IN THE SUPREME COURT OF FLORIDA

JOSEPH DUANE SAUCER,
Defendant/Petitioner,

v.

STATE OF FLORIDA,
Plaintiff/Respondent.

_____/

Case No.: 95,031
DCA Case No.: 97-04134
L.T. Case No.: 95-2967CF-D

REGARDING DISCRETIONARY REVIEW BY THE FLORIDA SUPREME COURT OF A CERTIFIED QUESTION RAISED BY THE FIRST DISTRICT COURT OF APPEAL ON DECEMBER 17, 1998

INITIAL BRIEF ON THE MERITS

By: Joseph Saucer Pro Se
Joseph Duane Saucer 118860
Gulf Correctional Institution
500 Ike Steele Road
Wewahitchka, Florida 32465

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HISTORY OF THE CASE

1) Petitioner filed a petition for writ of habeas corpus, seeking a belated appeal, with the First District Court of Appeal on October 22, 1997.

2) The First District Court of Appeal appointed a special master to hold an evidentiary hearing regarding petitioner's claims.

3) The special master found, contrary to the petitioner's claims, that no requests were made to trial counsel to appeal petitioner's case. Petitioner's petition for writ of habeas corpus was therefore denied on May 6, 1998.

4) The State filed a motion regarding sanctions pursuant to Florida Statute **§944.28(2)(a)** on June 8, 1998 in the First District Court of Appeal.

5) Petitioner filed a Traverse to the State's motion on June 18, 1998.

6) The First District Court of Appeal denied the State's motion for sanctions on August 17, 1998. (See **Saucer v. State, 23 Fla. L. Weekly D1972**)

7) The State filed a Motion for Rehearing and Motion for Rehearing En Banc on August 20, 1998.

8) Petitioner filed a Response to the State's Rehearing, on September 4, 1998.

9) The First District Court of Appeal withdrew its earlier Order, denied Respondent's Motion for Rehearing, and granted the State's original motion for sanctions in part, in an Order dated December 17, 1998. (See **Saucer v. State, 24 Fla. L. Weekly D37**)

10) Petitioner filed a Motion for Rehearing in the First District Court of Appeal on January 5, 1999.

11) The First District Court of Appeal denied petitioner's Rehearing, without opinion, on February 11, 1999.

12) Petitioner filed a Notice to Invoke Discretionary Jurisdiction, with the First District Court of Appeal, on March 3, 1999.

13) The Honorable Sid White dismissed the Notice to Invoke Discretionary Jurisdiction, due to a lack of jurisdiction, on March 17, 1999.

14) Petitioner sent a letter of inquiry to the Clerk of the Court for the First District Court of Appeal, asking if there was some sort of technicality petitioner overlooked regarding the Notice to Invoke Discretionary Jurisdiction, on March 22, 1999.

15) On March 23, 1999 this Honorable Court vacated their earlier Order, dismissing due to lack of jurisdiction, and accepted

petitioner's Notice to Invoke Discretionary Jurisdiction.

16) Petitioner's Initial Brief was deemed to be due on or before April 19, 1999.

17) This Initial Brief timely follows.

STATEMENT OF FACTS

1) Petitioner, Joseph Duane Saucer, was convicted in March of 1996 and sentenced to sixteen years in prison, for crimes that occurred on February 24, 1995.

2) Petitioner, with the "help" of an inmate law clerk, filed a petition for writ of habeas corpus, seeking a belated appeal.

3) Petitioner had asked his court appointed attorney to appeal his case on several occasions, although he may have mistakenly used the wrong **dates** on his petition.

4) At the special master's evidentiary hearing, these facts were brought out, and the petition as subsequently denied.

5) The State sought an order regarding sanctions, because (in their opinion) Petitioner brought "a frivolous pleading in which petitioner knowingly or with reckless disregard for the truth brought false information before the court".

6) Petitioner maintains that, due to the fact that his state habeas corpus petition was a collateral criminal proceeding, the gain-time forfeiture statute(s) therefore do not apply.

SUMMARY OF THE ARGUMENT

1) FLORIDA STATUTE §944.279 MUST BE READ **IN PARI MATERIA** WITH FLORIDA STATUTE §944.28(2)(a)

2) THE APPLICATION OF FLORIDA STATUTE §944.28(2)(a) TO THIS PETITIONER VIOLATES THE **EX POST FACTO** CLAUSE OF THE FLORIDA AND U.S. CONSTITUTIONS

3) THE MORE SPECIFIC STATUTE (§944.279) CONTROLS OVER A MORE GENERAL ONE (§944.28(2)(a)), ESPECIALLY WHEN BOTH STATUTES WERE ENACTED OR AMENDED AT THE SAME TIME

4) WHEN A STATUTE HAS MORE THAN ONE REASONABLE INTERPRETATION, IT MUST BE CONSTRUED IN FAVOR OF THE ACCUSED

5) THE DISTRICT COURT MISINTERPRETED THE IMPACT OF FLORIDA SESSIONS LAW, CHAPTER 97-78

6) THE STATE MISLED THE DISTRICT COURT IN THEIR MOTION FOR REHEARING WITH AN INCOMPLETE QUOTATION FROM A FIFTH DISTRICT COURT OF APPEAL CASE

ARGUMENT IN SUPPORT

GROUND ONE

FLORIDA STATUTE §944.279 MUST BE READ **IN PARI MATERIA** WITH FLORIDA STATUTE §944.28(2)(a)

The Florida Supreme Court has long recognized the rule of statutory construction that:

> "statutes which relate to the same person or thing or to the same class of persons or things, or to the same or a closely allied subject or object, may be regarded as in pari materia. Statutes which have a common purpose or the same common purpose, or are parts of the same general scheme or plan or aimed at accomplishing the same results, may be regarded as in pari materia." **Singleton v. Larson, 46 So.2d 186, 190 (Fla. 1950)**

This rule has been clarified further by the Florida Supreme Court, in **Lareau v. State, 573 So.2d 813, 815 (Fla. 1991)**, where was stated in part that:

> "This Court has long followed the rule that when two conflicting or ambiguous provisions of the same legislative act were intended to serve the same purpose, they must be read in **pari materia** to ascertain the overall legislative intent and to harmonize the provisions so that the fullest effect can be given to each. **See, e.g., State ex rel. Fla. Jai Alai, Inc. v. State Racing Comm'n,** 112 So.2d 825, 828 (Fla. 1959)(citing **Florida State Racing Comm'n v. McLaughlin,** 102 So.2d 574, 575 (Fla. 1958))."

The Florida Supreme Court addresses the issue of in pari materia again, in **McGhee v. Volusia County, 679 So.2d 729, 730 (Fla. 1996)**. In **St. Johns River v. Consolidated-Tomoka, 717 So.2d 72, 80 (Fla. 1998)**, the Florida Supreme Court noted that:

> "Statutes are not construed in isolation. On the contrary, the court must interpret an ambiguous statute in the context of other statutes on the same general subject. **See Florida Jai Alai, Inc. v. Lake Howell Water & Reclamation District**, 274 So.2d 522 (Fla. 1973)."

The Florida Supreme Court has even noted, in **Chiles v. Phelps, 714 So.2d 453, 459 (Fla. 1998)**, that constitutional provisions also must be construed in a manner which would not render another provision superfluous, meaningless, or inoperative. The State is attempting to render F.S. §944.279 "superfluous, meaningless, or inoperative" by ignoring it completely and using F.S. §944.28(2)(a) instead. This petitioner avers that to do so would go against the long standing statutory construction standards of this Court and the federal courts as well. See **U.S. v. Lowery, 15 F.Supp2d 1348, 1352 (S.D. Fla. 1998); Erlenbaugh v. United States, 409 U.S. 239, 243-245, 93 S.Ct. 477, 480-481, 34 L.Ed.2d 446 (1972); Haig v. Agee, 453 U.S. 280, 300, 101 S.Ct. 2766, 2778-79, 69 L.Ed.2d 640 (1981)**; and especially **Brown v. General Services Administration, 425 U.S. 820, 833, 96 S.Ct. 1961, 1968, 48 L.Ed.2d 402 (1976)**, wherein the United States Supreme Court stated:

> "It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading."

When read **in pari materia**, Florida Statute §944.28(2)(a) was clearly not intended to be utilized against prisoners who were filing criminal or collateral criminal pleadings. Allowing the State to circumvent Congress's intent, by ignoring Florida Statute §944.279 completely, thereby usurps the Legislative branch's

authority and places the law making authority on the Executive branch. This is the reason our great forefathers created a three part government, so as to keep all three branches in check.

Petitioner therefore solemnly asks this Honorable Court to correctly interpret and construe Florida Statute §944.279 and §944.28(2)(a) in pari materia so as to embrace the Legislature's original intent.

GROUND TWO

THE APPLICATION OF FLORIDA STATUTE §944.28(2)(a) TO THIS PETITIONER VIOLATES THE **EX POST FACTO** CLAUSE OF THE FLORIDA AND U.S. CONSTITUTIONS

Florida Statute §944.28(2)(a) was amended by Florida Sessions Law Chapter **96-106 §6** to provide penalties for inmates who file frivolous court actions. This sessions law took effect on July 1, 1996.

The Petitioner's crimes occurred on February 24, 1995 and his convictions and sentencing followed in March of 1996. Therefore, both petitioner's crimes and convictions occurred prior to the enactment of this section of the statute.

The United States Supreme Court, in **Lynce v. Mathis**, ____ **U.S.** ____, **117 S.CT. 891, 892 (1997)**, held that the 1992 statute cancelling provisional release credits violated the **Ex Post Facto** Clause and stated in part that:

> "To fall within the ex post facto prohibition, a law must be retrospective and "disadvantage the offender affected by it," **Weaver v. Graham**, 450 U.S. 24, 29,

101 S.Ct. 960, 964, 67 L.Ed.2d 17, by, **inter alia**, increasing the punishment for the crime, see **Collins v. Youngblood**, 497 U.S. 37, 50, 110 S.Ct. 2715, 2723, 111 L.Ed.2d 30."

The **ex post facto** clause is even a part of the United States Constitution (see Article **1**, Section **9** and Article **1**, Section **10**). It is also in the Florida Constitution (see Article **1**, Section **10**).

An even closer case to the point was answered by the Florida Supreme Court, in **Britt v. Chiles, 704 So.2d 1046, 1048 (Fla. 1997)**, wherein the court ruled as **ex post facto** the application of another statute related to gain-time forfeiture (F.S.**§944.281**) to an inmate who was convicted before the date of that statute's enactment.

The State's insistance on utilizing F.S. **§944.28(2)(a)** to punish prisoners who file what the State considers to be frivolous collateral criminal motions does tend to cause the prisoners to serve a longer term term of incarceration.

A man considering a crime should be made aware of the possible penalties that will affect him. To increase these penalties after the fact violates the Florida and U.S. Constitutions and results in unfair treatment of the accused.

"fair treatment... will enhance the chance of rehabilitation by avoiding reactions to arbitrariness."

Morrissey v. Brewer, 408 U.S. 471, 484, 92 S.Ct. 2593, 2602, 33 L.Ed.2d 484 (1972)

GROUND THREE

THE MORE SPECIFIC STATUTE (**§944.279**) CONTROLS OVER A MORE GENERAL ONE (**§944.28(2)(a)**),

ESPECIALLY WHEN BOTH STATUTES WERE ENACTED OR AMENDED AT THE SAME TIME

It is a well settled rule of statutory construction that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms.

In **Adams v. Culver, 111 So.2d 665, 667 (Fla. 1959)**, the Florida Supreme Court stated that this rule:

> "is particularly applicable to criminal statutes in which the specific provisions relating to particular subjects carry smaller penalties than the general provision." (citations omitted)

The Florida Supreme Court, in **McKendry v. State, 641 So.2d 45, 46 (Fla. 1994)**, further clarified this subject by stating in part that:

> "The more specific statute is considered to be an exception to the general terms of the more comprehensive statute." (citations omitted)

Again this Court declined to override the more specific of two statutes, in **Hudson v. State, 711 So.2d 244, 247 (Fla. 1998)**, by:

> "keeping with precedent and with the familiar rule of statutory construction that "a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms."" (citations omitted)

The federal courts have embraced this principle of statutory construction as well. See **U.S. v. Royal Caribbean Cruises, LTD.,**

11 F.Supp.2d 1358, 1364 (S.D. Fla. 1998); Bouchard Transp. Co., Inc. v. Updegraff, 147 F.3d 1344, 1351 (11th Cir. 1998); and Busic v. United States, 446 U.S. 398, 407, 100 S.Ct. 1747, 1753, 64 L.Ed.2d 381 (1980).

Petitioner contends that F.S. §944.279 is the more specific of these two closely related statutes and therefore must control over the more general F.S. §944.28(2)(a). With F.S. §944.279 rightfully "in control", there would be no penalty provided for any criminal or collateral criminal pleadings. Both statutes were brought into play, and remain substantially unchanged from, by Florida sessions law chapter 96-106.

GROUND FOUR

WHEN A STATUTE HAS MORE THAN ONE REASONABLE INTERPRETATION, IT MUST BE CONSTRUED IN FAVOR OF THE ACCUSED

This principle of statutory construction has even been made into a statute in this state. See Florida statute §775.021(1):

> "[W]hen the language is susceptible of differing constructions, it shall be construed most favorably to the accused." (emphasis added)

The Florida Supreme Court has consistently ruled in this manner. See: State ex rel. Cherry v. Davidson, 103 Fla. 954, 958, 139 So. 177, 178 (1931); State v. Wershow, 343 So.2d 605, 608 (Fla. 1977); Ferguson v. State, 377 So.2d 709 (Fla. 1979); Palmer v. State, 438 So.2d 1, 3 (Fla. 1983); Grappin v. State, 450 So.2d 480, 481 (Fla. 1984); Carawan v. State, 515 So.2d 161 (Fla. 1987);

Perkins v. State, 576 So.2d 1310, 1313 (Fla. 1991); State v. Camp, 596 So.2d 1055, 1056 (Fla. 1992); Johnson v. State, 602 So.2d 1288 (Fla. 1992); Scates v. State, 603 So.2d 504 (Fla. 1992); State v. Werner, 609 So.2d 585 (Fla. 1992); Lamont v. State, 610 So.2d 435, 437-38 (Fla. 1992); Overstreet v. State, 629 So.2d 125 (Fla. 1993); State v. Hamilton, 660 So.2d 1038, 1044 (Fla. 1995); Cabal v. State, 678 So.2d 315, 318 (Fla. 1996); Chicone v. State, 684 So.2d 736, 741 (Fla. 1996); Thompson v. State, 695 So.2d 691, 693 (Fla. 1997).

Nor has the federal courts been silent on this principle of law. See: U.S. v. McKeiver, 982 F.Supp. 842 (Fla.M.D. 1997); Tarpley v. Dugger, 841 F.2d 359, 364 (11th Cir. 1988); U.S. v. Trout, 68 F.3d 1276, 1280 (11th Cir. 1995); United States v. Brown, 79 F.3d 1550, 1556 (11th Cir. 1996); U.S. v. Lazo-Ortiz, 136 F.3d 1282, 1286 (11th Cir. 1998); United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-22, 73 S.Ct. 227, 229, 97 L.Ed. 260 (1952); Bell v. United States, 349 U.S. 81, 83, 75 S.Ct. 620, 622, 99 L.Ed. 905 (1955); Prince v. United States, 352 U.S. 322, 329, 77 S.Ct. 403, 407, 1 L.Ed.2d 370 (1957); Ladner v. United States, 358 U.S. 415, 419-420, 79 S.Ct. 451, 453-454, 3 L.Ed.2d 407 (1959); Rewis v. United States, 401 U.S. 808, 812, 91 S.Ct. 1056, 1060, 28 L.Ed.2d 493 (1971); United States v. Bass, 404 U.S. 336, 347, 92 S.Ct. 515, 522, 30 L.Ed.2d 488 (1971); Whalen v. United States, 445 U.S. 684, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980); Busic v. United States, 446 U.S. 398, 407, 100 S.Ct. 1747, 1753, 64 L.Ed.2d 381 (1980); Albernaz v. United States, 450 U.S. 333, 342, 101 S.Ct. 1137, 1144, 67 L.Ed.2d 275 (1981); McNally v. U.S., 483 U.S. 350, 359-360, 107 S.Ct. 2875, 2881, 97 L.Ed.2d 292

(1987).

This principle being a well established statutory construction device, **stare decisis** requires that it be utilized when construing the statute(s) in the present case.

Petitioner contends that there is definate ambiguity with regards to F.S. §944.28(2)(a), as it can either be used alone (ignoring F.S. §944.279) thereby allowing for the punishment of prisoners who file any sort of motion, petition, appeal, suit, or other frivolous action with the courts; or it can be read **in pari materia** with F.S. §944.279 thereby exempting punishment for prisoners who are attacking their convictions in criminal or collateral criminal proceedings.

This petitioner believes that the second construction is the correct one (and the one intended by legislature) but would point out that even if this Honorable Court disagrees —then the "rule of lenity" must be applied and the statute be construed in favor of the accused.

GROUND FIVE

THE DISTRICT COURT MISINTERPRETED THE IMPACT OF FLORIDA SESSIONS LAW, CHAPTER 97-78

The First District Court of Appeal, in their second published opinion (see **Saucer v. State, 24 Fla. L. Weekly D37, D38** December 17, 1998) misinterpreted the impact or main thrust of Florida sessions law, chapter **97-78.**

By deleting "forfeiture of gain-time and the right to earn gain-time" and adding "disciplinary procedures pursuant to the

rules of the Department of Corrections" in its place, the Legislature merely granted the Department of Corrections greater powers of punishment in case of frivolous civil suits.

The reason for this amendment is to allow the Florida Department of Corrections to place an inmate in confinement for up to sixty (60) days in addition to the loss of up to all gain-time if he files a frivolous civil law suit. The amendment also cleared up the fact that the Department of Corrections cannot forfeit the right to earn future gain-time, after the Florida Supreme Court's opinion in **Britt v. Chiles, 704 So.2d 1046 (Fla. 1997).** Prior to the amendment, the Department of Corrections could only take away gain-time.

The Legislature closed this loop hole with chapter **97-78** and the Department of Corrections changed the Florida Administrative Code so as to include the possible punishment of up to sixty (60) days in Disciplinary Confinement (see EEXHIBITS **A, B, C**)

There was absolutely no mention in the sessions law regarding the applicability of these statutes to criminal and/or collateral criminal proceedings.

Therefore, it is the opinion of this petitioner that the District Court read something into chapter **97-78** that wasn't there. The statute was not fundamentally changed by chapter **97-78** and therefore the previous arguments still apply.

GROUND SIX

THE STATE MISLED THE DISTRICT COURT IN THEIR MOTION FOR REHEARING WITH AN INCOMPLETE QUOTATION FROM A FIFTH DISTRICT COURT OF APPEAL CASE

The State, in their Motion for Rehearing and Motion for Rehearing En Banc, filed August 20, 1998, attempted to mislead the First District Court of Appeal by giving a portion of a quote from the case of **Bradley v. State, 703 So.2d 1176 (Fla. 5th DCA 1997).**

By providing only half of the quoted sentence to the court, the State gave the impression that Judge Griffen was in full agreement with the State's position.

This is not true. The rest of that sentence shows the extent of his disagreement with that position.

> "bound to concur.... based on our prior case law, but I do so not only with reservations concerning whether we are correct but exactly how this statute will work in the context of criminal appeals and collateral proceedings."
>
> (The underlined portions were omitted by the State)

That Judge went on to say that this statute, if wrongly construed as the First District Court of Appeal did in this case, can lead to all sorts of problems such as prisoners being punished for something their court appointed or private attorney did in their name.

The completed quote throws an entirely different light on the subject and makes this petitioner wonder if the misleading quote was one of the planks on which the First District Court of Appeal based their decision.

CONCLUSION

In conclusion, the petitioner points out that the basic rules of statutory construction must be utilized in applying F.S. §944.28(2)(a), i.e. **in pari materia, ex post facto**, the more specific controlling over the more general, the rule of lenity, and the intent of the Legislature.

To use F.S. §944.28(2)(a) alone, to bring sanctions against prisoners who file criminal and/or collateral criminal proceedings, we are forced to judicially repeal the provisions of F.S. §944.279. Surely the separations of powers doctrine of our state and federal constitutions prevents such a ruling.

We are left then with the logical conclusion that these statutes are to be used to provide sanctions against prisoners who file frivolous civil proceedings only.

PRAYER FOR RELIEF

Wherefore, this petitioner prays that this Honored and esteemed Court rule in his favor and declare F.S. §944.28(2)(a) to apply to civil actions alone. In the alternative, petitioner prays that F.S. §944.28(2)(a) not be applied to him due to the **ex post facto** clauses of our state and federal constitutions.

OATH

I DECLARE UNDER PENALTY OF PERJURY that I have read the foregoing Initial Brief and that the facts presented herein are true and correct.

Executed this 19th day of April, 1999, by the undersigned.

Joseph D. Saucer 118860 F3-111U
Gulf Correctional Institution
500 Ike Steele Road
Wewahitchka, Florida 32465

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that atrue and correct copy of the enclosed Initial Brief has been furnished to the Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 via U.S. Mail this 19th day of April, 1999.

INVOCATION OF THE "MAILBOX RULE"

Petitioner hereby invokes the "Mail Box Rule" in accordance with this Court's holding in **Haag v. State, 591 So.2d 614 (Fla. 1992)** and hereby cerifies that this Initial Brief has been turned over to the Institutuional Authorities here at Gulf Correctional Institution on this 19th day of April, 1999, and therefore the brief is to be considered as timely filed.

Joseph D. Saucer 118860

9-15	Visiting regulation violations	30 DC + 30 GT
9-16	Refusing to work	60 DC + 90 GT
9-17	Disorderly conduct	30 DC + 60 GT
9-18	Unauthorized physical contact involving non-inmates	60 DC + 90 GT
9-19	Presenting false testimony or information before Disciplinary Team, Hearing Officer, or Investigating Officer	60 DC + All GT
9-20	Extortion or attempted extortion	60 DC + 60 GT
9-21	Fraud or attempted fraud	30 DC + 90 GT
9-22	Robbery or attempted robbery	60 DC + All GT
9-23	Theft of property exceeding $50 in value	60 DC + All GT
9-24	Loaning or borrowing money or other valuables	15 DC + 30 GT
9-25	Telephone regulation violations	30 DC + 30 GT
9-26	Refusing to submit to substance abuse testing	60 DC + 180 GT
9-27	Use of unauthorized drugs - as evidenced by positive results from urinalysis test or observable behavior	60 DC + 180 GT
9-28	Canteen Shortage under $50.00	30 DC + 60 GT
9-29	Canteen Shortage over $50.00	60 DC + All GT
9-30	Self Mutilation	30 DC + 60 GT
9-31	Use of Alcohol -- as evidenced by positive results from authorized tests, or by observable behavior	30 DC + 90 GT
9-32	Is found by the court to have brought a frivolous suit, action, claim, proceeding or appeal in any court which is filed after June 30, 1996, or is found by the court to have knowingly or with reckless disregard for the truth brought false information or evidence before the court.	0 DC + All GT

"EXHIBIT A"

SECTION 10 - COMMUNITY RELEASE PROGRAM VIOLATIONS-WORK RELEASE, STUDY RELEASE, FURLOUGH AND VOLUNTEER SERVICE

10-1	Failure to directly and promptly proceed to and return from designated area by approved method	60 DC + 180 GT
10-2	Failure to remain within designated area of release plan	30 DC + 60 GT
10-3	Failure to return if plan terminated prior to scheduled time	30 DC + 30 GT

(Rule Development MEM)

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

LEGAL SERVICES OFFICE

MEMO TO: All Institutions, Facilities, and Other Offices of the Department

FROM: Louis A. Vargas, General Counsel

DATE: March 31, 1998

SUBJECT: **Rule Development for Rule: 33-22.012**

This notice of rule development will appear in the Florida Administrative Weekly on April 10, 1998. This notice must be posted at your institution and circulation must begin by this date.

(a) Post the notice on all inmate and personnel bulletin boards at your institution, office or facility.

(b) Circulate the notice among all inmates in all disciplinary, administrative, or close confinement areas, including all inmates under sentence of death.

(c) Follow the **DC-Mail instructions** to verify receipt of the notice of rule development.

(d) Keep the notice posted for at least 14 days.

(e) Retain at least one copy of the notice on file in the library or office.

\pkd

Attachments

cc: Harry K. Singletary, Jr.
Bill Thurber
Kerry Flack
Bernard Cohen
Nancy Wittenberg
Stan Czerniak
Charles R. Mathews
Wilson C. Bell
Harry Dodd
Marcellas Durham
Jerry Chesnutt
Lana Arnold
Ron Jones
Doyle Kemp
Celeste Kemp
Allen Overstreet
Ron Kronenberger
Buddy Ferguson
Phil Welsh
Fred Roesel
Ed Teuton
Tyrone Boyd
David Tune

"EXHIBIT B-1"

April 10, 1998

DEPARTMENT OF CORRECTIONS

RULE TITLE: RULE NO.:

Rules of Prohibited Conduct and 33-22.012

Penalties for Infractions

PURPOSE AND EFFECT: The proposed amendment is needed in order to implement Chapter 97-78 Laws of Florida, Section 14, which provides that any inmate who is found by a court to have filed a frivolous or malicious action or to have brought false information before a court is subject to disciplinary procedures pursuant to the rules of the Department of Corrections. The effect of the proposed amendment is to allow for up to 60 days of disciplinary confinement in these cases.

SUBJECT AREA TO BE ADDRESSED: Inmate discipline.

SPECIFIC AUTHORITY: 944.09, 944.14, 945.091 FS

LAW IMPLEMENTED: 20.315, 944.09, 944.14, 944.279, 944.28, 945.04, 945.091 FS

IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD ON THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 April 29, 1998

PLACE: Law Library Conference Room, Bureau of Legal Services, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: PERRI DALE

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-22.012 Rules of Prohibited Conduct and Penalties for Infractions. The following table shows established maximum penalties for the indicated offenses. As used in the table, "DC" means the maximum number of days of disciplinary confinement that may be imposed and "GT" means the maximum number of days of gain time that may be taken. Any portion of either penalty may be applied.

SECTION 1 through SECTION 8 No change.

SECTION 9 - MISCELLANEOUS INFRACTIONS

9-1 through 9-31 No change.

9-32	Is found by the court to have brought a frivolous or malicious suit, action, claim, proceeding or appeal in any court which is filed after June 30, 1996, or	60 ~~0~~ DC + All GT

"EXHIBIT B-2"

is found by the court to have

knowingly or with reckless disregard

for the truth brought false information

or evidence before the court.

SECTION 10 through SECTION 11 No change.

Specific Authority 944.09, 944.14, 945.091 FS. Law Implemented 20.315, 944.09, 944.14, 944.279, 944.28, 945.04, 945.091 FS. History-New 3-12-84, Formerly 33-22.12, Amended 1-10-85, 12-30-86, 9-7-89, 11-2-90, 6-2-94, 10-1-95, 3-24-97,____.

Name of Person Originating Proposed Rule: Ellen Roberts

"EXHIBIT B-3"

9-16	Refusing to work	60 DC + 90 GT
9-17	Disorderly conduct	30 DC + 60 GT
9-18	Unauthorized physical contact involving non-inmates	60 DC + 90 GT
9-19	Presenting false testimony or information before Disciplinary Team, Hearing Officer, or Investigating Officer	60 DC + All GT
9-20	Extortion or attempted extortion	60 DC + 60 GT
9-21	Fraud or attempted fraud	30 DC + 90 GT
9-22	Robbery or attempted robbery	60 DC + All GT
9-23	Theft of property exceeding $50 in value	60 DC + All GT
9-24	Loaning or borrowing money or other valuables	15 DC + 30 GT
9-25	Telephone regulation violations	30 DC + 30 GT
9-26	Refusing to submit to substance abuse testing	60 DC + 180 GT
9-27	Use of unauthorized drugs - as evidenced by positive results from urinalysis test or observable behavior	60 DC + 180 GT
9-28	Canteen Shortage under $50.00	30 DC + 60 GT
9-29	Canteen Shortage over $50.00	60 DC + All GT
9-30	Self Mutilation	30 DC + 60 GT
9-31	Use of Alcohol -- as evidenced by positive results from authorized tests, or by observable behavior	30 DC + 90 GT
9-32	Is found by the court to have brought a frivolous or malicious suit, action claim, proceeding or appeal in any court which is filed after June 30, 1996, or is found by the court to have knowingly or with reckless disregard for the truth brought false information or evidence before the court.	60 DC + ALL GT

"EXHIBIT C"

SECTION 10 - COMMUNITY RELEASE PROGRAM VIOLATIONS-WORK RELEASE, STUDY RELEASE, FURLOUGH AND VOLUNTEER SERVICE

10-1	Failure to directly and promptly proceed to and return from designated area by approved method	60 DC + 180 GT
10-2	Failure to remain within designated area of release plan	30 DC + 60 GT
10-3	Failure to return if plan terminated prior to scheduled time	30 DC + 30 GT
10-4	Making unauthorized contact, personal, telephone or otherwise,	10 DC + 15 GT

STATE OF FLORIDA)
)ss
COUNTY OF GULF)

Before me, the undersigned authority, this day personally, appeared JOSEPH SAUCER who is first being duly sworn, says that he is the PETITIONER, in the above styled cause, that he has read the foregoing document, and has personal knowledge of the facts and matters therein set forth and alleged, and that each and all of these facts and matters are true and correct.

Joseph Saucer
Affiant JOSEPH SAUCER

STATE OF FLORIDA)
)ss
COUNTY OF GULF)

The foregoing instrument was acknowledge before me this 19th day of APRIL, 1999, by JOSEPH SAUCER who is personally known to me or who has produced a Department of Corrections I. D. as identification and who did take an oath.

3-16-2001
MY COMMISSION EXPIRES

Helen L. Carlsten
NOTARY OF FLORIDA

Helen L. Carlsten
MY COMMISSION EXPIRES
MARCH 16, 2001
#CC 630273
Bonded thru
Troy Fain-Insurance
NOTARY PUBLIC, STATE OF FLORIDA