

HYPOTHETICAL 3
Lochenloade,
Petitioner
v.
State of Columbiana,
Respondent

In Columbiana, restoration of a felon's firearms rights is treated as a type of clemency. To obtain the restoration of gun rights, the felon must file an application with the Columbiana Office of Executive Clemency. To be considered, an individual's felony(ies) must not have involved sexual assault, drugs, or narcotics. Additionally, the felon can only submit an application for restoration of firearms rights after a period of ten years from "the date sentence expires or supervision is terminated."

Health Lochenloade is a convicted felon living in Columbiana. As a young man, Mr. Lochenloade was known for his "angry outbursts". He blamed this anger on a difficult childhood.

Though Mr. Lochenloade managed to stay away from drugs, he did have a short rap sheet of criminal behavior. Most of his crimes were petty thefts ("I just needed to blow off steam"); however, one of his thefts ended up being a felony. A felony theft in Columbiana is defined as stolen goods worth \$1,000 or more. With poor planning or even poorer luck, Mr. Lochenloade's last theft involved electronics valued at \$1,005.00.

As with many young criminals, Mr. Lochenloade determined in his late-twenties that a life of crime was not sustainable. He worked hard to finish the undergraduate degree he started in his teens; subsequently, he obtained a job and as, he states, "[I] got on with life and put any criminal behavior in my rearview mirror."

Now Mr. Lochenloade lives a relative quiet, isolated life. In his early thirties, he has not married and has no children. If pressed, Mr. Lochenloade would admit to being somewhat lonely and wishing for more human interaction. What Mr. Lochenloade does have, however, is a great love of hunting. When not at work, he loves to go out to the nearby woods and kill anything he is legally allowed to kill.

To indulge his love of hunting, Mr. Lochenloade uses a crossbow. Because of the felony on his criminal record and the laws of Columbiana, Mr. Lochenloade is not eligible to submit an application to obtain a firearm until he is 36 years old, some five years in the future.

In the meantime, Mr. Lochenloade has become extremely frustrated by this restriction. Recently, Mr. Lochenloade met a neighbor, Bubba Abbott, who lives a few blocks away. Bubba and a group of his friends are also avid hunters, only because none of the group has ever committed a known felony, they use rifles and semi-automatic weapons. Not only is Mr. Lochenloade legally restrained from owning a firearm, he cannot, under the law, even knowingly be around one, regardless of whether the gun belongs to someone else.

One Friday night, over a beer at a local tavern, Bubba and his friends invited Mr. Lochenloade to join them the next day on a hunting outing. Not wanting to discuss his five-year old criminal record, Mr. Lochenloade replied uncomfortably that he had to work the next day. Bubba replied, "No problem. We go every weekend so we will catch you next Saturday."

All the next day, Mr. Lochenloade thought of how nice it would be to hang out with a group of friends shooting up things in the woods rather than sitting at home alone feeling miserable. He wondered why he was restricted from lawfully obtaining a gun when his only crime was a theft that – had the items been valued \$6.00 less – would not have qualified as a felony. Mr. Lochenloade also questioned how his situation was even permissible, given that he was a citizen of the United States of America, a country with a proud history of protected gun rights under the Second Amendment.

The following Monday, Mr. Lochenloade contacted Max Heller, a local attorney who was well-versed in Second Amendment law. After listening to Mr. Lochenloade's story, Mr. Heller expressed great enthusiasm to take the case. Mr. Heller believed that, given the Supreme Court's continued loosening of gun restrictions, Mr. Lochenloade had a colorable Second Amendment claim.

Mr. Lochenloade filed suit in the District Court for the Western District of Columbiana. The question before the court was:

Where a felony conviction does not involve a violent crime, does Columbiana's law requiring a felon to submit an application for clemency to restore gun rights after a ten-year wait period from the date sentence expires or supervision is terminated, violate that individual's Second Amendment rights?

The District Court found for Mr. Lochenloade. The Court reasoned that the facts of Mr. Lochenloade's earlier crime were indisputable - no weapon had been used in the commission of the felony, and Mr. Lochenloade had broken no laws in the past five years. Therefore, the Court reasoned, denying him the right to submit an application and obtain a firearm gave the government "too much discretion" regarding Second Amendment rights. "It makes the Second Amendment right to bear arms a second-class right."

On appeal, the Court of Appeals for the Thirteenth Circuit reversed. It held that the law still allows Mr. Lochenloade to submit an application, at which time clemency is likely to be granted given the nature of his felony conviction. "Thus, Mr. Lochenloade will be able to obtain a firearm and exercise his Second Amendment rights in the future; he simply must meet the ten-year waiting period first, a waiting period imposed on him due to his past bad behavior."

The Court went on to opine that:

While Mr. Lochenloade's felony did not involve an assault – with or without a firearm – many felonies are violent crimes. For many felonies – those involving sexual assault, drugs, or narcotics – Columbiana's law does not allow a felon to ever obtain a firearm. And yet, as a society, we have not found this prohibition to be unconstitutional.

The government has an obvious and significant interest in keeping firearms out of the hands of most criminals. Given that, a ten-year waiting period is a small price to pay for an earlier life of crime.

Mr. Lochenloade has now filed a writ of *certiorari* with the Supreme Court and his writ has been granted. The following question is before the Court:

Does Columbiana's current law, requiring a ten-year wait period after committing a felony, deny Mr. Lochenloade of his Second Amendment rights?