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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2043**

State of Minnesota,
Respondent,

vs.

Rickey Johnson,
Appellant.

**Filed October 29, 2012
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27CR1037368

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Bjorkman, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

On appeal from his conviction of being an ineligible person in possession of a firearm, appellant argues that (1) because he relied on a statement in his 1995 probation-

discharge order that he would be eligible to possess a firearm after ten years, the lifetime ban on firearm possession contained in Minn. Stat. § 624.713, subd. 1(2), as applied to appellant, violates due process and his conviction must be reversed; (2) that same lifetime ban, as applied to appellant, violates appellant's Second Amendment rights; and (3) the district court abused its discretion in refusing to admit appellant's probation discharge order as a trial exhibit, necessitating a new trial. We affirm.

FACTS

In 1992, appellant was arrested for and charged with one count of controlled substance crime in the fifth degree in violation of Minn. Stat. §§ 152.025, subds. 2(1), 3(a), 609.101 (1990), for possessing less than one gram of crack cocaine. Appellant pled guilty to the charge and was placed on probation.

On June 8, 1995, appellant's probation officer recommended that appellant be discharged from probation based on his compliance with all conditions of his probationary sentence. Based on this recommendation, the Dakota County District Court issued the following order on June 13, 1995:

IT IS ORDERED that Rickey NMN Johnson is hereby discharged from probation and restored to all civil rights and to full citizenship with full right to vote and hold office the same as if said conviction had not taken place.

This order does not apply to any other charges or convictions for which you may be incarcerated, on probation, parole or supervised release.

 x This offense is deemed a misdemeanor under the provision of M.S.A. 609.13.

x You are not entitled to ship, transport, possess or receive a firearm until 10 years have elapsed since you have been restored to civil rights and during that time you are not to have been convicted of any other crime of violence.

On August 12, 2010, the West Metro SWAT team executed a no-knock search warrant at a home where appellant was renting a basement apartment. The law-enforcement officers executed the warrant by battering down the front door of the home and verbally announcing themselves while so entering. Appellant came upstairs from the basement with a loaded handgun, which was pointed towards the ground. When police instructed appellant to drop the handgun, appellant placed it on the ground.

On August 13, 2010, appellant was charged with one count of ineligible person in possession of a firearm in violation of Minn. Stat. §§ 624.713, subds. 1(2), 2(b), 609.11 (2010). The underlying felony resulting in the firearm ineligibility is appellant's 1992 conviction for controlled substance crime in the fifth degree.

Prior to trial, appellant moved for dismissal of the complaint for lack of probable cause. Appellant argued that the 1995 court order discharging him from probation stated that he would be ineligible to possess a firearm for a 10-year period and that the 10-year period had already passed. At the hearing on appellant's motion, he developed this argument further, arguing that his right to due process was violated because he had not been notified of a 2003 change in the law that amended the 10-year prohibition into a lifetime prohibition. His motion to dismiss was denied.

A jury trial was held on June 15 and 16, 2011. Appellant admitted that he had possessed a firearm on August 13, 2010, and testified that he had acquired the gun as

collateral for a pawn-type transaction with an acquaintance. Appellant admitted that he had been duly convicted in 1992 of the felony offense of controlled substance crime in the fifth degree. Appellant stated that he believed, on the basis of the 1995 court order, that he was permitted to own and possess firearms after June 8, 2005.

At trial, appellant sought to introduce the June 8, 1995 court order, but the district court excluded the document on the grounds that it would confuse and mislead the jury. The district court also considered and rejected appellant's requested jury instruction that appellant's good faith belief that he was permitted to possess a firearm was a defense to the charge of ineligible person in possession of a firearm.

The jury found appellant guilty and this appeal followed.

D E C I S I O N

I.

Appellant argues that his right to due process under the United States and Minnesota constitutions has been violated because the 1995 court order informed him that he would be eligible to possess a firearm ten years after the date of that order, but the state nevertheless prosecuted him for possessing a firearm after that date.

Both the Minnesota and federal constitutions prohibit the state from depriving a criminal defendant of "life, liberty, or property without due process of law." U.S. Const. amends. XIV, § 1; Minn. Const. art. I, § 7. Whether a criminal defendant's due-process rights have been violated is a question of law, which this court reviews de novo. *State v. Lehman*, 749 N.W.2d 76, 82 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

The June 8, 1995 order provided that appellant was prohibited from possessing firearms for a 10-year period. It accurately advised appellant of the then-existing period of ineligibility. *See* Minn. Stat. § 624.713, subd. 1(b) (1994) (prohibiting persons convicted of a crime of violence from possessing firearms for a period of ten years after the restoration of their civil rights or the expiration of their sentence). In 2003, the legislature amended the statute, making the 10-year prohibition a lifetime prohibition on the possession of firearms. Minn. Laws ch. 28, art. 3, § 10.

We first note that the June 8, 1995 order provided that appellant was “not entitled to . . . possess or receive a firearm until 10 years have elapsed.” Appellant was not advised by that order that the Dakota County District Court would ensure his eligibility to possess firearms thereafter. The 10-year prohibition provided by the order was undeniably accurate at the time of the order, which said nothing about the possible additional bases of prohibition (e.g., changes in the law or other convictions).

“It is a deeply rooted concept of our jurisprudence that ignorance of the law is no excuse. All members of an ordered society are presumed either to know the law or, at least, to have acquainted themselves with those laws likely to affect their usual activities.” *State v. King*, 257 N.W.2d 693, 697–98 (Minn. 1977) (citations omitted). Furthermore, a person need not be aware that conduct is unlawful in order to be prosecuted for that conduct. Minn. Stat. § 609.02, subd. 9(5) (2010).

Appellant is presumed to have been on notice that the change in the statute rendered him ineligible to carry a firearm. He cannot now rely on the 1995 court order to argue that he is somehow exempt from the statutory change. Nor does appellant’s

professed belief that he had been eligible to possess a firearm have any bearing on whether he can be prosecuted for being an ineligible person in possession of a firearm.

Appellant nevertheless argues that his right to due process was violated in the same manner as the rights of the petitioner in *Whitten v. State*, 690 N.W.2d 561 (Minn. App. 2005).

In *Whitten*, the petitioner was discharged from probation with a form order that contained a box that could be checked to inform him that he was ineligible to possess a firearm for ten years. *Id.* at 563. However, unlike the 1995 order in this case, the discharge order in *Whitten* did *not* have that box checked. *Id.* In other words, it was erroneous. This court held that this error “effectively advised appellant that he had the right to possess firearms” as of the moment that the order was issued. *Id.* at 566. *Whitten* held that the petitioner was entitled to rely on that erroneous representation, and that due process consequently prohibited the state from prosecuting him for being an ineligible person in possession of a firearm. *Id.* at 566.

However, in *State v. Grillo*, 661 N.W.2d 641, 645 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003), this court upheld the conviction of a defendant who had been eligible to possess firearms at the time of his underlying felony conviction, but who had been rendered ineligible to possess firearms by a subsequent change in the law. *Grillo* rejected the argument that the defendant had received no effective notice of the prohibition, and that his due process rights had thus been violated. *Id.*

The facts in this case more closely resemble *Grillo* than *Whitten*. The discharge order in *Whitten* made an inaccurate statement of law. 690 N.W.2d at 565–66. The order

in this case was entirely accurate when issued, and appellant does not contend otherwise. In *Grillo*, as in this case, the defendant's professed ignorance of the law stemmed from a subsequent amendment to the law. 661 N.W.2d at 645. *Grillo* rejected the argument that in 2005 the state had not provided adequate notice of the amendment, citing *King*. Ignorance of the law is not a defense. *Grillo*, 661 N.W.2d at 645 (citing *King*, 257 N.W.2d at 697–98).

Appellant's right to due process of law was not violated in this case. He is presumed to have known that the legislature amended the 10-year ineligibility period into a lifetime prohibition, and due process did not require that he be individually notified that the law had changed after his discharge from probation in 1995.

II.

Appellant argues that Minnesota's lifetime ban on firearm possession for persons convicted of a crime of violence within the meaning of Minn. Stat. § 624.712, subd. 5 (2010), is unconstitutional as applied to him because it violates his Second Amendment right to keep and bear arms.

Constitutional issues should generally not be considered for the first time on appeal. *State v. Hughes*, 758 N.W.2d 577, 582 (Minn. 2008). As appellant concedes, he did not bring his Second Amendment challenge below. Appellant has waived consideration of this issue. *Id.*

III.

Appellant argues that the district court should have admitted the 1995 court order into evidence at trial.

A district court's evidentiary rulings are reviewed for an abuse of discretion. *State v. Nunn*, 561 N.W.2d 902, 906–07 (Minn. 1997).

Under the Minnesota Rules of Evidence, the district court may exclude evidence when its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Minn. R. Evidence 403.

At trial, the state argued that the 1995 court order should be excluded under rule 403 because it did not reflect current law and could confuse and mislead the jury. The district court agreed with this argument and sustained the state's objection to the admission of the order into evidence.

The district court properly concluded that the probative value of the 1995 order was negligible. *See* Minn. Stat. § 609.02, subd. 9(5) (“Criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which the actor is prosecuted or the scope or meaning of the terms used in that statute.”); *King*, 257 N.W.2d at 697–98 (stating that “ignorance of the law is no excuse”). The risk of confusion was considerable due to a dispositive change in the law between when the 1995 order was issued and when appellant was charged: appellant would have been not guilty under the 1995 statute, but was guilty under the 2010 statute. The district court did not abuse its discretion by sustaining the objection to the 1995 court order.

Affirmed.