

No. 1-14-3405

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. 13 CR 15712
)	
JAVONTE REEVES,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction for being an armed habitual criminal where the statute under which he was convicted is not facially unconstitutional.

¶ 2 Following a bench trial, defendant Javonte Reeves was convicted of being an armed habitual criminal (AHC), unlawful use or possession of a weapon by a felon (UUWF), and aggravated unlawful use of a weapon (AUUW) and sentenced to nine years' imprisonment. On appeal, defendant contends that the AHC statute is facially unconstitutional because it criminalizes both the lawful and unlawful possession of firearms. We affirm.

¶ 3 Defendant was charged with AHC, UUWF, and AUUW. The trial evidence established that on the evening of August 6, 2013, Chicago police officers received a call of "shots fired" on the 8500 block of Sangamon. The officers arrived "[w]ithin a few seconds" and identified themselves to a group of men standing on the street. Defendant, who was standing with the group, "grabbed his right hand side" and fled through a vacant lot. An officer pursued him and observed defendant toss away a firearm, which was recovered. The State entered into evidence certified copies of defendant's prior convictions for residential burglary (2011) and UUWF (2011), along with a certification from the Illinois State Police indicating that he had never been issued a Firearm Owners Identification (FOID) card. The trial court found defendant guilty of AHC, UUWF, and AUUW, and, after merging the UUWF and AUUW counts into the AHC count, sentenced him to nine years' imprisonment.

¶ 4 On appeal, defendant contends that the AHC statute violates due process and is facially unconstitutional because it punishes possession of a firearm regardless of whether the offender has a FOID card. According to defendant, possession of a firearm is unlawful only if an individual lacks a FOID card. Because it is possible that, under the FOID Card Act (430 ILCS 65/1 *et seq.* (West Supp. 2013)), an applicant might obtain a FOID card despite having predicate convictions under the AHC statute, defendant reasons that the AHC statute criminalizes both the lawful and unlawful possession of firearms. Consequently, he maintains that the offense of AHC neither requires a culpable mental state nor describes a criminal act, and, therefore, does not rationally serve the purpose of punishing recidivist offenders for committing firearm offenses.

¶ 5 The constitutionality of a statute is a question of law, which this court reviews *de novo*. *People v. Schweih*s, 2015 IL 117789, ¶ 10. "There is a strong presumption that a statute is constitutional, and the party challenging its constitutionality bears the burden of clearly

establishing that the statute violates the constitution." *People v. Clark*, 2014 IL 115776, ¶ 9. A reviewing court must "construe a statute in a manner that upholds its constitutionality, if reasonably possible." *Id.* Here, defendant raises a facial constitutional challenge to the AHC statute, which "requires a showing that the statute is unconstitutional under any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant." *People v. Thompson*, 2015 IL 118151, ¶ 36. A statute's invalidity "in one particular set of circumstances" does not establish that the statute is facially invalid. *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006). Rather, "so long as there exists a situation in which a statute could be validly applied, a facial challenge must fail." *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002).

¶ 6 When a statute "does not affect a fundamental constitutional right," we determine its constitutionality using the "highly deferential rational basis test." *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011). Under the rational basis test, a statute will be upheld "so long as it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable." *People v. Hollins*, 2012 IL 112754, ¶ 15. The legislature has "wide discretion" to determine 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." *Id.* 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." *Id.* at 468.

¶ 7 The Class X offense of AHC occurs when an individual possesses a firearm and has two prior convictions for enumerated felony offenses, including, in relevant part, UUWF and

"forcible felon[ies]," such as residential burglary. 720 ILCS 5/24-1.7(a)(1)-(2) (West 2012); see also 720 ILCS 5/2-8 (West 2012).

¶ 8 Pursuant to the FOID Card Act, a person convicted of a felony may have his or her FOID card revoked and seized or the application for a FOID card denied. Pub. Act 98-63, § 150 (eff. July 9, 2013) (amending 430 ILCS 65/8(c) (West 2012)). However, section 10(c) of the FOID Card Act provides that a circuit court may grant a FOID card applicant relief where the applicant demonstrates that: "(1) the applicant has not been convicted of a forcible felony within the 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." *People v. Fulton*, 2016 IL App (1st) 141765, ¶ 22 (quoting Pub. Act 97-1131, § 15 (eff. Jan. 1, 2013) (amending 430 ILCS 65/10(c) (West 2012))).

¶ 9 In this case, defendant has not demonstrated that the AHC statute is facially unconstitutional. Initially, we observe that defendant's convictions from 2011 for residential burglary and UUWF served as predicate offenses for his AHC conviction (720 ILCS 5/24-1.7(a)(1)-(2) (West 2012)), but also rendered him ineligible to obtain a FOID card. Pub. Act 98-63, § 150 (eff. July 9, 2013) (amending 430 ILCS 65/8(c) (West 2012)). Thus, even if this court were to accept defendant's argument that possessing a firearm is unlawful only where an offender lacks a FOID card, here, he lacked a FOID card and could not have obtained one. Consequently, the AHC statute was properly applied and no constitutional violation occurred. See *In re C.E.*, 161 Ill. 2d 200, 219 (1994) (a defendant's facial challenge fails if the statute is constitutional as applied to him).

¶ 10 Moreover, in both *People v. Johnson*, 2015 IL App (1st) 133663, and *Fulton*, this court rejected the same facial constitutional challenge that defendant argues in this appeal. We 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[, 626, 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." [Citation.] * * *

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).

¶ 11 Defendant's contention that the AHC statute lacks a rational basis also fails. As this court explained in *Johnson* and *Fulton*, the AHC statute does not overreach, but precisely defines the activity that it seeks to punish. We held:

"*** [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 purpose of 'protect[ing] the public from the

threat of violence that arises when repeat offenders possess firearms.' " *Id.* ¶ 31 (quoting *Johnson*, 2015 IL App (1st) 133663, ¶ 27).

¶ 12 The case at bar thus differs from decisions cited by defendant, where our supreme court invalidated statutes that criminalized conduct that was not necessarily criminal in nature. In *Madrigal*, 241 Ill. 2d at 472, 479, for example, the court invalidated an identity theft statute that would prohibit using a neighbor's identification information to check his performance in a marathon. Likewise, in *People v. Carpenter*, 228 Ill. 2d 250, 269, 273 (2008), the court overturned a statute that penalized possession of vehicles containing compartments for concealing items from law enforcement, as the intent to conceal is not necessarily unlawful. See also *People v. Zaremba*, 158 Ill. 2d 36, 38-39 (1994) (antifencing statute rendered evidence technicians culpable for accepting stolen goods recovered by police officers); *People v. Wright*, 194 Ill. 2d 1, 28 (2000) (statute prohibiting knowing failure to maintain vehicle records criminalized lapses due to innocent reasons); *People v. Wick*, 107 Ill. 2d 62, 66 (1985) (aggravated arson statute punished lawful and unlawful conduct by not requiring an unlawful purpose for setting fire). Unlike the statutes involved in these cases, the AHC statute does not lack a rationale basis or punish lawful activity. *Fulton*, 2016 IL App (1st) 141765, ¶ 31; *Johnson*, 2015 IL App (1st) 133663, ¶ 27. Additionally, as our supreme court has explained, a culpable mental state is not required where, by statutory definition, a proscribed act (here, possession of a firearm by an individual with two qualifying felony convictions) is criminal in nature. *People v. Williams*, 235 Ill. 2d 178, 210 (2009). Thus, following our decisions in *Johnson* and *Fulton*, we hold that the AHC statute is not unconstitutional.

¶ 13 Notwithstanding, defendant maintains that *Coram v. State*, 2013 IL 113867, established a constitutional guarantee for "individualized consideration" of whether a person may legally

possess a firearm. In *Coram*, the Illinois State Police denied the applicant's FOID card application on the basis that, under federal law, a prior misdemeanor domestic battery conviction barred him from possessing a firearm. *Id.* ¶ 8. Our supreme court determined that, under the version of the FOID Card Act in effect when the applicant applied for his FOID card, nothing prevented the trial court from granting relief from the federal firearm disability. *Id.* ¶ 8-9.

Consistent with the Illinois Constitution's guarantee of "the right of the individual citizen to keep and bear arms" (Ill. Const. 1970, art. 1, § 22), the supreme court found that the FOID Card Act mandated "individual assessment of a person's application and circumstances by the *Department of State Police* in the first instance, and individualized *judicial* consideration of the basis for denial of a FOID card" (emphasis in original) (*Coram*, 2013 IL 113867, ¶ 58). The lead plurality opinion also stated that an amendment to the FOID Card Act allowing the trial court to grant relief only where not contrary to federal law, which was not in effect at the time of the application, did not change the trial court's ability to override the federal prohibition. *Id.* ¶ 75.

A majority of the supreme court justices, however, reached the opposite conclusion regarding the effect of the amendment. *Id.* ¶¶ 101 (Burke, J., specially concurring, joined by Freeman, J.), 123-24 (Theis, J., dissenting, joined by Garman, J.).

¶ 14 *Coram* is inapposite to the case at bar, as it considered whether a trial court could grant relief from a federal disability on firearm possession and did not address the AHC statute.

Further, in both *Fulton* and *Johnson*, this court found *Coram* distinguishable where our supreme court in *Coram* addressed the preamended FOID Card Act but the amended version applied to the *Johnson* and *Fulton* defendants. *Fulton*, 2016 IL App (1st) 141765, ¶ 24; *Johnson*, 2015 IL App (1st) 133663 ¶ 29. The amended version of the statute is similarly applicable here, as the amended version was effective January 1, 2013, and defendant committed the present AHC

1-14-3405

offense on August 6, 2013. Pub. Act 97-1150, § 545 (eff. Jan. 25, 2013) (amending 430 ILCS 65/8(c) (West 2012)). Consequently, *Coram* is inapplicable to the instant case and defendant's constitutional challenge to the AHC statute fails.

¶ 15 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 16 Affirmed.