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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

EDDIE LOCKHART,

Plaintiff and Appellant,

v.

HUNTINGTON PARK POLICE
DEPARTMENT et al.,

Defendants and Respondents.

B235191

(Los Angeles County
Super. Ct. No. BS129807)

APPEAL from a judgment of the Superior Court of Los Angeles County,
James C. Chalfant, Judge. Affirmed.

Eddie Lockhart, in pro. per., for Plaintiff and Appellant.

Leal & Trejo and Michael E. Wolfsohn for Defendants and Respondents.

Plaintiff and appellant Eddie Lockhart (Lockhart) appeals a judgment denying his petition for a traditional writ of mandate (Code Civ. Proc., § 1085)¹ wherein he sought an order directing defendants and respondents City of Huntington Park, Huntington Park Police Department, and Chief of Police Jorge Cisneros (the Chief) (collectively, the City) to issue him a concealed weapon permit.

The City's decision to issue a concealed weapon permit is discretionary, and traditional mandamus does not lie to control the Chief's exercise of his discretion in that regard.

Further, Lockhart failed to show the City's decision was arbitrary, capricious or entirely without evidentiary support. Therefore, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

1. Lockhart's moving papers.

On December 22, 2010, Lockhart filed a petition for writ of mandate under section 1085, seeking the issuance of a peremptory writ of mandate directing the City to set aside its decision denying him a concealed weapon permit and to issue him a permit.

Lockhart contended he was entitled to the issuance of a permit because he had met all the prerequisites. He had, inter alia, completed a required 16-hour firearm safety course and obtained a certificate, had undergone fingerprinting and had paid a \$75 processing fee.

In his supporting papers, Lockhart alleged Vice Mayor Gomez told him that the City does not issue such permits "to people like [Lockhart]," which Lockhart construed to mean that the City has a policy of refusing concealed weapon permits to African-Americans. Lockhart alleged he has a concealed weapon permit from the State of Utah, which permit is valid in 33 other states (excluding California), an exposed weapon permit from the State of California, and an entertainment firearm permit issued by the State of California.

¹ All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

Lockhart asserted that as a board member of the South East Neighborhood Council in the City of Los Angeles, his duties include travelling within his area of responsibility, where there is a lot of gang-related violence, and reporting illegal activity.

With respect to his moral character, Lockhart stated he is “a clergy” for the LAPD and the Los Angeles County Sheriff’s Department, he teaches Bible Studies in the county jail, he is a board member of the Empowerment Congress Southeast Area Neighborhood Development Council, and he has completed training on ethics and open government, conducted by the Los Angeles City Ethics Commission.

Further, Lockhart contended that in June 2008, he had been involved in two dangerous incidents on Figueroa Street in Los Angeles. Once, he was the victim of an attempted carjacking but succeeded in driving away. On another occasion, a passenger in his vehicle stole his wallet.

2. Opposition papers.

The city’s opposition papers stated: Pursuant to section 218 of the City’s internal policy and procedures guide (Policy 218), the City conducted an interview with Lockhart on September 13, 2010 and completed its investigation on November 4, 2010. It was determined that Petitioner had complied with the procedural requirements of Policy 218, including the purchase of a qualifying pistol and completion of a training class. However, the City’s investigation failed to find sufficient legal grounds to justify the issuance of a concealed weapon permit to Lockhart. Because sufficient legal grounds did not exist, it was recommended to the Chief that he deny Lockhart’s application.

The City’s papers further stated, “In addition to the lack of sufficient legal grounds, [Lockhart’s] application was denied because: (1) [he] had already been denied a permit by the Los Angeles County Sheriff in 2009, (2) [he] failed to clearly articulate a justification for issuance of a permit and to clearly describe his activities which voluntarily place him in jeopardy, (3) [he] has an ‘At Large Ministry’ located outside of [the City’s] jurisdiction and conducts the overwhelming majority of his business outside [the City’s] jurisdiction, (4) [he] is regularly in the company of law enforcement officers

while he conducts his ministerial duties, and (5) [he] has failed to file any crime or victim reports with [the City] alleging any threats or injuries inflicted upon him.”

3. *Trial court's ruling.*

On July 19, 2011, the matter came on for hearing. The trial court denied Lockhart's petition for writ of mandate. In its written ruling, the trial court stated:

Lockhart failed to support his petition with *any* evidence. He merely attached several unauthenticated documents to his opening brief, without a supporting declaration. Lockhart bore the burden of proof in the proceeding, and his failure to proffer any admissible evidence was sufficient to warrant denial of the petition.

The trial court further ruled that even assuming it were to consider the unauthenticated exhibits, those exhibits did not justify mandamus relief. To prevail in this proceeding, Lockhart was required to establish the City acted arbitrarily or capriciously in rejecting his application. Penal Code section 12050 vests considerable discretion in the Chief in determining whether an applicant has good moral character, that good cause exists for the issuance, and that the person applying is a city resident and has completed a particular training course. Here, the City denied the application on the ground Lockhart's ministry occurs in the City of Los Angeles *outside* of Huntington Park, he had been denied a permit by the Los Angeles County Sheriff, and Lockhart has access to law enforcement for his daily ministry.

The trial court added, “Lockhart suggests that because he is a clergyman who works with police in bad neighborhoods, that fact is good cause for him to have a concealed weapon permit. [¶] This argument is spurious. Concealed weapon permits are difficult to get. Public policy does not support issuance of a permit to everyone who may run a safety risk in the course of their daily duties. For this reason, section 12050 gives ‘extremely broad discretion’ to law enforcement concerning issuance of such permits. [Citation.] The mere fact that Lockhart ventures into crime-ridden areas does not provide good cause to issue a concealed weapon permit, let alone compel the Chief of Police to issue him one. Lockhart has a firearm at home and a permit to carry an exposed firearm; he does not offer any explanation as to why he needs to carry a concealed weapon as

well. It is also true that Lockhart’s ministry work occurs outside of Huntington Park, and there is no reason for the Chief of Police to provide him a permit based on that work.”

The trial court concluded “Lockhart has failed to establish good cause for issuance of a concealed weapon permit, and has failed to demonstrate that the [City’s] decision was arbitrary, capricious, or entirely lacking in evidentiary support.”

On August 8, 2011, the trial court entered judgment denying Lockhart’s petition for writ of mandate. This appeal followed.

CONTENTIONS

Lockhart contends the Chief abused his discretion in refusing to issue him a concealed weapon permit because he demonstrated good moral character, had completed the required training and showed good cause for the issuance of the permit.

DISCUSSION

1. General principles relating to traditional mandamus under section 1085.

A writ of mandate “may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.” (§ 1085, subd. (a).)

“The petitioner must demonstrate the public official or entity had a ministerial duty to perform, and the petitioner had a clear and beneficial right to performance. [Citations.]” (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700 [county health officer had no ministerial duty to require performers in adult film industry to wear condoms] (*Foundation*).)

Generally, “mandamus is available to compel a public agency’s performance or to correct an agency’s abuse of discretion when the action being compelled or corrected is ministerial. [Citation.] ‘A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act’s propriety

or impropriety, when a given state of facts exists. Discretion . . . is the power conferred on public functionaries to act officially according to the dictates of their own judgment. [Citation.]’ [Citations.] *Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner.* [Citation.]” (*Foundation, supra*, 197 Cal.App.4th at pp. 700-701, italics added; accord *Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002 [mandamus may not be invoked to control an exercise of discretion].)

In “ordinary mandamus proceedings such as this one, courts may exercise a very limited review of a public agency’s action, and may merely determine whether the agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support. [Citation.]” (*Gifford v. City of Los Angeles* (2001) 88 Cal.App.4th 801, 805 (*Gifford*)).

2. *Statutory scheme vests police chief with discretionary authority to issue license to carry concealed firearm.*

At the relevant time, Penal Code section 12050 stated in pertinent part at subdivision (a)(1)(B): “The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city and has completed a course of training as described in subparagraph (E), *may issue* to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person” (Italics added.)²

Penal Code “[s]ection 12050 gives ‘*extremely broad discretion*’ to the sheriff concerning the issuance of concealed weapons licenses [citation] and ‘explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements.’ [Citation.] This discretion must be exercised in each

² Penal Code section 12050, subdivision (a)(1)(B), has been repealed and recodified in Penal Code section 26155, without substantive change. (Deering’s Ann. Pen. Code (2012 pocket supp.) 2010 Law Revision Com. comment foll. Pen. Code, § 26155, p. 613.)

individual case. ‘It is the duty of the sheriff to make such an investigation and determination, on an individual basis, on every application under section 12050.’ [Citation.]” (*Gifford, supra*, 88 Cal.App.4th at p. 805, italics added.)

3. *Trial court properly denied mandamus relief.*

By statute, the Chief’s authority to issue a concealed weapon permit is discretionary, not ministerial. (Pen. Code, former § 12050.) Upon proof the applicant “is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city and has completed a course of training,” a police chief “*may*” issue a concealed weapon permit. (§ *Id.*, subd. (a)(1)(B), italics added.) Thus, the Penal Code “ ‘explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements.’ [Citation.]” (*Gifford, supra*, 88 Cal.App.4th at p. 805.)

Discretion “ ‘is the power conferred on public functionaries to act officially according to the dictates of their own judgment.’ ” (*Foundation, supra*, 197 Cal.App.4th at p. 700.) Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise discretion in some manner. (*Id.* at pp. 700-701.) Therefore, mandamus does not lie to compel the City to grant Lockhart’s concealed weapon permit application.

Our review herein is limited to determining “whether the agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support. [Citation.]” (*Gifford, supra*, 88 Cal.App.4th at p. 805 [municipal police department refused an individual’s application for concealed firearm license].)

Here, the City properly determined Lockhart failed to establish good cause for him to have a concealed weapon permit. As the trial court found, “the mere fact that Lockhart ventures into crime-ridden areas does not provide good cause to issue a concealed weapon permit, let alone compel the Chief of Police to issue him one.”

The City also based its denial on the fact that Lockhart's ministry is located outside the City of Huntington Park and he conducts the overwhelming majority of his business outside the City's jurisdiction.

On this record, Lockhart cannot show the City's decision was arbitrary, capricious or entirely without evidentiary support.³

DISPOSITION

The judgment denying Lockhart's petition for writ of mandate is affirmed. The City shall recover costs on appeal.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.

³ Lockhart's contention the permit was denied due to racial animus is without merit. As the trial court noted, Lockhart did not submit any evidence in support of his mandamus petition. His bare allegation of bias, without more, requires no discussion.