

BEFORE THE COURT OF THE JUDICIARY OF ALABAMA

In the Matter of DAN C. KING, III

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Circuit Judge of the Tenth Judicial

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Case No. 38

Circuit of Alabama

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TRIAL BRIEF: FACTUAL SUMMARY

COMES NOW Judge Dan C. King, III, Circuit Judge of the Tenth Judicial Circuit of Alabama, and as his trial brief submits the following summary of the facts that he will present at the trial of this matter.

COUNT ONE

Judge King has been brought before this Court for alleged violations of the Judicial Canon of Ethics. Judge King strenuously denies that he has done anything unethical, illegal or immoral. Further, he denies that any actions that he has taken were for his own benefit or with willful intent. The evidence that he will adduce at trial supporting his denial includes the following.

Ronnie Lee Ashford was indicted on a rape charge in the Jefferson County Circuit Court, Bessemer division, on May 21, 1991. The case number given to that charge was CC-1991-744. Following the indictment, Mr. Ashford was first represented by H. Jadd Fawwal, who filed a motion to withdraw on August 16, 1991. On February 7, 1994, Eugene Verin was appointed to represent Mr. Ashford. There is no record of any other attorneys being appointed, or filing a notice of appearance, to represent Mr. Ashford. This absence of information particularly includes the Case

Action Summary Sheet for CC-1991-744, which also only indicates that Ashford was represented first by Fawall and then by Verin. Nothing in the District Attorney's file for CC-1991-744 that was in front of Bill Veitch on August 28 or September 1 when Judge King and he were discussing the issue of setting aside Ashford's conviction indicated that Judge King had represented Ashford in that case, either.

In 1993, Mr. Ashford was also charged with robbery from a separate incident. The case number given to that action was CC-93-300. Eugene Verin was originally retained to represent Mr. Ashford for the robbery charge, but subsequently withdraw. When he withdrew, Dan King, who was an attorney at the time, was appointed to represent Mr. Ashford in the robbery charge only.

On October 30, 1995, Mr. Ashford pled guilty to the robbery charge. At the same time, as a docket cleaning measure, he also pled guilty to the rape charge with the understanding that any sentence imposed for the rape charge would run concurrently with the robbery statute. In other words, the rape charge plea was simply a "throw-away" plea. The District Attorney handling the rape case felt that the case against Mr. Ashford was weak. In the rape case, Walker, Ashford's uncle, the actual alleged perpetrator of the rape (Mr. Ashford was accused of aiding and abetting) was given youthful offender status and never served a day in the penitentiary while the third person accused of aiding and abetting was placed in front of family court.

Dan King, who represented Mr. Ashford on the robbery charge, carried him

through the guilty plea process. Because there were two guilty pleas, both case numbers were entered on the guilty plea form. Mr. Ashford was sentenced to serve 15 years in prison, and he served his sentence in its entirety - all 15 years.

At the time Mr. Ashford entered into the guilty plea, including the bundled rape charge, the Community Notification Act had not been passed. Instead, upon his release, at the time he pled guilty, Mr. Ashford would only have been required to register with the sheriff of the county of his legal residence within seven days of his release. Ala. Code § 13A-11-200 (1977). That registration would only have been available to the sheriffs and deputy sheriffs in that county, and the Department of Public Safety would have been notified as well. Ala. Code § 13A-11-185 (1977). It was not until 2005, 11 years after he was first sentenced, when the Community Notification Act was passed, that Mr. Ashford was not only required to register, but also to obtain a residence that was more than 2000 feet from any child care facility or school. § 15-20-26. A failure to comply, even after completion of the 15 year sentence, was a Class C felony.

Some years after Mr. Ashford's beginning to serve his sentence and before his release, Judge King's son was very ill at Children's Hospital. At that time, one of the nurses who treated Judge King's son was Mrs. Gray. Although Judge King did not know it, Mrs. Gray was Mr. Ashford's mother. He had no or very minimal contact with her while he was at the hospital and did not remember Mr. Ashford, or his representation of him, while his son was in Children's Hospital.

Mr. Ashford was scheduled to be released following the completion of his 15 year term, but because of the Community Notification Act, was unable to live with either his grandmother or his mother, both of whom were ill and needed his assistance. Accordingly, Mr. Ashford's mother, Ms. Gray, asked Judge King, in an oral pro se motion, for relief from the Community Notification Act so that Mr. Ashford could live with her. Judge King then got in touch with individuals from the Department of Corrections to see what, if any, avenues through which Ms. Gray could pursue remedies were available and was told there was nothing that could be done to help Mrs. Gray.

After his conversation with the corrections people, on August 28, 2009, Judge King called Bill Veitch in the Bessemer Division's district attorney's office. Mr. Veitch suggested that Ala. R. Crim. App. 32.1 could be used to set aside Mr. Ashford's conviction so that he would be able to reside with, and help, his mother, Mrs. Gray. On September 1, 2009, following this telephone conversation with Mr. Veitch, Judge King sent a letter to him asking for the district attorney's office's position on such a motion and stated that "[t]his is the humanitarian thing to do."

Ala. R. Crim. App. 32.1 provides that a defendant can receive post-conviction relief when "the constitution of the United States or of the State of Alabama requires...." Such grounds obviously would include both equal protection and due process grounds. In addition, while Ala. R. Crim. App. 32.2 provides certain time limits for filing such a motion, the Alabama Supreme Court (overruling numerous

Alabama Court of Criminal Appeals opinions) has held that the time limits under Ala. R. Crim. App. 32.2 are not jurisdictional but rather are affirmative defenses that are waived unless raised by the District Attorney's office. See, Ex parte Ward, — So. 2d —, 2007 WL 1576054 (Ala. 2007).

Between October 20 and November 20, the victim in the rape charge called Judge King and informed him that she did not object to the setting aside of the charge, because she "believed in giving people second chances" since she herself had been given a second chance on an attempted murder charge. It was only after that conversation, and after receiving word that the district attorney's office did not oppose the setting aside of the charge under Ala. R. Crim. App. 32. Accordingly, on November 20, 2009, Judge King issued an order setting aside the rape conviction for Ronnie Ashford in case CC-1991-744.

At no time from the time Judge King's son was in the hospital through December 4, 2009, was Judge King aware that he was considered to have represented Mr. Ashford in the rape case. However, on December 4, 2009, Judge Petelos of the Bessemer Circuit Court contacted Judge King to inform him that couldn't do this and that he had represented Ashford on the rape case. According to Judge Petelos, when she asked Judge King about this, Judge King thought that Jadd Fawwal of Birmingham had represented Ashford on the rape case. Immediately upon learning that this situation existed, Judge King set aside his November 20, 2009 order, holding it null and void.

After Judge King set aside his November 20, 2009 order, Wanda Jones Miller of the Victim's Assistance Unit contacted the Alabama Attorney General's office, who took no action concerning Judge King. Further, the District Attorney's office in Birmingham was contacted, and they refused the case. In spite of both Judge King's immediate setting aside of his order and the knowledge that neither the Alabama Attorney General's office nor the District Attorney in Birmingham would take action, Judge Petelos filed a complaint against Judge King with the Alabama Judicial Inquiry Commission, thereby setting in motion the machinations that led to the complaint in front of this Court.

COUNT TWO

Judge King denies that he violated Canons 1, 2A and 3A(6) of the Alabama Canons of Judicial Ethics. Judge King also vigorously denies that any ethical, immoral or illegal conduct occurred based upon the actions that led to the most recent complaint filed by Judge Petelos on which this second count is based.

The recusal order on which the complaint is based was issued by Judge King on April 15, 2010. On April 1, 2010, Judge Eugene Verin's wife qualified in the Democratic primary in the slot against Judge King. Prior to that time, numerous "Bingo" cases had been brought before the Circuit Court, and on numerous occasions, Judge Verin had recused himself. Judge King was addressing the reality of the situation that, now, in mid-April, 2010, his opponent's husband was now willing to rule on the merits of "Bingo" litigation thereby foregoing his previous recusals.

While Judge King's pen may have been loose, he has never failed to follow

the law as set forth by the appellate courts, nor has he ever urged his colleagues to do so.

Done on this the 16th day of September, 2010.

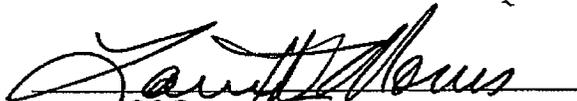
MORRIS, HAYNES & HORNSBY


Larry W. Morris
Attorney for Judge King
MOR007

Post Office Box 1660
Alexander City, Alabama 35011-1660
Telephone: (256) 329-2000
Telefax: (256) 329-2015

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Chairman of the Alabama Judicial Inquiry Commission by placing a copy of the same, properly addressed and postage pre-paid, in the United States Mail on this the 16 day of September, 2010.


Of Counsel