

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001992-MR

JEFFREY SCOTT RICHARDSON

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 02-CR-00019

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Jeffrey Scott Richardson has appealed from a final judgment and sentence of the Calloway Circuit Court entered on August 14, 2002, which, following a jury verdict convicting Richardson of possession of a firearm by a convicted felon,¹ sentenced him to five years' imprisonment. Having concluded that the statute prohibiting convicted felons from possessing firearms is not unconstitutional, we affirm.

¹ Kentucky Revised Statutes (KRS) 527.040.

On February 25, 2002, a Calloway County grand jury indicted Richardson on one count of possession of a firearm by a convicted felon; one count of possession of drug paraphernalia, second or subsequent offense;² one count of possession of a controlled substance in the first degree;³ one count of operating a motor vehicle on a suspended license;⁴ one count of operating a motor vehicle without insurance;⁵ and on one count as being a persistent felony offender in the second degree.⁶

On June 27, 2002, Richardson was tried before a jury on the possession of a firearm by a convicted felon charge, which had been severed from his other five charges. At the close of the Commonwealth's case-in-chief, Richardson moved the trial court for a directed verdict of acquittal on the grounds that KRS 527.040, the statute prohibiting convicted felons from possessing firearms, violated his right to bear arms under the Second Amendment to the United States Constitution.⁷ After the trial court denied Richardson's motion, and after Richardson

² KRS 218A.500(2).

³ KRS 218A.1415.

⁴ KRS 189A.090.

⁵ KRS 304-39.080.

⁶ KRS 532.080(2).

⁷ U.S. Const. amend. II. The Second Amendment to the United States Constitution states in full:

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.

presented his defense, he renewed his motion for a directed verdict of acquittal on the same grounds. This second motion was also denied by the trial court.

After hearing the evidence, the jury returned a verdict of guilty and recommended a sentence of five years' imprisonment. On August 14, 2002, after a pre-sentence investigation had been completed, the trial court followed the jury's recommendation and sentenced Richardson to five years' imprisonment. This appeal followed.

Richardson's sole argument on appeal is that KRS 527.040, the statute prohibiting convicted felons from possessing firearms, violates § 1(7) of the Kentucky Constitution's Bill of Rights. This provision states:

All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

. . .

Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.

According to Richardson, our General Assembly may not prohibit the possession of firearms unless the law is related to the carrying of concealed weapons. We disagree.

First, we note that this precise argument was never presented to the trial court. Although Richardson argued in general terms that KRS 527.040 violated his right to bear arms and that the statute violated the Second Amendment to the United States Constitution, Richardson never argued before the trial court that KRS 527.040 violated § 1(7) of the Kentucky Constitution's Bill of Rights. Hence, this issue would not ordinarily be considered for the first time on appeal.⁸

Regardless of this procedural defect, however, Richardson's argument is plainly without merit. In Eary v. Commonwealth,⁹ our Supreme Court held that KRS 527.040 did not violate § 1(7) of the Kentucky Constitution's Bill of Rights:

The remaining issue which we will confront is the contention of the movant that the statute in question--KRS 527.040--is unconstitutional, as it conflicts with § 1(7) of the Kentucky Constitution, which section grants to all men "[t]he right to bear arms in defense of themselves" This specious argument is almost patently meritless and would not warrant comment except that both movant and respondent state that it is a point of first impression in this jurisdiction. We hold that the statute is constitutional as a valid exercise of the police power of the Commonwealth of Kentucky. It is our opinion that a statute limiting the possession of firearms by persons who, by their past commission of serious felonies, have demonstrated a

⁸ McDonald v. Commonwealth, Ky., 554 S.W.2d 84, 86 (1977)(holding that issues not presented to the trial court for a ruling will not as a general rule be considered on appeal).

⁹ Ky., 659 S.W.2d 198, 200 (1983).

dangerous disregard for the law and thereby present a threat of further criminal activity is reasonable legislation in the interest of public welfare and safety and that such regulation is constitutionally permissible as a reasonable and legitimate exercise of the police power [citations omitted].

Thus, Richardson's argument has been rejected by our state's highest court. Accordingly, Richardson's conviction pursuant to KRS 527.040 did not violate his right to bear arms under § 1(7) of the Kentucky Constitution's Bill of Rights.

Based on the foregoing, the judgment of the Calloway Circuit Court is affirmed.

ALL CONCUR.

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