

Office on September 8, 1995 in Deed Book Volume 1269, page 407, granted and conveyed unto Danny W. Wyatt, Jr. and Kimberly D. Wyatt.

TO BE SOLD AS THE PROPERTY OF DANNY W. WYATT, JR. AND KIMBERLY D. WYATT UNDER FRANKLIN COUNTY JUDGMENT NO. A.D. 1997-310.

Tax Map #4A-44, Parcel # 35

TERMS

As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN December 22, 1997 at 4:00 PM, prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on December 29, 1997, 1:00 PM, prevailing time, in the Franklin County Court House, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

Robert B. Wollyung
Sheriff
Franklin County
Chambersburg, Pa.

11/21, 11/28, 12/05/97

COMMONWEALTH OF PENNSYLVANIA vs. TERRY L. MONN, Defendant, Franklin County Branch, CRIMINAL ACTION NO. 209 OF 1997 CHARGE: FIREARMS WITHOUT A LICENSE

Commonwealth v. Monn

Written notice requirement before gun license revocation fulfilled by personal oral notice - waiver of defense by not appealing revocation

1. Statute provides that written notice must be given to the license holder before license to carry firearms may be revoked.
2. Purpose of statute is fulfilled when the license holder is told personally by the sheriff that his license is revoked and the sheriff takes possession of the license.
3. Purpose of statute's requirement to provide written notice is not to provide notice of the opportunity to appeal, because the notice sent does not contain such information.
4. By remaining silent for more than a year, defendant has waived his defense of improper notice; he should have appealed immediately after the license revocation, not when he has been caught carrying a gun without a license.

John M. Lisko, Esquire, Attorney for Commonwealth
Deborah K. Hoff, Esquire, Attorney for Defendant

OPINION AND ORDER

Walker, P.J., October 21, 1997:

Factual and Procedural Background

On March 28, 1994, Defendant Terry Monn had been issued a license to carry a firearm by Franklin County Sheriff Robert Wollyung. In August 1995, defendant carried a handgun into the Franklin County Courthouse, despite warnings on the entrance doors that this was prohibited. On the third floor, defendant handed the gun over to a deputy sheriff prior to entering the metal detector. The gun was then taken by the sheriff, and defendant was told to see him before leaving the courthouse. When defendant met with the sheriff, the sheriff told him that his license was revoked for bringing it into the courthouse, and the sheriff took his permit. The sheriff did not give any written notice of the revocation to defendant. Defendant never took any steps to appeal the revocation of his license.

On December 19, 1996, defendant was lawfully stopped by Trooper Michael Taylor. When defendant exited the vehicle, he

informed the officer that he had a handgun in his possession. He was subsequently charged with the carrying of a firearm without a license.

A trial without jury on that charge was held on September 29, 1997. Both the Commonwealth and Public Defender have submitted briefs in support of their positions. Based on the reasoning set forth below, the court now finds defendant guilty of carrying a firearm without a license.

Discussion

Defendant argues that he must be found not guilty on the charge of carrying a firearm without a permit, because he was not given written notice of the license revocation, and thus his license was not properly revoked. Section 6109(i) of the Crimes Code provides as follows:

(i) Revocation - A license to carry firearms may be revoked by the issuing authority for good cause. Notice of revocation shall be in writing and shall state the specific reason for revocation. Notice shall be sent by certified mail, and, at that time, a copy shall be forwarded to the commissioner. An individual whose license is revoked shall surrender the license to the issuing authority within five days of receipt of the notice. An individual who violates this section commits a summary offense.

18 Pa.C.S.A. § 6109(I).

The intent of the statute requiring written notice of a revocation of a license to carry a gun, clearly is to assure that a license holder actually receives notice of such revocation. The notice sets in working the mechanism by which the holder of the license is required to turn in that license. Here, the sheriff of Franklin County personally notified defendant that his license was being revoked, and provided him with the reason for the revocation: having brought a gun into the courthouse. Defendant at this time was duly notified of the revocation and the reasons therefor. The sheriff demanded that defendant turn in his license, and he complied. The notice of the revocation and the surrender of the license took place simultaneously. Thus, the written notice as required by the statute could fulfill no further goal than the oral notice given to the defendant personally.

The intent of the statute was fulfilled. Further written notice would have served no purpose and was therefore not required.

Defendant argues that the reason for establishing a procedure of written notice is to "toll an appeal or objection and to inform the licensee of the reasons for the action taken." However, the statute does not provide for a notice of the opportunity to appeal to be included in the written notice of revocation. In the absence of such requirement, defendant's opportunity to appeal does not depend on a written notice. Even if defendant had received a written notice of revocation, he would not have been appraised of the possibility of appeal. No greater rights would have existed upon a written notice than existed under the oral notice given. Thus, the oral notice given complied with the intent of the statute.

However, even if written notice was required under the statute, defendant cannot prevail on that ground in the underlying case. Defendant, if he disagreed with the revocation or the procedure followed in the revocation, should have raised this issue immediately following the revocation. By remaining silent for more than one year (from August, 1995, until he was stopped in December, 1996), he waived the opportunity to raise the issue of any improper procedure followed in the revocation. This situation is parallel to that of the suspension of a driver's license: unless the license holder appeals the suspension (and requests a supersedeas), the license is suspended and the person cannot drive, whether the suspension was proper or not. Similarly here, defendant should have appealed the alleged improper procedure of the revocation shortly after its occurrence, *not* more than a year later when he was caught carrying a gun.

Defendant cites to a case from the Court of Common Pleas of Lawrence County in which the court held that where notice in a specified manner is prescribed by statute, that method of notice is exclusive even though the person entitled to notice has actual knowledge of all things he would be advised of by such written notice. *In re Appeal of Farella*, 24 Law. L.J. 13 (1972). The court in that case ordered the licensee's gun permit to be restored because he had received oral notice of revocation at the sheriff's office, rather than the required written notice. However, this case does not change the outcome in the underlying case. In *Farella*, the licensee, shortly after the sheriff refused to renew his license in an oral communication in

his office, appealed that revocation on the ground that it was improper because no written notice had been given. Here, on the other hand, defendant did nothing to appeal the procedure. As stated above, he cannot now raise this issue because he has waived it by his own inaction. Rather than carrying a gun knowing his license was revoked, he should have taken action shortly after the revocation to restore his license. Having failed to do so, he was not permitted to carry a gun. Therefore, the court finds that the defendant is guilty of the offense of carrying a firearm without a license.

ORDER OF COURT

October 21, 1997, the court finds the defendant guilty of carrying a firearm without a license. The court directs that defendant report to the Franklin County Probation Department, Franklin Farm Lane, Chambersburg, Pennsylvania, within fifteen (15) days of the date of this order so that a pre-sentence report may be completed. Sentencing is scheduled for Wednesday, December 10, 1997 at 9:00 o'clock a.m.

DENIAL

Denial is the state of mind of a chemically dependent person which prevents them from seeing the truth about their use of alcohol or other drug.

Denial allows the alcoholic or addict to keep using their drug of choice despite adverse consequences.

Denial allows the disease of addiction to progress causing increasingly more harm to the person's physical and emotional health and their personal and professional lives.

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