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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-424**

State of Minnesota,
Respondent,

vs.

S. U. N.,
Appellant.

**Filed September 12, 2011
Affirmed
Connolly, Judge**

Olmsted County District Court
File No. 55-KX-04-002177

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Eric M. Woodford, Assistant County Attorney, Rochester, Minnesota (for respondent)

Bruce Rivers, Rivers & Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of a motion to expunge a court-generated criminal record maintained by the Minnesota Bureau of Criminal Apprehension (BCA). Because the district court did not err when it ordered the expungement of the judicial file but correctly reasoned that it lacked authority to expunge the criminal record maintained by the BCA, we affirm.

FACTS

In June 2004, appellant S.U.N. was charged with theft by swindle in violation of Minn. Stat. § 609.52, subs. 2(4) and 3(2) (2002). Appellant pleaded guilty to the offense, and on December 9, 2004, she received a stay of imposition and was placed on probation for five years. Appellant was granted an early discharge from probation in February 2006. Upon her discharge from probation, appellant's conviction was reduced from a felony to a misdemeanor.

In October 2010, appellant petitioned the district court for an order sealing all records of her theft conviction. She sought expungement "to obtain employment opportunities and to have the option to move apartments in the future."

Appellant and a county attorney appeared for the hearing on the petition; the BCA did not appear but filed a letter "object[ing] to the expungement of [appellant's] conviction." The district court granted appellant's petition in part by ordering that records held by the district court be sealed, but declined to order expungement of the

records held by other agencies, including the BCA, because it believed that it lacked authority to do so. Appellant now challenges the district court's order.

D E C I S I O N

A district court may expunge criminal records based on statute or based on the court's inherent judicial authority. *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn. 2008). Appellant argues that the district court erred in declining to exercise its inherent authority to order the expungement of records held by the BCA.¹

Whether the district court has inherent authority to issue an expungement order to the executive branch is a question of law, which this court reviews de novo. *State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009). “The judiciary possesses inherent authority to expunge criminal records when expungement is ‘necessary to prevent serious infringement of constitutional rights.’” *S.L.H.*, 755 N.W.2d at 274 (quoting *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981)). The district court may order expungement when the benefits to the individual outweigh 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.” *N.G.K.*, 770 N.W.2d at 180 (quotation omitted). But the district court has the inherent authority to order expungement of records held outside the judicial branch only when such an order is “necessary to the performance of the court's unique judicial functions.” *S.L.H.*, 755 N.W.2d at 277 (quotation omitted).

¹ Minn. Stat. §§ 609A.01 to .03 (2010) sets forth grounds for statutory expungement. Appellant does not claim that she has a right to expungement under the statute.

Reducing or eliminating unfairness to the individual is a core judicial function. *Id.* For example, a petitioner whose conviction has been set aside is entitled to expungement because such an expungement is “closely tied to the core judicial function of granting full relief (and thus eliminating unfairness) to the petitioner.” *Id.* (quotation omitted). In contrast, a petitioner who continues to stand convicted is not entitled to expungement because expungement of “records held outside the judicial branch is not necessary to grant [the petitioner] full relief.” *Id.*

In *S.L.H.*, the petitioner requested expungement of records of her conviction held by the county, the city, and the BCA in order to achieve employment goals and to better provide for her family. *Id.* at 273. “But helping individuals achieve employment goals is not essential to the existence, dignity, and function of a court” *Id.* at 277-78 (quotation omitted). Thus, the district court had no authority to order expungement of records held outside the judicial branch. *Id.* at 280; *see also State v. M.L.A.*, 785 N.W.2d 763, 768 (Minn. App. 2010) (following *S.L.H.* and reversing expungement of records held by the executive branch because the petitioner’s request for expungement “to facilitate her goal of becoming a licensed nurse. . . . is not necessary to the performance of the judicial function as contemplated in our state constitution”), *review denied* (Minn. Sept. 21, 2010); *N.G.K.*, 770 N.W.2d at 183 (following *S.L.H.* and reversing expungement of records held by the executive branch because expungement of N.G.K.’s record was “not essential to the existence, dignity, and function of a court” (quotation omitted)).

Like *M.L.A.* and *N.G.K.*, this case is not distinguishable from *S.L.H.* Appellant remains convicted of a misdemeanor theft offense; she requests expungement of records held outside the judicial branch to seek better employment opportunities and housing; and her conviction—like that in *N.G.K.*—is “a valid conviction that is still relatively recent.” See *N.G.K.*, 770 N.W.2d at 183. Thus, under *S.L.H.*, appellant’s petition for expungement of these records was properly denied.

Moreover, “the judiciary should exercise restraint before invoking inherent expungement authority over records held outside the judicial branch where statutes require that some of the records be kept open to the public.” *S.L.H.*, 755 N.W.2d at 279. The Minnesota Government Data Practices Act “establishes a presumption that government data are public and are accessible by the public.” Minn. Stat. § 13.01 (Supp. 2011).

[D]ata created, collected, or maintained by the Bureau of Criminal Apprehension that identify an individual who was convicted of a crime, the offense of which the individual was convicted, associated court disposition and sentence information, controlling agency, and confinement information are *public data for 15 years following the discharge of the sentence* imposed for the offense.

Minn. Stat. § 13.87, subd. 1(b) (Supp. 2011) (emphasis added).

The judiciary must exercise its inherent authority “in such a way as to accommodate [the legislature’s] policies where appropriate,” and this would not occur “if a court were to expunge records held outside the judicial branch that the legislature has classified as public.” *S.L.H.*, 755 N.W.2d at 279 (quotation and citation omitted). Thus, although the district court’s determination that expungement of appellant’s records

five years after her discharge from probation was appropriate, that determination applied only to the district court's records.

Appellant argues that the district court's order provides a meaningless remedy if it is not extended to cover records held by the BCA because "most publicly available databases use the BCA and not the courts when reporting convictions." She relies on *State v. V.A.J.*, 744 N.W.2d 674, 678 (Minn. App. 2008) ("[W]hen a district court orders an expungement of a criminal record by way of its inherent authority, that expungement order includes the judicially created public record maintained by the BCA."), *review denied* (Minn. Oct. 1, 2008). But *V.A.J.* was decided before *S.L.H.*, which supersedes it. *M.L.A.*, 785 N.W.2d at 767 (explaining that the facts of *V.A.J.* and *S.L.H.* are nearly identical, the holdings cannot be reconciled, and thus, "*S.L.H.* supersedes *V.A.J.*").

Because expungement of appellant's conviction records held by the BCA is not necessary to perform a core judicial function, the district court did not err when it limited the expungement to only those records held by the district court.

Affirmed.