[Cite as *State v. Hutchins*, 2018-Ohio-5382.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellant	:	Hon. William B. Hoffman, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
KADANCE N. HUTCHINS	:	Case No. CT2018-0032, CT2018-0046
	:	
Defendant - Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court, Case No. CRB 1700137A
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT:	December 26, 2018

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
D. MICHAEL HADDOX Prosecuting Attorney Muskingum County, Ohio	KRISTOPHER K. HILL Graham & Graham Co., LPA 17 N Fourth St PO Box 340 Zanesville, Ohio 43702-0340
By: GERALD V. ANDERSON II Assistant Prosecuting Attorney 27 North Fifth St., P.O. Box 189 Zanesville, Ohio 43702-0189	

Baldwin, J.

{¶1} Defendant-appellant State of Ohio appeals from the May 14, 2018 and May 15, 2018 Entries of the Muskingum County Court. Plaintiff-appellee is Kadence N. Hutchins.

STATEMENT OF THE FACTS AND CASE

{¶2} On February 9, 2017, a complaint was filed charging appellee with one count of assault on a peace officer in violation of R.C. 2903.13(A), a misdemeanor of the first degree, and one count of operating a motor vehicle while under the influence of alcohol or drugs (OVI) in violation of R.C. 4511.19(A)(1)(a), a misdemeanor of the first degree. On February 13, 2017, appellee entered a plea of no contest to the charges and was found guilty. As memorialized in a Sentencing Entry filed on February 13, 2017, appellee was sentenced to two ten day jail sentences. The trial court ordered that they be served consecutively to each other. Appellee was also ordered to pay a $375.00 fine plus court costs, attend and complete a 72 hour Driver's Intervention Program, to attend counseling and to not have any criminal convictions or first degree misdemeanor traffic offenses for 60 months. Appellee's license was suspended for a period of 180 days.

{¶3} Appellee, on March 13, 2018, filed a Motion to Seal Record pursuant to R.C. 2953.32. Appellant filed an objection to the same on April 18, 2018 arguing that appellee was trying to seal her OVI conviction and that any conviction under R.C. Chapter 4511 was not eligible to be sealed.. Appellant also argued that the date of final discharge had not occurred yet and that appellee was not eligible to have her record sealed. Appellee filed a reply on April 23, 2018. Appellee, in her reply, indicated, in part, that she had not

moved to have the OVI sealed because she was aware that convictions under R.C. 4511.19 were not eligible to be sealed and that she had served her sentence. On the same date, appellee also filed a "Motion for Relief from 2/13/17 Judgment Entry." Appellee, in her motion, asked the trial court to either issue a Nunc Pro Tunc Judgment Entry making her immediately eligible to have her record sealed or, in the alternative, to have her community control sanctions vacated so that she could be eligible in one year to have her record sealed.

{¶4} A hearing was held on April 23, 2018. At the hearing, appellant argued, in relevant part, as follows:

{¶5} The second part of the motion is that she [appellee] has not completed - - or the date of final discharge has not happened yet. She was sentenced - - part of her sentence was to have no criminal convictions or first-degree misdemeanor convictions for the next - - I believe it was five years - - and that time has not run yet.

{¶6} Transcript of April 23, 2018 hearing at 3.

{¶7} The trial court, in a Re-Sentencing Entry filed on May 14, 2018, ordered that appellee have no criminal convictions or first degree misdemeanor traffic offenses for 12 months from date of conviction.

{¶8} Appellant appealed from such Entry, raising the following assignment of error in Case No. CT2018-0046:

{¶9} "I. THE TRIAL COURT ERRED WHEN IT RE-SENTENCED DEFENDANT WITHOUT HOLDING A HEARING, OR PROVIDING NOTICE TO THE PARTIES."

{¶10} The trial court, pursuant to an Order filed on May 15, 2018, granted appellee's Motion to Seal.

{¶11} Appellant appealed from such Order, raising the following assignments of error in Case No. CT2018-0032:

{¶12} "I. THE TRIAL COURT ERRED WHEN IT FOUND DEFENDANT-APPELLEE WAS ELIGIBLE FOR SEALING PURSUANT TO O.R.C. [SECTION] 2953.32 BECAUSE APPELLEE IS NOT A FIRST TIME OFFENDER AS REQUIRED."

{¶13} "II. THE TRIAL COURT ERRED WHEN IT FOUND DEFENDANT-APPELLEE WAS ELIGIBLE FOR SEALING PURSUANT TO O.R.C. [SECTION] 2953.32 BECAUSE HER CASE CONTAINED AN OVI CONVICTION."

{¶14} "III. THE TRIAL COURT ERRED WHEN IT FOUND DEFENDANT-APPELLEE WAS ELIGIBLE FOR SEALING PURSUANT TO O.R.C. [SECTION] 2953.32 BECAUSE THE DATE OF FINAL DISCHARGE HAD NOT OCCURRED."

{¶15} For purposes of judicial economy, we shall address the assignments of error out of sequence.

III

{¶16} Appellant, in its third assignment of error, contends that the trial court erred in granting appellee's request to seal her record because the date of final discharge had not yet occurred. We concur.

{¶17} R.C. 2953.32 states, in relevant part, as follows:

{¶18} (A)(1) Except as provided in section 2953.61 of the Revised Code, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the record of the case that pertains to the conviction. Application may be made at one of the following times:…

{¶19} (c) At the expiration of one year after the offender's final discharge if convicted of a misdemeanor.

{¶20} "[T]he final discharge required by R.C. 2953.32(A)(1) does not occur until an offender satisfies all sentencing requirements." *State v. Aquirre,* 144 Ohio St.3d 179, 2014–Ohio–4603, 41 N.E.2d 1178 ¶ 28.

{¶21} Because expungement is a privilege and not a right, a trial court shall only grant expungement to an applicant who meets all the requirements presented in R.C. 2953.32. *State v. Morris*, 5th Dist. Licking No. 09–CA–128, 2010–Ohio–2403, ¶ 8, *citing State v. Simon*, 87 Ohio St.3d 531, 533, 2000–Ohio–474, 721 N.E.2d 1041. An appellate court reviews a trial court's decision to grant or deny a motion to seal records pursuant to R.C. 2953.52 for an abuse of discretion. *State v. Poole*, 5th Dist. Perry No. 10–CA–21, 2011–Ohio–2956, ¶ 11, *citing State v. Widder*, 146 Ohio App.3d 445, 766 N.E.2d 1018, 2001–Ohio–1521, ¶ 6 (9th Dist.).

{¶22} An abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶23} The trial court, in the case sub judice, resentenced appellee pursuant to a Re-Sentencing Entry filed on May 14, 2018. The Ohio Supreme Court has clearly indicated that trial courts lack authority to reconsider their own valid final judgments in criminal cases. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 338, 1997–Ohio–340, 686 N.E.2d 267. Similarly, as a general rule, once a valid sentence has been executed, a trial court no longer has the power to modify the sentence except as provided by the

Ohio General Assembly. *See State v. Hayes* , 86 Ohio App.3d 110, 619 N.E.2d 1188 (1st Dist. 1983)

{¶24} There are two main exceptions to this general rule. *See State v. Marshall*, 5th Dist. Richland No. 14 CA 37, 2015–Ohio–1986, ¶ 26. The first is the void sentence doctrine. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006–Ohio–5795, 856 N.E.2d 263, ¶ 19. The Ohio Supreme Court has thus recognized: " * * * [I]n the normal course, sentencing errors are not jurisdictional and do not render a judgment void. * * * But in the modern era, Ohio law has consistently recognized a narrow, and imperative, exception to that general rule: a sentence that is not in accordance with statutorily mandated terms is void." *State v. Fischer*, 128 Ohio St.3d 92, 94, 2010–Ohio–6238, 942 N.E.2d 332, ¶ 7–¶ 8. However, the rule of *Fischer* was originally limited to "a discrete vein of cases: those in which a court does not properly impose a statutorily mandated period of postrelease control." *See Fischer* at ¶ 31.

{¶25} The other main exception to the general rule is that a trial court has jurisdiction to correct clerical errors in its judgments. *See State ex rel. Cruzado,* supra, ¶ 19, citing Crim.R. 36. A *nunc pro tunc* order can be used to supply information which existed but was not recorded, and to correct typographical or clerical errors. *See Jacks v. Adamson*, 56 Ohio St. 397, 47 N.E. 48 (1897).

{¶26} Neither exception applies in this instance. The trial court, in the case sub judice, did not amend appellee's sentence to properly impose a statutorily mandated period of postrelease control or to correct clerical errors. Rather, the trial court amended its original order that appellant could not have any criminal convictions or first degree misdemeanor traffic offenses for 60 months and reduced such length of time to 12 months

from the date of conviction in order to affect appellee's eligibility to have her record sealed. The trial court lacked authority to do so.

{¶27} Based on the foregoing, we find that the trial court erred in finding that appellee was eligible to have her record sealed pursuant to R.C. 2953.32 because the date of final discharge had not yet occurred. Because appellee failed to comply with the statutory one-year waiting period following the date of final discharge of her sentence, the trial court erred when it granted her application.

{¶28} Appellant's third assignment of error is, therefore, sustained.

{¶29} Having sustained appellant's third assignment of error, the remaining assignments of error are rendered moot.

{¶30} We reverse the judgment of the Muskingum County Court and remand the matter to the trial court with instructions to deny appellee's application.

By: Baldwin, J.

Gwin, P.J. and

Hoffman, J. concur.