2016 IL App (1st) 143144

THIRD DIVISION
September 7, 2016

NO. 1-14-3144

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RODNEY JONES, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County, Illinois. No. 14CR6938 The Honorable Vincent M. Gaughan, Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Pucinski concur in the judgment.

ORDER

¶ 1 Held: The armed habitual criminal statute is not facially unconstitutional and does not prohibit wholly innocent conduct. Affirmed.

¶ 2 After a jury trial, defendant Rodney Jones was found guilty of being an armed habitual criminal (AHC) and unlawful possession of a weapon by a felon (UUWF). The trial court merged the UUWF count into the AHC count and sentenced defendant to seven and one-half years' imprisonment for the AHC conviction. Defendant appeals, contending the AHC

statute is facially unconstitutional. He asks this court to vacate his AHC conviction and remand for re-sentencing on the UUWF conviction. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant does not challenge the sufficiency of the evidence in this appeal. Because the facts of the case are not in dispute, we provide here only a brief background.

¶ 5 Defendant was charged by information with one count of being an armed habitual criminal and two counts of unlawful possession of a weapon by a felon. Each count generally alleged, *inter alia*, that defendant was in possession of a firearm and/or ammunition on or about April 9, 2014. A jury trial was held and the following information was presented.

¶ 6 Chicago police executed a search warrant on April 9, 2014, to look for and recover a blue steel semiautomatic handgun, ammunition, any documents showing residency, and any other illegal contraband from defendant or in the single-family house or detached garage located at 9031 South Racine Avenue in Chicago. The warrant was based on information an informant provided to Chicago Police officer Michael Wrobel that the informant saw defendant inside the house holding a loaded blue steel semiautomatic handgun, which defendant stored in a safe in his bedroom. Defendant was in police custody at the time of the search.

¶ 7 Upon executing the warrant, police discovered a safe in the rear bedroom of the first floor of the house. Inside the safe were: a man's watch, defendant's 2013 tax return reflecting the South Racine address, an empty prescription drug bottle bearing defendant's name and South Racine address, a .32-caliber handgun loaded with nine live rounds of ammunition, and loose .32-caliber ammunition.

¶ 8 At trial, the State entered two certified statements of convictions into evidence: a burglary conviction under case number 07-CR-07778-02, and second burglary conviction under case number 05-CR-03054-01. Defendant did not testify and the defense presented no further evidence.

¶ 9 The jury returned a verdict finding defendant guilty of both AHC and UUWF. Defendant's motion for judgment notwithstanding the verdict and motion for a new trial was denied. After a sentencing hearing, the court merged the UUWF count into the AHC count and sentenced defendant to seven and one-half years' imprisonment for the AHC conviction.

¶ 10 Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Defendant raises one issue on appeal. He argues that, by making possession of a firearm a crime regardless of whether or not the person has a Firearm Owners Identification (FOID) card, the armed habitual criminal statute violates due process and is facially unconstitutional. According to defendant, it is possible for a felon, although twice convicted of the enumerated predicate felonies in the AHC statute, to also qualify for a FOID card under the Firearm Owner's Identification Card Act (FOID Card Act). See 430 ILCS 65/5, 8, 10 (West 2014). Citing *People v. Carpenter*, 228 Ill. 2d 250, 269 (2008), defendant argues, then, that the statute "potentially criminalizes innocent conduct" for those individuals with valid FOID cards and is, therefore, invalid on its face because it fails to require a culpable mental state. He says, "the AHC statute does not require a *culpable* mental state: it only requires that the defendant know he possesses a firearm while having two prior convictions for certain offenses. But *** these facts do not constitute a criminal act under Illinois law. The statute does not limit its application to the *unlawful* possession of a firearm – *i.e.*,

possession by those who have been denied a permit to possess a firearm. Because the statute does not require an 'unlawful purpose,' the statute 'sweeps too broadly by punishing innocent as well as culpable conduct.' [*People v.*] *Wick*, 107 Ill. 2d [62, 66 (1985)]." The first division of this court recently considered and rejected this precise issue in *People v. Fulton*, 2016 IL App (1st) 141765, and *People v. Johnson*, 2015 IL App (1st) 133663[1]. We see no reason to diverge from these well-reasoned cases.

¶ 13 Statutes are presumed constitutional, and we have the duty to construe statutes so as to uphold their constitutionality if there is any reasonable way to do so. *People v. Inghram*, 118 Ill. 2d 140, 146 (1987); *People v. Patterson*¸ 2014 IL 115102, ¶ 90 (This court has a duty to construe a statute in a manner which upholds its constitutionality "whenever reasonably possible, resolving any doubts in favor of its validity"). The party challenging the validity of a statute has the burden of clearly establishing a constitutional violation. *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011); *People v. Hollins*¸ 2012 IL 112754, ¶ 13. Here, defendant's challenge is a facial challenge to the statute on due process grounds, not an "as applied" challenge. "When the challenged statute does not affect a fundamental constitutional right, the appropriate test for determining its constitutionality is the highly deferential rational basis test." *Madrigal*, 241 Ill. 2d at 466. Under the rational basis test, a statute is to be upheld if it " 'bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective.' " *People v. Wright*, 194 Ill. 2d

[1] Defendant acknowledges *Johnson*, but argues it was wrongly decided. Neither defendant nor the State acknowledges *Fulton*.

1, 24 (2000) (quoting *People v. Adams*, 144 Ill. 2d 381, 390 (1991)).[2] Whether a statute is unconstitutional is a question of law which we review *de novo*. *Madrigal*, 241 Ill. 2d at 466.

¶ 14 "Under the banner of its police power, the legislature has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee of substantive due process, which provides that a person may not be deprived of liberty without due process of law." *Madrigal*, 241 Ill. 2d at 466. A statute violates due process if it potentially subjects "wholly innocent conduct to criminal penalty without requiring a culpable mental state beyond mere knowledge." *Madrigal*, 241 Ill. 2d at 467. In such a case, the statute "fails the rational basis test because it does not represent a reasonable method of preventing the targeted conduct." *Madrigal*, 241 Ill. 2d at 467.

¶ 15 The AHC statute creates a Class X felony for any person who possesses a firearm when that person has previously been twice-convicted of a list of enumerated felony offenses. The statute states:

> "(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:
>
> (1) a forcible felony as defined in Section 2-8 of this Code;
>
> (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular

[2] We recognize that there has been a dispute among our courts as to whether rational basis or intermediate scrutiny applies to constitutional challenges regarding a felon's right to bear arms. See *People v. Ross*, 407 Ill. App. 3d 931, 939 (2011) (applying intermediate scrutiny standard to constitutional challenge under the AHC statute regarding whether the statute violated the Second Amendment and whether the statute was an unconstitutional *ex post facto* law). Both parties here apply a rational basis standard, and we agree with this application. See *Fulton*, 2016 IL App (1st) 141765, ¶ 21.

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.

(b) Sentence. Being an armed habitual criminal is a Class X felony." 720 ILCS 5/24-1.7 (West 2014).

¶ 16 Pursuant to the FOID Card Act, a person who is convicted of a felony may have his or her FOID card revoked and seized, or the application for a FOID card denied. 430 ILCS 65/8(c) (West 2014). However, section 10(c) of the FOID Card Act (430 ILCS 65/10(c) (West 2014)) provides that a circuit court may grant a FOID card applicant relief where he establishes the following requirements to the court's satisfaction: "(1) the applicant has not been convicted of a forcible felony within 20 years of the application for a FOID card, or at least 20 years have passed since the end of any sentence related to such a conviction; (2) in light of his criminal history and reputation, an applicant 'will not be likely to act in a manner dangerous to public safety'; (3) a grant of relief is not contrary to the public interest; and (4) a grant of relief is not contrary to federal law. Pub. Act 97-1131, § 15 (eff. Jan. 1, 2013) (amending 430 ILCS 65/10(c) (West 2012))." *Fulton*, 2016 IL App (1st) 141765, ¶ 22.

¶ 17 The purpose of the AHC statute is to "help protect the public from the threat of violence based on the State's 'legitimate interest in protecting the public from the dangers posed by felons in possession of firearms.' " *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 17 (quoting *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011)).

¶ 18 While defendant contends that the armed habitual criminal statute under which he was convicted is unconstitutional, the same argument regarding the facial unconstitutionality of the armed habitual criminal statute for violating due process has been previously made, considered, and rejected by this court in both *Johnson*, 2015 IL App (1st) 133663, and *Fulton*, 2016 IL App (1st) 141765. We have held:

> " 'While it may be true that an individual could be twice-convicted of the offenses set forth in the armed habitual criminal statute and still receive a FOID card under certain unlikely circumstances, the invalidity of a statute in one particular set of circumstances is insufficient to prove that a statute is facially unconstitutional. [Citation.] The armed habitual criminal statute was enacted to help protect the public from the threat of violence that arises when repeat offenders possess firearms. [Citation.] The Supreme Court explicitly noted in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that "nothing in our opinion [regarding the breadth of the right to bear arms] should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." [Citations.] Accordingly, we find that the potential invalidity of the armed habitual criminal statute in one very unlikely set of circumstances does not render the statute unconstitutional on its face.' " *Fulton*, 2016 IL App (1st) 141765, ¶ 23 (quoting *Johnson*, 2015 IL App (1st) 133663, ¶ 27).

We continue to adhere to our reasoning in both *Johnson* and *Fulton*, and we reject defendant's argument that the armed habitual criminal statute is facially unconstitutional as a violation of due process.

¶ 19 Defendant relies on *Coram v. State of Illinois*, 2013 IL 113867, for the proposition that there exists a constitutional guarantee of the right to individualized consideration of

whether a person may own a firearm. However, while *Coram* discusses the FOID Card Act, it does so in the context of a domestic violence conviction and not in the context of the armed habitual criminal statute. See *Coram*, 2013 IL 113867. In addition, in both *Johnson* and *Fulton*, this court briefly considered *Coram* and found that it was factually inapposite and did not compel a different result where our supreme court in *Coram* addressed the language of the FOID Card Act as it read prior to the 2013 amendments, but the amended version of the statute was applicable to the *Johnson* and *Fulton* defendants. See *Johnson*, 2015 IL App (1st) 133663, ¶¶ 28-29 ("*Coram* is not applicable to the instant case, as the amended version of section 10 of the Act applies to this appeal, and a majority of our supreme court justices support the interpretation of the amendments as prohibiting the [Illinois Department of State Police] from issuing defendant a FOID card."); *Fulton*, 2016 IL App (1st) 141765, ¶ 24 ("*Coram* cannot be considered to be applicable because at the time of that decision, the amended version of section 10 of the FOID Card Act *** was not in effect. *** As a result, there was nothing in the statute at the time *Coram* was decided to prevent the trial court from granting that defendant the relief under section 10 that he sought. Here, in contrast, the amended version of section 10 is in effect, and we look to *Johnson*, not *Coram*, for proper guidance."). The amended version of the statute is also applicable to defendant in the case at bar, as the amended version was effective January 1, 2013, and defendant committed the crime on April 9, 2014. *Coram*, therefore, is factually distinguishable from the case at bar.

¶ 20 In addition, we reject defendant's contention that the armed habitual criminal statute fails the rational basis test because it criminalizes "wholly innocent conduct." Again, this court has previously considered and rejected this argument in *Fulton*. *Fulton*, 2016 IL App (1st) 141765, ¶ 31. The *Fulton* treatment of this issue bears repeating:

"Contrary to defendant's assertion that the armed habitual criminal statute seeks to 'punish recidivist offenders for committing a *new* gun crime' (emphasis in original), as we noted above, the purpose of the armed habitual criminal statute is 'to help protect the public from the threat of violence that arises when repeat offenders *possess* firearms' (emphasis added) (*Johnson*, 2015 IL App (1st) 133663, ¶ 27 ***). Unlike the conduct discussed in *Madrigal*[3] and *Carpenter*[4], a twice-convicted felon's possession of a firearm is not 'wholly innocent' and is, in fact, exactly what the legislature was seeking to prevent in passing the armed habitual criminal statute. The statute's criminalization of a twice-convicted felon's possession of a weapon is, therefore, rationally related to the purposes of 'protect[ing] the public from the threat of violence that arises when repeat offenders possess firearms.' *Johnson*, 2015 IL App (1st) 133663, ¶ 27 ***. Moreover, '[t]he Supreme Court explicitly noted in *District of Columbia v. Heller*¸ 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), that 'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.' " *Johnson*, 2015 IL App (1st)

---

[3] In *Madrigal*, our supreme court invalidated a section of the identity theft statute, finding that the statute was too broad because, by excluding the requirement of a culpable mental state or criminal purpose, it could punish a wide array of wholly innocent conduct such as a person searching online for his neighbor's public marathon results. The court concluded that the method employed by the statute to combat the activity the legislature intended to punish—identity theft—unconstitutionally captured wholly innocent conduct unrelated to its purpose. *People v. Madrigal*, 241 Ill. 2d 463, 473 (2011).

[4] In *Carpenter*, our supreme court found that a portion of the statute making it a felony to own or operate a motor vehicle knowing it contains a false or secret compartment where the compartment was intended and designed to conceal items from law enforcement violated due process. In so finding, the court stated that the purpose of the law was to protect police by punishing the use of a compartment to conceal weapons or contraband, but the statute itself did not require the contents of the compartment to be illegal for a conviction to result. 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." *Carpenter*, 228 Ill. 2d at 273.

133663, ¶ 27 *** (quoting *Heller*, 554 U.S. at 626, 128 S.Ct. 2783). The armed habitual criminal statute does not violate substantive due process and is, therefore, constitutional." *Fulton*, 2016 IL App (1st) 141765, ¶ 31.

¶ 21 We continue to adhere to this court's decisions in *Johnson* and *Fulton*, and find that the armed habitual criminal statute does not violate due process. Therefore, defendant's constitutional challenge to the armed habitual criminal statute fails.

¶ 22 CONCLUSION

¶ 23 For all of the foregoing reasons, the decision of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.