

TRUE COPY

1
2
3 IN THE CIRCUIT COURT OF THE STATE OF OREGON
4 FOR THE COUNTY OF MULTNOMAH

5 **THEBAN L. TONNESEN,**

6 Petitioner,

7 v.

8 **MULTNOMAH COUNTY SHERIFF'S**
9 **OFFICE,**

10 Respondent.

Civil No. 1311-16313

MULTNOMAH COUNTY SHERIFF'S
OFFICE TRIAL MEMORANDUM

11 Respondent respectfully requests that this Court, after hearing testimony and the parties'
12 arguments and reviewing the exhibits submitted to the Court, dismiss the Petition for Review of
13 the Denial of Concealed Handgun License and Affirmative Claims for Injunctive Relief filed
14 herein, uphold the Sheriff's Office decision denying Petitioner's concealed handgun license, and
15 award the Respondent its costs and the prevailing party fee.
16

17 **I. STATEMENT OF FACTS**

18 Although Petitioner attempted to apply for a concealed handgun license in May, 2013,
19 due to an enormous back log of concealed handgun license applications, the Multnomah County
20 Sheriff's Office could not accept the Petitioner's application for a concealed handgun license
21 until September 26, 2013 (Exhibit 1, Petitioner's Application and Database entry showing date
22 fees accepted from Petitioner on September 26, 2013) A search of Petitioner's criminal history
23 showed that Petitioner had a felony conviction. (Exhibit 2, Petitioner's Washington State
24 criminal history). Petitioner indicated on his application that he had never been convicted of a
25
26

Page 1 – MULTNOMAH COUNTY SHERIFF'S OFFICE TRIAL MEMORANDUM

1 felony. (Exhibit 1, p. 2). On October 11, 2013, Lt. Ned Walls, who has delegated authority from
2 the Multnomah County Sheriff to act on his behalf regarding the issuance, denial and revocation
3 of concealed handgun licenses, sent a letter to the Petitioner denying his application for a
4 concealed handgun license because of his felony conviction and the fact that he lied on his
5 application. (Exhibit 3). On December 6, 2013, after additional review of Petitioner's
6 Washington criminal history, which showed that Petitioner had a conviction for possession of
7 marijuana, Lt. Walls sent a second letter to the Petitioner informing him that a concealed
8 handgun license could not be issued to him because he had a conviction a drug offense. (Exhibit
9 4). Petitioner stated on his Application that he had never been to court for a drug offense.
10 (Exhibit 1, p. 2; Ex. 4). At the bottom of the application for concealed handgun license there is
11 a paragraph informing the applicant that making false statements on the application constitutes a
12 crime. (Exhibit 1, p. 2).
13
14

15 When Petitioner applied for the concealed handgun license, he included with his
16 application a certificate showing that his firearm rights had been restored in Washington;
17 however, he did not submit any evidence that any of his Washington convictions had been
18 expunged. (Exhibit 5).
19

20 II. STATEMENT OF LAW

21 A concealed handgun license may be denied or revoked by the Sheriff under ORS
22 166.293(2) and (3) (a). (*Bates v. Gordon*, 212 Or App 336, 346-347 (2007)).
23

24 ORS 166.291 sets forth the criteria for issuance of a concealed handgun license by the
25 Sheriff. The criteria include that the applicant cannot have been convicted of a felony (ORS
26 166.291 (1) (g)) and cannot have been convicted of an offense involving controlled substances.

1 (ORS 166.291 (L)) Regarding felony convictions the statute provides for an exception, namely,
2 the applicant has been granted relief under ORS 166.274 (restoration of right to possess firearms)
3 or 166.293 or section 5, chapter 826, Oregon Laws 2009, or 18 USC 925(c) or has had the
4 applicant's record expunged under the laws of this state or equivalent laws of other jurisdictions.

5 There is no exception for restoration of firearm rights under the laws of another state.

6
7 Regarding offenses involving controlled substances, the only exceptions are for persons
8 convicted only once of violating ORS 475.864 (3) who have not completed drug diversion under
9 ORS135.907 or persons who have completed court-supervised drug diversion programs who
10 have not been convicted of violating ORS 475.864 (3). There is no exception for convictions
11 involving controlled substances under the laws of another state.

12
13 ORS 166.293 (6) states that a judgment affirming or overturning the sheriff's decision to
14 deny an application shall be based on whether the petitioner meets the criteria that are used to
15 issue a concealed handgun license.

16 In the present case, Lt. Walls will first testify regarding the enormous amount of
17 applications for concealed handgun licenses the Sheriff's Office has received this past year which
18 has necessarily slowed down the ability of the Sheriff's Office to accept applications. Lt. Walls
19 will also testify that he has delegated authority from the Multnomah County Sheriff to act on his
20 behalf in regard to the denial of applications for concealed handgun licenses. Ned Walls will
21 testify that his review of Petitioner's concealed handgun application shows that Petitioner was
22 convicted of a felony in 1991 and, although Petitioner's right to possess firearms has been
23 restored in Washington, his felony conviction has not been expunged.¹ Since Petitioner's felony
24

25
26 ¹ It appears that in Washington, as in Oregon (see ORS 166.274 and ORS 137.225), restoration

1 has not been expunged, Lt. Walls could not issue a concealed handgun license to Petitioner.

2 Lt. Walls will also testify that Petitioner's criminal history shows a conviction for an
3 offense involving controlled substances and Petitioner's conviction does not fall within the
4 narrow exception for controlled substance convictions provided by ORS 166. 291 (L) (A) and
5 (B).
6

7 Finally, Lt. Walls will testify that his decision to deny a concealed handgun license to the
8 Petitioner should be affirmed by this Court because Petitioner made false statements, not once,
9 but twice when filling out his application; an act that constitutes a crime.

10 **CONCLUSION**

11 This Court should affirm Lt. Wall's decision to deny a concealed handgun license to the
12 Petitioner because he has a felony conviction that has not been expunged, a conviction involving
13 controlled substances and because he twice lied on his application for a concealed handgun
14 license.
15

16 DATED this 19th day of December, 2013.

17 Respectfully submitted,

18 JENNY M. MADKOUR, COUNTY ATTORNEY
19 FOR MULTNOMAH COUNTY, OREGON

20 

21 Susan M. Dunaway, OSB No. 970506
22 Assistant County Attorney
23 Of Attorneys for Multnomah County Sheriff's Office
24

25
26 of gun rights is separate from expungement or restoration of civil rights. *State v. Krzeszowski*,
2001 Wash. App. LEXIS 1295 (2001) (Attached as Appendix 1 for the Courts' convenience.)

CERTIFICATE OF SERVICE


I hereby certify that on December 19, 2013, I served the foregoing **MULTNOMAH**

COUNTY SHERIFF'S OFFICE TRIAL MEMORANDUM on:

Theban L. Tonnesen
621 SE 151st Avenue
Portland, OR 97233

by the following method or methods as indicated:

- (X) by **emailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- (X) by causing a true copy thereof to be **hand delivered** to said person(s) at the last known address for said person(s) as shown above, on the date set forth above.
- () by mailing via **certified mail, return receipt requested**, to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.



 Amy Goodale
 Paralegal



MULTNOMAH COUNTY SHERIFF'S OFFICE
12240 NE Gilsan St., • Portland, OR 97230

DANIEL STATION
SHERIFF

9/26
8:45

Exemplary service for a safe, livable community

503 251-2417 PHONE
503 251-2513 FAX
www.mcso.us

APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUNS

All services require payment

<input checked="" type="checkbox"/> New Applicant (\$65) Never applied for Multnomah County CHL	<input type="checkbox"/> Transfer (\$30) (If you have moved into Multnomah County and have a different Oregon County's CHL)	<input type="checkbox"/> Transfer & Renewal (\$65) (If you have moved into Multnomah County and have a different Oregon County's CHL that has already expired or will soon expire)	<input type="checkbox"/> Address Change (\$15) (If you already have a CHL from <u>Multnomah</u> County) <small>Please submit payment with form for address change only.</small>	<input type="checkbox"/> Name Change (\$15)
<input type="checkbox"/> Renewal (\$50)				<input type="checkbox"/> Reinstatement (\$50)

Date: 04/17/13 CHL # 1303570 (Only if this is a Renewal or Reinstatement) Exp. Date _____

Official Use only Second ID Type: NA CHL US Citizenship: US Passport
 Cert of Naturalization
 Birth Certificate

Kevin Faherty Competency Instructor
152454450 NRA/DPSST #

If you are applying as an out of state applicant, include a letter listing your compelling reason for wanting an Oregon permit with this application. If you are not a Washington State resident, you must own property in Multnomah County to qualify.

Full Legal Name: Tonnesen Theban Luque
Last Name First Name Middle Name

Maiden Name and/or Aliases (List all names previously used): None

Date of Birth: [REDACTED] State of Birth: TX OR Country if not born in US: _____

Social Security Number: _____
Disclosure of your social security number is voluntary. Solicitation of the number is authorized under ORS 166.420. It will be used only for identification.

Race White Sex Male Height 6'2" Weight 240 lbs Eyes Blue Hair Brown

Driver's License #: [REDACTED] State: OR Expiration: 07-06-2019

Residence Address: 621 S.E. 151st Ave Portland OR 97233
Street Address City State Zip Code

Mailing Address (if different): Same as residence
Street Address City State Zip Code

Home Phone Number (include area code): See cell phone # Cell Phone (include area code): (503) 704-6614

Proof of Residence: Current Driver's License Voter's Registration Card
 Previous Year's Oregon Tax Return Current Rent or Lease Agreement
 Real Property Ownership in Multnomah County

Email Address: theban@pdx.edu

List all states where you have lived (since age 18): Washington, Oregon

Character References (New & Transfer applications only): List 2 local and non-family references: 2.0

- 1. Stephen D. Harrah, 15145 SE Anderson Road, Damascus, OR 97089, (503) 957-0003
Name, Complete Mailing Address, and Phone Number
- 2. Leon K. Abel, 337 NW Ogden Street, Camas, WA 98607 (360) 601-8727
Name, Complete Mailing Address, and Phone Number

Employer Name, Address, & Phone (Optional): Declined

List residence addresses for the past three years and dates you resided at each (If different from current address):

- 621 SE 151st Avenue, Portland, OR 97233 (06-09-2011 to current)
- 4800 NE 109th Street, Vancouver, WA 98686 (09-01-2009 to 06-09-2011)

INITIAL each box indicating that you have read each statement. PLEASE READ CAREFULLY

I HEREBY DECLARE AS FOLLOWS:

I am a citizen of the United States. If I am not a citizen, I am a legal resident alien who can document continuous residency in Multnomah County for at least six months and have declared in writing to the United States Citizenship and Immigration Services my intention to become a citizen and can present proof of the written declaration to the Sheriff at the time of this application.

JH
JH

I am now at least 21 years of age.

I have not been under the jurisdiction of the juvenile department for the last four years for committing an act, that if committed by an adult, would constitute a felony or a misdemeanor involving violence.

JH
JH

I have **NEVER** been convicted of or found guilty of a felony.

I have **NOT**, within the last four years, been convicted of or found guilty of a misdemeanor.

JH
JH

There are no outstanding warrants for my arrest.

I do **NOT** have any charges pending in any court resulting from any citation or arrest.

JH
JH

I have not been mentally committed by a court nor have I been found mentally ill and am not presently subject to an order prohibiting me from purchasing a firearm because of mental illness.

I have never been to court for any charge involving drugs. (Per O.R.S. 166.291 (2))

JH
JH

I am not subject to a citation or court order restraining me from contacting or stalking another.

I have not received a dishonorable discharge (enlisted members) or a dismissal (commissioned officers) from the U.S. Armed Forces.

JH
JH

I am not required to register as a sex offender in any state.

I understand I will be photographed and fingerprinted.

JH
JH

I have read the entire text of this application and understand it completely. The statements I have made are correct and true. I understand that making false statements on this application is a *crime*. If I have made false statements in this application, I am subject to prosecution and my application will automatically be denied or revoked.

JH

Signature of Applicant:

[Handwritten Signature]

Date:

4-17-13

Permit Fees Paid

<u>Row</u>	<u>Date</u>	<u>Fee Description</u>	<u>Fee</u>	<u>Payment Type</u>	<u>Received By</u>
1	09/26/2013	New Permit	65.00	Credit Card	41154

RY412240000:REUR 1224 NLETS
FR, WAWSP0000
11:37 10/10/2013 14988
11:37 10/10/2013 08034 OR0260000
*M392OR1224

TXT
PUR/F, ATN/JAVOR, ANELA, SID/WA14989497
PAGE 2

FQ. OR0260000. 11:37 10/10/2013 0659511:37 10/10/2013 16271 WA11:37*M392OR1224TXT
PUR/F, ATN/JAVOR, ANELA, SID/WA14989497

ATN/JAVOR, ANELA
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA14989497

ARREST OFFENSES
07369 VUCSA-POSS MARIJ 40 GRAMS OR LESS
RCW: 69.50.401(E)
MISDEMEANOR
WARRANT NO: WSP75866
ORIGINATING AGENCY: WA0060000
CLARK COUNTY SHERIFF
DISPO RESPONSIBILITY: WA006015J
COURT CASE NO: WSP75866
DATE OF OFFENSE: 04/23/1996

DISPOSITION
CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA006015J CLARK COUNTY SUPERIOR
COURT
COURT CASE NO: 911009406
REFER TO 09/19/1991

09910 PROBATION/SUPERVISION VIOLATION
CLASS UNKNOWN
ORIGINATING AGENCY: WA0060000
CLARK COUNTY SHERIFF
OIN: 910009406
DISPO RESPONSIBILITY: WA006015J
DATE OF OFFENSE: 04/23/1996

ARREST 4 DATE OF ARREST: 04/10/1993

NAME USED: TONNESEN, THEBAN L
CONTRIBUTING AGENCY: WA0171300 RENTON POLICE DEPARTMENT
LOCAL ID: 40372 PCN: N/A TCN: N/A

ARREST OFFENSES
07644 DRIVING UNDER THE INFLUENCE
RCW: 46.61.502
GROSS MISDEMEANOR
ORIGINATING AGENCY: WA0171300
RENTON POLICE DEPARTMENT
OIN: J1008301
DISPO RESPONSIBILITY: WA017103J
DATE OF OFFENSE: 04/10/1993

DISPOSITION
CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA017103J RENTON DISTRICT COURT
COURT CASE NO: J100830
STATUS: NOT GUILTY
07644 DRIVING UNDER THE INFLUENCE
RCW: 46.61.502
GROSS MISDEMEANOR
STATUS DATE: 08/20/1993

07620 HIT AND RUN
RCW: 46.52.020
CLASS UNKNOWN
ORIGINATING AGENCY: WA0171300
RENTON POLICE DEPARTMENT
OIN: J1008302
DISPO RESPONSIBILITY: WA017101J
DATE OF OFFENSE: 04/10/1993

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA017101J RENTON MUNICIPAL COURT
COURT CASE NO: J100830
STATUS: NOT GUILTY
07620 HIT AND RUN
RCW: 46.52.020
CLASS UNKNOWN
STATUS DATE: 08/20/1993

<https://webleds.mcco.mccj.local/ledcgi/printresponse.pl?file=responses/24Y4/10-10-13 1...> 10/10/2013

ARREST 3 DATE OF ARREST: 09/19/1991

NAME USED: TONNESEN, THEBAN L
 CONTRIBUTING AGENCY: WA0060300 VANCOUVER POLICE DEPARTMENT
 LOCAL ID: 112506 PCN: N/A TCN: N/A

ARREST OFFENSES
 02152 MALICIOUS MISCHIEF-1
 RCW: 9A.48.070(1)
 CLASS B FELONY
 ORIGINATING AGENCY: WA0060300
 VANCOUVER POLICE DEPARTMENT
 OIN: 8559
 DISPO RESPONSIBILITY: WA006015J
 DATE OF OFFENSE: 09/19/1991

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006015J CLARK COUNTY SUPERIOR
 COURT
 COURT CASE NO: 911009406

STATUS: GUILTY
 02172 MALICIOUS MISCHIEF-2
 RCW: 9A.48.080(1)
 CLASS C FELONY
 STATUS DATE: 11/01/1991

SENTENCE: SENT. DESC.:
 CHG 01: JAIL-60 DS, SUPV-1
 YR 04/24/1996 JAIL-10 DS

SUBSEQUENT DISPOSITION: RIGHT TO
 POSSESS A FIREARM RESTORED
 DATE: 02/08/2013
 ORI: WA006015J
 COMMENT: 9.41.040(4), 132002136

ARREST 2 DATE OF ARREST: 11/19/1990

NAME USED: TONNESEN, THEBAN L
 CONTRIBUTING AGENCY: WA006025J CLARK COUNTY JUVENILE COURT
 LOCAL ID: 199723 PCN: N/A TCN: N/A

ARREST OFFENSES
 07300 VUCSA
 RCW: 69.50.401
 CLASS UNKNOWN
 ORIGINATING AGENCY: WA006025J
 CLARK COUNTY JUVENILE COURT
 DISPO RESPONSIBILITY: WA006025J
 DATE OF OFFENSE: 11/19/1990
 JUVENILE

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006025J CLARK COUNTY JUVENILE
 COURT
 COURT CASE NO: 199723
 REFER TO 06/26/1990

ARREST 1 DATE OF ARREST: 06/26/1990

NAME USED: TONNESEN, THEBAN L
 CONTRIBUTING AGENCY: WA006025J CLARK COUNTY JUVENILE COURT
 LOCAL ID: 199723 PCN: N/A TCN: N/A

ARREST OFFENSES
 07300 VUCSA
 RCW: 69.50.401
 CLASS UNKNOWN
 ORIGINATING AGENCY: WA006025J

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006025J CLARK COUNTY JUVENILE
 COURT
 COURT CASE NO: 199723

<https://webleds.mcsocj.local/ledcgi/printresponse.pl?file=responses/24Y4/10-10-13 1...> 10/10/2013

CLARK COUNTY JUVENILE COURT
DISPO RESPONSIBILITY: WA006025J
DATE OF OFFENSE: 06/26/1990
JUVENILE

STATUS: GUILTY
07300 VUCSA
RCW: 69.50.401
CLASS UNKNOWN
STATUS DATE: 06/26/1990

07300 VUCSA
RCW: 69.50.401
CLASS UNKNOWN
ORIGINATING AGENCY: WA006025J
CLARK COUNTY JUVENILE COURT
DISPO RESPONSIBILITY: WA006025J
DATE OF OFFENSE: 06/26/1990
JUVENILE

SENTENCE: SENT, DESC.:
CHG 01: JAIL - 6 DS, COMM
SUPV - 9 MOS **CHG 02:
DISP DT - 12/28/1990, FINE
- 25.00, JAIL - 32 DS,
COMM SUPV - 12 MOS

STATUS: GUILTY
07300 VUCSA
RCW: 69.50.401
CLASS UNKNOWN
STATUS DATE: 06/26/1990

STATE DEPARTMENT OF CORRECTIONS

NO KNOWN CUSTODY HISTORY INFORMATION

CUSTODY STATUS INFORMATION

NAME: TONNESEN, THEBAN L
DATE: 09/10/2001
DOC NUMBER: 986228
CUSTODY STATUS: INACTIVE
LOCATION: VANCOUVER EA
(NON-VERIFIED CUSTODY STATUS INFORMATION-PROVIDED BY DEPARTMENT OF CORRECTIONS)

NO KNOWN SEX/KIDNAPPING OFFENDER REGISTRATIONS

NO KNOWN APPLICANT DETAILS

GLOSSARY OF TERMS IS AVAILABLE IN THE CRIMINAL JUSTICE TRAINING MANUAL (CJTM)
LOCATED AT <http://www.wsp.wa.gov/crime/crimhist.htm>

RESOURCES

ADMINISTRATIVE OFFICE OF THE COURTS (AOC)-----WWW.COURTS.WA.GOV
WSP CHRU -----CRIMHIS@WSP.WA.GOV OR
(360) 534-2000
DEPARTMENT OF CORRECTIONS (DOC)-----WWW.DOC.WA.GOV
WSP SOR UNIT----- (360) 534-2000
WSP CRIME LAB CODIS----- (206) 262-6020
END OF PAGE 2 - PAGE 3 TO FOLLOW

Received on 10/10/13 at 11:37:17

<https://webleds.mcso.mccj.local/ledcgi/printresponse.pl?file=responses/24Y4/10-10-13 1...> 10/10/2013

DANIEL STATON
SHERIFF



Washington State Criminal Penalties *a safe, livable community*

(503) 255-3600 PHONE
(503) 261-2484 TTY
www.mceo.us

CRIMINAL OFFENSE	MAXIMUM PENALTY
RCW 69.50.401 (2) (c) (d) (e) - (iv) Manufacture, delivery, or possession with intent to deliver a Schedule III, IV or V Controlled Substance (such as barbituric acid derivatives and stimulants other than amphetamine and methamphetamine) as defined by RCW 69.50.208; 69.50.210; and 69.50.212	Class C Felony Not more than five years; or a fine of \$10,000, both such imprisonment and fine.
RCW 69.50.401 (2) (a) Manufacture, delivery, or possession with intent to deliver a Schedule I or II Controlled Substance (except heroin, cocaine, or methamphetamine) as defined by RCW 69.50.204 and RCW 69.50.206	Class B Felony Not more than ten years and a fine of \$25,000 (if less than 2 kg); or a fine of \$100,000 for first 2 kg plus \$50 for each gram in excess of 2 kg., or both such imprisonment and fine.
RCW 69.50.401 (2) (b) ***Manufacture, delivery, or possession with intent to deliver methamphetamine	Class B Felony Not more than ten years and a fine of \$25,000 (if less than 2 kg); or a fine of \$100,000 for first 2 kg plus \$50 for each gram in excess of 2 kg., or both such imprisonment and fine.
***Manufacture, delivery, or possession with intent to deliver heroin RCW 69.50.401 (2) (a) or cocaine (RCW 60.50.401 (2) (c))	Class B Felony Heroin - not more than ten years and a fine of \$25,000 (if less than 2 kg); or a fine of \$100,000 for first 2 kg plus \$50 for each gram in excess of 2 kg, or both such imprisonment and fine.
RCW 69.50.4014 Possession of Marijuana; less than forty (40) grams	Misdemeanor Not more than 90 days and a fine of \$1,000.
RCW 69.50.4013 Possession of a Schedule III, IV, or V Controlled Substance (such as barbituric acid derivatives and stimulants other than amphetamine and methamphetamine) as defined by RCW 69.50.208; 69.50.210; and RCW 69.50.211	Class C Felony Not more than five years or a fine of \$10,000, or both such imprisonment and fine.
RCW 69.50.4013 Possession of heroin, methamphetamine, marijuana (greater than 40 grams), phencyclidine (PCP), or a Schedule I or II Controlled Substance as defined by RCW 69.50.204 and 69.50.206	Class C Felony Not more than five years or a fine of \$10,000, or both such imprisonment and fine.
RCW 69.50.401 (2) (c) Manufacture, delivery or possession with intent to deliver marijuana	Class C Felony Not more than five years or a fine of \$10,000, or both such imprisonment and fine.

RY412240000.REUR 1224 NLETS
OR0260000
CTL/M392OR1224
ATN/

CR.WAII0000
11:36 10/10/2013 14969
11:36 10/10/2013 08018 OR0260000
*M392OR1224

TXT
HDR/2L01LDB-0M392OR1224
ATN/JAVOR, ANELA

PAGE 1

\$.A.CHR.HDR/2L01LDB-0M392OR1224.NCF/M392OR1224.TME/1436.TMZ/EDT.DTE/20131010.
ORI/OR0260000.SID/WA14989497.FBI/618561NA3.NAM/TONNESEN,THEBAN LUQUE.PUR/
F.TOS/BASED ON FBI NUMBER ONLY.ORT/MULTNOMAH CO SO PORTLAND.ATN/JAVOR,
ANELA.CRIMINAL HISTORY REQUESTED

ATN/JAVOR, ANELA
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA14989497
SINGLE STATE OFFENDER

WASHINGTON STATE PATROL
IDENTIFICATION AND CRIMINAL HISTORY SECTION
P.O. BOX 42633
OLYMPIA, WASHINGTON 98504-2633

CRIMINAL HISTORY INFORMATION AS OF 10/10/2013

NOTICE

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY.
SECONDARY DISSEMINATION OF THIS CRIMINAL HISTORY RECORD INFORMATION IS
PROHIBITED UNLESS IN COMPLIANCE WITH THE WASHINGTON STATE CRIMINAL RECORDS
PRIVACY ACT, CHAPTER 10.97 RCW.
POSITIVE IDENTIFICATION CAN ONLY BE BASED UPON FINGERPRINT COMPARISON. BECAUSE
ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED
FOR SUBSEQUENT USE. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED,
COMMUNICATE DIRECTLY WITH THE AGENCY THAT SUPPLIED THE INFORMATION TO THE
WASHINGTON STATE PATROL.

MASTER INFORMATION

NAME: TONNESEN, THEBAN L DOB: 07/06/1973
SID NUMBER: WA14989497 FBI NUMBER: 618561NA3
DOC NUMBER: 986228

PERSON INFORMATION

SEX RACE HEIGHT WEIGHT EYES HAIR PLACE OF BIRTH CITIZENSHIP
M W 602 177 GRN BRO TX
OTHER NAMES USED OTHER DATES OF SOC SEC MISC NUMBER
TONNESEN, THEBAN L BIRTH USED NUMBER
TONNESEN, THEBAN LUQUE
TONNESEN, THEBAN LUQUE
DNA TAKEN: N DNA TYPED: N

SCARS, MARKS, TATTOOS, AMPUTATIONS

LOCATION DESCRIPTION LOCATION DESCRIPTION
SC ABDOM TAT L ARM CARTOON CHARACTERS
TAT R FGR RELIGIOUS

https://webleds.mcso.mccj.local/ledcgi/printresponse.pl?file=responses/24Y4/10-10-13 1... 10/10/2013

CONVICTION AND/OR ADVERSE FINDING SUMMARY

```

*****
1 FELONY(S)                                DISPOSITION DATE
    MALICIOUS MISCHIEF-2                    CLASS C FELONY    11/01/1991
1 GROSS MISDEMEANOR(S)
    DRIVING UNDER THE INFLUENCE            03/19/1997
2 MISDEMEANOR(S)
    DRIVING WHILE LIC SUSP OR REVOKED-3    09/25/1998
    DRIVING WHILE LIC SUSP OR REVOKED-3    03/19/1997
2 CLASSIFICATION(S) UNKNOWN
    YUCSA                                    06/26/1990
    YUCSA                                    06/26/1990
*****
  
```

**** NO KNOWN DOC SUMMARY INFORMATION ****

CRIMINAL HISTORY INFORMATION

 THE ARRESTS LISTED MAY HAVE BEEN BASED ON PROBABLE CAUSE AT THE TIME OF ARREST
 OR ON A WARRANT, PROBABLE CAUSE ARRESTS MAY OR MAY NOT RESULT IN THE FILING OF
 CHARGES. CONTACT THE ARRESTING AGENCY FOR INFORMATION ON THE FORMAL CHARGES
 AND/OR DISPOSITIONS.

ARREST 9 DATE OF ARREST: 07/26/1999

NAME USED: TONNESEN, THEBAN LUQUE
 CONTRIBUTING AGENCY: WA0060000 CLARK COUNTY SHERIFF
 LOCAL ID: 112506 PCN: N/A TCN: N/A

ARREST OFFENSES
 09930 FAIL TO COMPLY
 CLASS UNKNOWN
 WARRANT NO: 251349
 ORIGINATING AGENCY: WA0060000
 CLARK COUNTY SHERIFF
 OIN: 99008802
 DISPO RESPONSIBILITY: WA006023J
 COMMENT: DWLS/REV 3

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006023J CLARK COUNTY DISTRICT
 COURT
 COURT CASE NO: 251349
 STATUS: GUILTY
 07633 DRIVING WHILE LIC SUSP OR
 REVOKED-3
 RCW: 46.20.342(C)
 MISDEMEANOR
 STATUS DATE: 09/25/1998
 SENTENCE: SENT. DESC.:
 CHG 01: FINE-1000.00/
 SUSPENDED 500.00, JAIL-90
 DS/SUSPENDED 85 DS

ARREST 8 DATE OF ARREST: 09/16/1998

NAME USED: TONNESEN, THEBAN LUQUE
 CONTRIBUTING AGENCY: WA0060000 CLARK COUNTY SHERIFF
 LOCAL ID: 112506 PCN: N/A TCN: N/A

ARREST OFFENSES
 07633 DRIVING WHILE LIC SUSP OR REVOKED-3
 RCW: 46.20.342(C)
 MISDEMEANOR
 ORIGINATING AGENCY: WA0060000

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006023J CLARK COUNTY DISTRICT
 COURT
 COURT CASE NO: 97053

<https://webleds.mcso.mccj.local/ledcgi/printresponse.pl?file=responses/24Y4/10-10-13 1...> 10/10/2013

CLARK COUNTY SHERIFF
 OIN: 98010543
 DISPO RESPONSIBILITY: WA006023J
 DATE OF OFFENSE: 09/16/1998
 COMMENT: WRNT97053

REFER TO 03/16/1997

ARREST 7 DATE OF ARREST: 03/19/1997

NAME USED: TONNESSEN, THEBAN L
 CONTRIBUTING AGENCY: WA0060000 CLARK COUNTY SHERIFF
 LOCAL ID: 112506 PCN: N/A TCN: N/A

ARREST OFFENSES
 07644 DRIVING UNDER THE INFLUENCE
 RCW: 46.61.502
 GROSS MISDEMEANOR
 ORIGINATING AGENCY: WA0060000
 CLARK COUNTY SHERIFF
 OIN: 97002887
 DISPO RESPONSIBILITY: WA006023J
 DATE OF OFFENSE: 03/19/1997
 COMMENT: 97053

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006023J CLARK COUNTY DISTRICT
 COURT
 COURT CASE NO: 97053
 REFER TO 03/16/1997

ARREST 6 DATE OF ARREST: 03/16/1997

NAME USED: TONNESON, THEBAN L
 CONTRIBUTING AGENCY: WA0060000 CLARK COUNTY SHERIFF
 LOCAL ID: 112506 PCN: N/A TCN: N/A

ARREST OFFENSES
 09930 FAIL TO COMPLY
 CLASS UNKNOWN
 ORIGINATING AGENCY: WA0060000
 CLARK COUNTY SHERIFF
 OIN: 97002782
 DISPO RESPONSIBILITY: WA006023J
 DATE OF OFFENSE: 03/16/1997
 COMMENT: WRNT97053 DWI

DISPOSITION
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA006023J CLARK COUNTY DISTRICT
 COURT
 COURT CASE NO: 97053
 STATUS: GUILTY
 07644 DRIVING UNDER THE INFLUENCE
 RCW: 46.61.502
 GROSS MISDEMEANOR
 STATUS DATE: 03/19/1997

SENTENCE: JAIL: 365 DS,
 JAIL SUS.: 363 DS
 FINE: \$5225.00, FINE SUS.:
 \$4200.00

STATUS: GUILTY
 07633 DRIVING WHILE LIC SUSP OR
 REVOKED-3
 RCW: 46.20.342(C)
 MISDEMEANOR
 STATUS DATE: 03/19/1997

SENTENCE: JAIL: 90 DS
 FINE: \$1000.00, FINE SUS.:
 \$500.00

ARREST 5 DATE OF ARREST: 04/23/1996

NAME USED: TONNESON, THEBAN LUQUE
CONTRIBUTING AGENCY: WA0060000 CLARK COUNTY SHERIFF
LOCAL ID: 112506 PCN: N/A TCN: N/A

END OF PAGE 1 - PAGE 2 TO FOLLOW

Received on 10/10/13 at 11:36:51



MULTNOMAH COUNTY SHERIFF'S OFFICE
12240 NE GLISAN ST., • PORTLAND, OR 97230

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DANIEL STATON
SHERIFF

(503) 255-3600 PHONE
(503) 251-2484 TTY
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October 11, 2013

Theban Luque Tonnesen
621 SE 151st Avenue
Portland, OR 97233

Dear Mr. Tonnesen,

The background check resulting from your application for a concealed handgun license shows that on November 1, 1991 you were convicted of Malicious Mischief-2, a felony, in the Clark County Superior Court in the state of Washington. You falsified your application by initialing the statement which read "I have *never* been convicted of or found guilty of a felony". Therefore, your application 13-03570 for a concealed handgun license is hereby denied.

A person who has a concealed handgun license application denied or revoked may petition the Multnomah County Circuit Court for review as allowed under ORS 166.293(5). You may contact an attorney for legal advice as the Sheriff's Office cannot fulfill this role in regard to any petition to the court. The Circuit Court may be contacted at the following address and phone:

Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, OR 97204-1123
General Information Phone: 503.988.3957

Sincerely,

A handwritten signature in cursive script, appearing to read "Ned Walls".

Lt. Ned Walls
Concealed Handgun License Unit
Multnomah County Sheriff's Office
NW/aj



MULTNOMAH COUNTY SHERIFF'S OFFICE

12240 NE GLISAN ST., • PORTLAND, OR 97230

Exemplary service for a safe, livable community

DANIEL STATON
SHERIFF

(503) 255-3600 PHONE
(503) 251-2484 TTY
www.mcso.us

December 6, 2013

Theban Luque Tonnesen
621 SE 151st Avenue
Portland, OR 97233

Dear Mr. Tonnesen,

On October 11th, 2013 we sent you a letter denying your application for a concealed handgun license. In that you inaccurately filled out the application. You initialed two locations; That you had never been convicted of or found guilty of a felony when in fact your criminal history shows a 1991 felony conviction.

Further review of your criminal back ground has revealed that you were arrested on April 23, 1996 for VUSCA-Possession of Marijuana 40 grams or less, a misdemeanor, and you initialed the declaration page on your application that "I have never been to court for any charge involving drugs". You hand wrote after the statement (per ORS. 166.291(2)).

You also attached to your concealed handgun license application a copy of your restoration of your right to possess firearms. The copy of your restoration of your right to possess firearms lists only the charge of Malicious Michief II from 11-01-91, it does not list your misdemeanor possession of Marijuana 40 grams or less. Under ORS 166.291 (L) precludes issuance of a concealed handgun license to anyone convicted of an offense involving controlled substances. Therefore, your application 13-03570 for a concealed handgun license is hereby denied.

A person who has a concealed handgun license application denied or revoked may petition the Multnomah County Circuit Court for review as allowed under ORS 166.293(5). You may contact an attorney for legal advice as the Sheriff's Office cannot fulfill this role in regard to any petition to the court. The Circuit Court may be contacted at the following address and phone:

Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, OR 97204-1123
General Information Phone: 503.988.3957

Sincerely,

A handwritten signature in cursive script, appearing to read "Ned Walls".

Lt. Ned Walls


Concealed Handgun License Unit
Multnomah County Sheriff's Office

NW/aj

1
ccsd
DSP

FILED
2013 FEB -8 AM 9:26
SCOTT G. WEBER, CLERK
CLARK COUNTY

(Copy Receipt)

 SUPERIOR COURT OF WASHINGTON
COUNTY OF ~~CLATSOP~~ CLARK

Petitioner: Theban L. Tonnesen

vs.

Respondent: STATE OF WASHINGTON

(Clerk's Date Stamp)

CASE NO. 13-2-00213-6

RCW 9.41.040/9.41.047 CERTIFICATE
RE: CRIME Malicious Mischief II
DATE OF SENTENCE: 11-01-1991

THIS MATTER having come on for hearing before the above entitled court on the 8th day of February, 2013, it is hereby declared the petitioner in the above-entitled action is granted a Certificate and the petitioner's right to possess firearms is restored pursuant to RCW 9.41.040(4).

This declaration is based on the petitioner's successful completion of probation, deferred prosecution, deferred sentence, community supervision or _____ in the above-entitled matter and the lack of any criminal convictions since a finding of guilt entered in the above-entitled matter.

DONE IN OPEN COURT this 8th day of February, 2013.


JUDGE

Presented by:

Pro Se
Attorney for Petitioner, WSBA # _____


Theban L. Tonnesen
Petitioner

Approved for entry:

Attorney for Respondent, WBA # _____
RCW 9.41.040/9.41.047 CERTIFICATE

PAGE 1 OF 2
Rev: 8/2007



STATE OF WASHINGTON } ss.
COUNTY OF CLARK }
I, Scott G. Weber, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document consisting of 1 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, for the legal custody thereof.
Signed and sealed at Vancouver, Washington this date:
3-8-2013
Scott G. Weber, County Clerk
By  Deputy

9
70

2001 Wash. App. LEXIS 1295 Search Tips

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△ State v. Krzeszowski, 106 Wn. App. 638 (Copy citation)

Court of Appeals of Washington, Division One
June 11, 2001, Filed
No. 45381-5-I

Reporter: 106 Wn. App. 638 | 24 P.3d 485 | 2001 Wash. App. LEXIS 1295

THE STATE OF WASHINGTON, Respondent, v. BRIAN STEFAN KRZESZOWSKI, Appellant.

Notice: PUBLISHED IN PART

Core Terms

convict, firearm, possession of a firearm, law, restore, possess, prohibition, civil rights, actively, felon, government, statute, violate, criminal, notice, fact, post, expressly, defense, crime, reasonable regulation, prosecute, rely, right to bear arms, convicted felon, federal statute, constitute, entrapment, discharge, estoppel

Case Summary

Procedural Posture

Appellant sought review of the order of the Superior Court, Snohomish County, Washington, convicting him of manufacture of a controlled substance and unlawful possession of a firearm in the first degree.

Overview

Appellant was convicted of manufacture of a controlled substance and unlawful possession of a firearm in the first degree. The firearm conviction was based on appellant's possession of the firearms despite the fact that he was previously convicted of a serious felony offense. He appealed. On review, the appellate court affirmed. The possession of firearms was subject to reasonable regulation. Prohibiting convicted felons like appellant from possessing firearms was one such reasonable regulation. Notwithstanding his contentions, appellant was not affirmatively misled by the certificate and order of discharge restoring his civil rights.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

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Constitutional Law > Bill of Rights > Fundamental Rights > Right to Bear Arms
Criminal Law & Procedure > ... > Possession of Weapons > Unregistered Firearm > Elements

HN1: Under both the United States and Washington Constitution, the law is well established that the right to bear arms is not absolute and is subject to reasonable regulation. One reasonable regulation is the prohibition of possessing firearms by convicted felons. *Shepardize - Narrow by this Headnote*

Constitutional Law > Congressional Duties & Powers > Bills of Attainder & Ex Post Facto Clause > General Overview
Constitutional Law > ... > Bills of Attainder & Ex Post Facto Clause > Ex Post Facto Clause > General Overview

HN2: Both the Washington and United States Constitutions prohibit ex post facto laws. A criminal law is ex post facto when it punishes past conduct. *Shepardize - Narrow by this Headnote*

Constitutional Law > Congressional Duties & Powers > Bills of Attainder & Ex Post Facto Clause > General Overview
Criminal Law & Procedure > ... > Possession of Weapons > Unregistered Firearm > Elements

HN3: Wash. Rev. Code § 9.41.040 (1992) does not violate the ex post facto clause because it applies to possession of firearms in the future. Section 9.41.040's reference to past felony

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Topic Summaries
View reports (1)

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convictions does not change the fact that only the future conduct of firearm possession is penalized. [Shepardize - Narrow by this Headnote](#)

Civil Rights Law > [Protection of Rights](#) > [Prisoner Rights](#) > [Restoration of Rights](#)
Criminal Law & Procedure > [Postconviction Proceedings](#) > [Imprisonment](#)

HN4: See [Wash. Rev. Code § 9.94A.220](#) (1992). [Shepardize - Narrow by this Headnote](#)

Criminal Law & Procedure > ... > [Weapons Offenses](#) > [Possession of Weapons](#) > [General Overview](#)
Criminal Law & Procedure > ... > [Possession of Weapons](#) > [Unregistered Firearm](#) > [Elements](#)

HN5: Felons and persons convicted of a crime of violence are expressly prevented from possessing short firearms under [Wash. Rev. Code § 9.41.040](#) (1992). [Shepardize - Narrow by this Headnote](#)

Criminal Law & Procedure > ... > [Weapons Offenses](#) > [Possession of Weapons](#) > [General Overview](#)
Criminal Law & Procedure > ... > [Possession of Weapons](#) > [Unregistered Firearm](#) > [Elements](#)
Criminal Law & Procedure > ... > [Acts & Mental States](#) > [Mens Rea](#) > [Willfulness](#)

HN6: Knowledge that possession of a firearm is unlawful is not an element of the crime of unlawful possession of a firearm under the Washington statute. Thus, the State does not have to prove that a defendant knew it was illegal to possess firearms. [Shepardize - Narrow by this Headnote](#)

Criminal Law & Procedure > [Defenses](#) > [Ignorance & Mistake of Law](#)

HN7: Ignorance of the law is no defense to a criminal prosecution. Notice issues typically center around whether a law explains with sufficient clarity the conduct it purports to criminalize. [Shepardize - Narrow by this Headnote](#)

Civil Rights Law > [Protection of Rights](#) > [Prisoner Rights](#) > [Restoration of Rights](#)
Criminal Law & Procedure > ... > [Weapons Offenses](#) > [Possession of Weapons](#) > [General Overview](#)

HN8: The possession of firearms by a convicted felon is not sufficiently innocent. Felons are routinely restricted from various activities even after their civil rights have been restored. Moreover, the possession of firearms is frequently subject to regulation. No felon can reasonably assume that the possession of firearms is so innocent as to require notice before the crime can be prosecuted. [Shepardize - Narrow by this Headnote](#)

Criminal Law & Procedure > [Defenses](#) > [Entrapment](#)

HN9: In order for the defense of entrapment by estoppel to apply the government must actively mislead the defendant by inducing him to rely on an affirmative misrepresentation of the law by the government official. [Shepardize - Narrow by this Headnote](#)

Criminal Law & Procedure > [Defenses](#) > [Entrapment](#)

HN10: In those cases where courts apply entrapment by estoppel, the defendant relies upon an express, active representation by a government agent that the proscribed activity is in fact legal. Where the government agent has not expressly represented the activity as legal, the defense does not apply. [Shepardize - Narrow by this Headnote](#)

Headnotes/Syllabus

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Summary

Nature of Action: Prosecution for unlawful manufacture of a controlled substance and first degree unlawful possession of a firearm. The firearm possession charge was based on the defendant's alleged possession of firearms as a convicted felon. At the time of the alleged possession, the defendant's civil rights in relation to the felony conviction had been restored.

Superior Court: The Superior Court for Snohomish County, No. 99-1-00384-0, Anita L. Farris, J., on October 5, 1999, entered a judgment of guilty.

Court of Appeals: Holding that the prohibition against possession of firearms by convicted felons was reasonable and that the defendant was not affirmatively misled to believe that his right to bear arms had been restored by the certificate and order of discharge restoring his civil rights, the court *affirms* the judgment.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

WA11: [1]

Weapons > Possession > Right of Possession > Regulation > In General

The right to bear arms under the Second Amendment and [Const., art. I, § 24](#) is not absolute and is subject to reasonable regulation.

WA121* [2]

Weapons > Possession > By Felon > Statutory Prohibition > Validity > Right To Bear Arms

The right to bear arms under the Second Amendment and Const. art. I, § 24 does not preclude the State from regulating firearm ownership or possession by persons formerly convicted of felonies.

WA131* [3]

Criminal Law > Ex Post Facto Law > What Constitutes > Restriction of Future Conduct

The mark of an ex post facto law is that it punishes past conduct. A law that applies only to future conduct is not an ex post facto law.

WA141* [4]

Weapons > Possession > By Felon > Prior Conviction > Statutory Provisions > Amendment > Validity > Ex Post Facto Law

RCW 9.41.040, which has been amended to prohibit the ownership, possession, or control of any firearm by persons who have been convicted of "any serious offense," does not constitute an ex post facto law even when applied to convicted felons whose felonies were committed before the amendments were enacted.

WA151* [5]

Weapons > Possession > By Felon > Elements > Knowledge of Illegality

A convicted felon's knowledge that possession of a firearm is unlawful is not an element of the crime of unlawful possession of a firearm as defined by RCW 9.41.040(1)(a).

WA161* [6]

Criminal Law > Ignorance of Law > In General

Ignorance of the law is not a defense to a criminal charge.

WA171* [7]

Criminal Law > Crimes > Notice > Sufficiency > In General

In general, whether a criminal defendant has received sufficient notice that an act is criminalized depends on whether the statute that criminalizes the act explains with sufficient clarity the conduct it purports to criminalize.

WA181* [8]

Weapons > Possession > By Felon > Prior Conviction > Restoration of Civil Rights > Effect

Where the restoration of a felon's civil rights does not include the affirmative representation that the right to bear arms has been restored, prosecution of the felon for possession of firearms does not violate due process.

WA191* [9]

Criminal Law > Entrapment > Entrapment by Estoppel > Test

A criminal defendant may not raise the defense of entrapment by estoppel unless (1) a government official or agent has expressly represented that certain conduct is legal and (2) the defendant reasonably relies on such advice and continues or initiates the conduct. Reliance is reasonable only if a person sincerely desirous of obeying the law would have accepted the information as true and would not have been put on notice to make further inquiries.

WA101* [10]

Weapons > Possession > By Felon > Prior Conviction > Restoration of Civil Rights > Entrapment by Estoppel

The restoration of a convicted felon's civil rights under RCW 9.94A.220 will not support a defense of entrapment by estoppel to a charge of unlawful possession of a firearm under RCW 9.41.040 absent an express representation that the restoration included the right to bear arms.

Counsel: Timothy K. Ford (of MacDonald, Hoague & Bayless), for appellant.

James H. Krider, Prosecuting Attorney, and David F. Thiele, Deputy, for respondent.

Judges: Written by: Grosse. Concurred by: Ellington, Becker.

Opinion by: GROSSE

Opinion

[639] Grosse, J. -- The possession of firearms is subject to reasonable regulation. Prohibiting convicted felons like [640] Krzeszowski from possessing firearms is one such reasonable

regulation. Moreover, Krzeszowski was not affirmatively misled by the certificate and order of discharge restoring his civil rights. Accordingly, we affirm.

2001 Wash. App. ...

State v. Krzeszow...

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State v. Krzeszowski, 106 Wn. App. 638

Reporter 106 Wn. App. 638

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... Krzeszowski who resided in Lynnwood and whose physical description matched the individual she observed. A background check on Krzeszowski showed that he had a prior conviction for second degree burglary.

Detective Shovlin went to the Lynnwood address on several occasions. On June 9, 1998, she and Detective Behrbaum detected a strong odor of marijuana from the sidewalk in front of the house. On June 10, she returned to the house with Detective Barden and Officer Jesson with his narcotics detection dog. The officers all detected an odor of marijuana, but the dog did not. Nevertheless, the officers obtained a search warrant and discovered a marijuana grow operation. They also found a shotgun and a rifle.

Krzeszowski was convicted of manufacture of a controlled substance and unlawful possession of a firearm in the first degree. The firearm conviction was based on Krzeszowski's possession of the firearms despite the fact that he was previously convicted of a serious felony offense. This appeal followed.

DISCUSSION

Gun Violations

Krzeszowski claims his firearm conviction was error for three reasons. He argues that the prohibition violates his right to bear arms under the United States and Washington [641] Constitutions. Secondly, he claims that because the felon firearm prohibition was made applicable to him via a statutory amendment that occurred after his civil rights had been restored, his conviction violated the prohibition on ex post facto criminal penalties. Thirdly, he argues that because his civil rights were restored when his burglary sentence was completed, his firearm conviction violated due process.

WA1317 [1] **WA1217** [2] Krzeszowski's claim that the prohibition of possessing firearms by felons violates the right to bear arms under the United States and Washington Constitutions fails. **HN17** Under both constitutions the law is well established that the right to bear arms is not absolute and is subject to reasonable regulation. [1] One reasonable regulation is the prohibition of possessing firearms by convicted felons. [2]

WA1317 [3] **WA1417** [4] As to Krzeszowski's second argument, **HN27** both the Washington and United States Constitutions prohibit ex post facto laws. [3] A criminal law is ex post facto when it punishes past conduct. [4] **HN37** Here the law does not violate the ex post facto clause because it applies to possession of firearms [642] in the future. [5] The statute's reference to past felony convictions does not change the fact that only the future conduct of firearm possession is penalized. Accordingly, Krzeszowski's ex post facto argument fails.

WA1517 [5] **WA1617** [6] **WA1717** [7] **WA1817** [8] Krzeszowski's third argument is that his firearm conviction was improper because his civil rights were restored after he completed his sentence for the burglary conviction. [6] At the time Krzeszowski completed his sentence, **HN47** **RCW 9.94A.220** (1992) provided: "The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state." Despite this language in the discharge statute, **HN57** felons and persons convicted of a crime of violence were expressly prevented from possessing short firearms under **RCW 9.41.040** (1992). In 1994, the Legislature expanded the scope of the prohibition to cover all firearms possessed by all serious offenders. [7] Although Krzeszowski possessed a rifle and a shotgun which fell under the later version of the statute, some version of the prohibition has applied to him since the court first restored his civil rights.

Krzeszowski claims the certificate and order of discharge form did not notify him that his right to bear arms was restricted. However, **HN67** knowledge that possession of a firearm [643] is unlawful is not an element of the crime of unlawful possession of a firearm under the Washington statute. [8] Thus, the State did not have to prove that Krzeszowski knew it was illegal to possess firearms. [9] **HN77** Ignorance of the law is no defense to a criminal prosecution. [10] Notice issues typically center around whether a law explains with sufficient clarity the conduct it purports to criminalize. [11]

To support his claims, Krzeszowski cites to a number of federal cases, all of which are distinguishable. In the case of *Lambert v. California*, [12] the Court considered a Los Angeles municipal criminal ordinance that required felons to register with municipal authorities if they were in the city more than five days. The Court in *Lambert* held that the statute was unconstitutional because defendants did not receive adequate notice of the duty to register under the statute. [13]

Subsequent courts have repeatedly construed *Lambert* as limited to its narrow facts and have declined to extend its reach. [14] Assuming without holding that *Lambert* does establish a rule that some activities are so innocent that it violates due process to prosecute them without express notice, **HN87** the possession of firearms by a convicted felon is not sufficiently innocent. Felons are routinely restricted from various activities even after their civil rights have been [644] restored. [15] Moreover, the possession of firearms is frequently subject to regulation. No felon can reasonably assume that the possession of firearms is so innocent as to require notice before the crime can be prosecuted.

Krzeszowski also cites *United States v. Emerson*. [16] In *Emerson* the court held that Emerson's due process right to notice was violated when he was convicted under a federal statute for possessing a firearm while under a restraining order. [17] However, two federal courts of appeal have expressly rejected *Emerson* because the court in *Emerson* mistakenly portrays a

dissenting view from another case as if it were a majority position. [18] We also decline to rely on it.

Krzeszowski next argues *United States v. Herron*. [19] The court in *Herron* considered a federal statute that prohibited individuals convicted of a crime punishable by imprisonment for a term exceeding one year from possessing any firearm. But the statute excludes convictions for which civil rights have been restored unless the restoration expressly restricts the right to possess firearms. The court in *Herron* held that a defendant who had a prior Washington felony conviction could not be convicted under the federal firearm statute because the defendant's civil rights had been restored.

In *Herron*, the court stated:

[645] "If the state sends the felon a piece of paper implying that he is no longer 'convicted' and that all civil rights have been restored, a reservation in a corner of the state's penal code can not be the basis of a federal prosecution. A state must tell the felon point blank that weapons are not kosher." [20]

Herron is inapplicable here because it interpreted *Herron's* rights under a federal firearm statute which expressly provides that it does not apply to defendants who have had their civil rights restored. The case pertains to an express "anti-mousetrapping" provision in a federal statute which exists to prevent felons from being convicted for firearm possession under the federal statute despite being told by the state in which they were convicted that they could bear arms. Indeed, the court in *Herron* went on to state that although *Herron* could not be convicted under federal law, he might have violated Washington's firearm law. [21]

The United States Supreme Court's reasoning in *Caron v. United States* is instructive. [22] In *Caron*, the Court interpreted the same federal statute considered in *Herron*. The Court in *Caron* held that while Massachusetts law restored *Caron's* civil rights after conviction, it prohibited him from possessing pistols outside his business or home. The Court went on to hold that the Massachusetts prohibition on pistols was a sufficient prohibition on the possession of firearms to invoke the federal prohibition on the possession of firearms. As a result the Court upheld *Caron's* federal conviction despite the fact that *Caron* possessed only shotguns and rifles which were not prohibited to him under the Massachusetts law. [23]

WA97 [9] Krzeszowski's final due process argument is that when the court restored his civil rights, this caused him to [646] believe that his right to possess firearms was also restored. Thus, Krzeszowski asserts the defense of entrapment by estoppel. [24] Such a defense may be raised only where a government official or agent has actively assured the defendant that certain conduct is reasonable, and the defendant reasonably relies on that advice and continues or initiates the conduct. [25] **HN9** "[T]he government must actively mislead the defendant by inducing him to rely on an affirmative misrepresentation of the law by [the government official]." [26] "In order for his reliance to be reasonable, the defendant must establish that 'a person sincerely desirous of obeying the law would have accepted the information as true, and would not have been put on notice to make further inquiries.'" [27]

HN10 In those cases where courts have applied entrapment by estoppel, the defendant relied upon an express, active representation by a government agent that the proscribed activity was in fact legal. [28] Where the government agent has not expressly represented the activity as legal, the defense does not apply. [29]

[647] **WALLOT** [10] Here the court that restored Krzeszowski's civil rights did not actively or affirmatively represent to him that he could possess firearms. Absent the express representation that the restoration includes the right to possess firearms, there can be no entrapment by estoppel.

We affirm.

The remainder of this opinion has no precedential value. Therefore, it will be filed for public record in accordance with the rules governing unpublished opinions.

Becker, A.C.J., and Ellington, J., concur.