

**IN THE SUPREME COURT OF FLORIDA**

**JERRY L. WILSON**  
**DC# 670412**  
**Petitioner,**

**FILED**  
**THOMAS D. HALL**  
**MAY 15 2000**  
**CLERK, SUPREME COURT**  
**BY**

vs.

**CASE NO. SC94377**

**MICHAEL W. MOORE,**  
**and THE FLORIDA PAROLE**  
**COMMISSION, et al.,**  
**Respondents.**

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**FLORIDA PAROLE COMMISSION'S RESPONSE TO THE**  
**REQUEST TO SHOW CAUSE**

Respondent Florida Parole Commission, through the undersigned counsel hereby responds to the Petition for Writ of Habeas Corpus pursuant to this Court's Request To Show Cause and states as follows:

**FACTS**

1. On August 30, 1985, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, case number 84-14076, the Petitioner was adjudicated guilty of count 1, Carrying a Concealed Firearm and count 2, Possession of Cocaine and placed on four years probation for each count, concurrent. On June 16, 1986, the Petitioner's probation was revoked and he was sentenced to concurrent two and one half years in state prison for each count.

(Exhibit A)

2. On September 2, 1986, the Petitioner was adjudicated guilty of count 2, Possession of Cocaine and count 3, Trafficking in Cocaine and sentenced to fifteen years in state prison for count 3, to run consecutive to the Broward County sentences. This offense was committed on February 7, 1986. (Exhibit B)

3. On February 25, 1992, the Florida Parole Commission set the Petitioner's Control Release Date at the Maximum Sentence Length-Non-Advanceable, April 25, 2003. (Exhibit C)

4. On April 20, 1992, the Petitioner wrote a letter to the Florida Parole Commission seeking consideration for release on Control Release supervision. (Exhibit D)

5. On October 27, 1992, the Petitioner was released on Control Release supervision. Petitioner signed the Control Release certificate on November 4, 1992, May 10, 1994 and on November 7, 1994. By signing the Control Release certificate, Petitioner agreed to the following;

**I agree to accept the terms and conditions of Control Release or if my offenses were committed on or after December 1, 1990, I acknowledge that I am subject to the terms and conditions of Control Release.**

(Exhibit E)

6. The Florida Parole Commission issued its Warrant for Retaking Control Releasee on November 13, 1996, charging the Petitioner with violating Condition 7 by unlawfully obstructing justice by impeding a police officer while in the course of his duty. (Exhibit F)

7. Petitioner was notified of the violation with which he was charged and advised of his rights in the violation proceedings on January 22, 1997 and elected to be afforded a violation hearing. (Exhibit G)

8. Petitioner was afforded his violation hearing on February 3, 1997 and was found not guilty of violating his Control Release. (Exhibit H)

9. On March 19, 1997, the Florida Parole Commission restored the Petitioner to Control Release supervision. (Exhibit I)

10. On March 20, 1997, the Florida Parole Commission issued its Warrant for Retaking Control Releasee charging the Petitioner with two violations of Condition 7 by unlawfully possessing and/or selling cocaine on November 27, 1996 and on January 1, 1997. (Exhibit J)

11. On March 31, 1997, the Petitioner was notified of the violations with which he was charged and advised of his rights in the violation proceedings and on this date requested that his violation hearing be postponed until disposition of the pending charges. (Exhibit K)

12. On December 22, 1997, in the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, case number 97-345, the Petitioner was convicted of two counts of Sale of a Controlled Substance and sentenced to thirty five point two months, each count concurrent and concurrent to the control release violation. (Exhibit L)

13. Petitioner was again provided notice of the Control Release

violations with which he was charged (Exhibit M) and afforded his Control Release violation hearing on January 7, 1998 and was found guilty of violating his Control Release supervision. (Exhibit N)

14. On March 11, 1998, the Commission revoked the Petitioner's Control Release supervision, effective January 20, 1997 and with credit for September 18, 1996. (Exhibit O)

### ARGUMENT

Petitioner argues that he has been subjected to an ex post facto violation by 1) the Commission's action in releasing him on Control Release supervision and 2) the subsequent revocation of his Control Release credits, and incentive and basic gain time, when his offenses were committed prior to the effective date of the Control Release Program Act. The Petitioner supports this argument by alleging that he was "forced" onto Control Release supervision and that the Control Release legislation mandated that all inmates were to be assigned a Control Release Date.

The Commission disagrees with Petitioner's contentions and submits that the Petitioner is not entitled to the relief requested.

The forfeiture of gain time subsequent to a revocation of Control Release supervision is an issue that is within the sole purview of the Florida Department of Corrections pursuant to Section 944.28, Florida Statutes. The Florida Parole Commission has no authority in this regard and the Commission will defer to the Department of Corrections' Response in this regard. See generally Harvey v. State, 616 So.2d 521 (Fla. 2d DCA 1993); Curry v. Wainwright, 422 So.2d 1029 (Fla. 1st DCA 1982).

### Alleged Coercive Placement on Control Release Supervision

Petitioner fails to support the allegation that he was "forced" into accepting Control Release. As noted in Mattern v. Florida Parole Commission, 707 So. 2d 806 (Fla. 4<sup>th</sup> DCA 1998),

**The burden of proof in a habeas corpus proceeding is on the Petitioner, who must back up his allegations with evidence...[g]eneral allegations are insufficient to demonstrate entitlement to relief.**

Id. at 808, citing Kohler v. Sandstrom, 305 So. 2d 76, 77 (Fla. 3<sup>rd</sup> DCA 1974) and Reaves v. State, 593 So. 2d 1150, 1151 (Fla. 1<sup>st</sup> DCA 1992).

Petitioner does not allege that he was threatened with retaliation if he did not sign the Control Release certificate or that the Department of Corrections or the Florida Parole Commission exerted any influence upon him to accept Control Release supervision. In his petition for Writ of Habeas Corpus, Petitioner appears to be basing his assertion that he was forced to accept Control Release by the alleged failure of the Department of Corrections or the Florida Parole Commission to advise him that he had a choice in the acceptance of Control Release supervision. Petitioner states that he was "forced to accept control release supervision ...without being given the option to accept or refuse the control release credits or the program" and "petitioner was never informed of his right to refuse control release credits or the program." (Petition, p. 4) Petitioner's claims are unsupported by the record and applicable case law and therefore have no merit.

On November 4, 1992, May 10, 1994 and November 7, 1994, Petitioner signed a document titled "Florida Parole Commission/Control Release Authority --

Notice of Control Release and Terms and Conditions of Supervision". (Exhibit E) By signing this document Petitioner affirmed the following:

**I agree to accept the terms and conditions of Control Release or if my offenses were committed on or after December 1, 1990, I acknowledge that I am subject to the terms and conditions of Control Release.**

(Exhibit E)(Emphasis supplied)

Petitioner should be prohibited from asserting almost 8 years later that he was forced into accepting early release from prison under the Control Release program. Petitioner should not be allowed to accept and enjoy the benefits of early release from prison, which included several years at liberty, and then avoid the consequences of his failure to comply with the conditions of Control Release by now asserting that he was forced into an early release. Petitioner had an obligation to voice his objection to the Parole Commission either before his release from custody or shortly thereafter. He does not allege nor is there any evidence that he contested this voluntary placement on Control Release supervision, until now. In fact, the evidence shows that the Petitioner actively sought consideration for Control Release as reflected in his April 20, 1992 letter to the Commission in which he stated in part,

**I pray I'm not judged by my past in this matter of trying to attain C.R.D., I'm not that same person...I can assure you that should I be allowed to receive C.R.D., I would not disappoint your board with a violation of any type and I would become a productive member of society and be a good Father who wants to help his children.**

(Exhibit D)

Furthermore, Petitioner, signed the Control Release certificate not once but at least three times and apparently never complained about his voluntary acceptance and placement on Control Release supervision until after his violations of the term and conditions of supervision and consequent Control Release revocation.

It is well established that one is required to object to a condition of parole, or probation, or to being sentenced to community control by appealing the imposition of such at the time the condition or sentence is imposed, rather than waiting to object upon violation of the supervision. See Bentley v. State, 411 So. 2d 1361 (Fla. 5th DCA 1982)(*when the trial court imposes conditions of probation the defendant should state on the record his objection to the conditions of probation and his refusal to accept such at the time of the imposition, otherwise conditions will be deemed to have been accepted*); Roach v. Mitchell, 456 So. 2d 963(Fla. 2nd DCA 1984)(*defendant acquiesced to the terms and conditions of parole by executing the certificate of parole and by failing to object until defendant violated the terms and conditions of parole*).

Additionally, the Second District Court of Appeal, in Joyner v. State, 594 So. 2d 328, 329 (Fla. 2nd DCA 1992), *approved*, 618 So. 2d 205 (Fla. 1993), held that because the defendant did not object to the imposition of community control at the time it was imposed and the defendant did not appeal the imposition of the sentence, the defendant accepted the sentence and therefore, the acceptance of the imposition of community control constituted a waiver of the right to contest such imposition at revocation.

The Commission submits that Bowles v. Singletary, 698 So. 2d 1201 (Fla. 1997), is the controlling case in this issue. In Bowles, the Florida Supreme Court held that the signed Control Release certificate constituted a waiver as to any ex post facto claim an inmate may have. Inmates attempt to distinguish Bowles from their situation by arguing that they were forced or coerced to accept Control Release and Bowles did not allege coercion. However, the Florida Supreme Court addressed the applicability of its Bowles decision to cases where coercion is raised. In Vereen v. Singletary, No. 92,356 (Fla. August 20, 1998), the inmate alleged that he was forced to accept early release from prison under the Control Release program and therefore the Court's decision in Bowles was not applicable. However, the Florida Supreme Court of Florida denied Vereen's petition and cited Bowles for its authority. (See Exhibit P) See also Delaine v. Singletary, 715 So.2d 376 (Fla. 1<sup>st</sup> DCA 1998), citing to Bowles v. Singletary, 698 So.2d 1201 (Fla.1997) (*prisoner's signature on the control release certificate containing the conditions of control release is an express waiver of any ex post facto claim regarding forfeiture of gain-time upon revocation of control release for prisoners whose offenses were committed prior to 1990*).

Therefore, it follows that if Petitioner wanted to object to Control Release, he should have refused to sign the Control Release document thereby objecting to being Control Released. He did not do so nor did he object to the Commission or seek any judicial or administrative relief either prior to accepting Control Release supervision or after his release, until this instant case. Petitioner should be



prohibited from enjoying the benefits of freedom and then, after his supervision has been revoked and he has been returned to incarceration to finish serving his court imposed sentence, objecting to his placement on Control Release.

Petitioner obviously failed to take his supervision seriously. The Commission gave Petitioner an opportunity to succeed while on supervision, however Petitioner ignored the importance of his Control Release supervision.

Now Petitioner is asserting that he was coerced into accepting early release under the Control Release program, although he signed the Control Release certificate after his release from incarceration. However, Petitioner has failed to substantiate his claim of coercion. In fact, the record clearly supports that Petitioner solicited consideration for Control Release supervision (Exhibit D) and agreed to accept the terms and conditions of Control Release, (Exhibit E) so that he could enjoy his freedom. If Petitioner wanted to object and refuse early release he should have done so in 1992, not in 2000, after he has enjoyed the benefits of early release from his Florida prison commitment, has violated his supervision, has had his supervision revoked and been returned to incarceration to finish serving the court imposed sentence. The Petitioner had the right to refuse placement on Control Release because his offenses were committed prior to December 1, 1990. (See Exhibit E, certificate of Control Release which Petitioner signed, agreeing to accept the terms and conditions of Control Release) He claims he was not informed that he could refuse Control Release supervision yet his signature on the certificate belies this statement when he affirmatively acknowledged not once but at least three times,

**I agree to accept the terms and conditions of Control Release or if my offenses were committed on or after December 1, 1990, I acknowledge that I am subject to the terms and conditions of Control Release.**

(Exhibit E)

The Petitioner's other basis for asserting that his placement and subsequent revocation of Control Release constitutes an ex post facto violation is his reliance on Ch. 89-526 s. 52, Laws of Florida, which states in part,

**All inmates committed to the department as of September 1, 1990, shall have a control release date established by December 1, 1990.**

Petitioner points to this legislative enactment as some sort of evidence that he has been subjected to an ex post facto violation. However as noted in the Department of Corrections' Response, this provision does not support any inference that the Petitioner was forced into Control Release or that he was required to accept Control Release. It merely provided the vehicle for the Commission to consider for each eligible inmate a potential date of release from prison pursuant to Control Release. Again as noted in the Department of Corrections Response, Section 921.001(12), Florida Statutes, (Supp. 1992), which was in effect at the time the Petitioner voluntarily accepted Control Release supervision provided,

**A person who is convicted of a crime committed on or after December 1, 1990, and who receives a control release date may not refuse to accept the terms and conditions of control release.**

The doctrine of *expressio unius est exclusio alterius*, applies in this case.

This Court in Thayer v. State, 335 So.2d 815 (Fla. 1976), referred to this tenet in deciding that the intent of the language in the relevant statute was to exclude previously issued licenses from a qualifying factor and stated,

**Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.**

*Id.* at 817 See also Capers v. State, 678 So.2d 330, 332, (Fla. 1996)(“If the legislature had intended to prohibit departure based on vulnerability due to age where it is an inherent component of the crime, it could have expressly stated this...”)

The clear meaning of Section 921.001(12), Florida Statutes, (Supp. 1992), is that only those inmates who had committed offenses on or after December 1, 1990, could not refuse the terms and conditions of Control Release supervision. By virtue of the doctrine of *expressio unius est exclusio alterius* as applied to Section 921.001(12), Florida Statutes, (Supp. 1992), and by virtue of the obvious language of the Control Release certificate which Petitioner signed, it is clear that he was on notice that his acceptance of Control Release supervision was voluntary and that he had the option to refuse if he had wanted to do so. The Petitioner is charged with not only constructive but also actual notice that acceptance and placement on Control Release supervision was voluntary for those inmates whose offenses were committed prior to December 1, 1990. Every citizen is charged with knowledge of the domestic law of his jurisdiction, Akins et al. v. Bethea et al., 33 So.2d 638 (Fla. 1948) and it is settled that publication of the law places all citizens on constructive notice and is adequate for due process purposes. See, City of Ft. Lauderdale v. Ilkanic, 683 So. 2d 563 (Fla. 4<sup>th</sup> DCA 1996); State v. Beasley, 580 So. 2d 139, 142 (Fla. 1991); See also Rule 23-22.006(24), Florida Administrative Code, (New 9/1/90), which stated,

**Refusal of Control Release-means that inmates whose offenses were committed on or before November 30, 1990 may refuse release by Control Release if it is offered. Inmates whose offenses were committed on or after December 1, 1990 are statutorily required to be released by Control Release when so ordered by the Commission, and may not refuse such release.**

(Exhibit Q)

The Petitioner fails to demonstrate that he was improperly placed on Control Release supervision. The evidence in this case reflects that he sought and agreed to an early release from prison under the Control Release program. As noted in Bowles v. Singletary, 698 So.2d 1201 (Fla. 1997), inmates in the same situation as the Petitioner were provided the option of choosing not to accept release and by signing the Control Release certificate, waived any ex post facto claim. Id. at 1202-1204. See also Lewis v. Moore, 25 Fla. L. Weekly S152 (Fla. February 17, 2000)(*where a releasee whose underlying offense predates the effective date of the Control Release act, accepts Control Release supervision and violates the terms and conditions of supervision, forfeiture of control release credits is proper and no ex post facto violation exists*) Petitioner's reliance on State v. Green, 547 So.2d 925 (Fla. 1989) and Heuring v. State, 559 So.2d 207 (Fla. 1990) to support his contention that his sentence expired due to gain time accrual is not persuasive. Petitioner was voluntarily released from incarceration almost two years prior to his Tentative Release Date<sup>1</sup> of July 23, 1994 as calculated by the Department of Corrections. (See Department of Corrections' Exhibit A, p. 2) This Court addressed

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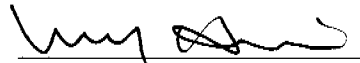
<sup>1</sup> The date projected for the prisoner's release from custody by virtue of gain time granted or forfeited Section 947.005(6), Florida Statutes, See also Section 944.275(3)(a), Florida Statutes.

this argument in Dowdy v. Singletary, 704 So.2d 1052 (Fla. 1998)<sup>2</sup>, when it held that the statements made in Green and Heuring do not apply to those inmates who violate control and conditional release. Id. at 1054 The Petitioner has failed to demonstrate any ex post facto violation by his voluntary acceptance and subsequent revocation of Control Release due to his noncompliance with the terms and conditions of supervision.

For the foregoing reasons, Petitioner is not entitled to the extraordinary relief requested.

Respectfully submitted,

William L. Camper  
General Counsel



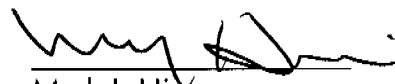
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<sup>2</sup> See also Duncan v. Moore, 25 Fla. L. Weekly S215 (Fla. March 23, 2000) (*holding that the principles in Dowdy v. Singletary, applies equally to Control and Conditional Release*)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Jerry Wilson, DC # 670412, Dade Correctional Institution, 19000 S.W. 377<sup>th</sup> Street, Florida City, Florida 33034 and by interoffice mail delivery to Judy Bone, Assistant General Counsel, Department of Corrections, 2601 Blair Stone Road, Building B, Tallahassee, Florida 32399-24500 this 15<sup>th</sup> day of May, 2000.



Mark J. Hiers  
Assistant General Counsel