

DISTRICT OF COLUMBIA
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ALAN COLES
Petitioner

v.

METROPOLITAN POLICE DEPARTMENT
Respondent

Case No.: PD-G-09-800002

FINAL ORDER

I. Introduction

Petitioner Alan Coles sought to register a .40 caliber Beretta, Model 8040 Cougar-F hand gun with Respondent Metropolitan Police Department (“MPD”). MPD denied Petitioner’s application because “the totality of your criminal history shows a clear pattern of violent behavior involving the use of firearms” April 22, 2009, Letter from Essary Taliaferro, Inspector. On May 26, 2009, Petitioner filed a hearing request to challenge MPD’s denial of his application for firearms registration. I held a status conference on July 2, 2009. During the status conference, the parties agreed to appear for an evidentiary hearing during the last week of July 2009, which I set for July 30, 2009. After two continuances, each requested by Petitioner and granted for good cause shown, I convened the evidentiary hearing on September 17, 2009.

Paul Vangellow, Esq., represented Petitioner Coles, who appeared and testified on his own behalf. Robert Hildum, Deputy Attorney General, represented Respondent MPD. Sergeant

Colin Hall testified on behalf of MPD. During the course of the hearing, I admitted into evidence Petitioner's exhibits 100-102, and 104A, as well as MPD's exhibits 200 and 202-207. According to a schedule agreed upon by the parties, MPD filed a post-trial brief on November 13, 2009, and Petitioner filed a responsive brief on December 22, 2009.

II. Findings of Fact

1. On November 2, 1982, April 15, 1983, December 11, 1984, May 5, 1985, May 13, 1987, January 7, 1994, and September 16, 2000, Petitioner was arrested for various crimes. Exhibits 200 and 202-207. All told, from 1982 to 2000, Petitioner was "arrested and charged with eighteen (18) criminal offenses. Ten (10) of these offenses involved the use of firearms." Exhibit 100. Petitioner has never been convicted of a crime.

2. Petitioner's arrest on September 16, 2000, occurred during a domestic dispute. Exhibit 200. Petitioner threatened to kill someone during the incident. *Id.*

3. At the time of the hearing, Petitioner was employed by the District of Columbia Water and Sewer Authority as a truck driver. Petitioner has been so employed for approximately five years. Prior to this job, Petitioner worked for the District of Columbia Department of Public Works. Petitioner is a high school graduate.

III. Discussion and Conclusions of Law

The pertinent statute restricts the registration of hand guns:

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person:

* * *

(6A) Within the 5 years immediately preceding the application, has not had a history of violent behavior.

D.C. Code, 2001 Ed. § 7-2502.3(a) and (6A).

The implementing regulations explain that:

Arrest records within the 5 years immediately preceding the application, showing that the applicant has had a history of violent behavior. For purposes of this subsection, "history of violent behavior" includes but is not limited to arrests for violation of D.C. Official Code § 22-407, regarding threats to do bodily harm, or D.C. Official Code § 22-404, regarding assaults and threats, any crime of violence as defined in D.C. Official Code § 23-1331, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm.

24 District of Columbia Municipal Regulations (“DCMR”) 2309.6.

Petitioner argued that as he has never been convicted of a crime and since all of his arrests are more than five years old, he is legally entitled to register his handgun. D.C. Code, 2001 Ed. § 7-2502.3(a)(6A). MPD argued strenuously that Petitioner is a career criminal, whose record of violent criminal behavior is so extensive that he should not be allowed to have a hand gun; because even though the regulatory scheme limits the review of records to the five years immediately preceding the registration application, common sense must prevail, MPD must protect the public, and Petitioner must not be allowed to register a hand gun.

Petitioner’s argument that because he has never been convicted of a crime he is legally entitled to register a hand gun in the District of Columbia is unpersuasive. The governing regulatory scheme makes clear: a history of violent behavior established by “arrest records” is a sufficient basis for the MPD Chief to refuse to register a gun. 24 DCMR 2309.6. The fact that Petitioner has not been convicted of a crime only means that his application to register a hand gun cannot be denied pursuant to D.C. Code, 2001 Ed. § 7-2502.3(a)(4) (the applicant “has not been convicted within 5 years prior to the application . . .”). But the absence of convictions does not mean that Petitioner is legally entitled to register his hand gun.

MPD denied Petitioner's application to register his hand gun based on its interpretation of D.C. Code, 2001 Ed. § 7-2502.3(a)(6A) ("Within the 5 years immediately preceding the application, [the applicant] has not had a history of violent behavior."). In general, the parties agree that the statute bars an applicant from registering a hand gun in the District of Columbia if the applicant has a demonstrable record of violent behavior in the five years immediately preceding the registration application. Where the parties disagree is whether I can or should interpret the statute to allow MPD to deny this Petitioner's application because of his undeniable history of violent behavior, all of which is more than five years old.

The standards for statutory interpretation are well established. In what is considered a seminal case, the District of Columbia Court of Appeals declared

In interpreting a statute, we are mindful of the maxim that we must look first to its language; if the words are clear and unambiguous, we must give effect to its plain meaning. The primary rule of statutory construction is that the intent of the legislature is to be found in the language which it has used. Moreover, the words of the statute should be construed according to their ordinary sense, and with the meaning commonly attributed to them. 'The words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing.'

Parreco & Son v. D.C. Rental Housing Comm'n, 567 A.2d 43, 45-46 (D.C. 1989) (internal citations omitted).

There is also no dispute that the only evidence MPD has is arrest records more than five years old. Exhibits 200 and 202-207. Petitioner's arrest records paint an unflattering picture: he has a frightening history of violent behavior between 1982 and 2000. Further, while on cross-examination during the evidentiary hearing, Petitioner claimed he could not remember crucial points of his past and denied others. So rather than take responsibility for his prior bad acts and claim that he is no longer a threat, Petitioner professed to remember little to nothing, admitted to no inappropriate behavior, and blamed others by saying they were out to get him by falsely

accusing him of crimes. Petitioner's arrest record and testimony makes him a very poor candidate for a hand gun in the District of Columbia. MPD argued that rather than being a pillar of the community, he is a menace.

But I am bound by the clear and unambiguous constraints of the hand gun laws in the District of Columbia. Those laws do not authorize me to prevent Petitioner from registering his hand gun in the District of Columbia. MPD urged me to deny Petitioner's appeal by using "common sense" to "keep the citizens of the District of Columbia safe from violent crimes." MPD's Brief, filed November 13, 2009, page 9. MPD argued that I should interpret the statute to avoid the "absurd" result of giving someone with such an extensive history of violent behavior the right to own a hand gun in the District of Columbia. MPD's Brief, filed November 13, 2009, page 11. Whether the result seems "absurd" to MPD or others, the law and its implementing regulations unambiguously entitle Petitioner to register his hand gun. The Council of the District of Columbia appears to have contemplated this result when it enacted the legislation, which the Mayor then signed into law. And MPD appears to have contemplated this result when it promulgated regulations that parrot the very language it now wants me to "interpret" (in other words to "ignore" in lieu of its view of what constitutes "common sense"). 24 DCMR 2309.6 ("Arrest records within the 5 years immediately preceding the application, showing that the applicant has had a history of violent behavior.").

As noted above, a "maxim" of statutory construction is to apply and give effect to the clear and unambiguous language of the statute and its plain meaning. *Parreco & Son*, 567 A.2d at 45. MPD's request that I "interpret" the statute to give effect to what it suggests must have been the Council's underlying intent, would require that I ignore the clear and unambiguous language of the controlling statute. MPD has not argued that the pertinent statute is ambiguous

and has provided no authority to support the proposition that I can “interpret” clear, unambiguous language to effectuate an end that is not set forth in the statute itself. If the statute contained a provision that allowed for the denial of a license based on an applicant’s extensive history of violent behavior, or the public interest, or other moral or social concerns, then there might be a basis in this case for affirming MPD’s denial.¹ But neither the statute nor the regulations give MPD or me in this de novo hearing, the right to deny Petitioner’s application merely because he exhibited violent behavior between 1982 and 2000, or because we believe the District would be better off if Petitioner were not entitled to register a handgun. The statute and MPD’s implementing regulations are clear: an applicant’s history of violent behavior is only relevant if it pre-dates the registration application by no more than five years. Thus, until the Council of the District of Columbia changes the law, or the District of Columbia Court of Appeals interprets the statute differently, I find no basis to affirm MPD.

IV. Order

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is this 4th day of February 2010

ORDERED that the April 22, 2009, denial of Petitioner Alan Cole’s application for firearm registration is **REVERSED and REMANDED** to Respondent Metropolitan Police Department for action not inconsistent with this Order; it is further

¹ See *In re Application of Clark*, 607 A.2d 1385, 1386 (N.J. Super. Ct. Law Div. 1992) (“The statutes regulating firearms are designed toward preventing criminal and other unfit elements from acquiring firearms, while enabling the fit elements of society to obtain them with minimal burdens and inconveniences.” Here Petitioner was eligible for a gun permit, but her husband was not. The Court ruled that “petitioner must accept denial of her application in light of the legislative purpose to protect the public interest.”)

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

Jesse P. Goode
Administrative Law Judge

