

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

IN RE: ROBERT J. HOLMES,

Applicant.

CASE NO.: 2016 CV 00835

JUDGE MARY WISEMAN

**DECISION, ORDER AND ENTRY
GRANTING APPLICATION FOR
RELIEF FROM STATUTORY
DISABILITY TO POSSESS A
FIREARM PURSUANT TO R.C.
2923.14**

FINAL APPEALABLE ORDER

This matter is before the Court on Applicant Robert J. Holmes's *Application for Relief from Statutory Disability to Possess a Firearm Pursuant to R.C. 2923.14* ["Application"], filed on February 15, 2016. On June 3, 2016, the State of Ohio filed a *Memorandum in Opposition to Plaintiff's Application for Relief from Weapons Disability* ["Memo Opp."]. In accordance with R.C. § 2923.14(D), the Court held a hearing on such application on June 24, 2016.

For the reasons that follow, Mr. Holmes's *Application for Relief from Statutory Disability to Possess a Firearm Pursuant to R.C. 2923.14* is GRANTED.

FACTUAL & PROCEDURAL BACKGROUND/THE PARTIES' CLAIMS

Applicant Robert J. Holmes previously was convicted in this Court of burglary, a felony offense. See *State v. Holmes*, Mont. County Common Pleas No. 1995 CR 543. On March 26,

1997, Mr. Holmes successfully completed all conditions of his term of probation. See *id.* (3/26/17 *Termination of Probation (Complete)*); (see also *Application*, Exh. A).

Mr. Holmes now applies pursuant to R.C. § 2923.14 for relief from the weapons disability arising from his burglary conviction. (*Application*). In support of his application, Mr. Holmes avers that he has led a law-abiding life throughout the nearly 20 years since his conviction; that he is married and the father of two children; that he has completed a college degree; and that he is gainfully employed and spends his non-working hours with his family. (*Id.*, p. 2). His sworn testimony during the hearing on his application affirmed those averments. (See *Record* of 6/24/16 hearing).

The State's opposing memorandum counters that Mr. Holmes "has in fact not led a law-abiding life," having "been convicted of numerous traffic violations" since his burglary conviction. (*Memo Opp.*, p. 2). Further urging that the Court possesses discretion to deny an application for relief from a weapons disability even when the statutory criteria for relief are satisfied (*id.*, pp. 2-3), the State asks that Mr. Holmes's application be denied. (*Id.*, p. 4).

LAW & ANALYSIS

Law re Weapons Disability due to Criminal Conviction

The version of R.C. § 2901.01 in effect at the time of Mr. Holmes's conviction included burglary among the violations defined as offenses of violence. See *State v. Berry*, 10th Dist. Nos. 97AP-964, 98AP-256, 1999 Ohio App. LEXIS 2983, at *42-*43 (Jun. 29, 1999). Pursuant to R.C. § 2923.13(A)(2), an individual who has been convicted of a felony offense of violence is legally ineligible to acquire, have, carry or use any firearm, "[u]nless relieved from disability under operation of law or legal process."

R.C. § 2923.14 provides one means by which a person may be relieved from a statutory weapons disability. Entitled "Relief from disability," R.C. § 2923.14 states as follows, in its entirety:

(A) Any person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.

(B) The application shall recite the following:

(1) All indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and any release granted under a community control sanction, post-release control sanction, or parole, any partial or conditional pardon granted, or other disposition of each case, or, if the disability is based upon a factor other than an indictment, a conviction, or an adjudication, the factor upon which the disability is based and all details related to that factor;

(2) Facts showing the applicant to be a fit subject for relief under this section.

(C) A copy of the application shall be served on the county prosecutor. The county prosecutor shall cause the matter to be investigated and shall raise before the court any objections to granting relief that the investigation reveals.

(D) Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

(1) One of the following applies:

(a) If the disability is based upon an indictment, a conviction, or an adjudication, the applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, if the applicant is under indictment, has been released on bail or recognizance.

(b) If the disability is based upon a factor other than an indictment, a conviction, or an adjudication, that factor no longer is applicable to the applicant.

(2) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.

(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

(E) Costs of the proceeding shall be charged as in other civil cases, and taxed to the applicant.

(F) Relief from disability granted pursuant to this section restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, and is subject to the following conditions:

(1) Applies only with respect to indictments, convictions, or adjudications, or to the other factor, recited in the application as the basis for the applicant's disability;

(2) Applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant;

(3) May be revoked by the court at any time for good cause shown and upon notice to the applicant;

(4) Is automatically void upon commission by the applicant of any offense set forth in division (A)(2) or (3) of section 2923.13 of the Revised Code, or upon the applicant's becoming one of the class of persons named in division (A)(1), (4), or (5) of that section.

(G) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(2) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

The language of this statute provides an unambiguous mechanism for an applicant to obtain relief from a prohibition on carrying any firearm. *In re Mullins*, 3rd Dist. No. 9-14-43, 2015-Ohio-2743, ¶15. Multiple Ohio appellate courts have concluded that a trial court must hold a hearing on an application made under Section 2923.14 in order to allow both sides (*i.e.*, the applicant and the State) an opportunity to present evidence relevant to the facts enunciated in the statute. See *State v. Brown*, 8th Dist. No. 94213, 2010-Ohio-2360, ¶14; *State v. Hairston*, 8th Dist. No. 92716, 2009-Ohio-3382, ¶16; *In re Hensley*, 154 Ohio App. 3d 210, 2003-Ohio-4619, ¶41, 796 N.E.2d 973 (12th Dist.); *State v. Robson*, 5th Dist. No. 97-CA-17, 1997 Ohio App. LEXIS 3262, at *3-*4 (Jun. 19, 1997); *State v. Jomaa*, 6th Dist. No. L-90-026, 1990 Ohio App. LEXIS 5213, at *3 (Nov. 30, 1990). Indeed, some courts have held that a trial court may err by ruling on such an application without

first conducting a hearing. See *Brown, supra*, ¶¶15-16; *State v. Stotler*, 5th Dist. No. 09-CA-17, 2010-Ohio-2274, ¶18; *Hairston, supra*, ¶18.

Although the statute “merely permits, but does not require,” a trial court to grant the requested relief when an applicant has presented evidence as outlined in R.C. § 2923.14(D), see *State v. Brown*, 8th Dist. No. 96615, 2011-Ohio-5676, ¶¶21-23 (affirming trial court’s finding that applicant unfit for relief due to nature and extent of prior criminal activity); *In re Relief from Disability of Mercer*, 10th Dist. No. 01AP-520, 2001-Ohio-4078, 2001 Ohio App. LEXIS 4814, at **2, 5, 7-8 (10th Dist. Oct. 30, 2001) (affirming trial court’s grant of only partial relief, excluding relief to carry handguns, due to applicant’s felony drug convictions); *State v. Morgan*, 2nd Dist. No. 3083, 1994 Ohio App. LEXIS 1164, at *7, *10 (March 23, 1994) (affirming denial of relief as “premature” where applicant had been law abiding for less than two years since final release from parole), a court may abuse its discretion by denying an applicant’s request for relief from weapons disability where neither the record shows nor the trial court states any reason for such denial. See *In re Childress*, 8th Dist. No. 103043, 2016-Ohio-814, ¶¶19-20, 23; *State v. Dozanti*, 8th Dist. No. 102158, 2015-Ohio-2276, ¶10.

Mr. Holmes’s Application for Relief from Disability

At the evidentiary hearing conducted on June 24, 2016, Mr. Holmes credibly testified that he successfully completed the sanctions imposed upon him from the 1995 offense. He has since furthered his education and engaged in a productive and law-abiding life. He appears likely to continue as a model citizen. He bears no other disability for the possession of firearms. Upon the evidence, comports with the statutory requirements, Defendant’s application will be granted.

CONCLUSION

For the foregoing reasons, Applicant Robert J. Holmes’s *Application for Relief from Statutory Disability to Possess a Firearm Pursuant to R.C. 2923.14* hereby is GRANTED, and his statutory disability from possessing a firearm hereby is TERMINATED.

THIS IS A FINAL APPEALABLE ORDER UNDER CIV.R. 58. PURSUANT TO APP.R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE MARY WISEMAN

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General Division
Montgomery County Common Pleas Court
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Type: Decision
Case Number: 2016 CV 00835
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So Ordered

May Wiseman