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In re Petition of Aragon, 136 Nev. Adv. Op. 75 (Dec. 3, 2020)

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SEALING CRIMINAL RECORDS IN NEVADA: GROSS MISDEMEANOR OPEN OR
GROSS LEWDNESS

Summary

The Court found that a gross misdemeanor open or gross lewdness is not an offense for which a criminal record cannot be sealed. Thus, the district court abused its discretion when it denied appellant Aragon's petition to seal his record regarding that offense.

Background

Aragon was charged with felony sexually motivated coercion of a minor several years ago. In return for Aragon pleading guilty to this offense and successfully completing his probation, the State agreed to allow him to later withdraw the felony guilty plea and instead enter a plea of guilty to gross misdemeanor open or gross lewdness. Aragon did so and three years later, filed a petition to seal his criminal records. The State had no objection to this, but the district court denied his petition on the grounds that under NRS 179.245(6)(a), Aragon's offense was a crime against a child and thus not sealable. Aragon appealed this decision.²

Discussion

The Court reviewed the district court's decision to deny the appellant's petition to seal his criminal record under the abuse of discretion standard. It reviewed statutory construction issues de novo and applied the statute's plain and unambiguous language. NRS 179.245 lays out the process that a person may use to seal his or her criminal records.³ If all of its requirements are met, then the person is entitled to a rebuttable presumption that his or her records are sealable.⁴

¹ By Victor Kang.

² NEV. REV. STAT. § 179.245(6)(a) (2017).

³ NEV. REV. STAT. § 179.245 (2017).

⁴ *Id.*

However, NRS 179.245(6)(a) provides that a person who has been convicted of “[a] crime against a child” may not file a petition to seal his or her record “relating to [such] a conviction.”⁵ The statute lists several definitions of “crime against a child,” of which Aragon’s gross misdemeanor open or gross lewdness is not expressly part of.⁶ Given this fact, the Court held that Aragon was entitled to a presumption that his misdemeanor offense is sealable. Had the Legislature intended to include Aragon’s offense as a “crime against a child,” it would have expressly listed that as part of the statute. Since it did not do so, the Court concluded that Aragon’s offense was not a “crime against a child.” Therefore, Aragon was entitled to a presumption that his gross misdemeanor open or gross lewdness is eligible to be sealed. And because no one rebutted this presumption, Aragon was entitled to have his record sealed.

Conclusion

The Court held that the district court abused its discretion in denying Aragon’s petition and thus reversed and remanded with instructions for the district court to grant the petition to seal.

⁵ NEV. REV. STAT. § 179.245(6)(a) (2017).

⁶ NEV. REV. STAT. § 179D.0357 (2013).