

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 2002

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. 01-1702-CR

Cir. Ct. No. 00-CM-1812

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

HAROLD G. GRIMES, III,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
SUE E. BISCHER, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Harold Grimes appeals a judgment convicting him of carrying a concealed weapon, contrary to WIS. STAT. § 941.23.² Grimes

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version.

² Under WISCONSIN STAT. § 941.23, “Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.”

contends that article I, section 25 of the Wisconsin Constitution, which provides that “people have the right to keep and bear arms,” renders § 941.23 unconstitutional. This court disagrees and affirms the judgment.

¶2 The facts are not disputed. On August 25, 2000, Grimes was involved in a one-car rollover accident. After the accident, the police found an uncased, loaded pellet gun and carbon dioxide cartridges in the passenger compartment of Grimes’ pickup truck. Grimes stated that he used the gun for hunting and had not removed it from the truck after his last hunting trip. Grimes was charged with carrying a concealed weapon.

¶3 Grimes filed a motion to dismiss, arguing that WIS. STAT. § 941.23 was unconstitutional in light of the recently ratified right to keep and bear arms in the Wisconsin Constitution. The trial court denied Grimes’ motion. Grimes entered a no contest plea, and the court accepted the plea, entered judgment and sentenced Grimes. On appeal, Grimes argues that the plain language of the constitutional right to bear arms conflicts with, and therefore voids, WIS. STAT. § 941.23.³

¶4 This case presents an issue of statutory and constitutional interpretation that this court reviews de novo. *State v. P.G. Miron Const. Co.*, 181

³ Grimes alleges that the right to bear arms is now a fundamental individual right in Wisconsin. He further contends that because the right to bear arms is a fundamental right, statutes affecting that right must be narrowly tailored to satisfy a compelling state interest to survive strict scrutiny. Grimes argues that WIS. STAT. § 941.23 does not enjoy a presumption of constitutionality because it predates the constitutional amendment and affects a fundamental right. He also argues that § 941.23 is not narrowly tailored to achieve a significant or compelling government purpose. However, we need not address these arguments because the statute and constitutional amendment do not conflict. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

Wis. 2d 1045, 1052, 512 N.W.2d 499 (1994). The unconstitutionality of a statute must be established beyond a reasonable doubt. *State ex rel. Hammernill Paper Co. v. LaPlante*, 58 Wis. 2d 32, 46, 205 N.W.2d 784 (1973).

¶5 In 1998, the Wisconsin Constitution was amended to include, “The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose.” WIS. CONST. Art. I, § 25. Grimes contends that this amendment voids WIS. STAT. § 941.23, under which “Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.”

¶6 Nevertheless, this court concludes that the amendment and the statute can be read together in harmony. Nothing in the amendment grants the right to carry concealed weapons. WISCONSIN STAT. § 941.23 does not impinge on the right to keep and bear arms. It simply limits the manner in which they are carried. Therefore, this court concludes that Grimes failed to establish beyond a reasonable doubt that § 941.23 is unconstitutional.

By the Court.—Judgment affirmed.

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

