

Appeals court upholds ban on felons carrying guns

By of the Journal Sentinel

The state law that bans felons from carrying guns is constitutional - even in the case of nonviolent felonies, the state Court of Appeals ruled Wednesday.

The ruling came in the case of Thomas M. Pocian, 44, of Hartford, who faces a charge of being a felon in possession of a firearm in Washington County.

In 1986, Pocian was convicted of three felonies for writing nearly \$1,500 worth of forged checks with a friend. Pocian, who was 18 at the time, paid restitution and was sentenced to three years' probation, according to court records.

In November 2008, Pocian shot two deer with his father's gun and registered them with the Department of Natural Resources. As a result of using the gun, Washington County District Attorney Mark Bensen filed the new charge against him.

Pocian was charged under a state law that bans any felon from having or using a gun for any reason. If convicted, he faces a maximum penalty of 10 years in prison, a fine of \$25,000, or both.

Pocian asked Washington County Circuit Judge Todd K. Martens to throw out the charge, arguing that the state law is overly broad and unconstitutional. Martens refused.

On Wednesday, the appeals court agreed with him.

The law is valid because it is «substantially related to the important governmental objective of enhancing public safety,» the ruling says.

The courts have not struck down any state law that prohibits felons from possessing guns, the ruling says. Courts also have not overturned a similar federal ban. Further, the Seventh Circuit Court of Appeals «recently held that it is constitutional to categorically ban felons from possession guns,» the ruling says.

«If Pocian wants to change the law, the proper route is through the legislature,» it says.

Pocian's attorney, Craig Powell, said Wednesday that his client has not yet decided whether to appeal.

There is a serious disconnect between the goal of protecting the public and barring someone like Pocian from possessing a gun for self-defense or hunting nearly 30 years after his conviction, Powell said.

Asking Gov. Scott Walker for a pardon would likely be futile, Powell said, since Walker's spokesman said late last year the governor «believes these decisions are best left up to the courts.»

Having his conviction expunged also is not an option for Pocian because it occurred too long ago, Powell said.

«There is a serious flaw in the statute,» the attorney said. «There ought to be a mechanism by which someone in Mr. Pocian's position, a nonviolent person with a nonviolent crime, ought to be able to exercise his fundamental right.»

Bensen, the Washington County district attorney, is out of the office until next week and could not be reached.