

No. 1-14-3453

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. 11 CR 99
)	
DWAYNE WILLIAMS,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE JAMES FITZGERALD SMITH delivered the judgment of the court.

Justices Lavin and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's convictions for being an armed habitual criminal and unlawful use of a weapon by a felon affirmed.

¶ 2 Following a hearing on remand, defendant Dwayne Williams appeals from an order of the circuit court which found that his two prior convictions for aggravated unlawful use of a weapon (AUUW) were entered under 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 2006)), which was declared unconstitutional and void *ab*

initio in *People v. Aguilar*, 2013 IL 112116. The two prior convictions for AUUW were used in this case to prove defendant guilty of the offenses of armed habitual criminal and unlawful use of a weapon by a felon (UUWF). On appeal, defendant contends that his convictions for being an armed habitual criminal and UUWF must be reversed because his two prior AUUW convictions that were used to satisfy an element of each offense are unconstitutional, and thus, the State failed to prove those elements of the offenses, and failed to prove him guilty beyond a reasonable doubt. In accordance with our supreme court's recent holding in *People v. McFadden*, 2016 IL 117424, we disagree and affirm defendant's convictions.

¶ 3 Following a 2012 jury trial, defendant was convicted of being an armed habitual criminal and two counts of UUWF for possessing two firearms. The armed habitual criminal conviction was premised on defendant's two prior convictions for AUUW in case numbers 07-CR-16540 and 08-CR-13590, and the UUWF convictions were premised on his prior AUUW conviction in the 2008 case. At trial, the State presented two stipulations regarding defendant's prior convictions. The first stipulation stated that "defendant has a prior felony conviction in case 08-CR-13590 from November 23, 2008." The second stipulation stated that "the defendant has two prior felony convictions in case 08-CR-13590 from November 23, 2008, and case 07-CR-16540 from September 20, 2007. These two prior felony convictions are qualifying offenses under the Armed Habitual Criminal." The nature of the prior felony convictions was not disclosed to the jury at trial. Following the guilty verdict, the trial court sentenced defendant to concurrent prison terms of eight years for the armed habitual criminal offense and seven years for each count of UUWF, then merged the UUWF sentences.

¶ 4 On direct appeal, defendant argued, *inter alia*, that the State failed to prove him guilty beyond a reasonable doubt of the armed habitual criminal and UUWF offenses because it relied on his two prior convictions for AUUW to satisfy the prior conviction element of each offense. Defendant asserted that those prior convictions were entered pursuant to the subsection of the AUUW statute that was declared unconstitutional in *Aguilar*, and thus, were void *ab initio* and could no longer serve as the predicate felonies for the offenses in this case. This court found that we were unable to determine from the record whether defendant's prior convictions were, in fact, entered under the subsection that had been found unconstitutional, and therefore, we were unable to determine whether *Aguilar* applied. *People v. Williams*, 2014 IL App (1st) 120661-U, ¶ 15. Consequently, we remanded the case to the trial court to conduct a limited hearing to determine under which subsection of the AUUW statute defendant had been previously convicted. *Id.* at ¶ 22.

¶ 5 The record shows that on remand, the trial court and the parties reviewed the court files from defendant's previous cases. The parties then agreed, and the trial court concurred, that defendant's prior AUUW convictions in case numbers 07-CR-16540 and 08-CR-13590 were both entered under 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 2006)). Accordingly, the trial court concluded that defendant's prior convictions were subject to the holding in *Aguilar*, which found that section unconstitutional.

¶ 6 On appeal, defendant solely contends that his convictions for being an armed habitual criminal and UUWF should be reversed because his two prior convictions for AUUW, which were used to satisfy an element of each offense, are unconstitutional pursuant to *Aguilar*.

Defendant argues that his AUUW convictions cannot stand as the predicate convictions for the offenses in this case. He therefore maintains that the State failed to prove the prior conviction element of each offense, and thus, failed to prove him guilty beyond a reasonable doubt.

¶ 7 In response, the State argues that defendant was proven guilty beyond a reasonable doubt because it sufficiently established that he had two prior felony convictions at the time he possessed the two firearms in this case. The State asserts that, although section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute may be void *ab initio* following *Aguilar*, the repercussions of defendant's prior convictions under that statute continue until he has those convictions vacated, expunged, or otherwise set aside.

¶ 8 After the parties filed their briefs in this case, our supreme court issued its opinion in *People v. McFadden*, 2016 IL 117424, addressing the same issue defendant raises here. This court granted the State's motion to cite *McFadden* as additional authority, and we find that the holding in *McFadden* controls our disposition in this case.

¶ 9 In *McFadden*, the defendant was convicted of UUWF for possessing a firearm after having a prior conviction for AUUW. *McFadden*, 2016 IL 117424, ¶ 1. On appeal, the defendant argued that his UUWF conviction should be vacated because it was predicated on his prior AUUW conviction, which was entered under the section of the statute that was held facially unconstitutional in *Aguilar*, and thus, the State failed to prove all of the elements of the offense. *Id.* at ¶ 13.

¶ 10 Initially, the supreme court pointed out that McFadden had chosen to stipulate to his felon status by agreeing that he had been previously convicted of AUUW. *Id.* at ¶ 15. The court

stated that it is well settled that by agreeing to a stipulation, a defendant may waive the necessity of proof of all or part of the State's case against him as the stipulation substitutes for proof and dispenses with the need for evidence. *Id.* The court further noted that a defendant is generally precluded from contradicting or attacking a stipulation. *Id.*

¶ 11 Nevertheless, the supreme court then examined the language of the UUWF statute, which prohibits a person from knowingly possessing a firearm " 'if the person has been convicted of a felony under the laws of this State or any other jurisdiction.' " *Id.* at ¶ 27, quoting 720 ILCS 5/24-1.1(a) (West 2008). The court explained that "the language of the statute requires the State to prove only 'the defendant's felon status,' " and does not require that the State prove the predicate offense at trial. *Id.*, quoting *People v. Walker*, 211 Ill. 2d 317, 337 (2004). The court expressly found that "[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." *Id.*

¶ 12 The court further found that "the language of section 24-1.1(a) is 'consistent with the common-sense notion that a disability based upon one's status as a convicted felon should cease only when the conviction upon which that status depends has been vacated.' " *Id.* at ¶ 29, quoting *Lewis v. United States*, 445 U.S. 55, 61 n.5 (1980). In addition, the purpose of the UUWF statute is to protect the public from persons who are potentially dangerous and irresponsible, and thus, it is immaterial if the predicate conviction is subsequently found invalid for any reason. *Id.* The UUWF statute is not concerned with enforcing the prior conviction, but instead, the legislature was concerned with the role of the prior conviction as a disqualifying condition for obtaining a firearm. *Id.* Consequently, the court found that the UUWF statute is a "status offense," and that

the legislature intended that a defendant must clear his felon status through the judicial process by having his prior felony conviction vacated or expunged prior to obtaining a firearm. *Id.* at ¶¶ 29-30.

¶ 13 The *McFadden* court further explained:

"It 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.* at ¶ 31.

The court found that, although the defendant could seek to vacate his prior conviction for AUUW under the void *ab initio* doctrine based on the holding of *Aguilar*, under the UUWF statute, he was still required to clear his felon status prior to obtaining a firearm. *Id.* at ¶ 37. Accordingly, the court concluded that the defendant's prior conviction for AUUW properly served as proof of the predicate felony conviction for UUWF. *Id.*

¶ 14 Similar to *McFadden*, in the case at bar, defendant had two prior convictions for AUUW from 2007 and 2008 which served as the predicate felony convictions for the armed habitual criminal and UUWF offenses. Defendant also stipulated to his felon status at trial, and thus, should be precluded from attacking it now. *McFadden*, 2016 IL 117424, ¶ 15. Nonetheless,

although *Aguilar* may provide a basis for vacating defendant's prior AUUW convictions, it did not automatically overturn those convictions. At the time defendant committed the armed habitual criminal and UUWF offenses in this case, he had two felony convictions that had not been vacated. Those prior felony convictions made it unlawful for defendant to possess the two firearms in this case. In accordance with *McFadden*, we conclude that defendant's two prior convictions for AUUW from 2007 and 2008 properly served as proof of the predicate felony convictions for the armed habitual criminal and UUWF offenses, and thus, the State satisfied that element of the offenses and proved defendant guilty beyond a reasonable doubt.

¶ 15 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.