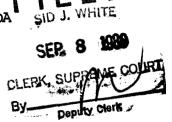
OA 11-9.87

IN THE SUPREME COURT OF FLORIDA



DONALD WALDRUP,

Petitioner,

vs.

CASE NO.: 74,012

RICHARD DUGGAR, Secretary, Florida Department of Corrections,

Respondent.

### REPLY BRIEF OF PETITIONER

MICHAEL E. ALLEN PUBLIC DEFENDER SECOND JUDICIAL CIRCUIT LEON COUNTY COURTHOUSE FOURTH FLOOR, NORTH 301 SOUTH MONROE STREET TALLAHASSEE, FLORIDA 32301 PHONE: (904) 488-2458 FLORIDA BAR NO: 197386

ATTORNEY FOR PETITIONER

### PAGE

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	1
ISSUE PRESENTED	
WHETHER THE <b>1983</b> AMENDMENT OF SECTION <b>944.275,</b> FLORIDA STATUTES, REDUCING WORK OR INCENTIVE GAIN-TIME FROM A POTENTIAL THIRTY-SEVEN DAYS PER MONTH	

TO A POTENTIAL TWENTY DAYS PER MONTH,

HIBITION OF THE UNITED STATES CONSTI-TUTION WHEN APPLIED TO A PRISONER SERVING A SENTENCE FOR A CRIME WHICH OCCURRED PRIOR TO THE EFFECTIVE DATE

VIOLATES THE EX POST FACTO PRO-

OF THE 1983 AMENDMENT.

CERTIFICATE OF SERVICE

2

# PAGE

1,2

Raske v. Martinez, Case No. 88-3101, (11th Cir., July 11, 1989)

-ii-

#### IN THE SUPREME COURT OF FLORIDA

DONALD WALDRUP,

Petitioner,

vs 🛛

CASE NO: 74,012

RICHARD DUGGAR, Secretary, Florida Department of Corrections,

Respondent.

## REPLY BRIEF OF PETITIONER

#### ARGUMENT

#### ISSUE PRESENTED

WHETHER THE **1983** AMENDMENT OF SECTION **944.275**, FLORIDA STATUTES, REDUCING WORK OR INCENTIVE GAIN-TIME FROM A POTENTIAL THIRTY-SEVEN DAYS PER MONTH TO **A** POTENTIAL TWENTY **DAYS** PER MONTH, VIOLATES THE EX POST FACTO PRO-HIBITION OF THE UNITED STATES CONSTI-TUTION WHEN APPLIED TO A PRISONER SERVING A SENTENCE FOR **A** CRIME WHICH OCCURRED PRIOR TO THE EFFECTIVE DATE OF THE 1983 AMENDMENT.

Respondent has raised the same basic argument before this Court as was raised before the Eleventh Circuit, United States Court of Appeals, in <u>Raske v. Martinez</u>, Case No. 88-3101, (11th Cir., July 11, 1989). That argument, of course, is that work on incentive gain-time is constitutionally distinguishable from basic gain-time. Rather than belabor the point, Petitioner

-1-

will simply rely upon the well-reasoned opinion of Judge Tjoflat in Raske, rejecting this argument.

Respectfully submitted,

MICHAEL E. ALLEN Public Defender Second Judicial Circuit Leon County Courthouse Fourth Floor, North 301 South Monroe Street Tallahassee, Florida 32301 Florida Bar No: 197386 ATTORNEY FOR PETITIONER

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief of Petitioner has been furnished to Susan A. Maher, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1502, Tallahassee, Florida 32399-1050 and to Donald Waldrup, #637862, Box 350, Avon Park Correctional Institutional, P. O. Box 1100, Avon Park, Florida 33825-1100, this 3 day of September, 1989.

UU MICHAEL E. ALLEN