COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2001 CR 000517**
vs.	:	**Judge McBride**
DOUGLAS M. MURPHY	:	**DECISION/ENTRY**
Defendant	:	

David S. McCune, assistant prosecuting attorney for the state of Ohio, 123 North Third Street, Batavia, Ohio 45103.

Edwin L. Hoseus, Jr., attorney for the defendant Douglas M. Murphy, 741 Milford Hills Drive, Milford, Ohio 45150-1446.

This cause is before the court for consideration of an application for sealing of record Involving conviction filed by the defendant Douglas Murphy.

The court scheduled and held hearings on the application on December 11, 2012 and January 15, 2013. At the conclusion of the second hearing, the court took the issues raised by the application under advisement.

Upon consideration of the application, the record of the proceeding, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

On July 17, 2002, the defendant Douglas Murphy entered a plea of guilty and was found guilty in the present case of one count of burglary in violation of R.C. 2911.12(A)(4), a felony of the fourth degree.[1]

The defendant filed the present application to seal the record of this case on November 9, 2012. The report prepared by the Probation Department at the direction of the court indicates that the defendant was convicted of the following offenses in addition to the offense in the present case: (1) one count of receiving stolen property, a misdemeanor of the first degree, in Hamilton County, Ohio on May 26, 1992 and (2) one count of OVI, also a misdemeanor, in Hamilton County on March 13, 1998.

At the January 15th hearing on this matter, the state argued that the defendant does not meet the definition of an "eligible offender" under R.C. 2953.31(A) because he has two misdemeanor convictions and one felony conviction. Counsel for the defendant argues that an offender with two misdemeanor convictions and one felony conviction does meet the definition of an "eligible offender" as set forth in the statute.

[1] Plea of Guilty, filed July 17, 2002; and, Amended Judgment Entry Sentencing Defendant to Community Control at pg. 1, filed September 13, 2002.

LEGAL ANALYSIS

Pursuant to R.C. 2953.32(A)(1):

> "* * * [A]n 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. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor."

R.C. 2953.31(A) defines "eligible offender" as follows:

> "'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. 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.
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> 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 prior version of the statute, which was in effect until September 28, 2012, stated as follows:

> "'First offender' means anyone 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 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 previous or subsequent 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 previous or subsequent conviction."

"The interpretation of a statute is a matter of law * * *."[2] "A court's primary duty when construing a statute is to give effect to the intention of the legislature enacting it."[3] However, "[w]here the language of a statute is plain and unambiguous and conveys a clear and definitive meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted.' "[4] "[W]here a statute is found to be subject to various interpretations, a court called upon to interpret its provisions, may invoke rules of statutory construction in order to arrive at its legislative intent."[5]

The defendant's OVI conviction would be under R.C. 4511.19 which, pursuant to R.C. 2953.31(A), shall be considered a conviction. Furthermore, the conviction for receiving stolen property is not a minor misdemeanor conviction and also shall be considered a conviction.

As set forth above, the current version of the statute states that an "eligible offender" is "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." The defendant argues that the one felony conviction, two misdemeanor

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[2] *Dikong v. Ohio Supports, Inc.* (Jan. 11, 2013), 1st Dist. No. C-120057, 2013-Ohio-33, ¶ 16, citing *Cincinnati v. State,* 1st Dist. No. C110680, 2012-Ohio-3162, 2012 WL 2866092, ¶ 9.

[3] Id., citing, *Bank of America, N.A. v. Omega Design Build Group LLC.,* 1st Dist. No. C–100018, 2011-Ohio-1650, 2011 WL 1261301, ¶ 26–27, quoting *Basic Distrib. Corp. v. Ohio Dept. of Taxation,* 94 Ohio St.3d 287, 291, 2002-Ohio-794, 762 N.E.2d 979.

[4] Id. at ¶ 18, quoting, *Sears v. Weimer,* 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus.

[5] Id., citing, *Cline v. Ohio Bur. of Motor Vehicles,* 61 Ohio St.3d 93, 96, 573 N.E.2d 77 (1991).

convictions, and one felony and one misdemeanor designations refer to convictions *in addition to* the conviction sought to be sealed.

However, the statute as written does not state that an offender may have one felony conviction, two misdemeanor convictions, or one felony and one misdemeanor conviction *other than* the conviction they are seeking to seal. To make the finding urged by the defendant, the court would have to read the phrase “other than the conviction sought to be sealed” into the language of the statute. However, there is no basis for the court to do so as the language of the statute is not ambiguous. The clear language of the statute can only be read to state that an eligible offender is anyone convicted of an offense who has not more than one felony conviction, not more than two misdemeanor convictions for different offenses, or not more than one felony and one misdemeanor conviction. There is no basis for the court to read that language as signifying that “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” is meant to refer to convictions in addition to the conviction sought to be sealed. As such, the language of the statute as written is not subject to two interpretations and, therefore, is not ambiguous.

Since the language of the statute is not ambiguous, this court has no basis to look at outside sources to interpret the language. The court does note, however, that it did search the legislative record of Senate Bill 337 for clarification of this issue and was unable to find any such clarification. The report issued by the Ohio Legislative Service Commission on the relevant portion of Senate Bill 337 and its various incarnations also

failed to address this issue. Regardless, the court reiterates that the language of the statute as written is not ambiguous on its face and, as such, there is no basis for the court to seek guidance as to the meaning of the statute outside its own language.

Due to the fact that the defendant was convicted of two different misdemeanor offenses in addition to the felony offense in the case at bar, the defendant does not meet the definition of an "eligible offender" as set forth in the current version of R.C. 2953.31(A).

CONCLUSION

Based on the above analysis, the defendant's application to seal the record of this case is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED:______________________ ________________________________
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 15th day of February 2013 to all counsel of record and unrepresented parties.

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Administrative Assistant to Judge McBride