

[Cite as *State v. Gross*, 2011-Ohio-55.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-03-030
- vs -	:	<u>OPINION</u> 1/10/2011
RONALD G. GROSS, JR.,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM LEBANON MUNICIPAL COURT  
Case No. CRA0701381

Matthew J. Graber, City of Lebanon Prosecuting Attorney, 50 S. Broadway, Lebanon, Ohio 45036, for plaintiff-appellee

Robert W. Rettich, III, 46 East Market Street, Germantown, Ohio 45327-1366, for defendant-appellant

**HENDRICKSON, J.**

{¶1} Defendant-appellant, Ronald G. Gross, Jr., appeals a decision of the Lebanon Municipal Court denying his application for an order to seal the record of his criminal case. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} In November 2007, appellant was charged with one count of public

indecentcy in violation of R.C. 2907.09, a first-degree misdemeanor. He was tried by a jury on the charge and acquitted. In August 2009, appellant filed an application with the trial court to seal the record of his public indecentcy arrest. Following a hearing, the court summarily denied the motion. This appeal followed.

{¶3} Although appellant's brief neglected to frame any assignments of error, his sole argument appears to be that the trial court erred in denying his request to seal his criminal record because his interest in having the record sealed outweighed the state's interest in maintaining public records.

{¶4} We review a trial court's decision granting or denying an application to seal a criminal record for an abuse of discretion. *State v. Lesinski* (1992), 82 Ohio App.3d 829, 830. An abuse of discretion connotes that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶5} R.C. 2953.52 governs the sealing of the records of criminal proceedings after a finding of not guilty or upon dismissal of a criminal complaint. The section does not operate automatically, but requires that a defendant seeking to have his record sealed follow the procedures outlined in the statute. R.C. 2953.52(A)(1). See, also, *State v. Brown*, Franklin App. No. 07AP-255, 2007-Ohio-5016, ¶3. The defendant bears the burden to demonstrate the need for sealing the record. *Id.* at ¶4. This burden remains the same whether or not the state opposes the application. *Id.*

{¶6} When considering an application to seal a criminal record under R.C. 2953.52, a trial court must hold a hearing and do each of the following:

{¶7} "(a) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was

returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreman or deputy foreman of the grand jury;

**{¶18}** "(b) Determine whether criminal proceedings are pending against the person;

**{¶19}** "(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

**{¶10}** "(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records." R.C. 2953.52(B)(2).

**{¶11}** There is no dispute that appellant was found not guilty in the public indecency case. R.C. 2953.52(B)(2)(a). Nor is there any dispute that criminal proceedings were not pending against appellant at the time of his application. R.C. 2953.52(B)(2)(b). In addition, neither party contests the fact that the state did not file an objection prior to the hearing.<sup>1</sup> R.C. 2953.52(B)(2)(c). The only issue remaining before the trial court was its resolution of the weighing of interests under subdivision (d) of R.C. 2953.52(B)(2).

**{¶12}** The trial court indicated at the hearing that it would look up the applicable statute, review its options, and make its decision accordingly. In its decision, the trial court stated that it reviewed the motion and the report of probation

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1. At the hearing on the motion, the prosecution voiced objections to sealing the record.

to make its decision, and found the motion not well taken.<sup>2</sup>

{¶13} In applying R.C. 2953.52, the trial court, at a minimum, should have indicated on the record that it considered the requisite statutory factors in finding appellant's motion not well taken. Such a practice would comport with the language of the statute and also facilitate a meaningful review of the lower court's decision by an appellate court. Cf. *State v. Haas*, Lucas App. No. L-04-1315, 2005-Ohio-4350, ¶23. However, appellant does not challenge the manner in which the trial court made its decision.

{¶14} In *State v. Orth* (Dec. 27, 1993), Clermont App. No. CA93-03-020, this court reviewed a decision sealing the defendant's record of conviction under R.C. 2953.32. We ruled that the trial court did not follow the requirements of the statute when no findings or conclusions accompanied the decision, and that there was "no evidence of any weighing of [the defendant]'s interest in having his record of conviction sealed against the state's legitimate interest" in preserving the record.

{¶15} Despite these deficiencies in the record, this court declined to overturn the trial court's decision sealing the defendant's record. We noted that the state did not raise the issue of the trial court's failure to make findings on the record in its appeal. We further opined that "the record seems to indicate that the parties considered the requirements of the statute to be impliedly met." We presumed the regularity of the trial court proceedings and overruled the state's assignment of error.

{¶16} Similar to the defendant in the *Orth* case, appellant did not challenge the lack of findings in the record on appeal. Accordingly, we presume the regularity of the proceedings below. *Beach v. Sweeny* (1958), 167 Ohio St. 477, 478. See,

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2. The report of probation was not part of the record provided to this court.

also, *State v. Lumaye* (1992), 76 Ohio App.3d 823, 825; *State v. Rinehart* (July 18, 1991), Montgomery App. No. 12497, 1991 WL 131704 at \*1. This includes the presumption that the trial court engaged in the requisite analysis under R.C. 2953.52(B)(2).

{¶17} We conclude that the trial court did not abuse its discretion in denying appellant's application to seal the record of his public indecency case. Appellant's assignment of error is overruled.

{¶18} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.