IN THE SUPREME COURT OF FLORIDA

PAROLE AND PROBATION
COMMISSION,

Petitioner,

v.

CASE NO. 66,427
FOURTH DISTRICT COURT
OF APPEAL NO. 83-2409

BRUCE FULLER,

Respondent.

_____/

INITIAL BRIEF

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

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CITATIONS OF AUTHORITY

PRELIMINARY STATEMENT

Petitioner, Florida Parole and Probation Commission, shall be referred to herein alternately as "Petitioner" and "the Commission". Respondent, Bruce Fuller, shall be referred to as " Respondent". Citations to the appendix shall be designated "App." followed by the appropriate document number(s).

STATEMENT OF THE CASE

This case comes before this Court on discretionary review pursuant to Fla.R.App.P. 9.030 and 9.120.

On or about November 10, 1983, Respondent filed a Petition for Writ of Habeas Corpus in the District Court of Appeal, Fourth District. (App. I) An Order to Show Cause directed to Petitioner was issued on November 14, 1983. (App. II) Petitioner filed a Motion for Remand on or about November 30, 1983. (App. III) That motion was granted by order dated December 23, 1983, albeit over Respondent's objection. (App. IV,VII)

Petitioner filed its Notice of Commission Action on January 11, 1984. (App. VIII) Not having been satisfied with Petitioner's response to the allegations raised in the petition, the lower court directed Petitioner to file a more specific response by order dated January 13, 1984. (App. IX) Petitioner complied with that order on January 21, 1984.[1] (App. XI)

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[1] Petitioner asked for and was granted remand for
(Footnote Continued)

On April 18, 1984, the district court rendered an opinion in which it found cause to issue the writ of habeas corpus. (App. XV) On rehearing, the district court declined to change its ruling; however, it did certify the following question as one of great public importance:

> IN CASES IN WHICH A PRISONER CLAIMS THAT IMPROPER CALCULATION OF HIS PRESUMPTIVE PAROLE RELEASE DATE ENTITLES HIM TO IMMEDIATE RELEASE, IS HIS REMEDY PROPERLY PURSUED THROUGH A PETITION FOR A WRIT OF MANDAMUS OR HABEAS CORPUS?

This action was taken by order dated December 12, 1984. (App. XX) On January 10, 1985, Petitioner filed its Notice to Invoke Discretionary Jurisdiction. (App. XXII)

(Footnote Continued)
the purpose of determining whether there was an error in the computation of Respondent's presumptive parole release date. On remand no error was found and the court was so advised by the notice.

STATEMENT OF THE FACTS

On September 26, 1974, Respondent was sentenced to fifteen years incarceration pursuant to a conviction for breaking and entering a dwelling with intent to commit a felony, to wit: grand larceny. (Case No. 73-2022-CF, App. XI) Having been convicted of two counts of robbery, Respondent was sentenced on October 24, 1974, to fifteen years incarceration as to each count. These sentences were to run concurrent with each other and concurrent with the sentence imposed in Case No. 73-2022-CF. (Case No. 74-2001-CF, App. XI) On August 21, 1979, Respondent was convicted of one count of resisting an officer with violence and one count of leaving the scene of an accident with injury. On that same date, he was sentenced to two years incarceration on Count I and one year consecutive on Count II. These sentences were designated to run concurrent with any other sentence already imposed. (Case No. 79-4554-CF, App. XI) Finally, having entered a plea of nollo contendere to the charge of one count of escape, Respondent was sentenced to six months incarceration on December 23, 1982. That sentence was designated to run consecutive to any sentences which he was subject to at the time of his escape. (Case No. 81-25632, App. XI)

On April 20, 1983, Respondent was given his initial interview for parole consideration. As a result of that interview, Petitioner scored Respondent separately on each of three different offenses. These were then aggregated to arrive at a presumptive parole release date (PPRD) of December 2, 1985. (App. XI) This action was certified by the Commission Clerk on July 18, 1983. Pursuant to § 947.173, Fla. Stat., Respondent sought administrative review of the setting of his PPRD on July 27, 1983. (App. XI) On review, Petitioner corrected two errors which were not raised by Respondent in his review request. Correction of these errors, however, did not change the established PPRD. Thus, finding that aggregation was properly applied in Respondent's case, Petitioner entered an order, certified on September 26, 1983, declining to modify the PPRD. (App. XI)

Respondent then sought relief from the district court by way of a petition for writ of habeas corpus. Respondent is currently in the custody of the Department of Corrections, having been denied bail pending appeal. (App. XIX)

ISSUE

THE FOURTH DISTRICT COURT OF APPEAL IMPROPERLY HELD THAT A CHALLENGE TO THE COMPUTATION OF A PRESUMPTIVE PAROLE RELEASE DATE IS CORRECTLY SOUGHT THROUGH A PETITION FOR WRIT OF HABEAS CORPUS

A.

In its opinion in Fuller v. Wainwright, ___ So.2d ___, 9 F.L.W. 901 (Fla. 4th D.C.A. opinion filed April 18, 1984) the district court, recognizing that habeas corpus is appropriate where the petitioner seeks immediate release, granted the writ for the purpose of allowing Respondent to successfully challenge the computation of his presumptive parole release date (PPRD).[2] While that court is not noted for its expertise in matters pertaining to parole and parole eligibility, there is no logical reason for its assumption that an inmate in custody in the State of Florida has a right to parole. Petitioner makes this statement because, if the court's decision is to make any sense at all, it must be presumed that the court's assumption that an alleged error in the computation of a PPRD entitles the affected inmate to immediate release on parole is bottomed upon the

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[2] Although the district court declined to change its ruling on the merits, Petitioner steadfastly maintains that the entire opinion is wrong simply because the district court made several erroneous assumptions which served as the basis of its opinion.

unsustainable notion that there is a statutory right to release on parole.[3] Petitioner maintains that such a stance is not only contrary to current state and federal decisional law, but is also a gross bastardization of the writ itself.

This Court has previously enunciated its belief that there is a right, not to parole, but to proper consideration for parole.[4] Moore v. FPPC, 289 So.2d 719 (Fla. 1979), cert. denied, 417 U.S. 935, 94 S.Ct. 2649, 41, L.Ed.2d 239 (1974); Ivory v. Wainwright, 393 So.2d 542 (Fla. 1981) We are compelled to conclude, with irrefutable logic, that an allegation that a presumptive parole release date has been improperly computed is tantamount to an allegation that a clear legal right to proper consideration for parole has been violated.

There are numerous decisions emanating from Florida's appellate courts which support the proposition that mandamus is appropriate to challenge the computation of a PPRD. Moore, supra; Daniels v. FPPC, 401 So.2d 1351 (Fla. 1st

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[3] In its opinion the Fourth District wrote: "We grant the petition, subject to standard provisions of parole, if any." Fuller, supra, at 901

[4] In Moore this Court treated the petition for writ of habeas corpus as one for mandamus.

D.C.A. 1981); Holman v. FPPC, 407 So.2d 639 (Fla. 1st D.C.A. 1981); Rothermel v. FPPC, 441 So.2d 663 (Fla. 1st D.C.A. 1983); Kirsch v. Greadington, 425 So.2d 153 (Fla. 1st D.C.A. 1983); Hardy v. Greadington, 405 So.2d 768 (Fla. 5th D.C.A. 1981); Pannier v. Wainwright, 423 So.2d 533 (Fla. 5th D.C.A. 1982); Lowe v. FPPC, 416 So.2d 470 (Fla. 2d D.C.A. 1982); Harrisson v. FPPC, 428 So.2d 389 (Fla. 4th D.C.A. 1983); Daizi v. FPPC, 436 So.2d 171 (Fla. 4th D.C.A. 1983)[5]

In Daniels, supra, the First District cited to Moore, supra, stating:

> Mandamus yet abides as a remedy, to the extent stated by Moore, but it "continues subject to judicial restrictions upon its use which require prior resort to and exhaustion of administrative remedies when they are available and adequate..."
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> (Citations omitted) Daniels, supra, at 1356

Similarly, in Kirsch, supra, a proceeding in habeas, that court took specific note of the existing conflict with other

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[5] Interestingly enough, there appears to be a conflict among the decisions emanating from the Fourth District, itself, as evidenced by Shannon v. Turner, (Shannon I) 432 So.2d 204 (Fla. 4th D.C.A. 1983); Harrisson, supra; Daizi, supra, and a recent decision styled Gaines v. FPPC, ___ So.2d ___, 10 F.L.W. 153 (Fla. 4th D.C.A. Opinion filed January 9, 1985, Case No. 84-1791).

districts.[6] Nevertheless, it adhered to the stance taken in Daniels. The availability of habeas corpus to challenge an alleged error in the computation of a PPRD was specifically rejected in Kirsch:

> In our opinion, even if the Commission action extending Kirsch's PPRD 13 months is illegal, this does not mean the inmate is entitled to immediate release from incarceration...Habeas corpus relief requires showing a right or entitlement to immediate release from custody...Accordingly, habeas corpus is not an available remedy for improper action by the Commission...Further, the placement of an inmate on parole on the date his PPRD arrives, or legally should have arrived, is not automatic...Ordering the release by habeas corpus of an inmate when his PPRD arrives or should have arrived would prevent the Commission from exercising its discretion in the parole grant process.
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> Id., at 154-155

Finally, in Rothermel, supra, the First District implicitly reaffirmed its position regarding the availability of mandamus to challenge the computation of a PPRD where it ruled that the appeal rights of prisoners were cut off through legislative amendment if those appeals were

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[6] In a footnote to the opinion, the First District cited to those cases which had been decided up to that point and which, in its perception, conflicted with the position taken in Daniels, supra, and Kirsch, supra, at 154, n.1.

pending at the time of amendment and there was no saving clause included in the amendment. The court stated that the result which obtained in that case would have been different were it not for the fact that inmates similarly situated had access to the courts via another remedy. That remedy could only be mandamus as that district court has consistently maintained that mandamus still abides as a means of challenging the computation of a PPRD.

The Second District Court of Appeal, in agreement on the issue of mandamus, opined:

> Therefore, the correct procedure for obtaining review of determinations by the Florida Parole and Probation Commission remains the filing of a petition for writ of mandamus...If it were contended that the commission's calculations were incorrect but that even under the prisoner's calculations he was not entitled to immediate release, mandamus would be the proper remedy.
>
> Lowe, supra, at 471

The Fifth District Court of Appeal has adopted a like stance:

> Habeas corpus would be the proper remedy only after an effective parole release date established pursuant to sections

947.174(6)(b) and 947.18, Florida Statutes (1981), has passed.[7]

(Citations omitted) Pannier, supra, at 534

Indeed, this Court appears to have adopted this view as evidenced by its ruling in Demar v. Wainwright, 354 So.2d 366 (Fla. 1977), cert. denied, 436 U.S. 962, 98 S.Ct. 3082, 57 L.Ed.2d 1129 (1973). In that case, the petitioner sought habeas corpus relief to obtain a hearing on the issue of whether his parole was properly rescinded. Relying upon the seminal cases of Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972) and Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) this Court issued the writ of habeas corpus directing that the petitioner should be placed on parole unless he was afforded a parole rescission hearing consistent with and conforming to the due process requirements set out in Morrissey, supra.

In Harrisson, supra, the Fourth District appeared to adopt the position that mandamus was the appropriate vehicle to challenge the computation of a PPRD. The petitioner in that case sought review of his PPRD by a petition for writ of habeas corpus. The Fourth District treated the petition

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[7] See, Hardy v. Greadington, 405 So.2d 769 (Fla. 5th D.C.A. 1981)

as one for mandamus pursuant to Moore, supra; Hardy, supra, and Pannier, supra, and denied relief. Again, in Daizi, supra, the Fourth District treated a petition for writ of habeas corpus as one for mandamus. The petitioner, who sought to challenge the method by which his PPRD was computed, was denied relief.

Given the Fourth District's sudden change in approach, which has been bottomed entirely upon the Third District's decision in Jenrette v. Wainwright, 410 So.2d 575 (Fla. 3d D.C.A. 1982), petition for review denied, 419 So.2d 1201 (Fla. 1982) and Taylor v. Wainwright, 418 So.2d 1095 (Fla. 5th D.C.A. 1982) which has been receded from by the Fifth District, we must ask what is so compelling in these cases to cause such a change.

Petitioner maintains that Jenrette is a hybrid, and as such, cannot lay claim to general precedential value. Noting the court's recognition in that case that an allegation of a violation of a clear legal right sounds in mandamus, under the teachings of Moore, supra, it would seem that Jenrette should have been treated as a mandamus action.[8] Close scrutiny of Jenrette reveals the fact that

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[8] In Roberson v. FPPC, 407 So.2d 1044 (Fla. 3d (Footnote Continued)

it was decided, in part, upon assumptions which the Commission failed to anticipate and, therefore, forestall in

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(Footnote Continued)
D.C.A. 1981), a decision which was quashed by this Court in an opinion reported at 444 So.2d 917 (Fla. 1983), the Fourth District specifically recognized the fact that mandamus was a viable means of challenging the computation of a PPRD. In a footnote to that opinion, the district court seemed to imply that mandamus was the preferable method of accomplishing this purpose; however, as Roberson himself did not allege the violation of a clear legal right, the district court appeared to be of the opinion that the only remedy available to Roberson was habeas corpus:

> Moreover, since there is no allegation of the violation of a clear legal right which would support a mandamus action, see Moore v. Florida Parole & Probation Commission, 289 So.2d 719 (Fla. 1974), cert. denied, 417 U.S. 935, 94 S.Ct. 2649, 41 L.Ed.2d 239 (1974); Daniels v. Florida Parole and Probation Commission, supra, at 401 So.2d 1352-53, It would seem the only means by which Roberson's complaints may be redressed would be (when the issue becomes timely by virtue of his being otherwise entitled to release) by habeas corpus either in the trial court or in the appropriate district court, perhaps with the appointment of a commissioner to resolve the factual issues. See Hardy v. Greadington, 405 So.2d 768 (Fla. 5th D.C.A. 1981); Smith v. Crockett, 383 So.2d 1166 (Fla. 3d D.C.A. 1980).
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> Roberson, supra, at 1046, n.5

Interestingly enough, the availability of habeas corpus was correctly restricted by the court to the point in time when Roberson would be "...otherwise entitled to release..."

its initial response. Specifically, Petitioner refers to the portion of Jenrette which reads as follows:

> [4] Finally, we address respondent's assertion that even if the 1951 conviction of petition is invalid, "the Commission should be given the opportunity to recalculate the Petitioner's presumptive parole release date," and to reinstate the aggravating factors found by the hearing examiners, but not relied upon by the Commission. Relying upon Section 947.16(4), Florida Statutes (1979), respondent asserted that "[i]f the Commission is unable to utilize the 1951 conviction to extend the Petitioner's presumptive parole release date, it may well decide to follow the recommendation of the hearing examiner and impose as an aggravating factor the concurrent sentences received by the Petitioner."
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> The Commission might well have decided to do what respondent suggests; however, Florida law forbids it. First, the very provision relied upon by respondent, Section 947.16(4), specifically states that the Commission may from time to time review the parole date established for an inmate, but that "the presumptive parole release date shall not be changed except for reasons of institutional conduct or the acquisition of new information not available at the time of the initial interview." In the present case, the parole examiner recommended a nine-month aggravation of the presumptive parole release date based upon a concurrent sentence imposed upon petitioner. This recommendation was specifically rejected by the Commission. It is self-evident that the existence of the concurrent sentence is not new or previously unavailable information upon which the Commission could rely under Section 947.16(4).

Jenrette, supra, at 578

While it is true that § 947.16(4), Fla. Stat. does state that a PPRD is binding absent the two factors as stated above, § 947.172, which must be read in pari materia with § 947.16, provides in pertinent part as follows:

> (3) the Commission may affirm or modify the authorized presumptive parole release date. However, in the event of a decision to modify the presumptive parole release date, in no case shall this modified date be after the date established under the procedures of s. 947.172. It is the intent of this legislation that, once set, presumptive parole release dates be modified only for good cause in exceptional circumstances.
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> § 947.173 (3), Fla. Stat.

Thus, while the Commission admittedly could not have set a later PPRD for Jenrette, it clearly had the authority to restructure the PPRD in light of the court's disapproval of the use of the challenged conviction in Jenrette's salient factor score. McKahn v. FPPC, 399 So.2d 476 (Fla. 1st D.C.A. 1981); Canter v. FPPC, 409 So.2d 227 (Fla. 1st D.C.A. 1982) Indeed, in Wickham v. FPPC, 410 So.2d 989 (Fla. 1st D.C.A. 1982) the First District rejected the very interpretation that the Jenrette court placed on McKahn, supra. Distinguishing its ruling in McKahn from the circumstances under consideration in Wickham, the court explained:

> In McKahn this court ordered the Commission to reduce the prisoner's offense characteristic and to reduce the erroneous PPRD previously assigned to the prisoner. Instead of complying with this court's order, however, the Commission in McKahn added an aggravating factor and awarded the same PPRD as the Commission had previously set. This is distinguishable from the situation here where the Commission is requesting that it be allowed to correct the very errors which have been called to its attention. (original emphasis; emphasis added)
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> Wickham, supra, at 990-991

Finally, the factors which most seriously militate against any current precedential value which Jenrette may have enjoyed are the enactment of § 947.1745, Fla. Stat. (1982 Supp.) after Jenrette was decided[9] and this Court's rulings in May v. FPPC, 435 So.2d 834 (Fla. 1983) and FPPC v. Paige, ___ So.2d ___, 10 F.L.W. 57 (Fla. Opinion filed January 17,1985). Reaffirming, in Paige, its ruling in May this Court stated:

> In May v. Florida Parole and Probation Commission, 435 So.2d 834 (Fla. 1983), we emphasized that although the Commission is required by law to develop and has developed and implemented objective parole guidelines as criteria upon which to base its parole decisions, chapter 947 leaves the

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[9] See, Ch. 82-171, s. 14, Laws of Florida which became effective on April 20, 1982.

> ultimate parole decision to the discretion of the Commission guided by its rules. We held that the adoption and implementation of objective parole guidelines did not render section 947.18 mere surplusage and said that "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." (Citations omitted; emphasis added)
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> Paige, supra, at 58

Thus, it is now clear that Respondent cannot lay claim to automatic entitlement to an effective parole date (EPRD) and most certainly cannot claim entitlement to immediate release except by expiration of his sentence.[10] Given the foregoing

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[10] Section 947.1745, Fla. Stat. provides:

> 947.1745 Establishment of effective parole release date.-- If the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:
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> (1) Within 90 days prior to the presumptive parole release date, a 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 shall be forwarded to

(Footnote Continued)

factors which cast considerable doubt upon the viability of Jenrette, Petitioner submits that holding should be restricted to its facts or reversed entirely. Under the dictates of Paige, Jenrette is clearly wrong.

Jenrette is based upon the assumption that once a PPRD arrives or should have arrived the inmate is entitled to be

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(Footnote Continued)
a panel of no fewer than two commissioners appointed by the chairman. Within 30 days after receipt of the recommendation, the panel shall determine whether or not to authorize the effective parole release date; and the inmate shall be notified of such decision in writing within 30 days of the decision by the panel.

(2) When an effective date of parole has been established, release on the 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 60 days by a commissioner without a hearing for the development and approval of release plans.

(3) An effective date of parole may be delayed by a commissioner for up to 60 days without a hearing based on:

(a) New information not available at the time of the effective parole release date interview.

(b) Unsatisfactory institutional conduct which occurred subsequent to the effective parole release date interview.

released. This premise is borne out by the following language:

> "Had his salient factor score not been increased, Jenrette would have been entitled to be released at the end of 39 months..."
>
> Jenrette, supra, at 576

While it is true that the Third District did not have benefit of later decisions by this Court, that does not change the fact that, under current decisional law, the basic premise upon which Jenrette was decided is saliently unsustainable. If the basic premise must fall, so too, must all that is dependent upon that premise. In holding that an affidavit submitted by an inmate should be accepted as true where the affidavit establishes probable cause to believe the inmate is being detained without lawful authority, the Jenrette court exhibited rueful short-sightedness. Specifically, such a stance could only be valid when applied to parole cases where an order of parole has been signed and, prior to the release of the inmate, the grant of parole is rescinded. See, Demar, supra It is at that point, pursuant to Morrissey, supra, that at least minimal due process rights attach. The pronouncements in May, supra, and Paige, supra, together with the well-established

doctrine that there is no right to parole in this state,[11] vitiate any precedential value which Jenrette might have enjoyed.

Turning now to Taylor v. Wainwright, 418 So.2d 1095 (Fla. 5th D.C.A. 1982), as previously noted, the Fifth District has receded from that decision for the very same reason that the Fourth District relied upon it. See, Pannier, supra Declining to grant habeas corpus relief to a petitioner who sought to challenge the computation of his PPRD, the Pannier court wrote:

> To the extent that Taylor may imply that the proper procedural attack upon the computation of a presumptive parole release date is by habeas corpus, we recede therefrom and reaffirm our holding in Hardy v. Greadington, 405 So.2d 768 (Fla. 5th D.C.A. 1981), that the appropriate remedy for challenging presumptive parole release dates is by writ of mandamus directed against FPPC. (Citations omitted)
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> Pannier, supra, at 534

Clearly, given the Fifth District's recantation of the opinion expressed in Taylor, one must question the Fourth

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[11] Moore v. FPPC, 289 So.2d 719 (Fla. 1974), cert. denied, 417 U.S. 935, 94 S.Ct. 2649, 41 L.Ed.2d 239 (1974); Ivory v. Wainwright, 393 So.2d 542 (Fla. 1981); Kirsch v. Greadington, 425 So.2d 153 (Fla. 1st D.C.A. 1983); Staton v. Wainwright, 665 F.2d 868 (5th Cir. 1982); Hunter v. FPPC, (Footnote Continued)

District's subsequent reliance upon Taylor. It is most notable that the Fourth District either was not aware or did not care that at least one of the decisions which it used to support its position was no longer viable. Legal circumlocution, however eloquent and witty, must give way to simple logic. If the court which authored an opinion no longer considers it to be good law, can another court, in good faith, rely upon that decision to bolster its own position? Petitioner contends it should not.

The Fourth District's adherence to the position taken in the case sub judice evades understanding. This is so, particularly in view of the fact that it has not been consistent in its treatment of cases such as the one under review.[12] If anything can be gleaned from the progression of Harrisson; Daizi; Gaines; Shannon I,[13] Shannon v. Mitchell (Shannon II), ___So.2d ___, 9 F.L.W. 815 (Fla. 4th D.C.A. 1984), order certifying question on grounds of conflict between district courts, ___So.2d___, 10 F.L.W. 149

(Footnote Continued)
674 F.2d 847 (11th Cir. 1982); Arnett v. State, 665 F.2d 686 (5th Cir. 1982)

[12] See, n.5

[13] Id.

(Fla. 4th D.C.A. January 9, 1985)[14] and the instant cause, it is that the wording of a pro se litigant's petition (be it inartful or provident) will largely determine the nature of his remedy, subject only to the existence of an accompanying affidavit attesting to the inmate's belief (well-founded or not) that he is being detained without lawful authority. In short, it appears that even the Fourth District lacks consensus with respect to when it is appropriate to seek mandamus and/or habeas corpus relief.

Petitioner contends that given the rather overwhelming logic of those decisions which hold that mandamus is the appropriate vehicle by which an inmate may challenge his PPRD and this Court's interpretation of the nature and legislative intent behind the Objective Parole Guidelines Act of 1978, the decision of the Fourth District should be quashed.

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[14] Shannon II involves the exact question presented by this cause.

CONCLUSION

Petitioner maintains that the Fourth District was in error in allowing Respondent to challenge the computation of his PPRD by way of a writ of habeas corpus. This is so simply because the ultimate decision to grant or deny parole rests solely with Petitioner. May, supra; Paige, supra There is no right to parole under Florida's statutory scheme. Staton, supra; Hunter, supra

If an inmate cannot show that he has a right to immediate release, then it is axiomatic that he cannot be granted habeas corpus relief. An inmate who seeks, as Respondent did, to challenge his PPRD does have a clear legal right to proper parole consideration. Moore, supra Where his claim is that the Commission improperly considered certain information in computing his PPRD, that decision is reviewable in mandamus. A finding that Petitioner has abused its discretion or has violated a clear right (in this case, the right to proper parole consideration) sounds in mandamus, not habeas corpus.

The district courts which have taken the position that habeas corpus is available to challenge a PPRD have succeeded only in bastardizing the writ. What is, perhaps, most lamentable is that they have done so without a rational explanation. The mere claim of entitlement to immediate

release is something quite different from the actual existence of such a right. The Fourth District has not made this distinction.

In light of the foregoing arguments and authorities offered in support thereof, Petitioner would urge this Court to definitively lay to rest the question certified by the district court by reiterating the teachings of Moore. The only method by which an inmate can maintain a challenge to the computation of his PPRD is through a petition for writ of mandamus directed to Petitioner.

Respectfully submitted,

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 Mr. Bruce Fuller, D.C. #043610, Hendry Correctional Institution, Route 2 Box 13A, Immokolee, Florida by U.S. Mail this 27th day of February, 1985.

Doris E. Jenkins

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