

IN THE PROBATE COURT OF FORSYTH COUNTY

STATE OF GEORGIA

IN RE: DANNY LANIER HANEY, Applicant

DOCKET NO. 05-397

FILED *mcp*

2008 DEC 23 PM 2:39

FORSYTH COUNTY, GEORGIA
PROBATE COURT

ORDER

This case involves the issuance of a Georgia Firearms License. The facts are not in dispute.

On May 21, 1969, at 18 years of age, applicant Danny Haney was convicted of a felony involving drugs. He was sentenced to three years probation and a \$300.00 fine.

On January 24, 1995, the Georgia State Board of Pardons and Paroles granted Mr. Haney an unconditional pardon which removed all disabilities resulting from the above conviction, and restored "... all civil and political rights, including the right to receive, possess, and transport in commerce a firearm...."

Mr. Haney applied for a Georgia Firearms License on April 1, 2005. He was issued that license on May 5, 2005, under the provisions of *Official Code of Georgia Annotated*, § 16-11-129.

Two months later, on July 7, 2005, the Attorney General of the State of Georgia issued an Unofficial Opinion Number U2005-3. In this unofficial opinion, the particular Assistant Attorney General opined that when a drug offender receives a pardon, he or she nevertheless remains ineligible to obtain a Georgia Firearms License.

The case *sub judice* arose when an individual from the National Instant Criminal Background Check System (NICS) telephoned the Chief Deputy Clerk of this Court, mentioned the aforesaid opinion of the Attorney General, and suggested that Mr. Haney's existing Georgia Firearms License should be revoked.

This Court determined that Mr. Haney be afforded “due process” and entered an order on October 21, 2008, setting a hearing at 10:00 A.M., November 6, 2008, on the matter.

Mr. Michael R. Sleister, Esq., then filed his written Entry of Appearance as attorney for Mr. Haney on October 31, 2008. No pleadings were filed by Mr. Sleister.

At the hearing, Mr. Sleister announced that his client, who was also present at the hearing, desired to surrender his Georgia Firearms License Number 05-397. Mr. Sleister then delivered his client’s Georgia Firearms License to the Court.

As a result of that voluntary surrender, this Court entered an order on November 10, 2008, dismissing the matter.

Thereafter, Mr. Haney secured other counsel, Mr. John R. Monroe, Esq., and Mr. M. Douglas King, II, Esq., who filed on December 2, 2008, a Motion for Reconsideration and brief in support thereof.

On December 3, 2008, this Court set the motion for oral argument at 10:00 A.M., December 15, 2008.

Mr. Haney also filed a new application for a Georgia Firearms License on December 4, 2008, and by order dated December 5, 2008, this Court set that new application down for hearing at the same time as the hearing on the Motion for Reconsideration.

On December 15, 2008, Mr. Haney appeared represented by Mr. Monroe, who presented oral argument.

It is now necessary for this Court to rule on both the Motion for Reconsideration and on the Application for Firearms License filed December 4, 2008.

I. FINDINGS OF FACT

The Applicant was convicted of a controlled substance felony in Fulton County Superior Court on May 21, 1969. The Applicant received an unconditional pardon for

such conviction, with removal of all disabilities together with restoration of all civil and political rights, including the right to bear arms, on January 24, 1995, a sealed copy of which was tendered at the hearing and forms a part of the record.

Other than the possible disqualification which may result from the above facts, the Applicant is otherwise qualified to be issued a Georgia Firearms License.

II. CONCLUSIONS OF LAW

In Georgia, it is a crime to carry a pistol without a license issued by the appropriate Judge of the Probate Court. *Official Code of Georgia Annotated*, § 16-11-128. A person commits an offense if he carries a pistol or revolver without a license outside his home, motor vehicle, or place of business. There are certain exceptions which are not pertinent here.

The procedures for obtaining a Georgia Firearms License, and the criteria to be applied for such issuance, are set forth in *Official Code of Georgia Annotated*, § 16-11-129.

The precise question which arises in the context of this case involves (1) the effect of *Official Code of Georgia Annotated*, § 16-11-129(b)(5)(A)and(B); and (2) the effect of a pardon granted by the State Board of Pardons and Paroles for a controlled substances conviction with full restoration of rights, including the right to bear arms.

The provisions of *Official Code of Georgia Annotated*, § 16-11-129, in brief, prohibit the issuance of a Georgia Firearms License to any person convicted of an offense involving a controlled substance or dangerous drug, whether such person pled guilty, was found guilty, pled *nolo contendere*, or successfully completed first offender treatment.

This lifetime prohibition is permanent "... irrespective of the pendency or availability of an appeal or an application for collateral relief." (emphasis supplied) *Official Code of Georgia Annotated*, § 16-11-129(b)(5)(B)(ii).

In the circumstances of this case, this Court is unable to agree with the position advanced by the National Institute of Criminal Background Check System (NICS) Unit of the Federal Bureau of Investigation.

This Court is also unable to agree with the advisory position taken by the Attorney General in Unofficial Opinion Number U2005-3.

The Applicant cites authorities regarding the nature and effect of an unofficial Attorney General's opinion. Without question, an unofficial opinion is for information, is advisory, and is not binding upon the Courts. *see, e.g. Atlanta J'S, Inc. vs. Houston Foods, Inc.*, 237 Ga. App. 415, 417, 514 S.E.2d 216, 218 (1999) and *State vs. Durr*, 274 Ga. App. 438, 442, 618 S.E.2d 117, 120 (2005).

Nevertheless, it is instructive to examine closely the Attorney General's Unofficial Opinion Number U2005-3 rendered July 7, 2005, after the issuance of Mr. Haney's Georgia Firearms License on May 5, 2005.

The Assistant Attorney General writing the opinion, Ms. Kay Baker, Esq., finds within the proscriptions of *Official Code of Georgia Annotated*, § 16-11-129 (b)(5)(A) a legislative mandate that a pardon does not negate a controlled substance "conviction" as such is defined in the statute for purposes of a Georgia Firearms License.

This Court can find no such language limiting the legal effect of a pardon. No cannon of statutory construction need be applied other than the time honored rule that words are to be interpreted according to the ordinary meanings thereof.

This Court supplied emphasis to certain words in the statutory recitation on the preceding page. The word "pending" is clear, it means something is now occurring. The word "availability" is clear, it means that something is within reach to be used. The word "appeal" is obviously intended to refer to an appeal of the conviction. The word "application" is intended to mean a plea to be tendered for "collateral relief." "Pendency" or

“availability” are prospective in their meanings. This statute is obviously intended to prevent a person convicted of a controlled substances offense from being able to acquire a Georgia Firearms License because he may intend to appeal, may have an appeal pending, or may be able to mount a collateral attack on some grounds such as subject matter jurisdiction.

This statute certainly cannot be interpreted to refer to concluded appeals or applications. An overturned (from an appeal or collateral attack) conviction would form no bar whatsoever to an applicant for a Georgia Firearms License.

Nowhere in the statutory scheme can this Court find any language which would justify the conclusion of the Assistant Attorney General, or NICS, that a pardoned individual cannot receive a Georgia Firearms License even if the right to bear arms is restored.

Nowhere within this legislative scheme is there any language to indicate a legislative intent that a fully pardoned individual is not fully pardoned for purposes of receiving a Georgia Firearms License. In fact, the language of *Official Code of Georgia Annotated*, § 16-11-129(b)(3), indicates otherwise, nothing else appearing.

It is necessary to proceed further with this analysis in the event this Court’s interpretation of the statutory language is misplaced.

What about the pardon?

The legislature of the State of Georgia cannot proscribe the power of the State Board of Pardons and Paroles in the manner contended by the Assistant Attorney General in the 2005 unofficial opinion under examination here.

The State Board of Pardons and Paroles is established by Article IV Section II of the *Constitution of the State of Georgia*. The powers of the General Assembly with respect to the State Board of Pardons and Paroles are set forth in paragraph II of the Sec-

tion. The General Assembly does not have the power under the *Constitution of the State of Georgia* to allow, disallow, regulate, or otherwise affect the power of the State Board of Pardons and Paroles as granted by the Constitution except as authorized by the Constitution itself in those limited subject areas set forth therein.

The constitution specifically vests the State Board of Pardons and Paroles "... with the power of executive clemency." (emphasis supplied) Included within that power is the power "... to remove disabilities imposed by law...." *Constitution of the State of Georgia* Article IV Section II Paragraph II, (A).

The Constitution grants limited authority to the General Assembly with respect to certain offenses, and the power to pardon those offenses, but the General Assembly does not have the power under the Constitution to prevent the State Board of Pardons and Paroles from removing the disabilities involved in this case caused by the offense present in this case.

The clemency power of the State Board of Pardons and Paroles to pardon a controlled substances or dangerous drug conviction is executive and it is not within the purview of the General Assembly to regulate that power without Constitutional mandate as such would be a violation of the separation-of-powers doctrine. The Constitution specifically exempts the State Board of Pardons and Paroles from the General Assembly's power to enact laws affecting the powers and duties of members of constitutional boards. *Charron vs. the State Board of Pardons and Paroles*, 253 Ga. 274 (1984), *Constitution of the State of Georgia*, Article I Section II Paragraph III; and Article IV Section VII Paragraph II.

For these reasons, were the advisory opinion of the Assistant Attorney General to be correct in its statutory interpretation, such interpretation would run a foul of the *Constitution of the State of Georgia* and would therefore be unconstitutional.

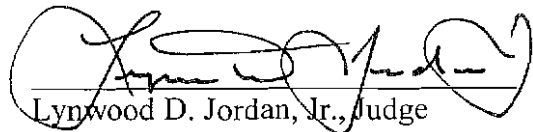
This Court finds as a matter of law that the State Board of Pardons and Paroles has absolute and unfettered authority to pardon one convicted of an offense arising out of the possession of or use of a controlled substance or dangerous drug, which power cannot be regulated by the General Assembly.

This Court further finds as a matter of law that a pardon including restoration of the right to bear arms by the State Board of Pardons and Paroles is just that, and that restoration of all civil and political rights may be done by the State Board of Pardons and Paroles without regulation by the General Assembly except for those specifically enumerated areas set forth in the Constitution itself, none of which apply to the issuance of a Georgia Firearms License in the context of this case.

This Court further finds as a matter of law that even were it to have the power, the General Assembly has passed no statute which states that the issuance of a pardon by the State Board of Pardons and Paroles, which restores the right to bear arms, does not then entitle the individual to the issuance of a Georgia Firearms License.

ACCORDINGLY, IT IS ORDERED AND ADJUDGED that the Motion for Reconsideration is hereby GRANTED and a Firearms License shall be issued pursuant to application number 2008-F-2168.

SO ORDERED this 23rd day of December 2008.


Lynwood D. Jordan, Jr., Judge

CERTIFICATE OF MAILING

This is to certify that I have this day mailed a copy of the foregoing Order to:

Mr. John R. Monroe, Esquire
9640 Coleman Road
Roswell, Georgia 30075

Mr. M. Douglas King, II, Esquire
King's Law Offices
1750 Powder Springs Road
Suite 190 PMB 315
Marietta, Georgia 30064

This 23rd day of December 2008.


Clerk, Probate Court

IN RE: DANNY LANIER HANEY, Applicant
DOCKET NO.: 05-397