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2022 IL App (3d) 200520-U

Order filed November 29, 2022

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2022

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-20-0520
)	Circuit No. 18-CF-231
TAVARRESS T. NUNN,)	Honorable
Defendant-Appellant.)	Paul P. Gilfillan, Judge, Presiding.

JUSTICE HAUPTMAN delivered the judgment of the court.
Presiding Justice O'Brien and Justice Hettel concurred in the judgement.

ORDER

¶ 1 *Held:* Defendant does not have standing to challenge the constitutionality of the Firearm Concealed Carry Act; and defendant's sentence does not violate the proportionate penalties clause of the Illinois Constitution.

¶ 2 Defendant, Tavarress T. Nunn, appeals his conviction of aggravated unlawful use of a weapon (AUUW), arguing that the Firearm Concealed Carry Act (Act) (430 ILCS 66/1 *et seq.* (West 2018)) is unconstitutional as applied to him and that his AUUW conviction and sentence violates the proportionate penalties clause. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On April 25, 2018, the State charged defendant with AUUW (720 ILCS 5/24-1.6(a)(1) (West 2018)), a Class 4 felony. The indictment alleged that defendant “knowingly carried about his person in a motor vehicle, a loaded, uncased and immediately accessible Mossberg 715 T rifle while located on a public street being SW Adams Street at Garden Street in Peoria, Illinois.”

¶ 5

The circuit court appointed the public defender’s office to represent defendant. On November 1, 2018, defendant, along with several other defendants represented by the public defender’s office, filed a consolidated motion to declare the AUUW statute unconstitutional. Defendant alleged that he was unlawfully deprived of his right to carry a firearm under both the Illinois and United States Constitutions. On February 19, 2019, defendant filed an amended motion, which included the argument that the costs associated with procuring a concealed carry license under the Act unlawfully hindered defendant’s right to carry a firearm openly in self-defense.

¶ 6

Defendant’s motion was denied following a hearing on September 12, 2019. Defendant’s case proceeded to a stipulated bench trial on December 14, 2020. Upon review of the stipulated evidence, the court found defendant guilty of AUUW. The court denied defendant’s oral motion for a new trial the same day. The court sentenced defendant to 24 months’ probation and 180 days of jail, time suspended. Defendant appeals.

¶ 7

II. ANALYSIS

¶ 8

A. Firearm Concealed Carry Act

¶ 9

Defendant raises an as-applied constitutional challenge to the Act (430 ILCS 66/1 *et seq.* (West 2018)). Defendant argues the Act violates the second amendment to the United States Constitution and article I, section 22 of the Illinois Constitution because it infringes on his

fundamental right to bear arms outside of the home. The Act specifically allows a license holder to “keep or carry a loaded or unloaded concealed firearm on or about his or her person within a vehicle.” *Id.* § 10(c)(2). Defendant argues that he is unable to afford to pay for the training and fees associated with obtaining a concealed carry license. He contends because he cannot afford the license, he is now subject to weapons charges like AUUW, when he otherwise would not be as a license holder. The State argues that there is no evidence defendant ever actually applied for a concealed carry license and was rejected. Therefore, defendant lacks standing to challenge the constitutionality of the statute as applied to him.

¶ 10 Generally, all statutes are presumed constitutional. *People v. Aguilar*, 2013 IL 112116, ¶ 15. To overcome this strong presumption, a party challenging the statute must clearly establish a constitutional violation. *People v. Guevara*, 216 Ill. 2d 533, 543 (2005). “A party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights.” *People v. Funches*, 212 Ill. 2d 334, 346 (2004). If no constitutional defect is found in the application of the statute to defendant, he does not have standing to argue it before this court. *Id.* “An as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party.” *People v. Thompson*, 2015 IL 118151, ¶ 36. We review *de novo* a challenge to the constitutionality of a statute. *Aguilar*, 2013 IL 112116, ¶ 15.

¶ 11 To establish standing to challenge the constitutionality of a statute, defendant must “submit to the challenged policy.” *Jackson-Bey v. Hanslmaier*, 115 F.3d 1091, 1096 (1997). In other words, defendant must have attempted to comply with the Act. The failure to apply for the concealed carry license would not preclude defendant from challenging the statute if he made a substantial showing that an application would be futile. See *id.* However, defendant neither

provides any evidence that he attempted to apply for the license and was subsequently denied, nor has he provided evidence to prove that he does not have means to obtain the license if he indeed wished to pursue applying for it.

¶ 12 Further, even if defendant could provide such evidence of standing, he must also show the Act would have protected him from being charged with AUUW. The AUUW statute states that the prohibition set forth does not apply to a firearm where the owner has “been issued a currently valid license under the *** Act.” 720 ILCS 5/24-1.6(a)(3)(A-5) (West 2018). The Act provides, in part, that an applicant shall be issued a license to carry a “concealed firearm” if certain conditions are met. 430 ILCS 66/10 (West 2018). A “[c]oncealed firearm,” in turn, is defined as “a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle.” *Id.* § 5. A “[h]andgun” is defined as “any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand. ‘Handgun’ does not include: *** a short-barreled rifle or shotgun.” *Id.*

¶ 13 Under the plain language of the Act, a person cannot be issued a concealed carry license for a rifle such as defendant was carrying at the time of his arrest. The most natural reading of the requirement that weapons be carried or possessed “in accordance” with the Act (720 ILCS 5/24-1(a)(4)(iv) (West 2018)) is that the weapons themselves are of the type for which a valid concealed carry license may be issued under the Act. Indeed, any other reading would carry absurd results. The Act is therefore “specifically limited to handguns and does not allow for the concealed carry of rifles or shotguns.” *People v. Webb*, 2019 IL 122951, ¶ 18; see also

Southerland v. Escapa, 176 F. Supp. 3d 786, 788 (2016) (“The *** Act does not provide for the public carrying of rifles or shotguns, concealed or otherwise.”).

¶ 14 Defendant was convicted of possessing a rifle. Even if defendant held a concealed carry license, he would still have been in violation of the AUUW statute because the firearm in his possession was not eligible for protection under the concealed carry license. Defendant therefore suffered no injury from the enforcement of the Act because a license would not have prevented his AUUW conviction. Thus, defendant does not have standing to challenge the constitutionality of the Act.

¶ 15 B. Proportionate Penalties Clause

¶ 16 Next, defendant argues that his conviction under the AUUW statute (720 ILCS 5/24-1.6(a)(1) (West 2018)) violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), because the statute contains the same elements as the Class A misdemeanor unlawful use of weapons (UUW) statute (*id.* § 24-1(a)(4)). Defendant contends that because the two statutes contain identical elements, his sentence must be vacated, and he should be sentenced on the misdemeanor charge.

¶ 17 This issue has recently been decided by this court in *People v. Brooks*, 2022 IL App (3d) 190761, ¶ 21. Further, the facts in *Brooks* are similar, and the argument made is identical to the case before us. Like the instant case, the defendants in *Brooks* were charged with AUUW and argued on appeal that they should be sentenced under the UUW misdemeanor statute as the charges required the same essential elements. *Id.* ¶ 8. In fact, the defendants in *Brooks* also participated in the same consolidated motion as the instant defendant in the circuit court in November 2018. In *Brooks*, this court found that AUUW and UUW offenses do not carry identical elements, and the higher sentence was not constitutionally disproportionate. *Id.* ¶ 21.

We find *Brooks* applicable to the instant case, and therefore hold that defendant's conviction and sentence does not violate the proportionate penalties clause.

¶ 18

III. CONCLUSION

¶ 19

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

¶ 20

Affirmed.