

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

APR 18 1998

ROBERT P. SHELEY,

Petitioner,

CLERK, SUPREME COURT

By B. J. White
Chief Deputy Clerk

v.

CASE NO. 92,260

FLORIDA PAROLE COMMISSION,

District Court of Appeal,
1st District - No. 97-1659

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

On discretionary review from the
District Court of Appeal
First District, State of Florida

WILLIAM L. CAMPER
General Counsel
Fla. Bar # 0107390

KIM M. FLUHARTY
Assistant General Counsel
Florida Parole Commission
2601 Blair Stone Road, Bldg. C
Tallahassee, Florida 32399-2450
(850) 488-4460
Fla. Bar # 0975214

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DESIGNATION OF PARTIES AND ABBREVIATIONS

The following designations and abbreviations will be used:

Respondent, Florida Parole Commission, will be referred to as "Respondent" or "Commission".

The Circuit Court of the Second Judicial Circuit, Leon County, Florida, will be referred to as "Circuit Court".

The District Court of Appeal, First District, State of Florida, will be referred to as the "District Court".

Effective Parole Release Date will be referred to as "EPRD".

References to the record on appeal will be designated (R-) followed by the volume number and page number(s).

References to the Petitioner's brief on the merits will be designated (PB) followed by the page number(s).

STATEMENT OF THE CASE AND THE FACTS

Respondent, Florida Parole Commission, pursuant to Fla.R.App.P. 9.210(c), provides a limited Statement of the Case and Facts because it appears that Petitioner is only challenging the procedural aspects of the District Court's opinion. In order to properly frame the issue presented for review and provide the necessary facts which are pertinent to a proper determination of this case, Respondent submits the following as its Statement of the Case and the Facts:

On or about July 3, 1996, the Commission declined to authorize Petitioner, who is serving a life+ term of imprisonment, an Effective Parole Release Date (EPRD) thereby denying Petitioner parole. (R-I-2) That quasi-judicial action taken by the Commission was based on numerous considerations and the Commission set forth those reasons in its order. (R-I-2)

Petitioner sought judicial review of the Commission's administrative decision to deny him parole in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida by a complaint for writ of

mandamus. (R-I-1-2) Petitioner was challenging the Commission's quasi-judicial determination declining to authorize his parole. (R-I-2) The Respondent provided an exhaustive response justifying the Commission's action and subsequently the Circuit Court, after conducting a thorough and detailed review of Petitioner's complaint and the Commission's response on March 17, 1997, denied Petitioner relief because the Petitioner failed to show that the Commission acted in an arbitrary or capricious manner or abused its discretion in denying Petitioner parole. (R-I-2)

Petitioner appealed to the First District Court of Appeal and sought to have the First District perform a subsequent "plenary appeal" on the merits of his case. (R-I-3-4) However, the District Court treated Petitioner's appeal as a petition for writ of certiorari. (R-I-1-2) The District Court determined that Petitioner was not entitled to relief and stated:

There has been no showing that the circuit court failed to afford the inmate due process of law or that the court departed from the essential requirements of the law. The court properly fulfilled its appellate function in reviewing the sufficiency

of the evidence supporting the Commission's administrative decision to suspend the inmate's presumptive parole release date. (R-I-9)

On or about January 26, 1998, Petitioner filed a Notice to Invoke Discretionary Jurisdiction, which was forwarded to this Court. On January 29, 1998, this Honorable Court issued an order postponing decision on jurisdiction and briefing schedule. On February 27, 1998, this Court granted Petitioner's Motion for Extension of Time to serve its brief until March 23, 1998. Subsequently, on March 31, 1998, Respondent received Petitioner's brief on the merits.

SUMMARY OF THE ARGUMENT

Petitioner is not entitled to successive opportunities for review on the merits of his case. Petitioner was provided a plenary appeal of the merits of his case when the Circuit Court reviewed his petition for writ of mandamus and found that "there is ample evidence to support the Commission's decision declining to authorize the [inmate's] effective parole release date." (R-I-2) Upon appeal to the District Court, the District Court properly determined that Petitioner had been afforded a plenary review of the merits of his case by the Circuit Court, that Petitioner was not entitled to a subsequent review on the merits and treated Petitioner's appeal as a petition for writ of certiorari. The District Court treated Petitioner's appeal as a certiorari petition and denied him relief. (R-I-9) The District Court determined that the Circuit Court had afforded Petitioner due process of law and had not departed from the essential requirements of law. (R-I-9) The District Court further indicated that the Circuit Court had "properly fulfilled its appellate function in

reviewing the sufficiency of the evidence supporting the Commission's administrative decision to suspend the inmate's presumptive parole release date." (R-I-9)

Therefore, the District Court's opinion should be affirmed and Petitioner's request for a review on the merits by the District Court should be denied.

ISSUE

WHETHER THE FIRST DISTRICT COURT OF APPEAL'S DECISION TO TREAT PETITIONER'S APPEAL AS A PETITION FOR WRIT OF CERTIORARI DENIED PETITIONER A PLENARY APPEAL ON THE MERITS OF THE COMMISSION'S QUASI-JUDICIAL ACTION.

ARGUMENT

Contrary to the Petitioner's contention, Petitioner was in fact provided a plenary appeal of the Commission's quasi-judicial action denying him parole by the Circuit Court. Further, Petitioner was provided an additional review by the District Court to ensure that the Circuit Court afforded Petitioner due process of law and that the Circuit Court did not depart from the essential requirements of law. Petitioner is not entitled to have successive reviews on the merits of this case. Petitioner has received appropriate judicial review of the Commission's quasi-judicial action by the Circuit Court and the District Court and it is clear that his claim before this Court has no merit.

In 1996 this Court adopted several amendments to the Florida Rules of Appellate Procedure. Specifically

9.100(f) was added to supersede Fla.R.Civ.P. 1.630 in extraordinary review proceedings filed in circuit court, with the exception of evidentiary proceedings.

In 1989, prior to the recent amendments of the Florida Rules of Appellate Procedure, the District Court of Appeal, Fourth District, in Johnson v. Florida Parole and Probation Commission, 543 So. 2d 875, 876 (Fla. 4th DCA 1989), indicated that inmates challenging a Commission order through a petition for writ of mandamus should seek review in the appropriate circuit court. The Court further acknowledged that a denial of such petition could then be appealed to the appropriate district court. Recently, in 1997, after the amendments to the Rules of Appellate Procedure, the District Court of Appeal, First District, in the case presently before this Court [Sheley v. Florida Parole Commission, 703 So. 2d 1202 (Fla. 1st DCA 1997)], again acknowledged, as did the Fourth District in Johnson, that "a final order on a complaint for writ of mandamus is reviewable by appeal." (R-I-8) However, in the present case, the District Court distinguished between a petition for mandamus filed to initiate a new civil

action in which the circuit court issues a final order, and a petition for writ of mandamus filed as an appellate remedy to review a quasi-judicial decision by a lower tribunal in the circuit court. (R-I-3-4)

It appears that both the First District and the Fourth District have mandated that inmates are entitled to a plenary appeal on the merits of Commission orders. However, neither Court has indicated that a petitioner is entitled to have successive opportunities for review on the merits of his case.

Petitioner is entitled to a plenary appeal on the merits of the Commission's quasi-judicial action. This was accomplished when the Circuit Court, acting in its review capacity, reviewed Petitioner's petition for writ of mandamus and subsequently denied the petition by finding that "there is ample evidence to support the Commission's decision declining to authorize the [inmate's] effective parole release date." (R-I-2)

When the Petitioner appealed the Circuit Court's adverse decision, the District Court determined that relief was available only by certiorari. (R-I-3) The record before the District Court clearly demonstrated

that Petitioner's case had been thoroughly reviewed and decided on the merits. It also was evident from the record that the Circuit Court was acting in a review capacity regarding the Commission's quasi-judicial determination. Thus, the District Court was correct in treating Petitioner's appeal as a petition for writ of certiorari. See Fla.R.App.P. 9.040(c). (R-I-3)

The District Court pursuant to Fla.R.App.P. 9.030(b)(2)(B) reviewed Petitioner's appeal by certiorari instead of conducting "a subsequent plenary appeal on the merits of the case." (R-I-4) This review by the District Court ensured that the Circuit Court provided Petitioner with "due process" and did not "depart from the essential requirements of law." After performing its review of Petitioner's case utilizing the standard applicable in certiorari, the District Court properly concluded that "[t]he court [Circuit Court] properly fulfilled its appellate function in reviewing the sufficiency of the evidence supporting the Commission's administrative decision to suspend the inmate's presumptive parole release date." (R-I-9)

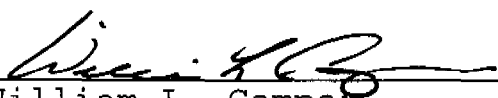
In Petitioner's case, the Circuit Court provided Petitioner with a plenary appeal of the merits of his case when it performed its thorough review under the authority of Fla.R.App.P. 9.100(f). The District Court afforded Petitioner another review of his case. It is clear that Petitioner has been afforded extensive judicial reviews and that Petitioner has not been deprived of any rights.

If inmates are permitted to manipulate the judicial system into providing them with successive judicial reviews of their cases on the merits, the judicial workload will continue to rise, as well as the concomitant burdens on administrative agencies and the taxpayer.


CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Appellee respectfully urges this Honorable Court to affirm the District Court's opinion.

Respectfully submitted,



William L. Camper
General Counsel
Fla. Bar # 0107390



KIM M. FLUHARTY
Assistant General Counsel
Fla. Bar #0975214

2601 Blair Stone Blvd., Bldg. C
Tallahassee, FL 32399-2450
(850) 488-4460

CERTIFICATE OF SERVICE

I CERTIFY THAT this is a true copy of the foregoing furnished by U.S. mail to Robert P. Sheley, ✓ DC# 037726, Calipatria State Prison, P. O. Box 5002, H-77787, Calipatria, California 92233-5002, this 13th day of April, 1998.



KIM M. FLUHARTY
Assistant General Counsel