

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

VICTOR JAMES MATHIS,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 18-1-00017-5

BRIEF OF RESPONDENT

DAVID M. WALL
CHIEF DEPUTY PROSECUTING ATTORNEY

Klickitat County Prosecuting Attorney
205 S. Columbus Avenue, MS-CH-18
Goldendale, Washington 98620
(509) 773 – 5838

TABLE OF CONTENTS

A. ISSUE PRESENTED.....1

B. STATEMENT OF THE CASE.....1

C. ARGUMENT.....3

1. In the absence of the defendant making a colorable and fact specific argument supporting a claim of constitutional error in a prior conviction the State was not obligated to affirmatively prove, as an essential element of unlawful possession of a firearm, that the predicate felony conviction was constitutionally valid.....3

D. CONCLUSION.....5

TABLE OF AUTHORTIES

State Cases

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).....3

State v. Summers, 120 Wn.2d 801, 846 P.2d 490 (1993).....3

Court Rules

CrR. 7.4.....4

CrR. 8.3.....4

A. ISSUE PRESENTED

1. Whether, in the absence of the defendant making a colorable and fact specific argument supporting a claim of constitutional error in a prior conviction, must the State affirmatively prove, as an essential element of unlawful possession of a firearm, that the predicate felony conviction was constitutionally valid?

B. STATEMENT OF THE CASE

On August 9, 2019, following a jury trial, the Defendant was found guilty of two counts of Unlawful Possession of a Firearm in the First Degree, a violation of RCW 9.41.040. These charges stemmed from a disturbance at the Defendant's home where it was alleged the Defendant was in possession of two firearms. RP 55-61. Further investigation revealed the Defendant had been convicted of \ serious offenses in Georgia. RP 65-66. When confronted the Defendant initially claimed he had not been convicted of any offenses in Georgia, and he was being confused with his brother. RP 66. Later in his conversation with law enforcement he admitted that he had been convicted of burglary and armed robbery in Georgia. RP 66.

Subsequent to being charged in this case the Defendant returned to his claim that his brother had actually committed the Georgia felonies. RP 66, 74. The defendant repeatedly and consistently claimed he was not the person convicted of the Georgia crimes throughout the entire trial. RP 66, 74, 145. He testified at trial that he had never been convicted of any felony

in any State and, more specifically, had never been convicted of any felony in the State of Georgia. RP 145-46. The Defendant also testified, despite historical forensic science regarding fingerprint analysis and generally accepted biological truths, that he was not Victor Lewis James, the name used by the Defendant when convicted in Georgia. RP 147-150. Rather, the Defendant testified that the person convicted in Georgia was actually his twin brother from a “different mother” with whom he shares the same fingerprints. RP 147-150. The defendant’s denial of his prior felony convictions was consistent throughout the pendency of the case against him. It was only after the trial had commenced, jeopardy had attached, the State had presented its evidence and rested its case that the defendant challenged the constitutionality of the underlying Georgia pleas, while continuing to deny that he was the person who actually pled guilty to the offenses in Georgia. RP 124.

To establish at trial that the Defendant had in fact been convicted in Georgia the State introduced certified copies of conviction documents from the State of Georgia showing the Defendant had been convicted of multiple felonies between 1989 and 1991. Ex. 8, RP 226. The State also presented the testimony of a WSP fingerprint examiner who positively matched the defendant’s fingerprints, taken as part of the booking process for the case at bar, to those of the person convicted of the Georgia crimes. RP 119.

The jury verdict correctly rejected the defendant's claims and found him guilty at trial. CP 89-90.

C. ARGUMENT

1. In the absence of the defendant making a colorable and fact specific argument supporting a claim of constitutional error in a prior conviction the State was not obligated to affirmatively prove, as an essential element of unlawful possession of a firearm, that the predicate felony conviction was constitutionally valid.

The defendant is challenging the constitutional validity of crimes which he insisted at trial were committed by another. 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).

When the existence of a prior conviction is an element of a crime a defendant may challenge the constitutional validity of the prior conviction.

First, a defendant may raise a defense to such a prosecution by alleging the constitutional invalidity of a predicate conviction, and second, upon doing so, the State must prove beyond a reasonable doubt that the predicate conviction is constitutionally sound. In raising this defense, the defendant bears the initial burden of offering a colorable, fact-specific argument supporting the claim of constitutional error in the prior conviction. Only after the defendant has made this initial showing does the State's burden arise.

State v. Summers, 120 Wn.2d 801, 812, 846 P.2d 490 (1993).

In the instant case the Defendant never offered a colorable, fact-specific argument supporting the claim of constitutional error in the prior conviction nor availed himself pre-trial of CrR. 8.3(c) or post-trial of CrR 7.4(a)(3) motions to challenge the sufficiency of the constitutionality of his prior convictions in Georgia. Rather the Defendant waited until jeopardy attached and the State had rested before challenging the constitutionality of his Georgia convictions – convictions he vehemently denied before the jury. RP 123-128. This strategy of challenging the constitutionality of the underlying convictions, without alleging any specific claim of constitutional error and coupled with an adamant denial of that these convictions throughout the trial, deprived the State of any meaningful opportunity to respond.

Given the timing of the argument regarding the constitutionality of the underlying conviction, it appears that the argument was only researched on the morning that the argument was made. RP 126. Additionally, at the time the defendant challenged the underlying Georgia convictions the trial court specifically found the defendant had not presented any evidence that there was some problem with the underlying convictions. RP 139. In fact, the Defendant has yet to make any colorable, fact-specific argument supporting the claim of constitutional error in the prior conviction beyond vague “how do we know” speculation.

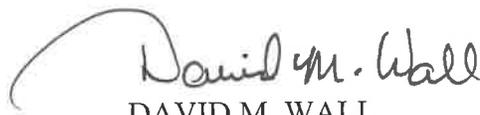
Even more at odds with the argument on appeal is that during trial the Defendant failed to even acknowledge that he was the person convicted. Rather, the defendant is offering a “catch-22” argument to this court—“I was not the person who was convicted of these offenses but whomever did plea to these crimes did not understand their constitutional rights. I think.” RP 147-150.

In short, the defendant denies his Georgia convictions, blamed another for his plight and now seeks to challenge the constitutional validity of this “other’s” convictions. All without acknowledging his own criminal history. This should not be allowed and is not supported by law.

D. CONCLUSION

The Defendant’s conviction should be affirmed.

Respectfully submitted this 1st day of May, 2019.

A handwritten signature in black ink that reads "David M. Wall". The signature is written in a cursive style with a large, sweeping flourish at the beginning.

DAVID M. WALL
W.S.B.A. No. 16463
Chief Deputy Prosecuting Attorney

KLICKITAT COUNTY PROSECUTOR'S OFFICE

May 01, 2019 - 1:57 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36296-5
Appellate Court Case Title: State of Washington v. Victor James Mathis
Superior Court Case Number: 18-1-00017-5

The following documents have been uploaded:

- 362965_Briefs_20190501135615D3134017_6876.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 2019-05-01-Response Brief.pdf

A copy of the uploaded files will be sent to:

- Andrea@2arrows.net
- davidq@klickitatcounty.org
- paapeals@klickitatcounty.org

Comments:

Sender Name: Rebecca Sells - Email: rebeccas@klickitatcounty.org
Address:
205 S COLUMBUS AVE RM 106
GOLDENDALE, WA, 98620-9054
Phone: 509-773-5838

Note: The Filing Id is 20190501135615D3134017