

IN THE SUPREME COURT OF IOWA
No. 23-0970

IN RE: N.S.
Petitioner/Appellant.

APPEAL IN A
CIVIL CASE

POTTAWATTAMIE COUNTY,
No. MHMH024891

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT

HONORABLE JUDGE MARGARET REYES

FINAL BRIEF FOR APPELLANT

Eric D. Puryear, AT0010498
P U R Y E A R L A W P.C.
3719 Bridge Avenue, Suite 6
Davenport, IA 52807
(p) 563.265.8344
eric@puryearlaw.com

Eric S. Mail, AT0011435
P U R Y E A R L A W P.C.
3719 Bridge Avenue, Suite 6
Davenport, IA 52807
(p) 563.265.8344
mail@puryearlaw.com

ATTORNEYS FOR THE PETITIONER-APPELLANT

TABLE OF CONTENTS

	PAGE
Certificate of Service.....	3
Table of Authorities.....	4
Statement of Issues Presented for Review.....	5
Routing Statement.....	6
Statement of the Case.....	6
Argument.....	10
Issue 1	10
Issue 2	15
Conclusion.....	22
Request for Oral Argument.....	23
Certificate of Cost.....	24
Certificate of Compliance.....	25

CERTIFICATE OF SERVICE

I, Eric S. Mail, filed and served the foregoing **Final Brief of the Appellant** on **December 14, 2023** by filing it on EDMS, which will provide a copy of it to the following:

Sarah Jennings
Assistant Attorney General
Iowa Attorney General
Hoover Building,
1305 E Walnut St
Des Moines, IA 50319

N.S.
via MyCase

Assistant County Attorney
Pottawattamie County Attorney's Office
Pottawattamie County Courthouse
Fifth Floor
227 S 6th St
Council Bluffs, IA 51501

ERIC WESSAN
Solicitor General
Iowa Department of Justice
Hoover State Office Building
Des Moines, Iowa 50319

/s/ Eric S. Mail
Eric S. Mail, AT0011435
PURYEAR LAW P.C.
3719 Bridge Avenue, Suite 6
Davenport, IA 52807
(p) 563.265.8344
mail@puryearlaw.com

TABLE OF AUTHORITIES

PAGE

CASES

<i>In the Matter of A.M.</i> 908 N.W.2d 280 (Iowa 2018)	11, 13-15
<i>Rivera v. Woodward Res. Ctr.</i> 865 N.W.2d 887 (Iowa 2015)	19
<i>Shapiro v. Thompson</i> 394 U.S. 618 (1968)	16
<i>State v. Fleming</i> 790 N.W.2d 560 (Iowa 2010)	10
<i>State v. Howard</i> 509 N.W.2d 764 (Iowa 1993)	10

STATUTES

Iowa Constitution Amend. 1A	9, 15, 17
Iowa Code § 724.31	8, 10, 11, 17, 19
34 U.S.C. § 40915	17

RULES

None

**STATEMENT OF ISSUES
PRESENTED FOR REVIEW**

Issue I. Whether the district court erred in denying the requested relief where the Appellant provided the required evidence that showed by a preponderance of the evidence that he would not be a threat to himself or others and where the record did not show evidence that he posed any risk?

AUTHORITIES

In the Matter of A.M., 908 N.W.2d 280 (Iowa 2018)

State v. Fleming, 790 N.W.2d 560 (Iowa 2010)

State v. Howard, 509 N.W.2d 764 (Iowa 1993)

Iowa Code § 724.31

Issue II. Whether the district court erred in failing to determine that a strict scrutiny analysis required granting the request for relief where no evidence in the record showed the Appellant to be a risk to himself or others?

AUTHORITIES

Rivera v. Woodward Res. Ctr., 865 N.W.2d 887 (Iowa 2015)

Shapiro v. Thompson, 394 U.S. 618 (1968)

Iowa Constitution Amend. 1A

34 U.S.C. § 40915

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it presents substantial issues of first impression, and substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.1101(2)(c), (f).

STATEMENT OF THE CASE

NATURE OF THE CASE

The Appellant, N.S., appeals from the denial of his request for relief from disabilities under Iowa Code § 724.31. Following the order denying the requested relief, the Appellant filed a Motion to Amend, Enlarge, and Reconsider. The trial court denied the Appellant's Motion. The Appellant timely appealed.

COURSE OF PROCEEDINGS AND DISPOSITION BELOW

The Appellant filed a Petition for Relief from Disabilities on August 23, 2022. (Petition; App. 8). The matter proceeded to a hearing on March 16, 2023 ; (Transcript; App. 35). Following the hearing the trial court issued a written ruling denying the requested relief. (Order under Iowa Code § 724.31 App. 10).

On May 4, 2023 the Appellant filed a Motion to Amend, Enlarge, or Reconsider. (Motion; App. 24). The trial court denied the Motion on June 2, 2023. (Order on Motion to Reconsider; App. 27).

The Appellant filed a timely Notice of Appeal on June 16, 2023. (Notice of Appeal; App. 33).

F A C T S

The Appellant, N.S., is a 32 year-old resident of Council Bluffs, Iowa. (Transcript 6:9-18; App. 40) He lost his firearm rights after a civil commitment when he was a juvenile in 2006 (*See*, Transcript 6:19 – 7:2; App. 40-41). Since the time of his commitment, N.S. obtained a GED, a CNA certificate, and is two credits away from an agricultural business degree. (Order under 724.31, p. 11; App. 20). He is married and has three children. (*Id.*) He has maintained employment over the past 6 years and has a commercial driver's license. (*Id.*)

N.S. did not understand that he lost his firearms rights at the time of his commitment. (Transcript 63:1-3; App. 97). He learned that he had lost his firearm rights when he moved to Iowa and applied for a permit to carry

weapons. (Transcript 63:5-11; App. 97).

N.S. voluntarily sought a mental health evaluation and voluntarily obtained drug test to prove his sobriety. (Transcript 63:15-19; App. 97). In the intervening decades between his commitment and the hearing, there was no evidence that N.S. was a danger to himself or others. (Transcript 63:23-64:10; App. 97). Because he did not know he was prohibited from having firearms, he innocently owned firearms for decades, and demonstrated no cause for concern. (*Id.*)

N.S. filed a Petition for Relief from Disabilities under Iowa Code Section 724.31 on August 23, 2023. (Petition; App. 8). At the hearing, N.S. presented character letters from his wife, family, friends, and coworkers. (Transcript 64:11-14; App. 98). He demonstrated a long history of employment. (*Id.*) He had no criminal history that showed any kind of problem with drugs or alcohol or violence. (Transcript 65:1-7; App. 99).

Following the hearing on the Petition for Relief, the trial court issued a ruling denying the requested relief. (Order under Iowa Code 724.31; App. 10). The trial court found that the information provided by N.S. was insufficient for the court to determine that he was not likely to act dangerously in the future. (Order at 13; App. 22). The trial court found that

the quality of the evidence provided was not sufficient for the court to determine whether N.S. was not likely to act in a manner dangerous to the public safety. (*Id.*)

N.S. filed a Motion to Amend, Enlarge, and Reconsider on May 4, 2023. (Motion; App. 24). This further explored the issue, raised briefly at trial, of the impact of Amendment 1A on the proper analysis in this case. The trial court issued an Order on Motion to Reconsider on June 2, 2023 denying the Motion. (Order; App. 27).

The Appellant timely appealed this matter on June 16, 2023. (Notice of Appeal; App. 33).

Additional facts relevant to this appeal will be discussed below.

ARGUMENT

- I. **The district court erred in denying the requested relief where the Appellant provided the required evidence that showed by a preponderance of the evidence that he would not be a threat to himself or others and where the record did not show evidence that he posed any risk.**

Preservation of Error

The Appellant raised these arguments before the trial court at trial (*see* Transcript of Hearing; App. 35) and again in a timely post-trial motion. (Motion to Amend, Enlarge, or Reconsider; App. 24). The Appellant has preserved error.

Standard of Review

By statute, review of the district court's denial of relief in this matter is *de novo*. Iowa Code § 724.31(4). Under a *de novo* review, the Court makes "an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993).

Where the district court had the opportunity to observe the witnesses and evaluate their credibility firsthand, this Court should give deference to its factual findings. *See, e.g., State v. Fleming*, 790 N.W.2d 560, 563 (Iowa 2010).

Discussion

When considering a petition to restore the right to possess a firearm, Iowa Code § 724.31(4) requires courts to consider an “applicant’s record and reputation” to determine whether “(1) the person ‘will not be likely to act in a manner dangerous to public safety’; and (2) ‘the granting of relief would not be contrary to the public interest’.” *In the Matter of A.M.*, 908 N.W.2d 280, 284 (Iowa 2018).

At the hearing on the Petition for Relief, N.S. provided evidence to the court regarding his past cases that led to the imposition of firearms disabilities. The trial court was able to see the circumstances of the original order, where his parents alleged that he had been diagnosed with bi-polar disorder and was not taking his medication, but instead was using alcohol and illegal drugs. He was found to be in need of treatment in a later case in 2006, and that case was dismissed in January 2007 after he was found compliant with services. (Order pp. 5 – 6; App. 14-15). Notably, a 2008 petition by his grandfather was dismissed after the doctor there found that “the child is not mentally ill.” (*Id.*)

N.S. provided his medical records in the form of a psychological evaluation (Exhibit 1; App. 108). He provided criminal history records that

demonstrate he has no significant criminal history. (Order p. 13; App. 22).

N.S. introduced character statements from several individuals. Exhibit 8 was a letter from Steven Sunde, a retired Deputy County Attorney in Nebraska fully supporting the restoration of the Appellant's rights. (App. 128). Exhibit 9 was a letter from his wife. (App. 129). Exhibit 10 was a letter from a co-worker, Heather Schaefer, supervisor at his employer describing him as one of the best employees and a man of good moral character. (App. 130). Exhibit 11 was a letter from Cynthia London, Steven Sunde's wife, describing N.S. as a responsible person. (App. 131). Exhibit 12 is a letter provided by Jared London, a friend who described N.S. as healthy and mentally stable. (App. 132).

The Appellant offered a calendar of volunteer service hours that he worked for the Open-Door Mission in March of 2022 during a time when he was off of work. (Order p. 4; App. 13).

Despite all of the evidence of stability, which included testimony from N.S. regarding the changes in his life since the juvenile commitment, the district court found that he failed to establish by a preponderance of the evidence that he was not likely to act in a manner that would threaten his or the public safety. (Order 13; App. 22).

This case presents an even stronger case in favor of restoration than the facts of an earlier case decided by the Iowa Court of Appeals, *In the Matter of A.M.*, 908 N.W.2d 280 (Iowa App. Ct. 2018). There, the Court described the facts as presenting a “close call” despite the one-sided character letters and the medical records covering only a short period of time. The circumstances in that matter occurred just over 6 years prior to the petition. (*Id.* at 285). The petitioner in that matter had not received any mental health treatment in the intervening six plus years. (*Id.*) The petitioner there had unilaterally decided to stop taking medication. (*Id.*) He further indicated he had no longer abstained from alcohol.

The only character statements offered in *A.M.* were those close to him. (*Id.* at 286). The only change in the intervening time that was long-term was the petitioner not drinking alcohol to excess. (*Id.* at 287).

In contrast to those facts, N.S. demonstrated a more recent mental health evaluation. The circumstances of his underlying commitment are not as concerning as the “close case” of *A.M.*, which were violent and gun-related. Many more years had passed in the case of N.S. His lived experience demonstrates he can be safe and trusted around firearms and possessing firearms. His character statements were not just from family

members, but included a statement from a supervisor coworker corroborating what his long history of employment would indicate.

In further contrast to the circumstances of *A.M.* N.S. has shown many long-term changes, including his education, the lack of any criminal history in that time, his employment history, and his family history He presents as a completely different individual than the juvenile that was committed in 2006.

Most significantly, this case differs from *A.M.* in that there is a lack of evidence here tending to create a concern that the petitioner is a risk. In *A.M.* there was a concern that the petitioner had started drinking again. In contrast, there is not a concern in the record that N.S. is in need of treatment or that he is engaging in any risky behavior that would lead to him posing a risk of harm to himself or others.

In short, N.S. has shown by a preponderance of the evidence that he will not be likely to act in a manner dangerous to the public safety.

For these reasons the Appellant would respectfully request that this Honorable Court would reverse the district court and grant his requested relief.

II. The district court erred in failing to determine that a strict scrutiny analysis required granting the request for relief where no evidence in the record showed the Appellant to be a risk to himself or others.

Preservation of Error

The Appellant argued the applicability of strict scrutiny analysis at trial. (Transcript of Trial; App. 35). He further argued this in the Motion to Amend, Enlarge, or Reconsider. (App. 24). The district court ruled on the issue in the Order on Motion to Reconsider. (App. 27). The issue is preserved for review.

Standard of Review

As noted above, this Honorable Court reviews grants denials of relief through *de novo* review.

Discussion

On November 8, 2022, the Iowa Constitution Amendment 1 was amended with section 1A, which reads: “The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny.” (Emphasis added). If subject to strict scrutiny, [a] law will be invalidated unless it is necessary to promote a compelling government interest. *Shapiro v. Thompson*, 394 U.S.

618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600, 615 (1968). (Emphasis added).

Iowa Code § 724.31(2)-(4) provides:

2. A person who is subject to the disabilities imposed by 18 U.S.C. §922(d)(4) and (g)(4) because of an order or judgment that occurred under the laws of this state may petition the court that issued the order or judgment or the court in the county where the person resides for relief from the disabilities imposed under 18 U.S.C. §922(d)(4) and (g)(4). A copy of the petition shall also be served on the director of human services and the county attorney at the county attorney's office of the county in which the original order occurred, and the director or the county attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner.

3. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning all of the following:

a. The circumstances surrounding the original issuance of the order or judgment that resulted in the firearm disabilities imposed by 18 U.S.C. §922(d)(4) and (g)(4).

b. The petitioner's record, which shall include, at a minimum, the petitioner's mental health records and criminal history records, if any.

c. The petitioner's reputation, developed, at a minimum, through character witness statements, testimony, and other character evidence.

d. Any changes in the petitioner's condition or circumstances since the issuance of the original order or judgment that are relevant to the relief sought.

4. The court shall grant a petition for relief filed pursuant to subsection 2 if the **court finds by a preponderance of the evidence** that the petitioner will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but the record shall remain confidential and shall be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be *de novo*. A person may file a petition for relief under subsection 2 not more than once every two years.

(Emphasis added).

A petitioner who is otherwise free from mental health concerns and who was previously committed so as to create a restriction on their ability to own firearms cannot own firearms without availing themselves of this procedure in Iowa. Accordingly, the effect of Section 724.31 is to restrict the ability of a person to exercise what Iowa has determined is a fundamental right. In accordance with Amendment 1A to the Iowa Constitution, this restriction is to be subject to strict scrutiny.

The NICS Improvement Act of 2007 set forth requirements for states to receive federal grants that required states to implement relief from disabilities programs under certain criteria. 34 U.S.C. § 40915 sets forth:

(a) Program described

A relief from disabilities program is implemented by a State

in accordance with this section if the program—

(1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18 or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;

(2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), **and the person's record and reputation, are such that the person 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; and**

(3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

(emphasis added).

Accordingly, the NICS Improvement Act of 2007 does not address the burden of persuasion or burden of proof to be required in such an application to a state relief from disabilities program – only that the procedure would determine that the applicant's record and reputation indicate that the applicant would not likely act in a manner dangerous to public safety and that the granting of relief would not be contrary to the public interest (in pertinent part).

Courts have not yet had an opportunity to address how the strict-

scrutiny analysis applies to Section 724.31; however, Iowa Courts should utilize the well-established rubric for testing such laws under strict scrutiny. The question is whether the framework, as applied to the Petitioner in this case, is narrowly tailored to further a compelling state interest.

The State of Iowa does not have a compelling state interest in preventing law-abiding adult individuals from possessing firearms if they have no current mental disability. If the Appellant in this case has submitted evidence of his record and reputation, and if that evidence demonstrates that the Appellant would not likely be dangerous to himself or others and that granting the relief is not contrary to the public interest, that is where the analysis should end.

Iowa Code § 724.31 speaks of the requirement that the court find that there is a preponderance of the evidence that the Appellant would not be likely to act in a manner dangerous to himself or others and that the granting of relief would not be contrary to the public interest (724.31(4)). But plaintiffs are rarely required to prove a negative. *See, e.g., Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 898 (Iowa 2015). The NICS Improvement Act of 2007 as set forth above only requires the showing by

the applicant. If the Court is to determine that a preponderance of the evidence shows that the Appellant is likely to act in a dangerous manner or that the public interest would be harmed by granting the relief, then the state must offer some evidence showing that, assuming that the Appellant, as here, has shown that his record and character demonstrate he is safe.

To apply a different analysis, allowing a restriction of an Appellant's fundamental rights without evidence tending to show a risk of harm to others and to the public interest would result in the restriction being overly broad and preventing a significant number of otherwise law-abiding, safe, responsible individuals from exercising their constitutional rights. Accordingly, such an approach to § 724.31 would be unconstitutional as applied.

The district court found that the Constitutional Amendment 1A did not apply to these facts, because the restrictions on N.S.'s ability to own firearms arose in 2006, but the amendment passed in 2022. However, this hearing occurred in 2023. The amendment requires courts --- moving forward --- to analyze any restrictions on a person's gun right under the strict scrutiny standard. No part of this case would require the district court to

apply the analysis retroactively.

As set forth above, the Appellant had demonstrated through testimony, employment records, criminal history records, character letters, a psychological evaluation, and the records from the underlying files pertaining to his past commitment that there were no present concerns. He has shown through his lived history since the commitment that he can be and has been a stable, peaceful, responsible member of the communities in which he has resided over that time. To suggest that the “quality” of the evidence that he has offered is insufficient under the plain language of 724.31 is to add a requirement that is not present in the language of the code section.

N.S. has shown by a preponderance of the evidence that he is not a risk to act dangerously to himself or others, that he is not a threat to public safety. Where the record contains no reason to believe that a person will act in a manner contrary to public safety, and where an individual, such as N.S., has made the statutorily required production, it is improper --- under the strict scrutiny analysis --- to deny the petition without any evidence tending to show a continuing disability or risk of harm to the community. The state

simply does not have a compelling interest in preventing law-abiding and responsible individuals from owning firearms.

For these reasons, the Appellant respectfully requests that this Honorable Court reverse the district court in this matter.

CONCLUSION

The district court erred in denying N.S.'s request for relief from disabilities in this matter. N.S. provided proof of his law abiding and peaceful nature. He provided proof that he was not a threat to himself or the community through substantial and competent evidence. He demonstrated with his testimony that he was no longer subject to the disability that led to the imposition of the legal disabilities to begin with. He introduced documentation of his mental health status, his lack of criminal history, and letters of support for his character. To the extent that the district court determined that he did not meet his burden to show this by a preponderance of the evidence, the district court erred.

Importantly, the record does not contain evidence showing that N.S. presents any risk to himself or others. The district court's analysis places an additional burden on N.S. that is inconsistent with the recent amendment to the

Iowa Constitution requiring that any restrictions on an individual's right to bear arms be analyzed with strict scrutiny. Applying strict scrutiny analysis to these facts leads to the conclusion that N.S. met his burden and that his request for relief should be granted.

For all these reasons, the Appellant respectfully requests that this Honorable Court reverse the district court and grant his request for relief in this matter.

REQUEST FOR ORAL ARGUMENT

The Petitioner-Appellant requests the opportunity to be heard in oral argument.

Respectfully submitted,
N.S., the Petitioner-Appellant

By: /s/ Eric S. Mail
Eric S. Mail AT0011435
PURYEAR LAW P.C.
3719 Bridge Ave, Suite 6
Davenport, IA 52807
(P): 563.265.8344
mail@puryearlaw.com
eric@puryearlaw.com

ATTORNEY'S COST CERTIFICATE

The undersigned certifies that the true costs of duplicating this document was \$ 0.

/s/ Eric S. Mail
Eric S. Mail

Attorney for the Petitioner-Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because: this brief contains **3596** words, exempting the parts of the brief excluded by Iowa R. App. P. 6.903(1)(g)(1).

The undersigned certifies that this brief satisfies the type-style requirements of Iowa R. App. P. 6.903(1)(e) because: I used LibreOffice (Version 5.1) for Linux, Times New Roman, proportionally spaced face, 14-point size, in preparation of the main body of this document.

/s/ Eric S. Mail

Eric S. Mail

Attorney for the Petitioner-Appellant