

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JOHN L. WATKINS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0024

Motion to Certify a Conflict

BEFORE:

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Denied.

Atty. Paul J. Gains, Mahoning County Prosecutor and *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Atty. Rhys B. Cartwright-Jones, 42 N. Phelps Street, Youngstown, Ohio 44503-1130, for Defendant-Appellant.

Dated: June 30, 2020

PER CURIAM

{¶1} On March 24, 2020, we released our Opinion in *State v. Watkins*, 2020-Ohio-1366, -- N.E.3d -- (7th Dist.). On April 3, 2020, Appellant John L. Watkins filed a motion to certify a conflict to the Ohio Supreme Court pursuant to App.R. 25(A). The state filed a response to Appellant's motion on April 20, 2020. As our Opinion does not conflict with *Mayfield Hts. v. N.K.*, 8th Dist. Cuyahoga No. 93166, 2010-Ohio-909 as Appellant alleges, we deny his motion to certify a conflict to the Ohio Supreme Court.

{¶2} A motion to certify a conflict is governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides: "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination."

{¶3} Pursuant to Ohio law, "there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper." *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 613 N.E.2d 1032, (1993), paragraph one of the syllabus. We have adopted the following requirements from the Supreme Court:

[A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of the court of appeals of another district and the asserted conflict must be "upon the same question." Second, the alleged

conflict must be on a rule of law—not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.)

Id. at 596.

{¶4} The issue at the crux of this appeal is whether an order granting expungement to an applicant who is later determined to be an ineligible offender is voidable, and only subject to challenge by means of a direct appeal or a properly filed Civ.R. 60(B) motion by the state.

{¶5} Appellant contends that our Opinion is in conflict with *Mayfield Hts.*, where the Eighth District concluded that its longstanding holding in *State v. Thomas*, 64 Ohio App.2d 141, 411 N.E.2d 85 (8th Dist.1979) was superseded by caselaw decided by the Ohio Supreme Court. Specifically, in *Mayfield Hts.* the Eighth District determined the *Thomas* rule, as it had become known, holding that expungement orders for an ineligible offender were void rather than voidable was no longer valid in light of the Ohio Supreme Court’s clarification of “void” and “voidable” orders. See *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11; *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851.

{¶6} The state responds that no conflict of law exists because the cases are distinguishable based on their facts.

{¶7} In *Pratts*, the Supreme Court explained, “[t]here is a distinction between a court that lacks subject-matter jurisdiction over a case and a court that improperly exercises that subject-matter jurisdiction once conferred upon it.” *Pratts* at ¶ 10.

Additionally, in *In re J.J.*, the Court concluded that an error involving the manner in which a court exercises its jurisdiction renders it voidable. An order is void only where the court never actually had subject-matter jurisdiction. *In re J.J.*, paragraph one of the syllabus.

{¶8} We agree with the Eighth District’s holding in *Mayfield Hts.*, as we stated in our underlying decision in this appeal:

[A] decision to seal criminal records of an ineligible defendant is voidable not void, pursuant to the Ohio Supreme Court holdings in *Pratts* and *In re J.J.* Hence, the question before us is whether the state’s motion in the instant matter, filed some two years after judgment, can be construed as a request pursuant to Civ.R. 60(B) and whether it was properly granted by the trial court.

Watkins at ¶ 22.

{¶9} We concluded that the motion filed by the state seeking to open Appellant’s criminal records was properly construed as a request pursuant to Civ.R. 60(B) and that request was properly granted by the trial court. Again, relief was appropriate where the trial court failed to meet or apply any of the requirements mandated by statute prior to sealing a criminal record. Relief was granted based on the unique facts of this case when applying the relevant law.

{¶10} Our holding in *Watkins* is not in conflict with the Eighth District’s holding in *Mayfield Hts.* To the contrary, in deciding this case we expressly relied on *Mayfield Hts.* as a correct statement of the law regarding void and voidable judgments as they relate to cases involving sealing the criminal records of ineligible offenders. We did not decide

that the trial court's order in this matter was void. We held that the order was voidable and that the state took the appropriate action, based on the facts of this case, in requesting that the voidable order be overturned. Accordingly, our decision in this case does not conflict with the holding in *Mayfield Hts.* and Appellant's motion has no merit.

{¶11} Therefore, Appellant's motion to certify a conflict is denied.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.

[Cite as *State v. Watkins*, 2020-Ohio-3626.]