

[Cite as *State v. Glass*, 2010-Ohio-4954.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 10AP-155
 : (C.P.C. No. 09EP-731)
 Jamie E. Glass, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on October 12, 2010

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*,
for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Plaintiff-appellant, the state of Ohio ("state"), appeals from a judgment of the Franklin County Court of Common Pleas granting an application to seal the record of conviction of defendant-appellee, Jamie E. Glass ("appellee"), in case No. 04CR-6545. Because the offense of which appellee was convicted is not eligible to be sealed, we reverse.

{¶2} On April 19, 2005, appellee pled guilty to menacing by stalking in violation of R.C. 2903.211, a felony of the fourth degree, and was sentenced to an 18-month term of community control. On December 15, 2009, appellee filed an application seeking to have the record of his conviction sealed. The state objected noting that an offense of violence bars a conviction from being sealed.

{¶3} At the hearing on the application, the trial court concluded that appellee's conviction for violation of R.C. 2903.211 had no component of a physical assault, and could therefore be sealed. The trial court determined that it was consistent with the public's interest to seal the record of appellee's conviction, and granted the application.

{¶4} Appellant sets forth the following single assignment of error for our review:

THE TRIAL COURT ERRED WHEN IT GRANTED APPELLEE'S APPLICATION TO SEAL THE RECORD OF HIS CRIMINAL CONVICTION AS R.C. 2953.36(C) BARS SEALING THE RECORD OF AN OFFENSE OF VIOLENCE.

{¶5} R.C. 2953.36 sets forth a list of offenses for which a record of conviction may not be sealed, including "[c]onvictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section 2917.03 of the Revised Code and is not a violation of section 2903.13, 2917.01 or 2917.31 of the Revised Code that is a misdemeanor of the first degree." R.C. 2953.36(C). In *State v. Miller*, 10th Dist. No. 06AP-192, 2006-Ohio-5954, we examined whether menacing by stalking is an offense of violence for purposes of the exclusion set forth in R.C. 2953.36(C), and concluded that it is. In considering whether there is any distinction between the "cause physical harm" and the "cause mental distress" forms of the offenses of menacing by stalking, we stated:

The statute expressly includes a violation of R.C. 2903.211 as an "offense of violence," and does not differentiate between conduct causing physical harm and conduct causing mental distress. Since the General Assembly did not make that distinction, neither shall we.

Id. at ¶10.

{¶6} Since appellee's conviction was for an offense of violence, and R.C. 2953.36(C) specifically precludes records of convictions for offenses of violence from being sealed, it was error for the trial court to grant appellee's application to seal the record of his conviction.

{¶7} Accordingly, the state's sole assignment of error is sustained and the judgment of the Franklin County Court of Common Pleas is reversed and remanded with instructions to enter judgment denying appellee's application to have the record of his conviction sealed.

Judgment reversed and cause remanded with instructions.

KLATT and McGRATH, JJ., concur.
