

VIRGINIA:

In the Court of Appeals of Virginia on Monday the 31st day of October, 2016.

In Re: Concealed Weapon Application of
Kenneth J. Richards,

Record No. 1460-16-1
Circuit Court No. CL16-5735

From the Circuit Court of the City of Norfolk

Per Curiam

By order dated May 25, 2016, the Circuit Court of the City of Norfolk denied Kenneth J. Richards's application for a renewal of his concealed handgun permit. Richards requested an *ore tenus* hearing and, by order dated July 12, 2016, the circuit court again denied the application. This appeal followed.

On appeal, petitioner contends the circuit court erred by finding 1) he "was required to submit a photo ID with his application for a concealed handgun permit," 2) his "application was incomplete on the grounds that a background check had not been conducted," and 3) he "was responsible for ensuring the completion of a background check."

The record reveals petitioner applied for a renewal of his concealed handgun permit by mailing his completed and notarized application to the circuit court clerk with the required filing fee. Soon after, the clerk's office contacted petitioner and requested he provide a copy of a photo ID, indicating it was required in order to complete a background check. Petitioner refused, observing that Code § 18.2-308.02(A) does not require the production of identification. The circuit court denied petitioner's application, noting that by refusing to produce a photo ID, he was refusing to submit to a background check.

At the July 12, 2016 *ore tenus* hearing, petitioner explained that he was not refusing to submit to the background check but merely declined to provide a photo ID because doing so is not required by statute. The circuit court suggested petitioner's application was not complete without the photo identification because the

police department required it in order to conduct the background check. The circuit court also indicated petitioner would need to go to the police department himself in order to complete the background check if he would not provide the identification. The circuit court again denied petitioner's application.

Code § 18.2-308.02(A) provides, in pertinent part:

Any person 21 years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides . . . for a five-year permit to carry a concealed handgun. . . . The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. No information or documentation other than that which is allowed on the application in accordance with this section may be requested or required by the clerk or the court.

Code § 18.2-308.02(E) provides:

An application is deemed complete when all information required to be furnished by the applicant, including the fee for a concealed handgun permit as set forth in § 18.2-308.03, is delivered to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check.

Petitioner provided all information and documentation required by statute, and his application was therefore complete. As indicated above, the circuit court is not permitted to request or require anything "other than that which is allowed on the application." Therefore, the circuit court impermissibly required petitioner to produce his photo ID.

Code § 18.2-308.04(B) provides: "Upon receipt of the completed application, the court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange." Thus, the circuit court, in conjunction with the appropriate sheriff or police department, is responsible for obtaining the background check, and the circuit court here incorrectly suggested petitioner would have to obtain the report himself.

Code § 18.2-308.04(B) provides that "[t]he court shall issue the permit via United States mail and notify the State Police of the issuance of the permit within 45 days of receipt of the completed application

unless it is determined that the applicant is disqualified.” Code § 18.2-308.09 includes twenty reasons for deeming an applicant disqualified.

In this case, the circuit court erroneously denied petitioner’s application for the reason that petitioner refused to provide documentation not required by statute. In short, the reason given by the circuit court for denying the permit is simply wrong.

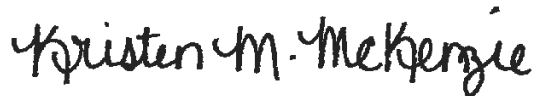
For these reasons, the circuit court’s order appealed from is reversed. This matter is remanded with directions that the circuit court process petitioner’s application as submitted, with instructions that taxable costs incurred by petitioner be paid by the Commonwealth, pursuant to Code § 18.2-308.08(C), and for further proceedings consistent with this order.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:



Deputy Clerk