IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ENTERED
MAY 19 2004
TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

UNITED STATES OF AMERICA,

Plaintiff,

v. CRIMINAL NO. 5:91-00225

LEWIS R. LAW,

Defendant.

MEMORANDUM OPINION AND ORDER

Currently pending before the Court is the Petition of Lewis R. Law for Pardon, Expungement, Set Aside or for Restoration of Civil Rights. In response, the United States filed Response of the United States to Petition of Lewis R. Law for Pardon, Expungement, Set Aside or for Restoration of Civil Rights. In reply thereto, Lewis R. Law filed Reply of Petitioner, Lewis R. Law to the Response of the United States. Having reviewed the aforementioned Petition, as well as all relevant case and statutory law, the Court is now prepared to issue its decision.

STATEMENT OF FACTS

On January 16, 1992, Defendant Lewis R. Law was convicted by a jury[1] in the United States District Court for the Southern District of West Virginia at Beckley of felony violations of

[1]Defendant Mine Management, Inc., a corporation for which Defendant Law was the sole officer and stockholder, was also convicted along with Defendant Law. As a result of said conviction, Defendant Mine Management, Inc. was placed on five (5) years' probation.

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the Clean Water Act, 33 U.S.C. § 1319(c)(2). Thereafter, Defendant was sentenced to twenty-four (24) months' imprisonment and a $80,000.00 fine. Defendant was imprisoned for twenty-four (24) months and thereafter placed on supervised release. By virtue of his felony conviction, Defendant is subject to certain restrictions on his civil rights. He seeks relief from that disability including, *inter alia*, expungement of his conviction and restoration of his right to possess a firearm.

DISCUSSION

Pursuant to federal law, a person who is convicted of a felony is prohibited from possessing firearms. 18 U.S.C. § 922(g)(1). The Attorney General[2] is authorized, however, to grant relief from that prohibition "if it is established to [the Attorney General's] satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). If ATF denies an individual's application for relief pursuant to 18 U.S.C. § 925(c), the individual then may file a petition with the United States district court for the district in which he or she resides for judicial review of such denial. *Id.* Significantly, such review may only take place if an individual's application for relief is denied. *United States v. Bean*, 537 U.S. 71, 74, 123 S.Ct. 584, 154 L.Ed.2d 483 (2002); *see also United States v. Carte*, 122 F.Supp.2d 702, 703 (S.D.W.Va. 2000) (Haden, C.J.).

[2]Prior to the 2002 Amendments to 18 U.S.C. § 925(c), the Secretary of Treasury was the individual to whom applications were made from those seeking relief pursuant to 18 U.S.C. § 922(g)(1). The Secretary of Treasury had previously delegated to the Bureau of Alcohol Tobacco and Firearms ("ATF") the exclusive authority to act on petitions brought pursuant to 18 U.S.C. § 925(c).

Defendant asserts that he was advised by an agent of ATF that the agency cannot perform an investigation to determine whether Defendant is entitled to relief pursuant to 18 U.S.C. § 925(c) because "there are no funds currently authorized for that purpose and such an attempted procedure would be a nullity." (Reply of Pet'r, Lewis R. Law to the Resp. of the United States at 1). Defendant maintains that is why he submitted an affidavit of the Sheriff of Kanawha County, West Virginia, in support of the Petition of Lewis R. Law for Pardon, Expungement, Set Aside or for Restoration of Civil Rights. *Id.* Based on the aforementioned, it is Defendant's position that the Court should "restore to [Defendant] all of his civil rights by either a pardon, an expungement, set aside of conviction or by appropriate order." *Id.* at 3.

As the Court noted in *United States v. Carte*, ATF, indeed, is not able to provide the relief requested due to the Appropriations Act for the Department of the Treasury, which provides, in pertinent part: "[N]one of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. § 925(c)." *Carte*, 122 F.Supp.2d at 703 (internal citation omitted). Every year since the aforementioned Appropriations Act was enacted in 1992, Congress has continued to bar the use of appropriated funds to process applications filed by individuals for relief pursuant to 18 U.S.C. § 925(c). *Bean*, 537 U.S. at 75 n.3, 123 S.Ct. 584. As the United States Supreme Court held in *United States v. Bean*, "the absence of an actual denial of respondent's petition by ATF precludes judicial review under § 925(c)." *Id.* at 78.

In the case at bar, the Court finds that there has not been a denial of relief sought by Defendant pursuant to 18 U.S.C. § 925(c), and therefore, the Court finds that it lacks jurisdiction to entertain Defendant's Petition. Accordingly, the Petition of Lewis R. Law for Pardon,

Expungement, Set Aside or for Restoration of Civil Rights is hereby **DENIED**.

The Clerk is directed to fax and mail a copy of this Memorandum Opinion and Order to all counsel of record and to post of a copy of this Memorandum Opinion and Order on the Court's website at www.wvsd.uscourts.gov.

IT IS SO ORDERED this 19th day of May, 2004.

ENTER:

ELIZABETH V. HALLANAN
Senior United States District Judge