

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 CARL LEE HICKS,)
)
 Respondent.)
)
 _____)

CASE NO. 65,195

FILED

SID J. WHITE

SEP 9 1985

CLERK, SUPREME COURT

By *[Signature]*
Chief Deputy Clerk

PETITIONER'S BRIEF IN RESPONSE TO AMICUS
BRIEF OF FLORIDA PAROLE AND PROBATION COMMISSION

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PRELIMINARY STATEMENT

Petitioner relies on the preliminary statement contained in its initial brief on the merits.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statement of the case and facts found in its initial brief on the merits with following addition:

The Supreme Court entered its opinion in this case May 23, 1985 (10 F.L.W. 292), and a Motion for Rehearing was filed by the State on May 31, 1983, which is currently pending herein.

The Florida Parole and Probation Commission was granted permission to file a belated amicus brief and filed that brief on July 24, 1985.

Both Petitioner, the State of Florida and the Respondent were given permission by this Court to file a brief in response to the amicus brief.

SUMMARY OF ARGUMENT

The holding of the opinion of May 23, 1985 in this case should be appropriately limited in application to probation revocation proceedings. The test for appointment of counsel for indigent parolees announced in Gagnon v. Scarpelli, 411 U.S. 778, 36 L.Ed. 2d 656, 93 S.Ct 1756 (1973), adequately protects the interest of alleged parole violators in light of the nature of parole and should be continued.

Were the decision in Hicks v. State, supra, held to apply to parole revocation cases, existing decisional law could support a requirement for the public defender system to provide counsel for indigent parolees facing preliminary revocation hearings. The Commission is not funded to provide such representation.

The rule of law announced in Hicks, supra, does not require retrospective application.

ISSUES PRESENTED

- I. IS THE HOLDING STATED IN THE OPINION OF MAY 23, 1985, APPLICABLE TO PAROLE REVOCATION HEARINGS CONDUCTED BY THE COMMISSION UNDER SECTION 947.23, FLORIDA STATUTES?

- II. IF THE ANSWER TO ISSUE NO. 1 IS IN THE AFFIRMATIVE, WHAT PROCEDURE EXISTS TO AFFORD COUNSEL TO ALL INDIGENT PAROLEES WHO DESIRE REPRESENTATION AT PRELIMINARY PAROLE REVOCATION HEARINGS?

- III. IF THE ANSWER TO ISSUE NO. 1 IS IN THE AFFIRMATIVE, IS THE COURT'S DECISION PROSPECTIVE ONLY IN APPLICATION?

ARGUMENT

POINT I

IS THE HOLDING STATED IN THE OPINION
OF MAY 23, 1985, APPLICABLE TO PAROLE
REVOCATION HEARINGS CONDUCTED BY THE
COMMISSION UNDER SECTION 947.23,
FLORIDA STATUTES?

Petitioner adpots as its own the argument
of the Florida Parole and Probation Commission regarding
this issue.

POINT II

IF THE ANSWER TO ISSUE NO. 1 IS IN
THE AFFIRMATIVE, WHAT PROCEDURE
EXISTS TO AFFORD COUNSEL TO ALL
INDIGENT PAROLEES WHO DESIRE
REPRESENTATION AT PRELIMINARY
PAROLE REVOCATION HEARINGS?

Petitioner adopts as its own the argument
of the Florida Parole and Probation Commission regarding
this issue.

POINT III

IF THE ANSWER TO ISSUE NO. 1 IS
IN THE AFFIRMATIVE, IS THE COURT'S
DECISION PROSPECTIVE ONLY IN
APPLICATION?

Petitioner submits that this Court's decision in the instant case should not be applied retroactively. In its opinion, this Court recognized that there is no constitutional requirement for the appointment of counsel in all probation revocation hearings. This Court based its decision rather, on the ground that a uniform rule mandating a right to counsel in all Probation revocation hearings "is more easily understood and easier to administer than requiring attorneys in some cases but not in others", Hicks at pg.1.

Petitioner submits that because this right to counsel in probation proceedings is not of a constitutional dimension, this Court should not apply the rule of law announced in the instant case retroactively. See, State v. Neil, 457 So.2d 481 (Fla. 1984); Witt v. State, 387 So.2d 922 (Fla. 1980); cert. denied 101 S.Ct. 796, 499 U.S. 1067, 66 L.Ed. 2d 612.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited herein, Petitioner respectfully requests that this Court reconsider its decision of May 23, 1985 and reverse the decision of the Fourth District Court of Appeal and affirm the judgment and sentence by the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: ENOCH J. WHITNEY, General Counsel, Florida Parole and Probation Commission, 1309 Winewood Blvd., Building 6, Tallahassee, Florida 32301 and MARGARET GOOD, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401 by U.S. Mail this 6th day of September, 1985.

Carolyn V. McCann

Of Counsel