

NOTICE
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2015 IL App (5th) 140004-U

NOTICE
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NO. 5-14-0004

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MICHAEL LEE BURTON,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Massac County.
)	
v.)	No. 10-MR-16
)	
THE DEPARTMENT OF STATE POLICE,)	Honorable
)	Joseph Jackson,
Respondent-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Schwarm and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in reversing on administrative review the director of ISP's denial of petitioner's FOID card application where petitioner was a convicted felon.
- ¶ 2 Petitioner, Michael Lee Burton, filed a petition requesting a court order to compel the Illinois Department of State Police (IDSP) to issue him a firearm owner's identification (FOID) card. While this petition was pending, petitioner filed a separate application with the IDSP requesting issuance of a FOID card. The IDSP denied petitioner's application due to petitioner's previous felony convictions.
- ¶ 3 Petitioner was subsequently granted leave of court to substitute the IDSP for the

People of the State of Illinois in his judicial action and filed an amended petition seeking administrative review of the IDSP's denial. The trial court reversed on administrative review and ordered the IDSP to issue petitioner a FOID card. The IDSP timely filed a notice of appeal. We reverse the trial court's order directing the IDSP to issue petitioner a FOID card.

¶ 4

BACKGROUND

¶ 5 On May 13, 2010, petitioner, Michael Lee Burton, filed a petition for a FOID card against the People of the State of Illinois seeking a court order to compel the IDSP to issue him a FOID card. The petition disclosed that in 2002, when he was 37 years old, petitioner pled guilty to two felonies in the state of California for possession of a controlled substance for sale and receipt of stolen property.

¶ 6 Approximately two years later, on April 11, 2012, petitioner filed an application with the IDSP requesting a FOID card. On July 2, 2012, the IDSP denied petitioner's application after discovering petitioner had been "convicted of Possession of Controlled Substance for Sale on June 25, 2002, in the state of California." The IDSP indicated that it had the authority, pursuant to section 8 of the Illinois Firearm Owners Identification Card Act (Act) (430 ILCS 65/8 (West 2012)), to deny a FOID card to any individual who has been convicted of a felony.

¶ 7 On August 15, 2012, petitioner sent a letter to the director of the IDSP seeking relief from the initial denial of his application. Petitioner acknowledged he had previously received a 16-month prison term for pleading guilty to the two felonies disclosed in his May 13, 2010, petition. Petitioner also indicated he was released on

parole with credit for time served and good behavior approximately 6½ years earlier on December 2, 2005.

¶ 8 In his letter, petitioner asserted that pursuant to the circumstances of his criminal convictions, his reputation and criminal history, he would not act in a manner dangerous to public safety if he were issued a FOID card. Petitioner indicated neither of his felony convictions involved a firearm or violence and he had never been convicted of a forcible felony. Petitioner also offered testimonials regarding his reputation from his pastor, two coworkers, and two friends who work in law enforcement.

¶ 9 On September 20, 2012, the director of the IDSP responded to petitioner's request for relief and informed petitioner that the IDSP had decided to uphold its initial denial of petitioner's FOID card application. On October 10, 2012, petitioner filed a motion to substitute parties and for leave to file amended petition for a FOID card with the trial court.

¶ 10 Petitioner indicated his original petition was defective because he did not initially exhaust his administrative remedies and he brought suit against the wrong party, naming the People of the State of Illinois as respondent rather than the IDSP. Petitioner asked the trial court to substitute the IDSP as respondent for the People of the State of Illinois and to grant petitioner leave to file an amended petition. On October 17, 2012, the trial court granted petitioner's motion. Petitioner subsequently filed an amended petition requesting that the trial court reverse the IDSP's denial of petitioner's FOID card application and order the IDSP to issue petitioner a FOID card.

¶ 11 Petitioner argued section 10(c) of the Act (430 ILCS 65/10(c) (West 2012))

provides that the director of the IDSP may grant relief if petitioner establishes the following four elements to the director's satisfaction: (1) petitioner had not been convicted of, or imprisoned for, a forcible felony within 20 years prior to his application, (2) petitioner is not a danger to public safety, (3) granting petitioner relief would not be contrary to the public interest, and (4) granting petitioner relief would not be contrary to federal law. Petitioner alleged he satisfied these four elements and, therefore, should be issued a FOID card.

¶ 12 The IDSP countered and asserted section 10(c) of the Act merely grants the director discretion to issue a FOID card if the four elements above are satisfied, as the Act reads "may grant" rather than "shall grant." The IDSP also asserted the director is not obligated to consider an application for relief from an individual who is admittedly ineligible for a FOID card under section 8 of the Act. The IDSP argued that even if the director had considered the factors under section 10(c), petitioner's application would have still been denied because petitioner conceded that federal law prohibits felons from possessing a firearm.

¶ 13 On November 27, 2013, the trial court entered judgment ordering the IDSP to issue petitioner a FOID card. The court indicated that IDSP's failure to consider evidence presented by petitioner in support of his FOID card application "was arbitrary and capricious and resulted in a failure of substantial justice." The court further noted that IDSP's failure to consider evidence presented by petitioner in support of his FOID card application "resulted in the [p]etitioner being deprived of a Second Amendment constitutional right and constitutes an abuse of discretion" by the director of the IDSP.

¶ 14 The trial court concluded petitioner had never been convicted of a forcible felony, the circumstances regarding petitioner's criminal history and reputation indicated he was not a danger to public safety, granting petitioner a FOID card would not be contrary to the public interest, and granting petitioner relief would not be contrary to federal law. The court further found that the director of the IDSP did not conduct an evaluation of the evidence presented by petitioner pursuant to section 10(c) of the Act "apparently believing that because the [p]etitioner had been convicted of a felony, the issuance of a [FOID] Card to the [p]etitioner would be a violation of federal law." The court noted this was not valid law pursuant to the supreme court decision in *Coram v. State of Illinois*, 2013 IL 113867, 996 N.E.2d 1057. The IDSP timely filed a notice of appeal.

¶ 15

ANALYSIS

¶ 16 The IDSP raises two issues on appeal. First, the IDSP contends section 8 of the Act prohibits a convicted felon such as petitioner from being issued a FOID card.

¶ 17 Petitioner brought this action pursuant to the Illinois Administrative Review Law, seeking review of the IDSP's denial of petitioner's FOID card application. 735 ILCS 5/3-101 *et seq.* (West 2012). When an appeal is taken to the appellate court following a circuit court's entry of judgment on administrative review, it is the decision of the administrative agency, not the judgment of the circuit court, which is under consideration. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386, 925 N.E.2d 1131, 1142 (2010). Illinois courts will not interfere with the discretionary authority vested in administrative agencies unless such authority is exercised in an arbitrary or capricious manner or the administrative order is against the

manifest weight of the evidence. *Cotovsky v. Department of Registration & Education*, 110 Ill. App. 3d 417, 424, 442 N.E.2d 520, 525 (1st Dist. 1982).

¶ 18 At issue in the instant case is whether the IDSP properly denied petitioner's FOID card application pursuant to section 8 of the Act. Section 8 provides, in relevant part:

"The Department of State Police has authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued under this Act only if the Department finds that the applicant or the person to whom such card was issued is or was at the time of issuance:

* * *

(c) A person convicted of a felony under the laws of this or any other jurisdiction; [or]

* * *

(n) A person who is prohibited from acquiring or possessing firearms or firearm ammunition by any Illinois State statute or by federal law[.]" 430 ILCS 65/8 (West 2012).

¶ 19 Section 10 of the Act details the process by which an applicant may obtain relief from an adverse IDSP decision. Section 10(c) of the Act provides, in relevant part:

"Any person prohibited from *** acquiring a Firearm Owner's Identification Card under Section 8 of this Act may apply to the Director of State Police or petition the circuit court in the county where the petitioner resides, whichever is applicable in accordance with subsection (a) of this Section, requesting relief from such

prohibition and the Director or court may grant such relief if it is established by the applicant to the court's or Director's satisfaction that:

* * *

(1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a [FOID] Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;

(2) the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;

(3) granting relief would not be contrary to the public interest; and

(4) granting relief would not be contrary to federal law." 430 ILCS 65/10(c) (West 2012).

¶ 20 The General Assembly amended the Act in 2013 to provide express prohibitions to certain applicants of FOID cards. Effective January of 2013, section 10(b) of the Act provides that the circuit court "shall not" issue an order directing the IDSP to grant a FOID card to an applicant if the applicant "is otherwise prohibited from obtaining, possessing, or using a firearm under federal law." 430 ILCS 65/10(b) (West 2012) (as amended by Pub. Act 97-1131, § 15 (eff. Jan. 1, 2013)). Similarly, section 10(c)(4) of the Act was added to provide that neither the circuit court nor the director of the IDSP should grant relief from the initial denial of a FOID card unless the applicant establishes "granting relief would not be contrary to federal law." 430 ILCS 65/10(c)(4) (West 2012)

(as amended by Pub. Act 97-1150, § 545 (eff. Jan. 25, 2013)).

¶ 21 In the instant case, both parties agree that the current, amended version of the Act is applicable to this appeal. Thus, the dispositive issue in this case is whether the issuance of a FOID card to petitioner would violate federal law.

¶ 22 The federal Gun Control Act prohibits certain individuals from possessing firearms. Section 922(g) of the Gun Control Act provides:

"(g) It shall be unlawful for any person—

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

* * *

to ship or transport in interstate or foreign commerce, or 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. § 922(g) (2006).

¶ 23 In the instant case, petitioner concedes that he pled guilty in the state of California to the felony offenses of receipt of stolen property and possession of a controlled substance for sale. Petitioner was subsequently sentenced to a state prison term of 16 months. Thus, petitioner falls within the prohibition of section 922(g)(1) of the Gun Control Act and cannot possess a firearm.

¶ 24 Furthermore, the exemption from the prohibition in the Gun Control Act provided for a felon who "has been pardoned or has had civil rights restored" does not apply to petitioner. 18 U.S.C. § 921(a)(20) (2006). Petitioner has not been pardoned, nor has

petitioner indicated his civil rights have been restored. Accordingly, because petitioner cannot possess a firearm pursuant to federal law, the IDSP properly denied petitioner's FOID card application under section 8 the Act, and the trial court erred in directing the IDSP to issue petitioner a FOID card.

¶ 25 In its order directing the IDSP to issue petitioner a FOID card, the trial court indicated the IDSP's conclusion that it would violate federal law to issue petitioner a FOID card as a result of petitioner being a convicted felon was erroneous in light of the supreme court's decision in *Coram v. State of Illinois*, 2013 IL 113867, 996 N.E.2d 1057. Petitioner also cites to *Coram* in his brief in support of his contention that he should be issued a FOID card. We disagree. The trial court and petitioner fail to recognize that the preamendment version of section 10 of the Act entitled the petitioner in *Coram* to a FOID card, whereas the current, amended version of section 10 applicable to this appeal prohibits petitioner from being issued a FOID card.

¶ 26 *Coram* involved an applicant who sought a FOID card approximately 17 years after he was convicted of misdemeanor domestic battery. The IDSP denied the FOID card application, and the applicant petitioned for judicial review. The circuit court entered an order directing the IDSP to issue the applicant a FOID card. The IDSP then filed a motion to intervene and a motion to vacate the order. The IDSP's motion to intervene was granted, but its motion to vacate the order was denied. The IDSP appealed.

¶ 27 The supreme court indicated the current version of the Act "was not in effect when proceedings under section 10(c) were conducted with respect to *Coram*," as the trial court's order directing the IDSP to issue *Coram* a FOID card occurred on December 30,

2011, over a year prior to the January 25, 2013, amendments to the Act. In the instant case, the trial court's order directing the IDSP to issue petitioner a FOID card took place on November 27, 2013, approximately 10 months after the amendments to the Act took effect. Accordingly, while nothing in the Act prevented the trial court from granting the applicant in *Coram* relief under section 10 at the time he applied for his FOID card, the current, amended version of the Act does prevent the trial court from granting petitioner relief under section 10 in the instant case, as petitioner is prohibited from acquiring a firearm under federal law.

¶ 28 Justice Karmeier's lead opinion in *Coram*, which was joined by two other justices, noted "in passing" the 2013 amendments to the Act, but opined that the amendments did not change the ability of the courts to override the federal prohibition. *Coram*, 2013 IL 113867, ¶ 75, 996 N.E.2d 1057. However, a majority of the supreme court justices concluded the opposite: that the 2013 amendments to the Act prevented a trial court from overlooking the federal prohibition.

¶ 29 Justice Burke, specially concurring in the judgment of the court and joined by Justice Freeman, stated that "[t]he amendments make clear that a circuit court no longer has the authority to make findings or grant relief under section 10 if the court concludes that the applicant would be in violation of federal law if he or she were to possess a firearm." *Coram*, 2013 IL 113867, ¶ 101, 996 N.E.2d 1057.

¶ 30 Justice Theis similarly noted in her dissent joined by Justice Garman that "under the amended statute, the relief procedures under section 10 cannot remove a federal firearms disability." *Coram*, 2013 IL 113867, ¶ 124, 996 N.E.2d 1057. Justice Theis

noted that the 2013 amendments to the Act clarified the General Assembly's "intent to make the Act consistent with the prohibitions on firearm possession established under federal law." *Coram*, 2013 IL 113867, ¶ 124, 996 N.E.2d 1057.

¶ 31 Justice Theis further indicated that "whatever effect the lead opinion and special concurrence have on *Coram*'s application, they would have no bearing on future applicants who are disqualified from possessing firearms." *Coram*, 2013 IL 113867, ¶ 124, 996 N.E.2d 1057.

¶ 32 It is clear that *Coram* is not applicable to the instant case, as the amended version of section 10 of the Act applies to this appeal rather than the preamendment version. A majority of the justices in *Coram* agreed that the 2013 amendments to the Act provide that a trial court may no longer grant relief to a petitioner whose possession of a firearm would violate federal law. This supports our interpretation of the 2013 amendments to the Act as prohibiting the IDSP from issuing petitioner a FOID card. The trial court's order directing the IDSP to issue petitioner a FOID card is contrary to the statute and must be reversed.

¶ 33 Petitioner similarly cites to *Hiland v. Trent*, 373 Ill. App. 3d 582, 868 N.E.2d 396 (3d Dist. 2007), in support of his contention that he should be issued a FOID card. Prior to the 2013 amendments to the Act, courts interpreted sections 8 and 10 of the Act as follows: "Read together, sections 8 and 10 'indicate a legislative intent that the Department have authority, in extraordinary cases, to grant a license to persons who have established their fitness to possess a gun, even though belonging to one of the enumerated classes.' " *Hiland*, 373 Ill. App. 3d at 585, 868 N.E.2d at 399 (quoting *Rawlings v.*

Department of Law Enforcement, 73 Ill. App. 3d 267, 276, 391 N.E.2d 758, 764 (3d Dist. 1979)). As discussed above, the preamendment version of the Act is not applicable to the instant case and, therefore, has no bearing on this appeal.

¶ 34 In its second issue raised on appeal, the IDSP alleges its director did not abuse his discretion in denying petitioner's FOID card application, as the director was not obligated to invoke his discretionary authority to grant a FOID card to a convicted felon. Because we reverse the trial court's order directing the IDSP to issue petitioner a FOID card for the abovementioned reason, we need not address this issue.

¶ 35 **CONCLUSION**

¶ 36 For the foregoing reasons, we reverse the judgment of the circuit court of Massac County directing the IDSP to issue petitioner a FOID card, and thereby affirm the IDSP's initial denial of petitioner's application for a FOID card.

¶ 37 Reversed.