

[Cite as *State v. Neal*, 2017-Ohio-8444.]

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DUSTIN E. NEAL

Defendant-Appellant

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. William B. Hoffman, J.

Hon. Craig R. Baldwin, J.

Case No. 16-CA-38, 16-CA-40

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Common  
Pleas Court, Case Nos. 11-CR-546,  
12-CR-224

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

November 3, 2017

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

R. KYLE WITT

Prosecuting Attorney

ANDREA GREEN BOYD

Assistant Prosecuting Attorney

239 W. Main Street

Lancaster, Ohio 43130

SCOTT P. WOOD

Conrad/Wood

120 East Main Street, Suite 200

Lancaster, Ohio 43130

*Hoffman, J.*

{¶1} Defendant-appellant Dustin E. Neal appeals the judgments entered by the Fairfield County Common Pleas Court overruling his motions to seal records. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE<sup>1</sup>

{¶2} On December 9, 2011, Appellant was indicted on one count of rape of a three-year-old child (Case Number 2011-CR-546). The charge was dismissed without prejudice on June 14, 2012, due to a superseding indictment in Case Number 2012-CR-224.

{¶3} Appellant was indicted on multiple felonies, including rape and gross sexual imposition involving the same three-year-old child, on June 1, 2012, in Case Number 2012-CR-224. The charges were dismissed without prejudice on May 24, 2013. Appellee has not re-filed any charges related to these allegations.

{¶4} Appellant filed motions to seal the record in both cases. On September 21, 2016, the trial court overruled the motion as to Case Number 2012-CR-224, and the court overruled the motion as to Case Number 2011-CR-546 on October 18, 2016. The trial court found Appellant was not statutorily eligible to have his records sealed in either case because the statute of limitations had not expired.

{¶5} Appellant filed an appeal in both cases, and we consolidated the appeals with Case Number 16-CA-38 controlling. In his brief, Appellant conceded this Court had ruled contrary to his position in *State v. Dye*, 5th Dist. Fairfield No. 15-CA-65, 2016-Ohio-

---

<sup>1</sup> A rendition of the facts is unnecessary for our disposition of this appeal.

5065. However, *Dye* was pending before the Ohio Supreme Court on a certified conflict with the decision of the Eighth District in *State v. C.K.*, 8th Dist. Cuyahoga No. 99886, 2013-Ohio-5135. Accordingly this Court stayed the appeal sua sponte until the Supreme Court issued an opinion or otherwise resolved *Dye*.

{¶6} The Ohio Supreme Court issued a merit opinion on September 27, 2017, and we have lifted the stay. Appellant assigns a single error:

{¶7} THE TRIAL COURT ERRED IN DETERMINING THAT APPELLANT WAS STATUTORILY INELIGIBLE TO SEAL RECORDS OF DISMISSED CHARGES.

{¶8} In *State v. Dye*, Slip Opinion No. 2017-Ohio-7823, the Ohio Supreme Court reversed the decision of this Court, and held R.C. 2953.52 does not require the relevant statute of limitations to expire before a trial court can grant an application to seal the records of a case dismissed without prejudice.

{¶9} Accordingly, Appellant's assignment of error is sustained.

{¶10} The judgment of the Fairfield County Common Pleas Court is reversed. This case is remanded to that court for further proceedings according to law.

By: Hoffman, J.

Delaney, P.J. and

Baldwin, J. concur

