STATE OF MINNESOTA
IN COURT OF APPEALS
A10-188

State of Minnesota,
Respondent,

vs.

S. R. W.,
Appellant.

Filed August 17, 2010
Affirmed
Worke, Judge

Wright County District Court
File No. 86-CR-08-5375

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Anne L. Mohaupt, Assistant County Attorney, Mark A. Erickson, Assistant County Attorney, Buffalo, Minnesota (for respondent)

Marc G. Kurzman, Carol M. Grant, Kurzman Grant Law Office, Minneapolis, Minnesota (for appellant)

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

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

WORKE, Judge

Appellant challenges the district court's decision to expunge judicially created records related to criminal charges that were dismissed by the state, but not related

executive-branch records, arguing that the district court should have dismissed the charges with prejudice and extended the expungement to executive-branch records. We affirm.

D E C I S I O N

Dismissal

Appellant S.R.W. was charged with three counts of second-degree criminal sexual conduct and malicious punishment of a child. Nearly one year after filing charges, the state dismissed the complaint "in the interests of justice" pursuant to Minn. R. Crim. P. 30.01. Appellant argues that the district court should have dismissed the charges with prejudice. "The interpretation of the rules of criminal procedure is a question of law subject to de novo review." *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005).

Under rule 30.01, "[t]he prosecutor may dismiss a complaint . . . without the court's approval . . . . The prosecutor must state the reasons for the dismissal in writing or on the record." A dismissal under rule 30.01 is without prejudice, and the state, provided it is not acting in bad faith, may "later [] reindict based on the same or similar charges." *State v. Pettee*, 538 N.W.2d 126, 131 n.5 (Minn. 1995); *State v. Couture*, 587 N.W.2d 849, 853 (Minn. App. 1999), *review denied* (Minn. Apr. 20, 1999). The plain language of the rule allows the state to dismiss a complaint without leave of court. "Generally, a prosecutor has broad discretion in the exercise of the charging function and ordinarily, under the separation-of-powers doctrine, a court should not interfere with the prosecutor's exercise of that discretion." *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996). The prosecutor stated the reason for dismissal—"in the interests of justice"—

thereby complying with rule 30.01. The district court was not compelled to dismiss with prejudice, because the state had already dismissed the complaint.

Additionally, a dismissal "with prejudice," does not mean that further prosecution is not permissible. *See City of St. Paul v. Halvorson*, 301 Minn. 48, 51, 221 N.W.2d 535, 537 (1974) (stating that the words "with prejudice" alone are not determinative, and it is not the words used but rather the basis of the dismissal itself that is controlling); *City of St. Paul v. Landreville*, 301 Minn. 43, 46-47, 221 N.W.2d 532, 534 (1974) (stating that when referring to dismissals the words "with prejudice" must be held to be superfluous; when jeopardy has not attached, the prosecution cannot be precluded from commencing another action if necessary). Thus, even if the district court dismissed the charges "with prejudice," the state could still re-file. The district court did not err in failing to dismiss the complaint with prejudice.

Expungement

Following dismissal, appellant also moved the district court to expunge and/or seal the records. The district court ordered expungement of judicially created records, pursuant to Minn. Stat. §§ 609A.01 to .03 (2008) "and the inherent powers of the [c]ourt," but it declined to extend the expungement to executive-branch records. Appellant argues that the expungement does not grant him full relief. In the exercise of discretion, a district court may expunge criminal records in two ways: (1) by statute and (2) under its inherent power, when "necessary to prevent [a] serious infringement of constitutional rights." *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn. 2008). "The proper

construction of [the expungement] statute is a question of law that we review de novo." *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000).

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 . . . if all pending actions or proceedings were resolved in favor of the petitioner." In *State v. L.K.*, we determined that because the defendant did not plead or admit guilt and the charge against him was not prosecuted, innocence was presumed and dismissal of the charge amounted to "a determination in his favor." 359 N.W.2d 305, 307-08 (Minn. App. 1984). Here, the state dismissed the charges against appellant, resolving the proceedings in his favor. The district court relied on the expungement statute in concluding that the judicially created records should be sealed. The district court appropriately granted the expungement under the statute.[1] But the district court declined to extend the expungement order to all records held by the executive branch. *See State v. J.R.A.*, 714 N.W.2d 722, 725 (Minn. App.

[1] The district court also analyzed the expungement petition under its inherent judicial authority. To the extent that the district court granted S.R.W.'s expungement petition based on its inherent judicial authority, the district court's order is overly broad. To ensure compliance with this court's precedent, the district court should have denied relief under its inherent judicial authority with respect to executive branch records. *See State, Comm'r of Human Servs. v. M.L.A.*, _____ N.W.2d ____, ____, 2010 WL 2813523, at *4-5 (Minn. App. July 20, 2010); *State v. N.G.K.*, 770 N.W.2d 177, 183-84 (Minn. App. 2009). But the state did not appeal from the district court's expungement order, nor did any of the executive-branch offices subject to the order. Furthermore, the expungement statute, which provides an independent legal basis for the district court's order, may be applied without concerns about violating the principle of separation of powers. *See State v. J.R.A.*, 714 N.W.2d 722, 725 (Minn. App. 2006, *review denied* (Minn. Aug. 23, 2006)). Thus, it is unnecessary for this court to analyze and decide whether the district court's expungement order is consistent with *S.L.H.*, *N.G.K.*, and *M.L.A.*

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2006) ("Expungement under chapter 609A applies to criminal records held by executive-branch law-enforcement agencies as well as to judicial records."), *review denied* (Minn. Aug. 23, 2006).

The district court ordered that "the following entities shall seal all **judicially-created** records and prohibit release to the public: Wright County Attorney Office, Wright County Sheriff's Office, Minnesota Bureau of Criminal Apprehension, Minnesota Attorney General, and City of Buffalo." We conclude that the district court's order was within the court's discretion in limiting the expungement sought by appellant under Minn. Stat. §§ 609A.01 to .03.

Affirmed.