

*This opinion is nonprecedential except as provided by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**

A25-0012

A25-0013

A25-0014

A25-0015

State of Minnesota,
Respondent,

vs.

T. S. W.,
Appellant.

**Filed August 18, 2025
Reversed and remanded
Ede, Judge**

Hennepin County District Court
File No. 27-CR-14-32132

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Attorney's Office)

Erik Nilsson, Minnetonka City Attorney, Anna Krause Crabb, Assistant City Attorney, Minnetonka, Minnesota (for respondent City of Minnetonka)

Adrian S. LaFavor-Montez, Colich & Associates, Minneapolis, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Bond, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

EDE, Judge

These consolidated appeals arise from the district court's orders denying appellant's petitions to expunge criminal records relating to four convictions. Appellant argues that the district court incorrectly calculated the time required for him to be eligible for statutory expungement under Minnesota Statutes section 609A.02 (2024). Because the district court erred in its interpretation of section 609A.02, we reverse and remand.

FACTS

On June 6, 2024, appellant T.S.W. petitioned the district court to expunge eleven convictions from his criminal record. These consolidated appeals concern four of those convictions.

On October 20, 2014, appellant was convicted of gross-misdemeanor domestic assault, in violation of Minnesota Statutes section 609.2242, subdivision 2 (2012 & Supp. 2013), and received a stay of imposition.¹ After appellant was discharged from probation on October 20, 2016, this conviction was deemed a misdemeanor per Minnesota Statutes section 609.13, subdivision 2(2) (2016).

¹ The district court file number for this case is 27-CR-14-3622; the appellate case number is A25-0014.

On April 14, 2015, appellant was convicted of gross-misdemeanor driving while impaired, in violation of Minnesota Statutes section 169A.20, subdivision 1 (2014).² Appellant was discharged from probation for this conviction on April 14, 2018.

On May 26, 2015,³ appellant was convicted of felony fifth-degree drug possession, in violation of Minnesota Statutes section 152.025, subdivision 2 (2012), and received a stay of imposition.⁴ Appellant was discharged from probation on October 20, 2016, and this conviction was deemed a misdemeanor per Minnesota Statutes section 609.13, subdivision 1(2) (2016).

On January 19, 2017, appellant was convicted of felony fifth-degree drug possession, in violation of Minnesota Statutes section 152.025, subdivision 2 (2014), and received a stay of imposition.⁵ After appellant was discharged from probation for this conviction on April 25, 2019,⁶ this conviction was deemed a misdemeanor per Minnesota Statutes section 609.13, subdivision 1(2) (2018).

² The district court file number for this case is 27-CR-14-32132; the appellate case number is A25-0012.

³ Although the district court's order states that appellant was convicted of this offense on May 25, 2015, the record reflects that the conviction occurred on May 26, 2015.

⁴ The district court file number for this case is 27-CR-13-41200; the appellate case number is A25-0013.

⁵ The district court file number for this case is 27-CR-16-13471; the appellate case number is A25-0015.

⁶ The district court's order states that appellant was discharged from probation in this case on January 19, 2020, which was the date of discharge that was anticipated when appellant

On June 1, 2017, appellant was convicted of felony driving while impaired (the 2017 DWI).⁷ Appellant was discharged from probation for the 2017 DWI on July 13, 2022, and the conviction was deemed a misdemeanor per Minnesota Statutes section 609.13, subdivision 1 (2020).

The district court held a hearing on appellant's petitions for expungement in August 2024. In November 2024, the district court issued four similar orders denying appellant's petitions for expungement of the records related to the October 20, 2014, April 14, 2015, May 26, 2015, and January 19, 2017 convictions.

This appeal follows.

DECISION

Appellant argues that the district court incorrectly calculated the time required for him to be eligible for statutory expungement under Minnesota Statutes section 609A.02. He challenges the district court's interpretation of section 609A.02 and contends that he is eligible for statutory expungement as to each of the four convictions at issue in this appeal. In particular, appellant maintains that the district court erroneously interpreted the statute by using his most recent discharge from probation for the 2017 DWI rather than the specific probation discharge dates for the October 20, 2014, April 14, 2015, May 26, 2015, and

was originally convicted and sentenced. But the record reflects that appellant was discharged from probation for this offense on April 25, 2019.

⁷ Appellant did not petition to have the records related to this conviction expunged. As explained below, however, the date of appellant's discharge from probation for this conviction—July 13, 2022—is now at issue because the district court relied on it in rejecting appellant's petitions for expungement related to the four convictions discussed above.

January 19, 2017 convictions. Appellant also asserts that remand is necessary so that the district court can “apply proper statutory considerations to appellant’s petition.” We agree.

We review a district court’s decision on whether to expunge criminal records for an abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). But “[w]e review the district court’s interpretation of the expungement statute de novo as a question of law.” *State v. C.W.N.*, 906 N.W.2d 549, 551–52 (Minn. App. 2018).

Minnesota Statutes section 609A.02 provides:

Subd. 3. Certain criminal proceedings. (a) A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if:

....

(4) the petitioner was convicted of a gross misdemeanor or the sentence imposed was within the limits provided by law for a gross misdemeanor and the petitioner has not been convicted of a new crime for at least three years since discharge of the sentence for the crime;

(5) the petitioner was convicted of a gross misdemeanor that is deemed to be for a misdemeanor pursuant to section 609.13, subdivision 2, clause (2), and has not been convicted of a new crime for at least three years since discharge of the sentence for the crime;

(6) the petitioner was convicted of a felony violation of section 152.025 and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime; [or]

(7) the petitioner was convicted of a felony that is deemed to be for a gross misdemeanor or misdemeanor pursuant to section 609.13, subdivision 1, clause (2), and has not been convicted of a new crime for at least:

(i) four years since discharge of the sentence for the crime if the conviction was for an offense listed in paragraph (b)

Minn. Stat. § 609A.02, subd. 3(a)(4)–(7). Subdivision 3(b)(4) of section 609A.02 includes violations of Minnesota Statutes section “152.025 (controlled substance in the fifth degree).” *Id.*, subd. 3(b)(4).

We have held that the conviction-free period for a petty misdemeanor, misdemeanor, and gross-misdemeanor “must occur between the date of discharge of the sentence for the crime . . . and the date of filing an expungement petition.” *C.W.N.*, 906 N.W.2d at 553. And in *State v. S.A.M.*, the Minnesota Supreme Court explained that the expungement statute “clearly organizes crimes into clauses in order of severity, provides longer waiting periods for expungement of more serious crimes, and requires a person to petition for expungement under the clause that addresses the crime for which the person was convicted.” 891 N.W.2d 602, 607–08 (Minn. 2017).

Here, the district court determined that appellant was not eligible for statutory expungement because appellant petitioned less than five years after his discharge from probation for the 2017 DWI as to the May 25, 2015 and January 19, 2017 convictions, and less than three years from his probation discharge for the 2017 DWI as to the October 20, 2014 and April 14, 2015 convictions. Based on our decision in *C.W.N.* and the supreme court’s decision in *S.A.M.*, we conclude that the district court erred in its interpretation of section 609A.02.

Appellant’s May 25, 2015 and January 19, 2017 convictions were for violations of Minnesota Statutes section 152.025—fifth-degree drug possession—that were both deemed to be misdemeanors per Minnesota Statutes section 609.13, subdivision 1(2). Thus, under both section 609A.02, subdivision 3(a)(6) and 3(a)(7)(i), the requisite period for statutory expungement based on those convictions is at least “four years since discharge of the sentence for the crime.” Minn. Stat. § 609A.02, subd. 3(a)(6)–(7)(i); *see also id.*, subd. 3(b)(4). As to the May 25, 2015 conviction, appellant became eligible to petition for expungement on October 20, 2020. And as to the January 19, 2017 conviction, appellant became eligible to petition for expungement on April 25, 2023. Appellant petitioned for expungement on June 6, 2024, well after the four-year period from discharge had elapsed in each case.⁸ The same is true of appellant’s October 20, 2014 and April 14, 2015 convictions. As to the October 20, 2014 conviction, under subdivision 3(a)(5) of section 609A.02, because the requisite period for expungement is “at least three years since discharge of the sentence for the crime,” appellant became eligible to petition on October 20, 2019. And as to the April 14, 2015 conviction, under subdivision 3(a)(4) of section 609A.02, because the requisite period for statutory expungement is also “at least three years since discharge of the sentence for the crime,” appellant became eligible to petition on April 14, 2021. Thus, we conclude that appellant is eligible for statutory expungement in all four cases and that the district court erred in interpreting section 609A.02 by applying

⁸ Even if we were to use the January 19, 2020 probation-discharge date that the district court erroneously stated in its order as to the January 19, 2017 conviction, *see supra* note 6, appellant would still have become eligible to petition for expungement in that case on January 19, 2024.

an expungement period that is contrary to the plain language of the statute and our decision in *C.W.N.*

Reversal and remand is appropriate because the district court determined that appellant filed the petitions for expungement properly and that appellant had given proper notice to all parties and agencies, as required by Minnesota Statutes section 609A.03, subdivision 3 (2024). And subdivision 5(c) of section 609A.03 requires that the district court consider twelve factors when determining whether statutory expungement is warranted. Minn. Stat. § 609A.03, subd. 5(c) (2024) (providing that, “[i]n making a determination under this subdivision, the court shall consider” the twelve factors listed in subdivision 5(c)(1)–(12)); *see also* Minn. Stat. § 645.44, subd. 16 (2024) (“‘Shall’ is mandatory.”). Although the district court cited the five factors set forth in *State v. H.A.*, 716 N.W.2d 360, 364 (Minn. 2006), and stated that those “factors are largely similar to, and informed by, the twelve factors listed in Minn. Stat. § 609A.03, subd. 5(c),” the court did not expressly analyze the twelve statutory factors set forth in subdivision 5(c) of section 609A.03. Instead, the district court specifically prefaced its analysis by stating that it was considering appellant’s request “under the factors recited in *State v. H.A.*, and the burdens applicable to the exercise of the court’s inherent authority over judicial records.”⁹ And while the district court’s orders do include some discussion that could be considered relevant to the subdivision 5(c) factors, the court definitively concluded in each case that expungement was not appropriate because of the amount of time that had passed and the

⁹ The district court’s inherent authority to expunge criminal records is not at issue in these consolidated appeals.

nature of the crimes. Accordingly, the district court did not decide—and we cannot review—whether expungement was appropriate based on the subdivision 5(c) factors.

In *State v. K.M.M.*, we reversed and remanded in part because the district court had failed to apply the balancing-of-interests test set forth in subdivision 5(b) of section 609A.03, and we instructed that the court make “appropriate findings” on remand. 721 N.W.2d 330, 334–35 (Minn. App. 2006). In this case, we likewise conclude that the district court did not make appropriate findings under subdivision 5(c). Applying our holding in *C.W.N.* and consistent with our decision in *K.M.M.*, we conclude that the district court erred in its interpretation of section 609A.02, such that reversal and remand is appropriate. We express no opinion on how the district court should rule on the merits of appellant’s statutory expungement petitions on remand.

Reversed and remanded.