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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1789**

State of Minnesota,
Respondent,

vs.

J. J. H.,
Appellant.

**Filed May 13, 2013
Reversed and remanded
Cleary, Judge**

Washington County District Court
File Nos. 82-K2-88-4872, 82-K9-93-004799

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Richard D. Hodsdon, Assistant County Attorney, Stillwater, Minnesota (for respondent)

J. J. H., Cottage Grove, Minnesota (pro se appellant)

Considered and decided by Cleary, Presiding Judge; Johnson, Chief Judge; and Hooten, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant challenges the district court's denial of his petitions to expunge criminal records of his convictions of driving while impaired (DWI) and refusal to submit to a chemical test. We reverse and remand for findings.

FACTS

In May 1989, appellant J. J. H. pleaded guilty to gross misdemeanor DWI within five years of a prior DWI conviction, in violation of Minn. Stat. § 169.121, subd. 3(a) (1988). In June 1994, appellant pleaded guilty to gross misdemeanor refusal to submit to a chemical test, in violation of Minn. Stat. § 169.121, subd. 1a (1992).

In March 2012, appellant filed two petitions for expungement, requesting that the district court expunge his convictions pursuant to Minn. Stat. § 609A.03 (2010) or the court's inherent authority. Appellant claimed that he had gone to "40 interviews and appl[ied] for hundreds of jobs," but was unable to pass criminal background checks or secure employment because of his criminal record. He stated that he had been rehabilitated through treatment, had earned an Associate's Degree, and had become a responsible home owner. The state opposed expungement.

Following a hearing, the district court denied the petitions. The court stated that "[n]o statutory authority exists which would entitle [appellant] to an expungement or sealing of his records of convictions or his underlying driving records." The court held that "[t]here is not clear and convincing evidence that sealing the record would yield a benefit to [appellant] commensurate with the disadvantages to the public and public safety of: (1) sealing the record; and (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order." This appeal follows.

DECISION

Courts have both statutory and inherent authority to expunge criminal records. *State v. Ambaye*, 616 N.W.2d 256, 257 (Minn. 2000); *see also* Minn. Stat. §§ 609A.01-

.03 (2012) (explaining the statutory process for expungement of criminal records). Under Minn. Stat. § 609A.02, expungement pursuant to statute is available if certain controlled-substance charges have been dismissed, if a juvenile who was prosecuted as an adult has been discharged by the Commissioner of Corrections or probation, and if criminal proceedings were resolved in the petitioner's favor and did not result in conviction. None of the statutory grounds for expungement exist in this case.

Separate from this statutory authority, a court has the inherent power to expunge criminal records if “the petitioner’s constitutional rights may be seriously infringed by retention of his records” or if “expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order.” *Ambaye*, 616 N.W.2d at 258 (quotations omitted). The exercise of a court’s inherent power to expunge is reviewed for an abuse of discretion. *Id.* at 261.

In his petitions, appellant stated that he was seeking expungement because he wants to be able to pass criminal background checks and become employed. When determining whether the benefit to a petitioner of expungement is commensurate with the disadvantages to the public, a district court should consider

- (a) the extent that a petitioner has demonstrated difficulties in securing employment or housing as a result of the records sought to be expunged;
- (b) the seriousness and nature of the offense;
- (c) the potential risk that the petitioner poses and how this affects the public’s right to access the records;
- (d) any additional offenses or rehabilitative efforts since the offense[;] and
- (e) other objective evidence of hardship under the circumstances.

State v. H.A., 716 N.W.2d 360, 364 (Minn. App. 2006). This court has previously stated: “While we appreciate the informality of expungement proceedings, we are unable to review whether a grant or denial of expungement constitutes an abuse of discretion unless the district court makes findings or determinations on the record regarding these factors.” *Id.*; *see also State v. K.M.M.*, 721 N.W.2d 330, 335 (Minn. App. 2006) (reversing and remanding for findings when a district court declined to exercise its inherent authority to expunge but failed to make findings on the *H.A.* factors).

In this case, the district court concluded that “[t]here is not clear and convincing evidence that sealing the record would yield a benefit to [appellant] commensurate with the disadvantages to the public and public safety of: (1) sealing the record; and (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.” But the court did not make findings on the factors articulated in *H.A.* or explain in any way how it had reached its conclusion. Appellant claimed in his petitions that he had gone to “40 interviews and appl[ied] for hundreds of jobs” to no avail, had been rehabilitated through treatment, had earned an Associate’s Degree, and had become a responsible home owner since his convictions. The record does not contain documentation regarding any of these claims, and although the district court denied the expungement, it is unclear what role an analysis of the *H.A.* factors played in this determination. Without findings, we are unable to determine whether the district court abused its discretion by concluding that it had not been shown that expungement will yield a benefit to appellant commensurate with the disadvantages to the public. We therefore reverse and remand for the appropriate findings.

Appellant argues that he is automatically entitled to expungement because the statute under which he was previously convicted, Minn. Stat. § 169.121, has been repealed. Minn. Stat. § 169.121 was repealed in 2000. *See* 2000 Minn. Laws ch. 478, art. 2, § 8, par. (a). But in that year, Minn. Stat. §§ 169A.01-.76 (2000) was enacted, which provided the chapter regarding DWI offenses that is in use today, and the offenses for which appellant was convicted were recodified. *See* Minn. Stat. § 169A.26 (making DWI after a previous DWI conviction and refusal to submit to a chemical test gross misdemeanor offenses). The recodifying of the offenses for which appellant was convicted is an inappropriate reason for expungement.

In its brief on appeal, the state discusses whether a court has the authority to order the expungement of records held by the executive branch. This issue is currently under review by the Minnesota Supreme Court. *See State v. M.D.T.*, 815 N.W.2d 628 (Minn. App. 2012), *review granted* (Minn. June 27, 2012). In the present case, because the district court determined that appellant was not entitled to expungement, it did not reach the issue of whether it has the authority to order the expungement of executive-branch records. Analysis of the issue is therefore unnecessary in this appeal, and we take no position as to the application of *M.D.T.* to this case.

Reversed and remanded.