

# THE STATE OF NEW HAMPSHIRE

## JUDICIAL BRANCH

### NH CIRCUIT COURT

CHESHIRE COUNTY

8<sup>TH</sup> CIRCUIT – DISTRICT DIVISION – KEENE

In the Matter of:

**Derrick Horton v. Keene Police Department**

**Case No: 449-2014-CV-00110**

### DECISION

On November 26, 2014, the court conducted a hearing on the merits concerning the petitioner's appeal of a denial of a concealed weapon permit by the City of Keene Police Department Police Chief. After considering the evidence and viewing the recording offered by the defendant, the court finds that, due to the nature of his criminal record, the petitioner is not a suitable person to be issued a permit to carry a concealed weapon.

The petitioner filed his petition under RSA 159:6-c. Under that statute, the burden is on the issuing authority (here, the Keene Police Department) to demonstrate by clear and convincing proof why the denial was justified, failing which the court is to enter an order directing the issuing authority to grant the petitioner's license.

The respondent police department offered testimony through three of its police officers. Officer Joel Chidester testified that, pursuant to his duties, he was assigned to check into the criminal record background of the petitioner and forward the results to the chief of police for a determination of suitability to be issued a license to carry. Officer Chidester testified as to a number of convictions that are on the petitioner's record in Keene. These included charges and convictions for resisting arrest and obstructing governmental administration. (The record also contained at least one conviction of marijuana possession, but the court does not take that into consideration, one way or the other, in determining the petitioner's suitability for a license.) The defendant was also convicted of common law criminal contempt and disobeying an officer. What is noteworthy about these convictions is that they involve resistance to law enforcement authorities in the proper exercise of their authority. That is, the petitioner has demonstrated, time and again, that he has little or no respect for law enforcement officials.

This lack of respect does not, per se, render the defendant unsuitable; no one can mandate that respect. The petitioner's record does show, however, that he manifests that lack of respect by repeatedly placing himself in situations where the authority of the police is challenged. While a challenge to police authority is not always inappropriate, the petitioner's chosen method of doing so is to do so in ways, evidenced by the record of convictions, that led almost ineluctably to physical confrontations with the police. The petitioner's testimony made it clear that he is committed to acting in similar fashion in the future. Under these circumstances, the court finds that the petitioner is unsuitable to possess a concealed weapon.

To be sure, the petitioner testified that his motivation in resisting arrest and committing these other offenses is based on political considerations (ostensibly making a First Amendment claim). Acts of civil disobedience may be expressions of great moral, political or religious courage, from

which society may ultimately benefit. But if the law being violated is constitutional, one's motives do not excuse a violation. And the petitioner, despite his motivations, must live with the consequences.

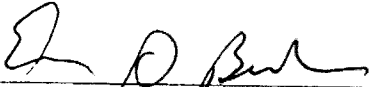
To accept the petitioner's contention that he should be issued a license despite these convictions would fly in the face of reasonableness. Although not necessary to support the court's finding of unsuitability, it is noted that to allow the petitioner to go through his prior court proceedings and accept guilty findings, even in the wake of a *nolo* plea, only then to accept at face value his own version of the events in support of a request for a license could serve to undermine the integrity of the criminal justice process. That is, if the petitioner had a claim, constitutional or otherwise, that his conduct was excusable or otherwise not culpable, the time and place for the exercise of that position would have been through a trial. By pleading *nolo* and accepting a guilty finding, he cannot open the door to offering his own version of the events at a later date for his own benefit.

For the foregoing reasons, the Court finds that the City of Keene Police Department carried its burden of proof, by clear and convincing evidence, that the petitioner is not a suitable person to carry a concealed weapon. In closing argument, counsel for the petitioner argued that the petitioner was being punished by denying the petitioner his Second Amendment right because he was exercising a First Amendment right. This argument lacks all merit under the facts of this case. The court reminds the parties that the petitioner is in no way, as far as the evidence in this case demonstrates, prohibited from possessing a firearm. This decision merely prevents him from carrying a concealed weapon.

**So Ordered.**

Date

12/8/14

  
Hon. Edward J. Burke, Presiding Justice