

IN THE SUPREME COURT
STATE OF FLORIDA

067
~~March 27~~
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MAR 27 1998
CLERK, SUPREME COURT
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ROBERT P. SHELEY,

Appellant,

Case No. 92,260


v.

FLORIDA PAROLE COMMISSION,

Appellee.

IN A DISCRETIONARY REVIEW PROCEEDING
ARISING FROM THE FIRST DISTRICT COURT OF APPEAL, EN BANC

INITIAL BRIEF ON THE MERITS



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APPELLANT, IN PRO PER

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INITIAL BRIEF ON THE MERITS

I PRELIMINARY STATEMENT

Appellant, Robert P. Sheley, was the **pro se** Appellant in the First District Court of Appeal and appears in proper person on appeal to this Court. Appellant will be referred to in this brief as "Sheley". Appellee, the Florida Parole Commission, will be referred to as "the Commission".

The record on appeal below consisted of one volume, consecutively numbered, and will be referred to as "R" followed by the appropriate page number(s), in parenthesis.

II STATEMENT OF THE CASE

On December 20, 1996, Sheley filed a **pro se** complaint for writ of mandamus in the Circuit Court, Second Judicial Circuit in and for Leon County, Florida, Case No. 96-7545, which named the Florida Parole Commission as the defendant, respondent. (R 1). On March 17, 1997, the Honorable Charles McClure entered an Order Denying Petition for Mandamus Relief. (R 134). Sheley timely filed a notice of appeal, and was granted leave to proceed as an indigent on appeal. (R 143, 151).

After the appeal was briefed by both parties, the Honorable J. Padovano, writing for an en banc Court in First District Court of Appeal Case No. 97-1659, treated Sheley's appeal as a petition for writ of certiorari, certified conflict with a decision of the Fourth District Court of Appeal, and denied relief. (Slip Op.). The mandate issued January 16, 1998. Notice to Seek Discretionary Review was timely filed, and this proceeding follows.

STATEMENT OF THE FACTS

On July 3, 1996, the Florida Parole Commission suspended Sheley's presumptive parole release date, and declined to authorize an effective parole release date. (R 10). When Sheley sought Administrative Review of their decision, the Commission summarily denied his request stating that "The Commission granted Administrative Review to you on February 28, 1990." (R 24).

Thereafter, Sheley filed a complaint for writ of mandamus in the Circuit Court raising numerous issues. (R 1). The complaint was denied without addressing many of Sheley's factual allegations and issues raised therein. (R 134). Sheley sought to appeal the denial of mandamus relief, and the appeal was briefed. (Record). On December 31, 1997, the Honorable J. Padovano wrote for an en banc court of the First District Court of Appeal, and without Sheley ever being notified that his appeal might be treated as such, denied Sheley a plenary appeal, and treated his appeal as a petition for writ of certiorari and denied relief. (Slip Op.). In doing so, the Court certified conflict with a decision of the Fourth District Court of Appeal.

IV SUMMARY OF ARGUMENT

Sheley is entitled to a plenary appeal from the denial of his complaint for writ of mandamus. The Commission refused to grant him an Administrative Review of their decision, and a plenary appeal in this case would not have amounted to a "review of a review". Precedent, and Rules of Procedure, should have been adhered to by the First District Court of Appeal.

V ARGUMENT

THE EN BANC DECISION IS CONTRARY TO THE
PRECEDENT AND RULEMAKING AUTHORITY OF
THE FLORIDA SUPREME COURT IN THAT IT
DEPRIVES APPELLANT OF A PLENARY APPEAL
FROM THE DENIAL OF MANDAMUS RELIEF

While the First District Court of Appeal is free to disagree with this Court, it should have certified a question and then adhered to the precedent of this Court. Gilliam v. Stewart, 291 So.2d 593, 594 (Fla. 1974). This Court has previously found mandamus to be the proper remedy for a prisoner aggrieved by actions of the Florida Parole Commission. Griffith v. Florida Parole and Probation Commission, 485 So.2d 818 (Fla. 1986); Moore v. Florida Parole and Probation Commission, 289 So.2d 719, 720 (Fla. 1974).

Since mandamus is the proper remedy, Sheley was entitled to a plenary appeal from the denial of his complaint for mandamus relief. Rule 9.030 (b)(1), Fla. R. App. P.; Warren v. State ex rel Four Forty, Inc., 76 So.2d 485 (Fla. 1954). This Court makes the procedural rules. Johnson v. State, 336 So.2d 93, 95 (Fla. 1976). Sheley respectfully submits that the First District Court of Appeal overstepped their authority and delved into a matter which should have been left to this Court. See, Benyard v. Wainwright, 322 So.2d 473, 475 (Fla. 1975).

In the instant case, where Sheley was denied Administrative Review of the Commission's decision (R. 24) and the trial court failed to address numerous factual allegations and issues raised in the complaint (R. 134) the need for plenary review is apparent. On certiorari review, the District Court could do no more than quash the lower court's order, and it would not be able to reverse and remand with directions for the trial court to follow. Gulf Oil Reality Co. v. Windhover Ass'n, Inc., 403 So.2d 476, 478 (Fla. 5th DCA 1981).

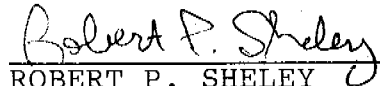
Plenary review was also contemplated by the Fourth District Court of Appeal when it found that the trial court was the proper forum for a prisoner to file a complaint naming the Commission as defendant/respondents. Johnson v. Florida Parole and Probation Commission, 543 So.2d 875, 876 (Fla. 4th DCA 1989). According to the Official 1996-97 Florida Department of Corrections Annual Report, on June 30, 1997, there were only 6,036 of the 64,713 inmates incarcerated in the Florida Department of Corrections at that time who were even eligible for parole consideration.

Thus, allowing plenary review to prisoners in these circumstances will not be overly burdensome on the judicial system and merely serves to safeguard the rights of the less than 10% of the prison population who are still entitled to proper consideration for parole.

VI CONCLUSION

Based on the foregoing facts, argument, and citation of authority, Sheley respectfully requests this Court find that he is entitled to an appeal from the denial of his complaint for writ of mandamus, and remand this cause for further proceedings in the First District Court of Appeal.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief on the Merits has been furnished, by U.S. Mail, to: Kim M. Fluharty, Assistant General Counsel, Florida Parole Commission, 2601 Blairstone Road, Building C, Tallahassee, Florida 32399-2450 this 23rd day of March, 1998.


ROBERT P. SHELEY