

STATE OF MINNESOTA
COUNTY OF HENNEPIN

11
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff/Respondent,

vs.

Defendant/Petitioner.

Date of Birth: 1/1/1986

DEPUTY
CLERK
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER GRANTING
EXPUNGEMENT

Case Number: 27-CR-07-125

The above-entitled matter came before the Honorable _____ on March 4, 2011, on a Petition for Expungement at the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487.

Ryan Garry, Esq. appeared on behalf of Petitioner, who also appeared.

The Minnesota Bureau of Criminal Apprehension and Minnesota Attorney General's Office were served but did not respond to the Notice of Hearing and Petition for Expungement related to this matter.

The Hennepin County Attorney's Office, the City of Edina and the Edina Police Department were served but did not respond to the Notice of Hearing and Petition for Expungement related to this matter.

There were no other appearances.

Based on the arguments of the parties and the entire file herein, this Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner was charged with gross misdemeanor theft by swindle; gross misdemeanor theft aggregation and misdemeanor theft on November 15, 2007.
2. Petitioner pled guilty to the charge of misdemeanor theft on December 26,

2007.

3. Petitioner was not convicted of an offense that requires registration under Minn. Stat. § 243.166.

4. A petition for expungement was properly filed, and Petitioner has given proper notice to all parties and agencies, including notice to any victims if required, as required in Minn. Stat. § 609A.03, subd. 3.

5. These cases were not resolved in Petitioner's favor; therefore, Petitioner is not entitled to expungement under Minnesota Statute Chapter 609A. The statute is not intended to protect people who plead guilty. *See, City of St. Paul v. Froyland*, 246 N.W.2d 435, 439 (Minn. 1976).

6. Minnesota courts have the inherent power to expunge criminal records in two situations. *See, State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981); *In re R.L.F.*, 256 N.W.2d 803, 807-08 (Minn. 1977). First, courts may use their inherent expungement power "where the Petitioner's constitutional rights may be seriously infringed by retention of his records." *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000), citing *R.L.F.*, 256 N.W.2d at 807-08. Second, when a Petitioner's constitutional rights are not involved, "the court must decide whether 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." *Ambaye*, 616 N.W.2d at 258, citing *C.A.*, 304 N.W.2d at 358.

7. There is not an infringement of Petitioner's constitutional rights.

8. The separation of powers among the branches of government is essential and the judicial branch is especially responsible for respecting it since the other branches cannot remedy the ultimate judicial decision in a case. *Id.*, citing, *Gollnick v. Mengel*, 128 N.W. 292 (Minn. 1910).

9. Criminal history data is public for 15 years following the discharge of the imposed sentence. Minn. Stat. Sec. 13.87, subd. 1(b). Probation was discharged less than 15 years ago in this case. To order the executive records sealed in this case "would effectively override the legislative determination that some of these records be kept open to the public." *Id.* at 279. While the importance of respecting the separation of powers has at times worked to prevent courts from ordering the executive branch to seal non-

judicial records, such concerns are not present in the current case. While the Minnesota Bureau of Criminal Apprehension and Minnesota Attorney General's Office were both served the Notice of Hearing and Petition for Expungement related to this matter, no objection to expungement relief was filed in this matter. Additionally, there was no objection to expungement relief filed by the investigating or charging agency in this case. Therefore, the separation of powers concerns often present in expungement related matters are not present in this case because the non-judicial agencies did not object.

10. The appellate courts have set a five-part test for deciding whether expungement should be granted under the court's inherent authority. The factors are listed in *State v. H.A.*, 716 N.W.2d 360 (Minn. 2006).

Thus, the factors to be considered by the district court are: (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 to 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.

Id., citing *Ambaye*, 616 N.W.2d at 261, and *Schultz* 676 N.W.2d at 341.

11. Petitioner seeks expungement relief to pursue a career as a probation officer. Petitioner recently completed an extensive internship with the Hennepin County Department of Corrections.

12. The conviction the Petitioner seeks to have expunged is relatively less serious than other offenses. Additionally, there have been no objections to expungement relief filed by the appropriate executive, law enforcement or prosecuting agencies.

13. The public has a legitimate interest in knowing about criminal convictions. Potential employers have a legitimate interest in knowing the criminal backgrounds of employment candidates.

14. Petitioner recently graduated from Concordia University.

15. In applying the balancing test, the Court finds that Petitioner did prove by clear and convincing evidence that the benefits she would receive are commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing and enforcing an expungement order.