

*State of New York*  
*Supreme Court, Appellate Division*  
*Third Judicial Department*

Decided and Entered: November 20, 2014

518078

---

In the Matter of IRVING  
GERARD,  
Petitioner,  
v

MEMORANDUM AND JUDGMENT

RICHARD M. KOWEEK, as  
Judge of the County Court  
of Columbia County,  
Respondent.

---

Calendar Date: October 17, 2014

Before: Stein, J.P., McCarthy, Garry, Lynch and Devine, JJ.

---

Tabner, Ryan & Keniry LLP, Albany (Dana Salazar of  
counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Paul  
Groenwegen of counsel), for respondent.

---

Stein, J.P.

Proceeding pursuant to CPLR article 78 (initiated in this  
Court pursuant to CPLR 506 [b] [1]) to review a determination of  
respondent which denied petitioner's application for a carry and  
conceal pistol permit.

Petitioner's pistol permit was permanently revoked by  
Surrogate's Court (Czajka, S.) in January 2003 as a result of a  
series of threatening comments he made to a group of

individuals.<sup>1</sup> In May 2013, petitioner filed a new application for a pistol permit, which respondent denied. Petitioner thereafter commenced this proceeding to review respondent's determination which, for the reasons that follow, we annul.

Respondent denied petitioner's pistol permit application based upon Penal Law § 400.00 (1) (k) (formerly Penal Law § 400.00 [1] [e]), finding that petitioner was ineligible for a pistol permit because of the prior revocation of his permit. Penal Law § 400.00 (1) (k) provides that no permit may be issued to an individual "who has [] had a license revoked or who is [] under a suspension or ineligibility order issued pursuant to the provisions of [CPL] 530.14 . . . or [Family Ct Act § 842-a]." Respondent interpreted this statute as two separate clauses and automatically barred petitioner from being issued a permit because his license had previously been revoked, despite the fact that the revocation was unrelated to either CPL 530.14 or Family Ct Act § 842-a.

We agree with petitioner that this was erroneous, as our reading of the statute indicates that the bar to issuance of a pistol permit "applies only in conjunction with the application of the Criminal Procedure Law and Family Court Act sections cited therein, which deal with orders of protection, and provides that a person who has previously had a firearms license revoked pursuant to those sections is ineligible to hold such a license" (Matter of Romanoff v Kelly, 23 AD3d 212, 212 [2005]; see Matter of Fautleroy v Kelly, 4 Misc 3d 1014[A], 2004 NY Slip Op 50875[U] [Sup Ct, NY County 2004]). Even if Penal Law § 400.00 (1) (k) is subject to multiple interpretations, the legislative history of the 1996 amendment to that statute makes it clear that the provision in question was intended to protect victims of domestic violence from individuals who have orders of protection issued against them (see Sponsor's Mem, Bill Jacket, L 1996, ch 644). We can find nothing in the legislative history that would support a reading of the statute as two separate clauses. Here, inasmuch as the prior revocation of petitioner's pistol permit

---

<sup>1</sup> This Court confirmed such revocation (Matter of Gerard v Czajka, 307 AD2d 633 [2003]).

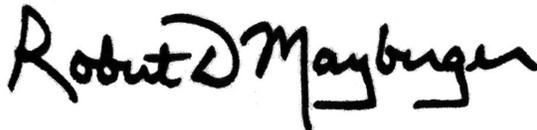
was unrelated to either of the enumerated statutes, it did not bar his eligibility to apply for a new permit.

Although the revocation of petitioner's pistol permit and the reasons therefor unquestionably could have some bearing on whether there is "good cause" to deny his current application (Penal Law § 400.00 [1] [n]), respondent's denial of the application was based, not on a finding of "good cause" but, rather, upon respondent's misinterpretation of Penal Law § 400 (1) (k). Accordingly, the determination must be annulled and the matter remitted to respondent for further proceedings on petitioner's pistol permit application.

McCarthy, Garry, Lynch and Devine, JJ., concur.

ADJUDGED that the determination is annulled, without costs, petition granted, and matter remitted to respondent for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court