

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3678-20**

**IN THE MATTER OF THE
APPEAL FROM THE DENIAL
OF APPLICATION FOR A
PERMIT TO CARRY A
HANDGUN FOR JAY FACTOR.**

Submitted May 17, 2022 – Decided June 13, 2022

Before Judges Currier and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. GPA-16-2020.

Jay Factor, appellant pro se.

Lori Linskey, Acting Monmouth County Prosecutor, attorney for respondent (Monica do Outeiro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel; Janine N. DeLucia, Legal Assistant, on the brief).

PER CURIAM

Appellant Jay Factor appeals from the July 21, 2021 order of the Law Division denying his application for a permit to carry a handgun because he

failed to establish that he has a "justifiable need" for such a permit pursuant to N.J.S.A. 2C:58-4(c). We affirm.

I.

Factor applied to Fair Haven Police Chief Joseph P. McGovern for a permit to carry a handgun. Chief McGovern denied the application because Factor did not meet the justifiable need requirement set forth in N.J.S.A. 2C:58-4(c).

Factor appealed that denial to the Law Division. At a hearing, Factor argued that the statutory requirement to show a justifiable need – defined as an individualized urgent necessity for self-protection – to acquire a handgun carry permit: (1) is unconstitutional in light of the holding in District of Columbia v. Heller, 554 U.S. 570 (2008), made applicable to the states in McDonald v. City of Chicago, 561 U.S. 742 (2010); (2) fails the conjunctive test set forth in Caetano v. Massachusetts, 577 U.S. 411, 417 (2016), with respect to a statutory ban on particular types of firearms; and (3) is contrary to the legislative intent of N.J.S.A. 2C:58-4(c), the very statute that establishes the requirement. He argued that because the State has issued him a firearms purchaser identification card, he has been found to be fit to own a handgun and the Second Amendment does not permit the imposition of any further statutory obstacle to his right to

carry a handgun in public, given his constitutionally protected right to self-defense.

On July 21, 2021, Judge Jill Grace O'Malley issued a comprehensive written opinion denying Factor's application. The judge found that it was undisputed that Factor was not subject to any statutory disqualification for a handgun carry permit. See N.J.S.A. 2C:58-4(c) (providing that a handgun carry permit shall not be issued to any person disqualified from issuance of a firearms purchaser identification card as set forth in N.J.S.A. 2C:58-3(c)(1) to (11)). In addition, the judge noted that the State acknowledged that Factor is familiar with the safe handling and use of a handgun.

Relying on our holding in In re Wheeler, 433 N.J. Super. 560, 590 (App. Div. 2013), Judge O'Malley held that the constitutionality of the justifiable need requirement in N.J.S.A. 2C:58-4(c) had been established post-Heller. She noted our holding in that case that the justifiable need standard, requiring an individualized showing of urgent need, does not impermissibly burden the Second Amendment and is not contrary to the Court's holding in Heller. Id. at 597.¹ A July 21, 2021 order memorializes the court's decision.

¹ Judge O'Malley also addressed procedural delays in adjudicating Factor's appeal largely attributable to court staffing reductions associated with the

This appeal follows. Factor reiterates the arguments he raised in the trial court and raises additional points discussed below.

II.

Our scope of review of the trial court's decision with respect to the denial of a permit to carry a handgun is limited. See In re Application of Z.L., 440 N.J. Super. 351, 355 (App. Div. 2015). We "accept a trial court's findings of fact that are 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 is de novo. In re N.J. Firearms Purchaser Identification Card by Z.K., 440 N.J. Super. 394, 397 (App. Div. 2015). This is true where "facts are not in dispute and the questions turn on interpretation of statutes and the Constitution" Wheeler, 433 N.J. Super. at 572.

In addition, "the burden is on the party challenging the constitutionality of the statute to demonstrate clearly that it violates a constitutional provision." Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 222 (1985).

COVID-19 pandemic and the State's delay in filing its response to his application for a hearing. These delays resulted in a failure to provide defendant a hearing within thirty days of the filing of his application, as required by N.J.S.A. 2C:58-4(e). Judge O'Malley determined that the remedy for the delay is not, as defendant suggested, that he be granted a handgun carry permit by default.

That burden is onerous. See e.g., In re P.L. 2001, Chapter 362, 186 N.J. 368, 392 (2006) ("[W]e will not declare void legislation 'unless its repugnancy to the Constitution is clear beyond a reasonable doubt.'") (quoting Harvey v. Bd. of Chosen Freeholders, 30 N.J. 381, 388 (1959)). We "afford every possible presumption in favor of an act of the Legislature." Town of Secaucus v. Hudson Cnty. Bd. of Tax'n, 133 N.J. 482, 492 (1993).

The acquisition of a permit to carry a handgun is a highly-regulated process. An application for a handgun carry permit must "be submitted to the chief police officer of the municipality in which the applicant resides" N.J.S.A. 2C:58-4(c). The chief police officer should not approve the application unless the applicant demonstrates that "he is not subject to any of the disabilities set forth in [N.J.S.A. 2C:58-3(c)], that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun." Ibid.

"Justifiable need" is

the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun. Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of the incidents to the appropriate law enforcement agencies.

[Ibid.]

Generalized fears for personal safety and the need to protect property are inadequate to warrant issuance of a permit. In re Preis, 118 N.J. 564, 571 (1990). The burden of demonstrating a justifiable need falls to the applicant. See In re Pantano, 429 N.J. Super. 478, 483 (App. Div. 2013). Any person whose application is denied by the chief police officer may seek a hearing to review the denial in the Superior Court. N.J.S.A. 2C:58-4(e).

We have carefully considered Factor's arguments in light of the record and applicable legal principles and affirm the July 21, 2021 order substantially for the reasons set forth by Judge O'Malley in her thorough and well-reasoned written decision. As Judge O'Malley explained, in Wheeler, this court examined at length the constitutionality, post-Heller, of the justifiable need requirement in N.J.S.A. 2C:58-4(c). Factor makes no convincing argument that we should depart from the holding in Wheeler to invalidate a statute that has long been upheld as consistent with the United States Supreme Court precedents

interpreting the Second Amendment. There has been no change in the law since Wheeler that casts doubt on the validity of its holding.²

We have also carefully considered Factor's additional arguments, including that the 2018 amendment of N.J.S.A. 2C:58-4(c) violated the Administrative Procedures Act, N.J.S.A. 52:14B-1 to -31, that the justifiable need requirement is contrary to the holding in Caetano, and that the State's objection to his trial court application should have been suppressed because it was untimely under a Directive issued by the Acting Director of the Administrative Office of the Courts, and conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

² Since we issued our opinion in Wheeler, the Legislature amended N.J.S.A. 2C:58-4(c) to incorporate the definition of justifiable need included in a previously existing regulation of the Department of Law and Public Safety. L. 2018, c. 37, §1. This development does not meaningfully change the legal principles and analysis expressed in Wheeler. To the contrary, the Legislature's adoption of the regulatory definition signals its agreement with the manner in which the Executive Branch had been applying the statute.