

ORIGINAL

FILED
THOMAS D. HALL
JUL 26 2002

IN THE SUPREME COURT OF FLORIDA

DANIEL KEVIN SCHMIDT,

Petitioner,

-vs-

JOHN E. CRUSOE, etc.,

Respondent.

CLERK SUPREME COURT
BY AMC

CASE NO. SC00-2512
Lower Tribunal No. 1D00-4166
Circuit Court No. 00-1971

RESPONDENT'S AMENDMENT TO THE SUPPLEMENTAL RESPONSE TO
AMENDED PETITION FOR WRIT OF MANDAMUS

Respondent, through undersigned counsel,¹ hereby amends the July 18, 2002 response to Petitioner's Amended Petition for Writ of Mandamus. This amendment adopts the July 18, 2002 response and amends it as follows:

This Court is apparently contemplating a policy change of great magnitude- a holding that all claims which would result in a speedier release from custody must be filed in a petition for writ of habeas corpus. Based on the information collected and reported herein, it is Respondent's position that the independent and cumulative effects likely to result from such a holding will significantly and detrimentally impact the state judicial system and the executive branch. Respondents request the Court to give

¹ The undersigned clarifies that the Office of the Attorney General represents the State of Florida Department of Corrections. However, response in this case is assumed by the state party because responsibility of response where mandamus is directed at judicial parties is that of the litigant opposing the relief requested in the petition. See Fla.R.App. P. 9.100(e)(3).

careful and thorough review to all factors affecting this issue.

1. The proposed holding will burden the urgent/emergency matter workloads of the judiciary.

Habeas corpus actions are accorded emergency or expedited treatment. They are often brought before a judge immediately and are not subjected to preliminary requirements of Section 57.085, Florida Statutes. See Appendix A, ¶14 (Affidavit of Ann Grissett); See Appendix B; see also, Article I, section 13, Constitution of the State of Florida ("the writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, . . . "). Adding petitions for speedier release will significantly increase the volume of urgent matter caseloads.

Moreover, the addition of speedier release petitions to urgent matter caseloads will divert judicial attention from petitions for immediate release. When both immediate and speedier release cases bear the label "habeas corpus," what is truly urgent (immediate release) will not be readily distinguishable. This will result in delayed justice for claimants seeking immediate release.

In some instances criminal court caseloads will be affected, as in the example of the Eleventh Judicial Circuit where all prisoner petitions in that jurisdiction are required to be filed in the criminal division of that court. See Appendix B. The

department's experience is that less than 75 petitions are filed annually as habeas petitions in that jurisdiction and that most of those are not true immediate release cases. See Appendix B. The department has three major institutions in the jurisdiction of the Eleventh Judicial Circuit.² If all "speedier release" cases are to be filed as habeas corpus actions in that circuit, it will affect the criminal court caseload.

The purpose of distinguishing immediate release cases from others was no doubt intended by the Legislature in enacting Chapter 79, Florida Statutes. Section 79.01, Florida Statutes, makes the writ of habeas corpus available to those who contend that they are being "detained without lawful authority." As such, the Legislature did not contemplate cases of lawfully incarcerated inmates seeking speedier release to be included in the statutory provisions of chapter 79. Thus, the proposed holding would result in a judicial expansion of Chapter 79, Florida Statutes.

2. Expedited treatment will compromise the effective treatment of speedier release cases.

Based upon the numbers of petitions filed annually by inmates seeking "speedier" release, see Appendix B, the ability for the circuit courts and the department to effectively handle

²Those institutions are South Florida Reception Center, Everglades, and Dade Correctional Institutions. See Appendix B, n. 9

such petitions will be compromised if all petitions are to be expedited.³

Currently, some circuit courts will not grant the department extensions on habeas corpus petitions. See Appendix B. For example, the Fourteenth Judicial Circuit in which six institutions⁴ are located, the courts issue 20 - 30 day orders on habeas corpus petitions and generally **do not** grant extensions of time. See Appendix B. In the Fifth Judicial Circuit, the department frequently receives 10 - 15 day orders on habeas petitions and although limited extensions are granted, the issuance of such short time-frame orders creates unnecessary motion practice. See Appendix B. In distant jurisdictions such as the Eleventh and Seventeenth Judicial Circuits, orders are issued for 10 - 30 days on habeas petitions, however, it takes 5 to 10 days to receive such orders, also often necessitating extension requests. A number of circuit court judges have simply set hearings on the habeas petitions and directed transport of the inmate. See Appendix B. In one instance, the circuit judge set a next day hearing, citing the provisions of Chapter 79. See Appendix B. On the other hand, the Second Judicial Circuit

³ This number, as explained *infra*, would increase substantially if not subject to the provisions of section 57.085, Florida Statutes.

⁴ Calhoun, Jackson, Bay, Washington, Gulf, and Holmes. See Appendix B, n. 5.

issues 45-day orders on the mandamus petitions and reasonable extensions are granted that allow both the circuit judges and the department to manage case flow of the substantial number of petitions filed in that circuit.⁵

If all "speedier release" petitions are required to be filed as habeas corpus actions, the shift of the cases will be to many rural counties where the department's institutions are typically sited that are not currently staffed or funded to handle on an expedited basis the volume of petitions that will be filed. See Appendix B. Neither will the department be staffed to respond to expedited petitions which will increase motion practice, a further burden to both the courts and the agency. See Appendix B. It will also increase the likelihood of default decisions on petitions, or decisions made without adequate record, if the department is not granted extension requests by the circuit courts. See Appendix B.

Speedier release cases include not only petitions challenging disciplinary actions but also challenges to sentence structure and gain time/overcrowding credit issues. See Appendix B. The cases involving sentence structure and gain-time/overcrowding credit issues have become extraordinarily

⁵The 45-day orders allow time for the department to administratively set up the case, review records, and prepare the detailed affidavits and documentation necessary to respond to these petitions. See Appendix B, n. 6.

complex in recent years. See, e.g., Gomez v. Singletary, 733 So.2d 499 (Fla. 1999); Winkler v. Moore, 27 Fla.L.Weekly S373 (Fla., April 2002); Eldrige v. Moore, 760 So.2d 888 (Fla. 2000) (the Fifth District's confusion in the initial decision in Whitaker was understandable, however, due to the complexities involved in gain time law); Young v. Moore, 27 Fla.L.Weekly S514 (Fla., May 30, 2002) (as this Court has noted in Gomez v. Singletary, the calculation of gain time can be immensely difficult even under one version of a statute). The concentration of the vast majority of these cases in the Second Judicial Circuit as mandamus petitions for "speedier release" has allowed the circuit judges of this jurisdiction to develop an expertise in this area of the law and an efficiency in handling these petitions that cannot be duplicated if all such petitions are filed as habeas corpus actions throughout the state. See Appendix B.

3. The proposed holding will result in undue judicial and administrative burden on the court system statewide.

Habeas corpus petitions must be filed in the county where the inmate is incarcerated. § 79.09, Fla. Stat. ("the papers shall be filed with the clerk of the circuit court of the county in which the prisoner is detained."). Mandamus actions, on the other hand, may be filed in the county where an administrative agency is headquartered. Moreover, in a mandamus action against

state officials, the state may assert its privilege to have the suit heard in the county of residence of the state officials.

Dugger v. Grooms, 582 So. 2d 136 (Fla. 1st DCA 1991).

The Department of Corrections is headquartered in Tallahassee, as is the Florida Parole Commission. As explained by the Deputy General Counsel for the Florida Department of Corrections, approximately ninety-seven percent of its year 2001 692 case counts total are speedier release cases. See Appendix B. A majority are filed in (or are subsequently transferred to) the Second Judicial Circuit in and for Leon County. See Appendix B. According to numbers of the Second Judicial Circuit, prisoners filed 504 petitions for writ of mandamus in the Second Judicial Circuit in the year 2001. See Appendix A, exhibit I.⁶ The proposed holding would result in the vast majority of these cases being filed elsewhere. Further, as discussed *infra*, that number will substantially increase, as the 57.085 disincentives for filing meritless challenges are made inapplicable.

In that appellate review of speedier release actions from the Second Judicial Circuit is in the First District Court of Appeal, that district court receives the vast majority of inmate petitions for review and other appellate actions. The Second

⁶Although in the prison context, claims for mandamus relief can include a variety of matters such as rights and privileges within the prison, a majority of mandamus actions are speedier release cases. See Appendix B.

Judicial Circuit, and likewise the First District, has consequently acquired an efficient process and expertise in handling the workload of speedier release cases. See Appendix B. Speedier release cases are not just actions challenging the forfeiture of gain time for disciplinary infractions, but can include challenges to sentence structure and other gain time matters. See Appendix B.

To classify speedier release state cases as state habeas corpus actions will result in substantial increase in inmates filing in other judicial circuits (most likely those of rural counties where prisons are more apt to be located). See Appendix A. These circuits will be unprepared and unfunded to handle such a dramatic change. The effect would likewise be felt by other district courts of appeal throughout the state.

Furthermore, the jurisdictional requirement for habeas corpus petitions will result in the transfer of many actions from county to county whenever an inmate is transferred within the state prison system. See *Wigfals v. Florida Parole Comm'n*, 691 So. 2d 644 (Fla. 5th DCA 1997). Not only will this result in excessive administrative handling within the judicial system, but this will ultimately result in delayed review of cases subjected to transfer.

Moreover, the jurisdictional requirement of habeas actions will result in excessively increasing the cost to the state

defending such actions when a live hearing is conducted. Most attorneys for the Attorney General's Office and Department of Corrections are located in Tallahassee. The habeas jurisdictional requirement would increase attorney travel expenses. Also, witnesses from outside the habeas jurisdiction, such as from a county of an inmate's previous institution, would likewise have to travel to any hearings within the habeas jurisdiction.

4. Inmates will file actions seeking previously paid filing fees.

Should the proposed holding be issued by this Court, inmates will be prompted to file civil actions seeking reimbursement of filing fees that they have previously paid. The number of cases seeking to recoup inmate filing fees would be enormous, particularly given that section 57.085 has been in effect for the past six years. Courts, such as the Second Judicial Circuit, would be ill-prepared to defend, process, and handle prisoner fee recoupment actions.

5. The proposed holding will result in undue judicial and administrative burden due to increased frivolous and malicious actions.

Excepting cases from the requirements of section 57.085 will result in the loss of an important "stop and think" measure.

When section 57.085 was enacted, speedier release cases were required to be filed as mandamus actions. Thus, they were among those cases considered by the Florida Legislature when it made the following findings:

WHEREAS, frivolous inmate lawsuits congest civil court dockets and delay the administration of justice for all litigants, and

WHEREAS, each year self-represented indigent inmates in Florida's jails and prisons file an ever-increasing number of frivolous lawsuits at public expense against prison officers and employees, and

WHEREAS, state and local governments spend millions of dollars each year processing, serving, and defending frivolous lawsuits filed by self-represented indigent inmates, and

WHEREAS, the overwhelming majority of civil lawsuits filed by self-represented indigent inmates are frivolous and malicious actions intended to embarrass or harass public officers and employees, and

WHEREAS, under current law frivolous inmate lawsuits are dismissible by courts only after considerable expenditure of precious taxpayer and judicial resources

. . . .

Ch. 96-106, at p. 92-93, Laws of Florida.

Frivolous lawsuits impact the penological interests of a correctional institution, as well as the interests of the state at large. As they relate particularly to prisons, frivolous lawsuits wastefully divert prison staff from their duties of managing the prison. Prison staff are diverted from duty to converse or meet with attorneys, to respond to document requests, or to attend judicial proceedings. Moreover, additional prison

staff is diverted to transport frivolous litigants to outside court for "short sabbaticals." Mitchell v. Farcass, 112 F.3d 1483, 1489 (11th Cir. 1997).

Further, an inmate generating frivolous litigation increases his opportunities to break from work or program schedules to visit the prison law library. There, he can divert or spend finite prison library resources. Also, the inmate in confinement can divert staff resources and library resources to accommodate his litigation activities. The Department of Corrections, and ultimately the taxpayer, bears the burden of making legal copies for inmates with insufficient funds. See Rule 33-602.405(4), Florida Administrative Code. Storage of frivolous inmate legal work also presents difficulties for prison management. Moreover, legal mail is often a front for illicit activity, see Shaw v. Murphy, 121 S.Ct. 1475, 1480 (2001), and frivolous litigation only increases the burden on correctional institutions to ensure legal mail is not being abused.

"Confined prisoners have little to lose by filing frivolous lawsuits." Harris v. Garner, 216 F.3d 970, 978 (11th Cir. 2000). Rather than engage in constructive or rehabilitative activities, prisoners file frivolous lawsuits to harass the state and prison officials. See Harris 216 F.3d at 978(citing from the Congressional Record the statement of Sen. Kyl that "[f]iling frivolous civil rights lawsuits has become recreational activity

for long-term residents of our prisons."). Prisoners have little to lose and everything to gain by filing at a drop of a hat. See Kerr v. Puckett, 138 F. 3d 321, 323 (7th Cir. 1998) ("Congress deemed prisoners to be pestiferous litigants because they have so much free time on their hands and there are few costs to filing suit.").

In this proceeding the Department of Corrections shows its case count figures over the last 10 years. See Appendix B. As shown in the case count figures, in the early 1990s there was a steady upward trend of petitions. That trend has reversed,⁷ even though the inmate population continues to increase. The Second Judicial Circuit experienced an overall trend in increased inmate filings which was dramatically reversed following the enactment of section 57.085. Through the year 2000, the Second Circuit has experienced overall decline in inmate filings.⁸

This reduction in inmate litigation is in part due to the enactment of section 57.085 which imposes lien obligations on

⁷The enactment of section 57.085, Florida Statutes, as intended by the Legislature, has resulted in an immediate dramatic decrease in the filing of inmate actions. Between 1997 and 1998, the number of inmate case counts of cases handled by the Department of Corrections went from 1181 to 717. See Appendix B. Between 1997 and 1998, the number of inmate filings in the Second Judicial Circuit Court was reduced by more than half. See Appendix A (showing 1,375 in 1997 and 904 in 1998).

⁸ Through enforcement of the provisions of 57.085(2), Florida Statutes, a significant number of filed cases are administratively closed and do not progress to assignment to a judge. See Appendix A, ¶ 17.

inmates who file civil petitions, other than habeas corpus actions. The statute was designed to deter frivolous and unnecessary litigation by inmates. Prior to enactment of this important statute, inmates were free to file petitions whenever and wherever without cost by simply draining their inmate bank accounts just before filing an action and receiving in forma pauperis status. In many cases, inmates filed in multiple jurisdictions on the same issue, even after having it adjudicated by a single court. Attached to Appendix B are two examples of inmates who filed in separate jurisdictions on the exact same issue. In the Ashley case, the litigation spanned an entire 10-year period. See Appendix B.

5. The proposed holding will result in financial burden on the court system.

The enactment of section 57.085, Florida Statutes, has resulted in a dramatic increase in court recoupment of the administrative costs of processing these actions. As seen by figures compiled by the Second Judicial Circuit, a dramatic increase in inmate fee collections occurred between 1996 (\$1,862.50) and 1997 (\$25,814.74). See Appendix A.

6. Classifying speedier release actions as habeas corpus in the vein of a collateral criminal remedy may additionally exempt speedier release actions from gain time forfeiture penalties for filing a frivolous action.

Currently, inmates seeking speedier release are subject to gain-time forfeiture if a judge makes a finding of frivolity under Section 944.279, Florida Statutes, and Section 944.28(2)(a), Florida Statutes. This Court has recognized that frivolous lawsuits significantly hinder prison administration and discipline and the administration of justice as a whole. See Spencer v. Florida Department of Corrections, 27 Florida Law Weekly, S646 (July 3, 2002). This Court has also recognized that making inmates responsible for filing their lawsuits by sanctioning them when they abuse the judicial system is a reasonable and practical way to discourage frivolous lawsuits, particularly when the payment provisions of section 57.085 alone is only a partially effective means of reducing frivolous litigation. See id.

7. The provisions of 57.085, Florida Statutes, do not impose unfair or prohibitive costs to inmates.

Section 57.085 provides that inmates who cannot afford to pay the filing fee may seek a waiver of prepayment those fees. See § 57.985(2) & (3), Fla. Stat. (2001). An inmate who has been denied indigency may seek appellate review of that decision. The requirement than an inmate be required to pay filing fees in subsequent installments, see section 57.085(4) & (5), does not "chill" inmate access to courts. An inmate who has made filing fee payments may move for costs, should he be successful in

obtaining relief in his mandamus proceeding.

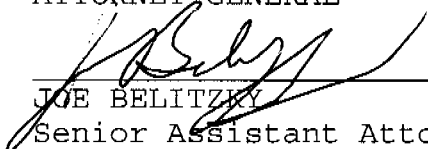
In the instant case, 57.085(2) information collected by this Court reveals that Petitioner Schmidt is a prisoner who receives substantial funds into his inmate bank account.⁹ Inmates should be required to prioritize their spending like any citizen. Requiring an inmate to make an economic decision about the cost of a lawsuit merely places the inmate in a position similar to that faced by those whose basic costs of living are not paid by the state. See Roller v. Gunn, 107 F.3d 227, 233 (4th Cir. 1997). Those outside of prison must weigh the importance of the cost of court filings when deciding to bring litigation. See id. It is apparent that Petitioner believes that his funds are better spent on items other than the legal actions he initiates.

⁹ Petitioner Schmidt's inmate trust account information filed in this court reflects that in October of 2000, inmate Schmidt had over \$400 in his inmate bank account.

WHEREFORE, Respondent respectfully urges this Court not to render a holding that claims for speedier release must be filed in a petition for writ of habeas corpus, or otherwise exempt such claims from the legal requirements pertaining to non-habeas, non-collateral criminal actions.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

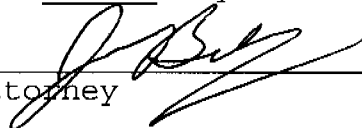


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CERTIFICATE OF SERVICE

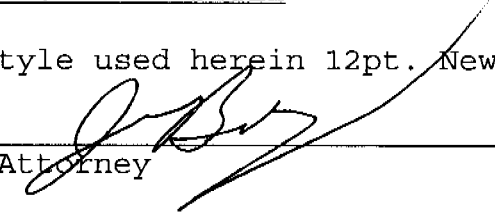
I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Robin L. Rosenberg, Holland & Knight LP, One Progress Plaza, 200 Central Avenue, Suite 1600, St. Petersburg, Florida 33701 on this 26th day of July 2002.



Attorney

CERTIFICATE OF TYPE STYLE

I certify that the type style used herein 12pt. New Courier.



Attorney

Appendix A

Date: 07/19/2002
Time: 14:34:30
CRTR5690

Action Activity Report
01/01/1999 To 12/31/1999
For All Judges
Report On Primary Charge
Status: All



Description

Filed	CONT	CONTRACT	5
	DISC	DISCRIMINATION	7
	EQRL	EQUITABLE RELIEF	23
	HBCE	WRIT OF HABEAS CORPUS	151
	OTHER	OTHER	35
	OTNG	OTHER NEGLIGENCE	8
	PRMP	PROFESSIONAL MALPRACTICE	3
	RYCE	JIMMY RYCE ACT	1
	WRMA	WRIT OF MANDAMUS	510
		Total	748

NO

747

*** End of Report ***

ACTION Activity Report
01/01/2001 To 12/31/2001
For All Judges
Report On Primary Charge
States: All



Description

Filed	DISC	DISCRIMINATION	10
	EQRL	EQUITABLE RELIEF	18
	HBCP	WRIT OF HABEAS CORPUS	79
	OTHER	OTHER	52
	OTNG	OTHER NEGLIGENCE	10
	PRMP	PROFESSIONAL MALPRATICE	3
	WRMA	WRIT OF MANDAMUS	504
		Total	676

End of Report ***

Date: 01/01/2002
Time: 14:49:14
CRTR5690

Action Activity Report
01/01/2002 To 12/31/2002
For All Judges
Report On Primary Charge
Status: All

Page:



Description

Filed	DISC	DISCRIMINATION	8
	EQRL	EQUITABLE RELIEF	10
	HBCP	WRIT OF HABEAS CORPUS	35
	OTHER	OTHER	11
	OTNG	OTHER NEGLIGENCE	13
	PRMP	PROFESSIONAL MALPRATICE	7
	WRMA	WRIT OF MANDAMUS	233
		Total	<hr/> 314

*** End of Report ***

Appendix B

IN THE SUPREME COURT OF FLORIDA SUPREME

DANIEL KEVIN SCHMIDT,

Petitioner,

v.

Case No. SC00-2512

JOHN E. CRUSOE, ETC., ET AL.,

Respondents.

AFFIDAVIT

**COUNTY OF LEON)
STATE OF FLORIDA)**

I, Susan A. Maher, am employed by the Florida Department of Corrections and serve in the capacity of the Deputy General Counsel. I have served in this capacity since February 1991. Prior to that time, I was employed by the Office of Attorney General (from 1985 to 1991) in the Corrections Litigation Section, and for the last few years there, served as the section chief. As a result of these positions I have personally handled several thousand inmate petitions related to sentence structure, release date calculations, and the award and forfeiture of gain-time and overcrowding release credits over the course of the last 17 years. In connection with this case, I have been asked to provide information regarding habeas corpus and mandamus actions handled directly by the Department of Corrections.

In 1991, the Department of Corrections assumed responsibility for representation by agency counsel of all inmate litigation related to an inmate's release date calculation, sentence structure, and gain-time/overcrowding credits eligibilities, awards or forfeitures, with the exception of petitions challenging inmate disciplinary action.¹ I have been employed by the Department of Corrections as Deputy General Counsel since February 1991. One of my primary duties is oversight of the Offender Litigation Unit and assignment of the cases handled by attorneys in that unit. Below is a list of the annual case counts handled since 1991 by the Department.

¹ Prior to that time, the Office of Attorney General represented the Department of Corrections in all inmate litigation. Currently the Office of Attorney General only represents the Department in inmate disciplinary actions and inmate conditions cases.

Approximately ninety-seven percent of the cases listed would be considered "speedier release" cases.² These cases are typically filed as mandamus, habeas corpus, or a combination of other extraordinary writ actions. The majority of these actions are filed in (or are subsequently transferred to) the Second Judicial Circuit, since the agency is headquartered here in Leon County and sentence structure and gain-time matters are all handled by the Department's central office.³

1991	425
1992	406
1993	550
1994	691
1995	701
1996	1362
1997	1181
1998	717
1999	833
2000	750
2001	692
2002 (to date)	252

While an exact number distribution between habeas and mandamus actions cannot be provided (see footnote 3), it has been my experience that only 1 or 2 out of 10 petitions would provide

² In addition to cases related to an inmate's sentence, the Department does handle some cases involving sex offender registration/designation and court orders interfering with Department functions, such as visitation, medical care, custody/classification, grooming, etc. However, only about 3% of all cases handled relate to these issues.

³ The Department is unable to give an exact breakdown of the number of annual habeas corpus versus mandamus actions for several reasons. First, this data was not maintained in a retrievable fashion prior to January 1999. Second, many inmates have attempted to avoid the application of Section 57.085 since its enactment in 1996 by styling the case as a habeas corpus even though the relief sought would not effect an immediate release. Because transferring venue requires the department to pay a filing fee and is sometimes a cumbersome process, the department only seeks transfer of improperly filed actions in cases where the issue is complex and the department believes the expertise of the judges in the Second Judicial Circuit will provide a more efficient handling of the case or where the jurisdiction where the petition is filed typically requires in-court hearings necessitating the transport of the inmate and the travel of department counsel. Third, many inmates do not designate the petitions as either mandamus or habeas corpus, but combine these titles as alternatives, or designate the petitions as extraordinary relief petitions or writs of prohibition or certiorari.

immediate release as the relief.⁴

Based upon the department's experience with these petitions over the last 10 years, I believe that reclassifying all "speedier" release petitions as habeas corpus petitions will substantially impact both the judicial and the executive branches. This is based upon several factors. First, habeas corpus cases are typically afforded expedited attention. Based upon the numbers of petitions filed annually by inmates seeking "speedier" release, the ability for the circuit courts and the department to effectively handle such petitions will be compromised if all petitions are to be expedited. Currently, some circuit courts will not grant the department extensions on habeas corpus petitions. For example, the Fourteenth Judicial Circuit in which six institutions⁵ are located, the courts issue 20 - 30 day orders on habeas corpus petitions and generally **do not** grant extensions of time. In the Fifth Judicial Circuit, the department frequently receives 10 - 15 day orders on habeas petitions and although limited extensions are granted, the issuance of such short time-frame orders creates unnecessary motion practice. In distant jurisdictions such as the Eleventh and Seventeenth Judicial Circuits, orders are issued for 10 - 30 days on habeas petitions, however, it takes 5 to 10 days to receive such orders, also often necessitating extension requests. A number of circuit court judges have simply set hearings on the habeas petitions and directed transport of the inmate. In one instance, the circuit judge set a next day hearing, citing the provisions of Chapter 79. On the other hand, the Second Judicial Circuit issues 45-day orders on the mandamus petitions and reasonable extensions are granted that allow both the circuit judges and the department to manage case flow of the substantial number of petitions filed in that circuit.⁶ If all "speedier release" petitions are required to be filed as habeas corpus actions, the shift of the cases will be to many rural counties where the department's institutions are typically sited that are not currently staffed or funded to handle on an expedited basis the volume of petitions that will be filed. Neither will the department be staffed to respond to expedited petitions which will increase motion practice, a further burden to both the courts and the agency.⁷ It will also increase

⁴ As part of the case assignment process, the case is assessed as to whether the inmate would be an immediate release if the relief were granted. This assessment is made so instructions can be given to the assigned attorney with regard to venue transfer or hearing practice in the particular circuit where the petition is filed.

⁵ The following institutions are located in the Fourteenth Judicial Circuit: Calhoun, Jackson, Bay, Washington, Gulf, and Holmes.

⁶ The 45-day orders allow time for the department to administratively set up the case, review records, and prepare the detailed affidavits and documentation necessary to respond to these petitions. Generally, department attorneys do not require extensions for the 45-day orders.

⁷ In prior years when the number of petitions exceeded 1000 per year, the department originally had only 3 attorneys available for handling petitions. I personally can recall a month in late 1996 in which I had 150 responses calendared for the single month. While additional positions were requested, the reality is that there is a considerable lag time in obtaining new FTE

the likelihood of default decisions on petitions, or decisions made without adequate record, if the department is not granted extension requests by the circuit courts. Additionally, it will be difficult for the circuit courts to distinguish and sift out "immediate release" petitions from merely "speedier release" petitions so that those inmates who may indeed be entitled to immediate release receive appropriate attention.⁸

Another factor to be considered is how the particular circuit handles prisoner petitions. For example, the Eleventh Judicial Circuit requires that all prisoner petitions be filed in the criminal division of that court. The department's experience is that less than 75 petitions are filed annually as habeas petitions in that jurisdiction and that most of those are not true immediate release cases. The department has three major institutions in the jurisdiction of the Eleventh Judicial Circuit.⁹ If all "speedier release" cases are to be filed as habeas corpus actions in that circuit, it will affect the criminal court caseload.

As shown in the case count figures above, in the early 1990s there was a steady upward trend of petitions. That trend has reversed, even though the inmate population continues to increase. This in part is due to the enactment of section 57.085 which imposes lien obligations on inmates who file civil petitions, other than habeas corpus actions. The statute was designed to deter frivolous and unnecessary litigation by inmates. Prior to enactment of this important statute, inmates were free to file petitions whenever and wherever without cost by simply draining their inmate bank accounts just before filing an action and receiving in forma pauperis status. In many cases,

positions, advertising, hiring, and training before a new attorney is capable of handling a full caseload of extraordinary writ petitions. Including non-immediate release petitions as habeas corpus petitions with expedited handling will only exacerbate such staffing crises for both the department and the courts if there are sudden increases in the numbers of petitions filed. Because habeas corpus actions proceed without cost, there is no mechanism that prevents an inmate from filing repeated petitions over the same issue or that causes the inmate to seriously assess whether he even has a valid claim.

⁸ Currently an inmate must carry his or her burden of demonstrating that he or she would be entitled to an immediate release from custody to sustain filing a habeas corpus petition. Inmate petitions are often not articulate or clear as to the specific relief requested and it is often difficult to determine whether granting the relief will result in an immediate release. Designating all "speedier release" petitions as a habeas corpus actions will only make this determination more difficult. Additionally, many mandamus petitions involve only a small amount of gain-time (some as little as 4 days were at issue) or credit, with several years remaining on the sentence to be served. Giving expedited consideration to such petitions will impede appropriate consideration of true "immediate release" petitions.

⁹ Those institutions are South Florida Reception Center, Everglades, and Dade Correctional Institutions.

inmates filed in multiple jurisdictions on the same issue, even after having it adjudicated by a single court. Attached two examples of inmates who filed in multiple jurisdictions on the exact same issue. In the Ashley case, the litigation spanned an entire 10-year period.

Finally, the cases involving sentence structure and gain-time/overcrowding credit issues have become extraordinarily complex in recent years. See, e.g., Gomez v. Singletary, 733 So.2d 499 (Fla. 1999); Winkler v. Moore, 27 Fla.L.Weekly S373 (Fla., April 2002); Eldrige v. Moore, 760 So.2d 888 (Fla. 2000)(the Fifth District's confusion in the initial decision in Whitaker was understandable, however, due to the complexities involved in gain time law); Young v. Moore, 27 Fla.L.Weekly S514 (Fla., May 30, 2002)(as this Court has noted in Gomez v. Singletary, the calculation of gain time ccan be immensely difficult even under one version of a statute) . The concentration of the vast majority of these cases in the Second Judicial Circuit as mandamus petitions for "speedier release" has allowed the circuit judges of this jurisdiction to develop an expertise in this area of the law and an efficiency in handling these petitions that cannot be duplicated if all such petitions are filed as habeas corpus actions throughout the state.

The information contained in the foregoing affidavit is personally known to me and is true and correct. I am over the age of 18 and competent to testify to such were I called upon to do so in a court of law.



Susan A. Maher, Affiant

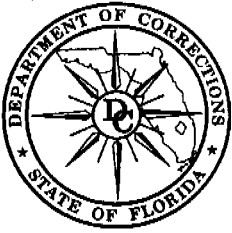
Sworn and Subscribed before me this
26th day of July, 2002, by Susan A. Maher
who is personally known to me.



Notary Public



Myrna Y. Del Rosario
Commission # DD 063648
Expires Nov. 12, 2005
Bonded Thru
Atlantic Bonding Co., Inc.



Office of General Counsel

General Litigation Docket

07/26/2002

Plaintiff: Ashley, James **DC Number:** 078962

Class Action? 0 **In House?** 1

Incident Date:

Facility: FSP - MAIN UNIT

Subject: GT ISSUES. (LLL).

Relief Request:

Codes:

WGT	Work Gaintime
SS	Sentence Structure
RDC	Release Date Calculation
WALDRUP	Waldrup/Raske
PC	Provisional Credits
OROSZ	Orosz Decision

Close Date:

Final Disposition:

Archive Date:

Archive Box:

Activity:

Office of General Counsel

Case Summary

<u>Filed</u>	<u>CaseTyp</u>	<u>Court</u>	<u>CaseNo</u>	<u>Action</u>	<u>CourtRef</u>	<u>ResCaseNo</u>	<u>AgencyRef</u>	<u>DC Attorney</u>
03/01/1991	Mandamus	13th Jud Circuit Ct; Hillsborough	91-2143				Dept. of Corrections - Internal	1991/03/21 Maher, Susan (DC)
02/23/1993	Mandamus	2nd Jud Circuit Ct; Leon	PC93-752				Dept. of Corrections - Internal	1993/03/03 Maher, Susan (DC) 1997/05/20 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)
01/01/1995	Unknown	2nd Jud Circuit Ct; Leon	PC94-4676				Dept. of Corrections - Internal	1995/01/18 Maher, Susan (DC) 1997/05/20 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)
07/01/1995	Appeal	1st District Court of Appeal	95-02487	Appeal	From 2nd Jud Circuit Ct; Leon		Dept. of Corrections - Internal	1995/08/02 Maher, Susan (DC) 1997/05/20 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)
08/11/1995	Habeas Corpus	8th Jud Circuit Ct; Alachua	95-3327-CA				Dept. of Corrections - Internal	1993/03/03 Maher, Susan (DC) 1997/05/20 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)
12/29/1995	Appeal	1st District Court of Appeal	96-00065	Appeal	From 8th Jud Circuit Ct; Alachua		Dept. of Corrections - Internal	1993/03/03 Maher, Susan (DC) 1997/05/20 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)
03/24/1997	Appeal	1st District Court of Appeal	97-1203	Appeal	From 2nd Jud Circuit Ct; Leon		Dept. of Corrections - Internal	1997/05/16 Maher, Susan (DC) 1997/05/20 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)
01/20/1998	Habeas Corpus	8th Jud Circuit Ct; Alachua	94-4435-CA	Venue Transfer	To 8th Jud Circuit Ct; Bradford		Potential	1998/03/04 McDonald, MaryEllen 1999/06/04 Maher, Susan (DC)



Office of General Counsel

General Litigation Docket

07/26/2002

Plaintiff: Newsome, Lewis **DC Number:** 401946

Class Action? 0 **In House?** 1

Incident Date:

Facility: MAYO C. I.

Subject: I/M who was control released and who forfeited gaintime upon revocation w/out a hearing, contends that the placement on control release was ex post facto and that the forfeiture of gaintime and control release credits violated his ex post facto rights. (PJD) (ALSO SEE KENNETH BOYD DOCKET, CASE NO. 4:00CV-150WS) [Additional DR code added upon receipt of Case No. SC01-2294 in which Newsome challenges DR rec'd for frivolous lawsuit based upon court order issues in 00-14502-C, USCA, 11th Cir.] SAM (PJD)

In a subsequent petition, I/M claims that the forfeiture of overcrowding gaintime violates his constitutional rights (2001-116-CA) & that the forfeiture of incentive gaintime for revocation of control release violates his double jeopardy rights (1D01-4168).

Relief Request:

Codes:

HO	Habitual Offender
CRV	Control Release Violation/Revocation
FGT	Forfeiture of Gaintime
BOWLES	Bowles Decision
GOMEZ-NR	Gomez- Outside Rlf TimeFrame or Ineligible For Rlf
DR	Disciplinary Report

Close Date:

Final Disposition:

Archive Date:

Archive Box:

Activity:

IN THE SUPREME COURT OF FLORIDA

DANIEL KEVIN SCHMIDT,

Petitioner,

vs.

CASE NO. SC00-2512

LOWER TRIBUNAL NO.
1D00-4166

CIRCUIT COURT NO. 00-1971

JOHN E. CRUSOE, etc.,

Respondent.

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared ANN GRISSETT, who was sworn and says under penalty of perjury that the following allegations are true and correct and made on personal knowledge and that the Affiant is over the age of 18 and is competent to testify to the matters stated:

1. I am presently employed as a Deputy Clerk of the Court with the Second Judicial Circuit Court in Leon County, Florida.
2. My primary duty is handling all the inmate case assignments. I also input and maintain records and statistics regarding total inmate cases filed with the court in Leon County; the nature of those cases, i.e.,

tort cases, mandamus cases, etc.; and other information related to inmate litigation.

3. I have attached documents to this affidavit. These documents provide information regarding the number of cases filed by inmates in Leon County, and the nature of those cases. (See exhibits A-J).
4. In 1994 there were 1,391 cases filed by inmates. (See exhibit B). Of those cases, 1037 were mandamus actions. (Id.). We recovered only \$90.00 in filing fees from the inmates that year. (See exhibit A).
5. In 1995 there were 1,426 cases filed by inmates. (See exhibit C). Of those cases, 1012 were mandamus actions. (Id.). We recovered \$1,398.00 in filing fees from the inmates. (See exhibit A).
6. In 1996 there were 1,879 cases filed by inmates. (See exhibit D). 1413 of those cases were mandamus actions. (Id.). We recovered \$1,862.50 in filing fees. (See exhibit A).
7. In 1997 the number of inmate lawsuits filed decreased to 1,375. (See exhibit E). 1008 of those cases were

mandamus actions. (Id.). We recovered \$25,814.74 in fees from inmates. (See exhibit A).

8. In 1998 inmate cases decreased again to 904 total filings. (See exhibit F). Of those 669 were mandamus actions. (Id.). We recovered \$33,732.74 in fees. (See exhibit A).
9. In 1999 inmate cases again shrank to 747 total filings. (See exhibit G). 510 were mandamus actions. (Id.).
10. In 2000 inmate filings again tapered off to 610 total filings. (See exhibit H). Of those there were 433 mandamus actions. (Id.).
11. In 2001 there were 676 inmate cases filed. (See exhibit I). 504 of those were mandamus actions. (Id.).
12. So far in 2002, there have been 314 inmate cases filed. (See exhibit J). 233 are mandamus actions. (Id.).
13. Inmate petitions for mandamus are often time consuming for the courts for several reasons. First, they are commonly voluminous in size containing numerous

exhibits. Second, the inmates will often file numerous motions and supplements during the pendency of the case, and send numerous letters to the clerk and the court.

14. When the Clerk's office receives a pleading from an inmate that is titled as a writ of habeas corpus, pursuant to Section 79.01, Florida Statutes, it is treated as an emergency, prioritized, and sent to a judge for his or her review.
15. If an action challenging an inmate disciplinary report is labeled or treated as a habeas corpus petition then that case will have to be assigned emergency status and also sent to a judge. This could significantly burden the judges by dramatically increasing the number of cases the judges will be required to review on an emergency basis.
16. It could also have the effect of delaying review of those writs of habeas corpus where the inmate claims he/she is entitled to immediate release from incarceration.
17. Also, I am often able to review and eliminate a

significant number of inmate cases, that are not habeas corpus actions, prior to assigning them to a judge. For example, in 1999, 338 out of 747 cases never were assigned to a judge. (See exhibit A). In 2000, 202 out of 610 cases never were assigned to a judge. (Id.).

18. If the mandamus actions are treated as habeas actions, I will not be able to eliminate any of those cases prior to assigning them to a judge.

19. Finally, since inmates do not pay a filing fee for habeas actions, treating the mandamus actions challenging disciplinary reports as habeas actions will reduce the filing fees the court can collect from inmates.

ANYTHING FURTHER AFFIANT SAYETH NAUGHT.

Ann Grissett
Ann Grissett
Affiant

Sworn to and subscribed before me this 24th day of July, 2002.

BOB INZER, CLERK
By: Bob Inzer
Notary Public Deputy Clerk



Commission No.: _____
My Commission Expires: _____

Personally known ✓

Produced Identification _____

INMATE STATISTICS

<u>YEAR</u>	<u>CASES FILED</u>	<u>COLLECTIONS</u>
<u>1990</u>	411	
<u>1991</u>	450	
<u>1992</u>	498	
<u>1993</u>	875	
<u>1994</u>	1,391	\$ 90.00
<u>1995</u>	1,426	\$ 1,398.00
<u>1996</u>	1,879	\$ 1,862.50
<u>1997</u>	1,375	\$25,814.74
<u>1998</u>	904	\$33,732.74
<u>1999</u>	747 *	
<u>2000</u>	610 **	
<u>2001</u>	676	
<u>2002</u>	314	

* 338 CASES CLOSED IN UNASSIGNED STATUS

** 202 CASES CLOSED IN UNASSIGNED STATUS

It should be noted that collections after 1998 are not immediately available. This is due to the fact that these fees are now distributed as part of the general civil collections.

Date: 07/19/2002
Time: 13:30:23
CRTR5690

Action Activity Report
01/01/1994 To 12/31/1994
For All Judges
Report On Primary Charge
Status: All

Page: 1

Description

Filed	CONT	CONTRACT	1
	DISC	DISCRIMINATION	107
	EQRL	EQUITABLE RELIEF	28
	HBCF	WRIT OF HABEAS CORPUS	155
	OTHER	OTHER	54
	OTNG	OTHER NEGLIGENCE	7
	PRSP	PROFESSIONAL MALPRACTICE	2
	WRMA	WRIT OF MANDAMUS	1037
		Total	<u>1391</u>

*** End of Report ***

Date: 07/19/2002
Time: 13:33:44
CRTR5690

Action Activity Report
01/01/1995 To 12/31/1995
For All Judges
Report On Primary Charge
Status: All



Description

Filed	CONT	CONTRACT	2
	DISC	DISCRIMINATION	15
	EQRL	EQUITABLE RELIEF	88
	HECP	WRIT OF HABEAS CORPUS	211
	OTHER	OTHER	34
	OTNG	OTHER NEGLIGENCE	14
	WRMA	WRIT OF MANDAMUS	1012
		Total	<u>1426</u>

*** End of Report ***

Date: 07/19/2002
Time: 14:37:32
CKTR5690

Action Activity Report
01/01/1997 To 12/31/1997
For All Judges
Report On Primary Charge
Status: All



Description

Filed	CONT	CONTRACT	7	
	DISC	DISCRIMINATION	7	
	EQRL	EQUITABLE RELIEF	35	
	HBCP	WRIT OF HABEAS CORPUS	199	
	OTHER	OTHER	115	
	OTNG	OTHER NEGLIGENCE	4	
	WRMA	WRIT OF MANDAMUS	1008	
	WRMAD	WRIT OF MANDAMUS - NP	2	NO
		Total	<u>1377</u>	
			1375	

*** End of Report ***