

ORIGINAL

IN THE SUPREME COURT OF OHIO  
2013

13-0006

STATE OF OHIO, )  
)  
*Plaintiff-Appellee,* )  
)  
-vs- )  
)  
CHAD WILLIAMSON, )  
)  
*Defendant-Appellant.* )

CASE NO.:

On Appeal from the Franklin County Court  
of Appeals, Tenth Appellate District

Court of Appeals Case No. 12APA-04-340

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF DEFENDANT-APPELLANT, CHAD WILLIAMSON

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## **WHY THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST**

This case is of public and great general interest because it will substantially affect the millions of Ohioans who have misdemeanor and felony convictions. Background checks for employment and other purposes have become routine. The Ohio General Assembly recognized the difficulties of surviving, much less thriving, in society with a criminal record because of the collateral sanctions preventing rehabilitated citizens from gaining and maintaining employment, housing, and other necessities. As such, on June 26, 2012, Governor Kasich signed Senate Bill 337 into law, which reformed the “collateral sanctions” by expanding the sealing of records and lifting some of the restrictions on occupational licenses that felons previously did not have.

The recent amendments to the expungement statutes in Senate Bill 337 did not however address or further define what constitutes a “minor victim”, which precludes the ability to have a record of conviction sealed when the victim of a crime is under eighteen years of age pursuant to Revised Code § 2953.36(F). The Fifth and Tenth District Court of Appeals have determined, contrary to the cardinal rules of statutory interpretation, there are “minor victims” for a possession crime occurring on school property and the offender is ineligible as a matter of law to have his or record of conviction expunged. The foregoing decisions involve a matter of first impression for this Court to provide much needed clarification as to whether there can be victims for a possession crime in violation of Ohio Revised Code § 2923.122, precluding the ability to have the matter expunged.

The decisions of the Fifth and Tenth District Court of Appeals is not however simply limited to a crime in violation of Ohio Revised Code § 2923.122. Rather, by supplementing their own definition of understanding of the term “victim”, any drug possession crime in a school safety zone or the illegal possession of a concealed weapon where minors were present could never be sealed. As such, the broad general and public interest underlying this case involves any

crime, misdemeanor or felony, in which there is the possibility a minor could have been present, preventing the sealing of any relevant conviction.

### **STATEMENT OF THE CASE AND FACTS**

Appellant-Defendant, Chad Williamson, (hereinafter "Appellant") was born on April 23, 1989. On September 20, 2007, Appellant brought a knife to school. At the time, Appellant was eighteen years old, attending the high school.

On December 13, 2007, Appellant was indicted for one count of illegal conveyance or possession of a deadly weapon in a school safety zone, in violation of Ohio Revised Code § 2923.122. Appellant was also charged with one count of aggravated menacing in the Franklin County Municipal Court for alleging threatening a minor with the pocketknife. The aggravated menacing charge was dismissed on January 17, 2008. On March 24, 2008, Appellant pled guilty to the indictment, and was placed on community control. Appellant's community control was terminated successfully on June 18, 2008.

On October 20, 2011, Appellant filed a petition to have the illegal conveyance or possession of a deadly weapon matter expunged. (R.2). On December 21, 2011, the record of the dismissed aggravated menacing case was sealed by the Franklin County Municipal Court pursuant to R.C. § 2953.52. The Prosecuting Attorney's Office filed an objection on January 13, 2012, arguing that Appellant was ineligible for the expungement of this case under Ohio Revised Code §2953.36(F) because it involved "victims" that were under eighteen years of age at the time of the offense. (R.7). The matter was briefed by the parties and a hearing was held on February 29, 2012. (R.12).

After reviewing the arguments of counsel both in writing, and at the time of the hearing, the trial court took the matter under consideration. Subsequently, on March 26, 2012, the trial

court filed an judgment entry denying the petition of Appellant for expungement based upon the case of *State v. Ritchie*, 174 Ohio App. 582, 2007-Ohio-6577 (5<sup>th</sup> Dist.). (R. 14). The entry stated: "Said application is hereby **DENIED** pursuant to *State v. Ritchie*, 1[]74 Ohio App.3d 582, 2007 Ohio 6477, 883 N.E.2d 1092 (5<sup>th</sup> Dist.)." By relying on *Ritchie*, supra, the trial court essentially ruled that Appellant was inherently ineligible for an expungement under Revised Code § 2953.36(F) because the offense Appellant committed occurred on school property and involved "victims" that wee minors attending the school.

Appellant filed a timely notice of appeal on April 17, 2012. (R.16). The matter was briefed by the parties and oral arguments were held before the Tenth District Court of Appeals on October 17, 2012. On November 20, 2012, the Tenth District issued a decision upholding the denial of Appellant's petition for expungement. Relying upon the allegations in the dismissed and sealed Municipal Court Case alleging a count of aggravating menacing, the Tenth District determined Appellant was ineligible to have his record of conviction sealed because his offense of illegal conveyance or possession of a deadly weapon in a school safety zone involved circumstances in which there was a victim under eighteen years of age. (Appx. 1-4). In support of his position and these issues, Appellant presents the following arguments.

## LAW AND ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

**Proposition of Law I: A criminal conviction for illegal conveyance or possession of a deadly weapon in a school safety zone, in violation of Revised Code § 2923.122, is by definition a crime that does not have any victims and thus, may be sealed by a trial court in accordance with the requirements set forth in Revised Code § 2953.32.**

In its decision, the 10<sup>th</sup> District affirmed the trial court's denial of Appellant's request for the sealing his record of conviction for illegal conveyance or possession of a deadly weapon in a school safety zone, by finding that the charge involved circumstances in which there was a "minor" victim. Such a ruling ignores the statutory and traditional definition of the term "victim", and further ignores the fact that the crime for which Appellant was convicted is a "possession" crime, a crime of status, not a crime of affirmative action or aggression. There cannot be a "victim" for this offense under any circumstance.

Appellant was indicted with one count of illegal conveyance or possession of a deadly weapon in a school safety zone in violation of Revised Code § 2923.122, a felony of the fifth degree. The indictment states as follows in count one:

"The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn and charged to inquire of crimes and offenses committed within the body of Franklin County in the State of Ohio, upon their oath to find and present that Chad Williamson late of said County, on or about the 20<sup>th</sup> day of September in the year of our Lord, 2007, within the County of Franklin aforesaid, in violation of section 2923.122 of the Ohio Revised Code, did knowingly possess a deadly weapon or dangerous ordinance, to wit: a knife, into and/or in a school safety zone, contrary to the statute in such case is made and provided and against the peace and dignity of the State of Ohio."

As the Court can see, no victim was identified in the indictment, nor was any accusation made against Appellant that he actually victimized anyone, whether that person was a minor or an adult.

The term “victim” is not defined in Chapter 2953, and the only definition anywhere in the Revised Code is found within the Victim’s Rights Chapter 2930. Under Revised Code § 2930.01(H), victim is defined as follows:

(H) “Victim” means either of the following:

- (1) A person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provided the basis for the criminal prosecution of delinquency proceeding and subsequent proceedings to which this chapter makes reference.
- (2) A person who receives injuries as a result of a vehicle, street car, trackless trolley aquatic device, or aircraft accident that is proximately caused by a violation described in division (A)(3) of this section or a motor vehicle accident that is proximately caused by a violation described in division (A)(4) of this section and who receives medical treatment as described in division (A)(3) or (4) of this section whichever is applicable.

Clearly, no “victim” exists when the crime is one of possessing a weapon on school property. Furthermore, the Ohio General Assembly ““has directed that words not defined by statute “shall be \*\*\* construed according to the rules of grammar and common usage.”” *State v. Everette*, 129 Ohio St.3d 317, 320, 2011-Ohio-2856, 951 N.E.2d 1018, ¶ 16, citing *R.C. 1.42*. In accordance with that statutory mandate, this Court has repeatedly held that ““[i]n the absence of a specific statutory definition, words used in a statute must be interpreted in their usual, normal, or customary meaning.”” *Id.*, (citations omitted). Furthermore, “[w]here the language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom.” *Hubbard v. Canton City Bd. Of Edu.*, 97 Ohio St.3d 451, 2002-Ohio-6718, 780 N.E.2d 543, ¶ 14. As such, if the definition of the term “victim” found in Chapter 2930 is not controlling or persuasive, then this Court must

therefore apply the usual, normal or customary meaning of the term “victim” as used in Chapter 2953.

Black’s Law Dictionary defines victim as “a person harmed by a crime, tort, or other wrong.” *Black’s Law Dictionary*, 1598 (8<sup>th</sup> Ed. 2004). Victim is further defined in Webster’s Dictionary as “one that is acted on and usually adversely affected by force or agent.” *Merriam Webster’s Collegiate Dictionary*, 1316 (10<sup>th</sup> Ed. 1996). Construing the term “victim” according to its common usage and customary meaning, there is clearly no victim for a possession crime under Revised Code § 2923.122.

The 10<sup>th</sup> District ignored the definition of “victim” that was provided to the Courts by the General Assembly and ignored the “cardinal rule of statutory interpretation” that words shall be given their plain and ordinary meaning. Rather, it supplemented its own definition or understanding of the term “victim” that stands in stark contrast to the statutory and customary established definitions. See, *Frisch’s Restaurant, Inc. v. Conrad*, 170 Ohio App.3d 578, 586, 2007-Ohio-545, 868 N.E.2d 689 (10<sup>th</sup> Dist), citing *Hubbard v. Canton City Bd. of Edu.*, 97 Ohio St.3d 451, 2002-Ohio-6718, 780 N.E.2d 543, ¶ 13.

Accordingly, construing the term “victim” by either the statutory definition or its customary meaning clearly establishes there cannot be any victim for the crime in which Appellant was convicted in possessing a dangerous weapon in a school safety zone. Any other interpretation of the term “victim” is nonsensical and leads to an untenable position that would preclude the sealing of records for any possession crime on school property or other crimes where minors may be present. Therefore, by definition, there is no “victim” to any violation of Revised Code § 2923.122. As a result, Appellant is eligible to have his record of conviction sealed in accordance with Revised Code §§ 2953.32 through 2953.36 of the Revised Code.

**Proposition of Law II: In determining whether an applicant is eligible to have his or her record of conviction sealed under Revised Code § 2953.32, a court cannot consider and rely upon information related to a separately dismissed case once that separate and dismissed case has been sealed in accordance with Revised Code § 2953.52.**

Records in a case that are ordered sealed pursuant to Revised Code § 2953.52 must be separated from a public office's other records and secured in a manner that limits access to the records only to persons authorized by statute. See, *R.C. §2953.53(D)*. Except as provided in Revised Code §2953.53, when a court orders the sealing or expunging of records in a case pursuant to Revised Code § 2953.52, the proceedings in the case are "deemed never to have occurred." *R.C. §2953.52(B)(4)*. In fact, "[i]n any application for employment, license, or any other right or privilege" \*\*\* "the person whose official record was sealed shall not be subject to any adverse action because of the arrest, the proceedings, or the person's response." *R.C. §2953.55(A)*.

Court documents sealed under *R.C. § 2953.52(B)(4)* qualify as "official documents" that are exempt from disclosure under state law. See, *R.C. 2953.54*. Only under limited circumstances are official records of a dismissed case authorized to be disclosed, once it is sealed pursuant to Revised Code § 2953.52. Revised Code § 2953.53, which states in pertinent part, "official records of a case that have been sealed *may be made available to the following persons for the following purposes*:

- 1) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose;
- 2) To 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 the case;

- 3) To 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;
- 4) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program under division (E)(2)(B) of section 4301.69 of the Revised Code."

*R.C. § 2953.53(D)(1)-(4)* (emphasis supplied).

Additionally, Revised Code § 2953.54(A)(1) states, "[e]xcept as provided in R.C. § 2953.54(A)(3), when a court issues an order pursuant to R.C. § 2953.52(B) directing that all official records pertaining to a case be sealed, no law enforcement officer "shall knowingly release, disseminate, or otherwise make the records and report or any information contained in them available to, or discuss any information contained in them with, any person not employed by the officer's employing law enforcement agency." *R.C. § 2953.54(A)(1)*. For purposes of Revised Code § 2953.54, a prosecuting attorney is a "law enforcement officer." *R.C. §2901.01(A)(11)(h)*. Thus, Revised Code § 2953.54 prohibits a prosecuting attorney from disclosing to the public information that pertains to a case, the records of which have been ordered sealed pursuant R.C. §2953.52.

The State opposed Appellant's petition for expungement based upon the decision of the Fifth District in *State v. Ritchie*, 174 Ohio App. 582, 2007-Ohio-6577 (5<sup>th</sup> Dist.), which held an offender guilty of Revised Code § 2923.122 is statutorily ineligible because the nature of the crime inherently involved victims who were minors. In further support of its position, the State relied and discussed information pertaining to Appellant's separate, dismissed and fully expunged charge for aggravating menacing, which alleged Appellant pulled the knife on another student who was minor at that time. (R. 7). As the Tenth District stated in its decision, "[t]he prosecutor pointed out, however, that appellant had also been charged with aggravated

menacing. Reading from the police report, the prosecutor explained that the charge arose when appellant argued with another student at their high school, and appellant pulled a “lock blade knife” on the other student.”

In upholding the denial of Appellant’s petition for expungement, the Tenth District considered the separate, dismissed and fully expunged aggravating menacing charge in determining whether Appellant’s offense for possessing a knife on school property was committed in circumstances which there was a minor victim. The Appellate Court based its justification in considering the separate, dismissed and fully expunged charge by relying on *State v. Simon*, 87 Ohio St.3d 531, 721 N.E.2d 1041 (2000). As stated by the 10<sup>th</sup> District, “[a]pplying [the principles of *Simon*], we conclude that the trial court, after examining the entire record, could only have determined that appellant is ineligible for expungement as a matter of law because he committed his offense in circumstances in which there was a victim, and the victim was under 18.” *Simon, supra*, does not however give the prosecuting attorney the authority to disclose any information that pertains to a case ordered sealed pursuant to Revised Code § 2953.52, and it absolutely does not give the courts the authority to consider an expunged charge when determining the applicants eligibility.

In *Simon, supra*, the defendant was indicted on two charges, both of which contained a firearm specification, the conviction for which carried a mandatory prison term. *Simon* at 534. After a plea bargain, the defendant pled guilty to an amended charge without a firearm specification and was sentenced to a suspended jail term and placed on three years of probation. *Id.* Thereafter, the defendant moved for expungement of his conviction record. The sentencing court refused to grant defendant’s application based upon Revised Code § 2953.36(A), which prohibited the expungement of records when the “offender is *subject* to a mandatory prison

term.” *R.C. § 2953.36(A)*. (emphasis supplied). Although the amended charge to which the defendant pled guilty did not subject him to a mandatory prison term, the original charges would have if not for the plea bargain.

In affirming the denial of the application, this Court held, “when considering whether an applicant is ineligible to have a conviction record sealed under *R.C. § 2953.36* because the applicant may have been ‘armed with a firearm or dangerous ordnance’ (*R.C. 2951.02*) at the time of the offense, a trial judge must examine the entire record to determine whether the applicant was so armed.” *Simon* at 535.

The facts in *Simon* are wholly distinguishable from the facts presented here and reliance on *Simon* to consider the allegations giving rise to the separate and fully expunged aggravating menacing charge was inappropriate and in direct contravention of the Ohio Revised Code. The charges the State filed against Appellant for aggravated menacing were in a separate court, under a separate case number, assigned to a different prosecutor and assigned to a different judge than the charges he faced and pled guilty to under Revised Code § 2923.122. The dismissal of the aggravated menacing charge was not the result of a plea bargain to amend and eliminate an additional element of the offense, and the elements for a conviction under Revised Code § 2923.122 are entirely separate and distinct from the elements for aggravating menacing. Moreover, the State dismissed the charge it filed against Appellant for aggravating menacing, which was expunged prior to the hearing on his petition to have the record of conviction for illegal conveyance or possession of a deadly weapon in a school safety zone sealed.

Unlike *Simon*, there was no information, allegation or suggestion in the indictment or record for the charge of illegal conveyance or possession of a deadly weapon, which identified or alleged Appellant actually victimized anyone, whether that person was a minor or an adult. The

State, during the expungement hearing improperly disclosed the only information regarding any potential minor victim, which specifically pertained to the allegations and charge against Appellant for aggravating menacing notwithstanding the fact that charge was already fully expunged. It was further error for the Tenth District to rely upon the information it received from the State regarding Appellant's expunged charge to determine whether his offense for illegal possession of a knife on school property was committed in circumstances in which there was a victim.

The Ohio General Assembly was unequivocal that the official records sealed pursuant to Revised Code § 2953.52 must be separated from public office, maintained in a manner that limits access to the records only to person authorized by statute, and when a court orders the sealing or expunging of records the proceedings are "deemed never to have occurred." *R.C. §2953.52(B)(4)*. It is a well-settled precept of statutory interpretation that exceptions to the application or operation of a statute shall be recognized only when such exceptions are set forth clearly and unambiguously by the General Assembly. *Schue v. State*, 83 Ohio St.146, 157-58, 93 N.E.969 (1910); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906)(syllabus, paragraph one). Moreover, "[i]n those instances in which the General Assembly has not enacted an exception to the terms of a particular statute, there is a presumption that it has intended that there shall be no exceptions thereto." 2003 Op. Att'y Gen. No. 2003-007 at 2-46, citing *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five); *Schue, supra* at 157-58.

The General Assembly specifically set forth the circumstances where the official records and information from an expunged case may be made available for disclosure. See, *R.C. §§ 2953.32(D); 2953.53(D)*. None of the precise exceptions listed in Revised Code § 2953.53(D)

permit the State from disclosing information from an expunged case or allows the trial court to consider the information from the expunged case to determine an applicant's eligibility to seal a completely separate record of conviction. Moreover, Appellant was adversely affected by the arrest and proceedings of his expunged charge for aggravating menacing when the State disclosed, and the Court considered information directly relating to this matter in denying his petition here.

Accordingly, in contravention of the Revised Code, the State disclosed information pertaining to Appellant's sealed record of dismissal in support of its argument there was a minor victim for the crime in which Appellant was convicted. The Tenth District then improperly relied upon and considered the information and allegations proffered by the State, which is specifically prohibited by the Revised Code. Therefore, not only by definition is there no "victim" to any violation of Revised Code § 2923.122, there is no information from the available sources the Court can consider which could even remotely establish there was a "victim" for such an offense. As a result, Appellant is eligible to have his record of conviction sealed in accordance with Revised Code §§ 2953.32 through 2953.36.

### **CONCLUSION**

This Court should accept jurisdiction to construe, for the first time, a statute that is of vital importance to millions of Ohio citizens that have criminal convictions for possession crimes. This Court should then reverse the Court of Appeals decision and remand this matter to the trial court for further proceedings.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was hand delivered upon Ron O'Brien and Barbara Farnbacher, Prosecuting Attorney's Office, 373 South High Street, 14<sup>th</sup> Floor, Columbus, Ohio, 43215, this 3 day of January, 2013.



---

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*Counsel for Chad Williamson,  
Defendant-Appellant*

# **APPENDIX**

## APPENDIX

1. Opinion of the Franklin County Court of Appeals, Tenth Appellate District Appx 1-4
2. Judgment Entry of November 20, 2012 Appx 5-6
3. Trial Court's Judgment Entry of March 26, 2012 Denying Defendant-Appellant's Application for an Order Sealing the Record Appx 7
4. Indictment Appx 8-10

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 12AP-340  
 : (C.P.C. No. 07CR-12-8936)  
 Chad Williamson, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on November 20, 2012

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*Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

*Tyack, Blackmore, Liston & Nigh Co., LPA, Jonathan T. Tyack, and Ryan L. Thomas*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Chad Williamson ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his application, pursuant to R.C. 2953.32, for an order sealing the record of his prior criminal conviction.

**I. BACKGROUND**

{¶ 2} In 2007, when he was 18 years old, appellant pled guilty to one count of illegal conveyance or possession of a deadly weapon in a school safety zone, a felony of the fifth degree, in violation of R.C. 2923.122(A). The trial court convicted him of that offense and placed him on community control, which ended in 2008.

{¶ 3} In 2011, appellant filed an application for an order sealing (or "expunging") the record of his conviction pursuant to R.C. 2953.32. In it, he argued that he was a first offender, three years had passed since his conviction, and he met all requirements of the statute.

{¶ 4} Plaintiff-appellee, state of Ohio ("the state"), objected. The state contended that R.C. 2953.36 bars expungement where the victim of the offense was under 18 years of age. Here, the state argued, appellant's conviction arose from his actions of bringing a deadly weapon (a knife) onto school property and threatening a juvenile. The state relied on *State v. Ritchie*, 174 Ohio App.3d 582, 2007-Ohio-6577, ¶ 23 (5th Dist.), in which the Fifth District Court of Appeals declined to expunge the record of an individual convicted of R.C. 2923.122(A). The court noted the presence of children on the bus he was driving and stated that the Ohio General Assembly "enacted R.C. 2923.122(A) \* \* \* to protect children occupying school property against the dangers of weapons." *Id.*

{¶ 5} Here, the trial court held a hearing. Appellant's counsel argued that the court should ignore *Ritchie* because the term "victim," as used in the expungement statute, did not apply to an offense such as possession of a weapon on school property because "[t]here is no victim to this crime by definition." (Tr. 3.) The prosecutor pointed out, however, that appellant had also been charged with aggravated menacing. Reading from the police report, the prosecutor explained that the charge arose when appellant argued with another student at their high school, and appellant pulled a "lock blade knife" on the other student. (Tr. 6.) Since there was a juvenile victim of the offense, the prosecutor argued, appellant was ineligible for expungement.

{¶ 6} The court asked if appellant had pled guilty to the menacing charge. Appellant's counsel responded that the charge had been dismissed, and the dismissal had been expunged.

{¶ 7} On March 26, 2012, the court issued an entry denying appellant's application for an order sealing the record. The entry stated: "Said application is hereby **DENIED** pursuant to *State v. Ritchie*, 1[]74 Ohio App.3d 582, 2007 Ohio 6477, 883 N.E.2d 1092 (5th Dist.)." (Emphasis sic.)

## II. ASSIGNMENT OF ERROR

{¶ 8} Appellant filed a timely appeal, and he raises the following assignment of error:

THE TRIAL COURT ERRED IN RULING THAT DEFENDANT-APPELLANT WAS LEGALLY INELIGIBLE FOR THE EXPUNGEMENT AND SEALING OF HIS CRIMINAL CONVICTION PURSUANT TO THE CASE OF STATE V. RITCHIE (2007), 174 Ohio App.3d 582 (5th Dist.).

## III. DISCUSSION

{¶ 9} In his assignment, appellant contends that the trial court erred by determining he is ineligible for expungement of his 2008 conviction for violating R.C. 2923.122. We disagree.

{¶ 10} Our beginning principle is that expungement is a state-created act of grace and "is a privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533 (2000). A trial court may only grant expungement when an applicant meets all of the statutory requirements. *State v. Hamilton*, 75 Ohio St.3d 636, 640 (1996).

{¶ 11} R.C. 2953.32 allows an eligible offender to apply to the sentencing court for the sealing of the conviction record. R.C. 2953.36 provides certain exceptions, however. At the time of appellant's sentencing, R.C. 2953.36(F) excluded the following from expungement: "Convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony." Former R.C. 2953.36(F). Because appellant was convicted of a felony, the question is whether he is ineligible because the offense was in circumstances in which there was a minor victim. We review that question de novo, as it is a question of law. *State v. Futrall*, 123 Ohio St.3d 498, 499, 2009-Ohio-5590, ¶ 6.

{¶ 12} In *Simon*, the Supreme Court of Ohio considered whether a defendant who was ineligible for probation pursuant to R.C. 2951.02 is ineligible to have his record sealed pursuant to R.C. 2953.36(A), which precludes expungement of conviction records of offenders subject to a mandatory prison term. The defendant in *Simon* was indicted on two charges, both of which contained a firearm specification, the conviction for which carried a mandatory prison term. After a plea bargain, the defendant pled guilty to an amended charge without a firearm specification. He was sentenced to a suspended

jail term and placed on three years probation. Thereafter, he moved for expungement of his conviction record. The sentencing court refused, based on R.C. 2953.36(A). Although the amended charge to which the defendant pled guilty did not subject him to a mandatory prison term, the original charges would have. The appeals court affirmed.

{¶ 13} In affirming, the Supreme Court of Ohio held that, "when considering whether an applicant is ineligible to have a conviction record sealed under R.C. 2953.36 because the applicant may have been 'armed with a firearm or dangerous ordnance' (R.C. 2951.02) at the time of the offense, a trial judge must examine the entire record to determine whether the applicant was so armed." *Simon* at 535. Because the record showed that the defendant had used a firearm in committing the offense, he was ineligible for expungement as a matter of law. This court reached a similar conclusion in *State v. Launer*, 107 Ohio App.3d 42, 43 (10th Dist.1995) (determining that, had the trial court gone "behind the judgment entry," it would have discovered that the defendant used a firearm in committing the offense; therefore, he was ineligible for expungement).

{¶ 14} Applying those principles here, we conclude that the trial court, after examining the entire record, could only have determined that appellant is ineligible for expungement as a matter of law because he committed his offense in circumstances in which there was a victim, and the victim was under 18. While the trial court reached the same conclusion by relying on *Ritchie*, which does not clarify whether a minor victim was present or impacted directly by the defendant's actions that led to his conviction under R.C. 2923.122, we conclude that we need not rely on *Ritchie* because the undisputed evidence in the case before us shows that there was a minor victim, i.e., the other student. Accordingly, we overrule appellant's assignment of error.

#### IV. CONCLUSION

{¶ 15} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and KLATT, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
Plaintiff-Appellee, :  
v. : No. 12AP-340  
Chad Williamson, : (C.P.C. No. 07CR-12-8936)  
Defendant-Appellant. : (REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on November 20, 2012, appellant's single assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

FRENCH, BRYANT, and KLATT, JJ.

/S/ JUDGE

Tenth Circuit Court of Appeals

**Date:** 11-20-2012  
**Case Title:** STATE OF OHIO -VS- CHAD WILLIAMSON  
**Case Number:** 12AP000340  
**Type:** JEJ - JUDGMENT ENTRY

So Ordered


/s/ Judge Judith L. French

Electronically signed on 2012-Nov-20 page 2 of 2

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CRIMINAL DIVISION

State of Ohio,

Plaintiff,

v

Chad Williamson,

Defendant

11EP-845

Case No. 07CR-8936

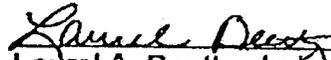
Judge Beatty

**ENTRY DENYING APPLICATION FOR AN ORDER  
SEALING THE RECORD**

CLERK OF COURTS  
7:12 MAR 26 AM 11:03  
FRANKLIN COUNTY OHIO  
COMMON PLEAS COURT

This cause came to be heard upon the application, pursuant to Section 2953.32, Ohio Revised Code, for an order sealing the record in case No. 07CR-3936

Said application is hereby DENIED pursuant to *State v Ritchie*, 1074 Ohio App 3d 582, 2007 Ohio 6477, 883 N E.2d 1092 (5th Dist.).

  
\_\_\_\_\_  
Laurel A. Beatty, Judge

✓

07CR 12-8936

State of Ohio,  
Franklin County, ss:

**INDICTMENT FOR: Illegal Conveyance  
Or Possession Of Deadly Weapon Or  
Dangerous Ordnance In A School Safety  
Zone (2923.122 R.C.) (F-5) (1 Count);  
(Total: 1 Count)**

In the Court of Common Pleas, Franklin County, Ohio, of the Grand Jury term beginning September fourteenth in the year of our Lord, Two Thousand Seven.

Count 1

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Chad Williamson late of said County, on or about the 20th day of September in the year of our Lord, 2007, within the County of Franklin aforesaid, in violation of section 2923.122 of the Ohio Revised Code, did knowingly possess a deadly weapon or dangerous ordnance, to wit: a knife,

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO

2007 DEC 13 PM 1:35

CLERK OF COURTS

ON COMPUTER

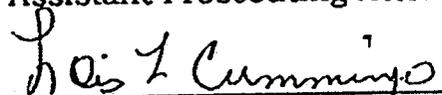
56704 - B18

into and/or in a school safety zone, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

RON O'BRIEN  
Prosecuting Attorney  
Franklin County, Ohio

**A TRUE BILL**

  
Assistant Prosecuting Attorney

  
Foreperson, Grand Jury

56704 - B19

State of Ohio v. Chad Williamson

Address: 1693 Greenville Road, Columbus, Ohio 43223

DOB: [REDACTED]

Sex/Race: M/W

Date of Arrest: 09-20-2007

SSN: [REDACTED]

Police Agency: Grove City

Municipal Reference: 23888/07

ITN #:

Count 1: Illegal Conveyance Or Possession Of Deadly Weapon Or  
Dangerous Ordnance In A School Safety Zone  
2923.122 F-5

Case No.