

NOTICE
Decision filed 04/12/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 160352-U

NO. 5-16-0352

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JAMES D. LEWIS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Jefferson County.
)	
v.)	No. 15-MR-134
)	
THE JEFFERSON COUNTY STATE’S)	
ATTORNEY,)	
)	
Respondent-Appellee)	
)	Honorable
(The Illinois State Police, Intervening)	Timothy R. Neubauer,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court lacked jurisdiction to enter order requiring the State Police to issue petitioner a FOID card.

¶ 2 Intervening respondent-appellant, the Illinois Department of State Police (State Police), appeals both the denial of the State Police’s motion to vacate and the order to issue petitioner-appellee, James D. Lewis (Lewis), an Illinois Firearm Owner’s Identification (FOID) card, as entered by the circuit court of Jefferson County. We reverse and vacate the order and judgment of the circuit court.

¶ 3 In connection with a 1993 Indiana felony drug plea agreement, Lewis surrendered his FOID card. Some 20 years later, in 2015, Lewis applied to the State Police to have his FOID card reinstated. In his application for reinstatement of his FOID card, Lewis disclosed that in October 1993 he pled guilty in Indiana to possession of cocaine, a Class D felony. Pursuant to the plea agreement, he was sentenced to three years' incarceration. That sentence was suspended to allow Lewis the opportunity to complete three years in a drug intensive supervision program and house arrest for the first six months, provided that Lewis could complete the drug program in Illinois and that the Illinois authorities could electronically monitor Lewis during the house arrest portion of his sentence. Subsequently, in accordance with the Indiana plea agreement, Lewis was supervised by the Illinois Jefferson County probation department from November 1993 until October 1996. Lewis successfully completed the terms of his sentence and was absolutely discharged by the Indiana court on December 10, 1996. The court order was filed January 10, 1997. It is not clear from the record whether this discharge under Indiana law resulted in a conviction for purposes of disqualification.

¶ 4 In his application, Lewis asserted that it had been more than 20 years since his conviction, his conviction did not involve firearms, and he had no other convictions of record in any jurisdiction. He also claimed that he was known in the community as a hard-working, law-abiding, nonviolent citizen and that granting him a FOID card would not violate public policy. Nevertheless, his application was denied by the State Police on May 13, 2015.

¶ 5 Lewis then filed a petition for relief in the circuit court of Jefferson County from the denial of his application pursuant to section 10 of the Firearm Owners Identification Card Act (Act) (430 ILCS 65/10 (West 2014)). He supported his petition with multiple affidavits. Notably, the Jefferson County State’s Attorney entered its appearance and filed a “Statement of No Objection To Petition For Relief,” indicating that the State had reviewed the petition for relief and had “no objection” to the court granting the requested relief. On September 8, 2015, the circuit court granted Lewis’s petition for relief and ordered the State Police to issue Lewis a FOID card. In doing so, the court found that it had jurisdiction over the parties and the subject matter. The court further found that “substantial justice has not been done by the Petitioner in denying him his application for a FOID card by the Illinois State Police.”

¶ 6 On January 28, 2016, Lewis filed a petition for rule to show cause because the State Police had not issued him a FOID card as ordered by the circuit court. The State Police moved to intervene and to vacate the September 8 order pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2014)). The State Police argued the circuit court lacked subject matter jurisdiction because Lewis failed to exhaust his administrative remedies by appealing to the Director of State Police before seeking relief in the circuit court. The State Police further argued that it correctly denied Lewis’s application for a FOID card because Lewis is prohibited from owning a firearm under federal law. Lewis moved to strike or dismiss the State Police’s motion to vacate, contending that he was not required to exhaust administrative remedies when doing so would have been futile. He further asserted that the circuit court had the authority to

discharge his federal firearm disability and properly restore his gun rights under section 10 of the Act. The circuit court granted intervention but denied the State Police's motion to vacate.

¶ 7 On July 21, 2016, the circuit court entered its final judgment, denying the State Police's motion to vacate and ordering the State Police to issue a FOID card to Lewis. The State Police appeal the circuit court's final judgment denying the State Police's motion to vacate and ordering issuance of a FOID card to Lewis. On October 12, 2016, this court entered an order staying enforcement of the judgment of the circuit court pending appeal, pursuant to Illinois Supreme Court Rule 305(d) (eff. July 1, 2004). We now reverse the denial of the State Police's motion to vacate, as well as the order requiring issuance of a FOID card to Lewis.

¶ 8 On appeal, the State Police argues that Lewis was required to exhaust his administrative remedies within the Department of State Police before bringing his petition for relief from the denial of a FOID card application in the circuit court because the denial of his application was not based on one of the enumerated offenses that confer subject matter jurisdiction upon the circuit court (430 ILCS 65/10 (West 2014)). The State Police also asserts that the circuit court lacked authority to order the State Police to issue a FOID card to Lewis because Lewis is prohibited from obtaining, possessing, or using a firearm under federal law as a result of his 1993 felony drug conviction in Indiana.

¶ 9 We initially note that when resolution of a motion to vacate turns entirely on questions of law, including issues of statutory construction, appellate review is *de novo*.

Miller v. Department of State Police, 2014 IL App (5th) 130144, ¶ 8. In construing a statute, the rule of statutory construction is to ascertain and give effect to the intent of the legislature. *People v. Ward*, 215 Ill. 2d 317, 324 (2005). A determination of legislative intent begins with the statutory language itself, giving the language its plain and ordinary meaning. *Ward*, 215 Ill. 2d at 324-25. When the statutory language is clear and unambiguous, it must be applied without resort to further aids of statutory construction. *Miller*, 2014 IL App (5th) 130144, ¶ 20.

¶ 10 The Act was designed “to promote and protect the health, safety and welfare of the public” by providing a system to identify those persons who are not qualified to acquire or possess firearms. 430 ILCS 65/1 (West 2014). Pursuant to that system, any person wishing to acquire or possess a firearm or ammunition in Illinois must first obtain a FOID card from the State Police. 430 ILCS 65/2 (West 2014). Upon the denial of a FOID card application, any person prohibited from possessing a firearm under section 8 of the Act (430 ILCS 65/8 (West 2014)) is permitted to appeal that denial to the Director requesting relief from the prohibition. 430 ILCS 65/10 (West 2014). The Director’s decision is then subject to judicial review in the circuit court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)). 430 ILCS 65/11(a) (West 2014).

¶ 11 It is well settled law in this state that where administrative remedies are available, they must be exhausted before one can seek judicial review. See *Sedlock v. Board of Trustees of the Police Pension Fund of the City of Ottawa*, 367 Ill. App. 3d 526, 527-28 (2006). The exhaustion doctrine allows full development of the facts before the administrative tribunal and allows the administrative agency to bring its expertise to bear.

The plain language of section 10(a) of the Act creates two procedural paths for challenging the denial of a FOID card. Most applicants must appeal to the Director, whose decision is subject to judicial review under the Administrative Review Law. The limited exception to the general rule allows aggrieved parties to bring a petition for relief in the circuit court, without appealing to the Director, only when the denial is based upon one of the criminal offenses listed in section 10(a) of the Act. None of these exceptions apply to Lewis's situation. See 430 ILCS 65/10(a) (West 2014). Lewis, therefore, was required to bring an appeal from the denial of his FOID card application in an administrative proceeding before seeking relief in the circuit court. In other words, because he did not first appeal to the Director of the Department of State Police, he had not exhausted his administrative remedies when he filed his petition with the circuit court. The Act's exhaustion requirement ensures an orderly procedure and a consistent application of the FOID card program. It does not impose an arbitrary restriction on firearm ownership, as Lewis suggests, for he is still permitted under the Act to appeal the denial of a FOID card application to the Director, whose decision is then subject to judicial review in the circuit court.

¶ 12 Lewis concedes that he never appealed the denial of his FOID card application to the Director, as the Act required him to do. Lewis contends, however, that appealing the denial of his application to the Director would have been futile, and therefore he was not required to first exhaust his administrative remedies. Lewis should not be permitted to circumvent the State Police's jurisdiction over the program merely because he anticipates an unfavorable ruling from the Director. *Dock Club, Inc. v. Illinois Liquor Control*

Comm'n, 83 Ill. App. 3d 1034, 1037-38 (1980). Futility is a limited exception to the rule requiring exhaustion of administrative remedies that applies only when it would be patently useless to seek relief before an administrative agency. *Beahringer v. Page*, 204 Ill. 2d 363, 378 (2003). “[T]he fact that there are clear indications that the agency may or will rule adversely is generally inadequate to terminate the administrative process or to avoid the exhaustion requirement.” *Castaneda v. Illinois Human Rights Comm’n*, 132 Ill. 2d 304, 328 (1989). A plaintiff must make specific factual allegations supporting the contention that resort to agency procedures would be futile. *Beahringer*, 204 Ill. 2d at 378. Lewis made no such allegations that the State Police has a policy of denying applications without considering the relevant law and particular facts submitted in each application. We conclude that exhaustion of Lewis’s administrative remedies was not excused in this instance, and therefore the circuit court lacked subject matter jurisdiction over his petition.

¶ 13 Because the circuit court lacked subject matter jurisdiction, we must reverse the court’s decision and vacate the September 8, 2015, order and judgment. Given our disposition, we cannot address Lewis’s argument concerning the court’s ability to waive a federal firearm disability.

¶ 14 For the foregoing reasons, we reverse and vacate the decision of the circuit court of Jefferson County.

¶ 15 Reversed; order vacated.