

SUPREME COURT OF OHIO

State ex rel. Calvaruso v. Brown

138 Ohio St. 3d 503, 2014-Ohio-1018 (Ohio 2014) · No. 2013-0280 · Decided March 19, 2014

SUMMARY

The Supreme Court of Ohio denied a writ of quo warranto sought by six Akron police captains who challenged Charles Brown's service as acting chief of police and alleged de facto deputy chief. The court held that acting chief was a temporary assignment rather than a public office and that Brown was not a de facto deputy chief because he did not claim to hold that office. The court noted that quo warranto could not be used to challenge duties Brown performed as an assistant to the mayor.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Pfeifer; O'Donnell; Kennedy; O'Neill; O'Connor; Lanzinger; French
JURISDICTION	Ohio
DECIDED	March 19, 2014
DOCKET	2013-0280
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original action in quo warranto in the Supreme Court of Ohio. Relators sought to oust Charles Brown from the positions of acting chief of police and de facto deputy chief of police. The court granted the City of Akron's motion to intervene, issued an alternative writ, denied motions for oral argument, and denied the writ.
STANDARD OF REVIEW	Original-action quo warranto review; the court determined whether the respondent unlawfully held or exercised a public office and whether the relators were entitled to that office.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	State ex rel. Calvaruso et al., Six Akron Police Department captains v. Brown et al., Charles Brown, City of Akron as intervenor

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QUESTIONS PRESENTED

1. Whether quo warranto may be used to oust a person from the position of acting chief of police when that position is a temporary assignment rather than a public office.
2. Whether Brown was a de facto deputy chief subject to ouster by quo warranto based on his performance of duties commonly performed by a deputy chief.
3. Whether quo warranto may be used to challenge the legality of duties performed by Brown in his actual position as an assistant to the mayor.
4. Whether oral argument was necessary in the original action.

HOLDINGS

1. Quo warranto does not lie to remove a person from the position of acting chief of police because, under the evidence presented, that position is a temporary assignment during the chief's short absence and is not a public office.
2. Brown was not a de facto deputy chief for purposes of quo warranto because he did not hold or claim the office of deputy chief, even though he performed some duties commonly associated with that office.
3. The court could not determine in this quo warranto action what duties Brown may perform as an assistant to the mayor, and quo warranto could not oust him from that position merely because he performed duties resembling those of a deputy chief.
4. Oral argument was unnecessary because the briefs and evidence were sufficient to resolve the issues presented.

KEY QUOTATIONS

“Quo warranto is the exclusive remedy to litigate the right of a person to hold a public office.” (¶ 26)

““Acting chief of police” is not a public office to which anyone has a right or from which anyone may be ousted in quo warranto.” (¶ 29)

“The extraordinary remedy of quo warranto is properly employed to test the actual right to an office or franchise. It can afford no relief for official misconduct, and cannot be employed to test the mere legality of official action by public officers.” (¶ 38)

FACTUAL BACKGROUND

The Akron police division has a classified rank structure that includes police chief, deputy chief, captain, lieutenant, sergeant, and officer, but had no deputy chiefs at the relevant time. Charles Brown resigned as a police lieutenant and became an unclassified assistant to the mayor; he was later designated assistant chief and appointed acting chief for four days during the police chief's absence, although no official assistant-chief position existed. Brown also performed some duties commonly associated with a deputy chief, including

participating in the Firearms Review Board, approving overtime, overseeing community relations, issuing orders, and attending command-level activities.

PROCEDURAL HISTORY

Six Akron police captains filed an original quo warranto action seeking Brown's removal from the alleged offices of acting chief and de facto deputy chief. The Supreme Court of Ohio permitted the City of Akron to intervene and established a briefing schedule. After reviewing the parties' evidence and briefs, the court denied oral argument and denied the requested writ.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland, 114 Ohio St. 3d 183, 2007-Ohio-3831, 870 N.E.2d 1174, ¶ 42
- State ex rel. Davis v. Pub. Emps. Retirement Bd., 111 Ohio St. 3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 15
- State ex rel. Allen v. Warren Cty. Bd. of Elections, 115 Ohio St. 3d 186, 2007-Ohio-4752, 874 N.E.2d 507, ¶ 21
- State ex rel. Deiter v. McGuire, 119 Ohio St. 3d 384, 2008-Ohio-4536, 894 N.E.2d 680, ¶ 20
- State ex rel. Ebbing v. Ricketts, 133 Ohio St. 3d 339, 2012-Ohio-4699, 978 N.E.2d 188, ¶ 8
- State ex rel. Johnson v. Richardson, 131 Ohio St. 3d 120, 2012-Ohio-57, 961 N.E.2d 187, ¶ 15
- State ex rel. Zeigler v. Zumbar, 129 Ohio St. 3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 23
- State ex rel. Hogan v. Hunt, 84 Ohio St. 143, 95 N.E. 666 (1911)
- State ex rel. Buian v. Kadlec, 53 Ohio St. 2d 239, 373 N.E.2d 1260 (1978)
- State ex rel. Buian v. Kadlec, 56 Ohio St. 2d 116, 383 N.E.2d 119 (1978)
- State v. Staten, 25 Ohio St. 2d 107, 267 N.E.2d 122 (1971)
- Staten v. Ohio, 408 U.S. 938, 92 S. Ct. 2869, 33 L. Ed. 2d 759 (1972)
- State ex rel. Huron Cty. Prosecutor v. Westerhold, 72 Ohio St. 3d 392, 650 N.E.2d 463 (1995)
- State ex rel. Berry v. Tackett, 60 Ohio St. 2d 12, 396 N.E.2d 743 (1979)

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