

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 12AP-1054
Plaintiff-Appellee,	:	(C.P.C. No. 12EP-534)
v.	:	
	:	(REGULAR CALENDAR)
William J. Heidrick,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 15, 2013

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

Tyack, Blackmore, Liston & Nigh Co., L.P.A., and *Thomas M.*
Tyack, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, William J. Heidrick, from an entry of the Franklin County Court of Common Pleas denying appellant's application for an order to seal the official records of a dismissed criminal case pursuant to R.C. 2953.52.

{¶ 2} On July 11, 2012, appellant filed an application, pursuant to R.C. 2953.52(A), for an order to seal a record of dismissal in common pleas case No. 07CR-8392, in which appellant had been indicted on charges of kidnapping, abduction, and domestic violence. The state filed a response on September 14, 2012, requesting that the application be denied. Attached to the state's response was a copy of an entry, filed

April 17, 2008, indicating that the trial court had entered a nolle prosequi in case No. 07CR-8392 "for the reason that victim has relocated out of state and does not wish to cooperate in prosecution; insufficient additional evidence to proceed." On September 28, 2012, appellant filed a reply to the state's response. By entry filed November 14, 2012, the trial court denied the application to seal.

{¶ 3} On appeal, appellant sets forth the following assignment of error for this court's review:

THE TRIAL COURT ERRED PURPORTING TO DENY THE DEFENDANT'S REQUEST SEALING THE RECORD PURSUANT TO §2953.52 OF THE REVISED CODE SINCE THE CHARGES AGAINST HIM HAD BEEN DISMISSED BY PURPORTING TO RELY ON THE PROVISIONS OF §2953.32 OF THE REVISED CODE RELATING TO EXPUNGEMENT OF CONVICTION AND NOT MAKING THE FINDINGS MANDATED BY §2953.52, ET SEQ. OF THE REVISED CODE IN A SITUATION WHERE THE CHARGES HAVE BEEN DISMISSED VIS A VIS A CONVICTION.

{¶ 4} Under his single assignment of error, appellant asserts that the trial court erred in denying the application to seal by purporting to rely on R.C. 2953.32 relating to expungement of convictions. Appellant notes that the state, in its response to the application, cited two cases, *State v. Simon*, 87 Ohio St.3d 531 (2000), and *State v. Hamilton*, 75 Ohio St.3d 636 (1996), involving the expungement provisions under R.C. 2953.31 through 2953.36; more specifically, those cases involved applications to seal records of convictions. Appellant filed a reply to the state's response, observing that the application in the instant case was brought under R.C. 2953.52 which governs the sealing of records for individuals who have been charged but not convicted.

{¶ 5} Under Ohio law, "there are currently two statutory methods to expunge and seal criminal records." *Schussheim v. Schussheim*, 12th Dist. No. CA2011-07-078, 2012-Ohio-2573, ¶ 10. Specifically, "R.C. 2953.32 * * * allows convicted first-time offenders to seek the expungement and sealing of their conviction records, [while] R.C. 2953.52 * * * allows for the expungement and sealing of a defendant's criminal records if the defendant was found not guilty, the case was dismissed, or a grand jury returned a no bill." *Id.*

{¶ 6} Here, appellant's application was brought pursuant to R.C. 2953.52, which states in part:

(A)(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

* * *

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons the prosecutor believes justify a denial of the application.

(2) The court shall do each of the following, except as provided in division (B)(3) of this section:

(a)(i) 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 foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

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

(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;

(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.

{¶ 7} A reviewing court "will not reverse a trial court's decision on an R.C. 2953.52 application to seal absent an abuse of discretion." *In re Dumas*, 10th Dist. No. 06AP-1162, 2007-Ohio-3621, ¶ 7, citing *State v. Haney*, 70 Ohio App.3d 135, 138 (10th Dist.1991). In considering an application under R.C. 2953.52, "the trial court is to '[w]eigh 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.'" *In re Dumas* at ¶ 8, quoting R.C. 2953.52(B)(2)(d). *See also State v. Widder*, 146 Ohio App.3d 445, 447 (9th Dist.2001) ("In denying an application to seal records pursuant to R.C. 2953.52, '[a] trial court must make the necessary findings as required by R.C. 2953.52(B)(2) and weigh the interests of the parties to the expungement[.]' "). Accordingly, "R.C. 2953.52(B)(2)(d) contains a balancing test in which the trial court must engage," and a trial court "abuses its discretion in denying an R.C. 2953.52 application without balancing the requisite factors." *In re Dumas* at ¶ 8.

{¶ 8} In the instant case, the trial court's entry denying the application states in part:

This cause came to be heard upon the application, pursuant to Section 2953.32, Ohio Revised Code, for an order sealing the record in Case no: **07CR-8392**.

Said application is hereby Denied.

{¶ 9} As noted by appellant, the trial court's entry cites an inapplicable statutory provision (R.C. 2953.32). This court has previously held that, where a trial court's entry denying a motion for expungement references the incorrect statutory provision, "we cannot simply presume the regularity of the proceedings below, despite appellee's urgings." *State v. Hillman*, 10th Dist. No. 09AP-478, 2010-Ohio-256, ¶ 16 (vacating judgment entry in which trial court incorrectly referenced R.C. 2953.32, rather than 2953.52, and failed to place required findings on the record).

{¶ 10} Further, the trial court's entry contains no findings indicating whether the court weighed the requisite interests of the appellant and the state as required by statute. *See Widder; Avon Lake v. Chircosta*, 9th Dist. No. 99CA007532 (Aug. 23, 2000) (reversing and remanding trial court's denial of application to seal record under R.C. 2953.52 where court's denial "makes no indication that it considered any of the mandatory factors nor does it note that it made the required findings with respect to the balancing of interests"); *State v. Smith*, 7th Dist. No. 12 MA 176, 2013-Ohio-2872, ¶ 14 ("While the trial court may have weighed the parties' interests, it did not place such findings in the record").

{¶ 11} Based upon the limited record in this case, including the trial court's entry referencing the provisions of R.C. 2953.32, the court's summary denial of the application to seal constitutes an abuse of discretion. We therefore remand this matter to the trial court to perform the requisite analysis under R.C. 2953.52.

{¶ 12} Accordingly, appellant's single assignment of error is sustained, the judgment of the Franklin County Court of Common Pleas is vacated, and this matter is remanded to that court for further proceedings in accordance with law, consistent with this decision.

*Judgment vacated and
cause remanded.*

SADLER and DORRIAN, JJ., concur.
