

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-1417-2012
 : OTN: L23134-6
 vs. :
 : CRIMINAL DIVISION
 ROBERT WILLIAM LYONS. :

OPINION AND ORDER

AND NOW, this 26th of March, 2013, after oral argument held on Defendant's Petition for Permission to File Petition Nunc Pro Tunc, it is hereby ORDERED and DIRECTED that Defendant's petition is DENIED. In this matter, Defendant is requesting that this Court allow him to file a petition nunc pro tunc to relieve him of his firearm disability. After review of the statute and applicable case law, the Court finds that this remedy is not available to Defendant.

On February 22, 2013, Defendant filed the instant petition requesting relief from his firearm disability, pursuant to 18 Pa. C.S. § 6105(d). Defendant admits that the disability was properly imposed on him because on August 15, 1988, he plead guilty to an enumerated offense under 18 Pa. C.S. § 6105(c) (pertaining to offense under The Controlled Substance, Drug, Device and Cosmetic Act). Pet., ¶ 5; Additionally, Defendant admits that he served a sentence of four (4) to eighteen (18) months in the Lycoming County Prison as a result of that plea. *Id.* However, Defendant argues that since a period of more than ten (10) years has elapsed since the time that he has been released from incarceration, he is entitled to relief from his disability, pursuant to 18 Pa. C.S. § 6105(d).

Defendant filed his petition to file a petition nunc pro tunc while charges, particularly persons not to possess charges, were pending against him in this docket. By criminal information filed September 7, 2012, the Commonwealth charged Defendant with two (2) counts of persons not to possess, pursuant to 18 Pa. C.S. § 6105(a)(1). These two (2) charges were severed for the purposes of a jury trial held on March 5, 2013. On that date, Defendant was

convicted of three (3) counts each of simple assault¹ and aggravated assault² – attempting to put an official in fear, and one (1) count each of terroristic threats³, possessing a criminal instrument⁴, and reckless endangerment⁵. Defendant is awaiting sentencing because his outstanding severed counts are contingent upon this petition.

Based upon this March 5, 2013 conviction, Defendant is now considered to be a person not to possess. *See* 18 Pa. C.S. § 6105(a)(1). Thus, Defendant is currently petitioning the Court to allow him to file for nunc pro tunc relief from this disability for the timeframe between his March 5, 2013 conviction and when he was presumably able to petition this Court to remove his firearm disability. The Court will not honor such a request.

Section 6105(d) of the Uniform Firearm Act provides that an individual who has been convicted of a crime under The Controlled Substance, Drug, Device and Cosmetic Act and who has abide by other criteria set forth in the act may make application to the court of common pleas of his county of principal residence to remove his firearm disability. 18 Pa. C.S. § 6105(d). Upon receipt of the application, the Court should schedule a hearing to determine if the requirements of the exemption portion of the statute have been met. 18 Pa. C.S. § 6105(e). This statute places an affirmative duty on Defendant to petition to have his firearm disability removed. *See* 18 Pa. C.S. § 6105(d).

In this instance, Defendant failed to petition the Court until he had a set of firearm charges pending before this Court. The Court finds that Defendant is not eligible to have his disability lifted and will not grant Defendant permission to so petition. Additionally, the Court agrees with the Commonwealth's argument that even if Defendant properly had the disability lifted prior to the incident leading to the September 2012 charges, the Court's state-issued relief

¹ 18 Pa. C.S. § 2701(a)(3).

² 18 Pa. C.S. § 2702(a)(6).

³ 18 Pa. C.S. § 2706(a).

⁴ 18 Pa. C.S. § 907(a).

⁵ 18 Pa. C.S. § 2705.

would not relieve him of his federal firearm disability. *See Pa. State Police v. Paulshock*, 836 A.2d 110, 115 (Pa. 2003) (providing “a common pleas court order could not effectuate removal of a firearms disability imposed pursuant to the Federal Act”). Therefore, based upon the reasons stated above, Defendant’s petition is DENIED.

This matter shall proceed to trial on severed counts 4 and 5, persons not to possess⁶.

BY THE COURT,

Date

Richard A. Gray, J.

cc: DA (MK)
C. Lovecchio, Esq.
E. Dgien, Deputy Court Administrator

⁶ 18 Pa. C.S. § 6105(a)(1).