047

IN THE SUPREME COURT OF FLORIDA

GLEN R. DEASON,
DC # 789898

Petitioner,

vs.

FLORIDA PAROLE COMMISSION, et al.

Respondents.
_____/

FILED
SID J. WHITE
MAY 16 1997
CLERK, SUPREME COURT
By_____
Chief Deputy Clerk

CASE NO. 90,218

RESPONDENT'S BRIEF ON THE MERITS

On Certification from the District Court of Appeal,
First District of Florida

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PRELIMINARY STATEMENT

The Appellant below, Glen R. Deason, will be referred to as "Petitioner" in this brief. Appellee below, Florida Parole Commission, will be referred to either as "Respondent" or "the Commission." References to the record on appeal below will be designated "R" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND THE FACTS

On November 17, 1995, Petitioner filed a "Petition for Habeas Corpus or in the Alternative Writ of Mandamus" in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, Case No. 95-5818, naming the Florida Parole Commission and the Florida Department of Corrections as respondents (R 1-14). None of the named respondents were ordered to respond to the petition.

On January 18, 1996, the Circuit Court issued a summary "Order Denying Petition for Writ of Habeas Corpus/Mandamus and Dismissing Cause", stating that "...the Court finds that the Petition fails to state a cause of action which would entitle the Plaintiff to relief. Accordingly, said Petition should be denied." (R 22, 23). Notice of Appeal was filed on January 30, 1996 (R 24, 25).

Petitioner filed his Initial Brief in the District Court of Appeal, First District of Florida, Case No. 96-458, on or about April 5, 1996. Petitioner's brief contained argument on the merits but ignored the lower court's final order (R).

On April 25, 1996, Appellee Florida Parole Commission filed its Answer Brief, arguing that the lower court properly determined that

Petitioner had failed to set forth a prima facie case for relief in circuit court (R).

On February 28, 1997, the District Court issued its opinion in this case affirming the denial of Petitioner's petition in circuit court. The majority of the panel held that under the Conditional Release supervision statute, Section 947.1405, Florida Statutes, even though Petitioner had not been convicted of a crime contained in categories 1-4 of the Sentencing Guidelines, he was subject to Conditional Release because he was a Habitual felony Offender. Deason v. State of Florida, Dept. of Corrections & Fla., Parole Commission, ___ So.2d ___, 22 Fla. L. Weekly D571 (Fla. 1st DCA, February 28, 1997). Because one judge of the panel dissented from the majority opinion, the court certified the following as a question of great public importance:

> DOES AN INMATE WHO HAS BEEN SENTENCED AS A HABITUAL OR VIOLENT HABITUAL OFFENDER BUT WHO IS NOT CONVICTED OF A CATEGORY 1, CATEGORY 2, CATEGORY 3 OR CATEGORY 4 CRIME QUALIFY FOR CONDITIONAL RELEASE PURSUANT TO SECTION 947.1405(2), FLORIDA STATUTES (1989)?

On April 7, 1997, this Court issued its Order Postponing Decision on Jurisdiction and Briefing Schedule, and on April 29, 1997, Petitioner's Brief on the Merits was served upon Respondent Florida Parole Commission.

STATEMENT OF THE ISSUE

DOES AN INMATE WHO HAS BEEN SENTENCED AS A HABITUAL OR VIOLENT HABITUAL OFFENDER BUT WHO IS NOT CONVICTED OF A CATEGORY 1, CATEGORY 2, CATEGORY 3 OR CATEGORY 4 CRIME QUALIFY FOR CONDITIONAL RELEASE PURSUANT TO SECTION 947.1405(2), FLORIDA STATUTES (1989)?

SUMMARY OF THE ARGUMENT

Given that a plain reading of Section 947.1405(2), Florida Statutes (1989), provides for conditional release for habitual offenders without other qualification, and given that even if the statute were ambiguous that the legislative history supports this interpretation, and given that the agency charged with the statute's administration has always followed this interpretation, it is clear that the statute applied to Petitioner to place him on conditional release supervision as a Habitual Felony Offender. The certified question in this case must consequently be answered in the affirmative.

ARGUMENT

ISSUE:

The District Court of Appeal, First District of Florida, certified the following question as one of great public importance:

> DOES AN INMATE WHO HAS BEEN SENTENCED AS A HABITUAL OR VIOLENT HABITUAL OFFENDER BUT WHO IS NOT CONVICTED OF A CATEGORY 1, CATEGORY 2, CATEGORY 3 OR CATEGORY 4 CRIME QUALIFY FOR CONDITIONAL RELEASE PURSUANT TO SECTION 947.1405(2), FLORIDA STATUTES (1989)?

The certified question must be answered in the affirmative.

The instant case presents an issue solely involving the statutory interpretation of Section 947.1405(2), Florida Statutes (1989), which stated in pertinent part that:

> (2) Any inmate who Is convicted of a crime committed on or after October 1, 1988, which crime is contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure, and who has served at least one prior felony commitment at a state or federal correctional Institution or is sentenced as a habitual or violent habitual offender pursuant to s. 775.084 shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be

> released under supervision subject to specified terms and conditions...

(Emphasis supplied)

The Conditional Release Program is administered by the Parole Commission, and although it is a supervised early release program, placement thereon is automatic for certain offenders, as opposed to probation and community control, which are court-imposed sanctions in lieu of incarceration. *See*, Chapter 948, Florida Statutes. Placement on conditional release supervision is "...freedom subject to supervision as if on parole." Haliburton v. State, 561 So.2d 248 (Fla. 1990). Prior to the 1988 enactment of Section 947.1405, prison inmates "expired" their sentences upon early release resulting from accumulated gain-time. At present, pursuant to Section 947.1405 (1996 Supp.), when an offender (a) commits a crime contained within categories 1 through 4 of the Sentencing Guidelines ("violent crimes") and has a prior commitment to prison, or (b) is sentenced as a Habitual or Violent Habitual Felony Offender or (c) a Sexual predator, the offender is placed on Conditional Release supervision under terms and conditions established by the

Parole Commission, the length of which shall not exceed the maximum penalty imposed by the sentencing court.

The District Court panel majority below stated in its opinion in this case that:

> Deason was originally convicted in 1990 of two counts of grand theft of a motor vehicle and sentenced as a habitual offender to concurrent terms of three and one-half years imprisonment. He was released from the Department of Corrections on February 1, 1993, and placed on conditional release pursuant to section 947.1405, Florida Statutes (1989). he was again arrested on April 12, 1993, and his conditional release was revoked. His argument in the trial court concerned proper interpretation of section 947.1405(2), Florida Statutes (1989):
>
> * * * * *
>
> Petitioner argued that the proper criteria for the conditional release program were that the inmate must have been convicted of a category 1, 2, 3, or 4 crime *and* either have been subject to a habitualized sentence or have served a prior felony commitment. Since appellant's crime was not enumerated in category 1, 2, 3, or 4 of the guidelines, he contended that he was ineligible for the program. The commission argued, and the trial judge agreed, that this statute, properly read, provides for habitualized sentencing as a separate independent criterion for conditional release.
>
> We agree with this reading of the statute. While there may be some ambiguity in its language, accepted aids to statutory construction support the commission's reading. For example, a Senate Staff Analysis for CS/HB 1574, 1422, 1430, 1438, 1439, and 1567 which passed as chapter 88-122 and enacted section 947.1405 provided:

> Section 16 [later section 19] creates section 947.1405, F.S., the "Conditional Release Program Act" to provide for post-release supervision for persons sentenced under Category 1, 2, 3, or 4 of Sentencing Guidelines or as habitual offenders.

This document, dated two days prior to the vote by both Senate and House, provides significant evidence of legislative intent. *See Auto-Owners Insurance v. Prough*, 463 So.2d 1184, 1186 (Fla. 2d DCA 1985); *Florida Insurance Guaranty Association, Inc. v. State Department of Insurance*, 400 So.2d 813, 817 n. 5 (Fla. 1st DCA 1981).

Additional support for our conclusion is drawn from an examination of the provisions of Florida law relating to the sentencing of habitual offenders. Although section 775.084(4)(e), Florida Statutes (1989) stated that "[t]he provisions of chapter 947 shall not be applied to [habitual offenders]", this court explained in *Lincoln v. State*, 643 So.2d 668 (Fla. 1st DCA 1994) that this language was an anachronism and contrary to legislative intent in enacting the conditional release program. The 1993 Legislature expressly clarified the issue when it enacted chapter 93-406, section 2, amending section 775.084(4)(e) to provide that "[t]he provisions of s. 947.1405 shall apply to persons sentenced as habitual offenders...." *See Lincoln*, 643 So.2d at 672.

Also supporting the commission's interpretation of the statute is a significant change made to section 947.1405(2) by the 1995 Legislature. It now reads:

> (2) Any inmate who:

> (a) Is convicted of any crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional Institution;
>
> (b) Is sentenced as a habitual or violent habitual offender pursuant to s. 775.084; or
>
> (c) Is found to be a sexual predator under s. 775.23, shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions...

We conclude that this amendment was likely intended to clarify, rather than change, the law. *See Keyes Investors Series 20, Ltd. v. Department of State*, 487 So.2d 59, 60 (Fla. 1st DCA 1986).

In light of the above, we hold that a person subject to habitualized sentencing in 1990, as now, is eligible for conditional release under the terms of section 947.1405(2), regardless of the status of the conviction itself under the sentencing guidelines. Denial of Deason's petition for writ of mandamus is therefore affirmed.

Deason, supra at 22 Fla. L. Weekly D571 (attached hereto as Appendix A).

The Dissenting Judge concluded that a plain reading of the statute in question mandates that only those inmates who have been convicted of a category 1, 2, 3, or 4 crime *and* have been sentenced as habitual offenders or served a prior prison commitment are subject to conditional release. Deason, supra at D572.

In his Brief on the Merits, Petitioner Deason contends that this Court should go no further than looking at the 1989 statutory provision, which according to Petitioner, on its face plainly requires that an inmate be convicted of both an enumerated offense and have a prior prison commitment and be sentenced as a habitual offender to be subject to conditional release. The Commission disagrees, and submits that the 1989 statute on its face plainly required that an inmate be convicted of an enumerated offense and have a prior prison commitment **or** be sentenced as a habitual offender to be subject to conditional release. This is the interpretation of the statute that the Commission has consistently followed since its initial enactment. This Court has held that courts should accord great deference to administrative interpretations of statutes which the agency is required to enforce. Department of Environmental Reg. v. Goldring, 477 So.2d 532 (Fla. 1985).

However, because there was a difference of opinion on the reading of the 1989 statute by the panel of the District Court, it must be assumed that the statute's meaning in this regard is neither plain nor clear, but is somewhat ambiguous. This Court has held that a statute is to be construed in such a manner as to ascertain and give effect to the evident interpretation of the legislature as set forth in the statute, and where any ambiguity exists, this must yield to the legislative purpose. Smith v. City of St. Petersburg, 302 So.2d 756 (Fla. 1974). When the meaning of a statute is at all doubtful, the law favors a rational, sensible construction. Courts are to avoid an interpretation of a statute which would produce unreasonable consequences. Wakulla County v. Davis, 395 So.2d 540 (Fla. 1981).

The only sensible reading of the 1989 version of Section 947.1405(2) is that the "or" signifies the Legislature's intention to subject to conditional release either "violent" offenders with at least one prior commitment or habitual offenders (if the drafters had thought to insert [or had not clerically misplaced] a mere comma before "or", no ambiguity could exist in this regard and Petitioner would be deprived of any basis for his argument).

This interpretation alone makes sense because if only the inmates convicted of the enumerated violent offenses who were sentenced as habitual offenders were contemplated as subject to conditional release, a multiple rapist and murderer who has avoided being sentenced by a trial court as a habitual offender, either because the prosecutor forgot to ask for such sentencing or for myriad other reasons, would not be subject to supervision, whereas a habitual bad check offender with one robbery conviction would. This result was never intended. The law is clear that an interpretation of a statute which leads to an unreasonable or ridiculous conclusion or result obviously not designed by the legislature will not be adopted. Drury v. Harding, 461 So.2d 104 (Fla. 1984).

Further, this Court has held that an ambiguity as to legislative intent should receive the interpretation that best accords with the public benefit. In re Ruff's Estate, 32 So.2d 840 (Fla. 1948). There can be no doubt that it is of great benefit to society that those offenders convicted of the most serious guidelines category 1-4 offenses or sentenced as habitual felony or violent felony offenders be subject to supervision once they are released into the community prior to expiration of their

court-imposed sentences due to accrual of gain-time credits. As a statute enacted for the protection of the public, Section 947.1405 must be construed in favor of the public even though it may contain a penal provision. State v. Hamilton, 388 So.2d 561 (Fla. 1980); City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971); Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969)

It is important to note that Section 947.1405 did not and does not impose any additional time in custody and of itself **imposes no penalty**, but only provides for supervision until expiration of an offender's court-imposed sentence for sexual offenders, or for a lesser period as determined by the Commission for other offenders. In no event does the length of supervision exceed the maximum penalty imposed by the court.

As the majority below correctly recognized, and as this Court has held, if the phraseology of an act is ambiguous or is susceptible of more than one interpretation, it is the duty of the court to glean the legislative intent from a consideration of the act as a whole, the evil to be corrected, the language of the act, including its title, and the history of its enactment, and give that construction which comports with the

evident legislative intent. *See e.g.* Foley v. State ex rel. Gordon, 50 So.2d 179 (Fla. 1951); Singleton v. Larson, 46 So.2d 189 (Fla. 1950); State v. Webb, 398 So.2d 820 (Fla. 1981). Staff analyses of legislation should be accorded significant respect in determining legislative intent. Ellsworth v. Insurance Co. of N. Am., 508 So.2d 395 (Fla. 1st DCA 1987); State, Dept. of Envir. Reg. v. SCM Glidco Org., 606 So.2d 722 (Fla. 1st DCA 1992).

The majority cited the Senate Staff Analysis for CS/HB 1574, 1422, 1430, 1438, 1439, and 1567 which passed as chapter 88-122 and enacted Section 947.1405, and which provided:

> Section 16 [later section 19] creates section 947.1405, F.S., the "Conditional Release Program Act" to provide for post-release supervision for persons sentenced under Category 1, 2, 3, or 4 of Sentencing Guidelines or as habitual offenders.

Deason, *supra* at 571 (emphasis supplied). The Commission would further submit as evidence of legislative intent the Florida House of Representatives Final Staff Analysis & Economic Impact Statement for

House Bill 1574 (attached hereto as Appendix B)[1] regarding Chapter 88-122, Laws of Florida, enacting the Conditional Release Program Act , wherein the House staff acknowledged that the Act

> ...targets "high risk" inmates being released early due to gain-time, requiring conditional supervision for up to 2 years. It targets the worst 6-7% of inmates being released... offenders who have committed murder/manslaughter, sexual offenses, robbery, and violent personal crimes, and inmates sentenced as "habitual offenders".

(emphasis supplied) Clearly, if the Legislature had not intended the statute's application to be an "either/or" proposition, its staff would have so indicated in these analyses. To further emphasize and clarify what the law had always been (and to include sexual predators), the Legislature amended the statute in 1995 to separate the qualifications precedent for conditional release status into different subsections to read:

> (2) Any inmate who:
>
> (a) Is convicted of any crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994,

[1] Judicial notice of this official action and record of the Florida Legislature is appropriate pursuant to Section 90.202(5), Florida Statutes, and Respondent moves that this Court take proper judicial notice thereof.

> which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional Institution;
>
> (b) Is sentenced as a habitual or violent habitual offender pursuant to s. 775.084; or
>
> (c) Is found to be a sexual predator under s. 775.23, shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions...

Section 947.1405(2), Florida Statutes(1995). The District Court panel majority correctly concluded that this amendment was likely intended to clarify what the law had always been, as opposed to a substantive change thereof, citing Keyes Investors Series 20, Ltd. v. Department of State, 487 So.2d 59, 60 (Fla. 1st DCA 1986). The majority further pointed to the 1993 Legislature's express clarification of the applicability of conditional release to habitual offenders by its enactment of chapter 93-406, section 2, Laws of Florida, amending Section 775.084(4)(e) to provide that "[t]he provisions of s. 947.1405 shall apply to persons sentenced as habitual offenders....". Id.

Given that a plain reading of Section 947.1405(2), Florida Statutes (1989), provides for conditional release for habitual offenders without other qualification, and given that even if the statute were ambiguous that the legislative history supports this interpretation, and given that the agency charged with the statute's administration has always followed this interpretation, it is clear that the statute applied to Petitioner to place him on conditional release supervision as a Habitual Felony Offender. The certified question in this case must consequently be answered in the affirmative.

CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Respondent Florida Parole Commission respectfully urges this Honorable Court to answer the certified question in this case in the affirmative and affirm the judgment of the District Court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing has been furnished by U.S. Mail to Glen R. Deason, DC # 789898, Okaloosa Correctional Institution, 3189 Little Silver Road, Crestview, Florida 32539-6708, this 15th day of May, 1997.

BRADLEY R. BISCHOFF
Assistant General Counsel

APPENDIX TO PETITIONER'S

BRIEF ON THE MERITS

APPENDIX A

conclusion was, in turn, based upon the assumption that appellant had not taken a direct appeal from his conviction and sentcncc. However, that assumption was erroneous. Appellant did, in fact, appeal his sentence, claiming that it was illegal, and this court affirmed without opinion. *White v. State*, 641 So. 2d 74 (Fla. 1st DCA 1994). Our mandate issued on August 12, 1994, and appellant filed his motion seeking post-conviction relief on June 10, 1996. Accordingly, his motion was timely filed.

We reverse the order denying relief, and remand for further proceedings. Should the trial court agam conclude that appellant is entitled to no relief, it shall attach to its order those portions of the record which conclusively demonstrate that fact.

REVERSED and REMANDED, with directions. (WEBSTER, MICKLE and LAWRENCE, JJ., CONCUR.)

* * *

Criminal law-Mandamus-Department of Corrections—Defendant who was arrested following revocation of conditional release contending that he was not eligible for conditional release program-Defendant who was sentenced as habitual offender, but who was not convicted of crime contained in category 1, 2, 3 or 4 under guidelines, qualified for conditional release—Ambiguous statutory language providing for conditional release of defendant who was convicted of category 1, 2, 3, or 4 offense, and who has served at least one prior felony commitment or is sentenced as habitual or violent habitual offender, when properly read, provides for habitualized sentencing as separate independent criterion for conditional release-Legislative amendment to statute was intended to clarify, rather than change, law-Question certified: Does an inmate who has been sentenced as a habitual or violent habitual offender but who is not convicted of a category 1, category 2, category 3, or category 4 crime qualify for conditional release pursuant to section 947.1405(2), Florida Statutes (1989)?

GLEN R. DEASON, Appellant, v. STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS and FLORIDA PAROLE COMMISSION. Appellees. 1st District. Case No. 96-458. Opinion filed February 28, 1997. An appeal from the Circuit Court for Leon County. F.E. Steinmeyer, III, Judge. Counsel: Glen R. Deason, pro se, appellant. William L. Camper, General Counsel, and Bradley R. Bischoff. Assistant General Counsel, Florida Parole Commission, Tallahassee, for appellee.

(PER CURIAM.) Glen Deason appeals an order of the circuit court which denied his petition for writ of mandamus. We affirm.

Deason was originally convicted in 1990 of two counts of grand theft of a motor vehicle and sentenced as a habitual offender to concurrent terms of three and one-half years imprisonment. He was released from the Department of Corrections on Febru ary 1, 1993, and placed on conditional release pursuant to section 947.1405, Florida Statutes (1989). He was again arrested on April 12, 1993, and his conditional release was revoked. His argument in the trial court concerned proper interpretation of section 947.1405(2), Florida Statutes (1989):

> Any inmate who is convicted of a crime committed on or after October 1, 1988, which crime is contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rule of Criminal Procedure, and who has served at least one prior felony commitment at a state or federal correctional institution or is sentenced as a habitual or violent habitual offender pursuant to s. 775.084 shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions. . . .

Petitioner argued that the proper criteria for the conditional release program were that the inmate must have been convicted of a category 1, 2, 3, or 4 crime ***and*** either have been subject to a habitualized sentence or have served a prior felony commitment. Since appellant's crime was not enumerated in category 1, 2, 3, or 4 of the guidelines, he contended that he was ineligible for the program. The commission argued, and the trial judge agreed, that this statute, properly read, provides for habitualized sentencing as a separate independent criterion for conditional release.

We agree with this reading of the statute. While there may bc some ambiguity in its language, accepted aids to statutory construction support the commission's reading. For example, a Senate Staff Analysis for CS/HBS 1574, 1422, 1430, 1438, 1439, and 1567 which passed as chapter 88-122 and enacted section 947.1405 provided:

> Section 16 [later section 19] creates section 947.1405, F.S., the "Conditional Release Program Act" to provide for post-release supervision for persons sentenced under Category 1, 2, 3, or 4 of Sentencing Guidelines or as habitual offenders.

This document, dated two days prior to the vote by both Senate and House, provides significant evidence of legislative intent. *See Auto-Owners Insurance v. Prough, 463 So.* 2d 1184, 1186 (Fla. 2d DCA 1985): *Florida Insurance Guaranty Association, Inc. v. State, Department of Insurance, 400 So.* 2d 813, 817 n.5 (Fla. 1st DCA 1981).[1]

Additional support for our conclusion is drawn from an examination of the provisions of Florida law relating to the sentencing of habitual offenders, Although section 775.084(4)(e), Florida Statutes (1989) stated that "[t]he provisions of chapter 947 shall not be applied to [habitual offenders]", this court explained in Lincoln v. Stare, 643 So, 2d 668 (Fla. 1st DCA 1994) that this language was an anachronism and contrary to legislative intent in enacting the conditional release program. The 1993 Legislature expressly clarified the issue when it enacted chapter 93-406, section 2, amending section 775.084(4)(e) to provide that "[t]hc provisions of s. 947.1405 shall apply to persons sentcnccd as habitual offenders . . . ." ***See Lincoln, 643 So.*** 2d at **672.**

Also supporting the commission's interpretation of the statute is a significant change made to section 947.1405(2) by the 1995 Legislature.[2] It now reads:

> (2) Any inmate who :
>
> (a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rule of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;
>
> (b) Is sentenced as a habitual or violent habitual offender pursuant to s. 775.084; or
>
> (c) Is found to be a sexual predator under s. 775.23,
>
> shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, . . .

We conclude that this amendment was likely intended to clarify, rather than change, the law. ***See Keyes Investors Series 20, Ltd. v. Department of State, 487 So.*** 2d 59, 60 (Fla. 1st DCA 1986).

In light of the above, we hold that a person subject to habitualized sentencing in 1990, as now, is eligible for conditional release under the terms of section 947.1405(2), regardless of the status of the conviction itself under the sentencing guidelines. Denial of Deason's petition for writ of mandamus is therefore affirmed.

However, we certify the following to bc a question of great public imoortancc:

> DOES-AN INMATE WHO HAS BEEN SENTENCED AS A HABITUAL OR VIOLENT HABITUAL OFFENDER BUT WHO IS NOT CONVICTED OF A CATEGORY 1, CATEGORY 2, CATEGORY 3 OR CATEGORY 4 CRIME QUALIFY FOR CONDITIONAL RELEASE PURSUANT TO SECTION 947.1405(2), FLORIDA STATUTES (1989)?

AFFIRMED. (MICKLE and LAWRENCE, JJ., CONCUR; ALLEN, J., DISSENTS WITH WRITTEN OPINION.)

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[1]The House Staff Analysis reaches the same conclusion but is of lesser value in determining legislative intent because it is dated six days after passage of the bill. See Rhodes & Scereiter, *The Search for Intent: Aids to Statutory Construction in Florida-An Update*, 13 F.S.U. L. Rev. 485, 509 (1985).

[2]Ch. 95-264, §5, Laws of Fla.

(ALLEN, J., dissenting.) I find myself in agreement with the construction of the statute urged by the appellant. Plainly read, the statutory language means that an inmate will be subject to conditional release when he has *both* (a) been convicted of a category 1, 2, 3, or 4 crime and (b) been given a habitual felony offender sentence or served a prior felony commitment.

I disagree with the majority's reliance upon tidbits of legislative history to discern "legislative intent." In my view, the law means what its text most appropriately conveys, and we should content ourselves with reading it rather than psychoanalyzing those who enacted it. ***See United States v. Public Utl. Comm'n*** Cal., 345 U.S. 295,319 (1953), (Jackson, J., concurring); ***Dept. Of Revenue*** v. ***John's Island Club,*** Inc., 2 1 Fla. L. Weekly D750, D751 (Fla. 1st DCA March 27, 1996), (Allen, J., concurring in result). Although I find use of legislative history troubling generally, it is particularly troubling when used out of proper context.

The majority relies upon a Senate Staff Analysis dated June 1, 1988, two days prior to the favorable vote by the Senate and House on consolidated CS/HB 1574, 1422, 1430, 1438, 1439, and 1567, which passed as chapter 88-122 and, among other things, enacted section 947.1405. Although it is true that the portion of the analysis quoted by the majority supports the construction now placed upon section 947.1405 by the majority, the majority neglects to point out rhat the staff analysis did not relate to the consolidated bill as finally enacted. The staff analysis related to the first engrossed version of the consolidated bill as passed by the House on May 12, 1988. But when the Senate took up the first engrossed bill on June 3, 1988, the Senate amended the bill by striking everything after the enacting clause and inserting an entirely new bill. As so amended, the bill was passed by the Senate and House on that date.

Section 16 of the first engrossed version of the consolidated bill and Section 19 of the consolidated bill as finally enacted both proposed to create a new section 947.1405, Florida Statutes. They were the same, except for one very important difference. The first engrossed version of the bill included a comma following the term "correctional institution," but the comma was omitted in the bill as finally enacted. With a comma inserted at that point in the text, the construction suggested by the staff analysis and adopted by the majority *is* more plausible. But without the comma, that construction seems quite strained.[1]

One who took guidance from legislative history might ask why the legislature chose to omit the comma. The answer to this question seems quite obvious, There could have been but one reasonable purpose for the decision to so alter the punctuation of the statutory language. **That purpose could** only have been to dissuade readers of the statutory text from the very construction now adopted by the majority.

The majority also relies upon *Lincoln* v. State, 643 So. 2d 668 (Fla. 1st DCA 1994). But Lincoln stands for the proposition that habitual offenders as a class are not exempted from the conditional release provisions of section 947.1405. It does not address the issue now before us.

Finally, the majority relies upon a 1995 amendment of section 947.1405(2) to justify its construction of the 1988 statute. The majority concludes that the amendment "was likely intended to clarify, rather than change, **the** law." But the majority does not tell us how this conclusion is reached. Certainly nothing in the text of the 1995 statute suggests that the amendment had this purpose. In fact, a plain reading of the entirety of section 947.1405(2), Florida Statutes (1995), together with the full text of section 947.1405(2) as it existed prior to the 1995 amendment, reveals that the 1995 amendment made substantial changes to the law as it existed under the prior statute. I therefore conclude that the legislature did intend to change the law by its 1995 amendment of the statute.

Based upon my reading of the statutory language, I respectfully dissent.

[1]Chapter 88-122, section 10, Laws of Florida, which subsequently appeared as section 944.291. Florida Statutes (1989). also set forth requisites for placement of prisoners into the conditional release prognm. The only significant distinction between the section 10 qualifications and the section 19 qualifications is that section 10 contains a comma after the term "correctional institution." But section 944.291 specifically defers to the provisions of chapter 947, Florida Statutes. It is worthy of note that section 944.291 was not amended even when the requisites for conditional release placement were substantially changed pursuant to the 1995 amendment of section 947.1405, Florida Statutes.

* * *

Injunctions—Administrative law-Challenge to Florida Residential Property and Casualty Joint Underwriting Association's selection of non-insurer as servicing provider brought by former servicing carrier whose competitive proposal for new contract was unsuccessful-Trial court properly dismissed action for failure to exhaust available administrative remedies-Allegation that FRPCJUA acted without colorable statutory authority and in excess of its delegated powers not sufficient to overcome exhaustion requirement where there was no showing that administrative remedies were inadequate

BANKERS INSURANCE COMPANY, Appellant, v. FLORIDA RESIDENTIAL PROPERTY & CASUALTY JOINT UNDERWRITING ASSOCIATION, AIB INSURANCE GROUP, INC.. AUDUBON INSURANCE COMPANY, and AMERICAN INTERNATIONAL INSURANCE COMPANY, Appellees. 1st District. Case No. 96-1120. Opinion filed February 25, 1997. An appeal from the circuit court for Leon County. William L. Gary, Judge. Counsel: Douglas A. Mang, Wendy Russell Wiener. and Connie Jo Pecori of Mang & Rett, P.A., Tallahassee, for Appellant. Stuart B. Yanofsky and Michael E. Colodny of Colodny. Fass & Talenfeld, P.A.. Fort Lauderdale, and Fred E. Karlinsky, Associate General Counsel, Tallahassee, for Appellee Florida Residential Property & Casualty Joint Undrtwriting Association; John Radey of Radey McArthur & Frehn, Tallahassee. and Perry Ian Cone, Vice President, Legal Affairs and Senior Counsel, Miami, for Appellee AIB Insurance Group, Inc.; Mitchell B. Haigler of Katz, Kutter, Haigler, Alderman. Marks. Bryant & Yon, P.A., Tallahassee, for Appellee Audubon Insurance Company, Inc.; and William B. Willingham of Rutledge, Encenia. Underwood, Purnell & Hoffman, P.A., Tallahassee, for Appellee American International Insurance Company. William C. Owen and Zollie Maynard of Panza, Maurer, Maynard & Neel. P.A., Tallahassee, for Amicus Curiae Policy Management Systems Corporation.

(PER CURIAM.) Bankers Insurance Company (Bankers) asks this court to reverse an order of the circuit court denying Bankers' request for a temporary injunction. The circuit court denied the request for temporary injunction on grounds that Bankers failed to demonstrate a substantial likelihood of success on the merits, see ***City of Jacksonville v. Naegele Outdoor Adver., 634*** So. 2d 750 (Fla. 1st DCA 1994), *approved*, 659 So. 2d 1046 (Fla. 1995), and because it had failed to exhaust available administrative remedies. We agree that Bankers failed to exhaust available administrative remedies and affirm on that basis.

Bankers acted as a servicing carrier for the Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) until its contract expired on March 31, 1996. Prior to expiration of the contract, FRPCJUA requested competitive proposals from insurers and other potential servicing carriers for the FRPCJUA. On December 14, 1995, the board of governors for the FRPCJUA evaluated the proposals submitted in response to its request for proposals and selected AIB Insurance Group, Inc. (AIB). Audubon Insurance Company, and American International Insurance Company. Bankers was not selected.

The request for proposals provides that the board of governors of the FRPCJUA will make the final selection of the company or companies that will act as servicing carriers. Section 627.35 1(6)(a), Florida Statutes (1995), provides that the FRPCJUA "shall operate pursuant to a plan of operation approved by order of the department." Section 24 of the FRPCJUA's second amended plan of operation provides a means for resolving disputes with respect to any decision of the board.

SECTION 24
APPEAL

Except as to any dispute, cause of action, claim or controversy arising under, or out of, any contract or Agreement pertaining to bonding or borrowing by the Association, any person or entity aggrieved with respect to any action or decision of the Board of the Association, or any Committee thereof, (other than matters regarding Assessments which appeals are governed by Sections 15, 16 and 17 hereof) may make written request of the Board for specific relief. All written requests for relief or redress shall be deemed Appeals and shall be delivered to the Executive Director. The Executive Director shall schedule any Appeal for hear-

APPENDIX B

PAROLE

This bill would change the name from the Florida Parole and Probation Commission to the Florida Parole Commission since all probation duties were transferred to the Department of Corrections in 1975. It also would increase the number of commissioners from 6 to 7, effective December 1, 1988, to handle the increased workload as a result of this bill's passage.

The bill would also repeal section 35, chapter 83-131, Laws of Florida, which repeals the Commission, would and extend parole eligibility to offenders with sentences of at least 10 years. It would also remove the early termination of parole; requiring biennial progress reviews to consider reform of conditions. Release plans would require verification prior to release, allowing a 60 day delay.

The bill would also create the "Conditional Release Program Act of 1988" which would target the "high risk" inmates being released earlier than sentenced due to gain-time, requiring conditional supervision for up to 2 years. It would target the worst 6-7% of inmates being released; offenders sentenced under categories 1,2,3,& 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure. These are offenders who have committed murder/manslaughter, sexual offenses, robbery, and violent personal crimes. This program would also allow for restitution, revocation, and input from the crime victim:

COMMUNITY CONTROL PAROLE

This bill would allow the Commission to require community control as a special condition of parole thus providing the releasee with a period of intense supervision while adjusting to life outside the prison system. This period of supervision would be stricter than regular parole is designed to provide.

The bill would also offer greater supervision by authorizing the officer to request random testing for drug usage as a condition of community control, probation and parole. In addition, the Department of Corrections at its discretion, may *require* the probationer to bear the costs of testing.

The community control program office would be notified immediately upon placement of a parolee on community control. Approximately 10% of parolees would be supervised under community control program, and an additional 10% of eligibles who would not receive parole without this special condition, resulting in a total of 20% or 112 parolees in FY 88-89, and decreasing each following year, if parole is not reinstated in some form.

COMMUNITY RESIDENTIAL PROBATION CENTERS

This bill proposes alternative housing in county residential probation centers for certain non-violent prisoners. Where available capacity may esist, such as in existing residential probation facilities, counties may contract with DOC to house non-violent prisoners in these facilities. Counties presently at capacity with residential probation facilities or counties with no residential probation facility, may construct, purchase, renovate or lease facilities to accommodate such prisoners.

This alternative housing for prisoners, who would otherwise be housed in a state