

IN THE TENNESSEE SUPREME COURT

ERNEST FALLS,)
)
Applicant-Plaintiff,)
)
)
)
v.)
)
MARK GOINS, in his official)
capacity as Coordinator of)
Elections for the State of)
Tennessee, TRE HARGETT, in)
his official capacity as)
Secretary of State of the State of)
Tennessee, and HERBERT)
SLATERY, III, in his official)
capacity as the Attorney)
General for the State of)
Tennessee,)
)
Respondents-Defendants.)

Court of Appeals No. M2020-01510-COA-R3-CV

On Application to Appeal from the Judgment of the Court of Appeals

ERNEST FALLS' APPLICATION FOR PERMISSION TO APPEAL

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INTRODUCTION

The Court should grant permission to appeal in this action because it presents an issue of first impression regarding an important question of law that is of significant public interest, and the Court of Appeals' decision denying Applicant Falls his right to vote is based on a flawed constitutional and statutory interpretation which creates discord in Tennessee law. The Court of Appeals' interpretation of Tennessee Code Ann. § 2-19-143(3) and Tenn. Code Ann. § 40-29-101 et seq. denies Applicant Falls and others similarly situated to him of their fundamental right to vote guaranteed by the Tennessee Constitution and contradicts this Court's case law and the Tennessee Secretary of State's initial plain reading of these statutes. The Court should consider the proper interpretation of these statutes given the importance of the right at issue to Applicant Falls and to the citizens of Tennessee.

DATE OF JUDGMENT

Pursuant to Tenn. R. App. P. 11, Applicant Falls requests permission to appeal the Court of Appeals' decision in this case, which was filed on December 21, 2021. A copy of the decision is attached. No party submitted a petition for rehearing.

QUESTION PRESENTED FOR REVIEW

Whether Applicant Ernest Falls has been unlawfully disenfranchised under Tennessee Constitution Art. I, § 5 and Tennessee Code § 2-19-143(3)—which states that Tennesseans convicted of felonies in other states are disenfranchised *unless* they have had their full rights of citizenship restored by the governor of the state of conviction, by the

law of the state of conviction, *or* under the law of Tennessee—where Applicant Falls’ lone felony conviction was in Virginia and he has had his full rights of citizenship restored by the Governor of Virginia.

STATEMENT OF FACTS¹

A. Applicant Falls

The facts in this case are agreed upon by the parties, leaving only questions of law. *State v. West*, 844 S.W.2d 144, 146 (Tenn. 1992) (“[The Tennessee Supreme Court] function[s] primarily as a law-development court, rather than as an error-correction court.”) Tenn. R. App. P. 11. The detailed facts regarding Applicant Falls’ disenfranchisement and the procedural history of this case are stated correctly in the attached Court of Appeals opinion. *See* Ex. A at 1-3; Tenn. R. App. P. 11(b) (“facts correctly stated in the opinion of the intermediate appellate court need not be restated in the application”). Succinctly, in or around 1986, Applicant Falls was convicted of involuntary manslaughter in Virginia. T.R. 9. He completed his sentence in 1987 and has had no subsequent criminal convictions. *Id.* In February 2020, the Governor of Virginia provided Applicant Falls with an individualized grant of clemency restoring his full rights of citizenship. *Id.* Relying on Tennessee Code § 2-19-143(3) and the Election Division’s November 2019 letter regarding its application, *see infra* at 13, Mr. Falls applied to vote in Grainger County, Tennessee. T.R. 9-10. The Elections Division denied his application because he did not provide evidence that he owes no fees or restitution

¹ References to the trial record are identified herein as “T.R. [page number].”

for his Virginia conviction. T.R. 30-34. Payment of court costs and restitution is required to restore the right to vote using the administrative process in Tenn. Code Section 40-29-201, et seq. That section allows “[a] person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court . . . to apply for a voter registration card and have the right of suffrage restored.” Tenn. Code § 40-29-202. Because of the Election Division’s decision, Applicant Falls was unable to vote in the 2020 primary and general elections and thereafter.

Payment of fees or restitution was not a condition of the Governor of Virginia’s unequivocal restoration of Applicant Falls’ full rights of citizenship. T.R. 41. Because he has his full rights of citizenship restored under the law of the state of his conviction, Mr. Falls is not disenfranchised under Tennessee law and the restoration process in Tenn. Code § 40-29-202 does not apply to him. Because he is not prohibited from voting by any law, he retains the right to vote. Because he retains the right to vote, he is not required to restore his right to vote in order to register and cast a ballot.

B. Statutory Background

The Tennessee Constitution provides that “the right of suffrage . . . shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by a court of competent jurisdiction.” Tenn. Const. Art. I, § 5. The Tennessee Supreme Court has held that the right to vote is self-executing, but disenfranchisement for felony convictions is “expressly dependent upon legislative action.”

Gaskin v. Collins, 661 S.W.2d 865, 867 (Tenn. 1983) (“It is true that the declaration of the right of universal suffrage is self-executing in that any citizen may rely upon it independently of any legislative enactment. However, the exception to universal suffrage is expressly dependent upon legislative action.”) *Id.* (quoting *Crutchfield v. Collins*, 607 S.W. 2d 478, 481 (Tenn. Ct. App. 1980)). Where the legislature enacts both (1) a law defining the crimes considered “infamous,” and (2) a law stating that a person convicted of an “infamous” crime will be denied the right to vote, only then can the state deny the right to vote to an otherwise qualified citizen. *Crutchfield*, 607 S.W. 2d at 482 (“The clear meaning of Article I, Section 5 and Article IV, Section 1 and 2 is: The State shall have no power to deny any citizen the right to vote except that the legislature may provide in advance that loss of voting rights shall be part of the punishment for crimes declared in advance to be infamous.”) Without an explicit legislative statement stripping a person of the right to vote, a person who has been convicted of a felony is not disenfranchised and must be treated like any other voter according to the Tennessee Constitution. *Id.* For example, felony convictions between May 15, 1973 and January 1, 1981 did not strip Tennesseans of the right to vote because, though the legislature defined felonies as “infamous crimes,” there was no provision explicitly taking away the right to vote for such convictions. *Id.*

The legislature currently defines “infamous” crimes in the code of criminal procedure to encompass all felony convictions in Tennessee state courts and disenfranchises those convicted of those crimes. Tenn. Code

Ann. § 40-20-112 (“Upon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right of suffrage.”). The Tennessee Supreme Court has twice held that this clause *only* applies to people with felony convictions from Tennessee state courts. *Burdine v. Kennon*, 209 S.W.2d 9, 10 (Tenn. 1948) (“This legislative direction that upon conviction the court shall make as a part of its judgment an adjudication of infamy necessarily refers to the judgment of a criminal court of Tennessee. Our legislature, of course, has no authority to direct the courts of another jurisdiction what to include in its judgments, and would not presume to do so.”); *Vines v. State*, 231 S.W.2d 332, 334 (Tenn. 1950) (“The fact that this witness had been convicted of robbery in New Jersey would not render him infamous under the laws of Tennessee.”).

Accordingly, the legislature has also defined the contours of disenfranchisement for the equivalents of infamous convictions in out-of-state courts. In doing so, the Legislature has taken the right to vote away from people with out of state convictions only under the following circumstances:

(3) No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state *unless such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or the person’s full rights of citizenship have otherwise been restored in*

accordance with the laws of such other state, or the law of this state.

Tenn. Code Ann. § 2-19-143(3) (emphasis added). Appellant Falls does not have a Tennessee state felony conviction, therefore, the only statute that could disenfranchise him is Section 2-19-143(3).

As referenced in the final clause of Section 2-19-143(3), Tennessee law provides mechanisms for the restoration of civil rights independent of clemency from the governor of the state of conviction or the laws of the state of conviction. That process is codified in the code of criminal procedure. *See* Tenn. Code Ann. § 40-29-101 et seq.

When the Tennessee Legislature initially created a civil rights restoration process in 1981, the avenue was a court petition available only to individuals with Tennessee convictions. 1981 Pub. Act 345, § 7. It was not open to individuals with convictions from other states. Thus, a potential voter with an out-of-state conviction could *only* vote again if they were no longer disenfranchised under Section 2-19-143(3) because the state of their conviction restored their voting rights (either via clemency or that state's law). In 1983, the Legislature amended both the elections code and criminal procedure code to allow people with convictions from out-of-state to take advantage of the rights restoration process available under the Tennessee code of criminal procedure. *See* 1983 Pub. Act 207, § 2 (codified at Tenn. Code Ann. § 2-19-143(3)) (adding "under the law of this state" as a third exception to disenfranchisement for people with out-of-state convictions); *id.* at § 3 (codified as amended at § 40-29-101 et seq.) (adding language about out-of-state convictions to the rights restoration process outlined in the code of criminal procedure).

In 2006, the Legislature amended the code of criminal procedure to create a new, easier, administrative process for voting rights restoration under Tennessee law besides petitioning a court. 2006 Pub. Act 860, § 1 (codified as amended at Tenn. Code Ann. § 40-29-201 et seq.). Like the court petition procedure as of 1983, the Certification of Restoration (“COR”) procedure is open to those with in-state, federal, or out-of-state convictions. The 2006 law allows anyone with a felony conviction after May 18, 1981, to apply to have their voting rights restored if they meet certain criteria. *Id.* (codified as amended at Tenn. Code Ann. § 40-29-202). Thus, a person with an out-of-state conviction who is ineligible to vote due to that conviction can take advantage of this process. This process, among other things, requires a person to have paid all court costs and restitution related to their disqualifying conviction. Tenn. Code Ann. § 40-29-202(b).

But while the legislature made this new rights restoration pathway available to “any person who has been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court,” nothing in the 2006 enactment repeals, abrogates, or amends § 2-19-143(3), which applies disenfranchisement for out-of-state convictions *only* to those who have not been restored to citizenship by the pardoning authority, the law of the state of conviction, *or* Tennessee law. *Id.* (codified at Tenn. Code Ann. § 40-29-202(a)). Thus, people who have had their rights of citizenship restored in the state of conviction are not “person[s] who ha[ve] been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court.” *Id.* To summarize

what should be obvious, a person who is not prohibited from voting need not go through the administrative procedure to restore his or her right to vote.

C. The State’s Shifting Interpretation of the Statutes.

Until recently, the Secretary of State’s office agreed with Appellant Falls that Tennessee Code Ann. § 2-19-143(3) identifies three *independent* exceptions to disenfranchisement for a person with an out-of-state felony conviction: (1) a pardon or similar restoration of rights by the Governor or appropriate authority of the state of conviction, (2) restoration of rights by operation of the law of the state of conviction, or (3) restoration of rights by operation of Tennessee law. T.R. 20. In a letter sent on November 22, 2019, Respondent Goins stated that Tennessee Code Section 2-19-143(3) was “the controlling Tennessee law” governing the eligibility of people with out-of-state convictions. T.R. 21. He further explained that “a person with an out-of-state conviction may have his voting rights restored, if *one* of the following can be shown: 1. The person has been pardoned or has had their rights of citizenship restored by the governor or other appropriate authority of the convicting state; or 2. The person’s full rights of citizenship have been restored in accordance with the laws of such other state.” *Id.* In that letter, Respondent Goins applied these principles to three individuals with out-of-state convictions. He concluded that two of these individuals had their full rights of citizenship restored by operation of the laws of the states of conviction and thus were “eligible to register to vote in Tennessee.” T.R. 21-23. He concluded that third person was not eligible because they had not had their full rights of citizenship restored under the laws of the relevant state. *Id.* The letter,

which focused on the first two exceptions to disenfranchisement under 2-19-143(3), nowhere suggested that the eligibility requirements for a Certificate of Restoration under § 40-29-202 would apply to those individuals. *Id.* Indeed, that statute is not even mentioned in Director Goins' letter on the topic.

This letter was part and parcel of substantial correspondence, beginning August 8, 2019, between Applicants' counsel and counsel within the Secretary of State's office on the issue of rights restoration for people with out-of-state convictions. T.R. 8. After the issuance of the November 22, 2019 letter, Applicant's counsel held a telephone conference in December 2019 with the Secretary of State's office, in which they reiterated the position of their November 22, 2019 letter and agreed to work with Applicants' counsel to implement a standard form for people with out-of-state convictions to use when registering to vote. *Id.* After December 2019, the Secretary of State's office failed to respond to follow-up correspondence from Applicants' counsel about implementing a standard form. *Id.*

On March 26, 2020, the Attorney General, responding to a request from the Secretary of State, issued an opinion contrary to the prior position taken by the Secretary of State. The opinion concludes that people with out-of-state convictions cannot rely on the restoration of their civil rights by the state of their conviction to establish eligibility to vote in Tennessee, but instead must meet the criteria dictated by the administrative Certificate of Restoration process. T.R. 9; Tenn. Atty. Gen. Op. No. 20-06 (Mar. 26, 2020), available at

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2020/op20-06.pdf>. The Opinion does not address whatsoever the three exceptions to disenfranchisement built into Tennessee Code Ann. § 2-19-143. *Id.* Instead, it takes for granted that any person with a felony conviction (in-state, federal, or out-of-state) is equally disqualified from voting in Tennessee and must avail himself of the administrative procedure for restoration. This assumption runs afoul of the Tennessee Supreme Court’s holding that the Tennessee Constitution’s allowance for felony disenfranchisement is never self-executing. *Gaskin*, 661 S.W.2d at 867. *Id.* On the grounds of this Attorney General opinion, the State denied of Applicant Falls’ voter registration application. T.R. 33.

STANDARD OF REVIEW

This case presents questions of statutory interpretation that the Court reviews de novo, “giving no deference to the lower court decision.” *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (citing *Mills v. Fulmarque*, 360 S.W.3d 362, 368 (Tenn. 2012); *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011)).

REASONS SUPPORTING REVIEW

Rule 11(a) of the Tennessee Rules of Appellate Procedure states,

In determining whether to grant permission to appeal, the following, while neither controlling nor fully measuring the court’s discretion, indicate the character of reasons that will be considered: (1) the need to secure uniformity of decision, (2) the need to secure settlement of important questions of law, (3) the need to secure settlement of questions of public interest, and (4) the need for

the exercise of the Supreme Court's supervisory authority.

Applicant Falls requests permission for appeal to this Court because review of this case is needed to secure uniformity of decision, settlement of an important question of law, and settlement of a question important to the public interest.

A. Review is Warranted Pursuant to this Court's Supervisory Authority Because the Court of Appeals' Ruling Conflicts with Binding Supreme Court Precedent, Its Own Prior Holdings, and the Sixth Circuit Court of Appeals' Interpretation of the Same Laws.

The opinions below directly conflict with binding Supreme Court precedent, longstanding Court of Appeals opinions, and persuasive authority interpreting these laws from the federal Sixth Circuit Court of Appeals. The Supreme Court must step in to secure uniformity in the interpretation of Tennessee's disenfranchisement and rights restoration statutes. This Court's holding in *Gaskin* and the Court of Appeals' ruling in *Crutchfield* require the state to assess whether there is a statute disqualifying a person from voting *before* moving to the question of whether his or her right to vote can be restored. 607 S.W.2d at 482; 661 S.W.2d at 867. The opinions below failed to faithfully follow that precedent.

The Court of Appeals decision in this case summarily cites Sections 40-20-112, 40-29-202, and 2-19-143(3) as the statutory sources of Applicant Falls' disenfranchisement. However, this summary recitation fails upon any scrutiny. First, precedent and persuasive authority foreclose Sections 40-20-112 and 40-29-202 from disenfranchising

Applicant Falls. The Tennessee Supreme Court has twice held that Section 40-20-122 does not and cannot apply to felony convictions from courts outside of Tennessee. *Burdine v. Kennon*, 209 S.W.2d 9, 10 (Tenn. 1948) (“This legislative direction that upon conviction the court shall make as a part of its judgment an adjudication of infamy necessarily refers to the judgment of a criminal court of Tennessee. Our legislature, of course, has no authority to direct the courts of another jurisdiction what to include in its judgments, and would not presume to do so.”); *Vines v. State*, 231 S.W.2d 332, 334 (Tenn. 1950) (“The fact that this witness had been convicted of robbery in New Jersey would not render him infamous under the laws of Tennessee.”).² Thus, despite the state’s persistent reliance on it, as a matter of law, Section 40-20-112 provides no support for the position that Applicant Falls is ineligible to vote.

Second, Section 40-29-202(b) is a rights restoration statute that presupposes a person utilizing its procedures is already denied the right to vote by some other part of the code. Indeed, its language makes this clear. First, it falls under Section 40-29: “Restoration of Citizenship.” Its purpose in Section 40-29-201 states, “[t]he provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state to any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of an infamous crime.” Additionally, section 40-29-202 allows for application for restoration by “[a] person rendered infamous and deprived of the right of

² See 1981 Pub. Acts 459 § 1 (re-codifying § 11762, § 40-2712 as § 40-20-112).

suffrage . . .” Finally, Sections (b) and (c) of 40-29-202 also refer to the conditions upon which a person *may restore* the right of suffrage. In sum, Section 40-29-201 et seq. plainly describes the procedures for restoring the right to vote if a person is already deprived of that right, not the conditions upon which a person shall be deprived of the right.

In fact, the Sixth Circuit Court of Appeals, has held that Section 40-29-201 et seq. is *solely* a rights restoration statute and *explicitly not* a source of disenfranchisement. *Johnson v. Bredesen*, 624 F.3d 742, 745 (6th Cir. 2010) (“The re-enfranchisement statute at issue, Tennessee Code § 40–29–202, restores felons’ eligibility to apply for a voter registration card and have the right of suffrage restored’ upon receipt of a pardon, discharge from custody after serving the maximum sentence imposed, or final discharge by the relevant county, state, or federal authority.”). In doing so, it adopted the position previously advocated by the Tennessee Attorney Generals’ office now arguing the opposite. See Resp’ts’ Br. in Opp’n To Pet. to Grant Cert., *Johnson v. Bredesen*, No. 10-1149 (U.S. April 20, 2010) (repeatedly and exclusively referring to Section 40-29-202 as “the reenfranchisement statute”). In fact, that distinction was relied upon in part in the *Johnson* Court’s decision to uphold § 40-29-202(b) and (c) in the face of Equal Protection and Twenty Fourth Amendment challenges. The federal courts typically apply heightened scrutiny to statutes that deny or abridge the fundamental right to vote but only rational basis review to a *rights restoration statute* because if a person is already legally denied the right to vote for a felony, he no longer possesses that fundamental right. *Johnson*, 624 F.3d at 748-49

(“Tennessee’s re-enfranchisement conditions, by contrast, merely relate to the restoration of a civil right to which Plaintiffs have no legal claim, and invoke only rational basis review.”) Finding that Section 40-29-202 is a rights restoration statute, the court applied rational basis review and subsequently upheld that law in the face of an Equal Protection Clause challenge. *Id.*; *See also*, Resp’t’s Br. in Opp’n to Pet. to Grant Cert., *Johnson v. Bredesen* at 6. (“As every United States court of appeals considering a similar question has held, because felons, properly stripped of their right to vote, do not have a fundamental right to vote, the State must show only a rational basis for placing conditions on felon re-enfranchisement.”)

Similarly, the distinction between disenfranchisement statutes and rights restoration statutes was determinative to the Sixth Circuit’s decision to not apply the strictures of the Twenty-Fourth Amendment to § 40-29-202’s legal financial obligation requirements. *Johnson*, 624 F.3d at 751 (“[M]ost fundamentally, the re-enfranchisement law at issue does not deny or abridge any rights; it only restores them [Section 40-29-202 does] not disenfranchise [plaintiffs] or anyone else, . . . Tennessee’s indisputably constitutional disenfranchisement statute accomplished that.”); *see also*, Resp’t’s Br. in Opp’n to Pet. to Grant Cert., *Johnson v. Bredesen* at 4. (“The court further held that Tennessee’s reenfranchisement law does not condition the right to vote on payment of restitution or child support, but instead conditions the restoration of a felon’s right to vote on such payment, which is not addressed by the Twenty-Fourth Amendment.”)

The finding that Section 40-29-202 is *only* a rights restoration statute and *not* a disenfranchisement was essential to the overall decision by the Sixth Circuit that the law passes muster under the U.S. Constitution. The Court of Appeals' holding that Section 40-29-202 disenfranchises Applicant Falls undermines the Sixth Circuit's opinion and thus the constitutionality of Section 40-29-202.

By improperly relying on Sections 40-20-112 and 40-29-202 as disenfranchising statutes applicable to Applicant Falls, the Court of Appeals elided the central problem for the state's position: the only statute that governs the loss of the right to vote for individuals with out-of-state convictions, Section 2-19-143(3), does not apply to Applicant Falls.

In short, the Court of Appeals' opinion ignores precedent in both federal and Tennessee Courts, sowing legal contradictions between the courts. We ask the Supreme Court to use its supervisory authority to ensure uniform decisions regarding Tennessee's disenfranchisement and rights restoration scheme.

B. Restrictions on the Right to Vote Present an Important Question of Law.

This case meets the second criteria for review listed in Rule 11(a) in that it involves an important issue of law that merits consideration by this Court. Applicant Falls' case presents an issue of first impression in Tennessee regarding a citizen's right to vote. The Court of Appeals' flawed statutory interpretation has deprived Applicant Falls of this "precious right." *Fisher v. Hargett*, 604 S.W.3d 381, 400 (Tenn. 2020).

The fundamental right to vote is expressly guaranteed under the Tennessee Constitution. *Id.* at 400. “It is beyond question that the right to vote is a ‘precious’ and ‘fundamental’ right.” *Id.* (quoting *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966)). “Even the most basic of other rights are ‘illusory if the right to vote is undermined.’” *Id.* (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)).

The Tennessee Constitution strictly protects the fundamental right to vote. Tenn. Const. Art. I, § 5 (“[T]he right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto”); *see also* Art. IV, § 1 (“Every person, being eighteen years of age, being a citizen of the United States, being a resident of the State . . . , and being duly registered in the county of residence . . . , *shall* be entitled to vote in all federal, state, and local elections”) (emphasis added). That universal grant of the right to vote is self-executing and can be relied upon “independently of any legislative enactment.” *Crutchfield*, 607 S.W.2d at 481; *see also Gaskin*, 661 S.W.2d at 867.

The framers of Tennessee’s Constitution had themselves experienced disenfranchisement under a shifting standard and “were determined to safeguard themselves and future generations from similar acts of repression.” *Gaskin*, 661 S.W.2d at 868. To achieve that end, the Constitution allows for disenfranchisement only under well-defined circumstances: “upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” Tenn. Const. Art. I, § 5. Thus, the allowance to “pass[] [laws] excluding from the right of suffrage persons

who may be convicted of infamous crimes,” Tenn. Const. Art. IV, § 2, is not a blank check for the legislature – and certainly not for election administrators. *Crutchfield*, 607 S.W.2d at 481. Although the legislature has significant leeway to define the boundaries of disenfranchisement and the terms of rights restoration, the administrators of those laws may not themselves move the goal posts.

In Tennessee, infringement of the right to vote because of a felony conviction is only constitutional where the parameters are clearly and deliberately defined by statute. *Crutchfield*, 607 S.W.2d at 481; *see also* Tenn. Const. Art. I § 5 (“ . . . except upon a conviction by a jury of some infamous crime, *previously ascertained and declared by law*, and judgment thereon by court of competent jurisdiction”); Art. IV, § 2 (“Laws *may* be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.”) (emphasis added). Thus, while the declaration of the right of universal suffrage is self-executing, “the exception to universal suffrage [for infamous crimes] is expressly dependent upon legislative action.” *Gaskin*, 661 S.W.2d at 867 (quoting *Crutchfield*, 607 S.W.2d at 481).

Put differently, the constitutional default for all Tennesseans—including individuals convicted of crimes—is enfranchisement, not disenfranchisement. To remove a citizen’s suffrage from the Constitution’s protection, the legislature must pass a law or laws that both define “infamous crimes” and restrict the right to vote based on those infamous crimes. *Crutchfield*, 607 S.W.2d at 482. Without one or

the other, people with criminal convictions have a protected right to vote under the Tennessee Constitution. *Id.*

Applicant Falls' case presents an important question of law that this Court should address. By incorrectly applying the statutory scheme set forth in Tennessee Code § 2-19-143(3) and Tenn. Code Ann. § 40-29-101 et seq., the Respondents have disenfranchised, and continue to disenfranchise, Applicant Falls in violation of his right to vote guaranteed by the Tennessee Constitution. The fundamental nature of this deprivation makes it imperative that this Court, applying *de novo* review, consider and reverse the decision of the Court of Appeals.

C. The Questions Regarding the Right to Vote Presented in This Case Are Issues Important to the Public Interest.

It is axiomatic that the fundamental right of the people to vote for their elected officials, and when they may be deprived of that right, are matters of public interest. “Where we can constitutionally give the people the right to vote and make their selection for the officers that serve them they should be given and have such a right.” *Glass v. Sloan*, 198 Tenn. 558, 570 (Tenn. 1955) (citing Sutherland Statutory Construction, 3rd Ed., Horack, at § 7215 (“*Statutes regulating the rights of citizens to vote are of great public interest, and, therefore, are given a broad interpretation to secure for the citizen his right to vote and to insure [sic] the election of those officers who are the people’s choice.*”) (emphasis added)).

The Court of Appeals' decision harms not only Applicant Falls, but every citizen of the State of Tennessee, particularly those similarly situated to him. It is appropriate that the State's highest court consider the statutory language at issue and make the final decision on its

meaning. This is true in many cases where statutory interpretation affects a fundamental constitutional right, but particularly in this case where State officials have rendered conflicting interpretations of the provisions at issue. *See supra* at 13. This Court, applying a *de novo* standard of review to this purely legal question, should make the final determination as to whether the State of Tennessee has unlawfully denied Applicant Falls his fundamental right to vote.

CONCLUSION

Respondents' erroneous statutory interpretation, adopted by the Court of Appeals, places the Tennessee Code in conflict with itself and the Tennessee Constitution and violates the plain language of both § 2-19-143(3) and § 40-29-202. This error deprives Applicant Falls of his fundamental right to vote protected by the Tennessee Constitution. Accordingly, the case raises a significant legal question that is important to the public interest. Moreover, it is necessary for the Supreme Court to exercise its supervisory authority to harmonize the code.

For the reasons stated herein, and for the reasons set forth in Applicant Falls' Appellant's Brief filed contemporaneously with this Application, Applicant Falls asks that this Court grant his request for permission to appeal, reverse the Court of Appeals' Judgment, and remand this case with instructions that the courts below recognize Applicant Falls' right to vote and compel Respondents to accept his valid voter registration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the forgoing Application for Permission to Appeal has been served on counsel for the parties by hard copy, via U.S. mail, and electronic mail on the **22nd day of February, 2022** to:

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/s/ William L. Harbison
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CERTIFICATE OF COMPLIANCE

I certify that this Application for Permission to Appeal complies with the text, font, and other formatting requirements set forth in Supreme Court Rule 46, § 3.02. Based upon the word count of a word processing system and excluding the sections set forth in § 3.02(a)(1), this Application for Permission to Appeal contains 5,167 words.

/s/ William L. Harbison

William L. Harbison

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FILED

12/21/2021

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 5, 2021 Session

ERNEST FALLS ET AL. v. MARK GOINS ET AL.

Appeal from the Chancery Court for Davidson County
No. 20-0704-III Ellen Hobbs Lyle, Chancellor

No. M2020-01510-COA-R3-CV

This case concerns the restoration of voting rights of a Tennessee citizen who was convicted of a felony in Virginia and subsequently granted clemency by the Governor of Virginia. Because the voting applicant did not provide evidence that he paid outstanding court costs, restitution, and/or child support as is required by Tenn. Code Ann. § 40-29-202, the election commission denied his application to vote. The voting applicant appealed the election commission's decision to the circuit court. The circuit court upheld the election commission's decision as valid. We agree with the trial court and affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JOHN W. MCCLARTY, J., joined.

William L. Harbison, Lisa K. Helton, and Christopher C. Sabis, Nashville, Tennessee, and Danielle Marie Lang, Blair Bowie, and Caleb Jackson, Washington, D.C., for the appellant, Ernest Falls.

Herbert H. Slatery, III, Attorney General and Reporter, Andrée Blumstein, Solicitor General, Janet Irene M. Kleinfelter, Deputy Attorney General, and Alexander S. Rieger, Assistant Attorney General, for the appellees, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, and Herbert Slatery, III, in his official capacity as the Attorney General for the State of Tennessee.

OPINION

In 1986, Ernest Falls was convicted of involuntary manslaughter in Virginia. He served his sentence and was released from prison in 1987. Mr. Falls relocated to Grainger County, Tennessee in 2018. In February 2020, the Governor of Virginia restored his rights of citizenship in Virginia. The document restoring Mr. Falls's rights states:

COMMONWEALTH of VIRGINIA
Executive Department

TO ALL WHOM THESE PRESENTS SHALL COME – GREETINGS

WHEREAS, Ernest L. Falls after being convicted and sentenced for crime(s) committed prior to January 14, 2020, when the Executive completed review of the particulars of the individual's case; and

WHEREAS, Ernest L. Falls, by reason of conviction(s), suffers political disabilities, to wit denial of the right to vote, to hold public office, to serve on a jury, to be a notary public and to ship, transport, possess or receive firearms; and

WHEREAS, it appears that Ernest L. Falls has rejoined society free from state supervision and it seems appropriate to the Executive to remove certain of those political disabilities by restoring the right to vote, hold public office, serve on a jury, and to be a notary public;

NOW, THEREFORE, I, Ralph S. Northam, Governor of the Commonwealth of Virginia, by virtue of the authority vested in me, do hereby remove the political disabilities, except the ability to ship, transport, possess or receive firearms, under which Ernest L. Falls labors by reason of conviction as aforesaid, and do hereby restore the rights to vote, hold public office, serve on a jury, and to be a notary public.

On June 4, 2020, Mr. Falls attempted to register to vote in Tennessee and disclosed his 1986 felony conviction. The Grainger County Administrator of Elections denied his registration because Mr. Falls failed to provide evidence that he owes no fees or restitution for his Virginia conviction.¹

¹ There is no evidence in the record that Mr. Falls actually owes any fees, restitution, or child support; however, he has not provided evidence that he does not owe any of these financial obligations.

On July 21, 2020, Mr. Falls and Arthur Bledsoe, a Tennessee citizen who had been convicted of a felony in North Carolina,² filed a Verified Complaint for Declaratory and Injunctive Relief against state officials, Mark Goins, Tre Hargett, and Herbert Slatery, III in their official capacities as Tennessee’s Coordinator of Elections, Secretary of State, and the Attorney General, respectively (collectively referred to as “Defendants”). The trial court entered a memorandum and order denying the motion for temporary injunction, finding that Mr. Falls had not demonstrated a “substantial likelihood of success on the merits.” On August 21, 2020, Mr. Falls filed a motion for summary judgment arguing that his full rights of citizenship had been restored by the Governor of Virginia, as required by Tenn. Code Ann. § 2-19-143(3), and therefore, he was entitled to vote in Tennessee. He asserted that Tenn. Code Ann. § 40-29-202, a statute requiring disenfranchised voters to pay restitution, court costs, and any outstanding child support, did not apply to him. Defendants filed their response in opposition to the motion for summary judgment asserting that until Mr. Falls provided evidence of compliance with the re-enfranchisement provisions of Tenn. Code Ann. § 40-29-202, he was not entitled to vote in Tennessee.

The chancery court denied Mr. Falls’s motion for summary judgment but granted summary judgment to Defendants upon its conclusion that Tenn. Code Ann. § 40-29-202 requires that Mr. Falls “must pay the court costs and restitution associated with [his] criminal conviction[] before [he is] eligible to vote in Tennessee.” The trial court noted that “[r]equiring the Plaintiffs to comply with the laws of this state, including complying with child support obligations, restitution orders, and other court orders, is both rational and constitutional.” Mr. Falls appeals raising the following issue for our review:

Whether Appellant Ernest Falls has been unlawfully denied the right to vote under the Tennessee Constitution Art. I, § 5 and Tenn. Code Ann. § 2-19-143(3)—which states that Tennesseans convicted of felonies in other states are disenfranchised unless they have their full rights of citizenship restored by the governor of the state of conviction, by the law of the state of conviction, or under the law of Tennessee—where Appellant Falls only has a felony conviction from Virginia and has had his full rights of citizenship restored by the Governor of Virginia.

STANDARD OF REVIEW

This appeal arises from the grant of summary judgment by the trial court. We review a trial court’s summary judgment determination de novo, with no presumption of correctness. *Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). This means that “we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Id.* Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and

² Mr. Bledsoe has not joined in this appeal; therefore, this Opinion will focus solely on Mr. Falls.

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” TENN. R. CIV. P. 56.04.

In this case, the parties agree that there are no factual disputes. Rather, the dispute hinges on statutory construction and application of the statutes to the undisputed facts of Mr. Falls’s situation. “The proper interpretation of a statute is an issue of law that may commonly be decided on summary judgment.” *Najo Equip. Leasing, LLC v. Comm’r of Revenue*, 477 S.W.3d 763, 766 (Tenn. Ct. App. 2015). Our review of the construction and application of statutes is de novo, affording no deference or presumption of correctness to the decision of the lower court. *Heirs of Ellis v. Estate of Ellis*, 71 S.W.3d 705, 710 (Tenn. 2002).

Our Supreme Court has explained that when interpreting a statute, we must “ascertain and give effect to the legislative intent without unduly restricting or expanding [the] statute’s coverage beyond its intended scope.” *Memphis Publ’g Co. v. Cherokee Child. & Fam. Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). When determining legislative intent, “we first must look to the text of the statute and give the words of the statute ‘their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.’” *Coleman v. Olson*, 551 S.W.3d 686, 694 (Tenn. 2018) (quoting *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012)). We need not consider sources of information outside the text of the statute when the statutory language is clear and unambiguous. *Id.* (citing *Frazier v. State*, 495 S.W.3d 246, 249 (Tenn. 2016)). However, “statutes should not be interpreted in isolation. The overall statutory framework must be considered, and ‘[s]tatutes that relate to the same subject matter or have a common purpose must be read *in pari materia* so as to give the intended effect to both.’” *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 846 (Tenn. 2019) (quoting *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015)). When “resolving potential conflicts between statutes, courts seek a reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.” *O’Neal v. Goins*, No. M2015-01337-COA-R3-CV, 2016 WL 4083466, at *4 (Tenn. Ct. App. July, 29 2016) (citing *LensCrafters Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000)). Furthermore, when two statutes exist on the same topic, “the more specific of two conflicting statutory provisions controls.” *Tennessean v. Metro. Gov’t of Nashville*, 485 S.W.3d 857, 872 (Tenn. 2016) (citing *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010)); *see also Cont’l Tenn. Lines, Inc. v. McCanless*, 354 S.W.2d 57, 58-59 (Tenn. 1962) (quoting *Wade v. Manning*, 28 S.W.2d 642, 649 (Tenn. 1930)) (“Specific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which might be broad enough to include it.”). Finally, “a more recent enactment will take precedence over a prior one to the extent of any inconsistency between the two.” *Moorcroft v. Stuart*, No. M2013-02295-COA-R3-CV, 2015 WL 413094, at *10 (Tenn. Ct. App. Jan. 30, 2015). With these principles in mind, we turn to the substance of the appeal.

ANALYSIS

We begin with the Constitution of the State of Tennessee which states that “the right of suffrage . . . shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” TENN. CONST. art. I, § 5.³ The Tennessee Constitution further provides that every voter who meets constitutional qualifications “shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides” except that “[l]aws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.” *Id.* at IV, §§ 1, 2. Under the Tennessee Constitution, suffrage is a “self-executing” constitutional right; however, the legislature is empowered to curtail the right of suffrage when a person has been convicted of an infamous crime. *Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. Ct. App. 1980). “[A] state may constitutionally disenfranchise convicted felons, . . . and . . . the right of felons to vote is not fundamental.” *Wesley v. Collins*, 791 F.2d 1255, 1261 (6th Cir. 1986); *see also Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010) (reiterating that felons who lose their right to vote no longer have a “fundamental interest [in voting] to assert”).

The Tennessee Legislature has exercised its authority to disenfranchise persons convicted of “infamous” crimes and has also enacted laws to restore the right to vote to some citizens with such convictions. Tennessee Code Annotated section 40-20-112 considers infamous crimes to include “any felony” conviction. Tenn. Code Ann. § 40-20-112 (“Upon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right of suffrage.”). Subsection (3) of Tenn. Code Ann. § 2-19-143 concerns the right of suffrage for persons convicted of out-of-state infamous crimes and states:

(3) No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state unless such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or the person’s full rights of citizenship have otherwise been restored in accordance with the laws of such other state, or the law of this state.

³ The United States Constitution allows for disenfranchisement for “participation in rebellion, or other crimes.” U.S. CONST., amend XIV, § 2; *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974) (“[T]he exclusion of felons from the vote has an affirmative sanction in s 2 of the Fourteenth Amendment.”).

Tenn. Code Ann. § 2-19-143(3). Accordingly, pursuant to Tenn. Code Ann. § 40-20-112 and Tenn. Code Ann. § 2-19-143, any person convicted of a felony is disenfranchised in Tennessee until the franchise is restored.⁴

There is no dispute that Mr. Falls was convicted of involuntary manslaughter in Virginia, a felony that constitutes an infamous crime in Tennessee. His loss of voting rights survives his sentence and remains in effect until his right of suffrage is restored. It is also undisputed that Mr. Falls was disqualified from exercising the right of suffrage when he moved to Tennessee in 2018. The central question in this appeal is whether, pursuant to Tenn. Code Ann. § 2-19-143(3), Mr. Falls was immediately re-enfranchised in Tennessee when the Governor of Virginia restored his Virginia citizenship rights in 2020, or whether he is subject to the additional preconditions to re-enfranchisement established by Tenn. Code Ann. § 40-29-202(b) and (c).

In 2006, the General Assembly enacted Tenn. Code Ann. §§ 40-29-201 to -205, providing a voting-rights-restoration pathway to “any person who has been disqualified from exercising” the right to vote due to being convicted of an infamous crime if he or she meets certain criteria.⁵ Tenn. Code Ann. § 40-29-201(a). Tennessee Code Annotated section 40-29-201(a) states in full that the “provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state to any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of an infamous crime.”⁶ Tennessee Code Annotated section 40-29-202 states:

(a) A person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored upon:

⁴ We note that there is a gap in Tennessee’s disenfranchisement history in which persons convicted of an infamous crime between January 15, 1973 and May 17, 1981 are not deprived of the right to vote. *See Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. Ct. App. 1980); *see also Restoration of Voting Rights*, TENNESSEE SECRETARY OF STATE, <https://sos.tn.gov/elections/guides/restoration-voting-rights> (last accessed Dec. 13, 2021).

⁵ Tennessee Code Annotated sections 40-29-201 to -205 were ostensibly adopted to “streamline and standardize” felony disenfranchisement laws and to eliminate “any requirement that a person seeking [voting] restoration petition for that right and litigate the issue in court.” *Voting Rights Restoration Efforts in Tennessee*, BRENNAN CENTER FOR JUSTICE (Feb. 9, 2018), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-tennessee>; *See* Tenn. Code Ann. §§ 40-29-201 to -204 (providing a pathway for persons rendered infamous to petition the circuit court for restoration of their right to vote).

⁶ Tennessee Code Annotated section 40-29-204 provides a list of certain persons with criminal convictions that will “never be eligible to register and vote in this state” including, *inter alia*, those convicted for voter fraud, treason, murder in the first degree, or aggravated rape.

- (1) Receiving a pardon, except where the pardon contains special conditions pertaining to the right of suffrage;
 - (2) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for the infamous crime; or
 - (3) Being granted a certificate of final discharge from supervision by the board of parole pursuant to § 40-28-105, or any equivalent discharge by another state, the federal government, or county correction authority.
- (b) Notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person:
- (1) Has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence; and
 - (2) Beginning September 1, 2010, notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person has paid all court costs assessed against the person at the conclusion of the person's trial, except where the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application.
- (c) Notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person is current in all child support obligations.

We must apply Tenn. Code Ann. § 2-19-143(3) and Tenn. Code Ann. § 40-29-202 to the case at hand keeping in mind that “[s]tatutes that relate to the same subject matter or have a common purpose must be read *in pari materia* so as to give the intended effect to both.” *Coffee Cnty. Bd. of Educ.*, 574 S.W.3d at 846 (quoting *In re Kaliyah S.*, 455 S.W.3d at 552). These statutes both relate to the restoration of an out-of-state felon's right to vote. Mr. Falls insists that Tenn. Code Ann. § 2-19-143(3) functioned to automatically restore his right to vote once his citizenship rights were restored in Virginia. However, adopting Mr. Falls's interpretation would require us to ignore another section of the code that our legislature implemented to “govern restoration of the right of suffrage in this state.” Tenn. Code Ann. § 40-29-201(a). We must read the two statutes *in pari materia* rather than in isolation.

Mr. Falls is now a citizen of the state of Tennessee. Tennessee is empowered to legislate different standards than other states for restoration of its citizens' rights to vote. When Mr. Falls moved to Tennessee in 2018, he was disqualified from voting in Tennessee because of his Virginia conviction: “No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state.” Tenn. Code Ann. § 2-19-143(3). Pursuant to Tenn. Code Ann. §

40-20-201, he is, regardless of his Virginia pardon in 2020, a “person who has been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court of an infamous crime.” Tenn. Code Ann. § 40-29-201. Therefore, the procedures and provisions of Tenn. Code Ann. § 40-29-202 apply to him. Those procedures impose preconditions to the restoration of a convicted felon’s voting rights related to the satisfaction of certain court-ordered financial obligations. Specifically, Mr. Falls was required to confirm he had paid restitution and court costs related to his conviction as well as to show he was current on child support obligations. “Tennessee possesses valid interests in promoting payment of child support, requiring criminals to fulfill their sentences, and encouraging compliance with court orders.” *Johnson*, 624 F.3d at 747. It is undisputed that Mr. Falls has not provided evidence that these financial obligations have been satisfied, and therefore he is not eligible to vote in Tennessee until he does so.

We have reviewed the caselaw Mr. Falls cites in support of his assertion that Tenn. Code Ann. § 2-19-143(3) operated to immediately re-enfranchise him such that he was not subject to Tenn. Code Ann. § 40-29-202, and we are not persuaded that the cases he cites operate to vitiate the additional re-enfranchisement requirements of Tenn. Code Ann. § 40-29-202. Indeed, none of the cases he cites—*Burdine v. Kennon*, 209 S.W.2d 9 (Tenn. 1948); *Crutchfield v. Collins*, 607 S.W.2d 478 (Tenn. Ct. App. 1980); *Gaskin v. Collins*, 661 S.W.2d 865 (Tenn. 1983)—involve the interplay between and applicability of the statutes at issue in this case. While these cases do stand for the proposition that our general assembly must specifically enact legislation before persons convicted of infamous crimes are disenfranchised or re-enfranchised, our legislature has done so via Tenn. Code Ann. §§ 40-20-112; 2-19-143; and 40-29-202. We cannot put Tenn. Code Ann. § 2-19-143 into a silo and ignore subsequent legislative enactments regarding re-enfranchisement. Because we must construe the statutes in *pari materia* and harmoniously, with more recent enactments taking precedence, we hold that the requirements of Tenn. Code Ann. §§ 40-29-201 to -205 supplement the provisions of Tenn. Code Ann. § 2-19-143 by providing additional requirements for the reinstatement of voting rights for convicted felons regardless of their state of conviction. *See Coffee Cnty. Bd. of Educ.*, 574 S.W.3d at 846; *O’Neal*, 2016 WL 4083466, at *4. The additional prerequisites outlined in Tenn. Code Ann. § 40-29-202 apply to Mr. Falls, and he cannot be re-enfranchised until he provides evidence that he has paid court-ordered restitution and costs related to his crimes (if applicable) and has satisfied his child support obligation (if any exists).

CONCLUSION

For the foregoing reasons, we affirm the trial court's entry of summary judgment to the Defendants. Costs of this appeal are assessed against the appellant, Ernest Falls, for which execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE

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