
IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA
FRANKLIN COUNTY BRANCH
CIVIL DIVISION

DOCKET NO: 2007-4202

GREGORY R. ROTZ, Appellant-Petitioner

V.

SHERIFF OF FRANKLIN COUNTY, ROBERT B. WOLLYUNG, Appellee-Respondent

APPEAL AND PETITION FOR REVIEW OF REVOCATION OF LICENSE TO CARRY FIREARMS

AND NOW, this ____ day of _____, 2007, in consideration of the attached APPEAL AND PETITION FOR REVIEW OF REVOCATION OF REVOCATION OF LICENSE TO CARRY FIREARMS, the Court orders that such appeal and petition are scheduled for hearing and argument on _____ at _____ in the Franklin County Courthouse in Courtroom _____. The Prothonotary is directed to serve a copy of this order on each party's attorney, or the party if unrepresented, by any method of service authorized under Pa.R.C.P. 440.

BY THE COURT,

J.



COPY

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APPEAL AND PETITION FOR REVIEW¹ OF REVOCATION OF LICENSE TO CARRY FIREARMS

Above Appellant-Petitioner (hereinafter "Petitioner"), by counsel, Steve Rice,
makes above appeal and petition, as set forth below:

Jurisdiction

1. This appeal and petition is made pursuant to:
 - a. 18 Pa.C.S.A. § 6109(i) ("Revocation");
 - b. 18 Pa.C.S.A. § 6114 ("Judicial review");
 - c. 2 Pa.C.S.A. Ch. 7 Subch. B ("Judicial review of local agency action"); and
 - d. 42 Pa.C.S.A. § 933 ("Jurisdiction of Courts of Common Pleas").

PROTHONOTARY
FRANKLIN COUNTY PA
2001 NOV 21 P 12:26
LINDA L. BEARD
PROTHONOTARY
DEPUTY *L.L.*

¹ By analogy to caselaw on license suspension appeals, it appears that review of the revocation decision is "accomplished by statutory appeal to the courts of common pleas, not by petition for review as required when appealing to this Court under the Rules of Appellate Procedure." *Rutkowski*, 780 A.2d at 862. In any event, Petitioner has fashioned this document both in terms of an appeal and a petition for review in case disagreement arises on this issue. The latter method has been used in other revocation appeals cases, although the propriety of the procedure was not addressed. See, e.g., *Harris v. Sheriff of Delaware County*, 675 A.2d 400 (Pa. Cmwlth. 1996)

Attests A TRUE COPY

Linda L. Beard
LINDA L. BEARD, PROTHONOTARY

Procedural and Factual Background

2. Petitioner is Gregory R. Rotz, residing at 1508 Guilford Station Road, Chambersburg, PA 17202, which is located within Franklin County and the 39th Judicial District of Pennsylvania.
3. Appellee-Respondent (hereinafter "Respondent") is Sheriff of Franklin County, Robert B. Wollyung, whose office is located at the Franklin County Courthouse, 157 Lincoln Way East, Chambersburg, PA 17201.
4. On or around April 2007, Petitioner applied for a license to carry firearms.
5. On or around May 2007, Petitioner received a license to carry firearms.
6. On November 9, 2007 by first class, and on November 10, 2007 by certified mail, Petitioner received the attached letter dated November 7, 2007. Such letter:
 - a. Provided Petitioner with notice that his license to carry firearms was revoked, pursuant to 18 Pa.C.S.A. § 6109(e)(1)(i);
 - b. Claimed that the reason for the revocation was Petitioner's "involvement in which a gun was used by you in an apparent illegal manner"; and
 - c. Directed Appellant to surrender his license within 5 days; and
 - d. Was sent by Respondent to Petitioner without a prior hearing on the merits.
7. On or around November 10, 2007, Petitioner surrendered his license to Respondent.

Legal Analysis²

8. 18 Pa.C.S.A. § 6109(i) (“Revocation”) provides in pertinent part:

A license to carry firearms may be revoked by the issuing authority for good cause. A license to carry firearms shall be revoked by the issuing authority for any reason stated in subsection (e)(1) which occurs during the term of the permit. Notice of revocation shall be in writing and shall state the specific reason for revocation.

9. The notice of revocation fails to state the specific reason for revocation:

- a. It contains a conclusion of use of a gun in an illegal manner, which was “apparent”; but does not provide notice of the “manner” supporting such conclusion or how such “manner” was in violation of the law;
- b. It merely indicates that the license was being taken pursuant to section 6109(e)(1)(i).

² The Rules of Civil Procedure appear not to apply to statutory appeals such as the one before the Court. *Cf. O'Donnell v. Com., Dept. of Transp., Bureau of Driver Licensing*, 781 A.2d 1287, 1288 n. 3 (Pa. Cmwlth. 2001) (reaching same conclusion on appeal from suspension of operating privileges). Moreover, neither caselaw nor local rule prescribes the form or content for such appeals. Although included to expedite litigation, it appears that a legal analysis is not required to obtain a hearing for this statutory appeal, by analogy to caselaw on statutory appeals of license suspensions:

The Court concludes from its review of case law that an appellant is not required to specifically state in a statutory appeal from a license suspension by the Department the defenses that the appellant may present at hearing, the legal theories of the case or a detailed statement of what laws the Department violated. Nor is an appellant required to provide a detailed statement of objections to enable the Department or the trial court to prepare for the de novo hearing. The Department bears the initial burden of proof. Inasmuch as Appellant gave proper and timely notice of his objections to the license suspension, it was incumbent upon the trial court to conduct a de novo hearing in the matter. The trial court erred in failing to do so, and its order therefore is reversed, and the case is remanded for de novo hearing.

Rutkowski v. Dept. of Transp., Bureau of Driver Licensing, 780 A.2d 860, 863 (Pa. Cmwlth. 2001) (citations omitted). *See also City of Pittsburgh v. Kisner*, 746 A.2d 661, 664 (Pa. Cmwlth. 2000) (observing that Local Agency Law does not specify the form or content that a notice of appeal from a local agency adjudication should take). With the included legal analysis, Petitioner does not intend to waive other defenses, legal theories, or claims against Respondent, or the opportunity to provide a more detailed statement of objections.

10. Section 6109(e) provides in pertinent part:

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license.

A license shall not be issued to any of the following:

(i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

11. Petitioner denies that he has used a gun in an illegal manner, as alleged; or that he has done anything to call into question his character or reputation, or to demonstrate that he would be likely to act in a manner dangerous to public safety, as required under section 6109(e)(1)(i).

12. No other good cause exists for revocation of his license.

13. Respondent failed to adequately investigate the basis for the revocation.

14. Respondent abused his discretion in revoking such license.

Request for Relief

15. For above reasons and/or facts, Petitioner appeals Respondents revocation decision and petitions the Court:

- a. For review of the revocation of his license to carry firearms;
- b. To schedule a de novo hearing³ and argument on this matter;

³ Due process requires a de novo hearing. *Cf. Liebler v. Com. Dept. of Transp. Bureau of Traffic Safety*, 476 A.2d 1389, 1390-91 (Pa. Cmwlth. 1984) (holding that due process required de novo hearing in order to cure any defect resulting from the lack of an administrative hearing prior to the suspension of driver's license).

- c. To hold that the Respondent failed to comply with the specificity requirement of section 6109(i), that no good cause existed or exists for revocation of his license, and that Respondent abused his discretion in revoking such license;
- d. To vacate the revocation order and direct Respondent to return to Petitioner his license to carry firearms; and
- e. To grant such other relief as may be appropriate.

Respectfully submitted,



11/21/07

Steve Rice, ID No. 85612
Attorney for Appellant-Petitioner
18 Carlisle Street, Suite 101
Gettysburg, PA 17325
717.339.0011

Date