

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Respondent,

vs.

MEMORANDUM OF LAW

Court File Nos. [REDACTED]

[REDACTED]
Petitioner.

FACTS

On November 26, 2002, Petitioner was arrested for drug possession and instruction permit violation in Brooklyn Park, Minnesota. Pet. ¶ 7; *see* Court File No. [REDACTED]. Petitioner does not recall the specific details surrounding the offense, but he was found guilty of the instruction permit violation, convicted, and still accepts full responsibility for the crime. The drug possession charge was dismissed without an adjudication of guilt. *Id.*

On November 25, 2003, Petitioner was charged with fighting and brawling in Brooklyn Center, Minnesota. Pet. ¶ 9; *see* Court File No. [REDACTED]. Petitioner plead guilty, was convicted, and accepts the consequences of his actions. *Id.*

Petitioner seeks expungement of these matters because they interfere with his ability to obtain employment. Pet. ¶ 11. Petitioner applied for multiple jobs but was denied each of them because of his criminal record. *Id.* Petitioner wishes to provide more financially for his children and is unable to do so with these cases on his criminal record. Pet. ¶ 12.

Since these incidents, Petitioner obtained his GED while incarcerated and obtained his commercial driver's license with an organization called Emerge. *Id.* He has not been under court supervision in over 10 years. Pet. ¶ 13.

ARGUMENT

I. Petitioner Qualifies For Expungement Under The Court's Statutory Authority As Provided In Minn. Stat. § 609A.02, Subd. 3.

The Court has statutory authority to seal Petitioner's records. A court may expunge "all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b) and if 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." Minn. Stat. § 609A.02, subd. 3(a)(3). Expungement is granted when a petitioner shows 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 sealing the record and burdening the court and public authorities to issue, enforce, and monitor the expungement order. Minn. Stat. § 609A.03, subd. 5(a).

Petitioner completed the terms of the sentences for both these crimes.

In determining the balance between the advantage to the petitioner and the disadvantage to the public and burden to the Court, the Court considers the following twelve factors:

1. The nature and severity of the underlying crime, the record of which would be sealed;
2. The risk, if any, the petitioner poses to individuals or society;
3. The length of time since the crime occurred;
4. The steps taken by the petitioner toward rehabilitation following the crime;

5. Aggravating or mitigating factors relating to the underlying crime, including the petitioner's level of participation and context and circumstances of the underlying crime;
6. The reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities;
7. The petitioner's criminal record;
8. The petitioner's record of employment and community involvement;
9. The recommendations of interested law enforcement, prosecutorial, and corrections officials;
10. The recommendations of victims or whether victims of the underlying crime were minors;
11. The amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and
12. Other factors deemed relevant by the court.

Minn. Stat. § 609A.03. Balancing the factors weighs in favor of the Petitioner.

(1) The Nature And Severity Of The Underlying Crime, The Record Of Which Would Be Sealed.

Both underlying offenses are misdemeanor convictions. Pet. ¶¶ 2, 3.

(2) The Risk, If Any, The Petitioner Poses To Individuals Or Society.

Petitioner does not pose a threat to society. Petitioner has not engaged in any criminal activity since 2004. Pet. ¶ 13.

(3) The Length Of Time Since The Crime Occurred.

These offenses occurred 20 years ago.

(4) The Steps Taken By The Petitioner Toward Rehabilitation Following The Crime.

Petitioner has achieved more education and employment licensing to better his chances in the job market. Pet. ¶ 12. He is heavily involved with his family and wants to provide more for his children. *Id.*

(5) Aggravating Or Mitigating Factors Relating To The Underlying Crime, Including The Petitioner’s Level Of Participation And Context And Circumstances Of The Underlying Crime.

Petitioner accepts full responsibility for his actions.

(6) The Reasons For The Expungement, Including The Petitioner’s Attempts To Obtain Employment, Housing, Or Other Necessities.

Petitioner lost employment opportunities because of the existence of these records. Specifically, petitioner was denied of four driving jobs including UPS, FedEx, Uber, and Lyft. Pet. ¶ 11.

(7) The Petitioner’s Criminal Record.

Petitioner ’s criminal history includes the following:

- Federal warrant from US Marshalls from 2005. Pet. ¶ 14.
- Manslaughter 1st degree conviction in Hennepin County, MN from 2004. *Id.*
- Operate Motor Vehicle and License Suspension/Revocation/Cancellation dismissal in Roseville, MN from 2003. *Id.*
- Fail to Provide Vehicle Insurance dismissal in Roseville, MN from 2003. *Id.*
- Operate Motor Vehicle and License Suspension/Revocation/Cancellation conviction in Roseville, MN from 2003. *Id.*
- Drugs – Other Controlled Substance Offenses dismissal in Roseville, MN from 2003. *Id.*
- Arrest Record for Criminal Vehicular Homicide/Injury by Minnesota State Patrol from 2002. *Id.*

(8) The Petitioner's Record Of Employment And Community Involvement.

Petitioner is currently working as a truck driver for Kock Trucking. He is a full-time employee and has worked for the company for the past year and a half. Pet. ¶ 12.

(9) The Recommendations Of Interested Law Enforcement, Prosecutorial, And Corrections Officials.

There are no recommendations from interested law enforcement, prosecutorial, or correction officials at this time.

(10) The Recommendations Of Victims Or Whether Victims Of The Underlying Crime Were Minors.

The victim of the fighting and brawling is unknown. The victim of the instruction permit violation is society.

(11) The Amount, If Any, Of Restitution Outstanding, Past Efforts Made By The Petitioner Toward Payment, And The Measures In Place To Help Ensure Completion Of Restitution Payment After Expungement Of The Record If Granted.

There is no restitution outstanding.

(12) Other Factors Deemed Relevant By The Court.

There are no additional factors to consider.

Petitioner demonstrates full and complete rehabilitation. Balancing the factors weighs in favor of expungement of this misdemeanor offense.

III. Petitioner Is Eligible for Expungement of Her Executive Branch Records.

Petitioner requests that the Court seal both executive and judicial branch records. Importantly, Minnesota law differentiates between statutory expungement and expungement where the judiciary uses its inherent authority. Where the court has a statutory basis to expunge a criminal record, there are no separation of powers issues regarding the court's ability to extend an

expungement order to executive branch records. Here, the Court has a statutory basis on which to order expungement and Petitioner requests that the Court seal judicial and executive branch records of this matter.

In 2006, the Minnesota Court of Appeals addressed this issue and opined that “[e]xpungement under Chapter 609A applies to criminal records held by executive branch law enforcement agencies as well as to judicial records.” *State v. J.R.A.*, 714 N.W.2d 722, 725 (Minn. Ct. App. 2006) *review denied* (Minn. Aug 23, 2006).

In 2010, in a special concurrence, Judge Johnson eloquently addressed the same issue in stating:

[T]here is a common perception that if criminal records possessed by executive-branch offices cannot be expunged pursuant to a district court’s inherent judicial authority, records of that type never can be expunged. In chapter 609A of the Minnesota Statutes, however, the legislature has set forth a detailed statutory scheme for the expungement of certain criminal records, ***including records possessed by executive-branch offices.***

The statutory expungement scheme expressly contemplates a remedy that is ***broad enough to reach records possessed by the executive branch.***

Nonetheless, the expungement statute is a means of expunging records possessed by executive-branch offices without doing violence to the principle of separation of powers.

State v. M.L.A., 785 N.W.2d 763, 769 (Minn. Ct. App. 2010) (Johnson, J., concurring specially) (emphasis added).

This Court has the statutory authority to expunge executive branch records. Petitioner respectfully requests that the Court include executive branch records in its Order to afford her a complete and effective remedy.

CONCLUSION

For the above cited reasons, Petitioner respectfully requests that the Court order expungement of all judicial and executive branch records relating to case file numbers [REDACTED]

[REDACTED]

RESPECTFULLY SUBMITTED BY:

Dated: [REDACTED]

