

DENNIS PETERSON – FIREARMS APPEAL

Heard 2/23/07

A.P. Tara Kirkendall

Louis Nappen, Esq.

FACTS

On October 3, 2006, Dennis Peterson, the applicant, made application for a firearms purchaser identification card. On December 19, 2006, the then Chief of the Independence Township Police Department, Chief Peterson (no relation to Applicant) disapproved the application. The Chief cited three reasons for disapproval, to wit: Criminal Record, Public Health, Safety and Welfare, and Falsification of Application. The applicant appealed the disapproval of his application and that matter was heard by this Court on February 23, 2007.

At that proceeding, the current Chief of the Independence Township Police, Chief Riley, indicated that if he had been the one to review the application, he would have disapproved it but would have only marked two of the three reasons indicated by the former Chief, namely, Public Health, Safety and Welfare, and Falsification of Application. Additionally, on it's own motion, the Prosecution raised an issue, pursuant to statute 2C:58-3(c)(8) which provides, "No handgun purchase permit or firearms purchaser identification card shall be issued...to any person whose firearm is seized

pursuant to the 'Prevention of Domestic Violence Act of 1991' and whose firearm has not been returned."

The current Chief of Police testified and indicated why "Falsification of Application" and "Public Health, Safety and Welfare" were marked on the applicant's application as reasons for disapproval. The Chief testified that "Falsification of Application" was marked because the applicant answered "No" to question 13 on the application.

Question 13 asks, "Have you ever been convicted of a disorderly persons offense or adjudged a juvenile delinquent?" Contrary to his answer, the applicant had been convicted of nine disorderly persons offenses some 37 years ago, in 1969 and 1970. Eight of the offenses, all for Malicious Injury to Property, derived from an incident where he had been the driver of a vehicle from which passengers in the backseat were shooting air rifles at the windows of homes and parked vehicles. The applicant testified that he was never arrested for these offenses. He testified that he plead guilty to and was sentenced on all eight Malicious Injury to Property offenses one occasion. The applicant was fined \$30.00 and assessed \$5.00 costs for each offense. In April of 1970, the applicant was charged with another disorderly persons offense, Malicious Injury to Property, for which he was fined \$100 and assessed court costs.

As to question 14 on the application, "Have you ever been convicted of a crime that has not been expunged or sealed?" the applicant answered, "Yes." As requested on the application, he provided the year and place in which the crime occurred, as well as the disposition, which he marked as "dismissed." The applicant testified that this "yes" answer corresponded to charges of Unlawful Use of a Dangerous Weapon and Assault with a Dangerous Weapon from 1970 in Byram Township, a charge for which he was arrested. A 12 gauge shotgun was seized by the police in connection with those charges, however the charges were ultimately "no-billed" by the Sussex County Grand Jury and the firearm was returned to Applicant.

There is no evidence that the then Chief of Police, having discovered the error on the form, questioned the applicant in any way.

Next, the State argues the application should be denied as against the public health, safety, and welfare because of the several disorderly persons charges which involved a weapon, coupled with the domestic violence incident which occurred in 2000. The domestic violence incident involved threats made by the applicant to his wife regarding her relationship with another man. The applicant testified that he did make threats to his then wife shortly after she had told him that she was leaving him for another man and during which time he was extremely upset. Specifically, the applicant

threatened to beat the other man to "within an inch of his life," and threatened his then wife, "I will kill your friend and burn down the store you work in even if you're inside."

As a result of the threats the applicant's former wife made application for and was granted a temporary restraining order, pursuant to which ten weapons were seized from the applicant. The temporary restraining order was subsequently dismissed. The seized weapons were not returned to the applicant.

The applicant testified that he was not able to regain possession of his weapons because he did not have a firearms purchaser identification card at that time and could not have obtained one in the time frame required to regain his weapons. Therefore, the applicant testified, signed a consent form to relinquish the weapons to the Hunterdon County Prosecutor's Office who subsequently destroyed some of the weapons and transferred others to a third party.

The Prosecution argues that by virtue of that consensual disposition the applicant comes within one of the statutory disqualifiers for issuance of a firearms purchaser identification card and that his application was rightfully disapproved. The applicant argues that the statutory provision in question was not enacted until 2004 and was not in effect at the time the he

surrendered his weapons. Therefore, he argues that at the time he surrendered the weapons, he had no notice that such action could effectively preclude him from ever lawfully possessing firearms again.

DECISION

Judicial review for the denial of firearms purchaser identification cards requires a de novo hearing in which the court contemplates the introduction of relevant and material testimony and the application, and makes an independent judgment. Weston v. State of New Jersey, 60 N.J. 36 (1972). Accordingly, in the court's view, the existence of good cause for the denial must represent a burden to be carried by the Police Chief, and to be established by a fair preponderance of the evidence. Of course, in evaluating the facts presented by the Chief, and the reasons given for rejection of the application, the court should give appropriate consideration to the Chief's investigative experience and to any expertise he appears to have developed in administering the statute. Id. at 46.

On February 23, 2006, this Court heard the testimony of Chief Riley of the Independence Township Police Department, as well as the testimony of the applicant himself. The Court had no reason to doubt the credibility of either of the witnesses who appeared before it; they both appeared to be telling the truth.

With regard to the falsification of the application, this Court finds that there was no such falsification. There is insufficient evidence to indicate that this applicant willfully falsified the official form for a firearms purchaser identification card. It is eminently clear, and the applicant testified to the fact that these unreported disorderly persons offenses occurred 37 or 38 years ago, when the applicant was approximately 19 years of age. Further, it is clear that the applicant thought he had reported the only incident of any significance and gave little heed to the municipal court convictions for which he paid a fine and was sent home. It is notable that the crime the applicant did report on the application was the only one for which he was actually arrested and brought to the police station. In sum, the applicant included the more serious offense and failed to report the less serious ones. It would seem unlikely that there would be an intentional falsehood and this Court so finds.

The Court now turns to the second issue, the public health, safety, and welfare, and the issuance of the firearms purchaser identification card being contrary to that. The court finds from the testimony that the applicant is a supervisor of 16 people and has been employed most of his life. He has been married twice, has one child, and three grandchildren. He is active in his condominium association, has no criminal record, is not a drug addict, is

not a drunk, and has not had any mental health counseling or been committed to an institution. He has been the subject of a Temporary Restraining Order because of domestic violence. Pursuant to the Prevention of Domestic Violence Act of 1991, and as a result of the Temporary Restraining Order 10 weapons were seized from the applicant's home. Those weapons were not returned.

The Prosecution argues that the law is clear; anyone who has had his weapons seized because of a domestic violence restraining order and has not had them returned to him may not obtain a firearms purchaser identification card. On its face, that argument is somewhat convincing, however, when one reviews the statutory provisions one discovers that the statute upon which the Prosecutor relies did not come into effect until 2004, some three years after the forfeiture in this case.

The Prosecutor seeks to subject the applicant to a provision of the statute that was not in effect at the time the applicant engaged in the conduct covered by the statute. The applicant argues that the enforcement of such a limitation on his ability to obtain a firearms purchaser identification card violates notions of fundamental fairness. This Court agrees.

"Fundamental fairness is a doctrine to be sparingly applied. It is appropriately applied in those rare cases where not to do so will subject the

defendant to oppression, harassment, or egregious deprivation." Doe v. Poritz, 142 N.J. 1 (1995), *citing* State v. Yoskowitz, 116 N.J. 679, 712, 563 A.2d 1 (1989) (Garibaldi, J., concurring and dissenting). Egregious deprivation would surely be the result if this applicant were precluded from obtaining a firearms purchaser identification card by virtue of the fact that he consensually surrendered his weapons at a time when it was impossible for him to have known that such action would later subject him to lifelong deprivation of his second amendment right.

Additionally, it is clear that in consenting to the disposition of the weapons seized as a result of the temporary restraining order, the applicant did not intend to waive his right to bear arms as provided by the second amendment of the U.S. Constitution. He therefore could not have knowingly, intelligently, or voluntarily waived that right.

Therefore, this Court finds that for this applicant there is no absolute prohibition to obtaining a firearms purchaser identification card derived from the statutory obstruction prohibiting persons whose weapons have been seized pursuant to the Prevention of Domestic Violence Act of 1991 and have not been returned from obtaining a firearms purchaser identification card.

Therefore, the court reverses the decision of Chief Peterson (no relation to Applicant) and directs that the permit issue in accordance with this decision.

Therefore, Applicant's appeal is GRANTED.

ORDER PREPARED BY COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL
WARREN COUNTY
DOCKET NO. A-01-07-2112

FILED

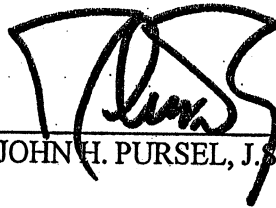
FEB 27 2007

Superior Court of New Jersey
Warren County
Judges Chambers
Belvidere, NJ 07823

IN THE MATTER OF FIREARM'S)
APPEAL OF DENNIS W.)
PETERSON)
Criminal Action
ORDER

This matter came on before the court on the 23rd day of February, 2007 in the presence of Tara J. Kirkendall, Assistant Prosecutor, and Louis P. Nappen, Esquire, attorney for the applicant, Dennis W. Peterson, and the court having reviewed the papers on file, having heard the arguments of counsel, and for good cause, IT IS, therefore, on this 27th day of February, 2007 ORDERED AND ADJUDGED that the applicant's appeal be and hereby is GRANTED.

See Reasons attached hereto.



JOHN H. PURSEL, J.S.C.