STATE OF MINNESOTA
IN COURT OF APPEALS
A10-56

State of Minnesota,
Respondent,

vs.

P. J. M.,
Appellant.

Filed August 17, 2010
Affirmed
Stoneburner, Judge

Carver County District Court
File No. 10VB0410166

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

James W. Keeler, Jr., Carver County Attorney, Dawn M. O'Rourke, Assistant County Attorney, Chaska, Minnesota (for respondent)

Ronald I. Meshbesher, Meshbesher & Spence, Ltd., Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

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

STONEBURNER, Judge

Appellant challenges the district court's denial of his petition to expunge all records of charges of domestic assault and fifth-degree assault and a conviction of

disorderly conduct. Because the district court did not abuse its discretion by declining to exercise its inherent authority to expunge and appellant does not meet the requirements for expungement under Minn. Stat. § 609A.02 (2008), we affirm.

FACTS

Appellant P.J.M. was charged with two misdemeanors: domestic assault, in violation of Minn. Stat. § 609.2242, subd. 1 (2004), and fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. 1 (2004). Both charges arose out of an altercation between P.J.M. and his then-wife, S.M., that occurred at their home in October 2004.

Pursuant to a plea agreement, P.J.M. pleaded guilty to an added charge of disorderly conduct, in violation of Minn. Stat. § 609.72 (2004). Under the agreement, the state dismissed the domestic-assault charge and the fifth-degree-assault charge was continued for dismissal after a period of one year. P.J.M. was convicted of disorderly conduct. Imposition of his sentence was stayed for one year, and he was placed on probation. The fifth-degree assault charge was dismissed shortly after P.J.M. successfully completed probation.

In August 2009, P.J.M. petitioned the district court for expungement of all records relating to the charges and conviction. The state opposed P.J.M.'s petition. S.M. submitted a letter to the district court opposing the petition and noting that the police reports describing the incident were accurate.[1] The police report stated that P.J.M. had

[1] S.M.'s letter is not in the district court file, but the transcript of the expungement hearing reflects that the district court and counsel received the letter. According to the district court's order denying P.J.M.'s petition, the letter voiced S.M.'s opposition to expungement, stating that the police reports were accurate as to P.J.M.'s behavior.

pushed S.M. to the ground several times, hit her in the right side with his knee, and followed her when she left the room and again pushed her to the ground. A deputy observed bruising on S.M.'s forearms and right knuckle.

P.J.M. was present and represented by counsel at the hearing on his expungement petition. Following the hearing, the district court denied P.J.M.'s petition, concluding that: (1) it did "not have the statutory authority to grant the expungement because the matter was not resolved in [P.J.M.]'s favor," citing Minn. Stat. § 609A.03; and (2) "[b]ecause [P.J.M.] did not meet the requirements of showing that the benefits he would experience by sealing of the records outweigh the disadvantages to the public, his petition that this Court use its inherent authority to expunge/seal these records is also denied." This appeal followed.

D E C I S I O N

I. Standard of Review

A district court may expunge criminal records in two ways: (1) by statute, under Minn. Stat. § 609A.01–.03 (2008), and (2) under 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). P.J.M. argues that the district court erred by concluding that it lacked statutory authority to grant P.J.M.'s expungement petition and that it erred by declining to exercise its inherent authority to expunge P.J.M.'s criminal records.

II. Statutory authority

If statutory conditions are met, criminal records can be "expunge[ed]" by a "court order sealing the records and prohibiting the disclosure of their existence or their opening

except under court order or statutory authority." Minn. Stat. § 609A.01. P.J.M. argues that because the domestic-assault and fifth-degree-assault charges were resolved in his favor, he is entitled to expungement of all records related to those charges under Minn. Stat. § 609A.02, subd. 3, which provides that a petition may be filed to seal "all records relating to an arrest, indictment or information, trial, or verdict [except a conviction of an offense for which registration is required] . . . if all pending actions or proceedings were resolved in favor of the petitioner." If the petitioner qualifies for expungement under section 609A.02, subdivision 3, "the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record." Minn. Stat. § 609A.03, subd. 5(b).

There is no dispute that the domestic-assault and fifth-degree-assault charges were resolved in P.J.M.'s favor because both charges were dismissed, but the district court implicitly concluded that "all pending actions or proceedings" included the charge of disorderly conduct to which P.J.M. pleaded guilty and was convicted. Because not *all* of the pending charges were resolved in P.J.M.'s favor, the district court concluded that it was without statutory authority to grant the petition. *See State v. C.P.H.*, 707 N.W.2d 699, 704 (Minn. App. 2006) (stating that, in determining whether a resolution was in favor of the petitioner, "the existence of an admission or finding of guilt is the deciding factor").

The proper construction of the expungement statute is a question of law, which we review de novo. *Ambaye*, 616 N.W.2d at 258. In *State v. J.R.A.*, this court addressed the meaning of the phrase "all pending actions or proceedings." 714 N.W.2d 722, 726–27 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). After concluding that the language is ambiguous, this court held that "the phrase 'all pending actions or proceedings' refers to multiple charges based on the same incident." *Id.* at 727.

P.J.M. argues that there are "critical distinctions" between the charged crimes[2] and asserts that there is "no evidence in the record that the disorderly conduct charge arose out of the same incident as the assault charges." We disagree. The record demonstrates that the negotiated charge of disorderly conduct added to the complaint was based on the same facts asserted in the complaint to support the assault charges and plainly was based on the same incident as the assault charges.

P.J.M.'s reliance on *J.R.A.*, 714 N.W.2d at 728, *State v. K.M.M.*, 721 N.W.2d 330 (Minn. App. 2006), and *State v. L.K.*, 359 N.W.2d 305 (Minn. App. 1984), to support his argument that he is statutorily entitled to expungement is based on his assertion that the disorderly conduct conviction did not arise out of the same incident as the assault charges. Because the charges were all based on the same incident, the cases do not support P.J.M.'s argument.

[2] P.J.M. sets out the elements of each of the charged crimes, but does not present any argument or authority for his implicit argument that, based on its separate elements, disorderly conduct did not arise out of the same incident as the assault charges. Issues not briefed on appeal are waived. *State v. Butcher*, 563 N.W. 2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).

In *K.M.M.*, the petitioner sought expungement, under Minn. Stat. § 609A.03, of all records pertaining to a 1982 forgery conviction, a 1985 conviction of wrongfully obtaining public assistance, and a 2000 dismissed indictment for first-degree and second-degree murder. 721 N.W.2d at 332. The district court denied the petition. *Id.* On appeal, we affirmed denial of the petition for expungement of records pertaining to the criminal convictions because they were not actions or proceedings resolved in K.M.M.'s favor under Minn. Stat. § 609A.02, subd. 3. *Id*. at 333. Because the murder proceedings were plainly resolved in K.M.M.'s favor, we stated that the district court "is required to grant the petition to expunge through sealing the records unless the agency of jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record." *Id.* at 334 (quoting Minn. Stat. § 609A.03, subd. 5(b) (2004)) (quotation marks omitted). We remanded for application of the balancing-of-interests test in section 609A.03, subdivision 5(b).[3] Here, because the three charges were based on the same incident, unlike the charges in *K.M.M.*, *K.M.M.* actually supports the district court's conclusion that not *all* pending actions or proceedings were resolved in favor of P.J.M.

J.R.A. resolved four separate cases that were pending against him in a single plea agreement under which he pleaded guilty to and was convicted of one charge in each of two cases, and all charges in the remaining two cases were dismissed. *J.R.A.*, 714

[3] In *K.M.M.*, the district court had failed to address petitioner's inherent-authority arguments, therefore on remand the district court was directed to address those arguments with regard to both the convictions and the indictment. 721 N.W.2d at 334.

N.W.2d at 724–25. He later petitioned for expungement of the records in all four cases. *Id.* at 725. The district court exercised its statutory authority to expunge the records in the two dismissed cases and exercised its inherent judicial authority to seal judicial records in the two cases in which J.R.A. had been convicted of one count. *Id.* The state appealed, arguing that the phrase "all pending actions or proceedings" meant that if multiple cases were pending and resolved in single a plea agreement, all of the cases must have been resolved in the defendant's favor to meet the statutory requirement that all pending actions or proceedings were resolved in defendant's favor. *Id.* at 726. This court rejected that interpretation of the statute and, as noted above, held that "the phrase 'all pending actions or proceedings' refers to multiple charges based on the same incident and not to multiple charges based on separate incidents that were then pending." *Id.* at 727. This court affirmed the district court's exercise of statutory authority to expunge the records in the dismissed cases and its exercise of inherent authority to seal judicial records in the cases that resulted in conviction. *Id.* at 728–29. *J.R.A.* therefore supports the district court's conclusion that it lacked statutory authority to expunge the records in P.J.M.'s case where multiple charges based on the same incident were not all resolved in P.J.M.'s favor.

And *L.K.* is distinguishable because the single misdemeanor charge against L.K. was continued for dismissal without a guilty plea or determination of guilt such that ultimate dismissal of the charge constituted a resolution of all pending actions in L.K.'s favor. 359 N.W.2d at 306.

P.J.M. pleaded guilty and was convicted of a crime that arose out of the same incident that gave rise to the charges of domestic assault and fifth-degree assault. The district court correctly determined that it was without statutory authority to grant his expungement petition.[4]

III. Inherent authority

A district court may exercise its inherent authority to expunge criminal records 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). P.J.M. has never alleged a violation or infringement of his constitutional rights: P.J.M. argues only that the district court erred by failing to find that expungement of the disorderly conduct conviction will yield a benefit to him commensurate with any disadvantage to the public and the burden on the court.[5]

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[4] P.J.M. also briefly argues that he is entitled, under Minn. Stat. § 299C.11, subd. 1(b) (2008), to the return of his identification data furnished to the BCA. Minn. Stat. § 299C.11, subd. 1(b) provides that, if an individual meets the requirements of that statute, the BCA is required, on demand, to return identification data furnished to the agency. This statute is not relevant to a petition under section 609A.01. And P.J.M. does not meet the requirements of Minn. Stat. § 299C.11, subd. 1(b), such that the BCA must return his identification data. His argument based on this statute is not relevant to this appeal and is without merit.

[5] P.J.M. has not identified on appeal the specific records he seeks to have sealed, but we note that the supreme court has held that the district court may not exercise its inherent expungement authority to seal records possessed by the executive branch absent a showing that expungement of such records is necessary to the performance of a core

P.J.M.'s argument regarding exercise of the district court's inherent expungement authority is premised on his assertion that he is entitled to statutory expungement of the assault charges, leaving only the "minor" offense of disorderly conduct (which he agrees was not resolved in his favor and therefore cannot be expunged under the statute) to be considered for expungement under the district court's inherent authority. We have rejected P.J.M.'s premise, and therefore review the issue of the district court's decision not to exercise its inherent authority to expunge the records related to the assault charges and the disorderly conduct conviction.

A district court's exercise of inherent authority to expunge, or not to expunge, criminal records is a matter of equity, which this court reviews under an abuse-of-discretion standard. *Ambaye*, 616 N.W.2d at 261.

When determining whether the benefit to a petitioner of expungement is commensurate with the disadvantages to the public, a district court should consider five factors:

> (a) the extent that a petitioner has demonstrated difficulties in securing employment or housing as a result of the records sought to be expunged; (b) the seriousness and nature of the offense; (c) the potential risk that the petitioner poses and how this affects the public's right to access the records; (d) any additional offenses or rehabilitative efforts since the offense; and (e) other objective evidence of hardship under the circumstances.

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judicial function, and "helping individuals achieve employment goals is not essential to the existence, dignity, and function of a court, because it is a court." *S.L.H.*, 755 N.W.2d at 277–78 (quotations omitted).

State v. H.A., 716 N.W.2d 360, 364 (Minn. App. 2006). In this case, the district court analyzed and weighed the factors. P.J.M. argues that the district court weighed the factors incorrectly. We disagree.

As the district court found, P.J.M. failed to demonstrate actual, rather than speculative, difficulties in securing employment as a result of the records. *See State v. N.G.K.*, 770 N.W.2d 177, 180 (Minn. App. 2009) (stating that "a petitioner may not justify expungement with speculative evidence") (quotation omitted)). Contrary to P.J.M.'s assertion that the records would affect his ability to secure employment, at the expungement hearing, P.J.M. indicated to the district court that he had recently obtained new employment. Therefore, the first factor weighs against expungement. The district court found the second factor (regarding the seriousness and nature of the offense) neutral, noting that while disorderly conduct is a relatively minor charge, that charge stemmed from the more serious charge of domestic assault. We agree. The state conceded that P.J.M. poses little risk to the public, but the victim objected to the expungement and the district court found that the public has a compelling interest in maintaining P.J.M.'s records. As the supreme court has indicated, employers have an interest in having access to criminal records to "assess any potential risk involved with hiring certain individuals." *Ambaye*, 616 N.W.2d at 261. P.J.M. has not been charged with any additional crimes in the approximately two years since he entered his guilty plea, and he has been discharged from probation: a factor undisputedly weighing in favor of expungement. But P.J.M. has not presented any objective evidence of other hardship under the circumstances: a factor weighing against expungement. On this record, we

cannot conclude that the district abused its discretion by declining to exercise its inherent authority to expunge P.J.M.'s records.

Affirmed.