

NOTICE
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2017 IL App (5th) 140523-U

NO. 5-14-0523

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 13-CF-182
)	
ADRIAN SHACKLEFORD,)	Honorable
)	Mark W. Stedelin,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's appointed appellate counsel is granted leave to withdraw, and the circuit court's order denying the defendant's motion to vacate the judgment of conviction is affirmed.

- ¶ 2 The defendant, Adrian Shackelford, appeals from the circuit court's order denying his "amended motion to vacate conviction, vacate finding of violation of probation, or alternatively to impose misdemeanor sentence." The defendant's appointed attorney on appeal, the Office of the State Appellate Defender (OSAD), has filed a motion to withdraw as counsel on the ground that this appeal lacks merit. See *Anders v. California*, 386 U.S. 738 (1967). OSAD served the defendant with a copy of its withdrawal motion.

This court granted the defendant adequate time to respond to OSAD's withdrawal motion, but the defendant has not filed any response. This court has considered OSAD's motion and the entire record on appeal. For the reasons that follow, this court grants OSAD's motion and affirms the circuit court's order.

¶ 3

BACKGROUND

¶ 4 In May 2013, the State filed a one-count information charging the defendant with aggravated unlawful use of a weapon (AUUW), in violation of subsection 24-1.6(a)(1), (a)(3)(C) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)), a Class 4 felony. The information alleged that the defendant had "knowingly carried on his person a .38 caliber handgun, at a time when he was not on his own land, or in his own abode, or fixed place of business, and when he had not been issued a currently valid Firearm Owner's Identification Card."

¶ 5 In June 2013, the defendant pleaded guilty as charged, pursuant to a fully negotiated agreement with the State. In accordance with that agreement, the circuit court sentenced the defendant to probation, with various conditions, for a period of two years.

¶ 6 In August 2013, the State filed a petition to revoke the defendant's probation. The State subsequently filed an amended petition, alleging that the defendant had failed to refrain from using cannabis and that he had committed a new offense, domestic battery. In February 2014, the court held a hearing on the State's amended petition to revoke probation. The defendant, by counsel, stipulated to the State's evidence. (There was no stipulation as to the sufficiency of the evidence.) Based on the stipulated evidence, the court found that the defendant had violated probationary conditions, as alleged in the

State's amended petition. In April 2014, the court sentenced the defendant to imprisonment for a term of one year and six months.

¶ 7 On May 23, 2014, the defendant filed, by counsel, a "motion to vacate the conviction, to vacate the finding of a probation violation, or, in the alternative, to impose a misdemeanor sentence." On August 1, 2014, the defendant filed, by counsel, an amended version of this motion (hereinafter, amended motion to vacate the conviction). The defendant asserted that (1) the entire AUUW statute (720 ILCS 5/24-1.6 (West 2012)) was unconstitutional, and therefore the defendant's conviction under subsection 24-1.6(a)(1), (a)(3)(C) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)) was void *ab initio*; (2) section 2(a)(1) of the Firearm Owners Identification Card Act (FOID Act) (430 ILCS 65/2(a)(1) (West 2012)), which forbids a person from possessing a firearm without also possessing a Firearm Owners Identification Card (FOID card), violates the second amendment to the United States Constitution; and (3) the elements of the Class 4 felony of which the defendant was convicted under subsection 24-1.6(a)(1), (a)(3)(C) are identical to the elements of the Class A misdemeanor of possessing a firearm without also possessing a FOID card previously issued to him (430 ILCS 65/2(a)(1) (West 2012)), in violation of the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) and requiring that the defendant be sentenced on the Class A misdemeanor, not the Class 4 felony. The State filed a response to the defendant's amended motion to vacate the conviction, arguing that it should be denied.

¶ 8 On October 6, 2014, the circuit court entered a written order denying the amended motion to vacate the conviction. The defendant perfected the instant appeal from the order. The circuit court appointed OSAD to represent him on appeal.

¶ 9 ANALYSIS

¶ 10 As previously mentioned, OSAD has concluded that this appeal lacks merit and, on that basis, has filed a motion to withdraw as the defendant's counsel on appeal. OSAD has identified four potential issues on appeal.

¶ 11 The first potential issue identified by OSAD is whether the statutory subsection that the defendant was convicted of violating, *i.e.*, subsection 24-1.6(a)(1), (a)(3)(C) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)), runs afoul of the second amendment right to bear arms (U.S. Const., amend. II), rendering his conviction void *ab initio*. Subsection 24-1.6(a)(1), (a)(3)(C) states, in relevant part, that a person commits AUUW when he knowingly carries a firearm on his person, outside his own land, abode, or fixed place of business, and he has not been issued a currently valid FOID card. 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012). The second amendment guarantees the right of individuals to keep and bear arms. U.S. Const., amend. II; *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). However, this right is "not unlimited." *Heller*, 554 U.S. at 626. For example, "prohibitions on the possession of firearms by felons and the mentally ill" are certainly allowable. *Id.* See also *People v. Aguilar*, 2013 IL 112116, ¶ 21, wherein our Illinois Supreme Court indicated that the second amendment right to keep and bear arms is subject to "meaningful regulation." Prohibiting a person from bearing a firearm outside his own land, etc., without first being

issued a currently valid FOID card is the type of meaningful regulation that can be enacted without infringing on second amendment rights. *People v. Mosley*, 2015 IL 115872, ¶ 32; *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 35; *People v. Taylor*, 2013 IL App (1st) 110166, ¶ 32. This statutory requirement reasonably attempts to keep firearms out of the wrong hands so as to protect the police and the public. *Henderson*, 2013 IL App (1st) 113294, ¶ 26; *Taylor*, 2013 IL App (1st) 110166, ¶ 30.

¶ 12 The second potential issue identified by OSAD is whether section 2(a)(1) of the FOID Act (430 ILCS 65/2(a)(1) (West 2012)), which forbids a person from possessing a firearm without also possessing a FOID card previously issued in his name, violates the second amendment. The defendant was neither charged with nor convicted of violating section 2(a)(1) of the FOID Act. This second potential issue is essentially a reformulation of the first potential issue. For the reasons stated in the immediately preceding paragraph, requiring a valid FOID card as a condition for keeping or bearing arms is a reasonable regulation that does not run afoul of the second amendment.

¶ 13 The third potential issue identified by OSAD is whether subsection 24-1.6(a)(1), (a)(3)(C) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)), under which the defendant was convicted, violates the Illinois Constitution's proportionate penalties clause because the elements of that offense are identical to the elements of the offense in section 2(a)(1) of the FOID Act (430 ILCS 65/2(a)(1) (West 2012)), but the former offense is nevertheless punished more harshly than the latter offense. The former offense, of which the defendant was convicted, is a Class 4 felony (720 ILCS 5/24-1.6(d)(1) (West 2012)) while the latter offense is a Class A misdemeanor (430 ILCS

65/14 (West 2012)). The proportionate penalties clause states that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. This clause is violated when two different criminal offenses have identical elements but the penalty for one is harsher than the penalty for the other. *People v. Williams*, 2015 IL 117470, ¶ 9. An examination of subsection 24-1.6(a)(1), (a)(3)(C) of the AUUW statute and section 2(a)(1) of the FOID Act reveals that those two offenses do not have identical elements. As our supreme court noted in *Williams*, subsection 24-1.6(a)(1), (a)(3)(C) of the AUUW statute contains a location element that is absent from section 2(a)(1) of the FOID Act. *Williams*, 2015 IL 117470, ¶ 14. A person cannot violate the former statute on his own property, but only when he is away from his own property, while a person can violate the latter statute regardless of his location, merely by possessing a firearm without also possessing a FOID card. *Id.* Without identical elements between the two offenses, there cannot be a violation of the proportionate penalties clause. *Id.*

¶ 14 The fourth and final potential issue identified by OSAD is whether the defendant was deprived of the due process of law (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2) at his probation-revocation hearing. At a probation-revocation hearing, due process is satisfied if the probationer has been notified of the alleged probationary violation(s), if he is given opportunities to be heard, to present evidence, and to confront witnesses, if he is represented by counsel, if the hearing is fair throughout, and if there is a fair determination as to whether the act(s) alleged in the revocation petition actually occurred. *People v. Lindsey*, 319 Ill. App. 3d 586, 592 (2001). An examination of the report of

proceedings shows that all of these conditions were met at the defendant's hearing. That the defendant chose to stipulate to the State's evidence does not alter this conclusion. See *People v. Cox*, 197 Ill. App. 3d 239, 244 (1990) (probationer, who chose to stipulate to some of the State's evidence at his probation-revocation hearing, was afforded due process at that hearing). The defendant clearly was not deprived of due process at his revocation hearing.

¶ 15

CONCLUSION

¶ 16 The circuit court did not err in denying the defendant's amended motion to vacate the conviction. Any argument to the contrary would lack merit. Accordingly, OSAD is granted leave to withdraw as the defendant's attorney, and the circuit court's order denying the defendant's amended motion to vacate the conviction is affirmed.

¶ 17 Motion granted; judgment affirmed.