



# State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.  
GOVERNOR

HILLARY J. CRAIN  
CHAIRMAN

## DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: DERYL A. MCCARY  
P040024162

This is an appeal by Deryl A. McCary of the decision of the Hearing Officer for the Louisiana Gaming Control Board ordering the denial of his non-key riverboat gaming employee permit renewal application.

By letter dated March 19, 2002, the Louisiana State Police Casino Gaming Division ("Division") denied Mr. McCary's renewal application based on his April 29, 1981, conviction for aggravated or felonious assault in the state of Michigan. Mr. McCary's criminal history was disclosed to the Division when he initially applied for a gaming employee permit in 1998. At the time of his initial application, aggravated assault was not a statutory disqualification under La. R.S. 27:76. Subsequent to his initial application and permitting, La. R.S. 27:76 was repealed by Acts 2001, No. 1222, sec. 2, effective July 2, 2001. The subject matter of former La. R.S. 27:76 is now contained in La. R.S. 27:28. Pursuant to subsection (B)(1)(e), of section 28, a conviction or guilty plea to a crime of violence as defined in La. R.S. 14:2(13) is a statutory disqualification for which no cleansing period is applicable. La. R.S. 27:28(C)(2). Aggravated assault is enumerated in La. R.S. 14:2(13)(e) as a crime of violence involving the possession or use of a dangerous weapon. Accordingly, Mr. McCary is statutorily disqualified.

We note that at page 5 of the written opinion, the Hearing Officer stated that this Board has ruled

that La. R.S. 27:28 must be applied *retroactively*. That statement is incorrect. We are applying the statute *prospectively* in denying this renewal application which was filed subsequent to the effective date of the statute. See *In Re Franklin D. Hardeman, No. P040022843, LGCB Decision, June 21, 2000*, which is attached hereto.

Based on the facts and for the reasons assigned by the Hearing Officer which we hereby attach to this decision and adopt as our own, we conclude that the decision of the Hearing Officer should be affirmed.

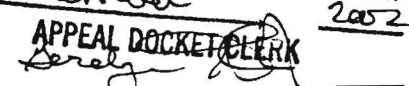
## ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of November 19, 2002:

**IT IS ORDERED THAT** the Hearing Officer's decision is **AFFIRMED**.

**THUS DONE AND SIGNED** this the 21<sup>st</sup> day of November, 2002.

**LOUISIANA GAMING CONTROL BOARD**  
BY:   
**HILLARY J. CRAIN, CHAIRMAN**

**LOUISIANA GAMING CONTROL BOARD**  
I HEREBY CERTIFY THAT A CERTIFIED  
COPY HAS BEEN MAILED OR SERVED ON  
ALL PARTIES THIS 20<sup>th</sup> DAY  
OF November 2002  
APPEAL DOCKET CLERK  




## State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.  
GOVERNOR

HILLARY J. CRAIN  
CHAIRMAN

# DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: FRANKLIN D. HARDEMAN  
NO. P040022843

This is an appeal by Franklin D. Hardeman of the denial his non-key riverboat gaming employee permit renewal application. The Louisiana State Police, Riverboat Gaming Division ("Division"), denied Mr. Hardeman's renewal application based on his 1994 guilty plea to theft in Harris County, Texas. Mr. Hardeman requested a hearing, after which the Hearing Officer upheld the Division's denial citing La. R.S. 27:76 as grounds for the ruling.

### ANALYSIS

Louisiana Revised Statute 27:76 was amended in 1999 to include a plea of theft as an automatic disqualification to permitting one as a non-key riverboat gaming employee if less than ten years has elapsed between "the date of application and the successful completion or service of any sentence, deferred adjudication, or period of probation or parole."<sup>1</sup> The amendment to La. R.S.

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<sup>1</sup> Louisiana Revised Statute 27:76 provides, in pertinent part:

A. The division or the Louisiana Gaming Control Board shall not award a license or permit to any person who is disqualified of the basis of any of the following criteria:

(1) Failure of the applicant to prove by clear and convincing evidence that he is qualified in accordance with the provisions of this Chapter.

. . .

(3) The conviction of or a plea of guilty or nolo contendere by the applicant, or of any person required to be qualified under this Chapter as a

27:76 is substantive and therefore its application is prospective. La. Civ. Code art. 6; *St. Paul Fire & Marine Ins. Co. v. Smith*, 609 So.2d 809 (La. 1992). The effective date of the amendment was August 15, 1999. Mr. Hardeman's permit expired and the effective date of the renewal would have occurred subsequent to the effective date of the amendment. The application of the substantive change in the law, under these circumstances, is given prospective effect only. Furthermore, the Louisiana Riverboat Economic Development and Gaming Control Act provides:

Any license, permit, approval, or thing obtained or issued pursuant to the provisions of this Chapter is expressly declared by the legislature to be a pure and absolute revocable privilege and not a right, property or otherwise, under the constitutions of the United States or of the state of Louisiana. Further, the legislature declares that no holder of any license or permit acquires any vested interest or right therein or thereunder. La. R.S. 27:42(B).

The record reflects that Mr. Hardeman pled guilty to the crime of theft in 1994, the adjudication was deferred, he was fined and placed on one year probation. He filed his renewal application in August 1999. Less than ten years has elapsed between the date of application for renewal of his permit and Mr. Hardeman's period of probation. Therefore, Mr. Hardeman is statutorily disqualified from being awarded a non-key riverboat gaming employee permit under La. R.S. 27:76 and his renewal application was properly denied.

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condition of a license, for an offense punishable by imprisonment of more than one year, or theft or any offense involving false statements or declarations, or gambling as defined by the laws or ordinances of any municipality, any parish, and state, or of the United States.

B. In the awarding of a license or permit, a conviction or a plea of guilty or nolo contendere shall not constitute an automatic disqualification as otherwise required pursuant to the provisions of Paragraph A(3), (5), or (6) of this Section if ten or more years has elapsed between the date of application and the successful completion or service of any sentence, deferred adjudication, or a period of probation or parole. These provisions shall not apply to any person convicted of a crime of violence as defined in R.S. 14:2(13). The Louisiana Gaming Control Board may consider the seriousness and circumstances of the offense and subsequent arrests.



# ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of June 20, 2000:

IT IS ORDERED THAT the Hearing Officer's decision is AFFIRMED.

THUS DONE AND SIGNED this 21<sup>st</sup> day of June, 2000.

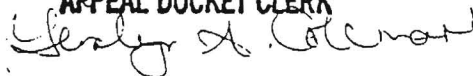
LOUISIANA GAMING CONTROL BOARD

BY:

  
\_\_\_\_\_  
HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD  
I HEREBY CERTIFY THAT A CERTIFIED  
COPY HAS BEEN MAILED OR SERVED ON  
ALL PARTIES THIS 21<sup>st</sup> DAY  
OF June, 2000

APPEAL DOCKET CLERK



STATE OF LOUISIANA

GAMING CONTROL BOARD

ADMINISTRATIVE HEARING

FEBRUARY 22, 2000

HEARING OFFICER

JOSEPH E. ANZALONE, JR.

IN RE: FRANKLIN D. HARDEMAN

P040022843

IN RE: FRANKLIN D. HARDEMAN  
P040022843

APPEARANCES:

For the State of Louisiana:  
Kendra Duay, Assistant Attorney General  
339 Florida Street, Suite 500  
Baton Rouge, La 70801

Mr. Franklin D. Hardeman:  
3030 Congress Blvd.  
Apt. No. 122  
Baton Rouge, LA 70808  
In Proper Person

STATEMENT OF THE CASE:

On December 17, 1999, the Louisiana Gaming Control Board ("Board") sent to Mr. Franklin D. Hardeman, a Notice of Recommendation of Denial of Renewal, alleging that Mr. Hardeman pled guilty on June 30, 1994, in Harris County, Texas, to the crime of theft, a statutory disqualification of his non-key gaming employee permit.

STATE'S EXHIBITS:

The State has offered, filed, and introduced into evidence an exhibit file marked S-1 (in globo) for purposes of identification and containing the following, to wit:

1. Notice of Denial of Renewal Application dated December 17, 1999;
2. Request for Hearing dated December 29, 1999;
3. Notice of Hearing Date dated January 4, 1999;
4. Gaming Employee Renewal Application submitted August 25, 1999; and
5. Certified Criminal History Records from Texas Department of Public Safety.

As a result of a guilty plea entered by Mr. Hardeman in Harris County, Texas, on June 30, 1994, for Theft, the State contends that Mr. Hardeman is statutorily disqualified from possessing a non-key gaming employee permit pursuant to LSA-R.S. 27:76(3).

LICENSEE'S EXHIBITS:

None submitted.

Mr. Hardeman contends that he was an adolescent at the time the theft was committed and that he has no criminal history, save that arrest.

FINDINGS OF FACT:

Mr. Hardeman, according to the Texas court proceedings, was born May 5, 1975. As such, Mr. Hardeman was nineteen years of age at the time of his plea. The court records do not reflect a juvenile proceeding.

Mr. Hardeman pled guilty in Harris County, Texas on June 30, 1994, to a crime of theft, a statutory disqualification pursuant to LSA-R.S. 27:76(3).

APPLICABLE LAW:

La. R.S. 27:76 License or permit disqualification criteria, provides in pertinent part:

The division shall not award a license or permit to any person who is disqualified on the basis of any of the following criteria:

- (3) The conviction of or a plea of guilty or nolo contendere by the applicant, or of any person required to be qualified under this Chapter as a condition of a license, for an offense punishable by imprisonment of more than one year, or theft or any offense involving false statements or declarations, or gambling as defined by the laws or ordinances of any municipality, any parish, any state, or of the United States.

Vernon's Texas Statutes And Codes Annotated, Penal Code 12.21(Class B Misdemeanor)

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and confinement.

REASON FOR DECISION:

Mr. Hardeman pled guilty in Harris County, Texas, on June 30, 1994, to the charge of theft, thus rendering him statutorily disqualified pursuant to LSA-R.S. 27:76(3), from holding a non-key gaming employee permit



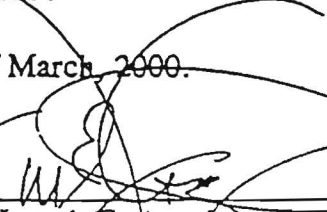
IN RE: FRANKLIN D. HARDEMAN  
P040022843

DECISION:

Accordingly, for the reasons stated above:

IT IS ORDERED, ADJUGED, AND DECREED that Mr. Hardeman's non-key gaming employee renewal application be DENIED.

Baton Rouge, Louisiana, this 20 day of March, 2000.

  
\_\_\_\_\_  
Joseph E. Anzalons, Jr.  
Hearing Officer  
Louisiana Gaming Control Board

LOUISIANA GAMING CONTROL BOARD  
I HEREBY CERTIFY THAT A CERTIFIED  
COPY HAS BEEN MAILED OR SERVED ON  
ALL PARTIES THIS 20th DAY  
OF March 2000  
Joe Anzalons  
SOCKET CLERK, ADMINISTRATIVE HEARING OFFICE

cc: Franklin D. Hardeman  
Kendra Duany, Esq.  
Lt. Dane Morgan

A TRUE COPY ATTEST  
LOUISIANA GAMING CONTROL BOARD  
HEARING OFFICE  
BATON ROUGE, LA 3-29-00

  
\_\_\_\_\_  
BY: CLERK

**STATE OF LOUISIANA  
GAMING CONTROL BOARD**

**ADMINISTRATIVE HEARING  
APRIL 30, 2002**

**HEARING OFFICER  
JOSEPH E. ANZALONE, JR.**

**IN RE: DERYL A. MCCARY  
P040024162**

IN RE: DERYL A. MCCARY  
P040024162

APPEARANCES:

For the State of Louisiana:  
Ms. Karen White  
Assistant Attorneys General  
339 Florida Street  
Suite 500  
Baton Rouge, LA 70801

Deryl A. McCary:  
In Proper Person  
611 Washington Street  
Apartment 1203  
Shreveport, LA 71104

STATEMENT OF THE CASE:

The Louisiana State Police: Casino Gaming Division ("Division") seeks to deny Deryl A. McCary a renewal of his non-key gaming employee permit alleging that he was convicted of aggravated assault on April 29, 1981, and is, therefore, statutorily disqualified.

STATE'S EVIDENCE AND CONTENTIONS:

The state offered, filed, and introduced into evidence an exhibit file marked S-1 (in globo) and containing the following documents:

1. Personal History Form dated March 17, 1998;
2. Escorse, Michigan Criminal Database Report

Division analyst, Ms. Betty Beckham, testified she reviewed Mr. McCary's renewal application and found that his 1981 conviction would be a bar to renewal. Ms. Beckham further testified that Mr. McCary disclosed his criminal history on his original application. Ms. Beckham received written and verbal confirmation from the Escorse, Michigan Police Department regarding Mr. McCary's conviction. Certified Court Documents were not available.

The Division contends that Mr. McCary's conviction for aggravated assault renders him statutorily disqualified.

## LICENSEE'S EVIDENCE AND CONTENTIONS:

Mr. McCary testified that he has been employed at the Horseshoe Casino for four years, he disclosed the Michigan arrest and conviction on his original application, but has never returned to Michigan to have the matter expunged.

On Mr. McCary's behalf the court ordered the following documents introduced into the record.

McCary 1. Correspondence dated April 26, 2002, from Theophilus E. Clemons, Esq. stating that Mr. McCary is eligible for expungement;

McCary 2. Correspondence dated March 21, 2002, from Buckhalter Recovery Center giving personal references for Mr. McCary;

## FINDINGS OF FACT:

On April 29, 1981, Deryl A. McCary was convicted of aggravated assault in the State of Michigan. His sentence was suspended and he was ordered to serve two years unsupervised probation. This information was included on his original application submitted to the Division on March 17, 1998.

## APPLICABLE LAW:

La. R.S. 27:28(B)(1)(e) provides in pertinent part:

B. The board or division, where applicable, shall not grant a license or permit, enter into a casino operating contract, or issue any other approval pursuant to the provisions of this Title to any person who is disqualified on the basis of the following criteria:

1. The conviction or a plea of guilty or nolo contendere by the applicant or any person required to be suitable under the provisions of this Title for any of the following:

(e) A crime of violence as defined by La. R.S. 14:2(13).

La. R.S. 14:2(13) reads in part as follows:

... ..The following enumerated offenses and attempts



to commit any of them are included as "crimes of violence."

(g) Aggravated Assault

La. R.S. 14:36 reads as follows:

Assault is an attempt to commit a battery or the intentional placing of another in reasonable apprehension of receiving a battery

La. R.S. 14:37 (A) reads as follows:

Aggravated assault is an assault committed with a dangerous weapon.

La. 14:2(3) reads as follows:

Dangerous weapon includes any gas, liquid, or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm.

Michigan Penal Code 750.82: Felonious assault: provides in pertinent part:

Sec. 82.(1) Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

## REASONS FOR DECISION:

When Mr. McCary submitted his original application on March 19, 1998, he disclosed both the arrest and the conviction occurring in Michigan.

At that time aggravated assault did not constitute denial criteria. The Gaming Control Board has ruled that La. R.S. 27:28 (B)(1)(e), effective July 2, 2001, be applied retroactively.

The Michigan Penal Code, cited above, words the crime of assault in somewhat different terms than does the Louisiana version. They, despite the differences in wording, are synonymous in meaning.

Mr. McCary's conviction renders him statutorily disqualified and, therefore, must result in a denial to renew his non-key gaming employee permit.


Correspondence from Mr. McCary's attorney in Michigan raises the possibility that his conviction might be pardoned by the governor of that state. For that reason, this writer feels the judgment should be rendered without prejudice.

IN RE: DERYL A. MCCARY  
P040024162

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Deryl. A. McCary be DENIED, WITHOUT PREJUDICE, a renewal of his non-key gaming employee permit.

Baton Rouge, Louisiana, this 22<sup>nd</sup> day of May, 2002.

  
\_\_\_\_\_  
Joseph E. Anzatone, Jr.  
Hearing Officer

LOUISIANA GAMING CONTROL BOARD  
I HEREBY CERTIFY THAT A CERTIFIED  
COPY HAS BEEN MAILED OR SERVED ON  
ALL PARTIES THIS 23<sup>rd</sup> DAY  
OF May 2002  
Aleta Hays  
DOCKET CLERK, ADMINISTRATIVE HEARING OFFICE

cc: Deryl McCary  
Karen White, Esq.  
Lt. George Dean

A TRUE COPY ATTEST  
LOUISIANA GAMING CONTROL BOARD  
HEARING OFFICE  
BATON ROUGE, LA 5-23-02  
Aleta Hays  
BY: CLERK