

RENDERED: NOVEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002574-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CR-00219

VINCENT FIELDS

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: GUIDUGLI AND HENRY, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

GUIDUGLI, JUDGE: This case arises from the Franklin Circuit Court's *sua sponte* dismissal of a three-count misdemeanor indictment against Vincent Fields on the basis of the pardon issued by Governor Fletcher in Executive Order 2005-924. The Franklin County Special Grand Jury, summoned by the Attorney General to investigate criminal violations of Kentucky's merit system hiring scheme, returned the indictment against Fields.

¹ Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The Commonwealth raises three issues in its appeal, contesting the validity of Governor Fletcher's pardon, asserting that Vincent did not accept the pardon and accordingly could not benefit from it, and arguing that the circuit court did not have jurisdiction over the misdemeanor indictment. While we disagree with two of the Commonwealth's arguments in light of the Supreme Court of Kentucky's recent decision of Fletcher v. Graham,² we agree that the circuit court did not have jurisdiction to dismiss the indictment. Accordingly, we vacate the circuit court's order and remand.

By way of background, we shall rely upon the Supreme Court's brief description of the investigation in Fletcher v. Graham:³

The investigation began in May 2005, when an employee of the Kentucky Transportation Cabinet contacted the Attorney General and presented evidence of alleged criminal violations of the state merit employee hiring system.[] On May 25, 2005, upon motion of the Attorney General, the Franklin Circuit Court summoned a special grand jury. For several months, the grand jury proceeded to investigate the matter and eventually issued several indictments against executive branch employees alleging both misdemeanor violations of the merit system laws and felony violations concerning evidence and witness tampering. Some three months into the investigation, on August 29, 2005,

² 192 S.W.3d 350 (Ky. 2006).

³ Id. at 355.

Governor Fletcher issued Executive Order 2005-924, whereby he sought to pardon nine individuals indicted by the grand jury^[4] as well as "any and all persons who have committed, or may be accused of committing, any offense up to and including the date hereof, relating in any way to the current merit system investigation."[]

The grand jury continued its investigation after the pardon had been entered and issued more indictments for pardoned offenses. One such person indicted was Vincent Fields.

Fields was indicted by the special grand jury on September 30, 2005, on three misdemeanor counts of conspiracy to violate the prohibition against political discrimination.⁵ In particular, Count 1 charged:

On or between August 2004 through October 1, 2004, in Franklin County, Kentucky, the above-named defendant, Vincent Fields, having the intention of promoting or facilitating the commission of a violation of KRS 18A.140(1), agreed with Daniel Groves, Richard Murgatroyd, Sam Beverage and other unknown and unindicted person(s), that at least one (1) of them would engage in conduct constituting a violation of KRS 18A.140(1) by appointing Billy Montgomery to the position of Highway District Administrative Manager for the Kentucky Department of Transportation, District 10, based on his political affiliation or opinion.

⁴ The nine individuals listed by name in the pardon are James L. Adams, Darrell D. Brock, Jr., Danny G. Druen, Tim Hazlette, Charles W. Nighbert, Cory W. Meadows, Richard L. Murgatroyd, Basil W. Turbyfill, and Robert W. Wilson, Jr.

⁵ KRS 506.040, KRS 18A.140(1), and KRS 18A.990.

Count 2 charged:

On or between August 2004 through October 1, 2004, in Franklin County, Kentucky, the above-named defendant, Vincent Fields, having the intention of promoting or facilitating the commission of a violation of KRS 18A.140(1), agreed with Daniel Groves, Richard Murgatroyd, Sam Beverage, and other unknown and unindicted person(s), that at least one (1) of them would engage in conduct constituting a violation of KRS 18A.140(1) by appointing James Maggard to the position of Administrative Section Supervisor for the Kentucky Department of Transportation, District 10, based on his political affiliation or opinion.

And Court 3 charged:

On or about January 1, 2004 through December 31, 2004, the above-named defendant, Vincent Fields, having the intention of promoting or facilitating the commission of a violation of KRS 18A.140(1), agreed with other unknown and unindicted person(s) that at least one (1) of them would engage in conduct constituting a violation(s) of KRS 18A.140(1) by using his position within the Governor's LINK Office as a recruiting and vetting mechanism through the Governor's office county political contacts to facilitate the appointment, promotion, demotion, transfer and dismissal of state merit employees, based on their political affiliation.

The circuit court permitted Fields to adopt the motion filed by Daniel Groves in his own case⁶ to quash the indictment and strike it from the record, arguing that Executive Order

⁶ The special grand jury also returned Indictment No. 05-CR-00218 against Daniel Groves on September 30, 2005, on three misdemeanor counts relating to the merit system investigation.

2005-924 not only pardoned those indicted, but provided a blanket amnesty. However, the circuit court entered a *sua sponte* order dismissing the indictment against Fields on November 16, 2005, on the basis of the pardon, which included "any and all persons who . . . may be accused of committing, any offense up to and including the date hereof, relating in any way to the current merit system investigation[,] . . . including . . . any violation of KRS Chapter 18A[.]"⁷ In the same order, the Commonwealth denied Fields' motion to quash, reasoning that the grand jury is empowered to return indictments. This appeal by the Commonwealth followed. Fields did not pursue a separate appeal from the denial of the motion to quash.⁸

The Commonwealth raises three issues on appeal, contesting the validity of the pardon, Fields' acceptance of the pardon, and the subject-matter jurisdiction of the circuit court to dismiss the misdemeanor indictments. Fields, in turn, disputes the arguments the Commonwealth raises. Because the issues raised relate solely to questions of law, we shall review the circuit court's ruling *de novo*.

⁷ The pardon specifically listed a violation KRS 18A.140 as an offense included within its reach.

⁸ In a separate appeal (2005-CA-002608-MR), Groves has appealed from the denial of his motion to quash the indictment. That appeal, as well as the Commonwealth's appeal from the *sua sponte* dismissal of the indictment against Groves (2005-CA-002573-MR), are both before this three-judge panel and shall be decided by a separate opinion.

1. VALIDITY OF THE PARDON

The bulk of the Commonwealth's brief addresses the applicability of Executive Order 2005-924 to future indictments of individuals not named in the pardon. However, the Commonwealth conceded in its reply brief that the Supreme Court decided this issue in Fletcher v. Graham.⁹ The Supreme Court held that Section 77 permits the issuance of blanket pardons, as "[n]othing in the language of Section 77 infers that general pardons are prohibited, nor is there any indication that a governor may not pardon a class of persons."¹⁰ Likewise, the Supreme Court held that the governor could issue pardons prior to formal indictments for the pardoned offenses: "[T]here is no language whatsoever in Section 77 identifying a particular stage in the criminal proceedings after which a pardon is permissible."¹¹

2. ACCEPTANCE OF PARDON

Next, the Commonwealth argues that the dismissal order is invalid because Fields never formally accepted the pardon granted by the Executive Order, while Fields asserts that acceptance is presumed and the only requirement is that the

⁹ Fletcher v. Graham was rendered after the Commonwealth filed its initial brief in the present appeal.

¹⁰ Id. at 358.

¹¹ Id. at 359.

defendant must bring the existence of the pardon to the attention of the trial court to obtain its benefit. As with the first issue, the Supreme Court addressed this argument in Fletcher v. Graham.

The Supreme Court, in addressing the acceptance requirement, held that a formal acceptance is not required:

Upon a thorough review of these [foreign] cases, we agree that acceptance of a pardon need not be formal, but may be inferred by the circumstances. This position embodies the notion that a pardon may be rejected, but also the common-sense assumption that such rejection will be the rare exception. Where the circumstances of the case evidence the clear intent of the governor to issue the pardon, and there is no evidence or circumstances from which to infer that it was rejected, acceptance must be assumed.¹²

In deciding that acceptance of the pardon was assumed, the Supreme Court held that "there is no indication that any person within its ambit has rejected the pardon."¹³

In the present case, the Commonwealth argues that under the Fletcher v. Graham analysis, this matter must be remanded to allow it an opportunity to demonstrate, and the lower court to determine, if there is any evidence to infer that Fields rejected the pardon. We disagree that such fact-finding is necessary in the instant case, as there are no circumstances

¹² Id. at 362.

¹³ Id.

or evidence showing that there is any question that Fields accepted the pardon. Indeed, had Fields evidenced any intention to reject the protection offered by the pardon, he would have contested the circuit court's dismissal and he certainly would not have filed a brief in this appeal opposing the Commonwealth's arguments for reversal.

3. JURISDICTION

For its final argument, the Commonwealth raises the issue of subject-matter jurisdiction. It asserts that the circuit court lacked jurisdiction to dispose of the misdemeanor charges filed against Fields, as the district court (not the circuit court) has exclusive jurisdiction over such charges pursuant to KRS 24A.110. The Commonwealth relies upon the Supreme Court's opinion in Commonwealth v. Adkins¹⁴ to support this proposition: "KRS 24A.110(2) provides that the district court has exclusive jurisdiction over final disposition of misdemeanors, except when the charge is joined with an indictment for a felony." In this case, the grand jury did not charge Fields with having committed any felony offenses.

We agree with the Commonwealth that the circuit court did not have jurisdiction over this case. As the indictment contained only misdemeanor charges, the district court's

¹⁴ 29 S.W.3d 793, 794 (Ky. 2000).

jurisdiction would necessarily be exclusive.¹⁵ While a remand to the district court will needlessly prolong a case that will immediately be dismissed on the basis of the pardon, we must vacate the circuit court's order as it was without jurisdiction to act.

For the foregoing reasons, the order of the Franklin Circuit Court is vacated, and this matter is remanded to the Franklin District Court for dismissal of the indictment.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Gregory D. Stumbo
Attorney General of Kentucky

Samuel J. Floyd, Jr.
Assistant Attorney General
Frankfort, Kentucky

BRIEF FOR APPELLEE:

John Casey McCall
Louisville, Kentucky

¹⁵ KRS 24A.110.