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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3144-20**

**IN THE MATTER OF THE
GRANTING OF THE
APPLICATION FOR A
FIREARMS PURCHASER'S
IDENTIFICATION CARD
AND FOUR PERMITS TO
PURCHASE A HANDGUN BY
ANTHONY JARVIS.**

Submitted April 26, 2022 – Decided May 5, 2022

Before Judges Smith and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law
Division, Burlington County.

Scott A. Coffina, Burlington County Prosecutor,
attorney for appellant (Jennifer B. Paszkiewicz,
Assistant Prosecutor, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

After a hearing, the trial court granted approval for issuance of a firearms purchaser identification card and four gun permits to Anthony G. Jarvis

(Applicant). The State appealed, arguing the court erred by issuing the identification card and the gun permits despite the record showing the applicant had a previous disqualifying criminal conviction, which he failed to disclose in the application form. We agree, finding that a plain reading of N.J.S.A. 2C:58-3(c)(1) compels denial of the application. We reverse for the reasons that follow.

I.

The applicant petitioned the Moorestown Township Police Department for a firearms purchaser identification card and four permits to purchase handguns. The Moorestown Police Chief, Lee Lieber, issued a letter tentatively denying the application, based on the fact that applicant answered "no" to the form question, "[h]ave you ever been convicted of a disorderly[-]persons offense in New Jersey or a criminal offense in another jurisdiction where you could have been sentenced up to six months in jail that have not been expunged or sealed?" Chief Lieber's letter contained an offer to discuss the tentative denial with the applicant, which he accepted. After their phone meeting, Chief Lieber issued a final denial letter, asserting:

[t]he applicant had been convicted of a misdemeanor DWI in . . . Georgia^[1] where he could have been sentenced to more than six months in jail that has not been expunged or sealed precluding the issuance of a Firearms [identification] [c]ard or [p]ermits to [p]urchase [h]andgun. The applicant answered 'No', that he had not on the application.

The applicant appealed to the Superior Court.

On June 7, 2021, the parties appeared for a hearing in the Law Division. Both the applicant and Chief Lieber testified. After considering the evidence, including application documents, the trial court made several findings. First, the court found both the applicant and Chief Lieber credible. The court next found the applicant had been convicted of a 2012 Georgia misdemeanor which carried a maximum twelve-month sentence, which he failed to report on his gun permit application. The court proceeded to make additional findings, concluding that Chief Lieber's denial letters did not sufficiently identify the reasons for the denial. After examining the record, the court found the applicant

¹ On July 7, 2012, respondent was convicted of Driving Under the Influence of Alcohol, pursuant to Ga. Ann. Code § 40-6-391(a)(5) (2012) (amended 2013), and sentenced to 12 months probation, community service, completion of a DHR risk reduction program, and an alcohol evaluation and treatment if recommended. Ga. Ann. Code § 40-6-391(c)(1)(B) (2012) (amended 2013) states that a person convicted of a first offense misdemeanor may be sentenced to "a period of imprisonment of not fewer than ten days nor more than 12 months"

had not knowingly falsified or misrepresented his misdemeanor conviction status. The court went on to examine the applicant's "corrective actions," noting that, since 2012, he had, become a military officer² and enjoyed a successful career, incurred no other criminal convictions, served as a military firearms trainer, and had otherwise "led an exemplary life." The judge issued an order on June 8, 2021 compelling the Chief to issue the identification card and the four gun permits to the applicant. The State makes the following point on appeal:

THE TRIAL COURT ERRED IN ISSUING FIREARMS PERMITS TO RESPONDENT WHERE RESPONDENT IS PER SE BARRED FROM BEING ISSUED FIREARMS PERMITS PURSUANT TO N.J.S.A. 2C:58-3(C)(1) AND WHERE RESPONDENT KNOWINGLY FALSIFIED HIS FIREARMS APPLICATION PURSUANT TO N.J.S.A. 2C:58-3(C)(3).

II.

We recognize that our scope of review of a trial court's decision to grant or deny a handgun carry permit is limited. See In re Z.L., 440 N.J. Super. 351, 355 (App. Div. 2015). We "accept a trial court's findings of fact that are

² After the 2012 conviction, the applicant successfully petitioned the United States Navy to remain in his college Naval R.O.T.C. program and continue his training to become a naval officer.

supported by substantial credible evidence." Ibid. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 116-17 (1997)). However, our review of a trial court's legal conclusions does not require the same level of deference. See, e.g., ibid.; In re N.J. Firearms Purchaser Identification Card by Z.K., 440 N.J. Super. 394, 397 (App. Div. 2015); In re Sportsman's Rendezvous Retail Firearms Dealer's License, 374 N.J. Super. 565, 575 (App. Div. 2005) (noting that an appellate court "review[s] a trial court's legal conclusions regarding firearms licenses de novo").

The process to acquire a permit to carry a gun in New Jersey is carefully regulated. N.J.S.A. 2C:58-3(c)(1) and (c)(3) read in relevant part:

No handgun purchase permit or firearms purchaser identification card shall be issued:

(1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in section 3 of P.L.1991, c.261 . . . whether or not armed with or possessing a weapon at the time of the offense;

. . . .

(3) . . . to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card

N.J.S.A. 2C:58-3(c)(1)-(3).

III.

The State argues the applicant is barred from obtaining a firearms purchaser identification card or gun permits because of sections one and three of N.J.S.A. 2C:58-3(c). Section (c)(3) addresses the disqualification of persons who apply for identification cards and gun permits. We begin by examining subsection (c)(1), and state the question simply: is the applicant's 2012 Georgia conviction constitutes a "crime" for purposes of the statute? We find that it is.

The New Jersey Criminal Code defines a "crime" as an offense "for which a sentence of imprisonment in excess of 6 months" is authorized. N.J.S.A. 2C:1-4(a). At the time of the trial court's decision, N.J.S.A. 2C:44-4(c)³ defined "a conviction in another jurisdiction" as a crime for which "a sentence of imprisonment in excess of 6 months was authorized under the law of the other jurisdiction." It is undisputed that the applicant was convicted of a violation of Ga. Ann. Code § 40-6-391(a)(5) and that this statute authorizes a sentence up to

³ N.J.S.A. 2C:44-4 was amended in 2021 after the trial court's decision in this matter. Under the current version of the law, "[a] conviction in another jurisdiction shall constitute a prior conviction of a crime if a sentence of imprisonment in excess of one year was authorized under the law of the other jurisdiction." N.J.S.A. 2C:44-4(c) (emphasis added); see also L. 2021, c. 298, § 2, eff. Nov. 8, 2021 (amending N.J.S.A. 2C:44-4). Because it was not raised on appeal, we do not reach the issue of retroactivity of the amended statute.

twelve months in Georgia. It is also undisputed that the applicant's Georgia conviction has not been sealed or expunged. Consequently, this conviction represents an absolute bar to issuance of firearms permits pursuant to N.J.S.A. 2C:58-3(c)(1).

The trial court made findings that expressly established the foundation for operation of subsection (c)(1) when it found the applicant had been convicted of a crime in Georgia. For reasons not clear to us, the court did not apply those findings to subsection (c)(1) in order to dispose of the matter. Instead, the court proceeded to subsection (c)(3) and applied facts in the record to conclude that the applicant had not knowingly falsified any responses in the form he submitted to the police.

Given the dispositive nature of subsection (c)(1) on this record, we find the trial court erred as a matter of law by not dismissing the case on that basis, and instead proceeding to the subsection (c)(3) analysis. While we recognize the record contained a compelling narrative from the applicant in support of his petition, his commendable personal history and career accomplishments since 2012 were not relevant to the issue before the trial court.

The salient and uncontroverted facts are these: the applicant's 2012 Georgia conviction exists, it remains unsealed and unexpunged, and, as an out

of state conviction, it was classified at the time as a crime under New Jersey law for purposes of subsection (c)(1). We reverse and remand for entry of an order affirming the denial of permits by the Moorestown Chief of Police.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION