


Beverly Logan, Clerk
Clarke County, Georgia

In the Superior Court of Clarke County
State of Georgia

Jarrood Miller,

Plaintiff

Versus

Case № SU23CV0108

Deborah Gonzalez in her official
capacity as District Attorney of the
Western Judicial Circuit,
Defendant

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The defendant moves to dismiss the plaintiff's petition for a writ of mandamus.

The plaintiff alleges that the defendant from the day she took office adopted a policy to never prosecute criminal cases where the charge was possession of marijuana or possession of drug related objects.¹ The plaintiff also alleges that she imposed a policy for her office to never prosecute truancy cases in the Western Circuit's juvenile courts.

Prosecuting attorneys, like judges, have a duty to uphold the laws as adopted by the General Assembly of this state-whether they personally agree with those laws or not.

It is entirely the legislature's role to decide what conduct is criminal. Judges interpret their laws. Prosecutors enforce them.

Ga. Const. art. VI, § 8, ¶ 1(d) provides:

It shall be the duty of the district attorney to represent the state in all criminal cases in the superior court of such district attorney's circuit and in

¹ Both are crimes under O.C.G.A. §16-13-30(a) and O.C.G.A. §16-13-32.2.

all cases appealed from the superior court and the juvenile courts of that circuit to the Supreme Court and the Court of Appeals and to perform such other duties as shall be required by law.

It is the prosecuting attorney's duty to prosecute **all** indictable offenses.² Mandamus clearly does not lie to force a prosecuting attorney to prosecute any one specific case.

However, a private citizen does standing to bring such an action to enforce a public right.

O.C.G.A. § 9-6-24 specifically tells us:

Where the question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced.

As a citizen of Clarke County, the plaintiff has a right to have the chief prosecuting officer of his county uphold the laws adopted by the General Assembly.

The Supreme Court has repeatedly ruled that:

"[M]andamus provides extraordinary relief to compel the performance of an official duty. It does not issue to direct a public official to do a discretionary act unless such discretion has been grossly abused."³

Where the district attorney adopts a policy to never enforce duly enacted state laws, that is a dereliction of her specific duty to enforce laws of our state.

The plaintiff has alleged in his complaint that the defendant made a public announcement that her office "Will not charge simple possession of marijuana offenses, regardless of amount and . . . will encourage police agencies to expand the use of civil citations of marijuana possession in lieu of criminal

² O.C.G.A. § 15-18-6.

³ *Stubbs v. Carpenter*, 271 Ga. 327, 327, 519 S.E.2d 451, 451-52 (1999) and *Tamaroff v. Cowen*, 270 Ga. 415, 511 S.E.2d 159 (1999).

arrest" and "Will not charge possession of "drug-related object" offenses."⁴

For the purpose of ruling on the defendant's motion to dismiss, this court has to accept that allegation as true.

This court finds if the defendant has adopted such a policy, she has grossly abused her discretion.

The court also finds the plaintiff does not have any other remedies for this abuse of discretion since he does not seek to remove her from officer, nor does he seek to disbar her. He merely seeks to have her perform her mandated duty to enforce the state criminal code.

The court therefore denies the defendant's motion to dismiss.

So ordered this May 9, 2023.



David Emerson
Senior Judge of Superior Courts
Presiding in Clarke County

Distribution List:

Counsel of Record

Beverly Logan, Clerk of Superior Court of Clarke County

⁴ Plaintiff's Exhibit 8.