

IN THE SUPREME COURT OF FLORIDA

DANIEL KEVIN SCHMIDT,

Petitioner,

-vs-

JOHN E. CRUSOE, etc.,

Respondent.

CASE NO. SC00-2512

Lower Tribunal No. 1D00-4166

Circuit Court No. 00-1971

FILED
THOMAS D. HALL
JUL 18 2002
CLERK, SUPREME COURT
BY

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

Respondent hereby serves his supplemental response to the Amended Petition for Writ of Mandamus, pursuant to this Court's request dated June 14, 2002. Respondent confines his response to the specific issue elaborated in said request, namely: "to what extent Florida's judicial system would be impacted by a holding from (the Supreme Court) that all claims which would result in either an immediate release from custody or a speedier release from custody (excepting those petitions which seek review of a lower court's decision) must be filed in a petition for a writ of habeas corpus."

Respondent submits that treating all such claims as collateral criminal proceedings, and requiring that all be brought in habeas petitions (as opposed to current treatment of those seeking speedier release from custody, but not immediate release, i.e., gain time challenges arising from prison disciplinary proceeding as mandamus actions) would have a negative impact upon Florida's judiciary.

Excepting claims for "speedier" release currently required to be filed as mandamus actions, from the requirements of Chapter 57.085, Florida Statutes (2001), would unduly and unnecessarily impose a financial and administrative hardship upon Florida's judiciary, particularly upon each of the twenty (20) Circuit Courts. This Court can take judicial notice that innumerable prisoner pro se lawsuits are brought challenging prison disciplinary decisions wherein gain time was forfeited, and seeking restoration of same (as well as expungement of the challenged disciplinary reports). The Court can also take note that there are over 70,000 inmates incarcerated in the Department of Corrections. See Appendix 1. The Court can also take note that in 2001, the statewide average monthly disciplinary report rate for the months of July, August, and September was 70 disciplinary reports per thousand inmates. See Appendix 2. Usually, the prisoner cannot and does not claim that he is entitled to immediate release from custody, only that he is entitled to have forfeited gain time restored. Often, the unspoken claim is that such restoration would ultimately result in his speedier, but not immediate, release. Those actions are typically styled by the prisoner as a petition for writ of mandamus or are treated as such by the Circuit Courts. Prior to filing in Circuit Court, an inmate must exhaust administrative

remedies within the Department. Plymel v. Moore, 770 So.2d 242, 246 (Fla. 1st DCA 2000).

Thus, they are not typically construed as collateral criminal proceedings, and hence the requirements of Chapter 57.085 apply. Accordingly, pursuant to subsections (2) through (5) thereof, even if the prisoner is determined to be indigent, the Circuit Court must attempt to collect partial payment(s) of the filing fees and costs, aided by the Department of Corrections' placing a lien on the prisoner(s)' account(s) until the balance of costs and fees are paid in full.

Respondent is not privy to the financial records of the various Circuit Courts, or of the Judicial Administrative Commission, but assumes that a substantial amount of money is recovered annually through this procedure, even from "indigent" prisoners, which would be lost if this type of action, currently treated as "mandamus," were converted into "habeas" proceedings, and thus taken out of the reach of subsections (4) and (5) by the exclusionary language of subsection (10).

A construction of "collateral criminal proceedings," that would include traditional mandamus actions, in a broader all inclusive category of "habeas" actions, would create an administrative burden on the Circuit Courts by excepting such actions from the tests currently imposed by subsections (6) through (8) of Chapter 57.085.

Those tests, and the remedies included therein, including dismissal of the subject action, were designed to minimize and penalize the filing of frivolous and malicious lawsuits. Removing a whole category of cases, i.e., current mandamus actions seeking restoration of prison gain time from the statute's provisions, would only serve to increase the burden on the Circuit Courts in handling an already significant volume of prisoner pro se lawsuits, by removing the deterrent from filing frivolous or malicious claims therefrom. The United States Supreme Court has observed that given the limited process required in a disciplinary hearing, it may be that a challenge to a disciplinary hearing will rarely be successful. See Ponte v. Real, 105 S.Ct. 2191, 2197 (1985).

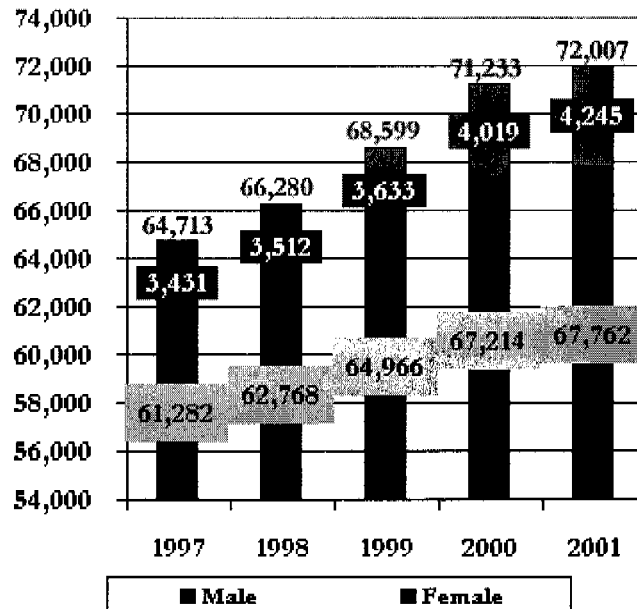
In short, Respondent submits that the proposed holding by this Court, as elaborated in its Request for Supplemental Response, would have a negative impact on the judiciary of this State, both financial and administrative. Respondent cannot articulate the specific extent of that impact, but suggests it would be significant.

For that reason, as well as those contained in the initial response to the Amended Petition for Writ of Mandamus filed by



Inmates in Prison

Prison Population by Gender on June 30



Offenses of Inmates in Prison on June 30, 2001

Offense	Number	Percent
Murder, Manslaughter	10,448	14.5%
Sexual Offenses	7,988	11.1%
Robbery	10,026	13.9%
Violent Offenses	8,655	12.0%
Burglary	11,857	16.5%
Theft, Forgery, Fraud	5,371	7.5%
Drugs	10,070	17.0%



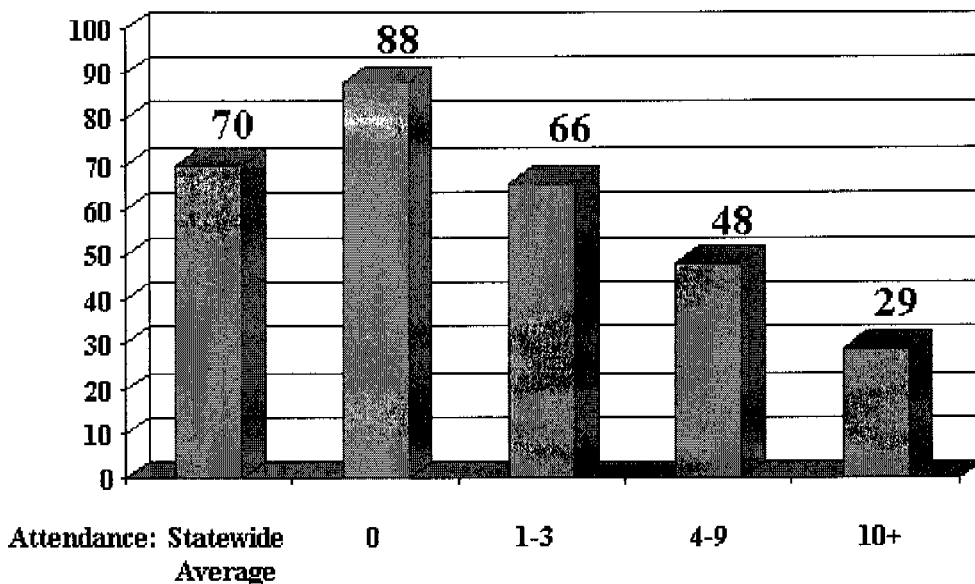
Impact of Inmate Participation
In Chaplaincy Programs

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Statewide Measurement of Disciplinary Reports per 1,000 inmates

Chart 7 shows the average monthly DR rate per 1,000 inmates for the months of July, August, and September. This chart indicates that the DR rate was lower for those who attended chapel, especially when comparing those who had attended at least 4 times.

Chart 7



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Institutional Adjustment: Disciplinary Report Frequency

A measurement of inmate adjustment identifies the number of disciplinary reports (DR's) that measured inmates received during the three months that Chapel participation rates were considered. The record of inmates who attended religious activities was separated from the record of those inmates who did not attend any religious activities. Both were then analyzed as to the frequency of DR's per one thousand inmates. In the group of inmates that attended religious activities during the three-month period, they were further grouped according to the number of times they attended a religious activity in the measurement period of one month.

The number of DR's was measured for those inmates who attended religious services one to three times per month, four to nine times per month and those who attended ten or more times in a month.

Finally, a statewide average was included to compare the findings with a norm. The State norm for all inmates is 70 DR's per thousand inmates. The inmates in the measurement group (50,026) that attended no religious services computed at the rate of 198 DR's per thousand inmates. Inmates who attended from one to three religious activities during the month received 66 DR's per thousand inmates. Inmates who attended from four to nine religious activities received 48 DR's per thousand inmates. The fewest DR's per thousand were received by the inmate group that attended ten or more religious activities during the month at 29 DR's per thousand inmates.

For all three months, the more inmates attended religious activities, the fewer DR's they received. Inmates who did not attend any religious activities were three times more likely to get a DR than inmates who attended ten or more services a month did. Statewide, inmates in general were more than twice as likely to get a DR than inmates who attended ten or more religious activities per month. Though there may be a variety of reasons for getting or not getting a DR, the numbers indicate that the more an inmate attends religious activities, the odds that the inmate gets into trouble are diminished.

DR's are considered to be one of the prime indicators of institutional adjustment. The following three pages measure the institutional adjustment of inmates who participate in Chapel programs by the number of times the

inmate participates and their number of DR's. This figure is then compared with the institutional adjustment of those inmates who did not participate in Chapel programs.

*Impact of Inmate Participation
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