

No. 1-14-3023

**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. 14 CR 2207
	)	
MARCUS WILLIAMS,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Under the Illinois Supreme Court's decision in *People v. McFadden*, 2016 IL 117424, defendant cannot challenge his weapons-related conviction based on the validity of a prior conviction that was used to establish an element of the main offense.

¶ 2 Following a bench trial, defendant Marcus Williams was convicted of unlawful use of a weapon by a felon (UUWF) and was sentenced to seven years in prison. As an element of that offense, the State introduced evidence of defendant's 2006 prior felony conviction in case No. 06

CR 0162501, also for UUWF. The prior conviction that was used as the underlying felony for that 2006 offense was a 2002 felony conviction for aggravated unlawful use of a weapon (AUUW). On appeal, defendant contends that his conviction must be reversed because his 2002 felony conviction was based on section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2002)), which was held unconstitutional by the Illinois Supreme Court in *People v. Aguilar*, 2013 IL 112116. For the following reasons, we affirm defendant's conviction.

¶ 3 Defendant was charged with various weapons-related offenses following a traffic stop on January 14, 2014. Count 3 charged defendant with UUWF pursuant to section 24-1.1 of the Criminal Code of 2012 (720 ILCS 5/24-1.1(a) (West 2012)) for knowingly possessing firearm ammunition having been previously convicted of the felony offense of possession or use of a firearm by a felon in case No. 06 CR 0162501. The State presented evidence of that prior felony conviction. Count 5 charged defendant with knowingly possessing firearm ammunition after having been convicted of the felony offense of residential arson under case No. 09 CR 1188601. The circuit court found defendant guilty of Count 3 and Count 5, and the court merged the latter count into Count 3, sentencing defendant to seven years in prison.

¶ 4 On appeal, defendant's sole contention is that the State failed to prove each element of the offense of UUWF in Count 3. He points out that his 2002 conviction was rendered void *ab initio* by *Aguilar*. Thus, defendant asserts that conviction could not be used as the predicate felony offense for his 2006 conviction, which was used as an element of his instant conviction for UUWF. Count 5 was predicated on a prior conviction for residential arson. Accordingly, defendant does not challenge his conviction on that count.

¶ 5 In their briefs to this court, defendant and the State agree that the issue raised here would be resolved by the supreme court's decision in *People v. McFadden*, 2016 IL 117424, which was pending at that time. In *McFadden*, the defendant was convicted of UUWF for possessing a firearm, and the defendant stipulated to his felon status via a prior conviction. *Id.* ¶¶ 6, 15. After noting that the defendant's stipulation generally barred him from challenging the proof as to that element, the supreme court held that the UUWF statute did not require the prosecution to prove the predicate felony offense at trial. *Id.* ¶¶ 15, 27.

¶ 6 The supreme court noted the UUWF statute prohibited the possession of a firearm by any person who "has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a)(West 2008). Thus, the supreme court stated, "[n]othing on the face of the statute suggests any intent to limit the language to only those persons whose prior felony convictions are not later subject to vacatur." *McFadden*, 2016 IL 117424, ¶ 27. The court noted that the statute was intended to protect the public from "persons who are potentially irresponsible and dangerous" and thus it is not relevant whether the predicate conviction is ultimately invalidated. *Id.* ¶ 29. The offense of UUWF is a "status offense" that requires the defendant to clear his felony record before owning a firearm. *Id.* ¶¶ 29-30.

¶ 7 The supreme court further explained in *McFadden*:

"[I]t is axiomatic that no judgment, including a judgment of conviction, is deemed vacated until a court with reviewing authority has so declared. As with any conviction, a conviction is treated as valid until the judicial process has declared otherwise by direct appeal or collateral attack. Although *Aguilar* may provide a basis for vacating defendant's prior 2002 AUUW conviction, *Aguilar* did not automatically overturn that

judgment of conviction. Thus, at the time defendant committed the UUW by a felon offense, defendant had a judgment of conviction that had not been vacated and that made it unlawful for him to possess firearms."

*Id.* ¶ 31.

¶ 8 Based on the supreme court's holding in *McFadden*, defendant's 2002 conviction may be vacated as void *ab initio*, but must be treated as valid until the judicial process has declared otherwise. Thus, that conviction can be used as an element of the predicate 2006 felony conviction in his case, and the State satisfied the element of a prior felony offense as to the crime at issue in this appeal.

¶ 9 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 10 Affirmed.