

[Cite as *State v. Hoyles*, 2009-Ohio-4483.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, : No. 08AP-946  
 : (M.C. No. M2008 CR X 051368)  
 v. :  
 : (REGULAR CALENDAR)  
 Ty E. Hoyles, :  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on September 1, 2009

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*Richard C. Pfeiffer, Jr.*, City Attorney, *Lara N. Baker*, City Prosecutor, and *Melanie R. Tobias*, for appellee.

*R. William Meeks Co., LPA*, and *David H. Thomas*, for appellant.

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APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶1} Appellant, Ty E. Hoyles, appeals the decision to deny his application to have his conviction for falsification sealed under R.C. 2953.32. For the reasons that follow, we affirm the denial of appellant's application.

{¶2} The parties stipulated to the facts of this matter. In 1988, appellant was convicted of theft in Bowling Green, Ohio. This conviction was sealed by the Bowling Green Municipal Court in 1992. In 1998, appellant was convicted of falsification, which he sought to have sealed in August 2008. The trial court denied appellant's application

because it found that he was not a first offender. Appellant appealed this determination and presents the following assignment of error for our review:

The trial court erred in finding that Appellant did not qualify as a first offender under R.C. 2953.31, where Appellant's prior conviction had previously been sealed.

{¶3} In this appeal, appellant argues that his sealed theft conviction does not disqualify him from being considered a first offender for purposes of sealing his subsequent falsification conviction. On the other side, appellee, the State of Ohio, argues that Ohio statutes and case law support the trial court's finding that appellant was not a first offender. Consequently, because appellant was not a first offender, appellee argues that the trial court lacked jurisdiction to grant appellant's application. The issue therefore is whether a prior sealed conviction precludes an applicant from being considered a first offender in a proceeding to seal a subsequent conviction.

{¶4} It is well-settled that the issue of whether an applicant is considered a first offender is an issue of law for a reviewing court to decide de novo. *In re Hawkins*, 10th Dist. No. 06AP-882, 2007-Ohio-4313, ¶9, citing *State v. Korn* (June 12, 2001), 10th Dist. No. 01AP-40. Under R.C. 2953.32(A)(1), a first offender may apply to seal a conviction. R.C. 2953.31(A) defines a first offender as "anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction." After a conviction is sealed, R.C. 2953.33 operates to restore "all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control."

{¶5} Appellant argues that the rights and privileges restored by R.C. 2953.33 permit an offender to qualify as a "first offender" multiple times for multiple convictions, so long as each and every prior conviction is sealed. However, appellate courts have routinely rejected this argument. See *State v. Cantrell*, 5th Dist. No. 06CA105, 2007-Ohio-3671; *State v. Vann*, 5th Dist. No. 03CA6, 2003-Ohio-7275; *State v. Easterday* (July 19, 1993), 5th Dist. No. 92-CA-123; and *State v. Johnson*, 7th Dist. No. 06 MA 188, 2008-Ohio-1183. Indeed, the *Cantrell* court held: "to adopt [appellant's] position would create a string of expunged cases and a crime spree of expunged convictions where the applicant is determined to be a first offender only by virtue of each expungement." *Id.* at ¶27.

{¶6} Appellee also points to statutory support for the trial court's holding, including R.C. 2953.32(C)(2), which provides that after a conviction is sealed:

The proceedings in the case shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code.

{¶7} Here, appellant was convicted of a subsequent offense. He was convicted of falsification after having previously been convicted of theft. Therefore, in determining the appropriate disposition of appellant's request under R.C. 2953.32, the court properly considered appellant's sealed theft conviction. See *Easterday*, *Vann*, and *Cantrell*. Indeed, R.C. 2953.32 affords the court with the authority to consider such a prior sealed conviction in these circumstances. Because the trial court could consider the prior

conviction, it properly held that appellant was not a first offender. Because appellant was not a first offender, the court lacked jurisdiction to grant appellant's request. See *In re Hawkins* at ¶7, citing *State v. Thomas* (1979), 64 Ohio App.2d 141, 145; see also *State v. Smith*, 10th Dist. No. 06AP-1059, 2007-Ohio-2873, ¶9-11; *In re Bowers*, 10th Dist. No. 07AP-49, 2007-Ohio-5969, ¶6; and *Cantrell* at ¶29. Indeed, according to the plain language of the statute, and in accordance with established case law, R.C. 2953.32 may only be used once. *Johnson* at ¶13.

{¶8} For all of these reasons, we overrule appellant's assignment of error. Having overruled appellant's only assignment of error, we affirm the judgment of the Franklin County Municipal Court.

*Judgment affirmed.*

BROWN and KLATT, JJ., concur.

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