

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0183**

State of Minnesota,
Respondent,

vs.

S. M. C.,
Appellant.

**Filed December 18, 2017
Affirmed
Reilly, Judge**

Nicollet County District Court
File No. 52-CR-06-39

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

Michelle M. Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant S.M.C. challenges the district court's order denying his petition for statutory expungement of criminal-sexual-conduct charges, arguing that the proceedings

were resolved in his favor and the state failed to meet its burden of establishing that the disadvantages to public safety outweighed the benefits of the expungement. We affirm.

FACTS

In January 2006, the state charged appellant with criminal sexual conduct stemming from an incident where the victim, C.H., reported that she had been raped by appellant and by a second individual identified as J.M. In November 2008, J.M. entered a plea of guilty to criminal sexual conduct and admitted to having nonconsensual sex with C.H. J.M. testified that he saw appellant touch C.H.'s breast, but he did not know whether the contact was consensual. A year later, in November 2009, the state dismissed the charges against appellant without prejudice and the district court issued an order for dismissal without prejudice under Minnesota Rule of Criminal Procedure 30.01.

In July 2016, appellant filed a petition for statutory expungement under Minnesota Statutes section 609A.03 (2016), arguing that he qualified for expungement because the charges were dismissed by the prosecuting authority. The state opposed the petition, arguing that appellant failed to include required information in his petition—including records of his seven past criminal charges and convictions—and failed to demonstrate that he would receive any benefit from the expungement. The Minnesota Department of Human Services and the Minnesota Department of Health also opposed the petition. C.H. opposed the petition and appeared at the expungement hearing to provide a statement. The district court denied the petition. While recognizing that the proceedings were resolved in appellant's favor and the state bore the burden of proof, the district court determined that the statutory expungement factors, considered together, “establish by clear and convincing

evidence that the public’s interest in keeping the records unsealed outweighs the disadvantages to [appellant] of not sealing the records.”

This appeal follows.

D E C I S I O N

I. Standard of Review

We review a district court’s denial of an expungement petition for an abuse of discretion and will only set aside factual findings for clear error. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). A factual finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not supported by the evidence as a whole.” *Id.* (quotation omitted). We review questions of statutory interpretation de novo. *See State v. S.A.M.*, 891 N.W.2d 602, 604 (Minn. 2017).

II. Expungement Statute

A district court has both statutory and inherent authority to expunge a petitioner’s criminal records. *State v. Ambaye*, 616 N.W.2d 256, 257 (Minn. 2000). Statutory expungement is available only in limited circumstances. *See* Minn. Stat. § 609A.02 (2016) (limiting statutory expungement to certain controlled-substance offenses, to crimes committed by juveniles prosecuted as adults, and to certain enumerated criminal proceedings). A petitioner qualifies for expungement under section 609A.02, subdivision 3(a)(1), when “all pending actions or proceedings were resolved in favor of the petitioner.” If a petitioner meets this legal threshold, the district court “shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh

the disadvantages to the petitioner of not sealing the record.” *State v. R.H.B.*, 821 N.W.2d 817, 821 (Minn. 2012) (describing “two-step procedure for statutory expungement”). The district court considers

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;
9. the recommendations of interested law enforcement, prosecutorial, and corrections officials;
10. the recommendations of victims or whether victims of the underlying crime were minors;
11. the amount, if any, of restitution outstanding. . . ; and
12. other factors deemed relevant by the court.

Minn. Stat. § 609A.03, subd. 5(c).

It is undisputed that the criminal charges against appellant were dismissed, and the proceeding was resolved in his favor. Thus, appellant is “presumptively entitled to

expungement,” *Ambaye*, 616 N.W.2d at 257, and the state bears the “burden of persuasion,” *R.H.B.*, 821 N.W.2d at 821 (citation omitted). The district court analyzed the 12 statutory expungement factors articulated in section 609A.03, subdivision 5(c), and concluded that clear and convincing evidence weighed against the petition.

III. Analysis

a. Disadvantages to Public and Public Safety

i. Nature and severity of crime, 5(c)(1); Risk to individuals or society, 5(c)(2); Victim recommendation, 5(c)(10)

The district court determined that the nature and severity of the underlying crime, the risk to society, and the recommendation of the victim weighed against expungement. Minn. Stat. § 609A.03, subs. 5(c)(1), (2), (10). C.H. opposed the petition at the hearing and stated that appellant “held her down” while J.M. sexually assaulted her. Minnesota Statute permits a victim to speak at an expungement hearing and directs the district court that:

A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim’s recommendation on whether expungement should be granted or denied. The judge shall consider the victim’s statement when making a decision.

Minn. Stat. § 609A.03, subd. 4 (2016).

The district court found C.H.’s testimony “sincere and credible,” and reasoned that her testimony lent credence to a determination that appellant “pose[d] a risk to society, especially young females.” It is the district court’s prerogative to weigh the evidence and make credibility determinations. *See State v. Engle*, 731 N.W.2d 852, 859-60 (Minn. App.

2007) (“Assessing the credibility of witnesses and weighing their testimony are within the exclusive province of the factfinder.”) (quotation omitted). We do not discern any error in the district court’s determination that these factors weighed against expunging appellant’s criminal record.

ii. Aggravating or mitigating factors, 5(c)(5)

The district court found that aggravating factors weighed against expungement because C.H. testified that appellant was an “active participant in the crime” and acted “callous[ly]” toward her, and J.M. testified at his plea hearing that appellant was “present in the hotel room and was touching [C.H.] on the breast.” Appellant argues that the district court mischaracterized J.M.’s testimony and “inculpate[d] [a]ppellant for [the charged] offense.” We disagree. The district court explained that “in finding [C.H.’s] testimony to be credible, it is not thereby finding Defendant guilty of the offense.” The district court acknowledged that the case was dismissed seven years ago and that appellant “has never been convicted of anything in connection with it.” But the district court continued:

The question here is whether to grant the expungement petition. The testimony of [C.H.] is relevant and properly used for that purpose. Minn. Stat. § 609A.03, subd. 4 gives [C.H.] the right to make a statement and directs the Court to consider it. The opinion of a victim is one of the factors listed in Minn. Stat. § 609A.03, subd. 5(c). The Court used the testimony of [C.H.] when applying the factors to determine whether expungement is appropriate.

The record demonstrates that the district court carefully analyzed this statutory factor as it relates to appellant’s expungement petition, without suggesting that appellant was guilty of the underlying offense.

iii. Steps toward rehabilitation, 5(c)(4); and Petitioner's criminal record, 5(c)(7)

Upon review of appellant's criminal record, the district court determined that appellant has a "significant record of other charges and convictions," including driving offenses in 1997, 1999, 2006, and 2009, and a domestic assault charge in 2010. The district court characterized appellant as having "a significant record of trouble with the law," and noted that appellant originally failed to include records of these charges and convictions in his petition for relief. Appellant argues that the 1997 and 1999 driving offenses occurred before the offense at issue, and that his only criminal conviction was eight years ago. We are not persuaded by this argument. Minnesota law directs the district court to consider "the petitioner's criminal record," Minn. Stat. § 609A.03, subd. 5(c)(7), and the plain language of the statute is not limited to charges and convictions arising after the date of the underlying crime.

The district court also found that appellant had a history of alcohol-related criminal offenses but failed to "set forth any steps that he has taken toward rehabilitation since the incident." The district court noted that appellant "present[s] a risk to society, particularly if he is under the influence of alcohol." The January 2006 complaint states that appellant and J.M. were drinking alcohol with C.H. before the assault occurred. And appellant's criminal record includes several impaired-driving offenses. The district court found that, as of the date of the hearing, there was no evidence "regarding what, if anything, [appellant] has done with regards to alcohol use." Because the record supports the district court's factual findings, the district court's review of appellant's criminal record is not erroneous.

b. Benefits to Petitioner

Appellant did not articulate how the benefits of an expungement outweighed the disadvantages to the public or to public safety. The district court considered the reasons for expungement and found that appellant “did not state that he has had any difficulty obtaining employment, housing or other necessities for living.” *See* Minn. Stat. § 609A.03, subd. 5(c)(6) (directing court to consider reasons for expungement “including the petitioner’s attempts to obtain employment, housing, or other necessities”). Appellant has not contested this determination on appeal. On balance, the district court found that “[t]he foregoing factors considered together establish by clear and convincing evidence that the public’s interest in keeping the records unsealed outweighs the disadvantages to [appellant] of not sealing the record.” We agree. The record demonstrates that the district court considered each of the statutory factors and concluded that the state met its burden of establishing that clear and convincing evidence weighed in favor of denying the petition.

Appellant argues that the district court’s ruling is contrary to *R.H.B.*, 821 N.W.2d at 817 and *State v. D.R.F.*, 878 N.W.2d 33 (Minn. App. 2016). We disagree. The petitioner in *R.H.B.* sought an expungement under section 609A.03, subdivision 5(b). *R.H.B.*, 821 N.W.2d at 820. The state opposed the petition and presented three affidavits stating that an expungement threatened public safety. *Id.* at 822. However, the affidavit statements were “unremarkable and generalized, and could be submitted in nearly every expungement case” because they were not unique to the petitioner. *Id.* The Minnesota Supreme Court noted that “the State presented almost no evidence that sealing R.H.B.’s criminal record would present a unique or particularized harm to the public,” and reinstated the district

court's order granting expungement. *Id.* at 822-23 (“Because the State presented little more than generalities explaining why it is beneficial for State and county licensing agencies and police departments to maintain the criminal records of an acquitted defendant, we hold that the district court did not err when it granted R.H.B.’s petition.”). The petitioner in *D.R.F.* also sought statutory expungement under section 609A.03, subdivision 5(b), which the state opposed. *D.R.F.*, 878 N.W.2d at 35. The district court denied the petition and we reversed on appeal, determining that because there was not a “unique or particularized harm to the public” presented by the facts of the case, the harm suggested by the state was “too speculative to constitute clear-and-convincing evidence.” *Id.* at 36.

R.H.B. and *D.R.F.* are inapplicable here. The district court had specific evidence regarding the “unique and particularized harm” to the public of granting the petition. While appellant disagrees with how the district court weighed the competing interests, the record reveals that the district court addressed each of the 12 statutory factors and determined that it was in the public’s interest to deny the expungement petition. A district court’s weighing of competing interests in an expungement case is a discretionary task, which we review for abuse of discretion. *R.H.B.*, 821 N.W.2d at 822. The district court did not abuse its discretion by determining that the state sustained its burden of persuasion in this case.

Affirmed.