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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1653**

State of Minnesota,
Appellant,

vs.

T. J.,
Respondent.

**Filed June 25, 2018
Reversed
Ross, Judge**

St. Louis County District Court
File No. 69HI-CR-05-482

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

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney,
Duluth, Minnesota (for appellant)

James Perunovich, Law Offices of James Perunovich, Hibbing, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Twelve years after T.J. pleaded guilty to possession of pornography involving a
minor, the district court granted his petition to expunge his felony conviction from records
kept by the judicial and executive branches. The state challenges the district court's

expungement of the executive branch's records. Because Minnesota Statutes, section 609A.02 (2016), does not authorize the district court to require the executive branch to expunge its records of a child-pornography-possession conviction, we reverse.

FACTS

T.J. used his work computer at Fairview Health Systems in 2005 to visit chat rooms where people posted links to pictures of nude girls posing sexually or engaging in sex acts. The Hibbing Police Department learned from the St. Paul Police Department's crimes-against-children task force that a cyber tip traced child pornography to Fairview Health Systems and later to T.J.'s home computer. The Hibbing Police Department investigated and found numerous photographs constituting child pornography on T.J.'s home computer. The St. Louis County Attorney charged T.J. with possessing pornographic material depicting minors.

T.J. pleaded guilty, resulting in a conviction that required him to register as a predatory sex offender. The district court granted a stay of imposition and ordered T.J. to complete three years of supervised probation. T.J. met all the requirements of the Hibbing Men's Sex Offender Group Program, and the program's psychologist described T.J. as hard-working, sincere, reliable, and motivated. The district court discharged T.J. from probation in 2008 and downgraded his offense from a felony to a misdemeanor under Minnesota Statutes, section 609.13 (2016).

T.J. petitioned the district court to expunge both the judicial-branch and executive-branch records of his offense. The Minnesota Bureau of Criminal Apprehension objected, arguing that T.J.'s offense required him to register as a sexual predator and that Minnesota

Statutes, section 609A.02, subdivision 4 (2016), prohibited expungement. St. Louis County also objected.

The district court found that the statute's language is ambiguous as to whether it prohibits expungement of an offense for which a sexual predator is no longer required to register. The district court reasoned that, because ten years had passed and T.J. was no longer required to register, the statute allowed it to order the sealing of both judicial- and executive-branch records, which it did, and it immunized T.J. from perjury for any future failure to acknowledge that he was arrested for the offense.

The state appeals.

D E C I S I O N

The state argues that the district court exceeded its authority by expunging the executive branch's record of T.J.'s felony child-pornography conviction. Whether a district court exceeded its authority to expunge criminal records is a question of law requiring our de novo review. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013).

The district court derives its authority to expunge criminal records from two sources. One source is the judicial branch's inherent power to expunge its own records. *Id.* The state does not challenge the district court's expungement order as it regards judicial-branch records. The other source is Chapter 609A of the Minnesota Statutes, which authorizes the district court to expunge executive-branch records in specific circumstances. *Id.* This appeal concerns only the interpretation and application of the statute authorizing the expungement of executive-branch records.

The state argues that the district court exceeded its statutory authority when it ordered the expungement of the executive branch’s records of T.J.’s conviction. The state’s argument requires us to interpret the statute, a task we perform de novo. *State v. R.H.B.*, 821 N.W.2d 817, 820 (Minn. 2012). When a statute is unambiguous, we will adhere to the unambiguous interpretation. *Id.* The expungement statute treats misdemeanors and felonies differently. If certain conditions are met, the expungement statute broadly authorizes the district court to order the expungement of “all records relating to an arrest, indictment or information, trial, or verdict” related to convictions or stayed sentences for offenses ranging from petty misdemeanors to gross misdemeanors. Minn. Stat. § 609A.02, subd. 3(a) and 3(b)(3)–(4) (2016). By contrast, the statute selectively includes a lengthy but finite list of felonies that qualify for expungement. *Id.*, subd. 3(a) and 3(b)(1)–(50). As the state points out, possessing child pornography is a felony that is not included on the list. And although the district court eventually deemed T.J.’s conviction a misdemeanor, the supreme court has held that downgraded felony convictions do not qualify for expungement under the misdemeanor provisions of the expungement statute. *State v. S.A.M.*, 891 N.W.2d 602, 608 (Minn. 2017). Because the statute does not authorize the district court to order the expungement of records of T.J.’s child-pornography conviction, the district court erred by ordering the executive branch to expunge those records.

The state also argues that the district court erred when it ordered that T.J. could not be guilty of perjury if he should ever fail to acknowledge his arrest for possessing pornography involving a minor. The argument is convincing. The district court cited no source authorizing it to immunize a convicted defendant from prosecution for perjury, and

T.J. submitted no brief defending or explaining the district court's decision. The expungement statute provides that a person shall not be held guilty of perjury for failing to acknowledge an arrest contained in an expunged record "[i]f the court orders the sealing of the record of proceedings under section 152.18" or if the person's crime shared a nexus with the person's status as a crime victim. Minn. Stat. § 609A.03, subds. 6, 6a (2016). These immunity provisions do not apply here. Section 152.18 refers only to expungement for certain first-time drug offenders, unlike T.J., and T.J. is not a crime victim. Because the district court did not identify the basis for its immunity decision and we are aware of none, we also reverse the portion of the district court's order immunizing T.J. from a perjury conviction should he fail to acknowledge his arrest for possessing child pornography.

Reversed.