FLORIDA PRISON LEGAL

Perspectives

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U.S. Supreme Court State Prisoners May Challenge Constitutionality of State Parole Procedures Under 42 U.S.C. 1983

by Bob Posey

WASHINGTON—The U. S. Supreme Court ruled 8-1 on March 7, 2005, that state prisoners can file federal civil rights lawsuits to challenge the constitutionality of state parole procedures.

The case began when the two state prisoners, William Dotson and Rogerico Johnson, both of whom are serving lengthy terms in Ohio prisons, filed separate federal suits under 42 U.S.C. §1983, the Civil Rights Act of 1871, claiming that Ohio's state parole procedures violate the Federal Constitution. Dotson and Johnson both sought declaratory and injunctive relief.

The question presented to the Supreme Court was whether state prisoners, claiming that state parole procedures or decisions violate federal law or the Constitution, may bring such actions under 42 U.S.C. §1983, or whether they must instead seek relief exclusively under federal habeas corpus statutes. The Supreme Court, with only one justice dissenting, Anthony Kennedy, held that such actions maybe brought as §1983 civil rights lawsuits.

Dotson began serving a life sentence in 1981. The parole board denied him parole in 1995; and in 2000 a parole officer, after reviewing his records, determined he would not receive another hearing for five more years. In making that decision, the parole officer used parole guidelines first adopted in 1998, seventeen years after Dotson began serving his life sentence. Dotson filed suit in the federal district court under §1983 claiming that retroactive application of the harsher 1998 parole guidelines to his pre-guideline case violates the *Ex Posto Facto* and Due Process Clauses of the U.S. Constitution. He sought a declaration from the federal court to that effect, as well as a permanent injunction ordering that he be given an "immediate parole hearing in accordance with the statutory laws and administrative rules in place when [he] committed his crimes."

Johnson began serving a 10-to-30 year sentence in 1992. The parole board denied him parole in 1999, basing its decision on the new 1998 guidelines. Johnson also filed a §1983 lawsuit in federal court claiming the application of the harsher 1998 guidelines to his pre-guidelines case was a retroactive violation of the *Ex Post Facto* Clause of the Constitution. He also alleged that the parole board (by having too few members present and by denying him an adequate opportunity to speak) violated the Due Process Clause. Johnson's §1983 complaint sought a new parole hearing conducted under constitutionally proper procedures and an injunction ordering the state to comply with due process and *ex post facto* requirements in the future.

ON THE INSIDE

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In both cases, the Federal District Court, Northern District of Ohio, held that the prisoners could not bring their claims as §1983 civil rights violation lawsuits, but must seek relief through habeas corpus (meaning that they must exhaust all state administrative and state-court remedies first *and* be subject to the severe restrictions on federal habeas corpus actions as enacted in the Antiterrorism and Effective Death Penalty Act of 1996, before seeking federal habeas corpus relief). The district court dismissed both cases, and Dotson and Johnson appealed. The Sixth Circuit Court of Appeals ultimately consolidated the two cases and heard them *en banc*. The appeals court reversed the lower court's decisions and held that the actions could proceed as §1983 lawsuits. 329 F.3d 463, 472 (6th Cir. 2003). Ohio parole officials then petitioned the Supreme Court for certiorari review, which was granted.

Eighteen other states joined Ohio in urging the Supreme Court to overturn the appeal court's decision and hold that prisoners may not attack parole-eligibility proceedings using the more lenient and possibly more effective §1983 civil rights lawsuit avenue, but are restricted to pursuing such challenges and seeking such relief under the (more onerous) federal habeas corpus laws.

Ohio claimed that prior decisions of the Supreme Court, holding that a state prisoner cannot use a §1983 action to challenge "the fact or duration of of his confinement," but must instead seek federal habeas corpus relief (or appropriate state relief), apply in cases like Dotson's and Johnson's that challenge state parole proceedings or decisions. Ohio posited that Dotson and Johnson attack their parole-eligibility proceedings (Dotson) and parole-suitability proceedings (Johnson) only because they believe that if successful it will lead to their speedier release from prison. Thus, Ohio argued, the prisoners' lawsuits, in effect, are a collateral attack on the duration of their confinement, and that such claims may only be brought through habeas corpus action, not through §1983.

The Supreme Court disagreed, with Justice Stephen Breyer writing for the majority stating that the "problem with Ohio's argument lies in its jump from a true premise (that in all likelihood the prisoners hope these actions will help bring about earlier release) to a faulty conclusion (that habeas corpus is their sole avenue for relief)." Breyer continued, stating, "consideration of this Court's case law makes clear that the connection between the constitutionality of the prisoners' parole proceedings and release from confinement is too tenuous here to achieve Ohio's legal door-closing objective."

The majority opinion pointed out that from *Preiser v. Rodriguez*, 411 U.S. 475 (1973) to *Edwards v. Balisok*, 520 U.S. 641 (1997) the Supreme Court has developed a line of cases that provide an exception to §1983's otherwise broad scope for actions that lie within

the "core of habeas corpus" where a state prisoner requests present or future release. Yet, §1983 remains available for procedural challenges where success *would not necessarily* result in immediate or speedier release, but prisoners cannot use §1983 to obtain relief where success *would necessarily* demonstrate the invalidity of confinement or its duration.

The relief sought (if granted) would render invalid the state procedures used to deny parole eligibility (for Dotson) and parole suitability (for Johnson). Neither of them seeks an injunction ordering immediate or speedier release from prison, nor would a favorably judgment necessarily imply the invalidity of their conviction or sentences. Success for Dotson would not mean immediate release or a shorter stay in prison, at most it would mean a new parole eligibility review, which may speed *consideration* of a new parole application, the Court wrote. For Johnson, at most success on his claims would mean a new parole hearing at which parole authorities may, in their discretion, decline to shorten his prison term. Because neither prisoners' claim *would necessarily* result in speedier release, neither lies at the core of habeas corpus. And concerning their claims for *future* relief (injunction) (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration), such claims are even more distant from that "core." Thus, the Court held that such claims can be brought under §1983 because they do not fall within the implicit habeas exception.

The Court also rejected two other arguments by Ohio. The state had argued that §1983 was not proper because a favorable judgment would necessarily imply the invalidity of the prisoners' *sentences*, citing *Heck v. Humphrey*, 512 U.S. 477 (1994). Ohio asserted that parole proceedings are part of the prisoners' sentences, an aspect of their sentences that the §1983 claims, if successful, would invalidate. The Court was not persuaded. It pointed out that, in context, *Heck* uses the word "sentence" to refer not to prison procedures, but to substantive determinations as to the length of confinement.

Second, Ohio had argued that a favorable decision for the prisoners would break faith with principles of federal/state comity by opening the door to the federal courts without prior exhaustion of state-court remedies. The Court was not persuaded by that tactic either. The Court pointed out that its earlier cases, *Preiser* through *Balisok*, "placed the States' important comity considerations in the balance, weighed them against the competing need to vindicate federal rights without exhaustion, and concluded that prisoners may bring their claims without fully exhausting state-court remedies so long as their suits, if established, would not necessarily invalidate state-imposed confinement." The Court said it saw no reason to move the line drawn in those cases, "particularly since Congress has already strengthened the requirement that prisoners exhaust state administrative remedies as a precondition to any §1983 action." (Where such administrative remedies are available.)

Justice Antonin Scalia, joined by Justice Clarence Thomas, wrote a special concurring opinion pointing out some additional observations in support of the majority opinion.

The Sixth Circuit's judgment in favor of Dotson and Johnson was thus affirmed and the cases were remanded back to the federal district court. See: *Wilkinson v. Dotson*, 18 Fla.L.Weekly Fed. S164 (3/7/05); —U.S—;—S.Ct.—.■

Focus Shifting to Reentry Initiatives in Some States

Faced with record numbers of people being released from prison, many of whom re-offend and have to be re-incarcerated leading to an increasing drain on budgets, some states are focusing attention on what is being seen as a crucial period of opportunity and risk—providing more support to offenders when they are released from prison.

Massachusetts is the latest state to consider new measures to reduce recidivism, with lawmakers proposing that all felons be supported by supervision as they make the transition back into life outside prison.

That state joins a number of cities, and other states from Rhode Island to Ohio, focusing more attention on the reentry phase at a time when hundreds of thousands of prisoners are being released from the nation's prisons each year. Most troubling, statistics show of the more than 600,000 people released from prison yearly, two-thirds of them are rearrested within three years of their release.

The idea has even spread to crime-tough California. Republican Gov. Schwarzenegger is emphasizing education, job training and drug rehabilitation for prisoners in that state's $6.5 billion-a-year correctional system.

It even appears that Washington is realizing that things can't continue to go as they have been. President Bush talked about the need for reentry programs in his 2004 State of the Union address. (See: FPLP, Vol. 10, Iss. 3, pg. 5.) In a bipartisan effort, Rep. Rob Portman (R) of Ohio and Rep. Danny Davis (D) of Illinois will soon reintroduce legislation that would, among other things, establish a national resource center of best and most effective reentry initiatives.

Although the efficacy of such programs is controversial, prison demographics and tight state budgets have driven some states to give them new consideration. Experts agree that much of the "tough on crime" rhetoric of the 1980s and 1990s is giving way—in both parties—to a belief that transitional assistance is a cost-savings proposition and benefits public safety.

The Massachusetts legislation would pair each ex-prisoner with a case worker who would help develop a plan to *find* work, housing, and alcohol and drug counseling. The mandatory supervision would last at least nine months and often up to one quarter of the ex-prisoner's maximum sentence. A judge could change its duration.

Currently 40 percent of Massachusetts's prisoners have no supervision at all after they are released. Lt. Gov. Kerry Healey (R), who is leading the effort, said that it costs $43,000 to keep a person in prison, so the state could save $1 million for every one percent of recidivism deterred. According to a 2002 study by the Massachusetts Sentencing Commission, 49 percent of state prisoners commit a new crime within one year of their release.

With 2 million people behind bars and tight budgets making it impossible for many states to keep building prisons, "more and more communities are realizing it's in their best interest to shepherd this transition so that communities can be safe," says Peggy Burke, a principal at the Center for Effective Public Policy, a Maryland thinktank.

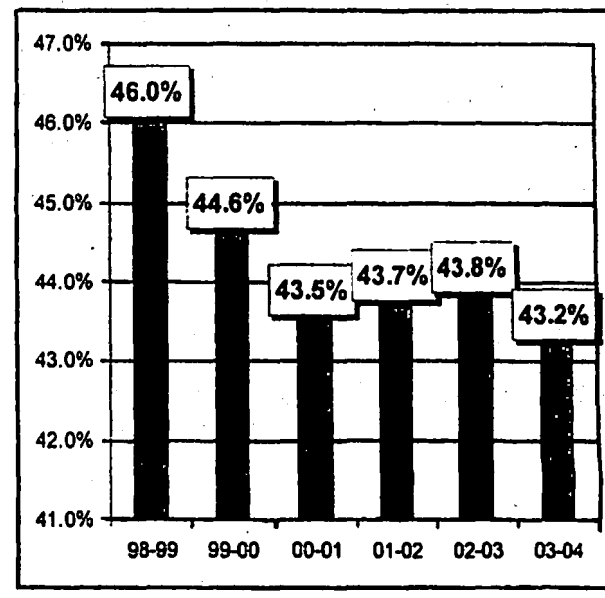
Experts also say there is a gradual realization that community-based organizations, not prisons, have the best chance of rehabilitating prisoners. "There has been recognition that prison time alone doesn't help people change behavior in the long run," says Alex Holsinger, an associate professor at the University of Missouri-Kansas City.

That recognition isn't new, but rehabilitation and assisting reentry fell out of favor in the 1980s when state budgets were flush and "get tough" demagogues preyed upon the public's crime fears to enact mandatory minimum sentences, tougher punishments and resultant expansion of the prison industrial complex and criminal justice systems became lucrative business—for the short run.

Some of the renewed Republican interest in reentry initiatives is occurring because it enables faith-based groups to come forward. Many such groups support the Republican agenda and their reward has been a push to reinterpret the constitutional separation of church-and-state clause to allow such groups to receive federal and state funding. One argument is that they should be allowed such funding to provide a critical service—reentry support services to ex-prisoners with a religious component.

However, not all lawmakers or researchers favor spending on reentry initiatives. There's still plenty of "tough on crime" sentiment around: it has proved to be too successful as a political platform, and too lucrative as an excuse to dig deep in taxpayers' pockets, to abandon entirely. States, like Florida, who aren't experiencing budget problems, have little incentive in reducing their shameful recidivism rates. In fact, to do so would negatively impact the prison/criminal justice economics that they have worked so hard to build up to their current capacities and on which they have come to rely as a prime source of taxpayer income to fund a self-perpetuating industry. Reentry initiatives that actually reduce recidivism would lead to the need for less police, court personnel, prison guards and even prisons, and that would disrupt budgets, employment rates and the status quo—according to many who are willing to sacrifice otherwise redeemable lives as long as they retain personal power. ■

Percent of Prison Admissions with Prior Commitments to Florida's Prison System



Prior commitments refer to any previous occasion that an inmate served time in the Florida prison system. This does not include supervision, such as probation. Nor does it include inmates who may have been in county jails in Florida, or in other state systems or in the Federal prison system.

- Some (43.2%) of the offenders who were admitted to the Florida state prison system in FY 2003-04 had been in state prison in Florida before, and that number has dropped slightly over the past five years.
- 20% had been in prison in Florida once previously, and almost 10% had been in twice previously. Eight percent had been in prison in Florida four or more times in the past.
- For FY 2003-04, the following types of prison admissions had no previous Florida prison commitments: sex offenders (69.0%), females (68.4%), those ages 50 and over at admission (49.0%) and drug offenders (52.0%).

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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 twelve years.

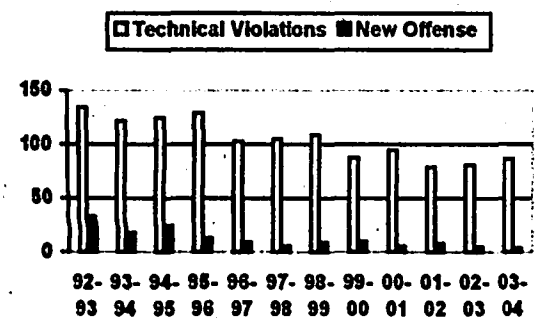

Chart Values

Fiscal Years	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

Prepared by the FPLAO Parole Project

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, 2004, there were 2,172 parolees in Florida (669 Florida cases and 1,503 other state cases). On June 30, 2004 there were 5,443 inmates in the Department of Corrections' custody who were parole eligible.

PRIDE Cuts Ties With Spinoff Company

As has been reported in past issues of *FPLP* (Volume 10, Issue 1, pg. 17 and Issue 4, pg. 6), during the last year the legislatively-created non-profit company that sells goods made by Florida prisoners has been under scrutiny for questionable business practices. Responding to a December 2004 investigative report by the governor's inspector general that found the way PRIDE created a spinoff company violated state law, in January PRIDE announced it no longer would do business with the spinoff, Industries Training Corporation.

In PRIDE's written response to the inspector general's report, the company admitted that its alliance with ITC, a 6-year-old company created and run by former PRIDE executives, may have financially compromised the firm. PRIDE now acknowledges it may have overpaid ITC for years.

Just how much PRIDE overpaid may never be known. PRIDE says it doesn't plan to figure out how much it overpaid ITC, calculating the actual costs would be time consuming, PRIDE's response claims, and in any event, "it is unlikely that PRIDE would be able to collect on the over payments." PRIDE did note that based on a new cost analysis that ITC was paid just $396,000 for the final quarter of 2004 compared to the $1.56-million in average payments for the first three quarters of last year.

PRIDE also said it has closed three businesses in the past six months, including a money-losing citrus processing plant, and consolidated three others.

The response blamed former PRIDE executives, former CEO Pamela Jo Davis and former President John F. Bruels, for withholding important financial information from the rest of the board of directors. The board is made up of 11 members, 10 of whom are appointed by the governor, and the 11th is always the secretary of the state prison system. After his inspector released the highly critical report in December, Gov. Jeb Bush named five new members to the board to replace members whose terms allegedly expired.

PRIDE's seven-page response provided little defense of the board, but said they had good intentions. "Although the audit report was generally critical...it is important to note there were no finding of any wrongdoing by anyone associated with PRIDE," the response said. It's curious there was no finding of wrongdoing by individuals when the inspector general did determined that the way PRIDE, or at least the way former CEO Davis and President Bruels, created ITC violated state law, which mandates that only PRIDE oversee prison labor.

"The good news is that they are accepting the recommendations made by the inspector general and they have agreed to take steps to rectify the situation," Bush

said. "You can't undo what's been done. It's not going back to whatever you would call normal in PRIDE world."

Florida Prison Legal Perspectives has previously reported how PRIDE, after creating ITC in 1999, was sharing its executives and board members with the spinoff, gave ITC at least $10-million in interest-free loans with no payback plan in place, and was paying ITC above premium rates for handling PRIDE's payroll, insurance coverage and accounting. The former chief executive, Pamela Jo Davis, was simultaneously acting as head of both PRIDE and ITC, she was forced to resign from PRIDE last July, but remains as CEO of ITC. Last year her salary was an obscene $236,000. Obscene, considering that the Florida prisoners whose work generates the revenue for PRIDE and funds its spinoffs can only earn between $.20 and $.55 an hour.

It is unclear where ITC will go from here, PRIDE was its biggest client. PRIDE officials estimate ITC stills owes $12.9-million from loans, and suggested that ITC might sell some assets to repay some of that debt. Then again, it might not. The lesson to be learned seems to be that crime does pay, if you're on the right side of the fence. ■

REHEARING MOTIONS
Post Conviction Proceedings in the Trial and Appellate Courts

by Dana Meranda

A Motion for Rehearing filed at an order on a Rule 3.850 Motion for Post Conviction Relief must be filed within fifteen (15) days of the date of service of the order. However, when the order is served by mail, Rule 3.070, Fla.R.Crim.P., provides that three (3) days shall be added to this time period. *Whipple v. State*, 867 So.2d 433 (Fla. 1st DCA 2004).

The trial court, for good cause shown, may extend the fifteen (15) day time limit. Fla.R.Crim.P. 3.050; *Nguyen v. State*, 868 So.2d 666, 667 (Fla. 1st DCA 2004).

Filing a Notice of Appeal from the denial of a Motion for Post Conviction Relief effectively abandons a Motion for Rehearing. *Moore v. State*, 789 So.2d 551 (Fla. 5th DCA 2001).

A Motion for Rehearing which is not timely filed does not suspend rendition of the order denying the post conviction motion, and therefore does not toll (stay) the time for filing a Notice of Appeal. *Jones v. State*, 838 So.2d 659 (Fla. 5th DCA 2003).

Rule 3.850(g) does not allow the state to file a Motion for Rehearing. *King v. State*, 870 So.2d 69, 70 (Fla. 2d DCA 2003).

And, the Florida Supreme Court recently adopted an amendment to Rule 3.800, Fla.R.Crim.P. *In Re Amendments to Florida Rules of Criminal Procedure*, 29 Fla.L.Weekly S568, — So.2d—, (Fla. Oct. 7, 2004), (effective January 1, 2005). The amendment authorizes a defendant to file a Motion for Rehearing directed at an order denying a Rule 3.800 Motion for Correction, Reduction and Modification of Sentence (another type of post conviction motion), thereby tolling the time to file a Notice of Appeal in that type proceeding also.

In the District Courts of Appeal, Rule 9.330, Fla.R.App.P., provides for Motions for Rehearing, Clarification, and Certification, and Rule 9.331 sets forth the procedures for Hearings and Rehearings En Banc. All final appellate decisions are subject to Rehearing or Clarification within fifteen (15) days of an appeal court decision. Motions for Certification serve a different purpose, although they are governed by the same rules.

A Motion for Rehearing is used to bring to the attention of the appeal court a matter that was overlooked or misapprehended. Under the present version of the rule, an appellant may argue a point decided by the court. 780 So.2d 834, 894 (Fla. Aug. 29, 2002), (effective January 1, 2003). However, it is still improper to use a Motion for Rehearing for the purpose of expressing disagreement with the court. And, generally, raising a new issue for the first time in a Motion for Rehearing is improper.

Florida Rule of Appellate Procedure 9.330(a), as amended, 827 So.2d 888, 889 (Fla. Aug. 29, 2003), (effective January 1, 2004), further provides that when a decision is entered without an opinion, and a party believes that a written opinion would provide a legitimate basis for state Supreme Court review, the motion may include a request that the appellate court issue a written opinion. *Parker v. State*, 845 So.2d 242, 243 (Fla. 5th DCA 2003). However, nothing in the amendment to Rule 9.330(a) *mandates* that the appeal court issue a written opinion upon request of a party. That rule does not create an automatic right for a party to obtain a written opinion when requested. *R.J. Reynolds Tobacco Co.*, 29 Fla.L.Weekly S462, —So.2d—Fla. Sept. 2, 2004).

Asking the appeal court to clarify a Per Curiam Affirmed (PCA) decision summarily affirming a trial court's decision is tantamount to asking the appeal court to write an opinion in the case. See: Phillip J. Padovano, *Florida Appellate Practice*, Sec. 19.3 (2005 ed.).

Intradistrict conflicts are now reserved exclusively by the Rehearing En Banc procedure, and to resolve matters of exceptional importance.

Federal courts have identified two types of cases of exceptional importance appropriate for en banc review: 1) Cases that may affect a large number of people, and 2) cases that interpret fundamental legal or constitutional rights. While Florida courts have not explicitly defined "exceptional circumstances," they seem to follow the Federal approach. *Kinder v. State*, 779 So.2d 512, 515 (Fla. 2d DCA 2000).

A Motion for Rehearing En Banc must be filed "in conjunction" with a Rule 9.330 Motion for Rehearing in the appeal court.

PCA decisions are common among the Florida District Courts of Appeal. However, a PCA is not always the end of the state appeal process as this article discusses. In appropriate situations, there are alternatives that can be effective, if used wisely and sparingly. For example:

1. **Filing a Motion for Rehearing coupled with a Motion for Rehearing En Banc.** See: *Hoechst Celanese Corp. v. Fry*, 753 So.2d 626, 627 (Fla. 5th DCA 2000) (explaining only that the per curiam affirmance was "improvident in light of established case authority and the facts of the case").

2. **Filing a Motion for Clarification or a Motion for Written Opinion.** In filing a Motion for Clarification or for a Written Opinion, one should, if possible, obtain and review the PCA Committee report. The Judicial Management Council suggested the types of cases that may warrant a written opinion. These include cases in which:
   - The decision conflicts with another district's decision;
   - An apparent conflict with another district may be harmonized or distinguished;
   - There may be a basis for Supreme Court review;
   - The case presents a new legal rule;
   - Existing law is modified by the decision;
   - The decision applies novel or significantly different facts to an existing rule of law;
   - The decision uses a generally overlooked legal rule;
   - The issue is pending before the court in other cases;
   - The issue decided may arise in future cases;
   - The constitutional or statutory issue is one of first impression;
   - Previous case law was "overruled by statute, rule or an intervening decision of a higher court"; or
   - There is a written dissent identifying an issue that may be a basis for state Supreme Court review.

   Appellants should consider all of those factors when filing a Motion for Clarification or for a Written Opinion.

   See: *Devlin v. State*, 766 So.2d 490 (Fla. 5th DCA 2000) (finding that counsel made a "good argument" for a written opinion and granting Motion for Rehearing and for Clarification of the PCA).

3. **Asking the Court of Appeal to Certify an Issue to the Florida Supreme Court.** A Motion for Certification should be approached much like the Motion for Rehearing En Banc. *State v. GTech Corp.*, 816 So.2d 648, 655-56 (Fla. 1st DCA 2001). Occasionally, such motions are successful. *Beverly Enterprises-Florida, Inc. v. Knowles*, 763 So.2d 1285 (Fla. 4th DCA 2000); *Watson v. State*, 763 So.2d 1143 (Fla. 4th DCA 2000); *Perry v. State*, 29 Fla.L.Weekly D2624, —So.2d—, (Fla. 5th DCA 11/19/04).

4. **Appealing a PCA Directly to the U.S. Supreme Court.** Despite the fact review of a PCA by the Florida Supreme Court is not available, an appellant can bypass the Florida Supreme Court and seek review of a PCA directly in the U.S. Supreme Court. *The Florida Star v. B.J.F.*, 530 So.2d 286, 288 n. 3 (Fla. 1988); *Hobbie v. Unemployment App. Comm. of Fla.*, 480 U.S. 136 (1987); *Florida v. Rodriguez*, 469 U.S. 1, 5 (1984); *Banks v. State*, 389 U.S. 413 (1967) (similarly situated). The Appellant, however, in such case must be prepared to prove the case involves an important issue of federal or constitutional law worthy of review by the U.S. Supreme Court.

5. **Filing an Appeal with the Florida Supreme Court.** The Florida Supreme Court has appeal jurisdiction under Art. V, Sec. 3(b)(1), Fla. Constitution, even if the decision of the district court of appeal merely affirms an order of the trial court declaring a state statute unconstitutional. *State v. Cohen*, 568 So.2d 49 (Fla. 1990). See also: Phillip J. Padovano, *Florida Appellate Practice*, Sec. 3.4 n. 3 (2005 ed). The term "expressly" is not contained in Art. V., Sec. 3(b)(1) as it is in other constitutional provisions adopted in the 1980 revision. Cf. Art. V., Sec. 3(b)(3), Fla. Constitution.

Although a PCA maybe an insurmountable obstacle in the majority of cases, in appropriate cases there are avenues available to the persistent appellant.

As a practical matter, a concise and detailed Motion for Rehearing will stand the better chance of success, as opposed to a lengthy motion written to reargue matters already addressed in the appellate briefs. ■

POST CONVICTION CORNER

by Loren Rhoton, Esq.

There's good news for some people with convictions out of Broward County. Recent case law from the Fourth District Court of Appeals has overturned several convictions which came about as the result of tainted confessions. It seems that the Broward County Sheriff's Office (BCSO) was reading defective *Miranda* warnings to suspects. The defective warnings failed to advise suspects that they had the opportunity to have an attorney present during questioning. As a result of the defective Miranda warnings; several cases have now been overturned. *See* Roberts v. State, 874 So.2d 1255 (Fla. 4th DCA 2004); West v. State, 876 So.2d 614 (Fla. 4th DCA, 2004); and, Franklin v. State, 876 So.2d 607 (Fla. 4th DCA, 2004).

In Roberts v. State, 874 So.2d 1255 (Fla. 4th DCA 2004), the defendant, Gorman Roberts, was convicted of manslaughter. Mr. Roberts gave a post-arrest statement to the Broward County Sheriff's Office. The *Miranda* Warning which was read to Mr. Roberts was as follows:

> "BEFORE I ASK YOU ANY QUESTIONS, I WANT TO ADVISE YOU OF YOUR CONSTITUTIONAL RIGHTS.
>
> "1. You have the right to remain silent.
>
> "2. Anything you say can be used against you in a court of law.
>
> "3. You have the right to talk with a lawyer and have a lawyer present before questioning.
>
> "4. If you cannot afford a lawyer, one will be appointed to represent you before any questioning if you wish." Id., emphasis added.

Roberts argued that the *Miranda* warning recited by the BCSO was defective in that it failed to advise him that he was entitled to have an attorney present *during* questioning as well as *before* questioning. Id. The Roberts Court noted that Florida Courts have consistently interpreted *Miranda* as requiring notification that a person in custody has the right to have counsel present not only before interrogation but during interrogation as well. *See* Ramirez v. State, 739 So.2d 568 (Fla. 1999); Holland v. State, 813 So.2d 1007 (Fla. 4th DCA 2002); Sapp v. State, 690 S0.2d 581 (Fla. 1997); T.S.D. v. State, 741 So.2d 1142 (Fla. 3rd DCA 1999); Statewright v. State, 278 So.2d 652 (Fla. 4th DCA 1973); James v. State, 223 So.2d 52 (Fla. 4th DCA 1969). And, federal courts have recognized that advisement of the right to counsel during questioning is a vital part of the *Miranda* procedural safeguards. *See* U.S. v. Noti, 731 F.2d 610 (9th Cir. 1984); U.S. v. Anthon, 648 F.2d 669 (10th Cir. 1981); Atwell v. U.S., 398 F.2d 507 (5th Cir. 1968); Groshart v. U.S., 392 F.2d 172 (9th Cir.1968); and, Windsor v. U.S., 398 F.2d 530 (5th Cir. 1968).

The Roberts Court found that the *Miranda* warnings given to Roberts were inadequate because they failed to inform him that he had a right to have counsel present during interrogation. Roberts at 1228. It was further held that "[t]his inadequacy militated against a finding that the defendant knowingly and intelligently waived his *Miranda* rights." Id. The court further noted that no amount of circumstantial evidence that a defendant may have been aware of his right to a lawyer will suffice to stand in place of *Miranda* warnings. "Only through such a warning is there ascertainable assurance that the accused was aware of this right." Roberts at 1229, *quoting* Miranda v. Arizona, 348 U.S. 436 (1966). Consequently, it was held that Roberts' statement to the BCSO should have been suppressed. Mr. Roberts' Judgement and Sentence was ultimately vacated as a result of the faulty *Miranda* warnings.

The above cases may significantly affect cases originating in Broward County where a confession/statement was given after *Miranda* rights were read to a suspect. If the case is still within the two year period of limitations for filing a 3.850 motion, the issue could be raised as one of ineffective assistance of counsel, involuntary plea, and/or as a *Miranda* issue. If the appellate attorney never addressed the issue on direct appeal, the issue could be raised as one of ineffective assistance of appellate counsel in a petition for writ of habeas corpus/petition for belated appeal to the Fourth District Court of Appeal of Florida. Or, if over two years have passed since the case was affirmed on direct appeal, the issue could be raised in a 3.850(b)(2) motion for postconviction relief alleging that the fundamental constitutional right asserted was not established within the applicable period of limitations and that said right applies retroactively. Each case is different, and, the specific facts of each case will dictate what procedural vehicle should be used.

The Florida Supreme Court and the United States Supreme Court have refused to review Roberts v. State, 874 So.2d 1255 (Fla. 4th DCA 2004), West v. State, 876 So.2d 614 (Fla. 4th DCA, 2004) and, Franklin v. State, 876 So.2d 607 (Fla. 4th DCA, 2004). As such, the case law is good and should be argued in cases that qualify. As I have advised with other new and beneficial case law in the past, it is recommend that persons with cases that qualify for relief act immediately. Otherwise the applicable periods of limitations will lapse and no relief will be available. Rapid action also will serve to have the issue addressed before the circuit courts start carving out exceptions to the case law which will ultimately limit the amount and type of relief available.

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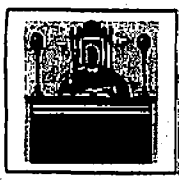

NOTABLE CASES

ANTHONY STUART

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

U.S. COURT OF APPEAL

Peoples v. Chatman, 18 Fla.L.Weekly Fed. C108 (11th Cir. 12/20/04)

Johnny Peoples, a Georgia state prisoner, appealed the denial of his petition for writ of habeas corpus to the 11th Circuit Court of Appeals. In the district court his petition was brought before it and treated as seeking relief under 28 U.S.C. 2241.

The 11th Circuit issued a Certificate of Appealability in Peoples' case regarding whether the district court erred in treating the petition as one seeking relief under 28 U.S.C. 2241 and in treating it as such, whether it was error to dismiss the petition as time barred.

As to the first issue the 11th Circuit cited to a prior case, *Medberry v. Crosby*, where it held that there was but one habeas corpus remedy for those imprisoned pursuant to a state court judgment, and that it was governed by *both* section 2241 and section 2254.

Peoples' habeas corpus remedy was authorized by section 2241, but also subject to section 2254 and all of its accompanying restrictions. Therefore, the petition was properly treated by, as brought to, the district court as seeking relief under section 2241, although it was governed by and subject to the rules and restrictions found in section 2254.

As to the second issue, Peoples had argued that the one-year period of limitations, found in section 2244(g), for bringing a petition does not apply to one brought under section 2241.

Regarding the second issue, the 11th Circuit reiterated, as in the first issue, the *Medberry* case where it held that there is but one means of bringing a post conviction petition for those imprisoned under state court judgment, that is the writ of habeas corpus, governed by *both* sections 2241 and 2254. Section 2244 statute of limitations applies to petitions governed by section 2254. Therefore, being that Peoples' petition was filed over the one-year period and section 2254's restrictions apply to his petition brought and treated as seeking relief under 2241, the petition was properly found to be time barred when filed.

Nix v. Secretary for the Dept. of Corrections of Florida, 18 Fla.L.Weekly Fed. C115 (11th Cir. 12/17/04).

Tony Lee Nix, a Florida prisoner, appealed the dismissal of his section 2254 petition for writ of habeas corpus as time-barred under section 2244(d)(1)(A). The 11th Cir. issued Nix a Certificate of Appealability (COA) regarding two issues: 1) whether the district court correctly concluded that Nix's convictions became final, for limitations purposes, only after the expiration of the ninety-days during which Nix could have sought certiorari review in the United States Supreme Court, even though appellees argues that the ninety-day window did not apply because Nix raised no federal issue on direct appeal (See: *Bond v. Moore*); and, 2) if the district court correctly applied the *Bond* rule, did the district court err in concluding that the limitations period expired before Nix filed his section 2254 petition.

Section 2244(d)(1)(A) provides that the one-year limitations period in which a state prisoner has to file a writ for habeas corpus begins to run from "the date on which the judgment became final by the conclusion of direct review or *the expiration of the time for seeking such review.*" Supreme Court Rule 13.1 provides that a petition for a writ of certiorari is timely when filed within ninety days after entry of judgment or denial of discretionary review by the state court of last resort.

Although the 14th Circuit found that the Supreme Court may review a final judgment rendered by the highest state court by writ of certiorari when a federal issue is involved, see 28 U.S.C. section 1257, section 2244(d)(1)(A) does not require an assertion of a federal claim on direct review in order to be availed of the one-year limitations period.

Regarding the second issue, Nix argued that the district court erred in its conclusion of when the one-year limitations period began. He maintained that his post conviction reviews were not final until the time in which he could have filed a motion for rehearing of the denial of his motion to correct illegal sentence had expired.

The one-year limitations period of section 2244(d)(1)(A) is tolled while an "application for State post-conviction or other collateral review" is pending. See 28 U.S.C. section 2244(d)(2) and *Coates v. Byrd*, 211 F.3d 1225, 1226 (11th Cir. 2000). Because a motion for state

court rehearing falls within the category of "State post-conviction or other collateral review," it was error for the district court to have failed to toll the statute of limitations during the time Nix appealed the denial of his motion to correct sentence. Thus, the 11th Circuit found that it was error to have dismissed the petition as untimely and reversed Nix's case, remanding it for reinstatement of the petition.

Callahan v. Donald, 18 Fla.L.Weekly Fed. C169 (11th Cir. 1/18/05)

On appeal to the 11th Circuit Court in this case, a district court magistrate judge addressed nine of the petitioner's claims of an amended habeas corpus petition and issued a report and recommendation denying relief on all counts. The petitioner objected to the report as to *eight* of the claims. The district court granted the petition, but only addressed the merits of *two* issues. Subsequently, it granted a Certificate of Appealability on all successfully preserved issues (eight), despite having addressed only two.

The 11th Circuit, having issued a Certificate of Appealability in the matter, cited its prior decision in *Clisby v. Jones* where it expressed its deep concern over the piecemeal litigation of federal habeas petitions filed by state petitioners, which it stated was exemplified by the district's failure to resolve all claims as was evidenced in this case.

Subsequently, the 11th Circuit vacated the district court's judgment without prejudice, vacated the Certificate of Appealability, and remanded the case with instructions for the district court to rule on the merits of *all eight claims*. After ruling on the merits, the district court shall determine on which, if any, of the petitioner's claims to grant a Certificate of Appealability. And being the issues were already fully briefed and presented, the 11th Circuit ordered the district court to enter its ruling within a thirty-day period.

FLORIDA SUPREME COURT

State v. Matthews, 30 Fla.L.Weekly S1 (Fla. 12/23/04)

On appeal in Gary Matthews' case, the Fourth District Court of Appeal opined that credit pursuant to *Tripp v. State applies* to habitual offender sentences. Contrary to that opinion, the Second District decided in *Duncan v. State*, 686 So.2d 701 (Fla. 2d DCA 1996), that the *Tripp* credit *does not* apply to habitual sentences. Due to the conflict, the issue was brought before the Florida Supreme Court for review.

In *Tripp*, the defendant was convicted of two separate offenses. He was sentenced to prison on one to be followed by probation on the other; however, both offenses were sentenced under the sentencing guidelines through the use of a single scoresheet. Consequently, both offenses must continue to be treated in relation to each other, even after a portion (the probation) of the sentence under that single guidelines scoresheet had been violated. Thus, it was held that Tripp should be credited the time served on the initial incarcerative portion of the imposed sentence for the violation of probation.

The Florida Supreme Court's primary focus of concern in *Tripp* was the interrelatedness of the sentences computed on a single scoresheet and how the incarcerative period, even after violation of probation, could not exceed the range contemplated by the guidelines at the original sentencing.

In regards to Matthews' case, in similarity, Duncan was convicted of different multiple offenses. He was sentenced as a habitual offender on some of those offenses and under the guidelines on the others. The Second District reasoned in *Duncan* that since guidelines sentencing does not apply to one who has been habitualized, time served pursuant to a guidelines sentence would not apply as credit to a habitual sentence. In other words, because a guidelines scoresheet does not apply to habitual sentences, the interrelation as found in *Tripp* would not exist.

Therefore, due to its finding, the Florida Supreme Court held that *Tripp* credit does not apply to habitual offender sentences, upholding the Second District's reasoning and decision in *Duncan*. The Fourth District's decision in Matthews was quashed.

Exposito v. State, 30 Fla.L.Weekly S9 (Fla. 12/23/04)

The issue involved in this case was whether section 924.07, Florida Statutes (2004), authorizes a state appeal from a post-trial order reducing a charge pursuant to Florida Rule of Criminal Procedure 3.620.

Alex Esposito had argued in the trial court that he could not be legally sentenced for his conviction in light of an unconstitutional statute. The relief he sought was a new trial or a reduction of his charged conviction under rule 3.620. Bound by the case law at the time, the trial court reduced his conviction to a lesser-included offense. The State appealed the order reducing Exposito's conviction.

On appeal, Exposito argued in reliance on *State v. Richars*, 792 So.2d 570, 571 (Fla. 4th DCA 2001), that the Third District was without jurisdiction to hear the State's appeal because, section 924.07 does not authorize a state appeal from a post-trial order reducing a charge to its lesser-included offense pursuant to rule 3.620.

The Third District declined to follow *Richars*, and relied instead on its own decision in *State v. Hankerson*. There, it held that section 924.07 authorized a state appeal from a pretrial order reducing a charge. It reasoned that analytically, an order reducing a

charge set forth in an information or indictment to a lesser-included charge is, despite its label, an order *dismissing the* charge in the information. In its decision, the Third District pointed to section 924.07)(1) and (a) which provides, "(1) The state may appeal from: (a) An order *dismissing* an indictment or information or any count thereof or *dismissing* an affidavit charging the commission of a criminal offense..." It further certified conflict with the Fourth District's decision in *Richars* and reinstated Exposito's original charge and conviction.

Upon granting review due to the conflict, the Florida Supreme Court looked to the statutory language of section 924.07, its plain ordinary meaning, and the Third District's reasoning of the decision as held in *Hankerson*. In regards to the reliance of the *Hankerson* decision, the Florida Supreme Court found that the Third District's decision in *Exposito* was misplaced because of a difference in the procedural posture being involved. Hankerson concerned a *pretrial* motion to reduce the charge under Rule *3.190(c)(4)*. That rule provides the sole authority for a State appeal in such a *pretrial* procedure. Also under rule 3.190(c)(4), it provides authority for motions to *dismiss*, not motions to reduce. Thus, Hankerson's labeling of his motion as one to reduce rather than to dismiss would not control the appealability of the pretrial order under section 924.07(1)(a).

Exposito's case regarded a *post-trial* motion filed for a *reduction* of the charge and was granted by the trial court, which *reduced*, not dismissed, the charge under Rule *3.620*.

The Florida Supreme Court, in light of it's finding, concluded that section 927.07(1) does not authorize a State appeal of a trial court order reducing a charge under Rule 3.620. It further quashed the Third District's decision in Exposito to the extent it was inconsistent with the found opinion, and approved the Fourth District's decision in *Richars*.

Milks v. State, 30 Fla.L.Weekly S55 (Fla. 2/3/05)

In this case the Florida Supreme Court has determined that Florida's Sexual Predators Act, section 775.21, Florida Statutes (2003), does not violate procedural due process or separation of powers.

It therefore reversed the decision of the Third District in *Espindola v. State* where that appellate court opined the Act unconstitutional on procedural-due-process grounds.

The Florida Supreme Court declined to consider substantive due process and equal protection challenges to the Act, which were briefed by the parties in this case but not addressed by the Second District in *Milks v. State* or the Third District in *Espindola*.

DISTRICT COURTS OF APPEAL

Daniels v. State, 30 Fla.L.Weekly D62 (12/23/04)

George M. Daniels' case presented a very informative issue regarding the filing of an enlargement of time in the lower court to file a motion for rehearing on the denial of a motion for post-conviction relief.

Within the time period to file a rehearing, Daniels filed a motion to enlarge the time to file for a rehearing. Before receiving a reply on his enlargement of time request, Daniels filed his motion for rehearing. Almost three months after filing his motion for rehearing, the trial court denied both the enlargement of time and the motion for rehearing on the same day. Daniels appealed within 30 days but it was dismissed. Subsequently, Daniels filed a Petition Seeking a Belated Appeal from the order, which denied his Rule 3.850 motion.

Daniels asserted in his petition that he sought the enlargement of time in accordance with Florida Rule of Criminal Procedure 3.050. In the motion to enlarge time the First District found that Daniels stated good cause for the requested extended time: Daniel's *needs to schedule time in the prison library and to obtain the assistance of an inmate law clerk.* Thus, the First District opined that the extension of time motion should have been granted and the motion for rehearing would have therefore postponed rendition of the order, resulting in a timely notice of appeal being filed.

Daniel's petition for belated appeal of the lower court's order denying his post conviction relief motion was granted and the First District instructed the lower court, upon issuance of the mandate and receiving a copy of the opinion, to treat the opinion as a timely notice of appeal.

Beaver v. Clerk of Court, Osceola County, Florida, 30 Fla.L.Weekly D124 (5th DCA 12/13/04)

This case is reminder of the seriousness that should be taken when one files prisoner pro-se motions.

Steven Earl Beaver has filed 26 different actions in the Fifth District Court of Appeals, including eight civil appeals or petitions, eight mandamus petitions, and eight appeals of petitions related to his arson conviction. This case was his 27th action before the Fifth District. Beaver had apparently been barred in the lower courts because the petition for writ of mandamus he filed related to two cases where orders were issued to that effect.

Besides Beaver being ordered by the Fifth District to be prohibited from filing any new pro-se appeals, pleadings, motions, petitions, or other papers or any proceeding pertaining to any case within the Ninth Judicial Circuit Court, the Fifth District Clerk was

directed not to accept any further pro-se filings from Beaver.

In addition to the Fifth District denying Beaver's mandamus petition it found that his petition was frivolous and without merit and it observed that the Department of Corrections, pursuant to sections 944.279(1) and 944.28(2)(a), Florida Statutes (2004), has the authority to forfeit Beaver's gain time and impose other appropriate disciplinary sanctions. Accordingly, the Fifth District directed its clerk, pursuant to section 944.279, to forward a certified copy of the opinion it issued in Beaver's case to the appropriate institution or facility for consideration of disciplinary action against Beaver.

[Note: Would a question of an ex post facto violation be in order when the court activates the provisions (forfeiture of gain time and other disciplinary sanctions by D.O.C.) of the statutes involved where one's pending appeal, pleading, motion, petition, or etc., that the court decided was frivolous, was filed in the court prior to the effective date of those statutes?]

McMurry v. State, 30 Fla.L.Weekly D128 (5th DCA 12/30/04)

On appeal to the Fifth District Court of Appeal, William John McMurry contended that the lower court was without authority to assess cost of his incarceration.

In contrary to Curry's contentions, section 960.293(2)(b), Florida Statutes (2003), provides: (2) Upon conviction, a convicted offender is liable to the state and its local subdivisions for damages and losses for incarceration costs and other correctional costs. (b) If the conviction is for an offense other than a capital or life felony, a liquidated damage amount of $50 per day of the convicted offender's sentence shall be assessed against the convicted offender and in favor of the state or its local subdivisions.

The assess of such costs has been found to be constitutional by the Florida Supreme Court in *Ilkanic v. City of Ft. Lauderdale*, 705 So.2d 1371 (Fla. 1998). It was further observed in *Ilkanic* that an order imposing incarceration charges is enforced in the same manner as a judgment in a civil action, and therefore, the lien created upon the imposition of the per diem charge has the same effect as the lien created by the entry of a civil judgment.

Due to its findings and statutorial mandation it cited, the Fifth District affirmed the lower court's imposition of cost for McMurry's incarceration.

Cason v. Crosby, 30 Fla.L.Weekly D159 (1st DCA 1/7/05)

A circuit court had a $130.00 lien placed on David K. Cason's inmate trust account of the filing fee for a mandamus petition that was filed challenging a disciplinary action by the Florida Department of Corrections which resulted in the loss of gain time.

On review, the First District Court of Appeal cited section 57.085, Florida Statutes that was enacted in 1996. It explained, the statute provides that a lien may be placed on a prisoner's trust account until the fee is paid in full. However, the statute specifically exempts "collateral criminal proceedings" from its provisions.

A challenge regarding the loss of gain time is a "collateral criminal proceeding" and so, section 57.085 does not apply. Although section 57.081 would apply, and does have a mechanism for future payment of a filing fee for court services, (subsection (3) of section 57.081 states if an indigent person prevails, "costs shall be taxed in his or her favor and, when collected, shall be applied to pay costs which otherwise would have been required and which have not been paid."), it *does not* have a provision for a lien to be placed on a prisoner's account.

On rebuttal, the respondent asserted that section 28.241 requires the circuit court clerk to collect an appellate filing fee, thus authorizing the clerk to institute payment when appellant has the ability to pay.

The First District found that Crosby's assertion was contrary to that statute's provisions. Section 28.241(2) provides that a clerk shall defer payment of the filing fees if a party is determined indigent. It does not have any provisions that would authorize the imposition of a lien.

As a result, the First District decided that there is *no statutory authority* for the imposition of the lien placed on Cason's prison trust account. As found in *Geffken v. Strickler*, the Florida Supreme Court emphasized the fact that collateral criminal proceedings are exempted even from the partial payment provisions of section 57.085. Thus, persons meeting the indigency requirements of section 57.081 should be able to proceed with their cases without the payment of any filing fee.

The circuit court's order of indigency, to the extent that it imposed a lien on Cason's inmate trust account, was vacated.

Akers v. State, 30 Fla.L.Weekly D239 (5th DCA 1/21/05)

The issue that was focused on in this case regarded the mandatory provision for the state to serve a timely written notice of its intent to seek a habitual felony offender sentence.

On appeal, the Fifth District Court of Appeal noted the statutory provision and opined that where it required a service of the notice before sentencing generally applies to a conviction after trial. In order to impose a habitual sentence following a plea, however, the defendant must be served with the notice a sufficient time prior to the plea, *and* the trial court must confirm that the defendant is personally aware of the consequences of such a sentence when the plea is actually entered.

It does not matter either if a defendant was told in open court that the state *could* seek a habitual sentence, because it does not serve the *defendant*, as required, with a written notice of what the state actually intends to do.

As found in *Pitts v. State*, despite the fact that Pitts' had actual notice (verbal) of the state's intention prior to the plea, the Fifth District, as in this case, reversed the sentence and held that the failure to provide a defendant with written notice prior to entry of his plea required reversal of the habitual felony offender sentence.

Ward v. State, 30 Fla.L.Weekly D226 (1st DCA 1/19/05)

This case on appeal has indicated when the Department of Corrections fails to change a prisoner's sentence after the courts have complied in changing the sentence, "the proper avenue of recourse would appear to be for the [prisoner] to pursue the institutional grievance process."

Delgado v. State, 30 Fla.L.Weekly D246 (5th DCA 1/21/05)

The Fifth District Court of Appeals stressed in this case the extreme importance that a trial court is absolutely required to conduct a *Richardson* hearing before imposing any sanction for a discovery violation, let alone excluding a witness.

Under *Richardson v. State*, 246 So.2d 771 (Fla. 1971), the Florida Supreme Court explicitly held that if there is a discovery violation, the trial judge must first decide whether the violation prevented the aggrieved party from properly preparing for trial. If the court so finds, it must then fashion the appropriate sanction to be invoked.

In this case, the appellate court opined that the trial court's exclusion of a defense witness was beyond harmless, because the witness would have supported the defendant's position that someone else committed the crime charged. For the trial court's failure to conduct a *Richardson* hearing, it could not make the required findings, and reversal was required.

Salazar v. State, 30 Fla.L.Weekly D271 (3d DCA 1/26/05)

The Third District Court of Appeals in this case pointed out the proper procedure for seeking credit of time served in jail *after* being sentenced to the Department of Corrections (DOC).

In order to be awarded post-sentencing jail credits, jail time served after imposition of a prison sentence but prior to being received by DOC, the individual must exhaust his or her available remedies through DOC's grievance procedures. After exhausting those remedies and the individual believes that DOC's ruling was incorrect, a petition for writ of mandamus may be filed directed to the DOC. *Lucio v. State*, 673 So.2d 195 (Fla. 3d DCA 1996) and *Barber v. State*, 661 So.2d 355, 356 (Fla. 3d DCA 1995).

Also, as a reminder, the venue for filing such a petition is in the Circuit Court for the Second Judicial Circuit, in Tallahassee, Leon County, Florida.

Stambaugh v. State, 30 Fla.L.Weekly D278 (4th DCA 1/26/05)

In Kimberly Stambaugh's case the issue was that a probationary period under Chapter 948, Florida Statutes (2002), is not tolled when an affidavit of violation of probation is filed without the issuance of an arrest warrant.

The appellate court cited to *Clark v. State* where it previously held that the appropriate steps to revoke or modify one's probation requires the issuance of an arrest warrant base upon an affidavit alleging a violation of probation.

Floyd v. State, 30 Fla.L.Weekly D316 (1st DCA 2/2/05)

The basic issue involved in this case was where an improper motion for rehearing is filed on the denial of a postconviction motion in the lower court; time is not tolled in seeking an appeal of that denial order.

In this particular case a motion for rehearing was untimely filed. On seeking appellate review, the First District Court of Appeals reiterated what it held in *Childs v. State*, in that *an untimely motion for rehearing does not toll the time to file a notice of appeal.*

The appellate court also pointed out that Rule 3.850(g) provides that a motion for rehearing must be filed within 15 days of rendition of the final order or within 18 days if the order was served by mail.

Alguno v. State, 30 Fla.L.Weekly D389 (4th DCA 2/9/05)

In this case it was stressed that a Rule 3.850 motion is timely when it is filed within two years of the *discovery* of a counsel's affirmative misadvice. As support it cited to *Peart v. State*, 756 So.2d 42 (Fla. 2000); *Love v. State*, 814 So.2d 475, 477 (Fla. 4th DCA 2002) (citing *Bethune v. State*, 774 So.2d 4 (Fla. 2d DCA 2000).

Washington v. State, 30 Fla.L.Weekly D391 (4th DCA 2/9/05)

The Fourth District Court of Appeals, on a motion for rehearing or reconsideration by the State, has withdrawn its previous opinion in Otis Washington's case at 29 Fla.L.Weekly D2011 b.

Washington had asserted that the State's notice of intent to seek a habitual felony offender sentence was a "shotgun" notice encompassing all sentencing schemes under Florida Statutes section 775.084. As a result, Washington contended that he had no notice of the precise sentencing enhancement being sought by the State. On appeal, Washington relied on *State v. Bell*, 747 So.2d 1028 (Fla.

3d DCA 1999) to support his argument.

In granting the State's rehearing or reconsideration, the appellate court opined that Washington's reliance on *Bell* was misplaced, contrary to the appellate court's original opinion in *Washington* that was withdrawn. This conclusion was due to the fact that the appellate court disagreed that a "shotgun" notice fails to provide specific notice of the State's intent to seek an enhanced sentence. Its reasoning was based on a finding that the notice of intent serves to provide a defendant with notice that his *entire* criminal record will be placed at issue and that he should prepare to refute any errors in that record (i.e., he was not the person convicted, he was not convicted of a certain offense, his conviction was vacated on appeal). The appellate court further opined that when a "shotgun" notice informs a defendant that he is subject to all sentencing schemes under section 775.084, a defendant is given all the notice necessary to prepare for sentencing in his case. However, a different scenario might exist where the State notices only the lowest enhancement and then attempts to seek the highest. But that distinction did not apply in Washington's case. The appellate court held that Washington was given a notice of intent that he would be subject to an enhanced sentence under *any* of the provisions of section 775.084, and it was his responsibility to prepare accordingly.

Dickey v. State, 30 Fla.L.Weekly D443 (1st DCA 2/15/05)

The First District Court of Appeals has withdrawn its original opinion in Herbert Dickey's case, 28 Fla.L.Weekly D2108, because of further consideration on a rehearing of the claim: Dickey's plea was entered in reliance of the counsel's mistaken advice that the plea could not be used to enhance a future sentence.

In *Bates v. State*, the First District had certified the question: "Whether allegations of affirmative misadvice by trial counsel on the sentence-enhancing consequences of a defendant's plea for future criminal behavior in an otherwise facially sufficient motion are cognizable as an ineffective assistance of counsel claim?" Although the Florida Supreme Court accepted review of Bates' case, due to a timeliness issue it quashed the First District's decision in the case and elected not to answer the procedurally barred question.

In Dickey's case on rehearing, however, the First District answered its own question affirmatively. Consequently, it certified conflict with the Second, Third, and Fifth Districts which have held that the claim does not entitle a defendant to an evidentiary hearing. The First District based its decision on the United States Supreme Court's *Strickland v. Washington* case explaining that as a matter of law, counsel's misadvice regarding the collateral consequence of future sentence enhancement constitutes deficient performance. Future sentence enhancement has been categorized as a collateral consequence of a plea in Florida. See *Major v. State*, 790 So.2d 550, 552 (Fla. 3d DCA 2001), affirmed, 814 So.2d 424 (Fla. 2002). If the consequence does not affect the range of the defendant's punishment, it is merely a collateral consequence of the plea. Included in the category of collateral consequences are such matters as damage to reputation, loss of professional licenses, and loss of certain civil rights, examples of which is the right to vote and the right to own a firearm.

Although the Florida Supreme Court initially held that a defendant did not have to be informed by court or counsel of any collateral consequences of a plea, Rule 3.172 (c), now requires that a defendant be informed of the potential deportation consequences of his plea. It has also been mandated by the Florida *Supreme* Court that a defendant who pleads guilty to a crime that subjects him to a potential habitual felony offender sentence must be told that habitualization could affect the possibility of early release.

Despite the fact that *failure to advise* as to collateral consequences cannot constitute ineffective assistance of *counsel*, the law is well settled that if a defendant enters a plea in reasonable reliance on his attorney's advice, which in turn was based on the attorney's honest mistake or misunderstanding, the defendant should be allowed to withdraw his plea, even if the mistaken advice regards a collateral consequence of the plea. ■

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Florida Parole Commission Escapes *Abolishment*, At Least For Another Year

by Bob Posey

Once again, 22 years after parole sentencing was replaced with guideline sentencing, the Florida Parole Commission (FPC) found itself on the very verge of being disbanded by state lawmakers. But, as in the past, the commission has once again survived being written out of Florida's laws, for at least one more year.

This latest attempt by legislators began April 1, during the regular session of the 2005 Legislature. Without any prior warning a House of Representatives budget committee, that was putting the final touches on the House version of the state's budget for fiscal year 2005-06, voted overwhelmingly (15-6) not to provide the parole commission with funding for this coming year. To not provide an agency with funds to operate or pay employees effectively kills such an agency.

The initial proposal to cut the FPC's funds came from Melbourne Republican Rep. Mitch Needleman. A retired police officer, Needleman explained his proposal to get rid of the parole commission, saying the money can be better used elsewhere. The 64-uear-old FPC, that is viewed by many as no longer needed, a waste of taxpayer money, largely ineffective and incompetent, has in recent years had a $9.4 million-per-year budget and only about 150 employees. Several recent audits of the FPC's operations by the state auditor's office and the Florida Corrections Commission (which itself had its funding denied in 2004-05) had in fact found that much of the FPC's claimed work is actually duplicating (or at least claiming responsibility for) work done by other agencies, mainly the Department of Corrections.

Rep. Needleman, apparently familiar with those audit reports, said, "This is a duplication of services in which we try to keep a dinosaur alive."

Rep. Fred Brummer, R-Apopka, was even more succinct. "This commission is like a bad movie, a bad nightmare," Brummer said. "When you have an ineffective agency that duplicates functions of other agencies, it's time for that agency to go away."

House Republicans who voted to abolish the commission called it obsolete, because there are only about 5,500 remaining parole-eligible prisoners in the state's prisons left from when the state switched from parole to guideline sentencing in 1983. Legislators also said the commission is incompetent in performing other duties it has besides deciding who among those prisoners will be paroled or have their parole revoked. Despite its name, since 1983 the parole commission spends the majority of its time conducting investigations on ex-felons who apply to have their civil rights restored after release from prison. Florida is the largest of only seven states that do not automatically restore civil rights, including the right to vote, once prisoners have served their time. In Florida they must apply to have their rights restored by the Clemency Commission, made up of the Governor and three Cabinet members. The parole commission does the investigations in the clemency process. There lay legislators' real problem with the FPC.

"They have done a dismal job in what is now their primary mission. Citizens shouldn't have to wait 18 months to two years to get their rights restored," said Rep. Joe Negron, R-Stuart, the House chief budget writer who is also running for attorney general next year.

Actually the wait is much longer than that and a steadily increasing backlog of clemency applications (approximately 9,000) has had the FPC claiming it needs more money and employees. Governor Jeb Bush and the Cabinet loosened the clemency rules some in December 2004, however, Gov. Bush still asked the Legislature to approve a $1.2 million budget increase for the FPC for fiscal year 2005-06 to allow 40 more people to be hired to work on the clemency backlog. The state Senate only approved a $400,000 increase in their budget, now the House was saying not only no increase, but to get rid of the FPC all together. Under the House proposal the FPC's parole duties would have been given to four regional volunteer parole boards and clemency investigations would have been shifted to the governor's executive office.

Gov. Bush, who has been the biggest obstacle to automatic civil rights restoration, said he wasn't worried about the House budget committee's vote, noting that there was still a month left in the legislative session and there was still time for negotiations between the House and Senate on the state's $63-billion-plus budget before the session ended. Gov. Bush also said laws would have to be changed before the FPC could be got rid of, which had not been proposed at that time.

On April 4 a bill was filed in the House (HB 1899) to change Florida laws to abolish the parole commission. The bill, in addition to changing some unconnected laws, would replace the FPC with volunteer regional parole boards, allow parole-eligible prisoners to appear at parole hearings in person or by video teleconference (which the FPC does not allow), provide that courts would make all parole revocation decisions, and move clemency investigations to the governor's office. Three days later, on April 7, the House voted on that bill and stunned observers by approving it with a unanimous vote of 110-0.

This isn't the first time legislators have moved to abolish the parole commission. The FPC was originally scheduled to be abolished in 1993, ten years after the state switched from parole to guideline sentences. The commission, however, successfully lobbied during those ten years to get other duties assigned to it so it could avoid being phased out. Those extra jobs included doing clemency investigations, deciding the conditions of conditional release for guideline-sentenced prisoners, and providing victim services.

In 1996 legislators again proposed getting rid of the FPC. The commission fought back, calling in favors (or threatening exposure of past political favors, some people believe), and survived being abolished, but with a reduction in the number of commissioners and FPC employees cut by 30 percent. Then state Sen. Charlie Crist, who is now Florida's attorney general, was one of those who led the push to abolish the commission in 1996.

In this latest move, once the House passed HB 1899 the bill was sent to the Senate for a vote where it was expected to find more opposition. Two key senators on criminal justice issues, Sen. Victor Crist, R-Tampa, and Sen. Alex Villalobos, R-Miami, had already stated they would not support the idea, as had Gov. Bush.

The bill was placed on the Senate Calendar to be heard and voted on, sparking optimism among parole-eligible prisoners,

their families and advocates that this might be the year that the commission would be abolished. Most of those people believe the commission releases so few parole-eligible prisoners and revokes the parole of those that are paroled for even minor technical reasons simply to continue its existence.

Once the bill was filed in the Senate a grassroots push began to get it passed. Several family members of parole-eligible prisoners took to the Internet to find and encourage others to call on senators to pass HB 1899. Florida Prisoners' Legal Aid Organization, Inc., that formed the FPLAO Parole Project two years ago to push for abolishment of the FPC, sent out over 1500 emails during mid-April to prisoners' families calling on them to contact their senators to demand passage of HB 1899. FPLAO staff made dozens of calls to senators or their offices urging support of the bill.

The bill was rescheduled on the Senate calendar twice, then scheduled to be voted on at the end of the session. Backdoor negotiations were going on, however, and on April 28 the news leaked out that a deal had been struck that the Senate would not vote on the bill this year. Instead, in an agreement between House and Senate budget writers made over the weekend of April 23-24, the parole commission will continue with no increase in its budget or additional employees for fiscal year 2005-06 and legislators will revisit whether the commission should be allowed to continue to exist during the 2006 legislative session.

Once again the parole commission escaped the ax. It is expected that during this next year the commission will focus almost exclusively on reducing the backlog of clemency applications in an attempt to appease legislators, and place parole even further on the back burner. Last fiscal year the commission only granted 27 people parole out of the 5,500 parole-eligible prisoner population, yet revoked the parole of 91, most for minor technical violations.

There is no guarantee that the parole commission will be dissolved next year, or even that HB 1899, or similar legislation, will be reintroduced in 2006. With at least a 10-month reprieve no doubt FPC Commissioners Monica David, Fred Dunphy and Tena Pate will be lobbying hard to seduce lawmakers into dropping the idea of getting rid of the commission. The FPC's old "dirty" files will get dusted off to see what dirt they may contain on current politicians. Deals and promises will be proposed and made. Parole-eligible prisoners, their families and advocates, and those who wish to see automatic civil rights restoration in Florida, need to use those 10 months to push harder than ever before for change. It may be a long time before such an opportunity comes again.

[Note: While the FPLAO Parole Project does not claim all the credit for having HB 1899 introduced, for the past tow years the project has been very active educating state legislators about the FPC, its incompetence, unfair procedures, and its innate self-serving policies. FPLAO intends to continue working to abolish the parole commission but depends on donations to do that work. Your help is needed, especially during these next 10 potentially critical months. Any amount donations are needed and will be used exclusively to work for beneficial changes to the Florida parole system. Send donations to FPLAO, Attn: Parole Project.]

[Sources: *Miami Herald*, 4/2/05; *St. Petersburg Times*, 4/2/05; *Tallahassee Democrat*, 4/2/05; *Palm Beach Post*, 4/28/05; House Bill 1899; FDOC and FPC records; OPPAGA Audit Reports; Florida Corrections Commission 2000 Annual Report.]

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 prison had closely paralleled the number of paroles granted until this past fiscal year. The chart below is based on the fiscal periods shown.

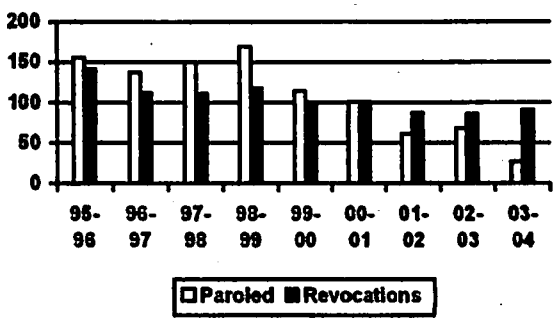
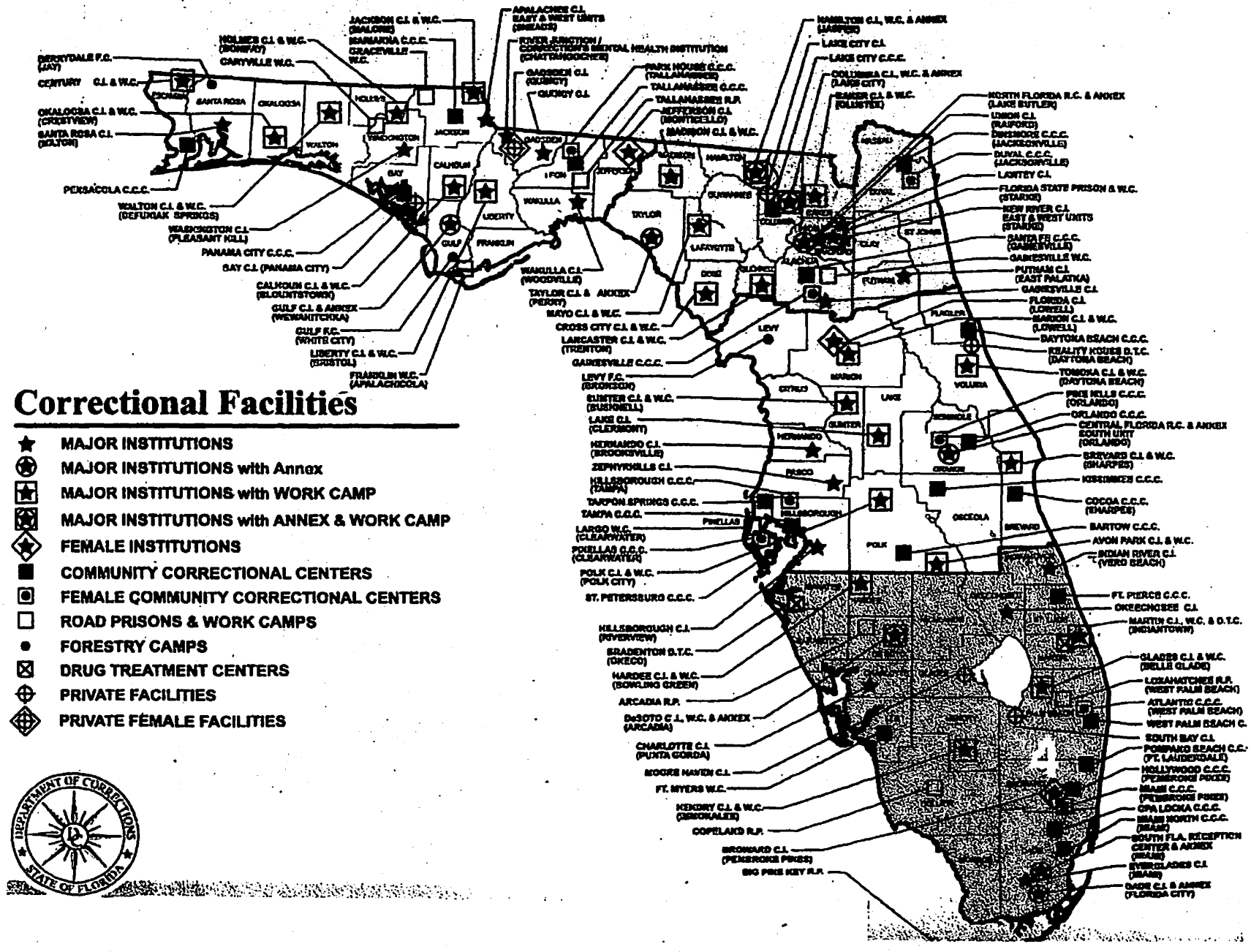


Chart Values

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

Prepared by the FPLAO Parole Project

Beginning in May 2002 the FDOC contracted with Western Union to enable friends and families to send funds to inmates using their "Quick Collect Service." This service credits the inmates' accounts quicker than mailing a money order. The department receives $1 per transaction, which is estimated to total $715,000 over the three-year term of the contract. The department timely processed 712,592 money orders from inmate family and friends totaling approximately $35 million and 198,992 Western Union "Quick Collect" service transactions totaling approximately $16 million. The "Quick-Collect" program generated revenues to the department of $361,990 in FY 2003-04.


Correctional Facilities
MAJOR INSTITUTIONS
MAJOR INSTITUTIONS with Annex
MAJOR INSTITUTIONS with WORK CAMP
MAJOR INSTITUTIONS with ANNEX & WORK CAMP
FEMALE INSTITUTIONS
COMMUNITY CORRECTIONAL CENTERS
FEMALE COMMUNITY CORRECTIONAL CENTERS
ROAD PRISONS & WORK CAMPS
FORESTRY CAMPS
DRUG TREATMENT CENTERS
PRIVATE FACILITIES
PRIVATE FEMALE FACILITIES
DEPARTMENT OF CORRECTIONS
STATE OF FLORIDA
JACKSON C.I. & W.C. (SNEADS)
APALACHEE C.I. EAST & WEST UNITS (SNEADS)
HOLMES C.I. & W.C. (BONIFAY)
CANTONMENT W.C.
MARIANNA C.C.C.
GRACEVILLE W.C.
RIVER JUNCTION / CORRECTIONS MENTAL HEALTH INSTITUTION (CHATTAHOOCHEE)
DERRYDALE F.C. (LAY)
CENTURY C.I. & W.C.
GADSDEN C.I. (QUincy)
QUincy C.I.
PARK HOUSE C.C.C. (TALLAHASSEE)
TALLAHASSEE C.C.C.
TALLAHASSEE R.P.
JEFFERSON C.I. (MONTICELLO)
MADISON C.I. & W.C.
OKALOOSA C.I. & W.C. (CRESTVIEW)
SANTA ROSA C.I. (MILTON)
PENSACOLA C.C.C.
WALTON C.I. & W.C. (DEFUNIAK SPRINGS)
WASHINGTON C.I. (PLEASANT HILL)
PANAMA CITY C.C.C.
BAY C.I. (PANAMA CITY)
CALHOUN C.I. & W.C. (BLOUNTSTOWN)
GULF C.I. & ANNEX (WEWAHITCHKA)
GULF F.C. (WHITE CITY)
LIBERTY C.I. & W.C. (BRISTOL)
FRANKLIN W.C. (APALACHICOLA)
WAKULLA C.I. (WOODVILLE)
TAYLOR C.I. & ANNEX (PERRY)
MAYO C.I. & W.C.
CROSS CITY C.I. & W.C.
LANCASTER C.I. & W.C. (TRENTON)
GAINESVILLE C.C.C.
LEVY F.C. (BRONSON)
SUMTER C.I. & W.C. (BUSHNELL)
LAKE C.I. (CLERMONT)
HERNANDO C.I. (BROOKSVILLE)
ZEPHYRHILLS C.I.
HILLSBOROUGH C.C.C. (TAMPA)
TARPON SPRINGS C.C.C.
TAMPA C.C.C.
LARGO W.C. (CLEARWATER)
PINELLAS C.C.C. (CLEARWATER)
POLK C.I. & W.C. (POLK CITY)
ST. PETERSBURG C.C.C.
HILLSBOROUGH C.I. (RIVERVIEW)
BRADENTON D.T.C. (OKECO)
HARDEE C.I. & W.C. (BOWLING GREEN)
ARCADIA R.P.
DeSOTO C.I., W.C. & ANNEX (ARCADIA)
CHARLOTTE C.I. (PUNTA GORDA)
MOORE HAVEN C.I.
FT. MYERS W.C.
HENDRY C.I. & W.C. (LABELLE)
COPELAND R.P.
BROWARD C.I. (PEMBROKE PINES)
BIG PINE KEY R.P.
HAMILTON C.I., W.C. & ANNEX (JASPER)
LAKE CITY C.I.
LAKE CITY C.C.C.
COLUMBIA C.I., W.C. & ANNEX (LAKE CITY)
BAKER C.I. & W.C. (OLUSTEE)
NORTH FLORIDA R.C. & ANNEX (LAKE BUTLER)
UNION C.I. (RAIFORD)
DINSMORE C.C.C. (JACKSONVILLE)
DUVAL C.C.C. (JACKSONVILLE)
LANTEY C.I.
FLORIDA STATE PRISON & W.C. (STARKE)
NEW RIVER C.I. EAST & WEST UNITS (STARKE)
SANTA FE C.C.C. (GAINESVILLE)
GAINESVILLE W.C.
PUTNAM C.I. (EAST PALATKA)
GAINESVILLE C.I.
FLORIDA C.I. (LOWELL)
MARION C.I. & W.C. (LOWELL)
DAYTONA BEACH C.C.C.
REALITY HOUSE D.T.C. (DAYTONA BEACH)
TOMOKA C.I. & W.C. (DAYTONA BEACH)
PINE HILLS C.C.C. (ORLANDO)
ORLANDO C.C.C.
CENTRAL FLORIDA R.C. & ANNEX SOUTH UNIT (ORLANDO)
BREVARD C.I. & W.C. (SHARPES)
KISSIMMEE C.C.C.
COCOA C.C.C. (SHARPES)
BARTOW C.C.C.
AVON PARK C.I. & W.C.
INDIAN RIVER C.I. (VERO BEACH)
FT. PIERCE C.C.C.
OKEECHOBEE C.I.
MARTIN C.I., W.C. & D.T.C. (INDIANTOWN)
GLADES C.I. & W.C. (BELLE GLADE)
LOXAHATCHEE R.P. (WEST PALM BEACH)
ATLANTIC C.C.C. (WEST PALM BEACH)
WEST PALM BEACH C.
SOUTH BAY C.I.
POMPANO BEACH C.C. (FT. LAUDERDALE)
HOLLYWOOD C.C.C. (PEMBROKE PINES)
MIAMI C.C.C. (PEMBROKE PINES)
OPA LOCKA C.C.C.
MIAMI NORTH C.C.C. (MIAMI)
SOUTH FLA. RECEPTION CENTER & ANNEX (MIAMI)
EVERGLADES C.I. (MIAMI)
DADE C.I. & ANNEX (FLORIDA CITY)

IN THE NEWS

AL—During March '05 Donaldson Correctional Facility Warden Stephen Bullard was placed on leave by the State Corrections Commissioner, Donald Campbell, after warning in a memo of "catastrophic circumstances" at the overcrowded prison near Birmingham. With space for about 1,000 prisoners, the facility holds 1,625 prisoners in conditions that have overloaded the prison's sewage system. A DOC spokesman said he could not comment on the reasons that Warden Bullard was placed on leave.

CT—Five death row prisoners staged a hunger strike in February '05, calling their years of solitary confinement "inhumane and tantamount to psychological torture." The prisoners asked to be allowed to interact with one another. State Rep. Stephen Dargan, co-chair of the Public Safety Committee, said he is willing to discuss conditions on death row.

FL—During February '05, Miami-Dade County Jail officials said prisoners have scammed unsuspecting people from the jail to make long distance phone calls. Officials said prisoners make collect calls, and then persuade the person on the line to push Star-72 and the number to the pay phone at the jail. That forwards the line and gives prisoners access to it. Officials say they have been getting complaints about the scam for about a year with some victims hit with hundreds of dollars in long distance bills.

FL—On February 10, 2005, a clerk at a Tampa law firm was arrested and charged with forging the signatures of two state judges on court orders. Spryng Harris, 23, who was a clerk with attorney Rick Silverman's firm, turned herself in and was released on $4,000 bail. According to the sheriff's office, Harris failed to file documents to have a client's driver license reinstated with courts in Citrus and Hillsborough counties but signed orders as if she had.

LA—A 40-year-old Louisiana man was release from Angola Prison in March '05 after serving almost 24 years for a rape that prosecutors now say he probably did not commit. DNA evidence from the 1981 rape did not match Michael Williams. He was the 159th person exonerated by DNA testing, according to the Innocence Project, which represented him.

OK—Oklahoma prisons went tobacco-free on February 14, 2005. The new policy bans all smoking, smoke-less tobacco and all products like lighters, matches or cigarette papers in the state's prisons and applies to prisoners, staff and visitors. Prisoners caught with tobacco products can lose credits towards parole. Staff caught with tobacco products can be subject to disciplinary action.

ND—In March '05 North Dakota prison officials announced that they are using a new scanner to detect prisoners who smuggle drugs into the state penitentiary through the mail. Prison officials claim the machine can detect drugs, such as LSD, that are soaked into stationary and sent through the mail to prisoners. ■

☞ The federal lawsuit, *Prison Legal News v. Crosby, et al.*, Case No. 3:04-cv-0014-J-16TEM (M.D. Fla.), challenging the FDOC rejection of a publication, PLN, for carrying prison telephone rate reduction services ads and challenging compensation for writing articles, is scheduled for trial June 6, 2005, in Jacksonville.

☞ FDOC Proposed Rule 33-210.101(22), which would prohibit prisoners from sending postage stamps or SASEs out in their outgoing mail *has not* been adopted. Enforcement of such "rule" is therefore invalid. That proposed rule is still being challenged by FPLAO, effectively stopping its adoption at this time.

☞ FPLAO is still waiting on a ruling from the First District Court of Appeal on the challenge to the FDOC's (illegally) adopted rule placing a 5 page limitation on written materials (except actual correspondence) sent to Florida state prisoners by free citizens through the mail. A decision is expected this year.

☞ A new report released on April 24 by the Federal Bureau of Justice Statistics says that U.S. prison and jail populations grew at a rate of about 900 prisoners each week between mid-2003 and mid-2004, reaching 2.1 million people. The report shows that 1 of every 138 Americans are incarcerated.

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DEPARTMENT OF CORRECTIONS BUDGET SUMMARY (FY 2003-04)

Operating Funds

Expenditures by Budget Entity:

Department Administration	$54,852,108
Security and Institutional Operations	1,144,147,508
Health Services	307,400,119
Community Corrections	221,208,055
Information Technology	24,562,233
Programs	39,621,718
Total Operating Funds	$1,791,791,741

Fixed Capital Outlay Funds

Expenditures by Project Classification:

To Provide Additional Capacity Through Expansion and New Construction	$25,381,014
To Maintain Existing Facilities and Meet Requirements of Regulatory Agencies	3,773,958
Total Fixed Capital Outlay Funds	$29,154,972

Total	$1,820,946,713

Local Funds

Volume of Collection Activities:

Cost of Supervision Fees	$25,874,735
Restitution, Fines, and Court Costs	56,757,490
Subsistence, Transportation, and other Court-Ordered Payments	18,909,204

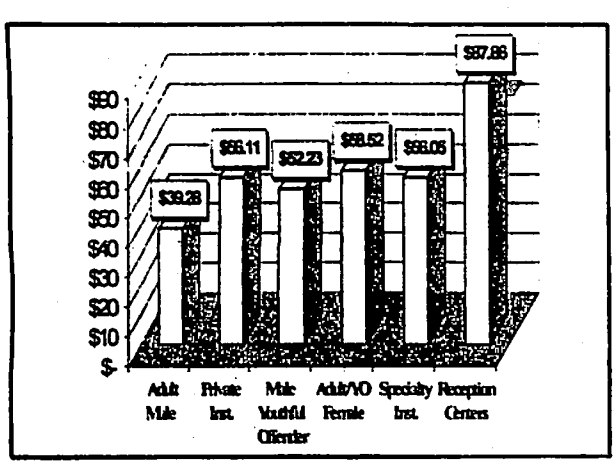
Inmate Banking Activities:

Total Deposits	$75,895,080
Total Disbursements	76,383,668
June 30, 2004 Total Assets	8,552,567

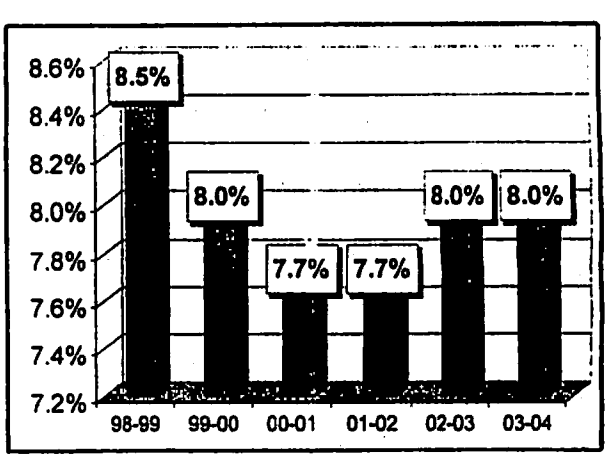
Other Activity:

Revenue from Canteen Operations	$20,980,163
Inmate Telephone Commissions	17,596,450

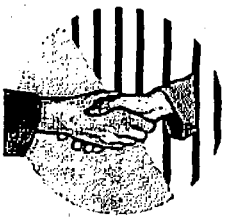
Inmate Cost Per Day by Type of Facility



Percent of State General Revenue Budget Appropriated to Corrections



Florida Prisoners' Legal Aid Organization Inc.



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1. Please Check ✓ One:

- ☐ Membership Renewal
- ☐ New Membership

2. Select ✓ Category

- ☐ $15 Family/Advocate/Individual
- ☐ $10 Prisoner
- ☐ $30 Attorneys/Professionals
- ☐ $60 Gov't Agencies/Libraries/Orgs./etc.

3. Your Name and Address (PLEASE PRINT)

_____ DC#_____
Name

_____
Agency/Library/Institution /Org/

_____
Address

_____
City State Zip

_____
Email Address and /or Phone Number

☞ Please make all checks or money orders payable to: Florida Prisoners' Legal Aid Organization, Inc. Please complete the above form and send it with the indicated membership dues or subscription amount to: *Florida Prisoners' Legal Aid Organization Inc., P.O. Box 660-387, Chuluota, FL 32766.* For family members or loved ones of Florida prisoners who are unable to afford the basic membership dues, any contribution is acceptable for membership. New, unused , US postage stamps are acceptable from prisoners for membership dues. Memberships run one year.

MEMBERSHIP/SUBSCRIPTION RENEWAL

Please check your mailing label to determine your term of membership and/or last month of subscription to FPLP. On the top line of the mailing label will be a date, such as ***Nov 04***. That date indicates the last month and year of your current membership with FPLAO or subscription to FPLP. Please take the time to complete the enclosed form to renew your membership and/or subscription before the expiration date.

Moving? Transferred? If so, please complete the enclosed address change form so that the membership rolls and mailing list can be updated. Thank you!

Litigation Manual Sold Out

The first edition of the *Florida Prisoner's Litigation Manual: Legal Information on Prison Discipline, Mandamus & Appellate Review*, that has been being advertised in past issues of *FPLP*, has sold out. No more copies of that edition are available. Please do not send orders for that book. We will let you know if and when a second edition of that book becomes available.

Conditional Release

An inmate sentenced to murder/manslaughter, sexual offenses, robbery or other violent personal crimes, and who has a previous commitment to a state or federal institution or has been convicted as a Habitual Offender or Sexual Predator, meets the criteria for conditional release. Upon reaching the release date with accrued gaintime, an inmate is placed on conditional release to serve up to the remainder of the length of sentence. A conditional release eligible inmate often accrues less gaintime than other inmates due to the nature of the offense. Conditional release is not technically an early release mechanism as it merely provides for post-release supervision for those considered serious offenders for up to the amount of gaintime accrued.

REMINDER

On April 1, 2005, the yearly membership dues for prisoners to become or remain a member of Florida Prisoners' Legal Aid Organization, Inc., was increased one dollar, from $9 a year to $10 a year. Dues received and postmarked after April 1 in the old amount of $9 will be prorated for a 10 month membership instead of a full year. All members receive *Florida Prison Legal Perspectives*. If you aren't an FPLAO member, join us today with the above form. If you are already a member, don't forget to renew your membership before it expires.

SUBMISSION OF MATERIAL TO *FPLP*

Because of the large volume of mail being received, financial considerations, and the inability to provide individual legal assistance, members should not send copies of legal documents of pending or potential cases to *FPLP* without having first contacted the staff and receiving directions to send same. Neither *FPLP*, nor its staff, are responsible for any unsolicited material sent.

Members are requested to continue sending news information, newspaper clippings (please include name of paper and date), memorandums, photocopies of final decisions in unpublished cases, and potential articles for publication. Please send only copies of such material that do not have to be returned. *FPLP* depends on YOU, its readers and members to keep informed. Thank you for your cooperation and participation in helping to get the news out. Your efforts are greatly appreciated.

PRISON LEGAL NEWS

Prison Legal News is a 36 page monthly magazine which has been published since 1990. It is edited by Washington state prisoner Paul Wright. Each issue is packed with summaries and analysis of recent court decisions from around the country dealing with prisoner rights and written from a prisoner perspective. The magazine often carries articles from attorneys giving how-to litigation advise. Also included in each issue are news articles dealing with prison-related struggle and activism from the U.S. and around the world.

Annual subscription rates are $18 for prisoners. If you can't afford to send $18 at once, send at least $9 and *PLN* will prorate the issues at $1.50 each for a six month subscription. New and unused postage stamps or embossed envelopes may be used as payment.

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Prison Legal News
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