STATE OF MINNESOTA
IN COURT OF APPEALS
A09-274

State of Minnesota,
City of Crystal,
Appellant,

vs.

A. J. H.,
Respondent.

Filed November 10, 2009
Remanded
Klaphake, Judge

Hennepin County District Court
File No. 27-CR-05-81112

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Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Minge, Judge.

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

KLAPHAKE, Judge

Appellant City of Crystal challenges the district court's order expunging the criminal records of respondent A.J.H., who was convicted of reckless discharge of a

firearm, Minn. Stat. § 609.66, subd. 1a(a)(3), 1a(b)(2) (Supp. 2005), a felony.[1] Appellant argues that the district court abused its discretion by granting respondent's petition when respondent was found guilty of the underlying charge and that the court exceeded its authority by ordering sealing of records held by the executive branch. Because we conclude that the district court must more fully consider whether expungement of such executive branch records will violate the separation of powers doctrine, we remand for further proceedings.

D E C I S I O N

In the exercise of its discretion, a district court may expunge criminal records for two reasons: (1) by statute, under Minn. Stat. § 609A.02, subd. 3 (2008), when criminal charges were resolved in favor of a defendant; and (2) by virtue of 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).

The district court ordered sealing of judicial records of appellant's conviction, and appellant conceded at oral argument before this court that the district court did not abuse its discretion by granting respondent's expungement as to those records. Appellant challenges the district court's authority to expunge records held by the executive branch, however. "Whether a court has inherent authority to issue an expungement order

[1] On the evening of November 30, 2005, respondent twice discharged a gun into the snowy ground from the window of his Crystal home. Respondent, who was 21 years old at the time of the offense, had no other criminal record, nor has he been charged with any crimes since that date. He pleaded guilty to the charged felony offense but received a gross misdemeanor sentence. After losing his job as a driver due to a company closing, appellant was rejected for similar employment several times because of his criminal record. Appellant then petitioned to expunge his criminal records.

affecting the executive branch is a question of law, which is subject to a de novo standard of review." *State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009). In the supreme court's most recent opinion addressing expungement, the court ruled that with regard to executive branch records, a district court's inherent authority to expunge is limited to cases in which

> the relief requested by the court or aggrieved party [is] necessary to the performance of the judicial function as contemplated in our state constitution. We do not resort to inherent authority to serve the relative needs or wants of the judiciary, but only for practical necessity in performing the judicial function. Accordingly, the judiciary's inherent authority governs that which is essential to the existence, dignity, and function of a court because it is a court.

S.L.H., 755 N.W.2d at 275 (quotations and citations omitted). The court referred to these functions as "core functions" of the judiciary, *id.* at 277, and warned that courts should proceed "cautiously when invoking inherent authority." *Id.* at 278 (quotation omitted).

In *State v. V.A.J.*, 744 N.W.2d 674, 678 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008), this court ruled that executive branch records "generated as a result of a judicial proceeding" could be expunged under a district court's inherent authority, including public records maintained by the Bureau of Criminal Apprehension (BCA). The precedential value of *V.A.J.* is unclear following *S.L.H.*, because while the two cases are somewhat contradictory, the supreme court dismissed the state's petition for further review in *V.A.J.*, even though it had earlier granted review and stayed further proceedings until issuance of its decision in *S.L.H. State v. V.A.J.*, A07-71 (Minn. Apr. 15, 2008).

The most recent expungement case decided by this court, *N.G.K.*, declines to allow expungement of executive branch records, relying on *S.L.H.*'s rationale that "helping individuals achieve employment goals is not [an essential core function of a court]." *N.G.K.*, 770 N.W.2d at 181. But we also noted in *N.G.K.* that while "the supreme court's opinion in *S.L.H.* appears to take a narrow view of a court's power to order expungement of records held by executive-branch offices, the opinion does not establish a bright-line rule forbidding such orders in all cases." *Id.* at 182. As we further noted, *S.L.H.* includes a concurrence from three justices of the six who decided the case, and the concurrence includes a more "expansive view of the scope of the judiciary's inherent authority to expunge records of criminal convictions possessed by the executive branch." *Id.*

While *N.G.K.* seems to rely on the fact that the petitioner sought expungement of executive branch records solely for employment reasons, a basis rejected in *S.L.H.*, both cases fail to specifically address the broader concern of whether expungement of executive branch records is an affront to the "existence, dignity, and function of a court because it is a court." *S.L.H.*, 755 N.W.2d at 275 (quotation omitted). An order that expunges judicial records but does not expunge executive branch records created by virtue of those judicial records may provide an illusory remedy to a petitioner who has a valid and compelling basis for seeking expungement under the law.[2] It may be perverse

[2] Under the circumstances of this case, the failure to fully expunge such records is fundamentally unfair to respondent, who holds a job offer conditioned on his receiving expungement of his conviction. *See V.A.J.*, 744 N.W.2d at 675 (noting that BCA records "are the records employers regularly rely on for criminal-background checks").

and an affront to a district court's authority to allow executive branch records that emanate from judicial branch records to stand after the judicial branch records have been expunged by court order.

Further, the existing case law fails to specifically consider whether the form of expungement ordered by the court affects the separation of powers analysis. A deeper consideration of the potential harm to the integrity of the executive branch is necessary to determine whether expungement will offend the separation of powers doctrine. Here, the expungement ordered by the court involved only sealing, not destroying, the executive branch records. In *V.A.J.*, this court reversed a district court order, holding that it did not have authority to order any expungement of records generated by the court but held by the executive branch and remanded, presumably for further consideration of whether sealing such records was beyond the authority of the district court. 744 N.W.2d at 678. *S.L.H.* did not distinguish between destruction of records or sealing of records in concluding that the petitioner in that case had not met her burden to show that "expungement of her criminal records held outside the judicial branch is necessary to the performance of a core judicial function . . . ." 755 N.W.2d at 280.

Respondent admits that his conduct was an uncharacteristic "stupid act," and the district court specifically found it less culpable than the typical offense, a fact which was recognized by the court at sentencing when respondent received a gross misdemeanor sentence rather than a felony sentence. In *S.L.H.*, the supreme court recognized that it is a core judicial function to "reduc[e] or eliminate[e] unfairness to individuals that could arise if court records, records related to the court process, or records used by agents in that process were used in a way that undermine[] the benefit to the petitioner of having his conviction set aside." 755 N.W.2d at 277 (quoting *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981)).

Consideration of the effect of an expungement order on the executive branch should address whether an executive agency has expressed a need to maintain judicially created records; whether other records, such as arrest records, will satisfy the executive agency's needs; whether an executive agency's needs can be satisfied by sealing, rather than expunging, executive branch records in order to make them fully available to an executive agency but not available to the general public; and whether the executive agency has its own expungement method. In *Ambaye*, 616 N.W.2d at 261, the supreme court noted that the equitable remedy of expungement requires balancing of competing interests. The supreme court concluded that the district court did not abuse its discretion by declining to expunge the criminal records, but it based its decision to a large degree on the gravity and violence of the underlying charge (first-degree murder) and the fact that Ambaye was employed, despite his criminal history. Here, the underlying charge is minor and the result undermines the benefit of expungement to appellant. For these reasons, we remand to the district court for further consideration of these issues.

Remanded.