

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EARL MARTIN,

Defendant-Appellant.

UNPUBLISHED

March 8, 2002

No. 227943

Oakland Circuit Court

LC No. 99-169979-FH

Before: Whitbeck, C.J., and Markey and K. F. Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a concealed weapon (“CCW”), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a second habitual offender, MCL 769.10, to 1 to 7-1/2 years’ imprisonment for the CCW conviction with credit for 156 days served. On the conviction for felon in possession of a firearm, the trial court sentenced defendant as a second habitual offender to 1 to 7 ½ years’ imprisonment. He was sentenced to a two-year term of imprisonment with credit for 156 days on his conviction for felony-firearm. The judgment of sentence specifies that the two-year sentence imposed for felony-firearm runs consecutive to the conviction for felon in possession of a firearm. Defendant appeals of right. We affirm.

I. Basic Facts and Procedural History

On December 10, 1999, an officer responded to a domestic call. When he arrived, a woman advised that she observed certain individuals firing a gun. Thereafter, the officer noted five individuals walking in the vicinity. The officer ordered these five individuals to place their hands atop the hood of his police cruiser. Four out of the five individuals complied. Defendant, however, did not comply until the officer commanded him three times to do the same. The officer then observed defendant take his hand out of his pocket, place his left hand on the hood of the vehicle and place his right hand down between his legs. Observing this conduct, the officer drew his weapon and proceeded to the other side of the police cruiser, whereupon he observed a gun on the ground.

The officer confiscated the weapon and placed defendant under arrest for carrying a concealed weapon. The jury found defendant guilty on the three firearms offenses. Defendant appeals as of right and we affirm.

II. Double Jeopardy

First, defendant argues that his conviction for both felony-firearm and felon in possession of a firearm violate the constitutional prohibitions against double jeopardy. We disagree.

A double jeopardy challenge presents a question of law that this Court reviews de novo. *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001). Indeed, both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense. See U S Const, Am V; Const 1963, art 1, § 15. The purpose underlying the constitutional prohibition against double jeopardy is to ensure that a defendant does not endure any more punishment than that intended by the Legislature. *People v Mayfield*, 221 Mich App 656, 661-662; 562 NW2d 272 (1997). To discern the Legislature's intent, we are bound by the words expressed in the applicable statute and may not otherwise speculate. *Dillard*, *supra* at 166.

After considering the language employed in the felony-firearm statute and the statute governing felon in possession, the court in *Dillard*, *supra*, stated that, “[b]ecause defendant’s felon in possession charge unquestionably does not constitute one of the explicitly enumerated exceptions to the felony-firearm statute, we conclude that the Legislature clearly intended to permit a defendant charged with felon in possession to be properly charged with an additional felony-firearm count.” *Id.* 167-168. The court definitively concluded therefore, that the protections against double jeopardy were not compromised. *Id.* at 169. Accordingly, in the case at bar, we decline to find that defendant’s respective convictions twice placed him in jeopardy for a single offense.

We similarly reject defendant’s argument that his dual convictions of both carrying a concealed weapon and felon in possession of a firearm violate the double jeopardy provisions of both the United States and Michigan Constitutions. *Mayfield*, *supra* at 661-662.

Considering the distinct nature of the concealed weapon statute and the felon in possession statute relative to the interests that both seek to protect, “leaves no question that the Legislature intended to permit multiple punishments when a single act violates both statutes.” *Id.* at 662. Accordingly, a dual conviction for a single act violative of both the concealed weapon statute and felon in possession statute does not violate the prohibition against double jeopardy. *Id.* Consequently, in the case at bar, we uphold defendant’s convictions for these offenses.

III. Consecutive Sentences

Defendant also argues that the trial court erroneously required his felony-firearm sentence to be served consecutive to his sentences for carrying a concealed weapon *and* felon in possession of a firearm. A review of the record belies defendant’s position. First, the judgment of sentence indicates that the trial court only required the sentence for “Count II” to be served consecutive to the felony-firearm sentence. Count II is the felon in possession of a firearm

offense. Thus, contrary to defendant's contention, the trial court did not order the felony-firearm sentence to be served consecutive to the sentence for carrying a concealed weapon.

Furthermore, the trial court did not err in requiring the felony-firearm sentence to be served consecutive to the sentence for felon in possession of a firearm. The felony-firearm statute, MCL 750.227b(2), provides:

(2) A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony, and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

Discussing this statute, our Supreme Court in *People v Clark*, 463 Mich 459, 463-464; 619 NW2d 538 (2000), stated:

Subsection 2 clearly states that the felony-firearm sentence "shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the *felony* or attempt to commit the *felony*." It is evident that the emphasized language refers back to the predicate offense discussed in subsection 1, i.e., the offense during which the defendant possessed a firearm. No language in the statute permits consecutive sentencing with convictions other than the predicate offense. (Emphasis in original.)

In the instant case, the crime of felon in possession comprised the "predicate offense" for purposes of the felony-firearm charge. Thus, the trial court properly ordered defendant's sentences for felony-firearm and felon in possession of a firearm to be served consecutively.

IV. Jury Instructions

Finally, defendant argues that the trial court erroneously instructed the jury on the felony-firearm charge. Defendant did not object to the trial court's jury instructions at trial. Therefore, we review this unpreserved issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). A review of the record reveals that the trial court's instructions on felony-firearm comport with CJI2d 11.34 and *Clark, supra* at 461-462. See also *People v Lewis*, 415 Mich 443, 454-455; 330 NW2d 16 (1982). Consequently, defendant does not demonstrate the requisite plain instructional error requiring reversal.

Affirmed.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly