

IN THE CIRCUIT COURT OF SEARCY COUNTY, ARKANSAS
TWENTIETH JUDICIAL DISTRICT

Division *2nd*

STATE OF ARKANSAS

PLAINTIFF

VS.

Case NO. CV *2011-53* _____

KENNY WEBSTER CASSELL (a.k.a. *Kenney Cassell*)

PETITION FOR REMOVAL FROM OFFICE

COMES NOW, the State of Arkansas, and for its petition for removal from office doth respectfully state the following:

I

On October 9, 1979, Kenny Webster Cassell pled guilty to a misdemeanor violation of 18 USC §659 Embezzlement or Theft of Interstate or Foreign Shipments by Carrier. The Honorable Paul X. Williams, United States District Judge, found that Cassell had “[p]ossessed property, of less than \$100.00 in value, the same being a part of an interstate shipment, knowing the same to have been embezzled or stolen, ...” This conviction followed a Harrison Division, District Court Jury Trial for a felony violation of the same statute which resulted in a mistrial (see Exhibit I, United States District Court Transcript from the National Archives).

Cassell was sentenced by Judgment and Probation/Commitment Order and Order Amending Judgment to supervision by the United States Attorney General of one year on condition that Cassell be confined in a jail-type institution for a period of thirty (30) days, with eleven (11) months suspended incarceration, probation after his release from incarceration and a three hundred dollar (\$300.00) fine. This crime occurred while Cassell was serving as a Searcy County Deputy Sheriff. *Id.*

In the October 15, 2009, edition of the *Marshall Mountain Wave*, Cassell in a paid political advertisement entitled “A Message from Kenny Cassell, Republican Candidate for Searcy County Sheriff, to the Citizens of Searcy County,” admitted, “[t]hirty-one years ago, when I was twenty-one years of age, I violated the laws of this land and plead guilty to the mi[s]deameanor charge of theft by receiving,” (Exhibit II).

Mr. Cassell was elected Sheriff and Collector of Searcy County in the November General Election of 2010, and is currently serving in that capacity.

II

Article 5, §9 of the Arkansas Constitution states concerning the effect of a criminal conviction of a public officer:

No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.

The Arkansas Supreme Court in *State v. Oldner*, 361 Ark. 316, 327, 206 S.W.3d 818, 822 (2005) decided that “an infamous crime” under Article 5, §9 of the Arkansas Constitution includes crimes involving the elements of deceit or dishonesty. Also, the Court found that infamous crimes are those that impugn the integrity of the office and directly impact the person’s ability to serve as an elected official. *Id.* At 332, 206 S.W.3d at 826-27. Mayor Oldner had been convicted by a jury of witness tampering and the Prosecuting Attorney sought his removal from office following this conviction. *Id.*

In *Edwards v. Campbell*, 2010 Ark. 398, 2010 Ark. Lexus 489 (2010), the Mayor of Greenwood, who had been convicted in District Court of theft of property for the removal of campaign signs of a group opposed to the mayor’s position for a tax increase,

argued that a bright-line test of eligibility to hold office upon conviction should be rejected in place of a totality of the circumstances test. *Id at *10, **13-14.* The Court found this argument to be unpersuasive and held that misdemeanor theft “is a crime of dishonesty and, as such, fits readily within the classification of an ‘infamous crime.’” *Id at *10-11, **14-15.* Furthermore the Court stated:

“In short, a person exhibits dishonesty when he or she knowingly takes unauthorized control of someone else’s property or obtains that property through deception or threat with the purpose of depriving the owner of the property, whether three campaign signs worth two dollars are taken or a case worth thirty thousand dollars is taken.”

*Id at *10, **13.*

In *Ridgeway v. Catlett*, 238 Ark. 323, 379 S.W.2d 277 (1964), the Supreme Court held that even crimes committed before a person takes office are disqualifying in the terms of Article 5, §9, and not even a pardon can restore a convicted persons right to hold public office (See also, *Allen v. State*, 327 Ark. 350, 357, 939 S.W.3d 270, 274 (1997), holding that one found guilty of an infamous crime is disqualified from holding public office in perpetuity.).

CONCLUSION

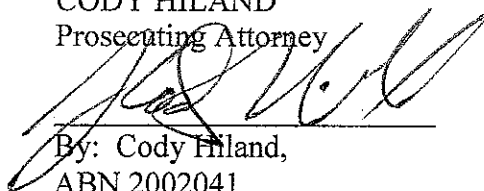
Mr. Cassell’s 1979 conviction of misdemeanor theft , an infamous crime, bars him from holding the office of Searcy County Sheriff and Collector. Because of this conviction, the Arkansas Constitution mandates that Mr. Cassell be removed from the office of Searcy County Sheriff, and this Court should issue an order of removal without delay.

WHEREFORE, the State of Arkansas respectfully requests this Court order the removal of Defendant Kenny Webster Cassell from the Office of Searcy County Sheriff and Collector; and for all other relief to which the State may be Entitled

Respectfully Submitted.

CODY HILAND

Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'Cody Hiland', is written over a horizontal line. The signature is stylized and cursive.

By: Cody Hiland,

ABN 2002041

Prosecuting Attorney

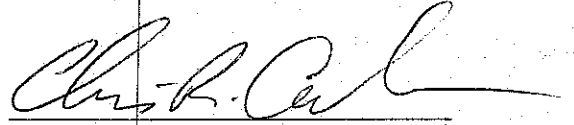
P.O. Box 550

Conway, AR 72033

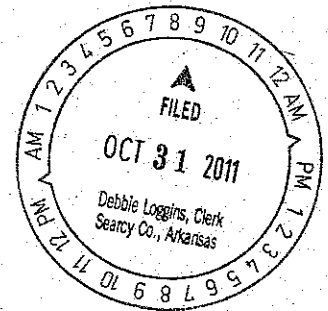
(501) 450-4927

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was transmitted by hand delivery to Joe Don Winningham, Attorney at Law, 564 Locust, Conway, AR 72034, on this 31st day of October, 2011.



Chris Carnahan,
Deputy Prosecuting Attorney



DEFENDANT

KENNY W. CASSELL

HARRISON DIVISION

DOCKET NO. 79-30004-01

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date MONTH 10 DAY 09 YEAR 79

COUNSEL WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel. WITH COUNSEL JACK HOLT, JR. (Name of counsel)

PLEA GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

There being a finding/verdict of NOT GUILTY. Defendant is discharged. GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of Possessing property, of less than \$100.00 in value, the same being a part of an interstate shipment, knowing the same to have been embezzled or stolen, in violation of 18 USC 659.

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year on the condition that the defendant be confined in a jail-type institution for a period of thirty (30) days, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant placed on probation, with supervision, for a period of eleven (11) months to commence upon the defendant's release from confinement, upon the regular terms and conditions of probation.

IT IS FURTHER ORDERED that the defendant pay a fine to the United States in the sum of three hundred dollars (\$300.00)

SPECIAL CONDITIONS OF PROBATION

U. S. District Court Western Dist. Arkansas

FILED

OCT 9 1979

Pat L. Graham, Jr., Clerk BY Deputy Clerk

IT IS FURTHER ORDERED that the defendant will surrender himself to the U. S. Marshal no later than 10 days from this sentencing, which is the 19th day of October, 1979.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within any period of probation, suspend or revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends:

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or an authorized officer.

SIGNED BY U.S. District Judge

U.S. Magistrate

Date 10-9-79