Illinois Official Reports

Appellate Court

People v. Doehring, 2024 IL App (1st) 230384

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHRISTOPHER DOEHRING, Defendant-Appellant.
District & No.	First District, Third Division No. 1-23-0384
Filed Rehearing denied	September 30, 2024 October 23, 2024
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 09-CR-01927; the Hon. William G. Gamboney, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	James E. Chadd, Douglas R. Hoff, and Hannah Lazar Pieterse, of State Appellate Defender's Office, of Chicago, for appellant. Kimberly M. Foxx, State's Attorney, of Chicago (Enrique Abraham, Tasha-Marie Kelly, and Himika Shergill, Assistant State's Attorneys, of counsel), for the People.
Panel	JUSTICE REYES delivered the judgment of the court, with opinion. Presiding Justice Lampkin and Justice D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 In 2009, defendant Christopher Doehring pleaded guilty to aggravated unlawful use of a weapon (AUUW), based on his possession of a firearm without a valid firearm owner's identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C) (West 2008)). In 2022, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2020)), claiming that the AUUW statute was unconstitutional and his conviction was therefore void. The circuit court dismissed defendant's petition as frivolous and patently without merit, and defendant now appeals, contending that (1) the AUUW statute violates the second amendment to the United States Constitution and (2) his due process rights were violated when the circuit court dismissed his petition without allowing him to respond to the State's oral motion to dismiss. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 In 2009, defendant was charged by indictment with four counts of AUUW, two based on his lack of FOID card (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C) (West 2008)) and two based on the fact that he was under the age of 21 at the time of the offense (*id.* §§ 24-1.6(a)(1), (a)(2), (a)(3)(I)). Defendant pleaded guilty to one of the AUUW counts based on the lack of FOID card (*id.* § 24-1.6(a)(1), (a)(3)(C)) and was sentenced to two years' probation; the remaining counts were nol-prossed. Defendant violated his probation in 2010, and his probation was terminated unsatisfactorily in 2011.[1]

¶ 4 In 2021, defendant filed a *pro se* section 2-1401 petition, seeking to vacate his conviction based on his claim that the AUUW statute was unconstitutional pursuant to *People v. Aguilar*, 2013 IL 112116.[2] The petition was denied in January 2022, as the circuit court found that *Aguilar* did not apply to the count for which defendant pleaded guilty and defendant's petition was therefore frivolous and patently without merit.

¶ 5 In October 2022, defendant again filed a nearly identical *pro se* section 2-1401 petition. The matter came before the circuit court on November 2, 2022; only the State was present. The circuit court noted that defendant "made a *pro se* filing [alleging] basically an Aguilar issue" and that the assistant state's attorney confirmed that defendant pleaded guilty to a count based on a lack of FOID card, "[s]o therefore Aguilar would not apply." The circuit court accordingly denied the petition as frivolous and patently without merit.

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[1]According to the Illinois Department of Corrections (IDOC) website, defendant has been in IDOC custody since a February 2010 conviction for home invasion in case No. 10 CR 02418 and is currently serving a life sentence for murder in case No. 14 CR 02583. See Internet Inmate Status, Ill. Dep't of Corr., https://idoc.illinois.gov/offender/inmatesearch.html (last visited Nov. 6, 2024) [https://perma.cc/9FEH-Q5LZ].

[2]In *Aguilar*, our supreme court found that the portion of the AUUW statute that banned the possession and use of an operable firearm for self-defense outside the home violated the second amendment. *Aguilar*, 2013 IL 112116, ¶ 21 (interpreting 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)).

¶ 6 We permitted defendant to file a late notice of appeal, and this appeal follows.

¶ 7 ANALYSIS

¶ 8 On appeal, defendant claims that (1) the provision of the AUUW statute under which he was convicted violates the second amendment to the United States Constitution and (2) he was denied due process when the circuit court dismissed his petition without allowing him to respond to the State's oral motion to dismiss. As an initial matter, however, we address the State's contention that the claims raised in defendant's section 2-1401 petition have been forfeited or are procedurally barred.

¶ 9 *Propriety of Defendant's Petition*

¶ 10 Section 2-1401 of the Code "provides a comprehensive statutory procedure by which final orders and judgments may be challenged more than 30 days after their entry." *People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003). While section 2-1401 is a civil remedy subject to the usual rules of civil practice, it extends to criminal cases, as well. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007); *People v. Stoecker*, 2020 IL 124807, ¶ 18.

¶ 11 A section 2-1401 petition must generally be filed no more than two years after the entry of the order or judgment being challenged. *Vincent*, 226 Ill. 2d at 7; 735 ILCS 5/2-1401(c) (West 2020). There is, however, an exception to this deadline where the petition challenges a void judgment. *People v. Thompson*, 2015 IL 118151, ¶ 29. Specifically, our supreme court has explained that

> "[a] *** type of voidness challenge that is exempt from forfeiture and may be raised at any time involves a challenge to a final judgment based on a facially unconstitutional statute that is void *ab initio*. When a statute is declared facially unconstitutional and void *ab initio*, it means that the statute was constitutionally infirm from the moment of its enactment and, therefore, unenforceable." *Id.* ¶ 32.

¶ 12 In this case, defendant's section 2-1401 petition was filed in 2022, over a decade after his conviction. The State does not dispute that the type of challenge raised in the petition—namely, a challenge to the facial constitutionality of the AUUW statute—is one which is exempt from forfeiture and may be raised at any time. The State, however, contends that defendant's argument on appeal—which is based on the United States Supreme Court case of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022)—is not the same argument raised in his petition—which was based on *Aguilar*. The State claims that, since defendant raised his *Bruen* claim for the first time on appeal, it should therefore be considered forfeited. We do not find this argument persuasive.

¶ 13 First, despite the difference in cited case law, defendant in his petition *did* expressly raise a constitutional challenge based on the second amendment. See *People v. Buford*, 2023 IL App (1st) 201176, ¶¶ 34-35 (in context of postconviction petition, finding claim sufficiently raised where the defendant sought to challenge constitutionality of his sentence based on his personal characteristics, despite the fact that the basis for that claim on appeal relied on different case law). Indeed, defendant's petition specifically alleges that "[t]he statute is facially unconstitutional as it violates the second amend[ment] of the U.S. Constitution and as such the statute is unenforceable against anyone." Thus, while the State claims that defendant

"abandoned his original claim and raised a new claim for the first time on appeal," this is not an accurate interpretation of the record below, and we find the State's reliance on *Thompson*, 2015 IL 118151, in support of this argument unpersuasive.[3]

¶ 14 Moreover, even if defendant had not raised his second amendment claim in his petition, "under Illinois law, there is no fixed procedural mechanism or forum, nor is there any temporal limitation governing when a void *ab initio* challenge may be asserted." *In re N.G.*, 2018 IL 121939, ¶ 57. Thus, the fact that defendant raised the argument for the first time on appeal would not result in its forfeiture. See, *e.g.*, *People v. Wright*, 194 Ill. 2d 1, 23-24 (2000); see also *People v. Bryant*, 128 Ill. 2d 448, 453-54 (1989); *People v. Wooters*, 188 Ill. 2d 500, 510 (1999). To the extent that the State contends that a voidness challenge may only be raised where a different court has *already* found the statute unconstitutional, we reject such an assertion, as the State provides no support for this novel interpretation of otherwise well-established law. We similarly find unpersuasive the State's suggestion that defendant's claim should be forfeited since it is meritless, as such an argument presupposes that this court agrees with the State's interpretation of the law. We therefore do not find that defendant has forfeited his argument concerning the constitutionality of the AUUW statute.

¶ 15 The State also contends that defendant's petition was barred by *res judicata*, as he had previously filed a nearly identical petition, which was denied by the circuit court. The State, however, did not seek dismissal of the petition on this basis before the circuit court, but now is raising the argument for the first time on appeal. Our supreme court has made clear that the rules of forfeiture apply to the State, as well as to the defendant in a criminal case. See, *e.g.*, *People v. McKown*, 236 Ill. 2d 278, 308 (2010); *People v. Williams*, 193 Ill. 2d 306, 347 (2000). By failing to raise *res judicata* as a basis for dismissal below, the State has forfeited the ability to raise it on appeal. See, *e.g.*, *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1038 (2001) (*res judicata* is a procedural defense which can be forfeited if not raised); see also *People v. Dorsey*, 2021 IL 123010, ¶ 113 (Neville, J., dissenting) (positing that the State forfeited *res judicata* argument by failing to raise it before the appellate court). We turn, then, to consideration of the merits of defendant's appeal.

¶ 16 *Second Amendment Claim*

¶ 17 Defendant's primary argument on appeal is that the subsection of the AUUW statute under which he was convicted is unconstitutional, as it violates the second amendment to the United States Constitution. All statutes carry a strong presumption of constitutionality, and a statute will be found constitutional "if it can be reasonably done." *People v. Mosley*, 2015 IL 115872, ¶ 22. In order to overcome this presumption, "the party challenging the statute must clearly establish its invalidity." *Id.* The question of whether a statute is constitutional is a question of law, which we review *de novo*. *Id.*

¶ 18 A defendant raising a facial challenge to a statute, as in the case at bar, "faces a particularly heavy burden." *People v. Bochenek*, 2021 IL 125889, ¶ 10. "A statute will be deemed facially unconstitutional only if there is no set of circumstances under which the statute would be

[3]We note that the State's reliance on *Thompson* is particularly unpersuasive, as it involved an as-applied constitutional challenge, not a facial challenge, and our supreme court made clear that "the void *ab initio* doctrine does *not* apply to an as-applied constitutional challenge." (Emphasis in original.) *Thompson*, 2015 IL 118151, ¶ 32.

valid." *Id.* Accordingly, the specific facts concerning the challenging party are "irrelevant" to the constitutional analysis. *Id.*

¶ 19 In this case, as noted, defendant was convicted of AUUW based on carrying a firearm in the absence of a currently valid FOID card. See 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2008). Specifically, the statute provides, in relevant part:

> "(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:
>
> (1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm; [and]
>
> ***
>
> (3) One of the following factors is present:
>
> * * *
>
> (C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card[.]" *Id.*

Defendant contends that this statute violates the second amendment of the United States Constitution, as it impermissibly restricts his constitutional right to bear arms.

¶ 20 The second amendment to the United States Constitution provides that, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. The United States Supreme Court has interpreted this language to "protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense." *Bruen*, 597 U.S. at 8-9 (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010)). It is clear, however, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626.

¶ 21 After the Supreme Court's decisions in *Heller* and *McDonald*, reviewing courts generally applied a two-part analysis in determining whether a restriction violated the second amendment, first (1) asking whether the challenged law regulated activity falling outside the scope of the right as originally understood, followed by (2) employing a means-end analysis to determine how close the law came to the core of the second amendment right and the severity of the law's burden on that right. *Bruen*, 597 U.S. at 17-19. In 2022, the Supreme Court, however, disapproved of this approach in *Bruen*, expressly finding that "[d]espite the popularity of this two-step approach, it is one step too many." *Id.* at 19. Instead, the Supreme Court set forth a new test to apply:

> "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " *Id.* at 17 (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10 (1961)).

¶ 22 Here, defendant contends that, under the *Bruen* framework, the AUUW statute is unconstitutional. As an initial matter, we note that defendant's precise argument set out in his brief is not entirely clear. In his brief, he argues that the criminalization of the carrying of a firearm without a valid FOID card is unconstitutional. He also, however, contends that the AUUW statute is unconstitutional, as he was *not permitted* to obtain a FOID card due to his age. See 430 ILCS 65/4(a)(2)(i) (West 2008) (requiring an applicant for a FOID card to demonstrate that he or she is at least 21 years of age or has parental permission). While he initially frames the latter point as an example of the statute's unconstitutionality, the tenor of his arguments throughout his briefs, and at oral argument before this court, indicates that he is affirmatively challenging the AUUW statute's FOID requirement as unconstitutional with respect to individuals under the age of 21. The State's appellate brief addresses defendant's claims in that light. We therefore consider both (1) whether the portion of the AUUW statute criminalizing the carrying of a firearm without a FOID card is unconstitutional as a whole and (2) whether the FOID portion of the AUUW statute is unconstitutional with respect to individuals under the age of 21, as relevant to this issue.

¶ 23 As noted, the first step in the *Bruen* analysis is the determination of whether the "plain text" of the second amendment covers the challenged conduct. *Bruen*, 597 U.S. at 17. In examining the validity of a handgun permitting requirement, the *Bruen* Court characterized the petitioners' "proposed course of conduct" as "carrying handguns publicly for self-defense," and concluded that the plain text of the second amendment encompassed such conduct. *Id.* at 32-33. Using this framing, the challenged conduct in this case, namely, publicly carrying a firearm, would similarly be covered by the second amendment.

¶ 24 We find the State's claim, raised at oral argument, that the challenged conduct is defendant's possession of a firearm *while failing to possess a valid FOID card* unpersuasive. We acknowledge that it is possible to characterize defendant's claims as a challenge to a statute that criminalizes non-lawful conduct (*i.e.*, carrying a firearm while violating the law in failing to obtain a FOID card), not a challenge to a statute prohibiting the carrying of firearms generally. See *People v. Hatcher*, 2024 IL App (1st) 220455, ¶ 57 (finding the relevant portions of the AUUW statute did not fall within the scope of the second amendment, where "[s]ubsections (a)(3)(A-5) and (a)(3)(C) of the AUUW statute apply exclusively to non-law-abiding conduct"). As we explain further below, however, the Supreme Court's recent decision in *United States v. Rahimi*, 602 U.S. 680 (2024), indicates that *Bruen* was not intended to suggest a focus on whether the defendant is engaged in non-lawful conduct in determining whether that conduct falls within the scope of the second amendment. As such, we believe that the reasoning in *People v. Brooks*, 2023 IL App (1st) 200435, ¶¶ 85-86, which looked to the conduct being proscribed—namely, possession of a firearm—instead of the circumstances surrounding that possession—there, possession of the firearm after having been twice convicted of felonies—better comports with the requirements in *Bruen*.

¶ 25 In *Rahimi*, 602 U.S. 680, the Supreme Court addressed the framework for second amendment claims for the first time since its *Bruen* decision.[4] In that case, the *Rahimi* Court applied the two-part analysis set forth in *Bruen* to uphold a firearm restriction against an individual subject to a domestic violence restraining order. *Id.* at 699-700. Notably, while the

[4]*Rahimi* was decided during the pendency of the instant appeal, and we permitted both parties to address the impact of the case in response to defendant's motion to cite additional authority.

petitioner in that case had been found to pose " 'a credible threat' to the 'physical safety' " of his girlfriend and child (*id.* at 687), the Supreme Court did not suggest that this conduct removed the petitioner from the scope of the second amendment's protection and instead immediately proceeded to conduct a historical analysis to determine whether the firearm restriction at issue was permissible (*id.* at 693-700). After finding that the restriction was constitutional, it noted that the government had argued that the petitioner could be disarmed where he was not " 'responsible.' " *Id.* at 701. The Supreme Court rejected this argument, observing: " 'Responsible' is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law." *Id.* at 701. Specifically, the Supreme Court noted that

> "[i]n *Heller* and *Bruen*, we used the term 'responsible' to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right. [Citations.] But those decisions did not define the term and said nothing about the status of citizens who were not 'responsible.' The question was simply not presented." *Id.* at 701-02.

¶ 26 Given the Supreme Court's recent clarification of the *Bruen* analysis, and its express rejection of the suggestion that an individual's second amendment rights are conditioned on his status as a " 'responsible' " individual (*id.* at 701), we agree with defendant that the conduct being proscribed in the instant case is the public carrying of a firearm, which falls within the scope of the second amendment's protections, and that the circumstances surrounding the carrying of the firearm are not relevant at this stage of the analysis. See *Bruen*, 597 U.S. at 32-33. To the extent that an individual's status or the circumstances surrounding the possession of the firearm impact the right to bear arms, we believe that the better approach is to determine whether firearm restrictions aimed at particular populations or circumstances have a historical analogue, consistent with the Supreme Court's directives in *Bruen* and *Rahimi*. See *Brooks*, 2023 IL App (1st) 200435, ¶ 89 (finding that "[h]ow the defendant's prior felony might impact his second amendment right to possess a firearm is more properly evaluated under the second step's historical tradition analysis"). Accordingly, since we have determined that the proposed conduct falls within the plain language of the second amendment's protections, we proceed to consider whether the FOID card requirement at issue here has such a historical analogue.[5]

¶ 27 In *Bruen*, the Supreme Court instructed that, to support a firearm restriction, the government bears the burden of demonstrating that the restriction is consistent with the nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 34. The *Rahimi* Court, however, made clear that this methodology "[is not] meant to suggest a law trapped in amber." *Rahimi*, 602 U.S. at 691. Instead, it is sufficient for the government to provide a " 'relevantly similar' " historical regulation. *Id.* at 692; *Bruen*, 597 U.S. at 28-29. Such an analysis involves considering whether the challenged regulation "is consistent with the principles that underpin

[5]While both parties include extensive argument as to whether individuals under the age of 21 are "people" with respect to the second amendment's protections, these arguments are more properly considered in the second step of our analysis, as part of our determination as to whether the second amendment permits firearm restrictions based on an individual's age. We note, however, that the Supreme Court has indicated that the " 'the people' " refers to "all members of the political community, not an unspecified subset" (*Heller*, 554 U.S. at 580), suggesting that individuals aged 18 to 20 would likely be considered "people" for purposes of the second amendment.

our regulatory tradition." *Rahimi*, 602 U.S. at 692. "Why and how the regulation burdens the [second-amendment] right are central to this inquiry." *Id.*; *Bruen*, 597 U.S. at 29.

¶ 28 In this case, as noted, defendant challenges two aspects of the AUUW statute: the requirement of a FOID card generally and the requirement of a FOID card with respect to individuals under the age of 21. As to the former, we find a recent decision by a different division of this court to be instructive. In *People v. Mofreh*, 2024 IL App (1st) 230524-U, ¶ 49, the fourth division of the First District considered the same provisions of the AUUW statute at issue here and concluded that *Rahimi* was dispositive of the matter. The *Mofreh* court noted that, in *Rahimi*, the Supreme Court upheld the firearm restriction at issue therein, finding that " '[o]ur tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others.' " *Id.* (quoting *Rahimi*, 602 U.S. at 700). The *Mofreh* court further observed that an individual could be denied a FOID card

> " 'only if the Illinois State Police finds that the applicant or the person for whom such card was issued is or was at the time of issuance *** [a] person who is prohibited from acquiring or possessing firearms or firearm ammunition by any Illinois State statute *or by federal law*.' " (Emphasis in original.) *Id.* ¶ 50 (quoting 430 ILCS 65/8(n) (West 2020)).

Reasoning that a person subject to the law at issue in *Rahimi* "is just such a person," the *Mofreh* court thus found that there was at least one instance in which it would be constitutional to deny someone a FOID card, meaning that the facial challenge to the AUUW statute would necessarily fail. *Id.* ¶¶ 50-51. While *Mofreh* is an unpublished decision, and therefore nonprecedential, we nevertheless find its reasoning persuasive and adopt the same reasoning to conclude that defendant's facial challenge to the AUUW statute must fail.

¶ 29 We find the same result applies to defendant's challenge with respect to the FOID requirement for those under the age of 21. It is important to note that defendant is *not* challenging the provisions of the AUUW statute that criminalize the carrying of a firearm by those under the age of 21, nor could he, as defendant was not convicted under those provisions. See 720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(I) (West 2008) (generally prohibiting the carrying of a firearm where "the person possessing the weapon was under 21 years of age"). The only charge on which defendant was convicted concerned carrying a firearm in the absence of a FOID card. See *id.* § 24-1.6(a)(1), (a)(3)(C) (prohibiting the carrying of a firearm where "the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card"). Hence, the question of whether an age-based AUUW claim, pursuant to section 24-1.6(a)(3)(I), is constitutional is not before us. Instead, the only provision challenged on appeal is the prohibition against carrying a firearm without a valid FOID card pursuant to section 24-1.6(a)(3)(C). Defendant's age-based challenge is therefore based on challenging the underlying FOID statute; in other words, his constitutional argument is based on the theory that the impossibility of obtaining a FOID card due to his age renders the AUUW statute unconstitutional. We do not find this argument persuasive.

¶ 30 While defendant downplays the option, we note that it *is* possible for an individual under the age of 21 to obtain a FOID card if he or she obtains parental permission. 430 ILCS 65/4(a)(2)(i) (West 2008). Accordingly, there are instances in which an individual under the age of 21 would be permitted to carry a firearm with a valid FOID card, provided that he or she otherwise satisfies the requirements for issuance of such a card. This alone renders defendant's facial challenge to the AUUW statute unsuccessful, as there is at least one

circumstance in which it would be constitutional with respect to individuals under the age of 21.

¶ 31 Moreover, our supreme court has upheld age-based restrictions on firearm regulations multiple times, including with respect to the FOID requirement in subsection (a)(3)(C). See *In re Jordan G.*, 2015 IL 116834, ¶ 25 (upholding constitutionality of subsection (a)(3)(C) with respect to individuals under age 21); see also *Aguilar*, 2013 IL 112116, ¶ 27; *Mosley*, 2015 IL 115872, ¶ 36. While these decisions predate *Bruen* and, therefore, do not contain precisely the same analysis as set forth therein, our supreme court nevertheless based its reasoning in each case on a finding that there was a long historical tradition of firearm restrictions with respect to minors and that historical tradition remains equally relevant to our analysis today. See *In re C.P.*, 2023 IL App (1st) 231033-U, ¶ 3 (noting that *In re Jordan G.*, *Aguilar*, and *Mosley* "were decided on precisely the grounds of 'text, as informed by history,' " that *Bruen* now requires (quoting *Bruen*, 597 U.S. at 19)); *In re D.B.*, 2023 IL App (1st) 231146-U, ¶ 33. We further note that a different division of this court recently conducted a thorough historical analysis on the matter and reached the same conclusion, even applying the standards set forth in *Bruen*. See *People v. Thompson*, 2024 IL App (1st) 221031, ¶¶ 36-41. We therefore cannot find that the AUUW statute is unconstitutional with respect to individuals under the age of 21. Accordingly, the circuit court properly denied defendant's section 2-1401 petition.

¶ 32 *Due Process*

¶ 33 In addition to his second amendment claim, defendant contends that he was denied due process where the circuit court denied his section 2-1401 petition while he was not present. At the time defendant's petition came before the circuit court, only the assistant state's attorney was present; the circuit court denied defendant's petition as frivolous and patently without merit without the State formally filing a motion or defendant responding to such a motion.

¶ 34 Our supreme court has made clear that section 2-1401 petitions are governed by the usual rules of civil practice and, "[a]s such, petitions filed thereunder are treated as complaints 'inviting responsive pleadings.' " *Stoecker*, 2020 IL 124807, ¶ 18 (quoting *Vincent*, 226 Ill. 2d at 8). Thus, the respondent may answer the petition, move to dismiss it, or choose not to file a responsive pleading. *Id.* Where a motion or responsive pleading has been filed by the respondent, "basic notions of fairness dictate that a petitioner be afforded notice of, and a meaningful opportunity to respond to," such motion or pleading. *Id.* ¶ 20. It is a violation of the petitioner's due process rights to dismiss his petition during an *ex parte* hearing without notifying the petitioner or allowing him a meaningful opportunity to respond to a motion to dismiss. *Id.* ¶ 22; *People v. Wells*, 2023 IL 127169, ¶ 25.

¶ 35 In this case, as noted, defendant was not present when the circuit court denied his petition; indeed, the State never even filed a written motion seeking dismissal of the petition. Thus, we agree with defendant that his due process rights were violated. Our supreme court, however, has explained that such violations are subject to harmless-error review. *Stoecker*, 2020 IL 124807, ¶ 23; *Wells*, 2023 IL 127169, ¶ 26. As such, the supreme court has found similar violations harmless where "[the] petitioner's claims were untenable as a matter of law and where additional proceedings would not enable him to prevail on his claim for relief." *Stoecker*, 2020 IL 124807, ¶ 33; see *Wells*, 2023 IL 127169, ¶ 41. Here, as explained above, defendant's constitutional arguments are "untenable as a matter of law" (*Stoecker*, 2020 IL 124807, ¶ 33), and additional proceedings would not change such a result. Accordingly, the circuit court's

denial of defendant's petition in his absence is harmless.

¶ 36 CONCLUSION

¶ 37 For the reasons set forth above, we affirm the circuit court's denial of defendant's section 2-1401 petition, where the portion of the AUUW statute challenged by defendant is constitutional and where the circuit court's denial of the petition in defendant's absence constituted harmless error.

¶ 38 Affirmed.