

1994 Ohio App. LEXIS 434, *

1 of 1 DOCUMENT

**STATE OF OHIO, PLAINTIFF-APPELLEE v. THOMAS OSKAY,
DEFENDANT-APPELLANT****NO. 65679****COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY****1994 Ohio App. LEXIS 434****February 10, 1994, Announced****NOTICE:**

[*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

PRIOR HISTORY: CHARACTER OF PROCEEDING: Criminal appeal from Common Pleas Court, Case No. CR-212427.

DISPOSITION: JUDGMENT: AFFIRMED.

COUNSEL: For Plaintiff-appellee: Stephanie Tubbs Jones, Cuyahoga County Prosecutor, Laurence R. Snyder, Assistant County Prosecutor, The Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113.

For Defendant-appellant: James A. Draper, Cuyahoga County Public Defender, John A. Fatica, Assistant Public Defender, The Marion Building, #307, 1276 West Third Street, Cleveland, Ohio 44113-1569.

JUDGES: JOHN F. CORRIGAN, P.J., JOHN T. PATTON, J., JAMES D. SWEENEY, J.

OPINION BY: PER CURIAM

OPINION

ACCELERATED DOCKET

JOURNAL ENTRY AND OPINION

PER CURIAM:

Defendant-appellant-movant Thomas Oskay ("Oskay") appeals on the accelerated docket from the denial of his February 22, 1992, motion to expunge his April 29, 1987, conviction for carrying a concealed weapon in violation of R.C. 2923.12. For the reasons adduced below, we affirm.

A review of the record indicates that Oskay, without benefit of counsel, pled no contest on June 24, 1985, in Port Clinton Municipal Court to [*2] driving while under the influence of alcohol and/or drugs in violation of R.C. 4511.19(A)(1). The sentence of a small fine was paid that same date. See Port Clinton Municipal Court case number 85TRC1937.

On December 5, 1986, Oskay was indicted in this case on two counts of carrying a concealed weapon in violation of R.C. 2923.12. On April 29, 1987, Oskay pled guilty and was convicted of one of the two counts, the remaining count being nolle. Oskay was sentenced to one and one-half (1 1/2) years imprisonment, a fine of \$ 200.00, plus court costs. This sentence was suspended and Oskay was placed on two years of conditional probation, to-wit, payment of court costs within six months, payment of the fine within twelve months, he not associate with guns or persons who use them, and he submit to alcohol counselling and assessment. See Journal Vol. 730, page 703. This conditional probation was completed by Oskay.

On February 22, 1992, Oskay filed the motion at issue pursuant to R.C. 2953.32. On April 7, 1992, the prosecutor filed her brief in opposition to expungement arguing that Oskay did not fulfill the definition of a "first offender" as contained in R.C. 2953.31(A).

Following an [*3] oral hearing of the subject motion on May 3, 1993, the trial court overruled the motion on May 11, 1993. This timely appeal followed raising one assignment of error.

THE TRIAL COURT ERRED IN RULING THAT A PREVIOUS, UNCOUNSELED MISDEMEANOR CONVICTION MAKES ONE INELIGIBLE TO HAVE THE RECORD OF SUBSEQUENT FELONY CONVICTION SEALED.

A prior uncounseled misdemeanor conviction constitutes a prior offense for purposes of R.C. 2953.31(A) so as to deny Oskay the benefit of first offender status. *State v. Alaeldin* (February 11, 1993), Cuyahoga App. No. 64100, unreported; *State v. Ware* (December 27, 1990), Cuyahoga App. No. 59867, unreported. Lacking the jurisdictional requirement of first offender status, we conclude that the trial court did not err in overruling the subject motion. See R.C. 2953.32.

Assignment overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this

judgment into execution. The defendant's conviction having been affirmed, any bail pending [*4] appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JOHN F. CORRIGAN, P.J.

JOHN T. PATTON, J.

JAMES D. SWEENEY, J.

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof, this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.