

## **The Gun Control Act and its Impact on Felons**

*By:*

Derek Andrew DeBrosse, Esq.

The Law Office of Derek A. DeBrosse

1161 Bethel Road, Suite 101, Columbus, Ohio 43220

(614) 316 - 7850

Serving one's time in Ohio, oftentimes, goes on much longer than any criminal defendant anticipated at the time of their conviction or plea to a lesser charge. I have previously written articles about the Gun Control Act ("GCA") focusing on misdemeanor crimes of domestic violence; in this article the focus will be around crimes punishable by imprisonment of more than one year.

Is it possible for someone who has dutifully served their time for a felony to be disqualified from owning firearms? The answer is clearly yes. While the guilty deserve punishment, too often when charges are filed, the accused do not even consider the impact it may have on their right to keep and bear arms. The GCA has a laundry list of triggers commonly referred to as "disqualifiers" that will prohibit one from shipping, transporting, or possessing any firearm or ammunition. Essentially, if you fall within a disqualifier you are no longer allowed to own a firearm.

Included in this laundry list are convictions of crimes punishable by a term exceeding one year. The law seems relatively straightforward; if you are convicted of a felony, you are disqualified. However, any confusion that may exist comes into play with the federal exceptions to this law and the state law. The GCA excludes convictions from this disqualifier if the conviction has been expunged, set aside, pardoned or for which the convicted has had a civil rights restoration. Regardless of these exceptions, if any of these processes expressly restrict firearms then the convicted remains disqualified; for example, a pardon may be a limited pardon with a firearms restriction attached.

Essentially, the United States Congress has left it up to the individual States to determine if their convicted felons could be trusted with firearms. When approaching this issue one should look at felonies under Ohio law in two separate categories; violent and non-violent.

### *Violent Felonies*

When dealing with violent felonies there is great ambiguity under the law. The federal government construes case law in such a manner as to prohibit a felon who has had their rights restored under Ohio law from regaining their right to keep and bear arms. Under Ohio law a person cannot own a weapon if they have committed a felony offense of violence. R.C. 2923.13. However, the person will be eligible to have their rights restored if they meet certain criteria. R.C. 2923.14. When dealing with a felony offense of violence it is important to remember that one is disqualified under both federal and state law. When that person is granted restoration under Ohio law it *should* fulfill the GCA's requirement regarding civil rights restoration. The federal government says no way!

Citing to a U.S. Supreme Court Case, *Caron v U.S.*, 542 U.S. 308 (1998), the federal government asserts the “ban for one ban for all” ruling. Under this rule of law if a state’s restoration process restricts a convicted felon’s right to own firearms in any manner then the exceptions in the GCA do not apply and the felon is not truly restored to his or her firearm rights, thereby making the state restoration process irrelevant. In *Caron*, the defendant was restored under Massachusetts law, which allowed for long guns but not handguns. The Court came to its holding based on the GCA, where it states “**unless** such...restoration...expressly provides that the person may not...possess...firearms.” In one sense, the defendant’s restoration does provide for a ban on firearms triggering the “unless” clause, in another sense the ban is not absolute therefore not triggering the “unless” clause. The court took the first approach resulting in the present ruling.

Looking to Ohio restoration law under R.C. 2923.14 it specifically states that restoration does not apply with respect to **dangerous ordnance**. The federal government contends that this provision under R.C. 2923.14 triggers the “unless” clause, thereby making it illegal for violent felons to ever purchase a firearm again, even if they had their rights restored in Ohio. This may not be the case for non-violent offenders.

### *Non-Violent Felonies*

The difference with non-violent felonies is centered on Ohio law. A felon, under the Ohio statutory restoration process, needs to seek such statutory restoration if they were disqualified under R.C. 2923.13, which includes violent felonies (as discussed above) and various drug related crimes. So, if one were convicted of a non-violent, non-drug related felony, such as burglary, they would not be disqualified under Ohio law, only federal law. Moreover, under R.C. chapter 2967 a felon is automatically restored to his civil rights (with a few enumerated exceptions). Does this automatic restoration restore one to their firearms rights? Possibly. It appears that unless one’s “certificate of final release” states otherwise, nothing should prohibit them from owning firearms. The *Caron* ruling would not be a prohibition as nothing under R.C. 2967 says a felon’s right to own firearms is restricted. They have served their time, been restored to their civil rights automatically, and a certificate of final release stating otherwise notwithstanding, have not been restricted in their restoration regarding firearms.

### **Conclusion**

In the end, it is important as citizens of Ohio that we understand the ambiguity that surrounds this nuanced area of the law. There is a great deal of case law, especially in Ohio and far too complex to discuss in this short article, that surrounds this very intricate issue. I recommend anyone who must face this thorny issue to contact competent legal counsel who understands the ramifications of the federal Gun Control Act and its nuances.

**Disclaimer: This article is for educational purposes only. The contents represent my own personal opinions, and should not be taken as legal advice. You can find further information on issues such as this in the Handbook of Ohio Firearms Law available at the Ohioans for Concealed Carry online store or by calling (614) 306 – 4082 to request a mail order form.**