

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO)	CASE NO: CR 03 437308
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
HARMEET BAINS)	<u>JOURNAL ENTRY</u>
)	
Defendant)	

John P. O'Donnell, J.:

This case was called for a hearing on May 6, 2009, on the defendant's March 20, 2009 motion to unseal records for a limited purpose. The State of Ohio filed a brief in opposition on March 25 and the defendant filed a reply brief on April 2. The hearing was attended by attorney Juan Paolo Sarmiento on behalf of the defendant and assistant county prosecutor Diane Smilanick.

On August 25, 2003, the defendant was convicted of attempted deception to obtain dangerous drugs in violation of Ohio R.C. §2925.22/2923.02. The defendant is not a United States citizen. At the time of the conviction, he was in the United States on a permanent resident card.

Because the record of this case was subsequently sealed, it is not clear whether the defendant was sentenced to probation or incarceration. However, there is no evidence other than that his sentence was completed without incident. Then, on March 21, 2005, the defendant was at the Detroit Metro Airport returning from an international trip. He was detained there by an agent of the Immigration and Naturalization Service.

At that time, the INS notified the defendant that he was subject to removal from the United States for having been convicted of an offense relating to a controlled substance.¹ The defendant was also notified that he was separately subject to deportation for not having a valid, unexpired immigrant visa.²

After the INS brought these charges, the defendant, on August 10, 2007, applied to this court to have the record of conviction sealed. That motion was thereafter granted and the record sealed in September 2007.

The defendant apparently asked that the record of conviction be sealed as a strategic maneuver in his defense of the immigration case. That strategy presumably did not work because the defendant now wants to unseal the record and try a different strategy; namely, asking that the conviction be vacated entirely. Although the court is loath to abet the defendant's shifting legal strategies, the expungement statute does provide, at Ohio Revised Code §2953.53(D)(1), that sealed records "may be made available" to the defendant upon written application "for any purpose." At least one Court of Appeals has held that this statute mandates release of these records to the defendant. See *City of Akron v. Frasier* (2001), 142 Ohio App. 3d 718, 723. Even if unsealing the records to the defendant is not mandatory, it does serve the overall purpose of the statute, which is to favor the interests of a defendant by eliminating some of the negative, long-term consequences of anomalous misconduct.

The motion of the defendant to unseal records for a limited purpose is, therefore, granted and the Clerk of Courts is ordered to provide the defendant with access to the entire record.

¹ See Exhibit A-6 to the defendant's reply brief.

² *Id.*

Because the limited unsealing may result in additional litigation, the prosecutor is also entitled to access to the record and the Clerk of Courts is directed to provide such access. No other parties are allowed access without an explicit order of the court.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this ____ day of May, 2009,
to the following:

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Judge John P. O'Donnell