

NOTICE
Decision filed 08/07/23. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-22-0563

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	White County.
)	
v.)	No. 17-CM-60
)	
VIVIAN CLAUDINE BROWN,)	Honorable
)	T. Scott Webb,
Defendant-Appellee.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Barberis and Vaughan concurred in the judgment.

ORDER

¶ 1 The State appeals the circuit court’s pretrial dismissal of a charge of unlawful possession of a firearm without a firearm owner’s identification (FOID) card against the defendant, Vivian Claudine Brown. The State has filed a motion for summary relief arguing that the basis of the court’s dismissal—that it was impossible for Brown to comply with the statute—is not one of the bases upon which a charge may be dismissed before trial. Brown agrees that the cause should be remanded. For the following reasons, we reverse the circuit court’s order, and we remand the cause for further proceedings.

¶ 2 On May 5, 2017, Brown was charged with one count of unlawful possession of a firearm a without a FOID card based on her alleged possession of a firearm in her home

“without having in her possession a Firearm Owner’s identification card,” as required by section 2(a)(1) of the Firearm Owners Identification Card Act (Act) (430 ILCS 65/2(a)(1) (West 2016) (“No person may acquire or possess any firearm *** within this State without having in his or her possession a Firearm Owner’s Identification Card ***.”)). Brown filed a motion to declare the Act unconstitutional as applied to her. The trial court granted that motion and the State filed a motion to reconsider, which was denied. In its order denying reconsideration, the trial court found that “if section 430 ILCS 65/2(a)(1) is constitutional then it becomes obvious the legislature did not intend the statute to apply in one’s own home due to the impossibility of compliance” because “no person could have their FOID card on their person 24 hours each and every day when firearms or ammunition are in the house” and that “every person who has knowledge of the firearms or ammunition and has immediate and exclusive control of where the firearms is located, who does not have a FOID card, would be in violation of the statute.”

¶ 3 The State appealed directly to our supreme court, which found that it did not have jurisdiction because, in addition to the finding that the statute was unconstitutional, the circuit court’s dismissal of the charge was based on a nonconstitutional ground. Our supreme court remanded the cause to the circuit court with directions to vacate that portion of its order finding the statute unconstitutional and enter a modified order excluding that finding. *People v. Brown*, 2020 IL 124100, ¶ 30.

¶ 4 In accordance with our supreme court’s mandate, the circuit court on June 4, 2020, vacated its finding of unconstitutionality and entered a modified order dismissing the

charge based solely on its finding that the legislature did not intend the statute to apply in a person's own home because of the impossibility of compliance.

¶ 5 Brown filed a motion to reconsider, noting that charges can be dismissed prior to trial only upon grounds set forth in section 114-1(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1(a) (West 2020)), and that “impossibility of compliance” was a trial defense and not one of the grounds set forth in the statute. The circuit court granted the motion to reconsider, vacated its order dismissing the charge, and then invited Brown to file “whatever motions deemed appropriate attacking the [reinstated] information.”

¶ 6 Brown then again filed a motion again seeking a declaration that the statute was unconstitutional as applied. The State filed a responsive pleading, and the circuit court again found the statute unconstitutional as applied.

¶ 7 On direct appeal to our supreme court the court found that the circuit court had failed to comply with its previous mandate when it considered and granted Brown's motion to reconsider. *People v. Brown*, 2022 IL 127201, ¶¶ 22-29. The court again remanded the cause for strict compliance with its mandate that the circuit court vacate its finding of unconstitutionality, reenter its June 4, 2020, order, and further ordered the circuit court “not entertain any motion from any party, nor take any action other than entering the modified order.” *Id.* ¶ 31.

¶ 8 On remand the circuit court entered a “modified order” again dismissing the charges based solely on the statutory grounds in had stated in its June 4, 2020, order. The State appeals.

¶ 9 In its motion for summary relief the State argues that order of dismissal challenged in this case was based on a finding that neither party sought and which the circuit court entered only to comply with the supreme court's mandate. The State further argues that impossibility of performance is not one of the bases upon which a charge can be dismissed prior to trial. In her response, Brown acknowledges that she never filed a motion to dismiss pursuant to section 114-1(a) and that "impossibility of compliance" is trial defense rather than a basis for dismissal under section 114-1(a), and that this cause is on appeal solely because the supreme court has required the nonconstitutional portion of the circuit court's original order be entered as a final order subject to the ordinary appellate process.

¶ 10 A circuit court has inherent authority to dismiss charges against a defendant (1) for any of the reasons set forth in section 114-1(a), (2) where the defendant has been deprived of due process (*People v. Stapinski*, 2015 IL 118278, ¶ 33 (citing *People v. Lawson*, 67 Ill. 2d 449, 455 (1977))), or (3) where failure to dismiss the charges would result in a miscarriage of justice (*People v. Newberry*, 166 Ill. 2d 310, 314 (1995)). A circuit court's ruling on a motion to dismiss charges is generally reviewed for an abuse of discretion, but where the issues present purely legal questions review is *de novo*. *Stapinski*, 2015 IL 118278, ¶ 35.

¶ 11 Here, the circuit court did not dismiss the charge against Brown on any of the bases set forth in section 114-1(a), or because charging her with the offense in question resulted in a deprivation of due process or a miscarriage of justice. Instead, the court dismissed the charge based on its finding that the legislature could not have intended the

statute to apply in a person's own home because it would be impossible for Brown or anyone else to comply. Impossibility of performance of a legally imposed duty is an affirmative defense which the defendant must raise at trial. *People v. Costello*, 2014 IL App (3d) 121001, ¶¶ 14-16. Regardless of the standard of review applied, the circuit court erred in dismissing the charge against Brown.

¶ 12 For the foregoing reasons and pursuant to Illinois Supreme Court Rule 23(c) (eff. Feb. 1, 2023), we reverse the order of the circuit court of White County dismissing the charges against Brown, and we remand the cause for further proceedings.

¶ 13 Reversed and remanded.