

2020 WL 5136968

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Court of Appeals of Minnesota.

IN RE: Request for Records by Amina MOHAMED.

A19-1694

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Filed August 31, 2020

Hennepin County District Court, File No. 27-CR-CV-19-31

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Considered and decided by [Larkin](#), Presiding Judge; [Segal](#), Chief Judge; and [Reilly](#), Judge.

**UNPUBLISHED OPINION**

[LARKIN](#), Judge

\*1 Appellant-victim challenges the district court's order denying her request to reopen the expungement record of the individual who was acquitted of her brother's murder. Because appellant fails to establish that she is entitled to such relief as a remedy for an alleged violation of Minnesota's victims' rights statutes, we affirm.

**FACTS**

A grand jury indicted B.O. for the 2011 murder of appellant Amina Mohamed's brother. Her brother was shot three times following a verbal altercation, while sitting in the back seat of a parked car. A jury acquitted B.O. of the murder after a trial in 2012. Appellant asserts that the acquittal occurred because B.O. threatened and intimidated witnesses.

After his acquittal, B.O. petitioned the district court to expunge his court file. Respondent State of Minnesota did not object, and the district court granted the expungement petition in 2013. The state did not notify appellant of the expungement petition or hearing. She learned of the expungement in 2019, while seeking a harassment restraining order against B.O.

In May 2019, appellant moved to reopen, disclose, and reseal B.O.'s expungement record so she could determine whether the district court adhered to Minnesota's expungement and victims' rights statutes when granting the expungement. She sought access to expungement-related documents such as the expungement petition, affidavit, and order. As grounds for reopening the record, she asserted that the prosecuting authority failed to notify her of B.O.'s expungement petition and hearing, as required by law.

In September 2019, the district court denied appellant's motion, reasoning that appellant was not entitled to relief under the plain language of Minnesota's expungement and victims' rights statutes. The court acknowledged that the state did not notify appellant of the expungement petition or hearing, but it concluded that the state was not obligated to do so because appellant did not request notice.<sup>1</sup> This appeal followed.

## DECISION

### I.

Appellant contends that the district court erred in denying her request to reopen B.O.'s expungement file, arguing that she is a victim of her brother's murder and that the prosecutor therefore was required by statute to notify her of B.O.'s expungement action.

Minnesota requires that crime victims be notified of certain rights and defines "victims" to include any "natural person who incurs loss or harm as a result of a crime," including the "family members" of a "deceased person." [Minn. Stat. § 611A.01\(b\) \(2012\)](#); *see* [Minn. Stat. §§ 611A.01-.06 \(2012\)](#) (providing for victim-notification rights). The state agrees that appellant is a crime victim within the meaning of those statutes.

\*2 Among the notification rights afforded victims is a requirement that a "prosecuting authority with jurisdiction over an offense for which expungement is being sought" must "make a good faith effort to notify a victim that the expungement is being sought if ... the victim has mailed to the prosecuting authority ... a written request for this notice." [Minn. Stat. § 611A.06, subd. 1a.](#)

Likewise, under the expungement-petition statute, "[t]he prosecutorial office that had jurisdiction over the offense for which expungement is sought shall serve by mail the petition for expungement and a proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of expungement pursuant to [section 611A.06](#)," and "must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the expungement hearing." [Minn. Stat. § 609A.03, subd. 3\(b\), \(c\) \(2012\)](#).

Appellant "concedes that neither she nor her family members ever requested to be put on such notice." Thus, under the plain language of [Minn. Stat. § 611A.06, subd. 1a](#), and [Minn. Stat. § 609A.03, subd. 3\(b\), \(c\)](#), the prosecuting authority was not statutorily obligated to notify appellant of B.O.'s expungement efforts. Appellant argues that her failure to request notice should not be held against her because she was not earlier informed of the need to do so. She relies on [Minn. Stat. § 611A.0385 \(2012\)](#), which provides:

At the time of *sentencing or the disposition hearing* in a case in which there is an identifiable victim, the court or its designee shall make reasonable good faith efforts to inform each affected victim of the ... notice of expungement provisions of [section 611A.06](#).

(Emphasis added.)

The parties disagree regarding whether [section 611A.0385](#) applies in a criminal case that resulted in an acquittal, as is the case here. The state suggests that the phrase "sentencing or the disposition hearing" indicates that the court's obligation arises only if

a defendant is found guilty. Appellant asserts that the phrase “disposition hearing” has a broader meaning and includes a hearing at which a jury’s verdict of acquittal is accepted by the district court.

The parties’ disagreement regarding the meaning of [section 611A.0385](#) presents an issue of statutory interpretation, which we review de novo. *Heilman v. Courtney*, 926 N.W.2d 387, 393 (Minn. 2019). “The goal of all statutory interpretation is to ascertain and effectuate the intention of the legislature.” *Id.* at 394 (quotation omitted).

We do not resolve the dispute regarding the meaning of [section 611A.0385](#) or determine whether appellant’s right to notice under that provision was violated because appellant fails to offer legal support for her underlying assumption that such a violation would provide grounds for her to access B.O.’s expunged record.<sup>2</sup> The legislature has delineated circumstances that justify reopening expunged records. See [Minn. Stat. § 609A.03, subd. 7 \(2018\)](#) (setting forth limited grounds for reopening expunged records and stating that “[u]pon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph”). The Minnesota legislature has also provided a method for investigating alleged violations of the rights of crime victims. See [Minn. Stat. § 611A.74 \(2018\)](#) (providing for the investigation of complaints regarding possible violations of crime-victims’ rights). Appellant does not assert that either of those statutory provisions is applicable here. Nor does she assert any other legal basis for gaining access to B.O.’s expungement record.

\*3 Error on appeal is never presumed; it must be established by the party claiming error. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944). Because appellant has not established a legal basis that would have authorized the district court to reopen B.O.’s expungement record, we cannot say that the district court erred by refusing to do so. See *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 730-31 (Minn. 2003) (denying petitioners’ requested relief for lack of any “sound legal basis”).

## II.

Appellant argues that the district court violated her right to due process “by censoring evidence which might be relied on [to] pursue civil relief.” But in district court, appellant did not present a due-process argument in support of her request for relief. Moreover, appellant fails to offer legal argument or authority to support her due-process claim on appeal.

Appellate courts generally do not consider issues not raised in and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Moreover, an assignment of error in an appellate brief based on “mere assertion” and not supported by argument or authority is waived “unless prejudicial error is obvious on mere inspection.” *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971)).

Whether a party’s procedural-due-process rights were violated is a question of law that an appellate court reviews de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). Appellant’s due-process claim requires that she be deprived “of a protected life, liberty, or property interest.” *Id.* But appellant does not provide legal support for the proposition that she has a protected interest in B.O.’s expungement record. Moreover, although appellant indicates that she might pursue civil relief against B.O. for her brother’s murder, “procedural due process protections do not apply when government action *may* lead to the deprivation of a protected interest at some indeterminate point in the future based on certain unfulfilled conditions.” *Id.* at 633. On this record, we do not discern an obvious prejudicial error.

### Conclusion

We are extremely sympathetic to the pain and suffering that appellant has endured as the result of her brother’s murder, and we understand her disappointment with the result of the ensuing prosecution and trial. But we are obligated to follow the law, and

appellant has not established that she is entitled to access B.O.'s expungement record under the law. We therefore cannot say that the district court erred by denying her access to that record.

**Affirmed.**

#### All Citations

Not Reported in N.W. Rptr., 2020 WL 5136968

#### Footnotes

- 1 The court also concluded that appellant was not entitled to reopen the expungement record pursuant to *Minn. Stat. § 609A.03, subd. 7a(b)(6) (2018)*, because she was not the victim of the underlying offense. Subdivision 7a applies to expungement orders “effective on or after January 1, 2015.” *Minn. Stat. § 609A.03, subd. 7a(g) (2018)*. Because the district court granted B.O.'s expungement petition in 2013, subdivision 7a is inapplicable.
- 2 Nonetheless, we observe that *Minn. Stat. § 611A.039 (2018)* generally provides that “within 15 working days after a *conviction, acquittal, or dismissal in a criminal case* in which there is an identifiable crime victim, the prosecutor shall make reasonable good faith efforts to provide to each affected crime victim oral or written notice of the final *disposition* of the case,” which indicates that the meaning of the word “disposition” is broader than the state suggests. (Emphasis added.)