

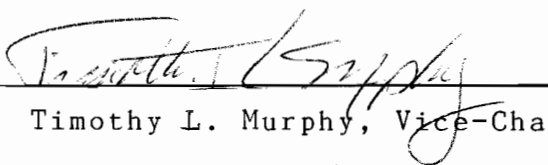
ORDER 2007-11

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF JASON D. GUTHRIE
FW-06-06**

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

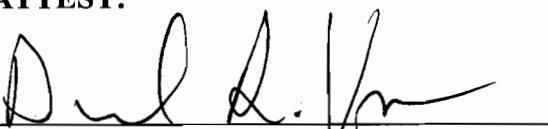
IT IS SO ORDERED, THIS THE 8th DAY OF MARCH, 2007.

THE INDIANA GAMING COMMISSION:



Timothy L. Murphy, Vice-Chair

ATTEST:



Donald R. Vowels, Secretary

**INDIANA GAMING COMMISSION
REQUEST FOR WAIVER OF FELONY CONVICTION DISQUALIFICATION
OF JASON D. GUTHRIE
FW-06-06**

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. Jason D. Guthrie makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. Petitioner, Jason D. Guthrie, entered dealer’s school at French Lick Resort • Casino in early November, 2006. He informed French Lick personnel that he had a felony OWI on his record. In anticipation of applying for an occupational license, he submitted a felony waiver request to Commission staff.
2. Commission staff contacted Mr. Guthrie and informed him that his felony waiver request would not proceed until and unless he applied for an occupational license.
3. In late November, 2006, Mr. Guthrie submitted to the Commission an application for a level 2 occupational license to work as a table games dealer (craps) at French Lick Resort • Casino.
4. Mr. Guthrie disclosed in his application that, in 1993, he was convicted of felony OWI in Lawrence County, Indiana. Upon receiving the case history report for his OWI case, the undersigned discovered that, although his arrest was on September 3, 1993, the conviction was not entered until April 10, 1995.
5. 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. Guthrie’s application. Subsequently, Commission staff began processing Mr. Guthrie’s felony waiver request.
6. On February 2, 2007, Keith Schnulle, Vice President of Human Resources for French Lick Resort • Casino, wrote a letter to Commission staff in satisfaction of 68 IAC 2-4-1. The letter is not specific enough to fully satisfy Indiana Code 4-33-8-11(c)(10), but the Indiana Code provision is only one of ten factors that the Commission must consider, so this failure does not doom Mr. Guthrie’s request.

7. Executive Director Ernest Yelton appointed the undersigned, an attorney on the Commission's staff, to serve as the review officer in this matter.
8. On February 20, 2007, the undersigned conducted a hearing regarding Mr. Guthrie's petition.
9. At the hearing, Mr. Guthrie appeared *pro se* and offered testimony in support of his request.
10. The undersigned recorded the hearing. The resulting digital file is part of the record in this matter.
11. The Commission may only waive a felony disqualification if the individual qualifies for a waiver in accordance with Indiana Code 4-33-8-11. Mr. Guthrie qualifies for a waiver under subsection (f) of that section in that his felony was not in the categories singled out for greater scrutiny and it has been at least five (5) years since the discharge of his sentence.
12. 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.
13. 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. Guthrie is thirty-six years old. He was born in Paoli, Indiana on December 15, 1970. He has lived in Orange or Lawrence County, Indiana his entire life and his immediate family and friends all live in Lawrence County. He attended Mitchell High School. His current address is 1539 Rabbitsville Rd., Mitchell, Indiana. He has lived at that address for two years. Prior to the Rabbitsville Road address, Mr. Guthrie lived at 6808 SR 60 East, Orleans, Indiana.
2. Mr. Guthrie currently works at his father's convenience store in Lawrence County, Indiana. Prior to that job, he worked at Pizza Hut. He has never worked in the gaming industry, but has already attended and passed French Lick Resort • Casino's dealer training school. Mr. Guthrie's interest in working as a craps dealer is rooted mostly in having stable employment in a job he believes he will enjoy.
3. Mr. Guthrie has secured employment as a table games dealer, specializing in craps dealing, pending this waiver. He testified that his understanding is that he could be working within a day or two of receiving his temporary license. On February 2, 2007, Keith Schnulle, Vice President of Human Resources at French Lick Resort • Casino, wrote a letter to Commission staff indicating that French Lick Resort • Casino will employ Mr. Guthrie if the commission grants a waiver of the felony disqualification.
4. Mr. Guthrie was convicted of felony OWI in 1995. At the time of his arrest on September 3, 1993, he had a prior OWI judgment within the previous five (5) years. He was originally charged with "A" misdemeanor OWI and two traffic infractions. When Mr. Guthrie attempted to plead guilty to the misdemeanor OWI, the judge rejected the plea agreement and set a trial date on felony OWI because of the prior judgment.
5. Mr. Guthrie pled guilty to the felony OWI and was sentenced to three (3) years in the Lawrence County Jail, with 915 days suspended. He was also sentenced to 915 days of probation, substance abuse program, 30 days of road crew work, drug and alcohol screens, fines, and a one year suspension of his Indiana operator's license.
6. Mr. Guthrie was twenty-two (22) years old when he committed the offense.
7. Unfortunately, the 1995 conviction was not the last of Mr. Guthrie's alcohol problems. He testified that he attended the substance abuse program and completed his sentence. His probation was discharged in April, 1998. Mr. Guthrie had no criminal activity for several years but had two additional OWI convictions in August, 2004. Both were "A" misdemeanors. As part of the 2004 violations, Mr. Guthrie was required to go to alcohol counseling once a week for six months. He testified that it was after the 2004 convictions and

the subsequent probation and counseling that he became serious about changing his alcohol abuse. Mr. Guthrie testified that he has not had a drink for nearly a year. He has had no further criminal behavior since the 2004 OWI offenses.

RECOMMENDATION

Based on the foregoing, Mr. Guthrie 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. Guthrie's case.

1. The nature and duties of his position will require him to interact with gamblers, to calculate odds, and to watch for irregular behavior. He will not have cage or surveillance access. Additionally, his job does not involve operating any machinery.
2. The nature of his conviction was serious especially considering his alcohol-related history. However, since his most recent troubles, Mr. Guthrie has changed his social habits and has not had a drink in nearly a year.
3. Mr. Guthrie admits that his life was not in order at the time of the felony OWI and the 2004 OWIs, but that he has made improvements in that area since then.
4. The offense was in 1993.
5. Mr. Guthrie was 22 years old at the time of the offense.
6. Mr. Guthrie has repeatedly been in alcohol-related trouble, but has demonstrated rehabilitation since 2004.
7. Mr. Guthrie did not offer evidence about social conditions that may have contributed to his conduct.
8. Mr. Guthrie provided testimony about his rehabilitation, both following the 1993 and 2004 OWIs. He successfully completed a work-release program and a 30 day treatment program in Greene County in connection with the 1993 OWI, and a regular counseling program in connection with the 2004 OWIs.
9. His criminal record is clear except for the OWIs.
10. French Lick Resort • Casino's letter does not specify that they are aware of all of the facts and circumstances of Mr. Guthrie's record but does state that they will hire him if he is granted his felony waiver.

Therefore, I recommend that the Commission grant a waiver of felony disqualification to Jason D. Guthrie.

Respectfully Submitted,

Adam F. Packer
Staff Attorney

DATE: _____