

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio [et al.], :
 :
 Plaintiffs-Appellees, :
 :
 v. : Nos. 16AP-625
 : (M.C. No. 2016CRX050775)
 Michael Martenet, : and 16AP-626
 : (M.C. No. 2016CRX050776)
 Defendant-Appellant. :
 : (REGULAR CALENDAR)
 :

D E C I S I O N

Rendered on March 14, 2017

On brief: *Richard C. Pfeiffer, Jr.*, City Attorney, and *Melanie R. Tobias; Ron O'Brien*, Prosecuting Attorney, and *Michael P. Walton*, for appellee. **Argued:** *Michael P. Walton*.

On brief: *Gregory B. Mathews*, for appellant. **Argued:** *Gregory B. Mathews*.

APPEALS from the Franklin County Municipal Court

TYACK, P.J.

{¶ 1} Michael Martenet is appealing from the refusal of a judge of the Franklin County Municipal Court to seal his records in two cases. He assigns two errors for our consideration:

[I.] THE TRIAL COURT ERRED IN DENYING THE APPLICATION TO SEAL THE RECORDS OF THE TWO CASES WITHOUT MAKING A FACTUAL DETERMINATION AS TO WHETHER THE PHYSICAL CONTROL AND THE DRUG-RELATED CHARGES AROSE AS A RESULT OF OR IN CONNECTION WITH THE SAME ACT.

[II.] THE TRIAL COURT ERRED IN DENYING THE APPLICATION TO SEAL THE RECORDS OF THE TWO CASES AS A RESULT OF ITS MISINTERPRETATION OF [R.C.] 2953.61, AS INTERPRETED BY THE OHIO SUPREME COURT AND THE 10TH DISTRICT COURT OF APPEALS.

{¶ 2} On February 2, 2013, Martenet was arrested on three charges: physical control of a motor vehicle while impaired by alcohol or a drug of abuse ("physical control"), illegal possession of a controlled substance and possession of drug paraphernalia. Eventually his counsel worked out a plea bargain under the terms of which he pled guilty to the physical control charge and the other two charges were dismissed.

{¶ 3} Later that same year, other drug-related charges were filed against him. He applied for and was admitted to the Franklin County Municipal Court's alcohol/drug addiction program and the new charges were dismissed as a result.

{¶ 4} Apparently because of his history with the courts, Martenet has had trouble getting a suitable job. As a result, he hired a lawyer to pursue an application to seal some of the records in the Franklin County Municipal Court. The application was denied because a judge in the municipal court found that he was not an eligible offender. This appeal followed.

{¶ 5} The problem faced by Martenet is that he must argue that his plea bargain was based on a lie. He entered a guilty plea to being in physical control of a motor vehicle while under the influence of a controlled substance. Now his counsel argues that he was not really under the influence of a controlled substance when police found him asleep or passed out in his motor vehicle with cocaine on his person and more cocaine in packets in his motor vehicle.

{¶ 6} Martenet admitted and admits still that he used cocaine on the day he was arrested initially. Now he argues that the effects of the cocaine had worn off before Martenet was found asleep or passed out.

{¶ 7} The trial court had every right to not believe Martenet's later assertion that he was not under the influence of alcohol or a drug of abuse when police found him in his vehicle with cocaine in his possession and more cocaine in his vehicle. The trial court also could be skeptical because Martenet avoided a felony charge of possessing cocaine by

saying he was under the influence of cocaine when arrested. The plea bargain worked out on his behalf protected Martenet. Now Martenet argues alternative facts which could benefit Martenet, if believed.

{¶ 8} R.C. 2953.61 reads:

(A) Except as provided in division (B)(1) of this section, a person charged with two or more offenses as a result of or in connection with the same act may not apply to the court pursuant to section 2953.32 or 2953.52 of the Revised Code for the sealing of the person's record in relation to any of the charges when at least one of the charges has a final disposition that is different from the final disposition of the other charges until such time as the person would be able to apply to the court and have all of the records pertaining to all of those charges sealed pursuant to section 2953.32 or 2953.52 of the Revised Code.

(B)

(1) When a person is charged with two or more offenses as a result of or in connection with the same act and the final disposition of one, and only one, of the charges is a conviction under any section of Chapter 4507., 4510., 4511., or 4549., other than section 4511.19 or 4511.194 of the Revised Code, or under a municipal ordinance that is substantially similar to any section other than section 4511.19 or 4511.194 of the Revised Code contained in any of those chapters, and if the records pertaining to all the other charges would be eligible for sealing under section 2953.52 of the Revised Code in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed. In such a case, the court shall not order that only a portion of the records be sealed.

(2) Division (B)(1) of this section does not apply if the person convicted of the offenses currently holds a commercial driver's license or commercial driver's license temporary instruction permit.

{¶ 9} Martenet stands convicted of physical control and therefore is not eligible for expungement of that charge.

{¶ 10} Turning to the specific assigned error, the trial court judge executed a judgment entry which stated, "the charge(s) cannot be sealed pursuant to R.C. 2953.61 (multiple charges, same act)." This finding acknowledges that being in control of a motor

vehicle while under the influence of cocaine, possessing or using cocaine and having instruments to allow the use of cocaine are sufficiently connected to allow a trial court judge to block expungement of the dismissal of the possession of cocaine charge and of the dismissal of the drug instruments charges under the terms of R.C. 2953.61.

{¶ 11} The first assignment of error is overruled.

{¶ 12} The trial court in our view did not misinterpret the statute given the facts in this set of cases.

{¶ 13} The second assignment of error is overruled.

{¶ 14} Both assignments of error having been overruled, the judgments of the Franklin County Municipal Court are affirmed.

Judgments affirmed.

KLATT and LUPER SCHUSTER, JJ., concur.
