

Opinion No. 2012-071

August 14, 2012

The Honorable Jerry Don Ramey
Circuit Judge
Fifteenth Judicial District
117 South Moose, Room 303
Morrilton, Arkansas 72110

Dear Judge Ramey:

This is my opinion on your questions about firearm rights of drug court participants and graduates. You state that your questions relate only to pre-adjudication drug courts and ask me to

assume that the participant does not have not [sic] any previous felony convictions, that the participant has acknowledged a presumptive felony plea if terminated from drug court and that a finding of guilt has not been entered into the record.

Your questions are:

1. Is there a statutory prohibition that prevents possession by a drug court participant of a firearm, muzzle loader, bow, or cross bow? If so, what is the extent of the prohibition?
2. Must a drug court graduate who has received a dismissal/expungement/seal of his/her charges receive a pardon in order to enjoy full use of firearm, muzzle loader, bow, or cross bow privileges?

RESPONSE

In my opinion, the answer to both of your questions is “no.”

Question 1 – Is there is a statutory prohibition^[1] that prevents possession by a drug court participant of a firearm, muzzle loader, bow, or cross bow? If so, what is the extent of the prohibition?

A statute makes it unlawful for a person “[c]onvicted of a felony” to possess or own any firearm.² A.C.A. § 5-73-103(a) (Supp. 2011). To convict a person is “[t]o find [him or her] guilty of a criminal offense upon a criminal trial, a plea of guilty, or a plea of nolo contendere (no contest).” *Black’s Law Dictionary* 358 (8th ed. 2004). A conviction is, in other words, an adjudication, a finding of guilt.

Your request states that your questions relate only to pre-adjudication drug courts, by which I understand you to be referring to courts in which participants are not convicted, at least for so long as they comply with the terms of participation.

It follows that a participant in a pre-adjudication drug court has not been convicted of a felony and therefore is not subject to the general prohibition of the felon-in-possession statute, A.C.A. § 5-73-103(a).

I know of no statute generally prohibiting anyone’s possession of a bow or crossbow.

Question 2 – Must a drug court graduate who has received a dismissal/expungement/seal of his/her charges receive a pardon in order to enjoy full use of firearm, muzzle loader, bow, or cross bow privileges?

My answer to your first question compels the conclusion that the answer to this question is “no.” If a pre-adjudication drug court participant is not subject to the felon-in-possession statute, it follows that a pre-adjudication drug court graduate who has not been convicted and “who has received a dismissal/expungement/seal

¹ Because your request asks only about statutory prohibitions, I do not address a drug court judge’s authority to order a participant not to possess weapons.

² “Firearm” includes a muzzleloader. *See* Op. Att’y Gen. 95-275; *see also* Op. Att’y Gen. 2005-023.

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of his/her charges” is also not subject to the statute and therefore need not obtain a pardon to avoid liability under the statute.³

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

³ The felon-in-possession statute provides in essence that a person has been convicted of a felony even if the court suspends imposition of sentence or places the person on probation. *See* A.C.A. § 5-73-103(b)(1). It goes on to provide that the suspension/probation rule “does not apply to a person whose case was dismissed and expunged under . . . § 16-98-303(g).” A.C.A. § 5-73-103(b)(2). The statute referred to is an Arkansas Drug Court Act provision that authorizes a drug court judge to order expungement and dismissal of a case in stated circumstances. *See* A.C.A. 16-98-303(g) (Supp. 2011). The provision has effect, in my view, only in post-adjudication drug court cases. As discussed in the body of this opinion, a pre-adjudication drug court participant or graduate has not been convicted of a felony and is not subject to the felon-in-possession statute regardless of whether his case has been expunged.