

Summary of SC94954, *State of Missouri v. Pierre Clay*

Appeal from the St. Louis city circuit court, Judge Robert H. Dierker

Argued and submitted October 27, 2015; opinion issued February 9, 2016

Attorneys: The state was represented by Veronica Harwin and Aaron Levinson of the St. Louis circuit attorney's office in St. Louis, (314) 622-4941. Clay was represented by David E. Roland of the Freedom Center of Missouri in Mexico, (314) 604-6621, and Nick A. Zotos, an attorney in St. Louis, (314) 534-1797.

Several parties filed briefs as friends of the Court. The city of St. Louis was represented by Winston E. Calvert, Erin McGowan and Matthew S. Dionne of the St. Louis city counselor's office in St. Louis, (314) 622-3361. The St. Louis Regional Chamber was represented by J. Bennett Clark, Lee Marshall, Jason Meyer and Mary Longenbaker of Bryan Cave LLP in St. Louis, (314) 259-2000, and Jason R. Hall of the regional chamber in St. Louis, (314) 444-1175. The St. Louis archdiocese was represented by Thomas M. Buckley of St. Louis, (314) 792-7075. The Demetrious Johnson Charitable Foundation was represented by Douglas P. Dowd and Lia Obata Dowd of Dowd & Dowd PC in St. Louis, (314) 621-2500. SSM Health was represented by J. Andrew Walkup of St. Louis, (314) 994-7800. The American Civil Liberties Union of Missouri Foundation was represented by Anthony E. Rothert and Jessie Steffan of the ACLU in St. Louis, (314) 652-3114, and Gillian R. Wilcox of the ACLU in Kansas City, (816) 470-9933.

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 the circuit court's holding that the right to bear arms set out in article I, section 23 of the state constitution is violated by section 571.070.1, RSMo, which prohibits nonviolent felons from possessing firearms. In a 5-2 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the circuit court's dismissal of a count of unlawful possession of a firearm and remands (sends back) the case. The constitution does not prohibit the legislature from regulating nonviolent felons' possession of firearms, and section 571.070.1 is a constitutional restriction of a nonviolent felon's right to bear arms.

Judge Richard B. Teitelman dissents. He would hold section 571.070.1, as applied to nonviolent felons, is unconstitutional. The state has failed to demonstrate that the statute's categorical and permanent restrictions on the exercise by nonviolent felons of the fundamental right to keep and bear arms are narrowly tailored to meet the state's compelling interest in public safety.

Facts: Pierre Clay was stopped for a traffic violation and found to possess a revolver in the car. He was arrested after police discovered he had a prior felony conviction for the nonviolent felony of unlawful use of a weapon. Clay was charged with unlawful possession of a weapon in violation of section 571.070.1. He moved to dismiss the charge, claiming that article I, section 23 of the state constitution prohibits the legislature from criminalizing his possession of a firearm. The circuit court agreed and dismissed the firearms possession count. The state appeals.

REVERSED AND REMANDED.

Court en banc holds: Article I, section 23, as amended, does not bar the regulation of firearms by nonviolent felons. In August 2014, the people of Missouri adopted Amendment 5, which added language requiring, among other things, strict scrutiny of laws restricting the right to bear arms as set out in section 23 and further declaring that “nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the right of convicted violent felons [to bear arms]” This Court recently held that the pre-Amendment 5 version of article I, section 23 permitted regulation of firearms possession by felons and that Amendment 5 did not substantially change the right to bear arms. State laws regulating firearms were already subject to strict scrutiny in light of the fact that the right to bear arms is a fundamental right. Article I, section 23, as amended, addresses convicted violent felons but is silent as to nonviolent felons. Such silence means that the constitution leaves to the legislature the question whether to adopt laws regulating possession of firearms by nonviolent felons. Article I, section 23 does provide that any law so adopted will be subject to strict scrutiny. The Court already has subjected section 571.070.1 to strict scrutiny and found it is narrowly tailored to serve a compelling government interest in protecting the public. This Court also has held that Amendment 5 did not substantially change article I, section 23. It follows, therefore, that section 571.070 is a constitutional restriction of a convicted nonviolent felon’s right to bear arms.

Dissenting opinion by Judge Teitelman: The author would hold that section 571.070.1, as applied to convicted nonviolent felons, violates article I, section 23 of the state constitution. This constitutional provision establishes a fundamental right to keep and bear arms that is subject to restriction only on the narrowest grounds. The state has failed to demonstrate that the statute’s categorical and permanent restrictions on the exercise of this fundamental right by nonviolent felons are narrowly tailored to meet a compelling state interest in public safety. The studies and data offered by the state do not demonstrate that permanently banning nonviolent felons from possessing a firearm will ameliorate any gun crimes; the list of nonviolent and impersonal regulatory offenses is long and growing every year; and a pivotal case determining what passes strict scrutiny involved a statute imposing only a 10-year ban on firearms possession by individuals who committed specifically enumerated dangerous or potentially dangerous felonies.