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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-861**

Dean E. Titel,
Appellant,

vs.

Bob Fletcher, Ramsey County Sheriff,
Respondent.

**Filed March 8, 2011
Reversed
Stoneburner, Judge**

Ramsey County District Court
File No. 62CV0910245

Joel M. Anderson, White Bear Lake, Minnesota (for appellant)

Susan Gaertner, Ramsey County Attorney, Edward Kaiser, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's judgment after reconsideration, holding that appellant is not eligible for a permit to carry a firearm. Because (1) there was no legal basis for the district court to grant reconsideration or to grant relief under rule 60.02 from the district court's initial judgment and (2) the district court erred as a matter of law

in concluding that appellant is ineligible for a permit to carry, we vacate the judgment issued after reconsideration. We reinstate the original judgment that requires respondent sheriff to issue appellant a permit to carry and awards appellant attorney fees.

FACTS

In 1985, appellant Dean Titel pleaded guilty to and was convicted of third-degree burglary. Imposition of sentence was stayed, and appellant was placed on probation for one year with conditions. Appellant successfully completed probation, and in December 1986, by order of the district court, appellant was discharged from probation and “restored to all civil rights and to full citizenship with full right to vote and hold office as if said conviction had not taken place.” Pursuant to Minn. Stat. § 609.13, subd. 1(2) (1986), appellant’s conviction was deemed a misdemeanor.¹

In 2004, appellant was issued a permit to carry a handgun. When the permit expired, he retrained and applied for another permit. Respondent Bob Fletcher, Ramsey County Sheriff, denied the application in a letter, stating the grounds for denial as:

Sheriff’s investigation, including but not necessarily limited to, an arrest for Felony Burglary in 1985, with the conviction deemed a misdemeanor is considered a crime of violence and you are prohibited to carry a gun under Federal Law.

Appellant challenged the denial by petitioning the district court as provided by Minn. Stat. § 624.714, subd. 12 (2008). At the subsequent hearing, the district court admitted the respondent’s investigative record into evidence. Respondent’s record

¹ Minn. Stat. § 609.13, subd. 1(2), provides that notwithstanding a conviction for a felony, the conviction is deemed a misdemeanor or gross misdemeanor “if the imposition of sentence is stayed, the defendant is placed on probation, and the defendant is thereafter discharged without a prison sentence.”

included the order restoring appellant's civil rights but did not include a certified copy of appellant's burglary conviction. The issue presented by the parties was whether appellant had been convicted of a crime punishable by imprisonment exceeding one year. The federal statute relied on by respondent was not identified at the hearing. Appellant argued that he was convicted of a misdemeanor such that "incarceration can only be up to a year but not exceed a year."² The district court accepted, as appellant's testimony, an offer of proof of what he would have testified to if he had been called as a witness.

The district court issued findings of fact, conclusions of law, and an order for judgment in favor of appellant. The district court noted appellant's admission that he was convicted of burglary and that the conviction was deemed a misdemeanor. The district court assumed that respondent relied on a federal law making it unlawful for any person "who has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm . . . or to receive any firearm . . . which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(1) (2006).

The district court concluded that, if appellant's conviction was for felony burglary, the sheriff would have a basis for denying a permit to appellant under Minn. Stat. § 624.714, subd. 2(b)(4)(ix) (2010), which allows respondent to deny permits to persons ineligible to possess firearms under "any federal law." But the district court held that respondent failed to prove appellant's disqualification from permit eligibility by clear-

² The parties appear to use "misdemeanor," which is punishable by incarceration of not more than 90 days, as including "gross misdemeanor," which is any crime that is not a misdemeanor or a felony. Minn. Stat. § 609.02, subds. 3, 4 (2008).

and-convincing evidence because respondent failed to offer a certified copy of a felony conviction. The district court ordered respondent to issue a permit to appellant and awarded appellant costs and attorney fees. Judgment was entered accordingly on November 12, 2009.

On November 17, 2009, respondent moved for “relief from judgment by reopening the record and for a subsequent order sustaining [the sheriff’s] denial of a permit to carry.”³ The memorandum supporting the motion cited Minn. R. Civ. P. 60.02 as a basis for relief, but made no reference to, or analysis of, any of the specific reasons for relief authorized by the rule. Respondent requested that the district court reopen the record to consider certified documents from the burglary conviction, “which show [appellant] convicted of a crime punishable by imprisonment for more than a year,” providing “good reason justifying relief from the operation of the judgment.” Respondent also argued, for the first time, that, because appellant was convicted of a crime punishable by more than one year in prison, appellant is disqualified from obtaining a permit under Minn. Stat. § 624.714, subd. 2(b)(4)(v) (2010).⁴ Respondent cited, also for the first time, Minnesota case law to support the proposition that the elements of the burglary, rather than the disposition, determine the level of conviction in

³ In the alternative, the sheriff purported to bring “a new proceeding for revocation of permit and moves for an order revoking any permit to carry.” But no new proceeding was initiated.

⁴ Minn. Stat. § 624.714, subd. 2(b)(4)(v), allows the sheriff to deny a permit to carry a firearm to a person disqualified from possessing a firearm under Minn. Stat. § 624.713. Minn. Stat. § 624.713, subd. 10(i) (2010), prohibits possession of certain firearms by a person who “has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.”

this case. Respondent failed to disclose that Minn. Stat. § 624.712, subd. 10, excludes from the definition of “conviction” “[a]ny conviction . . . for which a person has . . . had civil rights restored . . . unless such . . . restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

Appellant objected to the motion, characterizing it as a “motion for reconsideration” brought in violation of the procedure set out in Minn. Gen R. Prac.

115.11. The district court, by letter to counsel, acknowledged the respondent’s failure to obtain the district court’s permission to file a motion to reconsider as required by Minn. Gen. R. Prac. 115.11, but stated that it was sua sponte granting permission “given the law that [respondent] brings to my attention in his motion.”

Arguments on the motion took place in January 2010. The sheriff asserted that the burglary-conviction records and case law established that appellant had been convicted of a crime punishable by more than one year and was, therefore, disqualified from obtaining a permit to carry.

Appellant argued that cases cited by respondent were not applicable because appellant had been discharged from probation and all of his civil rights were restored in 1986. Appellant admitted that he had been convicted of a “felony,” and attempted to argue that, nonetheless, he is not excluded from possessing any firearm due to restoration of his civil rights. The district court cut off this argument, stating that it was “not interested” in the possession statute.

The district court subsequently issued its “Order on Reconsideration,” adopting all of its original findings of fact. The district court denied appellant’s procedural objections

to reopening the record and concluded that appellant is “ineligible to carry a pistol under Minn. Stat. § 623.713, subd. 1(10)(i), because he has been convicted of a crime punishable by imprisonment for a term exceeding one year.” In its “revised order for judgment,” the district court denied appellant’s challenge to the denial of the permit and granted judgment to respondent “dismissing the appeal and declaring that any permit to carry a pistol [appellant] may have obtained is void by reason of [appellant’s] statutory ineligibility.” The district court ordered each party to bear its own costs and disbursements. Judgment was entered and this appeal followed.

D E C I S I O N

I. The record is sufficient for review.

Appellant asserts that a remand is required to permit development of “a factual record from which constitutional issues may be prudently ripe for appellate review.” We disagree. We resolve this appeal based on relevant statutes without need to reach constitutional issues. *See State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981) (stating that courts only decide constitutional question when necessary to the disposition of the case).

II. No basis existed for relief from the original judgment under rule 60.02.

Respondent moved for “relief from judgment,” and the accompanying memorandum cited rule 60.02 generally.⁵ But respondent did not provide any analysis to

⁵ Respondent’s reply to appellant’s memorandum opposing the motion implies that the motion is seeking relief under rule 60.02, for mistake, inadvertence, surprise, or excusable neglect. At the hearing, respondent told the district court that “these files are typically prepared by law clerks [and] the clerk who worked with the file initially does not have criminal experience and did not realize the significance of the stay of imposition and reported that there was only a misdemeanor conviction of record.” This is the only

explain why respondent was entitled to relief from the original judgment under rule 60.02.⁶ And the district court did not identify any basis in the rules of civil procedure or the general rules of practice entitling respondent to relief from the initial judgment. The district court stated only that it was going to “straighten out the error that [the sheriff] alleges.”

A district court’s application of rule 60.02 will not be reversed absent an abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). A district court abuses its discretion when its findings are unsupported by the evidence in the record or if it misapplies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

“Motions for general reconsideration under rule 60.02 are highly suspect.” *Carter v. Anderson*, 554 N.W.2d 110, 113 (Minn. App. 1996) (quotation omitted) (holding that rule 60.02 does not allow for correction of judicial error and cannot be used as a substitute for appeal), *review denied* (Minn. Dec. 23, 1996); *Arzt v. Arzt*, 361 N.W.2d 135, 136 (Minn. App. 1985) (stating that “rule 60.02 is intended to correct mistake or inadvertence of a party, or to allow for newly discovered evidence, *not to correct for judicial error*”).

“Rule 60.02 can be utilized only if one of the grounds specified in the rule exists.”

Carter, 554 N.W.2d at 113.

reference in the record to mistake, inadvertence, or neglect, and respondent admitted to the district court that it was not asserting that this circumstance excused failure to present evidence or argument at the initial hearing.

⁶ A party seeking to set aside a judgment under rule 60.02 must (1) possess a reasonable defense on the merits; (2) have a reasonable excuse for the failure or neglect involved; (3) have acted with due diligence after notice of the entry of judgment; and (4) show that no substantial prejudice will result to the other party. *Boulevard Del, Inc. v. Stillman*, 343 N.W.2d 50, 52 (Minn. App. 1984).

At the hearing on respondent's rule 60.02 motion, respondent admitted that the district court's initial ruling was not erroneous based on the record made at the initial hearing. But, respondent argued that documents and argument not presented at the initial hearing demonstrate that the district court erred in its initial judgment, and, based on this additional information, the district court should find appellant ineligible for a permit to carry under state law without regard to the applicability of the federal law. But "rule 60.02 does not provide for the introduction of evidence that was known to exist before judgment was entered." *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 716 (Minn. App. 1997), *review denied* (Minn. April 27, 1997). Because no basis for relief from judgment under rule 60.02 was shown, the judgment on reconsideration is vacated and the initial judgment is reinstated. *See Carter*, 554 N.W.2d at 115 (reinstating original judgment where no basis for relief from judgment under rule 60.02 was shown).

III. As a matter of law, appellant does not have a conviction that makes him ineligible for a permit to carry a firearm.

In the interest of judicial economy, we also address the merits of the district court's revised judgment, because the district court plainly misapplied the law. Interpreting a statute is a question of law and is reviewed *de novo*. *See Am. Tower v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). If a statute is unambiguous, a reviewing court must apply the statute's plain meaning. *See Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986). None of the statutes involved in this case is ambiguous.

The district court erroneously failed to hear or consider appellant's proffered argument that Minn. Stat. § 624.713, subd. 10(i), does not apply to appellant because

unrestricted restoration of his civil rights removed his conviction from the definition of convictions that disqualify a person from possessing any type of firearm. Minn. Stat. § 624.712, subd. 10(2), states that “[a]ny conviction . . . for which a person has . . . had civil rights restored *shall not be considered as a conviction for purposes of this definition*, unless such . . . restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” (Emphasis added.) It is not disputed that appellant’s civil rights were fully restored in 1986 without any provision restricting his use or possession of firearms, thereby removing this conviction from the definition of disqualifying convictions in the relevant statutes. The district court plainly erred by concluding that appellant is ineligible to possess any firearm under Minn. Stat. § 624.713, subd. 10(i), and therefore ineligible for a permit to carry a firearm.

Respondent has mischaracterized appellant’s argument that he is not disqualified from possessing a firearm as a claim of lack of notice. Based on that mischaracterization, respondent argues that the facts of this case are similar to the facts in *State v. Grillo*, 661 N.W.2d 641, 643 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). We disagree.

In 1993, Grillo was adjudicated delinquent for felony theft of a motor vehicle, an offense that was not then characterized as a “crime of violence.” *Id.* Subsequent to Grillo’s discharge from court supervision in August 1993, applicable statutes were amended to include him in a class of persons prohibited from possessing a firearm. *Id.* In August 2000, as a result of a traffic stop for an equipment violation, a pistol was discovered in Grillo’s automobile. *Id.* Grillo was arrested and charged with possession by an ineligible person. *Id.* Grillo moved to dismiss the charge, arguing that prosecution

of the offense violated the constitutional prohibition against *ex post facto* laws. *Id.* at 644. We held that, because the law making Grillo ineligible to possess a firearm applied to future, not past conduct, it was not an *ex post facto* law, either facially or as applied to Grillo. *Id.* at 465. And, in addressing Grillo's contention that his due-process rights were violated by lack of effective notice of the restriction, we noted that the statute provided that failure to give notice does not affect the applicability of the statute and that Grillo could have discovered the prohibition had he made an effort to do so. *Id.*

By contrast here, no amendment to any law makes appellant part of a class subject to future punishment for possessing a firearm. His civil rights were restored without restriction in 1986, and no subsequent law made his restoration of civil rights subject to a firearms restriction. We therefore vacate the district court's judgment and reinstate the initial judgment for appellant requiring respondent to issue him a permit to carry a firearm and awarding him attorney fees.

Reversed.