

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio/City of Sylvania

Court of Appeals No. L-20-1104

Appellee

Trial Court No. CRB0602163

v.

S.C.

DECISION AND JUDGMENT

Appellant

Decided: January 29, 2021

* * * * *

Kati E. Tharp, for appellant.

* * * * *

MAYLE, J.

{¶ 1} Defendant-appellant, S.C., appeals the June 10, 2020 judgment of the Sylvania Municipal Court, denying his motion to seal his record of conviction. The city of Sylvania has not filed a brief. For the following reasons, we reverse the trial court judgment.

I. Background

{¶ 2} On March 23, 2007, S.C. was convicted in the Sylvania Municipal Court of attempted impersonation of a police officer. On December 30, 2019, S.C. filed a motion

to expunge and seal his record of conviction under R.C. 2953.32. The city indicated that it would not oppose the motion “if otherwise eligible.”

{¶ 3} The court held a hearing on S.C.’s motion on May 29, 2020. In a written decision dated June 10, 2020, the municipal court concluded that the state’s interest in maintaining the record of conviction outweighs S.C.’s interest in having the record sealed, and it denied the motion. S.C. appealed. He assigns a single error for our review:

WHETHER THE COURT ERRED IN DENYING THE MOTION TO SEAL THE
RECORD.

II. Law and Analysis

{¶ 4} In his sole assignment of error, S.C. argues that the trial court abused its discretion in denying his motion to seal the record. He argues that (1) the expungement provisions of R.C. 2953.32 must be liberally construed; (2) the court just months earlier granted a motion to seal S.C.’s conviction in Sylvania Municipal Court case Nos. CRB-0701290 and 0900100, and nothing in his criminal history has changed in the meantime; (3) the court improperly based its decision on the nature of the offense itself; (4) S.C. testified that the conviction limited his job mobility; and (5) the state did not express a need to maintain the record of conviction.

{¶ 5} Under R.C. 2953.32(A)(1) “an eligible offender may apply to the sentencing court * * * for the sealing of the record of the case that pertains to the conviction.”

Where the conviction at issue is a misdemeanor, an application may be made a year after the offender’s discharge. R.C. 2953.32(A)(1)(c). Upon the filing of an application, the

court must set a date for a hearing, and the prosecutor may object to the application by filing an objection specifying the reasons it believes the application should be denied. R.C. 2953.32(B). The court must direct its regular probation officer to make inquiries and written reports concerning the applicant. *Id.*

{¶ 6} In considering a motion to seal the record of conviction, the court must determine whether the applicant is an “eligible offender”; determine whether criminal proceedings are pending against the applicant; determine whether the applicant has been rehabilitated to the court’s satisfaction; consider the prosecutor’s objections, if any; and weigh the applicant’s interests in having the records sealed against the government’s need to maintain the records. R.C. 2953.32(C)(1)(a)-(e). “If the court determines * * * that the applicant is an eligible offender * * *, that no criminal proceeding is pending against the applicant, that the interests of the applicant in having the records * * * sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of [the] applicant * * * has been attained to the satisfaction of the court, the court * * * shall order all official records of the case that pertain to the conviction * * * sealed.” R.C. 2953.32(C)(2).

{¶ 7} The sealing of a criminal record has been characterized as an “act of grace created by the state.” *State v. Hamilton*, 75 Ohio St.3d 636, 665 N.E.2d 669 (1996). It is a privilege, not a right. *State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, 28 N.E.3d 69, ¶ 15. “Accordingly, a court may seal an offender’s conviction record only when all requirements for eligibility are met.” (Internal citations and quotations omitted.) *State v.*

Radcliff, 142 Ohio St.3d 78, 2015-Ohio-235, 28 N.E.3d 69, ¶ 15. “The burden is on the applicant to demonstrate that his interest in having the records sealed is equal to or greater than the government’s interest in maintaining those records.” *State v. J.M.S.*, 2019-Ohio-3383, 142 N.E.3d 142, ¶ 8 (10th Dist.).

{¶ 8} We generally review a trial court’s decision denying an application to seal a record of conviction under an abuse-of-discretion standard. *State v. Gaines*, 6th Dist. Huron No. H-19-004, 2019-Ohio-5003, ¶ 10. An abuse of discretion connotes that the trial court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). An unreasonable decision is one that lacks sound reasoning to support the decision. *Hageman v. Bryan City Schools*, 10th Dist. Franklin No. 17AP-742, 2019-Ohio-223, ¶ 13. “An arbitrary decision is one that lacks adequate determining principle and is not governed by any fixed rules or standard.” *Id.*, quoting *Porter, Wright, Morris & Arthur, LLP v. Frutta del Mondo, Ltd.*, 10th Dist. No. 08AP-69, 2008-Ohio-3567, 2008 WL 2779511, ¶ 11. And an unconscionable decision is one “that affronts the sense of justice, decency, or reasonableness.” *Id.*

{¶ 9} The municipal court found that S.C. was an “eligible offender,” S.C.’s probation terminated more than a year before filing his motion to seal, the state did not oppose the motion assuming S.C. was “otherwise eligible,” and there were no known proceedings pending against S.C.. But the court nevertheless concluded that the state’s interest in maintaining the record of conviction outweighs S.C.’s interest in having the

records sealed, and it denied the motion. It reasoned that (1) S.C. was convicted of felony drug possession in Wood County in 2008, was granted intervention in lieu of conviction, and twice violated the terms of the program; (2) S.C. was convicted of theft in Napoleon in 2011; (3) S.C. is employed by the U.S. Postal Service and failed to show that the presence of this conviction on his record has hampered his employment situation; and (4) the charge of attempting to impersonate an officer is “extremely serious.”

{¶ 10} S.C. argues that mere months before denying his motion in this case, the trial court granted his motion to seal the records of conviction in Sylvania Municipal Court case Nos. CRB-0701290 and 0900100, and nothing in his criminal history has changed since then. Unfortunately, this information is argued only in S.C.’s brief; it is not otherwise contained in the record, nor was this point argued in the trial court. We, therefore, cannot consider it. *See State v. Sawyer*, 6th Dist. Lucas No. L-19-1198, 2020-Ohio-6980, ¶ 13, citing *State v. Zhovner*, 2013-Ohio-749, 987 N.E.2d 333, ¶ 12 (3d Dist.) (recognizing that information that is “not admitted into evidence or otherwise made part of the trial record [is] not part of the record on appeal and cannot be considered”).

{¶ 11} But also not in the record are details concerning the Wood County and Napoleon convictions that were relied upon by the trial court in denying S.C.’s motion.¹ The record contains a prosecutor’s recommendation that attaches a criminal record report.

¹ S.C. acknowledged at the hearing that he had a drug conviction in Wood County in 2008, but no additional details were supplied concerning his purported violations of the terms of his intervention in lieu of conviction. Those violations appear to have been important to the trial court’s decision to deny S.C.’s motion to seal.

The convictions referenced by the court do not appear in the criminal record report or in any of the other documents transmitted to this court. The convictions referenced by the court are not part of the record and were not properly relied upon to deny S.C.'s motion. *See Tyler v. Tyler*, 2d Dist. Montgomery No. 26875, 2016-Ohio-7419, ¶ 29 (finding that trial court erred in considering evidence outside the record); *In re Estate of Strauss*, 5th Dist. Ashland No. 08-COA-19, 2010-Ohio-811, ¶ 25 (“Consideration of evidence outside the record is inappropriate and can constitute reversible error. * * * However, where there is ample evidence within the record to uphold the determination by the trial court, the consideration of evidence outside the record is not necessarily prejudicial.”).

If we set aside the information relied on by the court that was not contained in the record, this leaves us with the court's conclusion that S.C.'s conviction has not hampered his employment opportunities and its characterization of the underlying offense as “extremely serious.”

{¶ 12} S.C. testified that he was hired and continues to be employed by the U.S. Postal Service despite his conviction. But he also testified that he desires to seek other employment; he has not done so, however, for fear that his conviction will deter employers from hiring him. He also testified that he is embarrassed that this conviction appears on his record and he wants a clean slate. In this regard, S.C. has demonstrated that his employment opportunities have been hampered.

{¶ 13} As for the seriousness of the offense, attempting to impersonate a police officer is no doubt a serious offense. But Ohio courts have recognized that “a court

cannot deny an application solely on the nature of the offense.” *State v. M.J.*, 11th Dist. Ashtabula No. 2018-A-0046, 2019-Ohio-1420, ¶ 21. There must exist a legitimate interest in maintaining the applicant’s criminal record “*other than* the circumstances and nature of the crime * * *.” (Emphasis in original.) *M.J.* at ¶ 23. Here, no other interest was articulated by the prosecutor or by the court. In fact, the prosecutor opted not to oppose S.C.’s motion or file a brief on appeal.

{¶ 14} Accordingly, we find that the trial court abused its discretion when it concluded that S.C.’s interests in having the record of his conviction sealed were outweighed by a legitimate governmental need to maintain those records. We find S.C.’s sole assignment of error well-taken.

III. Conclusion

{¶ 15} The trial court improperly relied on information outside the record and the seriousness of the underlying offense as reasons for denying S.C.’s motion to seal his record of conviction. The information properly before the court demonstrates that S.C.’s interests in having the records sealed were not outweighed by any legitimate governmental need to maintain those records.

{¶ 16} We reverse the June 10, 2020 judgment of the Sylvania Municipal Court. S.C.'s motion to seal his record of conviction in Sylvania Municipal Court case No. CRB0602163 is granted and the official records of that case are ordered sealed. The city is ordered to pay the costs of this appeal.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Christine E. Mayle, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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