

No. 1-12-0650

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 9408
)	
JOHN W. WILLIAMS,)	Honorable
)	Catherine M. Haberkorn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction under the armed habitual criminal statute did not violate the prohibition on *ex post facto* laws. Defendant's unlawful use of a weapon by a felon conviction is vacated, under one-act, one-crime principles.

¶ 2 Following a jury trial, defendant John Williams was convicted of being an armed habitual criminal under section 24-1.7(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/24-1.7(a) (West 2008)) and two counts of unlawful use of a weapon by a felon (UUWF) under section 24-1.1(a) of the Code (720 ILCS 5/24-1.1(a) (West 2008)). He was also convicted of certain drug

offenses that are not at issue here. On appeal, defendant contends that his armed habitual criminal conviction violated the prohibition against *ex post facto* laws. He also maintains, and the State concedes, that his UUWF conviction should be vacated based on the doctrine of one-act, one crime. We affirm defendant's armed habitual criminal conviction, and vacate his UUWF conviction.

¶ 3 In May 2009, defendant was charged by information with being an armed habitual criminal, two counts of UUWF and four counts of possession of a controlled substance with intent to deliver. At trial, the State presented evidence that a consensual search of the apartment defendant shared with his sister produced a handgun, ammunition, heroin and cocaine. On February 14, 2011, he was sentenced to 16 years in prison for armed habitual criminal, 10 years for each UUWF conviction, 16 years for possession of a controlled substance with intent to deliver, and 3 years for two possession of a controlled substance convictions, all sentences to run concurrently to the armed habitual criminal conviction. Defendant was eligible for the armed habitual offender offense because, in addition to possessing a gun in the instant case, he had been previously convicted of residential burglary in 1990 and unlawful use of a weapon by a felon in 1997.

¶ 4 On appeal, defendant does not challenge the sufficiency of the evidence and contends solely that his armed habitual criminal conviction should be vacated because it violated the constitutional prohibition on *ex post facto* laws. Defendant argues that his prior convictions underlying the instant conviction occurred before the effective date of the armed habitual criminal statute.

¶ 5 All statutes are presumed to be constitutional and the party challenging the statute bears the burden of proving the statute unconstitutional. *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). Whenever reasonably possible, a court must construe a statute to uphold its

constitutionality. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005). Whether a statute is constitutional is a question of law reviewed *de novo*. *Malchow*, 193 Ill. 2d at 418.

¶ 6 A law is considered to be *ex post facto* if it "(1) makes criminal and punishable an act innocent when done; (2) aggravates a crime, or makes it greater than it was when committed; (3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the law; or (4) alters the rules of evidence to require less or different evidence than required when the crime was committed." *People v. Leonard*, 391 Ill. App. 3d 926, 931 (2009). The armed habitual criminal statute, which took effect on August 2, 2005 prohibits receipt, sale, possession or transfer of a firearm by a person with at least two prior convictions for certain enumerated offenses including residential burglary and unlawful use of a weapon by a felon. 720 ILCS 5/24-1.7(a) (West 2008). This court has held that the armed habitual criminal statute does not constitute an *ex post facto* law because it punishes a defendant not for his prior convictions preceding the statute but for the new act of possessing a firearm. *People v. Bailey*, 369 Ill. App. 3d 459, 461-64 (2009); *Leonard*, 391 Ill. App. 3d at 931.

¶ 7 Defendant argues that this court's interpretation of the habitual criminal statute conflicts with *People v. Dunigan*, 165 Ill. 2d 235 (1995), because the armed habitual criminal statute creates a new, substantive offense for which the prior conviction is an element of the crime. However, we reject this argument. In *Bailey* and *Leonard*, this court expressly considered and rejected contentions similar to defendant's based on *Dunigan*, which upheld the constitutionality of the Habitual Criminal Act, a sentencing enhancement, rather than the substantive offense of armed habitual criminal. Thus, *Dunigan* is inapplicable here. Furthermore, this court has consistently affirmed the constitutionality of the armed habitual criminal statute and dismissed challenges based on *ex post facto* grounds. See *People v. Black*, 2012 IL App (1st) 110055; *People v. Coleman*, 409 Ill. App. 3d 869 (2011); *People v. Tolentino*, 409 Ill. App. 3d 598

(2011); *People v. Ross*, 407 Ill. App. 3d 931 (2011). We find no reason to depart from these holdings.

¶ 8 Defendant also contends that his UUWF conviction should be vacated pursuant to the one-act, one-crime doctrine.

¶ 9 The State concedes, and we agree, that defendant's conviction for UUWF should be vacated. The one-act, one-crime rule, set forth in *People v. King*, 66 Ill. 2d 551, 566 (1977), prohibits multiple convictions based on "precisely the same physical act." *People v. Nunez*, 236 Ill. 2d 488, 494 (2010). Because defendant's convictions for both UUWF and armed habitual criminal were based on his singular possession of a gun, we vacate the UUWF conviction.

¶ 10 For the foregoing reasons, we affirm the judgment of the Circuit court of Cook County in part and vacate in part.

¶ 11 Affirmed in part; vacated in part.