

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Parsons

218 W. Va. 353 (2005) · Decided November 29, 2005

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the dismissal of Robert Adam Parsons’s petition to regain the ability to possess a firearm. The court held that his misdemeanor domestic assault conviction constituted a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9), and that his civil rights had not been restored within the meaning of 18 U.S.C. § 921(a)(33)(B)(ii). Because firearm possession would violate federal law, the court concluded that relief was unavailable under West Virginia Code § 61-7-7(c).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Maynard
JURISDICTION	West Virginia
DECIDED	November 29, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Circuit Court of Ohio County denying and dismissing a petition to regain the ability to possess a firearm after a misdemeanor domestic-assault conviction.
STANDARD OF REVIEW	De novo review applies because the appeal involves interpretation of a federal statute.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Robert Adam Parsons v. State of West Virginia

TOPICS

statutory interpretation

civil rights

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

firearms law

criminal law

statutory interpretation

civil rights

QUESTIONS PRESENTED

1. Whether a person convicted of a misdemeanor crime of domestic violence who never lost the civil rights to vote, hold elective office, or serve on a jury can invoke the civil-rights-restoration exception in 18 U.S.C. § 921(a)(33)(B)(ii).
2. Whether the term civil rights in 18 U.S.C. § 921(a)(33)(B)(ii) includes the right to possess a firearm.
3. Whether a misdemeanor domestic-violence predicate offense must include a qualifying domestic relationship as an element of the offense under 18 U.S.C. § 921(a)(33)(A)(ii).
4. Whether Parsons's domestic-assault conviction and relationship with the victim qualified him for the federal firearm prohibition in 18 U.S.C. § 922(g)(9), thereby precluding relief under West Virginia Code § 61-7-7(c).

HOLDINGS

1. A person convicted of a misdemeanor crime of domestic violence who did not lose his or her civil rights as a result of the conviction cannot have those rights restored for purposes of the exception in 18 U.S.C. § 921(a)(33)(B)(ii).
2. The term civil rights in 18 U.S.C. § 921(a)(33)(B)(ii) generally refers to the rights to vote, hold elective office, and sit on a jury, rather than the right to possess a firearm.
3. A violation of 18 U.S.C. § 922(g)(9) does not require the underlying state misdemeanor statute to include a qualifying domestic relationship as an element; it is sufficient that the misdemeanor was committed against a person in one of the relationships specified in 18 U.S.C. § 921(a)(33)(A)(ii).
4. Parsons's domestic-assault conviction was a misdemeanor crime of domestic violence under 18 U.S.C. § 921(a)(33)(A), and his firearm possession was prohibited by 18 U.S.C. § 922(g)(9); therefore, West Virginia Code § 61-7-7(c) did not authorize restoration of his firearm-possession ability.

KEY QUOTATIONS

“Therefore, we hold that a person who has been convicted of a misdemeanor crime of domestic violence and who does not lose his or her civil rights as a result of the conviction cannot have his or her civil rights “restored” for the purpose of 18 U.S.C. § 921(a)(33)(B)(ii) so as to fall within that provision’s restoration exception to the prohibition on firearm possession in 18 U.S.C. § 922(g)(9).” (357)

“Accordingly, we hold that the term “civil rights” in 921(a)(33)(B)(ii), which provides several exceptions to the prohibition in 922 U.S.C. § (g)(9) on the right of a person convicted of a misdemeanor crime of domestic violence to possess a firearm, generally refers to the rights to vote, hold elective office, and sit on a jury.” (358)

“We adopt the reasoning of the Belless court and its sister courts and hold that a violation of 18 U.S.C. § 922(g)(9), which prohibits the possession of a firearm by one who has a prior misdemeanor conviction for domestic violence, does not require that the underlying statute include as an element of the offense a domestic relationship between the victim of the domestic violence and the misdemeanant.” (359)

FACTUAL BACKGROUND

Robert Adam Parsons, a police officer, pleaded nolo contendere to domestic assault arising from an incident involving his girlfriend, Kristin Conrad. He received six months of probation, during which West Virginia law prohibited him from possessing firearms. After probation ended, he sought restoration of firearm-possession ability, but the record showed that the victim lived with him at the time of the offense.

PROCEDURAL HISTORY

Parsons pleaded nolo contendere to domestic assault and received six months of probation, including a firearm-possession prohibition under West Virginia Code § 61-7-7(a)(8). After probation expired, he petitioned under § 61-7-7(c) to regain firearm-possession rights. The Circuit Court of Ohio County dismissed the petition, finding that restoration would violate federal law, and the Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Chrystal R.M. v. Charlie A. L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- United States v. Jennings, 323 F.3d 263 (4th Cir. 2003)
- McGrath v. United States, 60 F.3d 1005 (2d Cir. 1995)
- United States v. Smith, 171 F.3d 617 (8th Cir. 1999)
- United States v. Hancock, 231 F.3d 557 (9th Cir. 2000)
- United States v. Barnes, 295 F.3d 1354 (D.C. Cir. 2002)
- United States v. Indelicato, 97 F.3d 627 (1st Cir. 1996)
- United States v. Wegrzyn, 305 F.3d 593 (6th Cir. 2002)
- United States v. King, 119 F.3d 290 (4th Cir. 1997)
- State v. Bongalis, 180 W. Va. 584, 378 S.E.2d 449 (1989)
- United States v. Belless, 338 F.3d 1063 (9th Cir. 2003)
- United States v. Shelton, 325 F.3d 553 (5th Cir. 2003)
- United States v. Denis, 297 F.3d 25 (1st Cir. 2002)
- Eibler v. Department of Treasury, 311 F. Supp. 2d 618 (N.D. Ohio 2004)
- In re Sorsby, 210 W. Va. 708, 559 S.E.2d 45 (2001)
- State v. Evans, 203 W. Va. 446, 508 S.E.2d 606 (1998)
- United States v. Williams, 642 F.2d 136 (5th Cir. 1981)
- White v. Department of Justice, 328 F.3d 1361 (Fed. Cir. 2003)
- United States v. Kavoukian, 315 F.3d 139 (2d Cir. 2002)
- United States v. Chavez, 204 F.3d 1305 (11th Cir. 2000)
- United States v. Meade, 175 F.3d 215 (1st Cir. 1999)

