IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-296

Filed: 19 November 2019

Edgecombe County, No. 18-CVD-119

WILLIAM ALLEN CALE, Petitioner,

v.

CLEVELAND ATKINSON, JR., IN HIS OFFICIAL CAPACITY AS SHERIFF OF EDGECOMBE COUNTY, Respondent.

Appeal by Petitioner from judgment entered 5 November 2018 by the Honorable Pell C. Cooper in Edgecombe County District Court. Heard in the Court of Appeals 3 October 2019.

Tickle Law Office, by Lawrence Edward Tickle, Jr., for Petitioner-Appellant.

Michael B. Peters for Respondent-Appellee.

BROOK, Judge.

William Allen Cale ("Petitioner") appeals from the district court's judgment entered on 5 November 2018. Petitioner argues the district court erred in upholding the decision of the Edgecombe County Sheriff's Office ("Respondent") to deny Petitioner's renewal of his concealed carry gun permit and that, in the course of that process, his constitutional rights were violated. For the following reasons, we affirm.

I. Factual and Procedural Background

In 2013 Petitioner first applied for a concealed carry permit from Respondent. As part of its review, Respondent submitted a request for mental health and substance abuse records from Eastpointe, a substance abuse, mental health, and intellectual and developmental service provider in Edgecombe and Nash Counties. The request returned nothing of concern, and Petitioner was granted his concealed carry permit.

On 5 December 2017, Petitioner submitted an application for the renewal of his concealed carry permit. Petitioner did not provide the names of any mental healthcare providers on his concealed carry renewal application. The application includes a release form which requests the names of any physical or mental health or substance abuse treatment providers.

Respondent again submitted a request for mental health and substance abuse records from Eastpointe. This time, the hospital returned over 100 pages of records showing Petitioner had regularly received mental health treatment from 1979 to 2003 and had previously been diagnosed with depressive neurosis (now known as major depressive disorder), personality disorder, and alcohol abuse. For example, Petitioner was admitted to Nash General Hospital on 20 April 1979; he was subsequently diagnosed with major depressive disorder before being released on 28 April 1979. The records also included statements by treating physicians that in 1983

Petitioner had once positioned a hunting rifle between his legs in a suicide attempt and in 1985 asked his sister to remove all of the guns from his house. There were many references to Petitioner's long history of depression dating back to when he was at least 12 years old. Based on these medical records, Respondent denied Petitioner's application to renew his concealed carry permit pursuant to N.C. Gen. Stat. § 14-415.12(a)(3) and N.C. Gen. Stat. § 14-415.12(b)(1). Respondent determined that Petitioner suffered from a mental infirmity that prevents the safe handling of a gun, and that Petitioner was ineligible to own, possess, or receive a firearm under the provisions of state or federal law.

Petitioner appealed Respondent's denial to the Edgecombe County District Court. At trial, Petitioner testified he had voluntarily admitted himself to Nash General in 1979. He denied ever having suicidal thoughts, instead testifying, "I had mentioned the word suicide has crossed my mind, but I was never suicidal." He further testified he had never asked his sister to remove firearms from his home nor had he positioned a hunting rifle between his feet. Petitioner testified he currently takes Wellbutrin, an antidepressant, but does not see a mental healthcare provider and has not seen one since 2003. Petitioner testified, and the medical records confirmed, that Petitioner had not used alcohol since 1997. The trial court also heard expert testimony from Dr. Kristy Matala who testified Petitioner still carries the diagnosis of major depression but is in full remission.

The trial court also heard from Respondent, Edgecombe County Sheriff Cleveland Atkinson, Jr. He testified Petitioner's application for renewal had been denied due to the history of mental illness, suicide attempts, and commitments to mental healthcare providers.[1] Respondent testified that these were all "very concerning" behaviors, and he saw fit to protect the safety of the citizens.

The trial court made the following pertinent findings of fact:

> 7. Petitioner was admitted to Nash General Hospital on April 20, 1979 and discharged on April 28, 1979. Petitioner was admitted because he was very depressed and expressed some transient suicidal thoughts. Petitioner was diagnosed with Depressive neurosis and Schizo personality disorder (the "Admission").
>
> 8. Petitioner received mental health treatment for depression and suicidal thoughts and ideations at Nash General and at Edgecombe-Nash Mental Health Center regularly from April 1979 to April 2003.
>
> 9. Records from Petitioner's mental health providers during his treatment from April 1979 to April 2003 indicate that Petitioner reported to mental health providers on several occasions that he had suicidal thoughts or depressive symptoms and that he had attempted to commit suicide.
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> 10. Records from Petitioner's mental health providers during his treatment in 1983 indicated that Petitioner reported to a mental health provider that he had suicidal thoughts and that he had attempted suicide with a firearm.
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> 11. Records from Petitioner's mental health providers during his treatment in 1985 indicated that Petitioner

[1] Respondent testified that he had not seen any involuntary commitment papers in Petitioner's mental health records.

> reported to a mental health provider that he had occasional suicidal ideation with thoughts that he might use a gun and that on one occasion asked his sister to remove his guns from his house.

Based on these findings, the trial court upheld Respondent's denial of Petitioner's concealed carry renewal application.

Petitioner timely appealed.

II. Standard of Review

This Court has previously analyzed the proper standard of review for a handgun permit appeal, which is helpful to our inquiry as to the standard of review here. In *Waldron v. Batten*, 191 N.C. App. 237, 662 S.E.2d 568 (2008), the plaintiff appealed the sheriff's denial of his handgun permit request pursuant to N.C. Gen. Stat. § 14-404(b), which stated, in part:

> An appeal from the refusal [of the sheriff] shall lie by way of petition to the chief judge of the district court for the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be final.

Id. at 237-38, 662 S.E.2d at 568-69. While normally the standard of review is "whether there is competent evidence to support the trial court's findings of facts and whether the findings support the conclusions of law and ensuing judgment," this Court determined the appropriate standard of review was abuse of discretion. *Id.* at

239, 662 S.E.2d at 569 ("When a trial court exercises its own judgment in rendering a decision, the abuse of discretion standard and not *de novo* review is applied.").

In the instant case, Petitioner appealed the denial of his concealed carry renewal application per N.C. Gen. Stat. § 14-415.15, which states, in part:

> An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal.

N.C. Gen. Stat. § 14-415.15(c) (2017). We note the near-identical language of the two statutes and determine that the reasoning of *Waldron* applies here. Because the district court exercised its own judgment in rendering its decision, the abuse of discretion standard applies when reviewing its decision. *Waldron*, 191 N.C. App. at 239, 662 S.E.2d at 569. An abuse of discretion results when the district court's judgment is "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *State v. Parker*, 315 N.C. 249, 258-59, 337 S.E.2d 497, 502-03 (1985) (internal marks and citations omitted).

This Court reviews alleged violations of constitutional rights *de novo*. *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009) (citation omitted). Under a *de novo* review, we consider the matter anew and freely substitute our own judgment for that of the lower tribunal. *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal marks and citations omitted).

III. Analysis

The main issue on appeal is whether the district court erred in upholding Respondent's denial of Petitioner's renewal application. First, Petitioner argues the district court abused its discretion by determining Petitioner suffers from a mental infirmity which prevents the safe handling of a firearm. Second, Petitioner argues the district court erred in determining Petitioner was disqualified under federal and state law to renew his concealed carry permit. Finally, Petitioner argues the district court erred by basing the denial on events that occurred prior to the initial approval of the concealed carry permit when the renewal statute focuses on whether the applicant "remains" eligible.

Petitioner next claims he was denied due process.

Finally, Petitioner argues he was deprived of his Second Amendment rights.

We address whether the district court erred in upholding the renewal denial as well as Petitioner's due process and Second Amendment arguments in turn.[2]

A. District Court's Decision

[2] We note at the outset that Petitioner asks this Court to review Respondent's denial of Petitioner's renewal application in addition to the district's court's judgment. However, N.C. Gen. Stat. § 7A-27(b)(2) provides this Court with jurisdiction to review final judgments of a district court in a civil action—not decisions from the sheriff's office. N.C. Gen. Stat. § 7A-27(b)(2) (2017). Nevertheless, Petitioner makes many of the same arguments in support of both positions, which we take into account in rendering our decision.

Petitioner first argues that the district court abused its discretion by determining Petitioner suffers from a mental infirmity which prevents the safe handling of a firearm. We disagree.

N.C. Gen. Stat. § 14-415.12(a) states, "[t]he sheriff shall issue a [concealed carry] permit if . . . (3) the applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a gun." N.C. Gen. Stat. § 14-415.12(a)(3) (2017). "[P]hysical or mental infirmity" is not defined by our statutes or case law.[3] This Court has previously held, in interpreting N.C. Gen. Stat. § 14-415.12(a)(3), it is within the discretion of the sheriff to determine whether an applicant suffers from a physical or mental infirmity. *See Debruhl v. Mecklenburg Cty. Sheriff's Office*, ___ N.C. Ct. App. ___, ___, 815 S.E.2d 1, 5 (2018) ("[I]f a *sheriff* determines that an applicant 'suffer[s] from a physical or mental infirmity that prevents the safe handling of a handgun' under N.C. Gen. Stat. § 14-415.12(a)(3), the *sheriff* may deny the application.") (emphasis added). Furthermore, an appeal of a concealed carry permit denial mandates the district court review the "reasonableness" of the *sheriff's* decision. N.C. Gen. Stat. § 14-415.15(c) (2017) (emphasis added).

[3] The "physical or mental infirmity" language also appears in Evidence Rule 804(a)(4), which states that a witness is unavailable if she is unable to testify due to "an existing physical or mental illness or infirmity." N.C. Gen. Stat. § 8C-1, Rule 804(a)(4) (2017). The term "physical or mental illness or infirmity" is similarly not defined within our statutes. It is instead left to the trial court to determine whether a witness is unavailable due to mental infirmity. *See, e.g.*, *State v. Carter*, 338 N.C. 569, 591, 451 S.E.2d 157, 169 (1994) (holding the record supported the trial court's determination that the witness suffered from a mental infirmity due to her depression and was therefore unavailable as a witness).

In the instant case, there is adequate evidence in the record to support the district court's determination that Petitioner suffers from a mental infirmity that prevents the safe handling of a firearm. Petitioner received mental health treatment relating to his diagnosis for over 20 years, and there were two documented instances when Petitioner contemplated suicide with firearms. The court heard from Petitioner's own expert that Petitioner still carries the diagnosis of major depressive disorder. Thus, the district court's determination that Petitioner suffers from a mental infirmity that prevents the safe handling of a firearm was the result of a "reasoned decision" and not an abuse of discretion. *Parker*, 315 N.C. at 259, 337 S.E.2d at 503.[4]

B. Due Process Rights

Petitioner also argues that the non-renewal of his concealed carry permit violated his due process rights. We disagree.

N.C. Gen. Stat. § 14-415.16(c) governs the renewal of concealed carry permits. The statute does not require a hearing before denying a requested renewal. N.C. Gen.

[4] Petitioner also argues that Respondent's denial of his renewal application violates N.C. Gen. Stat. § 14-415.16(c). Specifically, Petitioner contends that Respondent's consideration of evidence pre-dating the initial permit approval is at odds with the inquiry into whether "he remains qualified to hold a permit in accordance with the provisions of G.S. 41-415.12." N.C. Gen. Stat. § 14-415.16(c) (2017). But, as the text suggests, our Court has held this "remains qualified" inquiry requires review of whether the party seeking to renew is still an eligible permit holder per N.C. Gen. Stat. § 41-415.12. *See Kelly v. Riley*, 223 N.C. App. 261, 265-66, 733 S.E.2d 194, 197 (2012). Newly available information can impact this inquiry and, thus, the holding in *Kelly* applies to Petitioner's "remains qualified" argument as well. *See id.* at 264, 733 S.E.2d at 196. Furthermore, by upholding Respondent's denial on the grounds of mental infirmity we need not and do not reach the question of whether Petitioner was disqualified under federal and state law from owning a firearm.

Stat. § 14-415.16(c) (2017). In *Debruhl*, we held that petitioners have a property interest in the renewal of their concealed carry permit. ___ N.C. Ct. App. at ___, 815 S.E.2d at 3. As a consequence, while a sheriff may deny a concealed carry permit renewal without a hearing, procedural due process requires the provision of "notice of the precise grounds for the sheriff's denial" as well as the "opportunity to contest the matter in a hearing in district court." *Id.*, 815 S.E.2d at 9.

Petitioner was afforded due process here. Petitioner argues Respondent's actions constituted a revocation of his concealed carry permit, which is governed by N.C. Gen. Stat. § 14-415.18 and requires a pre-revocation hearing. N.C. Gen. Stat. § 14-415.18 (2017). But this process began with Petitioner seeking to renew his concealed carry permit; thus, N.C. Gen. Stat. § 14-415.16(c) governed. And, while the statute did not entitle him to a hearing prior to the denial of his renewal request, Petitioner did receive the requisite process in the form of a notice denying his renewal request on the grounds of mental infirmity dated 22 January 2018 and a full evidentiary hearing in district court that focused on the stated grounds for denial. Petitioner fully engaged in this hearing by testifying, offering expert testimony, and cross-examining Respondent regarding the denial of his application.

We hold Petitioner's due process rights were not violated because N.C. Gen. Stat. § 14-415.16(c) does not require a hearing prior to permit non-renewal, and Petitioner was given the exact process articulated by this Court in *Debruhl*.

C. Second Amendment Rights

Finally, Petitioner claims the denial of his concealed carry permit renewal application violated his Second Amendment right to bear arms. We reject this argument as Petitioner failed to properly preserve this issue for appellate review.

"In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1) (2019); *see also Anderson v. Assimos*, 356 N.C. 415, 416, 572 S.E.2d 101, 102 (2002) ("A constitutional issue not raised at trial will generally not be considered for the first time on appeal."). It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion. N.C. R. App. P. 10(a)(1).

Though Petitioner raised his Second Amendment claim in his pleading to the trial court, Petitioner withdrew the claim at trial and thus did not obtain a ruling on the issue. It is thus not properly preserved for our review.

IV. Conclusion

The district court did not abuse its discretion in affirming Respondent's denial of Petitioner's concealed carry renewal application on the grounds that Petitioner suffers from a mental infirmity preventing the safe handling of a firearm. In addition, Petitioner was not denied due process as he was afforded notice of the basis upon

which his renewal application was denied and an appeal of that decision. Finally, Petitioner did not properly preserve his Second Amendment argument for appellate review.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).