FLORIDA PRISON LEGAL

Perspectives

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Cheap Health Care for South Florida State Prisoners

by Teresa Burns Posey

Health care for prisoners located in all South Florida prisons was tuned over in January to a private company that promises to save the state millions of dollars over the next ten years. The contract has drawn both praise and criticism from some lawmakers. Though if it results in substandard health care for prisoners, as some expect, the only penalty paid will be by prisoners who are disenfranchised and whose suffering can therefore be easily ignored by those who pushed for the privatization.

The administration of Gov. Jeb Bush is praising the contract that puts Prison Health Care Services of Nashville, TN, in charge of providing health care to more than 14,000 prisoners at 13 South Florida prisons. It's claimed that taxpayers will be the real beneficiaries, with Prison Health being able to care for prisoners much cheaper than even the Department of Corrections could.

Some legislators are concerned, in part, because the contract went to Prison Health, which had the lowest bid, tens of millions of dollars lower than its nearest rival bidders. They are concerned that the company will have to take shortcuts that could result in poor health care for prisoners and possibly create hidden costs to taxpayers in the long run from things like prisoner lawsuits. Prison Health is no stranger to claims it provides substandard care to prisoners or prisoner lawsuits.

"It all seems very suspect," said Sen. Frederica Wilson, D-Miami, who sits on legislative committees dealing with criminal justice and corrections issues.

"We know the health care in the prisons already isn't what it should be. There are deaths, and there's almost an epidemic of tuberculosis and hepatitis C and HIV-AIDS. If this company is going to underbid all the others, then I fear we can only expect greater disappointment," Wilson said.

On New Year's Day, Prison Health and several of its subcontractors took over the prison health care after winning the bidding war with the biggest prison health care providers in the $2 billion-a-year industry.

Under the contract, the Department of Corrections (read taxpayers) will pay Prison Health $792 million over 10 years. Wexford Health Sources, which has had the South Florida prison health-care contract since 2001, had bid $884 million to keep the contract. The third bidder, Correctional Medical Services wanted over $1 billion.

Prison Health, a publicly traded company with 25 years of experience in Florida, largely providing health care in county jails, is represented in Tallahassee by an influential lobbying firm headed by Brian Ballard, who has ties to Gov. Bush and several other Republican lawmakers. Department of Correction's Secretary James Crosby's ties to lobbyists seeking the health care contract were scrutinized recently. [See: *FPLP*, Vol. 11, Iss. 5 and 6, pgs. 5-6, "Lobbyist Ties of FDOC Secretary Scrutinized."]

Once legislators forced the Department of Corrections to change the way it was trying to piecemeal

ON THE INSIDE

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out the contract, it was finally let out by competitive bid for the entire contract, and there is no indication that Prison Health's political or insider connections led to it getting the contract. Prison Health just claims it can do the job cheaper, almost $100 million cheaper than the next lowest bid. Which should have raised a red flag, some think.

Wexford officials said they were shocked that Prison Health bid for the contract at such a low amount. They suggested that the contract could be financially risky for Prison Health. Prisoners in these institutions are considered to be among the sickest in the country, disproportionately suffering from health conditions such as HIV-AIDS, hepatitis C, diabetes and hypertension, according to prison health officials.

"We were really surprised they not only bid on the Florida business but bid as low as they did," said Mark Hale, executive vice president and chief operating officer of Wexford, a Pittsburg-based company. "This is truly one of the most risky contracts that any prison health company could enter into."

Prison Health Services will provide basic medical treatment and pharmaceutical services, as well as mental-health, dental and vision care under the contract.

Legislators, including some who support Prison Health getting the contract, promise they will keep a close watch on its performance. Prison Health will need to be watched closely it's felt, in part, because of its dismal track record.

"I'm willing to give them the benefit of the doubt, but past experience doesn't make me overly optimistic," said Sen. Dave Aronberg, D-West Palm Beach, who sits on the Senate's criminal justice committee. One might wonder if he would be willing to give the same benefit of doubt if it were his or his family's health care at risk going with the cheapest medical care.

Prison Health has 110 prison health-care contracts in 37 states. It has had contracts with Volusia and Brevard counties in the past.

Last year *The New York Times* ran an investigative report on the company that found that substandard care contributed to at least 15 prisoner deaths in 11 Florida jails since 1992. The newspaper identified numerous administrative and health-care related problems at correctional facilities under contract with Prison Health Services throughout the country.

Although the paper's investigation questioned Prison Health's performance, it found that overall it did good work and did save taxpayers money. Company officials claim many of the criticisms leveled at the company come from unproven prisoner allegations raised in lawsuits.

"Inmates are one of the most litigious groups in society, and the vast majority of the suits that are filed against PHS are dismissed by the court as baseless before

ever going to trial," said Martha Harbin, a spokeswoman for Prison Health.

[Sources: *Orlando Sentinel*, *The New York Times*, FDOC contract with Prison Health Services.] ■

US Supreme Court Considers DNA Issue in Death Penalty Case

by Joseph Washawitz

The US Supreme Court has finally agreed to review the issue of exonerating DNA evidence in a death penalty case involving an alleged rape and murder. The striking feature of the case, which pits Paul House against Tennessee, is not that this is the first DNA-death penalty case to be heard by the High Court but that the state and federal court systems have allowed the matter to get this far in the judicial process in the first place.

Review by the High Court concerns a very divided US Court of Appeals in which the majority of the Sixth Circuit declined to grant House relief despite the court's finding that he "has been sentenced to death on the basis of a set of facts that now turn out to be false in several significant respects." Initially, however, the conviction appeared to be premised on solid evidence. So much so that the Tennessee and federal courts have persistently affirmed the conviction of guilt and sentence of death.

The Sixth Circuit's opinion described what happened. Carolyn Muncey's body was found concealed in some woods near her home. Semen was found on her clothes. Wounds on her body indicated there had been physical struggle, and medical experts testified that trauma to the head was the cause of death. Later, the victim's blood was found on the blue jeans House had been wearing on the evening of the murder.

House must be guilty of rape and murder, right? Not necessarily. After trial, DNA testing proved that the semen belonged to the victim's husband, Hubert Muncey, not House. Aside from the semen evidence, "there was no physical evidence supporting rape or attempted rape...There was no evidence of forced penetration, the victims clothing was not ripped or removed, and there were no bruises on the victim indicating an attempted rape. The State now seems to concede these facts," the court said.

Okay, so maybe House didn't rape Mrs. Muncey. Maybe he had some other motive to murder her. After all, her blood was found on House's jeans. But there's more to it than that. In a nutshell, House's attorney's demonstrated that the blood found on the jeans was taken from vials of blood drawn from Mrs. Muncey's body many hours after the murder. That is, the blood on the outside of the victim's body had a different decay rate (enzymatic denaturing) than the blood in the vials and on the jeans; yet the blood on the jeans had the same rate of decay as the blood in the vials. Obviously, there had been some evidence tampering.

But there's more. Two witnesses came forward and testified that "Hubert Muncey confessed to accidentally killing his wife." According to Kathy Parker and Penny Letner, Mr. Muncey said that "he smacked her and she fell and hit her head." A third witness testified "that he told her that he was going to get rid of his wife a few months before her death."

One might think that with all of this evidence indicating the foundation of the State's case is shaken, to say the least, any court would be happy to grant a new trial. But such is not the case. Bogged down by corrosive reasoning and hubris-filled rhetoric, courts have been unable to determine whether House should receive a fair trial despite knowing the first trial was fundamentally flawed.

If House is guilty, won't the evidence prove it? It is hard to acknowledge that so many "jurists of reason" would risk executing an innocent man rather than simply order a new trial. The public is left to guess whether the courts have any faith in the very system in which they are an integral part.

It may turn out to be a good thing that the US Supreme Court decided to intervene. According to Nina Morrison, an attorney with the Innocence Project in New York, "This will be the first time the Supreme Court considers the impact of DNA evidence on the constitutional right to a fair trial. The potential implications are significant." House, who has been incarcerated since 1985 and is currently on death row, would probably agree.

The Innocence Project has employed DNA testing to exonerate 172 people since 1989, including 14 from death row. "What we have leaned...is that DNA evidence 10, 20, 30 years later turning out to be much more reliable than eyewitness testimony and more reliable than confessions that are often false," said Peter Neufeld, cofounder of The Innocence Project.

Lawyer Barry Scheck, also a cofounder of The Innocence Project, and Neufeld together filed an amicus curiae (friend of the court) brief with the Supreme Court in the *House* appeal encouraging the court to grant House a new trial. "Whenever postconviction DNA testing proves that a prosecutor's theory of the case was false and proves that certain factual assertions present in the original trial were false, then at a minimum that conviction should not stand and a new jury should be able to hear the truth," said Neufeld.

The general public might find it amazing to learn however that 15 state attorneys general filed amicus curiae briefs urging the Supreme Court to not only deny House relief but also to prevent federal courts from intervening in state criminal cases notwithstanding evidence proving the innocence of those unduly convicted. What's worse is

that federal law supports their position. The Antiterrorism and Effective Death Penalty Act (AEDPA) and Prison Litigation Reform Act (PLRA) both operate to limit access to federal courts with such strict wording that the US Constitution has taken back seat to legislative and procedural law.

There are some who think the House case will not really change anything, like Kent Scheidegger, legal director at Criminal Justice Legal Foundation: "It may be a vehicle for incremental change," he said, "but I don't expect anything ground breaking out of this case."

Mr. Neufeld is a bit more optimistic: "For the first time the entire American public, including the Nine Supreme Court justices, are aware of just how vulnerable our criminal justice system is and how easy it is for innocent people to get wrongly convicted," he stated. "If there is going to be a situation where we are going to go back and give somebody a second trial, then it should be those cases where scientific evidence sheds new light on the question of guilt or innocence."

The Rehnquist court upheld AEDPA and PLRA; let's hope the Roberts court can do the right thing, give the American people fair trials and quit playing lap dog to the corrupt politics pouring from the halls of congress. A decision is expected in the *House* case before the Supreme Court recesses in June.

[Note: The Supreme Court heard oral arguments in *House v. Bell*, case No. 04-8990, on January 11, 2006. The underlying federal appeal court decision is found at *House v. Bell*, 311 F.3d 767 (6th Cir. 2002).]

[Sources: *Federal Reporter; Christian Science Monitor*, January 12, 2006] ■

Rule 3.850 Time Limits: In General and Following Resentencing

by Dana Meranda

Under Rule 3.850 Fla.R.Crim.P. a motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. *Summers v. State*, 747 So.2d 987 (Fla. 5th DCA 1999).

It has been held that this portion of the rule authorizing review of sentences "in excess of the maximum authorized by law" refers to a sentence which is above the legislative maximum for the prescribed crime. *Wahl v. State*, 460 So.2d 579 (Fla. 2d DCA 1984).

Such a claim may be raised at any time pursuant to Rule 3.850 or Rule 3.800(a), depending upon whether an evidentiary hearing is required. *Hinson v. State*, 709 So.2d 629, 630 (Fla. 1st DCA 1998). *Dol v. State*, 30 Fla.L.Weekly D755 (Fla. 3d DCA 3/16/05).

However, despite the "filed at any time" provision of the rule, where the illegal sentence issue requires a factual resolution (i.e. evidentiary hearing) the motion must be filed within the applicable two-year time limitation. *Maynard v. State*, 763 So.2d 480, 481 (Fla. 4th DCA 2000); *Lee v. State*, 754 So.2d 74 (Fla. 4th DCA 2000) (Jail time credit issue); *Houser v. State*, 30 Fla.L.Weekly D1198 (Fla. 2d DCA 5/11/05) (scoresheet errors).

No other motion to vacate, set aside, or correct a sentence may be filed or considered if filed more than 2 years after the judgment and sentence become final in a non-capital case or more than 1 year after the judgment and sentence become final in a capital case in which a death sentence has been imposed.

For purposes of the 2-year time limit under Rule 3.850 the judgment and sentence become final when direct review of the proceedings has concluded.

If a judgment and sentence are appealed, they become final for these purposes upon the issuance of the mandate by the District Court of Appeal. *Beaty v. State*, 701 So.2d 856 (Fla. 1997); *Witt v. State*, 861 So.2d 1292 (Fla. 5th DCA 2004).

On the other hand, *if* the Florida Supreme Court has jurisdiction to review the District Court's decision and review in that court is sought, the judgment and sentence become final upon the conclusion of proceedings in the Supreme Court. *Maxwell v. State*, 888 So.2d 152, 153 (Fla. 5th DCA 2004); *Perkins v. State*, 845 So.2d 273 (Fla. 2d DCA 2003). The Florida Supreme Court generally does not have jurisdiction to review decisions issued without a written opinion (i.e. Per Curium Affirmed), but it may review a "citation PCA," if the citation is to a decision that either is pending review or has been reversed by the Supreme Court. *Id.* at 845 So.2d 274.

Where no direct appeal is taken, the judgment and sentence become final upon the expiration of the 30-day period within which the defendant could file an appeal (Notice of Appeal). *Davis v. State*, 687 So.2d 292 (Fla. 2d DCA 1997); *Black v. State*, 750 So.2d 162 (Fla. 3d DCA 2000).

If a Petition for Writ of Certiorari is filed with the United State Supreme Court, the two-year time period does not begin to run until the writ is finally determined. *Huff v. State*, 569 So.2d 1247, 1250 (Fla. 1990); *Barkett v. State*, 728 So.2d 792 (Fla. 1st DCA 1999).

Rule 3.850(b) provides three (3) exceptions to the 2-year period of limitations. For a summary of this subdivision see *FPLP* Vol. 7, Issue 2, pgs. 9-11, Postconviction Corner, by Loren Rhoton, Esq.

A second or successive motion for postconviction relief can be denied on the ground that it is an abuse of process if there is no reason for failing to raise the issues in the previous motion. *Owen v. Crosby*, 854 So.2d 182, 187 (Fla. 2003).

For controlling issues of timeliness under the mailbox rule, the Florida Supreme Court held that a motion is deemed filed on the date appearing on the

motion's certificate of service. *Thompson v. State*, 761 So.2d 321, 326 (Fla. 2000); *Westly v. State*, 30 Fla.L.Weekly D1449 (Fla. 2d DCA 6/8/05).

Rule 3.050 Fla.R.Crim.P. allows a court "for good cause shown" to extend the two-year deadline for filing a postconviction motion under Rule 3.850. *State v. Boyd*, 846 So.2d 458 (Fla. 2003).

Amendment of Rule 3.850 motions are permitted when made within the limitation period. The Supreme Court determined that when both the original and amended 3.850 motions are filed within the statutory 2-year time limit...it was error not to consider the merits of the new allegations. *Gaskin v. State*, 737 So.2d 509 (Fla. 1999); *Pritchett v. State*, 29 Fla.L.Weekly D2202 (Fla. 2d DCA 2004).

In *Walton v. Dugger*, 634 So.2d 1059, 1062 (Fla. 1993), the defendant was granted 30 days in which to amend a Rule 3.850 motion to permit additional claims or facts discovered as a result of a public records request. And see: *Rozier v. State*, 603 So.2d 120 (Fla. 5th DCA 1994) (not barred from filing relevant supplemental document within reasonable time after 2-year deadline—applying Rule 1.190(e), Fla.R.Civ.P.)

When the trial court orders the correction of a technical defect (i.e. Oath) it will normally specify the time within which to refile, even though it may be beyond the 2-year time limitation. *Jumper v. State*, 30 Fla.L.Weekly D1309 (Fla. 2d DCA 5/25/05); *Daniels v. State*, 685 So.2d 1344 (Fla. 2d DCA 1996).

In conjunction with a resentencing proceeding as a result of a "direct appeal," the 2-year limitations period for filing a Rule 3.850 motion begins to run when both conviction and sentence become final. *Pierce v. State*, 875 So.2d 726 (Fla. 4th DCA 2004); *Skeens v. State*, 853 So.2d 494 (Fla. 2d DCA 2003).

Where a resentencing occurs following a successful "postconviction motion," see *Joseph v. State*, 835 So.2d 1221 at 1222 n.3 (Fla. 5th DCA 2003) (the 2-year limitation is not tolled by other collateral proceedings filed in the trial court, even if a corrected sentence is entered.)

Where a defendant was resentenced pursuant to a Rule 3.800(a) motion, the 2-year limitation period for issues raised in a Rule 3.850 motion attacking the judgment commenced when the judgment became final, not when the defendant was resentenced. *Smith v. State*, 886 So.2d 336 (Fla. 5th DCA 2004), citing *Kissel v. State*, 757 So.2d 631 (Fla 5th DCA 2000) (resentencing did not effect finality of judgment).

[**Important Note**: For anyone intending to file a 28 U.S.C. § 2254 federal Petition for Writ of Habeas Corpus after exhausting state remedies, in order to be timely filed in the Federal District Court, consideration *must* be given to the 1-year AEDPA time limitation. See: *Tinker v. Moore*, 225 F.3d 1331 (11th Cir. 2001); 28 U.S.C. § 2244(d)(2).

The 1-year federal limitation begins to run on the date the judgment became final by the conclusion of any state direct review (i.e. direct appeal) or the expiration of the time for seeking such review. See: *Kaufmann v. U.S.*, 282 F.3d 1336, 1339 (11th Cir. 2002).

Section 2244(d)(2) does not toll statute of limitations during 90-day period to petition for writ of certiorari to US Supreme Court of denial of "state postconviction relief." *Coates v. Byrd*, 211 F.3d 1225, 1226 (11th Cir. 2000).] ■

Motions to Correct Illegal Sentence Filed Pursuant to Rule 3.800(a), Fla.R.Crim.P.

by Dana Meranda

When preparing a Motion to Correct Illegal Sentence under Rule 3.800(a), it is essential to research the applicable law in effect at the time the offense was committed; since such motions can be filed at any time, even decades after the sentence was imposed.

Absent retroactive operation, the law in effect at the time of the offense is controlling. *Castle v. State*, 330 So.2d 10 (Fla. 1976); *Wells v. State*, 30 Fla.L.Weekly D1826b (Fla. 3rd DCA Aug. 3, 2005). And, other than a genuine pipeline case, it's not the law in effect at the time of any resentencing. *Mitchell v. State*, 635 So.2d 1073-74 (Fla. 1st DCA 1994). See also: *Hamilton v. State*, 30 Fla.L.Weekly D2417c (Fla. 4th DCA Oct. 12, 2005) certifying conflict with *Isaac v. State*, 30 Fla.L.Weekly D1582e (Fla. 1st DCA June 23, 2005) on whether *Apprendi* applies to resentencing when tried and sentenced pre-*Apprendi*.

It is also particularly important to recognize any changes/amendments that may have developed concerning the Rules of Criminal Procedure and Florida Statutes along with each of their effective dates.

For instance, Rule 3.701, Fla.R.Crim.P. (Sentencing Guidelines) used in conjunction with Rule 3.988(a)-(i) (Scoresheet Forms) applies to all felonies except capital felonies committed on or after Oct. 1, 1983, and before Jan. 1, 1994. See: *Florida Criminal Sentencing Law*, 2d ed, by C. M. Bravo.

These rules as revised by the Florida Supreme Court on May 8, 1984, were adopted and implemented in accordance with § 921.001, Fla. Stat. (Sentence). Laws of Florida Ch. 84-328 became effective on July 1, 1984, as illustrated in *Smith v. State*, 537 So.2d 982, 984 (Fla. 1989).

Second, the issue(s) must be cognizable on Rule 3.800(a) motions. For example, judgment issues are strictly forbidden and have no probability of success. *Safrany v. State*, 895 So.2d 1145 (Fla. 2d DCA 2005).

A double jeopardy sentencing error plain on the face of the court records could satisfy the parameters of cognizability if carefully explained and presented. *Ortiz v. State*, 779 So.2d 552 (Fla. 2d DCA 2001); *Shaw v. State*, 780 So.2d 188 (Fla. 2d DCA 2001).

Generally, issues which require a factual resolution (in an evidentiary hearing) should not be brought in a motion to correct illegal sentence. *Spires v. State*, 796 So.2d 1245 (Fla. 5th DCA 2001).

From time to time the Florida Supreme Court decides a variety of (cognizability issue) cases for the purpose of Rule 3.800(a) motions, e.g., *Wright v. State*, 30 Fla.L.Weekly 5611 (Fla. Sept. 1, 2005), "failure of sentencing court to provide written reasons for retention of jurisdiction does not constitute an illegal sentence as contemplated by Rule 3.800(a)." See also: *Galindez v. State*, 892 So.2d 1231 (Fla. 3rd DCA Feb. 16, 2005) and *Taylor v. State*, 897 So.2d 496 (Fla. 4th DCA Feb. 23, 2005), both certifying direct conflict with *Johnson v. State*, 877 So.2d 795 (Fla. 5th DCA 2004), on whether vindictive sentencing issues are cognizable on Rule 3.800(a) motions; and *Williams v. State*, 30 Fla.L.Weekly D2569a (Fla. 4th DCA Nov. 9, 2005), on rehearing, certifying conflict with *Watts v. State*, 790 So.2d 1175 (Fla. 2d DCA 2001), as to whether a mere allegation that a written sentence does not comport with an oral pronouncement is sufficient to raise a Rule 3.800(a) claim.

This is a valuable step and will save a lot of time and grief in the long run. If the issue is not clearly cognizable on Rule 3.800(a) motions, the time spent writing the motion is wasted. The courts simply will not address it.

Third, the avid legal researcher has undoubtedly read countless DCA cases finding that the Rule 3.800(a) motion fails to meet the facially sufficient requirement. Florida DCAs are fairly consistent on this requirement: (1) the error must have resulted in an illegal sentence; (2) the error must appear on the face of the record; and, (3) the motion must affirmatively allege that the court records demonstrate on their face an entitlement to relief. E.g., *Robinson v. State*, 816 So.2d 222-23 (Fla. 1st DCA 2002).

The Second DCA recently emphasized the importance of this requirement in *Macaluso v. State*, 30 Fla.L.Weekly D2494a (Fla. 2d DCA Oct. 28, 2005), explaining that the postconviction court's (trial court) first task was to determine the facial sufficiency of the Rule 3.800(a) motion.

However, be aware, there is some inconsistency among the DCAs on whether ruling on a facially sufficient 3.800(a) motion requires the trial court to justify a denial with attachments. *Shaw v. State*, 780 So.2d 188, 191 (Fla. 2d DCA 2001); Cf. *Williams v. State*, 30 Fla.L.Weekly D2569a (Fla. 4th DCA Nov. 9, 2005).

And, it is the duty of the court, not the state, to supply the necessary attachments. *McBride v. State*, 810 So.2d 1019 (Fla. 5th DCA 2002); *England v. State*, 879 So.2d 660 (Fla. 5th DCA 2004).

When it has been determined the motion is facially insufficient (a procedural ruling—*Reynolds v. State*, 827 So.2d 356 (Fla. 1st DCA 2002)), a defendant has a right to refile the motion and correct the identified insufficiency. *Flanagan v. State*, 792 So.2d 519 (Fla. 2d DCA 2001).

Therefore, be aware that the language used in the motion is extremely important. A choice of the wrong wording or omitting an affirmative, required allegation will serve to invite defeat with alarming quickness.

Forth, the record...refers to the entire written record available in the circuit court. *Atwood v. State*, 765 So.2d 242-43 (Fla. 1st DCA 2000); *Jackson v. State*, 803 So.2d 842, 844 (Fla. 1st DCA 2001) (transcripts).

As a precaution, it is wise to specify where the necessary information could be located (whenever possible) and state how the record demonstrates entitlement to relief. *Milne v. State*, 807 So.2d 725 (Fla. 4th DCA 2002); *White v. State*, 886 So.2d 286 (Fla. 1st DCA 2004).

Even though it is preferred to include court records (if available) as attachments to the motion, a defendant is entitled to correction of an illegal sentence regardless of the fact that he failed to include transcripts of a sentencing hearing or of a completed scoresheet under the applicable version of the guidelines. *Eastwood v. State*, 834 So.2d 409 (Fla. 5th DCA 2003).

Lastly, Rule 3.800(a) "contains no proscription against the filing of successive motions" but that "a defendant is not entitled to successive review of a specific issue which has already been decided against him." *State v. McBride*, 848 So.2d 287, 291 (Fla. 2003), citing *Price v. State*, 692 So.2d 971 (Fla. 2d DCA 1997). But see: *Cillo v. State*, 30 Fla.L.Weekly D2556 (Fla. 2d DCA Nov. 9, 2005) ("[C]ollateral estoppel will not be invoked to bar relief when its application would result in manifest injustice.")

Although the foregoing points out some basic standards involved with Rule 3.800(a) motions, it's merely a scratch on the surface of the topic. The most effective practice requires thorough research and preparation on a case-by-case basis. ■

Castration Law Will Likely See Increased Usage

Over eight year ago Florida lawmakers passed legislation that gives the judiciary the power to order chemical castration to sexual offenders. However, the law seems to be foreign to many judges. In fact, many are unaware of the law. That will change soon.

Victor Crist is concerned and he has vowed to get some answers as to why the law is not used more

frequently. Crist (R), a state senator from Tampa who helped engineer the mandatory castration law, is angry that it has fallen into disuse.

A study by the State Courts Administrator General Counsel's Office suggest it wasn't even discussed in dozens of cases where the law required it.

Les Garringer, senior attorney for the general counsel's office, surveyed judges and court administrators to determine why they are failing to use chemical castration as required in criminal cases involving violent rapists who have been convicted of two sexual batteries under Florida Statute 794.011.

The study uncovered at least four Pinellas County cases where sex offenders sentenced to prison terms should have been ordered to receive mandatory castration after their release.

Garringer said the state courts' administrator will distribute his findings to the Legislature, the DOC, and Gov. Bush with recommendations to improve the castration law. ■

Believe It or Not

Just when you think you've heard every horror story about the criminal justice system, a state proves you wrong. This time it is the state of North Carolina. Recently, Junior Allen walked out of the Orange Correctional Center after serving 35 years. His crime? Stealing a black and white television.

Allen was a 30-year old migrant farm worker from Georgia with a criminal record when he walked into an unlocked house and stole the 19-inch television worth approximately $140.

He was sentenced in 1970 to life in prison for second-degree burglary. Ironically, that same offense today carries a maximum penalty of three years in prison.

It took Allen 26 attempts at parole before the Parole Commission decided to free him.

A program director at Carteret Correctional Center in Newport where Allen was required to attend a work-release program feared Allen may have a difficult time adjusting to life on the outside following his lengthy incarceration. He also offered a rather striking question: How much time would Allen have gotten had he stole a color TV? ■

Guide helps those dogged by criminal records

A new publication from the Sentencing Project can guide former prisoners in understanding their rights and overcoming the baggage of a criminal record.

"Relief From the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide" describes the federal, state and jurisdictional laws and practices relating to restoration of rights and finding relief from the collateral consequences of a criminal conviction.

"Notwithstanding our fond national self-image, ours is not a land of second chances, at least as far as the legal system is concerned," writes report author Margaret Colgate Love, who concludes that most jurisdictions offer ways to circumvent post-prison penalties but that they are usually inaccessible and unreliable.

You can access the report at www.sentencingproject.org/rights-restoration.cfm.

- NOTICE -

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Christmas FL 32709-1511

LITIGATION UPDATE

In *FPLP*, Vol. 11, Iss. 3, we reported on *Smith v. FDOC*, 30 Fla.L.Weekly D1299 (Fla. 1st DCA 5/23/05), where the appeal court held that the FDOC's legal photocopying fee rule, 33-501.302, F.A.C., is invalid because the FDOC never had statutory authority to implement such a rule. In the last issue of FPLP it was noted that the FDOC motioned to certify a question on it to the Fla. Supreme Court. Those motions were denied, and the FDOC petitioned the state Supreme Court to accept jurisdiction and review the decision. A stay was granted until the high court decided whether to accept jurisdiction. On January 18, 2006, the Fla. Supreme Court refused to accept jurisdiction and denied review, meaning the appeal court decision will stand. The appeal court should now issue a Mandate on the decision and finalize it. Once that happens, prisoners who have been charged photocopy costs, or had liens placed on their accounts for same, should exhaust the FDOC grievance procedure seeking reimbursement to, or removal of the liens from, their inmate accounts for past photocopying costs, citing the *Smith* decision. If the FDOC refuses to voluntarily reimburse or remove the liens, for amounts up to $5,000, relief could be sought in small claims courts around the state.

[**Note:** In small claims courts it is important to know how to move your case along. *See Clark v. State*, 30 Fla.L.Weekly D1945 (Fla. 4th DCA 8/17/05); *Smartt v. First Union Nat. Bank*, 771 So.2d 1232 (Fla. 5th DCA 2000); and *Powell v. Watson*, 565 So.2d 845 (Fla. 5th DCA 1990).]■

NEWS IN BRIEF

GA – On December 8, 2005, an Atlanta judge freed a prisoner whose claims of innocence of a kidnapping and rape for 24 years were rejected until DNA testing proved he wasn't guilty. Robert Clark, 45, had been wrongfully convicted for a 1981 attack on an Atlanta woman and sentenced to life plus 20 years. His lawyers said DNA from another man, a friend of Clark's, Floyd Arnold, matches the rape and two others committed after Clark was sent to prison. Clark was convicted after the victim identified him as the man who carjacked and repeatedly raped her. Vanessa Potkin, an Innocence Project attorney that pushed for Clark to be freed, called the case "truly horrific." When released, Clark, while kissing and hugging his family members, kept repeating, "I told you. I told you."

FL – During November '05 the U.S. Supreme Court refused to review the 11th Circuit Court of Appeals' decision upholding Florida's lifetime ban on voting rights for convicted felons. However, Alan Spalding, with the Florida branch of the American Civil Liberties Union, says opponents of the ban are ready to get the issue on the November '06 ballot for the public to vote on, if necessary.

FL – On December 14, 2005, Gov. Jeb Bush signed legislation passed during a special session of the Legislature in November giving Wilton Dedge $2 million in compensation for time wrongfully spent in prison. Florida law caps claims against the state at $100,000; to get more, the Legislature must pass a special claims bill. Dedge was lucky. Sandy D'Alemberte, a former state legislator and Florida State University president, led an effort to compensate Dedge for the years stolen from him. Dedge was released from prison on August 12, 2004, after spending 21 years, 10 months, and 23 days in Florida prisons. He was proven innocent of a 1981 rape by DNA testing. [See: *FPLP* Vol. 11, Iss. 1, pgs. 3-6, for Wilton Dedge's story.]

FL – Hernando County Jail guard Nathaniel Pullings, 33, was fired September 30, 2005, after he went into a female housing unit at the jail and ordered the women prisoners to strip naked. Pullings was in charge of the jail's laundry and claimed he wanted them to strip to wash their laundry. He was overheard by the husband of a prisoner telling the women, "You bitches strip and wrap a towel around you." The jail is run by the private company Corrections Corporation of America.

FL – A former Levy County corrections guard was arrested December 15, 2005, by state authorities on allegations that he used his position as a corporal at the county jail to force female prisoners to have sex with him. Willie Lee Powell, 45, of Chiefland, was charged with four counts of sexual battery by a person in a position of authority. His bond was set at $100,000 on each charge. Powell's personnel file shows he had worked for the Levy County Sheriff's Office for four years. He began his career as a guard at Lancaster in 1983, and he also worked at correctional facilities in Columbia County before joining the LCSO. He had been forced to resign July 25, shortly before the Florida Department of Law Enforcement began its sexual battery investigation.

IA – On July 4, 2005, Gov. Tom Vilsack signed an order returning voting rights to an estimated 80,000 Iowans who have completed prison sentences for felony convictions. Currently only four states, Alabama, Florida, Kentucky and Virginia, still deny the right to vote to people convicted of a felony or aggravated misdemeanor. Except for Vermont and Maine, all states prohibit felons from voting for a period after convictions, but the period in each state differs. The above four states are the only ones that impose a lifetime ban on voting unless restored by special clemency.

ID – During October '05 Idaho shipped 302 of its state prisoners to a private Minnesota prison to be housed because of prison overcrowding. In November, ID DOC officials said they will likely ask for almost $8 million more on their budget during the 2006 legislative session to address prison overcrowding. Idaho's prison population has more than doubled in the past decade, to 6,764 in Nov. '05.

NC – On January 1, 2006, the North Carolina Department of Corrections banned all indoor smoking by staff and prisoners at all of its facilities.

NE – In March '05 the Nebraska Legislature passed, then overrode Gov. Dave Heineman's (R) veto of a bill lifting the ban on voting by those Nebraskans with felony convictions after two years of completing their sentence. The bill, passed into law, is estimated to have restored the voting rights of 59,000 people.

OH – During December '05, Clarence Elkins, 42, was released from the Mansfield, OH Correctional Institution after serving 7 years of a life sentence for murder and rape. He was exonerated by DNA evidence.

TN – The Tennessee DOC presented its budget request to Gov. Bredesen in November for the next fiscal year. The TDOC says it expects an increase of 1,000 prisoners and will need about 100 more staff people. The increase would cost $47 million. Approximately 28,000 people are expected to be in Tennessee prisons in fiscal year 2006.

TX – On November 12, 2005, Texas prisoner David Ruiz died in at a Galveston, TX, prison hospital. Ruiz, 63, was known for filing a pro se federal lawsuit in 1972 that continued for three decades and resulted in court-ordered improvements in the Texas prison system, stopped the use of prisoner "guards," and improved medical care (Ruiz v. Estelle). That case was finally dismissed in 2002, another victim of the Prison Litigation Reform Act of 1996 (PLRA), which has severely limited the federal courts' ability to order long term relief for constitutional violations of prisoners' conditions of confinement. Ruiz died while serving a life sentence for a robbery committed while he was on parole in 1983. Except for 4 years, Ruiz spent all of his adult life in prisons or jails. He died of natural causes. ■

FOR CLEMENCY ASSISTANCE INFO. WRITE TO:

NATIONAL CLEMENCY PROJECT
8624 CAMP COLUMBUS ROAD
HIXSON, TENNESSEE 37343
(423) 843-2235

Critical Resistance in Florida

Critical Resistance (CR) is a national grassroots group that fights to end the prison industrial complex. There's 3 regional Critical Resistance centers: 1) Oakland, Calif., is the first and is the National Office for CR; 2) New York City is the headquarters for the Northeastern Regional Office; and 3) New Orleans is where the Southern Regional Office is located, although their offices have been temporarily moved to Baton Rouge.

Florida is part of the Southern Region. There are 2 CR Chapters in Florida, Gainesville and Tampa/St. Petersburg. We meet every Sunday evening in St. Petersburg; however, we are planning to hold meetings in Tampa on certain Sunday evenings that are convenient for those in the Orlando area to attend.

We are made up of Teachers, Ministers, youth who are interested in being part of changing our world for the better, former inmates, and other citizens concerned about the huge increase in prisons in the U.S.

We are asking that inmates who have family or friends in the Tampa/St. Petersburg or Orlando area have them call us at (727) 278-1547 or (813) 401-4256. We would love for them to work with us to bring about a change.

We would love to hear from inmates as well, we already have other inmates working with us from within the prison system. Our contact address is:

Critical Resistance
Attn: Dennis Segall
P.O. Box 21922
Tampa, FL 33622 ■

POST CONVICTION CORNER

by Loren Rhoton, Esq.

A State inmate seeking to attack his Judgment and Sentence in the federal courts can do so by filing a Title 28 of the United States Code (U.S.C.) §2254 federal petition for writ of habeas corpus. However, there are numerous requirements before the merits of a §2254 petition will even be considered by the federal courts. Firstly, as with 3.850 motions, there is a period of limitations which can serve to bar consideration of a 2254 petition. Title 28 U.S.C. §2244(d)(1) provides a one year period of limitation for filing the federal petition. However, should a case appear to be outside of the one-year period of limitations, the postconviction litigator may still be able to obtain a review of the constitutional claims if a showing of *actual innocence* can be made.

Pursuant to Title 28 U.S.C. §2244(d)(1) the one year period of limitation shall begin running from the latest of the following:

> 1. The date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> 2. The date on which the impediment to filing an application created by State action, in violation of the Constitution or laws of the United States, is removed, if the applicant was prevented from filing by such State action;
>
> 3. The date on which the constitutional right asserted was initially recognized by the United States Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or,
>
> 4. The date on which the factual predicate of the claim or claims could have been discovered through the exercise of due diligence.

If a case appears to be outside of the one year period of limitations imposed by §2244(d), the postconviction movant may still be able to seek review of the constitutional claims. Exceptions to procedural rules have been made in situations where it would be equitable to do so. Habeas corpus is, in essence, an equitable remedy. Schlup v. Delo, 513 U.S. 298 (1995). The U.S. Supreme Court has consistently recognized exceptions to the procedural rules when it is necessary to prevent a miscarriage of justice. "The individual interest in avoiding injustice is most compelling in the context of actual innocence." Schlup at 325. It has been held that a petitioner's *actual innocence* may provide a "gateway" to allow federal constitutional claims to be heard in a §2254 proceeding in situations where the petitioner is otherwise procedurally barred by the applicable period of limitations.

In Schlup, it was held that although a federal habeas petitioner's *actual innocence* is not itself a constitutional claim on which relief can be based, it is considered a "gateway" which allows a petitioner to have otherwise procedurally barred claims considered on their merits. Id. at 315. In other words, a claim of innocence "does not by itself provide a basis for relief." Id. at

315.' The *actual innocence* claim is a procedural claim which is offered to demonstrate that the petitioner's case is one of a select category of cases which implicate "...a fundamental miscarriage of justice" and, thus, allow the court to consider the merits of the procedurally defaulted claim. Id. If actual innocence is demonstrated, then the procedurally barred claims of constitutional deprivations (such as ineffective assistance of counsel claims) can be considered on their merits. As provided in Schlup, a claim of *actual innocence* is "not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits."

In making an *actual innocence* claim, the burden is on the petitioner to present new evidence (not presented at trial) which demonstrates that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence. The standard provided in Schlup is that "in light of the new evidence, no juror, acting reasonably, would have voted to find [the petitioner] guilty beyond a reasonable doubt." Id. at 329. This is indeed a heavy burden on the habeas petitioner seeking to avoid a procedural bar.

Actual Innocence, for the purposes of this article means factual, as opposed to legal, innocence. By alleging *actual innocence*, the claim would have to be that the movant actually did not commit the crime. McCleskey v. Zant, 499 U.S. 467 (1991). The term actual innocence essentially means that in light of the new evidence, a reasonable trier of fact could not find all of the elements necessary to convict the defendant of the particular crime. Furthermore, *actual innocence* has been defined as meaning that the conviction was of a person who was innocent of the specific crime for which he was charged and convicted, not that the petitioner was not present at the scene of the offense. Johnson v. Hargett, 978 F.2d 855 (5th Cir. 1992).

The petitioner must support the claim of actual innocence with new and reliable evidence which was not presented at trial. Schlup at 324. In reviewing an *actual innocence claim*, the presiding court must "consider all relevant evidence: that presented at trial; that arguably wrongly excluded from trial; and that unavailable at trial." Battle v. Delo, 64 F.3d 347, 352 (8th Cir. 1985). And, such an evaluation must be reviewed with an understanding that "proof beyond a reasonable doubt marks the legal boundary between guilt and innocence." Schlup at 328. Should the petitioner be able to make the necessary showing, his constitutional claims should be considered by the reviewing court, even though they would otherwise be procedurally barred. The *actual innocence* exception to the one-year period of limitations sets a high standard to get past the procedural bar. But, if such an argument is available, it may be a feasible way of obtaining review of otherwise procedurally barred claims.

Loren Rhoton is a member in good standing with the Florida Bar and a member of the Florida Bar Appellate Practice Section. Mr. Rhoton practices almost exclusively in the postconviction/appellate area of the law, both at the State and Federal Level. He has assisted hundreds of incarcerated persons with their cases and has numerous written appellate opinions.

FDOC Secretary Fired

Only a few months after praising what a fine man he is and what a good job he is doing, on Feb. 10, 2006, Gov. Jeb Bush abruptly fired the head of the Florida Department of Corrections. The firing, which sent ripples of shock throughout the prison system, followed months of state and federal investigations into illegal activities by state prison guards and top officials in the department.

James Crosby, 53, who was appointed by Gov. Bush three years ago to clean up the FDOC following Bush ousting former FDOC Secretary Michael Moore, who critics claim created turmoil in the department, is apparently himself the target of state and federal investigations. State law enforcement officials sealed Crosby's office in Tallahassee on the day he was fired, although no one is saying yet just what they are looking for.

Crosby spent most of 2005 trying to defend himself and the FDOC against a constant barrage of allegations of illegal activities and wrongdoing in the FDOC. Those allegations ranged from prison guards operating an illegal steroid distribution ring to top officials ruling the department's employees through fear and intimidation. Other allegations involved prison employees stealing state property, using prisoners to perform personal work, hiring phantom employees, and in one case rape of a female prison guard by a ranking officer who committed suicide after being accused. Crosby himself also came under scrutiny in 2005 concerning his ties to lobbyists for companies seeking multi-million dollar contracts with the prison system. (All this previously reported on in *FPLP*, Vol. 11, Issues 5 and 6, Sept/Dec 2005.) However, it appears that Crosby may have other problems that have yet to be revealed.

At a new conference in Miami, when asked why he fired Crosby Gov. Bush said he wouldn't talk about the details because of ongoing investigations, he did however say, "I'm saddened and really disappointed, but I had to do it. But as the details come out, it'll be clear that it was the appropriate thing to do."

"There is an ongoing investigation into the Department of Corrections, and we can't discuss individuals," said Federal Bureau of Investigations Special Agent Jeff Westcott in Jacksonville. Westcott acknowledged that joint FDLE and FBI investigations are looking into matters that have not yet been reported in the media, but declined to give any details about those matters.

Tom Berlinger, spokesman for the FDLE, also declined to give any details, citing the state's continuing investigations.

Crosby, contacted at home by phone, effused to comment on why he was fired, and referred all questions to the governor's office.

So, just what is known so far?

In August, Allen Clark, an FDOC regional director whom Crosby is personal friends with and whom Crosby promoted up to a top position in the department, was forced to resign as state and federal investigators questioned, arrested and charged numerous prison guards with steroid trafficking. Clark and two other ranking prison guards were later charged in November with assaulting a former prison guard at a party, but the charges were dropped in January on that, no report on why.

FDLE agents seized vehicles and trailers belonging to Clark and other FDOC employees in six North Florida counties a few months ago and reportedly are investigating prisoners being used to do personal work for FDOC staff. After Crosby was fired it was also reported that this past fall investigators confiscated items from Crosby's Tallahassee home: a leaf blower, a firewood rack and a ladder. Investigators declined to say why they wanted the items.

A total of 10 former prison guards have been charged in connection with the steroid trafficking, six have pleaded guilty, four more were charged in January.

During the first week of February, a former prison officer who managed the state prison's recycling program pleaded guilty to embezzling from a recycling center and for his part in the steroid ring in which he sold drugs to other prison guards.

Also last fall, several other state prison guards were arrested for fighting at a bar near the state prison in Starke, and a former minor-league baseball player was arrested after being accused of doing nothing but playing on a prison guard softball team but receiving pay for supposedly being an assistant librarian at a prison.

Still another ranking prison guard committed suicide after being accused, but never charged, of sexually assaulting a fellow guard last fall.

Crosby himself knew he was being investigated. According to court files and police records obtained by the *St. Petersburg Times*, a federal grand jury in Jacksonville and the Florida Statewide Grand Jury have been conducting separate investigations of prison officials.

In addition to what appears to be a criminal investigation, Crosby has been taking heat for his relationships with lobbyists seeking private contracts for companies that do business with the FDOC. His awarding of no-bid contracts, like the one to Keefe Commissary Network to run inmate prison canteens and that authorizes Keefe to increase prices to prisoners 10 percent every six months, has raised questions because of Crosby's relationship with that company's lobbyist, Don Yeaeger. Crosby insisted that he paid his own way on their trips to sporting events and concerts.

On February 6, only days before he was fired, Crosby was grilled by state legislators concerning an auditor general's report detailing problems with how the FDOC handled a contract with a pharmaceutical company. Those

same lawmakers, however, they never expected Crosby to be fired. "I would be shocked to find out that he would be directly involved with anything illegal," said Sen. Victor Crist (R-Tampa). Not everyone shares Crist's naiveté.

Retired former Florida prison warden Ron McAndrew has been warning anyone who would listen that Crosby was "corrupting" the FDOC. "What was a wonderful organization just a few years ago is a shambles now thanks to the practices of Mr. Crosby," McAndrew recently said.

Gov. Bush named James McDonough, director of the state Office of Drug Control, as interim secretary of the FDOC. A retired Army colonel, McDonough is one of the longest-serving members of Bush's administration. Apparently McDonough is not intended to be a permanent replacement for Crosby, and indications are that Bush will name someone else to serve as FDOC secretary at least until the end of Bush's term as governor expires by term limits with this year's upcoming election. What's going to happen with Crosby remains to be seen.■

Prison Official Admits Stealing

On February 9, 2006, Alan Brown Duffee, 40, the former executive director of the now abolished Florida Correctional Privatization Commission, pleaded guilty in a Tallahassee federal courtroom to stealing almost $225,000 in state money nearly three years after he used the cash to help buy houses for himself and his girlfriend. Duffee pleaded guilty to one count each of mail fraud, wire fraud and money laundering. He faces up to 20 years in prison and a $250,000 fine. He will face sentencing in April.

Duffee took the money from the Privatization Commission, which was set up to oversee private prison contracts in Florida. Duffee served three years as the Commission's executive director. The Legislature voted to abolish the Commission in 2004 amid complaints about favoritism to private prison companies and a scandal involving Duffee hiring former FDOC secretary Michael Moore as a consultant in violation of state law. ■

Prisoners Sue Over Chemical Torture

Ten Florida State Prison prisoners filed a federal lawsuit against the FDOC on February 6, 2006, claiming they were severely burned when prison guards sprayed them with chemicals.

The lawsuit names 28 current and former FDOC employees, including FSP warden Michael Rathburn and former FDOC secretary James Crosby. The case is being represented by Florida Institutional Legal Services of Gainesville.

The suit claims prisoners suffered severe chemical burns, asthma attacks and psychological distress because of the excessive use of tear gas and pepper spray on them.

Cassandra Capobianco, an attorney with FILS, said the excessive use of such chemicals is a result of "systematic corruption" and amounted to knowing misconduct and torture by Florida prison employees.

New Study Finds No Correlation Between Incarceration, Declining Crime Rates

A new study released during Nov. '06 by The Sentencing Project suggests there may be no direct link between the growing prison population in the U.S. and declining crime rates. The study found that declining crime rates in states with higher-than-average prison populations were virtually the same as in states where the prison population remained stable or even declined. The U.S. incarceration rate grew from 411 prisoners per 100,000 residents in 1995 to 486 at the end of 2004, an 18 percent increase, according to recent Bureau of Justice Statistics. The Sentencing Project credits a growing economy, a decrease in the crack cocaine market, and improved policing with the decline in crime rates. ■

FAMM MEETING

On February 11, I had the pleasure of attending a FAMM (Family's Against Mandatory Minimums) meeting in Pompano Beach FL. I met some really wonderful people at this meeting, and they have been of great support for *FPLP*. I used to attend a lot of meetings of this sort around the state but finances and time have not allowed me to do this as much lately. That is something I plan on changing this year.

I want to let everyone know how fulfilling it is to attend a meeting such as this. When you come together with people who have similar problems or situations as you then you can be comforted and brain storm to find solutions to some of the problems we face as family members with a loved one in prison. I left this meeting with a great sense of accomplishment and hope for the future of our loved ones. I would like to encourage you if you have never attended a meeting of this sort before to find one and GO become enlightened and a part of the solution.

If you need information on where a meeting is being held, or how to start your own meeting, or would like me to attend a meeting write to me and I will do all I can to help you with the information. We need family members to become more involved and this is a great way to do so. We can help make changes possible if we come together and work together for the good of all. Teresa

Two New Sunshine Suits Filed Against Parole Commission

By Bob Posey

In the last issue of *FPLP* (Sept-Dec '05) it was reported that during September 2005 a citizen filed a lawsuit against Monica David, Chairman of the Florida Parole Commission (FPC), alleging intentional violations of Florida's open public meetings and records laws. That suit concerns the FPC's administrative rules being at least ten years out of date and providing false and misleading information and directions to the public on how and where the public may attend FPC public meetings or obtain FPC public records. The relief sought is a declaration from the court that such intentional misdirection violates Florida's Sunshine Law (§ 286.011, Fla. Stat.) and an injunction is sought prohibiting David or her FPC chairmen successors from misinforming the public in any manner about public meetings or records. That case is *Flowers v. David*, Case No. 2005-CA-002194 (Fla. 2d Jud. Cir. Ct.). Now two more lawsuits have been filed against the entire Commission alleging further Sunshine Law violations.

In mid-February (2006) Deborah Cantrell, a freelance writer and business owner from Orlando, filed suit against the Parole Commission claiming that it is violating state laws and the Florida Constitution by holding secret, closed door meetings as part of the parole consideration and decision-making process. Specifically Ms. Cantrell alleges that under Florida law what the FPC terms "parole interviews," whether initial, subsequent, special, or effective date parole interviews, are part of the parole decision-making process and therefore must be noticed and open to the public, minutes recorded of same, and be held in a location easily accessible to the public and press.

Ms. Cantrell's suit, seeking declaratory and injunctive relief under Chapter 86 and § 286.011 (2), Florida Statutes, is based on the open public meetings rights set forth in Article I, § 24 (b), Florida Constitution, and §§ 286.011 (Sunshine Law) and 947.06, third sentence, Florida Statutes (2005). That latter statutory provision specifically provides that:

"All matters relating to the granting, denying, or revoking of parole shall be decided in a meeting at which the public has a right to be present."

Parole consideration is required by law. Every parole-eligible prisoner must be considered for parole on a periodic basis, usually every two to five years. As of June 30, 2005, there were only 5,197 remaining Florida state prisoners in the 85,000 plus prison population who were parole-eligible, since parole sentencing was essentially abolished in 1983 in favor of guideline sentencing.

And, it is the three-member Parole Commission's constitutional and statutory responsibility to make *all* decisions concerning parole granting, denying, or revocations. Article IV, § 8 ©, Florida Constitution, and §§ 20.32 (1), 947.002 (3), and 947.13 (1), Florida Statutes. Any delegation of such responsibility may only occur if certain conditions are met and laws complied with.

Parole Interview and Hearing Process

The parole consideration process is divided into two parts. First, when parole-eligible prisoners come up for consideration a "parole interview" is held at the prison where such prisoners are housed.

Such parole interview meetings are conducted by FPC staff called "parole examiners" or "parole hearing examiners." These examiners are authorized by law to meet with such prisoners, conduct fact-finding activities, and report back to the Commission the findings. However, in a delegation of authority, FPC rules and procedure directives direct parole examiners to not only meet with the prisoners and conduct fact-finding, but also to meet with Department of Correction's representatives during the interview stage, discuss and conduct professional case analyses with them, and obtain a written recommendation from such FDOC representative(s) as to whether and when parole should be granted. The FPC rules also require the parole examiners themselves to formulate and make a written recommendation, supported by written rationales, for submission the Commission as to what action the Commission should take to grant or deny parole and/or when parole should be granted at a later date.

Second, once the Commission receives the findings, analyses, recommendations and rationales for the recommendations that were developed at the parole interview meeting, the Commission then meets in a public meeting called the "parole hearing" to approve or deny (with modifications) the parole examiners' recommendations. Parole-eligible prisoners are not present at "parole hearings," but members of the public can attend and speak, if granted prior permission to do so by the Commission chairman. And victims may appear at such "hearings" to oppose parole. Victims, victim advocates, and law enforcement personnel, state attorneys, judges, etc., may appear at hearings and speak without requiring permission.

While such *parole hearings* are open to the public, and noticed to the public, and minutes recorded of such hearings, *parole interviews* are not. Neither the public victims, no Commission itself ever hears what parole-eligible prisoners up for consideration may have to say on their own behalf, nor are the recommendations and rationales developed at the parole interview meetings explained at the public parole hearings. This, although the Commission's *official* action at the end of the parole hearings is documented (in writing) as approving or denying those recommendations that were formulated behind closed doors.

Recently Deborah Cantrell contacted the Parole Commission requesting information on how she, as a member of the public and press, could attend a number of parole interview meetings to observe the process.

In response, the FPC informed Ms. Cantrell that neither the public nor the press may attend parole interviews. The FPC's written response further claimed that since parole interviews are conducted by FPC staff parole examiners who "only gather

information" that they "are not, therefore, subject to the provisions of the Government-in-the-Sunshine Law."

Dissatisfied with that response, Cantrell, with assistance from Florida Prisoners' Legal Aid Org., Inc., researched what the law says about open public meetings. What was discovered prompted Cantrell to sue for access to attend parole interviews.

Although the Parole Commission has operated as if, and argued in the past that, it is not subject to the state's Sunshine Law, the courts have held otherwise. *Turner v. Wainwright*, 379 So.2d 148, 155 (Fla. 1st DCA 1980). It affirmed and remanded, 389 So2d 1181 (Fla. 1980). It is also well-settled in Florida law that governmental boards or commissions cannot evade compliance with open public meetings laws by delegating their public decision-making responsibilities to appointed committees or staff who meet behind closed doors and formulate recommendations on any matter on which foreseeable formal action will later be taken at a public hearing by such board or commission. *Town of Palm Bch. V. Gradison*, 296 So.2d 473, 477 (Fla. 1974), reaffirmed, *Wood v. Marston*, 442 So.2d 934, 940 (Fla. 1983). See also: *Dascott v. Palm Bch. Co.*, 877 So.2d 8, 13 (Fla. 4th DCA 2004); *Spillis Candela and Partners, Inc. v. Centrust Savings Bank*, 535 So.2d 694, 695 (Fla. 2d DCA 1988); and *Krause v. Reno*, 366 So.2d 1244, 1251 (Fla. 3rd DCA 1979). That is true even where the committee or staff have no power to bind the board or commission to its recommendations. Because making recommendations is decision-making and it is the entire decision-making process, no matter how many steps go into it, that is subject to the Sunshine Law. *Town of Palm Bch.; Wood,Id.*, and their progeny cases.

Meetings of staff of boards or commissions covered by the Sunshine Law are not ordinarily subject to poen public meetings laws. *Occidental Chemical Co. v. Mayo*, 351 So.2d 336 (Fla. 1977), disapproved in part on other grounds, *Citizens v. Beard*, 613 So.2d 403 (Fla. 1992). However, when a staff member ceases to function in a staff capacity and is delegated authority to hold meetings and make recommendations to a board or commission, the staff member loses his or her identity as staff while conducting or participating in such meeting, and the Sunshine Law applies to the meeting. Thus, it is the nature of the act performed, not the makeup of those in an appointed committee or delegated authority to hold meetings, or the proximity of the act to the final decision, which determines whether staff meetings are subject to open public meetings laws. *Wood v. Marston*, 442 So.2d at 941. See: *News Press Pub.Co., Inc v. Carlson*, 410 So.2d 546, 348 (Fla. 2d DCA 1982).

Where the Sunshine Law was enacted for the public benefit, the Florida Supreme Court has held that it must be liberally construed in the public's favor to effect its remedial and protective purpose. *Bd. Of Public Instruction of Broward Co. v. Doran*, 224 So.2d 693 (Fla. 1969), and *Canney v. Bd. Of Public Instruction of Alachua Co.*, 278 So2d 260 (Fla. 1973). Numerous court decisions have acknowledged that Florida's open public meetings laws serve to promote a state interest of the highest order by tending to enhance and preserve democratic processes. The ability of citizens to monitor governmental decisions and proceedings guarantees that public officials will be held accountable for their actions. Something, Deborah Cantrell claims, parole commissioners have been lacking for many, many years.

Approximately two weeks after Cantrell filed her suit, Erica Flowers filed a second lawsuit against the Commission, this time in the Ninth Judicial Circuit Court. Premised closely on Cantrell's suit, Flower's new suit claims the Commission is violating the public's right to notice and access to attend another Commission proceeding, i.e., what are termed "final parole revocation hearings." That name is somewhat misleading the way the Commission has set up the revocation process.

Parole Revocation Process

The parole revocation process has three parts to it:

First, when the Commission believes an act may have occurred that violates the conditions of a parolee's parole a warrant is issued and the parolee is taken into custody. Within a specified time a "preliminary parole revocation hearing" is held to determine if probable cause exists to support the charge of a claimed violation. Such preliminary revocation hearings are conducted by a parole hearing examiner at a location near the parolee's residence or near where the violation is alleged to have occurred. Such hearings are usually held in the jail where the parolee is confined.

Second, if probable cause is found to support an alleged violation, the parolee usually will be transferred to a state prison to await a "final parole revocation hearing." The final revocation hearing is held to determine if, in fact, the alleged violation occurred, and if so, what action should be taken (to revoke or reinstate parole). By statute, final revocation hearings may be conducted by more than one parole commissioner, a single parole commissioner, or a delegated FPC representative (usually a parole examiner). If conducted by someone other than two or more commissioners, the role of the hearing officer is generally limited to gathering information or fact-finding, by statute. However (similar to as they do concerning parole interviews, as discussed above), FPC rules and procedure directives delegate the responsibilities and authority of final revocation hearing officers into the realm of actual decision-making.

By FPC rules and procedure directives, final revocation hearing officers not only gather information and conduct fact-finding, but also are delegated authority to rule on argument or other matters presented at the hearing (such hearings are held like mini-trials, with witnesses, evidence presented, and the parolee may be represented by counsel). Upon conclusion of the final hearing, the hearing officer makes findings of fact and makes written recommendations to be submitted (later) to a panel of parole commissioners on whether parole should be revoked or not based on "competent, substantial evidence" adduced at the final hearing. (If a panel of commissioners conducted the final hearing, which is seldom or never the case in practice, then no recommendation is required, as they may make a "final" determination themselves.)

Third, when the final hearing is conducted by someone other than a panel of parole commissioners (as is almost always the case), the hearing officer's findings and recommendation(s) are

sent to the Parole Commission, which then holds a *public* ("open") meeting to, according to FPC rules and directives, approve or reject the findings and recommendation(s) and make a *final* determination on the recommendation(s) on whether to revoke parole or not (and whether to reincarcerate or impose another authorized sanction).

The major distinction in the above stages of the revocation process, as relevant to Erica Flower's second lawsuit, is that the preliminary and final parole revocation hearings are not noticed nor open to the public, and are held in locations that (even if they were open) are not easily or freely accessible to the public. Yet the Commission, when it meets after those two hearings to *finalize* the findings and recommendations, does open and notice *their* meeting to the public. (Of course, the parolee is still incarcerated awaiting the Commission's *final* decision, and therefore cannot attend the public meeting.)

And a major problem with the Commission allowing the public to attend only the last meeting held, and not the preliminary, and especially not the "final" hearings in the revocation process, is that recent case law has held that the Commission cannot reject the competent, substantial evidentiary findings, or recommendations based on same, that were made at a final revocation hearing. *Tedder v. Florida Parole Commission*, 842 So.2d 1022 (Fla. 1st DCA 2003); and *Ellis v. Florida Parole Commission*, 911 So.2d 831 (Fla. 1st DCA 2005). In other words, those findings and recommendation(s) *are* the *final* decision, are binding on the Commission, and the Commission's later open, public meeting is nothing more than a show to create an appearance that the revocation decision is being made within public view.

Unfortunately, for the Commission, according to Flower's second suit, it is well-established by Florida courts that "one purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance" at a public meeting. *Town of Palm Bch. V. Gradison*, 296 So.2d at 477.

Also unfortunate for the Commission, where the findings and recommendation(s) made at the final hearing are now *indisputably* binding on the Commission, and are the *de facto* final decision, the revocation decision is actually being made at a hearing *which is not open to the public*. Thus, such final revocation hearings are being held in violation of Article I, §24(b), Florida Constitution, and §§ 286.011 and 947.06, third sentence, Florida Statutes (2005), claims Flowers.

Flowers seeks a declaration from the court finding that final parole revocation hearings must be noticed and open to the public and be held in a location easily accessible to the public (her theory would appear to be equally applicable to "final conditional release revocation hearings," as the FPC also acts as the Conditional Release Authority and the revocation process is the same for parole and conditional release). Flowers also seeks temporary and permanent injunctions opening final revocation hearings to her and the public.

Validity of Actions Taken

Neither Cantrell nor Flowers include a claim in their suits asserting that past parole interviews and hearings of final parole revocation hearings (and any actions taken at same) were invalid for their failure to comply with open public meetings laws. Although, for those who were directly affected by those actions, that appears to be a viable legal argument that could be made.

It is established that the mere showing that open public meetings laws have been violated constitutes "irreparable public injury." *Town of Palm Bch. V. Gradison*, 296 So.2d at 477. And any action taken in violation of open public meetings laws is void *ab initio*. See: *Turner v. Wainwright*, 379 So.2d at 155 (parole revocation decisions made behind closed doors are void *ab initio*). Section 286.011, Florida Statutes, specifically provides that no resolution, rule, regulation or formal actior shall be considered binding except as taken or made at an oper meeting.

Conclusion

When the above-noted lawsuits were filed, FPLAO staff o the on the organization's Parole Project assisted by sendin separate news releases concerning the suits to every Florida stat legislator, Gov. Jeb Bush, and to over 30 news medi representatives around the state.

As these cases progress through the court, updates abou them will appear in *FPLP*.■

Parole Commission Update

• In mid-January '06 *FPLP* staff learned that the state Legislature WIL NOT reconsider House Bill 1899 (2005), that would have completel reorganized the Florida Parole Commission, as legislators stated the intended to do during this year's legislative session. so far, despi numerous inquiries by *FPLP* staff, legislators have not given any reaso for the reversal.

• On January 13, 2006, the Florida Parole Commission, in appare response to the lawsuit filed in September '05 by Erica Flowers (Se *FPLP*, Vol. 11, Iss. 5 and 6, pgs 12, 13), published a Notice of Propos Rule Development in the *Florida Administrative Weekly* indicating th the agency is planning to amend a large number of its rules at Chapter 2 21, Florida Administrative Code. At that same time the FPC al published several Notices of Proposed Rulemaking giving notice that t agency intends to repeal numerous outdated or duplicative rules. C February 10, 2006, the Commission published its final Notice Proposed Rulemaking concerning section 23-21, FAC. Howev waited until February 23 to have the FDOC post that notice *where* paro eligible inmates could see it in the prisons. This is the FPC's fi rulemaking of any note in over 10 years. Although it is no doubt t FPC's intent that such rulemaking now will provide FPC chairm Monica David a defense to Flower's lawsuit, it is not expected to mal any difference due to the claims in that suit. On March 2 FPLAO file rule challenge against the proposed rule changes in section 23-21. T will effectively stop that rulemaking while the lawsuits go forward.■

Florida Parole
Parole Releases vs. Parole Revocations

During the past several years there has been a dramatic decrease in the number of parole-eligible prisoners being granted parole in Florida. Curiously, the number of parolees who have their paroles revoked and who have been returned to prisons had closely paralleled the number of paroles granted until recently. The chart below is based on the fiscal periods shown.

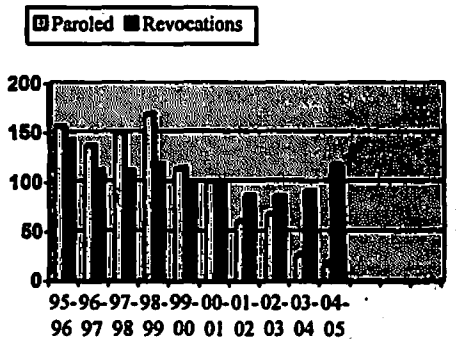


Chart Values

Fiscal Year	Paroled	Revoked
95-96	156	142
96-97	137	112
97-98	150	111
98-99	169	118
99-00	114	98
00-01	101	101
01-02	61	87
02-03	68	86
03-04	27	91
04-05	22	115

Prepared by the FPLAO Parole Project

Florida Parole
Parole Revocations
Technical Violations vs. New Offense Violations

The majority of parole revocations of Florida parolees are for technical violations. Very few parolees have their paroles revoked for committing a new offense while on parole. Under Florida Parole Commission policies, even a minor violation of a technical condition of parole may result in revocation of parole and a return to prison. This chart shows the parole revocations for the past thirteen years.

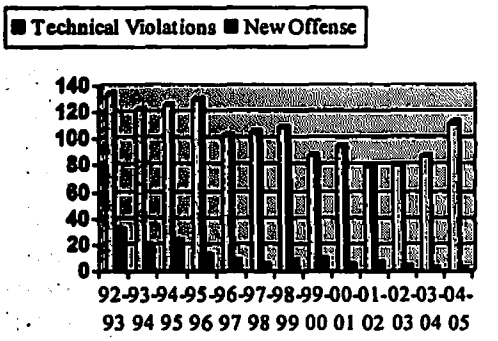


Chart Values

Fiscal Year	Technical	New Offense	Totals
92-93	134	33	167
93-94	122	18	140
94-95	125	25	150
95-96	129	13	142
96-97	103	9	112
97-98	105	6	111
98-99	109	9	118
99-00	88	10	98
00-01	95	6	101
01-02	79	8	87
02-03	81	5	86
03-04	87	4	91
04-05	112	3	115

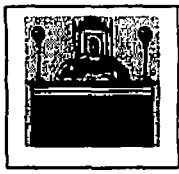
Prepared by the FPLAO Parole Project

FDOC Staff Barbershops Closed

It's been a dirty little secret that for decades Florida prisoners have been forced to perform personal services for prison employees, such as wash their cars, shine their shoes and boots, work in staff canteens, and work in unlicensed staff barbershops as unlicensed barbers cutting staff hair. In Dec. '05 FPLAO's Teresa Burns Posey began questioning former FDOC Secretary Crosby and other government officials about the legality of such practices. In particular, Chap. 476, Fla. Stat., requires all barbershops and barbers who cut any member of the public's hair to be licensed. On Feb. 23, '06 new FDOC Secretary James McDonough ordered all staff barbershops closed, shoe shine operations and car washes shut down, and closed staff canteens in prisons state wide. If any of those activities are to resume, FPLAO will be working to ensure it is to prisoners', not staff, benefit. Burns Posey has served notice that she will file suit if the staff barbershops are reopened without being licensed or with unlicensed prisoner barbers.

Parole

Parole is a post-prison supervision program where eligible inmates have the terms and conditions of parole set by the Florida Parole Commission. The period of parole cannot exceed the balance of the offender's original sentence. Under parole, the offender is to be supervised in the community under specific conditions. Parole supervision is provided by the Florida Department of Corrections. Although Florida no longer has parole except for those offenders sentenced for offenses committed prior to October 1, 1983, caseloads have increased. These increases are attributed to other state cases, which have transferred supervision to Florida. On June 30, 2005, there were 2,161 parolees in Florida (625 Florida cases and 1,536 other state cases). On June 30, 2005, there were 5,197 inmates in the Department of Corrections' custody who were parole eligible.



NOTABLE CASES

ANTHONY STURRIS

The following are summaries of recent state and federal cases that may be useful to or have a significant impact on Florida prisoners. Readers should always read the full opinion as published in the Florida Law Weekly (Fla. L. Weekly); Florida Law Weekly Federal (Fla. L. Weekly Federal); Southern Reporter 2d (So. 2d); Supreme Court Reporter (S. Ct.); Federal Reporter 3d (F.3d); or the Federal Supplement 2d (F.Supp. 2d), since these summaries are for general information only.

FLORIDA SUPREME COURT

Logan v. State, 30 Fla.L.Weekly S706 (Fla. 10/20/05)

On review of the Second District Court of Appeal's decision in Lawrence Logan's case, *Logan v. State*, 846 So.2d 657 (Fla. 2d DCA 2003), the Florida Supreme Court concluded that the Second District's reliance on *Smith v. State*, 537 So.2d 982 (Fla. 1989), for its opining that a defendant who elects to be sentenced under the guidelines elects to be sentenced under the guidelines in effect at the time of the election is incorrect.

In *Smith*, the primary holding was that the 1983 sentencing guidelines (which had been promulgated as procedural rules on September 8, 1983) were invalid; however, it was held that the Legislature rectified the invalidity when it adopted the same rules by statute effective July 1, 1984. In addressing the impact of that holding, the Florida Supreme Court determined that pursuant to Section 921.001(4)(a), Smith had the right to elect to be sentenced under the 1983 guidelines when he was resentenced in 1988.

The Florida Supreme Court recognized that Smith was in a "unique posture" because his crime was committed before the effective date of the guidelines, July 1, 1984, but his re-sentencing occurred afterwards. It was also recognized that the right to elect a sentence was a right granted by the Legislature. Section 921.001(4)(a) provided that "guidelines shall be applied to all felonies, except capital felonies, committed on or after October 1, 1983, and to all felonies, except capital felonies, committed prior to October 1, 1983, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the provisions of this act."

Similar to Smith, Logan's crimes were committed prior to July 1, 1984. His original sentence was vacated on appeal, and he appeared for resentencing after July 1, 1984. At his May 8, 2001, re-sentencing, Logan elected to be sentenced under the guidelines. The sentencing guidelines which were effective on that date expressly provided that the 1983 guidelines applied to Logan's offenses.

Thus, pursuant to the expressed language of Section 921.001(4)(b)(1), Florida Statutes (2000) (formerly Section 921.001(4)(a)), and consistent with *Smith*, the affirmative election entitled Logan to be sentenced under the 1983 guidelines.

Due to the erred reliance upon *Smith*, the Second District's conclusion that "[b]ecause Logan made his election in 2001, he elected to be sentenced pursuant to the Criminal Punishment Code" is contrary to that code's expressed language. Section 921.002, Florida Statutes (2001), provides: "[t]he Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998." Logan's offenses were committed in 1984. The pertinent date is the date of the offense, *not* the date of sentencing.

As a result, the Second District's decision was quashed and Logan's case was remanded to the district court for proceeding consistent with the Florida Supreme Court's opinion.

In Re: Amendments To The Florida Evidence Code—Section 90.104, 3 Fla.L.Weekly S701 (Fla. 10/20/05)

The Florida Bar Code and Rules of Evidence Committee recommended, and the Florida Supreme Court adopted, a amendment to section 90.104(1)(b of the Florida Evidence Code mad by chapter 2003-259, section 1, Law of Florida.

The amendment eliminates the need of a trial objection in order to preserve a evidentiary issue for appeal when th trial judge has made a definitiv ruling on the admissibility of th evidence.

It was explained that th amendment would reduce th number of motions f postconviction relief filed und Florida Rules of Criminal Procedu 3.850. Also, it was pointed out th the change is consistent with chang made to Federal Rule of Evidenc 103(a)(2) in 2000. Furthermore, th change eliminates the problem "inadvertent waiver" that preclud an appellate court's consideration an erroneous ruling at trial.

Therrien v. State, 30 Fla.L.Weekl S725 (Fla. 10/27/05)

John Richard Therrien's ca presented the Florida Supreme Cou with an issue of whether a pers may be designated a sexual predat when the offense triggering t designation became a qualifyi offense for sexual predator stat only after the person was sentenced.

When Therrien was sixteen-years-old he had committed a sexual battery and lewd and lascivious assault upon a nine-year-old girl. He was prosecuted as an adult, pleading to Count One's lesser-included offense of attempted sexual battery by a person under eighteen on a person under twelve and to the original count of lewd and lascivious assault. In August 1997, Therrien was sentenced, where his trial court withheld adjudication of guilt on both counts and imposed a sanction of probation for five years, conditioned on an eleven month and fifteen day suspended county jail sentence.

The offenses Therrien pled to did not qualify him as a sexual predator at the time of his sentencing. See: Section 775.21(4)(c), Fla. Statutes (Supp. 1996), which became effective July 1, 1996. However, the Legislature amended the statute subsequent to Therrien's sentencing, incorporating as qualifying offenses to include such crimes as he was found guilty. See: Ch. 98-81, sec. 3, at 591, Laws of Florida, codified at sec. 775.21(4)(c)(1)(b), Fla. Statues (Supp. 1998), and Ch. 2000-207, sec. 1, at 2052-53, Laws of Florida, codified at sec. 775.21(4)(a), Fla. Statues (2000).

More than three years after Therrien's sentencing, due to the amended statutes, the State sought and was granted by the trial court to have Therrien designated as a sexual predator in October 2000. The designation was affirmed on appeal.

The Florida Supreme Court, in its review of the case, basically pointed out the plain clear language of the statutes involved. The statutes were quoted in pertinent parts, where it was read that "[f]or a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a 'sexual predator' under subsection (5)" if the felony is one of a number of specified crimes. Then further, in subsection (5)(a), "An offender who meets the sexual predator criteria described in paragraph (4)(a) *who is before the court for sentencing for a current offense committed on or after October 1, 1993*, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of court shall transmit a copy of the order containing the written finding to the department within 48 hours after entry of the order..." The quoted language above was included in a revision that became effective July 1, 1996, and remained the same through the amendments in 1998 and 2000 where the specified crimes were changed by adding other offenses that included those committed by Therrien.

Given the statue's plain and ordinary meaning, the provision requires an offender both meet the eligibility criteria *and* be before the court for sentencing on a current offense committed after October 1, 1993. When the trial court designated Therrien a sexual predator in October 2000, Therrien was not before the court for sentencing.

In conclusion, it was held that a trial court is without jurisdiction to impose sexual predator designation on an offender who, under the law in effect at the time of sentencing, did not qualify as a sexual predator. Thus, the Florida Supreme Court quashed the appellate court's decision affirming the trial court's order and remanded Therrien's case for proceedings consistent with its opinion.

FLORIDA APPEAL COURTS

Williams v. State, 30 Fla.L.Weekly D2304 (Fla. 4th DCA 9/28/05)

Avery Williams' argument on appeal regarded a trial court preventing his defense counsel from exploring motive or bias of the State's witness during trial.

Williams was convicted of burglary of a structure with a battery. The crime arose after Williams entered an enclosed car repossession compound, attempted to steal a car, and was confronted by the owner, Edward Leb. That confrontation led to a physical altercation.

During trial, the defense's attack on Leb's credibility hinged on unrelated criminal charges that were pending against Leb at the time of the altercation with Williams. Some of those charges were still pending during Williams' trial. It was the defense's theory that Leb lied about his altercation with Williams, and what Williams had done before the fight, to minimize his own potential criminal exposure.

Williams' counsel cross-examined Leb about his pending charges. However, the trial court prevented the defense from asking Leb whether he knew that his existing bond would have been revoked had he been arrested for the incident that occurred with Williams.

The appellate court opined that such line of questioning was proper since it went to the motive behind Leb's initial report of the incident to the police. For that, it was opined that the trial court abused its discretion in limiting the cross-examination of the victim.

The appellate court further explained that a second, more significant problem occurred during closing argument when the trial court sustained objections that prevented defense from arguing that Leb was the true criminal, having attacked Williams, and that Leb fabricated his story to avoid getting in further trouble on top of his existing charges. Because one of the officers who responded to the scene saw Leb with a shock absorber in his hand standing over Williams and holding him to the ground, there was a basis in the evidence for defense to argue that Leb was the aggressor.

As a result, Williams' case was reversed and remanded for a new trial.

Gibson v. State, 30 Fla.L.Weekly D2305 (Fla. 4th DCA 9/28/05)

On appeal, Dontay Laver Gibson argued that his trial court erred in allowing, over objection, expert testimony regarding the statistical probability of a DNA match where State's expert lacked knowledge of the database and the statistical method used.

The appellate court explained, in Florida, DNA testing requires a two-step process, one biochemical and the other statistical. See: *Butler v. State*, 842 So.2d 817, 828 (Fla. 2003). Both steps must satisfy the *Frye* test for validity. In Gibson's case it was the statistical analysis employed that was at issue. As to that analysis, a properly qualified expert must testify as to the qualitative or quantitative estimates demonstrating the significance of the DNA match. The qualified expert must demonstrate a sufficient knowledge of the database grounded in the study of authoritative sources.

In a similar case, *Perdomo v. State*, 829 So.2d 280 (Fla. 3rd DCA 2002), the defendant objected to the DNA expert's qualifications to testify as to the statistical analysis of the DNA match arguing that he was not a statistician or a mathematician. The court sustained the objection pending the state's showing of a predicate for the admission of the testimony. In Gibson's case, the court did not even require a predicate from the state before overruling Gibson's objection. In *Perdomo* it was held that the state must prove by a preponderance of evidence that an expert testifying about DNA statistical and population genetics analysis has sufficient knowledge of the database grounded in the study of authoritative sources.

Like in *Perdomo*, the expert in Gibson's case never identified, much less displayed, sufficient knowledge of the database or method she used for the statistical component of her opinion. At no point did the expert explain what method she used, nor did she demonstrate any knowledge of the authorities pertinent to the database. Only by way of an example, the expert merely testified that the "formula" used in the calculation of the statistics used in the case was one recommended by the National Research Council. The appellate court deemed that this was insufficient.

Following the *Perdoma* court, the appellate court opined that the matter must be remanded for a limited evidentiary hearing to determine whether the expert had sufficient knowledge of the authoritative sources to present the statistical evidence.

King v. State, 30 Fla.L.Weekly D2297 (Fla. 2d DCA 9/28/05)

Regarding claims of erroneous sexual predator designations, the Second District Court of Appeals has opined that challenging such claims in a civil proceeding has not proven to be a workable mechanism to resolve them.

The Second District is convinced that the approach taken by the Fifth District is more appropriate. See: *Nicholson v. State*, 846 So.2d 1217 (Fla. 5th DCA 2003), and *Cobrera v. State*, 884 So.2d 482 (Fla. 5th DCA 2004). In those cases, the sexual predator designation was treated as an order that can receive appellate review and postconviction challenge as if it was a sentencing order. Thus, the Second District has receded from its numerous prior opinions regarding such claims.

The Second District went on to explain, to avoid confusion in the matter, a sexual predator designation: (1) may be imposed or modified after sentencing without regard to the time limits established in Rule 3.800(c); (2) may be directly appealed as a portion of a sentence under Rule 9.140(b)(1)(E); (3) may be directly appealed under Rule 9.140(b)(1)(D) if it is entered after the time to appeal the judgment and sentence has expired; (4) may be challenged under Rule 3.800(b) in order to preserve the issue for direct appeal; and, (5) may be challenged like a sentencing issue by postconviction motions pursuant to Rules 3.800(a) and 3.850.

A party in the Second District should no longer file any civil motion or proceeding to challenge a sexual predator designation. However, because the Fourth District has followed the prior opinions the Second District has now receded from, the Second District was compelled to certify direct conflict with the Fourth District regarding the issue.

Kepner v. State, 30 Fla.L.Weekly D2299 (Fla. 4th DCA 9/28/05)

On appeal, Mark A. Kepner argued that his trial court erred in failing to renew its offer of appointing assistance of counsel prior to sentencing.

Apparently, Kepner had chose to turn down the trial court's offer of assistance of counsel prior to the trial proceedings, and Kepner represented himself. However, the trial court did not renew the assistance of counsel offer prior to sentencing. The appellate court opined that this was error.

Rule 3.111(d)(5), Florida Rules of Criminal Procedure provides that an offer of assistance of counsel *shall* be renewed by the court at each subsequent stage of the proceeding at which the defendant appears without counsel. "Even if a defendant does not request appointment of counsel, this omission [by the defendant] is not considered a knowing waiver of the right to counsel." See: *Hardy v. State*, 655 So.2d 1245, 1247-1248 (Fla. 5th DCA 1995).

As a result, Kepner's sentencing was reversed and remanded for resentencing.

Ford v. State, 30 Fla.L.Weekly D2434 (Fla. 2d DCA 10/19/05)

Henry Ford had filed a Rule 3.850 motion within his circuit court alleging newly discovered evidence

Subsequently, the lower court applied a standard used for evidence discovered after a defendant has been convicted at trial and denied his motion. However, Ford's convictions were a result of pleas.

Therefore, on appeal, the appellate court opined that "the circuit court should have applied the more appropriate standard for withdrawal of pleas after sentencing, which requires the defendant to prove that withdrawal of his plea is necessary to correct a manifest injustice." See: *Bradford v. State*, 869 So.2d 28, 29 (Fla. 2d DCA 2004).

The appellate court further explained, as it was in the *Bradford* case, Ford's motion was facially insufficient because it failed to allege that plea withdrawal was necessary to correct a manifest injustice. Accordingly, the trial court's denial was affirmed without prejudice to Ford's right to file a timely, facially sufficient Rule 3.850 motion to withdraw plea based on his newly discovered evidence.

Cole v. State, 30 Fla.L.Weekly D2467 (Fla. 5th DCA 10/21/05)

Jeffrey Allen Cole filed his Rule 3.850 motion in the Citrus County Circuit Court which was subsequently denied as being a successive motion. The lower court further directed the Department of Corrections (DOC) to forfeit 90 days of Cole's gain-time. Cole appealed the decision.

In affirming the denial of Cole's motion, the appellate court further opined that a trial court is not authorized to direct DOC to forfeit any amount of gain-time as a sanction. A trial court can send a certified copy to DOC of an order showing that the prisoner has filed a frivolous or malicious pleading and recommend a sanction.

The order that directed DOC to forfeit the gain-time was stricken.

Julien v. State, 30 Fla.L.Weekly D2438 (Fla. 4th DCA 10/19/05)

Subsequent to an evidentiary hearing, Maxime Julien appealed the denial of his claim of ineffective assistance of counsel in failing to inform him of his option to apply for the Pretrial Intervention Program (PTI).

A first-time offender, Julien pled guilty to grand theft and was placed on probation. As a result of his plea, the United States commenced removal proceedings to rescind Julien's permanent residence status and remove him to Haiti.

Subsequent to his filing for postconviction relief, a lower court granted an evidentiary hearing on Julien's ineffective assistance of counsel claim. At the hearing, although: Julien testified that his counsel failed to advise him of the PTI program and that he would not have entered the guilty plea if he had been aware of the program and would have applied for it; Julien's interpreter testified he never heard counsel discuss the PTI program; and the Public Defender that represented Julien testified he might not have discussed the PTI program with Julien and that he did not have a general habit in doing so with his clients, the lower court denied Julien's postconviction relief motion without stating any reasons.

Florida Rule of Criminal Procedure 3.171(c)(2)(B) places a responsibility upon defense counsel to advise a defendant of all plea offers and "all pertinent matters bearing on the choice of which plea to enter and the particulars attendant upon each plea and the likely results thereof, *as well as any possible alternatives that may be open to the defendant.*" (Emphasis added)

It was noted also that Mickey Rocque, a trial lawyer and law professor, testified as an expert in the area of criminal law at Julien's evidentiary hearing. Rocque was very familiar with the PTI program because he helped draft the current PTI statute. He had explained that the PTI program is a possible alternative available to a first-time offender. For a first-time offender facing immigration consequences, the program is critical. A defendant derives a tremendous benefit by having his charges dismissed after completing the program.

After the appellate court considered all the factors before it, it concluded that the defense counsel's failure to inform Julien of this possible alternative constituted a deficient performance. Furthermore, the appellate court agreed with Julien that he sufficiently met the *Strickland v. Washington*, 466 U.S. 668 (1984), prejudice prong by demonstrating a reasonable probability that, but for counsel's error in failing to advise him of the PTI alternative, he would not have pleaded guilty but instead would have applied to the PTI program.

As result of the appellate court's findings, the denial of Julien's motion for postconviction relief was reversed and remanded with directions to give him the opportunity to withdraw his plea.

Macaluso v. State, 30 Fla.L.Weekly D2494 (Fla. 2d DCA 10/28/05)

The Second District Court of Appeals stressed an important point that must be followed to file a facially sufficient Rule 3.800(a) motion that attacks the legality of a habitual felony offender (HFO) sentence. (See also Rule 3.800(a) motion article in this FPLP).

The defendant, when he filed his Rule 3.800(a) motion in this case, merely alleged that his prior convictions in the record's pre-sentence investigation report did not establish the required predicate for sentencing him as an HFO.

A facially sufficient attack requires the defendant to affirmatively allege that *the predicate prior convictions do not exist as a matter of law.* See: *Bover v. State*, 797 So.2d 1246, 1247 (Fla. 2001). See also: *Judge v. State*, 596 So.2d 73, 78 (Fla. 2d DCA 1991) ("[W]e conclude that a habitual offender sentence is illegal for

purposes of rule 3.800(a) only if...a prior offense essential to categorize the defendant as a habitual offender does not actually exist.")

Although the defendant in this case failed to file a facially sufficient motion in the lower court, in the appellate court it was opined that the lower court erred in denying the Rule 3.800(a) motion *without* determining the facial sufficiency *before ruling on its merits*.

Therefore, the denial was reversed and the case remanded with instructions for the lower court to enter an order of dismissal.

[Note: From an order of dismissal, the defendant should have the opportunity to file a facially sufficient motion under Rule 3.800(a).]

Muhammad v. Crosby, 30 Fla.L.Weekly D2552 (Fla. 1st DCA 11/7/05)

Akeem Muhammad appealed a denial of his petition for writ of mandamus/certiorari where he had requested a lower court to direct James Crosby, Jr., Secretary of the Department of Corrections, to refrain from enforcing a prison rule that requires him to be clean-shaven. Muhammad explained that the rule has placed a substantial burden on his exercise of Islam, which is prohibited by Chapter 761, Fla. Statutes, the (Fla.) Religious Freedom Restoration Act of 1998 (RFRA).

The DOC rule that was at issue in this case requires inmates to be clean-shaven, and to submit to forced shaving if they refuse. Because Muhammad had refused to comply with the rule, he was sentenced to 30 days of disciplinary confinement, forced shaving, and loss of gain-time. This discipline was upheld on administrative appeal and Muhammad continued to be subjected to forced shaves.

When Muhammad filed his petition, the lower court placed a $280 lien on his prison account to cover the filing fee, pursuant to Section 57.085(5), Fla. Statutes (2004). However, the lower court had denied Muhammad's petition. The reason given for the denial was that Muhammad should have made his request in an action for declaratory relief.

On appeal, it was noted first that Section 761.03(1), Fla. Statutes (2004), provides that the government "shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability." Section 761.02(3), defines "exercise of religion" as "an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief." Muhammad, being a Muslim, asserted that Islam commands male adherents to wear a beard the size of a fist or the next shorter length possible.

Contrary to the lower court's denial, the appellate court opined that *mandamus was the appropriate vehicle* for Muhammad to attempt to show the circuit court that DOC's grooming policy substantially burdens his free exercise of religion in violation of Section 761.03. See, e.g., *Henderson v. Crosby*, 891 So.2d 1180 (Fla. 2d DCA 2005). See also: *Schmidt v. Crusoe*, 878 So.2d 361, 363 (Fla. 2003) (observing that when a court must interpret a relatively new statute to determine whether the petitioner has a clear legal right and respondent has a clear legal duty under the statute, this "does not make the right any more or less 'clear'" for purposes of mandamus relief). As a result, the appellate court determined to direct the lower court to address the merits of Muhammad's claim under Chapter 761. [In note 2 it was depicted that although the lower court is without jurisdiction to prohibit DOC from cutting Muhammad's beard for religious reasons, because courts are not authorized to regulate treatment of inmates, the court does have jurisdiction to consider his challenge to the validity of DOC's shaving regulation on religious grounds. See: *Moore v. Habibullah*, 759 So.2d 1281 (Fla. 5th DCA 1999); and *Singletary v. Duggins*, 724 So.2d 1234 (Fla. 3d DCA 1999).] The appellate court in Muhammad's case also cited a California case, *Mayweathers v. Terhune*, 328 F.Supp. 2d 1086 (E. D. Cal. 2004) (holding that the California State Prison regulation requiring inmates to be clean-shaven was not the least restrictive means for achieving a compelling governmental interest, and thus violated Muslim inmates' religious rights under the federal counterpart of RFRA).

In regards to the lower court placing a lien against Muhammad's prison account, the appellate court opined that such an order was error because, Muhammad lost gain-time as a consequence of his refusal to shave. Under *Schmit*, *Id.*, any challenge to discipline that results in loss of gain-time is a collateral criminal proceeding. See: Section 57.085(10), Florida Statutes (2004).

Regarding the aforementioned issues, the appellate court reversed and remanded Muhammad's case for further proceedings consistent with its opinion.

Palazon v. State, 30 Fla.L.Weekly D2533 (Fla. 4th DCA 11/2/05)

Osvaldo Palazon did not receive a final hearing when his conditional release was revoked because an attorney that had represented him faxed a letter to the Parole Commission stating Palazon waived the hearing. In a petition for writ of habeas corpus filed with the circuit court, Palazon maintained that he did not waive his right to a final hearing, nor did he authorize anyone else to do so in his behalf. The lower court denied Palazon any relief and he sought review of the denial in the Fourth District Court of Appeals.

In reviewing the denial, the Fourth District treated Palazon's case

as a petition for writ of certiorari seeking review of an order from the circuit court denying Palazon's petition. It was pointed out in this review Section 947.141(3), Florida Statutes (2004) provides that if a releasee is charged with violating conditional release, the releasee must be afforded a hearing within 45 days after notice to the Parole Commission of the releasee's arrest. Also, Florida Administrative Code, Rule 23-23.011(4)(c), states that a conditional release violation hearing "may be waived by the releasee after an explanation of the consequences of a waiver. The waiver shall be executed before a Commissioner or duly authorized representative of the Commission.

Furthermore, in *State v. Upton*, 658 So.2d 86 (Fla. 1995), it was held that a lawyer's written waiver is insufficient to waive a defendant's right to a jury trial. The concern about such a waiver was that it must be entered knowingly and voluntarily. FAC, Rule 23-23.011(4)(c), embodies similar concerns.

Consequently, the circuit court's denial order was quashed, and Palazon's case was remanded for the Parole Commission to conduct a final hearing on Palazon's violation of conditional release.

Ranes v. State, 30 Fla.L.Weekly D2533 (Fla. 4th DCA 11/2/05)

Andrew Ranes appealed a trial court's denial of his petition for writ of habeas corpus. The reason given for the denial by the trial court was a finding that the petition was impermissibly successive because Ranes had filed a previous petition seeking the same relief.

However, the previous petition was denied as legally insufficient, it was not denied based on the merits of Ranes' claim. Ranes alleged in the petition that he had retained counsel to file a postconviction motion, but counsel failed to do so. See: Fla.R.Crim.P. 3.850(b)(3), and *Steele v. Kehoe*, 747 So.2d 931 (Fla. 1999).

The appellate court found that the trial court denied Ranes' petition as successive in error, because the trial court had not ruled on the merits of the case when it denied Ranes' first petition. Also, the appellate court opined that based upon the copies of letters Ranes included in his initial brief showing his attorney's intentions to file a postconviction motion, Ranes' petition adequately set forth a claim for relief under *Steele*. Due process entitled Ranes to a hearing on his legally sufficient claim.

The trial court's denial was reversed and Ranes' case was remanded for an evidentiary hearing.

Cillo v. State, 30 Fla.L.Weekly D2556 (Fla. 2d DCA 11/9/05)

On appeal, Frank P. Cillo challenged a lower court's denial of his second-time-around (successive) Rule 3.800(a) motion, where he claimed that his sentence was illegal because it exceeded the statutory maximum.

Apparently, Cillo had filed a previous motion raising the same issue, and it was denied and affirmed in the appellate court. See: *Cillo v. State*, 884 So.2d 29 (Fla. 2d DCA 2004). Thus, the lower court's reason for denying the second-time-around motion.

Originally, Cillo was convicted of three second degree felony offenses. The lower court sentenced Cillo to three concurrent terms of 12.75 years prison followed by two years of community control and thirty years of probation, a total of 44.75 years. Cillo argued that because the offenses were second degree felonies, run concurrently, the maximum sentence he could receive was fifteen years unless the sentences were imposed consecutively for a total of forty-five years. In denying Cillo's claim, the lower court reasoned that because the lowest permissible sentence of 12.75 years, according to Cillo's scoresheet, did not exceed the statutory maximum of forty-five years, the lower court was within its discretion to sentence Cillo to 44.75 years.

Typically, Cillo's claim would have been collaterally estopped. However, the second-time-around in the appellate court the State conceded that Cillo's sentence was illegal and the appellate court was compelled to correct a manifest injustice. See: *McBride v. State*, 848 So.2d 287, 292 (Fla. 2003) ("[C]ollateral estoppel will not be invoked to bar relief when its application would result in a manifest injustice.").

The appellate court opined that Cillo's sentence, which included the prison portion as well as the community control and probation portions cannot exceed the statutory maximum of fifteen years. A sentence of incarceration and probation cannot exceed the maximum period of incarceration provided by law, unless the lowest permissible sentence under the criminal punishment code exceeds that statutory maximum.

The lower court's denial was reversed and Cillo's case was remanded for resentencing.

Kahane v. State, 30 Fla.L.Weekly D2645 (Fla. 4th DCA 11/23/05)

Michael J. Kahane, after being prohibited from filing any further pro se filings in connection with his St. Lucie County case, filed a Rule 3.800(a) motion regarding his incarceration in a Martin County case. The Martin County Circuit Court struck the pleading because of the ordered prohibition from the other county's court.

On appeal, it was noted that such an order of prohibition was not entered in the Martin County Circuit Court case. Regardless of that notation, the appellate court opined that if Kahane filed a legally sufficient Rule 3.800(a) motion, the circuit court shall consider that motion on the merits.

Accordingly, the Martin County Circuit's order striking Kahane's motion was reversed.

Williams v. State, 30 Fla.L.Weekly D2569 (Fla. 4th DCA 11/9/05)

On motion for rehearing, the Fourth District Court of Appeal withdrew its prior opinion in Daryl Williams' case. (Original opinion is at 30 Fla.L.Weekly D1249i.)

In substitution of that opinion, the Fourth District affirmed the denial of Williams' Rule 3.800(a) motion, which claimed that his written sentence does not conform to the lower court's oral pronouncement.

It was noted by the Fourth District that Williams' motion was unsworn where it had claimed that the judge sentenced Williams to eleven years but the written sentence depicted fourteen years seven months. It was also explained that the reason for its affirmation, no attachments, such as transcript of the sentencing proceeding, were included. Thus, the appellate court certified conflict with *Fitzpatrick v. State*, 863 So.2d 462 (Fla. 1st DCA 2004), and *Berthiaume v. State*, 864 So.2d 1257 (Fla. 5th DCA 2004).

It was then concluded that a mere allegation of a difference between the oral pronouncement and the written judgment is insufficient to comply with the Rule 3.800(a), Fla.R.Crim. Procedure. Therefore, the Fourth District also certified conflict with *Watts v. State*, 790 So.2d 1175 (Fla. 2d DCA 2001), as to the issue of whether a mere allegation that a written sentence does not comport with an oral pronouncement is sufficient to raise a Rule 3.800(a) claim. It was further noted that, unlike Rule 3.850(d), Rule 3.800(a) contains no requirement that the trial court attach portions of the record that conclusively refute the allegations of the motion. ■

Guide offers assistance to transitioning veterans

Veterans leaving prison will find help for the transition with "Planning for Your Release," a guide for incarcerated veterans offered by the National Coalition for Homeless Veterans (NCHV).

The 24-page booklet details resources specifically available to veterans as well as those for both veterans and nonveterans. It covers housing, finding and keeping a job, health, substance abuse and mental health treatment, financial and legal help, and women veterans. Toll-free numbers and addresses are included. In addition, the booklet explains federal benefits available to veterans and how to pursue them.

NATIONAL COALITION *for* HOMELESS VETERANS

To receive the booklet, ask family or friends to download it for you from the NCHV website, www.nchv.org; call (202) 546-1969 or 800.VET-HELP; or write NCHV, 333 1/2 Pennsylvania Ave. S.E., Washington, DC 20003-1148.

CORRECTION

In the last issue of *FPLP*, Vol. 11, Iss. 5 and 6, at page 8, an article entitled "Closing the DNA Exoneration Door" was published. That article discussed the (then) scheduled October 1, 2005, expiration of a 2001 Florida court rule that provided a 4-year window to Florida prisoners to petition the courts for DNA testing to prove their innocence—if they took their cases to trial. However, on Sept. 29, three days before the window was set to expire, the Florida Supreme Court amended the rule, 3.853, Fla. R. Crim.P., to delete the 10/1/05 time limit and changed to 7/1/06. Thus, extending the time allowed to petition for DNA testing for 8 months. The extension came when the Florida Bar moved/proposed that the time limit be stricken all together. The S. Ct. made the amendment to give it time to consider the Bar's proposal. *See In Re: Amendment to Fla.R.Crim.P. 3.853(d)*, 30 Fla. L. Weekly S661 (Fla. 9/29/05).

[Editor's Note: Legislation has been prefiled for the 2006 regular legislative session that, if passed and made law, would completely remove the time limit on seeking DNA testing.] ■

fyi

BUDGET

BUDGET
DEPARTMENT OF CORRECTIONS
BUDGET SUMMARY
(FY 2004-05)

Operating Funds

Expenditures by Budget Entity:

Department Administration	$ 58,729,772
Security and Institutional Operations	1,202,002,591
Health Services	315,486,894
Community Corrections	243,172,469
Information Technology	23,322,664
Programs	42,986,848
Total Operating Funds	$1,885,701,238

Fixed Capital Outlay Funds

To Provide Additional Capacity	$ 80,193,036
To Maintain Existing Facilities	2,868,834
Total Fixed Capital Outlay Funds	$ 3,061,870
Total	$1,968,763,108

Local Funds

Collection Activities:

Cost of Supervision Fees	$27,061,991
Restitution, Fines, and Court Costs	57,956,233
Subsistence, Transportation, and other Court-Ordered Payments	19,782,796

Inmate Banking Activities:

Total Deposits	$85,009,685
Total Disbursements	85,545,563
June 30, 2005 Total Assets	9,676,057

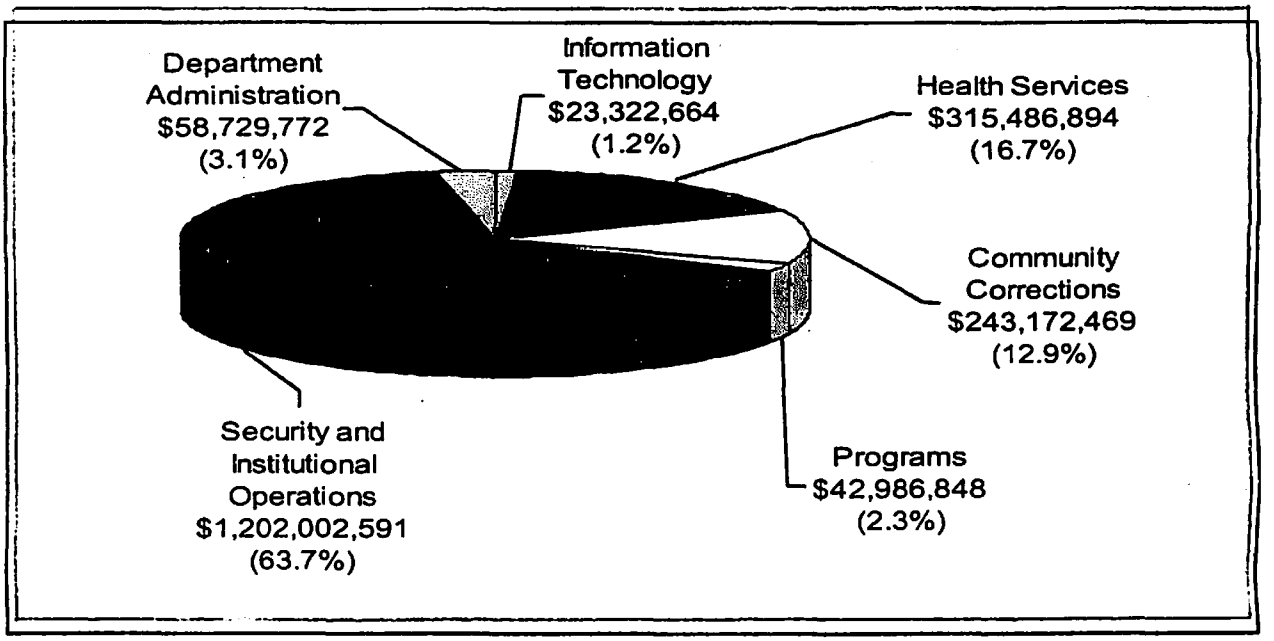
Other Activity:

Revenue from Canteen Operations	$20,986,632
Inmate Telephone Commissions	16,335,212

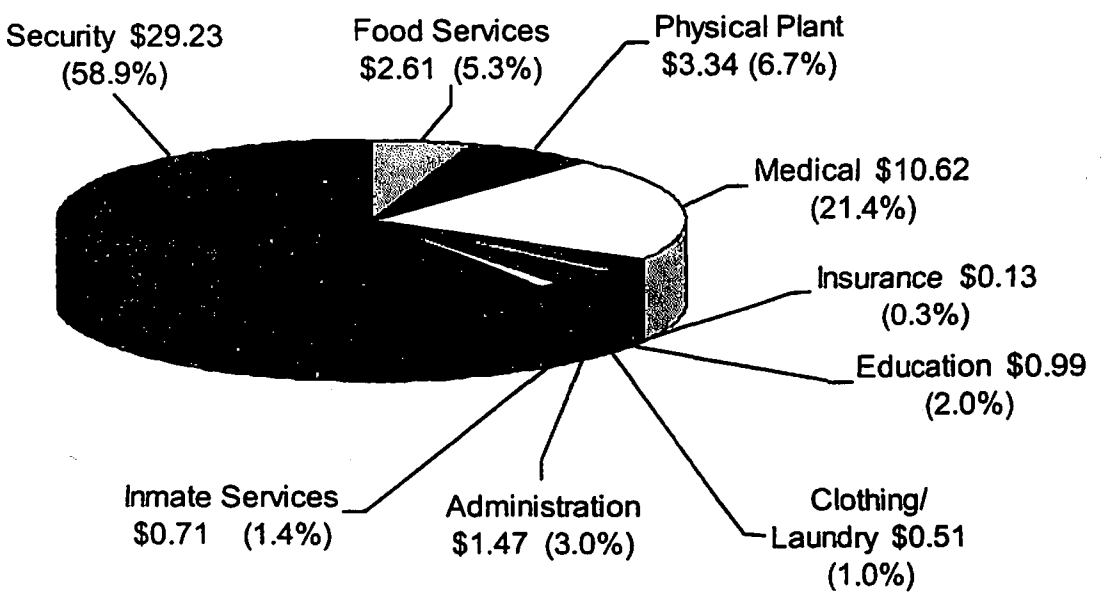
FLORIDA DEPARTMENT OF CORRECTIONS

BUDGET

FY 2004-05 Correctional Budget
Total Expenditures $ 1,885,701,238



Inmate Cost Per Day for FY 2004-05
$49.61 ($18,108 annually) (Major Institutions Only)



FLORIDA DEPARTMENT OF CORRECTIONS

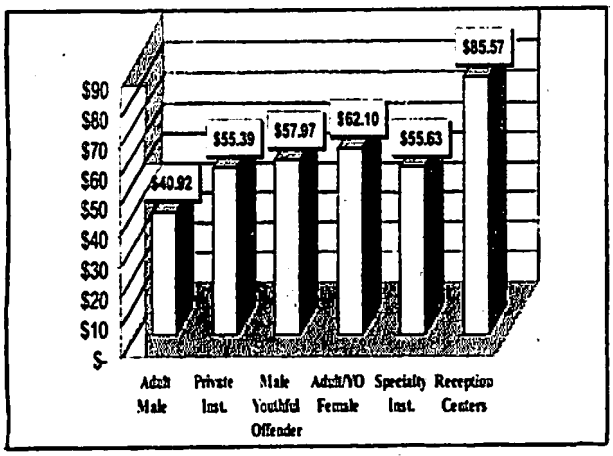
BUDGET

Summary of Average Inmate Costs (FY 2004-05)

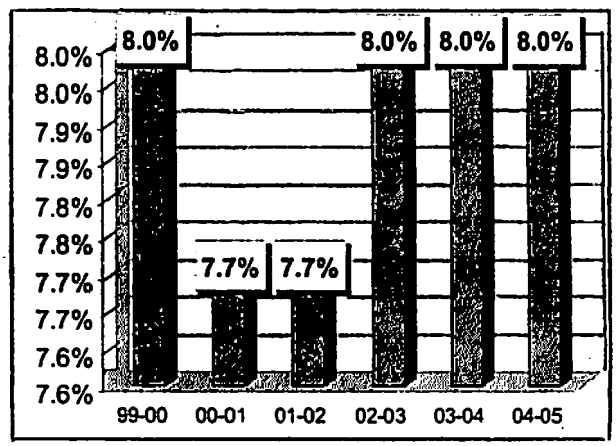
TYPE OF FACILITY	AVERAGE POPULATION	TOTAL PERDIEM	OPERATIONS	HEALTH SERVICES	EDUCATION SERVICES
TOTAL ALL DEPARTMENT FACILITIES (EXCLUDING PRIVATE) (3)	78,737	$49.60	$37.71	$10.66	$1.23
TOTAL MAJOR INSTITUTIONS (EXCLUDING PRIVATE)	78,643	$49.61	$37.70	$10.67	$1.23
ADULT MALE CUSTODY (1)	44,456	$40.92	$34.27	$5.62	$1.03
MALE YOUTHFUL OFFENDER CUSTODY	2,870	$57.97	$46.88	$6.79	$4.30
RECEPTIONS CENTERS	6,617	$85.57	$45.70	$39.07	$0.80
ADULT AND YOUTHFUL FEMALE CUSTODY (2)	4,043	$62.10	$42.90	$16.92	$2.28
SPECIALTY INSTITUTIONS	18,247	$55.63	$41.78	$12.58	$1.26
WORK RELEASE CENTERS	2,410	$34.50	$28.58	$5.46	$0.46
PRIVATE INSTITUTIONS (1) (3)	4,309	$55.39	$54.94	$0.45	$0.00
PROBATION AND RESTITUTION CENTERS & BRADENTON DTC	93	$43.42	$43.42	$0.00	$0.00

(1) These facilities exclude debt service costs, which if included would increase the department's average major institution per diem by $0.12 and the private institutions' per diem by $4.73.
(2) Also serving as reception centers (Broward CI and Lowell CI) for female inmates.
(3) Per diem figures do not include indirect and administration costs of $4.39 for major institutions (operations $2.21, health services $0.31, education $0.22, substance abuse $0.04, and departmental administration $1.61), and $0.85 for private institutions.
NOTE: Administration costs equal 3.06% of total Department expenditures.

Inmate Cost Per Day by Type of Facility



Percent of State General Revenue Budget Appropriated to Corrections



INMATE POPULATION ON JUNE 30, 2005

■ There are 20,568 more inmates in Florida prisons today than there were 9 years ago.

Inmate Population as of June 30th of Each Year

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
TOTAL	64,333	64,713	66,280	68,599	71,233	72,007	73,553	77,316	81,974	84,901
GENDER BREAKDOWN										
Males	60,782	61,282	62,768	64,966	67,214	67,782	69,164	72,520	76,675	79,221
Females	3,551	3,431	3,512	3,633	4,019	4,245	4,389	4,796	5,299	5,680
RACE BREAKDOWN										
White	26,988	27,518	28,235	29,405	30,894	31,308	32,384	34,588	36,935	38,874
Black	36,100	35,874	36,669	37,718	38,679	38,852	39,239	40,583	42,572	43,306
Other	1,245	1,321	1,376	1,476	1,660	1,847	1,930	2,145	2,467	2,721
RACE/MALES BREAKDOWN										
White Males	25,437	26,048	26,731	27,818	29,094	29,373	30,383	32,244	34,202	35,793
Black Males	34,123	34,014	34,778	35,824	36,652	36,784	37,121	38,412	40,259	40,984
Other Males	1,222	1,220	1,259	1,324	1,468	1,605	1,660	1,864	2,214	2,444
RACE/FEMALES BREAKDOWN										
White Females	1,551	1,470	1,504	1,587	1,800	1,935	2,001	2,344	2,733	3,081
Black Females	1,977	1,860	1,891	1,894	2,027	2,068	2,118	2,171	2,313	2,322
Other Females	23	101	117	152	192	242	270	281	253	277

Summary of Florida State Correctional Facilities

Facility Summary	Total	Male	Female	Population on June 30, 2005	Percentage of Population
Summary					
Correctional Institutions* **	59	53	6	71,702	84.5%
Work Camps, Stand Alone Work/Forestry Camps	37	35	2	10,031	11.8%
Treatment Centers	1	1	0	84	0.1%
Work Release Centers	26	19	7	2,630	3.1%
Road Prisons	5	5	0	412	0.5%
Total Facilities	128	113	15	84,859	100.0%
Contract Jail Beds				42	0.0%
Population Total				84,901	100.0%

* Institutions with separate units and hospitals are counted as one institution. These institutions are Apalachee East and West units; CFRC Main, East and South units; Gulf CI Main and Annex units; Hamilton CI Main and Annex units; Liberty CI and Quincy Annex; Lowell CI, Lowell Annex and Boot Camp units; New River CI East and West units; RMC Main and West units; South Florida Reception Center (SFRC) and SFRC South; Sumter CI and Boot Camp units; and Taylor CI Main and Annex units. The total includes five private correctional facilities. ** Franklin CI began receiving inmates July 12, 2005.

Florida Prisoners' Legal Aid Organization Inc.

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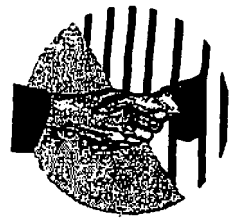

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