

STATE OF MAINE

SOMERSET, ss.

ROBERT CLEMONS, JR.,

Petitioner

v.

MAINE DEPARTMENT OF
PUBLIC SAFETY,

Respondent

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-08-010

AP-08-010 - 08/29/08
Wendy M. Robinson

JUN 26 2008

Clerk of Court
Somerset, Maine

DECISION

Introduction

In April 2008, the petitioner applied to the Commissioner of the Department Public for a permit to carry a non-concealed firearm by a prohibited person pursuant to the provisions of 15 M.R.S.A. § 393. The Commissioner denied this application on October 10, 2008. The petitioner filed this 80C appeal in reference to that final action.

Facts

In late April 2008, the petitioner applied for a section 393 permit for hunting purposes. On his application, he identified a 1986 conviction for rape, class A. Pursuant to the provisions of section 393, the Commissioner notified law enforcement officials and the Superior Court of the application, requested additional information relative to the issuance of the permit, and requested that the recipients respond in writing within 30 days of receipt of the notice if there any objection to the issuance of the permit.

The Department of Public Safety received two objections within the 30-day time period. The Attorney General's Office and the Chief Justice of the Superior Court responded in writing objecting to the petitioner's request for a permit.

Based on the objections received by these entities, the Commissioner denied the petitioner's application. In her decision, the Commissioner quoted section 393(4) which indicated that if within 30 days of the sending of the notice, any person so notified objects in writing to the issuance of the permit, none shall be issued.

The petitioner filed an 80C appeal relative to this final decision by the Commissioner.

Standard of Review

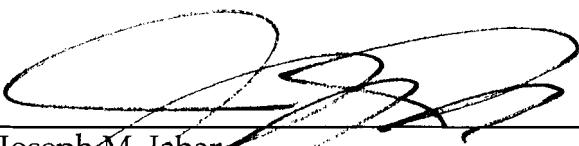
This appeal is governed by the provisions of Title 15 M.R.S.A. § 393(5) and 5 M.R.S.A. §§ 11001-11008 and M.R. Civ. P. 80. Petitioner bears the burden of demonstrating that there is no competent evidence in the record to support the Commissioner's finding. *Seider v. Bd. of Examiners of Psychologists*, 762 A.2d 551, 555 (Me. 2000).

Discussion

The plain language of the statute and the Law Court's decision in *Gonzales v. Commissioner, Dep't of Public Safety*, 665 A.2d 681 (Me. 1995) makes it very clear that the Commissioner has no discretion and is required to deny the permit in light of the objections. There is no requirement that the Commissioner review the reasons for the objections; the statute simply states that if an objection is received from any of the entities then no permit shall be issued.

The court finds that the *Gonzales* case is controlling and for this reason DENIES the petitioner's 80C appeal and affirms the decision of the Commissioner of Public Safety denying the petitioner's request for a permit for a non-concealed firearm.

Dated: June 25, 2009



Joseph M. Jabar
Justice, Superior Court

Off

Date Filed 11/10/08 Somerset County Docket No. AP-08-010

Action 80C Appeal - Petition for Review of Final Agency Action

THIS CASE IS SPECIALLY ASSIGNED TO:
-ON JOSEPH M. JABAR

Robert Clemons Jr.

vs. Department of Public Safety Maine
State Police Gaming and Weapons Sect.

Plaintiff's Attorney

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Defendant's Attorney

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Date of Entry

11/14/08	Petition for Review of Final Agency Action with attachments, Complaint Summary Sheet, \$150.00 filing fee, and certificate of service received and filed 11/10/08. Petition forwarded to the Office of the Attorney General this day and the Department of Public Safety Maine State Police Gaming and Weapons Section.
11/19/08	Entry of Appearance received and filed 11/14/08 by Lara Nomani, AAG on behalf of the Department of Public Safety.
12/15/08	Certification of Record received and filed 12/11/08. Notice and Briefing Schedule forwarded to John Martin, Esq. and Lara Nomani, AAG this day.
01/26/09	Brief for Appellee received and filed 01/20/09.
02/26/09	Respondent's Brief received and filed 02/24/09 with attachments.
06/30/09	Decision entered. The court finds that Gonzales case is controlling and for this reason DENIES the petitioner's 80C appeal and affirms the decision of the Commissioner of Public Safety denying the petitioner's request for a permit for a non-concealed firearm. Dated 06/25/09 /s/ Joseph M. Jabar JSC cc: Martin & Nomani