Garden State CLE Presents:

Shooting the Past!
Using Expungements to Obtain a Firearms Permit

Instructors

Robert Ramsey, Ed.D.
Tamra Katcher, Esquire
Allan Marain, Esquire

Lesson Plan

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

c. 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:

(1) To any person who has been convicted of: (a) any crime in this State or its felony counterpart in any other state or federal jurisdiction; or (b) a disorderly persons offense in this State involving an act of domestic violence as defined in section 3 of P.L.1991, c. 261 (C.2C:25-19) or its felony or misdemeanor counterpart involving an act of domestic violence as defined under a comparable statute in any other state or federal jurisdiction, whether or not armed with or possessing a weapon at the time of the offense;

(2) To any person who is presently confined for a mental disorder as a voluntary admission as defined in section 2 of P.L.1987, c. 116 (C.30:4-27.2) or who is presently involuntarily committed to inpatient or outpatient treatment pursuant to P.L.1987, c. 116 (C.30:4-27.1 et seq.);

(3) To any person who suffers from a physical defect or disease which would make it unsafe for that person to handle firearms, to any person with a substance use disorder unless any of the foregoing persons produces a certificate of a medical doctor, treatment provider, or psychiatrist licensed in New Jersey, or other satisfactory proof, that the person no longer has that particular disability in a manner that would interfere with or handicap that person in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;

(4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;

(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;

(6) To any person who is subject to or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et seq.) prohibiting the person from possessing any

firearm or a temporary or final domestic violence restraining order issued in another jurisdiction prohibiting the person from possessing any firearm;

(7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in subsection d. of section 2 of P.L.1997, c. 117 (C.2C:43-7.2);

(8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et seq.) and whose firearm has not been returned; or

(9) To any person named on the consolidated Terrorist Watchlist maintained by the Terrorist Screening Center administered by the Federal Bureau of Investigation;

(10) To any person who is subject to or has violated a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to the "Extreme Risk Protective Order Act of 2018," P.L.2018, c. 35 (C.2C:58-20 et al.);

(11) To any person who is subject to or has violated a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to P.L.2021, c. 327 (C.2C:12-14 et al.);

(12) To any person who is subject to or has violated a temporary or final protective order issued pursuant to the "Victim's Assistance and Survivor Protection Act ," P.L.2015, c. 147 (C.2C:14-13 et al.);

(13) To any person who has previously been voluntarily admitted to inpatient treatment pursuant to P.L.1987, c. 116 (C.30:4-27.1 et seq.) or involuntarily committed to inpatient or outpatient treatment pursuant to P.L.1987, c. 116 (C.30:4-27.1 et seq.), unless the court has expunged the person's record pursuant to P.L.1953, c. 268 (C.30:4-80.8 et seq.);

(14) To any person who is subject to an outstanding arrest warrant for an indictable crime in this State or for a felony, other than a felony to which section 1 of P.L.2022, c. 50 (C.2A:160-14.1) would apply, in any other state or federal jurisdiction; or

(15) To any person who is a fugitive from justice due to having fled from any state or federal jurisdiction to avoid prosecution for a crime, other than a crime to which section 1 of P.L.2022, c. 50 (C.2A:160-14.1) would apply, or to avoid giving testimony in any criminal proceeding.

EXPUNGEMENT OF COMMITMENTS TO MENTAL HEALTH FACILITIES

1) Why Bother?
    a) FID
    b) NICS

2) The Statutes
    a) N.J.S.A. 30:4-80.8
    b) N.J.S.A. 30:4-80.9
    c) N.J.S.A. 30:4-80.11

3) Limitations: In re J.D., 407 N.J.Super 317(Law Div., 2009)

4) Procedure
    a) Filing fee
    b) Documents
        i) Complaint
        ii) Affidavit with Exhibits
        iii) Order To Show Cause
        iv) Order for Sealing
        v) Order for Expungement of Records
        vi) CIS
    c) The Hearing

5) Case Law
    a) In re J.D. (discussed earlier)
    b) IMO S.C.S., 2024 WL 26477 (unpublished)
    c) In re M.U., 475 N.J.Super 148(App.Div2023)

6) Appellate Division Brief

7) Judicial Concerns
    a) Mass Shooting
    b) Suicide

8) The County Adjuster
9) Venue

10) NICS Appeals

New Jersey Statutes Annotated
Title 30. Institutions and Agencies
Subtitle 1. State Department and Institutions Governed Thereby (Refs & Annos)
Chapter 4. Management, Control and Operation of Institutions in General (Refs & Annos)
Article 3b. Expunging Records of Commitments

N.J.S.A. 30:4-80.8

30:4-80.8. Petition to have commitment expunged from records

Effective: January 11, 2010

Currentness

Any person who has been, or shall be, committed to any institution or facility providing mental health services, or has been determined to be a danger to himself, others, or property, or determined to be an incapacitated individual as defined in N.J.S.3B:1-2, by order of any court or by voluntary commitment and who was, or shall be, discharged from such institution or facility as recovered, or whose illness upon discharge, or subsequent to discharge or determination, is substantially improved or in substantial remission, may apply to the court by which such commitment was made, or to the Superior Court by verified petition setting forth the facts and praying for the relief provided for in this act.

Credits

L.1953, c. 268, § 1, eff. July 25, 1953. Amended by L.1976, c. 108, § 1, eff. Oct. 29, 1976; L.1978, c. 163, § 1, eff. Dec. 7, 1978; L.1991, c. 91, § 317, eff. April 9, 1991; L.2009, c. 183, § 1, eff. Jan. 11, 2010.

Notes of Decisions (9)

N. J. S. A. 30:4-80.8, NJ ST 30:4-80.8
Current with laws through L.2023, c. 310 and J.R. No. 18.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

New Jersey Statutes Annotated
Title 30. Institutions and Agencies
Subtitle 1. State Department and Institutions Governed Thereby (Refs & Annos)
Chapter 4. Management, Control and Operation of Institutions in General (Refs & Annos)
Article 3b. Expunging Records of Commitments

N.J.S.A. 30:4-80.9

30:4-80.9. Hearing; order

Effective: January 11, 2010

Currentness

Upon reading and filing such petition, the court shall by order fix a time, not less than 10 nor more than 30 days thereafter, for the hearing of such matter, a copy of which order shall be served by the petitioner upon the county adjuster of the county and upon the medical director of the institution or facility to which such person was committed or upon the party or parties who applied for the determination that the person be found to be a danger to himself, others, or property, or determined to be an incapacitated individual as defined in N.J.S.3B:1-2, and at the time so appointed, or to which it may be adjourned, the court shall hear evidence as to: the circumstances of why the commitment or determination was imposed upon the petitioner, the petitioner's mental health record and criminal history, and the petitioner's reputation in the community. If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and finds that the grant of relief is not contrary to the public interest, the court shall grant such relief for which the petitioner has applied and, an order directing the clerk of the court to expunge such commitment from the records of the court.

Credits

L.1953, c. 268, § 2, eff. July 25, 1953. Amended by L.1976, c. 108, § 2, eff. Oct. 29, 1976; L.2009, c. 183, § 2, eff. Jan. 11, 2010.

Notes of Decisions (8)

N. J. S. A. 30:4-80.9, NJ ST 30:4-80.9
Current with laws through L.2023, c. 310 and J.R. No. 18.

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New Jersey Statutes Annotated
Title 30. Institutions and Agencies
Subtitle 1. State Department and Institutions Governed Thereby (Refs & Annos)
Chapter 4. Management, Control and Operation of Institutions in General (Refs & Annos)
Article 3b. Expunging Records of Commitments

N.J.S.A. 30:4-80.11

30:4-80.11. Effect of order of expungement

Currentness

If an order expunging such commitment is granted, the commitment shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to its occurrence.

Credits

L.1976, c. 108, § 4, eff. Oct. 29, 1976.

Notes of Decisions (4)

N. J. S. A. 30:4-80.11, NJ ST 30:4-80.11
Current with laws through L.2023, c. 310 and J.R. No. 18.

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2024 WL 26477
Only the Westlaw citation is currently available.

Superior Court of New Jersey, Appellate Division.

In the MATTER OF the Expungement of Civil Commitment Records of S.C.S.

DOCKET NO. A-0982-22
|
Argued November 14, 2023
|
Decided January 3, 2024

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-1083-22.

Attorneys and Law Firms

Allan Marain argued the cause for appellant S.C.S.

Before Judges Enright and Paganelli.

Opinion

PER CURIAM

***1** S.C.S.[1] appeals from an October 18, 2022 order denying his petition to expunge his records pertaining to civil commitments in the Carrier Clinic, Monmouth Medical Center, Kimball Medical Center, and Riverview Medical Center. We affirm.

S.C.S. states that he was "born [in] 1994 ... [and] admitted to mental health care facilities in 2008, 2009, 2013, and 2017." He notes the 2013 "[d]ischarge [s]ummary ... asserted as a final diagnosis, 'Axis 1. Bipolar disorder manic with psychotic features in remission.' " The 2017 "[d]ischarge [s]ummary [a]ssessment stated '[diagnosis]: unspecified depressive disorder.' "

S.C.S. seeks expungement for "employment reasons and [because] his fiancé has a firearm and cannot keep [the firearm] in their residence because of [his] civil commitment record."

The judge reviewed: the commitment records; "letters from [S.C.S.]'s father, fiancé and friend"; a certificate that S.C.S. was an Emergency Medical Technician; a letter from the United States Department of Justice revealing no prior arrest; and a complete and thorough application. In addition, the judge heard testimony from S.C.S. and Sarah DeMarco, Psy.D. (Dr. DeMarco).

Dr. DeMarco "was qualified to offer opinions pertinent to the application." The judge noted that "[s]he interviewed [S.C.S.]; ... administered psychological testing, Personality Assessment Inventory[;] interviewed [S.C.S.]'s father and fiancé[;] and reviewed the commitment records from the four institutions ...." The judge found Dr. DeMarco provided a "comprehensive report to the court," and that Dr. DeMarco opined:

> It is clear that [S.C.S.] struggled with mental health problems as an adolescent, with a few years of stability from 2013-2017 and then a brief period of remerging depressive symptoms in 2017 following the death of his dogs ... [.]
>
> [B]y all accounts, [S.C.S.] appears to have remained psychiatrically stable at least until 2017 – 4.5 years ago. He has not demonstrated continued mental health symptoms or functional impairment, nor has he required any mental health treatment since. As such, any such problems have certainly substantially improved to the extent that they are not present at this point, nor have they been in at least 4.5 years, which was the time of his last hospitalization, per available data. In other words, they are in at least substantial remission. Additionally, he is not likely to act in a manner dangerous to the public ....
>
> Again, he has not engaged in any mental health treatment, nor has he taken psychiatric medication since 2017, and by all accounts has been stable since. If he, in fact, had a chronic mood disorder (i.e., Bipolar Disorder) as indicated in hospital records, it is very likely there would have continued to be evidence of such in recent years, especially in the absence of any psychiatric medication. Moreover, there would likely be evidence of functional impairment in other aspects of his life. However, to the contrary, he has maintained stable and consistent employment over time and has a stable intimate relationship.

***2** However, the judge found Dr. DeMarco's opinion was "not supported by the substantial evidence in the record of serious and repeated episodes of [S.C.S.] injuring himself and threatening others, with the last hospitalization only five years ago." Therefore, the judge gave the doctor's opinion "little weight." Moreover, noting that a "final

determination of dangerousness lies with the courts, not the expertise of psychiatrists and psychologists," citing In re D.C., 146 N.J. 31, 59 (1995), the judge found S.C.S. did not meet the burden necessary to grant expungement.

We review the trial court's interpretation of the statute governing expungement of mental health records de novo. State v. Gandhi, 201 N.J. 161, 176 (2010). However, we defer to a motion judge's fact finding because he or she has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which [we] cannot enjoy." In re Civil Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Moreover, as "[t]he factfinder, [the judge] may accept some of [an] expert's testimony and reject the rest." Torres v. Schripps, Inc., 342 N.J. Super. 419, 430 (App. Div. 2001) (citing Todd v. Sheridan, 268 N.J. Super. 387, 401 (App. Div. 1993)). "That is, a factfinder is not bound to accept the testimony of an expert witness, even if it is unrebutted by any other evidence." Id. at 431 (quoting Johnson v. American Homestead Mortgage Corp., 306 N.J. Super. 429, 438 (App. Div. 1997)). Further, "expert testimony need not be given greater weight than other evidence nor more weight than it would otherwise deserve in light of common sense and experience." Id. at 430.

"Assuming no error of law, we defer to a trial court's exercise of discretion so long as it was not 'clearly unreasonable in the light of the accompanying and surrounding circumstances ....' " In re LoBasso, 423 N.J. Super. 475, 496 (App. Div. 2012) (quoting Smith v. Smith, 17 N.J. Super. 128, 132-33 (App. Div. 1951)).

Under N.J.S.A. 30:4-80.9:

> [T]he court shall hear evidence as to: the circumstances of why the commitment or determination was imposed upon the petitioner, the petitioner's mental health record and criminal history, and the petitioner's reputation in this community. If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and finds that the grant of relief is not contrary to the public interest, the court shall grant such relief for which the petitioner has applied and, an order directing the clerk of the court to expunge such commitment from the records of the court.

S.C.S. argues the judge abused his discretion in denying expungement because: (1) the judge's analysis "misapprehend[ed]" the issues under the statute; (2) he failed to provide cogent reasons to reject Dr. DeMarco's opinion; and (3) "[n]o evidence was presented to challenge the reasoned opinion of Dr. DeMarco ...." We are not persuaded.

The statute requires S.C.S. to satisfy a two-prong test for expungement: "not likely [to] act in a manner dangerous to the public safety and ... the grant of relief is not contrary to the public interest." N.J.S.A. 30:4-80.9; see Matter of M.D.V., 465 N.J. Super. 194, 197 (App. Div. 2020). Here, the judge determined that S.C.S. did not satisfy his burden because "of his record of serious and repeated episodes of ... injuring himself and threatening others, with the last hospitalization only five years ago."

S.C.S. argues that the judge's analysis "begs the question" because the judge "cit[ed] ... the admissions that he was trying to expunge." However, S.C.S.'s argument misses the mark. The judge was required to consider the entirety of S.C.S.'s presentation. Included within the required fact-sensitive analysis is S.C.S.'s history and his "recent behavior and any recent act or threat." D.C., 146 N.J. at 42. In conducting his analysis, the judge determined that given S.C.S.'s "undisputed" "serious and repeated episodes," with the last being within five years, S.C.S. failed to meet his burden. We find no error in the application of the statute and find no abuse of discretion in the judge's determination.

***3** The judge gave "little weight" to Dr. DeMarco's opinion. He determined the opinion "was not supported by the substantial evidence in the record." S.C.S.'s arguments -that the judge was required to provide a more detailed explanation for his weighing of the opinion or should have given the opinion more weight, considering it was unopposed, are without merit. The judge satisfactorily explained his decision and had wide latitude in considering the expert's opinion. See Torres, 342 N.J. Super. at 430-31. We find no reason to disturb the judge's determination here.

Accordingly, we affirm the October 18, 2022 order denying S.C.S.'s application under N.J.S.A. 30:4-80.9.

Therefore, we need not address the denial of S.C.S.'s application under N.J.S.A. 2C:58-3(c). We only add that the requirements of N.J.S.A. 2C:58-3(c), which dictate the situations under which a person may be denied "a permit to purchase a handgun or a firearms purchaser identification card" are inapplicable to the requirements for the expungement of civil commitment records under N.J.S.A. 30:4-80.9.

Affirmed.

All Citations

Not Reported in Atl. Rptr., 2024 WL 26477

Footnotes

1 Because the underlying dispute concerns S.C.S.'s application for expungement of his commitment records, we use initials to preserve his anonymity. R. 1:38-3(f)(2).

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407 N.J.Super. 317
Superior Court of New Jersey, Law Division, Camden County.

In the Matter of the Application of J.D. to Appeal the Denial of an Application for a Purchaser Identification Card, and to Appeal the Denial of an Application to Purchase A Handgun.

G-01-09
|
Decided Feb. 2, 2009.

Synopsis

Synopsis

Background: Applicant appealed township police department's denial of his application for a firearms purchaser identification card and a permit for him to purchase a handgun.

Holdings: The Superior Court, Appellate Division, Natal, J.S.C., held that:

[1] applicant did not falsify his application when he gave negative answers;

[2] as a matter of first impression, court could inquire into whether applicant had overcome the psychiatric disability that would ordinarily accompany the diagnosis; and

[3] applicant was required to waive privilege of expungement of mental health commitment records in the event he wished to reapply for permit.

Appeal denied.

West Headnotes (10)

[1] **Statutes** Construction
Statutes Policy behind or supporting statute
Statutes Literal, precise, or strict meaning; letter of the law

The intention of a statute emerges from the spirit and policy of a statute, rather than from the literal sense of the particular terms.

[2] **Statutes** Purpose and intent

In construing the statute the court must look to the overall intent and purpose of the law.

[3] **Criminal Law** Sealing
Records Sealing and unsealing

An order of expungement as to an arrest triggers a duty for government agencies to remove all records specified in the order and place them in the control of a designated person, who has the duty, with some exceptions, to seal the records and prevent the information contained in the records from being released, utilized, or referred to for any purpose. N.J.S.A. 2C:52–15.

[4] **Mental Health** Records and confidential communications
Records Particular Records

The physical destruction of hospital records of a person previously committed to a mental health facility is not authorized by the expungement statutes. N.J.S.A. 2C:52–11, 30:4–80.8 et seq.

[5] **Mental Health** Records and confidential communications

The intent of statutory provisions allowing expungement of the records of a person who has been committed to a mental health institution and who has been discharged upon having recovered is to eliminate any stigmas that might attach to a person who was committed to a psychiatric hospital. N.J.S.A. 30:4–80.8, 30:4–80.9, 30:4–80.11.

1 Case that cites this headnote

[6] **Mental Health** Records and confidential communications

A qualifying individual who has had mental health commitment records expunged is entitled to answer under oath that he has never been committed. N.J.S.A. 30:4–80.8, 30:4–80.9, 30:4–80.11.

[7] **Weapons** Application

Firearms applicant who had had his mental health commitment records expunged did not falsify his application when he gave negative answers to application questions as to whether he had ever been confined or committed to a mental institution or hospital and whether he had ever been observed by a doctor or psychiatrist for any mental or psychiatric conditions, as expungement granted applicant a privilege to answer under oath that he has never been committed. N.J.S.A. 2C:58–3, 30:4–80.8, 30:4–80.9, 30:4–80.11.

4 Cases that cite this headnote

[8] **Weapons** License to own or possess gun; owner identification cards

Court, after becoming aware that firearm applicant had a prior psychiatric diagnosis and commitment that has been expunged, could inquire into whether applicant had overcome the psychiatric disability that would ordinarily accompany the diagnosis, as the application waived the privilege provided by the expungement. N.J.S.A. 30:4–80.8, 30:4–80.9, 30:4–80.11.

[9] **Statutes** In pari materia

Statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.

[10] **Mental Health** Records and confidential communications
Weapons License to own or possess gun; owner identification cards

Gun permit applicant was required to waive privilege of expungement of mental health commitment records in the event he wished to reapply for permit. N.J.S.A. 2C:58–3, 30:4–80.8, 30:4–80.9, 30:4–80.11.

4 Cases that cite this headnote

Attorneys and Law Firms

****1094** J.D., pro se.

Kathleen M. Delaney, Assistant Camden County Prosecutor, for the State (Warren W. Faulk, Camden County Prosecutor).

Opinion

NATAL, J.S.C.

***320** This is an appeal filed by the applicant, J.D., appearing *pro se*, from the denial of his application for a firearms purchaser identification card and a permit for him to purchase a handgun by the Voorhees Township Police Department.

On November 13, 2008, the applicant applied for a firearms identification card and a permit to purchase a handgun with the Voorhees Police Department. Question # 22 of the application asks, "Have you ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis?" Question # 25 of the application asks, "Have you ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an in-patient or outpatient basis for any mental or psychiatric conditions?" Applicant answered questions 22 and 25 in the negative by marking an "X" in the block next to the answer choice "No."

A subsequent investigation by the police department determined that the applicant's mental health history includes an involuntary commitment on September 12, 1983, to Ann Klein/Forensic Hospital. The investigation report also indicates that the applicant told the police he wanted the firearm so that while he was in the wilderness taking pictures, he could protect himself against animals that may try to attack him.

On December 11, 2008, the Voorhees Township police chief disapproved the application for the firearms purchaser identification card and permit to purchase a handgun based on the applicant's mental health history. More specifically, the disapproval letter set forth the reasons for denial as applicant's "Medical, Mental or Alcoholic Background" and "Falsification of Application."

***321** On January 8, 2009, the applicant, through counsel, filed an appeal of the denial of the application, accompanied by an affidavit. In the affidavit, the applicant alleged that he answered "No" to questions 22 and 25, believing he had the right to answer these questions in the negative. He believed that no records concerning his mental health in 1983 or 1984 existed. The applicant believed that Judge A. Donald Bigley ordered those records expunged in the spring of 1984.

Since 1984, the applicant stated, he has never answered in the affirmative to any application which inquired into his prior mental health or hospitalization. Having answered "no" on other job and health applications, he was never told his answers were inaccurate. Based on these experiences, the applicant believed the information properly had been expunged. Furthermore, the applicant asserts that were it not for this belief, he would have disclosed the past medical events on the firearm application. Thus, the applicant argues the failure to include his correct medical history was not intentional, but rather a mistake.

On January 20, 2009, the applicant asked the court to diligently search its records for the relevant expungement orders. The search of the court records revealed the applicant had filed verified petitions in February 1985 requesting the ****1095** expungement of: (1) his out-patient treatment and hospitalization; (2) all evidence of his arrest; and (3) the proceedings in connection with his arrest.

In support of these expungement petitions, the applicant alleged that in September 1983 he experienced emotional problems and depression which resulted from being struck by a motor vehicle. These problems culminated in his involuntary commitment to Trenton Psychiatric Hospital from September 12, 1983, to September 28, 1983, when he was transferred to Ancora State Hospital. He remained at Ancora until his discharge on October 19, 1983. He received a diagnosis of schizophreniform disorder.

He continued out-patient care from November 29, 1983, to January 31, 1985, at which time he allegedly was discharged as ***322** fully recovered. On March 29, 1985, Judge Bigley granted orders of expungement of all information relating to the applicant's arrest under *N.J.S.A.* 2C:52–11. On April 9, 1985, Judge Bigley granted orders of expungement of the record of psychiatric hospitalization under *N.J.S.A.* 30:4–80.8.

The issue presented is whether a court, after becoming aware that a firearm applicant has a prior psychiatric diagnosis and commitment which has been expunged, may inquire into whether the applicant has overcome the psychiatric disability ordinarily accompanying the diagnosis. There is no legislation on point.

[1] [2] The search for legislative intent begins with the expungement statute's language and structure. But "[it] is [also] a basic concept of our law in interpreting statutes that the intention [of a statute] emerges from the spirit and policy of a statute, rather than from the literal sense of the particular terms." *In re D. G.*, 162 *N.J.Super.* 404, 408, 392 *A.*2d 1257 (1977) (citation omitted). "In construing the statute the court must look to the overall intent and

purpose of the law." *Ibid.*

New Jersey law provides an individual may apply for an order of expungement[1] who has been committed to a mental health institution and who has been discharged upon having recovered. *N.J.S.A.* 30:4–80.8. A similar remedy is available to one who has been arrested but not convicted for certain crimes and offenses. *N.J.S.A.* 2C:52–6(a).

[3] [4] After an expungement hearing, "if no reason appears to the contrary, an order[2] shall be made directing the clerk of the ***323** court to expunge such commitment from the records of the court ..." and "the commitment shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to its occurrence." *N.J.S.A.* 30:4–80.9 and 30:4–80.11. A similar remedy is available to ****1096** one who has been arrested but not convicted for certain crimes and offenses. *N.J.S.A.* 2C:52–11 and 2C:52–15.

[5] [6] The intent of these provisions "is to eliminate any stigmas that might attach to a person who was committed to a psychiatric hospital." *In re D. G., supra,* 162 *N.J.Super.* at 408, 392 *A.*2d 1257. Case law supports the proposition that this remedy satisfies the expectation interests of the individual with respect to society. This is so because 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.* As such, a qualifying individual is entitled to answer under oath that he has never been committed. *Ibid.*

The expungement remedy, however, appears to be in direct conflict with *N.J.S.A.* 2C:58–1 to –19, our state statute relating to firearm ownership. Generally speaking, this "strict regulatory scheme" demonstrates "New Jersey's commitment to firearms safety [as] unrivaled anywhere in the nation ..." *N.J.S.A.* 2C:58–2.2.

"The Legislature clearly intended to create a complete system of law with respect to firearm regulation. The statute directs all aspects of the application, purchase and sale of firearms. It also requires applicants to undergo intensive 13–point individual investigations, ***324** including criminal background checks, in order to obtain firearm permits." *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Jersey City,* 402 *N.J.Super.* 650, 654, 955 *A.*2d 1003 (App.Div.2008).

In one of its pertinent sections, the statute prohibits the issuance of a permit to purchase a firearm or a purchaser identification card:

> "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 manner that would interfere with or handicap him in the handling of firearms...."
>
> *N.J.S.A.* 2C:58–3.

This brings into focus the collision between the expungement remedy and the legislation that governs firearm ownership. In this matter, the police chief determined the application should be denied because the applicant had a history of mental illness and did not answer truthfully questions 22 and 25, thereby falsifying his answers to the application.

By the firearms statute, which requires an applicant to admit to his prior commitment, it seems the applicant falsified his answers. As to the applicant, however, he qualified for the remedy of expungement which would entitle him to state, even under oath, despite the looming penalty of perjury, he has never been hospitalized or committed.

[7] Given the magnitude of the remedy, this court finds under these facts, the applicant did not falsify his application when he answered questions 22 and 25 in the negative. He relied on a privilege to which he was entitled, just as he has relied on it in the past without repercussion.

[8] The seminal issue, however, is whether a court, after becoming aware that a firearm applicant has a prior psychiatric diagnosis and commitment that has been expunged, may inquire into whether the applicant has overcome the psychiatric disability that would ordinarily accompany the diagnosis. Put differently, ***325** this issue requires a determination of the extent to which the beneficiary of an expungement order can rely on the benefit of the order.

In *Ulinsky v. Avignone,* 148 *N.J.Super.* 250, 252–54, 372 *A.*2d 620 (App.Div.1977), the plaintiff sued for malicious prosecution. ****1097** The trial court denied a discovery motion for expunged records about the plaintiff's criminal charge which was directly relevant to the plaintiff's suit. After the Superior Court denied the motion on appeal, the Appellate Division reversed the lower court. The panel held the plaintiff put the expunged evidence in issue by bringing the lawsuit for malicious prosecution. *Id.* at 256–57, 372 A.2d 620.

The panel acknowledged that expungement is a privilege,

which suggests it might fit among the privileges enumerated under *N.J.R.E.* 500 to 533. Just as the evidential privileges may be waived under various circumstances, the expungement privilege may also be waived. *Id.* at 255, 372 *A*.2d 620. Therefore, the panel held the expungement privilege can be waived upon consent of the privilege holder. *Id.* at 256, 372 *A*.2d 620.

The panel struck a balance as to the expungement privilege, stating the "shield of expungement cannot be converted into a sword upon which to impale...." *Id.* at 258, 372 *A*.2d 620. The panel reasoned that "a person whose records are expunged [can] insist upon their inviolability and strict enforcement of the Order of Expungement." *Id.* at 257, 372 *A*.2d 620. The panel determined the same person cannot, however, insist upon their continued unavailability while, at the same time, depriving others of possibly relevant material. *Id.* at 258, 372 *A*.2d 620. The panel determined, ultimately, the plaintiff could either waive his privilege and proceed with litigation, or exercise his privilege and withdraw the complaint.

The *Ulinsky* court analyzed the expungement statutes, including but not limited to *N.J.S.A.* 2A:85–21. This court independently has found that *N.J.S.A.* 30:4–80.11 began as Senate Bill 333. This bill originally did not contain the language that appears in ***326** *N.J.S.A.* 30:4–80.11. *See N.J. Senate Bill 333* (as pre-filed for introduction in the 1976 Session Jan. 13, 1976).

The Senate Institutions, Health, and Welfare Committee amended Senate Bill 333, adding the language now appearing in *N.J.S.A.* 30:4–80.11, intending to mirror *N.J.S.A.* 2A:85–21 with this amendment. This amendment extended the expungement privilege from an individual's arrest followed by a dismissal or acquittal to the commitment in a mental health facility followed by recovery and release. Legislative sources indicate this privilege applied to "applications" or when "providing a personal history." *See N.J. Senate Bill 333* (as amended by the Senate Institutions, Health, and Welfare Committee Mar. 29, 1976).

These sources, however, do not explain the legislative intent with its references to "applications" or "providing a personal history." These legislative materials do not express or imply the scope of the privilege. These sources, for example, do not suggest the privilege is limited to "applications" for employment, insurance, or other similar applications.

[9] In light of this legislative ambiguity, and based on the statute's plain text allowing a recovered individual to deny "*any question* relating to its occurrence," courts have interpreted the privilege to apply to oath-bound testimony. Today, *N.J.S.A.* 2C:52–15 incorporates the substance of *N.J.S.A.* 2A:85–21 and 2A:85–17(b). "Statutes are considered to be *in pari materia* when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object." *State v. Crawley*, 187 *N.J.* 440, 453, 901 *A*.2d 924 (2006). The privilege embodied in *N.J.S.A.* 30:4–80.11 mirrors the Title 2C privilege and therefore the two are *in pari materia*.

In *State v. J.R.S.*, 398 *N.J.Super.* 1, 3, 939 *A*.2d 226 (App.Div.2008), the panel decided ****1098** an issue relating to the timing of an expungement and pending civil litigation. The defendant was arrested for resisting arrest. After the charge was dismissed, the individual sent a tort claim notice to the State. This informed the ***327** State of the individual's intent to sue. Next, the individual filed an expungement application. After the remedy was granted, he filed a formal complaint with the court. The trial court granted the county prosecutor's discovery motion for disclosure of the expunged evidence.

The Appellate Division reversed, interpreting the provisions of *N.J.S.A.* 2C:52–14(d). That statute authorizes the denial of an expungement application when the "arrest or conviction sought to be expunged is, at the time of hearing, *the subject matter of civil litigation* between the petitioner ... and the State." *Id.* at 5, 939 *A*.2d 226. The panel distinguished filing notice of a tort claim from the filing of the pleadings, reasoning that litigation commences only upon filing the complaint. *Id.* at 6, 939 *A*.2d 226.

First, the reasoning of the *Ulinsky* court is persuasive. Similar to the *Ulinsky* court, this court recognizes the extent of the expungement privilege. This privilege restores an individual's sense of place in society by removing the stigma of commitment. The privilege applies even if the individual testifies under oath with the specter of perjury as a consequence.

The 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.[3]

Second, as explained above, *N.J.S.A.* 30:4–80.11 parallels *N J.S.A.* 2C:52–15. *N.J.S.A.* 30:4–80.8 to 80.11 contains no provision, however, that is analogous to *N.J.S.A.* 2C:52–14, which enumerates ***328** grounds for denial of an expungement application. To fill in the gap, the reasoning in *J.R.S., supra,* 398 *N.J.Super.* 1, 939 *A.*2d 226, is persuasive.

Based on *J.R.S.,* the crux of the distinction between filing notice with an adversary and filing the complaint in court is this: Filing notice merely demonstrates a subjective intent to commence litigation, whereas filing a complaint actually begins the lawsuit. Similar to filing notice, a gun applicant merely demonstrates a subjective intent to obtain a permit when he enters the police station to apply and secures the application. But submitting the application, as well as the subsequent appeal, are tantamount to filing a complaint in court. Just as filing a complaint in court triggers governmental machinery to handle the forthcoming litigation, submitting the application to the police causes the government to initiate an investigation it would not have undertaken otherwise.

[10] 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 ****1099** permit. The choice is entirely at his discretion.

As to the threshold question, whether the court may inquire into the subject matter of the expunged evidence, this reasoning clearly authorizes it. The medical history is discoverable to the court so long as the privilege-holder provides a waiver. Similar to the plaintiff in *Ulinsky* who put his history in issue when he filed suit, the applicant here put his psychiatric history in issue when he applied for the gun permit. This constructive waiver became an actual waiver when he asked this court diligently to search court records for the expungement order on January 20, 2009. The court found the expungement orders. These records, however, did not include a medical certificate from his psychiatrist, or any other proof that he no longer suffers from schizophreniform disorder.

***329** Since the police chief's search found the record of the applicant's mental illness commitment, this indicates that the order was never perfected by the applicant or his attorney by serving the order upon the mental health facilities. In addition, no proof of service of the order was found in the clerk's records.

For the foregoing reasons, the appeal of the denial of the application for a firearms purchaser identification card and a permit to purchase a handgun by applicant is denied.

If the applicant chooses to reapply, he may do so with the Voorhees Police Department. Reapplication, however, will require the applicant to waive the privilege of expungement. Therefore, he will be required to submit to the police both a new application and a certificate from a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof that he is no longer suffering from schizophreniform disorder or any other disorder in such a manner that would interfere with or handicap him in the handling of firearms.

All Citations

407 N.J.Super. 317, 970 A.2d 1092

Footnotes

1 "Expungement" means the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning, among other things, a person's apprehension, arrest, and detention within the criminal justice system. Arrests and commitments are included among documents that qualify as "expunged records." *N.J.S.A.* 2C:52–1; *N.J.S.A.* 30:4–80.11

2 The applicant believed his records no longer existed. To correct his mistake, an order of expungement as to an arrest triggers a duty for government agencies to remove all records specified in the order and place them in the control of a designated person. The designated person has the duty, with some exceptions, to seal the records and prevent the information contained in the records from being released, utilized, or referred to for any purpose. The designated person must respond to requests for the expunged information that there is no record information. *N.J.S.A.* 2C:52–15. The physical destruction of hospital records is not authorized. *Application of L.C.,* 153 *N.J.Super.* 517, 380 *A.*2d 308 (1977).

3 *See N.J. Const.* art. I, ¶ 2 ("Government is instituted for the protection, security, and benefit of the people....").

475 N.J.Super. 148
Superior Court of New Jersey, Appellate Division.

In the MATTER OF the Appeal of the Denial of M.U.’S APPLICATION FOR A HANDGUN PURCHASE PERMIT. In the Matter of the Revocation of M.U.’s Firearms Purchaser Identification Card and Compelling the Sale of His Firearms.

DOCKET NO. A-2535-20
|
Argued November 18, 2022
|
Decided March 21, 2023

Synopsis

Synopsis

Background: Applicant who had been issued a firearms purchaser identification card (FPIC) sought judicial review of decision of chief of police denying his application for a handgun purchase permit (HPP). The Superior Court, Law Division, Bergen County, upheld denial of the HPP application and granted the government’s motions to revoke applicant’s FPIC, examine expunged records, and compel the forfeiture and sale of applicant’s firearms. Applicant appealed.

Holdings: The Superior Court, Appellate Division, Geiger, J.A.D., held that:

[1] as a matter of first impression, statute providing that no FPIC or HPP shall be issued to any person where issuance would not be in the interest of public health, safety, or welfare was not void for vagueness;

[2] trial court’s determination that applicant was not entitled to an HPP was supported by a preponderance of the evidence and did not violate the Second Amendment;

[3] applicant was no longer qualified to hold a FPIC;

[4] applicant was not deprived of his right to procedural due process;

[5] trial court had no authority to order the seizure and compelled sale of applicant’s firearms following denial of his application for an HPP and revocation of his FPIC; and

[6] applicant was not entitled to a jury trial regarding the forfeiture of his firearms.

Affirmed in part, reversed in part, and remanded.

West Headnotes (67)

[1] **Appeal and Error** Credibility and Number of Witnesses
Appeal and Error Province of, and deference to, lower court in general

The appellate court gives deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions.

[2] **Appeal and Error** Credibility and Number of Witnesses

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.

[3] **Appeal and Error** Manifest weight; manifestly contrary
Appeal and Error Absence of competent or credible evidence

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.

[4] **Appeal and Error** Construction, Interpretation, or Application of Law
Appeal and Error Application of law to or in light of facts

A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.

[5] **Weapons** License to own or possess gun; owner identification cards

In order to lawfully acquire a firearm in New Jersey, one must have first secured a firearms purchaser identification card (FPIC) and, in the case of a handgun, a handgun purchase permit (HPP); HPPs and FPICs are not available to a person who has been convicted of a crime. N.J. Stat. Ann. §§ 2C:58-3(a), 2C:58-3(b), 2C:58-3(c)(1).

[6] **Weapons** License to own or possess gun; owner identification cards

The chief of police makes his or her decision on an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) independent of any decision to grant or deny a prior application. N.J. Stat. Ann. §§ 2C:58-3(d), 2C:58-3(f).

[7] **Weapons** License to own or possess gun; owner identification cards

If the chief of police denies an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP), he or she must provide an explanation for the denial, and provide the applicant with an opportunity to raise objections. N.J. Stat. Ann. §§ 2C:58-3(d), 2C:58-3(f).

[8] **Weapons** Judicial review

To guard against arbitrary official action, a police chief's denial of an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) may be appealed to the Superior Court, where a de novo hearing must be held. N.J. Stat. Ann. § 2C:58-3(d).

[9] **Weapons** Judicial review

In a judicial review of the denial of an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP), the police chief has burden of proving existence of good cause for denial by preponderance of evidence. N.J. Stat. Ann. § 2C:58-3(d).

[10] **Weapons** Judicial review

In a judicial review of the denial of an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP), the applicant may be

cross-examined. N.J. Stat. Ann. § 2C:58-3(d).

1 Case that cites this headnote

[11] **Weapons** Judicial review

In considering an appeal from denial of an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP), the Law Division is required to engage in a fact-sensitive analysis; the court should accept relevant testimonial and documentary evidence, including from the appellant and the police. N.J. Stat. Ann. § 2C:58-3(d).

1 Case that cites this headnote

[12] **Weapons** Judicial review

In a judicial review of the denial of an application for a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP), the court may consider hearsay but may not base its decision upon hearsay alone. N.J. Stat. Ann. § 2C:58-3(d).

[13] **Weapons** Judicial review

Hearsay may be admissible in a gun permit hearing if it is of a credible character, i.e. of a type which responsible persons are accustomed to rely upon in the conduct of their serious affairs. N.J. Stat. Ann. §§ 2C:58-3(a), 2C:58-3(b).

[14] **Weapons** Judicial review

In a gun permit hearing, the court also may consider the underlying facts relating to any criminal charges brought against the applicant, regardless of whether the charges were dismissed, and even if the dismissal followed successful participation in a pretrial intervention program. N.J. Stat. Ann. §§ 2C:58-3(a), 2C:58-3(b).

1 Case that cites this headnote

[15] **Criminal Law** Expungement and Correction

The expungement 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. N.J. Stat. Ann. § 2C:52-32.

[16] **Criminal Law** Expungement and Correction

Except for certain defined circumstances, a person granted expungement does not have to answer questions affirmatively relating to expunged criminal records; however, expunged criminal records are extracted and isolated but not destroyed, and they remain available for various important purposes. N.J. Stat. Ann. § 2C:52-27.

1 Case that cites this headnote

[17] **Weapons** Judicial review

The trial court in a gun permit hearing may consider out-of-state criminal convictions that no longer impose legal disabilities. N.J. Stat. Ann. § 2C:58-3(c)(1).

[18] **Weapons**🔑License to own or possess gun; owner identification cards

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; it does not eradicate or expunge the underlying conviction. N.J. Stat. Ann. § 2C:58-3(c)(1).

[19] **Weapons**🔑License to own or possess gun; owner identification cards

Expunged records may be considered when determining whether the issuance of a firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) would not be in the interest of the public health, safety, or welfare. N.J. Stat. Ann. §§ 2C:52-32, 2C:58-3(c)(5).

4 Cases that cite this headnote

[20] **Weapons**🔑Purpose
Weapons🔑License to own or possess gun; owner identification cards

The statute providing that no firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) shall be issued to any person where issuance would not be in the interest of 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 is intended to relate to interest cases of individual unfitness, where, though not dealt with in specific statutory enumerations, issuance of the permit or identification card is at issue. N.J. Stat. Ann. § 2C:58-3(c)(5).

3 Cases that cite this headnote

[21] **Weapons**🔑Purpose
Weapons🔑License to own or possess gun; owner identification cards

In enacting the statute providing that no firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) shall be issued to any person where issuance would not be in the interest of public health, safety, or welfare, the Legislature's goal was to keep guns out of the hands of unfit persons, noncriminal as well as criminal. N.J. Stat. Ann. § 2C:58-3(c)(5).

2 Cases that cite this headnote

[22] **Courts**🔑Construction of federal Constitution, statutes, and treaties

While a state court is not barred from addressing federal constitutional questions about state statutes, the United States Supreme Court is the final arbiter on all questions of federal constitutional law; thus, state courts are bound by decisions of the United States Supreme Court when interpreting the federal constitution.

[23] **Weapons**🔑Violation of right to bear arms

Only if a firearm regulation is consistent with the nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command. U.S. Const. Amend. 2.

1 Case that cites this headnote

[24] **Weapons**🔑Violation of right to bear arms

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 the nation's historical tradition of firearm regulation. U.S. Const. Amend. 2.

[25] **Weapons**Violation of right to bear arms

To determine whether a firearm regulation is relevantly similar to regulations present at the founding, for purposes of determining whether regulation is constitutional, courts must employ analogical reasoning and compare how and why the regulations burden a law-abiding citizen's right to armed self-defense; importantly, this analytical paradigm does not require the government to identify a historical twin. U.S. Const. Amend. 2.

[26] **Weapons**Violation of right to bear arms

Even if a modern-day firearm regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster. U.S. Const. Amend. 2.

[27] **Weapons**Right to bear arms in general

Individuals who commit felonies and felony-equivalent offenses are not among "the people" whom the Second Amendment protects. U.S. Const. Amend. 2.

[28] **Weapons**Right to bear arms in general

Individuals who engage in repeated misconduct, even if not convicted of a felony-equivalent offense, are not protected by the Second Amendment. U.S. Const. Amend. 2.

[29] **Weapons**Right to bear arms in general

The expungement of records relating to an individual's misconduct does not alter the analysis of whether the individual is protected by the Second Amendment. U.S. Const. Amend. 2.

[30] **Weapons**Right to bear arms in general

The right to keep and bear arms is subject to certain reasonable, well-defined restrictions. U.S. Const. Amend. 2.

[31] **Weapons**Right to bear arms in general

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. U.S. Const. Amend. 2.

[32] **Weapons**Right to bear arms in general

Persons whose criminal records show disrespect for the law are not law-abiding citizens entitled to keep and bear arms. U.S. Const. Amend. 2.

[33] **Weapons**🔑Right to bear arms in general

The Second Amendment codified a pre-existing right to keep and bear arms. U.S. Const. Amend. 2.

[34] **Constitutional Law**🔑Presumptions and Construction as to Constitutionality

Statutes are presumed to be constitutional.

[35] **Constitutional Law**🔑Facial invalidity
Constitutional Law🔑Invalidity as applied

A statute may be declared unconstitutional in one of two manners: first, it may be declared invalid on its face, and second, a statute may be found unconstitutional as-applied to a particular set of circumstances.

1 Case that cites this headnote

[36] **Constitutional Law**🔑Vagueness on face or as applied
Constitutional Law🔑Statutes in general

Facial challenges to the constitutionality of a statute generally come in two forms: (1) arguments that the statute is overbroad, or (2) that the statute is impermissibly vague.

1 Case that cites this headnote

[37] **Constitutional Law**🔑Statutes

A statute is not void for vagueness if it enables a person of common intelligence, in light of ordinary experience, to understand whether the contemplated conduct is lawful.

[38] **Constitutional Law**🔑Statutes

A statute need not be a model of precise draftsmanship to sufficiently describe the conduct it proscribes, thereby defeating a void-for-vagueness challenge.

[39] **Constitutional Law**🔑Statutes in general

That there is a need for judicial interpretation in the application of a statute does not itself establish unconstitutional vagueness, nor does the fact that a statute's enforcement requires the exercise of some degree of police judgment.

[40] **Constitutional Law**🔑Statutes in general

When the subject of a statute defies a cataloguing of all conceivable factual patterns, no such detailed exposition is needed to defeat a void-for-vagueness challenge.

[41] **Constitutional Law**🔑Weapons and explosives
Weapons🔑Violation of other rights or provisions
Weapons🔑License to own or possess gun; owner identification cards

The statute providing that no firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) shall be issued to any person where issuance would not be in the interest of public health, safety, or welfare was not void for vagueness in facial challenge brought by

applicant appealing denial of an HPP and revocation of his FPIC; the statute provided fair notice to people that a firearm permit will be denied if they engage in behavior indicating they are likely to pose a danger to the public if armed, and, coupled with the de novo review of permit denials, adequately guards against arbitrary official action. U.S. Const. Amend. 2; N.J. Stat. Ann. §§ 2C:58-3(a), 2C:58-3(b), 2C:58-3(c)(5).

[42] **Constitutional Law**🔑Facial invalidity

On a facial challenge, a statute should be deemed constitutional if it operates constitutionally in some instances.

[43] **Constitutional Law**🔑Statutes in general

A law is unconstitutionally overbroad if the reach of the law extends too far in fulfilling the state's interest.

[44] **Constitutional Law**🔑Overbreadth in General
Constitutional Law🔑Overbreadth in General

The overbreadth doctrine does not apply outside the context of the First Amendment. U.S. Const. Amend. 1.

[45] **Weapons**🔑Right to bear arms in general

It is 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 beyond the ambit of "the people" protected by the Second Amendment; this includes misconduct that did not involve violence against the victim or result in a criminal conviction. U.S. Const. Amend. 2.

[46] **Statutes**🔑Retroactivity

The law favors prospective application of a new statute.

[47] **Statutes**🔑Presumptions and inferences

Courts apply a presumption of prospective application for newly enacted statutes because retroactive application of new laws involves a high risk of being unfair.

[48] **Statutes**🔑Language and Intent; Express Provisions
Statutes🔑Presumptions and inferences

To overcome the presumption of prospective application, courts 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.

[49] **Statutes**🔑Language and Intent; Express Provisions
Statutes🔑Effect on vested rights

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.

[50] **Weapons**🔑License to own or possess gun; owner identification cards

Amendment to statute providing that no firearms purchaser identification card (FPIC) or handgun purchase permit (HPP) shall be issued to any person where issuance would not be in the interest of public health, safety, or welfare, adding the requirement that the person be found to be lacking the essential character of temperament necessary to be entrusted with a firearm, was prospective and applied only to HPP applications submitted on or after the amendment's effective date. N.J. Stat. Ann. § 2C:58-3(c).

3 Cases that cite this headnote

[51] **Weapons**🔑Violation of right to bear arms
Weapons🔑License to own or possess gun; owner identification cards

Trial court's determination that it would not be in the interest of the public health, safety, or welfare to issue a handgun purchase permit (HPP) to applicant was supported by a preponderance of the evidence and did not violate the Second Amendment; record reflected that applicant had demonstrated a repeated disrespect for the rule of law, including the criminal code, and his history of misconduct placed him outside the protections of the Second Amendment. U.S. Const. Amend. 2; N.J. Stat. Ann. § 2C:58-3 (2019).

1 Case that cites this headnote

[52] **Weapons**🔑Revocation, non-renewal

To revoke a firearms purchaser identification card (FPIC), the state must prove, by a preponderance of the evidence, that forfeiture is legally warranted. N.J. Stat. Ann. § 2C:58-3(f).

1 Case that cites this headnote

[53] **Weapons**🔑License to own or possess gun; owner identification cards

Applicant whose application for a handgun purchase permit (HPP) was denied was no longer qualified to hold a firearms purchaser identification card (FPIC), where the preponderance of the evidence supported the trial court's determination that issuance of an HPP to applicant would not be in the interest of public health, safety, or welfare based on conduct demonstrating a repeated disrespect for the rule of law. N.J. Stat. Ann. §§ 2C:58-3(c)(5), 2C:58-3(f).

[54] **Constitutional Law**🔑Due Process

The New Jersey Constitution embraces the fundamental guarantee of due process. N.J. Const. art. 1, para. 2.

[55] **Constitutional Law**🔑Notice and Hearing

The minimum requirements of due process are notice and opportunity to be heard. U.S. Const. Amend. 14; N.J. Const. art. 1, para. 2.

[56] **Constitutional Law**🔑Protections Provided and

Deprivations Prohibited in General

Due process rights are found whenever an individual risks governmental exposure to a grievous loss. U.S. Const. Amend. 14; N.J. Const. art. 1, para. 2.

[57] **Constitutional Law** Rights, Interests, Benefits, or Privileges Involved in General

The question is not merely the weight of the individual's due process interest, but whether the nature of the interest is one within the contemplation of the liberty or property language of the Fourteenth Amendment. U.S. Const. Amend. 14.

[58] **Constitutional Law** Weapons and firearms

The revocation of a firearms purchaser identification card (FPIC) constitutes state action triggering due process protections. U.S. Const. Amends. 2, 14; N.J. Const. art. 1, para. 2; N.J. Stat. Ann. § 2C:58-3(c).

[59] **Constitutional Law** Weapons and firearms
Weapons Revocation, non-renewal

Plaintiff whose firearms purchaser identification card (FPIC) was revoked received both adequate notice and a full opportunity to be heard, and thus was not deprived of his right to procedural due process, although the county prosecutor formally moved on short notice to revoke his FPIC; the proceedings were adjourned to provide sufficient time for plaintiff to submit briefs and opposing papers, plaintiff was represented by counsel and was afforded an evidentiary hearing at which the State's witnesses were subject to cross-examination and plaintiff was permitted to present legal arguments, the testimony of witnesses, and to testify himself. U.S. Const. Amend. 14; N.J. Const. art. 1, para. 2; N.J. Stat. Ann. § 2C:58-3(f).

[60] **Weapons** Revocation, non-renewal

Trial court's questioning of plaintiff regarding the number and types of firearms he possessed was not an abuse of discretion in hearing on the state's motion to revoke plaintiff's firearms purchaser identification card (FPIC); court was permitted to question witnesses during the hearing, and its questions elicited basic information relevant to the issues presented, provided additional clarity, sought relevant, admissible evidence, were not overzealous, did not interfere with counsel's examination of plaintiff, and did not evince any bias. N.J. Stat. Ann. § 2C:58-3(f); N.J. R. Evid. 614(b).

[61] **Weapons** Forfeiture or return of weapon

The appellate court's review of a forfeiture of firearms and a firearms purchaser identification card (FPIC) is deferential. N.J. Stat. Ann. §§ 2C:58-3(c)(5), 2C:58-3(f).

3 Cases that cite this headnote

[62] **Weapons** Forfeiture or return of weapon

Trial court had no authority to order the seizure and compelled sale of plaintiff's firearms following denial of his application for a handgun purchase permit (HPP) and revocation of his firearms purchaser identification card (FPIC); plaintiff was not prohibited from possessing and carrying a firearm within his residence without an HPP, FPIC, or carry permit. U.S. Const.

Amend. 2; N.J. Stat. Ann. § 2C:58-3(f).

[63] Weapons Proceedings

Plaintiff's appeal of erroneous court order requiring the forfeiture and sale of his firearms was not moot and would be remanded for entry of a corrected order, although the period for plaintiff to arrange for the sale of his firearms to a licensed firearms dealer expired without him seeking a stay or emergent relief of the trial court's order; the record on appeal did not disclose the current location and status of the firearms, and further proceedings could determine whether the firearms may be returned from the licensed firearms dealer, or whether some other remedy was available. N.J. Stat. Ann. § 2C:39-6(e).

2 Cases that cite this headnote

[64] Appeal and Error Mootness

An appeal issue is moot only if the appellant is not entitled to any affirmative relief; the lack of a stay pending appeal is not dispositive, nor is the absence of an application for emergent relief.

1 Case that cites this headnote

[65] Weapons Forfeiture or return of weapon

State did not have the authority to seek forfeiture and compel the sale of plaintiff's firearms under the community-caretaking doctrine following revocation of his firearms purchaser identification card (FPIC); the community-caretaking doctrine represented a narrow exception to the warrant requirement, and there was no warrantless seizure of plaintiff's firearms. U.S. Const. Amends. 2, 4; N.J. Stat. Ann. § 2C:58-3(f).

[66] Forfeitures Forfeitures disfavored

Forfeiture remains a disfavored remedy.

[67] Jury Seizures, penalties, and forfeitures

Plaintiff was not entitled to a jury trial regarding the forfeiture of his firearms following denial of his application for a handgun purchase permit (HPP) and revocation of his firearms purchaser identification card (FPIC); state did not seek forfeiture of his property under statute providing for the forfeiture of all property which had been, or was intended to be, utilized in furtherance of an unlawful activity. N.J. Stat. Ann. §§ 2C:58-3(f), 2C:64-3.

1 Case that cites this headnote

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

Attorneys and Law Firms

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

Before Judges Geiger, Susswein and Berdote Byrne.

Opinion

The Opinion of the Court was delivered by

GEIGER, J.A.D.

***162** In this case of first impression, we must determine the constitutionality of ****835** 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, Inc. v. Bruen, 597 U.S. ——, 142 S. Ct. 2111, 213 L.Ed.2d 387 (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.

***163** 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 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 ***164** 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, ****836** 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.

***165** 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, ****837** 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.

***166** 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.

***167** 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, ****838** 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 ***168** 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 ***169** briefing on the impact of ****839** 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.

IV. [STATE v. CUNNINGHAM, 186 N.J. SUPER. 502, 453 A.2d 239 (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, 712 A.2d 1148 (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, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008)] AND McDONALD [v. CITY OF CHICAGO, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010)].

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

***170** 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.

****840** 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 ***171** 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.

[1] [2] [3] [4]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." ****841** Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254, 105 A.3d 1082 (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, 223 A.3d 1229 (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, 105 A.3d 1082 (quoting Rova Farms Resort v. Invs. Ins. Co., 65 N.J. 474, 484, 323 A.2d 495 (1974)); accord Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169, 14 A.3d 36 (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, 218 A.3d 784 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995)). "Questions of law receive de novo review." Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619, 159 A.3d 412 (2017) (citing Manalapan Realty, 140 N.J. at 378, 658 A.2d 1230).

B.

[5]"In order to lawfully acquire a firearm in New Jersey, one must have first secured a firearms purchaser identification card ***172** and, in the case of a handgun, a permit to purchase a handgun." In re Winston, 438 N.J. Super. 1, 6, 101 A.3d 1120 (App. Div. 2014) (citing N.J.S.A. 2C:58-3(a) and (b) and State v. Cunningham, 186 N.J. Super. 502, 508, 453 A.2d 239 (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)).

[6] [7]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, 286 A.2d 43 (1972); In re Osworth, 365 N.J. Super. 72, 77, 838 A.2d 465 (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, 828 A.2d 946 (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, 286 A.2d 43; In re Dubov, 410 N.J. Super. 190, 200-01 n.2, 981 A.2d

87 (App. Div. 2009); Osworth, 365 N.J. Super. at 81, 838 A.2d 465.

[8] [9] [10]"To guard against arbitrary official action," the statute provides for judicial review. Burton v. Sills, 53 N.J. 86, 91, 248 A.2d 521 (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, 286 A.2d 43; Dubov, 410 N.J. Super. at 200-02, 981 A.2d 87; Osworth, 365 N.J. Super. at 77, 838 A.2d 465. 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, 838 A.2d 465 (citing Weston, 60 N.J. at 46, 286 A.2d 43). The applicant may be cross-examined. Weston, 60 N.J. at 46, 286 A.2d 43.

***173** [11]In considering the appeal, the Law Division is required to engage in a ****842** fact-sensitive analysis. In re Forfeiture of Pers. Weapons & Firearms Identification Card Belonging to F.M., 225 N.J. 487, 505, 139 A.3d 67 (2016); State v. Cordoma, 372 N.J. Super. 524, 535, 859 A.2d 756 (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, 286 A.2d 43; Dubov, 410 N.J. Super. at 200-02, 981 A.2d 87; Osworth, 365 N.J. Super. at 77-78, 838 A.2d 465.

[12] [13] [14]The court may consider hearsay but may not base its decision upon hearsay alone. Weston, 60 N.J. at 50-52, 286 A.2d 43; Dubov, 410 N.J. Super. at 202, 981 A.2d 87. 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, 286 A.2d 43. 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, 693 A.2d 92 (1997), and even if the dismissal followed successful participation in a pretrial intervention program. Osworth, 365 N.J. Super. at 78, 838 A.2d 465.

[15] [16]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.]

***174** "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, 46 A.3d 1247 (2012) (quoting In re T.P.D., 314 N.J. Super. 643, 648, 715 A.2d 1048 (Law Div. 1997), aff'd o.b., 314 N.J. Super. 535, 715 A.2d 994 (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, 46 A.3d 1247. However, expunged "criminal records are extracted and isolated but not destroyed." Id. at 568, 46 A.3d 1247 (citation omitted). They remain available for various important purposes. Id. at 569, 46 A.3d 1247.

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 ****843** (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 ***175** on expunged records to be revealed by applicant "seeking employment within the judicial branch or with a law enforcement or corrections agency").

[17] [18]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, 101 A.3d 1120 (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, 859 A.2d 756 (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.

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 ***176** against his wife. 404 N.J. Super. 174, 175, 960 A.2d 821 (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, 960 A.2d 821, there was "no active restraining order" against the petitioner, id. at 175, 960 A.2d 821,[3] "there ha[d] been no subsequent allegations of domestic violence in the [intervening] ****844** twelve years," id. at 176, 960 A.2d 821, and the incident "appear[ed] to have been an aberration in an otherwise law-abiding life," id. at 180, 960 A.2d 821.

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, 960 A.2d 821. 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 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, 960 A.2d 821. 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, 960 A.2d 821, was dicta.[4]

***177** 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, 970 A.2d 1092 (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, 970 A.2d 1092 (citing N.J.S.A. 30:4-80.8). If expungement is granted, "the commitment shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to its occurrence." Id. at 323, 970 A.2d 1092 (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, 392 A.2d 1257 (Juv. & Dom. Rel. Ct. 1977)).

[19]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, 970 A.2d 1092. 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 ***178** particular disability in such a manner that would interfere with or handicap him in the handling of firearms. ..."
>
> [Id. at 324, 970 A.2d 1092 (omissions and alteration in original) (quoting N.J.S.A. 2C:58-3).]

****845** 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, 970 A.2d 1092 (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, 970 A.2d 1092.

[20] [21]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 ***179** 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, 223 A.3d 1223 (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, 838 A.2d 465 (quoting Burton, 53 N.J. at 91, 248 A.2d 521). "The Legislature's goal was to keep guns out of the hands of unfit persons," Burton, 53 N.J. at 91, 248 A.2d 521, "noncriminal as well as criminal," id. at 94, 105, 248 A.2d 521. Accord In re Marvin, 53 N.J. 147, 150, 249 A.2d 377 (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, 838 A.2d 465; Cunningham, 186 N.J. Super. at 510-13, 453 A.2d 239. However, the statute does not require that the individual be shown to have used a weapon inappropriately. ****846** F.M., 225 N.J. at 514, 139 A.3d 67. The statute has also been applied to individuals convicted of certain disorderly persons offenses, In re Sbitani, 216 N.J. Super. 75, 76-78, 522 A.2d 1041 (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, 710 A.2d 582 (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, 139 A.3d 67;[7] In re Z.L., 440 N.J. Super. 351, 356-59, 113 A.3d 791 (App. Div. 2015). Thus, the public health, safety or welfare provision has largely ***180** 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, 113 A.3d 791.

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.

[22]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, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).[8]

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, 128 S.Ct. 2783. 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, 128 S.Ct. 2783.

***181** 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 ****847** 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.

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, 128 S.Ct. 2783 ("[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.

[23] [24]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 ***182** 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, 81 S.Ct. 997, 6 L.Ed.2d 105 (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.

[25] [26]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.

[27] [28] [29]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 ——, ——, 2022 WL 4352482 (W.D. Tex. 2022) ****848** (recognizing the Nation's "historical ***183** 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, 128 S.Ct. 2783. 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, 128 S.Ct. 2783), 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, 128 S.Ct. 2783). The criminal background checks the Court found constitutional are not limited to violent offenses.

[30]Third, Justice Scalia's majority opinion in Heller described "prohibitions on the possession of firearms by felons" as ***184** both "longstanding" and "presumptively lawful." 554 U.S. at 626-27, 627 n.26, 128 S.Ct. 2783. In his plurality opinion in McDonald v. City of Chicago, Justice Alito "repeat[ed] those assurances." 561 U.S. 742, 786, 130 S.Ct. 3020, 177 L.Ed.2d 894 (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, 128 S.Ct. 2783).

[31]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, 128 S.Ct. 2783), 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.

[32]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, 209 L.Ed.2d 546 (2021); ****849** 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]

***185** B.

[33]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, 128 S.Ct. 2783. 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 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, 128 S.Ct. 2783). 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, 128 S.Ct. 2783), reveals the "historical understanding," id. at 2131, that Parliament had the legislative power and discretion to determine ***186** 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).

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 ****850** 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 ***187** 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. ***188** 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 ****851** 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." ***189** Binderup, 836 F.3d at 349; accord Folajtar, 980 F.3d at 908-09. Thus, even nonviolent 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 ****852** had broad discretion to determine when people's status or conduct indicated a sufficient threat to warrant disarmament.

***190** G.

[34] [35] [36]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, 266 A.3d 374 (2022); Burton, 53 N.J. at 95, 248 A.2d 521. "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, 971 A.2d 989 (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, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999).

[37] [38] [39] [40]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, 498 A.2d 1217 (1985) (quoting State v. Lashinsky, 81 N.J. 1, 18, 404 A.2d 1121 (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, 631 A.2d 946 (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, 279 A.2d 706 (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, 92 S.Ct. 2294, 33 L.Ed.2d 222 (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, 284 A.2d 161 (1971).

[41]Our Supreme Court has explained that the challenged language of "to any person where the issuance would not be in the ***191** 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, 248 A.2d 521. 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, 139 A.3d 67 (quoting Cunningham, 186 N.J. Super. at 511, 453 A.2d 239). 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, 248 A.2d 521.

[42]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, 40 A.3d 684 (2012); see also Cameron, 100 N.J. at 593-94, 498 A.2d 1217. 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, 248 A.2d 521; and by this court as to the iteration of the ****853** statute prior to the most recent amendment in 2022, see Winston, 438 N.J. Super. at 10, 101 A.3d 1120; Dubov, 410 N.J. Super. at 196-97, 981 A.2d 87. See also F.M., 225 N.J. at 506, 511, 139 A.3d 67 ("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, 989 A.2d 827 (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 ***192** 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.").

[43] [44]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, 475 A.2d 31 (1984) (citing Town Tobacconist v. Kimmelman, 94 N.J. 85, 125 n.21, 462 A.2d 573 (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, 107 S.Ct. 2095, 95 L.Ed.2d 697 (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, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) ("outside the limited First Amendment context, a criminal statute may not be attacked as overbroad")); Lee, 96 N.J. at 165, 475 A.2d 31 (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, 128 S.Ct. 2783 ***193** (holding the Second Amendment guarantees the right to possess a handgun at home for purpose of self-defense), or McDonald, 561 U.S. at 791, 130 S.Ct. 3020 (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, 981 A.2d 87, and in Winston, 438 N.J. Super. at 10, 101 A.3d 1120, ****854** we explicitly rejected a constitutional argument premised upon the holding in McDonald.

[45]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 "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 ***194** supports this conclusion. See Bruen, 142 S. Ct. at 2122; Heller, 554 U.S. at 635, 128 S.Ct. 2783; 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, 139 A.3d 67.

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).

***195 **855** 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).]

[46] [47] [48] [49]"The law favors prospective application of a new statute." James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 556, 83 A.3d 70 (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, 231 A.3d 710 (2020) (quoting Oberhand v. Dir., Div. of Tax'n, 193 N.J. 558, 570, 940 A.2d 1202 (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 [381 A.2d 53] (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 [83 A.3d 70] (quoting In re D.C., 146 N.J. 31, 50 [679 A.2d 634] (1996)).
>
> [Id. at 443-44, 231 A.3d 710 (omission in original).]

[50]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, 276 A.3d 114 (2022) (holding that sentencing mitigating factor fourteen, ***196** 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).

[51]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. ****856** 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:

> 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 ***197** [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).]

[52]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, 139 A.3d 67 (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, 139 A.3d 67 (quoting Cordoma, 372 N.J. Super. at 533, 859 A.2d 756). 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, 828 A.2d 946.

[53]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, 139 A.3d 67. This does not end our inquiry, however. We must determine whether the revocation proceeding met due process requirements.

[54]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." ****857** Jamgochian v. N.J. State Parole Bd., 196 N.J. 222, 239, 952 A.2d 1060 (2008). Our Supreme Court has, "from time to time, construed Article I, Paragraph 1 to ***198** provide more due process protections than those afforded under the United States Constitution ...." Ibid.

[55] [56] [57] [58]"The minimum requirements of due process ... are notice and the opportunity to be heard." Id. at 240, 952 A.2d 1060 (omission in original) (quoting Doe v. Poritz, 142 N.J. 1, 106, 662 A.2d 367 (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, 361 A.2d 513 (1976) (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (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, 92 S.Ct. 2593 (citing Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)). The revocation of a FPIC constitutes state action triggering due process protections.

[59]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, 662 A.2d 367.

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.

***199** C.

[60]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, 793 A.2d 68 (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 ****858** 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.

[61]Our review of a forfeiture of firearms and FPIC is deferential. F.M., 225 N.J. at 505-06, 139 A.3d 67. 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 ***200** order was issued against him to protect his wife. 225 N.J. at 491, 139 A.3d 67. 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, 139 A.3d 67. 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, 139 A.3d 67. The Court noted "the [PDVA] contains detailed provisions with respect to weapons." Id. at 509-10, 139 A.3d 67 (quoting State v. Harris, 211 N.J. 566, 579, 50 A.3d 15 (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, 139 A.3d 67 (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, 859 A.2d 756. 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, 859 A.2d 756 (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 ***201** 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 ****859** 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).

[62]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.

[63]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.

***202** [64]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, 946 A.2d 564 (2008). See also Redd v. Bowman, 223 N.J. 87, 104, 121 A.3d 341 (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, 27 A.3d 1229 (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, 117 A.3d 1206 (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, 654 A.2d 979 (1995) ("One may possess an unlicensed handgun at home."); State v. Harmon, 104 N.J. 189, 198-99, 516 A.2d 1047 (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, 117 A.3d 1206.

[65]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, 140 A.3d 535 (2016); ***203** State v. Diloreto, 180 N.J. 264, 275-76, 850 A.2d 1226 (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 ****860** 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, 712 A.2d 1148 (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, 712 A.2d 1148. 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, 695 A.2d 303 (App. Div. 1997). The Supreme Court affirmed. 154 N.J. at 376, 712 A.2d 1148.

[66]Forfeiture "remains a disfavored remedy." Id. at 378, 712 A.2d 1148. 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 ***204** 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, 712 A.2d 1148.

[67]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, 7 A.3d 720 (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, 891 A.2d 1202 (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.

All Citations

475 N.J.Super. 148, 291 A.3d 827

Footnotes

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).

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, 101 A.3d 1120 (citing N.Y. Penal Law § 400.00 (McKinney 2022); In re Hecht v. Bivona, 306 A.D.2d 410, 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, 101 A.3d 1120 (quoting Able Cycle Engines, Inc. v. Allstate Ins. Co., 84 A.D.2d 140, 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, 101 A.3d 1120 n.3 (citing In re Caputo v. Kelly, 117 A.D.3d 644, 987 N.Y.S.2d 46, 47 (N.Y. App. Div. 2014)).

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.

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)).

5 See S&R Assocs. v. Lynn Realty Corp., 338 N.J. Super. 350, 355-56, 769 A.2d 413 (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).

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

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 of "for example, elements of 'narcissistic, anti-social, or paranoid personality disorder.' " 225 N.J. at 513-14, 139 A.3d 67.

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, 40 A.3d 684 (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, 214 A.2d 393 (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, 23 A.3d 416 (App. Div. 2011). We are thus constrained to follow the Bruen 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.

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).

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.

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

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).

End of Document

FAUGNO WEIS KATCHER DUARTE
235 Main Street, Suite 101
Hackensack, New Jersey 07601
(201) 488-1234
Attorneys for Defendant
ATTORNEY ID #019251999

IN THE MATTER OF EXPUNGEMENT OF THE MENTAL HEALTH RECORDS OF [redacted]	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BERGEN COUNTY DOCKET NO. **VERIFIED PETITION FOR EXPUNGEMENT OF MENTAL HEALTH RECORDS PURSUANT TO *N.J.S.A.* 30:4-80.8, et seq.**

PLEASE TAKE NOTICE that [redacted] petitions the Superior Court of New Jersey, Bergen County, State of New Jersey, for an Order expunging from all official records, the petitioner's mental health records, pursuant to *N.J.S.A.* 30:4-80.8, *et seq*.

In support of the Petition, [redacted] provides the following information:

A. He resides at [redacted]

B. His date of birth is [redacted]

C. On [redacted] he voluntarily committed himself to [redacted]. [redacted]. (See [redacted] records, attached hereto as Exhibit A).

D. Doctors diagnosed him with [redacted].

E. He was discharged from [redacted] on [redacted].

F. [redacted] has no record of his commitment, but the County Adjuster had limited records in its files. (See Letter, attached hereto as Exhibit B).

G. At the time of the commitment, he was [redacted]. [redacted], attached hereto as Exhibit C).

H. He never received or sought further mental health intervention and is a productive member of the community.

I. He has had no interaction with the criminal justice system. (See Criminal History report, attached hereto as Exhibit D).

J. He holds a Certification in [redacted].

K. From 1994 to the present time, he has been a volunteer [redacted].

L. From 1997 to present, he has been gainfully employed.

a. [redacted]

M. In January 2009, [redacted] Licensed Clinical Psychologist, for an evaluation as to his mental health. [redacted] showed no evidence of Axis I mental health issues. (See Report, attached hereto as Exhibit E).

N. In anticipation of filing this Petition, he retained the services of Center for Evaluation and Counseling, Christopher Friedrich, MA, LPC, ACS, Licensed Professional

Counselor. Mr. Friedrich conducted an extensive risk assessment, including interviews and testing. He concluded "there are no indications of somatic, cognitive, emotion, thought or behavioral dysfunction." (See Report, attached hereto as Exhibit F).

O. [redacted] married for twenty years and has two children. He is active in his children's lives, including coaching sports.

P. He has standing in his community as detailed in the letters of support from the following individuals (attached hereto as Exhibit G):

a. [redacted]

Q. He is not a danger to the community or to himself. The single instance of commitment was a result of [redacted] and there is no evidence of recurrence. Both mental health practitioners agree that he exhibits no signs of mental health disorders.

R. The expungement of [redacted] mental health records would be in the public interest as the one and only commitment for a non-violent and brief period of depression should not haunt him indefinitely.

WHEREFORE, [redacted] requests this court grant an expungement of his voluntary civil commitment record as authorized by *N.J.S.A.* 30:4-80.8, *et seq*. directing the Clerk of the Court of Bergen County, and the County Adjuster to expunge from its records evidence of his voluntary commitment.

Petitioner further requests this court grant an expungement of his voluntary civil commitment record from federal firearms disability and direct the Bergen County Adjuster to take all required steps to remove the information regarding the civil commitment record from inclusion in the federal National Instant Criminal Background Check System (NICS) databases.

_____

[redacted], Petitioner

Dated:

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____

[redacted], Petitioner

Dated:

Sworn to before me this

_____ day of _____, 2024

_____

Carmen Marie Miuccio
Notary Public of the State of New Jersey

FAUGNO WEIS KATCHER DUARTE
235 Main Street, Suite 101
Hackensack, New Jersey 07601
(201) 488-1234
Attorneys for Defendant
ATTORNEY ID #019251999

IN THE MATTER OF EXPUNGEMENT OF THE MENTAL HEALTH RECORDS OF [redacted]	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BERGEN COUNTY DOCKET NO. **CIVIL ACTION** **ORDER TO SHOW CAUSE**

THIS MATTER having been opened to the Court upon the Verified Complaint of [redacted], through his attorney, Tamra Katcher, Esq., Faugno Weis Katcher Duarte, seeking relief by way of summary action pursuant to *R.* 4:67-1; and the court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to *N.J.S.A.* 30:4-80.8 *et seq.,* and for good cause shown;

IT IS ORDERED this _____ day of _____, 2024, that the petitioner shall appear and show cause on the _____ day of _____, 2024 at _____ o'clock am/pm or as soon thereafter as the matter can be heard, at the Bergen County Courthouse, 10 Main Street, Hackensack, NJ, why an Order of Expungement shall be granted, and any such other relief shall be granted.

IT IS FURTHER ORDERED that petitioner shall serve by certified mail, return receipt requested, copies of this *Order to Show Cause* and the *Verified Complaint for the Expungement of Civil Commitment Record*, and all supporting documentation in support of the application to the following within seven (7) days of this Order: Bergen County Adjuster, Medical Director of Bergen Regional Medical Center.

_____
J.S.C.

FAUGNO WEIS KATCHER DUARTE
235 Main Street, Suite 101
Hackensack, New Jersey 07601
(201) 488-1234
Attorneys for Defendant
ATTORNEY ID #019251999

IN THE MATTER OF EXPUNGEMENT OF THE MENTAL HEALTH RECORDS OF [redacted]	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BERGEN COUNTY DOCKET NO. **CIVIL ACTION** **EXPUNGEMENT ORDER**

THIS MATTER having been opened to the court upon the Verified Complaint of [redacted] by his attorney, Tamra Katcher, Esq., Faugno Weis Katcher Duarte, and it appearing that the requirements for expungement under *N.J.S.A.* 30:4-80.8 *et seq.*, have been satisfied;

IT IS ORDERED this _____ day of _____, 2024, that

1) The Clerk of the Court and Bergen County Adjuster remove from its records all information relating to [redacted], from Bergen Regional Medical Center, commitment dates: [redacted] and place such information in the control of a person within the office designated to retain control over expunged records;
2) Any records or the information therein regarding the above civil commitment shall not be released and that the persons designated to retain control over expunged records take sufficient precautions to ensure that such records and information are not released;

3) In response to requests for information or records, the Bergen County Adjuster shall reply with respect to the civil commitment, which is the subject of this Order, that there is no record; and

4) The civil commitment which is the subject of this Order shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to this occurrence.

5) The petitioner is granted relief from federal firearms disability, and the Bergen County Adjuster shall take all steps to remove information regarding the civil commitment record from inclusion in the federal National Instant Criminal Background Check System (NICS) databases.

_____

J.S.C.

____Opposed
____Unopposed

	: SUPERIOR COURT OF NEW JERSEY
IN RE J.M. PETITION FOR	: APPELLATE DIVISION
EXPUNGEMENT OF MENTAL HEALTH	: DOCKET NO. A[redacted]
RECORDS	:
	: CIVIL ACTION
	:
	: ON APPEAL FROM A FINAL ORDER
	: OF THE SUPERIOR COURT OF NEW
	: JERSEY, LAW DIVISION, MIDDLESEX
	: COUNTY
	:
	: SAT BELOW:
	:
	: HON. JOSEPH L. REA, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF PETITIONER-APPELLANT [redacted]

NOTE: IDENTIFYING INFORMATION HEREIN HAS BEEN CHANGED, TO PROTECT CLIENT CONFIDENTIALITY

Law offices of Allan Marain
100 Bayard Street
P.O. Box 1030
New Brunswick, NJ 08903
Telephone: 732-828-2020
Allan@MarainLaw.com
File No. 7351
Attorneys for Petitioner-Appellant [redacted]

On the Brief:

Allan Marain
016001976

TABLE OF CONTENTS

TABLE OF CONTENTS TO APPENDIX

TABLE OF AUTHORITIES

CASES CITED

CONSTITUTIONAL PROVISIONS CITED

STATUTES CITED

REGULATION CITED

OTHER AUTHORITIES CITED

PRELIMINARY STATEMENT

On April 16, 2007, an individual shot and killed thirty-two persons on the campus of Virginia Polytechnic Institute and State University in Blacksburg, Virginia. He wounded seventeen others. He used two different firearms in his attacks.

The shooter had a history of mental illness. Under federal law, his name should have been in a national registry. Presence of his name would have prevented sale to him of the firearms that he used. However, gaps in reporting procedures by the States existed. Because of those gaps, the registry had no information concerning the shooter.

The Virginia Tech shooting commanded Congressional attention. Pressure mounted on Congress to plug the holes that enabled omission of the shooter's name from the registry. At the same time, influential organizations lobbied to prevent overreaction to the shooting from denying firearms to responsible citizens. Legislation resulted that accommodated the concerns of both sides.

The resulting legislation was the NICS Improvement Amendments Act of 2007 ("the Act"). The Act, on the one hand, provided financial incentives to the States to better inform the registry of mental health commitments. The NICS registry was to be updated with information concerning commitments that had occurred years or, in some cases, decades earlier. At the same time, the Act specified that obsolete and irrelevant data were to not bar acquisition of firearms.

[redacted] was sexually abused as a child. That abuse engendered anger issues, directed at his abuser. His anger issues, in turn, led to his being voluntarily admitted in 1989 to Fair Oaks Hospital in Summit, New Jersey, with subsequent voluntary out-patient treatment at Union County Hospital. His out-patient treatment concluded in 1990.

His treatment was successful. Mr. [redacted] went on to graduate from high school. He sought and received a nursing degree at Raritan Bay Medical Center, and a Bachelor of Science Degree in Nursing from the University of Phoenix. He holds nursing

licenses in both New Jersey and Montana, where he now lives. He has received numerous awards.

Mr. [redacted] moved from New Jersey to Montana in January 2000. He moved for the mountains, and to hunt and to fish. Suddenly, because of his voluntary juvenile admission a quarter century earlier, his name appeared on the NICS registry. He could no longer purchase firearms.

In an effort to address that development, Mr. [redacted] sought expungement of his New Jersey mental health records. The Law Division nominally granted the expungement but, *sui sponte*, required a provision ("the Provision") that rendered the expungement ineffective with respect to firearms ownership and possession. The Provision thus defeated the purpose for which Mr. [redacted] sought the expungement.

Mr. [redacted] challenges the Provision. This appeal will demonstrate that insertion of the Provision was arbitrary and capricious and, further, that the Provision directly violates the Act that caused his history to surface in the first place.

PROCEDURAL HISTORY

[redacted] filed a Verified Complaint on January 7, 2014 (Pa1)[1]. His complaint sought expungement of records relating to a voluntary mental health admission in 1989. Supporting his complaint was his own affidavit (Pa4). Exhibits to that affidavit documented his personal, educational, and professional activities in the ensuing quarter century (Pa13 through Pa22).

An Order entered February 4, 2014, set a hearing date of February 28, 2014 (Pa23). The Order specified particular agencies and persons to which notice was to be provided[2].

No noticed party filed responsive pleadings to their notifications, although Mr. [redacted]'s parents appeared and testified (T2)[3]. The hearing proceeded on

---

1 "P" stand for "Petitioner".

2 Proof of compliance with the requirement of service, although available, is not part of the record below.

3 "T" refers to proceedings on February 28, 2014. That is the only date on which hearings relevant to

(continued...)

February 28 as scheduled, the Hon. Joseph Rea, J.S.C., presiding (T1). Mr. [redacted] participated via video link (T3).

At the hearing, the judge, *sua sponte*, inquired into Mr. [redacted]'s reason for seeking the expungement (T9-12). Mr. [redacted] explained that his name had suddenly appeared on a national registry, and that that precluded his obtaining firearms (T9-18 through T10-4).

Judge Rea granted the expungement. He required, however, that the order specify that the expungement not extend insofar as firearms-related activities were concerned. The order was to further specify that the expunged information must be divulged in connection with any firearms-related applications (T11-5). No party that had been previously noticed, nor the judge himself, had previously raised a firearms issue.

---

3 (...continued)
this appeal occurred.

An order reflecting the court's instructions was entered on March 12, 2014 (Pa25). Mr. [redacted] filed his Notice of Appeal on April 22, 2014 (Pa27).

During this appeal, Mr. [redacted] filed two motions. His first motion was to amend the case caption, and to impound the record (Pa79). A Certification of counsel (Pa81) supported the application. His second motion was for leave to include specified judicially noticeable materials in the Statement of Facts in this brief (Pa84), again supported by the Certification of Counsel (Pa86). By way of decisions dated July 10, 2014, the Court issued the requested order impounding the record and changing the caption (Pa79), and denied the motion relating to judicial notice (Pa80).

STATEMENT OF FACTS

John [redacted], born [redacted], 1973 (Pa4), is 41 years old. He was graduated from JFK High School in Iselin, in 1991 (Pa5). Thereafter he was graduated from the Charles E. Gregory School of Nursing at

Raritan Bay Medical Center in 1996. He went on to obtain a Bachelor of Science degree in nursing from the University of Phoenix in 2005 (Pa5). He obtained his Registered Professional Nursing license in New Jersey in 1996, and in Montana in 2005. He maintains both licenses to this day (Pa14). He is a Board Certified Emergency Nurse. He held New Jersey State EMT-B certification from May 1991 to 2001 (Pa14).

In 1999 and 2000, Mr. [redacted] was a per diem registered nurse with University Radiology, in [redacted]. His duties included pre-procedure screenings to determine if patients were appropriate for contrast dyes. He administered IV dyes, and monitored patients during procedures (Pa26). Before that, between 1994 and 1997, he was an EMT-B ambulance technician with Multi-Care Medical Transport, located in South Amboy (Pa16).

Mr. [redacted] grew up in New Jersey (T8-5, T9-8). In January 2000, at age 28 (T8-24), he moved to Montana (Pa14). Judge Rea explored the circumstances of his relocation (T18-16):

> THE COURT: I'm curious. Why Montana, any particular reason?
>
> MR. [redacted]: The mountains, the hunting, the fishing. It has everything I want.

Mr. [redacted] has had extensive activities with the AmJohnan Heart Association. Those activities have included ACLS Instructor, ACLS Course Director, PALS Instructor; and PALS Course Director. He is on the faculty of the Nationial Sedation Center. He is a BLS[4] instructor with the [redacted] CPR Association (Pa14).

Mr. [redacted] has been heavily involved with the Emergency Nurses Association. He has been an instructor and course director with their Trauma Nursing Core Course for over a decade. Similarly, he has taught and directed its Emergency Nursing Pediatric Course. He is an instructor and course director for its Course for Advanced Trauma Nursing. For two years

4 The record does not reveal what ACLS, PALS, or BLS signify.

ending in 2008, he was its Nonviolent Crises Intervention Instructor (Pa14).

Mr. [redacted] became a member of the Montana Emergency Nurses Association in 2002. In 2007, he became a life member. He served as president in 2006 and 2007 and, again, in 2009. Among other things, he designed and implemented the cardiovascular, gastro-intestinal, medical emergencies, and OB-GYN portions of its CEN review course (Pa15).

[redacted], LLC, was established in 2006. Mr. [redacted] is its owner and sole officer. Its mission has been to provide high quality and professional education courses to all levels of health care professionals. As such, the company maintains the integrity of all courses, including instruction and course direction (Pa15).

In 2001, Mr. [redacted] became an Emergency Department Clinical Nurse Educator with the Helena Health Medical Center, Helena, Montana. In that capacity, he was responsible for planning and implementing individualized orientations for new RN's,

EMT's, paramedics, and clerks in its emergency department. He was responsible for maintaining current files on all staff, including up to date certifications and licensure. He developed and updated departmental policies as needed (Pa15). He conducted audits on narcotic and restraint documentation (Pa16).

From January 2007 to the present, Mr. [redacted] continued with that same facility as an Emergency Department Staff Nurse. His now part time duties there include directing patient care in its trauma, medicine and observation departments. At the same time, he works there as a charge nurse, triage, and radiology nurse (Pa15).

Mr. [redacted] has received numerous awards. Included have been the Outstanding First Aid Award from AmJohnan Legion Post 471 (1994), an Emergency Nurses Association Distinguished Leadership Award (2006, 2007, and 2009), and a Preceptor of the year (2009) award from the Helena Health Medical Center (Pa16). Between 2004 and 2013, he attended numerous professional conferences throughout the country (Pa17). He

participated in Gun Safety Lock education and distribution for Helena Health Medical Center Community Awareness Day in 2005 and 2007 (Pa17). He has made numerous presentations to professional groups in Montana and Iowa (Pa17, Pa18).

Mr. [redacted] has no criminal record. He has never been arrested (Pa5, Pa19). He has an excellent reputation in both his personal and professional community (Pa20, Pa21, Pa22). Indeed, [redacted] writes (among other things)(Pa20):

> On a personal note, John is selfless with this time. He has dressed up as Santa Claus for numerous families over the course of the last 10 years. John has also volunteered his time at Christmas visiting sick children in hospitals in his Santa suit. In the thirteen years I have known John, I have seen him demonstrate his generosity, kindness, and thoughtfulness toward not only my family but toward many by offering to move furniture, paint, drywall, and babysit.
>
> No more can be said other than on a personal and professional level John's reputation is of the highest quality.

John [redacted] was sexually abused as a child (T5-3 to T5-7, Pa2). That abuse engendered anger issues, directed at his abuser. His anger issues, in turn, led to his being voluntarily admitted in 1989 to Fair Oaks Hospital in Summit, New Jersey (Pa10), with subsequent voluntary out-patient treatment at Union County Hospital (Pa1). His out-patient treatment concluded in 1990 (Pa1). He has had no treatment since (Pa2).

His treatment was successful. His achievements are indicated above. Those achievements show Mr. [redacted] to be a solid, well-respected, contributing member of both his community in particular, and society in general (Pa13 through Pa22).

As indicated above, Mr. [redacted] moved to Montana for the mountains, to fish, and to hunt (T18-18). Suddenly, because of his voluntary admission to Fair Oaks a quarter century earlier, his name appeared in a national registry (T9-18 to T9-23). He could no longer purchase firearms (T10-1). A primary reason for his relocating so far from his home, and so far from his parents, was thus frustrated.

In an effort to regain that which was taken from him, Mr. [redacted] sought (Pa1) and nominally obtained expungement of his mental health records. The expungement court, however, *sui sponte*, required a provision in the final order that rendered the expungement ineffective with respect to firearms ownership and possession (Pa25). The court explained that requirement thusly (T10-20 to T12-17):

> [T]he Order would be tempered, Mr. [redacted], because there's a decision by Judge Natal. Judge Natal is a judge in my counterpart in Camden County.
> .
> .
> .
> He wrote a reported decision in the matter of the application of J.D. And in this -- when -- when it comes to -- when it comes to firearms applications Judge Natal his opinion takes the position that an expungement is analogous a privilege, a legal privilege which is waiveable. So, in other words, you can't assert an expungement and not reveal certain information provided, however, and in the context of firearms that if you apply for a firearms identification card or any permits to purchase, possess, or -- or -- or carry firearms that that the expungement, that

privilege is deemed to be waived and you would have to reveal that.

In other words, when it comes to firearms this expungement is not going to help you. It would help you -- I've had people come in who are school teachers and they want to apply for different positions and then they have a history, you know, years prior of a, you know, a certain licensing thing where they -- they don't want to have to write down where it asks that question. Fine. But any Order that goes out on this would contain the language that it doesn't apply in the context of firearms. And -- and that and, in fact, we had a meeting and I specifically discussed this with Judge Natal. Every county has a judge that handles these issues. At the Judicial College we all got together. This is a reported Opinion. It's at 407 N.J. Super 317, decided in February of 2009, and, in other words, this isn't going to help you get a gun or a permit to purchase a gun.

Now, if it's up that Montana is looking to New Jersey that's their business. I mean I have no jurisdiction over what Montana does, but I can tell you that the Order -- the Expungement Order would state that they would contain language, and I would tell Mr. [redacted] this Expungement Order shall not apply to applications for firearms, identification card, and/or permits to purchase, possess, and/or carry firearms. As such John [redacted] must divulge his civil

> commitment on any application for a firearm, identification card, and/or permits to possess, purchase, or carry a firearm.
>
> So I don't know where we're going with this.

The Provision thus thwarted the purpose for which Mr. [redacted] had sought the expungement in the first place.

STATEMENT OF LAW

STANDARD OF REVIEW

A trial court's interpretation of the law, and the consequences that follow from established facts, are not entitled to any special deference upon appellate review, Manalapan Realty v. Manalapan Township Committee, 140 N.J. 366, 378 (1995). This New Jersey standard is reinforced and, indeed, even mandated by

the Act[5]. The Act goes further. Section 105(a)(3) of the Act provides:

> A relief from disabilities program is implemented by a State in accordance with this section if the program...permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

Thus, at least with respect to Point Two of this Brief, beyond denying special deference to the court below, the applicable standard of review in this Court is to afford no deference to the court below. Rather, this Court is to consider the matter *de novo*, disregarding the findings and conclusions below.

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5 As indicated in the Preliminary Statement, "the Act" refers to the NICS Improvement Amendments Act of 2007. This Act is also designated P.L. 110-180. It lacks its own designation in the United States Code. Its text is included as a note to 18 U.S.C. Section 922. This brief discusses the Act extensively in Point Two.

POINT ONE

THE FIREARMS LIMITATION IS ARBITRARY AND CAPRICIOUS, AND CONSTITUTES AN ABUSE OF DISCRETION

The statute that governs expungement of mental health records is N.J.S. 30:4-80.11. That statute provides in its entirety:

> If an order expunging such commitment is granted, the commitment shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to its occurrence.

N.J.S. 30:4-80.11 is unqualified. Nothing in N.J.S. 30:4-80.11 authorizes the court to require the Provision here ordered. In requiring the provision, the motion court relied on In re J.D., 407 N.J. Super. 317 (Law Div., 2009). Beyond disregarding the mandate of N.J.S. 30:4-80.11, that reliance was misplaced.

It is first important to understand the context in which J.D. arose. J.D. obtained an expungement of mental health records in 1984. It was not until twenty-four years later, in 2008, that he sought a firearms purchaser identification card and a permit to purchase a handgun. Question 22 on the application

form asked, "Have you ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis?" Question 25 asked, "Have you ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an in-pataient or outpatient basis for any mental or psychiatric conditions?" J.D. answered "No" to both questions.

The Voorhees Township police chief denied his applications, on two grounds. His first ground was that, since J.D. had in fact been treated, his "no" answers constituted falsifications of his application. As to that ground, J.D. observed, at 324:

> [Applicant] qualified for the remedy of expungement which would entitle him to state, even under oath, despite the looming penalty of perjury, he has never been hospitalized or committed.
>
> Given the magnitude of the remedy, this court finds under these facts, the applicant did not falsify his application when he answered questions 22 and 25 in the negative. He relied on a privilege to which he was

> entitled, just as he has relied on it in the past without repercussion.

The second ground upon which the chief relied was J.D.'s "Medical, Mental or Alcoholic Background." Here it is crucial to note that, while the J.D. court affirmed the Chief's denial, it did not hold that applicant disqualified. Quite the contrary, that court held:

> If the applicant chooses to reapply, he may do so with the Voorhees Police Department. Reapplication, however, will require the applicant to waive the privilege of expungement. Therefore, he will be required to submit to the police both a new application and a certificate from a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof that he is no longer suffering from schizophreniform disorder or any other disorder in such a manner that would interfere with or handicap him in the handling of firearms.

Application of the J.D. requirement to Mr. [redacted] is wrong. Preliminarily, and unlike what happened here, the J.D. court had no intention of permanently stripping that applicant of his firearms

rights. That court simply required satisfactory proofs of fitness. But the Provision entered for Mr. [redacted] makes proofs irrelevant, regardless of their quantity or quality or antiquity. The Provision requires that Mr. [redacted] live in perpetuity with legal disabilities occasioned by an ancient juvenile voluntary commitment. These disabilities will surface on any and all occasions that he may choose to purchase firearms.

Secondly, Mr. [redacted] has already provided the medical proofs, or "other satisfactory proof" of no disqualifying disorder, required in J.D. Daniel S. Schoenwald, Ph.D., reported (Da13):

> At this time, Mr. [redacted] does not meet criteria for any psychological or psychiatric disorder, and has been free of symptoms for many years based on his report, which is supported by his long-term occupational stability. Mr. [redacted] has been working in the nursing field for almost 20 years and has worked for the same hospital for the last 13 years. Additionally, he is not reporting any psychological distress at this time. At the time of the clinical interview, the patient presented on time, was well dressed and groomed, alert, and intact

> conversationally. No indication of psychological symptoms was evident by observation. The mental status examination was free from deficiencies. I feel confident that these descriptions are an accurate portrayal of his current psychological functioning.

Beyond what Dr. Schoenwald specifically reported, Mr. [redacted]'s accomplishments bespeak and constitute the very proofs implicated by J.D. Yet the order of the court below affords no opportunity whatsoever for removal of the Provision.

This case distinguishes itself from J.D. in yet another way. J.D. obtained his expunction and, thereafter, applied for a firearms purchase permit. The J.D. court simply held that the police chief could consider the expunged facts in determining to grant or deny the application. But nothing in J.D. required that a qualification of the expungement order itself forever bear witness to his prior commitment.

J.D. holds that application for a firearms permit waives the benefit of a prior mental health expungement. But Mr. [redacted] did not ask the Court

below for a firearms permit; what he asked for was an expungement. And whatever it is that the court below gave, and whatever it is that the court below may call it, it is less than an expungement. The Provision tells all who receive it, and tells Mr. [redacted] himself that, as far as the court is concerned, Mr. [redacted] remains mentally suspect. The Provision constitutes, in effect, a Scarlet C (for "committed"). Mr. [redacted] must forever wear this Scarlet C any time he might try to exercise one of his fundamental constitutional rights[6].

The arbitrary and capricious nature of the inserted provision is manifest. John [redacted] is law abiding. He is professionally accomplished. He excels in his

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6 The legal principles invoked by Mr. [redacted] in this appeal are abuse of discretion (Point One), and violation of applicable statutory law (Point Two). Neither of these arguments are constitutional in nature. It is nonetheless appropriate to note that the Second Amendment conferred an individual right to keep and bear arms, District of Columbia v. Heller, 554 U.S. 570, 595, 128 S.Ct. 2783, 2799, 171 L.Ed.2d 637 (2008). This right is fully applicable to the States, McDonald v. City of Chicago, 561 U.S. 742, 130 S.Ct. 3020, 3026, 177 L.Ed.2d 894 (2010).

field. Those qualities, in and of themselves, are no guaranty of sanity. Still, there has to be *some* indication of abnormality to support the limitation imposed by the court. Here the only specified reason was robotic adherence to a consensus of judges reached at the Judicial College (T11-25), and a wholly inapplicable Law Division decision.

No individualized analysis was provided. No individualized analysis was attempted. No justification for the Provision was provided. Indeed, no pretense at justification for the Provision was ever suggested. An action is arbitrary and capricious when made without consideration and in disregard of circumstances, Beattystown Community Council v. DEP, 313 N.J.Super. 236 (App. Div., 1998).

Guns are dangerous. So are cars. But when a driver's negligence causes an accident, even a fatal accident, New Jersey does not revoke his driving privileges for life. Frank Forsgate, for example, drove carelessly, causing a death. The Division of Motor Vehicles suspended his driving privileges for

only one year. This Court affirmed, Forsgate v. Strelecki, 103 N.J. Super. 435 (App. Div., 1968). And Keeno Exum caused a fatal car accident on September 18, 1982. He had a blood alcohol level determined to be 0.128 percent. The Division revoked his driving privileges for five years, Division of Motor Vehicles v. Exum, 5 N.J.A.R. 298 (1983).

John [redacted], by way of contrast, has killed no one. He has harmed no one. He has threatened no one. Quite the contrary, he has conducted his entire life in a manner that can be cause only for praise and emulation. Yet the Provision imposes upon him a lifetime barrier to ever being able to legally possess a firearm.

The illogic of this provision is further highlighted by various New Jersey and federal statutes. N.J.S. 2C:39-7b(2) disqualifies a person convicted of a disorderly persons offense involving domestic violence from possessing firearms, even when weapons were not implicated in the offense. Similarly, N.J.S. 2C:39-7b(3) makes possession of a weapon a third degree crime

when possessed contrary to a court order issued under the Prevention of Domestic Violence Act of 1991. But each of those disabilities can be removed. The N.J.S. 2C:39-7b(2) disability is removed by expungement of the original conviction, N.J.S. 2C:52-27:

> 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 N.J.S. 2C:39-7b(3) disability disappears upon vacation of the court order, N.J.S. 2C:25-29d[7].

Similarly, it is a federal crime for a person subject to a domestic violence restraining order to possess a firearm, 18 U.S.C. Section 922(g)(8). But that disability, too, evaporates when the person becomes no longer subject to the order, Id. Surely an order is arbitrary and capricious when a person with no history of crime, violence, or threat of violence must never possess firearms while, at the same time, persons

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7 Under N.J.S. 2C:39-7b(3), vacation of the court order does not remove the disability when a firearm was previously seized and not returned.

who have perpetrated domestic violence, and persons who have been convicted of other violent crimes, including crimes involving firearms, can.

Unlike the revocation of driving privileges examples, which other states can elect to honor or disregard, the legal disability imposed by the Provision, by virtue of NICS, reaches Montana, Alaska, and wherever in the United States he may later choose to live. It even reaches United States territories like Puerto Rico[8].

The illogic of the limitation is still more highlighted by this hypothetical: Suppose, instead of being voluntarily admitted, Mr. [redacted], for revenge, had taken a gun and shot both kneecaps of his abuser. As a juvenile, he would have been charged with

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8 18 U.S.C. Section 922(g)(4) makes it unlawful for a person who has been committed to a mental institution to receive any firearm that has been shipped or transported in interstate commerce. Under 18 U.S.C. Section 921(a)(2), interstate commerce includes commerce between any place in a State and any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but not including the Canal Zone.

delinquent acts that, as an adult, would have constituted second degree aggravated assault, illegal possession of a weapon, and possession of a weapon for an unlawful purpose. Had he been adjudicated delinquent on all three charges, five years after completion of whatever sentence the court imposed, he could have had his entire juvenile record expunged, N.J.S. 2C:52-4.1b.

Had Mr. [redacted] deferred his revenge until after reaching his majority, he still could have had his entire adult criminal record expunged, N.J.S. 2C:52-2. This Court has observed in dictum that a conviction thus expunged would be unable to support a subsequent charge of N.J.S. 2C:39-7(b), possession of a weapon by one previously convicted of a crime, State v. King, 340 N.J. Super. 390, 395 (App. Div., 2001)(noting a previous unpublished opinion).

Under federal law, the New Jersey criminal record expungement results in the complete removal of federal firearms disabilities. While 18 U.S.C. Section 922(g)(1) prohibits any person convicted in any court

of a crime punishable by imprisonment for a term exceeding one year to possess any firearm shipped in interstate commerce, 18 U.S.C. 921(a)(2) specifically defines "crime punishable by imprisonment for a term exceeding one year" to not include:

> Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

It is a bizarre provision of a New Jersey mental health expungement order where voluntary prophylactic juvenile hospital admissions are to be permanently reported and disabling but, under both State and federal law, actual criminal violent acting out is, for firearms purposes, erased.

POINT TWO

THE FIREARMS LIMITATION VIOLATES THE NICS IMPROVEMENT ACT OF 2007 (Not Raised Below)[9]

Under the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Gun Control Act of 1968, felons, fugitives, and persons under indictment were rendered ineligible to legally receive firearms. Over time, further amendments increased the classes of persons who could not legally acquire or possess firearms[10].

As relevant to this appeal, 18 U.S.C. Section 922(g)(4) came to provide in pertinent part:

> It shall be unlawful for any person...who has been adjudicated as a mental defective or who has been committed to a mental institution...to ...possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition

9 Mr. [redacted] had no opportunity to raise this point below inasmuch as that court had provided no prior notice of its intention to require a firearms limitation.

10 The present list of ineligible classes is contained in 18 U.S.C. Section 922.

> which has been shipped or transported in interstate or foreign commerce.

And 18 U.S.C. Section 922(d)(4) provides:

> It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person...has been adjudicated as a mental defective or has been committed to any mental institution[.]

The Bureau of Alcohol, Tobacco, and Firearms has adopted implementing regulations. 27 C.F.R. 478.11 was in force in 2007. That regulation defines "adjudicated as a mental defective." That definition provides in pertinent part:

> (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
>
> (1) Is a danger to himself or to others[.]

Additional federal legislation arrived in 1993 in the form of the Brady Handgun Violence Protection Act

("the Brady Act")[11]. Section 103 of the Brady Act created the National Instant Criminal Background Check System (NICS). Subsection 103(b) provided:

> ESTABLISHMENT OF SYSTEM.—Not later than 60 months after the date of the enactment of this Act, the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.

The Brady Act had a major weakness. Its efficacy was dependent upon the States submitting qualifying events to the registry. Inconsistent or inadequate reporting procedures by the various States caused many such events to be not submitted. These reporting gaps

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11 The Brady Act is the popular name of P.L. 103-159. It is named after Presidential Press Secretary James Brady, shot in the head by a mentally ill individual, John Hinckley, on March 30, 1981. The setting for this shooting was an assassination attempt on President Reagan. For additional background, see Gun Control: the Brady Handgun Violence Prevention Act, 16 Seton Hall Legis. J. 245 (1992).

were implicated in subsequent mass shootings. One of these shootings was the Virginia Tech massacre, detailed in Congressional findings incorporated in Section 2 of the NICS Improvements Act of 2007:

> (9) On April 16, 2007, a student with a history of mental illness at the Virginia Polytechnic Institute and State University shot to death 32 students and faculty members, wounded 17 more, and then took his own life. The shooting, the deadliest campus shooting in United States history, renewed the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct complete background checks on potential firearms purchasers. In spite of a proven history of mental illness, the shooter was able to purchase the two firearms used in the shooting. Improved coordination between State and Federal authorities could have ensured that the shooter's disqualifying mental health information was available to NICS.

As a result of his proven history of mental illness, the shooter was a person who, within the meaning of 27 C.F.R. 478.11, had been "adjudicated as a mental defective." As such, his name should have been

in the Section 103(b) NICS registry. Because of the gaps just mentioned, the registry had no such record.

Under 18 U.S.C. Section 922(d)(4), the sale of the two firearms to the shooter was illegal. Under 18 U.S.C. Section 922(g)(4), the shooter's purchase of those firearms was also illegal. Had his name been in the registry, he would have been unable to obtain the firearms as he did.

The Virginia Tech shootings commanded Congressional attention. Public response over gun violence in the United States is what prompted Congress to pass, and the President to sign, the Act.

The subject matter of the Act touched upon different interests. Congress recognized a need to carefully balance the public's legitimate safety concerns on the one hand, against the rights of responsible owners and users of firearms, on the other. Influential organizations, most notably the National Rifle Association, lobbied to prevent overreaction to the shooting from denying firearms to responsible

citizens. The resulting legislation reflected the concerns of both sides.

The basic paradigm of the Act was to offer financial incentives to the States to better inform the registry of mental health commitments. The registry was to be updated with information concerning commitments that had occurred years, or even decades, earlier. At the same time, the Act specified that obsolete and irrelevant data were to not prevent acquisition or possession of firearms. This delicate balance resulted from prodigious efforts by all interests.

These efforts were memorialized in House debates. Thus on June 13, 2007, debate included the following excerpts, 153 Cong. Rec. H6339 (Pa29, Pa39, Pa41)(emphasis added):

> In order to move the legislation to the floor, it was necessary to make some accommodations to incorporate the concerns of gun owners. The dean of the Congress, among other things, led this effort. Among the things that were changed is section 105 of **the bill**, which **requires all States to adopt a procedure allowing those**

individuals who have been determined to suffer from a mental illness with an opportunity to purchase or possess a firearm at some point later in life. That's a pretty serious matter.

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I commend Congresswoman McCarthy and Congressman Dingell and the other cosponsors for their commitment to addressing this issue in a way that protects every AmJohnan's constitutional right to bear arms. The NICS Improvement Act will ensure that the NICS background check system really is instantaneous and accurate. The act will require Federal agencies to provide relevant criminal mental health and military records for using NICS, create financial incentives for States to provide relevant records for using NICS, improve the accuracy of NICS **by requiring** Federal agencies and **participating States to** provide relevant records, [and] **require removal of expired, incorrect or otherwise irrelevant records**[.]

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.

This legislation represents a true compromise, a public safety measure that will prevent gun violence and protect the second amendment rights of law abiding citizens.

I think it's very important to note that **we have two diverse groups coming together, the NRA and the Brady Group,**

> **coming together to help work out this legislation,** and both had some benefits from it.
> .
> .
> .
> Improving the National Instant Check System is a matter of important national business, and **I would urge my colleagues to take a look at the rather curious alliance which brings this matter forward. Not only is the NRA, but the gun control folks are in support of it. Members on both sides of the aisle, both here and in the Senate, are strongly supporting it.**
>
> The bill will require the National Instant Check System to work. It will provide incentives to the States and penalties for those who do not cooperate in terms of making the system work.
>
> **This system has the capability of seeing to it that criminals are denied firearms while, at the same time, assuring that we protect the rights of law abiding citizens.**

And the following remarks occurred on the occasion of final House passage, after the bill had returned from the Senate with modifications, 153 Cong. Rec. H16923 (December 19, 2001, Pa49)(emphasis added):

Mr. BOUCHER.

Madam Speaker, I rise in support of the measure which I am pleased to cosponsor with the gentlelady from New York, Mrs. McCarthy, and the gentleman from Michigan, Mr. Dingell. I want to thank both of my colleagues for their careful and constructive work on the legislation.

The bill before us today is a well-tailored response to the tragedy that occurred earlier this year in my Congressional District at Virginia Tech University.

It also meets a nationwide need for better reporting of mental health records to the National Instant Criminal Background Check System, against which prospective gun purchases are checked to determine whether they are eligible to purchase firearms.

Under existing federal law, which was also in effect at the time of the Virginia Tech tragedy, persons who have been adjudicated to be a risk to others or to themselves because of a mental condition are barred from purchasing firearms.

The perpetrator of the Virginia Tech tragedy had been adjudicated to be a risk to himself and committed for outpatient mental evaluation.

Accordingly, under federal law in effect at the time, he should have

been barred from purchasing the firearms he used.

However, at the time the purchases were made, Virginia did not submit to the National Instant Background Check System mental health records of persons who were committed for outpatient as opposed to inpatient mental evaluation.

Therefore, the disqualifying adjudication that the perpetrator was a risk to himself was not submitted to the background check system, and he was able to purchase firearms.

Ironically, at the time Virginia had the best record among the States for submitting mental health records to the national system.

Since the tragedy, Virginia's mental health record submissions have been made much more thorough by an executive order signed by Tim Kaine, the Commonwealth's Governor.

Nationwide, the number of mental health records submitted by the States to the federal database has doubled since the tragic events of April. I am pleased by this progress, but there are further improvements to be made, as 18 states currently do not submit names to the federal database.

The bill we will pass today will further improve the submission of mental health records nationwide by providing grants to States which

> undertake projects to make more thorough record submissions.
>
> **I also support the changes made by the Senate which strengthen the appeal process provided by the bill for individuals to have their names removed from the database if their mental health records are inaccurate or outdated. These changes will further ensure the accuracy of the National Instant Background Check System.**
>
> I commend Mrs. McCarthy for her longstanding effort to take these necessary and constructive steps, and I urge passage of the bill.

New Jersey applied for grants made available by the Act. Initially, the United States Attorney General denied the application. As explained in a Statement accompanying New Jersey Assembly No. 4301, 213th Legislature (2009)(Pa67, emphasis added):

> On June 22, 2009, the Administrative Office of the Courts applied for a federal grant to improve the recording, automation, and transmittal of State mental health adjudications. The program design would provide this mental health information to both the New Jersey State Police and NICS.

> **New Jersey's grant application was denied by the U.S. Attorney General on October 14, 2009 because State law: (1) does not adequately afford individuals adjudicated as mental defectives the right to apply for an expungement;** (2) does not require State courts to hear any of the evidence expressly required by federal law in such expungement cases; (3) contains directive language and phraseology concerning the factors to be considered by the court in reviewing petitions for expungement that are too vague to comply with the new federal law; and (4) does not grant the federal government access to State mental health records.
>
> The provisions of this bill amend the appropriate sections of State law to address the concerns raised by the U.S. Attorney General. With their adoption, New Jersey will become compliant with the provisions of the NICS Improvement Act of 2007 and be qualified to receive federal grant moneys to assist in the implementation of those changes.

Two of the statutes at issue in A-4301 were those that provided for expungement of mental health records, N.J.S. 30:4-80.8 and N.J.S. 30:4-80.9 (Pa65). For the specific purpose of obtaining the federal grants, A-4301 became law. N.J.S. 30:4-80.8 now provides:

> Any person who has been, or shall be, committed to any institution or facility providing mental health services, or has been determined to be a danger to himself, others, or property, or determined to be an incapacitated individual as defined in N.J.S. 3B:1-2, by order of any court or by voluntary commitment and who was, or shall be, discharged from such institution or facility as recovered, or whose illness upon discharge, or subsequent to discharge or determination, is substantially improved or in substantial remission, may apply to the court by which such commitment was made, or to the Superior Court by verified petition setting forth the facts and praying for the relief provided for in this act.

And N.J.S. 30:4-80.9 now provides (emphasis added):

> Upon reading and filing such petition, the court shall by order fix a time, not less than 10 nor more than 30 days thereafter, for the hearing of such matter, a copy of which order shall be served by the petitioner upon the county adjuster of the county and upon the medical director of the institution or facility to which such person was committed or upon the party or parties who applied for the determination that the person be found to be a danger to himself, others, or property, or determined to be an incapacitated individual as defined in N.J.S.3B: 1-2, and at the time so appointed, or to which it may be

> adjourned, the court shall hear evidence as to: the circumstances of why the commitment or determination was imposed upon the petitioner, the petitioner's mental health record and criminal history, and the petitioner's reputation in the community. **If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and finds that the grant of relief is not contrary to the public interest, the court shall grant such relief for which the petitioner has applied** and, an order directing the clerk of the court to expunge such commitment from the records of the court.

Upon conforming those statutes to the Attorney General's requirements, New Jersey applied for and received grants in federal fiscal years 2010 and 2011. Those grants totaled $3,632,891, Senate Budget and Appropriations Committee, Statement to A3737, May 9, 2013 (Pa62); Bureau of Justice Statistics (BJS) - State profiles, http://www.bjs.gov/index.cfm?ty=tp&tid=491 (Pa68).

In Section 1(b)(2) of the Firearms Owners' Protection Act, Pub.L. 99-308, Congress reaffirmed federal gun policy[12]:

> The Congress finds that...(2) additional legislation is required to reaffirm the intent of the Congress as expressed in section 101 of the Gun Control Act of 1968, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap-shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes."

While Section 1(b) defines federal policy, the Tenth Amendment allows New Jersey to define its own[13].

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12 Congressional findings in 99-308 appear under Historical and Statutory Notes to 18 U.S.C. Section 921.

13 The Tenth Amendment provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

And New Jersey does. New Jersey declares that its commitment to firearms safety is unrivaled anywhere in the nation, N.J.S. 2C:58-2.2.

While New Jersey can establish and enforce its own policies, in applying for and accepting federal grant moneys under the Act, it agreed to accept attached conditions. So here. Section 105(b) of the Act provides (emphasis added):

> Authority to provide relief from certain disabilities with respect to firearms.--If, under a State relief from disabilities program implemented in accordance with this section, an application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution or based upon a removal of a record under section 102(c)(1)(B), **the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.**

Once the commitment is deemed not to have occurred, the Act imposes specific duties upon participating

States. Those specific duties are set forth in Section 102(c)(1)(B):

> (B) NICS updates.--The State, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall, as soon as practicable--
>
> (i) update, correct, modify, or remove the record from any database that the Federal or State government maintains and makes available to the National Instant Criminal Background Check System, consistent with the rules pertaining to that database; and
>
> (ii) notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

But far from notifying the Attorney General that the basis no longer applies, the Provision requires the exact opposite. The actual effect, and the intended effect, of the Provision is that the adjudication or commitment, contrary to Section 101(c)(1)(B), be perpetuated and republished in the order itself. This provision is irreconcilable with the Act.

A significant objective of the Act was to improve mental health record reporting from the States to the national database. Congress contemplated that the Act would cause entry into the database of many previously unreported records. At the same time, Congress recognized that, in many instances, some of these previously unreported records would be either inaccurate or outdated. The Act was meticulously tailored to address precisely that concern.

New Jersey was never compelled to seek or accept federal grant moneys. It elected to do so. New Jersey enacted Assembly 4301 for the specific purpose of meeting grant conditions. Towards that end, the accompanying statement recites that the purpose of Assembly 4301 was to enable persons previously adjudicated as mental defectives to apply for expungement (Pa17). Yet now the consensus of the Judicial College (T11-25) recites a statewide policy that New Jersey judges attach provisions that make those expungements wholly ineffective to accomplish the purposes for which Assembly 4301 was passed. Put

starkly, the consensus of the Judicial College is to do completely that which the New Jersey Legislature and the New Jersey governor specifically agreed to not do. And the Provision wrongly reflects that misinformed consensus[14].

The injustice of the Provision is further heightened by a related federal provision. 27 C.F.R. 478.11 defines "Committed to a mental institution" as (emphasis added):

> A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. **The term does not include** a person in a mental institution for observation or **a voluntary admission to a mental institution**.

Mr. [redacted]'s admission was voluntary (Pa10). Under 27 C.F.R. 478.11, in effect at the hearing (and

14 In fairness to the court below and, for that matter, to the Judicial College itself, no indication exists that either was aware of the Act.

in effect to this day), the voluntary nature of Mr. [redacted]'s admission should have caused his name to never have been reported to the NICS registry in the first place[15]. But as a consequence of seeking to expunge records of his voluntary commitment, relief that N.J.S. 30:4-80.9 explicitly allows, Mr. [redacted] is ordered to divulge his commitment to New Jersey, to Montana, or to wherever else he may seek to exercise his Second Amendment rights.

The court below failed to honor the conditions that New Jersey accepted, and failed to follow the legislation that qualified New Jersey to receive federal grants. When the State, through its Executive and Legislative Branches, accepts moneys, conditions attached to those acceptances should be honored by the Judiciary.

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15 To prevent recurrences of such reporting, all county counsel, and the Administrative Office of the Courts, should be instructed to not report voluntary admissions. Mr. [redacted] makes no such formal application here, as consideration of such action exceeds the scope of relief that Mr. [redacted] can seek on this appeal.

CONCLUSION

The limitation required by the Law Division judge constituted an abuse of discretion. At the same time, it expressly violated federal statutory conditions that New Jersey accepted when it applied for and accepted federal grants.

This matter should be remanded to the Law Division. On remand, the Law Division judge should enter a Order striking the Provision. In its place, the Order should state that Petitioner is granted relief from the federal firearms disability, and that the county adjuster shall, within fourteen days of entry, take all steps to remove information regarding Mr. [redacted]'s civil commitment record from inclusion in the federal NICS database.

Respectfully submitted,

Law Offices of Allan Marain

By: Allan Marain

LAW OFFICES OF ALLAN MARAIN
Counsellors at Law
100 Bayard Street
P.O. Box 1030
New Brunswick NJ 08903
732-828-2020
(FAX: 732-828-2077)
(email: Allan@MarainLaw.com)

January 20, 2023

Refer to File No. 8244

Federal Bureau of Investigation
NICS Section
Appeal Services Team, Module A-1
Post Office Box 4278
Clarksburg WV 26302-4278

Federal Bureau of Investigation
NICS Operations Center
Criminal Justice Information Services Division
1000 Custer Hollow Road, Module C-3
Clarksburg WV 26306-0147

Re: Appeal of NICS Denial

Dear Sir/Madam:

We represent [redacted]. We write to appeal his NICS denial:

[redacted]
Atlanta GA 30328-2864
NTN: [redacted]

Mr. [redacted] was born on [redacted]1979. At age 15, he was voluntarily admitted to Carrier Clinic at Bell Mead, New Jersey, on [redacted] 1995 and released on [redacted], 1995.

[redacted] was denied under Title 18, U.S.C. Section 922(g)(4): a person who has been adjudicated as a mental defective or who has been committed to a mental institution.

27 CFR 478.11 excludes from "committed to a mental institution" persons whose admission was voluntary, as was Mr. [redacted]s. We enclose with this letter a copy of his records from the State of New Jersey, Department of Human Services, showing that his commitment was voluntary.

For the above reasons Mr. [redacted]'s history should not have been considered disqualifying. Please review and advise.

Thank you for your kind attention to this matter.

Very truly yours,

Law Offices of Allan Marain

s/Allan Marain

By: Allan Marain

AM:cda
CMRRR
Enclosures
cc: Mr. [redacted]

U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306
February 11, 2023

Allan Marain, Esq.
Post Office Box 1030
New Brunswick, NJ 08903

RE: Firearm-Related Challenge
NTN: [redacted]
Mr. [redacted]

Dear Mr. Marain:

This responds to your inquiry concerning the eligibility of your client, Mr. [redacted] to possess or receive a firearm. The material submitted is insufficient to modify your client's transaction response to possess or receive a firearm for the above-referenced NTN.

At the time this transaction was initiated, your client was matched with the following federal prohibitive information under Title 18, United States Code (U.S.C), section 922(g)(4): "A person who has been adjudicated as a mental defective or who has been committed to a mental institution." Please note that this standard may be met in a number of ways, including but not limited to:

- A formal ruling by a Court or other proper authority that an individual either lacks mental capacity to manage his or her own affairs or is a danger to self or others, due to mental illness, incompetency, condition or disease, or very low intelligence
- A finding, by a Court or jury, that an individual was not guilty of criminal charges due to mental incapacity or infirmity, or that the individual was guilty but mentally ill, or that such charges against the individual should be dismissed for mental health reasons
- An order of a Court or other proper authority directing an individual to receive treatment for a mental health condition, whether inpatient or outpatient, which for purposes of this statute constitutes being "committed to a mental institution"

In addition, please note that your agreement to the entry of any such order, ruling, or finding would not make the 18 U.S.C. §922(g)(4) prohibitor invalid.

When this National Instant Criminal Background Check System (NICS) transaction was conducted on February 13, 2021, the denying information was valid. Therefore, your client was not eligible to possess or receive a firearm under this original transaction and its unique NTN.

However, the FBI's Criminal Justice Information Services (CJIS) Division has been able to verify with the proper local and/or state law enforcement officials that the record entry for the federal prohibitor has been cancelled. Since the original prohibiting information has been resolved, and based on further review, your client is not prohibited from subsequent attempts to possess or receive a firearm

For subsequent NICS transactions, however, a complete background check will be conducted to ensure your client's eligibility to possess or receive a firearm.

Information Services Branch
Criminal Justice Information
Services Division