

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

STATE OF OHIO,	:	APPEAL NOS. C-110826
		C-110827
Plaintiff-Appellee,	:	TRIAL NOS. 06CRB-16537
		03CRB-20148
vs.	:	
DANIEL HOLBROOK,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant,	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist.Loc.R. 11.1.1.

Defendant-appellant Daniel Holbrook filed a motion to expunge a conviction for excessive noise from a motor vehicle in the case numbered 06CRB-16537. The trial court denied that motion because of “related traffic cases that cannot be expunged.” Holbrook also filed a motion to seal the record of a dismissed domestic-violence charge in the case numbered 03CRB-20148. The trial court denied that motion because “he had related traffic [cases] and they can’t be sealed.” Holbrook filed a timely appeal from the denial of those motions. We find no merit in his three assignments of error, and we affirm the trial court’s judgment.

We first note that the state has attached documents to its brief that were not a part of the record before the trial court. A reviewing court cannot add matter to the record before it and then decide the appeal on that basis. *In re Contested Election of November 2, 1993*, 72 Ohio St.3d 411, 413, 650 N.E.2d 859 (1995); *Amadasu v. O’Neal*, 176 Ohio App.3d 217, 2008-Ohio-1730, 891 N.E.2d 802, ¶ 4 (1st Dist.). Therefore we cannot consider those documents.

“Expungement is an act of grace created by the state[.]” Therefore, it is a privilege and not a right. *State v. Simon*, 87 Ohio St.3d 531, 533, 721 N.E.2d 1041 (2000), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639, 665 N.E.2d 669 (1996); *State v. Lovelace*, 1st Dist. No. C-110715, 2012-Ohio-3797, ¶ 24. The applicant must meet the statutory criteria to be eligible for an expungement. *Simon* at 533. The state bears no other burden than to object to an application. *State v. M.R.*, 8th Dist. No. 94591, 2010-Ohio-6025, ¶ 15; *State v. Wilson*, 10th Dist. No. 06AP-1060, 2007-Ohio-1811, ¶ 8.

Similarly, the defendant seeking to have the record of a criminal proceeding sealed following an acquittal or dismissal must follow the statutory procedures. The defendant bears the burden to demonstrate the need for sealing the record. *State v. Gross*, 12th Dist. No. CA2010-03-030, 2011-Ohio-55, ¶ 5; *State v. Severino*, 11th Dist. No. 2009-A-0045, 2010-Ohio-2674, ¶ 17.

In his first assignment of error, Holbrook contends that the trial court erred by applying R.C. 2953.61 to his excessive-noise conviction. In his second and third assignments of error, he contends that even if R.C. 2953.61 applies, the trial court applied it improperly and erred in denying his motions to expunge the excessive noise conviction and to seal the record of the dismissed domestic-violence charge. These assignments of error are not well taken.

Holbrook’s arguments ignore the fact that he had to show that he met all the requirements for expungement. In making their arguments, both parties rely on matters outside the record. The sparse record before us does not show whether the trial court applied R.C. 2953.61, or if it did, whether it applied the statute correctly.

The trial court said only that the excessive-noise conviction could not be expunged because of “related traffic cases that can’t be expunged.” Holbrook did not

object or present any evidence to support his motions. Consequently, he failed to show that he met all of the requirements for an expungement under R.C. 2953.32.

Similarly, the court said only that the record of the domestic-violence charge could not be sealed because Holbrook “had related traffic [cases] and they can’t be sealed.” Again, Holbrook did not object in any way or present any evidence. Consequently, he failed to show that he met all of the requirements to seal the record under R.C. 2953.52. *See State v. Brown*, 10th Dist. No. 07AP-255, ¶ 5-6.

Further, as the appellant, Holbrook bears the burden to show error by reference to the record. He has not met this burden. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980); *Maseck v. Lindav Properties.*, 1st Dist. No. C-050528, 2006-Ohio-3721, ¶ 10. We overrule his three assignments of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on October 12, 2012

per order of the court _____.

Presiding Judge