

IN THE
**COURT OF COMMON PLEAS
OF BEAVER COUNTY,
PENNSYLVANIA**

MD-0010630-2013

DENNIS MCKEE

Petitioner/Appellant

v.

SHERIFF GEORGE J. DAVID

Respondent/Appellee

***AMICI CURIAE* BRIEF OF FIREARMS INDUSTRY
CONSULTING GROUP, A DIVISION OF PRINCE
LAW OFFICES, P.C.**

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I. CORPORATE DISCLOSURE STATEMENT

Although the Pennsylvania Rules, unlike their Federal counterpart, do not require a Corporate Disclosure, Firearms Industry Consulting Group is a registered fictitious name with the Pennsylvania Department of State belonging to Prince Law Offices, P.C. Prince Law Offices, P.C. has no parent corporations. Because it is a law firm, no publicly held company owns 10% or more of its stock.

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III. IDENTITY OF *AMICI CURIAE*

This Amici Curiae brief is being submitted pursuant to PA.R.A.P. 531.

Amicus FIREARMS INDUSTRY CONSULTING GROUP (hereinafter FICG), a division of Prince Law Offices, P.C., is a registered fictitious name of Prince Law Offices, P.C., whereby Prince Law Offices, P.C. is an S Corporation founded in 1990 and incorporated under the laws of Pennsylvania, with its main office located in Bechtelsville, Pennsylvania. The fictitious name FICG was registered by Prince Law Offices, P.C. in 2012.

FICG represents numerous individuals, gun clubs and Federal Firearms Licensees in Pennsylvania with regards to state law issues. Furthermore, in relation to federal issues, FICG represents numerous Federal Firearms Licensees across the United States in all matters relating to firearms. FICG actively works to defend, preserve, and protect constitutional and statutory rights of firearm owners, including through Article 1, Section 21 of the Pennsylvania Constitution and the 2nd Amendment of the United States Constitution. In this amicus brief, FICG represents the interests of its respective clients.

FICG's purpose is to:

To provide legal representation in the protection and defense of the Constitutions of Pennsylvania and the United States, especially with reference to the inalienable right of the individual citizen guaranteed by such Constitutions to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens.

FICG's interest in this case stems from its representation of numerous Pennsylvania citizens, who have had licenses to carry firearms denied and/or revoked, without proper cause and in direct contravention to the constitutional and statutory requirements.

Attorney Joshua Prince is Chief Legal Counsel of FICG. Attorney Prince has actively litigated all forms of firearms-related issues, at the state and federal level, including license to carry firearm revocations and denials and has taught firearms-related continuing legal education seminars for the Pennsylvania Bar Institute, numerous local bar associations, and the National Rifle Association. Attorney Joshua Prince was trial counsel and appellate counsel, before the Commonwealth Court, in the case of Caba v. Weaknecht, 318 C.D. 2012 (*allocatur pending*).

IV. ARGUMENT

As Amicus was not present in the courtroom on April 25, 2013, when this Honorable Court heard this matter for the first time, Amicus is relying upon the news reporting of those proceedings, especially the information reported by John Paul of BeaverCountian.com in his article *Local Judge Orders Hearing After Man Alleges Sheriff David Violated His Rights* (available at <http://beavercountian.com/content/daily/local-judge-orders-hearing-after-man-alleges-sheriff-david-violated-his-due-process-rights>)

A. SHERIFF DAVID VIOLATED THE DUE PROCESS RIGHTS OF PETITIONER/APPELLANT MCKEE BY FAILING TO PROVIDE THE ACTUAL BASIS FOR REVOCATION.

As Sheriff David failed to provide adequate notice to Mr. McKee of the basis for the revocation of his license to carry firearms (hereinafter “LTCF”), the revocation should be deemed invalid, Mr. McKee’s LTCF reinstated, at no cost to Mr. McKee, the revocation expunged, and the Sheriff should be directed to pay all costs of Mr. McKee, pursuant to 18 PA.C.S. § 6114.

As the Commonwealth Court held in Caba v. Weaknecht, 318 C.D. 2012 (*allocatur pending*), the Sheriff has the burden of establishing the prohibiting criteria under 18 PA.C.S. § 6109. (*holding* “In the *de novo* proceeding, the trial court appropriately placed the burden of proof and ultimate burden of persuasion on the Sheriff to justify his revocation decision.” *Id.* at 53.). The court then went on find that an individual retains both a liberty and property interest in an issued LTCF, entitling the possessor to all the due process protections under the law. Specifically,

Under *Board of Regents and Paul*, and recognizing that Article I, Sections 1 and 11 of the Pennsylvania Constitution expressly attach due process protections to a

citizen's interest in his or her reputation, we hold that the Sheriff's revocation of Caba's license in this case implicated a liberty interest worthy of procedural due process protections. Id. at 37.

And,

"When a regulatory scheme provides for a review of an adverse governmental decision, this 'sheds light on the legislature's intention in conferring a property right on those' with the appeal right. Pipkin v. Pa. State Police, 548 Pa. 1, 7, 693 A.2d 190, 193 (1997)." Id. at 42. The Court continued, "Having determined that Caba was entitled to procedural due process protections when the Sheriff revoked his license under the Act, we must now determine whether Caba received the process he was due." Id. at 43.¹

The court then turned to reviewing revocations pursuant to Section 6109(e)(1)(i) and declared,

The notice requirement serves an important purpose under the Act. The Act provides for a direct appeal of a revocation to the court of common pleas. To evaluate whether to pursue this statutory remedy, a licensee should be informed of the 'specific reason' for revocation, and not simply a general statement that the licensee lacks the requisite character and reputation. Such a vague and nonspecific notice [citing merely character and reputation being a danger to public safety] essentially requires a licensee to guess as to the specific reason why the licensing authority has changed its opinion of the licensee's character and reputation since the time it issued the license. When determining whether to exercise a statutory right to appeal a license revocation, the licensee must, at a minimum, be made aware of the specific reason, and not merely the general legal authority, for the decision. Id. at 45. (emphasis added)

Section 6109(i) states, in 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. (emphasis added).

¹ The Commonwealth Court went on to overrule the decision by the District Court for the Eastern District of Pennsylvania in Potts v. City of Philadelphia, 224 F. Supp. 2d 919 (E.D. Pa. 2002), which had held that an individual did not have a property interest in an issued LTCF. Id. at 42.

In this matter, it appears from the news reports that Sheriff David has refused to supply the actual, specific reason for the revocation and instead has only stated the mere legal authority for the decision, in direct violation of the Commonwealth Court's decision in Caba. Unlike the factual background in Caba, Sheriff David is now refusing to disclose the actual, specific reason and informing Mr. McKee that he has the obligation of contacting the New Brighton Police Department for the basis. This is contrary to the clear language in Section 6109(i) and the Commonwealth Court's holding in Caba.

Accordingly, this Honorable Court should find Sheriff David's revocation invalid, order Mr. McKee's LTCF reinstated, at no cost to Mr. McKee, the revocation should be expunged, and the Sheriff should be ordered to pay all costs of Mr. McKee, pursuant to 18 PA.C.S. § 6114.

Section 6114 provides,

The action of the chief of police, sheriff, county treasurer or other officer under this subchapter shall be subject to judicial review in the manner and within the time provided by 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action). A judgment sustaining a refusal to grant a license shall not bar, after one year, a new application; nor shall a judgment in favor of the petitioner prevent the defendant from thereafter revoking or refusing to renew such license for any proper cause which may thereafter occur. The court shall have full power to dispose of all costs. (emphasis added).

Hence, the Legislature has provided the court with the power to grant attorney fees and costs in revocation matters, where such action of the Sheriff is contrary to or unsupported by the law. In this matter, as the Sheriff has violated Mr. McKee's due process rights, the court should award any costs that Mr. McKee incurred in filing the instant action and actively litigating this matter.

B. SHERIFF DAVID VIOLATED LOCAL AGENCY LAW, INVALIDATING ANY REVOCATION, AS HE FAILED TO PROVIDE MR. MCKEE WITH NOTICE AND AN OPPORTUNITY TO BE HEARD, AS REQUIRED BY 2 PA.C.S § 553.

As Sheriff David failed to provide reasonable notice of a hearing or any opportunity to be heard to Mr. McKee prior to revoking his LTCF, the revocation should be deemed invalid, Mr. McKee's LTCF reinstated, at no cost to Mr. McKee, the revocation expunged, and the Sheriff should be directed to pay all costs of Mr. McKee, pursuant to 18 PA.C.S. § 6114.

2 PA.C.S. § 551, et seq., deals with local agency action. Section 553 provides, "No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard." (emphasis added). Section 554 provides, "Reasonable examination and cross-examination shall be permitted." Section 555 provides, "All adjudications of a local agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail."

In this matter, it appears from the reports that at no time did Sheriff David notify Mr. McKee of the specific reason for revocation, contact Mr. McKee regarding the possibility of revoking his LTCF, provide notice to Mr. McKee of a hearing regarding the possibility of revoking his LTCF, provide Mr. McKee an opportunity to be hearing regarding the possibility of revoking his LTCF, provide Mr. McKee an opportunity to cross-examine witnesses or present witnesses, or provide Mr. McKee with a writing,

containing the findings and reasons for the adjudication.²

Accordingly, this Honorable Court should find Sheriff David's revocation invalid, order Mr. McKee's LTCF reinstated, at no cost to Mr. McKee, the revocation should be expunged, and the Sheriff should be ordered to pay all costs of Mr. McKee, pursuant to 18 PA.C.S. § 6114.³

C. THIS HONORABLE COURT SHOULD CONSIDER SEALING THIS MATTER, AS ALL LICENSE TO CARRY FIREARMS APPLICANT INFORMATION IS CONFIDENTIAL, PURSUANT TO 18 PA.C.S. §§ 6111(g)(3.1) AND (i).

As Petitioner/Appellant is *Pro Se*, he is likely unaware of the statutory confidentiality provisions relating to LTCF applicant information, and this Honorable Court should immediately seal this matter to protect his confidentiality.

18 PA.C.S. § 6111(g)(3.1) provides,

Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 [LTCF issuance provisions] for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree.⁴

Furthermore, Section 6111(i) provides, in relevant part,

All information provided by the potential ... applicant, including, but not limited to, the potential ... applicant's name or identity, furnished by a potential ...

² The Commonwealth Court in Caba raised concern over violations of Local Agency Law, specially Sections 551-555, but failed to address those concerns since the issue had not, in its opinion, been properly raised. *See*, fn 14.

³ 18 PA.C.S. § 6114 is specified, along with arguments regarding its applicability in this matter, in Section IV. A. of this Brief.

⁴ Currently, Northampton County Sheriff Deputy Darin Steward is being prosecuted for violating this provision in relation to a different matter. *See*, MJ-03205-CR-0000122-2013.

applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. (emphasis added).

Hence, all LTCF applicant information, including the applicant's name and identity, are protected as confidential information, which is not subject to public disclosure. Accordingly, this Honorable Court should consider sealing this matter to prevent further public disclosure of confidential information.

V. CONCLUSION

For all the foregoing reasons, this Honorable Court should seal this matter and find that the revocation of Mr. McKee's LTCF was invalid, order Mr. McKee's LTCF reinstated, at no cost to Mr. McKee, expunge the revocation, and order Sheriff David to pay all costs of Mr. McKee, pursuant to 18 PA.C.S. § 6114.

Respectfully Submitted,

Joshua Prince, Esq.
Attorney for *Amici Curiae*

IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA

DENNIS MCKEE :
PETITIONER/APPELLANT : CIVIL NO. MD-0010630-2013
v. :
SHERIFF GEORGE DAVID :
RESPONDENT/APPELLEE :

PROOF OF SERVICE

I, Joshua Prince, Esq., hereby certify that I served a true and correct copy of *Amici Curiae* Brief of Firearms Industry Consulting Group upon the following persons in the manner indicated below, on April 29, 2013:

Facsimile:
The Honorable Kim Tesla
1-724-728-8708

US MAIL:
Prothonotary of Beaver County
Beaver County Court House,
810 Third Street,
Beaver, PA 15009

US MAIL:
Sheriff George David
Beaver County Court House,
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Beaver, PA 15009

No copy was served on Petitioner/Appellant Dennis McKee as the Beaver County Prothonotary refused disclose his address. An additional copy has been provided to the Prothonotary for it to serve Mr. McKee.

Respectfully Submitted,
Prince Law Offices, P.C.

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DATED: April 29, 2013