

(Sample Brief)

IN THE
COURT OF APPEALS

In the Matter of Michael Roma, Petitioner

v.

Iverka Valerio as Albany Court Judge et al. Respondents

On Appeal from the Third Department

-

BRIEF FOR THE RESPONDENT (TEAM 2)
(This number will be assigned with the case)

-

Joe Student District 13
Jessica Student District 13

TABLE OF CONTENTS

Table of Authorities (<i>These are the precedent cases your students cite</i>)	1
Questions Presented (<i>These are the issues your students want to argue</i>)	2
Statement of Facts (<i>These are the facts from the case</i>)	2
Summary of the Argument (<i>Should be a short paragraph</i>)	3
Argument	3
Conclusion (<i>Must ask for appropriate relief</i>)	5

TABLE OF AUTHORITIES

	Page
<u>Brookman v. Dahalher</u> , 650 N.Y.S.2d 879, (3 rd Dept. 1996)	4
<u>Gerard v. Czajka</u> , 762 N.Y.S. 2d 553, (3 rd Dept. 2003)	4,5
<u>Dlugosz v Scarano</u> , 681 N.Y.S.2d 120 (3 rd Dept. 1998)	4,5
<u>Pelose v. Westchester</u> , 384 N.Y.S.2d 499, (2 nd Dept 1976)	4

QUESTIONS PRESENTED

1. Was the Judge's decision to revoke the petitioner's permit to carry a pistol proper after the Judge considered testimony from three eye witnesses and the petitioner had already violated federal law by bringing a weapon into a secure area of the airport.
2. Whether the Judge was correct in not granting the petitioner a hearing or additional time to file affidavits when the petitioner had previously admitted breaking the law by bringing a weapon in the secure area of the airport.

(Notice how the issues presented are similar to the petitioner's brief, except they are phased as if the judge made the right decision and they reflect different facts that are favorable to the respondent)

STATEMENT OF FACTS

On November 11th, 2001, Michael Roma (hereinafter "petitioner") was issued a restricted license to carry a pistol solely for hunting and target practice. The petitioner violated his license on July 3, 2003, when he carried the pistol past secure checkpoints in the Albany airport. The petitioner further violated his license by removing the weapon from its carrying case and firing the weapon into a crowd. Admittedly the petitioner was attempting to diffuse an armed robbery. But, the petitioner failed to summon trained police help and instead ended up injuring Jay Polston who was one of the robbers.

Polston, who had been convicted of a few felonies, gave a statement that the petitioner stated, "Hasta La Vista Baby" just prior to firing the weapon. Wilson the other armed robber, who also had been convicted of felonies, gave a similar statement, but remembered the petitioner said, "Make my day" prior to firing the weapon. The police also noted the petitioner was distraught and distressed because of his poor decision to fire the weapon in the direction of people. Connie Angeles, the third eyewitness, also stated the petitioner seemed agitated.

Judge Iverka Valario (hereinafter "respondent") considered all of the above evidence and found the petitioner showed poor judgment in regards to his possession of the pistol. The

respondent's decision to revoke the license was based on competent evidence and cannot be considered arbitrary and capricious. The respondent gave the petitioner a full two week period to submit evidence and did not grant a hearing prior to ruling against the petitioner.

(See how this statement uses facts included with the problem, but presents them in favor of the respondent. Compare these facts with those of the petitioner sample brief)

SUMMARY OF ARGUMENT

The respondent's decision to revoke the petitioner's license to carry a pistol was based on competent evidence. The respondent in her position as a judge is vested with broad discretion and her resolution of the factual issues should be accorded great weight. Regardless of the testimony of both Polston and Wilson, the petitioner showed poor judgment when he first brought the firearm to the airport. Furthermore a formal hearing is not required under New York law, and the petitioner was granted an adequate amount of time to submit evidence prior to the final decision. The respondent's decision should be upheld..

(Each major argument should be summarized in this paragraph. The first issue for the respondent (Valerio) is to have the court respect the lower judges decision based on the witnesses who gave testimony as well as Roma's decision to bring the gun to the airport in the first place. The second issue is block an attempt to gain a hearing or be allowed to submit additional evidence through affidavits based on the law that a hearing is not required and the petitioner received adequate time to submit already)

ARGUMENT

1. THE RESPONDENT'S DECISION TO REVOKE THE PISTOL PERMIT WAS BASED ON COMPETENT EVIDENCE AND SHOULD BE UPHELD

It is well settled that the exercise of poor judgment in the handling of a weapon is a sufficient ground for revocation of a pistol permit. Brookman v. Dahalher, 650 N.Y.S.2d 879, (3rd Dept. 1996). To that end, "[i]n determining whether to revoke a pistol permit, '[r]espondent is vested

with broad discretion and his resolution of factual and credibility issues is accorded great weight” Gerard v. Czajka, 762 N.Y.S. 2d 553, (3rd Dept. 2003). Consequently, respondent’s determination will be overturned only if he “abuse[d] his broad discretion or act[ed] in an arbitrary and capricious manner.” Dlugosz v Scarano, 681 N.Y.S.2d 120 (3rd Dept. 1998)

The petitioner in the instant case never abused her broad discretion. She considered four major sources of information. First, from Connie Angeles who as a neutral witness. Ms. Angeles gave testimony that the petitioner appeared to be agitated. Second, from the petitioner himself, who admitted he had illegally brought the weapon into a secured area. That fact alone shows poor judgment, regardless of his later acts which diffused the robbery. In Pelose v. Westchester, 384 N.Y.S.2d 499, (2nd Dept 1976), another hearing officer found that a passenger on an airplane who brought a pistol on board violated both State and Federal law, and also evinced an insensibility to the rights and safety fo the crew and passengers of that flight. The Court upheld suspension of Pelose’s license to carry a firearm. The petitioner’s conduct is exactly the same and his license should also remain suspended. Third, and Fourth, the testimony of both Polston and Wilson. In each case the witness said the petitioner made an alarming statement prior to firing the weapon. In Gerard, the petitioner said is was “almost Smith and Wesson Time”, a much less aggressive statement than either “Make my day” or “Hasta la Vista baby” Gerard’s licenses was similarly revoked.

The petitioner showed poor judgment in several instances. In each instance the respondent had adequate basis to revoke the license based on evidence. The ruling of the lower court should be upheld.

2. THE RESPONDENT WAS NOT OBLIGATED TO GRANT A HEARING AND ALSO GAVE THE PETITIONER ADEQUATE TIME TO SUBMIT EVIDENCE.

It is well settled that a formal hearing is not required prior to the revocation of a pistol permit as long as the licensee is given notice of the charges and has an adequate opportunity to submit proof in response. Dlugosz v. Scarano, 681 N.Y.S.2d 120, 121 (3rd Dept. 1998).

The issue in the case is whether evidence existed proving the petitioner showed poor judgment which was considered by the respondent in making the decision to revoke the license. The petitioner's own admission that he illegally brought the weapon into a secure area of the airport shows poor judgment. Any additional evidence would have only weakened the petitioner's case further. Two weeks is an adequate time to submit evidence in a case this simple. The petitioner should not be granted additional time to submit evidence which will never overcome his poor judgment in bringing the pistol into the airport in the first place.

CONCLUSION

The respondent's decision to revoke petitioner's license was based on competent evidence. The respondent has broad discretion in matters of credibility determination and the prior ruling should be given great weight. Furthermore, the petitioner was granted an adequate amount of time to submit evidence. The respondent respectfully requests this court to uphold the lower Court's judgment to revoke the pistol permit. . *(Make sure you ask for the proper relief in the conclusion so the judges know what you want to happen, also state in short form the reasons why they should rule in your favor)*

Respectfully Submitted,

Joe Student District 13

Jessica Student District 13