[Cite as *State v. Watkins*, 2020-Ohio-1366.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JOHN WATKINS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0024

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case Nos. 2008 CR 1174; 2009 CR 142

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

JUDGMENT:
Affirmed.

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: March 24, 2020

WAITE, P.J.

{¶1} Appellant John Watkins takes issue with the January 22, 2019 Mahoning County Common Pleas Court judgment entry granting the state's motion to unseal his expunged criminal records. For the reasons that follow, the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Appellant was convicted and sentenced in two cases in the trial court after entering guilty pleas. In the first, case number 2008 CR 1174, Appellant was convicted and sentenced to five years of incarceration on each of two counts of robbery in violation of R.C. 2911.02(A)(2)(B), felonies of the second degree. The sentences were to be served concurrently, for a total prison term of five years. In the second case, 2009 CR 142, Appellant was convicted and sentenced to 12 months on each of six counts of identity fraud in violation of R.C. 2913.49(A)(B)(2)(I)(1)(2), felonies of the fifth degree. These were also to be served concurrently, for a stated prison term of 12 months. The sentences in these in two matters were ordered to be served consecutively to one another, for a total combined prison term of six years. Appellant appealed both cases to this Court, but voluntarily dismissed them both. Subsequent to these voluntary dismissals, Appellant filed several postconviction motions in each case, detailed below.

2008 CR 1174

{¶3} In case number 2008 CR 1174, Appellant filed a request for modification of sentence on February 3, 2010, approximately two weeks after sentencing. That motion was overruled. On August 9, 2010 Appellant filed a motion for judicial release. The state

did not file a written response. In a judgment entry dated September 17, 2010, the trial court noted that the state was opposed to judicial release and overruled the motion. Appellant filed a second motion for judicial release on January 26, 2011. The state did not respond. The trial court ordered an institutional conduct report from Grafton Correctional Institution. A hearing was held on April 5, 2011 and the trial court granted the motion for judicial release, imposing five years of community control sanctions. As we later address, this sanction was ordered to be served concurrently with relief granted in case number 2009 CR 142.

{¶4} On January 24, 2013, Appellant filed a motion for early termination of his community control sanctions. No response was filed by the state. The trial court overruled the motion. Appellant filed a motion to reconsider and again the state filed no response. After a hearing, the trial court granted Appellant's motion for early termination on June 7, 2013, because Appellant planned to relocate to Nevada. Community control sanctions were ordered to be terminated when Appellant relocated to Nevada, as planned.

2009 CR 142

{¶5} Appellant's filings in 2009 CR 142 follow a nearly identical timeline. Appellant filed a motion for judicial release on August 9, 2010. The state did not file a written response motion. In a judgment entry dated September 17, 2010, the trial court noted the state was opposed to judicial release and overruled Appellant's motion. In early 2011 Appellant again sought judicial release and the state filed no response. The trial court ordered an institutional conduct report of Appellant from Grafton Correctional Institution. A hearing was held on April 5, 2011. The trial court granted Appellant's motion

for judicial release and imposed five years of community control sanctions. These sanctions were ordered to be served concurrently with the community control imposed in 2008 CR 1174, discussed above.

{¶6} As he had in case number 2008 CR 1174, on January 24, 2013 Appellant filed a motion for early termination of his community control sanctions. No response was filed by the state. The trial court overruled the motion. Appellant filed a motion to reconsider without response from the state. After a hearing, the trial court granted Appellant's motion for early termination on June 7, 2013, and community control sanctions were ordered to be terminated when Appellant relocated to Nevada.

Appellant's Applications To Seal His Criminal Record

{¶7} On April 9, 2015, after his move to Las Vegas, Nevada, Appellant filed a motion to vacate his guilty pleas in both cases. On January 29, 2016, he filed applications seeking to have his criminal records in both matters sealed, explaining that he had established himself in Las Vegas in the hospitality industry. The record does not contain a response by the state. On February 12, 2016, the trial court denied Appellant's motion to vacate and his applications for expungement. On May 19, 2016, Appellant filed motions seeking reconsideration of the applications to seal his records in these matters. In a single entry dated June 22, 2016, without holding a hearing, the trial court ordered the records in both cases sealed. We note that the state did file motions in opposition to Appellant's motions to reconsider, but these were not filed until June 28, 2016. There was no direct appeal of the trial court's judgments.

{¶8} Almost two years later, on June 26, 2018, the state filed a motion to unseal Appellant's records in both cases, with a memorandum in support. The state's motions

did not specifically invoke Civ.R. 60(B), but cited two bases: (1) that Appellant was an ineligible offender pursuant to the statutes because he had been convicted of multiple felonies which included offenses of violence; and (2) because Appellant was an ineligible offender, the trial court lacked jurisdiction to order the records sealed, rendering the June 22, 2016 judgments void. Appellant filed briefs in opposition on July 2, 2018 and requested a hearing. The state filed replies to Appellant's briefs in opposition. In a single-page judgment entry dated January 22, 2019, filed in both cases, the trial court noted that in reliance on their legal memorandum, the parties had elected to forego a hearing on the state's motion to unseal the records. After a review of the matter, the trial court held:

> The Court finds the State initially failed to respond to the request from the Court for its position on the sealing of the records. However, upon review of the State's now submitted brief the Court finds the State's Motion to be meritorious. Therefore the Court order [sic] the unsealing of Defendant, John Watkins records since it was in error to seal them originally.

(1/22/19 J.E.)

{¶9} Appellant raises a single assignment of error on appeal.

ASSIGNMENT OF ERROR

> The trial court erred in re-opening appellant's criminal convictions years after sealing them.

{¶10} Appellant argues the trial court erred in unsealing his criminal records because the trial court had no jurisdiction to vacate its earlier order sealing these records,

and because he claims the records were properly sealed by the court based on unusual and exceptional circumstances pursuant to *Schussheim v. Schussheim,* 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446. In response, the state contends the trial court's order sealing Appellant's records is void for lack of jurisdiction, and thus can be vacated at any time without regard to any direct appeal or Civ.R. 60(B) time limitations. The state also contends that the trial court improperly sealed Appellant's records, as Appellant was an ineligible offender pursuant to all relevant and applicable statutes.

Jurisdiction

{¶11} Before turning to the parties' arguments on the merits, the threshold matter of the trial court's jurisdiction must be examined. Both parties claim the court lacked jurisdiction, but at different times and for different reasons. Jurisdiction provides the trial court with statutory or constitutional power to adjudicate a case. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11. There are two types of jurisdiction: subject matter, and over the person. *Id.* As the parties raise no question involving personal jurisdiction, it will not be addressed. Subject matter jurisdiction involves the court's power to adjudicate the merits of a case. Subject matter jurisdiction cannot be waived and can be challenged at any time in the process. If the court at issue lacks the underlying subject matter jurisdiction, any judgment issued by that court is void and can be vacated at any time. *Pratts* quoting *United States v. Cotton,* 535 U.S. 625, 630; *Patton v. Diemer,* 35 Ohio St.3d 68, paragraph three of the syllabus.

{¶12} Subject matter jurisdiction also involves the court's ability to exercise its jurisdiction within a particular case, and involves the court's authority to determine a specific case or a specific issue arising in a case even though the court may have subject

matter jurisdiction over the general class of cases. *Pratts* at ¶ 12. If a trial court which otherwise has underlying subject matter jurisdiction has exercised jurisdiction over a particular case when it should not have, any subsequent judgment issued in the matter is voidable. *Id.* While a void judgment may be vacated at any time, a voidable judgment may be challenged only on direct appeal of that judgment, or pursuant to the requirements set forth in Civ.R. 60(B). *Id.*

{¶13} Some Ohio courts have relied on *State v. Thomas*, 64 Ohio App.2d 141, 411 N.E.2d 85 (8th Dist.1979) for the proposition that if a trial court issues an order sealing a defendant's record when the offender is statutorily ineligible for such order, this order is void and can be vacated at any time. These cases rely on the fact that the trial court had no statutory authority to take the action in question. In *Thomas,* the state filed a motion to vacate a two-year-old expungement order after it was discovered that the applicant was not a first-time offender, and was therefore ineligible for expungement. *Id.* The newly-enacted expungement rules were interpreted by the Eighth District, which held that an applicant's status as a first-time offender was a jurisdictional requirement, necessary in order to seal the offender's record. *Id.* The *Thomas* court declared the expungement order at issue void, and vacated it for lack of jurisdiction. *Id.* at 145.

{¶14} The *Thomas* rule has been followed by other Ohio districts. *See, e.g.*, *McCoy*, at ¶ 11; *State v. Lovelace,* 1st Dist. Hamilton No. C-110715, 2012-Ohio-3797, 975 N.E.2d 567; *State v. Stephens,* 195 Ohio App.3d 724, 2011-Ohio-5562, 961 N.E.2d 734 (2nd Dist.); *State v. Potts,* 11th Dist. Trumbull Nos. 2001-T-0016, 2001-T-0017, 2001-Ohio-8828. However, many districts, including the Eighth District from which *Thomas* emanated, have abandoned the *Thomas* rule following the release of two cases by the

Ohio Supreme Court, *Pratts* and *In re J.J.,* 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, which further clarified the issue of void versus voidable judgments.

{¶15} In *Pratts*, the defendant pleaded guilty to aggravated murder with death penalty and firearm specifications. The defendant agreed to submit his plea to one judge rather than to a three-judge panel as required by the statute. The Supreme Court of Ohio held that the trial court lacked the legal authority to sentence the defendant under these circumstances. However, although the trial court erred in exercising its jurisdiction in this particular case by not appointing a three-judge panel, it did not divest itself of subject matter jurisdiction generally over pleas in death penalty cases. *Pratts* at the syllabus. The Court defined it as an error in the exercise of the trial court's existing subject matter jurisdiction that was voidable on direct appeal, but not subject to a collateral attack. *Id.* at ¶ 32, 36. 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." *Id.* at ¶ 10. The court noted that distinguishing between them is important because, " '[i]t is only when the trial court lacks subject matter jurisdiction that its judgment is void; lack of jurisdiction over the particular case merely renders the judgment voidable.' " *Id.* at ¶ 12, quoting *State v. Parker,* 95 Ohio St.3d 524, 2002-Ohio-2833, 769 N.E.2d 846, ¶ 22.

{¶16} In another case clarifying void versus voidable judgments, *In re J.J., supra*, the Ohio Supreme Court relied on its holding in *Pratts* and concluded that a magistrate's order transferring a permanent custody case to a visiting judge was an error involving the trial court's exercise of jurisdiction over that particular case, rendering it voidable, but that

the error did not divest the court of subject matter jurisdiction such that the resulting order was void.

{¶17} In abrogating its *Thomas* rule, the Eighth District held:

> After reviewing the relatively recent Ohio Supreme Court's jurisdictional analyses in *Pratts* and *In re J.J.,* * * * we find that the 30-year-old rule of *Thomas* has been superseded by a more accurate and thorough understanding of the nuances of "jurisdiction". Thus, we hold that an order granting expungement to an applicant who is later discovered to be ineligible for expungement because he or she is not a first offender is voidable. It is therefore only subject to attack by direct appeal or a Civ.R. 60(B) motion.

Mayfield Hts. v. N.K., 8th Dist. Cuyahoga No. 93166, 2010-Ohio-909, ¶ 29.

{¶18} There is no dispute in this case that the trial court has general subject matter jurisdiction over an expungement application. The state does not contend that applications for expungement are not appropriate for the common pleas court from whence the convictions arose. The state argues, however, that Appellant was an ineligible offender who did not qualify for expungement and, thus, any judgment granting expungement was void. The state relies on a number of cases from the Tenth District concluding that judgments sealing the records of ineligible offenders are void and not voidable, and can be vacated at any time. *State v. Tauch,* 10th Dist. Franklin No. 13AP-327, 2013-Ohio-5796; *State v. Barnes,* 10th Dist. Franklin No. 05AP-355, 2005-Ohio-6891; *State v. Dominy,* 10th Dist. Franklin No. 13AP-124, 2013-Ohio-3744; *State v.*

McCoy, 10th Dist. Franklin No. 04AP-121, 2004-Ohio-6726. We note that the Tenth District has also released a decision concluding that after the Ohio Supreme Court's clarification of void and voidable judgments, any judgment that seals the record of an ineligible offender is voidable, and not void. *In re Bowers,* 10th Dist. Franklin No. 07AP-49, 2007-Ohio-5969. Since the Ohio Supreme Court's holding in *Pratts* and *In re J.J.,* several Ohio Districts have concluded that judgments inappropriately sealing criminal records are voidable and not void. *See, e.g.*, *State v. Wilfong,* 2nd Dist. Clark No. 2000-CA-75 (Mar. 16, 2001); *Mayfield Hts. v. N.K., supra*; *State v. Powers,* 5th Dist. Fairfield No. 02 CA 39, 2002-Ohio-6672.

{¶19} Appellant does not address whether the order to seal his records was void or voidable, but instead relies on the Ohio Supreme Court's holding in *Schussheim v. Schussheim,* 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446. In *Schussheim,* the Supreme Court held that a trial court has the inherent authority to order the expungement of records relating to a dissolved civil protection order when "unusual and exceptional circumstances" exist. *Id.* at ¶ 3. Appellant concedes that his matter does not involve the dissolution of a protection order and that there are specific statutes governing expungement that apply here, but contends broadly that the trial court has additional authority to seal criminal records in "unusual and exceptional circumstances" pursuant to *Schussheim,* and that his circumstances are exceptional. Appellant also argues that if the state wished to object to the trial court order sealing his records, it should have filed a direct appeal or a Civ.R. 60(B) motion within one year of the judgment. He claims the failure to do so in this case leaves the state unable to now raise the issue.

{¶20} The court of common pleas in Ohio has original subject matter jurisdiction over all crimes and offenses committed by an adult, and jurisdiction relative to postconviction expungement applications submitted as a result of those convictions. Section 4(B), Article IV, Ohio Constitution; R.C. 2931.03; R.C. 2953.32. Interpretation and application of the expungement statutes in general is a matter within the trial court's jurisdiction. Since common pleas courts in Ohio have subject matter jurisdiction over expungements, the state's argument that the judgments at issue are void does not comport with the Ohio Supreme Court's holdings regarding void judgments. A trial court's failure to comply with the requisite statutes involves the improper exercise of jurisdiction, and not complete lack of jurisdiction. *Pratts* at ¶ 12; *In re J.J.* Such orders, sealing criminal records of offenders who are ineligible, are voidable either on direct appeal of the judgment or pursuant to the requirements set forth in Civ.R. 60(B). *Pratts* at ¶ 12.

{¶21} A review of this record reflects that Appellant initially filed his applications for expungement in both of his criminal cases on January 29, 2016. The trial court did not hold a hearing on the matter, instead denying the applications for expungement on February 12, 2016. While the judgment entry indicates the state was opposed to the application, there is no written opposition motion on file. Even though the February order was final and appealable, Appellant filed a motion seeking the court to reconsider its decision on May 19, 2016. Again, there is no record that the state filed in opposition to this motion, and again, no hearing was held on the matter. However, on June 22, 2016, the trial court issued a judgment entry sealing Appellant's records in both criminal matters. There was no direct appeal filed with this Court.

{¶22} On June 26, 2018, two years after the final judgment sealing Appellant's records, the state filed a motion seeking to unseal these records. This motion does not specifically cite to Civ.R. 60(B) or directly address Civ.R. 60(B) factors. The state claimed in the motion that because Appellant was an ineligible offender and the trial court lacked jurisdiction to seal his records on that basis, any subsequent order sealing those records is void. As earlier discussed, a decision to seal criminal records of an ineligible defendant is voidable and 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.

Civ.R. 60(B) Motion

{¶23} At the outset, we note that in order to prevail, any motion filed under Civ.R. 60(B) must meet the requirements of this rule and cannot be used merely as a substitute for a timely direct appeal. *State v. Wilfong,* 2nd Dist. Clark No. 2000-CA-75 (Mar. 16, 2001); *Doe v. Trumbull County Children Services Bd.,* 28 Ohio St.3d 128, 131, 502 N.E.2d 605 (1986). A trial court's ruling on a Civ.R. 60(B) motion is reviewed for abuse of discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75, 77, 514 N.E.2d 748 (1987). An abuse of discretion exists where a trial court's ruling is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Civ.R. 60(B) involves issues which occur outside of the record and which justify relief from judgment. These cannot be raised in a direct appeal as they are not found in the record. This motion is made "to remedy an injustice resulting from a cause that could not reasonably be addressed during the ordinary trial and appellate proceedings." *In re A.K.,* 2d Dist.

Champaign No. 2011CA4, 2011-Ohio-4536, ¶ 15 quoting *Volodkevich v. Volodkevich,* 35 Ohio St.3d 152, 155, 518 N.E.2d 1208 (1988). Thus, issues that could have been raised in a direct appeal ordinarily are not properly raised in a Civ.R. 60(B) motion.

{¶24} In addition, in order to prevail on a Civ.R. 60(B) motion, a movant must demonstrate that (I) the movant has a meritorious defense or claim to present if relief is granted; (II) the movant is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (III) the motion is made within a reasonable time. *Fernwalt v. Our Lady of Kilgore,* 2017-Ohio-1260, 88 N.E.3d 499, ¶ 41 (7th Dist.), citing *GTE Automatic Elec. v. ARC Industries,* 47 Ohio St.2d 146, 351 N.E.2d 113 (1976). If the motion is based on some mistake on the part of the movant, on newly discovered evidence, or on fraud, the motion must be made within one year after the judgment or order. Otherwise, the motion must be made within a reasonable time. *Id.*

{¶25} It is clear the state's motion was not made within one year from the order of expungement. Thus, analyzing the state's motion under a Civ.R. 60(B) analysis, 60(B)(5) would be the only ground available under the rule. Civ.R. 60(B)(5) is a "catch-all" provision, "any other reason justifying relief from the judgment." The main basis for the state's motion was that Appellant was an ineligible offender pursuant to the applicable statutory provisions. This reason does appear valid under the catch-all provision of Civ.R. 60(B)(5). Still to be determined is whether the timing of the state's motion is reasonable, and whether the state can satisfy the three *GTE Automatic* requirements.

{¶26} Turning first to *GTE Automatic*, the initial requirement is that the movant must show he or she has a meritorious defense or claim to present if relief is granted. The state's motion rests on two main contentions: (1) that the judgment sealing the

records is void and can be vacated at any time; and (2) Appellant was an ineligible offender for expungement pursuant to the relevant statutes. Regarding the first contention, the state claims that "[w]hile Civil Rule 60(B) is one avenue to correct a trial court's otherwise unlawful order, it is not the only avenue." (Appellee's Brf., p. 6.) However, we have already determined that the state erroneously believed the judgment was void and could be vacated at any time. This contention is inconsistent with the Ohio Supreme Court's decisions in *Pratts* and *In re J.J.* regarding void and voidable judgments, discussed earlier. The trial court generally has subject matter jurisdiction over sealing a defendant's criminal records making such a judgment voidable, not void.

{¶27} However, we come to a different conclusion when examining the state's second contention. The state correctly argues that Appellant is ineligible for expungement based on the relevant statutes. Ordinarily, we review a trial court's decision on an application to seal a criminal record for an abuse of discretion. However, to the extent that the trial court's judgment here involves an interpretation and application of the statutes governing the sealing of a criminal record, a *de novo* standard of review is applied. *State v. Futrall,* 123 Ohio St.3d 498, 2009-Ohio-5590, 918 N.E.2d 497, ¶ 6. "[E]xpungement is an act of grace created by the state," and is a privilege, not a right. *State v. Hamilton*, 75 Ohio St.3d 636, 639, 665 N.E.2d 669, 672 (1996). Expungement should be granted only when all requirements for eligibility are met. *Id*. at 640. An expungement proceeding is not an adversarial one; the primary purpose of an expungement hearing is to gather information. *Id.* Because expungement proceedings are not adversarial, the Rules of Evidence do not apply. See Evid.R. 101(C)(7).

{¶28} Before a court may entertain such a request there are certain steps a trial court judge is required by law to undertake. Pursuant to R.C. 2953.32(C)(1)(a), when an application to seal criminal records is filed, the trial court must first determine whether the applicant is an eligible offender. R.C. 2953.36 precludes sealing the records in certain convictions, including for violent offenses. Therefore, an offender seeking to have records sealed dealing with a conviction listed in R.C. 2953.36 is ineligible for such relief. Appellant's conviction for robbery, in violation of R.C. 2911.02(A)(2)(B), places him in the ineligible offender category. Former R.C. 2953.36(C) prohibited the sealing of records of convictions for an offense of violence when the offense is a felony. R.C. 2109.01(A)(9) provides the definition for an "offense of violence," and a conviction for robbery in violation of R.C. 2911.02(A)(2)(B) is among those listed as an offense of violence, also precluding it from expungement.

{¶29} Moreover, under the version of R.C. 2953.31 in effect at the time Appellant filed his application, an eligible offender was defined as:

> (A) "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, 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. (Emphasis added.)

R.C. 2953.31(A) (2014) (prior to 2018 amendment).

{¶30} In September of 2008 Appellant was convicted in case number 2008 CR 1174 on two counts of robbery, felonies of the second degree. In December of that year he was convicted in case number 2009 CR 142 on six counts of identity fraud, felonies of the fifth degree. Appellant sought expungement in both cases. Based on the relevant law, it is readily apparent Appellant was not eligible for expungement of those records pursuant to R.C. 2953.31(A).

{¶31} Appellant does not dispute these provisions. Instead, he contends that notwithstanding the statutes, trial courts can also grant expungement of criminal records in "unusual or exceptional circumstances" pursuant to the Ohio Supreme Court's holding in *Schussheim. Id.* at ¶ 3. In *Schussheim,* a complainant who sought a civil protection order against her husband later moved to dissolve the CPO and submitted an affidavit that expungement of the records regarding the CPO was in the best interest of herself and her children. Citing to *Pepper Pike v. Doe,* 66 Ohio St.2d 374, 421 N.E.2d 1303 (1981), the Court concluded that, as in *Pepper Pike*, there was no statute relevant to expunging a dissolved CPO in an adult proceeding. As there were no set statutory guidelines or prohibitions, the Court concluded it had the discretion to decide the matter

on its own and determined that unusual and exceptional circumstances existed warranting the expungement. We specifically note that the request was made and granted in this CPO due to the wishes of the victim.

{¶32} Here, there are clear, relevant statutory provisions that expressly prevent the trial court from sealing Appellant's records, both for committing his offenses of violence and for his multiple felony convictions. Appellant's argument that *Schussheim* permits the trial court to circumvent the statutory prohibition if he can raise unusual and exceptional circumstances is a misstatement of the law. It is also important to note that post-*Schussheim,* the general assembly enacted legislation relative to the sealing of CPO records and chose not to follow the "unusual and exceptional" test set forth in *Schussheim*. See R.C. 3113.31(G)(2). Even if *Schussheim* could be said to apply, Appellant does not present any factual basis to demonstrate that an unusual or exceptional circumstance exists in his case. No entry of the trial court explains the decision to deny, then grant, the requests for expungement. As there was absolutely no authority for the decision to seal the records for this Appellant, under the first prong of the *GTE* test, the record shows the state has a meritorious claim if we analyze the state's motion under Civ.R. 60(B).

{¶33} The second *GTE* test requires that the state demonstrate it is entitled to relief under Civ.R. 60(B)(5), the only applicable provision for a motion made two years after judgment. Again, Civ.R. 60(B)(5) is a catch-all provision and provides that a motion made within a reasonable time, on grounds that are just, may relieve a party from a final judgment for any reason justifying relief from judgment. The grounds for relief must be substantial and this provision is only to be utilized in extraordinary and unusual cases

when the interest of justice warrants relief be granted. *Sell v. Brockway,* 7th Dist. Columbiana No. 11 CO 30, 2012-Ohio-4552, ¶ 25, citing *Adomeit v. Baltimore,* 39 Ohio App.2d 97, 316 N.E.2d 469 (8th Dist.1974.) It is clear from both R.C. 2953.36 and R.C. 2953.31(A) that Appellant was an ineligible offender, having been convicted of multiple felonies and offenses of violence. Expungement should not have been granted by law, hence the interest of justice warrants that the state's relief should be granted. While it is true that no timely appeal was filed in this matter, there is nothing in this record to show that the state was on notice that expungement was granted and, in fact, this record lends itself to the opposite conclusion. It is important to again note that the trial court did not abide by any of the statutory procedures when the court reconsidered its initial order denying Appellant's motion for expungement and ordered Appellant's records sealed. These procedures are set forth in R.C. 2953.32. Prior to making any determination on expungement, the trial court was required to hold a hearing and was required to notify the prosecutor and provide an actual opportunity to object. The record reveals the trial court did not hold a hearing and did not issue the required notice to the state prior to expungement. This is particularly important in this case because the record also contains no written objection to the motion for reconsideration and no direct appeal of the court's decision to seal. Ordinarily, these would be facts held against the state. However, as no requisite notice or opportunity to be heard was provided, this record does not reflect that the state had knowledge, whether before or after the trial court's order sealing the records, that the trial court intended to undertake such action. Again, the request to seal was initially denied. The order denying Appellant's request was not timely appealed by him and became final. Instead, Appellant filed a motion for reconsideration of that final

judgment almost three months later. There is no provision in the civil rules for reconsideration of a final judgment by the trial court, and such motions are, themselves, a nullity. State v. Brown, 7th Dist. Mahoning No. 13 MA 172, 2014-Ohio-5824, ¶ 45 citing *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981). There is nothing in this record that should have given rise to a belief by the state that a motion for "reconsideration" would be granted. Without the required statutory notice to the state that the court intended to hear the matter, and with no hearing actually held, there was no reason for the state to know that action granting the reconsideration motion had been taken, particularly since the motion in question was a legal nullity. Further, the record fails to reveal any evidence that the trial court contacted the state regarding Appellant prior to expungement, as required. Finally, the trial court did not make the findings required by R.C. 2953.32(C)(1) in its order granting expungement, including: (1) that Appellant was an eligible offender; (2) whether any criminal proceedings were pending against Appellant; (3) whether Appellant had been adequately rehabilitated; (4) whether Appellant's interest in having his records sealed outweighed any legitimate need by the government to maintain the records. Thus, this record supports the state's request to seek relief under the second *GTE* requirement in that the grounds for relief were substantial, and the state was justified in seeking the relief sought.

{¶34} As to the third *GTE* prong, the state was required to file its motion within a reasonable time. This motion was filed by the state two years after the judgment entry granting Appellant's application for expungement. The state does not argue the reasonableness of the timing for their request, nor does the state directly discuss reasons for the delay. These reasons, however, may easily be gleaned from the record in this

case. This record, as discussed above does not support a conclusion that the state was aware the trial court granted Appellant's application for the sealing of his records, not only because the court failed to follow any of the requisite statutory procedures, but also because the order was made based on Appellant's motion for reconsideration; again, a legal nullity in the trial courts. Based on this record, we conclude that the timeliness of the state's filing was reasonable when considering the particular facts at issue.

{¶35} The state was mistaken in its belief that the trial court's judgment ordering expungement was void. The judgment of the trial court in this matter was voidable, meaning that it could only be challenged on direct appeal or pursuant to Civ.R. 60(B). A careful reading of the state's motion, while it does not specifically state that it is being filed pursuant to this rule and appears to contend such filing is unnecessary, reveals that this motion does meet all of the requirements for Civ.R. 60(B). Although filed two years after the judgment granting Appellant's applications for expungement, it is apparent from the relevant statutory provisions that Appellant was an ineligible offender because his convictions were offenses of violence and multiple felonies. The decision was made on a motion for reconsideration of a final order, and none of the statutory requirements for proceeding with an expungement were followed, including notice to the state and a hearing on the matter. Thus, the state had a right to relief and the filing was reasonable under the circumstances. Based on the above, the trial court did not abuse its discretion in granting the state's motion to unseal Appellant's records. Appellant's assignment of error is without merit and should be overruled.

Conclusion

{¶36} Because the trial court generally has subject matter jurisdiction over the sealing of its own criminal convictions, the underlying judgment entry at issue represents a question of whether the trial court properly exercised its jurisdiction in this particular case. The judgment is voidable and not void, requiring that it be challenged by means of a direct appeal or by means of a Civ.R. 60(B) motion. Construing the state's motion as a request for relief pursuant to Civ.R. 60(B), we conclude, based on the particular facts in the record, that the state properly challenged the trial court's erroneous decision to seal Appellant's records. There is no evidence in the record that the state was timely and properly notified of the reconsideration of the trial court's initial denial of the request to seal Appellant's records, as none of the statutory requirements necessary to seal criminal records were followed, including the strict notice provision.

{¶37} Based on the foregoing, Appellant's assignment of error is without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.