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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1697**

State of Minnesota,
Respondent,

vs.

A. P. L.,
Appellant.

**Filed May 6, 2019
Reversed and remanded
Worke, Judge**

Dakota County District Court
File No. 19HA-CR-11-243

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Robert J. Jarrett (certified student attorney), Hastings, Minnesota (for respondent)

Robert H. Ambrose, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Slieter, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WORKE, Judge

Appellant appeals the district court's denial of his petition for expungement. Because the district court failed to make the findings of fact required by Minn. Stat. § 609A.03, subd. 5(c) (2018), we reverse and remand to the district court.

FACTS

In October 2010, appellant A.P.L. was arrested and charged with fleeing a peace officer in violation of Minn. Stat. § 609.487, subd. 3 (2010), and fourth-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1(5) (2010). He pleaded guilty to these charges on October 26, 2011. A.P.L. was discharged from probation on July 19, 2013. He has not been convicted of a crime since he was discharged from probation.

On April 19, 2018, A.P.L. served and filed his petition for expungement of both convictions. He sought expungement after being denied a housing opportunity, and because he wanted to improve his chances for career advancement. On June 14, 2018, respondent State of Minnesota objected to A.P.L.'s petition on the basis of the 12-factor analysis in Minn. Stat. § 609A.03, subd. 5(c).

At a June 2018 hearing on A.P.L.'s petition, the state conceded that A.P.L. was eligible to petition for statutory expungement. Both sides presented arguments based on the 12-factor analysis in the statute.

In September 2018, the district court denied A.P.L.'s petition, concluding that A.P.L. had not met his burden to prove with clear and convincing evidence that expungement would yield a benefit commensurate with the disadvantages to the public and

public safety. The district court made no mention of the 12-factor analysis in its order and did not address many of the factors. This appeal followed.

D E C I S I O N

We review the district court’s denial of an expungement petition for abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). Under this standard, we will not overturn the district court’s decision unless it was arbitrary or capricious, or based 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). We review legal conclusions de novo. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013).

Under Minnesota law, a district court may grant an expungement petition “only upon clear and convincing evidence that it would yield a benefit to the petitioner 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 order.” Minn. Stat. § 609A.03, subd. 5(a) (2018). In making this determination, the district court must consider 12 factors:

- (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.

Id. at subd. 5(c).

Consideration of each factor is mandatory. *Id.* (“the court shall consider” factors (1)-(12)); *see* Minn. Stat. § 645.44, subd. 16 (2018) (defining “shall” as “mandatory”). The district court must make sufficient factual findings in regard to these factors to facilitate meaningful appellate review. *See State v. H.A.*, 716 N.W.2d 360, 364 (Minn. App. 2006) (“[W]e 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 these factors.”). Remand is appropriate when the district court fails to address the 12 factors in applying the statutory balancing test. *See State v. K.M.M.*, 721 N.W.2d 330, 334-35 (Minn. App. 2006) (reversing and remanding to the district court because it failed to apply the balancing-of-interests test or make appropriate findings); *see also In re Welfare of J.T.L.*, 875 N.W.2d 334, 338 (Minn. App. 2015).

Here, the district court failed to make detailed findings as to the following factors:
(2) the risk, if any, A.P.L. poses to individuals or society; (4) the steps taken by A.P.L.

toward rehabilitation; (5) aggravating or mitigating factors relating to the underlying crime; (6) A.P.L.'s reasons for expungement; (7) A.P.L.'s criminal record; (8) A.P.L.'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; or (11) the amount, if any, of restitution outstanding.

Absent these findings, we are unable to determine whether the district court acted within its discretion, and therefore remand this matter to the district court to make the required findings.¹

Reversed and remanded.

¹ A.P.L. makes several other assignments of error that we do not reach in our decision. However, to the extent the district court relied on the enhanceable nature of A.P.L.'s DWI offense to conclude that expungement of that offense would thwart a legislative purpose, we note that enhanceability is not a listed factor under Minn. Stat. § 609A.03, subd. 5(c), and therefore cannot be the sole criteria for denying an expungement petition.