

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	Nos. 12AP-818
	:	and
v.	:	12AP-826
	:	(C.P.C. No. 12EP-125)
Lonnie Hoover,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on July 30, 2013

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellant.

Garry A. Sabol, for appellee.

APPEALS from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} In these appeals, plaintiff-appellant, the State of Ohio, appeals from judgments of the Franklin County Court of Common Pleas that partially granted the application of defendant-appellee, Lonnie Hoover, to have his criminal records sealed. For the following reasons, we reverse and remand the matter with instructions.

I. Factual and Procedural Background

{¶ 2} In 2003, a Franklin County Grand Jury indicted Hoover with a number of charges arising from a car crash that caused the death of one person and severe injuries to another. Ultimately, Hoover pled guilty to counts of aggravated vehicular homicide and vehicular assault. The trial court sentenced Hoover to a five-year term of community

control with sanctions including restitution and the performance of 200 hours of community service. The trial court also suspended Hoover's driver's license for life.

{¶ 3} In 2012, Hoover filed an application pursuant to R.C. 2953.32(A)(1) to have the records of his convictions sealed. The state objected, arguing that Hoover had not received a final discharge as required by R.C. 2953.32(A)(1) and, alternatively, that sealing would be inappropriate because the government has a legitimate interest in maintaining access to Hoover's criminal history. After a hearing, the trial court partially granted Hoover's application. Specifically, although the trial court sealed the records of his convictions, it did not seal the portion of his sentence that imposed a life-time suspension of his driver's license.¹

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

[1.] The trial court lacked jurisdiction to grant an application to seal the record where defendant had not received a final discharge within the meaning of R.C. 2953.32.

[2.] The trial court erred in purporting to partially seal the record.

II. Has Hoover Received a Final Discharge to Qualify for the Sealing of his Records?

{¶ 5} " '[E]xpungement is an act of grace created by the state', and so is a privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533 (2000), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639 (1996). In light of its nature, expungement should be granted only when all requirements for eligibility are met. *Simon* at 533; *State v. Brewer*, 10th Dist. No. 06AP-464, 2006-Ohio-6991, ¶ 5. The state argues that Hoover has not met the requirements for sealing of his records because he has not received a final discharge. We agree.

¹ The trial court's first entry sealing the record did not include this exception. Three days later the trial court filed another entry which fixed this omission. Apparently out of extreme caution, the state has filed appeals from both entries.

{¶ 6} Former R.C. 2953.32(A)(1) permitted a first offender to apply for the sealing of conviction records.² Because Hoover's convictions were both felonies, he had to wait three years after his final discharge before he could file his application. *Id.* Whether Hoover has been finally discharged under the statute is a question of law which we review de novo. *See State v. Futrall*, 123 Ohio St.3d 498, 2009-Ohio-5590, ¶ 6.

{¶ 7} The term "final discharge" is not defined by statute. Per case law, however, an offender is not finally discharged until he has served any sentence previously imposed by the court. *See State v. Pettis*, 133 Ohio App. 3d 618, 619 (8th Dist.1999); *Willowick v. Langford*, 15 Ohio App.3d 33, 34 (11th Dist.1984); *State v. Braun*, 8th Dist. No. 46082 (July 7, 1983) ("[a] final discharge from conviction means a release from all obligations imposed and not just a release from confinement."). For example, this court and others have repeatedly held that final discharge under the statute does not occur until court-ordered restitution has been satisfied. *See State v. Jordan*, 10th Dist. No. 07AP-584, 2007-Ohio-6383, ¶ 6; *State v. Wainwright*, 75 Ohio App.3d 793 (8th Dist.1991). *But see State v. Summers*, 71 Ohio App.3d 1, 2 (8th Dist.1990) (holding that court costs were not part of criminal sentence, and that non payment of those costs did not result in sentence not being served).

{¶ 8} The state argues that because Hoover's sentence included a mandatory lifetime suspension of his driver's license, he will never be able to complete that portion of his sentence and will, therefore, never receive a final discharge. We agree.

{¶ 9} Hoover pled guilty to a count of aggravated vehicular homicide in violation of former R.C. 2903.06. As a result, and pursuant to former R.C. 2903.06 and 4507.16, the trial court was statutorily obligated to permanently revoke his driver's license. A mandatory driver's license suspension is a criminal sanction. *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908, ¶ 14. *See also State v. Rondini*, 11th Dist. No. 2002-A-0053, 2004-Ohio-2597, ¶ 4 (noting that driver's license suspension is part of sentence). Because Hoover's driver's license is permanently revoked, he remains bound by a sanction imposed as part of his sentence. Therefore, he has not received a final

² The former version of R.C. 2953.31 through 2953.36 applies to Hoover's motion because he filed his motion before September 28, 2012, the effective date of the most recent changes to those statutes. *See State v. Porter*, 2d Dist. No. 2012 CA 4, 2012-Ohio-5541, ¶ 9 (applying former version of statute to application filed before effective date of new version).

discharge and is not eligible for sealing of his records. In reality, the lifetime driver's license revocation will prevent him from ever being eligible to have his records sealed.

{¶ 10} Hoover argues that the legislature could not have intended to permanently disqualify an applicant because of a lifetime driver's license suspension that can never be completely served. We disagree. It is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment. *Clark v. Scarpelli*, 91 Ohio St.3d 271, 278 (2001). The legislature has amended R.C. 2953.32 a number of times after the court decisions defining what a final discharge is under that statute and it has not attempted to redefine the meaning of a final discharge. *See Riffle v. Physicians & Surgeons Ambulance Servs., Inc.*, 135 Ohio St.3d 357, 2013-Ohio-989, ¶ 20.

III. Conclusion

{¶ 11} Because Hoover has not received a final discharge of his sentence, he is not eligible to have the records of his convictions sealed. Accordingly, the trial court erred in granting Hoover's application to seal his records and we sustain the state's first assignment of error. This disposition renders the state's second assignment of error moot. We reverse the judgments of the Franklin County Court of Common Pleas and remand the matter to the trial court with instructions to deny Hoover's application.

Judgments reversed; cause remanded with instructions.

SADLER and McCORMAC, JJ., concur.

McCORMAC, J., retired, of the Tenth Appellate District,
assigned to active duty under authority of Ohio Constitution,
Article IV, Section 6(C).
