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STATE OF MINNESOTA

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DISTRICT COURT

COUNTY OF HENNEPIN

HENNEPIN CO. DISTRICT COURT ADMINISTRATOR

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff/Respondent,

vs.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER GRANTING  
LIMITED RELIEF PER  
M. S. 609A**

D [REDACTED] R [REDACTED] N [REDACTED],

Defendant/Petitioner.

File: 27CR07-[REDACTED]

Petitioner's Date of Birth: [REDACTED]

The above-entitled matter came before R [REDACTED] A. T [REDACTED], District Court Referee, on Petitioner's Request for Expungement/Sealing of records relating to this file.

Petitioner is represented by Ryan Garry.

The County of Hennepin is represented by A [REDACTED] S [REDACTED].

Based on the petition, responses and the entire record herein, this Court makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Petitioner was charged with Felony Drug Possession in the Fifth Degree.
2. Petitioner pleaded guilty to the charge, received a stay of adjudication per Minn. Stat. §152.18, and was placed on probation. This charge was dismissed on June 23, 2011 after he completed that probation and was discharged.
3. Petitioner has paid all required fines, costs and surcharges.
4. Petitioner was not convicted of an offense requiring registration under Minn. Stat. Sec. 243.166.

5. Minnesota Statutes Chapter 609A.02, subd. 1, provides for the expungement/sealing of criminal records upon dismissal and discharge of proceedings under Minn. Stat. §152.18.

6. In cases under that statute, expungement may be granted “only upon clear and convincing evidence that it would yield a benefit to 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.” Minn. Stat. §609A.03, subd. 5(a).

7. In addition, in cases involving Minn. Stat. §152.18 dispositions, “the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information.” Minn. Stat. §609A.03, subd. 6.

8. Per affidavits of service in the petition, proper notice has been given in this case to law enforcement agencies and prosecuting authorities.

9. The Hennepin County Attorney objects to this order, citing to Minn. Stat. §152.01, subd. 16a which includes in its definition of a “subsequent controlled substance conviction” any case wherein the person received *inter alia* a Minn. Stat. §152.18 disposition, with a ten-year limit upon applicability. The existence of a qualifying conviction brings into play certain mandatory sentencing enhancement provisions as to that subsequent conviction. The County Attorney argues in sum that Petitioner here is subject to enhanced penalties should he reoffend within the ten year window, and so would receive an undue benefit should his petition be granted.

10. Petitioner is employed with [REDACTED] in its security department, and so must acquire security clearances to perform his job and to advance in his profession. The existence of this conviction would operate to deny him some, if not all, security approvals and thus would seriously inhibit his employment. This situation is found to be credible, and also of sufficient benefit to Petitioner that it does outweigh the disadvantages to the public of granting his petition.

11. It should also be noted that the provisions of Minn. Stat. §609A.03, subd. 6 go further than those cited above. The statute also states that “the person shall not be held guilty of perjury or otherwise of giving a false statement if the person fails to

acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose.”

12. In conjunction with the language previously quoted, this additional sentence reinforces, to this court, the clear intent of the Legislature to make a Minn. Stat. §152.18 disposition akin to as complete an exoneration of the person involved as may be accomplished. This provision seems to operate in stark contrast, and indeed direct opposition, to Minn. Stat. §152.01, subd. 16a. Two virtually opposite results seem to be mandated: one, that a record be kept in case a future charge occurs, and second, the directive to restore the person to his pre-arrest status by sealing that record.

13. The conundrum can be resolved by reference to another provision, see Minn. Stat. § 609A.03, subd. 7(b) which allows re-opening of the record (which is of course sealed, not physically destroyed) for investigation, prosecution, or sentencing. An order which provides the Petitioner relief from the public court file, yet preserves the ability of the State to know of and use this disposition when appropriate, charts a course that follows to a reasonable degree both diverging policies of these two statutes.

### ORDER

1. Petitioner’s request for sealing of records is **GRANTED** in part and **DENIED** in part.

2. The Hennepin County District Court Administrator shall seal all files and records relating to the offenses, and refrain from disclosing or revealing the contents thereof without a court order. References to Petitioner should be removed from all index books and computers open to public examination under the caption of these cases or as it relates to the cases.

3. The Minnesota Bureau of Criminal Apprehension Superintendent, Hennepin County Sheriff, Hennepin County Department of Community Corrections Director and Minneapolis Police Chief, shall seal Petitioner’s fingerprints, photographs and other identification data taken in connection with the offenses.

4. Other files, indices, reports and references to this case may be retained by said officials for a period of ten years ending on June 23, 2021.

5. The petition, with respect to the files, records of the Hennepin County Attorney is DENIED.

6. Any law enforcement, prosecution, probation or judicial authority may request an ex parte court order to reopen the judicial branch file for bona fide purposes of criminal investigation, prosecution or sentencing, as authorized by Minn. Stat. §609A.03, subd. 7(b)(1).

7. This Order is subject to the limitations set forth in Minn. Stat. §609A.03.

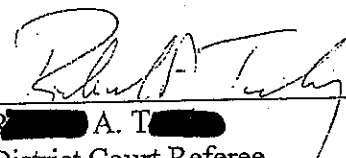
8. Petitioner may apply on or after June 23, 2021, for complete relief as authorized by M. S. Ch. 609A.

9. Petitioner shall not be held guilty of perjury or otherwise of giving a false statement if the he fails to acknowledge his arrest, prosecution or disposition in this case in response to any inquiry made for any purpose.

10. ~~The court administrator shall send a copy of this Order to each agency and jurisdiction whose records are affected.~~

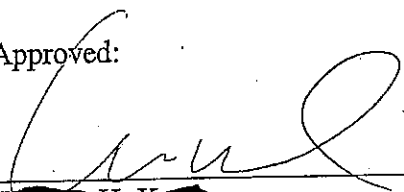
**NOTE: THIS ORDER IS STAYED FOR 60 DAYS FOLLOWING THE DATE OF FILING, AND DURING ANY APPEAL. RECORDS WILL NOT BE SEALED UNTIL AFTER THIS TIME.**

By the Court:

  
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R. A. T.  
District Court Referee

11/12/13  
\_\_\_\_\_  
Date

Approved:

  
\_\_\_\_\_  
W. H. K.  
District Court Judge

11-13-13  
\_\_\_\_\_  
Date

STATE OF MINNESOTA, COUNTY OF HENNEPIN  
Certified to be a true and correct copy of the  
original on file and of record in my office.  
M. S. T. Court Administrator