STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1840

State of Minnesota,
Respondent,

vs.

W. G. M.,
Appellant.

Filed August 19, 2019
Reversed and remanded
Cochran, Judge

Hennepin County District Court
File No. 27-CR-18-4962

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, David Bernstein, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Mary Moriarty, Fourth District Public Defender, Peter W. Gorman, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Worke, Judge; and Florey, Judge.

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

COCHRAN, Judge

In this expungement appeal, appellant challenges the district court's partial denial of his petition for statutory expungement of records related to a charge that was dismissed

a few months earlier. Appellant argues that the district court abused its discretion by concluding that the City of Minneapolis met its burden under Minn. Stat. § 609A.03, subd. 5(b) (2018) to establish by clear and convincing evidence that grounds existed to deny expungement of records of the Minneapolis City Attorney's Office and the Minneapolis Police Department relating to the dismissed charge. Because there is insufficient evidence to support the district court's decision that the city met its burden, we reverse and remand.

FACTS

On February 23, 2018, respondent State of Minnesota charged appellant W.G.M. with domestic assault. Approximately three months later, the state dismissed the case. Shortly thereafter, W.G.M. sought expungement of judicial and executive records pursuant to Minn. Stat. § 609A.02 (2018). The city opposed W.G.M.'s petition for expungement in a letter brief submitted to the district court on August 8, 2019. The city specifically opposed the expungement of executive branch records. The city did not attach any affidavits or other evidence to its letter.

At the expungement hearing, counsel reiterated their positions. Neither party called any witnesses or offered any evidence into the record. The court gave W.G.M. an opportunity to briefly discuss the events leading up to the alleged offense, but W.G.M. did not provide sworn testimony. At the end of the hearing, the district court characterized W.G.M.'s statements as "arguments" to the court.

Following the hearing, the district court granted in part and denied in part W.G.M.'s petition, ordering expungement of judicial records but not expungement of executive

records. The district court found that the city had met its burden "because of the recentness and seriousness of the crime, and the possibility that the matter could be re-charged." W.G.M. filed a motion for reconsideration and the district court issued an amended order clarifying that the denial of W.G.M.'s petition to expunge executive records extended only to the Minneapolis City Attorney's Office and the Minneapolis Police Department. The district court ruled that all other records must be sealed.

W.G.M. appeals.

D E C I S I O N

This court reviews a district court's denial of an expungement petition for an abuse of discretion. *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). We will only reverse the district court's decision if it is based on an erroneous interpretation of the law, is arbitrary or capricious, or is against the facts in the record. *Id.* A district court's findings of fact will not be set aside unless they are 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).

W.G.M. argues that the district court abused its discretion by denying expungement of the records of the city attorney's office and the police department. Because there is insufficient evidence to support the district court's decision, we agree.

The legislature has identified specific circumstances in which an individual may petition to expunge a criminal record. Minn. Stat. § 609A.02. When a case is resolved in the petitioner's favor, the petitioner is presumptively entitled to expungement of the case

record. Minn. Stat. § 609A.03, subd. 5(b); *see also R.H.B.*, 821 N.W.2d at 821 (describing expungement after a case is resolved in petitioner's favor as a presumption). There is no dispute that W.G.M.'s case was resolved in his favor because it was dismissed. Under Minn. Stat. § 609A.03, subd. 5(b), the district court "shall grant" W.G.M.'s petition to seal the record unless the agency or jurisdiction whose records would be affected rebuts the presumption. To rebut the statutory presumption, the agency opposing expungement must establish 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." *Id.* "[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).

The public safety risk identified to rebut the presumption must be "unique or particularized." *See State v. A.S.R.*, 906 N.W.2d 526, 531 (Minn. App. 2017) (noting that the agency 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"). When determining if the agency has met its burden, the district court considers 12 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;
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> (9) the recommendations of interested law enforcement, prosecutorial, and corrections officials;
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> (10) the recommendations of victims or whether victims of the underlying crime were minors;
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> (11) the amount, if any, of restitution outstanding, past efforts made by the petitioner towards payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and
>
> (12) other factors deemed relevant by the court.

Minn. Stat. § 609A.03, subd. 5(c)(1)-(12) (2018).

To rebut the presumption, the city submitted only its letter brief objecting to expungement. The city did not offer any evidence at the expungement hearing regarding the twelve factors, such as police reports or affidavits, or call any witnesses to testify about the alleged underlying offense. Instead, the city relied on the legal arguments in its letter brief to the court.

In its order, the district court denied expungement of the city's records "because of the recentness and seriousness of the crime, and the possibility that the matter could be re-charged." There is no evidence in the record to support the reasons identified by the district court. There is no evidence to demonstrate that a crime in fact occurred or that the alleged crime was serious. Nor is there any evidence to demonstrate that the matter could not be re-charged at a later date if the city's records relating to the dismissed charge were expunged. *See* Minn. Stat. § 609A.03, subd. 7(b)(1) (2018) (providing "[n]otwithstanding

the issuance of an expungement order[,] . . . an expunged record may be opened for purposes of . . . prosecution . . . upon an ex parte court order").

On appeal, the city points to W.G.M.'s petition for expungement to argue that its position is supported by information in the record. But the petition was not introduced as evidence by either party during the hearing.[1]

Because the city failed to present any evidence in support of its position, the district court abused its discretion when it found that the city met its burden to demonstrate by "clear and convincing evidence" that the interests of the public and public safety outweigh the disadvantages to W.G.M. of not sealing the city's records relating to the dismissed charge. *See* Minn. Stat. § 609A.03, subd. 5(b); *A.S.R.*, 906 N.W.2d at 531 (stating that the agency must present clear and convincing evidence to rebut the presumption). We therefore reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

[1] We note that, even if W.G.M.'s petition were considered evidence for purposes of the expungement proceeding, the petition filed by W.G.M. fails to provide sufficient factual support for the reasons given by the district court to deny expungement of the city's records.