

IN THE SUPREME COURT OF ALABAMA
October 25, 2006

1051712

Nancy Worley; State of Alabama; and Nell Hunter, in her official capacity and in her capacity as representative of a state-wide defendant class v. Richard Gooden, on behalf of himself and all others similarly situated (Appeal from Jefferson Circuit Court: CV-05-5778).

O R D E R

The State of Alabama; Nancy Worley, in her official capacity as Secretary of State; and Nell Hunter, in her official capacity as registrar of Jefferson County and in her capacity as representative of a state-wide defendant class consisting of all voter registrars in the State of Alabama, seek a stay of that portion of the August 23, 2006, final order of the Jefferson Circuit Court in case no. CV-05-5778 that reads:

"The Court hereby DECLARES that the policy and practice previously promulgated or employed by the defendants of denying voter registration to an individual otherwise qualified to vote, but who had been convicted of any felony, violated Amendment 579 of the Alabama Constitution. This policy and practice further violated the due process rights of the plaintiff class members provided by the Alabama Constitution. The named defendants, all members of the defendant class, and all those who work with or on behalf of any of the defendants or defendant class members, are ORDERED immediately to cease and desist in refusing voter registration on this basis."

Amendment No. 579 of the Alabama Constitution (§ 177, Ala. Const. 1901 (Off. Recomp.)), provides, in pertinent part, that "[n]o person convicted of a felony involving moral turpitude ... shall be qualified to vote until restoration of

civil and political rights"

All other actions and remedies mandated by the Jefferson Circuit Court in its final order have been stayed by that court, in response to the motion of the defendants, pending the appeal by the defendants to this Court of the final order; the Jefferson Circuit Court expressly denied the defendants' motion for a stay of the above-quoted portion of the order.

We deny the defendants' motion asking this Court to stay that portion of the final order, but we explain, for the benefit of the voter registrars of the State of Alabama, that the quoted portion of the final order means only that pursuant to Amendment No. 579 the voter registrars cannot deny voter registration to an individual otherwise qualified to vote simply because he or she has been convicted of some felony; denial of voter registration based on a felony conviction is appropriate only if the felony involved moral turpitude.

See, Lyons, Harwood, Woodall, and Parker, JJ., concur.

Nabers, C.J., and Stuart, Smith, and Bolin, JJ., dissent.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 25th day of October, 2006

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

SMITH, Justice (dissenting).

I concur in Justice Bolin's dissent. Given the possibility that this case does not present a justiciable controversy, I believe that, out of an abundance of caution, this Court should stay the execution of the trial court's final order pending appellate review of its viability. It should also be emphasized that, although a portion of the trial court's order has not been stayed by the majority, the voter registrars of this State must still comply with Amendment No. 579 (§ 177, Ala. Const. 1901 (Off. Recomp.)).

BOLIN, Justice (dissenting).

I must respectfully dissent from this Court's order denying the stay of the trial court's order in its entirety.

Ala. Const. 1901, Art. VIII, § 177(b) (Off. Recomp.) (originally Amendment No. 579), states:

"(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability."

(Emphasis added.)

Richard Gooden, one of the plaintiffs below, was convicted of the felony offense of driving under the influence of alcohol; Andrew Jones, another plaintiff, was convicted of felony possession of drugs; and Angela Thomas, another plaintiff, was convicted of possession of marijuana. All parties agreed before the trial court that none of these convictions are for felonies involving moral turpitude.

The plaintiffs' allege in paragraph 8 of their fourth amended complaint (Ex. A, Appendix A, Appellants' Motion to Stay) that they "bring this action on their own behalf and on behalf of all other persons similarly situated (the Plaintiff Class) against Defendants pursuant to the provisions of Rule

23 of the Alabama Rules of Civil Procedures." Thus, the plaintiffs were in no way originally concerned with those persons who have been convicted of felonies involving moral turpitude.

Relying on the defendants' motion for a stay, pp. 2-3, "two of the Plaintiffs were in fact registered to vote at the time the trial court entered its final order and the third was informed that she need only to submit an application to register to vote." Where, then, is the aggrieved plaintiff who provided the trial court with a justiciable claim to confer jurisdiction on the court to enter any order, much less an injunctive order that exceeded the scope of the prayer for relief in the plaintiffs' complaint?

It appears from the limited filings before us that the trial court may have refused to stay an order granting relief not requested¹ in a proceeding devoid of controversy at the

¹In the plaintiffs' "Opposition to Appellants' Motion for Stay" filed with this Court, at p. 10, the plaintiffs state:

"Even though the Circuit Court did not cite A.R.Civ.P. Rule 15(b), it was recognizing the de facto amendment of the complaint to conform to the evidence regarding the harm befalling persons convicted of a felony because of the confusion regarding the meaning of the term 'moral turpitude.'"

time of trial. It further appears that the defendants have made a strong showing of likely success on the merits on appeal.

We are but days away from the deadline for voter registration for the 2006 general election.² Not granting a complete stay of the trial court's order could lead to utter confusion³ among the 67 boards of registrars of Alabama. This consequence must be balanced with the ability of any aggrieved potential registrant hereunder, i.e., anyone who has been convicted of a felony not involving moral turpitude, to seek an adequate remedy at law by petitioning the circuit court in any county where an application for voter registration was wrongfully denied under those facts for a writ of mandamus.

The trial court never cited, much less supported, any reliance on Rule 15(b), Ala. R. Civ. P., to afford injunctive relief not prayed for in the plaintiffs' complaint.

²Section 17-4-120(a), Ala. Code 1975, provides:

"The boards of registrars in the several counties of the state or their deputies shall not register any person as a qualified elector within 10 days prior to any election"

³There is also no evidence by either party of the status of that part of the trial court's order directing the state defendants to seek preclearance from the United States Justice Department under Section 5 of the Federal Voting Rights Act. Apparently this provision of the trial court's order was stayed, so it is unclear whether any attempt has been made to clear this hurdle.

Such a remedy would prevent the disenfranchisement of any qualified voter⁴ while allowing the defendants to pursue an appeal of the trial court's order. Accordingly, I would grant a full stay of the trial court's order.

Stuart and Smith, JJ., concur.

⁴Pursuant to § 17-4-120, any voter would have 10 days from the last day to register before the general election to remedy an unlawful denial of registration.