Rel: March 8, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0496

State of Alabama ex rel. Frederick Burkes, Sr.

v.

James Franklin

Appeal from Jefferson Circuit Court
(CV-22-18.80)

STEWART, Justice.

The State of Alabama, on the relation of Frederick Burkes, Sr., initiated a quo warranto action in the Jefferson Circuit Court ("the trial court") challenging Governor Kay Ivey's appointment of James Franklin to the office of constable for the District 59 election precinct in Jefferson County. The trial court entered a judgment in favor of Franklin, which, for the reasons stated below, we affirm.

Facts and Procedural History

Burkes defeated Franklin in the 2020 Democratic party primary for the office of constable for District 59 in Jefferson County, with a term of office beginning on January 18, 2021. Burkes had no opposition in the general election, and he was declared and certified as the winner of the election on Friday, November 13, 2020. Section 36-23-4, Ala. Code 1975, requires that, before entering the duties of his or her office, a constable must first give a bond in the amount of $1,000.

On January 4, 2021, Burkes filed such a bond with the Jefferson Probate Court. Also on January 4, 2021, Burkes was administered his oath of office by Jefferson Probate Judge James Naftel. On January 6, 2021, Franklin sent a letter to Judge Naftel asserting that Burkes's bond had not been timely filed because it had not been filed within 40 days of

the declaration of Burkes's election. On January 8, 2021, Judge Naftel sent a letter to Governor Kay Ivey, stating, in pertinent part:

> "Under Ala[.] Code [1975,] § 11-2-3, the official bonds of all county officials (except for the judge of probate) are to be recorded in the office of the judge of probate. This includes the official bonds of duly elected county Constables.
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> "Alabama Code [1975,] § 36-5-2[,] provides that '[i]n all cases, official bonds must be filed in the proper office within 40 days after the declaration of election ….' Alabama Code [1975,] § 36-5-15[,] provides in turn that '[i]f any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office. In such case, it is the duty of the officer in whose office such bond is required to be filed at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases.' Finally, Alabama Code [1975,] § 36-23-2[,] provides that '[v]acancies in the office of constable shall be filled by appointment of the Governor, and the person appointed shall hold office for the unexpired term and until his successor is elected and qualified.'
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> "….
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> "It is this office's understanding that by statute it is required to notify the Governor (as the 'appointing power') of any duly elected Constable failing to file his or her bond within 40 days after the election results are declared, as the office is then, by statute, vacated. Please consider this letter to be such declaration and certification with respect to Constable for District 59, Jefferson County, Alabama. This office takes no position with respect to any appointment to fill any vacancy; I would note, however, that Mr. Burkes, the duly elected Constable for District 59, ran unopposed in the November 2020 General Election."

On February 26, 2021, the governor appointed Franklin to the office of constable for District 59.

On April 22, 2021, Burkes, acting pro se, initiated a quo warranto action against Franklin in the trial court. The trial court entered a summary judgment in favor of Franklin, and Burkes appealed that judgment to this Court. Because Burkes had not given security for the cost of the action as required by § 6-6-591(b), Ala. Code 1975, this Court concluded that the trial court had never obtained subject-matter jurisdiction over the action and, accordingly, dismissed the appeal. Burkes v. Franklin, 370 So. 3d 235, 241 (Ala. 2022) ("Burkes I"). While the appeal in Burkes I was pending, Burkes obtained counsel and initiated a new quo warranto action against Franklin in the trial court. The trial court dismissed that action on res judicata grounds. Given that the trial court in Burkes I had not obtained subject-matter jurisdiction over the quo warranto action, however, the doctrine of res judicata did not apply to the second quo warranto action. Accordingly, in Burkes v. Franklin, [Ms. SC-2022-0649, Nov. 18, 2022] __ So. 3d __, __ (Ala. 2022) ("Burkes II"), this Court reversed the trial court's judgment dismissing

Burkes's second quo warranto action and remanded the action for further proceedings.

Following our remand of the action in Burkes II, the trial court conducted a bench trial on the issues raised in Burkes's quo warranto action on June 6-7, 2023. On June 20, 2023, the trial court entered a final judgment in favor of Franklin and against Burkes. This appeal followed.

Standard of Review

In this case, the trial court entered a judgment following a bench trial. "The ore tenus standard of review generally applies to judgments entered following a bench trial." R&G, LLC v. RCH IV-WB, LLC, 122 So. 3d 1253, 1256 (Ala. 2013). In this appeal, however, the material facts are undisputed, and the issues raised on appeal are legal questions concerning the application and interpretation of various statutes regarding the bonding requirements for public officials. We review such questions of law de novo. See Ruttenberg v. Friedman, 97 So. 3d 114, 134 (Ala. 2012) ("Although the ore tenus standard of review is applicable here, because this issue presents a question of law and does not concern a disputed issue of fact, our review is de novo.").

Analysis

As is the case with numerous other public officials in Alabama, a constable is required to give an official bond before entering into the duties of his or her office. Section 36-23-4, Ala. Code 1975, provides, in pertinent part, that "[b]efore entering upon the duties of his office, the constable must give bond as prescribed by law." The purpose of such bond is to serve as "'collateral security for the faithful performance of [the] official duties [of the office].'" State v. Alabama Power Co., 230 Ala. 515, 516, 162 So. 110, 112 (1935) (quoting Walton v. United States, 22 U.S. 651, 656 (1824)); see also § 11-2-1(b), Ala. Code 1975.

Article 1 of Chapter 5 of Title 36 of the Code of Alabama 1975 provides generally applicable provisions governing official bonds. See Ala. Code 1975, § 36-5-1 et seq. Section 36-5-2, Ala. Code 1975, provides the time when official bonds must be filed:

> "In all cases, official bonds must be filed in the proper office within 40 days after the declaration of election or after the appointment to office, except bonds of tax assessors and tax collectors which shall be filed on or before September 1 next after their election or appointment."

Section 36-5-15, Ala. Code 1975, provides that an officer who fails to file a bond within the time required by law vacates his or her office:

> "If any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office.

> In such case, it is the duty of the officer in whose office such bond is required to be filed at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases."

As indicated by his letter to the governor quoted above, Judge Naftel interpreted the above statutory language as requiring him to certify that the office of constable for District 59 was vacant because Burkes, although he had filed a bond, had not filed that bond within 40 days of the declaration of his election. Based on that certification of vacancy, the governor appointed Franklin to fill the office of constable.[1] In issuing that certification of vacancy, Judge Naftel was apparently not aware that § 11-2-6, Ala. Code 1975, provides the time for which a constable is required to file his or her official bond. Section 11-2-6, as amended in 2009, expressly provides that § 36-5-2 does not apply to county officials required to file an official bond. That section states, in pertinent part:

> "Section 36-5-2 notwithstanding, the bond for a county official shall be filed no later than the date that the official takes

[1]In Ex parte Harris, 52 Ala. 87, 93 (1875), this Court noted that a commission from the governor filling a duly certified vacancy "is conclusive evidence of the title to office, until it is impeached on quo warranto," and that, in a quo warranto proceeding, "it is only prima facie evidence, liable, like other prima facie evidence, to be countervailed."

> office or, in the case of appointment to an office, within five working days of the date the appointment is made."

§ 11-2-6 (emphasis added). Furthermore, the term "county official" is defined to include the office of constable. § 11-2-1(a)(2), Ala. Code 1975. Thus, because Burkes filed his official bond before the date he took office, it was not untimely. The certification of vacancy was in error.

Notwithstanding our recognition that the office of constable was incorrectly declared vacant, this Court does not have the authority or the ability to right all wrongs. Rather, we are an appellate court called to review the judgment of the trial court. Such review is guided by certain bedrock principles, including the rule that we will not reverse a trial court's judgment on a ground or issue not presented to the trial court.[2] See, e.g., Lloyd Noland Hosp. v. Durham, 906 So. 2d 157, 165 (Ala. 2005). As the United States Supreme Court has explained:

> "In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to the courts the role of neutral arbiter of matters the parties present."

Greenlaw v. United States, 554 U.S. 237, 243 (2008).

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[2]A narrow exception to this principle is the plain-error review permitted in death-penalty cases. See Rule 45A, Ala. R. App. P.

In the trial court, Burkes framed the issue as one of conflict between § 36-5-2 and § 36-23-4. Burkes argued, as he does now on appeal, that the 40-day filing requirement established in § 36-5-2 conflicts with the language of § 36-23-4, which provides that constables must file a bond "[b]efore entering upon the duties of [their] office." Burkes contends that this purported conflict must be resolved by applying the provision specifically applicable to constables, i.e., § 36-23-4, and he cites the rule of construction that provides that, "[i]n the event of a conflict between two statutes, a specific statute relating to a specific subject is regarded as an exception to, and will prevail over, a general statute relating to a broad subject." Ex parte Jones Mfg. Co., 589 So. 2d 208, 211 (Ala. 1991).

Burkes's argument, however, is not correct. Sections 36-5-2 and 36-23-4 are not conflicting -- rather, those sections (and their predecessors) long formed part of a harmonious plan relating to official bonds that dates to the adoption of Alabama's first code in 1852. See Ala. Code 1852, § 717 (requiring constables to file a bond with the judge of probate before entering into the duties of their office), and Ala. Code 1852, § 123 (providing that bonds required to be filed with the judge of probate must be filed 15 days from election or appointment); see also Ex parte Harris,

52 Ala. 87, 92-93 (1875) (construing two statutes -- one, like § 36-23-4, which required a sheriff to file a bond with the probate judge before entering the duties of his office, and the other, like § 36-5-2, which required that all bonds to be filed with the probate judge be filed within a certain time following the election or else the office would be deemed vacated -- as part of a single harmonious plan). We cannot, therefore, fault the trial court for rejecting the sole argument Burkes presented below.

Regardless, it is § 11-2-6 that now specifies the time in which a constable must file his or her official bond, not § 36-23-4 or § 36-5-2. Unfortunately, no argument addressing § 11-2-6 was presented to the trial court or raised on appeal. Accordingly, we are compelled to affirm the trial court's judgment.

Conclusion

Based on the arguments of the parties and the record before us, the judgment of the trial court is affirmed.

AFFIRMED.

Parker, C.J., and Fridy,* Special Justice, concur.

Mitchell, J., concurs specially, with opinion.

Shaw, J., concurs in the result, with opinion.

Bryan, J., dissents, with opinion, which Wise, Sellers, and Mendheim, JJ., join.

Cook, J., recuses himself.

*Judge Matthew D. Fridy of the Alabama Court of Civil Appeals was appointed to serve as a Special Justice in regard to this appeal.

MITCHELL, Justice (concurring specially).

As Justice Shaw explains in his special writing, our precedents leave little room for appellate courts to exercise discretion in considering unpreserved arguments. I write separately to express my willingness to reconsider those precedents in cases where the controlling law is clear beyond doubt, as it is here. In those narrow circumstances, I believe it may be proper for appellate courts to apply that law even though the parties have "fail[ed] to invoke it." E.E.O.C. v. Federal Lab. Rels. Auth., 476 U.S. 19, 23 (1986).

I agree with Justice Shaw that, in most cases, it is not appropriate for our appellate courts to consider waived arguments. See, e.g., Ex parte Riley, 464 So. 2d 92, 94 (Ala. 1985) (explaining reasons for the general raise-or-waive rule). But it appears that, at common law, courts had "inherent authority" to forgive waiver and reach the merits of an unpreserved issue, 7 Wayne R. LaFave et al., Criminal Procedure § 27.5(c)-(d) (4th ed. 2015), especially when the law was "clear and overwhelming in its impact." Allan D. Vestal, Sua Sponte Consideration in Appellate Review, 27 Fordham L. Rev. 477, 510 (1958-59); accord Rentways, Inc. v. O'Neill Milk & Cream Co., 308 N.Y. 342, 349, 126 N.E.

2d 271, 274 (1955) (observing that "[t]o say that appellate courts must decide between two constructions proffered by parties, no matter how erroneous both may be, would be to render automatons of judges").

In keeping with that principle, the United States Supreme Court has recognized that federal appellate courts have the power to eschew the "general rule" that reviewing courts will "not consider an issue not passed upon below." Singleton v. Wulff, 428 U.S. 106, 120 (1976). Whether federal appellate courts should deviate from this rule is "left primarily to the[ir] discretion …, to be exercised on the facts of individual cases." Id. at 121; cf. Huntress v. Estate of Huntress, 235 F.2d 205, 209 (7th Cir. 1956) (explaining that "[t]he party's failure to call the trial court's attention to a relevant statute does not preclude the appellate court from considering it"). One instance in which courts may be "justified in resolving" an issue not raised below is "where the proper resolution" of a case is clear "beyond any doubt." Singleton, 428 U.S. at 121; see also Zivotofsky ex rel. Zivotofsky v. Kerry, 576 U.S. 1, 41 n.2 (2015) (Thomas, J., concurring in the judgment in part and dissenting in part) (arguing that a party's failure to invoke the correct interpretation

of a law "does not relieve [courts] of [their] responsibility to interpret the law correctly").

But our cases do not seem to acknowledge that courts have discretion to overlook waiver in the civil context. Instead, this Court has applied a seemingly blanket prohibition on considering unpreserved or unbriefed arguments. See, e.g., Thompson v. Skipper Real Estate Co., 729 So. 2d 287, 289 n.2 (Ala. 1999) (plurality opinion) (noting that "this Court will not reverse a trial court's judgment on a ground that has never been raised").

Because the parties to this case have not asked us to depart from our normal approach to waiver, I concur with the main opinion. See Ex parte McKinney, 87 So. 3d 502, 509 n.7 (Ala. 2011) (noting that "this Court has long recognized a disinclination to overrule existing caselaw in the absence of either a specific request to do so or an adequate argument asking that we do so"). But if a litigant in a future case raises this issue, I would be willing to revisit our approach.

SHAW, Justice (concurring in the result).

I respectfully concur in the result. The appellant, Frederick Burkes, Sr., challenges whether he timely filed the bond required for him to assume the office of constable. He argues that under § 36-23-4, Ala. Code 1975, he was required to file the bond only before he entered office. That Code section states:

> "Before entering upon the duties of his office, the constable must give bond as prescribed by law.
>
> "The official bonds of constables shall be $1,000.00, the premiums on said bonds to be paid by the persons making such bonds without expense to the county."

Burkes filed the bond before he assumed office; thus, he argues that the bond was timely filed under § 36-23-4.

The appellee, James Franklin, argues that there is another Code section that governs when the bond must be filed. Section § 36-5-2, Ala. Code 1975, states:

> "In all cases, official bonds must be filed in the proper office within 40 days after the declaration of election or after the appointment to office, except bonds of tax assessors and tax collectors which shall be filed on or before September 1 next after their election or appointment."

Franklin asserts that, although Burkes filed a bond, it was not filed within 40 days after the declaration of his election. Thus, he argues, the bond was untimely filed.

The issue, as framed in the trial court and on appeal, is whether there is a "conflict" between these two Code sections and whether § 36-5-2 is general in nature and § 36-23-4, being specifically applicable to constables, acts as an exception. See Ex parte Jones Mfg. Co., 589 So. 2d 208, 211 (Ala. 1991) ("In the event of a conflict between two statutes, a specific statute relating to a specific subject is regarded as an exception to, and will prevail over, a general statute relating to a broad subject."). I see it the other way around: § 36-23-4 is simply a general requirement that a constable must give a bond before assuming office. That the bond must be given "[b]efore entering upon the duties of his office" reads as a prerequisite to assuming the office, not a specific mechanism regulating the timing of the filing of the bond. Further, the section provides no details, such as how and to whom the bond would be given. Section 36-5-2, on the other hand, specifically regulates the timing of the filing of

bonds in "all cases."[3] Further, filing a bond within 40 days after the declaration of the election under that Code section does not conflict with § 36-23-4 if that bond is given before the constable enters office.

I am not convinced by Burkes's arguments on appeal that § 36-5-2 does not apply in this case. Because Burkes did not file his bond within the time limit prescribed by § 36-5-2, he has not shown that the trial court erred in holding that, under that Code section, he failed to timely file the bond, which resulted in Burkes's being deemed to have vacated the office. § 36-5-15, Ala. Code 1975 ("If any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office.").

That said, according to the main opinion, § 36-5-2 does not appear to apply in the first place. Instead, under § 11-2-6, Ala. Code 1975, Burkes was required to file his bond "no later than the date … [he] takes office." This is consistent with § 36-23-4, which requires the constable to provide the bond before entering office. If § 11-2-6 applies, then Burkes's bond was timely filed under that section and also was given in accord with § 36-23-4. Burkes, however, did not argue that § 11-2-6 applied in

[3]Whether § 36-5-2 is applicable only to bonds filed pursuant to § 36-5-1, Ala. Code 1975, and whether the bond at issue in this case is not one of those bonds are issues not raised by the parties.

this case to show that § 36-5-2 was inapplicable and that his bond was timely filed. Therefore, it cannot form a basis for reversing the trial court's judgment.

It might appear hypertechnical for this Court to rule against Burkes simply because he relied on § 36-23-4 instead of § 11-2-6, but it is not. It is well-established that the burden is on an appellant to show this Court that the trial court erred. Johnson v. Life Ins. Co. of Alabama, 581 So. 2d 438, 444 (Ala. 1991). Appellants do so by presenting in their briefs to this Court the issues, arguments, authorities, and portions of the record supporting their positions. Rule 28(a)(10), Ala. R. App. P. In turn, when determining whether a lower court's judgment should be reversed, "we address only the issues and arguments the appellant chooses to present." Hart v. Pugh, 878 So. 2d 1150, 1157 (Ala. 2003). With some very specific exceptions not applicable here, the grounds argued on appeal must first be raised in the trial court. Thompson v. Skipper Real Estate Co., 729 So. 2d 287, 289 n.2 (Ala. 1999) (plurality).

Both in the trial court and on appeal, the parties' dispute revolved around the interaction between § 36-23-4 and § 36-5-2 and which of those Code sections controls in this case. Although that framing of the issue is

misguided in light of § 11-2-6, which was never addressed below or on appeal, that is the issue presented for this Court to decide in this appeal. See Reed v. Madry, 585 So. 2d 909, 909 (Ala. 1991) (holding that, where the parties had tried a case under a certain legal theory that the Court "d[id] not necessarily agree … [was] determinative," that theory was treated as the law of the case), and Alabama Forest Prods. Indus. Workmen's Comp. Self-Insurers' Fund v. Harris, 194 So. 3d 921, 924-25 (Ala. Civ. App. 2014) (holding that the court on appeal would apply the version of the Alabama Workmen's Compensation Act under which the case was tried, despite the fact that a prior version of that law was applicable under the facts of that case). As presented on appeal, Burkes's arguments do not convince me that the trial court erred.

BRYAN, Justice (dissenting).

I respectfully dissent from this Court's decision affirming the judgment of the Jefferson Circuit Court in favor of James Franklin in this quo warranto action initiated by Frederick Burkes, Sr.

The effect of the circuit court's judgment is that Franklin is deemed to be the lawful holder of the office of constable for District 59 in Jefferson County. The basis for this judgment is the circuit court's apparent determinations that Burkes, although elected to that office, vacated the office by failing to timely give a bond under § 36-5-2, Ala. Code 1975, and that Franklin was thereafter appointed by the governor to fill the vacancy under § 36-5-15, Ala. Code 1975.

Section 36-5-2 provides: "In all cases, official bonds must be filed in the proper office within 40 days after the declaration of election or after the appointment to office, except bonds of tax assessors and tax collectors which shall be filed on or before September 1 next after their election or appointment." Section 36-5-15 provides:

> "If any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office. In such case, it is the duty of the officer in whose office such bond is required to be filed at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases."

However, as Burkes has correctly pointed out, § 36-5-2 is a statute of general applicability and does not specifically address the office of constable. Instead, a separate statute deals specifically with that office. In relevant part, § 36-23-4, Ala. Code 1975, provides: "Before entering upon the duties of his office, the constable must give bond as prescribed by law." (Emphasis added.)

Title 11, Chapter 2, the portion of the Alabama Code of 1975 that provides for bonds of county officers and employees, confirms that § 36-23-4 means precisely what it says. In particular, § 11-2-1(a)(2), Ala. Code 1975, includes constables in the definition of "county official or county officer." Section 11-2-6, Ala. Code 1975, then provides, in relevant part: "Section 36-5-2 notwithstanding, the bond for a county official shall be filed no later than the date that the official takes office or, in the case of appointment to an office, within five working days of the date the appointment is made." (Emphasis added.)

The main opinion reasons that this Court cannot reverse the circuit court's judgment in this case because Burkes has not cited § 11-2-6 in support of his position in either the circuit court or in this Court. Admittedly, the provisions of § 11-2-6 clearly demonstrate the

inapplicability of the bond-filing deadline set forth in § 36-5-2 to the office of constable. However, § 11-2-6 is entirely consistent with the plain meaning of § 36-23-4, which deals specifically with the office of constable, and upon which Burkes has relied throughout this litigation.

This Court has repeatedly held that "'[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says.'" Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998)(quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).

Moreover,

> "'[t]his court has the duty to construe provisions within a statutory plan in harmony with each other. J.N.H. v. N.T.H., 705 So. 2d 448 (Ala. Civ. App. 1997). In interpreting statutory language, a court does not look at one word or one provision in isolation, but rather looks to a whole statutory scheme for clarification and contextual reference.'"

Ex parte S.C.W., 826 So. 2d 844, 850 (Ala. 2001)(citation omitted).

Under the plain meaning of § 36-23-4, Burkes timely gave his bond before entering upon the duties of the office of constable. Therefore, Burkes did not vacate the office of constable under § 36-5-15, and there was no vacancy in the office for the governor to fill by appointing

Franklin. Consequently, the circuit court erred by entering a judgment in favor of Franklin in this case. In my opinion, this Court should reverse the circuit court's judgment.

My conclusion in this regard is bolstered by this Court's precedent in this area. In Sharp v. State ex rel. Elliott, 217 Ala. 265, 115 So. 392 (1928), this Court explained the proper procedure in quo warranto actions involving gubernatorial appointments to public offices. The Court stated: "As repeatedly held by this court, the information in cases of this sort is sufficient, if it avers in general terms that the respondent usurps, intrudes into, and unlawfully holds a designated public office." 217 Ala. at 266, 115 So. at 393. The Court further stated:

> "In this proceeding, when the state has shown, or the respondent has admitted, that the respondent is holding and exercising the powers and duties of a public office under the state, he must then show 'by what authority he holds the office, and that he is in the rightful exercise of its duties and powers.' Montgomery v. State ex rel. Enslen, 107 Ala. 37[2], 384, 385, 18 So. 157 [(1895)].
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> "In accordance with this rule as to the burden of proof, the respondent's answer must assume the burden, and must allege the facts which are necessary to show that he lawfully holds the office, and rightfully exercises its duties and powers. As said in Jackson v. State ex rel. Tillman, 143 Ala. 145, 148, 42 So. 61, 62 [(1905)]:

> "'In such a case it is not enough to show what might be termed a bare prima facie right to the office, such as would be evidenced by the holding of a commission from the Chief Executive, but the inquiry reaches further than this, and requires that it be shown that the Governor thereunto was lawfully authorized to act. State ex rel. Little v. Foster, 130 Ala. 154 [30 So. 477 [(1901)].'"

217 Ala. at 267, 115 So. at 393 (emphasis added).

Thus, Sharp indicates that, in a quo warranto proceeding, it is not enough for a respondent whose gubernatorial appointment to a public office has been challenged to answer the petition by simply relying on the commission itself. Under the procedure described by Sharp, the respondent also bears of the burden of proving that the gubernatorial appointment itself was valid. Sharp goes on to describe potential scenarios under which the burden of pleading or the burden of proof, depending on the circumstances, may be shifted back to the petitioner.

In my opinion, Franklin's continued reliance on § 36-5-2 in this case did not meet his initial burden of demonstrating that his commission was valid. As explained above, under clear Alabama law, the bond-filing deadline set forth in § 36-5-2 does not apply to the office of constable; the deadline set forth in § 36-23-4 does, and § 11-2-6 settles the issue beyond

question. Therefore, Burkes never vacated the office of constable, and there was no vacancy for the governor to fill by appointing Franklin.

In interpreting and applying the statutes at issue in this case, I believe it is this Court's duty to enforce their plain meaning "'look[ing] to [the] whole statutory scheme for clarification and contextual reference.'" Ex parte S.C.W., 826 So. 2d at 850 (citation omitted). In so doing, I conclude that the circuit court's judgment in favor of Franklin should be reversed. Therefore, I respectfully dissent.

Wise, Sellers, and Mendheim, JJ., concur.