2016 IL App (1st) 142198-U

SIXTH DIVISION
Order filed: May 20, 2016

No. 1-14-2198



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 12CR12567 |
| | ) | |
| CURTIS MCTIZIC, | ) | Honorable |
| | ) | Mary Margaret Brosnahan, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held*: The judgment of the circuit court is affirmed over the defendant's claim that the armed habitual criminal statute is unconstitutional; the defendant's $100 trauma fund fine is vacated.

¶ 2 Following a jury trial, the defendant, Curtis Mctizic, was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) and sentenced to 18 years in prison. On appeal, he argues that: (1) the armed habitual criminal statute is unconstitutional because it violates substantive due process; and (2) his $100 trauma fund fine should be vacated. For the

reasons that follow, we vacate the trauma fund fine but otherwise affirm the judgment of the circuit court.

¶ 3 In July 2012, the defendant was charged by information with, *inter alia*, being an armed habitual criminal in violation of section 24-1.7(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/24-1.7(a) (West 2012). The evidence presented at trial established that, at approximately 1:30 p.m. on June 26, 2012, two Chicago police officers were driving on patrol when they observed the defendant standing on a street corner with a gun tucked in his waistband. As the police exited the vehicle to approach the defendant, the defendant fled on foot, dropping the gun to the ground. The loaded gun was recovered, inventoried and admitted into evidence at trial. The State also entered into evidence certified copies of the defendant's prior convictions for armed robbery and possession of a controlled substance, as well as a certification from the Illinois State Police certifying that the defendant had no Firearm Owners Identification (FOID) card.

¶ 4 At the conclusion of the evidence, the jury found the defendant guilty as charged. The trial court sentenced him to 18 years' imprisonment and ordered him to pay fines, fees and costs including a $100 trauma fund fine. This appeal followed.

¶ 5 The defendant's first contention on appeal is that section 24-1.7 violates the substantive due process provisions of the United States and Illinois constitutions (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2) because it does not bear a reasonable relationship to its purpose and "potentially criminalizes innocent conduct."

¶ 6 We begin by noting that statutes are presumed constitutional. *In re M.A.*, 2015 IL 118049, ¶ 21. To rebut the presumption, the party challenging the statute must clearly establish a constitutional violation. *Id.* If reasonably possible to do so, this court must construe a statute in

a manner upholding its constitutionality. *Id*. Accordingly, we will resolve any doubt on the construction of a statute in favor of its validity. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 307 (2008). The constitutionality of a statute is a question of law that we review *de novo*. *In re M.A.*, 2015 IL 118049, ¶ 21.

¶ 7 When a statute does not impact a fundamental constitutional right, the applicable standard for reviewing whether it conforms with substantive due process is the rational basis test. *People v. Williams*, 235 Ill. 2d 178, 205 (2009). Generally, a statute violates the constitutional guarantee of due process under the rational basis test if it does not bear a rational relationship to a legitimate legislative purpose, or is arbitrary or unreasonable. *In re M.A.*, 2015 IL 118049, ¶ 55. In applying the rational basis test, we must identify the public interest the statute is intended to protect, determine whether the statute bears a rational relationship to that interest, and examine whether the method chosen to protect or further that interest is reasonable. *Id*. Rational basis review is highly deferential, but it is not "toothless." *People v. Jones*, 223 Ill. 2d 569, 596 (2006). Legislation must be upheld if there is a conceivable basis for finding that it is rationally related to a legitimate state interest. *In re M.A.*, 2015 IL 118049, ¶ 55.

¶ 8 Section 24-1.7(a) of the Code states, in pertinent part, as follows:

> "(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:
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> (1) a forcible felony as defined in Section 2-8 of this Code;
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> (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described

> in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05; or
>
> (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher." 720 ILCS 5/24-1.7(a) (West 2012).

¶ 9 As this court has observed, the purpose of section 24-1.7 is to protect the public from the threat of violence that arises when recidivist felons possess firearms. *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011). Section 24-1.7 seeks to accomplish its goal by imposing harsher penalties on all felons who have been convicted two or more times of serious, forcible, weapon-related, and high-level narcotics offenses to deter them from possessing firearms. In our view, the legislature could rationally conclude that those whose prior offenses were of a particularly serious class or nature present a higher risk of danger to the public when in possession of a weapon. And, because deterring recidivist felons from possessing firearms furthers the public interest in protecting the health and safety of the public (*People v. Adams*, 404 Ill. App. 3d 405, 411 (2010)), section 24-1.7 bears a reasonable relationship to its legislative goal.

¶ 10 The defendant does not dispute that the State has a legitimate interest in protecting the health and safety of the public, nor does he dispute that keeping guns out of the hands of repeat offenders furthers that interest. Instead, he contends that the *method* chosen to protect or further the State's interest is irrational. He argues that the language of the statute sweeps too broadly and has the potential to criminalize wholly innocent conduct because it does not require a culpable mental state. He cites section 10(c) of the Firearm Owners Identification Card Act

(FOID Card Act) (430 ILCS 65/10(c) (West 2012)), in effect at the time of his conviction, which provided that persons with prior felony convictions may, upon application, be awarded a FOID card.[1] He maintains that, because convicted felons can obtain FOID cards "possession of a firearm by a person twice convicted of offenses set forth in [section 24-1.7] is not, by itself, a criminal act." He believes that section 24-1.7 should require a "culpable mental state" and only apply to persons who do not have a FOID card at the time he or she possessed a firearm. We disagree.

¶ 11 At the outset, we note that this court has considered and rejected this very argument. *People v. Fulton*, 2016 IL App (1st) 141765, ¶ 23; see also *People v. Johnson*, 2015 IL App (1st) 133663, ¶ 27 (the potential invalidity of the armed habitual criminal statute under the one "very unlikely" circumstance that a twice-convicted felon received a FOID card does not render the statute unconstitutional). The defendant acknowledges this court's earlier opinion in *Johnson* but states that it was wrongly decided.

¶ 12 In support of his position, he cites to *People v. Madrigal*, 241 Ill. 2d 463 (2011), and *People v. Carpenter*, 228 Ill. 2d 250 (2008). We find these cases distinguishable because in those cases, the method adopted by the legislature captured conduct that was outside the set of criminal acts the legislature meant to punish. Each statute had the capacity to sweep in innocent people who could reasonably believe they were engaging in lawful activity. That is, the acts that comprised the offenses were not necessarily criminal in nature and the statutes did not accomplish their legislative purpose.

[1] Section 10 of the FOID Card Act has been amended and now bars the circuit court from ordering the Illinois State Police to issue a FOID card when an applicant is prohibited from possessing a firearm under federal law (430 ILCS 65/10(b) (West 2014)) or contrary to federal law (430 ILCS 65/10(c) (West 2014)). See Pub. Act 97-1131, § 15 (eff. Jan.1, 2013) (amending 430 ILCS 65/10 (West 2012)).

¶ 13 In *Madrigal*, the supreme court invalidated a section of the identity theft statute, which made it unlawful for a person to knowingly use any personal identification information of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person. *Madrigal*, 241 Ill. 2d at 471. The purpose of the statute was to protect the economy and people of Illinois from the ill effects of identity theft. *Id*. at 467. The supreme court explained that, by excluding the requirement of a culpable mental state or criminal purpose, the statute swept too broadly by punishing a wide array of wholly innocent conduct, such as someone using the internet to look up how their neighbor did in the Chicago Marathon or a husband who calls a repair shop for his wife, without her "prior express permission," to see if her car is ready. *Id*. at 471-72. The court therefore concluded that the method employed by the statute to combat identity theft—the activity the legislature intended to punish—unconstitutionally captured wholly innocent conduct unrelated to its purpose. *Id*. at 473.

¶ 14 In *Carpenter*, the statute at issue made it a felony to own or operate a vehicle knowing that it contains a false or secret compartment, where the compartment was intended and designed to conceal items from law enforcement. *Carpenter*, 228 Ill. 2d at 268. The purpose of the law was to protect police by punishing the use of a compartment to conceal weapons or contraband from police. *Id.* at 268-69. But the problem was that the statute did not require the contents of the compartment to be illegal for a conviction to result. Our supreme court found that an intent to conceal something inside a vehicle does not necessarily involve illegal conduct, particularly since people often do—and sensibly so—conceal their worldly possessions from the general public, which includes, as a subset, law enforcement officers. *Id.* at 269. In finding that the statute violated due process, the court stated that if the legislature wanted to punish those who

conceal firearms or contraband in a false or secret compartment, "it would seem that the rational approach might have been to punish *** those who actually did that." *Id.* at 273.

¶ 15 According to the defendant, section 24-1.7 is no different from the statutes invalidated in *Madrigal* and *Carpenter*. We disagree. The statute we are concerned with in this case is far different. Unlike the statutes in the cases relied upon by the defendant, section 24-1.7 captures the precise activities that it seeks to punish—namely, possession of a firearm by felons who have been twice convicted of serious, forcible, weapon-related, and high-level narcotics offenses. This is so even if the person possessing the firearm has no criminal objective. A culpable mental state beyond what section 24-1.7 requires is not needed because the statute is, in effect, self-defining. Recidivist felons who knowingly possess a firearm are engaged in criminal conduct. Period. They are not engaged in wholly innocent conduct. See *Williams*, 235 Ill. 2d at 210 (a culpable mental state is not required where, by statutory definition, the proscribed acts are criminal in nature; the person is not engaged in wholly innocent conduct); *People v. Marin*, 342 Ill. App. 3d 716, 727 (2003).

¶ 16 Moreover, adding an element that the person did not have a FOID card at the time he or she possessed a firearm would not make section 24-1.7 any better and is not necessary to uphold its constitutionality. As discussed above, the statute evinces a clear intent that the crime apply to those offenders whose prior offenses were of a particularly serious class or nature and it was rational for the legislature to have believed that the classification represented a reasonable means of keeping firearms away from potentially dangerous persons. Narrowing section 24-1.7 to punish only recidivist offenders who do not possess a FOID card would largely defeat its primary purpose to deter *all* twice-convicted felons from possessing firearms. Had the legislature intended to confine section 24-1.7(a) to recidivist felons who did not have FOID

Cards, it would have so provided, just as it did in other sections of the Code. See 720 ILCS 5/24-1.1(a) (West 2012) ("This Section shall not apply if the person has been granted relief *** under Section 10 of the [FOID] Card Act."). In the light of its purpose, the legislature could not have intended that the broad and unambiguous language of section 24-1.7(a) was to be confined, as the defendant suggests, to those who do not have a FOID card.

¶ 17 In sum, we find that imposing a greater punishment on recidivist felons to deter them from possessing firearms is a rational way to accomplish the legislative goal of improving public safety. The reach of section 24-1.7 is no greater than the desired goal. We, therefore, conclude that section 24-1.7 does not violate the due process clauses of the United States or Illinois constitutions.

¶ 18 The defendant next argues, and the State agrees, that the defendant's $100 trauma fund fine should be vacated. See *People v. Williams*, 394 Ill. App. 3d 480, 483 (2009) ("The trauma fund fine applies only to specified firearm offenses that do not include the armed habitual criminal statute."). As such, we vacate the $100 trauma fund fine.

¶ 19 For the foregoing reasons, we order the clerk of the circuit court to vacate the $100 trauma fund fine. The judgment of the circuit court is otherwise affirmed.

¶ 20 Affirmed; fines and fees ordered corrected.