STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0338

State of Minnesota,
Respondent,

vs.

R. M. S., a/k/a R. M. F., a/k/a R. M. W.,
Appellant.

Filed October 22, 2018
Affirmed
Worke, Judge

Hennepin County District Court
File Nos. 27-CR-00-034065, 27-CR-03-075520, 27-CR-04-032211
27-CR-04-067060, 27-CR-04-076981, 27-CR-05-010543, 27-CR-06-024503,
27-CR-87-903018, 27-CR-88-900918, 27-CR-06-048539

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

R.M.F., Brooklyn Park, Minnesota (pro se appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

WORKE, Judge

Appellant challenges the district court's denial of her expungement petition. We affirm.

FACTS

In 2015, appellant R.M.S. filed a petition to expunge 15 criminal records. The district court denied the petition with respect to ten records. R.M.S. did not appeal.

In August 2017, R.M.S. filed another petition to expunge the remaining ten criminal records. R.M.S. claimed that she was seeking expungement for employment purposes. She stated that she had worked for a company for six years, but was let go after the company merged with another and discovered her lengthy criminal record. R.M.S. provided a copy of a letter terminating her employment. R.M.S. stated that she has been at her current job for three years, but earns half of what she earned at her last employment. R.M.S. stated that she has no advancement opportunities and submitted a letter from a prospective employer indicating that a background check included information having an unfavorable effect on a conditional offer of employment. R.M.S. stated that she obtained a degree in addiction counseling, but submitted a letter indicating that a background study found factors disqualifying her from certain positions. R.M.S. stated that she has guardianship of her granddaughter, and claimed that if she is unable to care for her, she will "have to give her to the state." R.M.S. stated that her house is in foreclosure, and submitted a letter indicating that she did not qualify for public housing.

R.M.S. indicated that she was convicted of driving while impaired (DWI) in 2016, and was currently on probation. R.M.S. argued that her DWI conviction was different from her past convictions, and asserted that she has been able to maintain sobriety despite the DWI conviction, because cocaine was her drug of choice, but she has not done it in many years.

In January 2018, the district court denied R.M.S.'s petition. The district court found that R.M.S. pleaded guilty to:

> 1. gross-misdemeanor wrongfully obtaining public assistance and was convicted and sentenced in July 2000;
> 2. felony temporarily taking a motor vehicle and was convicted and sentenced in October 2003;
> 3. misdemeanor theft and was convicted and sentenced in February 2005;
> 4. aiding and abetting felony offering a forged check and was convicted and sentenced in February 2005;
> 5. felony offering a forged check and was convicted and sentenced in February 2005;
> 6. gross-misdemeanor false information to police and . . . failure to obey traffic control device and was convicted and sentenced in April 2005;
> 7. felony check forgery and was convicted and sentenced in June 2006;
> 8. felony attempt to offer a forged check and was convicted and sentenced in March 2007;
> 9. felony offering a forged check and was convicted and sentenced in August 1988; and
> 10. felony offering a forged check and was convicted and sentenced in August 1988.

The district court concluded that, because R.M.S. has a recent conviction, she does not qualify for statutory expungement. The district court denied the petition after applying a five-part test in exercising its inherent authority. The district court concluded that R.M.S. failed to prove by clear and convincing evidence that the benefits she would receive are commensurate with the disadvantages to the public from the elimination of the record and burden on the court in issuing and enforcing the expungement order. This appeal followed.

D E C I S I O N

This court reviews a district court's expungement decision for an abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013); *State v. Ambaye*, 616

N.W.2d 256, 261 (Minn. 2000) (stating that this court reviews a district court's exercise of its inherent authority to expunge criminal records for abuse of discretion). We review a district court's findings of fact for clear error. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013). This court will not reverse the decision unless the district court acted in an arbitrary or capricious manner, the district court based its decision on an erroneous interpretation of the law, or the district court's ruling is against the facts in the record. *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). The "interpretation of the expungement statute is a legal question subject to de novo review." *State v. D.R.F.*, 878 N.W.2d 33, 35 (Minn. App. 2016) (quotation omitted).

There are two bases in Minnesota for expungement of criminal records—pursuant to statute or under a district court's inherent authority. *See* Minn. Stat. §§ 609A.01-.04 (2016); *M.D.T.*, 831 N.W.2d at 279. The district court determined that at the time R.M.S. filed her petition she did not qualify for statutory expungement because of her DWI conviction. *See* Minn. Stat. § 609A.02, subd. 3(a)(3)-(5) (providing that, to qualify for statutory expungement, a petitioner must not have been convicted of a new crime for at least two years since discharge of a misdemeanor sentence, four years for a gross-misdemeanor sentence, and five years for certain felony sentences); *see also State v. C.W.N.*, 906 N.W.2d 549, 553 (Minn. App. 2018) (interpreting the statutory language of section 609A.02, subdivision 3 "to mean that the two- and four-year conviction-free periods must occur between the date of discharge of the sentence for the crime . . . and the date of filing an expungement petition").

R.M.S. does not argue that her convictions qualify for statutory expungement; instead she claims that she does not understand why some records were expunged and others were not. However, R.M.S. did not appeal the 2015 expungement order that granted the expungement of five records and denied the expungement of ten records. Rather, she appeals the 2018 order that denied expungement of ten records. Thus, it is not properly before this court to analyze the distinction between the two groups of criminal records.

R.M.S. also argues that the offenses are dated, and that other than Hennepin County, there was no objection to expungement. But even if R.M.S.'s convictions qualified for statutory expungement, the fact that some of the convictions occurred many years ago is but one of twelve factors that a district court considers in determining whether to grant an expungement pursuant to statute. *See* Minn. Stat. § 609A.03, subd. 5(c) (stating that a district court considers: nature and severity of the underlying crime, petitioner's risk to society, how long ago the crime occurred, steps toward rehabilitation, aggravating or mitigating factors relating to the underlying crime, reasons for expungement, criminal record, employment and community involvement, recommendations of law enforcement and prosecutors, recommendations of victims, outstanding restitution, and other relevant factors). Additionally, R.M.S. is incorrect in asserting that only Hennepin County objected to the petition. The record shows that the Bureau of Criminal Apprehension, Brooklyn Park City Attorney's office, and Hennepin County Attorney's office objected to the petition.

Here, the district court considered whether to exercise its inherent authority to grant R.M.S.'s petition to expunge criminal records held by the judicial branch. *See M.D.T.*, 831

N.W.2d at 284 (concluding that a district court has inherent authority to expunge records held by the judicial branch, but not records held by the executive branch). A district court may exercise its inherent authority to expunge criminal records in two situations—when the petitioner's constitutional rights are infringed by retention of the record or when the district court decides that "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. R.M.S. does not claim that her constitutional rights are infringed; thus, the district court weighed the benefits to R.M.S. if the expungement were granted against the disadvantages to the public from elimination of the record and the burden on the court in enforcing the order. The district court considered 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.

See State v. H.A., 716 N.W.2d 360, 364 (Minn. 2006).

The district court found that R.M.S. has been employed for three years. The district court found that R.M.S. claimed that her home may be foreclosed, but failed to offer documentation of her housing issues. The district court found that R.M.S. has an extensive criminal record, has many felony convictions, and was a "prolific forger." The district court determined that R.M.S.'s recent DWI conviction endangered the public and

evidenced that she has not achieved control over her use of chemicals. The district court determined that R.M.S. "has not shown rehabilitation." The district court's findings are not clearly erroneous as they are supported by the record.

R.M.S. argues that only she should "bear the repercussions" of her criminal behavior, but her granddaughter will unfairly "incur the effect." The district court referenced its 2015 order in its 2018 order. In the 2015 order, the district court acknowledged the "stark" contrast between R.M.S.'s "two-decade criminal lifestyle" and more recent crime-free period. But the district court found that the public interest in keeping the records accessible was "significant" and that while R.M.S.'s "recent good conduct" was somewhat mitigating, "too little time has passed to conclude that [R.M.S.] is fully rehabilitated." These findings were made prior to R.M.S.'s DWI conviction. Thus, while R.M.S. is concerned with how her criminal past could affect her granddaughter, the district court is justifiably concerned with how R.M.S.'s criminal past could affect the general public. The district court did not abuse its discretion in denying R.M.S.'s petition.

Affirmed.