

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK DAVID SESSIONS,

Defendant-Appellee.

FOR PUBLICATION

May 18, 2004

9:10 a.m.

No. 251836

Livingston Circuit Court

LC No. 03-013545-AR

Official Reported Version

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

BANDSTRA, P.J. (*dissenting*).

While agreeing with the majority's statement of the principles that guide us in this statutory construction case, I come to a different conclusion regarding the meaning of the statute.

The analysis I present here, when compared with that of the majority, illustrates that the statute is not as "clear" or "straightforward" as the majority suggests; instead, judicial construction is necessary. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). The majority presents a plausible construction of the language, but certainly not one required by the words of the statute. Most notably, the majority's interpretation seems to read the statute's "completed" as if it said "complied with" instead. In contrast to the majority's interpretation, I would conclude that the language in MCL 750.224f(1)(c) means that, once probation has been discharged, "all conditions of probation" have been "successfully completed" because there are simply no conditions remaining. That remains the case and subsection c remains satisfied regardless of any failure to comply with conditions of probation that might have occurred earlier, while probation was still in effect.

That construction of subsection c of the statute is at least as plausible as that of the majority. Further, it seems to comport better with the full statute and the manner in which it is structured. In its main part, subsection 1 says that the felon in possession offense can occur "until the expiration of three years after" the listed "circumstances." In subsections a and b, the listed circumstances involve points in time when prior offenders complete aspects of their penalties, i.e., when all fines have been paid and when all terms of imprisonment have been served. My interpretation of the language in subsection c has it refer to a similar point in time, i.e., when probation has been completed. That should be the triggering event under subsection c without regard to any prior failure to comply with conditions imposed during the probationary period.

Finally, I do not find that the "intent" of the legislation as referenced by the majority provides any assistance in interpreting the language at issue here. Anyone formerly convicted of a felony could be considered to have a disregard for ordered society and to be a threat to public safety. Nonetheless, the Legislature through the statute clearly provides that those felons can legally possess weapons under certain circumstances. The "intent" of the statute affords no assistance whatsoever in determining when or how the probation provision at issue here is to be satisfied.

I would affirm.

/s/ Richard A. Bandstra