

The Virgin Islands Consortium

Supreme Court Gives Fired Attorney Partial Victory In Whistleblower Suit Against Governor

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The Supreme Court of the Virgin Islands in an opinion issued on Friday giving Attorney LaVerne Mills-Williams, who was fired by Governor Kenneth Mapp from the Department of Justice, a partial victory when it remanded to the Superior Court Mrs. Mills-Williams's claim that the Whistleblowers Protection Act was violated when she was fired for revealing information to the public as part of a Freedom of Information Act request, which included the governor's credit card expenses.

Mrs. Mills-Williams was hired by Mr. Mapp through the recommendation of the administration's Chief Legal Counsel, Emile Henderson III. Ostensibly, Mr. Mapp wanted to see and possibly block certain expenses from the public's view — in violation of the

Freedom of Information Act — but Mrs. Mills-Williams refused to adhere to the governor's demands, according to local media reports. She was later unceremoniously relieved from her duties at Government House, where she served as special assistant attorney general to the Attorney General of the Virgin Islands, and jounced to and fro to various government departments by the administration.

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According to Virgin Islands law, "An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this territory or the United States to a public body unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action."

The Supreme Court said, "In reaching this decision, we emphasize that the mere fact that an employee was discharged or subject to other adverse job action after filing a lawsuit against his or her employer—without more—will not necessarily trigger liability under the Whistleblowers Protection Act. To hold otherwise would make "a complaint tantamount to a 'get out of jail free card'" that would immunize an employee who may have engaged in misconduct worthy of termination. *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000).

"In this particular case, however, Mills-Williams has pled sufficient facts that—if accepted as true—draw a clear causal link between her being placed on leave at the Department of Justice (which occurred the day after she filed her complaint) and subsequently terminated as an Assistant Attorney General. Significantly, Mills-Williams alleges that Governor Mapp, in his November 13, 2015 press release and in contemporaneous talk radio interviews, stated that he terminated Mills-Williams because of her association with the attorney who filed the complaint on her behalf. This allegation, if it is ultimately substantiated with sufficient proofs, would permit a finder of fact to infer that Mills-Williams was terminated because she retained an attorney to exercise her rights under the Whistleblowers Protection Act."

It added in its conclusion, "While the Superior Court committed no error when it dismissed the whistleblower claims against Knight and Walker and denied leave to raise a whistleblower claim against Henderson, it erred when it dismissed the whistleblower claim against Governor Mapp and the Office of the Governor and denied leave to amend to assert the claim against the Office of the Attorney General. Accordingly, we affirm in part and reverse in part the Superior Court's August 31, 2016 opinion, and remand the case to the Superior Court for further proceedings with respect to the whistleblower claims against Governor Mapp, the Office of the Governor, and—if properly served and found to have legal capacity to be sued—the Office of the Attorney General."

On the matter of defamation, which was levied against the governor by Mrs. Mills-Williams stating that the Mr. Mapp had made damaging comments about her in press releases, the Supreme Court upheld the Superior Court's decision, opining that "the Superior Court rightly determined that absolute immunity for the Governor from liability

for defamation represents the best rule for the Virgin Islands because it is “important that officials of government should be free to exercise their duties unembarrassed by the fear of . . . suits which would consume time and energies which would otherwise be devoted to governmental services and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government.” *Barr v. Matteo*, 360 U.S. 564, 571 (1959). We adopt these findings, and therefore conclude that the Governor of the Virgin Islands is entitled to absolute immunity from defamation for statements made in conjunction with his official duties.”

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