

IN THE SUPREME COURT OF FLORIDA

FLORIDA PAROLE AND )  
 PROBATION COMMISSION, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 WILLIAM H. PAIGE, )  
 )  
 Respondent. )

CASE NO. 64,144

**FILED**

OCT 26 1983 ✓

SID J. WHITE  
CLERK SUPREME COURT

PETITIONER'S REPLY BRIEF

By \_\_\_\_\_  
Chief Deputy Clerk

BY: ENOCH J. WHITNEY  
 General Counsel  
 Florida Parole and  
 Probation Commission  
 1309 Winewood Blvd. Bldg. 6  
 Tallahassee, Florida 32301  
 (904) 488-4460

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
CITATIONS OF AUTHORITY	ii
STATEMENT OF THE CASE AND FACTS	1
ISSUE PRESENTED	2
WHETHER THE COMMISSION MAY DECLINE TO AUTHORIZE A RECOMMENDED EFFECTIVE PAROLE RELEASE DATE, AND THEREBY DENY PAROLE, PURSUANT TO §947.18, FLORIDA STATUTES, SOLELY UPON THE BASIS OF INFORMATION WHICH WAS PREVIOUSLY CONSIDERED, OR AVAILABLE FOR CONSIDER- ATION, IN SETTING THE INMATE'S PRESUMPTIVE PAROLE RELEASE DATE.	
ARGUMENT	3
READ AS A WHOLE, CHAPTER 947 OF THE FLORIDA STATUTES AUTHORIZES THE COMMISSION TO DENY PAROLE RELEASE PURSUANT TO SECTION 947.18, FLORIDA STATUTES, SOLELY UPON THE BASIS OF INFORMATION WHICH WAS PREVIOUSLY CONSIDERED, OR AVAILABLE FOR CON- SIDERATION, IN SETTING THE INMATE'S PRESUMPTIVE PAROLE RELEASE DATE (PPRD) NOTWITHSTANDING THE FACT THAT THE COMMISSION'S DECISION TO DENY RELEASE IS NOT BASED ON ANY INFORMATION OR REPORTS OF UNFAVORABLE INSTITUTIONAL CONDUCT RECEIVED AFTER THE PPRD IS ESTABLISHED AND NOTWITHSTANDING THE FACT THAT SUCH ACTION RENDERS THE PPRD INEFFECTIVE FOR OBTAINING PAROLE RELEASE.	
CONCLUSION	6
CERTIFICATE OF SERVICE	7

CITATIONS OF AUTHORITY

PAGE

MAY V. FLORIDA PAROLE & PROBATION COMMISSION,  
435 So.2d 834,837 (Fla. 1983)

4

STATEMENT OF THE CASE AND FACTS

Petitioner readopts the Statement of the Case and Facts set forth in the Brief of Petitioner on the Merits at pages 2-6, as clarified by Respondent on page 2 of his Brief on the Merits.

ISSUE PRESENTED

WHETHER THE COMMISSION MAY DECLINE TO AUTHORIZE A RECOMMENDED EFFECTIVE PAROLE RELEASE DATE, AND THEREBY DENY PAROLE, PURSUANT TO §947.18, FLORIDA STATUTES, SOLELY UPON THE BASIS OF INFORMATION WHICH WAS PREVIOUSLY CONSIDERED, OR AVAILABLE FOR CONSIDERATION, IN SETTING THE INMATE'S PRESUMPTIVE PAROLE RELEASE DATE.

## ARGUMENT

READ AS A WHOLE, CHAPTER 947 OF THE FLORIDA STATUTES AUTHORIZES THE COMMISSION TO DENY PAROLE RELEASE PURSUANT TO SECTION 947.18, FLORIDA STATUTES, SOLELY UPON THE BASIS OF INFORMATION WHICH WAS PREVIOUSLY CONSIDERED, OR AVAILABLE FOR CONSIDERATION, IN SETTING THE INMATE'S PRESUMPTIVE PAROLE RELEASE DATE (PPRD) NOTWITHSTANDING THE FACT THAT THE COMMISSION'S DECISION TO DENY RELEASE IS NOT BASED ON ANY INFORMATION OR REPORTS OF UNFAVORABLE INSTITUTIONAL CONDUCT RECEIVED AFTER THE PPRD IS ESTABLISHED AND NOTWITHSTANDING THE FACT THAT SUCH ACTION RENDERS THE PPRD INEFFECTIVE FOR OBTAINING PAROLE RELEASE.

Respondent's argument misses the point identified on page 20 of Petitioner's Brief on the Merits that under the Objective Parole Guidelines Act and the Commission's Rules 23-21.15 and 23-21.155, Fla. Admin. Code, all inmates eligible for parole consideration will receive Presumptive Parole Release Dates (PPRDs) which will be periodically reviewed and which will ordinarily become their Effective Parole Release Dates (EPRDs) absent new information or unfavorable institutional conduct. In a small number of extraordinary cases however, and pursuant to the procedures contained in the subject rules, the full Commission may decline to authorize an EPRD solely upon its determination that the prisoner does not meet the requirements of §947.18, Florida Statutes.

Respondent Paige is such an extraordinary case. In light of his criminal history and his previous violations

of Mandatory Conditional Release (MCR), the absence of new information or unsatisfactory institutional conduct should not preclude the Commission from denying parole to such an inmate where the Commission is unable to make a finding that there is a reasonable probability that, if placed on parole, the inmate will live and conduct himself as as respectable and law abiding person and that his release will be compatible with his own welfare and the welfare of society. Section 947.18, Florida Statutes.

The Commission should not be required to wear blinders, as Respondent in effect argues, in determining whether it can make the foregoing findings in accordance with Section 947.18. Respondent's Brief's Appendix, pages 2 and 3, sets forth the Commission Action of May 24, 1983, and identifies the specific reasons for the Commission's inability to make the required findings under Section 947.18 in Respondent's case. Respondent's argument that the Commission should be required to "forget" his criminal history in making the Section 947.18 findings because of the enactment of the Objective Parole Guidelines Act ignores the Court's holding in May v. Florida Parole and Probation Commission, 435 So.2d 834, 837 (Fla. 1983), as follows:

It is true that the commission has developed and implemented, as required by law,<sup>6</sup> objective parole guidelines as the criteria upon which parole decisions are made. Nevertheless chapter 947, Florida Statutes, taken as a whole, leaves the ultimate parole decision to the discretion, albeit

guided by its own administrative rules, of the commission.

We are unable to assume, as May would have us, that the implementation of objective parole guidelines has rendered section 947.18 mere surplusage. Indeed, the use of the terms "guidelines" and "presumptive parole release date" clearly conveys the message that the final parole decision will depend upon the commission's finding that the prisoner meets the conditions provided in section 947.18.

We conclude that, had the commission applied the pre-1981 guidelines in setting May's PPRD following his 1981 offense, it could still have exercised its discretion to delay the PPRD beyond that provided by the guidelines.  
(Emphasis supplied.)

---

<sup>6</sup> §947.165, Fla.Stat. (1979).

<sup>7</sup> §947.18, Fla.Stat. (1979), in particular, allows the commission a repository of discretion in the ultimate parole decision. It provides:

947.18 Conditions of Parole. - No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison. No person shall be placed on parole until and unless the commission shall find that there is reasonable probability that, if he is placed on parole, he will live and conduct himself as a respectable and law abiding person and that his release will be compatible with his own welfare and the welfare of society. No person shall be placed on parole unless and until the commission is satisfied that he will be suitably employed in self-sustaining employment, or that he will not become a public charge. The commission shall determine the terms upon which such persons shall be granted parole. In addition to any other lawful condition of parole, the commission may make the payment of the debt due and owing to the state under §960.17 a condition of parole, subject to modification based on change of circumstances.




CONCLUSION

Petitioner submits that its decision to deny Respondent a parole under Section 947.18 must be viewed in light of the latter's criminal history and his previous violations of mandatory condition release (MCR), and that the absence of new information received subsequent to the establishment of the inmate's presumptive parole release date does not prevent Petitioner, in the sound exercise of its discretion, from determining that Respondent does not qualify for parole at this time under Section 947.18 criteria due to his criminal history and prior violations of MCR.


Petitioner requests that the certified question be answered in the affirmative.

Respectfully submitted,

  
\_\_\_\_\_  
ENOCH J. WHITNEY  
General Counsel  
Florida Parole and Probation  
Commission  
1309 Winewood Blvd., Bldg. 6  
Tallahassee, Florida 32301  
(904) 488-4460

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing to Thomas B. Woodward, Esquire, Lager & Woodward, P.C., P. O. Box 494, Tallahassee, Florida 32302, by U. S. mail, on this the 26<sup>th</sup> day of October, 1983.

  
\_\_\_\_\_  
ENOCH J. WHITNEY  
General Counsel  
Florida Parole and Probation  
Commission