

2017 WL 1548627

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).*

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

C.E.S., Appellant.

A16-1582

|

Filed May 1, 2017

Ramsey County District Court, File Nos. 62-K3-98-003179, 62-CR-08-7025, 62-K9-00-002247

#### Attorneys and Law Firms

[Lori Swanson](#), Attorney General, St. Paul, Minnesota; and [John J. Choi](#), Ramsey County Attorney; [Laura Rosenthal](#), Assistant County Attorney, St. Paul, Minnesota (for respondent)

C.E.S., St. Paul, Minnesota (pro se appellant)

Considered and decided by [Kirk](#), Presiding Judge; [Schellhas](#), Judge; and [Bratvold](#), Judge.

#### UNPUBLISHED OPINION

[BRATVOLD](#), Judge

\*1 Appellant challenges the district court's orders denying her requests for expungement of her criminal records arising out of three convictions. Because the district court did not abuse its discretion or err in interpreting the expungement statutes, we affirm.

#### FACTS

Appellant C.E.S. was convicted of gross misdemeanor intent to engage in prostitution on November 16, 1998. She received a stayed sentence of one year in the Ramsey County Workhouse. During the term of the stay, she admitted two separate probation violations. She was discharged in November 2000.

On December 22, 2000, C.E.S. was convicted of felony third-degree controlled-substance crime. She received a stay of imposition of sentence and was placed on probation, during which she admitted committing two probation violations. After her second probation violation, C.E.S. requested execution of her sentence, which was granted. On September 27, 2004, the district court vacated the stay, imposed a 27-month sentence, and C.E.S. was committed to the commissioner of corrections. She was discharged in November 2005.

On August 13, 2008, C.E.S. was convicted of misdemeanor prostitution charges. The district court stayed execution of C.E.S.'s sentence; she successfully completed one year of supervised probation and was discharged on August 13, 2009.

C.E.S. petitioned the district court for expungement of each of these three criminal records. Each criminal record was considered in one expungement proceeding and the district court issued three separate orders denying C.E.S.'s petitions. The district court determined that C.E.S. is ineligible for expungement of her first prostitution conviction and her controlled-substance conviction because she was convicted of crimes within the four-and five-year periods prescribed by law. See *Minn. Stat. § 609A.02, subd. 3(a)(4)–(5)* (2016). The district court also concluded that C.E.S.'s third-degree controlled-substance conviction could not be expunged because the legislature did not include the offense in its list of felonies that may be expunged. *Minn. Stat. § 609A.02, subd. 3(b)*.

Regarding C.E.S.'s 2008 prostitution conviction, the district court determined that C.E.S. failed to meet her burden that “sealing the record would yield a benefit to [her] commensurate with the disadvantages to the public and public safety.” The district court considered the factors set out in *Minn. Stat. § 609A.03, subd. 5(c)* (2016), and found that C.E.S. presented some evidence of rehabilitation, but she presented no evidence of being denied employment or housing due to her convictions. The district court commented that C.E.S.'s “11 convictions over 20 years weigh[ed] against her,” and C.E.S.'s multiple failures to successfully complete probation before 2008 also weighed against her. The district court denied expungement after concluding that C.E.S. did not establish that sealing the record would benefit her in proportion to “the disadvantages to the public and public safety of: (1) sealing the record; and (2) burdening the court and public authorities to” comply with an expungement order. C.E.S. appeals.

## DECISION

\*2 We understand C.E.S. to argue that the district court erred in concluding that she was statutorily ineligible for expungement and that the court abused its discretion in denying her petitions because she is seeking expungement for housing and employment purposes. While C.E.S. makes no reference to the expungement statute, it appears that this is the basis for her petitions. The record does not reflect that C.E.S. asked the district court to consider expungement under its inherent authority.<sup>1</sup> Thus, we address the district court's orders with respect to the applicable expungement statutes.

A district court is authorized to order expungement by statute. *Minn. Stat. §§ 609A.01–.03* (2016); *State v. Ambaye*, 616 N.W.2d 256, 257 (Minn. 2000). This court will review a district court's interpretation of the expungement statute de novo. *Ambaye*, 616 N.W.2d at 258. We review a district court's decision to grant or deny expungement for abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013).

A person seeking expungement must file a petition stating, among other things, why expungement is sought, the authority for expungement, and what steps the person has taken toward rehabilitation. *Minn. Stat. § 609A.03, subd. 2(a)(1)–(9)*. An expungement petition may be filed for a misdemeanor conviction if an individual has no new convictions “for at least two years since the discharge of the sentence.” *Minn. Stat. § 609A.02, subd. 3(a)(3)*. For a gross misdemeanor conviction, the individual must have no new convictions “for at least four years since discharge of the sentence.” *Id.*, subd. 3(a)(4). For a felony conviction, the crime must be enumerated in the statute, and the individual must have no new convictions “for at least five years since discharge of the sentence.” *Id.* subd. 3(a)(5); *Id.*, subd. 3(b)(1)–(50).

If the petitioner meets these initial requirements, she must prove, by clear and convincing evidence, that expungement would “yield a benefit to the 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” comply with an expungement order. *Minn. Stat. § 609A.03, subd. 5(a)*. In determining whether a petitioner has satisfied her burden under *Minn. Stat. § 609A.03*, the district court must consider 12 factors including, but not limited to, “the petitioner's criminal record,” the petitioner's current risk to society, “the length of time

since the crime occurred,” the petitioner's progress toward rehabilitation including “employment and community involvement,” and “other factors deemed relevant by the court.” *Id.*, subd. 5(c)(1)–(12).

The first issue is whether C.E.S. is eligible to expunge each conviction. We examine each of C.E.S.'s convictions in turn.

C.E.S. was convicted of a gross misdemeanor offense on November 16, 1998, and was discharged in November 2000. Within approximately one month of her discharge, on December 22, 2000, C.E.S. was convicted of a new offense. Thus, she failed to have no new convictions “for at least four years since the discharge of” her sentence, as required by the statute. *Minn. Stat. § 609A.02, subd. 3(a)(4)*. The district court did not err in concluding C.E.S. was ineligible to expunge her 1998 conviction.

\*3 C.E.S. was discharged from her felony sentence sometime in November 2005. On August 13, 2008, she was convicted of a new offense. Thus, C.E.S. faces two barriers to expunging her 2000 felony conviction. First, third-degree felony controlled-substance crime is not an enumerated offense under the expungement statute and, second, C.E.S. was convicted of a new crime less than five years after discharge from her felony sentence. *Minn. Stat. § 609A.02, subds. 3(a)(5), (3)(b)(1)–(50)*. For both of these reasons, the district court did not err in concluding C.E.S. was ineligible to expunge her felony conviction.

The second issue is whether the district court abused its discretion in denying C.E.S.'s petition to expunge her 2008 conviction. The district court determined that C.E.S. is eligible to expunge the 2008 conviction, but failed to meet her burden of proof that sealing the record would provide her a benefit in proportion to the disadvantages to the public and public safety of sealing the record and burdening the system by enforcing an expungement order. *Minn. Stat. § 609A.03, subd. 5(a)*. The district court weighed several factors. The court specifically considered that C.E.S. had no new convictions since 2008 and had presented evidence of rehabilitation, including that she attended therapy, participated in a restorative justice program, attended church, and taught Sunday school. The district court also considered that C.E.S. offered no evidence of being denied housing or employment opportunities. Also, the court determined that C.E.S.'s extensive criminal history weighed against her, as did her consistent failure to successfully complete probation before her most recent misdemeanor charge. The district court concluded that, on balance, the statutory factors “weigh[ ] against Petitioner.”

C.E.S. essentially asks this court to reweigh the evidence. But it is not for this court to do so. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997). Our role is to review the district court's interpretation of the statute for error and its decision for an abuse of discretion. Because the district court weighed C.E.S.'s rehabilitation against other statutory factors, we conclude that the district court did not abuse its discretion in determining that C.E.S. failed to prove by clear and convincing evidence that the benefit of expungement would be commensurate to the “disadvantages to the public and public safety.”

We commend C.E.S.'s efforts to turn around her life and serve her community. Nothing in our opinion today precludes C.E.S., in the future, from gathering more evidence and petitioning the district court to expunge those criminal records for which she is eligible to seek expungement.

**Affirmed.**

#### All Citations

Not Reported in N.W.2d, 2017 WL 1548627

#### Footnotes

- 1 C.E.S. did not provide a transcript of the expungement hearing and did not make an explicit request in her expungement petitions for the district court to consider the petitions under its inherent authority. See *State v. L.W.J.*, 717 N.W.2d 451, 456 (Minn. App. 2006) (declining to consider whether district court had inherent authority to expunge criminal records because petitioner did not make that request in the district court and the district court did not grant expungement under that theory).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.