

**Summary of SC93170, *State of Missouri v. Arthel Ford Harris***

Appeal from the St. Louis circuit court, Judge Philip D. Heagney

Argued and submitted September 3, 2013; opinion issued October 1, 2013

**Attorneys:** The state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321, and Harris was represented by Jerry Miller, a special public defender from Belleville, Ill., (314) 368-3910.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The state appeals a trial court's dismissal of a charge of unlawful possession of a firearm after finding the statute underlying the charge was unconstitutional as applied to the defendant. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The statute is not an unconstitutional ex post facto law because the conduct it punishes is the defendant's present possession of a firearm, not the past conduct underlying his original crime or his guilty plea to that crime.

**Facts:** In 2001, section 571.070, RSMo, prohibited possession of a concealable firearm by a person convicted of "a dangerous felony." That year, Arthel Ford Harris pleaded guilty to a drug felony that was not categorized by statute as a "dangerous felony." In 2008, section 571.070 was amended to provide that a person commits unlawful possession of a firearm if he knowingly has any firearm in his possession and has been convicted of "a felony." After Harris was arrested in 2011 for violating this statute, he moved to quash or dismiss the indictment, arguing that – as applied to him – section 571.070 is an ex post facto law in violation of article I, section 13 of the Missouri Constitution. The trial court agreed and dismissed the case with prejudice (so that it could not be refiled). The state appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** Section 571.070 is not an ex post facto law in violation of article I, section 13 of the state constitution. A statute is an ex post facto law if it applies to conduct completed before the statute's enactment and if it increases the penalty for the crime beyond what the law provided when the act occurred. The ban on such laws aims to ensure that individuals have fair notice of what conduct is proscribed criminally. Federal courts agree that the federal statute prohibiting persons with prior convictions from possessing firearms is not an ex post facto law because it does not punish a person's past conduct that led to the person's prior conviction. Here, section 571.070 imposes punishment for conduct that occurred after its 2008 amendment, not for the prior conduct associated with Harris' previous conviction. He did not complete the crime described in section 571.070 until 2011, when he possessed a revolver. The statute punishes him for that act, not for his prior criminal act or for pleading guilty to that crime in 2001. Harris had fair notice as of 2008 that the legislature had deemed his possession of firearms a criminal act. He now cannot avoid the consequences of violating section 571.070 now by claiming it is an ex post facto law.