

Tenn. Op. Atty. Gen. No. 97-169 (Tenn.A.G.), 1997 WL 834292

Office of the Attorney General

State of Tennessee
Opinion No. 97-169
December 22, 1997

Felons obtaining a handgun carry permit after restoration of rights

*1 Stephen I. Cohen
State Senator
Suite 8, Legislative Plaza
Nashville, TN 37243-0030

QUESTIONS

1. Does restoration of rights of citizenship pursuant to Tenn. Code Ann. §§ 40-29-101 through 40-29-105 (1997) render a felon who has been convicted of an infamous crime¹ eligible to obtain a handgun carry permit upon proper application under 1997 Pub. Acts ch. 476 § 1 (codified at Tenn. Code Ann. § 39-17-1351 (1997) and hereinafter referred to as such)?
2. What is the procedure to obtain restoration of rights of citizenship?

OPINIONS

1. Yes. Restoration of rights of citizenship pursuant to Tenn. Code Ann. §§ 40-29-101 through 40-29-105 will enable some felons to obtain a handgun carry permit, if otherwise qualified, upon proper application under Tenn. Code Ann. § 39-17-1351.
2. Most felons may have their rights of citizenship restored by petitioning the circuit court of the county in which they reside or in which they were convicted after the expiration of the maximum sentence imposed and by following the other procedures set out in Tenn. Code Ann. §§ 40-29-101 through 40-29-105.

ANALYSIS

1.

To obtain a handgun carry permit under Tennessee Law, a person, *inter alia*, must be eligible to possess a handgun under all of the following provisions: Tenn. Code Ann. §§ 39-17-1316(a), 39-17-1307(b) (1997); 18 U.S.C. § 922(g) (Supp. 1996); and any other State or federal law. Tenn. Code Ann. § 39-17-1351(b). Generally, felons² are ineligible to possess a handgun under all of those statutes,³ unless their rights have been restored⁴ and unless they are otherwise qualified. Tenn. Code Ann. § 39-17-1351(j); 18 U.S.C. §§ 922(g)(1), 921(a)(20) (Supp. 1996).

For felons to lawfully possess a firearm under federal law, they must have their “civil rights” restored to them by the appropriate State. The definition of “civil rights” for purposes of 18 U.S.C. §§ 922(g) and 921(a)(20) has been set forth in federal case law. *United States v. Cassidy*, 899 F.2d 543 (6th Cir. 1990). The Sixth Circuit held that for purposes of 18 U.S.C. §§ 922(g), 921(a)(20) “civil rights” means the “right to vote, the right to seek and hold public office and the right

to serve on a jury.” *Id.* at 549 (footnote omitted), *cited with approval in United States v. Dahms*, 938 F.2d 131, 133 (9th Cir. 1991) and *United States v. Hassan El*, 5 F.3d 726, 734 (4th Cir. 1993). The court ruled that a State must restore all three of those rights to a felon, and not otherwise prohibit the felon from possessing a firearm under State law, in order for that felon to be able to lawfully possess a firearm under federal law. The United States District Court for the Middle District of Tennessee followed *Cassidy* in deciding a similar issue. *United States v. White*, 808 F. Supp. 586 (M.D. Tenn. 1992). Thus, a felon must have the rights to vote, seek and hold public office, and to sit as a juror restored in order to be able to lawfully possess a firearm under federal law.

*2 Whether those rights are lost upon conviction and thereafter restored to felons is a matter of State law. In Tennessee, felons convicted of an infamous crime lose the right to vote (Tenn. Code Ann. § 40-20-112), lose the right to sit as a juror (Tenn. Code Ann. § 22-1-102(a)(1) (1994)), and may lose the right to seek and hold public office⁵ (Tenn. Code Ann. § 40-20-114 (1997)). A felon may have all of these rights restored to him under the procedure outlined in Tenn. Code Ann. §§ 40-29-101 through 40-29-105. “Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their *full* rights of citizenship restored by the circuit court.” Tenn. Code Ann. § 40-29-101(a) (1997). The General Assembly’s use of the word “full” in this context evidences its intent that a felon be restored to all rights of citizenship lost by virtue of conviction.⁶ In Op. Tenn. Att’y Gen. 87-57 (Apr. 2, 1987), this office opined that the restoration of a person’s rights of citizenship pursuant to Tenn. Code Ann. § 40-29-101 *et seq.* operates to remove any incompetency to State court jury service. However, felons convicted of murder, rape, treason, and voter fraud may not have their right to vote restored. Tenn. Code Ann. §40-29-105(b)(2), (c)(2)(B).

Since Tennessee restores to most felons the rights to vote, to seek and hold public office, and to sit as a juror, those felons may lawfully possess a firearm under federal law, if otherwise qualified. Therefore, such felons may obtain a handgun carry permit under Tennessee law if otherwise qualified.⁷

2.

The procedures for felons to have their rights restored, and thus become eligible to obtain a handgun carry permit, if otherwise qualified, are set forth in Tenn. Code Ann. §§ 40-29-101 through 40-29-105. The exact procedure to be used depends on the date of one’s conviction.

Before July 1, 1986

If a felon was convicted before July 1, 1986, he must petition “the circuit court of the county in which the petitioner resides, or to the circuit court of the county in which the petitioner was convicted.” Tenn. Code Ann. § 40-29-102 (1997). The petition must be made after expiration of the maximum sentence imposed. Tenn. Code Ann. § 40-29-101(c). The petition must contain “satisfactory proof that ever since the judgment of disqualification, the petitioner has sustained the character of a person of honesty, respectability and veracity, and that he is generally esteemed as such by his neighbors.” Tenn. Code Ann. § 40-29-102. Before the hearing on the petition, the court will notify the district attorney general or United States attorney, as applicable, of the prosecuting jurisdiction and the district attorney general having jurisdiction over the felon’s place of residence for an opportunity to resist. Tenn. Code Ann. § 40-29-103 (1997). Appeal of denial of restoration of rights lies with court appeals and is reviewed *de novo* upon the record of trial. *In re Curtis*, 6 Tenn. Civ. App. (6 Higgins) 12 (1915).

On and after July 1, 1986, but before July 1, 1996

*3 If a felon was convicted on and after 1, 1986, but before July 1, 1996, he must request a certificate of restoration from “an agent or officer of the supervising or incarcerating authority” after “service or expiration of the maximum sentence imposed ... 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), and (b)(3)(B) (1997). The felon must then submit the certificate of restoration to the registrar of the county in which the felon is eligible to vote. Tenn. Code Ann. § 40-29-105(b)(5). The authority issuing the certificate of restoration will send a copy of the certificate to the coordinator of elections. Tenn. Code Ann. § 40-29-105(b)(4). The registrar will verify the certificate submitted by the felon with the coordinator of elections before issuing a voter registration card. Tenn. Code Ann. § 40-29-105(b)(5) and (b)(6). Felons convicted of murder, aggravated rape, treason or voter fraud on and after July 1, 1986, but before July 1, 1996 “shall never be eligible to register or vote in this state.” Tenn. Code Ann. § 40-29-105(b)(2).

On or after July 1, 1996

If a felon was convicted on or after July 1, 1996, he must petition “the circuit court of the county where the petitioner resides or where the conviction for the infamous crime occurred.” Tenn. Code Ann. § 40-29-105(c)(1). The petition must be made after expiration of the maximum sentence imposed. Tenn. Code Ann. § 40-29-105(c)(2)(B). The petition must “state the reasons the petitioner believes that ... full citizenship rights should be restored [and] shall be accompanied by such certified records, statements and other documents or information as is necessary to demonstrate to the court that the petitioner is both eligible for and merits having full rights of citizenship restored.” Tenn. Code Ann. § 40-29-105(c)(3). Before acting on the petition, the court will notify the district attorney general or United States attorney, as applicable, of the prosecuting jurisdiction and the district attorney general having jurisdiction over the felon's place of residence of the opportunity to object. Tenn. Code Ann. § 40-29-105(c)(4). If the court approves the petition, it will order restoration and send a copy of the order to the coordinator of elections. Tenn. Code Ann. § 40-29-105(c)(5). The felon must submit a certified copy of the order to the registrar of the county in which such felon is eligible to vote. Tenn. Code Ann. § 40-29-105(c)(7). The registrar will verify the order with the coordinator of elections and issue a voter registration card upon verification. *Id.* “A person convicted of murder, rape, treason or voter fraud on or after July 1, 1996 shall never be eligible to register and vote in this state.” Tenn. Code Ann. § 40-29-105(c)(2)(B).

John Knox Walkup
Attorney General and Reporter
*4 Michael E. Moore
Solicitor General
Roger E. Nell
Assistant Attorney General

Footnotes

- 1 “Felony” and “infamous crime” as used herein are not synonymous. Not every felony has always been an infamous crime. Prior to May 18, 1981, an “infamous crime” was any of the following: “abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, felonious breaking into a business house, outhouse other than a dwelling house, bribery, buggery, counterfeiting, violating any other laws to suppress the same, forgery, incest, larceny, horse stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will.” Compiler’s Note to Tenn. Code Ann. § 40-20-112 (1997). From May 18, 1981, all felonies are “infamous crimes.” Tenn. Code Ann. § 40-20-112 (1997). The expansion of the scope of this term cannot be applied retroactively. *Gaskin v. Collins*, 661 S. W. 2d 865 (Tenn. 1983).
“Felons” refers to persons convicted of felonies, whether or not the crime was infamous, unless the context further modifies the word, as in “felons convicted of infamous crimes.”
- 2 This opinion does not address felons who may have this disability removed by virtue of expungement, set aside, or pardon, and references herein to felons assumes that their convictions have not been expunged or set aside and that they have not been pardoned.
- 3 Felons convicted only of felony “offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulation of business practices” may lawfully possess a handgun under both state and federal

law even without restoration of their rights. They may obtain a handgun carry permit, if otherwise qualified. Tenn. Code Ann. § 39-17-1351(c)(6); 18 U.S.C. § 921(a)(20)(A).

4 Felons convicted of a “felony involving the use or attempted use of force, violence, or a deadly weapon” or of any felony drug offense may not lawfully possess a handgun under Tennessee law even if they have had their rights restored. Tenn. Code Ann. § 39-17-1307(b). They cannot, therefore, qualify for a handgun carry permit. Likewise, felons convicted of “burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance” are barred from obtaining a handgun carry permit. Tenn. Code Ann. § 39-17-1351(j)(3).

5 Note that even though a person may have been convicted of a felony or an infamous crime, he does not automatically lose the right to seek and hold public office. The person must have also been sentenced to the penitentiary. Tenn. Code Ann. § 40-20-114.

Further note that not all felons have been convicted of infamous crimes, *see* Note 1, *supra*, and may not have lost these rights. Those felons would, therefore, have no need to seek restoration of those rights to be eligible to lawfully possess a firearm or to be eligible for a handgun carry permit. Felons convicted of felonies that were not defined as infamous crimes before May 18, 1981 would not have lost the rights to vote or to sit on a jury, and would have lost the right to seek and hold public office only if also sentenced to the penitentiary.

6 No Tennessee Supreme Court case has addressed whether a person may have the right to sit as a juror restored. *State v. Bell*, 745 S.W.2d 858 (Tenn. 1988), addresses the statute, but it does not discuss whether a person may regain the ability to sit on a jury after conviction of an infamous crime. *Id.* at 860-61. *See also, Durham v. State*, 182 Tenn. 577, 581, 188 S.W.2d 555, 557 (1945) (issue squarely presented except that appellant failed to preserve it for appeal and court did not decide it). Similarly, *United States v. White*, 808 F. Supp. 586 (M.D. Tenn. 1992), alludes to the issue, but, not needing to resolve it to decide the case, left the question unanswered.

7 It has been suggested that the General Assembly, by enacting Tenn. Code Ann. § 39-17-1351(j)(3), intended that a felon must obtain restoration of rights through a court proceeding in order to be eligible to obtain a handgun carry permit. In other words, the suggestion is that the General Assembly did not intend that a felon who obtained restoration of rights through the automatic procedure available from July 1, 1986 until June 30, 1996 be able to obtain a handgun carry permit.

The pertinent part of the statute states: “The department shall not deny a permit application if ... [t]he applicant ... has had his or her full rights of citizenship duly restored pursuant to the procedures set forth within title 40, chapter 29” Tenn. Code Ann. § 39-17-1351(j)(3). Title 40, chapter 29 of the Tennessee Code provides three procedures for the restoration of rights, the procedure applicable to a particular felon depending upon the date of his conviction, as further explained in the main text, *infra*.

“In construing statutes, [we] must presume that the legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation.” *State v. Levandowski*, No. 03-S-01-9611-CR-000116, 1997 WL 610823, at *1 (Tenn. Oct. 6, 1997). In this instance, the tape recordings of the debates in committee and on the floor of both houses concerning this statute evidence that the legislators were well aware of the automatic restoration procedure in place from 1986 to 1996. In the end, however, the General Assembly passed a final bill that did not distinguish between the automatic procedure and the court procedure for restoration of rights for purposes of obtaining a handgun carry permit. On this point, the statute is clear and unambiguous. Only “[w]hen the language is ambiguous and does not yield a clear interpretation ... may [we] consult the legislative history for additional interpretive guidance.” *Carter v. State*, 952 S.W.2d 417, 419 (Tenn. 1997). Therefore, felons who have had their rights restored under the automatic procedures in place in 1986 to 1996 are eligible to obtain a handgun carry permit, if otherwise qualified.

Tenn. Op. Atty. Gen. No. 97-169 (Tenn.A.G.), 1997 WL 834292