STATE OF MINNESOTA
IN COURT OF APPEALS
A09-892

State of Minnesota,
Appellant,

vs.

A. V. G.,
Respondent.

Filed March 16, 2010
Reversed
Halbrooks, Judge
Concurring specially, Randall, Judge[*]

Washington County District Court
File No. 82-T9-06-027548

Doug Johnson, Washington County Attorney, Richard D. Hodsdon, Assistant County Attorney, Stillwater, Minnesota (for appellant)

Rodd A. Tschida, Minneapolis, Minnesota (for respondent)

Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and Randall, Judge.

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

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

HALBROOKS, Judge

Appellant State of Minnesota challenges the district court's order granting respondent A.V.G.'s petition for expungement of executive-branch records relating to the first count of his two-count criminal complaint. Because we conclude that the district court erred in interpreting the expungement statute to permit expungement of executive-branch records in respondent's case, we reverse.

FACTS

In September 2006, respondent was charged with one count of misdemeanor assault and one count of disorderly conduct. The charges arose from an incident in which respondent became intoxicated, got into an argument with a woman, and struck her. Following a bench trial in September 2007, respondent was found guilty of disorderly conduct, and the district court dismissed his charge of misdemeanor assault.

Respondent petitioned for expungement of records related to the dismissed assault charge, but that petition was later withdrawn. Respondent filed an amended petition in December 2008, requesting expungement of all court-generated information related to his dismissed assault charge that had been disseminated to executive-branch agencies, such as the county attorney's office and the Bureau of Criminal Apprehension.[1] Respondent argued that expungement was necessary "to a core judicial function," because he was

[1] Respondent also requested expungement of judicial records related to both charges arising out of this incident. The state does not appeal the district court's decision to expunge respondent's judicial records related to both charges pursuant to its inherent authority.

acquitted by dismissal of his assault charge. In his petition, respondent asserted that he had been denied housing in two separate instances and that he would face problems with his employment because his assault charge would impair his ability to travel internationally. The state argued that because respondent was convicted of disorderly conduct, the "matter was not resolved in [respondent]'s favor," as required for an expungement by statute.

Following a hearing in February 2009, the district court granted respondent's expungement petition. The district court ordered that "all records maintained by the court and agencies upon whom this Order is served shall be sealed in regard to the charge of Misdemeanor Assault, of which [respondent] was found not guilty." The district court expressly stated that its order to expunge the executive-branch records of respondent's assault charge was based on the expungement statute and on the fact that respondent was acquitted by dismissal of the assault charge:

> The court does not base its order that the executive branch expunge the records of the assault conviction on inherent court powers, but on the basis of the acquittal of the [respondent] on the assault charge which would otherwise allow him to bring an action to expunge pursuant to Minn. Stat. § 609A.02, subd. 3.

This appeal follows.

D E C I S I O N

In the exercise of discretion, a district court may expunge criminal records in two ways: (1) by statute, under Minn. Stat. § 609A.02 (2008) and (2) under its inherent power, when equity requires expungement. *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn.

2008); *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000). Here, the district court relied on the statute in order to expunge the executive-branch records pertaining to respondent's assault charge. The proper construction of the statutory-expungement statute is a question of law, which we review de novo. *Ambaye*, 616 N.W.2d at 258.

Minn. Stat. § 609A.02, subd. 3, provides that "[a] petition may be filed . . . to seal all records relating to an arrest, indictment or information, trial, or verdict . . . if all pending actions or proceedings were resolved in favor of the petitioner." The state argues that all pending actions or proceedings were not resolved in respondent's favor because he was found guilty of disorderly conduct and that charge arose out of the same set of facts as the assault charge that was expunged. In *State v. J.R.A.*, this court addressed the meaning of the phrase "all pending actions or proceedings." 714 N.W.2d 722 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). After concluding that the language is ambiguous, we held that "the phrase 'all pending actions or proceedings' refers to multiple charges based on the same incident." *Id.* at 727.

Although respondent was charged with disorderly conduct and misdemeanor assault based on the same incident, he was only convicted of the disorderly conduct charge. While respondent contends that his acquittal of the more serious assault charge resulted in a favorable outcome, the statute permits expungement only when *all* charges arising out of the same incident are resolved in the defendant's favor. Because a guilty verdict is not a favorable outcome and because respondent's two charges arose out of the same incident, Minn. Stat. § 609A.02, subd. 3, does not permit expungement of either charge—including the charge of which respondent was acquitted. Therefore, we

conclude that the district court abused its discretion by expunging the executive-branch records of respondent's assault charge.

Reversed.

RANDALL, Judge (concurring specially)

I agree with my colleagues that the expungement statute did not permit the district court to expunge executive-branch records in this case. But I write separately to express my opinion on the merits of expunging partial acquittals. I applaud the reasoning behind the district court's decision to expunge records relating to appellant's assault charge because appellant was acquitted by dismissal of that charge. Permitting expungement of records of a partial acquittal will serve the interests of justice. A distinction can be made between acquittals and charges dismissed as part of a plea agreement with the state.

Dismissing charges as part of a plea agreement is not the same as finding the defendant innocent of those charges. The state often dismisses charges in exchange for a guilty plea to avoid the time and expense of trial, even when the state possesses solid evidence against the defendant. If the legislature decides to permit expungement of partial acquittals, it would be prudent for this state to adopt a law similar to that recognized in Pennsylvania, which makes a common-sense distinction between these two forms of dismissal. *See Commonwealth v. Rodland*, 871 A.2d 216, 218-19 (Pa. Super. 2005) (concluding that, absent impracticality or impossibility, a petition for partial expungement must be granted as to charges based on not-guilty verdicts); *Commonwealth v. Lutz*, 788 A.2d 993, 1001 (Pa. Super. 2001) ("[W]e agree with the trial court that the better resolution is to deny expungement of the charges dismissed as part of Appellant's plea agreement, particularly where Appellant has already been bound over for trial on all charges, the Commonwealth is fully prepared to proceed against Appellant on all charges

at trial, and Appellant admits to facts that could essentially constitute culpability for the dismissed charges.").

For all of the common-sense reasons expressed by the district court, I recommend this change for the State of Minnesota. A criminal record is bad enough, and some provision in the statute should ameliorate the life-long consequences of a criminal record.