

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN  
*Justice*

PART 21

In the Matter of the Application of  
CURTIS PILGRIM,

INDEX NO. 401766/11

MOTION DATE 8/12/11

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice  
Law and Rules

- against -

MOTION SEQ. NO. 001

**UNFILED JUDGMENT**

THE CITY OF NEW YORK POLICE DEPARTMENT LICENSE  
DIVISION,

Respondent.

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

The following papers, numbered 1 to \_\_\_\_\_ were read on this Article 78 petition

- Notice of Petition; Verified Petition — Exhibits A-K \_\_\_\_\_ | No(s). \_\_\_\_\_
- Verified Answer — Exhibits A-K \_\_\_\_\_ | No(s). \_\_\_\_\_
- Replying Affirmation — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed.

By application dated September 22, 2010, petitioner applied for a Premise Residence Handgun License. By letter dated February 11, 2011, the Licensing Bureau denied petitioner's application because he did not disclose a 1991 arrest for assault and robbery. Petitioner appealed, and the appeal was denied by letter dated March 30, 2011. Petitioner then commenced this Article 78 proceeding challenging the denial.

Petitioner claims that he did not disclose the arrest because he "was found not guilty and was told at [his] young age that it would be thrown out and not ever be seen on [his] record." (Verified Petition at 1-2.) He further stated that the arrest "was never and has never come up on my background checks on till [sic] now." (*Id.* at 2.) Petitioner did disclose that he had been arrested in Georgia for driving without a license, having an invalid tag and theft by taking.

The New York City Police Department License Division is an administrative agency which enjoys broad discretionary power when making determinations on matters within its purview. "The only issue for consideration by the court is whether the administrative decision...was arbitrary and capricious or an abuse of discretion." (*Sewell v City of New York*, 182 AD2d 469, 473 [1st Dept 1992].) "The court may

(Continued...)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

overturn...an administrative determination only if the record reveals no rational basis for it, and may not substitute its own judgment for that of the agency." (Matter of Tolliver v Kelly, 41 AD3d 156, 158 [1<sup>st</sup> Dept 2007].)

"Possession of a handgun is a privilege, not a right, subject to broad discretion of the New York City Police Commissioner." (Matter of Tolliver, 41 AD3d at 158) "The Police Commissioner is given the authority under the New York City Administrative Code to grant licenses for the carrying or possessing of firearms,...and to deny a firearms permit to an application where good cause exists for the denial of such permit." (Matter of Rezek v Kelly, 2003 WL25668641 \*1 [Sup Ct, NY County 2003].) According to Title 38 RCNY § 5-10

"an application for a handgun license may be denied where it is determined that an applicant lacks good moral character or that other good cause exists...[t]he applicant has been arrested, indicted or convicted for a crime or violation...[t]he applicant made a false statement on [his] application, or failed to disclose [his] complete arrest history, including sealed arrests."

Moreover, "[t]he state has a substantial and legitimate interest and indeed, a grave responsibility, in insuring the safety of the general public from individuals, who, by their conduct, have shown themselves to be lacking the essential temperament or character which should be present in one entrusted with a dangerous instrument." (Matter of Pelose v County Ct. of Westchester County, 53 AD2d 645, 645 [2<sup>nd</sup> Dept 1976].)

Here, petitioner's failure to disclose a prior arrest provided a rational basis for the denial of the permit. Petitioner did not disclose his prior arrest for assault and robbery. Although petitioner states that he was found not guilty and the record was sealed, the instructions for handgun licenses are straightforward. Pursuant to the application instructions, an applicant must disclose all arrests: "YOU MUST DO THIS EVEN IF: the case was dismissed, the record sealed or the case nullified by operation of law...DO NOT rely on anyone's representation that you need not list a previous arrest." (Verified Answer, Ex K.) Therefore, the Licensing Bureau's denial of petitioner's application for a handgun permit was not arbitrary and capricious or an abuse of discretion.

**UNFILED JUDGMENT**

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Dated: 10/18/11  
New York, New York

  
\_\_\_\_\_, J.S.C.

HON. MICHAEL D. STALLMAN

- 1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. Check if appropriate:..... PETITION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. Check if appropriate:.....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE