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Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

Court Holds That Defendant Was Improperly Convicted of Federal Offense of Felon in Possession of a Firearm Under 18 U.S.C. § 922(g) Because His Civil Rights Had Been Restored for North Carolina State Predicate Felony Convictions

[United States v. Burleson](#), ___ F.3d ___, 2016 WL 878136 (4th Cir. March 8, 2016). The defendant, a convicted felon, possessed a firearm in 2012 and as a result was convicted in a North Carolina federal district court of being a felon in possession of a firearm under 18 U.S.C. § 922(g). The predicate felonies that supported the federal conviction occurred in North Carolina state courts between 1964 and 1985. However, federal law (18 U.S.C. § 922(a)(20)) excludes a prior conviction for the federal offense if the person has had his or her civil rights restored, unless the restoration “expressly provides that the person may not ship, transport, possess, or receive firearms.” The defendant’s civil rights had been restored by operation of state law in 1993, well before his possession in 2012. However, the government argued that his federal firearm rights were restricted in 2012 because the North Carolina legislature in 1995 enacted a provision that prohibited people with felony convictions from possessing firearms regardless of when they were convicted—before, on, or after the 1995 effective date.

The court held, agreeing with rulings in other circuit courts, that federal law excludes state law restrictions enacted after a person’s civil rights had been restored. Therefore, the defendant’s state law convictions, for all of which his civil rights had been restored before the 1995 legislative change, could not support his federal conviction of being a felon in possession of a firearm.

Author’s note: The court explicitly stated that whether the defendant can be charged under state criminal law for possession of the firearm by a felon is a different question on which it expresses no view. Note, however, that the North Carolina Court of Appeals in [State v. Johnson](#), 169 N.C. App. 301 (2005), upheld a defendant’s conviction of possessing a firearm by a convicted felon, rejecting the defendant’s ex post facto, bill of attainder, and due process challenges based on the 1995 legislative change, discussed above. The defendant had been convicted of a felony drug offense in 1983 and his civil rights restored in 1990, so he then could legally possess a firearm. The 1995 legislative change, however, again barred him from possessing a firearm as a convicted felon. In 2001 he possessed a firearm that was the basis of his conviction.

Court Holds That Defendant Was Deprived of His Sixth Amendment Right to Counsel When His Counsel Slept During a Substantial Portion of His Trial

[United States v. Ragin](#), ___ F.3d ___, 2016 WL _____ (4th Cir. March 11, 2016). The defendant was tried and convicted in a North Carolina federal district court of prostitution and drug offenses. The court held that the defendant was deprived of his Sixth Amendment right to counsel when his counsel slept during a substantial portion of his trial. Although generally a defendant must show that his counsel’s performance was deficient *and* prejudicial to prevail on a claim of ineffective assistance of counsel, when counsel sleeps through a substantial portion of the trial, the conduct compromises the trial’s reliability and a showing of prejudice is unnecessary. For an analysis of this case, see Jeff Welty, *Fourth Circuit: New Trial Required When Defense Lawyer Sleeps Through “Substantial Portion” of a Trial*, North Carolina Criminal Law (UNC School of Government, March 14, 2016), available at

<http://nccriminallaw.sog.unc.edu/fourth-circuit-new-trial-required-defense-lawyer-sleeps-substantial-portion-trial/>.