

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY**

IN RE:

**DEREK S. MULLINS,
[STATE OF OHIO - APPELLANT].**

CASE NO. 9-14-43

OPINION

**Appeal from Marion County Common Pleas Court
Trial Court No. 14 MS 0008**

Judgment Affirmed

Date of Decision: July 6, 2015

APPEARANCES:

Denise M. Martin for Appellant

Ted I. Coulter for Appellee

ROGERS, P.J.

{¶1} Plaintiff-Appellant, the State of Ohio, appeals the judgment of the Court of Common Pleas of Marion County relieving Applicant-Appellee, Derek Mullins, of disability pursuant to R.C. 2923.14. On appeal, the State argues that the trial court erred by relieving Mullins of disability pursuant to R.C. 2923.14 because R.C. 2923.14 was not the proper statutory remedy applicable to Mullins. For the following reasons, we affirm the judgment of the trial court.

{¶2} On March 31, 2014, Mullins filed an application for relief from disability pursuant to R.C. 2923.14. In his application, Mullins argued that he was under a disability that prevented him from being considered for a concealed carry permit pursuant to R.C. 2923.125. Specifically, Mullins stated that he has two prior drug convictions: one for drug abuse, a minor misdemeanor; and one for possession of drug paraphernalia, a misdemeanor of the fourth degree.¹ Given the language of R.C. 2923.125, the sheriff reviewing Mullins' application would have to deny it based on these convictions. A hearing was held on Mullins' application on October 6, 2014.²

{¶3} In its judgment entry, filed on October 23, 2014, the trial court granted Mullins' application. The entry noted that the State did not oppose Mullins'

¹ On March 30, 2001, Mullins pled guilty to a minor misdemeanor drug abuse in the Municipal Court of Marion County, in case no. CRB0100616. On August 15, 2003, Mullins was convicted of possession of drug paraphernalia in the Marion Municipal Court in case no. CRB0301488C.

² We note that the State failed to provide this court with a transcript of the hearing, thus we must presume regularity in the trial court's proceedings. *State v. West*, 3d Dist. Auglaize No. 2-06-04, 2006-Ohio-5834, ¶ 53.

application. (Docket No. 8 p. 1). The court found that Mullins possessed two prior misdemeanor drug convictions, but no prior felony convictions or any convictions for any crime of violence. The court found that under the amendment to R.C. 2923.13(A), Mullins was not placed under what is typically called a “disability.” Specifically, the court stated that the prior version, which did not distinguish between felony and misdemeanor drug offenses for purposes of being under disability, was amended and replaced with language that differentiated between felony and misdemeanor drug offenses. Only the former places an individual under a “disability.” Thus, the court found that Mullins was no longer prohibited “from acquiring, having, carrying, or using a firearm.” (*Id.* at 3).

{¶4} However, the court found that although Mullins was not prohibited from possessing a firearm, Mullins was prohibited from obtaining a concealed carry permit. R.C. 2923.125, the statute regulating the granting and denying of concealed carry permits, does not distinguish between felony and misdemeanor offenses. Specifically, R.C. 2923.125(D)(1)(e) provides that a sheriff shall not grant a concealed carry permit to anyone that has “been convicted of or pleaded guilty to * * * an offense under Chapter 2925 * * * [.]” R.C. 2923.125(D)(5) further provides that if a court grants an individual relief from disability, then the sheriff cannot even consider the conviction when determining whether to grant the request.

{¶5} The trial court found that although it would not be inconsistent for the General Assembly to “impose a stricter requirement for obtaining a concealed carry permit than it does to openly carry a firearm, it would be inconsistent to permit a person with a felony drug offense conviction to obtain relief from disability and a concealed carry permit while a person with only a misdemeanor drug offense conviction would be prohibited from obtaining a permit.” (Docket No. 8, p. 5).

{¶6} The court then discussed the requirements to apply for relief from disability and how the relief statute restores all civil firearm rights to the full extent enjoyed by any citizen. Thus, because the statute includes “all civil firearm rights,” the court found that R.C. 2923.14 was an available remedy to Mullins. The court concluded by finding that given the conflict between R.C. 2923.13 and 2923.125, R.C. 2923.14 must be interpreted to allow people convicted of misdemeanor drug offenses to seek the same remedy as convicted felons. Consequently, the court granted Mullins’ application for relief.

{¶7} The State filed this timely appeal, presenting the following assignment of error for our review.

Assignment of Error

THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT RELIEVED THE APPLICANT OF DISABILITY PURSUANT TO R.C. 2923.14 AND ALLOWED FOR

**APPLICANT TO APPLY FOR AND OBTAIN A CARRY
CONCEAL PERMIT PURSUANT TO R.C. 2923.125.**

{¶8} In its sole assignment of error, the State argues that the trial court erred by granting Mullins' application for relief from disability. Specifically, the State argues that Mullins, a person with two misdemeanor drug convictions, cannot seek relief from R.C. 2923.14 since he is not a convicted felon. We disagree.

{¶9} Initially, we note that the State did not raise the issue that Mullins was barred from seeking relief from disability under R.C. 2923.14 at the hearing. (Docket No. 8, p. 1). As such, it has waived all but plain error regarding this issue. *See Shanklin v. Lowman*, 3d Dist. Logan No. 8-10-07, 2011-Ohio-255, ¶ 40.

{¶10} By its very language, R.C. 2923.14 is civil in nature. *See* R.C. 2923.14. Although it is located in the criminal section of the Ohio Revised Code, it merely provides an avenue for a person to have his or her civil firearm rights restored.

{¶11} In civil matters, “ ‘the plain error doctrine is not favored and may be applied only in the extremely rare case * * * where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.’ ” *Ordean v. Ordean*, 3d Dist. Shelby No. 17-

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06-15, 2007-Ohio-3979, ¶14, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶12} On appeal, the State has failed to offer any argument that plain error existed. It does not explain how the trial court’s decision affected the basic fairness, integrity, or public reputation of the judicial process. Nor does it explain how this is an example of an extremely rare case that challenges the legitimacy of our judicial process. The only argument the State put forth in its brief was that R.C. 2923.125 provides the mechanism for how Mullins can obtain a concealed carry permit.

{¶13} R.C. 2923.14 states, in relevant part, “Any person who is *prohibited from* acquiring, having, *carrying*, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.” (Emphasis added.) Further, R.C. 2923.14(F) reads “Relief from disability granted pursuant to this section *restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen * * * [.]*” (Emphasis added.)

{¶14} “In construing statutes, we must read words and phrases in context and construe them in accordance with rules of grammar and common usage.” *Kimber v. Davis*, 10th Dist. Franklin No. 12AP–888, 2013-Ohio-1872, ¶ 12, citing *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶ 11. Further, it is the duty of this court “to give effect to the words used in a statute, not

to insert words not used.” *State v. S.R.*, 63 Ohio St.3d 590, 595 (1992), citing *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St.3d 50 (1988), paragraph three of the syllabus. If a statute’s language is clear and unambiguous, the court must apply the statute as written. *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶ 9.

{¶15} R.C. 2923.14 is unambiguous, and thus, we must give effect to its plain meaning. *See Slingluff v. Weaver*, 66 Ohio St 621 (1902), paragraph two of the syllabus. Here, Mullins is prohibited from carrying a firearm that is concealed. R.C. 2923.14 is quite clear when that “[a]ny person who is prohibited from * * * carrying * * * firearms” may seek relief under the statute. Since R.C. 2923.14 provides relief for a person who cannot carry a concealed firearm, it is a mechanism available for Mullins and those similarly situated.

{¶16} Moreover, the former R.C. 2923.14 included language that allowed only persons subject to disability under R.C. 2923.13 to apply for relief from disability. However, in 2011, the General Assembly amended R.C. 2923.14 and removed the language which limited the right to apply for relief from disability. The current version of R.C. 2923.14 has not changed since the 2011 amendment. In drafting R.C. 2923.14, the General Assembly has placed confidence in the discretion of the trial court judge in granting relief from disability.

{¶17} Finally, although this court agrees with the trial court's ultimate decision, we find no basis for the trial court's statutory interpretation of R.C. 2923.13 and 2923.125. Since the language of R.C. 2923.14 was clear and unequivocal, there was no need to dive into a discussion involving the other two statutes. All of the trial court's statutory interpretation outside of R.C. 2923.14 should be disregarded from future consideration.

{¶18} Accordingly, we overrule the State's sole assignment of error.

{¶19} Having found no error prejudicial to the State in the particulars assigned or argued, we affirm the judgment of the trial court.

Judgment Affirmed

WILLAMOWSKI, J., concurs.

SHAW, J., concurs in Judgment Only.

/jlr