



Her Ballot Didn't Count. She Faces 5 Years in Prison for Casting It.

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On Election Day 2016, Crystal Mason went to vote after her mother insisted that she make her voice heard in the presidential election. When her name didn't appear on official voting rolls at her polling place in Tarrant County, Texas, she filled out a provisional ballot, not thinking anything of it.

Mason's ballot was never officially counted or tallied because she was ineligible to vote: She was on supervised release after serving five years for tax fraud. Nonetheless, that ballot has wrangled her into a lengthy appeals process after a state district court sentenced her to five years in prison for illegal voting, as she was a felon on probation when she cast her ballot.

Mason maintains that she didn't know she was ineligible to vote.

"This is very overwhelming, waking up every day knowing that prison is on the line, trying to maintain a smile on your face in front of your kids, and you don't know the outcome," Mason said in a phone interview. "Your future is in someone else's hands because of a simple error."

Her case is headed for the Texas Court of Criminal Appeals, the highest state court for criminal cases, whose judges said on Wednesday that they had decided to hear it. Mason unsuccessfully asked for a new trial and lost her case in an appellate court.

The new appeal is the last chance for Mason, 46, who is out on appeal bond, to avoid prison. If her case advances to the federal court system, Mason will have to appeal from a cell.

Alison Grinter, one of Mason's lawyers, said the federal government made it clear in the Help America Vote Act of 2002 that provisional ballots should not be criminalized because they represent "an offer to vote — they're not a vote in themselves."

She said that Mason didn't know she was ineligible and was still convicted, and that Texas' election laws stipulate that a person must knowingly vote illegally to be guilty of a crime.

"Crystal never wanted to be a voting rights advocate," Grinter said Thursday. "She didn't want to be a political football here. She just wanted to be a mom and a grandmother and put her life on track, but she's really taken it and run with it, and she refuses to be intimidated."

A Tarrant County grand jury indicted Mason for a violation of the Texas election laws, a spokesperson for the Tarrant County Criminal District Attorney's Office said in a statement.

“Our office offered Mason the option of probation in this case, which she refused,” the statement said. “Mason waived a trial by jury and chose to proceed to trial before the trial judge.”

In March 2018, Judge Ruben Gonzalez of Texas’ 432nd District Court found Mason guilty of a second-degree felony for illegally voting.

According to Tommy Buser-Clancy, a lawyer at the American Civil Liberties Union of Texas, Mason should never have been convicted. If there is ambiguity in someone’s eligibility, the provisional ballot system is there to account for it, he said.

“That’s very scary,” he said of Mason’s conviction, “and it guts the entire purpose of the provisional ballot system.”

If her eligibility was incorrect, he said, “that should be the end of the story.”

The appeals court’s decision could set an important precedent for the future of how the public interprets voting, especially if they’re confused, according to Joseph Fishkin, a law professor at the University of Texas at Austin. He said he hoped that the court establishes a principle not to “criminalize people for being confused about the complexities of the interaction between the criminal law and election law.”

Fishkin said that he and many other law experts believe that if the court upholds Mason’s conviction, the state will be in direct conflict with the federal Help America Vote Act.

“It’s very important for basic fairness and for participation around the country that people are confident that when they act in good faith and aren’t trying to pull a fast one, that you’re not going to start charging them for crimes,” Fishkin said Thursday. “If this case stands, that’s obviously concerning, because a lot of people who may not understand the details of their status or who is allowed to vote will be deterred from voting.”

Across the United States, 5.2 million Americans cannot vote because of a prior felony conviction, according to the Sentencing Project, a research organization dedicated to crime and punishment.

The office of the Texas attorney general, Ken Paxton, said that 531 election fraud offenses have been prosecuted since 2004. The outcomes of those cases were not immediately available. At least 72% of Paxton’s voter fraud cases have targeted people of color, according to The Houston Chronicle.

Mason’s cause has received support from the Cato Institute, a libertarian think tank. Clark Neily, a senior vice president for criminal justice at the institute, said the case represented an example of excessive criminalization.

“It’s putting people in a position where they can commit a criminal offense without even knowing that they’re in violation of any law,” he said.

Celina Stewart, chief counsel at the League of Women Voters, which has filed supporting briefs on Mason’s behalf, said her case sent “a very clear message” that people with felony convictions should be cautious.

“She’s being made an example, and the example is that you don’t want returning citizens, Black people, Black women to vote,” she said. “That’s an egregious narrative, and we have to push back on that, because that’s not how democracy works.”