

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellant,

-vs-

[J.M.],

Defendant-Appellee.

Case No.: 2015-1221

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

Court of Appeals
Case No. 15AP-77

BRIEF OF APPELLEE J.M.

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TABLE OF CONTENTS

	Page No.		
Table of Authorities	iii		
Statement of the Facts	1		
Argument	1		
Introduction.....	1		
First Response to State’s Proposition of Law			
A violation of R.C. 4503.11, concerning failure to register a motor vehicle, is now classified as a minor misdemeanor. As such, it does not constitute a “conviction” for determining whether an individual is an “eligible offender” for purposes of the provisions of R.C. 2953.51.....			
	4		
Second Response to State’s Proposition of Law			
A violation of R.C. 4503.11 is substantially similar to the administrative traffic offenses exempted from R.C. 2953.31’s definition of “conviction.” As such it should not be treated as a “conviction” for purposes of the provisions of R.C. 2953.51.....			
	5		
Conclusion	7		
Certificate of Service	8		
Appendix.....	9		
		Appendix Page	
		Number	
R.C. 1.11		A-1	
R.C. 2953.31.....		A-2	
R.C. 2953.32.....		A-4	
R.C. 2953.51.....		A-9	
R.C. 4503.11		A-10	
R.C. 4549.08		A-12	

TABLE OF CONTENTS---Cont'd

R.C. 5577.04(A).....A-13

S.Ct.Prac.R. 8.04.....A-15

TABLE OF AUTHORITIES

Page No.

Cases

Barker v. State, 62 Ohio St.2d 35, 42, 16 O.O.3d 22, 26, 402 N.E.2d 550, (1980)..... 5

In re Mooney, 10th Dist. No. 12AP-376, 2012-Ohio-5904 3

State ex rel. Gains v. Rossi, 86 Ohio St.3d 620, 622, 1999-Ohio-213, 716 N.E.2d 204 5

State v. Black, 10th Dist. No. 03AP-862, 2004-Ohio-5258..... 3

State v. Clark, 4th Dist. Athens No. 11CA8, 2011-Ohio-6354 4, 5, 6

State v. Ellis, 8th Dist. No. 83207, 2004-Ohio-3108 3

Statutes

R.C. 2953.31 *passim*

R.C. 2953.32(C)(1)(a),..... 2

R.C. 4503.11 *passim*

R.C. 4549.08 6

Rules

S.Ct.Prac.R. 8.04..... 5

STATEMENT OF FACTS

While Appellee accepts the State's Statement of Facts, a brief summary of the operative facts may assist the Court in determining the issues presented in this case:

- On July 19, 1989, Appellee J.M. pleaded guilty in Franklin County Common Pleas Court to one count of receiving stolen property;
- On or about January 27, 1998, J.M. pleaded guilty to an amended charge of negligent assault in case prosecuted in the Franklin County Municipal Court;
- On October 4, 2013, J.M. pleaded guilty to a charge of failing to renew his vehicle registration in violation of R.C. 4503.11. At that time, the offense was classified as a fourth degree misdemeanor;
- On January 10, 2014, J.M. filed an application with the Franklin County Common Pleas Court seeking to seal the records of the 1989 conviction for receiving stolen property. The State objected and argued that J.M. had too many conviction on his record;
- By Entry filed February 4, 2015, the Common Pleas Court granted J.M.'s application for sealing of his record;
- The State appealed to the Franklin County Court of Appeals. By Opinion rendered June 30, 2015, the Court of Appeals rejected the State's appeal and affirmed the trial court's order. The Court of Appeals also certified the matter to this Court for resolution of a conflict between the decision in this appeal and that of the Athens County Court of Appeals in *State v. Clark*, 4th Dist. Athens No. 11CA8, 2011-Ohio-6354;
- The decision of the Court of Appeals was journalized by Judgment Entry filed July 1, 2015. That same day relevant provisions of 2015 H.B. 53, §101.01 which, in part, reclassified the offense of failing to renew a vehicle registration in violation of R.C. 4503.11 from a fourth degree misdemeanor to a minor misdemeanor.

ARGUMENT

Introduction

Appellee J.M. pled guilty to receiving stolen property, s felony, on July 19, 1989 and was sentenced to 18months 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 violation of R.C. 4503.11. The issue presented by the State's appeal is whether this third conviction renders J.M. ineligible for sealing of the records of his felony conviction for RSP.

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). 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 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 *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 added.)

Thus, 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.

The specific question raised here is whether J.M.'s conviction for failing to register his vehicle in violation of R.C. 4503.11 is a second misdemeanor conviction that would render him ineligible for sealing the records of his felony conviction. The record sealing statutes do not treat all misdemeanor convictions the same. 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.

The Court of Appeals relied upon *State v. Ellis*, 8th Dist. No. 83207, 2004-Ohio-3108 (violation of a municipal ordinance prohibiting driving under suspension is not a “conviction” for R.C. 2953.31 purposes); *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258 (driving under FRA suspension not a conviction), *In re Mooney*, 10th Dist. No. 12AP-376, 2012-Ohio-5904 (violation of R.C. 4503.11 “administrative in nature” and not a “conviction”); *State v. Dominy*, 10th Dist. No. 13AP-124, 2013-Ohio-3744 (violation of R.C. 5577.04(A) for driving an overweight vehicle not a “conviction.”) The Court concluded 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 RC. 2953.31. The Court recognized that the Athens County Court of Appeals reached a contrary decision in *State v. Clark*, 4th Dist. Athens No. 11CA8, 2011-Ohio-6354. Finding its decision in this case to be in conflict with *Clark*, the Court of Appeals certified the following question to this Court for resolution:

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?

For the following reasons, Appellee J.M. asserts that the answer to this question is “no.”

First Response to State’s Proposition of Law

A violation of R.C. 4503.11, concerning failure to register a motor vehicle, is now classified as a minor misdemeanor. As such, it does not constitute a “conviction” for determining whether an individual is an “eligible offender” for purposes of the provisions of R.C. 2953.51.

The certified question is based upon a proposition that is no longer valid. As of July 1, 2015 (ironically, the very day on which the Court of Appeals certified the question to this Court), a violation of R.C. 4503.11 is a minor misdemeanor. See 2015 H.B. 53, §101.01. Since R.C. 2953.51 expressly exempts minor misdemeanors from the categories of offenses that qualify as “convictions” for purpose of the statutes, a violation of R.C. 4503.11 does not count as a conviction that could render an individual ineligible for record sealing.

The General Assembly has, in effect, answered the certified question. Given that a conviction for a violation of R.C. 4503.11 is now expressly exempted from the definition of “conviction” there is no need for this Court to address the issue. Given these

circumstances, the Court may find it appropriate to dismiss this case pursuant to S.Ct.Prac.R. 8.04 as improvidently certified.

Second Response to State's Proposition of Law

A violation of R.C. 4503.11 is substantially similar to the administrative traffic offenses exempted from R.C. 2953.31's definition of "conviction." As such it should not be treated as a "conviction" for purposes of the provisions of R.C. 2953.51.

This Court has held that the record 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-Ohio-213, 716 N.E.2d 204, citing R.C. 1.11 ("Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice..."); *Barker v. State*, 62 Ohio St.2d 35, 42, 16 O.O.3d 22, 26, 402 N.E.2d 550, (1980). It is therefore necessary to construe the provisions of R.C. 2953.31 liberally.

R.C. 2953.31 exempts offense defined in chapters of the Revised Code from the definition of "conviction." These Chapters are 4507 (driver's license law), 4510 driver's license suspension cancellation, revocation), 4511 (traffic laws—operation of motor vehicles), 4513 (traffic laws—equipment, loads) ,or 4549 (motor vehicle crimes.) These exempted offenses are akin to R.C. 4503.11 in that they are primarily administrative in nature.

Relying on the Fourth District's decision in *State v. Clark*, the State urges the Court to adopt a literal construction of the language of R.C. 2953.51, arguing that the statute does not expressly include R.C. 4503.11 in the list of offenses excluded from the statutory definition of "conviction." The literal interpretation flies in the face of the liberal construction required by R.C. 1.11 and this Court's decisions in *Rossi* and *Barker*.

The literal interpretation of these statutes would lead to unreasonable results. For example, R.C. 4549.08 prohibits operation of a motor vehicle with fictitious tags. Even though this offense punishes fraudulent conduct, it is nevertheless an offense within a Chapter of the Revised Code that R.C. 2953.51 excludes from the definition of conviction. It is unreasonable to interpret R.C. 2953.51 to include a negligent or inadvertent failure to register in violation of R.C. 4503.11 within the definition of “conviction” while excluding an offense based upon fraudulent conduct in the use of fictitious plates from that definition.

Further, as the Court of Appeals noted below, the decision in *State v. Clark* addressed a prior version of R.C. 2953.51 that was far more restrictive than subsequent versions of the statute. Under the prior law discussed in *Clark*, an eligible offender was someone “who has not 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....*” (Emphasis added.) Under this prior version *any other conviction* occurring either before or after the conviction the applicant sought to seal would render the applicant ineligible. The enactment of S.B. 337 in 2012—after the date of the *Clark* opinion—expanded access to the sealing of criminal records beyond that permitted by the version of the statute in effect at the time of *Clark*.

CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Court to affirm the judgment of the Franklin County Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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APPENDIX

	Appendix Page Number
R.C. 1.11	A-1
R.C. 2953.31.....	A-2
R.C. 2953.32.....	A-4
R.C. 2953.51.....	A-9
R.C. 4503.11	A-10
R.C. 4503.11	A-10
R.C. 4549.08	A-12
S.Ct.Prac.R. 8.04.....	A-15