This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1125

State of Minnesota,
Respondent,

vs.

T. A. W.,
Appellant.

Filed April 11, 2022
Affirmed
Worke, Judge

Hennepin County District Court
File Nos. 27-CR-94-070286, 27-CR-98-088978

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

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

Elana Dahlager, Mitchell Hamline School of Law, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Kirk, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court erred by determining that two of her criminal records were not eligible for statutory expungement. She also argues that the district court abused its discretion by denying her petition to expunge these records. We affirm.

FACTS

In April 2021, appellant T.A.W. filed a petition to expunge six criminal records, two of which are at issue in this appeal. The first related to charges in November 1994 for felony possession of crack cocaine and gross-misdemeanor theft (1994 record). *See* Minn. Stat. §§ 152.025, subd. 2(1), 609.52, subd. 2(1) (1994). T.A.W. pleaded guilty to the charges and received a stay of imposition. The convictions were converted to misdemeanors, and on June 10, 2010, T.A.W. was discharged from probation. The second record related to a November 1998 conviction for felony theft over $500 (1998 record). *See* Minn. Stat. § 609.52, subd. 2(1) (1998). T.A.W. was sentenced to 15 months in prison, stayed for three years.

The four other records included: (1) a gross-misdemeanor conviction for providing false information to a police officer, two other charges were dismissed; (2) a 1994 dismissal of felony fifth-degree drug-possession and shoplifting charges; (3) a misdemeanor theft conviction; and (4) a 1998 dismissal of felony-receiving-stolen-goods charge.

T.A.W. argued that her criminal records qualified for expungement under Minn. Stat. § 609A.02, subd. 3 (2020). T.A.W. also argued that she showed that expungement would yield a benefit to her commensurate with the disadvantages to the public and public

safety of sealing the record and burdening the court and public authorities to issue, enforce, and monitor the expungement order.

T.A.W. asserted that expungement would make it easier to find housing and employment. She claimed that she was initially denied Section-8 housing (but was later found qualified) and specific employment opportunities. T.A.W. asserted that expungement would help her move on from a period in her life in which she used substances and committed offenses to support her habit. T.A.W. claimed that she took steps toward rehabilitation, including completing drug court, remaining sober since 2009, volunteering at church, and caring for her grandchildren.

T.A.W. also provided her additional criminal history—16 offenses. T.A.W. asserted that her last conviction occurred in 2012 (felony theft) and that she has not had any interaction with the criminal justice system since her discharge from probation in 2015 for that offense.

In June 2021, the district court held a hearing on the petition. The Bureau of Criminal Apprehension (BCA) objected to expungement of the 1994 record, claiming that it was not eligible for expungement because T.A.W. was convicted of a crime within five years of the discharge of the sentence for that crime. The BCA also noted that T.A.W. failed to disclose her full criminal history and submitted supplemental information, which included eight additional offenses—mainly thefts. T.A.W. claimed that the BCA's records did not relate to her; but argued that even if they did, it would not foreclose expungement because the records do not show an offense after 2012.

The Minnetonka City Attorney objected to expungement of the 1998 record. She noted that T.A.W. had a long criminal history, and an insufficient amount of time elapsed since the offenses to allow for expungement. She also argued that potential employers should know when an applicant has an extensive record of theft convictions.

The district court denied T.A.W.'s petition to expunge the 1994 and the 1998 records. The district court found that the crimes were not among the felonies for which statutory expungement is permitted. The district court nevertheless conducted an analysis of the 12-part test, under Minn. Stat. § 609A.03, subd. 5(c) (2020), to determine whether expungement should be granted. The district court determined that these were "serious crimes," and that T.A.W. provided "no evidence of ongoing substance abuse programming or counseling." The district court also considered the objections from the BCA and the City of Minnetonka. The district court concluded that T.A.W. failed to show by clear and convincing evidence that the benefit she would receive exceeds the public interests involved.[1] This appeal followed.

DECISION

"This court reviews the district court's decision on whether to expunge criminal records under an abuse-of-discretion standard. We review the district court's interpretation of the expungement statute de novo as a question of law." *State v. C.W.N.*, 906 N.W.2d 549, 551-52 (Minn. App. 2018) (citation omitted).

[1] The district court also denied expungement under the court's inherent authority. T.A.W. does not challenge that determination on appeal.

There are two bases for expungement of criminal records: pursuant to the judiciary's inherent authority and pursuant to statutory authority. *Id.* at 552; Minn. Stat. §§ 609A.01-.04 (2020). Under its inherent authority, a district court may order the sealing of judicial-branch records. *C.W.N.*, 906 N.W.2d at 552. Under statutory provisions, a district court may order executive-branch agencies to seal their records when two conditions are met. *Id.* First, the petition must include an offense that is eligible for expungement under Minn. Stat. § 609A.02. *Id.* Second, because expungement "is an extraordinary remedy," the petitioner must show "clear and convincing evidence that [expungement] would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety." *Id.*; Minn. Stat. § 609A.03, subd. 5(a).

Statutory expungement

T.A.W. argues that the district court erred when it concluded that the convictions were not enumerated in Minnesota's expungement statute.

The 1994 record includes a felony fifth-degree drug-possession conviction under section 152.025.

> A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if . . . the petitioner was convicted of or received a stayed sentence for a felony violation of [section 152.025 (controlled substance in the fifth degree)] and has not been convicted of a new crime for at least five years since discharge of the sentence for the crime.

Minn. Stat. § 609A.02, subd. 3(a)(5), (b)(4). Thus, T.A.W. may file a petition to expunge the record if she "has not been convicted of a new crime for at least five years since

discharge of the sentence for the crime." *See id.*, subd. 3(a)(5). T.A.W. was discharged from probation on June 10, 2010. T.A.W. concedes that she was convicted of a new offense in 2012, just two years after the discharge from the sentence for the felony drug offense.

The 1998 record includes a felony theft conviction under section 609.52.

> A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if . . . the petitioner was convicted of or received a stayed sentence for a felony violation of [section 609.52, subdivision 3, clause (3)(a) (theft of $5,000 or less)] and has not been convicted of a new crime for at least five years since discharge of the sentence for the crime.

Id., subd. 3(a)(5), (b)(20). Like the 1994 record, T.A.W. may file a petition to expunge this record if she "has not been convicted of a new crime for at least five years since discharge of the sentence for the crime." *See id.*, subd. 3(a)(5). It is not clear from the record when T.A.W. was discharged from her sentence. In her brief, she states that she was "released from probation in 2006." T.A.W.'s records show new convictions occurring within the five-year period. As such, the district court did not erroneously conclude that "these crimes are not included among those felonies for which expungement is permitted."[2]

[2] This court has held that the conviction-free period for a petty misdemeanor, misdemeanor, and gross-misdemeanor "must occur between the date of discharge of the sentence for the crime . . . and the date of filing an expungement petition." *C.W.N.*, 906 N.W.2d at 553; Minn. Stat. § 609A.02, subd. 3(a)(3) (conviction-free period for petty misdemeanor or misdemeanor is "at least two years since discharge of the sentence for the crime"); subd. 3(a)(4) (conviction-free period for gross misdemeanor is "at least four years since discharge of the sentence for the crime"). In *C.W.N.*, however, this court did "not address the language in Minn. Stat. § 609A.02, subd. 3(a)(5), relating to felonies." 906 N.W.2d at 553. T.A.W. does not argue that *C.W.N.* should extend to felonies, and we will not consider

Even though the district court determined that the crimes did not qualify for statutory expungement, it still conducted an analysis of the 12 factors to determine whether T.A.W. showed with clear and convincing evidence that expungement would yield a benefit to her commensurate with the disadvantages to the public and public safety. *See* Minn. Stat. § 609A.03, subd. 5(a). The district court concluded that T.A.W. failed to meet her burden. Therefore, even if the district court erred in concluding that the crimes did not qualify for statutory expungement, that error did not affect the result because the district court conducted an analysis to conclude that T.A.W. failed to show that she was entitled to expungement.

Abuse of discretion

T.A.W. also argues that the district court abused its discretion by denying expungement of the 1994 record while it granted expungement of four other records. She quotes from the district court order granting those expungements and included the order in her addendum. T.A.W. argues that the 1994 conviction is not meaningfully different from one of the expunged convictions. But no appeal was taken from the four expunged matters and those four records are not before us on appeal. Accordingly, we cannot conclude based on the existing record that the district court abused its discretion by expunging records for four convictions, but not the 1994 record.

T.A.W. also claims that the district court abused its discretion by relying too heavily on her past drug use and the BCA's and the City of Minnetonka's objections to

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it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that reviewing court considers issues that were presented and considered by the district court).

expungement, and by concluding that the benefit to her did not "exceed the public interests involved." T.A.W.'s steps toward rehabilitation and the objections are factors that a district court is to consider in determining whether to grant statutory expungement. *See* Minn. Stat. § 609A.03, subd. 5(c)(4), (9). T.A.W. explained that her drug use caused her to commit criminal acts. If T.A.W.'s drug use motivated her criminal activity, but she failed to present evidence, other than her own statements, that she is rehabilitated, we cannot conclude that the district court abused its discretion in its weighing of this factor. Further, the district court made just one statement regarding law-enforcement agency objections: "Finally, the relevant law enforcement agencies clearly object to an expungement where these crimes are concerned." The district court's consideration of these factors was proper and did not place undue weight on any single factor. And the district court's order adequately supports its conclusion regarding the balance between the private benefits and public interest regarding expungement. T.A.W. has therefore failed to show that the district court abused its discretion by denying her petition to expunge these two criminal records.

Affirmed.