

*This opinion is nonprecedential except as provided by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
A22-0039**

State of Minnesota,
Respondent,

vs.

D. E. N.,
Appellant.

**Filed August 15, 2022
Reversed and remanded
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-19-19376

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

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

Corrine Heine, Minnetonka City Attorney, Anna Krause Crabb, Rolf A. Sponheim,
Assistant City Attorneys, Minnetonka, Minnesota (for respondent)

Kassius O. Benson, Fourth District Public Defender, Jill Barreto, Chelsea Knutson,
Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Gaïtas, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges a district court order denying his petition to expunge a criminal
record following acquittal, arguing that: (1) respondent-city failed to overcome the

presumption favoring expungement by clear and convincing evidence under Minn. Stat. § 609A.03, subd. 5(b) (2020); (2) the district court erred by misstating and misapplying the controlling expungement statute; and (3) the district court erred by relying on documents that are not evidence. We conclude that the district court abused its discretion by denying appellant's expungement petition because respondent failed to meet its clear-and-convincing burden of proof and we reverse and remand for the district court to enter an order of expungement.

FACTS

On August 10, 2019, respondent City of Minnetonka charged appellant with two counts of domestic assault and one count of disorderly conduct. Following a trial, a jury acquitted appellant of all three charges on January 15, 2020.

About eight months later, appellant sought expungement of the records relating to those jury-acquitted charges under Minn. Stat. § 609A.02, subd. 3(a)(1) (2020) (providing for expungement of records relating to criminal proceedings resolved in defendant's favor, including by acquittal). Only the city opposed the expungement, submitting three items to the district court: (1) its opposition letter; (2) a nonprecedential opinion of this court affirming appellant's 1998 conviction of first-degree burglary; the underlying crime pertaining to sexual assault against a former girlfriend; and (3) an opposition letter from the alleged victim of appellant's 2019 jury-acquitted charges. The city did not appear at the virtual expungement-petition hearing and submitted no other evidence. Appellant waived his appearance, but his counsel appeared at the hearing on his behalf.

Relying on Minn. Stat. § 609A.03, subd. 5(a) (2020), and stating that expungement “is an extraordinary remedy,” the district court denied appellant’s expungement petition. It determined that appellant failed to meet his burden to show by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to appellant of not sealing the record. Appellant filed a motion for reconsideration of the district court’s order, arguing that the district court incorrectly applied subdivision 5(a), which places the burden on the petitioner and notes that expungement is an extraordinary remedy, rather than applying subdivision 5(b), which states that “the court shall grant the petition to seal the record unless the agency . . . establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.” He also argued that the district court improperly relied on the city’s letter and the alleged victim’s letter because they are inadmissible hearsay evidence. The district court acknowledged its error of citing to the incorrect statute but again denied appellant’s expungement petition.¹ This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by denying his expungement petition because the city failed to establish by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to appellant of not sealing the record of his 2019 acquitted charges. We agree.

¹ While the district court admitted its error, it nevertheless again cited the wrong subdivision in its order affirming denial. The district court also stated that the charges were dismissed. The charges were not dismissed. A jury acquitted appellant of the charges.

Courts have both the statutory and inherent authority to grant expungement relief. *State v. C.W.N.*, 906 N.W.2d 549, 552 (Minn. App. 2018). Appellant’s petition for expungement relies on statutory grounds, which allows for the expungement of criminal records if all pending actions and proceedings were “resolved in favor of the petitioner.” Minn. Stat. § 609A.02, subd. 3(a)(1). Here, the parties agree that appellant’s acquittal after a jury trial is a favorable result under the statute. As a result, appellant is presumptively entitled to expungement of his criminal records related to the charges of which he was acquitted “unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.”² Minn. Stat. § 609A.03, subd. 5(b); *see State v. A.S.R.*, 906 N.W.2d 526, 531 (Minn. App. 2017) (stating that agency must present clear and convincing evidence to rebut presumption).

Clear and convincing evidence requires “more than a preponderance of the evidence but less than proof beyond a reasonable doubt” and is shown when “the truth of the facts asserted is highly probable.” *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978) (quotation omitted). We review the district court’s determination on whether a record-holding agency has met its burden for an abuse of discretion. *See State v. R.H.B.*, 821

² We note our concern that, while the city agrees that appellant’s charges were resolved in his favor and the controlling statute is Minn. Stat. § 609A.02, subd. 3, its formal brief with this court and oral arguments contain certain inferences which appear to place the burden of proof erroneously on appellant. In addition, the city’s letter to the district court, on which it relies, explicitly put the burden on appellant, as we discuss below.

N.W.2d 817, 822 (Minn. 2012). A district court abuses its discretion when its ruling is “against the facts in the record” or based on “an erroneous interpretation of the law.” *Id.*

The statute enumerates twelve factors for the district court to consider when determining whether the record-holding agency has met its burden of proving by clear and convincing evidence that the public’s interest in keeping the records available outweighs the disadvantages to the petitioner. The twelve factors are: (1) “the nature and severity of the underlying [crime],” (2) any risk 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” such as the petitioner’s participation, the context of the underlying crime, and the circumstances, (6) any “reasons for the expungement,” (7) “the petitioner’s criminal record,” (8) “the petitioner’s record of employment and community involvement,” (9) law enforcement, prosecutorial, and corrections recommendations, (10) the victim’s recommendations, (11) the petitioner’s efforts to pay, if any, restitution, and (12) “other factors deemed relevant by the court.” Minn. Stat. § 609A.03, subd. 5(c) (2020).

Appellant argues that most of the city’s evidence showed a *generalized* concern for the public’s interests and did not explain how the expungement of appellant’s acquitted charges presented a *particularized* harm. We agree.

In *R.H.B.*, the Minnesota Supreme Court concluded that “the State failed to establish by clear and convincing evidence” that the public’s interests outweighed the petitioner’s. 821 N.W.2d at 818-19. The supreme court noted that the state submitted only three affidavits from state officials which briefly explained how maintaining criminal records

can generally benefit their goals. *Id.* at 822. It characterized the state’s evidence as “little more than generalities,” stating that “[t]hese statements are unremarkable and generalized, and could be submitted in nearly every expungement case” given that “the State presented almost no evidence that sealing R.H.B.’s criminal record would present a unique or particularized harm to the public.” *Id.* at 822-23.

Here, to rebut the presumption, the city submitted only its letter brief objecting to expungement, a letter from the alleged victim, and this court’s opinion regarding appellant’s 1998 conviction. We consider each in turn.

First, the city submitted a two-page letter, arguing that: the records are relevant for *Spreigl*³ evidence, bail, charging, and sentencing determinations along with other assessments and permits; officers and the alleged victim should have access to the information in the event of future domestic concern; only a short time has passed since appellant’s acquittal; the alleged victim opposes expungement; and appellant failed to show “why expungement of this offense is necessary” or “that it is needed for housing or employment or other issues.” The city’s letter also raises concerns of appellant’s prior criminal history four times.

We can find only two arguments⁴ in the city’s letter that show a *particularized* harm consistent with the 12 statutory factors: the short length of time since the crime occurred and appellant’s prior criminal history. We first note that the city’s letter erroneously

³ *Spreigl* evidence is evidence of prior crimes or other bad acts. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

⁴ The city’s letter also notes generally that the alleged victim opposes the expungement request. This factor is addressed separately below.

focuses on the short time that has passed since appellant's acquittal, which is not the statutory standard. Rather, we must focus on "the length of time *since the crime occurred*." Minn. Stat. § 609A.03, subd. 5(c) (emphasis added). Nevertheless, appellant sought expungement just one year after the crime occurred, and such recency is one of the twelve factors courts consider. The city also relies heavily on appellant's criminal history, referencing it four times. But most of appellant's convictions occurred more than 16 years ago. The city has not shown how expungement of *these* acquitted charges would affect the public's interest as it relates to those prior convictions. Appellant's prior criminal history will still be available to officers, the victims of those past crimes, and the public should they need it.

The city's letter also contained several arguments that relate to the broader needs of the criminal justice system, the alleged victim needing access to the information, and the public's interest in "hav[ing] the full picture of [appellant]." These are only general, unparticularized harms alleged that "could be submitted in nearly every expungement case." *R.H.B.*, 821 N.W.2d at 822. Finally, and most troublesome, the city's letter incorrectly placed the burden of proof on appellant when it stated that appellant failed to show a particularized reason for expungement. As discussed above, the controlling statute presumes that the district court shall grant expungement, and it is the city, not appellant, that must make a particularized showing by clear and convincing evidence to rebut that presumption. *See* Minn. Stat. § 609A.03, subd. 5(b). The city failed to make that showing here.

We turn next to the alleged victim's letter, which states that

I am not in agreement with the expungement of the domestic assault case of [appellant] I was the victim of this assault, and feel it is important for the public to know of this offense. I was too afraid for my safety to testify at the trial. I still feel he could hurt me now. I want the record to stand as it is. [Appellant]'s history of domestic abuse should not be overlooked. I could have lost my life that day or anyone who may have tried to intervene could have been hurt, as well. The police report and statements of the officers that charged him with this crime should be available to the public. Expunging [appellant]'s record would send the wrong message that domestic violence is not a serious matter.

We first note that the victim here is an *alleged* victim. A jury acquitted appellant of the charges for the crimes in which the individual here alleges to be the victim. Furthermore, although the alleged victim states that they did not testify at appellant's trial for fear of safety, they do not explain why specifically they were or are afraid of appellant. Nor do they point to any unique or particular harm beyond the vague statements that they "still feel [appellant] could hurt me now" and "I could have lost my life that day." The alleged victim also states that "[appellant]'s history of domestic abuse should not be overlooked," but appellant's history, notwithstanding these jury-acquitted charges, will still be available.

The letter also references the seriousness of domestic violence as a general issue, stating that "[e]xpunging [appellant]'s record would send the wrong message that domestic violence is not a serious matter." Domestic violence is a serious matter, and a victim's recommendation regarding expungement should be carefully considered. However, the

allegations here were unproven⁵ and rejected by the jury. Further, the alleged victim's contention that expunging appellant's record would "send the wrong message" is the type of generalized statement that the supreme court has previously rejected. *See R.H.B.*, 821 N.W.2d at 822-24. As a result, after careful consideration, we conclude that this alleged victim's recommendation letter does not favor denying expungement.

Finally, the city submitted an opinion of this court affirming appellant's 1998 burglary conviction. However, that prior conviction predates the charges here by approximately 22 years. The city does not explain how that conviction presents a unique or particularized harm supporting denial of this expungement petition. Instead, the city argues only that it shows appellant's pattern of assaultive behavior toward women. But the city has already argued about appellant's prior criminal history, and this conviction is duplicative of that. Further, appellant's expungement request will not affect the availability of records relating to his 1998 conviction. This evidence therefore does not favor denying expungement.

After considering the state's limited written submissions in light of the 12 statutory factors, we conclude that the district court abused its discretion by denying appellant's expungement petition because the city failed to rebut the presumption in favor of expungement by clear and convincing evidence. We therefore reverse and remand for the

⁵ *See R.H.B.*, 821 N.W.2d at 824 (noting that there are "inherent disadvantages caused by unproven criminal accusations" including "personal and professional reputational damage").

district court to enter an order of expungement. Because our conclusion on this issue is dispositive, we need not address appellant's other arguments.

Reversed and remanded.