



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

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January 8, 2021

Paul Mickelsen, Esq.
Tate Bywater, PLC
2740 Chain Bridge Road
Vienna, VA 22181
Counsel for Petitioner

Lyle Burnham II, Esq.
Office of the Commonwealth's Attorney
4110 Chain Bridge Road
Fairfax, VA 22030
Counsel for Respondent

Re: *Stoddart v. Commonwealth of Virginia*, Case No. CL-2020-17011

Dear Counsel:

Once an individual convicted of a felony loses certain rights and liberties to which all persons are entitled, restoration of those rights becomes a privilege rather than a guarantee. Some rights can be restored without much risk to the community. However, the right to possess firearms poses such an inherent danger to public safety that it simply cannot be restored without more scrutiny. Thus, the General Assembly has vested the circuit courts with the power to restore firearm rights at their discretion after careful deliberation.

This Court heard Richard Carl Stoddart's (Petitioner) Petition to Restore Firearm Rights on December 11, 2020. The question before the Court is:

Whether the Petitioner's threat to public safety outweighs his desire to have his firearm rights restored, given that the General Assembly has required him to permanently register as a sex offender?

OPINION LETTER

After considering the pleadings and oral arguments presented by Counsel, the Court finds that the General Assembly has determined that Petitioner is a continued threat to public safety and this finding overrides any good cause Petitioner may have demonstrated in trying to have his firearm rights restored. The Court exercises the discretion conferred to it by the General Assembly and denies Petitioner's request.

I. BACKGROUND

After the original charge of Aggravated Sexual Battery was amended, Petitioner pleaded guilty to and was convicted of Taking Indecent Liberties with a Child on December 11, 1998, in Prince William County Circuit Court. At the time of the offense, Petitioner was 33 years old. Petitioner complied with the terms of his sentence and had his rights to vote, become a notary public, serve on a jury, and hold public office restored by Governor Terence R. McAuliffe on August 15, 2016. However, because of his conviction and the danger he poses to the community, the General Assembly requires Petitioner to permanently register as a sex offender.

Petitioner petitioned to have his firearm rights restored October 30, 2020. This Court heard the Petition on December 11, 2020, and took the matter under advisement.

II. ARGUMENTS

A. Petitioner's Petition and Oral Argument

Petitioner argued that the Court should restore his firearm rights because his conviction happened 22 years ago, he completed his sentence, he was not convicted of other crimes, and he had his other rights restored. At the hearing, Petitioner conceded that his offense was serious but averred that he had been regularly employed for the last 20 years. Petitioner struggled to articulate the purpose for seeking restoration in his petition. In court, he stated he wanted his firearm rights restored because he and his wife are concerned about the "current state of affairs" in the country, they wanted to protect their home, and because of his "civic duty . . . to provide defense of the law." He also considered it a step forward in his philosophical and spiritual journey towards rehabilitation.

B. Commonwealth's Opposition and Oral Argument

The Commonwealth opposed the petition because the General Assembly categorized Petitioner as a potential danger to the community by requiring him to register as a sex offender. Thus, the General Assembly determined that Petitioner is inherently dangerous, and thus, public safety concerns should outweigh Petitioner's good cause showing. The Commonwealth also pointed to the fact that Petitioner was charged originally with aggravated sexual battery, demonstrating his dangerousness.

III. ANALYSIS

After a conviction, a felon may later seek the removal and/or restoration of certain political disabilities and rights. The governor may restore rights that do not involve “an inherent danger to public safety,” such as the right to vote, hold public office, or serve on a jury. *In re McGregor*, 100 Va. Cir. 352, 354 (2018); *see also* Va. Code Ann. § 18.2-308.2(C) (2020); *Gallagher v. Commonwealth*, 284 Va. 444, 452 (2012). However, because of its risk to public safety, the restoration of firearm rights raises unique policy and procedural considerations. As such, the General Assembly has specifically granted the power to restore those rights to the circuit courts. Va. Code Ann. § 18.2-308.2(C); *Gallagher*, 284 Va. at 452.

According to the statute, the Court may only restore a felon’s firearm rights if he first has his other civil rights restored and then demonstrates good cause. Va. Code Ann. § 18.2-308.2(C); *Gallagher*, 284 Va. at 453. Further, the Court has full discretion in deciding whether to restore a felon’s firearm rights. Va. Code Ann. § 18.2-308.2(C).

While neither the statute nor caselaw have explicitly defined what constitutes good cause, the Court must consider local public safety concerns. *See Gallagher*, 284 Va. at 452. Moreover, this Court’s precedent has developed a set of non-exclusive factors for reviewing firearm rights restoration petitions. *In re McGregor*, 100 Va. Cir. 352, 355-56 (2018); *Rudolph v. Commonwealth*, 100 Va. Cir. 481, 482 (2017). The factors include:

- (1) The nature of the crimes for which the Petitioner stands convicted;
- (2) Whether the crimes involved the use of a firearm;
- (3) How long ago the crimes were committed;
- (4) Was the Petitioner punished for his misconduct;
- (5) Since his release from incarceration, has the Petitioner led a law-abiding life;
- (6) What efforts has the Petitioner made that are indicative of rehabilitation;
- (7) Is the Petitioner seeking restoration for a lawful purpose.

Rudolph, 100 Va. Cir. at 482.

Moreover, as opined by Judge Bernhard, “good cause shown” in the firearm rights restoration context “simply means the risk that caused the offender to lose his or her right to bear firearms . . . no longer appears present.” *In re McGregor*, 100 Va. Cir. at 352.

In this case, the Petitioner failed to demonstrate sufficient good cause to override the dangers he poses as a registered sex offender. Petitioner submitted very little persuasive evidence in support of the factors outlined above. Moreover, the policy considerations underlying his conviction and the resulting punishment undermine his good cause arguments and demonstrate his risk to public safety.

Petitioner offered no evidence in support of the factors in his petition and provided only scant evidence at the hearing. As to factors two through seven, his conviction occurred 22 years ago in 1998, but Petitioner was already 33 years old at that time. Petitioner claims he fulfilled the obligations of his sentence and that a firearm was not used during the crime. Petitioner's proof of rehabilitation is his 20 years of employment as an IT engineer and lack of criminal convictions since his previous conviction. As to his lawful purpose for seeking restoration, Petitioner stated during the hearing that he would like the right restored so he could defend his home given the current state of affairs, to fulfill his "civic duty . . . to provide defense of the law," and to help him progress on his philosophical and spiritual journey of rehabilitation.

Yet, the nature of the crime for which Petitioner was convicted and the accompanying punishment raise the most serious concern. Petitioner admitted during the hearing that Taking Indecent Liberties with a Child is a serious offense.¹ In fact, the General Assembly has categorized it as a Tier III offense under the Sex Offender and Crimes Against Minors Registry Act (Va. Code Ann. § 9.1-900-923 (2020)). Va. Code Ann. § 9.1-902(A) (2020). Because of his conviction, Petitioner is required to register with the Sex Offender and Crimes Against Minors Registry (Sex Offender Registry). Va. Code Ann. § 9.1-901(A) (2020). Moreover, he must be photographed by local law-enforcement every two years and must "verify his registration information with State Police" every three months "for life." Va. Code Ann. §§ 9.1-903(H); 9.1-904(B)(1); 9.1-908 (2020). Furthermore, unlike individuals convicted of Tier I and Tier II offenses, Petitioner may never petition to be removed from the Sex Offender Registry. Va. Code Ann. § 9.1-910(A) (2020).

The stringent registration requirements and lifetime ban on petitioning for removal from the Sex Offender Registry manifest the General Assembly's intent to label Petitioner a danger to public safety. As added corroboration, the stated purpose of the Sex Offender Registry is to "assist the efforts of law-enforcement agencies and others *to protect their communities and families* from repeat offenders and *to protect children* from becoming victims of criminal offenders." Va. Code Ann. § 9.1-900 (2020) (emphasis added). The General Assembly has not deemed it sufficient for the Petitioner to go without further criminal incident. Instead, it has required the Petitioner to perpetually stay on the Sex Offender Registry. Additionally, the Governor's policy is not to restore a convicted felon's civil rights until after he completed probation. Restoration of Rights, Secretary of the Commonwealth, <https://www.restore.virginia.gov/> (last visited January 6, 2021). Inferred in this policy is the idea that the Court, in an effort to protect the community, determined the felon still needs supervision and cannot be entrusted with certain, limited rights until that supervision is lifted. The Sex Offender Registry serves the same purpose and demonstrates that the General Assembly believes the Petitioner should still be monitored. Thus, Petitioner's continued supervision by the Commonwealth indicates to this Court that Petitioner still cannot be entrusted with firearm rights.

¹ The Court takes judicial notice that Petitioner was convicted under Code of Virginia Section 18.2-370 (2014).

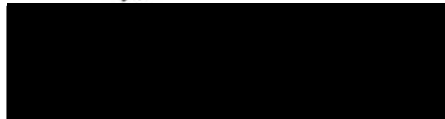
Moreover, the General Assembly has implicitly negated one of the factors the lower courts have relied on: the length of time since the conviction. Though it has been 22 years since Petitioner was convicted, the General Assembly still considers Petitioner dangerous enough to remain on the Sex Offender Registry. Thus, the General Assembly has determined that “the risk that caused the offender to lose his or her right to bear firearms” is still present in this case. *In re McGregor*, 100 Va. Cir. 352, 352 (2018). Any showing of good cause by the Petitioner is outweighed by public safety considerations.

IV. CONCLUSION

It has been 22 years since Petitioner was convicted of Taking Indecent Liberties with a Child. However, the General Assembly requires that Petitioner remain on the Sex Offender Registry for the rest of his life to alert the public of his potential risk to the community. Given the nature and ongoing requirements of his conviction, which stem from his potential danger to the community, Petitioner has failed to demonstrate good cause that outweighs the threat to public safety that firearm rights restoration inherently raises.

For the foregoing reasons, Petitioner’s Petition to Restore Firearm Rights is DENIED. Because Petitioner can never petition to be removed from the Sex Offender Registry per Code of Virginia Section 9.1-910(A), Petitioner’s petition is dismissed with prejudice.

Sincerely,



Daniel E. Ortiz
Circuit Court Judge