STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1765

State of Minnesota,
Respondent,

vs.

J. L. L., Jr.,
Appellant.

Filed July 20, 2020
Affirmed
Rodenberg, Judge

Dakota County District Court
File No. 19-K5-07-004016

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney, Hastings, Minnesota (for respondent)

Lousene M. Hoppe, Fredrikson & Byron, P.A. Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Frisch, Judge.

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

RODENBERG, Judge

Appellant J.L.L., Jr., challenges the district court's denial of his petition for statutory expungement of his 2008 felony conviction for offering a forged check. Appellant argues that the district court erred in concluding that appellant was validly convicted in 2008 under

Minn. Stat. § 609.631, subd. 4(3)(b) (2006), and that statutory expungement is unavailable for that conviction. We affirm.

FACTS

On December 13, 2007, appellant was charged with one count of offering a forged check based on conduct from September 2, 2007. The complaint states that appellant "has a previous conviction for issuance of a dishonored check from 2001, where he received a felony sentence." The complaint cites Minn. Stat. § 609.631, subds. 1, 3, and 4(3)(b) (2006).

On September 9, 2008, appellant pleaded guilty to a charge of check forgery and received a 17-month stayed prison sentence with three years of probation. Appellant was discharged from probation on August 11, 2011.

Appellant petitioned for expungement of his 2008 conviction on February 26, 2019. At the June 19, 2019 expungement hearing, appellant's counsel explained the impact that appellant's difficult youth had on appellant's criminal history, detailed appellant's commendable transformation, and emphasized that appellant's therapist believes that appellant is "unlikely to ever . . . re-offend." Appellant's counsel informed the district court that appellant has already been granted six expungements in other cases. Appellant's counsel argued that expungement would improve appellant's ability to pursue a career and to provide for his daughters. Appellant also shared with the district court the difficulties he has faced finding employment and housing because of this remaining conviction.

The state objected to appellant's request for statutory expungement because appellant was sentenced under Minn. Stat. § 609.631, subd. 4(3)(b), which is not an offense

eligible for statutory expungement. The state explained that appellant was sentenced under that subdivision because he had "a previous felony conviction for a check forgery within the preceding five years." The Minnesota Bureau of Criminal Apprehension also objected to any expungement of appellant's conviction.

On September 4, 2019, the district court granted appellant judicial expungement, but denied statutory expungement because it concluded that appellant was convicted and sentenced under Minn. Stat. § 609.631, subd. 4(3)(b)—a statutory subdivision that is not one of the enumerated felonies eligible for statutory expungement under Minn. Stat. § 609A.02, subd. 3(b) (2018).

Before the district court, appellant argued that he could not have been convicted under subdivision 4(3)(b) because "it would have been unlawful for him to be sentenced thereunder when . . . he was not convicted within the five preceding years for an offense." Appellant contended that, measuring "from conviction to conviction," his conviction in this Dakota County case occurred "more than five years after his [prior] Anoka County conviction and therefore, he could not or should not have been convicted under subdivision 4(3)(b)." The state argued that appellant had been convicted of an offense for which statutory expungement is unavailable. It also argued that the proper measurement of the applicable five-year period would be whether five years had passed between appellant's earlier conviction and the criminal offense in this case.

Considering that the parties did not dispute that appellant "was convicted for offering a forged check in the amount of $200, and was sentenced to 17 months in prison with a stay of execution," the district court concluded that appellant "was effectively

sentenced under Minn. Stat. § 609.631, subd. 4(3)(b)." The district court explained that appellant's sentence seemingly "took into account his prior forged check felony in Anoka County" because appellant "could not otherwise have received over a year's prison sentence for offering a forged check in an amount below $250." The district court concluded that appellant's felony conviction was lawful and "that the proper inquiry for determining whether to convict under subdivision 4(3)(b) is whether the prior related conviction was within five years of the subsequent offense of check forgery." The district court observed that the language of Minn. Stat. § 609.631, subd. 4(3)(b), is "somewhat ambiguous," but ultimately decided that "if the determinative period were construed to be five years from conviction to conviction, the implications would cut against basic principles of statutory construction." The district court cited its concerns that, if sentencing relied upon a subsequent conviction date instead of a subsequent offense date, there would be "substantial uncertainty in charging, trial strategy, plea negotiations, and related court processes" as well as the ability to "delay trial or pleading" until the five-year timeframe had passed. The district court concluded that it would have granted appellant's request for statutory expungement if appellant had been convicted of an offense that was listed as an eligible felony. It concluded that the benefit to appellant in exercising the court's inherent authority to expunge judicial records outweighed "any and all countervailing considerations," and granted the petition to expunge judicial-branch records, but denied appellant's request for statutory expungement.

This appeal followed.

D E C I S I O N

Appellant contends that the district court erred by concluding that he was convicted under Minn. Stat. § 609.631, subd. 4(3)(b), and is therefore ineligible for statutory expungement.

We review "the district court's decision on whether to expunge criminal records under an abuse-of-discretion standard." *State v. C.W.N.*, 906 N.W.2d 549, 551-52 (Minn. App. 2018) (citation omitted).

Under Minnesota law, two bases exist for expungement of criminal records: the judiciary's inherent authority, *id.* at 552, and statutory expungement, Minn. Stat. §§ 609A.01-.04 (2018). "The judiciary's inherent authority only allows a court to seal those records kept by the judicial branch and does not extend to records held by executive-branch agencies." *C.W.N.*, 906 N.W.2d at 552. Under Minn. Stat. § 609A.02, subd. 3, "[a] petition may be filed . . . to seal all records relating to an arrest, indictment or information, trial, or verdict" in some situations. One such situation is if "the petitioner was convicted of or received a stayed sentenced for a felony violation of an offense listed in paragraph (b)." Minn. Stat. § 609A. 02, subd. 3(a)(5). The expungement statute lists 50 offenses that are eligible for statutory expungement. Minn. Stat. § 609A.02, subd. 3(b). Minn. Stat. § 609.631, subd. 4(3)(b), is not one of the enumerated offenses eligible for statutory expungement.

The district court denied appellant's petition for expungement because he was convicted under Minn. Stat. § 609.631, subd. 4(3)(b).

The complaint in this case consisted of a single count of felony check forgery, to which appellant pleaded guilty. The complaint recited the statutory authority for the charge and sentence as Minn. Stat. § 609.631, subds. 1, 3, and 4(3)(b). Subdivision 1 lists applicable definitions. Subdivision 3 provides the elements of offering a forged check. Subdivision 4 explains how a person convicted under subdivision 2 or 3 can be sentenced. Nothing in the record suggests any amendment of the charged offense, and appellant does not dispute that he was convicted of that offense. Instead, he argues that he could not have been sentenced under subdivision 4(3)(b) because his January 2003 conviction was more than five years before his September 2008 conviction.

It is true that appellant's plea petition, the district court's sentencing order, and the transcript of appellant's plea and sentencing hearing do not mention a statute of conviction. But the complaint listed only one charge against appellant—felony check forgery—to which appellant pleaded guilty.

We agree with the district court's reasoning that appellant's having been given a felony-level sentence after his 2008 conviction can only mean that appellant was convicted under Minn. Stat. § 609.631, subd. 4(3)(b). Appellant could not have been sentenced under subdivision 4(3)(a) because he was convicted for offering a forged check in the amount of $200, less than the $250 minimum required for sentencing under subdivision 4(3)(a). Appellant could not have been sentenced under subdivision 4(4) because he received a felony-level sentence. That leaves only subdivision 4(3)(b), the subdivision cited in the complaint, and seems to fit the factual circumstances of appellant's case. Because he was convicted of and sentenced for an offense for which statutory expungement is unavailable,

the district court was powerless to grant appellant's request for statutory expungement. *See* Minn. Stat. § 609A.02, subd. 3(b).

Because of the procedural posture of this appeal, we do not reach the interesting statutory-interpretation question appellant argues in the briefing. By arguing that he was convicted and sentenced under the incorrect subdivision because he did not have a valid prior qualifying offense, appellant appears to be challenging the validity of his 2008 conviction through his appeal of the denial of his petition for expungement. Such a collateral attack is improper. *See State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988) (stating that "[c]ollateral attacks weaken the finality of judgments"). And because appellant did not move for correction of his sentence under Minn. R. Crim. P. 27.03, subd. 9, neither the district court in the first instance nor this court on appeal has any basis for amending the pronounced sentence from 2008.

We agree with the district court that appellant appears to have made an admirable transformation since his younger years involving multiple legal transgressions. By granting appellant a judicial expungement of the 2008 conviction, the district court afforded appellant all of the relief that it could provide him. It is the legislature's prerogative that certain criminal offenses not be eligible for statutory expungement. *State v. M.D.T.*, 831 N.W.2d 276, 282-83 (Minn. 2013). The record as constituted reflects that appellant was convicted of such an offense. We therefore affirm the district court's denial of statutory expungement.

Affirmed.