

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 29, 2003**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 01-0682-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 00 CF 1052

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROBERT M. WHEELER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ and PATRICIA D. McMAHON, Judges.<sup>1</sup> *Affirmed.*

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<sup>1</sup> Judge Richard J. Sankovitz presided over Wheeler's jury trial and entered the judgment of conviction; Judge Patricia D. McMahon entered the order denying Wheeler's postconviction motion.

¶1 SCHUDSON, J.<sup>2</sup> Robert M. Wheeler appeals from the judgment of conviction for carrying a concealed weapon, following a jury trial, and from the order denying his motion for postconviction relief.<sup>3</sup> He argues that WIS. STAT. § 941.23 is unconstitutional. Consistent with the Wisconsin Supreme Court's decisions in *State v. Cole*, 2003 WI 112, \_\_ Wis. 2d \_\_, \_\_ N.W.2d \_\_, and *State v. Hamdan*, 2003 WI 113, \_\_ Wis. 2d \_\_, \_\_ N.W.2d \_\_, this court affirms.

¶2 This appeal, received by this court in 2001, was placed on hold pending the supreme court's resolution of appeals involving constitutional challenges to WIS. STAT. § 941.23. Given the long pendency of this appeal, and given that, as the parties must realize, the supreme court's decisions effectively dispose of the issues involved here, this court now will expeditiously address this appeal.

¶3 According to the factual summary in Wheeler's brief to this court:

On February 28, 2000[,] a handgun belonging to Mr. Wheeler was seized by the police. Mr. Wheeler ran away from the police after they tried to stop him for questioning. The complaint and the evidence presented at trial indicated that Mr. Wheeler discarded a black Glock 27.20 caliber handgun during the pursuit.

(Citations omitted.)

¶4 Wheeler presents two facial challenges to WIS. STAT. § 941.23. He contends:

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<sup>2</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>3</sup> Wheeler also was convicted of possession of marijuana but he does not challenge that conviction on appeal.

First, because the plain language of [article I, § 25 of the Wisconsin Constitution] is inconsistent with the statutory restriction, the amendment supercedes and effectively repeals the statute. Second, the prohibition on carrying a concealed weapon is an unconstitutional exercise of the state's police power because it is not narrowly tailored to serve its purpose but, instead, sweeps so broadly so as to severely impinge on the fundamental right to bear arms guaranteed by the amendment.

¶5 In *Cole*, the supreme court essentially rejected these arguments and concluded “that the CCW statute is not effectively repealed by the right to bear arms amendment and that such a prohibition is a reasonable time, place, and manner restriction upon the right.” *Cole*, \_\_ Wis. 2d \_\_, ¶35.

¶6 Wheeler presents no “as applied” challenge. His circumstances are not akin to those presented in *Hamdan* and, therefore, they would not allow for any tenable defense that the application of the statute “unreasonably impair[ed his] right to keep and bear arms.” *See Hamdan*, \_\_ Wis. 2d \_\_, ¶41.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

