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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH MICHAEL MARTINEZ,

Defendant and Appellant.

F068390

(Super. Ct. No. F13901651)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James Petrucelli, Judge.

Anne V. Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P. J., Detjen, J. and Peña, J.

INTRODUCTION

Defendant Joseph Michael Martinez was convicted by jury trial of one count of felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1))¹ and was sentenced to a term of three years in prison. On appeal, defendant argues (1) section 29800 violates his Second Amendment right to bear arms, and (2) section 29800 violates his Fourteenth Amendment right to equal protection, as it disproportionately affects minorities. We affirm.

DISCUSSION²

I. Section 29800 does not violate defendant’s right to bear arms.

The Second Amendment of the United States Constitution provides, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Section 29800, however, prohibits the possession of a firearm by any person “who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country.” (§ 29800, subd. (a)(1).) On appeal, defendant asserts that section 29800 violates his Second Amendment right to bear arms, as the application of section 29800 to nonviolent felons is overbroad. As defendant failed to raise this issue before the trial court, it has been waived. (*People v. Gonzalez* (2014) 225 Cal.App.4th 1296, 1313.)

Even examined on the merits, however, defendant’s argument must fail. In *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Heller*), the Supreme Court held that a universal ban on handgun ownership was unconstitutional, but noted “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” (*Id.* at p. 626.) The court went on to state the following:

¹ All subsequent statutory references are to the Penal Code.

² We dispense with the traditional statement of facts as they are unnecessary for resolution of the issues raised by defendant.

“Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, *nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.*” (*Heller, supra*, 554 U.S. at pp. 626-627, italics added.)

According to *Heller*, those examples represented a nonexhaustive list of “presumptively lawful regulatory measures.” (*Heller, supra*, 554 U.S. at p. 627, fn 26.) Following this logic, the First and Fourth Appellate Districts have rejected arguments claiming that California’s ban on firearm possession by individuals convicted of felonies and certain misdemeanors violates the Second Amendment. (*People v. Delacey* (2011) 192 Cal.App.4th 1481, 1491-1493; *People v. Flores* (2008) 169 Cal.App.4th 568, 574-575.)

Here, while defendant urges us to differentiate between violent and nonviolent felons for the purpose of our Second Amendment analysis, we fail to see any precedent for doing so, and readily acknowledge the state’s interest in preventing firearm ownership by citizens who have demonstrated an unwillingness to abide by the law. Given the United States Supreme Court’s explicit inclusion of prohibitions against the possession of firearms by felons in its list of presumptively legal regulatory measures, we reject defendant’s argument that section 29800 violates his Second Amendment right to bear arms.

*II. Section 29800 does not violate defendant’s right to equal protection.*³

Next, defendant argues that, because racial minorities are more likely to have committed felonies than the public at large, section 29800 has an unconstitutionally disproportionate impact on minorities. We disagree.

³ Defendant’s argument does not specifically mention equal protection, but is unintelligible without reference to Fourteenth Amendment principles.

As a preliminary matter, we must reject defendant's contention that section 29800 is subject to strict scrutiny. While racial classifications imposed by government are subject to strict scrutiny, section 29800 does not classify offenders by race, or even make reference to racial groups in any way. (*Adarand Constructors, Inc. v. Peña* (2000) 515 U.S. 200, 227.) Instead, section 29800 is a facially neutral law.

Even if defendant could establish his assertion that racial minorities are more likely to commit felonies, his equal protection argument fails. Absent discriminatory intent, a facially neutral law that disproportionately affects a racial group but serves a purpose within the power of government to pursue is not invalid under the Equal Protection Clause. (*Washington v. Davis* (1976) 426 U.S. 229, 239-242.) Defendant does not allege or provide any evidence of discriminatory intent in the enactment or enforcement of section 29800. It cannot seriously be argued that preventing felons from possessing firearms is a purpose our government is powerless to pursue.

DISPOSITION

The judgment is affirmed.