

FILED

SID J. WHITE

APR 28 1997

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

RONALD THOMAS,

Petitioner,

vs.

CASE NO.: 90,128

HARRY K. SINGLETARY, etc.,

and

THE FLORIDA PAROLE COMMISSION,

Respondent(s).

**PETITIONER'S REPLY TO THE RESPONDENT'S,
FLORIDA PAROLE COMMISSION'S RESPONSE**

COMES NOW, the Petitioner, RONALD THOMAS, pro se, in the above-styled cause, and hereby files this Reply To The Respondent's, Florida Parole Commission's, Response to this Honorable Court's Show Cause Order dated April 1, 1997, and states the following:

1. The question before this Honorable Court is whether the Respondents' retroactive cancellation of Petitioner's control release date (CRD), violates the Ex Post Facto Clause of the United States Constitution.

2. The answer is affirmative. California Department of Corrections v. Morales, ___ U.S. ___, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) ("thus, a prisoner who could show that he was 'suitable' for [release] ... might well be entitled to secure a release ...").

3. In 1993, the Florida Legislature enacted legislation that made the Petitioner eligible for CRD even though he was serving a sentence as an habitual felony offender¹. See, chapter

¹ SECTION 775.084(1)(a), Fla.Stat. (1989).

93-406, Laws of Florida. As a result of this legislation, the Petitioner was awarded CRD, the last date being in July 1996.

4. The Petitioner's status, classification, and the number of prior commitments were known to the Respondents at the time he was awarded advancable CRD credits. Whether temporary or long-term, chapter 93-406, Laws of Florida, granted the Petitioner with an eligibility for early release, under § 947.146, Fla.Stat.

5. The Petitioner had an expectation to leave prison early due to the advancable CRD credits that he had received. Therefore, to retroactively cancel the CRD credits violated the Ex Post Facto Clause. California Dept. of Corrections v. Morales, supra. This is not a matter of mass release,² but a matter of constitutional dictates. Gwong v. Singletary, 638 So.2d 109, 114 (Fla. 1996) ("We can neither ignore nor avoid the express dictates of the United States Supreme Court in its holding in Weaver" infra).

6. The Florida Parole Commission ("Commission") cites a number of reason why relief should not be granted. Each will be addressed in turn.

7. The Commission states that the CRD credits were not canceled, therefore, there is no Ex Post Facto violation. However, in December 1994, the Commission froze all inmates' CRD's and then on January 17, 1995, adopted an emergency policy to extend all CRD's to the inmates' Tentative Release Date (TRD). In support

² In arguing Gwong, the Department's 10/22/96 Rehearing Motion, page 4, stated that the outcome of this court's decision will affect "prison release dates for many thousands of 'violent felony offenders' as well as the safety and welfare of all Floridians" and the argument here are almost identical: TO INFLUENCE PUBLIC OPINION IN A NON-JUDICIAL FORUM.

of this position, the Commission cites section 947.146(6)(a)3, Fla.Stat. This statute unconstitutionally grants the Commission the authority to extend CRD's as necessary, based on prison capacity.³

8. A similar argument was raised by the Department of Corrections in Gwong v. Singletary, supra. In that case, the Department argued that the awarding of incentive gain-time was within its discretion, and nothing in the statutes prohibited it from making a distinction among inmates. In rejecting the Department's argument, this Court held that "such an argument fails to 'acknowledge' that it is the effect, not the form, of the law that determines whether it is Ex Post Facto." id. at 114, citing, Weaver v. Graham, 450 U.S. 24, 31, 101 S.Ct. 960, 965, 67 L.Ed.2d 17 (1981).

9. The statute violated the Ex Post Facto Clause when it allowed the Respondents to extend the CRD's once they were given, based on no fault or action of the prisoner. Gwong, supra.

10. The fact that the instant case addresses CRD's and Lynce v. Mathis, 117 S.Ct. 891 (1997) addressed provisional credits and administrative gain-time, is not the controlling factors. What controls is that the Florida legislature enacted laws in which to releave prison overcrowding, each law had certain criterion, and each law superseded the former.⁴

³ This argument was upheld in Calamia v. Singletary, 22 Fla.L.Wkly S7 (12/19/96), but was overruled by Lynce v. Mathis, 117 S.Ct. 891 (1997).

⁴ Justice Harding hit the nail directly on the head when he said, "I do not believe that this analysis fails here simply because we call one form of gain-time 'incentive' and the other 'administrative' or, 'provisional'." Calamia v. Singletary, 22 Fla.L.Wkly S7, 9 (12/19/96).

All were means of releasing prisoners by granting credits to those prisoners meeting the prescribed criterion, creating an expectancy to early release that could not be taken away at the Respondents' discretion. Stated simply, if the Respondents determined that it was no longer a need to release prisoners, they could have froze the credits and awarded no more, but not extend or cancel the credits once they were given. Id. at 898 (the state could have alleviated the overcrowding problem in other ways, given the fact that release credits were awarded, and retroactively cancelled resulted in an Ex Post Facto violation).

11. The Commission points to the fact that the Petitioner was not statutorily eligible for CRD credits when his crime was committed. This argument must fail. Because, section 93-406, Laws of Florida, granted the Commission with the authority to grant the Petitioner - as an habitual felony offender - with CRD credits. (See, Appendix, Exhibit "I," 93-406, s.26, Laws of Florida).

Based on this change in the law, the Commission granted the Petitioner with CRD credits. These credits advanced the Petitioner's release date to July 1996. No court has upheld the Commission's argument on this point thus far. See, Lynce; Gwong; Weaver v. Graham, supra. And their argument is likewise unpersuasive now.

12. The Commission points out next that the Petitioner was never released, and therefore the Ex Post Facto laws cannot be applied to him.⁵ This argument is extinguished by the conclusion reached in Morales, supra, wherein the Court stated "Thus, a prison-

⁵ However, all inmates that had received administrative or provisional credits, benefited from the decision in Lynce, whether they were released or still incarcerated.

er who could show that he was 'suitable' for parole two years prior to such a finding by the board might well be entitled to secure a release date that reflects that fact." Id. at 1605.

A close reading of Morales, supra, indicates that it requires the prisoner to show that there was an expectation to early release. And that it was not based on speculation. In the instant case, the Petitioner has shown that there was an expectation to early release. (See, App., Ex. "II," Affidavit). The Petitioner had his date reduced to July 1996. What more is required? The only reason the Petitioner was not released was because the Commission took action to cancel his CRD credits, at no fault attributable to the Petitioner.

13. Ex Post Facto is not determined by a prisoner having a right to early release credits. It is determined when a law retroactively alters the definition of a crime, or increases the punishment for criminal acts. Collins v. Youngblood, 497 U.S. 37, 43, 110 S.Ct. 2715, 2719, 111 L.Ed.2d 30 (1990).

In the instant case, the Petitioner was set for release, his date was reduced within seven (7) months of release, his family was awaiting his release. And the Commission, using its discretion, canceled the Petitioner's CRD date. What more is required to violate the Ex Post Facto Clause of the United States Constitution? The Commission's argument must fail, because discretion is out-the-window when the Petitioner was within seven (7) months of his release, and his release date was canceled. This violated the Ex Post Facto Clause. See, Raske v. Martinez, 876 F.2d 1496 (11th Cir. 1989)(the Department of Correction's discretion is

not absolute). The Petitioner was eligible because he did in fact receive the CRD credits. He was on his way home and was stopped only because of the Commission's unbridled discretion.

Lastly, the Commission's attempt to shift the burden of responsibility solely to the Department of Corrections is not supported by their own exhibits, but rather, their exhibits refute their very own allegations. (All of these exhibits were taken from the Commission's Response, Exhibit "K"). (See, App., Ex. "III," Memorandum from Judith A. Wolson, Chairman, dated December 12, 1994, @ ¶ 4)("In doing all of this [canceling Early Release], we must work not only together as a Commission, but also with the Department of Corrections as one team with a common goal"). (See Also, App., Ex. "IV," Letter from Harry K. Singletary, Jr., Secretary, dated January 12, 1995, @ ¶ 2)("...Based upon the review of these documents and the desire not to release inmates any sooner than required by law, we discussed the possibility that you, the Parole Commission, may no longer need to release inmates through the control release mechanism")(emphasis added). (See Also, App., Ex. "V," Memorandum from Terry Parker, Control Release Administrator, dated January 17, 1995, @ pg. 1, ¶ 3)("As you and the Commissioners are all aware, the Control Release Authority was created to control the prison population and to keep it within lawful limits"). (See Also, App., Ex. "VI," Letter from Judith A. Wolson, Chairman, dated December 15, 1994, @ ¶ 2)("... the Florida Parole Commission acting in its capacity as the Control Release Authority has ceased all scheduled Early Releases as of the close of business, December 8, 1994")(emphasis added).

The Florida Legislature does not have the authority to grant the Florida Parole Commission permission to override the U.S. or Florida Constitutions. The Declaration of Rights of the Florida Constitution, Art. 2, § 3, creates the powers of the state government that is divided into three branches. The legislative branch looks to the Constitution for limitations on its power. One such limitation is found in Art. 1, § 10, of the Florida Constitution which prohibits the passing of any ex post facto laws. The legislature overrode this Constitutional limitation by enacting a statute which granted the Commission the authority to extend CRD's.

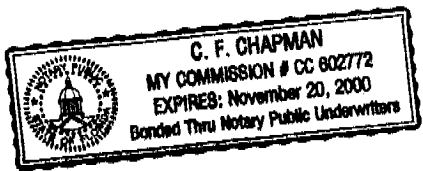
The Petitioner's rights against ex post facto laws has been violated by the Commission and this Honorable Court must issue to the Respondents, a Habeas Corpus, directing that his CRD credits be restored to reflect a July 1996 date, as was previously awarded to him in 1995, and Order his immediate release. Such other and further relief that this Honorable Court deems just and proper.

Based on the foregoing argument and legal authority, this Petitioner moves this Honorable Court to reject the Respondent's ever-failing arguments, and issue an immediate Writ of Habeas Corpus, directing that all of his CRD credits be restored to reflect the date of July 1996.

SWORN AND SUBSCRIBED TO
BEFORE ME THIS THE 25
DAY OF APRIL, 1997.

Ronald Thomas
RONALD THOMAS #061064
LAKE CORRECTIONAL INSTITUTION
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CLERMONT, FL 34711-9025

C. F. Chapman
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY TO THE RESPONDNET'S, FLORIDA PAROLE COMMISSION'S RESPONSE with attached Appendix, has been furnished by regular, Pre-Paid, First Class U.S. Mail to the attorney for the Respondnets: WILLIAM L. CAMPER, (Commission), 2601 Blair Stone Road, Bldg. C., Tallahassee, FL 32399-2450; and SUSAN MAHER, (Department of Corrections), Bureau of Legal Affairs, 2601 Blair Stone Road, Tallahassee, FL 32399-2500, on this the 25 day of April, 1997.


RONALD THOMAS #061064

Pro Se Petitioner