

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

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|-----------------------|---|--------------------------------|
| STATE OF OHIO, |) | CASE NO: CR-07-497621 |
| |) | |
| Plaintiff |) | JUDGE JOHN P. O'DONNELL |
| |) | |
| -vs- |) | |
| |) | |
| JONATHAN DEAN, |) | <u>JOURNAL ENTRY</u> |
| |) | |
| Defendant |) | |

John P. O'Donnell, J.:

On April 26, 2007, defendant Jonathan Dean woke up and began following orders from God.¹ He watched a children's television program that included scenes where a camera took pictures of various smiling objects. Taking this as a "message from the future" he grabbed a video camera and left his apartment.

He got into his car with the videotape recorder still operating. He thought he was on a "mission from God to save the future." He went fast to catch up with "the light" and began ignoring traffic signals. Dean ran a red light and struck another car and careened into a pole. He left his damaged car and began walking down Mayfield Road, still videotaping. He ignored a policeman's orders to stop and twice bit the officer on the wrist.

The defendant was arrested and eventually charged in a three-count indictment with felonious assault on a peace officer, failure to comply with the order or signal of a police officer, and failure to stop after an accident.

¹ The factual summary in this journal entry is drawn from the September 24, 2007, report of James Rodio, M.D., a psychiatrist with the court psychiatric clinic.

After a bench trial on October 23, 2007, the defendant was found not guilty by reason of insanity. At a subsequent hearing, he was found not to be a mentally ill person subject to hospitalization by court order and was discharged.

He has now filed a motion to seal the records of this case pursuant to Ohio Revised Code Section 2953.52. The motion was opposed by the prosecutor and an evidentiary hearing was held on August 31, 2009. This entry follows.

Revised Code § 2953.52 provides, in pertinent part:

2953.52 Sealing of records after not guilty finding . . .

(A)(1) Any person, who is found not guilty of an offense . . . may apply to the court for an order to seal his official records in the case. . . .(T)he application may be filed at any time after the finding of not guilty . . .

(B)(2) The court shall do each of the following:

- (a) Determine whether the person was found not guilty in the case . . .
- (b) Determine whether criminal proceedings are pending against the person;
- (c) . . .(C)onsider 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.

(3) If the court determines, after complying with division (B)(2) of this section, . . . the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records . . . the court shall issue an order directing that all official records pertaining to the case be sealed . . .

As to the first two required determinations, the court finds that the defendant was found not guilty in the case² and that there are no criminal proceedings pending against the defendant.³

The prosecutor has opposed the defendant's request for sealing the records.⁴ The prosecutor argues that the state "has a legitimate interest in maintaining these records of applicant's not guilty by reason of insanity case, that out weighs Applicant's interest in having it sealed."⁵ The specific "legitimate interest" claimed by the state, although not fully articulated, appears to include a concern that agents of law enforcement who may encounter the defendant in the future would be benefited by having this information available to them either before or after an encounter.

The court finds that this is a legitimate interest of the state. Any information that might allow police officers to protect themselves or to deal appropriately with the defendant, should he encounter the police in the future, may literally make the difference between life or death for either a police officer or the defendant. Where a defendant is known to have acted aggressively toward the police – whether with criminal intent or by virtue of a mental illness – there should be a substantial interest at stake before preventing law enforcement from acquiring that information.

As to the interests of the defendant in having the official record sealed, no evidence was produced at the hearing. The defendant's counsel argued that the defendant has been unable to find employment because prospective employers have declined to hire him after learning of the record of this case, but no evidence was produced to support that assertion. Counsel also argued

² See *State v. Schwarz*, 2005-Ohio-3171, 1st District App. No. C-040390, at ¶7 and ¶8, holding that O.R.C. 2953.52 applies to a defendant who has successfully interposed a plea of not guilty by reason of insanity.

³ See the adult probation department's expungement investigation report dated June 4, 2008.

⁴ The prosecutor's brief in opposition was filed June 9, 2008, after the defendant first filed the motion on May 13, 2008. That motion was withdrawn at the request of the defendant. A nearly identical motion filed on June 8, 2009, was the subject of the hearing. Therefore, although the prosecutor's brief in opposition was actually filed in response to the first motion, the court is treating it as opposing the June 8, 2009 motion.

⁵ Brief in opposition at Page 3.

that the defendant has identified an employer who is willing to hire him if this record is sealed but no sworn testimony supporting that claim was given at the hearing.

On the state of this record, the court is bound to conclude that the interests of the defendant in having this record sealed are outweighed by the legitimate governmental need to maintain the records.

The court does recognize that the circumstances surrounding the defendant may change and that it is possible, at a future hearing, that evidence will be presented to justify a finding that the interests of the defendant in sealing the record are not outweighed by the government's interest in keeping the record sealed. It is, therefore, conceivable that the defendant will file a similar motion in the future.⁶ However, the court is likely to be less inclined to grant a subsequent motion if three years⁷ have not passed from November 5, 2007; *i.e.*, the date of the defendant's final discharge.

Although the defendant was found not guilty by reason of insanity, there is ample evidence that he engaged in conduct that, if coupled with a criminal *mens rea*, would have resulted in the commission of at least two of the offenses charged. It, therefore, strikes the court as not unfair that a person who engaged in criminal conduct, but without criminal intent, be made to wait for the opportunity to seal the record the same three years as a person who engaged in criminal conduct with criminal intent.

IT IS SO ORDERED:

Date: _____

Judge John P. O'Donnell

⁶ See *Schwarz*, *supra*, at ¶9: *Res judicata* does not bar subsequent proceedings where there is a showing of a change in circumstances.

⁷ In contrast to the statute applicable here, which has no waiting period before an application may be filed, Revised Code § 2953.32 governing the sealing of records of conviction requires an applicant to wait until three years from final discharge to apply for expungement.

SERVICE

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

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Judge John P. O'Donnell