FLORIDA PRISON LEGAL

Perspectives

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– Florida Parole Commission– Just Keeps on Going and Going

Like the Energizer Bunny, the Florida Parole Commission (FPC) ducks, dodges or shakes off adversity with an indifferent aplomb, and just keeps on going and going.

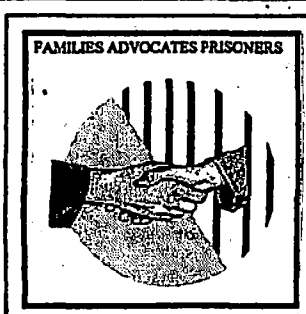
Although the FPC was legislatively scheduled to be phased out within ten years following 1983, when parole-eligible sentencing was generally replaced with guide-line sentencing in Florida, here it is 25 years later and not only does the commission still exist, but it is still marching along to its own autocratic tuneless drumbeat. The FPC is seemingly oblivious (and impervious) to criticism and efforts to dissolve what many consider an anachronism whose sun should have set many years ago.

But maybe, just maybe, the commission's batteries are beginning to run down. For the first time in a long time the commission did take a hit this year that's going to put a limp in the FPC's march across the backs of those unfortunate enough to lie beneath the commission's totalitarian feet.

First, to dispel this year's crop of rumors and misinformation. Early in the legislative process this year Senator Paula Dockery filed Senate Bill (5B) 842. The title of that bill indicated that it would relate to the FPC. However, as that bill was simply a "placeholder," it had no accompanying text. Every year similar bills are filed by various legislators to hold a place open just in case they want to later add text to such bill on a particular subject. Although Sen. Dockery never added any text to her placeholder bill concerning the FPC, rumors flashed through the parole-eligible prisoner population (and some of their on-line family members) that said senator was going to try to abolish the FPC and that she should be supported. It was all nonsense, fueled by a lack of understanding about the bill-filing and legislative process.

Having at least some substance to it, there was a bill filed by State Representative Mitch Needelman (HB-5075) (who also filed bills in 2005 and 2006) that did concern the FPC. His bill this year did not promote drastically changing the commission (as his 2005-06 bills did), but instead would have transferred the FPC to the FDOC for administrative purposes, three-member commission intact. That bill did not pass.

Next up came a semi-rumor in May of this year, that Monica David, current chair of the FPC was going to be replaced. What the situation actually was is that FPC commissioner Fred Dunphy's six-year term was set to expire June 30 and the Parole



ON THE INSIDE

FLORIDA PRISON LEGAL PERSPECTIVES

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Qualifications Committee had been accepting applications for Dunphy's position. On May 30 it was announced that there were three finalists for the position: Dunphy, to retain the position; Hieteenthia "Tina" Hayes, current FDOC Director of Initiatives; and term-limited State Representative Curtis Richardson, D-Tallahassee. There was pressure attempted to be added to pick either Hayes or Richardson over retaining Dunphy when the mainstream media raised a question about diversity. Both Hayes and Richardson are black, while Dunphy and the other two commissioners, Monica David and Tena Pate, are white. It has been an all-white commission for years, although the majority of those under FPC control are black.

A decision was expected by the Governor and Cabinet on Dunphy's commission position June 10. However, on July 3 a staffer in the Governor's office informed FPLAO staff that the decision was still up in the air.

As for the "hit" taken by the FPC, there hasn't been any rumors or apparent knowledge about it among parole-eligible prisoners. The Legislature cut the FPC's operating budget for the 2008-09 Fiscal Year from $9.69 million (that it received in the 2007-08 FY) to $8.1 million. That reduction, the first significant cut in the FPC budget in a long time, has forced the commission to lay off 17 of its 131 employees and leave 7 vacant job positions unfilled, a total loss of 24 positions. Hopefully next year the Legislature will whittle away some more.

For now the FPC will continue beating its tin drum and marching aimlessly around on the lives of those it is keeping captive for the sake of job security.

As for facts about the commission, they speak for themselves.

As of July 1, 2007, there were 5,112 Florida state prisoners who were parole eligible. Only 587 Florida offenders were actually on parole. During Fiscal Year 2006-07 (the latest year for which numbers are available at this time) only 27 Florida prisoners were granted parole. However, consistent with the FPC's recent policies, during the same period 73 parolees had their paroles revoked and they were returned to prison. Of those revocations, 70 were for technical violations; while only 3 were for committing a new crime. ■

FDOC Guard Killed at Tomoka CI

DAYTONA BEACH— A prisoner accused in the murder of a female prison guard at Tomoka Correctional Institution on June 25, 2008, was charged with first-degree murder the following day, officials said.

Prisoner Enoch Hall, 39, ambushed and killed prison guard Donna Fitzgerald, 50, about 7:30 p.m. inside a welding shed at the prison. According to the charging affidavit, at some point on the 25th, Hall was discovered to be missing from his job at the PRIDE Heavy Equipment Renovation Plant located on the Tomoka CI compound. Fitzgerald allegedly went looking for Hall and found him when she opened the door to the welding shed. Hall then stabbed Fitzgerald several times with a piece of metal formed into a knife and then hid the weapon in a nearby concrete block wall claims the affidavit.

Hall admitted that he had repeatedly stabbed Fitzgerald and hid the makeshift knife in the wall, officials said. Whether such "confession" will be admissible in court remains to be seen. When Hall's mug shout was shown on news programs that reported on the incident, it was clearly evident that prior to being booked Hall had been severely beaten himself at some point.

Initially it was reported by the media that Fitzgerald had also been raped. But reports from the Sheriff's Office and state investigators from the Florida Department of Law Enforcement did not mention that a rape had occurred or was suspected. Officials refused to confirm or deny that a rape occurred. The initial reports of such may have been speculation considering the charges that Hall was in prison for.

Hall was sentenced to life in prison in 1993 for a kidnapping in Pensacola. He was also convicted of sexual battery and aggravated battery with a weapon on the 66-year-old woman who he was convicted of kidnapping. Hall also had a 40-year federal sentence after pleading guilty to kidnapping a 23-year-old woman from a Pensacola parking lot in 1992 and taking her to Alabama. And he was also given a 12-year sentence for an earlier attack while in prison.

According to a friend of Fitzgerald, Nancy Duke, Fitzgerald had told her that her life had recently been threatened by a prisoner. Duke could not say that it was Hall who had threatened Fitzgerald, but did say it was obvious to her that it must have been Hall who made the threat and then waited for "the perfect opportunity" to catch Fitzgerald alone. FDOC officials said they did not know Fitzgerald had been threatened. It's odd that Fitzgerald didn't report it. Normally a prisoner would be immediately locked up in confinement for making such a threat.

Other oddities exist that may or may not be clarified as the case against Hall proceeds.

A Department of Correction's representative told reporters that a head count was being conducted when Hall was discovered to be missing. However, a prison secretary said the incident had nothing to do with a head count.

Additionally, every FDOC prison guard is required to wear a wireless body alarm at all times. Such alarms can be set off, sending a signal to the prison control room and resulting in an immediate alert to all officers to respond, by either hitting a button on the alarm device or automatically if the device is tilted to the vertical. However, there is no report that Fitzgerald's body alarm ever went off, as it would almost had to have done if she struggled with Hall, as officials claim, while wearing the small beeper-sized, belt-worn device, especially if she fell to the ground before or after being killed.

Fitzgerald is the second female Florida prison guard to be killed on the job. Both were killed while supervising high custody, knowingly violent prisoners on their own.

Shortly after being charged, Hall was transported by prison officials to Florida State Prison, the state's maximum-security prison. ■

FDOC Prison Guard Gouges Out Prisoner's Eye

Florida Department of Correction's prison guard (in a rare instance considering the wide-spread physical abuse of prisoners that is again occurring since former FDOC Secretary Jim McDonough resigned a few months ago) has been accused of gouging and causing a prisoner to lose an eye.

William Wilson, 25, a guard at Charlotte Correctional Institution, located near Punta Gorda in southwest Florida, was fired by the FDOC and arrested and charged on aggravated battery after an investigation into the May 21 incident.

According to an FDOC investigative report, a prisoner, handcuffed and shackled, was being transferred out of his cell when Wilson intentionally gouged the prisoner's right eye with his hand. The eye later had to be removed by medical staff.

Wilson was released on bail after spending one night in jail. ■

Florida to Build More Prisons

The politically popular "lock 'em up and throw away the key" approach to crime in Florida scored another victory this year.

The recently completed regular legislative session was all about a state budget crisis, cuts had to be made in all areas, legislators claimed. There were even threats to cut the Department of Correction's budget, which the department responded to by threatening that if its budget were cut it might mean early release of prisoners and prison overcrowding. Backing up the threat, the FDOC scrambled to erect tents at several prisons to house prisoners, which successfully turned the tide in FDOC's favor. (See: *FPLP*, Vol. 14, Iss. 2.)

At the end of the session, not only were no cuts made to the prison system's $2.27 billion budget, but the FDOC was given almost $300 million more to build new prisons and another $86 million to operate a private prison.

In an apparent move to ensure the adage that "if you build it, they will come," the Legislature cut public school funding by $900 million this year. ■

Seeking Return of Seized Property

by Melvin Pérez

In this article I will explain the procedure one must follow when seeking the return of property seized during a prisoner's arrest or pursuant to a lawful investigation. This article *does not* address Forfeiture Act, sections 932.701 to 932.707, Florida Statutes, or property illegally taken from a prisoner by FDOC.

Section 705.105(1), Florida Statutes, provides that title to unclaimed evidence or personal property lawfully seized pursuant to a lawful investigation that is in the custody of the court or clerk as part of a criminal proceeding, or seized as evidence by and in the custody of a law enforcement agency, shall vest permanently in the law enforcement agency sixty days after the conclusion of the proceeding.

Decisional law *has* extended this sixty-day limit to include resolution of post-conviction remedies. *See: Sutherland v. State*, 860 So.2d 505 (Fla. 4th DCA 2003).

Court's Jurisdiction

A trial court's jurisdiction over a criminal proceeding includes inherent authority over property seized or obtained in connection with the proceeding and thus held in *custodia legis* (in the custody of the law). *See: Stevens v. State*, 929 So.2d 1197, 1198 (Fla. 2nd DCA 2006).

Further, this authority continues beyond the termination of the prosecution, thus enabling the court to direct the return of the property to its rightful owner. *See: Eight Hundred, Inc., v. State*, 781 So.2d 1187, 1191-92 (Fla. 5th DCA 2001).

Moreover, when a defendant seeks the return of seized property as the true owner, the applicable procedure is similar to the procedure for the consideration of a motion for post-conviction relief. *See:* Fla.R.App.P. 9.141(b)(a) and *Stone v. State*, 630 So.2d 660, 660 n.1 (Fla. 2nd DCA 1994).

Filing The Motion

First, the defendant must file a facially sufficient motion for the return of property. *See: Brown v. State*, 613 So.2d 569 570 (Fla. 2nd DCA 1993).

To be facially sufficient, the motion *must* allege that:

(1) the property at issue was his or her personal property;
(2) that the property was not the fruit of criminal activity; and,
(3) that the personal property was not being held as evidence. *See: Burain v. State*, 765 So.2d 880, 880 (Fla. 2nd DCA 2000).

Implicit in this standard is the requirement that the defendant must specifically identify property at issue.

However, the defendant need not establish proof of ownership in order to allege a facially sufficient claim for the return of property. See: *Stone, supra* at 660-61.

If the court deems the motion to be facially sufficient, then it must conduct an evidentiary hearing or attach those record documents that conclusively refute defendant's claim. *See: Clound v. State*, 801 So.2d 964 (Fla. 2nd DCA 2001).

At the evidentiary hearing, the trial court must first ascertain whether the property was confiscated by a law enforcement agency in connection with a criminal prosecution and whether the property is still in the agency's possession.

If the state can show that the property was entered into evidence or that the state intends to pursue forfeiture against the property, the defendant is not entitled to have the property returned. *See: Stone, supra* at 661.

In addition, the defendant is not entitled to have the property returned if the state intends in good faith to bring another criminal prosecution at which the items would be admissible in evidence. *See: Oleandi v. State*, 731 Soo.2d 4, 6 (Fla. 4th DCA 1999) and *Kern v. State*, 706 So.2d 1366, 1370 (Fla. 5th DCA 1998).

Likewise, the defendant is not entitled to return of property during the pending of civil forfeiture proceedings, even in the absence of formal charges against the owner. *See: City of Miami v. Barclay*, 563 So.2d 203 (Fla. 3rd DCA 1990).

In contrast, if the state is unable to connect the items to specific criminal activity, and no one else can be identified who can demonstrate a superior possessory interest in the property, it should be returned to the defendant or to such person(s) as he or she may designate. *See: Stone, supra* at 661.

Should the court dismiss the motion as facially insufficient, it shall identify the deficiencies and grant leave to amend within a reasonable time. *See: Harkless v. State*, 32 Fla. L.Wkly (D) 792, 793 (Fla. 2nd DCA; March 23, 2007).

Summarily Denial

If the court summarily denies the motion for return of property pursuant to the sixty-day time bar, the trial court must attach those portions of the record showing that the property was seized pursuant to a lawful investigation or held as evidence. *See: Burden v. State* 890 So.2d 566 (Fla. 2nd DCA 2005) and *Clound, supra.*

Appealing The Denial

An appeal from an order denying a motion for return of property is governed by Fla.R.App.P. 9.141(b)(2). *See: Clound, supra.*

The defendant shall file a notice of appeal as prescribed by rule 9.110(d) with the clerk of the lower tribunal at any time between rendition of a final judgment and 30 days following rendition. *See:* Rule 9.900(a) for an example of

the notice of appeal and Rule 9.020(h) for more information on rendition. Copies shall be served on the state attorney and attorney general.

If the motion was denied without an evidentiary hearing, no briefs shall be required, but any appellant who wishes to submit one, must do so within 15 days of the filing of the notice of appeal. The court may request a response from the appellee before ruling. *See:* Rule 9.141(b)(2)(c).

If the motion was denied after a hearing, the prisoner must file designations to the court reporter, however, if one is not filed, the notice of appeal shall serve as the designation to the court reporter for the transcript of the evidentiary hearing. *See:* Rule 9.141(b)(3).

The clerk of court has 50 days from the filing of the notice of appeal to prepare the record. *See:* Rule 9.141(b)(3)(b)(i).

Further, appellant may direct the clerk to include in the record any other documents that were before the lower tribunal at the hearing. *See:* Rule 9.141(b)(3)(b)(ii).

The initial brief shall be served within 30 days of service of the record or its index. Additional briefs shall be served as prescribed by rule 9.210.

If the record does not support the summary denial, the DCA must reverse. *See: Harkless, supra,* and *Ferguson v. State*, 873 So.2d 581 (Fla. 3rd DCA 2004).

I hope this information may help those seeking the return of property lawfully seized during their arrest or pursuant to a lawful investigation. ■

Dear FPLP: I have been a member and strong supporter for FPLP with donations. I would like to address the problems I've witnessed in the last 5 to 10 years while being incarcerated in Florida prisons. Inmates/Prisoners/Convicts serving time in Florida Facilities, Institutions not Prisons, you all need to wake up, grow up, and open your eyes and make a stand legally. Notice the change of food service Trinity from Aramark. The food now is sour, old, stale, and lesser portion.. Notice the security staff is manipulating you all into being against each other. They are actually breeding, promoting and provoking you all into snitches. Notice a lot of facilities do not post, hand out pamphlets for HIV, AIDS awareness, TB, Syphilis, Hepatitis. Notice how correction officers are not earning rank but being given rank because of who they know. FSP has become the snitch capital, homosexual capital and police/inmate relationships are astronomical here. Define *unity*, loyalty, prison, and humane human. All you fools are doing is securing the next sorry, lazy, uncaring officer a job and retirement benefits for him and his generation on down. What are you gaining? Still incarcerated, release date still the same, is a few deodorants, cigarettes, chips, cookies worth your name, character, or life? Study law, grievance procedures, your rights and execute it because the officers go home everyday laughing at you all. Black-Mexico

Dear FPLP: I am a Lifer, doing time since March 1983. I am one of many thousands left on parole. I do not have family in Florida. What family is alive are far and few. I do not receive funds to live comfortably as so many prisoners do. But I consider FPLP worth the sacrifice of whatever funds I could get. I am a revolutionary, not of violence; I've matured past that stage. I've obtained my GED and many educational & vocational skills while incarcerated now 25 years. FPLP is the only prisoners' vanguard legal rights organization in Florida. My awareness of this and the dire need for this organization on behalf of prisoners & their families is one to live, serve & fight for. Tough times are challenges for tough people. The times are rough & tough, more so now than ever. Economically as well as politically, don't give up. EC HCIA

Dear FPLP: I have asked my family to contact you but they have not responded to my request for some reason. I have followed the FPLP paper for several years and finally bought a subscription last year because I liked what you were doing. Mainly the parole project. For the last 2 years FPLP has been hot on the parole commission's heels. Then all of a sudden this year nothing. There are many of us prisoners here at Holmes that have a vested interest in what happens with the parole issue. Personally I will complete my 25 year mandatory portion of my sentence in a few months and the parole commission has set me off to 2058. I've never even had a DR or CC, I'm 56 years old. I've had 2 heart attacks, a stroke and just had open heart surgery Dec. of 06. So not only a lot of men here want to know what's going on. I have family and friends who will email or call anyone, we just need guidance. RB HCI

Dear FPLP: I was reading in (FPLP) about different things. I myself am under the sentencing guidelines for life, 25 years. I have been locked up for 22 years. I filed my executive clemency on April 5, 2006. I haven't heard anything as of yet. I am an elderly person at Lowell CI. Some of the ladies have been locked up for 30 years and they can't get a decent parole date. Maybe they have been in trouble or had too many DR. Myself I have a perfect record. I'm supposed to see them in 2009. When people get our age and it's their first time in prison looks like they would let us go home to our family. I am glad you all are fighting for our lives. When you are 70 they should let you go, I don't think women or men our age would return. BPS LCI

Dear Editor: Elderly and infirm prisoners, such as myself, who suffer with medical problems are routinely transported to the so-called medical center (RMC) at Lake Butler. During our stay at Lake Butler we are subjected to physical and psychological abuse by prison guards. The "medical center" at Lake Butler employs the most sadistic guards in all of Florida, the reason for this is to discourage the elderly and infirm from seeking costly health care. Prisoners are treated so badly by the sub-human guards that they often sign medical refusals just to get away from there. This is just what the FDOC wants. I am a 58 year old man, I need health care but I refuse to go back to the "extermination camp" at Lake Butler, and I am not alone. KR SCI

To Whom It May Concern: I want to thank FPLP for the newsletter you put out and the up-to-date cases you use in your articles. Because of some of them I was recently appointed counsel to help me in my appeal. There are 4 of us at this facility from Florida so I share with them when I receive one. Thanks. SR AUCF

Dear FPLP: Bob Posey couldn't have been more on point when he penned his recent "From the Editor" segment in the February 2008 issue of the FPLP, with one minor exception; he only hit the tip of the preverbal "iceberg." After more than 15 years in prison both within and without the state of Florida, I have never run across a set of more unprofessional and power hungry officers and civilian personnel as I have at Mayo CI. You know, you can always tell a person has never experienced power or authority over another when the individual sees him or herself as a demigod who is ordained to abuse those who have the misfortune to find themselves under his authority. This type of behavior *is not* only evident, but rampant among the security, mailroom and medical staff at Mayo CI. The security personnel at Mayo do not seem to know the difference between discipline and humiliation. Nor, have many of them ever heard of the concept of progressive discipline. Here the officers are so petty and eager to harass and humiliate an inmate that if your foot crosses their "yellow line" you will be required to hold a "sign" directing others to stay on the right side of the "yellow line". Other officers cannot seem to interpret a simple memorandum correctly, but instead find ways to interpret it in the most restrictive manner possible so they can add their own sadistic twist. Yet other officers make up their own rules, for example, your socks are not pulled up properly, you cannot wear shorts in the canteen line during the weekend or during your off duty evening hours, but my favorite is the one where the officers won't allow you to exit the canteen line once in line, they call it being "line dedicated". Notwithstanding that the Colonel says the inmates are not line dedicated. Tell the officer this and all you hear is "I run this, not the colonel." Keep in mind these rules are nowhere to be found in Chapter 33, the PM's or Mayo's "inmate handbook", but disobey them and you will receive paperwork, if not a free trip to the box for disobeying a verbal order. Medical and mailroom civilian personnel are just as bad. There can be no question that Mayo's mailroom officer walks a very fine line and at time steps over the line when it comes to the unlawful practice of law. This civilian employee continually chooses what documents she will and will not notarize, what documents are necessary and how many copies need to be sent, all without ever checking the Florida Rules of Procedure. Medical personnel, on the other hand, with the rare exception, are no better. WJ MCI

Dear FPLP: I am one of your loyal subscribers, I have been in DOC for 4 years and have enjoyed and benefited from your publication so very much. It has been so incredibly helpful to me. Just last year, thanks to a case you published in the "Notable Cases" section, I was able to successfully petition for and receive an additional 4 months of Jail Credit time that had not ever been awarded to me. I totally thank FPLP for those 120 days. But that is not why I am writing to you today. I am writing to you to ask if you could please publish in a near future issue any and all information you may have regarding the DOC's 2008-2009 budget and just what it means to us inmates. The Florida Legislature just ended it's 2008 session on May 2nd and there's a whole lot of speculation about what changes that may be forthcoming. I've read that DOC got awarded every single penny they asked for, plus an additional $400 million for 4 new prisons to be built next year (3 DOC. 1 private). The DOC did not have any budget cuts, but education suffered $900 million in cuts. How awful. I remember, and still have a copy of your FPLP issue from about a year or so ago that dedicated several pages to the DOC budget, balance sheet and income statement. Any information you could share or clarify with us behind the fences would be so very much appreciated. SS HCI

Dear FPLP: My turn. Yep, the Parole Commission got me and got me good. My 25 year min/mand. sentence is almost completed and I have life after that. I saw a Parole Examiner in January 2008 and he put my Presumptive Parole Release date at 2045 based on 2 aggravating factors. The Parole Examiner had me down as a level 5 degree felon 1st/life, murder in the first degree. On 3-26-08, the Parole Commission did not affirm that date and restructured the case. I was changed to level 6 degree capital felony murder in the 1st degree. They listed 7 aggravating factors to come up with a PPRD of 9-9-2937. That's almost 1000 years! Check it out. They listed 3 false aggravating factors, and I do mean false, because I was never charged with any of those 3. One of the other aggravating factors was my institutional conduct and another is misleading. That leaves 2 aggravating factors in which I have almost completed this 25 year min/mand. on. They are recharging me and making me do time all over again. What is the 25 year sentence for? The gist of it all is that I got shafted big time. The Parole Commission is using obvious loopholes in doing this. A lot of nerve they have. BS. WCI

Dear FPLP: Last week I was blessed with reading the Jan/Feb Legal Perspectives. In this issue Bob Posey did an outstanding job of clarifying the "Children in Prison Rehabilitation Act" and I'm living testimony of this fact. I.e: On Nov 23, 1968, at the age of 15 I was found guilty of murder in the 1st degree. April 1969, at the age of 16, I was sentenced to life in prison (parole eligible), May 9, 1969, sent to Lake Butler MRC and June 25, 1969, sent to Florida State Prison main housing unit, " The Rock," July 3, 1969, transferred to Florida State Prison East Unit still at the age of 16. At present I am the longest living, parole eligible youthful defender in the DOC. My PPRD was April 20, 2008. On Feb. 27, 2008 the Parole Commission denied my effective parole release date, despite "7" years disciplinary free record, job offer paying $25,000 annually and a place to live. Both approved by the examiner and South Carolina Parole Board. On April 23, 2008. I was given an extraordinary review hearing and despite my family contacting David Mack to speak for me (for a mere

$7,500) the commission set my next hearing at 11-15-2012. Does this sound like the Florida Parole Commission has compassion for youths who made a mistake at a young age? Bob Posey is correct, "The Commission will feel safe that it's future is secure for several more decades with new young victims who it will never let go from it until they die." In 1978 I was being considered for release (parole) in the near future. However in June 1978 the Commission's new guidelines came into effect and in 1979 they gave me a PPRD of 1994 which had gone up consistently for disciplinary. Now with 7 years disciplinary free they extraordinary review me. Oh yeah, they did relent after David Mack speaking and agree to send me to Sumter for the lifers program. DC WCI

Dear FPLP: I feel qualified to comment on "Florida Gets Sixth Private Prison," being an undistinguished guest at Graceville CF since 10/24/07. When I first arrived I doubted this joint would ever be fit for human habitation. My opinion hasn't changed to this day. The ruling regime at GCF basically consists of DOC rejects, unless and until, they go, there will be no hope here. For a long time there was no law library so to speak here, and access has taken even longer and there's still no meaningful access to the courts for inmates at GCF. There's no chow hall. Can't report their crimes on the TIPS line. Phone rates are double those charged DOC inmates. Swanson Services Corporation runs the canteen and charges up to ten times the prices DOC inmates pay, on a miniscule range of choices. Most mentally ill inmates here have never been seen by psych staff. The dentists keep quitting, as have many guards. I've read Ch. 33-205.101, FAC, and Chapters 957, 944.105 and 944.710-944.719, Florida Statutes. I still can't understand how recidivism is supposed to be reduced by a corporation whose best interest is in expansion of the prison industrial complex. Inmates at GCF don't have pillows, no lighters allowed, but smoking is. Not much to the library. The entire chapel is one large room. I can't find civil words to aptly describe the most disgraceful prison I've ever been to, and I've been to many. GEO Group Inc. is liable in tort with respect to care and custody of inmates under its supervision and for any breach of contract. Sovereign immunity may not be raised by the contractor nor their insurer. Ch. 957.05(i), Fla. Stat. G GCF

Dear FPLP: I was inspired by your Jan/Feb issue to write a letter to my politicians. As a class we go unrepresented in the State Legislature, which is partly due to us not making ourselves heard. This is the type of activity every FDOC prisoner needs to be engaging in, yet there are extremely few besides me. I believe this is doing some good. Even if the politician just says, "A prisoner writes me these eloquent letters. Maybe they're not all bad people. I'll vote against mandatory minimums or something like that." SB ACI

Dear FPLP: I am currently serving a 36 month sentence in the FDOC and I want to thank you for the FPLAO. It has been very helpful many times. The reason I'm writing is to tell you about a grievance that I've just filed, where the outcome could affect thousands of FDOC inmates. In June '07 I received a DR for 3-8 (poss. of neg.) after spending 5 days in A/C confinement. I went to my DR hearing and was given the following sentence: loss of 30 days gain time, 40 hours extra duty. A few days later I learned that not only will I lose 30 days but an additional 40. Ten for the month of the infraction, which I can understand, and 30 more pursuant to F.A.C. 33-601.101(5)(a)(2) (disqualification). Right away I say that's double jeopardy. So I start researching, because obviously there's an issue here. If I committed a single infraction and was then given a single sentence, then how are they punishing me more than once? According to F.S. 944.272, unless I receive a DR for unsatisfactory rating in a certain month, I am in fact eligible for gain time. Well, after searching for only a short time I find F.A.C. 601.101(5)(a)(1.,2.,3) were made under F.S.A. 944.28. Not only does this statute say that in order to apply 33-601.10(5)et.al., the inmate must commit a "certain infraction in the criteria," see 944.28(a), but if you read further, 944.28(c) states, in order for it to apply, it must be shown on the DR worksheet, form DC6-112E. Just like I thought, if this rule is not ordered and marked as part of your actual sentence, it is void, and would be double jeopardy not to mention other Constitutional violations like Due Process. The scary part is, there's a box on the DC6-112E form that's suppose to be checked showing there's justification for applying this rule, and out of the hundreds of inmates I've talked to, none of their worksheets were checked, nor was it brought up. Yet we were all punished 3 to 6 times more for a single infraction. As far as I can tell DOC simply applies F.A.C. 33-601.101(5) et.al to "All Inmates" that receive DRs and are clearly in error. I will keep you informed to the responses I receive and another inmate is doing a Declaratory Judgment on this issue. Just another example of DOC's rule bending and disregard for our rights. TP TCI

Dear FPLP: I have a Civil Case No. 3:07cv522/MCR/MD. I filed over 1st amendment rights to freedom of religion, expression, the press and to grievance. My religious mail was being returned to sender without any appeal and out going letters were being confiscated as "gang material". All of this by Inspector Ron Castle. While he spent his time tampering with U.S. mail, officers from 5 institutions were brought in for a two week lock down, Dec 2006, searching for a pistol smuggled in by an inmate. Haven't seen you publish that so thought I would let you know. DDP WCI

D. R. GRIEVANCES / APPEALS AND JUDICIAL REMEDIES

BY HOWARD RICHMOND

PART I

This information will answer some of the most frequently asked questions concerning D. R. grievances and appeals at the Institutional and Central Office levels as well as filing a Petition for Writ of Mandamus in the Circuit Court and subsequent Appeal or Certiorari review in the District Court of Appeal.

PROCEDURAL REQUIREMENTS

You must file a D. R. grievance appeal by using a DC1-303 Form at the Institutional level pursuant to Chapter 33-103.006 (3) (b) F. A. C. and appeal to the Office of the Secretary pursuant to Chapter 33-103.007 F. A. C., before proceeding to the Second Judicial Circuit Court (Leon County) by Petition for Writ of Mandamus pursuant to Rule 1.630 (a) Fla. R. Civ. P. (2008).

The types of grievances that may be filed directly with the reviewing authority bypassing the informal grievance step are listed in Chapter 33-103.006 (3) F. A. C.

The Inmate shall state his grievance in Part A. If additional space is needed the Inmate shall use attachments and not multiple copies of Form DC1-303. Chapter 33-103.006 (2) (c) F. A. C.

The new one page DC1-303 Form (Revised 2/05) only requires you to submit one copy of the grievance form along with one copy of any continuation pages.

Inmates in Confinement shall submit the grievance or appeal by placing the grievance or appeal in a locked grievance box. Chapter 33-103.006 (9) F. A. C.

Amendments are to be filed only regarding issues unknown or unavailable to the Inmate at the time of filing the original grievance and must be submitted within a reasonable time frame of knowledge of the new information. Chapter 33-103.006 (2) (i) F. A. C. The Amendment provision for the appeal to the Secretary is contained in Chapter 33-103.007 (5) (e) F. A. C. "Amended Grievances" must be clearly stated at the beginning of Part A on the DC1-303 Form.

Extensions of time shall be granted when it is clearly demonstrated on a DC1-303 Form that it was not feasible to file the grievance within relevant time periods. Chapter 33-103.011 (2) F. A. C.

Pursuant to Chapter 33-103.017 (1) F. A. C., inmates shall be allowed access to the grievance process without hindrances. Staff found to be obstructing an inmates access to the grievance process shall be subject to disciplinary action ranging from oral reprimand up to dismissal in accordance with Rules 33-208.001 - .003 F. A. C.

TIME LIMITS

You have fifteen (15) calendar days from the date of your D. R. Hearing to file a Formal Grievance (D. R. Appeal) at the Institutional level, (See Chapter 33-103.011 (1) (b) F. A. C.) and fifteen (15) calendar days from the response on the Formal Grievance to file an appeal to central office. (See Chapter 33-103.001 (1) (c) F. A. C.).

"Where an appeal from a grievance procedure must be received by the Department within 15 calendar days of the date of the institutional response, under the mailbox rule the appeal is deemed "received" by the Department "at the moment in time when the inmate loses control over the document by entrusting its further delivery or processing to agents of the state." Gonzalez v. State, 604 So.2d 874, 876 (Fla. 1st DCA 1992); Pedroza v. Tadlock, 705 So.2d 1005 (Fla. 4th DCA 1998).

Pursuant to 9.100 (c) (4), Fla. R. App. P. (2008), a petition for Writ of Mandamus challenging an order of DOC entered in a prisoner disciplinary proceeding must be filed within 30 days of the rendition of that DOC order. (See also Chapter 95.11 (8), Florida Statutes (2007)); Ortiz v. Moore, 741 So.2d 1153, 1154-55 (Fla. 1st DCA 1999).

A Petition for Writ of Certiorari must be filed within 30 days of the Circuit Court's final order on the merits of the Mandamus Petition. Rule 9.100 (c) (1), Fla. R. App. P. (2007). Green v. Moore, 777 So.2d 425, 426 (Fla. 1st DCA 2000), and in the case of an appeal by filing a notice of appeal to the Circuit Court within 30 days of rendition of the order to be reviewed. Rule 9.110 (b), Fla. R. App. P. (2008).

RESPONSES TO GRIEVANCES AND APPEALS

The rules that set forth time frames for inmates to file grievances (See Chapter 33-103.011 F. A. C.), also set forth time frames in which prison officials must respond to grievances and appeals. Chapter 33-103.011(3) F. A. C. provides:

(3) Responding to Grievances.

a. Informal Grievance within 10 calendar days ...

b. Formal Grievance – reviewing authority shall have 20 calendar days ... to take action from the date of receipt.

c. Grievance Appeals and Direct Grievances to the Office of the Secretary shall be responded to within 30 days from date of receipt.

d. Emergency Grievances – Shall be responded to within 15 calendar days of receipt.

Subsection (4) provides that unless the grievant has agreed in writing to an extension of time, expiration of a time limit at any step in the process shall entitle the complainant to proceed to the next step of the grievance process. The complainant must clearly indicate this fact when filing at the next step. Aultman v. Singletary, 708 So.2d 1004 (Fla. 1st DCA 1998). If the inmate does not agree to an extension of time at the central office level of review, he shall be entitled to proceed with judicial remedies, as he would have exhausted his administrative remedies.

Reasons for returning of grievances or appeals without processing is contained in Chapter 33-103.014 F. A. C.

The degree of investigation is determined by the complexity of the issue and the content of the grievance. Chapter 33-103.006 (6) F. A. C.

The original grievance and one copy shall be returned to the inmate. Chapter 33-103.006 (6) (a) F. A. C.

The response to the formal grievance shall include the statement "you may obtain further administrative review of your complaint by obtaining Form DC1-303, providing attachments as required by Chapter 33-103.007 (3) (a) and (b) and forwarding the complaint to Bureau of Inmate Grievances Appeals, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500." (See Chapter 33-103.006 (7) F. A. C.).

COPY SERVICE

Copying services for documents to be included as attachments to a grievance or grievance appeal shall be handled according to Chapter 33-501.302 F. A. C. (See Chapter 33-103.015 (8) F. A. C.). Copying services shall not be provided to make copies of continuation pages.

JUDICIAL REMEDY

CIRCUIT COURT

The exhaustion of available Administrative Remedies is a condition precedent to judicial review of a contested agency action. Jackson v. Parkhouse, 826 So.2d 478, 479 (Fla. 1st DCA 2002). The Circuit Court can dismiss a Petition for Writ of Mandamus without prejudice and allow a reasonable time (30 days) showing exhaustion of Administrative remedies. Johnson v. McNeil, 33 Fla. L. Weekly D930 a (Fla. 1st DCA April 3, 2008).

If you fail to exhaust Administrative Remedies the Circuit Court will reject the Mandamus Petition.

The proper method of seeking judicial review of an order denying an administrative appeal in prison disciplinary proceedings is to file a petition for extraordinary relief (Mandamus) in the Circuit Court (Leon County). Holland v. Singletary, 698 So.2d 1364 (Fla. 1st DCA 1997).

The facts alleged in the Mandamus Petition must be the same as those alleged during the Formal Grievance process. Hall v. Wainwright, 498 So.2d 670 (Fla. 1st DCA 1986).

At some point during the preparation stage of the Formal Grievance the prospective litigant must determine the objective with respect to the circumstances involved in the case. (I.e. whether to challenge the administrative decision or seek to compel F.D.O.C. to comply with its own rules).

If you are using Mandamus to challenge an administrative decision (such as appealing a DR team finding), the Mandamus is treated as an appeal from a quasi-judicial decision.

When the circuit court denies a Petition for Writ of Mandamus that is challenging the decision of an Administrative agency (such as F.D.O.C.) the court is plainly acting in its "review capacity". Therefore, the Order of the Circuit Court is reviewable in the District Court of Appeal by Certiorari under Rule 9.030 (b) (2) (B), Fla. R. App. P. (2008), and not by a subsequent plenary appeal on the merits of the case. In other words, a petition for Writ of Mandamus in the Circuit Court takes the place of an appeal.

In the event the Circuit Court denies mandamus relief on essentially any other issue besides the merits,, review in the District Court of Appeal would be by way of plenary (direct) appeal. The Standard of Review on appeal is de novo. See State v. Phillips, 852 So.2d 922, 923 (Fla. 1st DCA 2003) (ruling that the "court's interpretation of the statute is one of law; therefore, our review standard is de novo"). Caucus of Black State Legislators v. Crosby, 877 So.2d 861 at 863 (Fla. 1st DCA 2004)

It can be confusing as to which remedy to seek in the District Court of Appeal if the Petition for writ of Mandamus is denied in the Circuit Court.

To make it perfectly clear, if the Mandamus is denied on the merits, the remedy in the appeal court is a Petition for Writ of Certiorari. If the mandamus is denied for any other reason besides the merits, then the remedy in the appeal court would be by (direct) plenary appeal. Green v. Moore, 777 So.2d 425 (Fla. 1st DCA 2000).

An extraordinary writ proceeding in the Circuit Court, which seeks an appellate remedy, is governed by the Rules of Appellate Procedure. Huffman v. F.D.O.C, 33 Fla. L. Weekly D 495 a (Fla. 1st DCA Feb 13, 2008), citing Newell v. Moore, 826 So.2d 1033 (Fla. 1st DCA 2002).

If you are seeking to compel F.D.O.C. to comply with its own rules/statutes, the Mandamus will be considered an original civil action when filed in the Circuit Court.

In that situation, the question for the Circuit Court is whether the Petitioner has demonstrated a prima facie case for relief; to wit: did the F.D.O.C. have a clear legal duty to perform a ministerial act. Milanick v. Town of Beverly Beach, 820 So.2d 317, 320 (Fla. 5th DCA 2001).

A Petition for Writ of Mandamus brought against the F. D. O. C. is properly filed in the county where the agency maintains its principal headquarters in accordance with the general venue statute, Chapter 47.011, Fla. Stat. (2007). See Bush v. State, 945 So.2d 1207, 1212.

The Circuit Court has Jurisdiction to issue Writs of Mandamus under Article V, Section 5 (b) of the Florida Constitution; Chapter 26.012 (1) (a), Fla. Stat. (2007); and Rule 1.630, Fla. Rule Civil Procedure. (2008).

One seeking a Writ of Mandamus must show that he has a clear legal right to the performance of a clear legal duty by a public officer, and that he has no other available legal remedies. Hatten v. State, 561 So.2d 562, 563 (Fla. 1990); Holcomb v. Department of Corrections, 609 So.2d 751, 753 (Fla. 1st DCA 1992); Adams v. State, 560 So.2d 321, 322 (Fla. 1st DCA 1990). Mandamus may be used only to enforce a clear and certain right; it may not be use to establish such a right, but only to enforce a right already clearly and certainly established in the law. Florida League of Cities v. Smith, 607 So.2d 397, 400-401 (Fla. 1992). Mandamus may be granted only if there is a clear legal obligation to perform a duty in a prescribed manner. Adams, 560 So.2d at 323; Holland v. Wainwright, 499 So.2d 21, 22 (Fla. 1st DCA 1986). The Writ may be used to compel the performance of the ministerial duty imposed by law where it has not been performed, as the law requires. [A]lthough [a Writ of Mandamus] cannot be used to compel a public agency to exercise its discretionary powers in a given manner, it may be used to compel the agency to follow its own rules. Williams v. James, 684 So.2d 868,869 (Fla. 2nd DCA 1996). A prisoner seeking Mandamus relief must demonstrate that he/she has exhausted available administrative remedies. Barber v. State, 661 So.2d 355, 356 (Fla. 3rd DCA 1995).

"All facts alleged in the order to show cause, which generally incorporates by reference the original petition, that are not specifically denied are admitted to be true." Holcomb, 609 So.2d at 753, citing Arnold v. Sate ex rel. Mallison, 147 Fla. 324, 2 So.2d 874 (1941). Therefore, when the DOC's response fails to refute the allegations of the petition, which show entitlement of relief, the petitioner is entitled to Mandamus relief. See generally, Turner v. Singletary, 623 So.2d 537, 539 (Fla. 1st DCA 1993); and Plymel v. Moore, 770 So.2d 242 (Fla. 1st DCA 2000).

A prisoner must also submit an Application for Indigent Status when filing a Mandamus Petition. Schmidt v. Mc Donough, 951 So.2d 797 (Fla. 2006).

A certificate of service should designate a copy of the Petition being served on Respondent (Secretary F.D.O.C.) by U.S. Mail. Harris v. State, 713 So.2d 1106 (Fla. 4th DCA 1998).

Once the Respondent answers an order to show cause the prisoner is afforded 20 days to file a reply under Rule 9.100 (k), Fla. R. App. P. (2008). Johnson v. F. P. C., 873 So.2d 611 (Fla. 1st DCA 2004).

DISTRICT COURT OF APPEAL

It is important to know that if Mandamus is used to initiate a new civil action in the circuit court, the resulting final order is subject to review by appeal. Mandamus is an action at law, See State ex rel Mott v. Scofield, 120 So.2d 825 (Fla. 2nd DCA 1960), and as with other actions at law, a final judgment on a complaint for Writ of Mandamus is reviewable by appeal. See, e.g. Warren v. State ex rel Four Forty, Inc., 76 So.2d 485 (Fla. 1954); City of Miami Beach v. State ex rel Pickin' Chicken of Lincoln Road, Inc., 129 So.2d 696 (Fla. 3rd DCA 1961); Conner v. Mid-Florida Growers inc., 541 So.2d 1252 (Fla. 2nd DCA 1989).

For example, Rivera v. Moore, 825 So.2d 505, 506 (Fla. 1st DCA 2002), illustrates that a prisoner who is **not** seeking review of a quasi-judicial action taken by the F.D.O.C. will be treated as an appeal from a final order of the trial court under Rule 9.110 Fla. R. App. P. (2008), rather than a Petition for Writ of Certiorari pursuant to Rule 9.100 Fla. R. App. P. (2008), See Sheley v. F. P.C., 703 So.2d 1202 (Fla. 1st DCA 1997), approved 720 So.2d 216 (Fla. 1998). See also Whisner v. Moore, 825 So.2d 420 (Fla. 1st DCA 2002), (holding that the portion of the Circuit Court's order that involved an original disposition of a constitutional claim over which the F.D.O.C. had no jurisdiction was entitled to plenary review.)

Likewise, Appeal rather than Certiorari, was the proper method to review a Circuit Court's denial of inmate's petition for Writ of Mandamus challenging disciplinary sanction, where proceeding was concluded on grounds other than the merits. Green v. Moore, 777 So.2d 425 (Fla. 1st DCA 2000).

These principles cannot be applied when the petition for Writ of Mandamus was filed in the Circuit Court as an appellate remedy to review a quasi-judicial action of an administrative agency.

By Contrast a District Court of Appeal reviews by Certiorari an order of the Circuit Court acting in its appellate capacity to review an administrative determination of DOC. White v. Moore, 789 So.2d 118 (Fla. 1st DCA 2001).

When the Circuit Court reviews an administrative decision by appeal, subsequent review in the District Court of Appeal is available by Certiorari, a more restrictive Standard of Review because the first level of review is a plenary appeal on the merits. Cherokee Crushed Stone v. City of Miramar, 421 So.2d 684 (Fla. 4th DCA 1982).

The District Court of Appeal has jurisdiction to issue Writs of Certiorari under Article V, Section (4) (b) (3) of the Florida Constitution and Rule 9.030 (b) (2) (B), Fla. R. App. P. (2007).

The Standard of Review applicable to Circuit Court Review of a decision of an Administrative agency and for Certiorari Review in the District Court of Appeal is explained in Plymel v. Moore, 770 So.2d 242, 246 (Fla. 1st DCA 2000)

This is Part One of a two part series. Part Two will appear in the next issue of F. P. L. P. ◆

The mailing address for FPLAO, Inc., and *Florida Prison Legal Perspectives* (FPLP) has changed. The new address is as follows. Please send all mail for either FPLAO, Inc., or FPLP to this new address:

P.O. Box 1069
Marion, NC 28752

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.

Supreme Court Of Florida

Polite v. State, 33 Fla. L. Weekly S69 (Fla. 1/24/08)

The Third District Court of Appeal in Gary L. Polite v. State of Florida, 933 So.2d 587 (Fla. 3d DCA 2006), had certified a conflict with the decision of the Fifth District's in *A.F. v. State*, 905 So.2d 1010 (Fla. 5th DCA 2005).

The conflict that was certified to the Florida Supreme Court was whether knowledge that a victim is a law enforcement officer is an essential element of the offense of resisting an officer with violence under section 843.01, Florida Statutes (2002). The Third District opined that it was not an essential element and the Fifth District opined the opposite conclusion.

Based on its analysis of the conflict, the Florida Supreme Court concluded that knowledge of the officer's status is an essential element. Therefore, the decision of the Third District's was quashed and the Fifth District's was approved.

Yisrael v. State, 33 Fla. L. Weekly S131 (Fla. 2/21/08)

In this case, the Florida Supreme Court reviewed the decision in Abraham Yisrael's appeal made by the Fourth District Court of Appeal, *Yisrael v. State*, 938 so.2d 546 (Fla. 4th DCA 2006). In that appeal, the Fourth District had certified direct conflict with its decision and that of the First District in *Gray v. State*, 910 So.2d 867 (Fla. 1st DCA 2005).

The sole relevant issue that was presented for review was whether documents the State proffers to establish a defendant's status as a habitual violent felony offender (HVFO) are admissible under either the business-or-public-records exceptions to the rule against hearsay. These documents being the "Crime and Time Reports" issued by the Dept. of Corrections (DOC).

The Florida Supreme Court opined, DOC release-date letters, standing alone, constitute inadmissible hearsay-Crime and Time Reports issued by DOC are admissible as public records so long as they are properly authenticated, and are admissible as business records when the DOC attaches a section 90.902(ii) certification. Also, when the State provides a Crime and Time Report, and properly authenticates the report by attaching a signed and sealed release-date letter, the combined document is admissible as a public record to establish a defendant's HVFO status.

Ey v. State, 33 Fla. L. Weekly S144 (Fla. 2/28/08)

Robert Ey's case presented the Florida Supreme Court with an issue of whether when a defendant has committed two separate crimes and informs his attorney about both of them, the attorney's erroneous advise that his plea in one case could not be used to enhance his sentence in the other constitutes ineffective assistance of counsel.

The Supreme Court opined that it does constitute ineffective assistance of counsel. The Court also outlined the pleading requirements in this case for raising a facially sufficient claim on this ground and stated that it must be filed within two years after the conviction based on the plea the defendant is attacking becomes final.

It was further noted that in *State v. Dickey*, 928 So.2d 1193, 1194 (Fla. 2000), the same question was answered in the negative. It was found, however, that Ey's claim was substantively different. This was because, in *Dickey*, "wrong advice about the consequences *for a crime not yet committed* cannot constitute ineffective assistance of counsel."

Jenkins v. State, 33 Fla. L. Weekly S147 (Fla. 3/6/08)

The background of Donald E. Jenkins' case began when a confidential informant provided information about an individual identified only as "D" to a police officer. The CI offered to call "D" and order a quantity of cocaine, stating to the officer that he had ordered drugs from "D" before. The CI only described "D" as a tall, black male and the officer only heard the CI's side of the "order placing" when he called "D." The delivery was to take place at a gas station in a well know area for drug activity, and the CI told the officer that "D" would be driving a "brown boxy 4-door Chevy."

At the place of the delivery, the CI informed the officer that it was "D" who drove up to the gas station, whereupon the officer notified other officers of this. One of the other officers ordered Jenkins out of the vehicle at gunpoint and placed him in handcuffs. The CI confirmed to the officers that Jenkins was "D." A subsequent search of Jenkins' vehicle produced no contraband. An officer then proceeded to conduct a pat down of Jenkins' person, which produced no drugs. According to the pat down officer, his sergeant gave him permission to look inside

Jenkins' clothing, where the officer then pulled back Jenkins' pants and boxers and observed a twisted sandwich bag with cocaine, inside Jenkins' butt crack. The sandwich bag was removed and Jenkins was arrested and charged with possession of cocaine and possession of cocaine with intent to sell.

At trial, Jenkins filed a motion to suppress all evidence discovered as a result of the stop and search, where he asserted that: (1) the police lacked reasonable suspicion to detain him; (2) there was no basis to conduct a pat down for weapons, and the search which revealed the bag between his buttocks was unreasonable; (3) the police lacked probable cause to search the vehicle; and, (4) the search violated section 901.211 of the Florida Statutes (2002), which governs strip searches. The trial court denied the motion and subsequent to an appeal, the Second District Court affirmed the denial, noting that its opinion was in direct conflict with the decision of the Fourth District in *D.F. v. State*, 682 So.2d 149 (Fla. 4th DCA 1996), thus, it certified the conflict to the Florida Supreme Court.

On review in the Supreme Court, it was concluded that the police had probable cause to arrest Jenkins, that the search of Jenkins was valid under the Fourth Amendment, and that the exclusionary rule does not apply to violations of section 901.211, Fla. Statutes. As such, the Second District's decision was approved and the Fourth District's in *D.F.* was disapproved.

[NOTE: Judge Quince, J. dissented with the majority decision in a very well and lengthy, informative opinion that should be reviewed and of which Judge Pariente, J. concurred with. Hopefully, Jenkins will seek further review of his case with the Federal Courts using the dissented opinion that was given.]

District Courts of Appeal

Redmond v. State, 33 Fla. L. Weekly D90 (Fla. 5th DCA 12/28/07)

The Fifth District Court of Appeal in Edward C. Redmond's case stressed that section 948.20, Florida Statutes (2005), *does not* give the trial court authority to impose drug offender probation for delivery of cocaine. *See: State v. Roper*, 915 So.2d 622 (Fla. 5th DCA 2005), and *Anderson v. State*, 941 So.2d 446 (Fla. 4th DCA 2006).

Under section 948.20, it only authorizes such probation for violations of section 893.13(2)(a) or (6)(a), which prohibit the purchase or of certain controlled substances.

Although Redmond's sentence was reversed for a re-sentencing without the imposition of drug offender probation, the appellate court informed the lower court that it may impose regular probation. *See: State v. DeMille*, 890 So.2d 454 (Fla. 2d DCA 2004).

Soto v. State, 33 Fla. L. Weekly D106 (Fla. 3d DCA 1/2/08)

Ruben Soto appealed his judgment and convictions of DUI manslaughter and manslaughter by culpable negligence where there was only a single death involved.

On appeal, the state confessed error, such separate convictions were improper. Thus, Soto's case was remanded for the manslaughter conviction to be vacated.

Johnson v. State, 33 Fla. L. Weekly D114 (Fla. 4th DCA 1/2/08)

In William M. Johnson's case the appellate court opined that counsel's failure to advise Johnson that he could be indefinitely committed under the Jimmy Ryce Act upon the commission of any future non-sexual offense would constitute good-cause to permit Johnson to withdraw his guilty plea to his charge of lewd and lascivious battery.

The appellate court reversed Johnson's case for further proceedings, concluding that it was error for the lower court to deny Johnson's pre-sentencing motion to vacate the plea.

Concha v. State, 33 Fla. L. Weekly D134 (Fla. 4th DCA 1/2/08)

The appellate court in Luis Concha's direct appeal opined that prosecutor's questioning of arresting officer regarding Concha's failure to demand tests and refusal to perform tests after being taken to an alcohol testing center was fairly susceptible of being interpreted as a comment on Concha's right to remain silent.

Thus, Concha's DUI conviction was reversed for a new trial.

White v. State, 33 Fla. L. Weekly D151 (Fla. 4th DCA 1/2/08)

Christopher White appealed his conviction after a jury trial of sale or delivery of cocaine, where the trial court admitted testimony that White's conduct displayed a characteristic typical of drug transactions.

The appellate court stressed that admittance of such testimony is inadmissible and improper. Also, a variety of iterations from numerous cases within different appellate courts were cited in White's appellate opinion.

White's case was reversed and remanded, apparently for a new trial – although the opinion was silent in that matter.

Esposito v. McDnough, 33 Fla. L. Weekly D164 (Fla. 1st DCA 12/31/07

John M. Esposito petitioned the appellate court for a writ of certiorari that sought review of the lower court's denial of a mandamus petition.

The mandamus petition challenged the imposition of a disciplinary sanction imposed against him by DOC where he had been found guilty of attempting to conspire with his wife to introduce contraband in the form of a wrist watch into a prison facility.

It was found that DOC had ignored Esposito's request for DOC

documents that would have shown he possessed the wrist watch before his wife visited him. Thus, the writ was granted and the mandamus denial was quashed, and the case was remanded with instructions to issue the mandamus writ.

Elford v. McDonough, 33 Fla. L. Weekly D165 (Fla. 1st DCA 12/31/07)

This was a certiorari petition where Michael Elford sought review of a lower court's denial of his mandamus petition that challenged a disciplinary action by DOC.

In the lower court, Elford had been found indigent and a lien was placed on his prison account to recover the filing fees. Subsequently, the lien was removed but the lower court declined to order reimbursement of any funds taken pursuant to the lien.

In the appellate court, although it was found there was no error in the denial of his mandamus petition, it was found that the lower court was in error to decline reimbursement of funds taken. *See: Rowlie v. Fla. Parole Comm'n*, 958 So.2d 1131 (Fla. 1st DCA 2007).

Elford's certiorari petition was granted in part as to the lower court's order that declined reimbursement of the funds, and the case was remanded for further proceedings regarding such reimbursement.

Pierre v. State, 33 Fla. L. Weekly D167 (Fla. 5th DCA 1/4/08)

It was stressed by the appellate court in Wilbert Pierre's appeal from a summary denial of his rule 3.850 that a defendant who files a legally insufficient 3.850 motion should be given at least one opportunity to correct the deficiency. Thus, the proper procedure of the lower court would have been to strike the motion with leave to amend within reasonable time. The case was remanded for proceedings consistent with that opinion.

Brumit v. State, 33 Fla. L. Weekly D168 (Fla. 4th DCA 12/31/07)

Jody Brumit's case presented a very interesting example of the proper procedure to follow when one seeks relief when co-defendants' appeals on the same issue are resolved differently.

The proper method was opined to be a habeas corpus filed in the appellate court *See:* e.g., *Raulerson v. State*, 724 So.2d 641 (Fla. 4th DCA 1999).

Jackson v. State, 33 Fla. L. Weekly D171 (Fla. 4th DCA 12/31/07)

It was opined in Antonio Jackson's appeal from the denial of his rule 3.800(a) motion that sought jail credit *after* sentencing that such challenge should be made by exhausting administrative remedies with DOC. Then, after exhausting those remedies, a mandamus petition may be against DOC.

Jimenez v. State, 33 Fla. L. Weekly D480 (Fla. 3d DCA 2/13/08)

The question presented in Luis Jimenez's appeal was whether the trial court had committed fundamental error by failing to instruct the jury in Jimenez's trial on the definition of excusable homicide.

Jimenez's main position at trial was that he killed a person while acting in self defense. The State and defense agreed to have the instruction on justifiable homicide be given to the jury. However, neither party requested that excusable homicide instruction be given and so, it was not.

"Because manslaughter is a 'residual offense, defined by reference to what it is not,' a complete instruction on manslaughter requires an explanation that justifiable and excusable homicide is excluded from the crime." *See: State v. Lucas*, 645 So.2d 425, 427 (Fla. 1994) (citations admitted). "Failure to give a complete instruction on manslaughter during the original jury charge is fundamental error which is not subject to harmless-error analysis where the defendant has been convicted of either manslaughter or a greater offense not more than one step removed, such as second-degree murder." *Id.* There is, however, an exception, where defense counsel affirmatively agreed to or requested the incomplete instruction. But that did not occur in Jimenez's case.

Accordingly, Jimenez's case was reversed and remanded for a new trial.

Huffman v. Fla. Dept. of Corrections, 33 Fla. L. Weekly D495 (Fla. 1st DCA 2/13/08)

David Huffman sought certiorari review of an order that denied his petition/complaint that challenged DOC disciplinary proceedings. He asserted that the lower court erred in denying his motion for leave to amend the petition/complaint.

It was found that the lower court did not err in the denial of Huffman's request to amend, which was made after the filing of DOC's response. However, the appellate court opined that it was error to deny relief on the merits of Huffman's petition/complaint without affording him the opportunity to reply to DOC's response.

An extraordinary writ proceeding in the circuit court which seeks an appellate remedy is governed by the rules of appellate procedure. *See: Newell v. Moore*, 826 So.2d 1033 (Fla. 1st DCA 2002). Florida Rule of Appellate Procedure 9.300(b) provides that except in circumstances, that was not relevant in Huffman's case, the service of a motion tolls the time schedule of an appellate proceeding. Huffman's motion was served prior to the expiration of the time for filing a reply set by the circuit court, and thus tolled the time to reply. After the lower court denied the motion for leave to amend it should have allowed Huffman the opportunity to reply before disposing of the matter on the merits. *Cf. Wilkinson v.*

McDonough, 960 So2d 911 (Fla. 1st DCA 2007).

Accordingly, the certiorari petition was granted, the lower court's order was quashed, and case was remanded to allow a reply.

Mullins v. State, 33 Fla. L. Weekly D497 (Fla. 3d DCA 2/13/08)

Mullins' conviction was rendered August 6, 2002, and he was sentenced October 30, 2002 and a direct appeal was filed which the appellate court had affirmed his conviction and sentence with citations on August 29, 2003. Mullins then sought discretionary review in the Florida Supreme Court, which was dismissed November 24, 2004. On July 10, 2006, Mullins filed his 3.850 motion, which was denied as untimely.

The appellate court opined that because Mullins' direct appeal opinion cited a case that was pending review in the Florida Supreme Court, the time for filing a rule 3.850 was tolled until the date the Florida Supreme Court either accepts or denies review. Thus, Mullins' two-year period for filing his 3.850 motion began to run from the date the Supreme Court dismissed his petition for discretionary review.

Accordingly, Mullins' rule 3.850 was found to be timely filed and the lower court's denial was reversed and the case was remanded for consideration of that motion on the merits.

Thompson v. State, 33 Fla. L. Weekly D583 (Fla. 2nd DCA 2/22/08)

William P. Thompson appealed an order that revoked his probation and the resulting sentences.

The appellate court opined that it was error for the lower court to revoke Thompson's probation where the state failed to prove by competent, substantial evidence that Thompson had either willfully failed to pay court-ordered costs or that he had changed his approved residence without permission. It was found to be abuse of discretion in finding Thompson had violated by failing to pay court costs, where no evidence was presented or findings made of his ability to pay the costs, and the state did not present any evidence that he was actually living at a different address.

As a result, Thompson's case was reversed and remanded, and because Thompson's two year probation term he was originally placed on had expired, the lower court was instructed to discharge him from supervision.

Burkhart v. State, 33 Fla. L. Weekly D591 (Fla. 2/25/08)

In Dennis R. Burkhart's case, the appellate court stressed that the imposition of an additional condition of probation after the conclusion of a sentencing hearing violates the double jeopardy clause. *See: Lippman v. State*, 633 So.2d 1061, 1064 (Fla. 1994); and *Justice v. State*, 674 So.2d 123, 126 (Fla. 1996). *But also see* section 948.06, Fla. Statutes, which sets forth the proper procedure for enhancing a probation condition, which is only after a violation of the probation originally imposed.

State v. Young, 33 Fla. L. Weekly D592 (Fla. 1st DCA 2/25/08)

The State of Florida sought review of an order that granted Eric Young's motion to suppress evidence gathered during a warrant-less search of his office and workplace computer, as well as statements obtained from Young in a subsequent interrogation.

This case was on motion for rehearing and certification filed by the State, which the appellate court denied. However, on the appellate court's own motion, it withdrew its previous opinion at 33 Fla. L. Weekly D51a to substitute a new one.

In relevant part, the appellate court opined that the trial court properly granted Young's motion to suppress where it was found that Young's church pastor's office was kept locked and Young was not present to consent to a search. Young expected no one to pursue his personal belongings in that office and there was no evidence of a church policy that informed Young that others could enter his office to view contents of his computer, thus, Young had a reasonable expectation of privacy in that office. Futher, church officials did not, under the circumstances, have authority to consent a search of Young's office. As a result, the officers had acted improperly in conducting the search and the subsequent statements of Young were "fruit of the poisonous tree."

Accordingly, the lower court's order granting Young's motion to suppress was affirmed.

Clifton v. Fla. Parole Commission, 33 Fla. L. Weekly D599 (Fla. 1st DCA 2/25/08)

Henry Clifton had sought review of a lower court's denial of his mandamus petition that challenged the setting of his presumptive parole release date.

The appellate court found that Clifton's argument was without merit. However, his underlying action constituted a "collateral criminal proceeding" and the lower court improperly imposed a lien upon Clifton's prison account. Clifton properly preserved this issue by filing a motion to vacate the lien in the lower court. *See Kemp v. McDonough*, 955 So.2d 635 (Fla. 1st DCA 2007).

It was found that although the lower court granted the motion to dissolve the lien, it refused to authorize a refund of the monies that had been withdrawn based on the erroneous lien. The appellate court quashed that portion of the lower court's order. *See Villar v. Fla. Parole Comm'n*, 955 So.2d 664 (Fla. 1st DCA 2007).

Accordingly, Clifton's petition was denied in part, and granted in part, and his case was remanded

where the lower court was directed to order the reimbursement of any funds that have been withdrawn from Clifton's account to satisfy the improper lien order.

Davis v. State, 33 Fla. L. Weekly D604 (Fla. 2nd DCA 2/27/08)

Merlan Davis filed a mandamus petition requesting the appellate court to compel the lower court to strike his rule 3.850 motion with leave for him to amend the insufficiency of the motion as based on the Supreme Court's decision in *Spera v. State*, 32 Fla. L. Weekly S680 (Fla. Nov. 1, 2007).

Davis contended that according to Spera, he is entitled to at least one opportunity to amend his rule 3.850 motion that was filed in the lower court on Dec. 8, 2005.

The appellate court opined that Davis was not entitled to a leave to amend based on *Spera* because the *Spera* decision does not apply retroactively, *Spera* was opined to be a refinement of decisional law; not a "fundamental and constitutional law change."

Davis' petition was denied.

Joseph v. State, 33 Fla. L. Weekly D609 (Fla. 3rd DCA 2/27/08)

In Gregory Joseph's appeal of the denial of his rule 3.850 motion as being successive, the appellate court stressed that claims in a second 3.850 motion are procedurally barred where those claims could have been raised in the first motion. *See: Moore v. State*, 820 So.2d 199, 205 (Fla. 2002).

Chapman v. State, 33 Fla. L. Weekly D611 (Fla. 4th DCA 2/27/08)

The appellate court opined in Derek T. Chapman's case that there is no statutory authority to impose costs and fees for prosecution under the Sexually Violent Predators Act, and that the Department of Children and Family Services is responsible for all costs. Also, although a defendant is entitled to counsel, and the court is required to appoint counsel, there are no provisions for a lien for repayment.

Valentin v. State, 33. Fla. L. Weekly D627 (Fla. 4th DCA 2/27/08)

Jamie Valentin was convicted for possession cocaine with intent to sell within one thousand feet of a publicly owned park. Valentin sought a judgment of acquittal, because the state failed to prove that his possession was with intent to sell. The trial court denied the motion for judgment of acquittal and Valentin appealed.

The appellate court opined that it was error to deny the JOA and that discovery of individually packaged narcotics does not automatically establish an intent to sell.

Valentin's case was reversed and remanded with directions for the lower court to enter a judgment for simple possession of cocaine, pursuant to section 924.34, Florida Statutes (2006).

Head v. McNeil, 33 Fla. L. Weekly D621 (Fla. 1st DCA 2/28/08)

William Head's case was a question of whether his mandamus petition against DOC was timely, as it was deemed untimely by the lower court.

Head's mandamus petition sought review of an *administrative determination that denied application of gain time to his date of release*, and the lower court opined that because he filed his petition over 30 days from the DOC's final decision, the petition was untimely pursuant to section 95.11(8), Florida Statutes (2006).

The appellate court found that the lower court was in error to apply the 30 day limit proscribed in 95.11(8). Head did not argue against a disciplinary proceeding or his conviction. As a result, Head's argument fell under the provision found in section 95.11(5)(f) where the petition must be filed within one year of exhausting administrative remedies. *See Canete v. DOC*, 967 So. 2d 412, 414 (Fla. 1st DCA 2007).

Accordingly, the lower court's denial was reversed and the matter was remanded for further proceedings consistent with the appellate court's opinion.

Williams v. State, 33 Fla. L. Weekly D858 (Fla. 4th DCA 3/26/08)

The Fourth District Court of Appeal in Tavares A. Williams' direct appeal from an order denying his motion for judgment of acquittal opined that the state had failed to establish a prima facie case of guilt.

Police could only testify that they saw what was believed to be a hand-to-hand transaction and that Williams received some cash from the driver of a vehicle Williams had the transaction with. It was opined that although drugs were found in the particular vehicle Williams was see to encounter and made a possible transaction with the driver of that vehicle, there was no evidence linking the found drugs to Williams or limiting the possible source of those drugs.

Accordingly, the denial of Williams' motion for judgment of acquittal was found to be in error, and the case was remanded with instructions that Williams was to be discharged.

Robinson v. State, 33 Fla. L. Weekly D878 (Fla. 2nd DCA 3/28/08)

Stevie R. Robinson appealed the denial of his motion to suppress marijuana and a firearm found on him from a search that police claimed had probable cause for because of Robinson standing with a group of men where an odor of burnt marijuana was detected.

Appellate court opined that it was error to deny the suppression motion and reversed the convictions.

Murphy v. State, 33 Fla. L. Weekly D880 (Fla. 2nd DCA 3/28/08)

The appellate court in Robert Murphy's direct appeal opined that it was error for the trial court to impose a special condition of no early

termination of Murphy's probation term.

It was opined that a trial court may not impose a special condition of probation that purports to divest the D.O.C. of its authority to recommend early termination and trial court may not prevent a circuit court from exercising its discretion to discharge a defendant in the future.

Douglas v. State, 33 Fla. L. Weekly D886 (Fla. 2nd DCA 3/28/08)

Ceasar Douglas appealed the denial of his rule 3.850 motion as untimely where he claimed ineffective assistance of counsel in a misrepresentation of his potential length of imprisonment and failure to advise of possible forfeiture of gain time for violation of conditional release.

The appellate court opined that it ws error for the lower court to deny Douglas' rule 3.850 motion as untimely. The triggering event for the two-year period was not the date Douglas' judgment and conviction became final, it was the date that DOC informed him of the gain time forfeiture. Such claim constituted newly discovered information.

However, Douglas' failed to provide information explaining why he did not know or could not have known of the forfeiture. As such, the case was reversed and remanded for the lower court to dismiss the motion and allow Douglas to file a corrected one.

Sabree v. State, 33 Fla. L. Weekly D921 (Fla. 4th DCA 4/2/08)

Quadir Sabree appealed his DUI manslaughter/unlawful blood alcohol level and DUI serious bodily injury/unlawful blood alcohol level where he asserted that the trial court fundamentally erred in giving misleading and inaccurate jury instructions that related to an element of his offense.

The appellate court opined the instruction given to the jury that the state was required to prove Sabree, while driving or while in actual physical control of the vehicle, had a blood alcohol level of .08 or higher "and/or a controlled substance to-wit: cocaine" was inaccurate and misleading. Simply having cocaine in a defendant's system is legally insufficient evidence to convict because the state is required to prove beyond a reasonable doubt that the defendant was "under the influence" of cocaine.

Accordingly, the error was found to be fundamental and the case was reversed and remanded for Sabree to have a new trial. ■

NEWS IN BRIEF

AR- A bailiff, Cpl. Jarrod Hankins, was suspended for 30 days on March 12, 2008 for leaving a woman locked in a courthouse cell for four days without food, water or access to a bathroom. Washington County Sheriff, Tim Helder, said that Hankins will keep his job because he acted without intentional misconduct.

AZ- In an effort to discourage young people from using drugs, on April 14, 2008, fifteen women prisoners cleaned trash from a street wearing T-shirts that say "I was a drug addict." The women want to help others make better choices than they did, said Maricopa County Sheriff Joe Arpaio.

CT- On April 28, 2008, Jewu Richardson, a state prisoner, filed a federal lawsuit against New Haven narcotics detectives. Richardson asserted that they planted drugs on him during his arrest. The suit names seven former and current police officers, including two who have been convicted of federal corruption charges.

DC- The U.S. Sentencing Commission on April 24, 2008, released a report that says that new sentencing guide-lines enacted March 3, 2008, have cut 3,075 prisoners' sentences for crack cocaine. The study states that it is unclear how many prisoners have actually been released from custody, however, federal judges nationwide have agreed to reduce sentences for 3,075 prisoners. Four of every five crack defendants are black, while most powder cocaine convictions involve whites, said the report.

DC- On April 14, 2008, the US Supreme Court granted discretionary review to decide whether an ex-prisoner, Thomas Goldstein, can sue the ex-prosecutors for allegedly violating his civil rights. Goldstein, 54, served 24 years before his murder conviction was overturned.

DE- On March 4, 2008, a state trooper, Hynn Jin Kim, 27, was charged with a robbery that took place during a poker game at the Wild Quail Gold and Country Club in Wyoming, Del. Officials say that three armed men entered the club Feb. 22, took money and electronic devices from the players then left. Authorities also said that evidence left at the scene had been bought at a Wal-Mart and video images identified the state trooper.

FL- The U.S. Marshal's South Florida Task Force on April 1, 2008, captured an inmate that had escaped a week prior from the Belle Glade Jail. Officials found Jean Lafalaise, 26, at an apartment in Clewiston. No details about how he escaped were given by authorities, other than he was missing during a head count at the jail.

FL- A correctional officer was booked into the Palm Beach County Jail during the last week of April 2008, after she was captured on video surveillance having sex with a prisoner. Akina Wright, 28, worked at South Bay Correctional Institution. Officials say the pair tried to conceal themselves on the floor behind a desk during the 35 minute tryst. Wright was released about an hour later on a $3,000 bond. The name of the prisoner was not released.

GA- After entering a guilty plea to felony theft and other charges related to a payroll theft scheme, a former district attorney in northeast Georgia, Tim Madison, was sentenced to six years in prison. Madison was sentenced on March 5, 2008, and was the chief prosecutor in Banks, Barrow, and Jackson counties. Last summer, Madison resigned after 24 years in office and amid a state investigation. The theft scheme included payments made to his wife and an assistant DA.

GA- On April 27, 2008, an Al Burruss State Prison guard was arrested and charged with five felony charges. Heather Hunnicutt, 25, was arrested after prisoners snitched on her. The five felonies include having sex with a prisoner and trying to sell marijuana, said authorities.

IN- State officials announced on March 3, 2008, that a contract was signed with the Alabama-based Ready-Built Transmission that would allow prisoners at the Pendleton Correctional Facility to repair transmissions used on postal vehicles. Under the contract, prisoners can earn up to $1.25 an hour. To qualify, prisoners must have shown good conduct and have over three years left on their sentences.

IN- On March 11, 2008, police chief Thomas Houston retired and two of his top aides were reassigned, after they were accused of assaulting two people suspected of burglarizing Houston's home last June. Federal civil rights charges were filed against the three, said Gary Mayor Rudy Clay.

LA- Judge Frank Marullo ordered the execution by injection on April 23, 2008, for the former police officer convicted of three murders. Antoinette Frank was sentenced to death for killing a fellow officer and a brother and sister during a *murder* spree at a restaurant where he once worked as a guard.

MI- Albert Eliel, 57, a prisoner at the Marquette *Branch* Prison, was sentenced to life in prison on March 13, 2008, for attacking a nurse during

an examination. The incident took place in February 2007. Eliel was convicted of assault with intent to murder and assault to commit sexual penetration.

MS- Hinds County attorney settled a multimillion dollar lawsuit on April 22, 2008, filed by a County Detention Center inmate who was paralyzed in a fight with another inmate. Michael Burnley, 24, was paralyzed from the chest down during the fight and had sought $10 million for general and compensatory damages. The amount of the settlement is confidential, said the county attorney.

MS- On March 12, 2008, district attorney Forrest Allgood formally petitioned a judge to dismiss the capital murder and rape indictment filed against an ex-prisoner who did 18 years in prison. Levon Brooks, 48, was wrongly convicted in 1990. Earlier this year, the state Supreme Court threw out the conviction after DNA evidence showed he was wrongly convicted of killing a three-year-old girl.

NC- A state trooper, Michael Steele, pleaded guilty to 10 charges on April 22, 2008, which included kidnapping, extortion, and sexual battery. Prosecutors claim that Steele kissed, touched or fondled three Hispanic women, threatening to arrest them or turn them over to immigration authorities if they failed to comply.

NC- Federal Marshals on Feb. 20, 2008, arrested an ailing 81-year-old prison escapee. Willie Parker was arrested in his bed 43 years after he walked away from a prison work detail in Maryland.

NM- On April 16, 2008, DOC officials said that they are closing a minimum security women's prison in Albuquerque because of a decline in prisoners. The Camino Nuevo Correctional Facility holds 192 prisoners and only had 23 women. The women will be transferred to the Women's Correctional Facility in Grants.

NM- Bernalillo County Metropolitan Judge, J. Wayne Griego, was ordered by the state Supreme Court removed on March 12, 2008 for ticket-fixing. The Judicial Standard Commission had recommended that Griego be suspended without pay for 90 days and reprimanded. According to the Commission's director, Griego fixed 24 traffic tickets.

NY- A member of the Hells Angels, Richard Vallee, 50, was sentenced to life in prison on April 14, 2008. Vallee was convicted for blowing up federal drug informant Lee Carter Jr. with a car bomb in 1993.

PR- A women visiting her husband was arrested on February 16, 2008, after she tried to use her seven month old baby to conceal contraband in the baby's diaper. Officials say that Jennifer Rivera Torres, 23, arrived at the VP section of the 308 Bayamon Prison in Puerto Rico with her baby. When officials held the baby while she was being searched, the officer felt the baby was too heavy. The officer then proceeded to a room where she took the diaper off and found 15 pills, two cellular phones, wires, and cell phone cards.

PR- A Puerto Rico police officer was convicted on April 13, 2008, of first degree murder. Officials say that, Javier Pagan Cruz killed an unarmed man in a shooting captured on video tape last year in Humacao. The incident occurred after the victim insulted an officer as police responded to a traffic jam and a scuffle followed. The ex-cop faces a maximum of life in prison.

TN- The Associated Press reported on March 3, 2008, that according to statistics supplied by the state, 502 claims of abuse at state-run juvenile facilities had been filed from 2004 through mid-2007. The report stated that 14 of the claims were substantiated. During this same period, 450 employees at the 16 juvenile facilities were reprimanded or fired. However, no reasons were specified.

TX- After 23 years in prison for a rape conviction, Thomas McGowan walked out of a Dallas courtroom along with two attorneys from the Innocence Project on April 16, 2008. DNA evidence cleared McGowan from the rape conviction.

TX- Lawyers from the Innocence Project of Texas say that a prisoner exonerated by DNA evidence on April 29, 2008, served the longest sentence in U.S. history by a prisoner later exonerated by DNA evidence. James Lee Woodard, 55, had served 27 years before he was exonerated. Woodard was convicted in connection with the murder of his girlfriend in 1980.

TX- A policeman was sentenced to life in prison, plus 75 years on March 13, 2008, after pleading guilty to two counts of aggravated sexual assault of a child. Salvador Hernandez, 35, had been accused of raping and impregnating a 12-year-old girl in 2006. Officials said that the girl terminated the pregnancy on a doctor's advice.

WA- The King County Ombudsman's Office released their review on April 17, 2008, into the death of a jail inmate who died last year. Lynn Iszley, 47, had complained about having severe abdominal pain for two days before he died from a perforated ulcer at the King County Jail. Two medical experts wrote that the staff overlooked or ignored symptoms that Iszley was suffering from more than drug withdrawal, said the report.

Compiled by MelvinPérez ■

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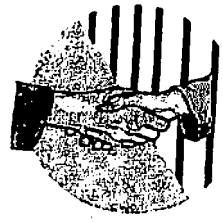

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