

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

In re the Matter of the
Judicial Restoration of
Shannon Cortez Gooden's Ability
To Possess and Otherwise
Deal with Firearms

**DAKOTA COUNTY ATTORNEY'S OFFICE
RESPONSE TO PETITION OF
SHANNON CORTEZ GOODEN TO
RESTORE HIS ABILITY TO
POSSESS FIREARMS**

District Court File No. 19-K3-07-002832

TO: The Honorable Judge of the First Judicial District; Mathew K. Higbee,
Attorney for Petitioner Shannon Cortez Gooden, 1504 Brookhollow Drive,
Suite 112, Santa Ana, California 92705.

Shannon Cortez Gooden, Petitioner, being banned for life from possessing
firearms, filed a Petition to restore his ability to possess firearms. For the
following reasons, the Dakota County Attorney's Office objects to the restoration
of Petitioner's ability to possess firearms.

Background

On August 28, 2007, Petitioner was in a shopping center with J.L.
("Victim") and Petitioner's male cousin D.D.B. ("Cousin") when they were
escorted from the shopping center by security officers due to an argument
between Petitioner and Cousin regarding harassing phone calls that Victim
suspected Petitioner made to her cell phone. (Compl. p. 1, Case No. 19-K3-07-

002832.)¹ While in the parking lot, Cousin and Victim were walking to their vehicle when Petitioner followed them and made comments to them about slashing their tires if they were to drive away. (*Id.*)

Soon thereafter, Victim's mother, S.M.L. ("Mother") and brother, J.E.L. ("Brother"), arrived in Mother's vehicle. (*Id.*) Brother then got out of Mother's vehicle and approached Petitioner. (*Id.*) A verbal argument took place between Victim and Petitioner. (*Id.*) Early on into the argument, both Brother and Petitioner removed their shirts and were squaring off to fight when Petitioner reached for his pants pocket and pulled out and extended a folding knife. (*Id.*) The knife was described by witnesses as being about seven inches in length when unfolded. (*Id.* at 2.) Witnesses saw Petitioner run toward Brother while holding the point of the knife toward Brother and yelling that he was going to stab Brother. (*Id.*) Brother then jumped on top of Mother's vehicle where Petitioner could not reach him. (*Id.*)

A security guard then approached Petitioner and removed the knife from Petitioner's hand. (*Id.*) Petitioner then picked up landscaping rocks and threw them in the direction of Brother, who was still on top of Mother's vehicle, and even while the security was present. (*Id.*) Petitioner hit Brother with the rocks.

¹ Certified Copy, attached and incorporated, as **Exhibit 1**.

(*Id.*) Petitioner also hit Mother's vehicle with many rocks, breaking the rear window and denting the side of Mother's vehicle. (*Id.*)

Shortly thereafter, Petitioner got into a black sport utility vehicle and fled the scene. Petitioner was later stopped by the police. (*Id.*) Petitioner admitted that he was involved in the altercation but denied knowledge of a knife. (*Id.*)

Subsequently, Petitioner was charged with one count of Felony Assault in the Second Degree (a crime of violence), a second count of Felony Terroristic Threats (a crime of violence), and a third count of Misdemeanor Criminal Damage to Property. (*Id.* at 2-3.)

On February 26, 2008, Petitioner was convicted of Felony Assault in the Second Degree with a Dangerous Weapon under Minnesota Statute Section 609.222, subd. 1; 609.11, subd. 4; and 609.101 in Dakota County. (Register of Actions, Case No. 19-K3-07-002832.)² This conviction subjected Petitioner to a lifetime ban from possessing firearms. Minn. Stat. § 624.712, subd. 5 (crime of violence); Minn. Stat. § 624.713, subd. 1 (lifetime ban).

In addition to Petitioner's crime of violence conviction, Petitioner has had additional encounters with police, involving assaults, disorderly conduct, and numerous traffic violations demonstrating a continued disregard to obey the law:

² Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 2**.

- On December 15, 2004, Petitioner was convicted of Petty Misdemeanor Disorderly Conduct. (Register of Actions, No. 27-CR-04-078576).³
- On February 10, 2005, Petitioner was convicted of Misdemeanor Disorderly Conduct-Brawling or Fighting. (Register of Actions, No. 19-K1-05-000136.)⁴ The first count of Interference with a 911 Call was dismissed. (*Id.*) The third count of domestic assault was dismissed. (*Id.*) In this case, the complaint demonstrated that an officer was dispatched to the scene where Victim had advised that Petitioner was being violent with her. (Compl. p.1, Case No. 19-K1-05-000136.)⁵ Petitioner and Victim were arguing when Victim picked up the phone and told Petitioner that she was going to call the police. (*Id.*) Petitioner then hit the phone out of her hand and broke it. (*Id.*) The Victim stated that she was very scared the entire time they were arguing, and that Victim had never seen Petitioner that upset before. (*Id.*)
- On September 14, 2005, Petitioner was convicted of Misdemeanor No Drivers License in Possession. (Register of Actions, No. 27-CR-05-031489.)⁶ The second count of Misdemeanor Driving After Suspension was dismissed. (*Id.*)
- On May 8, 2006, Petitioner was convicted of Misdemeanor Driving After Suspension. (Register of Actions, No. 27-CR-06-016729.)⁷ The second count of Misdemeanor Failure to Produce Proof of Insurance was dismissed. (*Id.*) The third count of License Plates Must Be Securely Fastened was dismissed. (*Id.*) The fourth count of Windshield Cracked/Tinted/Obstructed was dismissed. (*Id.*)

³ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 3**.

⁴ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 4**.

⁵ Certified Copy, attached and incorporated, as **Exhibit 5**.

⁶ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 6**.

⁷ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 7**.

- On May 8, 2006, Petitioner was convicted of Misdemeanor Driving After Suspension. (Register of Actions, No. 27-CR-06-016730.)⁸
- On January 28, 2011, Petitioner was convicted of Misdemeanor Vehicle Without Current Registration Parked Out of Garage. (Register of Actions, No. 19AV-VB-11-156.)⁹
- On December 3, 2013, Petitioner was convicted of Petty Misdemeanor Expired Registration/Expired Tabs. (Register of Actions, No. 19HA-VB-13-5481.)¹⁰ The first count of Misdemeanor Failure to Produce Proof of Insurance was dismissed. (*Id.*)
- On February 5, 2015, Petitioner was convicted of Petty Misdemeanor Failure to Obey Traffic Control Devices. (Register of Actions, No. 19AV-VB-15-2152.)¹¹
- On June 5, 2015, Petitioner was convicted of Petty Misdemeanor Expired Registration/Expired Tabs. (Register of Actions, No. 19AV-VB-15-7239.)¹²
- On February 2, 2016, Petitioner was cited for Speeding. (Register of Actions, No. 27-VB-16-272115203237.)¹³
- On August 23, 2016, Petitioner was convicted of Petty Misdemeanor Expired Registration/Expired Tabs. (Register of Actions, No. 19AV-VB-16-16184.)¹⁴
- On March 6, 2017, Petitioner was convicted of Speeding (88/55). (Register of Actions, No. 27-CR-17-2248.)¹⁵ A second count of Misdemeanor Expired Registration was dismissed. (*Id.*)

⁸ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 8**.

⁹ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 9**.

¹⁰ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 10**.

¹¹ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 11**.

¹² Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 12**.

¹³ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 13**.

¹⁴ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 14**.

¹⁵ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 15**.

- On April 24, 2017, Petitioner was convicted of Petty Misdemeanor Parking in a No Parking 2-5AM or Truck Parked Over Two Hours Zone. (Register of Actions, No. 27-VB-17-108328.)¹⁶

In addition, since his crime of violence conviction, Petitioner has had two Order for Protection Petitions filed against him, including one alleging domestic abuse and the other alleging domestic assault:

- On October 30, 2017, Ashley Dyrdaahl, one of Petitioner's character witnesses to his Petition for restoration, filed a Petition for an Order for Protection with the district court alleging that Petitioner "head butted" her face causing a concussion and black eye and that Petitioner threw her down the stairs. (Petitioner's Affidavit and Petition for Order for Protection p.5, Case No. 62-DA-FA-17-1324.)¹⁷ The court dismissed this action because Ms. Dyrdaahl failed to appear. (Domestic Abuse Order for Dismissal, Case No. 62-DA-FA-17-1324.)¹⁸
- On July 7, 2020, Noemi Torres filed a Petition for Order for Protection with district court alleging that Petitioner told his current girlfriend to beat Torres up while they were arranging for child exchange. (Petitioner's Affidavit and Petition for Order for Protection p.4, Case No. 62-DA-FA-20-664.)¹⁹ Torres also alleged that in 2014, Petitioner and Torres were in an argument when Petitioner grabbed a knife and cut her clothes and side swiped her foot, which resulted in Torres falling down the stairs. (*Id.*) Torres claimed that she believed that Petitioner was going to kill her. (*Id.*) Lastly, Torres alleged that Petitioner would pull her hair, throw her against the wall, and that Petitioner even let his family members assault Torres.

¹⁶ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 16**.

¹⁷ Certified Copy of Petitioner's Affidavit and Petition for Order for Protection, attached and incorporated, as **Exhibit 17**.

¹⁸ Certified Copy of Domestic Abuse Order for Dismissal, attached and incorporated, as **Exhibit 18**.

¹⁹ Certified Copy of Petitioner's Affidavit and Petition for Order for Protection, attached and incorporated, as **Exhibit 19**.

(*Id.*) The court dismissed this action because the allegations were not proved. (Domestic Abuse Order for Dismissal, Case No. 62-DA-FA-20-664.)²⁰

Petitioner now seeks judicial restoration of his ability to possess firearms under Minnesota Statute Section 609.165, subdivision 1d.

Petitioner does not dispute he has been convicted of a crime of violence, subjecting him to a lifetime ban from possessing firearms. (Petition at p. 4.) Despite this, Petitioner urges the Court to restore his ability to possess firearms, most notably citing his desire to be able to protect himself and his family. (Gooden Aff. ¶ 2.)

Given the seriousness of Petitioner's crime of violence conviction involving a dangerous weapon (7-inch knife), a continued disregard to obey the law, and lack of good cause, the Dakota County Attorney's Office opposes an order from the Court restoring Petitioner's ability to possess firearms.

Argument

Petitioner fails to allege sufficient facts to demonstrate good cause to restore his ability to possess firearms; and even if this Court finds good cause, it should exercise its discretion and deny Petitioner's motion.

²⁰ Copy of Domestic Abuse Order for Dismissal, attached and incorporated, as **Exhibit 20**.

A court has discretion to restore a convicted felon's ability to possess firearms if the convicted felon establishes good cause. Minn. Stat. § 609.165, subd. 1d (2018); *see also Averbek v. State*, 791 N.W.2d 559, 560 (Minn. Ct. App. 2010). "[G]ood cause is a reason for taking an action that, in legal terms, is legally sufficient, and in ordinary terms, is justified in the context of the surrounding circumstances." *Id.* at 561; *see also* Minn. Stat. § 609.165, subd. 1d. Even if a district court finds good cause, the district court has discretion to deny the petition. *Averbek*, 791 N.W.2d at 561 (citing Minn. Stat. § 645.44, subd. 15 (2018) for the proposition that 'may' is permissive); *see also Jackson v. Comm'r of Public Safety*, 2018 WL 2470357, at *2 (Minn. Ct. App. June 4, 2018) ("Even if the petitioner shows good cause, the district court still has discretion to grant or deny the petition, meaning the court's findings are reviewed for an abuse of discretion.").²¹ In simpler terms, just because a court finds good cause does not mean that it is required to grant a petition for restoration.

Dangerous weapon present during the commission of a crime heightens public safety concerns.

The Supreme Court of Minnesota has affirmatively stated that, whether or not the offender actually fires it, a firearm inherently "raises the stakes of severe injury or death as a result of the commission of [a crime]." *State v. Royster*, 590

²¹ Attached and incorporated as **Exhibit 21**.

N.W.2d 82, 85 (Minn. 1999). Based on this, here, Petitioner's crime of violence conviction itself not only presents a public safety concern, but the concern is then exacerbated because a knife – although not a firearm but nonetheless a dangerous weapon – was present during the commission of the crime of violence. See *State v. Moon*, 463 N.W.2d 517, 520 (Minn. 1990) (stating Minn. Stat. § 609.165, subd. 1(a) is “designed to protect the public safety by keeping firearms out of the hands of convicted criminals who have committed crimes which, in the legislature's judgment, are indications of future dangerousness.”). Notably, a 7-inch knife was used by the Petitioner when he ran toward Victim while holding the point of the knife toward Victim and yelled that he was going to stab Victim. Likewise, Petitioner threw rocks at Victim and Petitioner threw rocks at Mother's car, causing injuries and damage to property. These facts further exacerbate the already existing public safety concern.

Moreover, the Supreme Court of Minnesota has explained that the assault statute “reflects a legislative determination that the use of a dangerous weapon to criminally assault another is equally reprehensible whether or not one inflicts harm.” *State v. Ott*, 189 N.W.2d 377, 380 (Minn. 1971). Here, it does not matter that Petitioner did not inflict harm upon Victim with the knife, because using the knife (a dangerous weapon) to assault someone is equally inexcusable to actually causing harm.

In *Anderson v. State*, No. A15-1254, 2016 WL 1619367, at *3 (Minn. Ct. App. Apr. 25, 2016)²², the Minnesota Court of Appeals affirmed the District Court in favor of *Anderson*. In *Anderson*, there was not a firearm during the commission of the crimes of violence for which *Anderson* was convicted. *Id.* The Court held that a district court is not precluded from considering whether a petitioner used a firearm in the commission of the crime of violence. However, as articulated by the Minnesota Supreme Court, “felons convicted of a crime of violence are more likely to reoffend and commit further crimes of violence that threaten the public safety.” *State v. Craig*, 826 N.W.2d 789, 797 (Minn. 2013); *United States v. Yancey*, 621 F.2d 681, 685 (7th Cir. 2010) (recognizing that “someone with a felony conviction on his record is more likely than a nonfelony to engage in illegal and violent gun use.”). To restore Petitioner’s ability to possess a firearm would contradict the Legislature’s intention and aggravate the already existing public safety concern. Even though there was not a firearm present during the commission of the assault, the fact that the Petitioner has been convicted of a crime of violence makes it more likely that he will commit further crimes of violence or engage in illegal and violent gun use, threatening public safety.

²² Attached and incorporated as **Exhibit 22**.

Petitioner fails to establish good cause.

To support a finding of good cause, Petitioner asserts that he has “undergone tremendous personal and professional growth since [his] conviction.” (Gooden Aff. ¶ 11.) Despite this statement, it should be noted, Petitioner did not mention the 2017 Domestic Abuse and 2020 Domestic Assault Petitions for Orders for Protection. And although Petitioner indicated that he completed an anger management course (Gooden Aff. ¶ 3.), although not required, he has not submitted any expert affidavits or opinions evidencing his anger being managed, and importantly, establishing that he is not a threat to public safety and can safely possess firearms. Additionally, his continued traffic violations demonstrate his continued disregard to obey the law. In short, there is insufficient supporting evidence to demonstrate Petitioner can safely possess firearms.

To the extent Petitioner argues that the passage of time provides good cause, the passing of time is not, by itself, good cause to restore Petitioner’s ability to possess firearms, and furthermore, in this case the passage of time is not sufficient. In *Averbeck*, the Minnesota Court of Appeals affirmed the District Court’s order denying the felony offender’s petition to restore his right to possess a firearm, even when 19 years had passed since the singular crime of violence offense. *Averbeck*, 719 N.W. 2d at 559. The Minnesota Court of Appeals reasoned

that the district court did not abuse its discretion by denying the appellant's petition to restore his right to possess a firearm on the ground that the interest of public safety outweighed any showing of good cause. *Id.* at 562.

Here, Petitioner committed a singular crime of violence, and only 7 years have passed since he was recently released from probation in 2013.²³ Arguably, it is possible Petitioner may have another assault or similar conviction in the near future; notably, Petitioner has failed to remain law abiding. The legislature's intent in creating a lifetime ban for those that commit felony crimes of violence is to prevent future dangerous acts because felons who have been convicted of a crime of violence are more likely to reoffend and commit other crimes of violence acts, which on its own threatens public safety. *Craig*, 826 N.W.2d at 797.

In short, although Petitioner alleges to be a changed person, it has only been 7 years since he was released from probation, which is insignificant when compared to a lifetime – even 12 years since the conviction of the underlying crime of violence is insignificant passage of time when compared to a lifetime.

Petitioner's history of disobeying the law and posing a threat to public safety coupled with an insignificant passage of time demonstrates that, at this time, Petitioner has not demonstrated he can safely possess firearms. Petitioner's

²³ Certified Copy of Register of Actions, attached and incorporated, as **Exhibit 2**.

inability to possess firearms for life is a consequence of committing a crime of violence, which Petitioner should have considered when he committed the crime.

Conclusion

Because the interest of public safety outweighs any private interest Petitioner may have, the Dakota County Attorney's Office respectfully requests that this Court, in its discretion, deny the Petition to restore Petitioner's ability to possess and otherwise deal with firearms.

Dated: September 25, 2020

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

By: /s/ Amelia Jadoo

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