

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

IN RE: APPLICATION OF DOUGLAS
WELLS

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OPINION

CASE NO. 2014-L-040

Civil Appeal from the Lake County Court of Common Pleas, Case No. 14 CV 000048.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Michael L. DeLeone*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellee – State of Ohio).

Matthew C. Bangerter, P.O. Box 148, Mentor, OH 44061 (For Appellant – Douglas Wells).

CYNTHIA WESTCOTT RICE, J.

{¶1} Upon application for relief from firearms disability, filed pursuant to R.C. 2923.14, appellant, Douglas Wells, moved the trial court for relief from his prior convictions for felony-five drug abuse and felony-five possession of criminal tools. The Lake County Court of Common Pleas determined that R.C. 2923.14 contemplates relief from firearms disability only for those convictions set forth under R.C. 2923.13. Because appellant's conviction for drug abuse fell under that rubric, the court granted

appellant relief from that conviction; because, however, appellant's conviction for possessing criminal tools was not a conviction creating a firearms disability under R.C. 2923.13, the court concluded it could not grant relief regarding that conviction under R.C. 2923.14, even though that conviction precluded appellant from applying for a conceal-and-carry license. Appellant appeals the trial court's judgment and we affirm.

{¶2} On January 30, 1980, appellant pleaded no contest to and was convicted of one count of drug abuse, a felony of the fifth degree, in violation of R.C. 2925.11. The trial court suspended a prison sentence, imposed a fine, and ordered appellant to serve two years of probation. Appellant successfully completed probation and was fully discharged.

{¶3} On December 27, 1990, appellant pleaded no contest to and was convicted of one count of possession of criminal tools, a felony of the fifth degree, in violation of R.C. 2923.24. The trial court suspended a prison sentence and ordered appellant to serve two years of probation; the court further ordered appellant to attend a substance abuse program and obtain employment. Appellant again successfully completed probation and was discharged.

{¶4} On January 9, 2014, appellant filed an application, in the Lake County Court of Common Pleas, for relief from disability relating to the drug abuse conviction. The state filed a pleading indicating it would not object to appellant's application. Appellant subsequently amended the application, which additionally requested relief from an alleged disability relating to the possession of criminal tools conviction. The state filed a notice of objection relating to appellant's attempt to seek relief from disability from the possession of criminal tools conviction, arguing that conviction does

not create a disability pursuant to R.C. 2923.13(A)(2) and (3) and R.C. 2923.14. Accordingly, the state concluded, appellant was attempting to seek relief which, in effect, did not exist.

{¶5} On March 19, 2014, the trial court granted relief from the disability imposed by the 1980 drug conviction. The court further determined the possession of criminal tools conviction did not create a disability; hence, the court observed that conviction did not prohibit appellant from acquiring, having, carrying, or using firearms. The court acknowledged that the conviction for possessing criminal tools, as a felony conviction, rendered appellant statutorily ineligible for a conceal-and-carry permit. The court further recognized, however, that it had no authority to grant appellant relief from such a collateral consequence. Appellant appeals the trial court's judgment assigning the following error:

{¶6} "The trial court erred to the prejudice of the applicant-appellant when it partially denied his request from the firearms disability imposed by his conviction for possessing criminal tools."

{¶7} Appellant's argument under his sole assignment of error is somewhat convoluted. He acknowledges that R.C. 2923.14 creates a mechanism for relieving an applicant of a firearms disability. Appellant also recognizes, pursuant to R.C. 2923.125(D)(1)(e), he is ineligible to obtain a license to carry a concealed weapon due to his felony-five possession of criminal tools conviction. He also does not dispute that R.C. 2923.13 allows a party to be relieved of a firearm disability set forth in that statute through the application process set forth under R.C. 2923.14.

{¶8} With the above premises in mind, appellant notes that the procedures outlined in R.C. 2923.14 do not specifically limit the relief process to the crimes outlined in R.C. 2923.13. Appellant consequently maintains that he should be permitted to utilize the mechanisms set forth under R.C. 2923.14 to relieve him of the disability imposed by virtue of his felony-five conviction for possession of criminal tools, which prevents him from applying for and obtaining a conceal-and-carry license under R.C. 2923.125. We do not agree.

{¶9} First of all, appellant's contention that his felony-five conviction for possession of criminal tools creates a disability is inaccurate. R.C. 2923.13 defines the crime of having weapons while under a disability. The statute provides a limited definition of "disability" and prohibits a person from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance *unless* that person has been relieved from the disability as provided by R.C. 2923.14. If a person is not so relieved, he or she may be guilty of having weapons under disability if any of the following factors are present:

{¶10} (1) The person is a fugitive from justice.

{¶11} (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.

{¶12} (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or

has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

{¶13} (4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

{¶14} (5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, “mentally ill person subject to court order” and “patient” have the same meanings as in section 5122.01 of the Revised Code.

{¶15} Pursuant to R.C. 2923.13, therefore, a person is under a statutory disability if and only if one of the factors set forth under R.C. 2923.13(A)(1) – (5) are present and such disability has not been relieved per R.C. 2923.14. Possession of criminal tools is not an offense that fits within one of the five factors listed under R.C. 2923.13(A). Accordingly, the trial court correctly concluded that appellant’s conviction for possession of criminal tools does not create a disability that would prohibit appellant from acquiring, having, carrying, or using a firearm under R.C. 2923.13.

{¶16} Moreover, the plain language of R.C. 2923.14 limits the relief procedures to individuals who are precluded from acquiring, having, carrying, or using firearms due

to a conviction that imposes a statutory disability. R.C. 2923.14(A) provides: “[a]ny person who 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.” Because R.C. 2923.14 mimics the language of R.C. 2923.13 relating to the firearms prohibition, it follows that the scope of the procedures outlined in R.C. 2923.14 apply only to those persons entitled to seek relief from a disability imposed by one of the statutory factors set forth under R.C. 2923.13(A)(1) – (5). As discussed above, appellant, by virtue of his possession of criminal tools conviction, is not prohibited from acquiring, having, carrying, or using firearms. Hence, the procedures set forth under R.C. 2923.14 are inapplicable to his conviction for possession of criminal tools.

{¶17} Appellant nevertheless argues that finding R.C. 2923.14 inapplicable to his conviction for possession of criminal tools will result in absurdity. To wit, he asserts his non-violent, non-drug-related, low-level felony conviction for possessing criminal tools prevents him from acquiring a conceal-and-carry license; alternatively, the more serious drug-related offense is essentially forgiven for that same purpose. Appellant is not incorrect; we, however, discern no absurdity in the legislature’s policy decision to prohibit even a low-level, non-violent felon from obtaining a conceal-and-carry license. Simply because appellant’s privilege to acquire, have, use, or otherwise carry firearms was reinstated does not imply he should have the additional privilege to obtain a license to carry a concealed weapon.

{¶18} In Ohio, although the right to bear arms is fundamental, it is also subject to limitation. *Klein v. Leis*, 99 Ohio St.3d 537, 539, 2003-Ohio-4779. And, “[i]t is the

province of the legislature to regulate the carrying of firearms and enactments for that purpose are valid and constitutional.” *State v. Hogan*, 63 Ohio St. 202 (1900). The legislature’s decision to limit or restrict the ability of a convicted felon to obtain a conceal-and-carry license is a matter of policy, the constitutionality of which is not at issue. And, even though the issue is not before this court, we see nothing facially unreasonable, arbitrary, or absurd in the policy, even when, such as here, the conviction is, as appellant designates it, a low-level felony conviction.

{¶19} Appellant’s position appears to be, in part, premised upon his assumption that the ability to apply for and obtain a conceal-and-carry license is, or should be, viewed as tantamount to the more general privilege of acquiring, having, using or otherwise carrying a firearm. We decline to conflate these privileges.

{¶20} Appellant was relieved of his firearm disability that was imposed by virtue of his drug abuse conviction. Even in light of his felony conviction for possession of criminal tools, he may acquire, have, use, or otherwise carry a firearm. That felony conviction, however, still disqualifies appellant from obtaining a license to carry a concealed weapon. To wit, pursuant to R.C. 2923.125(D)(1)(e), any applicant who has been “convicted of or pleaded guilty to a felony offense” of which the record has not been sealed or otherwise expunged, as stated under R.C. 2923.125(D)(5), is ineligible for a conceal-and-carry license. Relief from the disability imposed by R.C. 2923.13, which permits a party to acquire, have, use, or otherwise carry a firearm, is not, in this case, relevant to the issue of obtaining a conceal-and-carry license. Unless the record is ordered sealed or the felony-five conviction for possessing criminal tools is expunged, we discern no alternative authority that would allow the trial court to grant appellant

relief from the collateral consequence disqualifying him from obtaining a conceal-and-carry permit. The trial court therefore did not err in denying appellant the relief he sought regarding the possession of criminal tools conviction.

{¶21} Appellant's sole assignment of error is without merit.

{¶22} For the reasons discussed in this opinion, the judgment of the Lake County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

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{¶23} I respectfully dissent.

{¶24} The majority holds the trial court did not err in partially denying appellant's request from the firearms disability imposed by his conviction for possessing criminal tools. For the following reasons, I disagree.

{¶25} At the outset, this writer notes the great importance of the right of the people to keep and bear arms under the Second Amendment to the United States Constitution, and extended to the states through the Fourteenth Amendment. The facts at issue in this case, including the statutory scenario, the trial court's judgment, and the majority's affirmation, have improperly resulted in an outcome where a non-violent, non-drug related, low-level felony prevents appellant from obtaining his concealed handgun license.

{¶26} The United States Supreme Court has held that where the plain language of a statute is clear and unambiguous but produces an absurd result, the court should not follow the literal language where it could not have been the legislature’s intent. See, e.g., *FBI v. Abramson*, 456 U.S. 615 (1982). Ohio courts have similarly held that the paramount concern regarding statutory interpretation is to ascertain and give effect to the legislature’s intent in enacting that statute. See *State v. S.R.*, 63 Ohio St.3d 590, 594-595 (1992).

{¶27} The statutes at issue must be read in pari materia. Regarding a disability with respect to carrying a firearm, R.C. 2923.12 states:

{¶28} “(A) No person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand, any of the following:

{¶29} “(1) A deadly weapon other than a handgun;

{¶30} “(2) A handgun other than a dangerous ordnance;

{¶31} “(3) A dangerous ordnance.”

{¶32} In addition, R.C. 2923.13 states in part:

{¶33} “(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

{¶34} “* * *

{¶35} “(2) The person * * * has been convicted of any felony offense of violence * * * .

{¶36} “(3) The person * * * has been convicted of any felony offense involving * * * any drug of abuse * * * .”

{¶37} Thus, both R.C. 2923.12 and 2923.13 provide that a person shall not have or carry a firearm in certain circumstances. In R.C. 2923.12, the circumstance is concealment of the firearm. In R.C. 2923.13, the circumstance is a drug conviction, among other things. Therefore, the statutes impose a disability based on its stated circumstance.

{¶38} In the instant matter, appellant's 1980 conviction for a fifth-degree felony of drug abuse creates a legal disability that bars him from owning a firearm under R.C. 2923.13. However, as appellant's 1990 possession of criminal tools conviction is neither violent nor drug-related, that conviction does not prevent him from owning a firearm under R.C. 2923.13.

{¶39} The Ohio Revised Code provides a way to remove the legal disability by applying for a concealed handgun license under R.C. 2923.125. Also, the Revised Code provides a way to remove the disability under R.C. 2923.14, which states in part:

{¶40} "(A) Any person who 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.

{¶41} "* * *

{¶42} "(D) Upon hearing, the court may grant the applicant relief pursuant to this section, if * * *:

{¶43} "(1) One of the following applies:

{¶44} "(a) If the disability is based upon an indictment, a conviction, or an adjudication, the applicant has been fully discharged from imprisonment, community control, post-release control, and parole * * *.

{¶45} “* * *

{¶46} “(2) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.

{¶47} “(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.”

{¶48} R.C. 2923.14 provides a relief mechanism while not specifying the source of the disability. R.C. 2923.125 addresses R.C. 2923.14 only in the context of an R.C. 2923.13 disability. The best way to resolve this conflict is to recognize that a felony conviction not addressed by R.C. 2923.13 does create a disability as it prevents a person from ever obtaining a concealed handgun license. In turn, R.C. 2923.14 should be able to cure that disability. If R.C. 2923.14 does not allow relief when applied to felonies not addressed in R.C. 2923.13, then absurdity results.

{¶49} In this case, appellant applied for relief and satisfied the foregoing statutory factors. The trial court granted relief from the disability imposed by the drug abuse conviction but not for the possession of criminal tools conviction. The court reasoned that R.C. 2923.13 did not create a statutory disability from which relief could be granted.

{¶50} Both his drug abuse and possession of criminal tools convictions make appellant ineligible for a concealed handgun license under R.C. 2923.125. However, once the trial court granted relief from the disability created by the drug abuse conviction, it no longer prevented him from obtaining that license. The possession of criminal tools conviction, on the other hand, did not give rise to a disability under R.C. 2923.13 and the trial court held there is nothing to grant relief from under R.C. 2923.14.

{¶51} As stated, the result in this case has led to a scenario in which a non-violent, non-drug related, low-level felony prevents appellant from obtaining his permit even though the more serious drug-related disability was essentially forgiven for that purpose. Thus, this writer believes this scenario has produced an inconsistent, illogical, and an absurd result. A more sensible solution would be to allow R.C. 2923.14 to remove any statutory disability, not just those imposed by R.C. 2923.13.

{¶52} For the foregoing reasons, I respectfully dissent.