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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2051

State of Minnesota,
Respondent,

vs.

R. P. C.,
Appellant.

Filed July 17, 2017
Reversed and remanded
Connolly, Judge

Hennepin County District Court
File No. 27-CR-13-21397

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

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

Corrine Heine, Minnetonka City Attorney, Anna Krause Crabb, Assistant City Attorney, Minnetonka, Minnesota (for respondent)

Christopher A. Grove, The Grove Law Firm, Burnsville, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D   O P I N I O N

CONNOLLY, Judge

On appeal from the district court's denial of his petition for expungement of a 2013 underage-drinking-and-driving conviction, appellant argues that the district court's factual findings are unsupported by the record and that he met his burden to establish that the benefit of the expungement outweighed the corresponding disadvantages to public safety. Because the district court's analysis in its order improperly focused on driving-while-impaired offenses rather than the offense sought to be expunged and included inconsistent legal conclusions, we reverse and remand.

FACTS

On July 5, 2013, appellant R.P.C. received a citation for misdemeanor underage drinking and driving in Minnetonka. He was 19 years old. Appellant pleaded guilty to the offense in August, received a stayed sentence, and was placed on probation. Appellant indicates he successfully completed probation in August 2014, but respondent State of Minnesota contends he was not officially discharged until October 2014 and appellant included October 29, 2014 as the date of discharge on his petition for expungement. Appellant filed the petition in the spring of 2016.[1]

Since his offense, appellant has graduated from college and received an offer to begin work at Deloitte in Washington, D.C. as a federal business analyst. He indicated he

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[1] The timeliness of appellant's petition was not raised below, and we therefore do not reach the issue. *See* Minn. Stat. § 609A.02, subd. 3(a)(3) (2014) (requiring that a petitioner "has not been convicted of a new crime for at least two years since discharge of the sentence" for the crime sought to be expunged).

sought expungement because his position would likely involve background checks, because he is seeking housing, and "for travel purposes." The district court conducted a hearing in September 2016. The city attorney's office filed a letter with the judge opposing expungement on the grounds that the offense was recent and relevant to insurers, investigators, and government background checks.

The district court issued an order denying appellant's petition for expungement in October 2016.[2] The district court concluded that appellant had not met his burden to show the benefit to him resulting from expungement would be commensurate with the resulting disadvantages to the public and public safety. This appeal follows.

DECISION

We review a district court's denial of a petition for expungement for an abuse of discretion. *State v. N.G.K.*, 770 N.W.2d 177, 180 (Minn. App. 2009). We will only set aside a district court's findings of fact for clear error. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). "Clearly erroneous means manifestly contrary to the weight of the evidence or not supported by the evidence as a whole." *Id.* (quotation omitted).

The relevant expungement statute provides that expungement

> is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:
> (1) sealing the record; and

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[2] A referee conducted the expungement hearing and recommended an order, which became effective "when countersigned by a judge." Minn. Stat. § 480.70, subd. 7 (2016). "The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court." Minn. R. Civ. P. 52.01.

> (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

Minn. Stat. § 609A.03, subd. 5(a) (2014). The same statute provides 12 factors for the district court's consideration in determining whether to grant a petition for expungement, including the following relevant factors:

> (1) the nature and severity of the underlying crime, the record of which would be sealed;
> (2) the risk, if any, the petitioner poses to individuals or society;
> (3) the length of time since the crime occurred;
> (4) the steps taken by the petitioner toward rehabilitation following the crime;
> (5) aggravating or mitigating factors relating to the underlying crime, including the petitioner's level of participation and context and circumstances of the underlying crime;
> *(6) the reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities;*
> (7) the petitioner's criminal record;
> (8) the petitioner's record of employment and community involvement; [and]
> (9) the recommendations of interested law enforcement, prosecutorial, and corrections officials . . . .

Id., subd. 5(c) (2014) (emphasis added). And

> [w]hen determining whether the benefit to a petitioner of expungement is commensurate with the disadvantages to the public, a district court should consider five factors: (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.

N.G.K., 770 N.W.2d at 180 (quotation omitted).

Appellant contends that the district court clearly erred with regard to five specific findings: (1) "There is no evidence in the record to support the notion that sealed records are less accurate, more difficult to find or less organized. Such findings by the district court are unremarkable and generalized and could be said about any expungement matter"; (2) "Expungement of Appellant's Criminal Record does not prevent the record from being used by government agencies for subsequent criminal investigations and proceedings"; (3) "There is no authority for the district court's conclusion that the written objection by the Minnetonka City Attorney constitutes 'strongly oppos[ing]'"; (4) "The Minnesota Legislature has determined that the actions of Appellant during the Criminal Incident shall be charged as a misdemeanor. The district court's attempt to elevate the status misdemeanor charge and equate it to a [driving-while-impaired (DWI) offense] has no support in the record and is contrary to Minnesota Law"; and (5) "The district court cited no legitimate disadvantages to the public or public safety of expunging Appellant's Criminal Record; its finding that sealing the record will be a substantial disadvantage to the public is clearly erroneous." He also suggests that the 12 statutory factors favor expungement and that he has "established by clear and convincing evidence that the benefit of expungement vastly exceeds the disadvantages to the public and public safety." We focus our analysis on appellant's arguments regarding the district court's focus on DWI offenses and regarding whether appellant met his burden of proof.

First, appellant contends the district court improperly equated appellant's offense to a DWI offense. In its general analysis of the public interest in keeping the records sealed,

the district court relied heavily on analogy to DWI convictions. It noted that "[r]ecords of DWI convictions must be retained permanently, setting such crimes apart from most others," and that such requirements "illustrate the significance of DWI convictions vis-à-vis those for other crimes." (Citation omitted). It went on to discuss the danger of alcohol offenses, finding that:

> This crime is an alcohol-related driving offense. In a large sense DWI crimes are sui generis. No other crime is responsible for the amount of death, injury and destruction that results from mixing alcohol with driving. There is a particularly acute public interest in driving conduct where alcohol is a factor. Driving after using alcohol is dangerous, and is a factor in many traffic accidents, injuries and deaths each year.
>
> DWI offenses are among the relatively few misdemeanor crimes denominated as "targeted misdemeanor" per Minn. Stat. § 299C.10, subd. 1(e). They count as criminal history units for purposes of the sentencing guidelines for ten years following discharge from probation for the offense.
>
> A history of alcohol related offenses is a particularly crucial tool if the subject is accused of a subsequent crime. DWI violations can be enhanced to become gross misdemeanors and even felonies when a previous record exists. In Ch. 169A Minnesota has established and continues to enhance a complex scheme which aims to protect those who use our highways from the consequences of those who repeatedly drink and drive. A key factor in identifying those few is the maintenance of accurate and complete records of such convictions. The entire record of offenses, even those which may go back decades, comes into play upon a conviction in the sentencing decision.
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> Thus the public interest in maintaining complete and accurate records of alcohol related convictions is very high.

Despite the district court's focus on DWI convictions in its analysis, appellant's conviction is not similar to a DWI conviction for the purposes of many of the enumerated considerations: records of underage-drinking-and-driving convictions are not retained

permanently pursuant to Minn. Stat. § 171.12, subd. 3(4) (2014); the record contains no information to indicate that this offense involved "traffic accidents, injuries and deaths"; it is not a "targeted misdemeanor" pursuant to Minn. Stat. § 299C.10, subd. 1(e) (2014); and it is not an enhanceable offense as delineated in Minn. Stat. §§ 169A.24, .25, .26, .27 (2014), which sections refer only to prior convictions pursuant to Minn. Stat. § 169A.20 (2014) when considering enhanceability. Additionally, appellant would be unable to repeat this particular offense—the status offense depends upon appellant's age on the date of offense. *See* Minn. Stat. § 169A.33 (2014) ("It is a crime for a person under the age of 21 years . . . .). We conclude that the district court abused its discretion by relying on an analogy to an enhanceable offense that our statutory scheme treats quite distinctly from appellant's actual conviction offense.

Next, appellant argues that the district court erred in determining that he had not met his burden of proof. The district court concluded that appellant "ha[d] not shown a hardship resulting from this conviction, only some measure of potential embarrassment," and noted that he had demonstrated "only speculative and intangible harm" in support of his petition for expungement. But the district court also concluded that "the reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities" weighed in favor of expungement. Appellant's very reasons for requesting expungement included concerns relating to employment, housing, and travel to see his family. It is difficult to discern how this factor could weigh in appellant's favor while still constituting "only speculative and intangible harm." The district court's findings

are therefore inconsistent and require clarification on remand. In short, the district court has to decide whether the factor weighs in favor of or against expungement.

Before concluding, we note that appellant's arguments rely heavily on *State v. R.H.B.*, 821 N.W.2d 817 (Minn. 2012), to attack the district court's findings as generalized and unremarkable. *R.H.B.* concerned a petitioner who had been acquitted and who therefore petitioned under a different subsection of the expungement statute. *R.H.B.*, 821 N.W.2d at 820. In such cases, the respondent carries the burden of proof to show that expungement *should not* be granted—the inverse of the burden at issue in this case. Minn. Stat. § 609A.03, subd. 5(b) (2014). Appellant does not cite any authority requiring application of *R.H.B.* to expungement petitions other than those made pursuant to Minn. Stat. § 609A.02, subd. 3(a)(1), 3(a)(2) (2014). But because we decide that the district court erred for other reasons, we need not determine *R.H.B.*'s applicability to appellant's case.

Accordingly, we reverse and remand for further findings and legal analysis consistent with this opinion. In making its decision on expungement, the district court cannot include in its analysis any comparison of the conviction to DWI cases and must clearly decide whether factor six favors or disfavors expungement. Upon remand, the district court may in its discretion reopen the record.

Reversed and remanded.