



TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-850-6544



Web Site: www.texindbar.org

⚖ Vol. 17, No. 41, October 12, 2009

Case Name: [Ex parte Veronica Rachel Quintana](#)

- OFFENSE: Pre-Trial Habeas Corpus (Forgery)
- COUNTY: El Paso
- C/A CASE No. 08-08-0227-CR
- DATE OF OPINION: October 8, 2009
- DISPOSITION: Trial Court Affirmed OPINION: Chew, CJ.
- TRIAL COURT: CCL 7; Hon. Steve Ables
- LAWYERS: [Stephen Peters](#) (Defense); [Lily Stroud](#) (State)

Ed Note: In a bad sign for the defendant/applicant/appellant, the opinion starts with the following: “On the sea there is a tradition older even than the traditions of the country itself It is the tradition that with responsibility goes authority and with them both goes accountability . . .,” referencing “Hobson’s Choice, Wall Street Journal, May 14, 1952.”

Ed Note: (Background Facts) Appellant is an elected city representative of El Paso, Texas. In November 2007, she was arrested and charged with Class A misdemeanor forgery. The District Attorney assigned a supervisory prosecutor to handle the prosecution with public instructions that no offer of deferred adjudication or pretrial diversion was authorized. The prosecutor was further instructed that if Appellant were to plead guilty to the charged offense, any disposition other than pretrial diversion or deferred adjudication would be available for negotiation. On May 2, 2008, Appellant filed a pretrial habeas corpus application with the trial court and alleged that refusing to allow her to dispose of her case through pretrial diversion constitutes selective and vindictive prosecution because it violated her Equal Protection right and First Amendment right to be an elected official. The court heard the writ on May 9, 2008 but denied relief.

⚖ **335 Prosecutorial Misconduct / Selective Prosecution:** Appellant argues that denying her pretrial diversion is selective prosecution because it violates her Equal Protection right as well as her First Amendment right to serve as an elected official.

Holding: Appellant challenges the State’s selective prosecution based on her elected official status, which implicates neither a suspect class nor a fundamental right. Therefore, we use the rational basis test to determine whether the prosecutor’s action was rationally related to a legitimate governmental interest. We conclude that the State’s decision to prosecute Appellant is rationally related to a legitimate governmental interest because elected officials will or are likely to receive media attention, and such a prosecution serves to deter potential similar conduct by others. Thus, the State has satisfied its burden to justify its discriminatory treatment of Appellant. We overrule the first part of Issue One, that the State engaged in selective prosecution because the refusal to

offer Appellant pretrial diversion violated her Equal Protection right as well as her First Amendment right to serve in a public office to which she has been elected.

§ 335 Prosecutorial Misconduct / Selective Prosecution: Appellant claims that denying her pretrial diversion constitutes vindictive prosecution because the refusal to offer her pretrial diversion was a direct and unjustifiable consequence and penalty of her exercise of a protected legal right.

Holding: The State represented that the factors relevant to the prosecutorial decision in Appellant's case include: (1) Appellant is an elected official and thus should be held to a higher standard; (2) Appellant should have known better than to engage in the conduct that she did; (3) the offense involved a high level of sophistication, planning, and determined intent; and (4) this case is of a type that a jury should decide. This indicates the State based its decision to deny Appellant pretrial diversion on various factors apart from her status as an elected official, and we cannot find that the District Attorney's prosecutorial tactics derived solely from her exercise of a protected legal right. Therefore, we overrule the second part of Issue One, that the State engaged in vindictive prosecution because the refusal to offer her pretrial diversion was a direct and unjustifiable penalty that resulted from her exercise of a protected legal right.

§ 335 Prosecutorial Misconduct / Selective Prosecution: Appellant argues that the prosecutor interfered with her First Amendment right to elected office because without pretrial diversion, she will be removed from office pursuant to El Paso City Charter § 2.1. And related to that, she argues that the denial based on her exercise of rights protected by the First Amendment, namely holding public office, violated her civil rights under 42 U.S.C. § 1983.

Holding: Because Appellant has failed to establish her claims of selective and vindictive prosecution, there is no need to address Appellant's argument that the allegedly unlawful prosecution interfered with her First Amendment right to her elected office. Appellant analogizes the alleged violations of her constitutional rights by the State to a First Amendment retaliatory claim under 42 U.S.C. § 1983. However, we have not found any binding legal authorities in her brief to support this analogy. Therefore, we overrule the third part of Issue One, that the State violated Appellant's rights by taking action against Appellant based on her exercise of First Amendment rights.