

Summary of SC91632, *State of Missouri ex inf. Teresa Hensley, Prosecuting Attorney v. Herschel L. Young*

Appeal from the Cass County circuit court, Judge Jacqueline Cook
Argued and submitted Nov. 3, 2012; opinion issued March 6, 2012

Attorneys: Young was represented by Charlie R. Dickman of The Law Offices of Charlie Dickman LLC in Kansas City, (816) 505-1906; and the state was represented by Scott Wright and Teresa Hensley of the Cass County prosecutor's office in Harrisonville, (816) 380-8250.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of a Missouri felony in the 1990s appeals his ouster from office pursuant to a 2007 statute that prohibits those convicted of felonies in Missouri from being qualified to run for elective office. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the trial court's judgment. The process used for the ouster was proper; the statute under which the man was ousted is constitutional, as applied to the man; and the statute does not violate the constitutional guarantees of equal protection.

Facts: In December 1987, Herschel Young pleaded guilty to a felony offense in the state of Texas. The trial court entered an order "deferring adjudication" and placed Young on probation for three years. When he completed the probation, the "adjudication" was dismissed. In June 1995, Young pleaded guilty to the class C felony of second-degree assault in Cass County, Missouri. The court sentenced him to one year in prison, suspended execution of the sentence and placed Young on supervised probation for three years. He successfully completed probation. The Missouri conviction never was recorded with the state highway patrol and remains absent from Young's criminal history. In March 2010, Young filed a declaration of candidacy for presiding commissioner of Cass County. He was elected to the position in November 2010 and was sworn into office Jan. 1, 2011. Two days later, the county prosecutor filed an action in quo warranto seeking to remove Young from office, alleging he was not qualified to be a candidate for elective public office under section 115.350, RSMo, because of his 1995 Missouri felony conviction. The trial court granted the writ of quo warranto and ordered Young's ouster from office. Young appeals, in part challenging the constitutional validity of section 115.350.

AFFIRMED.

Court en banc holds: (1) This Court has jurisdiction over this appeal. Although its jurisdiction to adjudicate quo warranto actions seeking to remove officials from office is confined to whether the office in question is a "state office," *State v. Olvera*, 969 S.W.2d 715, 716 (Mo. banc 1998), this Court has jurisdiction because the appeal challenges the validity of a state statute.

(2) As applied to Young, section 115.350 does not operate retrospectively in violation of article I, section 13 of the state constitution. The statute, enacted a dozen years after Young's Missouri conviction, provides that no person shall qualify as a candidate for elective public office in Missouri who has been convicted of, found guilty of or pleaded guilty to "a felony under the

laws of this state.” Article I, section 13 prohibits the enactment of any law that is retrospective in its operation by taking away or impairing vested or substantial rights under existing law or imposes new obligations, duties or disabilities with respect to past transactions. Young has no vested right in election qualification laws remaining unchanged, nor does he have a vested right to be free from further collateral consequences from his guilty plea. Further, section 115.350 does not impose any new duty or obligation on Young because he has no affirmative obligation to take any action whatsoever to comply with the statute. While the statute disqualifies Young from running for office based on his 1995 conviction, its operation does not change the legal effect of his conviction. Section 115.350 required Young to prepare a declaration of candidacy – including subscribing and swearing under oath that the declarant will qualify – but his obligation to prepare the declaration arises only because of his desire to run for office, not his 1995 conviction. In his written declaration of candidacy, Young said he was qualified to be elected, which was a false statement. All persons, previously convicted or otherwise, would be subject to criminal liability if they included false assertions in the declaration of candidacy form.

(3) An action in quo warranto was the proper remedy here.

(a) Section 531.010, RSMo, permits the attorney general or a county prosecutor to institute a quo warranto proceeding when a person is believed to have usurped, intruded into, or held or executed any office. The original purpose of the ancient writ of quo warranto was to inquire into the legality of the claim of one who purported to have the right to enjoy and exercise a particular office granted by the government, and its sole purpose is to prevent persons from usurping a power they do not have. As long ago as 1895, Missouri courts have affirmed judgments of ouster in quo warranto proceedings finding a candidate for office had no lawful right to hold the office when the candidate failed to meet the requirements for eligibility for election to the office. One of the requisites to being qualified to hold office is that the person seeking office be a valid candidate and comply with statutory provisions regarding candidacy. Quo warranto is the proper action to make an inquiry into a candidate’s eligibility for office.

(b) The right to institute a quo warranto action is not superseded by the state’s comprehensive election reform act of 1977. The plain language of section 115.526, RSMo, permits other candidates to challenge their opponents’ qualifications in a private cause of action, but filing an action pursuant to this section is distinguishable from the attorney general or a prosecutor instituting a quo warranto proceeding, which is designed to determine lawful title to hold office and which may be predicated on whether the person challenged holds the requisite qualifications.

(c) Application of section 561.021.2, RSMo, which provides a person convicted of a felony is ineligible to hold public office until completion of his sentence or period of probation, to Young does not change the fact that he still had to demonstrate he was qualified to be a candidate under section 115.350 before taking office.

(d) While it is evident that the legislature, in enacting section 561.016, RSMo, intended to restore some legal disqualifications and disabilities previously suffered by convicted felons, it does not eliminate all disabilities, including the requirement that Young comply

with section 115.350. Further, the legislature was not required to list every felony disqualifying a person from holding office under section 115.350; section 115.350 provides sufficient notice of the conduct that will result in a legal disability or qualification.

(4) Young failed to demonstrate that section 115.350 violates the equal protection laws under either the state or federal constitution. Because Young is not a convicted felon in Texas (as a defendant under a “deferred adjudication” has not been found guilty under Texas law), he has no standing (legal ability) to raise the application of section 115.350 to felons from other jurisdictions. His 1995 Missouri conviction, however, does give him standing to raise constitutional challenges to the statute on behalf of felons convicted in Missouri. Because the plain language of section 115.350 does not create any classification, and it does not operate to the disadvantage of a suspect class nor impinge on a fundamental right, it withstands constitutional challenge if the classification bears some rational relationship to a legitimate state purpose. Under this review, a law will be upheld if it is justified by any set of facts. Section 115.350’s disqualification of Missouri felons from being candidates for elective public office has a rational basis under the law: the state’s legitimate interest in maintaining the public’s confidence in the honesty and integrity of their elected officials and disqualifying those who have demonstrated an inability to follow the laws of the state. That the law permits felons from other states to qualify for candidacy is an issue for the legislature, not this Court. Further, because officials appointed to office presumably undergo a vetting process to determine qualifications, those individuals are not similarly situated to the Missouri felons who run for elective office and who are subject to the qualification provisions of section 115.350.