

The Honorable Gordon Alley
Presiding Judge
Superior Court, Pima County

August 20, 1999
I99-016 (R99-035)

Question Presented

You have asked whether Arizona Revised Statutes ("A.R.S.") § 13-3102(A) (4), which bans a person classified as a "prohibited possessor" from possessing a deadly weapon, prohibits a person convicted of a misdemeanor who is on unsupervised probation from participating in target practice with a firearm. You have also indicated that this question does not arise from a specific case but has been a matter of concern in many justice courts.

Summary Answer

A person on probation for a misdemeanor conviction may not possess a firearm during the term of probation, regardless of whether the probation is supervised. A.R.S. §§ 13-3102(A)(4) and 13-3101(6)(d). This statutory prohibition does not exempt possession of firearms for target practice.

Background

Arizona's Criminal Code includes several statutes concerning the possession, sale and use of deadly weapons, which include firearms.⁽¹⁾ See A.R.S. §§ 13-3101 to 13-3115. Many of the prohibitions relating to weapons are included in A.R.S. § 13-3102, which establishes the offense of "misconduct involving weapons." This statute specifies that a person commits misconduct involving weapons by "knowingly . . . possessing a deadly weapon if such person is a prohibited possessor." A.R.S. § 13-3102(4). The purpose of the law regarding prohibited possessors is to restrict firearm possession to "secure the safety of the state's citizens." *State v. Olvera*, 191 Ariz. 75, 77, 952 P.2d 313, 315 (App. 1997).

A "prohibited possessor" includes a person [w]ho is at the time of possession serving a term of probation, parole, community supervision, work furlough, home arrest or release on any other basis, or who is serving a term of probation or parole pursuant to the Interstate Compact under title 31, chapter 3, article 4.

A.R.S. § 13-3101(6)(d).⁽²⁾ The Legislature added A.R.S. § 13-3101(6)(d) to the definition of "prohibited possessor" in 1993, and expanded it to cover probation in 1994. See 1993 Ariz. Sess. Laws ch. 13, §1 and 1994 Ariz. Sess. Laws ch. 236, § 8.⁽³⁾

Probation is a judicial order allowing a criminal defendant time "to perform certain conditions and thereby avoid imposition of sentence." *State v. Muldoon*, 159 Ariz. 295, 298, 767 P.2d 16, 19 (1988). Arizona has various types of probation, including intensive probation, supervised probation

(sometimes referred to as "standard probation"), and unsupervised probation.⁽⁴⁾ See A.R.S. § 13-901(A). In justice courts and municipal courts, where misdemeanor cases are generally heard, access to supervised probation is limited by statute.⁽⁵⁾ A.R.S. § 12-251(A).⁽⁶⁾ Generally, the type of probation is left to judicial discretion. See A.R.S. § 13-901(A).

Analysis

It is illegal for a prohibited possessor to knowingly possess a deadly weapon. A.R.S. § 13-3102(A)(4). A violation of this provision is a Class 4 felony. A.R.S. § 13-3102(J). A "prohibited possessor" includes, among others, a person who is "at the time of possession serving a term of probation" A.R.S. § 13-3101(6)(d).

The cardinal rule of statutory construction is to ascertain the Legislature's intent. *City of Phoenix v. Superior Court*, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984). If statutory language is clear and unambiguous, the text of the statute establishes legislative intent. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 592, 667 P.2d 1304, 1307 (1983). Here, the prohibited possessor law encompasses anyone who is serving "a term of probation, parole, community supervision, work furlough, home arrest or release on any other basis." A.R.S. § 13-3101(6)(d). The statute does not specify certain types of probation. Therefore, based on its language, A.R.S. § 13-3101(6)(d) applies to supervised as well as unsupervised probation.

The statute also makes no distinction based on the type of offense committed. Commenting on the scope of A.R.S. § 13-3101(6)(d), the Arizona Supreme Court has noted that this provision prohibits petty offenders from possessing weapons while on probation. *State ex rel. McDougall v. Strohson*, 190 Ariz. 120, 125, 945 P.2d 1251, 1256 (1997). The court's comment in *Strohson* supports the conclusion that A.R.S. § 13-3101(6)(d) applies to all persons on probation regardless of the offense. The primary difference between felons and misdemeanants under the prohibited possessor definition is that felons remain prohibited possessors until their civil rights are restored, but misdemeanants are prohibited possessors only during any term of imprisonment or while serving on probation, parole, or some other release.⁽⁷⁾ See A.R.S. § 13-3101(6)(b)-(d). This is a temporary limitation to further the Legislature's purpose of protecting the public.⁽⁸⁾ See *Olvera*, 191 Ariz. at 77, 952 P.2d at 315.

Finally, there is no statutory exception allowing people on parole or probation, or other prohibited possessors, to participate in target practice. In contrast, the statute does include several other specific exceptions and limitations. See A.R.S. § 13-3102(D)-(I) (exceptions for museums and educational institutions from the prohibition against possessing prohibited or defaced weapons; exception to the law prohibiting entry into a public establishment or event while carrying a deadly weapon for shooting ranges, shooting events or hunting areas; exception to ban on guns on school grounds

for weapons used for firearm safety courses or specific, approved school programs or, under certain circumstances, for unloaded firearms carried within a means of transportation). Moreover, the statute prohibiting minors from possessing firearms includes specific exceptions for participation in hunting or shooting events or marksmanship practice at established ranges, and for transportation to these activities within certain hours. *See* A.R.S. § 13-3111(B)(1) and (3). The Legislature established no similar exceptions or limitations that apply to prohibited possessors. Specifically, there is no exception that would allow a person who is on probation to engage in target practice.

Conclusion

Under A.R.S. §§ 13-3101(6)(d) and -3102(A)(4), a person on supervised or unsupervised probation because of a misdemeanor conviction is a prohibited possessor and may not knowingly possess a firearm until the person completes the term of probation. This statutory prohibition precludes a person from participating in target practice while on probation.

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- 1.** A "deadly weapon" is "anything designed for lethal use. The term includes a firearm." A.R.S. § 13-3101(1).
 - 2.** A "prohibited possessor" also includes a person: (1) "[w]ho has been found to constitute a danger to himself or to others pursuant to court order . . . and whose court ordered treatment has not been terminated" by the court, (2) who has been convicted of a felony or adjudicated delinquent and whose civil right to possess or carry a gun or firearm has not been restored; or, (3) "[w]ho is . . . serving a term of imprisonment in any correctional or detention facility." A.R.S. §§ 13-3101(6)(a), (b) and (c).
 - 3.** In 1993, a Department of Corrections representative testified that inmates were prohibited possessors, but persons on parole, work furlough and home arrest were not, and that legislation adding § 13-3101(6)(d) was necessary to "plug that loophole." *See Parolees; Prohibited Possessor: Hearing on H.B. 2149 Before the House Comm. On Public Institutions*, 41st Legis. 1st Reg. Sess. (Ariz. 1993)(statement of Gene Moore, Assistant Director, ADC). *See also State v. Johnson*, 171 Ariz. 39, 827 P.2d 1134 (App. 1992) (former prohibited possessor statute did not apply to a person on parole). The 1994 amendment adding probation was included in a larger measure characterized as a technical correction bill. *See Senate Fact Sheet, H.B. 2117*, 41st Legis. 2d Reg. Sess. (Ariz. 1994).
 - 4.** This opinion focuses on the application of A.R.S. § 13-3101(6)(d) to probation imposed as a result of a criminal conviction and does not explore its possible application to juvenile probation that is imposed as a result of a delinquency adjudication.
 - 5.** *See* Ariz. Const. art. 6, § 32(C); A.R.S. § 22-301 (criminal jurisdiction justice courts); A.R.S. § 22-402 (jurisdiction of municipal courts).
 - 6.** Section 12-251(A), A.R.S., limits probation services in justice courts to "persons who are convicted of violating 28-1381 or 28-1382 (driving under the influence) or Title 13, chapter 14 (sex offenses), 35.1 (sexual exploitation of children) or 36 (family offenses)." In municipal courts, supervised probation requires an intergovernmental agreement between the appropriate county and municipality. *Id.*

7. Although the State law prohibition may last for a limited time, a person convicted of a misdemeanor under State law that falls within the federal definition of a "misdemeanor crime of domestic violence" may remain subject to federal prohibitions against possession of firearms or ammunition after completing probation. *See* 18 U.S.C. § 922(g)(9); *U.S. v. Lewitzke*, 176 F.3d 1022 (7th Cir. 1999).

8. In 1999, the Legislature considered amendments that would have limited A.R.S. § 13-3101(6)(d) to persons on probation for felony convictions or misdemeanor domestic violence convictions, but these measures were not enacted. *See* House of Representatives Judiciary Committee Amendments to S.B. 1292, 44th Leg. 1st Reg. Sess. (Ariz. 1999); Senate Judiciary Committee Amendments to H.B. 2346, 44th Leg. 1st Reg. Sess. (Ariz. 1999); H.B. 1396, 44th Leg., 1st Reg. Sess. (Ariz. 1999) (House engrossed version).



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