

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-240500
	:	TRIAL NO. B-1707511
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY</i>
JAMAL DAVID,	:	
	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In January 2018, defendant-appellant Jamal David was indicted on (1) three counts of fifth-degree felony harassment with a bodily substance under R.C. 2921.38(B), (2) two counts of fifth-degree felony cruel treatment against companion animals under R.C. 959.131(C), (3) one count of first-degree misdemeanor assault under R.C. 2903.13(A), and (4) one count of second-degree misdemeanor resisting arrest under R.C. 2921.33(A). The indictment stemmed from an incident in which Mr. David allegedly assaulted his neighbor, killed his two dogs, and spat on officers once they arrived at his home and convinced him to come outside. But before these charges were adjudicated, the trial court found that Mr. David was incompetent to stand trial, and it dismissed the charges. The Hamilton County Probate Court then received jurisdiction over Mr. David.

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In both February and June 2019, Mr. David applied to have his criminal records expunged in this case. Both times, the State objected to his application, and the trial court ultimately denied both applications. In June 2024, Mr. David filed to *seal* his criminal records in this case. The State, once again, objected to the sealing of the records, citing the nature of the crimes alleged and the fact that Mr. David is potentially a continuing harm to the community and himself, which is information that should stay available in the event law enforcement ever encountered him. As required by R.C. 2953.33(B)(1), the trial court convened a hearing on Mr. David’s application and asked the State to present its objections. The trial court then asked Mr. David to present his arguments. He briefly began talking about issues he had with the court’s handling of his case in 2018 and his counsel at the time. The trial court quickly cut him off and denied his application, stating that those things were not at issue. This third denial is the basis for this appeal.

Mr. David now appeals to this court, asserting two assignments of error that essentially put forth the same argument—that the trial court erred in denying his application to seal his criminal records in connection with his 2018 indictment. In support of his argument, he mainly highlights the trial court’s lack of consideration of his application and its mislabeling of his application as one for expungement in its written entry denying such. Mr. David makes several ancillary arguments regarding the handling of his 2018 case that are not properly at issue in this appeal.

We review “a trial court’s decision regarding an application to seal records under an abuse-of-discretion standard.” *State v. Evans*, 2022-Ohio-341, ¶ 3 (1st Dist.), quoting *State v. Floyd*, 2018-Ohio-5107, ¶ 4 (1st Dist.). A trial court abuses its discretion when “[it] exercise[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 166 Ohio

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St.3d 427, 436 (2021). An “abuse of discretion “implies that the court’s attitude, in reaching its decision, was unreasonable, arbitrary, or unconscionable.”” *State v. R.S.*, 2022-Ohio-1108, ¶ 7 (1st Dist.), quoting *State v. Austin*, 2021-Ohio-3608, ¶ 34 (1st Dist.), quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

When an individual applies to have his records sealed, the trial court is required to consider the following before it grants or denies the application:

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

...

(e) Weigh the interests of the person in having the official records pertaining to the case sealed or expunged, as applicable, against the legitimate needs, if any, of the government to maintain those records.

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See State v. Lanxiang Yu, 2024-Ohio-3083, ¶ 11 (1st Dist.), quoting R.C. 2953.33(B)(2).

In this case, it is unclear from the record whether the trial court considered the required factors. At the hearing, the trial court simply stated that the parties convened upon Mr. David’s application, and it asked the parties to present their arguments in support of their respective positions. The State did note that the indictment did not end in a conviction, but beyond that statement (and similar language mirrored in the State’s written objections), there is no indication that the trial court made the findings associated with a dismissal pursuant to R.C. 2953.33(B)(2)(a)(ii) at the hearing or in its written entry. Nor does the record reflect whether the trial court determined if Mr. David had any pending criminal proceedings. *See* R.C. 2953.33(B)(2)(b).

At the hearing, the trial court briefly allowed Mr. David the opportunity to present his supporting points before it cut him off and denied the motion. It did so without any further explanation of its denial. In its written entry denying Mr. David’s application, the trial court simply noted that it had before it the application, the State’s objections, the arguments of the parties, and the probation department’s report. Similar to the hearing, the trial court provided *no explanation* for the denial, nor did it indicate that it considered the statutory factors. Such a lack of explanation is reversible error. *See Yu*, 2024-Ohio-3083, at ¶ 14-15 (1st Dist.), citing *State v. W.C.*, 2022-Ohio-3235, ¶ 19-20 (8th Dist.) (“The trial court offered no explanation for its denial . . . Thus, on this record, we cannot discern on what basis the trial court issued its denial or whether the trial court considered any of the [statutorily required] factors. . . . Denying an application for record sealing . . . without conducting the required statutory analysis constitutes an abuse of discretion.”); *see also R.S.*, 2022-Ohio-1108,

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at ¶ 8 (1st Dist.), quoting *State v. Cannon*, 2021-Ohio-4198, ¶ 20 (1st Dist.) (“A decision is unreasonable when it is ‘not supported by a “sound reasoning process.””).

While no one is entitled to a sealing of his records, the trial court is nevertheless required to consider certain factors, and we cannot tell from the record whether the trial court did that here. Thus, the trial court’s unexplained decision constitutes an abuse of discretion. See *Yu* at ¶ 13, citing *State v. M.D.*, 2009-Ohio-5694, ¶ 19, 21 (8th Dist.) (“Where the trial court offers no reasons for its denial, we cannot blindly defer to its unexplained exercise of discretion.”).

Mr. David also points out that the trial court mislabeled his application as one for expungement in its written entry, which he argues supports his contention that the trial court did not give his application the proper consideration. Expunging records and sealing records are processes with entirely different results. See *R.S.* at ¶ 9. While an expungement results in criminal records being ““permanently irretrievable,”” sealing “simply provides a shield from the public’s gaze [and limits] inspection . . . to certain persons” *Id.*, quoting *State v. Aguirre*, 2014-Ohio-4603, ¶ 36, fn. 2. Here, the trial court mislabeled Mr. David’s application in its written entry. However, it correctly stated at the hearing that the parties were there to address Mr. David’s application to *seal* his records. Because of the nature of the competing outcomes under each application, the terms are not interchangeable and should not be used as such. However, any error related to the trial court’s mislabeling is rendered moot by the above analysis.

For the foregoing reasons, we sustain the assignments of error, reverse the judgment of the trial court, and accordingly remand the cause to the trial court in order to consider the statutory factors. The trial court may set forth its rationale either on the record or in an entry.

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The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., BOCK and NESTOR, JJ.

To the clerk:

Enter upon the journal of the court on 4/2/2025 per order of the court.

By: _____
Administrative Judge