

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERELL CHARLES,

Defendant-Appellant.

UNPUBLISHED

March 10, 2009

No. 283452

Wayne Circuit Court

LC No. 07-009605-FH

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to serve consecutive sentences of two years' imprisonment for the felony-firearm conviction, and two years' probation for the heroin conviction. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court concluded that defendant had possessed eight packets of heroin, while also in possession of a firearm. The court stated, "The firearm does not have any nexus or relationship to the other crime other than it was simply carried at the time he possessed the drugs." Defendant's sole issue on appeal is whether his conviction of felony-firearm violated his right to bear arms as guaranteed by the state and federal constitutions.

This Court reviews constitutional questions de novo. *People v Conat*, 238 Mich App 134, 144; 605 NW2d 49 (1999). However, defendant did not raise this issue at trial, leaving it unpreserved. A defendant asserting an unpreserved claim of error must show a plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). The reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* Defendant has not met this burden.

According to the Michigan Constitution, "[e]very person has a right to keep and bear arms for the defense of himself and the state." Const 1963, art 1, § 6. However, that a right is constitutionally guaranteed does not mean that a citizen can never forfeit that right, or that the right cannot be subjected to reasonable regulation. See *People v Swint*, 225 Mich App 353, 374-375; 572 NW2d 666 (1997). Accordingly, "A right to bear arms does not encompass the

possession of a firearm during the commission of a felony.” *People v Graham*, 125 Mich App 168, 172-173; 335 NW2d 658 (1983).

“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.” US Const, Am II. The United States Supreme Court has recently determined that the Second Amendment guarantees a personal right to firearms for purposes of self-defense, and as a check against tyranny. *District of Columbia v Heller*, ___ US ___; 128 S Ct 2783, 2801-2802, 2821-2822; 171 L Ed 2d 637 (2008). However, it also held that the right to bear arms was not without limitation, and advised that “prohibitions on the possession of firearms by felons” remained presumptively valid. *Id.* at 2816-2817.

Because neither the state nor federal constitutional right to bear arms extends to doing so in connection with felonious conduct, we reject defendant’s constitutional challenges.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering