]eigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.” R.C.2953.32 (C)(1)(d) (Sealing statute for convictions); R.C. §2953.52(B)(2)(d) (Sealing statute for dismissals).

In both the *Pepper Pike* case (judicial sealing of a dismissal) and the sealing statutes, the trial court is asked to determine the government’s interest in maintaining the records against the privacy interests of the applicant. For both remedies, the trial court examines for the first time the government’s interest in keeping the record public.

By contrast, when governor pardons a conviction, the governor has decided the government’s interest requires a pardon, and the decision eliminates any need the government has in keeping the record public. That decision is definitive on the question. “[T]he governor acts in his official character, and represents the sovereignty of the state.” *Work v. Corrington*, 34 Ohio St. 64, 77, 32 Am.Rep. 345 (1877), quoting *Taylor v. Tainter*, 83 U.S. 366, 370, 16 Wall. 366, 21 L.Ed. 287 (1872). As chief executive, “[t]he supreme executive power of the state” is “vested in the governor.” Ohio Constitution, Article III, Section 5. A pardon necessarily

determines that the pardon applicant's interest in privacy must outweigh the government's interest in maintaining a record of the pardoned conviction.

The governor's conclusion that the applicant's privacy interest outweighs the government's interest in keeping the conviction a public record does not preclude the trial court and the prosecuting attorney from a role in the process. The pardon process allows both to offer an opinion on the propriety of the pardon. Anyone seeking a pardon must file an application with the OPB, and the OPB must conduct an investigation. R.C. § 2967.07. This investigation requires the OPB to solicit the opinion of the victim, the trial court and the prosecutor on the applicant's fitness to be pardoned. R.C. § 2967.03; OAC 5120-1-15. *See State ex rel Maurer v. Sheward* (1994), 71 Ohio St. 3d St.3d 513, 530, 644 N.E.2d 369 (1994), fn.7. The victim, prosecutor and judge may appear at any pardon hearing. R.C. §2967.03; R.C. §2967.12(A) & (B). The OPB only will issue a favorable recommendation to the governor "if in its judgment there is reasonable ground to believe that granting a pardon, commutation, medical release, or reprieve to the convict or paroling the prisoner *would further the interests of justice and be consistent with the welfare and security of society.*" R.C. § 2967.03. (Emphasis added.)

The governor's pardon comes at the conclusion of this comprehensive process. His consideration of the pardon includes the opinion of all of the parties involved in the case. Nevertheless, once he issues the pardon, any interest the government has in the record remaining public ends. The trial court should not be allowed to reexamine this issue and to second-guess the governor's deliberate and informed decision to pardon.

Further, the recipient of a pardon has a great privacy interest in having the pardoned conviction sealed. This Court discussed the privacy issue that surrounds the sealing process in *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 805 N.E.2d 1094 (2004). In

Winkler, the Cincinnati Enquirer had requested access to records sealed by the expungement statute. In denying the request, the Court stated:

The defendant's right to privacy takes into account the public policy of providing a second chance to criminal defendants who have been found not guilty. (Citation omitted.) The only function of this statute is to allow a court, after balancing the public and private interests, to limit the life of a particular record. The public's ability to attend a criminal trial is not hindered. The media's right to report on the court proceedings is not diminished. The statute does not restrict the media's right to publish truthful information relating to the criminal proceedings that have been sealed. In addition, the public had a right of access to any court record before, during and for a period of time after the criminal trial. In fact, the public's access to the records is unrestricted until a decision is made to seal records. The statute ensures fairness by balancing the competing concerns of the public's right to know and the defendant's right to keep certain information private.

Id. at ¶ 10-11.

The *Winkler* analysis is applicable to pardoned convictions. The public has unrestricted access to the criminal record up until the time the governor issues the pardon and the trial court seals the pardoned conviction. The trial court's sealing of the pardoned conviction provides a "second chance" to the pardoned applicant. *See State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d at ¶ 10. It "releases" the offender from the entire punishment prescribed for his

offense, and from all the disabilities consequent on his conviction.” *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d at 520, 644 N.E.2d 369 (1994).

IV. THE DANGER OF DISCRETIONARY SEALING

Granting the trial court discretion to seal a pardoned conviction intrudes on the governor’s constitutional right to issue a pardon and undermines the effect of the pardon. Appellant Boykin’s case is a perfect example of the constitutional dangers inherent in giving trial courts the discretion to seal the pardoned conviction.

The Summit County Common Pleas court issued its sealing decision on December 10, 2010. The court denied the sealing request without hearing and without any lodged objection by the State of Ohio. It concluded

The Defendant’s prior criminal history is lengthy. However, for reasons unknown to this Court, convictions dating from 1987 through 1996 were pardoned by Governor Strickland. Therefore, the Defendant is technically eligible for sealing. However, in light of the Defendant’s propensity for theft, the Court finds that the interests of the State in maintaining this conviction outweigh the interest of the Defendant in having her case sealed.

(Appx. 32.)

The trial court’s decision fails to accord any respect to the governor’s pardon decision. In fact, the decision questions the governor’s pardon by stating that that for “reasons unknown to the court” the governor pardoned the conviction. The governor’s reasons for granting clemency are beyond the constitutional reach of the court. *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d at 520-21.

Because the common pleas court failed to recognize the impact of the pardon, it determined anew the government's interest in maintaining a record of the conviction. It did this without a hearing and any objection from the State of Ohio that the pardoned conviction should remain public. Without any evidence, the court pointed to Appellant Boykin's "propensity for theft" to deny the sealing. This conclusion fails to recognize that the pardon placed Appellant Boykin "in the same condition as if the crime had never been committed," *State ex rel. Gordon v. Zangerle*, 136 Ohio St. 371, 376. The convictions no longer existed so the trial court could not rely on them as a reason to deny the sealing. The court's reference to her "propensity for theft" is directly contrary to the governor's conclusion that "Montoya Boykin has demonstrated that she has been rehabilitated and has assumed the responsibilities of citizenship." (Appx. 33.)

The governor's pardon received similar adverse treatment by the Akron Municipal Court. The municipal court engaged in a weighing process that gave no weight to the governor's decision. It too decided that the government's interests in the pardoned conviction remaining public outweighed Appellant Boykin's interest in sealing. Like the common pleas court, the municipal court relied on the existence of Appellant Boykin's convictions to justify its decision. (Appx. 29-31.) When the governor pardoned those convictions, in effect he "obliterated" them. *See State v. Martin*, 59 Ohio St. at 218, 212, 218, 52 N.E. 188 (1898). This did not factor into the court's calculus. Moreover, the municipal court took an additional step in its analysis. The court evaluated the pardon process by examining the evidence Appellant Boykin submitted to the Ohio Parole Board and governor as part of her application process. (Appx. 29-30.)

The municipal court overstepped its role, and directly interfered with the governor's exclusive constitutional authority to consider all of the evidence and issue a pardon. Its disregard of the governor's decision is most apparent in one section of its decision.

The Court has duly noted the significant changes that Defendant has made in her life over an extended period of time. The Defendant has demonstrated that she made diligent and concerted efforts to reform her conduct and to improve her life. The Court has taken note of these positive developments and has weighed them carefully in arriving at its decision. It is commendable that she is now pursuing a degree in hopes of helping others. Yet, all of the positive changes do not erase the fact that Defendant's criminal history is lengthy. It demonstrates a clear pattern of disregard of the law for the rights of others.

(Appx. 30.)

The municipal court's conclusion stands in stark contrast to the governor's conclusion that "Montoya Boykin has demonstrated that she has been rehabilitated and has assumed the responsibilities of citizenship." (Appx. 33.)

Allowing trial courts the discretion to seal pardoned convictions, invites those courts to do exactly what happened in this case. A trial court will feel free to question the governor's pardon decision and the entire pardon process. It will allow the courts to treat the convictions as if no pardon had ever occurred. As this Court stated in *Knapp v. Thomas*, 39 Ohio St. 377, 393, 48 Am.Rep. 462 (1883), the "idea that the most solemn acts of the Chief Executive of the state may be so treated, is not to be tolerated for a moment."

V. CONCLUSION

This Court has long acknowledged the important role the pardon plays in our state:

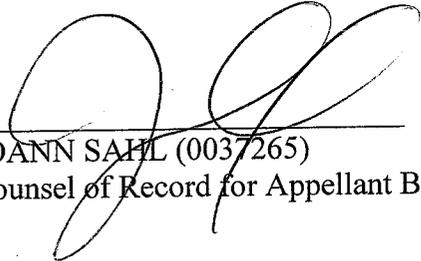
We recognize that the pardoning power conferred on the Governor by the Ohio Constitution is essential to ensure justice in particular cases. Indeed, as Alexander Hamilton stated in *The Federalist* No. 74 (Cooke Ed.1961) 500-501, in support of the broad clemency power conferred on the President by Section 2, Article II of the United States Constitution:

"Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel."

State ex rel. Maurer v. Sheward, 71 Ohio St.3d 513, 526, 644 N.E.2d 369 (1994).

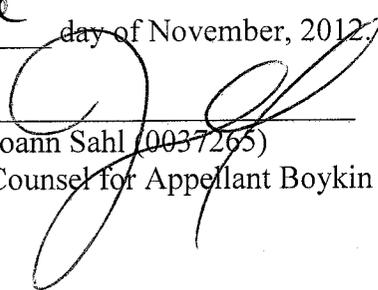
To give the pardon its full and intended effect, a trial court must seal a pardoned conviction. The trial court should have no discretion in that sealing process. The sealing must be automatic to ensure the "interests of justice." *See* R.C. §2967.03.

Appellant Boykin requests that this Court reverse the decision of the Ninth District Court of Appeals.


JOANN SAHL (0037265)
Counsel of Record for Appellant Boykin

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief on the Merits was hand delivered to Michael J. Defibaugh, Assistant Prosecuting Attorney, 161 S. High Street, Suite 202, Akron, OH 44308 and Assistant Prosecutor Heaven DiMartino, Summit County Prosecutor's Office, 53 University Avenue, Akron, OH 44308 on this 2nd day of November, 2012.



Joann Sahl (0037265)
Counsel for Appellant Boykin

The Supreme Court of Ohio

FILED

SEP 05 2012

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio
City of Akron

v.

Montoya L. Boykin

Case No. 2012-0808

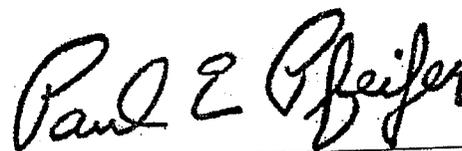
ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court accepts the appeal.

It is ordered that the clerk shall issue an order for the transmittal of the record from the Court of Appeals for Summit County.

It is further ordered by the court, sua sponte, that this cause is consolidated with Supreme Court Case No. 2012-1216, *State of Ohio, City of Akron v. Montoya Boykin*, and that the briefing in Case Nos. 2012-0808 and 2012-1216 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct. Prac. R. 6.2-6.4 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct. Prac. R. 6.1-6.4.

(Summit County Court of Appeals; Nos. 25752 and 25845)



PAUL E. PFEIFER
Acting Chief Justice

FILED

The Supreme Court of Ohio

SEP 05 2012

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio,
City of Akron

Case No. 2012-1216

ENTRY

v.

Montoya Boykin

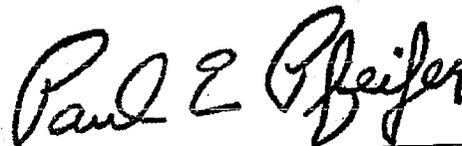
This cause is pending before the court on the certification of a conflict by the Court of Appeals for Summit County. On review of the order certifying a conflict, it is determined that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' Judgment Entry filed July 5, 2012, as follows:

"Whether a pardon conclusively entitles the recipient to have her pardoned convictions sealed?"

It is ordered by the court that the clerk shall issue an order for the transmittal of the record from the Court of Appeals for Summit County.

It is ordered by the court, sua sponte, that this cause is consolidated with Supreme Court Case No. 2012-0808, *State of Ohio, City of Akron v. Montoya L. Boykin*, and that the briefing in Case Nos. 2012-1216 and 2012-0808 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct. Prac. R. 6.2-6.4 and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct. Prac. R. 6.1-6.4.

(Summit County Court of Appeals; Nos. 25752 and 25845)



PAUL E. PFEIFER
Acting Chief Justice

IN THE SUPREME COURT OF OHIO

12-1216

STATE OF OHIO

Plaintiff-Appellee,

v.

MONTOYA L. BOYKIN

Defendant-Appellant,

CASE NO. _____

On Appeal from the Summit
County Court of Appeals,
Ninth Judicial District

Court of Appeals
Case No. 25752

CITY OF AKRON

Plaintiff-Appellee,

v.

MONTOYA L. BOYKIN

Defendant-Appellant,

On Appeal from the Summit
County Court of Appeals,
Ninth Judicial District

Court of Appeals
Case No. 25845

NOTICE OF CERTIFIED CONFLICT

Appellant, MONTOYA L. BOYKIN, hereby gives notice that the Court of Appeals, Ninth Judicial District, Summit County, Ohio, has certified its decision in this case to be in conflict with the First District Court of Appeals' decision in *State v. Cope*,

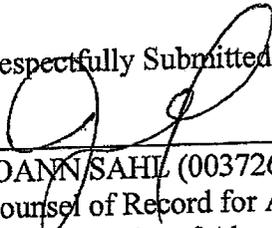
RECEIVED
JUL 20 2012
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JUL 20 2012
CLERK OF COURT
SUPREME COURT OF OHIO

111 Ohio App.3d 309, 676 N.E.2d 141 (1st Dist. 1996). The Ninth District Court of Appeals has certified the following issue to this Court:

Whether a pardon conclusively entitles the recipient to have her pardoned convictions sealed?

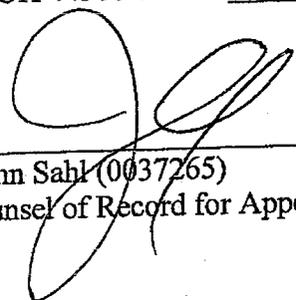
Respectfully Submitted,



JOANN SAHL (0037265)
Counsel of Record for Appellant Boykin
The University of Akron
School of Law
150 University Avenue
Akron, Ohio 44325-2901
(330) 972-7751
Facsimile (330) 972-6326
jsahl1@uakron.edu

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Certified Conflict was hand delivered to Michael J. Defibaugh, Assistant Prosecuting Attorney, 161 S. High Street, Suite 202, Akron, OH 44308 and Heaven DiMartino, Assistant Prosecuting Attorney, 53 University Avenue, Akron, OH 44308 on this 18th day of July, 2012.



Joann Sahl (0037265)
Counsel of Record for Appellant Boykin

STATE OF OHIO)
COUNTY OF SUMMIT)
COURT OF APPEALS
DANIEL

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO 2012 JUL -5 PM 12:33

C.A. No. 25752
25845

Appellee

CLERK OF COURTS

v.

MONTOYA BOYKIN

Appellant

CITY OF AKRON

Appellee

v.

MONTOYA BOYKIN

Appellant

JOURNAL ENTRY

Montoya Boykin has moved this Court to certify a conflict under App. R. 25 between this Court's March 30, 2012, judgment and the judgment of the First District Court of Appeals in *State v. Cope*, 111 Ohio App.3d 309 (1st Dist.1996). The City of Akron, appellee in C.A. No. 25845, has responded in opposition to the motion. The State of Ohio, appellee in C.A. No. 25752, has not.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment * * * is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" "[T]he alleged conflict must be on a rule of law - not facts." *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596 (1993).

Ms. Boykin has proposed that a conflict exists on the following issue: "Whether a pardon conclusively entitles the recipient to have her pardoned convictions sealed."

Upon review, we find that a conflict of law exists. In *Cope*, the First District Court of Appeals concluded that a trial court has the authority to seal the record of conviction of a pardoned offender even if the offender is not eligible for statutory expungement. The Court noted that in that situation, "what [the offender] needed was for the trial court to help him obtain the sealing to which he was entitled because of the pardon." *Cope*, 111 Ohio App.3d at 312. The First District also quoted with approval another jurisdiction's conclusion that "[a] pardon without expungement is not a pardon." *Id.* at 312, quoting *Commonwealth v. C.S.*, 517 Pa. 89 (Pa.1987). In *State v. Boykin*, 9th Dist. No. 25752, 25845, 2012-Ohio-1381, however, this Court agreed that a trial court may exercise the discretion to seal the conviction of a pardoned offender, but concluded that the nature of executive pardon does not require sealing in every case. *Id.* at ¶ 13.

To the extent that this Court reached a different conclusion from the First District Court of Appeals regarding the exercise of a trial court's authority to seal the record of a pardoned offender, those decisions are in conflict. Accordingly, Ms. Boykin's motion is granted, and this Court certifies the following issue to the Supreme Court of Ohio pursuant to App.R. 25:

Whether a pardon conclusively entitles the recipient to have her pardoned convictions sealed?



Judge

Concurs:
Dickinson, J.

Dissents:
Belfance, P.J.

ORIGINAL

IN THE SUPREME COURT OF OHIO

CASE NO. 12-0808

STATE OF OHIO

Plaintiff-Appellee,

v.

MONTOYA L. BOYKIN

Defendant-Appellant,

(
(
(
(
(
(
(
(
(
(
(

On Appeal from the Summit
County Court of Appeals,
Ninth Judicial District

Court of Appeals
Case No. 25752

CITY OF AKRON

Plaintiff-Appellee,

v.

MONTOYA L. BOYKIN

Defendant-Appellant,

(
(
(
(
(
(

On Appeal from the Summit
County Court of Appeals,
Ninth Judicial District

Court of Appeals
Case No. 25845

FILED
MAY 09 2012
CLERK OF COURT
SUPREME COURT OF OHIO

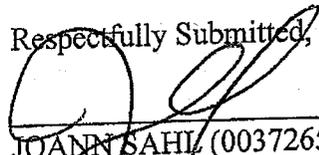
NOTICE OF APPEAL OF APPELLANT MONTOYA L. BOYKIN

Appellant, MONTOYA L. BOYKIN, hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals, Ninth Judicial District, Summit County, Ohio, entered in Case Nos. 25752 and 25845. These cases were consolidated on appeal and judgment issued on March 30, 2012.

RECEIVED
MAY 00 2012
CLERK OF COURT
SUPREME COURT OF OHIO

This discretionary appeal involves a substantial constitutional question and a question of public or great general interest.

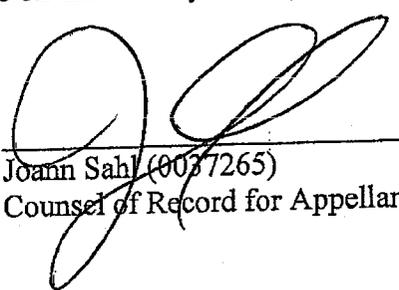
Respectfully Submitted,



JOANN SAHL (0037265)
Counsel of Record for Appellant Boykin
The University of Akron
School of Law
150 University Avenue
Akron, Ohio 44325-2901
(330) 972-7751
Facsimile (330) 972-6326
jsahl1@uakron.edu

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was hand delivered to Michael J. Defibaugh, Assistant Prosecuting Attorney, 161 S. High Street, Suite 202, Akron, OH 44308 and Sheri Bevan Walsh, Summit County Prosecutor, 53 University Avenue, Akron, OH 44308 on this 8th day of May, 2012.



Joann Sahl (0037265)
Counsel of Record for Appellant Boykin

COURT OF APPEALS
DANIEL M. ...

2012 MAR 30 AM 9:07

SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO
COUNTY OF SUMMIT
STATE OF OHIO

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 25752

Appellee

v.

MONTOYA L. BOYKIN

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 92 03 0635

CITY OF AKRON

C.A. No. 25845

Appellee

v.

MONTOYA L. BOYKIN

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE Nos. 87 CRB 05482
91 CRB 07522
96 CRB 14102

DECISION AND JOURNAL ENTRY

Dated: March 30, 2012

CARR, Judge.

{¶1} Appellant, Montoya Boykin, appeals orders of the Summit County Court of Common Pleas and Akron Municipal Court that denied her motions to seal the record of her convictions. We affirm.

I.

{¶2} In 1992, Boykin pled guilty to one count of receiving stolen property in a case originating in the Summit County Court of Common Pleas. She moved to seal her record in

1996 and 2000, and the trial court denied both motions. In 1996, she pled no contest to and was convicted of two counts of theft by the Akron Municipal Court. In 2009, Governor Ted Strickland pardoned Boykin for these three offenses. Boykin moved both courts to seal her record, arguing that the trial courts were required to exercise their inherent judicial authority to do so by virtue of the pardon. Both motions were denied, and Boykin appealed. This Court consolidated the appeals for oral argument and decision.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY DENYING APPELLANT BOYKIN'S MOTION TO SEAL HER PARDONED CONVICTIONS.

{¶3} Boykin's assignment of error is that the trial courts erred by denying her motions to seal her records. Specifically, she has argued that the existence of the executive pardon required the trial court to do so as an exercise of its inherent judicial powers.

JUDICIAL EXPUNGEMENT

{¶4} Underlying Ms. Boykin's argument is the assumption that a trial court has the inherent authority to seal criminal records when the defendant has been pardoned, even when the defendant is not eligible under the relevant statute. This is not, however, a foregone conclusion, nor is it an insignificant issue in this case. Boykin concedes that she is not eligible to have her records sealed under the relevant statutes. If the trial courts did not have the authority to seal her records from some other source, then our inquiry need go no further.

{¶5} A first offender may move to have the record of conviction of eligible offenses sealed under R.C. 2953.32. *See also* R.C. 2953.36 (describing the convictions that preclude sealing). R.C. 2953.52 also permits the official record of a criminal case to be sealed if the defendant was acquitted, the case was dismissed, or a grand jury returned a no bill. Apart from

these statutes, a record of conviction may be sealed only "where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter[.]" *Pepper Pike v. Doe*, 66 Ohio St.2d 374 (1981), paragraph two of the syllabus. In *Pepper Pike*, the Ohio Supreme Court considered whether the case record of a defendant could be sealed when the charges against her were dismissed with prejudice before trial. *Id.* at paragraph one of the syllabus. Because the predecessor of the current statutes only provided for expungement of a conviction, the Court considered whether trial courts had authority to grant expungement without statutory authorization. *Id.* at 377. The Court concluded that trial courts have the inherent authority to expunge records apart from the statutes when justified by "unusual and exceptional circumstances" founded on constitutional guarantees of the right to privacy. *Id.* The Court emphasized, however, that this judicial power should not be exercised as a matter of course:

Again, this is the exceptional case, and should not be construed to be a *carte blanche* for every defendant acquitted of criminal charges in Ohio courts. Typically, the public interest in retaining records of criminal proceedings, and making them available for legitimate purposes, outweighs any privacy interest the defendant may assert.

Id., citing *Chase v. King*, 267 Pa.Super. 498 (1979). The Court also concluded that exercise of this discretionary power should, for purposes of consistency, not obliterate the fact of the criminal record, but that a record so expunged "will remain an historical event," available for inspection and use as provided in the expungement statute then in place. *Id.* at 378.

{¶6} *Pepper Pike* has not been broadly applied. Before the enactment of R.C. 2953.52(A), for example, this Court held that trial courts did not have the authority to expunge the records of individuals who had been acquitted of the charges against them. See *State v. Stadler*, 14 Ohio App.3d 10, 11 (9th Dist.1983). Other courts concluded that judicial expungement was not available to defendants who had been convicted of a crime but were

ineligible for statutory expungement. See *State v. Netter*, 64 Ohio App.3d 322, 325-326 (4th Dist.1989); *State v. Weber*, 19 Ohio App.3d 214, 217-218 (1st Dist.1984); *State v. Moore*, 31 Ohio App.3d 225, 227 (8th Dist.1986). See also *State v. Spicer*, 1st Dist. No. C-040637, 040638, 2005-Ohio-4302, ¶ 12 (“Prior to the passage of R.C. 2953.52, expungement was an equitable remedy reserved for extraordinary cases in which the defendant was not only acquitted, but also factually exonerated.”). In other words, courts concluded that “[w]here there has been a conviction, only statutory expungement is available.” *State v. Davidson*, 10th Dist. No. 02AP-665, 2003-Ohio-1448, ¶ 15.

{¶7} Nonetheless, “the judicial power to grant an expungement request still exists, * * * [but] it is limited to cases where the accused has been acquitted or exonerated in some way and protection of the accused’s privacy interest is paramount to prevent injustice.” *State v. Chiaverini*, 6th Dist. No. L-00-1306, 2001 WL 256104, *2 (Mar. 16, 2001). Despite the enactment of R.C. 2953.32 and 2953.52, exercise of judicial authority to expunge records is warranted in exceptional cases:

[w]hile it may be argued that it is inappropriate for courts to supersede legislative judgment by granting judicial expungement where the legislature has specifically removed statutory expungement as a remedy, it is in such situations where the judicial expungement remedy may well be most appropriate. Judicial expungement is a *constitutional* remedy, and it is elementary that although the legislature has freedom to provide greater protections, it has no authority to place limits on rights guaranteed under the Constitution.

(Emphasis in original.) *In re Application to Seal Record of No Bill*, 131 Ohio App.3d 399, 403 (3d Dist.1999). It therefore stands to reason that, the limitations of R.C. 2953.32 notwithstanding, a trial court has the authority to grant judicial expungement in situations in which an executive pardon is at issue.

EFFECT OF PARDON

{¶8} Given that trial courts have the authority to grant judicial expungement when a pardon is at issue, the question remains whether the nature of the executive pardon itself requires them to do so in every case. We conclude that it does not.

{¶9} The Ohio Constitution gives the governor “power, after conviction, to grant reprieves, commutations, and pardons * * * upon such conditions as the governor may think proper[.]” Ohio Constitution, Article III, Section 11. A “pardon” is defined as “the remission of penalty by the governor in accordance with the power vested in the governor by the constitution.” R.C. 2967.01(B). It “relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted.” R.C. 2967.04(B). The recipient of a pardon is, therefore, relieved of the disabilities imposed by R.C. 2961.01(A)(1) and is no longer “incompetent to be an elector or juror or to hold an office of honor, trust, or profit.” R.C. 2961.01(A)(2).

{¶10} Noting that a pardon restores the civil rights of the recipient, the Ohio Supreme Court has described the effect of pardons:

“In contemplation of law it so far blots out the offense, that afterwards it cannot be imputed to him to prevent the assertion of his legal rights. It gives him a new credit and capacity, and rehabilitates him to that extent in his former position”, and hence its effect “is to make the offender a new man.” It is, in effect, a reversal of the judgment, a verdict of acquittal, and a judgment of discharge thereon, to this extent, that there is a complete estoppel of record against further punishment pursuant to such conviction.

(Internal citations omitted.) *Knapp v. Thomas*, 39 Ohio St. 377, 381 (1883). Context is key to understanding the Court’s explanation in *Knapp*, which Boykin cites in support of her assignment of error. A careful reading of the Court’s language, however, leads to the conclusion that a pardoned individual is “a new man” insofar as the restoration of competency and the

further imposition of punishment are concerned. *See id.* A pardon, so understood, does not wipe away all traces of the criminal case.

{¶11} Current laws support this conclusion. For example, R.C. 2961.01(A)(2) provides:

[t]he full pardon of a person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit restores the rights and privileges so forfeited under division (A)(1) of this section, *but a pardon shall not release the person from the costs of a conviction in this state, unless so specified.*

(Emphasis added.) R.C. 2961.01 does not provide that a pardon restores the recipient's competency under R.C. 2961.01(B) to "circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition," although such a person may be restored by operation of R.C. 2967.16(C). 2010 Ohio Atty.Gen.Ops. No. 2010-002, 2010 WL 292684, *2. A pardon does not automatically remove the recipient's disability with respect to carrying a concealed weapon. *See* R.C. 2923.14(C) (requiring an individual to petition the court of common pleas for the removal of the disability, reciting "any partial or conditional pardon granted" as well as "facts showing the applicant to be a fit subject for relief[.]").

{¶12} Consistent with the definition of a pardon as "remission of penalty," as set forth in R.C. 2967.01(C), it is also apparent that an executive pardon does not eradicate the fact of the underlying conduct. Despite a pardon, for example, the character of an offense may be relevant for purposes of employment. *See State ex rel. Atty. Gen. v. Hawkins*, 44 Ohio St. 98, 117 (1886) ("Whatever the theory of the law may be as to the effect of a pardon, it cannot work such moral changes as to warrant the assertion that a pardoned convict is just as reliable as one who has constantly maintained the character of a good citizen."). An attorney who has been indefinitely suspended from practicing law is not automatically entitled to reinstatement when the underlying

offense has been pardoned. *See In re Bustamante*, 100 Ohio St.3d 39, 2003-Ohio-4828, ¶ 3-5 (requiring an attorney to complete the prerequisites for reinstatement that had been set by the Supreme Court of Ohio notwithstanding a presidential pardon.). A pardoned offense may be considered in subsequent prosecutions. *Carlesi v. New York*, 233 U.S. 51, 59 (1914). Although evidence of a conviction is not generally admissible in Ohio to impeach a witness, it may be admitted if the witness subsequently committed certain crimes. Evid.R. 609(C).

{¶13} If it is to be maintained that “in the eye of the law, [a pardoned] offender is as innocent as if he had never committed the offense,” these examples of collateral consequences that remain after a pardon lead us to agree with one commentator, who has observed that in that case, “the eyesight of the law is very bad.” Williston, *Does a Pardon Blot Out Guilt?*, 28 Harv.L.Rev. 647, 648 (1918), quoting *Ex Parte Garland*, 71 U.S. 333 (1866). We conclude, therefore, that a pardon does not conclusively entitle the recipient to have the record sealed. This conclusion is in accord with the majority of courts that have considered the question. *See U.S. v. Noonan*, 906 F.2d 952, 960 (3d Cir.1990); *R.J.L. v. State*, 887 So.2d 1268 (Fla.2004); *State v. Blanchard*, 100 S.W.3d 226, 228 (Tenn.App.2002); *State v. Aguirre*, 73 Wash.App. 682, 690 (Wash.App.1994); *State v. Skinner*, 632 A.2d 82 (Del.1993); *State v. Bachman*, 675 S.W.2d 41, 52 (Mo.App.1984); *Commonwealth v. Vickey*, 381 Mass. 762, 771 (Mass.1980); *People v. Glisson*, 69 Ill.2d 502, 506 (Ill.1978).

{¶14} We recognize that a minority of courts that have addressed the issue disagree. *See State v. Cope*, 111 Ohio App.3d 309 (1st Dist.1996); *State v. Bergman*, 558 N.E.2d 1111, 1114 (Ind.App.1990); *Commonwealth v. C.S.*, 517 Pa. 89, 92 (Pa.1987). Nonetheless, we conclude that this result is correct. In Ohio, the legislature has not provided for sealing records of a

pardoned individual by statute. Some other jurisdictions have done so. *See R.J.L.*, 887 So.2d at 1279 fn4. In this respect, we must defer to the legislative process.

CONCLUSION

{¶15} A pardon under Article III, Section 11, of the Ohio Constitution does not automatically entitle the recipient of the pardon to have the record of conviction sealed. A trial court may exercise its authority to order judicial expungement but, as the Ohio Supreme Court concluded in *Pepper Pike*, this authority should not be exercised as a matter of course, but “where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter[.]” *Pepper Pike*, 66 Ohio St.2d 374 at paragraph two of the syllabus. In this case, Boykin’s motions to seal her record relied exclusively on her position that she was entitled to relief by virtue of the pardon, and the record on appeal does not contain evidence beyond that argument. Consequently, consideration of whether her motions should have been granted under the analysis set forth above is premature, and this Court takes no position in that respect.

III.

{¶16} Boykin’s assignment of error is overruled, and the judgments of the Summit County Court of Common Pleas and the Akron Municipal Court are affirmed.

Judgments affirmed.

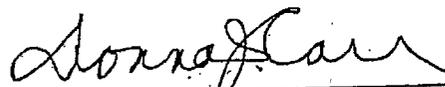
There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas and Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into

execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.


 DONNA J. CARR
 FOR THE COURT

DICKINSON, J.
CONCURS.

BELFANCE, P. J.
DISSENTING.

{¶17} I respectfully dissent. The question presented to this Court is whether a person who has received a full and unconditional pardon for certain offenses is entitled to have the public records of those convictions sealed.

{¶18} As an initial matter, and as discussed by majority, I agree that the trial court has inherent authority to order the sealing. See *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 377-378 (1981).

{¶19} Even prior to the existence of statutory sealing provisions, the Supreme Court of Ohio discussed the effect and breadth of an unconditional pardon. It has stated that:

a pardon reaches both the punishment prescribed for the offense and the guilt of the offender. It obliterates, in legal contemplation, the offense itself. In contemplation of law it so far blots out the offense, that afterwards it cannot be imputed to him to prevent the assertion of his legal rights. It gives him a new credit and capacity, and rehabilitates him to that extent in his former position and hence its effect is to make the offender a new man. It is, in effect, a reversal of the judgment, a verdict of acquittal, and a judgment of discharge thereon, to this extent, that there is a complete estoppel of record against further punishment pursuant to such conviction.

(Internal quotations and citations omitted.) *Knapp v. Thomas*, 39 Ohio St. 377, 381 (1883). The legal effect of a pardon is grounded upon the Supreme Court's recognition of the executive's constitutional authority to make a pardon. See Ohio Constitution, Article III, Section 11. The Ohio Supreme Court has more recently reiterated the principle that a full pardon has the effect of removing both the punishment and guilt of the offender. In *State ex rel. Gordon v. Zangerle*, 136 Ohio St. 371 (1940), it stated "[a] full pardon purges away all guilt and leaves the recipient from a legal standpoint, in the same condition as if the crime had never been committed." *Id.* at 376. If a full pardon leaves a person from a legal standpoint as if the crime had never been committed, and obliterates the offense itself, it is difficult to envision how a public document that contains the imposition of guilt could appropriately remain in the public domain.

{¶20} In examining whether sealing is appropriate subsequent to a full and unconditional pardon, I find the reasoning and analysis of the First District's *State v. Cope*, 111 Ohio App.3d 309 (1st Dist.1996), to be very logical and persuasive. As noted in *Cope*, R.C. 2967.04(B) provides that "[a]n unconditional pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted." (Emphasis added.) See *Cope* at 311. While the majority concludes that a pardon relieves a person of only those disabilities imposed by R.C. 2961.01(A)(1), R.C. 2967.04(B) does not reference R.C. 2961.01(A)(1), nor does it include limiting language. I would interpret the word "all" to mean

just that, *all disabilities*. I think any reasonable person would agree that having a conviction be part of public record for all to see is a disability. Moreover, I do not find the majority's recitation of actions that persons granted pardons must take to restore themselves to full competency to be a compelling argument in support of its position. The fact that someone has to take action to receive the full benefits of the pardon does not necessitate the conclusion that the person is not entitled to those benefits. Thus, in my view, it is logical that sealing the public records of a conviction would go hand in hand with a full and unconditional pardon. As the Court in *Cope* stated, "[a] pardon without expungement is not a pardon." (Internal quotations and citation omitted.) *Cope* at 312. Furthermore, even though a public court record might be sealed, it does not mean that is destroyed. *See, e.g., Pepper Pike*, 66 Ohio St.2d at 378. ("[E]xpungement does not literally obliterate the criminal record * * * [as] [t]he sealed record of the case may be inspected by any law enforcement authority or prosecutor to aid in the decision to file charges on any subsequent offenses involving the defendant.").

{¶21} Accordingly, the only way to give full effect to the broad language of Supreme Court precedent and the statute, and thus the pardon itself, is to order the sealing of the records of a person who has received a full and unconditional pardon. Thus, I respectfully dissent.

APPEARANCES:

JOANN SAHL, Appellate Review Office, School of Law, The University of Akron, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.

CHERI B. CUNNINGHAM, Director of Law, and DOUGLAS J. POWLEY, Chief City Prosecutor, for Appellee.

County Court of Common Pleas.² Defendant again pled guilty to a charge of Petit Theft in the Akron Municipal Court on August 7, 1991.³ On April 23, 1992, Defendant pled guilty to one count of Receiving Stolen Property in the Summit County Court of Common Pleas, a felony of the 4th Degree.⁴ Defendant was again convicted of Petit Theft on December 13, 1996.⁵ On February 23, 1998, The Akron Municipal Court found Defendant to be in contempt for failure to pay fines and costs associated with the 1996 conviction of Petit Theft. Additionally, Defendant was convicted of Disorderly Conduct, a minor misdemeanor, on March 23, 2007.⁶

In 1999, Defendant applied for a pardon with the Ohio Adult Parole Board. The Court notes that in her application, Defendant did not request that the 1987 Petit Theft conviction be pardoned and did not inform the Parole Board of the contempt charges arising from that case.⁷ Defendant also failed to inform the Ohio Adult Parole Board of the 1998 contempt charges for failure to pay fines and costs arising from the 1996 Petit Theft conviction. Furthermore, Defendant failed to disclose her 2007 conviction of Disorderly Conduct to the Ohio Adult Parole Board at the time of the initial application for pardon.⁸ The Ohio Adult Parole Board, after conducting a review of Defendant's record, recommended that the Defendant receive a pardon. On November 23, 2009, former Ohio Governor Ted Strickland granted Defendant a full and unconditional Warrant of Pardon. Specifically, the language contained in the Warrant of Pardon

² Case No. CR-91-261705-A, Cuyahoga County Court of Common Pleas. Although initially charged with a Felony Theft and Possession of Criminal Tools, Defendant entered a guilty plea to the reduced charge of Theft, a misdemeanor of the first degree. The remaining charges were dismissed.

³ Case No. 91 CRB 07522, Akron Municipal Court.

⁴ Case No. CR-1992-03-0635, Summit County Court of Common Pleas.

⁵ Case No. 96 CRB 14102, Akron Municipal Court.

⁶ Case No. 07 CRB 02414, Akron Municipal Court.

⁷ The Court does note that the September 28, 2007 Clemency Report does list this conviction as part of Defendant's prior record. See September 27, 2007 Clemency Report attached to Defendant's Supplemental Addendum filed on September 3, 2010. This conviction is not listed among the offenses for which Defendant requested clemency. See Ohio Parole Board Application for Executive Clemency attached to Defendant's Supplemental Addendum filed on September 3, 2010.

states that Defendant was “convicted of three counts of the crime of Theft and one count of Receiving Stolen Property” in the Cuyahoga County Common Pleas Court, Akron Municipal Court and the Summit County Common Pleas Court.⁹ The document goes on to state that Defendant’s “conviction for the crimes of Theft and Receiving Stolen Property are to be pardoned”.¹⁰ The language of the Warrant of Pardon does not seem to extend to either the 1987 conviction of Petit Theft or the 2007 conviction of Disorderly Conduct.¹¹

Defendant originally filed a Motion to Seal on June 22, 2010. In her first Motion to Seal, Defendant requested that the Court seal Defendant’s convictions of Theft in case numbers 91-CRB-07522 and 96-CRB-14102. On June 28, 2010, Defendant filed an Amended Motion to Seal Criminal Record. In that Motion, Defendant requested that the Court seal Defendant’s Theft conviction in case number 87-CV-05482 along with the two previously referenced cases. Defendant filed an Application for Sealing of Convictions with the Court on July 7, 2010. In her Application, Defendant requests to seal the convictions for the cases numbered 87-CRB-05482, 91-CRB-07522, and 96-CRB-14102. Although Defendant initially requested that case number 87-CRB-05482 be included in the sealing, the Court notes that, because this case was not included in the pardon, Defendant dismissed her request that this case be sealed.¹² Given that fact, the Court must now address Defendant’s Motion to Seal with respect to case 91-CRB-07522 and case 96-CRB-14102 only. Defendant’s Motion to Seal is now limited only to the two cases arising out of this Court that were included in the Warrant of Pardon. Accordingly, the

⁸ On June 5, 2007 Defendant did send a letter to the Ohio Adult Parole Board informing it of the 2007 conviction of Disorderly Conduct. See Letter attached to Defendant’s Supplemental Addendum filed on September 3, 2010. There is no evidence as to whether or not the Ohio Adult Parole Board received this letter.

⁹ See November 23, 2009 Warrant of Pardon.

¹⁰ See November 23, 2009 Warrant of Pardon.

¹¹ In Defendant’s Supplemental Memorandum, Defendant concedes that the 1987 Petit Theft Conviction was not pardoned. See Defendant’s Supplemental Memorandum filed on July 16, 2010.

¹² See Defendant’s Supplemental Memorandum filed on July 16, 2010.

Court must now determine whether the pardon granted to Defendant entitles her to records expunction.

In Ohio, the authority for the sealing or expungement of a criminal record exists in two ways: one is statutory (R.C. 109.60, R.C. 2953.31 *et seq.*, and R.C. 2953.52 *et seq.*) and one is judicial. See *Pepper Pike v. Doe* (1981), 66 Ohio St.2d 374, 20 O.O.3d 334, 421 N.E.2d 1303. R.C. 109.60 is limited to the return of fingerprints and identification of a defendant, to persons found not guilty, or to cases that are dismissed. *Id.* R.C. 2953.32 allows a first offender to apply to the sentencing court and request the sealing of the conviction record. R.C. 2953.32(A). R.C. 2953.52 allows for a person acquitted of a crime to make an application for sealing. R.C. 2953.52(A). The Court notes that Defendant is not requesting that her convictions be expunged pursuant to any of these statutes.¹³ Even if Defendant was requesting a sealing pursuant to statutory means, that request could not be granted because Defendant was neither acquitted of the charges, nor is she a first offender as defined by R.C. 2953.31 due to the 1987 conviction for Petit Theft. See R.C. 2953.31.

Although she is not requesting expungement pursuant to statutory provisions, Defendant is requesting that the Court employ its inherent judicial authority to assist her in obtaining relief from the disabilities arising out of her pardoned convictions. Relying on *State v. Cope*, 111 Ohio App.3d 309 (1st Dist.), Defendant argues that the pardon she received automatically entitles her to records expunction. Defendant additionally argues that the specific facts of this case allow the Court can use its inherent judicial power as set forth in *Pepper Pike* to grant Defendant's Motion to Seal. The Court will address each argument in turn.

The Court must first determine whether or not the Court is compelled, by virtue of the pardon granted to Defendant, to grant her Motion to Seal. The power to issue pardons is granted,

to the Governor by Constitution of the State of Ohio and is also referenced in the Ohio Revised Code. See R.C. 2967.01 *et. seq.* While it is undisputed that the Governor has the power to grant pardons, the complete ramification of a pardon remains unclear. This is especially true with regards to the expungement of criminal records for a pardoned offense. R.C. 2967.04 outlines the effect of a pardon. This statute specifically states that an unconditional pardon relieves the person of all disabilities arising out of the conviction or convictions from which it is granted. R.C. 2967.04(B). This statute is silent as to the effect of a pardon on the sealing of a criminal record. The Ohio Revised Code addressed the sealing of a record of conviction in R.C. 2953.31 *et. seq.* However, these statutory provisions also fail to address sealing of a record relating to pardoned convictions. Thus, the court must look to common law to determine what effect, if any, the Governor's pardon has on Defendant's Motion to Seal.

It is not settled law in Ohio whether or not the granting of a full pardon entitles a Defendant to a sealing of the record of conviction. In fact, only nine jurisdictions throughout the country have addressed this specific issue directly and there is a lack of general consensus among these jurisdictions as to whether a pardon automatically makes an individual eligible for sealing of records. A minority of these courts has determined that a pardoned individual is automatically entitled to records expunction. See *State v. Bergman*, 558 N.E.2d 1111, 1114 (Ind.Ct.App,1990); *State v. Cope*, 111 Ohio App.3d 309, 676 N.E.2d 141, 143 (1996); and *Commonwealth v. C.S.*, 517 Pa. 89, 534 A.2d 1053, 1054 (1987). These decisions are based on language contained in *Ex Parte Garland*, where the Supreme Court stated that a full pardon "releases the punishment and blots out the existence of guilt, so that in the eye of the law, the offender is as innocent as if he had never committed the offense". *Ex Parte Garland*(1866), 71 U.S. (4 Wall.) at 380-381, 18 L.Ed. 366. The Supreme Court went on to say that "A Pardon

¹³ See Defendant's Supplemental Memorandum filed on July 16, 2010. Appx. 24

removes penalties and disabilities and restores defendant to all his civil rights". *Id.* The courts in the minority of jurisdictions addressing the issue presently before this Court have concluded that, based upon the language of *Garland*, when a person is pardoned, they are to be treated as if they never committed the crime. *R.J.L. v. State of Florida*, 887 So.2d 1268, 1278-79. Because a person is to be treated as such, a pardon would carry with it the attendant right of records expunction. *State v. Bergman*, 558 N.E.2d 1111, 1114 (Ind.Ct.App. 1990). Therefore, "a pardon without expungement is not a pardon". *Commonwealth v. C.S.*, 517 Pa. 89, 534 A.2d 1053, 1054 (1987). However, the majority of courts addressing this issue have not reached to this same conclusion.

Six out of the nine jurisdictions that examined this issue have held that a pardoned individual is *not* entitled to records expunction because the pardon does not blot out the existence of guilt and does not have the effect of eliminating the fact of the conviction. See *State v. Skinner*, 632 A.2d 82, 87 (Del.1993); *People v. Glisson*, 69 Ill.2d 502, 14 Ill.Dec. 473, 372 N.E.2d 669, 671 (1978); *Commonwealth v. Vickey*, 381 Mass. 762, 412 M.E.2d 877, 883 (1980); *State v. Bachman*, 675 S.W.2d 41, 52 (Mo.Ct.App. 1984); *State v. Blanchard*, 100 S.W.3d 226, 228 (Tenn.Crim.App.2002); and *State v. Aguirre*, 73 Wash.App. 682, 871 P.2d 616, 620 (1994). These decisions are rooted on the fact that the language contained in *Garland* has since been found to be dictum and therefore, a pardon does not necessarily erase the fact that the crime occurred or the guilt associated with it. See *Harscher v. Commonwealth of Kentucky*, 327 S.W.3d 519 citing *In Re North*, 62 F.3d 1434 (D.C.Cir.1994). Because these Courts concluded that a pardon does not eliminate the existence of guilt, a pardoned individual is not automatically entitled to record expunction.

The Ohio Supreme Court has held that a pardon “purges away all guilt and leaves the recipient from a *legal standpoint*, in the same condition as if the crime had never been committed.” *State ex rel. Gordon v. Zangerle* (1940), 136 Ohio St. 371, 376, 16 O.O. 536, 538, 26 N.E.2d 190, 194, *emphasis added*. However, this case is silent as to whether a pardon erases the *fact* of the conviction itself. Purging away guilt and placing an individual, from a legal standpoint, in the same condition as if the crime had never been committed does not change the historical fact that the crime itself occurred. A pardon essentially restores the civil rights of an individual and removes punishment associated with the crime; it involves forgiveness and not necessarily forgetfulness of the act itself. For this reason, this Court concludes that the holding in *Gordon* does not imply that a court is required to treat a pardoned offense as if it never occurred; a court is merely required to treat the pardoned individual, from a legal standpoint, as if they were never found guilty of the pardoned offense.

After careful review of the established case law, this Court agrees with the majority of courts that have ruled on this issue and finds that, absent statutory clarification, a pardon does not automatically entitle a petitioner to a sealing of the conviction because the pardon does not have the effect of erasing the conviction itself. Although the First District of Ohio has ruled contrary to this position, the Court notes that it is not bound by that holding. Additionally, the statutory scheme governing sealing of records provides additional support for this conclusion. Even in cases where the Revised Code permits an individual to seek expungement, the statute lists several factors that a court must consider before the record can be sealed. See R.C. 2953.32. The fact that the statutes require a court to consider the unique circumstances surrounding each case when an individual is expressly permitted to seek expungement, further persuades the Court to

decline to adopt a blanket rule providing for an automatic sealing of any conviction that was pardoned.

As stated before, the Ohio Revised Code is silent as to how to address a case where the applicant has received a pardon and wishes to seal the record of the conviction. Therefore, Court must next determine whether or not it possesses the inherent authority to seal a criminal record absent statutory authorization. The Court's inherent authority to seal a criminal record was first expressly recognized in *City of Pepper Pike v. Doe*, 66 Ohio St.2d at 377, 20 O.O.3d at 335, 421 N.E.2d at 1306. Specifically the Ohio Supreme Court held that "trial courts in Ohio have jurisdiction to order expungement and sealing of records in a criminal case *where the charges are dismissed with prejudice prior to trial* by the party initiating the proceedings. *Pepper Pike v. Doe* (1981), 66 Ohio St.2d 374, 20 O.O.3d 334, 421 N.E.2d 1303, paragraph one of syllabus (*Emphasis added*). Additionally, they stated that trial courts have authority to order expungement only where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter. *Pepper Pike v. Doe* (1981), 66 Ohio St.2d 374, 20 O.O.3d 334, 421 N.E.2d 1303, paragraph two of the syllabus.

Pepper Pike dealt with an individual who was charged with a crime and later acquitted of that offense. At the time the court ruled on that case, no such exception for that particular circumstance existed in the Ohio Revised Code. The holding in *Pepper Pike* was later codified in R.C. § 2953.52 *et. seq.* The *Pepper Pike* decision was formed to address the inequality that resulted due to the former statutory scheme. Under the former provisions of the Revised Code a convicted first offender could request expungement, but those who were acquitted of an offense had no such option. *City of Pepper Pike v. Doe*, 66 Ohio St.2d at 377, 20 O.O.3d at 335, 421 N.E.2d at 1306. *Pepper Pike*, however, does not grant a trial court broad authority to order

expungement whenever it deems appropriate. The rule stated in *Pepper Pike* has since been limited; the inherent authority of the court may be cautiously exercised only in those instances where the Revised Code is silent on the matter. See *Bound v. Biscotti*, 76 Ohio Misc.2d 6, 663 N.E.2d 1376 (Holding that the Court's inherent judicial authority to order expungement is limited to those situations not addressed by the statutory scheme for expungement). See also *State v. Stadler*, 14 Ohio App.3d 10, 469 N.E.2d 911, *State v. Weber*, 19 Ohio App.3d 214, 484 N.E.2d 207, and *State v. Netter*, 64 Ohio App.3d 322, 581 N.E.2d 597 (All holding that a trial court cannot use its inherent authority to seal a conviction where the applicable statute would not permit such action). The Ohio Supreme Court has made it clear that such an exception is rare. *Pepper Pike v. Doe*, 66 Ohio St.2d at 377, 20 O.O.3d at 335, 421 N.E.2d at 1306. The court's use of its inherent authority would merely be an extension of the same principle of *Pepper Pike, supra*, which is to only provide relief to a class of persons that are not provided for by a statute. *Bound v. Biscotti*, 76 Ohio Misc.2d 6 at *10, 663 N.E.2d 1376.

Because the Ohio Revised Code does not provide guidance on the sealing of a conviction of an applicant who has been pardoned of the offense, this Court finds the rationale that was the basis of the Supreme Court's decision in *Pepper Pike, supra*, applies equally to the case at hand. Having determined that this instance is one of "unusual and exceptional circumstances" as discussed in *Pepper Pike, supra*, this Court must now use the balancing test set forth in that case to determine if expungement is proper for the Defendant. Specifically, this Court will weigh the interest of the Defendant in her good name and right to be free from unwarranted punishment against the legitimate need of government to maintain records. *State v. Stadler*, 14 Ohio App.3d at 11, 14 OBR at 14, 469 N.E.2d at 913 citing *City of Pepper Pike v. Doe*, 66 Ohio St.2d at 377, 20 O.O.3d at 335, 421 N.E.2d at 1306. An individual's constitutionally protected right to

privacy is the basis for a trial court to order a judicial expungement, if the equities of the case demand it. *City of Pepper Pike v. Doe*, 66 Ohio St.2d at 377, 20 O.O.3d at 335, 421 N.E.2d at 1306. The Court must balance this individual right of privacy against governmental interests including the promotion of effective law enforcement, the public interest in promoting general safety and welfare of the community, continuing investigation of a specific crime and investigation of future criminal activity. *State v. Greene, supra*, 61 Ohio St.3d at 141, 573 N.E.2d at 113 (Moyer, C.J., concurring in part and dissenting in part). See, also, *State v. Grove* (1986), 29 Ohio App. 3d 318, 320, 29 OBR 418, 420, 505 N.E.2d 297, 299. The public's need to know is also a relevant, legitimate governmental need which must be considered. *Id.* Therefore, this Court can order Defendants' convictions sealed only if the application of this balancing test weighs in her favor.

In applying the balancing test outlined by the Ohio Supreme Court in *Pepper Pike* to the facts of this case, it is the opinion of this Court that the equities do not weigh in favor of the Defendant. The two cases at issue in this proceeding are not the only convictions that Defendant has on her record. She has been convicted of theft related offenses in other jurisdictions along with the convictions from this jurisdiction. The offenses occurred over the better part of a decade. Defendant additionally was held in contempt on two different cases for failing to pay fines and costs. The occurrence of numerous similar offenses over such a long a period of time establishes a pattern of criminal behavior that evidences disrespect for, and disregard of, the laws of this State.

The Court also notes that Defendant denied ever having any alcohol or substance abuse issues in her life on the forms submitted to the Ohio Adult Parole Board. Yet, in documents submitted to this Court, Defendant states that her criminal past is related to a conquered history

of substance abuse. The Court sees this inconsistency as troubling. It is difficult to determine at this juncture whether Defendant actually suffered from a substance abuse problem, in which case she was less than candid with the Ohio Adult Parole Board.

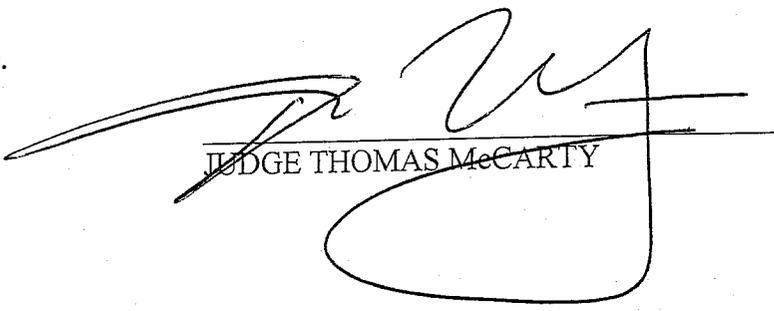
The Court also finds troubling the fact that the Defendant did not inform the Ohio Adult Parole Board of the two contempt charges accompanying Defendant's 1987 and 1996 convictions when applying for a pardon. Given the long and consistent history the Defendant had of criminal conduct, this Court sees the contempt charges as further evidence of Defendant's disregard for the law and unwillingness to face the consequences of her actions. In her statement to the Ohio Adult Parole Board, Defendant stated that she had "three misdemeanors for theft".¹⁴ A review of Defendant's criminal record indicates that she actually had four convictions of Petit Theft. The Court also can't ignore the fact that Defendant was additionally convicted of Disorderly Conduct after initiating the process in order to obtain a pardon.

The Court has duly noted the significant changes that Defendant has made in her life over an extended period of time. The Defendant has demonstrated that she made diligent and concerted efforts to reform her conduct and to improve her life. The Court has taken note of these positive developments and has weighed them carefully in arriving at its decision. It is commendable that she is now pursuing a degree in hopes of helping others. Yet, all of the positive changes do not erase the fact that Defendant's criminal history is lengthy. It demonstrates a clear pattern of disregard of the law and for the rights of others. The Ohio Supreme Court held in *Pepper Pike* that "typically, the public interest in retaining records of criminal proceedings, and making them available for legitimate purposes, outweighs any privacy interest the defendant may assert." *City of Pepper Pike v. Doe*, 66 Ohio St.2d at 377, 20 O.O.3d at 335, 421 N.E.2d at 1306. It is true that such a record may prove to be a hindrance to the

Defendant at present and in the future. The fact that a criminal record may prevent Defendant from pursuing some activities or employment does not overcome the State's significant interest in keeping records of a repeat offender, who demonstrated a disregard of the law. The Court is confident that if Defendant continues to make progress, her criminal record, while a scar on her good name, will not prove to be a mortal wound to it.

For the reasons stated above, Defendant's Motion to Seal is hereby **DENIED**.

IT IS SO ORDERED.



JUDGE THOMAS McCARTY

cc: Douglas Powley, Esq. – Chief Prosecutor, City of Akron
Joanne Sahl, Esq. – Defendant's Counsel

¹⁴ See Clemency Report attached to Defendant's Supplemental Addendum filed on September 3, 2010.
Appx. 31

DANIEL M. HERRIGAN
2010 DEC 10 PM 2:11
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

CASE NO. CR 92 03 0635

THE STATE OF OHIO

vs.

MONTOYA L. BOYKIN

)
)
)
)

JOURNAL ENTRY

THIS DAY, to-wit: The 22nd day of November, A.D., 2010, this matter is set before the Court upon the Defendant's Motion to Seal her record in the above captioned matter.

The Defendant's prior criminal history is lengthy. However, for reasons unknown to this Court, convictions dating from 1987 through 1996 were pardoned by Governor Strickland. Therefore, the Defendant is technically eligible for sealing. However, in light of the Defendant's prior propensity for theft, the Court finds that the interests of the State in maintaining this conviction outweigh the interest of the Defendant in having her case sealed.

The Defendant's Motion to Seal is DENIED.

APPROVED:
December 7, 2010
mh

Lynne S. Callahan
LYNNE S. CALLAHAN, Judge for

BRENDA BURNHAM UNRUH, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Chad VanOrman/Jennie Shuki
Adult Probation Department
Defendant - **CERTIFIED**

DANIEL M. HERRIGAN

2009 DEC 10 PM 3: 20

SUMMIT COUNTY
CLERK OF COURTS



TED STRICKLAND
GOVERNOR
STATE OF OHIO

WARRANT OF PARDON

1. Montoya Boykin was convicted of three counts of the crime of Theft and one count of Receiving Stolen Property and was sentenced by the Cuyahoga County Common Pleas Court, Akron Municipal Court, and the Summit County Common Pleas Court.
2. As of the date of this document Montoya Boykin has completed her sentence.
3. After careful and diligent examination of the totality of the materials available to me, I believe that Montoya Boykin has demonstrated that she has been rehabilitated and has assumed the responsibilities of citizenship. A full and unconditional pardon is warranted.
4. By virtue of the authority vested in the Governor by the Constitution and the laws of this state, I do hereby direct that the conviction of Montoya Boykin for the crimes of Theft and Receiving Stolen Property be pardoned.
5. I signed this Warrant of Pardon on November 23, 2009, in Columbus, Ohio

Ted Strickland

Ted Strickland, Governor

DATE TYPED: September 19, 2007

DATE PUBLISHED: September 28, 2007

IN RE: MONTOYA L. BOYKIN

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: June 26, 2007

Minutes of the SPECIAL MEETING of the
Adult Parole Authority held at 1030 Alum Creek Drive,
Columbus, Ohio 43205 on the date indicated above.

Montoya Boykin
Clemency Report

IN RE: MONTOYA L. BOYKIN (AKA: Melinda Brooks, Nicole Sugga)

SUBJECT PARDON

CRIME, CONVICTION Theft, Theft, Receiving Stolen Property, Theft

DATE, PLACE OF CRIME CR261705A 12/19/90 in Parma, Ohio
9107522 8/5/91 in Akron, Ohio
92030635 2/24/92 in Fairlawn, Ohio
9614102 12/6/96 in Akron Ohio

COUNTY Cuyaboga and Summit

CASE NUMBER(s) CR261705A, 9107522, 9201893 and 9614102

VICTIM(s) CR261705A [REDACTED]
9107522 [REDACTED]
92030635 [REDACTED]
9614102 [REDACTED]

FILED/INDICTED CR261705A 3/8/91 Count 1 Theft (\$300 - \$5,000), Count 2 Possession of Criminal Tools
9107522 8/7/91 Theft (M-1)
92030635 2/24/92 Counts 1-4 Receiving Stolen Property
9614102 12/13/96 Theft (M-1)

PLEA CR261705A 9/3/91 Pled guilty to amended Count 1, Theft (less than \$300), remaining count nolle
9107522 8/7/91 Pled guilty as charged
92030635 4/23/92 Pled guilty to one (1) count Receiving Stolen Property, remaining counts dismissed
9614102 12/13/96 Pled guilty as charged

SENTENCE CR261705A 9/24/91 10 days jail suspended, \$100 fine and costs
9107522 8/7/91 30 days jail (28 days suspended), \$100 fine (\$75 suspended)
92030635 4/23/92 1 year ODRC, suspended to one (1) year probation
9614102 12/13/96 60 days jail (suspended), \$250 fine (\$150 suspended)

IN RE: MONTOYA L. BOYKIN (AKA: Melinda Brooks, Nicole Suggs)

SUBJECT: PARDON

CRIME, CONVICTION: Theft, Theft, Receiving Stolen Property, Theft

DATE, PLACE OF CRIME: CR261705A: 12/19/90 in Parma, Ohio
9107522: 8/5/91 in Akron, Ohio
92030635: 2/24/92 in Fairlawn, Ohio
9614102: 12/6/96 in Akron Ohio

COUNTY: Cuyahoga and Summit

CASE NUMBER(s): CR261705A, 9107522, 9201893 and 9614102

VICTIM(s): CR261705A: Contempo Casuals
9107522: Silverman's Clothing Store
92030635: Brooks Store, Lerner, Express, DV's and Gap
9614102: Value City Department Store

FILED/INDICTED: CR261705A: 3/8/91: Count 1: Theft (\$300 - \$5,000), Count 2: Possession of Criminal Tools
9107522: 8/7/91: Theft (M-1)
92030635: 2/24/92: Counts 1-4: Receiving Stolen Property
9614102: 12/13/96: Theft (M-1)

PLEA: CR261705A: 9/3/91: Pled guilty to amended Count 1, Theft (less than \$300); remaining count nolle.
9107522: 8/7/91: Pled guilty as charged.
92030635: 4/23/92: Pled guilty to one (1) count Receiving Stolen Property; remaining counts dismissed.
9614102: 12/13/96: Pled guilty as charged.

SENTENCE: CR261705A: 9/24/91: 10 days jail suspended, \$100 fine and costs.
9107522: 8/7/91: 30 days jail (28 days suspended), \$100 fine (\$75 suspended).
92030635: 4/23/92: 1 year ODRC, suspended to one (1) year probation.
9614102: 12/13/96: 60 days jail (suspended), \$250 fine (\$150 suspended).

Appx. 36

AGE AT CONVICTION: CR261705A: 23 years old
9107522: 22 years old
92030635: 23 years old
961410237: 28 years old

DATE OF BIRTH: September 15, 1968

PRESIDING JUDGE: CR261705A: Honorable Carolyn B. Friedland
9107522: Honorable Joseph Roulac
92030635: Honorable Frank Bayer
9614102: Honorable Monte Mack

PROSECUTING ATTORNEY: CR261705A: William Mason
9107522: James Casey
92030635: James Casey
9614102: James Casey

CODEFENDANTS: CR261705A: Shelly Rodgers and Sonja El'Brown
9107522: None
92030635: Andrena Andrus
9614102: James Blackwell and Patricia Bitting

FOREWORD: Under provisions set forth under Section 2967.07 Ohio Revised Code, a clemency action was initiated by the applicant, Montoya L. Boykin and received by the Adult Parole Authority on January 22, 2007. Upon completion of the investigation, Ms. Boykin was heard by the Ohio Parole Board on June 26, 2007.

Ms. Boykin respectfully requests a pardon due to her felony and misdemeanor convictions hindering her from advancing in her chosen field of social work. On June 26, 2007, Parole Board members conducted an extensive interview with Ms. Boykin.

At the conclusion of the interview and presentation, the Board gave careful review and discussion of all available facts pertaining to the crime, and supplemental materials submitted by Ms. Boykin. The Board deliberated upon the propriety of clemency in the form of pardon. With eight (8) members participating, the members voted unanimously to provide a FAVORABLE recommendation to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE:

According to the Clemency Investigation Reports, the following is known concerning the Instant Offenses:

Cuyahoga County Common Pleas Court Case #CR261705A:

On 12/19/90, at approximately 8:00pm, the candidate was observed at the [REDACTED] Store in Parmatown Mall as she removed a suede suit off of a rack and placed it into a JC Penney shopping bag. The candidate was with co-offenders Shelly Rodgers and Sonja El' Brown at the time. The Store Manager was advised of the theft, who proceeded to approach the three (3) suspects. The Store Manager demanded the stolen merchandise be returned, and the candidate complied with the request. The Store Manager then demanded to see what else was inside the bag. The suspects then fled the area, dropping the shopping bag as they ran. Inside the bag, were three (3) pairs of jeans and two (2) shirts. The total value of the items shoplifted was \$336.00. All three (3) suspects were apprehended a short time later by Parma Police.

Akron Municipal Court Case #9107522:

On 8/5/91, the candidate, Montoya Boykin, attempted to steal the following items from [REDACTED] Store located in Rolling Acres Mall. She was observed by a store employee stuffing two t-shirts (Cross Colours brand) and two denim shirts (Cross Colours brand) in a pair of tights she was wearing under her dress (total value \$149.98). The employee alerted Rolling Acres Security who made contact with the candidate. At that time, security was able to arrest the candidate without incident with the items being returned undamaged. The candidate was subsequently picked up by Akron Police officers and transported to the Akron Police Department for processing.

Summit County Common Pleas Court Case #92030635:

On 2/24/92, an employee of the [REDACTED] Store in the Summit Mall located in Fairlawn, Ohio, contacted Fairlawn Police Department and reported the following to Officer T. Rengel (#113). She reported two females, later identified as the candidate, Montoya Boykin, and co-offender Andrena Andrus had just exited her store with the co-offender carrying a [REDACTED] bag. She reported she could see a woman's shirt in the bag and neither female paid for the item. As Officer Rengel arrived, he stopped the females near the main entrance and found neither female was carrying any bag. After questioning both females, the co-offender was found to have an active warrant through the Akron Police Department and was arrested without incident. Officer Rengel walked the candidate to her car and looked inside. Officer Rengel observed a large number of clothing items in the backseat with the price tags still on. The clothing items were found to have price tags from [REDACTED] and [REDACTED] (total value \$304.98). The candidate could not produce a receipt for any of the items recovered. She was arrested at that time without incident. Both females were charged with Receiving Stolen Property and processed at the Fairlawn Police Department. All recovered items were returned to the appropriate retailers without damage.

Akron Municipal Court Case #9614102:

On 12/6/96, at the [REDACTED] Store in Akron, Ohio, the manager was having problems with one of their cashiers, Patricia Bitting. Ms. Bitting was only scanning part of the items purchased for certain customers. On said date, customers Montoya Boykin (candidate) and James Blackwell proceeded through Ms. Bitting's checkout line. It was observed that Ms. Bitting failed to ring up all items, with the candidate and Blackwell

leaving the store with the uncharged items. Akron Police Department, who had been called to the scene due to Ms. Bitting's actions, stopped the candidate and Blackwell outside of the store and placed them under arrest without incident, along with Patricia Bitting.

PRIOR RECORD:

Juvenile: According to the Clemency Investigation Reports, the candidate has no known juvenile criminal history.

Adult: According to the Clemency Investigation Reports, the BCI, NCIC/LEADS, and the Ohio Bureau of Motor Vehicles, the candidate has the following known criminal history:

<u>Date</u>	<u>Offense</u>	<u>Place</u>	<u>Disposition</u>
4-5-88	Theft (M-1) 87CRB05462	Akron, Ohio	9-15-88 \$25 fine & costs
Details: Unknown			
12-9-90	Theft CR261705A	Parma, Ohio	9/24/91: 10 days Cuyahoga County Jail & \$100 fine, Execution of sentence Suspended, \$100 fine & costs INSTANT OFFENSE
8/5/91	Theft (M-1) 9107522	Akron Police Department	8/6/91, sentenced to 30 days jail, 28 days suspended plus fine INSTANT OFFENSE
2/24/92	Receiving Stolen Property 92030635	Fairlawn, Ohio	4/23/92, convicted to 1 Ct. Receiving Stolen Property (F-4); other counts dismissed. Sentenced to 1 year ORW, suspended to 1 year probation. INSTANT OFFENSE

NOTE: The original municipal case #921893 once case was transferred to Common Pleas the case # changed to 92-03-0635.

12/6/92	Theft (M-1) 9614102	Akron, Ohio	12/13/96, sentenced to 30 days jail, suspended plus fine
---------	------------------------	-------------	--

Montoya Boykin
Clemency Report

INSTANT OFFENSE

6/30/98	No Alarm License (M-3)	Akron Police Department	7/23/98, 30 days suspended
---------	---------------------------	----------------------------	-------------------------------

Details: Unknown.

Supervision Adjustment: On 4/23/92, the Ms. Boykin was granted one-year probation for case 92030635. APA officer was unable to find any supervision adjustment in the Summit County Probation archives. The available records indicated Ms. Boykin received a final release on case 9614102 on 4/22/93. She was on supervision with Probation Officer Dina Howard, who is no longer employed by the Summit County Adult Probation Department.

Minor Traffic Convictions:

On 4/19/96, Ms. Boykin was cited for Speeding. On 6/6/01, she was cited for Assured Clear Distance. On 8/20/96, she was issued a violator compact suspension from Kentucky. Ms. Boykin currently has a valid Ohio driver's license, which is due to expire on 9/15/09.

COMMUNITY ATTITUDE:

[REDACTED]

[REDACTED]

[REDACTED]

APPLICANT'S STATEMENT:

Ms. Boykin took fully responsibility for her actions and expressed strong remorse for what had occurred. She did describe the events just a noted in the details section. The Board finds the follow statement submitted by Ms. Boykin to be credible, verifiable and deservedly supportive of her clemency petition:

There are several reasons why I am requesting a pardon from the governor; the main and foremost reason is because I simply need to be able to live a successful and productive life, with me having these inflictions on my record it is so hard for me to stay gainfully employed. I have had many jobs in my

Montoya Boykin
Clemency Report

adulthood, most of them I was unable to keep because of the felony on my record. I have been on my current job now for the past two years and recently I was told I was in jeopardy of losing my job, due to the fact that the company has signed a new contract with the State of Ohio. The new contract states that you are allowed to have a criminal record, but charges must be listed under different statute numbers. Seeing that I have a felony for receiving stolen property, and 3 misdemeanors' for theft that are listed under the same statute number this puts me in jeopardy of losing my job. I have tried several times to get my record sealed but the law states you cannot get a felony sealed if you have certain misdemeanors' on your record and I do fall under that category so I was unable to get my record sealed.

Another reason I would like to be considered for a pardon is I am currently in my second year at the University of Akron pursuing a Bachelors' Art degree in Social Work, and it is said that with some things that may be on your background, will not allow you to become a licensed Social Worker, but they won't even tell you what those things are until you come before the Board of Social Work to apply for your licensures. I chose that career path because I just want to be able to help troubled teens not to make the same mistakes that I and so many others have made. I want them to understand that right now it may not seem important to them, but it is the most important thing, because their life will be practically over once they receive these type of inflictions on their record, and it is so important for us people who have been through these trials and tribulations to give back and try to help someone who is in need.

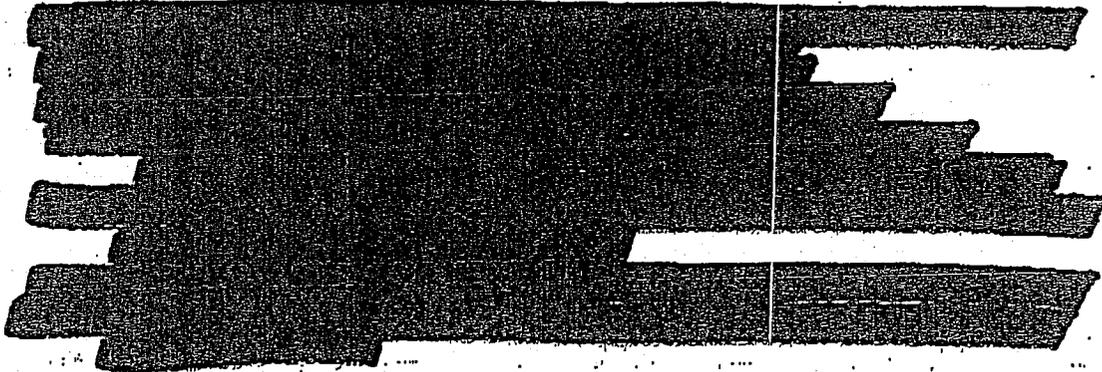
I cannot not stress how much my life, depends on getting a pardon from the governor. I just need to be given a second chance. I have proven myself worthy of receiving one, I have not been involved in any crime for over 10 years, and I don't plan on ever affiliating myself with that type of lifestyle, only if I would have known then what I know now. Along with the clemency application I have enclosed my resume so that you may see that I am trying to continuously stay employed and also with every job I have had for the past several years it was working for and serving the underprivileged population. I have also enclosed letters from people in my family and my community that can testify to the person that I am today, some of them are addressed to my employer because they were written in the response to the fact that I might lose my job. I know that these are choices that I made as a young adult, and I also know that sometimes we have to suffer behind choices that we make. But in all honesty I feel that I have paid a lifetime for these mistakes that I have made. Not only have I suffered behind these choices but my children have suffered as well as my family members. I know that is hard to believe that people do change, but what I can say for myself and a lot of others is that we do change. In order for society to see that people can and do change and that all hope is not lost for the people who have made mistakes in the past, we must set some examples out here, and I am willing and able to be one of those examples.

Montoya Boykin
Clemency Report

CONCLUSION:

Ms. Boykin's expression of remorse was sincere and genuine. The Board is convinced that Ms. Boykin has taken every step possible to turn her life in a positive direction. Despite her nine (9) year history of shoplifting and arrests she appears to have fully rehabilitated herself. Indeed, since her convictions she has demonstrated an impressive history of exemplary personal conduct, academic achievement, and professional accomplishment.

The Board was equally impressed by the letters of support from various members of the Akron Community on Ms. Boykin's behalf, most notably:



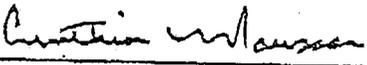
The Board finds that Ms. Boykin is most deserving of a pardon for the following reasons:

- Her offenses are neither violent nor weapons-related;
- Her offenses are not recent and are the result of a conquered history of substance abuse;
- The factors leading to her offense behavior are not likely to recur;
- Her post-conviction conduct, character & reputation have been exemplary;
- Significant & strong testimonials of her good character and notable accomplishments were submitted in writing from distinguished officials, employers, educators and others in the Akron community;
- She has demonstrated an ability to lead a responsible and productive life for a significant period after conviction;
- There is clear evidence of her successful rehabilitation;
- She has accepted full responsibility for her offenses and has expressed strong remorse;
- She has demonstrated a credible, verifiable employment-related need for a pardon;
- The on-going debilitating effects of Ms. Boykin's collateral punishment [undue restrictions on her ability to fully pursue her social worker's license and to work with selective populations] are no longer deserving and should be remitted;



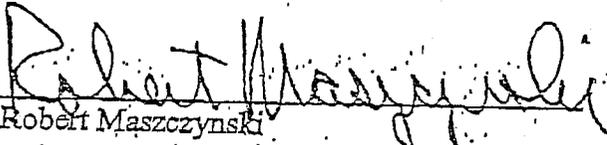
Adult Parole Authority
Ohio Parole Board Members
Voting Favorable

Ohio Parole Board Members
Voting Unfavorable

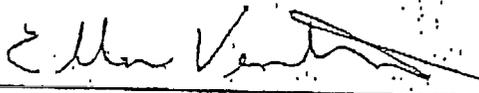

Cynthia Mausser, Chair

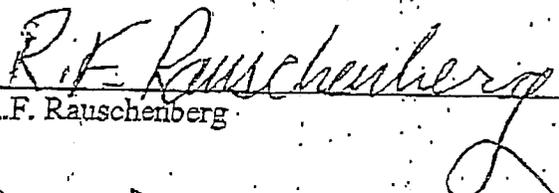

Sandra Mack, Ph.D.

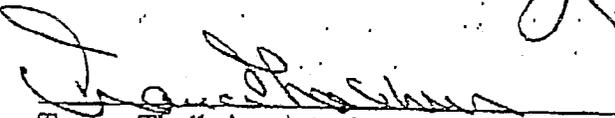

Peter Davis


Robert Maszczyński


Kathleen Kovach


Ellen Venters


R.F. Rauschenberg


Trayce Thalheimer, Acting Board Member

Montoya Boykin
Clemency Report

RECOMMENDATION:

Following careful consideration of available information and after due deliberation, the Ohio Parole Board, with eight (8) members participating, recommends to The Honorable Ted Strickland, Governor of the State of Ohio, by a vote of eight (8) to zero (0) that Clemency be granted to Montoya L. Boykin.

Ohio Constitution, Article III

§ 05 Executive power vested in governor

The supreme executive power of this state shall be vested in the governor.

§ 11 May grant reprieves, commutations and pardons

The Governor shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law. Upon conviction for treason, the Governor may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. The Governor shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with the Governor's reasons therefor.

R.C. § 2953.32 [Effective Until 9/28/2012] Sealing of conviction record or bail forfeiture record.

(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 divisions (G) and (H) 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 of the Revised Code;

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

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

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

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

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

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 and 3313.662 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 and 3313.662 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.

(H) For purposes of sections 2953.31 to 2953.36 of the Revised Code, DNA records collected in the DNA database and fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation shall not be sealed unless the superintendent receives a certified copy of a final court order establishing that the offender's conviction has been overturned. For purposes of this section, a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

R.C. § 2953.52 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury.

(A)(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in 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 two years after the date on which the foreperson or deputy foreperson of the grand jury reports to the court that the grand jury has reported a no bill.

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in 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 the prosecutor believes justify a denial of the application.

(2) The court shall do each of the following, except as provided in division (B)(3) of this section:

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

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

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

(3) If the court determines after complying with division (B)(2)(a) of this section that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed with prejudice, or that the complaint, indictment, or information in the case was dismissed without prejudice and that the relevant statute of limitations has expired, the court shall issue an order to the superintendent of the bureau of criminal identification and

investigation directing that the superintendent seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of the bureau and all DNA records and DNA profiles. The determinations and considerations described in divisions (B)(2)(b), (c), and (d) of this section do not apply with respect to a determination of the court described in this division.

(4) The determinations described in this division are separate from the determination described in division (B)(3) of this section. If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the foreperson or deputy foreperson of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, or if division (E)(2)(b) of section 4301.69 of the Revised Code applies, in addition to the order required under division (B)(3) of this section, the court shall issue an order directing that all official records pertaining to the case be sealed and that, except as provided in section 2953.53 of the Revised Code, the proceedings in the case be deemed not to have occurred.

(5) Any DNA specimens, DNA records, and DNA profiles ordered to be sealed under this section shall not be sealed if the person with respect to whom the order applies is otherwise eligible to have DNA records or a DNA profile in the national DNA index system.

R.C. § 2967.03 [Effective Until 9/28/2012] Duties and powers as to pardon, commutation, reprieve or parole.

The adult parole authority may exercise its functions and duties in relation to the pardon, commutation of sentence, or reprieve of a convict upon direction of the governor or upon its own initiative. It may exercise its functions and duties in relation to the parole of a prisoner who is eligible for parole upon the initiative of the head of the institution in which the prisoner is confined or upon its own initiative. When a prisoner becomes eligible for parole, the head of the institution in which the prisoner is confined shall notify the authority in the manner prescribed by the authority. The authority may investigate and examine, or cause the investigation and examination of, prisoners confined in state correctional institutions concerning their conduct in the institutions, their mental and moral qualities and characteristics, their knowledge of a trade or profession, their former means of livelihood, their family relationships, and any other matters affecting their fitness to be at liberty without being a threat to society.

The authority may recommend to the governor the pardon, commutation of sentence, or reprieve of any convict or prisoner or grant a parole to any prisoner for whom parole is authorized, if in its judgment there is reasonable ground to believe that granting a pardon, commutation, or reprieve to the convict or paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society. However, the authority shall not recommend a pardon or commutation of sentence, or grant a parole to, any convict or prisoner until the authority has complied with the applicable notice requirements of sections 2930.16 and 2967.12 of the Revised Code and until it has considered any statement made by a victim or a victim's representative that is relevant to the convict's or prisoner's case and that was sent to the authority pursuant to section 2930.17 of the Revised Code, any other statement made by a victim or a victim's representative that is relevant to the convict's or prisoner's case and that was received by the authority after it provided notice of the pendency of the action under sections 2930.16 and 2967.12 of the Revised Code, and any written statement of any person submitted to the court pursuant to division (G) of section 2967.12 of the Revised Code. If a victim, victim's representative, or the victim's spouse, parent, sibling, or child appears at a full board hearing of the parole board and gives testimony as authorized by section 5149.101 of the Revised Code, the authority shall consider the testimony in determining whether to grant a parole. The trial judge and prosecuting attorney of the trial court in which a person was convicted shall furnish to the authority, at the request of the authority, a summarized statement of the facts proved at the trial and of all other facts having reference to the propriety of recommending a pardon, commutation, or medical release, or granting a parole, together with a recommendation for or against a pardon, commutation, medical release, or parole, and the reasons for the recommendation. The trial judge, the prosecuting attorney, specified law enforcement agency members, and a representative of the prisoner may appear at a full board hearing of the parole board and give testimony in regard to the grant of a parole to the prisoner as authorized by section 5149.101 of the Revised Code. All state and local officials shall furnish information to the authority, when so requested by it in the performance of its duties.

The adult parole authority shall exercise its functions and duties in relation to the release of prisoners who are serving a stated prison term in accordance with section 2967.28 of the Revised Code.

R.C. § 2967.04 Pardons and commutations.

(A) A pardon or commutation may be granted upon such conditions precedent or subsequent as the governor may impose, which conditions shall be stated in the warrant. Such pardon or commutation shall not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having his sentence commuted, and his acceptance is indorsed upon the warrant, signed by him, and attested by one witness. Such witness shall go before the clerk of the court of common pleas in whose office the sentence is recorded and prove the signature of the convict. The clerk shall thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, shall be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.

(B) An unconditional pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted. For purposes of this section, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

R.C. § 2967.06 Form of warrants of pardon and commutation.

Warrants of pardon and commutation shall be issued in triplicate, one to be given to the convict, one to be filed with the clerk of the court of common pleas in whose office the sentence is recorded, and one to be filed with the head of the institution in which the convict was confined, in case he was confined.

All warrants of pardon, whether conditional or otherwise, shall be recorded by said clerk and the officer of the institution with whom such warrants and copies are filed, in a book provided for that purpose, which record shall include the indorsements on such warrants. A copy of such a warrant with all indorsements, certified by said clerk under seal, shall be received in evidence as proof of the facts set forth in such copy with indorsements.

R.C. § 2967.07 Written applications for pardon, commutation of sentence, or reprieve.

All applications for pardon, commutation of sentence, or reprieve shall be made in writing to the adult parole authority. Upon the filing of such application, or when directed by the governor in any case, a thorough investigation into the propriety of granting a pardon, commutation, or reprieve shall be made by the authority, which shall report in writing to the governor a brief statement of the facts in the case, together with the recommendation of the authority for or against the granting of a pardon, commutation, or reprieve, the grounds therefor and the records or minutes relating to the case.

R.C. § 2967.12 Notice of pendency of pardon, commutation, or parole sent to prosecutor and court.

(A) Except as provided in division (G) of this section, at least three weeks before the adult parole authority recommends any pardon or commutation of sentence, or grants any parole, the authority shall provide a notice of the pendency of the pardon, commutation, or parole, setting forth the name of the person on whose behalf it is made, the offense of which the person was convicted or to which the person pleaded guilty, the time of conviction or the guilty plea, and the term of the person's sentence, to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the person was found. If there is more than one judge of that court of common pleas, the authority shall provide the notice to the presiding judge. The department of rehabilitation and correction may utilize electronic means to provide this notice. The department of rehabilitation and correction, at the same time that it provides the notice to the prosecuting attorney and judge under this division, also shall post on the database it maintains pursuant to section 5120.66 of the Revised Code the offender's name and all of the information specified in division (A)(1)(c)(iii) of that section.

(B) If a request for notification has been made pursuant to section 2930.16 of the Revised Code, the office of victim services or the adult parole authority also shall provide notice to the victim or the victim's representative at least three weeks prior to recommending any pardon or commutation of sentence for, or granting any parole to, the person. The notice shall include the information required by division (A) of this section and may be provided by telephone or through electronic means. The notice also shall inform the victim or the victim's representative that the victim or representative may send a written statement relative to the victimization and the pending action to the adult parole authority and that, if the authority receives any written statement prior to recommending a pardon or commutation or granting a parole for a person, the authority will consider the statement before it recommends a pardon or commutation or grants a parole. If the person is being considered for parole, the notice shall inform the victim or the victim's representative that a full board hearing of the parole board may be held and that the victim or victim's representative may contact the office of victims' services for further information. If the person being considered for parole was convicted of or pleaded guilty to violating section 2903.01 or 2903.02 of the Revised Code, the notice shall inform the victim of that offense, the victim's representative, or a member of the victim's immediate family that the victim, the victim's representative, and the victim's immediate family have the right to give testimony at a full board hearing of the parole board and that the victim or victim's representative may contact the office of victims' services for further information. As used in this division, "the victim's immediate family" means the mother, father, spouse, sibling, or child of the victim.

(C) When notice of the pendency of any pardon, commutation of sentence, or parole has been provided to a judge or prosecutor or posted on the database as required in division (A) of this section and a hearing on the pardon, commutation, or parole is continued to a date certain, the authority shall provide notice of the further consideration of the pardon, commutation, or parole at least three weeks before the further consideration. The notice of the further consideration shall be provided to the proper judge and prosecuting attorney at least three weeks before the further consideration, and may be provided using electronic means, and, if the initial notice was posted

on the database as provided in division (A) of this section, the notice of the further consideration shall be posted on the database at least three weeks before the further consideration. When notice of the pendency of any pardon, commutation, or parole has been given as provided in division (B) of this section and the hearing on it is continued to a date certain, the authority shall give notice of the further consideration to the victim or the victim's representative in accordance with section 2930.03 of the Revised Code.

(D) In case of an application for the pardon or commutation of sentence of a person sentenced to capital punishment, the governor may modify the requirements of notification and publication if there is not sufficient time for compliance with the requirements before the date fixed for the execution of sentence.

(E) If an offender is serving a prison term imposed under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and if the parole board terminates its control over the offender's service of that term pursuant to section 2971.04 of the Revised Code, the parole board immediately shall provide written notice of its termination of control or the transfer of control to the entities and persons specified in section 2971.04 of the Revised Code.

(F) The failure of the adult parole authority to comply with the notice or posting provisions of division (A), (B), or (C) of this section or the failure of the parole board to comply with the notice provisions of division (E) of this section do not give any rights or any grounds for appeal or post-conviction relief to the person serving the sentence.

(G) Divisions (A), (B), and (C) of this section do not apply to any release of a person that is of the type described in division (B)(2)(b) of section 5120.031 of the Revised Code.

(H) In addition to and independent of the right of a victim to make a statement as described in division (A) of this section or pursuant to section 2930.17 of the Revised Code or to otherwise make a statement, the authority for a judge or prosecuting attorney to furnish statements and information, make recommendations, and give testimony as described in division (A) of this section, the right of a prosecuting attorney, judge, or victim to give testimony or submit a statement at a full parole board hearing pursuant to section 5149.101 of the Revised Code, and any other right or duty of a person to present information or make a statement, any person may send to the adult parole authority at any time prior to the authority's recommending a pardon or commutation or granting a parole for the offender a written statement relative to the offense and the pending action.

O.A.C. 5120:1-1-15 Pardon, reprieve and commutation of sentence.

(A) All applications for pardon, reprieve or commutation of sentence shall be made in writing to the parole board.

(B) When an application for a pardon, reprieve or commutation of sentence is filed with the parole board, the parole board shall conduct such investigation as is necessary and make a recommendation to the governor. A hearing may be held at the discretion of the parole board prior to making a recommendation to the governor. Such hearing if held, shall be before at least a majority of the members of the parole board.

(C) Prior to any hearing held to consider pardon, reprieve or commutation of sentence, notice of such hearing shall be provided to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the applicant was found within required timeframes specified in section 2967.12 of the Revised Code, and, if required by section 2967.12 of the Revised Code, to the victim or victim's representative. Where there is more than one judge of the court of common pleas, the notice shall be provided to the presiding judge. The department of rehabilitation and correction may utilize ordinary mail or electronic means to provide this notice. The adult parole authority or the office of victim's services shall provide notice of hearings to qualified victims or victim's representatives. The adult parole authority may provide notice to victims or victim's representatives by ordinary mail or electronic means. The office of victim's services may provide notice to victims or victim's representatives by ordinary mail, telephone, or through electronic means.

(D) Such notice shall contain the following:

- (1) The name of the applicant;
- (2) The crime for which the applicant was convicted;
- (3) The date of conviction;
- (4) The term of sentence.

(E) In the event the hearing is continued, notice of such continuance and the date of the continued hearing shall be provided within required timeframes specified in section 2967.12 of the Revised Code. The department of rehabilitation and correction may utilize ordinary mail or electronic means to provide this notice. The adult parole authority or the office of victim's services shall provide notice of continued hearings to qualified victims or victim's representatives. The adult parole authority may provide notice to victims or victim's representatives by ordinary mail or electronic means. The office of victim's services may provide notice to victims by ordinary mail, telephone, or through electronic means.

(F) The recommendation of the parole board for or against pardon, reprieve, or commutation of sentence shall be forwarded to the governor, together with a brief statement of the facts, the grounds for such recommendation, and the record or minutes of the case.

(G) The decision of the parole board to recommend for or against pardon, reprieve or commutation of sentence shall be within its sole discretion and shall not be subject to administrative review.

(H) If the parole board receives an application for pardon, commutation or reprieve for a person for whom executive clemency was denied within two years from the date the denial was issued by the governor, the parole board shall review the application to determine whether it contains any significant new information that was not and could not have been presented in the earlier application. If the application contains no such new information, the parole board shall return the application to the applicant. The parole board shall inform the applicant of the date on which the applicant may reapply for consideration.

(I) The parole board shall consider a case for pardon or commutation only upon the application of the convicted person or his counsel or at the direction of the governor.