

**Johnson v Shea**

2022 NY Slip Op 32118(U)

July 5, 2022

Supreme Court, New York County

Docket Number: Index No. 161281/2021

Judge: Shlomo Hagler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHLOMO HAGLER PART 17

Justice

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DAVID JOHNSON,

Petitioner,

- v -

DERMOT SHEA, CITY OF NEW YORK

Respondent.

INDEX NO. 161281/2021

MOTION DATE 01/20/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, it is

In this Article 78 proceeding, petitioner moves to annul and reverse the determination disapproving Petitioner's Rifle/Shotgun permit application and mandating the issuance of the permit to Petitioner. Respondent has neither appeared nor interposed an Answer to the Petition.

Pursuant to a detailed "Notice of Disapproval After Appeal" dated August 20, 2021, Respondent denied the Petitioner's Rifle/Shotgun permit application based on the following circumstances:

"Pursuant to Section 10-303(a)(2) and (9), of the New York City Administrative Code, an application for a Rifle/Shotgun permit may be denied when an applicant is not of good moral character, and/or when good cause exists for the denial of the permit. Title 38 of the Rules of The City of New York (RCNY), Section 3-03, provides a list of what shall be considered in assessing moral character and good cause. Pursuant to 38 RCNY 3-03(a), the License Division considers the circumstances surrounding an applicant's arrests, as well as convictions. In addition, pursuant to 38 RCNY 3-03(a), one or more domestic violence incidents are considered.


Also, pursuant to 38 RCNY 3-03(n), the License Division considers information that demonstrates an applicant's unwillingness to abide by the law. Mr. Johnson has three convictions stemming from an arrest for Leaving the Scene of an Accident and Assault, 3<sup>rd</sup> Degree, as well as two Driving While Intoxicated ("DWI") arrests. On 9/4/05, Mr. Johnson was arrested for Leaving the Scene of an Accident and Assault, 3<sup>rd</sup> Degree. According to the Complaint Report, the Complainant stated that she was involved in a motor vehicle accident with Mr. Johnson. The Complainant further stated that when she exited her vehicle to obtain Mr. Johnson's information, he attempted to leave the scene and while doing so, struck her with his vehicle, which caused her leg pain. On 10/19/06, Mr. Johnson pleaded guilty to Disorderly Conduct. On 2/14/06, the police arrested Mr. Johnson for DWI. According to the Arrest Report, a police officer observed Mr. Johnson drive a vehicle in a reckless manner. The police officer stopped Mr. Johnson's vehicle, at which time he observed Mr. Johnson with an open container of an alcoholic beverage. On 2/14/06, Mr. Johnson pleaded guilty to Driving While Ability Impaired. On 10/4/09, Mr. Johnson was again arrested for DWI. According to Mr. Johnson's 5/5/21 affidavit, he was stopped by Nassau County Police upon leaving a club and was arrested for DWI. On 2/3/10, Mr. Johnson pleaded guilty to DWI, a misdemeanor. These three convictions, though not very recent, raise concern about Mr. Johnson's temperament and judgment. These concerns are heightened by the circumstances surrounding three additional sealed arrests, two of which were for violent crimes. In this regard, Mr. Johnson was arrested for a second assault in 2010 for attacking his own son, which required hospitalization. According to the Arrest Report, Mr. Johnson's son stated that his father had assaulted him with a closed fist, which caused bleeding and swelling to his lips, and which also caused contusions to both eyes. This assault was domestic in nature, a

factor which raises further concern. In addition, Mr. Johnson was arrested for harassment of in 2005 - a second arrest that was domestic in nature. According to the Complaint Report, Mr. Johnson was the Complainant's ex-boyfriend. The Complaint Report states that according to the Complainant, Mr. Johnson "is constantly calling her house and verbally abusing her and threatening her life," as well as "driving up and down the block where she lives." On 9/29/05, the District Attorney's Office declined to prosecute. Raising further serious concern is Mr. Johnson's rape arrest in 2008. According to the Arrest Report, Mr. Johnson forced the Complainant to perform oral sex and forcibly penetrated her. The Arrest Report also stated that Mr. Johnson struck her, causing bruising, and swelling to her body. On 8/13/09, the charges were dismissed. Mr. Johnson seeks a rifle/shotgun permit so that he can be employed for Port Authority shooting birds at Kennedy airport. However, entrusting Mr. Johnson with a rifle at Kennedy airport raises safety concerns that are good cause for denial in light of serious concerns about his temperament and judgment based upon his having been arrested at least six times, including several for violent offenses, two for domestic incidents, that resulted in three convictions. Also, please note that we have taken account of Mr. Johnson's character references and his work experience at JFK Airport, as well as his last arrest having occurred in 2010. However, we still have determined that his six arrests (three convictions), including domestic-related arrests and arrests for violent criminal conduct, are good cause to deny his application."

Given petitioner's extensive arrest record, which included several arrests for domestic violence and other violent crimes, and three convictions, petitioner's application was properly denied by respondent upon consideration of the circumstances surrounding petitioner's arrests and convictions. (See, *Evangelista v Kelly*, 16 AD3d 172 [1<sup>st</sup> Dep't 2005]). Therefore, the

determination of respondent to deny Petitioner's Rifle/Shotgun permit application was rational, and neither arbitrary nor capricious. (See Pell v. Board of Education, 34 NY2d 222 [1974]).

ORDERED AND ADJUDGED, that the petition is denied, and the proceeding is dismissed. The clerk shall enter a judgment accordingly.

<u>7/5/2022</u> DATE		 SHLOMO HAGLER, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> OTHER
		<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE