2019 IL App (1st) 181919-U

SIXTH DIVISION
August 2, 2019

No. 1-18-1919

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SALLY O. NALLS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 17 CH 15527
	)	
ILLINOIS STATE POLICE and ILLINOIS CONCEALED CARRY LICENSE REVIEW BOARD,	)	Honorable
	)	Thomas R. Allen,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Cunningham and Justice Connors concurred in the judgment.

ORDER

Held: We find no error in denying an application for a concealed carry license based on a police report, as such reports fall under a statutory hearsay exception for such licenses and the consideration of a police report did not deprive the applicant of due process.

¶ 1 Plaintiff Sally Nalls appeals *pro se* from an order of the circuit court affirming the decision of defendant Illinois Department of State Police (Department) to deny her application for a concealed carry license based on a determination by defendant Illinois Concealed Carry License Review Board (Board). On appeal, Nalls contends that her application was denied based

on a police report, which constituted inadmissible hearsay and deprived her of due process by denying her application without a prior conviction or arrest. For the reasons stated below, we affirm the decision of the Department and Board.

¶ 2 I. JURISDICTION

¶ 3 Nalls applied to the Department for a concealed carry license, which the Department denied on October 27, 2017, pursuant to a determination by the Board. Nalls filed a complaint for administrative review in the circuit court on November 28, 2017. 735 ILCS 5/3-103 (West 2018) (complaint for administrative review to be filed within 35 days of service of the administrative decision). The circuit court affirmed the decision of the Department and Board on August 9, 2018, and Nalls filed her notice of appeal on September 5, 2018. Accordingly, this court has jurisdiction over this matter pursuant to article VI, section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017).

¶ 4 II. BACKGROUND

¶ 5 Nalls applied to the Department for a concealed carry license in May 2017. The application included her representation that she had no prior convictions. The Department checked national criminal records and found no entry for Nalls.

¶ 6 In June 2017, the Chicago Police Department (Police) submitted to the Department an objection to Nalls's application. The Police stated that its "reports reflect the following: **** domestic battery, in that on [June 5,] 2016, the applicant/offender, punched and scratched the victim/ boyfriend during a verbal altercation. The applicant was not arrested." A copy of a Police incident report to that effect, also indicating that the "comp[lainant] refused to pros[ecute]," was attached to the objection. The report recited that the victim told police that Nalls "became enraged and began punching, scratching, and pulling the victim's hair out," and that the responding officers saw "several large scratches on the victim's back" and hair on the floor.

¶ 7 In July 2017, the Department sent Nalls a letter notifying her that an objection had been filed to her application, which was submitted to the Board for its determination of Nalls's eligibility for a concealed carry license. In August 2017, the Department sent Nalls a letter notifying her that the Board determined that the objection "appears sustainable." The Letter recited the Police objection, including the nature and date of the alleged incident, and stated that she had "15 days from the date of receipt of this notice to submit any relevant evidence, including any documentation supporting any factual assertions you may make, to the Board for its consideration before a final administrative decision is rendered regarding your application."

¶ 8 The record does not indicate that Nalls submitted any response to the objection.

¶ 9 The Board voted unanimously on October 24, 2017, to find Nalls a danger to self or others or a threat to public safety. The Department sent Nalls a letter on October 27, 2017, notifying her that the Board had affirmed the objection to her application and found her to be a danger to herself or others, or a threat to public safety, so that her application was denied.

¶ 10 Nalls filed a complaint for administrative review in the circuit court on November 28, 2017. She alleged that she filed a complete license application and paid the requisite fees, that she met all the statutory requirements to be issued a concealed carry license, and that "she is not a threat to herself or others and does not otherwise pose a threat to public safety, contrary to the *** Board's determination."

¶ 11 The Department and Board appeared in the circuit court and filed the Department record regarding Nalls's application. They also filed a memorandum of law in support of the administrative decision, arguing that there was sufficient evidence in the record to support the denial of Nalls's application under the clearly-erroneous standard applicable to mixed questions of law and fact such as whether an applicant poses a danger to self or others or is a threat to public safety. The alleged domestic battery incident of June 5, 2016, was taken seriously by the

Board because "domestic violence offenders routinely escape conviction" due to the unwillingness of victims with a relationship to the aggressor to endanger that relationship, and "[d]ue to the strong correlation between domestic violence and misuse of firearms." The Department and Board emphasized that Nalls did not respond to the Police objection despite being given the opportunity to do so.

¶ 12 On August 9, 2018, the circuit court issued an order stating that it was "fully advised in the premises" following a hearing with the parties present. The order denied Nalls's complaint for administrative review and affirmed the administrative decision. This timely appeal followed.

¶ 13 III. ANALYSIS

¶ 14 On appeal, Nalls contends that the Department and Board erroneously denied her application based on a police report, which constituted inadmissible hearsay and deprived her of due process by denying her application without a prior conviction or arrest. The Department and Board respond that the Board's finding that Nalls posed a danger to self or others or a threat to public safety was not clearly erroneous, Nalls forfeited her due-process claims, and her right to due process was not violated.

¶ 15 The Firearm Concealed Carry Act (Act), 430 ILCS 66/1 *et seq.* (West 2018), provides that the "Department shall issue a license to carry a concealed firearm under this Act to an applicant who" meets the qualifications listed in the Act, provides the requisite application and other documentation, pays the requisite fees, and "does not pose a danger to himself, herself, or others, or a threat to public safety as determined by the Concealed Carry Licensing Review Board." 430 ILCS 66/10(a) (West 2018). The Act also provides that:

> "Any law enforcement agency may submit an objection to a license applicant based upon a reasonable suspicion that the applicant is a danger to himself or herself or others, or a threat to public safety. The objection *** must include any

> information relevant to the objection. If a law enforcement agency submits an objection within 30 days after the entry of an applicant into the database [of applicants and licensees], the Department shall submit the objection and all information available to the Board under State and federal law related to the application to the Board." 430 ILCS 66/15(a) (West 2018).

The Board determines by a majority vote, and by preponderance of the evidence presented by the Department, objecting agency, and applicant, whether the applicant poses a danger to self or others or is a threat to public safety. 430 ILCS 66/20(e), (g) (West 2018). Under these statutory provisions regarding whether an applicant poses a danger or threat, neither the agency's objection nor the Board's determination is limited to prior convictions. *Perez v. Illinois Concealed Carry Licensing Review Board*, 2016 IL App (1st) 152087, ¶¶ 19-21. "Instead, the broad language illustrates the intent for a wide ranging consideration of an applicant's criminal history." *Id.* ¶ 21.

¶ 16 The Board's decision regarding a license is reviewable, first by the circuit court, under the Administrative Review Law. 430 ILCS 66/87 (West 2018) (citing 735 ILCS 5/3-101 *et seq.* (West 2018)). On appeal from the circuit court review, we do not review the court's decision but the underlying administrative decision of the Board. *Perez*, 2016 IL App (1st) 152087, ¶ 15. Our review extends to all questions of law and fact presented by the entire record, and we deem the Board's factual findings to be *prima facie* true and correct. *Id.* (citing 735 ILCS 5/3-110 (West 2018)). The standard of review depends on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact. *Id.* A mixed question of law and fact concerns the legal effect of a given set of facts; that is, when the historical facts are admitted or established, the legal rule is undisputed, and the issue is whether the facts satisfy the applicable statutory standard or whether the legal rule was violated. *Id.* ¶ 16. A mixed question of law and

fact is reversed only if the Board's decision on the question was clearly erroneous. *Id.* Conversely, a legal question is reviewed *de novo*. *Jankovich v. Illinois State Police*, 2017 IL App (1st) 160706, ¶ 31.

¶ 17 In *Perez*, we rejected an unsuccessful applicant's contention "that the evidence related to his criminal history was inadmissible hearsay." *Perez*, 2016 IL App (1st) 152087, ¶ 23. Firstly, the applicant "failed to raise this hearsay argument before the Board and any objection has been forfeited," under the rule that hearsay evidence admitted without objection is given its natural probative effect. *Id.* (citing *Jackson v. Board of Review of Department of Labor*, 105 Ill. 2d 501, 508 (1985)). Moreover, we held that "the language of the Act establishes the intent to permit the admission of hearsay evidence before the Board for considering a concealed carry license application." *Id.* ¶ 24. Hearsay is inadmissible except when a statute or supreme court rule provides otherwise (Ill. R. Evid. 802 (eff. Jan. 1, 2011)), and "the statutory scheme under the Act permits such an exception because it requires the [Department] as well as the Board to consider an applicant's criminal history, including arrests, when reviewing an application for a concealed carry license." *Id.* ¶ 24. Specifically, the Act provides that an agency's objection "must include any information relevant to the objection" (430 ILCS 66/15(a) (West 2018)) and the Department's required background check "shall include a search of *** all available state and local criminal history record information files, including records of juvenile adjudications." 430 ILCS 66/35(2) (West 2018)). Due process requires that an applicant be notified of the objections to his application and have an opportunity to respond, and the Board provided both to the *Perez* applicant. *Perez*, 2016 IL App (1st) 152087, ¶ 27.

¶ 18 We followed *Perez* in *Jankovich*, 2017 IL App (1st) 160706, ¶ 3, holding "that the Board did not err in considering [an applicant's] rap sheet or police reports, as the Act contemplates the Board relying on such evidence," and that his "argument that the Board's reliance on hearsay

violated his constitutional rights merits no consideration." While the *Jankovich* applicant did not forfeit his hearsay claim as in *Perez*, the *Perez* "court still reached the merits of that argument," and the *Jankovich* court found "the analysis of *Perez* to be persuasive in light of the language of the Act." *Id.* ¶ 58. The *Jankovich* court also echoed the *Perez* court regarding due process; that is, the right to receive notice of the substance of the agency objection and to have an opportunity to respond. *Id.* ¶¶ 74-79. The *Jankovich* applicant had notice of the specific allegations in the police reports. *Id.* ¶¶ 74, 76. However, instead of responding to the substance of the allegations with denials, refutations, or mitigations to show that he was not a danger to self or others or a threat to public safety, the applicant challenged the relevancy of the reports and the allegations therein. *Id.* ¶¶ 78-79. Because those objections were "wrong as a legal proposition" (*Id.* ¶ 75), "[s]hort of a confession to those disturbing allegations, it is hard to imagine how [the applicant's] response could have been less helpful to his cause." *Id.* ¶ 79.

¶ 19 We conclude that this court has previously disposed of the very contentions raised by Nalls on appeal here: that the Board's consideration of, and reliance upon, a police report was inadmissible hearsay and deprived the applicant of due process. We see no reason not to follow *Perez* and *Jankovich*, and we similarly conclude that Nalls's contentions of error are unavailing. The police report was not inadmissible hearsay under the Act, nor did the Board deprive Nalls of due process by relying upon the police report and denying her application in the absence of a prior conviction or arrest.

¶ 20 CONCLUSION

¶ 21 Accordingly, we affirm the decision of the Department and Board denying Nalls's application for a concealed carry license.

¶ 22 Affirmed.