

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4217

LEONARDO LYNCH,

Appellant,

v.

FLORIDA DEPARTMENT OF LAW
ENFORCEMENT,

Appellee.

On appeal from the Florida Department of Law Enforcement.

December 1, 2021

ROBERTS, J.

Mr. Lynch challenges the Florida Department of Law Enforcement's (FDLE) determination that he was prohibited from purchasing a firearm. After examining federal and state law as well as the record, we conclude FDLE erred. Accordingly, we reverse and remand for proceedings consistent with this opinion.

Mr. Lynch attempted to purchase a firearm from a federal firearm licensee (FFL). The sale of firearms is regulated by state and federal law. 18 U.S.C. § 922; § 790.065, Fla. Stat. (2018). Before completing the sale of a firearm, federal law requires an FFL to conduct a background check of the purchaser. 18 U.S.C. § 992(t). The federal background check requires the FFL to contact the National Instant Criminal Background Check System

(NICS) to determine whether it is unlawful for the person to receive the firearm under federal or state law. 18 U.S.C. § 922(t)(1)(A). A person cannot receive a firearm if he: has been found to be the unlawful user of a controlled substance, has been found to be addicted to a controlled substance, has been adjudicated mentally defective, or has been committed to a mental institution. 18 U.S.C. § 922(g)(3)–(4). The FFL cannot sell a person a firearm, without the risk of fines, suspension, or loss of its license, unless the NICS system provides the FFL with a unique identification number that authorizes the sale. 18 U.S.C. §§ 922(t)(1)(A)–(B)(i), 922(t)(5). However, when an FFL is located in a state that has a governmental point-of-contact (POC), the FFL does not directly contact the NICS; instead, the POC takes care of contacting the NICS system. *Mance v. Sessions*, 896 F.3d 669, 707 (5th Cir. 2018). The Legislature designated FDLE as the POC for FFLs in Florida. § 790.065, Fla. Stat. (2018).

When FDLE receives a request for a background check from an FFL, it is required to contact the NICS system on behalf of the FFL based on federal and state law. § 790.065(1)(a)3., Fla. Stat. (2018). The Legislature also required FDLE to conduct a check of the information contained in the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC). *Id.* After conducting checks in those systems, FDLE is required to review the information it receives from the systems as well as any other information it has available to determine whether the person is prohibited under federal and state law from receiving a firearm. § 790.065(2), Fla. Stat. (2018). After reviewing all the available records, FDLE must inform the FFL whether the records indicate the person is prohibited from receiving a firearm, and if so, FDLE must provide the FFL with a nonapproval number. § 790.065(2)(b), Fla. Stat. (2018). If the records indicate the person is not prohibited, then FDLE is required to give the FFL a unique approval number. *Id.*

With these legislative mandates in mind, we turn to the facts of this case. Before Mr. Lynch’s firearm purchase was completed, the FFL requested FDLE to conduct the required background check. Upon receiving the information, FDLE reviewed the records. Because the records it received indicated Mr. Lynch was

a prohibited person, FDLE provided the FFL with a nonapproval number.

Upon learning that FDLE had given the FFL a nonapproval number, Mr. Lynch sought to appeal his nonapproval in accordance with Florida Administrative Code Rule 11C-6.009(8). Upon receiving Mr. Lynch's appeal, FDLE wrote him a letter informing him of the reason why he was not approved. The NICS system indicated Mr. Lynch was prohibited from receiving a firearm in accordance with Title 18 United States Code section 992(t)(4).^{*} Mr. Lynch was prohibited from receiving a firearm based on mental incompetency records or a court-ordered substance abuse treatment record. If he believed he was not the subject of the record(s), he would need to contact the owner of the record(s) in New York. The letter included the contact information for the owner of the record(s). It also informed him that if he was the subject of the record, but believed he should be relieved of the collateral consequences of the record(s), he would still need to contact the owner of the record to determine the process he needed to follow to be relieved of those consequences. FDLE informed Mr. Lynch that he could submit additional records showing that he was relieved of those collateral consequences or that he was not the subject of the record(s) and initiate a reappeal. Mr. Lynch states that he has never been adjudicated incompetent or subject to court-ordered substance abuse treatment.

In the view of FDLE, its obligations end there, and Mr. Lynch is required to go to the New York Division of Criminal Justice Services to obtain the potentially disqualifying document. However, sub-sub-paragraph 790.065(2)(a)4.f. provides that "When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record." This provision provides an affirmative obligation for FDLE to identify and get copies of the underlying records supporting the disqualification when a

^{*} In the letter to Mr. Lynch, FDLE wrote subsection (b)(4), but that is a typographical error.

potential buyer appeals a nonapproval based on those records. *Cf. R.C. v. Dep't of Agric. & Consumer Servs., Div. of Licensing*, 323 So. 3d 275, 280 (Fla. 1st DCA 2021) (finding that the Legislature tasked the Department of Agriculture and Consumer Services with determining an applicant's eligibility for a license to carry a concealed weapon). As this Court has noted, NICS results alone cannot take away a person's constitutional right to possess or purchase a firearm. *Id.* at 280–81. It is the underlying records that determine whether the person's constitutional right to possess or purchase a firearm has been taken away. *Id.* As a result, FDLE cannot make the determination that a person's constitutional right to purchase a firearm has been stripped away based solely on a hearsay document such as an NICS printout. *Id.* at 281. Rather, when a potential buyer appeals a nonapproval based on NICS results, it is incumbent upon FDLE to request the underlying records “to help determine whether the potential buyer . . . is the same person as the subject of the record.” § 790.065(2)(a)4.f. Accordingly, we reverse and remand for further proceedings in accordance with this opinion.

REVERSED and REMANDED.

ROWE, C.J., and JAY, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Eric J. Friday of Kingry & Friday, Jacksonville, for Appellant.

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