# Right To Carry Firearm Statute Remains Firm In Recent Unpublished Case

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In a recent unpublished case out of Morris County, *In Re D.C.*, Docket Number A-35-10-17T2 (App. Div. 2019), the Appellate Division upheld the lower court's decision to reject the appeal of an individual's application to carry a handgun pursuant to N.J.S.A. 2C:58-4(C). The Appellate Division also rejected the appellant's argument that N.J.S.A. 2C:58-4(C) and N.J.A.C. 13:54-2.4(d) are unconstitutional.

The Court found the appellant's arguments were without merit to warrant a written decision, but it did discuss the standard for allow regular citizens (who are not associated with security or law enforcement) to carry handguns.

The Appellate Division held that to obtain a New Jersey permit to carry a firearm, an applicant must demonstrate that they are not subject to "any of the disabilities set for in [N.J.S.A.] 2C:58-3(C), that he [or she] is thoroughly familiar with the safe handling and use of handguns, and that he [or she] has a justifiable need to carry a handgun." N.J.S.A. 2C:58-4(C); see also N.J.S.A. 2C:58-4(d). The court also cited N.J.A.C. 13:54-2.4(d), which, in pertinent part, requires that a private citizen's application for a permit to carry a handgun include a "written certification of justifiable need to carry a handgun … detail[ing] the urgent necessity for self-protection, as evidenced by specific threats or previous attacks, which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun."

In this case, there was no question that the appellant did not make any showing of "justifiable need" as he did not dispute same. His arguments challenging the constitutionality of the "justifiable need" requirements of the statute and regulation were rejected. In doing so, the Appellate Division noted that the "justifiable need" requirement in N.J.S.A. 2C:58-4(C) and (d) has been found constitutional in *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), and in *In Re Wheeler*, 433 N.J. Super 560 (App. Div. 2013),

and it felt no need to deviate from that precedent.

In *Wheeler, supra*, the Appellate Division held that the "justifiable need" requirement of N.J.S.A. 2C:58-4(C) to carry a handgun does not violate the Second Amendment. Id. at 575-576. The *Wheeler* Court went on to fully discuss the "justifiable need" aspect of the law and held that the "justifiable need" component of the carry permit law is best understood "as accommodating, on a case-by-case basis, those who have a reason – one based on more than a generalized concern against the prevalence of crime- to anticipate a violent attack in a public place warranting lawful defensive use of a handgun." *Id*. at 579 (Citations omitted).

The *Wheeler* Court echoed the statute with regard to a "justifiable need" and held that applicants must show an "urgent necessity for self-protection" by pointing to specific threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means." *Id*. at 580. Accordingly, there is no question that the "justifiable need" burden to carry a handgun in New Jersey is a high one, and courts have adhered to the strict language in the statute when evaluating such applications.