STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1448

State of Minnesota,
Respondent,

vs.

B. H. F.,
Appellant.

Filed April 23, 2012
Affirmed
Stoneburner, Judge

Ramsey County District Court
File No. 62K508531

Lori Swanson, Attorney General, Cynthia B. Jahnke, Assistant Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Mark N. Lystig, Assistant Ramsey County Attorney, St. Paul, Minnesota (for respondent)

Elise M. Chambers, Minnesota Law Collective, L.L.C., St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Cleary, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges the district court's denial of a petition requesting the district court to exercise its statutory authority to expunge executive-branch agencies' criminal records pertaining to charges of which appellant was acquitted. We affirm.

FACTS

In February 2009, a jury acquitted appellant B.H.F. of two counts of first-degree attempted murder and two counts of second-degree attempted murder after a trial in which B.H.F. asserted that he shot a person at a house party in Roseville in self-defense. The district court denied B.H.F.'s June 2009 petition requesting that the district court expunge his criminal record under its statutory authority.

In February 2011, B.H.F. again petitioned for expungement of his criminal record under the district court's statutory authority, asserting that he had been denied employment and volunteer opportunities because of his record. The Ramsey County Attorney and Roseville Police Department opposed the petition, arguing that public interest and public-safety concerns outweigh the disadvantages to B.H.F. of the records remaining public. The district court granted the petition to expunge court records but denied the request to expunge records held by executive-branch agencies. This appeal followed.

Respondent Minnesota Department of Human Services (DHS) did not participate in the district court proceeding but filed a brief in this appeal and a motion to supplement the record on appeal. In Order No. A11-1448 (Minn. App. Dec. 29, 2011), this court

granted in part and denied in part DHS's motion to supplement the record, allowing the record to be supplemented to include the following:

> On September 17, 2011, a personal-care provider organization initiated a background study through [DHS] for [B.H.F.] to provide direct-contact services. Before the background study, [DHS] had no contact with [B.H.F.] and [B.H.F.'s] petition did not indicate his intent to obtain employment in [DHS]-licensed facilities. After the study was initiated, [DHS] obtained records to conduct its review as required by Minn. Stat. § 245C.08 (2010). [DHS] has issued an administrative decision as a result of the background study.

D E C I S I O N

Minn. Stat. § 609A.02, subd. 3 (2010), provides, in relevant part, that "[a] petition may be filed . . . to seal all records relating to an arrest, . . . trial, or verdict . . . if all pending actions or proceedings were resolved in favor of the petitioner." Minn. Stat. § 609A.03, subd. 5 (2010), provides, in relevant part, that

> if the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 3, the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

It is undisputed that all relevant proceedings were resolved in B.H.F.'s favor and that the agencies opposing the petition had the burden of establishing by clear and convincing evidence that public and public-safety interests outweigh the disadvantages to B.H.F. of not sealing the records. *See State v. L.W.J.*, 717 N.W.2d 451, 456 (Minn. App. 2006) (stating that if all proceedings were resolved in petitioner's favor, "the burden shifts to the agency or jurisdiction whose records would be affected by expungement to

prove by clear and convincing evidence that the interests of the public in denying expungement outweigh the disadvantages to the petitioner"). We review the district court's decision about whether to expunge a record under an abuse-of-discretion standard. *State v. Davisson*, 624 N.W.2d 292, 296 (Minn. App. 2001), *review denied* (Minn. May 15, 2001).

The state argued to the district court that the interests of the public and public-safety concerns outweigh the disadvantages to B.H.F. of the records remaining public because his behavior underlying the criminal charges was "extraordinarily reckless" and the executive-agency records must remain open to permit law-enforcement officers to review the records should B.H.F. request a conceal-and-carry permit. The district court record reflects that the district court considered B.H.F.'s behavior during the incident that led to his criminal charges, including his decision to leave a party after arguing with another individual, retrieve a loaded gun from his vehicle, and reenter the home with the loaded gun. The district court concluded that the public has an interest in knowing about B.H.F.'s actions and that the motion to seal executive-agency records should be denied in the interest of public safety. The district court concluded that B.H.F. was entitled, on the basis of his acquittal, to expungement of criminal records held by the judicial branch; but the district court declined to order expungement of B.H.F.'s criminal records held by executive-branch agencies.

Because the district court considered the facts and the facts support the district court's conclusion that the agencies had demonstrated by clear and convincing evidence that the interests of the public and public-safety concerns outweigh the disadvantages to

B.H.F. in not expunging the record, the district court did not abuse its discretion by denying B.H.F.'s petition to expunge executive-agency records under its statutory authority.

B.H.F.'s appeal is almost entirely based on B.H.F.'s argument that the district court erred by declining to expunge executive-agency records without first exploring whether it should exercise its inherent authority to expunge those records. But B.H.F. did not seek expungement as an exercise of inherent judicial authority and did not present any argument to the district court for an exercise of such authority. The district court, therefore, did not abuse its discretion by failing to sua sponte engage in an inherent-authority analysis. And we decline to consider matters on appeal that were not argued before or considered by the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (declining to consider matters on appeal that were not argued before or considered by the district court). But nothing in this opinion is intended to preclude B.H.F. from seeking expungement as an exercise of the district court's inherent authority.

Affirmed.