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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0874**

State of Minnesota,
Respondent,

vs.

J. S. K.,
Appellant.

**Filed March 12, 2018
Affirmed in part, reversed in part, and remanded
Peterson, Judge**

Hennepin County District Court
File Nos. 27-CR-14-4811, 27-CR-14-7039,
27-CR-14-9708, 27-CR-14-11574, 27-CR-14-14958

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Considered and decided by Reyes, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a district court order denying appellant's petitions to expunge criminal records in five separate criminal matters, appellant argues that the district court (1) incorrectly applied the burden of proof; (2) abused its discretion in applying the applicable statutory factors when considering the petitions; and (3) erred by denying his motion to find a provision in the expungement statute unconstitutional. We affirm in part, reverse in part, and remand.

FACTS

During February 2014, appellant J.S.K. began exhibiting symptoms of mental illness and was involved in the first of several incidents that resulted in five separate criminal charges against him. On February 21, 2014, appellant was charged with one felony count of fleeing a peace officer in a motor vehicle. On March 16, 2014, appellant was charged with misdemeanor disorderly conduct. On April 8, 2014, appellant was charged with misdemeanor driving while impaired. On April 25, 2014, appellant was charged with felony stalking (pattern of stalking conduct). Finally, on May 27, 2014, appellant was charged with gross-misdemeanor stalking.

In proceedings on the fleeing-a-peace-officer charge, the district court ordered a competency evaluation under Minn. R. Crim. P. 20.01 and a mental examination under Minn. R. Crim. P. 20.02 and scheduled a competency hearing to be held on April 15, 2014. Before that hearing was held, the charges for misdemeanor disorderly conduct and misdemeanor driving while impaired were filed, and the prosecutor agreed to apply the

competency-evaluation report to those misdemeanors. Following the April 15 hearing, the district court concluded that appellant was incompetent to stand trial. Consequently, the district court dismissed the misdemeanor disorderly-conduct and driving-while-impaired charges and suspended proceedings on the felony fleeing-a-peace-officer charge. *See* Minn. R. Crim. P. 20.01, subd. 6(b) (if court finds defendant incompetent, misdemeanor charges must be dismissed and proceedings on felony charges must be suspended). The district court also referred appellant for civil commitment proceedings. *See* Minn. R. Crim. P. 20.01, subd. 6(b)(1), (2) (if court finds defendant mentally ill or mentally deficient so as to be incapable of understanding proceedings or participating in defense, court must commence civil commitment proceeding or cause civil commitment proceedings to be instituted against defendant).

A second competency hearing was held on April 29, 2014, after appellant was charged with felony stalking. Following that hearing, the district court amended its April 15 order by adding a provision that suspended criminal proceedings on the felony stalking charge “until [appellant] has returned to a competent state of mind.”

Appellant regained competency, and, on September 15, 2014, he waived his right to a jury trial on the fleeing-a-peace-officer charge and, pursuant to Minn. R. Crim. P. 26.01, subd. 3, agreed with the prosecutor that the determination of his guilt may be submitted to and tried by the district court based on stipulated facts. In an order filed on October 7, 2014, the district court concluded that the state proved beyond a reasonable doubt that appellant committed the charged offense and that appellant proved that, due to his mental illness, he was unable to know the nature of the acts he committed, or that they

were wrong. Accordingly, the district court found appellant not guilty by reason of mental illness of fleeing a peace officer.

On March 20, 2015, pursuant to Minn. R. Crim. P. 30.01, the state dismissed the felony stalking complaint against appellant and stated in writing that it dismissed the complaint in the interests of justice and because, in the fleeing-a-peace-officer case, appellant was found not guilty by reason of mental illness and appellant was under a stay of civil commitment as a result of that case. *See* Minn. R. Crim. P. 30.01 (prosecutor may dismiss complaint without court’s approval and must state reasons for dismissal in writing or on the record). The prosecutor in the gross-misdemeanor stalking case dismissed that charge because the events that were the basis for the charge were part of the pattern of conduct that was the basis for the felony stalking charge.¹

Appellant filed petitions seeking expungement of the criminal records in each of the five cases in which he was charged, claiming that the only reason why the offenses occurred “was because brand new mental health disorders came on and [he] was untreated at the beginning,” but now that he is “under appropriate medical care, there is no worry that [he] will engage in this type of behavior ever again.” Appellant requested a hearing on his petitions under Minn. Stat. § 609A.03, subd. 4 (2016).

Respondent State of Minnesota opposed expungement of records in the fleeing-a-peace-officer and felony stalking cases. The state asserted that a verdict of not guilty by reason of mental illness is not a verdict “in favor of” appellant and that appellant’s fleeing-

¹ The record does not clearly demonstrate when the misdemeanor stalking charge was dismissed, but the parties do not dispute that it was dismissed.

a-peace-officer offense is excluded from the statutory remedy of expungement. The state also asserted that, in the felony stalking case, appellant is not entitled to expungement under the court's inherent authority. In response, appellant moved for a finding that Minn. Stat. § 609A.02, subd. 3(a)(1) (2016), is unconstitutional as applied to him and that he qualifies for inherent-authority expungement because that relief will remedy a constitutional violation.

Respondents Minnesota Department of Human Services (MDHS) and Minnesota Department of Health (MDH) opposed expungement of records in the felony and gross-misdemeanor stalking cases. Respondents asserted that records in those cases are needed to fulfill their responsibilities under Minnesota Statutes chapters 245A and 245C to evaluate risks presented by “individuals who wish to provide care for, or have access to, the state's most vulnerable citizens.”

The district court denied appellant's petitions. This appeal followed.

D E C I S I O N

This court reviews a district court's expungement decision for abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). “Under an abuse of discretion 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). We review a district court's findings of fact supporting expungement for clear error. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013). But the “interpretation of the expungement statute is a legal

question subject to de novo review.” *State v. D.R.F.*, 878 N.W.2d 33, 35 (Minn. App. 2016) (quotation omitted).

The expungement statute, Minn. Stat. §§ 609A.01 to .04 (2016), provides “grounds and procedures” for expunging criminal records. Minn. Stat. § 609A.01. The expungement statute specifies various circumstances under which an expungement petition may be filed. Among the permitted circumstances, the statute provides that “[a] petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict . . . if . . . all pending actions or proceedings were resolved in favor of the petitioner.” Minn. Stat. § 609A.02, subd. 3(a)(1).

When a petition is filed under this provision, “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). “In determining whether a case was resolved in favor of the petitioner under Minn. Stat. § 609A.02, subd. 3, the existence of an admission or finding of guilt is the deciding factor.” *State v. C.P.H.*, 707 N.W.2d 699, 704 (Minn. App. 2006). The expungement statute, however, specifically provides that “a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner.” Minn. Stat. § 609A.02, subd. 3(a)(1).

The Minnesota Supreme Court has explained that when Minn. Stat. § 609A.02, subd. 3(a)(1) and (2), are read together with Minn. Stat. § 609A.03, subd. 5(b), they create a “two-step procedure for statutory expungement.” *R.H.B.*, 821 N.W.2d at 821. Under

step one, if all pending criminal actions or proceedings have been resolved “in favor of” an individual, he may petition the district court to seal the records related to the action or proceeding, and there is a statutory presumption that the court will grant the petition. *Id.* (quotation omitted).

Once a petitioner meets the legal threshold set forth in Minn. Stat. § 609A.02, subd. 3(a)(1), or (2), he is “presumptively entitled to expungement.” *Id.* (quotation omitted). But the statutory presumption is not absolute; rather “it is a rebuttable statutory presumption that shifts the burden of persuasion to the opposing party.” *Id.* (quotation omitted). Under the second step, the agency or jurisdiction holding the record may prevent expungement if it satisfies its burden of persuasion set forth in section 609A.03, subdivision 5(b). *Id.*

In addition to statutory expungement authority under chapter 609A,

[t]he district court also has inherent authority to expunge court records: (1) when the petitioner’s constitutional rights may be seriously infringed by retention of petitioner’s records; or (2) if constitutional rights are not involved, when the court finds 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. L.W.J., 717 N.W.2d 451, 456 (Minn. App. 2006) (quotation omitted).

The supreme court has explained that “the authority the judiciary has to control its own records does not give the judiciary inherent authority to reach into the executive branch to control what the executive branch does with records held in that branch, even when those records were created in the judiciary.” *M.D.T.*, 831 N.W.2d at 282. In *M.D.T.*,

the supreme court held that, because expungement of the petitioner's criminal records held in the executive branch was not necessary to the performance of a unique judicial function, the district court did not have authority to expunge criminal records held in the executive branch. *Id.* at 284.

Four dismissed cases

Appellant argues that, with respect to the four cases that were dismissed, the district court applied the wrong statutory standard when it “did not shift the burden of proof to the government to offer clear and convincing evidence, as required under § 609A.03, subd. 5(b).” We agree.

The district court concluded in paragraph 51 of its order that it would not seal the executive-branch records in the four cases that were dismissed because MDHS and MDH use those records to conduct background studies, and conducting those studies is not a unique judicial function. In reaching this conclusion, the district court applied principles related to the court's inherent expungement authority, instead of applying only the requirements for statutory expungement under Minn. Stat. § 609A.03, subd. 5(b). Under the expungement statute, executive-branch records may be sealed even if the records are not necessary to the performance of a unique judicial function.

Because there was no admission or finding of guilt in the cases that were dismissed, appellant is presumptively entitled to expungement under Minn. Stat. § 609A.03, subd. 5(b), and the district court should have determined whether respondents met their burden of establishing by clear and convincing evidence that the interests of the public and public safety in sealing the records outweigh the disadvantages to appellant of not sealing

the records. We, therefore, reverse the denial of appellant's petition with respect to the four cases that were dismissed and remand to permit the district court to apply to those cases the requirements for statutory expungement under Minn. Stat. § 609A.03, subd. 5(b).

Based on its conclusion that appellant was not entitled to statutory expungement of records held in the executive branch, the district court further concluded that, because records of appellant's offenses will remain available in the executive branch, there was not "clear and convincing evidence that [appellant] will gain a benefit from only a partial expungement of judicial records (via the court's inherent authority) commensurate with the burden on the court in issuing and enforcing an expungement order." This conclusion with respect to expungement under the court's inherent authority is based, in part, on the district court's decision regarding statutory expungement. Therefore, because we have reversed the district court's statutory-expungement decision, the district court must reconsider whether appellant is entitled to expungement under the court's inherent authority after it has applied the requirements for statutory expungement.

Fleeing-a-peace-officer case

Unlike the four cases that were dismissed, in the fleeing-a-peace-officer case, appellant was found not guilty by reason of mental illness; the case was not dismissed. In the district court, appellant recognized that because Minn. Stat. § 609A.02, subd. 3(a)(1), specifically provides that "a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner," his petition did not meet the requirement that "all pending actions or proceedings were resolved in favor of the petitioner." Minn. Stat. § 609A.02, subd. 3(a)(1).

Nevertheless, in an attempt to file his petition to expunge the records in the fleeing-a-peace-officer case under Minn. Stat. § 609A.02, subd. 3(a)(1), appellant filed a motion in the district court asking the court to find that Minn. Stat. § 609A.02, subd. 3(a)(1), is unconstitutional as applied to him because it violates his rights to due process and to equal protection of the law. Appellant did not file a memorandum of law supporting his motion, and during the hearing on his petition, he argued only that the statute violated his right to equal protection. On appeal, appellant argues that the district court erred by denying his motion to find the statute unconstitutional and again argues only that the statute violates his right to equal protection.

In its order denying appellant's petition, the district court did not address appellant's equal-protection claim. But during the hearing in the district court, appellant's counsel did not cite any authority that supported the claim. Counsel argued only that, if the district court did not grant an expungement of executive-branch records, appellant "would be treated differently than other people with acquittals that would get their executive branch records expunged, and that is a constitutional infringement." When the district court asked counsel whether he had any authority that supported his argument, counsel responded, "I do not, Your Honor. I looked. I told my client when we got here today that I think we're probably on uncharted territory. I don't know that anybody has raised this issue in this context before."

The district court's failure to address an issue raised in only a conclusory fashion and without supporting affidavits, or testimony, or argument is not error. *Cf. Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987) (noting argument is waived if not briefed). We

will not address an issue not properly raised before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating appellate courts generally address only issues presented to and considered by the district court).

We, therefore, conclude that, because the fleeing-a-peace-officer case was not resolved in appellant's favor, appellant's petition did not meet the requirements for filing under Minn. Stat. § 609A.02, subd. 3(a)(1), and the district court did not abuse its discretion when it denied appellant's petition for statutory expungement of records in that case. We also note, however, that, because the district court's decision with respect to expungement under the court's inherent authority was based, in part, on its decision with respect to statutory expungement in the four dismissed cases, the district court must reconsider whether appellant is entitled to expungement under the court's inherent authority in the fleeing case after it has applied the requirements for statutory expungement in the four dismissed cases.

Because the district court must reconsider whether appellant is entitled to expungement, we do not consider appellant's argument that the district court abused its discretion in applying the applicable statutory factors when it considered his petitions.

Affirmed in part, reversed in part, and remanded.