IN THE SUPREME COURT OF FLORIDA

PAROLE AND PROBATION COMMISSION,

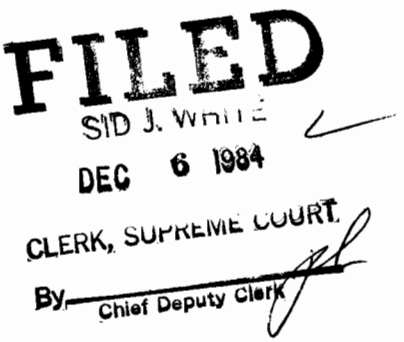
Petitioner,

v. CASE NO. 65,289

ROBERT BRUCE,

Respondent.

_____/



PETITIONER'S ANSWER BRIEF

DORIS E. JENKINS
Assistant General Counsel
Florida Parole and Probation
Commission
1309 Winewood Blvd., Bldg. 6,
Tallahassee, Florida 32301
(904) 488-4460

TABLE OF CONTENTS

CITATIONS OF AUTHORITY

PRELIMINARY STATEMENT

References herein, to Respondent's answer brief, shall be designated "RB" followed by the appropriate page number(s).

ARGUMENT

The proposition that there is no right to parole under Florida's Objective Parole Guidelines Act is so well-settled as to merit considerable consternation when it is argued that such a right does exist. It does not and never has in the history of parole in this state. See, Ivory v. Wainwright, 393 So.2d 542 (Fla. 1981); Moore v. FPPC, 299 So.2d (Fla. 1974); Staton v. Wainwright, 665 F.2d 686 (5th Cir. 1982) Nevertheless, this contention serves as the basis of Respondent's entire argument, although it has been nicely obfuscated. Even so, the premise is a faulty one; so, too, is Respondent's analysis.

Disposition of this case and others like it turns upon the role of §947.18, Fla. Stat. in the statutory scheme of parole in the State of Florida. Respondent would have this Court accept the rather curious contention that the sole purpose of that statute is "to consider the welfare of society in determining the inmate's fitness for parole". (RB 19) He leaves unanswered, however, several pertinent questions. If the sole purpose of §947.18 is as Respondent represents, at what point does society's welfare become irrelevant to the inmate's desire for release on parole? Why does the statute require the Commission to make a

finding that releasing the inmate on parole will be "...compatible with his own welfare and the welfare of society" if the only purpose of the statute is "to consider the welfare of society in determining the inmate's fitness for parole"? See, §947.18, Fla. Stat.

Petitioner submits that Respondent has avoided answering these questions for the simple reason that his interpretation of the legislative intent behind the statute simply does not comport with the plain language which appears there.

Respondent's brief is fraught with language which clearly assumes that there is a right to parole under the Objective Parole Guidelines Act of 1978. Statements such as "...refusal to convert a PPRD into an EPRD for an inmate who is otherwise entitled to an EPRD..." (RB 15); and "...to refuse to release an inmate otherwise qualified therefor... based upon a naked finding that the nebulous standards of Section 947.18 were satisfied" (RB 16, 17) are evidence of a profound misunderstanding of the parole process. "Nebulous" is defined as lacking definite form or limits; vague.[1] If we are to assume from Respondent's choice of

---

[1] American Heritage Dictionary (Second College Edition, 1982)

words that §947.18, Fla. Stat. is "nebulous" or vague, how is it that he argues with such confidence and vehemence that the sole purpose of 947.18 is to "consider the welfare of society..."? Petitioner suggests that if, indeed, §947.18 is nebulous it is Respondent's reading of the statute that makes it so.

Continuing with Respondent's analysis which is premised upon the assumption that there exists a right to parole in Florida, Petitioner notes that while Respondent makes much of the language found in §947.1745, Fla. Stat. he does not appear to comprehend its meaning within the overall statutory scheme. It is elementary enough to attempt to interpret a single statute. To place it within the statutory scheme, however, requires an understanding of both the subject matter and legislative intent. Had the legislature intended that §947.1745, Fla. Stat. should serve as the final determiner of whether an inmate would be released on parole it would have been a simple matter to repeal 947.18. Regardless of <u>when</u> §947.18 was enacted, it became a part of the subsequently enacted Objective Parole Guidelines Act of 1978 by legislative decree. It cannot be explained away as the mere surplusage which Respondent's analysis relegates it to. See, <u>May v. FPPC</u>, 435 So.2d 834 (Fla. 1983)

Petitioner would be remiss in not addressing Respondent's contention that this Court, in May, supra, "...construed Section 947.18 as applicable to the process of setting a PPRD, rather than to establishing or refusing to established an EPRD..." (RB 21) To this Petitioner can only answer that most assuredly Respondent has somehow obtained a defective copy of this Court's opinion in May. The key language in May for our purposes, here, is as follows:

> 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.[7]
>
> 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. (footnote omitted)
>
> Id. at 837

Petitioner would further point out that this Court's analysis in May with respect to the ultimate parole decision being left to the discretion of the Commission served, in part, as the basis for the Eleventh Circuit's ruling in

Paschal v. Wainwright, 738 F.2d 1173 (11th Cir. 1984) to the effect that there is no violation of federal ex post facto proscriptions in applying Florida's revised guidelines to inmates whose offense were committed prior to enactment of the guidelines.

CONCLUSION

Petitioner would reiterate its contention that the decision of the Third District reported at 450 So.2d 520 is clearly erroneous. Respondent has said nothing in his brief which compels a contrary conclusion. Accordingly, Petitioner would urge this Court to adhere to its analysis in May, supra and reject the reasoning of Bruce, supra.

Respectfully submitted,

Doris E. Jenkins
DORIS E. JENKINS
Assistant 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 a copy of the foregoing has been furnished to Elliot H. Scherker, Counsel for Respondent, Eleventh Judicial Circuit of Florida, 1351 Northwest 12th Street, Miami, Florida 33125, by U.S. Mail this 6TH day of December.

Doris E. Jenkins

DORIS E. JENKINS
Assistant General Counsel
Florida Parole and Probation Commission