

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	
	:	Case No. 24CA9
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
JAMES E. PHOENIX,	:	
	:	
Defendant-Appellant.	:	RELEASED: 04/03/2026

APPEARANCES:

Morgan R. Dineen and Jon Paul Rion, Rion, Rion, & Rion, L.P.A., Dayton, Ohio, for appellant.

Jason Holdren, Gallia County Prosecuting Attorney, and Isaac Beller, Gallia County Assistant Prosecuting Attorney, Gallipolis, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal of a Gallia County Court of Common Pleas judgment entry in which James E. Phoenix (“Phoenix”) was convicted of one count of having weapons while under a disability. On appeal, Phoenix asserts that the trial court erred in denying his motion to dismiss the weapons disability charge because he was not under a disability as a matter of law. Having reviewed the parties’ arguments, the law, the record, and the facts, we find that the trial court did not err in denying the motion to dismiss the weapons disability charge. Therefore, we affirm Phoenix’s weapons under a disability conviction.

BACKGROUND

{¶2} On November 15, 2023, the State charged Phoenix with one count of possessing a weapon while under a disability in violation of R.C. 2913.13(A)(2), a

third-degree felony, and one count of complicity to discharging a firearm on or near prohibited premises in violation of R.C. 2923.03(A)(1), R.C. 2923.162(A)(3) and (C)(2), also a third-degree felony. The weapons under disability charge stemmed from a 2015 trial court finding that Phoenix was a delinquent juvenile for an act that would have constituted complicity to commit burglary if he had been an adult. Phoenix pleaded not guilty to both charges.

{¶3} On April 1, 2024, Phoenix filed a motion for leave to file a motion to dismiss the weapons disability charge. Phoenix argued that an April 3, 2017, court order from his weapons with disability conviction indicated that he had been released from community control related to the delinquency determination, and, as a result, he was “restored to all civil rights[,]” which he asserted included his right to bear arms under the Second Amendment.

{¶4} The State filed a memorandum contra. The State argued that the April 3, 2017, entry terminating his probation was insufficient to restore his right to possess a firearm. The State claimed that restoration had to be acquired under R.C. 2923.14, which required a hearing.

{¶5} Phoenix filed a reply motion. He claimed that there is no law indicating that R.C. 2923.14 is the exclusive method for relief from a weapons disability. He argued that the plain language of the April 3, 2017 entry, which restored him to “all civil rights,” relieved him of his weapons disability.

{¶6} On April 8, 2024, the parties convened at the courthouse to begin trial. However, after the jury was selected, but, prior to opening arguments, the parties reached a plea agreement, which involved Phoenix pleading no contest to

Count 1 (possessing weapons under a disability) preserving the right to appeal that issue, and guilty to an amended Count 2 (complicity to discharge a firearm on or near a prohibited premises).

{¶17} The court held a sentencing hearing on May 8, 2024. On May 14, 2024, the parties filed an agreed entry that stated:

For purposes of clarity of the record, prior to the beginning of the trial on April 8, 2024, the Court ruled, and memorialized by Entry of the same date, that [Phoenix] could not submit the court's order of April 3, 2017, upon [Phoenix's] request for termination of probation in Case No. 14 CRB 205, which recites that "[Phoenix] be *discharged from probation and restored to all civil rights*" to the jury for the reason it may be misleading, but allowing that the order could be proffered to the court at the conclusion of the close the evidence for court consideration and for purposes of appellate review.

Following opening arguments, the case was resolved by way of a plea agreement wherein [Phoenix] pled no contest to the charge of having weapons under disability, and the Court and the parties agreed that [Phoenix] had preserved all issues regarding the legal effect of the April 3, 2017 order. [Id. doc. 103]

(Emphasis added.)

At the end of the entry the following was handwritten: "Despite the plea, [Phoenix] was found guilty."

{¶18} On June 6, 2024, the trial court issued an entry that sentenced Phoenix to a 30-month prison term on each count with the sentences to be served consecutively for an aggregate 60-month sentence. Phoenix appeals the weapons disability conviction to this court.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DENYING MR. PHOENIX'S MOTION TO DISMISS WEAPONS UNDER DISABILITY CHARGE BECAUSE MR. PHOENIX WAS NOT UNDER A DISABILITY AS A MATTER OF LAW

{¶9} Phoenix's weapons under disability offense originated in 2015 when he pleaded guilty to complicity to commit burglary. His probation for that offense was terminated by an April 3, 2017 entry, which terminated his probation for the 2015 offense, discharged him from community control, and “restored [him] to all civil rights.” Phoenix argues that the April 3, 2017 entry, restored his Second Amendment right to possess firearms, relieving him of the disability that gave rise to his weapons disability conviction.

{¶10} Phoenix claims that both the Federal and Ohio constitutions include the right to keep and bear arms. He asserts that the term “civil rights” has been defined as being part of a person’s civil liberties, which are personal rights, natural rights guaranteed and protected by the Constitution. Finally, Phoenix maintains that this court has recognized that the right to keep and bear arms is a civil right in *State v. Lerch*, 2016-Ohio-2791, ¶18-20 (4th Dist.). Therefore, he claims, the right to bear arms is a “civil right.”

{¶11} Next, Phoenix cites R.C. 2923.13(A), which states:

“ ‘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 . . . 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[.]’ ” (Ellipses original)

{¶12} Although R.C. 2923.13 does not define the terms “under operation of law or legal process[.]” Phoenix, citing Black’s Law Dictionary, claims that “ ‘under operation of law’ ” is “ ‘[t]he means by which a right or liability is created for a party regardless of the party’s actual intent.’ ” Again, citing Black’s, Phoenix

claims that “ ‘legal process’ ” means a “ ‘process validly issued.’ ” And finally, he asserts that “ ‘process’ ” means “ ‘[t]he proceedings in any action or prosecution.’ ” (Bracket’s original). Applying these definitions, Phoenix argues that a court order is as an “ ‘operation of law or legal process’ ” as those terms are used in R.C. 2923.13(A), and, therefore, a court order can remove a weapons disability.

{¶13} Phoenix cites *State v. T.J.D.*, in which the court determined “that sealing a record of conviction pursuant to R.C. 2953.32 is an ‘operation of law or legal process’ that relieves a weapons disability under R.C. 2923.13(A)(3).” 2020-Ohio-3745, ¶ 34 (2d Dist.). Phoenix asserts that because “a court order is the culmination of the sealing process, by which rights and liabilities of a party can be affected, it stands to reason that a court order can be considered an operation of law.”

{¶14} Therefore, Phoenix argues that the trial judge in his case had the jurisdiction and authority to issue an order that terminated his community control for the 2015 offense, and also restore “all civil rights” to him; thus, relieving him of the weapons with disability offense.

{¶15} In response, the State argues that Phoenix’s claim that his civil rights, including the right to bear arms, were restored upon termination of community control is incorrect. The State emphasizes that in Ohio, relief from a weapon disability must be obtained through “ ‘operation of law or legal process[,]’ ” which “does not include mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction.” R.C. 2923.13(A) and (C).

{¶16} The State explains that the mechanism for removing a weapons disability is outlined in R.C. 2923.14. R.C. 2923.14 includes several requirements, which include: submitting an application, holding a hearing, notifying the prosecutor, investigating by the prosecutor, and the prosecutor raising any objections based on the investigation's findings. Then, based on certain statutory criteria, the court “may” grant the application. The State claims that Phoenix did not file an application to remove his weapons disability under this provision.

{¶17} The State maintains that R.C. 2923.14 is the only statutory mechanism for relief from a firearm disability, but recognizes that the Second and Twelfth Appellate Districts have held that the “language ‘unless relieved from disability under operation of law or legal process’ includes other avenues to relief.” See *T.J.D.*, 2020-Ohio-3745 (2d Dist.) and *State v. Geddes*, 2021-Ohio-4115 (12th Dist.).

{¶18} “In *T.J.D.*, the defendant was indicted on a charge of having Weapons While Under Weapon Disability, which stemmed from a sealed felony drug conviction dating back 30 years.” The defendant filed a motion to dismiss the weapons disability charge, claiming that it was removed when his criminal record was sealed. The trial court denied his motion to dismiss and found him guilty of the weapons disability charge. On appeal, the court held “that sealing a record of criminal conviction was an “operation of law or legal process” that relieved the related weapon’s disability under R.C. 2923.13(A).

{¶19} In *Geddes*, the appellant was convicted of a weapons disability based upon a previous adjudication that found him to be mentally ill. However, a subsequent court decision found that the defendant was no longer mentally ill, and *Geddes* argues that this determination relieved him of the weapons disability under the operation of law or legal process language in R.C. 2923.13(A). The State claims that in *Geddes* the court of appeals agreed that “R.C. 2923.13 permits relief from a weapons disability by means other than the procedure set forth in R.C. 2923.14[.]” However, the court in *Geddes* also determined that the judgment entry finding that the appellant was no longer mentally ill was “not enough” to relieve the defendant of his weapons disability because it did “not state [appellant] was relieved from disability or that his prior adjudication was improper or unlawful in any way.” *Id.* at 20.

{¶20} The State argues that the distinction between *T.J.D.* and *Geddes* is that in *T.J.D.* the defendant went through the process of having his record sealed under R.C. 2953.32, which, among other requirements, involves an application, service of the application on the prosecutor, a hearing, and permits the prosecutor to object to the record being sealed. The State argues that the procedure for sealing a record is similar to the process outlined in R.C. 2923.14 for an offender to seek relief from a weapons disability. Both processes require submitting an application, serving the application to the prosecutor, holding a hearing, and allowing the prosecutor to object to the relief. The State points out that the defendant in *Geddes* did not pursue relief by having his record sealed or by using R.C. 2923.14 to remove his weapons disability. The State maintains

that “this contrast is why the court in *T.J.D.* found the defendant to have been relieved of his weapon disability under operation of law or legal process but the court in *Geddes* did not.”

{¶21} The State argues that similar to *Geddes*, Phoenix sought no relief from his weapons disability under R.C. 2923.14, and he is not eligible to have his record sealed. Therefore, Phoenix’s only avenue of redress for his weapons disability is under R.C. 2923.14 or pursuant to a pardon.

{¶22} Phoenix claims that his weapons disability was removed when the April 3, 2017 entry terminating his community control was issued. However, the State points out that in issuing that entry, the court did not hold a hearing, the prosecutor had no notice of the application, or the ability to object to Phoenix’s weapons disability being removed. The State argues that the language that restored Phoenix’s civil rights found in the entry that terminated his probation was merely boilerplate language; it did nothing to remove his weapons disability.

{¶23} The State asserts that at his sentencing hearing, Phoenix “admitted his actions that led to Count II, Complicity to Discharging a Firearm on or near Prohibited Premises[,]” when he persuaded a friend to come over to his house and discharge a firearm, then he instructed the friend to re-holster the firearm “because he (Phoenix) was not allowed to.” Phoenix knew at the time he committed this new offense that he was not allowed to handle a firearm; therefore, the State maintains that Phoenix’s argument on appeal that he thought his weapons disability was removed is disingenuous.

{¶24} Therefore, the State argues that this court should overrule Phoenix’s assignment of error and affirm the conviction for complicity to discharge a firearm while under a weapons disability.

A. Law

1. Standard of Review

{¶25} Phoenix claims that the trial court erred in failing to dismiss the weapons disability charge alleged against him. This requires us to consider two different issues to resolve his appeal, both of which use the same standard of review.

{¶26} The first issue is whether the court erred in denying Phoenix’s motion to dismiss the indictment for the weapons disability. “ “[A] motion to dismiss charges in an indictment tests the [legal] sufficiency of the indictment, without regard to the quantity or quality of evidence that may be produced by either the state or the defendant.” ’ “ (Brackets original) *State v. Evans*, 2010–Ohio–2554 ¶ 18 (4th Dist.), quoting, *State v. Barcus*, 133 Ohio App.3d 409, 414 (4th Dist. 1999), quoting *State v. Patterson* (1989), 63 Ohio App.3d 91, 95 (2 d Dist. 1989). Thus, “ ‘when a defendant moves to dismiss, the proper determination is whether the allegations contained in the indictment constitute offenses under Ohio criminal law.’ ” *Id.*, quoting *Barcus* at 414, quoting *Patterson* at 95. “The sufficiency of an indictment is a question of law that we review de novo.” *Id.*, citing *State v. Smith*, 2007-Ohio-502, ¶ 26 (4th Dist.). “[A]n appellate court conducts a de novo review, without deference to the trial court’s determination.” *State v. Blanton*, 2018-Ohio-1278, ¶ 50 (4th Dist.).

{¶27} The second issue in determining whether the trial court erred in denying the motion to dismiss Phoenix’s weapon’s disability involves interpreting the phrase “operation of law or legal process” as used in R.C. 2923.13(A), which pertains to the criminal offense of weapons disability. Statutory interpretation also presents a legal issue we review de novo. *In re O.H.*, 2010-Ohio-1244, ¶ 8 (4th Dist.), citing *State v. Lawless*, 1998 WL 729233 (4th Dist. October 14, 1998). Therefore, we also owe no deference to the trial court’s interpretation of the statute.

2. Firearms and Weapons Disability

{¶28} “The Second Amendment to the United States Constitution confers an individual right to keep and bear arms.” *In re Chrosniak*, 2017-Ohio-7408, ¶ 11, citing *Dist. of Columbia v. Heller*, 554 U.S. 570, 595 (2008). “The Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right to keep and bear arms and applies it to the states.” *Id.*, citing *McDonald v. Chicago*, 561 U.S. 742, 794 (2010). However, “[t]his right is not unlimited, but is subject to several longstanding prohibitions, including the possession of firearms by felons.” *Id.*, citing *Heller* at 626–627.

{¶29} “Similarly, the right to keep and bear arms is part of Ohio’s heritage and is a fundamental state constitutional right.” *Id.* at ¶ 12, citing *Klein v. Leis*, 2003-Ohio-4779, ¶ 5, 7; Ohio Constitution, Article I, Section 4. However, “[l]ike the federal constitutional right to keep and bear arms, the state constitutional right is also subject to limitations.” *Id.*, citing *Klein* at ¶ 8.

{¶30} R.C. 2923.13(A), which sets out the weapons under a disability offense, states in pertinent part that

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:

...

(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.

...

(C) For the purposes of this section, “under operation of law or legal process” shall not itself include mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction.

{¶31} “R.C. 2923.14 provides the mechanism in Ohio to restore civil rights to felons prohibited from keeping and bearing firearms, by specifying that ‘[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.’ ” (Bracket original.) *In re Chrosniak*, 2017-Ohio-7408, at ¶ 13 (8th Dist.), quoting R.C. 2923.14(A). R.C. 2923.14(D) authorizes a trial court to grant an application for relief from disability if certain requirements are satisfied:

Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

(1) One of the following applies:

(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, or, if the applicant is under indictment, has been released on bail or recognizance.

(b) If the disability is based upon a factor other than an indictment, a conviction, or an adjudication, that factor no longer is applicable to the applicant.

- (2) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.
- (3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

1. Statutory Interpretation

{¶32} “The primary goal in construing a statute is to ascertain and give effect to the intent of the legislature.” *In re M. W.*, 2012-Ohio-4538, ¶ 17, citing *State v. Hairston*, 2004-Ohio-969, ¶ 11. “When interpreting and applying a statute, a court typically relies on ‘definitions provided by the legislative body’ or, when a definition is not given in the statute, the ‘plain and ordinary meaning’ of a term, which we ascertain by looking to the ‘particular statutory language at issue, as well as the language and design of the statute as a whole.’ ” *Matter of M.M.E.W.*, 2023-Ohio-2039, ¶ 27 (4th Dist.), quoting *Lingle v. State*, 2020-Ohio-6788, ¶ 15, quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). “Rather than limit our analysis to the ‘hyperliteral meaning of each word,’ we consider the ordinary meaning of the word as it is used within the surrounding text.” *Great Lakes Bar Control, Inc. v. Testa*, 2018-Ohio-5207, ¶ 11 citing Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 56, at 356 (2012).

B. Analysis

{¶33} In 2015, the General Assembly amended R.C. 2923.13(A) as follows with the strike-through language removed and the underlined language added: “Unless relieved from disability ~~as provided in section 2923.14 of the Revised Code~~ under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance . . .” Am.Sub.H.B. No. 234. Additionally, this amendment also added language that

expressly excluded “mere completion, termination, or expiration of a sentence from qualifying as a relief “under operation of law or legal process” in R.C. 2923.13(C). In essence, relief from a firearms disability must occur through a qualifying legal mechanism, principally an application and adjudication under R.C. 2923.14, or another distinct process that itself operates as law or legal process.

{¶34} Our research reveals that to date only sealing of a criminal record and a pardon have been recognized as an “operation of law or legal process” that would remove a weapons disability under R.C. 2923.13(A). See *T.J.D.*, 2020-Ohio-3745 (12th Dist.). Similar to R.C. 2923.14(A), which provides a direct method to remove a weapons disability, both sealing a criminal record and a pardon involve multi-step processes. A person seeking to seal their criminal record must follow the dictates of R.C. 2953.21 (e.g., an application must be filed, the prosecutor must be notified, the court must hold a hearing, etc.), and a person seeking a pardon must follow the dictates of R.C. 2967.07 (e.g., a written application must be submitted and the adult parole authority must conduct a “thorough investigation” and make a written report to the governor). The particulars of each application are not crucial to our analysis. What we find persuasive is that a multi-step process is required for all the currently recognized direct and indirect methods that remove a weapons disability.

{¶35} Permitting a trial court to remove a weapons disability by merely inserting language that restores an individual’s civil rights in a termination entry would enable the trial court to circumvent the procedure that is otherwise

required by R.C.2923.14(B), or the process involved in removing a weapons disability through a pardon or sealing a criminal record. Phoenix has not cited any case that removes a weapons disability upon sentence termination, and our research finds no such authority. We decline to adopt this view as a matter of first impression, recognizing that R.C. 2923.13(C) specifies that merely terminating a sentence is not an "operation of law or legal process" that can remove a weapons disability under R.C. 2923.13(A).

{¶36} Thus, we conclude that the language "under operation of law or legal process" within R.C. 2923.13(A) was not intended by the General Assembly to permit a court to sua sponte remove a weapons disability by merely inserting language that it is restoring a defendant's civil rights in an entry that terminates his or her sentence.

{¶37} Therefore, we find that the trial court's April 3, 2017 entry that terminated Phoenix's sentence, which included language that it restored all his civil rights, did not remove his weapons disability. Consequently, we also find that the trial court did not err in denying Phoenix's motion to dismiss his weapons disability charge. Accordingly, we overrule Phoenix's assignment of error.

CONCLUSION

{¶38} Having overruled Phoenix's sole assignment of error, we affirm the judgment of conviction for his weapons disability.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

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

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.