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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1221
A19-1223**

State of Minnesota,
Respondent,

vs.

P. L. C.,
Appellant (A19-1221)

V. M. C.,
Appellant (A19-1223).

**Filed April 13, 2020
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-14-22054

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

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Philip Carlson, Wayzata, Minnesota (pro se appellant, P.L.C.)

Virginia Carlson, Wayzata, Minnesota (pro se appellant, V.M.C.)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellants challenge the district court's denial of their expungement petitions. We affirm.

FACTS

In 2015, appellants P.L.C. and V.M.C. pleaded guilty to felony theft by swindle of an amount in excess of \$5,000. The district court stayed imposition of sentence and placed appellants on probation. Appellants appealed the convictions. We affirmed the convictions on appeal, and the Minnesota Supreme Court denied further review. *See State v. Carlson*, No. A15-1219, 2016 WL 3961792, at *1 (Minn. App. July 25, 2016), *review denied* (Minn. Oct. 26, 2016); *State v. Carlson*, No. A15-1210, 2016 WL 3961771, at *1 (Minn. App. July 25, 2016), *review denied* (Minn. Oct. 26, 2016). Appellants have since filed numerous petitions for postconviction relief, all of which were denied. Appellants were discharged from probation in May 2018. In November 2018, appellants filed expungement petitions. The district court denied the petitions, determining that appellants were not entitled to expungement on statutory grounds or under the inherent authority of the court. Appellants moved for reconsideration of the expungement orders, which the district court denied. They separately appealed orders denying expungement and the appeals were consolidated in the order questioning jurisdiction on August 8, 2019.

D E C I S I O N

I. The Appeal Is Timely.

The state challenges the timeliness of the appeal. Unless a different time is provided by statute, an appeal may be taken from an appealable order within 60 days after service by any party of written notice of its filing. Minn. R. Civ. App. P. 104.01, subd. 1. “An expungement order shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period.” Minn. Stat. § 609A.03, subd. 9 (2018). “This court lacks jurisdiction to consider an appeal which is not timely served and filed.” *State by Humphrey v. Certified Servs., Inc.*, 432 N.W.2d 494, 495 (Minn. App. 1988).

The district court denied the expungement petitions on February 5, 2019. Appellants filed an appeal from this order in August 2019. The state contends that the appeal is time-barred under Minn. Stat. § 609A.03, subd. 9. However, in a special-term order, this court accepted jurisdiction over the appeal. The special-term order concluded that there was no indication that notices of filing of the February 5, 2019, orders were served to commence the 60-day appeal period under Minn. Stat. § 609A.03, subd. 9. Because the time to appeal the February 5, 2019, orders had not expired when appellants filed this appeal, we accepted jurisdiction. Consequently, the appeal is timely.

II. The District Court Did Not Abuse its Discretion in Denying the Petitions.

A. Standard of Review

Expungement of a criminal record may be ordered pursuant to statute or under a district court’s inherent authority. See Minn. Stat. §§ 609A.01-.04 (2018); *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). We review a district court’s denial of an expungement

petition for an abuse of discretion. *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). We will only reverse the district court’s decision if it is based on an erroneous interpretation of the law, is arbitrary or capricious, or is against the facts in the record. *Id.* A district court’s factual findings will not be set aside unless clearly erroneous. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). A factual finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not supported by the evidence as a whole.” *Id.* (quotation omitted).

B. Statutory Authority

The district court determined that appellants did not qualify for statutory expungement. Statutory expungement is available in limited circumstances. *See* Minn. Stat. § 609A.02 (2018) (limiting statutory expungement to certain controlled-substance offenses, to crimes committed by juveniles prosecuted as adults, and to certain enumerated criminal proceedings). A petitioner may seek expungement if the petitioner “was convicted of or received a stayed sentence for a felony violation of an offense listed in paragraph (b), and has not been convicted of a new crime for at least five years since discharge of the sentence for the crime.” *Id.*, subd. 3(a)(5). Paragraph (b) lists 50 felony offenses to which subdivision 3(a)(5) applies. *Id.*, subd. 3(b). Here, appellants pleaded guilty to theft by swindle in excess of \$5,000, under Minn. Stat. § 609.52, subd. 3(2) (2015). This offense is not one of the 50 felony offenses enumerated in section 609A.02, subd. 3(b).¹ Therefore, appellants are not eligible for statutory expungement.

¹ The list includes convictions arising under Minn. Stat. § 609.52, subd. 3(3)(a) (2018) (theft of \$5,000 or less), or Minn. Stat. § 609.52, subd. 3a(1) (2018) (theft of \$1,000 or less

C. Inherent Authority

The district court also declined to expunge appellants' records under the court's inherent authority. A district court may exercise its inherent authority to expunge criminal records in two situations: when the petitioner's constitutional rights are infringed by retention of the record, or when the district court decides 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." *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000) (quotation omitted).

First, the district court determined that retention of the records did not infringe upon appellants' constitutional rights. On appeal, appellants contend that their constitutional rights were violated because their guilty pleas were "fabricated" and "bogus," the district court lacked jurisdiction, and the criminal charges violated double jeopardy.² Appellants failed to provide sufficient factual or legal support for these arguments. Appellants were convicted of theft by swindle and those convictions have been affirmed on direct appeal. Appellants filed numerous postconviction petitions alleging violations of their constitutional rights. The district court dismissed each of these petitions. The district court

with risk of bodily harm). Minn. Stat. § 609A.02, subd. 3(b)(20). Appellants were not sentenced under either of these subdivisions.

² Appellants each have two convictions on their records, one for each offense against different victims. The district court previously rejected appellants' double-jeopardy argument, noting that appellants were not being criminally prosecuted for the same offense.

did not abuse its discretion by determining that appellants were not entitled to expungement under the inherent authority of the court based on the infringement of a constitutional right.

The district court also weighed the benefits to appellants if the expungements were granted against the disadvantages to the public from eliminating the criminal records, and the burden on the court in enforcing the orders. *See Ambaye*, 616 N.W.2d at 258 (noting alternative basis to grant expungement under inherent authority when constitutional rights are not involved). The district court considered 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.

H.A., 716 N.W.2d at 364.

The district court found that appellants live together in a rented apartment. P.L.C. works as a home handyman and has had difficulty finding other employment due to his criminal convictions. And while V.M.C. receives social security retirement benefits because of her age, she “spent little time . . . discussing any potential employment issues.” Overall, the district court found that while their criminal records have “caused some hardship,” appellants “are stable and do have housing.” The district court also found that the offense was serious in nature, and noted that one of the victims testified at the hearing and gave a “sincere and wrenching description of the effects of this case upon himself and his family.” The district court found that appellants “refuse[d] to accept responsibility” for

their actions, and have not demonstrated rehabilitative efforts since the offense. Lastly, the district court noted that “[o]bjective evidence of hardship was not provided.”

The district court’s factual findings are not clearly erroneous, and those findings are supported by the record. Based on its review of the relevant factors, the district court determined that the benefit of expungement to appellants did not outweigh the public’s interest in retaining the records and the burden to the court. Because we discern no abuse of discretion in the district court’s denial of the expungement petitions, we affirm.³

Affirmed.

³ Appellants raise a number of additional arguments in their briefs. Appellants fail to support their arguments with relevant legal authority or citations to the record. Generally, a party who submits a brief without relevant legal authority or legal argument forfeits those claims. See *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (refusing to consider arguments raised in pro se brief because it contained “no argument or citation to legal authority”). We deem appellants’ arguments forfeited.