Florida Prison Legal Perspectives

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TAXPAYER'S BURDEN INCREASED BY OLDER PRISONERS

Florida's population is getting older, and this is equally true of the prison population. Largely unknown to the taxpayers and free citizens of Florida, there is a growing group of senior citizens who are retiring not in a retirement community, but in the prison system. The age of those being admitted to prison in Florida is increasing and, once in prison, they are serving longer sentences. The burden on taxpayers is increasing along with this growing trend, yet little attention is given to this area or the consequences that are expected to result as it continues.

Florida has the highest number of prisoners in the South who are 50 years old or older, with 4,176 in a recent report. The number two Southern state in amount of elderly prisoners is Texas, which had 1,246 prisoners aged 50 or older in 1997, approximately one fourth of the number in Florida. But notably, Texas has more than twice the total prison population of Florida.

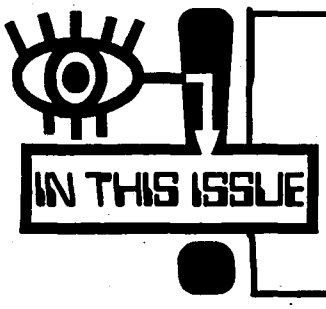
In fact, Florida has more prisoners over 50 than Texas, Georgia, and Kentucky combined, which are the three Southern states ranked below Florida with the highest number of elderly prisoners. Between 1982 and 1997 the number of Florida prisoners 50 or older at any one time has nearly quadrupled and prison administrators fear there is no end in sight as politicians continue using crime fear and increased imprisonment as political platforms.

This trend means that the prison system in Florida is facing problems that will likely change the shape of prison in the future. While older prisoners may be less violent or disruptive than younger prisoners this does not result in a lower cost of basic incarceration, as some claim. Often older prisoners are the targets of younger violent prisoners where the populations are mixed. Older prisoners also suffer more health problems that increase the medical costs of incarceration; costs that continue to increase as a prisoner gets older and requires more medical care.

In 1997 there were more than 200 state prisoners who were over 70 years old. There are more than 300 prisoners confined to wheelchairs in the system, and a number who are blind or deaf. Right now prison administrators claim they are able to serve the medical needs of older prisoners, but predicts John Burke, who oversees the Florida Department of Correction's (FDOC) medical services department, "Over time, this is going to become a significant problem."

While Florida has not kept a tab on exactly what percentage of its medical budget goes to providing for older prisoners, other states report that they spend two to three times more on elderly prisoners. According to John Burke, where the average prisoner only costs approximately $18,000 per year to incarcerate, because of the additional medical needs of the elderly, older prisoners average $40 to $50 thousand a year. Older prisoners cost more, they require extra staff, and they take up prison beds in crowded prisons resulting in younger, more dangerous prisoners having to be released to make room for them.

The FDOC now spends more than $200 million per year on medical services. This amount is expected to increase as more older prisoners are incarcerated and as those with longer sentences age. Thousands of prisoners still in the system were sentenced before 1983 and the adoption of sentencing guidelines, many of them have sentences in the hundreds and thousands of years, and they are not being paroled. Adding to the equation is the requirement that all prisoners committing crimes and sentenced to prison after October 1996 will have to do 85 percent



of their sentence, regardless of their age upon entering the system.

And in recent years the legislature has toughened sentencing laws so that prisoners are receiving longer sentences on top of having to serve the greater percentage of the sentence. And anyone released from a Florida prison now, who commits a violent felony within three years of release, can be subjected up to a life sentence.

According to Carl Schmertmann, a Florida State University demographer and associate professor of economics, keeping elderly prisoners in prison for long periods is not cost effective, because most of them are not likely to commit more crimes when released. "People over 60, even those with criminal pasts, are a decidedly unrisky group," contends Schmertmann. Schmertmann maintains that the state is wasting time and money housing many of the prisoners who are middle-aged and older. "Getting tough on crime in this way is, to put it bluntly, demographically stupid," stated Schmertmann.

Rep. Victor Crist, chairman of the House Justice Council, defends long sentences, claiming the the higher medical costs of elderly prisoners is offset by lower costs of controlling them. This does not add up, where all prisoners are in a controlled environment, and such control is figured in the basic costs of incarceration, regardless of age. Yet, Crist says that those who are serving longer sentences are not good candidates for release, no matter the age. "They are career criminals," he said. "Age doesn't necessarily relinquish the threat of crime." Crist does not take into account that many of those elderly prisoners who were sentenced before 1983 have been in prison for decades now. Yet, they were never determined to be career criminals.

Nor does Crist take into account the numerous studies that have shown that recidivism rates drastically drop the older the offender is when released from prison. One example of how the risk factor drops is a project operated for several years by Jonathan Turley, a George Washington University law professor. This program uses volunteer law students to study cases of prisoners 55 and older and then assists them in obtaining release. Since the program begin in 1989, over 300 elderly prisoners have been released under the program and none have committed another crime. "Older inmates represent a promising alternative for states like Florida to reduce population without increasing risk to society, " said Turley. "In a state like Florida, if you release 500 inmates, that's one large prison. You can now house more younger and dangerous inmates."

To enter some Florida prisons now is like coming onto the grounds of a retirement home. Prisoners are seen in their 60's, 70's and even 80's using walkers or being pushed in wheelchairs to even move around. Many prisoners who have been in prison for decades have sentences they can never expire for crimes that today only carry a faction of the amount of time they have. Yet, these prisoners are under the parole system of release, and as this parole eligible population has dwindled the parole board in Florida has significantly reduced releasing these prisoners. Most of these prisoners feel hostage to the parole commission's intention of not "releasing" itself out of existence, and that is the only reason they are still in prison.

Politician's efforts to use "getting tougher on prisoners" is guaranteeing that Florida's prison population will continue getting older, and more expensive to taxpayers in the coming years. Where prisoners are disenfranchised there is little opposition to this trend, and it will continue until these prisoner's families and friends begin making their voice heard politically by questioning and working to expose to the public the fallacies and irrationalities of geriatric imprisonment in many instances. ■

OLDER PRISONERS

The Four Southern states with the most prisoners 50 and older as of July 1, 1997

	50+	Total Prison Population
Florida	4,176	64,713
Texas	1,246	138,861
Georgia	1,111	36,339
Kentucky	964	11,069

Source: Council of State Governments

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INCREASING NUMBERS

From 1982 to 1997, the number of prisoners age 50 and older in Florida prisons has nearly quadrupled:

Year	Older Prisoners
1982	1,092
1983	1,084
1984	1,170
1985	1,314
1986	1,459
1988	1,613
1989	1,083
1990	2,098
1991	2,252
1992	2,484
1993	2,809
1994	2,930
1995	3,281
1996	3,715
1997	4,176

Source: FDOC Reports

NOTICE

Shortly before the last issue of *FPLP* was printed the staff received notice that the Parole Elimination Network (PEN) had folded. We were unable to change the layout of the paper to get a notice of that in the last issue. It is official, however, PEN is no longer in existence and is no longer in operation. ■

FROM THE EDITOR

As *FPLP* approaches its fifth year of continuous publication it has been notable that its subscribers and supporters have been not only able to fund the complete costs of publication but to allow numerous important issues and projects to be taken on by the staff to create a check and balance to the Florida Department of Corrections. It has not been necessary so far to do fund-raising drives or to make appeals to subscribers and supporters for additional donations.

The most important goal of *FPLP* is to publish the paper and distribute it. While at times the budget has made this barely possible, at other times there has been enough over to allow other projects to be taken on that also cost money. Right now the coffers are very low, yet some very important issues and projects are pending that requires us to come to you and ask for your additional support.

In March of 1999 *FPLP* staff will be in Tallahassee, in the Capitol building, representing issues that are very important to every prisoner and their families, friends and loved ones to our state representatives, elected and appointed officials. We are working to make it possible for every family member, friend or loved one who wishes to attend that event with us. This is going to take money for transportation, displays, flyers, brochures, telephone bills to network, etc.

There are also several other pending projects that cannot and should not be delayed during this coming year: there is lobbying that needs to be done on improving family visiting in the prisons, the collect telephone scheme needs more attention paid to it to try to reduce the costs to reasonable rates, we need to have *FPLP* staff attend meetings of the Corrections Commission and House and Senate Corrections Committees to inform them of the problems and seek solutions during the upcoming legislative session. All this takes money, on top of keeping the paper going. All of this will impact every single prisoner, and their family members, friends and loved ones in the State of Florida.

FPLP staff has not been too eager to push for additional donations, we have made do with what came in. Every penny received goes right back into the paper or projects that assists everyone who supports *FPLP*'s goals. Now, however, we need some additional help if *FPLP* is to continue being effective and if the staff is to continue taking on and representing issues (like the recent successful challenge to the FDOC proposed mail rules) that benefit everyone in, or associated with, the Florida prison system.

We know that most prisoners have very little, but every little bit can and will help us help you. Many subscribers and supporters of FPLP in the free world are not wealthy, but then there are some who are, or who are at least comfortable. Whatever you can do within your means will help us continue this important work and help us continue to take on issues that impact your lives.

FPLP is totally dependant on its subscribers and supporters, we will never accept funding that does not allow us to continue to accomplish the goals that are felt to be evident to anyone who picks up and reads an issue of *FPLP*. While *FPLP* does apply for grants, right now they are sparsely granted for prison projects such as *FPLP*, which are not very popular, but are essential.

At this time of *FPLP's* need, just as for the past five years we have tried to be there when you needed us, to help on the issues that we could-where we could, now FPLP needs YOU. Please consider making a donation, no matter how large or small, to FPLP at this time. We will survive without it, but so much more can and will be done with a little extra help right now. Thank you, I know we can count on YOU. - BOB POSEY, Editor ■

HOOKS V. SINGLETARY ACCESS TO COURT CLASS ACTION Magistrate Issues Final Report and Recommendation

In a surprisingly favorable manner, U.S. Magistrate Judge John Steele, of the U.S. District Court in Jacksonville FL, issued a 51 page final Report and Recommendation in the federal class action Hooks v. Singletary concerning FL prisoners access to the courts. This report and recommendation, issued August 25, 1998, is surprising in that it is not as harsh as one would expect following the U.S. Supreme Court case of Lewis v. Casey that was decided in 1996. That case substantially changed almost three decades of standards concerning prisoners' access to courts in this country.

To notice Florida prisoners, who are all plaintiffs in this action, of the magistrate judge's recommendations of what course Hooks v. Singletary should now take, a notice was posted at all institutions by September 23, 1998. The notice informed all prisoners that copies of the report and recommendations would be made available to all prisoners to read, where the copies were available from at

the institution, and that any and all prisoners could submit comments or proposed objections to the recommendations by October 23, 1998.

The *Hooks* case has been in the courts for more than 27 years as the FDOC has gradually changed and added to its law library and inmate law clerk programs in trying to fashion a plan that would provide Florida prisoners with the constitutional right of access to the courts. After Hooks was started in 1972, the U.S. Supreme Court decided Bounds v. Smith in 1977. In that case the high court held that the fundamental constitutional right of access to the courts requires prison officials to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

Many different methods were tried by different states to meet this constitutional duty. Some states hired attorneys or legal professionals to assist prisoners in accessing the courts. Some states tried a combination of professional assistance with some access to legal materials to provide the access. And some states tried actual law library access to prisoners with assistance in using the libraries made available and to assist impaired or illiterate prisoners with their legal needs.

Florida's approach to meet the *Bounds* requirement was to provide prisoners with law libraries and inmate law clerk assistants with the oversight vehicle being the *Hooks* case. Going from basically no law books or legal assistance being available to FL prisoners in 1972, the FDOC now has fairly comprehensive law libraries available to all prisoners. There is also a state-wide inmate law clerk program that trains inmates in legal research in order to assist other prisoners, especially the illiterate or impaired, in preparing legal documents.

In 1996, however, as stated above, the Supreme Court revisited the prisoner access to court issue in Lewis v. Casey, a case that had originated out of Arizona. Essentially, in Lewis, the Supreme Court held that many lower courts had read too much into the Bounds v. Smith case; that states did not have to constitutionally provide a specific access to court method, such as law libraries or attorneys, etc., and instead held that states are free to experiment with many different ways of providing court access to prisoners, as long as the access was adequate and meaningful. Providing an example, the high court said this might be accomplished by simply providing prisoners with forms to file the initial pleading in an action, get their foot in the door, but after that the state no longer has any duty to provide further assistance.

Having said this, and as if it was not enough, the *Lewis* court then determined that states do not have any constitutional duty to assist prisoners in accessing the courts in just any type legal action. The Court held that such access only has to be assisted by the states in challenges to criminal convictions or conditions of confinement actions. The *Lewis* court also held that there must be actual injury in claims of denial of access to the courts, and that essentially, no longer will system-wide deficiency claims be sufficient to meet this actual injury standard.

One major area of contention in *Hooks* has been access to the law libraries and law clerk assistance for prisoners in confinement situations. The Lewis court addressed this area also, basically holding that delayed or reduced access to such confined prisoners does not amount to denial of access, unless actual injury as defined by *Lewis* occurs on an individual basis.

Almost immediately following the Lewis decision, the FDOC took action to try to have the Hooks case finally dismissed, asserting that the prisoner plaintiffs in Hooks had never actually plead or established that individual damages or injury within the meaning of Lewis had ever occurred. The magistrate judge in Hooks has now disagreed with that position.

The magistrate's report and recommendation approves, with only minor exceptions, the FDOC's access to court program and proposed plan to continue operation of the law libraries and law clerk program. The magistrate, however, found that actual injury within the meaning of Lewis had been establish by two of the original plaintiffs before class certification was established. The magistrate also found that evidence at a 1972 trial in Hooks had established system-wide actual injury as to the contents (or lack thereof) of the DOC prison law library collections. The evidence at that trial did not, however, establish system-wide actual injury as to other aspects of access to courts issues raised after the 1972 trial. Therefore, the magistrate concluded that relief in Hooks, from this point forward, is only appropriate as to the contents of the law library collections.

The magistrate did recommend that an injunction that had been issued in 1977 ordering the FDOC to continue funding a prison project started by Florida Institutional Legal Services be dissolved. The magistrate also recommended that some annotated volumes of the United States Code be re-added to the law library collections that had been deleted by the FDOC back in 1996 following Lewis. And privately operated prisons in Florida will have to add law libraries comparable to the FDOC's.

It is expected that the Report and Recommendation will be approved by the District Judge. After the October 23, 1998, deadline for prisoners to submit comments or objections then counsel for both sides have until November 20th to file any objections or response to such objections. After that the District Court will take the case under advisement.

It is expected that the injunction concerning Florida Institutional Legal Services will be dissolved, perhaps by January of 1999. Florida Institutional Legal Services will be able to continue functioning for the immediate future, however, with other funding that it receives.

The real question, is what is going to happen after Hooks is totally resolved? In Arizona, after the Supreme Court reversed and remanded Lewis for failing to show any actual injury, the Arizona DOC immediately removed all prison law libraries and replaced them with a state-paid paralegal program that provides very sparse access to court assistance, if any. Colorado and Idaho, in unconfirmed reports, have acted to reduce-towards-elimination their law library programs following Lewis. And no doubt, other states have also.

Will there be prison law libraries in Florida two years from now? or even a year from now? Will the FDOC move to reduce or eliminate this essential access to Florida prisoners? The current program is undoubtedly one of the best remaining in

the U.S.

The hard work, time, and care that has in the past few years been devoted to making the program one of the best by those in the FDOC has been commendable. The frivolous lawsuits that some prisoners had filed have been virtually stopped now with the Prison Litigation Reform Act and Florida's version of that Act. It would be a shame and a mistake to take from prisoners their only remaining hope of being able to effectively challenge their criminal cases, or to remove the only remaining vestige of check and balance on conditions of confinement. Perhaps wiser heads will realize this and ensure that the current program in place in Florida continues, or actually improves. There can be no financial reason for reduction, as the law libraries in Florida's prisons are completely funded from monies earned off prisoners themselves and placed in the Inmate Welfare Trust Fund, so there is no burden on taxpayers in this regard. Updates on the Hooks case will be provided in this paper as they become available. ■

LAWSUIT FILED IN PRISON MURDER

In 1996, after an Orlando radio station held a bash-the-killer program where one caller reportedly offered a thousand dollar reward to any other prisoner to kill a specific prisoner, Donald Glenn McDougall was beat to death at Avon Park Correctional Institution. McDougall had been singled out as the "poster-prisoner" for the fanatical vigilante group that calls itself S.T.O.P. for Stop Turning Out Prisoners.

McDougall had been in prison since 1982 for a high profile case involving the death of a five year old girl. STOP members had held McDougall up as the prime example of why prisoners had to stop being released in Florida, even though McDougall was nowhere near being considered for release. This in turn had lead to the talk show bashing of McDougall on Orlando FM station WTKS 104.1 on the "BO and Russ Show." Other prisoner witnesses maintained that the talk show that had been heard at Avon Park CI directly contributed to prisoner Arba Barr using a steel horseshoe stake to beat McDougall to death just one week after the radio show aired. *FPLP* carried that story in Vol. 2, Iss. 6.

On October 1, 1998, two years to the date after McDougall's murder, his family filed a lawsuit against the radio station that broadcast the S.T.O.P. talk show. The lawsuit was filed in the Tampa federal district court for an unspecified amount of damages on behalf of McDougall's son.

The suit alleges that the talk show contributed to McDougall's murder; that the talk show hosts, Bo and Russ, had joked on the air about lynching McDougall, encouraged other prisoners to beat him, and pretended that he was already dead with a mock announcement of his demise.

No explanation has been provided why the Department of Corrections was not also named in the lawsuit. The suspected reason is the difficulty of litigation against any state agency that has unlimited taxpayer money to defend such suits. None of the principle actors from the radio station or the call-in STOP member who offered the reward for McDougall's killing were ever charged with solicitation to murder, perhaps because numerous sheriffs and state attorneys and other officials are themselves STOP members. ■

FDOC WITHDRAWS PROPOSED MAIL RULES

In the last two issues of *FPLP*, readers have been kept informed of a proposal by the Florida Department of Corrections (FDOC) to substantially amend the routine, legal and privilege mail rules of the department (*FPLP* Vol. 4, Iss.4, "RULE REVIEW, First Amendment Targeted;" Vol.4, Iss.5, PROPOSED MAIL RULES UPDATE.") After several months of concerted effort by *FPLP* and other advocates to oppose those proposed rule amendments, the FDOC published notice on October 9, 1998, that all of the proposed mail rules have been withdrawn from the rulemaking process without adoption. This means that the proposed mail rule amendments will not be adopted. This also means that the same mail rules that have been in effect for several years in the FDOC are still, and will remain, in effect and unchanged.

To briefly summarize this important situation for those readers who missed it or who are just subscribing: In May 1998 the FDOC proposed amending the routine mail rules of the department to prohibit prisoners from receiving postage stamps from family and friends through the mail; prisoners would have been prohibited from receiving more than 5 pages of any type written material besides personal letters through routine mail; blank greeting cards would have been prohibited through the mail; blank envelopes or paper would have been prohibited through the mail; photographs would have been limited to only five through the mail; and there were several other smaller proposed prohibitions and limitations that would have acted to substantially and negatively affect prisoners ability to send or receive correspondence from persons outside the prisons.

The FDOC also proposed several amendments to the legal and privilege mail rules that would have had serious consequences. Under the proposed rules, attorneys and other legal entities would have been prohibited from sending prisoners stamps for postage; written or published materials of a "non-legal" nature (which could only have been detected by reading the materials-which is against the law); photographs from attorneys or legal sources would have been prohibited unless related to the individual receiving prisoner's criminal case (civil case photographs would have been prohibited period); and prisoners would have been prohibited from receiving any other non-paper item, such as brief covers, paper clips, brief binders, page protectors, staples, etc., from any legal source through legal mail.

Most egregious, the FDOC proposed that all indigent prisoners would have to pay all outgoing legal mail postage or have a hold placed on their accounts for all legal mail postage costs. These costs later to be deducted if and when the indigent prisoner ever received any money, and allowing in such case the account to be reduced to zero to satisfy the postage "lien." Privilege mail, such as that from news media sources, legislators, governmental agencies, etc., would have been prohibited from containing anything besides letters, other written or printed materials would have been prohibited in privilege mail.

The FDOC received hundreds of

letters from prisoners and those on the outside of the prisons protesting these proposed amendments after *FPLP* published notice of them. Attorneys from Florida Institutional Legal Services, and other attorneys contacted by *FPLP* staff filed opinion letters on the proposed rules' legality. The Aleph Institute filed numerous letters concerning these proposed rules. And on July 14, 1998, a public hearing that had been requested was held which several people attended to oppose the proposed mail rules. Attending that meeting were attorneys Susan Cary and James Lohman, Paul Harvill (former CCR investigator), Mary Anne Hoffman (Kindred Spirits), Kasinal White (family member), Rev. Emory Hingst, and Sister Dorothea Murphy.

The result of all the opposition letters and the public hearing was that on August 21, 1998, the FDOC proposed some changes to the proposed rules. The proposed changes would have allowed prisoners to continue receiving postage stamps, 5 blank greeting cards or blank paper or envelopes would have been allowed through routine mail. But essentially, no changes were proposed to the proposed legal or privilege mail rules, which were equally or even more important than the routine mail proposed rules. The FDOC intended to adopt the legal and privilege mail proposed rules as they were initially proposed. This was not satisfactory.

These proposed rules would have virtually destroyed indigent and other prisoners access to the courts or attorneys, and their ability to send or receive information freely with news medias and other privilege mail sources would have been severely curtailed. Instead of relying on the FDOC to "do the right thing," *FPLP* staff filed a complaint with the Joint Administrative Procedures Committee (JAPC) about these proposed rules that did not appear to comply with established laws. The JAPC oversees all agency rule-making in the state of Florida. The JAPC indicated in correspondence with *FPLP* staff that they also saw legal problems with the proposed rules, specifically the proposal to make indigent prisoners pay all legal mail postage costs.

It is unconfirmed, but suspected that when the FDOC went to file the changed proposed mail rules for adoption in September, that the JAPC notified them of their concerns about the legality of some of the proposed provisions and that this opposition finally convinced the FDOC to withdraw the proposed rules in their entirety.

There is an important lesson to be learned from this situation. We all worked together and accomplished the unified goal of having these proposed rules stricken. Everyone who participated in this effort is commended. It is unfortunate when attempts are made to promulgate and adopt poorly thought out rules. It does happen however. We must stand prepared to respond when it does, and encourage others to get involved and be prepared to work together. Again, thanks all those who participated in this very important effort, and who responded to the call to action, you know who you are. ■

HUMAN RIGHTS IN THE USA AMNESTY INTERNATIONAL REPORT

Amnesty International has launched a year-long campaign to alert the world to growing conditions of human right abuses; abuses that are occurring in the United States. Although the U.S. has been assessed before in a global context in relation to human rights, this is the first time that the U.S. has been singled out by Amnesty International for scrutiny into its human rights abuses.

This campaign was kicked off accompanied by the release of a 153 page report by Amnesty International on October 5, 1998. The report provides comprehensive coverage of a wide range of human right abuses that are occurring in, or that are associated with, the United States. The report charges that thousands of Americans are being increasingly subjected to a persistent pattern of police brutality, that prison guards and immigration officials are increasingly subjecting prisoners and detainees-most of them minorities-to inhuman and degrading treatment and conditions of confinement, and that executions in the U.S. are biased against minorities.

The report also condemns the exporting of arms and security equipment by the U.S. to countries with a history of human rights abuses. The report condemns the increased indefinite incarceration of people coming to the U.S. seeking asylum. These, and other abuses, have caused the authors of the Amnesty International report to conclude that "there is a wide-spread pattern of human-rights violations in the USA" that must be addressed.

Much of the focus of the Amnesty campaign will be directed towards the disparate application of the death penalty in the United States. While most other industrialized nations have abolished the death penalty, the U.S. is actually increasing its use. Highlighted in the Amnesty report concerning the application of capital punishment was the problem that Florida has experienced with electrocution to execute condemned prisoners. Two times in the past ten years Florida's electric chair has malfunctioned, causing flames to leap from the heads of executed men.

The Amnesty report calls for the abolition of the death penalty, saying that capital punishment has become a "political campaigning tool." This was exampled shortly after the report's release in Florida with the political push during the November elections to include a state constitutional amendment to the ballot. That proposed amendment, entitled Preservation of the Death Penalty, garnered controversy and a challenge to the Florida Supreme Court by religious leaders seeking to block its placement on the ballot. During October eight plaintiffs, including Rev. Dr. James Armstrong, past president of the National Counsil of Churches; Thomas Horkan, general counsel for the FL Catholic Conference; and Kathy Barber Hersh, representing the South East Yearly Meeting of Friends, or Quakers, filed an action in Florida's high court represented by attorney Randall Berg. Political leaders, such as Rep. Victor Crist (R) and Rep. Tom Feeney (R) who sponsored the amendment, erupted to the threat of a challenge to the proposed amendment claiming that failure to pass the amendment could jeopardize the death penalty in Florida. Opponents of the measure pointed out the amendment is not necessary, that its purpose is to preserve electrocution over lethal injection, that existing state laws adequately provides for the death penalty in Florida, and that the amendment could actually delay executions through further court challenges.

On October 9th Amnesty's secretary general, Pierre Sane, made national news

when he called Texas a "conveyor belt of death." During 1997, Texas was noted for executing half of the people who were executed in the U.S. that year. Of the 42 men and women who were executed in the U.S. through August of this year, 11 of them were executed in Texas. The vast majority of executions are occurring in the Southern states. It is expected and hoped that we will hear much more from Amnesty International on these topics during this next year. ■

PRISONER ABUSE RESULTS IN SIMPLE DISMISSAL

In 1989 Anthony Dalem was employed by the Florida Department of Corrections. He rose up through the ranks quickly, and in February 1996 he was promoted to a Correctional Officer Lieutenant. A few months later, while serving as the shift supervisor at a Florida prison, Dalem responded to a radio transmission that two prisoners were fighting in a dormitory. By the time that Dalem had arrived, however, two other officers had already broken the fight up. One of the prisoners was handcuffed and removed from the scene. The other two officers then went into a holding cell to handcuff the other prisoner, Wayne Green. During this process, Dalem rushed past the two officers and begin to beat and curse Green, although Green was not resisting in any way. Dalem beat Green to the floor and then kicked him in the chest several times and at least once in the neck. Dalem then climbed up on a foot locker and twice jumped onto Green's back. After the beating Green had to be transported to a medical facility.

After the incident, one of the other officers went to Dalem and asked about filing a use of force report. Dalem told the officer that no report was necessary, that nothing had happened, and that in fact, that he, Dalem, was "not even present." Dalem also told the other officer that, where he had come from, they used force like that often, and that the officers at that institution should get use to it because it would be happening more often in the future. Dalem then told the officer that if the others did not have the stomach for that type use of force, they should find other work.

Unusually, this particular incident was exposed when four correctional officers informed on and witnessed against Dalem. He was eventually fired by the Department of Corrections, for abuse of a prisoner, willful violation of the rules, and giving false testimony. He was fired even though some other officers came forward claiming to also have been present and also stated that there was no abuse and that they saw nothing improper occur.

After being fired, Dalem filed an appeal to the state Public Employees Relations Commission arguing that there was no clear proof that he had done anything wrong. The Commission found that the witnesses against Dalem were the more convincing and that other convincing evidence supported the dismissal. The Commission noted that Dalem's witnesses had contradicted each other about where they actually were during the incident and about what they actually saw or did not see. The Commission upheld Dalem's being fired.

Displaying a typical arrogance and conviction that prisoners have no rights and that his actions were not wrong, Dalem had the nerve to file an appeal to the Forth District Court of Appeal (DCA) from the Employees Relations Commission's decision. The DCA reviewed the Commission's determination and also upheld the dismissal with a discussion of the facts of the case.

Criminal charges were not lodged against Dalem in this incident, he was simply, and surprisingly, fired. No disciplinary action is reported to have been taken against Dalem's "witnesses" who also had evidentially violated department rules by not reporting Dalem's actions, if they were present as they tried to testify, nor were they disciplined for their obviously false testimony in trying to cover for a fellow officer. A nurse had also apparently attempted to shield Dalem's abuse with failing to report the full extent of Green's injuries. No criminal charges were placed against any of the other officers or the nurse who supported Dalem either. The officers who testified against Dalem were Officers Krueger, Garver, Arpan, and Cochenour. They should be commended for coming forward. This case was reported in the *Florida Law Weekly* at: Dalem v. DOC and Public Employees Relations Commission, 23 FLW D2265 (Fla. 4th DCA 10/7/98). ■

POLICE BRUTALITY INCREASING

According to a report issued during July by the largest human rights organization in the U.S., there has been a widespread increase in police violence nationwide. Aggressive tactics initiated to reduce crime and credited with low crime rates in cities across the U.S. are also leading to increased police brutality, primarily targeting ethnic and racial minorities, according to the report issued by the Human Rights Watch.

The report examined police behavior in 14 cities, and alleges that federal and local governments are ignoring the growing number of cases of police brutality. The report notes that this problem will likely continue to grow as many Americans appear willing to accept more police brutality in exchange for reduced crime rates.

Police officials responding to the report argue that the findings and methodology used in compiling the report are faulty. These officials allege that the report fails to provide numbers on the total cases of police violence nationwide and does not address whether police officers have grown more violent in recent years.

The report, that includes detailed chapters on the surveyed cities, is available on the Internet at **www.hrw.org.** ■

LITERATURE REVIEW

Prisoners' Rights

The Law of Sentencing, Corrections, and Prisoners' Rights-In A Nutshell, 5th Edition
by Lynn S. Branham
West Group (Pub.) (1998) Paperback

This book is the completely new and revised edition of the popular West Nutshell Series concerning corrections and prisoners' rights. Written by Lynn S. Branham, a senior research scientist with the Institute of Government and Public Affairs at the University of Illinois, this latest edition includes a new and useful section dealing specifically with sentencing laws and the

rights of individuals during the criminal sentencing process. The sections dealing with corrections and prisoners' rights have been updated to include discussions of the most important changes in the law in these areas. Well written and easy to read, this book is excellent in providing a general overview of the subjects treated. Consisting of 390 pages, this book goes beyond discussing the present state of sentencing, corrections, and prisoners' rights and delves into proposals for more rational and cost-effective corrections and sentencing systems. Some examples of these proposals are the adoption by each state and the federal government of comprehensive community-corrections acts, the implementation of rational, capacity-based sentencing guidelines, and introducing victim-offender mediation into the sentencing and corrections phases. Of interest to those concerned about the future of legal developments in the covered areas, the author does not hesitate to address unresolved constitutional questions concerning sentencing and correctional law. This Nutshell volume is basically a compact version of an expanded casebook by the same author entitled The Law of Sentencing, Corrections, and Prisoners Rights (West Pub. Co. 1997) that is being used in college courses. Also included in this book is a chapter on the mechanics of litigating 42 U.S.C. Section 1983 civil rights actions that gives good coverage of the Prison Litigation Reform Act of 1996. Perhaps most useful to the readers of this review, however, is the balanced coverage provided in this book of the present state of what are termed "prisoners' rights," including First Amendment Rights, Court Access Rights, Prison Disciplinary Proceeding Rights, Cruel and Unusual Punishment Pohibitions, Searches and Seizures, etc. This a handy and useful book for both the experienced and inexperienced litigator.

Available from: West Group, ATTN: Order Fulfillment, 610 Opperman Drive, Eagan MN 55123. Price: $19.95, check or money order. Orders may be placed by phone toll-free at: 1-800-328-9352. ■

1999 ANNUAL STATE CAPITOL ROTUNDA RALLY

A CALL TO ACTION FOR: PRISONERS' FAMILY MEMBERS/FRIENDS/LOVED ONES AND ADVOCATES

MARCH 11, 1999 7:00AM TO 7:00PM

This past year, during April, approximately 100 family members, friends and advocates of Florida's prison population met in Tallahassee during the legislative session to attend a rally and demonstration project in the rotunda of the state capitol building. Organized by *Florida Prison Legal Perspectives*, and other groups affiliated with the Florida Prison Action Network (FPAN), that event was a great success. There were displays and information booths set up that examples many of the problems and unaccountable policies of the Florida Department of Corrections. Informational flyers and displays exposed how the families, friends and loved ones of Florida's prisoners have been and continue to be targeted by policies that have serious financial impact on what are largely low-income people, and that serve in cases to unnecessarily obstruct family and friend relationships. The range of topics covered family visitation to monopolization and gouging involved in the prison collect telephone situation.

During March 1999 another such capitol rotunda event is going to be held-bigger, better, and more powerful! YOU are invited and needed to be there, or to support the effort. If you have a family member or loved one incarcerated in Florida, this is your chance to join with others to demonstrate to our elected officials in Tallahassee that our voice will be heard. If you are an advocate of the civil and human rights of the incarcerated, this is your opportunity to meet with and network with others on the front line in this crucial work. For prisoners, this is the time that you can stand up and be counted, by encouraging your family members and friends to attend this event and be your voice, and it is the time that your direct support is needed through donations.

We can no longer be silent and hope it gets better, or wait for someone else to do something. Without opposition, there are those in power who intend to make it much worse. We all saw the political campaign ads this election based on "getting tougher on prisoners." It is time to make our voices heard above those who promote "get tough" prison policies for political gain or job security platforms. It is time that accountability be demanded of a prison system concerned only with perpetuating itself at the expense of lost lives and opportunities to change. It is time to come together and speak out against abuse and corruption in the system; speak out against the disregard and arbitrary treatment that prisoners' family, friends and loved ones are increasingly subjected to; and time to speak out against the double-taxation, gouging and monopolization that the Department of Corrections is increasingly engaged in.

Alone, not much can be done. That is why we call on YOU to join US to work together for ALL. Efforts are being taken to arrange car-pools and other transportation for those wishing to attend this upcoming Tallahassee event. Suggestions for displays and information booths are invited from free citizens and prisoners alike. Those unable to attend can support this effort by donations, every little bit helps as all the groups involved are non profit and will be depending on your support to make this event even more effective. Working together, change is possible. For more information, contact:

Florida Prison Legal Perspectives
P.O. Box 660-387
Chuluota FL 32766
407/568-0200
Email: fplp@aol.com

Families with Loved ones in Prison
710 Flanders Ave.
Daytona Bch. FL 32114
904/254-8453
Email: flip@afn.org

Florida Institutional Legal Services
1110-C NW 8th Ave
Gainesville, FL 32601
352/955-2260
Email: fils@afn.org

NOTABLE CASES
by Sherri Johnson and Brian Morris

Certificate of Appealability Appeal is Limited to Issue(s) Specified in Certificate

In a matter of first impression, the federal 11th Circuit Court of Appeals has determined that 28 U.S.C. s.2253(c)(3), of the Antiterrorism and Effective Death Penalty Act (AEDPA), requires that "the scope of review in a habeas appeal be limited to issues specified in the [Certificate of Appealability]."

A federal prisoner incarcerated in Florida, Jason Todd Murray, filed a s.2254 habeas corpus petition in the Middle District Court of Florida raising four claims: (1) a Forth Amendment violation; (2) ineffective assistance of counsel concerning the Fourth Amendment claim; (3) sentence based on erroneous and false information; and (4) double jeopardy violation. Without holding an evidentiary hearing, the District Court rejected all the claims and dismissed the habeas petition. Murray filed an appeal of the denial, and the 11th Circuit grated a Certificate of Appealability (COA) pursuant to 28 U.S.C. s. 2253(c), which specified that the COA was limited to one issue, the ineffective assistance claim.

However, in his appeal, Murray raised two issues: (1) whether his appeal could be limited to only issues specified in the COA; and, (2) whether the lower court erred in dismissing the ineffective assistance claim without an evidentiary hearing. The 11th Circuit addressed both issues on the appeal.

Examining the Certificate of Appealability limiting issue, the 11th Circuit noted that it was an issue of first impression for that court, but that it was not a difficult question to answer. Examining the plain language of 28 U.S.C. s. 2253(c)(3), which mandates specification of the issue(s) that the COA is granted for, the Court concluded that "there would be little point in Congress requiring specification of the issues for which a COA was granted if appellate review was not limited to the issues specified."

The Court also noted that before the passage of the AEPDA that the old Certificate of Probable Cause (CPC) requirement also limited appealable issues to those that were actually specified on the certificate. Thus, the Court held that "in an appeal brought by an unsuccessful habeas petitioner, appellate review is limited to the issues specified in the COA."

Concerning Murray's ineffective assistance claim, the Court determined that it will constue issue specification in light of the pleadings and other parts of the record, giving the Court authority to review all aspects of his counsel's performance in connection with the Forth Amendment claim as it related to Murray's plea conviction.

After examining the record, the Court found that even if Murray had been entitled to an evidentiary hearing on this claim, that he received such a hearing when he proceeded to a motion to withdraw plea hearing with new counsel, yet elected not to testify or present evidence to back up his claim of ineffective assistance. The Court noted that Murray had one opportunity to prove his allegations, which he failed to do. The Court opined that Murray cannot now change his allegations and expect to obtain another opportunity to raise an issue that should have been raised at the first opportunity to challenge his plea. The Court AFFIRMED the district court's dismissal of Murray's habeas corpus petition for those reasons. See: Murray v. U.S., 11 F.L.W. Fed. C1562; 145 F.3d 1249 (11th Cir. *7/7/98).*

Function of Error Coram Nobis Writ is to Correct Errors of Fact, Not Errors of Law

After being deported because of state trafficking convictions, Gustavo Eusse was convicted in federal court of illegal reentry into the United States. Subsequently, Eusse's state trafficking convictions were used to enhance his new federal sentence.

In his effort to obtain postconviction relief on the basis that his state trafficking convictions were obtained from an involuntary plea, Eusse applied to the state trial court for a writ of error coram nobis or, in the alternative, postconviction relief under Rule 3.850, Fla.R.Crim.P. The state trial court denied relief and an appeal was taken to the Third DCA.

On appeal, the district court found that its recent holding in Peart v. State, 705 So.2d 1059 (Fla. 3d DCA 1998), was that "the function of a writ of error coram nobis is to correct fundamental errors of fact, and that the writ is not available to correct errors of law." Id., at 1062. Similarly, the Eusse Court found that "[a]n irregularity in the plea colloquy is an error of law, for which the proper remedy is a Rule 3.850 motion." 23 FLW D1699. The Third DCA affirmed the denial of Eusse's petition for writ of error coram nobis and alternative 3.850 motion on the basis that Rule 3.850(b) requires such errors of law to be rasied within two years of the sentence becoming final and, prior to the filing of his application, more than two years had elapsed since Eusse's state trafficking convictions became final. See: Eusse v. State, ___So.2d ___, 23 FLW D1699 (7-22-98).

[Comment: Citing Ross V. State, 95 So.2d 594 (1957), the Peart Court correctly noted the well established rule that a party seeking a writ of error coram nobis cannot have any other remedy available. And, the Eusse Court reiterates that the function of the coram nobis writ is to correct fundamental errors of fact, not errors of law. A conflict decision arose, however, as to whether the voluntariness of a plea is an error of law or fact. The Fourth DCA was confronted with an involuntary plea claim brought in an application for writ of coram nobis. The Fourth DCA found that in one of Florida's earliest cases allowing coram nobis relief, Nickels v. State, 98 So. 502 (Fla.1923) (not cited by the Peart Court), Nickels claimed that his plea was involuntary entered because he feared being killed through mob violence. "After acknowledging that coram nobis is available only for errors of fact and not errors of law, the Florida Supreme Court held that a plea of guilty entered through fear or coercion is an error of fact which may be challenged by coram nobis." Gregersen v. State, So.2d ___, 23 FLW D1830 (8-5-98). Thus, based on Nickels, the Fourth DCA concluded that, under the circumstances of the Gregersen case, an involuntary plea may indeed be an error of fact, not an error of law. Ultimately, the Fourth DCA certified conflict with the Peart Court's decision. Review granted, Florida Supreme Court Case Numbers 92,629 (Peart v. State), 92,652 (Prieto v. State), and 92,653 (Ross v. State). It should be interesting to see just how the high court resolves this certified conflict. I'd almost be willing to bet that, if the court doesn't sidestep the issue, we'll be hearing that the voluntariness of a plea is a mixed question of law and fact. *FPLP* will be watching these cases closely with hopes of informing you, its reader, that a meaningful decision was entered.-bm]

Allegation of Timely Filing Necessitates Evidentiary Hearing

In a rare case involving the Mailbox Rule articulated in Haag v. State, 591 So.2d 614 (Fla.1992), the First DCA twice reversed Judge E. Vernon Douglas' order dismissing Charles Bray's Rule 3.850 motion as untimely.

From the onset, the First DCA found that Bray's allegations of timely filing were sufficient factual allegations warranting an evidentiary hearing. See Bray v. State, 702 So.2d 302 (Fla. 1st DCA 1997). Thus, the DCA initially reversed and remanded with simple directions for the trial court to conduct an evidentiary hearing with regard to Bray's allegations of timely filing.

Interestingly, on remand, the trial court, Judge Douglas, again dismissed the motion on the basis that the sworn allegations of timeliness were insufficient. Interesting because Judge Douglas entered his second order without conducting the evidentiary he was directed to conduct. In other words, Judge Douglas simply acted without regard to the DCA's mandate.

Bray was again forced to seek appellate review. Moreover, the First DCA was forced to reiterate its previous findings and, once again, reverse and remand, this time with specific instruction for Judge Douglas to afford Bray "the opportunity at an evidentiary hearing to prove (by prison mail logs or otherwise) that his motion was timely filed." See: Bray v. State, So.2d ___ 23 FLW D1897 (Fla. 1st DCA 8-13-98).

Frivolous Pleading Tunnel Vision

Joseph Saucer filed, with the First DCA, an application seeking a belated appeal on his judgment and sentence. Saucer claimed that, to no avail, he had timely requested his attorney to file an appeal. Saucer's petition for belated appeal was ultimately denied without a written opinion.

Subsequently, the state sought to penalize Saucer for seeking judicial redress through the courts. The state moved for an order forfeiting Saucer's gain-time in accordance with section 944.28(c), Florida Statutes (1997). The Saucer Court found that this statute authorizes the courts to impose sanctions if it finds that, among other things, "an appeal is frivolous or that the prisoner 'knowingly or with reckless disregard for the truth brought false information or evidence before the court.'" The First DCA was constrained to deny the state's request to have Saucer's gain-time declared forfeited because, like the Second DCA, the First DCA couldn't help but find that it is the role of the DOC, not the courts, to order the forfeiture of gain-time. The First DCA also found that section 944.279 which provides that '[t]his section does not apply to a criminal proceeding or a collateral criminal proceeding" must be read in pari materia with section 944.28(2). The First DCA, without expressly admonishing the state for filing its frivolous pleading, was constrained to find that there is no statutory authority for a gain-time forfeiture in Saucer's case. The First DCA did not hesitate, however, to advise the state on how it could seek perjury charges against Saucer. See: Saucer v. State, ___ So.2d, 23 FLW D1972 (8-17-98).

Error to Omit Requested Jury Instruction Deemed Harmless

Bobby Scott appealed his conviction and sentence imposed for allegedly possessing contraband in a correctional facility.

Correctional officers entered Scott's cell and searched his locker. The officers claimed they found cannabis hidden inside Scott's eyeglass case. Subsequently, criminal charges were filed against Scott.

Scott entered a not guilty plea and proceeded to trial. Scott's position at trial was that he had no knowledge of the presence of the substance. Not surprisingly, with his primary argument being that he had no knowledge of the physical existence of the substance, Scott may not have expressly argued that he also had no knowledge of the actual nature of the illicit substance. Apparently, both Scott and his attorney assumed it would only be logical to conclude that lack of any knowledge of the existence of the substance would encompass lack of knowledge as to the nature of the substance. Sounds reasonable!

The trial court erred in failing to provide Scott's requested instruction to the jury that, in order to convict, the jury must find he had knowledge of the illicit nature of the substance allegedly found in his possession. It's only reasonable to conclude that if one dosen't know the substance is even there, then, the nature of the illicit substance would also be unknown. Not so, according to the Fifth DCA. The Fifth DCA, while agreeing that the instruction should have been given, found that the failure to give the requested instruction, at least in this prisoner's case, was harmless error. See: Scott v. State, ___ So.2d ___, 23 FLW 1954 (Fla. 5th DCA 8-21-98).

Comment: Judge James C. Dauksch dissented based on his belief that the failure to instruct on the elements of the offense cannot be harmless error. *FPLP* believes Judge Dauksch's opinion should have been the majority opinion. Then again, FPLP would like to assume that one is deprived of his constitutional right to a fair trial when the state is not put to its burden of proving all the elements that the legislature says constitute the crime.-bm].

Ineffective Assistance Found In Consecutive HFO Sentencing

Jose Eustaquio Diego sought postconviction relief based on, among other things, his claim that the imposition of consecutive sentences was unauthorized because all of the crimes for which he was convicted were part of a single criminal episode. The trial court denied relief and Diego appealed.

On appeal, the Third DCA found that Diego's postconviction motion "should have been granted." The DCA found that Diego's trial attorney rendered ineffective assistance by failing to preserve the erroneous imposition of unauthorized consecutive sentences for appellate review. Based on its finding that counsel rendered ineffective assistance, the case was REVERSED AND REMANDED for resentencing. See: Diego v. State, ___ So.2d ___, 23 FLW D1979 (Fla. 3d DCA 8-26-98) (revised opinion).

[Comment: In his concurring opinion entered in Chojnowski v. State, Judge Altenbernd expressed his belief that "trial court's will soon see a flood of motions alleging ineffective assistance of counsel for failing to investigate jail

credit and to file a timely motion." 705 So.2d 915 (Fla. 2d DCA 1997). Thereafter, in a feeble attempt to limit the effects of that flood, the Florida Supreme Court threw out a few sandbags by announcing that certain credit time served issues could be raised in 3.800(a) motions. See State v. Nancino, 714 So.2d 429 (Fla.1998). Nonetheless, the high court needs to either throw out more sandbags or get the makers of the Criminal Appeal Reform Act of 1996 to provide funding for unlimited liferafts. In most cases, whether or not the crimes were committed in a single criminal episode can be determined from the face of the record. Yet, claims involving the imposition of unauthorized consecutive habitual offender sentences are not cognizable in Rule 3.800(a) proceedings. Thus, unless the high court throws out more sandbags, it appears that trial courts and attorneys will be forced to swim in ineffective assistance claims.-bm]

Invoking Right to Remain Silent Results in Criminal Prosecution

Kevin Burkes took an appeal from, among other things, the judgment and sentence imposed for the offense of obstructing or opposing an officer without violence founded upon Burkes' refusal to provide his name to law enforcement officers after he was lawfully arrested. The question addressed on appeal was whether an arrested individual's right to remain silent also permits a refusal to provide one's name to law enforcement when asked. While correctly noting that "the right to remain silent means just that and has no exceptions," the Second DCA nonetheless affirmed Burkes obstruction conviction. As strange as it may sound, the Burkes Court found that "after an individual has been lawfully arrested, he must provide his name or otherwise identify himself when asked by law enforcement officers." This exception to the constitutional right to remain silent was made more egregious when the Court noted that "section 843.02, Florida Statutes (1992), entitled 'Resisting officer without violence to his or hr person' is the proper statute with which to charge an individual with obstruction for failure to give their name or otherwise identify themselves." See: Burkes v. State, ___ So.2d ___, 23 FLW D2178 (Fla. 2d DCA 9-16-98)

Unfair Prejudice Hits Hurdle

Terry Kenneth Brown proceeded to trial by jury where he was ultimately convicted of the offense of possession of a firearm by a convicted felon. At trial, over Brown's objection, the State was allowed to introduce certified copies of Brown's prior felony convictions into evidence. In other words, even though Brown offered to stipulate that he in fact had prior felony convictions, the State was permitted to inform the jury of the actual number and, even worse, actual nature of Brown's prior convictions.

The Florida Supreme Court found that "[w]hile there is obviously some risk of prejudice inherent in establishing that a defendant is a convicted felon, our concern here is dealing with the unnecessary risk of prejudice that comes from disclosure of the number or nature of the prior convictions." The Brown Court held that "when a criminal defendant offers to stipulate to the convicted element of the felon-in-possession of a firearm charge, the Court must accept that stipulation, conditioned by an on-the-record colloquy with the defendant acknowledging the underlying prior convictions and acceding to the stipulation. See: Brown v. State, ___ So.2d ___, 23 FLW S535 (Fla. 10-15-98).

[Comment: Prior to the Brown decision, the State was permitted to enter into evidence prejudicial documents relecting the exact number and the exact nature of the prior felony convictions. Indeed, prior to this case, both the trial court's and the appellate court's mistakenly read the decisions entered in Parker v. State, 408 So.2d 1037 (Fla.1982), and Williams v. State, 492 So.2d 1051 (Fla.1986), "as adopting virtually a per se rule mandating admission of the particulars of a defendant's actual prior record in felon possession cases." Brown, at S537. It's only reasonable to believe that, knowing such prejudicial evidence would be admitted, numerous individuals elected to enter a plea and hope for judicial leniency rather than take the slim chance that the jury would not return a guilty verdict for the wrong reason. Fortunately, the court's long standing practice of condoning, and in fact requiring, such unfair prejudice may have finally been put to rest.-bm]

Lack of Jurisdiction May Be Raised At Any Time

In 1978 Wilson Tony Harrell pleaded guilty (pursuant to an agreement that he would receive a sentence of time served) to a 1975 offense of "accessory after the fact to first degree murder." Prior to entering his plea, Harrell had proceeded to trial by jury which resulted in a hung jury. Over Harrell's objection, the trial court declared a mistrial. When the trial court moved to reschedule a new trial, Harrell petitioned the appellate court for a writ of prohibition. Interestingly, with regard to Harrell's petition, on November 9, 1978, the appellate court issued an order to show cause. Thus, because the show cause order had been issued, the trial court was divested of its jurisdiction. "Apparently unaware of the show cause order, Harrell agreed to plea to being an accessory and was adjudicated on December 20, 1978." The First DCA denied Harrell's petition for writ of prohibition on December 22, 1978.

Several years' later, Harrell found himself imprisoned in federal custody on unrelated convictions. During preparation for a federal parole hearing, Harrell obtained documents which exonerated him in the 1975 murder and accessory offense. Thereafter, arguing that the trial court lacked jurisdiction to enter an adjudication, Harrell petitioned for a writ of error coram nobis which the trial court, treating the petition as a motion under Florida Rule of Criminal Procedure 3.850, summarily denied. The Fifth DCA, however, found that Harrell's petition raised a fundamental defect which, if true, would require the conviction to be set aside. Citing a long line of cases in support of its position, the Fifth DCA held that "lack of jurisdiction can be raised at any time." The case was REVERSED AND REMANDED for an evidentiary hearing. See: Harrell v. State, ___ So.2d , 23 FLW D2160 (Fla. 5th DCA 9-18-98).

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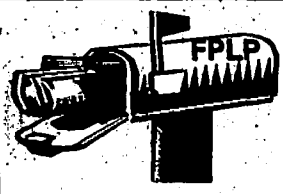

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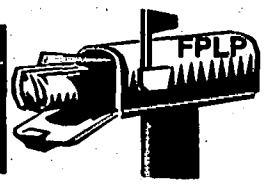

FPLP, Just wanted to thank you for your knowledge that you publish and trying to help us and our family's out. I've been in prison for many years and have seen a lot of changes making things worse and worse. Little by little taking more and more of our restricted freedom and making our loved ones suffer. Always trying to tear the family apart. Separating, dividing, and then conquering! Keep up the good work and I hope one day these supposed Convicts start sticking together. Peace-Out. B.S. CCI

Dear FPLP, I just finished reading my May-June 1998 issue of FPLP, and I again praise you and all the staff at FPLP for all the hard work and dedication ya'll put forth in putting out this newsletter.

I read with great interest the "CYBER-CONS" article on the front page of the May-June issue of FPLP. I'm surprised that FPLP has taken the position that ya'll have toward the FDOC WEB-SITE. I for one, and about everyone I know, or at least associate with feel that this is one of the best things the FDOC has did in years. I disagree with FPLP's position toward the FDOC WEB-SITE for all the same reasons FPLP holds against it.

All this information, plus more, that is on the FDOC WEB-SITE has always been available to the public. Before the WEB-SITE came out all someone had to do, was to write, phone, or apply in person to FDOC and request it. I don't recall ever hearing of anyone snivel about that source of information. Why then, snivel now that its on the WEB-SITE. The only people I've heard snivel about the WEB-Site here are some know child molesters, and a few people that are running scams on people outside. This WEB-SITE will surely bring to a halt, a lot of mail scams that goes on.

In my opinion, the WEB-SITE doesn't go far enough. I'd like to see more information included on it. Society is lead to believe we in here are all child molesters and serial killers, that we're all total screw ups. For this reason, the accomplishments we accomplish, such as advancing in education, completion of vocational courses, and any other self-help programs that we participate in should be included on the WEB-SITE. I'm sure that if our accomplishments were included, that our disciplinary record would also have to be. I do not have a problem with that.

I ask that you and your staff at FPLP rethink your position towards the FDOC WEB-SITE. This WEB-SITE can be very helpful to all of us in here, that has worked hard and strived in the right direction toward getting out of prison.

I ask that FPLP to promote the FDOC WEB-SITE, and help through your growing influential power to get more information on it. Thank You, CG PCI

Dear Staff: My name is Glenn Spradley. I am an inmate of the Florida prison system. Currently, I am incarcerated at CCI. What I want to sound off about is the way the Florida parole Commission arbitrarily and capriciously deny inmates parole when their presumptive parole release date arrives.

I have been in prison since June of 1980. When I initially saw the parole examiner on March 31,1981, he recommended my presumptive parole release date (PPRD) to be November 7, 2000, and the Parole Commission agreed on this date. As a result of good institutional conduct from March 31, 1981 till June 6, 1989, the Parole Commission reduced my PPRD two years and established it to be May 7, 1998. On August 27, 1998, I saw the Parole Examiner who conducted an effective parole release date interview and recommended that my PPRD—Nov.7, 1998, be my effective parole release date. On Oct. 7,1998, I received correspondence from the Commission Clerk notifying me that "[t]he Commission has decided NOT to authorize [my] effective parole release date for the following reason(s):...[f]ailed to make a positive finding as required by s. 947.18, Florida Statutes, and has referred your case to the Commission for extraordinary review (see Rule 23.21.0155)." This is not fair, especially in light of the fact that my institutional record indicates that I will remain free once paroled. During my 19 years of imprisonment, I have gotten only one disciplinary report, and that was in August of 1991, over eight years ago. Also, I have participated in amended treatment programs that relate to the offenses for which I was convicted—aggravated assault, attempted murder, false imprisonment, and trespassing of a dwelling. I have also successfully completed two vocational courses. Finally, I had overcome the hurdle of getting a verifiable place of housing and employment. Therefore, I am very disappointed. GS.CCI

Dear FPLP, Thank you for publishing a wonderful newsletter to keep us up to date on what's happening within the FDOC and on the laws which affect us everyday. I've been admitted to Okeechobee's CM one status for seven months now and have experienced numerous forms of neglect. We are forced to be fully dressed Monday thru Friday 7:00 AM to 5:00 PM our cells, even with the temperatures reaching up to 100 deg.. If we don't comply, disciplinary reports are fabricated and forms of abuse takes place from getting gassed, being stripped of all personal and state property (except for boxers and T-shirts), and even physical abuse and electric shock.

The law library does not provide adequate assistance and legal materials to CM unit. When requesting for sick-call, the medical department delays treatment for up to four weeks, but charges your account the day you signed up for sick-call. When all matters are grieved, the outcome and results are always denied. Even the Secretary of FDOC in Tallahassee denies the grievances, always stating that the institution level was appropriate. These actions by FDOC has deprived me and numerous other inmates our liberty which is supposed to be guaranteed by the constitution, of the United States. PW OCI

[All letters received cannot be printed because of space restrictions. Unsigned letters will not be printed or letters that obviously are not intended for publication. Please indicate in your letters if you do not want it printed, otherwise FPLP reserves the right to print all letters received and to edit letters for length.]

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ABOUT GARY "AL" PICCIRILLO

Gary "Al" Piccirillo has served over 14 years in such state prisons as Sing Sing and Raiford. While incarcerated, he became a popular jail house lawyer successfully advocating the rights of his fellow prisoners. See *Department of Corrections v. Piccirillo,* 474 So.2d 199 (Fla. 1st DCA *1985);Department of Corrections v. Adams & Piccirillo,* 458 So.2d 354 (Fla. 1st DCA *1984);Piccirllo v. Wainwright,* 382 So.2d 743 (Fla. 1st DCA 1980), and *Adams & Piccirillo v. James,784* F.2d 1077(11th Cir. 1985).

Following his release, from the Florida State prison system in 1983 and after years of college education and hard work, his criminal lifestyle has changed. He is now the President of Piccirillo & Son, Inc., the Editor and Publisher of The Florida Post-Conviction Relief Update, Co-Author of Florida Post-Sentencing, Practice and Procedure, Capital Legal Publishing (1995), and the Florida Department of Corrections Law Clerk Training Manual (1996). He has written articles relating 10 access to courts and post-conviction relief in such legal publications as the Florida Defender and the Informant. He has lectured in Kiser College on the subjects relating to post-conviction relief, criminal law, criminal appeals, gain-time, civil rights, and the history of guideline sentencing in Florida.

He has served as an expert witness and consultant for the Florida Department of Corrections in matters relating to access to courts and post-conviction relief, has trained over 300 inmate law clerks, and has served as a Qualified Representative before the Department of Administration, Division of Administrative Hearings successfully representing prisoners in administrative rule challenge proceedings-against the Florida Department of Corrections. He has served as Executive Director for residential transitional inmate release programs with grants awarded by the Governor's Office of Criminal Justice Services for Ohio, and the United States Department of Justice. He has more than 25 years of experience in post-conviction relief, criminal appeals, and corrections related matters. He has testified before the United States District Court, Middle District of Florida as an expert on access to the courts and such related matters as post-conviction relief in the civil rights case of *Hooks v. Singletary,* 775 F.2d 1433 (11th Cir. 1985).

While with the law firm of Daley & Associates, he coordinated Ihe litigation in such cases as *State v. Leroux,* 689 So.2d 235 (Fla. 1996); *Maddry v. State,* 702 So.2d 1314 (Fla.1997), and *Guisasola v. State, 667So.2d 248 (Fla. 1st DCA 1995).*

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The Florida Corrections Commission is composed of eight citizens appointed by the governor to oversee the Florida Department of Corrections, advise the governor and legislature on correctional issues, and promote public education about the correctional system in Florida. The Commission holds regular meetings around the state which the public may attend to provide input on issues and problems affecting the correctional system in Florida. Prisoners families and friends are encouraged to contact the Commission to advise them of problem areas. The Commission is independent of the FDOC and is interested in public participation and comments concerning the oversight of the FDOC.

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Florida Resource Organizations

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Web Site: www.afn.org/fils/

Families with Loved
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