

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 6 - SUFFOLK COUNTY

PRESENT:

Hon. Gary J. Weber MOTION DATE July 21, 2008
Acting Justice of the Supreme Court Motion Seq. # 001-MG

In the Matter of the Revocation of the Pistol License of
JOSEPH L. COLAIACOVO,
Petitioner
-against-

MURTHA & MURTHA, PLLC
BY: JAMES D. MURTHA, ESQ.
ATTORNEY FOR THE PETITIONER
26 RAILROAD AVENUE, #351
BABYLON, NY 11702

RICHARD DÖRMER, as the Statutorily Designated
Handgun Licensing Officer, and as the Police
Commissioner of the County of Suffolk, and His
Successors in Office,
Respondent

CHRISTINE MALAFI
SUFFOLK COUNTY ATTORNEY
BY: LEONARD G. KAPSALIS, ESQ.
ATTORNEY FOR THE RESPONDENT
H. LEE DENNISON BLDG.
100 VETERANS' MEMORIAL HIGHWAY
HAUPPAUGE, NY 11788

The Petitioner, by Order to Show Cause granted July 7, 2008 has demanded that the Respondent Show Cause why his right to a pistol permit should not be completely restored. Respondent has now submitted a Verified Answer dated October 7, 2008, an Administrative Return dated October 7, 2008, and a Memorandum of Law dated October 7, 2008. The Petitioner has submitted an "Affirmation in Sur-Reply", dated September 22, 2008.

DECISION

The Petitioner was possessed of a pistol permit with a sportsman endorsement that was issued on June 7, 2005 and was not due to expire until June 1, 2010. On March 7, 2008 the Respondent revoked the Petitioner's pistol permit altogether based upon circumstances surrounding the death of Petitioner's wife which was found to be a suicide. Apparently, the Respondent determined that the Petitioner's failure to keep his weapon in a locked safe, or otherwise inoperable was an unspecified rule violation. Respondent terminated the Petitioner's license to possess a weapon predicated upon this alleged failure. Thereafter, the Respondent modified this determination so as to permit the Petitioner to possess a pistol in his dwelling, but without the sportsman endorsement, which would allow him to possess the pistol outside the home.

The Supreme Court of the United States rendered its determination in *District of Columbia v. Heller on June 26, 2008.*¹ US, *128 S.Ct. 2783*. In *Heller* the Court held that there is a personal right to bear arms protected by the 2nd Amendment to the Constitution. The Court further held that requirements that a handgun be rendered inoperable, or locked in such a manner so that it is not immediately accessible when possessed in the owner's dwelling also transgresses upon this right to bear arms, because the 2nd Amendment recognizes that the right to bear arms includes a corollary right to self defense. The Respondent had previously determined that the Petitioner met the qualifications for a pistol permit with a sportsman's endorsement. In view of *Heller* there is a question as to

¹The Court in *Heller* did not create a new right, it only interpreted the 2nd Amendment to the Constitution and the rights recognized at the time it was ratified by the States. It can be said that the *Heller* decision did, for the first time, make a clear statement of each citizen's 2nd Amendment rights. See *Scott v. Harris*, US, *127 S.Ct. 1769 (2007)*.

whether the Petitioner's conduct relative to properly safeguarding his handgun was within the bounds of his constitutionally protected 2nd Amendment rights. If the Petitioner acted in a manner consistent with his existing constitutional rights relative to the care and safeguarding of his pistol, the State of New York may not diminish such other rights as he may otherwise possess or have been previously granted solely on the basis that some provision of State law or rule dictates that he behave differently in derogation of his Second Amendment Rights. Simply put, the State of New York and its agencies are no longer in a position to require that a handgun be stored in an inoperable condition or otherwise locked up if it is otherwise legally present in the owner's dwelling. Accordingly, the matter is remanded to the Respondent for further proceedings.

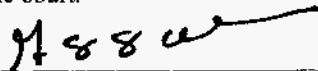
ORDER

ORDERED that the Petition (Mot. #001) is granted to the extent that the matter is remanded for such further proceedings as Respondent deems necessary in order to make a determination and create a record as to whether and how the Petitioner's actions or inactions went beyond constitutionally protected conduct as recognized by the U.S. Supreme Court in *District of Columbia v. Heller on June 26, 2008*. ___ US ___, 128 S.Ct. 2783; and it is further

ORDERED that the Petitioner is directed to serve a copy of this decision and order together with notice of entry upon the Respondent as soon as is practicable.

This shall constitute the decision and order of the court.

Dated: October 30, 2008



Gary J. Weber, Acting J.S.C.

Final Disposition