

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

STATE OF OHIO,	:	APPEAL NOS. C-190416
		C-190417
Plaintiff-Appellee,	:	TRIAL NOS. C-13CRB-9584A
		C-13CRB-9584B
vs.	:	
		<i>JUDGMENT ENTRY.</i>
LAKYSHA SAGER,	:	
Defendant-Appellant.	:	

We consider these appeals 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 Lakysa Sager appeals the decision of the Hamilton County Municipal Court denying her third application to seal records of her convictions for interference with custody under R.C. 2919.13. For the reasons that follow, we affirm the trial court’s judgments.

In 2013, Sager was charged with two counts of interference with custody after she took her then nine- and 11-year-old daughters from a school-bus stop without the knowledge or permission of their father, the girls’ residential parent. She was convicted of both counts following a jury trial.

In 2016, Sager filed an application to seal the records of her convictions, which the trial court denied. Sager appealed, and we affirmed the trial court’s judgment. *See State v. Sager*, 1st Dist. Hamilton No. C-160664 (Nov. 11, 2017).

In 2018, Sager filed a second application to seal records of her convictions, which the trial court denied, finding that Sager was ineligible to have the records sealed because the offenses involved child victims. Sager appealed again. Sager argued on appeal that the underlying facts of her convictions revealed that her children were not harmed or put at risk and thus could not be victims of the offenses. *See State v. Sager*, 2019-Ohio-135, 131 N.E.3d 335, ¶ 16 (1st Dist.) (“*Sager II*”). However, because Sager had failed to ensure that the transcript of the jury trial was transmitted for our review on appeal, we refused to consider that transcript in resolving the assignment of error. *Id.* at ¶ 21. We affirmed the trial court’s judgment, holding that in a prosecution under R.C. 2919.23(A)(1), the minor enticed, taken, kept or harbored is a victim of the offense. We held, therefore, that the trial court had no jurisdiction to grant Sager’s application and properly refused to do so, stating:

Since the only facts discernable from our record reveal that, following a jury trial, Sager was convicted of enticing, taking, keeping, or harboring her nine- and 11-year-old children, that the children were victims of the offenses, and that the offenses were punishable as first-degree misdemeanors, R.C. 2953.36(A)(6) clearly and unambiguously precludes sealing of the records of the convictions.

Id. at ¶ 35. Sager appealed to the Ohio Supreme Court, and the court declined jurisdiction. *See State v. Sager*, 155 Ohio St.3d 1445, 2019-Ohio-1707, 122 N.E.3d 207.

In January 2019, Sager filed a third application to seal records of her convictions, this time including the transcript of the jury trial. The trial court denied the application, “find[ing], as it has done in the past and as the First District Court of Appeals has also found, that the victims in these cases were minors,” and, that, therefore, R.C. 2953.36 precluded sealing of the records of the convictions. This appeal followed.

In a single assignment of error, Sager argues that the trial court erred by denying her third application to seal records of her convictions. She argues that our holding in *Sager II* was overbroad and reiterates her arguments that we rejected in that decision. Where, as here, the question of eligibility for sealing involves a purely legal question, we review the issue de novo. *See Sager II* at ¶ 9.

Successive applications to seal a record of conviction are ordinarily barred by the doctrine of res judicata, unless there is a showing of changed or new circumstances. *State v. S.J.*, 8th Dist. Cuyahoga No. 108216, 2020-Ohio-183, ¶ 12. Sager contends that two changes in circumstances occurred to prevent the application of res judicata. First, she asserts that she filed her third application for sealing “after the expansion of Ohio’s statutory expungement scheme in October 2018,” citing generally 2018 Am.Sub.S.B. No. 66. She concedes that the new legislation did not explicitly address the offense of interference with custody, however, and fails to point to anything in the legislation that shows she would be eligible for expungement. R.C. 2953.36(A)(6) precludes the sealing of records of “[c]onvictions of an offense in circumstances in which the victim of the offense was less than sixteen years of age when the offense is a misdemeanor of the first degree or a felony[,]” and the provision was not amended by the 2018 legislation. And we held in *Sager II* as a matter of law that in a prosecution for interference with custody under R.C. 2919.23(A)(1), the minor enticed, taken, kept, or harbored is a victim of the offense. *See Sager II* at ¶ 33.

Next, Sager argues that the transcripts from the jury trial that resulted in her convictions for interference with custody are now part of the appellate record and that this constitutes a change in circumstances sufficient to prevent the application of the doctrine of res judicata. But the only fact relevant to the determination of whether R.C. 2953.36(A)(6) precludes the sealing of records of convictions for interference with custody under R.C. 2919.23(A)(1) is whether the offenses involved children under the age of 16. We held in *Sager II* that “[t]here is no factual dispute as to the age of the

children taken” who, at the ages of nine and 11, “were both below the threshold ages identified in R.C. 2919.23(A)(1) and 2953.36(A)(6).” *See Sager II* at ¶ 34-35. The addition of the trial transcript to the appellate record does not alter that fact.

Because Sager failed to establish that a sufficient charge in circumstances occurred since she last requested the trial court to seal records of her convictions and failed to raise any arguments in her third application to seal that she could have raised in her second application, we hold that her third application to seal was barred by the doctrine of res judicata. *See State v. D.M.*, 2018-Ohio-3327, 118 N.E.3d 288, ¶ 30 (4th Dist.). Consequently, we overrule the assignment of error and affirm the trial court’s judgments.

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.

MYERS, P.J., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on July 29, 2020

per order of the court _____.

Presiding Judge