

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

PHILLIP ROBBINS,

Petitioner,

vs.

Case No. 21-0188

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondents.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH) conducted the final hearing in this matter on March 23, 2021, by Zoom video conference.

APPEARANCES

For Petitioner: Phillip A. Robbins, pro se
1146 Navajo Avenue
Lehigh Acres, Florida 33936

For Respondent: Rhonda E. Parnell, Esquire
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Did Respondent, Florida Fish and Wildlife Conservation Commission (Commission), correctly deny the application of Petitioner, Phillip Robbins, for a Public Exhibition of Conditional and/or Prohibited Species Permit (CSP)?

PRELIMINARY STATEMENT

Mr. Robbins applied for a Conditional CSP that would authorize him to possess and exhibit a Burmese python. The Commission's Amended Notice of Denial stated that Mr. Robbins did not meet the criteria for a public exhibitor, which is the only category of individuals or businesses permitted to possess and exhibit conditional species, including a Burmese python, into which Mr. Robbins might fit. Mr. Robbins contested the denial and requested a formal administrative hearing. On January 19, 2021, the Commission referred the dispute to DOAH for conduct of the requested hearing. The undersigned conducted the requested hearing on March 23, 2021.

Commission Exhibits 1 through 7 were admitted into evidence. The Commission presented testimony from Investigator Robert O'Horo and Kristin Sommers. Mr. Robbins' Exhibits 1 through 7 were admitted into evidence. Mr. Robbins testified on his own behalf. A Post-Hearing Order directed the parties to address certain issues and identified authorities the parties should cite in their proposed recommended orders. The Transcript was filed. The parties timely filed proposed recommended orders. They have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Article IV, Section 9 of the Florida Constitution creates the Commission. It charges the Commission to "exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and ... exercise regulatory and executive powers of the state with respect to marine life," Chapter 379, Florida Statutes (2020),¹ implements the constitutional grant of authority. The Commission adopted Florida Administrative Code Chapters 68-1 and 68-5 to fulfill its constitutional and statutory duties.

¹ All citations to Florida Statutes are to the 2020 codification, unless noted otherwise.

2. Mr. Robbins operates a business that he calls Pan-Terra Exotics. He owns a Burmese python and has for over 25 years. From 2012 through 2017, Mr. Robbins sought and obtained the license required to possess the python, License to Possess Class II Wildlife for Exhibition or Public Sale (ESC). He also held and still holds a License to Possess Venomous Reptiles (VRC) that is not involved in this dispute. Mr. Robbins developed a pattern of letting his licenses lapse before applying to renew them.

3. Mr. Robbins' 2015 ESC expired October 3, 2016. Mr. Robbins applied to renew it on October 11, 2016. The Commission issued the license November 2, 2016.

4. Mr. Robbins' 2016 ESC expired October 3, 2017. Mr. Robbins applied to renew it November 8, 2017. The Commission issued the license November 14, 2017. It expired October 3, 2018.

5. The ESCs which Mr. Robbins had held authorized him to possess his Burmese python.

6. Mr. Robbins did not apply for, and consequently did not hold, an ESC after October 3, 2018.

7. On March 11, 2020, Mr. Robbins applied for an ESC and VRC. The Commission issued the VRC on June 12, 2020. It did not issue the ESC.

8. Mr. Robbins followed up on the ESC application with telephone calls and emails.

9. By letter dated July 2, 2020, the Commission denied Mr. Robbins' ESC application. In pertinent part, the Notice of Denial stated:

On July 1, 2020, FWC Executive Order 20-19 was signed, effectively altering regulation of species previously listed as Conditional Reptiles. EO 20-19 states in part:

The Florida Fish and Wildlife Conservation Commission ... hereby establishes special regulations to take effect July 1, 2020, in order to conform with Laws of Florida that amends

Section 379.372, Florida Statutes. This statute regulates certain high-risk nonnative invasive reptiles in Florida, particularly those listed as Conditional, Prohibited, Venomous, and Reptiles of Concern. These regulations are necessary due to ecological, economic and human health and safety concerns related to potential impacts of nonnative reptiles in Florida.

1) The regulations below apply to the following species of reptile:

a. Burmese or Indian python (*Python molurus*)

2) A person, party, firm, association, or corporation may not keep, possess, import into the state, sell, barter, trade, or breed the above species except for educational, research, or eradication or control purposes. Facilities that meet the requirements for the possession of Prohibited species as described in Rule 68-5.007, F.A.C. may apply for an FWC Conditional/Prohibited/Nonnative Species Permit for these uses.

The Captive Wildlife Program is no longer issuing authorizations for Conditional reptiles on the ESC license and applicants may no longer apply for an ESC license for the purpose of possessing Conditional, Prohibited, or Reptiles of Concern. For these reasons, your application is denied.

10. The letter went on to give instructions on how to apply online for a CSP "under new regulations," Mr. Robbins did not seek review of that decision.

11. On July 14, 2020, Mr. Robbins applied for a CSP. He followed up on his application. On August 5, 2020, he submitted another application, this one typewritten. He also submitted a completed Critical Incident/Disaster Plan form, a power point file on Burmese pythons, and an image of his Facebook page along with it.

12. As part of the application review process, Commission Investigator Robert O'Horo inspected Mr. Robbins' facility, which was the garage at his residence. There were no exterior signs indicating that the home was a place where a python, other reptiles, or any animals were on display or available for viewing. The python cage was located in Mr. Robbins' garage. There were no signs on the cage or in the garage providing information about the python, such as a description of its natural element or its diet. Mr. Robbins did not provide signs that may have been used but were not displayed at the time because he had paused his operation. Mr. Robbins also did not provide brochures or other printed materials with information about the python or other reptiles. There were no seating areas in the garage. The garage contained many objects one would expect to see in a garage such as weights, a weight bench, and a motorcycle. No area of the garage was cleared out and set up as a presentation area. In short, there was nothing indicating that the garage was being used or had been used as a location for exhibition of a python.

13. Pan-Terra Exotics maintains a scanty Facebook page. That is the only marketing or outreach evidence in the record. On August 10, 2020, the page had two pictures of a snake, presumably the python. The page directed people to contact Pan-Terra on Messenger. It contained only the following description of the business: "We offer personalized tours of multiple facilities covering a wide range of exotic, endangered, beautiful animals. Our

education and community outreach is second to none. We also import, export, sell, trade and breed exotic animals." There is no mention of exhibitions at Mr. Robbins' home. The Facebook page also advised that Pan-Terra was temporarily closed.

14. Mr. Robbins explained that the minimal information on his Facebook page, as well as the absence of seating, educational materials, display materials, or signs in his garage were due to his license being lapsed and COVID concerns. Because of this, at the time of the inspection he was not operating his business. But Mr. Robbins, who bears the burden of proof in this matter, did not offer any evidence demonstrating that at any time his home and garage were set up to offer public tours or information. He did not, present earlier images of his Facebook page at a more active time. He did not present examples of brochures or other educational materials used before he ceased operations. He did not offer signs removed because of the pause in operations. He did not offer photographs of the exterior or interior of his home and garage that showed use of the garage to exhibit the python.

15. Mr. Robbins did not offer other evidence that might indicate use of his python in an educational exhibition. Examples of evidence that might have indicated such use include receipts or other records showing individuals or groups paid for an exhibition, the power point presentation referred to in his email and testimony, calendars showing scheduled days and times for tours, photos of the facility, or thank you notes from individuals or groups who had attended exhibitions.

16. Mr. Robbins did not testify persuasively about exhibition of the python in his garage. He spoke generally about *ad hoc* visits from a few interested people. Mr. Robbins testified more persuasively about taking his reptiles to various locations and meetings. But the testimony was very general, did not clearly indicate that the python was among the reptiles, and did not provide information about when he took the reptiles to various locations and meetings. He also offered no corroborating testimony from other witnesses.

The only evidence offered to corroborate his claim of traveling to locations to exhibit the python was hearsay, a single letter generally describing "educational" outreach programs. Furthermore, the visits described do not amount to "scheduled tours or general admission ..." in a "permanent, fixed facility."

CONCLUSIONS OF LAW

17. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2020). *See also* Fla. Admin. Code R. 68-1.008(5)(c)3.

18. The Commission proposes to deny Mr. Robbins' application for a CSP. Mr. Robbins challenges that decision. He must prove entitlement to the license by a preponderance of the evidence. § 120.57(1)(j), Florida Statutes.

19. Section 379.372 and Commission rules implementing it govern possession of Burmese pythons. The Legislature amended the statute in 2020. Section 3 of Chapter 2020-123, Laws of Florida, amended section 379.372(2)(a) to expressly prohibit keeping or possessing a Burmese python "except for educational, research, or eradication or control purposes." The amended law took effect July 1, 2020, before Mr. Robbins submitted his CSP application. Mr. Robbins maintains that he possesses the python for educational purposes. He bore the burden of proving this.

20. Rule 68-5.005 prohibits possession of "conditional non-native species," including Burmese pythons. It provides for permitted possession in specific circumstances.

Permits shall be issued only to individuals or institutions engaged in research, or to commercial import or export businesses, public aquaria, public zoological parks, or public exhibitors providing educational exhibits. Permits shall not be issued for display of these species in private aquaria, private zoological parks, or for personal possession, except as provided in Rule 68-5.004, F.A.C.

21. Rule 68-5.002(3) defines "educational exhibit." It states an educational exhibit is:

an organized presentation or display of a nonnative fish or wildlife species along with a selection of educational materials to include interpretive signs, presentations, brochures, handouts, or other materials which impart knowledge about the displayed species. Such materials shall include information about the species' range, habitat, biology, and threats the species poses to Florida's ecology, economy, or human health and safety.

22. Mr. Robbins did not prove by a preponderance of the evidence that his possession of the python was an educational exhibit. There is no persuasive evidence he had or offered educational materials as described in the definition.

23. Rule 68-5.002(9) defines a public exhibitor. It requires:

a permanent, fixed facility in which Conditional and/or Prohibited species are confined in such a manner that the general public is able to view them during regularly scheduled business hours, either through scheduled tours or general admission, with or without a fee.

24. A preponderance of the evidence does not prove that Mr. Robbins is a public exhibitor. For example, there is no evidence of scheduled tours or general admission exhibits. In fact, Mr. Robbins' testimony indicates he did not maintain regularly scheduled hours for display of the python.

25. Section 379.372(2)(c) creates a grandfathering provision for people possessing, among other creatures, a Burmese python, if the person held a permit issued before July 1, 2010. Mr. Robbins did not hold a permit qualifying him for that exemption.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Florida Fish and Wildlife Conservation Commission, issue a final order denying the Conditional/Prohibited/Nonnative Species Permit application of Petitioner, Phillip Robbins.

DONE AND ENTERED this 17th day of May, 2021, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of May, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.