IN THE SUPREME COURT OF FLORIDA

PAROLE & PROBATION COMMISSION,

Petitioner,

V. CASE NO. 65,289

ROBERT BRUCE,

Respondent.

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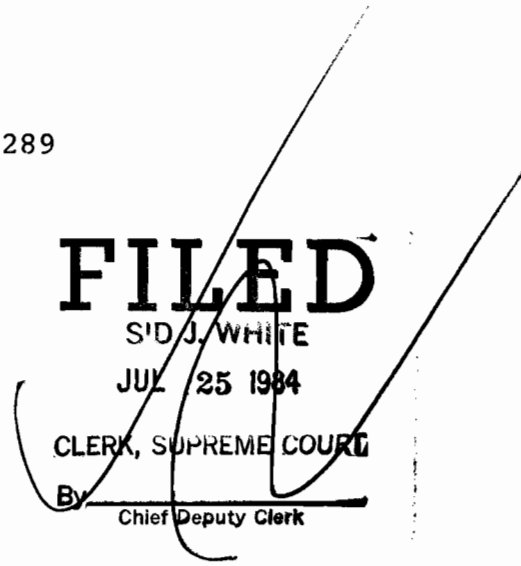

PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information dated January 29, 1980, with one count of burglary as defined by §810.02, Fla. Stat., (1979) (App.I) Having entered a plea of nolo contendere to the charge as stated in the information on July 31, 1980, Petitioner was adjudged guilty and sentenced to thirty (30) years incarceration with one-third (1/3) retained jurisdiction by the Honorable S. James Foxman, Circuit Judge, Seventh Judicial Circuit in and for Volusia County. (App. II)

On September 18, 1980, Judge Foxman entered an order reducing Petitioner's term of incarceration to fifteen (15) years with one-third (1/3) retained jurisdiction. Explicating his reasons for retaining jurisdiction, Judge Foxman stated:

> ...and this Court shall retain jurisdiction over the Defendant for ONE-THIRD (1/3) of the sentence time pursuant to F.S. 947.16, as the Court finds the Defendant has a compulsion to commit sex acts against women, is a danger to society, needs to be supervised, and further finds that the best interest of society will be served by retention of jurisdiction... (App. III)

Petitioner was given his initial interview for parole consideration on May 20, 1981. Pursuant to this interview, Petitioner's presumptive parole release date was established

at December 20, 1981. (App. IV) On October 21, 1981, Petitioner came up for an effective parole release date (EPRD) interview. As a result of that interview, on December 7, 1981 the Commission extended his PPRD to January 3, 1995. (App. V) Petitioner filed a timely review request pursuant to §947.173, Fla. Stat. Nevertheless, the Commission declined to alter its previous action after reviewing the case. (App. VI) In April of 1983, Petitioner initiated habeas corpus proceedings in the Third District Court of Appeal. Petitioner came up for biennial review on August 18, 1983.[1] On considering Petitioner's case, the Commission determined that in light of decisional law which came about after the December 7, 1981, order and which interpreted §947.18, Fla. Stat. it would be necessary to bring the particulars of Petitioner's case into conformity with applicable court decisions and the provisions of Rule 23-21.155, F.A.C. Thus, on October 13, 1983, the Commission entered two orders. The first order, termed "Special

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[1]At the time of the Commission's December 7, 1981, order which invoked §947.18, Fla. Stat., Commission rules merely provided for biennial review of an inmate's case. On August 1, 1983, however, Rule 23-21.155, F.A.C., relating to extraordinary review and interview went into effect. Accordingly, when Petitioner's case came before the Commission on biennial review, it was treated as an extraordinary interview.

Commission Action", nullified the extension of Petitioner's PPRD and reinstated the original PPRD. (App. VII) The second order, entered pursuant to Rule 23-21.155, F.A.C. (App. VIII) reaffirmed the Commission's inability to authorize Petitioner's release on parole based upon the same findings previously relied upon to invoke §947.18, Fla. Stat. (App. IX)

On October 28, 1983, the Third District entered an order stating that the petition for writ of habeas corpus (which was treated as one for mandamus) was denied. (App. X) Petitioner subsequently sought rehearing on November 14, 1983. By order dated January 20, 1984, rehearing was granted and the order of October 28, 1983 was vacated. (App. XI) The parties were directed to address the merits; consequently, on April 3, 1984 the court rendered its decision wherein it determined that the Commission abused its discretion in refusing to authorize an EPRD pursuant to §947.18, Fla. Stat. (1981). That decision is reported at 450 So.2d 520 (Fla. 3d D.C.A. 1984). The Court grounded its conclusion upon its finding that the Commission relied upon the "...same information it had before it when it originally established the PPRD and when it later revised the date. (App. XII, p.2) Petitioner subsequently sought and obtained (over Respondent's objection) a stay of issuance of the

mandate and certification of the question presented here as one of great public importance from the Third District. (App. XIII and XIV) Petitioner filed its Notice to Invoke Discretionary Jurisdiction in the district court on May 7, 1984. (App. XV)

PRELIMINARY STATEMENT

Petitioner, Florida Parole and Probation Commission (the Respondent below) will be referred to herein as "Petitioner" and "the Commission". Respondent Robert Bruce (the Petitioner below) will be referred to herein as "Respondent." Citations to the Appendix will be designated "App." followed by the appropriate page number(s).

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

AN INTERPRETATION OF §947.18, FLA. STAT. TO THE EFFECT THAT THE COMMISSION IS PROHIBITED FROM RELYING UPON AN INMATE'S ENTIRE RECORD IN REFUSING TO AUTHORIZE HIS RELEASE ON PAROLE RENDERS §947.18, FLA. STAT. MERE SURPLUSAGE AND, AS SUCH, IS IN CONFLICT WITH THIS COURT'S PREVIOUS INTERPRETATION OF THE PURPOSE OF THE STATUTORY PROVISION.

This Court is asked to determine whether the Commission may decline to authorize a recommended effective parole release date, thereby denying parole, pursuant to §947.18, Fla. Stat. solely upon the basis of information which was previously considered, or available for consideration, in

setting the inmate's presumptive parole release date.[2] To resolve the issue this Court must first determine what part §947.18, Fla. Stat. plays in the overall statutory scheme of the Objective Parole Guidelines Act. Were we to accept the position advanced by Respondent all interests would best be served by ending the query, here, not because of the correctness of Respondent's position, but rather because the statute would serve no useful purpose. It could, in fact, be considered from this point on as desuetudinal, mere surplusage. Fortunately, this Court has already dispelled such a notion through its decision in May v. FPPC, 435 So.2d 834 (Fla. 1983).

A.

Chapter 947, Fla. Stat. comprises what is known as the Objective Parole Guidelines Act of 1978. Section 947.002, Fla. Stat. addresses the intent of the Act and provides in pertinent part:

> 1. The present system lacks objective criteria for paroling and thus, is subject to allegations of arbitrary and capricious release and, therefore, potential abuses. It is the

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[2]This same question has been squarely placed before the Court in the case of Florida Parole and Probation Commission v. Paige, Case No. 64,144 which is awaiting final disposition by this Court.

intent of this Act to establish an objective means for determining and establishing parole dates for inmates.

2. Objective parole criteria will be designed to give primary weight to the seriousness of the offender's present criminal offense and his criminal records. In considering the risk of recidivism, practice has shown that the best indicator is prior record. §947.002(1) and (2), Fla. Stat. (1981).

The duties and powers of the Commission are enumerated under 947.13, Fla. Stat. That section provides in pertinent part:

> (1) The Commission shall have the powers and perform the duties of:
> (a) Determining what persons shall be placed on parole, subject to the provisions of §§947.172 and 947.14.

Eligibility for consideration for parole is defined by §947.16, Fla. Stat. While the title of that statute makes reference to persons "eligible for parole", what the statute itself really addresses is eligibility for parole consideration.[3] Whether an inmate is eligible for parole (as opposed to eligibility for consideration for parole) and therefore may be released on parole, is a matter within the

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[3] In Greer v. FPPC, 403 So.2d 1000 (Fla. 1st D.C.A. 1981) the Court noted that a PPRD must be established for every inmate who is eligible for parole consideration regardless of when he may actually be released on parole.

discretion of the Commission. May, supra; Gobie v. FPPC, 416 So.2d 838 (Fla. 1st D.C.A. 1982); McRae v. State, 408 So.2d 775 (Fla. 2nd D.C.A. 1982); Staton v. Wainwright, 665 F.2d 686 (5th Cir. 1982). To the extent that statutory requirements specify, an inmate must fall within an identifiable group described in subsection (1) of §947.16 before he becomes eligible for consideration for parole.

Once an inmate is found to be eligible for parole consideration, Florida law provides for the establishment of a presumptive parole release date (PPRD). §947.172, Fla. Stat. "Presumptive parole release date" is defined as the tentative parole release date as determined by objective parole guidelines. §947.005(4), Fla. Stat. Viewed from their practical application, the two statutes being read in pari materia provide for the determination of a tentative release date based upon guidelines established and approved by the Commission. While subsection (3) of §947.172 makes the setting of a PPRD binding, the Commission retains the power to alter the date under narrowly prescribed circumstances.[4] Canter v. FPPC, 409 So.2d 277 (Fla. 1st

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[4]The First District has held that three factors justify changing a PPRD. Those factors have been indentified as new information, institutional conduct and, something of a
(Footnote Continued)

D.C.A. 1982); Bizzigotti v. FPPC, 410 So.2d 1360 (Fla. 1st D.C.A. 1982).

Subsequent to the establishment of a PPRD, and inmate will come up for a periodic review interview pursuant to §947.174, Fla. Stat. at which point the Commission is authorized to consider "... such information as is deemed important to the review of the presumptive parole release date, including, but not limited to, current progress reports, psychological reports and disciplinary reports." §947.174(3), Fla. Stat. (1981).

At the relevant point in time for purposes, here, the establishment of an effective parole release date (EPRD) was governed by §947.174(6), Fla. Stat. (1981):

> (6) Provided that the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:
>
> (a) Sixty days prior to the presumptive parole release date, hearing examiner shall conduct a final interview with the inmate in order to establish an effective parole release date. If it is determined that the inmate's institutional conduct has been unsatisfactory, a statement to this effect shall be made in writing with particularity and forwarded to a panel

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(Footnote Continued)
catch-all designated "extraordinary circumstances." See, McKahn v. FPPC, 399 So.2d 476 (Fla. 1st D.C.A. 1981); Jackson v. FPPC, 424 So.2d 930 (Fla. 1st D.C.A. 1982).

> of no fewer than two commissioners appointed by the chairman. Within 14 days, the panel shall determine whether or not to authorize the effective parole release date, and the inmate shall be notified of the decision in writing within 30 days of the final interview.
>
> (b) When an effective date of parole has been established, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. An effective date of parole may be delayed for up to 30 days without a hearing for development and approval of release plans.[5]

Left at this juncture, it appeared that all that was required of an inmate as a prerequisite to being paroled was simply that he maintain a record of good conduct and perform the tasks assigned to him during his incarceration. That the Legislature did not intend this is clearly evidenced by the introductory language of §947.18, Fla. Stat. (1981). To the contrary, that statute emphatically states that no person shall be placed on parole merely as a reward for good conduct or for efficient performance of his duties. Thus, even where an EPRD had been established under §947.174(6), Fla. Stat. (1981) the Commission was further charged with

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[5]Section 947.174, Fla. Stat. (1981) was amended by chapter 82-171, Laws of Florida removing subsection (6). Section 947.1745 was created by that same legislation, thereby making separate provisions for the establishment of an EPRD.

making additional findings relative to the inmate's suitability for parole.

B.

Turning now to the question of how the Legislature intended that §947.18 should be implemented, Petitioner submits that the statute was perceived as the final arbiter of the question of whether parole was now virtually automatic in light of the enactment of the Objective Parole Guidelines Act of 1978. The response was, and remains, unequivocably negative. The reason is best explicated by the First District Court of Appeal in Gobie v. FPPC, 416 So.2d 838 (Fla. 1st D.C.A. 1982):

> [1] Section 947.18, Fla. Stat. (1981), gives the Commission ultimate discretion in deciding whether to parole an inmate by providing:
>
> > 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 this release will be compatible with his own welfare and the welfare of society.
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> On its face, §947.174(6), Fla. Stat. (1981), which prescribes the procedure for making the PPRD the EPRD, indicates that the only proper criterion for consideration is whether the inmate's institutional conduct has been

> satisfactory. However, §947.18 provides: "No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison." Section 947.18 was originally enacted by the Florida Legislature in 1941; it was adopted as part of the Objective Parole Guidelines Act in 1978, thereby reflecting a legislative intent to retain ultimate discretion in paroling an inmate with the Commission. Gobie, supra at 839.
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> Further, Florida law has consistently found that there is no right to parole, even subsequent to the enactment of the Objective Parole Guidelines Act. Parole lies within the sound discretion of the Commission. Ivory v. Wainwright, 393 So.2d 542, 544 (Fla. 1980); Moore v. FPPC, 289 So.2d 719, 721 (Fla. 1974); Arnett v. State, 397 So.2d 330, 332 (Fla. 1st D.C.A. 1981); and Staton v. Wainwright, 665 F.2d 686, 688 (5th Cir. 1982).
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> Gobie, supra at 840. (Footnotes omitted)

A consolidation of three separate cases, Gobie, supra, represented the first attempt by Florida courts to interpret the provisions of §947.18, Fla. Stat. and place a meaningful construction on that statute.[6] As the Court points out in Gobie, while §947.18 was conceived by the Legislature as far back as 1941, it was not until Gobie that any guidance

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[6] Gobie v. FPPC, Case No. AJ-383; Jackson v. FPPC, Case No. AK-253, and; Logan v. FPPC, Case No. AL-67.

whatsoever was offered to the Commission with reference to how the statute was to be applied. In its initial discussion, the Court identified the crux of the problem, but offered no real solution. The result which obtained in Gobie, supra, was that the Commission was directed to explicate its reasons in a manner sufficient to permit judicial review given the absence of any guidance from either the statutes or the Commission's own rules.

The Court further noted that in the three cases under consideration the Commission had invoked §947.18 and "amended" the PPRD's with written explanations for these actions. The Court did not inform the Commission that such action was improper. In any case, Gobie, supra, stood as the First District's recognition that §947.18, Fla. Stat. (1981) served as something of a caveat to all inmates who found themselves eligible for parole consideration.

Later that same year, the First District again entertained efforts to challenge Commission action and touched upon §947.18 in the case of Moats v. FPPC, 419 So.2d 775 (Fla. 1st D.C.A. 1982). As in Gobie, Moats presented the Court with Commission action which declined to authorized an EPRD, instead extending the inmate's PPRD. In its resolution of the issues the Court opined:

> As above shown, the critical point at which the Commission was required to

determine an effective parole release date was prematurely reached, albeit by accident rather than design. Nevertheless, it became incumbent upon the Commission to act. There appears to be no abuse of discretion in the Commission's determination not to allow petitioner's PPRD (already passed) to become his effective parole release date. Under the circumstances, it may be argued that the setting of a new PPRD, based upon the Commission's inability to make the findings necessary for a parole release under Section 947.18, was the only alternative available to it.

Further, the Court stated:

> [2] We have noted petitioner's argument that the Commission's action amounts to the setting of no PPRD, since his sentence will expire before arrival of the new PPRD in 1987. This fact is of no significance in itself, however, as there is no prohibition against the establishment of a PPRD beyond the inmate's sentence expiration date. It is clear that the setting of a new PPRD was error, because it was not done in accordance with the Objective Parole Guidelines Act. We concede, however, that since the PPRD actually set fell beyond petitioner's sentence expiration date, the label attached is immaterial, and the result would have been the same had the Commission simply declined, under the authority of Section 947.18, to approve an effective parole release date for the duration of petitioner's sentence. It is noted, further, that future parole consideration by the Commission has not been foreclosed, because the Commission has also ordered that petitioner shall be reinterviewed during the month of November, 1982, which has the effect of placing petitioner back within the guidelines.

Moats, supra at 777.

Clearly, the significance of Moats was the Court's finding that the Commission could, in fact, decline to authorize an EPRD and instead extend the PPRD. More importantly, the Court reached this conclusion in the face of the inmate's argument that his sentence would expire before his PPRD arrived.

In Jackson v. FPPC, 424 So.2d 930 (Fla. 1st D.C.A. 1983), hereinafter referred to as Jackson I, the Commission's extension of the PPRD was disapproved because none of the three factors which justify changing a PPRD were present where the Commission's order stated that the action was based on new information. By the time the decision in Jackson was rendered, the inmate's PPRD had already passed. Holding that the Commission failed to provide record support for its inability to find there was a reasonable probability that, if placed on parole, the inmate would live and conduct himself as a respectable and law-abiding person and that his release would be compatible with his own welfare and the welfare of society, the Court remanded the case to the Commission for further consideration.[7] The effect of such a

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[7]In Jackson II, the Commission's findings on remand
(Footnote Continued)

decision is a clear statement that ordering the Commission to release an inmate for whom it could not authorize an EPRD is not a viable alternative. Id., at 930, n.1; see also, Kirsch v. Greadington, 425 So.2d 153 (Fla. 1st D.C.A. 1983).

The Court in Jackson I rejected that portion of the Commission order under review which purported to extend the inmate's PPRD based on new information. Ruling that none of the reasons cited for the extension constituted new information, the Court found that the Commission action extending the PPRD violated §§947.16(4) and 947.173(3) and vacated the PPRD which came about as a result of the extension. Specifically, the Court stated, "We find that his [Jackson's] December 15, 1981, PPRD should remain his PPRD, even though he was not paroled on that date." Id., at 931.

Addressing invocation of §947.18, Fla. Stat. the First District reaffirmed its decision in Gobie, supra:

(Footnote Continued)
were brought back before the First District. In an opinion reported at 429 So.2d 1306 (Fla. 1st D.C.A. 1983), the First District stated that if none of the three factors are present to justify changing a PPRD, parole may be denied only if the Commission is unable to find that, if placed on parole, there is a reasonable probability that an inmate 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.

> We noted in Gobie, supra, that prior to actually paroling an inmate, the Commission is required to make a finding under §947.18, Florida Statutes (1981), that there is reasonable probability that, if [the inmate] 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 welfare of society. When the Commission is unable to make that finding, it should so state and give its reasons, as it has done in Jackson's case. Further, in order to aid a court in reviewing the Commission's decision for abuse of discretion, the Commission should provide record support. Cf. McKahn, supra, at 478. This it has not done. The rationale behind Gobie, supra, is that the inmate may challenge the factual basis for the Commission action, which Jackson has done. The Commission did not answer his challenges, but merely affirmed its action. Additionally, the Commission's answer brief fails to point out the relevant pages in the record that support its action here.
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> Id., 931-932

Thus, Jackson I was remanded to the Commission ostensibly for the purpose of having the Commission provide record support for its findings. The findings on remand were rejected in Jackson II, the Court stating that the Commission failed to "offer any reasonable basis for its conclusory statement" that Jackson was a poor parole risk. Jackson II, supra, at 1308

Viewed as a composite, Jackson I and II teach us that §947.18 may not be invoked by extending a PPRD. Indeed, that statutory provision is available only when, having run the gamut, the Commission is yet unable to make the necessary finding pursuant to that statute. Further, what is required is a suspension of the PPRD with an explication of the reasons for the Commission's denial of parole together with record support for its findings.

Finally, in Paige v. FPPC, 434 So.2d 7 (Fla. 1st D.C.A. 1983) the First District reversed that portion of the Commission's order which declined to authorize an EPRD. There the Court reasoned:

> Nevertheless, as we stated in Jackson v. Florida Parole and Probation Commission, 424 So.2d 930, 931 (Fla. 1st D.C.A. 1983), the limited discretion remaining with the Commission under the provisions of section 947.18 must be considered in pari materia with other provisions of the Objective Parole Guidelines Act of 1978, permitting the Commission to change a PPRD only upon a showing of new information, institutional conduct or extraordinary circumstances. The Commission in the instant case, as in Jackson v. Florida Parole and Probation Commission, 429 So.2d 1306 (Fla. 1st D.C.A. 1983), has done no more on remand than it did previously, by relying on the same information it had before it when it first established appellant's PPRD as of May 11, 1982, and when it later revised the date as of May 13, 1989.
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> Paige, supra at 8.

The significance of Paige is two-fold, however. We first note that, even in reversing that portion of the Commission's order which declined to authorize an EPRD, the Court did not find that the Commission was compelled to release the inmate. Rather, the Commission was directed to establish an effective parole release date. As has been previously demonstrated, under the dictates of May, even if an EPRD has been established "...the final parole decision will depend upon the Commission's finding that the prisoner meets the conditions provided in §947.18." May, supra at 837.

The second significant factor in Paige, as was the case with those decisions which preceded it, is that the Commission had no rule governing treatment of such cases at the time the actions were taken. Thus, judicial review of the appropriateness of such action was limited to the sparse provisions of the statutes. See, Gobie, supra. It is not clear, however, that the First District is certain of exactly what is required to facilitate judicial review of such decisions. The litany of "record support" and "explication of the reasons for the Commission's findings" fall far short of the mark where there has been no analysis or interpretation of what the Commission may rely upon in invoking §947.18. Realizing this, the First District

certified the same question as that presented in this case as a question of great public importance.[8] Resolution of that question is still awaiting this Court's decision. See, FPPC v. Paige, Case No. 64,144

C.

It is, by now, well-settled that the three factors which justify modification of a PPRD are: (1) new information; (2) institutional conduct, and; (3) extraordinary circumstances. James v. FPPC, 395 So.2d 197 (Fla. 1st D.C.A. 1981); McKahn v. FPPC, 399 So.2d 476 (Fla. 1st D.C.A. 1981); Canter v. FPPC, 409 So.2d 227; Bizzigotti v. FPPC, 410 So.2d 1360 (Fla. 1st D.C.A. 1982); Jackson I and II, supra.

The First District, has taken the position that the Commission can extend or otherwise modify a PPRD thereby denying parole, only where one of the three factors which justify changing a PPRD is present. The only other instance in which parole may be denied, according to the First District, is through invoking §947.18. If this is so, then it stands to reason that there need not be any new

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[8]See, Paige v. FPPC, 434 So.2d 7 (Fla. 1st D.C.A. 1983).

information, evidence of institutional misconduct or extraordinary circumstances present to invoke §947.18 to deny parole. If either of these three factors is present, then there is no need to reach the §947.18 finding. This is so simply because the Commission would have grounds to extend the PPRD.

In the absence of a requirement of the presence of one of the three factors which justify modification of a PPRD, upon what basis may the Commission fairly ground its finding that, if placed on parole, there is not a reasonable probability that the inmate will live and conduct himself as a respectable and law-abiding person and that his release would not be compatible with his own welfare and the welfare of society? The obvious and only logical response is that the Commission must weigh those factors which have acknowledged relevance to the inmate's overall parole suitability: (1) his record during incarceration; (2) his mental health; (3) his criminal history; (4) the nature of the crime or crimes for which he is incarcerated. All of these factors are likely to have been taken into consideration at some point during the parole eligibility consideration process. Such information is not rendered irrelevant simply because it has been available for a period of time prior to the setting of an EPRD. The danger

inherent in the analysis of the First District in Paige, and now the Third District in the instant case, is that it clearly flies in the face of the well-established principle that, in the State of Florida, parole is not a right but a privilege. Further, to contend that invocation of §947.18 to deny parole requires "something new" is to rob the statue of any conceivable use. It would, then, become mere surplusage. This is so because the "something new" would invariably qualify as one of the three factors which could be used to extend the PPRD. In the absence of that "something new" the Commission would be compelled to parole an inmate merely because he has successfully manipulated the system and successfully jumped through all of the statutory hoops. Section 947.18 tells us that this is precisely what the Legislature intended to avoid.

Under the reasoning of the First and Third Districts an inmate could bide his time in confinement and plan his next offense in anticipation of being release on parole and, so long as he avoids any disciplinary reports, the Commission would be compelled to release him notwithstanding the fact that, in light of his criminal history, mental health reports and circumstances of his offense or offenses, there is every indication that he will come back through the criminal justice system very soon after his release on

parole. Petitioner submits such reasoning is not only inconsistent with the concept of parole as a privilege, it defies all logic.

If this Court is to stand by what it wrote in May v. FPPC, 435 So.2d 834 (Fla. 1983), then it must reject the notion that "something new" must exist to justify denial of parole pursuant to §947.18, Fla. Stat. To the extent that the First and Third Districts have held this to be a requirement under that statute, they must be told that they are quite plainly in error.

CONCLUSION

When the Legislature passes a law, it is presumed that the legislative intent is expressed by the words found in the statute. Courts may not "write in" legislative intent in the absence of direct or indirect language. Florida Department of Commerce, Division of Employment Security v. Todd, 353 So.2d 662 (Fla. 2d D.C.A. 1977). Further, the courts of this state are obligated to construe statutes in such a manner as to avoid unreasonable results. Crown Diversified Industries, Inc. v. Watt, 415 So.2d 803 (Fla. 4th D.C.A. 1982); Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st D.C.A. 1978).

If this Court is indeed unwilling to view §947.18 as mere surplusage as it stated in May, supra, then it must reject the decisions of the First District in Paige v. FPPC, 434 So.2d 7 (Fla. 1st D.C.A. 1984) and that of the Third District in Bruce v. FPPC, 450 So.2d 520 (Fla. 3d D.C.A.

1984) as unreasonable constructions rendering §947.18, Fla. Stat. useless.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Elliot H. Scherker, Assistant Public Defender, Eleventh Judicial Circuit of Florida, 1351 Northwest 12th Street, Miami, Florida 33125, by U.S. Mail this 25th day of July, 1984.

Doris E. Jenkins

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