

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

FILED

APPEAL FROM THE ADMINISTRATIVE LAW COURT

AUG 29 2017  
SC Court of Appeals

John D. McLeod, Administrative Law Judge

Appellate No.: 2017-000270

Shawn Bethea

Appellant

Vs.

South Carolina Law Enforcement Division

Respondent,

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. THE ADMINSTRATIVE LAW COURT'S FINDING THAT APPELLANT FAILE TO SATISFY THE REQUIREMENTS FOR A CONCEALED WEAPONS PERMIT UNDER THE LAW ABIDING CITIZENS SELF-DEFENSE ACT OF 1996 IS AN ABUSE OF DISCRETION AND ERROR OF LAW BECAUSE APPELLANT'S 1993 CONVICTION FOR CRIMINAL DOMESTIC VIOLENCE IS NOT A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE UNDER 18 U.S.C. 922(g) (9); THEREFORE, APPELLANT IS NOT DISQUALIFIED FROM POSSESSION A FIREARM UNDER FEDERAL LAW.
  
2. THE ADMINSTRATIVE LAW COURT'S FINDING THAT APPELLANT FAILE TO SATISFY THE REQUIREMENTS FOR A CONCEALED WEAPONS PERMIT UNDER THE LAW ABIDING CITIZENS SELF-DEFENSE ACT OF 1996 IS AN ABUSE OF DISCRETION AND ERROR OF LAW, BECAUSE APPELLANT IS NOT DISQUALIFIED FROM POSSESSION A FIREARM UNDER SOUTH CAROLINA LAW.

## STATEMENT OF THE CASE

In 2016 Shawn Bethea (hereinafter “Appellant”) submitted an application to the South Carolina Law Enforcement Division (hereinafter “Respondent”) for a Concealed Weapons Permit (hereinafter “CWP”) under the Law Abiding Citizens Self-Defense Act of 1996 (hereinafter the “CWP Act”). Respondent issued to Appellant a CWP denial notice letter dated July 1, 2016, deny his application.

Appellant appealed Respondent’s denial by letter dated July 20, 2016 addressed to SLED CWP Denial Appeals. By letter addressed to Appellant dated July 25, 2016, Respondent affirmed its decision denying Appellant’s application for a CWP. Thereafter, Appellant appealed Respondent’s denial of his CWP application to the South Carolina Administrative Law Court (hereinafter “Administrative Law Court”).

A contested case hearing was held before the Administrative Law Court on November 9, 2016. In December 2016 Respondent and Appellant submitted proposed orders to the Administrative Law Court. The Administrative Law Court issued a Final Order dated January 12, 2017, affirming Respondent’s denial of Appellant’s application.

Appellant filed a notice of appeal with the South Carolina Court of Appeals on February 10, 2017.

## STATEMENT OF THE FACTS

Respondent denied Appellant’s application for a CWP on belief that Appellant’s May 17, 1993 conviction for misdemeanor Criminal Domestic Violence (hereinafter “CDV”) constituted an unfavorable background check under the CWP Act. Respondent explained in its July 1, 2016 denial letter to Appellant:

Our records indicate that you were convicted on or about May 17, 1993 for "Criminal Domestic Violence". Pursuant to U.S.C. 922(g) (9) this conviction prohibits you from purchase, possession, or transfer of a firearm and ammunition. As such, pursuant to SC Code of laws 23-31-215(B) your concealed weapon application is denied.

(R. p. 98).

The City of Marion Police Department responded to a CDV call at Appellant's home on May 16, 1993. (R. p. 99). Appellant was arrested at the scene and charged with misdemeanor CDV. (Id.) Appellant was released on a cash bond of Two Hundred Forty-eight and 25/100 Dollars (\$248.25). (R. p. 36, lines 20-24 ). On May 17, 1993, the next day, Appellant was found guilty by the Marion Municipal Court in his absence and fined \$248.25 or thirty (30) days in jail. (R. p. 100). The cash bond Appellant posted was forfeited and applied to the fine. (Id.). Appellant never appeared before the court before, during or after his conviction, was never notified of his right to a jury trial, and was never represented by legal counsel. (R. p. 20, lines 10-17 & R. pp. 36-37, lines 10-19).

On appeal before the Administrative Law Court, Respondent's denial of Appellant's application for a CWP was affirmed. The Administrative Law Court reasoned that:

Federal law states that "[i]t shall be unlawful for any person...who has been convicted in any court of a misdemeanor crime of 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.

(R. p. 3).

Prior to applying for a CWP, Appellant was subjected to a Federal Bureau of Investigation (hereinafter "FBI") background check during the process of purchasing a

handgun from a local firearms dealer. (R. p. 22, lines 4-21). Appellant was asked on the background check application whether he had been convicted of domestic violence. (R. p. 22, lines 23-25; R. p. 23, line). Appellant's application was flag for further scrutiny by the FBI during processing. (R. p. 23, lines 8-24). Appellant returned to the firearms dealer five (5) days later and was permitted to purchase a .40 caliber handgun. (R. pp. 23, lines 21-25; R. p. 24, lines 1-7).

Appellant presented to the local offices of the Bureau of Alcohol Tobacco Firearms and Explosives (hereinafter "ATF") and the FBI after his application for a CWP was denied by Respondent to seek affirmation that his purchase of a handgun was legal. (R. pp. 25-27). Appellant advised both ATF and FBI that he had a prior record of misdemeanor CDV and that he was in possession of a handgun he purchased from a firearms dealer. (Id.). No action was taken against Appellant by ATF or FBI to retrieve Appellant's handgun, or otherwise. (Id.).

#### ARGUMENT

The standard for reviewing an order of the Administrative Law Court is governed by Section 1-23-610(B). S.C. Code Ann. § 1-23-610(B). Section 1-23-610(B) holds in pertinent part:

(B) The review of the administrative law judge's order must be confined to the record.... The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

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(d) affected by other error or law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

S.C. Code Ann. § 1-23-610(B). “The decision [of an administrative law court] must be affirmed if supported by substantial evidence in the record.” Coastal Conservation v. Dept. of Health, 669 S.E. 2d 899, 905, 390 S.C. 349 (S.C. App. 2008). “Substantial evidence is evidence that, when viewing the record as a whole, would allow reasonable minds to reach the same conclusion the ALC (Administrative Law Court) arrived at in justifying its decision. Id.

I. THE ADMINSTRATIVE LAW COURT’S FINDING THAT APPELLANT FAILE TO SATISFY THE REQUIREMENTS FOR A CONCEALED WEAPONS PERMIT UNDER THE LAW ABIDING CITIZENS SELF-DEFENSE ACT OF 1996 IS AN ABUSE OF DISCRETION AND ERROR OF LAW BECAUSE APPELLANT’S 1993 CONVICTION FOR CRIMINAL DOMESTIC VIOLENCE IS NOT A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE UNDER 18 U.S.C. 922(g)(9); THEREFORE, APPELLANT IS NOT DISQUALIFIED FROM POSSESSION A FIREARM UNDER FEDERAL LAW.

Subsection 922(g) (9) of the United States Code states in pertinent party that:

(g) It shall be unlawful for any person-

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(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g) (9). Subsection 921(33) (B) (i) defines what offenses constitute a “misdemeanor crime of domestic violence” and what offenses are excluded from inclusion under the firearms chapter of the United States Code of law. 18 U.S.C. §921(33) (B) (i). Subsection 921(33) (B) (i) states in pertinent part:

A person shall not be considered to have been convicted of ... [a misdemeanor crime of domestic violence] for purposes of this chapter, unless-

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

Appellant testified before the Administrative Law Court that his 1993 conviction for CDV in the Marion Municipal Court was accomplished without jury trial, and that he was not represented by legal counsel during the judicial process. (R. p. 20, lines 10-17 & R. pp. 36-37, lines 10-19). Appellant never appeared in court when his case was disposed the day after his arrest. (Id.). Plaintiff was never advised of his right to jury a trial and legal counsel, and did not understand that he could have challenged the CDV charge. (R. p. 32; R. p. 33, lines 1-8). Appellant's testimony was not contested by Respondent, nor contradicted by any other evidence or witness presented at the trial before the Administrative Law Court.

Appellant's 1993 conviction for criminal domestic violence is specifically excluded from the definition of a misdemeanor crime of domestic violence. See, 18 U.S.C. §921(33) (B) (i). Therefore, appellant is not disqualified from possession a firearm under 18 U.S.C. § 922(g) (9) of federal law.

II. THE ADMINISTRATIVE LAW COURT'S FINDING THAT APPELLANT FAILS TO SATISFY THE REQUIREMENTS FOR A CONCEALED WEAPONS PERMIT UNDER THE LAW ABIDING CITIZENS SELF-DEFENSE ACT OF 1996 IS AN ABUSE OF DISCRETION AND ERROR OF

LAW, BECAUSE APPELLANT IS NOT DISQUALIFIED FROM POSSESSION A FIREARM UNDER SOUTH CAROLINA LAW.

Section 23-31-215 of the CWP Act hold in pertinent part:

(A) Notwithstanding any other provision of law, except subject to subsection (B), SLED must issue a permit...to carry a concealed weapon to a resident or qualified nonresident who is at least twenty-one years of age and **who is not prohibited by state law form possession the weapon...**

S.C. Code Ann. § 23-31-215(A). Subsection 23-31-215(F) (1) of the CWP Act employs the same state law requirement: “(F) The permit application form shall require the applicant to certify that: (1) **he is not a person prohibited under state law from possessing a weapon...**” S.C. Code Ann. § 23-31-215(F) (1). Again, the same state law requirement is reinforced for the third time in subsection 23-31-215(J) (1) of the CWP Act: “(J) A permit is valid statewide unless revoke because the person has: (1) **become a person prohibited under state law from possessing a weapon...**” S.C. Code Ann. § 23-31-215(J) (1).

“The Cardinal rule of statutory construction is to ascertain the legislative intent.” State v. Morgan, 352 S.C. 359, 365, 574 S.E. 2d 203 (S.C. App., 2002). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and the language must be construed in the light of the intended purpose of the statute.” Id. at 365-366. “The determination of legislative intent is a matter of law.” Id. “The legislative’s intent should be ascertained primarily from the plain language of the statute.” Id. “Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute’s operation.” Id.

It is clear and unambiguous from the language of the CWP Act that the standard for issuing a CWP under the CWP Act is not whether an applicant is prohibited from possession a weapon under federal law, but under South Carolina law. The state law standard is reinforced throughout the Section 23-31-215 of the CWP Act. It must be assumed that if the legislature intended that issuance of a CWP under the CWP Act was conditioned upon the applicant being eligible to possession a firearm under the federal standard it would had simply stated so. To the contrary, the language of the CWP Act specifically limits the condition that an applicant for a CWP must be qualified to possession a weapon as determined by South Carolina law. If the requirement is extend to include the federal standard for possession a firearm, it would result in subtle and forced construction to expand the statute's operation.

The requirement for possession a handgun under South Carolina law is expressed in Subsection 16-23-30(A) of South Carolina law. Section 16-23-30(A) – (B) holds that:

(A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to:

(1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent;

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(B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

S.C. Code Ann. § 16-23-30(A) – (B). South Carolina law expresses distinguishes violent crimes from nonviolent crimes the legislative degree. See, S.C. Code Ann. § 16-1-60; S.C. Code Ann. § 16-1-70. Appellant's 1993 misdemeanor CDV is not a violent crime

under South Carolina law and would not disqualify Appellant from possession a handgun under South Carolina law. See, S.C. Code Ann. § 16-1-60; S.C. Code Ann. § 16-1-70. Therefore appellant is a qualified person to possession a handgun under South Carolina law for purposes of obtaining a CWP.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court and find that Applicant is entitled to a Concealed Weapons Permit Section 23-31-215 of South Carolina law.

Respectfully submitted



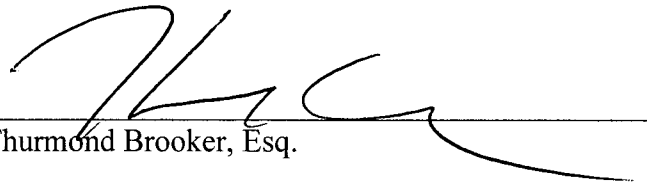
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August 28, 2017

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that Final Brief of Appellant complies with Rule 211(b), SCACR.



Thurmond Brooker, Esq.