

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JACQUES GAHARY,
Appellant.

No. 2 CA-CR 2021-0042
Filed August 23, 2021

Appeal from the Superior Court in Pima County
No. A20210006001
The Honorable Kyle Bryson, Judge

**SPECIAL-ACTION JURISDICTION ACCEPTED;
RELIEF GRANTED**

COUNSEL

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Counsel for Appellee

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OPINION

Presiding Judge Eppich authored the opinion of the Court, in which
Chief Judge Vásquez and Judge Brearcliffe concurred.

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E P P I C H, Presiding Judge:

¶1 Jacques Gahary appeals from the trial court’s denial of his motion to restore his right to possess or carry a firearm. For the following reasons, we treat this appeal as a special action, accept jurisdiction, and grant relief.

Factual and Procedural Background

¶2 In February 2021, Gahary filed a motion in an Arizona trial court to restore his right to possess or carry a firearm. He asserted he had pled guilty to attempted criminal possession of a weapon in the third degree in New York in 1982 and had received a \$500 fine for the offense, which he paid. Gahary further asserted that in 1994, he was convicted of “Gifts to Public Servants” in New Jersey for which he was sentenced to two years of probation and received a \$125 fine. He claimed he satisfied the terms of his sentence, and in 1996, moved to Arizona.

¶3 In March 2021, the trial court denied the motion. The court stated that Gahary, “appears to be asking this court to restore civil rights that were lost due to New Jersey State Conviction, and a New York State Conviction, rather than a federal court conviction, or an Arizona state court conviction,” and concluded it was “without the authority to grant such relief under the Arizona Revised Statutes.”

¶4 Gahary moved the trial court to reconsider its conclusion that it lacked authority to consider his motion. The state responded that the court had correctly denied the motion because it “has no jurisdiction to restore civil rights lost from a foreign-state conviction,” asserting that the at-issue statute “does not comment on jurisdiction” and arguing legislative history and intent. The court denied Gahary’s motion to reconsider. This appeal followed.

Jurisdiction

¶5 “We have an independent duty to determine whether we have jurisdiction” over an appeal. *State v. Limon*, 229 Ariz. 22, ¶ 3 (App. 2011). Appellate jurisdiction is dictated by statute, *see id.*, and “our courts have largely treated an action for a restoration of rights after a criminal conviction as a criminal proceeding, implicitly treating them as orders appealable under A.R.S. § 13-4033(A)(3).” *State v. Perry*, 245 Ariz. 310, ¶¶ 3, 7 (App. 2018) (concluding appeal from court’s denial of application to restore firearm rights criminal in nature but dismissing

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appeal as untimely). Section 13-4033(A)(3) allows a defendant to appeal when there is “[a]n order made after judgment affecting the substantial rights of the party.”

¶6 However it is not clear whether § 13-4033(A)(3) would permit Gahary’s appeal here because, unlike in *Perry*, his underlying convictions were apparently not adjudicated in this state.¹ Assuming, without deciding, that § 13-4033(A)(3) does not permit Gahary’s appeal, in our discretion, we assume special-action jurisdiction. *See Sw. Gas Corp. v. Irwin*, 229 Ariz. 198, ¶ 5 (App. 2012) (special-action jurisdiction is discretionary); *Catalina Foothills Unified Sch. Dist. No. 16 v. La Paloma Prop. Owners Ass’n*, 229 Ariz. 525, ¶ 20 (App. 2012) (citing cases assuming “special-action jurisdiction over a matter brought as a direct appeal”).

¶7 The exercise of our special-action jurisdiction “is appropriate in matters of statewide importance, issues of first impression, cases involving purely legal questions, or issues that are likely to arise again,” and when a litigant does not have a “plain, adequate or speedy remedy by appeal.” *State ex rel. Romley v. Martin*, 203 Ariz. 46, ¶ 4 (App. 2002). All of these considerations being present here, we exercise special-action jurisdiction over this appeal.

Discussion

¶8 Gahary asserts that the trial court erred in concluding that it lacked the authority to grant his motion, because the plain language of A.R.S. § 13-910, which governs restoration of the right to possess or carry a firearm, “clearly indicates that Arizona state courts can restore gun rights in Arizona that were lost due to convictions from other states.” The state asserts that, although it initially argued to the court that it lacked jurisdiction to rule on the motion, it was mistaken, and concedes on appeal that the plain language of § 13-910, “confers jurisdiction upon superior

¹Although our opinion in *Perry* does not discuss where defendant’s underlying convictions were committed, *see* 245 Ariz. 310, ¶¶ 1-8, on review of our records, *Perry* was convicted in Graham County, Arizona. *See In re Sabino R.*, 198 Ariz. 424, ¶ 4 (App. 2000) (court of appeals can take judicial notice of its own records when not subject to reasonable dispute); *see also* Ariz. R. Evid. 201(b)(2) (an adjudicative fact can be judicially noticed if “not subject to reasonable dispute” and from a source “whose accuracy cannot reasonably be questioned”).

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courts to consider motions to restore firearm rights even when the underlying conviction occurred in a foreign state.”

¶9 This case presents a question of statutory interpretation that we review *de novo*. See *State v. Potter*, 248 Ariz. 347, ¶ 9 (App. 2020). In interpreting a statute, we first look to its text as “the most reliable indicator of its meaning.” *Id.* “When the words of a statute are clear and unambiguous, we need not resort to other methods of statutory interpretation to determine the legislature’s intent because its intent is readily discernable from the face of the statute.” *Id.*

¶10 In Arizona, a person who has been convicted in another state of a felony and who has not had his or her civil right to possess or carry a firearm restored is a “prohibited possessor.” A.R.S. § 13-3101(A)(7)(b). Section 13-910 provides eligibility for persons convicted of certain felonies to have their right to possess a firearm restored. Effective August 2019, § 13-910 provides,

A. A person who is convicted of a dangerous offense under § 13-704 or an offense committed in another state that would be a dangerous offense under § 13-704 if committed in this state may not file for the restoration of the right to possess or carry a firearm. A person who is convicted of a serious offense as defined in § 13-706 or an offense committed in another state that would be a serious offense as defined in § 13-706 if committed in this state may not file for the restoration of the right to possess or carry a firearm for ten years from the date of the person’s absolute discharge. A person who is convicted of any other felony offense may not file for the restoration of the right to possess or carry a firearm for two years from the date of the person’s absolute discharge.

B. The restoration of the right to possess a firearm is in the discretion of the judicial officer.

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The plain language of this statute authorizes the trial court to consider Gahary's motion.² The statute explicitly permits the "judicial officer" to exercise discretion in restoring firearm rights, and unambiguously contemplates applicability to "offense[s] committed in another state" and "any other felony offense," § 13-910, which is consistent with Arizona's prohibited possessor statute, § 13-3101(A)(7)(b) (expressly encompassing out-of-state felonies). The only limitations in § 13-910 depend on the nature of the felony offense and the timing of the person's absolute discharge.³ Therefore, the court erred in denying the motion by concluding that because Gahary's prior convictions were from out of state, it was "without the authority to grant such relief under the Arizona Revised Statutes."⁴ Section 13-910 plainly provides trial courts with authority to consider whether felony convictions from other states merit restoration of firearm rights in Arizona, and accordingly, we remand for the court to consider the motion on its merits.⁵

Disposition

¶11 For the foregoing reasons, we accept special-action jurisdiction and grant relief. We reverse the trial court's ruling and remand the case for further proceedings consistent with this opinion.

²Because Gahary has made his claim under § 13-910, we assume, without deciding, that Gahary's prior convictions were felonies.

³Gahary contends his prior convictions could not be considered "dangerous" nor "serious" under § 13-910. The state likewise asserts his convictions do not "appear to be dangerous or serious under Arizona law." Given our disposition, we need not reach this issue. *See State v. Yslas*, 139 Ariz. 60, 62, 65 (1984) (not addressing other issues raised given dispositive issue).

⁴The issue not being presented here, we do not consider any effect that restoration of Gahary's firearms rights under Arizona law would have under federal law or laws of other states.

⁵As both Gahary and the state acknowledge, it is in the trial court's discretion on remand to determine whether to grant or deny the motion on the merits. *See* § 13-910(B).