IN THE SUPREME COURT OF FLORIDA

LOUIE L. WAINWRIGHT and JIM SMITH, Petitioners,	)	
v.	)	CASE NO. 62,685 5DCA NO. 82-866
JAMES LAMONT TAYLOR, Respondent.	)	

PETITIONERS' BRIEF ON JURISDICTION

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AUTHORITIES CITED

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

Respondent, James Lamont Taylor, as Petitioner in the District Court of Appeal of the State of Florida, Fifth District, filed an original Petition for Writ of Habeas Corpus asserting an entitlement to immediate release from the custody of Louie L. Wainwright, Secretary of the Department of Corrections of Florida. Taylor attributed his alleged illegal detention to an erroneous computation by the Florida Parole and Probation Commission of its presumptive parole release date such that, had the presumptive parole release date been calculated in the manner which Respondent contended was required, he would have been eligible for parole (App. 1-24). The District Court of Appeal of the State of Florida, Fifth District, issued its Order to Show Cause on July 16, 1982, directed to Louie L. Wainwright and Jim Smith (App. 25). Petitioners, Louie L. Wainwright and Jim Smith, as Respondents in the District Court of Appeal, Fifth District, filed a Motion to Dismiss or, Alternatively, to Substitute Proper Party (App. 26-28). Without first disposing of said motion and affording Petitioners herein an opportunity to respond to the merits of Taylor's claim, the District Court of Appeal, Fifth District, granted the writ and ordered Petitioner Louie L. Wainwright as Secretary of the Department of Corrections to forthwith "release the Petitioner, James Lamont Taylor, from custody subject to the standard provisions of parole in such cases." (App. 29-34).

Petitioner Louie L. Wainwright as Respondent in the

district court, filed a Motion for Rehearing or for Clarification of Decision on August 18, 1982 (App. 35-40) which was denied by Order of the District Court of Appeal, Fifth District, dated September 2, 1982 (App. 41). Thereafter, a timely Notice to Invoke Discretionary Jurisdiction was filed by Petitioners seeking review in this Honorable Court (App. 42).

ISSUE PRESENTED

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, EXPRESSLY AND DIRECTLY CONFLICTS WITH PRIOR DECISIONS OF OTHER DISTRICT COURTS OF APPEAL OR THIS COURT BY ANNOUNCING A RULE OF LAW WHICH CONFLICTS WITH THE RULE OF LAW PREVIOUSLY ANNOUNCED BY OTHER COURTS, APPLYING A RULE OF LAW TO PRODUCE A DIFFERENT RESULT IN A CASE WHICH INVOLVES SUBSTANTIALLY THE SAME CONTROLLING FACTS AS THE PRIOR CASES AND/OR BY ACCEPTING AN EARLIER DECISION AS CONTROLLING PRECEDENT IN A SITUATION MATERIALLY AT VARIANCE WITH THE CASE RELIED ON?

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, EXPRESSLY AND DIRECTLY CONFLICTS WITH PRIOR DECISIONS OF OTHER DISTRICT COURTS OF APPEAL OR THIS COURT BY ANNOUNCING A RULE OF LAW WHICH CONFLICTS WITH THE RULE OF LAW PREVIOUSLY ANNOUNCED BY OTHER COURTS, APPLYING A RULE OF LAW TO PRODUCE A DIFFERENT RESULT IN A CASE WHICH INVOLVES SUBSTANTIALLY THE SAME CONTROLLING FACTS AS THE PRIOR CASES AND/OR BY ACCEPTING AN EARLIER DECISION AS CONTROLLING PRECEDENT IN A SITUATION MATERIALLY AT VARIANCE WITH THE CASE RELIED ON.

Petitioners recognize that the requisite conflict to afford a basis for discretionary review in this Court must be express and direct as required under Article V, Section 3, of the Florida Constitution, as amended April 1, 1980. Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Further, Petitioners recognize that the role of the Supreme Court of Florida in conflict certiorari jurisdiction:

> . . . [I]s to stabilize the law by review of decisions which form patently irreconcilable precedents. Florida Power and Light Company v. Bell, 113 So.2d 697 (Fla. 1959).

Harmonization and clarification are therefore the primary considerations in this area. Ansin v. Thurston, 101 So.2d 808 (Fla. 1958).

This Court has formulated a series of well established rules for determining whether conflict of decisions exist. Generally speaking, the principal situations justifying the

exercise of conflict certiorari jurisdiction include:

> (1) The announcement of a rule of law which conflicts with a rule of law previously announced by the supreme court or a district court of appeal, or
>
> (2) The application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as the prior case, or
>
> (3) On a ground that the decision in this case creates a conflict by expressly accepting an earlier decision as a controlling precedent in a situation materially at variance with the case relied on. Neilson v. City of Sarasota, 117 So.2d 731, 734 (Fla. 1960); McBurnette v. Playground Equipment Corp., 137 So.2d 563, 565 (Fla. 1962).

Petitioners assert that the decision of the District Court of Appeal, Fifth District, in the instant case, expressly and directly conflicts with the prior decision of this Court in Moore v. Florida Parole and Probation Commission, 289 So.2d 719 (Fla. 1974), by announcing a rule of law different from the rule of law announced by this Court in Moore. Petitioners further assert that the decision of the District Court of Appeal, Fifth District, expressly and directly conflicts with the decisions of the District Court of Appeal, First District, and this Court in Daniels v. Florida Parole and Probation Commission, 401 So.2d 1351 (Fla. 1st DCA 1981); Gobie v. Florida Parole and Probation Commission, 416 So.2d 838 (Fla. 1st DCA 1982); and Hargrave v. Wainwright, 388 So.2d 1021 (Fla. 1980), by applying a rule of law to produce a different result in a case involving substantially the same controlling facts as the prior cases. Finally, Petitioner asserts that the decision of the District

Court of Appeal, Fifth District, expressly and directly conflicts with the decision of this Court in Moore, supra, by accepting Moore as controlling precedent in a situation materially at variance with the facts of said case.

Petitioners submit that the district court in the instant case effectively announced a rule of law different from that previously announced by this Court in Moore when the court ordered Louie L. Wainwright, Secretary of the Department of Corrections of Florida, to "forthwith release the Petitioner, James Lamont Taylor, from custody subject to the standard provisions of parole in such cases." The decision of the district court ignores the obvious practical problems with ordering the parole of an inmate when the Florida Parole and Probation Commission is not a party to the proceeding. Further, the decision of the district court invades the discretion of the Florida Parole and Probation Commission and violates the separation of powers doctrine. This Court in Moore recognized that the courts of this state could only compel the agency with parole powers to exercise its discretion as to the granting or denial of parole but could not judicially compel the granting of parole. The decision of the district court in the instant case announces a new role of law whereby the district court has effectively announced that judicial paroles are an acceptable method for disposing of petitions for writ of habeas corpus alleging erroneous presumptive parole release date calculations.

Petitioners further submit that the decision of the district court applies the rule of law that exhaustion of

administrative remedies is a prerequisite to a petition for writ of habeas corpus to a case involving substantially the same facts as Daniels and Gobie but nonetheless reaches a different result. The district court was apprised by the Petitioners herein that Taylor had not exhausted his administrative remedies. As noted by Petitioners in their Motion to Dismiss or, Alternatively, to Substitute Proper Party (App. 27) the Petition for Writ of Habeas Corpus, on its face, established that no review of the commission action setting Taylor's presumptive release date was sought. Further, Petitioners noted that Taylor had alleged in his petition only that he sought review of the commission action of May 25, 1982, wherein the Florida Parole and Probation Commission rejected the hearing examiners recommendation that the presumptive release date be reduced. However, the review request referred to by Taylor in his petition was apparently submitted some time prior to March 17, 1982, prior to the hearing examiner's recommendation and commission determination that the presumptive parole release date should not be reduced but more than sixty (60) days after the agency action of May 21, 1980, establishing the presumptive parole release date. Nonetheless, even though agency review and an appeal therefrom was not sought by Taylor, the district court in its Decision construed Taylor's untimely review request as an exhaustion of administrative remedies. Petitioners would submit that Daniels and Gobie, in applying the rule of law that exhaustion of administrative remedies is a prerequisite to a petition for writ of habeas corpus, have

established that utilization of administrative review and a subsequent administrative appeal pursuant to § 120.68, Fla. Stat. (1981), are required to exhaust administrative remedies prior to utilization of habeas corpus to review agency action. The instant decision effectively eliminates any requirement that administrative review and appeal be sought and utilized in a timely fashion but instead accepts the failure to utilize available and adequate administrative review procedures as the substantial equivalent of exhausting said remedies. Further, the ecision of this Court fails to recognize that habeas corpus may not be used as a vehicle to raise for the first time issues which could have been raised on appeal. Accordingly, the exhaustion requirements cannot be ignored by the district court and treated as the substantial equivalent as exhaustion of administrative remedies when the failure to pursue such remedies results in a waiver to raise said issue by habeas corpus. Hargrave, supra.

Finally, Petitioners submit that the district court decision expressly and directly conflicts with Moore by accepting Moore as controlling precedent in a situation materially at variance with the facts in Moore. In Moore, this Court stated that it could not order the Florida Parole and Probation Commission to grant parole, which was a discretionary function reserved to the Florida Parole and Probation Commission, but could only require that the habeas petitioner be considered for parole free of any proper influences affecting the parole decision. In the instant case, the district court

violated this precept in dramatic fashion by usurping the commission's discretionary function to decide upon parole by ordering the release of Taylor after its own computation of a tentative parole release date. The Florida Parole and Probation Commission, although not a party to the proceeding, was never given the opportunity to decide upon the granting or denial of parole under the appropriate statutory criteria. The court in Taylor, therfore, did exactly what this Court in Moore said should not be done - it ordered the grant of parole. The actual effect of the Taylor decision is to establish, contrary to statute, a judicial parole power.

This Honorable Court should exercise its discretion and accept the instant case for review in light of the serious issues presented. Of paramount importance are issues related to the power of the judiciary to usurp the authority of the Florida Parole and Probation Commission to grant or deny parole and the continued viability of the requirement of exhaustion of administrative review procedures in light of this decision. Absent clarification of these issues by this Court, the courts of this state will be inundated with habeas corpus and mandamus proceedings where the petitioners have either waived, by failure to pursue in a timely fashion, administrative review procedures or have not yet utilized same although still available. The obvious result would be that the already overburdened court system of this state would be deluged with original proceedings which either could or should have been resolved in a less burdensome manner. Accordingly, Petitioners respectfully request

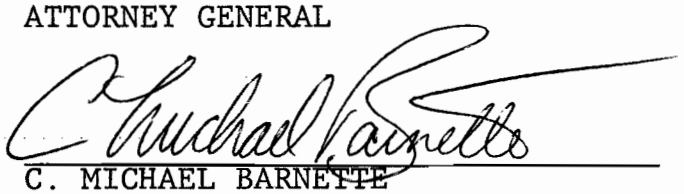
this Honorable Court accept jurisdiction in this cause.

CONCLUSION

Based on the foregoing argument and authorities cited herein, Petitioner respectfully requests this Honorable Court exercise its discretion and accept jurisdiction to review the Decision of the District Court of Appeal, Fifth District.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioners' Brief on Jurisdiction has been furnished, by mail, to James Lamont Taylor, Respondent, at 2306 N.W. 16th Street, Ft. Lauderdale, Florida 33301, this 7th day of October, 1982.

C. MICHAEL BARNETTE
COUNSEL FOR PETITIONERS