STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 15, 2004
v	No. 246712 Wayne Circuit Court
TERMAINE ANTONIO TURNER, Defendant-Appellant.	LC No. 02-004747

Before: Murphy, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for carrying a concealed weapon, MCL 750.227, possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

Defendant first argues that he was erroneously convicted of felon in possession of a firearm because his 1997 conviction for attempted carrying a concealed weapon (ACCW) is not a "specified felony" under MCL 750.224f. We disagree.

"Statutory interpretation is a question of law reviewed de novo on appeal. The overriding goal guiding judicial interpretation of statutes is to discover and give effect to legislative intent." *People v Parker,* 230 Mich App 677, 685-686; 584 NW2d 753 (1998).

This Court has held that attempted possession of cocaine is a "specified felony" under MCL 750.224f because MCL 750.224f(5) "clearly indicates that the definition of felony applies throughout the statute. . . . Accordingly, the definition of felony provided in subsection 5 also applies to the definition of specified felony found in subsection 6. . . . In other words, subsections 5 and 6 are overlapping categories, not discrete classifications, with the specified felony category being entirely subsumed within the felony category." *Parker, supra* at 685-687. Because *Parker, supra,* held that for purposes of MCL 750.224f(6), a "specified felony" is a subcategory of "felony," and therefore, includes attempts to violate the law, defendant's 1997 ACCW conviction is a conviction for a "specified felony" under MCL 750.224f(6)(iii). We reject defendant's argument that the holding in *Parker, supra,* is limited to substance abuse cases, a reading clearly at odds with the Court's statement that "subsections 5 and 6 are overlapping categories, not discrete classifications, with the specified felony category being entirely subsumed within the felony category." *Id.* at 686.

Defendant next argues that his convictions for felony-firearm and felon in possession of a firearm violate his constitutional protections against double jeopardy. We disagree.

Defendant did not preserve this issue for review, since he did not raise it at trial. *People v Wilson*, 242 Mich App 350, 359-360; 619 NW2d 413 (2000). Consequently, this Court's review is for a plain error that affected defendant's substantial rights. *Id.* at 360 citing *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). To avoid forfeiture of an unpreserved issue on appeal, a criminal defendant must show that (1) an error occurred, (2) the error was plain, and (3) the plain error affected substantial rights. It is the defendant rather than the government who bears the burden of persuasion with respect to prejudice. *Carines, supra* at 763-764.

Defendant's argument on this issue has already been considered and rejected by this Court in *People v Dillard*, 246 Mich App 163, 166; 631 NW2d 755 (2001) and our Supreme Court recently reaffirmed this position in *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003), providing that "[b]ecause the felon in possession charge is not one of the felony exceptions in the statute, it is clear that defendant could constitutionally be given cumulative punishments when charged and convicted of both felon in possession, MCL 750.224f, and felony-firearm, MCL 750.227b." Accordingly, it was not error, much less plain error, to allow defendant to be convicted and sentenced for both felony-firearm and felon in possession of a firearm because there was no violation of the double jeopardy clause.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Jessica R. Cooper