

[Cite as *State v. W.T.D.*, 2021-Ohio-873.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO (CITY OF  
RIVERSIDE)

Plaintiff-Appellee

v.

[W.T.D.]

Defendant-Appellant

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Appellate Case Nos. 28741 & 28764

Trial Court Case Nos. 2019-CRB-608E  
& 2019-CRB-734E

(Appeal from Municipal Court)

.....

**OPINION**

Rendered on the 19th day of March, 2021.

.....

PETER S. CERTO, Atty. Reg. No. 0018880, One South Main Street, Suite 1590, Dayton,  
Ohio 45402

Attorney for Plaintiff-Appellee

[W.T.D.], Charlotte, North Carolina  
Defendant-Appellant, Pro Se

.....

HALL, J.

{¶ 1} [W.T.D.] appeals from two orders of the Municipal Court of Montgomery County, Eastern Division. In Case No. 2019-CRB-608E (Montgomery App. No. 28741), the trial court vacated a previous order to seal the record. We find no error with the trial court's decision to vacate its prior order, and we affirm the order in that case. [W.T.D.] also appeals from the trial court's judgment convicting him of violating a protection order in Case No. 2019-CRB-734E (Montgomery App. No. 28764). Because it is unclear from the record whether the complaint in that case was properly signed and notarized, we reverse the judgment in Case No. 2019-CRB-734E and remand the matter for further proceedings.

### **I. Factual and Procedural Background**

{¶ 2} [W.T.D.] was a licensed attorney in Ohio for over 20 years. In 2019, he was charged in the municipal court with several offenses in two cases; the offenses were based on the same operative facts and had the same victim, one of [W.T.D.]'s clients. In Case No. 2019-CRB-608E, [W.T.D.] was charged with violating a protection order, falsification, and attempting to solicit improper compensation. In Case No. 2019-CRB-734E, [W.T.D.] was charged with a separate offense of violating a protection order, because he had appeared at a police department in possession of a firearm; although [W.T.D.] had a concealed carry permit, the protection order prohibited him from carrying a firearm.

{¶ 3} On September 13, 2019, pursuant to a plea agreement, [W.T.D.] pleaded no contest to the charge of violating a protection order in Case No. 2019-CRB-734E, and the

charges in Case No. 2019-CRB-608E were dismissed. That same day, [W.T.D] filed a petition with the court to seal the records in Case No. 2019-CRB-608E, but he did not send a copy of the petition to the state. The trial court set the petition for a hearing on October 15, and the notice of the hearing was received by the state on October 8. That same day, the trial court prematurely entered an order granting [W.T.D]'s petition. The state did not learn of the court's action until three days later, when the prosecuting attorney was talking to the clerk of courts. On October 15, the state filed a motion to vacate the sealing order. On February 12, 2020, the trial court sustained the state's motion and vacated the October 8, 2019 sealing order.

{¶ 4} [W.T.D] separately appealed the two cases. We consolidated the two appeals, and they are now before us.

## **II. Analysis**

{¶ 5} [W.T.D] assigns eight errors to the trial court:

1. THE ORDER OF 2/12/2020, UNSEALING A VALID, STANDING AND SETTLED PRIOR TRIAL COURT ORDER, ABSENT LEGAL AND STATUTORY AVENUES, LACKS JURISDICTION AND AS A MATTER OF LAW, IS UNLAWFUL AND UNTIMELY, VIOLATES DUE PROCESS AND EQUAL PROTECTION AND HAS NO AUTHORITY IN LAW TO DISTURB A PRIOR COURT ORDER ON A CLOSED AND SEALED CASE, OVER FOUR (4) MONTHS PRIOR, ALL DONE WITHOUT EVEN A SINGLE HEARING ON THE ISSUE, AND ALL UPON MIS-INTERPRETATION OF ORC 2953.52, AND FOR REASONS STATED WHICH ARE ILLEGAL AND

NOT RESPONSIVE TO ORC 2953.52 WHICH SET FORTH THE SPECIFIC LEGAL CRITERIA.

2. THE TRIAL COURT FAILED TO ADVISE DEFENDANT OF THE EFFECT OF A NO-CONTEST PLEA AS REQUIRED BY STATUTE.

3. THE STATE OF OHIO HAS FAILED TO ALLEGE AS A NECESSARY ELEMENT OF THE STATUTE THAT THIS EX-PARTE TEMPORARY ORDER OF PROTECTION WAS EVER SERVED UPON APPELLANT.

4. THERE IS NOT A VALID OR LEGALLY SUFFICIENT, LAWFUL COMPLAINT BEFORE THE TRIAL COURT AND THE TRIAL COURT MUST FIND [HIM] NOT GUILTY, UPON ACCEPTING A NO-CONTEST PLEA FROM DEFENDANT.

5. THE GUILTY FINDING UPON THE NO-CONTEST PLEA MUST BE VACATED AND THE MATTER DISMISSED AS THE UNDERLYING EX-PARTE TEMPORARY ORDER OF PROTECTION WAS ORDERED, ADJUDGED AND DECREED AS BEING VOID BY THE ISSUING COURT.

6. THE TRIAL COURT COMMITTED PLAIN ERROR BY NOT AFFORDING DEFENDANT HIS RIGHT OF ALLOCUTION AFFORDED BY THE U.S. CONSTITUTION AND THE OHIO CRIMINAL RULES.

7. THE STATE FAILS TO SET FORTH THE ELEMENT OF "OPERABILITY" AND THE FACT DEFENDANT IS NOT A PERSON "EXEMPTED" UNDER THE PROVISIO, AND STATUTORY EXCEPTIONS,

AS SET FORTH IN THIS SAME RELIED UPON EX-PARTE TEMPORARY ORDER OF PROTECTION.

8. THE NO CONTEST PLEA WAS INDUCED SOLELY BY COERCION AND SEVERE PROSECUTORIAL MISCONDUCT AND THE TRIAL COURT AFTER REVIEWING THE MATTER “DE NOVO AND INDEPENDENT REVIEW” AND UPON THE AFFIDAVIT OF DEFENDANT INDEPENDENTLY REVIEWED DE NOVO, THE TRIAL COURT SHOULD NOT HAVE THEREAFTER PROCEEDED TO JOURNALIZE A SENTENCE AND FINAL APPEALABLE ORDER.

The first assignment of error relates to Case No. 2019-CRB-608E, and the remaining assignments of error relate to Case No. 2019-CRB-734E.

**A. Vacating the sealing order in Case No. 2019-CRB-608E**

{¶ 6} In the first assignment of error, [W.T.D] argues that the trial court erred by vacating its order sealing the records in Case No. 2019-CRB-608E. We disagree, for two reasons.

{¶ 7} One, a hearing was required before [W.T.D]’s petition to seal could be granted. We have said that “[a] trial court’s failure to conduct a hearing [on an application to seal] requires reversal of the trial court’s judgment.” *State v. S.D.*, 2d Dist. Montgomery No. 28615, 2020-Ohio-4597, ¶ 7, citing *State v. L.L.*, 2d Dist. Clark No. 2016-CA-74, 2017-Ohio-5489, ¶ 5. No hearing was held on [W.T.D]’s petition.

{¶ 8} Two, because the trial court prematurely granted the petition, the state was unable to file objections. By statute, the hearing date establishes the deadline for filing

objections to a sealing petition. R.C. 2953.52(B)(1). And a court is required to consider objections. R.C. 2953.52(B)(2). Here, a hearing was set for October 15, which meant that the state should have had until that date to file objections. By granting the application on October 8, the trial court truncated the state's statutory time to object.

{¶ 9} We note that the issue here is not whether the record should or should not be sealed; it is procedural. The trial court's order vacating its prior decision expressly permitted [W.T.D] to file another petition to seal the record, although it appears the dismissal of the charges in that case may have been in exchange for a plea to -- and an expectation of a conviction on -- the charge in Case No. 2019-CRB-734E. That issue is not before us.

{¶ 10} The first assignment of error is overruled.

#### **B. The validity of the complaint in Case No. 2019-CRB-734E**

{¶ 11} With respect to the issues related to Case No. 2019-CRB-734E, we begin with the fourth assignment of error, because it raises a jurisdictional question. [W.T.D] contends that the complaint filed in Case No. 2019-CRB-734E was invalid because the charging officer failed to supply a properly attested to, signed, and sworn jurat. Specifically, he argues that the criminal complaint filed by the officer was not properly executed under Crim.R. 3, because the charging officer's signature was not made upon oath before a person authorized by law to administer oaths.

{¶ 12} We agree that the complaint in the record is not properly signed and sworn. In Case No. 2019-CRB-608E, the complaint bears the stamp "PEACE OFFICER AUTHORIZED TO ADMINISTER OATHS, ORC 2935.081" and a signature. In contrast,

the complaint in the record of Case No. 2019-CRB-734E bears no such stamp or signature of an authorized person.

{¶ 13} The transcript of the plea hearing, though, suggests that a separate sworn jurat might exist. The magistrate referred to an “affidavit” in connection with the complaint:

MAGISTRATE: Well, I’m going to read the affidavit into the file—into the record on that in determining my decision, okay?

MR. [W.T.D]: Okay.

MAGISTRATE: It says that the Complaint—Complainant, which in this case was Detective Christine Krueger, okay, being duly sworn states that [W.T.D.], on or about the 2nd day of November of 2018, at 1791 Harshman Road, Riverside, Montgomery County, Ohio, 454—it says 24, but I think that’s probably 31 or—

DETECTIVE KRUEGER: It’s 24.

MAGISTRATE: It’s a 24 down on Harshman?

DETECTIVE KRUEGER: Yeah.

MAGISTRATE: Okay, 24, did recklessly violate the terms of a probation—or a protection order issued pursuant to Section 2903.214 of the revised code, to wit, [W.T.D.] did have a firearm on his person while the Respondent of—while he was the Respondent of active protection order 2018 CV 05086. This is a—violating a protection order in violation of Section 2919.2782 of the Ohio Revised Code, a first degree misdemeanor. On the basis of the Complaint, I will accept your no contest plea and find you guilty.

\* \* \*

(Tr. 6-7.)

{¶ 14} We believe that the “affidavit” that the magistrate was referring to is actually the complaint in the record before us. But [W.T.D] seems to think that it is a separate document not in the record. Because we cannot confidently say one way or the other, we will remand this case for the trial court to determine if there were a properly signed and notarized complaint. If the unsworn complaint in the record is all that exists, as we suspect, the court must find the complaint defective and dismiss the case for lack of jurisdiction, because a jurisdictional defect cannot be waived or consented to. *State v. Davies*, 11th Dist. Ashtabula No. 2012-A-0034, 2013-Ohio-436, ¶ 12 (“[T]he state’s submission of a valid criminal complaint is a necessary prerequisite for invoking the subject matter jurisdiction of a trial court \* \* \* and [i]f the state files an invalid complaint, there exists a jurisdictional defect which cannot be waived by the criminal defendant.”).

{¶ 15} The fourth assignment of error is sustained.

{¶ 16} In light of our ruling on the fourth assignment of error, we decline to rule on the remaining assignments of error, which concern alleged errors that occurred after the complaint was filed.

### III. Conclusion

{¶ 17} In Montgomery App. No. 28741, the order vacating the prior order sealing the record in Case No. 2019-CRB-608E is affirmed. In Montgomery App. No. 28764, the judgment of conviction in Case No. 2019-CRB-734E is reversed, and the case is remanded for further proceedings consistent with this opinion.



.....

TUCKER, P.J. and WELBAUM, J., concur.

Copies sent to:

Peter S. Certo

[W.T.D.]

Hon. William H. Wolff, Jr.

Hon. William C. Cox