

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0728  
A17-0729**

State of Minnesota,  
Respondent,

vs.

C. W. N.,  
Appellant.

**Filed January 2, 2018  
Reversed in part and remanded  
Schellhas, Judge**

Redwood County District Court  
File Nos. 64-TX-00-000587, 64-K6-00-00280

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Amy M. Busse, Redwood Falls City Attorney, Redwood Falls, Minnesota (for respondent)

Peter H. Dahlquist, Dahlquist Law, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Kirk,  
Judge.

**S Y L L A B U S**

To be eligible for expungement of executive-branch records of a petty-misdemeanor or misdemeanor conviction under Minn. Stat. § 609A.02, subd. 3(a)(3) (2016), a petitioner must not have been convicted of a new crime for at least two years immediately preceding the filing of an expungement petition. To be eligible for expungement of executive-branch records a gross-misdemeanor conviction under Minn. Stat. § 609A.02, subd. 3(a)(4)

(2016), a petitioner must not have been convicted of a new crime for at least four years immediately preceding the filing of an expungement petition.

## **OPINION**

**SCHELLHAS**, Judge

Appellant challenges the district court's denial of his petition for expungement under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), of executive-branch records related to his misdemeanor and gross-misdemeanor convictions.

## **FACTS**

A district court convicted appellant C.W.N. of misdemeanor and gross-misdemeanor violations of a harassment restraining order in 2000 (HRO convictions). In 2002, a district court convicted C.W.N. of third-degree driving while impaired (DWI).<sup>1</sup> In December 2015, C.W.N. filed petitions under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4) to expunge his HRO convictions. The Minnesota Bureau of Criminal Apprehension (BCA) objected in district court to C.W.N.'s petitions, arguing that C.W.N. is ineligible for statutory expungement of its agency records. Neither the City of Redwood Falls nor Redwood County objected to C.W.N.'s petitions.

At his expungement hearing, C.W.N. argued that clear and convincing evidence supported expungement of judicial- and executive-branch records of his 2000 HRO convictions. The district court, under its inherent authority, granted expungement of

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<sup>1</sup> In August 2015, a district court granted C.W.N. a stay of adjudication after C.W.N. pleaded guilty to making obscene or harassing phone calls under Minn. Stat. § 609.79, subd. 1(1)(ii) (2014). The record on appeal contains no additional details about this offense.

judicial-branch records of the HRO convictions and ordered that all files and records relating to the offenses be sealed. The parties do not challenge this portion of the district court's order. But the court denied C.W.N.'s petitions for statutory expungement of executive-branch records, embracing the BCA's interpretation of the expungement statute. The court concluded that C.W.N. is ineligible for executive-branch-records expungement of his misdemeanor HRO conviction because of his gross-misdemeanor HRO-violation conviction within two years immediately following the misdemeanor conviction and of his gross-misdemeanor HRO-violation conviction because of his DWI conviction within four years immediately following the gross-misdemeanor conviction.

This appeal follows.

### **ISSUE**

Is C.W.N. eligible for expungement of his executive-branch records under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4)?

### **ANALYSIS**

C.W.N. challenges the district court's denial of his petition to expunge executive-branch records and its interpretation of Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), and argues that he is eligible for expungement under the statute because he was not convicted of any new crimes within two and four years immediately preceding the filing of his expungement petitions. This court reviews the district court's decision on whether to expunge criminal records under an abuse-of-discretion standard. *State v. M.D.T.*, 831 N.W.2d 276, 279

(Minn. 2013). We review the district court’s interpretation of the expungement statute de novo as a question of law. *State v. S.A.M.*, 891 N.W.2d 602, 604 (Minn. 2017).

Minnesota law establishes two bases for expungement of criminal records: Minn. Stat. §§ 609A.01-.04 (2016 & Supp. 2017) and the judiciary’s inherent authority. *M.D.T.*, 831 N.W.2d at 279. The judiciary’s inherent authority only allows a court to seal those records kept by the judicial branch and does not extend to records held by executive-branch agencies. *Id.* at 282–83. A district court may order executive-branch agencies to seal their records only if a petitioner for expungement is eligible under Minn. Stat. § 609A.02 and the court finds “clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety.” Minn. Stat. § 609A.03, subd. 5(a) (2016).

The Minnesota Supreme Court has “never held that the judiciary’s inherent authority to order expungement extends to records held in the executive branch.” *M.D.T.*, 831 N.W.2d at 281. And until 2015, the expungement statute only “provided for the expungement of criminal records for certain controlled substance crimes, Minn. Stat. § 609A.02, subd. 1, certain juvenile offenders prosecuted as adults, Minn. Stat. § 609A.02, subd. 2, and certain criminal cases that do not result in convictions, Minn. Stat. § 609A.02, subd. 3.” *M.D.T.*, 831 N.W.2d at 282 (citing Minn. Stat. § 609A.02, subs. 1-3 (2012)). The law did not allow for expungement of the criminal records of someone like C.W.N. But effective 2015, the Minnesota Legislature amended the expungement statute to allow expungement of petty misdemeanors, misdemeanors, gross misdemeanors, and certain

felonies. 2014 Minn. Laws ch. 246, § 6, at 811–14 (codified as amended at Minn. Stat. § 609A.02, subd. 3 (2016)).

The portion of the expungement statute at issue in this case states:

(a) A petition may be filed under section 609A.03 to seal all records . . . if:

. . . .

(3) the petitioner was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and has not been convicted of a new crime for at least two years *since* discharge of the sentence for the crime; [or]

(4) the petitioner was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least four years *since* discharge of the sentence for the crime[.]

Minn. Stat. § 609A.02, subd. 3(a)(3)-(4) (emphasis added). In *S.A.M.*, following the legislature’s amendment to the statute, the supreme court characterized the two-, four-, and five-year periods in Minn. Stat. § 609A.02, subd. 3(a)(3)-(5), as “waiting periods.” 891 N.W.2d at 608.

When interpreting a statute, an appellate court must first determine whether the statute’s language, on its face, is ambiguous. *State v. Thonesavanh*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2017 WL 3880768, at \*2 (Minn. Sept. 6, 2017). The plain language of the statute controls only if it is unambiguous and “is susceptible to only one reasonable meaning.” *Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010). A statute is ambiguous if it is subject to more than one reasonable interpretation. *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 139 (Minn. 2017).

The BCA objected to C.W.N.’s petition in district court on the basis that the statutory language means that if a person has a new conviction during an applicable waiting

period—two years for a petty misdemeanor or misdemeanor and four years for a gross misdemeanor—the person will never be eligible to seek statutory expungement of executive-branch records related to the original conviction. C.W.N. argues that, under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), a person is eligible to seek statutory expungement of executive-branch records as long as the person has not been convicted of a new crime during the applicable waiting period immediately preceding the filing of an expungement petition. In other words, the BCA argued that “since” in Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), means that the two- or four-year waiting period begins to run on the date of “discharge of the sentence for the crime” and that if any new convictions occur during those waiting periods, a petitioner is forever ineligible to seek expungement with respect to the crimes subject to the waiting periods. C.W.N. argues that the minimum two- or four-year period immediately precedes the date of filing the petition.

Chapter 609A does not define “since.” “In determining the plain and ordinary meaning of undefined words or phrases in a statute, we may consult the dictionary definitions of those words and apply them in the context of the statute.” *Poehler*, 899 N.W.2d at 140–41. The dictionary definition of “since” depends on whether it serves as an adverb (“[f]rom then until now or between then and now”); a preposition (“[c]ontinuously from”); or a conjunctive (“[d]uring the period subsequent to the time when”). *The American Heritage Dictionary of the English Language* 1635 (5th ed. 2011). We conclude that “since” in the statute serves as an adverb, modifying “has not been convicted.” Applying the dictionary definition of “since,” as an adverb, we interpret the statutory language to mean that the two- and four-year conviction-free periods must occur between

the date of discharge of the sentence for the crime, i.e., “then,” and the date of filing an expungement petition, i.e., “now.” We therefore conclude that C.W.N. is eligible to petition for statutory expungement of the executive-branch records under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4).

Our conclusion is supported by the fact that the expungement statute automatically bars those individuals convicted of a crime requiring registration from petitioning for expungement. Minn. Stat. § 609A.02, subd. 4 (2016) (“Records of a conviction of an offense for which registration is required [for predatory offenses] may not be expunged.”). Further, in amending the expungement statute in 2014, the legislature added a paragraph excluding from the exceptions in Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), certain offenses related to domestic abuse and sexual assault. 2014 Minn. Laws. ch. 246, § 6, at 811–14 (providing that “[t]his paragraph expires on July 15, 2015”). Had the legislature wanted to permanently disqualify C.W.N.’s HRO convictions from expungement due to his subsequent convictions within the waiting periods, the legislature could have used more restrictive language, but it did not. *See State v. Expose*, 872 N.W.2d 252, 258–59 (Minn. 2015) (“The inference to be drawn from the Legislature’s decision to create exceptions . . . in some statutes, but not others, is that it did not intend to create an exception . . . in those statutes that do not mention [an exception].”).

We do not address the language in Minn. Stat. § 609A.02, subd. 3(a)(5), relating to felonies. And we offer no opinion on whether the district court should grant C.W.N.’s petition for statutory expungement; we hold only that the court may consider C.W.N.’s

petition for statutory expungement in applying the factors in Minn. Stat. § 609A.03, subd. 5(a)-(c).

## **D E C I S I O N**

Because C.W.N. has not been convicted of a new crime for at least two years immediately preceding the filing of his expungement petition regarding his misdemeanor HRO conviction, and because he has not been convicted of a new crime for at least four years immediately preceding the filing of his expungement petition regarding his gross-misdemeanor HRO conviction, he is eligible under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), to seek expungement of executive-branch records of his misdemeanor and gross-misdemeanor HRO convictions. We therefore reverse the district court's denial of statutory expungement of the executive-branch records and remand for further proceedings consistent with this opinion.

**Reversed in part and remanded.**