STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1075

State of Minnesota,
Respondent,

vs.

T. R. P.,
Appellant.

Filed February 8, 2011
Affirmed
Bjorkman, Judge

Stearns County District Court
File No. 73-K7-92-000944

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief County Attorney, Carl Ole Tvedten, County Law Clerk, St. Cloud, Minnesota (for respondent)

Daniel J. Koewler, Ramsay Law Firm, PLLC, Roseville, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant argues that the district court abused its discretion by denying his petition to expunge his criminal records. We affirm.

FACTS

In July 1992, appellant T.R.P. pleaded guilty to fourth-degree criminal sexual conduct for an incident involving a 14-year-old girl. Appellant complied with the terms of his probation and was discharged from probation in March 2000.[1] The conviction was reduced to a misdemeanor.

On January 28, 2010, appellant petitioned to have all state records of arrest and conviction of the criminal-sexual-conduct offense expunged, asserting that the records cause him employment difficulties. After a hearing, the district court denied appellant's petition. This appeal follows.

D E C I S I O N

Appellant challenges the district court's denial of his request to expunge records held by the judicial branch.[2] A district court has inherent power to expunge court records, and we review a district court's decision whether to exercise this power under an abuse-of-discretion standard. *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000). A district court's findings of fact will not be set aside unless clearly erroneous. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). Clearly erroneous means "manifestly contrary to the weight of the evidence or not supported by the evidence as a whole." *Id.* (quotation omitted).

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[1] The district court found that appellant was discharged from probation "on or about September 18, 2002," the date originally scheduled for his discharge from probation. But the record unambiguously indicates that appellant was discharged from probation in a March 7, 2000 order. The error is harmless.

[2] Although appellant initially sought expungement of records held outside the judicial branch, he does not challenge the district court's denial of that request.

A district court may expunge court records under its inherent power when: (1) "the petitioner's constitutional rights may be seriously infringed by retention of his records," or (2) the district court finds that "expungement will yield a benefit to the petitioner commensurate with 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." *Ambaye*, 616 N.W.2d at 258 (quotations omitted). In weighing the equities of expungement under this second scenario, the district court must make findings addressing (1) the extent to which the petitioner has demonstrated difficulties in securing employment or housing as a result of the records sought to be expunged, (2) the seriousness and nature of the offense on record, (3) the potential risk that the petitioner poses and how this affects the public's right to access the petitioner's records, (4) any additional offenses or rehabilitative efforts since the offense on record, and (5) any other objective evidence of hardship under the circumstances. *H.A.*, 716 N.W.2d at 364.

A petitioner may not justify expungement with speculative evidence. *State v. N.G.K.*, 770 N.W.2d 177, 180 (Minn. App. 2009) (citing *Barlow v. Comm'r of Pub. Safety*, 365 N.W.2d 232, 234 (Minn. 1985)). To establish employment difficulties, a petitioner must demonstrate actual "difficulties in securing employment." *H.A.*, 716 N.W.2d at 364. Mere inability to obtain a particular position is insufficient to meet this requirement, but it may be proven by evidence of "a history of unsuccessful employment attempts." *Id.*

Appellant asserts that the district court clearly erred in finding that appellant had not demonstrated that the records of his conviction negatively affect his ability to secure

employment. We disagree. Appellant has been consistently employed for 15 years by five different employers. There is no evidence that he has been terminated from employment because of the conviction. But because he fears possible corporate downsizing, appellant recently applied for another position. A criminal background check revealed the 1992 conviction and, according to appellant, the prospective employer indicated it would only hire him if the conviction was expunged. Appellant testified that he "assume[d] most large companies" would similarly reject him because of his conviction but acknowledged that he has not applied for any other positions. The district court found this evidence speculative and insufficient to demonstrate "difficulties in securing employment." *See id.* Because we discern no error in the district court's findings of fact or legal analysis, we conclude that the district court did not abuse its discretion in denying appellant's expungement petition.

Affirmed.