

[Cite as *In re Mooney*, 2012-Ohio-5904.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of:	:	
	:	No. 12AP-376
Alexis J. Mooney,	:	(C.P.C. Nos. 12EP-29
(State of Ohio,	:	and 10CR-06-3490)
Appellant).	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 13, 2012

Saia & Piatt, Inc., and *Jessica G. Fallon*, for appellee.

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Appellant, state of Ohio ("the state"), appeals the judgment of the Franklin County Court of Common Pleas, which granted the application of appellee, Alexis J. Mooney ("appellee"), to seal the record of her conviction for attempted misuse of a credit card, a first-degree misdemeanor.

I. BACKGROUND

{¶ 2} On January 13, 2012, appellee filed an application for an order sealing a record of conviction, as provided by R.C. 2953.32. In it, she stated that she had been convicted of a misdemeanor more than one year before her application and that she had otherwise satisfied the requirements for expungement.

{¶ 3} The state opposed appellee's application. The state argued that appellee was not a first offender and, therefore, was ineligible for expungement because she had a prior conviction for failing to register her vehicle, a violation of R.C. 4503.11 and a fourth-degree misdemeanor. The state also argued that appellee had failed to demonstrate her rehabilitation from the serious offense of attempting to misuse a credit card she obtained while employed at a bank.

{¶ 4} The trial court held a hearing at which appellee appeared. Relying on *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258, her counsel argued that appellee's prior conviction did not disqualify her as a first offender under the statute. Rather, it was an "administrative traffic-related offense. It was a payable offense." (Tr. 5.) As for her misuse of the credit card, appellee discussed at length her efforts at rehabilitation since her conviction. She told the court that she had applied for jobs, but she had been rejected because of her conviction.

{¶ 5} At the hearing, the trial court stated that it would grant the application. The court confirmed that ruling in an entry filed March 27, 2012.

II. ASSIGNMENT OF ERROR

{¶ 6} The state filed a timely appeal and raises the following assignment of error:

THE TRIAL COURT ERRED WHEN IT GRANTED AN
EXPUNGEMENT APPLICATION FOR AN OFFENDER
WHO WAS NOT A FIRST OFFENDER.

III. DISCUSSION

{¶ 7} At the time appellee filed her application, R.C. 2953.32(A)(1) provided that a first offender could apply for the sealing of a record of conviction. R.C. 2953.31(A) defined the term and specified that convictions for certain offenses would act as exceptions to this definition and not bar expungement. R.C. 2953.31(A) did not exclude a violation under R.C. Chapter 4503 as a first offense. However, it excluded many other

violations under similar chapters, as well as violations of municipal ordinances that were substantially similar to the listed provisions.¹

{¶ 8} In *Black*, this court considered whether an applicant's prior conviction for driving under suspension meant that she was not a first offender for purposes of expungement. We concluded that her prior conviction did not preclude her from being considered a first offender for these purposes. We analogized her conviction to traffic-related violations that the statute specifically excluded as first offenses.

{¶ 9} The facts of *Black* are closely analogous to the facts before us now. In fact, appellee's conviction for failing to register her vehicle is more administrative in nature than the conviction of driving under a suspended license at issue in *Black*. Adhering to the principles of stare decisis, and given the closely analogous facts at issue, we apply *Black* and conclude that the trial court did not err. Our holding in this regard is limited to the facts before us. With these express limitations, we overrule the state's assignment of error.

IV. CONCLUSION

{¶ 10} For all these reasons, we overrule the state's assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.

¹ Effective September 28, 2012, an "eligible offender" may apply for the sealing of a record of conviction. R.C. 2953.31(A). Under this new law, in general terms, an eligible offender means someone who has no more than one felony conviction or no more than two different misdemeanor convictions. Having been convicted of two different misdemeanors, it appears that appellee would be eligible for expungement under the new law.

