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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shawn L. Bethea,)
)
Petitioner,)
)
vs.)
)
South Carolina Law Enforcement Division,)
)
Respondent.)
)

Docket No. 16-ALJ-20-0287-CC

FINAL ORDER AND DECISION

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to a request for a contested case hearing filed by Shawn L. Bethea (“Petitioner”) arising out of the South Carolina Law Enforcement Division’s (“SLED” or “Respondent”) denial of Petitioner’s application for a Concealed Weapons Permit (“CWP”).

The Court held a contested case hearing on November 9, 2016, at the ALC in Columbia, South Carolina. Based upon the evidence presented and testimony offered at the hearing, I find that Petitioner’s application for a CWP must be denied because of his prior conviction for Criminal Domestic Violence.

FINDINGS OF FACT

Having carefully considered all testimony and arguments presented at the hearing on this matter, and taking into account the credibility and accuracy of the evidence, I make the following findings of fact by a preponderance of the evidence:

Petitioner applied for a CWP from Respondent in 2016. As a result of the application, SLED performed a background check on Petitioner pursuant to S.C. Code Ann. § 23-31-215(B) (Supp. 2016). The background check showed that on May 17, 1993, Petitioner was sentenced by the Marion Municipal Court to either payment of a \$248.25 fine or service of thirty days in jail for violating S.C. Code Ann. § 16-25-20(1). Petitioner paid the fine. At the time of Petitioner’s conviction, S.C. Code Ann. § 16-25-20 stated, in part: “It is unlawful to: (1) cause physical harm or injury to a person’s own household member[.]” Because Petitioner has a conviction for a misdemeanor crime of domestic violence, SLED denied Petitioner’s application for a CWP by

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letter dated July 25, 2016.

Petitioner asserts that SLED must issue a CWP to all individuals who are not prohibited by South Carolina law from possessing a weapon, regardless of whether or not the individual is prohibited from possessing a firearm by federal law or by the law of any other state.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following as a matter of law:

S.C. Code Ann. § 23-21-215(D) (Supp. 2016) and S.C. Code Ann. § 1-23-600(B) (Supp. 2016) grant jurisdiction to this Court to hear this contested case.

Respondent is required to conduct local, state, and federal background checks of an applicant for a CWP upon submission of required information and proof of training. S.C. Code Ann. § 23-31-215(B). If an applicant's fingerprints and background checks are favorable, SLED must issue a permit to the applicant. *Id.* However, if SLED determines that an applicant's background is unfavorable, SLED may deny the permit and shall issue a written statement to the applicant specifying its reasons for denying the permit. *Id.*

Federal law states that "[i]t shall be unlawful for any person...who has been convicted in any court of a misdemeanor crime of domestic violence." 18 U.S.C. § 922(g)(9). In this case, Petitioner's criminal background record reflects that he was convicted in South Carolina of Criminal Domestic Violence. Based upon his record and applicable federal law, Petitioner's possession of a firearm would place him in direct violation of federal law. Therefore, Petitioner would not be a "favorable" person to receive a CWP.

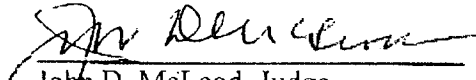
Petitioner attempts to challenge the constitutionality of his 1993 conviction. I find this unpersuasive. As an initial matter, there was no evidence or testimony presented that Petitioner has ever challenged the constitutionality of his conviction on appeal, or through any legally cognizable procedure that is available to appeal the constitutionality of a criminal conviction or imposition of a sentence. Further, I find that this venue is not appropriate for such a constitutional challenge. *See Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 84-85, 529 S.E.2d 6, 9 (2000) ("ALJs have no authority to pass upon the constitutionality of a statute or regulation.") (citing *Beaufort Cty. Bd. of Educ. v. Lighthouse Charter Sch. Comm.*, 335 S.C. 230, 516 S.E.2d 655 (1999); *S.C. Tax Comm'n v. S.C. Tax Bd. of Review*, 278 S.C. 556, 299 S.E.2d 489 (1983)). Lastly, Petitioner argues that his alleged entitlement to an expungement for his conviction invalidates the conviction from being a federal prohibition. This argument is without merit.

Expungements for misdemeanor convictions in South Carolina are discretionary and are not a matter of right. See S.C. Code Ann. § 22-5-910 (Supp. 2016).

ORDER

Based upon the above Findings of Fact and Conclusions of Law,
IT IS HEREBY ORDERED that South Carolina Law Enforcement Division's denial of Shawn L. Bethea's application for a concealed weapons permit is **AFFIRMED**.
AND IT IS SO ORDERED.

January 12, 2017
Columbia, S.C

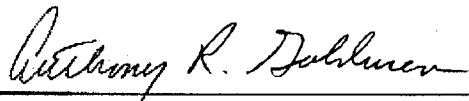


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

January 12, 2017
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

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