

STATE OF MICHIGAN
COURT OF APPEALS

JAMEEL STEPHENS,

Petitioner-Appellant,

v

WAYNE COUNTY CONCEALED WEAPONS
LICENSING BOARD,

Respondent-Appellee.

UNPUBLISHED

July 12, 2012

No. 302744

Wayne Circuit Court

LC No. 10-014515-AA

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Petitioner appeals as of right the circuit court order dismissing his appeal and affirming respondent's denial of his application for a concealed pistol license (CPL). We affirm.

Petitioner argues that, under MCL 712A.23, respondent was prohibited from using evidence of his juvenile disposition in its decision to deny his CPL application and in the circuit-court appeal. We disagree.

This Court reviews questions of statutory interpretation de novo. *Johnson v QFD, Inc.*, 292 Mich App 359, 364; 807 NW2d 719 (2011).

MCL 712A.23 provides:

Evidence regarding the disposition of a juvenile under this chapter [of the Probate Code] and evidence obtained in a dispositional proceeding under this chapter shall not be used against that juvenile for any purpose in any judicial proceeding except in a subsequent case against that juvenile under this chapter. This section does not apply to a criminal conviction under this chapter.

MCL 712A.23 keeps the public from finding out about a minor's "youthful errors." *In re Wentworth*, 251 Mich App 560, 568; 651 NW2d 773 (2002) (internal citation and quotation marks omitted). Juvenile proceedings are not considered criminal in nature. *Id.*

MCL 28.425b(19)(a), defining "conviction" in the context of determining eligibility for a CPL, provides:

“Convicted” means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.

If two statutes conflict, the more specific statute prevails over the generally applicable statute. *Johnson* 292 Mich App at 373.

First, MCL 712A.23 applies to petitioner because a juvenile adjudication is at issue. The statute states that “[t]his section does not apply to a criminal conviction under this statute.” MCL 712A.23. A statute’s language must be given its ordinary meaning, and “[t]he Legislature is presumed to have intended the meaning that it plainly expressed” *Johnson*, 292 Mich App at 369. Juvenile adjudications are not considered criminal convictions. *In re Wentworth*, 251 Mich App at 568. The Legislature would not have used the phrase “a criminal conviction” if it had meant that juvenile adjudications that violate a criminal statute are excluded under MCL 712A.23. A criminal conviction implies a finding of guilt for an adult. *In re Wentworth*, 251 Mich App at 568. In its statement that MCL 712A.23 does not apply to a criminal conviction, the Legislature was likely referencing MCL 712A.2d, the section of the Probate Code where a juvenile can be tried and convicted as an adult.

However, MCL 28.425b(19)(a) does not conflict with MCL 712A.23. MCL 28.425b(19)(a) defines “conviction” in the context of CPL issuance. MCL 712A.23 prevents the use of evidence of juvenile dispositions in subsequent *judicial* proceedings. MCL 28.425b permits a county concealed weapon licensing board to issue CPLs. A county concealed weapon licensing board makes an administrative decision. See, e.g., *Carr v Midland Co Concealed Weapons Licensing Bd*, 259 Mich App 428, 432; 674 NW2d 709 (2003). In the context of respondent’s decision to deny petitioner’s CPL application, there is no conflict. Further, it would make little sense to interpret MCL 712A.23 as preventing the circuit court from hearing evidence about petitioner’s previous juvenile adjudication when the court is reviewing a decision based on that adjudication.

Finally, even if, as petitioner claims, MCL 712A.23 prevents the circuit court from using evidence of petitioner’s juvenile adjudications, MCL 28.425b(19)(a) is more specific than MCL 712A.23, and therefore it takes precedence over MCL 712A.23. MCL 28.425b(19)(a) defines the term “convicted” to include specific juvenile adjudications or dispositions. MCL 712A.23 states generally that juvenile dispositions cannot be used in later judicial proceedings against the defendant. MCL 28.425b is specific to CPLs, whereas MCL 712A.23 refers to juvenile dispositions in all subsequent judicial proceedings. At the time the Legislature amended MCL 28.425b(19)(a) in 2008, it would have been aware of the prohibition in MCL 712A.23 on using juvenile dispositions (MCL 712A.23 was amended in 1996). The specific provision of MCL 28.425b(19)(a) prevails over the general prohibition in MCL 712A.23. Therefore, evidence of petitioner’s prior juvenile adjudication was properly presented to the circuit court.

Petitioner next argues that the circuit court erred by affirming respondent’s denial of petitioner’s CPL application. Petitioner contends that respondent improperly denied petitioner’s

CPL application because respondent reinstated petitioner's firearm rights under MCL 28.424 and because certain federal laws operate in his favor. We disagree that the circuit court erred.

"The decision of a concealed weapons licensing board to deny an application for a concealed weapons permit is reviewed for clear error. Similarly, we review a lower court's review of an agency decision for clear error. An issue of statutory interpretation is reviewed de novo." *Carr*, 259 Mich App at 432 (citations omitted).

MCL 28.424 provides:

(1) A person who is prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f(2) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.224f of the Michigan Compiled Laws, may apply to the concealed weapons licensing board in the county in which he or she resides for restoration of those rights.

(3) The concealed weapons licensing board shall, by written order of the board, restore the rights of a person to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm if the board determines, by clear and convincing evidence, that all of the following circumstances exist:

(a) The person properly submitted an application for restoration of those rights as provided under this section.

(b) The expiration of 5 years after all of the following circumstances:

(i) The person has paid all fines imposed for the violation resulting in the prohibition.

(ii) The person has served all terms of imprisonment imposed for the violation resulting in the prohibition.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition.

(c) The person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons. . . .

MCL 750.227(2) prohibits a person from carrying "a pistol concealed on or about his or her person . . . without a license to carry the pistol as provided by law" MCL 28.425b establishes the requirements for obtaining a license to carry a concealed pistol legally. MCL 28.425b(7) provides, in relevant part:

The concealed weapon licensing board shall issue a license to an applicant to carry a concealed pistol within the period required under this act after the

applicant properly submits an application under subsection (1) and the concealed weapon licensing board determines that all of the following circumstances exist:

(f) The applicant has never been convicted of a felony in this state or elsewhere, and a felony charge against the applicant is not pending in this state or elsewhere at the time he or she applies for a license described in this section.

MCL 28.425b(11) provides:

The concealed weapon licensing board shall deny a license to an applicant to carry a concealed pistol if the applicant is not qualified under [MCL 28.425b(7)] to receive that license.

Again, MCL 28.425b(19)(a) provides:

“Convicted” means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or *a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.* [Emphasis added.]

The requirements for restoring a person’s rights to “possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm” under MCL 28.424 are different than the requirements for obtaining a *concealed* pistol permit pursuant to MCL 28.425b. Petitioner must satisfy MCL 28.425b in order to obtain a CPL. Read together, MCL 28.425b(7)(f), MCL 28.425b(11), and MCL 28.425b(19)(a) require that a successful applicant for a CPL not have a prior juvenile adjudication or disposition for a violation that, if committed by an adult, would be a felony. As a juvenile, petitioner was adjudicated guilty of breaking and entering in violation of MCL 750.110a. If committed by an adult, a violation of MCL 750.110a is a felony. Therefore, under MCL 28.425b, respondent properly denied petitioner’s CPL application.¹ The circuit court did not clearly err by affirming respondent’s decision to deny the application.

Petitioner also argues that federal law does not prevent him from “owning or carrying or selling firearms” and that this fact should be viewed in his favor. However, MCL 750.227(2) prohibits a person from carrying a concealed pistol without a license, and petitioner fails to cite any federal law that preempts the applicable state laws.

¹ We note that petitioner is not eligible for an order to set aside his juvenile adjudication of breaking and entering because petitioner was also adjudicated guilty of a second offense. See MCL 712A.18e and *In re Hutchinson*, 278 Mich App 108, 110-112; 748 NW2d 604 (2008). At any rate, petitioner does not make an argument in this regard.

There are three types of federal preemption: express preemption, conflict preemption, and field preemption. Express preemption occurs when a federal statute clearly states an intent to preempt state law or that intent is implied in a federal law's purpose and structure. Under conflict preemption, a federal law preempts state law to the extent that the state law directly conflicts with federal law or with the purposes and objectives of Congress. Field preemption acts to preempt state law when federal law so thoroughly occupies a legislative field that it is reasonable to infer that Congress did not intend for states to supplement it. [*Packowski v United Food & Commercial Workers Local 951*, 289 Mich App 132, 140; 796 NW2d 94 (2010).]

The federal law petitioner cites, 18 USC 921, is the definition section for statutes regulating importing, manufacturing, and dealing in firearms. These federal statutes do not expressly limit state concealed pistol legislation, do not occupy the field of firearm legislation, and do not conflict with MCL 750.227(2). Federal law does not preempt MCL 750.227(2). Reversal is unwarranted.

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood