



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

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OPINION NO. 2015-05

PUBLIC SAFETY; FIREARMS; CIVIL RIGHTS: Felons cannot possess firearms unless and until they have had their right to do so specifically restored by means of a pardon issued in Nevada. If a person is convicted of a felony in any jurisdiction within the United States, their right to possess, control or own a firearm in Nevada is forfeited unless they obtain a pardon that specifically restores that right. Nevada is not bound to honor the restoration of civil rights granted by another state unless that restoration of rights was granted by pardon that specifically addresses the right to bear firearms.

James M. Wright, Director
Department of Public Safety
555 Wright Way
Carson City, Nevada 89711

Dear Mr. Wright:

You have requested an opinion from the Office of the Attorney General regarding the State of Nevada's law requiring a Governor's pardon to restore firearm rights and its

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applicability to out-of-state felons who have had their civil rights restored pursuant to another state's statutory scheme or court order. Your particular inquiry focuses on the Arizona statutory scheme which provides for restoration of civil rights under certain circumstances and how that restoration should be interpreted and applied by Nevada when considering applications to purchase or redeem firearms.

BACKGROUND

The State of Nevada is recognized by the Federal Bureau of Investigations National Instant Criminal Background Check System (NICS) Office as a Point of Contact (POC) state for firearms transfers under the federal Brady Handgun Violence Prevention Act of 1993, Pub. L. No. 103-159 ("Brady Act"). The Brady Act requires that a criminal history background check be conducted on any individual wishing to purchase or redeem a firearm to ensure that the individual does not have any disqualifying criminal history that would prohibit firearms ownership pursuant to Title 18 United States Code Sections 922(g) or (n) or state law.

In some states, federal firearms licensees (dealers) contact the FBI's NICS Office directly for a federal criminal history records check of individuals wishing to purchase or redeem a firearm. In POC states, like Nevada, the state conducts a check of its state criminal history records in addition to the FBI NICS check resulting in a more thorough background check. Further, POC states attempt to locate missing court dispositions for the NICS Office's and other POC states' use when making firearms eligibility determinations.

QUESTION ONE

Does either or both of Arizona Revised Statutes (ARS) 13-905 or 13-907, which allow for the restoration of civil rights to convicted felons under certain circumstances, have the authority to restore a person's ability to purchase or redeem a firearm in the State of Nevada where Nevada law requires a pardon that specifically restores that right before such an individual may purchase or redeem firearms here?

ANALYSIS

As relevant to your question, NRS 202.360 provides:

1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been convicted of a felony in this or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms . . .

Under this law, a person convicted of a felony in Nevada loses his or her right to bear arms unless he or she obtains a pardon which specifically restores that right. A person who is convicted in another state that does not provide for a pardon process, but who complies with that state's statutory scheme for restoration of civil rights, may still not regain his or her right to bear arms in Nevada for the reasons set forth below.

A. REASONABLE AND LONGSTANDING PROHIBITIONS ON POSSESSION OF FIREARMS BY EX-FELONS ARE PERMISSIBLE.

The United States Supreme Court has established that certain limitations on the individual's rights under the Second Amendment are permissible. Longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws which prohibit carrying firearms in sensitive places, such as schools or government buildings, and even laws imposing conditions on the commercial sale of firearms have been upheld. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 786 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008). These prohibitions are permitted because they do not unduly burden the core principle of the Second Amendment, *Heller*, 544 U.S. at 628, which is "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

Once convicted, a felon in Nevada loses many of the rights which are enjoyed by the citizens of the State, including the right to vote, hold public office, hold employment in sensitive positions, and possess firearms. *Pohlabel v. State*, 128 Nev. ___, ___, 268 P.3d 1264, 1270 (Adv. Op. 1, January 26, 2012). The loss of these rights of citizenship is set forth in the State Constitution and various statutes. See e.g., NEV. CONST. art. 2 § 1 and NRS 176A.850 (right to vote); NRS 6.010 (serve on a jury); NRS 254.010 (hold public office); NRS 289.555 and NRS 391.033 (hold employment as peace officer or school teacher); NRS 202.360(1) (possess firearms). The loss of these rights of citizenship has existed in Nevada law for over 150 years. *Pohlabel*, 128 Nev. at ___, 268 P.3d at 1271.

Nevada's limitation on the ownership and possession of firearms by convicted felons under NRS 202.360 does not burden the core principle of the Second Amendment because convicted felons fall outside the category of "law-abiding, responsible citizens." *Heller*, 544 U.S. at 627.

B. FULL FAITH AND CREDIT.

Each state is competent to legislate in furtherance of its own legitimate public policy interests *in that state*. *Franchise Tax Board of California v. Hyatt*, 538 U.S. 488, 497 (2003); *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988); *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939). Thus, the Full Faith and Credit Clause of the United States Constitution (U.S. CONST. art. IV, § 1), does not govern the interplay between Arizona civil rights restoration orders and Nevada's statutory prohibition on felons' possession or ownership of firearms in the absence of a full pardon. Put differently, while Arizona State statutes may establish how and when firearm rights are restored to ex-felons *in Arizona*, Arizona's statutes may not dictate how and when such rights might be restored in other states. See *Hyatt*, 538 U.S. at 496 ("The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'") (quoting *Pacific Employers Ins. Co.*, 306 U.S. at 501).

Under the Full Faith and Credit Clause, a final judgment entered in a sister state must be respected by the courts of other states. *City of Oakland v. Desert Outdoor Adver., Inc.*, 127 Nev. ___, ___, 267 P.3d 48, 50 (Adv. Op. 46, August 4, 2011) See U.S. CONST. art. IV, § 1; *Rosenstein v. Steele*, 103 Nev. 571, 573, 747 P.2d 230, 231; *Donlan v. State*, 127 Nev. ___, ___ & n. 1, 249 P.3d 1231, 1233 & n. 1 (Adv. Op. 12, April 12, 2011). However, courts have consistently differentiated between the credit owed to laws (legislative and common law) and to judgments. *Baker v. General Motors Corp.*, 522 U.S. 222, 232 (1998); *Donlan*, 127 Nev. at ___, n.1, 249 P.3d at 1233, n.1.

The Arizona courts derive their authority to grant or deny the restoration of civil rights to persons convicted of felonies in Arizona from Arizona statutes, specifically ARS 13-904 to 912. Arizona courts have acknowledged this fact, noting that the restoration of civil rights is a creature of statute, rather than an inherent power of the court. *State v. Grant*, 537 P.2d 38, 39 (Ariz. 1975). "Without legislative fiat, there is no jurisdiction to grant such applications [for restoration of civil rights] as were granted herein." *Id.*

Under the Arizona statutory scheme, only certain felons can seek to have their rights restored and only under certain circumstances or after particular waiting periods. Nevada has its own statutory scheme for determining the civil rights of convicted felons, including if, when and under what circumstances those rights are lost and restored. *E.g.*, NRS 202.360; NRS 213.090. Thus, it is a legislative act which permits restoration of a felon's civil rights in Arizona, and Nevada need not substitute Arizona's statutory scheme for its own. *Baker*, 522 U.S. at 232-33.

C. PENAL JUDGMENT NOT ENTITLED TO FULL FAITH AND CREDIT.

Even if the order restoring civil rights issued by an Arizona court would be considered a court order for purposes of Full Faith and Credit analysis, the order restoring an ex-felon's rights is one issued in a penal action.

Penal laws are those imposing punishment for an offense committed against the state, and which the executive of the state has the power to pardon. *Huntington v. Attrill*, 146 U.S. 657, 667 (1892). The Full Faith and Credit Clause does not apply to penal judgments. *City of Oakland v. Desert Outdoor Adver., Inc.*, 127 Nev. ___, ___, 267 P.3d 48, 51 (Adv. Op. 46, August 4, 2011); *Huntington*, 146 U.S. at 666, 672-73; *Nelson v. George*, 399 U.S. 224, 229 (1970) (reiterating that "the full faith and credit clause does not require that sister states enforce a foreign penal judgment"). A penal action is one that seeks to impose criminal penalty for violation of law – a crime. BLACK'S LAW DICTIONARY, 1153 (7th ed., 1999) (quoting 3 Norman J. Singer, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 59.01, at 1 (4th ed. 1986) ("The word *penal* connotes some form of punishment imposed on an individual by the authority of the state. Where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment, the statute is always construed as penal."))

Under the Arizona statutory scheme, it is the superior court judge who imposed the criminal sentence who is also vested with the discretion to restore, upon proper application, the ex-felon's civil rights. The resulting order, entered in the criminal proceedings pursuant to ARS 13-904 to 917, would, therefore, be an order in a penal proceeding – a penal judgment. See *Huntington*, 146 U.S. at 667-68 (discussing the difference between a penal judgment, a punishment imposed for a crime against the state, and a remedial judgment, where a penalty for an intentional breach of an agreement might be accumulative damages to the aggrieved party).

CONCLUSION TO QUESTION ONE

In sum, in Nevada, felons -- even felons who have had their convictions set aside or their civil rights restored in another state -- cannot possess firearms unless and until they have had their right to do so specifically restored by means of a pardon, which is issued in Nevada pursuant to NRS 213.090. "The Full Faith and Credit Clause cannot be used by one state to interfere impermissibly with the exclusive affairs of another." *Donlan*, 127 Nev. at ___, 249 P.3d at 1233.

QUESTION TWO

On a broader scale, does NRS 202.360's pardon requirement apply to felony convictions entered outside of the State of Nevada?

ANALYSIS

When interpreting a statute, if the statute is clear or unambiguous, courts will not go beyond a statute's plain language to determine legislative intent. *Bacher v. State Engineer*, 122 Nev. 1110, 1117, 146 P.3d 793, 798 (2006). It is necessary to avoid statutory interpretation that renders language meaningless or superfluous. *Karcher Firestopping v. Meadow Valley Contr.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).

By the express terms of the statute, any person who “[h]as been convicted of a felony in this or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America” is prohibited from owning, possessing or having control over any firearm in Nevada, “unless the person has received a pardon and the pardon does not restrict his or her right to bear arms.” NRS 202.360(1)(a) (emphasis added).

The nature of and procedures for obtaining a pardon in Nevada are also clearly and unambiguously defined in the law. See generally NEV. CONST. art. 5 §§ 13-14; NRS 213.005 – 213.100. Therefore, according to the rules of statutory construction, NRS 202.360 applies to felony convictions entered outside of the State of Nevada and a pardon which “does not restrict the right to bear arms” is the only means for any convicted felon to lawfully own, possess or redeem firearms in this state.

CONCLUSION TO QUESTION TWO

If a person is convicted of a felony in any jurisdiction within the United States, his or her right to possess, control or own a firearm in Nevada is forfeited unless he or she obtains a pardon that specifically restores that right.

QUESTION THREE

How does NRS 202.360 interact with 18 U.S.C. § 922(9), where conviction in Nevada for misdemeanor domestic violence does not result in the loss of the right to own, possess, or redeem firearms? How may an individual convicted of this offense in another state regain his or her right to own, possess or redeem firearms in Nevada?

ANALYSIS

This question is rendered moot by passage of Senate Bill (SB) 175 in the 78th Regular Session of the Nevada Legislature. This new statutory provision, which revises NRS 202.360, makes it illegal for anyone convicted of misdemeanor domestic violence (as defined by federal law) in any state to possess, control, or own a firearm in Nevada. The amendment became effective upon the bill's passage, and NRS 202.360(1) now reads:

1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) *Has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33);*

(b) Has been convicted of a felony in this State or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

(c) Is a fugitive from justice; or

(d) Is an unlawful user of, or addicted to, any controlled substance.

A person who violates the provisions of this subsection is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

Act of June 2, 2015, ch. 328, § 3, 2015 Nev. Stat. ____ (emphasis added). The new provision does not provide for a pardon to alleviate the prohibition because NRS 202.360 specifically addresses only felony convictions.

CONCLUSION TO QUESTION THREE

Nevada is not bound to honor the restoration of civil rights granted by another state unless that restoration of rights was granted by pardon. Moreover, the pardon must specifically address the right to bear firearms. Persons convicted of misdemeanor domestic violence, as defined by federal law, are prohibited from possessing,


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controlling, or owning any firearm in Nevada. Under the 2015 amendments to the statute, this right is not subject to restoration by any means.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:


LORI M. STORY
Senior Deputy Attorney General

LMS/JMR