

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
(Mr. Justice Popplewell)

Royal Courts of Justice
Strand
London WC2

Date: Monday, 8th March 1999

Before:
LORD JUSTICE PETER GIBSON
LORD JUSTICE HENRY
LORD JUSTICE MORRITT

THE QUEEN
-v-

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Ex parte MICHAEL JAMES BURKE.

(Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Reporting Limited 180 Fleet Street, London EC4A ZHD
Telephone No: 0171 421 4040. Fax No. 0171 831 8838. Official
Shorthand Writers to the Court).

THE APPLICANT appeared in Person

JUDGMENT (As approved by the Court)

Judgment

LORD JUSTICE HENRY: Section 5 (1) of the Firearm Act 1968 makes it an offence if a person, without the authority of the Secretary of State, has in his possession a prohibited firearm. Until 1997 that section did not apply or the definition of "prohibited firearms" did not extend to small bore handguns, but they were added to the list of prohibited firearms by the amending Acts passed in 1988 and 1997. The 1997 Act, passed in the after-math of the tragedy at Dunblane, removed small calibre pistols from the list of exceptions to prohibited handguns.

Mr, Burke, the applicant who has appeared in person before us today, has two such pistols, a Smith and Wesson and a Browning. They, as I understand him, had been taken from him under the Act that was passed post-Dunblane. It was no reflection on him. The Act applied to everyone in the country. He wants those pistols back. He applied to the Home Office for that, and he said this :

" I wish to claim my common law right possess pistols for my defence and therefore formally make this application to you for the necessary authorities. I remind you of your obligation under the Bill of Rights to respect the liberties of the subject".

That application was refused by letter from the Home Office on 2nd October. That letter reads as follows:

“Thank you for your letter of 24 September 1997 about the Secretary of State's authority to possess section 5(1) (aba) prohibited weapons under section 5 of the Firearms Act 1968 (as amended).

The Secretary of State gives careful consideration to the grant or renewal of authorities to possess prohibited weapons, and I regret to inform you that having considered all the circumstances of the application he has decided not to grant an authority.

Applications for the authority of the Secretary of State are usually made by persons who wish to trade (manufacture; buy sell; etc) in prohibited weapons and/or prohibited ammunition, or who otherwise consider they have a need arising from the nature of their trade, profession, occupation or business. The Secretary of State normally regards these as acceptable reasons for making an application.

It is not the policy for the Secretary of States authority to be granted for personal protection purposes.

If you consider yourself to be at risk, I have to say that the proper agency for the protection of a country's citizens its police force. I can only suggest therefore that you contact your local police force and discuss the level of threat you feel yourself to be facing and the precautions you might need to take”.

There was further correspondence with the Home Office, and in answer to another applicant making a similar application, the Home Office said, in a letter dated 30th April 1998:

" In effect, there are no circumstances in which you would be authorised to possess a pistol for personal defence in Great Britain and nor are there likely to be unless government policy changes. "

Mr. Burke now seeks to challenge that decision by way of judicial review. He starts with the Bill of Rights.

The Bill of Rights, as its title makes clear, is an Act declaring the rights and liberties of the subject and settling the succession of the Crown. The recital, when dealing with those rights and liberties, sets

out the statutory background in relation to this. Under "disarming protestants", the recital says:

“By causing several good subjects being protestants to be disarmed at the same time when papists were both armed and employed contrary to law.”

And then, when dealing with the subject's rights, it was declared in relation to “Subjects' Arms”:

"That the subjects which are Protestant may have arms for their defence suitable to their conditions (then follow the crucial words) and as allowed by law."

That was the Bill of Rights. It was declaratory of the common law. It contained in its own words of limitation, namely that the right to have arms for self-defence is limited by the words "and as allowed by Law". The law is a changing thing. Parliament by statute can repeal the common law. Parliament has since 1920 (and it may be earlier, but certainly since 1920) imposed limitations on the right to carry firearms, and one of those limitations is Section 5(1) which we are here concerned with. Where the Bill of Rights says that “ the Subjects may have arms for their defence suitable for their condition and as allowed by law”, "and as allowed by law means “and as allowed by law for the time being”, and at this time you have to comply with the provisions of the Firearms Act 1968, section 5, as amended, if you wish to have a prohibited weapon; that is to say, you require authority from the Secretary of State. That is the first ground which makes Mr. Burke's application hopeless.

Even if that ground was not fatal to it, the submission is not entrenched; that is to say, what the law makes, the law can unmake. Mr. Burke suggested to us that Parliament has no power to alter the common law. That is a submission totally without substance. What the law makes the law can unmake. You now need the authority of the Secretary of State if you have a prohibited weapon. Mr. Burke cannot avoid that provision of the law.

Mr. Burke then takes a third point. He says that the Secretary of State has wrongly fettered his discretion, in that he is refusing all who wish to carry arms for their personal protection. However, as the letter of 2nd October makes clear, he does make exceptions where there is a need from the nature of their trade, profession, occupation or business, but those exceptions are subject to his present policy, namely that authority shall not be granted to those who need them for personal protection purposes. That is a policy which the Secretary of State is entitled to have. There is nothing improper in him having it. It does not assist Mr Burke. Therefore, this application must be refused.

LORD JUSTICE MORRITT: I agree.

LORD JUSTICE PETER GIBSON: I would pay tribute to Mr. Burke for the clear and courteous way in which he has expressed his grievance at the refusal by the Home Office to grant him authority to hold his handguns. He has provided us with a skeleton argument and an affidavit. It is obvious that, although not a lawyer, he has put in a great deal of research to present to us documents in support of his argument. I have to say that his argument that he has a common law right to hold arms for his defence, which has not been validly removed by the Firearms Act, seems to me to be unsustainable for the reasons given by Lord Justice Henry. I, too, would refuse the application.

Order: Application refused.