IN THE SUPREME COURT OF GEORGIA

CRAIG MOORE, Petitioner, v. MARY T. CRANFORD, Judge of the Coweta County Probate Court, Respondent	)	Case No. A07A0316 In the Court of Appeals of Georgia

PETITION FOR CERTIORARI

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PETITION FOR CERTIORARI

Petitioner, Craig Moore (Appellant in the Court of Appeals of Georgia and hereinafter referred to as "Moore"), pursuant to Rule 40 of this Court, petitions for certiorari and reversal of the opinion of the Court of Appeals of Georgia entered on May 25, 2007, a copy of which is attached as **Exhibit A**. Moore's timely Motion for Reconsideration was denied by the Court of Appeals of Georgia on June 5, 2007.

INTRODUCTION

This case involves the right under Article I, Section 1, Paragraph 8 of the Georgia Constitution of hundreds of thousands of Georgians to bear arms. The issue is whether a probate judge may wait longer than the statutory limit of 60 days to issue a firearms license. As recognized by the Court of Appeals, delays are so ubiquitous as to "routinely" cause delays beyond the 50 days for a law enforcement report and a wait for applicants beyond the 60 days provided by law to issue a license.[1] Opinion, p. 2. The Court of Appeals found that "the probate judge has no discretion to extend the 60-day time period," [Opinion, p. 8] but, despite this finding,

[1] Petitioner in this case waited 124 days, more than twice the period set out in the statute.

the Court of Appeals ruled that "the 60-day period is implicitly extended." Opinion, p. 12. This has the effect of the Court of Appeals repealing both the 50 day timeline and the 60 day timeline out of the statute, without any legislative action.

Fundamentally, the General Assembly places the onus upon the government to act swiftly and efficiently in issuing Georgia Firearms licenses in order to protect and give effect to the right of Georgians to bear arms. The General Assembly, through its licensure scheme, which includes significant limitations on the discretion of probate judges, does not intend for the licensed carrying of a firearm to be a privilege one exercises at the pleasure and on the timing of the government, but rather intends the orderly and timely administration of a fundamental right. Through the plain language of the statute, the elected legislators contemplated the possibility that background checks may not be completed in the allotted 50 days, but chose to insert a 50 day and a 60 day limitation anyway. The Court of Appeals finds itself in a "quandary" between the clear, ordinary meaning of plain language in a statute and its perception of good public policy for the State of Georgia. The Court of Appeals, through its tortured logic and incongruous sentence construction, erects from the ground up a new

scheme which installs as law its preference for the public policy in Georgia and completely eviscerates the time limits,[2] and thus the citizen protections, put in place by the legislature. Setting public policy simply is not the role of the courts, and thus this decision should be overturned.

This is a matter of such importance in the State of Georgia that the General Assembly, motivated by petitioner's predicament and others similarly situated, has introduced HB 850, shortening even further the probate court's timeline for issuing firearms licenses and declaring:

> The General Assembly finds that the right of the people to bear arms as guaranteed by the Second Amendment to the United States Constitution is crucial to protecting individual freedom and safeguarding the many liberties which are the cornerstones of this great nation. In preserving this right, ***it is essential that licenses to carry weapons be timely issued*** to law abiding citizens who are seeking to exercise their Second Amendment right in accordance with the laws of this state. It is the ***intent*** of this legislation to ***prevent unnecessary delays*** and hardships placed by local governments which infringe

[2] Indeed, the Court of Appeals recognized that the law does not require either GCIC or NCIC to process the fingerprint based background checks at all, meaning that under the Court of Appeals' reasoning, a refusal by either agency to process the background checks would result in no further firearms licenses being issued. Under the express words of the statute, however, licenses "shall issue" "[n]ot later than 60 days after the date of application" "if no facts establishing ineligibility have been reported." Note that there is no requirement anywhere in O.C.G.A. § 16-11-129 that facts establishing ***eligibility*** be reported.

> upon the exercise of Second Amendment rights. It is further the ***finding*** of this body that lawful Georgia residents are entitled to obtain a license to carry a pistol or revolver ***in a timely manner***.

(emphasis added). This bill was introduced prior to the Court of Appeals opinion, and therefore does not address the Court of Appeals' newly created dual reporting system under O.C.G.A. § 16-11-129(d)(4). The Georgia Court of Appeals created its own public policy in extending the time for issuance by creating two separate reporting systems that do not exist in the text of the statute and have not existed in the practice of the probate courts over the last 30 years the current licensing system has been in place.

The Supreme Court should accept Petitioner's petition and give full effect to the words of the statute and undo the Court of Appeals' opinion that leaves hundreds of thousands of applicants with no outside time limit on their applications, in spite of the fact that the statute clearly spells out two firm timelines that are being ignored in many counties throughout the state.[3] If the

[3] Curiously, many probate judges throughout the state adhere to the timelines religiously, unlike Respondent, even though all counties' local law enforcement agencies must send their requests for background checks to the same FBI as Respondent. These counties have been characterized by the Court of Appeals as being in "gross dereliction of duty" because of their decades of faithful adherence to the timelines provided by the General Assembly in the statute.

decision of the Court of Appeals is allowed to stand, the constitutional right of Georgians to keep and bear arms will be in a state of limbo, outside the structure created by the General Assembly, for an indefinite period of time.

STATEMENT OF MATERIAL FACTS

Moore is a resident of Coweta County who applied to Respondent, the probate judge of Coweta County, for a Georgia firearms license on December 13, 2005. R-46[4]. It was undisputed that Moore met all the statutory eligibility requirements to obtain a Georgia Firearms License and that he had a "clear legal right" to obtain one. R-17.

Because O.C.G.A. § 16-11-129 requires probate judges to issue firearms licenses within 60 days of the application, Moore inquired into the status of his Georgia Firearms License when the 60th day was at hand. Respondent's office told Moore it would be at least ***another*** two months before his GFL would be issued, and that she routinely took longer than 60 days to issue firearms licenses. R-46.

[4] References to the record in this Petition are to the record of the superior court as it was transmitted to the court of appeals.

When more than 120 days had elapsed since his application was submitted, which is more than twice the time set out in the statute, Moore commenced the action below,[5] requesting declaratory and injunctive relief. On cross motions for summary judgment, the superior court ruled in favor of Respondent, finding that probate judges must wait indefinitely for background checks on firearms license applicants, even though the statute says that no report is required when there is no derogatory information to report. Moore appealed, and the Court of Appeals affirmed, though on slightly different grounds.

WHY CERTIORARI SHOULD BE GRANTED

The Court of Appeals' opinion is inconsistent with the plain language of the statute, contains internal inconsistencies, and will be precedent for the proposition that probate judges may wait indefinitely to issue firearms licenses, contrary to the clear intent of the General Assembly. Statistics from the Administrative Office of the Court indicate that Georgia probate courts process approximately 60,000 firearms license applications each year.

[5] Moore's Complaint was mailed to the superior court clerk for filing on April 16, 2006, the 124th day after his application date. Respondent mailed Moore's firearms license to him on April 18, 2006, the 126th day. The Complaint and license crossed in the mail.

Given that firearms licenses have 5-year terms, it follows that roughly 300,000 Georgians have firearms licenses. Thus, the procedures that apply to the issuance of firearms licenses (and renewal licenses) are a matter of statewide concern.

ENUMERATION OF ERRORS

1. The Court of Appeals erred in finding that the 60-day requirement in the statute was "implicitly extended."
2. The Court of Appeals erred in ruling that the background "report," which need not be provided where no derogatory information is found, is different from the background "notification" that the Court of Appeals ruled was required in all circumstances.
3. The Court of Appeals erred by assuming that Respondent was waiting for the "notification" the Court said she could wait for, when in fact she testified she was waiting for the "report" for which the Court said she could not wait.

ARGUMENT AND CITATION OF AUTHORITIES

1. There is No Extension of the 60-Day Deadline, Either Expressed or Implied

The resolution of this case depends on the interpretation of a subsection of the Georgia Weapons and Firearms Act. O.C.G.A. § 16-11-129(d)(4) states, in pertinent part:

> Not later than 60 days after the date of the application the judge of the probate court shall issue the applicant a license or renewal license to carry any pistol or revolver if no facts establishing ineligibility have been reported and if the judge determines the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements contained in this Code section.

The Court of Appeals correctly noted, "The use of the term 'shall' [in the Code section] means that the probate judge has no discretion to extend the 60-day time period." Paradoxically, however, the Court of Appeals later said, "the 60-day period is implicitly extended … when necessary…." There is no extension, implicit or otherwise. If the General Assembly had intended for there to be an extension, it could have included one in the Code.

2. There is No Difference Between the "Report" and the "Notification"

The first three sentences of O.C.G.A. § 16-11-129(d)(4) state that: (1) the local sheriff that captured the fingerprints is to

notify the judge "within 50 days" of any findings bearing on the applicant's eligibility; but (2) "a report shall not be required" if there is nothing derogatory to report; and (3) the sheriff is simply to return the application and the license form to the probate judge "within such time period" (*i.e*, 50 days). Both the first and the second sentence use nearly the ***exact*** same language to describe what is being reported. Somehow, in the Court of Appeals opinion, "applicant which may bear on his or her eligibility for a license or renewal" in the first sentence of (d)(4) means one thing, but the very next sentence that contains "applicant bearing on his or her eligibility to obtain a license or renewal license" is deemed not to be the same thing. The second sentence must concern the ***same*** topic.

The first two sentences of O.C.G.A. § 16-11-129(d)(4) state:

> The law enforcement agency shall ***notify*** the judge of the probate court within 50 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a license or renewal license under the terms of this Code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, ***a report shall not be required***.

[emphasis supplied]. These first two sentences are speaking of the same thing, clearly stating that the local sheriff shall notify the judge of findings that bear on the applicant's eligibility, but

when nothing negative is found, "a report shall not be required." Despite the fact that the two sentences quoted are juxtaposed as shown and contain parallel language ("bear on his or her eligibility for a license or renewal license" and "bearing on his or her eligibility to obtain a license or renewal license"), the Court of Appeals held that the "notification" of findings that "bear on his or her eligibility for the license" in the first sentence is different from the "report" of findings "bearing on his or her eligibility to obtain a license or renewal license" in the second sentence.

The General Assembly clearly stated in the second sentence that "a report shall not be required," but the Court of Appeals found itself in a "quandary," [Opinion, p. 8] because, in its view, such reports must ***always*** be required. The Court of Appeals declared this to be "ambiguous," [Opinion, p. 11] and proceeded to create out of whole cloth two separate reporting systems and excise the 50 and 60 day words out of the statute. The Court of Appeals held that the second sentence refers to a "written evaluation of the candidate" that shall not be required, but the first sentence is referring to something completely different that is ***always*** required, and is ***not*** required "within 50 days." *Id.* The first

sentence is a notification "of any findings" to be made within 50 days. The Court of Appeals decided that the first sentence is instead a notification that the background checks have been performed and not subject to the 50 day requirement.[6] *Id.* The thrust of the Court's analysis is that the "notification" always is required, because even a finding of no derogatory information "bears" on an applicant's eligibility, even though the "report" is not required if no derogatory information is found. Thus, reasoned the Court, even when no "report" is required, the "notification" is, and the "notification" need not come within 50 days, as the statute states. Opinion, p. 11. The conclusion is, therefore, that the probate judge, having no discretion to extend the 60-day requirement, must wait for the "notification," even if it takes longer than 50 days and even if it takes longer than 60 days. The 60-day requirement is therefore "implicitly extended."

[6] The words of the first sentence would be an odd way for the General Assembly to state that the law enforcement agency was to notify the judge that "the background checks had been performed," even setting aside the clear 50 day timeline in the first sentence. Surely if the General Assembly had intended that, it simply could have said so. Instead, it mandated a 50 day timeline for the notification of any findings, removed the requirement for a report altogether if nothing bad is found, and required the sheriff to return the application and license form within the same 50 days.

There is nothing in the statute from which this inference can be drawn, as the General Assembly was quite clear in imposing timelines and stating that a report is not required. In addition, the General Assembly put in place a revocation system for such licenses, and, effective July 1, 2006, added an "instant" background check that can be performed ***in minutes*** and includes information about crimes for every state in the nation as well as mental health adjudications, alien status, and domestic violence information. *See* O.C.G.A. § 16-11-129(d)(2). This instant system is the same one used by gun stores to comply with prospective gun purchaser background check provisions of the Brady Act. Under federal regulations, the gun sale must be allowed if the instant system does not disallow it within ***only three days.*** *See* 18 U.S.C. § 922(t)(1)(B) and 28 C.F.R. § 25.2.

The firearms application process established by the General Assembly is simple. The applicant completes an application from the probate judge. The applicant is directed to the local law enforcement agency to be fingerprinted. The agency sends the fingerprints to the Georgia Crime Information Center and the National Crime Information Center. The agency also does a check of the National ***Instant*** Criminal Background Check System (mentioned in

the paragraph above). Within 50 days of the application (and regardless of whether the GCIC and NCIC have completed their checks), the local law enforcement agency reports to the probate judge what the agency has learned in the background investigation, but, if no derogatory information is found, no report is required. The probate judge has at least 10 days (between the 50th and 60th days) to issue the license or deny the application. O.C.G.A. § 16-11-129(d)(4).

3. Respondent Was Not Waiting for a "Notification"

As difficult as it is to understand the Court of Appeals' analysis, the Court of Appeals also overlooked the facts of this particular case when it applied its ruling. The Court of Appeals' analysis has no application to the facts of this case because it is clear from the record that Respondent was not waiting for any "notification" from the sheriff. Respondent testified that at the time of Petitioner's application, she never requested that the sheriff perform background checks as the statute requires. R 64-65.

This requires examination of another part of the same Code Section. The Court of Appeals found that the "report" of § 1229(d)(4) is the "appropriate report" [Opinion, p. 11] described in O.C.G.A. § 16-11-129(d)(1) and (2):

> (1) For both license applications and requests for license renewals, the judge of the probate court shall direct the law enforcement agency to request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court….
> (2) For both license applications and requests for license renewals, the judge of the probate court shall also direct the law enforcement agency to conduct a background check using the Federal Bureau of Investigation's National Instant Criminal Background Check System and return an appropriate report to the probate judge.

The "appropriate report[s]" described in 129(d)(1) and (2) above are the "reports" the Court of Appeals said are not required when no derogatory information is found. Opinion, p. 11. On the other hand, the Court of Appeals found that the "notification" is required all the time, and ***not*** within 50 days as provided by statute. *Id.* By affirming the superior court, the Court of Appeals implicitly assumed that Respondent exceeded the 60-day requirement because she was waiting on the "notification" and not the "report."

While Petitioner strenuously disagrees with the holding that 129(d)(4) "extends" the timeline, the record indicates that the Court of Appeals' assumption that Respondent was awaiting the

sheriff's "notification" is an unjustified assumption. Nowhere does she claim she was waiting for "notification" from local law enforcement. In fact, she could ***not*** have been, because Respondent testified that she did not use local law enforcement at all, preferring instead to run a background check on license applicants, including Moore, directly to the FBI and from a GCIC terminal in her office.[7] R 64-65. Thus, because she usurped the role of local law enforcement, the "notification" of local law enforcement would ***never*** come.

The Court of Appeals ruled that the report of Section 129 (d)(4), which is the "appropriate report" of Section 129 (d)(1) and (2), is not required when no derogatory information is found [Opinion, p. 11], and there is no dispute that no derogatory information was found on Moore. The Court also ruled that the "notification" of Section 129(d)(4) is required, and that the 60-day requirement is "implicitly extended" if this "notification" by local law enforcement (required within 50 days) is late. Because it is undisputed that Respondent was waiting for the "report" and

[7] In fairness, Respondent testified by affidavit that she changed this policy subsequent to the lawsuit, and she now requests that local law enforcement perform the background checks and return "an appropriate report" to her.

not the "notification" (under the Court of Appeals reasoning), it was error for the Court of Appeals to affirm the superior court.

CONCLUSION

The plain language of the statute requires issuance of a Georgia Firearms License within 60 days. The plain language of the statute requires that the sheriff "notify the judge of the probate court within 50 days of any findings relating to the applicant which may bear on his or her eligibility for a license or renewal license," ***not*** that the sheriff notify the judge of the probate court that background checks have been completed. If, however, nothing derogatory is found, the plain language of the statute states that "a report shall ***not*** be required," but the sheriff is required to return the application and the blank license form to the probate judge "***within such time period***." That time period can only be the same 50 days mentioned in the first sentence. The first three sentences are talking about the ***same*** report and the ***same*** time period. The holding of the Court of Appeals is contrary to that language and even internally inconsistent. If the Court of Appeals decision is left to stand, neither that time period nor the 60 day time period have any meaning, as they have been excised from the statute as completely as if the General Assembly had never put

them there. Surely if the General Assembly had intended to make it the law that the sheriff notify the probate judge that the background checks are ***completed***, regardless of whether it takes more than 50 days, it could have done so. Ironically, the effect of the Court of Appeals decision on HB 850, introduced prior to the Court of Appeals decision with the expressed intent that "licenses . . . be timely issued," will be that HB 850 will not have the intended effect of shortening the timelines to 30 and 45 days, respectively, since ***those*** timelines will mean no more than the ***current*** 50 and 60 day timelines do under the Court of Appeals holding (which will become the law of the land).

This Court should accept this Petition and enforce O.C.G.A. § 16-11-129 according to its terms.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day served Nathan T. Lee, Esq. with a copy of this Petition for Certiorari by mailing a copy first class mail postage prepaid to him at 10 Brown Street; Newnan, Georgia 30264.

Dated June 25, 2007

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