

Public defender argues against vote conviction

In a rare move, the elected official defends on appeal a man convicted of voting illegally in Pasco.

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TAMPA -- The tale of one man, one vote and one controversial election more than two years ago landed back in court Tuesday, this time elevated to an appeals panel and championed by the Pasco-Pinellas circuit's highest ranking public defender.

Bob Dillinger, the elected public defender of the two-county circuit, argued before the 2nd District Court of Appeal that his client, 31-year-old Edwin McGusty, should be cleared of voting illegally in the 2000 election, even after a jury convicted him.

A favorable ruling would erase McGusty's felony conviction, and McGusty said it would be a victory for good citizenship. A ruling by the three-judge panel is not expected for at least two weeks.

McGusty's trouble began shortly before the 2000 election when the Pasco County elections office refused to mail him an absentee ballot when he told them he had moved to Tampa. He maintained the move was temporary, and he planned on returning to Pasco, and the county was his home.

By that time, it was too close to the election to re-register in Hillsborough County.

Denied an absentee ballot, he returned to his Pasco County precinct on Election Day, and after a series of arguments with officials -- culminating in a confrontation with Supervisor of Elections Kurt Browning -- he voted despite warnings he could be prosecuted. Charges were filed, and a jury convicted him in December 2001.

A judge withheld an adjudication of guilt -- meaning McGusty did not lose his right to vote in future elections -- and sentenced him to probation. The probation is complete, but McGusty said he is determined to clear his name and to fight for the rights of all citizens.

In a rare move, Dillinger took the case before the appeals panel.

"As an elected official, it's very important to me to protect the right to vote," he said after the hearing.

In the Tampa hearing room, Dillinger said the law is vague, and a conviction requires proof that McGusty knew he was doing something wrong.

"He was a transient, living in a corporate apartment," Dillinger argued. "He believed he had the right to vote in Pasco County. . . . When Mr. McGusty came before the people to vote, he felt he had the right to vote. He didn't take 'no' for an answer, obviously."

Susan Dunlevy of the state Attorney General's office said McGusty was warned repeatedly that he had given up his rights in Pasco. He had moved out of the Pasco house he shared at least four months earlier, and the home had been sold. He had no residence in Pasco, she said.

"He wanted to vote. I think that's admirable," she said. "But you have to register first. I don't think he honestly, in his heart, believed he had a right to vote in his previous precinct."

Appeals Judges Darryl Casanueva and Virginia M. Hernandez Covington, along with retired Circuit Judge Tom Gallen listened to both sides, posing questions along the way.

Casanueva remarked on the irony that while millions of people are too apathetic to vote, felony charges were leveled against one man who insisted on casting his ballot. But he also questioned Dillinger's argument that McGusty had no home in Pasco but intended to return so it was still his home county.

Later, he wondered aloud if the intent of a person was a question for a jury to decide, not an appeals panel, which reviews the validity of legal questions.

Outside the hearing room, McGusty, a technology consultant, said it would be easy for him to move on and forget the incident. He still has his right to vote, and his probation is over.

But, he said, the issue means more to him.

"The Constitution, the laws, are there to specifically protect the right to vote," he said. "This is about a lot more than these technical questions. This is about a person's right to vote in this country."