

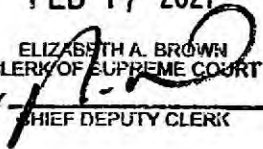
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD JERRELL,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; AND JOSEPH
LOMBARDO, SHERIFF, CLARK
COUNTY, NEVADA,
Respondents.

No. 79994-COA

FILED

FEB 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard Jerrell appeals from a district court order denying a petition for judicial review of a firearm license revocation. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

In 1994, appellant Richard Jerrell pleaded guilty to misdemeanor battery domestic violence (BDV).¹ Due to an administrative error, this BDV conviction was mistakenly entered into the National Instant Criminal Background Check System (NICS) under the wrong spelling of his last name. Subsequently, the conviction was apparently sealed.

In June 2014, Jerrell applied for and was issued a concealed firearms permit (CFP) by the Las Vegas Metropolitan Police Department (LVMPD). During the permitting process, LVMPD conducted a background check of Jerrell, which included a search of the NICS database, the Department of Public Safety records, a Criminal History Report, and a Shared Computer Operation for Protection and Enforcement report. Evidence of Jerrell's BDV conviction did not appear in any record when

¹We recount the facts only as necessary for our disposition.

LVMPD searched under the correct spelling of Jerrell's last name. As a result, LVMPD approved Jerrell's CFP application without knowledge of his 1994 conviction.

In May 2017, the 1994 administrative error was discovered and corrected. In November, Jerrell attempted to purchase a firearm but was denied because the NICS database properly noted his BDV conviction. The Nevada Department of Public Safety notified LVMPD that Jerrell's firearm purchase had been denied due to his BDV conviction. LVMPD sent a letter to Jerrell informing him that his CFP was revoked pursuant to NRS 202.3657(4)(g) and 18 U.S.C.A. § 922(g)(9) (West 2015). Jerrell returned his permit and surrendered his firearms to the LVMPD.

Jerrell filed a petition for writ of mandamus, which the district court construed as a petition for judicial review. The district court later denied his petition for judicial review. The court determined that despite Jerrell's conviction being sealed, NRS 179.285, Nevada's record sealing statute, did not restore his right to bear arms. On appeal, Jerrell contends that LVMPD abused its discretion when it revoked his CFP because his 1994 BDV conviction was presumably sealed and, therefore, he is not prohibited from possessing a CFP pursuant to 18 U.S.C.A. § 922(g)(9).² We disagree.

²18 U.S.C.A. § 922(g)(9) prevents a person who has been convicted of misdemeanor domestic violence from possessing a firearm. Jerrell contends that because his record was presumably sealed, he is no longer prohibited from possessing a firearm under the United States Code. Jerrell cites to 18 U.S.C.A. § 921(a)(20) (West 2019), which provides that "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship,

We review administrative agency decisions “for clear error or an arbitrary abuse of discretion” and will only overturn findings that are not supported by substantial evidence. *N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). “Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion.” *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 624, 310 P.3d 560, 564 (2013) (internal quotation marks omitted). “When determining the validity of an administrative regulation, courts generally give great deference to an agency’s interpretation of a statute that the agency is charged with enforcing.” *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (internal quotation marks omitted). This court reviews statutory interpretations de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 405 (2014).

When the language of a statute is clear and unambiguous, a court is not permitted to attach an alternative meaning and interpretation beyond the statute itself. *Erwin v. State*, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995). If a statute is ambiguous, a court may look to alternative sources beyond the statute to determine its meaning, including looking to legislative history, intent, and analogous statutes. *State Farm*, 116 Nev. at 294, 995 P.2d at 485. Thus, we must begin with an analysis of NRS 179.285:

1. If the court orders a record sealed . . . :

transport, possess, or receive firearms.” That is, this statute defers to the state with regard to restoring civil rights. Assuming that Jerrell’s conviction was actually sealed and his civil rights restored, as we explain in further detail above, NRS 179.285(2)(b) specifically states that his right to bear arms is not automatically restored, and NRS 213.090 provides that the right to bear arms may be restored only with a pardon.

- (a) All proceedings recounted in the record are deemed never to have occurred
 - (b) The person is immediately restored to the following civil rights if the person's civil rights previously have not been restored:
 - (1) The right to vote;
 - (2) The right to hold office; and
 - (3) The right to serve on a jury.
2. Upon the sealing of the person's records, a person who is restored to his or her civil rights pursuant to subsection 1 must be given:
- (a) An official document which demonstrates that the person has been restored to the civil rights set forth in paragraph (b) of subsection 1; and
 - (b) A written notice informing the person that *he or she has not been restored to the right to bear arms, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms.*

(Emphasis added.) Our review of the record does not reveal any evidence that Jerrell's 1994 BDV conviction was ever sealed. However, the district court summarily found that the conviction was sealed. Regardless, the statute clearly and unambiguously states³ that sealing would not restore Jerrell's right to bear arms.⁴ Sealing only restores the right to vote, hold

³Jerrell argues that the rule of lenity should apply so that the statute be construed in his favor. The rule of lenity provides that ambiguous criminal statutes shall be liberally interpreted in favor of defendants. *State v. Lucero*, 127 Nev. 92, 99, 249 P.3d 1226, 1230 (2011). However, NRS 179.285 is clear and unambiguous because it expressly states that his right to bear arms is not restored. Therefore, the rule of lenity is not applicable.

⁴Jerrell claims to never have received written notice informing him that he was not restored the right to bear arms as required under the

office, and serve on a jury. Pursuant to NRS 179.285, the right to bear arms is only restored through a pardon, which Jerrell has not provided evidence of.

NRS 179.285 is clear and unambiguous, and so it is given its plain meaning and effect. As a result, the district court did not err when it determined that even if Jerrell's conviction record was sealed, he was not permitted to carry a firearm.

Furthermore, LVMPD did not act arbitrarily or abuse its discretion when it revoked Jerrell's CFP after it discovered his BDV conviction. Here, NRS 202.3657 provides the eligibility requirements for obtaining a CFP, including the requirements to deny or revoke a CFP permit. The statute provides, "[t]he sheriff *shall* deny an application or revoke a permit if the sheriff determines that the applicant or permittee: . . . [h]as been convicted of a crime involving domestic violence or stalking" NRS 202.3657(4)(g) (emphasis added). When interpreting statutes, "shall" is presumptively mandatory language whereas "may" is construed as permissive language unless legislative intent demands another construction." *State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990). An agency has little to no discretion to interpret

statute; he infers that his right was restored because of this alleged lack of notice. However, he would receive this notice only if his BDV conviction was actually sealed after the enactment of this statute. He has not provided the date of the sealing of his record. Therefore, the alleged absence of this notice is not determinative. Nor does Jerrell make any argument or provide any authority supporting his assertion that the lack of notice automatically restores the right to bear arms, presuming that his record was sealed. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).


a statute when the language is presumptively mandatory. *N. Nev. Ass'n Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 113-14, 807 P.2d 728, 731-32 (1991). Because the statute uses the term "shall," the language is construed as being mandatory and, therefore, LVMPD was required to revoke Jerrell's CFP when it learned of his BDV conviction. Jerrell has not asserted an argument showing any exceptions to the mandatory language nor did he seek equitable relief.

Lastly, LVMPD cannot ignore Jerrell's conviction after learning of its existence. *See Baliotis v. Clark Cty.*, 102 Nev. 568, 570, 729 P.2d 1338, 1340 (1986) (holding that the police department cannot disregard its independent knowledge of an applicant's prior convictions despite the arrest and conviction records having been sealed). Therefore, once LVMPD learned of Jerrell's BDV conviction, LVMPD had no other option but to revoke his CFP pursuant to statute.

Thus, LVMPD did not abuse its discretion in revoking Jerrell's CFP. Therefore, we conclude that the district court properly denied Jerrell's petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Ara H. Shirinian, Settlement Judge
The Gersten Law Firm PLLC
Matthew J. Christian
Eighth District Court Clerk