

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

ROCHESTER DISTRICT COURT

No: 99-CR-1208

STATE VS CHAD EVANS

ORDER ON MOTION TO VACATE CONVICTION

The defendant seeks to have his March 24, 2000 conviction for the offense of simple assault vacated on the grounds that he was not informed at the time of pleading guilty that he would be precluded from possessing firearms or ammunitions.

The defendant has the burden of proving that the plea was not made voluntarily and that withdrawal of the plea is necessary to correct a manifest injustice. State v. LaRoche, 117 NH 127(1977), and State v. LaForest, 140 NH 286(1985).

Before accepting a guilty plea a trial court is required to assure that the defendant's plea of guilty was voluntary and knowing and that the defendant appreciates the direct consequences of his plea. Boykin v. Alabama, 395 US 238(1969); Richard v. Macaskill, 129 NH 405(1987). A court is not obligated to explicitly name each constitutional right that a defendant is waiving by pleading guilty. Millette v. Warden, 141 NH 653(1997) "The consequences of which a trial court is bound to assure a defendant's appreciation before accepting a guilty plea are confined to those that are direct, to the exclusion of those that are merely collateral." State v. Elliot, 133 NH 190,192(1990).

It is a federal statute not a state statute that may prohibit the defendant from possessing firearms as a result of his conviction for domestic violence related misdemeanor offense. 18 USCA § 921 & § 922 (herein after the Federal Gun Control Act).

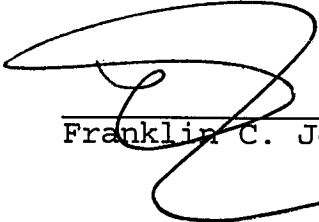
While there is no evidence in the record that the defendant was advised of the possible application of the Federal Gun Control Act, none was required. The Federal Gun Control Act is a collateral consequence and not a direct consequence of the defendant's plea to simple assault. The federal prohibition on possessing firearms arises under a body of law that is collateral to the state court proceedings. The Federal Gun Control Act firearms prohibition is a separate, peripheral consequence and does not have an immediate or automatic effect on the range of punishment imposed under state law by the trial court in accepting

the simple assault guilty plea. Wisconsin v. Kosina, 266 Wis. 2d 482(1999). Any consequence to the defendant arising under the Federal Gun Control Act is only potential because the defendant can choose not to possess a firearm. Further while the criminal complaint has the domestic violence related box checked, no factual determination was made by the Court that the simple assault plea and conviction would be a "domestic violence offense" triggering application of the federal statute. As such application of the Federal Gun Control Act is not an automatic and inevitable consequence.

For the reasons set forth above the Motion to Vacate Conviction is **denied**.

Date

8.23.01



Franklin C. Jones, Justice

THE STATE OF NEW HAMPSHIRE

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AUG 27 2001

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RE: State vs Chad Evans

Docket No. 99-CR-01208

Enclosed please find Order on Motion to Vacate Conviction.

8/23/2001
Date

/s/ Carol A. Hatch
Clerk of Court

cc: Chad Evans
Rochester Police Department
Strafford Cty Domestic Violence Pr
Tristan Evans
Hope Flynn, Esq.