Due Process, Hearings, and Concealed Handgun Permits

To legally carry a concealed handgun in North Carolina, a person must receive a permit from the county sheriff. When considering an application for a permit, the sheriff is required to apply the criteria set out in G.S. 14-415.12. Among other requirements, the applicant must be at least 21, must be a citizen or lawful permanent resident of the U.S., and must have successfully completed an approved firearms training course. Several other factors also prevent the sheriff from issuing a permit to an applicant, such as the applicant's ineligibility to possess a firearm under Federal law, conviction of a felony, adjudication of mental illness, or discharge from the military under less than honorable conditions. Also, quite sensibly, one of the requirements for issuing a permit is that the applicant "does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun." If none of the statutory restrictions applies, and the applicant otherwise meets all of the criteria, the sheriff "shall" issue the permit. G.S. 14-415.12.

If the sheriff denies an application, the applicant may appeal to a local district court judge. The statute doesn't tell us much about these appeals. It only specifies that the judge must decide the appeal on "the facts, the law, and the reasonableness of the sheriff's refusal" and that the judge's decision "shall be final." G.S. 14-415.15(c). It doesn't specify how and by what standard the court is to conduct its review, whether it must hold a hearing, how much time it may take to make a decision, and similar details. As my colleague Jeff Welty noted in his 2016 bulletin on gun permit appeals, this bare-bones statutory framework has created variation in how district court judges "hear" these appeals – some calendar evidentiary hearings while others decide the issues in chambers on the paper record only. However, as Jeff also rightly pointed out, "any procedure likely must satisfy the demands of due process." Indeed it must, said the Court of Appeals last month in DeBruhl v. Mecklenburg County Sheriff's Office.

The *DeBruhl* case

Mr. DeBruhl had maintained a Concealed Handgun Permit for 10 years. He submitted his renewal application to the sheriff in September 2016. In December 2016, the Sheriff's Office issued him a written denial. Mr. DeBruhl was not given notice of the basis for the denial or an opportunity to be heard as to the reasons. The denial simply informed him that he did not meet the requirements of G.S. 14-415.12 for possession of a handgun and that he was ineligible to own, possess, or receive a firearm under State or Federal law. The denial also informed him that "YOU ARE DENIED DUE TO INFORMATION RECEIVED FROM VETERANS AFFAIRS."

Mr. DeBruhl then appealed to the district court in March 2017, noting that "there is no way for [Mr. DeBruhl] to know what facts to challenge on appeal" because the sheriff did not include specifics. The next month, the district court judge in entered an order denying the appeal. The judge included a finding that the sheriff's office had denied the permit because the applicant had sought mental health/substance abuse treatment in 2016. The judge then found that Mr. DeBruhl "suffers from a mental health disorder that affects his ability to safely handle a firearm." The district court's

appeal denial was the first time Mr. DeBruhl had notice of the statutory basis for his permit denial, and neither the sheriff nor the district court had given him notice and a hearing on the question.

The Court of Appeals was therefore tasked with deciding whether Mr. DeBruhl had been denied the permit in violation of the Fourteenth Amendment, which provides that "[n]o State shall…deprive any person of life, liberty, or property, without due process of law."

The Court first concluded that Mr. DeBruhl did indeed have a property interest in the gun permit because the statute *required* the sheriff to issue it if the statutory criteria were met. *See* G.S. 14-415.15(a) (the "permit shall not be denied unless the applicant is determined to be ineligible pursuant to G.S. 14-415.12."). The court stated that, "[b]ecause the statute does not give the sheriff unfettered, unassailable discretion in the issuance of gun permit renewals, an applicant enjoys a legitimate claim of entitlement to renewal so long as the enumerated criteria have been satisfied." [Note that this property interest analysis might not apply in states where the sheriff has greater discretion. Jeff discusses some of these "may issue" states in his bulletin.]

The Court then concluded that the appellate review afforded Mr. DeBruhl did not comport with procedural due process because it did not provide him any opportunity whatsoever to be heard on the mental health question. The court pointed out that the requirement of a hearing was particularly important in this case because a determination about the effects of a mental health condition could be "especially susceptible to the type of arbitrary governmental action that the due process clause was designed to prevent." An applicant in Mr. DeBruhl's position must, in short, "be afforded an opportunity to dispute the allegations underlying the denial before it becomes final."

The opinion did not discuss how the hearing should have been conducted or how extensive it should have been. But the panel quoted the United States Supreme Court in noting that "a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument, however brief; and, if need be, by proof, however informal."

A last note

This case does not, of course, challenge the wisdom of including mental fitness among the criteria for lawfully carrying a concealed handgun. The Court of Appeals panel noted that "we do not discount the safety concerns expressed by the Sheriff's Office." The case is also not a Second Amendment analysis. It is about basic procedural fairness during a statutory permit renewal. On remand, it may well be that Mr. DeBruhl is yet again denied a permit on grounds that he does not meet one or more of the statutory requirements. But he will have been given his opportunity to first be heard on the matter.