

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 20, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-1816**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**THOMAS WILLAN,**

**PLAINTIFF-APPELLANT,**

**V.**

**CHARLENE BRERETON AND THE TOWN OF LODI,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Columbia County:  
RICHARD L. REHM, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Thomas Willan appeals from an order dismissing his action to recount the ballots from the 1999 spring election for the office of Chairperson for the Town of Lodi. Willan alleges fraud and raises several other procedural challenges to the validity of the election. Charlene Brereton and the

Town of Lodi (collectively, the Town) respond that Willan lacks standing to challenge the election results because, although he was listed on the ballot, he was ineligible to be a candidate due to a prior felony conviction. The Town also asks that we deem the appeal frivolous and award costs and fees. Having carefully considered all of the parties' arguments, we are persuaded that Willan does lack standing. Accordingly, we affirm the order of the circuit court. We decline, however, to award costs and fees because we are satisfied that Willan's action was brought in good faith and meets the threshold of arguable merit.

### **BACKGROUND**

¶2 In April of 1999, Willan challenged incumbent Charlene Brereton for the office of Chairperson of the Town of Lodi. Willan and Brereton's names both appeared on the ballot. The Board of Canvassers declared Brereton the winner of the election by a vote of 486 to 307. Willan petitioned the Board for a recount, which confirmed that Brereton had won the election by 179 votes. After Willan successfully challenged the first recount in the circuit court on procedural grounds, the Board conducted a second recount with the same results. Willan then filed an amended complaint in the circuit court, alleging various irregularities in the election procedure. The circuit court dismissed Willan's action for failure to state a claim, and he appealed.

¶3 While his appeal was pending, we were asked to remand the matter to the circuit court for a hearing to determine whether Willan lacked standing because he had been convicted of a felony. We did so. On remand, the circuit court found that Willan had been convicted in Georgia in 1981 of felony burglary. He was sentenced under the Georgia Youthful Offender Act to an indeterminate prison term and was paroled in 1982. In 1984, the Georgia State Board of Pardons

and Paroles discharged Willan's sentence and issued a certificate restoring all of his civil and political rights, with the exception of the right to possess a firearm. Based on this record, the circuit court determined that Willan was ineligible to hold public office in Wisconsin and, therefore, that he lacked standing to challenge the election results. Willan's initial claims and the standing issue are now before this court for review.

### STANDARD OF REVIEW

¶4 Whether a plaintiff has standing to bring a particular issue before a court is a question of law, which we decide independently of the circuit court's decision. See *Le Fevre v. Schrieber*, 167 Wis. 2d 733, 736, 482 N.W.2d 904 (1992).

### ANALYSIS

¶5 The doctrine of standing requires a party to have a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. See *State v. Iglesias*, 185 Wis. 2d 117, 132-33, 517 N.W.2d 175 (1994). By statute, "[a]ny candidate voted for at any election" may request a recount from the Board of Canvassers, and "any candidate ... aggrieved by the recount may appeal to circuit court." WISCONSIN STAT. § 9.01(1)(a) and (6)(a) (1997-98).<sup>1</sup>

¶6 The Town contends that although Willan appeared on the ballot and received votes, he was not a "candidate" for the office of Chairperson of the Town

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

Board because, under the state constitution, he was ineligible to run for or hold that office. Article XIII, § 3 of the Wisconsin Constitution provides in relevant part:

(2) No person convicted of a felony, in any court within the United States ... shall be eligible to any office of trust, profit or honor in this state unless pardoned of the conviction.

(3) No person may seek to have placed on any ballot for a state or local elective office in this state the name of a person convicted of a felony, in any court within the United States ... unless the person named for the ballot has been pardoned of the conviction.

¶7 Willan concedes that he was convicted of burglary in Georgia in 1981. However, he argues that he should nonetheless be considered a candidate for office entitled to standing because: (1) he received votes; (2) the evidence of his burglary conviction was not properly before the court; (3) the conviction did not count as a felony because it was entered under the Georgia Youthful Offender Act; (4) the usual disabilities of conviction did not apply because he entered a no contest plea; and (5) the order restoring his civil and political rights was the equivalent of a pardon. We will address each argument in turn.

¶8 We first note that, unlike the “voted-for” standard required to request a recount from the Board, the standard for judicial review specifically requires that a candidate for office be “aggrieved” in order to obtain standing. *Compare* WIS. STAT. § 9.01(1)(a), *with* § 9.01(6)(a). We agree with the circuit court that a person running for office could not be aggrieved by any election irregularities if he or she was not eligible to run for or hold that office in the first place. Therefore, regardless of the votes Willan received, his standing to challenge the election in the circuit court turns upon the application of the constitutional ineligibility provisions set forth in article XIII, § 3.

¶9 The record contains copies of several documents from the Clerk of the Superior Court for Liberty County, Georgia, showing that: (1) Willan was convicted of felony burglary on March 2, 1981; (2) he was sentenced under the Youthful Offender Act to an indeterminate term of no more than six years in prison; (3) he was paroled on May 19, 1982; (4) he was discharged from his sentence effective February 24, 1984; and (5) all disabilities from his sentence were removed, and all civil rights, except for the right to possess firearms, were restored on the discharge date. The Town also submitted an affidavit from the custodian of Georgia's clemency records stating that Willan had never been granted a pardon or any other form of clemency by the State of Georgia and continued to be ineligible to possess firearms.

¶10 The documents all appear to be in proper form. Willan claims that the circuit court should not have considered them because they were illegally obtained. However, he does not cite any state or federal statutes that would prohibit an open records request for these documents. Moreover, even if there is some confidentiality law that limits the dissemination of conviction information as Willan claims, such a law would apply to the custodian of records. We see no impropriety in the Town's request and conclude that the circuit court properly admitted the documents.

¶11 The Georgia Youthful Offender Act of 1972 was designed to provide educational programs, vocational training and other treatment designed to correct "the antisocial behaviors of youthful offenders" between the ages of seventeen and twenty-five. *See* GA. CODE ANN. § 42-7-2 (1999). The Youthful Offender Act relates to sentencing and does not contain any provision expunging a conviction upon completion of the sentence. *See Lazenby v. State*, 470 S.E.2d 526, 529 (Ga. Ct. App. 1996). Therefore, the fact that Willan was sentenced under

the Youthful Offender Act has no bearing on the classification of his conviction as a felony.

¶12 Willan claims that the trial court erroneously determined that he had entered a guilty plea rather than a plea of no contest. However, this is a distinction without a difference in this case. The constitutional provision barring unpardoned felons from holding office in Wisconsin applies to all felons, regardless of whether they were convicted following a trial or a plea. It is therefore irrelevant whether Willan pled no contest to the burglary charge.

¶13 Finally, Willan maintains that the Georgia order restoring his civil and political rights grants him the right to hold office. It does appear that an offender is allowed to hold public office in Georgia upon the restoration of his civil rights, *see Harrison v. Wigington*, 497 S.E.2d 568, 570 (Ga. 1998); however, that is not the law in this state. Here, the mere restoration of civil rights is insufficient to remove a felon's ineligibility to hold public office. *See State v. Village of Lyndon Station*, 98 Wis. 2d 229, 246, 295 N.W.2d 818 (Ct. App. 1980) (offender who had obtained restoration of his civil rights under the predecessor to WIS. STAT. § 304.078 was nonetheless ineligible to hold office of police chief), *aff'd*, 101 Wis. 2d 472, 305 N.W.2d 89 (1981). Under our state constitution, a pardon is required before a convicted felon may hold office. *See WIS. CONST.* art. XIII, § 3. This requirement is a rational measure designed to maintain confidence in public officials and has recently passed scrutiny under federal constitutional standards. *See Swan v. LaFollette*, 231 Wis. 2d 633, 642-43, 605 N.W.2d 640 (Ct. App. 1999).

¶14 A pardon is a form of clemency that constitutes complete forgiveness of the offense committed. *See Bruce R. Bauer, Executive Clemency in*

*Wisconsin: Procedures and Policies*, 1973 WIS. L. REV. 1154, 1154. Unless otherwise stated, it removes all disabilities of conviction. See Benjamin J. Rosenthal, Note, *Restoration of the Civil Rights of Convicted Criminals*, 1951 WIS. L. REV. 378, 381. In addition to restoring civil rights, a pardon may also signify a favorable review of the offender's character. See 60 Wis. Op. Att'y Gen. 452, 453 (1971). In Wisconsin, the power to grant pardons is vested in the governor. See WIS. CONST. art. V, § 6.

¶15 An order restoring civil rights does not constitute a pardon under either Wisconsin or Georgia law. See *Village of Lyndon Station*, 98 Wis. 2d at 246; *Harrison*, 497 S.E.2d at 570. It merely acts to remove some of the disabilities imposed by law upon those convicted of a crime. See *Harrison*, 497 S.E.2d at 569; see also WIS. STAT. § 304.078 and WIS. CONST. art. III, § 2(4) (providing that felons may be excluded from voting “unless restored to civil rights”). Therefore, whatever effect the Georgia order restoring Willan's civil rights may have in that state, it does not remove his ineligibility for public office in this state. The circuit court correctly determined that Willan lacks standing to challenge the election results for the Lodi Town Chair due to his unpardoned felony conviction.

¶16 In light of our conclusion that Willan lacks standing, we do not address his other claims. We are satisfied, however, that Willan had a good faith basis for initiating this appeal.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.





