

**THE COURT OF REVIEW FOR THE TRIAL OF A BISHOP
OF THE PROTESTANT EPISCOPAL CHURCH
IN THE UNITED STATES OF AMERICA**

The Rt. Rev. Charles E. Bennison, Jr.

Appellant

vs.

No. 1 – 2009

The Protestant Episcopal Church in the
United States of America

Appellee

FINAL JUDGMENT

This is an appeal from the decision of the Court for the Trial of a Bishop on June 25, 2008, that Appellant, The Rt. Rev. Charles E. Bennison, Jr. (“Appellant”, hereafter) is guilty of two separate counts of Conduct Unbecoming a Member of the Clergy under Title IV.1.1(j) of the Canons For the Government of the Protestant Episcopal Church in the United States of America Otherwise Known as The Episcopal Church (2006) (“Canons” hereafter) and from the sentence of deposition entered on September 30, 2008 pursuant to Canon IV.5.29.

PROCEDURAL HISTORY

On October 28, 2007, a Review Committee duly constituted pursuant to Canon IV.3.27 issued a Presentment pursuant to Canon IV.3.45 charging Appellant with two counts of Conduct Unbecoming a Member of the Clergy (Canon I.1.1(j)). The Presentment defined the First Offense as “Contemporaneous Failure To Respond Appropriately” and enumerated the elements of that charge in paragraph 48 of the Presentment, as follows:

“(48) Charles Bennison engaged in conduct unbecoming a member of the clergy when, as rector at St. Mark’s Upland in 1975, he failed to fire or suspend his brother immediately, failed to investigate his brother’s conduct, and failed to discharge his pastoral obligations to a 14-year-old parishioner, the members of her family, and the members of the parish youth group after he learned that a member of his staff – the youth group coordinator, who happened to be his brother – was engaged in a sexually abusive and sexually exploitative relationship with the 14 year-old.”

The Presentment defined the Second Offense as: “Subsequent Suppression of Pertinent Information” and enumerated the elements of that charge in paragraph 57 of the Presentment, as follows:

“(57) By deliberately and systematically concealing from family members and parishioners what he knew about his brother’s misconduct, and by failing to place the needs of the church and his former parishioners above his perceived obligations to himself and his brother, Charles Bennison engaged in conduct unbecoming a member of the clergy.”

These events are alleged to have occurred beginning in 1975 and continuing until 2006.

Appellant immediately filed an Answer. At the same time he separately filed a Motion to Dismiss that asserted the defense of the applicable statute of limitations because the alleged actions, at their core, both charged offenses that occurred 30+ years prior to the date of the Presentment. On April 22, 2008, the Trial Court denied the Motion to Dismiss without providing any findings of fact or rationale for its decision. On June 12, 2008, following the conclusion of the trial, but prior to the decision of the Trial Court, Appellant filed a Motion for Judgment As A Matter of Law¹ asserting, once again, his contention that the Presentment is barred by the applicable statute of limitations. On June 25, 2008, the Trial Court issued its Judgment without ruling on Appellant’s pending Motion for Judgment As A Matter of Law.

On June 27, 2008, Appellant requested that the Trial Court (a) provide an explanation of its findings of guilt and (b) issue an opinion explaining its reasoning for denying, once again, Appellant’s efforts to invoke the statute of limitations.² When no response was forthcoming

¹ The Motion was filed pursuant to Rule 50(b), Federal Rules of Civil Procedure. That is within the scope of Canon IV. 5. 17., which provides that “The Court shall be governed by the Rules of Procedure set forth in Appendix A to this Title, and such other procedural rules or determinations as the Court deems appropriate and not inconsistent with this Title.” It is also within the scope of Canon IV. Appendix A.

² It should be noted that this request was by letter from Appellant’s attorney to the Lay Assessors for the Trial Court. This procedure of raising issues with Title IV Courts through correspondence with the Lay Assessors is not authorized by the canons. However, it seems to have been accepted by the Trial Court, so,

from the Trial Court, on July 11, 2008, Appellant’s counsel wrote, once again, requesting the Trial Court to

“issue both an explanation of its decision on each count as well as a written opinion setting forth the basis for the Court’s denial of our Rule 50 motion on the statute of limitations and laches.”

Later that same day as Appellant’s counsel’s letter the Trial Court denied Appellant’s request for an explanation of its judgment, but granted his request “for an articulation of its order on the Respondent’s motion for judgment as a matter of law.” It stated, further, that “a memorandum of decision will be issued to the parties in the near future.”

The Trial Court also issued a “Memorandum of Decision on Motion for Judgment as a Matter of Law” on July 11, 2008. The “Memorandum of Decision” provides only the legal conclusion that both counts include “specifications . . . which include sexual abuse and sexual exploitation of a minor.” It does not identify any facts on which the Trial Court concluded that either count constitutes a sexual abuse offense committed by Appellant sufficient to bring the charges within the ambit of Canon IV.14.4(a)(2).

Appellant’s counsel’s letter of June 27, 2008, requested a hearing on the submissions in excuse or mitigation of the sentence, pursuant to Canon IV.5. 28. On September 30, 2008, the Trial Court denied the request for a hearing and concluded that the submissions made on the

for this case only, this Court will treat correspondence with the Lay Assessor as if it were a properly filed pleading lodged with the Clerk of the Court. This Court has repeatedly held that all communication with the Title IV Courts must be by a written pleading filed with the Clerk of the Court. The canons do not allow the Lay Assessors to act in lieu of the Clerk of the Court or to act in lieu of the Presiding Judge or the full Court. See, e.g., Canon IV. 15. “Lay Assessor”, Canon IV. 5. 14, and Canon IV. 6. 12. Correspondence among attorneys is not recognized by the canons or by the Federal Rules of Civil Procedure or the Federal Rules of Appellate Procedure as a proper pleading to present either to the Trial Court or to the Court of Review issues to be decided. Because the Trial Court seems to have allowed this unfortunate procedure and because neither party has complained in this appeal, this Court will allow it this one last time. Henceforth, however, any matter to be resolved by the Trial Court or by the Court of Review must be submitted in writing by counsel for the Church or by counsel for the Respondant and filed with the Clerk of the appropriate Title IV Court.

issue of sentencing, coupled with the four days of trial, gave Appellant a full and fair opportunity to present his views on sentencing.

On the same day that Appellant's request for a hearing was denied, the Trial Court entered its Decision Adjudging Sentence. In that Decision of September 30, 2008, the Trial Court listed certain facts on which it based its decision. The abbreviated statement of facts finds that Appellant's brother, John Bennison, had committed sexual abuse of a female minor at a time when the female minor was a member of Appellant's congregation and when he was on the staff of Appellant's congregation. The findings list various omissions by Appellant, but the Trial Court did not find, as a fact, that Appellant had, himself, committed an act of sexual abuse of the female minor member of his congregation, nor did it find as a fact that Appellant had committed any act of sexual abuse, direct or indirect.

Appellant timely filed a Motion For Modification of Sentence pursuant to Canon IV.5.30(b). A hearing was held on the Motion on November 12, 2008. An order denying the Motion was entered on February 2, 2009. In that Order the Trial Court, once again, found that John Bennison had committed sexual abuse; but, once again, it failed to adjudicate Appellant's conduct as a form of sexual abuse. The remaining findings of fact related to the issue of sentencing which is not here relevant since this phase of the appeal focuses on the finding of guilt and not on the sentence imposed.³

On April 17, 2009, Appellant filed a Motion for Extraordinary Relief Seeking The Dismissal Of The Presentment Or, In The Alternative, A New Trial. This Motion was primarily based upon the discovery of 256 letters written by the female minor to John Bennison between July 17, 1974, and February 18, 1994. The Trial Court denied the Motion on September 24, 2009, in an Order that "concluded that the sexual relationship between John and the Minor

³ Canon IV. 6. 19(a)

constituted sexual abuse.” The order then enumerated certain actions or failure to act by Appellant that it found was conduct unbecoming a member of the clergy; but the Trial Court never found that the conduct of Appellant was, itself, sexual abuse of a minor.

Following a timely notice of appeal and briefing by the parties, oral argument was presented on May 4, 2010.

STANDARD OF REVIEW

The parties do not agree on the standard of review this Court should apply in this appeal. The Church contends that the “clearly erroneous” standard applies to a factual review and only legal decisions should be examined *de novo*. Appellant contends that this Court should review the record *de novo* both for facts and for legal questions.⁴

While the canons define standards applicable to the Trial Court in reaching its decisions,⁵ no standard of review has been articulated by the canons for Courts of Review in Title IV proceedings. In *The Rt. Rev. Charles I. Jones III v. The Protestant Episcopal Church in the United States of America*, No. 1 – 2001, (Court of Review for the Trial of a Bishop, May 1, 2002) at p. 6 (“*Jones case*” hereafter) we announced that the standard of review for a review of a Sentence imposed by the Trial Court would be an abuse of discretion standard that requires that one or more of the following circumstances to be present: (1) the record contains no evidence upon which the decision could have been rationally based; (2) the decision is based on an

⁴ Appellant argues that this Court should adopt a *de novo* standard of review of the facts based upon an analysis found in *The Standing Committee of the Diocese of New Jersey v. The Reverend Thomas L. Berlenbach*, The Court of Review, Province II, 2002. That analysis is *dicta* and was not the basis for that Court of Review’s decision. While it is a valid argument that distinctions between ecclesiastical courts and secular courts may require differences in procedures or outcomes with regard to some issues, that distinction is not a valid basis for ignoring settled criteria for standards of review found in the federal system from which the canons have drawn the Rules of Appellate Procedure as the touchstone for Title IV appeals.

⁵ See, e.g., Canon IV. 5 . 23, “. . . the Respondent must be presumed not to have committed the Offense alleged until established by clear and convincing proof. . . .” and Canon IV. 15. “Clear and Convincing shall mean proof sufficient to convince ordinarily prudent people that there is a high probability that what is claimed actually happened. More than preponderance of the evidence is required but not proof beyond a reasonable doubt.”

erroneous conclusion of law; (3) the decision is based upon clearly erroneous findings of fact; or (4) the decision clearly appears arbitrary.

Title IV trials are not jury trials. They are bench trials.⁶ As early as 1948 the federal courts recognized the difference between the appellate review of a jury verdict and a bench trial.

In *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, the court said:

It was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since judicial review of findings of trial courts does not have the statutory or constitutional limitations of findings by administrative agencies or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous.' The practice in equity prior to the present Rules of Civil Procedure was that the findings of the trial court, when dependent upon oral testimony where the candor and credibility of the witnesses would best be judged, had great weight with the appellate court. The findings were never conclusive, however. [Footnotes and citations omitted]

The development of the standard of review for a bench trial is summarized by *Wright & Miller, Federal Practice & Procedure* § 2585 (3rd Edition 2009)

This respect for the findings of fact by the trial court should not be pressed too far. It is simply wrong to say, as one court did in an early case, that the "findings will be given the force and effect of a jury verdict." Although the appellate court may take that view of the evidence that is most favorable to the appellee, assume that all conflicts in the evidence were resolved in his favor, or give him the benefit of all favorable inferences, history is clear that those who drafted the rule rejected proposals to apply the limited review of a jury verdict to the findings of a judge. The court of appeals must give great weight to the findings made and the inferences drawn by the trial judge, but it must reject those findings if it considers them to be clearly erroneous. [Footnotes and citations omitted]

⁶ The members of the Trial Court are "Judges" (See, e.g., Canons IV. 5. 3, 4, 5, 6, and 9), not jurors, and they fulfill the role of judges by ruling on legal issues even as they return a verdict based upon the facts and the law. The Trial Court is provided the assistance of one or more Lay Assessors (Canon IV.5.14), but the role of the Lay Assessor is to "advise" (Canon IV. 15) and the Lay Assessor has "no vote" (Canon IV. 5. 14). Unlike a jury trial where the judge decides the legal issues and the jury decides the fact issues, a Title IV Trial Court, in effect, functions as a bench trial in which the judge decides both facts and law. Under Title IV, however, there are multiple judges instead of a single judge, providing the bench trial.

United States Gypsum Co.'s definition of "clearly erroneous" has been long accepted and applies here:

A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.* at 395.

The standard of review to be applied in Title IV appeals is that factual determinations are subject to review under the clearly erroneous standard and the Trial Court's legal conclusions are subject to *de novo* review.

FINDINGS OF FACT

Neither Canon IV. 15. 17 nor Canon IV, Appendix A requires the Trial Court to make findings of fact, but the Church, correctly, does not take the position that none are required. Instead, the Church contends that the Trial Court made adequate findings of fact to sustain its Judgment and to withstand a "clearly erroneous" review by this Court.

Appellant, on the other hand, contends that, even in the face of repeated requests to the Trial Court for the Trial Court to state the findings of fact upon which it based its discussions both as to the statute of limitations and as to its finding of guilt on the merits, the Trial Court failed to do so. We turn to an analysis of the Trial Court's orders entered in response to Appellant's request for findings of fact to determine whether adequate findings of fact were made by the Trial Court.

On April 22, 2008, the Trial Court said only, "The motion to dismiss now having been fully considered by the Court, the motion is hereby denied." The judgment finding Appellant guilty of the offenses charged stated, "The Respondent committed the Offense. . . ." The Church does not contend that those two orders were adequate. Instead, the Church argues that four subsequent orders entered by the Trial Court were responsive to Appellant's request and

contained adequate findings of fact. We now examine those four orders.

The first of those orders is the Trial Court's July 11, 2008 "Memorandum of Decision On Motion For Judgment As A Matter Of Law". It states, in pertinent part, "The Court concludes that both counts in the Presentment against the Respondent charge an Offense the specifications of which include sexual abuse and sexual exploitation of a minor." This is not an adequate finding of fact on which either Appellant or this Court can ascertain the basis for the Trial Court's decisions. It does not identify the facts relating to Appellant's conduct that are the legal equivalent of sexual abuse by Appellant of the minor female. It does not even find as a fact or in law that Appellant committed acts of sexual abuse of a minor female.

The second order on which the Church relies is the Trial Court's September 30, 2008 "Decision Adjudging Sentence." The Trial Court did find as a fact that John Bennison, Appellant's brother, had a sexual relationship with a Minor and that that relationship "constituted sexual abuse." It made no such finding as to Appellant, saying only:

The Respondent failed, among other things, to: investigate the sexual abuse; immediately separate John from the Minor; protect the Minor; protect other members of the Youth Group; report the conduct to secular authorities; report the conduct to the Minor's parents; report the conduct to the Church; extend pastoral care to the Minor, her family, the parish, and others affected by this conduct, and; (sic.) intervene to stop or postpone the subsequent ordinations of John to the Diaconate and the Priesthood, and John's 1979 restoration to the Priesthood.

The Trial Court never found as a fact that those enumerated actions or inactions constitute sexual abuse of the minor female by Appellant, and the Trial Court never concluded that those actions constitute sexual abuse as a matter of law.

The third order is the Trial Court's February 2, 2009, "Memorandum and Decision On Motion For Modification of Sentence". Before discussing the facts that the Trial Court found

