

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH NH CIRCUIT COURT

MERRIMACK COUNTY

6TH CIRCUIT – DISTRICT DIVISION - CONCORD

Mark Fisher

v.

New Hampshire State Police/Permit and Licensing Unit

Docket No. 429-2015-CV-00212

ORDER

A Hearing was held on August 13, 2015, on the Petitioner's Appeal of the denial of his application for a Non-Resident License to Carry a Pistol/Revolver Permit.

In the denial letter to the Petitioner, and at the Hearing, the State/ Respondent, stated that the Petitioner is not a suitable person to be licensed, under RSA 159:6, and Saf-C 2103.01(a)(b)(6), because of a 2003 conviction in the Commonwealth of Massachusetts for Possession of a Class D Controlled Drug. The State maintained that the Department of Safety Administrative Rules prohibit the issuing of a permit if a person has been convicted of a misdemeanor drug offense less than 20 years from the date of their application. (The Court notes that in the denial letter the State cited section (3), not (6), but at the Hearing the State referred to section (6)).

In addition to arguing that the State had not met its burden of proof, the Petitioner also made an Equal Protection Argument. The Petitioner claims that out-of-state residents are being treated differently than in-state residents with respect to the grounds used to grant or deny a License to Carry, and that there is no rational basis to do so. Specifically, if the Petitioner were a resident of the State of New Hampshire, the Commonwealth of Massachusetts conviction would not have been a disqualifier. The Petitioner also noted that the Petitioner has a valid license to Carry a Concealed Weapon in the Commonwealth of Massachusetts.

After hearing all of the testimony, the Court finds that the State's position fails for two reasons.

First, the State failed to meet its burden of proof, by clear and convincing evidence, that the Petitioner was convicted of the Possession charge. Therefore, the State is unable to prove that the Petitioner is not suitable to hold a license. The only evidence submitted to the Court regarding a conviction was a standard criminal records check (Respondent's Exhibit A), which listed the offense "POSS CLASS D CONT SUB". It also listed what appeared to be an arraignment date and a disposition date. The State did not provide a certified copy of the conviction nor any court documents from Marlborough District Court where the offense apparently was resolved.

Second, the State was unable to prove that there was a valid or rational basis for treating in-state and out-of-state residents differently with respect to disqualifiers for a License to Carry.

The Court finds that out-of-state residents are being treated differently than in-state residents with respect to the grounds used to grant or deny a License to Carry, and that there is no legitimate, articulable or rational basis to do so.

Further, the Court finds that the provision precluding the issuance of a license for an out of state resident based upon a misdemeanor conviction that would not be a disqualifier for an in state resident is unreasonable on its face, and, unreasonable as applied to this Petitioner.

Therefore, the Court grants the Petitioner's Appeal and orders that a Non-Resident License to Carry a Pistol/Revolver be issued to the Petitioner.

So Ordered.

August 14, 2015
Date

M. Kristin Spath
Hon. M. Kristin Spath, Judge