

No. 1-13-0689

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

<i>In re</i> DOMONICK B., a Minor,)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County
)	
Petitioner-Appellee,)	
)	No. 12 JD 3718
v.)	
)	
Domonick D.,)	Honorable
)	Andrew Berman,
Respondent-Appellee).)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The finding of delinquency, adjudication of wardship, and sentence of probation entered against respondent are vacated, pursuant to *People v. Aguilar*, 2013 IL 112116.

¶ 2 Respondent-appellant, Domonick D., was adjudicated delinquent for having committed the offense of aggravated unlawful use of a weapon (AUUW), in violation of section 24-1.6(a)(1), (a)(3)(A) of the Criminal Code of 1961 (Code). 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2012). He was subsequently made a ward of the court and sentenced to 18 months' probation. Respondent has now appealed, contending: (1) the AUUW statute under which he was adjudicated delinquent violates the right to bear arms protected by the United States and

Illinois Constitutions (U.S. Const., amends. II, XIV; Ill. Const.1970, art. I, § 22); and (2) alternatively, the circuit court erred in denying his pretrial motion to quash arrest and suppress evidence. Pursuant to our supreme court's decision in *People v. Aguilar*, 2013 IL 112116, we vacate the finding of delinquency, adjudication of wardship, and sentence of probation entered against respondent.

¶ 3

I. BACKGROUND

¶ 4 On September 19, 2012, the State filed a four-count petition for adjudication of wardship with respect to respondent. That petition alleged respondent was a minor, and that he should be found delinquent and adjudicated a ward of the court because—on or about September 18, 2012—respondent had: (1) committed the offense of AUUW, in violation of three separate, specific provisions of section 24-1.6 of the Code (counts I through III of the petition); and (2) committed the offense of unlawful possession of a firearm (UPF), in violation of section 24-3.1(a)(1) of the Code (720 ILCS 5/24-3.1(a)(1) (West 2012)) (count IV of the petition).

¶ 5 Prior to trial, respondent filed a motion to quash arrest and suppress evidence. That motion was heard on December 6, 2012, with the circuit court hearing testimony from a number of witnesses. Respondent's motion was denied, and the matter proceeded to a stipulated bench trial consisting of: (1) the evidence introduced at the hearing on respondent's motion; and (2) the additional stipulated testimony of one of the arresting officers. At the conclusion of the bench trial, the circuit court stated:

"So, based upon that, I'm going to enter a finding—Count I is it? I think, State, you put on evidence on all four counts, but they're all the same. So they're all going to be unlawful use of a weapon. So I'll make a finding on Count I then.

There's a finding of guilty on Count I, and the other counts are dismissed."

A written order entered that same day also reflects that respondent was found guilty only with respect to count I.

¶ 6 On January 17, 2013, respondent was adjudicated a ward of the court and sentenced to one year of probation. Respondent filed a timely notice of appeal on February 14, 2013.

¶ 7 **II. ANALYSIS**

¶ 8 On appeal, respondent contends the AUUW statute, pursuant to which he was adjudicated delinquent, is unconstitutional and, alternatively, the circuit court erred in denying his motion to quash arrest and suppress evidence. We agree with respondent's constitutional argument and, therefore, vacate the circuit court's finding of delinquency, adjudication of wardship, and sentence of probation. "The constitutionality of a statute is a question of law that we review *de novo*." *Aguilar*, 2013 IL 112116, ¶ 15.

¶ 9 The State brought the instant delinquency petition pursuant to the Juvenile Court Act of 1987 (Act). 705 ILCS 405/5–101 *et seq.* (West 2012). The Act provides for three individual phases of juvenile delinquency proceedings: the findings phase; the adjudicatory phase; and the dispositional phase. *In re Samantha V.*, 234 Ill. 2d 359, 65 (2009). As our supreme court has more specifically recognized:

"The findings phase consists of a trial and determination of guilt. [Citations.] During this phase, the trial court applies the reasonable doubt standard of proof and the rules of evidence that would be followed in a criminal case to determine whether the minor should be found delinquent. [Citations.] If a delinquency finding is entered, the matter proceeds to sentencing. [Citations.] The sentencing proceeding includes the adjudication phase, where the court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. [Citations.] If the minor is made a ward of

the court, the matter proceeds to the dispositional phase where the court fashions an appropriate sentence that will best serve the minor and the public. [Citations.]” *Id.* at 365-66.

“In a juvenile delinquency case, a finding of guilt and a finding of delinquency are one and the same.” *In re Veronica C.*, 239 Ill. 2d 134, 145 (2010).

¶ 10 Pursuant to count I of the petition, the circuit court found respondent to have violated the section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, which makes it unlawful to carry or possess a loaded firearm in public. 720 ILCS 5/24–1.6(a)(1),(a)(3)(A) (West 2012). However, in *Aguilar*, our supreme court found this exact provision to be a facially unconstitutional violation of the constitutional right to bear arms. *Aguilar*, 2013 IL 112116 ¶ 22. When a statute is declared unconstitutional, it is void *ab initio*, or, as though the law had never been passed. *People v. Fields*, 2014 IL App (1st) 110311 ¶ 38; *People v. Tellez-Valencia*, 188 Ill. 2d 523, 526 (1999).

¶ 11 On appeal, both respondent and the State agree that—in light of *Aguilar*—respondent could not have been properly found delinquent and sentenced to probation on the basis of count I of the petition. However, they disagree on the significance of this fact.

¶ 12 Respondent contends the circuit court never entered any findings of guilt with respect to the three remaining counts of the petition, never merged any such findings for purposes of sentencing and, in fact, specifically dismissed the three remaining counts of the petition prior to finding respondent should be made a ward of the court and entering the sentence of probation. Respondent, thus, contends we must simply vacate the circuit court's finding of delinquency, its adjudication of wardship, and its sentence of probation.

¶ 13 In contrast, while the State acknowledges that the *Aguilar* decision vitiates section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, it notes that respondent was also charged with

violating two other sections of the AUUW statute and, also, with committing the offense of UPF. The State contends none of these charges are affected by the *Aguilar* decision. Furthermore, the State asserts the circuit court "ruled that there was sufficient evidence" to support findings of guilt with respect to these other charges, and that the circuit court essentially "merge[d] all the charges." Thus, the State contends the "finding of guilt was clearly intended for all four counts," and that it is appropriate to remand this matter "so that the trial court can enter judgment and sentence on one of the other AUUW counts or the UPF count." In support of this interpretation of the circuit court's actions, the State cites *In re Samantha V.*, which recognized that "generally, only one finding of delinquency is entered against a minor, and a minor receives only one sentence." *In re Samantha V.*, 234 Ill. 2d at 373.

¶ 14 We agree with respondent. While the circuit court did acknowledge the State had "put on evidence on all four counts" following the stipulated bench trial, the circuit court never made any specific finding that the State's evidence was sufficient to support a finding of guilt with respect to all four of the counts contained in the petition. Rather, the circuit court specifically stated only that "[t]here's a finding of guilty on Count I." Nor did the circuit court ever make an indication that any other possible findings of guilt with respect to the remaining counts were merged for purposes of sentencing. In fact, the circuit court specifically indicated that "the other counts are dismissed." It was only, thereafter, that this matter proceeded to the adjudication and dispositional phases, where the circuit court determined respondent should be made a ward of the court and sentenced to probation.

¶ 15 In light of the record, it is clear that this matter proceeded to the adjudicatory and dispositional phases *solely* upon a finding that respondent was guilty and delinquent pursuant to count I of the petition, with the other counts having been dismissed. As the only finding of guilt

and delinquency actually made in this case cannot stand in light of *Aguilar*, we conclude that this matter may not be remanded for further adjudicatory and dispositional proceedings. We must, therefore, vacate the circuit court's finding of delinquency against respondent, its adjudication of wardship, and its sentence of probation, as they were all predicated on respondent's violation of the unconstitutional portion of the AUUW statute.

¶ 16 Finally, we note again that the parties also debate the propriety of the circuit court's denial of respondent's motion to quash arrest and suppress evidence. However, as we have already concluded that the finding of delinquency against respondent and the sentence of probation must be vacated, this question is now moot. See *People v. Blaylock*, 202 Ill. 2d 319, 325 (2002) ("A question is said to be moot when it presents or involves no actual controversy, interests or rights, or where the issues involved have ceased to exist."). We, therefore, need not address this issue any further.

¶ 17

III. CONCLUSION

¶ 18 For the foregoing reasons, we vacate the circuit court's finding of delinquency, adjudication of wardship, and sentence of probation.

¶ 19 Orders vacated.