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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **IN THE MATTER OF THE PETITION**
3 **FOR EXPUNGEMENT OF ARREST**
4 **AND PUBLIC RECORDS OF STEVEN**
5 **TRUITT,**

Court of Appeals of New Mexico
Filed 4/3/2024 10:15 AM



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

6 **STEVEN TRUITT,**

7 Petitioner-Appellant,

8 v.

No. A-1-CA-40211

9 **NEW MEXICO DEPARTMENT OF**
10 **PUBLIC SAFETY,**

11 Respondent-Appellee.

12 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
13 **Stan Whitaker, District Court Judge**

14 Ben A. Ortega
15 Albuquerque, NM

16 for Appellant

17 Jason Greenlee, Legal Director
18 Santa Fe, NM

19 for Appellee

20 **DECISION**

21 **HANISEE, Judge.**

22 {1} Petitioner Steven Truitt appeals the district court's order denying his petition
23 for expungement, filed pursuant to NMSA 1978, Section 29-3A-1 to -9 (2019, as

1 amended through 2023)¹ (Expungement Act or the Act). Petitioner argues that the
2 district court erred in concluding that his convictions were ineligible for
3 expungement under the Act on the basis that his underlying conduct resulted in the
4 death of a clerk at the grocery store that was robbed by Petitioner—the getaway
5 driver—and various accomplices. *See* § 29-3A-5(G) (“The provisions of [the Act]
6 do not apply to . . . an offense that caused great bodily harm or death to another
7 person.”). For the reasons that follow, we affirm.

8 {2} As an initial matter, in any appeal before this Court, “[i]t is the appellant’s
9 burden to demonstrate, by providing well-supported and clear arguments, that the
10 district court has erred.” *Premier Tr. of Nev., Inc. v. City of Albuquerque*, 2021-
11 NMCA-004, ¶ 10, 482 P.3d 1261. On December 3, 2021, the district court issued a
12 well-reasoned, explanatory order denying Petitioner’s request for expungement (the
13 Order). Having carefully reviewed the Order, as well as the briefs of the parties and
14 the record on appeal, we exercise our discretion to adopt the Order for substantially
15 the same reasons as those set forth therein. *See* Rule 12-405(B) NMRA (providing
16 that appellate courts may dispose of a case by nonprecedential order, decision, or
17 memorandum opinion under certain circumstances). We briefly supplement the
18 reasoning expressed by the district court in light of the issues raised on appeal.

¹Certain sections of the Expungement Act were amended during the pendency of this case. *See* §§ 29-3A-8, -4. Because such amendments do not impact this appeal, we cite the most recent version of the statute herein.

1 {3} In 1997, Petitioner was convicted of the following offenses: one count of
2 conspiracy to commit armed robbery, contrary to NMSA 1978, Sections 30-16-2
3 (1973) and 30-28-2 (1979); and two counts of tampering with evidence, contrary to
4 NMSA 1978, Section 30-22-5 (1963, amended 2003). Petitioner argues that his
5 convictions are eligible for expungement because his own criminal acts underlying
6 them—driving a getaway vehicle to and from the scene of an armed robbery at which
7 a person was murdered—did not “cause” death as prohibited by Section 29-3A-5(G).
8 Petitioner asserts that his role in the crime was too attenuated from the murder to
9 establish causation, the killing could still have occurred if Petitioner did not
10 participate in the crime, and nothing in the record suggests Petitioner actually knew
11 the killer was armed during the robbery. The district court rejected these same
12 arguments, concluding first that the Legislature’s use of the word “offense,” rather
13 than “conviction,” in Section 29-3A-5(G) is indicative of its intent to allow courts to
14 consider facts and circumstances beyond those narrowly supporting Petitioner’s
15 convictions. The district court secondarily noted that another section of the Act
16 instructs courts to consider “the nature and gravity of the offense *or conduct* that
17 resulted in the petitioner’s conviction.” Section 29-3A-5(E) (emphasis added). We
18 agree with the district court that a plain reading of these two sections, combined with
19 the Legislature’s use of the word “conviction” elsewhere in the Act in different
20 contexts, *see, e.g.*, § 29-3A-5(A) (using the word “conviction” four times in a single

1 sentence), clearly directs a district court to consider the broader conduct underlying
2 and surrounding a petitioner’s specific convictions. *See State v. Notah*, 2022-
3 NMCA-005, ¶ 31, 503 P.3d 418 (“When the language in a statute is clear and
4 unambiguous, we give effect to that language and refrain from further statutory
5 interpretation.” (internal quotation marks and citation omitted)); *State v. Jade G.*,
6 2007-NMSC-010, ¶ 28, 141 N.M. 284, 154 P.3d 659 (“[W]hen the Legislature
7 includes a particular word in one portion of a statute and omits it from another
8 portion of that statute, such omission is presumed to be intentional.”).

9 {4} While we adopt the district court’s Order for the above reasons, we also briefly
10 explain that Petitioner’s conviction of conspiracy to commit armed robbery is itself
11 ineligible for expungement. By arguing that his involvement in the robbery was too
12 attenuated from the actual killing to establish a causal relationship, Petitioner
13 misconstrues the very nature of conspiracy. “As a general rule, one who participates
14 in a criminal venture is treated by the law as if he or she had committed all of the
15 criminal acts of the other participants.” *State v. Catt*, 2019-NMCA-013, ¶ 21, 435
16 P.3d 1255 (internal quotation marks and citation omitted). “A conspirator is
17 ordinarily responsible for the criminal acts of coconspirators in furtherance of the
18 conspiracy.” *Id.* (internal quotation marks and citation omitted); *see also, State v.*
19 *McDonald*, 2004-NMSC-033, ¶ 14, 136 N.M. 417, 99 P.3d 667 (“Because [the
20 d]efendant participated in armed robbery, he can be sentenced for the death that

1 resulted from the robbery.”). The nature of conspiracy is that it spans the panoply of
2 criminal acts committed by coconspirators made in furtherance of the criminal
3 agreement. In other words, by being convicted of conspiracy to commit armed
4 robbery, Petitioner established the causal relationship between his acts and those
5 made in furtherance of the goals of the conspiracy, which include in this case the
6 murder of the store employee. For this reason, and those relied on by the district
7 court, Petitioner’s convictions are ineligible for expungement.

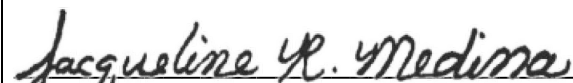
8 **CONCLUSION**

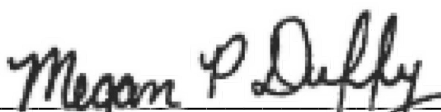
9 {5} For the above reasons, we affirm.

10 {6} **IT IS SO ORDERED.**

11 
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 
15 **JACQUELINE R. MEDINA, Judge**

16 
17 **MEGAN P. DUFFY, Judge**