

Trimboli v Walsh

2020 NY Slip Op 30240(U)

January 28, 2020

Supreme Court, Suffolk County

Docket Number: 4303-18

Judge: Denise F. Molia

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Index No.: 4303-18

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:

Hon. DENISE F. MOLIA,
Justice

GERARD S. TRIMBOLI,

Petitioner,

- against -

SERGEANT WALSH OF THE SUFFOLK COUNTY
PISTOL LICENSE BUREAU, GERALDINE HART,
COMMISSIONER OF THE SUFFOLK COUNTY
POLICE DEPARTMENT, and SUFFOLK COUNTY
POLICE DEPARTMENT,

Respondents.

CASE DISPOSED: YES
MOTION R/D: 8/28/18
SUBMISSION DATE: 5/3/19
MOTION SEQUENCE No.: 001 MD
002 MG

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Upon the following papers filed and considered relative to this matter:

Order to Show Cause dated August 10, 2018 (001); Verified Petition dated August 9, 2018; Affidavit in Support dated August 9, 2018; Affirmation in Support dated August 9, 2018; Exhibits A through I annexed thereto; Notice of Motion dated September 27, 2018 (002); Affidavit in Support dated September 21, 2018; Exhibits A through C annexed thereto; Affidavit in Opposition dated October 24, 2018; Affirmation in Opposition dated October 24, 2018; Reply Affidavit dated November 1, 2018; Petitioner's Memorandum of Law; Respondents' Memorandum of Law; and upon due deliberation; it is

ORDERED, that the petition of Gerard S. Trimboli (001), pursuant to CPLR Article 78, for an Order (1) annulling, vacating and setting aside the Respondents' disapproval dated September 5, 2017 of the Petitioner's Petition for a carry Pistol License, (2) reversing and/or annulling, vacating and setting aside the Respondents' upholding of the disapproval dated September 5, 2017 of the Petitioner's Petition for a carry Pistol License in a letter dated May 21, 2018, and (3) directing and compelling the approval of a New York State carry Pistol License, is denied.

ORDERED, that motion by respondents (002), pursuant to CPLR 7803, CPLR 7804, and CPLR 3211(a)(1), (5) and (7), for an Order dismissing the Verified Petition, is granted.

The petitioner was the holder of a pistol license, which he surrendered on or about October 29, 2006, at the time that criminal charges were levied against him for the offenses of

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unlawful imprisonment and menacing. Both charges were subsequently dismissed on or about October 9, 2007. Thereafter, by correspondence from the Suffolk County Police Department dated November 16, 2007, the petitioner was notified that his pistol license had been revoked. The petitioner reapplied for a New York State Carry Pistol License on or about November 1, 2016. Said application was disapproved by letter dated September 5, 2017 from respondents Sergeant Walsh of the Suffolk County Pistol License Bureau and Suffolk County Police Department. Petitioner requested a review of said denial by letter of appeal dated October 4, 2017. By letter dated May 21, 2018, the respondents denied the appeal and upheld the Walsh determination of September 5, 2017.

The petitioner has commenced the instant proceeding, contending that the May 21, 2018 determination by the respondents to uphold the denial of his pistol license application was arbitrary and capricious and an abuse of discretion. Trimboli is seeking to annul, vacate and set aside the respondents' disapproval of petitioner's petition for a carry Pistol License dated September 5, 2017, as well as the respondents' upholding of said disapproval. Trimboli is also seeking an Order directing and compelling the approval of a New York State carry Pistol License for him.

CPLR 7803 provides for a very limited judicial review of administrative actions. The scope of judicial review in an Article 78 proceeding is limited to the issue of whether the administrative action is rationally based (see, Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 230-231. The judgment of the Court may not be substituted for that of the administrative body under review unless the decision under review is arbitrary and capricious or constitutes an abuse of discretion (*id.* At 232). The standard for review of an agency determination under Article 78 is whether substantial evidence supports said agency's determination (CPLR 7803). Substantial evidence is more than "bare, surmise, conjecture, speculation or rumor" but "less than a preponderance of the evidence." 300 Gramatan Avenue Assocs. v. State Div. of Human Rights, 45 N.Y.2d 176, 180.

The New York Court of Appeals has held that administrative determinations will not be disturbed where there is a rational basis for the determination and it is neither arbitrary nor capricious, specifically holding that:

"In Article 78 proceedings, "the doctrine is well settled, that neither the Appellate Division nor the Court of Appeals has power to upset the determination of an administrative tribunal on a question of fact; *** 'the courts have no right to review the facts generally as to weight of evidence, beyond seeing to it that there is "substantial evidence." . . . "The approach is the same when the issue concerns the exercise of discretion by the administrative tribunal: The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious.'"

"The arbitrary or capricious test chiefly "relates to whether a particular action should have been taken or is justified *** and whether the administrative action is without foundation in fact." . . . Arbitrary action is without sound basis in reason and is generally taken without regard to the facts. In Matter of Colton v. Berman this court said "the proper test is whether there is a rational basis for the administrative orders, the review not being

of determinations made after quasi-judicial hearings required by statute of law.” Where, however, a hearing is held, the determination must be supported by substantial evidence . . . Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.” (citations omitted).

Pell v. Board of Education of Union Free School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester Co., 34 N.Y.2d 222, 231-232 (1974).

In Purdy v. Kreisberg, 47 N.Y.2d 354, the Court of Appeals set forth the standard that:

“A reviewing court in passing upon this question of law may not substitute its own judgment of the evidence for that of the administrative agency, but should review the whole record to determine whether there exists a rational basis to support the findings upon which the agency’s determination is predicated.”

In explaining the standard to be applied on determining whether there is a “rational basis” to support the administrative agency’s findings, the Appellate Division, Second Department, has stated:

“Demystifying that term of art, what this means is that the reviewing court examines the entire record to determine whether sufficient proof exists from which “an inference *** of the [facts] found may be drawn reasonably” and once it makes a determination as to this quantum of evidence - - roughly that needed for a court to submit a question of fact to a jury - - its task is complete . . . In the final analysis, it is not the function of the reviewing court to weigh the evidence or substitute its own judgment for that of an administrative body to whose expertise a subject matter has been entrusted, but rather to determine whether there is a “reasonable fulcrum of support in the record” to sustain the body’s findings.” (citations omitted).

The issuance of a handgun license is not a right, but rather a privilege that is subject to reasonable regulation (see, Parker v. Nastasi, 97 A.D.2d 547, *aff’d* 62 n.y.2D 714. The Suffolk County Police Commissioner is the statutorily designated licensing agent for all pistol licenses issued in Suffolk County, New York. The Commissioner, through his agents in the Pistol License Bureau, administers all aspects of the pistol permit application process, including the review of all applications for pistol licenses by persons residing or working in Suffolk County. To administer these duties, the Commissioner is guided by the criteria set forth in Penal Law §400(1), which defines “eligibility” to possess a pistol license. The Commissioner is given broad discretion in administering pistol applications, and may deny any application for good cause.

Here, Sergeant William Walsh, Executive Office of the Pistol Licensing Bureau, by letter dated September 5, 2017, disapproved the petitioner’s license application citing that Trimboli’s previous conduct arising from his arrest for a domestic incident “cast grave doubt upon your character and fitness to possess a pistol license.” Walsh noted the filing of charges against Trimboli for Unlawful Imprisonment 1st and Menacing 2nd involving the use of a firearm to threaten deadly physical force. Walsh concluded “Despite the outcome of the case, there is more than sufficient evidence to conclude that there was good cause for the underlying arrest. This disqualifies you from obtaining a pistol license due to poor moral character. The above

information constitutes good cause to deny you a license.”

The petitioner subsequently appealed the denial by Walsh, and the matter was reviewed by Sergeant Christopher A. Love on behalf of the Commissioner. Love issued his determination by letter dated May 21, 2018, in which he stated, in pertinent part:

“The ground upon which the Licensing Officer based his disapproval was your lack of the requisite moral character. This ground is based on the statutory requirement that all applicants be of good moral character. PENAL LAW §400(1)(b). To support this ground the licensing officer points to the acts underlying your arrest in October of 2006 for menacing and unlawful imprisonment. Although, as you note, these charges were ultimately dismissed, the licensing officer contends that substantial evidence exists in the record to indicate that the alleged acts did in fact occur, notwithstanding the disposition of the charges against you. His contention is largely, if not exclusively, based upon a very detailed sworn statement given by your wife at the time, Tracy Trimboli.

In your letter/affidavit of appeal you state that none of the acts alleged in her statement occurred, the criminal case against you was dismissed and she recanted all of her accusations in a letter dated November 1, 2007. Notably, this letter was in the file (“C-57411) reviewed by the Licensing Officer for your present application.

The Licensing Officer’s consideration of the acts underlying your arrest for menacing and unlawful imprisonment was proper, notwithstanding the ultimate dismissal of those charges. *St.-Oharra v Colucci*, 415 N.Y.S.2d 142 (4th Dept. 1979). In considering those acts, the Licensing Officer determined that your ex-wife’s detailed four page statement was more credible than her subsequent three sentence retraction. As the arbiter of veracity and credibility, it was well within his discretion to give more weight to the former. *Brookman v. Dagher*, 234 A.D.2d 615, 650 N.Y.S.2d 879 (3d Dept. 1996); *Finley v. Nicandri*, 272 A.D.2d 831, 708 N.Y.S.2d 190 (3d Dept. 2000). His conclusion that her statement provided substantial evidence that those acts in-fact occurred was similarly within the discretion granted by law. *Davis v. Clyne*, 58 A.D.2d 947 While the Licensing Officer chose to view the acts underlying your arrest in the context of ‘moral character’ under Penal Law §400(1)(b), those acts would also constitute “any good cause” for disapproval under §400(1)(n).

Although not addressed by the Licensing Officer, a review of your file indicates an additional ground for disapproval pursuant to Penal Law §400(1)(n). Department records indicate that two domestic disputes were reported at your residence in January of 2018, involving yourself, your ex-wife, and her current boyfriend. One of these reports documents the unauthorized entry by these individuals into your private living area and the other documents a crime. Moreover, both reports list your address as the home address of your ex-wife. These volatile domestic circumstances constitute further grounds for the disapproval

of your application based upon Penal Law §400(1)(n).

As the Licensing Officer has acted in accordance with the law, based his decision on the evidence in the record, and acted neither arbitrarily nor capriciously in disapproving your application for a pistol license, I must uphold his decision.”

Based upon the circumstances presented, the review of the record of the criminal proceedings involving the petitioner and his ex-wife, and the findings and concerns articulated by the licensing officer in his denial of Trimboli’s application for a pistol license, this Court finds the determinations of both the licensing officer and the Office of the Police Commissioner dated September 5, 2017 and May 21, 2018, respectively, to be supported by a rational basis. The Court does not find such determinations to be either arbitrary or capricious. The respondents’ motion is therefore granted and the petition is dismissed.

The foregoing constitutes the Order of this Court.

Dated: January 28, 2020

Hon. Denise F. Molia

HON. DENISE F. MOLIA, A.J.S.C.