

*This opinion is nonprecedential except as provided by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
A21-0640**

State of Minnesota,
Respondent,

vs.

D. V. L.,
Appellant.

**Filed January 3, 2022
Reversed and remanded
Klaphake, Judge ***

Hennepin County District Court
File No. 27-CR-94-061744

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Andrew C. Wilson, Britta Ann Torkelson, Wilson Criminal Defense, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant D.V.L. argues the district court erred by denying his expungement petition on the basis that Minnesota's expungement statute prohibits inherent-authority expungement for people required to register as predatory offenders. Because the expungement statute does not limit expungement under the judiciary's inherent authority, we reverse and remand to the district court.

DECISION

The district court denied appellant's petition for an expungement under the court's inherent authority based on a statutory expungement prohibition in Minn. Stat. § 609A.02 (2020). We review a district court's denial of an expungement request for an abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). There are two bases for expungement of criminal records in Minnesota: statutory expungement under Minn. Stat. § 609A.01-04 (2020) (the expungement statute), and expungement under the judiciary's inherent authority. *M.D.T.*, 831 N.W.2d at 279.

Expungement under the judiciary's inherent authority is well-established and derives from the Minnesota Constitution. *State v. C. A.*, 304 N.W.2d 353, 358 (Minn. 1981); *see also M.D.T.*, 831 N.W.2d at 280 ("The origin of judicial power in Minnesota is our state constitution."). The Minnesota Constitution divides the powers of government into three distinct branches: legislative, executive, and judicial. Minn. Const. art. III, § 1. No branch may use powers properly belonging to another unless the constitution expressly provides for it. *Id.*; *accord In re Welfare of J.J.P.*, 831 N.W.2d 260, 268 (Minn. 2013)

(“[N]o branch of government may usurp or diminish the powers committed to another co-equal branch of government.”). The supreme court has therefore held that expungement based on the judiciary’s inherent authority “can be neither augmented nor diminished by legislative acts” because “inherent judicial authority is derived from ‘the constitutional doctrine of separation of powers’ and ‘is grounded in judicial self-preservation.’” *State v. S.L.H.*, 755 N.W.2d 271, 279 (Minn. 2008) (quoting *In re Clerk of Ct.’s Comp. for Lyon Cnty.*, 241 N.W.2d 781, 784 (Minn. 1976)). Due to the same separation-of-powers concerns, expungement by the judiciary’s inherent authority is limited only to expunging the records kept by the judicial branch and does not include records held by executive-branch agencies, “even when those records were created in the judiciary.” *M.D.T.*, 831 N.W.2d at 282.

Here, the district court denied appellant’s petition for expungement under the judiciary’s inherent authority based on section 609A.02, subdivision 4 of the expungement statute. Because the legislature cannot infringe upon the judiciary’s inherent authority granted by the constitution, the district court abused its discretion by concluding that the expungement statute prohibited inherent-authority expungements in addition to statutory expungements.

Even if the constitution did not prevent the legislature from infringing upon the judiciary’s inherent authority to grant expungements, there is no evidence that the legislature intended for the expungement statute to limit inherent-authority expungements. We review the district court’s interpretation of the expungement statute de novo as it is a question of law. *State v. C.W.N.*, 906 N.W.2d 549, 552 (Minn. App. 2018). Here, the

district court based its denial of appellant’s petition on section 609A.02, subdivision 4, titled “Expungement prohibited,” which states, “[r]ecords of a conviction of an offense for which registration [as a predatory offender] is required under section 243.166 may not be expunged.” Minn. Stat. § 609A.02, subd. 4. Throughout the chapter, the expungement statute refers to “expungement” without specifying statutory expungement or inherent-authority expungement. Appellant argues that the district court erred because the plain language of subdivision 4 indicates that the prohibition only applies to statutory expungement and does not prohibit the district court from granting him an expungement under its inherent authority.¹ We agree. When referring to “expungement” the statute does not specify statutory expungement, but reading the statute as a whole, “expungement” refers to the type of expungement that the statute establishes: statutory expungement. The statute does not address expungement under the judiciary’s inherent authority.

The supreme court has previously interpreted the expungement statute as referring only to statutory expungement. *See State v. Ambaye*, 616 N.W.2d 256, 257 (Minn. 2000) (“There are two legal bases that provide for the expungement of criminal records: Minn. Stat. ch. 609A (the expungement statute) and a court’s inherent expungement power.”); *M.D.T.*, 831 N.W.2d at 279 (same). Minnesota courts have regularly analyzed whether expungement was properly granted or denied under the judiciary’s inherent authority despite finding that the petitioner was ineligible for statutory expungement. *See Ambaye*,

¹ Appellant also argues that his conviction is not included in those prohibited by subdivision 4. Because we conclude that subdivision 4 does not restrict judicial-authority expungements—the only type of expungement appellant requested in his petition—we need not address whether his conviction would be prohibited from statutory expungement.

616 N.W.2d at 260-61 (after concluding that he was ineligible for a statutory expungement, the supreme court reviewed Ambaye's claim that his criminal record should have been expunged under the district court's inherent authority); *State v. H.A.*, 716 N.W.2d 360, 363 n.1 (Minn. App. 2006) (noting that the district court properly determined it lacked statutory authority for expungement before reviewing whether the district court properly granted expungement under its inherent authority). Because both the plain language and prior interpretations of the statute indicate that the expungement statute only refers to statutory expungement and not to inherent-authority expungement, we agree with appellant that the legislature did not intend to limit the judiciary's inherent authority in subdivision 4 of the expungement statute.

In sum, the judiciary's inherent authority to grant expungements cannot be infringed upon by the expungement statute, and section 609A.02, subdivision 4 was not intended to limit the judiciary's inherent authority. We remand to the district court to review D.V.L.'s petition for expungement under the court's inherent authority.

Reversed and remanded.