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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0407**

Michael Nikiforakis, petitioner,
Appellant,

vs.

Richard W. Stanek,
Respondent.

**Filed September 15, 2009
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-08-22336

Michael Nikiforakis, 6337 Pleasant Avenue East, Apartment 8, Richfield, MN 55423
(pro se appellant)

Michael O. Freeman, Hennepin County Attorney, Toni A. Beitz, Senior Assistant County
Attorney, A-2000 Government Center, 300 South 6th Street, Minneapolis, MN 55487
(for respondent)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and
Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his petition to review respondent's denial of his application for a permit to carry a pistol. Because the record supports the district court's decision, we affirm.

FACTS

On July 17, 2007, appellant Michael Nikiforakis applied to respondent Hennepin County Sheriff Richard W. Stanek for a permit to carry a pistol under Minn. Stat. § 624.714 (2008).¹ Respondent denied appellant's application on the ground that there was a substantial likelihood that appellant "would be a danger to self or the public if authorized to carry a pistol under a permit." Respondent subsequently denied appellant's request for reconsideration.

Appellant then petitioned the district court for review. Following a hearing, the district court denied the petition, concluding that "there is clear and convincing evidence that there exists a substantial likelihood that the applicant is a danger to self and the public if authorized to carry a pistol under a permit." In the memorandum supporting its order, the district court listed the following six incidents supporting the denial. First, appellant was charged with fifth-degree assault, arising from an incident that occurred in

¹ The district court order states that appellant applied for a transferee permit under Minn. Stat. § 624.7131 (2008). But the district court then analyzed appellant's claim under the judicial-review provisions for permits to carry under Minn. Stat. § 624.714, subd. 12. Further, respondent's denial of appellant's application and subsequent denial of appellant's request for reconsideration indicate that the application was for a permit to carry under Minn. Stat. § 624.714. Accordingly, we conclude that appellant applied for a permit to carry, not a transferee permit.

July 1992. This incident involved L.M.P., appellant's girlfriend and the mother of his child. According to the police report, appellant threw L.M.P. against a door, punched her in the head, and smashed her head on the floor, resulting in a neck injury. Appellant pleaded guilty to an amended charge of disorderly conduct.

Second, appellant was charged with fifth-degree assault for a July 1997 incident that also involved L.M.P. Appellant pleaded guilty to an amended charge of disorderly conduct, and L.M.P. obtained an order for protection against appellant.

Third, appellant pleaded guilty to and was convicted of fraud (issuance of a check against nonsufficient funds) in June 1999.

Fourth, appellant was charged with misdemeanor domestic assault following a November 2004 incident involving his roommate. Appellant's roommate, who suffered numerous bite marks, told police that appellant had experienced a brain-stem injury and had other mental-health issues. Other witnesses also expressed concerns about appellant's mental health. Appellant pleaded guilty to and was convicted of an amended charge of disorderly conduct.

Fifth, appellant was charged with fifth-degree possession of a controlled substance and driving while impaired in December 2004. Appellant tested positive for amphetamine and methamphetamine. The case was dismissed, but appellant's driver's license was revoked.

Sixth and finally, appellant sent a letter to the Anoka County Sheriff's Department in July 2007, seeking permission to carry a firearm inside the county courthouse. As a justification for the request, appellant stated:

I work for the American Legion Internal Affairs as a U.S. Marshall and I ride the bus from Richfield to Anoka. I will be working during the day and I will have to go back out of my way to Richfield just because I'm NOT driving OR have a place to lock and store my gun.

I will be in a uniform T-shirt with a identifying badge on the front and blue jeans.

I will have my identifying brass and bronze five point star inside of round that identify's me as American Legion U.S. Marshall

A member of the Hennepin County Sheriff's Department investigated appellant's claim and spoke with Deputy U.S. Marshal Sean McCaffrey. The marshal stated that he had visited appellant and observed that appellant walked around his house all day with a gun strapped to him. Respondent received no confirmation that appellant is a U.S. Marshal.

This appeal follows.

DECISION

Appellant contends that the district court abused its discretion when it concluded that appellant was not entitled to a permit to carry a pistol. "When reviewing mixed questions of law and fact, 'we will correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.'" *Langford Tool & Drill Co. v. Phenix Biocomposites, LLC*, 668 N.W.2d 438, 442 (Minn. App. 2003) (quoting *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997)). We review findings of fact under the clearly erroneous standard. Minn. R. Civ. P. 52.01.

Under Minnesota law, a permit is required for an individual to carry a pistol in public. Minn. Stat. § 624.714. To obtain this permit, an applicant must file an application with the sheriff of the county where the applicant resides. *Id.*, subd. 2(2). If the sheriff denies the application, the applicant may appeal by petition to the district court and is entitled to a de novo hearing. *Id.*, subd. 12(a). Following the hearing, the district court must order the sheriff to issue a permit

unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented may not be considered.

Id., subd. 12(b).

Appellant argues that he has not been convicted of any crimes that automatically preclude him from receiving a permit. *See id.*, subd. 2(b)(4) (listing crimes that automatically preclude an applicant from receiving a permit to carry). But the district court did not conclude that appellant was convicted of any of these crimes. Rather, the district court found that “there exists a substantial likelihood that the applicant is a danger to self and the public if authorized to carry a pistol under a permit.” *See id.*, subd. 12(b)(2). Denial of a petition on this basis does not require conviction of a crime; it only requires that the underlying conduct meets this standard.

Appellant asserts that his convictions for disorderly conduct should not be considered because the constitutionality of the Model Penal Code's disorderly conduct provisions has been deemed doubtful. But again, it is the underlying conduct that is relevant to the district court's decision, not the conviction. Further, the constitutionality of the Model Penal Code's disorderly conduct provisions is irrelevant because appellant was convicted under the Minnesota Statute prohibiting disorderly conduct, which has not been deemed unconstitutional.

Appellant contends that the district court erred by finding that he is mentally ill. But the district court made no such finding. Rather, the district court stated that witnesses to the November 2004 incident had expressed concern about appellant's mental health. Accordingly, appellant's argument is meritless.

Appellant maintains that his status as an American Legion U.S. Marshal shows that he is not a danger to the public. But appellant has not explained how his status as an American Legion U.S. Marshal should affect the status of his permit. Further, appellant does not seem to contest the district court's conclusion that he is not an official U.S. Marshal. Therefore, this argument is meritless.

Appellant argues that the district court erred by considering hearsay and a dismissed felony charge in denying the permit. But appellant did not raise these issues in a motion for a new hearing. "[T]he general rule [is] that matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error." *Sauter*

v. Wasemiller, 389 N.W.2d 200, 201 (Minn. 1986). Therefore, we do not address this argument.

The record supports the district court's decision. Therefore, the district court did not abuse its discretion when it denied appellant's petition.

Affirmed.