

No. 1-16-0963

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 DISTRICT

| | | |
|----------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County |
| |) | |
| |) | |
| v. |) | No. 12 CR 02615 |
| |) | |
| |) | |
| BENNY WILLIS, |) | Honorable |
| |) | Gregory Robert Ginex, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the circuit court’s order dismissing the defendant’s petition for postconviction relief over the defendant’s argument that the Illinois armed habitual criminal statute pursuant to which he was convicted is facially unconstitutional.

¶ 2 The defendant, Benny Willis, appeals from an order of the circuit court summarily dismissing his petition for postconviction relief. For the reasons which follow, we affirm.

¶ 3 On January 16, 2015, the defendant pled guilty to one count of being an armed habitual criminal (AHC) in violation of section 24-1.7(a) of the Criminal Code of 2012 (AHC statute) (720 ILCS 5/24-1.7(a) (West 2012)) in exchange for a recommended sentence of twelve years' imprisonment and the dismissal of the other charges pending against him. After accepting the defendant's guilty plea, the circuit court sentenced him to the negotiated 12-year prison term, imposed fines and costs, and awarded him 1,110 days of credit.

¶ 4 The defendant did not file either a motion to withdraw his guilty plea or a direct appeal. However, on January 28, 2016, the defendant filed a *pro se* postconviction petition, arguing, *inter alia*, that his trial attorney was ineffective for not challenging the State's case and his prior conviction for residential burglary should not have been considered a qualifying felony under the AHC statute. After examining the petition, the trial court summarily dismissed the petition on March 18, 2016, and this appeal followed. As this is an appeal from a first-stage dismissal of a postconviction petition, our review is *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

¶ 5 The defendant does not challenge the first-stage summary dismissal of his postconviction petition based on the grounds stated therein and, in his brief, specifically disclaimed any issue concerning the sufficiency of his postconviction petition. Rather, he argues that the AHC statute, to which he pled guilty and was sentenced, is facially unconstitutional. The defendant admits that he did not challenge the constitutionality of the AHC statute in his postconviction petition, and generally, claims not raised in a postconviction petition are forfeited and may not be raised for the first time on appeal from the dismissal of that petition. See *People v. Petrenko*, 237 Ill. 2d 490, 502-03 (2010). However, the defendant argues, and the State concedes, that a claim that the

statute pursuant to which a defendant has been convicted is facially unconstitutional may be raised at any time. *People v. Thompson*, 2015 IL 118151, ¶ 32.

¶ 6 The AHC statute provides, in relevant part, that “[a] person commits the offense of being an armed habitual criminal if he *** possesses *** any firearm after having been convicted a total of 2 or more times of any combination” of the offenses set forth therein. 720 ILCS 5/24-1.7 (West 2012). In support of his argument that the AHC statute is facially unconstitutional, the defendant contends that possession of a firearm, even by a person convicted of two qualifying felonies under the AHC statute such as himself, may be authorized under the Firearm Owners Identification (FOID) Card Act. See 430 ILCS 65/5, 8, 10 (West 2012). According to the defendant, possession of a firearm only “becomes criminal when the person does not have a valid Firearm Owner’s (‘FOID’) card.” See 430 ILCS 65/2, 14, (West 2012). He contends that possession of a firearm is a constitutionally protected right in Illinois (Ill. Const. 1970, art. I, § 22), and a FOID card is available to all qualified citizens under the FOID Card Act (see 430 ILCS 65/5 (West 2012)). Nevertheless, the AHC statute makes possession of a firearm by an individual who has been convicted of two qualifying felonies a crime without regard to whether the individual has been granted a FOID card. The defendant concludes, therefore, that the AHC statute is facially unconstitutional because it “potentially” criminalizes innocent conduct. We disagree.

¶ 7 Statutes enjoy a strong presumption of constitutionality, and we must construe statutes as constitutional whenever reasonably possible. *Wickham v. Byrne*, 199 Ill. 2d 309, 316 (2002). “Successfully making a facial challenge to a statute’s constitutionality is extremely difficult, requiring a showing that the statute would be invalid under any imaginable set of circumstances.” *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006). “[S]o long as there exists a situation

in which a statute could be validly applied, a facial challenge must fail.” (Internal quotation marks omitted.) *People v. Huddleston*, 212 Ill. 2d 107, 145; see also *Unites States v. Salerno*, 481 U.S. 739, 745 (1987). The fact that a statute might be found unconstitutional under some set of circumstances does not establish its facial invalidity. *In re Parentage of John M.*, 212 Ill. 2d 253, 269 (2004).

¶ 8 The AHC statute was enacted by the legislature to help protect the public from the threat of violence that arises when repeat offenders possess firearms. *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011). The AHC statute can be validly applied in cases such as this where a twice-convicted felon does not possess a valid FOID card. Although an individual twice convicted of the offenses set forth in the AHC statute might conceivably receive a FOID card and, as a result, legally possess a firearm pursuant the terms of the FOID Card Act, that unlikely circumstance is insufficient to establish that the statute is facially unconstitutional. *People v. Johnson*, 2015 IL App. (1st) 133663, ¶ 27.

¶ 9 A facial unconstitutionality challenge to the AHC statute identical to the one raised by the defendant in this case has been previously considered and rejected by this court. See *People v. West*, 2017 IL App (1st) 143632; *People v. Fulton*, 2016 IL App (1st) 141765; *Johnson*, 2015 IL App (1st) 133663. Relying upon the analysis in *Coram v. State of Illinois*, 2013 IL 113867, the defendant argues that *West*, *Fulton*, and *Johnson* were wrongly decided and urges us not to follow those cases. We decline the invitation. *Coram* did not address the constitutionality of the AHC statute and is, therefore, distinguishable. We find no basis to deviate from the reasoning in *West*, *Fulton*, and *Johnson*.

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¶ 10 Based upon the foregoing analysis, we reject the defendant's challenge to the constitutionality of the AHC statute and affirm the dismissal of the defendant's postconviction petition.

¶ 11 Affirmed.