

responsibility of the Session of FWPC to put in place many of their policies in an effort to protect the vulnerable. Nonetheless, I agree with Complainant that the pieces of the policy noted above are inconsistent with Scripture and the Constitution of the PCA. As such, I respectfully dissent from the decision of the SJC to deny all portions of the Complaint and thus to uphold the actions of the lower courts.

/s/ RE Frederick R. Neikirk

CASE 2019-08
TE NEAL GANZEL
vs.
CENTRAL FLORIDA PRESBYTERY

DECISION IN APPEAL
February 6, 2020

I. SUMMARY OF THE FACTS

- Jan. 2009 A group of 21 members of Coquina Presbyterian Church (CPC), Ormond Beach, FL, sent a letter to the Session raising concerns about pastoral and sessional leadership, and suggesting a number of structural changes. Two members of Session were among the signers of the letter. The group's concerns were also shared orally at the January meeting of the CPC Session.
- 02/23/09 The Session of CPC responded to the above letter. Session expressed its disagreement both with the concerns raised by the members and their suggested changes. Session encouraged the concerned members to live out their membership vows. The two elders who had signed the letter of concern did not participate in Session's deliberations, nor did they sign Session's letter. One of those elders soon moved out of state.
- Summer '09 Session raised questions about the Christian character of the second elder who had signed the letter of concern. This man, a founding member of CPC, resigned from the Session and renounced his membership in CPC.

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- July '09 An anonymous e-mail was circulated among members of CPC raising questions about TE Ganzel's compensation and leadership, and about how decisions were made at CPC.
- 10/10/09 Mike and Pat Vesta sent a letter to the Session expressing concerns about the preaching and leadership at CPC. They indicated the concerns had been ongoing and that they were also representing the views of others.
- Oct. '09 The Minister and His Work Committee (MHWC) of Central Florida Presbytery (CFP) received a "packet of information from a group of discontented people." According to the Chairman of the Committee, TE Robert Barnes, one of the individuals leading the group was the elder who had renounced his membership in CPC. Another was Mr. Vesta. TE Barnes spoke to some of the leaders of the group. According to him, "They accused [TE Ganzel] of leadership problems; the fundamental issue was he would not let them do what wanted in the church. And that made him a bad leader and ogryish." TE Barnes went on the say "[The packet] had no actual misbehavior, no actual charges, no evidence. It was just their letters to Neal and his responses with lots of highlighting when he disagreed with them. I told them they didn't have a case against Neal and that they should work to resolve their differences." There is no evidence in the Record as to what, if any, formal action MHWC took with regard to this matter.
- 03/17/10 The two men who led the group who sent the materials to MHWC sent a letter to the Session of CPC noting it had been a year since they stopped attending CPC and that they have been attending St. Andrew's Church. They stated they dealt with their issues in accordance with Scripture and the *BCO*. They said they met with Session several times, but did not take the next step of taking the matter to the Church because they wanted to preserve the peace of the church. They went on to say, "However, after 4 pastors advised us to do so, we did send a letter to the Minister and [H]is Work [C]ommittee of the Central Florida Presbytery. We did not send it because we expected them to do anything, but so that we would have taken every step prescribed to deal with these issues."

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- 01/13/18 MHWC received a letter from Daniel and Laura Yang, former members of CPC, alleging “un-Christlike behavior” on the part of TE Ganzel and attributing a decline in the church’s membership to problems with TE Ganzel. They stated, “The reason for the church’s decline is sadly well known to many of us who were members between 2007 and 2013.” The Yangs were apparently not among those who signed the Jan. 2009 letter of concern. Mrs. Yang’s parents continued to be members of CPC.
- 01/15/18 TE Dan Thompson, Chairman of the MHWC, exchanged a series of e-mails with Mr. Yang between Jan. 15 and Feb 2. to get further perspective and to inform Mr. Yang that the Committee would follow up on the concerns.
- 02/05/18 TE Thompson and TE Chuck Holliday, also a member of MHWC, met with TE Ganzel to discuss the concerns raised by the Yangs’ letter.
- 02/06/18 TE Thompson e-mailed TE Robert Barnes to confirm MHWC had previously received materials regarding TE Ganzel. TE Barnes confirmed these had been received in Oct 2009 and had been deemed insufficient to warrant action by CFP. TE Thompson also conferred with a previous pastor of CPC about the situation at CPC.
- 04/25/18 TEs Thompson and Holliday met with a group of “12-14 former members” of CPC at the Yangs’ home. TEs Thompson and Holliday concluded there was a strong presumption of guilt regarding TE Ganzel.
- 05/08/18 MHWC met, considered summaries of the 02/05 and 04/25 meetings, and concluded representatives from the Committee should meet with TE Ganzel to discuss the allegations and to “discuss the options available to him under the *BCO*.”
- 05/12/18 TEs Thompson and Holliday met with TE Ganzel. They urged him to “confess the sins identified by the former members,” telling him that if he did so the Presbytery would take up the matter as a case without process, and if he denied the charges, the matter would become a case with process and go to trial. They also offered another option on behalf of the Committee.

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They stated that if TE Ganzel would announce his retirement no later than December 2018 they were convinced that those who had raised the concerns would not pursue the matter to trial. TE Ganzel refused to plead guilty and stated he was unwilling to retire, believing “he may have another ten to fifteen years for ministry and [he] believes the church is doing well at this point.”

07/25/18 A packet of materials was produced. This packet included a summary of the findings of the MHWC; proposed charges; communications (some of them lengthy) from former members of CPC; summaries of the various meetings held by TEs Thompson and Holliday; and interactions between various members of CPC and the Session from the years of 2008-2010. The packet was listed as being from TE Thompson and was styled an “Amicus Brief transmitting documents to the second commission.” This cannot be correct in that the Second Commission was not established until 01/22/19. It appears the materials were originally provided by MHWC to CFP and/or the First Commission that was being recommended by the Committee (see below) and that they were later restyled for submission to the Second Commission.

08/14/18 MHWC reported to Presbytery in executive session. The minutes of CFP contain the following note: “Inasmuch as no minutes for the Executive Session during the 169th meeting can be located the following is set forth.” That material was developed from notes written by the Stated Clerk elected at the 171st meeting, who was authorized by the 172nd meeting to “address inadequacies of some previous records of the Presbytery.”

The recreated minutes of the executive session state, “Those filing charges, being willing to pursue their case, have asked that this case be set before Presbytery for trial.” Note that the Record does not contain an indication of if, when, or how the Yangs or any other former member filed charges or converted their letter(s) of concern to charges, nor is a list of formal charges from those former members included in the Record.

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The recreated minutes further state the MHWC voted unanimously to “ask CFP to appoint a prosecutor (*BCO* 31-2) to draw up charges and to establish a judicial committee to try this case. Written accusations, evidence and findings to this point will be provided to the judicial committee by the MHW committee.” Finally, MHWC stated they would recommend a slate of men to serve on the “judicial committee/commission, none of which would be members of the MHW committee.”

CFP established a Judicial Commission of three teaching elders and three ruling elders to “address charges with a strong presumption of guilt against TE Neil [*sic*] Ganzel.” Minutes of the Judicial Commission list one of these TEs as an alternate and list a fourth RE as an alternate.

09/20/18 The Judicial Commission met by videoconference. They considered the charges proposed by MHWC and adopted “recommended charges of M&HW Committee against TE Ganzel as follows:

1. Abuse of spiritual authority as a pastor.
2. Dishonesty and failure to honor his word.
3. Failure to pursue reconciliation.
4. Violation of his ordination vows, particularly failing to uphold the peace, purity, and unity of the church and failing to adorn the profession of the Gospel in his manner of life and example to the flock.”

The Commission also appointed a prosecutor and acted to “Call TE Ganzel to appear at a second meeting of the court to answer indictment [*sic*]....”

11/12/18 The Judicial Commission met again by videoconference. TE Frank Cavalli (a member of the Commission and the Prosecutor) and TE Richard Burguet (a member of the Commission) provided reports and recommendations.

TE Cavalli reported “on his interaction with the list of proposed witnesses provided by the Yangs.” He stated that some former members of CPC were willing to testify, but “no

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members presently worshipping at Coquina were willing to testify against TE Ganzel which suggested that the complaints alleged by others in the past were not apparent or current patterns members observed.” He further reported that he had found himself unable to “follow through on the duties of prosecutor” so an indictment was never prepared. This fact had been communicated to all members of the Commission.

TEs Burguet and Cavalli reported on a meeting with TE Ganzel and his wife on November 2. At that meeting the Ganzels shared a perspective on these matters that they believed TEs Thompson and Holliday had not heard or were unwilling to hear.

The Commission voted to have TE Burguet make the following report at the next meeting of CFP:

The commission has reviewed the documentation provided by the Minister and His Work Committee and spoken to the relevant parties involved. Upon further examination we have concluded that there are no chargeable offenses against TE Ganzel to act on. There are no current members of Coquina willing to testify in a trial and we believe the charges of former disgruntled members stem primarily from a decision made by the church leadership apart from TE Ganzel which certain people have chosen not to put behind them. There is an issue the Commission addressed with TE Ganzel that we believe warrants an explanation to Presbytery which our brother will speak to in a moment. Otherwise, the commission moves to absolve TE Ganzel from any presumption of guilt and to close the matter.

11/13/18 CFP meets and adopts the recommendation of the Judicial Commission. The minutes state:

TE Richard Burguet reported that after a thorough investigation, the Commission concluded there were no chargeable offenses and that it absolves Neal of any presumption of guilt and closes the matter. Neal addressed the Presbytery to express

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his repentance over matters related to his responsibilities to Presbytery and to asked [*sic*] Presbytery for forgiveness. M/S/C that the Commission's actions be approved, that the Commission express Presbytery's acceptance of Neal's repentance and express on its behalf our forgiveness and that the Commission be dismissed with thanks.

Although the actual text of the Commission's report is not included in the minutes of CFP, TE Cavalli later affirmed he read the recommendation to CFP in exactly the form it was approved by the Judicial Commission.

11/15/18 TE Cavalli sent e-mails to TEs Ganzel and Burguet. They stated TE Cavalli spoke to TE Thompson and the latter said he had communicated to the Yangs he had heard from TE Burguet that "no one was willing to testify in a trial." Apparently the Yangs were very upset about the decision and the characterization that no one was willing to testify when they and other former members had said they were willing. TE Cavalli also e-mailed Mr. Yang to tell him that what the Commission had said was that no current members of CPC, including Mr. Yang's in-laws, were willing to testify and that no current members "communicated to me that they thought Neal should go."

11/19/18 TE Cavalli sent a lengthy document to TEs Ganzel and Burguet. He stated he did not remember whether the Commission had determined how the former members would be informed of the decision, but that he had assumed he and TE Burguet would take the lead in that. He noted the Yangs were upset about the decision, and this was heightened by the statement that no one was willing to testify. He believed the Yangs would file a complaint against the decision. TE Cavalli explained the process by which he had contacted potential witnesses and why those individuals had expected that a trial would be conducted.

He wrote, "Here's the difference between the committee and the commission. The committee believes there is a strong presumption of guilt in your case. They believe you definitely

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sinned against these people. The commission on the other hand recognizes that you could have conducted yourself more sensitively at times, but we do not believe there are chargeable offenses against you that could potentially warrant your dismissal. The fact that there are no ‘chargeable offenses’ in our opinion does not mean that there wasn’t offense taken particularly in relationship to [two women].”

TE Cavalli advised TE Ganzel that “the only way to ensure this case is not taken up again is if you are willing to do the hard but necessary thing and speak face to face with those who have presented written testimony against you.” The individuals in question were five former members of CPC and their “testimony” was their written statements to MHWC. TE Cavalli concluded, “Here is the reality Neal. If you are not willing to have a face to face with the people mentioned above under set conditions, it is possible or even likely the case will be taken up by a different commission who will bring it to trial and may rule against you, forcing you out of the church.”

01/07/19 MHWC filed a Complaint against CFP’s action of 11/13/19 stating, “We believe this decision has left the Central Florida Presbytery open to an appeal to the General Assembly by those who brought the charges in this case.” While styling their submission as a complaint and quoting *BCO* 43, they cite *BCO* 42-3 as their grounds and report, “The irregularity in this case is that those who actually brought charges against TE Ganzel were not given opportunity to present their case to the Judicial Commission. In this, receiving proper evidence for the charges was denied and a decision was made in this case before all the testimony was taken, which seems to manifest prejudice in the case.” MHWC advised it would be better to have CFP take up the matter again rather “than having those who brought charges take this to the General Assembly.”

01/22/19 CFP took up the Complaint. The executive session minutes record that TEs Burguet and Cavalli (via e-mail) agreed with the Complainant. CFP acted on the Complaint as follows:

MSC that the previous findings of the commission (that TE Ganzel was not guilty of allegations) be

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ruled out of order and a new commission formed to investigate the allegations. The members of the previous commission were tasked to turn over all relevant notes and correspondence in this case to the convener of the new commission.

A new commission, consisting of three TEs and four REs was then appointed.

Spring '19 TE Thompson sent an “AMICUS BRIEF transmitting documents to the Second Commission.” This packet included a summary of the actions of MHWC and CFP to this point, summaries of the meetings with TE Ganzel and with former members, written statements from four former members of CPC, and various communications between disaffected members and Session from 2008-2009. In this “Brief,” TE Thompson also argued the allegations of the former members were consistent with what CFP experienced when TE Ganzel was their Stated Clerk. The report stated the group of former members was willing to “go through the difficulty of a trial because they are convinced justice requires it, the reputation of Christ requires it, and the future welfare of Coquina PCA requires the removal of a pastor they believe has harmed the church and will continue to harm it by misusing the authority invested in a pastor.” The report concluded by stating MHWC believes the Session of CPC should resign, the Church should seek to return to mission status, and the Church should be placed under the guidance of CFP’s MNA Committee for guidance in re-starting the church. [Note: The materials contained in this packet are the same as those in the packet referenced at 07/25/18.]

05/24/19 The Second Judicial Commission issued an indictment to TE Ganzel. The indictment summarized the history of the matter and then laid out the same four basic charges as had been recommended by MHWC and adopted by the First Commission (see 09/20/18). The charges set forth by the Second Commission differed from those of the First Commission in that the new charges included Scripture references to support the first three charges, a listing of six “subcharges” under the first charge, and the specification in

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charge 4 that vows 6 and 7 were specifically in view. The Commission cited TE Ganzel to appear on June 29 to answer the charges.

06/20/19 TE Ganzel wrote to the Second Judicial Commission. He made two requests. First, that the date for his plea be postponed on the grounds that the indictment was improperly drawn in that it lacked specifics “as to time, place, circumstances and witnesses.” TE Ganzel argued this lack of specificity meant he could not enter a plea. His second request was that the charges be dismissed on the grounds they violated *BCO 32-20* because the offenses alleged had occurred well over one year prior to the commencement of process. Indeed, TE Ganzel noted none of those supporting the charges had been involved in CPC for over three years. He cited *SJC 2016-05 (TE Thomas Troxell v. The Presbytery of the Southwest)* in support of his request.

06/22/19 TE Chuck Debardeleben, the Moderator of the Second Commission, responded to TE Ganzel, presumably at the direction of the Commission. He denied the request for postponement. He responded to TE Ganzel’s *BCO 32-20* concern by stating: a) “this case has not been characterized as a case of scandal;” and b) that the one year limitation has not been violated because the “complaints” made by the former members were given to MHWC in January of 2018 and that body immediately began an investigation. He stated that TE Ganzel had pled not guilty in a 06/10/19 e-mail to TE Debardeleben. [Note: this e-mail is not in the Record.] Finally, he asserted: “It is only reasonable that the charges fit the nature of the offense. In this case, the charges result from alleged behavior over an extended period of time. However, in the spirit of trying to be as specific as possible we have added at least one specification to each of the four major charges.” There followed a list of witnesses to the charges, a request for a list of defense witnesses, and an “ADDENDUM TO THE INDICTMENT OF MAY 24, 2019.” This addendum listed years or portions of years within which offenses were alleged to have occurred, noted the nature of the offenses, and listed witnesses who would testify to each alleged offense. Almost all of the alleged offenses were listed as having occurred

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sometime between 2001 and 2014. The exceptions were two specifications under “Failure to pursue reconciliation.” One dealt with how TE Ganzel dealt with members “he has hurt.” That specification was listed as “Summer 2006-ongoing.” The other was tied to TE Ganzel’s failure to heed the Fall 2018 advice of the First Judicial Commission that he pursue reconciliation with certain families. Note that, for some reason, the Addendum does not include the 6th subcharge under Specification 1.

- 06/24/19 TE Ganzel sent a second request for dismissal, which e-mail was not received until 07/01/19. TE Ganzel reiterated his contention that the charges were barred under *BCO* 32-20, quoting Ramsey in support of his contention. He argued the witnesses waited over three years after they left CPC before they contacted MHWC and that, having left CPC, they are not able to report on current conditions there. He also contended the revised indictment was still not sufficiently precise.
- 07/01/19 TE DeBardeleben responded on behalf of the Commission. He repeated that the charges were timely since this was a continuation of events following the communication from January 2018. He stated “the charges are not based on a single event of scandal. They flow from *BCO* 32-1 [*sic*].” He then quoted *BCO* 31-2 and stated, “As you are aware, it was on that basis that the Commission indicted you. It is based on your Christian character.” He again denied TE Ganzel’s requests that he be allowed to withdraw his not guilty plea and that the charges be dismissed, stating the trial would take place on July 6.
- 07/02/19 TE Ganzel responded, renewing his objections that the charges were out of order because they violated the one-year limitation of *BCO* 32-20 and that the indictment lacked required specificity.
- 07/06/19 The trial was held, lasting from 9:07 a.m. to 6:55 p.m. The indictment was read. TE Ganzel pled not guilty. He requested that his objections, as summarized above, be included in the Record. Nine witnesses testified for the prosecution, one of whom left CPC in 2006, two in 2009, five in 2014, and one in 2015. Eight witnesses testified for the defense, including TE

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Ganzel's wife, one former and three current members of CPC's Session, the church secretary, and two other current members of CPC.

The Commission deliberated and found TE Ganzel guilty of five of the six subcharges under Specification 1, not guilty of Specification 2, and guilty of Specifications 3 and 4. The Commission concluded, "We hereby admonish you to pursue reconciliation in the presence of the Minister and His Work Committee of Central Florida Presbytery by the January meeting of Presbytery 2020 or sooner, specifically: [there followed the names of nine individuals, eight of whom had been witnesses for the prosecution]." When announcing its decision to TE Ganzel the Commission used language that seems to suggest they actually administered the censure ("We hereby admonish you to pursue reconciliation....")

- 07/10/19 The Second Commission met by conference call "to discuss the previously administered censure of admonition after being informed our censure could be changed at any time prior to the action of Presbytery." "It was M/S/C to change the censure of TE Ganzel to Definite Suspension of Office for Six Months, in accordance with *BCO* 36-4."
- 07/13/19 The Second Commission met by conference call with TE Ganzel to inform him of the change in censure. TE Ganzel stated he had attempted one reconciliation meeting but had been rebuffed. It was noted he had not included a member of MHWC as instructed.
- 08/13/19 The Second Commission reported to CFP. They summarized the proceedings in Presbytery and the actions of the Commission, including the change in the censure. Note that the judgment portion of the report is not in exactly the same form as what was acted on by the Commission after the trial. [Compare the minutes of the trial, the transcript of the trial, and the Commission's report. Beyond changes in order and wording, the names of the members with whom TE Ganzel was to seek reconciliation were omitted and the date by which this was to be accomplished was changed to January 2021.] Their report further stated that TE Ganzel "knew the original

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censure had been out of order, but did not say anything.” The Commission reported their reasons for the more stringent censure were: the length of time over which the offenses occurred; TE Ganzel’s “persistent refusal to humble himself, repent, and seek reconciliation;” their belief that without an “admonition plus censure” TE Ganzel would continue to refuse to be reconciled; a concern that reconciliation efforts could appear insincere; a belief that the new censure was proportionate to the offenses; and a recognition of the seriousness of the offenses while also recognizing the impact on a “struggling congregation.” The Commission reported it was unanimous in its findings.

- 08/13/19 CFP approved the report of the Judicial Commission. There is, however, no requirement in the censure that TE Ganzel meet with offended individuals. It is not clear whether that requirement was dropped when the Commission changed its recommended censure, or it was not acted on by CFP, or it was omitted from its minutes. There is also nothing in the minutes showing the censure was actually administered per *BCO* 36-4.
- 08/22/19 TE Ganzel appealed his conviction and censure to the General Assembly.
- Oct-Nov '19 The parties agreed to an expedited schedule for the submission of briefs and the hearing. Both parties filed briefs. Appellee asked that if the SJC denies TE Ganzel’s Appeal it follow *BCO* 42-9 and “render the decision that should have been rendered” by indefinitely suspending TE Ganzel from office.
- 11/21/19 The hearing is held via GoToMeeting before a panel consisting of RE Neikirk (Chairman), TE Lucas (Secretary), TE Ross, TE Bankson (alt), and RE Terrell (alt.) TE Ganzel was represented by TE Dominic Aquila. CFP was represented by TE Dan Thompson, who had with him RE Bud Leonard (a member of the Second Commission and the Prosecutor) and TE Don Mountan (Clerk of CFP).

II. STATEMENT OF THE ISSUES

1. Shall this specification of error be sustained: That CFP erred in prosecuting the alleged offense by failing to acknowledge that it was debarred under *BCO 32-20* from prosecuting the case since the statute of limitations for instituting judicial process in this instance had expired?
2. Shall this specification of error be sustained: That CFP erred in prosecuting this case by failing to follow required constitutional steps for conducting judicial process?

III. JUDGMENT

1. Yes, with regard to Specifications 1, 2, and 4 of the indictment.
No, with regard to Specification 3.
2. Yes.

IV. REASONING AND OPINION

Judgment 1

Appellant asserts that *BCO 32-20* (“Process, in the case of scandal, shall commence within the space of one year after the offense was committed, unless it has recently become flagrant.”) bars a court from instituting process against alleged offenses that occurred more than one year prior to the instituting of process. In support of this claim he cites F.P. Ramsey, “if the Church neglects to commence process against scandal (which is any flagrant public offence of [*sic*] practice bringing disgrace on the Church) within a year, she is debarred from thereafter doing it. This is not to shield the offender, but to incite to the prompt prosecution of such offences....” Appellant further points to SJC Case 2016-05 (*TE Thomas Troxell vs. The Presbytery of the Southwest*) wherein the SJC upheld the Complaint on the grounds that, “Although each of these reports contains findings regarding the conduct of the TE, there is nothing in the record of the case that would indicate that any of the findings could be considered to have ‘recently become flagrant’ in the twelve (12) months preceding the September 2015 institution of process.” In fact, in the *Troxell* case the most recent report was for an offense that occurred fifteen (15) months prior to the initiation of process.

Appellee argues that the requirement of *BCO* 32-20 was met in this case. He argues, first, that the language “the recent discovery of the church membership of the individual shall be considered as equivalent to the offense itself recently having become flagrant” suggests that a court can deal with allegations dating back several years if they have recently come to the court as “new information.” He asserts this principle fits the facts of this case in that allegations of older offenses first came to CFP’s attention via a letter to MHWC in January of 2018. Appellee argues that these matters did not previously come to the attention of CFP because the 2009 letter was apparently seen only by the Chairman of MHWC. Thus, the Presbytery was not aware of the allegations and, it, therefore, did not take any action regarding them. He further asserts that the allegations received in 2018 were similar to, but also additional to, the earlier allegations, and that it was in the communications between the “concerned former members” and MHWC that the offenses actually became flagrant. He argues that “become flagrant” can mean “has become more egregious,” but that it can also mean “that an unknown pattern of offense has suddenly become known to those who are responsible to deal with the alleged offender.” Finally, Appellee contends that *Troxell* does not fit this case. In *Troxell* the Presbytery was made aware of the allegations and made a formal decision to delay instituting process. Here, the Presbytery took no such action, and, indeed, the Presbytery, as a court, was not even aware of the allegations.

We agree that in the normal pattern *BCO* 32-20 bars a court from prosecuting an alleged offense that occurred more than one year previously. The honor of Christ, the protection of His Church, the cause of justice, and the concern that memories could fade and testimony become unreliable, all support that conclusion. At the same time, we do recognize that there may be situations in which a court could not reasonably have known about an alleged offense until long after it occurred (*e.g.*, cases of child abuse or embezzlement). In such cases we would have sympathy for Appellee’s broader reading of *BCO* 32-20 and would conclude that the *Troxell* precedent would not apply. Given, however, the clear language and logic of *BCO* 32-20, any effort by a court to avail itself of a broader reading of the time limits must, of necessity, be accompanied by a clear showing as to why the court could not have known of the alleged offense(s).

In the current case, virtually all of the alleged offenses occurred prior to 2015. None of the witnesses who testified for the prosecution were members of CPC after 2015, and most left before that. The events about which they testified occurred well over a year before the Yangs’ January 2018 letter to

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MHWC. Further, it is significant that no current members of CPC were willing to testify for the prosecution and those who testified for the defense were unanimous in their assertions that the behaviors alleged by the prosecution did not fit the patterns they saw in TE Ganzel. Except as noted below, there is no allegation of any sinful behavior on the part of TE Ganzel in the twelve (12) months prior to the January 2018 letter. Thus, absent some extraordinary finding that the Presbytery could not reasonably have known about these older offenses, the time limit set forth in *BCO 32-20* for instituting process must control.

Nothing in the Record or arguments of the parties shows that there were extraordinary circumstances such that that Presbytery could not have known about the alleged offenses. Indeed, there is evidence in the Record that indicates that members of Presbytery and MHWC were aware of allegations against TE Ganzel long before January 2018. For example, in 2009 the MHWC received materials from members of CPC containing allegations against TE Ganzel. The Chairman of MHWC followed up by speaking with at least two leaders of that group. The Chairman then told the members “they didn’t have a case against Neal.” Appellee characterizes this as one man’s actions as opposed to an action of Presbytery. While we agree this is not Presbytery acting, we do not agree this meant that the matter had not been brought to the attention of Presbytery by way of one of its officials. The then Chairman of the MHWC asserts the Committee received the materials. The Record is not clear as to how the Committee handled those materials, but it is clear the Chairman followed up with the concerned individuals.

There is further evidence that these concerns cannot be characterized as being unknown to members of CFP. First, in their March 17, 2010 letter to Session, the two men who were leaders of the group who sent the materials to MHWC in October 2009, and who were both ruling elders, although not currently serving on the CPC Session, stated that they had made a determination not to take their concerns “to the whole church” so as to try to preserve the peace of the church. They then go on to say that they sent their letter to MHWC after having been advised to do so by four pastors. This certainly qualifies as making what might have been private concerns more broadly known, and it certainly indicates that other members of Presbytery were aware of the situation in 2009, at least from conversations with these two men. In addition, Appellee, himself, argued that Presbytery had some awareness of the alleged pattern of behavior when he stated in his “Amicus Brief:”

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As to whether or not the accusations seem out of character for what we in Central Florida Presbytery have experienced with Neal, I suggest we have evidence to substantiate the claim that Neal does not admit to doing wrong or seek forgiveness. In his role as Stated Clerk of Central Florida Presbytery, Neal failed to honor his commitment and failed to be completely honest with Presbytery.

If this is the same “pattern of behavior” as was developed in the indictment, then CFP was certainly well aware of the alleged behavior prior to January of 2018.

We also note that MHWC ‘s own actions suggest that the Committee understood that it could handle such allegations without necessarily requiring an action by Presbytery. At its May 8 meeting the Committee determined to offer TE Ganzel three choices: 1) confess so that Presbytery could deal with the matter as a case without process; 2) deny the charges, at which point there would be a trial; or 3) announce his retirement no later than December 2018, in which case those raising the allegations would likely not pursue them to trial. Note that had TE Ganzel accepted the third option it is not clear that Presbytery would have ever known about the allegations, and there certainly would not have been the same level of effort to persuade TE Ganzel of his guilt and his need to reconcile with those offended. Would that have meant that if TE Ganzel had accepted “option 3” someone could come eight years later with the same concerns and allege that they were properly before Presbytery because Presbytery had not acted on the allegations previously?

In sum, *BCO 32-20* exists to protect the honor of Christ, the cause of His Church, and those alleged to be offenders by mandating that prosecution of matters of scandal not be delayed beyond one year. In this case, almost all of the alleged offenses occurred well over a year prior to the institution of process against TE Ganzel. The delay in instituting process came a) from those offended deciding not to pursue the matter to “the whole church;” b) a chairman (and maybe a committee) of Presbytery receiving and investigating the allegations and acting, so far as can be seen from the Record, to conclude there were not chargeable offenses; and c) members of Presbytery who were aware of the concerns from conversations with concerned members or observations of TE Ganzel’s work as Stated Clerk not pursuing process. Thus, except as noted below, CFP was in violation of *BCO 32-20* when it instituted process against TE Ganzel in 2018. This error was aggravated when the prosecution relied entirely on witnesses who could not comment on TE Ganzel’s current patterns of behavior as pastor and leader of CPC, and

when, as is asserted in the Record, no current member of CPC was willing to bring charges or testify.

There is one exception to the above conclusion. The charge of "Failure to pursue reconciliation with those you knew had been wounded by decisions you led, in violation of Matthew 5:23-24" was characterized as an on-going sin which continues. This particular charge, therefore, did not violate the limitations of *BCO* 32-20. As such, CFP had the right to pursue this charge. Thus, following the principle of *BCO* 39-3.2 we would, absent the concerns raised under Issue 2 below, be obliged to defer to CFP's findings on that charge.

For these reasons, this specification of error is sustained as it applies to Specifications 1, 2, and 4 of the Indictment. It is not sustained as it applies to Specification 3.

Judgment 2

There were a number of missteps in conducting disciplinary process in the various investigatory committees and Judicial Commissions appointed by CFP.

Mistake #1: Once MHWC investigated and concluded there was a strong presumption of guilt, "the court shall institute process" (*BCO* 31-2). According to the Record of the Case, CFP did so, establishing a Judicial Commission to try the Case. The Judicial Commission then met and adopted the recommended charges and appointed a prosecutor.

However, the Judicial Commission did not actually write the indictment or cite the accused to appear (per *BCO* 32-3). The prosecutor began interviewing witnesses, but never drew up the indictment; he then withdrew and no one else on the commission would take up the prosecutor role. In the meantime, the prosecutor (with another member of the commission) interviewed the Appellant and concluded there was not in fact "anything that would warrant a chargeable offense," even though the commission had already adopted the charges of the investigating committee as their own and even though CFP had instituted process by appointing the Judicial Commission.

And so, the Judicial Commission reversed field, and without trying the case or even interviewing all of the witnesses (though they claimed to have done

a “thorough investigation”), voted to “absolve TE Ganzel from any presumption of guilt and to close the matter.” This statement was read at the November 13, 2018 CFP meeting, and CFP voted to approve the Commission’s actions, making their actions final (*BCO* 15-3).

In this process, the Judicial Commission’s mistakes included not writing the indictment for the charges already approved and not citing the accused to appear to plead one way or another (*BCO* 32-3), as well as not interviewing all of the witnesses before concluding they did not want to try the case (while claiming to have done a thorough investigation) (*BCO* 40-3). If the Judicial Commission believed that charges should not have been brought, its only recourse at that point would have been to return to CFP and to ask for relief from either prosecuting the charges or carrying out the case.

Mistake #2: In the Complaint against the actions of CFP, the members of MHWC noted an irregularity in the proceedings of the Presbytery, citing *BCO* 42-3. However, *BCO* 42 deals with appeals; and *BCO* 42-1 notes that “an appeal cannot be made to any other court other than the next higher, except with its consent.” Hence, the basis upon which the Presbytery took up the Complaint was the wrong basis. Further, no provision in the *BCO* allows a committee, as a committee, to file a complaint.

That said, the members of the MHWC, as individuals, had the right to complain against the action of Presbytery (*BCO* 43-2) and had the right to cite the irregularities of the Judicial Commission’s proceedings as a basis (*BCO* 40-3). The irregularity should have been the failure to draw up the indictment and cite the accused to appear once CFP determined there was a strong presumption of guilt (*BCO* 31-2; 32-3). Unfortunately, the basis upon which Presbytery sustained the Complaint—*BCO* 42-3—was incorrect, and CFP should have denied the Complaint on that basis.

By sustaining the Complaint on faulty bases, CFP exposed the Appellant to fundamental unfairness in the use of process.

Mistake #3: In this instance, CFP sustained the Complaint (with the support of the two key members of the First Judicial Commission, at least one of whom agreed by email). And so, CFP established a Second Judicial Commission. But was it within CFP’s power to undo its absolution and closing of the Case when those decisions were made in response to a Judicial Commission acting on charges (*BCO* 15-1, 3)? Essentially what CFP had decided to do with its first commission was to determine that “the matter complained of amounts to no more than such acts of infirmity as may be

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amended, so that that little or nothing remains to hinder the minister's usefulness" (*BCO* 34-6). Granting the fact that this finding did not actually come as a result of a trial, that was what CFP concluded when it "absolved" TE Ganzel and closed the matter. How then can that court undo that finding on complaint? Does that subject the accused to a kind of double-jeopardy?

Mistake #4: While the initial indictment was not improperly drawn in terms of charges, the form of the first indictment was not a properly drawn indictment because it did not include "times, places, and circumstances" or witnesses and evidence (*BCO* 32-5). Once the Judicial Commission prepared the "addendum to the indictment," they actually produced a properly drawn indictment. At that point, the time requirements in the Rules of Discipline should have started (*BCO* 32-3, 7). By not following the time requirements at that point, the Judicial Commission failed to allow the Appellant to prepare his defense after "reasonable notice" (*BCO* 32-7, 8).

Mistake #5: The Judicial Commission voted to sustain the majority of the charges against the accused. They then "administered" the censure of admonition and gave further instructions to the accused to be reconciled to his former church members (*BCO* 36-3). The Commission's action of "administering" the sentence violates *BCO* 15-3, in that, until Presbytery acts to approve the Judgment of the Commission, there is no basis to impose a censure. Once they were informed that such instruction was not allowed under the "previously administered censure of admonition," they changed their censure to definite suspension from office for six months (*BCO* 36-4). However, definite suspension is to be used when "the delinquent has given satisfaction to the court," that is, he has demonstrated repentance (*BCO* 30-3). The Commission was convinced that the accused was not repentant; hence, it applied the wrong censure twice. Yet it would not be appropriate for the SJC to render, as CFP asks, a harsher sentence than CFP twice tried to render to the accused (*BCO* 42-9).

Mistake #6: Throughout the process leading up to the trial, CFP and its representatives were unclear as to whether they were dealing with charges filed by the former members or with a request for a *BCO* 31-2 investigation. CFP's records go back and forth in this regard. Each of those paths requires a different process. If the matter involved charges that were presented, then there must be a formal charge under *BCO* 32-2. We do not find that in the Record, but Presbytery and its agents often refer to such charges. If the letter(s) from former members constituted a request for a *BCO* 31-2 investigation, then Presbytery has broad latitude as to how to conduct that investigation which could, conceivably be satisfied without calling all the

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former members to testify. Presbytery’s failure to be clear as to which path it was following confused the process, allowing Presbytery to pursue broad allegations as might be appropriate in a *BCO* 31-2 investigation, while also asserting that those bringing the allegations had a right to testify as would be true only if those individuals had filed formal charges. That confusion certainly prejudiced the outcome of the Case.

As a statement about the entirety of the process, the SJC notes that CFP’s record-keeping—in its two Judicial Commissions as well as in its own minutes—contributed to the faulty process because it inevitably made it difficult for the accused to defend himself adequately. Examples of this included lack of clarity as to whether the first Judicial Commission was established as a committee or commission (see 8/14/18); lack of clarity as to who was to communicate with the former members (see 11/15/18; 11/19/18); differences in the way the judgments of the commissions were recorded at various places the minutes (see 8/13/19); allowing a commission to rescind a non-rescindable motion, in that the effect of the motion had already been accomplished (see 8/13/19); and ruling a commission out of order, contrary to proper order (see 1/22/19).

All of these constitutional missteps reflect a disciplinary process that was significantly flawed and prejudicial against the Appellant. Hence, we conclude that CFP erred in its prosecution of the Case, and the SJC sustains this specification of error. We further reverse the whole of the censure against the Appellant and thus conclude the matter.

The Summary of the Facts and the Reasoning for Judgment 1 were written by RE Neikirk. The Reasoning for Judgment 2 was written by TE Lucas. All Panel members provided input before any of these sections were written, and all contributed to revisions of those sections.

After adopting amendments, the SJC approved the above Decision by a vote of 21-0, with three absent.

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

Concurring Opinion

Case 2019-08: Appeal of TE Neal Ganzel v. Central Florida Presbytery
RE Howie Donahoe

I agree this Appeal should be sustained, because I agree with the SJC's conclusion that it involved "a disciplinary process that was significantly flawed and prejudicial against the Appellant." But I do not support the Appellant's specification of error regarding the first sentence of *BCO* 32-20, nor some of the Decision's Reasoning pertaining to this sentence.

BCO 32-20. Process, in case of scandal, shall commence within the space of one year after the offense was committed, unless it has recently become flagrant.

According to that sentence, the date of an alleged offense is not material *unless* the offense is a "case of scandal." If it's not a case of scandal, the first sentence of *BCO* 32-20 doesn't apply. So, what constitutes a case of scandal?

The wording of *BCO* 32-20 is 140 years old, dating back to the PCUS Book of 1879. In his 1898 *Exposition of the Book of Church Order*, F.P Ramsay wrote:

The principle is that, if the Church neglects to commence process against scandal (which is any flagrant public offence or practice bringing disgrace on the Church) within a year, she is debarred from thereafter doing it. This is not to shield the offender, but to incite to the prompt prosecution of such offences. Offences not so serious or scandalous the Church may bear with the longer while seeking to prevent scandal; but for no consideration is the Church to tolerate such offences as are scandalous. (<http://pcahistory.org/bco/rod/32/20.html>)

Properly understood, the first sentence of *BCO* 32-20 does not shelter an offender *in any way*, but rather, it is simply meant to *spur the court* to prosecute a *particular* offense - something that's *actually* bringing public disgrace on the Church (i.e., "a case of scandal"). For an offense to be a "case of scandal" it would need to be an offense that is known to the broader public and, unless adjudicated promptly, would bring public disgrace on the Church. And thanks to technology, an offense could become a case of broad, public scandal *much* more quickly in 2020 than in 1879.

Thus, I think the following excerpts from the SJC's Reasoning are overstated. (Emphasis added below.)

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We agree that *in the normal pattern BCO 32-20* bars a court from prosecuting an alleged offense that occurred more than one year previously.

...Given, however, the clear language and logic of *BCO 32-20*, any effort by a court to avail itself of a broader reading of the time limits must, of necessity, be accompanied by a *clear showing as to why the court could not have known* of the alleged offense(s)....

...Thus, absent some *extraordinary finding* that the Presbytery could not reasonably have known about these older offenses, the time limit set forth in *BCO 32-20* for instituting process *must control*.

But the first sentence of *BCO 32-20* does not require any "extraordinary finding." For example, if a person alleges a PCA member abused them two years ago, but it was not a case of public scandal (i.e., not broadly known to the public), the first sentence of *BCO 32-20* would not apply and the alleged offender could be prosecuted - without any "extraordinary finding." Unless the matter was a case of public scandal, the first sentence of *BCO 32-20* wouldn't pertain - even if the offense occurred a dozen years ago, and regardless of when the court became aware of the allegations.

For several reasons, it would be helpful for the PCA to consider revising *BCO 32-20*. First, as a friend recently observed, if the cause of Christ is made scandalous by the Church's neglect of timely discipline in a case of scandal, how would disallowing prosecution on day 366 repair the matter? The scandal continues, unabated. Second, it would be difficult to codify a time-requirement based on when a court "learns" of an alleged offense. Granted, in a case of scandal, the Church learns of it when the broader public learns of it (if not earlier). But it would be difficult to determine when a presbytery, *as a body*, becomes aware of a private offense, unless the matter is raised at a meeting or to a commission. Third, (referencing the SJC's Reasoning), it is unclear how a prosecuting court would make a "clear showing as to why the court *could not* have known of the alleged offense." It would be relatively easy for a defendant or appellant to argue several ways for how the court theoretically could have known of an offense (better pastoral care, more thorough work by a presbytery committee, etc.). Fourth, if my reasoning is correct, it means there is no "statute of limitations" whatsoever in the *BCO*.

/s/ RE Howie Donahoe