

Florida Parole Commission failed to provide documents which were requested under Chapter 119, Florida Statutes. As a result of this request, Judge Lockett entered an order requiring that the Florida Parole Commission provide copies of all such files and documents to counsel for Duckett within fifteen (15) days. Subsequently, the Florida Parole Commission filed a motion for rehearing and/or motion to vacate and motion to stay in the Fifth Judicial Circuit. That motion was served on July 31, 1992. Judge Lockett denied the Commissions' motion based upon the fact that Duckett is sentenced to be "securely strapped in the electric chair and have sufficient electricity pass through his body to render him dead." The trial court was concerned that:

The notion that the State would intend this result while at the same time maintaining its right to a "secret file" containing information which may or may not be useful to this defendant's counsel is abhorrent to the notions of fundamental fairness and due process.

II. LEGAL ARGUMENT

Respondent agrees with the fundamental notion that there is a prohibition against legislative or judicial encroachment upon the executive branch's clemency power. See Art. IV, § 8, Fla. Const.; Sullivan v. Askew, 348 So.2d 312 (Fla. 1977), cert denied 434 U.S. 878 (1977). Clearly, the Governor has the sole, unrestricted, and unlimited discretion to exercise the pardon power. Id. The legislature and the judiciary are without authority to prescribe either occasions for exercising the pardon power or the manner and procedure for its exercise. See Turner v. Wainwright, 379 So.2d

148 (Fla. 1st DCA 1980), affirmed 389 So.2d 1181 (Fla.); In re Advisory Opinion of the Governor, 334 So.2d 561 (Fla. 1976). This constitutional power derives from Article IV, Section 8 of the Florida Constitution which provides that the governor has the power of clemency and states:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the Secretary of State, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty (60) days, and with the approval of three (3) member of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Art. IV, § 8(a), Fla. Const. However, Article IV of the Florida Constitution also provides for the creation of a parole and probation commission with the power to supervise persons on parole and to grant paroles or conditional releases to persons under sentences for crime. Art. IV, § 8(c), Fla. Const. The Constitution provides that the qualifications, method of selection, and terms of the members of **the commission shall be prescribed by law.** Id. (Emphasis added).

Although the Governor, in exercising the powers under Article IV, Section 8(a), is excluded from any control by the judiciary or legislature, the Parole Commission clearly is subject to the powers of the judiciary and legislature. See Turner v. Wainwright, supra. In fact, the powers and duties of the Parole Commission are legislatively prescribed in Section 947.13, Florida Statutes. The Statute **provides** that **one of the duties of the Parole** and Probation

Commission shall be:

Reporting to the Board of Pardons the facts, circumstances, criminal records, and social, physical, mental, and psychiatric conditions and histories of persons under consideration by the Board of Pardons for pardon, commutation of sentence, or remission of fine, penalty, or forfeiture.

§ 947.13 (1)(e), Fla. Stat. The legislature has also directed that the Parole Commission shall immediately examine records of the Department of Corrections obtained under Section 945.25, Florida Statutes, as well as other records which it obtains and provides the authority to make such other investigations as may be necessary. § 947.13(2) (a), Fla. Stat. If the powers and duties of the Parole Commission are legislatively prescribed, certainly, the Parole Commission must be subject to other legislative enactments.

See Turner v. Wainwright, supra.

In Turner v. Wainwright, supra, the First District held that the open public meetings law could not constitutionally be held to require compliance by the Governor or by the Governor and Cabinet in dispensing pardons and other forms of clemency authorized by the Constitution. 379 So.2d at 151. However, the court went on to opine that the powers which are enumerated to the Governor under Subsection 8(a) of Constitution can be differentiated from those under Subsection 8(c) of the Constitution. Id. **The** court noted:

Since 1968 the constitutional authority for paroles has been housed with pardons and other clemency measures in Article IV, Section 8. Yet Subsection 8(c) is of a character different from 8(a), which grants certain clemency powers outright to the Governor, or to the Governor and Cabinet. Subsection 8(c) provides that a Parole and Probation

Commission having parole powers, "may be created by law."

Id. In Turner, the Parole Commission argued that because it fell within the parameters of Article IV, Section 8, that it automatically partakes in the executive's immunity from legislation. Id. The First District and this court rejected that argument. See Wainwright v. Turner, 389 So.2d 1181 (Fla.).

The Legislature of Florida has expressed a strong general state policy that public records shall be open. See § 119.01, Fla. Stat. In Locke v. Hawkes, 595 So.2d 32 (Fla. 1992), this court specifically found that the definition of agency in Section 119.011, Florida Statutes:

...was intended to apply to executive branch agencies and their officers...

595 So.2d at 37. Thus, given the fact that the Florida **Parole** Commission is an executive agency, it clearly is subject to Chapter 119. See Locke v. Hawkes, supra.

Given the fact that the Florida Parole Commission is an agency subject to Chapter 119, it is clear that the records must be produced. See Mendyk v. State, 592 So.2d 1076 (Fla. 1992). In Mendyk, this court held that a request for documents under Chapter 119 may properly be made as a part of a motion for post conviction relief. 592 So.2d at 1076.

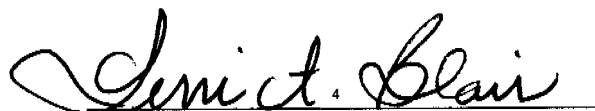
This court has made it abundantly clear that Chapter 119 requests must be honored in death penalty cases in order to assure the heightened level of due process necessary to protect the interest of individuals who have been sentenced to death. See

State v. Kobal, 562 So.2d 324 (Fla. 1990). ~~See also Provenzano v. Dugger~~, 561 So.2d 541 (Fla. 1990). It is, as the trial court opined, abhorrent to notions of fundamental fairness that "secret files" might be maintained by the Florida Parole Commission when every other executive agency is subject to Chapter 119 disclosure.

111. CONCLUSION

In conclusion, respondent requests that this court affirm the order entered by respondent requiring that the Florida Parole Commission produce all records for examination by defendant's counsel.

Respectfully submitted,



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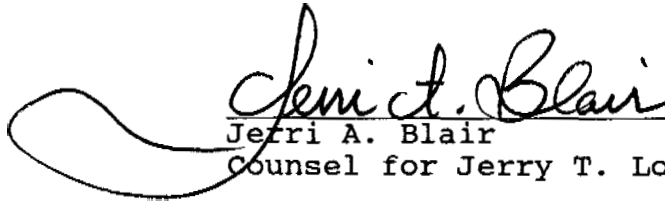
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CERTIFICATE OF SERVICE

I certify that copy hereof has been furnished to William L. Camper, Florida Parole Commission, 1309 Winewood Boulevard, Building 6, Room 338, Tallahassee, Florida 32399-2450; M. Elizabeth Wells, Capitol Collateral Representative, 1533 South Monroe Street, Tallahassee, Florida 32301; Albert J. Vidal, Assistant State Attorney, 19 Northwest Pine Avenue, Ocala, Florida 32670; Carolyn M. Snurkowski, Assistant Attorney General, Department of Legal

Affairs, Room 1502, The Capitol, Tallahassee, Florida 32399; Bobby Brochin, Office of the Governor, Legal Office, Room 209, The Capitol, Tallahassee, Florida 32399-0001; Gene Hodges, Chairman, Florida Parole Commission, 1309 Winewood Boulevard, Building 6, Tallahassee, Florida 32399-2450; and Ray Howard, Director, Clemency Administration, Florida Parole Commission, 1309 Winewood Boulevard, Building 6, Tallahassee, Florida 32399-2450 by mail this 25th day of August, 1992.



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