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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0866**

State of Minnesota,
Appellant,

vs.

K. J. B.,
Respondent.

**Filed March 17, 2009
Affirmed in part and reversed in part
Connolly, Judge**

Washington County District Court
File No. 82-K0-06-006457

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Considered and decided by Toussaint, Chief Judge; Schellhas, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

The State of Minnesota appeals from an order granting respondent K.J.B.'s
petition to expunge records of his 2006 misdemeanor criminal conviction of interference

with an emergency call. Because the district court had inherent authority to order expungement of records held by the judicial branch, we affirm that part of the district court's order. But because, under *State v. S.L.H.*, 755 N.W.2d 271 (Minn. 2008), the district court lacks inherent authority to order expungement of records held outside the judicial branch by executive branch agencies, when no constitutional violations are alleged and when the sole reason for expungement is related to employment problems, we reverse that part of the district court's order granting expungement of records held outside the judicial branch.

FACTS

In October 2006, respondent K.J.B. was arrested and charged with gross misdemeanor interference with an emergency call and misdemeanor fifth-degree domestic assault against his wife. In late November 2006, respondent entered a plea of guilty to interference with an emergency call as a misdemeanor. The domestic assault charge was dismissed, and respondent was sentenced to serve 90 days in jail and pay a \$1,000 fine. The district court stayed 87 days of the sentence and \$500 of the fine for one year, and placed respondent on probation on the conditions that he have no same or similar offenses and that he complete a domestic abuse assessment and follow all treatment and counseling recommendations.

One year later, following his successful discharge from probation, respondent petitioned for expungement. At the expungement hearing and in his papers, respondent states that he is a 46-year-old executive at a major health care organization, where he has worked for the past 19 years. He claims that he has suffered significant employment

problems as a result of his misdemeanor conviction because his employer is required to obtain licenses to provide health services in various states, his misdemeanor conviction is disclosed on state licensing checks, and his employer is in jeopardy of losing its licenses if respondent remains in his position. Respondent has been forced to resign from two positions as top financial executive of two subsidiaries controlled by his employer, and he will be required to resign from other positions with his employer once its licenses come up for renewal unless his conviction is expunged. Respondent's employer has assured him that he will again be eligible for these positions and for other promotions if his conviction is expunged. Respondent finally claims that if the record of his conviction remains publicly available, he will likely be terminated from any further employment with his current employer.

DECISION

I.

The district court initially denied expungement, concluding that respondent had no statutory right to relief and that the court lacked inherent authority to expunge records of the executive branch due to the doctrine of separation of powers. Shortly after the district court filed its order, this court released its decision in *State v. V.A.J.*, 744 N.W.2d 674 (Minn. App. 2008). Based on *V.A.J.*, the district court sua sponte vacated its first order and reversed itself, concluding that it had inherent authority to expunge respondent's criminal records, even those held by the executive branch.

The supreme court thereafter granted further review of *V.A.J.*, and stayed additional proceedings pending its decision in another expungement case, *State v. S.L.H.*,

No. A06-1750, 2007 WL 2769652 (Minn. App. Sept. 25, 2007), *review granted* (Minn. Dec. 11, 2007). After the parties' briefs were prepared and filed in connection with this case, the supreme court decided *S.L.H.*, 755 N.W.2d 271 (Minn. 2008). And one month later, on October 1, 2008, the supreme court vacated its stay of *V.A.J.* and denied the state's petition for further review.¹

Thus, the district court's decision in this case and the briefing on appeal are based solely on this court's decision in *V.A.J.* But, following the supreme court's decision in *S.L.H.*, the continuing viability of *V.A.J.* appears somewhat questionable.

The facts in *V.A.J.* and *S.L.H.* are almost identical: in both cases, the petitioners sought expungement of criminal records for employment purposes. In both cases, the district court granted the petition and ordered the sealing of judicial branch records, finding that the benefit to the petitioner was greater than the disadvantage to the public. And in both cases, the district court denied the petitioner's request to expunge records held by the executive branch, concluding that the court lacked inherent authority to grant this relief. But while the facts of *V.A.J.* and *S.L.H.* are similar, the supreme court in *S.L.H.* applied a different analysis and reached a substantially different result than this court did in *V.A.J.*

¹ The fact that the supreme court chose to deny further review in *V.A.J.* is of no significance and cannot be interpreted as an expression of opinion on the merits of *V.A.J.* A denial of further review merely means that the "supreme court has declined, at that time and for whatever undisclosed reasons, to consider the matter." *Murphy v. Milbank Mut. Ins. Co.*, 388 N.W.2d 732, 739 (Minn. 1986); *see also Powell v. Anderson*, 660 N.W.2d 107, 123 (Minn. 2003).

In *V.A.J.*, this court reversed the district court’s decision, concluding that the district court had inherent authority to expunge what this court described as “judicially created” records that are held by the executive branch, particularly the Bureau of Criminal Apprehension (BCA), in order to provide a meaningful remedy to the petitioner. 744 N.W.2d at 676-77. But in *S.L.H.*, the supreme court held that the district court did not err in declining to exercise its inherent authority to expunge criminal records held outside the judicial branch, because assisting the petitioner in achieving employment goals did not implicate a “core judicial function.” 755 N.W.2d at 277-78.

Because we cannot reconcile the holdings of *V.A.J.* and *S.L.H.*, and because *S.L.H.* appears on point, we are constrained to follow the analysis and holding set out in *S.L.H.*

II.

When the analysis set out by the supreme court in *S.L.H.* is applied to the facts of this case, we must conclude that the district court erred in determining that it had inherent authority to order expungement of records held outside the judicial branch. Similar to the petitioner in *S.L.H.*, respondent does not claim that he is entitled to statutory expungement under Minn. Stat. § 609A.02 (2008), nor does he claim that his case presents any constitutional violations. Rather, respondent asserts that the district court had inherent authority to order expungement of his criminal records held outside the judicial branch, because the relief he seeks is necessary to the performance of the “core functions” of the judiciary to provide him with a meaningful and complete remedy.

But in *S.L.H.*, the supreme court made it clear that “helping individuals achieve employment goals is not essential to the existence, dignity, and function of a court

because it is a court. It may be a matter of relative needs or judicial wants, but it cannot be said to be necessary to the performance of the judicial function as contemplated in our state constitution.” 755 N.W.2d at 278 (citations and quotations omitted). Thus, the *S.L.H.* analysis firmly rejected the claim now made by respondent that his employment goals are necessary to the performance of core functions of the judiciary.

In addition, our supreme court in *S.L.H.* noted that “courts must proceed cautiously” when invoking inherent authority, particularly when “our separation of powers jurisprudence requires that we give due consideration to the equally important executive and legislative functions.” *Id.* The court specifically pointed to legislative concerns, as expressed in the data practices act, which include keeping criminal records held outside the judicial branch open to the public. *Id.* (citing and quoting Minn. Stat. §§ 13.82, subd. 2, 13.87, subd. 1(b) (2006)). The court acknowledged that “[t]he expungement of . . . criminal records held outside the judicial branch would effectively override the legislative determination that some of these records be kept open to the public.” *S.L.H.*, 755 N.W.2d at 279. Thus, the court continued, “in light of the deference that courts are to afford the other branches of government, 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.” *Id.*

Similarly to the petitioner in *S.L.H.*, respondent in this case “has not demonstrated that expungement of [his] criminal records held outside the judicial branch is necessary to the performance of a core judicial function.” *Id.* at 280. In addition, the district court in

this case erred by failing to recognize “the restraint our separation of powers jurisprudence counsels with regard to the exercise of inherent authority.” *Id.* The district court’s decision to expunge respondent’s criminal records held outside the judicial branch is therefore reversed.

III.

The state appears to concede that the district court had the authority and properly exercised its discretion in granting expungement of records held by the judicial branch. A district court has inherent authority to expunge criminal records when “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.” *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000) (quotation omitted). The district court’s findings and incorporated memorandum are detailed and consider the appropriate factors set out in *State v. H.A.*, 716 N.W.2d 360, 364 (Minn. App. 2006). We therefore conclude that the district court did not abuse its discretion in granting expungement of records held by the judicial branch and affirm that part of the district court’s decision.

Affirmed in part and reversed in part.