

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of the Application for the :
Sealing of the Records of : No. 12AP-310
Everett H. Johnson, : (M.C. No. 2011 CRX 052931)
(State of Ohio, : (REGULAR CALENDAR)
Appellant). :

D E C I S I O N

Rendered on December 20, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for
appellant.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶ 1} Plaintiff-appellant, the State of Ohio, appeals from a judgment of the Franklin County Municipal Court granting the application of defendant-appellee, Everett H. Johnson, to have his criminal records sealed. Because the trial court granted Johnson's application without first complying with R.C. 2953.52, we reverse that judgment and remand the matter for further proceedings.

I. Factual and Procedural Background

{¶ 2} In April 2006, two criminal complaints were filed against Johnson in the Franklin County Municipal Court, both alleging counts of possession of drugs. The trial court dismissed the complaints shortly after their filing.

{¶ 3} In December 2011, Johnson filed an application pursuant to R.C. 2953.52 to have the records of those filings sealed. The trial court scheduled a hearing on the application for March 5, 2011. Nothing in the record indicates that the trial court notified

the prosecutor of the hearing date. However, on March 5, 2011, the trial court granted Johnson's application and sealed his criminal records in those two cases.

{¶ 4} The state appeals and assigns the following error:

The trial court erred and abused its discretion when it granted the application for expungement without first conducting a hearing and without giving notice to the prosecution.

II. The Procedure to Consider Applications for Sealing Records under R.C. 2953.52

{¶ 5} R.C. 2953.52 permits people who have been found not guilty of an offense or who have had a complaint against them dismissed to apply to have those records sealed. Upon the filing of an application under that statute, however, the trial court must "set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application." R.C. 2953.52(B)(1). The state argues that the trial court erred procedurally by not notifying it of the hearing set for Johnson's application and also by not holding said hearing.

{¶ 6} The record indicates that Johnson was the only recipient of notice of the hearing. As the trial court itself admitted, "the file does not reflect that notice was sent to the prosecuting attorney." (May 16, 2012 Entry granting Motion to Settle the Record.)¹ This procedural flaw mandates reversal of the trial court's judgment. *State v. Selesky*, 11th Dist. No. 2008-P-0029, 2009-Ohio-1145, ¶ 25 (failure to give prosecution notice of hearing deprives trial court authority to grant application).

{¶ 7} Because the trial court granted Johnson's application without complying with R.C. 2953.52, we sustain the state's assignment of error. Accordingly, we reverse the judgment of the Franklin County Municipal Court and remand the matter to the trial court for further proceedings that comply with R.C. 2953.52.

Judgment reversed; cause remanded.

BRYANT and FRENCH, JJ., concur.

¹ It is also unclear from the record whether the trial court actually held a hearing on Johnson's application.