THE SUPREME COURT OF FLORIDA

JERRY L. WILSON,
Petitioner,

Case No: 94377

vs.

L.T. No: CR-86-357-C-FANO

HARRY K. SINGLETARY, JR., Secretary,
Florida Department of Corrections,
CHARLES E. GERMANY, Superintendent,
Washington Correctional Institution,
Respondents.
_____/

APPLICATION FOR WRIT OF HABEAS CORPUS

JURISDICTION

The jurisdiction of this Court is invoked pursuant to: Article I, §9, United States Constitution, Article I, §13, Article V, §3(b), Florida Constitution, Chapter 79, Florida Statutes (1995), and Rule 1.630, Florida Rules of Civil Procedure.

DECLARATION FOR RELIEF

The Petitioner is being held illegally, deprived of his liberty without lawful authority in violation of the Fifth and Fourteenth Amendments of the United States Constitution; and the Florida Constitution Article I, Subsection 10.

Where petitioner is being unlawfully detained from the unconstitutional retroactively applying Fla. Stat. 947.146 by the Department which has caused an ex post facto violation to occur were said statute was not ineffect at the time petitioner committed his offense.

STATEMENT OF FACT

On the 16th, day of June, 1986, Petitioner was sentenced to served fifteen (15) years with five (5) years minimum mandatory within the Department of Corrections for the offense of Trafficking cocaine, Count I, of the information. And petitioner received two (2) and one half years for V.O.P. Count II, of the information possession of a firearm.

Sometime in 1990, petitioner was given a non-advanceable control release date pursuant Fla. Stat. 947.146 (1989). In 1992, petitioner was given a advanceable control release date. On the 27th, day of October, 1992, petitioner was release from a combination of control release credits, basic and incentive gaintime awards.

On the 17th, day of January, 1997, petitioner violated the terms of his control release supervision and was subsequently returned to the Department of Corrections as results thereof.

ARGUMENT IN SUPPORT

Petitioner argues that the forfeiture of his control release credits, basic and incentive gaintimes due to the revocation of his control release supervision constitutes a violation of the constitutional prohibitions against ex post facto laws. Where petitioner was released from imprisonment by virtue of accrued control release credits, pursuant to Florida Statute, 947.146 (1989), basic and incentive gaintimes. However, upon petitioner's release he was informed by a Designee of the Florida Parole And Probation Commission, and the Control Release Authority that he would have to serve his accrued gaintime on control release supervision.

In 1986, the petitioner was sentenced to fifteen (15) years, incarceration with five (5) years of the fifteen (15) years to be served minimum mandatory followed by two (2), and one half years to be served consecutive with the fifteen (15) year sentence previously imposed. Subsequently, three (3) years later the Florida State legislature enacted Fla. Stat. 947.146, governing Control Release Authority. The petitioner's conviction and sentence was long before the enactment of the Control Release Program, which was enacted on the 28th, day of June, 1989, and became effective on the 1st, day of September, 1990.

Petitioner was initially ineligible for the Control Release Program due to the fact that he was sentenced prior to the enactment of the Statute. However, in 1990, the petitioner was given a control release date, which was non-advanceable. In 1992, petitioner was given an

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advanceable control release date. On the 27th, October, 1992, the petitioner was released as a results of a combination of control release credits, basic and incentive gaintime awards. The petitioner's contention is since he was sentenced in 1986, prior to the enactment of Fla. Stat. 947.146, which took effect in 1989, the ex post facto violation occurred on the 27th, day of October, 1992, whereby the petitioner was forced to accept control release supervision pursuant to Fla. Admin. Code 23-22.006, subsection (25), and Section 52 of Florida Session Laws (1989), Chapter 89-526, without being given the option to accept or refuse the control release credits or the program.

Though the language of the Fla. Admin. Code 23-22.006, subsection (25), does specifically states that the "Refusal Of Control Release - means that inmates whose offenses were committed on or before November, 30th, 1990, may refuse release by control release if it is offered." However, this pertinent information is, nor was specified any where in the control release contracts that petitioner and hundreds of other inmates were forced into signing; in violations of their Sixth Amendment rights to be informed. Where petitioner was never informed of his right to refuse control release credits or the program.

Notwithstanding, petitioner was released by way of control release credits, only after the enactment of the mandatory language of Section 52 of Florida Session Laws, (1989); Chapter 89-526, which provides in the pertinent part: "All inmates committed to the Department as of September 1, 1990, shall have a control release date established by

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December 1, 1990. Inmates received after September 1, 1990, shall have a control release date established within 90 days following notification by the department of receipt of the inmates."

Therefore, clearly substantiating petitioner's argument that he was not given an option to accept or refuse control release supervision, where the statutory language of the legislative intent is clearly outlined in the enactment of the control release statute, that "All" inmates be established a control release date!" Petitioner's crimes and sentence occurred, prior to the enactment of Fla. Stat. 947.146 in 1989, and was therefore ineligible for a non-existent program such as control release, which was not in effect at the time of his commitment to the department.

And where petitioner only became eligible from the retroactive application of the control release program, from the enactment of Fla. Stat. 947.146 (1989), an ex post facto violation has occurred! The United States Constitution provides that "[n]o state shall.... pass any.... ex post facto law." U.S. Const. Art. I, § 10, Cl. 1. This clause prohibits the states from enacting "any law which imposes a punishment for an act which was not punishable at the time it was committed, or imposes additional punishment to that then prescribed." Weaver v. Graham, 450 U.S. 24, 28, 101 S. Ct. 960, 964, 67 L. Ed. 2d 17 (1981).

Thus, in order for a criminal or penal law to be ex post facto it must be retroactively applied and must dis-advantage

the offender because it may impose greater punishment, Id. at 29, 101 S.Ct. at 964. Such as in the instant case, where petitioner has been dis-advantage by the retroactive application of control release supervision which was not a part of his court ordered sentence imposed in (1986), and where petitioner was ineligible for control release credits until the enactment of Fla. Stat. 947. 146, almost some two (2), and one half years later and retroactively applied to petitioner without giving him the opportunity to accept or refuse said program in accordance with Fla. Admin. Code 23-22.006, Subsection (25), has deprived petitioner of his substantial rights to proper due process of law.

Petitioner argues that he had a right to reasonably expect that once he received control release credits, along with his basic and incentive gaintime awards and he was release, his control release credits and gaintime could not be taken away for post-prison misbehavior. Since, the control release credits were accrued gaintime awarded due to prison over crowding. Therefore, the revocation of his control release credits, basic and incentive gaintime awards is unconstitutional where petitioner had a "vested right" in those gaintime awards.

Furthermore, where this Honorable Court held in Heuring v. State, 559 So.2d 207 (Fla. 1990), and also in Green v. State, 547 So.2d 925 (Fla. 1989). "That a prisoner who is released early because of Accrued Gaintime is considered to have completed his sentence in full,

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and that accrued gaintime is the fundamental equivalent of "Time Served" in prison. Just as in the cases of Orosz v. Singletary, 655 So. 2d 1112 (Fla. 1995), and 693 So. 2d 539 (Fla. 1997), as in the instant case, the statutes being applied to award petitioner control release credits, basic and incentive gaintimes, and being used to forfeit said credits and gaintimes awards are all being retroactively applied; since none of statutes being utilized in this case were in effect, or enacted until long after petitioner had been sentenced. See: Section 52 of Florida Session Laws (1989), Chapter 89-526, Section 6, section 944.28(1), Section 8, section 948.06(6), (1989).

Petitioner argues that this forfeiture of his control release credits, basic and incentive gaintime awards violates the ex post facto clauses of the Florida and United States Constitutions, Art. I, §10, Fla. Const.; U.S. Const. Art. I, §10. Therefore, petitioner is entitled to restoration of his control release credits, basic and incentive gaintime awards where statute enacted to forfeited control release credits, basic and incentive gaintime awards was subsequently enacted after petitioner's offenses. See 947.146, (1988), 948.06(6), Fla. Stat. 1989; 944.28(1), Fla. Stat. (1989).

CONCLUSION

Petitioner concludes that the United States Constitution provides that no state shall pass any ex post facto law, U.S. Const. Article I, § 10, Cl. 1 as well as the Florida State Constitution, Art. I, §10. And that is exactly what has occurred in the present case where the petitioner was forced to accept control release supervision without being given the option to refuse due to the mandatory language of the legislative intent in the newly enacted Fla. Stat. 947.146 (1989), where it specifically states that "All inmate" committed to the dept. as of September 1, 1990, shall have a control release date established by December 1, 1990, which included the petitioner, pursuant to Section 52 of Fla. Session Laws (1989), Chapter 89-526.

Where inmates such as the petitioner whose offense occurred before the enactment date of the control release program were subject to mandatory control release. Petitioner contents that since he was sentenced prior to the enactment Fla. Stat. 947.146 (1989), he should have been given the option to either accept or refuse, control release credits, which later lead to his being placed on control release supervision retroactively thereby encompassing the ex post facto violation.

RELIEF SOUGHT

That petitioner's petition for writ of habeas corpus relief be granted, and his forfeited control release credits, basic and incentive gaintime awards be restored, where the forfeiture of his credits, basic and incentive gaintime awards are due to the revocation of his control release supervision which constitutes a violation of the constitutional prohibition against ex post facto laws. Where statutes utilized for the penalizing and the forfeiture of said credits and gaintimes was not in effect at the of his offenses. And only became enacted after petitioner committed his offenses and retroactively applied to him due to the mandatory language of the legislature in Section 52 Florida Session Laws, Chapter 89-526 (1989); Section 6, Chapter 89-526 (1989); Section 8, Chapter 89-526 (1989). Thereby, entitling petitioner to relief sought since his crimes were committed in (1986).

Respectfully submitted,

Jerry Wilson
Petitioner pro se

DECLARATION PURSUANT TO §92.525 FLORIDA STATUTE

Under penalties of perjury I declare that I have read the foregoing and that the facts stated in it are true.

Jerry Wilson
Petitioner
In Proper Person
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