

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JAY ESTEP,

No. 36575

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**JAN 23 2002**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court denying appellant's petition to seal records relating to conviction and records relating to arrest.

On April 7, 2000, appellant filed in the district court a petition to seal records of a Nevada conviction and records of a Nevada arrest pursuant to NRS 179.245 and NRS 179.255 respectively.<sup>1</sup> The State opposed appellant's petition. Appellant filed motions to have the State's opposition dismissed. The State thereafter withdrew its opposition. On July 13, 2000, the district court denied appellant's petition. In denying the petition, the district court first stated that "it dispensed with the hearing requirement . . . based on stipulation of the parties." The district court then found that "[appellant] was charged in Nevada with possession of a firearm as ex-felon . . . was convicted of conspiracy to conceal a

---

<sup>1</sup>See NRS 179.245 (sealing records after conviction); NRS 179.255 (sealing records of arrest after dismissal or acquittal).

weapon," and that "the underlying felony of which [appellant] was convicted was rape." The district court then denied appellant's petition pursuant to NRS 179.245(5) providing, in relevant part, that "[a] person may not petition the court to seal records relating to a conviction of a . . . sexual offense." This appeal followed.

Our review of the record on appeal reveals that the district court erred in denying appellant's petition to seal records. First, the district court denied appellant's petition based upon the misapplication of NRS 179.245(5). Appellant sought to have sealed his 1967 Nevada conviction for conspiracy to conceal a weapon, a conviction with no underlying sexual offense component. Thus, the district court improperly applied NRS 179.245(5) to this conviction. Appellant also sought to have sealed records relating to his 1966 Nevada arrest resulting in a charge, later dismissed, of ex-felon in possession of a firearm, where the underlying felony was a 1955 Washington State conviction for carnal knowledge.<sup>2</sup> NRS 179.245(5), which prohibits the district court from sealing records of conviction for a sexual offense, does not apply to sealing records of arrest. NRS 179.255, the provision relating to sealing records of arrest, does not contain a provision analogous to NRS 179.245(5).<sup>3</sup> Thus, we conclude that the district court erroneously denied appellant's petition to seal records relating to his Nevada conspiracy to conceal a weapon conviction and records of his Nevada arrest pursuant to NRS 179.245(5).

---

<sup>2</sup>Presumably, the rape to which the district court referred in its order denying appellant's petition is this Washington State conviction.

<sup>3</sup>See NRS 179.245; NRS 179.255.

Next, there is nothing in the record to support the district court's conclusion that the parties stipulated to dispensing with an evidentiary hearing. In fact, the record on appeal supports the opposite conclusion. Appellant filed two motions for setting a date certain for an evidentiary hearing on his petition.<sup>4</sup> Thus, we conclude that appellant did not stipulate to dispensing with an evidentiary hearing.<sup>5</sup>

There may be valid reasons for denying appellant's petition to seal records. In State v. Cavaricci,<sup>6</sup> this court held, pursuant to an appeal by the State, that the district court abused its discretion in sealing respondent's records of convictions and charges that were dismissed, never filed or not prosecuted where he had been arrested for serious offenses in the five years following his most recent misdemeanor conviction.<sup>7</sup> The district court, however, did not deny appellant's petition based upon his

---

<sup>4</sup>Appellant titled these documents "File Reply Request for Hearing to Speak," and "Request for Submission of Motion for Hearing."

<sup>5</sup>See NRS 179.245(3), (4); NRS 179.255(3); NRS 179.255(4) (relating to hearings on petitions to seal records of conviction and records of arrest); see also Knox v. District Court, 108 Nev. 354, 830 P.2d 1342 (1992), (after concluding that the district court could not refer petitions to seal arrest records to deputy district attorneys, this court directed the district court to schedule a hearing on appellant's petition); State v. District Court, 105 Nev. 822, 823, 783 P.2d 463, 463 (1989) ("[U]nless the parties stipulate otherwise, it is error for the district court to grant a record sealing petition pursuant to NRS 179.255 without first conducting an evidentiary hearing.").


<sup>6</sup>108 Nev. 411, 834 P.2d 406 (1992).

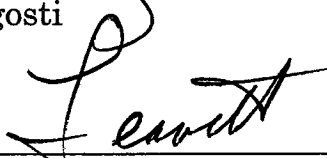
<sup>7</sup>Id. at 412-13, 834 P.2d at 407-08; see also NRS 179.245(1)(d), (4); NRS 179.255(1), (4).

criminal history, and the district court's stated grounds for its denial are erroneous. Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to conduct an evidentiary hearing and further proceedings consistent with this order.<sup>8</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Charles M. McGee, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
James Jay Estep  
Washoe County Clerk

---

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that further relief is not warranted.