IN THE SUPREME COURT
OF FLORIDA

CASE NO: 71,104

BENJAMIN U. SANDLIN,

Appellant,

vs.

CRIMINAL JUSTICE STANDARDS AND
TRAINING COMMISSION,

Appellee.

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

The appellant, Benjamin U. Sandlin, will be referred to herein as the "Appellant" or "Mr. Sandlin." The appellee, Criminal Justice Standards and Training Commission, will be referred to as "Appellee" or the "Commission." References to the Record on Appeal will be designated "R.", followed by the appropriate page numbers set out in brackets.

STATEMENT OF CASE AND FACTS

This appeal calls upon this Court to interpret the provisions of §943.13(4), Fla. Stat. (1985); Article IV, Section 8(a); and Article II, Section 3, of the Florida Constitution to determine: 1) whether §943.13, Fla. Stat. (1985), acts as an absolute bar to the certification of a convicted felon, who has received a full pardon, as a law enforcement officer and, if so; 2) whether that statute unconstitutionally impinges upon the Governor's exclusive power to pardon as granted by Article II, Section 3 of the Florida Constitution. The First District Court of Appeal has certified this appeal as one of great public importance with respect to the following question:

> 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), of a person who has been convicted of any felony?

Sandlin v. Criminal Justice Standards and Training Commission, ___ So.2d ___, 12 FLW 1938, 1939 (Fla. 1st DCA August 11, 1987).[1/]

The facts and procedural history of this case are as follows. Benjamin U. Sandlin, appellant herein, at all relevant times, including the present, has been employed by the Jacksonville Sheriff's Office as a Correctional Officer II.

1/ Jurisdiction in this case is invoked pursuant to Fla. R. App. P. 9.030(a)(2)(ii) and (v).

[R. 2]. Since 1971, he has served as the chief bailiff for the Honorable Hudson R. Olliff, a circuit judge for the Fourth Judicial Circuit, in and for Duval County, Florida. During that time, Mr. Sandlin has served both the Sheriff's Office and the court system with diligence and professionalism [R. 2, 5, 55-78]. His duties require, among other responsibilities, that he have close contact with citizens sitting as jurors in criminal proceedings. He has received letters of commendation for the manner in which he interacted with those citizens [R. 35-36].

Mr. Sandlin, however, is not a typical bailiff, because while he was still in his teens he was convicted of robbery (1961), escape and assault (1964). 2/ He was paroled for these offenses in 1965, and has not been arrested since that time. On December 10, 1968, upon recommendation of the Florida Parole and Probation Commission, the Governor and the Cabinet granted Mr. Sandlin a full and complete pardon for these offenses, pursuant to §940.01, Fla. Stat. (1968). According to the rules promulgated by the Office of Executive Clemency:

> A full pardon unconditionally releases from punishment, forgives guilt and entitles an applicant to all the rights of citizenship enjoyed by him before his conviction. It freely and unconditionally absolves the offender from all legal consequences of the conviction under Florida law.

2/ In 1964, Mr. Sandlin's 1961 conviction for robbery was vacated. Thereupon, he again pled guilty to the robbery and was sentenced to serve fifteen months with credit for time served [R. 11]. Ironically, Judge Olliff, who appeared on behalf of Mr. Sandlin before the Commission was the assistant state attorney who prosecuted him earlier [R. 24]. Judge Olliff strongly recommended Mr. Sandlin's certification.

[R. 28].

On June 5, 1985, a request for certification was made to the Criminal Justice Standards and Training Commission by Police Personnel Officer, W. E. Squyars, of the Jacksonville Sheriff's Office that Mr. Sandlin be certified as a police officer. In making his request, Officer Squyars attached a letter from Sheriff Dale Carson, which stated:

> Mr. Sandlin's personnel file contains numerous letters from members of the court describing the outstanding job he does for them. He consistently receives an above average rating by his supervisors on his performance evaluations and is respected by his peers.
>
> . . . .
>
> We are aware of Mr. Sandlin's past arrest and conviction record, however, these incidents began at 17 years of age. After fifteen years of loyal, dedicated service to the department as a Correctional Officer, we have no reservation in our desire to now employ him as a Police Officer.

[R. 2].

After notice, a hearing was held before Appellee Commission on July 25, 1985, on the matter of Mr. Sandlin's certification to be a law enforcement officer [R. 4]. At the hearing, Mr. Sandlin presented uncontroverted evidence as to his good moral character and his outstanding reputation in the law enforcement field. 3/ He presented additional evidence that since his

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3/ At no time has the Commission taken the position that Mr. Sandlin lacks good moral character. To the contrary, all members of the Commission have noted Mr. Sandlin's outstanding qualities and have concluded the Commission would certify Mr. Sandlin but for his prior felony convictions for which he has been pardoned

pardon, he has obtained an Associate of Arts degree from Florida Junior College [R. 80]. He also attended and completed a court security seminar conducted by the United States Marshal's Service and has been certified as a correctional officer [R. 81-82].

According to Judge Olliff, Mr. Sandlin has willingly risked his own personal safety in the protection of the court and its personnel on several occasions [R. 30-31]. In the words of the judge, an individual with many years experience in the criminal justice system, "He [Mr. Sandlin] is a credit to the Sheriff's Office, to my court and to himself" [R. 59]. He is, according to State Attorney Ed Austin, "...[A] young man who got into trouble at an early age, saw the error of his ways, and is now a good solid law-abiding and respected citizen." [R. 55].

At the hearing, Mr. Sandlin presented additional evidence on his behalf, consisting of letters of reference from Fourth Circuit Judges including Chief Judge John E. Santora, Jr., Circuit Judge Lawrence Page Haddock, County Judge Raymond L. Simpson, as well as seventeen letters from Assistant State Attorneys, Public Defenders, private attorneys, a probation officer and Sheriff Carson [R. 2-27, 61-63]. All of these individuals have had extensive contact with Mr. Sandlin and have had the opportunity to observe Mr. Sandlin firsthand. All were

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3/ (continued) Indeed, the First District Court of Appeal specifically noted, "At the hearing on the certification request, appellant presented uncontroverted evidence of his good moral character, his outstanding reputation in the law enforcement field, and his continuing education since his pardon." Sandlin, at 1938 (emphasis added).

unanimous and unequivocal in their support for Mr. Sandlin's certification.

Despite the overwhelming and uncontroverted evidence of Mr. Sandlin's present fitness to be a law enforcement officer, the Commission concluded it was "powerless" to grant certification of Mr. Sandlin to be a law enforcement officer [R. 47]. The Commission, relying upon a 1970 opinion of the Attorney General, [4/] reluctantly concluded that a felony conviction, even one which has been subject of a full and complete pardon, stands as a conviction and bar from certification for purposes of §943.13(4), Fla. Stat. (1985). [5/] In doing so, however, the Commission acknowledged that it had previously contradicted its position and had certified an individual who had been convicted of a felony and later pardoned [R. 38]. Thus, while the Commission determined it had no discretion to grant the

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4/ 1969-70 Atty. Gen. Op. 157, p. 388 (1970).

5/ The Commission reached its decision by interpreting §943.13(4), Fla. Stat. (1985), in light of §§112.011(1)(a) and (2)(a), Fla. Stat. (1985), which provide:

> A person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality 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.
>
> . . .
>
> This section shall not be applicable to any law enforcement or correctional agency.

certification, its determination was directly contrary to prior decisions, where it had certified fully pardoned convicted felons as law enforcement officers [R. 38].

The Commission made it quite clear that the sole reason for its refusal to certify Mr. Sandlin as a law enforcement officer was his pardoned felony convictions [R. 96]. There was no assertion that Mr. Sandlin was unfit to be a law enforcement officer for any other reason. Indeed, at the hearing conducted below, Louie Wainwright, former Secretary of the Florida Department of Corrections, stated, "I don't think there could ever be any example any better than this one of a case [where]...this Commission ought to be able to grant certification." [R. 40]. Michael Berg, Chief of the Duval County Jail, agreed, stating that Mr. Sandlin's situation is "...a classic example of an individual that has gone astray and come back to be a productive, contributing member not only of society but of a professional, successful criminal justice system and I would have to say that I'd be in favor of certification." [R. 43].

Although the Commission was of the opinion that Mr. Sandlin was qualified for certification as a law enforcement officer, it concluded it had no discretion to grant certification because of the mandatory preclusion of all convicted felons contained within §943 [R. 44-45]. It, therefore, reluctantly concluded that despite the full pardon bestowed upon Mr. Sandlin, he had been convicted of a felony for purposes of §943.13(4), Fla. Stat. (1985), and denied his requested certification [R. 44-45, 96].

A timely appeal was taken and this cause was heard by a panel of the First District Court of Appeal. After oral argument, the court affirmed the Commission's decision. In an opinion authored by Judge Barfield, it held that the Commission was correct in its determination that §943.13(4), Fla. Stat. (1985) constituted a legislative bar to the certification of a convicted felon who has received a full pardon as a law enforcement officer.

In concluding that the Commission had no discretion to grant certification pursuant to Chapter 943, the majority rejected the argument that legislative preclusion, of convicted felons who have received a full pardon, from certification violates the separation of powers doctrine. It also rejected petitioner's argument that by denying him certification as a law enforcement officer the Commission imposed upon him a "legal disability", which should have been removed upon the grant of a full pardon. Nonetheless, the majority conceded, "A pardon may relieve a person from the legal disabilities attendant upon a conviction..." Sandlin at 1939.

Judge Ervin dissented from the majority opinion, noting that the case did not involve the question of whether the Commission properly exercised its discretion, because the Commission thought it had no discretion to act. According to Judge Ervin, the power to pardon "...is vested exclusively in the executive branch and 'when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of

the constitutional provision.' " Sandlin at 1941 (emphasis in original); citing Weinberger v. Board of Public Instruction, 93 Fla. 470, 112 So. 253, 256 (Fla. 1927).

Judge Ervin noted that the executive branch of government, pursuant to its exclusive pardon power, has enacted Rule 5A of the Rules of Executive Clemency which specifically provides that a pardon "...freely and unconditionally absolves the offender from all legal consequences of the conviction of an offense under Florida Law." Id. (emphasis in original). He thus reasoned that since the pardon power vests exclusively in the executive branch of government, any legislative enactment which represents an absolute bar to consideration of certification is unconstitutional. He further concluded:

> Appellant's entitlement to employment as a law enforcement officer following his pardon is no greater than that he possessed before his conviction, nor can it be any less. Although his receipt of a full pardon does not blot out the fact of his commission of a crime, neither, in the absence of executive action so holding, can it solely be a basis for disentitlement to any such consideration. The applicant still must be allowed the right - unimpeded by the legislature - to have the question of his entitlement for the position he seeks considered by the Commission, and any statute or statutes denying him such right must be held unconstitutional as an improper exercise of the power of pardon which resides exclusively with the executive branch of government.

Id.

As previously noted, both the majority and dissent agreed this appeal should be certified because it raises a question of great public importance. Certainly, there can be no question that this appeal raises issues of great import because it calls

upon this Court to interpret constitutional provisions which are fundamental to our system of government.

SUMMARY OF ARGUMENT

Appellant is a prior convicted felon who has been fully pardoned. He subsequently applied for certification as a law enforcement officer and was denied such certification, even though he established his good moral character. Certification was denied because the Criminal Justice Standards and Training Commission interpreted §943.13(4), Fla. Stat. (1985), which provides that an officer shall not have been convicted of a felony, to act as an absolute bar to certification. This statute should not be interpreted as an absolute disqualification to all felons, regardless of the presence of a full pardon and regardless of their present moral character. To interpret the statute as such ignores the power of a full pardon and thus, nullifies the restoration of complete civil rights and the removal of disqualifications granted by the executive branch of government. Having established his good moral character, Mr. Sandlin should not have been denied certification solely because of his criminal record, for which he has received a full and complete pardon.

POINTS ON APPEAL

I.

SECTION 943.13(4), FLORIDA STATUTES (1985), AS INTERPRETED BY THE FIRST DISTRICT COURT OF APPEAL TO DISQUALIFY A CONVICTED FELON WHO HAS RECEIVED A FULL PARDON FROM LAW ENFORCEMENT CERTIFICATION, VIOLATES ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION

II.

SECTION 943.13(4), FLORIDA STATUTES (1985) SHOULD NOT BE INTERPRETED TO BAR A CONVICTED FELON WHO HAS RECEIVED A FULL PARDON FROM CERTIFICATION AS A LAW ENFORCEMENT OFFICER IF HE OTHERWISE ESTABLISHES HIS GOOD MORAL CHARACTER

ARGUMENT

I.

SECTION 943.13(4), FLORIDA STATUTES (1985), AS INTERPRETED BY THE FIRST DISTRICT COURT OF APPEAL TO DISQUALIFY A CONVICTED FELON WHO HAS RECEIVED A FULL PARDON FROM LAW ENFORCEMENT CERTIFICATION, VIOLATES ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION

Under Florida law, to be eligible for certification as a law enforcement officer, an applicant must not have been convicted of a felony. §943.13(4), Fla. Stat. (1985). By this appeal, Mr. Sandlin challenges the Commission's conclusion that this statute acts an an absolute disqualification to certification to any person with a felony conviction, regardless of the fact that the individual has received a full and complete pardon for the offenses at issue.

By its terms, a full pardon has the effect of removing the disabilities created by the conviction [6] and thus, allows the once convicted felon to, among other things, hold office, vote, serve on a jury in a court of law, and practice law. United States v. Matassini, 565 F.2d 1297 (5th Cir. 1978); In Re Florida Board of Bar Examiners, 183 So.2d 688 (Fla. 1966); Marsh v. Garwood, 65 So.2d 15 (1953); Page v. Watson, 190 Fla. 536, 192 So. 205 (Fla. 1938); Fields v. State, 85 So.2d 609 (Fla. 1956).

6/ The legal effect to be given a full pardon is clearly set forth in Rule 5A of the Rules of Executive Clemency of Florida, which states, "A Full Pardon unconditionally releases from punishment, forgives guilt and entitles an applicant to all of the rights of citizenship enjoyed by him before his conviction. It freely and unconditionally absolves the offender from all legal consequences of the conviction of an offense under Florida law." (Emphasis added).

Article IV, Section 8(a) of the Florida Constitution explicitly vests the pardon powers within the exclusive domain of the executive branch of government. It provides:

> Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the secretary of state, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

(Emphasis added). This article must be read in conjunction with Article II, Section 3 of the Florida Constitution which provides in material part, "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." (Emphasis added). There is no constitutional provision which permits the Legislature to interfere with, abridge or diminish the effect of a grant of a full pardon. Any legislative attempt to abridge the Governor's pardon power must be rejected as a violation of the separation of powers doctrine.

As noted in Weinberger v. Board of Public Instruction, 112 So. 253, 256 (Fla. 1927), "...[W]hen the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision." If §943.13(4), Fla. Stat. (1985) is construed to remove from the Commission any discretion to act favorably upon an application by a convicted felon after pardon, enactment of such statute is beyond the power of the Legislature.

In In Re Advisory Opinion of the Governor, In re: Administrative Procedure Act, Executive Clemency, 334 So.2d 561, 562-563 (Fla. 1976) this Court held, "This Court has always viewed the pardon powers expressed in the Constitution as being peculiarly within the domain of the executive branch of the government...[W]e see no reason to depart from our previous view that the Legislature may not intrude into this area of constitutional authorization." Similarly, in In Re Advisory Opinion of the Governor, Civil Rights, 306 So.2d 520, 521 (Fla. 1975), this Court invalidated as unconstitutional legislation which provided for the automatic suspension and restoration of civil rights, finding that such legislation, "...does constitute a clear infringement upon the constitutional power of the Governor to restore civil rights." In doing so, the Court also noted, "As early as 1896, this Court committed itself to the proposition that the power of pardon is reposed exclusively in the chief executive..." Id. at 522 (emphasis added).

In Sullivan v. Askew, 348 So.2d 312 (Fla. 1977), this Court rejected an attempt by inmates under a sentence of death to impose certain minimal due process procedures upon the clemency process. Referring specifically to Article IV, Section 8 of the Florida Constitution, this Court held, "By this self-executing constitutional provision, the people of this state chose to vest sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." Id. at 315 (emphasis added).

Additionally, in this State there can be no dispute that a grant of a full pardon operates to remove all legal disabilities from an individual so pardoned: 7/

> 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. 'Imprisonment and hard labor are not the only punishments which the law inflicts upon those who violate its commands. Besides these are disabilities which are the consequences of conviction, and which remain after incarceration has ceased. A pardon is supposed to be granted to one who has been improperly convicted, or who has sufficiently expiated his offense. If it was only efficacious when the party was in duress, its effect would only be a halfway relief. The doctrine, now well recognized, upon this subject, is that 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.' State v. Baptiste, 26 La.Ann. 134.

Singleton v. State, 38 Fla. 297, 21 So. 21, 22 (Fla. 1896) (emphasis added).

Case law thus makes clear that the pardon power vests solely in the executive branch of government. Any attempt to lessen that power must run afoul of Article II, Section 3 of the Florida Constitution. This Court has been called upon to interpret the

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7/ The majority opinion below conceded as much when it held, "A pardon may relieve a person from the legal disabilities attendant upon a conviction." Sandlin, at 1939. Appellant respectfully submits that an absolute prohibition from certain employment based upon a prior felony conviction which has been the subject of a pardon is precisely the type of legal disability which a pardon is designed to remove.

separation of powers doctrine embodied in that constitutional provision. Within the context of the appointment of the judiciary, this Court has held that the Legislature cannot take any action which limits the executive power to appoint judges. In Re Advisory Opinion to Governor, 276 So.2d 25 (Fla. 1973). Significantly, this Court concluded:

> At the time the executive order was issued, there was no statute governing the process through which the Governor made appointments to the judiciary. Indeed, under the provisions of the existing Fla. Const., art. IV, §1(f), and §7, and Art. V, §14, (1885), F.S.A., the Legislature could not have enacted laws on the subject area of the executive order. See Westlake v. Merritt, 85 Fla. 28, 95 So. 662 (1923). This was an executive function, pure and simple, and limitations could not be placed on that executive function.

Id. at 29 (emphasis added).

In the present case, the Commission and the court below have interpreted §943.13(4), Fla. Stat. (1985) so that it diminishes the legal effect of a full pardon and imposes a legal disability - restriction from employment - which a pardon is intended to remove. Such legislative diminishment is an unconstitutional usurpation of the Governor's pardon power and should be rejected by this Court.

II.

SECTION 943.13(4), FLORIDA STATUTES (1985) SHOULD NOT BE INTERPRETED TO BAR A CONVICTED FELON WHO HAS RECEIVED A FULL PARDON FROM CERTIFICATION AS A LAW ENFORCEMENT OFFICER IF HE OTHERWISE ESTABLISHES HIS GOOD MORAL CHARACTER

It is a settled principle of statutory construction that courts should avoid holding a statute unconstitutional if a fair construction of the statute can be made within constitutional limits. Industrial Fire and Casualty v. Kwechin, 447 So.2d 1337, 1339 (Fla. 1984); State v. Beasley, 317 So.2d 750, 752 (Fla. 1975); State v. Ecker, 311 So.2d 104, 109 (Fla. 1975). This principle was succinctly stated by this Court in Kwechin, when it stated, "When two constructions of a statute are possible, one of which is of questionable constitutionality, the statute must be construed so as to avoid any violation of the constitution." Id. at 1339. Moreover, "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character." United States v. Matassini, 565 F.2d 1297, 1311 (5th Cir. 1978); citing, Perry v. Commerce Loan Company, 383 U.S. 392 (1966).

The construction placed upon §943.13, Fla. Stat. (1985) by the Commission and by the court below is violative of the above principles of statutory construction. To construe this statute in such a fashion, "...would render it unconstitutional as a clear encroachment by the legislature upon the pardoning

power..." of the Governor. Slater v. Olson, 230 Iowa 1005, 299 N.W. 879, 881 (Iowa 1941).

The Commission's construction of the statute is also violative of another well-settled rule of statutory construction. Expressio unius est exclusio alterius: the expression of one thing is the exclusion of others. James v. Department of Corrections, 424 So.2d 826, 827 (Fla. 1st DCA 1982). Section 943.13(4), Florida Statutes (1985), upon which the Commission's decision is based, expressly states:

> ...[A]ny person employed or appointed as an officer shall:...(4) not have been convicted of any felony...Any person who...is found guilty of a felony...is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication.

§943.13 Fla. Stat. (1985). The Legislature expressly included two possible exceptions to the rule. Significantly, however, it did not include a full pardon in this language. The inclusion of these two situations without mention of a full pardon supports the conclusion that a full pardon should be excluded from the terms of the statute. This position is similar to that discussed in Fields v. State, 85 So.2d 609 (Fla. 1956), where the Court stated:

> ...[I]nasmuch as the legislature did not expressly include pardoned convictions in the act, it is taken as evidencing an intention on the part of the legislature of this state that pardoned convictions not be counted as prior "live" felony convictions.

Id. at 611.

The statutory construction which Mr. Sandlin seeks to have this Court adopt and which would permit a convicted felon, who has received a full pardon, to be certified as a law enforcement officer if he otherwise establishes good moral character, has been adopted by other courts which have addressed this issue. In Commissioner of the Metropolitan District Commission v. Director of Civil Service, 203 N.E.2d 95 (Mass. 1964). A prior convicted felon with a full pardon sought appointment as a police officer. Id. at 96. The appointment was refused because of the existence of a Massachusetts statute, which disqualified convicted felons from service as police officers. Id. at 97. The Court ruled that the absolute disqualification of being a felon is removed by a full pardon. Id. The Court reasoned that the effect of the statute was to impose a quasi-penal, civil disqualification which should be removed with the granting of the full pardon. Id. at 103. This result allows the felon with a full pardon to hold such office, if he can sustain the burden of proving his good character just as any other nonconvicted applicant.

The Supreme Court of Iowa has also adopted this rationale. Slater v. Olson. In Slater, the applicant, a felon who had received a full pardon, applied for a civil service position with the City of Des Moines. Id. at 879. His application was denied because of a statute which provided, "...In no case shall a person be appointed...in the fire or police department or any department...governed by Civil Service, unless...[he] has not been convicted of a felony." The Court reasoned that to interpret the statute to exclude those with a full pardon would

render it unconstitutional as an encroachment upon the exclusive pardoning powers of the judicial branch of government. Id. at 881. The court thus concluded that the absolute disqualification was removed by the full pardon and that plaintiff was entitled to prove that he is now a man of good moral character. Id.

The instant case is factually indistinguishable from these cases. Appellant in the instant case is a person with a felony record and a full pardon seeking certification as a police officer. Also, similar to Commissioner and Slater, Mr. Sandlin has been denied certification based on a Florida statute which says that any person appointed as an officer shall not have been convicted of a felony. The Commission and the court below interpreted the statute to be an absolute disqualification to all prior convicted felons, whether or not they possess a full pardon. This is the exact position rejected by the Commissioner and Slater courts.

By denying Mr. Sandlin's certification the Commission imposed a "legal disability" upon Mr. Sandlin, when it concluded that despite Mr. Sandlin's pardon, he was absolutely prohibited from being certified as a law enforcement officer. This "disability" is precisely that which the Cabinet and Governor, acting as the Clemency Board, sought to remove when it granted Mr. Sandlin a full pardon. As previously discussed, the rationale of Slater is applicable in that to interpret §943.13(4), Fla. Stat. (1985), as did the Commission would result in the usurpation, by negation, of the pardoning power of the executive branch of government. The absolute bar from

certification should be removed by appellant's full pardon and he should be certified, having previously proven his good moral character at the hearing already conducted herein.

Recently, in the case of Calhoun v. Department of Health and Rehabilitative Services, 500 So.2d 674 (Fla. 3d DCA 1987), the Third District Court of Appeal, explicitly accepted the appellant's position herein. In that case, the court interpreted §112.011(1)(b), Fla. Stat. (1985) to act as an absolute bar to preclude a convicted felon from certification as a family day care operator. In doing so, however, it stated:

> It follows, then, that Mrs. Calhoun, upon proof of her rehabilitation - and we acknowledge her exemplary record as a child day care operator for the years 1978-1985 - may apply for a restoration of her civil rights through a pardon or otherwise, and, upon such restoration, will no longer be disqualified, as she is now, from being licensed as a family day care operator. We recognize, of course, that HRS could still, in its discretion, decline to issue such a license to Mrs. Calhoun based on her prior felony convictions, even if her civil rights are restored, if it determines that she has not been fully rehabilitated, see Page v. Watson, 140 Fla. 536, 192 So. 205 (1939). Still, HRS is, plainly, free to issue her such a license, under Section 112.011(1)(b), Florida Statutes (1985), upon the restoration of her civil rights, notwithstanding her prior felony conviction, if it concludes she has been rehabilitated.

Id. at 678-679 (emphasis added) (footnote omitted).

In the present case, the Commission concluded that it lacked any discretion to grant certification. This conclusion was clearly erroneous.

This Court has, on numerous occasions, accepted the reasoning found in the Calhoun decision. For instance, this

Court has ruled that the complete bar to felons serving as witnesses in a court of law is lifted by the presence of a full pardon. Singleton v. State, 38 Fla. 297, 21 So. 21 (Fla. 1896). This Court has also held that prior felony convictions, relieved by a full pardon, cannot be the basis for subjection to a habitual criminal law. Fields v. State, 85 So.2d at 611.

This Court has also considered the effect of a full pardon on a convicted felon's right to practice law in this state. See, In re Florida Board of Bar Examiners, 183 So.2d 688 (Fla. 1966). In that case, this Court ruled that a prior felony conviction, once pardoned, cannot be used as an absolute bar to the practice of law. Id. at 690. This Court allowed the conviction to be used only during the overall measurement of the applicant's good character. This position was cited with approval in the case of In re Admission of Previously Convicted Felons, 341 So.2d 503 (Fla. 1976). In that case, this Court considered the effect of newly adopted Rule 9(A), Rules of Executive Clemency of Florida which called for automatic restoration of civil rights upon release from conviction. Id. at 503. Although this Court refused to approve the new rule until the constitutionality was tested, the Court did reinforce its earlier opinion that a full pardon does restore eligibility to practice law in this state. Id. at 504. It is difficult to conceive a rational reason why a full pardon should have one impact on lawyers but a different impact on police officers.

This Court has not had the opportunity to address the precise issue of the effect of a full pardon on a felon's

eligibility for police service. Based on the foregoing authority, however, it is clear that this Court should conclude that a full pardon removes the complete disqualification of a felon, where a law enforcement applicant otherwise demonstrates his good moral character. Indeed, case law supports the conclusion that this Court is in favor of the complete removal of all disabilities resulting from the conviction, where a person has received a full pardon. Practicing law and serving as a witness are both very significant roles in the makeup of our society. In terms of the requirement of good moral character, they are equivalent to the role of a police officer. A convicted felon may regain the right to practice law or serve as a witness upon the receipt of a full pardon. Thus, to allow a full pardon to remove a felon's disqualification to serve as a police officer is consistent with the overall effect of a full pardon as applied by this Court.

Appellee based its denial of certification to appellant on a strict literal reading of §943.13(4), Fla. Stat. (1985). The Commission regarded this section as imposing an absolute disqualification, regardless of whether the felon is granted a full pardon. It held below that the statute leaves no room for discretion in their decision as to the eligibility of a convicted felon. This view is in direct conflict with the legal effect which should be afforded a full pardon. See, e.g., Calhoun, at 678-679. Additionally, it is in direct conflict with the Commission's prior actions in certifying convicted felons who have received full pardons as law enforcement personnel.

Based on the policy and purpose behind the granting of a full pardon, and the effect given it under the case law, the better view would be that the pardon removes the disqualification of a felon from serving as a police officer, so long as the applicant otherwise establishes his good moral character. Upon the removal of the absolute disqualification by the full pardon, appellant must still meet the burden of satisfying appellee of his good moral character. The record below establishes without question that Mr. Sandlin did in fact establish his good moral character. This approach has been accepted by the supreme courts of Massachusetts and Iowa on this specific issue; of Missouri in regard to granting of liquor licenses; and of the Supreme Court of Florida with regard to the practice of law in this state. Commissioner at 103; Slater at 881; Bar Examiners at 504; see, also, Guastello v. Department of Liquor Control, 536 S.W.2d 21 (Mo. 1976); and of the Third District Court of Appeal with regard to day care workers. Calhoun at 678-679.

At the original hearing, the Commission found in favor of Mr. Sandlin's overall good moral character. The denial of certification was based solely on the absolute disqualification of convicted felons. As is evident from the record, however, Mr. Sandlin has presented overwhelming evidence to support his certification. He has presented endorsements from several local judges, prosecuting and defense attorneys, the Sheriff of Duval County and other highly respected individuals. All of these people unequivocally vouch for his good moral character. Thus, it was clear error to have refused to consider appellant for

certification as a police officer solely because of felony convictions for which he has received a full pardon.

CONCLUSION

Based upon the facts and legal principles cited herein, the Commission committed reversible error when it concluded that it had no discretion to grant Mr. Sandlin certification as a law enforcement officer.

Respectfully submitted,

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