

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Ellen M. O'Connor
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian McLean
Supervising Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

DeJon James,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 4, 2023

Court of Appeals Case No.
22A-CR-2892

Appeal from the Marion Superior
Court

The Honorable Amy M. Jones,
Judge

The Honorable Richard E.
Hagenmaier, Magistrate

Trial Court Cause No.
49D34-2201-F6-2720

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] On October 17, 2021, DeJon James, his girlfriend, and his girlfriend’s cousin were “playing” with firearms when James accidentally shot his girlfriend’s cousin. James was subsequently charged with and pled guilty to Level 6 felony criminal recklessness. After accepting James’s plea agreement and sentencing him to a 910-day suspended sentence, the trial court ordered that the firearms recovered from James’s home be destroyed (the “Firearm Destruction Order”). On appeal, James contends, and the State concedes, that the Firearm Destruction Order is clearly erroneous. We agree and therefore reverse and remand the matter back to the trial court for further proceedings.

Facts and Procedural History

- [2] On October 17, 2021, James, Da’Rayla Owens, and La’Quishiana Johnson were “playing with” firearms in James’s and Owens’s home when James accidentally shot Johnson in the abdomen. Appellant’s App. Vol. II p. 17. During their investigation, police recovered five firearms from the home. At least three of the firearms belonged to James and one handgun belonged to Owens.
- [3] On January 28, 2022, James was charged with Level 6 felony criminal recklessness. The parties entered into a plea agreement, under the terms of which James would plead guilty and receive a 910-day suspended sentence.

The plea agreement further provided that “the destruction of the firearms found in this case will be open for argument.” Appellant’s App. Vol. II p. 68. The trial court accepted the plea agreement, entered judgment of conviction for Level 6 felony criminal recklessness against James, and sentenced him pursuant to the terms of the plea agreement. On November 7, 2022, the trial court issued the Firearm Destruction Order, in which it ordered that that the firearms belonging to James be destroyed.¹

Discussion and Decision

[4] Indiana Code section 35-47-3-1 provides that “[a]ll firearms confiscated pursuant to statute shall, upon conviction of the person for the offense for which the confiscation was made, be disposed of in accordance with this chapter.” Indiana Code section 35-47-3-2(b) provides that “[f]irearms shall be returned to the rightful owner at once following final disposition of the cause if a return has not already occurred.... However, nothing in this chapter shall be construed as requiring the return of firearms to rightful owners who have been convicted for the misuse of firearms.” “In such cases, the court may provide for the return of the firearm in question or order that the firearm be at once delivered to” the sheriff’s department of the county in which the offense occurred or to the law enforcement agency that confiscated the firearm. Ind. Code § 35-47-3-2(b). The receiving law enforcement agency shall then dispose

¹ The trial court ordered that the handgun belonging to Owens be returned to her.

of the firearms by selling the firearms to the general public, a licensed firearms' dealer, or another law enforcement agency; releasing the firearms to the state police laboratory; or destroying the firearms. Ind. Code § 35-47-3-2(d).

[5] As we stated in *Trice v. State*, 114 N.E.3d 496, 499 (Ind. Ct. App. 2018), *trans. denied*, a trial court's "order of destruction, in substance, operates to deny the return of [an individual's] property." "Thus, we apply the standard of review used when a trial court has denied a party's motion for the return of property." *Id.* "When we review the denial of a motion for return of property, we will affirm unless the decision is clearly erroneous and cannot be sustained on any legal theory supported by the evidence." *Id.*

[6] James does not challenge the portion of the Firearm Destruction Order indicating that the firearm used in the commission of his crime be destroyed. However, he argues that the trial court erred in ordering that his other firearms, which he claims were not misused in any way, also be destroyed. In making this argument, James asserts that the firearms should have been returned so that ownership of the firearms could be transferred to his uncle.

[7] For its part, the State concedes that Indiana Code section 35-47-3-2

does not contemplate the disposal of any and all firearms seized from a defendant during the course of a criminal investigation based solely on the trial court's belief that the defendant should not have access to firearms. While the statute generally provides that trial courts are not required to return firearms to rightful owners who have misused them, this general statement is narrowed in the next sentence requiring that "[i]n such cases"

where a rightful owner has misused a firearm, “the firearm in question” may be returned or disposed of by the other methods in the statute. [Indiana Code] § 35-47-3-2.

Appellee’s Br. p. 12. The State further concedes that the trial court’s order

appears to depart from the scope of authority granted to it by [Indiana Code] section 35-47-3-2. The statute provides that a trial court has only two options regarding a misused firearm: (1) return the firearm to its rightful owner, or (2) “order that the firearm be at once delivered ... to the sheriff’s department of the county in which the offense occurred” or “to the law enforcement agency that confiscated the firearm.” [Ind. Code] § 35-47-3-2(b). The “receiving law enforcement agency” is to dispose of the firearm according to one of the statute’s allowed methods selected “at the discretion of the law enforcement agency.” [Ind. Code] § 35-47-3-2(d). Trial courts are not granted authority to order the use of any of the methods allowed by statute to dispose of a firearm. [Ind. Code] § 35-47-3-2(d), (e).

Appellee’s Br. p. 14. Here, the trial court ordered the Lawrence Police Department to destroy the firearms. We agree with the State that “[w]hile destruction is one of the allowed methods for disposing of firearms, it is only one of several methods that the Lawrence Police Department may, in its discretion, decide to employ here.” Appellee’s Br. p. 14 (citing Ind. Code § 35-47-3-2(e)). The State additionally concedes that there appears to be some confusion in the trial court’s order regarding the serial numbers of the firearms recovered by police, conceding that “[t]he trial court erroneously ordered the destruction of some firearms without evidence as to which of them was actually misused by James during the incident. The record likewise does not go beyond

suggesting speculations, conjectures or surmises as to which firearm James misused.” Appellee’s Br. pp. 16–17. Thus, the State agrees that the trial court erred in issuing the Firearm Destruction Order and asserts that the matter should be remanded for further proceedings.

[8] We agree with the parties that the Firearm Destruction Order is clearly erroneous. At the very least, it is unclear from the order which of the firearms beyond the firearm used to shoot Johnson, if any, were misused by James. We also agree that however many of the firearms the trial court decides not to return to James, pursuant to Indiana Code section 35-47-3-2, it is up to the discretion of the receiving law-enforcement agency to determine how it wants to dispose of the firearms. Remand is therefore necessary for further proceedings.

[9] The judgment of the trial court is reversed and remanded for further proceedings.

May, J., and Mathias, J., concur.