

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 REPLY 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 "Mr. Andrews."

The Respondent, FLORIDA PAROLE COMMISSION, Defendant below, will be referred to as "the Commission."

The Respondent, FLORIDA DEPARTMENT OF CORRECTIONS, Defendant below, will be referred to as "DOC."

The Appendix will be referred to as "App." 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.

ARGUMENT

ISSUE ONE: 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 SUBJECTED TO INCARCERATION FOR MORE THAN ELEVEN MONTHS BEYOND THE MAXIMUM RELEASE DATE PERMITTED BY THE STATUTE.

The Respondents argue that since the Commission had no common-law duty owed to Mr. Andrews, there could be no cause of action for false imprisonment. Under § 768.28 Fla. Stat. (1992) a state agency can be held liable if a "private person" would be liable under like circumstances. The Commission argues that since there was no duty owed to Mr. Andrews under common-law, the Commission cannot be held liable. However, a "private person" under common-law could be held liable for false imprisonment. Courts in this State have held that State and its agencies can be held liable for false imprisonment under § 768.28 Fla. Stat. (1999) even when their agent's acts may have been intentional but within the scope of their employment. *Hennagan v. Department of Highway Safety and Motor Vehicles*, 467 So.2d 748 (Fla. 1st DCA 1985); *Richardson v. City of Pompano Beach*, 511 So.2d 1121 (Fla. 4th DCA 1987); *Williams v. Henderson*, 687 So.2d 838 (Fla. 2d DCA 1996) *Maybin v. Thompson*, 514 So.2d 1129 (Fla. 2d DCA 1987).

The Commission attempts to paint a picture that Mr. Andrews is alleging negligent false imprisonment. In support

thereof, the Commission cites numerous cases that are not relevant. *Pokorny v. First Federal Sav. & Loan Ass'n of Largo*, 382 So.2d 678 (Fla. 1980) holds that Courts do not recognize a separate tort for negligently swearing out warrant for arrest rather such cases may be brought only in form of civil suits for malicious prosecution. *Rivers v. Dillards Dept. Store, Inc.*, 698 So.2d 1328 (Fla. 1st DCA 1997 held that in a false arrest action, the plaintiff is required only to establish imprisonment contrary to his will, and unlawfulness of detention. Thereafter, probable cause may then be raised and proved by defendant, as an affirmative defense. *Rivers* involved a department store detaining customers who were allegedly previously warned not to trespass. None of these cases deal with whether the Commission's lack of jurisdiction to issue a warrant can cause it to be liable to an individual illegally incarcerated on that void warrant.

The Respondent attempts to characterize the Commission's action of assuming jurisdiction over a sentence that he had no jurisdiction over as a misinterpretation of the law. (Page 9, Respondent's Answer Brief). The issue is whether the Commission exercised jurisdiction where it had none. The Commission never had jurisdiction over Mr. Andrews' sentence in Bradford County case number 88-642 because the conduct 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 only on sentences for crimes occurring after October 1, 1988.

The Commission attempts to argue that the Commission was acting under "color of legal authority" when it issued void warrants for Mr. Andrews arrest. In the same breath the Commission acknowledges that a false imprisonment action will lie for arrest under "void process." *Johnson v. Weiner*, 155 Fla. 169, 19 So. 2d 699 (1944). The warrant issued by the Commission was void since it had no jurisdiction over Mr. Andrews. The Commission mistaken belief of jurisdiction is no defense. *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).

The Commission's jurisdiction over one of Mr. Andrews' sentences is not a basis to find "color of legal authority" over a sentence where the Commission never had jurisdiction. The issue here is not the jurisdiction the Commission had on the conditional release eligible sentence but the Commission's illegal exercise of jurisdiction over the non-conditional release sentence.

Despite the Commission's attempt to restate Mr. Andrews' case by referring to "breach of duty" (Page 13, Respondents' Answer Brief), false imprisonment is not dependent upon motivation or negligence but rather on whether the person was unlawfully restrained against his will. Clearly, the Commission exercise of jurisdiction over Mr. Andrews was

unlawful under § 947.1405 (a) Fla. Stat. (1995) and there is no dispute that he was restrained.

b. Commission's Actions Are Not Discretionary and Are Not Quasi-judicial:

The Commission and DOC continue to confuse parole with conditional release in an attempt to establish the Commission was acting in a discretionary manner to receive the protection of *Trianon Park Condominium Association v. City of Hilaleah*, 468 So. 2d 912 (Fla. 1985). Granting parole is a discretionary act for which the Commission has immunity from suit. *Berry v. State*, 400 So. 2d 80 (Fla. 4th DCA 1981). An inmate's release on conditional release is not discretionary and can be enforced by mandamus. *Westlund v. Florida Parole Commission*, 637 So. 2d 52 (Fla. 1st DCA 1994). The argument that the Commission has discretion in setting the terms of conditional release gives it immunity from suit in a decision on the maximum term of conditional release where it has no discretion, is illogical.

The Commission attempts to equate "discretion" with "jurisdiction." Jurisdiction is clearly defined by law. The Commission has no discretion to take any action concerning a sentence that by statute and judicial decision over which it has no jurisdiction.

This is the fundamental fracture in logic in the Commission's position before this Court. Mr. Andrews was not illegally detained because the Commission and/or DOC made an error in

the calculation of his release date for his conditional release eligible sentence. Rather, Mr. Andrews' illegal incarceration was caused by the Commission's unlawful exercise of jurisdiction over Mr. Andrews' non-conditional release sentence. The distinction is critical to understand this case. There can be no discretion if there is no jurisdiction.

The argument that the Commission's action was a Level II decision under a *Trianon* analysis is likewise flawed. The Commission has no discretion as to which inmates are released on conditional release nor does it have discretion to extend conditional release beyond the maximum penalty imposed by the sentencing court. § 947.1405 (2) and (6), Fla. Stat. (1995). The Commission urging that the determination of the "length of supervision" under conditional release involves "1) . . . a basic governmental policy 2) is essential to the realization of that policy . . . 3) requires the exercise of the Commission's judgment and expertise 4) and is within the Commission's statutory authority" is a red herring. (Page 19, Respondent's Answer Brief). The Commission had no jurisdiction over Mr. Andrews' sentences that were not eligible for conditional release. Even assuming that the unlawful incarceration was caused by the Commission extending a conditional release date beyond Mr. Andrews' maximum sentence end date on the eligible sentences, the Commission did not have the statutory authority to do so. § 947.1405 (6) Fla. Stat. (1995). Note, however, Mr. Andrews' Complaint

alleges the unlawful incarceration was caused by the Commission's illegal exercise of jurisdiction over his non-conditional release sentences. (Paragraph 10, Petitioner's Appendix 2 submitted with Initial Brief herein).

The Commission rationalizes that since it had jurisdiction over Mr. Andrews' conditional release sentences, its illegal exercise over his non-eligible conditional release sentences should be protected from suit because of the doctrine of quasi-judicial immunity. In support thereof it cites *Rivello v. Cooper City*, 322 So. 2d 602 (Fla. 4th DCA 1975) where a judge was held not liable when he revoked a probation after it was completed. In *Rivello* "[T]he 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." (Page 23, Respondent's Answer Brief).

Unlike the judge in *Rivello*, the Commission has never had conditional release jurisdiction over a sentence for a crime that was committed before October 1, 1988. § 947.1405 (2) (a) Fla. Stat. (1989). Though the Commission had jurisdiction over Mr. Andrews' conditional release sentences, that jurisdiction did not magically bleed over to the non-eligible sentences. If Mr. Andrews was alleging that the Commission made an error in unlawfully extending a maximum release date so as to illegally extend the termination of Mr. Andrews'

conditional release, then *Rivello* might apply. That is not what is alleged herein. Again, the Commission exercised jurisdiction where it had none.

The Commission argues that since it had jurisdiction over Mr. Andrews' conditional release eligible sentence, it had subject matter jurisdiction over his non-conditional release eligible sentence. (Page 25, Respondents' Answer Brief). There is no authority, case law or otherwise to support this legal conclusion.

Additionally, the Commission argues that its initial illegal exercise of jurisdiction over Mr. Andrews' non-conditional release eligible sentences should somehow excuse its second subsequent illegal exercise over Mr. Andrews' non-conditional release eligible sentences. Again, there is no support for this logic.

c. DOC Liability

DOC attempts to argue that it was the Commission and not DOC that caused Mr. Andrews to be unlawfully incarcerated. DOC also argues that it was relying on the Commission's facially valid conditional release violation warrant. DOC has the responsibility under § 944.275 Florida Statutes (1995), to set the "maximum expiration date" of all inmates' sentences and also a "tentative release date." DOC also identifies those inmates who are eligible for conditional release and notifies the Commission of their names and DOC inmate numbers within 90 days of the inmates' tentative release dates.

§ 944.291(2), Fla. Stat. (1989). The Commission, in establishing the lawful length of an inmate's conditional release, relies upon the "tentative release date". § 947.1405, Fla. Stat. (1995).

Apparently, DOC improperly included Mr. Andrews' non-conditional release sentence in calculating Mr. Andrews' "maximum expiration date." If this Court were to hold that DOC could not possibly be liable, the Commission would be free to point its finger at DOC and say that the Commission relied upon DOC's identification and calculations in setting Mr. Andrews illegal conditional release termination date. Any such finger pointing should occur before a jury to determine which agency, if not both, is truly at fault.

DOC can be held just as liable as the Commission for undertaking actions that led to Mr. Andrews' unlawful incarceration.

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY BRIEF was sent to Louis F. Hubener, Esq. and Charlie McCoy, Esq. Assistant Attorney Generals, Office of the Attorney General, The Capitol, Suite PL-01, Tallahassee, Florida, 32399-1050 this 20th day of February 2001.

JOHN D. MIDDLETON, ESQ.