

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: VICTOR W. WELSHANS : NO. 15-2566  
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: CIVIL ACTION - LAW  
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: Relief from Firearms Disability  
: Application for Expungement of Record

**OPINION AND ORDER**

Before the court is Victor Welshans' (Applicant's) Amended Application for Relief from Disability Not to Possess Firearms and for Expungement of Civil Commitment Record, filed August 3, 2016. A hearing on the Application was held November 22, 2016, following which counsel requested and were granted two weeks in which to submit letter briefs. Applicant filed a Memorandum in Support of his application; nothing was submitted or filed by the State Police. The matter is thus now ripe for decision.

In July 2015, Applicant was denied permission to purchase a firearm based on an involuntary mental health commitment on October 12, 1999, pursuant to 18 Pa.C.S. Section 6105(c)(4).<sup>1</sup> In the instant Application, Applicant seeks to remove that disability and also asks the court to expunge the civil commitment record. Each of these requests is subject to its own standard of review and the court finds that while Applicant is entitled to relief from the firearms disability, he is not entitled to have the record expunged.

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<sup>1</sup> "A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 of the ... Mental Health Procedures Act" "shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use control, sell, transfer or manufacture a firearm in this Commonwealth." 18 Pa.C.S. Section 6105(c)(4) and (a)(1).

The request for relief from disability is governed by 18 Pa.C.S. Section 6105(f):

(f) Other exemptions and proceedings.

(1) Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.

At the hearing, Applicant testified that he was involved in a car accident in 1994, that his injuries rendered him unable to do many things and that such led to depression. The involuntary commitment in 1999 appears to have come at a low point in Applicant's life, but upon discharge from the commitment, on October 16, 1999, the treating physician stated: "His condition is well enough for military duty in the reserves and he is well enough to return to work. No signs of danger to himself or others at discharge." Exhibit 7.3. Applicant and his wife both testified that he has since recovered fully from the depression.

Applicant also presented the results of a mental health evaluation conducted in April of this year, in which the evaluator states: "I have no current concerns that patient is a danger to himself or others" and that "[n]o ongoing mental health treatment is deemed necessary for this patient". Exhibit 8.7. It is notable that Applicant served in the Army Reserves on active duty in Iraq in 2003-2004 (where he continuously possessed a firearm) and was honorably discharged from that service. Considering all of the circumstances, the court finds that Applicant "may possess a firearm without risk to the applicant or any other person."

Applicant's request to expunge the mental health commitment record is governed by 18 Pa.C.S. Section 6111.1(g), which provides in relevant part as follows:

(g) Review by court.

...

(2) A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged.

The court is to hear the matter de novo, In re Vencil, 120 A.3d 1028 (Pa. Super. 2015), and is to apply a "clear and convincing evidence" standard of proof. Id. As the Court in Vencil explained:

"Clear and convincing evidence" requires: [that t]he witnesses must be found to be credible[;] that the facts to which they testify **are distinctly remembered and the details thereof narrated exactly** and in due order[;] and that their testimony is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. It is not necessary that the evidence be uncontradicted provided it carries a clear conviction to the mind or carries a clear conviction of its truth.

Id. at 1037 (emphasis in original), quoting In re Novosielski, 992 A.2d 89, 107 (Pa. 2010) (emphasis added, citations and footnote omitted), cert. denied sub nom., Modzelewski v. Proch, 562 U.S. 1137, 131 S. Ct. 918, 178 L. Ed. 2d 751 (2011).

From the testimony and documentation presented, it appears that Applicant's involuntary commitment was initiated by his wife. Mrs. Welshans

testified that she called her own therapist regarding her concern that her husband had been depressed and that guns in their home were missing. The documentation shows that the therapist alerted the crisis unit and that the police were then dispatched to intercept Mr. Welshans, a postal worker, while on his postal route and transport him to the emergency room. Exhibit 5.1. Mr. Welshans was then taken to the mental health unit of Divine Providence Hospital where he was evaluated and involuntarily committed.

Although Mrs. Welshans denied making many of the statements contained therein, the documentation indicates that she stated to her therapist that her husband had “made threats to harm himself by committing suicide”, that he “had told [their] son that his plan was to drown himself” and that the previous evening “Victor stated that he was hearing voices telling him to jump out of the car while it was moving”. She also reported that “Victor said he was going to go to work and open fire on some people there at the post office.” Exhibit 3.3-3.4. The therapist apparently felt the threat of harm to Mr. Welshans and/or others was significant enough to compel her to report the information in spite of her duty of confidentiality,<sup>2</sup> and the examining physician found that Mr. Welshans “has suffered increasing depression and anger for two weeks”, was “now suicidal” and that he “has been making threats against himself and others”. Exhibit 3.8. That physician stated, “This patient needs immediate in-patient psychiatric care in a controlled environment. He is a danger to himself and others at this time.” Id.

While in his testimony Mr. Welshans denied hearing voices or making the

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<sup>2</sup> See Emerich v. Philadelphia Center for Human Development, 720 A.2d 1032, 1043 (Pa. 1998), where the court recognized the psychologist-patient privilege but declared as an exception a duty to warn a third party “when the patient has communicated to the professional a specific and immediate threat of serious bodily injury against a specifically identified or readily identifiable third party and when the professional determines or should determine

statements attributed to him, he also stated that he “can’t remember exactly what happened back then”. He admitted that he had been depressed about marital problems and explained that he was worried that he might think about harming himself and had therefore removed the guns to avoid any temptation to use them against himself. The court finds more significant that the examination conducted the day after Mr. Welshans’ admission found “depression with suicidal ideation”, Exhibit 5.2, and the Psychiatric Evaluation conducted two days later gave an initial diagnostic impression of “major depression, recurrent, with psychotic features”. Exhibit 6.2. While the Welshans’ current attempts to minimize the episode are certainly understandable, their testimony is not “so clear, direct, weighty, and convincing” that this court feels compelled to set aside the evaluations and reports produced at the time of the occurrence in favor of their version of events now. Rather, the court finds “without hesitancy” that the evidence upon which the involuntary commitment was based was sufficient.

### **ORDER**

AND NOW, this 9<sup>th</sup> day of December 2016, for the foregoing reasons, the Application for Relief from Firearms Disability is hereby GRANTED. The court specifically finds that Victor W. Welshans may possess a firearm without risk to himself or any other person. Pursuant to 18 Pa.C.S. Section 6105(f)(1), the court hereby restores Víctor W. Welshans’ right to possess, use, control, sell, transfer or manufacture or obtain a license to possess, use control, sell, transfer or manufacture a firearm in this Commonwealth. The

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under the standards of the mental health profession that his patient presents a serious danger of violence to the third party”.

Pennsylvania State Police are hereby directed to include the instant restoration of rights in its database.

The Request for Expungement of the Civil Commitment Record is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: David Shipman, Esq.  
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Hon. Dudley Anderson