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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0497**

Toe Bo, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 26, 2020
Affirmed
Connolly, Judge**

Lyon County District Court
File No. 42-CR-17-1332

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Richard R. Maes, Lyon County Attorney, Marshall, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that there was insufficient evidence to convict him of unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2017). Specifically, he argues that the state failed to prove beyond a reasonable doubt that appellant knew he was ineligible to possess a firearm. Because knowledge of ineligibility is not an element of the offense, we affirm.

FACTS

On June 28, 2016, appellant Toe Bo pleaded guilty to felony third-degree assault. He received a stay of execution of a prison sentence and was placed on probation for five years. As a condition of his probation, appellant was prohibited from possessing a firearm. Appellant “signed written agreements” that acknowledged “a condition of his probation was that he could not possess firearms, ammunition, or explosives.”

On December 9, 2017, Lyon County law enforcement received multiple 911 calls from an area in which they later found appellant and his girlfriend, A.S. Appellant admitted to placing the 911 calls, and both individuals were taken into custody.

Appellant told officers that on the previous day he had found a broken firearm in a garbage can near his residence, taken it apart, and repaired it. Appellant stated that the firearm was now at A.S.’s home. With the consent of A.S., officers entered and retrieved a .40 caliber pistol from her home.

Appellant was charged with one count of unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2). To establish that appellant was ineligible to

possess a firearm, the state introduced evidence of the 2016 felony assault conviction, the paperwork signed by appellant acknowledging his ineligibility to possess a firearm, and testimony from appellant's probation officer.

At trial, appellant "testified and admitted that he found the firearm in a garbage can." Appellant also testified that he did not understand the provisions of his probation agreement when his probation officer, P.O., explained them, because he did not have interpreter services. This testimony was directly contradicted by his P.O. who stated that she had not used interpreter services with appellant because "the first time [she] met with [appellant] [she] asked him if he needed an interpreter present and he said that he did not." The P.O. also stated that appellant "did not" indicate at any time that he did not understand his conditions. Rather, "he would ask questions [in English] regarding his conditions" and the P.O. was able to understand what he was asking. In addition, appellant testified that he communicated with A.S. in English and spoke English while attending school.

Using the standard jury instruction, the district court instructed the jury that the elements of the offense of ineligible possession of a firearm were:

First, the Defendant knowingly possessed a firearm or consciously exercised dominion and control over it. The second is, the Defendant's been convicted of committing a crime of violence in the State of Minnesota [and that] Assault in the Third Degree is a crime of violence. And the third is, that the act took place on December 8th or 9th, 2017, in the city of Marshall.

The defense did not object to this instruction. The jury found appellant guilty of the charged offense, and the district court sentenced him to 60 months in prison.

In a petition for postconviction relief, appellant argued that “[t]he State failed to prove beyond a reasonable doubt that [he] violated [Minn. Stat. § 624.713, subd. 1(2)] because the State did not establish that [he] knew he was ineligible from possessing a firearm.” Appellant relies on *Rehaif v. United States*, which concluded that knowledge of ineligibility is required for a conviction for unlawful possession under the federal statute 18 U.S.C. § 922(g) (2019). 139 S. Ct. 2191, 2194 (2019). The postconviction court determined that “because the plain language of the state and federal statutes differ to this extent regarding mens rea” it was “unwilling to extend the *Rehaif* holding to the case at hand.”

DECISION

This court “review[s] the denial of a petition for postconviction relief for an abuse of discretion.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A postconviction court abuses its discretion “when it [acts] in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or ma[kes] clearly erroneous factual findings.” *Id.* On appeal, “[l]egal issues are reviewed de novo [and] review of factual issues is limited to whether there is sufficient evidence . . . to sustain the court’s findings. *Id.*”

Here, the facts surrounding the possession of the firearm are not in dispute. Thus, the only issue is whether the state was required to prove beyond a reasonable doubt that appellant knew he was ineligible to possess a firearm. “Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute

when evaluating an insufficiency-of-the-evidence claim.... We review issues of statutory interpretation de novo.” *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017).

Minn. Stat. § 624.713 states in relevant part:

Subdivision 1. Ineligible persons. The following persons shall not be entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon [or] any other firearm:

....

(2) . . . a person who has been convicted of . . . in this state or elsewhere, a crime of violence ...

Thus, the state must prove knowledge only of possession of a firearm, not knowledge of ineligibility. As previously stated, knowledge of possession was established beyond a reasonable doubt by the state at appellant’s jury trial. The state statute does not include a specific mens rea requirement.

Appellant urges us to apply the holding in *Rehaif*, which concluded that in a prosecution for unlawful possession of a firearm under 18 U.S.C. § 922(g), the government must prove that the defendant knowingly possessed a firearm *and* knowingly belonged to a category of individuals prohibited from possession of a firearm. 139 S. Ct. at 2195. Appellant argues that, because the state statute is silent regarding mens rea and the federal statute requires it, state courts should follow the federal rule. But the Minnesota Supreme Court has addressed the issue in *State v. Wenthe*, holding that, when a state statute does not include a mens rea requirement, the court will not supply one. 865 N.W.2d 293, 305 (Minn. 2015). We follow the supreme court’s binding precedent in *Wenthe*.

Furthermore the state statute can logically be interpreted to dispense with such a requirement because it also states that “[t]he failure of the court to provide [information

regarding ineligibility] to a defendant does not affect the applicability of the . . . possession prohibition or the felony penalty....” Minn. Stat. § 624.713, subd. 3(a) (2017). If the legislature intended to require knowledge of ineligibility, it would not have explicitly stated that a failure to inform a defendant of ineligibility does not negate the rule or the punishment.

Because the district court did not abuse its discretion in denying appellant’s petition for postconviction relief, we affirm. *See Pearson*, 891 N.W.2d at 597.

Affirmed.