IN THE SUPREME COURT OF FLORIDA

CASE NO. 71,104

BENJAMIN U. SANDLIN,

Appellant,

vs.

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION,

Appellee.

_____/

BRIEF OF AMICUS CURIAE

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ISSUE PRESENTED FOR REVIEW

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?

Amicus Attorney General, Robert Butterworth files this brief to address the propriety of the Appellee Criminal Justice Standards and Training Commission's interpretation of Section 943.13(4), Florida Statutes (1985), and the effect of a full pardon on the execution of said statute.

ARGUMENT

A. THE PLAIN MEANING OF SECTION 943.13(4), FLORIDA STATUTES, REQUIRES THAT THE CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION DENY CERTIFICATION AS A LAW ENFORCEMENT OFFICER TO ANY APPLICANT CONVICTED OF A FELONY, NOTWITHSTANDING SAID APPLICANT'S RECEIPT OF A FULL PARDON FOR THE CONVICTION IN QUESTION.

The statutory provision at issue in this case, Section 943.13(4), Florida Statutes (1985), states:

> 943.13 Officers Minimum Qalifications for Employment or Appointment. On or after October 1, 1984, any person employed or appointed as an officer shall:

> (4) Not have been convicted of any felony or of a misdemeanor involving perjury or false statement or have received a dishonorable or undesirable discharge from any of the armed forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendre to or is found guilty of a felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication.

The Criminal Justice Standards and Training Commission in compliance with the mandate of the above referenced statute denied the Appellant's application for certification as a law enforcement officer. It had been alleged and admitted that the Appellant had been convicted of four separate felonies between the years 1961 and 1964 and that the Appellant had obtained a full pardon for said offenses. The Commission correctly determined that Section 943.13(4), Florida Statutes, created a complete and non-discretionary bar to certification as a law enforcement officer of convicted felons and rejected the Appellant's application in spite of Appellant's pardon. It is a well established principle "that unambiguous statutory language must be accorded its plain meaning." Carson v. Miller, 370 So.2d 10, 11 (Fla. 1979). See also, Thayer v. State, 335 So.2d 815 (Fla. 1976). Indeed, in establishing that the intent of a statute is determined primarily from its language, this court has stated that "[t]he plain meaning of

the statutory language is the first consideration." St. Petersburg Bank and Trust Company v. Hamm, 414 So.2d 1071, 1073 (Fla. 1982). Restated, "[w]ords are the means of expressing [intention], making a permanent monument of it and are, when clear, the best evidence of what the law is." Lanier v. Bronson, 215 So.2d 776, 778 (Fla. 4th DCA 1968).

The statutory requirements for certification as a law enforcement officer are clear. No individual "convicted of any felony" shall be qualified to possess certification as a law enforcement officer.

The Appellant has urged this Court to apply the principle of statutory construction expressio unius est exclusio alterius to Section 943.13(4), Florida Statutes (1985), and argues that such an application will result in an interpretation favorable to his position. The application of said principle to the statutory section in question would be improper for two reasons. Initially, the application of any rule of statutory interpretation is improper if the language considered is clear and unambiguous as is the language in the statutory section in question. Nevertheless, assuming arguendo that Section 943.13(4), Florida Statutes (1985), is unclear it is not the principle of expressio unius est exclusio alterius that should be

applied but rather the rule that statutes should be read in pari materia. Appellant contends that by including the language "notwithstanding suspension of sentence or withholding of adjudication" "[t]he legislature expressly included two possible exceptions to the rule" and, ergo, expressly excluded full pardons from the parameters of the statute's exclusionary language. This analysis ignores the fact that Section 943.13(4), Florida Statutes (1985), is divided into two segments, the first relating to actions prior to July 1, 1981, and the second subsequent to said date. The Appellant's factual situation steers him toward the first segment or sentence which states that any person certified as a law enforcement officer shall:

> "Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable or undesirable discharge from any of the armed forces of the United States." Emphasis added

The language referencing suspension of sentence and withholding of adjudication applies exclusively to those actions occurring after the July 1, 1981, date. Therefore, whether or not the Legislature's failure to include full pardons into the second sentence has a limiting effect on applicants who are convicted after July 1, 1981, is irrelevant to the case at bar.

Were any principle of statutory construction to be applied in this matter, the more appropriate action would be to read

Section 943.13(4), and Section 112.011, Florida Statutes (1985), in pari materia. Section 112.011, Florida Statutes (1985), entitled "Felons: removal of disqualifications for employment, exceptions." states in Section (1)(a):

> "[a] person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipalities solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought."

At first blush the above stated statutory section appears to support the Appellant's contention that the Legislature favors limited restrictions to licensure based upon prior felony convictions. However, Section 112.011(2)(a), Florida Statutes (1985), makes it quite clear that the above referenced statutory section "shall not be applicable to any law enforcement or correctional agency." This exception supports the Commission's conclusion that the Legislature intended that a restrictive policy be applied to convicted felons seeking certification as law enforcement or correctional officers.

If this Court accepts the analysis presented above and concurs with the members of the First District Court of Appeal in the case, sub judice, then the question to be answered is whether the absolute disqualification of every convicted felon from

certification as a law enforcement officer as established by the legislature is violative of the separation of powers doctrine established in Article II, Section 3, of the 1968 Florida Constitution. Restated, does Section 943.13(4), Florida Statutes (1985), stand as a legislative infringement on the constitutionally granted rights of the executive branch by its failure to recognize a pardon as an exception to its dictates?

B. CERTIFICATION AS A LAW ENFORCEMENT OFFICER IS NOT AN ORGANIC OR CIVIL RIGHT, ERGO THE LEGISLATIVE ESTABLISHMENT OF NON-DISCRETIONARY CRITERIA FOR SAID CERTIFICATION IS NOT VIOLATIVE OF THE SEPARATION OF POWERS DOCTRINE.

In support of his position, the Appellant has relied primarily on Singleton v. State, 38 Fla. 297, 21 So. 21 (Fla. 1896), In re: Florida Board of Bar Examiners, 183 So.2d 688 (Fla. 1966), In re: Florida Board of Bar Examiners, 341 So.2d 503 (Fla. 1976), and Fields v. State, 85 So.2d 609 (Fla. 1956), which have respectively stated that once pardoned a prior felony conviction cannot pose a complete bar to serving as a witness in a court of law, neither may it absolutely restrict eligibility to practice law, nor be used to subject an individual to the consequences of the habitual offender law. While possibly persuasive as to what policy the Legislature should follow

with respect to applicants such as the Appellant, none of the cases cited fit the fact pattern before this court and can be easily distinguished. It has been established that a pardon "restores one to the customary civil rights which ordinarily belong to a citizen of the state, which are generally conceded or recognized to be the right to hold office, to vote, to serve on a jury, to be a witness, but it does not restore offices forfeited, nor property or interests vested in others in consequence of conviction." Page v. Watson, 140 Fla. 536, 192 So. 205, 207 (Fla. 1938). This proposition as presented in the Page decision reinforced the earlier pronouncement in Singleton with respect to the civil right to appear as a witness in a court of law. Indeed, it should come as no surprise that Page was cited with authority in the Fields decision as that case dealt with the habitual offender law, a law which has a direct impact on an individual's personal liberty. However, when dealing with what at best might be considered a property right if held and a privilege if applied for, certification as a law enforcement officer can hardly be considered a civil right. Truly, as Justice Thornal noted, no one has an "organic right to be a policeman" nor does an individual have a "constitutional right to be hired by the government." Headly v. Baron, 228 So.2d 281, 284 (Fla.

1969). Similarly, no civil or organic right exists with respect to bar admission. While it is true that this court has held that a convicted felon, if in possession of a full pardon, may not be denied admission based exclusively upon said conviction, it should be noted that such a decision was just as likely one of policy as of law. It is understood that the Supreme Court is empowered by the State Constitution with exclusive jurisdiction over the admission to the practice of law in this state. Art. V, §15, Fla. Const. (1968), Art. V, §23, Fla. Const. (1957). Acknowledging this fact, the cases cited by the Appellant dim in their persuasiveness as pronouncements of law and take on the color of internal administrative policy decisions.

To date this Court has stood by the proposition that a pardon restores only one's customary civil rights as enumerated in Marsh v. Garwood, 65 So.2d 15, 19 (Fla. 1953). We submit that there exists no organic or civil right to certification as a law enforcement officer. We submit further that the legislature, in a valid exercise of its police powers established criteria for certification as a law enforcement officer when it promulgated Section 943.13(4), Florida Statutes (1985).

Based on the above, the Attorney General would urge that this court find that Section 943.13(4), Florida Statutes (1985), stands as a complete and non-discretionary bar to certification as a law enforcement officer to all convicted felons regardless of said felons' possession of a full and complete pardon; that this disqualification is a valid exercise of the legislature's police powers as granted to it by the state constitution; that said statutory section does not stand in contradiction to the Article IV, Section 8, clemency powers granted to the executive branch by the Florida Constitution and therefore is not in conflict with the separation of powers doctrine as established in Article II, Section 3, of the Florida Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE, has been furnished by United States Mail to JOSEPH S. WHITE, ESQUIRE, Attorney for Appellee, Assistant General Counsel, Department of Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302 and to ELIZABETH L. WHITE, ESQUIRE and WILLIAM J. SHEPPARD, ESQUIRE, Attorneys for Appellant, Sheppard and White, P.A., 215 Washington Street, Jacksonville, Florida 32202, this 27 day of October, 1987.

Clark R. Jennings