

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1994 Term

No. 21889

IN RE: APPLICATION OF WESLEY W. METHENEY
FOR STATE LICENSE TO CARRY A DEADLY WEAPON

Appeal from the Circuit Court of Monongalia County
Honorable Robert B. Stone, Judge
Law Action No. 89-P-118

REVERSED AND REMANDED

Submitted: January 18, 1994
Filed: February 17, 1994

J. Michael Benninger, Esq.
Wilson, Frame & Metheney
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Attorney for Appellant

The Opinion of the Court was delivered PER CURIAM.

JUSTICE WORKMAN dissents and reserves the right to file a dissenting opinion.

SYLLABUS BY THE COURT

"West Virginia Code § 61-7-4 (1989) sets out the eight specific requirements necessary to obtain a license to carry a concealed deadly weapon. If the judge determines that the specific requirements have been satisfied, then the circuit court must issue the license. However, the circuit court also has the power to examine the assertions made by the applicants to determine if the reasons are valid. If the court determines that the statute has not been satisfied, the petition for the license will be denied and an order issued with the court's findings of fact." Syllabus Point 2, Application of Metheney, 182 W. Va. 722, 391 S.E.2d 635 (1990).

Per Curiam:

Wesley W. Metheney appeals the denial of his application to obtain a license to carry a concealed deadly weapon pursuant to W. Va. Code 61-7-4 [1989]. Mr. Metheney maintains that the denial of his application was an abuse of discretion. Because the record clearly demonstrates that Mr. Metheney should be granted a license to carry a concealed deadly weapon, we reverse the order of the circuit court and remand the case with directions that the circuit court grant Mr. Metheney his license.

This is Mr. Metheney's third appeal to this Court concerning the rejection of his application. In In re Application of Metheney, 182 W. Va. 722, 391 S.E.2d 635 (1990) (Metheney I), we noted that Mr. Metheney and several other applicants had been denied applications to carry a concealed deadly weapon. Although disagreeing with the contentions of the Metheney I applicants, we

¹In Metheney I, the applicants claimed a constitutional right to carry concealed deadly weapons and contended that outside the specific provisions of W. Va. Code 61-7-4 [1989], the circuit court was without discretion to deny their applications. See Metheney I, 182 W. Va. at 724-25, 391 S.E.2d at 637-38 for our discussion of the constitutional right claim and the Legislature's intention to allow only citizens qualified under W. Va. Code 61-7-4 [1989] to obtain licenses to carry concealed weapons; see also Metheney I, 182 W. Va. at 725, 391 S.E.2d at 638 for our discussion of the circuit court's ability to examine the assertions made by applicants

found that W. Va. Code 61-7-4 [1989] allows a circuit court the discretion "to examine the assertions made by applicants for a license to carry a concealed deadly weapon. . . ." Metheney I, 182 W. Va. at 725, 391 S.E.2d at 638. In Syllabus Point 2, Metheney I, we said:

West Virginia Code § 61-7-4 (1989) sets out the eight specific requirements necessary to obtain a license to carry a concealed deadly weapon. If the judge determines that the specific requirements have been satisfied, then the circuit court must issue the license. However, the circuit court also has the power to examine the assertions made by the applicants to determine if the reasons are valid. If the court determines that the statute has not been satisfied, the petition for the license will be denied and an order issued with the court's findings of fact.

Based on Metheney I, the circuit court on remand held a hearing to examine Mr. Metheney's assertions. During the hearing,

before granting a license to carry a concealed weapon.

²After Metheney I, the circuit court affirmed the denial holding that no additional evidentiary hearing was necessary, and that Mr. Metheney's case was insufficient. Asserting that the circuit court's denial was part of a blanket policy, Mr. Metheney again appealed. By order dated November 7, 1990, we remanded the case "for the purpose of supplementing the record. . . ." After the circuit court failed to act, this Court, by writ issued on March 26, 1993, directed the circuit court "either to render a ruling granting the permit upon the application or to conduct a hearing on the allegations in the petition." On April 22, 1993, the circuit court granted a hearing. After the hearing, the circuit court again denied Mr. Metheney's application and the present appeal concerns this denial.

in attempting to show that he meets the requirements of W. Va. Code 61-7-4 [1989], Mr. Metheney testified that he needs a concealed weapon for self-defense and defense of family and home. Mr. Metheney described several break-ins at his office and family farm as well as several incidents when he was threatened while attempting to conduct investigations on behalf of criminal defense clients. After hearing Mr. Metheney's description of specific incidents, the circuit court found that although Mr. Metheney met the general requirements of W. Va. Code 61-7-4 [1989], Mr. Metheney's reasons

³W. Va. Code 61-7-4 [1989] states, in pertinent part:

(a) Any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the circuit court of his or her county for such license, and shall pay to the clerk of the circuit court, at the time of application, a filing fee of twenty dollars. The applicant shall file with the clerk of the circuit court an application in writing, duly verified, which sets forth the following:

(1) That the applicant is a citizen of the United States of America or lawfully resides in the United States of America;

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made;

(3) That the applicant is eighteen years of age or older;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug, and is not an unlawful user thereof;

(5) That the applicant has not been convicted of a felony or of an act of violence involving the misuse of such deadly weapon;

(6) That the applicant desires to carry such deadly weapon for the defense of self, family, home or state, or other lawful purpose;

for seeking a permit were insufficient to justify granting the requested permit. Following the circuit court's third denial of his application, Mr. Metheney appealed to this Court.

According to the record the circuit court determined that Mr. Metheney met the eight specific requirements listed in W. Va.

(7) That the applicant is physically and mentally competent to carry such weapon;

(8) That, in the case of a person applying for a license to carry a concealed pistol or revolver, the applicant has qualified under minimum requirements for handling and firing such firearms. These minimum requirements are those promulgated by the department of natural resources and attained under the auspices of the department of natural resources. . . .

. . . .

(b) The court shall issue or deny such license within thirty days after the application is filed with the circuit clerk. The court shall, if necessary, hear evidence upon all matters stated in such application and upon any other matter related to the eligibility of the applicant under subsection (a) of this section. If from such application or the proof it appears that the purpose for such person to carry such weapon is defense of self, family, home or state, or other lawful purpose, and all other conditions in subsection (a) are complied with, the court, or the judge thereof in vacation, shall grant such license.

(c) In the event an application is denied, the specific reasons for the denial shall be stated in the order of the court denying the application. Upon denial of an application and at the request of the applicant made within ten days of such denial, the court shall schedule the matter for a hearing. The applicant may be represented by counsel, but in no case shall the court be required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law.

Code 61-7-4 [1989]. However, the circuit court found that in order to satisfy the requirement that "the applicant desires to carry such deadly weapon for the defense of self, family, home or state, or other lawful purpose" (W. Va. Code 61-7-4(a)(6) [1989]), it was incumbent that Mr. Metheney show a "particular special and compelling need. . . to carry a concealed deadly weapon for the purposes of self-defense or the defense of family and home." Although the circuit court has discretion to examine the assertions made by applicants to determine if the reasons are valid, W. Va. Code 61-7-4 [1989] does not require an applicant to show a "particular special and compelling need." Given the statute's specific requirements, a court's review of an application cannot go behind the applicant's assertions unless the court has reason to believe, or the facts imply, that the applicant might seek to carry the weapon for an unlawful purpose. In this case we find that the circuit court erred in requiring the showing of a compelling need.

Because the circuit court found that Mr. Metheney met the requirements set out in W. Va. Code 61-7-4 [1989], we reverse the decision of the circuit court and remand the case to the circuit court with directions to issue Mr. Metheney a license to carry a concealed deadly weapon within ten days of the filing of this opinion.

For the above stated reasons, the judgment of the Circuit Court of Monongalia County is reversed and the case is remanded for the issuance of Mr. Metheney's license to carry a concealed deadly weapon.

Reversed and remanded.