

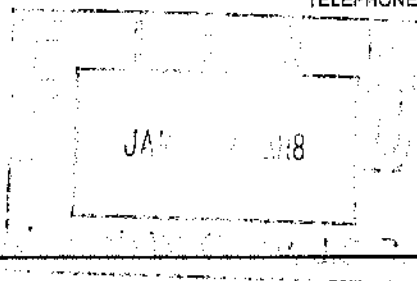
EXHIBIT 2

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JOSEPH W. OXLEY
JUDGE, SUPERIOR COURT



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PREPARED BY THE COURT

In the MATTER OF THE APPEAL
FOR THE DENIAL OF A PERMIT TO
CARRY A HANDGUN OF:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL PART
MONMOUTH COUNTY

THOMAS ROGERS

G.P. NO. 2017-024

ORDER

THIS MATTER having been brought before the Court by ALI HOMAYOUNI, ESQ., on behalf of Petitioner THOMAS ROGERS, on appeal from the denial of his application of a Permit to Carry a Handgun, which Appeal was filed on August 28, 2017;

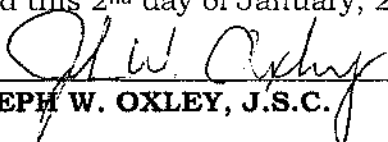
And having heard arguments on December 19, 2017 from SEAN BRENNAN, ESQ., Monmouth County Assistant Prosecutor, appearing on behalf of the State, and ALI HOMAYOUNI, ESQ. appearing on behalf of THOMAS ROGERS;

And this Court having reviewed the submissions by the parties and after hearing testimony from witnesses, and for good cause shown and the reasons and authorities set forth on the RECORD on December 19, 2017;

IT IS, on this 2nd day of January, 2018:

ORDERED that the appeal for the denial of the application of THOMAS ROGERS of a Permit to Carry a Handgun is **DENIED**.

Dated this 2nd day of January, 2018



JOSEPH W. OXLEY, J.S.C.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
COUNTY OF MONMOUTH
LAW DIVISION-CRIMINAL PART
GP No. 2017-024

Decided January 2, 2018

IN THE MATTER OF THE
APPEAL OF DENIAL OF
A PERMIT TO CARRY A
HANDGUN FOR:
THOMAS RODGERS

SEAN BRENNAN, ESQ., on behalf of the State
Monmouth County Prosecutor's Office

ALI HOMAYOUNI, ESQ., on behalf of Petitioner THOMAS
ROGERS

JOSEPH W. OXLEY, J.S.C.

The following submissions have been made by the parties and
reviewed by this Court:

- 1) Petitioner's Notice of Appeal filed on August 28, 2017;
- 2) State's brief in opposition to Petitioner's Appeal to a Permit to Carry a Firearm filed on November 18, 2017, accompanied by:
 - a. Exhibit A: Petitioner's Application for a Permit to Carry a Handgun;
 - b. Exhibit B: Petitioner's letters to Wall Township Chief of Police Robert Brice dated January 4, 2017 and February 13, 2017;
 - c. Exhibit C: Denial Letter of Petitioner's Permit to Carry a Handgun by Chief Brice dated August 15, 2017;
 - d. Unpublished Cases:
 - i. In re Racanelli, 2015 WL 3843562 (2015).
 - ii. In re Atkins, 2011 WL 93811 (2011).
 - iii. In re Almeida, 2015 WL 6473282 (2015).
 - iv. In re Dubinsky, 2016 WL 805998 (2016).

- 3) Petitioner's brief in support of his Appeal for his Permit to Carry a Firearm, filed on December 8, 2017, accompanied by:
- a. Exhibit A: Denial Letter of Petitioner's Permit to Carry a Handgun by Chief Brice dated August 15, 2017;
 - b. Exhibit B: Petitioner's Application for a Permit to Carry a Handgun;
 - c. Exhibit C: Petitioner's letters to Wall Township Chief of Police Robert Brice dated January 4, 2017 and February 13, 2017;
 - d. Exhibit D: Petitioner's Consent for Mental Health Records Search;
 - e. Exhibit E: Wall Township's Request for a Criminal History Record Information for a Noncriminal Justice Purpose and the NCIC 2000 Response;
 - f. Exhibit F: Petitioner's Certification of Firearms Qualification from Short Shot Pistol Range dated February 13, 2017;
 - g. Exhibit G: Petitioner's Certification of Completion for SAFTD Defensive Handgun 1 and SAFTD Defensive Handgun 2 from the Second Amendment Foundation;
 - h. Exhibit H: Petitioner's NJ Firearms Purchaser Identification Card and Petitioner's NJ Division of Fish and Wildlife Hunting License;
 - i. Exhibit I: Letter from Kearny Bank about money withdrawals;
 - j. Exhibit J: Petitioner's business card for Speed of Service ATM;
 - k. Exhibit K: Petitioner's four passport sized photos;
 - l. Exhibit L: Petitioner's Notice of Appeal filed on August 28, 2017;
 - m. Exhibit M: Press Release from the New Jersey Governor's Office Entitled "Governor Christie Protects Individuals' Rights to Firearms for Self-Defense and Protection with Commonsense Reforms;
 - n. Exhibit N: Rule Proposals from the Law and Public Safety Division of State Police for the Application for a Permit to Carry a Handgun; and
 - o. Exhibit O: Report to Governor J. Christie from the New Jersey Firearm Purchase and Permitting Study Commission Established Pursuant to Executive Order 180.

I. PROCEDURAL HISTORY

This matter is before the court on appeal by Thomas Rogers (hereinafter the "Petitioner") from the denial of his application for a Permit to Carry a Handgun. Petitioner met with Chief Brice for a pre-conference meeting on January 24, 2017 to discuss the Petitioner's application. In a letter dated August 15, 2017, Wall Township Police Chief Robert L. Brice, informed Petitioner that his application was denied for failure to demonstrate a justifiable need. Petitioner filed the instant appeal on August 29, 2017. On December 19, 2017, this Court took testimony from Petitioner and Chief Kenneth Brown for the Wall Township Police Department. Chief Brown became Chief of Police on August 1, 2017 after Chief Brice retired. This Court also heard oral argument from defense counsel and the State.

II. FACTS

This Court had the opportunity to observe and assess the demeanor of Petitioner, and was in a unique position to judge his credibility. Petitioner's testimony was clear, and he was honest and very straightforward throughout his testimony. This Court also heard testimony from Chief Brown of the Wall Township Police Department. This Court had the opportunity to observe and assess his demeanor and was in a unique position to judge his credibility. Chief Brown's testimony was clear, candid, and convincing. He was honest and very straightforward throughout his testimony. Based on

the testimony of the witnesses, and a review of the record, this Court makes the following findings of fact and conclusions of law.
R. 1:7-4.

Petitioner is a life-long resident of Monmouth County, and has lived in Wall Township for 40 years. For the last decade, Petitioner has owned and operated automatic teller machines (hereinafter "ATM") businesses. His companies presently manage over 100 ATMs throughout New Jersey, including but not limited to, Asbury Park, Neptune, Long Branch, Red Bank, Wall, Point Pleasant, and Brick. The ATMs' yearly cash fill is approximately 6.8 million dollars per year. Petitioner additionally owns two restaurants. Petitioner possesses a valid New Jersey Firearms Purchaser Identification Card and a New Jersey Firearm Hunting License. Petitioner has also passed two defensive handgun trainings demonstrating his knowledge of gun safety.

Petitioner argues that he has a "justifiable need" for a Permit to Carry a Handgun because he carries large sums of money, and is therefore a potential robbery target. Petitioner also argues that his work is dangerous and he is subject to harm.

III. RELEVANT LAW

N.J.S.A. 2C:58-4(c) sets forth the requirements that must be met in order to issue a Permit to Carry a Handgun. Specifically,

No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the

disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.

N.J.S.A. 2C:58-4(c). The burden of demonstrating a justifiable need lies with the applicant. See In re Pantano, 429 N.J. Super. 478, 483 (App. Div. 2013) (citing In re Preis, 118 N.J. 564, 571 (1990)) (stating that Pantano, the applicant, "must show an urgent necessity to carry a handgun for self-protection.").

Pursuant to N.J.S.A. 2C:58-4d "justifiable need" can be demonstrated by proving:

[U]rgent necessity for self-protection, as evidenced by serious threats, specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incident to the appropriate law enforcement agencies..." N.J.A.C. 13:54-2.4(d)(1) (2017).

The term "serious threats" is a recent addition to the statute that was amended in 2016. Justifiable need is not established where an applicant asserts only generalized fears or wishes to protect property only. In re Preis, supra, 118 N.J. 564. The Applicant must show the existence of serious threats, specific threats or previous attacks that demonstrate a danger to the applicant's life that cannot be avoided by other means. Preis, supra, 118 N.J. at 571; N.J.A.C. 13:54-2.4(d)(1) (2017).

IV. LEGAL ANALYSIS

In this case, the Petitioner's argument for justifiable need to carry a handgun is that Petitioner runs an ATM business with a yearly cash flow of approximately 6.8 million dollars. Petitioner argues that several of his ATMs are in high and moderate crime areas such as Asbury Park, Neptune, Long Branch, Red Bank, Wall, Point Pleasant, and Brick.

The only example Petitioner provides in order to prove "justifiable need" is a general scenario in which Petitioner has had to leave machines because he felt as though there were "suspicious activities around the machine." This one example is not enough to establish a "serious threat." Where an applicant asserts only generalized fears or wishes to protect property, "justifiable need" is not established. In re Preis, supra, 118 N.J. 564.

Here, the Petitioner points to no examples where he, or other ATM operators, have been a target of crime. Petitioner merely states that there has been "suspicious activity" surrounding his ATMs. This is simply not enough to establish justifiable need. A generalized statement such as this is not the type of "serious threat" under the statute. Furthermore, Petitioner offers no examples of robberies or crime in the areas in which his ATMs are located. Petitioner simply states that his ATMs are in areas with

high or moderate crime rates. The blanket statement provided by the Petitioner is not enough.

During his testimony, Petitioner produced a newspaper article from over 30 years ago detailing an incident where he was robbed at gunpoint while the manager of a Roy Rogers. This information is irrelevant to the present case. This previous attack does not demonstrate a special danger to the applicant's life to justify ordering a permit to carry.

Additionally, Petitioner points to N.J.S.A. 2C:58-4.1, which allows an employee of an armored car company a permit to carry a firearm. Petitioner attempts to draw similarities to his ATM business. However, the New Jersey Supreme Court stated that "[o]nly employees of armored-car companies are singled out for special treatment." In re Preis, 118 N.J. 564, 569 (1990). Therefore, Petitioner's argument is not persuasive. The statute specifically gives employees of armored car companies' permission to carry firearms and fails to mention anything about ATM employees.

V. CONCLUSION

Petitioner has failed to meet his burden of showing a justifiable need to carry a handgun. Accordingly, for the reasons and authorities cited above, Petitioner's application for a Permit to Carry a Handgun is **DENIED**.