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OFFICE OF THE
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October 24, 2002

Opinion No. 02-119

Restoration of Rights Forms for Handgun Permit Purposes

QUESTIONS

1. Does a “certificate of restoration” issued by a pardoning, supervising, or incarcerating authority pursuant to Tenn. Code Ann. §40-29-105(b)(3) satisfy the requirement, in Tenn. Code Ann. §39-17-1351(j)(3), that felons convicted on or after July 1, 1986, but before July 1, 1996, who are otherwise eligible for issuance of a handgun permit, must obtain restoration of the full rights of citizenship in order to obtain such a permit?

2. Is the Tennessee Department of Safety required to accept a certain form captioned “Certificate of Restoration of Voting Rights” for the issuance of a handgun carry permit, for otherwise eligible felons convicted on or after July 1, 1986, but before July 1, 1996?

3. If a certificate of restoration is not sufficient in all such cases to restore full rights of citizenship to an applicant for a handgun permit, what steps can be taken by the applicant to restore full rights of citizenship?

OPINIONS

1. Yes, unless the applicant was sentenced to the penitentiary .

2. The Department of Safety must accept the form titled “Certificate of Restoration of Voting Rights” from otherwise eligible persons not sentenced to the penitentiary if the form was applicable to the applicant, and properly executed, during the time period when the form was in effect. The form was the one officially prescribed by the coordinator of elections, before it was revised in January 1998.

3. An otherwise eligible applicant with a penitentiary sentence convicted during said period can regain full rights of citizenship for a handgun permit by proceeding on a petition in the circuit court of the county of the petitioner’s residence or in the circuit court of the county in which the petitioner was convicted of an act depriving the petitioner of citizenship for a court order restoring those rights pursuant to Tenn. Code Ann. §§ 40-29-101-102.

ANALYSIS

Introduction

Tennessee has no blanket disability statute depriving convicted persons of all civil rights. Instead, Tennessee law provides for specific disabilities for persons convicted of certain crimes. *Cole v. Campbell*, 968 S.W.2d 274, 276 (Tenn. 1998).¹ Convicted felons are rendered “infamous” and are disqualified from voting, but not from testifying in court. Tenn. Code Ann. §40-20-112.

The legislature has also imposed specific disabilities regarding possession and carrying of firearms by felons. Felons convicted of certain offenses are prohibited from possession of a firearm. Tenn. Code Ann. § 39-17-1307.² Felons who are prohibited from possession of a firearm are likewise prohibited from obtaining a handgun carry permit. Tenn. Code Ann. § 39-17-1351(b). Felons who have been convicted of first degree murder, aggravated rape, treason, or voter fraud and certain other offenses are also ineligible to obtain a handgun carry permit. Tenn. Code Ann. § 40-29-105(b)(2).³ Other felons who are otherwise qualified can obtain a handgun permit if they have had their “full rights of citizenship” restored pursuant to Tenn. Code Ann. §§ 39-17-1351(j)(3)(Supp. 2001); 40-29-105. As this office has previously opined, however, the particular procedure that should be followed to obtain such restoration is dependent on the date of the felon’s conviction. Op. Atty Gen. 97-169 (Dec. 22, 1997). In addition, further research not treated in that opinion also reveals that the particular procedure to be followed may also be dependent on the nature of the specific right sought to be restored. Felons convicted between July 1, 1986, and July 1, 1996, who were sentenced to the penitentiary must obtain a court order restoring their rights of citizenship in order to be eligible to obtain a handgun permit. For felons of that period who are otherwise qualified and were not sentenced to the penitentiary, a certificate of restoration issued under Tenn. Code Ann §39-17-1351(j)(3) will suffice.

1. Certificate of restoration

a. Felons not sentenced to the penitentiary

If a felon in this class seeking restoration of rights was convicted on and after July 1, 1986, but before July 1, 1996, he or she must obtain a “certificate of restoration.” Such a certificate can

¹In this case the court held that, in the absence of a specific statutory disability, convicted felons have standing, as citizens, to request access to public records.

²The statute prohibits firearms possession by persons convicted of any felony involving the use or attempted use of force, violence or a deadly weapon. It also prohibits possession by any person convicted of a felony drug offense.

³In addition, permits may not be issued to those convicted of burglary, any felony involving violence or use of a firearm; felony Schedule I, II, III, IV, or V drug offenses; or Schedule VI drug offenses less than ten years before application. Tenn. Code Ann. § 39-17-1351(j)(3). The prohibition also applies to felons, fugitives, persons of unsound mind, alcohol and drug addicts and persons convicted of illegal sale of alcohol, as set out in Tenn. Code Ann. § 39-17-1316. Tenn. Code Ann. § 39-17-1351(b).

be issued by “an agent or officer of the supervising or incarcerating authority” or “the pardoning authority” after service or expiration of the maximum sentence imposed, after receiving a pardon or after being granted final release from incarceration or supervision by the board of parole, the department of correction or county correction authority. Tenn. Code Ann. §§ 40-29-105(b)(1)(A), (b)(1)(B), (b)(1)(C) and (b)(3). Any person eligible for restoration “may request, and then shall be issued, a certificate of restoration upon a form prescribed by the coordinator of elections.” Tenn. Code Ann. § 40-29-105(b)(3). The plain meaning of this statute suggests a mandated restoration of rights when the statutory conditions are met and the proper form is duly executed.

It should be noted, however, that the “full restoration of rights” provided for under this section does not restore the right to possess a handgun to persons convicted of a felony involving the use or attempted use of force, violence or a deadly weapon. *State v. Johnson*, 2002 WL 1485364 (Tenn. 2002), at *1.⁴ As noted above, persons who are prohibited from possessing a firearm are not eligible to obtain a handgun carry permit. Therefore the certificate of restoration, while restoring “rights of citizenship” to these non-penitentiary sentenced 1986-96 felons convicted of violent offenses, would not restore eligibility to obtain a handgun carry permit.

b. Felons sentenced to the penitentiary

Tenn. Code Ann. § 39-17-1351(j)(3) states, “The department shall not deny a permit application if...[t]he applicant...has his or her full rights of citizenship duly restored pursuant to the procedures set forth within title 40, chapter 29. . . .” This language, however, must be read in *pari materia* with subsection (b) of this statute, which provides that no permit shall be issued to any person who is prohibited by federal law from possessing or purchasing a firearm.⁵ In addition, the entire statute must be read in *pari materia* with an older statute concerning restoration of rights for felons sentenced to the penitentiary, Tenn. Code Ann. §40-20-114.⁶

⁴ This opinion affirmed a conviction for a felon in possession of a firearm even though the defendant had obtained a certificate of restoration.

⁵ The federal felon/firearm prohibition is specifically incorporated in Tenn. Code Ann. § 39-17-1351(b) by the following language:

(b) Any resident of Tennessee who has reached twenty-one (21) years of age may apply to the department of safety for a handgun carry permit. *If the applicant is not prohibited* from purchasing or possessing a firearm in this state *pursuant to* § 39-17-1316 or § 39-17-1307(b), *18 U.S.C. § 922(g)* or any other state or federal law and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

Emphasis supplied.

⁶ A traditional dividing line between felons and non-felons is that felons are sentenced to the penitentiary while non-felons are sentenced to a local jail or workhouse. Sentencing laws in Tennessee diverged somewhat from this division some time ago. Thus not all felons are sentenced to the penitentiary. Some are sentenced to incarceration in a local jail or workhouse. Tenn. Code Ann. §§ 40-34-101-102; 40-35-104; 40-35-314.

Tenn. Code Ann. § 40-20-114 provides that felons or infamous criminals sentenced to the penitentiary may have their rights to seek and hold public office restored only when citizenship rights have been restored by a court of competent jurisdiction.⁷ This suggests that the certification that conditions such as release or expiration of sentence have been met under Tenn. Code Ann. §40-29-105(b) will not restore all rights in penitentiary sentence cases.

Tenn. Code Ann. §39-17-1351(b) requires that the applicant for a handgun permit not be prohibited from purchasing or possessing a firearm under 18 U.S.C. §922(g). The federal statute prohibits gun possession or purchase by persons convicted of a crime punishable by imprisonment exceeding one year. This prohibition can be removed if the convicting state has restored “civil rights” to the felon, without expressly limiting firearm privileges. 18 U.S.C. 921(a)(20).

A state’s blanket “restoration of rights” is not necessarily sufficient to remove the prohibition under federal law. Federal courts have specifically defined which civil rights are required to be restored by the state for a felon to avoid federal firearm disabilities. The rights specifically enumerated include “the right to vote, the right[s] to seek and hold public office, and the right to serve on a jury.”*United States v. Cassidy*, 899 F. 2d 543, 549 (6th Cir. 1990). Thus a felon is prohibited from possessing a firearm under the federal firearms statutes if his rights to seek and hold public office have not been restored. *Id.*, at 546. *See also United States v. White*, 808 F. Supp. 586, 590 (M.D. Tenn. 1992).⁸ The question whether a convicted state felon has had his federal firearms disabilities removed is a federal question and thus federal courts provide controlling authority. Therefore, if a handgun permit applicant’s rights to seek and hold public office have not been restored, the felon’s federal firearms disabilities are not removed. If those disabilities are not removed, then by operation of Tenn. Code Ann. § 39-17-1351(b), the felon is ineligible for a handgun permit.

United States v. White, previously cited, provides case authority for the requirement of a court order for removal of handgun permit disabilities in certain 1986-96 cases. In that case, the court stated that the restoration of rights certificate provisions of Tenn. Code Ann. §40-29-105

It should be noted that some felons who are placed on probation, as opposed to diversion, are still “sentenced to the penitentiary.” Probation merely suspends their sentences of confinement. If their sentences are to the penitentiary, they are still “sentenced to the penitentiary” despite being placed on probation.

⁷ Tenn. Code Ann. § 40-20-114 reads as follows:

Every person convicted of a felony or an infamous crime and sentenced to the penitentiary, either on the state or federal level, is disqualified from qualifying for, seeking or holding any office under the authority of this state unless and until such person’s citizenship rights have been restored by a court of competent jurisdiction.

⁸ *White* involved a federal prosecution of a felon carrying a firearm and a determination that the accused had not had his civil rights restored under Tennessee state law.

concern the restoration of voting rights.⁹ The court cited Tenn. Code Ann § 40-29-114, requiring a court order to restore the rights to seek and hold public office to a felon who has been sentenced to the penitentiary. The court directed that a felon who has been sentenced to the penitentiary must follow the procedure in Tenn. Code Ann. §§40-29-101— 102 to accomplish this. *White* at 588.

There is state court authority in accord with this conclusion. In *State v. Black*, 2002 WL 1364043 (Tenn.Ct.App., June 25, 2002), the court, citing *White*, mentioned that there are two distinct restoration procedures for 1986-96 felons. These are: the certificate for the right to vote and a court order for the rights to seek and hold public office.¹⁰ *Black*, at *6. The question then is whether an otherwise eligible penitentiary-sentenced 1986-96 felon would need both a court order and a certificate to qualify for a handgun permit, or whether a court order alone would suffice.

⁹The *White* Court interpreted Tenn. Code Ann. § 40-29-105 as applying to the right to vote only. The Court struggled with procedure to restore the right to serve on a jury, even showing uncertainty as to whether an order under Tenn. Code Ann. § 40-29-101 could accomplish this. The opinion finally states, “Regardless, the resolution of this question is unnecessary on the facts of the case before this Court.” *White* at 589.

Both Tenn. Code Ann. §§ 40-29-101 (court order) and 40-29-105 (certificate) provide that infamous persons may have “full rights of citizenship restored.” Unlike the statute on the rights to seek and hold public office, Tenn. Code Ann. § 40-20-114, which makes persons convicted of certain infamous offenses incompetent to serve on a jury, is without any language requiring a court order to restore the right. A plain meaning interpretation of the phrase “full rights of citizenship” would indicate that a certificate or order, whichever is appropriate, restores the right to serve as juror as well as the right to vote. The Tennessee Supreme Court recently stated, “The cardinal rule of statutory construction is to follow the plain meaning of the statute on its face.” *Jackson v. General Motors Corp.*, 60 S.W. 3d 800, 804 (Tenn. 2001).

¹⁰In *Black*, the Court also notes an obvious drafting error in Tenn. Code Ann. §40-29-105(a) which literally prescribes a court petition, not the certificate, as the proper procedure for “all persons convicted of an infamous crime prior to July 1, 1986, but before July 1, 1996.” The court commented as follows:

This unclear language clouds the issue of whether subsection (a) makes §§ 40-29-101 through 104 applicable to persons convicted after July 1, 1986, but before July 1, 1996, since subsection (b), specifically applicable to those persons, does not include the same language.

Black at *7, n. 10.

The necessity to obtain a court order in some 1986-96 cases involving persons sentenced to the penitentiary is created by Tenn. Code Ann. § 40-20-114. That law speaks in terms of an order restoring “citizenship rights,” which can be restored to such persons “by a court of competent jurisdiction.” The “court of competent jurisdiction” is the circuit court, Tenn. Code Ann. §40-29-101, and the procedure is set forth in Tenn. Code Ann. §§ 40-29-102— 104. These statutes do not by context or otherwise limit themselves to a particular right. Therefore, although the question is not free from doubt, it appears that an otherwise eligible 1986-96 felon sentenced to the penitentiary who obtained a court order restoring his citizenship rights under this section would not be required to also present a certificate in order to obtain a handgun permit.¹¹

Thus the Department of Safety is not authorized to accept a penitentiary-sentenced felon’s § 40-29-105(b) certificate as sufficient proof that federal firearms disabilities have been removed. Such felons must present a court order restoring citizenship rights. As to felons convicted between July 1, 1986, and July 1, 1996, and not sentenced to the penitentiary, a certificate of restoration is necessary.

This office has previously addressed issuance of handgun permits to felons in general. Tenn. Op. Atty. Gen. No. 97-169. Neither the question presented in that opinion, nor the analysis, specifically dealt with felons who were sentenced to the penitentiary. To the extent that the previous opinion could be read to suggest that otherwise eligible penitentiary-sentenced inmates have their full rights of citizenship restored for handgun purposes by issuance of a certificate of restoration, it is hereby withdrawn.

2. Sufficiency of pre-1998 “Restoration of Voting Rights” form for issuance of handgun carry permit to non-penitentiary-sentenced felons convicted between 1986 and 1996

In addition to the question of whether a certificate of restoration is sufficient to restore the eligibility of 1986-96 felons to obtain a handgun permit, the request asks whether a particular restoration form is sufficient to meet the requirements of the statute. In light of the above analysis, the specific issue examined here becomes whether the Tennessee Department of Safety may issue a handgun permit to a 1986-96 felon who has not been sentenced to the penitentiary on the strength of a restoration of rights form captioned “Certificate of Restoration of Voting Rights.”

¹¹ This does not mean that any other 1986-96 felons have an option to have their rights restored by court order rather than by the certificate. The right and necessity to obtain a court order in some 1986-1996 cases are created by Tenn. Code Ann. § 40-20-114, which is limited in application to persons “sentenced to the penitentiary.” Felons of that period who were not sentenced to the penitentiary have no right to use that statute rather than Tenn. Code Ann. §40-29-105(b) in order to restore their right to vote. Instead, they must use the certificate procedure. It must be kept in mind that Tenn. Code Ann. § 40-20-114 divests only those sentenced to the penitentiary of the rights to seek and hold office. A certificate is sufficient for felons not sentenced to the penitentiary, because they lost only the rights to vote and serve as juror and a certificate restores those rights.

This form was prescribed by the coordinator of elections, as required by Tenn. Code Ann. § 4-29-105(b)(3), but was superseded by a newer form in January 1998.¹² The form is not an order. Rather, it is a certification as to facts that entitle one to restoration of rights by operation of law. The older form in question contains the same proper factual certifications and prescribes execution by the same proper authority as the newer one. In other words, the body of the older form contains the requisite information for restoration of rights under Tenn. Code Ann. § 40-29-105(b). The question is whether the form's caption, which refers only to "voting rights," renders the form insufficient in light of Tenn. Code Ann. § 39-17-1351(j)(3)'s requirement that "full rights of citizenship" be restored in order to obtain a gun permit.

Again, the statute must be interpreted by determining its plain meaning. Tenn. Code Ann. § 40-29-15(b)(3) does not prescribe a form. It delegates this authority to the coordinator of elections.

The handgun permit statute specifically refers to "title 40, chapter 29" for the restoration of rights. Tenn. Code Ann. § 39-17-1351(j)(3). Thus in determining whether the caption "Restoration of Voting Rights" invalidates the older form for gun permit purposes, one must look to title 40, chapter 29.

The primary goal of statutory construction is to give effect to the intention and purpose of the legislature. *Knox County Education Association v. Knox County Board of Education*, 60 S.W. 3d 65, 74 (Tenn. App. 2001); *State v. Walls*, 62 S.W. 3d 119, 121 (Tenn. 2001). The purpose and intention behind Tenn. Code Ann. § 40-29-105(b) is to specify how "full rights of citizenship" can be restored to persons convicted of infamous crimes between July 1, 1986, and July 1, 1996, but not sentenced to the penitentiary. Eligibility for restoration of rights is attained upon receiving a pardon, service or expiration of the maximum sentence imposed for the infamous crime, or release from incarceration or supervision.¹³ The consummation of restoration is done by the pardoning,

¹² The coordinator of elections instituted some minor changes in the form for the restoration of rights under Tenn. Code Ann. § 40-29-105(b) in January of 1998 after this office issued an opinion involving felons obtaining handgun carry permits after a restoration of rights. See Op. Tenn. Atty. Gen. 97-169 (December 22, 1997). The caption for the current restoration of rights form reads, "Certificate of Restoration (Pursuant to T.C.A. § 40-29-105) for Persons Convicted of a Felony After July 1, 1986 But Before July 1, 1996." This language changed the older caption which read, "Certificate of Restoration of Voting Rights." The current restoration of rights form also adopted a number of minor technical changes including the following: the line, "this is to certify," has been replaced by, "I hereby certify that the following information is true and correct;" spaces for the applicant's county of residence, date of birth, and social security number have been added; three boxes stating the reason for the restoration of rights have been changed to four boxes by splitting one of the original reasons into two separate boxes; the phrase "check one" has been added above these four boxes; and the information from witnesses to the execution of the document has been expanded to include a space for the witness' printed name, address, and telephone number. In the lower left corner of the newer form appears "(Rev. 1/98)."

¹³ Tenn. Code Ann. § 40-29-105(b)(1).

supervising or incarcerating authority's certification that the appropriate condition has been met,¹⁴ not by court order. This certification is to be done on a form "prescribed by the coordinator of elections." The legislature has left the selection of a form to the coordinator of elections. The only requisite for a proper form is certification of proper facts by proper authorities. Tenn. Code Ann. § 40-29-105 states that such certification results in restoration of "full rights of citizenship." The older form, despite its caption, satisfies those conditions and was thus valid during the time it was officially prescribed.

The above conclusion follows clearly defined precedent. The Tennessee Supreme Court has held that it must seek a reasonable construction of statutes in light of the purposes, objectives, and spirit of the statute based on "good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W. 3d 281, 286 (Tenn. 2001). The Supreme Court has also ruled that it must presume that "the legislature says in a statute what it means and means in a statute what it says there." *Linebaugh v. Coffee Medical Center*, 59 S.W. 3d 73, 83 (Tenn. 2001). On yet another occasion, the same tribunal stated, "When the language contained within the four corners of a statute is plain, clear and unambiguous, the duty of the courts is simple and obvious, to say sic ex scripta, and obey it." *Kradel v. Piper Industries Inc.*, 60 S.W. 3d 744, 749 (Tenn. 2001).

The question of whether the caption on such a form is of real legal significance can be compared to the importance of the section heading on a statute. It has been held that the heading has no effect on the statute's scope or application. *Winter v. Smith*, 914 S.W. 2d 527, 538 (Tenn. App. 1995) *p.t.a. denied* (1995).

Thus the older "voting rights" form complies with Tenn. Code Ann. § 40-29-105(b) and should be accepted for handgun permit purposes if executed by the proper authority at the time it was the officially prescribed form.

3. Restoration of rights to seek and hold public office for penitentiary-sentenced felons convicted between 1986 and 1996.

For the reasons set forth above, an otherwise eligible felon convicted during the 1986-1996 period and sentenced to the penitentiary must obtain restoration of his or her "citizenship rights" by court order before obtaining a handgun permit.¹⁵ The means for accomplishing such restoration is suggested by the following excerpt from *White*:

The reference in T.C.A. § 40-20-114 to the restoration of citizenship rights by a "court of competent jurisdiction" refers to the procedures outlined in T.C.A. § 40-29-101 and § 40-29-102.

¹⁴ Tenn. Code Ann. § 40-29-105(b)(3).

¹⁵ If the felon only wants to restore his or her right to vote, there does not appear to be any reason why he or she must obtain a court order.

White at 588.

The procedure requires the filing of a petition in circuit court in the county of the felon's residence or conviction with proper notice to prosecutors and satisfactory proof of character. Tenn. Code Ann. §§ 40-29-102— 103.¹⁶

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¹⁶ Felons convicted on or after July 1, 1996, must petition under Tenn. Code Ann. § 40-29-105(c). This is similar to the pre-1986 procedure, except that the post-1996 petitioner has benefit of a presumption in favor of restoration.