IN THE SUPREME COURT OF FLORIDA

The Florida Bar

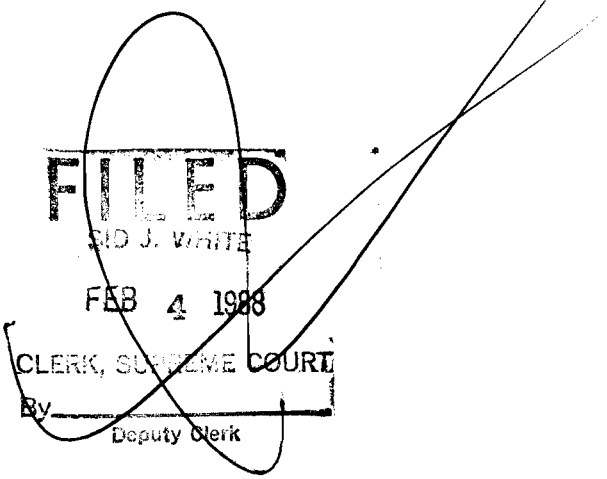
Complaintant

Case No. 70,322

v.

William A. MacGuire

Respondent



RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Respondent was not convicted of two threat-related felonies in the Circuit Court of Leon County, Florida in August 1986. Case No. 85-1521-CF. The Bar brought this proceeding alleging that respondent had been convicted of felony.

Respondent asserted and the Bar did not contest that the Bar's action was based on the fact of his felony conviction and not on any specifically alleged misconduct. The Referee so stated in his Report.

Respondent moved to stay proceedings because he had a right to claim before the trial court that the court lacked jurisdiction pursuant to Fla. R. Crim. P. 3.850 during the two years following August 8, 1986. This Motion was denied, but not until after the final hearing.

Respondent timely petitioned this Court for review after the Referee recommended disbarment. R.p.4.

SUMMARY OF ARGUMENT

I argue simply that in Florida I have a right to claim before the trial Judge that the Court lacked jurisdiction under Rule 3.850; that that right exists for two years following August 8, 1986, and that I stood on that my right to claim that remedy in my own time and in my own way before the Referee; that my alleged conviction is not final until after my Rule 3.850 Motion is heard, decided and,if adverse to me, appealed to the Court of last resort, and that the Referee should have stayed the Bar's proceedings, which were based on the fact of a conviction, until the alleged conviction was final.

I also argue that the conviction is void and that this circumstance appears from the face of the record.

I also argue against waiver on the grounds that waiver of something so fundamental is not possible, and that any alleged waiver was not knowing and voluntary.

ISSUE 1 ARGUMENT

Did the Referee act prematurely in recommending disbarment after being informed that the respondent had an available remedy under Fla.R. Crim. P. 3.850 which respondent wished to preserve?

Your Honors I know there is case law to the contrary, but the writ of habeas corpus for post-conviction relief has been effectively suspended in Florida in favor of the procedure outlined in Rule 3.850. That rule eliminates habeas corpus until its own procedures are accomplished.

If there were no Rule 3.850, the Referee might have been correct in denying my Motion for a Stay. The Bar could not reasonably be expected to wait forever to disbar a lawyer who appeared to have been convicted of felony merely because the lawyer claimed that he might file a successful habeas corpus action at some indefinite time in the future. Rule 3.850 's definite time limit however defeats any argument that I stand in the same shoes as a lawyer trying to avoid disbarment based on the possibility that at some indefinite time in the future he would file a successful habeas.

Florida is unlike any other state in the Union. There are many void convictions here, the result of a practice dating back to at least 1971. Pugh v Rainwater (D.C.S.D. Fla. 1971) 332 F. Supp.1107, 1110. That is why, I believe, the Rules provide for a claim of lack of jurisdiction to be made to the trial judge and also provide a definite period for making such a claim. No Florida felony conviction can be said to be "final" until expiration of the period set by the Rules for making this claim. Rule 3.850 has become an auxillary review procedure in this state.

The specific subjects of a Rule 3.850 Motion are not required to be raised on direct appeal. Lack of jurisdiction may always be shown,

but in enunciating Rule 3.850, your Honors gave the people of this state a specific way to do it and you set a time limit during which ti could be done outside of the normal, open-ended remedy of habeas corpus.

I counted on this. I was attempting to get federal help against re-prosecution, and I did not want to reveal in detail to the Bar at the time the Bar brought its prodeeding exactly what my claims were. I raised before Judge Fernandez the fact that I had such a remedy and that it was part of my strategy to preserve it. In view of my uncontested right to the remedy, he should have deferred the proceedings until I used it in my own time or the remedy expired by its terms.

Someone had to become angry about this. Perhaps I could have chosen another way, but I don't think so. I know that I never had a chance to go at it the normal way because Judge Shepard at least colorably suspended my license in February of 1984.

I have done my best. I have suffered impossible humiliation and exile in false disgrace. I have been falsely imprisoned in mental hospitals and jails for almost four years. I have been deprived of my right to make a living, ruined financially, and every person I have met has wounded me in some way because the public doesn't believe any of this. It seems to me that until my alleged conviction is final it is not only inequitable but also illegal to enter a judgment of Disbarment.

ISSUE 2 ARGUMENT

Should a judgment of disbarment be based on an alleged felony conviction which is void? My alleged conviction is void. I was held to answer to the trial court for felony on the unsupported writ of an assistant prosecutor without indictment or waiver of indictment. The cases cited in my Petition For Review, which are herewith incor-

porated herein by reference, show this unarguably. The record produced by Mr. Watson shows it, and an elementary appreciation of the function of the 5th and 14th Amendments in restraining the prosecutor shows it.

In addition, I was in or within the state of Virginia when I spoke, wrote and mailed the offending words. Florida's state courts cannot possibly have jurisdiction. U.S. Const. Amend. VI; U.S. v Worrall -U.S.- (early Supreme Court, citation omitted)

A judgment of disbarment should not be entered based on a judgment which is known to the Court to be void. I denied that I had been convicted of felony before Judge Fernandez; that issue is properly before your Honors on Review.

ISSUE 3 ARGUMENT

Is waiver possible on a question as fundamental as the void nature of an alleged felony conviction which is asserted as a basis for disbarring a lawyer?

I am unable to find the cases, but I believe it is good law that something as fundamental as the void nature of alleged felony conviction cannot be waived. It is an old principle of our jurisprudence that lack of jurisdiction may always be shown. The evidence Mr. Watson produced before the Referee shows that I was charged by the writ of an assistant prosecutor and not by indictment. Florida is a Grand Jury State. Therefore, Mr. Watson's proof shows on its face that the trial court did not have jurisdiction.

I don't believe I could waive such a thing even if I wanted to do so. Enforcing such a waiver against me would have the effect of converting a legal nullity into something real. Waiver cannot achieve such a result.

ISSUE 4 ARGUMENT

If there was waiver and if waiver was possible, was the waiver knowing and voluntary?

Even if there was waiver, it certainly was not knowing and voluntary. I felt strongly that it would not be in my best interests to reveal these claims to the Bar at that time. I was at that time seeking federal protection against re-prosecution. Obviously the Tallahassee Prosecutor had either a belief that what he was doing was resulting in valid convictions or that he could simply ignore the law at his option. In either case, I did not want to reveal these claims in the Bar's proceedings until I had fully explored getting federal protection.

The average fellow has few real advantages in a contest with the state. One of them is that if he gives up some right, he must do so with knowledge that he is giving up the right and he must do so voluntarily. I believed, do believe, that the Bar's proceeding is premature until and unless my Rule 3.850 Motion is denied and the denial is upheld in the Court of last resort. I moved for a stay before the Referee, but it was not denied until after the Final Hearing. Thus I either had to give up the right to present evidence before the Referee or reveal something to the Bar which I felt it was injurious to my position to reveal at that time.

Even if there was a waiver of some kind , it was not freely given and voluntary. I was forced into it and if I waived anything, I did so involuntarily.

CONCLUSION

The Founding Fathers had had enough of life and death struggles over points of the law. They set up a system by which all persons were guaranteed certain rights and a speedy remedy for violation of them. Among the most important of those rights was the Grand Jury.

I should not be confined it this jail and facing the ruination of everything I treasure in my life, after four years of uninterrupted torture, merely for speaking in anger over this point of law about which I am correct.

I should not be disbarred because of an illusory conviction which has no status legally. The record, the papers in this case, and the public records provide undeniable evidence that there are many void convictions in Florida and that mine is one of them.

A delay in entering a judgment in this case in just and equitable.

I have, on January 21, 1988, filed a 3.850 Motion with Judge McClure. I will keep your Honors and the Bar informed of the progress of the case.

The Rule 3.850 Motion is, in effect, my real appeal for justice. I respectfully ask that until it is finally heard and decided and, if necessary, fully appealed, your Honors do not stain me with disbarment.

Respectfully Submitted

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Certificate

I certify that on the first day of February, 1988, my mother mailed the original and seven copies of this brief to the Clerk of The Supreme Court of Florida for filing and that she also served a true copy thereof on James N. Watson, Jr., Esq,; The Florida Bar; 600 Apalachee Parkway; Tallahassee, Florida, 32301; all by U.S. Mail, postage prepaid.

W. A. MacGuire
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