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IN THE
COURT OF APPEALS OF INDIANA

Dax A. Bunch,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 6, 2022

Court of Appeals Case No.
21A-CR-2278

Appeal from the Owen Circuit
Court

The Honorable Lori Thatcher
Quillen, Judge

Trial Court Cause No.
60C01-0710-FD-523

Bradford, Chief Judge.

Case Summary

[1] Both federal and Indiana law provide that an individual who has been convicted of a crime of domestic violence may not possess a firearm. However, federal law further indicates that an individual's federal rights may be restored if the individual's rights are restored in the applicable jurisdiction, in this case, Indiana. The Indiana General Assembly has created an avenue by which such an individual may petition to have their right to possess a firearm restored. Dax Bunch alleges that he lost his right to possess a firearm after he pled guilty to and was convicted of Class B misdemeanor battery for acts committed against his then-wife. Bunch subsequently petitioned the trial court to have his right to possess a firearm restored. The trial court denied Bunch's petition, finding that if Bunch's gun privileges had been revoked, the revocation was not the result of Indiana Code section 35-47-4-7, but rather the result of federal law and, as such, Bunch must seek relief in the federal courts. Because we conclude otherwise, we reverse and remand the matter to the trial court for further proceedings.

Facts and Procedural History

[2] On October 24, 2007, the State charged Bunch with Class D felony domestic battery and Class D felony intimidation. With respect to the domestic battery charge, the State alleged that on October 23, 2007, Bunch knowingly or intentionally touched his then-wife, Robbyn R. Bunch, "in a rude, insolent, or angry manner, to wit: holding her down, choking her and poking her in the eye, resulting in bodily injury, to wit: pain in the eye and pain and bruising of

the wrist[.]” Appellant’s App. Vol. II p. 9. Bunch subsequently pled guilty to and was convicted of the lesser-included charge of Class B misdemeanor battery.

[3] At some point about “ten years after” he was convicted, Bunch received “a letter in the mail” indicating that he “had lost [his] gun rights.” Tr. Vol. II p. 7. Bunch reached out to the Indiana State Police who indicated that he needed to request to have his right to possess a firearm restored by the trial court. Soon thereafter, on December 10, 2020, Bunch filed a petition to have his right to possess a firearm restored pursuant to Indiana Code section 35-47-4-7. The trial court conducted a hearing on Bunch’s petition on August 24, 2021. On October 12, 2021, the trial court denied Bunch’s petition, finding that Bunch’s “gun privileges if revoked were revoked as a result of Federal law. This Court does not have the authority or jurisdiction to Order Federal authorities to Restore [Bunch’s] gun privileges. [Bunch] must seek relief in the Federal Courts.” Appellant’s App. Vol. II p. 26.

Discussion and Decision

[4] Bunch contends that the trial court abused its discretion in denying his request to restore his right to possess a firearm. In denying Bunch’s request for the court to reinstate his right to possess a firearm, the trial court found that

Bunch’s “gun privileges if revoked were revoked as a result of Federal law”¹ and, because it did not “have the authority or jurisdiction to Order Federal authorities to Restore [Bunch’s] gun privileges,” Bunch was required to “seek relief in the Federal Courts.” Appellant’s App. Vol. II p. 26. Bunch argues that the trial court “misinterpreted the law when it held [that] it did not have the authority to restore Bunch’s firearm privileges pursuant to Indiana Code [section] 35-47-4-7.” Appellant’s Br. p. 4.

[5] In determining whether the trial court correctly found that it did not have the authority to consider Bunch’s request for the restoration of his right to possess a firearm, we must attempt to discern the respective legislative body’s intent, looking to the language used in crafting both the relevant federal and Indiana statutes.

The best evidence of legislative intent is the language of the statute itself, and all words must be given their plain and ordinary meaning unless otherwise indicated by statute. We will examine the statute as a whole, and avoid excessive reliance upon a strict literal meaning or the selective reading of individual words. The legislature is presumed to have intended that the language used in the statute be applied logically and not bring about an unjust or absurd result.

Glotzbach v. State, 783 N.E.2d 1221, 1227 (Ind. Ct. App. 2003) (cleaned up).

¹ We note that despite the trial court’s statement that Bunch’s right to possess a firearm was revoked pursuant to federal law, it is unclear from the record whether Bunch’s right to possess a firearm was revoked as a matter of state or federal law.

[6] Federal law indicates that “[i]t shall be unlawful for any person ... (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ... possess ... any firearm or ammunition[.]” 18 U.S.C.A. § 922(g) (West).

Federal law defines the term “misdemeanor crime of domestic violence” as

an offense that--

(i) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

18 U.S.C.A. § 921(33)(A) (West) (internal footnote omitted). The statute further provides that

A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction ... is an offense for which the person has ... had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C.A. § 921(33)(B)(ii) (West). Thus, to the extent that Bunch’s federal right to possess a firearm has been revoked, the revocation is tied to his Indiana conviction for a “misdemeanor crime of domestic violence” and lasts until he

has had his civil rights restored in connection to that underlying Indiana conviction. *See generally Fisher v. Kealoha*, 855 F.3d 1067, 1070 (9th Cir. 2017) (indicating that the process for having a federal right to possess firearms restored following a conviction of a crime of domestic violence is tied to the state procedure for having said right restored and that the unavailability of a procedure for the restoration of one’s right to possess a firearm under state law does not remove the individual from the ambit of section 922(g)(9)’s prohibition).

[7] Indiana Code section 35-47-4-7 provides that “a person who has been convicted of a crime of domestic violence may not possess a firearm.” However, the statute further states that

Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence may petition the court for restoration of the person’s right to possess a firearm. In determining whether to restore the person’s right to possess a firearm, the court shall consider the following factors:

- (1) Whether the person has been subject to:
 - (A) a protective order;
 - (B) a no contact order;
 - (C) a workplace violence restraining order; or
 - (D) any other court order that prohibits the person from possessing a firearm.
- (2) Whether the person has successfully completed a substance abuse program, if applicable.
- (3) Whether the person has successfully completed a parenting class, if applicable.
- (4) Whether the person still presents a threat to the

victim of the crime.

(5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to satisfy a specified condition under subsection (c)^[2] or whether the person has committed a subsequent offense.

Ind. Code § 35-47-4-7(b). The question before us on appeal is therefore whether Bunch's right to possess a firearm was revoked pursuant to Indiana Code section 35-47-4-7. If so, the trial court had the authority to consider Bunch's request.

[8] The State argued below, and the trial court appears to have agreed, that Indiana Code section 35-47-4-7 did not apply to Bunch because he pled guilty to and was convicted of Class B misdemeanor battery, rather than the charged offense of Class D felony domestic battery. Indiana Code section 35-47-4-7(a), however, does not say that a person convicted of domestic battery cannot possess a firearm, but rather that those convicted of *a crime of domestic violence* cannot possess a firearm. This distinction is important and cannot go unnoticed. As of the date that Bunch filed his petition to restore his right to possess a firearm, the Indiana General Assembly had separately defined the term "crime of domestic violence" as "an offense or the attempt to commit an offense that: (1) has as an element the: (A) use of physical force; or (B)

² Subsection (c) provides that "[t]he court may condition the restoration of a person's right to possess a firearm upon the person's satisfaction of specified conditions." Ind. Code § 35-31.5-2-78(c).

threatened use of a deadly weapon; and (B) is committed against a family or household member.” Ind. Code § 35-31.5-2-78.

[9] In charging Bunch, the State alleged that on October 23, 2007, Bunch knowingly or intentionally touched his wife “in a rude, insolent, or angry manner, to wit: holding her down, choking her and poking her in the eye.” Appellant’s App. Vol. II p. 9. Bunch subsequently pled guilty to the lesser-included charge of Class B misdemeanor battery. It appears to be uncontested that the victim of Bunch’s relevant conviction was Bunch’s ex-wife as (1) Bunch admitted at the hearing on his petition to restore his right to possess a firearm that the victim of his relevant conviction was his ex-wife, (2) the original charging information clearly states that the victim was Bunch’s ex-wife, and (3) Bunch pled guilty to and was convicted of a lesser-included of the originally charged offense.³ Tr. Vol. II p. 5; Appellant’s App. Vol. II pp. 9, 11–13.

[10] Indiana Code section 35-42-2-1(c) provides that “a person who knowingly or intentionally: (1) touches another person in a rude, insolent, or angry manner” commits Class B misdemeanor battery. Thus, the crime of battery has as an element the use of physical force and, in this case, the physical force was used against his then-wife, who unquestionably qualified as a family or household

³ The record does not contain the original probable cause affidavit or an amended charging information. However, nothing in the record even suggests that the victim of the lesser-included offense of which Bunch was convicted was anyone other than his then-wife.

member. As such, we must conclude that Bunch's conviction qualified as a crime of domestic violence.

[11] Because we conclude that the proper venue for Bunch's request was the trial court regardless of whether his federal or state right to possess a firearm (or both) was revoked and that Bunch's conviction qualified as a crime of domestic violence, we further conclude that Indiana Code section 35-47-4-7 applied. Thus, to the extent that Bunch's right to possess a firearm was revoked, Bunch appropriately relied on Indiana Code section 35-47-4-7(b) in his attempt to have his right to possess a firearm restored.

[12] The State alternatively asserts on appeal that "[a]ssuming that the trial court ... was the correct venue for hearing [Bunch's] petition, the trial court's denial of the petition was still the right result." Appellee's Br. p. 9. However, given that the trial court made no findings on whether restoration of Bunch's right to possess a firearm was proper pursuant to the factors listed in Indiana Code section 35-47-4-7(b), we cannot merely agree with the State on this assertion. Rather, we must remand the matter to the trial court for further proceedings, during which the trial court may consider the merits of Bunch's petition.

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

Crone, J., and Tavitas, J., concur.