

ORIGINAL

IN THE OHIO SUPREME COURT

State of Ohio, :

Appellant, : Case No. 2012-0819

v. : On Appeal from the Franklin County

Marlon G. Pariag, : Court of Appeals, Tenth Appellate

Appellee. : District, Case No. 11AP-569

**Memorandum in Support of Appellee’s Motion for Reconsideration of
Amicus Curiae Towards Employment**

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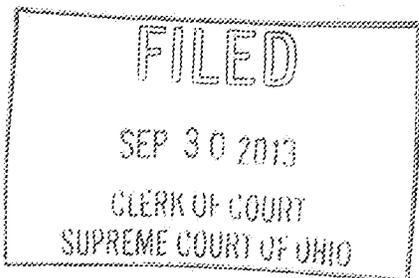
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STATEMENT OF AMICUS INTEREST

Towards Employment is an organization dedicated to empowering individuals to achieve and maintain self-sufficiency through employment. Since 1976, it has helped more than 120,000 low-income and disadvantaged adults in Greater Cleveland prepare for jobs, get jobs, keep jobs and move up the career ladder. And since 2004, it has successfully taken on the challenge of placing ex-offenders in full-time, permanent jobs.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law:

A prohibition on sealing of dismissed criminal charges violates the intent of the General Assembly and creates permanent handicaps in the efforts of those merely charged with crimes to secure and maintain productive employment and personal responsibility.

Amicus urges this Court to reconsider its decision in *State v. Pariag*, Slip Opinion No. 2013-Ohio-4010.

The presumption of innocence is a truism of American criminal law, but it is a courtroom presumption. In the world outside the courtroom, the working presumption is that where there's smoke there's fire. Revised Code Section 2953.52 is a statutory fire extinguisher, but this Court's decision in *Pariag*, if not reconsidered, dangerously and intemperately weakens its ability to douse the flames.

Facts have consequences. The consequences of criminal charges are pernicious. Prospective employers prefer not to take a chance, prospective landlords worry, long-time friends turn away, children are taunted in the schoolyard and no longer invited to play at the homes of classmates who are, in turn, prohibited from visiting at their homes. These are real

world consequences of criminal charges. They reflect a public perception, enhanced perhaps by the ubiquity of social media and the lasting effects of the internet.

Ohio law provides, in many circumstances, statutory amelioration of those consequences. At issue in this case are the provisions regarding sealing the record of a case in which the accused prevailed whether by dismissal, acquittal, or grand jury no bill. R.C. 2953.51 et seq. In the ordinary course of things, and appropriately, persons who have so prevailed are entitled to ask a court to seal those records so that they may be relieved of the consequences of the charges that were brought against them. There is no guarantee, of course. The court is 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. 2953.52(B)(2)(d). Even if the court orders the record sealed, it is not eliminated. It remains available to various entities for various purposes as set forth in R.C. 2953.53.

With its decision in this case, however, this Court set up what is, in many cases, an absolute bar to sealing the record in such cases. The bar arises not from any balancing of interests, not from any “legitimate needs . . . of the government,” but from what may be – and in this case was – a coincidental fact: That in a case somehow related to the dismissed charges, the accused was convicted and the offense of conviction is not subject to sealing.

In this case, Mr. Pariag was convicted of a traffic offense the records of which cannot be sealed. He was also charged with two misdemeanor offenses which were dismissed. The trial court granted his motion and ordered the record of those other offenses sealed, thereby

ameliorating the effects of the dismissed charges. This Court reversed that decision holding that because no traffic offense can be sealed neither can any related offense.

More than thirty years ago, this Court explained the result and rationale behind sealing the record of a conviction.

It will remain an historical event, available for use in legitimate criminal investigations, and as the appellant may direct. At the same time, appellant will be spared the economic, social, and legal consequences which might accompany routine handling of the records in question, and is entitled to destruction of such ancillary records as witness' statements and departmental reports.

Pepper Pike v. Doe, 66 Ohio St.2d 374, 378, 421 N.E.2d 1303 (1981).

Pepper Pike is exactly right. Criminal charges, even in misdemeanor cases and certainly in felony cases, even criminal charges which are dismissed, have “economic, social, and legal consequences.” Counsel for the State said as much during oral argument. A person “trying to seek employment . . . wouldn’t want anything on the record.” And she added that since the economic downturn there has been a substantial increase in applications for sealing presumably from people looking for work. More tellingly still, she pointed out that the General Assembly has enacted legislation precisely intended to make sealing records more widely available precisely for that reason. Ohio Channel, *Supreme Court of Ohio, Oral Argument, Case No. 2012-0819 In the Matter of the Application of: Marlon G. Pariag* (Apr. 9, 2013), available at <http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=138612> (accessed Sept. 27, 2013).

Anyone who does a background check – prospective employers, lenders, mortgage companies and landlords – will find out about the arrest.¹ The law-abiding citizen, stopped for speeding, charged with other offenses, is denied the job, the loan, the housing. People once friends turn away. Children are taunted, classmates and playmates warned to keep away. And under this Court's holding in *Pariag*, those consequences are eternal.

Where R.C. 2953.21 *et seq.* were intended to provide relief from the consequences of charges that were dismissed, that were not billed, or that led to acquittal. The problem with this Court's analysis and ruling in this case is that it interprets the language of the statutes to defeat their purpose.

¹ In fact, R.C. 109.5721(C) and (E) provides a mechanism for the fact of arrest to be immediately and continuously made known to certain public entities which can affect employment status and eligibility.

CONCLUSION

For these reasons, and for the reasons advanced by counsel for Mr. Pariag and by other amici, this Court should reconsider its decision and affirm the decision of the Franklin County Court of Appeals.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify a copy of the foregoing was sent by regular U.S. Mail, to OHIO JUSTICE & POLICY CENTER, Stephen JohnsonGrove , 215 E. Ninth St., Ste. 601, Cincinnati, OH 45202, and Melanie R. Tobias, Director – Appellate Unit, 375 S. High St., 17th Fl., Columbus, OH 43215-4350 on this 30th day of September, 2013.


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