STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0627

Benjamin L. Tapia,
Appellant,

vs.

Dakota County Sheriff, Tim Leslie,
Respondent.

Filed February 18, 2020
Affirmed
Hooten, Judge
Dissenting, Smith, Tracy M., Judge

Dakota County District Court
File No. 19HA-CV-18-4369

Steven K. Budke, Leverson Budke, P.A., Eagan, Minnesota (for appellant)

James C. Backstrom, Dakota County Attorney, Helen R. Brosnahan, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Cleary, Chief Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

For the purposes of obtaining a permit to carry, a person deemed ineligible to possess a firearm because of an adjudication of a "crime of violence," as defined under a prior version of Minn. Stat. § 624.712, subd. 5 (2018), is not rendered eligible to possess a firearm as a result of a 2014 amendment that subsequently removed that person's offense from the list of offenses designated as crimes of violence. Because the plain language of the amendment indicates that it applies to crimes committed on or after its effective date,

the sheriff does not have a clear duty to issue a permit to a person who was previously deemed ineligible.

O P I N I O N

HOOTEN, Judge

Appellant challenges a district court order denying a writ of mandamus to require respondent sheriff to issue him a permit to carry a firearm. Appellant asserts that the district court erred by concluding that he is precluded from obtaining a permit to carry based on his 1998 adjudication for an offense that was removed from the list of offenses designated as crimes of violence under Minn. Stat. § 624.712, subd. 5, by a 2014 legislative amendment. Because we conclude that appellant remains a person prohibited from carrying a firearm for purposes of obtaining a permit to carry, we affirm.

FACTS

In 1998, appellant Benjamin Tapia was adjudicated delinquent for felony theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(1) (1996). At the time of his adjudication, theft of a motor vehicle was listed as a crime of violence under Minn. Stat. § 624.712, subd. 5 (1996), which rendered Tapia ineligible to possess a firearm for ten years after the expiration of the sentence or disposition. *See* Minn. Stat. § 624.713, subd. 1(b) (1996) (providing that a person adjudicated of a crime of violence is ineligible to possess a firearm).

In 2003, the legislature amended the statute governing eligibility to carry a firearm to create a lifetime ban on possessing a firearm once a person is deemed ineligible. Minn. Stat. § 624.713, subd. 1(k) (Supp. 2003). The legislature retroactively applied the lifetime

ban, stating, "The lifetime prohibition on possessing . . . firearms for persons convicted or adjudicated delinquent of a crime of violence in clause (b), applies only to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993." Because Tapia was adjudicated delinquent for theft of a motor vehicle in 1998, after the date provided in the statute, the lifetime ban applied to Tapia.

In 2014, the legislature amended the definition of a "crime of violence" under Minn. Stat. § 624.712, subd. 5 (2014), and removed theft of a motor vehicle from the list of crimes. 2014 Minn. Laws ch. 260 (amending Minn. Stat. § 624.712, subd. 5 (2012)). However, the effective date of the amendment was August 1, 2014, and it expressly applied "to crimes committed on or after that date." *Id.*

In March 2017, Tapia applied for a permit to carry a pistol. The Dakota County Sheriff issued Tapia a permit to carry the next month. The following year, during an annual review of Tapia's records, the sheriff's office discovered Tapia's 1998 juvenile delinquency adjudication and voided his permit to carry in July 2018. Tapia returned his permit-to-carry card to the sheriff's office.

Tapia petitioned the district court for a writ of mandamus to order the Dakota County Sheriff to issue him a permit to carry in the fall of 2018. Following a hearing, the district court denied Tapia's petition for a writ of mandamus, concluding that the lifetime ban applied to him despite the 2014 amendment to the definition of a "crime of violence."

Tapia appeals.

ISSUE

Did the district court err by denying Tapia's petition for a writ of mandamus based on his ineligibility to possess a firearm?

ANALYSIS

Minn. Stat. § 624.714, subd. 2 (2018), governs whether a sheriff may grant or deny an application for a permit to carry. "[A] sheriff must issue a permit to an applicant if the person" meets the following criteria: (1) the applicant has training in the safe use of a pistol, (2) the applicant is at least 21 years old and a U.S. citizen or permanent resident, (3) the applicant completes an application, and (4) the applicant is not prohibited from possessing a firearm. Minn. Stat. § 624.714, subd. 2(b). The statute lists a number of Minnesota statute sections under which an applicant is prohibited from possessing a firearm, resulting in the denial of the applicant's permit to carry. *Id.* One of those sections is Minn. Stat. § 624.713 (2018), entitled "Certain persons not to possess firearms." Under subdivision 1(2) of the statute, a person is ineligible to possess a firearm if that person "has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence." Minn. Stat. § 624.713, subd. 1(2). A "crime of violence" is defined in Minn. Stat. § 624.712, subd. 5 (2018).

Tapia acknowledges that his adjudication for theft of a motor vehicle in 1998 was, at that time, an offense included in the definition of a "crime of violence." As a result of his adjudication, he was ultimately banned for life from possessing a firearm. Despite this lifetime ban, Tapia argues that the 2014 amendment, which removed theft of a motor

vehicle as an offense designated as a "crime of violence" under Minn. Stat. § 624.712, subd. 5, renders him eligible to possess a firearm.

A. The language of the 2014 amendment is unambiguous.

The 2014 amendment included an effective-date provision: "This section is effective August 1, 2014, and applies to crimes committed on or after that date." 2014 Minn. Laws ch. 260 (amending Minn. Stat. § 624.712, subd. 5). Tapia argues that the effective-date language in the 2014 amendment is, on its face, ambiguous.

"Interpreting a statute is a question of law, which we review de novo." *In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015). "Our objective in statutory interpretation is to effectuate the intent of the legislature." *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). When the legislature's intent is clear from the statute's unambiguous language, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 60 (Minn. 2014) (quotation omitted). "A statute is ambiguous when its language is subject to more than one reasonable interpretation." *Riggs*, 865 N.W.2d at 682. Therefore our first question is whether the language of the statute is ambiguous. *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009). Only when a statute is ambiguous may we then apply cannons of construction to determine the statute's meaning. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

When the legislature amended the "crime of violence" definition in 2014 to remove theft of a motor vehicle, the legislature included the following effective-date provision: "This section is effective August 1, 2014, and applies to crimes committed on or after that date." 2014 Minn. Laws ch. 260 (amending Minn. Stat. § 624.712, subd. 5). The

legislature has clarified that "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2018). Additionally, even when an effective date is not specified in an act, Minn. Stat. § 645.02 (2018) provides that a law goes into effect on August 1st following a statute's final enactment and thus does not automatically apply retroactively.

According to the plain language of the amended statute, the legislature clearly did not intend for the statute to be applied retroactively to crimes committed *before* August 1, 2014. Instead, the language unambiguously applies the modified list of crimes of violence to those crimes that are committed on or after August 1, 2014. A crime that was removed from the list, such as theft of a motor vehicle, would not be considered a crime of violence under the statute if the theft occurred on or after August 1, 2014. Conversely, because we do not apply the statute retroactively, a crime that was removed from the list but occurred before August 1, 2014, is still considered a crime of violence under the statutory scheme.

Tapia's theft of a motor vehicle occurred before August 1, 2014. His 1998 crime is thus considered a crime of violence because theft of a motor vehicle was not effectively removed from the "crime of violence" definition until 2014. Because the language of the statute is unambiguous and Tapia was adjudicated delinquent of theft of a motor vehicle in 1998, Tapia is ineligible to possess a firearm under the statutory scheme as the lifetime ban in Minn. Stat. § 624.713, subd. 1, still applies to him.

There is no dispute that the 2014 provision is unambiguous as it pertains to possession crimes occurring on or after the effective date. However, the issue presented here is whether the amendment should also be construed to retroactively change Tapia's

eligibility status to possess a firearm because of his predicate crime of violence, which was defined as a crime of violence under a prior version of the statute. Tapia is not able to point to any language in the amendment or the caselaw that provides for such retroactive application. The dissent points to *State v. Smith*, 899 N.W.2d 120 (Minn. 2017), for the assertion that the effective-date provision was ambiguous because it could be interpreted in two ways—as applying to the predicate crime or the possession crime. But the dissent cites to the concurrence for this assertion, which is not binding precedent. *See Maryland v. Wilson*, 519 U.S. 408, 412–13, 117 S. Ct. 882, 885 (1997) (stating that concurring opinions are non-binding). The majority opinion in *Smith* actually supports our analysis, i.e., that we are to apply the clear and unambiguous language of the statute and that there was no ambiguity created by the plain language of the effective-date provision. *Smith*, 899 N.W.2d. at 123–26 (holding that the plain and unambiguous language of the statute defining "qualified prior impaired driving incident" did not include Smith's offense because the offense was not listed in the statute).

Rather, the law is clear—statutes may not be retroactively applied unless "clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21. It is a central tenet of criminal law that we apply the law in effect at the time a crime is committed. *See State v. Ward*, 847 N.W.2d 29, 31 n.1 (Minn. App. 2014) ("The statutes that were in effect when respondent committed the . . . offense apply."), *review denied* (Minn. Mar. 17, 2015). Because the law that was in effect at the time of the offense controls, and the legislature did not indicate that the amendment to the definition of a "crime of violence" was

retroactive, a crime of violence committed by Tapia in 1998 remains a crime of violence absent an explicit legislative instruction otherwise.

Even if the effective date of the amendment created an ambiguity as to whether it applied to the possession or the predicate crime of violence, and we applied the canons of construction, Tapia would still not be able to show that the 2014 amendment retroactively changed his eligibility status to possess a firearm. In resolving an ambiguity, we are to "construe statutes as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *State v. Clark*, 755 N.W.2d 241, 250 (Minn. 2008) (quotation omitted). We are not to interpret a statute in such a way as to create an absurd result. *See* Minn. Stat. § 645.17 (2018).

The legislature has previously amended the statute governing eligibility to carry a firearm and intended to apply the amendment retroactively. *See, e.g.*, Minn. Stat. § 624.713, subd. 1(k) (Supp. 2003) (applying the lifetime ban to "offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993").[1] Significantly, the legislature did not do that here. And because the lifetime prohibition does not include any exceptions that would allow us to apply a different definition of a "crime of violence" to Tapia's adjudication, and in light of the legislature's

[1] The dissent states that the 2003 amendment's application of the lifetime ban to offenders who were not discharged from sentence or court supervision for a crime of violence on or after August 1, 1993, was not a retroactive provision. This contradicts what our court has said previously in *State v. Weber*, 741 N.W.2d 402, 404 (Minn. App. 2007), that the 2003 amendment was retroactive and specifically "was plainly intended to limit the retroactive effect . . . by not imposing the new lifetime prohibition on those whose ten-year prohibition had expired."

policy decision to not retroactively change his status, this court is unable to lift Tapia's lifetime prohibition from carrying a firearm. Simply put, it would be absurd for us to interpret the applicable statutes as mandating a lifetime ban on Tapia's right to carry a firearm while, at the same time, mandating that the sheriff has a clear duty to issue Tapia a permit to carry a firearm.

B. State v. Schluter is distinguishable from this case.

Tapia argues that the effective-date language in the "crime of violence" definition does not apply to his crime based on our prior decision in *State v. Schluter*, 653 N.W.2d 787 (Minn. App. 2002), *review denied* (Minn. Feb. 18, 2003). In *Schluter*, we addressed whether applying the then-current definition of a "crime of violence" violated the prohibition against ex post facto laws. 653 N.W.2d at 792.

Schluter was convicted of felony possession of lysergic acid diethylamide (LSD) with intent to distribute in 1986. *Id.* at 788. On the date of his conviction, felony possession with intent to distribute was not listed as a crime of violence under Minn. Stat. § 624.712, subd. 5 (1986). *Id.* at 790. But by 2000, when Schluter was caught in possession of ammunition and several firearms, the legislature had amended the "crime of violence" definition to include Schluter's previous controlled substance crime. *Id.* at 789; *see* Minn. Stat. § 624.712, subd. 5 (2000) (listing controlled substances under chapter 152 as a "crime of violence"). Accordingly, the state charged Schluter with possession of a firearm by an ineligible person based on his prior conviction of a crime of violence. *Schluter*, 653 N.W.2d at 789. On appeal, Schluter argued that, as applied to him, the 2000 version of the

statute defining a person ineligible to possess a firearm violated the Ex Post Facto Clause because it retroactively increased his punishment for his 1986 conviction. *Id.*

Because *Schluter* was a case of first impression in Minnesota, we first looked to other jurisdictions for guidance on whether the amendment constituted an ex post facto law. *Id.* at 789–92. Relying on caselaw from other states and federal courts, we determined that "Schluter's conviction of felon in possession does not increase the burden of punishment for his 1986 offense." *Id.* at 792. Instead, "[t]he illegal act was possessing the firearm in 2000, not the possession of LSD in 1986." *Id.* We determined that "Schluter's 1986 sentence, long since served, is unaffected by the change in the law; only his *status* due to that prior conviction has changed." *Id.* (emphasis added). We concluded that Minn. Stat. § 624.713, subd. 1(b), as applied to Schluter, did not violate the prohibition against ex post facto laws. *Id.*

Tapia argues that, based on our decision in *Schluter*, we are bound by our reading of the 2014 amended statute's effective-date provision as applying only to crimes of possessing a firearm as an ineligible person, and not to the underlying crimes listed in the definition of a "crime of violence." The consequence of this reading is that any individual who committed a crime that subsequently was removed from classification as a crime of violence after the individual's conviction could not subsequently be convicted of ineligible possession of a firearm despite the statute's effective date. In fact, the sheriff conceded that after the 2014 amendment and *Schluter*, if Tapia were to possess a firearm, he could not be convicted of the crime of being ineligible to possess a firearm under Minn. Stat. § 624.713 because the offense for which he was convicted is no longer on the list of

qualifying crimes of violence. However, Tapia has not been convicted of ineligible possession of a firearm—instead, he is seeking a permit to carry a firearm. Neither our interpretation of the statute nor *Schluter* implies that Tapia is authorized to hold a permit to carry under Minn. Stat. § 624.714, subd. 2. Indeed, *Schluter* can be distinguished for three reasons.

First, Tapia seeks relief in a civil matter, whereas *Schluter* was a criminal case. *See Schluter*, 653 N.W.2d at 789. Tapia challenges his status to hold a permit to carry, while Schluter challenged his conviction for possessing a firearm as an ineligible person. *See id.* Schluter was convicted of two crimes: the underlying crime that rendered him ineligible, and the crime of possessing a firearm as an ineligible person. *Id.* We determined that the crime for which Schluter was being punished was not the underlying crime but the specific conduct of possession of a firearm by an ineligible person. *Id.* at 792. Unlike in *Schluter*, there is only one relevant crime in Tapia's case—theft of a motor vehicle in 1998. Tapia was never charged with a second crime of possessing a firearm by an ineligible person. Rather, Tapia submitted an application for a permit to carry to the Dakota County Sheriff. While our language in *Schluter* indicates that the relevant date of a crime subject to this statute is the second crime of possession of a firearm by an ineligible person, in Tapia's case, there is no analogous second crime.

Second, unlike Schluter, Tapia was on notice from the time of his delinquency adjudication in 1998 that his crime carried a prohibition on possessing a firearm. In *Schluter*, we dealt with an amendment to the "crime of violence" definition in which the offense, possession of LSD, was *added* to the list after Schluter was convicted of that crime,

and Schluter unsuccessfully argued that it violated the Ex Post Facto Clause because he did not have notice of the illegality of possessing a firearm. *Schluter*, 653 N.W.2d at 790. This case does not present an ex post facto argument because unlike the scenario in *Schluter*, Tapia's crime was *removed* from the list. Tapia's status as an ineligible person was established at the time he was adjudicated in 1998. The legislature's removal of his crime from the list, effective on August 1, 2014, does not extinguish Tapia's status as an ineligible person for purposes of holding a permit to carry.

Third, as mentioned above, we do not apply laws retroactively unless "clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21; *see also Cooper v. Watson*, 187 N.W.2d 689, 693 (Minn. 1971). Although we did not address retroactivity directly in *Schluter*, we discussed it when Schluter appealed his conviction to this court a second time. *See Schluter v. State*, No. A04-119, 2004 WL 1925431 (Minn. App. Aug. 31, 2004), *review denied* (Minn. Oct. 27, 2004). In an unpublished opinion, we determined that Schluter's postconviction petition was barred because we had already considered and decided the issue raised. *Id.* at *2. We discussed our prior decision: "[I]n Schluter's direct appeal this court inherently and necessarily decided that Schluter's conviction for ineligible possession of a firearm does not violate the prohibition against retroactive application of laws found in section 645.21." *Id.* Because we addressed the appropriateness of Schluter's criminal conviction, we were required to look at the existing "crime of violence" definition to determine if his crime rendered him ineligible to possess a firearm.

As *Schluter* is distinguishable for the foregoing reasons, we conclude that our reasoning in *Schluter* does not apply to the present case.

C. Tapia did not meet his burden of showing that he was entitled to the extraordinary remedy of obtaining a writ of mandamus.

An appellate court "review[s] de novo a decision on a writ of mandamus based solely on a legal determination." *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017) (quotation omitted). A writ of mandamus is an "extraordinary remedy" that "compel[s] the performance of an act which the law specially enjoins as a duty." *Id.* (quotations omitted). "To obtain a writ of mandamus," Tapia "must therefore show that (1) the [sheriff] failed to perform an official duty clearly imposed by law, (2) which caused a public wrong specifically injurious to [the petitioner], and (3) for which there is no other adequate legal remedy." *Id.* (quotations omitted).

In this case, we must simply determine if Tapia has met his burden in showing that he was entitled to such extraordinary relief. Under Minn. Stat. § 624.714, subd. 2(b), the sheriff was required to issue a permit to Tapia if he met the requirements, which included a requirement that he was eligible to possess a firearm. Because Tapia had a lifetime ban on his use or possession of a firearm, Tapia was prohibited from possessing a firearm and the sheriff complied with the statute by determining that he could not allow Tapia to have a permit to carry. *See* Minn. Stat. § 624.714, subd. 2(b)(4).

Because a writ of mandamus is an "extraordinary remedy," there was no clearly imposed duty requiring the sheriff to grant Tapia a permit to carry. *Madison Equities*, 889 N.W.2d at 571 (providing that the judiciary may not order a member of the executive branch to fulfill a duty unless the sheriff "failed to perform an official duty clearly imposed by law").

D E C I S I O N

For purposes of being eligible to hold a permit to carry, the legislature's 2014 amendment removing theft of a motor vehicle from the list of crimes of violence under Minn. Stat. § 624.712, subd. 5, does not apply retroactively to render Tapia eligible to possess a firearm. We therefore affirm the district court's denial of Tapia's petition for writ of mandamus because Tapia cannot show that the sheriff failed to perform an official duty clearly imposed by law.

Affirmed.

SMITH, TRACY M., Judge (dissenting)

I respectfully dissent. Because the offense underlying Tapia's 1998 conviction is not a "crime of violence" under current law, it does not render him ineligible to possess a firearm. I would reverse the district court's denial of a writ of mandamus compelling the sheriff to grant Tapia's application for permit to carry and remand for issuance of the writ.

I. The current definition of "crimes of violence" applies to Tapia's application, and he is not ineligible under that definition.

Although this case involves the civil permitting process and not the criminal offense of possession of firearm by an ineligible person, the two issues are closely intertwined in Minnesota's firearm statutes. A brief review of the statutory scheme helps frame the issue in this case.

Many of Minnesota's laws governing the possession, sale, and manufacture of firearms are contained in Minn. Stat. §§ 624.71-.7192 (2018). Importantly, one of those statutes, Minn. Stat. § 624.713, subd. 1, creates categories of "certain persons not to possess firearms." The categories of "ineligible persons" include anyone "who has been convicted of, or adjudicated delinquent [of,] . . . a crime of violence." Minn. Stat. § 624.713, subd. 1(2). A "crime of violence" is defined by Minn. Stat. § 624.712, subd. 5, which lists the offenses that qualify.[1]

[1] This definition of "crime of violence" by its terms applies to Minn. Stat. §§ 624.711-.717, *see* Minn. Stat. § 624.712, subd. 1, and, in addition, is incorporated by reference into a number of other statutes, s*ee*, *e.g.*, Minn. Stat. §§ 260B.245, subd. 1(b), 609.165, subd. 1b, .668, 609B.332, 611A.039, subd. 1, 629.725(b) (2018).

As for criminal possession of a firearm, Minn. Stat. § 624.713, subd. 2, makes it a felony for an ineligible person under Minn. Stat. § 624.713, subd. 1(2), to possess a firearm. As for permits to carry, Minn. Stat. § 624.714, subd. 2(b), provides that, barring other circumstances not at issue here, a sheriff must issue a permit to an applicant if the person otherwise qualifies and is not ineligible under Minn. Stat. § 624.713. Consequently, the same crimes of violence listed in section 624.712, subdivision 5, render a person ineligible under section 624.713 and can form the basis for an ineligible-possession criminal charge as well as render the person unable to obtain a permit to carry.

With that background, I turn to the question of whether Tapia is ineligible to possess a firearm under this statutory scheme. The majority concludes that the definition of "crime of violence" in effect at the time of Tapia's application for a permit to carry does not apply to him in light of the effective-date language of the 2014 legislation removing his crime from the definition of "crime of violence." The central question, therefore, is what the legislature meant when, amending the definition of "crimes of violence" in section 624.712, subdivision 5, in 2014, it stated: "This section is effective August 1, 2014, and applies to crimes committed on or after that date." 2014 Minn. Laws ch. 260, § 1, at 1. More specifically, the question is what the term "crimes" means in that statement.

"The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous." *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). If it is, the canons of construction may be applied to resolve the ambiguity. *Id.* "A statute is ambiguous only if it is subject to more than one reasonable interpretation." *Id.*

A. The statute is ambiguous.

On its face, the term "crimes" in the effective-date statement is subject to more than one interpretation. One interpretation is that "crimes" refers to the crimes listed in the statutory definition of "crimes of violence"—in other words, the *predicate crimes* that render a person ineligible. *See* Minn. Stat. §§ 624.712, subd. 5 (listing crimes of violence); .713, subd. 1(2) (making persons who committed crimes of violence ineligible to possess firearms). This "predicate crimes" interpretation is the interpretation that the majority adopts, concluding that it is mandated by the plain language of the law. Under this interpretation, the amended definition of "crimes of violence" does not apply to Tapia's application because Tapia's predicate crime occurred before August 1, 2014. Instead, the former definition applies, rendering him ineligible.

A second interpretation is that "crimes" refers not to the predicate crimes listed in section 624.712, subdivision 5, but rather to the crimes that persons commit by possessing a firearm when they are ineligible to do so—in other words, *possession crimes*. *See* Minn. Stat. § 624.713, subd. 2 (imposing criminal penalties for possession of firearms by ineligible persons). Under this "possession crimes" interpretation, the phrase "applies to crimes committed on or after [August 1, 2014]" is not relevant to Tapia because he has applied for a permit—not committed a possession crime—and the amended definition of "crimes of violence" applies to his application. Under the amended definition, he is not ineligible.

Both the predicate-crimes and the possession-crimes interpretations are reasonable based on the face of the statute. *Cf. State v. Smith*, 899 N.W.2d 120, 130 (Minn. 2017)

(Gildea, J., concurring) (observing that the phrase "applies to crimes committed on or after [the effective date]" of an amendment to the criminal-vehicular-homicide statute has more than one reasonable meaning in the context of the amendment of a criminal statute involving predicate crimes). The statute is therefore ambiguous, and the application of canons of construction is appropriate to discern its meaning.

B. Application of the current law is not retroactive.

As an initial matter, the majority frames the issue as whether the legislature provided for the retroactive application of law when it amended the definition of "crimes of violence" in section 624.712, subdivision 5, and concludes that, because it did not, the current definition does not apply to Tapia. I disagree that application of the current definition to a person seeking a permit is the retroactive application of law.

As the majority explains, statutes are construed not to be retroactive unless clearly intended to be so by the legislature. *See* Minn. Stat. § 645.21 (2018). But, when a person applies for a permit, using the statutory definition of "crimes of violence" in effect at the time of the permit application is not the retroactive application of law. If the applicant has no criminal history, a history that includes a crime that was never considered a crime of violence, or a history that includes a crime that was, at one time, considered a crime of violence but has since been removed from the list, then the applicant is not ineligible to possess a firearm under the definition of "crimes of violence." Conversely, if the applicant has a history of a crime that either has always been on the list of crimes of violence or was not considered a crime of violence when committed but was thereafter added to the

statutory list, then the applicant is ineligible to possess a firearm. In none of these situations is the application of the law in effect at the time of the permit application retroactive.

This conclusion follows from our decision in *State v. Schluter*, 653 N.W.2d 787 (Minn. App. 2002). Schluter was convicted of a felony controlled-substance crime in 1986. *Schluter*, 653 N.W.2d at 788. At the time of his conviction, controlled-substance offenses were not listed as crimes of violence under Minn. Stat. § 624.712, subd. 5 (1986). *Id.* at 790. In 1987, however, the statute was amended to include Schluter's crime. *Id.* In 2000, police searched Schluter's home and found firearms. *Id.* at 789. They also did a background check on Schluter and learned of his 1986 controlled-substance crime. *Id.* Because his 1986 controlled-substance crime was listed as a crime of violence under Minn. Stat. § 624.712, subd. 5 (2000), Schluter was charged with and convicted of possession of a firearm by an ineligible person. *Id.*

Schluter appealed from his conviction, arguing that applying the amended version of Minn. Stat. § 624.713, subd. 1(b), to him violated the federal and state constitutional prohibitions on ex post facto laws. *Id.* at 790. He argued that applying the amended statute retroactively increased his punishment for his 1986 controlled-substance crime. *Id.* This court disagreed, reasoning that Schluter's 1986 sentence was "unaffected by the change in the law; only his *status* due to that prior conviction has changed, making him subject to Minn. Stat. 624.713, subd. 1(b)." *Id.* at 792 (emphasis added). The "illegal act was possessing the firearm in 2000, not the possession of LSD in 1986." *Id.* Although Schluter's underlying offense was not a crime of violence when committed, his underlying offense

was listed as a crime of violence when he possessed the firearm in 2000, so his ineligible-possession conviction did not violate the prohibition on ex post facto laws. *Id.*[2]

Here, as in *Schluter*, Tapia's underlying prior conviction is unaffected by the amendment to section 624.712, subdivision 5; it is his status due to that conviction that has changed. And it is his current status to which the current law applies.

The majority observes that *Schluter* was a criminal case and this is a civil case. But, even though this case involves a permit-to-carry application, and not a possession charge, the identical statutes apply to render a person "ineligible" for both purposes, *see* Minn. Stat. §§ 624.712, subd. 5 (defining "crime of violence"), .713, subds. 1(2) (making individuals convicted of crimes of violence ineligible to possess firearms or ammunition), 2 (making it a crime for an ineligible person to possess a firearm), .714, subds. 2, 6

[2] The conclusion that application of the current law to Schluter was not retroactive was confirmed in our unpublished decision on Schluter's second appeal. After his unsuccessful first appeal, Schluter sought postconviction relief, arguing that his ineligible-possession conviction violated the prohibition on the retroactive application of laws found in Minn. Stat. § 645.21. *See Schluter v. State*, No. A04-0119, 2004 WL 1925431, at *1 (Minn. App. Aug. 31, 2004), *review denied* (Minn. Oct. 27, 2004). In an unpublished opinion, we affirmed the district court's decision that Schluter's argument was procedurally barred because the retroactivity issue was "inherently and necessarily" decided in his previous appeal. *Id.* at *2. We reasoned, "Fundamental to our analysis in Schluter's direct appeal is the determination that the 'offenses committed on or after' the statute's effective date refers to the offense of possessing the firearm, not the predicate offense on which the illegal possession is based." *Id.* at *2. Though the second *Schluter* decision is unpublished and thus does not control here, its assessment of the first *Schluter*'s necessary implication is compelling. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993) (observing that, while unpublished decisions are not precedential, they may be of persuasive value).

(requiring sheriff to deny permits to ineligible individuals), and the difference in the type of case is immaterial with respect to retroactivity.

The legislature's action in 2003 does not alter my view regarding retroactivity. One of the sheriff's arguments for the predicate-crimes approach is that the legislature, in 2003, explicitly stated an intention to make an amendment to the firearms law retroactive but did not do so here. But this argument misunderstands the import of the 2003 effective-date language—it did not make the amendment to the firearms law retroactive.

The 2003 amendment changed the ten-year ban on firearm possession for "violent felons" to a lifetime ban. *See* 2003 Minn. Laws ch. 28, art. 3, §§ 1-12, at 290-98. The legislature stated, "The lifetime prohibition on possessing . . . firearms for persons convicted or adjudicated delinquent of a crime of violence . . . applies *only* to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993." *Id*., § 8 at 296 (emphasis added).[3] When the 2003 amendment became effective on August 1, 2003, everyone discharged on or after August 1, 1993, would have still been subject to the ten-year ban. *See id.* § 1 at 290 (amending Minn. Stat. § 242.31, subd. 2a, to require that the order of discharge for persons convicted of crimes of violence now advise of a lifetime firearm ban, when it previously advised of a ten-year ban). The

[3] Similarly, the final section of the 2003 legislation provides the effective date for the preceding eleven sections, which amend several statutes, including the definition of crime of violence. *Id.* § 12 at 297-98. It states that the preceding eleven sections are effective August 1, 2003, but adds that the provisions of those sections that "impose a lifetime prohibition on possessing . . . firearms apply to persons who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993." *Id.*

effective-date language of the 2003 amendment thus specified that the new lifetime ban did not apply to persons whose ten-year ban had expired; it captured *only* those persons who were then currently subject to the ten-year ban or would subsequently become subject to a ban. This approach avoided the result of imposing a lifetime ban on persons whose ten-year ban had already expired. *See State v. Weber*, 741 N.W.2d 402, 404 (Minn. App. 2007) (explaining that the statutory language "was added to accommodate" those persons who had been discharged from sentence ten or more years earlier and had already become eligible to possess firearms). The effective-date language thus narrowed the scope of persons to whom the lifetime ban would otherwise apply in the absence of that language. As in *Schluter*, the amendment addressed the person's current status; it was not retroactive legislation.[4]

In sum, applying the current definition of "crimes of violence" does not violate the principle that laws are not retroactive unless expressly made so by the legislature. [5]

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[4] As the majority correctly observes, in *Weber* we characterized the effective-date language in the 2003 amendment as a "retroactivity provision." *See id.* at 404. But retroactivity was not necessary to our holding in that case, and that characterization is not binding here. *See Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 611 (Minn. 2016) (declining to apply dicta from a previous case). Weber was on probation for his 2005 conviction of a crime of violence when he was found in possession of a firearm, and he challenged the resulting criminal possession charge on the ground that he was not yet "discharged from sentence" and therefore not subject to the ban. *Weber*, 741 N.W.2d at 403. We rejected his argument. *Id.* at 404. Retroactivity was not necessary to our decision that the legislature intended the ban to apply to offenders who were still serving their sentences for their crimes of violence. *Id.* at 403-04.

[5] That applying the current law is not retroactive accords with a test for retroactivity identified in Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012). Scalia and Garner write that "retroactivity ought to be judged with regard to the act or event the statute is meant to regulate." Antonin Scalia & Bryan A. Garner,

C. Interpreting "crimes" as possession crimes, not predicate crimes, best accords with legislative use of the phrase "applies to crimes committed on or after [the effective date]."

Next, interpreting "crimes" as possession crimes and not the predicate crimes in the definition of "crimes of violence" best accords with other legislative use of the term in effective-date statements. The effective-date language at issue here has been repeatedly used by the legislature to refer to new crimes. Again, the language at issue is, "This section is effective August 1, [year of enactment], and applies to crimes committed on or after that date." 2014 Minn. Laws ch. 260, § 1, at 1. This exact language appears in other legislative acts that change criminal laws in ways unrelated to predicate crimes. *See, e.g.*, 2015 Minn. Laws ch. 65, art. 3, § 25, at 27 (modifying the definition of ammunition); 2009 Minn. Laws ch. 137, §§ 2-9, at 2-6 (modifying the definitions of multiple terms related to sex trafficking, with some terms defining predicate crimes and some not, but all terms using the same effective-date language).

And, significantly, the language has been used in amendments to the firearms law in a way that could refer only to new possession crimes. In 2015, the legislature amended Minn. Stat. § 624.712—the same "definitions" section where "crime of violence" appears—to add a definition of "ammunition." 2015 Minn. Laws ch. 65, art. 3, § 25, at 27. The section of the act adding the ammunition definition contains the identical effective-

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Reading Law: The Interpretation of Legal Texts 263 (2012). Here, the firearms law is meant to regulate the permitting and possession of firearms, not the underlying conduct that gave rise to criminal convictions in the past. Thus, applying the amended firearms law to the current "act or event" (possessing weapons, like Schluter, or seeking a permit to carry, like Tapia) is not the retroactive application of law.

date statement at issue here: "This section is effective August 1, [year of enactment], and applies to crimes committed on or after that date." The very next section of the act amends Minn. Stat. § 624.713, subd. 1—defining "ineligible persons"—to add that such persons, in addition to not possessing firearms, are not to possess ammunition. 2015 Minn. Laws ch. 65, art. 3, § 26, at 27. The predicate-crime interpretation is impossible to apply to the language in the 2015 ammunition amendment because "ammunition" itself is not a crime. "Crimes," in that effective-date statement, necessarily refers to new possession crimes committed on or after August 1, 2015.

Here, the predicate-crimes approach reads the identical effective-date language in the 2014 amendment to convey a different meaning that is unique to *subdivision 5* of section 624.712 (a subdivision that lists crimes). We should not assume that the legislature intended this inconsistent result. It is a "basic rule of statutory construction" that "like language should be construed in a like manner." *See Hince v. O'Keefe*, 632 N.W.2d 577, 584 (Minn. 2001); *cf. Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) ("We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations."). Interpreting "crimes" to mean possession crimes is the consistent interpretation of the phrase "crimes committed on or after [the effective date]."

D. The possession-crimes interpretation yields the only reasonable result to serve the purpose of the firearms law.

Finally, reading the 2014 amendment's effective-date language as referring to predicate crimes rather than possession crimes leads to an unreasonable result, given the

purpose of the firearms law. The "object to be attained" by legislation is considered in interpreting an ambiguous statute, as are "the consequences of a particular interpretation." Minn. Stat. § 645.16(4), (6) (2018). Moreover, it is to be presumed that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17(1) (2018); *see also Am. Family Ins. Grp.*, 616 N.W.2d at 278 ("[C]ourts should construe a statute to avoid absurd results and unjust consequences.").

Under the predicate-crimes approach, when a person applies for a permit to carry, the sheriff necessarily must perform a criminal background check to find any criminal convictions and, upon finding a conviction, must ascertain what version of Minn. Stat. § 624.712, subd. 5, applies to that conviction, taking into account any relevant effective-date language.[6] This means that, if two people committed identical crimes, but in different years, one of the applicants could be treated as having committed a crime of violence while the other would not. And, as in Tapia's case, a person who more recently committed a

[6] This process could be complicated. The legislature has amended the list of crimes of violence in Minn. Stat. § 624.712, subd. 5, numerous times to add and remove offenses. *See, e.g.*, 2014 Minn. Laws ch. 260, § 1, at 1 (removing theft of an automobile in violation of Minn. Stat. § 609.52 (2014) and third-degree burglary in violation of Minn. Stat. § 609.582, subd. 3 (2014); adding fifth-degree assault in violation of Minn. Stat. § 609.224 (2014), domestic assault in violation of Minn. Stat. § 609.2242 (2014), and domestic assault by strangulation in violation of Minn. Stat. § 609.2247 (2014)); 2009 Minn. Laws ch. 137, § 11, at 6 (adding solicitation, inducement, promotion of prostitution, and sex trafficking in violation of Minn. Stat. § 609.322 (2008)); 1994 Minn. Laws ch. 636, art. 3, § 24, at 2240-41 (adding assaults motivated by bias in violation of Minn. Stat. § 609.2231, subd. 4 (1994)). And, because a crime's inclusion on the list may turn on the particular effective-date language in the legislation amending the list, a sheriff may have to consult not only the codified statutes but also the session laws to ascertain whether the person has committed a disqualifying crime of violence.

deleted crime of violence—such as automobile theft—would not be ineligible to possess a firearm while a person with an older conviction for the same crime would be.

Firearms restrictions are "a measure designed to protect the public safety by keeping firearms out of the hands of convicted criminals who have committed crimes which, in the legislature's judgment, are indications of future dangerousness." *See State v. Moon*, 463 N.W.2d 517, 520 (Minn. 1990). The legislature has evidently determined that automobile theft is not necessarily indicative of future dangerousness. It is difficult to see a reasonable basis for the legislature to treat an older conviction of automobile theft as an indication of future dangerousness, but not a recent conviction for the same crime.[7]

In sum, the most plausible, consistent, and reasonable interpretation of the amendment is that "crimes" refers to possession crimes, not predicate crimes.[8] Under this

[7] I note, too, that the predicate-crimes interpretation adopted by the majority means that persons who, before August 1, 2014, committed a crime that was *added* to the statutory list in 2014 will not be susceptible to possession charges based on that predicate crime. In other words, the result will be different from the result in *Schluter*. In *Schluter*, the current list applied to Schluter's possession of a firearm, rendering him ineligible. But the necessary flip side of the predicate-crimes approach is that offenses that were added to, rather than removed from, the crime-of-violence definition by the 2014 amendment will not be predicate crimes either. For example, one offense that the 2014 amendment added as a crime of violence is fifth-degree assault. Under the predicate-crimes approach, a person who committed fifth-degree assault prior to August 1, 2014, will not be ineligible under § 624.713, subd. 1(2), to possess a firearm, but a person who committed the same crime on or after August 1, 2014, will be ineligible under that provision. It is true that the effective-date language for the 2014 amendment is different from the effective-date language in the 1987 amendment at issue in *Schluter*—the latter merely said, "This act is effective the day following final enactment," 1987 Minn. Laws ch. 276, § 5, at 1429—so there is arguably a statutory basis for this difference in outcome from *Schluter*, but, for the reasons already discussed, I do not believe the legislature intended this result in 2014.

[8] In support of its interpretation, the majority cites the criminal-law principle that courts apply the law in effect at the time a person was convicted. But, if Tapia's eligibility to

interpretation, a person is ineligible to possess a firearm under Minn. Stat. § 624.713, subd. 1(2)—which means they can be charged with a possession crime under Minn. Stat. § 624.713, subd. 2, or be denied a permit to carry under Minn. Stat. § 624.714, subd. 2(b)—if the person committed a crime of violence as defined by the current version of Minn. Stat. § 624.712, subd. 5. Because Tapia's conviction is not listed in the current definition of "crimes of violence," it does not render him ineligible to possess a firearm.

II. A writ of mandamus should issue.

The sheriff argues that Tapia is not entitled to a writ of mandamus because he has another ordinary legal remedy.

A petitioner may obtain a writ of mandamus if they show that "(1) [a public official] failed to perform an official duty clearly imposed by law, (2) which caused a public wrong specifically injurious to [the petitioner], and (3) for which there is no other adequate legal remedy." *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017) (quotations omitted).

Under Minn. Stat. § 624.714, subd. 2, a sheriff "must issue a permit to an applicant" if the applicant meets the statutory criteria, one of which is that he or she "is not prohibited from possessing a firearm," unless an exception applies. Here, the sheriff voided the permit

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possess a firearm were determined as of the time of his conviction, he would be eligible now, since, when he was convicted in 1998, he was subject to only a ten-year ban, not a lifetime ban. *See* 2003 Minn. Laws ch. 28, art. 3, §§ 1-12, at 290-98. Moreover, *Schluter* holds that a person may be ineligible under current law even if their predicate crime was not listed as a crime of violence at the time of conviction. *Schluter*, 653 N.W.2d at 792. In other words, the person's status is not fixed at the time of conviction for the predicate crime but may change with amendments to the list of disqualifying crimes.

issued to Tapia because he believes, under what I would hold to be an erroneous interpretation of the law, that Tapia is prohibited from possessing a firearm. The sheriff's refusal to issue the permit caused a public wrong specifically injurious to Tapia.

The sheriff suggests, though, that Minn. Stat. § 609.165, subd. 1d (2018), provides an alternative legal remedy. That statutory provision authorizes a person who is "prohibited by state law" from possessing firearms to "petition a court to restore the person's ability to possess firearms" upon a showing of good cause. Minn. Stat. § 609.165, subd. 1d. But Tapia is not seeking restoration of his ability to possess firearms. Rather, he argues that state law does not prohibit him from possessing them in the first place. For the reasons I have given, I agree. I therefore conclude that Minn. Stat. § 609.165, subd. 1d, is not an available legal remedy.

Because all elements required for a writ of mandamus are present, I would reverse the district court and remand with directions to issue the writ.