IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-105

Filed: 7 July 2020

Buncombe County, No. 19 CVD 2609

In re: Wendell Bezanson

Appeal by petitioner from order entered 16 September 2019 by Judge Julie M. Kepple in Buncombe County District Court. Heard in the Court of Appeals 10 June 2020.

Redding Jones, PLLC, by Ty K. McTier and David G. Redding, for petitioner-appellant.

J. Brandon Freeman for respondent-appellee Buncombe County Sheriff's Office.

YOUNG, Judge.

Where petitioner was not currently or previously adjudicated mentally ill, the trial court did not err in relying upon a statute that did not require such a determination. Where petitioner cannot show that his constitutional rights were impacted, we do not find the applicable statute unconstitutional, and the trial court did not err in relying upon it. Where petitioner did not preserve any hearsay issue

before the trial court, we dismiss such argument. We decline to remand for new hearing, and affirm the order of the trial court.

I. Factual and Procedural Background

On 27 November 2018, Wendell Albert Bezanson (petitioner) applied for a concealed handgun permit. On 13 May 2019, the Buncombe County Sheriff's Office contacted petitioner to inform him that his application was denied, based on the existence of a "physical or mental infirmity that prevents the safe handling of a handgun[.]" Specifically, the Sheriff's Office noted the existence of mental health records from 2007, 2009, and 2013, raising concerns of a diagnosis of "Personality Disorder Not Otherwise Specified[.]" Petitioner appealed the denial of his application to Buncombe County District Court, alleging that there was "no basis for denial" of his application. On 16 September 2019, the district court entered an order denying petitioner's appeal, finding that the decision of the Sheriff's Office was reasonable.

Petitioner appeals.

II. Statutory Error

In his first argument, petitioner contends that the trial court applied the inappropriate statute in denying his appeal from the denial of his petition for a concealed carry permit. We disagree.

A. Standard of Review

"Alleged statutory errors are questions of law, and as such, are reviewed *de novo*." *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721, *writ denied,* ___ N.C. ___, 707 S.E.2d 246 (2011) (citations omitted).

B. Analysis

The order of the Sheriff, which the trial court upheld on appeal, denied petitioner's concealed carry permit application on the basis of N.C. Gen. Stat. § 14-415.12(a)(3), which provides that a sheriff shall issue a concealed carry permit to an applicant who "does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun." N.C. Gen. Stat. § 14-415.12(a)(3) (2019). Petitioner contends, however, that this was not the appropriate provision under which to consider his mental health history; rather, he argues that the Sheriff and trial court should have considered his mental health pursuant to separate subsection, which requires a sheriff to deny a concealed carry permit to an applicant who "[i]s currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill." N.C. Gen. Stat. § 14-415.12(b)(6). Moreover, petitioner notes that an applicant cannot be held ineligible under this latter subsection "if the individual's rights have been restored" pursuant to the relevant statute. N.C. Gen. Stat. § 14-415.12(c).

Petitioner argues that, "[i]f District Courts are allowed to judge mental illness and mental fitness" under subsection (a)(3) "in isolation, then" the other two subsections "are rendered superfluous." However, it is clear from context that the two serve distinct purposes.

Subsection (b)(6), upon which petitioner relies, specifically concerns an adjudication of mental illness. As petitioner notes, there is a statutory framework for the purpose of adjudicating an individual as mentally unsound, for restricting their rights on that basis, and for restoring their rights after they are no longer a threat to the public. Subsection (a)(3), on the other hand, does not reference such an adjudication. Instead, it merely requires a finding of unfitness.

In the instant case, the record does not show, nor does any party contend, that petitioner was involuntarily committed or otherwise previously adjudicated as mentally ill or unfit. In such a situation, this Court, in examining a near-identical statute, has held that where an applicant "was neither involuntarily nor voluntarily committed to a mental institution, he does not fall under the purview of" the relevant statute. *Waldron v. Batten*, 191 N.C. App. 237, 241, 662 S.E.2d 568, 570 (2008).

This is not an instance in which reliance upon subsection (b)(6) would have been appropriate. As such, the trial court did not err in relying upon subsection (a)(3).

III. Constitutionality

In his second argument, petitioner contends that the applicable statute is overbroad and unconstitutional. We disagree.

A. Standard of Review

"[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal." *State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982).

"The standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. review denied*, 363 N.C. 857, 694S.E.2d 766 (2010).

B. Analysis

Petitioner notes that the trial court made "no findings of a diagnosable mental disorder." He once again attempts to cite N.C. Gen. Stat. § 14-415.12(b)(6), which we have held above to be inapplicable, as a basis for his reasoning.[1] He contends that, absent an explicit adjudication of a specifically diagnosable mental illness, denial of a concealed carry permit is a violation of constitutional rights.

As a preliminary matter, a review of the transcript before us reveals that petitioner never raised any arguments concerning his constitutional rights. Ordinarily, this would preclude review of such argument on appeal. *Hunter*, 305 N.C.

[1] In fact, petitioner cites N.C. Gen. Stat. § 14-412. However, as that statute concerns possession of pyrotechnics, and contains no subsection (b)(6), we assume this to be a typographical error.

at 112, 286 S.E.2d at 539. However, even assuming *arguendo* that petitioner's challenge to the denial of his application for a concealed carry permit constituted an implicit argument concerning his constitutional rights, such argument must fail.

This Court has previously addressed the issue of whether an application for a concealed carry permit implicates the Second Amendment. Specifically, this Court has found that, while the Second Amendment protects an individual's right to *possess* a weapon, it does not protect one's right to *conceal* a weapon, and thus the "right to carry a concealed handgun does not fall within the scope of the Second Amendment[.]" *Kelly v. Riley*, 223 N.C. App. 261, 268, 733 S.E.2d 194, 199 (2012). Accordingly, petitioner's Second Amendment rights are not impacted by the trial court's decision.

Nor are petitioner's Due Process rights impacted. Our General Statutes provide that, should a sheriff deny an application for a concealed carry permit, the applicant possesses the remedy of appeal via petition to the appropriate district court. N.C. Gen. Stat. § 14-415.15(c) (2019). This Court has held that, "following a sheriff's denial of a Concealed Handgun Permit application, the process afforded is the applicant's opportunity to appeal that decision[,]" and that an applicant who does in fact receive a hearing on appeal has been afforded his Due Process rights. *DeBruhl v. Mecklenburg Cty. Sheriff's Office*, 259 N.C. App. 50, 58, 815 S.E.2d 1, 7 (2018). Because petitioner did in fact appeal the Sheriff's denial of his application, participated in a hearing before the trial court on that appeal, and offered expert

testimony in support of his position, we hold that petitioner's Due Process rights are not impacted by the trial court's decision.

Because petitioner cannot show that his constitutional rights were impacted by the trial court's decision, we hold that the statute relied upon by the trial court was not unconstitutional on its face or as applied to petitioner, and that the trial court did not err in relying upon it.

IV. Evidentiary Matters

In his third argument, petitioner contends that the trial court erred in admitting hearsay, and in conducting an incomplete evidentiary analysis. We disagree.

A. Standard of Review

> In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C.R. App. P. 10(a).

B. Analysis

Petitioner argues that the trial court erred in relying upon hearsay evidence. However, petitioner fails to state specifically what evidence before the trial court constituted hearsay. Moreover, petitioner did not raise any such objection at trial.

The only objection petitioner raised with respect to the evidence was one of authentication. As petitioner did not raise this issue before the trial court, we hold that it was not properly preserved. And as petitioner offers no basis for this Court to review his unpreserved issue, we dismiss it.

Petitioner also argues that the trial court did not properly address the criteria which form the basis for mental health disqualification. However, the statute which petitioner cites, N.C. Gen. Stat. § 14-409.43, concerns transmitting an adjudication of mental unfitness to the National Instant Criminal Background Check System (NICS). As we have held above, this case did not concern an adjudication of mental unfitness, and thus that statute is inapplicable.

Petitioner further contends that the trial court abused its discretion "in ignoring the greater weight of the evidence" that petitioner did not suffer from a mental infirmity which prevented the safe handling of a firearm. However, "[i]t is not the function of this Court to reweigh the evidence on appeal." *Garrett v. Burris*, 224 N.C. App. 32, 38, 735 S.E.2d 414, 418 (2012), *aff'd per curiam,* 366 N.C. 551, 742 S.E.2d 803 (2013). It is not the role of this Court to determine whether the trial court should have given petitioner's evidence more weight, and we decline to do so.

V. New Proceeding

In his fourth argument, petitioner contends that he is entitled to a new proceeding. We disagree.

In a rather broad argument, petitioner contends that this proceeding constituted an adjudication of mental unfitness without the procedural checks for such a determination, that his rights will be impacted as a result, and that this Court must therefore remand this matter to place it under seal.

We are not convinced by petitioner's argument. In essence, he contends that he and others like him place themselves in jeopardy of a deprivation of their rights by applying for a concealed carry permit, and that this is unfair. While the outcome is certainly more than one might expect from merely applying for a permit, the fact that placing the issue of one's mental fitness to use a firearm before the trial court might result in a finding that one is unfit to use a firearm is hardly unexpected. Petitioner is correct that, "[i]f firearms were not in play, [he] would not have an adjudication that he is somehow mentally unfit." He knew that the initial denial of his application was on the basis of mental fitness, yet he chose to appeal it anyway; he cannot be surprised that the trial court found that the Sheriff's determination of petitioner's mental fitness was reasonable.

Nonetheless, petitioner seeks two remedies. The first is that this matter will be remanded for rehearing in the trial court, under seal, with protections in place pursuant to N.C. Gen. Stat. § 14-409.42. However, that statute is the basis for a petitioner to seek restoration to remove an adjudication of mental unfitness. While we do not hold that the order below constituted an adjudication of mental unfitness

requiring such an order, even assuming *arguendo* that it did, the burden is on petitioner to file such a petition with the trial court, not on this Court to independently institute such proceedings on his behalf.

Second, petitioner asks that this Court state affirmatively that petitioner will not be precluded by N.C. Gen. Stat. § 14-415.12(a)(3) from applying for a concealed carry permit if his rights are restored pursuant to N.C. Gen. Stat. § 14-409.42. However, it is not our role to do so. Rather, should petitioner restore his rights at some point in the future, and nonetheless be denied a concealed carry permit, the burden is upon petitioner to present proof of the restoration of his rights to the trial court. It will then be the role of the trial court to compare the evidence of petitioner's mental unfitness and the adjudication of his restored rights to determine whether petitioner, at that time, suffers from a mental illness which "prevents the safe handling of a handgun." We decline to issue a premature rule or ruling rendering petitioner *per se* fit to do so.

AFFIRMED IN PART, DISMISSED IN PART.

Judge DILLON concurs.

Judge ARROWOOD concurs in the result only.

Report per Rule 30(e).