



FILED
LORAIN COUNTY
2018 SEP 28 P 2:21
COURT OF COMMON PLEAS
TOM CHILCOTE

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Sept. 27, 2018

Case No. 18CV195866

STATE OF OHIO
Plaintiff

Richard Gronsky
Plaintiff's Attorney

VS

RICHARD E. SHUMATE
Applicant

James Burge
Applicant's Attorney

This matter is before the Court on Applicant's Application For Partial Relief From Disability, filed July 30, 2018; the State's Motion To Dismiss Petition For Lack of Jurisdiction And Failure To State A Claim, filed August 3, 2018; Applicant's Brief In Opposition To Motion To Dismiss Application For Relief From Disability, filed August 15, 2018; The State's Memorandum Concerning Standing, filed September 14, 2018; and the Applicant's Memorandum: Standing, filed September 14, 2018.


The State's Motion To Dismiss is not well-taken and DENIED.

Pursuant to RC 2923.14(D), this matter is set for hearing on the merits for Thursday, October 17, 2018 at 1:30 pm. The Applicant is ordered to personally appear.

See Judgment Entry.

IT IS SO ORDERED. No Record.

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JUDGE D. Chris Cook

cc: Gronsky, Asst. Pros. Atty.
Burge, Esq.



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I. INTRODUCTION

This matter is before the Court on Applicant's Application For Partial Relief From Disability, filed July 30, 2018; the State's Motion To Dismiss Petition For Lack of Jurisdiction And Failure To State A Claim, filed August 3, 2018; Applicant's Brief In Opposition To Motion To Dismiss Application For Relief From Disability, filed August 15, 2018; The State's Memorandum Concerning Standing, filed September 14, 2018; and the Applicant's Memorandum: Standing, filed September 14, 2018.

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II. ABBRIEVED STATEMENT OF FACTS

The facts in the case at bar in not in dispute as to the underlying convictions that form the basis of the Applicant's weapons disability pursuant to RC 2923.13. The Applicant has six (6) felony convictions from 1991 through 2002 that disqualify him from owning or possessing firearms.

The Applicant is a domiciliary of the State of Michigan.



III. STANDARD OF REVIEW

A) RELIEF FROM WEAPONS DISABILITY

“The right to keep and bear arms is a fundamental right enshrined in federal and state constitutional law.” *State v. Robinson*, 2015-Ohio-4649, 48 N.E.3d 1030, ¶ 11. The Second Amendment to the United States Constitution confers an individual right to keep and bear arms. *Dist. of Columbia v. Heller*, 554 U.S. 570, 595, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). The Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right to keep and bear arms and applies it to the states. *McDonald v. Chicago*, 561 U.S. 742, 794, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010). This right is not unlimited, but is subject to several longstanding prohibitions, including the possession of firearms by felons. *Heller* at 626–627, 128 S.Ct. 2783. See: *In re Chrosniak*, 8th Dist. Cuyahoga No. 105459, 2017-Ohio-7408, at ¶ 11.

Similarly, the right to keep and bear arms is part of Ohio's heritage and is a fundamental state constitutional right. *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633, ¶ 5, 7; Ohio Constitution, Article I, Section 4. Like the federal constitutional right to keep and bear arms, the state constitutional right is also subject to limitations. *Klein* at ¶ 8; *Chrosniak* at ¶ 12.

R.C. 2923.14 provides the mechanism in Ohio to restore civil rights to felons prohibited from keeping and bearing firearms, by specifying that “[a]ny person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.” R.C. 2923.14(A). R.C. 2923.14(D) authorizes a trial court to grant an application for relief from disability if certain requirements are satisfied. *Chrosniak* at ¶ 13.

By using the word “may,” the General Assembly has drafted a permissive statute. *In re I.A.*, 140 Ohio St.3d 203, 2014-Ohio-3155, 16 N.E.3d 653, ¶ 13. Because the determination of whether to grant an application for relief from disability under R.C. 2923.14(D) is vested within a trial court's broad discretion, “[a] court of appeals reviews a trial court's decision either granting or denying an application for relief from disability under an abuse of discretion standard.” *State v. Brown*, 8th Dist. Cuyahoga No. 96615, 2011-Ohio-5676, 2011 WL 5299304, ¶ 17; *Chrosniak* at ¶ 14.

B) JURISDICTION

The Ohio Supreme Court has explained that “[t]he general term ‘jurisdiction’ can be used to connote several distinct concepts, including jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, ¶ 18. “Subject-matter jurisdiction is the



the power of a court to entertain and adjudicate a particular class of cases” and is “determined without regard to the rights of the individual parties involved in a particular case.” *Id.* at ¶ 19. A court's jurisdiction over a particular case on the other hand “refers to the court's authority to proceed or rule on a case that is within the court's subject-matter jurisdiction.” *Id.* See: *In re: T.D.*, 9th Dist. Wayne No. 16AP0035, 2018-Ohio-204, ¶ 5.

C) STANDING

The Ohio Constitution provides in Article IV, Section 4(B): “The courts of common pleas and divisions thereof shall have such original jurisdiction *over all justiciable matters* and such powers of review of proceedings of administrative officers and agencies as may be provided by law.” (Emphasis added.) *Federal Home Loan Mortgage Corp. v. Sxhwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, at ¶ 20.

In *Cleveland v. Shaker Hts.*, 30 Ohio St.3d 49, 51, 507 N.E.2d 323 (1987), we stated: “Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends on ****1219** whether the party has alleged * * * a “personal stake in the outcome of the controversy.” ’ ’ * * * Similarly, the United States Supreme Court observed in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998), that “[s]tanding to sue is part of the common understanding of what it takes to make a justiciable case.” *Id.* at ¶ 21.

We recognized that standing is a “jurisdictional requirement” in *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 179, 298 N.E.2d 515 (1973), and we stated: “It is an elementary concept of law that a party lacks standing *to invoke the jurisdiction* of the court unless he has, in an individual or representative capacity, some real interest in the subject matter of the action.” (Emphasis added.) See also *New Boston Coke Corp. v. Tyler*, 32 Ohio St.3d 216, 218, 513 N.E.2d 302 (1987) (“the issue of standing, inasmuch as it is jurisdictional in nature, may be raised at any time during the pendency of the proceedings”). *Id.* at ¶ 22.

IV. ANALYSIS

The parties have spent a considerable amount of time and argument addressing the issues of jurisdiction and standing as the Applicant does not reside in the State of Ohio, but is a domiciliary of the State of Michigan.



According to the State, this Court lacks jurisdiction to hear this matter as RC 2923.14(A)(1) requires that an applicant file his petition for relief from weapons disability with “. . . the court of common pleas in the county in which the person resides . . .” Since the Applicant does not reside in any county in Ohio, he cannot avail himself of the courts of common pleas in Ohio.

Additionally, the State urges that the Applicant lacks standing to bring this action as he is not a resident of Ohio and that this court lacks jurisdiction to grant Applicant “partial” relief from the disability.

The Applicant disputes this literal reading of the statute as to jurisdiction and standing and has provided case law that stands for the proposition that a trial court may grant partial or limited relief from a weapons disability.

A) “PARTIAL” OR “LIMITED” RELIEF FROM A WEAPONS DISABILITY

In its initial pleading, the State argues that the Applicant’s request for “partial” relief from a weapons disability is not allowed by RC 2923.14 and cannot be granted by this court.” The State fails, however, to provide any support for this position. There is certainly nothing in the statute that limits the Court’s ability to grant partial or limited relief. And, the State fails to provide this Court with any case law authority to support its argument.

Conversely, the Applicant cites this Court to the matter of *State v. Haslam*, 7th Dist., Monroe No. 08 MO 3, 2009-Ohio-1663. In *Haslam*, the trial court granted the defendant partial relief from his firearm disability by allowing him to carry a firearm restricted to his employment as a guide for turkey hunters. On appeal, the Seventh District noted, “. . . the State did not present sufficient evidence to prove that three of Haslam’s possession counts exceeded the scope of his 1997 partial relief of his weapons disability.” *Id.* at ¶ 3. The court went on to hold, “Haslam satisfied his initial burden of production by submitting the 1997 judgment entry providing him with partial relief from his weapons disability.” *Id.* at ¶ 26. The court then vacated his convictions on counts two, three, and six. *Id.* at ¶ 57.

Like both courts in *Haslam*, this Court finds that a trial court in the State of Ohio may, as a matter of law, provide “partial” or “limited” relief from a weapons disability under RC 2923.14, assuming all other statutory requirements are met.



B) THE NATURE OF RC 2923.14 IS REMEDIAL

At the outset, similar to Ohio's sealing statutes¹, the Court finds that RC 2923.14 is a remedial statute that should be liberally construed in favor of the Applicant. *State ex rel. Gains*, 86 Ohio St.3d at 622, 716 N.E.2d 204, citing R.C. 1.11 and *Barker v. State*, 62 Ohio St.2d 35, 42, 402 N.E.2d 550 (1980).

C) THE LEGISLATIVE INTENT

When construing a statute, a court's objective is to determine and give effect to the legislative intent. *State ex rel. Solomon v. Police & Firemen's Disability & Pension Fund Bd. of Trustees*, 72 Ohio St.3d 62, 65, 647 N.E.2d 486 (1995). To determine legislative intent, a court must first consider the words used in a statute. *State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121, 767 N.E.2d 242, ¶ 10. When a statute's language is clear and unambiguous, a court must apply it as written. *Zumwalde v. Madeira & Indian Hill Joint Fire Dist.*, 128 Ohio St.3d 492, 2011-Ohio-1603, 946 N.E.2d 748, ¶ 23. Further construction is required only when a statute is unclear and ambiguous. *State v. Chappell*, 127 Ohio St.3d 376, 2010-Ohio-5991, 939 N.E.2d 1234, ¶ 16.

At first blush, RC 2923.14 appears to be straight-forward and unambiguous. As urged by the State, any person who is prohibited from possessing weapons may apply to the court of common pleas *in the county in which the person resides* for relief from judgment.

But what about a person convicted in Ohio of an offense that carries a weapons disability who does not reside in Ohio? Is that person precluded from seeking relief in the very court that imposed the disability?

This narrow reading is illogical, impractical, and inapposite.

First, as a practical matter, it would seem that regardless of where a person resides, the court that imposed a weapons disability is in the best position to determine if it should be lifted.² That court has (most likely) a pre-sentence investigation, information about the facts and circumstances surrounding the conviction(s), input from the prosecutor who prosecuted that case, and perhaps input from the victim, if there was one.

Moreover, it is desirable that an Ohio court interpret and apply Ohio law over a foreign jurisdiction where Ohio imposed the disability in the first place.

¹ RC 2953.34 *et seq.*

² This Court is aware that a trial court does not actually "impose" the weapons disability but that it occurs by operation of law.



And, while Michigan apparently has a statute similar to Ohio's to restore the rights of a person to possess firearms³, many jurisdictions may not. For instance, what if a person under an Ohio weapons disability resides in a state like Louisiana that does not have any "counties" at all? Is that sad soul forever precluded from seeking relief from the disability? What if the person resides in Canada, Haiti, Equatorial Guinea, Kiribati, or Bora Bora and their jurisdiction of residence has no similar state to Ohio's relief from disability statute? Again, are they out of luck?

Such a limited application of a statute that is remedial in nature cannot have been intended by the General Assembly.

As Chief Justice Moyer noted in his concurrence in *State v. Futrall*, 123 Ohio St.3d 498, 2009-Ohio-5590, a case involving a defendant's efforts to seal some, but not all of his criminal convictions, the Chief said, "Still, our path in this case is dimly lit by the existing statutory framework. No Ohio statute directly answers the question before us. For that reason, we have been required to fashion interstitial law, covering the gap between the existing law and the issue in this case by tugging at the edges of several closely related statutes. * * * But an opinion of this court is not the preferred method of lawmaking. At issue is the ability of a person to expunge the record of his past offenses. Such an issue is better resolved in the General Assembly. Therefore, I write separately to urge the General Assembly to address the issues posed in this case." *Id.* at ¶ 22.

Similarly, this Court's path is "dimly lit" by the existing statute regarding relief from weapons disabilities for non-residents of Ohio. And, this Court too must craft "interstitial law" in order to rectify this anomaly, at least for the time being.

V. CONCLUSION

For the forgoing reasons, this Court finds that it has jurisdiction to hear this matter; that the Applicant has standing to bring this case; and that the Court may grant partial or limited relief from the Applicant's weapons disability if he is otherwise statutorily eligible.



JUDGE D. Chris Cook

³ M.C.L.A. 28.424.