

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0498-12T2

IN THE MATTER OF APPLICATION OF JEREMY  
PEREZ FOR A FIREARMS PURCHASER  
IDENTIFICATION CARD AND PERMIT TO  
PURCHASE A HANDGUN

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Submitted December 4, 2013 - Decided January 8, 2014

Before Judges Grall and Accurso.

On appeal from Superior Court of New Jersey,  
Law Division, Passaic County, Docket No. 12-  
053.

Evan F. Nappen, attorney for appellant  
(Louis P. Nappen, on the brief).

Camelia M. Valdes, Passaic County  
Prosecutor, attorney for respondent (Robert  
J. Wisse, Assistant Prosecutor, of counsel  
and on the brief).

PER CURIAM

Jeremy Perez applied for a firearms purchaser  
identification card, N.J.S.A. 2C:58-3b, and a permit to purchase  
a handgun, N.J.S.A. 2C:58-3a. The Paterson Police Department  
denied both applications because of the "Public Health, Safety  
and Welfare" and Perez's failure "to provide required  
documents." Pursuant to N.J.S.A. 2C:58-3d, Perez requested a  
hearing on the denials in the Superior Court, and the trial  
court upheld the denials on the ground that Perez "failed to

fully complete the application process." Perez now appeals from that order.

In the Law Division, the State asserted one ground for the denial of Perez's applications – that Perez had not filed a form required by the Paterson Police Department. Relying on subsection f of N.J.S.A. 2C:58-3, Perez argued that by conditioning issuance of purchaser identification cards and permits to purchase a handgun on completion of the form it had developed, the Paterson Police Department acted contrary to the statute.

The judge questioned a detective from the Department who was not sworn to testify, asking him 1) if all applicants had to complete the form in question, 2) if the Department considered the form to be part of the application process, and 3) if the Department's practice was consistent with the statute. The detective gave affirmative answers to the first two questions. In response to the third, he said the Department had been using the form for the past three years and no other applicant had refused to complete it.

On the detective's assertions and without discussing the statute, the judge found that the form "is part of the application form and process that . . . the applicant is required to fill out and submit in connection with this

application." Solely because these denials were based on Perez's failure to complete the form, the judge rejected his challenges to the denials.

On appeal Perez argues, as he did in the Law Division, that subsection f of N.J.S.A. 2C:58-3 precludes what the Paterson Police Department has done – adding conditions and imposing requirements not specifically set forth in Chapter 58 of Title 2C. We agree that the Department's special forms are in conflict with the plain meaning of subsections e and f of N.J.S.A. 2C:58-3.

The statute, N.J.S.A. 2C:58-3, could not be clearer on the point raised here. Pursuant to subsection e,

Applications for permits to purchase a handgun and for firearms purchaser identification cards shall be in the form prescribed by the superintendent [of the Division of State Police] and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description, including distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether he is an alcoholic, habitual drunkard, drug dependent person as defined in section 2 of P.L.1970, c. 226 (C.24:21-2), whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or

observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition, giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence, whether he presently or ever has been a member of any organization which advocates or approves the commission of acts of force and violence to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey, whether he has ever been convicted of a crime or disorderly persons offense, whether the person is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et seq.) prohibiting the person from possessing any firearm, and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. For the purpose of complying with this subsection, the applicant shall waive any statutory or other right of confidentiality relating to institutional confinement. The application shall be signed by the applicant and shall contain as references the names and addresses of two reputable citizens personally acquainted with him.

Application blanks shall be obtainable from the superintendent, from any other officer authorized to grant such permit or identification card, and from licensed retail dealers.

[N.J.S.A. 2C:58-3e (emphasis added).]

Subsection e makes it clear that officers authorized to grant purchaser identification cards and permits to purchase a

handgun may not supplement the form "prescribed by the superintendent" of the Division of the State Police. And subsection f expressly and unambiguously directs: "There shall be no conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter." N.J.S.A. 2C:58-3f (emphasis added). The plain meaning of these provisions is sufficiently clear to foreclose a judicial interpretation that would allow the hundreds of municipal police departments in this State to develop applications supplementing the form promulgated by the Division of State Police. DiProspero v. Penn, 183 N.J. 477, 492-94 (2005).

The Paterson Police Department forms call for several submissions not required by the form approved by the superintendent: a color passport photo; a notarized statement signed by the applicant attesting to absence of specified disqualifying conditions; proof of residence shown by either a PSE&G bill bearing the applicant's name and address; a W-2 form with name and address; or a landline phone bill, not a cell phone bill. In addition, the Paterson Police Department requires the applicant to type the information on its form.

The statute plainly precludes the Paterson Police Department from imposing burdens on an applicant not required by statute and, therefore, from denying an applicant a purchaser identification card or a permit to purchase a handgun based on the applicant's failure to complete special forms adding to the burden that it has devised. The Department must use applications in the form prescribed by the superintendent as required by N.J.S.A. 2C:59-3e.

Moreover, the Department may not deny applications based on any condition or requirement not specifically set forth in Chapter 58 of Title 2C. N.J.S.A. 2C:58-3f precludes that.

Because the judge's decision to reject Perez's challenge was based solely on his failure to complete the invalid application form, we reverse and remand for further proceedings. The remand is necessary because the Department's letter of denial states two reasons, which may or may not be independent. Clearly, it would be inappropriate for this court or the Law Division to direct issuance of a permit to purchase or purchase identification card to an applicant who is in fact disqualified, as the Department's letter of denial suggests, on the ground that "issuance would not be in the interest of the public health, safety or welfare." N.J.S.A. 2C:58-3c(5). Accordingly, we remand for further proceedings on that question.

Perez raises two issues that he did not raise in the trial court. He argues that N.J.S.A. 2C:58-3c(5), which permits denial of an application for authorization to purchase a firearm "where the issuance would not be in the interest of the public health, safety or welfare" impermissibly burdens the individual but limited right to keep and carry firearms guaranteed by the Second Amendment. District of Columbia v. Heller, 554 U.S. 570, 580-81, 598-600, 603, 610, 626, 128 S. Ct. 2783, 2790-91, 2800-04, 2807-08, 2816-17, 171 L. Ed. 2d 637, 650-51, 661-62, 664-65, 668, 678 (2008). Because we are remanding, there is no reason for us to deviate from our general practice of declining to consider questions raised for the first time on appeal. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

Perez also contends that Paterson's Chief of Police should be found guilty of violating the firearms law, N.J.S.A. 2C:39-10, and of official misconduct, N.J.S.A. 2C:30-2. The initiation of criminal prosecutions to enforce the firearms law is a matter for the Executive Branch of government, not for the courts. See, e.g., State v. Leonardis, 73 N.J. 360, 376-77 (1977).

Reversed and remanded for further proceedings.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION