Cite as 2010 Ark. App. 515

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1282

JOSEPH MICHAEL HADLEY APPELLANT	**Opinion Delivered** June 23, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR-2008-2609-B]
V.	HONORABLE MARION A. HUMPHREY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was charged with committing aggravated robbery, theft of property, and possession of a firearm by a felon as the result of an incident that took place on May 12, 2008. A severance was granted, and appellant was convicted of aggravated robbery and theft of property in a separate proceeding. This appeal is from his subsequent conviction of possession of a firearm by a felon, for which he was sentenced as a habitual offender to fifteen years' imprisonment. On appeal, appellant argues that his sentence is illegal because it resulted from stacking a specific enhancement statute for felon in possession with the general enhancement statute for habitual offenders. We affirm.

The jury found appellant guilty of the Class B felony of being a felon in possession of a firearm involving the commission of another offense (here, aggravated robbery and theft). *See* Ark. Code Ann. § 5-73-103(a)(1) and (c)(1)(B) (Supp. 2009). In the penalty phase of the

trial, the jury was instructed that appellant was a habitual offender with three prior felony convictions, and that the range of punishment for a Class B felony where the defendant has three prior felony convictions was a term of imprisonment of no less than five years and no more than thirty years. The jury fixed appellant's sentence at fifteen years, and the trial court sentenced appellant accordingly.

Appellant's argument is based on *Lawson v. State*, 295 Ark. 37, 746 S.W.2d 544 (1988). There, the supreme court held that it was impermissible to stack the sentence enhancement for fourth-offense driving while intoxicated with the general habitual-offender enhancement statute. The basis for this holding was the notion that misdemeanors, such as Lawson's first three DWI convictions, should not be allowed to substitute for one of the predicate felony convictions used to establish habitual-offender status.

Lawson does not apply to the present case because possession of a firearm by a felon is *always* a felony—Class D for simple possession of a firearm by a felon and Class B if one of the prior convictions was for a violent felony or if the firearm possessed was employed in the commission of another crime. The only way that "Possession of Firearms by Certain Persons" can be a misdemeanor offense is if the firearm is possessed by a person who has been adjudicated mentally ill or committed to a mental institution. *See* Ark. Code Ann. § 5-73-103(a); *compare* Ark. Code Ann. § 5-73-103(c)(1) and (2) and Ark. Code Ann. § 5-73-103(c)(3); *see also Williams v. State*, 364 Ark. 203, 217 S.W.3d 817 (2005).

Furthermore, Ark. Code Ann. § 5-73-103(c)(1)(B) is simply not an enhancement

statute. Felon in possession is a proscription against the possession of objects that, to certain classes of people, are effectively contraband. A greater punishment is allowed if the contraband possessed is employed in the commission of another offense because the additional element of committing a separate offense while in possession of a firearm constitutes a greater crime than simple possession. We see no conceptual difference between this distinction and the distinction made that permits greater punishment for aggravated robbery than for simple robbery. The Arkansas Supreme Court recognized this distinction in *Williams v. State*, *supra*, where it rejected the argument that aggravated robbery was nothing more than a sentence enhancement provision for robbery, reasoning that aggravated robbery was a "stand-alone" offense as opposed to "enhancement due to the commission of prior offenses of the same type," and that no enhancement from misdemeanor to felony status was involved in that case. The employment of the proscribed weapon to commit robbery in the present case was likewise an independent offense rather than an enhancement based on prior possessory offenses.

Affirmed.

GLADWIN and GLOVER, JJ., agree.