

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Jeffrey Kempf,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-937 (C.P.C. No. 11CVF-12-15751)
Zach Scott, in his official capacity as Sheriff of Franklin County,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on March 26, 2013

Barney DeBrosse LLC, and Derek A. DeBrosse, for appellant.

*Ron O'Brien, Prosecuting Attorney, and Mary Jane Martin,
for appellee.*

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Jeffrey Kempf is appealing from the denial of his application for a concealed carry license under R.C. 2923.125 as a result of conviction for attempted trafficking in drugs. He assigns two errors for our consideration:

First Assignment of Error: The court erred by applying statutory interpretation to a clear and unambiguous statute.

Second Assignment of Error: The court erred when it misinterpreted *State v. Taylor* and failed to recognize that attempt is a separate offense from the complete offense attempted.

{¶ 2} "Attempt" is defined in R.C. 2923.02(A) as follows:

No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.

{¶ 3} The penalties for violating the attempt statute are set forth in R.C. 2923.02(E). The penalties are directly related to the seriousness of the offense attempted.

{¶ 4} Counsel for Kempf has argued that a conviction for attempt to commit trafficking in drugs is not a drug-related offense. Conviction for drug-related offenses are a bar to an individual obtaining a concealed carry permit. *See* R.C. 2923.125(D)(1)(e), which reads:

Except as otherwise provided in division (D)(5) of this section, the applicant has not been convicted of or pleaded guilty to a felony or an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; has not been adjudicated a delinquent child for committing an act that if committed by an adult would be a felony or would be an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; and has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a violation of section 2903.13 of the Revised Code when the victim of the violation is a peace officer, regardless of whether the applicant was sentenced under division (C)(3) of that section.

{¶ 5} R.C. 2923.125(D)(1)(e) also bars a permit for anyone who has committed a felony that involves the illegal possession or sale of a drug of abuse. The record on appeal indicates that Kempf's conviction was for a misdemeanor, not a felony. Therefore, any additional restriction does not come into play in addressing the issues here.

{¶ 6} Returning to the precise words of R.C. 2923.125(D)(1)(e), the issue is whether attempt is an offense under R.C. Chapters 2925, 3719 or 4729. On its face, a violation of an offense under R.C. Chapter 2923 is not an offense under R.C. Chapter 2925. However, the trial court and the prosecutor's office have indicated that the ruling of the Supreme Court of Ohio in *State v. Taylor*, 113 Ohio St.3d 297, 2007-Ohio-1950 indicates otherwise. The syllabus for the *Taylor* case reads:

An attempted possession of illegal drugs is a drug-abuse offense, and an individual convicted of an attempted drug-abuse offense is subject to the mandatory sentencing provisions of R.C. 2925.11.

The syllabus relies upon the finding of the Supreme Court set forth in ¶ 16 of the opinion:

We agree with both the Sixth and Eighth District Courts of Appeals that an attempted possession of drugs is not a separate and distinct crime from the possession of drugs, but rather is incorporated into the possession offense.

{¶ 7} The *Taylor* case was addressing mandatory sentencing provisions of the Ohio Revised Code, not the ability of citizens to obtain a concealed carry permit. However, the clear syllabus of the *Taylor* case indicates that we must interpret attempted trafficking in drugs as a drug offense under R.C. Chapter 2925. We, therefore, are compelled by Supreme Court precedent to overrule the assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.
