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THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

STATE OF OHIO,)	CASE NO. 18 C 00065
)	
Plaintiff,)	JUDGE ROBERT J. BROWN
v.)	
)	
FRANK J. GLIHA,)	<u>DEFENDANT'S APPLICATION</u>
)	<u>TO SEAL RECORDS</u>
Defendant.)	
)	(ORAL HEARING REQUESTED)
)	

Now comes Defendant Frank Gliha, by and through the undersigned counsel, and respectfully moves the Court to seal the records in the within case pursuant to Ohio Revised Code §2953.32.

STATEMENT OF CASE AND FACTS

On June 20, 2018, Mr. Gliha entered guilty pleas to four violations of R.C. §2921.44(E), Dereliction of Duty, all of which were second degree misdemeanors. He pled no contest to an additional violation of §2921.44(E), also a second degree misdemeanor.

The Court sentenced Mr. Gliha to ninety days incarceration, which was suspended, imposed a fine of \$250.00 for each count, and ordered him to pay costs of prosecution - all sanctions authorized under the Ohio Revised Code for second degree misdemeanors. The Court also ordered Mr. Gliha barred from running for public office for four years. Mr. Gliha timely paid all the fines and costs on August 13, 2018.

LAW AND ARGUMENT

Ohio Revised Code §2953.32 sets forth the requirements which must be met by an applicant in order to have court records sealed. Courts must liberally construe the requirements of R.C. §2953.32 in favor of promoting the individual's interest in having the

records sealed.¹ See *State v. Bissantz* (1988) 40 Ohio St. 3d 112, 532 N.E.2d 126. A trial court shall grant an applicant's request to seal records if he meets all of those requirements. See *State v. M.D.*, 2012-Ohio-1545, citing *State v. Simon*, 87 Ohio St.3d 531, 533, 200-Ohio-474, 721 N.E.2d 1041. An application for sealing of records of misdemeanor convictions may be made at the expiration of one year after the offender's final discharge. R.C. §2953.32(A)(1)(C).

Pursuant to R.C. §2953.32(C), the court must: 1) determine whether the applicant is an eligible offender; 2) determine whether criminal proceedings are pending against him; 3) determine whether the applicant has been rehabilitated to the court's satisfaction; 4) consider any objections by the prosecutor; and 5) weigh the interests of the applicant in having the records sealed against the legitimate needs, if any, of the government to maintain those records. While the public's interest in being able to review the record is a relevant, legitimate governmental need under R.C. §2953.32, courts must nonetheless liberally construe the statute in favor of promoting the individual's interest in having the records sealed. See *State v. MD* (recognizing the public's "need to know" concern is not unlimited, and courts still must liberally

¹ The legislature has clearly indicated its intent to favor the sealing of records via several amendments to the applicable statutes. The Ohio Supreme Court recognized that after being amended in 1984 to exclude minor traffic offenses, which previously barred the sealing of records of first offenders, from its definition of first offender, R.C. §2953.32 provided for a "greater emphasis on the individual's interest in having the record sealed." *State v. Bissantz* (1988) 40 Ohio St. 3d 112, 114, 532 N.E.2d 126, 128. Similarly, Ohio SB 33, eliminated the requirement that an applicant be a "first offender," and expanded the law by requiring an applicant be an "eligible offender," thus allowing those who have more than one conviction to have their records sealed. Most recently, the legislative intent to favor the sealing of records was further demonstrated with the enactment of Senate Bill 66 on October 29, 2018, which expands the number of convictions that can be expunged, and allows people to have criminal records sealed who were ineligible under previous law. Specifically, the definition of "eligible offender" was expanded to include anyone convicted of up to five felonies offenses, and an unlimited number of misdemeanor offenses. R.C. §2953.31(A)(1)(a).

construe the intent of the statute). Mr. Gliha meets all of the foregoing requirements, and therefore his application should be granted.

As an initial matter, Mr. Gliha's application is being timely made in accordance with R.C. §2953.32(A)(1)(c), which, for misdemeanor convictions, imposes a one year waiting period after final discharge before an eligible offender can apply to have his records sealed. The Court imposed its sentence on June 20, 2018. Mr. Gliha paid all of his Court ordered fines and costs on August 13, 2018. As of this date, one year has passed since he paid his restitution, and Mr. Gliha's application to seal records may be considered by this Court. Mr. Gliha also meets the requirements for having his records sealed under the framework of R.C. §2953.31 and R.C. §2953.32.

1. Eligible Offender – R.C. §2953.31(A)

Mr. Gliha is clearly an "eligible offender." Revised Code §2953.31(A)(1)(a) defines "eligible offender," in relevant part, as either "Anyone who has been convicted of one or more offenses, but not more than five felonies ... of the fourth or fifth degree *or misdemeanors*. . . ." (emphasis added). Accordingly, an applicant can have an unlimited number of misdemeanors and qualify as an "eligible offender." Mr. Gliha was convicted of second degree misdemeanors. There is no question that Mr. Gliha meets this requirement.

2. No Criminal Proceedings - R.C. §2953.32(C)(1)(b)

Mr. Gliha has no criminal proceedings pending against him. This needs little explanation and there is no disputing that this requirement is met.

3. Rehabilitation R.C. §2953.32(C)(1)(c)

Next a court shall determine whether the defendant “has been rehabilitated to the satisfaction of the court.” R.C. §2953.32(C)(1)(c). Mr. Gliha has undoubtedly been sufficiently rehabilitated. Before he was even convicted, he publicly apologized, withdrew from the then upcoming primary, and resigned from his position as County Auditor. He pled guilty or no contest to all of the offenses for which he was charged. He has expressed his remorse and regret for his actions. Mr. Gliha meets this requirement, especially when liberally construing R.C. §2353.32 in accordance with clear legislative intent to favor the sealing of records.

4. Objections by Prosecutor - R.C. §2953.32(C)(1)(d)

The court must also consider objections by the prosecutor, if any. In this case, the prosecutor is expected to argue that as part of his sentence, the Court barred Mr. Gliha from “running for public office” for four years, and therefore he cannot presently apply to have his records sealed. The four year waiting period of §2921.44(G) is a statutory mandate that would have been applicable regardless of whether or not the Court made it part of his sentence, and does not apply for purposes of determining when an eligible offender may request to have his records sealed. See *State v. Bissantz (1988) 40 Ohio St. 3d 112, 532 N.E.2d 126*. In *Bissantz*, the defendant, a public official, was convicted of bribery in office under R.C. §2921.02(B). As a result, he was barred for life from holding office pursuant to R.C. §2921.02(F), which is a mandatory statutory penalty for public officials convicted of bribery. He subsequently applied to have his record expunged pursuant to R.C. §2953.31. The Court held that the defendant was entitled to have his records sealed, notwithstanding the lifetime ban from holding office. Id. In

so holding, the Court obviously did not use the lifetime ban for purposes of determining his eligibility to have records sealed.

In Mr. Gliha's case, the Court imposed the jail term and financial sanctions for second degree misdemeanors, pursuant to Revised Code §§2929.24(D) and 2947.23. But as a public servant, like *Bissantz*, Mr. Gliha was subject to a separate, specific statutory mandate for his conviction of dereliction of duty. Despite the Court stating so, the statutory four year waiting period is not something a court can "sentence." It applied to Mr. Gliha as a matter of law once he was convicted. As in *Bissantz*, this statutory four- year waiting period is not determinative of when Mr. Gliha was finally discharged. Rather, the one year waiting period under R.C. §2953.32(A)(1)(c) for misdemeanor convictions began to run when Mr. Gliha paid his fines and court costs.

Moreover, Mr. Gliha is not requesting that his records be sealed so that he can run for office at this time. He fully understands that even if the Court grants his application to seal records, he is statutorily disqualified from holding a position of public office for four years.

5. Interest in Having Records Sealed - R.C. §2953.32(C)(1)(e)

Finally, Mr. Gliha's interest in having his records sealed outweighs any need for the government to retain the records. He is not in office or seeking office, and the sealing of his records will not change the fact that he cannot run for office. There is thus no current "need to know" issue that might apply to a person holding a public office.

Moreover, sealing records simply provides a shield from the public's gaze. Revised Code §2953.32(D) operates to restrict inspection of sealed records of conviction to certain persons for certain purposes. Should a truly "legitimate need" arise, a person who has obtained the

expungement of his record of conviction may nonetheless be questioned with respect to that conviction if the questioning bears a 'direct and substantial relationship' to the position for which the person is being considered. E.g. Bissantz citing In re Application of Davis (1980), 61 Ohio St.2d 371, 403 N.E.2d 189 (bar applicant who had prior felony conviction expunged could be questioned regarding the conviction since questioning bore a "direct and substantial relationship" to the position he sought).

Bissantz makes sense; Mr. Gliha is not asking that his convictions be pardoned or commuted, he is only asking that they be shielded, to the extent permitted by law, from public view. *Bissantz* rests on the theory that his conviction is accessible for certain purposes, including its consideration in determining his eligibility for public office. Were he to try and run before the expiration of the four year prohibition, his record could be accessed. For now however, the appropriate decision is to grant Mr. Gliha's request to have his records sealed.

For the foregoing reasons, Mr. Gliha respectfully requests this Honorable Court to order his records sealed pursuant to Revised Code §2953.32.

Respectfully submitted,

/s/ Todd Petersen

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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed on the 15th day of November 2019. Service upon the following will be made, pursuant to Civ.R. 5(B)(2)(f) and Civ.R. 5(B)(3), by operation of the Court's electronic filing system:

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