

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO.: CR 91 262125
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
CHARLES HILL)	
)	
Defendant)	<u>JOURNAL ENTRY</u>

STATE OF OHIO)	CASE NO.: CR 91 263854
)	
Plaintiff)	
)	
vs)	
)	
CHARLES HILL)	
)	
Defendant)	

John P. O'Donnell, J.:

In March, 1991, defendant Charles Hill pled guilty in case number 262125 to two counts of trafficking in drugs and two counts of possession of criminal tools. At the same time, he pled guilty in case number 263854 to a single charge of trafficking in drugs. He was then sentenced to prison in both cases and assessed fines totaling \$12,500.00.

On June 3, 2009, the defendant filed a *pro se* application, pursuant to O.R.C. Section 2953.32, to seal the records of both convictions. A hearing on the motion was held on October 22, 2009.

The court considered as evidence at the hearing an expungement investigation report prepared by the Cuyahoga County Adult Probation Department dated June 25, 2009. That report

revealed that the defendant has not had any criminal convictions besides these two cases. However, the report also shows that the defendant owes the entire \$7,500.00 fine and \$101.50 in court costs in Case No. 263854.¹ Although the defendant spoke at the hearing, scant details of the crimes were provided.

The State of Ohio opposes the application on the grounds that the defendant is not a statutorily eligible first offender and, because he has not paid his fine, he has not been finally discharged within the meaning of the expungement statute.

Revised Code Section 2953.32 provides, in pertinent part, as follows:

(A)(1) . . . , a first offender may apply to the sentencing court . . . for the sealing of the conviction record. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony . . .

(C)(1) The court shall do each of the following:

(a) Determine whether the applicant is a first offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. If the applicant applies as a first offender pursuant to division (A)(1) of this section and has two or three convictions that result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, in making its determination under this division, the court initially shall determine whether it is not in the public interest for the two or three convictions to be counted as one conviction. If the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction, the court shall determine that the applicant is not a first offender; if the court does not make that determination, the court shall determine that the offender is a first offender.

Although the defendant here has two separate convictions from two separate indictments, there appears to be a possibility that he could be considered a first offender under R.C. 2953.32(C)(1). He argued at the hearing that the separate indictments were for essentially the

¹ For some reason, the expungement investigation report pertains to number 263854 only. However, it seems most likely that the fine has not been paid in number 262125.

same conduct. If that is accurate, the court, upon the submission of appropriate evidence, may find that the convictions “result from the same indictment” if all charges could have been indicted together. Additionally, a review of the docket suggests that the convictions resulted “from the same plea of guilty” on March 21, 1991. It also seems that the defendant may be able to show that the convictions resulted “from related criminal acts that were committed within a three-month period.”

If the defendant can produce evidence to satisfy those two prongs of the R.C. 2953.32(C)(1) test of whether he is a first offender, the court will then be charged with deciding whether it is not in the public interest for the multiple convictions to be counted as one conviction. Unfortunately, on the current state of the record, the court cannot make any of these decisions. The court, therefore, defers a finding on whether the defendant is a first offender.

The evidence of record is sufficient to allow the court to determine whether the defendant’s application to seal the record is premature for having been made prior to his final discharge. A fine is a sentencing condition. A defendant is not entitled to seal his conviction records until all of the sentencing conditions imposed by the court are fulfilled.² Because the defendant has not been finally discharged, this court does not have the statutory authority to consider the defendant’s request for expungement.

This court is sympathetic to the defendant’s frustration at being unable to overcome the continuing effects of what was apparently atypical criminal conduct over eighteen years ago. It may be that a just result is for these convictions to be expunged to relieve the defendant of the continuing disability of his criminal record. However, the court cannot reach that result without

² *State v. Wainwright* (1991), 75 Ohio App.3d 793, 795. See also *State v. Braun* (1983), Cuyahoga App. No. 46082, 1993 WL 5542, unreported: The intent of the statute is clear; a final discharge from conviction means a release from all obligations imposed and not just a release from confinement.

first having the authority to grant the motions and that authority simply does not exist in these cases in the absence of a final discharge.

For these reasons, the defendant's applications to seal the records are dismissed without prejudice to his right to file the applications again after his final discharge.

IT IS SO ORDERED:

Date: _____

Judge John P. O'Donnell

SERVICE

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

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Judge John P. O'Donnell