

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS A. PONTARELLI : CIVIL ACTION
 :
 v. :
 :
 UNITED STATES DEPARTMENT OF THE :
 TREASURY, et al. : NO. 98-5081

MEMORANDUM AND ORDER

HUTTON, J.

September 13, 1999

Presently before this Court is Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) (Docket No. 6) and Plaintiff's Answer to Defendants' Motion to Dismiss Complaint and/or Summary Judgment (Docket No. 7).\¹ For the reasons stated below, Defendants' Motion is **DENIED**.

I. BACKGROUND

In 1991, Plaintiff, Louis A. Pontarelli ("Plaintiff"), pled guilty to giving a thing of value to a public official in violation of 18 U.S.C. § 666(a)(2). Pursuant to his plea, Plaintiff was sentenced to three years probation, a fine, restitution totaling \$4,000, and two hundred hours of community service, all of which Plaintiff satisfied.

Pursuant to his conviction, Plaintiff was subject to the

¹ The Court treats this as a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), not a Motion for Summary Judgment under Federal Rule of Civil Procedure 56.

jurisdiction of the Gun Control Act of 1968 ("GCA"), 18 U.S.C. § 922(g), which prohibits Plaintiff from, inter alia, possessing any firearms or ammunition. Accordingly, it is unlawful for Plaintiff to possess a firearm or ammunition for any reason whatsoever. Before he entered his guilty plea, Plaintiff alleges that he was an avid hunter. Plaintiff also states that "as a [c]ontractor, [he] is often confronted with working in adverse areas whereby he would like the opportunity to possess a firearm for his personal safety." (Pl.'s Answer to Def.s' Mot. to Dismiss Compl. and/or for Summ. J. at 2). Plaintiff therefore wishes to be relieved from the restrictions placed on him by the GCA.

Accordingly, in 1998, Plaintiff petitioned for relief from his firearms disability, as authorized by 18 U.S.C. § 925(c). The Bureau of Alcohol, Tobacco and Firearms ("ATF"), the federal agency authorized to grant such relief, denied Plaintiff's petition. The ATF explained to Plaintiff that Congress forbids the ATF from spending appropriated funds to consider and grant such relief. Thereafter, Plaintiff sought review of the ATF's decision in this Court, claiming that "the ATF's failure and/or refusal to allow him to be heard and/or grant the requested relief is a 'miscarriage of justice.'" (Pl.'s Answer to Def.s' Mot. to Dismiss Compl. and/or for Summ. J. at 2). The United States Department of the Treasury, the ATF, and John W. Magaw, the Director of the ATF (collectively, the "Defendants") filed a motion under Federal Rule of Civil

Procedure 12(b)(6) to dismiss Plaintiff's Complaint.

II. DISCUSSION

A. Legal Standard

When considering a motion to dismiss a complaint for failure to state a claim under Rule 12(b)(6),² this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). A court will only dismiss a complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). Nevertheless, a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

² Rule 12(b)(6) provides that:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

B. Defendants' Argument for Dismissal

Defendants argue that Plaintiff failed to allege facts sufficient to prove that a miscarriage of justice will result if this Court denies Plaintiff's request for relief from federal firearms disability. Plaintiff answers Defendants' dismissal motion by arguing that Plaintiff satisfied all of the statutory requirements for relieving his federal firearms disability and therefore should be accorded a fair hearing on the merits of his Complaint.

1. Federal Firearms Disability

It is a federal offense for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year to possess a firearm. 18 U.S.C. § 922(g)(1) (1999). In the original statutory scheme, the Secretary of the Treasury was authorized to grant relief from § 922(g)(1) if

it is established to his satisfaction that the circumstances regarding the [firearms] disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to public interest.

18 U.S.C. § 922(g)(1) (1999). Congress, however, prohibits the expenditure of appropriated funds to investigate applications for such relief. See United States v. Quintiliani, No. 75-438, 1997 WL 430973, at *2 (E.D. Pa. July 15, 1997) (same). Nevertheless, in light of the Secretary of the Treasury's inability to investigate

and grant relief from firearms disability, the Third Circuit Court of Appeals held that the unavailability of an administrative remedy does not foreclose an applicant from seeking judicial review of his or her application. Rice v. United States, 68 F.3d 702, 704 (3d Cir. 1995). Accordingly, Plaintiff applied to this Court for relief from his firearms disability.

The Rice court established the following test for evaluating whether an existing federal firearms disability should be sustained or lifted. First, the Court must determine in the exercise of its sound discretion whether the facts alleged in Plaintiff's Complaint indicate a potential for a miscarriage of justice if the relief requested is denied. Id. at 710. If the Court resolves this issue in favor of the Plaintiff, the Court should permit Plaintiff to submit evidence of his fitness to have his firearms disability revoked. Id. Third, the Court must then determine whether Plaintiff's evidence satisfies the § 925(g) standard. Id. The Plaintiff carries a heavy burden in attempting to sustain his statutory claim. Id. It is also important to note the Supreme Court's announcement that the right to possess a firearm after a disabling conviction is not a right but a privilege. Lewis v. United States, 445 U.S. 55, 66, 100 S. Ct. 915, 921 (1980).

The Department of the Treasury promulgated regulations for granting relief under § 922(g)(1). 27 C.F.R. § 178.444 (1999). Upon careful review of these regulations, the Court concludes that

Plaintiff has alleged facts sufficient to demonstrate compliance with said regulations in that Plaintiff, inter alia, submitted three references recommending the granting of relief, and was discharged from parole or probation over two years prior to the filing of this action. (Pl.'s Answer to Def.s' Mot. to Dismiss at 6-7). Therefore, to decide Defendant's rule 12(b)(6) motion, this Court must only determine whether Plaintiff is entitled to offer evidence to get him over the threshold burden of indicating a potential for a miscarriage of justice if his requested relief is denied. Plaintiff alleged facts, that when taken in the light most favorable to Plaintiff, indicate that he fulfilled the requirements of 27 C.F.R. 178.444, thereby satisfying his burden. Accordingly, subject to this Court's continuing jurisdiction over this matter and upon motion of the parties, the Court will schedule a hearing to determine if Plaintiff meets the criteria of 18 U.S.C. 925(c) for restoration of his right to possess firearms and ammunition.

An appropriate Order follows.

