

SUPREME COURT OF FLORIDA

LEONARD DAVID RANDALL,

Petitioner,

vs.

FLORIDA DEPARTMENT OF LAW  
ENFORCEMENT,

Respondent.

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CASE NO.: SC01-2135

Lower Tribunal No.: 1D00-2169

Florida Bar No.: 313300

INITIAL BRIEF

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**TABLE OF CONTENTS**

|  | Page     |
|--|----------|
| TABLE OF CONTENTS.....   | 2        |
| TABLE OF CITATIONS .....   | 3        |
| STATEMENT OF THE CASE AND OF THE FACTS.....  | 4        |
| SUMMARY OF THE ARGUMENT.....   | 5        |
| <b>ARGUMENT</b>  |          |
| <b>I.    THE STANDARD OF REVIEW IS WHETHER THE TRIAL COURT’S RULING CONTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.....</b>   |          |
|  | <b>6</b> |
| <b>II.    THE TRIAL COURT ERRED BY RULING THAT THE APPELLANT HAD BEEN CONVICTED OF A CRIME AND IS THUS INELIGIBLE FOR THE ISSUANCE OF A CERTIFICATE OF ELIGIBILITY BY THE FDLE EVEN THOUGH THE APPELLANT HAD RECEIVED A FULL PARDON BY GOVERNOR BUDDY MCKAY.....</b> |          |
|  | <b>6</b> |
| CONCLUSION .....   | 10       |
| CERTIFICATE OF SERVICE.....  | 11       |
| CERTIFICATE OF COMPLIANCE.....   | 12       |

## TABLE OF CITATIONS

|   | <u>Page</u> |
|---|-------------|
| <u>Advisory Opinion to Governor</u> , 14 Fla. 319 (1872).....   | 7           |
| <u>Advisory Opinion of the Governor Civil Rights</u> ,<br>306 So2d 520 (Fla. 1975).....                         | 7           |
| <u>Doe v. State</u> , 595 So2d 212 (Fla. 5 <sup>th</sup> DCA<br>1992).....                                      | 4,7         |
| <u>E.G. Tyson v. Lanier</u> , 156 So2d 833 (Fla. 1963).....   | 9           |
| <u>Ex parte Garland</u> , 4 Wall. 333, 71 U.S. 333, Led 366 (1866).....   | 7           |
| <u>Fields v. State</u> , 85 So2d 609, (Fla. 1956).....  | 7,9         |
| <u>Page v. Watson</u> , 140 Fla. 536, 192 So. 205 (1938).....   | 8           |
| <u>Randall v. Florida Department of Law Enforcement</u> , 791 So2d 1239<br>(Fla. 1 <sup>st</sup> DCA 2002)..... | 4, 6, 8     |
| <u>Sandlin v. Criminal Justice Standards Training Commission</u> ,<br>531 So2d 1344 (Fla. 1988).....            | 8           |
| <u>State v. Snyder</u> , 136 Fla. 875, 187 So. 381 (1939).....  | 8           |
| <u>State ex. Rel. Quigley v. Quigley</u> , 463 So2d 224 (Fla. 1985) .....                                       | 9           |
| <u>Sullivan v. Askew</u> , 348 So2d 312 (Fla. 1997).....  | 7           |
| Florida Constitution, Article IV, Section 8 (a)<br>.....  | 6,7         |

## STATEMENT OF THE CASE AND OF THE FACTS

The Appellant, Leonard David 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 on December 21, 1998, by Governor Buddy McKay. On April 7<sup>th</sup>, 1999, Randall applied to the Department of Law Enforcement for a certificate of eligibility to have his criminal history expunged. The Department denied the application on August 10<sup>th</sup>, 1999, on the ground that “[t]he criminal history record reflect[ed] an adjudication of guilty to the charge [s] from the arrest or alleged criminal activity to which the application pertain[ed].”

In his Mandamus petition, Randall recited the foregoing facts and cited Doe v. State, 595 So2d 212 (Fla. 5<sup>th</sup> DCA, 1992) as authority for his relief. The trial court issued an order to show cause to which the Department responded. On May 4<sup>th</sup>, 2000, the trial court issued its order denying the Petition for a Writ of Mandamus stating that Randall was ineligible for a certificate of eligibility absent a specific provision in the pardon under Chapter 943.

The Appellant thereupon filed his appeal with the First District Court of Appeal which affirmed the trial court’s order in its opinion issued on August 21<sup>st</sup>, 2001. Randall v. Florida Department of Law Enforcement, 791 So2d 531 (Fla. 1<sup>st</sup> DCA 2002). In its opinion the Court held that “...we decline to follow Doe, with

which we note direct conflict.”. This appeal to the Supreme Court of Florida followed thereafter which accepted conflict jurisdiction of April 12<sup>th</sup>, 2002.

### **SUMMARY OF ARGUMENT**

Leonard David Randall was granted a full, complete and irrevocable pardon by Governor Buddy McKay on December 21<sup>st</sup>, 1998 prior to Governor Jeb Bush’s directive to FDLE on October 28<sup>th</sup>, 1999 to change its policy of issuing certificates of eligibility to pardoned individuals. As the law in effect at the time of the pardon required FDLE to issue the certificate of eligibility, and the statute does not preclude such relief, Governor Bush was without authority to order FDLE to deny Randall his certificate of eligibility. The trial court departed from the essential requirements of law and erred in its denial and failure to issue the Writ of Mandamus.

## **ARGUMENT**

### **I. THE STANDARD OF REVIEW IS WHETHER THE TRIAL COURT'S RULING CONTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW**

The First District Court of Appeals clearly stated the standard of review in its opinion in Randall v. Florida Department of Law Enforcement, 791 So2d 1239, 1240 (Fla. 1<sup>st</sup> DCA 2002) where it stated:

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)

As the law at the time of Randall's pardon by Governor Buddy McKay clearly entitled him to a certificate of eligibility from the FDLE, the trial court departed from the essential requirements of law and erred in its denial and failure to issue the Writ of Mandamus.

### **II. THE TRIAL COURT ERRED BY RULING THAT THE APPELLANT HAD BEEN CONVICTED OF A CRIME AND IS THUS INELIGIBLE FOR THE ISSUANCE OF A CERTIFICATE OF ELIGIBILITY BY THE FDLE EVEN THOUGH THE APPELLANT HAD RECEIVED A FULL PARDON BY GOVERNOR BUDDY MCKAY**

The Florida Constitution grants the governor authority to grant a full or

conditional pardon with the approval of three members of the cabinet. (Article IV, Section 8(a), 1965). As stated in Sullivan v. Askew, 348 So2d 312 (Fla. 1997), 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.” at page 315.

The Appellant’s Petition for a Writ of Certiorari filed with the First District Court of Appeals (Record on Appeal, Pages 1-55 including exhibits) specified the law available to Governor McKay at the time that he granted Leonard David Randall a full pardon. Specifically,

1. Advisory Opinion to Governor, 14 Fla. 319 (1872), that 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 had never committed the offense, citing Ex parte Garland, 4 Wall. 333, 71 U.S. 333, Led 366 (1866).
2. Fields v. State, 85 So2d 609, (Fla. 1956) which held that a full and unconditional pardon “removes all that is left of the consequences of conviction.” at page 610.
3. Doe v. State, 595 So2d 212 (Fla. 5<sup>th</sup> DCA 1992) which specifically held that an individual who had received a full pardon was eligible for the issuance of a certificate of eligibility from FDLE.

Although not included in the District Court brief, the Advisory Opinion of the Governor Civil Rights, 306 So2d 520 (Fla. 1975) was also available to Governor McKay in deciding whether to grant Randall a full pardon with the

knowledge that he would be eligible for the issuance of certificate of eligibility from FDLE if and when granted.

Given the unassailable legal effect of Randall's full pardon by Governor McKay, the trial court's denial of his petition for a Writ of Mandamus constituted

a departure from the essential requirements of law and must be reversed.

Furthermore, the First District Court of Appeal's erred in its opinion affirming the trial court's ruling in Randall, supra. By relying on Sandlin v. Criminal Justice Standards Training Commission, 531 So2d 1344 (Fla. 1988), State v. Snyder, 136 Fla. 875, 187 So. 381 (1939), and Page v. Watson, 140 Fla. 536, 192 So. 205 (1938), all of which involved licensing issues subsequent to a pardon, the court confused the issues of legal guilt and moral guilt. It is the Appellant's position that legal guilt is removed by a full pardon. This is distinguished from the issue of moral guilt which arises in and is only relevant in those subsequent situations where a pardoned individual seeks a state license which requires a determination of moral character. The Appellant agrees that the effect of a full pardon does not extend to those situations as a licensing entity must make a de novo determination as to the moral fitness of the applicant, and clearly all prior acts are relevant to such a determination. However, here the issue does not involve morality, but rather the legal effect of a pardon under the statutory construction of Florida Statute 943. And, inasmuch as the legislature did not amend this statute

after Doe, supra, was decided, it is equally clear that there is no legislative or statutory impediment to the issuance of a certificate of eligibility by FDLE as had customarily been the case prior to Governor Bush's directive. See, E.G. Tyson v. Lanier, 156 So2d 833 (Fla. 1963) (that the primary guide to statutory interpretation is to determine the purpose of the Legislature); Fields v. State, 85 So2d 609 (Fla. 1956) (that the Legislature is presumed to know and understand the common law of the State of Florida at the time it enacts a statute); State ex. Rel. Quigley v. Quigley, 463 So2d 224 (Fla. 1985) (and when amendments are made to a statute).

Finally, under the doctrine of the separation of powers, it is the courts which decide the legal effect of a full pardon at the time it is granted, and the directive by Governor Bush to limit its legal effect as to Randall's entitlement to a certificate of eligibility by FDLE constitutes an unconstitutional infringement by the executive branch on the judiciary. Although Governor Bush has every right to issue conditional pardons which preclude any subsequent expungement or sealing, he can not violate Randall's right to a certificate of eligibility which only grants him the opportunity to petition a trial court judge for this relief. Once again, both the trial court and appellate courts were wrong in their analysis of the legal effect of the full pardon granted Randall by Governor McKay and the trial court departed from the essential requirements of law and erred in its denial and failure to issue the Writ of Mandamus.

## **CONCLUSION**

Based upon the arguments herein, it is clear that the trial court erred as a matter of law and departed from the essential requirements of law by denying the petition for a Writ of Mandamus to require FDLE to issue a certificate of eligibility to Leonard David Randall, and the decision of the First District Court of Appeals affirming the trial court's order must be reversed.

**CERTIFICATE OF SERVICE**

I HEREBY certify, that a true and correct copy of foregoing was mailed this 28<sup>TH</sup> day of May 2002 to:

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that I have complied with the Supreme Court of Florida's Rules of Procedure and format.

By: \_\_\_\_\_  
SHELDON ZIPKIN, ESQ.