

ORDER 2007-77

AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF FREDDIE PAUL ROSS
FW-07-09

The Indiana Gaming Commission having reviewed this matter and the attached Findings of Fact hereby **ADOPTS THE RECOMMENDATION** of the review officer granting Mr. Ross's request for a waiver of his felony disqualification.

IT IS SO ORDERED, THIS THE 13th DAY OF SEPTEMBER, 2007.

THE INDIANA GAMING COMMISSION:



William W. Barrett, Chair

ATTEST:



Tim Murphy, Vice Chair

**INDIANA GAMING COMMISSION
REQUEST FOR WAIVER OF FELONY CONVICTION DISQUALIFICATION
OF FREDDIE P. ROSS
FW-07-09**

FINDINGS OF FACT AND RECOMMENDATION

Adam F. Packer, Staff Attorney for the Indiana Gaming Commission (“Commission”) and review officer for the request for a felony waiver of Mr. Freddie P. Ross makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. Petitioner, Freddie P. Ross, currently works in the housekeeping staff at French Lick Resort • Casino. On or about August 21, 2007, Mr. Ross applied for a level 3 occupational license to work in general maintenance. Mr. Ross will work primarily at the West Baden Springs property, but the facilities department wants all maintenance employees to have casino access in case of extraordinary need. Mr. Ross will do general facility maintenance and repair.
2. Mr. Ross disclosed in his application that, on February 4, 1993, he was convicted for felony marijuana possession in Floyd County, Indiana. The 1993 date He disclosed two misdemeanor DUI convictions (1996 and 2006) and a 1979 public intoxication conviction. None of the misdemeanor convictions would result in an adverse licensing decision absent other aggravating facts.
3. Pursuant to Indiana Code 4-33-8-3, the Commission may not issue a license to an individual who has been convicted of a felony. On that basis, Commission staff denied Mr. Ross’s application.
4. On or about August 27, 2007, Mr. Ross submitted a felony waiver application to the Commission staff.
5. On August 23, 2007, Angela Eastridge, Senior Recruiter for French Lick Resort • Casino, wrote a letter to Commission staff in satisfaction of 68 IAC 2-4-1 and Indiana Code 4-33-8-11(c)(10).
6. Executive Director Ernest Yelton appointed the undersigned, an attorney on the Commission’s staff, to serve as the review officer in this matter.
7. On September 6, 2007, the undersigned conducted a hearing regarding Mr. Ross.
8. At the hearing, Mr. Ross appeared *pro se*, with no witnesses.

9. The undersigned recorded the hearing. The resulting digital recording is part of the record in this matter.
10. The Commission may only waive a felony disqualification if the individual qualifies for a waiver in accordance with Indiana Code 4-33-8-11. Ms. Abell qualifies for a waiver under subsection (e) of that section in that her felony is a felony described in IC 35-48-4, namely felony possession of marijuana, and it has been ten (10) years since the discharge of his sentence on August 10, 1995.
11. Pursuant to Indiana Code 4-33-8-11 (b), the Commission may only waive a felony disqualification if the individual has demonstrated by clear and convincing evidence the individual's rehabilitation.
12. In accordance with Indiana Code 4-33-8-11 (c), in determining whether the Petitioner has demonstrated rehabilitation, the commission shall consider the following factors:
 - a. The nature and duties of the position applied for by the individual.
 - b. The nature and seriousness of the offense or conduct.
 - c. The circumstances under which the offense or conduct occurred.
 - d. The date of the offense or conduct.
 - e. The age of the individual when the offense or conduct was committed.
 - f. Whether the offense or conduct was an isolated or a repeated incident.
 - g. A social condition that may have contributed to the offense or conduct.
 - h. Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational education, successful participation in a correctional work release program, or the recommendation of a person who has or has had the individual under the person's supervision.
 - i. The complete criminal record of the individual.
 - j. The prospective employer's written statement that:
 - i. the employer has been advised of all of the facts and circumstances of the individual's criminal record; and
 - ii. after having considered the facts and circumstances, the prospective employer will hire the individual if the commission grants a waiver.

FINDINGS OF FACT

1. Mr. Ross is forty-six years old. He was born in Somerset, Kentucky, on November 5, 1960. He has lived in his current home in rural Orange County since moving from New Albany, Indiana three years ago. Mr. Ross moved his family out of New Albany to be away from a bad neighborhood and live in the country. He has lived in Southern Indiana for most of his life. Mr. Ross has

three (3) children who range in age from twenty-seven to thirteen, and two (2) grandchildren. All of his children and grandchildren live in Orange County.

2. Mr. Ross currently works at French Lick Resort • Casino on the housekeeping staff at West Baden Springs Hotel. He gathers the dirty linens from the in-room staff and takes them to central laundry, organizes and keeps the linen closet at West Baden, among other similar tasks. He would prefer to be working in a more handyman-type capacity, as that is where his experience lies. Prior to taking the job at French Lick Resort Casino, Mr. Ross worked in facility maintenance at a factory in New Albany, Indiana. Mr. Ross testified that he is excited to get the more desirable work in the maintenance division.
3. If the waiver is granted, Mr. Ross's responsibilities will change to include all property maintenance and repair at West Baden Springs. Mr. Ross explained he has particular experience in plumbing and electrical work.
4. In 1992, Mr. Ross and his family lived in a mobile home on the property of Mr. Ross's brother-in-law. At the time, Mr. Ross's brother-in-law was under investigation for a theft case. Floyd County authorities obtained a search warrant for the brother-in-law's home, and when they asked Mr. Ross's wife if they could search the mobile home as well, she granted permission. Subsequently, the authorities found a bag of marijuana in a cabinet in the mobile home.
5. Mr. Ross was arrested on February 4, 1993 on one count of felony marijuana possession. The relevant court documents do not state how much marijuana was found in Mr. Ross's possession.
6. Following a guilty plea, Mr. Ross was convicted of felony marijuana possession on February 10, 1994. This crime is a class D felony. Mr. Ross was sentenced to 1 ½ years suspended sentence with supervised probation during the suspended sentence. He was also fined \$1, sentenced to community service, and required to attend drug abuse classes. He has three alcohol-related convictions, none felonies, and has no other criminal record.
7. Mr. Ross completed his drug abuse classes following the conviction and alcohol classes in connection with his 2006 DUI. He stated that he does not use marijuana anymore, called his actions "stupid" and said "I was young," and expressed embarrassment over having marijuana in his home at the time. He also stated that he saw how dangerous drugs can be while living in public assistance housing in New Albany in the early 2000s and that part of the reason he moved his family to Orange County was to remove them from the negative drug-infested environment in their neighborhood in New Albany.

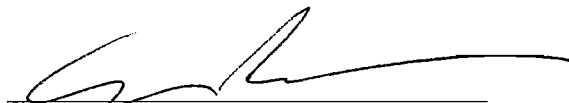
RECOMMENDATION

Based on the foregoing, Mr. Ross has demonstrated by clear and convincing evidence that he has been rehabilitated and should be granted a waiver of his felony disqualification. The statutory guidelines provide a useful framework for evaluating the facts of Mr. Ross's case.

1. The nature and duties of his position will only rarely require him to work in the casino. He will have limited exposure to the licensed area and any secured areas of the property such as the cage. He will not have cage or surveillance access. The idea of placing Mr. Ross in a non-licensed position with the same duties and pay scale was discussed with French Lick Resort Casino personnel, but according to Senior Recruiter Angela Eastridge, the "Director of Facilities does not want vessel access removed from the General Maintenance job description. He would like for his employees to be inter-changeable throughout the properties." Nevertheless, it is not foreseeable that Mr. Ross will have much exposure to the licensed area of the property.
2. The nature of his conviction was serious but there is no indication that the crime itself was terribly serious. There were no charges for intent to distribute, and Mr. Ross testified that he did not have a large amount of marijuana.
3. The circumstances of the crime were that Mr. Ross possessed an amount of marijuana for personal use, stored it in a cabinet, and was found out during a search related to his brother-in-law's suspected criminal activity. Mr. Ross was engaged in ill-advised possession of illegal drugs.
4. The offense was in 1992-93.
5. Mr. Ross was 32 years old at the time of the offense.
6. Mr. Ross has had two alcohol-related offenses in the time since the marijuana conviction, but no other illegal drug activity.
7. Mr. Ross did not indicate that he had a social condition at the time of the offense.
8. Mr. Ross provided testimony about his rehabilitation. He underwent all court-ordered counseling and education and stated that he learned not to associate with illegal drugs. He also stated that he was young at the time and that age has made him wiser about the things that he does. He said many times that he enjoys the country and a better life in rural Orange County as opposed to the city.
9. French Lick Resort • Casino's letter states that they are aware of Mr. Ross's record and that they will hire him if he is granted a felony waiver.

Therefore, I recommend that the Commission grant a waiver of felony disqualification to Freddie Paul Ross.

Respectfully Submitted,



Adam F. Packer
Staff Attorney

DATE: 9/13/07