

Perspectives

FDOC GUARDS ACCUSED OF PRISONER TORTURE FIRED

WEWAHITCHKA-Three Florida Department of Correction's prison guards were fired April 19 following a year-long investigation by the department into allegations they tortured a state prisoner.

Fired were Lt. Carmen McLemore, Sgt. Christopher Wood and Correctional Officer Donald Guillot who were accused of torturing prisoner William Webb at Gulf Forestry Camp, located in the rural Florida panhandle, in July 2000.

DOC investigation documents allege that the guards began by slapping Webb while trying to force him to reveal information

about contraband at the work camp that is located at a major Florida prison-Gulf Correctional Institution. When Webb refused to supply information he was then taken outside where the guards handcuffed his arms behind him around a small tree. McLemore then sprayed Webb with a chemical like pepper spray as Webb hung helplessly fastened to the tree. Webb believed the spray was not the same as that issued to DOC guards.

DOC documents say that then the guards beat Webb, hitting him numerous times and then left him cuffed to the tree for an "extended period of time."

McLemore had worked for the DOC for 12 years, and is also a Gulf County Commissioner. Several years ago when a prison chain gang was operated out of Gulf CI, another prisoner accused McLemore of making him get on his knees where McLemore put a loaded handgun to his head and cocked it. The FDOC took no action in that case.

Wood also was a 12-year

veteran with the FDOC, but Guillot had only been with the DOC six months before the alleged torture of Webb took place. Webb has since been released from prison.

In response to the firing of the three guards FDOC Secretary Michael Moore stated, "We have no tolerance for abuse of inmates in our custody." Moore made no comment on whether he thought Webb's abuse was another "isolated incident" as he labeled the murder of death-row prisoner Frank Valdes by guards in 1999.

The allegations of Webb's treatment are far from the only allegations of abuse at prisons located in Gulf County. The main prison, Gulf Correctional, has a widespread reputation among Florida's prison population as being one of the state's worse prisons, where prison guards appear to have a free rein to beat and abuse prisoners. According to some sources, newly arriving prisoners at Gulf CI are often told when they get off the bus that while the town of Wewahitchka

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FPLP is a non profit publication focusing on the Florida prison and criminal justice systems. FPLP provides a vehicle for news, information, and resources affecting prisoners, their families, friends, loved ones and the general public of Florida.

Reduction of crime and recidivism, maintenance of family ties, civil rights, improving conditions of confinement, promoting skilled court access for prisoners, and promoting accountability of prison officials are all issues the FPLP is designed to address.

FPLP's non attorney volunteer staff cannot respond to requests for legal advice. Due to volume of mail that is received and volunteer staff limitations, all correspondence that is received cannot be responded to, but all mail does receive individual attention.

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is nearby, that they are now in "Wewillhitcha" as what will happen if they cause a problem. This statement is usually made by a high-ranking guard.

One prisoner who just left Gulf CI after being there six years. claims guards murdered several prisoners while he was there, but nothing was ever done about it because they were always covered up and the FDOC central office didn't seem to care what happened there. While recently, he said, the beatings have slowed down some, they still are happening, "especially in the confinement unit."

[Sources: *St. Petersburg Times*, 4/20/02; personal interviews]■

BILL PASSES LEGISLATURE FOR MANDATORY HIV TESTING OF PRISON RELEASEES

TALLAHASSEE-During April the Florida Legislature passed a bill that would require all prisoners being released from Florida Prisons to be tested for HIV, the virus responsible for AIDS.

House Bill 1289 (2002) was sponsored by Representative Frederica Wilson, D-Miami, and would require the Florida Department of Corrections to test prisoners for HIV at least 60 days before they are released from prison.

"AIDS is being fed and bred in prisons," Rep. Wilson said. "Promiscuous sexual acts, intravenous drug use, needle sharing, and the proliferation of tattooing," are factors that contribute to HIV in Florida prisons, claims Wilson.

According to her bill, if signed or allowed to become law by Gov. Jeb Bush, prisoners found to be HIV positive will be linked to health care while still in prison, and referred to doctors for Medicaid bankrolled treatment once they are released. The bill provides exceptions to prisoners who have already been tested within the year before their release, to those already known to be HIV positive, or to those released by an emergency court order.

The bill's passage came only a couple of months following the release of a new report by the Centers for Disease Control in Atlanta. The CDC report released in February indicated that AIDS is the leading cause of death among blacks in Florida between the ages of 24 to 44. The CDC report also listed the 10 U.S. cities with the highest HIV/AIDS infection rates in 2000. Miami headed the list, with 58 cases per 100,000 people. Ft. Lauderdale was third (behind New York) with 53 cases per 100,000 and West Palm Beach reported 48.2 per 100,000.

Disturbing to Rep. Wilson is that blacks top all other ethnic groups in total AIDS cases, about 35,000 blacks in Florida-one in every 50 black people-carry HIV according to the Fla. Dept. of Health. Florida's prison population is about 60 percent black.

That prisons are experiencing an HIV/AIDS epidemic is not new news. In a report released by the Bureau of Justice Statistics, a bureau within the U.S. Justice Department, in June 2001, it was noted that AIDS cases among prisoners is five times greater than the rate among the nonincarcerated general population of the United States. The BJS report, surveying prisons and jails nationwide between 1995 and 1999, found that 3.4 percent of all female state prisoners were HIV positive, compared to 2.1 percent of male prisoners. And while the number of AIDS deaths in

state prisons had dropped from 1,010 in 1995 to 242 in 1999, AIDS remains the second-leading cause of death for state prisoners, only behind "natural causes other than AIDS." Still, the percentage of AIDS related deaths in state prisons is almost twice the rate of AIDS related deaths in the general U.S. population.

The BJS report is of even more concern as relates to Florida. Although AIDS cases are found in every prison system, New York, Florida, and Texas were the three most infected states. Collectively, those three states account for one-half of the HIV-positive cases in prison reported nationwide.

HIV testing varies widely among prison systems. Texas and Georgia, for example, have very limited testing. Florida has previously only tested when a prisoner requests it.

Other states require more frequent testing. Some states test all prisoners when they enter the prison system. Only three states, Arkansas, Nevada, and South Carolina, and the Federal Bureau of Prisons, test all prisoners at least once a year.

Even more problematic in Florida is while there are laws that require prison officials to provide extensive HIV/AIDS education to prisoners, the FDOC only did that when the law was first passed years ago. Now according to prison activists, very little information is available to prisoners on the subject from the FDOC, and HIV-infection rates are continuing to increase. While Rep. Wilson's bill is a step in the right direction, especially since 80 percent of the prison population will be released at some point, prevention, and not merely identification after the fact, needs equal enforcement, claim activists.

At the time of this writing it is not known whether Gov. Bush will approve or veto the testing bill. Rep. Wilson's first attempt to have such a bill passed in 1998 failed because of

the cost. If HB 1289 is implemented it is expected to cost taxpayers \$1 million a year, perhaps a hard sell with the budget situation in Florida so tight.

[Sources: BJS report, *HIV in Prisons and Jails, 1999*, NCJ 187456, July 2001 (available from www.ojp.us.doj.gov/bjs/; *The Miami Times*, 4/24 - 30/02]■

BOOM OR BUST

The High Cost of Running a Prison Nation

America, the land of freedom and liberty, imprisons more of its own citizens than any other country in the world. In a report released by the U.S. Justice Department this past August statistics showed that the U.S. federal, state and adult correctional population rose another 2 percent in 2000, to a record 6.5 million people. That number represents the total number of prisoners in prisons and jails as well as those on probation or parole. The 2 percent increase, however, was below the annual increase of 4 percent averaged for each year during the last decade. That small slowdown may be attributed to the steady decline in the crime rates over the past decade, or to the growing realization of just what it is costing the U.S. and individual states to base a significant portion of the economy on a crime and prison industry.

In February the Justice Department's Bureau of Justice Statistics released a new study showing that in 1999, the last year for which figures are available to date, the cost of America's War on Crime was \$147 billion, or four times the \$36 billion spent in 1982 on criminal justice. The study noted that in 1999 almost 2.2 million people now make their livelihoods on the criminal justice industry. That includes one million police officers,

717,000 prison and jail guards, and 455,000 people who work in the court system, according to the BJS study. The expenditure in 1999 amounted to 7.7 percent of all state and local government spending, approximately the same as all government expenditures on health care and hospitals for the same period.

The monumental cost of crime and incarceration has caused some states around the country to re-evaluate laws that were adopted in the 1980's and 90's behind "lock them all up" policies that forced many states into a prison building frenzy. With many states struggling with budget deficits this year, some states have realized that perhaps the "get tough" policies went too far and are now looking at ways to scale back spending on incarceration and prisons.

Collectively, states report that they anticipate a \$40 billion budget shortage this coming fiscal year, which if realized will be one of the most burdensome deficits ever experienced. The last time states experienced substantial budget shortages was in 1991, when together they had to cut \$7.6 billion, less than one-fifth of what is expected to have to be cut this coming fiscal year.

Recent Justice Department statistics show that approximately \$24 billion is spent by states every year now on incarcerating 1.2 million nonviolent prisoners. Additionally, several polls have shown that public opinion is changing about incarceration as the first solution, indicating that the public is more receptive to alternative sentencing, rehabilitation, and prevention for nonviolent offenders. A recent poll by the Open Society Institute shows three-quarters of the public favors probation over incarceration for nonviolent offenders and that a majority of the public favors eliminating mandatory sentencing and a return to discretionary

sentencing by judges. Polls taken in California and Pennsylvania indicated that when lawmakers address state budget deficits that prison costs should be among the first cuts made.

As state budgets are tightened politicians have scaled back their crime fear-inducing rhetoric and had to rethink their incarceration policies. Even conservative states are shifting to a more moderate approach to crime.

Louisiana, which has the highest per capita incarceration rate in the U.S., recently abolished several mandatory sentencing laws and returned sentencing discretion to judges. The move is expected to save Louisiana millions of dollars a year. Similarly, Republican-led states, including Arkansas, Connecticut, Utah and North Dakota have increased parole of nonviolent prisoners or eliminated mandatory minimum sentencing laws. Restructured sentencing guidelines in North Carolina have resulted in nearly 10,000 offenders being diverted to alternatives to prison. West Virginia, Mississippi and Iowa recently enacted new laws to increase alternatives to incarceration or return sentencing discretion to judges for drug or nonviolent crimes. California is reported to be saving \$100 to \$150 million annually with a new law that is diverting an estimated 36,000 nonviolent drug offenders into drug treatment instead of prison.

Florida also claims that it will suffer a large budget deficit next fiscal year, but its Republican-led government is pushing cuts in education and health care for the elderly rather than return to discretionary sentencing for nonviolent offenders or other ways of reducing its prison population. Gov. Jeb Bush has stated that no matter what, Florida will retain 85 percent sentencing for all who are incarcerated. A bill was introduced to divert first time drug offenders to

treatment instead of incarceration for consideration in this year's legislative session, but the Legislature in Florida has bogged down in making any budget decisions despite an unprecedented three sessions having been held in the past six months. Even though Florida has the third largest prison system in the U.S., and spends almost 8 percent of its general revenue on corrections, no lawmakers have been brave enough to suggest that it is an area that could be reduced to save money. Approximately 45 percent of those incarcerated in Florida are nonviolent offenders, according to Florida Department of Corrections' statistics. Almost 20 percent of the Florida prison population is incarcerated for nonviolent drug offenses. The prison system did receive some cuts this year, education was slashed at all but 10 of the FDOC's 125 prison facilities and in-prison drug treatment programs eliminated at all but 4 prisons. Community correctional drug treatment programs were also severely reduced, which collectively are almost guaranteed to increase recidivism rates in Florida and cost taxpayers more in the next few years, according to critics of these reductions.

Ironically, even Texas with its conservative policies about incarceration, and having the largest prison population in the U.S., is doing more than Florida. Texas has reduced imposing technical violations for parolees and increased parole releases, cutting its prison population by almost 8,000 prisoners and saving taxpayers millions.

Ohio, Michigan, Illinois, and other Republican-led states have actually closed down prisons as a cost saving measure. Virginia is planning to close some of its prisons.

Michael Jacobson, a professor at John Jay College of Criminal Justice in New York, commenting on the BJS's recent

report of criminal justice costing Americans \$147 billion in 1999, stated: "In the 1990's when states were flush with cash, they could do anything. But now they must make hard choices, and with crime going down, they must put a price on prisons."

[Sources: BJS reports; Justice Policy Institute report by Judith Green and Vincent Schiraldi (2002); *New York Times*, 10/2/01 and 2/11/02; FDOC Annual Report 2000-2001]■

DEATH PENALTY DEBATE INCREASES

A panel commissioned by Illinois Gov. George Ryan issued its report April 15, 2002 recommending 85 specific revisions to the state's capital punishment laws, stopping just short of a recommendation that the state abolish the death penalty.

The 14-member bipartisan panel's report was handed over to Gov. Ryan who indicated that after fully reviewing the report he would likely seek legislative change to Illinois' capital punishment laws. Ryan has become a major figure in the capital punishment debate in the U.S. where he suspended all executions in his state in January 2000 after 13 men had been exonerated in capital cases in Illinois. Ryan imposed the moratorium after he, a Republican and longtime supporter of the death penalty, became convinced that there were major flaws in the way capital punishment is imposed.

The panel issuing the report, which included both defenders and critics of capital punishment, found that without serious changes in the law, and perhaps even with the best safeguards, as long as the death

penalty is imposed innocent people may be executed.

Former U.S. Attorney Thomas Sullivan, who co-chaired the panel, said, "The message from this report is clear: Repair or repeal; fix the capital punishment system or abolish it."

An analysis accompanying the panel's report found that of 275 death-penalty cases in Illinois since 1977, over half were later reversed because of trial court errors, tainted evidence and mistakes by prosecutors and defense lawyers. The report also supported evidence that bias may be a factor in who is sentenced to death or not. Persons convicted of killing whites, females, children or senior citizens have a higher chance of receiving the death sentence over other type killings, the report found.

The Illinois report received widespread media attention, especially when it was released only a few days after the 100th death-row or former death-row prisoner was exonerated by DNA evidence since 1973. Ray Krone, 45, was released from Arizona's death-row April 8, after DNA tests showed that he had been convicted of stabbing a bartender to death in 1991 when the DNA evidence matched that of another man in prison on unrelated charges.

The Illinois report and the 100th DNA exoneration, both significant events in a fast-growing movement that is placing increasing pressure on death penalty supporters, came on the heels of another event that has effectively placed a moratorium on executions in 9 of the 38 states with the death penalty. On January 11 of this year the U.S. Supreme Court agreed to hear an Arizona case that calls into question the constitutionality of whether a judge instead of the jury may decide sentencing factors that contribute to imposition of a death sentence. Nine states, including Florida, allow judges to make such decisions

exclusive of the jury. The Supreme Court is expected to rule on that case this summer, and may invalidate the death sentences of over 800 death-row prisoners in the nine states. (See last issue of *FPLP*, "Wheel of Death: Florida's Other Lottery Game.")■

FROM THE EDITOR

By Bob Posey

Greetings, to all of Florida Prisoners' Legal Aid Organization's (FPLAO) members, supporters, and friends and welcome to this latest issue of the organization's newsletter.

These past few months have been interesting, to say the least. America has launched its war on terrorism and our entire society is being changed to deal with that. The Middle East is in turmoil and our country has been drawn in. In Florida our state lawmakers, citing a budget shortfall, have been stymied through three sessions in the past seven months (and are in a fourth at the time of this writing) trying to work out a budget and define their political positions for this November's elections.

In Florida, prison budget cuts in December slashed into two of the most beneficial programs for prisoners—education and substance abuse—leaving even more prisoners idle and the system on a course to experience an increase in the already high rate of recidivism. In the long run this will cost taxpayers many times more than the amounts "saved" by slashing education and substance abuse programs this year.

Florida prisoners and their families will feel the pinch as prison administrators gear up to figure out ways to force them to subsidize more of the cost of incarceration. One example of that mindset is part of a memo sent to all FDOC wardens and education supervisors in January from Director of Programs Richard

Nimer, stating, "I am hopeful that some of our education funding may be restored next fiscal year through increased profits from the canteen and inmate telephone usage which goes into the inmate welfare trust fund."

FPLAO staff is working hard, as usual, to keep an eye on the changes occurring and a check and balance on what they can. In December FPLAO Chairperson Teresa Burns Posey traveled to Tennessee for a two-day meeting with representatives from Critical Resistance, a national coalition movement calling for a moratorium on prison building and working to focus public attention on the prison industrial complex. The organization's staff is also networking with several other groups and organizations, including Amnesty International and local Florida chapters of the ACLU, to increase public awareness of human rights abuses in Florida's prison.

In March FPLAO was represented by (retired) attorney Robert Bader at a public hearing requested to present opposition to an FDOC rulemaking proposal to allow prison staff increased authority to examine the contents of incoming and outgoing legal and privileged mail to or from prisoners. Attorneys Susan Cary, who assists death-row prisoners, Lisa White Shirley, who works with Florida Institutional Legal Services, and an assistant public defender, also went to the hearing with objections. We are waiting now to see if FDOC will withdraw, change, or proceed to adopt the proposal unchanged. FPLAO is strongly opposed to prison officials having any increased ability to examine the contents of prisoners' mail to attorneys, government officials, or the media.

In April, as noticed in the last issue of *FPLP*, Florida prisoners and their families lost one of their most ardent advocates and activists,

Gayle Russell. Over the many years that Gayle worked at Florida Institutional Legal Services in Gainesville there is no telling how many prisoners she helped or their family members. She truly cared about others. Gayle will be deeply missed by all who knew her or were ever helped by her. All of FPLAO's staff, including myself, were very saddened by Gayle's passing away, but grateful to have known and worked with her. To old-time convicts, I also note in this issue's "In Memory of ..." notice that James Bailes, "Ruckus", passed away in February. As one old con commented on hearing the news, "If Ruckus liked you, you couldn't have a better friend." I agree. May he be at peace.

Now to the nitty-gritty. Over the past couple of years it has been mentioned several times in *FPLP* that the organization needs to hire someone to work full-time in the office. All of the current staff are volunteers, most with their own full-time jobs or businesses and families. They devote what spare time they can to keep *FPLAO* and this paper going for Florida prisoners and their families and loved ones. Financially, the organization functions solely on dues paid by members, some advertisement income, and extra donations. It is often a struggle to stay afloat. So far the money just hasn't been there to hire someone for the office. When one of the volunteer staff is out sick or out for other personal reasons, it's that much harder to keep everything on schedule and going.

Members are asked to keep that in mind and are reminded that *FPLAO* isn't the staff's organization, it is YOUR organization. Becoming a member isn't just about getting this paper, it's about being a part of and helping support Florida's only organization that is working to improve conditions for all prisoners and their families and friends and

bring them news and resource information to help them deal with individual problems.

In recent months it seems many *FPLAO* members have slacked off on recruiting others to become members. That's not good. You are needed to help the organization grow. Encourage others, inside and out, to become members.

When writing to the organization or this paper's staff, please keep letters as brief as possible and to the point. Over 300 letters are received each week, long letters bog down the staff trying to process that mail. If you write about a problem receiving *FPLP*, state that and the problem at the beginning of your letter. If you move or are transferred, please complete and send in the address change form in the back of every issue. And do it as soon as possible so *FPLP* doesn't get sent to your old address or returned to *FPLP*, or thrown away by prison mailroom staff (which occurs).

Right now *FPLAO* is ready to proceed on several projects that have been developed, including making another serious effort to reduce the prison collect telephone rates. But with membership growth stagnant and few members making donations, financing those projects may not be possible. It's important now that all members do something for the organization. If you can make a donation, large or small, please do so. Over the next few weeks, get 2 or 3 other prisoners or family members to join the organization. If each member, if you, will do this, by the end of this year we're going to have something powerful going on, and before then things are going to happen that you didn't think possible. Let's get moving people, now is the time. ■



PLANT CITY MAYOR, POLICE CHIEF ACCUSED OF COVERUP

PLANT CITY-Federal prosecutors accused Plant City's mayor and police chief of collaborating to hide criminal evidence against police officers targeted in a federal corruption operation.

During late April Assistant U.S. Attorney Jeffrey Del Fuoco said that Mayor Mike Sparkman paid legal fees for police officer Armand Cotnoir to keep him from talking to federal officials about crimes that have been committed by police Chief Bill McDaniel. In exchange, claims Del Fuoco, McDaniel agreed to hide incriminating evidence about the mayor.

The accusations were presented in court documents and are the latest in a three-year federal investigation of police corruption allegations, including stealing, lying, and looking the other way. Prosecutors are claiming that police officers stole property, conducted illegal searches, filed false reports and lied to judges.

Cotnoir, 27, was indicted in February on charges of concealing knowledge of a felony, obstruction of justice, depriving and conspiring to deprive residents of their civil rights. Although neither Sparkman nor McDaniel have been charged with a crime, these latest accusations prompted them and a city commissioner to hire a criminal defense attorney.

Two other former police officers, Robert David Dixon and Shawn Corgan, have already pleaded guilty in the probe being conducted by the federal government and Florida Dept. of Law Enforcement.

The alleged criminal activity occurred over a four-year period, from 1997 until February of this year, said prosecutors. Plant City, a town of 27,000 is located 25 miles east of Tampa.

[Source: *St. Petersburg Times*, 4/28/02] ■

FDOC ANNUAL REPORT FY 2000 – 2001

The following figures, statistics, and claims are from the Florida Department of Correction's recently released annual report for fiscal year 2000-2001, which ran from July 1, 2000, to June 30, 2001:

Claimed Accomplishments

- Managed 72,007 incarcerated felons and supervised 152,018 offenders on probation and parole, admitted 25,731 new inmates and carried out the lawful release of over 26,800 from the department's custody.
- Collected approximately \$83,550,000 in court-ordered payments from offenders. Of this total, \$31,360.393 or 37.5 percent was paid to victims in the form of restitution.
- Implemented the Automated Fingerprint Identification System (AFIS) at all five reception centers. The system captures high quality fingerprint images, thereby positively identifying newly received inmates and establishing a criminal record for each print and

comparing the prints to any unsolved crimes and latent prints.

- Completed statewide implementation of Central Visitation Authority using a new computer screen to coordinate and track visitors in institutions. The primary objective includes the rejection of visitors who may be detrimental to security.
- Implemented new three-year contract with Florida Drug Screening, Inc.
- Reduced number of service centers from seven to four.
- Privatized comprehensive health services in Region IV and food services statewide.
- Changed close management population procedures and closed five close management units.
- Established ten full time narcotic K-9 teams.
- Processed 38,367 inmate grievances and developed a more consistent and efficient grievance process through use of regional and institutional grievance coordinator positions.
- Assumed responsibility for conditional release interviews from the Florida Parole Commission.
- Assumed monitoring of 403 Florida Parole Commission interstate compact cases.
- Formed educational partnership program with Ford Motor Company to provide Light Maintenance

Service Center at Dade CI to train female offenders as service technicians.

- Formed educational partnership with AAMCO Transmissions, Inc., to provide training of offenders at Polk CI.
- Formed partnership with the Thoroughbred Retirement Foundation to provide training for inmates at Marion CI in the care and handling of thoroughbred horses.
- Connected 30 institutions and four state courts in Central and South Florida for videoconference hearings.
- Increased the number of offenders electronically monitored on Global Positioning Satellite from 120 offenders to over 500.

FDOC Goals

- Create automated close management and protective management systems to streamline reviews for state classification process. Complete consolidation of the male close management population to three institutions.
- Implement statutory requirements outlined in Senate Bill 912 Criminal Rehabilitation Act that authorizes major expansions in transition assistance for inmates.
- Amend F.S. 945.215 to increase weekly inmate draw from \$45 to amount specified by Secretary to be expended for personal use on

canteen and vending machine items. (That was done in Dec. 2001 and weekly draw increased to \$65 by the Secretary-ed.)

- Amend Chapter 944.31 to give the Secretary authority to designate inspectors within the Office of the Inspector General as sworn law enforcement officers. This action will streamline the department's investigative process and reduce the need for outside law enforcement to respond to internal DC matters, particularly in the area of making arrests.

Statistics as of June 30, 2001

- ▷ The FDOC operates 57 major prisons (prisons with separate annexes are counted as one prison), 52 of which are male, 4 female and 1 with separate male and female units, housing a total of 60,239 prisoners of the department's then 72,007 prison population.
- ▷ Of the 15,587 officers within the Department 10,838 are classified as correctional officers (69.5%) and 3,831 are correctional officer sergeants (24.6%). Lieutenants make up 2.8% (435) while captains comprise 1.7% (265).
- ▷ On June 30, 2001, the FDOC employed 25, 457 people. Of that number, 15,170 were male, 10,287 were female. Racial breakdown is 17,765 white, 6,071 black, and 1,621 other. Correctional officers were 15,587 of the total, 2,860 Correctional

- ▷ Probation Officers, 1,973 medical staff, and 5,037 administrative staff.
- ▷ During the 2000-2001 fiscal year the FDOC spent \$1,658,319,871. The average cost per day for prisoners at major institutions was \$49.75 (\$18,159 annually).
- ▷ P.R.I.D.E. industries totaled 43 at 20 prisons, had 2,560 prisoner workers and employed 213 staff members.
- ▷ In 2000-2001 there were 25,731 new admissions to the prison system (almost identical to 1999-2000 at 25,743), 28.4 percent of whom were incarcerated for drug crimes, and 43.5 percent had served a prior prison sentence in Florida (recidivists).
- ▷ During 2000-2001 elderly new admissions (over 50 years old) totaled 1,221 (compared to 821 in fiscal year 1996-97) of which 325 or 26.6 percent were incarcerated for drug crimes.
- ▷ New admissions 17 years old or younger numbered 1,698 in fiscal year 2000-2001, with the largest percentage, 24.8 percent, incarcerated for burglary.
- ▷ Female new admissions numbered 2,425 with 36.3 percent incarcerated for drug crimes.
- ▷ Of the 72,007 prisoners on June 30, 2001, 38,852 were black, 31,308 were white, and 1,847 were others (Hispanic, American Indian,

Asian, etc.), 67,762 were males and 4,245 were female.

- ▷ The youngest person in Florida's prisons on June 30, 2001, was 14 years old and the oldest was 89 years old.
- ▷ On June 30, 2001, approximately 15 percent of the state prison population, or 10,862 prisoners, were considered to be mentally ill.
- ▷ More than half of Florida prisoners, 63.0 percent, are serving sentences imposed after October 1, 1995, that requires them to serve a minimum of 85 percent of their sentences.
- ▷ Prisoners averaged a 7.3 grade level in Florida prisons on June 30, 2001.
- ▷ On June 30, 2001, there were 371 prisoners on Florida's death row (368 males, 3 females). Of that number, 225 were white males, 133 black males, 10 other males, 2 white females and 1 other female.

Parole Statistics on June 30, 2001

- There were 5,682 parole-eligible prisoners incarcerated. Of that number, 296 were being imprisoned in facilities not operated by the FDOC.
- There were 2,252 people on parole in Florida, however, only 825 of those were Florida parolees, the remaining 1,422 were on parole from other states, and 5 parolees where of unknown origin (no explanation for who those 5

could be-ed).

- In fiscal year 2000-2001 there were 101 Florida parole-eligible prisoners granted parole. Conversely, there were 101 Florida parolees who had their parole revoked and who were returned to prison. Of the 101 revocations, 6 parolees caught new charges, 95 were revoked for technical violations.

The complete FDOC Annual Report for fiscal year 2000-2001 (and past fiscal years) can be downloaded and printed (approximately 75 pages) from the Internet at: www.dc.state.fl.us/pub/annual. ■

In memory of those who have passed on...

<p>January</p> <p>Willie J. Copeland - NFRC Richard G. Hale - NFRC Gary H. Parrish - NFRC Archie Davis - Wakulla Johnny Mack - NFRC Jeffrey M. James - Taylor</p> <p>February</p> <p>Hilleary Sawyer - Martin Dionne M. Thomas - NFRC Alfred Owens - NFRC Fabian T. Hall - NFRC</p>	<p>Feb. continued</p> <p>Lawrence Brown - Taylor Jimmie G. Youngerman - NFRC Frederick A. Caccavale - NFRC Gerry D. Shinglas - NFRC James Bailes - NFRC Raymond W. Sims - NFRC Charles E. Morris - NFRC Lee A. Jemison - NFRC John R. Jenkins - NFRC Stephen L. Davis - Wakulla Robert S. Hall - SFRC Darrell B. Jarrett - NFRC</p>
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POST CONVICTION CORNER

by Loren Rhoton, Esq.

In the last issue I began addressing the filing of a Title 28 §2254 petition for writ of habeas corpus by a state inmate in the federal courts. Before filing any such petition, it is best to review the local rules of the federal district court before whom you are filing your petition. There are three federal districts in Florida: the northern, the middle and the southern districts. While each district court is bound by the Federal Rules of Civil Procedure (a 2254 petition is civil in nature, not criminal), each district also has local rules which must be followed. And, each district's local rules can differ. For example, the Northern District requires that a 2254 petition be prepared on the form provided in the Appendix of Forms to the Rules Governing Section 2254 Cases, while the Middle District does not impose such a requirement. There are many slight differences in the requirements of the local rules so it is always advisable to review said rules and make sure that your federal habeas petition complies with the Rules of Civil Procedure and the local rules of your federal court. If you do not have the local rules readily available, then you should write the clerk of your district court and request a copy of said rules.

The Appendix to the Rules Governing Section 2254 Cases in the United States District Courts provides a Model Form for a §2254 habeas corpus petition. Said form will be extremely helpful to the pro se petitioner as it informs the petitioner all of the information the district court will need in order to consider the petition. It is not necessary to cite case law in your petition itself. Instead, I would recommend that a memorandum in support of your petition be filed which fleshes out your claims with supporting case law and application of the legal standards to the facts of your case.

It is important to plan your petition out ahead of time and make sure that you raise all of your issues in one petition. Essentially, you will want to raise all of the constitutional issues that you have already presented in your direct appeal and state postconviction motion(s). If you try to present several habeas corpus petitions to the district court any petitions after your first one will likely be considered successive. A second or successive petition

may be dismissed if a judge finds that it fails to allege new or different grounds for relief and the determination of the prior petition was on the merits. If there is a finding that your petition is successive, you will need to respond by filing a response setting out why your petition should not be dismissed as a successive petition. The Appendix of Forms to the Rules Governing Section 2254 Cases provides a form to use for this purpose entitled *Petitioner's Response as to Why His Petition Should Not Be Barred Under Rule 9*.

When you file your 2254 petition it is very possible that it will be assigned to a magistrate judge instead of a federal district court judge. Title 28 U.S.C. §636 (b)(1)(A) authorizes the district judge in habeas corpus cases to appoint a magistrate judge to consider your 2254 petition. While the magistrate judge does not have the power to render a final and binding decision on your case, he or she will submit to the court proposed findings of fact and a recommendation for a disposition of your case. Once a report and recommendation is issued by the magistrate judge, the parties to the case have 10 days from the date of the report to file objections with the district judge. If such objections are filed the objecting party may receive a *de novo* review of the petition. As is provided in Rule 8(b)(4) of the Rules Governing Section 2254 Cases in the United States District Courts: "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate judge."

Therefore, if there is a report and recommendation from a magistrate judge in your case that is not to your advantage, then any harmful aspects of the report and recommendation should be objected to within ten days. In addition to obtaining a *de novo* review of the issues, this also serves to preserve your objections for appeal. Generally, in the Eleventh Circuit Court of Appeals for the United States, a petitioner must object to the magistrate's report and recommendation in order to preserve the issue for appeal; However, this only applies if the magistrate judge

informed the parties of the need to object within ten days. See Wiley v. Wainwright, 709 F.3d 1412 (11th Cir. 1983). Thus, it is the best practice to always file written objections to the magistrate's report. It will obtain a *de novo* review of the issues and facts and will preserve your right to pursue your appeal if necessary.

There are numerous issues that can be raised in a 2254 petition. Of course, as was discussed in my last article, it is very important that you first exhaust these issues at the State level before raising them in your 2254 petition. (See "Post Conviction Corner" in March-April, 2002, *FPLP*). Because the potential issues that can be raised in a 2254 are so varied, there is no possible way I could provide an exhaustive list of such claims. Therefore, I will merely try to give some examples that I hope will be helpful. Of course the best places to look for issues to present in your 2254 petition are in your direct appeal and any state post conviction motions that you have filed. Any issues of a constitutional (federal constitution) nature that have previously been raised will be ripe for consideration in your 2254 petition. The following are examples of issues cognizable in 2254 proceedings:

*Jury Instructions- Thomas v. Kemp, 800 F. 2d 1024 (11th Cir., 1986); and, Drake v. Kemp, 762 F.2d 1449 (11th Cir. 1985).

*Counsel's Failure to Investigate Case- See, Futch v. Dugger, 874 F.2d 1483 (11th Cir. 1989); Aldrich v. Wainwright, 777 F.2d 630 (11th Cir. 1985); and, Code v. Montgomery, 799 F.2d 1481 (11th Cir. 1986).

*Ineffective Assistance of Counsel- Strickland v. Washington, 466 U.S. 668 (1984); and Smith v. Dugger, 911 F.2d 494 (11th Cir. 1990).

*Ineffectiveness of Appellate Counsel- Evitts v. Lucey- 469 U.S. 830 (1985); and, Mayo v. Henderson, 13 F.3d 528 (2nd Cir. 1994).

*Prosecutorial Misconduct- Troedel v. Dugger, 828 F.2d 670 (11th Cir. 1987); and, Brown v. Wainwright, 785 F.2d 1457 (11th Cir. 1986).

*Issues Relating to the Defendant's Competency to Stand Trial- See Wallace v. Kemp, 757 F.2d 1102 (11th Cir. 1985); and Strickland v. Francisu, 738 F.2d 1542 (11th Cir. 1984).

*Issues relating to Jury Selection- See, Amadeo v. Zant, 486 U.S. 214 (1988); and Coleman v. Kemp, 778 F.2d 1487 (11th Cir. 1985).

* Involuntary Statements to Law Enforcement- See, Christopher v. Florida 824 F2d 836 (11th Cir.1987); and, Cervi v. Kemp, 855 F.2d 702 (11th Cir. 1988).

*Claims Relating to Involuntary Pleas- U.S. v. Loughery, 908 F.2d 1014 (D.C. Cir. 1990); and, Garmon v. Lockhart, 938 F.2d 120 (8th Cir. 1991).

There are many more issues that can be raised in a 2254 petition, therefore, I recommend that you not limit yourself to the above issues. I also recommend that you not fall into the trap of thinking you did not preserve your constitutional issues at the State level because only State law was referenced in your briefs or motions. Just because federal case law was not cited, it does not mean that you did not raise the constitutional issue in the State courts. As long as the constitutional question was addressed, then your issue was raised and exhausted and is ripe for federal review.

In my next issue I will be addressing the appeal from the denial of a 2254 petition and the pursuit of a certificate of appealability for permission to appeal your case. In the meantime I wish my readers good luck with their post conviction pursuits.

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

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NEWS BRIEFS

Worldwide Executions Almost Double in 2001

According to statistics released by Amnesty International during April 2002, the number of government executions worldwide almost doubled in 2001 compared to 2000. The increase was attributed to an increase in executions in China. The Amnesty report noted that 3,048 people were executed in 31 countries, up from 1,457 in 2000. China led all other countries in the number of executions in 2001, reporting 2,468 executions, up from 1,000 executed in 2000. China's increase in executions was credited to a crackdown on crime, including execution of thieves and corrupt government officials. The U.S. executed 66 people in 2001, the lowest number since 1996.

Innocent Man Dies in Prison

MARYLAND - During April Baltimore prosecutors admitted that a man convicted of a murder in 1991 and who died in prison in 1995 was innocent. Henry Roberts, who died of heart failure at age 65, had maintained his innocence in the death of his nephew. The case was reopened two years ago, and a judge has now accepted a guilty plea for the murder from another man.

Installment Plan Prison Terms

MINNESOTA - A state Sentencing Guidelines Commission is reviewing a proposal for some prisoners to do their sentences on an installment plan as an alternative to the state's current sentencing scheme. The idea started with a rural trial judge who decided to try something different with repeat

DUI offenders. Instead of one continuous prison term, Isanti County District Judge James Dehn imposed staggered terms of incarceration. Offenders were sentenced to serve one-third of their time immediately, one-third a year later, and one-third a year after that. In between those terms, if the offenders could show reform, they could have the remaining term vacated. However, any violation during the terms resulted in incarceration for the remainder of the sentence. Of the 60 cases that Judge Dehn sentenced in that manner, only 3 offenders had committed new offenses over a four-year period. Judge Dehn has considered this type sentencing for other crimes.

Nationalize Death Penalty

While the U.S. Supreme Court is taking yet another look at the death penalty in the U.S. (See "Wheel of Death," *FPLP* Vol. 8, Iss. 2), Attorney General John Ashcroft continues his death penalty crusade. According to a recent article in *Time* magazine, Ashcroft recently overruled recommendations from the U. S. Attorney in Brooklyn, N. Y., as well as from his own committee of lawyers who review death-eligible cases, and instead decided to seek capital punishment for Emile Dixon, an alleged drug kingpin. This is the twelfth time since he took office last year that Ashcroft has ordered the death penalty be applied when local U.S. prosecutors did not seek it, according to the Death Penalty Resource Council, a network of lawyers who defend capital defendants. Kevin McNally, a death-penalty defense expert, believes that there appears to be an aggressive attempt, spearheaded by Ashcroft, to nationalize the federal death penalty. [Source: *Time* magazine, 4/22/02]

Innocent on Death Row

NEW YORK - A federal judge in New York said he will declare the federal death penalty unconstitutional unless the government explains why so many condemned prisoners are now being exonerated. Federal Judge Jed Rakoff said innocent people are being sent to death row "with a frequency far greater than previously supposed."

[Source: *USA TODAY*, 4/26/02]

All Prisoners to Provide DNA

WASHINGTON - New legislation was signed into law by WA. State Gov. Locke that requires DNA samples to be taken from every prisoner in the state, both those in prison and in jails. WA currently has a DNA database of 30,000 felons. The new law will affect an additional 20,000. Virginia recently enacted a similar law.

[Source: *AP*, 4/3/02]

Prison Barbershops Unregulated

CALIFORNIA - At a news conference held in So. Los Angeles during March AIDS activists, supported by Rep. Maxine Waters, announced the filing of a class-action federal lawsuit seeking a ban on the state's prison barbershops using unsterilized clippers. The activists claim thousands of prisoners have been exposed to HIV or hepatitis because of unsanitary barbering practices. State law in CA exempts the prison system from sanitation regulations.

[Note: Florida has similar laws exempting prisons from the sanitation requirements that must be observed by barbers for the public-ed]

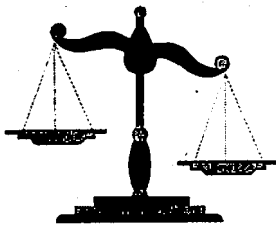
[Source: *Los Angeles Times*, 3/12/02]

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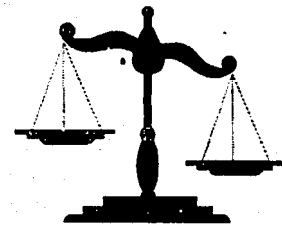
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NOTABLE CASES



Oscar Hanson

The following are summaries of recent state and federal cases that may be useful to or have a significant impact on Florida prisoners. Prisoners interested in these cases should always read the full case as published in the Florida Law Weekly (Fla. L. Weekly); Florida Law Weekly Federal (Fla. L. Weekly Fed.); Southern Reporter 2nd Series (So.2d); Federal Supplement 2nd Series (F.Supp.2d); Federal Reporter 3rd Series (F.3d); or Supreme Court Reporter (S.Ct.).

UNITED STATES COURT OF APPEALS

DuPree v. Palmer, 15 Fla. L. Weekly Fed. C 348 (11th Cir 3/7/02)

William DuPree, a state prisoner, appealed the U.S. District Court's order dismissing his civil rights complaint filed pursuant to 42 U.S.C. Section 1983. The District Court dismissed the complaint under the three strikes provision of the Prison Litigation Reform Act (PLRA) found in 28 U.S.C. Section 1915 (g).

On appeal DuPree argued that the District Court erred when it denied *informa pauperis* status and dismissed the complaint. Once the District Court denied DuPree leave to proceed *informa pauperis*, he attempted to revive the complaint by paying the filing fee. This effort failed.

The 11th Circuit held that the proper procedure in this circumstance was for the District Court to dismiss a complaint without prejudice when it denies a prisoner leave to proceed *informa pauperis* pursuant to the three strikes provision of section 1915 (g). The prisoner does not have the option to seek *informa pauperis* status then, if denied, pay the filing fee to keep the case alive. The prisoner subject to the three strike provision must pay the full amount at the time he initiates his suit.

United States v. Vangates, 15 Fla. L. Weekly Fed. C 454 (11th Cir 4/8/02)

At issue in this appeal was whether certain statements made by a correctional officer were protected under the Fifth Amendment to the Constitution and *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967). Specifically, Vangates contended that her conviction for deprivation of a prisoner's constitutional rights under color of law and obstruction of justice should be overturned because the district court erroneously concluded that her testimony from a previous civil trial was admissible in the criminal proceeding. The Eleventh Circuit rejected this former correctional officer's argument and affirmed her conviction.

[Comment: Vangates' conviction arose from her participation with other corrections officers, Brigetta Mas and Rena Symonette, who in concert with each other, physical beat prisoner Novelette Hamilton in a South Florida Detention Facility. In the civil case a settlement was reached during trial.]

UNITED STATES DISTRICT COURTS

Wilson v. Moore, 15 Fla. L. Weekly Fed. D 211 (N.D. Fla. 2/6/02)

Florida Prisoner Jason Wilson filed a civil rights complaint against DOC officials alleging that FDOC Procedure Directive 503.001, which provides guidelines for Native American religious observances, violates his First Amendment right to

freely exercise his religious beliefs and violates the Equal Protection Clause of the Fourteenth Amendment. Wilson further alleged that the Procedure Directive violates the Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106 - 274, 114 Stat. 803, codified at 42 U.S.C. Sections 2000cc, et seq. (hereafter referred to as RLUIPA).

Prison official moved to dismiss the complaint on the grounds that: (1) Wilson failed to exhaust administrative remedies as to some of his claims, (2) some claims are not ripe for judicial review because Wilson lacks standing to argue those claims, and (3) some claims are barred by the statute of limitations.

The District Court reviewed the Magistrate's Report and Recommendation and decided to adopt the report, which granted DOC's motion to dismiss in part, and denied in part. Because of the complexity of this case and the space constraints of this section, any prisoners who have been hindered from practicing their Native American religion should read the above case. The RLUIPA required prison officials to do more to accommodate the religious need of prisoners. It will benefit all religious prisoners to become familiar with this Act.

Wilson v. Moore, 15 Fla. L. Weekly Fed. D 215 (S.D. Fla. 2/1/02)

Florida Prisoner James Wilson sought habeas corpus relief

from his conviction for indirect criminal contempt of court on the ground that it violated his First Amendment right to freedom of speech. The indirect criminal contempt charge stemmed from a letter he wrote to his trial judge who had recused himself prior to sentencing. The letter was sent after the recusal and sentencing but during the pendency of the direct appeal for his original criminal convictions. The letter contained profane statements.

The District Court adopted the Magistrate's Report and Recommendation that recommended the petition to be granted as to the claim that indirect criminal contempt conviction was entered in violation of petitioner's First Amendment right to freedom of speech. The Court reasoned that the State court's failure to apply more stringent clear and present danger test to the facts of the case was contrary to, or involved an unreasonable application of clearly established federal law as determined by the U.S. Supreme Court. Thus, the indirect criminal contempt conviction was vacated.

The Eleventh Circuit instructed courts that when faced with out-of-court speech that is critical of the judiciary, the courts must follow the Supreme Court's precedent, which requires a more substantial showing than that the speech tended to or was calculated to embarrass a judge.

Florida Supreme Court

Winkler v. Moore, 27 Fla. L. Weekly S 373 (Fla. S.Ct. 4/25/02)

In *Gomez v. Singletary*, the Florida Supreme Court addressed gain time in context of prisoners who were never awarded certain types of overcrowding credits, but should have been awarded such credits. This case is a continuation of *Gomez*. Only three groups (Groups 3,4, and 5) were actually represented by

Gomez, and the Court declined to address the remaining groups (1,2, and 6). In this case, Mark Winkler, Christopher Hall, and James Cross represent the remaining groups.

In sum, the Court provided no relief to Winkler or Hall, but did grant relief to Cross. The breakdown of the offense dates and the type and amount of gain time credits are as follows: Group One: Offense dates must fall between June 15, 1983 and June 30, 1985. Emergency Gain Time at 98 percent of lawful capacity. Total possible relief: 0 days. Group Two: Offense dates must fall between July 1, 1985 and June 1, 1986. Emergency Gain Time at 98 percent of lawful capacity (defined as 133 percent of design capacity). Total possible relief 720 days. (Phase One: 330 days, Phase Two: 390 days). Group Six: Offense dates must fall between September 1, 1990 and June 16, 1993. Provisional Credits at 98 percent of lawful capacity (defined as 133 percent of design capacity). Total possible relief: 822 days.

[Comment: This case is very convoluted and in order to determine your eligibility for these additional awards you should consult an attorney or a law clerk within your institution.]

Comer v. State, 27 Fla. L. Weekly S 245 (Fla. S. Ct. 3/14/02)

Florida prisoner Sean Comer sought habeas corpus relief in the Florida Supreme Court arguing that Florida's 85 percent statute was unconstitutional. Comer based his argument on recent Supreme Court decisions: *Thompson v. State*, 750 So.2d 643 (Fla. 1999); *Heggs v. State*, 759 So.2d 620 (Fla. 2000); and *Trapp v. State*, 760 So.2d 924 (Fla. 2000). The Supreme Court ruled, contrary to Comer's assertion, nothing in *Thompson* or *Heggs* indicates or holds that chapter 95-294 (Laws of Florida enacting the 85

percent provision) is invalid under a single subject analysis.

In *Thompson*, the Court concluded that chapter 95-182, Laws of Florida, violated the single subject requirement of Florida's Constitution and held it to be invalid in its entirety. Section 2 of the invalidated law would have only amended section 775.084, Fla. Stat., to provide that the newly created category of offenders denominated "violent career criminals" would be required to serve 85 percent of their sentences. The time window for challenging the application of 95-182 was opened on October 1, 1995 and closed on May 24, 1997. See, *Salter v. State*, 758 So.2d 667 (Fla. 2000).

In *Heggs*, the Court concluded that chapter 95-184, Laws of Florida also violated the single subject requirement and held it to be invalid. Section 26 of the invalidated law only amended the principle gain time statute (994.275) to generally clarify which version of the gain time statutes should apply if an inmate had multiple sentences from different years. Nothing in the law required prisoners to serve 85 percent of their sentences. The time window for challenging the application of 95-184 was opened on October 1, 1995 and closed on May 24, 1997. See, *Trapp v. State*, 760 So.2d 924 (Fla. 2000).

While the provision relating to serving 85 percent of sentences imposed for "violent career criminals" created by chapter 95-182 is clearly null and void after *Thompson*, nothing in this section effects the law regarding the service of 85 percent of sentences for other offenders. The general provision that created the requirement for serving 85 percent of a sentence imposed was enacted by chapter 95-294, section 2. And this enactment is not unconstitutional.

Hunter v. State, 27 Fla. L. Weekly S 284 (Fla. S.Ct. 3/28/02)

The Supreme Court

addressed yet another constitutional challenge to the Prison Releasee Offender Act on the grounds that it violates the prohibitions against double jeopardy and cruel and unusual punishment. The Court determined there was no merit to this latest attack and upheld the constitutionality of the PRRA.

Major v. State, 27 Fla. L. Weekly S 269 (Fla. S.Ct. 3/28/02)

The Florida Supreme Court has ruled that neither the trial court nor trial counsel has an affirmative obligation to advise a defendant that a plea in a pending case may have sentence enhancing consequences if the defendant commits a new crime in the future. In so holding, the Court reaffirmed an earlier decision rendered in *State v. Ginebra*, 511 So.2d 960 (Fla. 1987), which held that neither the trial court nor trial counsel has a duty to inform a defendant of collateral consequences of his guilty plea.

FLORIDA DISTRICT COURTS OF APPEAL

Heard v. Florida Parole Commission, 27 Fla. L. Weekly D 637 (Fla. 2d DCA 3/20/02)

Florida prisoner William Heard petitioned the First District Court of Appeal for a writ of certiorari to review an order entered by the circuit court upholding the revocation of his parole by the Florida Parole Commission. The First DCA concluded that the circuit court had departed from the essential requirements of the law by: 1) treating Heard's habeas corpus petition as a petition for writ of mandamus and requiring him to pay a filing fee, and 2) exercising jurisdiction of Heard's habeas petition even though Heard is incarcerated in a county within a different judicial circuit.

The First DCA cited its prior precedent that revocation of an early release from prison under the terms

and conditions of an early release program is properly filed in a petition for writ of habeas corpus. *Gillard v. Florida Parole Comm'm*, 784 So.2d 1214, 1215 (Fla. 1st DCA 2001). Further, a petition for a writ of habeas corpus is constitutionally exempt from all court costs and filing fees. *Stanley v. Moore*, 744 So.2d 1160, 1161 (Fla. 1st DCA 1999). As to proper jurisdiction, the petition is to be filed in the circuit court having jurisdiction over the county in which the prisoner is currently incarcerated. *Gillard*, 784 So.2d at 1215. Thus, the case should have been transferred to the proper circuit court within Hamilton County where Heard was incarcerated when he filed his action.

Dukes v. State, 27 Fla. L. Weekly D 503 (Fla. 1st DCA 3/1/02)

In a constitutional challenge to the 10/20/life statute (775.087 (2)-(7), Fla. Stat.), which required minimum mandatory terms of imprisonment for the use of a firearm in the commission of a felony, the First District Court of Appeal ruled the statute did not violate the separation of powers doctrine nor the single subject requirement of the Florida Constitution. See also, *Nelson v. State*, 27 Fla. L. Weekly D 548 (Fla. 4th DCA 3/6/02) (same).

[Note: The 10/20/life statute is not to be confused with the three strikes statute, which was found unconstitutional by the Second District Court of Appeal in *Taylor v. State*, 27 Fla. L. Weekly D 250 (Fla. 2d DCA 1/23/02).]

Meyer v. Moore, 27 Fla. L. Weekly D 764 (Fla. 2d DCA 4/3/02)

Kansas prisoner, Jack Meyer, who is serving his Kansas sentence in the state of Florida pursuant to the Interstate Corrections Compact, section 941.56, Fla. Stat., sought certiorari to obtain appellate review of the denial of his petition for writ of habeas corpus.

In his habeas petition, Meyer sought to be returned to Kansas to serve his sentence. The DCA denied certiorari on the premise that the circuit court lacked jurisdiction to consider or even grant Meyers the relief he requested.

Under the Interstate Corrections Compact, Florida Corrections officials act only as agents for the state of Kansas, and the Florida court lacks jurisdiction over the length of incarceration or whether that incarceration is served in Kansas or Florida. However, because Meyer also alleged that Florida was not complying with the terms of the Compact, the Florida courts could exercise Mandamus or injunctive relief to require compliance. But Meyer had not sought such relief. The DCA instructed Meyer to seek mandamus or injunctive relief in the circuit court. ■

How executions stack up

Since capital punishment was reinstated in 1976, there have been 769 executions in the USA. States with heaviest use of the death penalty:

- ▶ Texas: 264
- ▶ Virginia: 85
- ▶ Missouri: 57
- ▶ Florida: 51
- ▶ Oklahoma: 50
- ▶ Louisiana: 26

In that same period, 100 convicts on their way to the death chamber have been released after being found to have been wrongly convicted. States with the most such mistakes exposed:

- ▶ Florida: 22
- ▶ Illinois: 13
- ▶ Oklahoma: 7
- ▶ Texas: 7
- ▶ Arizona: 6
- ▶ Georgia: 6

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***ACTUAL INNOCENCE**

***I.N.S. DEPORTATION**

I am a former Assistant State Attorney (Felony Division Chief), Assistant Public Defender (Lead Trial Attorney), and member of the faculty at the University of Florida College of Law. I have devoted over 24 years to the teaching and practice of criminal defense law, and I am an author of a text on federal practice in the Eleventh Circuit. The major thrust of my practice has been post-conviction oriented. There is approximately 70 years of combined experience in my office, including that of a former Assistant United States Attorney. I do not believe you can find more experienced representation in the State of Florida or elsewhere.

The hiring of a lawyer is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications.

WRITING TO WIN

by Bob Posey

Most people don't think about writing very much. It's something that was learned in school, or at least enough to get by, and then later taken for granted as it's only done infrequently. Ordinarily, after leaving school, the average person may write a letter now and then, make up a list for something, or have to fill out a form every once in a while. Unless your job is one that requires you to write, it's not something that you ordinarily do very often. That can be a problem when circumstances change and suddenly you are faced with having to write more often. That is often the case once a person goes to prison. There, you will be faced with having to write more. You write more letters to stay in touch with people on the outside. You often have to write requests and grievances to prison official to obtain information or to deal with problems that may arise. And, if you are unable to hire an attorney and wish to challenge your conviction or sentence, you will be faced with a lot more writing, often more than you have ever done before in your life. One notable thing about legal work, it generates a large amount of paperwork. That is when you need to go back to "school" and realize that writing is a skill, an important one, that you can always learn to do more effectively. In fact, in such a case, your very freedom may depend on it.

Without having a reason to remember, most people forget a lot of what they learned in school about writing. You may remember the terms for words that English teachers tried to drill into you, terms like: nouns, pronouns, verbs, adverbs, modifiers, adjectives, and conjunctions. But how much of what those terms mean have you retained?

And then there are sentence and paragraph construction, simple and complex sentences, the thesis sentence, punctuation, and word choice, all part of a knowledge intended to teach you how to communicate in writing more effectively. If you have forgot most of that teaching, and ignore brushing up on it when faced with the daunting task of legal writing, you are making a serious mistake.

Generally, the purpose of legal writing is to persuade a court to rule in your favor on an issue. To compound the problem, you are going to be opposed by one or more writers on the opposite side who are attorneys and whose careers are intimately tied to the art of writing. You may think you know how to write good enough or that it doesn't matter how well you write. You may think the court must and will take into account that you are not a lawyer and give you more leeway in your legal pleadings. That ideal has even been expressed in a few court cases in the past. In *Haines v. Kerner*, 404 U.S. 519 (1972), a more liberal U. S. Supreme Court than exists today, stated, in effect, that *pro se* prisoner legal pleadings must be held to less stringent standards than formal pleadings drafted by lawyers. The reality, however, is a different story. Most judges have little patience with prisoners trying to litigate. You have several strikes against you, as far as most judges are concerned, just being who you are. If you add to that poor writing skills, your pleadings are not going to be seriously considered.

Any effective prison litigator will tell you that you can learn all the court rules, how to do legal research, the form for pleadings, etc., but when it comes down to it, good writing skills are essential. You may have all the law on your side, but if you can't effectively communicate in writing, the odds that you will receive the entitled relief are drastically reduced.

Writing, any writing, should flow. If your writing flows, it is smooth and easy to read; its logical and organized; it has an obvious beginning, middle, and end; and, it is more likely to catch and hold your reader's attention. To achieve that flow, most experienced writers approach a writing job in three stages. They are: planning, drafting, and revising.

Planning

If you plan your writing ahead of time, you can make it easier to read, more understandable, more interesting, though-provoking, and actually easier to write. Begin your planning with thinking over the writing you have to do. Give some thought to the following:

- *Subject.* What is the subject or issue that you intend to write about? How broadly or narrowly do you need to cover the subject or issue? Is there more than one subject or issue, and if so, will your writing be clearer to your reader if each subject or issue is handled as a separate section within your overall writing?
- *Information Sources.* What sources of information will you need to do the writing? Do you have the documentation that you will need to refer to? Have you researched the subject or issue and do you have your notes from that research handy?
- *Purpose.* Are you writing to: inform readers, persuade them, obtain some action, or a combination of those purposes?
- *Audience.* Who are your readers? How much do they already know about your topic? How interested will they be? Will they resist or oppose what you write? How much time do they have to read your material?

- *Length.* Can you write as much as you want or are there page restrictions that apply?
- *Format.* Is there a particular format that you must use? If so, do you have guidelines or examples that you can consult?
- *Deadline.* Is there a deadline for the writing to be finished? How much time will you need for each stage of your writing?

Before starting to write something that will cover several ideas, topics, issues, or sections, it is useful to create an outline or guide for what you intend to write. There are several ways to do that. You can make a list, use what is termed the branching technique, ask yourself questions, and even use freewriting.

To make an outline list, write down ideas about what you are going to write or need to cover in the writing as the ideas come to you. Once on paper, you are free to rearrange the ideas, add to them, delete from them, place them in order so you can see how you will start, what is going to be needed to be covered in the body and in what order, and how you can sum it all up at the end. Make such a list for each section of your intended writing.

The branching technique is a little more formal than just making a list, but does not need to be any more difficult. Write the main idea at the top of a blank sheet of paper and then list major supporting ideas beneath it. Leave plenty of space between ideas in case you need to add new ideas as you go. To the right of each major idea, branch out to minor ideas, drawing a line to each minor idea connected to the specific major idea. Continue doing that for each major idea that you have listed. If a minor idea leads to even more specific ideas, list them to the right of the minor idea and connect them to the minor idea with a drawn line. You can use the branching technique for

several main ideas, sections, topics, or issues, using a separate sheet of paper for each. Creating a branch diagram is an excellent way to get a visual outline of the points that you intend to write about and helps you organize those points in order of importance.

You can also use written questions to yourself to help plan and organize your writing. For example, news journalists are taught to routinely ask themselves Who? What? When? Where? Why? And How? when gathering material for a story. In addition to helping them get started, these questions ensure that they will not overlook important facts.

Freewriting is another way to get your writing organized. Instead of an informal or formal outline, simply write the thoughts that come to you about the topic. Don't worry about word choice, spelling, or meaning. Just get your thoughts down on paper. The point is to relax and break the ice on writing about the topic. This, of course, is only very rough writing, but out of it there may emerge ideas on how to organize your writing or a line of thought worth following up on.

Whichever outline method you use, taking the time to prepare an outline is never wasted time. Outlines help to organize and focus your writing, lessens the number of drafts that you may need to write, and gives you a visual guide for your writing.

Drafting

When you begin to write your initial draft keep your planning materials—lists, branching diagrams, questions and answers, or freewriting—close to hand. Such material will not only help you to get started, they will also help to keep your writing focused and moving. Writing tends to flow smoother when there are few stops and starts.

For most types of writing, an *introduction* announces the main point, several *body paragraphs* develop that point, and a *conclusion* sums up the main point and supporting body paragraphs. If you are writing about several main points or issues, consider dividing them into their own distinct sections. Each section will have its own introduction, supporting body paragraphs, and conclusion. Do not jumble topics, issues, or main points together or jump back and forth between them. If you do, not only will your writing be harder, but it will also be confusing to your reader.

Your introduction is usually a paragraph 50 to 150 words long. A common strategy is to open the paragraph with a few sentences that catch the reader's attention and to conclude it with a sentence setting out the main point that will be developed in the following body paragraphs. The sentence setting out the main point is called the *thesis sentence*.

The body paragraphs are groups of sentences that support the main point. Structure body paragraphs so they are unified, organized, well-developed, and not too long or too short for easy reading.

Within each body paragraph, similar to the introductory paragraph, there should be a topic sentence as to what that paragraph is about. The topic sentence should be clear to readers and all other sentences in the paragraph should relate to it. Usually, the topic of a body paragraph will be the first sentence in the paragraph and the following sentences are added to support that topic. Sometimes a topic sentence is not necessary if the new paragraph continues to develop a topic from the last-written paragraph, or if the details of the new paragraph unmistakably set out the overall topic.

The conclusion should relate back to the main point, without just

repeating it. In addition to summing up the main point and supporting body paragraphs, the conclusion may also suggest some action or seek to persuade as to why the main point should be accepted by the reader. Avoid introducing new ideas in the conclusion or apologies and other passive endings. Conclude each section of your writing that involves a main point crisply and on a positive note.

Revising

Once you have your draft, you are ready to go to the next stage in your writing—revising. Experienced writers rarely view revising as a one-step process. The purpose of revising is to tighten up your writing by going back over it carefully and making improvements in sentence and paragraph structure, word choice, grammar, punctuation, and spelling.

Do not limit yourself in revising the writing. It may be that your first draft is pretty good and only needs minor revision or corrections. However, there will be times when revision can be dramatic and necessitate dropping or adding whole paragraphs or combining two or three paragraphs into one. Entire sections may need to be rearranged for clarity to the reader and to improve the smooth flow of the writing. The process of revision itself stimulates thought.

One pitfall that you need to be conscious of during the revision stage is the natural tendency to review your writing from your own, and not from the reader's, perspective. You know what you meant in your thoughts as you were writing; you have the tendency to think some details or information wasn't necessary to include as your reader will already know those details or have that information. Sometimes that may be true, but more often what may be obvious to you is not obvious to your reader.

Remember, you are writing to explain to or inform the reader, not yourself. Sometimes it is necessary to distance yourself from your draft to achieve the correct objectivity. To do that, put it aside for awhile, overnight or even longer. When you go back to it, try to look at it from your reader's point of view. If possible, have someone else read the draft and make suggestions on how it could be made clearer.

The most important step in your writing is proofreading it. Proofreading is boring, but critical. If you have errors throughout your writing, the reader is going to notice them and either think you didn't care enough about the writing to do it right, so why should I?, or believe that you really don't know the subject well that you are writing about. Errors in spelling and grammar are distracting and annoying to readers.

Proofreading is a special kind of reading. It should be a slow, relaxed, and methodical search for errors. Such errors may be difficult to spot in your own writing because with the way our minds work you may "read" what you intended to write, adding words in your thoughts that are not actually written on the page. To avoid that, try reading the material out loud, speak each word as it is written. Another technique is to slowly read the material backwards, which forces you to focus on the words instead of their meaning. You can also use a ruler or other item to focus on looking at the words in a single line at a time. Take your time and try to find and correct every single error that might cause your reader to stumble and lose their train of thought. To correct spelling and expand the choice of words in your writing you should always have a good dictionary and thesaurus handy.

Good writing skills are not something that you are born with or that will naturally come to you, even if you write a million pages. You

can, however learn them, and with practice they will become a natural part of your writing.

This is the first in a series of articles designed to encourage you to think about and improve your writing skills. Future articles in this series will explore other aspects of writing fundamentals and offer practical suggestions to improve comprehension of legal writing, research, and analysis. ■

PROSECUTORS GIVE UP ON VALDES' MURDER

STARK—The decision was announced May 10 by a state prosecutor that all charges would be dropped against five prison guards who had been accused of involvement in the brutal stomping murder of Florida death-row prisoner Frank Valdes on July 17, 1999. State Attorney Bill Cervone dropped second-degree murder charges against former FDOC prison guards Andrew Lewis, 32; Montrez Lucas, 33; Donald Stanford, 53; Dewey Beck, 54. Charges were also dropped against Robert Sauls, 39, who was to be tried for conspiracy to commit aggravated battery, battery on an inmate and official misconduct.

The decision to drop charges against the remaining five of eight Florida State Prison guards came less than three months after the first three guards were tried and acquitted of second-degree murder back in February of this year. (See last issue of *FPLP*).

One of the main reasons cited by Cervone for dropping the remaining charges was the difficulty in picking an impartial jury to hear the case in the area where prisons dominate the economy. Circuit Judge Larry Turner, who was elected to the bench by residents who depend on prisons for their living, refused to allow the trials to be held in another location where an impartial jury could be found.

Frank Valdes was on death-row for killing a Palm Beach County prison guard in 1989 during a botched attempt to help a prisoner escape. Medical examiners testified in the February trial against Captain Timothy Thornton, 36, and Sgt. Charles Brown, 28, and Jason Griffis, 29, that Valdes was beaten to death, probably while handcuffed and shackled. Valdes had fractures of his sternum, vertebrae, nose and jaw, along with numerous internal injuries and crushed testicles, and there were boot prints on his face, neck, abdomen and back.

Cervone said information on the case has been forwarded to the U.S. Justice Department. |



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On the Web Now!

During June 2002 Florida Prisoners' Legal Aid Organization, Inc. (FPLAO), launched an exciting and innovative new website. Over the next few weeks and months this site will become a major source of news, information, resources and advocacy for Florida prisoners and their families, friends, and loved ones. Spread the news about:

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Talkative Prisoners' Tunnel Found

by David M. Reutter

After seven prisoners at Zephyrhills Correctional Institution (ZCI) were caught digging a tunnel to escape from, the FDOC tried to hide its investigation of the incident. The *St. Petersburg Times* filed two public records request with FDOC that went unanswered. FDOC finally released, in March 2002, over 500 pages of documents after the Times filed a lawsuit. The investigation of the escape attempt reveals the verbosity of the prisoners foiled their plans, and that lapses in security allowed them to get close to their objective.

The prisoners, Richard Seibert, Robert Fennell, Joshua Knerr, Paul Russell, Henry Shelton, Raymond Eldridge, and Mark Guglielmo, had access to heavy tools, and thanks to an unlocked gate and rigged door, access to an old warehouse on ZCI grounds. They were also fortunate to have a supervisor who left them alone for hours at a time, which allowed them to dig almost daily from 1:00 p.m. to 3:00 p.m. The digging was done with shovels made from old metal fan blades. They started in the old warehouse by D dorm with a concrete drill bit, and they cut a rectangle in the floor just wide enough to squeeze through.

While one or two were digging, the others would watch for "the man" or hide dirt. The dirt was put into plastic bags or pillowcases and hid above air conditioning ducts in the ceiling. The prisoners dug to a nearby mobile classroom structure with a metal skirting around the bottom, allowing them to dump all the dirt they wanted without detection. From the structure, only 40 feet away was the woods. The plan was to escape in April 2001 and fade into the crowd of the Livestock Music Festival where one of the

prisoners' cousins would leave a car stocked with clothing and handguns. Then, on to Tampa to switch cars and a trip to Daytona Beach. But, as is so usual within the FDOC these days, someone snitched before the plan bore fruit.

The snitch, murderer Robert Pasquince, informed prison officials of his knowledge on March 1, 2001. In return, Pasquince wanted a transfer to another FDOC prison where his brother is serving 2 ½ years. After that, he wanted an interstate compact transfer to New Jersey. Pasquince told investigators he befriended the seven prisoners while getting a tattoo. Pasquince said the seven began talking in riddles about escaping, and they talked about the "Texas Seven." They said that group made mistakes and they wouldn't. They had considered every detail, even the clothes they would wear out of the tunnel: shorts made from sweatshirts with Nike Swooshes on them. Evidently, the one detail they forgot was keeping their mouths shut. Investigators say as many as 10 other prisoners likely knew of the plot.

The investigation revealed that lax security at ZCI allowed the prisoners to get within 40 feet of the perimeter fence. Their immediate supervisor, who left the seven alone for hours at a time, said a teacher in a nearby classroom building was watching them. The teacher denied he was ever asked to watch the seven. In clear violation of FDOC policy, no one kept tabs on the tools the seven had access to. Although FDOC cited six ZCI staff members for negligence, all remain employed at ZCI.

FDOC did impose sanctions on the staff involved. Sgt. Arthur Stowell received a written reprimand. Colonel Ronnie Edwards received a record of counseling to pay closer attention to his duties. Paul Bradley, a maintenance and construction supervisor was

suspended for 30 workdays. Albert Guedes, a temporary worker, was suspended for 15 workdays. FDOC spokeswoman Debbie Buchanan admitted the staff's lack of attentiveness aided the escape attempt, but said security and tool control have been tightened up since the attempt.

The prisoners, although certainly receiving a transfer and close management, had nothing to lose. Most were serving life sentences. As a result, the Pasco-Pinellas State Attorney's Office decided not to prosecute because another conviction would mean nothing. Had the prisoners truly paid attention to every detail as they professed, they had everything to gain.

(Source: *St. Petersburg Times*, 3/9/02.) □

RESTORATION OF CIVIL RIGHTS

The American Civil Liberties Union recently commended the Florida Department of Corrections for making it easier for felons who have completed their time to have their civil rights restored. But the ACLU will ask Gov. Bush to make the restoration of rights automatic for felons who successfully complete all the terms and conditions of their sentences.

A Website www.state.fl.us/fpc/exclem.html has a link to a new application for getting rights restored. The application no longer requires felons to obtain certified copies of court records or processing by the chief judge or the prosecutor.

Florida is one of only eight states that does not automatically restore the right to vote to felons who complete their sentences. [Source: *St. Pete Times*, 4/25/02] †

NOTICE

FPLAO, Inc., recently acquired three new directors: Oscar Hanson, his wife, Linda Hanson, and Darrell Blackwelder. All three bring a wealth of experience and knowledge to FPLAO and are very welcome. Former director Darryl McGlamery has retired from the board of directors and is wished the best in future endeavors while thanked for all he did for FPLAO.

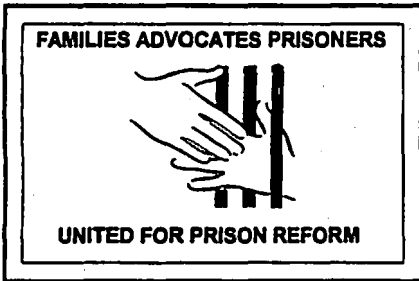
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CONTACTS

The Florida Corrections Commission is composed of eight citizens selected by the governor to oversee the operation of the Florida Department of Corrections. The Commission makes recommendations to the governor and state legislature concerning problem areas within the prison system. The Commission welcomes input from the public identifying problem areas. The Commission's activities can be found on its website. The Commission is independent from the FDOC.

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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 advice. 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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