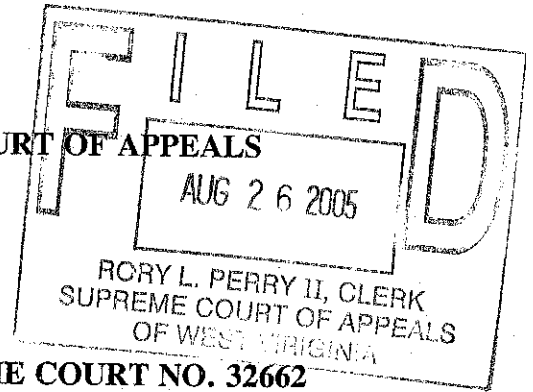


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS



IN RE:

PETITION OF ROBERT ADAM
PARSONS FOR RESTORATION
OF CIVIL RIGHTS

:
:
:

SUPREME COURT NO. 32662

REPLY BRIEF OF APPELLANT,
ROBERT ADAM PARSONS

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The State of West Virginia notes to the Court that W.Va. Code § 61-7-7 does not contain the words "civil rights". We concur. In the context of this statute, this Court has in *Rohrbaugh v. State*, 216 W.Va. 298, 607 S.E.2d 404, referenced rights under the West Virginia and the United State Constitutions to bear arms and § 61-7-7 "places restrictions on an individuals exercise of such right in certain enumerated circumstances", 607 S.E.2d at 412. The traditional civil rights of voting, holding public office and jury service are impacted by certain criminal convictions, voting rights lost under West Virginia Constitution Article IV, and public office and jury service rights impacted by West Virginia Code § 52-1-8 and West Virginia Code § 6-5-5. The right to hold public office is lost for a felony conviction "unless reversed", the right to vote is lost while the disability continues, service on a jury is lost because of a criminal conviction or a conviction for perjury, false swearing or other infamous offense, the criminal convictions generally being felony (with the exception of false swearing, which is a lifetime ban for jury service). Thus, the State contends that Mr. Parson's civil rights were not taken away, therefore, could not have been restored. The restoration exception to 18 U.S.C. § 921 (a)(33)(B)(ii): reads ... a person shall not be considered to be convicted of such an offense "if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil right restored, if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense". [Emphasis supplied]

We would contend that the appellant's right to possess a firearm is a civil right, in fact the term "civil right to possess a firearm is referenced at various cases within the Fourth Circuit, for example, *United States v. Thomas*, 52 F.3d 82 (4th Cir. 1995); *United States v. Jackson*, 124 F.3d 607 (4th Cir. 1997); *United States v. King*, 119 F.3d 290 (4th Cir. 1994) and *United States v. Essick*, 935 F.2d 28 (4th Cir. 1991).

The appellant's civil right to possess a firearm was taken away under the terms of his probation (Condition #9, Record on Appeal Designation #2, filed November 18, 2004). This provision was expressly referred to in the Circuit Court's Order as "binding" (Designation #2, *infra*). Was this right "automatically" restored upon completion of probation? No, according to the terms under § 61-7-7(a)(8), it would have to be restored by petition.

As the State points out, the Fourth Circuit has addressed the restoration issue in *United States v. Jennings*, 323 F.3d 263 (4th Cir. 2003) noting because Mr. Jennings' civil rights were never taken away, it was impossible for those civil rights to have been "restored". The parties in *Jennings* agreed that Mr. Jennings lost none of his civil rights under South Carolina law. We make no concession here, nor do we concede that his conviction for a misdemeanor did not operate to forfeit his civil rights, as his civil right to possess a firearm is forfeited by his domestic assault conviction. While the *Jennings* court appears to concentrate on a loss of and restoration of all civil rights, the restoration provision of 18 U.S.C. 921 does not say all civil rights, it simply says "civil rights".

Finally, the State indicates the appellant is not entitled to any relief under § 61-7-7, because his possession of a firearm would, in fact, violate a Federal law. We would respectfully contend that this issue is not that crystal clear, as the definition of a domestic violence crime under Federal law at 18 U.S.C. 921 (a)(33)(A)(i) and its classification of victim is not identical to the identity of a victim of domestic assault under § 61-2-28 with a cross-reference to § 48-27-204 of the W.Va. Code in its definition of "family or household member".

Therefore, appellant respectfully requests his relief be granted and the case be remanded for a hearing under § 61-7-7.

Respectfully submitted,

ROBERT ADAM PARSONS, Appellant

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CERTIFICATE OF SERVICE

Service of the foregoing REPLY BRIEF OF APPELLANT, ROBERT ADAM PARSONS was had upon the following by mailing a true and complete copy thereto to their last known address, by regular United States mail, postage prepaid, this 24th day of August, 2005, as follows:

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