STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0284

State of Minnesota,
Respondent,

vs.

A. S. R.,
Appellant.

Filed December 26, 2017
Reversed and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-14-27666

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

Christopher P. Renz, Nathan J. Knoernschild, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent)

Steven J. Meshbesher, Kevin Gregorius, Meshbesher & Associates, PA, Minneapolis, Minnesota; and

David R. Lundgren, Adam T. Johnson, Lundgren & Johnson, PSC, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

S Y L L A B U S

A criminal charge that is continued for dismissal and subsequently dismissed without an admission or finding of guilt is "resolved in favor of the petitioner" under Minn.

Stat. § 609A.02, subd. 3(a)(1) (2016), presumptively entitling the petitioner to expungement under Minn. Stat. § 609A.03, subd. 5(b) (2016).

O P I N I O N

BJORKMAN, Judge

Appellant challenges the denial of his petition to expunge a dismissed charge, arguing that he is presumptively entitled to expungement and the district court abused its discretion by determining that the Metropolitan Airport Commission (MAC), which opposed the petition, successfully rebutted that presumption. We reverse and remand for entry of an order of expungement.

FACTS

In September 2014, appellant A.S.R. was charged with providing false identification to gain access to an airport security area, a violation of a MAC ordinance. MAC alleged that A.S.R. submitted an application for an airport badge and had improperly marked a box on the employer's portion of the form addressing employee security access levels, indicating that he should receive "escort" authority. A.S.R. pleaded not guilty to this misdemeanor charge.

On May 29, 2015, MAC agreed to continue the case for dismissal after one year on the conditions that A.S.R. (1) not commit any offenses identical or similar to the false-identification charge, (2) "remain out of the airport for one year unless he has a valid ticket to travel," and (3) pay prosecution costs and surcharges totaling $400.

A.S.R. subsequently asked MAC to modify these conditions so he could work at the airport. MAC had not responded to the request when A.S.R. went to the airport to apply

for a security badge for an airline job he sought. He had a valid ticket for travel but left the airport after completing the application and did not fly. A.S.R. provided his badge application to MAC in support of his work-related modification request.

MAC did not grant A.S.R.'s request. Instead, MAC moved the district court to terminate the continuance for dismissal, alleging that A.S.R. violated the conditions by being at the airport.

While the motion was pending, A.S.R. again went to the airport with a ticket, planning to travel with his mother and aunt. A.S.R. was waiting to proceed through security when law-enforcement officers approached him and asked about his travel intentions. A.S.R. later explained that the inquiry embarrassed him and caused him to abandon his flight plans that day, seeking alternative travel means.

The parties stipulated to the foregoing facts as the basis for MAC's motion to terminate the continuance for dismissal. The district court denied the motion, reasoning that A.S.R.'s possession of valid tickets to travel justified his presence at the airport on both occasions. The false-identification charge was dismissed on August 1, 2016.

Just over one month later, A.S.R. petitioned to have the charge expunged. MAC objected. A.S.R. testified at the expungement hearing; MAC argued against expungement but did not present any evidence. A referee determined that A.S.R.'s case was resolved in his favor but that MAC demonstrated the interests of the public and public safety outweigh the disadvantages to A.S.R. of not sealing the record, and denied A.S.R.'s expungement petition. The district court approved the referee's decision. A.S.R. appeals.

ISSUES

I. Was A.S.R.'s case resolved in his favor?

II. Did the district court abuse its discretion in determining that MAC rebutted the presumption in favor of expungement?

ANALYSIS

The legislature has identified specific circumstances in which an individual may petition to expunge a criminal record.[1] *See* Minn. Stat. § 609A.02 (2016). In most circumstances, a petitioner seeking statutory expungement must prove by clear and convincing evidence that sealing his criminal record would "yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety." Minn. Stat. § 609A.03, subd. 5(a) (2016). But the scenario is reversed when "all pending actions or proceedings were resolved in favor of the petitioner." Minn. Stat. § 609A.02, subd. 3(a)(1); *see State v. R.H.B.*, 821 N.W.2d 817, 821 (Minn. 2012). In those cases, the district court must grant expungement unless the agency 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." Minn. Stat. § 609A.03, subd. 5(b); *see R.H.B.*, 821 N.W.2d at 821 (describing this framework as a "statutory presumption").

[1] While district courts have both statutory and inherent powers to grant expungement relief, *State v. L.W.J.*, 717 N.W.2d 451, 455 (Minn. App. 2006), A.S.R. requested and the district court addressed only statutory expungement.

The state argues that A.S.R. did not establish that the false-identification charge was resolved in his favor and therefore he is not presumptively entitled to expungement.[2] A.S.R. asserts that the district court abused its discretion by determining that the state met its burden of rebutting the presumption in favor of expungement. We address each argument in turn.

I. A.S.R.'s case was resolved in his favor.

Whether a case was resolved "in favor of" the petitioner is a question of statutory interpretation. We review statutory interpretation de novo, seeking to ascertain and effectuate the legislature's intent. *State v. S.A.M.*, 891 N.W.2d 602, 604 (Minn. 2017). "Interpretation of a statute begins with the statute's plain language." *R.H.B.*, 821 N.W.2d at 820. But we are mindful of that language's context. We interpret a statute as a whole and consider its structure. *S.A.M.*, 891 N.W.2d at 604. We also presume that the legislature, when enacting or amending a statute, was aware of existing judicial interpretations of the statute. *Rockford Township v. City of Rockford*, 608 N.W.2d 903, 908 (Minn. App. 2000).

It is to prior judicial interpretations of the phrase "in favor of" that we turn first. In *State v. C.P.H.*, we considered whether a continuance for dismissal and eventual dismissal of a criminal charge is a resolution in favor of the petitioner. 707 N.W.2d 699, 702 (Minn. App. 2006). The answer lay not in the mere fact of the dismissal but in the substance of

[2] Because MAC presented this argument to the district court and urges it now as an alternative basis for affirming the district court's decision, it is properly before us in this appeal. *See Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 331 (Minn. 2010).

the dismissal. *Id.* We reasoned, consistent with decades of prior cases addressing the "in favor of" language, that the critical factor is whether there has been an admission or finding of guilt. *Id.* at 703-04. If there has been, a subsequent dismissal is "in the nature of a pardon, not a declaration of innocence and therefore not a determination in favor of [the] accused." *State v. Davisson*, 624 N.W.2d 292, 296 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. May 15, 2001). But in the absence of an admission or a finding of guilt, "the petitioner's innocence must be assumed." *C.P.H.*, 707 N.W.2d at 703. Consequently, we held that "[f]or the purpose of expungement under Minn. Stat. § 609A.02, subd. 3 (2004), a criminal charge that is continued for dismissal and subsequently dismissed, without an admission or finding of guilt, is resolved in favor of the petitioner." *Id.* at 701.

The state argues that subsequent changes to Minn. Stat. § 609A.02, subd. 3, have rendered *C.P.H.* obsolete. We disagree. When we decided *C.P.H.*, there were few statutory grounds for expungement and only one ground for presumptive expungement—a resolution in favor of the petitioner. *See* Minn. Stat. §§ 609A.02, subd. 3, .03, subd. 5 (2004). In 2014, the legislature extended presumptive expungement to a second category of individuals—those who demonstrate successful completion of "a diversion program or a stay of adjudication," followed by one year without new criminal charges. 2014 Minn. Laws ch. 246, §§ 6, at 812; 10, at 815. And the legislature added provisions permitting individuals convicted of certain crimes to petition for expungement after a designated crime-free period. *Id.* § 6, at 812-14. But the legislature, presumably aware of our holding in *C.P.H.* and the numerous cases following it, declined to alter the provision affording

presumptive expungement to petitioners whose cases were resolved "in favor of" them. *Id.* § 6, at 811. In short, the legislative changes reflect an expansion of the grounds for expungement, not an abrogation of *C.P.H.*

The state nonetheless contends that the 2014 provision addressing diversion programs, Minn. Stat. § 609A.02, subd. 3(a)(2), limits the "in favor of" basis for presumptive expungement. The state asserts that the new provision evinces the legislature's intent to distinguish petitioners who successfully complete any type of pretrial diversion, including a continuance for dismissal, from petitioners whose cases were resolved in their favor. We are not persuaded. The new provision does not address pretrial diversion generally. Rather, it refers to a specific type of diversion that differs in two critical respects from the continuances for dismissal at issue in *C.P.H.* and here.

First, the 2014 provision refers specifically to a diversion "program." A "program" is a "system of services, opportunities, or projects, usually designed to meet a social need." *American Heritage Dictionary* 1447 (5th ed. 2011). Consistent with this definition, the phrase "diversion program" refers to structured systems for pretrial diversion that include mandated screening, monitoring, counseling, and reporting. *See, e.g.*, Minn. Stat. §§ 388.24 (juvenile-offender "pretrial diversion program"), 401.065 (adult-offender "pretrial diversion program") (2016). By contrast, a continuance for dismissal is simply an agreement between the prosecutor and the defendant to suspend prosecution for a specified period of time, with agreed-to conditions, after which the charge is automatically dismissed. Minn. R. Crim. P. 27.05; *see also* Minn. Stat. § 609.132 (2016). A continuance

for dismissal does not, in and of itself, involve programmatic components. Simply put, a continuance for dismissal, without more, is not a "diversion program."

Second, consideration of the diversion-program provision on its face and in the context of the entire statute persuades us that it applies only to cases involving an admission or finding of guilt. By its express terms, the provision treats diversion programs the same as stays of adjudication. It is well established that a stay of adjudication flows from a determination of guilt, *see State v. Martin*, 849 N.W.2d 99, 103 (Minn. App. 2014), *review denied* (Minn. Sept. 24, 2014), and thus is not a resolution in favor of the petitioner, *Davisson*, 624 N.W.2d at 295. It follows that a diversion program that is functionally equivalent to a stay of adjudication is one premised on an admission or finding of guilt. Moreover, the new provision conditions expungement on a showing that the petitioner "has not been charged with a new crime for at least one year." Minn. Stat. § 609A.02, subd. 3(a)(2). This requirement is similar to those in related provisions that permit expungement following a conviction. *See* Minn. Stat. § 609A.02, subd. 3(a)(3)-(5) (premising entitlement to expungement on two to five years without a new conviction, depending on severity of the underlying offense).

Accordingly, we conclude that the legislature, in enacting Minn. Stat. § 609A.02, subd. 3(a)(2), did not alter a petitioner's statutory right to presumptive expungement of a criminal charge that was continued for dismissal and later dismissed without any admission or finding of guilt. Instead, the 2014 amendments extended the reach of the expungement statute to a new class of individuals—those who admitted guilt or were found guilty but nonetheless successfully completed a diversion program or received a stay of adjudication,

garnering dismissal of the charge and avoiding a conviction. Because the prosecutor dismissed the charge against A.S.R. without any admission or finding of guilt, the district court properly determined that A.S.R.'s case was resolved in his favor.

II. The district court abused its discretion in determining that MAC rebutted the presumption in favor of expungement.

A petitioner whose case was resolved in his favor is presumptively entitled to expungement of the case record. Minn. Stat. §§ 609A.02, subd. 3(a)(1), .03, subd. 5(b). To rebut the statutory presumption, the agency opposing expungement of its record must present clear and convincing evidence that sealing the record presents a unique or particularized public-safety risk that outweighs the disadvantages to the petitioner of not sealing the record. Minn. Stat. § 609A.03, subd. 5(b); *R.H.B.*, 821 N.W.2d at 821, 823. "[T]o prove a claim by clear and convincing evidence, a party's evidence should be unequivocal, intrinsically probable and credible, and free from frailties." *Gassler v. State*, 787 N.W.2d 575, 583 (Minn. 2010). In determining whether that standard is met, a district court is guided by 11 statutory factors and may consider others it deems relevant. Minn. Stat. § 609A.03, subd. 5(c) (2016).

We review for an abuse of discretion a district court's decision that the agency opposing expungement satisfied its burden. *R.H.B.*, 821 N.W.2d at 823. We will not reverse that decision unless it is based on an erroneous interpretation of the law or against the facts in the record. *Id.* at 822. "A district court's findings of fact will not be set aside unless clearly erroneous." *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).

A.S.R. challenges several of the district court's factual findings and contends that the court misapplied the law by shifting the burden of proof to him. Both arguments have merit.

A.S.R. first points to the district court's findings regarding the circumstances of the alleged offense, particularly the finding that he "sought 'escort' privileges to which he was not entitled by altering an application for his badge." He argues that this finding is clearly erroneous because it mischaracterizes as fact the unproven allegation against him. We agree. A.S.R. did not plead guilty or stipulate to any facts regarding the false-identification charge. The only factual stipulation before the district court was the one that the parties submitted at the hearing on MAC's motion to terminate the continuance for dismissal on the ground that A.S.R. violated one of the conditions by going to the airport. The stipulation included the reports detailing the factual allegations underlying the charge but expressly indicated that the information was included only to provide the district court context, not as a stipulation that the allegations were true. As such, the stipulation supports no more than a finding that A.S.R. was alleged to have engaged in particular conduct. And we are not convinced that A.S.R.'s testimony at the expungement hearing supports the finding, as he stated only that he had an airport "escort" pass through a previous employer and noticed when he filled out the badge application at issue, "that box is not checked because I already have it." The district court clearly erred by finding that A.S.R. engaged in the underlying charged—but never proven—conduct.

A.S.R. next contests the district court's finding that he was "barred from the airport for the duration of his continuance." His argument is similarly persuasive. The plain language of the continuance-for-dismissal agreement permitted A.S.R. to be at the airport if he had a valid ticket to travel. Indeed, the presence of this clear language underlies both the district court's denial of MAC's motion to terminate the continuance for dismissal and conclusion that A.S.R.'s case was ultimately resolved in his favor.

Finally, A.S.R. argues that the district court clearly erred in finding as fact that "maintenance of airport security is highly complex" and that a "mistake, or an exploitation of the process, could have disastrous consequences." While we are mindful that airport security, as a general matter, is a vital public-safety concern, the district court's specific findings regarding the complexity and vulnerabilities of that security system lack any support in the record. Importantly, MAC did not offer evidence to explain the role that badge applications and the alleged false-identification offense play in maintaining airport security. Absent such evidence, the district court clearly erred in its airport-security findings.

As to legal error, A.S.R. asserts that the district court's analysis fails to hold MAC to its burden of proving that the public's interest in keeping his record unsealed outweighs the disadvantages to him of not sealing it. We agree. MAC argued that (1) it considered A.S.R.'s persistent interest in obtaining employment at the airport to be "odd" or "bizarre," and (2) if "other issues" arise with A.S.R. at other airports around the country, those airports would not have access to the information about the false-identification charge. But MAC presented no evidence that A.S.R. intends to or has submitted employment

applications at any other airports. Nor did MAC explain how the charged misdemeanor false-identification offense presents a particularized public-safety risk, especially after MAC itself agreed to continue the charge for dismissal and the charge was ultimately dismissed. These types of generalizations and hypotheticals are insufficient to establish a genuine public-safety concern. *See R.H.B.*, 821 N.W.2d at 822-23 (rejecting as "unremarkable and generalized" affidavits stating that keeping a defendant's criminal records open give law enforcement more investigative tools); *State v. D.R.F.*, 878 N.W.2d 33, 36 (Minn. App. 2016) (rejecting as "hypothetical" and "speculative" an argument that acquitted petitioner's record of absconding would be relevant to setting bail if he were charged with another offense in the future). The district court erred by relying on MAC's bald allegations concerning the public interest.

Likewise, the district court erred in its analysis of the disadvantages to A.S.R. of not sealing the record of his false-identification charge. MAC argued that A.S.R.'s petition should be denied because he did not demonstrate that the unsealed charge poses an employment barrier. But a petitioner like A.S.R., whose case was resolved in his favor, "is not required to prove specific disadvantages that he . . . will suffer if the petition is denied." *R.H.B.*, 821 N.W.2d at 824. There are "inherent disadvantages caused by unproven criminal accusations—such as personal and professional reputational damage—that would be suffered by *any* expungement petitioner," even if he did not identify any particular disadvantages from denying expungement. *See id.* at 823-24. Although A.S.R. had no obligation to do so, he identified two issues that expungement would address. He testified that he enlisted with the Air Force but was told the false-identification charge would

disqualify him unless it is expunged; MAC argued that this claimed employment barrier is doubtful but presented no contrary evidence. And A.S.R. testified, unrebutted, that he experiences personal embarrassment because of the charge and wants it "to be over with."

On this record, we conclude that the district court abused its discretion in determining that MAC presented clear and convincing evidence that expungement of A.S.R.'s false-identification charge presents a unique or particularized risk of harm to the public that outweighs the unrebutted and legally recognized benefits that A.S.R. expects from expungement. A.S.R. is entitled to expungement of his criminal record.

D E C I S I O N

The district court abused its discretion by denying A.S.R.'s expungement petition. We reverse that decision and remand for the district court to enter an order of expungement.

Reversed and remanded.