

STATE OF NEW HAMPSHIRE

COUNTY OF HILLSBOROUGH

HILLSBOROUGH SUPERIOR COURT, N.

DOCKET # _____

GERARD BELOIN V. TOWN OF NEW BOSTON POLICE DEPARTMENT

GERARD BELOIN V. JUSTICE ROBERT J. LYNN, NH SUPERIOR COURT

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER RSA 159:6-E

NOW COMES the Petitioner, Gerard Beloin, 31 Dane Road, PO Box 304, New Boston, NH 03070, by and through his attorney, Paula J. Werme, Esq., and hereby PETITIONS this honorable Court for declaratory and injunctive relief pursuant to the provision of RSA 159-6-E.

In addition, the Petitioner requests that this Court give the matter priority on the calendar as the statute requires. In particular in this case, the person responsible for rescinding the concealed carry license of the Petitioner is Chief Christopher Krajenka, New Boston Police Department, 116 Old Coach Rd., New Boston, NH 03070; the entity responsible for administering the NH Superior Court Rules is the Chief Justice Robert Lynn, Administrative Office of the Superior Court, 17 Chenell Drive, Suite 1, Concord, NH 03301.

In support of this Petition, Petitioner states:

1. The NH Constitution, [Art.] 2-a. [The Bearing of Arms.] states:

All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.

December 1, 1982

The Federal Constitution, Amendment II states:

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.

The U.S. Supreme Court recently ruled that this amendment protects the right of individuals to keep and bear arms in their own defense. Parker v. District of Columbia, 128 S.Ct. 2994 (2008)

2. The NH Legislature has enacted various restrictions on the right to carry. RSA 159:3, the possession of firearms by convicted felons, RSA 159:4, the carrying of a weapon without a license, and RSA 159:5, regarding the **mandatory** licensing of persons to carry upon a finding that they have a proper purpose and are “suitable person[s] to be licensed.”

3. There is no NH statute regarding prohibitions on the right of persons convicted of misdemeanors to carry weapons, concealed or otherwise. Had the legislature wanted to include persons convicted of misdemeanors in the category of “person’s not suitable to be licensed,” they would have done so.

4. The petitioner was convicted in 2008 of violating RSA 570-A, a non-violent misdemeanor conviction. The conviction is currently on appeal before the NH Supreme Court. He has no other qualifying conviction that would vacate his right to carry pursuant to RSA 159:3, to wit: “(1) A felony against the person or property of another; or (2) A felony under RSA 318-B; or (3) A felony violation of the laws of any other state, the District of Columbia, the United States, the Commonwealth of Puerto Rico or any territory or possession of the United States relating to controlled drugs as defined in RSA 318-B.

5. Although the prosecution recommended a 30 day jail sentence, the Court sentenced the Petitioner to time served (3 days), and a year of probation. Clearly the court, at the time of sentencing, did not consider the Petitioner a threat to society.

6. The probation agreement, which is based on Superior Court Rule # 107, states, in relevant part:

The terms and conditions of probation, unless otherwise prescribed, shall be as follows:
. . . (f) Not receive, possess, control or transport any weapon, explosive or firearm, or simulated weapon, explosive, or firearm;

It is significant that the Court Rule existed before the enactment of Article 2-a of the Constitution in 1982, and has not been amended since.

7. In-so-far as Superior Court Rule 107(f) rescinds Petitioner's rights under the 2nd Amendment of the US Constitution, Article 2-a of the NH Constitution, the 14th Amendment of the United States Constitution, and Article 15 of the NH Constitution, in that it deprives him of his right to carry a weapon in his own defense without due process of law, Petitioner states that NH Superior Court Rue 107(f) is unconstitutional under both the US. Constitution and the NH Constitution, to wit:

There is a presumption that following conviction of a non-violent misdemeanor violation, a person is no longer "a proper person" with all the rights to carry as every other citizen of this state. There is further no administrative or judicial method to make said determination, nor is there an administrative or judicial process by which one can challenge said determination by a probationer once made. The only relief is pursuant to RSA 159:6-E.

8. The NH legislature has already made the determination that once convicted of a felony, that a person's right to carry firearms in their own defense is lost. RSA 159-3. This statute has been held constitutional by the NH Supreme Court. *State v. Smith*, 132 N.H. 756 (1990). In *State v. Smith*, the NH Supreme Court stated:

[2] The statute narrowly serves this interest by prohibiting a category of persons likely to be dangerous from possessing dangerous weapons. Included in the category are only those who have committed a felony against the person or property of another, or who have committed a felony under the controlled substance act, RSA chapter 318-B. **Other felons, such as habitual offenders and perjurers, are not as likely to harm another's life or property, and therefore are not included in the category of felons forbidden to possess or own a firearm.** Conceivably some felons falling within the reach of RSA **159:3** (Supp. 1988) are not potentially dangerous. However, on the standard we apply here, the statute need not be perfectly tailored, simply narrowly tailored. We hold that RSA **159:3** (Supp. 1988) **narrowly serves a significant governmental interest** in protecting the general public and is therefore constitutional.

Absent a determination that he is not a proper person to carry because there is no history of aggressive or violent behavior, and no felony conviction that would put him under the provisions of RSA 159:3. It is not the province of the Judicial

Branch to determine who can and cannot exercise their constitutional rights in NH absent express authorization from the legislature

NH Superior Court rule is NOT similarly narrowly tailored to serve a significant government interest in protecting the public. The Court rule presumes that any person convicted of ANY misdemeanor who receives probation in lieu of sentencing is automatically deemed potentially dangerous without any due process protections. While it may serve the government interest in protecting the public from potentially dangerous persons, it violates the NH Constitution by presuming that people who have no history of violence are potentially dangerous. It therefore violates both Article 2-a and Article 15 of the NH Constitution, as well as corresponding federal constitutional provisions.

10. Alternatively, even if a person is prohibited from carrying a firearm by the terms of a probation order, his right to carry under RSA 159:3 should not be rescinded, because its provisions are MANDATORY as per the legislative wording.

WHEREFORE, Petitioner respectfully requests the following relief:

A. A determination that NH Superior Court Rule 107(f) is unconstitutional under the Federal Constitution, Amendment II, the NH Constitution, Art. 2-a, the 14th Amendment of the U.S. Constitution, and Article 15 of the NH Constitution.

B. That this Court ORDER Judge Robert J. Lynn to immediately cease enforcement of Rule 107(f) of the Rules of Superior Court, and

C. In the alternative, that if this Court determines that the Court constitutionally has the right to deny a probationer the right to carry a gun, there remains no statutory reason to rescind the probationer's carry license, because that may only be denied based on qualifying felony convictions, domestic violence convictions, or qualifying domestic violence orders outstanding against him.

C. That if this Court determines that Court Rule 107(f) is unconstitutional as an improper exercise of the Court's discretion, for an ORDER Gill Provost, the Petitioner's probation officer, to immediately cease enforcing the Petitioner's condition of probation that is not permitted to carry a firearm under his TERMS OF PROBATION.

D. That this Court ORDER the Town of New Boston Police Chief Christopher Krajenka to immediately re-issue the Petitioner's Concealed Carry License.

E. That this Court give the matter priority on its calendar pursuant to the terms of RSA 159:6-e.

F. For other and such relief as may be just.

Respectfully submitted,

Date: _____

Gerard Beloin

Date: _____

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this PETITION on the NH Attorney General's Office, 33 Capitol St., Concord, NH 03301.

Date: _____

Paula J. Werme, Esq