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FRANKLIN CIRCUIT COURT
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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO: *07-CV-1896*
I

RICHARD MURGATROYD

PETITIONER

VS. PETITION FOR DECLARATORY JUDGMENT

EXECUTIVE BRANCH ETHICS
COMMISSION

RESPONDENT

Serve: John Steffan, Esq., General Counsel
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** ** * * *

Comes now the Petitioner, Richard Murgatroyd, to Petition this Court for a declaratory

judgment pursuant to CR 57 and the Declaratory Judgment Act, KRS Chapter 418 *et seq.* to determine his rights and hereby states as follows:

1. Petitioner, Richard Murgatroyd ("Murgatroyd"), is an individual residing at 2402 Parrish Hill Lane, Crestview Hills, Kentucky 41017.
2. Respondent, Executive Branch Ethics Commission, is an agency of the Executive Branch of the Commonwealth of Kentucky whose principal place of business is located at The Vest-Lindsey House, 401 Wapping Street, Frankfort, Kentucky 40601. The Executive Director of the Commission is Jill LeMaster and the members of the Commission are John A. Webb, J. Quentin Wesley, E. Patrick Moores and Ronald L. Green.
3. Murgatroyd was employed as the Deputy Secretary of the Kentucky Transportation Cabinet from January 2004 to February 2005.
4. Petitioner was indicted by the Special Grand Jury empaneled in Franklin Circuit Court by the Kentucky Attorney General for alleged violations of the merit system. Murgatroyd vehemently denied any wrongdoing and entered a not guilty plea to such charges.
5. On August 29, 2005, Governor Ernie Fletcher issued a pardon, also known as Executive Order 2005-924. A copy of Executive Order 2005-924 is attached hereto as **Exhibit A**. This pardon covered any/all conduct as alleged in the charges with Respondent.
6. More than two (2) years after the indictments and pardon have been issued, the Petitioner in this matter was served with charges of ethical violations relating to their prior employment with the Kentucky Transportation Cabinet by Order of the Commission. Copies of the charging documents for Murgatroyd are attached hereto as **Exhibit B**.
7. The charged violations are for actions the Commission deems to be violations of the

merit system.

8. The Commission seeks to penalize the Petitioner for alleged ethical violations.
9. Because Petitioner is no longer employed by the Kentucky Transportation Cabinet, the only penalty assessment available to the Commission is the statutory fine of \$5,000.00 per violation. See KRS 11A.100(3).
10. The above mentioned pardon constitutionally prohibits this Commission from assuming jurisdiction over action(s) covered by the pardon and, further, from assessing any punitive award against Petitioner.
11. Petitioner Murgatroyd has filed a response to the charges of the Commission and has vehemently denied any wrongdoing or other violations of the Executive Branch Code of Ethics. See a copy of Petitioner Murgatroyd's Answer attached hereto as **Exhibit C**.
12. Section 77 of the Kentucky Constitution specifically confers upon the Governor of Kentucky the ability to "...to remit fines and forfeitures, commute sentences, grant reprieves and pardons,..."
13. The pardon specifically applies to the Petitioner by name and the full scope of the pardon was conferred upon the Petitioner as set forth in the Kentucky Supreme Court's Opinion in Fletcher v. Graham, Ky., 192 S.W.3d 350 (2006).
14. Fletcher v. Graham, *supra*, clarified the power of a pardon and amnesty under Ky.Const. §77. The pardon applies to fines and costs. The Commission is attempting to levy a punitive fine against the Petitioner despite the effect of the Governor's pardon and in direct violation of the Petitioner's constitutional rights.
15. The Kentucky Supreme Court held in Fletcher v. Graham, Ky., 192 S.W.3d 350, 362-63

(2006) that,

A 'pardon' is "[t]he act or an instance of officially nullifying punishment or other legal consequence of a crime." It operates to eviscerate prosecution of the pardoned offense because the pardonee is regarded as innocent: "The pardoned man is relieved from all the consequence which the law has annexed to the commission of a public offense of which he has been pardoned and attained new credit and capacity, as if he had never committed that public offense."

The law is clear and well-established: "the pardon is itself an absolute exemption from any further legal proceedings...." (citation omitted)(emphasis added). There is no room for equivocation on this point. When a pardon has been issued, the court is without jurisdiction or constitutional authority to continue legal proceedings against the pardonee: "[w]hen a pardon... is brought to the attention of the court, it is the duty of the court to discharge the defendant and dismiss the proceedings against him..." (citation omitted).

16. The Commission's intent to disregard this constitutional prohibition has already been established in another case before Commission, Executive Branch Ethics Commission v. Danny G. Druen, Case 06-110. The Druen case is procedurally identical to the circumstances of the Petitioner herein. Druen worked for the Kentucky Transportation Cabinet, was indicted by the Special Grand Jury for alleged violations of the merit system laws and he was pardoned under Executive Order 2005-924. Mr. Druen made a Motion to Dismiss the Commission's charges against him based on the Governor's pardon, Ky. Const. §77 and Fletcher v. Graham. The hearing officer denied Mr. Druen's Motion. A copy of the hearing officer's Order in Mr. Druen's case is attached hereto as **Exhibit D**.
17. Notwithstanding the Commission's knowledge regarding the scope and effect of the pardon as set forth in Ky. Const. §77 and Fletcher v. Graham, *supra*, it has moved forward with charging the Petitioner.
18. The Commission does not possess jurisdiction or authority to conduct a hearing or assess penalties to the Petitioner on these matters.

19. If the Commission is permitted to continue with these charges, the Petitioner's constitutional and statutory rights will be violated. Violation of an individual's constitutional rights constitutes irreparable injury for which no adequate remedy at law exists. Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)(holding that a violation of an individual's Constitutional rights constituted a per se irreparable injury for the purposes of injunctive relief); See also Wesselman v. Ashley, 899 F.2d 1223 (6th Cir. 1990).
20. Additionally, if the Commission is permitted to continue with these charges it will violate *stare decisis* regarding the effect of a gubernatorial pardon as set forth in Fletcher v. Graham, *supra*.
21. The impact of the Commission's unconstitutional actions against the Petitioner will be direct and immediate.
22. Further, the Commission's action against Petitioner is barred by the statute of limitations and thus, the Commission should be estopped from proceeding against the Petitioner.
23. Kentucky Revised Statutes Chapter 11A does not provide a limitations period for a violation of KRS 11A.020. However, KRS 500.050(2) states that "Except as otherwise expressly provided, the prosecution of an offense other than felony must be commenced within one (1) year after it is committed.
24. Violation of KRS 11A.020 is an "offense" covered by the Penal Code. See KRS 500.080. In addition, KRS 532.020(4) provides that "[a]ny offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment

shall be deemed a violation.”

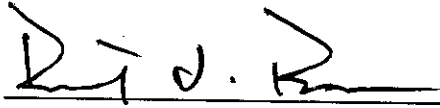
25. Any charges under KRS 11A.020 are criminal in nature and subject to a punitive fine. Therefore, since more than one (1) year has passed since the issuance of the pardon, any action taken by the Commission under KRS 11A.020 is barred by the statute of limitations.

WHEREFORE, Petitioner, Richard Murgatroyd respectfully requests that this Court award the following:

- a. Judgment declaring Petitioner’s right to be free from penalization by the Kentucky Executive Branch Ethics Commission pursuant to Executive Order 2005-924, Kentucky Constitution §77 and KRS 11A.020;
- b. Stay the proceeding before the Executive Branch Ethics Commission against Petitioner;
- c. Petitioner’s costs, including reasonable attorney’s fees incurred herein and
- d. All other relief to which the Petitioner may be entitled.

Respectfully Submitted,

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