

September 12, 2014

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Not For Publication****IN THE SUPREME COURT OF THE VIRGIN ISLANDS****ADELBERT M. BRYAN,**
Appellant/Petitioner,

v.

CAROLINE F. FAWKES,
Appellee/Respondent,**ALICIA "CHUCKY" HANSEN,**
Appellee/Intervenor.**S. Ct. Civ. No. 2014-0046**

Re: Super. Ct. Civ. No. 144/2014 (STX)

2014 SEP 12 PM 5:08

SUPREME COURT

On Petition for Rehearing
Considered and Filed: September 12, 2014**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.**APPEARANCES:****Emile A. Henderson III, Esq.**
Law Offices of Yvette D. Ross-Edwards
St. Croix, U.S.V.I.
*Attorney for Appellant,***Kimberly L. Salisbury, Esq.**
Assistant Attorney General
St. Thomas, U.S.V.I.
*Attorney for Appellee Caroline F. Fawkes,***Lee J. Rohn, Esq.**
Law Offices of Lee J. Rohn & Associates LLC
St. Croix, U.S.V.I.
*Attorney for Appellee Alicia "Chucky" Hansen.***ORDER OF THE COURT****PER CURIAM.****THIS MATTER** comes before the Court pursuant to a petition for rehearing filed by

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Appellee Caroline F. Fawkes on September 11, 2014.¹ Supreme Court Rule 31, which governs petitions for rehearing, requires that the petition “state with particularity the points of law or fact which . . . the Supreme Court has overlooked or misapprehended.” This Court concludes that Fawkes has not met this standard, but has instead primarily used her rehearing petition as a vehicle to either re-litigate issues that this Court duly considered, or to raise new arguments for the first time on rehearing that could have been—but were not—raised in her appellate brief. *Rivera v. People*, S. Ct. Crim. No. 2008-0052, 2009 WL 1044577, at *1 (V.I. Apr. 14, 2009) (unpublished) (collecting cases).

We do, however, note that in her petition, Fawkes contends that this Court’s decision reversing the Superior Court’s July 30, 2014 order and directing the Superior Court, on remand, to grant Adelbert Bryan’s petition and order the Supervisor of Elections to set aside the nomination papers of Alicia “Chucky” Hansen “was premature since the defect was curable by pardon from the Governor restoring [her] civil rights.” (Pet. 2.) Implicitly requesting that this Court take judicial notice of the fact that the Governor of the Virgin Islands subsequently pardoned Hansen on September 3, 2014, Fawkes appears to argue that this Court, rather than directing that Hansen’s nomination papers be set aside, should have *sua sponte* granted Hansen an unspecified period of time to obtain a pardon.

While Fawkes cites to several cases from other jurisdictions standing for the proposition that a candidate’s qualifications at the time he or she is administered the oath of office, rather than on the date of the election, control whether the candidate is eligible to hold

¹ Pursuant to Supreme Court Rule 31, “[n]o answer to a petition for rehearing will be received unless requested by the Supreme Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request.” In accordance with Rule 8.2 of this Court’s Internal Operating Procedures, an answer was not requested by any member of the majority.

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that office, those cases are inapposite because this case arose pursuant to a proceeding initiated under 18 V.I.C. § 412, a statute authorizing judicial review of the decision of the Supervisor of Elections to place a candidate on the ballot. That statute contains a specific provision relating to the ability to cure a nomination paper that has been challenged in a judicial proceeding:²

If the court finds that the nomination petition or paper is defective under the provisions of section 411 of this title, or that it does not contain a sufficient number of genuine signatures of electors entitled to sign it under the provisions of this chapter, or was not filed by persons entitled to file it, it shall be set aside. If the objections relate to material errors or defects apparent on the face of the nomination petition or paper, or on the face of the accompanying or appended affidavits, the court, after hearing, *may, in its discretion*, permit amendments within such time and upon such terms as to payment of costs, as the court may specify.

18 V.I.C. § 412 (emphasis added). Thus, section 412 clearly contemplates that candidates whose nomination papers have been challenged in the courts do not have an automatic right to cure the defect. Notably, Hansen never requested that this Court or the Superior Court grant her time to cure in the event she was found ineligible for nomination to the 31st Legislature.

Hansen was not eligible to be nominated for membership in the 31st Legislature when she filed her nomination papers on May 13, 2014, due to her convictions for crimes involving moral turpitude. Nor was she eligible on August 28, 2014, when this Court issued its opinion reversing the Superior Court's July 30, 2014 order, or on August 29, 2014, when the Superior Court, on remand, ordered her removal from the ballot. While the Superior Court, in its discretion, could have arguably provided Hansen with a date certain by which to obtain a

² A different provision in the Virgin Islands Code provides that "[w]hen a nomination petition, nomination paper or nomination certificate is found to be defective" by the Supervisor of Elections, "the candidate shall be notified immediately by special messenger with the reason or reasons therefor," and further provides that "[i]f a new, valid petition, paper or certificate is not filed within three days thereafter the candidate shall be disqualified for nomination or election." 18 V.I.C. § 411(c).

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pardon,³ at no point did Fawkes or Hansen request that it exercise that discretion. After the Superior Court granted Hansen permission to intervene, Hansen filed a motion to dismiss; at no point did she request, in the alternative, that the Superior Court provide her with an opportunity to cure the defect alleged in Bryan's petition. Similarly, although the matter had been pending before the Superior Court for approximately three months, Fawkes never requested that the Superior Court exercise its discretion under section 412 to provide Hansen with an opportunity to cure.

Of even more relevance to the rehearing petition, on appeal to this Court, neither Hansen nor Fawkes ever requested, either in their appellate briefs or even during oral argument, that this Court—were it to rule in Bryan's favor—order the Superior Court to refrain from setting aside Hansen's nomination papers until she had the opportunity to seek a pardon from the Governor. Rather, both Hansen and Fawkes premised their entire litigation strategy—both at the trial level and on appeal—on convincing the Superior Court and this Court to either refrain from resolving Bryan's petition on the merits, or to sustain Fawkes's determination that Hansen's convictions were not for crimes involving moral turpitude. Despite being clearly aware of section 412's existence, neither Fawkes nor Hansen requested that either the Superior Court or this Court grant leave to amend under that section. Thus, Fawkes cannot argue, for the very first time in her petition for rehearing, that this Court should have *sua sponte* mandated the Superior Court to grant leave to cure when, pursuant to statute, such leave is discretionary rather than mandatory. *Rivera*, 2009 WL 1044577, at *1. In other words, like the other issues addressed in

³ As noted above, section 412 authorizes the Superior Court to provide a candidate with an opportunity to cure only if "the objections relate to material errors or defects apparent on the face of the nomination petition or paper, or on the face of the accompanying or appended affidavits." Given that Bryan's objection in this case related to Hansen's eligibility to run given her convictions for crimes involving moral turpitude, it is not clear whether the defect in this case could be characterized as a defect with the nomination paper itself. In any case, we decline to decide this issue as part of this rehearing petition.

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her rehearing petition, Fawkes could have—but did not—raise the issue of amendment or opportunity to cure in her appellate brief, but for whatever reason did not do so. Accordingly, it is hereby

ORDERED that the petition for rehearing is **DENIED**; and it is further

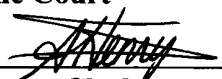
ORDERED that copies be served on the appropriate parties.

SO ORDERED this 12th day of September, 2014.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: _____


Deputy Clerk

Dated: _____

September 12, 2014

Copies to:

Justices of the Supreme Court
Judges & Magistrates of the Superior Court
Emile A. Henderson III, Esq.
Kimberly L. Salisbury, Esq., AAG
Lee J. Rohn, Esq.
Veronica J. Handy, Esq., Clerk of the Supreme Court
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