

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 14, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2707-CR

Cir. Ct. No. 2011CF003770

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DIJON L. CARTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Kessler, Brennan and Bradley, JJ.

¶1 BRENNAN, J. Dijon L. Carter appeals from a judgment of conviction entered after he pled guilty to possession of a firearm by a felon as set

forth in WIS. STAT. § 941.29(2)(b) (2013-14).¹ He argues that the complaint against him should have been dismissed because when he was adjudicated delinquent for the predicate offense, the juvenile court failed to inform him of the lifetime firearm prohibition as it was required to do pursuant to WIS. STAT. § 938.341. Carter essentially argues that § 938.341 adds an additional element to § 941.29(2)(b). However, reading an additional element into § 941.29(2)(b) is contrary to both the plain language of the statute and our holding in *State v. Phillips*, 172 Wis. 2d 391, 493 N.W.2d 238 (Ct. App. 1992). As such, we affirm.

BACKGROUND

¶2 In August 2006, Carter was adjudicated delinquent for a single count of possession with intent to deliver 200 grams or less of marijuana, a crime which would have been a felony if Carter had been an adult. At the time of the juvenile disposition hearing, the juvenile court failed to inform Carter, pursuant to WIS. STAT. § 938.341, that he was prohibited from ever again carrying a firearm.² However, during his adjudication, Carter told the court that he had read through the Plea Questionnaire/Waiver of Rights form with his lawyer and that he understood it. One provision on that form read: “I understand that if I am convicted of any felony, it is unlawful for me to possess a firearm.” The juvenile court did inform Carter that his adjudication was for a felony offense.

¶3 In May 2010, Carter pled guilty to one count of possession of a dangerous weapon by a person under eighteen years of age, a Class A

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² The Honorable Thomas R. Cooper presided over the relevant juvenile proceedings.

misdemeanor, and a judgment of conviction was entered.³ See WIS. STAT. § 948.60(2). During disposition of the gun possession case, there was no mention of Carter’s 2006 adjudication, or the fact that he could have been charged with possession of a firearm by a felon pursuant to WIS. STAT. § 941.29(2)(b).

¶4 In August 2011, the State charged Carter with one count of possession of a firearm by a felon, pursuant to WIS. STAT. § 941.29(2)(b). The charge was predicated on Carter’s 2006 adjudication for drug possession with intent to deliver. Carter moved to dismiss the charge based on the fact that at the time of his 2006 adjudication, the juvenile court failed to advise him that he was thereafter prohibited from possessing a firearm. Carter subsequently withdrew the motion and entered a guilty plea.

¶5 During Carter’s plea hearing, Carter told the circuit court that the juvenile court had failed to warn him that he could no longer possess a firearm.⁴ The circuit court asked Carter’s counsel if he wanted to “bring any motions on that subject,” to which counsel replied that “[t]here is case law that says it doesn’t matter.” The State informed the circuit court that *Phillips* was controlling, and that *Phillips* did not require the warning to be given before a defendant could be convicted for possessing a firearm pursuant to WIS. STAT. § 941.29. Thereafter, the circuit court found Carter’s plea to be knowingly, intelligently, and voluntarily given, but held open entry of the judgment of conviction until the sentencing hearing.

³ The Honorable J.D. Watts entered the May 2010 judgment of conviction.

⁴ The Honorable Charles F. Kahn, Jr., presided over Carter’s plea hearing in this case.

¶6 Shortly after the plea hearing and prior to the sentencing hearing, Carter filed a second motion to dismiss based upon the juvenile court's failure to warn him that he was prohibited from carrying a firearm. Following briefing and a hearing on the matter, the circuit court denied the motion, finding *Phillips* controlling.⁵ Judgment was entered accordingly.⁶ Carter appeals.

DISCUSSION

¶7 Carter argues that the circuit court erred when it refused to dismiss the charge against him for possession of a firearm by a felon because it is undisputed that the juvenile court failed to properly advise him of the lifetime firearm ban as it was required to do at the time of his adjudication. *See* WIS. STAT. § 938.341. He contends that *Phillips* is not controlling in this case because *Phillips* addresses the failure of a circuit court to give the warning in an adult felony case, as opposed to a juvenile adjudication. That argument requires us to review the circuit court's interpretation of WIS. STAT. § 941.29, which bans possession of a firearm by felons and juveniles adjudicated delinquent for felony offenses. Questions of statutory interpretation are questions of law that we review *de novo*. *See Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, ¶16, 300 Wis. 2d 290, 731 N.W.2d 240.

¶8 We begin with the language of the statute. WISCONSIN STAT. § 941.29 states, in relevant part:

⁵ Judge Watts presided over the motion hearing on Carter's motion to dismiss and denied the motion.

⁶ The Honorable Jeffrey A. Wagner entered the judgment of conviction.

Possession of a firearm. (1) A person is subject to the requirements and penalties of this section if he or she has been:

(a) Convicted of a felony in this state.

(b) Convicted of a crime elsewhere that would be a felony if committed in this state.

(bm) Adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony.

....

(2) A person specified in sub (1) is guilty of a Class G felony if he or she possesses a firearm under any of the following circumstances:

(a) The person possesses a firearm subsequent to the conviction for the felony or other crime, as specified in sub. (1) (a) or (b).

(b) The person possesses a firearm subsequent to the adjudication, as specified in sub. (1) (bm).

....

WISCONSIN STAT. § 938.341 requires that: “Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a felony, the court shall inform the juvenile of the requirements and penalties under s. 941.29.” It is undisputed that Carter did not orally receive that warning here.

¶9 Carter argues that the notice requirement set forth in WIS. STAT. § 938.341 adds an additional element to WIS. STAT. § 941.29(2)(b). In other words, Carter contends that when read together, §§ 938.341 and 941.29(2)(b) set forth three elements to the offense of possession of a firearm by a felon, as applied to Carter’s case: (1) that Carter was adjudicated delinquent for an act that would be a felony if committed by an adult; (2) that he possessed a gun subsequent to the adjudication; and (3) that the juvenile court orally informed him of the penalties

for possessing a firearm at the time of his adjudication. We first addressed this question, pursuant to the adult notification statute, in *Phillips*. See WIS. STAT. § 973.176(1); *Phillips*, 172 Wis. 2d at 392.

¶10 In *Phillips*, the defendant was charged with a felony as an adult in June 1990. *Id.*, 172 Wis. 2d at 392. It was undisputed that at the time the defendant was sentenced, the circuit court failed to inform him of the state restrictions on possessing a firearm, as required by WIS. STAT. § 973.033 (1991-92).⁷ *Phillips*, 172 Wis. 2d at 392. The circuit court dismissed the gun charge against the defendant on the grounds that “a violation of sec. 941.29 could be established only with proof that pursuant to sec. 973.033 [the predecessor to sec. 973.176] ... the sentencing court for the underlying felony conviction informed him that as a felon he could not legally possess a firearm.” *Phillips*, 172 Wis. 2d at 392-93. The State appealed the circuit court’s order dismissing the charge against the defendant, arguing that “the [circuit] court erroneously ruled that sec. 973.033 ... added an additional element to the sec. 941.29 ... offense of possession of a firearm by a felon.” *Phillips*, 172 Wis. 2d at 392.

¶11 Analyzing the statutory language, we agreed with the State and reversed the circuit court on the grounds that “the plain language of [WIS. STAT. §]941.29 ... does not mandate [WIS. STAT. §]973.033 ... notice.” *Phillips*, 172 Wis. 2d at 396. As we explained in *Phillips*:

⁷ WISCONSIN STAT. § 973.033 (1991-92) was later renumbered as WIS. STAT. § 973.176. See 2003 Wis. Act 121, § 2. However, the text of the statute remains the same: “Whenever a court imposes a sentence or places a defendant on probation regarding a felony conviction, the court shall inform the defendant of the requirements and penalties under s. 941.29.” See WIS. STAT. § 973.033 (1991-92) & § 973.176(1) (2013-14). This is the identical language to the juvenile code provision on informing set forth in WIS. STAT. § 938.341.

sec. 941.29 ha[s] two elements: That the accused is a convicted felon and that the accused was in possession of a firearm. Nothing in the plain language of sec. 941.29 leads one to believe a notification element to sec. 941.29 exists.

Section 973.033 ... is a straightforward directive to sentencing courts to notify defendants convicted of felonies that they may not possess firearms. It does not mention or even intimate that a failure on the court's part will result in the nullification of sec. 941.29 In fact, if sec. 973.033 were read as [the defendant] contends it should be, it would effectually legalize the possession of firearms in Wisconsin for felons convicted outside the state because Wisconsin has no way of directing equivalent notification in other states. This reading would directly contravene the plain language of sec. 941.29(1)(b) and (d) that prohibits felons convicted elsewhere from possessing firearms in Wisconsin, leading to an absurd result. We will not interpret statutes to lead to an absurd result.

Phillips, 172 Wis. 2d at 394-95.

¶12 There is no substantive difference between the statute requiring courts to inform adult felons of the penalties they face for possessing a firearm pursuant to WIS. STAT. § 941.29, and the statute requiring the courts to inform juvenile delinquents of the same. *See* WIS. STAT. §§ 973.176 (adults) & 938.341 (juveniles). And the language of the statute penalizing possession of firearms is also the same for both adult felons and juvenile delinquents. *See* § 941.29. Consequently, we must conclude, as did the circuit court in this case, that *Phillips* is controlling. While Carter spends a great deal of time trying to convince us that public policy demands a different result, we cannot ignore the plain language of the statutes. *See State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. (“[W]e have repeatedly held that statutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.’”) (citation omitted). For the same reason, we must reject Carter’s argument that any problems with his juvenile

adjudication were compounded when he was subsequently charged with a misdemeanor for possession of a firearm by an individual under the age of eighteen when he could have been charged as a felon in possession of a firearm.⁸

¶13 Because the language of the statutes in this case is plain and unambiguous, *see* §§ 941.29 & 938.341, and based upon our holding in *Phillips*, we conclude that the juvenile court’s failure to properly notify Carter that he may not possess a firearm has no bearing on whether he is guilty of violating § 941.29’s prohibition. As such, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

⁸ Furthermore, although it is irrelevant to our decision in this case, we note that at the time the juvenile court accepted Carter’s plea, Carter had signed the Plea Questionnaire/Waiver of Rights form, in which he acknowledged that he understood “that if I am convicted of any felony, it is unlawful for me to possess a firearm.”

