

**IN THE DISTRICT COURT
AT HUNTLY**

**I TE KŌTI-Ā-ROHE
KI RĀHUI PŌKEKA**

**CIV-2020-024-000082
[2021] NZDC 3817**

UNDER SECTION 62 ARMS ACT 1983

BETWEEN WILLIAM TELFORD
Appellant

AND COMMISSIONER OF POLICE
Respondent

Hearing: 25 February 2021

Appearances: N Taylor for the Appellant
K Whyte for the Respondent

Judgment: 4 March 2021

RESERVED JUDGMENT OF JUDGE R L B SPEAR

[1] The appellant appeals against a decision of an Inspector of Police, dated 4 April 2017, revoking the appellant's firearms licence.

[2] There is no dispute that the appellant held a firearms licence for a period of some ten years prior to revocation on 4 April 2017. Furthermore, that at no stage prior to a search of the appellant's property on 28 February 2017 had the police had any cause to be concerned as to whether the appellant was a fit and proper person to hold a firearms licence.

[3] On 28 February 2017, the police executed a search warrant at the appellant's home at 629A Hakarimata Road, Ngaruawahia. The purpose of that search was to locate evidence of offences under the Misuse of Drugs Act – specifically cannabis.

[4] This property is a 20 acre block of land that is mainly in bush. It has a reasonably new house on it. The evidence at the hearing was that the appellant and his wife had moved into the house only some six weeks beforehand when the building of that residential dwelling had reached an appropriate stage for their arrival. Their adult son (in his 30s) had, however, been living in the house for some six months as he was apparently assisting with the build of the house.

[5] A search of the property revealed a number of small cannabis plots being grown with some care. The appellant's son faced charges in respect of that offending. However, at no stage has the appellant faced a charge of either cultivating cannabis or permitting premises to be used for the purposes of cultivating cannabis.

[6] During the course of the search, the police found a number of firearms and ammunition belonging either to the appellant or to his son. The son was, at that time, also the holder of a firearms licence. In summary, the police also found:

- (a) Rifle and shotgun ammunition in the appellant's motor vehicle;
- (b) A number of firearms, being rifles and shotguns, and ammunition for them in a shed on the property. They were unsecured. They belonged to the son;
- (c) In the son's bedroom, an unsecured shotgun and ammunition, all unsecured;
- (d) Various rifles and ammunition in the master bedroom.

[7] A large gun safe was located in the wardrobe of the master bedroom, containing a number of rifles and shotguns. There was also a pistol safe in wardrobe containing various pistols for which the appellant had an appropriate firearms licence.

[8] The concern was not so much in respect of the firearms secured in the wall safe or pistol safe, but in respect of various firearms and ammunition not appropriately secured. In that respect:

- (a) Four rifles were found unsecured under the righthand side of the bed in the master bedroom within gun bags;
- (b) A shotgun shell was found unsecured on a shelf in the master bedroom wardrobe;
- (c) A substantial quantity of ammunition was found unsecured on the floor behind the door in the master bedroom.

[9] The evidence from Sergeant Hodgson by affidavit was to the effect that the various firearms found on the floor of the master bedroom and under the master bed would not be able to fit into the safe as those safes were at capacity.

[10] The formal process towards revocation was then followed by the police giving notice of an intention to consider revoking the the appellant's firearms licence. Despite the the appellants' representations to the police, the decision was made on 4 April 2017 by Inspector Hassan to revoke the licence.

[11] The appellant then applied in July 2018 for a new firearms licence. That application was declined by Inspector Mortimer on 21 November 2018. It is the decision of Inspector Mortimer that is the subject of this appeal.

[12] The reasons given by Inspector Mortimer for refusing the firearms licence are, in summary:

- (a) That unsecured firearms belonging to the appellant were found in the course of that earlier search of the appellant's property in February 2017;
- (b) A concern that the appellant may have mental health issues:

“That you have suffered a serious head injury in the past and have been unable to work for the past three years, and police have concerns that this may have affected your mental health.”

- (c) A concern that other people, who were not fit and proper to possess firearms, could access his firearms if he was to be granted a firearms licence;
- (d) That the application was not supported by the District Arms Officer.

[13] On that stated basis, Inspector Mortimer declined the application.

[14] The evidence from the appellant was to the effect that he first obtained a firearms licence at his home country of Ireland when he was 15 years of age in 1972. He stated that he has been a keen hunter since the age of eight when he used to go hunting with his father. He came to New Zealand in 1982 and then obtained his first firearms licence.

[15] The appellant stated that he was a member of the Deerstalkers Association in Hamilton and hunted with them. He went back to Northern Ireland in or about 1987 for five years and then joined the British Deerstalking Association and hunted deer. He returned to New Zealand in 2001 and applied for and received another firearms licence. He rejoined both the Deerstalkers Association in Hamilton and the Hamilton Pistol Club.

[16] The appellant suffered a workplace accident in February 2010 that saw him left with a fractured skull and jaw, a cracked spine and broken ribs and shoulder. He was also concussed. While he was passed as fit for work some ten months later, his oral evidence in court was to the effect that his physical ability to work at the capacity required was sufficiently impaired such that he eventually had to give up that work.

[17] The appellant explained that his son moved into the house some six months before his wife and he moved into their new home. In relation to the cannabis, the appellant asserted that he had no knowledge of the cannabis being grown on the property which was being grown in the bush down a back valley. Nothing to do with drugs was found in the main house.

[18] While the majority of the appellant's firearms were found in the wall safe or the pistol safe, he stated that he had taken four rifles out to clean them and get them ready to trade in for a firearm that he intended to purchase from the local Hunting and Fishing shop. He said that he had taken them out of the safe and had undertaken some "re-blueing", which he described as applying an acid chemical to the metal surface to darken it and protect it. He then applied oil and cleaned them ready for sale. He put them in the gun bags so that he could take them the following day to the Hunting and Fishing shop.

[19] The appellant said that the firearms found in the wall safe were in their gun cases or bags, which is why it would have looked to be full to Sergeant Hodgson during the course of the search. However, all the firearms were initially in the safe without being encased in the gun bags and they all fitted into that safe.

[20] The appellant explained that he had received a call from the Hunting and Fishing shop to the effect that a Remington rifle that he was keen to purchase had arrived in stock. The reason why he had taken the four firearms out of the safe and worked on them was to offer them as a trade-in. The ammunition found behind the door in the main bedroom was as part of his work to separate that ammunition that related to those firearms from the other ammunition for firearms retained.

[21] The appellant said further that he remained in the house throughout the day or two when the rifles were outside the safe and under his bed, and accordingly they were under his direct supervision and care throughout that period. It is argued that this was the level of supervision that would be the case if the defendant, or any licensed firearm hold was travelling and staying say at a motel with his firearms.

[22] In relation to the issue of mental health, the appellant said that he had no mental health concerns. He produced a letter from his medical practitioner that confirmed that the injuries sustained by the appellant during the course of that workplace accident had had no residual effect on him other than some physical incapacity. In particular, there were no concerns held by the Doctor about the appellant's mental fitness.

[23] Inspector Mortimer acknowledged that if the search warrant had not been executed back in February 2017, it is likely that the appellant would still have his firearms licence. In short, the Inspector's evidence was that the only time that the appellant had come to the attention of the police was because of the search of his property in February 2017, the finding of cannabis growing on his property, the dangerous link between firearms and cannabis or other drug offenders and the unsecured firearms at the house in the master bedroom.

[24] It can be appreciated and respected that the police will always take a cautious approach to determining whether a person is a fit and proper person to hold a firearms licence. In this case, however, there is nothing that suggests that the appellant had knowledge of the cannabis being grown on his property by his adult son. Certainly, the appellant was not charged with any offence relating to that cannabis. If the police had any intelligence about the involvement, passive or active, of the appellant in the cannabis cultivation operation then he would surely have been charged accordingly.

[25] There is no basis for the Inspector's assertion that there is a concern about the appellant's mental health arising from the workplace accident.

[26] There has been a satisfactory explanation given by the appellant as to why those four firearms were in gun bags under his bed rather than secured in the safe, but in any event, they were found at a time when the appellant was in the house and so they were secure to that extent. The appellant's evidence was not shaken in this respect.

[27] The application was for only a Category A firearms licence being for semi-automatic .22 rifles, bolt action rifles with a larger bore and shotguns with a restricted magazine capacity. The appellant did not seek to regain a pistol licence.

[28] Having regard to all the evidence presented in this case, I can find no justification for Inspector Mortimer's cautious view that the appellant is not a fit and proper person to hold a firearms licence.

[29] I accordingly find that the appellant is a fit and proper person to hold a firearms licence. The decision of Inspector Mortimer dated 21 November 2018 is accordingly reversed and the firearms licence sought will now issue.

[30] As to the question of costs, in these circumstances I do not consider that an award of costs should be made against the police who have the difficult task to evaluate a person's character in relation to firearms. Often, and this is one of those cases, a full hearing before Court will often be the best way in which a full and detailed assessment can be made as to whether a person is indeed a fit and proper person to hold a firearms licence. I find that this is one of those cases.

Judge RLB Spear
District Court Judge
Date of authentication: 04/03/2021