

ORIGINAL

IN THE
SUPREME COURT OF OHIO

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| STATE OF OHIO | : | NO. 2013-1010 |
| Plaintiff-Appellee | : | On Appeal from the Hamilton County Court of Appeals, First Appellate District |
| vs. | : | |
| TERRELL VANZANDT | : | Court of Appeals Case Number C-130079 |
| Defendant-Appellant | : | |

MEMORANDUM IN RESPONSE

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Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question

While this case does present a question of first impression, it does so with such a unique set of facts and circumstances that it does not amount to a question of public or great general interest nor does it involve a substantial constitutional question.

Terrell Vanzandt had been acquitted of a criminal charge. He filed for and was granted an expungement in that case. Three days after he was granted the expungement, he retaliated against the primary witness against him in the acquitted case.

The State, realizing that it would need to use the sealed records to prove the retaliation case, moved to unseal the records of the acquitted case for use in that trial. Vanzandt argued that since there was no statutory authority allowing this to happen that the trial court had no choice but to deny the state's motion.

The trial court disagreed. It granted the state's motion and unsealed the records solely for the purpose of using them in the retaliation case. In all other aspects, the acquitted case remained sealed.

Vanzandt appealed. The First District, relying on those cases holding that trial courts possess the extra-statutory authority to seal records, found that trial courts also possess the extra-judicial authority to unseal those records in unusual and exceptional circumstances. It found that such circumstances existed here and, in turn, found that the trial court properly exercised its discretion in unsealing Vanzandt's record for the sole purpose of the retaliation prosecution.

The First District got the law on this matter right. And while it is an issue of first impression, it is such an unusual event that it is unlikely to happen again. As such, there is no reason for this court to grant jurisdiction over this matter.

Statement of the Case and Facts

As described above, Vanzandt had been acquitted of a criminal offense. The records of that offense were then expunged. Three days after they were expunged, Vanzandt retaliated against the primary witness in the expunged case.

The state charged Vanzandt with retaliation. When it realized that it would need the records of the sealed case to properly prosecute him, it moved to unseal those records. The trial court granted that motion and unsealed the records for the limited purpose of using them in the retaliation prosecution. The First District affirmed that finding.

Argument in Support of State's Proposition of Law

Proposition of Law: When there are unusual and exceptional circumstances, a trial court possesses the authority to, in its discretion, unseal records that have been sealed pursuant to R.C. 2953.51 through 56.

In *Pepper Pike v. Doe*, this court held that “even absent statutory authorization,” trial courts still may “order expungement where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter.”¹ In *Pepper Pike*, this court was considering whether trial courts had the authority to seal the records of a case that had been dismissed before trial.²

Three years after *Pepper Pike* was decided, the legislature enacted R.C. 2953.51 through 2953.56. Those sections of the code provide a statutory framework for the sealing of an acquittal, dismissal, or the issuance of a no bill by a grand jury.

Ohio has continued to recognize that trial courts possess the extra-statutory authority to order expungements even when the existing statutory framework does not specifically allow for one. It has been recognized that trial courts may grant an expungement when an executive pardon has been issued.³ It has also been recognized when children service records that were part of a criminal case where a no bill was issued could be sealed.⁴ And it has even been applied to arrest records when no subsequent charges were filed.⁵

The decision below is the first time an appellate court has been confronted with the issue of whether a trial court possesses the authority to unseal records. The First

¹ *Pepper Pike v. Doe*, 66 Ohio St. 2d 374, 376, 421 N.E.2d 1303 (1981).

² *Id.* at 377.

³ *State v. Boykin*, 9th Dist. Nos. 25752 & 25854, 2012-Ohio-1381.

⁴ *In re Application to Seal Record of No Bill*, 131 Ohio App. 3d 399, 722 N.E.2d 602 (3rd Dist. 1999).

⁵ *Bound v. Biscotti*, 76 Ohio Misc.2d 6, 663 N.E.2d 1376 (M.C. 1995).

District found that the existence of extra-statutory authority to seal cases means that there is also extra-statutory authority to unseal cases.

The statutory scheme currently allows certain individuals and organizations to view sealed records as a matter of law.⁶ While that statute does not specifically grant the authority to unseal, nothing in the statutory scheme is inconsistent with allowing this to happen. Because of that, the First District properly found that “in light of the court’s supervisory power over its own records and the nonexclusive nature of the statute providing for access to sealed records . . . that within the court’s power to seal its records is a concomitant power to unseal such records in appropriate cases.”⁷

The First District cautioned that the exercise of that power should not be exercised lightly and, instead, should only be used in “unusual and exceptional circumstances.”⁸ The First District found that there were unusual and exceptional circumstances in this case because: (1) Vanzandt was trying to use the expungement to prevent the state from prosecuting him for retaliation; (2) the retaliation occurred three days after the records were sealed; and (3) the state moved to unseal happened three months after the records were sealed. The First District also found it significant that the trial court narrowly tailored its order by limiting the use of the records only in the retaliation case. Under those circumstances, the First District found that the trial court properly exercised its discretion when it unsealed the records of Vanzandt’s acquittal. That decision was correct.

⁶ R.C. 2953.53(D).

⁷ *State v. Vanzandt*, 1st Dist. No. C-130079, at p. 6.

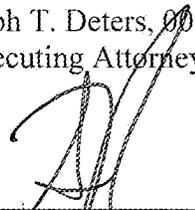
⁸ *Id.* at 7 citing *Pepper Pike*, *supra*.

Conclusion

Though this case does present a case of first impression, it is one that has been adequately addressed by the First District. The chances of the circumstances underlying this case happening again are exceedingly rare. As such, this is not a matter of public or great general interest nor does it present a substantial constitutional question worthy of this Court's time. Jurisdiction should, therefore, be declined.

Respectfully,

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Proof of Service

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Christine Y. Jones ~~AND~~ Josh Thompson, Public Defender's Office, 230 E. 9th St., Suite 3000, Cincinnati, Ohio 45202, counsel of record, this 2nd day of July, 2013.



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