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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 36296-5-III

STATE OF WASHINGTON, Respondent,

v.

VICTOR JAMES MATHIS, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

At the conclusion of the State's case against Victor Mathis for two counts of unlawfully possessing a firearm, Mathis moved to dismiss the prosecution on the grounds that the State failed to prove a constitutionally valid prior conviction that prohibited him from owning a firearm. The trial court denied his motion, and the jury convicted him. On appeal, Mathis contends that the case is controlled by *State v. Swindell*, 93 Wn.2d 192, 607 P.2d 852 (1980) and because the State failed to prove his felony conviction for the predicate offense was the product of a knowing, intelligent, and voluntary guilty plea, the evidence is insufficient prove an essential element of the charge. Accordingly, Mathis's convictions must be reversed and dismissed.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: Insufficient evidence supports the convictions for unlawful possession of a firearm.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Whether the State must affirmatively prove as an essential element of unlawful possession of a firearm that the predicate felony conviction was constitutionally valid.

ISSUE NO. 2: Whether the State has met its burden to prove a constitutionally valid predicate felony conviction when the conviction records introduced at trial do not show that Mathis knowingly, intelligently, and voluntarily waived his rights.

IV. STATEMENT OF THE CASE

The State charged Victor Mathis with two counts of first degree possession of a firearm. CP 1. On the night in question, police responded to a call of a fight in progress at Mathis's house. RP 55-56, 60-61. When one of the participants told them Mathis had pointed a rifle at him, Mathis admitted to police that there were guns in the house and turned one over to them that night. RP 57. After obtaining a criminal history that showed prior felony convictions, police obtained a warrant for other guns and recovered a second one. RP 57, 64.

To establish the prior conviction element, the State introduced certified copies of conviction documents from the State of Georgia showing that a "Victor Lewis James"¹ had been convicted of multiple felonies arising from three causes between 1989 and 1991. Ex. 8. In all three causes, conviction was obtained by guilty plea. Ex. 8, pp. 2, 24, 27.

¹ At trial, Mathis disputed his identity as Victor James Lewis. RP 144-47. For purposes of this appeal, it is assumed that the prior convictions of Victor James Lewis were properly attributed to the Appellant, Victor James Mathis.

In each instance, nothing in the conviction record indicates that the defendant was advised of his right to a jury trial, his presumption of innocence, the State's burden of proof, or any other rights that he relinquished by pleading guilty. *Id.*

After the State rested, Mathis moved to dismiss the case, arguing the State had failed to present evidence of a constitutionally valid prior conviction. RP 123-24. He contended that the records failed to include a guilty plea statement or other acknowledgment of his advisement and waiver of his constitutional rights. RP 124. The trial court denied the motion, and the jury convicted Mathis as charged. RP 141, 217, CP 89-90. The trial court imposed a high end sentence of 102 months and \$600 in legal financial obligations. RP 237, 240, CP 157, 159. Mathis now appeals. CP 164.

V. ARGUMENT

When an appellant challenges the sufficiency of evidence supporting a conviction, the reviewing court views the evidence in the light most favorable to the State and determines whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In a prosecution for unlawfully possessing a firearm, the State bears an unusual burden to affirmatively prove that the prior conviction that resulted in the loss of firearm rights is constitutionally valid. *See State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719 (1986) (“In only two situations has this court held that the state, before using a prior conviction, had to affirmatively show its constitutional validity: . . . (2) a proceeding to establish the crime of felon in possession of a firearm.”). Consequently, when a defendant challenges the constitutional validity of a prior conviction and offers “a colorable, fact-specific argument supporting the claim of constitutional error in the prior conviction, the State must prove the constitutional validity of the prior conviction beyond a reasonable doubt. *State v. Summers*, 120 Wn.2d 801, 812, 846 P.2d 490 (1993).

The Washington Supreme Court first recognized this rule in *State v. Swindell*, 93 Wn.2d 192, 607 P.2d 852 (1980). There, the State charged the defendant with unlawfully possessing a firearm based on a prior conviction for second degree assault. *Id.* at 194. The conviction was obtained by guilty plea, which the defendant alleged was involuntary. *Id.* First, the *Swindell* Court rejected the argument that the defendant’s position constituted a collateral attack or an effort to invalidate the previous judgment, holding instead that the State may not use a constitutionally invalid prior conviction to establish an essential element

of unlawful possession of a firearm. *Id.* at 196. Second, the *Swindell* Court applied its holding in *State v. Holsworth*, 93 Wn.2d 148, 607 P.2d 845 (1980) that a defendant charged with a status crime could challenge a guilty plea that did not meet the standard for a knowing, intelligent, and voluntary waiver of rights under *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). *Swindell*, 93 Wn.2d at 196. Lastly, the *Swindell* Court held that once a defendant calls attention to the alleged invalidity of the prior guilty plea, the State must prove that the plea was voluntary beyond a reasonable doubt. *Id.* at 197.

In *State v. Gore*, 101 Wn.2d 481, 486, 681 P.2d 227 (1984), the Washington Supreme Court reaffirmed its holding in *Swindell* that RCW 9.41.040 requires proof of a constitutionally valid prior conviction. In *Gore*, the defendant was convicted of an offense that was subsequently reversed on appeal for insufficient evidence. *Id.* at 482. Evaluating the requirements of the unlawful possession statute, the *Gore* Court acknowledged that the prohibition against possessing a firearm by one “convicted” of a crime could refer to any conviction, or only a constitutionally valid prior conviction. *Id.* at 485. Applying the rule of lenity, the *Gore* Court concluded that the statute required a constitutionally valid prior conviction and reversed. *Id.* at 486, 487.

These rules apply here to require reversal and dismissal of the charges against Mathis. As required under *Swindell*, Mathis challenged the voluntariness of the prior convictions by contending that the State's evidence failed to establish that Mathis affirmatively acknowledged that he understood his constitutional rights and voluntarily chose to waive them. RP 124. Under *Boykin*, because a guilty plea effects a waiver of multiple constitutional rights, a voluntary waiver cannot be inferred from a silent record. 395 U.S. at 243. Accordingly, where the record fails to show that the defendant knowingly and voluntarily entered a guilty plea, the plea cannot be determined to be voluntary. *Id.* at 244.

In this case, the State's evidence fails to show that Mathis was advised of his constitutional rights to trial, to confront his accusers, or his privilege against self-incrimination. *Boykin*, 395 U.S. at 243; Ex. 8. Accordingly, the State's evidence does not establish that Mathis's pleas were voluntary under the *Boykin* standard, and therefore constitutionally valid. Because the State failed to prove constitutionally valid prior convictions, Mathis's convictions for unlawful possession of a firearm must be reversed and dismissed.

VI. CONCLUSION

For the foregoing reasons, Mathis respectfully requests that the court REVERSED and DISMISS his convictions for unlawful possession of a firearm.

RESPECTFULLY SUBMITTED this 27 day of February, 2019.

TWO ARROWS, PLLC

A handwritten signature in black ink, appearing to read "Andrea Burkhart", written over a horizontal line.

ANDREA BURKHART, WSBA #38519
Attorney for Appellant

CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Victor Mathis
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David Quesnel
Klickitat County Prosecutor
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Goldendale, WA 98620-9054

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 27 day of February, 2019 at Kennewick, Washington.


Andrea Burkhart

BURKHART & BURKHART, PLLC

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