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Opinion No. 09-168

Pardoned Felony Drug Offender Prohibited from Possessing or Purchasing Firearms

QUESTIONS

1. Does Tenn. Code Ann. § 39-17-1316 prohibit licensed firearms dealers from selling firearms to a Tennessee resident who has been pardoned for a Tennessee felony drug conviction?
2. Can a Tennessee resident who has been pardoned for a Tennessee felony drug conviction lawfully possess a firearm?
3. Does Tenn. Code Ann. § 39-17-1316 prohibit licensed firearms dealers from selling firearms to a Tennessee resident who has been pardoned for an out-of-state felony drug conviction?
4. Can a Tennessee resident who has been pardoned for an out-of-state felony drug conviction lawfully possess a firearm in Tennessee?
5. Can a Tennessee resident who has been pardoned for an out-of-state felony drug conviction and holds a valid out-of-state handgun carry permit obtain a Tennessee handgun carry permit pursuant to a handgun carry permit reciprocity agreement?

OPINIONS

1. Under Tenn. Code Ann. § 39-17-1316, licensed firearms dealers may sell any type of firearm, except a handgun, to a Tennessee resident who has been pardoned for a Tennessee felony drug conviction.
2. A Tennessee resident who has been pardoned for a Tennessee felony drug conviction may possess any type of firearm, except a handgun.
3. Full faith and credit does not require Tennessee to afford an out-of-state pardon the same treatment that the issuing state gives it. Since a Tennessee pardon does not obliterate the fact that the conviction occurred, Tenn. Code Ann. § 39-17-1316 prohibits a licensed firearms dealer from selling a handgun to a person who has been pardoned for a felony drug offense that was committed in another state, even though under the law of the issuing state, a pardon obliterates the fact that the conviction was entered.

4. Full faith and credit does not require Tennessee to afford an out-of-state pardon the same treatment that the issuing state gives it. Since a Tennessee pardon does not obliterate the fact that the conviction occurred, Tenn. Code Ann. § 39-17-1307(b)(1)(B) prohibits a Tennessee resident who has been pardoned for a felony drug offense that was committed in another state from possessing a handgun, even though under the law of the issuing state a pardon obliterates the fact that the conviction was entered.

5. A Tennessee resident who has been pardoned for an out-of-state felony drug conviction and who holds a valid out-of-state handgun carry permit may not obtain a Tennessee handgun carry permit pursuant to a handgun permit reciprocity agreement.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1316(a) generally prohibits licensed firearms dealers from selling firearms to convicted felons, including those who have been convicted of felony drug offenses.¹ Tenn. Code Ann. § 39-17-1316(a) authorizes licensed firearms dealers to sell firearms to convicted felons under certain conditions. It states:

(a)(2) The provisions of this subsection (a) prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

- (A) The person was pardoned for the offense;
- (B) The conviction has been expunged or set aside; or
- (C) The person's civil rights have been restored pursuant to title 40, chapter 29, and
- (D) The person is not prohibited from possessing a firearm by the provisions of § 39-17-1307.

* * *

Tenn. Code Ann. § 39-17-1316(a).

The primary objective of statutory construction is to ascertain and give effect to the intention of the legislature. *State v. Sherman*, 266 S.W.3d 395 (Tenn. 2008); *Auto Credit v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007). Courts do not read statutory language in isolation; the meaning of a statute is derived from a reading of a statute as a whole. *McCoy v. T.T.C., Illinois, Inc.*, 14 S.W.3d 734 (Tenn. 2000). Courts must construe a statute so that no part is rendered inoperative

¹The prohibition against selling firearms to convicted felons, generally, is found in the prohibition against selling a firearm to a person who may not lawfully receive a firearm under 18 U.S.C. § 922. That statute prohibits convicted felons from possessing firearms.

or meaningless. *Faust v. Metro Government of Nashville*, 206 S.W.3d 475 (Tenn. App. 2006).

Reading the unambiguous language of Tenn. Code Ann. § 39-17-1316(a)(2) as a whole, a licensed firearms dealer may sell a firearm to a convicted felon who meets one of the criteria listed in subparts (A) through (C). In addition to meeting one such condition, such a sale may be made only if the convicted felon's possession of such firearm would not violate Tenn. Code Ann. § 39-17-1307.

The prohibitions set forth in Tenn. Code Ann. § 39-17-1307(b) apply to handguns only. Long guns are not implicated by that statute and a licensed firearms dealer may therefore lawfully sell a long gun to a person who has been pardoned for a felony drug offense that was committed in Tennessee.²

The prohibitions set forth in Tenn. Code Ann. § 39-17-1307 apply only to certain classes of convicted felons, those who have been convicted of violent felonies and those who have been convicted of felony drug offenses. Tenn. Code Ann. § 39-17-1307(b)(1).³ Reading Tenn. Code Ann. § 39-17-1316(a)(2) together with Tenn. Code Ann. § 39-17-1307(b)(1)(B) indicates that the legislature intended to prohibit licensed firearms dealers from selling handguns to persons who have been convicted of felony drug offenses in Tennessee, including those who received pardons from such convictions.⁴

2. You ask if a person who has received a pardon for a felony drug offense that was committed in Tennessee may lawfully possess a handgun. Tenn. Code Ann. § 39-17-1307(b)(1)(B) states that it is unlawful for persons who have been convicted of felony drug offenses to possess a handgun. Such a person could possess a handgun without violating Tenn. Code Ann. § 39-17-1307 only if the pardon has the effect, under Tennessee law, of removing the fact that the person has been convicted of a felony drug offense.

²Tenn. Code Ann. § 39-17-1307(a) is not germane to this analysis because that subsection prohibits the carrying of any weapon by any person for the purpose of going armed. Subsection (b) prohibits any possession of a handgun by certain classes of felony offenders.

³Tenn. Code Ann. § 39-17-1307(b)(1)(B) states, in relevant part:

A person commits an offense who possesses as handgun and:

* * *

(B) Has been convicted of a felony drug offense.

* * *

Tenn. Code Ann. § 39-17-1307(b)(1)(B).

⁴Reading Tenn. Code Ann. § 39-17-1316(a)(2) to authorize licensed dealers to sell handguns to persons who have been pardoned for felony drug offenses that were committed in Tennessee would effectively render Tenn. Code Ann. § 39-17-1316(a)(2)(D) ineffective. In addition, reading Tenn. Code Ann. § 39-17-1316(a)(2) to prohibit licensed dealers from selling handguns to persons who have been pardoned for felony drug offenses that were committed in Tennessee is consistent with the legal effects of pardons under Tennessee law. In *State v. Blanchard*, 100 S.W.3d 226 (Tenn. App. 2002), the court noted that a full pardon restores civil rights and remits all punishments but does not obliterate the fact that the crime was committed and that the defendant was convicted.

The term “pardon” describes the authority of the governor to restore the felon’s civil rights and remit punishment of a person who has been convicted of a crime. *State v. Blanchard*, 100 S.W.3d 226 (Tenn. Crim. App. 2002).⁵ In *Blanchard*, the court stated that a pardon restores a person’s civil rights and remits punishment but does not erase the fact that the crime occurred or that a conviction for that crime was, in fact, entered.

The plain meaning of the text of Tenn. Code Ann. § 39-17-1307(b)(1)(B) indicates that the legislature intended to prohibit any person who has, in fact, been convicted of a felony drug offense from possessing a handgun. Since a pardon does not erase the fact of such a conviction, a person who has been convicted of a felony drug offense cannot lawfully possess a handgun even if he has received a full pardon for the offense.

3. You ask if, pursuant to the full faith and credit clause of the United States Constitution, a licensed firearms dealer may lawfully sell a handgun to a person who received a pardon for a felony drug offense that was committed in another jurisdiction, if the issuing jurisdiction treats a pardon as removing the fact that a conviction occurred. Art. IV, § 1 of the United States Constitution states:

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

As set forth above, under Tennessee law, a pardon remits punishment and restores rights of citizenship but does not obliterate the fact that the conviction occurred. *Blanchard, supra*. Therefore, a licensed firearms dealer may not sell a handgun to a person who has received a pardon for a felony drug offense that was committed in Tennessee.

Some other states, however, may treat pardons as if the crime did not occur. *See, e.g., Groseclose v. Plummer*, 106 F.2d 311 (9th Cir. 1939).⁶ *Groseclose* and *United States v. Maroney*, 373 F.2d 908 (3rd Cir. 1967), are instructive on the issue whether full faith and credit would require Tennessee to treat such a pardon in the same manner as the issuing state and thus to permit licensed firearms dealers to sell handguns to persons who had received pardons for felony drug convictions in other states. In both cases, the courts held that the full faith and credit clause did not prohibit states from considering convictions in other states in setting criminal punishment, even if a subsequent pardon had the effect in the convicting state of removing the original conviction. As the court in *Groseclose* noted, a pardon, regardless of its legal effect, does not change the historic fact of the original conviction and would not prevent another state from taking cognizance of that conviction. *Groseclose*, 106 F.2d at 313. Tenn. Code Ann. § 39-

⁵ Art. III, § 6, of the Tennessee Constitution confers upon governors the power to grant pardons and reprieves.

⁶ In *Groseclose*, the court assumed without deciding that under Texas law, a full pardon obliterated the fact that the conviction occurred.

17-1316 prohibits a licensed firearms dealer from selling a handgun to any person who has been convicted of a felony drug offense. A subsequent pardon of such a conviction in another state would not alter the fact that the conviction occurred, and, therefore, the statutory prohibition on the sale of handguns would still apply.

4. You ask if persons who have been pardoned by other states for felony drug offenses may lawfully possess a handgun in Tennessee if the issuing state treats pardons as obliterating the fact that such a conviction ever occurred. The full faith and credit clause does not require Tennessee to permit the possession of handguns by persons who have been pardoned for felony drug offenses that were committed in other states. For the reasons stated in parts 2 and 3, Tenn. Code Ann. § 39-17-1307(b)(1)(B) prohibits such persons from possessing handguns, even if the issuing state treats a pardon as obliterating the fact that the offense occurred.

5. Tenn. Code Ann. § 39-17-1351(r)(3)(B) states that a person who possesses a handgun carry permit that was issued by another state may continue to carry a handgun based on such out-of-state permit for six months after becoming a Tennessee resident. Under the plain meaning of that subsection, such a person may obtain a permit on reciprocity if the state that issued the permit has eligibility requirements that are substantially similar to those of Tennessee. Tenn. Code Ann. § 39-17-1351(r)(3)(B).

Convicted felons are not eligible to receive handgun carry permits in Tennessee. Tenn. Code Ann. § 39-17-1351(c)(6). Under Tenn. Code Ann. § 39-17-1351(j), however, convicted felons, except those who have been convicted of certain specified classes of felonies, may receive handgun carry permits if their citizenship rights have been restored. Most felony drug offenses are among the specified classes of offenses excepted from the benefit conferred by Tenn. Code Ann. § 39-17-1351(j).⁷

As set forth in part 2 above, a pardon issued in Tennessee restores rights of citizenship but does not obliterate the fact that the conviction occurred. By its plain terms, Tenn. Code Ann. § 39-17-1351(j) indicates that the legislature did not intend to restore the eligibility of most convicted drug felons to obtain a handgun carry permit with the restoration of their citizenship rights. Based on the analysis in part 3 above, persons who possess handgun carry permits that were issued in other states and who have been pardoned for felony drug offenses that were committed in other states are not entitled, under the full faith and credit clause, to obtain such a permit in Tennessee.

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⁷The only persons who have been convicted of felony drug offenses who may become eligible to receive a handgun carry permit are those persons whose offenses involved Schedule VI controlled substances. Those persons may reapply for a permit ten years after the date of the offense if their citizenship rights have been restored. Tenn. Code ann. § 39-17-1351(j)(3).

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