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EUGENE M. SALUTE et al., Plaintiffs and Appellants, v. PETER PITCHESS, as Sheriff, etc., Defendant and Respondent

Civ. No. 47881

Court of Appeal of California, Second Appellate District, Division Four

61 Cal. App. 3d 557; 132 Cal. Rptr. 345; 1976 Cal. App. LEXIS 1834

August 26, 1976

SUBSEQUENT HISTORY: [***1] Respondent's petition for a hearing by the Supreme Court was denied October 28, 1976. Tobriner, J., and Mosk, J., were of the opinion that the petition should be granted.

PRIOR HISTORY: Superior Court of Los Angeles County, No. NW-C-45104, Norman R. Dowds, Judge.

DISPOSITION: The order of dismissal is reversed for further proceedings consistent with this opinion.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

By petition for a writ of mandate, two duly admitted attorneys at law, who were also licensed private investigators, sought relief from the county sheriff's rejection of their applications pursuant to *Pen. Code*, §§ 12050, 12051, for permits to carry concealed weapons. The trial court sustained the sheriff's demurrer and the petition was dismissed. The policy of the sheriff, as expressed by the undersheriff, was to issue permits only to judges who expressed concern for their personal safety, except that, in special circumstances, the request of a public office holder who expressed concern for his personal safety would be considered. (Superior Court of Los Angeles County, No. NW-C-45104, Norman R. Dowds, Judge.)

The Court of Appeal reversed, holding that the sheriff's policy constituted a refusal to exercise the discretion given him by the statute. It was pointed out that the only limits imposed by *Pen. Code*, § 12050, are that the applicant must be of good moral character, show good cause, and be a resident of the county, that the petition alleged good moral character and residency, and that it was admitted that no inquiry into the existence of good cause had ever been made in connection with the applications in question or of any other application except those of the limited group of public officials. The court held that it was the duty of the sheriff under the statute to make such an investigation and determination, on an individual basis, on every application. (Opinion by Kingsley, Acting P. J., with Dunn and Jefferson (Bernard), JJ., concurring.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports, 3d Series

(1a) (1b) Weapons § 3--Gun Control Legislation--Applications to Carry Concealed Weapons--Exercise of Discretion by Sheriff. --The trial court erred in sustaining a demurrer to the petition of licensed private investigators who sought to compel the county sheriff to grant their applications for permission to carry concealed weapons pursuant to *Pen. Code*, § 12050,

which provides for such an authorization if the applicant is of good moral character, shows good cause, and is a resident of the county, where the petition alleged good moral character and residency and it was admitted that no inquiry into the existence of good cause had been made, and where the sheriff's failure to exercise his discretion under the statute was demonstrated by his admitted determination in advance, as a uniform rule, that only selected public officials could show good cause.

(2) Mandamus and Prohibition § 22--Mandamus--To Public Officers and Boards--Official Discretion.

--While a court cannot compel a public officer to exercise his discretion in any particular manner, it may direct him to exercise that discretion.

COUNSEL: Eugene M. Salute and Richard F. Murkey, in pro. per., for Plaintiffs and Appellants.

John H. Larson, County Counsel, and John P. Farrell, Deputy County Counsel, for Defendant and Respondent.

JUDGES: Opinion by Kingsley, Acting P. J., with Dunn and Jefferson (Bernard), JJ., concurring.

OPINION BY: KINGSLEY

OPINION

[*559] [**346] Petitioners appeal from an order dismissing their petition for a writ of mandate, after a demurrer to that petition had been sustained.¹ For the reasons set forth below, we reverse the order.

1 The notice of appeal states that it is from the nonappealable order sustaining the demurrer. Since a formal order of dismissal was made and entered, and appears in the record before us, we treat the appeal as being from that appealable order. (*Rule 1(a), Cal. Rules of Court.*)

[***2] Petitioners were and now are duly admitted attorneys-at-law and were duly licensed private investigators. As investigators they applied to respondent Sheriff of Los Angeles County for a permit to carry concealed weapons and their application was rejected. They sought relief in the trial court with the result above stated.

As duly licensed private investigators, petitioners are authorized to carry loaded firearms on their persons and

in automobiles. (*Pen. Code, § 12031, subd. (b)(7).*) However, that section does not cover the carrying of such weapons in a concealed manner. Permission to carry a concealed weapon may be sought, as petitioners did here, by an application under *sections 12050 and 12051 of the Penal Code.* Those sections read as follows:

Section 12050: "(a) The sheriff of a county or the chief or other head of a municipal [**347] police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of the county, may issue to such person a license to carry concealed a pistol, revolver, or other firearm for any period of time not to exceed [***3] one year from the date of the license.

"(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, and circumstances under which the person may carry a concealed firearm.

"(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued on or after the effective date of the amendments to this section enacted at the 1970 Regular Session of the Legislature."

[*560] *Section 12051:* "Applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Any license issued upon such application shall set forth the foregoing data and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number and the caliber.

"Applications and licenses shall be uniform throughout the State, upon forms to be prescribed by the Attorney General."

(1a) The petitioners allege, and the sheriff [***4] admits, that the sheriff has a fixed policy of not granting applications under *section 12050* except in a limited number of cases. The policy was stated by Undersheriff Block as follows:

"The Sheriff's policy is not to issue any concealed weapons permit to any person, except for judges who

express concern for their personal safety. In special circumstances, the request of a public office holder who expresses concern for his personal safety would be considered. . . ." and "the outstanding permits issued by the Sheriff are only 24 in number."

(2) While a court cannot compel a public officer to exercise his discretion in any particular manner, it may direct him to exercise that discretion. (1b) We regard the case at bench as involving a refusal of the sheriff to exercise the discretion given him by the statute. *Section 12050* imposes only three limits on the grant of an application to carry a concealed weapon: the applicant must be of good moral character, show good cause and be a resident of the county. To determine, in advance, as a uniform rule, that only selected public officials can show

good cause is to refuse to consider the existence of good cause on the part of citizens generally [***5] and is an abuse of, and not an exercise of, discretion.

The petition before us alleges that petitioners are of good moral character and are residents of Los Angeles County. It is admitted that no inquiry into the existence of good cause has ever been made in connection with the application of these petitioners, or of any other applicant outside the limited group of public officials. It is the duty of the [*561] sheriff to make such an investigation and determination, on an individual basis, on every application under *section 12050*.

The order of dismissal is reversed for further proceedings consistent with this opinion.