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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0220-21

IN THE MATTER OF JUSTIN
GUERRERA¹ APPEAL OF THE
DENIAL OF AN APPLICATION
FOR A FIREARM PURCHASER
IDENTIFICATION CARD.

Submitted January 11, 2023 – Decided January 24, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Law Division, Ocean County, Docket No. GPA-0004-
20.

Law Office of Nicholas A. Moschella, Jr., LLC,
attorneys for appellant Justin Guerrero (Nicholas A.
Moschella, Jr., on the brief).

Dasti, Murphy, McGuckin, Ulaky, Koutsouris &
Connors, attorneys for respondent Borough of Ship
Bottom (Christopher C. Connors, of counsel and on
the brief; Patrick F. Varga, on the brief).

¹ Appellant is incorrectly referred to as Justine and Guererro in some of the pleadings and documents.

PER CURIAM

Appellant, Justin Guerrero, appeals from the Law Division's August 4, 2021 order affirming the Ship Bottom Borough police chief's denial of appellant's application for a Firearm Purchaser Identification Card (FPIC) and a permit to purchase a handgun.² We affirm.

We discern the following facts from the record. In 2020, appellant applied for an FPIC and permit. In evaluating appellant's application, the Ship Bottom police department performed a background check revealing that appellant had been found guilty of "creating a disturbance"³ and of two driving

² In response to the United States Supreme Court's decision in N.Y. State Rifle & Pistol Association v. Bruen, 142 S. Ct. 2111 (2022), Governor Murphy amended, on December 22, 2022, a number of New Jersey firearm statutes through Bill A-4769. These changes eliminated the "justifiable needs" requirement for the purchase of firearms and eliminated the court's ability to determine applications for permits to carry a handgun. Instead, all initial application decisions must be received, investigated, and determined by law enforcement.

Bill A-4769's amendments are, however, inapplicable to this matter. First, appellant's application was reviewed and denied by appropriate law enforcement. Second, appellant was not denied for failure to show justifiable need—he was denied pursuant to N.J.S.A. 2C:58-3(c)(5) and (c)(1).

³ Appellant's August 19, 2007 violation was urinating in public.

while under the influence (DUI) violations. Appellant's DUI offenses occurred on August 11, 2008⁴ and December 15, 2008.

Appellant's out-of-state background check revealed a Pennsylvania criminal record indicating that appellant had received summonses for DUI, simple assault, reckless endangering, and criminal mischief. Records later provided by defense counsel indicated that, on March 7, 2012, appellant struck an occupied vehicle while in Philadelphia, PA.⁵ Appellant was subsequently charged with DUI: General Impairment/Incapable of Driving Safely; DUI: General Impairment (BAC .08-.10); and Recklessly Endangering Another Person. On February 15, 2013, appellant was found guilty of all three charges and sentenced to 18 months' probation.⁶

Based upon appellant's background check, police chief Jonathan Potter denied appellant's application. Appellant received an official denial letter

⁴ Appellant underwent a court-ordered substance abuse program at the Intoxicated Drivers Resource Center as a result of his August 11, 2008 offense.

⁵ The accident resulted in the other driver's hospitalization.

⁶ Appellant completed a court-ordered substance abuse program as a result of the incident.

from the chief postmarked September 1, 2020.⁷ The letter provided the chief's reason for denying appellant's application and advised appellant of his right to appeal:

As set forth in 2C:58-3c(5) the issuance of a firearms identification card and a permit to purchase would not be in the best interest of the public health, safety[,] or welfare.^[8] Your application did not pass the Criminal History Check as well as the NCIC III check. You have the right to file an appeal within 30 days of receiving the denial, you may request a hearing in the Superior Court located in Ocean County.

Appellant appealed the chief's decision on September 30, 2020. On June 16, 2021, a hearing was held to determine whether the police chief had good cause to deny appellant's application.

On August 4, 2021, the judge provided an order and written opinion finding, by the preponderance of the evidence, that appellant's application was properly denied. The judge's opinion aligned with the chief's determination

⁷ Appellant's brief incorrectly states that the denial letter was dated December 1, 2020. The letter was not dated but was postmarked September 1, 2020.

⁸ N.J.S.A. 2C:58-3(c)(5) has been updated by A4769 to read, "(5) To any person where the issuance would not be in the interest of the public health, safety or welfare because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm."

that it would not be in the best interest of the public health and safety for a FPIC or permit to be issued to appellant per N.J.S.A. 2C:58-3(c)(1) and (5).

On September 29, 2021, the judge provided an amplification of her August 4, 2021 order which found that appellant's Pennsylvania infractions barred his application pursuant to N.J.S.A. 2C:58-3(c)(1), which states that a person shall be denied a permit or FPIC if that person:

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 (C.2C:25-19), whether or not armed with or possessing a weapon at the time of the offense.^[9]

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

The judge wrote in her amplification:

Prior to the de novo hearing on the appellant's denial of June 16, 2021, this court was unaware of appellant's Pennsylvania convictions. Therefore, at the conclusion of that hearing, this court informed counsel that it would review Pennsylvania law and, if necessary, continue the hearing or issue its decision. The [c]ourt found that the statute appellant was convicted of in 2013, 18 Pa.C.S 2705, was not a motor vehicle statute as [a]ppellant's attorney contended, but rather a criminal statute. The maximum statutory sentence a Pennsylvania court could impose was a fine of \$500 to \$5,000, and/or up to two years

⁹ "Domestic violence" is defined by N.J.C.C. 2C:25-19 to include "Assault N.J.S. 2C:12-1."

imprisonment. Given the maximum sentence of two years imprisonment, the [c]ourt found that 18 Pa.C.S. 2705 was analogous to, at the very least, N.J.S.A. 2C:12-1(c)(1),^[10] a fourth-degree assault by automobile crime. The basis of the [c]ourt's denial of appellant's appeal was thus the fact that he had a felony conviction, a statutory bar per N.J.S.A. 2C:58-3(c)(1).^[11]

On appeal, appellant raises the following point:

POINT I

THE CHIEF OF POLICE FAILED TO ESTABLISH GOOD CAUSE FOR DENIAL OF THE APPLICATION FOR A NEW JERSEY FIREARM PURCHASER IDENTIFICATION CARD OF APPELLANT PURSUANT TO [N.J.S.A.] 2C:58-3(c).

¹⁰ N.J.S.A. 2C:12-1(c)(1) states that:

A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

¹¹ The judge evaluated appellant's Pennsylvania offense as a prior conviction of a crime, pursuant to N.J.S.A. 2C:44-4(c):

c. Prior conviction in another jurisdiction. 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.

A. THE COURT MAY APPLY AN EXCEPTION TO THE STATUTORY BAR UNDER N.J.S.A. 2C:58-3(C)(1) AND N.J.S.A. 2C:1-4.

B. RECIPROCITY, EQUAL PROTECTION AND FUNDAMENTAL FAIRNESS SHOULD PREVENT APPELLANT'S CONVICTION FROM BEING CONSIDERED A CRIME.

Our review of "a trial court's legal conclusions regarding firearms licenses [is] de novo." In re N.J. Firearms Purchaser Identification Card by Z.K., 440 N.J. Super. 394, 397 (App. Div. 2015). However, we are bound to accept the trial court's fact findings if they are supported by substantial credible evidence. In re Return of Weapons to J.W.D., 149 N.J. 108, 116-17 (1997). It is well settled that "[d]eference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Id. at 117. Thus, an appellate court should not disturb a trial court's fact-findings unless those findings would work an injustice. Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974).

A police chief's denial of an application for an FPIC is subject to the Law Division's de novo review. In re Osworth, 365 N.J. Super. 72, 77 (App. Div. 2003) (citing Weston v. State, 60 N.J. 36, 45, (1972)). "The chief has the

burden of proving the existence of good cause for the denial by a preponderance of the evidence." Ibid. "[I]n 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." Weston, 60 N.J. at 46 (1972).

An application for an FPIC is governed by N.J.S.A. 2C:58-3. The statute provides in pertinent part:

No person of good character and good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. 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 (C.2C:25-19), whether or not armed with or possessing a weapon at the time of such offense;

. . . .

(5)[]To any person where the issuance would not be in the interest of the public health, safety or welfare

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

Our statute "recognizes that the right to possess firearms is presumed, except for certain good cause." In re Z.L., 440 N.J. Super. 351, 355 (App. Div. 2015) (citing N.J.S.A. 2C:58-3(c)). The statute lists a series of disqualifying circumstances, and specifically provides that no FPIC "shall be issued . . . [t]o any person where the issuance would not be in the interest of the public health, safety or welfare." N.J.S.A. 2C:58-3(c)(5). This provision "is 'intended to relate to cases of individual unfitness, where, though not dealt with in the specific statutory enumerations, the issuance of the permit or identification card would nonetheless be contrary to the public interest.'" Z.L., 440 N.J. Super. at 356 (quoting Osworth, 365 N.J. Super. at 79).

"[A] judicial declaration that a defendant poses a threat to the public health, safety or welfare involves, by necessity, a fact-sensitive analysis." State v. Cordoma, 372 N.J. Super. 524, 535 (App. Div. 2004). In reviewing such determinations, we accept the trial court's fact findings so long as they are supported by substantial credible evidence. J.W.D., 149 N.J. at 116 (1997); see, e.g., State v. Cunningham, 186 N.J. Super. 502, 511 (App. Div. 1982) (where defendant shot his wife, the court found that the intentional wrongdoing or negligence in the handling of a weapon supported the denial of permit); State v. Freysinger, 311 N.J. Super. 509, 517 (App. Div. 1998)

(firearm forfeiture was upheld where defendant had two convictions for DUI, two convictions for refusal to submit to chemical tests and admitted to hitting a pedestrian with his car and not stopping his vehicle); Osworth, 365 N.J. Super. at 81 (App. Div. 2003) (holding that defendant's application for a FPIC was properly denied where he had clearly violated N.J.S.A. 2C:39-5(b), unlawful possession of a handgun, and N.J.S.A. 2C:39-3(f), possession of hollow point ammunition, but was never charged).

With these guiding principles in mind, we find no error in the judge's finding of good cause, as it is amply supported by the record and legally sound. The sum of appellant's criminal history, including a charge for urinating in public, three DUI convictions—one of which resulted in a criminal conviction for reckless endangerment due to the injury of another driver—was more than sufficient to conclude that appellant was not entitled to the permit pursuant to N.J.S.A. 2C:58-3(c)(1) and (5). Indeed, his Pennsylvania criminal conviction alone is a per se bar to his application to obtain an FPIC and permit.

Appellant's remaining arguments were not raised before the Law Division. Therefore, we decline to consider them for the first time on appeal. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION