IN THE SUPREME COURT OF FLORIDA

LAWRENCE SCOTT ANDREWS,

Petitioner,

v. CASE NO SC00-2333

THE FLORIDA PAROLE COMMISSION and
THE FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondents.

_____/

ANSWER BRIEF OF RESPONDENTS

On Review of a Question Certified From the
District Court of Appeal, First District

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FLORIDA STATUTES

FLORIDA CONSTITUTION

OTHER AUTHORITIES

STATEMENT OF THE CASE

Petitioner Andrews, a former inmate, sued the defendants, the Florida Parole Commission and the Florida Department of Corrections, in the Leon County Circuit Court. (R: 1) The circuit court dismissed the complaint for failure to state a cause of action. (R: 44) Andrews appealed to the District Court of Appeal, First District, which affirmed the circuit court's decision and certified a question of great public importance to this Court. The certified question is set forth following the statement of facts.

This Court, by order entered November 16, 2000, set a briefing schedule but postponed its decision on jurisdiction.

STATEMENT OF THE FACTS

The District Court of Appeal accepted the facts pleaded in the complaint and set out relevant portions of paragraphs 7-15 and 23-24. Those paragraphs alleged the following:

> **7**. Plaintiff was convicted of crimes occurring before and after October 1, 1988.
>
> **8**. On April 1, 1991, the Plaintiff was sentenced to 30 months incarceration . . .in case number 88-642 ...The criminal conduct in that case occurred prior to October 1, 1988.
>
> **9**. Again, on April 4, 1991, Plaintiff was sentenced to 30 months on case numbers 90-574 and 91-25 . . which ran consecutive [to] the thirty months given in case number 88-642 referred to above. The criminal conduct in those cases occurred [after] October 1, 1988.
>
> **10**. Upon expiration of the sentences through gain time on May 28, 1993, Plaintiff was

released on conditional release to be supervised until December 25, 1995. This date was calculated by considering the two separate sentences as one 60 month sentence despite the fact that only the second thirty month sentence was subject to the provisions of Florida Statute §947.1405 (1) and (2). The first thirty month sentence was subject to provisions of §944.291, Fla. Stat. which dictate that the inmate shall have no supervision by either Defendant.

11. On May 13, 1994, the First District Court of Appeal in Westlund v. Florida Parole Comm'n (and Florida Department of Corrections), 637 So. 2d 52 (Fla. 1st DCA 1994) specifically held that it was illegal for [the Defendants] to include sentences for criminal conduct occurring prior to October 1, 1988 in their calculation of the length of conditional release.

12. Under Westlund, the maximum time that the Plaintiff could have been supervised to, and hence subject to revocation by Defendant COMMISSION was September 12, 1994.

13. Based on a warrant issued by Defendant Commission after September 12, 1994, the Plaintiff was returned to Defendant DOC custody on Defendant COMMISSION's first illegal warrant initially as a parole release violator on December 9, 1994 but then illegally was reinstated to conditional release by Defendant COMMISSION on January 31, 1995.

14. The Plaintiff again was illegally returned to Defendant DOC custody on December 28, 1995 on Defendant COMMISSION's void warrant and was given a tentative release date by Defendant DOC of November 11, 1997. The Defendants knew or should have known of the decision in Westlund when they considered Plaintiff's case at this time.

15. Within a very short time of his re-incarceration, Plaintiff filed many inmate

> grievances, both at the institutional level and Defendant DOC at Tallahassee Central Office complaining about the illegality of his incarceration and citing the Westlund case.
> ....
> **23**. Plaintiff filed a writ of habeas corpus, but prior to the Court's ruling, Defendant COMMISSION issued an emergency order dated October 16, 1996 which resulted in the unconditional release of the Plaintiff on October 17, 1996 from incarceration.
>
> **24**. As a direct and proximate cause of [the Defendant's] actions or omissions, Plaintiff was falsely and illegally incarcerated. . . .

(Slip Op. at pp. 2-4) (R: 2-5).

The complaint further alleged the breach of various duties by both the Parole Commission and DOC. Andrews alleged that DOC had a duty to him as a prisoner to properly calculate the end date of his sentence, including any award of gain time (¶¶ 5 and 17); that the Commission was required by law to ensure that the date for the end of conditional release supervision was properly calculated (¶ 18); that both defendants had a duty to determine all inmates affected by the Westlund decision (¶ 19); that the Commission had a duty to ensure that its warrants were lawful at the time of their issuance (¶ 20); and that DOC had a duty to ascertain the lawfulness of Andrews' confinement after he filed numerous grievances (¶ 22). Finally, Andrews alleged that as a result of Defendants' acts and omissions, he was falsely and illegally incarcerated (¶ 24).

In its assessment of these allegations the majority below found that it was the Commission that "at the time of Andrews' initial release established December 25, 1995 as the termination date for his conditional release supervision" and that thereafter "on two occasions subsequent to September 12, 1994, the Commission issued warrants for Andrews' arrest based upon alleged violations of the terms of his conditional release. DOC took custody of Andrews pursuant to these warrants." (Slip Op. at 5) The majority also concluded that the Commission's responsibilities under section 947.1405 include "interpretation of the sentences and offenses of which the inmate is convicted, the dates of the offenses, and a determination of the expiration date of the maximum sentence imposed by the court," and, although DOC has certain related statutory duties, "the responsibility for an inmate's actual conditional release is solely with the Commission." (Slip Op. at 9)

From the complaint allegations it is clear that the Parole Commission determined Andrews would be released from conditional supervision on December 25, 1995 and it then released him to conditional supervision on May 28, 1993. That occurred approximately one year before Westlund v. Florida Parole Comm'n was decided on May 13, 1994.

The majority ruled that the Commission functions in a quasi-judicial capacity in carrying out its duties under section

947.1405. (Slip Op. at 9) It found the Commission's duties under the statute "functionally comparable" to those of a judge, and that the Commission, and to some extent DOC, operate as "the arm of the sentencing judge." (Slip Op. at 9-10)

All three judges of the panel concurred in the holding that Andrews had no cause of action for the negligent breach of sections 944.275 and 947.1405, Florida Statutes, and related provisions. The majority agreed that Andrews' common law claim of false imprisonment was barred because the Parole Commission enjoyed quasi-judicial immunity and because DOC was entitled to rely on arrest warrants issued by the Parole Commission which were "lawful, as they were regular on their face and issued by a legal body having authority to issue warrants." (Slip Op. at 13) The third member of the panel, Judge Benton, dissented.

The lower court certified the following question:

> WHETHER THE DEPARTMENT OF CORRECTIONS AND THE PAROLE COMMISSION ARE AMENABLE TO SUIT FOR FALSE IMPRISONMENT WHERE THE PAROLE COMMISSION ESTABLISHED THE TERMS AND CONDITIONS OF AN INMATE'S CONDITIONAL RELEASE PURSUANT TO SECTION 947.1405, FLORIDA STATUTES (1989), BUT THROUGH AN ALLEGED ERROR IN DETERMINING THE INMATE'S RELEASE DATE, THE INMATE WAS SUBJECT TO INCARCERATION FOR MORE THAN ELEVEN MONTHS BEYOND THE MAXIMUM RELEASE DATE PERMITTED BY THE STATUTE?

(Slip Op. at 16)

Andrews' brief to this Court argues only the theory of false imprisonment. It does not argue that the lower court erred in its

ruling that he had no cause of action for the negligent breach of sections 944.27 and 947.1405, Florida Statutes.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Parole Commission is a constitutionally authorized body empowered to grant paroles or conditional releases to persons sentenced for crimes. See Art. IV, § 8(c), Fla. Const. Section 947.1405, Florida Statutes, implements the conditional release program.

Petitioner Andrews seeks to hold the Parole Commission liable for false imprisonment because it either did not apply Westlund or it misinterpreted that decision, and DOC liable because it did not second-guess either the Commission's warrants, which were regular and lawful on their face, or the Commission's determination of Andrews' release date. His arguments, if accepted, would mean that any inmate could hold these agencies liable for mistakes in legal judgments, the Commission in deciding the expiration date of conditional release and DOC in its application of intricate gain time criteria. There are tens of thousands of inmates with respect to whom these determinations must be made. The cost of defending such claims could impose heavy burdens on already stressed budgets.

There is, however, no merit to Andrews' claim for false imprisonment.

First, Andrews' allegations do not state a claim for false imprisonment because the Parole Commission acted under color of

legal authority in issuing warrants for Andrews' arrest. It had the statutory duty to act on a reasonable belief that he had violated the conditions of his release and to provide him a hearing on those charges, pursuant to section 947.141(3), Florida Statutes. Andrews did not allege and does not contend here that the Commission's beliefs were unwarranted or that it failed to provide him a hearing at which he could have raised the Westlund decision. That the Commission may have overlooked or misunderstood Westlund does not mean that it acted without color of legal authority.

Second, the Commission's determination of a conditional release termination date involves a Category II judgmental or discretionary function under this Court's decision in Trianon Park Condominium Ass'n v. City of Hialeah, 468 So. 2d 912 (Fla. 1985). Section 947.1405, Florida Statutes, is a statute involving the enforcement of laws and the protection of public safety. There has never been a common law duty of care to enforce such laws - or to correctly determine a release date - for any individual. Hence, the Commission cannot be held liable for an error in its judgment.

Third, the Commission is a quasi-judicial body entitled to immunity unless it acts in the clear absence of **all** jurisdiction. The Commission had jurisdiction over Andrews and it had subject matter jurisdiction under section 947.1405 to decide his conditional release termination date, to impose the terms and condition of his release, and further, under section 947.141, to

issue an arrest warrant if it believed Andrews had violated those conditions and to provide him a hearing. The Commission did not act in the clear absence of all jurisdiction.

Last, DOC cannot be held liable for false imprisonment because it relied on facially valid warrants. Andrews does not contend otherwise. DOC had no duty to second-guess the Commission's issuance of the warrants or their regularity. It also had no independent duty to question the conditional release termination date as determined by the Commission under a statute that the Commission, not DOC, administered.

ARGUMENT

I. THE DECISION OF THE DISTRICT COURT OF APPEAL MUST BE AFFIRMED BECAUSE THE PAROLE COMMISSION AND THE DEPARTMENT OF CORRECTIONS ARE NOT AMENABLE TO SUIT FOR FALSE IMPRISONMENT FOR THE ALLEGED ERROR IN DETERMINING ANDREWS' RELEASE DATE.

The complaint alleges that when petitioner Andrews was granted early release on May 18, 1993, the Parole Commission did not properly calculate the termination date of his conditional release, at least on the basis of the decision in Westlund v. Florida Parole Comm'n, 637 So. 2d 52 (Fla. 1st DCA 1994), which came down one year **later**. Apparently, and for reasons unknown, the Parole Commission either did not recalculate the date that conditional release should have ended under Westlund or misapplied that decision when it later issued arrest warrants for Andrews and had him returned to DOC custody for violations of conditional release.

All three judges on the panel below concurred in the holding that sections 944.275 and 947.1405, Florida Statutes, and related statutory provisions created no duty on the part of the Parole Commission or DOC to correctly calculate a tentative or provisional release date or the date for termination of Andrews' conditional release. Thus, Andrews had no cause of action for the breach of a statutory duty of care. Andrews does not contest that holding.

The two-member majority also held that there was no liability on the part of either the Parole Commission or DOC for common law

false imprisonment. For the reasons stated infra, that holding must be affirmed and the certified question answered in the negative.[1]

A. The Parole Commission's Alleged Error In Determining Andrews' Conditional Release Date Provides No Basis For A Claim Of False Imprisonment.

This Court has firmly - and repeatedly - held that in tort actions against a governmental entity, a court must find no liability as a matter of law if either **a)** no common law or statutory duty of care existed, or **b)** the doctrine of governmental immunity bars the claim. See Kaisner v Kolb, 543 So. 2d 732 (Fla. 1989). See also State Dept. of Corrections v. Vann, 650 So. 2d 658, 660 (Fla. 1st DCA 1997), adopted by Vann v. Department of Corrections, 662 So. 2d 339 (Fla. 1995).

Because the Parole Commission owed no **actionable** statutory duty to Andrews to correctly determine the expiration date of conditional release under the statutes, as the lower court unanimously held, the question is, what common law duty of care did it owe Andrews?

Andrews claims the duties of the Commission were those underlying the tort of false imprisonment. But in fact, Andrews

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[1]This appeal presents only a legal issue for review. The standard of review is *de novo*. This Court, like the courts below, must accept the well-pleaded allegations of the complaint as true. See Sarkis v. Pafford Oil Co., Inc., 697 So. 2d 524 (Fla. 1st DCA 1997).

argues only that the Commission erred in determination of his conditional release termination date, at most an argument that it misinterpreted Westlund or negligently failed to apply it. This argument is wholly insufficient to state a claim for false imprisonment.

As the decision below points out, Andrews' consecutive sentences extended from April 1, 1991 to approximately March 31, 1996 (less credit for time served) and without the various gain time statutes he would have served that full sentence. Andrews was twice taken back into custody - in December 1994 and December 1995 - for violating the conditions of his release based on warrants issued by the Commission. If the Commission improperly caused Andrews to be returned to custody after the termination date of his conditional release, alleged to be September 12, 1994, it was only because of an error in determination of the release date or the failure to redetermine it. No more is alleged. The Commission did not affirmatively act to lengthen Andrews' sentence beyond what the court had imposed. Again, however, the Commission had no actionable duty to make these statutory determinations accurately, which is the gravamen of the complaint.

There is no tort of negligently causing false imprisonment. See Pokorny v. First Federal Savings & Loan Ass'n, 382 So. 2d 678 (Fla. 1980). The tort of false imprisonment or false arrest "is defined as "the unlawful restraint of a person against his will,

the gist of which action is the ***unlawful*** detention of the plaintiff and the deprivation of his liberty." See Rivers v. Dillards Dep't Store, Inc., 698 So. 2d 1328, 1331 (Fla. 1st DCA 1997) (quoting Escambia County School Bd v. Bragg, 680 So. 2d 571 (Fla. 1st DCA 1996)) (emphasis added). Further, as Rivers states, "[a] plaintiff must show that the detention was unreasonable and unwarranted under the circumstances." See 698 So. 2d at 1331.

Lawfully sentenced and imprisoned in April 1991, Andrews contends that the Commission's actions were unlawful because it "lost jurisdiction" over him after September 12, 1994, when his conditional release allegedly terminated. But that states no claim for false imprisonment. To the contrary, it concedes the Commission had "jurisdiction" or authority over him initially. The Commission has authority under section 947.141, Florida Statutes, to issue arrest warrants when it has reasonable grounds to believe an offender has violated the terms and conditions of his release. Pursuant to section 947.141(3), the offender is entitled to a hearing before the Commission. Andrews does not contend the Commission did not have reasonable grounds to believe he had violated the conditions of his release or that he was not provided a hearing after his arrest.

Under the statute, therefore, the Commission had jurisdiction to act on its reasonable beliefs and to afford Andrews a hearing at which he could have argued the Westlund decision. It is

sufficient, moreover, that the Commission acted under "***color*** of legal authority." See Johnson v. Weiner, 155 Fla. 169, 19 So. 2d 699, 700 (1944) (emphasis added). Imprisonment under color of legal authority cannot be false. 19 So. 2d at 700. See also Jackson v. Navarro, 665 So. 2d 340, 341 (Fla. 4th DCA 1995) (same), and Erp v. Carroll, 438 So. 2d 31, 40 (Fla. 5th DCA 1983) (imprisonment under "process regular and in legal form issued by lawful authority" is not false).[2]

As the decision below notes, gain time and other calculations are often complex and subject to disagreement, even among "the most seasoned appellate judges." (Slip Op. at 11) The individual determinations the Commission or DOC must make for the tens of thousands of inmates in custody are generally not done by lawyers. Surely it does not strain credulity to suggest that inmates have on occasion been held after the expiration of their sentences because of incorrect determinations or erroneous interpretations of the law. The courts of this state have never recognized false imprisonment claims in such circumstances. Where, as here, the agency has mistaken the law or at worst been negligent, it has breached no actionable duty. It therefore adds nothing to Andrews' claim to contend that the Commission "loses jurisdiction" when a

[2]Although Johnson v. Weiner states that void process does not constitute "legal authority," see 19 So. 2d at 700, this case concerns the colorable authority of the Commission, not the process it issued.

sentence expires and is therefore liable for false imprisonment for the additional time an inmate may be detained. A statutory mechanism existed to correct any mistake of the Commission and to call its attention to Westlund.

As the decision below also notes, other remedies in addition to the hearings specified in section 947.141(2) and (3) include appeal, mandamus and habeas corpus. Conceivably, an inmate might also have a civil rights claim under 42 U.S.C. § 1983 against individual actors if his constitutional rights have been violated. See, e.g., Johnson v. State Dept. of Health & Rehab. Services, 695 So. 2d 927 (Fla. 2d DCA 1997). Given appropriate facts, an inmate might also have an action for malicious prosecution. See Jackson v. Navarro, 665 So. 2d at 341.

In any case, the Commission was acting under color of legal authority. Because, at worst, it was either mistaken as to the law or was negligent, the complaint was properly dismissed.

B. The Action Against The Parole Commission Is Barred Because The Commission Was Performing A Judgmental Or Discretionary Function And Because It Was Also Acting In A Quasi-Judicial Capacity.

1. Judgmental or Discretionary Function

Even though private citizens have a common law duty of care not to unlawfully detain a person against his will, it is still necessary to closely scrutinize the nature of the governmental activity in question and determine whether that activity is protected by operation of sovereign immunity. See Layton v. Dep't

of Highway Safety & Motor Vehicles, 676 So. 2d 1038, 1040 (Fla. 1st DCA), review denied, 686 So. 2d 579 (Fla. 1996). If the governmental activity at issue is either a judgmental or a discretionary function, then a government agency remains immune from suit in tort based on its performance of that function; if the activity is "operational" in nature, the agency can be held liable in tort. See Trianon Park Condominium Ass'n, Inc. v. City of Hialeah, 468 So. 2d 912, 918-921 (Fla. 1985).

This Court in Trianon recognized four categories of governmental functions: (I) legislative permitting, licensing and executive officer functions; (II) enforcement of laws and the protection of the public safety; (III) capital improvements and property control operations; (IV) providing professional, educational, and general services for the health and welfare of the citizens. The Court then held that

> [i]n considering governmental tort liability under those four categories, ***we find that there is no governmental tort liability for the action or inaction of governmental officials or employees in carrying out the discretionary governmental functions described in categories I and II because there has never been a common law duty of care with respect to these legislative, executive, and police power functions, and the statutory waiver of sovereign immunity did not create a new duty of care.*** On the other hand, there may be substantial governmental liability under categories III and IV. This result follows because there is a common law duty of care regarding how property is maintained and

> operated and how professional and general services are performed.

Id. at 921 (emphasis added).

Clearly, the conduct for which Andrews seeks to hold the Commission liable involved Category II functions. The Commission's authority to set conditional release dates is derived from Article IV, section 8(c) of the Florida Constitution which authorizes a parole and probation commission with the power to grant paroles or conditional releases. A program for keeping convicted felons under supervision following their release undoubtedly benefits and serves the public. In fact, all three judges below agreed that the statutory provisions in question that relate to gain time and conditional release are for protection of the public and create no actionable duty for the benefit of any private person, including Andrews. Trianon holds, for the same reasons, that no common law duty of care has ever existed for such programs. Id. at 918 ("there is not now, nor has there ever been, any common law duty for either a private person or a governmental entity to enforce the law for the benefit of an individual or a specific group of individuals"). More specifically, it ruled that the City of Hialeah could not be held liable to injured property owners for the failure of government inspectors to use due care in enforcing the construction requirements of the building code.

The majority opinion took note of the frequent difficulties in determining release dates, and the "nuances of ex post facto effect

on statutory interpretation." (Slip Op. at 11) Indeed, such agency determinations about the meaning of statutes and their application necessarily involve the exercise of judgment for which there is no common law duty of care. See Trianon, 468 So. 2d at 918. Such judgments may be wrong or negligent, but they are nevertheless immune from liability.

The dissenting opinion, however, characterized the determination to be made by the Commission as "operational" or even "ministerial." (See Slip Op. at 18 and n.10, 19, Benton, J., dissenting). It seemed to suggest that because the determination was simple and demanded little or no judgment, at least after Westlund, that a duty suddenly arose: "No quasi-judicial statutory interpretation was required because the Westlund case had been decided." (Id. at 28) The dissent would apparently hold the Commission liable for erroneously applying Westlund or for negligently failing to apply it.

There is no precedent for such a ruling. When a duty is judgmental within the meaning of Trianon, it does not matter whether it is negligently performed or negligently not performed. It would have made no difference in Trianon whether the city's inspector performed a building inspection negligently or not at all, because there was no common law duty of care. Furthermore, the dissenting opinion prescribes a standard that defies any consistent application. In those cases where the right legal

judgment or interpretation is more apparent, the determination is "operational" and a duty will arise. Where the interpretation is more complex, it may not. Such a sliding-scale standard would serve only to invite endless tort suits by inmates who believe they had been held in custody too long and endless debate about the level of judgment called for. Moreover, it is inconsistent with the unanimous holding that neither the Commission nor DOC owed an actionable duty to Andrews to correctly calculate his release date or the termination date of his conditional release.

Although a private citizen has a duty not to unlawfully detain another, that duty bears little similarity to what the Commission and DOC must do under complex statutes for tens of thousands of inmates.[3] The more detailed four-part test set out in Trianon (which this Court stated is actually most appropriate for cases

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[3]In 1993, the Commission would have had to make, inter alia, the following determinations under section 947.1405: whether the inmate was convicted of a category 1, category 2, category 3 or category 4 crime under Rules 3.701 and 3.988, Fla.R.Cr.P.; whether he had served at least one prior felony commitment at a state or federal institution or was sentenced as a habitual or violent habitual offender; the earlier of the tentative or provisional release date established by DOC; whether the inmate had received a term of probation or community control supervision to be served after his release, and, if so, substitute that period for the conditional release period; whether the inmate was subject to conditional release supervision or provisional release supervision; and the terms and conditions of the inmate's release.

The Commission is required to "enter an order establishing the length of supervision and the conditions attendant thereto." See section 947.1405(6), Florida Statutes (1993). In most cases the length of supervision is discretionary with the Commission, although it cannot exceed "the maximum penalty imposed by the court." Id.

involving Category III and IV functions, see 468 So. 2d at 921) confirms that the Commission's Category II function is judgmental. The determination of an inmate's length of supervision (and the many other judgments the Commission makes under section 947.1405) **1)** necessarily involves a basic governmental policy, program or objective; **2)** is essential to the realization of that policy program or objective; **3)** requires the exercise of the Commission's judgment and expertise; **4)** and is within the Commission's statutory authority. See Trianon, 468 So. 2d at 918. When, as here, these answers are in the affirmative, "the governmental conduct is discretionary and 'nontortious.'" Id. "Discretionary" or "judgmental" does not mean that a governmental entity has immunity only when it has discretion to do something authorized or refrain from doing it, such as installing a traffic signal. It means, rather, that the exercise of judgment is involved, as it was here and as it was in Trianon under the building code, and there is no liability for a mistake in the exercise of that judgment.

2. Quasi-Judicial Capacity

The majority below held that the Parole Commission functions in a quasi-judicial capacity in carrying out its duties under the relevant statutes and is therefore entitled to quasi-judicial immunity. The Commission acts in a quasi-judicial capacity not only in issuing warrants for arrest after a probable cause determination and holding a hearing, see section 947.141(1) and

(3), Florida Statutes, but more generally in its function as an "arm of the sentencing judge" in converting sentences for various terms into definite periods of incarceration. And it does this, as the majority noted, "through the application of a maze of ever changing statutes." (Slip Op. at 9-11)

Because, as argued above, there is no common law or statutory duty of care applicable here, the Court may not need to address this case in terms of quasi-judicial immunity. See Henderson v. Bowden, 737 So. 2d 532, 535 (Fla. 1999) (observing, in the context of sovereign immunity, "there can be no governmental liability unless a common law or statutory duty of care existed that would have been applicable to an individual under similar circumstances.") However, there is ample authority to support the proposition that the Commission should enjoy quasi-judicial immunity when issuing warrants, converting sentences to definite periods of incarceration by interpreting statutes, and granting, denying or revoking parole or conditional release. See Sellars v. Procunier, 641 F. 2d 1295 (9th Cir. 1981) (tracing the development of the rule of quasi-judicial immunity from the common law to its extension to modern-day parole boards, which were unknown at common law); Farrish v. Mississippi State Parole Bd., 836 F.2d 969, 975 (5th Circ. 1988) ("parole board members must receive absolute immunity in a suit for damages by a parolee alleging revocation procedures violated his right to due process"); Walrath v. United

States, 35 F. 3d 277, 281 (7th Cir. 1994) ("Most federal courts ... have consistently held that parole board members are absolutely immune from suit for their decisions to grant, deny, or revoke parole.").

Andrews contends that the Commission is not entitled to quasi-judicial immunity because it was not acting in a "discretionary capacity" to grant or deny him conditional release but simply and wrongly extended his sentence, which it did not have "discretion" to do. But this argument fundamentally mischaracterizes what the Commission did and what the statutes provide for. In fact, the Commission issued arrest warrants under section 947.141(1), and pursuant to section 947.141(3) was required to provide Andrews a hearing. The proceedings under section 947.141 are undoubtedly adjudicatory in nature, and the Commission acts in a quasi-judicial capacity in determining whether to revoke conditional release just as much as it does in deciding to grant or deny parole in other circumstances. If in doing so the Commission makes a mistake, it is entitled to quasi-judicial immunity. Furthermore, Andrews concedes that even when the Commission establishes the length of the supervisory period, it acts in a quasi-judicial capacity because in most cases it may in its discretion prescribe a period that is less than the maximum court-imposed sentence. See § 947.1405(6), Fla. Stat.

The dissenting opinion did not contend that the Commission could never claim quasi-judicial immunity or that it never functioned in a quasi-judicial capacity. Rather, it argued that the Commission could not claim that immunity because it "lost jurisdiction" over Andrews when his sentence expired, and thereafter the duties of the Commission and DOC became "operational." (See Slip Op. at 19,27,30)

A long line of authority in this state holds that a judge or other person or body exercising quasi-judicial authority is not civilly liable for erroneous acts taken "in excess of jurisdiction" but only when there is a "clear absence of jurisdiction." See Rivello v. Cooper City, 322 So. 2d 602, 603 (Fla. 4th DCA 1975) (quoting McDaniel v. Harrell, 81 Fla. 66, 87 So. 631, 632 (1921)). Rivello ruled that a judge could not be held liable for acting in excess of his jurisdiction, but only for acting in the clear absence of **all** jurisdiction.

Rivello, an action against a judge for false imprisonment and malicious prosecution, is instructive. The defendant judge had suspended a jail sentence and fine on condition that the plaintiff be placed on ninety days probation and pay restitution. After the probation was completed, the judge revoked the probation because the plaintiff had not paid the restitution and ordered plaintiff's incarceration. The district court held that because the judge initially acquired jurisdiction of the subject matter and of the

person, he may have acted in excess of his jurisdiction after ninety days but not in the clear absence of jurisdiction. See 322 So. 2d at 607. Rivello cites authority holding that the policy underlying judicial immunity "does not depend on the determination of nice questions of jurisdiction," and that once a judicial officer acquires jurisdiction of the subject matter and the person, though he should lose it, the officer "is not liable merely because his order was made too late." Id. at 605.

In Berry v. State, 400 So. 2d 80 (Fla. 4th DCA 1981), the court rejected the argument that a judge could be held liable for the failure to sentence a defendant as a multiple offender, an alleged "operational" duty. The court noted "the consistent and uniform holding of Florida courts" was that judicial officers are not civilly liable for acts taken in excess of their jurisdiction. Id. at 82. See also Johnson v. Harris, 645 So. 2d 96 (Fla. 5th DCA 1994) (to be held liable a judge must act "in the clear absence of all jurisdiction"). No Florida judge has been held civilly liable for misinterpreting or failing to apply a sentencing law or erring on a petition seeking release, even when the relevant authority is more or less clear.

The Commission did not act in the "clear absence of all jurisdiction." Andrews was sentenced to serve consecutive 30-month terms that, absent mitigation through gain time, would have kept him incarcerated until April 1996, less some amount for time

served. Section 947.1405(6) instructs the Commission only that the length of supervision "must not exceed the maximum penalty imposed by the court" - here 60 months. It was the Commission's responsibility, though not an actionable duty, to decide when Andrews' supervision would terminate. The Commission's initial determination of that date was not correct under the later occurring decision in Westlund, but it violated no court decision when made. The Commission apparently never revisited its initial determination after Westlund, or else misapplied it. Nevertheless, all its actions occurred during the 60-month time frame.

These facts do not establish that the Commission acted in the clear absence of all jurisdiction when it issued warrants for Andrews' arrest for conditional release violations pursuant to section 947.141. Certainly the Commission was acting "within the scope of its jurisdiction" as opposed to "wholly without jurisdiction." See Waters v. Ray, 167 So. 2d 326, 329 (Fla. 1st DCA 1964). In Waters v. Ray the court held that a judge was acting without jurisdiction when, during a recess in trial, he had the defendant arrested for a nonexistent offense - the failure to have a driver's license. On the other hand, as the Waters decision pointed out, a judge is not civilly liable for "judicial acts in excess of his jurisdiction when such acts involve affirmative decisions of the fact of the jurisdiction, even though such decisions may be wholly erroneous, provided there is not a clear

absence of jurisdiction....” Id. at 330 (quoting McDaniel v. Harrell, 87 So. 631, 632 (Fla. 1921)).[4]

The Commission clearly was acting within the scope of its jurisdiction because it had legal authority to determine relevant release dates and also to have Andrews arrested for conditional release violations and provide him a hearing. Relying on its initial determination, it erroneously assumed Andrews' sentence had not expired. Though the assumption was wrong, the Commission did not act in the clear absence of all jurisdiction. As the majority opinion states, the Commission clearly had jurisdiction over Andrews, and had jurisdiction under section 947.1405 to fix the terms and conditions of his conditional release. To hold the Commission liable for misapplication of the statute as applied to Andrews would mean that a judicial officer “may be viewed as acting within his or her jurisdiction only when acting without error.” (Slip Op. at 13) That, of course, has not been the law. Such a

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[4]Andrews' reliance on Farrish v. Smoot, 56 So. 2d 534 (Fla. 1952), is mistaken. The rule stated in Farrish is this:

> If facts with respect to his jurisdiction are brought to the attention of a judicial officer about which he can have no doubt, and he knew or is bound to know that on these facts the court over which he presides has no jurisdiction of the controversy, or of the person of the accused, he may well be held to proceed at his peril.

Id. at 537 (emphasis omitted). The Commission's conduct was wholly unlike that of the municipal judge in Farrish.

holding would effectively give Andrews the very statutory cause of action the lower court unanimously rejected.

The majority below was therefore correct in holding that quasi-judicial immunity barred Andrews' action for false imprisonment.

C. DOC Cannot be Liable for Relying on Facially Valid Warrants Issued by the Commission.

The majority concluded DOC could not be liable to Andrews. Essentially, it held DOC properly relied on facially valid warrants issued by the Commission.[5] (Slip Op., at 13-14). DOC adopts the majority's rationale, which recognizes imprisonment pursuant to regular and legal process cannot be "false," even if the initial prosecution was malicious. Id. at 14, citing Erp v. Carroll, 438 So. 2d 31, 40 (Fla. 5th DCA 1983).

As alleged in the complaint, DOC acted upon Commission warrants which were not alleged to have been irregular or improper or their face and, presumably, on revocation orders after Commission proceedings under section 947.141(3). By finding DOC could not be liable, the majority essentially applied the "fellow officer" rule in the context of one state agency relying on the facially regular actions of another. See A.J.M. v. State, 746 So. 2d 1222, 1224 (Fla. 3d DCA 1999) ("Under the 'fellow officer' rule,

[5]Andrews notes he was arrested by a police officer, not DOC. (Initial Brief, p.26). Regardless of whether DOC arrested him, Andrews alleges DOC relied on warrants issued by the Commission to accept his return to prison. (Complaint, ¶¶ 13-14).

the knowledge, and probable cause or reasonable suspicion, of the directing officer is imputed to the arresting officer."). Just as an arresting officer is entitled to rely on the knowledge of the directing officer, DOC was entitled to rely on the Commission's determination of the date Andrews' would be discharged from conditional release.

It was never DOC's duty to determine when Andrews' conditional release would expire.[6] While DOC may have provided some information to the Commission, only the Commission could establish the date at which Andrews would be discharged from supervision. While Andrews alleges he filed inmate grievances upon his second return to custody,[7] he cannot reasonably contend DOC had a duty to challenge the Commission's determination on his behalf--just as DOC would not have a duty to seek mandamus relief for an inmate who filed a grievance claiming his gain time was improperly calculated. Furthermore, an inmate may not use DOC grievance procedures to complain about parole decisions or other matters beyond the control of DOC. See Rule 33-103.001(4), Fla. Admin. Code.

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[6]Pursuant to section 944.275(2) and (3), Florida Statutes, DOC had only the duty to establish a "maximum sentence expiration date" and a "tentative release date" based on gain time granted or forfeited. It has no independent duty to determine the termination point of conditional release.

[7]Curiously, Andrews does not explain why he did not raise Westlund in either of his parole violation hearings, or why it took from December 1995 to October 1996 for him to file a writ of habeas corpus.

Andrews' reliance on Williams v. State, 172 N.Y.S. 2d 206 (N.Y. App. Div. 1958), is therefore clearly misplaced. In Williams, the court found it was the prison warden's duty, not that of the parole commission, to determine how long the prisoner was to be held. Sullivan v. County of Los Angeles, 527 P.2d 865 (Cal. 1974), is likewise inapposite because in that case the plaintiff alleged the sheriff knew or should have known that the court had dismissed the charges that were the basis for his detention. Here, Andrews accuses DOC of failing to second-guess the Commission's legal determinations, not of disregarding a conclusive fact such as dismissal of charges.

Otherwise, DOC adopts the arguments made in this brief on behalf of the Commission. DOC notes it was the Commission which was charged with administering the conditional release statute. Andrews does not allege DOC negligently failed to provide needed information to the Commission for determining his conditional release date, or that any such information provided was wrong. Instead, he urges that DOC had an independent duty to "not to hold a prisoner beyond the expiration of his sentence." (Initial Brief, p.27).

This assertion, of course, begs the question. It erroneously assumes DOC had an independent duty to re-calculate Andrews' sentence under a statute administered by the Commission. But there is no actionable statutory duty to do this or a common law duty.

DOC was entitled to rely on the Commission's determination of when Andrews was to be discharged from conditional release.

Andrews goes so far as to contend: "a reasonable jury will be hard pressed to find the DOC was not negligent." (Initial Brief, p.29; emphasis supplied). But negligence is not the basis of false imprisonment. In effect, Andrews claims DOC should be liable for an alleged negligent failure to question the Commission's end-date of conditional release and to go behind facially valid warrants. He demands DOC be held accountable for "negligent false imprisonment" because it relied on the Commission's determination of the duration of conditional release. Whatever else he may argue, Andrews cannot be heard to claim DOC acted negligently. To the contrary, DOC relied on the warrants and revocation orders of the Commission, which had both the authority and expertise to administer the conditional release statute.

CONCLUSION

The decision of the First District Court of Appeal must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to JOHN D. MIDDLETON, Esquire, Middleton & Prugh, P.A., 303 State Road 26, Melrose, Florida 32666 this _____ day of December, 2000.

_____
Louis F. Hubener

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief for the respondents satisfies the requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure. The brief uses Courier New 12-point font.

_____
Louis F. Hubener

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