

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-453
v.	:	(C.P.C. No. 07CR-5018)
	:	
Susan K. Streets,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 19, 2009

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*, for appellee.

Yavitch & Palmer Co., L.P.A., and *Jeffery A. Linn, II*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, Susan K. Streets ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying her application to seal the record.

{¶2} Appellant was indicted on July 16, 2007, for one count of theft, a felony of the fourth degree in violation of R.C. 2913.02. The facts underlying the indictment are as follows. Appellant was employed as a nurse for Mount Carmel Hospice when, in the course of her employment, she misappropriated hydrocodone from a hospice patient. On

January 16, 2008, appellant was granted treatment in lieu of conviction. Appellant successfully completed the treatment, and, accordingly, the trial court dismissed the theft charge on February 2, 2009. On February 18, 2009, appellant filed an application to seal the record pursuant to R.C. 2953.52. Plaintiff-appellee, State of Ohio ("appellee"), opposed the application, arguing the government had an interest in maintaining public access to the records and that appellant had not met her burden of establishing that expungement was warranted. After a hearing, the trial court denied appellant's application.

{¶3} Appellant timely appeals and brings the following assignment of error for our review:

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S APPLICATION FOR EXPUNGEMENT BECAUSE APPELLANT WAS ELIGIBLE BY STATUTE, WITH NO LEGITIMATE STATE INTEREST FOR DENIAL, AND APPELLANT HAS SUCCESSFULLY COMPLETED REHABILITATION TREATMENT IN LIEU OF CONVICTION.

{¶4} Pursuant to R.C. 2953.52(A)(1), any person who has been found not guilty of an offense or has had a criminal indictment dismissed may apply to the court for an order to seal the records of those matters. Upon filing such an application, R.C. 2953.52(B) requires that the trial court hold a hearing to: (1) determine whether the applicant was found not guilty or whether the complaint, indictment, or information was dismissed; (2) determine whether criminal proceedings are pending against the applicant; and (3) consider, if such are filed, the objections of the prosecutor. Finally, the trial court is required to weigh 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). If the trial court determines that appellant's interests in having the records sealed are not outweighed by the government's interests in maintaining the records, then the trial court shall issue an order sealing the records. R.C. 2953.52(B)(3).

{¶5} " 'Expungement 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, 2000-Ohio-474, quoting *State v. Hamilton* (1996), 75 Ohio St.3d 636, 639. "Typically, the public interest in retaining records of criminal proceedings, and making them available for legitimate purposes, outweighs any privacy interest the defendant may assert." *State v. Brown*, 10th Dist. No. 07AP-255, 2007-Ohio-5016, ¶6, quoting *City of Pepper Pike v. Doe* (1981), 66 Ohio St.2d 374, 377; *State v. Price* (Oct. 19, 2000), 10th Dist. No. 00AP-243.

{¶6} The decision whether to grant or deny an application to seal criminal records lies within the sound discretion of the trial court. *State v. Haney* (1991), 70 Ohio App.3d 135, 138. A reviewing court may only reverse such a determination upon a showing of an abuse of that discretion. *Id.* An abuse of discretion connotes that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Id.* *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶7} The burden is on the applicant to demonstrate that his or her interests in having the records sealed are equal to or greater than the government's interests in maintaining those records. *State v. Newton*, 10th Dist. No. 01AP-1443, 2002-Ohio-5008, ¶9, quoting *Haney* at 138. Here, we find the trial court did not abuse its discretion when it determined that appellant did not meet her burden.

{¶8} At the hearing, appellant explained that her recovery from her addiction is "pretty solid" as she attends six meetings per week. Appellant stated that by her own choice she is no longer practicing nursing, but that she would want "to be maybe in the healthcare business" in some facet. (Tr. 6.) Appellant further explained she sought expungement because she was finding it difficult to obtain employment.

{¶9} During the hearing, the trial court indicated that due to the nature of the offense, there were concerns about appellant's desire to work in the healthcare industry. Further, the court stated:

I applaud what you have done so far in recovering from the addiction, from owning up to your responsibilities, but at this particular juncture I am not comfortable with expunging your record. I think it has been a short period of time since you completed the treatment in lieu of intervention. If I am not mistaken, it was completed in February of this year, and so at this point I am not going to grant expungement.

(Tr. 7.)

{¶10} Appellant argues the trial court's decision was unreasonable. According to appellant, concerns of her working in the healthcare industry are largely irrelevant because all of her actions are documented with the Ohio Nursing Board, and she no longer has her nursing license. Appellant also contends the trial court acted unreasonably when it disregarded the fact that she completed treatment in lieu of conviction. We, however, do not find appellant's position well-taken.

{¶11} Our review of the record indicates that the trial court complied with all statutory requirements by holding a hearing, asking questions, considering the arguments and evidence, and weighing the interests of appellant against those of the government. See *In re Page*, 10th Dist. No. 08AP-966, 2009-Ohio-1565 (finding no abuse of discretion

in denying an expungement application where trial court complied with all statutory requirements). Additionally, the trial court was aware of the circumstances surrounding the original charge and its subsequent dismissal upon completion of treatment in lieu of conviction. Regardless of whether this court might have ruled differently, having reviewed the matter, we are unable to conclude that the trial court abused its discretion in denying appellant's application for expungement.

{¶12} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.
