

[Cite as *State v. J.C.*, 2010-Ohio-4686.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94427

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

J.C.

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-301359

BEFORE: Cooney, J., Kilbane, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: September 30, 2010

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, state of Ohio (“the State”), appeals the trial court’s judgment sealing the criminal record of defendant-appellee, J.C.¹ We find no merit to the appeal and affirm.

{¶ 2} In October 1993, J.C. was convicted of insurance fraud, a third degree felony, and was placed on probation. In November 2007, J.C. filed an

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

application to seal the records of his 1993 conviction. Pursuant to R.C. 2953.32, the trial court held a hearing on the application, at which the State argued that J.C.'s conviction should not be sealed because he was not a "first offender" as defined by R.C. 2953.31(A). The State asserted that J.C. had previously been convicted of crimes in a foreign jurisdiction. In support of this contention, the State relied on a statement contained in the probation report that referred to a 1988 conviction for fraud from New Scotland Yard, London.²

{¶ 3} At the conclusion of the hearing, the trial court found that J.C. was a first offender, that no criminal proceedings were pending against him, that more than three years had elapsed since his final discharge, that he had been rehabilitated to the court's satisfaction, and that his interest in having the records of his conviction sealed outweighed the government's need in maintaining those records. The State now appeals this decision.

{¶ 4} In its sole assignment of error, the State argues the trial court abused its discretion in granting J.C.'s application to seal his conviction because, having been convicted of crimes in a foreign jurisdiction, J.C. was not a first offender as defined by 2953.31(A). We disagree.

{¶ 5} Pursuant to R.C. 2953.32, a defendant is entitled to have a record of conviction sealed only if he is a first offender. Upon the filing of an application

²The report indicated three counts of "fraud altering and using excise license on vehicle" with fines of 200 pounds, 100 pounds, and 20 pounds.

for an order sealing the record of conviction under R.C. 2953.32(A)(1), the court must set a hearing date and notify the prosecutor of the hearing on the application. R.C. 2953.32(B). The prosecutor may object to the granting of an application request by filing an objection with the court prior to the hearing date. Id.

{¶ 6} Before ruling on the application, the trial court must determine (1) whether the applicant is a first offender, (2) whether criminal proceedings are pending against the applicant, (3) whether the applicant has been rehabilitated to the satisfaction of the court if the court finds the applicant to be a first offender, (4) if the prosecutor filed an objection in accordance with R.C. 2953.32(B) and consider the prosecutor's reasons for the objection, and (5) weigh the applicant's interests in having the records sealed against the legitimate needs, if any, of the government to maintain the records. R.C. 2953.32(C)(1). "The statutory requirements are independent of one another and are in the conjunctive." *State v. Krantz*, Cuyahoga App. No. 82439, 2003-Ohio-4568, at ¶23. Accordingly, if the applicant fails to satisfy one of these requirements, the trial court must deny the application. Id.

{¶ 7} The determination of whether an applicant is a first offender is a question of law to be determined de novo by a reviewing court. *State v. Mullins*, Cuyahoga App. No. 85273, 2005-Ohio-2193. However, whether the facts in any case meet the definition of first offender is, in many cases, a question of fact.

State v. Patterson (1998), 128 Ohio App.3d 174, 176, 714 N.E.2d 409. The State bears the burden of proving that a defendant is not a first offender. *State v. Davis*, Cuyahoga App. No. 84470, 2005-Ohio-188, citing *Patterson* at 176.³

{¶ 8} R.C. 2953.31(A) defines a first offender, in relevant part, as “anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction.” Thus, as a general rule, only a person with a single conviction is eligible for expungement. *State v. Brewer*, Franklin App. No. 06AP-464, 2006-Ohio-6991, at ¶8.

{¶ 9} R.C. 2953.31 and 2953.32 must be liberally construed and the relief available must be liberally granted. *State v. Hilbert* (2001), 145 Ohio App.3d 824, 827, 764 N.E.2d 1064. Failure to grant the expungement where available constitutes an abuse of discretion. *Id.* Thus, the court must weigh the interest of the public’s need to know about the conviction against the individual’s interest in having the record sealed, and must liberally construe the statute so as to promote the legislative purpose of allowing expungements. With that standard in mind, we now review the trial court’s decision to determine whether the trial court abused its discretion in granting the expungement.

³In *Davis*, the prosecuting attorney informed the trial court that she had “called up” the municipal court to determine that the prior conviction was not a minor misdemeanor. No such investigation appears in the record of the instant case.

{¶ 10} The trial court determined that the State failed to establish the existence of an alleged prior conviction in a foreign country because the State failed to produce any authenticated evidence upon which the alleged convictions could be verified. In *State v. Chalmers* (May 17, 2001), Cuyahoga App. No. 78967, the court was faced with a similar situation in which the State argued the application to seal records should be denied because the applicant had a prior DUI conviction. This court rejected the State's argument because "the state failed to present a certified journal entry of conviction or otherwise demonstrate that Chalmers had been convicted on the DUI charge." *Id.*

{¶ 11} Here, the State relied on the report from the Probation Department that referenced offenses J.C. allegedly committed in the United Kingdom. However, the report did not disclose the name of the court or the jurisdiction involved, a case number, or the identity of the judge, if any. It is impossible to discern from the limited information provided by the State whether the offense was civil or criminal in nature, or whether it constituted the equivalent of a minor misdemeanor. Thus, in granting J.C.'s application, the court stated:

"[I]t's not authenticated and frankly, it doesn't give me any information about what the law is in Scotland or anywhere. * * * In this case, I don't know what the conviction was in Scotland. I don't know if it would qualify here as a minor misdemeanor and the State hasn't presented evidence * * * ."

{¶ 12} Nothing in our record demonstrates that the defendant was not a first offender. Since the only factor the State offered for denying J.C.'s request

related to an unverified allegation of a prior conviction involving only a monetary sanction, we find that the trial court properly determined that J.C. was entitled to have his record sealed, and therefore, we find no abuse of discretion.

{¶ 13} The sole assignment of error is overruled.

Judgment affirmed. The Clerk of the Court of Appeals is instructed to reseal the trial court record and to seal the Court of Appeals record in this case.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
ANN DYKE, J., CONCUR