

A10-430

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State of Minnesota
In Court of Appeals

James Michael Averbeck,

Appellant-Petitioner,

v.

State of Minnesota and
Robert Fletcher, Sheriff of Ramsey County,

Respondent-Respondent.

**APPELLANT'S BRIEF
AND APPENDIX.**

Adkins & Anderson, Chartered
Kirk M. Anderson (#338175)
1050 Flour Exchange Building
310 Fourth Avenue South
Minneapolis, MN 55415
(612) 355-2787

Attorneys for Appellant

Ramsey County Attorney
Susan Gaertner (#123882)
50 West Kellogg Blvd., Suite 315
St. Paul, MN 55102
(651) 266-3083

Minnesota Attorney General
Lori Swanson (#254812)
1400 Bremer Tower
445 Minnesota St.
St. Paul, MN 55101
(651) 296-3353

Attorneys for Respondent

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LEGAL ISSUES ON APPEAL

- I. Whether the District Court Abused its Discretion in Denying Appellant's Petition for Restoration of his Right to Possess a Firearm?**

The district court held: Appellant's Petition to Restore his Right to Possess a Firearm is Denied.

STATEMENT OF THE CASE

This is an appeal from the denial of Appellant James Michael Averbeck's ("Appellant"), Petition for the Restoration of his Right to Possess Firearms by the Honorable John B. Van de North, Jr., Judge of Second Judicial District.

On or about September 18, 2009, Appellant served and filed a petition to restore his right to possess firearms, pursuant to Minn.Stat. § 609.165, subd. 1(d). On December 9, 2009, an evidentiary hearing was held before the Honorable John B. Van de North, Jr., Judge of Second Judicial District. Following this hearing, the parties submitted written final arguments.

In an Order dated January 8, 2010, the district court denied Appellant's petition. Judgment was entered on January 12, 2010. [Order Denying Petition for Restoration of the Right of Possess a Firearm; App's Appdx. at A-1 ("Order")]. This appeal follows.

STATEMENT OF THE FACTS

On February 3, 1991, Appellant was arrested, and eventually charged with Third Degree Assault for an incident that occurred in Mounds View, MN. The allegation was that Appellant punched the 'victim' during a bar fight and broke his nose. The incident did not involve a firearm or a weapon of any kind. [Transcript dated December 9, 2009 at p. 15 (Averbeck)]. Appellant pled not guilty to the charge and the matter proceeded to trial. [Transcript dated December 9, 2009 at p. 15 (Averbeck)].

Following a jury trial held before the Honorable John DeCoursey, Appellant was found guilty of Third Degree Assault. On November 21, 1991, Appellant was sentenced as follows: Stay of Imposition of Sentence with five (5) years probation, standard conditions were imposed. [Court Summary from Ramsey County Court File No. 91-45, Exhibit 4; App's Appdx. at A-7].

At the time Appellant was sentenced, he was subject to a ten-year prohibition from possessing firearms. Minn.Stat. § 609.165, subd. 1(a) (1994). However, prior to Appellant being discharged from probation, the Minnesota Legislature enacted Minn.Stat. § 624.713, subd. 1(11), which states that any person who has been convicted of a 'crime of violence' and who was discharged from sentence or court supervision after August 1, 1993, is subject to a lifetime ban from possessing or receiving firearms.

On July 25, 1994, which was more than two (2) years prior to the date his probation was scheduled to expire, Appellant was discharged from probation. While he was on probation, Appellant did not have any allegations of a probation violation. [Exhibit 4; App's Appdx. at A-7].

Appellant has absolutely no criminal history prior to or after the 1991 incident occurred. [Transcript dated December 9, 2009 at p. 14 (Averbeck)]. Since Appellant received a Stay of Imposition of sentence, and since he was successfully discharged from probation, Appellant's conviction is now deemed a misdemeanor. Thus, the only reason that Appellant's ability to possess or receive firearms is because Assault in the Third Degree is considered a 'crime of violence.'

In August 2009, pursuant to Minn.Stat. § 609.165, subd. 1d, Appellant initiated this action to restore his right to possess and receive firearms. On December 9, 2009, this matter was heard before the Honorable James B. Van De North.

During the hearing, the Court heard testimony from Appellant and Mr. Steve Cobb, a former police officer and U.S. Marshall, in support of the Petition. Prior to his conviction in 1991, Appellant had a long history of use with firearms for recreational purposes. Appellant never had any issues whatsoever with firearms during this time, and he has been prohibited from conducting these activities for several years. [Transcript dated December 9, 2009 at p. 16-17, 20 (Averbeck)].

Additionally, and perhaps most importantly, Appellant has future plans for employment purposes that will require that he have the ability to possess – although not required to carry – a firearm in order to qualify for those jobs. [Transcript dated December 9, 2009 at p. 18-20 (Averbeck)]. As stated at the hearing, Appellant has performed part-time work as a process server, and desires to obtain his license as a private investigator, but cannot do so if he is prohibited from obtaining a firearm. [Transcript dated December 9, 2009 at p. 19-20 (Averbeck)]. Certainly, Appellant's inability to pursue his career aspirations would constitute 'good cause.'

Finally, Appellant and Mr. Steven Cobb testified at the hearing about Appellant's desires and his trustworthiness. Both individuals testified that

Appellant does not have problems with alcohol, drugs, or anger management. [Transcript dated December 9, 2009 at p. 16 (Averbeck)].

Following the hearing, the parties submitted final written arguments, and the district court took the matter under advisement. The parties do not dispute that Appellant was no longer in custody, probation or supervised release at the time of the hearing, thus, the only issue for the district court to determine was whether or not Appellant had shown 'good cause' to have his firearm rights restored.

In an Order dated January 12, 2010, the district court denied Appellant's petition. In doing so, the district court interpreted 'good cause' in a more restrictive manner than does a petition for expungement. [Order at p. 4 n. 2; App's Appdx. at A-4]. The district court stated that this petition is analogous to a petition for expungement, which requires 'clear and convincing' evidence that shows the expungement would yield a benefit to the petitioner commensurate with the advantages to public safety. [Order at p. 3-4; App's Appdx. at A-3-4].

In applying this standard, the district court denied Appellant's petition. This appeal follows.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S PETITION FOR RESTORATION OF HIS RIGHT TO POSSESS FIREARMS BECAUSE IT ERRED AS A MATTER OF LAW WHEN IT INTERPRETED 'GOOD CAUSE' AS IT RELATES TO MINN.STAT. § 609.165, SUBD. 1(D).

A. Standard of Review.

The interpretation of a statute is a question of law which this Court reviews de novo. Reider v. Anoka-Hennepin Sch. Dist. No. 11, 728 N.W.2d 246, 249 (Minn. 2007).

B. Applicable Law.

Minn.Stat. § 624.713, subd. 1(2), states that a person who have been convicted of a 'crime of violence' is forever barred from possessing, receiving, shipping, or transporting a firearm. Minn.Stat. § 624.712, subd. 5, includes Third Degree Assault as a crime of violence.

Minn.Stat. § 624.713, subd. 1(11), states that this lifetime prohibition applies to those who were discharged from sentence or court supervision after August 1, 1993. Minn.Stat. § 609.165, subd. 1d, states that a person who is prohibited from possessing a firearm for committing a crime of violence may have that right restored if an offender can show (1) 'good cause' for restoring the right, and (2) if the person has been released from prison. Minn.Stat. § 609.165, does not define 'good cause.'

C. Analysis.

In this case, the only issue for the district court to determine was whether or not Appellant had shown 'good cause' for having his firearm rights restored. Minn.Stat. § 609.165, subd. 1(d). Unfortunately for the parties, and for the district court, the Minnesota Legislature did not define 'good cause' in this context. The parties were not able to locate any Minnesota case law interpreting 'good cause.'

The parties agreed that the term 'good cause' gives a district court a great amount of discretion in determining whether or not a person seeking to have his firearm rights restored has satisfied their burden. However, in making the determination in this case, the district court went far beyond the clear language of the statute, and made its own interpretation of 'good cause.' This was in error. See ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412, 419 (Minn. 2005) ("The touchstone for statutory interpretation is the plain meaning of a statute's language."); see also Minn.Stat. § 645.08(1) (words are construed according to their common usage).

The district court determined that this petition was similar to that of an expungement petition. [Order at p. 3-4; App's Appdx. at A-3-4]. Minn.Stat. § 609A.03, subd. 5, states that an:

expungement of a criminal record is an *extraordinary* remedy to be granted *only* upon *clear and convincing* evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety.

(emphasis added). The district court went on to say in a footnote that it seemed appropriate to apply a more 'strict' approach to balancing private versus public interests in determining whether or not 'good cause' had been shown. [Order at p. 4 n. 2; App's Appdx. at A-4].

In applying this standard, the district court determined that Appellant did not show 'good cause' for having his firearm restriction lifted. [Order at p. 4; App's Appdx. at A-4]. The problem with the district court's determination is that it applied a very restrictive standard that is not called for in the statute.

The expungement statute specifically states that a 'clear and convincing' standard must be met. 'Clear and convincing' does not appear anywhere in Minn.Stat. § 609.165, subd. 1(d). The district court's interpretation of the statute involved in this case was in error and this Court should define 'good cause' in this context, and remand to the district court for further consideration.

Appellant takes the position that if the legislature was intending for such a strict interpretation of 'good cause' that it would have explicitly said so in the statute, like it did in the expungement statute. However, since the legislature specifically did not include that language, it is reasonable to infer that the legislature did not intend such a restrictive approach.

Moreover, the private versus public benefit analysis that is applicable to an expungement petition is also irrelevant to this context. Again, the expungement statute specifically states that the district court must analyze benefits to the petitioner along with the disadvantage to the public. This language is absent from

Minn.Stat. § 609.165, subd. 1(d), yet the district court applied it to this matter. This was an abuse of discretion.

The district court's interpretation of 'good cause' had absolutely no basis in law or fact. The district court decided on its own that the legislature must have wanted this relief to be granted only in extraordinary contexts. However, if that were the case, then the legislature should have included that language when it enacted Minn.Stat. § 609.165, subd. 1(d).

Appellant concedes that the phrase 'good cause' appears to grant a significant amount of discretion to a district court. However, this Court has long held that a district court abuses its discretion when it misinterprets or misapplies the law. See State v. Jedlicka, 747 N.W.2d 580, 582 (Minn.Ct.App. 2008). Applying a different standard than the one articulated by a statute, as the district court did in this case, is a misinterpretation and a misapplication of the law.

Assuming the district court's interpretation of 'good cause' was proper, it seems impossible that any individual could have their firearm rights restored. Such an interpretation cannot be constitutional as it essentially renders the statute moot. If the legislature wanted individuals convicted of crimes of violence to be forever banned from possessing or receiving a firearm, it never would have enacted this statute.

In this case, other than the underlying conviction that lead to Appellant's firearm ban, Appellant has absolutely no criminal history of any kind; the incident occurred more than eighteen (18) years ago; the incident did not involve a firearm;

Appellant successfully completed probation; prior to his conviction, Appellant had a long history of use with firearms for recreational purposes; Appellant has future plans for employment purposes that will require that he have the ability to possess firearms; and Appellant has never had any issues with alcohol, drugs or anger management.

Any one of the reasons standing on their own may not constitute 'good cause.' However, when looking at all of the above, it is difficult to understand how Appellant did not show 'good cause' for having his firearm restriction lifted. For these reasons, the district court abused its discretion in denying Appellant his petition to restore his firearm rights.

D. Conclusion.

For the reasons stated above, the district court erred as a matter of law in using the expungement standard for defining 'good cause' as it relates to Minn.Stat. § 609.165, subd. 1(d), and the district court's order should be reversed and remanded for further consideration.

CONCLUSION

For the reasons stated above, Appellant requests this Court reverse and remand back to the district court.

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Adkins & Anderson, Chartered



Kirk M. Anderson (#338175)
1050 Flour Exchange Building
310 Fourth Avenue South
Minneapolis, MN 55415
(612) 355-2787