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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1947**

State of Minnesota,
Respondent,

vs.

Michael David Roberts,
Appellant.

**Filed June 25, 2012
Affirmed
Worke, Judge**

Dakota County District Court
File No. 19-K8-07-000090

Lori Swanson, Attorney General, St. Paul, Minnesota;

James C. Backstrom, Dakota County Attorney, Helen R. Brosnahan, Assistant County Attorney, Hastings, Minnesota (for respondent)

Michael D. Roberts, Robbinsdale, Minnesota (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant Michael David Roberts challenges the district court's decision denying his petition pursuant to Minn. Stat. § 609.165, subd. 1d (2010), for restoration of his right to carry a firearm. Because appellant's petition was filed within three years of a previous

petition and was therefore not permitted by statute, and because appellant did not demonstrate good cause for restoration of his rights, we affirm.

D E C I S I O N

We review the district court's decision on a petition for restoration of the right to possess a firearm for an abuse of discretion. *Averbeck v. State*, 791 N.W.2d 559, 561 (Minn. App. 2010). This issue presents a mixed question of fact and law: we review the district court's factual findings for clear error, but we review de novo whether these findings support the district court's legal conclusions. *Id.* at 560-61.

A person who is prohibited from possessing a firearm because of a conviction for a crime of violence can petition the court for restoration of the right to possess a firearm. Minn. Stat. § 609.165, subd. 1d. "The court may grant the relief sought if the person shows good cause to do so and the person has been released from physical confinement." *Id.* If a petition for restoration is denied, a new petition may not be filed for three years absent court permission. *Id.*

In 2007, appellant became irate during a protracted telephone conversation with a Cingular Wireless customer service representative located in Colorado and threatened to shoot up a Cingular store in Minnesota. The customer service representative could hear a noise like ammunition dropping; appellant told her that he had 15 rounds, guns, and a mask in his car. Cingular closed all of its stores in the Twin Cities because of this threat. Police located and stopped appellant in his car, where they found a loaded Glock 22 and 46 rounds of ammunition. At the time, appellant was working as a security guard and had

a permit to carry a gun. Appellant admitted to police that he had threatened the Cingular employee.

Appellant pleaded guilty in 2008 to the charge of making terroristic threats, Minn. Stat. § 609.713, subd. 1 (2006), and was discharged from probation in November 2009. In March 2010, appellant moved to have his right to carry a firearm restored. The district court denied this motion, based on the pre-sentence investigation, which showed that appellant had a history of assaultive behavior and problems with anger. The district court noted that appellant's reaction to frustration was wholly disproportionate to the situation and that he actually had a loaded firearm at the time he made the threats. The district court concluded that appellant did not make a sufficient showing of good cause for restoration of his right to carry a firearm and that insufficient time had passed since the incident. Appellant filed this petition for restoration of his rights in April 2011, only 14 months after the first petition was denied.

A subsequent petition for restoration of rights cannot be filed within three years of the denial of a previous petition, without permission of the court. Minn. Stat. § 609.165, subd. 1d. Appellant did not seek and did not gain the district court's permission to file a second petition. On this basis alone, we affirm the district court's order denying appellant's petition.

The district court also considered appellant's petition on the merits, concluding that appellant had not established good cause for restoration of his right to carry a firearm. This court defined "good cause" as "a reason for taking an action that, in legal terms, is legally sufficient, and, in ordinary terms, is justified in the context of

surrounding circumstances.” *Averbeck*, 791 N.W.2d at 561. Of particular importance, the prohibition against possession of firearms is intended as a public safety measure; thus consideration of “good cause” involves a balancing of public safety against private interest. *Id.*

In *Averbeck*, this court noted that although the petitioner’s conviction was 19 years old at the time of the petition, the conviction for third-degree assault was serious and the petitioner continued to show little remorse and believed that the jury’s verdict had been wrong. *Id.* Further, the petitioner continued to put himself “in emotionally charged situations in which the presence of firearms could escalate risks in already dangerous circumstances,” had not shown that his employment prospects were compromised because he had made no applications for the particular job he wanted, and generally lacked the “maturity of judgment” necessary to one seeking restoration of the right to possess a firearm. *Id.* at 562 (quotations omitted).

Here, only four years elapsed between the date of the offense and this petition, filed in 2011. Although appellant was given a misdemeanor sentence, the circumstances of the offense were quite serious: Cingular Wireless closed stores throughout the Twin Cities based on appellant’s threats; he had a loaded pistol in his possession at the time; his level of anger and frustration was wholly disproportionate to the circumstances; he carried a firearm and was licensed to do so, and thus had training that would emphasize improper usage of a firearm; and he had a history of assaultive or angry behavior. The psychological evaluation provided to the court in support of his petition for restoration is ambivalent at best.

Appellant provided the court with rejection letters from employers but many of the positions did not require an applicant to carry a firearm and appellant may not have had the qualifications necessary for some of the positions. Some of the rejections referred to appellant's conviction, but restoration of the right to possess a firearm would not negate that reason for rejection. Appellant has not demonstrated that restoration of his right to carry a firearm would alter his employment status.

Based on the totality of the circumstances, appellant has not demonstrated that his private interest in restoration of his right to carry a firearm outweighs considerations of public safety.¹

Finally, appellant raises a Second Amendment challenge to the statute based on the United States Supreme Court's decisions in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), and *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008). Appellant did not raise this issue below; generally, this court refuses to consider issues not argued before the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In any event, the United States Supreme Court identified laws prohibiting those convicted of violent crimes and the mentally ill from possessing firearms as presumptively lawful measures. *Heller*, 554 U.S. at 626-27 & n.26, 128 S. Ct. at 2816-17 & n.26. *See State v. Craig*, 807 N.W.2d 453, 462-63 (Minn. App. 2011) (concluding that ineligible persons statute was not overly broad), *review granted* (Minn. Feb. 14, 2012).

¹ Appellant also challenges the district court's decision not to grant a limited restoration of his rights, arguing that the court erred by requiring him to have a "sponsor" for an actual job before it could grant a limited right. In fact, the statute does not provide for limited restoration of rights.

The district court's decision to deny appellant's petition for restoration of his right to carry a firearm was not an abuse of discretion. We therefore affirm.

Affirmed.