IN THE FLORIDA SUPREME COURT

LAWRENCE SCOTT ANDREWS,

Petitioner,

v. CASE NO.: SC 00-2333

THE FLORIDA PAROLE COMMISSION and THE FLORIDA DEPARTMENT OF CORRECTIONS,
Respondents.

_____/

PETITIONER'S INITIAL BRIEF

On Review from Certified Question By the District Court of Appeal, First District, State of Florida
Docket No.:1D-98-1931

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PREFACE

The Petitioner, LAWRENCE SCOTT ANDREWS, Plaintiff below, will be referred to as ÒMr. Andrews.Ó

The Respondent, FLORIDA PAROLE COMMISSION, Defendant below, will be referred to as Òthe Commission.Ó

The Respondent, FLORIDA DEPARTMENT OF CORRECTIONS, Defendant below, will be referred to as ÒDOC.Ó

The Appendix will be referred to as ÒApp.Ó followed by the page number where the reference may be found.

CERTIFICATE OF SIZE AND STYLE

I, JOHN D. MIDDLETON, Esquire, Attorney for Petitioner, Lawrence Scott Andrew, hereby certify that the size and style of type used in the Brief of Petitioner is New York 12, proportional font, which does not exceed 10 characters per inch, pursuant to the Administrative Order of this Court entered July 13, 1998.

STATEMENT OF THE CASE

Mr. Andrews filed a Complaint for monetary damages against the Commission and DOC for false imprisonment and negligence. (App. 2). The Commission and DOC filed Motions to Dismiss based upon sovereign immunity and the fact that DOC incarcerated Mr. Andrews under a facially valid warrant. (App. 1). The lower court initially denied the DOC's and the Commission's Motions to Dismiss but granted the motion after the DOC and the Commission filed motions for reconsideration. (App. 5).

Mr. Andrews appealed the trial court order to the First District Court of Appeal. The First District rendered a two-to-one panel decision on October 18, 2000 affirming the trial court. (App. 1 at 34). In that decision the court certified as a question of great public importance whether DOC and the Commission could be held liable for false imprisonment under the circumstances presented in this case. (App. 1 at 16).

On November 6, 2000, the Petitioner time filed a Notice to Invoke Discretionary Review under Florida Rule of Appellate Procedure 9.120(b). This Court postponed its decision on accepting jurisdiction and set a briefing schedule on the merits by its order dated November 16, 2000.

STATEMENT OF FACTS

On April 1, 1991, Mr. Andrews was sentenced to 30 months incarceration with the DOC in case number 88-642, Bradford County, Eighth Judicial Circuit Court. The criminal conduct in that case occurred prior to October 1, 1988.

Four days later on April 4, 1991, Mr. Andrews was additionally sentenced to 30 months in case numbers 90-574 and 91-25, Bradford County, Eighth Judicial Circuit Court, which sentence was to run consecutive to the sentence in case number 88-642. The criminal conduct in cases 90-574 and 91-25 occurred after October 1, 1988. (App. 2).

The incarcerative portion of Mr. Andrews' sentences expired on May 28, 1993 by reason of accrued gaintime. He was released on conditional release pursuant to SectionÊ947.1405 Florida Statutes (1992) to be supervised until December 25, 1995. The ending supervision date was calculated by combining the two separate sentences as one sixty-month sentence despite the fact that only the second thirty-month sentence was subject to the post-release supervisory provisions of Florida Statutes subsectionsÊ947.1405 (1) and (2). The first thirty-month sentence was subject to provisions of SectionÊ944.291 Florida Statutes that provides that the inmate shall have no supervision by either DOC or the Commission. (App. 2-3).

On May 13, 1994, the First District Court of Appeal held in *Westlund v. Florida Parole Commission and Florida Department of Corrections*, 637 So. 2d 52 (Fla. 1st DCA 1994)

that it was illegal for DOC and the Commission to include sentences for criminal conduct occurring prior to October 1, 1988 in their calculation of the length of conditional release. The maximum time that the Plaintiff could have been supervised subject to revocation by the Commission was September 12, 1994 under the *Westlund* decision. (App. 2).

As pled in the complaint, the Commission issued its first conditional release violation warrant after Mr. Andrews' sentence was legally completed on September 12, 1994. Mr. Andrews was returned to DOC custody as a conditional release violator on December 9, 1994. On January 31, 1995, the Commission reinstated him to conditional release. Mr. Andrews was again illegally returned to DOC custody on December 28, 1995 on the Commission's second warrant. His conditional release was revoked and DOC set his tentative release date at November 11, 1997. (App. 2).

Within a very short time of his re-incarceration, Mr. Andrews filed many inmate grievances, both at the institutional level and to DOC's Tallahassee Central Office complaining, about the illegality of his incarceration and specifically citing the *Westlund* case. (App. 2). He was not released.

Finally, Mr. Andrews filed a writ of habeas corpus with the circuit court, but prior to the court's ruling the Commission issued an emergency order dated October 16, 1996 that resulted in his unconditional release on October 17,

1996. (App. 2).

As a result of the Commission's and DOC's actions or inactions, Mr. Andrews was unlawfully incarcerated for more than eleven months and was unlawfully charged monthly cost of supervision by DOC for supervision after September 12, 1994. (App. 6).

SUMMARY OF ARGUMENT

Mr. Andrews adopts the dissent of Judge Benton from the decision under review in this case and urges this Court to adopt that dissent as its opinion.

Mr. Andrews additionally argues the decision of the First District Court of Appeal is fundamentally flawed for three reasons. First, it wrongly equates "parole" under Section 947.16 Florida Statutes (1981), where the Commission does exercise discretion on final release date, with "conditional release" under Section 947.1405 where the Commission has no discretion on the maximum release date. Because of this error, the district court incorrectly extended the doctrine of quasi-judicial immunity to the Commission from suit under Section 768.28 Florida Statutes (1999). The conclusion regarding quasi-judicial immunity is error because the Commission has no discretion to keep an inmate on conditional release supervision beyond the maximum sentence expiration date.

Second, even if the Commission was acting in a quasi-judicial capacity, the Commission never had jurisdiction over Mr. Andrews' sentence in case number 88-642, Bradford County, Eighth Judicial Circuit Court because the criminal conduct in that case occurred prior to October 1, 1988. An *ultra vires* exercise of jurisdiction, even without malice, strips any quasi-judicial immunity that the Commission might possess.

Third, in imprisoning Mr. Andrews after his sentence expired,

the district court overlooked the DOC's non-discretionary statutory and common law duties to inmates to properly execute the sentence imposed by the sentencing court. The district court wrongly equated the DOC with a police officer arresting someone on a void warrant. The DOC's duties under the facts of this case are greater than a police officer relying on a facially valid warrant to make an initial arrest, but is more analogous to police detaining a person after receiving information the warrant is invalid.

ARGUMENT

ISSUE ONE: THE DEPARTMENT OF CORRECTIONS AND THE PAROLE COMMISSION ARE AMENABLE TO SUIT FOR FALSE IMPRISIONMENT 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 SUBJECTED TO INCARCERATION FOR MORE THAN ELEVEN MONTHS BEYOND THE MAIXMUM RELEASE DATE PERMITTED BY THE STATUTE.

The lower court certified the following question to be of great public importance with statewide implications:

> WHETHER THE DEPARTMENT OF CORRECTIONS AND THE PAROLE COMMISSION ARE AMENABLE TO SUIT FOR FALSE IMPRISIONMENT 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 SUBJECTED TO INCARCERATION FOR MORE THAN ELEVEN MONTHS BEYOND THE MAXMIUM RELEASE DATE PERMITTED BY THE STATUTE?

(App. 1 at 16).

This Court should answer the certified in the affirmative. First and foremost, Mr. Andrews adopts Judge Benton's well-reasoned and legally supported dissent as his own argument in this Initial Brief. Mr. Andrews respectfully

recommends this Court adopt Judge Benton's decision as its own in deciding the certified question.

Mr. Andrews adds the following argument in support of Judge Benton's dissent.

a. Commission's Actions Are Not Quasi-judicial:

The district court majority hinged its decision on the conclusion that the Commission was acting in a quasi-judicial capacity when it twice issued arrest warrants for Mr. Andrews for conditional release violations even though Mr. Andrews had fully expired his conditional release and sentence. The district court ruled that sovereign immunity barred recovery in damages under these circumstances. The district court found that the Commission was "clearly acting in a quasi-judicial capacity in establishing the terms and length of Andrew's conditional release. . . . " (App. 1 at page 8). (emphasis added). The district court majority functionally equates the Commission's role in "parole" with "conditional release" when determining a final release date from supervision. (App. 1, pages 9-10, n. 5-7).

The equation of parole and conditional release is misplaced and leads to the wrong conclusion regarding quasi-judicial immunity. "Conditional release" was a program established by the Legislature to insure that certain inmates who are released through the award of gain time shall have supervision for that period not to exceed the maximum expiration date of the sentence imposed by the trial court.

¤ 947.1405, *Fla. Stat.* (1989). The statutes require the DOC to set the "maximum sentence expiration date" of inmates. ¤ 944.275(2)(a), *Fla. Stat.* (1989). The DOC is also required to establish a "tentative release date" which is the date projected when the individual inmate's sentence will expire based upon the award or forfeiture of gain time. ¤ 944.275(3)(a), *Fla. Stat.* (1989).

Under Section 944.291 of the 1989 Florida Statutes, inmates such as Mr. Andrews were released under a conditional supervision for a term not exceeding the difference between the actual release date and the "maximum sentence expiration date." ¤¤ 944.291(1), (2), *Fla. Stat.* (1989). The DOC is required by law to identify those inmates who are eligible for conditional release and notify the Commission of their names and inmate numbers within 90 days of an inmates' tentative release date. ¤ 944.291(2), *Fla. Stat.* (1989).

The Commission, in turn, is required by law to establish the terms and conditions of the conditional release. ¤¤ 947.1405(2), 947.13(1)(f), *Fla. Stat.* (1989). The maximum length of time an inmate can be on conditional release is the difference between his "tentative release date" and his "maximum sentence expiration date." Critical to this appeal, the Commission is statutorily prohibited from setting a date of conditional release termination beyond the penalty imposed by the court. ¤Ê947.1405, *Fla. Stat.* (1989).

All the above statutes utilize the word "shall" or "must", and are therefore mandatory. No discretion is given the DOC or the Commission whether to place a prisoner on conditional release, or, establish a conditional release date beyond the maximum sentence expiration date.

In contrast, "parole" decisions by the Commission under Sections 947.16 and 947.18 Florida Statutes (1979) are based on the Commission's exercise of discretion as to which particular inmate is paroled. In fact, Section 947.18 Florida Statutes gives the Commission broad discretion in determining which particular inmate is amenable to parole supervision. *May v. Florida Parole and Probation Comm'n*, 435 So. 2d 834 (Fla. 1983); *Florida Parole and Probation Comm'n v. Paige*, 462 So. 2d 817 (Fla. 1985).

None of the cases cited by the district court even remotely concern statutorily mandated release from prison. (App. 10, page 9, n.5; p. 10). Instead they are decisions interpreting the scope of the federal civil rights statute, 42 U.S.C. ¤Ê1983, or, pure parole decisions whether to release a prisoner to parole.

The Commission has discretion in crafting the conditions of conditional release and arguably could impose a shorter than maximum term of supervision. The Commission, however, has no discretion to extend the length of supervision beyond the maximum sentence date. ¤Ê947.1405(6), *Fla. Stat.* (1989). Since the Commission does not have discretion as to who is

released and what the maximum term of supervision is, the Commission could not act in a quasi-judicial capacity when it released Mr. Andrews on conditional release or ordered his re-arrest.

Even *Berry v. State*, 400 So. 2d 80 (Fla. 4th DCA 1981) cited by the majority in the district court panel supports this conclusion. In *Berry* the court stated:

> Unquestionably, the decision to grant or withhold parole requires the exercise of discretion. Yet, we are loathe to ascribe talismanic effect to the term "discretion."
>
> * * *
>
> Applying the analysis recommended in *Commercial Carrier Corp. v. Indian River County, supra*, we conclude that the determination to grant parole is a discretionary, planning level decision which does not subject the state to tort liability.
>
> * * *
>
> We note, however, that in reaching this conclusion we have confined ourselves to the specified statute and allegations in plaintiff's complaint. We expressly do not decide the question whether the Parole and Probation Commission would enjoy immunity in all instances including, for example, the <u>negligent parole of a prisoner in direct contravention of a legislatively crafted and judicially imposed mandatory minimum sentence</u>.

Berry v. State, 400 So. 2d 80, 86 (Fla. 4th DCA 1981) (underlining supplied).

Conducting a *Trianon Park* analysis, as Judge Benton as done in his dissent and as was done in *Berry*, leads one to the inescapable conclusion that the Commission does not have discretion in whom to release under the conditional release statutes.

In *Trianon Park* this Court adopted the four-question test:

> 1) Does the challenged act, omission, or decision necessarily involve a basic governmental policy, program, or objective?
> 2) Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one which would not change the course or direction of the policy, program, or objective?
> 3) Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the governmental agency involved?
> 4) Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision?

Trianon Park Condominium Association v. City of Hilaleah, 468 So. 2d 912, 918 (Fla. 1985).

The answer to all four tests is "no" regarding Commission authority to re-arrest after sentence expiration. The failure to properly calculate the correct maximum release date does not involve a basic program or objective, it does not affect any government program, it does not involve any exercise of judgment (other than to not follow the law), and DOC lacked the authority to <u>not</u> properly calculate the Mr. Andrews end of sentence date. To hold otherwise would ignore the clear language of the statute.

The "conduct" here involves "operational" or "ministerial" conduct and not discretionary conduct.

b. <u>Commission Had No Jurisdiction.</u>

Even assuming the Commission was acting in a quasi-judicial capacity, the district court decision is in error because the Commission acted outside its jurisdiction. The district court ruled that since the Commission has jurisdiction over "conditional release," any error that it made, including issuing warrants after Mr. Andrews' conditional release expired, was protected by the doctrine of quasi-judicial immunity. The problem is that the Commission exercised jurisdiction over a sentence where it had none.

The criminal conduct in Bradford County case number 88-642 occurred prior to October 1, 1988, the effective date of the conditional release statute. Section 947.1405(a), Florida Statutes (1989) clearly states that "conditional release" supervision shall be imposed on sentences for crimes occurring after October 1, 1988. Regardless of the Commission's or the DOC's prior interpretation of this statute, *Westlund v. Florida Parole Commission and Florida Department of Corrections*, 637 So. 2d 52 (Fla. 1st DCA 1994) cleared any misinterpretation of the law. The *Westlund* case was decided some seven months before the first illegal warrant was issued in this case. (App. 2 at page 3). It was clear, therefore, that Mr. Andrews had expired his sentence.

The Commission simply had no jurisdiction over Mr. Andrews at the time he committed his offense or was sentenced in Bradford County case number 88-642. Mistaken exercise of

jurisdiction, even when exercised for no malicious purpose, is not protected by the doctrine of sovereign immunity.

The majority district court panel fails to recognize that Commission jurisdiction over the sentence in Bradford County cases 90-574 and 91-25, which were eligible for conditional release, does not transfer jurisdiction to the non-jurisdictional conditional release sentence in Bradford County case 88-642. This is the very point corrected by the *Westlund* decision. Further, the logic has no endpoint. Judges could issue false warrants with impunity based on the mere fact that a court had power to issue warrants as opposed to jurisdiction over the subject matter or person for which the warrant was issued.

There is no immunity for common-law false imprisonment when a judicial officer or quasi-judicial officer exercises jurisdiction where he has none. *Farish v. Smoot*, 58 So. 2d 534 (Fla. 1952); *Beckham v. Cline*, 151 Fla. 481, 10 So. 2d 419 (1942); *Waters v. Ray*, 167 So. 2d 326 (Fla. 1st DCA 1964). It is settled that an action for false imprisonment is the remedy for imprisonment on void process. *Jackson v. Navarro,* 665 So. 2d 340 (Fla. 4th DCA 1995).

The District Court agrees with this statement of law but found that the cases were so factually dissimilar that they did not apply. (App. 1, page 12). To the contrary, there exists no principled distinction.

For example, in *Farish v. Smoot*, 58 So. 2d 534 (Fla. 1952) a county judge ordered the re-arrest of the plaintiff who had been lawfully freed on a writ of habeas corpus. Even though the county judge did not actually know that his court had lost jurisdiction to issue an arrest warrant, the judge was still liable because he should have known or could have found out with relative ease. This Court found:

> Under these facts . . . the picture presented by the evidence was that of a judicial officer who, though having eyes with which to see and ears with which to hear, wilfully failed and refused to inform himself fully in respect to the facts at a time when the slightest inquiry on his part would have revealed that the order he had determined to make would be in a case as to which he then had no jurisdiction, either as to the subject matter of the charge or the person of the accused, because of the issuance of the writ of habeas corpus and the filing of the bond upon which it was conditioned to become effective.

Farish v. Smoot, 58 So. 2d 534, 537 (Fla. 1952).

This Court continued by quoting *Rammage v. Kendall*, 168 Ky. 26, 181 S.W. 631 (1916):

> There is a general principle of universal application to all grades of judicial officers that a judge who is proceeding within the scope of his jurisdiction is not liable in an action for damages for the opinion he may deliver as such judge, nor for any rule or action he may take for the conduct of the business of his court. This principle, however, does not extend to make a judicial officer immune from damages for illegal acts which result in injuries to others or deprive them of their legal rights, when his acts are without the scope and limits of his jurisdiction. It follows that, if his illegal acts are without the scope and limits of his jurisdiction, he is liable, if damages result to others from such acts, whether he is actuated by malice, corrupt and impure motives or not. In the last state of case the fact that his

> motives are impure and bad are considered only as aggravating the damages. When the judge acts illegally without the limits of his jurisdiction, he becomes a trespasser, and is liable in damages as such. (Cases cited.) The reason for the rule is stated in Cooley on Torts (3rd Ed.), pages 805, 806, as follows: 'A judge is not such at all times and for all purposes: when he acts he must be clothed with jurisdiction; and, acting without this, he is but the individual falsely assuming an authority he does not possess. The officer is judge in the cases in which the law has empowered him to act, and in respect to persons lawfully brought before him; but he is not judge when he assumes to decide cases of a class which the law withholds from his recognizance, or cases between persons who are not, either actually or constructively, before him for the purpose.

Farish v. Smoot, 58 So. 2d 534, 537 (Fla. 1952)

The Commission is no different than the county judge in *Farish.* The Florida Statutes clearly delineate what crimes and sentences the Commission has conditional release jurisdiction over. ¤ 947.1405(a), *Fla. Stat.* (1995). The courts emphasized what was already clear law stated regarding conditional release authority over pre-1988 offenses. *Westlund v. Florida Parole Commission and Florida Department of Corrections*, 637 So. 2d 52 (Fla. 1st DCA 1994). The fact that the Commission chose to ignore these statutory and judicial decisions is even more egregious to the self-imposed blinders that the county judge relied upon in *Farish.*

Another clear precedent is *Waters v. Ray*, 167 So. 2d 326 (Fla. 1st DCA 1964). There the Plaintiff sued a judge and other parties for being charged and arrested for the alleged (imaginary) offense of having an improper driver's license.

The judge's main defense was judicial immunity and he argued he was immune from any civil liability from the result of his actions.

The district court in *Waters* held:

> Immunity from, or liability for, acts done by a person while acting in a judicial capacity depends upon the existence or nonexistence of jurisdiction. The general rule is if there is jurisdiction no matter how erroneous the decision of the judge may be, no personal liability attaches to him so long as he acts within the scope of his jurisdiction and in a judicial capacity. On the other hand if he acts wholly without jurisdiction his judicial office can afford him no protection. It is well settled that where a judicial officer causes the arrest or detention of a person in a proceeding in which he is acting wholly without jurisdiction, he may be held liable for false imprisonment, for even honesty of purpose cannot justify a clear usurpation of power.

Waters v. Ray, 167 So. 2d 326, 329 (Fla. 1st DCA 1964).

In *Waters* the district court also relied on *Rammage v. Kendall* to hold:

> The appellee, as county judge or judge of the quarterly court, had, without doubt, jurisdiction to try one upon the charge of fornication, if such person was lawfully before the court for that purpose by some one of the methods provided by law. It was, however, necessary that appellee should have jurisdiction of the appellant, as well as the subject-matter of the charge, before he is authorized by law to try and render a judgment against him. To hold otherwise would be to empower judges in ex parte proceedings, when they became satisfied that someone had committed a public offense, to impose a punishment upon such person in his absence and without his knowledge. It would be to deny to a citizen absolutely his constitutional right to have his day in court and due process of law. That the one upon whom a punishment is imposed without the formality of due process of law is actually guilty of the offense for which the

> punishment is imposed is aside from, and does not affect, the question. From the time of Magna Charta until now neither judges, nor any other authority, have had power to take from one his goods or to deprive him of his liberty, except in accordance with and by the laws of the land. For the orderly and uniform administration of justice, and to protect the citizens in their property, lives, and liberties, the laws have provided that certain requisites must exist before jurisdiction of individuals can be taken, and before jurisdiction of the subject-matter of their controversies can be assumed by the courts.
>
> *Waters v. Ray*, 167 So. 2d 326, 331 (Fla. 1st DCA 1964).

The Commission had no jurisdiction over Mr. Andrews or the pre-October 1, 1988 sentence. The Commission cannot create actual jurisdiction even if acting in good faith. To hold otherwise would permit the reckless abuse of power by judicial and quasi-judicial officials.

c. DOC Liability

The District Court held that the DOC was not liable since it had relied upon the Commission's warrant in incarcerating Mr. Andrews despite the fact that warrant had been illegally issued. While this approach is appropriate for analyzing an arrest by a police officer on a void warrant, this not the appropriate standard in determining whether DOC should be liable for illegally imprisoning Mr. Andrews for eleven months.

First, DOC did not "arrest" Mr. Andrews. Rather, Mr. Andrews was arrested by a police officer. The Commission issued an order revoking his conditional release per ¤ 947.141 Florida

Statutes (1995). DOC's complicity in causing Mr. Andrews unlawful incarceration is set forth in the original Complaint against DOC and the Commission. (App. 2 at pp. 4 and 5).

Specifically, under Section 944.275 Florida Statutes (1995), the DOC has the ministerial duty of setting a "maximum expiration date" of all inmates' sentences and also a "tentative release date." The Commission in establishing the lawful length of an inmate's conditional release relies upon the "tentative release date". ¤ 947.1405, *Fla. Stat*. (1995). The DOC is required by law to identify those inmates who are eligible for conditional release and notify the Commission of their names and DOC inmate numbers within 90 days of the inmates' tentative release dates. ¤Ê944.291(2), *Fla. Stat.* (1989). The DOC, therefore, has actual knowledge of a prisoner's maximum release date independent of the Commission.

The DOC also has a statutory duty to properly execute the sentence of the court by itself. *Pearson v. Moore*, 767 So. 2d 1235, 1239 (Fla. 1st DCA 2000). This duty includes a long-established common law duty not to hold a prisoner beyond the expiration of his sentence. William L. Prosser, *Law of Torts* ¤Ê11 at 46, n. 86 (4th ed. 1971).

Mr. Andrews alleged in his complaint that upon his re-incarceration he immediately filed inmate grievances both at the institutional level and DOC Central Office in Tallahassee setting forth that he was illegally incarcerated and

specifically citing the *Westlund* decision. It was clearly negligent for the DOC to continue to imprison Mr. Andrews. The DOC is clearly distinguishable from an arresting office relying on a facially valid warrant because the DOC has independent knowledge of the maximum release date and an independent duty to calculate that date itself. The DOC in this case is more similar to an arresting officer who continues to detain a person after being advised that the warrant is invalid. The DOC was on notice of the illegal nature of the Commission's revocation order, particularly after Mr. Andrews grieved the issue with particularity.

A case strikingly similar to the case at hand involving a facially valid warrant is *Williams v. State*, 5 A.2d 936, 172 N.Y.S. 2d 206 (N. Y. App. Div. 1958). In *Williams* the claimant was originally sentenced in April 1947 to an indefinite sentence. A later court decision clarified that the indefinite commitment was deemed to be for 5 years. The claimant's sentence, if served in prison or on parole, would have expired April 1952. In January, 1952 he was arrested on a parole warrant and returned to prison where he stayed until paroled again in 1953. In March, 1954 he was again arrested on a parole warrant and returned to prison where he remained until his release by *habeas corpus* writ in July, 1954. After his release, the claimant sued the State for damages for the 16 months he illegally spent in prison and the seven months time he was unlawfully restrained on parole.

As here, the warden raised the defense that the warrant was issued by a quasi-judicial body, the parole board. The court held that the warden had a duty to ascertain how long to hold the prisoner by reviewing the basic judgment and the applicable law. *Williams* is consistent with the common law principle that a jailer is liable for false imprisonment if the jailer knows or should have known that an arrest was illegal and there is no right to imprison the person arrested whether the act is done officially or otherwise. 32 Am. Jur. 2d *False Imprisonment* ¤ 48 (1964). *See also Sullivan v. County of Los Angeles*, 527 P.2d 865 (Cal. 1974).

It is a mixed question of fact and law whether the DOC was negligent in continuing to imprison Mr. Andrews. It is not a pure question of law suitable for a motion to dismiss. A jury should decide whether DOC knew or should have known Mr. Andrews' sentence had expired. In view of the *Westlund* case, the DOC's clear statutory duty to properly calculate the end date of Mr. Andrews' sentence, and the added weight of Mr. Andrews' inmate grievances, a reasonable jury will be hard pressed to find the DOC was not negligent.

This Court has been embroiled in the election process over the past month to insure the integrity of the right to vote in Florida and have one's vote counted. Though this case does not have the national notoriety of the election cases, the fundamental right of freedom involved in this case is just as precious as the right to vote and may be the very treasure

that the right to vote protects. Allowing executive agencies without jurisdiction to illegally incarcerate a citizen for eleven months, whether a convicted felon or not, without recourse for compensation is an extremely dangerous precedent. Though the facts in this case may not seem egregious, the potential erosion of all citizens' right to freedom is

great. As forcefully stated in *Boyd v. United States*:

> It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principis*.

Boyd v. United States, 116 U.S. 616, 635, 6 S. Ct. 524, 29 L. Ed. 746 (1886).

The same principle should apply here.

CONCLUSION

For the reasons stated above, this Court should answer the certified question in the affirmative, reverse the decision of the district court, and remand for further trial proceedings.

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing INITIAL BRIEF was sent to AMELIA L. BEISNER, Assistant Attorney General, Office of the Attorney General, The Capitol, Suite PL-01, Tallahassee, Florida, 32399-1050 this 12th day of December, 2000.

_____

JOHN D. MIDDLETON, ESQ.