



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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November 27, 2018

LETTER OPINION

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Re: *In re* Dennis Nicholas McGregor Jr.
Case No. CL-2018-13906

Dear Counsel:

This cause comes before the Court on the Motion of Dennis Nicholas McGregor Jr. ("Petitioner") to reinstate his right to purchase, possess, and carry firearms, ammunition, and/or stun weapons pursuant to Virginia Code § 18.2-308.2. The Petition

OPINION LETTER

implicitly raises the question as to what the General Assembly meant by the “good cause shown” standard for such restoration delineated in the enabling statute. Petitioner posits that what he must show is merely that he has returned to a normal, uneventful, and law-abiding life after incurring the felony convictions that caused him to lose his right to bear firearms. The Commonwealth, in turn, in opposing such restoration in this instance, responds that before such rights may be restored Petitioner should be required to show he has a post-conviction record of exemplary citizenship. Both parties thus state factors which may be relevant to a determination of “good cause shown” but these assertions do not in and of themselves state the limiting principle to be applied. The discernible intent of the General Assembly is that convicted felons who have regained their civil rights by action of the Governor, have their gun rights restored by the Circuit Courts upon a showing they do not pose the risk of unlawful use of firearms. This Court holds that “good cause shown” in the context of restoration of gun rights simply means the risk that caused the offender to lose his or her right to bear firearms as informed by a factored analysis of the available evidence, no longer appears present.

As neither statute nor case law define precisely what constitutes “good cause” for a circuit court to restore the right of a convicted felon to bear firearms after the Governor has first restored his or her civil rights, this Court evaluates whether Petitioner has demonstrated he meets the standard for restoration of his right to bear firearms by resorting to application of a non-exhaustive list of logical and reasoned factors to be considered, as first laid out in Final Order, *In re Ronald Jennings Rudolph*, CL-2017-3336 (Fairfax Cir. Ct. Apr. 24, 2017) (Bellows, J.): (1) The nature of the crimes for which the Petitioner stands convicted; (2) Whether the crimes involved the use of a firearm; (3) How

long ago the crimes were committed; (4) Was the Petitioner punished for his misconduct; (5) Since his release from incarceration, has the Petitioner led a law-abiding life; (6) What efforts has the Petitioner made that are indicative of rehabilitation; (7) Is the Petitioner seeking restoration for a lawful purpose. After examining these factors, this Court finds that Petitioner has demonstrated good cause for this Court to restore his right to bear firearms.

Consequently, the Court shall by separate order grant Petitioner's Motion to reinstate his right to purchase and possess firearms, ammunition, and/or stun weapons.

BACKGROUND

Petitioner was convicted of two counts of Distribution of Cocaine in Fairfax Circuit Court on November 17, 1989. As such, he became a convicted felon and he was thus divested by operation of law of certain rights, including the ability to purchase, possess, and carry firearms, ammunition, and/or stun weapons. Petitioner subsequently sought, and did acquire by Executive Order of the Governor of Virginia, the restoration of the specific rights to vote, to hold public office, to serve on a jury, to be a notary public and to ship, transport, possess or receive firearms. See Va. Exec. Order (Aug. 15, 2016) (Pet. Ex. B). Petitioner has not been convicted of any felony offense since this granting of clemency to him.

ANALYSIS

This Court derives its authority to restore the right of a convicted felon to possess firearms and ammunition from Virginia Code Section § 18.2-308.2(C). In the relevant part, that section states:

Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides ... for a permit to possess or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. ... The court may, *in its discretion and for good cause shown*, grant such petition and issue a permit.

Va. Code § 18.2-308.2(C) (emphasis added). Petitioner is a resident of Fairfax County and his civil rights have been restored by the Governor through an August 15, 2016, Executive Order. Therefore, it is for this Court to decide whether good cause has been shown to restore Petitioner's right to possess firearms and ammunition. The "good cause shown" standard set forth in the enabling statute is neither statutorily defined nor laid out precisely in case law. This Court is mindful that reasonable judges could arrive in isolation at differing conclusions as to what "good cause shown" is when restoring the right to possess firearms to convicted felons. However, the Supreme Court of Virginia provides the following guide of interpretation which promotes uniformity in evaluation of a term that is defined only by the context to which it applies:

When . . . a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature's intent from the plain meaning of the language used." *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998) (citing *City of Virginia Beach v. Flippen*, 251 Va. 358, 362, 467 S.E.2d 471, 473-74 (1996); *Marsh v. City of Richmond*, 234 Va. 4, 11, 360 S.E.2d 163, 167 (1987)). An undefined term must be "given its ordinary meaning, given the context in which it is used." *Dep't of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980). "*The context may be examined by considering the other language used in the statute.*" *City of Virginia Beach v. Bd. of Supervisors of Mecklenburg County*, 246 Va. 233, 236-37, 435 S.E.2d 382, 384 (1993).

Sansom v. Bd. of Supervisors, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999)
(emphasis added).

The Virginia Constitution allows the Governor to individually restore political rights of convicted felons without judicial review. Va. Const. art. V, § 12. Restoration of rights to vote, to hold public office, to serve on a jury, to be a notary public, to someone who has paid his debt to society, do not constitute an inherent danger to public safety. In the case of restoration of gun rights, the General Assembly sought to make sure before placing a weapon in the hands of convicted felons whose civil rights have been restored, that by so doing, society is not placed at undue risk. Therefore, the General Assembly carved out restoration of the right to bear firearms for special scrutiny by the Judiciary. The Supreme Court of Virginia explained the distinction in the roles of the Governor and the Judiciary in the context of restoration of the right to bear firearms:

[T]he Governor is empowered to remove political disabilities, but not to restore all rights lost as a result of a felony conviction. The jurisdiction to restore firearm rights lost in in those circumstances is vested solely in the circuit courts. Strong policy considerations support that conclusion. *Statutory proceedings to consider restoration of firearm rights involve consideration of local concerns for public safety.* Such proceedings are not ex parte, but adversarial in nature. The Commonwealth's Attorney receives notice and has an opportunity to be heard and to present evidence which may only be available from local witnesses and records. *An impartial fact-finder is best situated to resolve conflicts that may arise in the evidence and arguments.*

Gallagher v. Commonwealth, 284 Va. 444, 452-53, 732 S.E.2d 22, 26 (2012) (emphasis added).

The intent of the General Assembly as to what constitutes "good cause" is evident from the distinction made between restoration of voting and gun rights. As the Supreme Court notes, the emphasis of the Circuit Courts in evaluation of restoration of the right to bear firearms is to be on "local concerns of public safety." *Id.* A convicted felon has demonstrated criminogenic thinking at one point in his or her life. The General Assembly

balanced restoration of the right to bear firearms with an evaluation of whether that risk of criminal thinking and even activity, continues. A quick search reveals the term “good cause shown” is used in almost 300 Virginia Code Sections, with little to no guidance given except for the context in which the term appears. Judges are thus no strangers to the proper application of such standard with reference to the relevant evidence to be applied that is at hand. The breadth of the standard thus allows judges, who are by training and experience well-equipped to consider the “good cause shown” standard in a variety of statutory settings, to apply those factors which appear relevant in the context of restoring someone’s right to possess a firearm. While judges are not clairvoyant or able to predict the future, they are daily called upon to assess and balance risk to the community in such decisions as whether to release someone from incarceration pending trial or in the sentences imposed on offenders. It is likely for this reason that the General Assembly entrusted the evaluation of risk in the gun rights restoration context to the Judiciary.

A different judge of this Court, in deciding another case, conceived of the following factors that may be considered as a framework to evaluate in a reasonable and logical way whether good cause has been shown to restore the right of a convicted felon to bear firearms:

- (1) The nature of the crimes for which the Petitioner stands convicted;
- (2) Whether the crimes involved the use of a firearm;
- (3) How long ago the crimes were committed;
- (4) Was the Petitioner punished for his misconduct;
- (5) Since his release from incarceration, has the Petitioner led a law-abiding life;
- (6) What efforts has the Petitioner made that are indicative of rehabilitation;
- (7) Is the Petitioner seeking restoration for a lawful purpose.

Final Order, *In re Ronald Jennings Rudolph*, CL-2017-3336 (Fairfax Cir. Ct. Apr. 24, 2017) (Bellows, J.).

This framework, in application, imparts one overarching governing principle, namely, that the person whose gun rights are to be restored must be determined to no longer constitute a threat to the community. The factors are not all mandatory, exclusive, or even considerations of which there must be inquiry at every hearing. They constitute, however, a prudent evaluative envelope within which a judge may exercise discretion in restoration of gun rights cases. The factors are astute inquiries with which a court can make its reasoned determination, and this Court now proceeds to adopt and apply them in turn in its analysis of the merits of the Petition in the instant case.

(1) *The nature of the crimes for which Petitioner stands convicted.*

The distribution of a controlled substance, namely cocaine, is a serious crime and this Court does not wish to minimize the significance of the offenses for which Petitioner was convicted. The nature of Petitioner's crimes is significant in that it necessarily involved distribution of a dangerous substance into the stream of illicit commerce with potential deleterious effects to public health. The Commonwealth argues Petitioner's offenses are distinguished from other less severe felonies because "they do involve and for Petitioner did involve the pursuit of money by preying on a third party to effectuate that goal." Response to Pet. for Restoration of Firearm Rights at 1. The Court notes, however, that Petitioner's offenses did not involve the alleged use of violence.

(2) *Whether the crimes involved the use of a firearm.*

No evidence was presented by either party to indicate that Petitioner's offenses involved the use of a firearm. The Commonwealth points out, "it is not unreasonable to

recognize that weapons have become ‘tools of the trade’ in illegal narcotics operations.” *United States v. Hinds*, 856 F.2d 438, 443 (1st Cir. 1988) (quoting *United States v. Cresta*, 825 F.2d 538, 554 (1st Cir. 1987); see also *United States v. White*, 875 F.2d 427, 433 (4th Cir. 1989). However, there is nothing in the current record to show that use of firearms formed part of Petitioner’s crimes, i.e., that they were “tools of *his* trade,” or that he otherwise ever used them in an illegal fashion.

(3) *How long ago were the crimes committed?*

The Petitioner’s last felony offense was committed in 1989, approximately twenty-nine years ago. “The passage of time, by itself, is of course no guarantee of rehabilitation. However, the passage of a substantial period of time, coupled with undisputed evidence of rehabilitation, is significant.” Final Order, *In re Ronald Jennings Rudolph*, CL-2017-3336 (Fairfax Cir. Ct. Apr. 24, 2017) (Bellows, J.).

(4) *Was the Petitioner punished for his misconduct?*

The Petitioner submitted to the Court his criminal record, which indicates a sentence of three years of active incarceration for his felony convictions. The record does not provide any more detail. Nevertheless, the sentence provided Petitioner the incentive not to return to illegal activity, a period of confinement to reflect about the course of action that placed him into such predicament, and was not of such a length as to suggest he was a major figure in the distribution of illegal substances.

(5) *Since his release from incarceration, has the Petitioner led a law-abiding life?*

Petitioner submits, and the Commonwealth concedes, that Petitioner has led a law-abiding life over the last twenty-nine years, with the exception of a speeding ticket in 2015. “Mr. McGregor certifies that he has not been convicted of any felony offense against

the United States, the Commonwealth of Virginia, or any political subdivision thereof since the granting of executive clemency to him.” Pet. ¶ 3. In its Response to Petitioner’s Petition, the Commonwealth agreed that “it appears that Petitioner has changed his life and is and has been for many years a good family man and successful individual and member of society...” Res. at 2. It is unclear what more this Court could demand from Petitioner in support of restoration of his right to bear firearms than the apparently worthy life he has led after conviction.¹

(6) What efforts has the Petitioner made that are indicative of rehabilitation?

In a variety of ways, the Petitioner has satisfied this Court that he is rehabilitated.

This includes the following:

- Petitioner has been employed at Midas for over twenty years and currently holds the position of mechanic. His job is by definition highly skilled and requires concentration of mind and coordinated dexterity. If Petitioner was consuming illegal substances as some distributors are wont to do, it is doubtful he would have been able to retain such a challenging job, or that such drug use would have gone undetected. His work also shows he has long supported himself and his family by lawful means, making it unlikely he is also engaged in ancillary criminal activity as a means of sustenance.
- The Petitioner’s rehabilitation is reflected in a series of letters provided to the Court:

¹ By this statement, the Court does not imply that the Commonwealth must agree to this or other petitions for restoration of the right to bear firearms. As noted by the Supreme Court of Virginia in *Gallagher*, the Constitution and applicable statutory scheme of Virginia envision the Circuit Courts have the duty to determine the merits of such petitions with an emphasis on “local concerns for public safety,” which responsibility this Court concludes it must carry out independent of concession or lack thereof by the Commonwealth. 284 Va. at 452-53, 732 S.E.2d at 26.

- **Katerina McGregor** writes: “I have known Dennis N. McGregor, Jr. for approximately 20 years. Over these past two decades, I have watched Dennis grow into a mature and responsible gentleman with one of the kindest demeanors anyone could possibly possess. Ever since I’ve known Dennis, he’s always made his family and work obligations his primary focus. Without hesitation, he dedicates his total efforts to both his job and his family. Needless to say, Dennis is well grounded and extremely humble. He realizes the importance of hard work and genuinely enjoys helping others.”
- **John Sherrill Jr.**, a former co-worker of Petitioner, writes: “Dennis is a smart auto mechanic and was very helpful to me many times. He achieved master tech status with A.S.E. which is the renowned certification for the auto repair industry and does regular testing every five years to continue renewing them and from the long history he has dating back to 1990 with them he has show [sic] commitment to this auto repair industry. While I have since moved on from working at Midas full time I do work part time there with Dennis currently as a safety inspector and emission inspector both of [sic] license that Mr. McGregor also currently has and are valid. I was very surprised when he explained to me what occurred thirty years ago I can attest that I don’t see any behavior of this nature from him at work or after work. He has only been a good friend and caring person and long time [sic] resident of this part of virginia [sic].”
- **Jeff Ploger** writes: “I am writing this letter to speak on behalf of Mr. mcgregor JR [sic]. I have known him for a couple years. He starts work daily

at 7:30 am until 7:00 pm and 7:30 am until 5:00pm on Saturday. This is very consistent schedule [sic] and usually amounts to approximately 53 hours each week. Dennis is usually the first one in and last one to leave most of the time. He is very generous with his time toward repairing customers vehicles and persists to get repairs done correctly the first time around in an industry with so much negativity towards auto repair facilities. Dennis appears to be a caring and responsible person during the time I have known him [sic] I have never seen any violent behavior or issues relating to that. We have some common hobbies and interest in older model cars restoring and repairing these this [sic] kind of cars also have huge following [sic] as well. Dennis has been a life long [sic] resident in the general area here for most all his life [sic] certainly way longer than I have known him.”

(7) *Is the Petitioner seeking restoration for a lawful purpose?*

The Petitioner seeks restoration of his right to possess firearms and ammunition for several reasons, each of which is legitimate. The Petition states the following: “Mr. McGregor certifies that he desires permission to possess and carry a firearm and ammunition for the purposes of hunting, self-defense inside and outside the home, firearms training, target-shooting, and any other lawful purpose.” He lawfully engaged in hunting and target-shooting activities with family before his conviction, so his restoration request is further grounded in a desired return to normalcy, including resumption of family social activities that preexisted his convictions.

This Court having applied the factors set forth in Final Order, *In re Ronald Jennings Rudolph*, CL-2017-3336 (Fairfax Cir. Ct. Apr. 24, 2017) (Bellows, J.) to the evidence in

this cause, finds that they militate in favor of restoration of Petitioner's right to bear firearms.

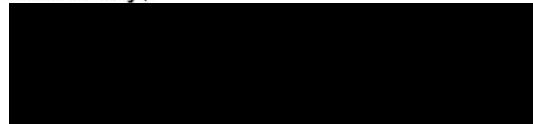
CONCLUSION

This Court has considered the Motion of Dennis Nicholas McGregor Jr. for the restoration of his right to purchase, possess, and carry firearms, ammunition, and/or stun weapons pursuant to Virginia Code § 18.2-308.2. The Petition implicitly raised the question as to what the General Assembly meant by the "good cause shown" standard for such restoration delineated in the enabling statute. Petitioner posited that what he must show is merely that he has returned to a normal uneventful and law-abiding life after incurring the felony convictions that caused him to lose his right to bear firearms. The Commonwealth, in turn, in opposing such restoration in this instance, responded that before such rights may be restored Petitioner should be required to show he has a post-conviction record of exemplary citizenship. Both parties thus stated factors which may be relevant to a determination of "good cause shown" but these assertions do not in and of themselves state the limiting principle to be applied. The discernible intent of the General Assembly is that convicted felons who have regained their civil rights by action of the Governor, have their gun rights restored by the Circuit Courts upon a showing they do not pose the risk of unlawful use of firearms. This Court holds that "good cause shown" in the context of restoration of gun rights simply means the risk that caused the offender to lose his or her right to bear firearms as informed by a factored analysis of the available evidence, no longer appears present.

As neither statute nor case law define precisely what constitutes “good cause” for a court to restore the right of a convicted felon to bear firearms after the Governor has first restored his or her civil rights, this Court evaluated whether Petitioner has demonstrated he meets the standard for restoration of his right to bear firearms by resorting to application of a non-exhaustive list of logical and reasoned factors to be considered, as first laid out in Final Order, *In re Ronald Jennings Rudolph*, CL-2017-3336 (Fairfax Cir. Ct. Apr. 24, 2017) (Bellows, J.): (1) The nature of the crimes for which the Petitioner stands convicted; (2) Whether the crimes involved the use of a firearm; (3) How long ago the crimes were committed; (4) Was the Petitioner punished for his misconduct; (5) Since his release from incarceration, has the Petitioner led a law-abiding life; (6) What efforts has the Petitioner made that are indicative of rehabilitation; (7) Is the Petitioner seeking restoration for a lawful purpose. After examining these factors, this Court finds that Petitioner has demonstrated good cause for this Court to restore his right to bear firearms.

Consequently, the Court shall by separate order grant Petitioner’s Motion to reinstate his right to purchase, possess, and carry firearms, ammunition, and/or stun weapons pursuant to Virginia Code § 18.2-308.2, and until such time THIS CAUSE CONTINUES.

Sincerely,

A solid black rectangular redaction box covering the signature of David Bernhard.

David Bernhard
Judge, Fairfax Circuit Court

OPINION LETTER