

Tennessee has ruled that even full pardons which restore firearm privileges do not operate to remove firearm disabilities and thus Petitioner is subject to immediate arrest although the federal government has authorized his lawful purchase of firearms. He can buy a gun, but he is subject to arrest the moment he touches it.

PARTIES

1. Petitioner, David Scott Blackwell is an individual of the full age of majority and is domiciled in Tennessee. He was convicted in Georgia for a felony drug offense but was granted a full and unconditional pardon by Georgia, the pardon providing on its face that his firearm rights were restored to him. *See* Exhibit A. Mr. Blackwell moved to Tennessee with full confidence that the Tennessee would extend Full Faith and Credit to his Georgia Pardon.

2. Governor Phil Bredesen is sued in his official capacity as the Governor of the State of Tennessee. The Governor is a proper party to a declaratory judgment action seeking to invalidate the application of a criminal statute to a citizen. *See Plan Parenthood of Middle Tennessee v. Sundquist*, 38 S.W.3d 1 (Tenn. 2000); *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520 (Tenn. 1993).

3. The State of Tennessee is a sovereign state whose laws, specifically Tenn. Code Ann. § 39-17-1307, have been interpreted to adversely affect the Petitioner.

4. Defendant, Robert Cooper, Jr., is sued in his official capacity as the Attorney General of the State of Tennessee. The Attorney General is a proper party for declaratory judgment action. *See Peters v. O'Brien*, 278 S.W. 660 (Tenn. 1925).

JURISDICTION

5. This Court has jurisdiction pursuant to Tenn. Code Ann. § 29-14-102 to declare the rights of the parties. This Court has jurisdiction to determine the application of a penal statute. *See Erwin Billiard Parlor v. Buckner*, 300 S.W. 565 (Tenn. 1927); *Davis-Kidd Booksellers, Inc. v. McWherter, supra*; *Grubb v. Mayor*, 203 S.W.2d 593 (Tenn. 1947).

6. This Court also has jurisdiction over statutes which govern the deprivation of federal civil rights under color of state law pursuant to 42 U.S.C. § 1983 and § 1985. *Poling v. Goins*, 713 S.W.2d 305 (Tenn. 1986).

STANDING

7. Petitioner has an absolute right to possess handguns and firearms in his own home and engage in lawful hunting activities as guaranteed to him by the Second Amendment to the Constitution of the United States and the Tennessee Constitution, Art. I, Sec. 26, which provides a right to bear arms. Even though he has a full and unrestricted pardon which specifically restores to him his firearm rights, the State of Tennessee does not recognize the restoration of rights and removal of disabilities associated with the pardon and thus he is adversely affected by the threat of special loss or damage. *Campbell v. Sundquist*, 926 S.W.2d 250 (Tenn.App. 1996). He does not have to wait to be prosecuted or to be place himself at the mercy of prosecutorial discretion in order to have standing to challenge the application of Tennessee laws to him in this declaratory judgment action. *See Campbell v. Sundquist, supra*.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

8. The Second Amendment to the Constitution of the United States provides “a well regulated militia being necessary to the security of a free state, the right of the People to keep and bear arms shall not be infringed.”
9. Article IV § I of the Constitution of the United States provides in relevant part that “Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other state.”
10. Article IV, Section 2, Clause 1, Constitution of the United States provides “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”
11. The Fourteenth Amendment to the Constitution of the United States provides in part that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
12. Article III, § IV of the Constitution of Tennessee provides that the Governor “shall have the power to grant reprieves and pardons, after conviction, except in cases of impeachment.”
13. Georgia Constitution Article IV, § II provides in relevant part that “the State Board of Pardons and Parole shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons, and paroles.”

14. Ga. Code Ann. § 42-9-56 provides that “the Governor [of Georgia] shall have no authority or power whatever over the granting of pardons or paroles.”

15. Tenn. Code Ann. § 39-11-106 provides in relevant part:

(11) “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use;

(16) “Handgun” means any firearm with a barrel length of less than twelve inches (12”) that is designed, made or adapted to be fired with one (1) hand;

16. Tenn. Code Ann. § 39-17-1307 (the “Tennessee Firearms Statute”), provides in relevant part:

(b)(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106, and:

(A) Has been convicted of a felony involving the use or attempted use of force, violence or a deadly weapon; or

(B) Has been convicted of a felony drug offense.

(2) An offense under subdivision (b)(1) is a Class E felony.

(c)(1) A person commits an offense who possesses a handgun and has been convicted of a felony.

(2) An offense under subdivision (c)(1) is a Class E felony. . . .

(f)(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106(a), and: . . .

(C) Is prohibited from possessing a firearm under any other provision of state or federal law.

(4) A violation of subdivision (f)(1) is a Class A misdemeanor and each violation constitutes a separate offense.

2008 Pub.Acts, c. 1166, § 1, rewrote subsec. (b)(1), which formerly read:

“(b)(1) A person commits an offense who possesses a handgun and:

“(A) Has been convicted of a felony involving the use or attempted use of force, violence or a deadly weapon; or

“(B) Has been convicted of a felony drug offense.”

2008 Pub.Acts, c. 1176, § 1, added a new subsec. (c), relating to unlawful possession of a handgun, redesignated subsec. (c) as (d) and changed the reference from subsec. (c) to subsec. (d).

15. Federal law forbids a person convicted of a serious offense to possess any firearm. 18 U.S.C. 922(g)(1). However, 18 U.S.C. 921(a)(20) expressly states that a conviction for a predicate offense will not be considered as a “prior conviction” if a state exercises its right to restore the civil rights of a person for that offense:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

16. The Tennessee Constitution, Art. I, Sec. 26 provides a right to bear arms: —[t]hat the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.

17. Tenn. Code Ann. § 40-27-101. Governor; powers and duties: “The governor has power to grant reprieves, commutations and pardons in all criminal cases after conviction, except impeachment, subject to the regulations provided in this chapter.”

18. Tenn. Code Ann. § 39-17-1316.provides in relevant part:

(a)(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring firearms; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, who are ineligible to receive firearms under 18 U.S.C. § 922, or who have been judicially committed to a mental institution pursuant to title 33 or adjudicated as a mental defective are prohibited. For purposes of this subdivision (a)(1), the offense of violation of a protective order as prohibited by § 39-13-113 shall be considered a “misdemeanor crime of domestic violence” for purposes of 18 U.S.C. § 921.

(2) The provisions of this subsection (a) prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

(A) The person was pardoned for the offense;

(B) The conviction has been expunged or set aside; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29, and

(D) The person is not prohibited from possessing a firearm by the provisions of § 39-17-1307.

(b)(1) As used in this section, “firearm” has the meaning as defined in § 39-11-106, including handguns, long guns, and all other weapons that meet the definition except “antique firearms” as defined in 18 U.S.C. § 921.

(emphasis added).

19. CHAPTER 1395-1-3 of the RULES OF TENNESSEE BUREAU OF INVESTIGATION DIVISION OF TENNESSEE [Firearm] INSTANT CHECK SYSTEM PROGRAM provides in relevant part:

Section 1395-1-3-.05 (1) The TBI TICS shall issue a Denial for reasons including, but not limited to, the following:

.....;

(b) Felony conviction punishable by imprisonment for one (1) year or more;

.....

(2) All convictions on arrest charges will be determined by the law of the jurisdiction in which the individual was convicted.

20. § 40-29-105. Convictions July 1, 1986 to July 1, 1996.

(a) The provisions and procedures provided for in §§ 40-29-101--40-29-104 shall apply to all persons convicted of an infamous crime after July 1, 1986, but before July 1, 1996.

(b) For all persons convicted of infamous crimes after July 1, 1986, but before July 1, 1996, the following procedures shall apply:

(1) A person rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have full rights of citizenship restored upon:

(A) Receiving a pardon, except where the pardon contains special conditions pertaining to the right to suffrage;

THE FACTS

21. The Petitioner was born on March 25, 1968 in Atlanta, Georgia. He is an American citizen. He is a registered nurse having acquired a nursing degree from the

University of Mississippi. In 1989, the Petitioner was convicted of felony drug offenses in the State of Georgia for which he was sentenced to nine years, to serve five with the balance being suspended.

22. On August 11, 2003, the Petitioner was granted a pardon by the State of Georgia which, by its terms specifically included the “restoration of the right to bear arms.” The pardon further provided that “all disabilities under Georgia law resulting from the conviction and sentence are hereby removed.” *See* Exhibit A. Once an unrestricted pardon is granted, Georgia law imposes no firearm disabilities. *See* Exhibit B

23. The Petitioner moved to Tennessee in 2007 where he is currently employed as a nurse.

24. The Petitioner desired to possess firearms and a handgun in the privacy of his home to protect himself and his family and engage in lawful hunting activities just like any other citizen. The Petitioner believes he had every right to do so because of the disabilities of his Georgia conviction were removed by the Georgia pardon which specifically restored his firearm rights.

25. To acquire comfort that he might possess firearms and a handgun in his home and engage in lawful hunting activities in Tennessee, Petitioner solicited the assistance of his State Representative, Glen Casada, who sent a request to the Attorney General for an opinion regarding the affect of the pardon in Georgia as well as the status of the law in Tennessee regarding the possession of firearms and handguns. *See* Exhibit C.

26. On October 20, 2009, the Attorney General rendered Opinion 09-168, which is attached as Exhibit D. The opinion recites that since he was convicted of a drug offense Mr. Blackwell could not possess a handgun. The opinion went on to recite that the Georgia pardon was of no consequence and that, indeed, a Tennessee pardon would have no impact on a conviction and thus even a Tennessee resident could not be free of firearm disabilities notwithstanding a pardon from the Governor of the State of Tennessee. It should be noted that the opinion recited provisions of Tenn. Code Ann. § 39-17-1307 to the effect that while Mr. Blackwell could possess a “long gun” he could not possess a pistol. In actuality, the statutes recited by the Attorney General had already been amended to prohibit the possession of any firearm (which would include “long guns”) by a person convicted of a drug offense and that a person convicted of any felony could not possess a handgun. Thus, while the opinion of the Attorney General recited since-amended laws the thrust of the opinion is unchanged in that a person convicted of a drug offense is prohibited from possessing a firearm notwithstanding a full and complete pardon by the Governor of another state or even the Governor of Tennessee. *See* Exhibit D, attached.

27. Given the existence of the opinion of the Tennessee Attorney General, the Petitioner’s status and right to possess a firearm or a handgun in his own home and engage in lawful hunting activities is now uncertain given that the penalty for same is a felony.

28. In the anticipation of litigation the Petitioner acquired an authorization from the United States Department of Justice permitting him to purchase a firearm. See Exhibit E. However, while federal law may allow him to purchase the firearm he is subjected to immediate arrest for possession of same under Tennessee law as interpreted by the Attorney General of the State of Tennessee. Thus, without declaratory relief from this Court he cannot possess a firearm or handgun in the privacy of his own home and engage in lawful hunting activities without fear of arrest and prosecution thus directly implicating the purposes of the Tennessee Declaratory Judgment Act.

FIRST COUNT: DECLARATORY JUDGMENT

29. This Court should declare that the provisions of Tenn. Code Ann. § 39-17-1307, which allegedly prohibits the possession of a firearm or a handgun by a person convicted of a felony drug offense or a felony of any sort, have no application where the felony conviction has been subject to full and unrestricted pardon by the appropriate constitutional authority of the State within which the conviction occurred.

30. This Court should declare that the Full Faith and Credit provision in the United States Constitution guarantees the application of the removal of the disabilities in the State of Georgia to apply fully so as to remove disabilities and restrictions under the Tennessee firearm and handgun provisions of Tenn. Code Ann. § 39-17-1307 as amended in 2008.

31. The Tennessee Constitution, Art. I, Sec. 26 provides a right to bear arms: “[t]hat the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime,” and thus the provisions of Tenn. Code Ann. § 39-17-1307 which allegedly prohibits the mere possession of a firearm or a handgun by a person convicted of a felony drug offense or a felony of any sort have no application where the felony conviction has been subject to full and unrestricted pardon by the appropriate constitutional authority of the State within which the conviction occurred.

32. To the extent that the Court need even address the issue, the Court should find that a Tennessee pardon for a Tennessee conviction that provides that firearm disabilities have been removed would remove the disabilities and allow full restoration of firearm rights.

33. Petitioner is squarely within the provisions of Tenn. Code Ann. § 40-29-105, which addresses convictions from July 1, 1986 to July 1, 1996:

(b) For all persons convicted of infamous crimes after July 1, 1986, but before July 1, 1996, the following procedures shall apply: (1) A person rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have full rights of citizenship restored upon:(A) Receiving a pardon, except where the pardon contains special conditions pertaining to the right to suffrage . . .

and thus, in light of this statute and those other statutes and constitutional provisions cited in this complaint Petitioner is entitled to possess a handgun and firearm in light of his absolute constitutional rights of citizenship as provided by the Second Amendment to the Constitution of the United States which provides “a well regulated militia being necessary to the security of a free state, the right of the People to keep and bear arms

shall not be infringed,” and the Tennessee Constitution, Art. I, Sec. 26, which provides “That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.

FEDERAL CONSTITUTIONAL VIOLATIONS

34. The Petitioner asserts that he has the right under the Second Amendment of the Constitution of the United States and the Fourteenth Amendment of the Constitution of the United States to possess firearms and handguns in his own home for his own protection and engage in lawful hunting activities .

35. The Petitioner asserts that it violates Due Process and Equal Protection of the laws under the United States Constitution for the Petitioner to suffer the consequences of Tennessee law dealing with “convictions” when the disabilities associated with same from the State of Georgia have been removed by Georgia itself.

36. The Petitioner asserts that the interpretation given to the firearm and handgun limitations under Tennessee law notwithstanding a valid pardon from another state constitutes an unlawful taking of property and rights in violation of the Due Process provisions of the Fourteenth Amendment of the Constitution of the United States and the Fifth Amendment of the Constitution of the United States.

37. The firearm restrictions imposed by Tennessee law — notwithstanding a valid pardon in another state for a conviction in that state — violates the Privileges and Immunities Clause of the United States Constitution which guarantees the freedom of

movement. *See Saenz v. Roe*, 526 U.S. 489 (1999). The right to travel is a fundamental right protected by the Constitution. *Shapiro v. Thompson*, 394 U.S. 618, 629-30, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). It is derived from the Privileges and Immunities Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment. *Id.* at 631, 89 S.Ct. 1322. The right to travel protects a person's right to enter and leave another state, the right to be treated fairly when temporarily present in another state, and the right to be treated the same as other citizens of a state when moving there permanently. *Saenz*, 526 U.S. at 500. A statute that unreasonably burdens the right to travel is subject to strict scrutiny and thus must be justified by a compelling government interest. *Id.* at 499; *Shapiro*, 394 U.S. at 627, 634.

38. The Full Faith and Credit provision to the Constitution of the United States guarantee the application of the removal of the disabilities in the State of Georgia to apply fully so as to remove any disabilities and restrictions under the Tennessee firearm and handgun provisions of Tenn. Code Ann. § 39-17-1307 as amended in 2008. *See Schlenther v. Department Of State, Division Of Licensing*, 743 So.2d 536 (Fla.App. 1998) (Connecticut's restoration of firearm licensee's civil rights following his Connecticut felony conviction was entitled to full faith and credit in Florida, and thus state of Florida improperly relied on that conviction in revoking licensee's firearm permit to carry a concealed handgun, where licensee moved to Florida under no disability and with full rights of citizenship, and licensee had done nothing to lose those rights since moving).

39. The various restrictions and arbitrary classifications and illegal constructions placed upon the Tennessee firearm laws as set forth in this Complaint constitute violations of 42 U.S.C. § 1983 and are subject to declaratory relief to remedy the constitutional violations. 18 U.S.C. § 1983 provides for actions involving the deprivation of civil rights under color of state law. This Court may address declaratory relief so as to protect the Petitioner's rights under the Second Amendment of the United States Constitution as guaranteed to him by the Fourteenth Amendment to the Constitution of the United States. Further, the Petitioner is entitled to the Full Faith and Credit guaranteed to him by Article IV, § I of the Constitution of the United States so that Tennessee should recognize the legal effect of the pardon from the State of Georgia, and that he is entitled to protection of the Privileges and Immunities Clause of the United States Constitution.

ATTORNEY'S FEES

40. The Petitioner requests and is entitled to an award of attorney fees and litigation-related costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1920. 42 U.S.C. § 1983 prohibits the State of Tennessee from depriving a Petitioner of the "rights, privileges, and immunities secured by the constitutional laws" in the United States.

REQUEST FOR RELIEF

41. This Court should grant declaratory relief that the Petitioner's conviction in the State of Georgia which was subject to a full and unconditional pardon is no bar to Tennessee law as it relates to Petitioner's enjoyment of his Second Amendment right to

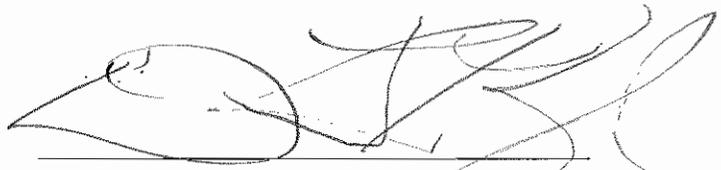
possess and own firearms and his rights under the Tennessee Constitution, Art. I, Sec. 26 which provides a right to bear arms.

42. The Court should order that the word “conviction” in Tennessee statutes and laws which impose alleged disabilities against the Petitioner with regard to his firearm rights have no application to him and with all firearm disabilities and handgun disabilities of any and every sort which may exist under Tennessee law of no force and impact on the Petitioner so that he might enjoy the same privileges and immunities as any other citizen of this State.

43. That this Court award him such other relief as the Court deems appropriate and that the Court award him costs and reasonable attorney’s fees for his litigation to vindicate his Second Amendment rights and his rights under the Tennessee Constitution, Art. I, Sec. 26, which provides a right to bear arms.

Respectfully submitted,

HOLLINS, RAYBIN & WEISSMAN, P.C.

A handwritten signature in black ink, appearing to read 'DR', is written over a horizontal line. The signature is stylized and somewhat illegible.

David L. Raybin, BPR #3385
424 Church Street, Suite 2200
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Nashville, Tennessee 37219
615-256-6666
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STATE BOARD OF PARDONS AND PAROLES



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August 11, 2003

David Blackwell
117 Cambridge Cove
Clinton, MS 39056

Dear Mr. Blackwell:

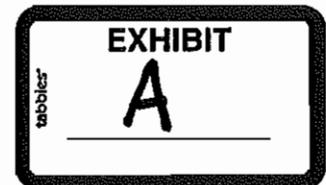
Enclosed is a Pardon including the restoration of the right to bear arms which the Board has granted in response to your recent application. Please retain this document for your future reference.

Sincerely,

A handwritten signature in black ink that reads "W C Davis".

W C Davis
Assistant Director of Clemency

WCD/pl



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STATE BOARD OF PARDONS AND PAROLES

STATE BOARD OF PARDONS AND PAROLES



PARDON

INCLUDING RESTORATION OF THE RIGHT TO BEAR ARMS

WHEREAS, David Blackwell, Serial Number EF-235799 was convicted in the court(s) indicated below of the following offense(s) for which he received the sentence(s) hereinafter set forth:

OFFENSE	COURT OF CONVICTION	SENTENCING DATE	SENTENCE
Violation of Georgia Controlled Substance Act (Sale of Cocaine) (88BB714) (Counts 1-3)	Gwinnett Superior	1/23/89	9 years to serve 5 years, balance probated (3 counts concurrent) (c/f 9/9/88) \$3,000 fine, \$50 POT, \$10 probation fee Terminated 1/22/94

and,

WHEREAS, an application for a Pardon has been filed by the above named individual; and

WHEREAS, having investigated the facts material to the pardon application, which investigation has established to the satisfaction of the Board that the pardon applicant is a law-abiding citizen and is fully rehabilitated;

THEREFORE, pursuant to Article IV, Section II, Paragraph II (a), of the Constitution of the State of Georgia, the Board, without implying innocence, hereby unconditionally fully pardons said individual, and it is hereby

ORDERED that all disabilities under Georgia law resulting from the above stated conviction(s) and sentence(s), as well as, any other Georgia conviction(s) and sentence(s) imposed prior thereto, be and each and all are hereby removed; and

ORDERED FURTHER that all civil and political rights, including the right to receive, possess, or transport in commerce a firearm, lost under Georgia law as a result of the above stated convictions, as well as, any other Georgia conviction(s) and sentence(s) imposed prior thereto be and each and all are hereby restored.

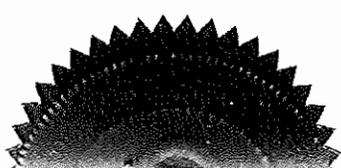
It is directed that copies of this order be furnished to the said applicant and to the Clerk(s) of Superior Court(s) in the County(s) where the above sentence(s) were imposed.

GIVEN UNDER THE HAND AND SEAL of the State Board of Pardons and Paroles, this 11th day of August, 2003.

STATE BOARD OF PARDONS AND PAROLES

FOR THE BOARD


Linda Winston





GLEN CASADA
STATE REPRESENTATIVE
63RD LEGISLATIVE DISTRICT

CHAIRMAN, REPUBLICAN CAUCUS

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July 27, 2009

The Honorable Robert E. Cooper, Jr.
Attorney General and Reporter
State of Tennessee
425 Fifth Avenue North, Second Floor
Nashville, Tennessee 37243

Dear General Cooper:

I have several questions regarding firearms that I would like your office to address.

Tennessee Code Annotated, Section 39-17-1316(a) prohibits the sale of a firearm to certain persons convicted of a felony. Subdivision (2) of Section 39-17-1316(a) exempts persons who were pardoned for the felony offense. Can a person who receives a pardon for a felony drug offense purchase a firearm despite the provisions of Tennessee Code Annotated, Section 39-17-1307(b)(1)(B)?

The United States Constitution requires states to give full faith and credit to the judgments and laws of other states. If a person were convicted of a felony drug offense in another state, received a full and complete pardon for such offense in such state (and the pardon affirmatively states there are no firearm disabilities), and is permitted to purchase, own and carry a firearm in such state pursuant to the laws of that state, is Tennessee required to give full faith and credit to the legal effect of the pardon where the person now resides in Tennessee and desires to purchase, own or carry a firearm in Tennessee? In other words, if the pardon removes firearm disabilities stemming from the felony drug conviction in the other state, does that mean that Tennessee may not impose firearm disabilities or restrictions as a result of that pardoned conviction for the person who now resides in Tennessee?

Tennessee Code Annotated, Section 39-17-1351 authorizes written reciprocity agreements with other states in regards to firearms. If Tennessee has a written reciprocity agreement with another state that has issued a handgun carry permit to a person pardoned for a felony drug offense, is such person who becomes a resident of Tennessee then authorized to receive a handgun carry permit in this state?

Is there any manner for a person convicted of a felony drug offense in another state, who has subsequently received a full and complete pardon for such felony drug offense (and the pardon affirmatively states there are no firearm disabilities), to legally obtain a firearm and a handgun carry permit in Tennessee?

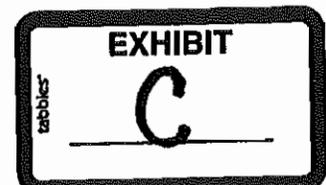
I appreciate, as always, the assistance of your office.

Sincerely,

COPY

Glen Casada

GC:cas



STATE OF TENNESSEE

Office of the Attorney General



LUCY HONEY HAYNES
CHIEF DEPUTY ATTORNEY GENERAL

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CHIEF POLICY DEPUTY

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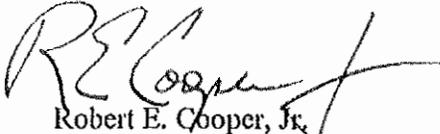
October 20, 2009

The Honorable Glen Casada
State Representative
112 War Memorial Building
Nashville, Tennessee 37243

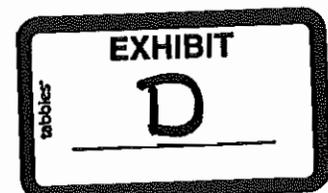
Dear Representative Casada:

In response to your request, attached is opinion number 09-168 . If you have further questions or comments, please contact this office.

Sincerely,


Robert E. Cooper, Jr.
Attorney General and Reporter

Enclosure



STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 20, 2009

Opinion No. 09-168

Pardoned Felony Drug Offender Prohibited from Possessing or Purchasing Firearms

QUESTIONS

1. Does Tenn. Code Ann. § 39-17-1316 prohibit licensed firearms dealers from selling firearms to a Tennessee resident who has been pardoned for a Tennessee felony drug conviction?
2. Can a Tennessee resident who has been pardoned for a Tennessee felony drug conviction lawfully possess a firearm?
3. Does Tenn. Code Ann. § 39-17-1316 prohibit licensed firearms dealers from selling firearms to a Tennessee resident who has been pardoned for an out-of-state felony drug conviction?
4. Can a Tennessee resident who has been pardoned for an out-of-state felony drug conviction lawfully possess a firearm in Tennessee?
5. Can a Tennessee resident who has been pardoned for an out-of-state felony drug conviction and holds a valid out-of-state handgun carry permit obtain a Tennessee handgun carry permit pursuant to a handgun carry permit reciprocity agreement?

OPINIONS

1. Under Tenn. Code Ann. § 39-17-1316, licensed firearms dealers may sell any type of firearm, except a handgun, to a Tennessee resident who has been pardoned for a Tennessee felony drug conviction.
2. A Tennessee resident who has been pardoned for a Tennessee felony drug conviction may possess any type of firearm, except a handgun.
3. Full faith and credit does not require Tennessee to afford an out-of-state pardon the same treatment that the issuing state gives it. Since a Tennessee pardon does not obliterate the fact that the conviction occurred, Tenn. Code Ann. § 39-17-1316 prohibits a licensed firearms dealer from selling a handgun to a person who has been pardoned for a felony drug offense that was committed in another state, even though under the law of the issuing state, a pardon obliterates the fact that the conviction was entered.

4. Full faith and credit does not require Tennessee to afford an out-of-state pardon the same treatment that the issuing state gives it. Since a Tennessee pardon does not obliterate the fact that the conviction occurred, Tenn. Code Ann. § 39-17-1307(b)(1)(B) prohibits a Tennessee resident who has been pardoned for a felony drug offense that was committed in another state from possessing a handgun, even though under the law of the issuing state a pardon obliterates the fact that the conviction was entered.

5. A Tennessee resident who has been pardoned for an out-of-state felony drug conviction and who holds a valid out-of-state handgun carry permit may not obtain a Tennessee handgun carry permit pursuant to a handgun permit reciprocity agreement.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1316(a) generally prohibits licensed firearms dealers from selling firearms to convicted felons, including those who have been convicted of felony drug offenses.¹ Tenn. Code Ann. § 39-17-1316(a) authorizes licensed firearms dealers to sell firearms to convicted felons under certain conditions. It states:

(a)(2) The provisions of this subsection (a) prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

(A) The person was pardoned for the offense;

(B) The conviction has been expunged or set aside; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29, and

(D) The person is not prohibited from possessing a firearm by the provisions of § 39-17-1307.

* * *

Tenn. Code Ann. § 39-17-1316(a).

The primary objective of statutory construction is to ascertain and give effect to the intention of the legislature. *State v. Sherman*, 266 S.W.3d 395 (Tenn. 2008); *Auto Credit v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007). Courts do not read statutory language in isolation; the meaning of a statute is derived from a reading of a statute as a whole. *McCoy v. T.T.C., Illinois, Inc.*, 14 S.W.3d 734 (Tenn. 2000). Courts must construe a statute so that no part is rendered inoperative

¹The prohibition against selling firearms to convicted felons, generally, is found in the prohibition against selling a firearm to a person who may not lawfully receive a firearm under 18 U.S.C. § 922. That statute prohibits convicted felons from possessing firearms.

or meaningless. *Faust v. Metro Government of Nashville*, 206 S.W.3d 475 (Tenn. App. 2006).

Reading the unambiguous language of Tenn. Code Ann. § 39-17-1316(a)(2) as a whole, a licensed firearms dealer may sell a firearm to a convicted felon who meets one of the criteria listed in subparts (A) through (C). In addition to meeting one such condition, such a sale may be made only if the convicted felon's possession of such firearm would not violate Tenn. Code Ann. § 39-17-1307.

The prohibitions set forth in Tenn. Code Ann. § 39-17-1307(b) apply to handguns only. Long guns are not implicated by that statute and a licensed firearms dealer may therefore lawfully sell a long gun to a person who has been pardoned for a felony drug offense that was committed in Tennessee.²

The prohibitions set forth in Tenn. Code Ann. § 39-17-1307 apply only to certain classes of convicted felons, those who have been convicted of violent felonies and those who have been convicted of felony drug offenses. Tenn. Code Ann. § 39-17-1307(b)(1).³ Reading Tenn. Code Ann. § 39-17-1316(a)(2) together with Tenn. Code Ann. § 39-17-1307(b)(1)(B) indicates that the legislature intended to prohibit licensed firearms dealers from selling handguns to persons who have been convicted of felony drug offenses in Tennessee, including those who received pardons from such convictions.⁴

2. You ask if a person who has received a pardon for a felony drug offense that was committed in Tennessee may lawfully possess a handgun. Tenn. Code Ann. § 39-17-1307(b)(1)(B) states that it is unlawful for persons who have been convicted of felony drug offenses to possess a handgun. Such a person could possess a handgun without violating Tenn. Code Ann. § 39-17-1307 only if the pardon has the effect, under Tennessee law, of removing the fact that the person has been convicted of a felony drug offense.

²Tenn. Code Ann. § 39-17-1307(a) is not germane to this analysis because that subsection prohibits the carrying of any weapon by any person for the purpose of going armed. Subsection (b) prohibits any possession of a handgun by certain classes of felony offenders.

³Tenn. Code Ann. § 39-17-1307(b)(1)(B) states, in relevant part:

A person commits an offense who possesses as handgun and:

* * *

(B) Has been convicted of a felony drug offense.

* * *

Tenn. Code Ann. § 39-17-1307(b)(1)(B).

⁴Reading Tenn. Code Ann. § 39-17-1316(a)(2) to authorize licensed dealers to sell handguns to persons who have been pardoned for felony drug offenses that were committed in Tennessee would effectively render Tenn. Code Ann. § 39-17-1316(a)(2)(D) ineffective. In addition, reading Tenn. Code Ann. § 39-17-1316(a)(2) to prohibit licensed dealers from selling handguns to persons who have been pardoned for felony drug offenses that were committed in Tennessee is consistent with the legal effects of pardons under Tennessee law. In *State v. Blanchard*, 100 S.W.3d 226 (Tenn. App. 2002), the court noted that a full pardon restores civil rights and remits all punishments but does not obliterate the fact that the crime was committed and that the defendant was convicted.

The term “pardon” describes the authority of the governor to restore the felon’s civil rights and remit punishment of a person who has been convicted of a crime. *State v. Blanchard*, 100 S.W.3d 226 (Tenn. Crim. App. 2002).⁵ In *Blanchard*, the court stated that a pardon restores a person’s civil rights and remits punishment but does not erase the fact that the crime occurred or that a conviction for that crime was, in fact, entered.

The plain meaning of the text of Tenn. Code Ann. § 39-17-1307(b)(1)(B) indicates that the legislature intended to prohibit any person who has, in fact, been convicted of a felony drug offense from possessing a handgun. Since a pardon does not erase the fact of such a conviction, a person who has been convicted of a felony drug offense cannot lawfully possess a handgun even if he has received a full pardon for the offense.

3. You ask if, pursuant to the full faith and credit clause of the United States Constitution, a licensed firearms dealer may lawfully sell a handgun to a person who received a pardon for a felony drug offense that was committed in another jurisdiction, if the issuing jurisdiction treats a pardon as removing the fact that a conviction occurred. Art. IV, § 1 of the United States Constitution states:

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

As set forth above, under Tennessee law, a pardon remits punishment and restores rights of citizenship but does not obliterate the fact that the conviction occurred. *Blanchard, supra*. Therefore, a licensed firearms dealer may not sell a handgun to a person who has received a pardon for a felony drug offense that was committed in Tennessee.

Some other states, however, may treat pardons as if the crime did not occur. *See, e.g., Groseclose v. Plummer*, 106 F.2d 311 (9th Cir. 1939).⁶ *Groseclose* and *United States v. Maroney*, 373 F.2d 908 (3rd Cir. 1967), are instructive on the issue whether full faith and credit would require Tennessee to treat such a pardon in the same manner as the issuing state and thus to permit licensed firearms dealers to sell handguns to persons who had received pardons for felony drug convictions in other states. In both cases, the courts held that the full faith and credit clause did not prohibit states from considering convictions in other states in setting criminal punishment, even if a subsequent pardon had the effect in the convicting state of removing the original conviction. As the court in *Groseclose* noted, a pardon, regardless of its legal effect, does not change the historic fact of the original conviction and would not prevent another state from taking cognizance of that conviction. *Groseclose*, 106 F.2d at 313. Tenn. Code Ann. § 39-

⁵ Art. III, § 6, of the Tennessee Constitution confers upon governors the power to grant pardons and reprieves.

⁶ In *Groseclose*, the court assumed without deciding that under Texas law, a full pardon obliterated the fact that the conviction occurred.

17-1316 prohibits a licensed firearms dealer from selling a handgun to any person who has been convicted of a felony drug offense. A subsequent pardon of such a conviction in another state would not alter the fact that the conviction occurred, and, therefore, the statutory prohibition on the sale of handguns would still apply.

4. You ask if persons who have been pardoned by other states for felony drug offenses may lawfully possess a handgun in Tennessee if the issuing state treats pardons as obliterating the fact that such a conviction ever occurred. The full faith and credit clause does not require Tennessee to permit the possession of handguns by persons who have been pardoned for felony drug offenses that were committed in other states. For the reasons stated in parts 2 and 3, Tenn. Code Ann. § 39-17-1307(b)(1)(B) prohibits such persons from possessing handguns, even if the issuing state treats a pardon as obliterating the fact that the offense occurred.

5. Tenn. Code Ann. § 39-17-1351(r)(3)(B) states that a person who possesses a handgun carry permit that was issued by another state may continue to carry a handgun based on such out-of-state permit for six months after becoming a Tennessee resident. Under the plain meaning of that subsection, such a person may obtain a permit on reciprocity if the state that issued the permit has eligibility requirements that are substantially similar to those of Tennessee. Tenn. Code Ann. § 39-17-1351(r)(3)(B).

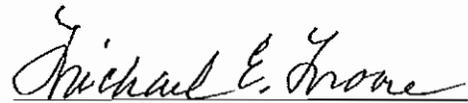
Convicted felons are not eligible to receive handgun carry permits in Tennessee. Tenn. Code Ann. § 39-17-1351(c)(6). Under Tenn. Code Ann. § 39-17-1351(j), however, convicted felons, except those who have been convicted of certain specified classes of felonies, may receive handgun carry permits if their citizenship rights have been restored. Most felony drug offenses are among the specified classes of offenses excepted from the benefit conferred by Tenn. Code Ann. § 39-17-1351(j).⁷

As set forth in part 2 above, a pardon issued in Tennessee restores rights of citizenship but does not obliterate the fact that the conviction occurred. By its plain terms, Tenn. Code Ann. § 39-17-1351(j) indicates that the legislature did not intend to restore the eligibility of most convicted drug felons to obtain a handgun carry permit with the restoration of their citizenship rights. Based on the analysis in part 3 above, persons who possess handgun carry permits that were issued in other states and who have been pardoned for felony drug offenses that were committed in other states are not entitled, under the full faith and credit clause, to obtain such a permit in Tennessee.



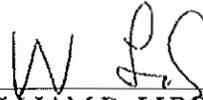
ROBERT E. COOPER, JR.
Attorney General and Reporter

⁷The only persons who have been convicted of felony drug offenses who may become eligible to receive a handgun carry permit are those persons whose offenses involved Schedule VI controlled substances. Those persons may reapply for a permit ten years after the date of the offense if their citizenship rights have been restored. Tenn. Code Ann. § 39-17-1351(j)(3).



MICHAEL E. MOORE

Solicitor General



WILLIAM R. LUNDY, JR.

Assistant Attorney General

Requested by:

The Honorable Glen Casada
State Representative
112 War Memorial Bldg.
Nashville, TN 37243



U. S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

April 10, 2010

Mr. David Scott Blackwell
1255 Carriage Park Drive
Franklin, TN 37064

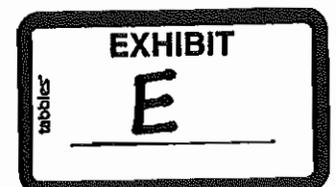
SUBJECT: Firearm Denial Appeal Review
National Instant Criminal Background
Check System (NICS) Transaction
Number (NTN)-1D66FGW
State Transaction Number (STN)-09U042829
Voluntary Appeal File (VAF)
Unique Personal Identification
Number (UPIN)-V0006BTN

Dear Mr. Blackwell:

The fingerprints you submitted are identical with those in a record that was used to deny your firearm purchase or pawn redemption. However, based on the certified court documentation and/or other pertinent materials submitted, we have been able to verify that you are eligible to purchase or redeem a firearm. The FBI Criminal Justice Information Services (CJIS) Division's NICS Section Firearm Appeal Certificate is enclosed.

You must take this original certificate to the Federal Firearms Licensee (FFL) who initiated your background check through the NICS. Present this original certificate to that FFL. The NICS Section recommends to the FFL that the certificate be kept on file with your original Bureau of Alcohol, Tobacco, Firearms and Explosives Forms 4473 reflecting the NTN/STN listed above. This certificate is good for only one transaction; however, you may purchase multiple firearms during the transaction if permitted by state law.

If more than 30 days have elapsed since the initial background check, the FFL must contact the state Point of Contact (POC) to complete the additional NICS check before allowing the transfer. State law may require a NICS recheck for transactions less than 30 days old.



Mr. David Scott Blackwell

Additionally, the NICS Section's Appeal Services Team has processed your application and has been able to verify that you are eligible to be placed into the VAF.

Please be advised that your entry into the VAF will not automatically result in a proceed response on subsequent firearm purchases. A complete NICS check will be required on each transaction and may result in a denied status if prohibitive information is discovered.

You have been issued a UPIN, which will identify you as a person who has been entered into the VAF and whose criminal history contains no firearm prohibitions. Keep this original letter in a secure location. You will need to provide your assigned UPIN to the FFL for each subsequent firearm transaction.

In the future, if you decide that you no longer wish to have your information retained in the VAF, you may submit a written request to the VAF Team to be removed from the VAF. Upon receipt of your written request, your information will be destroyed and you will receive written confirmation. Additionally, your original fingerprint card will be returned. Per the NICS Final Rule, Title 28, Code of Federal Regulations, Part 25.10(g), if the NICS Section discovers disqualifying information, the NICS Section may delete your information from the VAF. You will be notified by mail if this situation ever occurs.

For subsequent NICS checks, the FFL must contact the state POC to complete the NICS check. Your UPIN should be provided to the POC by the FFL to initiate your NICS check.

If you have any questions regarding this communication, you may contact the NICS Section's Customer Service at 1-877-FBI-NICS(324-6427).

NICS Section
CJIS Division

Enclosure

**FBI Criminal Justice Information Services Division's
NICS Section Firearm Appeal Certificate**

This is to certify the NICS Section has resolved
the appeal of

Mr. David Scott Blackwell.

Mr. Blackwell is eligible to purchase or redeem
a firearm from USELTONS SHOOTING SPORTS

**APPEALED NTN: 1D66FGW
STN: 09U042829**

INITIATION DATE: June 2, 2009

*FFL: If initiation date is older than 30 days, a NICS recheck MUST
be conducted. See the instructions below on conducting a recheck.*



INSTRUCTIONS TO THE FFL

This certificate may only be used for one transaction at the FFL where the denial occurred; however, multiple firearms may be purchased if permitted by state law.

- Verify the above certificate is embossed with the NICS Section seal.
- Verify the identity of the person presenting this certificate is the same as the name that appears above.
- If more than 30 days have elapsed since the initiation of the original NTN appearing above on this certificate, federal law requires a NICS recheck must be conducted by the FFL before allowing the transfer. State law may require a NICS recheck for transactions less than 30 days old.
- If this is a state Point-of-Contact (POC) check, please contact your POC to complete the NICS recheck.
- If this is an FBI check, call the NICS Customer Service at 1-877-FBI-NICS(324-6427) (select option 2) and advise the NICS Customer Service Representative you wish to perform an appeal recheck. Record the new NTN, date, and status on the original Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473.
- Provide the original denied NTN/STN, appearing above on this certificate, to the NICS Customer Service Representative.
- The NICS Section's best practice recommendation: Retain the original copy of this certificate with the ATF Form 4473 for inspection purposes.

(Revised 03/02/2009)