

[Cite as *State v. Hairston*, 2010-Ohio-2485.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94166

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES C. HAIRSTON

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-331664

BEFORE: Sweeney, J., Boyle, P.J., and Jones, J.

RELEASED: June 3, 2010

**JOURNALIZED:
FOR APPELLANT**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Charles C. Hairston (“Hairston”), appeals pro se from the trial court’s decision that denied his application to be relieved from disability to possess a firearm, filed pursuant to R.C. 2923.14, for the reason that his 1971 conviction for an offense of violence prevented him from satisfying the provisions of R.C. 2923.14(D)(3). For the reasons that follow, we reverse and remand.

{¶ 2} This matter was previously before this Court in *State v. Hairston*, Cuyahoga App. No. 92716, 2009-Ohio-3382 (“*Hairston I*”), following the trial court’s denial of his application for relief from disability without a hearing. The facts set forth in *Hairston I* are incorporated herein by reference.

{¶ 3} In *Hairston I*, we remanded the matter with instructions that the trial court hold a hearing and receive evidence on Hairston’s application for relief from disability. The trial court conducted the evidentiary hearing on October 8, 2009 and denied the application.¹ The trial court issued a detailed judgment entry setting forth the reasons for its decision. Hairston then filed a motion for reconsideration, which the State opposed and the trial court also denied. Hairston now appeals raising three assignments of error for our review, of which we address only the first. See App.R. 12(A)(1)(c).

¹There is no transcript of the hearing in the record.

{¶ 4} “l. The trial court erred in finding that because Hairston was convicted of a crime of violence, he fails to meet the statutory requirements and is therefore ineligible for relief under R.C. 2923.14.”

{¶ 5} Hairston’s 1971 conviction for murder in North Carolina disabled him from “knowingly acquir[ing], hav[ing], carry[ing], or us[ing] any firearm or dangerous ordnance” under Ohio law; specifically, R.C. 2923.13(A)(2).² The record does not indicate that Hairston is otherwise under a disability with regard to firearms, for example, pursuant to subdivisions (A)(1), (4), or (5) of R.C. 2923.13.

{¶ 6} R.C. 2923.14(A) provides that:

{¶ 7} “(A) Any person who, *solely by reason of the person’s disability under division (A)(2) or (3) of section 2923.13 of the Revised Code*, is prohibited from acquiring, having, carrying, or using firearms, may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.” (Emphasis added.)

{¶ 8} Thus, a prerequisite to pursuing relief from disability is that the applicant be solely under disability pursuant to R.C. 2923.13(A)(2) or (3). *State v. Hensley*, 154 Ohio App.3d 210, 2003-Ohio-4619, 796 N.E.2d 973, ¶43.

²“Offense of violence” includes “[a] violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section.” R.C. 2901.01(A)(9)(b). Hairston’s conviction for murder is the substantial equivalent to a violation of R.C. 2903.02, and, therefore, qualifies as an offense of violence for purposes of R.C. 2923.13(A).

Further, explicit in R.C. 2923.13(A) is the recognition that persons may be relieved from disability pursuant to R.C. 2923.14. *Id.* at ¶45.

{¶ 9} It is understandable how the wording of R.C. 2923.14 could be easily misinterpreted and lead to the conclusion reached by the trial court — that a conviction for a crime of violence prevents the applicant from satisfying R.C. 2923.14(D)(3). Yet, this construction would render relief from disability under the statute an impossibility, since anyone applying for it must be under disability pursuant to R.C. 2923.13(A)(2) or (3).

{¶ 10} In order to give each provision effect, R.C. 2923.14(D)(3) must be read in conjunction with paragraph (A); meaning, the applicant cannot be under a disability other than *R.C. 2923.13(A)(2) or (3)*. For example, a person prohibited from possessing a firearm pursuant to R.C. 2923.13(A)(4) could not satisfy the provisions of R.C. 2923.14(D).

{¶ 11} Here, the trial court found that Hairston satisfied R.C. 2923.14(D)(1) and (2). The trial court denied Hairston's application for the sole reason that it believed his murder conviction prevented him from satisfying R.C. 2923.14(D)(3). The trial court offered no further reasons for denying the application. Because the trial court erred in the sole basis for its denial, we remand the matter to the trial court for further consideration.

{¶ 12} We reiterate that the trial court retains full discretion in ruling on the application even if Hairston ultimately satisfies all of the criteria to render him eligible for relief. But a remand is necessary since the trial court clearly denied

the application believing he was not eligible for relief rather than pursuant to an exercise of its discretion.

Judgment reversed and case remanded for further proceedings.

It is ordered that appellant recover from appellee his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. Case remanded to the trial court for further proceedings.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY J. BOYLE, P.J., and
LARRY A. JONES, J., CONCUR