In the Court of Review for Province IV of The Protestant Episcopal Church in the United States of America

The Rev. W. Thomas Leckrone **Appellant;**	)	
vs.	)	
The Standing Committee of the Diocese of Southwest Florida, **Appellee;**	)	**Opinion**

Before the Court is the appeal by the Rev. W. Thomas Leckrone from Orders entered by the Ecclesiastical Trial Court for the Diocese of Southwest Florida. Those orders arise out of a Presentment, dated May 6, 1998, in which the Standing Committee for that Diocese found that there was probable cause that Father Leckrone had committed the offenses of 1) immorality, 2) dishonesty and 3) conduct unbecoming a member of the clergy. The Presentment included five specific counts of misconduct.

The Ecclesiastical Trial Court for the Diocese held a trial on January 23-24, 1999. At the conclusion of the trial, the Court announced its determination that Father Leckrone had committed the acts alleged in each of the counts of the Presentment and was guilty of the three offenses alleged there. After hearing evidence concerning an appropriate sentence, it recommended Deposition. The decision of the Court as to both guilt and recommended sentence were unanimous. This appeal ensued.

For reasons set forth below, the judgment of the Ecclesiastical Trial Court is AFFIRMED.

All references to the Canons are to the Canons of The Episcopal Church, Title IV.

The Facts

The first four counts of the Presentment alleged that Father Leckrone:

1) had participated in an adulterous affair with a woman under his pastoral care;
2) had written lewd and obscene letters to that woman;
3) had participated in an adulterous affair with a second woman under his pastoral care, and

4) had misused his role as spiritual counselor to suggest to that second woman that she engage in improper sexual acts.

The record indicates that by letters dated February 13 and 18, 1998, two former parishioners of Father Leckrone's--both women-- addressed letters to the Right Reverend John R. Lipscomb, Bishop of Southwest Florida, alleging that they had had sexual relationships with Father Leckrone. The alleged relationships occurred during the period 1990-1995.

At trial, both women testified in detail about their relationships with Father Leckrone. Both testified that the sexual relationship arose out of Father Leckrone's pastoral relationship with them. Both women testified to numerous acts of sexual intimacy. Both testified that Father Leckrone used his role as spiritual counselor to justify their sexual intimacy.

One of the women produced more than 30 handwritten letters from Father Leckrone that documented the progression of their relationship. Certain of the letters are sexually explicit in the extreme. An expert witness, with 27 years experience as an examiner of questioned documents for the FBI, testified unequivocally that the handwriting of the letters was Father Leckrone's.

The testimony of the two women was further corroborated by gifts, cards and e-mail messages that the women testified that they had received from Father Leckrone. One woman produced her daily calendars from the years in question to substantiate the dates and times of her meetings with Father Leckrone.

The testimony of one of the two women was further corroborated by a friend. The friend testified that she attended a party at Father Leckrone's house. During the party she had come upon Father Leckrone and her friend alone in a room kissing. She also testified that she once helped her friend create a pretext for being away from home so that her friend could have an overnight tryst with Father Leckrone. The purpose of the pretext was to deceive her friend's husband concerning the tryst.

Father Leckrone introduced no evidence contraverting the testimony of these witnesses or directly challenging the authenticity of the letters or other documents he purportedly authored.

The fifth count of the Presentment concerned a letter which Father Leckrone sent to parishioners of John's Memorial Church, Farmville, Virginia. Father Leckrone was formerly an interim rector of the church.

On April 23, 1998 Father Leckrone wrote to the members of John's Memorial to inform them that he was not aware what the accusations were against him in Southwest Florida. He stated that he had "done nothing which could be considered as sexual misconduct." He concluded by stating: "Now you know, literally, everything that I do. And I hereby swear that all of the above is the absolute truth!"

Standard of Review

The Canons that create Provincial Courts of Review clearly establish that these Courts are not to reverse decisions of Ecclesiastical Trial Courts for "technical errors not going to the merits of the case." Canon 4.49. Similarly, the Canons establish that no proceeding under them is to be dismissed for non-compliance with procedural requirements unless the non-compliance shall cause "material and substantial injustice to be done or seriously prejudice the rights of a Respondent as determined by the Court on motion and hearing." Canon 14.27.

By motions to dismiss dated June 12 and June 30, 1998, the Appellant raised a number of issues as grounds for dismissing the Presentment against him. The Trial Court held an evidentiary hearing on these issues on July 7, 1998 and after due consideration, found Appellant's claims to be without merit. In addition, Appellant raised a number of procedural, discovery and evidentiary motions at and before trial which the Trial Court denied.

The thrust of Appellant's case before this Court is that the denial of the motions to dismiss, and rulings on other procedural and discovery motions were in error. Appellant does not raise any challenge as to the substantive findings of the Court below or as to the sufficiency of the evidence to support the judgment against him.

Accordingly, this Court will determine whether the rulings of the Trial Court on the matters raised by the Appellant were based on fatal errors of fact or law, either as to the merits of the issue themselves or as to the significance of prejudice from them. Under the Canons, reversal would be proper only if this Court finds that procedural error did in fact occur and that the error was sufficiently prejudicial, viewing the case as a whole, that it seriously prejudiced the Appellant in defending the case on the merits.

Failure to Warn Respondent of Right to Remain Silent

The record shows that on February 19, 1998, Bishop Lispcomb--accompanied by the President of the Standing Committee--met with the Appellant to inform him of the charges against him and to serve him with a copy of a letter of Temporary Inhibition. It is undisputed that no instruction was given to the Appellant that he did not need to make a statement about the charges and that any statement made could later be used against him at trial. Canon 14.11(a). The Court assumes, arguendo, that in delivering the Temporary Inhibition and in informing the Appellant of the accusations, Bishop Lipscomb was a "person proceeding under authority of this Title," as the Canon requires. The Court is also willing to assume, arguendo, that the circumstances of the meeting were such that the Bishop was implicitly requesting a statement from the Appellant in response to the charges made.

Even so, there is no reversible error here. The remedy for a violation of Canon 14.11(a) is to exclude the improperly solicited statement from evidence under Canon 14.11(c). All parties agree that no inculpatory statement was made at the meeting. In response to the Letter of Temporary Inhibition, Father Leckrone stated that he would seek

legal counsel and otherwise would "take the Fifth." No inculpatory statement from this interview was ever offered into evidence. Under these facts, no reversible error can have occurred.

Failure to Appoint a Consultant

In 1997, the General Convention amended Title IV to require all Dioceses to appoint one or more Consultants to assist members of the clergy charged with or suspected of offenses. Canon 14.8(a). This provision was adopted in lieu of proposals to require Dioceses to appoint legal counsel to advise clergy in such situations. The Consultant is defined in Canon 15 as "a priest, pastoral counselor, chaplain, attorney-at-law or other person familiar with the procedures, alternatives, requirements and consequences of proceedings under this Title and who is made available to a member of the Clergy under Canon 14.8." Under Canon 14.8(b):

> A Member of the Clergy shall be notified of the availability and identity of the Consultant at the earliest of (i) the communication to the Member of the Clergy of a Charge, (ii) any interrogation or request for a statement described in Canon IV.14.11(a), (iii) the service of a Temporary Inhibition, (iv) submission to the Ecclesiastical Authority or the Presiding Bishop of a Renunciation under Canon IV.8, or (v) prior to the Execution of a Waiver and Voluntary Submission to Discipline.

The Consultant is to be available to "consult with and advise the Member of the Clergy and his or her legal advisors at reasonable times prior to the issuance of a Presentment. The Consultant will explain the rights of the Member of the Clergy and the alternatives available under this Title." Canon 14.8(a).

The record shows that when Bishop Lipscomb delivered the Temporary Inhibition to the Appellant, he made a priest available to Appellant to act as a pastoral advisor. The Appellant rejected the offer, indicating that he would rely on his wife for pastoral support and that he trusted only two priests in the Diocese. Appellant also indicated to the Bishop that he would promptly seek advice of an attorney. The record indicates that shortly thereafter Appellant had obtained legal counsel.

The record also indicates that five months after the Presentment issued, the Diocese made a duly appointed Consultant available to the Appellant. The Appellant declined to consult with the Consultant appointed at that time.

In denying the motion to dismiss, the Trial Court found that the priest made available to the Appellant as a pastoral advisor constituted a Consultant satisfying the requirements of Canon 14.8. The Court reverses this finding of the Trial Court. There is no evidence that anyone considered the priest first offered by the Bishop to be a Consultant under the terms of this Canon. There is no evidence that he was appointed as such by the Diocese. There is no evidence that he was trained or qualified to fulfill the role set out by the Canons for a Consultant. The only evidence on the record is that he did not understand his role to be that of a Counselor.

While the failure to comply with the Canons is clear in this instance, there is nonetheless no evidence of prejudice. Appellant has not suggested how he believes availability of a Consultant early in the process could have affected the outcome of the case on the merits. Having carefully reviewed the record, the Court can find no evidence of any admission, procedural default, or other error that Appellant or his lawyers might have made that could have been avoided by advice from a duly-appointed Consultant. Instead, the record shows that Appellant obtained legal counsel promptly and vigorously protected his rights throughout the process.

Failure to Issue a Written Referral

After receiving the letters of complaint against the Appellant, Bishop Lipscomb proceeded to inform the Standing Committee under Canon 3.5. Under that Canon, the Bishop is "to concisely and clearly inform the Standing Committee in writing as to the nature of and the facts surrounding each alleged Offense . . .." The Standing Committee then " shall proceed as if a Charge had been filed." Canon 3.5. It is then the duty of the Standing Committee to "promptly communicate the same [i.e. the Charge] to . . . the Respondent." Canon 3.9.

The record shows that the Bishop and President of the Standing Committee did meet promptly with the Appellant to inform him of the accusations. It is not disputed that the Bishop allowed the Appellant to read the letters of accusation but did not allow him to take copies of them from the meeting. After the meeting, the Appellant requested copies of the letters. On advice from his Chancellor, Bishop Lipscomb declined to provide the letters to Appellant. The Church Attorney provided copies of the letters to counsel for Appellant later in the proceedings. Further, the record also shows that in referring the accusations to the Standing Committee, the Bishop did not prepare a written referral as required by Canon 3.5. However, the President of the Standing Committee was present when the Bishop presented to the Appellant the Temporary Inhibition containing the substance of the charges.

The Court agrees with the Appellant that the reference of the matter to the Standing Committee should have been in writing. It further agrees that when the Standing Committee communicated the charge to the Appellant, a copy of the writing should have been provided. The Court, however, cannot see how this prejudiced the Appellant in mounting a defense.

At the conclusion of the meeting on February 19, 1998, the Appellant clearly understood the nature of the charges that had been made and the identities of the women who had made them. Thereafter, the Standing Committee issued a specific and detailed Presentment on May 6,1998. The Appellant had ample time after Presentment to prepare a defense. The Appellant has not pointed to any specific way in which the failure to provide a written statement of the charges before Presentment prejudiced his ability to defend the charges on the merits. After careful review, the Court does not find any evidence of such prejudice on the record.

Failure to Order Production of Documents

Appellant challenges the decision of the Ecclesiastical Trial Court not to order production of certain documents. Those documents were the Church Attorney's investigative report, the minutes and other records of the Standing Committee meetings concerning the charges against him, and the notes taken by the President of the Standing Committee at the meeting where Bishop Lipscomb informed the Appellant of the charges against him.

The Standing Committee argues that these documents are all privileged either under specific Canon, or under attorney client privilege. Further, it argues that under Canon 5.15, it is not required to produce any documents other than those it intended to use at trial. There is no dispute that the Church Attorney provided Appellant all documents used at trial as required by Canon.

As originally adopted, Title IV of the National Canons incorporated the Federal Rule of Civil Procedure authorizing requests for production of documents. At the General Convention of 1997, proponents of the rights of victims--fearing intrusion into their privacy -- proposed deleting these provisions and substituting a provision requiring only that parties exchange all documents to be used at trial. The General Convention adopted this proposed revision and it is now incorporated in Canon 5.15 and in Appendix A to Title VI. Accordingly, the Standing Committee was under no obligation to provide Appellant any documents, privileged or not, other than those to be offered in evidence at trial.

The record shows that the Standing Committee for Southwest Florida did not rest on the strict terms of Canon 5.15, but instructed the Church Attorney to produce to Appellant all non-privileged documents in its possession. This action was commendable but in no way expanded the Standing Committee's obligations or required it to produce other documents not discoverable under Canon 5.15.

In addition, Appellant insisted throughout the proceedings that the letters of accusation shown him at the meeting on February 19,1998 were different from those his counsel was later provided. All other witnesses, including the authors of the letters, indicated that there were not any other copies of their letters. Accordingly, the record does not support the conclusion that any other letters existed.

Defects in the Inhibitions

Appellant argues that there were defects in the Inhibitions issued against him in that they were over broad and otherwise not in compliance with the Canons. The Canons are clear, however, that appeal from a Temporary Inhibition lies to the Standing Committee and not to the Trial Court. Canon 1.2(a). No appeal was taken to the Standing Committee, this in spite of the fact that the Temporary Inhibition itself clearly informed the Appellant of his right to do so. Accordingly, the Court finds Appellant's arguments on this issue to be without merit.

Failure to Exclude Witnesses

At trial, the Appellant moved to exclude witnesses from trial under Federal Rule of Evidence 618. The Trial Court granted that motion as to all witnesses but four – the two women who had brought the initial allegations and the two persons they chose to accompany them to trial. Of the two people accompanying the women, one was the parish priest of one of the women and successor rector to Father Leckrone. His testimony was limited to authenticating certain documents from in the parish files that were used as exemplars of Father Leckrone's handwriting.

The other person was the friend of one of the women. She was the witness who testified concerning the arrangements to conceal the tryst and concerning the Appellant's behavior during the party at his home.

The Court finds that the Trial Court properly allowed these four people to remain in the courtroom during the trial. The Canons specifically allowed each of the complainants to attend the entire proceedings with a person of her choice. Canon 4.17. Nothing in the Canons requires the complainants or the persons selected to accompany them to choose between attending the trial or appearing as witnesses. Federal Rule of Evidence 618 expressly recognizes that persons "authorized by statute" to observe trials are not properly excluded because they will also be witnesses. In this context, Canon 4.17 is analogous to a statute for purposes of construing Rule 618. Accordingly, the Court finds that the Trial Court properly allowed these four people to be present throughout the proceedings.

Interference with Appointment of Pro Bono Counsel

Sometime before the issuance of the Presentment, Appellant secured experienced criminal defense attorneys to represent him. They conducted discovery and filed a number of motions including the extensive motions to dismiss. They represented Appellant at an evidentiary hearing on those motions held July 7, 1998. Some weeks later, they sought and were granted leave to withdraw from the representation.

Thereafter the Appellant proceeded pro se. The record shows that in December of 1998, the Ecclesiastical Trial Court located an attorney willing to consider representing the Appellant pro bono. At this point, the hearing on pretrial motions and the trial itself had been set for January 23-24, 1999.

As a condition of accepting the representation, the attorney in question required a continuance of the proceedings until May of 1999. He also asked for a letter from Bishop Lipscomb waiving any conflict of interest arising out of previous work he had done on behalf of the Diocese.

The Church Attorney wrote back and communicated the lack of objection to the representation but stated that the Bishop reserved the right to address any specific conflicts if specific instances of conflict should arise. The Church Attorney agreed to the continuance if he could preserve testimony of the principal witnesses by deposition, use those depositions at trial, be allowed to enter certain documents from the parish and

Diocesan files without authenticating witnesses and be allowed other accommodations. The Trial Court took no formal action on these proposals. For reasons that do not appear on the record, the attorney in question withdrew the offer of pro bono representation.

The Appellant alleges that the record demonstrates an improper interference by the Trial Court, Bishop and Church Attorney in his securing counsel and that this is grounds for reversal of the Trial Court's judgment. The facts do not support this claim. It was clearly within the rights of the Church Attorney to impose conditions on his agreement to a continuance. The Ecclesiastical Trial Court was in no way bound to accept any conditions it found improper or to accept any conditions at all. It was clearly within the Bishop's rights to withhold a blanket waiver of conflicts until specific instance conflict might arise. Accordingly, the Court finds nothing objectionable here.

Ineffective Assistance of Counsel

Appellant argues that because he was incapable of representing himself, his conviction should be overturned for ineffective assistance of counsel. The Canons clearly allowed Appellant to be represented by counsel of his own choosing in these proceedings. Canon 14.10. The Canons, however, do not require the Diocese to appoint, secure or compensate counsel to represent Appellant. In fact, in 1997 proposals to insert such a requirement into the canons were rejected.

The Court finds that there is no requirement for Ecclesiastical Trial Courts to guarantee that respondents in proceedings under Title IV are effectively represented by counsel. Nonetheless, the Court has carefully reviewed the record. It shows that the Trial Court went to great lengths to accommodate Appellant's lack of skill in courtroom proceedings. Appellant has not pointed to any evidence, argument, witnesses or other matters which –had they been presented by competent counsel—would likely have changed the outcome of the proceeding. Given the overwhelming evidence against Appellant, much of it in his own handwriting, it is impossible to envision how more skilled legal counsel could have changed the outcome of the proceeding.

Miscellaneous Issues

The Appellant has raised a number of other issues in his briefs and motions. The Court has carefully considered each of them and finds them all to be without merit.

Conclusion

The Court has studied the record in great detail and finds that the evidence adduced at trial was clear, convincing and effectively unchallenged that Appellant committed the acts alleged in the Presentment. Moreover, the acts in question unequivocally constitute grounds for the Deposition. Accordingly, the judgment of the Ecclesiastical Trial Court for the Diocese of Southwest Florida is

AFFIRMED.

Charles M. Crump, Esq.
Judge

The Rt. Rev. Dorsey F. Henderson Jr.
Presiding Judge

The Rev. Jennie Olbrych
Judge

The Rev. Hill Riddle
Judge

Richard P. Perry, Esq.
Judge

The Rev. Duncan Gray III
Judge

Roy Davis, Esq.
Judge

November 24, 1999