

**IN THE SUPREME COURT OF OHIO
2015**

STATE OF OHIO,

Case No. 2015-1221

Plaintiff-Appellant,

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

-vs-

[J.M.],

Court of Appeals
Case No. 15AP-77

Defendant-Appellee.

BRIEF OF PLAINTIFF-APPELLANT STATE OF OHIO

RON O'BRIEN 0017245
Franklin County Prosecuting Attorney
373 South High Street-13th Fl.
Columbus, Ohio 43215
614/525-3555

and

MICHAEL P. WALTON 0087265
(Counsel of Record)
Assistant Prosecuting Attorney
mw Walton@franklincountyohio.gov

COUNSEL FOR PLAINTIFF-APPELLANT

[J.M.]

2630 Augustwood Drive
Columbus, Ohio 43207

DEFENDANT-APPELLEE PRO SE

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

ARGUMENT 4

 Proposition of Law: A violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31. 4

 Certified Conflict Question: Whether a violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31? 4

CONCLUSION 11

CERTIFICATE OF SERVICE 11

Appendix:

 Notice of Certified Conflict (filed July 24, 2015)..... A-1

 10th Dist. Certification of Conflict (filed July 1, 2015)..... A-4

 10th Dist. Decision (filed June 30, 2015)..... A-5

 10th Dist. Judgment Entry (filed July 1, 2015)..... A-15

 Common Pleas Entry Sealing Record of Conviction (filed Feb. 4, 2015)..... A-17

 R.C. 2953.31..... A-18

TABLE OF AUTHORITIES

Cases

City of Dayton v. Sheibenberger, 115 Ohio App.3d 529, 685 N.E.2d 841 (2nd Dist. 1996) 6

City of Fairborn v. Dedomenico, 114 Ohio App.3d 590, 683 N.E.2d 820 (2nd Dist. 1996)..... 6

Hubbard v. Canton City School Be. Of Educ., 97 Ohio St.3d 451, 2002-Ohio-6718, 780 N.E.2d 543 9

In re Mooney, 10th Dist. No. 12AP-376, 2012-Ohio-5904 7

Miller Chevrolet v. Willoughby Hills, 38 Ohio St.2d 298, 313 N.E.2d 400 (1974) 11

Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife, Slip Opinion No. 2015-Ohio-3731 6

Sherwin-Williams Co. v. Dayton Freight Lines, Inc., 112 Ohio St.3d 52, 2006-Ohio-6498, 858 N.E.2d 324 9

State v. 1981 Dodge Ram Van, 36 Ohio St.3d 168, 522 N.E.2d 524 (1988) 11

State v. Aguirre, Slip Opinion No. 2014-Ohio-4603 4

State v. Black, 10th Dist. No. 03AP-862, 2004-Ohio-5258 7, 8

State v. Clark, 4th Dist. No. 11CA8, 2011-Ohio-6354 6

State v. Dominy, 10th Dist. No. 13AP-124, 2013-Ohio-3744 7

State v. Ellis, 8th Dist. No. 83207, 2004-Ohio-3108 7

State v. Hamilton, 75 Ohio St.3d 636, 665 N.E.2d 669 (1996) 4

State v. J.M., 10th Dist. No. 15AP-77, 2015-Ohio-2669 2, 8, 9

State v. LaSalle, 96 Ohio St.3d 178, 2002-Ohio-4009, 772 N.E.2d 1172 4

State v. Pariag, 137 Ohio St.3d 81, 2013-Ohio-4010, 998 N.E.2d 401 4

State v. Reed, 10th Dist. No. 05AP-335, 2005-Ohio-6251 4, 5

State v. Schlatterbeck, 39 Ohio St. 268 (1883) 9

State v. Simon, 87 Ohio St.3d 531, 721 N.E.2d 1041 (2000) 4

Statutes

R.C. 2953.31 5, 6, 9

R.C. 2953.31(A)..... 5

R.C. 2953.32(A)(1)..... 5

R.C. 2953.36 5

R.C. 4503.11 9

STATEMENT OF FACTS

On August 23, 1989, defendant was convicted for Receiving Stolen Property, a third-degree felony, in Franklin County Common Pleas case no. 89CR-482 and was sentenced accordingly. (Trial Rec. 6)

On January 10, 2014, defendant applied to seal the record of his conviction in 89CR-482. (Trial Rec. 1) The State filed an objection, noting that defendant had two other misdemeanor convictions from Franklin County Municipal Court. (Trial Rec. 6) As a result, the State objected based upon defendant's failure to qualify as an "eligible offender" within the meaning of R.C. 2953.31(A). (Id.)

On May 29, 2014, the matter came before the trial court for a brief hearing. (5-29-14 T. 1-7) Defendant appeared and presented the trial court with a particular case from the Tenth District. (Id. at 5) Although never identified during the May 29th hearing, the case would later be identified as *In re: Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904. (10-2-14 T. 3) At the conclusion of the May 29th hearing, the trial court indicated that it would review the case and schedule the matter for an additional hearing. (5-29-14 T. 7)

On October 2, 2014, the matter came before the trial court for further proceedings. (10-2-14 T. 1-6) During the hearing, the State presented its argument regarding *Mooney*. (Id. at 3-5) At the conclusion of the hearing, the trial court did not issue a decision from the bench.

On February 4, 2015, the trial court granted the defendant's motion to seal the record of conviction. (Trial Rec. 22) The State filed a timely notice of appeal. (Trial Rec. 24; App. Rec. 2)

On appeal, the State argued that, based upon the plain, unambiguous language of the definition of "eligible offender" contained in R.C. 2953.31(A), defendant's fourth-degree

misdemeanor conviction for violating R.C. 4503.11 must be counted for purposes of determining whether he qualified as an eligible offender. (App. Rec. 10)

On June 30, 2015, the appellate court affirmed the trial court's order in a fractured decision. *See State v. J.M.*, 10th Dist. No. 15AP-77, 2015-Ohio-2669. The lead opinion explicitly recognized that R.C. 2953.31(A) does not reference R.C. 4503.11 as an exception to convictions that should be counted to determine an offender's eligibility. *J.M.*, ¶11. Yet, the lead opinion ultimately held that it would "allow the statutory scheme to achieve its designated purpose as we have previously interpreted it, to give eligible offenders who have learned from their mistakes, a second chance." *Id.*, ¶17. The lead opinion also criticized the Fourth District's "strict" and "literal" reading of the plain and unambiguous language of R.C. 2953.31(A) in *State v. Clark*. *Id.*, ¶17.

One panel member concurred in judgment only, noting that the issue could be resolved "[b]ased solely on the doctrine of stare decisis and recent holding of this court in *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904, where the precise issue before us was previously decided[.]" *J.M.*, ¶21 (Sadler, J., concurring in judgment only). The third panel member dissented in part and would have overruled *Mooney*, *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258, and *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744, by relying on the "plain language of the relevant statutes[.]" *J.M.*, ¶23 (Dorrian, J., concurring in part; dissenting in part).

Despite the fractured decision, the appellate panel unanimously certified the decision as being in conflict with *Clark* on the following question:

Whether a violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31?

On July 1, 2015, the Tenth District journalized its decision, (App. Rec. 19), and its certification of a conflict, (App. Rec. 20).

The State then filed a discretionary appeal (No. 15-1220) and certified-conflict appeal (No. 15-1221). On September 30, 2015, this Court declined jurisdiction in the discretionary appeal, but recognized the certified conflict and allowed the certified-conflict appeal to proceed.

ARGUMENT

Proposition of Law: A violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31.

Certified Conflict Question: Whether a violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31?

Sealing criminal records “is an act of grace created by the state, and so is a privilege, not a right.” *State v. Simon*, 87 Ohio St.3d 531, 533, 721 N.E.2d 1041 (2000) (internal quotation marks omitted). “[T]he government possesses a substantial interest in ensuring that [sealing¹] is granted only to those who are eligible.” *State v. Hamilton*, 75 Ohio St.3d 636, 640, 665 N.E.2d 669 (1996). Consequently, a motion to seal a criminal record “should be granted only when all requirements for eligibility are met.” *Simon*, 87 Ohio St.3d at 533, citing *Hamilton*, 75 Ohio St.3d at 640. The sealing procedure set forth in R.C. 2953.31 *et seq.* creates a post-conviction remedy that is civil in nature. *State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, 772 N.E.2d 1172, ¶19. “Ultimately, it is the responsibility of the trial court to determine whether an applicant is eligible to file for [sealing] of the record of a conviction.” *State v. Reed*, 10th Dist. No. 05AP-335, 2005-Ohio-6251, ¶14.

The eligibility requirements that are defined by R.C. 2953.31 *et seq.* “set out the limits of the trial court’s jurisdiction to grant a request to seal the record of convictions or charges that have been dismissed.” *State v. Pariag*, 137 Ohio St.3d 81, 2013-Ohio-4010, 998 N.E.2d 401, ¶12. It follows then, that a failure to meet any eligibility requirement deprives a trial court of

¹ As previously recognized by this Court, sealing and “expungement” are two legally distinct concepts. See *State v. Aguirre*, Slip Opinion No. 2014-Ohio-4603, fn. 2. Revised Code 2953.31 *et seq.* provides for sealing, not expungement. Therefore the State has eliminated, to the extent possible, references to the term “expungement” throughout this brief. All replacements are noted by the use of brackets.

jurisdiction to grant an application to seal criminal records. *State v. Reed*, 10th Dist. No. 05AP-335, 2005-Ohio-6251, ¶8.

An applicant’s eligibility to seal the record of a criminal conviction is governed by R.C. 2953.31, 2953.32, and 2953.36. The applicant must be an “eligible offender” within the meaning of R.C. 2953.31(A), must have no pending criminal proceedings, and must have complied with the statutory waiting period. R.C. 2953.32(A) and (C).

Revised Code 2953.32(A)(1) allows for the sealing of a record of conviction and provides, in pertinent part, that:

an eligible 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.

At the time of defendant’s application,² R.C. 2953.31(A) contained the definition of eligible offender and provided, in relevant part:

“Eligible offender” means anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction. * * *

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. * * *

Revised Code 2953.31(A) also enumerates certain offenses which must be considered, or counted, as convictions in determining whether the applicant meets the definition of “eligible

² See *State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, 772 N.E.2d 1172 (application to seal is governed by version of statute in effect at time of application). 2014 SB 143, effective 9/19/2014, removed the language “if the convictions are not of the same offense” from the definition of “eligible offender.” The amendment has no effect on this case, as the removed language was not relevant.

offender.” Convictions for these enumerated offenses may therefore create a bar to a request for sealing.

Based upon the plain, unambiguous language of the statute, a defendant’s conviction for a minor misdemeanor, for an offense in any of the explicitly enumerated chapters of the Revised Code, or for a substantially similar municipal ordinance is not counted for purposes of determining eligibility to seal a criminal conviction. The General Assembly intended to permit a defendant to seal a criminal conviction when the defendant had only a relatively minor conviction, like a conviction for speeding. *City of Dayton v. Sheibenberger*, 115 Ohio App.3d 529, 533, 685 N.E.2d 841 (2nd Dist.1996).

But that intent does not permit the judiciary to amend the legislative enactment by adding words to the statute. “It is our duty to give effect to the words in a statute. * * * We are derelict in this duty when we give effect to words unused in a statute.” *City of Fairborn v. Dedomenico*, 114 Ohio App.3d 590, 593-594, 683 N.E.2d 820 (2nd Dist.1996) (quotation marks and citation omitted). “[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. * * * The General Assembly determined which violations should not be considered convictions for purposes of [sealing], and R.C. 4503.11 does not fall under any of those exceptions.” *State v. Clark*, 4th Dist. No. 11CA8, 2011-Ohio-6354, ¶17 (quotation marks and citations omitted). “We apply the statute as written, * * * and we refrain from adding or deleting words when the statute’s meaning is clear and unambiguous[.]” *Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife*, Slip Opinion No. 2015-Ohio-3731, ¶12.

As referenced in the concurring opinion of Judge Sadler and the dissent of Judge Dorrian, the Tenth District has a long line of cases recognizing an unwritten exception that allows

offenses that are unenumerated by R.C. 2953.31(A) to be overlooked when determining whether an offender is eligible. *J.M.*, ¶¶21-24 citing *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258; *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904; and *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744. In each of these cases, the Tenth District held that various offenses were more similar to the excepted traffic offenses actually cited in R.C. 2953.31(A) and should, therefore, also be ignored when determining an offender's eligibility to seal the record of a conviction.

In *Black*, the Tenth District addressed the issue for the first time. In that case, the defendant applied to seal the record of a misdemeanor conviction and the State objected, based upon the failure of Black to qualify under the then "first offender" standard. *Black*, ¶2. The State cited Black's additional conviction for driving under a Financial Responsibility Act ("FRA") suspension, in violation of R.C. 4507.02. *Id.* ¶9. The trial court granted the application over the State's objection. On appeal, the Tenth District adopted the reasoning of the Eighth District in *State v. Ellis*, 8th Dist. No. 83207, 2004-Ohio-3108, and held that Black's conviction for driving under suspension, in violation of R.C. 4507.02, was "analogous to a traffic offense" and that she was still eligible to seal her conviction. *Black*, ¶14. However, the Tenth District's reliance on *Ellis* was misplaced.

In *Ellis*, the Eighth District addressed the issue at a time when driving under a FRA suspension was not specifically contained in the list of exempt convictions in R.C. 2953.31(A). *Ellis*, ¶12. Furthermore, the defendant in *Ellis* was charged under a municipal ordinance, not the Ohio Revised Code. *Id.* ¶3. Thus, the *Ellis* court engaged in its analysis to determine whether the municipal ordinance for driving under a FRA suspension was "substantially similar to any

section in” the specifically-enumerated chapters in R.C. 2953.31(A) at the time of Ellis’ application.

In *Black*, the defendant had been convicted for driving under a FRA suspension under R.C. 4507.02. *Black*, ¶9. But, similar to *Ellis*, the application in *Black* was governed by a former version of R.C. 2953.31(A); a version which did not include “Chapter 4507” within the specifically-enumerated list of exempt convictions. Despite this clear distinction, the Tenth District cited *Ellis* as persuasive and engaged in an interpretation of plain and unambiguous statutory language, ultimately concluding that an unwritten exemption existed in the former version of R.C. 2953.31(A) and allowed Black to be considered eligible to seal her conviction. The Tenth District has re-affirmed *Black* on a number of occasions, erroneously “interpreting” plain and unambiguous statutory language. What is more, the lead opinion from the Tenth District in this case criticizes the Fourth District for following the well-established principle that plain and unambiguous language must be applied, not interpreted. *See J.M.*, ¶17 (“we³] note that the strict reading applied by the Fourth District is inconsistent with law providing that the sealing statutes are remedial and are to be construed liberally to promote their purpose and assist the parties in obtaining justice. * * * The Fourth District’s literal reading of R.C. 2953.31 denies access to remedies found in R.C. 2953.31 because of what are essentially administrative, traffic-related mistakes.”).

The fundamental flaw of *Black*, *Mooney*, *Dominy*, and *J.M.* is that the “interpretation” in which the Tenth District engaged was not as a result of some ambiguity in the statutory language. Rather, these decisions were made despite plain, unambiguous statutory language. Of

³ Strangely, the lead opinion in *J.M.* repeatedly uses the pronoun “we” despite the fact that it reflects the opinion of a single member of the Tenth District. Indeed, Judge Sadler concurred in judgment only, citing stare decisis as the sole basis for her opinion; and Judge Dorrian dissented from all parts of the lead opinion except for certification of the conflict.

these four decisions, *J.M.* is by far the most egregious. Whereas *Black*, *Mooney*, and *Dominy* never stated that the convictions at issue in those cases were not part of the exempt convictions contained within R.C. 2953.31(A), *J.M.* states it outright. Indeed, the lead opinion in *J.M.* specifically states that R.C. 4503.11 is not an exempt conviction defined by R.C. 2953.31(A), yet affirmed the trial court's judgment as if it was. *Id.* ¶11 (“Although neither R.C. Chapter 4503 nor section 4503.11 is specifically exempted by the sealing of records statute * * *.”). Judicially adding language to a plain, unambiguous statute is fundamental legal error. See *Sherwin-Williams Co. v. Dayton Freight Lines, Inc.*, 112 Ohio St.3d 52, 2006-Ohio-6498, 858 N.E.2d 324, ¶14 (“where 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.”), quoting *Hubbard v. Canton City School Bd. Of Educ.*, 97 Ohio St.3d 451, 2002-Ohio-6718, 780 N.E.2d 543, ¶14. See also *State v. Schlatterbeck*, 39 Ohio St. 268, 271 (1883) (“It is not allowable to interpret that which has no need of interpretation[.]”).

Here, the defendant did not meet the plain, unambiguous definition of “eligible offender” contained in R.C. 2953.31(A), because he had more than one felony conviction and one misdemeanor conviction. Specifically, the defendant had the felony conviction for RSP which he applied to seal, a conviction for negligent assault, a third-degree misdemeanor, and a conviction for failure to pay a vehicle registration tax, in violation of R.C. 4503.11, a fourth-degree misdemeanor. Revised Code 2953.31(A) does not contain an exemption for either R.C. 4503.11 or all sections within Chapter 4503 as part of the definition of “eligible offender.” Therefore, it must be counted as a conviction for purposes of R.C. 2953.31 *et seq.*

As a result, it must be concluded that defendant had at least one felony conviction and two misdemeanor convictions. Thus, the trial court lacked jurisdiction to grant the application to

seal the record of his felony RSP conviction. Based upon the trial court's clear lack of jurisdiction, the Tenth District erroneously affirmed. Accordingly, this Court should answer the certified conflict question in the affirmative and remand this matter to the trial court with instructions to deny defendant's application to seal the record of 89CR-482.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court reverse the judgment of the Tenth District Court of Appeals affirming the trial court’s decision to grant the defendant’s application to seal his criminal conviction, when he did not qualify as an “eligible offender” and was therefore ineligible to seal the record of this case.⁴

Respectfully submitted,

RON O’BRIEN 0017245
Prosecuting Attorney

/s/ M.Walton
Michael P. Walton 0087265
Assistant Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215
614-525-3555
mwatson@franklincountyohio.gov

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed via regular U.S. Mail, postage pre-paid, this day, November 9, 2015, to [J.M.], at 2630 Augustwood Drive, Columbus, Ohio 43207; Defendant-Appellee Pro se.

/s/ M.Walton
Michael P. Walton 0087265
Assistant Prosecuting Attorney

⁴ If this Court *sua sponte* contemplates a decision upon an issue not briefed, the State respectfully requests notice of that intention and requests an opportunity to brief the issue before this Court makes its decision. *Miller Chevrolet v. Willoughby Hills*, 38 Ohio St.2d 298, 301 & n. 3, 313 N.E.2d 400 (1974); *State v. 1981 Dodge Ram Van*, 36 Ohio St.3d 168, 170, 522 N.E.2d 524 (1988).

IN THE SUPREME COURT OF OHIO
2015

ORIGINAL

STATE OF OHIO,

Case No. 15-1221

Plaintiff-Appellant,

-vs-

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

J.M.,

Defendant-Appellee

Court of Appeals
Case No. 15AP-77

**NOTICE OF CERTIFIED CONFLICT
OF PLAINTIFF-APPELLANT STATE OF OHIO**

RON O'BRIEN 0017245
Franklin County Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215
Phone: 614-525-3555
Fax: 614-525-6103
E-mail: mwalton@franklincountyohio.gov

and

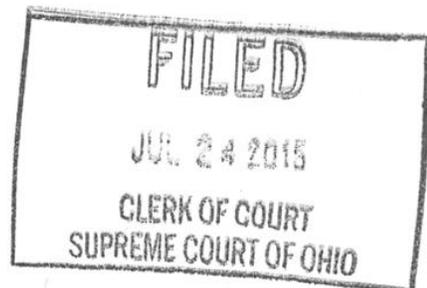
MICHAEL P. WALTON 0087265
(Counsel of Record)
Assistant Prosecuting Attorney

COUNSEL FOR PLAINTIFF-APPELLANT

JOHN MERRION

2630 Augustwood Drive
Columbus, Ohio 43207

DEFENDANT-APPELLEE PRO SE



**NOTICE OF CERTIFIED CONFLICT
OF PLAINTIFF-APPELLANT STATE OF OHIO**

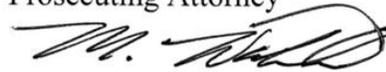
Plaintiff-appellant, the State of Ohio, hereby gives notice that, on June 30, 2015, the Franklin County Court of Appeals, Tenth Appellate District, certified a conflict in *State v. J.M.*, 15AP-77 on the following question of law pursuant to its authority under Section 3(B)(4), Article IV, of the Ohio Constitution:

Whether a violation of R.C. 4503.11, concerning a failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31?

Attached are the Tenth District journal entry certifying the conflict and the Tenth District decision. Also attached is the conflicting case in *State v. Clark*, 4th Dist. Athens No. 11CA8, 2011-Ohio-6354, in which the Fourth District Court of Appeals, unlike the Tenth District, determined that the defendant's conviction for violating R.C. 4503.11 counted as a conviction for purposes of determining eligibility to seal another conviction pursuant to R.C. 2953.31(A).

Respectfully submitted,

RON O'BRIEN 0017245
Prosecuting Attorney



MICHAEL P. WALTON 0087265
(Counsel of Record)
Assistant Prosecuting Attorney

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This is to certify that pursuant to S.Ct.Prac.R. 3.11(A)(1)(a) and (A)(3), a copy of the foregoing was sent by regular U.S. Mail this day, July 24, 2015, to John Merrion, at 2630 Augustwood Drive Columbus, Ohio 43207; Defendant-Appellee Pro se, and to Timothy Young, Ohio Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio, 43215.



MICHAEL P. WALTON 0087265
Assistant Prosecuting Attorney

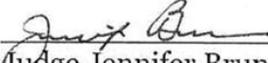
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
Plaintiff-Appellant, :
v. : No. 15AP-77
[J.M.], : (C.P.C. No. 14EP-18)
Defendant-Appellee. : (ACCELERATED CALENDAR)

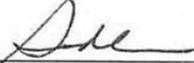
JOURNAL ENTRY

For the reasons stated in the decision of this court rendered herein on June 30, 2015, it is ordered that, being in conflict with the judgment of the Fourth District Court of Appeals in *State v. Clark*, 4th Dist. No. 11CA8, 2011-Ohio-6354, pursuant to S.Ct.Prac.R. 8.01 and Ohio Constitution, Article IV, Section 3(B)(4), , the record of this case is sua sponte certified to the Supreme Court of Ohio for review and final determination upon the following issue in conflict:

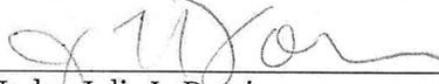
Whether a violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31?



Judge Jennifer Brunner



Judge Lisa L. Sadler



Judge Julia L. Dorrian du

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 15AP-77
 : (C.P.C. No. 14EP-18)
 [J.M.], : (ACCELERATED CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on June 30, 2015

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellant.

APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from a decision of the Franklin County Court of Common Pleas that granted J.M.'s application to seal the record of his 1989 felony conviction for receiving stolen property. The state contends that a failure to timely apply to register a motor vehicle, pursuant to R.C. 4503.11, counts as a conviction for the purposes of determining eligibility to seal records of convictions under R.C. 2953.31. Because we have previously decided the exact issue presented by this case and concluded that a violation of R.C. 4503.11 does not count as a conviction for purposes of R.C. 2953.31, we adhere to the principle of stare decisis and affirm the decision of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On January 10, 2014, J.M. filed an application with the Franklin County Court of Common Pleas seeking to seal the records of his felony conviction for receiving

stolen property. J.M. pled guilty to that charge on July 19, 1989 and was sentenced to 18 months in prison, all of which were suspended pending J.M.'s cooperation with the terms of probation for a three-year period. In addition to this conviction, J.M. pled guilty to negligent assault, a third-degree misdemeanor, in 1998 and to a failure to timely apply to renew his vehicle registration in 2013, a fourth-degree misdemeanor.

{¶ 3} The state objected to the application and argued that J.M. was not eligible to have the records sealed because he had too many convictions on his record. The trial court held hearings on the matter on May 29 and October 2, 2014. It granted J.M.'s application by written entry on February 4, 2015. The state now appeals.

II. ASSIGNMENT OF ERROR

{¶ 4} The state advances a single assignment of error for our review:

THE TRIAL COURT LACKED JURISDICTION TO GRANT DEFENDANT'S APPLICATION FOR SEALING, AS HE WAS NOT QUALIFIED AS AN "ELIGIBLE OFFENDER" WITHIN THE MEANING OF R.C. 2953.31(A).

III. DISCUSSION

{¶ 5} Sealing records in Ohio is a two-step process. In the first step, a trial court is called on to determine if a person is eligible. The specific requirements for eligibility vary depending on whether a person is seeking to seal records of convictions and bail forfeitures or seeking to seal records relating to arrests and cases ending in "not guilty" findings, dismissals, and "no bill" verdicts. *Compare* R.C. 2953.32 *with* 2953.52. When an applicant for expungement seeks to seal records of a conviction, he or she must first be determined to be an "eligible offender"; that is, a court must determine whether his or her criminal record reflects a permissible number of convictions, that the conviction(s) sought to be sealed is/are currently eligible to be sealed (based on the time elapsed since the time of final discharge and the nature of the conviction), and that no criminal proceedings are then currently pending against the applicant. *See* R.C. 2953.31(A); 2953.32(A) and (C)(1)(a) and (b).

{¶ 6} R.C. 2953.31(A), as amended by 2012 Am.Sub.S.B. No. 337 ("S.B. No. 337") expanded the number of offenses subject to sealing of the records (also referred to as

"expungement" in some circumstances) in determining whether an applicant is an "eligible offender":

[A]nyone who has been convicted of an offense in this state or any other jurisdiction and ~~who previously or subsequently has not been convicted of the same or a different offense~~ has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction. When two or three convictions 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, they shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

(Emphasis sic.) S.B. No. 337.

{¶ 7} Under R.C. 2953.32(C)(1)(a), when a trial court reviews an application for the sealing of an adult criminal record, it must determine as a threshold question whether an applicant is an "eligible offender" as is set forth in R.C. 2953.32(A) and 2953.31(A). A court lacks jurisdiction to seal records when an applicant is not an "eligible offender." *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744, ¶ 6. Whether an applicant is an eligible offender is an issue that we review de novo (although if factual findings are a necessary predicate to applying the law regarding eligibility, we review those for an abuse of discretion). *State v. Tauch*, 10th Dist. No. 13AP-327, 2013-Ohio-5796, ¶ 7.

{¶ 8} Once an applicant has been found to be an eligible offender, the statutes require a court to use its discretion to weigh a number of factors that vary, depending on whether the person seeks to seal records of convictions and bail forfeitures or records relating to arrests and cases ending in dismissals, "not guilty" findings, or "no bill" verdicts. *Compare* R.C. 2953.32 *with* 2953.52. When considering sealing records of a conviction for an eligible offender, a trial court must make statutorily required

determinations of: (1) whether the applicant has been rehabilitated to the satisfaction of the court, (2) whether the reasons, if any, offered by the prosecutor in any written objection against sealing the records are persuasive, and (3) whether the interests of the applicant in having conviction records sealed outweigh the legitimate needs, if any, of the state to maintain those records. R.C. 2953.32(C)(1)(c) through (e). We review a trial court's determination on these issues for abuse of discretion. *Tauch* at ¶ 17.

{¶ 9} If the trial court finds that a person is eligible and using its discretion determines that the facts supporting the other required findings should be construed to favor sealing the records of conviction, the trial court "shall order all official records of the case that pertain to the conviction or bail forfeiture sealed." (Emphasis added.) R.C. 2953.32(C)(2). Under S.B. No. 337, if the jurisdictional requirements and discretionary factors are met, a trial court is without authority to refuse to seal the records. Further, the sealing statutes are remedial and are, therefore, to be construed liberally to promote their purpose and assist the parties in obtaining justice. *State ex rel. Gains v. Rossi*, 86 Ohio St.3d 620, 622 (1999), citing R.C. 1.11; *Barker v. State*, 62 Ohio St.2d 35, 42 (1980).

{¶ 10} In this case, the state challenges J.M.'s eligibility based on the number of prior convictions that appear on his record. As relevant to this issue, an "eligible offender" is:

[A]nyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction.¹

R.C. 2953.31(A). The state claims that J.M. does not meet this definition because he has one felony and two misdemeanor convictions. The state contends that he is thus not an eligible offender since the statute only allows him to have "one felony conviction, * * * two misdemeanor convictions, * * * or * * * one felony conviction and one misdemeanor conviction." (Emphasis added.) R.C. 2953.31(A).

¹ Effective September 19, 2014, the legislature removed the language "if the convictions are not of the same offense." 2014 Am.Sub.S.B. No. 143. However, because J.M. filed his application in January 2014, the applicable definition still contained this language.

{¶ 11} In the trial court, J.M.'s position is that his fourth-degree misdemeanor conviction for failure to annually apply to register his vehicle, in violation of R.C. 4503.11, does not count as a conviction under R.C. 2953.31. J.M.'s position that R.C. 2953.31 exempts certain classes of conviction when determining the permissible number and levels of offenses that are permitted by law to be sealed.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. However, a conviction for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or 4511.196 of the Revised Code, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a conviction.

R.C. 2953.31(A). Although neither R.C. Chapter 4503 nor section 4503.11 is specifically exempted by the sealing of records statute, J.M.'s position that a violation of R.C. 4503.11 is essentially an administrative traffic offense substantially similar to the offenses contemplated in the excluded chapters and, on that basis, should be excluded also.

{¶ 12} J.M.'s position appears to be based on an Eighth District decision, *State v. Ellis*, 8th Dist. No. 83207, 2004-Ohio-3108. In *Ellis*, the Eighth District considered whether driving under a license suspension counted as a conviction for purposes of R.C. 2953.31 and held as follows:

The question is whether the municipal ordinances for driving under suspension are substantially similar to R.C. Chapter 4511, 4513, or 4549, or whether they are substantially similar to R.C. 4511.19, 4511.192, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, 4549.07, 4549.41, or 4549.46.

Chapters 4511, 4513, and 4549 all involve traffic law. Driving under suspension is essentially a violation of driver's license

law. These types of convictions are substantially similar to other traffic laws and not the type of law found, for example, in driving under the influence, R.C. 4511.19.

We find that a driving under suspension charge is not substantially similar to those laws the statute cites as driving under the influence of alcohol or drugs, street racing, hit and run, vehicle master key possession, or deceptive practices regarding odometer rollback and disclosure. Driving under suspension relates better to the Ohio Revised Code chapters representing the excluded convictions than it does to the provisions which count against expungement.

In the case at bar, appellant's DUS was an administrative violation. Her driving under suspension charge was traffic related, a violation of the Financial Responsibility Act regarding her insurance. Appellant's previous suspensions were traffic related and, therefore, similar to the situations in which expungement applies. In determining whether a driving under suspension offense is analogous to a traffic offense, we look to the underlying basis for the suspension. Here the suspension was based on an administrative violation directly related to the operation of a motor vehicle under the Financial Responsibility Act. As such, the suspension was, in effect, traffic related. Whether a driving under suspension offense under the previous statute meets the criteria of a traffic related offense is dependent on the basis of the underlying suspension.

Id. at ¶ 17-20.

{¶ 13} In *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258, this court considered the same question presented in *Ellis*, whether driving under a suspension imposed for a violation of the Financial Responsibility Act was an offense that would disqualify an otherwise eligible person from seeking to seal records. This court found *Ellis* to be persuasive and followed it. *Black* at ¶ 10-14.

{¶ 14} Eight years later, in *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904, this court applied *Black* and *Ellis* in the context of R.C. 4503.11. We held in *Mooney* that failing to register one's vehicle, in violation of R.C. 4503.11, was an offense that is "administrative in nature" (like driving under a Financial Responsibility Act suspension). *Id.* at ¶ 7-9. We held that a violation of R.C. 4503.11 is not of such a nature

as to count as a separate misdemeanor for purposes of determining eligibility under R.C. 2953.31. *Id.*

{¶ 15} Most recently, we considered the *Ellis* line of cases in the context of a violation of R.C. 5577.04(A), which regulates the weights of vehicles on public highways. *Dominy*. In *Dominy* we reasoned as follows:

Pursuant to [R.C. 2953.31(A)], certain convictions do not count as convictions for purposes of determining whether an offender is eligible for the sealing of convictions. While convictions under R.C. 5577.04 are not expressly listed, this court in *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258, concluded that certain traffic-related convictions, even if not set forth in the statute, do not count as a conviction if they " 'relate[] better to the Ohio Revised Code chapters representing the excluded convictions than it does to the provisions which count against expungment.' " *Black* at ¶ 14, quoting *State v. Ellis*, 8th Dist. No. 83207, 2004-Ohio-3108, ¶ 19.

Convictions that do not count as convictions under the statute include: (1) violations of R.C. Chapters 4507 and 4510, which relate to administrative drivers license concerns; (2) R.C. Chapter 4511, which relates to traffic controls and signs; (3) R.C. Chapter 4513, which relates to vehicle equipment requirements and load limitations; and (4) R.C. Chapter 4549, which generally relates to motor vehicle crimes. On the other hand, the offenses that do count as convictions under the statute are more serious traffic offenses, including: (1) violations of R.C. 4511.19, operation of a vehicle while intoxicated; (2) R.C. 4511.251, street racing; and (3) R.C. 4549.02, 4549.021 and 4549.03, stopping after an accident. They also include serious crimes like: (1) R.C. 4549.042, involving the sale or possession of master car keys for illegal purposes; (2) R.C. 4549.62, vehicle identification number fraud; (3) R.C. 4549.41 through 4549.46, odometer fraud; and (4) R.C. 4510.11 and 4510.14, driving under suspension.

In *Black*, we concluded that a conviction for driving under a Financial Responsibility Act suspension in violation of R.C. 4507.02 did not count as a conviction because that conviction was "analogous to a traffic offense" and not similar to the convictions listed in the statute that do count as convictions. *Black* at ¶ 12-14. In *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904, we similarly concluded that a conviction for

failing to register a vehicle in violation of R.C. 4503.11 did not count as a conviction for purposes of eligibility for sealing. We noted that such conviction was even more administrative in nature than the conviction in *Black Mooney* at ¶ 9.

Dominy argues that his weight convictions are similar to the convictions that did not count as convictions in *Black* and *Mooney*. We agree, as Dominy's weight convictions have more in common with the convictions that do not count towards eligibility. Those are generally less serious traffic offenses or more administrative types of offenses. The offenses that do count as convictions are much more serious traffic offenses and more serious crimes involving vehicle fraud. Because Dominy's weight convictions relate better to the Ohio Revised Code chapters representing excluded convictions than they do to the more serious offenses that count as convictions, the trial court did not err when it found that Dominy was an eligible offender.

Id. at ¶ 9-12. Thus, having decided the precise issue of whether R.C. 4503.11 is a misdemeanor offense that counts for the purposes of determining eligible offender status, we adhere to the principle of stare decisis in reaching our decision to affirm the judgment of the trial court. *Mooney*.

{¶ 16} We note that, prior to our decisions in *Mooney* and *Dominy* and the changes to the law expanding opportunities for sealing of the records of criminal conviction, the Fourth District Court of Appeals, in *State v. Clark*, 4th Dist. No. 11CA8, 2011-Ohio-6354, narrowly read R.C. 2953.31(A) to exempt exactly and only the sections listed in that section. The Fourth District specifically concluded that a violation of R.C. 4503.11 counts as a conviction for the purposes of determining eligibility for the sealing of records of criminal conviction. *Id.* at ¶ 15-20. The two cases for which we observe stare decisis were decided *after* the Fourth District decided *Clark* and *after* the adoption of S.B. No. 337, which expanded access to the sealing of criminal records beginning September 28, 2012. The state has brought this appeal, fully aware of our prior holdings on this very issue and apparently seeks a holding that reflects a different outcome. We find no emergent justification to change our prior course to adopt the holding in *Clark*.

{¶ 17} In addition to noting that *Clark* was decided before the enactment of S.B. No. 337, we note that the strict reading applied by the Fourth District is inconsistent with

law providing that the sealing statutes are remedial and are to be construed liberally to promote their purpose and assist the parties in obtaining justice. *Rossi* at 622, citing R.C. 1.11; *Barker* at 42. The Fourth District's literal reading of R.C. 2953.31 denies access to remedies found in R.C. 2953.31 because of what are essentially administrative, traffic-related mistakes. We prefer to allow the statutory scheme to achieve its designated purpose as we have previously interpreted it, to give eligible offenders who have learned from their mistakes, a second chance. In doing so, we adhere to our prior holdings that a trial court is empowered to find that an administrative, traffic-related offense, such as R.C. 4503.11, is exempt from being counted as a misdemeanor in determining eligible offender status under R.C. 2953.31. *Dominy; Mooney*.

{¶ 18} J.M.'s failure to timely register his car did not count as a criminal conviction for the purposes of determining his eligibility to have his records of criminal conviction sealed under R.C. 2953.31. Thus, J.M. had one felony conviction and one misdemeanor conviction on his record and was, therefore, an eligible offender pursuant to R.C. 2953.31(A). The state's assignment of error is overruled.

{¶ 19} The state requests that we certify to the Supreme Court of Ohio a conflict between our decision today and the decision of the Fourth District Court of Appeals on the identical issue in *Clark*, concerning whether a violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31. While Loc.R. 14 of the Tenth District Court of Appeals requires the filing of a motion, we recognize the conflict as discussed in the state's brief. Based on the state's request in its brief and pursuant to S.Ct.Prac.R. 8.01 and Ohio Constitution, Article IV, Section 3(B)(4), we sua sponte certify the record of this case to the Supreme Court for review and final determination, recognizing that our judgment today is in conflict with the judgment of the Fourth District Court of Appeals in *Clark*, on the same question, that being:

Whether a violation of R.C. 4503.11, concerning failure to register a motor vehicle, a fourth-degree misdemeanor, must be counted as an offense when determining eligible offender status under R.C. 2953.31?

IV. CONCLUSION

{¶ 20} The state's assignment of error is overruled, and we affirm the decision of the Franklin County Court of Common Pleas. Being in conflict with the judgment of the Fourth District Court of Appeals in *Clark*, we hereby certify a conflict pursuant to S.Ct.Prac.R. 8.01 and Ohio Constitution, Article IV, Section 3(B)(4).

*Judgment affirmed;
sua sponte certify a conflict.*

SADLER, J., concurs in judgment only.
DORRIAN, J., concurs in part; dissents in part.

SADLER, J., concurring in judgment only.

{¶ 21} Based solely on the doctrine of stare decisis and the recent holding of this court in *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904, where the precise issue before us was previously decided, I concur with the lead decision in affirming the judgment of the trial court. Additionally, as we did in *Mooney*, I would expressly limit our holding to the facts presented herein.

{¶ 22} Finally, I concur in the decision to sua sponte certify a conflict to the Supreme Court of Ohio.

DORRIAN, J., concurring in part; dissenting in part.

{¶ 23} I respectfully dissent. Given the plain language of the relevant statutes, I would overrule our precedent in *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904, *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258, and *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744.

{¶ 24} I concur, however, with the sua sponte certification of this case to the Supreme Court of Ohio to determine a conflict between this decision and the decision of the Fourth District Court of Appeals in *State v. Clark*, 4th Dist. No. 11CA8, 2011-Ohio-6354.

Tenth District Court of Appeals

Date: 07-01-2015
Case Title: STATE OF OHIO -VS- JOHN S MERRION
Case Number: 15AP000077
Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Jennifer Brunner

Electronically signed on 2015-Jul-01 page 2 of 2

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

STATE OF OHIO, : SEALING CASE NO. 14EP-18
Plaintiff, :
Vs. : CRIMINAL CASE NO 89CR-482
John S. Merrion : JUDGE FAIS
Defendant, :

ENTRY SEALING RECORD OF CONVICTION PURSUANT TO R.C. 2953.32

In accordance with Section 2953.32, Ohio Revised Code, the Court finds that there are no criminal proceedings pending against the applicant, **John S. Merrion**, and that the sealing of the record of the applicant's CONVICTION, in Criminal Case number **89CR-482** is consistent with the public interest.

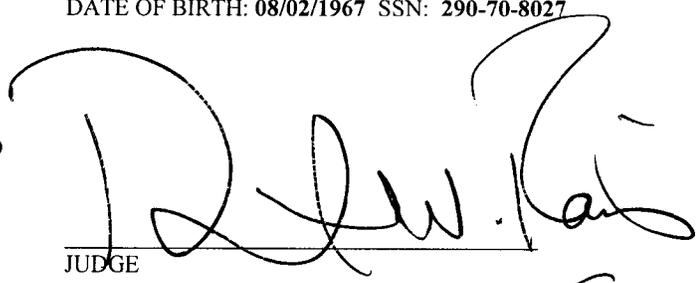
In accordance with Section 2953.32(C)(1)(c), Ohio Revised Code, the Court determines by clear and convincing evidence that the applicant has been rehabilitated to the Court's satisfaction.

It is therefore **ORDERED** that all official records pertaining to the applicant's conviction in Case number **89CR-482**, be sealed and, except as provided in R.C. 2953.32(F), all index references be deleted. This order does not exempt from use records and work product in this case in any civil litigation arising out of, or related to, the facts in this case, and such records and work product will be available for inspection and use for such purposes if necessary.

With the exceptions noted above, it is **FURTHER ORDERED** that no officer or employee of the State, or political subdivision thereof, except as authorized by Division (D), (E) and (G) of Section 2953.32 of the Ohio Revised Code, shall release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any department agency, or other instrumentality of the State, or any political subdivision thereof, any information or other data concerning the: arrest, complaint, indictment, dismissal, nolle, motion hearings, trial, adjudication or correctional supervision associated with Criminal Case **89CR-482**.

For purposes of identification, the following information is provided for the arresting agency and any custodians of arrest and adjudication data:

APPLICANT'S FULL NAME: **John S. Merrion**
ADDRESS: **4235 E. Broad St. Apt. 31**
CITY: **Whitehall** STATE: **OH** ZIP: **43213**
SEX: **Male** RACE: **Black** DATE OF BIRTH: **08/02/1967** SSN: **290-70-8027**
CHARGE: **RSP (F3)**
CONVICTED OF: **RSP(F3)**
DATE OF ARREST: **1/1989**
ARRESTING AGENCY: **CPD**
MUNICIPAL COURT CASE NUMBER: **1907/89**
OHIO B.C.I. NUMBER: **B274899**
F.B.I.: **109014KA1**


JUDGE

2-3-15

RON O'BRIEN, Franklin County Prosecutor

2953.31 Sealing of record of conviction definitions.

As used in sections 2953.31 to 2953.36 of the Revised Code:

(A) "Eligible offender" means anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction. When two or three convictions 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, they shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. However, a conviction for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or 4511.196 of the Revised Code, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a conviction.

(B) "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

(C) "Bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case as defined in Traffic Rule 2, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case.

(D) "Official records" has the same meaning as in division (D) of section 2953.51 of the Revised Code.

(E) "Official proceeding" has the same meaning as in section 2921.01 of the Revised Code.

(F) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(G) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

(H) "DNA database," "DNA record," and "law enforcement agency" have the same meanings as in section 109.573 of the Revised Code.

(I) "Fingerprints filed for record" means any fingerprints obtained by the superintendent of the bureau of criminal identification and investigation pursuant to sections 109.57 and 109.571 of the Revised Code.

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

Effective Date: 01-01-2004