IN THE SUPREME COURT OF FLORIDA

Case No.
District Court Case No. 4D10-4687
Lower Court Case No. 10-07095 (25)

WILLIAM TELLI

Petitioner,

v.

BROWARD COUNTY AND
DR. BRENDA C. SNIPES

Respondents.

PETITIONER'S CORRECTED AMENDED BRIEF IN SUPPORT OF JURISDICTION

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Table of Contents

Table of Contents ii
Table of Authorities iii
I. STATEMENT OF THE CASE AND FACTS 1
II. SUMMARY OF ARGUMENT 1
III. ARGUMENT 3
A. The Decision in *Telli* Expressly Construes a Provision of the Florida Constitution 3
B. The Decision in *Telli* Expressly Affects a Class of Constitutional Officers 4
C. The Decision in *Telli* Expressly and Directly Conflicts with This Court's Decision in *Cook v. City of Jacksonville* 6
D. The Decision in *Telli* Addresses an Issue of Great Public Importance 9
IV. CONCLUSION 10

Table of Authorities

Cases

Cook v. City of Jacksonville,
823 So. 2d 86 (Fla. 2002) ..... passim

Knowles v. State,
848 So. 2d 1055 (Fla. 2003) 6

Robertson v. State,
829 So. 2d 901 (Fla. 2002) 6

Snipes v. Telli,
No. 4D10-4687 (Fla. 4th DCA August 10, 2011) ..... passim

State v. Grassi,
532 So. 2d 1055 (Fla. 1988) 4

Wilson v. Newell,
223 So. 2d 734 (Fla. 1969) 4

Rules

Fla. R. App. P. 9.030 ..... 3, 4, 6, 9

Constitutional Provisions

Florida Constitution, Article V, Section 3 ..... 3, 4, 6, 9

Florida Constitution, Article VI, Section 4 ..... 2, 6, 7

Florida Constitution, Article VIII, Section 1 ..... passim

I. STATEMENT OF THE CASE AND FACTS

The decision of the District Court of Appeal in *Snipes v. Telli*, No. 4D10-4687 (Fla. 4th DCA August 10, 2011), attached as Appendix A, generally sets forth the case and facts. In 2000, Broward County voters approved an amendment to the county charter that limited Broward County Commissioners to no more than three consecutive four year terms. William Telli, Petitioner, challenged the charter amendment on the ground that it conflicts with the Florida Constitution. The circuit court agreed, finding that under this Court's holding in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), a term limit is a disqualification from office that can only be imposed on constitutional officers through amendment to the Constitution itself. In an opinion dated August 10, 2011, the Fourth District Court of Appeal reversed, concluding that the holding in *Cook* is inapplicable under the novel rationale that the office of County Commissioner of a Charter County is not an expressly authorized constitutional office under the Florida Constitution.

II. SUMMARY OF ARGUMENT

Broward County's Term Limit Amendment is unconstitutional under the decision of this Court *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), which unequivocally determined that the Florida Constitution preempts the entire field of disqualification of **all** constitutional officers. In *Cook*, the Court explicitly

held that a term limit provision is a disqualification from election to office. The Court further held that article VI, section 4, provides the exclusive roster of permissible disqualifications and provides those positions authorized by the constitution upon which a term limit provision may be permissibly imposed. Accordingly, the Court held that constitutionally authorized offices not included in article VI, section 4(b), may not have a term limit disqualification imposed. The constitutional officers before the Court in *Cook* were authorized under article VIII, section 1(d). Because article VIII, section 1(d) officers are not included in article VI, section 4(b), the Court concluded that any charter amendment purporting to place term limits on these constitutionally authorized officers is an impermissible disqualification of a constitutional office.

The Fourth District's attempt to distinguish *Cook* from the instant case by holding that County Commissioner of a Charter County is not an authorized constitutional office is wholly unsupported by any precedent and in direct contravention of the rationale underlying the decision in *Cook*. In addition, the Fourth District's decision casts aside the strikingly similar language between article VIII, sections 1(d) and (e) by creating a distinction without a difference and, in the process, creating an irreconcilable conflict with the plain language of *Cook*.

III. ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE AUGUST 10, 2011, DECISION OF THE FOURTH DISTRICT COURT OF APPEAL.

This Court has jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution because the decision below: (1) expressly construes a provision of the Florida Constitution; (2) expressly affects a class of constitutional officers; and (3) expressly and directly conflicts with this Court's decision in *Cook v. City of Jacksonville*. The Fourth District expressly recognized as much in the opinion itself, citing these additional jurisdictional grounds as the reason that the court did not certify a question of great public importance: "We choose not to certify a question to the Florida Supreme Court. If we have incorrectly delineated the scope of *Cook*, our failure to apply it here would be in conflict with that opinion, so that the Supreme Court could take discretionary jurisdiction of this case." *Snipes v. Telli*, No. 4D10-4687 at 7 (Fla. 4th DCA August 10, 2011).

A. The Decision in *Telli* Expressly Construes a Provision of the Florida Constitution

Under both article V, section 3(b)(3) of the Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(ii), this Court has jurisdiction to review decisions of a district court that expressly construe a provision of the state or federal constitution. Here, the Fourth District's holding is based upon its construction of article VIII, section 1(e). Specifically, the court found that under the language of article VIII, section 1(e),

county commissioners are not "constitutionally authorized officers" as that phrase has been used by this Court. *See Telli*, No. 4D10-4687 at 3-4, 6, n.4. In reaching this conclusion, the court found that article VIII, section 1(e) "does not unalterably establish the office of 'county commissioner;' rather, that subsection provides for county commissioners only as a fallback option." *Id*. at 4. Because the district court's opinion expressly construes article VIII, section 1(e) of the Florida Constitution, this Court has discretionary jurisdiction to review the decision.

B. The Decision in *Telli* Expressly Affects a Class of Constitutional Officers

Under both article V, section 3(b)(3) of the Fla. Const. and Fla. R. App. P 9.030(a)(2)(A)(iii), this Court has jurisdiction to review decisions of a district court of appeal that expressly affect a class of constitutional officers. There can be little doubt that a county commissioner is a constitutional officer. *See* Fla. Const. Art. VIII, §(1)(e). *See also State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988); *Wilson v. Newell*, 223 So. 2d 734, 735 (Fla. 1969). Here, the decision of the Fourth District expressly affects not only members of the Broward County Commission, but the members of all of the boards of county commissioners across the state. Accordingly, the decision impacts an entire class of constitutional officers.

Specifically, the Fourth District held that although county commissioners are constitutional officers, they are not "constitutionally authorized officers" within the meaning of that phrase as used by this Court in *Cook*. *Telli*, No. 4D10-4687 at 6,

n.4. To appreciate the sweeping affect of this holding on county commissioners, it is necessary to briefly examine this Court's use of that phrase within *Cook*, where this Court expressly held:

> that a term limit provision is a disqualification from election to office and that article VI, section 4(a), Florida Constitution, provides the exclusive roster of those disqualifications which may be permissibly imposed. **We also hold** that article VI, section 4(b), Florida Constitution, **provides those positions authorized by the constitution** upon which a term limit provision may be permissibly imposed.
>
> ….
>
> Clearly, by virtue of article VI, section 4(b), the Florida Constitution contemplates that term limits may be permissibly imposed upon certain offices authorized by the constitution. By the constitution identifying the offices to which a term limit disqualification applies, **we find that it necessarily follows that the constitutionally authorized offices not included in article VI, section 4(b), may not have a term limit disqualification imposed.** If these other constitutionally authorized offices are to be subject to a term limit disqualification, the Florida Constitution will have to be amended to include those offices.
>
> 823 So. 2d at 93-94. (Emphasis added)

The Fourth District expressly acknowledges that county commissioners are constitutional officers, but found that unlike the officers before the Court in *Cook*, they are not "constitutionally authorized". *Id*. Put another way, the Fourth District singled out county commissioners for special treatment separate and apart from other constitutional officers, even those officers that are likewise specified in

article VIII, section 1.[1] As a result of this holding, article VI, section 4, entitled "Disqualifications", no longer applies to county commissioners. For these reasons, the decision expressly, and unavoidably, affects a class of constitutional officers and, thus, is appropriate for invoking this Court's discretionary jurisdiction review.

C. The Decision in *Telli* Expressly and Directly Conflicts with This Court's Decision in *Cook v. City of Jacksonville*

Under both article V, section 3 (b)(3) of the Florida Constitution and Fla.R.App.P. 9.030 (a)(2)(A)(iv), this Court has jurisdiction to review decisions of a district court of appeal that expressly and directly conflict with a decision of another district or this Court on the same question of law. One type of express and direct conflict that has been recognized by this Court is misapplication of this Court's precedent. *See Knowles v. State*, 848 So. 2d 1055, 1056 (Fla. 2003) (invoking jurisdiction over a case that misapplied a previous decision of the Court); *Robertson v. State*, 829 So. 2d 901, 904 (Fla. 2002) (accepting jurisdiction over "a decision from the Third District Court that misapplies this Court's [prior] holding"). The decision of the Fourth District Court of Appeal expressly and directly conflicts with *Cook* by misapplying that decision to the constitutionally created and authorized office of county commissioner.

[1] *Cook* concerned officers authorized under article VIII, section 1(d), such as a sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court.

The misapplication here is the Fourth District's failure to apply *Cook* on grounds that are essentially drawing a distinction without a difference. In *Cook*, this Court held that "that article VI, section 4(b), Florida Constitution, provides those positions authorized by the constitution upon which a term limit provision may be permissibly imposed." *Cook*, 823 So. 2d at 93-94. The respondents in *Cook* were officers authorized by article VIII, section 1(d), whereas the constitutional officers at issue in this case are established by article VIII, section 1(e). The subsections to article VIII, section 1, that are at issue provide, *inter alia*:

> (d) **County officers**. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; **except, when provided by county charter or special law approved by vote of the electors of the county**, any county officer may be chosen in another manner therein specified, or **any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.**
>
> (e) **Commissioners**. **Except when otherwise provided by county charter**, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. (Emphasis in text added)

The Fourth District held that the officers identified in section 1(e) are not "constitutionally authorized" officers because of the following introductory language: "Except when otherwise provided by county charter". *Telli*, No. 4D10-4687 at 4. The court held that county commissioners under 1(e) are merely default officers and that "[t]o equate the legal effect of [sections 1(d) and 1(e)]—to say

that section 1(e) establishes county officers with the same exactness as section 1(d) constitutional officers—would be to ignore the first seven words of section 1(e)." *Id*. Section 1(d), however, contains nearly the exact same language, resulting in the exact same default classification, whereby counties "shall" elect 1(d) officers "except, when provided by county charter or special law approved by vote of the electors of the county". As a result, the opinion of the Fourth District and this Court's opinion in *Cook* are hopelessly irreconcilable.

The Fourth district additionally attempts to distinguish *Cook* on the grounds that the *Cook* analysis "is inappropriate when the case is read in light of the broad powers accorded charter counties by sections 1(e) and 1(g) of article VIII." *Id.* This is likewise a misapplication of *Cook*, as that case also involved a charter county and the Court expressly rejected the argument that the analysis of the Court should not apply to such municipalities:

> We do not agree with the . . . Second District's reliance on a charter county's home rule powers. . . . The Second District implicitly held that within the home rule powers of a charter county resided the authority to impose a term limit upon county officers authorized pursuant to article VIII, section 1(d), Florida Constitution. However, as we have indicated, neither Jacksonville nor Pinellas County has abolished the county officer positions authorized by article VIII, section 1(d). A county charter must comply with the Florida Constitution in respect to the disqualifications which pertain to these offices authorized by the constitution.

See Cook, 823 So. 2d at 94. Similarly, Broward County has not abolished the office of county commissioner. Although the opinion of the Fourth District does

not address the fact that one of the respondents in *Cook* was a charter county, this is a second instance of the direct conflict between *Telli* and *Cook*.

Finally, in the *Telli* opinion itself, the district court expressly recognizes that direct conflict (and a question of great public importance) exists if it did misapply *Cook*: "We choose not to certify a question to the Florida Supreme Court. If we have incorrectly delineated the scope of *Cook*, our failure to apply it here would be in conflict with that opinion, so that the Supreme Court could take discretionary jurisdiction of this case." *Telli*, No. 4D10-4687 at 7. Because the district court's opinion expressly and directly conflicts with a prior decision of the Florida Supreme Court, this Court has discretionary jurisdiction to review the decision.

D. The Decision in *Telli* Addresses an Issue of Great Public Importance

Under both article V, section 3 (b)(4) of the Fla. Const. and Fla. R. App. P. 9.030 (a)(2)(A)(v), this Court has jurisdiction to review decisions of a district court of appeal that pass upon a question certified to be of great public importance. In its opinion, the Fourth District made clear that the only reason it did not certify the issue as one of great public importance is because discretionary jurisdiction already exists as discussed above. *Id.* (citing Fla. R. App. P. 9.030(a)(2)(iii), (iv)). The district court's recognition that this Court should have the opportunity to be the final arbiter on the issue of whether the holding in *Cook* applies to constitutional officers other than those authorized by article VIII, section 1 (d), and specifically

whether that holding applies to county commissioners, is an acknowledgment of the need for this Court to take jurisdiction of this case.

The issue of term limits as applied to county commissioners is of significant statewide importance. The holding of the Fourth District is more expansive than the issue of whether a term limit may be imposed upon a county commissioner. Rather, as discussed in section B *supra*, the court, without precedent, segregates the constitutional office of county commissioner from all other constitutionally created offices. This segregation would naturally apply to other forms of qualification and disqualification as well. Unless this Court accepts jurisdiction, the status of the law post *Telli* is that the voters of a charter county could, for example, make graduation from an accredited law school a prerequisite for the office of county commissioner, but could not impose such a qualification/disqualification to the clerk of courts or county sheriff. Finally, the idea that county commissioners are not constitutionally authorized officers was never raised by the Respondents/Appellant in either the circuit or district courts.

IV. CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court invoke its discretionary jurisdiction to review the Fourth District Court of Appeal's decision in *Snipes v. Telli*, No. 4D10-4687 (Fla. 4th DCA August 10, 2011).

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was via U.S. Mail, to all counsel on the attached Mailing List on this 19th day of September, 2011.

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned counsel certifies that the type and style used in this brief is 14 point Times New Roman.

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