

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	No. 13AP-158
v.	:	(C.P.C. No. 12EP-849)
Shareda A. Evans,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 10, 2013

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

APPEAL from the Franklin County Court of Common Pleas

T. BRYANT, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting an application, pursuant to R.C. 2953.32, to seal the record of defendant-appellee, Shareda A. Evans. Because the trial court erred in granting the application when there was insufficient evidence to do so and it failed to make the requisite findings, we reverse the judgment of the court of common pleas.

I. BACKGROUND

{¶ 2} On September 21, 2011, the Franklin County Court of Common Pleas convicted appellee of attempted patient abuse in violation of R.C. 2903.34, a misdemeanor of the first degree, and sentenced her to pay the costs of the prosecution. On November 5, 2012, appellee filed, pursuant to R.C. 2953.32(A), a form application to seal the record of her misdemeanor conviction. The preprinted portion of the application included the following unsworn statement:

Applicant is an eligible offender as defined in R.C. 2953.31; and more than three years have passed since applicant's conviction of a felony (more than one year if conviction or bail forfeiture for a misdemeanor). Applicant otherwise satisfies the requirements of R.C. 2953.32 for granting this application.

(R. 2-5.)

{¶ 3} The state objected to appellee's application. In its objection, the state claimed that the facts underlying the conviction raised concerns about whether appellee had been rehabilitated because she had slapped the face of an elderly resident of an assisted living facility. The state argued that the public had a legitimate interest in maintaining access to records involving crimes of violence committed against the elderly by assisted living employees. Thus, the state requested that the trial court deny appellee's application to seal her record.

{¶ 4} A hearing was held on February 21, 2013. At the hearing, appellee stated that she could not get a job because of her conviction. The state argued that based on the seriousness of the offense, the age of the victim, and the position of trust that appellee had held at the facility at the time of the offense, the application should be denied. The trial court gave appellee the opportunity to respond to the state's objection, but she declined. The following exchange then occurred:

THE COURT: All right. With respect to this offense, I agree it was a serious offense. It was indicted as a felony, and I would note that the State did, in disposing of this matter, reduce it to a misdemeanor.

MR. KIRSCHMAN: It would be patient abuse, yes, as a misdemeanor, but patient abuse.

THE COURT: Yes. It was reduced to a misdemeanor. And I would note also that this is the only offense that this lady has. How long had you worked in this area, ma'am?

MS. EVANS: Eight and a half years.

THE COURT: Okay. Based upon that and based upon her prior history, the Court at this time will grant her request for an expungement. That's all, ma'am.

(Tr. 4.)

{¶ 5} On February 22, 2013, the trial court entered a judgment granting appellee's application to seal the record of her conviction. In the entry, the trial court stated that "[i]n accordance with Section 2953.32, Ohio Revised Code, the Court finds that there are no criminal proceedings pending against the applicant, **Shareda A. Evans**, and that the sealing of the record of the applicant's CONVICTION, in Criminal Case number **11CR-2515**, is consistent with the public interest." (Emphasis sic.) (R. 10.)

II. ASSIGNMENT OF ERROR

{¶ 6} The state appealed from the sealing order and assigns the following error:

THE TRIAL COURT ERRED IN GRANTING THE APPLICATION TO SEAL THE RECORD OF CONVICTION WHERE IT FAILED TO FIND THAT DEFENDANT HAD BEEN REHABILITATED.

III. DISCUSSION

{¶ 7} In its sole assignment of error, the state asserts that the trial court erred in granting appellee's application to seal the record of her conviction because it failed to find that she had been rehabilitated.

{¶ 8} In general, a trial court's decision to grant or deny a request to seal records is reviewed under an abuse of discretion standard. *In re Fuller*, 10th Dist. No. 11AP-579, 2011-Ohio-6673, ¶ 7. An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable. *State ex rel. Nese v. State Teachers Retirement Bd. of Ohio*, 136 Ohio St.3d 103, 2013-Ohio-1777, ¶ 25. " 'Expungement 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). "Moreover, the government possesses a substantial interest in ensuring that expungement is granted only to those who are eligible" because it eliminates the public's access to conviction information. *Hamilton* at 640. Consequently, "[e]xpungement should be granted only when all requirements for eligibility are met." *Simon* at 533; *Hamilton* at 640; *State v. Reedus*, 10th Dist. No. 12AP-1066, 2013-Ohio-2752, ¶ 4.

{¶ 9} R.C. 2953.32(C)(1) provides the means by which an eligible offender may apply to seal the record of conviction and sets forth the applicable requirements for

eligibility. In determining whether to seal the record of a conviction, the trial court must do each of the following:

(a) Determine whether the applicant is an eligible offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case.

(b) Determine whether criminal proceedings are pending against the applicant;

(c) If the applicant is an eligible offender who applies pursuant to division (A)(1) of this section, *determine whether the applicant has been rehabilitated to the satisfaction of the court*;

(d) If the prosecutor has filed an objection in accordance with division (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed against the legitimate needs, if any, of the government to maintain those records.

(Emphasis added.)

{¶ 10} The state claims that the trial court did not make the determination required by R.C. 2953.32(C)(1)(c) that appellee had been rehabilitated to the satisfaction of the court and that no evidence was submitted on the rehabilitation issue. "As opposed to the adversary posture of a guilt determination, an expungement hearing provides the court with the opportunity to review matters of record and to make largely subjective determinations regarding whether the applicant is rehabilitated and whether the government's interest in maintaining the record outweighs the applicant's interest in having the record sealed." *Hamilton* at 640. "The purpose of the hearing is to provide a reviewing court with all relevant information bearing on an applicant's eligibility." *State v. Black*, 10th Dist. No. 03AP-862, 2004-Ohio-5258, ¶ 7, quoting *State v. Suel*, 10th Dist. No. 02AP-1158, 2003-Ohio-3299, ¶ 10.

{¶ 11} The hearing here included no evidence concerning whether appellee had been rehabilitated since her misdemeanor conviction. Evidence of rehabilitation normally

consists of an admission of guilt and a promise to never commit a similar offense in the future, or good character or citizenship in the community since the conviction. *State v. Brooks*, 2d Dist. No. 25033, 2012-Ohio-3278, ¶ 21; *State v. Schuster*, 12th Dist. No. CA2012-06-042, 2013-Ohio-452, ¶ 22; *State v. Auge*, 10th Dist. No. 01AP-1272, 2002-Ohio-3061, ¶ 25-26. Appellee did not admit guilt in committing the offense nor did she promise that it would not happen again. Appellee also did not introduce evidence of her good character or citizenship in the community since her conviction. Further, although her application contained the preprinted statement that she "otherwise satisfies the requirements of R.C. 2953.32," this did not satisfy her evidentiary burden to establish that she was rehabilitated. *See In re Brown*, 10th Dist. No. 07AP-715, 2008-Ohio-4105, ¶ 13 (involving motion to seal criminal records of person who had her charges dismissed by the state due to insufficient evidence, court held that applicant had the burden to demonstrate need for sealing the records under R.C. 2953.52, which is analogous to R.C. 2953.32, and that the applicant failed to meet that burden when her written application merely stated that she met all the requirements of R.C. 2953.52); *State v. Shaffer*, 11th Dist. No. 2009-G-2929, 2010-Ohio-6565, ¶ 32-33 (applicant for expungement of criminal conviction under R.C. 2953.32 must demonstrate he has been rehabilitated).

{¶ 12} Moreover, the trial court never found, either in its journal entry or at the hearing, that appellee had been rehabilitated to its satisfaction. Instead, the trial court merely determined that there were no criminal proceedings pending against appellee and that the sealing of the record of her conviction was consistent with the public interest. As discussed previously, there was also no evidence submitted upon which the trial court could have made such a determination. Ultimately, it is the responsibility of the trial court to determine whether an applicant meets the requirements to have a record of conviction sealed, and when there is no indication that such a determination is made and insufficient information in the record to support the determination, reversal is required. *See Fuller* at ¶ 8 (reversal where record is lacking in both findings and evidence of applicant's rehabilitation); *State v. Bates*, 5th Dist. No. 03-COA-057, 2004-Ohio-2260, ¶ 25-28 (reversal where court never made findings either on the record or otherwise regarding whether applicant had been rehabilitated to the satisfaction of the court);

Shaffer at ¶ 32-34 (affirming trial court's denial of motion to seal record of conviction because applicant did not testify or present any evidence of his rehabilitation).

{¶ 13} Therefore, because the record does not include any evidence concerning appellee's rehabilitation, although she was not precluded by the trial court from introducing this evidence, and the trial court made no findings on her rehabilitation, the trial court abused its discretion in granting appellee's application to seal the record of her misdemeanor conviction. The state's assignment of error is sustained.

IV. CONCLUSION

{¶ 14} Accordingly, having sustained the state's single assignment of error, the judgment of the Franklin County Court of Common Pleas granting appellee's application to seal her record of conviction is reversed and remanded for further proceedings.

*Judgment reversed
and cause remanded.*

KLATT, P.J., and BROWN, J., concur.

T. BRYANT, J., retired, formerly of the Third Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).
