

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: :
Tiffeny S. Hopson, : No. 12AP-67
(State of Ohio, : (C.P.C. No. 11EP-607)
Appellant). : (REGULAR CALENDAR)

D E C I S I O N

Rendered on September 28, 2012

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

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Appellant, the state of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting the application of appellee, Tiffeny S. Hopson, and sealing the official records of her conviction in case No. 99CR-5029 pursuant to R.C. 2953.32. For the following reasons, we reverse.

{¶ 2} In 2000, Hopson pleaded guilty to one count of receiving stolen property, a fourth-degree felony. The trial court sentenced her to a five-year period of community control and ordered her to, inter alia, pay restitution and court costs. On July 18, 2011, Hopson filed an application to seal the records of her conviction. The state filed an objection to the application on the ground that her application was premature under R.C. 2953.32(A)(1) because she had not satisfied her obligation to pay restitution. The state attached a report from the court investigator, which indicated that, as of July 28, 2011, Hopson still owed \$75 in restitution.

{¶ 3} The trial court scheduled a hearing for October 25, 2011, but continued the hearing until December 20, 2011. At the December hearing, the trial court indicated that the matter was continued because Hopson "had some fees to pay" and asked Hopson whether she had paid those fees. (Tr. 2.) After Hopson responded affirmatively, the trial court granted her application.

{¶ 4} The state now appeals, raising a single assignment of error for our consideration:

THE TRIAL COURT ERRED WHEN IT GRANTED THE
DEFENDANT'S PREMATURELY FILED APPLICATION FOR
EXPUNGEMENT.

{¶ 5} Pursuant to R.C. 2953.32(A)(1), an offender is ineligible to seal the records of conviction until "the expiration of three years after the offender's final discharge if convicted of a felony." " 'An offender is not finally discharged for purposes of R.C. 2953.32(A)(1) if the offender still owes restitution.' " *State v. Jordan*, 10th Dist. No. 07AP-584, 2007-Ohio-6383, ¶ 6, quoting *In re White*, 165 Ohio App.3d 288, 2006-Ohio-233, ¶ 7 (10th Dist.); *see also State v. Wainwright*, 75 Ohio App.3d 793 (8th Dist.1991).

{¶ 6} In this case, it is undisputed that Hopson had not received a "final discharge" when she applied to seal her records because she still owed restitution. While Hopson may have eventually paid restitution between the first and second hearing dates, this would not change the fact that her application was premature. The existence of a final discharge only begins the running of the three-year waiting period in R.C. 2953.32(A)(1). Therefore, because Hopson's application was premature under R.C. 2953.32(A)(1), the trial court erred by sealing the records of her conviction. Accordingly, the state's assignment of error is sustained.

{¶ 7} Having sustained the state's assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand this cause to enter judgment denying Hopson's application to seal her record.

*Judgment reversed;
cause remanded with instructions.*

BROWN, P.J., and DORRIAN, J., concur.
