



After receiving notice of the petition, the Chief Deputy District Attorney of Dauphin County did not object to the trial court granting Reed's petition. (R.R. at 102a). On August 29, 1997, the trial court granted Reed's petition by issuing the following order:

AND NOW this 29 day of August, 1997, upon presentation and consideration of the within Motion, and the failure of the Commonwealth to raise any objection

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**(continued...)**

(d) Exemption.- A person who has been convicted of a crime specified in subsection (a) or (b) . . . may make application to the court of common pleas of the county where the principal residence of the applicant is situated for relief from the disability imposed by this section upon the possession, transfer or control of a firearm. The court shall grant such relief if it determines that any of the following apply:

...

(3) Each of the following conditions is met:

(i) The Secretary of the Treasury of the United States has relieved the applicant of an applicable disability imposed by Federal law upon the possession, ownership or control of a firearm as a result of the applicant's prior conviction, except that the court may waive this condition if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to the applicants eligible for relief.

(ii) A period of ten years, not including any time spent in incarceration, has elapsed since the most recent conviction of the applicant of a crime enumerated in subsection (b) or a felony violation of The Controlled Substance, Drug, Device and Cosmetic Act.

thereto, it is hereby Ordered that Defendant's Petition For Relief From Firearms Disability is GRANTED pursuant to 18 Pa. C.S.A. [§]6105 (d). Petitioner RODNEY E. REED is therefore permitted to seek application for reinstatement of his firearm privileges, as his prior criminal history is hereby expunged for that purpose.

(R.R. at 103a).

On December 11, 1998, Reed attempted to purchase a firearm. In response to an instantaneous records check request pursuant to Section 6111.1(b) of the Firearms Act, 18 Pa. C.S. §6111.1(b),<sup>2</sup> PSP conducted a review of its criminal history files and other relevant records to determine if Reed was prohibited from receipt or possession of a firearm under federal or state law. This review revealed a disqualifying conviction, i.e., violation of the Firearms Act. Because this was a state conviction punishable by more than two years imprisonment, PSP denied Reed's purchase pursuant to Section 922(g) of the Federal Gun Control Act of 1968 (Federal Act), 18 U.S.C. §922(g).<sup>3</sup>

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<sup>2</sup> 18 Pa. C.S. §6111.1(b) provides:

(b) Duty of Pennsylvania State Police.-

(1) Upon receipt of a request for a criminal history . . . of the potential purchaser or transferee, the Pennsylvania State Police shall immediately during the licensee's call or by return call forthwith:

(i) review the Pennsylvania State Police criminal history and fingerprint records to determine if the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law.

<sup>3</sup> 18 U.S.C. §922(g) provides:

(g) it shall be unlawful for any person—

**(Footnote continued on next page...)**

Reed challenged the denial, including the trial court's order with his application. By letter dated December 17, 1998, PSP confirmed Reed's denial. Reed thereafter filed an appeal with the Office of Attorney General (OAG). The OAG assigned the case to an ALJ who held a hearing on May 27, 1999.<sup>4</sup> At the hearing, Reed testified that he filed a petition for relief of firearm disabilities which the trial court granted. Reed further testified that he applied to PSP for reinstatement of his firearm privileges, but PSP again denied Reed's application. (R.R. at 48a-51a). On cross-examination, Reed stated that he did not apply for relief from federal firearm disabilities. (R.R. at 53a).

In opposition, Michael P. Kelly, a legal supervisor of the Pennsylvania Instant Check System employed by PSP, testified that the trial court's order which accompanied Reed's application had no effect on PSP's denial of Reed's application because the denial was based on federal law. Mr. Kelly

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**(continued...)**

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

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to . . . possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. §921(a)(20) clarifies that the term "crime punishable by imprisonment for a term exceeding one year" does not include any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less.

<sup>4</sup> It appears from the record that Reed requested an expungement of his criminal record to comply with the trial court's order which the ALJ ultimately denied. Because the ALJ's decision denying the expungement of Reed's criminal record is not at issue, we will not address it further.

further testified that Reed needed to obtain federal relief from firearm disabilities pursuant to Section 925 of the Federal Act, 18 U.S.C. §925. (R.R. at 58a). PSP argued that the trial court's order relieving Reed of state firearm disabilities did not relieve him of federal disabilities.

On April 6, 2000, the ALJ granted Reed's appeal in part and denied it in part. The ALJ denied Reed's request for expungement of his criminal record for failure to comply with the requirements set forth in 18 Pa. C.S. §9122,<sup>5</sup> but granted his request for an exemption to the prohibition to possess a firearm. The ALJ concluded that because Reed was relieved of firearm disabilities by the trial court, PSP was precluded from asserting that Reed's conviction remained disqualifying for federal purposes.

PSP thereafter filed a petition for review with this Court,<sup>6</sup> arguing that the ALJ erred in granting Reed's request for an exemption to the firearm prohibition. Specifically, PSP asserts that it had the authority to deny Reed's application because the trial court did not relieve Reed's federal firearm disabilities. We disagree.

Section 921(a)(20)(B) of the Federal Act specifically provides:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. *Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored*

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<sup>5</sup> 18 Pa. C.S. §9122 addresses the specific proceedings required for having a criminal record expunged.

<sup>6</sup> Our scope of review is limited to a determination of whether necessary findings are supported by substantial evidence, an error of law was committed or whether constitutional rights were violated. See Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

*shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.*

18 U.S.C. §921(a)(20)(B). (emphasis added). The plain language of the Federal Act mandates that Pennsylvania, the jurisdiction in which Reed pleaded guilty, determines whether Reed's conviction constitutes a "conviction" within the meaning of the Federal Act. Moreover, our United States Supreme Court has found this Section to be unambiguous and held that this Section defines "convictions, pardons expungements, and restorations of civil rights by reference to the law of the convicting jurisdiction." Caron v. United States, 524 U.S. 308, 313 (1998), citing Beecham v. United States, 511 U.S. 368 (1994).<sup>7</sup> In other words, this Section "must refer only to restorations of civil rights by the convicting jurisdiction." Beecham, 511 U.S. at 372.<sup>8</sup>

In this case, the offense for which Reed was convicted was punishable by more than two years imprisonment. Initially, then, it would appear that Reed had a disqualifying conviction under Section 922(g) of the Federal Act. However, our inquiry does not end there. The trial court restored Reed's civil right to possess a firearm.<sup>9</sup> The Federal Act specifies that any conviction for which a person has received a restoration of civil rights does not constitute a "conviction"

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<sup>7</sup> In Caron, the law of the state of Massachusetts, Caron's convicting jurisdiction, permitted him to possess rifles or shotguns, but expressly forbade him from possessing handguns outside of his home or business. As Caron did not receive a full restoration of his civil rights in Massachusetts, the Court held that Caron was not relieved of his federal firearm disability.

<sup>8</sup> See also United States v. Jefferson, 88 F.3d 240 (3d Cir. 1996), cert. denied, 519 U.S. 1019 (1996).

<sup>9</sup> We note that, as set forth in Section 6105(d)(3) of the Firearms Act, the trial court had the right to remove Reed's firearm disability.

under the Federal Act. Therefore, Reed's conviction does not constitute a disqualifying "conviction" under the Federal Act. See Section 921(a)(20) of the Federal Act; Caron; Beecham. In turn, the trial court's order had the effect of not only removing state firearm disabilities but also removing federal disabilities.

Further, we are constrained to comment on what we perceive to be PSP's improper independent evaluation of the trial court's order. Without question, upon receipt of such direction from the trial court, PSP had no authority to argue the order's validity or correctness. PSP's actions were undoubtedly a blatant disregard of the trial court's powers.

Finally, at argument before this Court, PSP presented a memorandum order from the United States District Court, as well as a Magistrate Judge's Report and Recommendation, in the case of Dunn v. Evanko (W.D. Pa., Civil Action No. 99-1090, filed March 9, 2001). The order adopted the report and recommendation as the opinion of the court and concluded that state courts lack jurisdiction to remove federal firearm disabilities. However, we believe that this decision contradicts the clear language of both the Firearms Act and the Federal Act.<sup>10</sup>

Accordingly, the ALJ's order is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge  
Judge Leadbetter concurs in the result only.

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<sup>10</sup> Absent a pronouncement by the United States Supreme Court, decisions of the inferior federal courts are not binding on state courts. City of Philadelphia v. Pennsylvania Public Utility Commission, 676 A.2d 1298 (Pa. Cmwlth. 1996), petition for allowance of appeal denied, 546 Pa. 657, 684 A.2d 558 (1996), cert. denied, 520 U.S. 1155 (1997). There is no hierarchical arrangement between state courts and federal courts that exercise jurisdiction within that state. Under the federal system, the states possess sovereignty concurrent with that of the federal government. Id.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania State Police,	:	
Petitioner	:	
	:	
v.	:	No. 1068 C.D. 2000
	:	
Rodney Reed,	:	
Respondent	:	

**ORDER**

AND NOW, this 27<sup>th</sup> day of April, 2001, the order of the Administrative Law Judge is hereby affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge