

Rudnick v City of New York

2020 NY Slip Op 32292(U)

June 27, 2020

Supreme Court, New York County

Docket Number: 161561/2019

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 37

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ALAN RUDNICK,

Petitioner,

-against-

Index No. 161561/2019

THE CITY OF NEW YORK, JAMES P. O'NEILL, as
Commissioner of the New York City Police Department,
MICHAEL BARETTO, as Commanding Officer of the
New York City Police Department License Division,
JONATHAN DAVID, Esq. as Director of the New York
City Police Department License Division,

Respondents.

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ENGORON, J.:

Petitioner Alan Rudnick brings this proceeding, pursuant to CPLR Article 78, seeking to annul respondents' decision to deny his application for a Carry Guard handgun license application. Petitioner contends that he seeks a lawful firearm to use in conjunction with his business as a licensed private investigator, and that respondents arbitrarily and capriciously, and without regard to the operative facts, denied his application outright.

Respondents, the City of New York, James P. O'Neill,¹ as Commissioner of the New York City Police Department (the "NYPD"), Michael Baretto, as Commanding Officer of the NYPD License Division, and Jonathan David, Esq., as Director of the NYPD License Division, now move for an order: (1) permitting the following documents, which will be filed as part of the administrative record for the above-captioned proceeding, to be filed under seal: Arrest Reports and NYPD Detailed Reports; or (2) in the alternative, permitting respondents to file a redacted version of their answer on NYSCEF that omits the criminal records and any substantive

¹ On November 30, 2019, James P. O'Neill resigned as Police Commissioner. Dermot F. Shea is the current Police Commissioner.

references to same in their papers, while providing an unredacted version of their answer in hard copy form to the Court for in camera review, pending a decision on the motion.

For the reasons set forth below, respondents' motion is granted.

BACKGROUND

On March 26, 2018, petitioner applied to the NYPD's License Division ("the License Division") for a Carry Business handgun license. The License Division's ensuing investigation of petitioner revealed that he had been arrested on four occasions (affirmation of Aldo Caira, Esq., assistant corporation counsel, ¶¶ 7-8 [NYSCEF Doc. No. 19]).

Although petitioner concedes that he has been arrested four times, in 1998, 2006, 2007 and 2012, he contends that he has no criminal convictions (*see* petition, ¶¶ 2-3 [NYSCEF Doc. No. 1]). In January of 1998, petitioner was charged in New Rochelle, New York, with assault in the third degree, a misdemeanor. Petitioner pled guilty to harassment, and his sentence was a conditional discharge, which was completed without incident (*see id.*, ¶ 3).

In 2006, petitioner was arrested for a drug charge and related matters. This matter was dismissed in toto (*see id.*, ¶4).

In April of 2007, petitioner contends that he was the victim of harassment from an NYPD Traffic Enforcement Agent and was charged with a misdemeanor, Obstruction of Governmental Administration. According to petitioner, the matter was Adjourned in Contemplation of Dismissal (*see id.*, ¶ 5).

In 2012, petitioner was charged with assault. The matter involved his then-fiancé and ended, as did the prior matter, with an adjournment in contemplation of dismissal (*id.*, ¶ 6). Petitioner alleges that none of these arrests resulted in a conviction of any crime, and that there was no showing of injury to any person in any of these matters (*id.*).

The records pertaining to two of those arrests have since been sealed, pursuant to CPL § 160.50 (*see id.*, ¶ 3; *see also* Caira affirmation, ¶ 8).

The License Division is responsible for approving and issuing permits to own and carry firearms in the City of New York. Title 38 of the Rules of the City of New York, § 5-10 (a) allows a licensing authority such as the NYPD to consider arrests in the granting or denying of a firearm permit.

By Notice of Disapproval After Appeal dated August 7, 2019 (the “Final Determination”), the License Division denied petitioner’s application for a Carry Guard license, based, in part, on the circumstances surrounding the sealed arrests (Caira affirmation, ¶ 9).

By Notice of Petition, dated December 3, 2019, and by Verified Petition, dated November 27, 2019, petitioner commenced the instant proceeding seeking an order, *inter alia*, annulling the August 7, 2019 Final Determination denying his application for a Carry Guard license.

DISCUSSION

The sealing of court and law enforcement records occurs by operation of law when a criminal action or proceeding “has been terminated in favor of the accused” (*see* CPL § 160.50 [1]). A criminal action or proceeding against a person shall be considered terminated in favor of such person where, *inter alia*, there was an order dismissing the proceeding against such person; prior to filing an accusatory instrument the prosecution elects not to prosecute such person; and after an arrest, the arresting police agency elects not to proceed further with the case (CPL § 160.50 [3]).

The statute further provides that “all official records and papers, including judgments and orders of a court . . . relating to the arrest or prosecution, including all duplicates and copies

thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency" (*see* CPL § 160.50 [1] [c]).

CPL § 160.50 is meant to balance the interests of law enforcement agencies against the right of a former defendant to restrict access to the official records of criminal proceedings that had been terminated in his or her favor. Thus, this statute requires sealing of records in a broad variety of contexts, and permits disclosure of sealed files to enumerated third parties or agencies only under very narrowly defined circumstances (*Matter of Harper v Angiolillo*, 89 NY2d 761, 767 [1997]). As is relevant here, the statute provides that:

[S]uch records shall be made available to the person accused or to such person's designated agent, and shall be made available to . . . (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license

(CPL § 160.50 [1] [d]).

The plain language of the statute firmly prohibits the unsealing of records for any reason but those that are expressly stated. Accordingly, these exceptions have been strictly construed, and the class of persons/agencies entitled to obtain sealed records has not been expanded, and thus parties falling outside the enumerated exceptions who seek disclosure of records sealed pursuant to CPL § 160.50 have been found to have no standing, and the Court no statutory authority to release such records (*see Matter of Katherine B. v Cataldo*, 5 NY3d 196, 203 [2005]; *Matter of Joseph M. [New York City Bd. of Educ.]*, 82 NY2d 128, 132–133 [1993]; *Matter of Hynes v. Karassik*, 47 NY2d 659, 663 [1979]).

“The sealing requirement was designed to lessen the adverse consequences of unsuccessful criminal prosecutions by limiting access to official records and papers in criminal proceedings which terminate in favor of the accused” (*Matter of Harper*, 89 NY2d at 766).

Accordingly, the purpose of sealing records pursuant to CPL § 160.50 is “to remove any stigma related to *accusations* of criminal conduct” and “afford protection to accused persons ‘in the pursuit of employment, education, professional licensing and insurance opportunities’” (*Lino v City of New York*, 101 AD3d 552, 556 [1st Dept 2012], quoting *People v Patterson*, 78 NY2d 711, 716 [1991] [emphasis in original]; see also *Matter of Hynes*, 47 NY2d at 662 [internal citations omitted] [“That detriment to one’s reputation and employment prospects often flows from merely having been subjected to criminal process has long been recognized as a serious and unfortunate by-product of even unsuccessful criminal prosecutions. The statute’s design is to lessen such consequences”]).

In support of their motion, respondents contend that the License Division relied in part on petitioner’s sealed records to make its determination and that, unless they can submit to the Court these materials that comprise the administrative record and articulate the basis for the denial by reference to these materials, respondents will be unable to fully defend the challenged determination. Respondents further contend that, however, if those records are not filed under seal, those records would be made public, and petitioner may be subject to the stigma related to accusations of criminal conduct.

This Court agrees. Addressing the sealing of court records, the Uniform Rules for the New York State Trial Courts provides, in relevant part, as follows:

Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard

(see 22 NYCRR 216.1 [a]).

New York law presumptively favors broad access by the public and the press to judicial proceedings and court records, placing the burden on the party favoring sealing to show a compelling interest that likely would be harmed by granting public access (*see Mosallem v Berenson*, 76 AD3d 345, 348–349 [1st Dept 2010]; *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 501–502 [2d Dept 2007]). However, “the right of access is not absolute” (*Danco Labs. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]), and a court determining whether there is good cause for sealing court records (see 22 NYCRR 216.1 [a]) must weigh the competing interests of the public and the parties, authorizing the sealing only in the prudent exercise of the court’s discretion (*see Mancheski*, 39 AD3d at 502).

This Court finds that respondents have shown good cause to seal petitioner’s arrest records and the accompanying NYPD reports. Given that the ambit of the sealing requirement under CPL § 160.50 is extremely broad, so that a former accused may pursue employment, education, professional licensing and insurance opportunities untainted by the stigma of a criminal prosecution, as well as the extremely narrow circumstances under which such records can be disclosed, this Court holds that petitioner’s arrest records, and the NYPD reports with respect to such arrests, should be sealed in this action. Petitioner certainly has a compelling interest in keeping such records sealed. To hold otherwise would contravene the purpose of the statute and subject petitioner to the stigma and prejudice that flows from accusations of criminal conduct (*see O’Reilly v Klar*, 167 AD3d 919, 920 [2d Dept 2018] [affirming lower court’s grant of motion to seal documents relating to matrimonial proceeding, on ground that “there is a compelling interest in maintaining the privacy interests of the parties to the previous matrimonial action”]; *see also Abe v. New York Univ.*, 169 AD3d 445, 448–49 [1st Dept 2019] [upholding sealing order, and finding that the lower “court made a finding of good cause before ordering

[the documents] sealed”]; *Carver Fed. Sav. Bank v Shaker Gardens, Inc.*, 167 AD3d 1337, 1334 [3d Dept 2018] [“we find no basis upon which to disturb Supreme Court’s decision to seal the two letters proffered by defendant’s counsel as well as the transcript of the in camera conference”]).

Accordingly, it is

ORDERED that respondents’ motion is granted, and respondents are directed to file petitioner’s arrest reports and NYPD Detailed Reports under seal.



6/27/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE