

2025 IL App (1st) 240350-U
No. 1-24-0350
Order filed September 26, 2025

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 00 CR 21142
)	
ARMANDO DELGADO,)	Honorable
)	Timothy Joseph Joyce,
Defendant-Appellant.)	Judge, presiding.

JUSTICE TAILOR delivered the judgment of the court.
Presiding Justice Mitchell and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the order of the circuit court dismissing defendant's petition for relief from judgment where the unlawful use or possession of a weapon statute is not facially unconstitutional.

¶ 2 Defendant Armando Delgado appeals from the order of the circuit court dismissing his petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2024)), which sought to vacate his conviction for unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2024)). On appeal, Delgado argues

that the UUWF statute is facially unconstitutional and that his conviction is void *ab initio*. We affirm.

¶ 3 On September 13, 2001, Delgado pled guilty to one count of UUWF and was sentenced to two years in prison. Delgado's conviction was predicated on his prior conviction for aggravated battery.

¶ 4 On December 5, 2023, Delgado filed a *pro se* petition for relief from judgment, arguing that his UUWF conviction was void *ab initio* based on our supreme court's opinions in *People v. Aguilar*, 2013 IL 112116, *People v. Mosley*, 2015 IL 115872, and *People v. Chairez*, 2018 IL 121417; the United States Supreme Court's opinion in *New York State Rifle and Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); and the second amendment of the United States Constitution. He argued that his possession of a firearm was presumptively protected by the Second Amendment under *Bruen*, and because non-violent felons who completed their sentences were historically able to possess firearms, the State could not show a historical tradition of regulating his conduct.

¶ 5 On January 5, 2024, the circuit court held a hearing on Delgado's petition. The circuit court stated that *Chairez* was not applicable because it involved the constitutionality of the aggravated unlawful use of a weapon statute (AUUW), and observed that neither our supreme court nor this court has ever held the UUWF statute to be unconstitutional. The court denied Delgado's petition.

¶ 6 On appeal, Delgado argues that his conviction is void *ab initio* because the UUWF statute is facially unconstitutional under the Second Amendment as interpreted by *Bruen*.

¶ 7 Section 2-1401 of the Code provides a mechanism to vacate a final judgment more than 30 days after its entry. 735 ILCS 5/2-1401(a) (West 2024). Section 2-1401 is a civil remedy also available in criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). Ordinarily, a motion under section 2-1401 must be brought within two years of a judgment. 735 ILCS 5/2-1401(c) (West

2024). However, a petition alleging that a conviction or sentence is based on a facially unconstitutional statute may be brought at any time. *People v. Stoecker*, 2020 IL 124807, ¶ 28. The circuit court’s dismissal of a section 2-1401 petition is reviewed *de novo*. *Vincent*, 226 Ill. 2d at 18.

¶ 8 A facial challenge to a statute requires a showing that the statute is unconstitutional under any set of facts. *People v. Garvin*, 219 Ill. 2d 104, 117 (2006). “Statutes are presumed constitutional, and the party challenging the constitutionality of a statute has the burden of clearly establishing its invalidity.” *People v. Gray*, 2017 IL 120958, ¶ 57. We review the facial constitutionality of a statute *de novo*. *People v. Bochenek*, 2021 IL 125889, ¶ 9.

¶ 9 At the time of Delgado’s arrest, the UUWF statute provided, in relevant part, that “[i]t is unlawful for a person to knowingly possess on or about his person *** any firearm or firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction.” 720 ILCS 5/24-1.1(a) (West 2000).

¶ 10 In *Bruen*, the Supreme Court set forth a two-step framework for evaluating the constitutionality of firearm regulations under the Second Amendment. *Bruen*, 597 U.S. at 17. A court must first determine whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* If it does, then the Second Amendment “presumptively protects that conduct,” and the government “must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* The Court clarified this test in *United States v. Rahimi*, 602 U.S. 680, 692 (2024), explaining that even if a law regulates the possession of firearms for a permissible reason, the law may nevertheless violate the Second Amendment if it regulates “to an extent beyond what was done at the founding.” The Court also clarified that the

challenged regulation need not have a “ ‘historical twin,’ ” but rather must be “ ‘analogous enough to pass constitutional muster.’ ” *Id.* (quoting *Bruen*, 597 U.S. at 30).

¶ 11 The State initially argues that Delgado did not raise a facial challenge to the UUWF statute based on *Bruen* before the circuit court, and therefore has forfeited his claim. Delgado’s *pro se* petition cites *Bruen* and argues that his conviction is unconstitutional, though it is unclear whether he intended to raise a facial or an as-applied challenge to the UUWF statute. Regardless, a facial challenge to the statute under which a defendant is convicted is exempt from forfeiture and can be raised at any time. *People v. Thompson*, 2015 IL 118151, ¶ 32. Therefore, we may review Delgado’s facial challenge to the UUWF statute.

¶ 12 The State also argues that we need not conduct a full analysis under *Bruen*, as the Supreme Court in *Bruen* already signaled approval for “shall-issue” licensing regimes, including the Illinois Firearm Owners Identification (FOID) Card Act (430 ILCS 65 (West 2024)) and Firearm Concealed Carry Act (430 ILCS 66 (West 2024)). See *Bruen*, 597 U.S. at 38 n.9 (“nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall issue’ licensing regimes”).

¶ 13 After this case was fully briefed, our supreme court issued its opinion in *People v. Thompson*, 2025 IL 129965. *Thompson* involved a conviction for AUUW, which prohibits the possession of an “uncased, loaded, and immediately accessible” firearm in a vehicle without a valid concealed carry license. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2024). The court viewed the issue as a challenge to “the constitutionality of the AUUW statute’s enforcement of the CCL licensing regime, which incorporates FOID card licensure.” *Thompson*, 2025 IL 129965, ¶ 17. The court held that footnote 9 in *Bruen* expressly endorsed Illinois’ shall-issue licensing scheme and “obviate[d] the need for this court to apply the historical-tradition component of the *Bruen* analysis

to defendant’s facial challenge” to the AUUW provision at issue. *Id.* ¶ 44. Unlike *Thompson*, however, the present case does not implicate the FOID Card Act or the Firearm Concealed Carry Act, as Delgado was convicted based on his status as a felon, not his failure to comply with Illinois’ firearm licensing scheme.

¶ 14 Notwithstanding, in the wake of *Bruen*, this court has repeatedly upheld the constitutionality of the UUWF statute in the context of facial and as-applied challenges. The majority of decisions have held that felons are not “law abiding citizens,” and therefore the possession of firearms by felons does not fall within the Second Amendment’s protection. See, e.g., *People v. Gray*, 2025 IL App (1st) 191086-B, ¶ 20; *People v. Burns*, 2024 IL App (4th), 230428, ¶ 21; *People v. Baker*, 2023 IL App (1st) 220328, ¶ 37. A minority of decisions have held that the possession of firearms by any individual is presumptively protected by the Second Amendment, but have also held that the UUWF statute is consistent with a historical tradition of preventing dangerous individuals and felons from obtaining firearms. *People v. Travis*, 2024 IL App (3d) 230113, ¶¶ 25-33; *People v. Brooks*, 2023 IL App (1st) 200435, ¶¶ 86-105.

¶ 15 In *Baker*, this court considered an as-applied challenge to the constitutionality of the UUWF statute. We found that “[t]he *Bruen* Court could not have been more clear that its newly announced test only applied to laws that attempted to regulate the gun possession of ‘law abiding citizens,’ and not felons.” *Baker*, 2023 IL App (1st) 220328, ¶ 37 (quoting *Bruen*, 597 U.S. at 71). We observed that the *Bruen* Court repeated the phrase “law-abiding citizens” 18 times, and that Justice Kavanaugh’s concurrence in *Bruen* expressly stated that the Court’s opinion did not cast doubt on the prohibition of the possession of firearms by felons. *Id.* (citing *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring, joined by Roberts, C.J.)). We concluded that felons were “simply outside of the box drawn by *Bruen*.” *Id.*

¶ 16 Delgado argues that *Baker* was wrongly decided, and we should follow the holding in *Brooks* that the possession of firearms by felons falls within the scope of conduct protected by the Second Amendment. In *Brooks*, the defendant raised an as-applied challenge to his conviction under the armed habitual criminal statute (720 ILCS 5/24-1.7 (West 2016)), asserting that the statute was unconstitutional as applied to him as a nonviolent felon. *Brooks*, 2023 IL App (1st) 200435, ¶ 55. This court focused on the defendant’s conduct, rather than his status as a felon, in finding that his possession of a firearm fell under the Second Amendment’s protection of the individual’s right to “keep and bear arms,” and found that “the defendant’s status as a felon is irrelevant at this stage of the analysis.” *Id.* ¶¶ 86-89. This court then turned to the second step of *Bruen*, found that the armed habitual criminal statute was consistent with a historical tradition of disarming felons, and rejected the defendant’s as-applied challenge. *Id.* ¶¶ 90-105.

¶ 17 Since *Baker* and *Brooks*, the majority of decisions from this court have followed *Baker*’s conclusion that felons are not within the scope of “law abiding citizens” protected by the Second Amendment. See, e.g., *People v. Boss*, 2025 IL App (1st) 221885, ¶ 33; *Gray*, 2025 IL App (1st) 191086-B, ¶ 20; *People v. Atkins*, 2024 IL App (1st) 221138-U, ¶ 23 (collecting cases following *Baker*, rather than *Brooks*). We agree with *Baker* and the majority of decisions of this court and conclude that the Second Amendment’s protections only extend to “law abiding citizens,” and therefore does not protect the possession of firearms by felons.

¶ 18 Delgado argues that the *Baker* line of cases is overly reliant on *dicta* from *Bruen* and *District of Columbia v. Heller*, 554 U.S. 570, 626-27 n.26 (2008). While the “law abiding citizens” language and the observation in *Heller* that bans on felons possessing firearms are “presumptively lawful” may be *dicta*, they are binding on this court absent contrary authority. *People v. Williams*, 204 Ill. 2d 191, 206 (2003); see also *People v. Mobley*, 2023 IL App (1st) 221264, ¶ 27 (finding

that *Baker* is “consistent with the statement in *Heller* that felon bans are ‘presumptively lawful,’ which, though debatably *dicta*, suggests that the Court did not believe that felons maintained second amendment rights post-conviction” (quoting *Heller*, 554 U.S. at 626-27 n.26)).

¶ 19 Delgado argues that *Rahimi* rejected a test of whether an individual may be disarmed merely if he is deemed to be not “responsible,” finding that such a test would be vague. *Rahimi*, 602 U.S. at 701-02. However, *Rahimi* reiterated the Court’s statement in *Heller* that restrictions on firearm possession by felons were “ ‘presumptively lawful.’ ” *Id.* at 699 (quoting *Heller*, 554 U.S. at 626-27 n.26). *Rahimi* does not undermine our conclusion in *Baker* that the possession of firearms by felons is outside the scope of activity protected by the Second Amendment. Therefore, we reject Delgado’s challenge to the UUWF statute on that basis.

¶ 20 Even if the possession of firearms by felons fell within the scope of the Second Amendment, however, we would agree with the prior decisions of this court which have found that the UUWF statute is a constitutional restriction on the possession of firearms by felons under *Bruen* and *Rahimi*. This court has previously conducted the historical analysis required by the second step of *Bruen* and has concluded that Illinois’ restriction on felons possessing firearms is consistent with a historical tradition of disarming dangerous individuals. See *People v. Macias*, 2025 IL App (1st) 230678, ¶¶ 29-34 (discussing founding-era laws that authorized capital punishment and estate forfeiture for persons convicted of felonies); *Travis*, 2024 IL App (3d) 230113, ¶¶ 27-33 (“The government has historically promoted public safety by protecting society from persons it deems to be dangerous.”); *Brooks*, 2023 IL App (1st) 200435, ¶¶ 90-105 (“[T]here is a historical tradition of legislatures exercising their discretion to impose status-based restrictions disarming entire categories of persons who, based on their past conduct, were presumed unwilling to obey the law.” (internal quotation marks omitted)).

¶ 21 Delgado argues that there is no historical precedent for a permanent ban on the possession of firearms by felons. However, the ban is not in fact permanent because individuals may seek relief under section 10 of the FOID Card Act. 720 ILCS 5/24-1.1(a) (West 2024) (“This Section shall not apply if the person has been granted relief by the Director of the Illinois State Police under Section 10 of the Firearm Owners Identification Card Act.”); see *People v. Grace*, 2025 IL App (1st) 232429-U, ¶¶ 18-19 (rejecting argument that UUWF or armed habitual criminal statutes amounted to a lifetime ban on firearm possession).

¶ 22 In conclusion, we reject Delgado’s facial challenge to the UUWF statute, as felons are not within the class of “law abiding citizens” protected by the Second Amendment. Even if they did fall within the protections of the Second Amendment, a historical tradition of restricting felons from access to firearms supports the ban preventing felons from possessing firearms in the UUWF statute. See *Macias*, 2025 IL App (1st) 230678, ¶¶ 29-34; *Travis*, 2024 IL App (3d) 230113, ¶¶ 27-33; *Brooks*, 2023 IL App (1st) 200435, ¶¶ 90-105. Therefore, we affirm the order of the circuit court dismissing Delgado’s section 2-1401 petition.

¶ 23 Affirmed.