

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1280**

State of Minnesota,
Respondent,

vs.

D. E. L.,
Appellant.

**Filed April 26, 2021
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge**

Morrison County District Court
File No. 49-CR-13-511

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

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Jessica Mikkelsen, Central Minnesota Legal Services, St. Cloud, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Segal, Chief Judge; and
Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges an order denying her petition for expungement, arguing that the district court erred in determining that her offense was not eligible for expungement under Minn. Stat. § 609A.02, subd. 3(b)(20) (2018), and by failing to consider her request

for expungement under the court’s inherent authority. We affirm in part, reverse in part, and remand.

FACTS

In April 2013, respondent State of Minnesota charged appellant D.E.L. with felony theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(a)(1) (2012), with reference to Minn. Stat. § 609.52, subd. 3(3)(d)(v) (2012).¹ The complaint alleged that D.E.L. stole a vehicle that another individual was storing on D.E.L.’s property and sold it to a salvage business without the individual’s permission. In May 2014, D.E.L. pleaded guilty to the charged offense. The district court stayed imposition of sentence, placed D.E.L. on probation, and ordered her to pay \$467 in restitution. On November 10, 2015, the district court discharged D.E.L. from probation and deemed her conviction to be a misdemeanor pursuant to Minn. Stat. § 609.13 (2014).

On May 22, 2020, D.E.L. petitioned the district court to expunge the criminal records related to her conviction. She argued that her conviction qualified for statutory expungement and alternatively requested that the district court consider her petition under the court’s inherent authority to expunge judicial-branch records. She explained that she was seeking expungement because she was concerned that her conviction would limit her

¹ Minn. Stat. § 609.52, subd. 2(a)(1), sets out the following elements for the crime of theft—“intentionally and without claim of right takes . . . movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of the property.” Minn. Stat. § 609.52, subd. 3(3)(d)(v), sets the sentence at up to five years when the theft was of a motor vehicle valued at \$1,000 or less.

housing and employment options, and that she had been turned down for employment by 30 employers.

D.E.L. further explained that she suffered a traumatic brain injury in 2002, and that injury allowed others to take advantage of her and influenced her past criminal behavior. She noted that since her conviction she had been receiving treatment for her mental health and brain injury, surrounded herself with people who supported her, and asserted that she had changed and was not the same person that she was at the time of the offense. D.E.L. also submitted letters from medical professionals to verify that she had suffered a brain injury and that it made her susceptible to being taken advantage of, and letters from friends to support her assertion that she had changed.

The Minnesota Bureau of Criminal Apprehension (the BCA) filed a letter objecting to the petition for expungement. The BCA argued that D.E.L. was not entitled to have her records expunged because her offense was not included in the list of offenses eligible for expungement under Minn. Stat. § 609A.02, subd. 3(b) (2018). The BCA further objected on the grounds that the statutory waiting period of five years after being discharged from a sentence had not yet elapsed. Minn. Stat. § 609A.02, subd. 3(a)(5) (2018). Following a hearing, the district court denied the petition, stating as the reason for the denial that D.E.L. was “not eligible [for expungement] as offense not included in eligible list.” Counsel for D.E.L. submitted a letter to the court seeking clarification of whether the court intended by its order to also deny D.E.L.’s request for expungement under the court’s inherent authority. The district court then reissued its denial order, adding a reference to Minn. Stat.

§ 609A.03, subd. 5(a) (2018),² in the heading of the order, but no other changes. D.E.L. now appeals.

DECISION

I. The district court did not err by determining that D.E.L.’s conviction is not eligible for statutory expungement.

We review a district court’s decision on whether to expunge criminal records for an abuse of discretion. *State v. C.W.N.*, 906 N.W.2d 549, 551-52 (Minn. App. 2018). But “[w]e review the district court’s interpretation of the expungement statute de novo as a question of law.” *Id.* at 552.

D.E.L.’s argument on this appeal presents a question of statutory interpretation—whether her conviction is for an offense that is eligible for expungement under Minn. Stat. § 609A.02 (2018). The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2020). “When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect.” *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). Words and phrases are construed according to their plain and ordinary meaning. *Am. Tower, L.P. v. City of*

² Minn. Stat. § 609A.03, subd. 5(a), of the expungement statute provides, in relevant part, as follows:

[E]xpungement of a criminal record is an extraordinary remedy to be granted 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.

Grant, 636 N.W.2d 309, 312 (Minn. 2001). If a statute is susceptible to more than one reasonable meaning, the court applies canons of construction to discern the intention of the legislature. *Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010).

Minnesota Statutes chapter 609A sets out the grounds and procedures for expungement of a criminal record. Minn. Stat. § 609A.01 (2018). The eligible offenses and other grounds required for expungement are provided in Minn. Stat. § 609A.02. Clauses (1) through (4) of section 609A.02, subdivision 3(a), allow expungement of proceedings “resolved in favor” of the petitioner, and of proceedings where the petitioner has successfully completed a diversion program or was convicted of a misdemeanor or gross misdemeanor and has not been convicted of any new crime for a set number of years since discharge of the sentence for the offense. Minn. Stat. § 609A.02, subd. 3(a)(1)-(4). Clause (5) of that subdivision applies to felony offenses. Minn. Stat. § 609A.02, subd. 3(a)(5). The statute contains a list of 50 felony offenses that are eligible for expungement under chapter 609A. *Id.*, subd. 3(b). An individual may petition for expungement of one of the enumerated felony offenses provided that the petitioner “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).

Here, the district court denied D.E.L.’s petition for expungement on the basis that she was convicted of an offense that is not one of the 50 offenses on the list of offenses eligible for expungement under the statute. D.E.L. challenges that determination. She argues that her conviction is eligible because, while it is not a listed offense, she was sentenced as if she had committed an eligible offense. D.E.L.’s conviction in this case was

for theft of an automobile valued at not more than \$1,000 under Minn. Stat. § 609.52, subd. 3(3)(d)(v). She acknowledges that this offense is not among the listed offenses set out in Minn. Stat. § 609A.02, subd. 3(b).

D.E.L. points, however, to Minn. Stat. § 609A.02, subd. 3(b)(20), which identifies the following as offenses eligible for expungement: convictions under “section 609.52, subdivision 3, clause (3)(a) (theft of \$5,000 or less), or other theft offense that is sentenced under this provision.”³ D.E.L. argues that, under the plain meaning of subdivision 3(b)(20), her conviction constitutes an “other theft offense that is sentenced under this provision,” and is thereby eligible for expungement.

She reasons that, because theft of property worth more than \$1,000 but less than \$5,000 set out in Minn. Stat. § 609.52, subd. 3(3)(a), is explicitly expungable, the phrase “other theft offense that is sentenced under this provision,” Minn. Stat. § 609A.02, subd. 3(b)(20), must refer to the other types of theft, namely the offenses set out in Minn. Stat. § 609.52, subd. 3(3)(b)-(d) (2012).⁴ To conclude otherwise, she argues, would “effectively read the phrase ‘or other theft offense that is sentenced under this provision’ completely out of the statute.” We do not agree.

³ Minn. Stat. § 609.52, subd. 3(3)(a) (2012), provides for a sentence of not more than five years for the crime of theft where the value of the property or services stolen is more than \$1,000 but less than \$5,000.

⁴ Minn. Stat. § 609.52, subd. 3(3)(b)-(d), covers the theft of property of a lesser value, but where, for example, the theft is of a controlled substance, the defendant has certain prior convictions, or the theft involves property from a person or a corpse, involves a court record or public funds, or as here the theft is of a motor vehicle.

We conclude that the plain language of the phrase “other theft offense that is sentenced under this provision” contained in Minn. Stat. § 609A.02, subd. 3(b)(20), refers to theft offenses sentenced under the identified section of the theft statute—Minn. Stat. § 609.52, subd. 3(3)(a). The applicable sections of Minn. Stat. § 609.52, subd. 3(3), provide as follows:

Subd. 3. Sentence. Whoever commits theft may be sentenced as follows:

....

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if any of the following circumstances exist:

(a) the value of the property or services stolen is more than \$1,000 but not more than \$5,000; or

....

(d) the value of the property or services stolen is not more than \$1,000, and any of the following circumstances exist:

....

(v) the property stolen is a motor vehicle[.]

If the legislature had intended to include *any* felony-level theft offense that carried the same sentence, the legislature could have just referenced subdivision 3(3) of Minn. Stat. § 609.52. Instead, subdivision 3(b)(20) of the applicable section of the expungement statute makes a specific reference to “section 609.52, subdivision 3, clause (3)(a)” —and only to clause (3)(a)—and makes no reference to clauses (3)(b)-(d) even though they are all governed by the sentence length set out in subdivision 3(3) of the theft statute. Minn. Stat. § 609A.02, subd. 3(b)(20).

Given the specific reference to clause (3)(a) in section 609A.02, subdivision 3(b)(20) of the expungement statute, we cannot conclude that the phrase “other theft

offense” includes clause (3)(d)(v), the provision under which D.E.L. was sentenced for theft of a motor vehicle.

We also do not believe that this interpretation renders the phrase “other theft offense that is sentenced under this provision” meaningless. There are “other theft offenses” that provide for sentencing under Minn. Stat. § 609.52, subd. 3(3)(a). The crime of insurance fraud is one such example. The acts constituting insurance fraud fall under the more general category of theft, and pursuant to Minn. Stat. § 609.611, subd. 3 (2020), whoever commits insurance fraud is to be sentenced according to the monetary amount involved in the crime as provided in Minn. Stat. § 609.52, subd. 3. Thus, insurance fraud involving an amount that is more than \$1,000, but not more than \$5,000, would constitute an “other theft offense that is sentenced under [subdivision 3(3)(a) of Minn. Stat. § 609.52].” Minn. Stat. § 609A.02, subd. 3(b)(20).

We acknowledge that the outcome may seem arbitrary but, because of the reference to only clause (3)(a) in Minn. Stat. § 609A.02, subd. 3(b)(20), we are not free to interpret this provision as broadly as D.E.L. is seeking. It is the legislature’s prerogative that certain offenses be eligible for statutory expungement while others are not, and it is thereby beyond the authority of this court to alter. *State v. M.D.T.*, 831 N.W.2d 276, 282-83 (Minn. 2013); *see also* Minn. Stat. § 645.16 (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”).

We therefore affirm the district court’s denial of D.E.L.’s petition for statutory expungement.

II. The district court erred by not considering D.E.L.’s request for expungement based on the court’s inherent authority.

In addition to statutory expungement, Minnesota courts have inherent authority to expunge criminal records. *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000). This authority derives from the Minnesota Constitution. *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981). However, the relief available is more limited than that which is available based on statutory expungement, because “[t]he judiciary’s inherent authority only allows a court to seal those records kept by the judicial branch and does not extend to records held by executive-branch agencies.” *C.W.N.*, 906 N.W.2d at 552. Rather, courts have the authority to “control court records . . . in order to reduce or eliminate unfairness to individuals,” even if that unfairness does not rise to the level of a constitutional violation. *C.A.*, 304 N.W.2d at 358. Expungement based on inherent authority is permitted if it “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.” *Id.* We review the district court’s decision of whether to expunge criminal records for an abuse of discretion. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013).

D.E.L. argues that the district court erred by failing to consider her request to have her records expunged based on the court’s inherent authority. D.E.L.’s petition for expungement requests that the district court grant D.E.L.’s petition based on statutory authority, but also states: “In the alternative, if the court does not consider my request for a statutory expungement, I am requesting an expungement under the court’s inherent

authority.” At the hearing on the petition, D.E.L.’s counsel again requested that, if the court determined that statutory expungement was not available, the court then consider the petition for expungement based on its inherent authority. Counsel argued that the unfairness to D.E.L. outweighed the benefit to the public of having notice of the record, that D.E.L. had changed but was struggling to find employment and had been denied over 30 jobs based on the criminal record, and requested that the district court “change the record to reflect more of who she is today instead of who she was back then and the place that she was in then because she has changed.”

The district court order denying D.E.L.’s petition for expungement contains no reference to the request for expungement based on inherent authority. Rather, the order is a standardized form on which the district court checked the box that states: “Petitioner’s request for sealing/expunging of records is denied.” The district court judge then included the following statement in the order: “Petitioner not eligible as offense not included in eligible list.” After seeking a clarification of whether the district court’s denial included a ruling on her request for expungement under the inherent authority of the court, the district court reissued the same order, just adding a reference to Minn. Stat. § 609A.03, subd. 5(a), under the heading of the order with no other changes. This reference is, again, to the expungement statute and not to the court’s inherent authority.

In *State v. H.A.*, this court 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 these factors.” 716 N.W.2d 360, 364 (Minn. App.

2006); *see also* *A.S.E.*, 835 N.W.2d at 517 (reversing and remanding because the district court failed to make findings on inherent-authority expungement); *State v. K.M.M.*, 721 N.W.2d 330, 335 (Minn. App. 2006) (reversing and remanding where the district court denied a request for inherent-authority expungement but failed to make findings). Here, the district court did not make findings on D.E.L.’s request for expungement based on the court’s inherent authority, and we are therefore unable to review whether the district court abused its discretion by denying her petition for inherent-authority expungement. Accordingly, we reverse and remand to the district court to make findings on D.E.L.’s request for expungement based on the court’s inherent authority.

Affirmed in part, reversed in part, and remanded.