**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-2233**

State of Minnesota,
Appellant,

vs.

P. P. S.,
Respondent.

**Filed July 1, 2013**
**Reversed**
**Chutich, Judge**

Washington County District Court
File No. 82-KO-88-005146

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

Peter Orput, Washington County Attorney, Richard D. Hodsdon, Assistant County Attorney, Stillwater, Minnesota (for appellant)

Robert E. Oleisky, Oleisky & Oleisky, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Smith, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

**CHUTICH**, Judge

In this records-expungement appeal, the state challenges the district court's order expunging respondent's criminal records held by the executive branch. Because the district court exceeded the scope of its inherent authority when it expunged executive-branch records, we reverse.

## FACTS

In 1988, Washington County charged respondent P.P.S. with receiving stolen property. The case was transferred to Ramsey County to be heard concurrently with a related felony-stolen-property case, and P.P.S. pled guilty to both charges. The district court imposed a stay of execution of 23 months to the commissioner of corrections and placed P.P.S. on probation for 10 years.

In October 2004, six years after successfully completing probation, P.P.S. petitioned the Ramsey County district court for an expungement order. The district court granted the petition in full. When P.P.S. realized in 2012 that the 2004 Ramsey County expungement order did not also apply to the Washington County charge, he petitioned Washington County for similar relief. In the petition, P.P.S. stated that he was seeking expungement because he "was convicted of a crime but [had] rehabilitated [him]self."

The Washington County district court held an expungement hearing on November 19, 2012. At the hearing, counsel for P.P.S. argued that the district court has the inherent authority to fully grant his expungement petition and that P.P.S.'s criminal record has hindered his advancement in the trucking and transportation industry. The

state argued that the district court's authority to expunge records extended only to those held by the judicial, and not the executive, branch. The district court commented that it would like to give "full faith and credit" to the Ramsey County expungement order and noted that P.P.S.'s Ramsey and Washington County convictions arose from the same set of operative facts. The district court then acknowledged that P.P.S. had not been in trouble with the law since 1988 and that P.P.S.'s record may result in negative employment consequences.

On December 4, 2012, the district court issued an order granting in full P.P.S.'s petition for expungement. The order was applicable to "[a]ll records relating to [P.P.S.'s] arrest, charging indictment, or trial" held by the state's bureau of criminal apprehension and attorney general's office, Woodbury police department, and the Washington County sheriff, attorney, department of corrections, and district court. This appeal by the state followed.

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

The state challenges only the expungement of executive branch records. A district court's authority to order expungement of criminal records arises from statute or its inherent authority to grant relief. *See State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000). The parties agree that the district court was relying on its inherent authority when it ordered expungement of executive branch records here.

A district court may exercise its inherent authority to expunge records in two situations. *Id*. The first situation is when the petitioner's constitutional rights are "seriously infringed by retention of his records." *In re R.L.F.*, 256 N.W.2d 803, 808

(Minn. 1977). P.P.S does not allege that expungement is necessary to protect his constitutional rights. The second situation is when doing so is "necessary to the performance of judicial functions." *State v. M.D.T.*, ___ N.W.2d ___, ____, 2013 WL 2220826, at *4 (Minn. 2013) (quotation omitted). If, and only if, the court concludes that expungement is necessary to the performance of a judicial function, it must then determine "whether expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order." *Id*. at *6 (quoting *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981)).

After the district court issued its order, the supreme court released its opinion in *M.D.T.* clarifying the limits of the courts' inherent authority to expunge records held by the executive branch. *M.D.T.* makes clear that courts do not have inherent authority to expunge executive branch records because expungement is not necessary to the performance of a judicial function "as contemplated in our state constitution." *Id.* at *3 (quotation omitted). "[T]he authority the judiciary has to control its own records does not give the judiciary inherent authority to reach into the executive branch to control what the executive branch does with records held in that branch, even when those records were created in the judiciary." *Id.* at *5. Expungement of executive branch records would fail to "respect the equally unique authority of another branch of government." *Id.* (quotation omitted).

Because the expungement of P.P.S.'s records held by the executive branch exceeded the district court's inherent authority, no balancing of competing interests is

allowed. *See id*. at *6. We must, therefore, reverse the district court's order to the extent it applies to records held by the executive branch.

**Reversed.**