

No. A10-430

State of Minnesota
In Court of Appeals

James Michael Averbeck,

Appellant-Petitioner,

vs.

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

Respondent-Respondent.

**Respondent Robert Fletcher, Sheriff of Ramsey County's
Appellate Brief**

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LEGAL ISSUES ON APPEAL

1. Whether the District Court Abused its Discretion when Denying the Appellant's Petition for Restoration of his Right to Possess Firearms?

The District Court held that the Appellant had not established "good cause" to have his right to possess restored by either a clear and convincing standard or a preponderance standard of the evidence.

Standard of Review for a mixed question of law and fact is abuse of discretion.

Apposite Authority

Minn. R. Civ. P. Rule 52.01.

Hagen v. Schirmers, No. A09-743, 2010 WL 2265578 (Minn. Ct. App. June 8, 2010).

State v. Moon, 463 N.W.2d 517, 520 (Minn. 1990).

Thompson v. Thompson, 739 N.W.2d 424 (Minn. Ct. App. 2007).

2. Whether the District Court Followed the Clear and Plain Language of the Statute when Applying its Interpretation of "Good Cause" to the Facts.

The District Court held that the lack of definition for "good cause" in Minn. Stat. § 609.165 gave it broad discretion for determining if "good cause" exists.

Statutory interpretation is a question of law, and is reviewed de novo.

Apposite Authority:

BLACK'S LAW DICTIONARY (8th ed. 2004).

State v. Hicks, 583 N.W.2d 757 (Minn. Ct. App. 1998).

State v. Jesmer, 196 N.W.2d 924 (Minn. 1972).

State v. Moon, 463 N.W.2d 517 (Minn. 1990).

STATEMENT OF THE CASE

This is an appeal from a district court order denying the Appellant's Petition for the Restoration of his Right to Possess Firearms. On December 9, 2009, an evidentiary hearing was held before the Honorable John B. Van de North Jr., Judge of the Second Judicial District. On January 8, 2010, Judge Van de North issued an Order denying the Appellant's petition. In the Memorandum accompanying his Order, Judge Van de North found that the Appellant had not established "good cause" for the restoration of his right to possess, as required by Minn. Stat. § 609.165, subd. 1(d) (2010).

STATEMENT OF THE FACTS

At the December 9, 2009 evidentiary hearing, Appellant offered the testimony of himself and his friend, Steve D. Cobb, in an attempt to establish "good cause" for his petition to restore his right to possess firearms.

During his own testimony, Appellant admitted to being convicted, by a jury, for Assault in the Third Degree in 1991. (Hearing Transcript, dated December 9, 2009, [hereinafter "Tr."] at 14-15.) However, when questioned further about this incident, the following line of questioning occurred on Cross Examination:

Q: Now, you're aware, sir, that the witness statements, when you were arrested in 1991, describe you as having sucker punched the victim in the face. Do you recall that?

A: I don't recall that statement, no.

Q: Did you sucker punch the man you hit in the face?

A: No, I did not.

* * *

Q: Had you been drinking that night?

A: No, I had not.

Q: But you hit a man in the face?

A: I was alleged to have hit him, yes.

Q: Well, then you were found guilty of that by a jury of your peers, is that right?

A: That's right.

Q: Do you still deny that you hit the man in the face?

A: Not on purpose.

Q: You accidentally hit him so hard that you broke his nose?

A: That's what he claimed.

* * *

Q: Did the victim testify in court?

A: Yes, he did.

Q: You were there to hear it, right?

A: That's correct.

Q: Do you recall him saying that you sucker punched him?

A: I don't recall that.

Q: Do you recall seeing evidence that his nose was badly swollen and very crooked, obviously broken?

A: I seen a picture.

Q: And you did hit him in the face, right?

A: No, I did not.

Q: So you continue to deny that?

A: I did not do that.

Q: You did not do what.

A: I did not hit him in the face.

Q: So you were wrongly convicted, is that what I should understand?

A: I went through the process. The jury found me guilty.

(Tr. at 42-44.)

Appellant testified that he used to hunt, trap shoot and target shoot with a firearm before his 1991 felony assault conviction rendered him ineligible to possess firearms, and he testified that he would like to be able to do those activities again. (Tr. at 17-19.)

Appellant also claimed that, in the past, his ineligibility to possess firearms prevented him from taking a job as a conservation officer. (Tr. at 18.) However, Appellant never testified that he actually intended to pursue that type of job in the future. (Tr. at 18-19.) Instead, Appellant testified that he currently works full-time as a truck driver, where he earns \$20 per hour and normally works 60 hours per week. (Tr. at 40-41.) He also testified that he works part-time as a process server, normally serving process six times a month, and earning \$40 per service. (Tr. at 38-39.) On Direct Examination, Appellant testified that he wished he had a firearm while serving papers “[e]very time I go”, which prompted the following line of questioning:

Q: And has there been any specific incidents that you’ve run into?

A: Oh, yes.

Q: Like what?

A: People shooting at ya. There was an incident where a guy had a gun in his back pocket and we had to call the Blaine cops. He was threatening us with it.

(Tr. at 19.) Appellant never testified that he had actually been shot at while serving process. (Tr. at 19-20, 48-50.) He also explained that, in the Blaine incident, after he saw that a person had a firearm, he obtained the assistance of the Blaine Police Department to effectuate service. (Tr. at 48 – 50.)

Appellant also testified on Direct Examination about his purported interest in becoming a private investigator:

Q: And are you currently – or have you been trying to get your investigator's license?

A: Yes.

Q: Is there any restrictions with that?

A: Not having a firearm.

Q: Okay. If you were to obtain your license – even if you were to obtain your license, without having a firearm or if you could, do you think you'd even consider being an investigator without having the ability to have a gun?

A: That would be tough. It's – it's hard. Your safety is on the line when you go out there and try talking to people and dealing with that. I – I still want to do it, but it would be dangerous without a gun.

(Tr. at 20.)

On Cross Examination, Appellant admitted that he had not yet filled out an application for a private investigative license and did not have a written business plan for

working as a private investigator. (Tr. at 35-37.) Later, on Cross Examination, the following line of questioning occurred:

Q: Just so I'm sure I understand, Mr. Averbeck, will you tell me how you're showing good cause to the Judge today to lift the restriction?

A: I want to continue my – my hunting. I'd like to retire so I can have my own legal business as an investigator and to pursue the things that I enjoy to do and to be able to go back to league shooting and – and to do things with my family.

Q: And you have not hunted in 18 years, right?

A: That's correct.

Q: And the soonest you would pursue actively working as a private investigator is at least two years from now?

A: A year and a half.

Q: And as a process server you average about \$240 a month gross doing that part time, right?

A: Correct.

(Tr. at 48.)

Appellant then called Steve D. Cobb, a retired police officer and United States Marshall, to testify on his behalf. Mr. Cobb testified that he has known the Appellant for 15 years and vouched for the Appellant's general character. (Tr. at 56-59.) Cobb also testified that, based on his understanding of the law, in order to obtain a private investigator license, the Appellant would have had to get his assault conviction expunged or removed in some way. (Tr. at 59.)

Neither Cobb nor the Appellant offered any direct testimony that Appellant's inability to possess firearms was an actual legal impediment to becoming a private

investigator. Nor did either of them offer any testimony to show that, but for his inability to possess, the Appellant was certain to become a private investigator.

In fact, when Judge Van de North asked Mr. Cobb some questions for clarification, the following dialogue ensued:

Q: From your experience as a police officer in the past and from at least exploring the idea of becoming a private investigator, do you think it would be good policy and a good decision for me frankly to allow [the Appellant] to have a firearm as a process server? Do you think process servers need guns, generally speaking?

A: Not generally speaking, no sir. There are some very big concerns about it...As far as absolutely necessary, I don't think its ever necessary, in my opinion, to go armed in every situation.

(Tr. at 74) (emphasis added).

Following the evidentiary hearing, the parties submitted final written arguments addressing whether the Appellant had shown “good cause” to have his ability to possess firearms restored. In an order dated January 12, 2010, the district court denied Appellant’s petition. In the memorandum accompanying this order, Judge Van De North wrote:

The pivotal inquiry in the present case is whether [Appellant], through testimony and argument of counsel, has established “good cause” for restoration of his right to possess firearms. The Court and the parties have noted that there is no statutory or judicially defined standard for determining when “good cause” exists under the facts of a particular case. The Court has broad discretion in making such a determination.

A somewhat analogous situation confronts the Court when asked to expunge a criminal record pursuant to Minn. Stat. § 609A.03, subd. 5. Under that statute, expungement is deemed an extraordinary remedy to be granted only upon clear and convincing evidence that the requested relief would yield a benefit to the petitioner commensurate with the advantages to the public and public safety. Accordingly, it seems reasonable that

determining good cause for granting the relief requested by [Appellant] would also involve the balancing of the interests: the harm caused to him by the continued restriction of his rights to possess firearms when weighed against issues of public safety...

With the above analysis and statutory framework in mind, the Court concludes that [the Appellant] has not established good cause for the removal of his lifetime firearm prohibition on the record in the present case. This is the case regardless of whether a “preponderance” or “clear and convincing” burden is imposed...

(Memorandum Accompanying District Court Order [hereinafter “Order”] at 4; App.’s Appdx. at A-3-A-4) (emphasis added).

In a footnote, Judge Van De North noted:

[I]t would appear reasonable that a more strict approach to balancing private versus public interests should apply in determining good cause to remove a lifetime firearm restriction than applies to the expungement of criminal records.

(Order at 4 n.2; App.’s Appdx. at A-4.) However, on this page of the Memorandum, this footnote appears on the page below the sentence that begins: “[W]ith the above analysis and statutory framework in mind...” (Order at 4 n.2; App.’s Appdx. at A-4.)

In its Memorandum, the district court explained its analysis to the various facts and arguments proffered by the Appellant for establishing “good cause.” In response to the Appellant’s argument that his conviction was an isolated incident, which occurred many years ago, the district court concluded that the Appellant’s felony assault conviction involved “at the very least, a display of extremely poor judgment and violence by [the Appellant] when he was a grown man.” (Order at 4; App.’s Appdx. at A-4.) The district court also found that the Appellant’s testimony demonstrated that the Appellant’s “professional and personal life continue[s] to put him in emotionally charged situations in

which the present of firearms could escalate risk in already dangerous circumstances.”

(Order at 5; App.’s Appdx. at A-5.) The district court also noted:

[Appellant’s] lack of remorse and qualified acceptance of the jury verdict in his assault case is troubling. At the December 9 hearing, he continued to question whether he was properly charged and convicted, despite the fact that no appeal apparently was ever taken from the jury verdict.

(Order at 4 n.3; App.’s Appdx. at A-4.)

The district court then addressed the Appellant’s argument that involved “generalized testimony suggesting [the Appellant’s] gun possession prohibition may interfere with prospective employment opportunities[.]” (Order at 5; App.’s Appdx. at A-5) (emphasis added). The district court concluded that “the testimony on this issue was not corroborated by a neutral source and lacked sufficient specificity to be probative.” (Order at 5; App.’s Appdx. at A-5.)

Lastly, the district court addressed the Appellant’s argument regarding his interest in hunting, concluding:

[W]hen public safety concerns are weighed against the private interest of [the Appellant] in pursuing an enjoyable pastime, the Court must come down on the side of public safety...the Court needs a significant level of comfort with respect to the maturity of judgment in those seeking a restoration of firearm rights. The Court does not have that level of comfort in this case.

(Order at 5; App.’s Appdx. at A-5.)

CLARIFICATION OF THE LEGAL ISSUES.

Minn. Stat. § 624.713, subd. 1(2) (2010) provides, in pertinent part, that any person convicted of a “crime of violence” is forever barred from possessing, receiving, shipping or transporting a firearm. Assault in the Third Degree is a “crime of violence.”

Minn. Stat. § 624.712, subd. 1(5) (2010). Appellant does not dispute that his assault conviction renders him ineligible to possess firearms for his lifetime. (App.'s Brief at 2.)

Pursuant to Minn. Stat. § 609.165, subd. 1d, a person who is ineligible to possess a firearm because of a prior conviction for a "crime of violence" may petition to have that right restored. A district court may grant a petition if the offender can show "good cause" for restoring that right and that he has been released from prison. "Good cause" is not defined in section 609.165 and it is undisputed that the Appellant had been released from prison prior to the evidentiary hearing.

In this appeal, the Appellant contends that, in determining that he had not established "good cause" for his petition, "the district court went far beyond the clear language of the statute, and made its own interpretation of 'good cause.' This was error." (App. Brief at 6.)

Appellant argues, in the heading of his brief, that the district court abused its discretion in deciding that "good cause" was not established. (App. Brief at 5.) However, portions of the Appellant's brief also may suggest that the district court erred in its statutory interpretation of "good cause." Appellant's memorandum never specifically avers that "good cause" is an ambiguous term that needs to be interpreted by this Court. Rather,

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.

(App. Brief at 7) (emphasis added).

Ostensibly, the Appellant's brief confuses two separate issues and fuses them into one argument. The issue of whether the district court abused its discretion in applying facts to law is wholly separate, and has a different standard of review, than the issue of statutory interpretation of "good cause."

ARGUMENT

The Respondent will respond to the Appellant's brief first by demonstrating that the district court did not commit an abuse of discretion in applying the facts to an undefined standard of "good cause," and determining that the Appellant had not met that standard. Second, although the Appellant's brief failed to aver that "good cause" is ambiguous, the Respondent will demonstrate that the term "good cause" is not ambiguous, so the district court did not commit any error in applying the facts to either a clear and convincing or preponderance of evidence standard. Third, the Respondent will demonstrate that, even if the term "good cause" is ambiguous, the district court's interpretation of "good cause" followed the clear intent of the legislature.

The Respondent will defer to this Court's judgment as to whether the Appellant can argue about the ambiguity of the "good cause" clause after he failed to specifically mention "ambiguity", or any derivative thereof, in his entire brief. *See In re Application of Olson*, 648 N.W.2d 226, 228 (Minn. 2002) (Supreme Court of Minnesota held: "It is axiomatic that issues not 'argued' in the briefs are deemed waived on appeal[.]").

I. THE DISTRICT COURT DID NOT ABUSE ITS BROAD DESCRETION BECAUSE THE ORDER WAS WELL-REASONED, SUPPORTED BY THE FACTS, AND NOT A CLEAR ERROR.

A. Standard of Review

To date, this Court has not published a review of a district court's decision to deny a petition for restoration of civil rights under section 609.165, subd. 1d. However,

[i]n all actions tried upon the facts without a jury...the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment...Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

Minn. R. Civ. P. Rule 52.01 (emphasis added). In other words, when reviewing mixed questions of law and fact, this Court may correct erroneous applications of law, but must also accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard. *Langford Tool & Drill Co. v. Phenix Biocomposites*, 668 N.W.2d 438, 444 (Minn. Ct. App. 2003) (finding that a district court did not abuse its discretion in determining that a project had been "abandoned").

In this case, the district court concluded that the Appellant "ha[d] not established good cause for the removal of his lifetime firearm prohibition on the record in the present case." (Order at 4; App.'s Appdx. at A-4) (emphasis added). Appellant suggests, in his brief, that this Court should review for an abuse of discretion, and the Respondent concurs. The district court's denial of the Appellant's Petition for Restoration of the Right to Possess Firearms, on the grounds that the "good cause" was not established on the record, presents a mixed a mixed question of law and fact. Pursuant to Rule 52.01,

this Court must review the district court's decision for an abuse of discretion, but must also give due regard to the district court's judgment about the credibility of the witnesses and may only reverse if the decision to deny the petition was clearly erroneous.

The Appellant conceded both at the district court hearing, and in his brief on this appeal, that "the phrase 'good cause' appears to grant a significant amount of discretion to the district court." (App. Brief at 8.) The district court also concluded that it had "broad discretion" in determining if "good cause" exists under the facts of this case. (Order at 3; App.'s Appdx. at A-3.)

This Court has reviewed other district court orders for an abuse of discretion where those district courts had broad discretion. For example, this Court has held that "[a] district court abuses [its] discretion by making findings unsupported by the evidence or improperly applying the law[,] but not if "the district court analyzed each factor and there is reasonable support for its findings." *Hagen v. Schirmers*, No. A09-743, 2010 WL 2265578, at *2 (Minn. Ct. App. June 8, 2010) (citations omitted) (holding that district courts have "broad discretion" to decide parenting time questions).

This Court has also held:

If there is evidence to support the district court's decision, an abuse of discretion will not be found...Absent clear error, we will not disturb the district court's findings. A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made...That the record might support findings other than those made by the district court does not render the findings clearly erroneous.

Thompson v. Thompson, 739 N.W.2d 424, 427 (Minn. Ct. App. 2007) (citations omitted) (holding that district courts have broad discretion to reopen a judgment or decree from a marriage dissolution).

B. The District Court Did Not Abuse Its Discretion in Denying the Petition

In its Memorandum, the district court discussed each of the Appellant's arguments and articulated a rationale for declining to find "good cause" in any of them. In responding to each argument, the district court cited to the factual underpinnings of the Appellant's assault conviction, the Appellant's "troubling" lack of remorse and qualified acceptance of his conviction, the testimony at the evidentiary hearing, the lack of specificity or corroboration of testimonial evidence, and a balancing test between private and public interest. (Order at 4-5; App.'s Appdx. at A-4-A-5.)

In this case, there was no abuse of discretion because the district court's Memorandum establishes that it analyzed each factor of the Appellant's various arguments for showing "good cause." *Hagen*, 2010 WL 2301710, at *4. Moreover, because this Court must give due regard to the district court's conclusions about the credibility of the Appellant's witnesses, there is reasonable support for the district court's conclusions about the Appellant's testimonial evidence.

The Minnesota Supreme Court has held that section 609.165 is:

[A] measure designed to protect the public safety by keeping firearms out of the hands of convicted criminals who have committed crimes which, in the legislature's judgment, are indications of future dangerousness.

State v. Moon, 463 N.W.2d 517, 520 (Minn. 1990). In this appeal, the Appellant is a convicted felon, who committed a crime of violence when he assaulted another person.

Because of the district court's decision, the Appellant simply remains ineligible to possess firearms. This Court cannot possibly be left with a "definite and firm conviction that a mistake was made" in this case. *Thompson* 739 N.W.2d at 427.

Appellant argues that the district court "determined that this petition was similar to that of an expungement petition" and "appl[ie]d a more 'strict' approach", which had been articulated in footnote 2 of the district court's Memorandum. However, Appellant's argument misreads and mischaracterizes the language of the Memorandum. The district court only mentioned that an expungement proceeding offers a "somewhat analogous situation" and that an interest-balancing approach "seems reasonable" for determining "good cause". (Order at 4; App's Appdx. at A-3-A-4.) There was no indication in the Memorandum that the district court explicitly adopted the standards and procedures of an expungement hearing. Nor was there any indication that the district court adopted or applied the "more strict approach" discussed in footnote 2.

To the contrary, the orientation of this footnote on the page below the sentence reading, "with the above analysis and statutory framework in mind[,]" indicates that the district court did not, in fact, rely upon this "more strict" standard. (Order at 4; App.'s Appdx. at A-4) (emphasis added). Furthermore, the specific reference to the Appellant's failure to establish either "a 'preponderance' or clear and convincing' burden" demonstrates that the district court did not use the "more strict" balancing approach.

Footnote 2 was merely dicta. However, even assuming that the district court had applied the "more strict approach to balancing private versus public interests" standard discussed in footnote 2, there was no abuse of discretion in this case. The purpose of

section 609.165 is to “protect the public safety by keeping firearms out of the hands of convicted criminals[.]” *Moon*, 465 N.W.2d at 520. Ostensibly, balancing public safety with the Appellant’s private interest is exactly the type of approach the legislature intended the district courts to use in this type of proceeding. Therefore, the test in footnote 2, if used, still falls within the district court’s undisputably broad discretion in deciding whether “good cause” has been established.

C. The District Court Did Not Misinterpret or Misapply the Law

The Appellant cites to *State v. Jedlicka*, 747 N.W.2d 580, 582 (Minn. Ct. App. 2008) and suggests that the district court committed an abuse of discretion by misinterpreting or misapplying the law. (App. Brief at 8). In *Jedlicka*, the issue was whether an amended statute applied retroactively to the appellant. *Id.* at 584. Unlike *Jedlicka*, where the issue was whether the district court erred in not applying an existing law to a party, this case involves a district court’s application of the facts to a “good cause” standard that was not defined in the statute. Both the Appellant and the district court acknowledged that no statutory or judicially defined standard for “good cause” exists. Therefore, this is not the case where the district court misapplied the law, because there was no other existing law (i.e. no definition of “good cause”) that the district court should have applied.

The Appellant also concedes that “the phrase ‘good cause’ appears to grant a significant amount of discretion to a district court.” (App. Brief at 8.) Therefore, the Appellant agrees with the district court’s legal conclusion that the lack of a definition of “good cause” in the statute gives the district court broad discretion in determining

whether “good cause” has been established. There is thus no question as to whether the district court misinterpreted the law, because there is no dispute, in this case, that the lack of definition gives the district court broad discretion to apply its own standard for “good cause.”

The Appellant’s challenge is that the district court erred in wielding its broad discretion. However, that is not a challenge based on statutory misinterpretation or misapplication. That is a challenge of abuse of discretion, which was addressed above. There is no issue of statutory misinterpretation or misapplication, so *Jedlicka* is inapposite to this case.

II. THE DISTRICT COURT FOLLOWED THE CLEAR AND PLAIN LANGUAGE OF THE STATUTE WHEN APPLYING ITS INTERPRETATION OF “GOOD CAUSE” TO THE FACTS.

A. Standard of Review

Statutory interpretation is a question of law, which this Court reviews *de novo*. *State v. Coquette*, 601 N.W.2d 443, 445 (Minn. Ct. App. 1999) (citations omitted). When a statute fails to specifically define its terms, this Court “turn[s] to an examination of the common and approved usage of those terms.” *State v. Hicks*, 583 N.W.2d 757, 759 (Minn. Ct. App. 1998) (citations omitted).

However, in any statutory interpretation analysis, the threshold issue is whether the statute’s language is ambiguous. *State v. Peck*, 773 N.W.2d 768, 773 (Minn. 2009) (holding that “mixture” is not ambiguous). When a statute is unambiguous and plain on its face, the clearly expressed intent of the statute must be given effect and there is no room for construction. *State v. Jesmer*, 196 N.W.2d 924, 924 (Minn. 1972). In other

words, this Court need only ensure that the district court applied the “good cause” language in the plain meaning in which it was written.

B. “Good Cause” is Not Ambiguous

BLACK’S LAW DICTIONARY defines “good cause” as:

A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused.

BLACK’S LAW DICTIONARY (8th ed. 2004), cause 2 (emphasis added).

Minn. Stat. § 256D.35 (2010) similarly defines “good cause” as “a reason for taking an action or failing to take an action that is reasonable and justified when viewed in the context of surrounding circumstances.”

C. The District Court followed the Plain Meaning of the Statute

In *State v. Hicks*, this Court addressed the question of whether a trial court erred in interpreting the statutory term “public place” by examining its definition in BLACK’S LAW DICTIONARY and in other Minnesota statutes. 583 N.W.2d at 759. *See also Peck*, 773 N.W.2d at 772 (holding: “When analyzing the plain and ordinary meaning of words or phrases, we have considered dictionary definitions.”).

BLACK’S LAW DICTIONARY provides that “good cause” means a “legally sufficient reason.” Minn. Stat. § 256D.35 similarly provides that “good cause” is a “reason” for taking an action that is reasonable in light of the surrounding circumstances. The plain meaning of “good cause” is simply a legally sufficient “reason.” Moreover, the Appellant conceded both at the evidentiary hearing and in his appellate brief that the lack of definition for “good cause” in section 609.165 gave the district court broad

discretion in determining whether “good cause” had been established. Therefore, the Appellant does not challenge the district court’s interpretation of the “good cause” language to require that the Appellant demonstrate a legally sufficient reason to have his right to possess restored.

Thus, in the context of a petition for the restoration of civil rights, the requirement that the Appellant show “good cause” is simply a requirement that the Appellant show a legally sufficient “reason” to have his rights restored. On its face, the term “good cause” in section 609.165 is, in and of itself, not ambiguous and plain on its face.

Accordingly, this Court must give effect to the clearly expressed intent of this unambiguous statute, and there is no room for statutory construction on this appeal. *Jesmer*, 196 N.W.2d at 924. As discussed above, the purpose of section 609.165 is to keep firearms out of the hands of convicted criminals. *Moon*, 465 N.W.2d at 520. Therefore, the district court’s determination that “good cause” required the Appellant must show a legally sufficient reason followed in the plain and ordinary meaning of the statute and should be affirmed by this Court.

The Appellant ostensibly argues that the ambiguity arises in the sufficiency of the reason that is needed to prove “good cause”, since no standard of sufficiency is articulated in the statute. If so, this is not an issue of statutory interpretation of an ambiguous term, because the sufficiency issue is undisputed: the sufficiency rests in the broad discretion of the district court. The sufficiency issue returns to the abuse of discretion issue and, as discussed above, the district court did not commit an abuse of discretion in determining that “good cause” was not established in this case.

Since it is the level to which “good cause” must be proven, and not the term “good cause” itself, that is arguably ambiguous, this Court need only ensure that the district court followed the clear and plain language of the statute when interpreting “good cause” to mean a legally sufficient reason. Because the Appellant has not challenged that the district court misinterpreted section 609.165 when it decided that “good cause” means a legally sufficient reason, the district court’s Order should be affirmed.

III. EVEN ASSUMING “GOOD CAUSE” IS AMBIGUOUS, THE DISTRICT COURT FOLLOWED THE CLEAR INTENT OF THE LEGISLATURE.

The objective of statutory interpretation of an ambiguous term is to ascertain and effectuate the intent of the legislature. *Coquette*, 601 N.W.2d at 445. The legislative intent of section 609.165 is to keep firearms out of the hands of convicted criminals. *Moon*, 465 N.W.2d at 520.

Appellant argues that since the legislature specifically did not include language articulating a restrictive test for “good cause,” it is reasonable to infer that the legislature did not intend the district courts to use such a restrictive approach. (App. Brief at 7) However, the district court found that the Appellant failed to establish “good cause” by even a preponderance of the evidence.

If Appellant indeed argues that the district court’s utilization of a preponderance standard was too restrictive, in this case, then Appellant’s argument seeks to render section 609.165 meaningless. A statute designed to keep firearms out of the hands of convicted criminals that can be disregarded by any criminal who shows any reason by less than even a preponderance of the evidence, would not prevent convicted criminals

from possessing firearms. Since the district court found that the Appellant failed to establish "good cause" by even a preponderance, and since the use of a preponderance standard, at the very least, followed the plain intent of the legislature, the district court's interpretation of the ambiguous term should be affirmed.

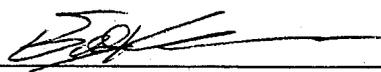
CONCLUSION

The Appellant concedes that the lack of definition for "good cause" gave the district court broad discretion in determining if "good cause" exists. "Good cause" means a legally sufficient reason. The only ambiguity in "good cause" is the level to which "good cause" needs to be proven. The district court's Memorandum indicated that both a clear and convincing standard and a preponderance standard were used for determining if Appellant showed "good cause", and there are facts supporting the district court's well-reasoned decision that neither standard was met. Even if the district court had applied a "more strict" balancing approach to the "good cause" standard, there would have been no abuse of the district court's broad discretion in this case. Further, even if "good cause" is ambiguous, the district court followed the clear intent of the legislature in this case. Therefore, the district court's Order should be affirmed.

Respectfully submitted,

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Dated: July 7, 2010

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CERTIFICATE OF COMPLIANCE

I hereby certify that Respondents' Brief complies with the word count limitation of Minn. R. Civ. App. P. 132.01, subd. 3(a). I further certify that, in preparation of this Brief, I used Microsoft Word 2007, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. All text is 13-point Times New Roman. I further certify that the Brief contains 5,295 words.

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