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2015 JUN 10 AM 11:42

BARBARA A. WEDENBEN
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH.

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO	:	
Plaintiff	:	CASE NO. 1998 CR 05224
vs.	:	Judge McBride
JEREMY T. BECK	:	DECISION/ENTRY
Defendant	:	

Carol A. Rowe, assistant prosecuting attorney for the State of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Edward Roberts, attorney for the defendant Jeremy T. Beck, 810 Sycamore Street, Cincinnati, Ohio 45221.

This cause is before the court for consideration of an application for sealing of record filed by the defendant Jeremy T. Beck on March 17, 2015.

The court scheduled and held a hearing on the application on April 22, 2015. At the conclusion of that hearing, the court gave counsel additional time to brief the issues raised by the application. No memoranda were filed by either party and the application was taken under advisement on June 3, 2015.

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

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The defendant Jeremy T. Beck was charged in a one-count indictment in the present case with Obstructing Justice in violation of R.C. 2921.32(A)(5), a felony of the fifth degree. On October 14, 1998, the defendant tried his case to the court and was found guilty of one count of obstructing justice as charged in the indictment.¹ The defendant was subsequently sentenced to a three-year term of community control.²

The defendant has now filed an application to seal the record of the case at bar.

LEGAL ANALYSIS

Expungement "is a state-created act of grace and 'is a privilege, not a right.'"³ "A trial court may only grant expungement when an applicant meets all of the statutory requirements."⁴

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

¹ Judgment Entry on Verdict and Continuing Sentencing, filed October 21, 1998; and Judgment Entry Sentencing Defendant to Community Control, filed December 9, 1998.

² Judgment Entry Sentencing Defendant to Community Control, filed December 9, 1998.

³ *State v. Williamson*, 10th Dist. Franklin No. 12AP-340, 2012-Ohio-5384, ¶ 10, quoting *State v. Simon*, 87 Ohio St.3d 531, 533, 721 N.E.2d 1041 (2000).

⁴ *Id.*, citing *State v. Hamilton*, 75 Ohio St.3d 636, 640, 665 N.E.2d 669 (1996).

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."

An "eligible offender" is defined by R.C. 2953.31(A) as follows:

"* * * [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, 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."

A report prepared by the Adult Probation Department regarding the defendant's criminal history shows that the defendant has the following convictions on his record, aside from minor misdemeanors: (1) the conviction in the present case of obstructing justice, a felony of the fifth degree; (2) a conviction in Clermont County Municipal Court Case Number 1998 CRB 2008 for furnishing beer to a minor, a misdemeanor of the first degree; and (3) a conviction in Hamilton County Municipal Court Case Number 2008 CRB 26700 for fishing without a license, a misdemeanor of the fourth degree.

The furnishing "of liquor to a minor is a violation of R.C. 4301.69, a misdemeanor of the first degree."⁵ Therefore, the offense is not a minor misdemeanor, nor is it included as one of the offenses expressly excluded from consideration under R.C. 2953.31. As a result, this offense counts as a misdemeanor conviction on the defendant's record for the purpose of considering the present application.

R.C. 1533.32 provides that "* * * no person * * * shall take or catch any fish by angling in any of the waters in the state or engage in fishing in those waters without a license." R.C. 1531.02 provides in pertinent part that "[a] person doing anything prohibited or neglecting to do anything required by this chapter or Chapter 1533. of the Revised Code or contrary to any division rule violates this section." R.C. 1531.99(A) provides that "[w]hoever violates section 1531.02 of the Revised Code * * * is guilty of misdemeanor of the fourth degree." Therefore, the offense is not a minor misdemeanor, nor is it included as one of the offenses expressly excluded from consideration under R.C. 2953.31. As a result, this offense counts as a misdemeanor conviction on the defendant's record for the purpose of considering the present application.

⁵ See, *State v. Habbouche*, 1st Dist. Hamilton No. C-840954, 1985 WL 11479, *1 (Sept. 25, 1985).

As such, setting aside convictions for minor misdemeanors, the defendant has one felony conviction and two misdemeanor convictions on his record. R.C. 2953.31(A) defines an “eligible offender” as “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.”

If the felony conviction in this case were not to count in determining the defendant’s eligibility, he would be eligible because of having not more than two misdemeanor convictions. However, this court has previously held that the language of R.C. 2953.31(A) does not support a conclusion that a defendant may have 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 addition to* the conviction sought to be sealed.⁶ A copy of that decision is attached hereto. Instead, this court has concluded that the language of R.C. 2953.31(A) is unambiguous and 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 total.⁷

The defendant is limited to having one felony conviction and one misdemeanor conviction, but instead has one felony conviction and two misdemeanor convictions. Therefore, the defendant does not meet the definition of an “eligible offender” set forth in R.C. 2953.31(A).

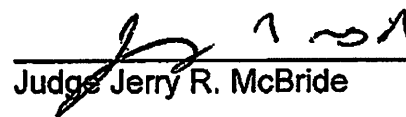
⁶ *State v. Murphy*, Clermont County Court of Common Pleas Case No. 2001 CR 000517, decision filed February 15, 2013; see, also, *State v. Mullin*, 12th Dist. Clermont No. 2013 CA 04 033 (Mar, 3, 2014).

⁷ *Id.*

R.C. 2953.32(A)(1) provides that only an eligible offender may apply for the sealing of his record. If an individual is not an eligible offender, a trial court is without jurisdiction to grant an expungement application.⁸ Therefore, this court has no discretion to consider the application and it must be denied.

CONCLUSION

The defendant Jeremy T. Beck's application to seal record is not well-taken and is hereby denied.



Judge Jerry R. McBride

⁸ See, e.g., *State v. Kelly* (Oct. 28, 2002), 12th Dist. No. CA2002-04-041, 2002-Ohio-5887, ¶ 15.