

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION**

State of Ohio,

Plaintiff-Respondent,

Expungement Case No. 14EP-308

Criminal Case No. 03CR-3407

-vs-

Judge Lynch

Christopher T. Shirk,

Defendant-Applicant.

**STATE'S OBJECTION TO SEALING APPLICANT'S RECORD OF CONVICTION AS
APPLICANT IS INELIGIBLE UNDER R.C. 2953.36(B) AND (F)**

Pursuant to R.C. 2953.32, applicant has filed an application to seal the record of ten convictions of illegal use of a minor in nudity-oriented material, fifth degree felonies, in case number 03CR-3407. (Entry attached) Applicant bears the burden of showing he is eligible under R.C. 2953.31 *et seq.* Applicant cannot meet the burden because R.C. 2953.36(B) bars expungement of any conviction under R.C. 2907.323, use of a minor in nudity-oriented material or performance. In addition, R.C. 2953.36(F) bars expungement of any conviction when the victim of the offense was under 18 years of age. As applicant is not eligible for expungement, the State objects to this application and respectfully requests that it be denied.

"Expungement is an act of grace created by the state, and so is a privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533, 721 N.E.2d 1041 (2000). A hearing is required under R.C. 2953.32 to determine whether the applicant is eligible to seal the record. "Because expungement proceedings are not adversarial, the Rules of Evidence do not apply." *Id.* at 533, citing Evid.R. 101(C)(7). There is no inherent authority to grant expungement of a criminal conviction; rather, specific statutory criteria must be met before an applicant may be considered eligible. This Court must find that the applicant received a final discharge from the conviction;

complied with the statutory waiting period; has no pending criminal proceedings; qualifies as an eligible offender under RC. 2953.31(A), and that the conviction to be sealed does not fall within any category in R.C. 2953.36. When an applicant is eligible to seal the record of a conviction, this Court must then determine whether the applicant's interests in sealing the record outweigh the State's interests in maintaining the record.

Because expungement is a privilege not to be granted lightly, R.C. 2953.32(B) requires a hearing to determine whether applicant is eligible and whether the applicant's interest in sealing the record is outweighed by the State's interest in maintaining the record. *State v. Simon*, 87 Ohio St.3d 531, 721 N.E.2d 1041 (2000). The hearing is not adversarial. Rather, the hearing "provides the court with the opportunity to review matters of record and to make largely subjective determinations regarding whether the applicant is rehabilitated and whether the government's interest in maintaining the record outweighs the applicant's interest in having the record sealed." *State v. Hamilton*, 75 Ohio St.3d 636, 640, 665 N.E.2d 669 (1996). During the hearing, the court should review the record and gather relevant information from the applicant, the prosecutor, as well as through independent court investigation through probation officials. *Id.*

Applicant is ineligible for expungement under R.C. 2953.36(B) and (F) because his conviction was for ten counts of illegal use of a minor in nudity-oriented material, in violation of R.C. 2907.323. Because applicant is ineligible under R.C. 2953.36(B) and (F), this Court lacks jurisdiction to grant his application. The State respectfully requests that applicant's application be denied.

Respectfully Submitted,

RON O'BRIEN
 PROSECUTING ATTORNEY

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing notice was served upon Christopher Shirk, defendant-applicant pro se, at 2000 U.S. Hwy 23 N., Lot 79, Delaware, Ohio, 43015, by regular U.S. Mail, postage prepaid on the May 23rd, 2014

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

STATE OF OHIO, :
Plaintiff, : 2004 JAN -8 AM 8:21 :
-v- :
Christopher T. Shirk, :
Defendant. :
: 044539C12
: Case No. 03CR-05-3407
: JUDGE McGRATH

JUDGMENT ENTRY

On November 6, 2003, the State of Ohio was represented by Prosecuting Attorney Ronald Welch and the Defendant was represented by Attorney Tim Harfstad. The Defendant after being advised of his rights pursuant to Crim. R. 11, entered a plea of guilty to the stipulated lesser included offenses of Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine and Ten of the indictment, to wit: Illegal Use of a Minor in Nudity Oriented Material, in violation of Section 2907.323 of the Ohio Revised Code, all are felonies of the fifth degree.

The Court found the Defendant guilty of the charges to which the plea was entered.

Upon application of the Prosecuting Attorney and for good cause shown, it is ORDERED that a Nolle Prosequi be entered for Counts Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen and Seventeen of the indictment.

The Court ordered and received a pre-sentence investigation.

On January 6, 2004, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Prosecuting Attorney Ronald Welch and the Defendant was represented by Attorney Tim Harfstad. The Prosecuting Attorney and the Defendant's attorney did not recommend a sentence.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C.

2029.14. The Court further finds that a prison term is not mandatory pursuant to R.C. 2929.13(F).

The Court hereby imposes a period of Community Control for five years. In addition to the provisions of R.C. 2951.02 and the general requirements of the Franklin County Department of Community Control, as authorized by the Court and as given to the Defendant in writing, the Court imposes the following Community Control Sanctions (See R.C. 2925.15, R.C. 2929.16 and R.C. 2929.17.): That the defendant shall obtain and maintain verifiable employment; the defendant shall submit to sex offender counseling; the defendant shall be placed on sex offender caseload; the defendant shall have no unsupervised contact with children; and the defendant shall have no private life internet access.

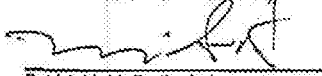
In addition, a hearing was held and the Defendant stipulates to being a **sexually oriented offender** pursuant to Section 2950.00(B)(3) of the Ohio Revised Code.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanctions and, pursuant to R.C. 2929.16, hereby renders judgment for the following fine and/or financial sanctions: **No fines imposed.**

The total costs are to be determined. The defendant shall pay the total costs.

After the imposition of Community Control, the Court, pursuant to R.C. 2929.19(B)(4) notified the Defendant, orally and in writing, what could happen if he violates Community Control. The Court further indicated that if the Defendant violates Community Control he could receive a prison term of up to twelve months as to each Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine and Ten.

The Court finds that the Defendant has **four (4) days** of jail time credit.


Patrick M. McGrath, Judge

cc: Prosecuting Attorney
Defendant's Attorney

Case No. 03CR-05-3407