

[Cite as *Beachwood v. D.Z.*, 2010-Ohio-3320.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94024

CITY OF BEACHWOOD

PLAINTIFF-APPELLEE

vs.

D.Z.

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Shaker Heights Municipal Court
Case No. 03 CRB 00388

BEFORE: Rocco, P.J., Celebrezze, J., and Sweeney, J.

RELEASED: July 15, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant, D.Z.,¹ appeals from the Shaker Heights Municipal Court's decision to deny his motion to seal his criminal record. He argues that the court erred by failing to make written findings and abused its discretion by denying his motion. We agree with appellant that the court erred by failing to make written findings stating its reasons for denying his motion. Therefore, we reverse and remand for further proceedings.

{¶ 2} Appellant entered a no contest plea to a charge of public indecency in the Shaker Heights Municipal Court and was found guilty. He was sentenced on July 29, 2003 to a \$700 fine, \$350 of which was suspended, 30 days in jail, also suspended, and 12 months of active probation with the condition that he obtain a psychiatric evaluation and treatment as prescribed through that evaluation.

{¶ 3} On June 15, 2009, appellant filed a motion for the court to seal the record of this misdemeanor conviction. Although the city did not file an objection to this request, appellant's probation officer did file an objection, noting that there was a child-witness to this crime who was under the age of 18.

¹The anonymity of the defendant is preserved in accordance with this court's Guidelines for Sealing Records in Criminal Appeals.

{¶ 4} The court conducted a hearing on the motion on September 1, 2009. The court granted appellant permission not to attend the hearing because he was living in New Jersey. However, counsel did appear on appellant's behalf. The city prosecutor also appeared. Appellant's counsel informed the court that appellant was a first-time offender and had not committed any other crimes. This offense occurred more than one year before the hearing. Since the time of the offense, appellant obtained his medical degree. He was completing his residency at the time of the court's hearing. Appellant's counsel argued that the government had no legitimate reason to maintain the record of this offense, because it was a one-time occurrence and there was no indication that appellant would re-offend. The city objected that it was inappropriate to seal the record because the act of indecency occurred in front of an eight-year-old child. The court also noted that the police report indicated that the acts of indecency occurred on an almost daily basis over a three-week period, and it "didn't seem like he thought he was alone."

{¶ 5} At the conclusion of the hearing, the court stated that it was "not sure which way I'm going to go right now" but "I will make a ruling before the day is over." The court then entered an order on September 1, 2009, which stated:

“[Defendant] was not present but was represented by counsel. The court heard the statements of defense counsel and the statement of the prosecution, who objected to [defendant’s] motion to seal the records.

“The motion is denied.”

{¶ 6} Appellant’s motion to seal the record of his misdemeanor conviction was governed by R.C. 2953.32. This statute permits an offender to make an application to seal a criminal record “at the expiration of one year after the offender’s final discharge if convicted of a misdemeanor.” R.C. 2953.32(A)(1). The court must conduct a hearing, and determine (a) “whether the applicant is a first offender,” (b) “whether criminal proceedings are pending against the applicant,” and (c) “whether the applicant has been rehabilitated to the satisfaction of the court.” R.C. 2953.32(C)(1). The court must further consider “the reasons against granting the application specified by the prosecutor” and “weigh the interests of the applicant in having the records pertaining to the applicant’s conviction sealed against the legitimate needs, if any, of the government to maintain those records.” *Id.* The court must seal the records if the court determines that the applicant is a first offender and has no pending criminal proceedings, and that the applicant’s interests in having the record sealed are not outweighed by a legitimate government need to maintain the record. R.C. 2953.32(C)(2).

{¶ 7} “[T]he trial court has a significant amount of discretion in determining whether to seal an applicant’s record of conviction.” *State v. M.D.*, Cuyahoga App. No. 92534, 2009-Ohio-5694, ¶17. Nevertheless, the court must “place its findings on the record for review.” *Id.*, ¶19. Here, the trial court did not state its findings on the record, either at the hearing, cf. *State v. Smith*, Cuyahoga App. No. 91853, 2009-Ohio-2380, ¶12; *State v. Gerber*, Cuyahoga App. No. 87351, 2006-Ohio-5328, ¶13, or in its journal entry, *State v. Bates*, Ashland App. No. 03-COA-057, 2004-Ohio-2260, ¶24. We must reverse the summary denial of appellant’s motion and remand for the court to state its findings and reasons for its ruling on the record. *State v. M.D.*

{¶ 8} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. Case remanded to the trial court for further proceedings.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
JAMES J. SWEENEY, J., CONCUR