Rel: July 21, 2023

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2022-0538

Angela Turner and the State of Alabama ex rel. Angela Turner

v.

Governor Kay Ivey; Cam Ward, Director of the Alabama Bureau of Pardons and Paroles; and Leigh Gwathney, Dwayne Spurlock, and Clifford Walker, in their official capacities as members of the Alabama Board of Pardons and Paroles

Appeal from Montgomery Circuit Court
(CV-21-900383)

COOK, Justice.

In 2019, the Alabama Legislature passed -- and Governor Kay Ivey

signed -- House Bill 380 ("H.B. 380"), which became Act No. 2019-393, Ala. Acts 2019. As enacted, H.B. 380 amended various Code provisions, including § 15-22-21(a), Ala. Code 1975, creating the position of director of the Alabama Bureau of Pardons and Paroles ("the Bureau"), and § 15-22-20(b), Ala. Code 1975, addressing the nomination and appointment processes for the members of the Alabama Board of Pardons and Paroles ("the Board"). After H.B. 380 was enacted, Governor Ivey appointed Leigh Gwathney as chair of the Board pursuant to the new procedures set forth in § 15-22-20(b).

In November 2020, the three-member Board -- consisting at that time of Gwathney, Dwayne Spurlock, and Clifford Walker -- convened and held a parole-consideration hearing for Angela Turner, an inmate who was serving a life sentence for murder. Following a review of Turner's file, the Board unanimously denied Turner's parole request. Around that same time, Governor Ivey appointed Cam Ward as the new director of the Bureau.

In response to the Board's denial of parole, Turner initiated an action in the Montgomery Circuit Court against Governor Ivey, Ward, Gwathney, Spurlock, and Walker, in their official capacities, in which she

sought a judgment declaring that Governor Ivey's appointment of Ward and Gwathney to their respective positions pursuant to the changes created by H.B. 380 violated the Alabama Constitution of 1901. She also, on behalf of the State of Alabama, petitioned for writs of quo warranto pursuant to § 6-6-591, Ala. Code 1975, alleging that Ward and Gwathney unlawfully held their respective positions. Finally, she alleged a 42 U.S.C. § 1983 claim against all the defendants (Governor Ivey, Ward, Gwathney, Spurlock, and Walker) on the basis that she had been denied due process during her parole-consideration hearing.[1]

The circuit court dismissed Turner's claims with prejudice, and she now appeals. For the reasons stated below, we affirm.

Facts and Procedural History

In 2019, the Legislature enacted H.B. 380, which, as stated above, creates the position of director of the Bureau and provides that the director is to be appointed by the governor. See § 15-22-21(a). H.B. 380

[1]It appears that Spurlock and Walker are no longer members of the Board. Rule 25(d), Ala. R. Civ. P., and Rule 43(b), Ala. R. App. P., provide that if a public officer is a party to an action or an appeal in an official capacity and the officer ceases to hold office during the pendency of the action or the appeal, the officer's successor is automatically substituted as a party.

also clarifies that although the director, who is described as the "chief executive officer of [the Board]," is responsible for implementing the Board's parole decisions and preparing recommended rules for the Board's consideration, he or she may not exercise the Board's "power … to make individual determinations concerning the grant or denial of pardons, the grant or denial of paroles, … [or] the revocation of parole." § 15-22-21(b) (emphasis added); see also Ala. Admin. Code (Board of Pardons and Paroles), r. 640-X-1-.01 (stating that the director of the Bureau "perform[s] all administrative duties as provided by law").

H.B. 380 also amended the procedures for filling a vacancy on the three-member Board found in § 15-22-20(b). Per those amended procedures, in the event of a vacancy, the lieutenant governor, the speaker of the Alabama House of Representatives, and president pro tempore of the Alabama Senate are required to select "five qualified persons" for the governor's consideration. See § 15-22-20(b). From there, the governor, "with the advice and consent of the Senate," appoints one of those candidates to fill the vacancy. Id.

Under Alabama law, the Board is charged with, among other things, the duty of determining "which prisoners serving sentences in the

jails and prisons of the State of Alabama may be released on parole and when and under what conditions." § 15-22-24(a)(1), Ala. Code 1975. "Meetings set for the purpose of conducting hearings and making determinations concerning pardons, paroles, restorations of political and civil rights, remission of fines and forfeitures, and revocations may be set by the chairman, the board, or a panel of the board designated for such purpose." § 15-22-23(a), Ala. Code 1975.

After H.B. 380 was enacted, Governor Ivey appointed Gwathney as chair of the Board pursuant to the new appointment process provided in § 15-22-20(b). In February 2020, the Senate confirmed Gwathney's appointment. Around that time, Governor Ivey also appointed Charles Graddick to serve as the director of the Bureau pursuant to § 15-22-21(a).

As a result of the onset of the COVID-19 pandemic, on March 13, 2020, Governor Ivey declared a public-health emergency in Alabama. At that time, the Board suspended in-person parole-consideration hearings.

A month later, Governor Ivey issued her "Seventh Supplemental Emergency Proclamation" ("the emergency proclamation"), which officially authorized the Board to conduct remote parole-consideration hearings. The emergency proclamation also provided, however, that,

when it chose to conduct such hearings, the Board was required to accept written statements from "[a]ny individuals," including officials, crime victims, and crime-victim representatives, regarding the appropriateness of a parole request.

Around the time that these events were taking place, Turner petitioned the Board for consideration for parole. Following a remote hearing in November 2020, the Board denied Turner's request.[2]

It was after Turner was denied parole that Ward was appointed to be the new director of the Bureau following Graddick's resignation. Ward's appointment became effective on December 7, 2020.

A few months later, Turner commenced the present action. After the defendants moved to dismiss Turner's claims against them, she filed an "Amended Complaint and Motion for Bond" in which she alleged four claims and clarified that she was bringing her action both in her personal capacity and as a "relator" on behalf of the State of Alabama.

In Counts I and II, Turner, on behalf of the State of Alabama,

[2]According to the materials in the record, the Board denied Turner's request because (1) the severity of Turner's offense was "high"; (2) the Board received negative input from stakeholders; and (3) one unnamed Board member believed that Turner posed a risk to public safety.

petitioned for writs of quo warranto pursuant to § 6-6-591, alleging that Ward and Gwathney unlawfully held their respective positions. In Count III, Turner sought a judgment declaring that Governor Ivey's appointments of Ward and Gwathney to their respective positions violated the Alabama Constitution of 1901. Finally, in Count IV of her amended complaint, Turner asserted a 42 U.S.C. § 1983 claim against all the defendants on the basis that she allegedly had been denied due process during her parole-consideration hearing.

In response, the defendants renewed their motions to dismiss, asserting that they were entitled to dismissal either because the circuit court lacked subject-matter jurisdiction, see Rule 12(b)(1), Ala. R. Civ. P., or because Turner had failed to state a claim on which relief could be granted, see Rule 12(b)(6). After Turner filed her response, the circuit court held a hearing on the motions.[3] Following that hearing, the circuit court entered a judgment dismissing Turner's action. Turner appeals.

Standard of Review

As stated previously, the defendants asserted that Turner's action

[3]The transcript of that hearing was not included in the record on appeal.

was due to be dismissed either because the circuit court lacked subject-matter jurisdiction, see Rule 12(b)(1), Ala. R. Civ. P., or because Turner had failed to state a claim on which relief could be granted, see Rule 12(b)(6). This Court has recently stated:

> "On appeal, no presumption of correctness is given to a dismissal. '"We review de novo whether the trial court had subject-matter jurisdiction."' Taylor v. Paradise Missionary Baptist Church, 242 So. 3d 979, 986 (Ala. 2017) (quoting Solomon v. Liberty Nat'l Life Ins. Co., 953 So. 2d 1211, 1218 (Ala. 2006)). 'The appropriate standard of review under Rule 12(b)(6)[, Ala. R. Civ. P.,] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle her to relief.' Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). Furthermore, this Court reviews questions of law de novo. See Ex parte Liberty Nat'l Life Ins. Co., 209 So. 3d 486, 489 (Ala. 2016)."

Hudson v. Ivey, [Ms. SC-2022-0836, Mar. 24, 2023] ____ So. 3d ____, ____ (Ala. 2023).

Discussion

A. Turner's Quo Warranto Claims (Counts I and II)

Turner argues that the circuit court should not have dismissed her claims seeking writs of quo warranto concerning Ward's and Gwathney's ability to lawfully hold their respective positions. She notes that the circuit court dismissed these claims for, among other reasons, her failure

to post any security. However, Turner contends, among other things, that she repeatedly requested that a security bond be set but the circuit court never did so. As a result, Turner contends that the failure to post security was beyond her control and, thus, that dismissal of her quo warranto claims on this basis was improper.

As this Court has explained,

> "[t]he writ of quo warranto is a common law writ used to determine whether one is properly qualified and eligible to hold a public office. … Stated another way, the purpose of the writ of quo warranto is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.' 65 Am Jur. 2d Quo Warranto § 122 (1972).
>
> "In Alabama, actions for the writ of quo warranto may be brought by private citizens pursuant to Ala. Code 1975, § 6-6-591. Rouse v. Wiley, 440 So. 2d 1023 (Ala. 1983). Section 6-6-591 states, in pertinent part:
>
> > "'(a) An action may be commenced in the name of the state against the party offending in the following cases:
> >
> > > "'(1) When any person usurps, intrudes into or unlawfully holds or exercises any public office ....'"

Ex parte Sierra Club, 674 So. 2d 54, 56-57 (Ala. 1995) (plurality opinion) (quoted with approval in Hudson v. Ivey, ____ So. 3d at ____).

Section 6-6-591(b) provides that a quo warranto action "may be

commenced without the direction of [a] judge" by "any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought." (Emphasis added.) "'"The giving of security for the costs of the action is the condition upon which the relator is permitted to sue in the name of the State,"'" and, "'"[w]ithout such security, he usurps the authority of the State."'" Burkes v. Franklin, [Ms. 1210044, July 15, 2022] ____ So. 3d ____, ____ (Ala. 2022) (quoting Riley v. Hughes, 17 So. 3d 643, 646 (Ala. 2009), quoting in turn Birmingham Bar Ass'n v. Phillips & Marsh, 239 Ala. 650, 657-58, 196 So. 725, 732 (1940)). "The absence of such security deprives the circuit court of subject-matter jurisdiction over a quo warranto action." Burkes, ___ So. 3d at ____ (emphasis added).[4]

Although it is undisputed that Turner never posted any type of security with the circuit court, she nevertheless asserts that she "stood willing to post a bond," that "the circuit clerk would not [set a bond]," and that she "beseeched the [circuit court] to set a bond amount." Turner's

[4]In Burkes, we dismissed the appeal from a summary judgment. We did so because the judgment was void for lack of subject-matter jurisdiction because the relator purporting to assert quo warranto claims in that action had failed to pay security costs. Burkes, ____ So. 3d at ____.

brief at 21. However, nothing in the record supports Turner's assertions. Specifically, there is nothing in the record indicating that Turner submitted anything, at any time, as "security for the costs of the action" to the "clerk of the court in which the action" was brought, as required by § 6-6-591(b). Assuming that she did so, there is certainly nothing in the record indicating that the clerk of the court failed to approve that security as required by § 6-6-591(b).

Even in the face of motions to dismiss that specifically referenced Turner's failure to satisfy this jurisdictional requirement to maintain a quo warranto action, Turner failed to submit anything as security. Even today, Turner has failed to submit anything as security. Further, we note that this Court has clearly stated that some security must be provided at the initiation of a quo warranto action and that the "failure to give the security at the [initiation] of the proceedings is fatal thereto." Evans v. State ex rel. Sanford, 215 Ala. 61, 62, 109 So. 357, 357 (1926) (emphasis added). Cf. State ex rel. Radcliff v. Lauten, 256 Ala. 559, 561, 56 So. 2d 106, 107 (1952) (recognizing that, in other cases, "it was held that if some sort of security is given in a bona fide effort to comply with the statute, but it is not a full compliance, it is sufficient for jurisdictional purposes

to allow an amendment of the security to be made within the time allowed for starting the suit by giving the required security").[5]

Because our caselaw makes clear that the failure of a relator to give security for the costs of a quo warranto action deprives the trial court of subject-matter jurisdiction over the action, the circuit court properly dismissed Turner's quo warranto claims with prejudice on that basis.

B. Turner's Declaratory-Judgment Claim (Count III)

Although Turner's argument regarding this issue is not a model of clarity, Turner next contends that the circuit court erred in dismissing her declaratory-judgment claim because, she says, the Legislature's delegation to the governor of its authority to appoint the director of the Bureau and the chair of the Board pursuant to the amendments in H.B.

[5]Because of Turner's failure to post any security of any kind at any time in this case, we need not decide (1) what type of security would have been necessary in this case or (2) what the appropriate amount of security would have been in this case. Additionally, we need not address issues with broader implications, such as: (1) when the security must be posted if the relator files one amount or type of security and the circuit clerk approves something different or (2) what to do if the circuit clerk never approves a security that is filed or rejects a security that the relator claims is appropriate.

380 is unconstitutional under Article III, § 42, and Article V, § 124, of the Alabama Constitution of 1901. Specifically, she contends:

> "Under § 124 of the Alabama Constitution, the legislature must regulate and administer paroles. Under § 42 of the Alabama Constitution, neither the Governor nor any other member of the executive branch may discharge legislative duties. Given the specificity of § 124 and the plain language of § 42, the Governor cannot have the power to appoint a Director of the Board of Pardons and Paroles, especially if that Director is a person operating as the chief executive officer of the Board and serving at the pleasure of the Governor. …
>
> "The statutory process pursuant to which Gwathney was appointed is similarly flawed. Before H.B. 380, members of the judicial, executive, and legislative branches compiled a list of candidates for membership on the Board of Pardons and Paroles. The Governor nominated a person from the list, and the Senate had to approve the person. 2003 Al. ALS 415, 2003 Ala. Acts 415, 2003 Al. Pub. Act 415, 2003 Al. HB 3. After H.B. 380, the judiciary has no role in compiling the list of candidates. Worse, once the Governor nominates someone, he or she becomes a member of the Board, unless the Senate votes to disapprove him or her. Under § 124, the legislature is charged with regulating and administering paroles, not merely vetoing executive actions regarding parole when those actions get out of line. As set forth in H.B. 380 and codified at Ala. Code § 15-22-20(b), the process by which the Governor appoints members to the Board is unconstitutional."

Turner's brief at 19-20.

We note that, in dismissing Turner's declaratory-judgment claim, the circuit court found that, although Turner had couched the claim as a challenge to the constitutionality of the governor's appointment powers

in H.B. 380, the claim was in actuality a substantive challenge to Ward's and Gwathney's ability to legally hold their respective positions. It thus concluded that Turner's declaratory-judgment claim was merely an extension of her quo warranto claims and dismissed it for many of the same reasons it dismissed those claims.

This Court has recently recognized that a declaratory-judgment action cannot serve as a substitute for a quo warranto action. For example, in Hudson v. Ivey, [Ms. SC-2022-0836, Mar. 24, 2023] ____ So. 3d ____ (Ala. 2023), the plaintiff commenced an action related to the reallocation of a judicial seat from Jefferson County to Madison County by the Alabama Judicial Resources Allocation Commission, seeking, among other things, a judgment declaring that the act providing for the reallocation of judgeships, § 12-9A-1 et seq., Ala. Code 1975 ("the Act"), violated certain provisions of the Alabama Constitution of 1901. The trial court dismissed the action on the ground that it did not have subject-matter jurisdiction to grant the plaintiff's requested relief because a quo warranto action -- not a declaratory-judgment action -- provided the exclusive remedy to the plaintiff.

On appeal, the plaintiff argued that a quo warranto action was not

needed in her case because "her action was not initiated with the direct purpose of removing [the Madison County judge] from office but, rather, to challenge the constitutionality of the Act under which a judgeship was removed from [Jefferson County]." Hudson, ____ So. 3d at ____. In addressing her contention, we explained:

> "'[T]he exclusive remedy to determine whether a party is usurping a public office is a quo warranto action pursuant to § 6-6-591, Ala. Code 1975, and not an action seeking a declaratory judgment.' Riley v. Hughes, 17 So. 3d 643, 646 (Ala. 2009) (footnote omitted). As explained in Riley, '[a] declaratory-judgment action cannot be employed where quo warranto is the appropriate remedy because the declaratory judgment would violate public policy,' 17 So. 3d at 646, and is, therefore, not justiciable:
>
> > "'"This remedy [quo warranto,] 'looks to the sovereign power of the state with respect to the use or abuse of franchises -- which are special privileges -- created by its authority, and which must, as a principle of fundamental public policy, remain subject to its sovereign action in so far as the interests of the public, or any part of the public, are affected by their usurpation or abuse.'
> >
> > "'"Our statute has extended the right to institute such proceeding to a person giving security for costs of the action. But, in such case, the action is still prerogative in character, brought in the name of the State, on the relation

> of such person, who becomes a joint party with the State. The giving of security for the costs of the action is the condition upon which the relator is permitted to sue in the name of the State. Without such security, he usurps the authority of the State.
>
> "'"....
>
> "'"As indicated, it is the policy of the law of Alabama that [quo warranto] proceedings should be had in the name of the State, and instituted in the manner designated by statute.
>
> "'"To sanction a private action inter partes with the same objective would operate a virtual repeal of the quo warranto statute.
>
> "'"....
>
> "'"The Declaratory Judgment Law was never intended to strike down the public policy involved."
>
> "'Birmingham Bar Ass'n v. Phillips & Marsh, 239 Ala. 650, 657-58, 196 So. 725, 732 (1940) (citations omitted).
>
> "'....'
>
> "Riley, 17 So. 3d at 646-47."

Id. at ____ (emphasis added).

We then held that the plaintiff's action was "not one merely

concerning the interpretation of a statute" but was instead a direct challenge to the newly appointed Madison County judge's exercise of his judicial office. Id. Because our law makes clear that such claims must be brought as a quo warranto action, we held that the trial court's dismissal of the plaintiff's declaratory-judgment action was due to be affirmed because the trial court lacked subject-matter jurisdiction. Id. ("In other words, this action is not one merely concerning the interpretation of a statute; rather, Hudson directly challenges [the Madison County judge's] exercise of his judicial office. Under our law, such claims must be brought as a quo warranto action.").

In this case, Turner maintains that her declaratory-judgment claim "does not turn on whether Ward or Gwathney have usurped their offices." Turner's brief at 17. Instead, she says, her position is that H.B. 380's delegation of authority to the Governor to appoint the director of the Bureau and its amendments to the process by which the members of the Board are appointed are unconstitutional.

However, Turner named Ward and Gwathney as defendants and sought a judgment declaring that their appointments to their respective positions through the new procedures established by H.B. 380 were

unconstitutional. Specifically, in her amended complaint, Turner, in alleging that Ward and Gwathney had "usurped" their respective offices also alleged that those offices were "unlawful" because they violated the Alabama Constitution of 1901.

Like the declaratory-judgment action in Hudson, Turner's declaratory-judgment claim here "is not one merely concerning the interpretation of a statute; rather, [Turner] directly challenges [Ward's and Gwathney's] exercise of [their] … office[s]." Hudson, ____ So. 3d at ____. Therefore, under Alabama law, Turner's "exclusive remedy" was to seek writs of quo warranto. We, thus, affirm the circuit court's judgment dismissing Turner's declaratory-judgment claim for want of subject-matter jurisdiction, and we pretermit discussion of the constitutionality of H.B. 380. See Hudson, ____ So. 3d at ____ (pretermitting discussion of the constitutionality of the Act or Hudson's standing to seek declaratory relief following affirmance of the trial court's dismissal of Hudson's declaratory-judgment action for want of subject-matter jurisdiction).

C. Turner's 42 U.S.C. § 1983 Claim
(Count IV)

Finally, Turner argues that the circuit court erred in dismissing her 42 U.S.C. § 1983 claim. Although she acknowledges that inmates have no

right to parole, she maintains that an inmate being considered for parole must be afforded certain procedural due-process rights. Because, she says, due process was not given to her when she was considered for and denied parole, Turner contends that she has sufficiently alleged a claim against the defendants under § 1983.[6]

"'Section 1983 alone creates no substantive rights; rather it provides a remedy for deprivations of rights established elsewhere in the [United States] Constitution or federal laws.'" Wright v. Bailey, 611 So. 2d 300, 304 (Ala. 1992) (quoting Cornelius v. Town of Highland Lake, Alabama, 880 F.2d 348, 352 (11th Cir. 1989)). To state a claim under § 1983, "'it is not enough to make "conclusory allegations of a constitutional violation" or to state "broad legal truisms." … [T]he right must be particularized so that potential defendants are on notice that conduct in

[6]We note briefly that the circuit court dismissed Turner's § 1983 claim after determining (1) that Turner lacked standing to bring this claim against Governor Ivey and Ward and (2) that the claim lacked merit. In his special writing, Justice Mitchell makes some insightful points about the need to address whether Turner lacked standing to bring her § 1983 claim before addressing the merits of that claim. However, Turner's § 1983 claim is not well developed in the complaint. Because it is not possible for this Court to adequately discern from that pleading alone whether Turner lacked standing in this case, we see no need to reach that issue at this time.

violation of that right is unlawful.'" Ex parte Wilcox Cnty. Bd. of Educ., 285 So. 3d 765, 782 (Ala. 2019) (quoting Spivey v. Elliott, 29 F.3d 1522, 1527 (11th Cir. 1994)). In other words, an alleged violation of a state constitutional provision alone will not support a claim under § 1983.

Further, as acknowledged by Turner and the circuit court below, our caselaw makes clear that an inmate has no liberty interest in parole. See Thompson v. Board of Pardons & Paroles, 806 So. 2d 374, 375 (Ala. 2001) (recognizing that because § 15-22-26, Ala. Code 1975, "provides that parole may be granted at the board's discretion, it does not confer a liberty interest in parole that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution"); see also Alabama Bd. of Pardons & Paroles v. Wright, 37 So. 3d 842, 843 (Ala. Crim. App. 2009) (recognizing that an inmate has no liberty interest in parole; thus, due-process rights do not attach to the denial of parole, but only to the revocation of parole); and Tedder v. Alabama Bd. of Pardons & Paroles, 677 So. 2d 1261, 1262 (Ala. Crim. App. 1996) (stating that, "[b]y definition, an inmate has no liberty interest in obtaining parole"). "'Obtaining an early release through parole … is wholly contingent upon the grace of the detaining authority ….'" Tedder, 677 So. 2d at 1263

(quoting Andrus v. Lambert, 424 So. 2d 5, 9 (Ala. Crim. App. 1982)). "'Unless there is a liberty interest in parole, the procedures followed in making the parole determination are not required to comport with standards of fundamental fairness.'" O'Kelley v. Snow, 53 F.3d 319, 321 (11th Cir. 1995) (quoting Slocum v. Georgia State Bd. of Pardons & Paroles, 678 F.2d 940, 942 (11th Cir. 1982)).

To the extent that Turner is arguing that the members of the Board violated Alabama law by failing to hold an in-person parole hearing, she is mistaken. "While the violation of state law may (or may not) give rise to a state tort claim, it is not enough by itself to support a claim under section 1983." Knight v. Jacobson, 300 F.3d 1272, 1276 (11th Cir. 2002) (emphasis added). Further, "'a "mere error of state law" is not a denial of due process.'" Swarthout v. Cooke, 562 U.S. 216, 222 (2011) (emphasis added; citations omitted). Accordingly, even if the members of the Board somehow violated Alabama law by failing to hold an in-person parole hearing for Turner, such a violation is not enough by itself to support a claim under § 1983.

Although Turner cites two cases that were not selected for publication and that deal with parole law in other states in support of her

§ 1983 claim -- Kerlin v. Barnard, 742 F. App'x 488, 489 (11th Cir. 2018), and Thomas v. McDonough, 228 F. App'x 931 (11th Cir. 2007) -- neither of those cases are applicable here because they stand for the proposition that the failure to consider whether an inmate should be granted parole can support a claim under § 1983. Here, it is undisputed that Turner was considered for parole.

Finally, we note that, as a separate basis for supporting her § 1983 claim, Turner appears to argue that Governor Ivey violated the "separation of powers" provision of Article III, § 42, of the Alabama Constitution of 1901 by issuing her emergency proclamation during the COVID-19 pandemic, which allowed the Board to suspend in-person parole hearings and to hold such hearings remotely. It is true that "[e]ach branch within our tripartite governmental structure has distinct powers and responsibilities, and our Constitution demands that these powers and responsibilities never be shared." Monroe v. Harco, Inc., 762 So. 2d 828, 831 (Ala. 2000). "But 'the doctrine of separation of powers does not prohibit the Legislature's delegating the power to execute and administer the laws, so long as the delegation carries reasonably clear standards governing the execution and administration.'" Id. (quoting Folsom v.

Wynn, 631 So. 2d 890, 894 (Ala. 1993)).

Turner does not address the fact that the Legislature has specifically authorized the governor to act in response to an emergency by issuing emergency proclamations like the one in this case, see §§ 31-9-6 and 31-9-8, Ala. Code 1975, or that Alabama law gives "full force and effect of law" to such proclamations, see § 31-9-13, Ala. Code 1975. She also neither disputes that Governor Ivey acted pursuant to her authority under those statutes nor otherwise demonstrates that, in doing so, Governor Ivey violated Alabama law.[7] Under these circumstances, Turner has failed to demonstrate that the circuit court's dismissal of her § 1983 claim with prejudice was improper.

Conclusion

For the reasons set forth in this opinion, the circuit court's judgment dismissing Turner's claims with prejudice is due to be affirmed.

AFFIRMED.

Parker, C.J., and Stewart, J., concur.

Mitchell, J., concurs in part and concurs in the result, with opinion,

[7]Given the lack of argument by Turner, we are not called upon to decide the full scope of such statutory powers or the validity of such Alabama statutes.

which Sellers, J., joins.

Shaw, Wise, and Bryan, JJ., concur in the result.

MITCHELL, Justice (concurring in part and concurring in the result).

I agree with the main opinion that the trial court properly dismissed Angela Turner's quo warranto and declaratory-judgment claims on jurisdictional grounds. But I concur in the result only with respect to the affirmance of the trial court's decision to dismiss Turner's 42 U.S.C. § 1983 claim; I would affirm the dismissal of that claim on the basis that Turner lacked standing, rather than for merits-based reasons.

The trial court concluded that Turner's § 1983 claim should be dismissed both because she lacked standing to bring the claim and because the claim had no merit. This Court has held that -- at least in public-law cases such as this one -- defects in standing to sue are jurisdictional defects, not merits defects. See Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 44 (Ala. 2013). We are therefore obligated to address Turner's standing to sue before we can reach the merits of her claim. See Bentley v. Bentley, [Ms. SC-2022-0522, Apr. 21, 2023] ___ So. 3d ___, ___ (Ala. 2023) (explaining that this Court is duty bound to notice the absence of subject-matter jurisdiction and therefore "must first address [the jurisdictional] issue before discussing the merits of [the appellant's] arguments on appeal"); Muhammad v. Ford, 986 So. 2d 1158,

1162 (Ala. 2007) ("Before considering the merits of this appeal, this Court must first consider whether [the appellants] have standing to challenge the constitutionality of Amendment No. 744."). And an analysis of Turner's § 1983 claim confirms the trial court's conclusion that it has a fatal standing defect.

Under our precedents -- which Turner does not challenge -- a plaintiff lacks standing to sue unless she pleads (1) a particularized injury, (2) caused by the named defendants, and (3) redressable by a favorable judicial ruling. See Ex parte HealthSouth Corp., 974 So. 2d 288, 293 (Ala. 2007). So far as I can tell, Turner has failed to satisfy these requirements. To the extent that she seeks to use her § 1983 claim as a vehicle to allege that Cam Ward and Leigh Gwathney were unconstitutionally appointed, she lacks standing because neither Ward nor Gwathney (nor, for that matter, Governor Ivey) has anything to do with her particularized injury, which is the denial of her parole: Ward and Governor Ivey are ineligible to vote on parole requests, and Gwathney's vote was irrelevant to the denial of Turner's parole because a bare majority is sufficient to deny parole and the other members of the Board of Pardons and Paroles -- whose appointments Turner does not

challenge -- also voted to deny Turner's parole request. In other words, a ruling in Turner's favor on this point would not entitle her to parole and so would not redress her particularized injury.

To the extent that Turner seeks to use her § 1983 claim as a vehicle to allege that Governor Ivey violated the "separation of powers" provision of Article III, § 42, of the Alabama Constitution of 1901 by issuing an emergency proclamation in response to the COVID-19 virus that allowed the Board to hold parole hearings remotely, she has again failed to satisfy the redressability component of standing to sue. Her complaint demands unspecified "injunctive relief" from all named defendants with respect to her § 1983 claim, but none of the named defendants has the power to retroactively undo the already-expired COVID-19 emergency proclamation. Perhaps Turner intends to seek an order compelling certain defendants to hold a renewed, nonremote hearing to remedy the alleged deficiency of the first hearing, but she neither argues for such a result on appeal nor attempts to explain how such an order would be within either the statutory authority of the named defendants or the scope of the judicial power conferred by the Alabama Constitution of 1901. Thus, she has failed to meet her burden of demonstrating a

redressable injury and her § 1983 claim cannot be maintained due to her lack of standing.[8] I therefore express no view on the merits of the claim.

For these reasons, I concur in part and concur in the result.

Sellers, J., concurs.

[8]When a defendant moves to dismiss a claim under Rule 12(b)(6), Ala. R. Civ. P., the defendant bears the burden of showing that the plaintiff could prove no set of facts entitling the plaintiff to relief. See, e.g., Altrust Fin. Servs., Inc. v. Adams, 76 So. 3d 228, 239 (Ala. 2011). But, here, the defendants' challenge to Turner's standing to bring her § 1983 claim invoked Rule 12(b)(1), Ala. R. Civ. P. "'Once a party challenges the trial court's jurisdiction, pursuant to Rule 12(b)(1), [Ala. R. Civ. P.], the burden of establishing jurisdiction is on the plaintiff.'" Crutcher v. Williams, 12 So. 3d 631, 636 (Ala. 2008) (plurality opinion) (quoting Bush v. Laggo Props., L.L.C., 784 So. 2d 1063, 1065 (Ala. Civ. App. 2000)).