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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1991**

State of Minnesota,
Respondent,

vs.

J. L. D.,
Appellant.

**Filed June 12, 2017
Reversed and remanded
Reyes, Judge**

Anoka County District Court
File No. 02-CR-09-6515

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

Derek Archambault, Oak Grove City Attorney, Hawkins and Baumgartner, P.A., Anoka,
Minnesota (for respondent)

Matthew J. Mankey, Golden Valley, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

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

REYES, Judge

Appellant challenges the district court's order denying his petition for
expungement, arguing that the district court made an erroneous finding, failed to provide
written findings, and erred in its interpretation of the expungement statute. Because the

order contained a clearly erroneous finding and there is no evidence in the record that the district court considered all of the statutory expungement factors, we reverse and remand for appropriate findings.

FACTS

In 2009, appellant J.L.D. pleaded guilty to violating a domestic abuse no contact order (DANCO), a misdemeanor under Minn. Stat. § 518B.01, subd. 22(b) (2008) (current version at Minn. Stat. § 629.75, subd. 2(b) (2016)). That same year, appellant was also convicted of a separate misdemeanor charge (non-DANCO conviction). In August 2016, appellant filed a petition for expungement under Minn. Stat. § 609A.02, subd. 3(a)(3) (2016). Appellant sought to have the convictions expunged because he claimed, in part, that the convictions inhibited him from obtaining and keeping employment.

At the hearing on appellant's petition for expungement, respondent State of Minnesota presented no objection to expungement of appellant's non-DANCO conviction. However, the state objected to expungement of the DANCO conviction on the basis that it could be used to enhance a future qualified domestic-violence-related offense until 2019 under Minn. Stat. § 518B.01, subd. 14(c) (2016).¹ No other agencies objected to the petition.

¹ Although renumbered, the substance of subdivision 14(c) is substantially the same as it was in 2009 when appellant was convicted. See Minn. Stat. § 518B.01, subd. 14(c) (2008).

At the conclusion of the hearing, the district court granted expungement of the non-DANCO conviction but denied appellant's petition on the DANCO conviction and stated that the order would have been different if the ten-year period for enhancement had elapsed. The district court used a template order form included with appellant's petition as its order, on which the district court made checkmarks to indicate its findings. The district court checked the box indicating that appellant was convicted of an offense that requires registration under Minn. Stat. § 243.166 (2016)² as its reason for denying the petition. The district court did not include a written memorandum with its order. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion because the district court's findings of fact were clearly erroneous and asserts that the district court failed to issue adequate written findings of fact but used the form order. We agree.

We review the district court's order denying appellant's expungement petition for an abuse of discretion. *State v. K.M.M.*, 721 N.W.2d 330, 332-33 (Minn. App. 2006). Under this standard, "we will not overrule the district court unless the court exercised its discretion in an arbitrary or capricious manner or based its ruling on an erroneous interpretation of the law." *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). This court reviews the district court's findings of fact for clear error. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013). A finding of fact is clearly erroneous if it is

² The content of the 2016 statute has not changed since appellant's conviction. See Minn. Stat. § 243.166 (2008).

“manifestly contrary to the weight of the evidence or not supported by the evidence as a whole.” *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006) (quotation omitted).

Under Minn. Stat. § 609A.02, subd. 3(a)(3), a petitioner may file a petition “to seal all records relating to an arrest, indictment or information, trial, or verdict” if “the petitioner was convicted of . . . [a] misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence for the crime.” Here, appellant qualifies to file a petition for expungement under subdivision 3(a)(3).

Having qualified under subdivision 3(a)(3), the appellant must prove by “clear and convincing evidence that [expungement] would yield a benefit to [appellant] 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.” Minn. Stat. § 609A.03, subd. 5(a) (2016).

Appellant first argues that the district court made a clearly erroneous finding when it checked the box on its order indicating that appellant had previously been convicted of an offense that requires registration under Minn. Stat. § 243.166. “Records of a conviction of an offense for which registration is required under [Minn. Stat. § 243.166] may not be expunged.” Minn. Stat. § 609A.02, subd. 4 (2016). Section 243.166, subdivision 1(b), enumerates the circumstances under which a person is required to register as a predatory offender. Appellant’s DANCO violation is not a listed circumstance. *See* Minn. Stat. § 243.166. Therefore, the district court’s finding that appellant was convicted of an offense that requires registration under section 243.166 is clearly erroneous because it is not supported by the evidence in the record.

Appellant also asserts that the district court erred because it did not provide written factual findings but checked boxes on the form order. The expungement statute provides that the district court “shall consider” 12 factors when determining whether to grant or deny a petition for expungement:

- (1) the nature and severity of the underlying crime, the record of which would be sealed;
- (2) the risk, if any, the petitioner poses to individuals or society;
- (3) the length of time since the crime occurred;
- (4) the steps taken by the petitioner toward rehabilitation following the crime;
- (5) aggravating or mitigating factors relating to the underlying crime, including the petitioner’s level of participation and context and circumstances of the underlying crime;
- (6) the reasons for the expungement, including the petitioner’s attempts to obtain employment, housing, or other necessities;
- (7) the petitioner’s criminal record;
- (8) the petitioner’s record of employment and community involvement;
- (9) the recommendations of interested law enforcement, prosecutorial, and corrections officials;
- (10) the recommendations of victims or whether victims of the underlying crime were minors;
- (11) the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and
- (12) other factors deemed relevant by the court.

Minn. Stat. § 609A.03, subd. 5(c) (2016). The district court must create a record showing its consideration of these factors. Minn. Stat. § 645.44, subd. 16 (2016) (defining “shall” as mandatory).

In the context of expungement of criminal records for juveniles, this court has previously stated: “While we appreciate the informality of expungement proceedings, we

are unable to review whether a grant or denial of expungement constitutes an abuse of discretion unless the district court makes findings or determinations on the record regarding [expungement] factors.” *H.A.*, 716 N.W.2d at 364; *see also In re Welfare of J.T.L.*, 875 N.W.2d 334, 338 (Minn. App. 2015) (“Absent findings on the required statutory considerations, we are unable to determine whether the district court acted within its discretion.”).

Here, the district court failed to make sufficient written findings of fact under Minn. Stat. § 609A.03, subd. 5(c), and determinations under Minn. Stat. § 609A.03, subd. 5(a), to allow appropriate appellate review. As previously stated, the district court’s finding that appellant was convicted of an offense requiring registration under section 243.166 is clearly erroneous. However, we note that, at the conclusion of the hearing, the district court stated that it was denying appellant’s petition because the ten-year period during which appellant’s DANCO conviction could be used to enhance a future offense had not elapsed. This is not a listed factor.

But even if enhancement of a future offense could be considered as a factor under section 609A.03, subdivision 5(c)(12), the district court did not analyze or make specific findings of fact relevant to the other statutory factors it is required to consider, including those raised by appellant. For example, at the hearing, appellant argued that “the court is to look at the [12] factors that are listed in the petition, including the length of time since the offense.” Appellant argued that seven years have elapsed since the DANCO violation. In addition, appellant asserted that he no longer knows the victim’s whereabouts, making the likelihood of using the conviction to enhance a future qualified

domestic violence-related offense against the victim very low. In 2009, appellant was diagnosed with bipolar disorder and has been taking steps towards rehabilitation, including taking medication and seeing a psychiatrist. And, since 2009, appellant's attempts to obtain and maintain employment have failed. Appellant also highlighted that the state was the only entity to oppose expungement of the DANCO conviction, even though the state did not oppose expungement for appellant's non-DANCO conviction.

Appellant further noted that the sole basis for the state's opposition to expungement of the DANCO conviction was the enhanceability of the offense and that expungement would impede the state from knowing that a future offense should be enhanced. However, appellant emphasized that the expunged record would not be sealed as to law enforcement and prosecutors. Minn. Stat. § 609A.03, subd. 7a(b)(1) (2016) (“[A]n expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services.”). Despite appellant's and the state's arguments, the district court failed to make a determination as to whether sealing the record would yield a benefit to appellant commensurate with the disadvantages to the public and public safety under section 609A.03, subdivision 5(a).

Accordingly, we remand for appropriate findings of fact concerning the statutory factors and determinations on the record. *See, e.g., J.T.L.*, 875 N.W.2d 334 (remanding for findings of fact on juvenile expungement statute factors). Because we reverse and remand the order denying appellant's petition for expungement based on clearly

erroneous and inadequate findings of fact and determinations on the record, we do not address appellant's alternative argument that the district court erred in its interpretation of the expungement statute.

Reversed and remanded.