

**IN THE SUPREME COURT  
OF THE STATE OF FLORIDA**

**LEONARD DAVID RANDALL**

**Petitioner,**

**SC01-2135**

**vs.**

**FLORIDA DEPARTMENT OF  
LAW ENFORCEMENT**

**Respondent.**

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**BRIEF OF R. J. L.,**  
**AMICUS CURIAE FOR PETITIONER**

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## STATEMENT OF THE CASE AND FACTS

R. J. L., as amicus curiae for Petitioner, Leonard David Randall (hereinafter “Randall”), submits this brief on the merits pursuant to Rule 9.370 of The Florida Rules of Appellate Procedure.<sup>1</sup>

The pertinent undisputed facts as set forth by the First District in Randall v. Florida Department of Law Enforcement, 791 So.2d 1238, 1239 (Fla DCA 2001) are:

Randall was convicted of falsely or fraudulently making a certificate as a notary public, a third-degree felony, in 1985. He was granted a full pardon by Governor Buddy McKay (which was approved by the entire Cabinet) on December 21, 1998. On April 7, 1999, Randall applied to the Department of Law Enforcement for a certificate of eligibility to have his criminal history record expunged.

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<sup>1</sup>R. J. L. currently has an appeal from a Final Order pending as Case No. 1D01-3544 in the First District Court of Appeal. The facts in R. J. L. are very similar to the instant case except that R. J. L. was granted his full pardon from Governor Leroy Collins and The Pardon Board on June 17, 1959 under the authority of Article IV, Section 12, Florida Constitution (1885). A copy of the Final Order is attached as Exhibit 2 to R. J. L.’s Appendix.

On the application he noted the conviction and the subsequent pardon. The Department of Law Enforcement denied the application on August 10, 1999, on the ground that “the criminal history record reflected an adjudication of guilty of the charge from the arrest or alleged criminal activity to which the application pertained”.

The FDLE’s denial of Randall’s application was contrary to the FDLE’s prior practice of issuing certificates of eligibility for expunction when the applicant had received a full pardon and when the only impediment to the issuance of the certificate of eligibility was the pardoned conviction. This prior practice of the FDLE was ended in 1999 by Governor Jeb Bush and his Cabinet as set forth in the following excerpt from the Executive Clemency Board meeting on October 28, 1999:

GOVERNOR BUSH: Before we return to the regular agenda, I want to inform the Board that the Florida Department of Law Enforcement will not treat routine pardons as authorization for expungement or sealing of criminal records. You all may remember that Commissioner Nelson brought this issue to our attention at the last Clemency Board hearing, and the FDLE has moved very quickly to end this practice.

When this Board grants a pardon, it is generally our intention to say that the State of Florida has forgiven an individual for his or her past actions. This does not mean that the State must also forget what has occurred in the past. There may be a rare case where an individual was wrongly convicted of a crime that he or she did not commit. In such a case, this Board might wish to grant a pardon that is intended to void the very record of conviction. If this is our intention, we’ll say so, expressed in the executive order

granting the pardon.<sup>2</sup> (emphasis added.)

After the FDLE refused to issue the certificate of eligibility, Randall filed in the Trial Court a Petition seeking a writ of mandamus to compel the Department of Law Enforcement to issue the certificate. The Trial Court denied Randall's Petition. The First District agreed with the Trial Court, denied Randall's Petition for Writ of Certiorari and found express conflict with Doe v. State, 595 So.2d 212 (Fla. 5<sup>th</sup> DCA 1992). This Court accepted jurisdiction of this case on April 12, 2002.

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<sup>2</sup>A copy of the full excerpt which the FDLE attached as Exhibit "A" to its response to order to show cause in Leonard David Randall vs. Florida Department of Law Enforcement, Case No. CV99-05841, Circuit Court of the Second Judicial Circuit in and for Leon County, Florida is attached to R. J. L.'s Appendix as Exhibit "3".

### **SUMMARY OF ARGUMENT**

Randall was given a full pardon from his conviction by Governor Buddy McKay. The full pardon was final and irrevocable when granted. The established law in Florida at the time that Governor Buddy McKay granted the pardon was that a full pardon removed legal guilt as well as the fact of the conviction. The FDLE was required to issue a certificate of eligibility to Randall for expunction of his criminal record because the fact of Randall's prior conviction was legally erased and blotted out by the full pardon.

## **ARGUMENT**

### I.

#### **The Standard of Review is Whether the Trial Court's Ruling Constitutes a Departure from the Essential Requirements of Law**

The standard of review by this Court was clearly set forth by the First District in Randall v. Florida Department of Law Enforcement, 791 So.2d 1239, 1240 (Fla. 1<sup>st</sup> DCA 2001) as follows:

The scope of our review on such a petition for certiorari is limited to determining whether the trial court (1) afforded due process and (2) observed the essential requirements of law. Randall does not claim that the trial court failed to afford him due process of law. Accordingly, our review is limited to determining whether the trial court's ruling constitutes a departure from the essential requirements of law, that is, whether it constitutes "a violation of a clearly established principle of law resulting in a miscarriage of justice." (citations omitted.)

II.  
The Legal Effect of a Full Pardon was Clearly  
Established under Florida Law when Governor  
Buddy McKay Granted Randall's Pardon

Article IV, §8(a) of the 1965 Florida Constitution provides in pertinent part that the governor may, with the approval of three (3) members of the cabinet, grant full or conditional pardons. The pardon may be granted by the governor “for good reasons or bad, or for any reason at all, and his act is final and irrevocable (emphasis added).” Sullivan v. Askew, 348 So.2d 312, 315 (Fla. 1997) (quoting American Jurisprudence with approval). See also Wade v. Singletary, 696 So.2d 754, 756 n. 4 (Fla. 1997). A full pardon, once granted, cannot be altered or diminished. See Sullivan, supra at 315.

When Governor Buddy McKay (with approval of three members of his Cabinet) granted a full pardon to Randall, the scope and extent of the pardon had been clearly defined by the advice and opinions of the Florida Supreme Court, as indicated by the

following quotations:

- I. When the pardon is full, it remits the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. Advisory Opinion to Governor, 14 Fla. 319 (1872).
  
- II. It was held, in *Ex parte Garland*, 4 Wall. 333, that the pardoning power conferred on the president was not subject to legislative control. In this case it is said, in reference to the effect of a pardon, that it “reaches both the punishment prescribed for the offense, and the guilt of the offender. When the pardon is full, it remits the punishment, and blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he had never committed the offense.” This has been approved in an opinion of the Justices of this Court. Advisory Opinion to Governor, 14 Fla. 319. It is settled law that the pardon of an offense not only blots out the crime committed, but removes all disabilities resulting from the conviction. Singleton v. State, 21 So. 21, 22 (Fla. 1896).
  
- III. A full and unconditional pardon “removes all that is left of consequences of conviction”. Fields v. State, 85 So.2d 609, 610 (Fla. 1956).
  
- IV. It is settled law that the pardon of an offense not only blots out the crime committed, but removes all disabilities resulting from the conviction...[A] pardon gives to the person in whose favor it is granted a new character and makes of him a new man. When extended to him in prison, it relieves him, and removes his disabilities. When given to him after his time of imprisonment has expired, it removes all that is left of the consequences of conviction, - his disabilities. Advisory Opinion of the Governor Civil Rights, 306 So.2d 520, 523 (Fla. 1975) (quoting with approval State v. Baptisite, 26 La. Ann. 134 (1874)).

Moreover, in Doe v. State, 595 So.2d 212 (Fla 5<sup>th</sup> DCA 1992), the Fifth District reaffirmed the meaning and scope of a full pardon under Florida law. As set forth in Doe at p. 213:

The Supreme Court has ruled that a pardon reaches both the punishment prescribed for the offense and the guilt of the offender. When the pardon is full, it remits the punishment and blots out of existence the guilt, so that in the eyes of the law the offender is as innocent as if he never committed the offense. Advisory Opinion to the Governor, 14 Fla. 319 (1872), citing Ex parte Garland, 4 Wall. 333, 71 U.S. 333, 18 L.Ed. 366 (1866). A pardon not only blots out the crime committed, but removes all disabilities resulting from conviction and gives to an individual in whose favor it is granted a new character, and makes of him or her a new person. Singleton v. State, 38 Fla. 297, 21 So. 21 (1896). A full and unconditional pardon removes all that is left of the consequences of conviction. Fields v. State, 85 So.2d 609 (Fla. 1956). See also Marsh v. Greenwood, 65 So.2d 15 (Fla. 1953).

Governor McKay certainly had clear advice and guidance on the meaning and scope of the full pardon he granted to Randall. The legal effect of that full pardon cannot be altered or diminished since it is final and irrevocable. See Sullivan v. Askew, 348 So.2d 312, 315 (Fla. 1977).

### III.

#### Doe v. State is Consistent with Established Florida Common Law on the Effect of a Full Pardon

The Fifth District’s decision in Doe v. State, 595 So.2d 212 (Fla. 5<sup>th</sup> DCA 1992) is clearly consistent with Florida common law on the legal effect of a pardon and should be approved by this Court. Doe squarely holds that one who receives a full pardon is eligible for expunction or sealing because the pardonee is no longer legally considered “convicted” or “adjudicated guilty” of that crime. Doe at 213.

In Doe, the Fifth District Court of Appeal considered a Petition for Declaratory Relief filed by a pardonee seeking expunction or sealing of his criminal records. The Court considered the 1989 version of the expunction statute, Florida Statutes, §943.058(2)(b)(1989). That Section provided, as it does now, that the person seeking expunction has not been “adjudicated guilty” of any of the charges stemming from the arrest. The Court quoted the 1989 version of the expunction statute on page 213 of

its opinion. The Court held that a petitioner who receives a full and unconditional pardon is eligible for expunction and sealing. The Court reasoned on page 213:

Because a full and unconditional pardon legally blots out the finding of guilt, the pardon removes all the attendant legal consequences which flow from an adjudication of guilt. The pardonee is no longer legally considered “convicted” or “adjudicated guilty” of that crime. Therefore, the trial court erred in finding appellant ineligible for a records expunction due to his conviction for being an accessory to robbery.

In rejecting the State’s argument that expunction might deny access to the public in cases where the pardonee seeks a position of public trust or where there is an eligibility statute for employment, the Court in Doe pointed out on page 214 of its opinion that the expunction statute provides access to expunged or sealed records to those authorities responsible for licensing or for employing individuals that hold offices or positions of public trust. The present expunction statute, Florida Statutes, §943.0585(4)(a)(1999), continues this availability of expunged records under certain circumstances.

Doe is clearly consistent with established Florida case precedent on the legal effect of a full pardon. Doe squarely holds that a pardonee is entitled to expungement of his pardoned conviction.

#### IV.

The First District's Decision in Randall is not  
Consistent with Established Florida Case Precedent  
on the Effect of a Full Pardon

The First District in Randall v. Florida Department Law Enforcement, 791 So.2d 1238 (Fla. 1<sup>st</sup> DCA 2001) did not follow established case precedent on the legal effect of a pardon but instead relied on another line of Florida case authority dealing with a separate and different issue - whether a pardon removes moral guilt in the context of eligibility statutes for employment or in some other statutorily regulated professions. The cases relied on by the First District were: Sandlin v. Criminal Justice Standards Training Commission, 531 So.2d 1344 (Fla. 1988) (certification standards for law enforcement officer); State v. Snyder, 136 Fla. 875, 187 So. 381 (1939) (attorney disbarment proceedings); and Page v. Watson, 140 Fla. 536, 192 So. 205 (1938) (medical license revocation proceedings). These three cases did not change or alter

the law in Florida that a full pardon wipes out legal guilt and the legal fact of conviction.

In Sandlin, the First District Court of Appeal had certified to the Florida Supreme Court the following question as being of great public importance:

Does a full pardon under Chapter 940, Florida Statutes (1985), which restores the civil rights of a person convicted of a felony, relieve the pardoned person from the disqualification from certification as a law enforcement officer imposed by Section 943.13(4), Florida Statutes (1985), on a person who has been convicted of any felony?

Sandlin, supra at 1344.

The Florida Supreme Court answered the question in the affirmative with the caveat that a pardoned felon must demonstrate rehabilitation and good moral character and fitness to the Commission's satisfaction and that the Commission may decline to certify an applicant because of a character flaw as evidenced by the prior felony conviction. Sandlin involved a very different issue - moral character and fitness of an applicant for employment and certification as a law enforcement officer. Sandlin did not involve whether legal guilt is blotted out or removed as a result of a full pardon.

On page 1346 of its opinion in Sandlin, the Florida Supreme Court stated that

the question was whether Section 943.13, Florida Statutes, dealing with the minimum requirement that a law enforcement officer be of “good moral character” can co-exist with the concept of a pardon. The Florida Supreme Court stated that Section 943.13 and the concept of pardon can co-exist and also stated:

“We believe they can, but in doing so we must select one of contrary views on the effect of a pardon on an eligibility statute for employment.” (emphasis added.)

The Court then cited the earlier Florida Supreme Court opinion of Page v. Watson, 192 So.2d 205 (Fla. 1938) for the proposition that in determining the effect of a pardon on an eligibility statute for employment (practicing medicine) that Page “adopted the middle ground, i.e. that a pardon removes punishment, but not moral guilt” (emphasis added), Sandlin, supra at 1346.

In the instant case, we are not concerned with “moral guilt”. We are also not concerned with Randall seeking application under an eligibility statute for employment or some other statutorily regulated profession that requires good “moral character”. The issue in this case is whether or not “legal” guilt has been removed and blotted out as a result of the pardon. Sandlin did nothing to change the established common law of the State of Florida that a full and complete pardon removes and blots out legal guilt. The Florida Supreme Court’s opinion in Sandlin simply did not change the common law of the State of Florida with respect to the effect of a full pardon.

In State v. Snyder, 136 Fla. 875, 187 So. 381 (Fla. 1939), an attorney was convicted of embezzlement. The State Attorney filed a motion to disbar him because of the conviction. Before the motion was ruled on, the attorney was granted a full pardon and the attorney raised the pardon as a complete defense to the disbarment proceedings. The Trial Court held that the pardon was a complete defense to the disbarment proceedings. The Florida Supreme Court noted disagreement among counsel as to the question presented for review, and therefore set forth the question which it was considering. The Court stated at page 876:

We pose the following question. When a disbarment proceeding is instituted predicated on the fact of a charge and conviction of embezzlement and before final judgment, the defendant is granted a full and complete pardon restoring him to all rights of citizenship, does such pardon and restoration also restore him to his status as attorney at law and thereby warrant an abandonment of the disbarment proceedings then pending against him?

The Florida Supreme Court answered the question in the negative and held that “the very fact of embezzlement is cause for disbarment and a pardon does not blot out that fact” (emphasis added). The Court went on to discuss that the attorney/client relationship is unique and one of the most sacred relations known to the law, is predicated on trust and confidence and that “[c]ertainly no act could more completely destroy that trust and confidence than embezzlement”. Snyder, supra at 878.

Snyder did not alter or change the common law of the State of Florida that a full pardon wipes out legal guilt and the legal fact of conviction. Snyder simply holds that a pardon “in no way affects a disbarment proceeding”. Snyder, supra at 877.

In Page v. Watson, 140 Fla. 536, 192 So. 205 (1938), the case was heard on a petition for a writ of prohibition. Page was a licensed physician who was convicted of perjury, possession of stolen goods and grand larceny. Page later received a full pardon. The State Board of Medical Examiners took steps to revoke or suspend Page’s medical license. Page filed a petition for writ of prohibition claiming that the pardon was a complete defense and prevented the State Board of Medical Examiners from taking action against him. The Florida Supreme Court held that the pardon granted to Page “is no defense to the proceedings filed before the Board of Medical Examiners”. The Court discussed the uniqueness of the physician/client relationship and the need for honor and good moral character of physicians. The Court stated at page 208:

It cannot be contended here that the Legislature of Florida had not the power to require, as a condition to the right to practice medicine, that the practitioner shall not only be learned in the profession but have in addition thereto the qualification of honor and good moral character. It cannot be overlooked that the health of a citizen is his greatest asset. It was the will and desire of the Legislature that the life, limb and health of its citizens should not be entrusted to quacks,

adventurers and to those of questioned integrity. The doors of our homes should not be opened to receive men who hold themselves out as qualified medical practitioners when in truth and fact they have been convicted of crime and this fact alone throws much light upon the question of character.

Page, like Sandlin and Snyder, dealt with moral guilt - not legal guilt. Page did not alter the common law of the State of Florida that a full pardon wipes out legal guilt and the legal fact of conviction. Rather, Sandlin, Snyder and Page all hold that pardoned convictions cannot be used as a shield or as a complete defense to professional inquiries, qualification requirements and disciplinary proceedings in certain regulated professions or eligibility statutes where the facts surrounding the pardoned convictions are important on the question of morality and character of the applicant or licensed professional.

The First District's decision in Randall does not follow established Florida case law on the legal effect of a full pardon and should not be adopted by this Court. Such a change of established Florida common law would alter the meaning and effect of the pardons issued by former governors and allow the current executive to change, alter and diminish the full pardons that former executives have granted.

## **CONCLUSION**

R. J. L., as amicus curiae for Randall, requests that this Court reverse the First District's decision in Randall, adopt and approve the holding of the Fifth District in Doe v. State and require the FDLE to issue a Certificate of Eligibility to Randall.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been served via U. S. Mail to John P. Booth, Esquire, Office of the General Counsel, Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302-1489, William L. Camper, Esquire, General Counsel, Florida Parole Commission, 2601 Blair Stone Road, Building C, Room C-220, Tallahassee, Florida 32399-2450, Sheldon L. Zipkin, Esquire, Sheldon L. Zipkin, P. A., 2020 N.E. 163<sup>rd</sup> Street, North Miami Beach, Florida 33162 and Robert Augustus Harper, Jr., Esquire, Robert Augustus Harper Law Firm, 325 W. Park Avenue, Tallahassee, Florida 32301 this \_\_\_\_\_ day of May, 2002.

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**CERTIFICATE OF COMPLIANCE**

I CERTIFY that this Brief of R. J. L., as amicus curiae for Leonard David Randall, complies with the font requirements of Rule 9.210 of the Florida Rules of Appellate Procedure.

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