

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94213

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KEYATTA BROWN

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-350757

BEFORE: Jones, J., Kilbane, P.J., and McMonagle, J.

RELEASED: May 27, 2010

**JOURNALIZED:
ATTORNEY FOR APPELLANT**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} This cause came on to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the trial court records and briefs of counsel.

{¶ 2} Defendant-appellant, Keyatta Brown (“Brown”), appeals the decision of the trial court. Having reviewed the arguments of the parties and the pertinent law, we hereby reverse and remand to the trial court for a hearing on appellant’s application for relief from weapons disability.

STATEMENT OF THE CASE

{¶ 3} Brown was convicted in two separate cases. On October 15, 1997, in Case No. CR-350757, Brown was convicted of attempted kidnapping, in violation of R.C. 2923.02 and 2905.01. On December 11, 1997, Brown was sentenced to one year in prison.

{¶ 4} On January 23, 1998, in Case No. CR-357309, Brown was convicted on two separate counts: Count 1, receiving stolen property, in violation of R.C. 2913.51; and Count 4, theft, in violation of R.C. 2913.02. On January 23, 1998, Brown was sentenced to a prison term of six months on both counts, to run concurrent with each other and concurrent with the sentence in Case No. CR-350757.

{¶ 5} On June 9, 2009, Brown filed an application for relief from weapons disability. On August 12, 2009, the State filed a brief in opposition to Brown’s application for relief from disability. The trial court denied Brown’s application for

relief from weapons disability on October 7, 2009. Brown now appeals the lower court's denial of her application for relief from weapons disability.

STATEMENT OF THE FACTS

{¶ 6} Brown, filed an application for relief from disability for possessing a weapon under R.C. 2923.14. Brown alleged the following in her application:

“On 05/21/1997[,] Ms. Brown was indicted on Attempt[ed] Kidnapping in violation of R.C. 2905.01. On 10/15/1997[,] Ms. Brown ple[]d guilty to the charge of Attempt[ed] Kidnapping and was sentenced to and served one year at the Ohio Reformatory for Women in Marysville, Ohio. Under R.C. 2923.13[,] her conviction makes her ineligible to lawfully obtain a firearm or concealed carry license.

Ms. Brown is a fit subject for relief under R.C. 2923.14 as she has been fully discharged from the sentence imposed and has no outstanding cases or warrants against her.

Ms. Brown has led a law-abiding life since being released and appears likely to continue to do so. She has received her Commercial and Residential real estate licenses in Ohio and is currently an independent agent in good standing for Howard Hanna Realtors. To obtain th[ese] license[,] she was found on 10/25/2006 by the Ohio Department of Commerce to have met the requirements of R.C. 4735.09. Ms. Brown is also a member of the Area Board of Realtors for Cuyahoga County. Ms. Brown also owns her own property management business.

As further evidence of her remaining a law abiding citizen Ms. Brown has also been approved for an Instructors License for Cosmetology by the State Board of Cosmetology.

Ms. Brown is not otherwise prohibited by law from acquiring, having, or using firearms.

Ms. Brown respectfully moves this court to grant her motion for relief from disability so that she can lawfully acquire a firearm and concealed carry license for safety purposes. Ms. Brown's business and Commercial real estate job require that she show abandoned buildings. Ms. Brown's Commercial real estate employment puts her

in dangerous situations at times and feels that a personal firearm is the only way to fully provide for her personal safety on the job.

WHEREFORE, applicant respectfully requests this Honorable court to set a hearing date on the application to grant relief from weapons disability.”

{¶ 7} The prosecuting attorney opposed the application alleging that defendant was a poor risk and should not have a weapon in her possession because she had committed a crime of violence — kidnapping, in which she held down another woman and repeatedly struck her. The brief in opposition also alleged defendant had more than one conviction. Therefore, the relief from disability statute should not apply to her. The trial court, without a hearing, denied the application and defendant has taken this appeal.

ASSIGNMENTS OF ERROR

{¶ 8} Brown assigns one assignment of error on appeal:

{¶ 9} “[1.] Defendant was denied due process of law when the court denied her application for relief from disability without a hearing.”

LEGAL ANALYSIS

{¶ 10} An application for relief from disability under R.C. 2923.14 provides that a person who, solely by reason of the person’s disability under R.C. 2923.13(A)(2) or (3) is prohibited from acquiring, having, carrying, or using firearms, may apply for relief from disability. Section 2923.13(A)(2)-(3) prohibits one from having a weapon if the person has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence,

or a person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution or trafficking in any drug of abuse or has been adjudicated a delinquent child for the same offense.

{¶ 11} Brown was convicted of attempted kidnapping. The other convictions were for receiving stolen property and theft, which would not disqualify her from having or possessing a weapon. An applicant is required to include in the application information on the conviction upon which the disability is based, the sentence imposed, and whether or not that sentence was served, with all postconviction requirements completed. The application must then list the facts showing the applicant to be a fit subject for relief under the section.

{¶ 12} Under R.C. 2923.14(D):

“Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

“(1) The applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, if the applicant is under indictment, has been released on bail or recognizance.

“(2) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.

“(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.”

{¶ 13} Brown was sentenced on December 11, 1997 to a one-year term of imprisonment on the attempted kidnapping charge. Consequently, she completed the sentence in December 1998. The charges of receiving stolen property and theft were felonies of the fifth degree, to which she was sentenced to a concurrent term of imprisonment of six months.

{¶ 14} *In re Hensley* (2003), 154 Ohio App.3d 210, 796 N.E.2d 973, provides

the following:

“Although the wording of the statute is not as clear as it should be, we conclude that R.C. 2923.14(D) mandates that a trial court hold a hearing on any application for relief from disability imposed by virtue of R.C. 2923.13(A)(2) or (3). Other courts have so held. See, e.g., *Smith v. State* (Apr. 21, 1994), Cuyahoga App. No. 65101, 1994 WL 144503; and *State v. Jomaa* (Nov. 30, 1990), Lucas App. No. L-90-026, 1990 WL 187240. ‘At the required hearing, “an opportunity for both sides to present evidence must be afforded relevant to the facts enunciated in the statute. Due process so dictates!”’ *Smith*, Cuyahoga App. No. 65101, 1994 WL 144503, quoting *Jomaa*, Lucas App. No. L-90-026, 1990 WL 187240. Once it holds that hearing, the trial court has discretion to grant the application if all of the criteria listed in R.C. 2923.14(D)(1) through (3) apply. R.C. 2923.14(D).”

{¶ 15} “A ‘hearing’ usually envisions a proceeding during which any party may present evidence and then argue inferences therefrom.” See *State v. Boggs* (1993), 89 Ohio App.3d 206, 624 N.E.2d 204. In the instant matter, the trial court’s failure to conduct a hearing on Brown’s application was improper. Moreover, appellee in its brief concedes Brown’s assignment of error on the grounds that a hearing should have been held.

{¶ 16} Accordingly, the order overruling Brown’s application without a hearing was prejudicial to defendant and that order is hereby reversed and this cause remanded for a proper hearing in accordance with R.C. 2923.14.

{¶ 17} Brown’s assignment of error is well taken.

{¶ 18} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR