

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4286

VINCENT MOBLEY,

Appellant,

v.

RONNIE FUSSELL/DUVAL COUNTY
CLERK OF COURT,

Appellee.

On appeal from the Circuit Court for Duval County.
Bruce P. Anderson, Judge.

February 10, 2021

ROWE, J.

Vincent Mobley appeals an order denying his mandamus petition. After the Duval County Clerk of Court declined to provide Mobley with certified copies of his judgment and sentence free of charge in response to his request for records required for his application for clemency, he sought mandamus relief in the trial court. The trial court denied the petition, finding that Mobley was not entitled to mandamus relief because the Clerk was willing to produce the requested copies if Mobley paid for the copies or provided a signed and complete copy of his clemency application. As explained below, we reverse.

Our review is de novo. *L.G. v. State*, 939 So. 2d 1141, 1142 (Fla. 1st DCA 2006). This case presents a straightforward question

of statutory interpretation: what must a person allege or do to be “an applicant for executive clemency” and trigger the clerk of court’s duty to produce certified copies of records “required” for a clemency application under section 940.04, Florida Statutes (2019)? Answering the question requires an examination of two related statutes and an executive clemency rule.

First, we examine the language of section 940.04, Florida Statutes, the statute Mobley cited when he requested records from the Clerk:

In the event any applicant for executive clemency is required to supply a certified copy of the applicant’s information, indictment, judgment, or sentence, said document shall be furnished by the clerk of court to the applicant free of charge and without delay.

Under the plain language of section 940.04, to trigger the clerk of court’s duty to provide certified copies free of charge, the requesting party must be “an applicant for executive clemency” and the requested copies must be for records “required” for the clemency application.

To determine which records are required for a clemency application, we first look to section 940.03, Florida Statutes (2019). That statute describes the steps a person must take to apply for executive clemency and identifies the records an applicant **may** be required to submit with the application:

If a person intends to apply for remission of any fine or forfeiture or the commutation of any punishment, or for pardon or restoration of civil rights, he or she shall request an application form from the Florida Commission on Offender Review in compliance with such rules regarding application for executive clemency as are adopted by the Governor with the approval of two members of the Cabinet. **Such application may require the submission of a certified copy of the applicant’s indictment or information, the judgment adjudicating the applicant to be guilty,**

and the sentence, if sentence has been imposed . . .

Id. (emphasis supplied).

Still, section 940.03 does not definitely answer the question of what records are “required” for a clemency application. But Florida Rule of Executive Clemency 6(B) makes clear what records are required in connection with a clemency application:

Each application for clemency shall have attached to it a certified copy of the charging instrument (indictment, information, or warrant with supporting affidavit) for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor, and a certified copy of the judgment and sentence for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor.

Thus, under the plain language of the clemency rule and sections 940.03 and 940.04, a person seeking executive clemency is “required” to provide a certified copy of the judgment and sentence with the clemency application.

Having settled the question that certain records are “required” in connection with a clemency application, we turn to the thornier question that remains: what must a person allege or do to be “an applicant for executive clemency” under section 940.04? Put differently, must a person have already completed the clemency application? If so, may the clerk request a copy of the application before producing the requested records? Or is it enough for a person to attest that they are applying for executive clemency?

This Court has considered the question previously but resolved the question in an unelaborated decision. *See Ramsey v. Fuller*, 99 So. 3d 628 (Fla. 1st DCA 2012). Judge Makar wrote a concurring opinion, explaining his reasons for affirming and presenting the facts of the case.

As Mobley did here, after the clerk of court denied his request for certified copies, Ramsey petitioned for mandamus relief in the circuit court. *Id.* He alleged that he had a clear legal right to certified copies of the docketing statement and the information in his criminal case and that the clerk had a clear legal duty under section 940.04 to provide him with the requested copies. *Id.* The trial court denied the petition, finding that the clerk had no duty to provide the requested copies because Ramsey did not allege that he had applied for executive clemency. *Id.* Instead, Ramsey’s one-page notice to the clerk requested the records, citing section 940.04 without further explanation. *Id.* at 629. Judge Makar concluded that the trial court was correct in its ruling because Ramsey did not allege facts sufficient to show that he was applying or had applied for clemency. *Id.*

Even so, Judge Makar explained that neither section 940.04 nor judicial interpretations of the statute make clear what an applicant for executive clemency must allege or provide to the clerk of court when requesting certified copies of records required for a clemency application. *Id.* Judge Makar examined the decisions by the Third District in *Shannon v. State*, 172 So. 2d 479, 480 (Fla. 3d DCA 1965), and the Second District in *Marshall v. State*, 759 So. 2d 717, 718 (Fla. 2d DCA 2000). Those courts held that a person seeking certified copies under the statute (and the statute’s predecessor) need allege only that he has applied or is applying for executive clemency to trigger the clerk’s duty to provide the requested copies. *Ramsey*, 99 So. 3d at 629. Judge Makar observed that the holdings in *Shannon* and *Marshall* avoid the following “chicken/egg” dilemma—if certified copies must be attached to a clemency application, how can the clerk of court require a person requesting the required certified copies to provide a completed copy of the clemency application before producing the certified copies? *Id.*

Judge Makar pointed out that the Fifth District reached a different conclusion in *Williams v. Circuit Court, 18th Judicial Circuit*, 862 So. 2d 887, 888 (Fla. 5th DCA 2003). That court held that a person requesting certified copies under section 940.04 had to comply with the clerk’s request for a copy of the clemency application to trigger the clerk’s duty to produce the copies. *Id.* The court determined that “[i]t is reasonable for the clerk to require the

requesting party to show that he is an applicant.” *Id.* But Judge Makar observed that the requirement that the requestor provide a copy of the clemency application as a precondition to the clerk producing the copies conflicts with the executive clemency rule requiring that the certified copies accompany the clemency application. *Ramsey*, 99 So. 3d at 629.

We believe Judge Makar’s construction and the *Shannon* and *Marshall* courts’ construction of the statute are correct. And so, we hold that under section 940.04, a person requesting certified copies of records required for a clemency application need only attest that he is applying or has applied for clemency to qualify as an “applicant” and trigger the clerk of court’s duty to furnish the requested copies.

Mobley attested that he was applying for executive clemency, so the Clerk had a duty to provide the requested records free of charge and without delay. Mobley did not have to furnish the Clerk with “a completed, signed copy of the clemency form” provided to him by “The Office of Executive Clemency” before that duty was triggered. And thus because Mobley had a clear legal right to the requested copies and the Clerk had an indisputable duty to provide the copies, Mobley demonstrated entitlement to mandamus relief. *See Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000) (holding that to be entitled to a writ of mandamus, the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available). Thus, we reverse the trial court’s order denying Mobley’s petition.

Finally, because our decision conflicts with the Fifth District’s decision in *Williams v. Circuit Court, 18th Judicial Circuit*, 862 So. 2d 887, 888 (Fla. 5th DCA 2003), we certify conflict with that decision.

REVERSED; CONFLICT CERTIFIED.

RAY, C.J., and BILBREY, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Vincent Mobley, pro se, Appellant.

Ashley Moody, Attorney General, and Jennifer J. Moore, Assistant Attorney General, Tallahassee, for Appellee.