

IN THE  
**COMMONWEALTH COURT  
OF PENNSYLVANIA**

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709 CD 2023

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PENNSYLVANIA STATE POLICE

v.

AMANDA JO REESE

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**BRIEF OF *AMICI CURIAE* – FIREARMS OWNERS AGAINST  
CRIME-INSTITUTE FOR LEGAL, LEGISLATIVE AND  
EDUCATIONAL ACTION AND SECOND AMENDMENT  
FOUNDATION – IN SUPPORT OF APPELLEE AMANDA JO  
REESE ON APPEAL FROM THE ORDER OF JUNE 6, 2023, OF THE  
OFFICE OF ATTORNEY GENERAL, ADMINISTRATIVE LAW  
JUDGE DOCKET NO. FAD01724**

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## I. STATEMENT OF INTEREST OF AMICUS CURIAE

*Amici Curiae* – Firearms Owners Against Crime - Institute for Legal, Legislative and Educational Action and Second Amendment Foundation – submit this brief in support of Appellee Amanda Reese on appeal from the order of June 6, 2023, of the Office of Attorney General, Administrative Law Judge Docket No. FAD01724, reversing the Pennsylvania State Police’s denial of her application for a License to Carry Firearms (LTCF).

*Amicus* Firearms Owners Against Crime - Institute for Legal, Legislative and Educational Action (“FOAC-ILLEA”) is a non-partisan, non-profit corporation organized as a Social Welfare Organization pursuant to section 501(c)(4) of the Internal Revenue Code for the purposes of developing and advocating for legislation, regulations, and government programs to improve safety, protect citizens, stimulate sportsmen’s activities and safe legal firearm ownership; conducting and publicizing research into the positions of elected officials concerning these issues; providing legal defense of firearms and sportsmen’s related issues; and educating the public on safe and legal firearm ownership, and constitutional issues relating thereto.

FOAC-ILLEA is a member-driven organization with more than 1600 members within the Commonwealth. Its members are active and well-

informed on political issues at both the state and federal level. As a Pennsylvania organization with members being citizens of the Commonwealth, the questions before this Court and the decision this Court has been asked to render, are of great significance to FOAC-ILLEA and its members.

*Amicus* Second Amendment Foundation (“SAF”) is a non-profit membership organization founded in 1974 with over 720,000 members and supporters across the United States. Its purposes include education, research, publication, and legal action focusing on the constitutional right to keep and bear arms, and SAF is dedicated to promoting a better understanding about our Constitutional heritage to privately own, possess, and carry firearms.

For these reasons, the *Amici* believe this Honorable Court will benefit from their perspective.

Pursuant to Pa.R.A.P. 531(b)(2), no individual or entity – other than the identified entities and counsel – have paid in whole or in part for the preparation of this brief or authored portions of this brief.

## **II. SUMMARY OF ARGUMENT**

The Pennsylvania State Police bring this appeal seeking the reversal of an Administrative Law Judge’s correct determination that an Arizona

criminal conviction no longer exists consistent with the Superior Court of Arizona for Mohave County's Orders setting aside the judgments of guilt, dismissing the accusations or information, and releasing the defendant from all penalties and disabilities resulting from the conviction, and explicitly restoring Ms. Reese's civil right to carry firearms. As this Court's clearly established precedent dictates that where a "*convicting jurisdiction deems the conviction no longer a 'conviction' for purposes of firearms disability, the PSP has no discretion to deem otherwise,*" the PSP's appeal is baseless and this Court should award Ms. Reese attorney fees and costs for the PSP's frivolous appeal. *Pennsylvania State Police v. Sama*, 209 A.3d 1155, 1160 (Pa. Cmwlth. Ct. 2019).

For the reasons explained *infra*, the Administrative Law Judge's Order is sufficient and correct, in both form and substance, and this Court should affirm the Order.

### **III. ARGUMENT**

Pennsylvania's Uniform Firearms Act, similar to the Federal Gun Control Act, forbids certain categories of persons from the possession, use, manufacture, control, sale, or transfer of firearms, or obtaining a License to Carry Firearms ("LTCF"). *See* 18 Pa.C.S. §§

6105, 6109, and 18 U.S.C. § 922(g). Among the categories of persons prohibited from obtaining an LTCF, is “[a]n individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).” 18 Pa.C.S. § 6109(e)(1)(viii). As Appellee Amanda Reese is not a person who has been convicted of such an offense, this Court should affirm the Administrative Law Judge’s June 6, 2023 Order.

**A. What Constitutes a Conviction?**

A conviction, a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgment of sentence has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.

18 Pa.C.S. § 6102.

In previously examining the licensing prohibition in relation to a New York certificate of relief from disabilities, this Court concluded that “the prohibition in Section 6109(e)(1)(viii) does not apply to McCaffrey because under New York law the 1985 conviction is no longer deemed a ‘conviction’ within the meaning of any provision imposing a disability against obtaining

a license to carry a firearm.” *Pennsylvania State Police v. McCaffrey*, 816 A.2d 374, 376 (Pa. Cmwlth. Ct. 2003). And more recently, this Court reaffirmed this position in *Pennsylvania State Police v. Sama*, restating its holding that “*where the convicting jurisdiction deems the conviction no longer a ‘conviction’ for purposes of firearms disability, the PSP has no discretion to deem otherwise.*” 209 A.3d 1155, 1160 (Pa. Cmwlth. 2019)(relating to Delaware gubernatorial pardon)(quoting *Pennsylvania State Police v. McCaffrey*, 816 A.2d 374, 376 (Pa. Cmwlth. Ct. 2003))(emphasis in original). *See also, Sutton v. Pennsylvania State Police*, \_\_\_ A.3d \_\_\_, 2023 WL 7118405, \*5 (Pa. Cmwlth. Ct. October 30, 2023)(determining whether a ‘conviction’ exists in the originating jurisdiction) and *Titus v. Pennsylvania State Police*, 2015 WL 5457810, \*6 (Pa. Cmwlth. Ct. 2015)(assessing whether a ‘conviction’ exists in the originating jurisdiction).

This Court has also addressed what constitutes a conviction twice in relation to California’s set aside of a guilty plea. In *Bacon v. Pennsylvania State Police*, the firearm applicant had been convicted in California of an offense equivalent to a Pennsylvania offense that would prohibit him from obtaining a firearm in the Pennsylvania, but did not similarly prohibit him in California. 164 A.3d 563 (Pa. Cmwlth. Ct. 2017). Bacon argued that the “set

aside” he had received in California constituted an “expungement” that exempted his criminal offense from the definition of conviction under section 6102. *Id.* at 569-70. This Court rejected that argument and distinguished the circumstances from *McCaffrey*, on the basis that the issue was not whether California deemed the conviction, a “conviction” for purposes of the firearms disability, but whether the California relief was an “expungement.” *Id.* at 570. Notably, the California set aside that Bacon received statutorily provided that it “does not permit a person to own, possess, or have in his or her custody or control any firearm...” *Id.* at 568 (quoting California Penal Code § 1203.4(a)(2)). Thus, as the set aside was not considered an expungement and the firearms disability was not relieved by the set aside, a “conviction” remained.

Similarly, and most recently, in *Pennsylvania State Police v. Drake*, this Court again considered a California set aside, under a different statutory scheme. In *Drake*, the applicant had been convicted of a criminal offense which triggered a federal firearms disability under 18 U.S.C. § 922(g)(9). \_\_\_ A.3d \_\_\_, 2023 WL 7118444, \*1 (Pa. Cmwlth. Ct. October 30, 2023). While the California Superior Court later entered an Order setting aside the *nolo contendere* plea and dismissing the criminal complaint, the Court’s Order explicitly stated that the dismissal “does not permit a person to own,

possess, or have in his ... control a firearm if prevented by [California] Penal Code sections 29800 or 29900[.].” *Id.* (quotations, ellipses, and brackets in original). The direct issue this Court addressed was whether the California set aside was an “expungement” under the Federal Gun Control Act (“FGCA”), 18 U.S.C. § 921(a)(33)(B)(ii), not whether the convicting jurisdiction still deemed a conviction to exist for firearms purposes. <sup>1</sup> *Drake* was based on an interpretation of California and federal law; whereby in adopting the reasoning of *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236 (10<sup>th</sup> Cir. 2008), this Court held that “expungement” and “set aside” under the FGCA were synonymous, but did not address whether Drake’s set aside conviction constituted a “conviction” under Pennsylvania law, as such was irrelevant.

In this matter, the PSP admits that Ms. Reese is *not* the subject of a federal firearms disability under the FGCA <sup>2</sup> And the PSP’s position that she is not prohibited under federal law as a result of the Arizona set aside, is reaffirmed in their letters of April 14, 2021 <sup>3</sup> and June 2, 2021, <sup>4</sup> which only

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<sup>1</sup> It should be noted that Mr. Drake represented himself *pro-se* and failed to file a brief before this Court. Thus, while there may exist legal arguments in support of Mr. Drake not actually being prohibited, he, unfortunately, did not have the benefit of counsel to put forth those arguments.

<sup>2</sup> *See*, Petitioner’s Brief at 10, fn. 5 (declaring that “[t]his prohibition applies only under the UFA and does not implicate Federal law in general, or the Gun Control Act of 1968 (as amended), specifically.”)

<sup>3</sup> *See*, RR. 058a.

contend that Ms. Reese is prohibited as a result of 18 Pa.C.S. § 6109(e) and not as a result of 18 U.S.C. § 922(g)(1). If the PSP contends that an individual is prohibited under both state and federal law, its determination letters specify both, as reflected in the following:<sup>5</sup>

Dear: [REDACTED]

This letter is in response to your Pennsylvania Instant Check System (PICS) Challenge, Form SP 4-197, which was received by this office on [REDACTED]

Please be advised that we have reviewed all records and documentation regarding your PICS denial and challenge for [REDACTED], and the decision to deny your challenge has been upheld. This information is confidential and to be used only if you decide to continue with the challenge process.

Please be advised that you are prohibited under both state and federal law. Your conviction is an enumerated offense in 18 Pa C.S. § 6105. It is also prohibited under federal law, 18 USC § 922 (g) (1). Your [REDACTED] conviction for [REDACTED] is prohibiting. Please be advised that regardless of any penalty you may have received, this decision under federal law is based on the maximum penalty you could have received for this offense.

Accordingly, unlike in *Drake*, the PSP does not dispute that the Arizona set aside resulted in the *absence* of a “conviction” in the originating jurisdiction. If the FBI or ATF contended that the set aside was insufficient – whereby the conviction remained a “conviction” – the National Instant Check System (“NICS”) would have notified PSP during the background check of FBI/ATF’s position and PSP would have also included 18 U.S.C. § 922(g)(1) as a basis for denial.

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<sup>4</sup> See, RR. 062a.

<sup>5</sup> As all purchaser, transferee, and LTCF applicant information is confidential and not subject to disclosure pursuant to 18 Pa.C.S. §§ 6111(g)(3), (3.1), (i), the undersigned has redacted the identifying information.

**B. The Arizona Set Aside**

Pursuant to A.R.S. § 13-907(A), “any person who has not previously been convicted of a felony offense shall automatically be restored *any* civil rights that were lost or suspended as a result of the conviction if the person pays all victim restitution imposed.” Under certain circumstances, where the person has been convicted of a dangerous or serious offense, subsection A, *supra*, may not apply to a person’s right to possess a firearm, but said right can still be restored by an order pursuant to § 13-910. A.R.S. § 13-907(C)-(D).

In this matter, on March 17, 2005, the Superior Court of Arizona for the County of Mohave issued three identical Orders “setting aside the judgment of guilt...dismissing the accusation or information, and releasing the defendant from all penalties and disabilities resulting from the conviction.” RR. 029a, 032a, 035a. On October 23, 2012, the Court issued two additional identical orders granting the relief requested in an Application to Restore Civil Rights to Carry a Firearm filed by Ms. Reese. RR. 030a, 033a. On August 27, 2014, the Court issued a third Order granting the relief requested in an Application to Restore Civil Rights to Carry a Firearm filed by Ms. Reese, identical to the first two issued in 2012. RR. 036a. The PSP does not dispute that “Reese did obtain her AZ Set Aside,

pursuant to A.R.S. § 13-907,”<sup>6</sup> and they correctly assess that a set aside pursuant to A.R.S. § 13-907, is not the equivalent of a Pennsylvania expungement, but that equivalence – or lack thereof – is irrelevant.

This case, like *McCaffrey* and *Sama*, concerns an applicant whose conviction is no longer considered a ‘conviction’ for purposes of a firearms disability by the law of the convicting jurisdiction. As discussed *supra*, if the “*convicting jurisdiction deems the conviction no longer a ‘conviction’ for purposes of firearms disability, the PSP has no discretion to deem otherwise.*” *Sama*, 209 A.2d at 1160. As A.R.S. § 13-907 and the Arizona Court’s October 12, 2012 and August 24, 2014 Orders clearly state that Ms. Reese’s firearms rights have been unconditionally restored, the PSP’s decision contrary is meritless and this Court should award Ms. Reese attorney fees and costs against the PSP for its frivolous appeal.

**C. The ALJ’s Opinion is Brief, but Sufficient**

Pursuant to 2 Pa.C.S. § 507, agency adjudications must be in writing, contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel either personally or by mail. The decision must contain sufficiently detailed findings of fact for this Court to perform a

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<sup>6</sup> Petitioner’s Brief at 13.

meaningful review. *Salters v. Pennsylvania State Police Municipal Police Officers' Education and Training Commission*, 912 A.2d 347, 355 (Pa. Cmwlth. Ct. 2006)(internal citation omitted).

While the order issued by the ALJ is short and lacks formal headings or a numbering or bullet system specifically signaling or identifying its facts, the findings and reasoning of the ALJ are clear and sufficiently identifiable for this Court's review. The PSP was required to prove by a preponderance of the evidence that Ms. Reese was a person prohibited from obtaining her license to carry firearms, and the ALJ found that, as a result of the crystal clear precedent set by this Court, addressing when a conviction does and does not exist, the PSP failed to carry their burden.

#### **IV. CONCLUSION**

For all the foregoing reasons, *Amici* respectfully submits that the Pennsylvania State Police's appeal of the Administrative Law Judge's decision is clearly meritless and there is no basis to contend that a conviction properly set aside by the State of Arizona, continues to disable Ms. Reese from obtaining her License to Carry Firearms. *Amici* accordingly request that this Court affirm the ALJ's Order.

Respectfully Submitted,



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Dated: December 28, 2023

**WORD COUNT CERTIFICATION**

I certify that based on the word count of Microsoft Word that this brief does not exceed 7,000 words, pursuant to Pa.R.A.P. 531(b)(3).

  
\_\_\_\_\_  
Joshua Prince, Esq.

**CONFIDENTIAL INFORMATION CERTIFICATION**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

  
\_\_\_\_\_  
Joshua Prince, Esq.