

1-10-3549

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL

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<i>In re</i> THE MATTER OF PETITION OF:	)	Appeal from the
MARK A. MCPHERSON,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellant.	)	
	)	
v.	)	No. 10 CH 1220
	)	
ANITA ALVAREZ, STATE'S ATTORNEY	)	
OF COOK COUNTY,	)	Honorable
	)	William O. Maki,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Quinn and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* The order of the trial court is vacated and the case is remanded because it is unclear why the trial court ruled that the defendant is not eligible to obtain a Firearm Owner's Identification Card.

¶ 2 This appeal arises from an October 28, 2010 order denying petitioner-appellant Mark A. McPherson's (Mark) petition for relief from denial of his application for a Firearm Owner's Identification (FOID) card. On appeal, Mark argues that: (1) the trial court misapplied and

misconstrued section 10 of the Firearm Owners Identification Card Act (Act) (430 ILCS 65/10 (West 2008)) in denying his petition; (2) even if the trial court did not misapply section 10 of the Act, the trial court's denial of his petition was against the manifest weight of the evidence; and (3) respondent-appellee Anita Alvarez, State's Attorney of Cook County's (State) argument at trial that federal law prohibits Mark from ever possessing a gun was a misconception of law. For the following reasons we vacate the judgment of the circuit court of Cook County and remand the matter with instructions to the trial court to permit the State to put its evidence on the record and the court in turn shall put its findings, regarding the reasons for its ruling as to whether Mark has satisfied the requirements of sections 10(c)(2) and (3) of the Act on the record. We retain jurisdiction of this case.

¶ 3

#### BACKGROUND

¶ 4 On or around October 5, 1984, Mark was arrested in Cook County. Mark gave a statement to police admitting that he, along with an acquaintance, drove to rob a paperback shop because the only employee in the store was female. Mark waited in the car while his acquaintance entered the store with a stocking cap over his face and .22 caliber rifle (which belonged to Mark). Mark's acquaintance returned to the car with \$436 and a check. Mark then drove to another friend's house where he and his acquaintance split the money. Mark was charged with armed robbery for this offense.

¶ 5 On October 9, 1984, Mark was again charged with armed robbery in Cook County. The indictment states that Mark took money from a victim by using force and threatening the imminent use of force while armed with a dangerous weapon. On August 14, 1986, while Mark was released

on bond pending his two prior armed robbery charges, he was arrested in DuPage County for attempted armed robbery and armed violence. The complaining document states that Mark took a substantial step toward committing armed robbery when, while armed with a knife, he demanded money from a victim by threatening the imminent use of force. Mark then stabbed the victim in the forearm intentionally and without legal justification, causing the victim great bodily harm.

¶ 6 On December 11, 1986, Mark was convicted of attempted armed robbery and armed violence for the DuPage County incident, and was sentenced to six years in the Illinois Department of Corrections. On January 26, 1987, Mark was convicted of two counts of armed robbery for the Cook County offenses, and sentenced to six years in the Illinois Department of Corrections to run concurrently with the DuPage County sentence. Mark was released from prison in May 1989.

¶ 7 In the fall of 1991, Mark was at a tavern with his softball team when a man tried to pick a fight with him. Mark resisted on multiple occasions, but as he was leaving the bar the man approached Mark again. Mark pushed the man aside and the man fell into a plastic table. The tavern owner called the police and had Mark arrested for disorderly conduct and damage to property. The charges were later dismissed.

¶ 8 On or around June 2009, Mark filed an application with the Department for a FOID card. On July 7, 2009, Mark was notified that the Department denied his application. The Department informed Mark that he could petition the circuit court for a hearing on the denial of his application.

¶ 9 On January 11, 2010, Mark filed a petition for relief from denial of his application for a FOID card in the circuit court of Cook County. Mark's petition requested that the court direct the Department to issue him a FOID card. On February 10, 2010, the State filed an appearance. On

March 11, 2010, the State filed an objection to Mark's petition. On June 10, 2010, Mark filed a response to the State's objection which included affidavits given by Mark, former U.S. Army Chief Warrant Officer and Special Agent Unit Supervisor Milburn L. Reed (Special Agent Reed), former Village of Frankfort police officer Calvin Pickup (Officer Pickup), and Reverend Dr. John F. Sullivan (Reverend Sullivan) attesting to a complete change in Mark's character and lifestyle. On June 14, 2010, the State filed a brief in further support of its objection.

¶ 10 On October 28, 2010, a hearing on the petition was held in the chancery division of the circuit court of Cook County. The trial court heard arguments from both parties relying largely on the arguments presented in their previously filed briefs. The record does not contain a transcript of these proceedings, however, a stipulated bystander's report summarized the hearing. After hearing the arguments, the trial court, with little comment, agreed with the State and determined that because of Mark's convictions and criminal history, he failed to prove that he would not likely act in a manner dangerous to public safety, or that it was in the public interest to issue him a FOID card. Therefore, the trial court denied Mark's petition. On November 24, 2010, Mark filed a notice of appeal.

¶ 11

#### ANALYSIS

¶ 12 We first examine Mark's argument that the trial court misconstrued and misapplied section 10 of the Act. The reviewing court applies the *de novo* standard of review for the construction and application of a statute. *Blum v. Koster*, 235 Ill.2d 21, 44, 919 N.E.2d 333, 347 (2009). The primary goal in construing a statute is to ascertain and give effect to legislative intent. *Id.* at 44, 919 N.E.2d at 347. The plain and ordinary meaning of the statutory language is the most reliable indicator of

legislative intent. *Id.* If the statutory language is clear and unambiguous, the court must apply it as written without using extrinsic aids of statutory construction. *Id.* Section 10 of the Act states in relevant part:

"§10. (a) Whenever an application for a Firearm Owner's Identification Card is denied, whenever the Department fails to act on an application within 30 days of its receipt, or whenever such a Card is revoked or seized as provided for in Section 8 of this Act, the aggrieved party may appeal to the Director of the Department of State Police for a hearing upon such denial, revocation or seizure, unless the denial, revocation, or seizure was based upon a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, any felony violation of Article 24 of the Criminal Code of 1961, or any adjudication as a delinquent minor for the commission of an offense that if committed by an adult would be a felony, in which case the aggrieved party may petition the circuit court in writing in the county of his or her residence for a hearing upon such denial, revocation, or seizure.

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(c) Any person prohibited from possessing a firearm under

Sections 24-1.1 or 24-3.1 of the Criminal Code of 1961 or acquiring a Firearm Owner's Identification Card under Section 8 of this Act may apply to the Director of the Department 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:

(0.05) when in the circuit court, the State's Attorney has been served with a written copy of the petition at least 30 days before any such hearing in the circuit court and at the hearing the State's Attorney was afforded an opportunity to present evidence and object to the petition;

(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 Firearm Owner's Identification 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; and

(3) granting relief would not be contrary to the public interest." 430 ILCS 65/10(a), (c) (West 2008)

¶ 13 Mark argues that the trial court misconstrued section 10(c) of the Act because the court incorrectly placed the burden of proof on Mark to establish that he complied with the requirements of sections 10(c)(1), (2), and (3). Mark claims that the Act instead places the burden on the respondent (the State in this case) to object to the petition and present evidence refuting that Mark has met the requirements of sections 10(c)(1), (2), and (3). In response, the State argues that Mark's interpretation of the Act is incorrect. The State claims that the clear and unambiguous language of the Act shows that the burden of proof is on the petitioner to establish that he has satisfied the requirements of sections 10(c)(1), (2), and (3). We agree with the State's reasoning. Section 10(c) states that the court may grant relief from the prohibition of acquiring a FOID card to a petitioner "if it is *established by the applicant* to the court's or Director's satisfaction" (emphasis added) that the requirements of sections 10(c)(1), (2), and (3) are met. 430 ILCS 65/10(c) (West 2008). Moreover, section 10(c)(0.05) states that the State's attorney only needs to be afforded the opportunity to present evidence and object to the petition. 430 ILCS 65/10(c)(0.05) (West 2008). Thus, the State was not required to object to Mark's petition. Therefore, we find Mark's argument as to the burden of proof in section 10 of the Act unpersuasive.

¶ 14 Mark also contends that the trial court incorrectly focused solely on his criminal convictions for armed robbery and armed violence in making its ruling, instead of his criminal history as a whole. This argument is deficient for similar reasons that Mark's burden of proof argument is deficient.

Section 10(c)(2) expressly allows the court to consider the circumstances regarding a criminal conviction. 430 ILCS 65/10(c)(2) (West 2008). Further, the court expressly stated that it considered Mark's "convictions and criminal history" in making its ruling. We are unable to adopt Mark's construction of section 10 of the Act. Therefore, we hold that the trial court did not misconstrue section 10 of the Act.

¶ 15 We next examine Mark's argument that even if the trial court correctly construed section 10 of the Act, the court's ruling was against the manifest weight of the evidence. Mark claims that the evidence presented at the petition hearing overwhelmingly establishes that he complied with all three requirements of section 10(c) of the Act, and the State presented no evidence to the contrary. We agree. It is uncontroverted that Mark has not been convicted of a forcible felony in the past 20 years, and has been released from prison for his prior offenses for over 20 years. Therefore, we hold that he is in compliance of section 10(c)(1) of the Act.

¶ 16 According to the bystander's report, the trial court held that because of Mark's criminal convictions and history, he failed to prove that he would not likely act in a manner dangerous to public safety, or that it was in the public interest to issue him a FOID card. Thus, according to the trial court's ruling, Mark failed to satisfy the requirements of sections 10(c)(2) and (3) of the Act. We review the trial court's factual determination that Mark failed to prove that he was not likely to act in a manner dangerous to public safety, or that it was in the public interest to issue him a FOID card, under the manifest-weight standard of review. *Tully v. McLean*, 409 Ill. App. 3d 659, 669, 948 N.E.2d 714, 730 (2011). A ruling is against the manifest weight of the evidence if it is arbitrary, unreasonable, and not based on the evidence, or the opposite conclusion is clearly evident from the



record. *Id.* The reviewing court gives deference to the trial court because as the finder of fact, the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses.

*Id.*

¶ 17 Mark offered multiple forms of evidence to show that he satisfied the requirements of sections 10(c)(2) and (3) of the Act. In his response to the State's objection to the petition, Mark presented four affidavits to illustrate his progression as citizen after his release from prison in May 1989. Mark pointed out that this type of evidence has been found sufficient to prove the reputation of an applicant who has been denied a FOID card. See *Hiland v. Trent*, 373 Ill. App. 3d 582, 868 N.E.2d 396. The first affidavit was given by Mark, and it first acknowledged the crimes for which he was convicted, and the tavern altercation that occurred in 1991. Mark stated that while growing up, he "ran with a rough crowd" and was exposed to drugs and alcohol when he was ten years old. He believes that the people he associated with encouraged him to do things that were against the law and the values he was raised on. While in jail, Mark made a commitment to change his life and earned his high school diploma. He was released from prison six months early for good behavior.

¶ 18 Once he was released from prison, Mark was invited to the Spirit of God Fellowship Church in South Holland, Illinois. After joining the church, he stated that he dedicated his life to serving others. The church is actively involved in a faith-based program that counsels former drug addicts and alcoholics. In this program, Mark serves as a mentor to young men that struggled with the same issues he struggled with in his youth. He and his wife also serve as marriage counselors in the church. Mark currently has a wife and three children. He stated that his family has been members of the church for over 19 years.

¶ 19 Mark has been working in the plumbing trade for over 18 years, and opened his own business with his wife a few years ago. He stated that the reason he is seeking a FOID card is because he is an avid sportsman and loves to go hunting. Mark also stated that many of his friends and clients enjoy hunting, but he has repeatedly turned down invitations to join them because it is illegal for him to possess firearms. Mark views hunting as a way to strengthen client relations and market his business, akin to other professionals playing golf or attending sporting events.

¶ 20 Mark next presented the affidavit of Special Agent Reed. Special Agent Reed served over 27 years in the U.S. Intelligence Community and U.S. Army Special Operations Command, and worked over 25 years as a law enforcement officer. Special Agent Reed has known Mark for over 15 years and is aware of his criminal background. He stated that Mark has always been a reformed, reliable person whom he would consider stable in making decisions. Special Agent Reed considers Mark to be a Christian man who values his family and country. He stated that he would have no problem recommending Mark for any matter that requires proof of good character.

¶ 21 Mark also presented the affidavit of Officer Pickup. Officer Pickup has known Mark for several years and is aware of his criminal background. Their relationship began professionally when Mark completed some plumbing work for Officer Pickup. It then grew into a friendship. Officer Pickup has had the opportunity to observe Mark in many professional situations dealing with employees, tenants, neighbors and other public officials. Officer Pickup stated that Mark "has always maintained a professional attitude and demeanor even when the circumstances could have easily dictated otherwise." Despite Mark's criminal history, his personality, work and family values, and moral convictions have convinced Officer Pickup that Mark is a changed man and is in no way

a threat to people or property. Officer Pickup stated that he is so confident of his beliefs that he has offered Mark a master key to all his properties for future service and would not hesitate to give Mark the keys to his personal home.

¶ 22 Officer Pickup also stated that he does not vouch for the character of others without careful consideration. He believes that his 11 years as a full-time police officer have made him very sensitive to the needs of public safety, especially regarding the use of firearms and violent persons. Officer Pickup stated that his values stem from a career ending injury that he sustained after he was attacked at a traffic stop by a felon who had recently been released from prison. He asserts that his injuries have made him keenly aware of the dangers that are present with convicted felons. Officer Pickup stated that he would not associate himself with Mark, much less offer an affidavit to recommend his character, if he had the slightest concern about Mark having violent tendencies or re-offending. He believes without hesitation that returning Mark's FOID eligibility would not endanger law enforcement or the public at large.

¶ 23 The last affidavit Mark presented was given by Reverend Sullivan. Reverend Sullivan has known Mark for 19 years and is aware of his criminal background. He is the founding pastor of the Spirit of God Fellowship Church. Reverend Sullivan stated that Mark has overcome his negative past and now sits as one of the most respected men in the church. He confirmed that Mark and his wife have served as house church leaders that meet with a group of approximately 12 people weekly. Mark and his wife lead discussion and provide counseling and support. Reverend Sullivan is also the founder and Chairman of the Board of Restoration Ministries, a not-for-profit organization that operates a live-in facility for men and women recovering from difficulties including drugs, alcohol

and incarceration. Reverend Sullivan stated that Mark has been a valuable help in the organization, especially in mentoring men in the program. Reverend Sullivan asserted that, as a trustee on the South Holland Village Board, he knows how valuable citizen volunteers are to the village. He stated that Mark is always willing to volunteer for anything the Village needs. Reverend Sullivan gave Mark his highest recommendations. He stated "[Mark] is a respected family man, a church leader, a Village volunteer, and a mentor to those struggling to rebuild their lives. Mark is an outstanding example of a changed life. He is a man I would trust with my life."

¶ 24 In addition to the affidavits, Mark argued that the legislative history of the Act shows that the Act was intended to provide relief for ex-felons in exactly his situation. Mark highlighted the Third Reading of Senate Bill 827, which was the bill that would amend the Act to add section 10(c). During the debate, Senator Savickas stated:

\*\*\*\* [T]his bill was introduced at a constituency's request. It seems that we do have a loophole in our firearm owners identification card, for those that have been convicted of a felony can never \*\*\*\* can never get a fire owners identification card for either the purchase of a weapon or purchase of ammunition to \*\*\*\* to go out hunting. This bill would cover that one opening and would say that if the person convicted of felony and at least twenty years have elapsed since that conviction and since the end of any period of imprisonment imposed in relation to that conviction, that if he has been judged by society to be capable to be out, vote, do all of the things that our normal citizens

do after twenty years of this \*\*\* dedication to legitimate living, that he can get a card and can go out and go duck hunting, whatever it is, with his family \*\*\* I would say it's a good bill. We should pass it." 85th Ill. Gen Assem., Senate Proceedings, May 21, 1987, at 143-44 (statements of Senator Savickas).

The bill passed shortly thereafter. *Id* at 145. The Senate debates show that the legislature intended to offer ex-felons, who have worked to change their lives, an opportunity to restore the firearm rights that would otherwise be unavailable to them. Senator Savickas' comments describe a situation analogous to Mark's in which an applicant has worked tirelessly to better his standard of living in society, and seeks the eligibility to possess firearms in order to hunt. The affidavits that Mark presented clearly establish that he has become a productive and law-abiding citizen.

¶ 25 In opposition, the State argues that the trial court correctly considered Mark's entire criminal history, and that the passage of 20 years without a subsequent conviction does not automatically entitle an ex-felon to obtain a FOID card. The State claims that the legislature's intent was clearly to promote the health, safety and welfare of the public as evinced in the Act's declaration of policy:

"§1. It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety and welfare of the public, it is necessary and in the public interest to provide a system of identifying persons who are not qualified to acquire or possess firearms, firearm ammunition, stun guns and tasers within the State of Illinois by the establishment of a system of

Firearm Owner's Identification Cards \*\*\*" 430 ILCS 65/1 (West 2008).

While we agree that the legislature was concerned with health, safety and welfare of the public when drafting the act, we cannot say that there are no situations in which an ex-felon can be afforded a FOID card consistent with the Act's purpose. This possibility is especially apparent in situations, such as Mark's, where the ex-felon has presented a body of evidence illustrating his change in character.

¶ 26 The State also highlights Mark's convictions for armed robbery and armed violence, and argues that his criminal history reveals a person capable of physical violence that is a clear danger to the public safety. The State claims that Mark's arrest for disorderly conduct after his release from prison shows that he is willing to resort to violence. The State argues that Mark's criminal history provided ample evidence for the trial court to rule that Mark did not meet his burden of proof to satisfy section 10(c)(2) and (3) of the Act.

¶ 27 Although there was no transcript of the petition hearing in the record, the parties stipulated to a bystander's report that summarized the proceedings. The bystander's report did not elaborate on what, if any, evidence was offered by the State either directly or in rebuttal. The report simply said that in making its ruling, the trial court "agreed with the Assistant State's Attorney, and determined that because of this [*sic*] convictions and criminal history, the Petitioner failed to prove that Petitioner would not likely act in a manner dangerous to public safety, or that it was in the public interest to issue him a FOID card." The bystander's report offered no other analysis, information or reasoning to support the trial court's decision. Also, Mark was present at the hearing, but the trial

court declined to allow Mark to testify. Although the circuit court may very well have had valid reasons for ruling that Mark did not satisfy the requirements of sections 10(c) (2) and (3) of the Act, the only evidence we are able to rely on in the record is the unrebutted evidence presented by Mark. That evidence seems to satisfy the requirements of the Act. Specifically the evidence suggests that Mark has taken steps in the 24 years since his convictions to conduct himself in a manner which would meet the legislative intent of the Act. The Act is intended to outline a path whereby ex-felons may demonstrate that they are now worthy of applying for a FOID card.

¶ 28 It is clear that while the legislature was concerned with the health and safety of the public as a whole, it intended section 10(c) to operate as a mechanism for allowing deserving ex-felons to resolve the stigma that is associated with their prior convictions and apply for a FOID card. The evidence that Mark presented showed that he has worked toward being an upstanding citizen in his community, and has changed his life. There was evidence of his work with his church and volunteer work throughout his village. The unrebutted affidavits of Special Agent Reed, Officer Pickup, and Reverend Sullivan show that Mark's reputation is essentially repaired. If as the State's argument suggests, an ex-felon can never be eligible for a FOID card, then the Act is meaningless. We do not believe that the legislature enacted a statute with requirements that can never be satisfied. Thus, it is incumbent upon the State to put forward evidence to provide the trial court with a basis for its analysis and conclusion. The State seems to rely on the original crimes committed more than two decades ago to support its argument that Mark is not eligible for a FOID card. If the State's argument is taken at face value, then the question becomes, what is the legislative intent of section 10(c)(2) and (3) of the Act? The bystander's report was less than helpful because it did not illustrate the

evidence put forward by the State to support its argument against issuance of a FOID card to Mark, nor the trial court's reasoning in making its ruling. We believe that the trial court may have had valid reasons for its ruling which are not reflected in the record. However, based on the record before us, we cannot say whether the requirements of the Act were met. In light of the importance of this issue, we need clarity regarding the evidence put forward by the State as well as the trial court's reasoning in reaching its conclusion. This is essential to resolution of the issue on appeal.

¶ 29 As a final issue, Mark argues that the State misinterpreted the law when it argued to the trial court that federal law prohibits Mark from ever possessing a firearm. The State points out, and we agree, that issues not raised in the trial court are forfeited and therefore are not proper subjects for consideration on appeal. *Blaszczak v. City of Palos Hills*, 123 Ill. App. 3d 699, 703, 463 N.E.2d 762, 765 (1984). Further, in light of our ruling, we need not address this issue.

¶ 30 The order of the circuit court of Cook County is vacated and the matter is remanded with instructions to the trial court to permit the State to put its evidence on the record and, further, Mark shall be permitted to put any rebuttal evidence on the record also. The court in turn shall then put its findings, regarding the reasons for its ruling as to whether Mark has satisfied the requirements of sections 10(c)(2) and (3) of the Act, on the record. This court retains jurisdiction of this matter.

¶ 31 Vacated and remanded with instructions.