

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY JAY CORWIN,

Defendant-Appellant.

UNPUBLISHED

February 8, 2005

No. 250564

Jackson Circuit Court

LC No. 03-000180-FH

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of felon in possession of a firearm, MCL 750.224f. He was sentenced as a fourth habitual offender, MCL 769.12, to twenty-four months' probation with a suspended jail sentence of 210 days. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

In his sole issue on appeal, defendant argues that the definition of "firearm" provided by MCL 8.3t, which he claims underlies his felon in possession of a firearm conviction, is unconstitutionally overbroad or vague as applied to the facts of this case. We conclude that defendant is not entitled to relief based on this issue.

As an initial matter, contrary to the indication of the parties, the definition of "firearm" in MCL 8.3t does not actually apply to the felon in possession of a firearm charge. MCL 8.3t provides that its definition of "firearm" does not apply where the term is "otherwise specifically defined in the statutes." MCL 750.222(d) provides a specific definition of "firearm" that applies to the statutory chapter that includes the felon in possession of a firearm statute:

"Firearm" means a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air. Firearm does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling by a spring, or by gas or air, BB's not exceeding .177 caliber.

However, even though the definition of a firearm in MCL 8.3t does not directly apply to this case in light of the specific definition of a firearm in MCL 750.222, the definition of a firearm provided by MCL 8.3t is substantively identical to that provided by MCL 750.222. Specifically, MCL 8.3t defines a firearm to include "any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any

smooth bore rifle or handgun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas or air." Accordingly, we believe it is appropriate to treat defendant's argument that MCL 8.3t is unconstitutionally overbroad or vague as actually being a challenge on these grounds to MCL 750.222(d).

A challenge on overbreadth grounds may succeed where there is "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *People v Barton*, 253 Mich App 601, 603-604; 659 NW2d 654 (2002), quoting *In re Chmura*, 461 Mich 517, 531; 608 NW2d 31 (2000), quoting *Los Angeles City Council v Taxpayers for Vincent*, 466 US 789, 801; 104 S Ct 2118; 80 L Ed 2d 772 (1984). The felon in possession of a firearm statute prohibits certain convicted felons from possessing a firearm. MCL 750.224f. Clearly, this in no way implicates speech or other expressive conduct protected by the First Amendment. Thus, the definition of a firearm provided by MCL 750.222(d) is not unconstitutionally overbroad for purposes of the felon in possession of a firearm statute.

Apart from First Amendment overbreadth concerns, a statute may be found unconstitutionally vague if it does not provide fair notice of the conduct it prohibits or requires or if it is so indefinite that it confers unstructured and unlimited discretion on a factfinder to decide whether the law has been violated. *People v Lueth*, 253 Mich App 670, 675-676; 660 NW2d 322 (2002). Such a vagueness challenge is examined "in light of the particular facts" of a case. *Id.* at 677. It is plain that the rifle at issue, which defendant acknowledges he intended to use for hunting, falls within the definition of a firearm provided by MCL 750.222(d) because, based on the undisputed facts, it is a weapon from which a dangerous projectile may be propelled by an explosive. Thus, the statutory definition of a firearm is not unconstitutionally vague as applied to this case because it provided fair notice that defendant's rifle is encompassed within its definition. Accordingly, the statute does not require a factfinder to exercise unstructured discretion to decide whether the rifle fell within this definition of a firearm. While defendant asserts that the definition of firearm may be vague as applied to paintball guns, rivet guns, and "automatic" hammers, any such concerns are immaterial because the definition is not vague as applied to the facts of this case.

While defendant couches his issue in terms of overbreadth and vagueness, he makes arguments to the effect that it was simply unwise for the Legislature to include muzzle loading rifles within the scope of firearms subject to the felon in possession of a firearm statute because such rifles, especially when used for hunting purposes, pose far less danger than many other types of firearms. But, "that a statute may appear undesirable, unfair, unjust, or inhumane does not of itself render a statute unconstitutional and empower a court to override the Legislature." *People v Boomer*, 250 Mich App 534, 538; 655 NW2d 255 (2002). Rather, the Legislature "should address arguments that a statute is unwise or results in bad policy." *Id.* Thus, defendant's argument regarding the wisdom of the inclusion of muzzle loading rifles in the relevant definition of a firearm is simply inapposite. In this regard, while the point is disputed by the prosecution, defendant indicates that federal law regarding possession of a firearm by a convicted felon would not preclude him from possessing the firearm at issue. That argument is simply immaterial because obviously state law may and does prohibit conduct that does not constitute a federal crime.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello