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2024 IL App (3d) 230275-U

Order filed August 8, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	Appeal No. 3-23-0275
v.)	Circuit No. 16-CF-366
DONALD SHERROD JR.,)	Honorable
Defendant-Appellant.)	Kathy S. Bradshaw-Elliott, Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court.
Justices Hettel and Davenport concurred in the judgment.

ORDER

¶ 1 *Held:* The statute prohibiting the possession of firearms by felons is facially constitutional.

¶ 2 Defendant, Donald Sherrod Jr., appeals his conviction for unlawful possession of a weapon by a felon (UPWF). Defendant challenges the facial constitutionality of the UPWF statute, asserting that the permanent, status-based revocation of the right to bear and keep arms violates both the second amendment of the United States Constitution and article I, section 22 of the Illinois Constitution. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged by indictment with, *inter alia*, two counts of UPWF (720 ILCS 5/24-1.1(a) (West 2016)) and two counts of aggravated unlawful use of a weapon (AUUW) (*id.* § 24-1.6(a)(1)(3)(C)). Following a bench trial, defendant was found guilty on all counts. The counts merged at sentencing and the court imposed a term of seven years' imprisonment for one count of UPWF.

¶ 5

II. ANALYSIS

¶ 6 On appeal, defendant first argues his UPWF conviction under section 24-1.1(a) of the Criminal Code of 2012 is facially unconstitutional pursuant to *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). In *Bruen*, the United States Supreme Court set forth a two-pronged analysis for evaluating the constitutionality of statutory firearm regulations. *Id.* at 26-27. The first prong requires a determination as to whether the conduct at issue is protected under the plain text of the second amendment and, if so, the second prong considers whether the regulation justifiably comports with history and tradition. *Id.*; *People v. Travis*, 2024 IL App (3d) 230113, ¶ 24. Defendant asserts section 24-1.1(a) cannot meet the standard set forth in *Bruen* because permanently disarming felons based on their criminal status is inconsistent with the history and tradition of firearm regulations in this country.

¶ 7 All statutes are presumed constitutional and must be construed to uphold this presumption whenever reasonably possible. *People v. Wells*, 2023 IL App (3d) 210292, ¶ 19. A facial challenge to a statute can only overcome this presumption by showing that the statute is unconstitutional under any set of circumstances. *People v. Hilliard*, 2023 IL 128186, ¶ 21. The constitutionality of a statute is reviewed *de novo* as a matter of law. *People v. McKown*, 2022 IL 127683, ¶ 29.

¶ 8 Applying the framework established in *Bruen*, we recently upheld the constitutionality of section 24-1.1(a). *People v. Travis*, 2024 IL App (3d) 230113, ¶¶ 25, 33. In *Travis*, we resolved *Bruen*'s first step by concluding the disarmament of felons under section 24-1.1(a) falls within the plain text of the second amendment. *Id.* ¶ 25. The amendment's plain language guaranteeing the "right of the people to keep and bear Arms" covers the possession of firearms and does not exclude felons from "the people" to whom it applies. U.S. Const., amend. II; *Travis*, 2024 IL App (3d) 230113, ¶ 25.

¶ 9 Pursuant to *Bruen*'s second step, our historical analysis in *Travis* demonstrated that section 24-1.1(a) is consistent with this country's history and tradition of disarming individuals who violate the law or are deemed dangerous. *Travis*, 2024 IL App (3d) 230113, ¶¶ 27-33. Although laws specifically prohibiting felons from possessing firearms did not emerge until the twentieth century, these regulations evolved from comparable status-based restrictions dating back to the founding era. *Id.* ¶¶ 28-31. Defendant contends that these historical predecessors cannot provide a proper analogue for the permanent disarmament of felons under section 24-1.1(a) because precursory dispossession regulations were traditionally temporary and could be lifted based on a change in status or circumstance. However, section 24-1.1(a) is not an indissoluble ban as it provides the opportunity to be exempted from its provisions by successfully obtaining relief under section 10 of the Firearm Owners Identification Card Act (430 ILCS 65/10 (West 2016)). See 720 ILCS 5/24-1.1(a) (West 2022).

¶ 10 Moreover, *Bruen*'s historical inquiry only requires that the challenged regulation have "a well-established and representative historical *analogue*, not a historical *twin*." (Emphases in original.) *Bruen*, 597 U.S. at 30. Properly analogous modern and historical regulations are determined by their relative similarities, which include, *inter alia*, " 'how and why the regulations

burden a law-abiding citizen's right to armed self-defense.' " *Travis*, 2024 IL App (3d) 230113, ¶ 24 (quoting *Bruen*, 597 U.S. at 29). The disarmament of felons under section 24-1.1(a) based on their criminal convictions is consistent with a longstanding history and tradition of similar firearm prohibitions disarming individuals who engaged in criminal conduct or posed a danger to society. *Id.* ¶¶ 29-31. Like its historical antecedents, section 24-1.1(a) imposes practically no burden on the second amendment rights of law-abiding citizens. *Id.* ¶ 33. Therefore, section 24-1.1(a) is facially constitutional under the second amendment of the United States Constitution.

¶ 11 Defendant further contends section 24-1.1(a) is facially invalid under article I, section 22 of the Illinois Constitution. As discussed in *Travis*, we reject defendant's assertion that, by extending the right to bear arms to "the individual citizen", the Illinois Constitution provides greater protection than the right granted to "the people" under the second amendment. *Id.* ¶ 42. Indeed, the use of "individual citizen" broadens the scope of the type of arms covered by expanding it beyond weapons only traditionally used by a regulated militia. *Id.* ¶ 40. However, article I, section 22 also provides the state with an immense degree of control over firearms by explicitly limiting the right to bear arms subject to the police power. Ill. Const. 1970, art. I, § 22. The disarmament of felons under section 24-1.1(a) is a proper exercise of this power, which contemplates legislation intended to prohibit or restrict anything that presents a danger to the welfare of the people. *Travis*, 2024 IL App (3d) 230113, ¶¶ 41, 43.

¶ 12 Accordingly, we adhere to *Travis* and find that the UPWF statute is facially constitutional under both the United States and Illinois Constitutions.¹

¹We note that during the pendency of this appeal, the U.S. Supreme Court issued a decision in *United States v. Rahimi*, 602 U.S. ___, 144 S. Ct. 1889 (2024), in which it upheld a federal statute that prohibited individuals subject to a domestic violence restraining order from possessing a firearm. We have reviewed that decision and find that it does not change the above analysis.

¶ 13

III. CONCLUSION

¶ 14

The judgment of the circuit court of Kankakee County is affirmed.

¶ 15

Affirmed.