TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 82-801
of	:	OCTOBER 13, 1983
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THE HONORABLE GEORGE DEUKMEJIAN, GOVERNOR OF CALIFORNIA, has requested an opinion on these questions:

1. Does a presidential pardon of a federal felony conviction restore the recipient's privilege to possess concealable firearms in California?

2. Does a pardon by the governor of another state of a felony conviction in that state restore the recipient's privilege to possess concealable firearms in California?

CONCLUSIONS

1. A full and unconditioned presidential pardon of a federal felony issued before June 19, 1968, restores the recipient's privilege to possess concealable firearms in California. A presidential pardon of a federal felony issued after June 19, 1968, does not restore the recipient's privilege to possess concealable firearms in California

unless it expressly restores such privilege or is accompanied by an authorization to receive and possess firearms in commerce.

2. A pardon by the governor of another state of a felony conviction in that state does not restore the recipient's privilege to possess concealable firearms in California if the felony pardoned involved use of a dangerous weapon or for pardons of other felonies if the pardon does not expressly restore the recipient's privilege of possessing concealable firearms.

ANALYSIS

Penal Code Section 12021

Section 12021(a)[1] provides:

> "(a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, and shall be punishable by imprisonment in the state prison, or in a county jail not exceeding one year or by a fine not exceeding five hundred dollars ($500), or by both."

The questions presented concern the application of section 12021(a) to persons in California who have been convicted of a felony in another state or in federal court and have been pardoned therefor. The first element of the crime defined by section 12021(a) is conviction of a felony. Does a pardon eliminate the conviction for the purposes of section 12021(a)? We addressed this question with respect to California pardons in 28 Ops.Cal.Atty.Gen. 178 (1956), concluding that a "felon who receives a full and unconditional pardon [from the Governor of California] is still a person who has been convicted of a felony within the meaning of Penal Code section 12021." We addressed the question with respect to pardons of felonies in federal courts and sister states in 56 Ops.Cal.Atty.Gen. 138 (1973), concluding that section 12021(a) applied to such felons notwithstanding the pardons. We reexamine our 1973 opinion in the light of subsequent appellate court decisions.

[1] Section references are to the California Penal Code unless otherwise indicated.

Only two California appellate court decisions have addressed the application of section 12021(a) to pardoned felons. *People* v. *Norton* (1978) 80 Cal.App.3d Supp. 14 was an appeal from a section 12021(a) conviction where the defendant claimed that his prior Nevada felony was eliminated by an order from the Nevada Board of Pardon and Parole Commissioners removing "all disabilities resulting from the law of the state of Nevada." The court affirmed the conviction holding the Nevada order was only a limited pardon which did not remove disabilities under California's section 12021(a). *Harbert* v. *Deukmejian* (1981) 117 Cal.App.3d 779 was a declaratory relief action brought by a California resident who was convicted of a federal felony in 1945, received a full and unconditioned pardon therefor in 1961 and was denied permission to buy a handgun required in his job as a security guard because of our 1973 opinion. The court affirmed the judgment which declared:

> "In view of the Supremacy Clause, article VI, clause 2 of the United States Constitution, Penal Code section 12021 is interpreted not to apply to any person who is the recipient of a full and unconditioned presidential pardon."

The *Harbert* opinion appears to have assumed that section 12021(a) applied to pardoned felons generally but excepted federal felons who had received a full and unconditioned presidential pardon under the compulsion of the Supremacy Clause. The first issue we address herein is whether section 12021 applies to any person whose prior conviction of a felony has been pardoned. In the absence of judicial guidance we apply the rules of statutory construction summarized in *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, as follows:

> "We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose; a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Citations and quotations omitted.)

Thus, the fundamental question on this issue is whether the Legislature intended section 12021(a) to apply to pardoned felons. Looking to the language of the statute we note that it applies to "[a]ny person who has been convicted of a felony" and that no exception is made for any such person who had received a pardon for the felony. The plain meaning of the language used in section 12021 is that it was intended to apply to pardoned felons unless the pardon in some way removed the conviction of felony. The case law on the legal effect of a pardon on a conviction has been conflicting and confusing. It is for this reason that we review the law on this point.

The power of the chief executive to pardon an offender convicted of crime has ancient roots imbedded in English common law. (See *People* v. *Bowen* (1872) 43 Cal. 439 and *Richards* v. *U.S.* (D.C. Cir. 1951) 192 F.2d 606.) But, the king's pardon was never considered to wipe out all of the legal effects of the conviction. (See Williston, Does a Pardon Blot out Guilt?, 28 Harvard Law Review 647.)

The pardon has been used to perform several different functions in the criminal justice system. There are no restrictions on the chief executive as to the reasons for which a pardon may be granted. The reasons range from a determination that the convict is innocent, that the punishment imposed was too severe, that the convict has been rehabilitated, as a reward for good conduct (e.g., saving a child's life) or as an inducement for information (e.g., identity of crime partners, location of loot, etc.). With such differences in purpose it is not surprising that the courts have not been consistent in their determinations of the legal consequences of a pardon. The convict pardoned for innocence would seem more deserving of the privilege of possessing firearms than the bank robber who was pardoned for revealing where he hid the bank's money.

Procedural requirements are minimal in the granting of a pardon. There is no requirement of proof other than information which persuades the chief executive to act. Article V, section 8, of the California Constitution authorizes the Legislature to impose application procedures for pardons by statute. But there are no procedural requirements or limitations in the granting of a pardon which are imposed by the due process clauses of the United States Constitution. (*Binion* v. *U.S.* (9th Cir. 1983) 695 F.2d 1189, 1190.)

Chief Justice Marshall described a pardon in *U.S.* v. *Wilson*, 7 Pet. 150, 159 (1833) in these terms:

> "A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."

But, in *Ex parte Garland*, 4 Wall. 333, 380 (1866), the high court gave this description of a pardon:

> "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender. . . . It releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. . . . It removes the penalties and disabilities, and restores him to all his civil rights. It makes him, as it were, a new man, and gives him a new credit and capacity."

Though often quoted, the *Garland* language has caused more confusion than enlightenment on the nature and effect of a pardon.

In *Carlesi* v. *New York* (1914) 233 U.S. 51, the high court held that a New York statute providing increased penalties on conviction of a crime for a person who was previously convicted of a felony in New York or elsewhere could constitutionally be applied to a defendant previously convicted of a federal felony, notwithstanding the fact the defendant had received a presidential pardon for that felony. The court's opinion observed:

> "The issue is a narrow one, and involves not the determination of the operation and effect of a pardon within the jurisdiction of the sovereignty granting it, but simply requires it to be decided how far a pardon granted as to an offense committed against the United States operates, so to speak, extraterritorially as a limitation upon the states, excluding them from considering the conviction of a prior and pardoned offense against the United States in a prosecution for a subsequent state offense. It may not be questioned that the states are without right directly or indirectly to restrict the national government in the exertion of its legitimate powers. It is therefore to be conceded that if the act of the state in taking into consideration a prior conviction of an offense committed by the same offender against the laws of the United States despite a pardon was in any just sense a punishment for such prior crime, that the act of the state would be void because destroying or circumscribing the effect of the pardon granted under the Constitution and laws of the United States. And of course, conversely, it must be conceded that if it be that the act of the state in taking into consideration a prior offense committed against the United States after pardon under the circumstances stated was not in any degree a punishment for the prior crime, but was simply an exercise by the state of a local power within its exclusive cognizance, there could be no violation of the Constitution of the United States. The whole controversy therefore is to be resolved by fixing the nature and

character of the action of the state under the circumstances for the purpose of deciding under which of these two categories it is to be classed.

Quoting from *McDonald* v. *Massachusetts* (1900) 180 U.S. 311, the court then stated:

"The fundamental mistake of the plaintiff in error is his assumption that the judgment below imposes an additional punishment on crimes for which he had already been convicted and punished in Massachusetts and in New Hampshire.

"But it does no such thing. The statute under which it was rendered is aimed at habitual criminals; and simply imposes a heavy penalty upon conviction of a felony committed in Massachusetts since its passage, by one who had been twice convicted and imprisoned for crime for not less than three years, in this or in another state, or once in each. The punishment is for the new crime only, but is the heavier if he is an habitual criminal . . . It is within the discretion of the legislature of the state to treat former imprisonment in another state as having the like effect as imprisonment in Massachusetts, to show that the man is an habitual criminal. . . . The statute, imposing a punishment on none but future crimes, is not *ex post facto*. It affects alike all persons similarly situated, and therefore does not deprive anyone of the equal protection of the laws. [Citations.]"

The *Carlesi* opinion then concluded as follows:

"Applying the principles thus settled, the case before us clearly comes within the second category which we have stated, and therefore the contention as to the effect of the pardon here pressed is devoid of all merit, and the court below was right in so holding.

"Determining as we do only the case before us, that is, whether the granting of a pardon by the President for a crime committed against the United States operates to restrict and limit the power of the state of New York to punish crimes thereafter committed against its authority, and in so doing to prescribe such penalties as may be deemed appropriate in view of the nature of the offense and the character of the offender, taking in view his past conduct, we must not be understood as in the slightest degree intimating that a pardon would operate to limit the power of the United States in punishing crimes against its authority to provide for taking into consideration past

offenses committed by the accused as a circumstance of aggravation, even although for such past offenses there had been a pardon granted."

The *Carlesi* case makes it clear that a pardon does not "blot out" all of the legal consequences of the conviction for the pardoned offense. Legislatures may enact statutes attaching legal significance to a conviction for a crime notwithstanding a pardon therefor if the statute does not impose "punishment" for the pardoned crime. The difficulty is in ascertaining what constitutes punishment within the *Carlesi* rationale. Any sentence of fine, imprisonment or other penalty imposed on a defendant in consequence of his conviction of a crime would be the clearest form of punishment. But, statutes generally disqualifying convicted felons from the exercise of particular rights or privileges or which attach legal consequences to that status do not as clearly qualify as punishment.

We do not undertake a comprehensive inquiry as to the specific kinds of "disqualifications" and "disabilities" which constitute "punishment" under the *Carlesi* rationale. (See discussion in *Bjerkan* v. *U.S.* (7th Cir. 1975) 529 F.2d 125, 128, that punishment involves the deprivation of certain basic civil rights.) Instead we are here concerned only with whether section 12021(a)'s proscription against possession of a concealable firearm constitutes a disqualification or disability which constitutes "punishment" under the *Carlesi* case or is removed by a pardon under some other rationale. In this regard we note that proscribing the possession of concealable firearms by felons does not violate any constitutional rights. (*People* v. *James* (1925) 71 Cal.App. 374; *Stevens* v. *U.S.* (6th Cir. 1971) 440 F.2d 144, 149.)

The California Supreme Court no longer accepts the notion that a pardon blots out guilt. In the case of *In re Lavine* (1935) 2 Cal.2d 324, 329, the court stated:

"The mere presentation of a pardon, without more, by an applicant situated as is petitioner here, does not, in our opinion, satisfy the burden resting on him of showing that he possesses that moral stamina essential to one qualified to engage in the practice of the law, for it has been held that while a pardon obliterates an offense to such an extent that for all legal purposes the one-time offender is to be relieved in the future from all its results, it does not obliterate the act itself. It puts the offender in the same position as though what he had done never had been unlawful, but it does not close the judicial eye to the fact that once he had done an act which constituted the offense. (*United States* v. *Swift*, 186 Fed. 1002, 1016; *People* v. *Weeber*, 26 Colo. 229 [57 Pac. 1079, 1080].) In other words, while the effect of a pardon is to relieve the offender of the penal consequences of his act, it does not restore his character and cannot reinvest a person with those qualities which are absolutely essential for an attorney-at-law to possess or

rehabilitate him in the trust and confidence of the court. (*Nelson* v. *Commonwealth*, 128 Ky. 779 [109 S. W. 337, 338-340, 16 L.R.A. (N.S.) 272].) The very essence of a pardon is forgiveness or remission of the penalty. (*State* v. *Hazzard*, 139 Wash. 487.) It implies guilt and does not wash out the moral stain. (*Nelson* v. *Commonwealth*, *supra*.) We recognize that authorities to the contrary are available but we are neither impressed with nor bound by their reasoning.

"With these principles before us we conclude that in so far as the 1933 'pardon statute' purports to reinstate, or to direct this, or any other, court to reinstate, without any showing of moral rehabilitation, an attorney who has received an executive pardon of the offense upon the conviction of which his disbarment was based, the same is unconstitutional and void as a legislative encroachment upon the inherent power of this court to admit attorneys to the practice of the law and is tantamount to the vacating of a judicial order by legislative mandate."

In *People* v. *Biggs* (1937) 9 Cal.2d 508, 511-512, the court stated:

"Appellant relies largely upon a number of declarations by various authorities as to the general effect of a pardon. The following are examples: 'The power to pardon is something more than the power to release from servitude. Pardon is the remission of guilt, amnesty, oblivion or forgetfulness.' (*People* v. *Hale*, 64 Cal.App. 523, 533.) 'The effect of a pardon (under the rules of the common law) is to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to that offense for which he obtains a pardon; it gives him a new credit and capacity . . ." (*People* v. *Bowen*, 43 Cal. 439, 442, quoting from Blackstone's Commentaries.) 'A pardon reaches both the punishment prescribed for the offence [sic] and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense . . . if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.' (*Ex parte Garland*, 4 Wall. 333, 380 [18 L.Ed. 366].) Similar expressions may be found in numerous other cases.

"But the somewhat extravagant language occasionally employed must be contrasted with the actual decisions of the courts. It is universally established that a pardon exempts the individual from the punishment which the law inflicts for the crime which he has committed; and generally

> speaking, it also removes any disqualifications or disabilities which would ordinarily have followed from the conviction. To say, however, that the offender is 'a new man', and 'as innocent as if he had never committed the offense', is to ignore the difference between the crime and the criminal. A person adjudged guilty of an offense is a convicted criminal, though pardoned; he may be deserving of punishment, though left unpunished; and the law may regard him as more dangerous to society than one never found guilty of crime, though it place no restraints upon him following his conviction. The criminal character or habits of the individual, the chief postulate of habitual criminal statutes, is often as clearly disclosed by a pardoned conviction as by one never condoned. The broad generalizations quoted above are, if taken too literally, logically unsound as well as historically questionable. (See Williston, Does a Pardon Blot Out Guilt?, 28 Harv.L.Rev. 647; *People* v. *Carlesi*, 154 App.Div. 481 [139 N.Y. Supp. 309]; 13 Columb.L.Rev. 418; *In re Lavine*, 2 Cal. (2d) 324; 4 Cal.L.Rev. 236.)"

Perhaps the best description of a pardon's effect was made by Professor Gough in his article in 1966 Wash.U.L.Q. 147, 150, as follows:

> "Despite confusion engendered by murky decisional language, it seems clear—and has been widely held—that a pardon remits punishment and removes some disabilities, but does not erase the legal event determinative of the offender's status *qua* offender, i.e., the conviction itself."

Our review of the law leads us to conclude that a pardon does not set aside or eliminate the conviction for the pardoned offense. Indeed, it is difficult under our constitutional scheme of separation of powers to see how an act of the chief executive (the pardon) could affect an adjudication of guilt in the courts (the conviction) unless nullification of the conviction is inherent in the exercise of the constitutional pardon power. If annulling the conviction is an inherent effect of a pardon there would be no prior conviction to which the habitual criminal statutes could apply to impose enhanced punishment for subsequent offenses, but *Carlesi* and *Biggs* establish that a pardon has no such inherent effect. (See also *Thrall* v. *Wolfe* (7th Cir. 1974) 503 F.2d 313, 316.)

Section 12021 was first enacted in 1953. As previously noted in 28 Ops.Cal.Atty.Gen. 178 (1956) we interpreted the section to apply to pardoned felons. In *California Correctional Officers' Assn.* v. *Board of Administration* (1978) 76 Cal.App.3d 786, 794, the court observed:

> "Opinions of the Attorney General are entitled to great weight as an administrative interpretation of a statute [citation]. 'It must be presumed that

> the aforesaid interpretation [of the Attorney General] has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of many enactments on the subject in the meantime.' [Citations.]"

The Legislature has amended section 12021 five times since our 1956 opinion without reference to pardoned felons.

In 1968 the Legislature added section 4854 to read as follows:

> "In the granting of a pardon to a person, the Governor may provide that such person is entitled to exercise the right to own, possess and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 12002 and 12021 of the Penal Code shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

In 56 Ops.Cal.Atty.Gen. 138, 139, we noted that:

> ". . . even if a full pardon has been given [for a California felony], it would not operate to relieve a person convicted of a felony from the operation of section 12021, unless relief is specifically granted by the Governor of California, pursuant to section 4854, or, the pardon is based upon a certificate of rehabilitation in accordance with section 4852.17."

This requirement for express entitlement to own and possess firearms[2] in the granting of the pardon is inconsistent with a legislative intent or understanding that section 12021 does not apply to pardoned felons.

We conclude that in enacting section 12021 the Legislature intended it to apply to every person who has been convicted of a felony notwithstanding the fact that the person may have been pardoned for the felony.

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[2] Compare 18 United States Code, Appendix section 1203, which states that relief from the federal law prohibiting a felon from possessing a firearm in commerce is provided only where the presidential or gubernatorial pardon expressly grants the recipient the right to possess a firearm.

Federal Pardons

Constitutional questions arise in the application of section 12021(a) to a person who has been convicted of a federal felony[3] and has received a presidential pardon therefor. These were addressed in *Harbert* v. *Deukmejian*, *supra*, 117 Cal.App.3d 779. In 1945, Harbert was convicted of a felony in federal court and was granted probation. In 1961, after performing all of the conditions of probation, he was granted a full and unconditioned pardon by the President. His recent employment as a security guard required that he carry a gun. When a permit to buy a concealable firearm was denied, he sought declaratory relief. The court cited *Bjerkan* v. *U.S.* (7th Cir. 1975) 529 F.2d 125, 129 for the proposition that under the supremacy clause (U.S. Const., art. VI, cl. 2) a state cannot lawfully deny to a person holding a federal pardon the full effect of that pardon nor "punish" the person for the offense pardoned. The *Harbert* court then stated the issue to be "whether the federal pardon prevents this state from disregarding the federal pardon to 'disable' a federal pardonee." In other words, is the proscription against felons possessing concealable firearms a punishment or disability which was removed by the presidential pardon? Noting that *People* v. *Taylor* (1960) 178 Cal.App.2d 472 had held that the proscription of section 12021(a) was a disability removed by the procedure authorized by section 1203.4[4] the court held that it was also a disability released by the presidential pardon. The court then affirmed the judgment interpreting section 12021(a) not applicable to a recipient of a full and unconditioned presidential pardon "in view of the Supremacy Clause."

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[3] Subdivision (c) of section 12021 provides:

"(c) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless:

"(1) Conviction of a like offense under California law can only result in imposition of felony punishment; or

"(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both such punishments."

A felony conviction in federal courts to which section 12021(a) does apply is referred to as a "federal felony" herein.

[4] Section 1203.4 provides that when a defendant has fulfilled the conditions of probation the court may set aside the verdict of guilty or permit him to withdraw his guilty plea and the court shall thereupon dismiss the accusation against him and "he shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted." Following the decision in *People* v. *Taylor*, *supra*, 178 Cal.App.2d 472, in 1960 the following sentence was added to section 1203.4 in 1961: "Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his custody or control any firearm capable of being concealed upon the person or prevent his conviction under Section 12021."

We are constrained to follow the *Harbert* decision though we question the soundness of its rationale.[5] When a presidential pardon purports to remove all disabilities (including those under state law) resulting from a federal felony conviction, such pardon releases the recipient from the proscription of section 12021(a). (*Harbert* v. *Deukmejian*, *supra*, 117 Cal.App.3d 779.)

It should be noted that the *Harbert* case was concerned with a full and unconditioned presidential pardon granted in 1961 before the enactment of the federal Omnibus Crime Control and Safe Streets Act of 1968 (the "Omnibus Act"). One provision of the Omnibus Act (18 U.S.C., Appen. § 1202) prohibited persons convicted of a felony from receiving, possessing or transporting firearms in commerce.[6] However, the next section (18 U.S.C., Appen. § 1203) provided that this prohibition did not apply to "any person who has been pardoned by the President of the United States or the chief executive of a state and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess or transport in commerce a firearm." Thus, after the Omnibus Act became law on June 19, 1968, a presidential pardon had to expressly state that the recipient was authorized to possess a firearm in commerce to exempt him from the firearm proscription of the Omnibus Act. (See *U.S.* v. *Matassini* (5th Cir. 1978) 565 F.2d 1297, 1307.) When such express authorization is not provided the person pardoned is still subject to the prohibition of the federal law. (*U.S.* v. *Kelly* (9th Cir. 1975) 519 F.2d 794, 796.) The intent of Congress in requiring the express authorization to receive and possess firearms was to require pardoning authorities (including the President) to "consider the effect on public safety of permitting any given pardonee to receive and possess firearms." (*U.S.* v. *Matassini*, *supra*, 565 F.2d at 1302.) Thus, since 1968 a presidential pardon reflects a considered choice whether the possession of firearms by the person pardoned would endanger the public safety which is indicated by the presence or lack of an express authorization to receive and possess firearms in commerce.

What is the effect of a presidential pardon of a federal felon granted after enactment of the Omnibus Act in 1968 upon the application of California Penal Code section 12021(a) to the person pardoned? We do not question the power of the President to remove the disability of section 12021(a) in his pardon of a federal felon. (*Harbert* v. *Deukmejian*, *supra*, 117 Cal.App.3d 779.) However, the President also has the power to impose terms and conditions in a pardon which will limit its effect (*Ex parte Wells* 59 U.S.

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[5] *Harbert's* conclusion that section 12021(a) was a "disability" removed by a pardon because *Taylor* held it was a disability removed by section 1203.4 seems inapposite since section 1203.4 involves setting aside the conviction by the court while a pardon does not affect the conviction.

[6] Proof that the possessed firearm previously traveled at some time in interstate commerce is sufficient to satisfy the required nexus between possession and commerce. (*Scarborough* v. *U.S.* (1977) 431 U.S. 563.)

397). In *Burdick* v. *U.S.* (1914) 236 U.S. 79, 90, the court, quoting Chief Justice Marshall in *U.S.* v. *Wilson* (1833) 7 Pet. 150, observed: "A pardon is a deed to the validity of which delivery is essential, and delivery is not complete without acceptance." (See also, *People* v. *Bowen* (1872) 43 Cal. 439, 443, referring to a "deed of pardon" and *In re Peterson* (1939) 14 Cal.2d 82, acceptance required.) The courts interpret pardons like other instruments to carry out the intentions of the parties. (67A Corpus Juris Secundum 21, § 17; cf. Civ. Code, § 1635 and *People* v. *Bowen*, *supra*.) Deeds are to be construed according to the laws in force at the time they are executed. (*Richman* v. *Hoppin* (1930) 45 F.2d 737, 740; *Burnett* v. *Piercy* (1906) 149 Cal. 178, 189.)

A presidential pardon granted after the enactment of the Omnibus Act on June 19, 1968, must be interpreted according to the provisions of that act. As noted above such pardons will reflect a considered choice to grant or withhold exemption from the federal proscription against possession of firearms based on whether such possession by the person pardoned would endanger the public safety. Whether a firearm had ever moved in interstate commerce appears wholly irrelevant to whether its possession by a pardoned convict would endanger the public. We think it unlikely that a president would intend by pardon to restore the privilege of possessing firearms under federal law but not under state law. Similarly an intent to deny possession of firearms under federal law but restore it under state law also seems unlikely in the absence of language expressing such anomalous results incorporated in or accompanying such pardon. We believe that a court would interpret a presidential pardon granted after enactment of the Omnibus Act to deny or restore the privilege of possessing firearms in the same manner under both the Omnibus Act and similar state laws in the absence of any expression to the contrary. Thus if a post Omnibus Act presidential pardon authorizes the recipient to possess firearms in commerce, such pardon would release the recipient from the prohibition of section 12021(a) in California. On the other hand, if no express authorization to possess firearms accompanies such a presidential pardon the recipient will remain subject to the prohibitions of section 12021(a) as well as those in the Omnibus Act.

Our conclusion on the first question is bifurcated. A full and unconditioned presidential pardon of a federal felony conviction issued before June 19, 1968, restores the recipient's privilege to possess concealable firearms in California. A presidential pardon of a federal felony conviction issued after June 19, 1968, does not restore the recipient's privilege to possess concealable firearms in California unless it is accompanied by an authorization to receive and possess firearms in commerce or otherwise expressly restores such privilege.

Pardons of Felons in Other States

The second question is whether a pardon for a felony conviction in another state by the governor of that state restores the recipient's privilege to possess concealable firearms in California. Our research has revealed no cases which have answered this question. However, many of the issues were identified and discussed in *People* v. *Norton* (1978) 80 Cal.App.3d Supp. 14. Norton was convicted of burglary in Nevada in 1943 and was sentenced to state prison. After his release, the Nevada Board of Pardon and Parole Commissioners issued him a document which declared "that all civil disabilities resulting by the law of the State of Nevada from said conviction of a felony be and they are hereby removed." In 1976 he was convicted of violation of section 12021(a) in California (charged as a misdemeanor) and appealed. The first issue addressed by the opinion was whether the Nevada certificate restored Norton's privilege of possessing a concealable firearm in California. The opinion noted that a pardon does not obliterate the record of conviction, citing *People* v. *Biggs*, *supra*, 9 Cal.2d 508 and *Carlesi* v. *New York*, *supra*, 233 U.S. 51. The court then noted there was a conflict whether the pardoned offense could be used for other purposes. In *People* v. *Dutton* (1937) 9 Cal.2d 505, the court held that a person convicted of forgery a second time could be treated as a repeat offender though the prior conviction had been pardoned and full faith and credit was not involved. But, in *People* v. *Terry* (1964) 61 Cal.2d 137, 147-148, the court held it was error to admit proof that defendant had suffered a prior Oklahoma felony conviction where he had received a pardon for the Oklahoma offense. Without referring to either *Biggs* or *Dutton* the *Terry* court noted that a 1934 Oklahoma case held that a pardon blotted out guilt and reasoned that California was required to give full faith and credit to the Oklahoma pardon. (In a footnote, the Norton opinion cited a 1962 Oklahoma case holding that a person twice convicted of a felony could be sentenced as a recidivist and a prior pardon did not blot out the previous offense.)

The *Norton* court then stated (at pp. 20-21):

> "In view of *Terry*, we are required to consider whether the certificate issued to appellant affords him immunity from prosecution under Penal Code section 12021, subdivision (a). However, we observe at the outset that while the full faith and credit clause is designed to give maximum recognition to rights credited or recognized under the laws of sister states, it does not compel the forum state to subordinate its own laws and policies to conflicting laws or public acts of a sister state. Instead, courts must appraise the governmental interests of each of the states. (See *Alaska Packers Assn.* v. *Industrial Accident Com'n.* (1935) 294 U.S. 532, 546-548 [citations]; *Hughes* v. *Fetter* (195) [sic (1951)] 341 U.S. 609, 611-612 [citations].) Thus, *if* we have a 'true' conflict between the laws of California and Nevada, and both

> states had an interest in having their laws applied, we would then be forced to inquire whether California's public policy would be 'very significantly impaired' if an exemption created by Nevada law was recognized. (See *Bernhard* v. *Harrah's Club* (1956) 16 Cal.3d 313, cert. den., 429 U.S. 859.)"

The *Norton* court then concluded there was no true conflict between Nevada and California law because the Nevada pardon was a limited one which did not purport to entitle Norton to possess a concealable weapon in California. For that reason, the court did not apply the significant impairment approach to resolve which state's law governed, holding simply that the doctrine of full faith and credit did not afford Norton any defense.

The second question is not limited to the factual situation involved in the *Norton* case. It includes as well a pardon from another state which, under the law of that state, purports to remove disabilities (including proscriptions against possession of firearms) imposed by the law of California while the recipient is in California. Thus, the question presents a potential conflict of laws problem. As *Norton* indicated, the first inquiry in such cases is to ascertain whether there is a true conflict between the laws of the two concerned states, i.e., the law of the pardon state and the law of California. If, under the law of the pardon state, the pardon does not purport to restore the recipient's privilege to possess concealable firearms while he is in California, there is no conflict of laws and section 12021(a) would prohibit the recipient from possessing concealable firearms while he is in California. (*People* v. *Norton*, *supra*.)

If, on the other hand, the pardon from the other state, under the laws of that state, has the effect of restoring the recipient's privilege of possessing concealable firearms, not only within that state but elsewhere, a true conflict of laws question arises when the recipient comes to California. Does the pardon, as construed in the pardon state, govern over section 12021(a)? Resolution of this question involves a consideration of the full faith and credit clause and, if it does not resolve the matter, a consideration of the choice of law rule which is applicable in California.

Article IV, section 1, of the United States Constitution provides in part:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state . . . ."

The *Norton* case pointed out that the application of the full faith and credit clause to pardoned felons in California is confused by two conflicting California Supreme Court cases. In *People* v. *Dutton*, *supra*, 9 Cal.2d 505, the court held that a person convicted of forgery who was previously convicted of the same crime in another state could be given additional punishment as a repeat offender even though he had a pardon for the

prior offense and stated that "full faith and credit was not involved." In *People* v. *Terry*, *supra*, 61 Cal.2d 137, 147-148, the court held that it was error to admit proof that the defendant had suffered a prior conviction where he had received a pardon therefor, which under Oklahoma case law "obliterated" the crime, stating that California was required to give full faith and credit to the Oklahoma pardon. The *Terry* decision made no reference to the *Dutton* case and did not elaborate on the application of the full faith and credit clause.

In *Hughes* v. *Fetter* (1951) 341 U.S. 609, 611, the court stated:

> "We have recognized, however, that full faith and credit does not automatically compel a forum state to subordinate its own statutory policy to a conflicting public act of another state; rather, it is for this court to choose in each case between the competing public policies involved."

In *Groseclose* v. *Plummer* (9th Cir. 1939) 106 F.2d 311, cert. den. 379 U.S. 866, defendant was charged with being an habitual criminal and evidence of two felony convictions in Texas was received against him. Defendant had been pardoned for each Texas offense. The court rejected defendant's claim that California had refused to give full faith and credit to the laws of Texas or that he had been denied equal protection of the laws.

It would therefore appear that the full faith and credit clause, as interpreted by the federal courts, does not compel a state to give the same effect to the pardon of a sister state that it has under the laws of the pardon state.

Even if the full faith and credit clause were held applicable to a pardon issued in another state it would not compel the forum state to give it the same effect as it has in the pardon state where this would subordinate its own statutory policy to that of the pardon state. (*Hughes* v. *Fetter*, *supra*, 341 U.S. 609.) Whether the full faith and credit clause applies or not, the forum state is still confronted with a choice of laws problem where the laws of the pardon state present a true conflict with those of the forum state. Since California is the forum state, we turn to California law regarding resolution of the conflict of laws problem.

People v. *Norton*, *supra*, 80 Cal.App.3d Supp. 14 pointed out that in true conflict cases the "comparative impairment" approach of *Bernhard* v. *Harrah's Club*, *supra*, 16 Cal.3d 313 would control the development of a rule governing the choice of laws to be applied, pointing out that the approach was applicable to criminal cases. No California case has applied the *Bernhard* approach to formulate a rule determining the choice of law to be applied by California courts in cases where the pardon of a felony conviction in another state is claimed to bar the application of section 12021(a) to the

recipient of such pardon while he is in California. Our task, therefore, is to predict what choice of law rule the California courts will formulate when such a case is presented.

The court, in *Bernhard*, *supra*, observed initially:

> "Although California and Nevada, the two 'involved states' [citations], have different laws governing the issue presented in the case at bench, we encounter a problem in selecting the applicable rule of law only if *both* states have an interest in having their respective laws applied. Generally speaking the forum will apply its own rule of decision unless a party litigant invokes the law of a foreign state. In such event he must demonstrate that the latter rule of decision will further the interest of the foreign state and therefore that it is an appropriate one for the forum to apply to the case before it."

Thus, there must be a true conflict between the laws of the two states and not a "false conflict" as in the *Norton* case. The *Bernhard* court described the "comparative impairment" approach as follows:

> "Once this preliminary analysis has identified a true conflict of the governmental interests involved as applied to the parties under the particular circumstances of the case, the 'comparative impairment' approach to the resolution of such conflict seeks to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state. This analysis proceeds on the principle that true conflicts should be resolved by applying the law of the state whose interest would be the more impaired if its law were not applied. Exponents of this process of analysis emphasize that it is very different from a weighing process. The court does not '"weigh" the conflicting governmental interests in the sense of determining which conflicting law manifested the "better" or the "worthier" social policy on the specific issue. An attempted balancing of conflicting state policies in that sense . . . is difficult to justify in the context of a federal system in which, within constitutional limits, states are empowered to mold their policies as they wish . . . . [The process] can accurately be described as . . . accommodation of conflicting state policies, as a problem of allocating domains of law-making power in multi-state contexts--limitations on the reach of state policies--as distinguished from evaluating the wisdom of those policies . . . . [E]mphasis is placed on the appropriate scope of conflicting state policies rather than on the "quality" of those policies . . . .'"

California's policy interest is expressed in section 12021(a) to preclude ownership and possession of concealable firearms by all those who have been convicted of

a felony in the interest of public safety. This policy interest has been more specifically articulated with respect to pardoned felonies in section 4854, i.e., to apply the proscription of section 12021(a) to every person who was ever convicted of a felony involving the use of a deadly weapon whether pardoned therefor or not and to those who have been convicted of other felonies and pardoned therefor unless the pardon expressly restores the right to own and possess firearms. The pardon state's policy interest is to accord those convicted of felonies under its laws the benefits of relief from the legal consequences of those convictions afforded by the executive clemency of its governor wherever the person goes.

California's policy of prohibiting all those in the state from possessing a concealable firearm whose danger to the public has been demonstrated by conviction of a felony involving the use of a deadly weapon regardless of a pardon therefor would be substantially impaired by a rule allowing such felons from any other state to possess concealable firearms in California by producing a pardon from such felonies purporting to restore such privilege not only in the pardon state but elsewhere as well. This impairment would clearly be greater than the impairment to the pardon state's policy of according extraterritorial recognition to the pardons of its felons that would result from California's refusal to provide such recognition while the person is in California. Thus we conclude that California law would be applied to prohibit any person who had ever been convicted in another state of a felony involving the use of a deadly weapon from possessing concealable firearms while in California regardless of any pardon for such felony purporting to restore such privilege.

When the felony in the other state does not involve the use of a deadly weapon the relative impairment of the two states' policies is not so clear. California's policy does not ban any restoration of the privilege to possess concealable firearms by pardon in such cases but only requires the pardon to expressly restore such privilege to have such effect. In that respect it is similar to section 1203 of the Omnibus Act. It requires the chief executive to decide in each case whether the privilege of possessing firearms should be restored. This suggests a choice of laws rule that provides for a reasonable accommodation in furthering the policy interests of both states. Such rule would restore the possession of concealed weapons privilege of the recipient of a pardon for a conviction in another state of a felony not involving the use of a deadly weapon when the pardon expressly restores the recipient's privilege to possess concealable firearms or firearms generally but not when the pardon, though removing disabilities generally, does not specifically refer to the possession of firearms. Such rule would substantially satisfy California's policy interest in having the chief executive focus upon the danger to public safety which restoring the pardon recipient's privilege to possess firearms would entail but would also accommodate the pardon state's policy interest in giving extraterritorial effect to its pardons by giving effect in California to an express provision in its pardon restoring the recipient's privilege to possess firearms in the pardon state and elsewhere. There is no reason to suppose that

the decision to restore firearms to pardoned felons made by governors of other states would be any less reliable than like decisions of California's governor. Such a choice of laws rule in California would not only cause the least impairment of the policy interests of California and the pardon state, it would also provide equal treatment of pardoned felons while they are in California regardless of the state which granted the pardon. We conclude that a pardon by the governor of another state of the conviction of a felony not involving the use of a deadly weapon does not restore the recipient's privilege to possess concealable firearms in California unless the pardon expressly restores the recipient's privilege to possess firearms.

In 28 Ops.Cal.Atty.Gen. 178, 182 and 56 Ops.Cal.Atty.Gen. 138, 140, footnote 4, we suggested that different legal consequences might obtain where the pardon is based on innocence. Similar suggestions are contained in *People* v. *Dutton*, *supra*, 9 Cal.2d at 507-508; *People* v. *Biggs*, *supra*, 9 Cal.2d at 515; and *Richards* v. *U.S.* (D.C. Cir. 1951) 192 F.2d 602, 606. In the *Dutton* case the court observed:

> "Whether under any circumstances the pardoned defendant can bring himself outside the scope of the subsequent offender statutes by proof relating to his innocence of the crime is a difficult question which we need not now consider. There is little mention of this point in the reported cases or law review discussions which we have examined. (See 14 Minn. L.Rev. 293, 294; 41 Harv. L.Rev. 918; 78 Pa L.Rev. 561, 562.) This is perhaps due in part to the fact that the chief executives of the states seldom have either facilities or procedure for the peformance of the *quasi*-judicial task of determining guilt or innocence of convicted criminals seeking a pardon. Moreover, executive clemency is probably more frequently granted on the theory that the pardoned felon has expiated his offense, rather than that he was never guilty of it. (See 2 Wigmore, Evidence, sec. 1116, p. 636.) The problem of proof, therefore, in cases where it is asserted that clemency was granted because of a determination of innocence, would appear to present a formidable obstacle. We mention this point only to the end that it shall not be deemed foreclosed by our present decision. It may be that upon fuller consideration it will appear to be a question for legislative rather than judicial consideration, and perhaps part of the larger problem as to whether there should not be more complete judicial remedies for persons unjustly convicted of crime. (See Williston, Does a Pardon Blot Out Guilt", 28 Harv. L.Rev. 647, 659.)"

As the *Dutton* court points out, the problem of establishing proof of innocence to obtain such a pardon presents a formidable obstacle. But even if the proof obstacle were overcome, the pardon of the chief executive based on innocence does not set aside or

otherwise affect the judicial determination of the recipient's guilt. At best it presents a conflict in the official records, an executive pardon based on innocence standing contemporaneously with a judicial conviction establishing guilt. The recipient still stands convicted of the crime though his punishment therefor is terminated by the pardon. Thus the proscription of section 12021(a) applies to the recipient of a pardon based on innocence to the same extent as a pardon granted for other reasons.

Should it be thought necessary to find some procedure to vindicate a person who was wrongly convicted of crime, that procedure should be one that can set aside the conviction and thus restore the person's innocence on the judicial record. This necessarily involves judicial action. The courts would appear to be the appropriate forum in which to resolve the questions of proof. Such relief may be available in some cases by extraordinary writ. (See *In re Hall* (1981) 30 Cal.3d 408 (habeas corpus); *People* v. *Shipman* (1965) 62 Cal.2d 226 (coram nobis).) While a pardon does terminate the punishment resulting from the conviction it does not, and cannot, restore innocence on the judicial record by removing the conviction.

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