STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1390, A08-1391

State of Minnesota, City of Crystal,
Appellant,

vs.

S. D. G.,
Respondent.

Filed June 16, 2009
Affirmed in part and reversed in part
Shumaker, Judge

Hennepin County District Court
File No. 27-CR-87-915044

Lori Swanson, Attorney General, David James Koob, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134;

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S.D.G., 9909 East 76th Terrace, Raytown, MO 64138 (pro se respondent)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Halbrooks, Judge.

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

SHUMAKER, Judge

In these consolidated appeals, appellant argues that the district court abused its discretion by granting respondent's petitions for expungement of convictions from 1988 and 1991. Because appellant does not object to the district court's expungement of its own records and concedes that the district court has the authority to expunge its own records, we affirm in part. But because we conclude that the district court lacked inherent authority to order expungement of records of respondent's convictions held outside the judicial branch by executive branch agencies, we reverse in part.

FACTS

Respondent S.D.G. was charged with gross-misdemeanor theft and pleaded guilty to an amended charge of misdemeanor theft in January 1988, and was sentenced to a stayed 90-day jail sentence. Then, in 1991, respondent was charged with the gross misdemeanor of giving a false name to a peace officer and misdemeanor theft by shoplifting $200 or less. She pleaded guilty to the misdemeanor theft charge and was sentenced to 90 days in jail; the gross misdemeanor charge of giving a false name to a peace officer was dismissed.

In June 2008, respondent filed petitions for expungement of her convictions in both matters. Appellant City of Crystal opposed the petitions. The district court granted the petitions for expungement, finding that there was clear and convincing evidence that sealing the records of respondent's convictions "would yield a benefit to [respondent] commensurate with the disadvantages to the public and public safety of: (1) sealing the

record; and (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order." The court addressed the scope of the order:

> [Respondent's] request for sealing of records is granted. All official records, other than the non-public record retained by the Bureau of Criminal Apprehension, including all records relating to arrest, indictment or complaint, trial, dismissal and discharge shall be sealed and their existence shall be disclosed only by court order, except as authorized by law.

These consolidated appeals followed.

D E C I S I O N

We review a district court's decision granting or denying an expungement petition under an abuse-of-discretion standard. *State v. Davisson*, 624 N.W.2d 292, 296 (Minn. App. 2001), *review denied* (Minn. May 15, 2001).

There are two legal bases for the expungement of criminal records: Minnesota Statutes chapter 609A[1] and a court's inherent expungement power. *State v. Ambaye*, 616 N.W.2d 256, 257 (Minn. 2000). In this case, respondent has not alleged that she is entitled to statutory expungement. We therefore consider only whether the district court had inherent power to expunge respondent's criminal records.

A court may exercise its inherent power to expunge criminal records in two cases. *Id.* at 258. First, a court may order expungement to prevent a serious infringement of the

[1] As the Minnesota Supreme Court has explained, Minn. Stat. § 609A.02 (2006) "provide[s] for the expungement of records related to certain controlled substance crimes, convictions of juveniles who were prosecuted as adults, and certain criminal proceedings that did not result in a conviction." *State v. S.L.H.*, 755 N.W.2d 271, 274 n.2 (Minn. 2008).

petitioner's constitutional rights. *Id.* Here, respondent has not claimed a constitutional violation.

Second, a court may use its inherent expungement power if "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." *Id.* The district court granted respondent's request for expungement on this basis, finding "that sealing the record[s] would yield a benefit to [respondent] commensurate with the disadvantages to the public and public safety of: (1) sealing the record; and (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order."

Appellant concedes that the district court has the authority to expunge its own records, *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981), and has withdrawn its objection to the court's expungement of its own records relating to respondent. Because the district court did not abuse its discretion by granting expungement of records held by the judicial branch, we affirm that part of the district court's orders.

Appellant claims, however, that the district court abused its discretion by ordering that records of any agency of the executive branch of government be sealed. In support of its position, appellant cites as controlling authority *S.L.H*, 755 N.W.2d 271. There, the petitioner sought expungement of her criminal records to achieve employment goals. 755 N.W.2d. at 277. 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, but denied the request to expunge records held by the executive branch

because it concluded that it lacked inherent authority to grant this relief. *Id.* at 274. The supreme court held that the district court did not err in declining to exercise its inherent authority to expunge records held outside the judicial branch because assisting the petitioner in achieving employment goals did not implicate a "core judicial function" and because judicial authority must be exercised to accommodate the public policy of allowing public access to certain governmental records. *Id.* at 277-78 (citations and quotations omitted). Additionally, the court warned courts to "proceed cautiously" when invoking their inherent authority, because "our separation of powers jurisprudence requires that we give due consideration to the equally important executive and legislative functions." *Id.* at 278 (quotations omitted); *see also C.A.*, 304 N.W.2d at 359 (stating that when ordering expungement, a court should "proceed cautiously . . . in order to respect the equally unique authority of the executive and legislative branches of government").

Because *S.L.H.* is controlling authority, we conclude that the district court lacked the inherent authority to order expungement of records relating to respondent's convictions held outside the judicial branch. Like the petitioner in *S.L.H.*, respondent did not claim that she was entitled to statutory expungement or that her case presented a constitutional violation. Rather, she sought expungement claiming that her criminal record restricted her advancement in employment, her ability to obtain a business loan, her ability to become a notary public, and her ability to obtain housing. As in *S.L.H.*, where the petitioner sought expungement for employment purposes, respondent's stated reasons for seeking expungement do not implicate a core judicial function. *S.L.H.*, 755 N.W.2d at 280.

The district court abused its discretion by ordering the expungement of criminal records held outside the judicial branch. Therefore, to the extent that the district court's orders provide for expungement of records outside the judicial branch, we reverse in part those orders.

Affirmed in part and reversed in part.