

III. REPORT OF THE CASES

**CASE 2019-04
COMPLAINT OF TE F. TODD WILLIAMS
V.
CHESAPEAKE PRESBYTERY**

**DECISION ON COMPLAINT
August 24, 2020**

I. SUMMARY OF THE CASE

Chesapeake Presbytery (CP), acting through its Presbytery Judicial Commission (PJC), indicted a Teaching Elder for sins relating to his marriage. The TE and the Commission discussed the substance of the Indictment. The TE acknowledged his sin and requested that the matter proceed as a BCO 38-1 case without process. The TE submitted the “full statement of the facts” required by BCO 38-1, which was approved by the PJC. There was confusion as to whether the PJC was proceeding to trial under BCO 32-3, with a confession/guilty plea, or to a case without process under BCO 38-1. After the PJC finalized its proposed judgment and censure and delivered it to the TE, the TE submitted a revised statement of the facts that was not approved by the PJC. The TE then withdrew his consent to proceeding under BCO 38-1 and subsequently withdrew his withdrawal before CP approved the PJC proposed judgment and censure. The TE was present at the meeting of Presbytery at which the proposed judgment and censure were approved. The TE raised no objection before CP when given an opportunity to address the Presbytery following the approval of the judgement and censure. Subsequently the TE complained against the actions of CP, asserting errors of procedure, discretion, and judgment and seeking rescission of those actions.

II. SUMMARY OF THE FACTS

Spring ‘18 TE Todd Williams requested prayer and guidance from the Shepherding Committee (SC) of CP concerning his marital struggles. Periodic exchanges between TE Williams and the SC continued at least through May 2018.

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- 5/8/18 The SC recommended and CP ordered a *BCO 31-2* investigation of TE Williams. The investigation and adjudication were to be conducted by the PJC.
- 9/25/18 The PJC indicted TE Williams, charging him with “failure to ‘manage his own family well and see that his children obey him with proper respect’ (I Timothy 3:4-5), and “to walk with exemplary piety before the flock of ...God” (*BCO 21-5*, vow 7) against the peace, unity, and purity of the Church, and the honor and majesty of the Lord Jesus Christ, as the King and Head thereof.” Three specifications were noted in the Indictment, each of which had multiple points, and/or specific sins alleged.
- 10/16/18 At a meeting held on 10/16/18, the PJC did not accept the guilty plea from the complainant because he did not fully agree with the specifications contained in the indictment. The complainant was given more time to review his plea options and was directed to submit a plea in writing no later than 10/02/18.
- 11/13/18 After several exchanges between the Complainant and members of the PJC, TE Williams confessed to some of the sins outlined in the Indictment and appeared to be pleading guilty, but at the same time requested the matter be treated as a *BCO 38-1* case without process. He communicated to the PJC that “[his] written and signed confession serves as the full and only statement of facts that fairly represents the charges and allegations made in the Indictment dated September 25, 2018 and based upon those facts in my confession the PJC, according to BCO 38.1 (sic) is permitted to render judgment without process.”
- 11/19/18 PJC met, approved revisions to Indictment, accepted TE Williams’ guilty plea, found the Complainant guilty of charges, and approved administration of the censure of indefinite suspension from the office of teaching elder.
- 12/03/18 PJC met and approved a final pronouncement of judgment, censure, and admonition. The Chairman of the PJC “delivered the approved pronouncement of judgment and censure....” He also “read the additional advice and admonition....” The Complainant “denied the veracity of several statements in the advice and admonition....”

MINUTES OF THE GENERAL ASSEMBLY

- 12/12/18 Complainant presented a revised confession of his sins to the Chairman of the PJC.
- 12/17/18 PJC met to finalize its report to CP. It considered the revised confession statement of TE Williams but voted not to accept the revision on the basis that acceptance would require rescission of previous actions, and because there were no substantive changes that would warrant rescission.
- 01/06/19 Although the TE withdrew his guilty plea/confession and requested a trial on the charges contained in the Indictment on January 3, 2019, the Complainant later telephoned the Chairman of the PJC. Testimony in hearing indicated that there was discussion of the possible withdrawal of previous Statement of the Facts and substitution. Complainant indicated that he could agree to proceeding with the earlier Statement and withdrew his prior withdrawal.
- 01/08/19 CP met and voted to receive the PJC's report (42-3-3), which included the indictment, TE Williams' written confession to the charges in the indictment, the pronouncement of judgment and censure, and the additional admonition to the accused.
- 03/05/19 TE Williams complained against the acts of CP.
- 03/12/19 CP referred TE Williams' Complaint to the PJC.
- 05/08/19 The PJC voted to deny the Complaint.
- 05/15/19 CP voted to approve and sustain the PJC's recommendation to deny TE Williams' Complaint.
- 06/11/19 TE Williams' Complaint was received by the Stated Clerk's Office of the PCA. The Complaint cover letter was dated May 31, 2019.
- 07/31/19 The Officers of Standing Judicial Commission (SJC) ruled the Complaint to be administratively in order and assigned the Case to a panel consisting of TE Carl Ellis (Convener), RE John Bise, RE John White, and (as alternates) RE Sam Duncan and TE Hoochan Paul Lee.

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- 08/09/19 Respondents requested corrections to the ROC.
- 08/28/19 The SJC officers approved a request from RE White to be excused from the Panel, approved seating alternate RE Sam Duncan as a principal member of the Panel in place of RE White and appointed RE Mel Duncan as a new alternate member.
- 01/24/20 Panel held a hearing on the ROC and ruled to finalize the ROC.
- 01/30/20 Final ROC and notice of hearing on March 13, 2020 at 10:00 EDT were delivered to the Parties.
- 02/28/20 Respondents filed a Brief with the Stated Clerk's Office. Complainant filed a Brief after the Respondents, and the Panel voted to not receive, publish, or consider Complainant's Brief because it was untimely filed.
- 03/13/20 Hearing was held. Panel members present were RE John Bise (Secretary), RE Mel Duncan (Alternate), RE Sam Duncan (*Chairman Pro Tempore*), and TE Paul Lee (Alternate, seated as voting member). TE Carl Ellis was absent.

III. STATEMENT OF THE ISSUE

At its meeting on January 8, 2019 did Chesapeake Presbytery err in approving the PJC report that conflated *BCO* 32 and 38-1, thus violating the due process rights of the accused?

IV. JUDGMENT

Yes. The complaint is sustained and the action of Presbytery approving the PJC report is annulled, thereby returning the matter to the PJC. The PJC is free to dismiss the case, or to adjudicate the case with process according to the principles set forth herein. If the PJC chooses to adjudicate the case, the proceedings should begin with the PJC citing TE Williams to appear before the PJC to say whether he be guilty or not with respect to the Indictment of September 25, 2018 (*BCO* 32-3.3).

V. REASONING

Chesapeake Presbytery commissioned its PJC to investigate TE Williams under *BCO* 31-2 and to adjudicate the case should the Commission find a strong presumption of guilt. The PJC concluded that there was a strong presumption of guilt and appointed a prosecutor to prepare an indictment and to conduct a case (*BCO* 32-3). TE Williams appeared before the PJC on October 16, 2018 and pled guilty to some -but not all- of the charges. At that point, the options before the PJC included determining an appropriate censure with respect to the guilty pleas, and either adjudicating or dropping the charges to which TE Williams pled not guilty.

Instead, the PJC rejected TE Williams' pleas, and then attempted to turn a *BCO* 32 case of process into a *BCO* 38-1 case without process, leading to a lengthy and confusing negotiation over the wording of a confession in relation to the indictment.

Upon the receipt of a guilty plea, the court is to deal with the person "...according to its discretion; if he plead and take issue, the trial shall be scheduled and all parties and their witnesses cited to appear." (*BCO* 32-3). The case, at that point, is a case of process and it cannot be converted to a case without process unless all of the qualifying conditions are met. For a case to proceed without process the person must "...come forward and make his offense known to the court" (*BCO* 38-1). In this case, the accused had reservations about some of the charges against him and only pled guilty to some, but not all of the charges. A *BCO* 38-1 confession is not and cannot be achieved by an indicted party who confesses to part, but not all, of the charges he has been cited to answer.

Further, in cases of process, a second or third party is the accuser (*BCO* 32-2); in a case without process, the person is his own accuser. In a case of process, the accused is brought before the court by citation (and may be disciplined for failing to comply); in a case without process the subject comes before the court at his own initiative. In a case of process, the court frames the indictment setting forth the offences to be proved at trial and the accused is called upon to plead innocent or guilty. In a case without process the self-accused sets forth his own "indictment" and "pleads" guilty.

The approval of the confession by the confessor and the court required by *BCO* 38-1 is inappropriate when there has been an investigation that produces a strong presumption of guilt, an indictment, and a partial or

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modified plea. To allow the accused the right to have a role in framing the indictment would significantly undermine the very notion of a prosecution. In this case, there was no need to attempt to make this case of process under *BCO* 32 into a case without process under *BCO* 38-1. The court could have simply proceeded to judgment and pronounced censure concerning the matters to which TE Williams pled guilty. There would have been no need for a trial on those matters, guilt having already been confessed. If the court wished to pursue the other charges to which TE Williams did not plead guilty, then a trial with respect to those matters should have ensued.

The attempt to transform this proceeding into a case without process led to procedural confusion and was prejudicial to the rights of the accused. Though the Complainant raised a number of other considerations, some of which have merit, this decision renders those matters moot.

It is important to note that the reasoning and opinion above is applicable to this case only and should not be taken to be an exposition of whether a matter that begins as a case of process may ever be converted to a case without process under *BCO* 38-1.

The Panel Decision was not adopted by the SJC, a Committee was appointed, and submitted a Revised Decision that was approved by the SJC on the following roll call vote:

Bankson, <i>Concur</i>	Duncan, M., <i>Dissent</i>	Neikirk, <i>Concur</i>
Bise, <i>Concur</i>	Duncan, S., <i>Concur</i>	Nusbaum, <i>Concur</i>
Cannata, <i>Absent</i>	Ellis, <i>Absent</i>	Pickering, <i>Concur</i>
Carrell, <i>Concur</i>	Greco, <i>Concur</i>	Ross, <i>Dissent</i>
Chapell, <i>Disqualified</i>	Kooistra, <i>Dissent</i>	Terrell, <i>Absent</i>
Coffin, <i>Concur</i>	Lee, <i>Concur</i>	Waters, <i>Concur</i>
Donahoe, <i>Disqualified</i>	Lucas, <i>Dissent</i>	White, <i>Absent</i>
Dowling, <i>Concur</i> (13-5-0)	McGowan, <i>Dissent</i>	Wilson, <i>Concur</i>

RE Donahoe disqualified himself because he was on a PCA Session when the Complainant was one of two ministers on staff. RE Donahoe concluded he could not be, or might not appear to be, sufficiently impartial in the case. *OMSJC* 2.10. TE Chapell disqualified himself because he did not participate in the initial discussion and deliberation of the case on July 20-21. *OMSJC* 2.3(c).