

Matter of Campbell v Kelly

2010 NY Slip Op 34122(U)

May 5, 2010

Supreme Court, New York County

Docket Number: 117015/2009

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

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In the Matter of the Application of

CLINTON CAMPBELL,

Petitioner,

For a Judgment under Article 78 of the

Index No. :
117015/2009

Civil Practice Law and Rules,

-against-

RAYMOND KELLY, as the Police Commissioner of the
City of New York,

Respondent.

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Jane S. Solomon, J.:

FILED
MAY 06 2010
NEW YORK
COUNTY CLERK'S OFFICE

In this Article 78 proceeding, petitioner Clinton Campbell (Campbell), seeks a judgment annulling the action of Raymond Kelly, as the Police Commissioner of the City of New York, which denied Campbell's application for a handgun license, and ordering respondent to grant him the license.

FACTS

On April 30, 2009, Campbell, a security guard with a private security company, applied for a "premises residence handgun license," which would license him to own a handgun in New York City.

Title 38 of the Rules of the City of New York (RCNY) § 5-02 requires that an applicant for such a license be "of good

moral character." More specifically, the applicant must furnish, among other things, the following:

Arrest information. If the applicant was ever arrested for any reason s/he shall submit a Certificate of Disposition showing the offense and disposition of the charges. Also, the applicant shall submit a detailed, notarized statement describing the circumstances surrounding each arrest. The applicant shall do this even if the case was dismissed, the record sealed or the case nullified by operation of law.

(38 RCNY § 5-05 [b](6)).

On his application, Campbell listed a single 1986 arrest for criminal possession of a loaded firearm. He explained that he was licensed to own a handgun, but the license did not permit him to transport it, loaded, in his vehicle, which he did. The weapon should have been unloaded in transit from his home to his work. This violated the terms of his firearm license and led to the revocation of his license in 1986.

The License Division of the NYPD investigated Campbell's application. Part of this investigation included a review of Campbell's criminal record, as allowed by Penal Law §400.00(4). This review revealed that Campbell had seven additional arrests between 1979 to 2004 that he had not disclosed in his application. Based on this, on June 17, 2009, the License Division denied Campbell's 2009 application. The Notice of Disapproval stated:

Investigation revealed . . . arrests totaling eight and you failed to disclose your arrest history, provide a detailed notarized statement explaining each arrest on

application along with the Certificate of Dispositions for each arrest as outlined in the Instructions To Handgun License Applicants

* * *

Based on the circumstances of the above arrests, failure to disclose all arrests on application, revocation of previous license which cast grave doubt upon the applicant maintaining good moral character . . . to possess a firearm in NYC . . .

(Notice of Disapproval, attached to Verified Answer, Ex. D).

Campbell appealed the determination, arguing that many of his arrests had not ended in convictions and noted that the majority of his arrests occurred between 1979 and 1990, and that he is a different person at present (see, Verified Answer, Ex. E). He explained that his failure to disclose his other arrests was unintentional; He simply forgot about them. As part of his appeal, Campbell supplied the requisite documentation regarding his arrests. On August 4, 2009, the Licensing Division upheld its earlier determination, based primarily upon Campbell's initial failure to disclose and explain the circumstances surrounding seven of his arrests. It specifically noted that "[y]our explanation that you forgot about seven arrests lacks credibility" and ultimately determined that Campbell "demonstrate[d] a lack of character and fitness for a license to possess firearms" (Notice of Disapproval After Appeal, attached to Verified Answer, Ex. E). This petition followed.

DISCUSSION

Campbell argues that Respondent's determination was arbitrary and capricious because the August 4 decision did not

take into account that the majority of the undisclosed arrests were dismissed or ended in non-criminal dispositions. He claims that his subsequent submission of his full arrest record and his notarized explanations should cure his earlier omission, and shows that he is "of suitable character" to possess a handgun. Respondent counters that the Licensing Division's determination was rationally based upon Campbell's failure to disclose seven of his arrests.

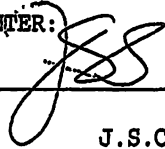
The possession of a handgun is a privilege, not a right, that is subject to the broad discretion of the New York City Police Commissioner (*Matter of Papaioannou v Kelly*, 14 AD3d 459, 460 [2005]). A court may overturn such an administrative determination only if the record reveals no rational basis for it, and may not substitute its own judgment for that of the agency (see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

Respondent's initial determination to deny Campbell's license was rationally based upon his failure to comply with the requirements of the application. Respondent's subsequent determination to deny Campbell's appeal was likewise rationally based. The agency determined that Campbell's excuse was incredible, and the surrounding circumstances of his criminal history cast a shadow over his fitness for a firearm license.

Such considerations are acceptable (see, Tolliver v. Kelly, 41 AD3d 156-7 [1st Dept, 2007]). Accordingly, it hereby is

ORDERED that the petition is denied.

Dated: May 5, 2010

ENTER: 

J.S.C.

JANE S. SOLOMON

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