NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2535-20

IN THE MATTER OF THE
APPEAL OF THE DENIAL
OF M.U.'S APPLICATION
FOR A HANDGUN
PURCHASE PERMIT.

APPROVED FOR PUBLICATION
March 21, 2023
APPELLATE DIVISION

&

IN THE MATTER OF THE
REVOCATION OF M.U.'S
FIREARMS PURCHASER
IDENTIFICATION CARD
AND COMPELLING THE
SALE OF HIS FIREARMS.

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Argued November 18, 2022 – Decided March 21, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

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

Louis P. Nappen argued the cause for appellant M.U. (Evan F. Nappen PC, attorneys; Louis P. Nappen, on the briefs).

Edward F. Ray, Assistant Prosecutor, argued the cause for respondent State of New Jersey (Mark Musella, Bergen County Prosecutor, attorney; Edward F. Ray, of counsel and on the briefs).

Tim Sheehan, Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Matthew J. Platkin, Attorney General, attorney; Angela Cai and Sookie Bae, Assistant Attorneys General, of counsel; Tim Sheehan and Viviana Hanley, Deputy Attorney General, on the brief).

Daniel L. Schmutter argued the cause for amicus curiae New Jersey Rifle & Pistol Clubs, Inc. (Hartman & Winnicki, PC, attorneys; Daniel L. Schmutter, on the brief).

The Opinion of the Court was delivered by

GEIGER, J.A.D.

In this case of first impression, we must determine the constitutionality of N.J.S.A. 2C:58-3(c)(5), which restricts the issuance of handgun purchase permits (HPP) and firearms purchaser identification cards (FPIC), considering the United States Supreme Court's recent Second Amendment decision in New York State Rifle & Pistol Association v. Bruen, 597 U.S. ___, 142 S. Ct. 2111 (2022). As part of our analysis, we consider whether relevant historical analogues demonstrate that N.J.S.A. 2C:58-3(c)(5) "is consistent with this Nation's historical tradition of firearm regulation" under Bruen, and whether individuals who engaged in repetitive misconduct without being convicted of a crime or felony-equivalent offense, is a part of "the people" whom the Second

Amendment protects. We also must determine if expunged records may be considered.

Appellant M.U.[1] appeals from a Law Division order denying his application for a HPP, revoking his FPIC, requiring him to immediately surrender his firearms to police, authorizing police to seize his firearms, and directing that his firearms be destroyed unless he arranged for a licensed firearms dealer to purchase the firearms within 120 days.

As to the denial of his application for an HPP and the revocation of his FPIC, appellant argues the court erred in its assessment of the evidence and in its conclusion under N.J.S.A. 2C:58-3(c)(5) that it would not be in the interest of the "public health, safety or welfare" if he were to purchase another firearm. He also argues that N.J.S.A. 2C:58-3(c)(5)'s restriction upon firearm acquisition in the interest of the "public health, safety or welfare" should be declared unconstitutional.

Regarding the order for the sale or transfer of firearms in his possession, appellant argues the court committed an evidentiary error in requiring him to identify the number and type of firearms in his possession, and that the court did

[1] We refer to appellant by initials because the trial court considered expunged criminal records in rendering its decision. See R. 1:38-3(c)(7).

not have the legal authority, under N.J.S.A. 2C:58-3(c) and (f), to compel the transfer and sale of his existing firearms. Appellant also argues he was entitled to a jury trial on the issue of the sale or transfer of his firearms, and that the court erred by denying his motion for a stay of the sale-or-transfer ruling.

To determine the constitutionality and applicability of N.J.S.A. 2C:58-3(c)(5), which prohibits the issuance of a HPP or FPIC "[t]o any person where the issuance would not be in the interest of the public health, safety, or welfare," we have carefully reviewed the record, the arguments of the parties and amici, and applicable legal principles, including the scope of "the right of the people to keep and bear Arms," U.S. Const. amend. II, as informed by "this Nation's historical tradition of firearm regulation," Bruen, 142 S. Ct. at 2126, 2135. We hold that N.J.S.A. 2C:58-3(c)(5) does not violate the Second Amendment. For the reasons we explain, we affirm in part, reverse in part, and remand for further proceedings.

I.

Appellant was issued a FPIC in 2017. In December 2019, appellant filed an application with the Oakland Police Department (OPD) for an HPP. Following an investigation by an OPD officer, on March 9, 2020, the OPD Chief denied the application pursuant to N.J.S.A. 2C:58-3(c)(5), finding that issuance

of the HPP would be contrary to public health, safety, or welfare. The denial was based on appellant's "multiple instances of negative police interactions, including the theft of a trailer and criminal mischief."

On March 13, 2020, appellant appealed the denial to the Law Division. After a lengthy delay due to the COVID-19 pandemic, the appeal was scheduled for January 13, 2021. The Bergen County Prosecutor's Office opposed the appeal and filed motions to examine expunged records, revoke appellant's FPIC, and compel the sale of appellant's firearms. The court adjourned the hearing to allow appellant to respond and for briefing of the issues. Appellant filed opposing papers and requested a jury trial as to the State application for forfeiture of his firearms.

On February 12, 2021, the court issued an oral decision granting the State's motion to examine expunged documents and denying appellant's motion for a jury trial. The court also directed that the caption list only appellant's initials because it would be considering expunged materials. The decision was memorialized in a February 19, 2020 order.

On March 18, 2021, the trial court conducted a testimonial hearing on the appeal of the denial of an HPP and the State's motion to revoke appellant's FPIC and to compel the sale of his firearms. Four police officers testified for the State

regarding appellant's background, interactions with police, criminal charges, and prior arrests. Appellant also testified.

The testimony revealed that appellant was involved in: (1) a July 2012 incident in Oakland involving vandalizing property and destruction of mailboxes, lights, and fences; (2) a November 2012 incident in Wyckoff involving criminal mischief directed at a customer's car and tree in retribution for non-payment of a $300 invoice; (3) an April 2013 road rage incident in Wyckoff where a passenger in a car operated by appellant threw a drink at a female pedestrian from the moving car; and (4) a 2017 arrest for theft of a trailer. Appellant, who was born in December 1990, was at least twenty-one years old when these incidents took place.

The November 2012 criminal mischief incident caused an estimated $3600 in damages to the victim's car and the loss a fifteen-foot maple tree valued at $2000. In an interview by police, appellant admitted that he and his accomplices had thrown logs at the victim's car, shattering the rear window, and used a chainsaw to cut down the tree on the victim's front lawn in retaliation for her not paying the invoice. Defendant was charged with third-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1), later downgraded to a disorderly persons

offense, and ultimately dismissed. The record of the incident was later expunged.

Regarding the 2013 incident involving throwing a drink from the window of a vehicle, investigation revealed appellant was driving and a passenger had thrown the soda. No charges were filed relating to this incident.

As to the stolen trailer, the owner reported the theft in 2015 and later located the trailer, which appellant listed for sale on Craigslist. Appellant had installed a fictitious license plate on the trailer, but the owner was able to identify the trailer based on its unique characteristics. After the trailer was recovered, appellant told police he had purchased the trailer but had no paperwork verifying the purchase. He was charged with possession of stolen property. The charge was ultimately resolved by a conditional dismissal in municipal court.

During the HPP application interview, appellant admitted stealing the trailer, which his friend said was abandoned, but did not think it was a "big deal" to take it. Investigation also revealed the other incidents, with appellant denying any knowledge of, or responsibility for, one of them.

The investigating officer considered each incident and concluded they reflected a pattern of "poor judgment," which made appellant "unfit to possess

a firearm." He also considered the fact that the trailer theft occurred only two years before the HPP application. He recommended the HPP application be denied. The Chief of Police agreed and issued a denial letter to appellant.

Appellant testified he was thirty years old, had managed a construction company since 2012, and had been shooting firearms "[h]is entire life." He noted he was truthful on his HPP application, had not been convicted of any crimes, and had never been adjudicated a juvenile delinquent. Appellant testified he had no active domestic violence restraining orders, was never placed on a terrorist watch list, was not addicted to drugs or alcohol, and did not suffer from any mental health issues. Appellant has no history of domestic violence.

Regarding the July 2012 vandalism incidents, he admitted only that he had been stopped by the police on his way home from a party. As to the 2012 tree-cutting incident, he did not specify what he had done but stated he was "not going to deny what we did." He described the incident as "stupid," and on cross-examination admitted it was not a minor incident and what they had done was planned. Regarding the 2013 drink-throwing incident, he admitted it happened but denied encouraging or instigating the incident, and said it was unplanned.

Regarding the trailer incident, appellant admitted he stole the trailer in the middle of the night and mounted license plates on it from another trailer. He

also admitted lying to police about how he acquired the trailer. Asked by counsel what he would do differently today, appellant did not state he would not take the trailer in the first instance, that he would not affix false license plates to the trailer, or that he would not lie to the police about how he came into possession of the trailer. Instead, he responded, "honestly . . . I would remain silent and call a lawyer." When asked by his counsel whether there was anything else he would like to say about the incident, he first said, "I don't know," and when asked again he said, "It was stupid."

When asked by the court how many firearms he owned, appellant initially deflected, stating he was not comfortable answering the question in a public setting. After the court overruled counsel's objection, appellant stated he possessed one handgun, one shotgun, and three rifles in his home, and had no firearms elsewhere.

Finally, appellant testified about his charitable donations and his training and accomplishments in archery, but acknowledged he had no formal training in the use of firearms. He claimed he had "great respect for firearms," he "would never harm anyone," and he had never been accused of misusing a weapon.

The court issued an oral decision and order that denied appellant's HPP application and granted the State's motion to revoke appellant's FPIC and to

compel the sale of his firearms within 120 days. The court rejected appellant's version of the trailer and tree-cutting incidents, finding they lacked credibility. In particular, the court concluded that appellant's claims he thought the trailer was abandoned, and he did not plan to cut down the customer's tree, were not honest. The court found the tree-cutting incident to be "very serious" and "almost inexplicable." It characterized the incident as a violent act designed to instill fear and intimidation in the victim, and it noted that appellant minimized his conduct. Regarding the trailer incident, the court was troubled by appellant's lies to police and found the theft exhibited a complete disregard for the law. It found the underlying conduct concerning because it evidenced a "disregard for the law, poor judgment, and poor character." The court noted the incidents were not remote.

The court also rejected any argument that it was bound by the previous issuance of a FPIC to appellant. It rejected appellant's testimony that he would never harm anyone with a firearm, finding that the testimony lacked credibility. The court found that based upon the totality of the evidence "certainly . . . there is a risk" that appellant would do so.

Finally, based upon the substance of appellant's testimony and "the inflection of [his] answer" to the court's questions, the court had "concerns" as

to whether appellant was "being honest and forthcoming" as to the number of firearms he had at home or elsewhere.

The court found that granting the HPP permit and allowing appellant to continue to own firearms was not in the interest of public health, safety, and welfare. It further found the tree-cutting and trailer incidents demonstrated appellant's "poor judgment, poor self-control, a temper, [and] a complete disregard for the law." The court gave no weight, however, to the vandalism and drink-throwing incidents because appellant was only questioned and not charged.

The court also found that allowing appellant to retain the previously issued FPIC would not be in the interest of the public health, safety, or welfare, and ordered that his firearms should be sold or transferred. The court denied appellant's motion to stay its ruling.

On March 30, 2021, the court heard and denied appellant's application to transfer his firearms to a family member rather than a licensed firearms dealer. The court noted that appellant no longer possessed the firearms, which had recently been turned over to the police pursuant to the court's prior ruling, and were to be sold through a licensed firearms dealer.

The court's decision was embodied in an April 8, 2021 amended order. In addition to denying the HPP application, revoking the FPIC, and denying a stay, the order also:

> ORDERED that [M.U.] must immediately surrender all firearms in his custody, control, and possession, whether they are in his actual, constructive, or joint possession, to the Oakland Police Department; and it is further
>
> ORDERED that the State and/or the Oakland Police Department is authorized to seize and maintain any and all firearms presently held at [M.U.'s] residence located . . . [in] Oakland, New Jersey, pursuant to the State's community caretaking function, for the health, safety and welfare of the community and pursuant to N.J.S.A. 2C:58-3(f); and it is further
>
> ORDERED that in lieu of immediate destruction, [M.U.] shall have 120 days from the date of this Order to arrange for a Federal Firearms License dealer (FFL) to purchase the firearms which will be stored at the Oakland Police Department; and it is further
>
> ORDERED that if [M.U.] does not successfully arrange for the sale of his firearms within 120 days from the date of this Order, the firearms shall be subject to destruction . . . .

This appeal followed.

II.

On June 23, 2022, the United States Supreme Court issued its opinion in Bruen. We directed the parties to submit supplemental briefing on the impact

of Bruen. We invited the Attorney General to participate as amicus curiae and permitted New Jersey Rifle & Pistol Clubs, Inc. to participate as amicus curiae.

In this appeal, appellant raises the following points for our consideration:

> I. THE COURT BELOW ERRED BECAUSE THE U.S. SUPREME COURT HAS SPECIFICALLY RULED THAT "COMMUNITY CARETAKING" MAY NOT BE USED TO SEIZE FIREARMS FROM RESIDENCES.
>
> II. THE COURT BELOW ERRED BECAUSE "PUBLIC HEALTH, SAFETY OR WELFARE" DOES NOT AUTHORIZE THE SEIZURE OR FORFEITURE OF FIREARMS FROM RESIDENCES.
>
> III. THE COURT BELOW ERRED BECAUSE N.J.S.A. 2C:58-3(f) DOES NOT AUTHORIZE THE SEIZURE OR FORFEITURE OF FIREARMS FROM RESIDENCES AND, IN FACT, AFFIRMATIVELY PROHIBITS SUCH ADDED REQUIREMENTS.
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> IV. [STATE v. CUNNINGHAM, 186 N.J. SUPER. 502 (APP. DIV. 1982)] DOES NOT APPLY TO THE PRESENT CASE.
>
> V. [THE] COURT BELOW'S ORDER TO SEARCH AND COMPEL SALE OR DESTRUCTION OF FIREARMS THAT PETITIONER ALREADY POSSESSED CONSTITUTES AN UNLAWFUL FORFEITURE ACTION AND OFFENDS EQUITY.
>
> VI. THE COURT BELOW ERRED IN DENYING [APPELLANT'S] STAY, AND [APPELLANT] SUFFERS FROM IRREPARABLE HARM SINCE HIS LEGALLY POSSESSED FIREARMS WERE

WRONGFULLY SEIZED AND FORCIBLY TRANSFERRED.

VII. THE COURT BELOW ERRED BY DENYING [APPELLANT] A JURY TRIAL REGARDING THE FORFEITURE OF HIS PROPERTY PURSUANT TO [STATE v. ONE 1990 HONDA ACCORD, 154 N.J. 373 (1998)].

VIII. THE COURT BELOW ERRED BY REQUIRING [APPELLANT] TO REGISTER WITH THE COURT HOW MANY AND WHAT TYPES OF FIREARMS HE POSSESSES, AND THE MATTER SHOULD BE REMANDED FOR A FAIR HEARING BEFORE A NEW JUDGE.

IX. THE COURT BELOW ERRED BY FINDING THAT [APPELLANT] IS CURRENTLY A RISK TO THE PUBLIC HEALTH, SAFETY OR WELFARE IF HE WERE TO PURCHASE ANOTHER FIREARM.

X. NEW JERSEY'S RESTRICTION UPON FIREARM ACQUISITION "IN THE INTEREST OF PUBLIC HEALTH, SAFETY OR WELFARE" SHOULD BE FOUND UNREASONABLE AND UNCONSTITUTIONAL IN OFFENSE TO [DISTRICT OF COLUMBIA v. HELLER, 554 U.S. 570 (2008)] AND McDONALD [v. CITY OF CHICAGO, 561 U.S. 742 (2010)].

A. "In the Interest of Public Health, Safety or Welfare" is Unconstitutionally Vague.

B. "In the Interest of Public Health, Safety or Welfare" is Unconstitutionally Overboard.

C. "In the Interest of Public Health, Safety or Welfare" is a Balancing Test in Offense to Heller.

D. "In the Interest of Public Health, Safety or Welfare" Wrongfully Denies Due Process Notice.

In his supplemental brief, appellant argues:

PER BRUEN, DENIAL OF SECOND AMENDMENT RIGHTS UPON A "NOT IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY OR WELFARE" STANDARD IS UNCONSTITUTIONAL.

A. N.J.S.A. 2C:58-3(c)(5) is prima facie unconstitutional and, if not, Government must prove that denying Second Amendment rights upon a "not in the interest of the public health, safety or welfare" standard is consistent with this "Nation's historical tradition of firearm regulation" (e.g., from 1791 to, arguably, 1868).

B. "Not in the interest of the public health, safety, or welfare" constitutes an unconstitutional balancing test per Bruen.

C. N.J.S.A. 2C:58-3(c)(5)'s denial of people's Second Amendment rights as "not in the interest of the public health, safety or welfare" constitutes exactly the type of discretion not permitted under Bruen.

In its supplemental brief, respondent argues:

THE PUBLIC HEALTH, SAFETY, OR WELFARE DISQUALIFIER REMAINS CONSTITUTIONAL AFTER THE U.S. SUPREME COURT'S DECISION IN [BRUEN].

A. The Bruen Holding and its Limited Application to State's Licensing Regimes.

B. The Public Health, Safety, or Welfare Disqualifier, N.J.S.A. 2C:58-3(c)(5), is not Unconstitutional under Bruen.

Amicus curiae Attorney General of New Jersey argues:

I. M.U.'S VAGUENESS AND OVERBREADTH CHALLENGES FAIL UNDER SETTLED LAW.

II. NEW JERSEY'S "PUBLIC HEALTH, SAFETY OR WELFARE" PROVISION DOES NOT VIOLATE THE SECOND AMENDMENT.

A. Bruen Confirms That Subsection 3(c)(5) Is Not Facially Invalid.

B. M.U.'s Challenge Fails Under Bruen's Text-And-History Framework.

Amicus curiae New Jersey Rifle & Pistol Clubs argues:

"NOT IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY OR WELFARE" IS UNCONSTITUTIONAL AS A BASIS TO DETERMINE AN INDIVIDUAL'S RIGHT TO OBTAIN OR KEEP A HANDGUN PURCHASE PERMIT OR FIREARMS PURCHASER IDENTIFICATION CARD BECAUSE IT DIRECTLY IMPLICATES CONDUCT PROTECTED BY THE SECOND AMENDMENT AND THE STATE HAS FAILED TO DEMONSTRATE THAT THE PROVISION IS CONSISTENT WITH THE HISTORICAL TRADITION OF FIREARM REGULATION.

A. The State Incorrectly Applies [Bruen].

B. The State Has Failed to Demonstrate that the Challenged Provision is Consistent with the Historical Tradition of Firearm Regulation.

C. The State's Citation to Connecticut Law Does Not Save the Challenged Provision.

A.

Our scope of review is limited. "[W]e give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). Heightened deference should be given to the trial court's assessment of witness credibility because the court was able to observe the witnesses as they testified. Balducci v. Cige, 240 N.J. 574, 594-95 (2020). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg, 220 N.J. at 254 (quoting Rova Farms Resort v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)); accord Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). However, a "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe

v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). "Questions of law receive de novo review." Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619 (2017) (citing Manalapan Realty, 140 N.J. at 378).

B.

"In order to lawfully acquire a firearm in New Jersey, one must have first secured a firearms purchaser identification card and, in the case of a handgun, a permit to purchase a handgun." In re Winston, 438 N.J. Super. 1, 6 (App. Div. 2014) (citing N.J.S.A. 2C:58-3(a) and (b) and State v. Cunningham, 186 N.J. Super. 502, 508 (App. Div. 1982)). HPPs and FPICs "are not available to a person who has been convicted of a crime." Ibid. (citing N.J.S.A. 2C:58-3(c)(l)).

Pursuant to N.J.S.A. 2C:58-3(d), applications for HPPs and FPICs are made to "[t]he chief police officer of an organized full-time police department of the municipality where the applicant resides or the superintendent, in all other cases." Thereafter, the application must be investigated, albeit informally. N.J.S.A. 2C:58-3(f); Weston v. State, 60 N.J. 36, 43, 45 (1972); In re Osworth, 365 N.J. Super. 72, 77 (App. Div. 2003). The chief of police makes his or her decision on the application independent of any decision to grant or deny a prior application. In re Boyadjian, 362 N.J. Super. 463, 475-79 (App. Div. 2003). If

the chief of police denies the application, he or she must provide an explanation for the denial, and provide the applicant with an opportunity to raise objections. Weston, 60 N.J. at 43-44; In re Dubov, 410 N.J. Super. 190, 200-01 n.2 (App. Div. 2009); Osworth, 365 N.J. Super. at 81.

"To guard against arbitrary official action," the statute provides for judicial review. Burton v. Sills, 53 N.J. 86, 91 (1968). That is, the police chief's denial of an application may be appealed to the Superior Court, where a de novo hearing must be held. N.J.S.A. 2C:58-3(d); Weston, 60 N.J. at 44-45; Dubov, 410 N.J. Super. at 200-02; Osworth, 365 N.J. Super. at 77. Before the Law Division, "[t]he Chief has the burden of proving the existence of good cause for the denial by a preponderance of the evidence." Osworth, 365 N.J. Super. at 77 (citing Weston, 60 N.J. at 46). The applicant may be cross-examined. Weston, 60 N.J. at 46.

In considering the appeal, the Law Division is required to engage in a fact-sensitive analysis. In re Forfeiture of Pers. Weapons & Firearms Identification Card Belonging to F.M., 225 N.J. 487, 505 (2016); State v. Cordoma, 372 N.J. Super. 524, 535 (App. Div. 2004). The court should accept relevant testimonial and documentary evidence, including from the appellant and the police.

Weston, 60 N.J. at 46; Dubov, 410 N.J. Super. at 200-02; Osworth, 365 N.J. Super. at 77-78.

The court may consider hearsay but may not base its decision upon hearsay alone. Weston, 60 N.J. at 50-52; Dubov, 410 N.J. Super. at 202. Hearsay may be admissible in a gun permit hearing if it is "of a credible character – of the type which responsible persons are accustomed to rely upon in the conduct of their serious affairs." Weston, 60 N.J. at 51. The court also may consider the underlying facts relating to any criminal charges brought against the applicant, regardless of whether the charges were dismissed, In re Return of Weapons to J.W.D., 149 N.J. 108, 110 (1997), and even if the dismissal followed successful participation in a pretrial intervention program. Osworth, 365 N.J. Super. at 78.

We are mindful of the statutory effect of expungement. "Unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly," except as set forth in subsections (a) to (c). N.J.S.A. 2C:52-27. The statute further states that expungement

> shall be construed with the primary objective of providing relief to the reformed offender who has led a

> life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby persistent violators of the law or those who associate themselves with continuing criminal activity have a regular means of expunging their police and criminal records.
>
> [N.J.S.A. 2C:52-32.]

"In other words, the statute is designed to eliminate 'the collateral consequences imposed upon otherwise law-abiding citizens who have had a minor brush with the criminal justice system.'" In re Kollman, 210 N.J. 557, 568 (2012) (quoting In re T.P.D., 314 N.J. Super. 643, 648 (Law Div. 1997), aff'd o.b., 314 N.J. Super. 535 (App. Div. 1998)). Except for certain defined circumstances, a person granted expungement "does not have to answer questions affirmatively relating to expunged criminal records." Id. at 569. However, expunged "criminal records are extracted and isolated but not destroyed." Id. at 568 (citation omitted). They remain available for various important purposes. Id. at 569.

In numerous statutorily delineated circumstances, records that have been expunged may be considered. See N.J.S.A. 2C:52-19 ("Inspection of the files and records, or release of the information contained therein, which are the subject of an order of expungement, or sealing under prior law, may be permitted by the Superior Court upon motion for good cause shown and compelling need

based on specific facts."); N.J.S.A. 2C:52-20 (permitting use of expunged records in determining whether to grant "acceptance into a supervisory treatment or diversion program"); N.J.S.A. 2C:52-21 (permitting use of expunged or sealed records in setting bail "or for purpose of sentencing"); N.J.S.A. 2C:52-22 (permitting use of expunged records by Parole Board); N.J.S.A. 2C:52-23 (permitting use of expunged records by "the Department of Corrections . . . solely in the classification, evaluation and assignment to correctional and penal institutions of persons placed in its custody"); N.J.S.A. 2C:52-23.1 (permitting use of expunged or sealed records "to facilitate the State treasurer's collection of any court-ordered financial assessments that remain due at the time of an expungement or sealing"); N.J.S.A. 2C:52-27(b) (requiring disclosure of prior charges dismissed after successful completion of supervisory treatment or diversion program when applying for acceptance into supervisory treatment or other diversion program for subsequent charges); N.J.S.A. 2C:52-27(c) (requiring information on expunged records to be revealed by applicant "seeking employment within the judicial branch or with a law enforcement or corrections agency").

The trial court may also consider out-of-state criminal convictions that no longer impose legal "disabilities." See Winston, 438 N.J. Super. at 9 (finding

that New York convictions, for which appellant had obtained "certificates of relief from disabilities" from courts in New York, disqualified him from obtaining HPP or FPIC under N.J.S.A. 2C:58-3(c)(1)).[2] Finally, the court also may consider certain otherwise privileged materials. See Cordoma, 372 N.J. Super. at 537-38 (medical records).

Regarding the use of expunged records in this context, we find only two published opinions, both by trial courts, which discuss the use of expunged records in considering applications for issuing HPPs or FPICs. The first, which did not involve an application for a HPP or FPIC, discussed that issue in dicta. The second permitted consideration of expunged records in the context of an application for a gun permit.

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[2] A certificate of relief from disabilities "relieve[s] an eligible offender of any forfeiture or disability" and bars to employment that were "automatically imposed by law by reason of his conviction of the crime or of the offense specified therein." N.Y. Correct. Law § 701(1) (McKinney 2019). A certificate of relief from disabilities relieves an offender "from the automatic disqualification his convictions would otherwise pose to his possessing a firearm in New York." Winston, 438 N.J. Super. at 8 (citing N.Y. Penal Law § 400.00 (McKinney 2022); In re Hecht v. Bivona, 761 N.Y.S.2d 485, 485 (N.Y. App. Div. 2003)). It does not "eradicate[] or expunge[] the underlying conviction." Winston, 438 N.J. Super. at 8 (quoting Able Cycle Engines, Inc. v. Allstate Ins. Co., 445 N.Y.S.2d 469, 472 (N.Y. App. Div. 1981)). "Accordingly, even in New York a convicted felon possessing a certificate of relief from disabilities for [a] conviction can lawfully be denied a gun permit on the basis of the conviction." Id. at 8 n.3 (citing In re Caputo v. Kelly, 987 N.Y.S.2d 46, 47 (N.Y. App. Div. 2014)).

In In re Criminal Records of H.M.H., the chancery court granted an application to expunge a conviction for simple assault, N.J.S.A. 2C:12-1(a), that constituted an act of domestic violence against his wife. 404 N.J. Super. 174, 175 (Ch. Div. 2008). The court noted the petitioner's argument that "N.J.S.A. 2C:52-2 does not prohibit the expungement of convictions which involve domestic violence" and held "the prosecutor ha[d] failed to demonstrate a basis to deny the expungement[.]" Ibid. The court noted the petitioner and his wife remained married "without apparent incident," id. at 180, there was "no active restraining order" against the petitioner, id. at 175,[3] "there ha[d] been no subsequent allegations of domestic violence in the [intervening] twelve years," id. at 176, and the incident "appear[ed] to have been an aberration in an otherwise law-abiding life," id. at 180.

The prosecutor contended the record of the conviction of a domestic violence related offense was needed in the event the petitioner applied for a gun permit. Id. at 175. See N.J.S.A. 2C:58-3(c)(1) (prohibiting issuance of a HPP or FPIC to any person convicted of any crime or disorderly persons offense

[3] Accordingly, N.J.S.A. 2C:58-3(c)(6), which prohibits the issuance of a HPP or FPIC to any person subject to a domestic violence restraining order that prohibits the person from possessing any firearm, did not apply.

involving an act of domestic violence). The court discussed N.J.S.A. 2C:52-14(b), which provides that expungement shall be denied when "[t]he need for the availability of the records outweighs the desirability of having a person freed from any disabilities as otherwise provided in this chapter." Id. at 176. Therefore, the court's statement that the expungement, if granted, had the effect of allowing the petitioner to "apply for gun permits and have those applications considered . . . as if the domestic violence offense had not occurred," id. at 178, was dicta.[4]

In contrast, In re J.D. held that an applicant waived the expungement when he applied for a firearm permit, allowing expunged records of a diagnosis of schizophreniform disorder and involuntary psychiatric commitment to be considered in determining whether the permit should be granted. 407 N.J. Super. 317, 327-29 (Law Div. 2009). The court noted an individual "who has been committed to a mental health institution and who has been discharged upon having recovered" may apply for expungement. Id. at 322 (citing N.J.S.A. 30:4-80.8). If expungement is granted, "the commitment shall be deemed not to have

[4] Anything that is not the "court's determination of a matter of law pivotal to its decision" is dicta, which is "entitled to little deference . . . ." Bryan A. Garner et al., The Law of Judicial Precedent 44 (2016) (quoting Black's Law Dictionary 849 (10th ed. 2014)).

occurred and the petitioner may answer accordingly any question relating to its occurrence." Id. at 323 (quoting N.J.S.A. 30:4-80.11). This remedy "place[s] petitioner in the same position he was in before the hospitalization and illness occurred, with a view toward eliminating to the greatest possible extent petitioner's exposure to discrimination." Ibid. (quoting In re D.G., 162 N.J. Super. 404, 408 (Juv. & Dom. Rel. Ct. 1977)).

We part company with the court in H.M.H.[5] and adopt the reasoning of J.D. in concluding that expunged records may be considered when determining whether the issuance of a HPP or FPIC "would not be in the interest of the public health, safety or welfare," N.J.S.A. 2C:58-3(c)(5).

In J.D., the trial court found that the expungement remedy "appear[ed] to be in direct conflict with N.J.S.A. 2C:58-1 to -19, our state statute relating to firearm ownership." 407 N.J. Super. at 323. The court noted that N.J.S.A. 2C:58-3 then prohibited the issuance of a HPP or FPIC:

> "to any person who has ever been confined for a mental disorder . . . unless [that person] produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a

[5] See S&R Assocs. v. Lynn Realty Corp., 338 N.J. Super. 350, 355-56 (App. Div. 2001) (stating trial court opinions are not binding on appellate courts); accord Pressler & Verniero, Current N.J. Court Rules, cmt. 3.4 on R. 1:36-3 (2023).

> manner that would interfere with or handicap him in the handling of firearms. . . ."
>
> [Id. at 324 (omissions and alteration in original) (quoting N.J.S.A. 2C:58-3).]

Considering these statutes in pari materia, the J.D. court reasoned:

> The [expungement] privilege, however, is not absolute. The holder of the privilege has discretion to determine whether to waive it. In the context of gun ownership, the legislature has crafted a strict regulatory scheme. It protects society, and it protects individuals from themselves. Where, as here, the individual has a prior psychiatric commitment, gun ownership could result in harm to himself or to others. If the applicant wishes to proceed with his application for a gun permit, then he must waive the privilege because government has a duty to determine whether the applicant qualifies lawfully to own a handgun.
>
> . . . .
>
> It follows, therefore, that an application for a gun permit is tantamount to filing a civil complaint, and the privilege-holder must make a choice. He may apply for the permit, but only upon waiver of the privilege. This allows the government to investigate the applicant's medical history. Alternatively, he may exercise his privilege by withdrawing the application for a firearms permit. The choice is entirely at his discretion.
>
> [Id. at 327-28 (footnotes omitted).]

The court deemed the firearm permit application to be a "constructive waiver" of the expungement privilege, allowing the court to "inquire into" and consider the expunged evidence. Id. at 328.

The version of N.J.S.A. 2C:58-3(c) in effect when the Law Division heard and decided this case provided that a HPP or FPIC shall not be denied to a "person of good character and good repute in the community" but that no such permit or card shall be issued to those within certain enumerated categories.[6] Among those barred for specific reasons are convicted criminals. N.J.S.A. 2C:58-3(c)(1). The recently amended version of N.J.S.A. 2C:58-3(c)(5) provides that no HPP or FPIC shall be issued "[t]o 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." This is the "broadest" of the disqualifications for obtaining an HPP or FPIC. In re Carlstrom, 240 N.J. 563, 570 (2020). The 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.'" Osworth, 365 N.J. Super. at 79 (quoting Burton, 53 N.J. at 91). "The

[6] While this appeal was pending, N.J.S.A. 2C:58-3 was amended.

Legislature's goal was to keep guns out of the hands of unfit persons," Burton, 53 N.J. at 91, "noncriminal as well as criminal," id. at 94, 105. Accord In re Marvin, 53 N.J. 147, 150 (1969) (noting that New Jersey's gun control law "seeks to prevent criminal and other unfit elements from acquiring lethal weapons while enabling the fit elements of society to obtain firearms with minimal burdens and inconveniences").

The public health, safety or welfare exclusion has been applied to individuals shown to have disregarded the State's gun laws. See, e.g., Osworth, 365 N.J. Super. at 80-81; Cunningham, 186 N.J. Super. at 510-13. However, the statute does not require that the individual be shown to have used a weapon inappropriately. F.M., 225 N.J. at 514. The statute has also been applied to individuals convicted of certain disorderly persons offenses, In re Sbitani, 216 N.J. Super. 75, 76-78 (App. Div. 1987), individuals convicted of driving under the influence and refusing to submit to chemical tests, State v. Freysinger, 311 N.J. Super. 509, 516 (App. Div. 1998); and individuals who had a documented or admitted history of domestic violence disputes, although no convictions for domestic violence, F.M., 225 N.J. at 510-16;[7] In re Z.L., 440 N.J. Super. 351,

[7] In F.M., the Court also stated that an individual not diagnosed with mental illness may nevertheless be disqualified under N.J.S.A. 2C:58-3(c)(5) because

356-59 (App. Div. 2015). Thus, the public health, safety or welfare provision has largely been applied in conjunction with the specific disabilities identified under various subsections of N.J.S.A. 2C:58-3(c), but where the facts do not quite rise to the level of those disabling conditions. Z.L., 440 N.J. Super. at 356.

We hold that expunged records may be considered when determining whether to grant or deny a HPP application and whether to revoke a FPIC.

III.

A.

Because of the Supreme Court's analysis of the historical context of the adoption of the Second Amendment, its proper application, and the test it adopted for determining the constitutionality of statutes that limit the right "to keep and bear arms," we initially recount the pertinent aspects of the majority's opinion in Bruen and District of Columbia v. Heller, 554 U.S. 570 (2008).[8]

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of "for example, elements of 'narcissistic, anti-social, or paranoid personality disorder.'" 225 N.J. at 513-14.

[8] While "a state court is not barred from addressing federal constitutional questions about state statutes," In re Contest of Nov. 8, 2011 Gen. Election, 210 N.J. 29, 45 (2012), "the United States Supreme Court is the final arbiter on all questions of federal constitutional law," State v. Coleman, 46 N.J. 16, 34 (1965). Thus, state courts are bound by decisions of the United States Supreme Court when interpreting the federal constitution. State v. Witczak, 421 N.J. Super. 180, 195 (App. Div. 2011). We are thus constrained to follow the Bruen

In Heller, the Supreme Court held "the right of the people to keep and bear arms," established by the Second Amendment, is an individual right. 554 U.S. at 595. While the precise contours of that individual right are still being defined, the Court has repeatedly acknowledged that it does not question the "longstanding prohibitions on the possession of firearms by felons." Id. at 626.

While this appeal was pending, the Supreme Court issued Bruen, rejecting the second step of the test adopted by the Third Circuit, post Heller, in United States v. Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010), and amplified in Binderup v. Att'y Gen. U.S., 836 F.3d 336, 346 (3d Cir. 2016) (en banc). That test required an inquiry as to whether (1) the regulation burdens conduct protected by the right to keep and bear arms, and (2) if so, whether the regulation survives means-end scrutiny. Binderup, 836 F.3d at 346; Marzzarella, 614 F.3d at 89. Bruen held the first step of the test was "broadly consistent with Heller" to the extent it focused on "the Second Amendment's text, as informed by history." 142 S. Ct. at 2127. However, the Court held precedent did "not support applying means-end scrutiny in the Second Amendment context." Ibid.

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majority's interpretation of the Second Amendment. Unlike in Bruen, which involved the constitutionality of statutes that require carry permit applicants to demonstrate justifiable need, this case does not involve New Jersey's carry permit statute, N.J.S.A. 2C:58-4.

Before Bruen, the Third Circuit analyzed Second Amendment challenges under that two-part test. The first prong considered whether the challenged law burdened conduct within the scope of the Second Amendment. Marzzarella, 614 F.3d at 89. The Third Circuit observed "the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the government could disarm 'unvirtuous citizens,'" including "any person who has committed a serious criminal offense, violent or nonviolent." Binderup, 836 F.3d at 348 (quoting United States v. Yancey, 621 F.3d 681, 684-85 (7th Cir. 2010)); see also Heller, 554 U.S. at 626 ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings."). If the first prong was met, the court applied the second prong and assessed whether the challenged law withstood means-end scrutiny. Marzzarella, 614 F.3d at 89.

Bruen abruptly abrogated Binderup's two-step test and directed the federal courts to instead look to the text of the Second Amendment and "the Nation's historical tradition of firearms regulation." Bruen, 142 S. Ct. at 2130. "Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second

Amendment's 'unqualified command.'" Id. at 2126 (quoting Konigsberg v. State Bar of Cal., 366 U.S. 36, 50 n.10 (1961)). Thus, because "the Constitution presumptively protects [individual conduct]" covered by "the Second Amendment's plain text," the government must justify its regulation of that conduct by establishing "not simply . . . that the regulation promotes an important interest," but that "the regulation is consistent with this Nation's historical tradition of firearm regulation." Ibid.

Under Bruen, the inquiry is whether the regulation is "relevantly similar" to regulations present at the founding. Id. at 2132 (quoting Cass R. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993)). To make that determination, courts must employ "analogical reasoning" and compare "how and why the regulations burden a law-abiding citizen's right to armed self-defense." Id. at 2132-33. Importantly, this new analytical paradigm does not require the government to identify "a historical twin." Id. at 2133. "So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." Ibid.

The historical record shows that legislatures had broad discretion to prohibit those who had not respected the law from possessing firearms. Individuals who commit felonies and felony-equivalent offenses are not among

"the people" whom the Second Amendment protects. So too, individuals who engage in repeated misconduct, even if not convicted of a felony-equivalent offense, are not protected by the Second Amendment. The expungement of records relating to the misconduct does not alter the analysis.

"[T]he Founders understood that not everyone possessed Second Amendment rights." Binderup, 836 F.3d at 357 (Hardiman, J., concurring in part); see also United States v. Quiroz, ___ F. Supp. 3d ___, ___ (W.D. Tex. 2022) (recognizing the Nation's "historical tradition of excluding specific groups from the rights and powers reserved to 'the people'").

Bruen provides insights into "the people" protected by the Second Amendment. First, the majority repeatedly characterized the holders of Second Amendment rights as "law-abiding" citizens. Bruen, 142 S. Ct. at 2122, 2125, 2131, 2133-34, 2135 n.8, 2138, 2138 n.9, 2150, 2156; accord Heller, 554 U.S. at 625, 635. Bruen's references to law-abiding citizens included its holding that the New York statute under review "violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms," Bruen, 142 S. Ct. at 2156, its statement that the Second Amendment "'elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense," id. at

2131 (quoting Heller, 554 U.S. at 635), and its directive to identify historical analogues to modern firearm regulations by assessing "how and why the regulations burden a law-abiding citizen's right to armed self-defense," id. at 2133. The Court also recited nineteenth-century sources extending the right to keep and bear arms to "all loyal and well-disposed inhabitants," and disarming any person who made "an improper or dangerous use of weapons." Id. at 2152 (quoting Cong. Globe, 39th Cong., 1st Sess., at 908-09; The Loyal Georgian, Feb. 3, 1986, p. 3, col. 4).

Second, the Court made clear that, despite the infirmity of New York's discretionary may-issue permitting system, "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes . . . [,] which often require applicants to undergo a [criminal] background check" and "are designed to ensure only that those bearing arms in the jurisdiction are, in fact 'law-abiding, responsible citizens.'" Id. at 2138 n.9 (quoting Heller, 554 U.S. at 635). The criminal background checks the Court found constitutional are not limited to violent offenses.

Third, Justice Scalia's majority opinion in Heller described "prohibitions on the possession of firearms by felons" as both "longstanding" and "presumptively lawful." 554 U.S. at 626-27, 627 n.26. In his plurality opinion

in McDonald v. City of Chicago, Justice Alito "repeat[ed] those assurances." 561 U.S. 742, 786 (2010). Justice Thomas's majority opinion in Bruen recognized the right to keep and bear arms is "subject to certain reasonable, well-defined restrictions." 142 S. Ct. at 2156 (citing Heller, 554 U.S. at 581).

While the Supreme Court has not provided an "exhaustive historical analysis . . . of the full scope of the Second Amendment," Bruen, 142 S. Ct. at 2128 (quoting Heller, 554 U.S. at 626), Heller, McDonald, and Bruen provide insights into the Court's view of the status-based disarmament of criminals, who fall outside "the people" protected by the Second Amendment. This trilogy recognizes that it is well-rooted in the nation's history and tradition of firearm regulation that persons convicted of crimes, regardless of whether their crimes involved violence, are not protected by the Second Amendment.

Additionally, persons whose criminal records show disrespect for the law are not law-abiding citizens entitled to keep and bear arms. Several Circuits have expressed the view referred to as "virtuous citizenry." See e.g., Folajtar v. Att'y Gen., 980 F.3d 897, 902 (3d Cir. 2020), cert. denied, ___ U.S. ___, 141 S Ct. 2511 (2021); Binderup, 836 F.3d at 348; United States v. Carpio-Leon, 701 F.3d 974, 979-80 (4th Cir. 2012); Yancey, 621 F.3d at 684-85; United States v.

Vongxay, 594 F.3d 1111, 1118 (9th Cir. 2010). Numerous law review articles have likewise embraced the civic virtue theory of the Second Amendment.[9]

B.

Bruen emphasized that the Second Amendment codified "a pre-existing right" "to keep and bear arms" and found particular relevance in "English history dating from the late 1600s, along with American colonial views leading up to the founding." Bruen, 142 S. Ct. at 2127; see also Heller, 554 U.S. at 595. Bruen also found post-ratification practices from the late eighteenth and early nineteenth centuries highly relevant. See Bruen, 142 S. Ct. at 2136.

In the late seventeenth century, the English government disarmed persons whose conduct indicated a disrespect for the sovereign and its dictates. To that end, the English Bill of Rights during this period confirmed Parliament's

[9] See, e.g., Don B. Kates & Clayton E. Cramer, Second Amendment Limitations and Criminological Considerations, 60 Hastings L.J. 1339, 1359-60 (2009); Saul Cornell & Nathan DeDino, A Well Regulated Right: The Early American Origins of Gun Control, 73 Fordham L. Rev. 487, 492 (2004); Saul Cornell, "Don't Know Much About History": The Current Crisis in Second Amendment Scholarship, 29 N. Ky. L. Rev. 657, 672 (2002); David Yassky, The Second Amendment: Structure, History, and Constitutional Change, 99 Mich. L. Rev. 588, 626 (2000); Glenn Harlan Reynolds, A Critical Guide to the Second Amendment, 62 Tenn. L. Rev. 461, 480, 487 (1995); Don B. Kates, Jr., The Second Amendment: A Dialogue, 49 Law & Contemp. Probs. 143, 146 (1986); Anthony J. Zarillo III, Comment, Going off Half-Cocked: Opposing As-Applied Challenges to the "Felon-in-Possession" Prohibition of 18 U.S.C. § 922(g)(1), 126 Penn St. L. Rev. 211, 238 (2021).

authority to delineate which community members "may have Arms for their Defence suitable to their Conditions, and as allowed by Law." 1 W. & M. Sess. 2, ch. 2, § 7 (Eng. 1689) (quoted by Heller, 554 U.S. at 593). Following the English Civil War, nonconformist Protestants were disarmed by the restored Stuart monarchs.[10] See Joyce Lee Malcolm, To Keep and Bear Arms: The Origins of an Anglo-American Right 45 (1994) (describing the total disarmament of religious dissenters). Thus, the English Bill of Rights, described by the Supreme Court as the "predecessor to our Second Amendment," Bruen, 142 S. Ct. at 2141 (quoting Heller, 554 U.S. at 593), reveals the "historical understanding," id. at 2131, that Parliament had the legislative power and discretion to determine who was sufficiently loyal and law-abiding to exercise the right to bear arms. See Lois G. Schwoerer, To Hold and Bear Arms: The English Perspective, 76 Chi.-Kent L. Rev. 27, 47-48 (2000) (describing how the English Bill of Rights preserved Parliament's authority to limit who could bear arms).

[10] In reciting the early history of firearms regulation, as we are compelled to do under Bruen's new analytical paradigm, we do not mean to suggest that such discriminatory laws would pass muster under current constitutional standards. They clearly would not.

In 1689, Parliament enacted a status-based restriction prohibiting Catholics who refused to take an oath renouncing their faith from owning firearms, except as necessary for self-defense. See An Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 W. & M., Sess. 1, ch. 15 (Eng. 1689) (cited by Quiroz, ___ F. Supp.3d at ___ n.53); see also Malcolm, at 123. The likely historical basis for disarming Catholics who refused to renounce their faith was their perceived disrespect for and disobedience to the Crown and English law. When Catholics swore that they rejected the tenets of Catholicism, their right to own weapons was restored. W. & M., Sess. 1, ch. 15. This serves as another example of the seizure of firearms based on status—a disregard for the legally binding decrees of the sovereign—not a proclivity for violence.

C.

We next consider the relevant historical traditions in colonial America. The first firearm legislation prohibited Native Americans, African Americans, and indentured servants from owning firearms. See Michael A. Bellesiles, Gun Laws in Early America: The Regulation of Firearms Ownership, 1607–1794, 16 Law & Hist. Rev. 567, 578-79 (1998). While these groups were considered outside the political community, colonial history provides numerous examples

in which members of the political community were disarmed due to conduct revealing inadequate faithfulness to the sovereign and its laws. See e.g., James F. Cooper, Jr., Anne Hutchinson and the "Lay Rebellion" Against the Clergy, 61 New Eng. Q. 381, 391 (1988) (describing disarmament used to shame colonists whose perceived disavowal of the rule of law and disobedience to the dictates of government, rather than for a propensity for violence).

Similarly, Catholics in the American colonies were subject to disarmament absent any proclivity for violence. Maryland, Virginia, and Pennsylvania confiscated firearms from Catholic residents during the Seven Years' War. See Joseph G.S. Greenlee, The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms, 20 Wyo. L. Rev. 249, 263 (2020). Protestants in the colonies (as in England) disarmed Catholics because they viewed Catholics as defying sovereign authority and communal values, rather than for posing a threat of armed resistance.

D.

The Revolutionary War era provides additional examples of legislative disarmament of non-violent individuals whose actions indicated a disinclination to comply with the legal norms of the fledgling social compact. Many of the newly independent states enacted laws that required individuals, as a condition

of keeping their firearms, to pledge to the social compact by swearing fidelity to the revolutionary regime. See Robert H. Churchill, Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment, 25 Law & Hist. Rev. 139, 158 (2007). In Connecticut, for example, suspected loyalists to England who defamed resolutions of the Continental Congress were prohibited by statute from keeping arms, voting, or serving as a civil official. G.A. Gilbert, The Connecticut Loyalists, 4 Am. Hist. Rev. 273, 282 (1899) (cited by Folajtar, 980 F.3d at 908).

Pennsylvania disarmed non-violent residents who were unwilling to abide by the state's legal norms. All white male inhabitants over eighteen who failed to swear to "be faithful and bear true allegiance to the commonwealth of Pennsylvania as a free and independent state," were subject to disarmament by local authorities, without regard to dangerousness or propensity for physical violence. Act of June 13, 1777, 9 Pa. Stat. from 1682-1801, ch. DCCLVI, §§ 1, 3 (Wm. Stanley Ray 1903). This statutory disarmament was enacted despite Pennsylvania's 1776 state constitution protection of the people's right to bear arms. Cornell, at 670-71. It had the effect of depriving sizable numbers of that right because oath-taking violated the religious convictions of Quakers, Mennonites, Moravians, and other groups. Jim Wedeking, Quaker State:

Pennsylvania's Guide to Reducing the Friction for Religious Outsiders Under the Establishment Clause, 2 N.Y.U. J.L. & Liberty 28, 51 (2006). Pennsylvania's legislature was not the only state to enact statutes disarming certain citizens.

Wielding its authority to disarm individuals who disrespected the rule of law, Virginia's General Assembly enacted a loyalty oath statute in 1777. An Act to Oblige the Free Male Inhabitants of this State Above a Certain Age to Give Assurance of Allegiances to the Same, and for Other Purposes ch. III (1777), 9 Statutes at Large. The statute disarmed "all free born male inhabitants . . . above the age of sixteen years, except imported servants" who refused to swear their "allegiance and fidelity" to the state. Ibid.

The "how and why," Bruen, 142 S. Ct. at 2133, of the burden on the right to keep and bear arms imposed by these oath statutes informs us about the historical underpinnings of status-based prohibitions. First, these laws "defined membership in the body politic" by disarming individuals whose refusal to take the oaths showed a disrespect for the rule of law and the norms of the community, rather than a propensity for violence. Churchill, at 158. Second, legislatures had the authority and discretion to exclude even non-violent offenders from "the people" entitled to keep and bear arms.

E.

The ratification debates similarly illustrate that period's understanding of legislative power and discretion to disarm those not considered law-abiding. The Founding generation viewed "'[c]rimes committed'–violent or not–[as] . . . an independent ground for exclusion from the right to keep and bear arms." Binderup, 836 F.3d at 349; accord Folajtar, 980 F.3d at 908-09. Thus, even non-violent convictions could support disarmament. This view comports with longstanding traditions in English and American law of disarming individuals whose non-violent actions demonstrated disrespect for the law.

F.

Punishments for various non-violent offenses during the seventeenth, eighteen, and nineteenth centuries further illustrate legislative authority to disarm even non-violent offenders. Legislatures in the colonies and states authorized the seizure of firearms for non-violent, misdemeanor hunting offenses. For example, in 1771, New Jersey enacted a statute "for the preservation of deer, and other game" that punished non-residents trespassing with a gun by seizing the individuals' firearms. 1771 N.J. Laws 19-20. State legislatures continued to enact such laws after the Revolution. Virginia and Maryland punished individuals hunting wild fowl on rivers at night by seizing

their firearms. 1832 Va. Acts 70; 1838 Md. Laws 291-92. Similarly, Delaware law required non-residents who hunted wild geese on the state's waterways to forfeit their firearms, even though the offense was a misdemeanor. 12 Del. Laws 365 (1863). Centuries of statutes governing hunting demonstrate that legislatures regularly exercised their authority to disarm non-violent offenders.

The historical record reveals three principles. First, legislatures traditionally imposed status-based restrictions that disqualified categories of persons from possessing firearms. Second, the status-based restrictions were not limited to individuals who demonstrated a propensity for violence–they also applied to entire categories of people due to the perceived threat they posed to an orderly society and compliance with legal norms. Third, legislatures had broad discretion to determine when people's status or conduct indicated a sufficient threat to warrant disarmament.

G.

Turning to the constitutionality of N.J.S.A. 2C:58-3(c)(5), statutes are presumed to be constitutional. State v. Comer, 249 N.J. 359, 384 (2022); Burton, 53 N.J. at 95. "A statute may be declared unconstitutional in one of two manners. First, it may be declared invalid 'on its face.' Second, a statute may be found unconstitutional 'as-applied' to a particular set of circumstances."

Abbott by Abbott v. Burke, 199 N.J. 140, 234 (2009) (footnote omitted). Facial challenges generally come in two forms: (1) arguments that the statute is overbroad, or (2) that the statute is impermissibly vague. City of Chicago v. Morales, 527 U.S. 41, 52 (1999).

Appellant advances a facial challenge to the constitutionality of N.J.S.A. 2C:58-3(c)(5) on the grounds it is void for vagueness and overbroad. A statute is not void for vagueness if it "enable[s] a person of 'common intelligence, in light of ordinary experience' to understand whether contemplated conduct is lawful." State v. Cameron, 100 N.J. 586, 591 (1985) (quoting State v. Lashinsky, 81 N.J. 1, 18 (1979)). A statute need not be a "model of precise draftsmanship" to "sufficiently describe[] the conduct it proscribes." State v. Afanador, 134 N.J. 162, 169 (1993). "That there is a need for judicial interpretation in the application of a statute does not itself establish unconstitutional vagueness," Manzo v. City of Plainfield, 59 N.J. 30, 33 (1971), nor does the fact that a statute's "enforcement requires the exercise of some degree of police judgment," Grayned v. City of Rockford, 408 U.S. 104, 114 (1972). Moreover, when, as here, "the subject defies a cataloguing of all conceivable factual patterns[,] . . . no such detailed exposition is needed." Trap Rock Indus., Inc. v. Kohl, 59 N.J. 471, 483 (1971).

Our Supreme Court has explained that the challenged language of "to any person where the issuance would not be in the interest of the public health, safety of welfare" "was 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." Burton, 53 N.J. at 90-91. Codifying a list of every conceivable fact pattern bearing on a person's fitness to possess firearms clearly is not possible. The statute provides fair notice to people that a permit will be denied if they engage in behavior indicating they are "likely to pose a danger to the public" if armed. F.M., 225 N.J. at 507 (quoting Cunningham, 186 N.J. Super. at 511). Coupled with the de novo review of permit denials by the Law Division, the statute adequately "guard[s] against arbitrary official action." Burton, 53 N.J. at 91.

On a facial challenge, a statute should be deemed constitutional if it operates constitutionally in some instances. In re Contest of Nov. 8, 2011 Gen. Election of Off. of N.J. Gen. Assembly, 210 N.J. 29, 46-48 (2012); see also Cameron, 100 N.J. at 593-94. Facial challenges to the language of N.J.S.A. 2C:58-3(c)(5) have already been rejected by our Supreme Court in relation to an earlier iteration of the statute, see Burton, 53 N.J. at 90-91; and by this court as

to the iteration of the statute prior to the most recent amendment in 2022, see Winston, 438 N.J. Super. at 10; Dubov, 410 N.J. Super. at 196-97. See also F.M., 225 N.J. at 506, 511 ("the right to bear arms under the Second Amendment to the United States Constitution is subject to reasonable limitations" including the public health, safety, or welfare disqualifier); Crespo v. Crespo, 201 N.J. 207, 209-10 (2010) (holding Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, constitutional because "the right to possess firearms may be subject to reasonable limitations").

We discern no basis to declare the statute void for vagueness. In that regard, we distinguish statutes requiring a showing of "justifiable need" for a handgun carry permit, such as N.J.S.A. 2C:58-4(d), as does the Attorney General. See Attorney General, Law Enforcement Directive No. 2022-07 (June 24, 2022) ("The decision in [Bruen] prevents us from continuing to require a demonstration of justifiable need in order to carry a firearm, but it does not prevent us from enforcing the other requirements in our law.").

A law is unconstitutionally overbroad if "the reach of the law extends too far in fulfilling the State's interest." State v. Lee, 96 N.J. 156, 164-65 (1984) (citing Town Tobacconist v. Kimmelman, 94 N.J. 85, 125 n.21 (1983)). Appellant's overbreadth challenge fails because the overbreadth doctrine does

not apply outside the context of the First Amendment. See United States v. Salerno, 481 U.S. 739, 745 (1987) (stating "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment") (citing Schall v. Martin, 467 U.S. 253, 268 n.18 (1984) ("outside the limited First Amendment context, a criminal statute may not be attacked as overbroad")); Lee, 96 N.J. at 165 (rejecting an overbreadth challenge to a firearm statute because "the statute does not impinge upon any [F]irst [A]mendment right"). N.J.S.A. 58:3(c)(5) does not impinge on any First Amendment right, at least as to the facts of this case.

The holding in Bruen does not warrant a different conclusion,[11] nor do the holdings in Heller, 554 U.S. at 635 (holding the Second Amendment guarantees

[11] In Bruen, the Court held that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." 142 S. Ct. at 2122. The Court further held that New York's then-existing public carry law, N.Y. Penal Law § 400.00(2)(f) (since amended), violated the Constitution because it allowed for the issuance of public-carry licenses only when an applicant demonstrated that "proper cause" existed, meaning that the applicant had a "special need" for self-defense, distinguishable from the general community. Id. at 2123, 2156. In contrast, this appeal does not involve New Jersey's carry permit statute, which prior to Bruen required a showing of "justifiable need" for a carry permit, N.J.S.A. 2C:58-4(d) (since amended). Bruen emphasized that its holding did not effectuate a wholesale invalidation of the various states' gun licensing and permit systems. Bruen, 142 S. Ct. at 2138 n.9; see also id. at 2157, 2159 (Alito, J., concurring), id. at 2161-62 (Kavanaugh, J., and Roberts, C.J., concurring). Bruen explicitly noted that New Jersey's then

the right to possess a handgun at home for purpose of self-defense), or McDonald, 561 U.S. at 791 (holding the Due Process Clause incorporates Second Amendment right recognized in Heller). Indeed, in Dubov, we explicitly rejected a constitutional argument premised upon the holding in Heller, 410 N.J. Super. at 196-97, and in Winston, 438 N.J. Super. at 10, we explicitly rejected a constitutional argument premised upon the holding in McDonald.

For the reasons we have stated, we reject appellant's arguments that N.J.S.A. 2C:58-3(c)(5) is unconstitutionally vague or overbroad. Bruen, Heller, and McDonald do not undermine the holdings in F.M., Burton, Winston, and Dubov that upheld the "public health, safety or welfare" disqualifier for issuance of a HPP or FPIC. On the contrary, considering the historical traditions and analogues we have described and our historical analysis of those who were disarmed, we conclude it is likewise well-rooted in the nation's history and tradition of firearm regulation that individuals whose armament poses a risk to "public health, safety or welfare," as evidenced by their record of misconduct that evinces a disrespect for the rule of law, are likewise beyond the ambit of

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in place "justifiable need" requirement was analogous to New York's unconstitutional standard. 142 U.S. at 2124.

"the people" protected by the Second Amendment. This includes misconduct that did not involve violence against the victim or result in a criminal conviction.

The historical record convinces us that non-violent individuals were regularly disarmed between the seventeenth and nineteenth centuries because legislatures determined those individuals lacked respect for the rule of law and fell outside the community of law-abiding citizens. The Supreme Court's repeated characterization of Second Amendment rights as belonging to "law-abiding" citizens supports this conclusion. See Bruen, 142 S. Ct. at 2122; Heller, 554 U.S. at 635; cf. Cornell, at 672 (stating the right to keep and bear arms was historically "limited to" persons "deemed capable of exercising it in a virtuous manner"). Accordingly, we hold that N.J.S.A. 2C:58-3(c)(5) does not violate the Second Amendment.

IV.

A.

We next apply the foregoing general principles to the denial of appellant's application for an HPP. We note that the Police Chief did not decide whether to grant or deny the HPP application within thirty days of the application being made. See N.J.S.A. 2C:58-3(f) (upon application, "the licensing authority . . . shall grant the [HPP] . . . within 30 days" unless good cause for the denial

thereof). The application was submitted on December 27, 2019, and denied seventy-two days later, on March 9, 2020. Despite the delay, the thirty-day limit did not require that M.U.'s application be granted because there appeared to be "good cause for the denial thereof." F.M., 225 N.J. at 508.

At the time the HPP application was submitted, denied by the Police Chief, and considered by the trial court, the introductory paragraph and subsection (c)(5) of N.J.S.A. 2C:58-3(c) stated:

> Who may obtain. No person of good character and good repute in the community in which he lives, and is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a [HPP] or a [FPIC], except as hereafter set forth. No [HPP] or [FPIC] shall be issued:
>
> . . . .
>
> (5) To any person where the issuance would not be in the interest of the public health, safety or welfare;
>
> [(Emphasis added).]

N.J.S.A. 2C:58-3 was amended twice while this appeal was pending. The first amendment, effective July 5, 2022, did not alter the introductory paragraph of subsection (c) or the disability set forth in subsection (c)(5).

The latest amendment, effective December 22, 2022, substantially changed the introductory paragraph and subsection (c)(5). It now provides:

> Who may obtain. Except as hereinafter provided, a person shall not be denied a permit to purchase a handgun or a firearms purchaser identification card, unless the person is known in the community in which the person lives as someone who has engaged in acts or made statements suggesting the person is likely to engage in conduct, other than justified self-defense, that would pose a danger to self or others, or is subject to any of the disabilities set forth in this section or other sections of this chapter. A handgun purchase permit or firearms purchaser identification card shall not be issued:
>
> . . . .
>
> (c)(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;
>
> [N.J.S.A. 2C:58-3(c) (emphasis added).]

"The law favors prospective application of a new statute." James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 556 (2014). "We apply a presumption of prospective application for newly enacted statutes because 'retroactive application of new laws involves a high risk of being unfair.'" State v. J.V., 242 N.J. 432, 443 (2020) (quoting Oberhand v. Dir., Div. of Tax'n, 193 N.J. 558, 570 (2008)).

> To overcome the presumption of prospective application, we must find the "Legislature clearly intended a retrospective application" of the statute

> through its use of words "so clear, strong, and imperative that no . . . meaning can be ascribed to them" other than to apply the statute retroactively. Weinstein v. Inv'rs Sav. & Loan Ass'n, 154 N.J. Super. 164, 167 (App. Div. 1977). Courts apply a newly enacted statute retroactively only if "the Legislature intended to give the statute retroactive application" and "retroactive application of that statute will [not] result in either an unconstitutional interference with vested rights or a manifest injustice." James, 216 N.J. at 563 (quoting In re D.C., 146 N.J. 31, 50 (1996)).
>
> [Id. at 443-44 (omission in original).]

The Legislature—in deliberate terms—made the pertinent aspects of the amendments effective upon passage. We construe the amendments to be prospective, not retroactive, and apply only to HPP applications submitted on or after the amendment's effective date. See State v. Lane, 251 N.J. 84, 87-88 (2022) (holding that sentencing mitigating factor fourteen, N.J.S.A. 2C:44-1(b)(14), is not entitled to retroactive effect because the Legislature conveyed its intent to afford the new law only prospective application by making it effective upon passage).

Here, the denial of appellant's application was based upon his unlawful activities, albeit not any criminal convictions that would be specifically disabling under N.J.S.A. 2C:58-3(c)(1). Appellant was afforded a full opportunity to present his arguments in favor of his application. The record

supports the court's factual findings and legal conclusion that it "would not be in the interest of the public health, safety or welfare" to issue a HPP to appellant, N.J.S.A. 2C:58-3(c)(5), because the record reflects that he is not a law-abiding, responsible citizen. To the contrary, he has demonstrated a repeated disrespect for the rule of law, including our Criminal Code. The record supports the finding that appellant fits squarely within the category of individuals who would pose a risk to "public health, safety or welfare" if permitted to purchase handguns. We therefore conclude that appellants history of misconduct placed him outside of "the people" protected by the Second Amendment. We discern no abuse of discretion. We therefore affirm the denial of his HPP application.

B.

We next address the revocation of appellant's FPIC. Revocation of a FPIC is governed by N.J.S.A. 2C:58-3(f). As we have explained, the amendments to N.J.S.A. 2C:58-3 apply prospectively.[12] The version of the statute then in effect provided:

[12] In response to Bruen, the Legislature amended N.J.S.A. 2C:58-3(f) effective July 5, 2022. The minimal changes to the language of this subsection were semantic and did not affect the operative language of the subsection (f). The subsequent amendment to N.J.S.A. 2C:58-3, effective December 22, 2022, did not change the revocation aspect of subsection (f).

> A [FPIC] shall be valid until such time as the holder becomes subject to any of the disabilities set forth in subsection c. of this section, whereupon the card shall be void and shall be returned within five days by the holder to the superintendent, who shall then advise the licensing authority. Failure of the holder to return the [FPIC] to the superintendent within the five days shall be an offense under subsection a. of N.J.S.2C:39-10. Any [FPIC] may be revoked by the Superior Court of the county wherein the card was issued, after hearing upon notice, upon a finding that the holder thereof no longer qualifies for the issuance of the permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to the court at any time for the revocation of the card.
>
> [N.J.S.A. 2C:58-3(f).]

Here, the prosecutor applied to the Superior Court under N.J.S.A. 2C:58-3(f) to revoke appellant's FPIC on notice to him. The statute provides that a FPIC may be revoked by the court, "after hearing upon notice, upon a finding that the holder thereof no longer qualifies for the issuance of such permit.'" F.M., 225 N.J. at 508 (quoting N.J.S.A. 2C:58–3(f)). The State must prove, "by a preponderance of the evidence, that forfeiture is legally warranted." F.M., 225 N.J. at 508 (quoting Cordoma, 372 N.J. Super. at 533). The court conducted an evidentiary hearing, found the State had met that burden, and revoked the FPIC. The court was not bound by the fact appellant had been issued a FPIC in 2017. Boyadjian, 362 N.J. Super. at 475-79.

The same disabilities enumerated in N.J.S.A. 2C:58-3(c) that preclude issuance of a HPP also preclude issuance of a FPIC. The disability enumerated in N.J.S.A. 2C:58-3(c)(5) applies with equal force to the FPIC appellant already possessed. Therefore, for the same reasons that appellant was correctly denied a HPP, he no longer qualified for a FPIC. Accordingly, his FPIC could be revoked. F.M., 225 N.J. at 508. This does not end our inquiry, however. We must determine whether the revocation proceeding met due process requirements.

The Fourteenth Amendment of the United States Constitution prohibits the deprivation "of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §Article I, paragraph 2 of the New Jersey Constitution "embrace[s] the fundamental guarantee of due process." Jamgochian v. N.J. State Parole Bd., 196 N.J. 222, 239 (2008). Our Supreme Court has, "from time to time, construed Article I, Paragraph 1 to provide more due process protections than those afforded under the United States Constitution . . . ." Ibid.

"The minimum requirements of due process . . . are notice and the opportunity to be heard." Id. at 240 (omission in original) (quoting Doe v. Poritz, 142 N.J. 1, 106 (1995)). "[D]ue process rights are found whenever an individual risks governmental exposure to a 'grievous loss.'" State ex rel.

D.G.W., 70 N.J. 488, 501 (1976) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). "The question is not merely the 'weight' of the individual's interest, but whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." Morrissey, 408 U.S. at 481 (citing Fuentes v. Shevin, 407 U.S. 67 (1972)). The revocation of a FPIC constitutes state action triggering due process protections.

Appellant had the right to prior written notice of the claimed violation and a meaningful opportunity to be heard, which included the right to retain counsel to represent him, before the FPIC revocation application was heard. The county prosecutor formally moved on short notice to revoke appellant's FPIC. The return date of the motion was adjourned to provide sufficient time for the submission of briefs and opposing papers. Appellant did so. He was represented by counsel and afforded an evidentiary hearing at which the State's witnesses were subject to cross-examination and appellant was permitted to present legal arguments, the testimony of witnesses, and to testify himself. The requirements of N.J.S.A. 2C:58-3(f) were met. Appellant received both adequate notice and a full opportunity to be heard. He was not deprived of procedural due process. See Doe, 142 N.J. at 106.

We are convinced, as was the trial court, that the State proved by a preponderance of the evidence that revocation of appellant's FPIC was warranted. We affirm that determination.

C.

Appellant argues the judge erred in questioning him about the number and types of firearms he possessed and contends the matter should be remanded for rehearing before a different judge. We disagree.

Judges are permitted to ask witnesses questions during a testimonial hearing, N.J.R.E. 614(b), particularly when the judge is the factfinder, see State v. Medina, 349 N.J. Super. 108, 131-32 (App. Div. 2002) (reasoning that because it was a bench trial, there was no risk that a jury would place undue emphasis on the judge's questions).

Here, the judge's questions regarding the number and type of firearms appellant possessed elicited basic information relevant to the issues presented and provided additional clarity. The questions asked appellant to provide relevant, admissible evidence, were not overzealous, did not interfere with counsel's examination of appellant, and did not evince any bias. We have no reason to doubt the judge's good faith and impartiality. We discern no abuse of

discretion or error in the manner appellant was examined by the judge or any basis to disqualify him.

D.

We next address the forfeiture and compelled sale of appellant's firearms under N.J.S.A. 2C:58-3(f), which addresses revocation of FPICs and carry permits. The State proceeded under N.J.S.A. 2C:58-3(f), which provides no basis for the forfeiture of firearms already possessed.

Our review of a forfeiture of firearms and FPIC is deferential. F.M., 225 N.J. at 505-06. Several opinions discuss the forfeiture of weapons in the context of a domestic violence incident.

In F.M., for example, F.M.'s personal firearm and FPIC were seized pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35 (PDVA), after a temporary restraining order was issued against him to protect his wife. 225 N.J. at 491. Although a final restraining order was denied, the State moved in the Family Part "to forfeit F.M.'s weapon and revoke his [FPIC], based on N.J.S.A. 2C:58-3(c)(5), contending that rearming F.M. 'would not be in the interest of the public health, safety or welfare.'" Ibid. Following an evidentiary hearing, the Family Part judge denied the State's forfeiture motion. Id. at 501. The Court focused on forfeiture of firearms and FPICs in actions

under the PDVA and considered the interplay of N.J.S.A. 2C:58-3 and the PDVA. Id. at 505, 509. The Court noted "the [PDVA] contains detailed provisions with respect to weapons." Id. at 509-10 (quoting State v. Harris, 211 N.J. 566, 579 (2012)). "[E]ven if a domestic violence complaint is dismissed and the conditions abate, forfeiture may be ordered if the defendant is subject to any of the disabilities in N.J.S.A. 2C:58-3(c), which includes that defendant's possession of weapons 'would not be in the interests of the public health safety or welfare.'" Id. at 510-11 (quoting N.J.S.A. 2C:58-3(c)(5)).

Cordoma also involved the forfeiture of a firearm and FPIC following their seizure pursuant to a domestic violence temporary restraining order. 372 N.J. Super. at 527. The court noted the 2003 amendments to the PDVA required law enforcement officers to "inquire as to the presence of weapons on the premises", "seize any weapon the officer reasonably believes would expose the victim to a serious risk of bodily injury," and seize any [FPIC] or [HPP] "issued to the person accused of committing domestic violence." Id. at 533 (citing N.J.S.A. 2C:25-21(d)(1)(a), (1)(b)). The court explained "that the voluntary dismissal of a domestic violence complaint does not mandate the automatic return of any firearms seized by law enforcement officers in connection therewith." Ibid. "The State retains the statutory right to seek the forfeiture of

any seized firearms provided it can show that defendant is afflicted with one of the legal 'disabilities' enumerated in N.J.S.A. 2C:58-3(c)." Ibid. The court noted "the State can petition the Family Part for a forfeiture order 'to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for use, possession, or ownership of such weapons.'" Ibid. (quoting N.J.S.A. 2C:25-21(d)(3)).

The facts in F.M. and Cordoma are readily distinguishable from this case. Appellant has no history of domestic violence. Accordingly, the forfeiture procedure codified in N.J.S.A. 2C:25-21(d)(3) does not apply.

We also recognize that N.J.S.A. 2C:64-1(a)(1)-(2) provides for forfeiture of firearms unlawfully possessed or acquired, or used in furtherance of an unlawful activity. In addition, N.J.S.A. 2C:58-24 and -26 provide for the surrender of firearms, FPICs, HPPs, and carry permits under circumstances that "pose[] a significant danger of bodily injury" pursuant to "an extreme risk protective order." Appellant's conduct does not fall within either statute.

There is no allegation, much less evidence in the record, that appellant used his handgun in furtherance of an unlawful activity, committed an act of domestic violence, or was subject to weapon surrender under an extreme risk protective order. Nor is there any evidence that appellant improperly brandished

or fired his firearms. Moreover, because appellant's firearms were not "unlawfully possessed, carried, acquired or used," they are not "prima facie contraband." N.J.S.A. 2C:64-1(a)(1).

The State concedes there is no statutory authority for a court to order the seizure and compelled sale of firearms except in circumstances not present here. We concur.

The State nevertheless argues the forfeiture is moot because the 120-day period for appellant to arrange for the sale of his firearms to a licensed gun dealer expired without appellant seeking a stay or emergent relief of the trial court's order from this court. The State notes appellant turned his firearms over to the police and speculates the guns were sold pursuant to the trial court's order.

An appeal issue is moot if the appellant "is not entitled to any affirmative relief." Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 484 (2008). See also Redd v. Bowman, 223 N.J. 87, 104 (2015) ("An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011))). The lack of a stay pending appeal is not dispositive. Nor is the absence of an application for emergent relief. The

current location and status of the firearms is not disclosed by the record. On this record, we reject the State's mootness argument.

Although the State argues that appellant's history of misconduct satisfied the public health, safety, and welfare disqualifier, that disqualifier applies to the issuance of HPPs and FPICs, rather than the right to possess firearms at home. See N.J.S.A. 2C:39-6(e) ("Nothing in subsections b., c., and d. of N.J.S.A. 2C:39-5 shall be construed to prevent a person keeping or carrying about the person's place of business, residence, premises or other land owned or possessed by the person, any firearm . . . ."); Morillo v. Torres, 222 N.J. 104, 121 (2015) ("[T]he exemption [in N.J.S.A. 2C:39-6(e)] applies to possessing weapons inside one's dwelling or place of business"); State v. Petties, 139 N.J. 310, 315 (1995) ("One may possess an unlicensed handgun at home."); State v. Harmon, 104 N.J. 189, 198-99 (1986) ("A homeowner who possesses a gun in his home . . . does not violate N.J.S.A. 2C:39-5 because under N.J.S.A. 2C:39-6(e), he is not carrying it."). Put simply, defendant is not prohibited by N.J.S.A. 2C:39-5 from possessing and carrying a firearm within his residence, and perhaps on adjacent land he owns or possesses, without a HPP, FPIC, or carry permit. See Morillo, 222 N.J. at 122.

The court's reference to the community caretaking doctrine is misplaced. "The community-caretaking doctrine represents a narrow exception to the warrant requirement." State v. Scriven, 226 N.J. 20, 38 (2016); State v. Diloreto, 180 N.J. 264, 275-76 (2004). There was no warrantless seizure of appellant's firearms by police.

We reverse the forfeiture and compelled sale of appellant's firearms and remand for entry of a corrected order. On remand, the court shall conduct further proceedings to determine whether the firearms may be returned from the federally licensed firearms dealer, or whether some other remedy is available. In those proceedings, appellant is free to pursue his claims for deprivation of his property rights under the Second, Fourth, Fifth, and Fourteenth Amendments.

E.

Lastly, relying on State v. One 1990 Honda Accord, 154 N.J. 373 (1998), appellant argues the court erred by denying him a jury trial regarding the forfeiture of his firearms. In that case the State brought a civil in rem action under N.J.S.A. 2C:64-3(f), seeking forfeiture of a vehicle. Id. at 375. The vehicle's owner demanded a jury trial and counterclaimed for a declaration that N.J.S.A. 2C:64-3(f), which provides that forfeiture of innocent property is subject to a summary hearing, is unconstitutional. Ibid. The trial court denied

the owner's request for a jury trial, conducted a summary proceeding, and forfeited the vehicle to the State. Ibid. We reversed and remanded for a new trial. State v. One 1990 Honda Accord, 302 N.J. Super. 225 (App. Div. 1997). The Supreme Court affirmed. 154 N.J. at 376.

Forfeiture "remains a disfavored remedy." Id. at 378. Here, appellant opposed the State's motion to compel the sale of his firearms and demanded a jury trial. The court heard and decided the motion in a summary proceeding and rejected appellant's demand for a jury trial.

N.J.S.A. 2C:64-1(a)(2) provides for the forfeiture of "all property," such as appellant's firearms, "which has been, or is intended to be, utilized in furtherance of an unlawful activity." The State did not file a statutory forfeiture action under N.J.S.A. 2C:64-3. If it had, appellant would have been entitled to have that issue determined by a jury. One 1990 Honda Accord, 154 N.J. at 393.

Because the State did not seek forfeiture under N.J.S.A. 2C:64-3, appellant is not entitled to a jury trial. Considering our ruling reversing the forfeiture and compelled sale of appellant's firearms, we do not engage in speculation whether the State will file a new application to forfeit the firearms, or the nature of any such application, and we do not reach the issue of whether appellant would be entitled to a jury trial in that potential future proceeding. See

Comm. to Recall Robert Menendez from the Off. of U.S. Senator v. Wells, 204 N.J. 79, 95 (2010) (stating that courts "strive to avoid reaching constitutional questions unless required to do so"); Randolph Town Ctr., L.P. v. Cnty. of Morris, 186 N.J. 78, 80 (2006) ("Courts should not reach a constitutional question unless its resolution is imperative to the disposition of litigation.").

To the extent we have not specifically addressed any of appellant's remaining arguments, we conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.