

ADDENDUM TO PETITION FOR REVIEW

STATE OF MINNESOTA
IN SUPREME COURT

In re Petition for Restoration of Rights of
BRANDON MICHAEL TAMM,
Petitioner,

v.

TODD COUNTY SHERIFF MICHAEL ALLEN,
Respondent.

Court of Appeals File No. A25-0721
District Court File No. 77-CV-24-755

Dated: February 20, 2026

Table of Contents

A. Court of Appeals Order Opinion (Jan. 21, 2026)	Add. A-1
B. District Court Findings/Conclusions/Order (Mar. 3, 2025)	Add. A-5

STATE OF MINNESOTA
IN COURT OF APPEALS

A25-0721

In Re Petition for Restoration of Rights of
Brandon Michael Tamm.

ORDER OPINION

Todd County District Court
File No. 77-CV-24-755

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and Harris, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Brandon Michael Tamm challenges the district court’s order denying his petition for reconsideration of respondent Todd County Sheriff’s denial of his permit application to purchase a firearm.

2. In November 2020, Tamm got into a physical dispute with his girlfriend at his home. According to Tamm, at some point, in trying to defend himself, he “took it too far” and put his hands around his girlfriend’s neck. His girlfriend left soon after, and Tamm followed her in his car until law enforcement intervened. In March 2022, Tamm pleaded guilty to committing felony threats of violence under Minnesota Statutes section 609.713,

subdivision 1 (2020).¹ On April 27, 2022, the district court granted a downward durational departure, sentencing the felony threats-of-violence conviction as a gross misdemeanor. The district court also placed Tamm on probation for two years, which included a condition that he could not use or possess firearms during probation.

3. Less than two years later, on March 25, 2024, Tamm applied for a permit with the Todd County Sheriff's Office to purchase a firearm. One month later, the sheriff denied his application because there was a "substantial likelihood that [he was] a danger to [himself] or the public when in possession of a firearm" and because of his criminal history, which included several property crimes and his recent threats of violence conviction. While the sheriff could not pinpoint the reason for disqualification, he relied on Tamm's criminal history report which indicated he was disqualified from possessing a firearm, and Tamm's "long history of adult criminal convictions."

4. In May 2024, Tamm requested that the sheriff reconsider his permit application. Through counsel, he argued that he was not disqualified from possessing a firearm because his conviction was deemed a gross misdemeanor and there was no support that he was a danger to himself or the community. In June 2024, the county attorney replied that Tamm was disqualified due to his felony-level threats-of-violence conviction. In September 2024, the sheriff wrote separately to Tamm, reiterating the same justifications for the denial as outlined in his initial denial letter.

¹ The state charged Tamm with felony domestic assault by strangulation, misdemeanor domestic assault by intentionally inflicting or attempting to inflict bodily harm, and felony threats of violence. *See* Minn. Stat. §§ 609.2242, subd. 1(2), .2247, subd. 2, (2020), .713, subd. 1. The state dismissed the two domestic assault charges.

5. The district court held a de novo review hearing in October 2024 and heard testimony from the sheriff, a records administrator for the state, and a character witness for Tamm. The district court denied Tamm’s petition for reconsideration because there was clear and convincing evidence that there was a substantial likelihood that Tamm was a danger to the public when in possession of a firearm. The district court reasoned that although Tamm’s threats-of-violence conviction was sentenced as a gross misdemeanor, his offense met all the elements of a felony-level conviction. Tamm appeals.

6. Tamm argues that, by accepting his guilty plea, the district court’s order violated his substantive and procedural due-process rights. Tamm’s argument is not properly before this court because he cannot challenge the guilty plea underlying his criminal conviction in a subsequent civil proceeding. *Noske v. Friedberg*, 670 N.W.2d 740, 744 (Minn. 2003). Because Tamm is contesting the validity of his guilty plea, he must first file for postconviction relief in the criminal proceeding. *See* Minn. Stat. § 590.01, subd. 1 (2024) (stating a person claiming their constitutional rights were violated may file “a petition in the district court . . . in which the conviction was had to vacate and set aside the judgment”); *see Zumberge v. State*, 937 N.W.2d 406, 411 (Minn. 2019) (“A person convicted of a crime who claims that the conviction violated the person’s constitutional or statutory rights is entitled to file a petition for postconviction relief.”).

IT IS HEREBY ORDERED:

1. The district court’s order is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: January 21, 2026

BY THE COURT

Judge JaPaul J. Harris

Brandon Tamm,
Petitioner,

Court File No. 77-CV-24-755

vs.

Todd County Sheriff Michael Allen,
Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER DENYING WRIT OF
MANDAMUS AND JUDGMENT**

The above-entitled matter came before the undersigned, Todd County District Court Judge, for a hearing on October 24, 2024. Petitioner Brandon Tamm was represented by attorney Sean Kehren. Todd County Sheriff Michael Allen was represented by Assistant Todd County Attorney Chris Brigman.

Based on the applicable law and the files, records, and proceedings in this case, the Court makes the following:

FINDINGS OF FACT

1. On March 25, 2024, Petitioner Brandon Tamm made an application with the Todd County Sheriff's Office (TCSO) for a permit to purchase a firearm (Exhibit 6).
2. Via a letter dated April 25, 2024, TCSO Sheriff Mike Allen notified Petitioner that his application was denied because the TCSO had determined there was a substantial likelihood that he was a danger to himself or the public, and due to a criminal history that included a threats of violence conviction that would have been a felony had it not been sentenced as a gross misdemeanor (Exhibit 7).
3. On May 23, 2024, Petitioner sent Sheriff Allen a letter seeking reconsideration of the denial. He argued the permit denial was not justified by law because the threats of violence conviction had not been sentenced as a felony, and because there was insufficient factual support for the determination that Petitioner was a danger to himself or the public (Exhibit 8).
4. On June 28, 2024, the Todd County Attorney's Office responded to Petitioner's attorney by email. The email stated Petitioner was disqualified based on the threats of violence conviction (Exhibit 9).

5. On September 23, 2024, Sheriff Allen responded to Petitioner separately through a letter. Sheriff Allen listed the same justifications for the denial as in his original letter denying Petitioner a permit. Sheriff Allen also identified File No. 77-CR-20-987 as the specific threats of violence conviction at issue (Exhibit 10).
6. In File No. 77-CR-20-987, Petitioner was charged with domestic assault by strangulation, domestic assault – bodily harm, and threats of violence based on an incident that occurred on November 19, 2020. Pursuant to a plea deal, Petitioner pleaded guilty to making threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2020), and the two other charges were dismissed. Petitioner received a downward durational departure which made the offense a gross misdemeanor as defined by Minn. Stat. § 609.13, subd. 1(1) (2020).
7. Sheriff Allen credibly testified at the hearing that he believed Petitioner is a danger to the public when in possession of a firearm. Sheriff Allen based this determination on his knowledge of Petitioner’s criminal history, including his personal knowledge of the incident leading to the threats of violence conviction.

CONCLUSIONS OF LAW

1. Under Minn. Stat. § 609.713, subd. 1, “Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another ... or in a reckless disregard of the risk of causing such terror ... may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.”
2. Petitioner is prohibited from possessing a firearm under Minn. Stat. § 624.713, subd. 1(2) due to his conviction for threats of violence (Minn. Stat. § 609.713, subd. 1). Although he received a gross misdemeanor sentence, the offense is a felony and all the elements of the felony offense were present.
3. Chiefs of police and sheriffs “shall refuse to grant a transferee permit if the applicant is ... determined to be a danger to self or the public when in possession of firearms.” Minn. Stat. § 624.7131, subd. 4(a)(2). An applicant’s criminal history prior to the law’s effective date is relevant to this determination and should be considered.
4. Sheriff Allen proved by clear and convincing evidence that there is a substantial likelihood Petitioner is a danger to the public when in possession of a firearm.
5. Sheriff Allen properly denied Petitioner’s permit application.
6. The permit should not be issued.

Based upon the foregoing, the Court enters its:

ORDER FOR JUDGMENT

1. Brandon Tamm’s Petition for Reconsideration is DENIED.
2. The attached memorandum is incorporated into this Order by reference.

Let judgment be entered accordingly.

Date: March 3, 2025.

BY THE COURT:



Daniel A. Benson
Todd County District Court Judge

JUDGMENT

I hereby certify that the above Findings of Fact, Conclusions of Law, and Order for Judgment constitute the Judgment of the Court.

Date: March 3, 2025



Deputy Court Administrator

MEMORANDUM

Under Minnesota law, certain individuals are prohibited from possessing firearms or ammunition. The prohibition includes “a person who has been convicted of ... in this state or elsewhere, a crime of violence.” Minn. Stat. § 624.713, subd. 1(2). “Crime of violence” is defined as a felony conviction of a listed offense, including Minn. Stat. § 609.713 (terroristic threats, also known as threats of violence). Minn. Stat. § 624.712, subd. 5.

Minn. Stat. § 609.713 is violated when someone “threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another ... or in a reckless disregard of the risk of causing such terror.” A person convicted of violating Minn. Stat. § 609.713 “may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.” For the purpose of Minn. Stat. § 609.713, “crime of violence” includes any crime designated a “[v]iolent] crime” in Minn. Stat. § 609.1095, subd. 1(d), including several forms of assault.

Minnesota Statutes also provide that the levels of offenses are defined by the sentences which may be imposed. “ ‘Felony’ means a crime for which a sentence of imprisonment for more than one year may be imposed.” Minn. Stat. § 609.02, subd. 2 (2020).¹ “ ‘Misdemeanor’ means a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.” Minn. Stat. § 609.02, subd. 3 (2020). “ ‘Gross misdemeanor’ means any crime which is not a felony or misdemeanor.” Minn. Stat. § 609.02, subd. 4 (2020). Since a prison sentence of five years can be imposed for a violation of Minn. Stat. § 609.713, that offense is a felony.

However, a conviction for a felony-level offense can be designated a less serious offense depending on the sentence.

Notwithstanding a conviction is for a felony:

- (1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02; or
- (2) The conviction is deemed to be for a misdemeanor if the imposition of the prison sentence is stayed, the defendant is placed on probation, and the defendant is thereafter discharged without a prison sentence.

Minn. Stat. § 609.13, subd. 1.

¹ The definition of “felony” was amended in 2023 to “a crime for which a sentence of imprisonment for one year or more may be imposed.”

In File No. 77-CR-20-987, Petitioner Brandon Tamm was convicted of committing threats of violence in violation of Minn. Stat. § 609.713. Petitioner reached an agreement with the State and entered a guilty plea on March 9, 2022. He gave the following factual basis for the plea: On November 19, 2020, his then-girlfriend was at his Todd County residence when the two of them got into an argument that escalated into a physical altercation. While trying to defend himself, he “took it too far” and put his hands on his girlfriend’s neck. When she left the residence, he followed her in his vehicle and continued following her until police arrived. He agreed that by following his girlfriend after their physical altercation, he acted in reckless disregard of the risk that the pursuit would cause his girlfriend to believe that he was indirectly threatening to commit a crime of violence against her, specifically an assault (Exhibit 1, pages 13-14).

Pursuant to his plea agreement with the State, Petitioner received a downward durational departure. He was sentenced to pay a \$375 fine and serve 365 days in the Todd County Jail, with 363 days of the sentence stayed for 2 years. He received credit for 2 days served and was placed on supervised probation for 2 years. The Court also entered a domestic abuse no contact order (DANCO) protecting the victim pursuant to Minn. Stat. § 629.75, and ordered Petitioner not to possess firearms or ammunition while on probation (Exhibits 2 and 5).

Threats of violence conviction as disqualifying grounds

Based on his sentence, Petitioner’s threats of violence conviction was deemed to be for a gross misdemeanor pursuant to Minn. Stat. § 609.13. Petitioner and the State disagree about whether this is a conviction for a felony crime of violence that disqualifies Petitioner from possessing a firearm or ammunition under Minn. Stat. § 624.713, subd. 1(2). The State argues the threats of violence conviction is disqualifying under *State v. Moon*, 463 N.W.2d 517 (Minn. 1990) and *State v. Anderson*, 733 N.W.2d 128 (Minn. 2007).

Petitioner argues *Moon* and *Anderson* are distinguishable from his situation, because in both those cases, the defendants were originally convicted of a felony that was *later* deemed a misdemeanor pursuant to Minn. Stat. § 609.13, subd. 1(2). Petitioner pleaded guilty to a felony-level offense that was deemed a gross misdemeanor based on the *original* sentence imposed pursuant to Minn. Stat. § 609.13, subd. 1(1).

This is a difficult issue. The appellate courts have not directly addressed how Minn. Stat. § 609.13, subd. 1(1) affects the prohibition on possessing firearms and ammunition in a precedential case, and there is support in *Moon* and *Anderson* for both parties’ positions.

In the earlier case, *Moon*, defendant Joseph Chan Moon admitted he had billed Medicaid thousands of dollars for drugs that were not actually dispensed to patients and pleaded guilty to one count of felony theft based on this fraud. 463 N.W.2d at 518-19. At the time, Minnesota law provided that persons convicted of a crime of violence were prohibited from possessing firearms for 10 years after being restored to their civil rights, and felony theft was on the list of crimes defined to be crimes of violence. *Id.* at 519.

The court of appeals observed that theft was one of only three offenses on the list modified “with the words felony or felonious,” while all other listed offenses were not limited by an offense-level designation. *Id.* at 520. “A person who commits an offense which is not described with the words felony or felonious in [the list of crimes of violence] clearly is subject to the firearms restriction even if the conviction is deemed to be a misdemeanor pursuant to section 609.13.” *Id.*

The court reasoned the legislature had included only felony violations of three particular offenses on the crimes of violence list “as a means to define the elements of the crimes which subject the offender to the federal² firearms prohibition,” not because the legislature had wanted to “bring into play section 609.13” for those three offenses but not the others. “We hold that the definitions of the offenses listed as crimes of violence in section 624.712, subdivision 5, relate to the elements of the offense for which the defendant was originally convicted rather than the disposition subsequently imposed by the trial judge.” *Id.* at 521.

In 2003, the legislature amended Minn. Stat. § 624.712, subd. 5 to define “crime of violence” as “felony convictions of the following [listed] offenses,” including second-degree burglary. *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). William Anderson pleaded guilty to felony second-degree burglary in 1995, and the conviction was deemed a misdemeanor pursuant to Minn. Stat. § 609.13, subd. 1(2) when he was discharged from probation five years later. *Id.* at 131. In 2004, when Anderson was on probation for another crime, his probation agent searched his residence and found two firearms. *Id.* Due to his 1995 second-degree burglary conviction, Anderson was charged with being an ineligible person in possession of a firearm. *Id.* A jury subsequently convicted him of the firearms possession charge, and he was sentenced to serve 60 months in prison. *Id.*

On appeal, Anderson argued the legislature had amended the crimes of violence definition to include only felony convictions because it wanted Minn. Stat. § 609.13 to apply to all the listed offenses. *Id.* at 135. The appellate courts rejected this reasoning.

² The Minnesota statute at issue in *Moon* was enacted in response to federal legislation. *Id.* at 519.

Anderson’s effort to recast our holding in *Moon* in light of the amended definition of “crime of violence” is unavailing. *Moon* instructs courts to consider the elements of a prior offense rather than its subsequent disposition when deciding whether the offense is a crime of violence, 463 N.W.2d at 521, and Anderson fails to show that the 2003 amendments undermine the propriety of that instruction. More specifically, the relevant provision of section 609.165, subd. 1b(a) – prohibiting firearm possession by “[a]ny person who *has been convicted* of a crime of violence” (emphasis added) – has not changed since we decided *Moon*. As the court of appeals stated, Anderson “ ‘has been convicted’ of felony second-degree burglary. His conviction was later deemed a misdemeanor, but that does not change his underlying conviction for the purposes of the [firearm prohibition] statute.” *Anderson*, 720 N.W.2d at 861 (quoting Minn. Stat. § 609.165, subd. 1b).

Id. at 136.

In the present case, the question is whether Petitioner’s threats of violence conviction is a crime of violence that disqualifies him from possessing firearms or ammunition under Minn. Stat. § 624.713, subd. 1(2). Minn. Stat. § 624.713, subd. 1(2) uses very similar language to the statute at issue in *Anderson*. It prohibits “a person who *has been convicted* of . . . a crime of violence” from possessing a firearm or ammunition. Petitioner’s conviction for a felony-level offense was deemed to be for a gross misdemeanor upon his original sentencing pursuant to Minn. Stat. § 609.713, subd. 1(1), unlike the convictions at issue in *Anderson* and *Moon*. *Anderson* and *Moon* both received stays of imposition of their sentence, and their felony convictions became misdemeanors when they were discharged from probation. Because Petitioner’s plea to a felony-level offense was taken under advisement and sentenced as a gross misdemeanor pursuant to a dispositional departure, Petitioner has not been convicted of a felony in the same sense as *Anderson* and *Moon*.

Anderson and *Moon* both state that, when creating the crimes of violence list, the legislature was uninterested in the disposition of the offenses under Minn. Stat. § 609.13. According to the opinions, the legislature focused on identifying the offenses that should subject an individual to a firearms prohibition upon conviction, and used the felony designation when appropriate in order to define and limit the particular conduct that constitutes a crime of violence. For example, one of the offenses on the current crimes of violence list is a felony violation of Minn. Stat. § 609.224 (fifth-degree assault). Fifth-degree assault can be a misdemeanor, gross misdemeanor, or a felony, and each form of fifth-degree assault has different elements. *Anderson* and *Moon* indicate that fifth-degree assault is a crime of violence if all the elements of a felony violation are present, regardless of the sentence.

Anderson and *Moon* emphasize the “has been convicted” language in the firearms prohibition statute. However, the opinions state this is because they pleaded guilty to all the elements of a felony-level *offense*, which is what matters for the purpose of the firearms prohibition statute. Petitioner likewise pleaded guilty to all the elements of a felony-level offense, which makes him ineligible under Minn. Stat. § 624.713, subd. 1(2). *Also, see, Anderson v. State*, Nos. A15-1254, A15-1323, 2016 WL 1619367 at *1 (Minn. App. 2016) (stating that defendant had two “prior convictions considered a crime of violence for purposes of” the firearms prohibition statute, including a conviction for third-degree assault originally sentenced as a misdemeanor pursuant to Minn. Stat. § 609.13, subd. 1(1)).

Danger to self or the public as disqualifying grounds

Sheriff Allen also declined to issue Petitioner a permit because he determined Petitioner was a danger to himself or the public when in possession of a firearm. This has been a basis for disqualification since Minn. Stat. § 624.7131 was amended in 2023.

Grounds for disqualification. (a) The chief of police shall refuse to grant a transferee permit if the applicant is: (1) prohibited by state or federal law from possessing a pistol or semiautomatic military-style assault weapon; (2) determined to be a danger to self or the public when in possession of firearms under paragraph (b); or (3) listed in the criminal gang investigative data system under section 299C.091.

Minn. Stat. § 624.7131, subd. 4. In making this determination, Sheriff Allen referenced Petitioner’s threats of violence conviction as well as the fact that Petitioner’s “adult criminal history includes several property crimes” (Exhibit 7).

Petitioner argues that Sheriff Allen was not authorized to deny a permit on this basis because the 2023 amendments to Minn. Stat. § 624.7131 do not apply to the crimes Sheriff Allen cited. Petitioner notes that the bill amending the law included the following language: “This section is effective August 1, 2023 and applies to crimes committed on or after that date.” Petitioner interprets this to mean that a sheriff is barred from considering any crimes that occurred prior to August 1, 2023 when determining whether an applicant is a danger to self or the public when in possession of firearms. The Court disagrees.

The sentence Petitioner cites is boilerplate language frequently employed when a statute might interact with criminal laws. If the legislature had actually intended to prohibit chiefs of police from considering crimes that occurred before August 1, 2023 when making the dangerousness determination under Minn. Stat. § 624.7131, subd. 4(a)(2), this would have been clear in the statute itself. It is also nonsensical that the legislature would amend Minn. Stat. § 624.7131 to expand the

grounds for disqualification while undermining a key provision in the amended statute for no apparent reason. Even Petitioner seems to acknowledge that the legislature was not constitutionally barred from allowing police to consider criminal history prior to the law's effective date. *See State v. Grillo*, 661 N.W.2d 641 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003) (holding it was not an unconstitutional *ex post facto* law for the legislature to reclassify vehicle theft as a disqualifying crime of violence, including for individuals convicted of vehicle theft before it was a disqualifying crime of violence).

Since the Court finds that Sheriff Allen properly considered Petitioner's criminal history when denying Petitioner a permit under Minn. Stat. § 624.7131, subd. 4(b), the Court also finds that the denial was proper.

The determination that Petitioner is a danger to the public when in possession of a firearm is well-supported by his threats of violence conviction alone. The Minnesota legislature determined that an individual convicted of a felony violation of Minn. Stat. § 609.713 (threats of violence) should permanently lose firearms rights due to the level of danger they present to society. The Minnesota Supreme Court believed the legislature was concerned with the dangerousness of the *offense* and did not intend to limit the firearms prohibition based on sentencing as long as all the elements of a felony violation of a listed offense were present.

It is also documented that the State had probable cause to charge Petitioner with domestic assault by strangulation (a felony), that this charge was dropped pursuant to the plea agreement, and that Petitioner admitted to placing his hands on his girlfriend's neck while taking self-defense "too far" during a physical altercation with his girlfriend.

Petitioner further argues that Sheriff Allen improperly considered parts of Petitioner's criminal history that did not result in convictions, and that he was biased against Petitioner because he had personal knowledge of the threats of violence incident as one of the responding law enforcement officers.

Nothing in the statute prevented Sheriff Allen from considering Petitioner's criminal record or things he learned while working on the threats of violence case. The statute only bars consideration of "[i]ncidents of alleged criminal misconduct that are not investigated and documented." Minn. Stat. § 624.7131, subd. 8(b)(2).

The Court finds that Sheriff Allen properly denied Petitioner a permit because he proved by clear and convincing evidence that there is a substantial likelihood Petitioner is a danger to the public when in possession of a firearm.

D.A.B

3/3/2025



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