

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92662

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL KELLER

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-446662

BEFORE: Blackmon, J., Gallagher, P.J., and Rocco, J.

RELEASED: July 2, 2009

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), is filed within ten (10) 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. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} In this accelerated appeal, appellant Michael Keller appeals the trial court's denial of his motion for expungement without first conducting a hearing.

He assigns the following error for our review:

“The trial court erred by abusing its discretion in denying appellant’s motion for expungement filed pursuant to R.C. 2953.32 without first holding a hearing.”

{¶ 2} Having reviewed the record and pertinent law, we reverse and remand the trial court's judgment.

{¶ 3} Keller filed a motion to expunge his conviction for attempted aggravated vehicular assault. The state responded by filing a brief in opposition. The trial court denied Keller's motion without a hearing, stating that the State had a continuing interest in retaining the conviction.

{¶ 4} Keller argues that since R.C. 2953.32 mandates that the court hold an oral hearing on motions for expungement, the trial court's decision denying his application without holding a hearing must be reversed. The State concedes this point, and we agree.

{¶ 5} A trial court errs in ruling on a motion for expungement filed pursuant to R.C. 2953.32 without first holding a hearing.¹ Pursuant to R.C. 2953.32, when a motion for expungement is filed, “the court shall set a date for a

¹R.C. 2953.32(B); *State v. Hamilton*, 75 Ohio St.3d 636, 1996-Ohio-440; *State v. Saltzer* (1984), 14 Ohio App.3d 394; *State v. Hann*, 173 Ohio App.3d 716, 2007-Ohio-6201; *State v. McGregor*, Cuyahoga App. No. 90879, 2008-Ohio-5743.

hearing and shall notify the prosecutor for the case of the hearing on the application.”

{¶ 6} There is no indication on the docket or in the record that a formal hearing was scheduled or held, as required by law, and both parties agree that a hearing was not held. We conclude the court erred by not holding a hearing on Johnson’s motion for expungement. Therefore, the case must be remanded to the trial court for a hearing. Accordingly, Johnson’s assigned error is sustained.

Judgment reversed and remanded for proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee his costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution

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

PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
KENNETH A. ROCCO, J., CONCUR