

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (3d) 150030-U

Order filed April 11, 2016

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

|                            |   |                               |
|----------------------------|---|-------------------------------|
| RONALD CATALANELLO,        | ) | Appeal from the Circuit Court |
|                            | ) | of the 13th Judicial Circuit, |
| Petitioner-Appellee,       | ) | LaSalle County, Illinois.     |
|                            | ) |                               |
| v.                         | ) |                               |
|                            | ) | Appeal No. 3-15-0030          |
| THE ILLINOIS DEPARTMENT OF | ) | Circuit No. 13-MR-349         |
| STATE POLICE,              | ) |                               |
|                            | ) |                               |
| Intervenor-Appellant.      | ) | The Honorable                 |
|                            | ) | Troy D. Holland,              |
|                            | ) | Judge, Presiding.             |

---

JUSTICE WRIGHT delivered the judgment of the court.  
Justice Lytton concurred in the judgment.  
Justice Schmidt specially concurred.

---

**ORDER**

- ¶ 1 *Held:* The circuit court improperly ordered the Illinois Department of State Police to renew petitioner's FOID card in 2014 because petitioner could not lawfully possess a firearm according to federal law.
- ¶ 2 In 2012, the Illinois Department of State Police (the Department) denied a request to renew Petitioner's FOID card. Petitioner waited until November 18, 2013 before seeking judicial review of the denial of petitioner's request to renew his FOID card in 2012. In 2014, the

circuit court entered an order directing the Department to issue an unrestricted FOID card to the petitioner in spite of petitioner's prior domestic battery conviction which made it unlawful, under federal law, for Petitioner to possess a firearm. The Department appeals.

¶ 3 We reverse.

¶ 4 BACKGROUND

¶ 5 It is undisputed for purposes of this appeal that on March 16, 2012 the Petitioner filed an application to renew his expired FOID card. In a letter dated May 16, 2012, the Department denied Petitioner's request to renew his FOID card. Petitioner waited more than a year to initiate judicial review on November 18, 2013 and the circuit court granted the Department's motion to intervene in that 2013 judicial proceeding.

¶ 6 On October 21, 2014, the Department filed a motion to dismiss the petition in circuit court pursuant to 735 ILCS 5/2-619.1. The Department alleged that legislative changes to sections 8 and 10 of the Illinois Firearm Owners Identification Card Act (the FOID Act) (430 ILCS 65 (West 2013)), which became effective before petitioner initiated judicial review, barred the relief petitioner requested in the circuit court. Specifically, the Department argued that granting petitioner a FOID card in 2013 was prohibited under the 2013 version of the FOID Act since it was unlawful for petitioner to possess a firearm according to the federal Gun Control Act. Petitioner opposed the Department's motion to dismiss on the grounds that the decision in *Coram v. State*, 2013 IL 113867, recognized the circuit court possessed the authority to remove state and federal firearms disabilities under section 10 of the FOID Act.

¶ 7 On November 14, 2014, the trial court denied the Department's section 2-619.1 motion to dismiss. The circuit court found the 2013 amendment to the FOID Act should not be applied for

purposes of judicial review<sup>1</sup> because Petitioner’s 2012 request for a FOID card “occurred prior to the effective date of the amendment to 430 ILCS 65/10(c), January 25, 2013.” On December 8, 2014, the court applied the version of the FOID Act as it existed in 2012 and entered a finding that Petitioner had not been convicted of a forcible felony and was not likely to act in a manner dangerous to the public safety. Based on these findings, the circuit court ordered the Department to issue Petitioner an unrestricted FOID card in 2014.

¶ 8 The Department filed a timely notice of appeal. On January 28, 2014, the circuit court stayed the 2014 court order pending the outcome of this appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, the Department asserts the circuit court should have applied the amended provisions of sections 8, 10(a), and 10(c) of the FOID Act that became effective in January, 2013. Petitioner has not filed a brief on appeal, but the claimed error raised in this appeal is not complex. Consequently, this court is able to address the merits of this appeal without the assistance of an appellee’s brief. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)).

¶ 11 In this case, Petitioner submitted his application to renew his FOID card in 2012. Section 10 of the 2012 version of the FOID Act authorized a trial court to judicially review a decision denying an application for a FOID card upon petition of the unsuccessful applicant. 430 ILCS 65/10(b) (West 2012). However, when Petitioner initiated judicial review of the Department’s 2012 denial of his renewal application, the State law had changed and a 2013 amendment to the FOID Act prohibited the Department from issuing a FOID card to any person who was “prohibited from obtaining, possessing, or using a firearm under federal law.” Pub. Act 97-1131,

---

<sup>1</sup>The amendment at issue was effective on January 1, 2013. See Pub. Act 97-1131, § 15 (eff. Jan. 1, 2013). It was also included in Public Act 97-1150, § 545 (eff. Jan. 25, 2013).

§ 15 (eff. Jan. 1, 2013); Pub. Act 97-1150, § 545 (eff. Jan. 25, 2013). See 430 ILCS 65/10(b) (West 2014). Specifically, effective January 2013, the statute included a new subsection, (c)(4), that prohibited the circuit court from granting relief by judicial review when “granting relief would not be contrary to federal law.” Pub. Act 97-1131, § 15 (eff. Jan. 1, 2013); Pub. Act 97-1150, § 545 (eff. Jan. 25, 2013). See 430 ILCS 65/10(c)(4) (West 2014).

¶ 12 As recognized by this court, Section 922 of the Gun Control Act makes it unlawful for any person “ ‘who has been convicted in any court of a misdemeanor crime of domestic violence, 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.’ ” *O’Neill v. Director of Illinois Department of State Police*, 2015 IL App (3d) 140011, ¶ 23 (quoting 18 U.S.C. § 922(g)(9) (West 2006)). Based on Petitioner’s 2000 conviction for a crime involving domestic violence, we conclude federal law prohibited Petitioner from possessing a gun at all times relevant to this appeal.

¶ 13 The outcome of the appeal depends on whether the 2013 amendment to the FOID Act applies to the judicial review proceeding initiated in this case on November 18, 2013. Our decision in *O’Neill* is particularly helpful in this case. In *O’Neill*, Justice Schmidt, writing for the majority, observed that a majority of justices in *Coram*, 2013 IL 113867, seemed to agree that a circuit court could not remove the federal prohibition against Petitioner possessing firearms as part of a judicial review conducted in 2013. In that case, we did not reverse the trial court’s findings, but reversed the trial court’s order requiring the Department to reinstate O’Neill’s FOID card in 2013, because such an order was contrary to existing state and federal law in 2013. *O’Neill* at ¶ 31. Similarly, in *People v Frederick*, Justice Schostok concluded

applying the 2013 version of the FOID Act to persons who received a FOID card prior to 2013 does not violate a gun owner's due process rights. *People v. Frederick*, 2015 IL App (2d) 140540 ¶ 6 (leave for final appeal pending).

¶ 14 Accordingly, our holding in *O'Neill* controls the outcome of this appeal. We do not reverse the circuit court's 2014 findings that Petitioner had not been convicted of a forcible felony and was not likely to act in a manner dangerous to the public. Instead, we reverse the circuit court's order directing the Department to renew Petitioner's FOID card in 2014, which would be contrary to the statute in effect at the time judicial review was both initiated by petitioner and allowed by the circuit court.

¶ 15 **CONCLUSION**

¶ 16 For the foregoing reasons, we reverse the decision of the trial court compelling the Department to issue an unrestricted FOID card to Petitioner.

¶ 17 Reversed.

¶ 18 JUSTICE SCHMIDT, specially concurring.

¶ 19 While I believe that the federal statute at issue is an overbroad denial of constitutional rights, there is no appellee's brief filed in this case and, therefore, I see no reason to tilt at that windmill on this case. I do not concur in the majority's analysis, but I do concur in the judgment.