

Judge Peatross' Concurrence, filed
August 29, 2006, to follow opinion rendered
August 29, 2006, at 10:53 a.m.

No. 41,781-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

MAX T. MALONE, ET AL

Plaintiff-Appellee

versus

JOE SHYNE

Defendant-Appellant

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 505,431

Honorable Jeanette G. Garrett, Judge

CLERK OF COURT
STATE OF LOUISIANA
CADDO PARISH

2006 AUG 29 P 1:19

FILED

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LA

Before BROWN, WILLIAMS, STEWART, GASKINS,
CARAWAY, PEATROSS, DREW, MOORE, and LOLLEY, JJ.

CBA

PEATROSS, J., concurs with written reasons.

PEATROSS, J., concurs.

I agree with the majority that a literal reading of Article I, Section 10(B)(1) allows either the President of the United States or the Governor of Louisiana to grant a pardon ending the disqualification affecting a person convicted of a federal crime in Louisiana that also would be a felony under Louisiana state law. I concur to add alternative reasons for concluding that Article IV, Section 5(E)(1) does not limit the governor's power to pardon in this case.

Our Supreme Court has indicated in *State v. Adams*, 355 So. 2d 917 (La. 1978) and in *State v. Lee*, 171 La. 744, 132 So. 219 (1931), that a full pardon by the governor restores the "original status" of the pardoned individual, i.e. a "status of innocence" of crime. There can be little doubt that such a "gold seal" pardon restores all rights of citizenship because, logically, an individual restored to a "status of innocence" must have all rights of citizenship. Furthermore, logic also dictates that, if the constitution gives the governor such broad power to pardon, the governor can exercise that power to restore any subset of the rights restored by a full pardon.

Article IV, Section 5(E)(1), however, arguably restricts the broad pardoning power to "those convicted of offenses against the state." For the following reasons, I do not read this language as restricting the governor's broad pardoning power to pardoning only convictions under Louisiana state law, but read this language as authorizing the governor to pardon any offenses against the state, including a crime under the law of the United States that would be a felony in Louisiana. I agree with the statement in

footnote 4 of the majority opinion that, when a Louisiana official commits an act of public bribery in this state, Louisiana has suffered the offense regardless of the fact that the official is convicted under federal law. Thus, I conclude that Article IV, Section 5(E)(1) allowed the governor in this case to remove Joe Shyne's disqualification to seek elective office.

The trial court read these provisions narrowly as a restriction on the governor's power to restore civil rights to Louisiana citizens who had such rights taken away by Louisiana law because of a conviction in Louisiana of a federal crime that also was a felony under Louisiana state law. Aside from the fact, recognized by the trial court, that restricting such power to the executive branch of the federal government "makes little sense," this narrow reading goes against the principle that laws in derogation of common law or common right should be strictly interpreted. *Monteville v. Terrebonne Parish Consolidated Government*, 567 So. 2d 1097 (La. 1990). The right to seek elective office is such a right; thus, the governor's power to restore the right should be read broadly. For the same reason the disqualification added by the 1998 amendment to Article I, Section 10 should be read narrowly.

Furthermore, even if "offenses against the state" were read narrowly to include only convictions under Louisiana state law, it is doubtful that such a reading would limit the governor's pardoning power in this case. Such a narrow reading would simply make Article IV, Section 5 inapplicable; it would neither permit, nor prohibit the pardon given in this case. Therefore, if another source of law gave such power, the pardon would be effective. Article IV, Section 5(K) makes clear that the powers

mentioned in Section 5 should not be read as restricting executive power; instead, the governor shall have other powers “authorized by this constitution or provided by law.” A good argument can be made that another source of law gives the governor the power exercised herein.

La. C.C. art. 1 states that the sources of law are legislation and custom. La. C.C. art. 3 states that custom results from practice “repeated for a long time and generally accepted as having the force of law.” Custom may not abrogate legislation, but if, *arguendo*, no legislative prohibition exists that addresses the pardon given herein, the governor could acquire that power through customary practice accepted as being valid.

The requirement of a practice repeated for a long time arguably is shown in Attorney General Opinion 79-787 indicating that the governor has granted pardons to federal offenders “as a matter of custom and practice of longstanding in Louisiana,” and indicating that in the 15 years prior to that opinion, at least 87 pardons were granted by Louisiana governors for federal offenses. Obviously, the governor, the Board of Pardons, the pardoned offender, and the attorney general’s office all understood these pardons to be effective in restoring civil rights; thus, the second requirement of La. C.C. art. 3 also arguably is met. I note that this understanding is in line with the majority opinion’s quote from Am. Jur. 2d.

For the foregoing reasons, I respectfully concur in the reversal.