938 N.W.2d 248
Supreme Court of Minnesota.

James Salvatore BERGMAN, Respondent,

v.

Isanti County Sheriff Christopher CAULK, Appellant.

A18-1784
|
Filed: February 5, 2020

Synopsis

Background: County sheriff denied gun owner's application to renew his permit to carry a pistol. Owner petitioned for writ of mandamus to compel sheriff to issue him a carry permit. The District Court, Isanti County, No. 30-CV-18-283, denied owner's petition. Owner appealed. The Court of Appeals, Schellhas, J., 931 N.W.2d 114, reversed and remanded. Sheriff appealed.

The Supreme Court, Chutich, J., held that owner's conviction was not "expunged," as required to reinstate his firearm rights.

Reversed

Syllabus by the Court

Respondent's right to carry a firearm cannot be reinstated because a district court's inherent authority to seal judicial records is not sufficient to satisfy the "expungement" required by section 921(a)(33)(B)(ii) of Title 18 of the United States Code.

Court of Appeals

Attorneys and Law Firms

Daniel C. Guerrero, Meshbesher & Spence, Ltd., Minneapolis, Minnesota, for respondent.

Jeffrey R. Edblad, Isanti County Attorney, Timothy C. Nelson, Chief Deputy County Attorney, Cambridge, Minnesota, for appellant.

Richard D. Hodsdon, Saint Paul, Minnesota, for amicus curiae Minnesota Sheriffs' Association.

OPINION

CHUTICH, Justice.

***249** This case considers the narrow question of whether the sealing of judicial records by the inherent authority of a Minnesota district court is sufficient under federal law to expunge a previous conviction of respondent James Salvatore Bergman and thereby reinstate his firearm rights. In 2007, a district court issued an expungement order under its inherent authority that sealed the judicial records of Bergman's prior conviction of domestic assault. Bergman then applied for, and received a permit to

carry a firearm. In 2018, the Isanti County Sheriff, appellant Christopher Caulk (the Sheriff), denied Bergman's permit-to-carry application because of his prior domestic assault conviction.

Bergman petitioned the district court for a writ of mandamus, which was denied. Upon appeal, a divided panel of the court of appeals reversed, holding that Bergman was not disqualified from receiving a permit to carry a firearm. Because we conclude that the sealing of judicial records under a court's inherent authority does not satisfy the federal requirement of expungement, we reverse.

FACTS

Bergman was convicted in 1996 of domestic assault. In 2007, Bergman sought to expunge his conviction in order "to possess a firearm for the purpose of hunting." An Anoka County district court granted Bergman relief under its inherent authority. The expungement order directed the county court administrator to seal Bergman's file, remove the case caption from index books and records open to the public, and "refrain from disclosing or revealing the file contents without a court order or specific statutory authority." The district court also ordered the county corrections department to "seal or otherwise remove references from its records related to [Bergman]'s arrest and subsequent court proceedings ... to preclude any public access."

Bergman states that, starting in 2008, he was consistently granted a permit to carry a firearm. In 2018, the Sheriff denied Bergman's permit-to-carry application. In doing so, the Sheriff relied upon Minnesota Statutes section 624.713, subdivision (1)(10)(viii) (2018), which incorporates federal law prohibiting a person convicted of "a misdemeanor crime of domestic violence" from possessing a firearm. *See* 18 U.S.C. § 922(g)(9) (2018). Bergman requested reconsideration, but the Sheriff again denied his permit application.

Bergman appealed to the Isanti County District Court by filing a petition for writ of mandamus under Minnesota Statutes section 624.714, subdivision 12 (2018), asking that the court order the Sheriff to issue him a permit to carry. The court denied Bergman's petition. The court concluded that, because the sealing of Bergman's conviction did not remove or eliminate the conviction, it was not "removed or eliminated as defined under federal law."

Bergman appealed, and a divided panel of the court of appeals reversed the decision of the district court. *Bergman v. Caulk*, 931 N.W.2d 114 (Minn. App. 2019). The court looked to state law "to determine whether Bergman's domestic-assault conviction" was expunged. *Id.* at 117. The court determined that "[f]ederal law does not require that the expungement be statutory or result in the sealing of records in every branch of government." *Id.* The court concluded that the "2007 expungement order meets the plain meaning of 'expunged' in 18 U.S.C. § 921(a)(33)(B)(ii)," so that Bergman was "not disqualified from holding a carry permit." *Id.*

***250** The dissent contended that sealing judicial records had no effect on the executive branch records of Bergman's conviction, noting that Minnesota distinguishes between sealing judicial records through inherent authority and the statutory sealing of records held in the executive branch. *Id.* at 118–19 (Worke, J., dissenting). The dissent concluded that the majority's reasoning "negates the legislative intent to deny permits to carry to individuals convicted of domestic violence crimes." *Id.* at 119.

The Sheriff appealed, and we granted his petition for review.

ANALYSIS

This case requires us to interpret federal and state statutes, and we review matters of statutory interpretation de novo. *Christianson v. Henke*, 831 N.W.2d 532, 535 (Minn. 2013).

At the outset, we note that this case does not concern any constitutional challenges. Nor does Bergman raise any claims of estoppel or contest that his 1996 conviction was for a "misdemeanor crime of domestic violence." The case is simply one of statutory interpretation, and we look to the relevant state and federal laws to discern the meaning and import of "expungement."

Minnesota law makes it a crime for anyone to possess a firearm in public without a permit. *See* Minn. Stat. § 624.714, subd. 1a (2018). Applications for carry permits are "made to the county sheriff where the applicant resides." *Id.*, subd. 2(a) (2018). Sheriffs must issue the permit if the person (1) has gun safety training; (2) is "at least 21 years old and a citizen or a permanent resident of the United States;" (3) "completes an application for a permit;" (4) is not prohibited under certain enumerated provisions; and (5) "is not listed in the criminal gang investigative data system." *Id.*, subd. 2(b).

But a sheriff must not issue a permit to a person prohibited from possessing a firearm under section 624.713 or "any federal law." Minn. Stat. § 624.714, subd. 2(b)(v), (ix). Section 624.713 specifically prohibits "a person who ... is disqualified from possessing a firearm under United States Code, title 18, section 922(g) ... (9)" from possessing a firearm. Minn. Stat. § 624.713, subd. 1(10)(viii).

This specific federal provision—section 922(g)(9)—makes it "unlawful for any person ... convicted in any court of a *misdemeanor crime of domestic violence*, to ... possess ... any firearm." 18 U.S.C. § 922(g)(9) (emphasis added). In turn, section 921(a)(33) of the United States Code, Title 18, defines "misdemeanor crime of domestic violence" and also references "expungement."

Specifically, subsection 921(a)(33)(B)(ii) provides:

> A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been *expunged* or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, *expungement*, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(33)(B)(ii) (emphasis added).[1]

***251** Minnesota law therefore incorporates by reference federal law that prohibits persons convicted of misdemeanor crimes of domestic violence from carrying firearms. Minn. Stat. § 624.713, subd. 1(10)(viii). And section 921(a)(33) in Title 18 of the United States Code provides the relevant federal definition of misdemeanor crimes of domestic violence, including a reference to whether a crime has been expunged.[2] Because Minnesota law incorporates this federal law, we conclude that the federal meaning of expungement applies when determining whether a conviction of a misdemeanor crime of domestic violence has been expunged so as to reinstate firearm rights in Minnesota.

When considering a federal statute, "our task is to give effect to the will of Congress." *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (internal quotation marks omitted) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982)). If the intent is clear and unambiguous, then no further analysis is necessary. *Id.* We consider the "bare meaning" of the words, as well as their "placement and purpose in the statutory scheme." *Id.* (citations omitted) (internal quotation marks omitted).

Here, where Congress has not defined "expunged" or "expungement," we may consider dictionary definitions to determine a word's plain meaning. *See, e.g.*, *id.* at 759 n.2. Because the word "expunge" "frequently appears as a legal [term] in statutory references, we may look to legal dictionaries to define it." *Getz v. Peace*, 934 N.W.2d 347, 354 (Minn. 2019); *see also* Minn. Stat. § 645.08(1) (2018). Expunge is defined as "[t]o remove from a record, list, or book; to erase or destroy."[3] *Expunge*, *Black's Law Dictionary* (10th ed. 2014).

***252** Applying this definition of expunge here, we must determine whether the 2007 district court expungement order that sealed the judicial records of Bergman's 1996 conviction removed, erased, or destroyed Bergman's conviction.[4] In *State v.*

M.D.T., we spoke about the limitations of sealing judicial records through expungement by inherent authority. There we said, "[r]ecognition of inherent judicial authority to expunge ... criminal records held in the executive branch would effectively override the legislative policy judgments expressed in" the statutes on expungement. 831 N.W.2d 276, 283 (Minn. 2013). We concluded that it is well-settled law that the sealing of judicial records under inherent authority simply does not reach those records that are held in the executive branch. *Id.* at 282, 284. Accordingly, the district court expungement order here sealed Bergman's *judicial* records, but his executive branch records still exist.

In Minnesota, when sheriffs consider an applicant's initial or ongoing eligibility, the law requires them to check records that are held in the *executive branch*, namely the National Instant Criminal Background Check System and the Minnesota Crime Information System. *See* Minn. Stat. § 624.714, subd. 4(a), (c) (2018). Consequently, when the Sheriff ran a routine background check to determine Bergman's eligibility to possess a firearm, his conviction appeared in the records that the Sheriff was required by law to check; the Sheriff therefore determined that Bergman was disqualified from possessing a firearm. Bergman's conviction was not removed, erased, or destroyed from the executive branch records relevant to considering an application to possess a firearm.

In sum, the expungement that took place in 2007 under the district court's inherent authority did not remove, erase, or destroy the executive branch records of Bergman's prior domestic assault conviction. We therefore hold that expungement by inherent authority does not by itself satisfy the federal meaning of expungement, and Bergman's right to carry a firearm in Minnesota cannot be reinstated under these circumstances.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.

All Citations

938 N.W.2d 248

Footnotes

1 Notably, the court of appeals did not refer to this subsection, but instead referenced an inapplicable subsection of section 921 that defines "crimes punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 921(a)(20) (2018). Subsection 921(a)(20) differs from subsection 921(a)(33)(B)(ii) by explicitly directing courts to determine whether such a crime has occurred by looking to the law of the jurisdiction of conviction:

> *What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.* Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Id. (emphasis added).

2 This subsection says nothing about whether state or federal law should apply to determine when a conviction is expunged under the statute. *See* 18 U.S.C. § 921(a)(33)(B)(ii) (referring only to the law of the "applicable jurisdiction" in reference to the restoration of civil rights).

3 Federal cases interpreting the term "expunge" as used in section 921(a)(33)(B)(ii), have concluded "that Congress intended ... to require a state procedure that *completely* removes the effects of the misdemeanor conviction in question." *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1239 (10th Cir. 2008). *See also Jennings v. Mukasey*, 511 F.3d 894, 899 (9th Cir. 2007) (concluding that a conviction had not been expunged when California law contains a "sweeping limitation" on the relief it offers, precluding persons afforded relief under this statute from possessing a firearm).

The federal cases cited by Bergman do not contradict this interpretation of expungement because they involve circumstances where, by state law, the effects of the previous conviction have been completely removed from records. *See United States v. Laskie*, 258 F.3d 1047, 1050–52 (9th Cir. 2001) (overturning a conviction for being a felon in possession of a firearm because an "honorable discharge" of a previous drug conviction was "unequivocal," changed the finding of "Guilty" to "Not Guilty," and released Laskie from "all penalties and disabilities resulting from the crime of which he has been convicted"); *Siperek v. United States*, 270 F. Supp.3d 1242, 1249 (W.D. Wash. 2017) (concluding that the expungement of plaintiff's juvenile adjudication was established under federal law because "Washington law clearly dictates that ... the sealing of a juvenile record constitutes expungement of the juvenile offense" because the statute explicitly states that "the proceedings in the case shall be treated as if they never happened").

4 We note that, in 2007, expungement by a district court's inherent authority was the only remedy available to Bergman. Minnesota Statutes sections 609A.01–.04 (2018) now provide for statutory expungement, including statutory expungement of misdemeanor crimes of domestic violence. *See* Minn. Stat. § 609A.02, subd. 3(a)(3). This remedy may be available to Bergman. Because the question before us involves the narrower question of whether expungement by inherent authority satisfies subsection 921(a)(33)(B)(ii), we express no opinion as to whether statutory expungement may do so.

End of Document