



RON DESANTIS
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-717-9418

April 4, 2019

VIA E-MAIL ONLY (goodlette.dudley@flsenate.gov)

Dudley Goodlette, Special Master
The Florida Senate
The Capitol, Suite 409
404 S. Monroe Street
Tallahassee, Florida 32399

Re: Executive Order 19-14
Suspension of Scott Israel

Dear Special Master Goodlette –

Today, Seventeenth Circuit Judge David Haines dismissed Scott Israel's Petition for Writ of Quo Warranto in *Scott Israel v. Ron DeSantis*, 19-CA-005019 (Seventeenth Judicial Circuit, Broward County). I have enclosed the Final Order of Dismissal and Order Granting Motion to Dismiss for your review.

On March 12, 2019, you recommended to Senate President Bill Galvano that the proceedings on Executive Order 19-14 be held in abeyance pursuant to Senate Rule 12.9(2) at the initiation of Mr. Israel's Petition. Now that the Petition has been dismissed, the Executive Office of Governor Ron DeSantis requests the Senate continue its removal hearing process in an expedited manner given the imminent adjournment of the regular session on May 3, 2019.

Respectfully,

A handwritten signature in blue ink, appearing to read "N. Primrose".

Nicholas A. Primrose
Deputy General Counsel

cc: Benedict P. Kuehne
Christie M. Letarte
Jeremiah Hawkes

THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CIVIL DIVISION (08)

SCOTT ISRAEL,

CASE NO.: CACE 19-5019

As the Elected Sheriff of
Broward County, Florida

JUDGE: DAVID A. HAIMES

Petitioner.

v.

RON DESANTIS,

In his official capacity as
Governor, State of Florida,

Respondent.

FINAL ORDER OF DISMISSAL
AND ORDER GRANTING MOTION TO DISMISS

THIS MATTER is before the Court upon the Respondent, Governor Ron DeSantis's, Motion to Dismiss. On April 1, 2019, the Court held a hearing on said motion where it heard arguments from counsel for both parties. After carefully considering the above-referenced motion and related pleadings filed in support and in opposition thereto and the arguments of counsel presented at the hearing, and for the reasons that follow, the Court GRANTS the Respondent's Motion to Dismiss.

I. BACKGROUND

On January 11, 2019, in his capacity as Governor of the State of Florida, Ron DeSantis (hereinafter Governor DeSantis) issued Executive Order 19-14 suspending Sheriff Scott Israel (hereinafter Sheriff Israel) as the Sheriff of Broward County, Florida for neglect of duty and incompetence pursuant to Article IV, Section 7 of the Florida Constitution.

Following his suspension, on January 29, 2019, Sheriff Israel invoked his constitutional right to request a formal review on the merits before the Florida Senate. The Senate appointed a Special Master to preside over a hearing on the suspension. The hearing was scheduled to take place during the week of April 8, 2019.¹

On March 7, 2019, Sheriff Israel filed the present action asserting that Governor DeSantis exceeded his constitutional authority when the Governor suspended him. Sheriff Israel asserts that a petition for writ of *quo warranto* is the proper method to test whether a state officer has improperly exercised a power or right. The Petition seeks to have the Court issue a writ directing Governor DeSantis to demonstrate sufficient jurisdictional grounds for the suspension.

On March 14, 2019, Governor DeSantis filed the instant motion to dismiss, which he alternatively requests that the Court construe as his Response to the Petition. In his Motion to Dismiss, Governor DeSantis asserts that Article IV, Section 7(a)-(b) of the Florida Constitution vests in the Governor of the State of Florida the authority to suspend an official and in the Florida Senate the exclusive authority to judge the Governor's decision. Governor DeSantis asserts that as long as he acts within the jurisdictional limits prescribed by the Florida Constitution, the suspension may not be reviewed by the courts.

On March 25, 2019, Sheriff Israel filed his response in opposition to the motion to dismiss. Sheriff Israel concedes that the Court's review of the executive order of suspension is limited to a determination of the sufficiency of the jurisdictional facts. However, Sheriff Israel maintains that Executive Order 19-14 fails to identify sufficient jurisdictional grounding for the suspension. In particular, Sheriff Israel asserts the Executive Order fails to identify any statutory or official duty that was neglected or any official duty where he was incompetent.

¹ The Florida Senate has abated its review pending the outcome of the present case.

The parties agree that no evidentiary hearing is warranted and that the Court's inquiry is limited to the allegations set forth in Executive Order 19-14.

II. DISCUSSION

The starting point for the Court's analysis is Article IV, Section 7 of the Florida Constitution, which provides as follows:

- (a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment . . . or any county officer for . . . neglect of duty . . . [or] incompetence . . . and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.
- (b) The senate, may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.

Art. IV, §7, Fla. Const. (emphasis added). Under this section, the Governor is clearly vested with the authority to issue an executive order suspending a sheriff, and the senate is clearly vested with the authority to remove or reinstate. It has long been recognized that an elected officer, such as an elected sheriff, accepts the position subject to the power of the Governor to suspend the officer as provided in the Constitution. See State v. Joughin, 138 So. 392, 395 (Fla. 1931) (“[Sheriff] must bear in mind that he, as well as every other officer appointed or elected in this state who is not subject to impeachment, accepts his appointment or election subject to suspension by the Governor for the causes enumerated in section 15 of article 4 of the Constitution.”).

The Florida Supreme Court has repeatedly held that this power is executive. State ex rel. Hardie v. Coleman, 155 So. 129, 133 (Fla. 1934) (citations omitted). “It involves judgment and discretion on the part of the Governor, including the power to hear and decide; and the rule seems well-settled that so long as the Governor acts within his jurisdiction as charted by organic law, his action may not be reviewed by the courts.” Id. However, this general rule is modified by an

exception that such exercise of power is subject to judicial review when the lawful rights of an individual are affected. Id.

The power of the Governor to suspend and of the Governor and the Senate to remove is not an arbitrary one. Both are guarded by constitutional limitations which should be strictly followed. It has been charged that this is an unusual power to vest in the Governor and the Senate, and so it is, but the people have lodged it there. The position of Governor and Senator is one vested with great dignity and responsibility and we are not to presume that these places will be filled by the people with men who do not measure up to the responsibility imposed in them. At any rate the duty imposed should be exercised with great care and caution because, when done, the result is final as no other power is authorized to interfere.

Id. at 134.

The law in this area is well settled that “the courts may determine the sufficiency of the jurisdictional facts on which the Governor rests his action, but (the courts) have no authority to determine the sufficiency of evidence to support the grounds of suspension; that being a function solely for the Senate under such rules as it may prescribe.” State ex rel. Hardee v. Allen, 172 So. 222, 224 (Fla. 1937) (citing State ex rel. Hardie v. Coleman, *supra*). “[I]f the order of suspension names one or more of the grounds embraced in the Constitution and clothes and supports it with alleged facts sufficient to constitute the grounds named it is sufficient.” Id. Moreover, “[i]t is not necessary that the allegations of fact be as specific as the allegations of an indictment or information in a criminal prosecution. Being reviewable by the Senate, if it contains allegations that bear some reasonable relation to the charge made against the officer, it will be held sufficient.” Id.; see also Crowder v. State ex rel. Baker, 285 So. 2d 33, 35 (Fla. 4th DCA 1973).

Therefore, the narrow question presented before this Court is whether Executive Order 19-14 suspending Sheriff Israel meets the jurisdictional threshold, to wit: whether the order names one or more grounds set forth in the Constitution and is supported with alleged facts sufficient to constitute the grounds named for the suspension.

Turning to Executive Order 19-14, the Governor's order of suspension sets forth thirty-five separate paragraphs of allegations. In particular, the Executive Order specifies two separate grounds for suspension: neglect of duty and incompetence. Both of these grounds are specifically enumerated in Article IV, Section 7(a), of the Florida Constitution as grounds for suspension. Therefore, if either of these grounds are supported by alleged facts in Executive Order 19-14, then Governor DeSantis has met the jurisdictional threshold for Sheriff Israel's suspension.

Sheriff Israel asserts that neglect of duty must pertain to a statutory duty and that the allegations in the executive order fail to establish the neglect of an identifiable statutory duty. However, Article IV, Section 7(a) of the Florida Constitution states "neglect of duty" and not "neglect of a statutory duty," and the Court declines to read additional words into the Constitution. Moreover, the Florida Supreme Court has defined neglect of duty as follows:

Neglect of duty has reference to the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law. It is not material whether the neglect be willful, through malice, ignorance, or oversight. When such neglect is grave and the frequency of it is such as to endanger or threaten the public welfare [,] it is gross.

Coleman, 155 So. 132 (emphasis added). In Coleman, the Supreme Court also discussed incompetence and stated that "[i]ncompetency may arise from gross ignorance of official duties or gross carelessness in the discharge of them." Coleman, 155 So. at 133 (emphasis added).

Throughout Executive Order 19-14, Governor DeSantis alleges numerous factual allegations related to both neglect of duty and incompetence. The Executive Order specifically addresses two active shooter incidents which led to the tragic loss of life at the Fort Lauderdale-Hollywood International Airport on January 6, 2017, and at Marjorie Stoneman Douglas High School on February 14, 2018. The Executive Order alleges these incidents evidence Sheriff

Israel's neglect of duty and incompetence regarding his statutory duty under Florida Statute § 30.15 as the conservator of the peace for Broward County and further regarding his responsibility for developing, implementing, and training his deputies on policy related to active shooters.

The Executive Order specifically alleges that "Sheriff Israel is responsible for inserting into the Broward County Sheriff's Officer Active Policy that a deputy 'may' enter the area or structure to engage an active shooter and preserve life;" and that such policy is "inconsistent with current and standard law enforcement practices." The Executive Order also contains various factual allegations regarding failures in the setting up of command centers, as well as failures regarding training and leadership. The Executive Order alleges that the investigations of the active shooter incidents "revealed that Sheriff Israel's neglect of duty and incompetence lead to 'most of the law enforcement personnel who responded [lacking] clear instructions, objectives, and roles;'" and that Sheriff Israel "has not provided the proper training of his deputies." Executive Order 19-14 concludes that "due to his demonstrated neglect of duty and incompetence, Sheriff Israel can no longer demonstrate the qualifications necessary to meet his duties in office." The Court finds that the allegations set forth in Executive Order 19-14 are sufficient to support the specified grounds of neglect of duty and incompetence, and therefore, meet the jurisdictional requirements for suspension.

III. CONCLUSION

The Court's role is not to assess the merits of the allegations set forth in Executive Order 19-14. Rather, the Court's limited role is to determine whether such allegations meet the minimum jurisdictional threshold. This is consistent with the Florida Constitution and general principles of separation of powers, which grant the Governor the authority to suspend an official, and grant the Florida Senate the exclusive authority to review the suspension and decide whether to remove or reinstate the official.

After reviewing Executive Order 19-14, the Court holds that the Executive Order names specific grounds (neglect of duty and incompetence) that are set forth in the Florida Constitution as grounds for suspension, and further alleges facts that support and bear a reasonable relation to the stated grounds. Therefore, the Court holds that Executive Order 19-14 meets the jurisdictional threshold and that Sheriff Israel's Petition must be dismissed.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Respondent, Governor Ron DeSantis's, Motion to Dismiss is hereby **GRANTED** and that Petitioner, Sheriff Scott Israel's, Petition for Writ of Quo Warranto is hereby **DISMISSED**.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida, this 4th day of April, 2019.



DAVID A. HAIMES
CIRCUIT COURT JUDGE

cc: Counsel of Record

Copies Furnished to:

Benedict P Kuehne, Email : ben.kuehne@kuehnelaw.com

Benedict P Kuehne, Email : cmelo@kuehnelaw.com

Benedict P Kuehne, Email : efiling@kuehnelaw.com

John MacIver, Email : maciver@nlaw.northwestern.edu

John MacIver, Email : john.maciver@eog.myflorida.com

Michael Terrell Davis, Email : cmelo@kuehnelaw.com

Michael Terrell Davis, Email : efiling@kuehnelaw.com

Michael Terrell Davis, Email : mdavis@kuehnelaw.com

Nicholas Allen Primrose PRIMROSE, Email : nicholas.primrose@eog.myflorida.com

Stuart N Kaplan, Email : skaplan@kaplanparkerlaw.com

Stuart N Kaplan, Email : jwise@kaplanparkerlaw.com

Stuart N Kaplan, Email : tmarinaro@kaplanparkerlaw.com