

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA010670

Appellee

v.

RONALD D. SHELTON, JR.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 96CR948786

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 27, 2015

SCHAFFER, Judge.

{¶1} Appellant, Ronald Shelton, appeals the judgment of the Lorain County Court of Common Pleas denying his request for the expungement of his felony theft conviction. For the reasons that follow, we affirm.

I.

{¶2} In 1996, Shelton was convicted on one count of theft in violation of R.C. 2913.02(A)(2), a felony of the fourth degree. The trial court imposed a suspended jail term of six months combined with a two-year probation period. Shelton was eventually discharged from his probation in 2000.

{¶3} On August 1, 2014, Shelton filed a motion to expunge his conviction. After Shelton underwent an interview with the probation department, the trial court conducted a hearing at which it did not receive testimony or other evidence. Rather, the trial judge orally issued a denial of Shelton’s motion and gave the following explanation:

Mr. Shelton, unfortunately, I have to inform you that pursuant to the Ohio Revised Code, you are not eligible for an expungement or sealing of your record. There have been some changes recently that have made it a little more liberal. It used to be that you had to be strictly a first offender. But now you can have a misdemeanor conviction, in fact, two misdemeanor convictions, and still get your felony record expunged. However, in your case, not only do you have two theft convictions that post-dated the offense you are asking for the sealing of the record in, but you also have some higher misdemeanor traffic offenses, as well, that count against you as offenses in a separate case.

So, for the record, you have, according to this report provided by the Probation Department, you had a theft conviction based on a 10-29-97 offense. That conviction was on 12-23-97. And then another theft conviction based on a November 2nd, '97 offense, though the conviction was the same date; separate cases, separate case numbers.

Then you had December 20th of '99 you had in Elyria Municipal Court, as well, a conviction for registration violation; operating with restrictions, no operator's license. The registration violation was a misdemeanor of the Fourth Degree. Then no operator's license was a misdemeanor of the First Degree. The operating restrictions was a minor misdemeanor.

That being the case, you have at least three misdemeanor convictions separate and apart from the felony conviction in this case; therefore, you are not eligible for an expungement at this time.

On September 3, 2014, the trial court issued a judgment entry journalizing its denial of the motion on the basis of its finding that Shelton was ineligible for expungement.

{¶4} Shelton filed this timely appeal, raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED AS A MATTER OF LAW BY DENYING PLAINTIFF'S MOTION FOR EXPUNGEMENT.

{¶5} In his sole assignment of error, Shelton argues that the trial court erred in denying his request for expungement. Specifically, he contends that the trial court incorrectly found that he had at least three misdemeanor convictions and was consequently ineligible for expungement. Due to deficiencies in the record, we cannot assess the merits of Shelton's argument, must

presume regularity in the trial's court proceedings, and consequently affirm the trial court's judgment.

{¶6} We preliminarily note S.B. 143 amended the Revised Code's treatment of expungements. But, S.B. 143's amendments did not become effective until September 19, 2014. As a result, we must review this matter based on the provisions of the expungement statutes as they existed on August 1, 2014, which is the date that Shelton filed his motion. *See State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, paragraph two of the syllabus ("The statutory law in effect at the time of the filing of an R.C. 2953.32 application to seal a record of conviction is controlling."); *see also State v. D.L.*, 2d Dist. Montgomery No. 26394, 2015-Ohio-1664, ¶ 8, fn. 2 (applying former versions of the expungement statutes since the defendant filed his request for expungement in April 2014).

{¶7} "Neither the United States Constitution nor the Ohio Constitution endows one convicted of a crime with a substantive right to have the record of a conviction expunged. Instead, expungement is an act of grace created by the state." *State v. Hamilton*, 75 Ohio St.3d 636, 639-640 (1996), citing *Escoe v. Zerbst*, 295 U.S. 490 (1935); *Bird v. Summit Cty.*, 730 F.2d 442, 444 (6th Cir.1984). Under former R.C. 2953.32(A)(1), which is relevant here, "an eligible offender" may ask for the sealing of a felony conviction "at the expiration of three years after the offender's final discharge." Before granting an expungement, a trial court is required to first determine whether the movant is an eligible offender. Former R.C. 2953.32(C)(1)(a). Former R.C. 2953.31(A) defined eligible offender as:

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 if the convictions are not the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction.

Since this matter implicates the denial of an expungement application on the basis of Shelton's ineligibility under the statute, it presents a question of law that we review de novo. *State v. Tauch*, 10th Dist. Franklin No. 13AP-327, 2013-Ohio-5796, ¶ 7, citing *State v. Hoyles*, 10th Dist. Franklin No. 08AP-946, 2009-Ohio-4483, ¶ 4.

{¶8} The trial court, in finding Shelton ineligible and denying the motion for expungement, stated that it relied on the report produced by the probation department regarding Shelton's previous convictions. But, this report is not contained in the record. It is the appellant's duty to transmit the complete record to this Court. *See* App.R. 10(A) ("The record on appeal * * * shall be transmitted to the clerk of the court of appeals[.]"); *Lunato v. Stevens Painton Corp.*, 9th Dist. Lorain No. 08CA009318, 2008-Ohio-3206, ¶ 11 ("This Court has repeatedly held that it is the duty of the appellant to ensure that the record on appeal is complete."). When an appellant fails to satisfy this burden, "we must presume regularity in the trial court's proceedings and affirm." *State v. Taylor*, 9th Dist. Lorain Nos. 13CA010366, 13CA010367, 13CA010368, 13CA010369, 2014-Ohio-2001, ¶ 6, citing *State v. Jalwan*, 9th Dist. Medina No. 09CA0065-M, 2010-Ohio-3001, ¶ 12. We must follow this principle here since without the probation department's report, we are unable to determine the facts surrounding Shelton's other convictions and consider whether the trial court erred in its application of those facts to the statutory requirements for expungement. As a result, we have to presume that the trial court's proceedings were proper and decline from second-guessing the trial court's judgment.

{¶9} Accordingly, we overrule Shelton's sole assignment of error.

III.

{¶10} Having overruled Shelton's sole assignment of error, we affirm the judgment of the Lorain County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JULIE A. SCHAFER
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

ROBERT CABRERA, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellee.