

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

STATE OF OHIO,	:	APPEAL NO. C-180655
	:	TRIAL NO. B-9401043
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
CARLOS MITCHELL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Carlos Mitchell appeals the judgment of the Hamilton County Court of Common Pleas denying his motion to seal the record of his 1994 aggravated-assault conviction, a fourth-degree felony offense. In one assignment of error, Mitchell contends the trial court erred by denying his motion.

Mitchell acknowledges that the trial court lacked the statutory authority to seal the record of his conviction because of the limitation found in R.C. 2953.36(A)(3), which precludes relief to offenders, such as him, convicted of a felony “offense of violence.” He argues, however, that the trial court erred as matter of law because the court failed to recognize its “inherent discretion” to seal a record of conviction.

In support of a reversal, Mitchell relies upon *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 421 N.E.2d 1303 (1981), in which the Ohio Supreme Court held that “trial courts have the authority to order expungement where such unusual and exceptional circumstances

make it appropriate to exercise jurisdiction over the matter.” *Id.* at paragraph two of the syllabus. But the charges filed against the defendant in *Pepper Pike* were dismissed with prejudice prior to trial, unlike in this case. *See id.* at paragraph one of the syllabus. Further, the legislature had not yet afforded a statutory remedy to seal records for that type of defendant. *See id.* at 376.

When a defendant has been *convicted* of an offense, the trial court may seal the record of conviction only as allowed by statute. *See State v. Radcliff*, 142 Ohio St.3d 78, 2015-Ohio-235, 28 N.E.3d 69, ¶ 27; *State v. Weber*, 19 Ohio App.3d 214, 216-217, 484 N.E.2d 207 (1st Dist.1984); *State v. Stamps*, 1st Dist. Hamilton No. C-950276, 1996 WL 348019 (June 26, 1996). Consequently, the trial court lacked inherent authority to grant Mitchell’s motion to seal the record of his 1994 aggravated-assault conviction. Accordingly, we overrule the assignment of error and affirm the trial court’s judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on October 16, 2019
per order of the court _____.
Presiding Judge