

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

923

OP 18-00393

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, CURRAN, AND WINSLOW, JJ.

IN THE MATTER OF DAVID M. BLY, PETITIONER,

V

MEMORANDUM AND ORDER

HON. WILLIAM M. BOLLER, ACTING SUPREME COURT
JUSTICE, RESPONDENT.

JASON R. DIPASQUALE, BUFFALO, FOR PETITIONER.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (initiated in the Appellate Division of the Supreme Court in the Fourth Judicial Department pursuant to CPLR 506 [b] [1]) to annul the determination of respondent. The determination denied petitioner's application for a firearm permit.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this original CPLR article 78 proceeding pursuant to CPLR 506 (b) (1) seeking to annul the determination of respondent denying petitioner's application for a permit to carry a concealed firearm. Contrary to petitioner's contention, the determination is not arbitrary and capricious. "A licensing officer has broad discretion in determining whether to grant or deny a permit under Penal Law § 400.00 (1)" (*Matter of Papineau v Martusewicz*, 35 AD3d 1214, 1214 [4th Dept 2006]; see *Matter of Fromson v Nelson*, 178 AD2d 479, 479 [2d Dept 1991]; *Matter of Covell v Aison*, 153 AD2d 1001, 1002 [3d Dept 1989], *lv denied* 74 NY2d 615 [1989]), and "[t]he failure of petitioner to report on his application [a] prior arrest[] provided a sufficient basis to deny the application" (*Papineau*, 35 AD3d at 1214; see *Matter of DiMonda v Bristol*, 219 AD2d 830, 830 [4th Dept 1995]; *Matter of Conciatori v Brown*, 201 AD2d 323, 323 [1st Dept 1994]).

Entered: September 28, 2018

Mark W. Bennett
Clerk of the Court