

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 21944
v.	:	T.C. NO. 91 CRB 02160
WILLIAM STEWART	:	(Criminal Appeal from Municipal Court)
Defendant-Appellant	:	

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**OPINION**

Rendered on the 21<sup>st</sup> day of December, 2007.

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CASEY R. CROSLEY, Atty. Reg. No. 0075540, Assistant City Prosecutor, 335 W. Third Street, Room 372, Dayton, Ohio 45402  
Attorney for Plaintiff-Appellee

WILLIAM STEWART, 313 Shroyer Road, Dayton, Ohio 45419  
Defendant-Appellant

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WOLFF, P.J.

{¶ 1} William Stewart applied to the Dayton Municipal Court for the sealing of a conviction record of a 1991 conviction for fourth degree misdemeanor disorderly conduct. (Case No. 91 CRB 02160). The trial court denied the application, finding that Stewart was not a first offender, as required by R.C. 2953.32(A)(1), due to a subsequent conviction for disorderly

conduct in the Kettering Municipal Court (Case No. 01 CRB 2440). It would appear that the trial court believed that the disorderly conduct conviction in the Kettering Municipal Court – even if only a minor misdemeanor – disqualified Stewart for “first offender” status and eligibility to have the record sealed.

{¶ 2} Stewart assigns error as follows:

{¶ 3} “THE TRIAL COURT ERRED BY FINDING THAT THE APPELLANT IS NOT A FIRST OFFENDER FOR THE PURPOSE OF HAVING HIS RECORD OF CONVICTION SEALED WHEN THE ONLY OTHER OFFENSE THE APPELLANT HAS BEEN CONVICTED OF IS A MINOR MISDEMEANOR.”

{¶ 4} Stewart claims, and the prosecutor concedes, that a minor misdemeanor disorderly conduct conviction does not prevent first offender status because minor misdemeanors are generally not “previous or subsequent conviction[s]” for purposes of determining first offender status. R.C. 2953.31(A). The State also confirms that the Kettering conviction was for a minor misdemeanor.

{¶ 5} Both parties request us to order the record of conviction in Dayton Municipal Court Case No. 91 CRB 02160 sealed. We decline to do so. Assuming that Stewart is a first offender, the trial court is required to perform the analysis prescribed by R.C. 2953.32(C)(1) before ordering a record sealed. The trial court has not done this analysis because it determined Stewart was not a first offender.

{¶ 6} Accordingly, the assignment of error is sustained and the matter will be remanded for further proceedings consistent with this opinion.

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BROGAN, J. and DONOVAN, J., concur.

Copies mailed to:

Casey R. Crosley

William Stewart

Hon. Carl Sims Henderson