



FIREARMS RIGHTS RESTORATION & THE NORTH CAROLINA FELONY FIREARMS ACT

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Since 1971, the North Carolina Felony Firearms Act, G.S. § 14-415.1 *et seq*, has generally banned felons from owning or possessing firearms. But the Act, its applicability and constitutionality are far from settled. The General Assembly has amended the Act several times over the years to further restrict felons' firearms rights. But more recently it altered this course, responding to new constitutional standards articulated by the North Carolina Supreme Court in *Britt v. State*, by amending the Act to provide for a firearms rights restoration process. 363 N.C. 546 (2009). This paper explains the major provisions of the Felony Firearms Act, particularly firearms rights restoration, in light of *Britt* and the decision of the Court of Appeals in *Baysden v. State*. ___ N.C. App. ___, 718 S.E.2d 699 (2011). Whether the current statutory firearms restoration scheme meets constitutional requirements remains to be determined by the courts.

The North Carolina Felony Firearms Act

In its current form, the Act bars persons convicted of felonies from owning or possessing firearms. G.S. § 14-415.1(a). The prohibition does not apply to antique firearms, certain white-collar crimes, or to a felon who has been pardoned or who has had his or her firearms rights restored. G.S. § 14-415.1(a) (exception for antiques); G.S. § 14-415.1(e) (exception for white-collar crimes); G.S. § 14-415.1(d) (exception for pardon or rights restoration). Beginning in the 1970s, the Act provided that a felon could nevertheless possess "a firearm within his own home or on his lawful place of business," and that the firearm disability automatically expired five (5) years from the completion of the felon's sentence. N.C. Sess. Laws 1975-870, s. 1-2.² But in 1995 the General Assembly eliminated the five-year automatic expiration of the firearm disability. N.C. Sess. Laws 1995-487, s. 3.

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² The original Act did not apply to any felon whose civil rights were restored under Chapter 13 of the General Statutes or other comparable procedure in another jurisdiction. N.C. Sess. Laws 1971-954, s. 2.

Then, amendments made in 2004 deleted the exception that had previously allowed a felon to keep a firearm in his or her own home or business. N.C. Sess. Laws 2004-186, s. 14.1. Thus, possession of firearms by most felons was completely prohibited in 2004 giving rise to notable court cases discussed below.

Britt v. State

In 2009 the North Carolina Supreme Court ruled in *Britt v. State* that the Felony Firearms Act, as amended in 2004, was unconstitutional as applied to the plaintiff. 363 N.C. 546 (2009). The plaintiff, Barney Britt, pleaded guilty in 1979 to one count of felony possession with intent to sell and deliver a controlled substance, methaqualone. He completed his active prison term and probation in 1982, and his firearms rights were restored five years later in 1987, pursuant to the terms of the Felony Firearms Act at that time. From then until 2004, plaintiff legally owned firearms in a safe and responsible manner and maintained a clean criminal record. But in order to comply with the 2004 prohibition, plaintiff disposed of all his firearms, even the rifles he used to hunt on his own land.

Britt filed a lawsuit seeking that the statute be declared unconstitutional. Eventually, the case found its way to the state's highest court. The North Carolina Supreme Court started its analysis by noting that the "regulation of the right to bear arms is a proper exercise of the General Assembly's police power, but that any regulation must be at least 'reasonable and not prohibitive, and must bear a fair relation to the preservation of the public peace and safety.'" *Britt v. State*, 363 N.C. 546, 549 (2009). The court cited several factors— that he had a single nonviolent felony, that there was no evidence that he was dangerous, that he had remained law-abiding since completion of his sentence, that he had responsibly and legally owned firearms for seventeen years until the 2004 amendments, and that he had "assiduously and proactively" complied with the law by ridding himself of all his firearms upon passage of the new prohibition—*Britt v. State*, 363 N.C. at 550. The Court explained, "it is unreasonable to assert that a nonviolent citizen who has responsibly, safely, and legally owned and used firearms for seventeen years is in reality so dangerous that any possession at all of a firearm would pose a significant threat to public safety." *Britt*, 363 N.C. at 550. Therefore, as applied to plaintiff, the Court held that "the 2004 version

of N.C.G.S. § 14-415.1 is an unreasonable regulation, not fairly related to the preservation of public peace and safety.” *Britt*, 363 N.C. at 550.

Legislative Response to *Britt*

In response to the *Britt* decision, the General Assembly moved to amend the Felony Firearms Act in 2010 by enacting Session Law 2010-108. This amendment established a procedure and qualifications for felons to have their firearms rights restored. N.C. Sess. Laws 2010-108, s. 1. Under the new statute, G.S. § 14-415.4(b), felons with a *single* nonviolent felony conviction (in North Carolina or any other jurisdiction)³ can petition the district court in their county of residence to have their firearms rights restored if they meet all of the following requirements:

1. The applicant’s civil rights must have been restored for at least 20 years;⁴
2. The applicant must not have any misdemeanor convictions since the nonviolent felony conviction;
3. He applicant must submit to fingerprinting and a criminal background check by the Sheriff of his county of residence; *and*
4. The applicant must not be disqualified under G.S. § 14-415.4(e), which prohibits a felon from possessing a firearm if he is disqualified from owning or possessing guns under another law, is under indictment or a finding of probable cause for a felony, is a fugitive from justice, is an unlawful drug user, has been dishonorably discharged from the military, has a conviction or prayer for judgment continued for a violent misdemeanor or another nonviolent felony, is free on bond or on his own recognizance for a crime that would prohibit him from having his firearms rights restored, or is subject to a Chapter 50B or Chapter 50C restraining order.⁵

Another amendment in 2011 provided that the Felony Firearms Act does not apply to a person who has been pardoned. N.C. Sess. Laws 2011-268, s. 13. *See Booth v. State*, ___ N.C.

³ The length of the waiting period for out of state convictions is unclear. G.S. § 14-415.4(c); *but see* G.S. § 14-415.4(d)(3). For more information on this issue, *see* Firearm Rights after Felony Conviction, UNC School of Government, footnote 1, <http://www.sog.unc.edu/node/2673>.

⁴ A felon’s citizenship rights (excluding firearms rights) are automatically restored upon completion of the felon’s sentence or pardon. *See* G.S. § 13-1 *et seq.*

⁵ The restoration process does not apply to misdemeanor convictions, however. This is important because federal law includes a firearm prohibition for a “misdemeanor crime of domestic violence.” 18 U.S.C. § 922(g)(9). Thus, an expunction of such a conviction would be necessary to lift this disability. *See* Firearm Rights after Felony Conviction, UNC School of Government, <http://www.sog.unc.edu/node/2673>.

App. ___, 742 S.E.2d 637 (2013) (pursuant to G.S. § 14-415.1(d), Act inapplicable to a pardoned felon).

Baysden v. State

Applying the *Britt* analysis to the 2011 case of *Baysden v. State*, the North Carolina Court of Appeals ruled that the 2004 amendments were also unconstitutional as applied to another plaintiff who had two nonviolent felony convictions from decades prior. ___ N.C. App. ___, 718 S.E.2d 699 (2011). Plaintiff's two felony convictions were from Virginia in the early 1970s for the sale of marijuana and possession of a sawed-off shotgun he had found that was apparently rusted-out and unworkable. Plaintiff regained his right to possess firearms in the mid-1980s, and exercised that right until passage of the statute in question made it illegal in 2004.

Although the decision in *Britt* addressed a plaintiff with a single nonviolent felony, creating a standard later incorporated into the Act by the legislature, the Court of Appeals considered the plaintiff in *Baysden* to be in substantially the same situation as the plaintiff in *Britt*, though he had two nonviolent convictions. *See Baysden*, 718 S.E.2d at 704. The Court considered the felonies nonviolent since the sawed off shotgun was unworkable. The Court further noted the convictions were from decades prior, and the plaintiff had been a law abiding citizen since and had responsibly owned firearms up until the Act made it illegal, at which point he complied with the law. Thus, the Act's prohibition was unconstitutional as applied to plaintiff. On appeal to the Supreme Court, the Justices were equally divided, with Justice Beasley taking no part in the case. This left the decision of the Court of Appeals undisturbed but without precedential value. *Baysden v. State*, 366 N.C. 370 (2013).

Conclusion

Whether the 2010 statutory amendments meet constitutional muster remains to be determined. While the legislature has statutorily established a firearms rights restoration process with a twenty year waiting period, as discussed above, it is unclear whether the courts will require more in light of the recent decisions of the Court of Appeals and Supreme Court in *Baysden*.