

**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. 01-2181-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00 CF 4995

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JARRELL L. HENRY,

DEFENDANT-APPELLANT.

APPEAL from judgment and an order of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Jarrell L. Henry appeals from the judgment of conviction for carrying a concealed weapon, following his guilty plea, and from

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

the order denying his motion for postconviction relief.² He argues that WIS. STAT. § 941.23 (1999-2000) 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 Henry's brief to this court:

The record reflects that Mr. Henry was arrested [on September 27, 2000] after the police were dispatched to the 4800 block of North 40th Street because an individual had been seen displaying a handgun. When the police attempted to effect a traffic stop of the vehicle driven by Mr. Henry, he did not respond and drove away. He eventually did stop several blocks away after he was pursued by the police and was arrested. A black .45 caliber semi-automatic pistol was found on the driver's seat of the vehicle.

(Citation omitted.)

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

² Henry also was convicted of fleeing an officer but he does not challenge that conviction on appeal.

First, because the plain language of [art. 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 Henry 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.

