

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK SERLES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86301-COA

FILED

APR 29 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Mark Serles appeals from a district court order denying a petition to seal criminal records. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

On October 4, 2022, Serles filed a petition to seal criminal records associated with a 2004 conviction of sexually motivated coercion. In his petition, Serles asserted his criminal records were eligible for sealing because he had been honorably discharged from probation in 2008 and he had not been charged or convicted of any subsequent offenses. The State subsequently filed a notice indicating that Serles' records should not be sealed because they involved a crime against a child or a sexual offense. The district court later entered a written order denying Serles' petition because it found his offense was ineligible for sealing pursuant to NRS 179.245(6)(a) and (b). This appeal followed.

On appeal, Serles argues the district court abused its discretion by denying his petition to seal his criminal records because an offense of sexually motivated coercion is not one that is ineligible for sealing under NRS 179.245(6) and the State did not otherwise rebut the presumption that his records should be sealed. In its answering brief, the State concedes that

the district court abused its discretion by denying Serles' petition and it acknowledges that sexually motivated coercion is not one of the offenses ineligible for sealing and it further concedes that Serles' petition should be granted.

“We review a district court’s decision to grant or deny a petition to seal a criminal record for an abuse of discretion.” *In re Aragon*, 136 Nev. 647, 648, 476 P.3d 465, 467 (2020). “A district court abuses its record sealing discretion when it commits a legal error.” *In re Tiffie*, 137 Nev. 224, 225, 485 P.3d 1249, 1251 (2021). “NRS 179.245 provides the process that a convicted person may use to seal his or her criminal records.” *Aragon*, 136 Nev. at 649, 476 P.3d at 467. “If a convicted person meets all the statutory requirements under NRS 179.245, then he or she is entitled to a rebuttable presumption in favor of sealing the criminal records.” *Id.* (citing NRS 179.2445(1)). Because the Legislature has expressly defined which offenses are ineligible for sealing, a district court “must look to the crimes identified in the statute as being precluded from record sealing” and “may not independently evaluate the facts” to reach its own conclusion as to whether an offense is ineligible for sealing. *Id.* at 649, 476 P.3d at 467-68.

Here, whether the district court committed legal error turns on whether the offense of sexually motivated coercion is expressly defined as an offense that is ineligible for sealing. In its written order, the district court stated that Serles' offense of sexually motivated coercion is ineligible for sealing as provided by NRS 179.245(6)(a) and (b). NRS 179.245(6)(a) and (b) preclude individuals convicted of certain offenses involving crimes against a child or crimes of a sexual nature from petitioning to seal their criminal convictions. *Aragon*, 136 Nev. at 649, 476 P.3d at 467. However, sexually motivated coercion is not expressly listed as a crime for which

sealing is ineligible. See NRS 179.245(6)(a), (b); NRS 179.245(10)(a) (stating a crime against a child has “the meaning ascribed to it in NRS 179D.0357”); NRS 179.245(10)(b) (listing crimes defined as sexual offenses as used in the statutes governing sealing of criminal records); NRS 179D.0357 (listing offenses defined as crimes against a child). Had the Legislature intended to preclude sealing of criminal records related to a crime of sexually motivated coercion, “it would have expressly done so by including it in this list of convictions that a defendant may not petition to seal.” *Aragon*, 136 Nev. at 649, 476 P.3d at 467.

Because sexually motivated coercion is not barred from sealing pursuant to NRS 179.246(6)(a) and (b), the district court abused its discretion by denying Serles’ petition. As detailed above, the State now concedes that Serles’ conviction is eligible for sealing. Under these circumstances, we reverse the district court’s order and remand this matter for further proceedings consistent with this order.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Erika D. Ballou, District Judge  
Cofer & Geller, LLC  
Clark County District Attorney  
Eighth District Court Clerk