

**IN THE COURT OF APPEALS OF IOWA**

No. 17-0972  
Filed February 21, 2018

**IN THE MATTER OF J.S.,  
Alleged to be Seriously Mentally Impaired,**

**J.S.,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Beth A. Tigges,  
Magistrate.

A person previously subject to a mental health commitment appeals the  
denial of his petition to reinstate firearm privileges. **APPEAL DISMISSED.**

Grant C. Gangestad of Gourley, Rehkemper & Lindholm, P.L.C., West Des  
Moines, for appellant.

Thomas J. Miller, Attorney General, and J. Bradley Horn, Assistant Attorney  
General, for appellee State.

Considered by Doyle, P.J., and Tabor and McDonald, JJ.

**TABOR, Judge.**

More than a decade ago, J.S. was subject to a mental health commitment. As a result, he cannot legally possess a firearm. See Iowa Code § 724.31(1) (2016). In 2016, he filed a petition for relief from the firearm disabilities. See *id.* § 724.31(2). The matter was heard by a Polk County magistrate, who denied relief. J.S. filed a notice of appeal from the magistrate's order.

The State moved to dismiss the appeal, asserting the magistrate did not have jurisdiction to consider the petition. J.S. did not file a resistance. The supreme court ordered the motion to dismiss to be submitted with the appeal. The parties filed their briefs, and the supreme court transferred the case to us. In its appellee's brief, the State renewed its motion to dismiss on jurisdictional grounds. In his reply brief, J.S. "does not disagree that the instant matter may be outside the jurisdiction conferred to magistrates."

Before reaching the merits of a case, we must decide if our court has subject matter jurisdiction. See *In re B.T.G.*, 784 N.W.2d 792, 795 (Iowa Ct. App. 2010). After reviewing the procedural history of this case, the applicable statutes, and the parties' positions, we conclude we do not.

The magistrate lacked subject matter jurisdiction to decide the petition for reinstatement of firearms rights. The jurisdiction of magistrates is spelled out in Iowa Code section 602.6405. See *State v. Moret*, 486 N.W.2d 589, 591 (Iowa 1992). That code section does not contemplate magistrates deciding petitions seeking restoration of firearm rights. See Iowa Code § 602.6405. Because the magistrate lacked jurisdiction, the magistrate's order is void. See *Wilson v. Iowa Dist. Ct.*, 297 N.W.2d 223, 226 (Iowa 1980) (holding district court decision was of

no effect where court lacked jurisdiction to entertain appeal). A void order cannot be considered on appeal. See *In re L.H.*, 890 N.W.2d 333, 338–39 (Iowa Ct. App. 2016). Accordingly, we dismiss the appeal.

**APPEAL DISMISSED.**