

SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL
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BY

DANIEL KEVIN SCHMIDT,

CASE NO.: SC00-2512

Petitioner,

Lower Tribunal No.: 1D00-4166

Circuit Court No.: 00-1971

vs.

STATE OF FLORIDA et al.,

Respondents.

**PETITIONER'S SUPPLEMENTAL REPLY TO RESPONDENT'S
AMENDMENT TO THE SUPPLEMENTAL RESPONSE
TO AMENDED PETITION FOR WRIT OF MANDAMUS.**

Pursuant to the Court's Order of June 14, 2002, Petitioner Daniel Kevin Schmidt ("Mr. Schmidt") replies to the Respondent's Amendment to the Supplemental Response to Amended Petition for Writ of Mandamus.¹ Mr. Schmidt urges the Court to hold that prisoner claims that would result in a speedier, but not immediate release, be considered collateral criminal proceedings, but not filed as habeas corpus petitions.

**A. Petitioner Seeks A Declaration That His Mandamus Is A
Collateral Criminal Proceeding, Not That It Be Brought As A
Habeas Petition.**

The Government's brief makes some rational arguments for reserving habeas corpus petitions for those circumstances in which relief might result in immediate

¹ Although the Court's most recent order of July 9, 2002 set a July 29th deadline for this Supplemental Reply, the Respondent did not file it's final Supplemental

release. Petitioner concurs that the judicial and agency resources necessary to timely hear habeas petitions do not need to be taxed when prisoners seek speedier, but not immediate release from custody.² Petitioner does not seek to retard the cause of persons wrongfully being held in custody. Likewise, Petitioner recognizes the judicial and administrative convenience of having all "speedier release" mandamus petitions heard in the Second Judicial Circuit and the First District Court of Appeals.

Petitioner concedes that the jurisdictional and procedural requirements attendant upon a habeas corpus petition are not necessary when a prisoner seeks speedier release. Petitioner does not, however, disavow the arguments in his briefs and at oral argument asserting that mandamus seeking restoration of gain time is the functional equivalent of a petition for writ of habeas corpus for purposes of Fla. Stat. §57.085. He remains firm in assertion that inmates seeking speedier release should be exempt from paying filing fees.

B. Mandamus Seeking Restoration of Gain Time Should Be Exempt From Filing Fees

The remainder of the State's arguments posit a parade of horrors that would occur if prisoners were allowed to seek speedier release without having to pay a

Response until July 26, 2002. Thus the Court's previously imposed 10 day deadline would result in a reply deadline of August 5, 2002.

² Petitioner's personal experience, however, tells him that habeas petitions are seldom heard with the immediacy suggested by Respondent's brief.

filing fee or move for a declaration of indigency. Aside from the obvious loss of revenue that the courts will experience, the State's arguments are logically flawed. None of the State's claims provide a sufficient basis to distinguish between a mandamus seeking speedier release and a habeas seeking immediate release in determining what is a collateral criminal proceeding.

First, the State warns that prisoners would seek reimbursement for filing fees and the state courts would be forced to disgorge the fees it previously collected. That outcome can easily be prevented by a statement in this Court's opinion announcing that the decision is not retroactive. Such a ruling would be in complete accord with this Court's jurisprudence on retroactivity. See *Witt v. State*, 387 So.2d 922 (Fla. 1980) and its progeny.

Next, the State claims that removal of the filing fee will open the floodgates to frivolous law suits. Circuitously, the State argues that since at the time section 57.085 was enacted speedier release was sought by mandamus, then the legislature must have included such petitions in their findings on frivolous pleadings. However, the legislative history never specifically mentions challenges to gain time among the Legislature's concerns over frivolous litigation. Instead, the Legislature was clear in its desire to not impose a financial burden on prisoner actions contesting a criminal conviction or sentence.

The State spews forth all the harms that arise from frivolous lawsuits, but makes no effort to explain why it fears that actions seeking speedier release are more likely to be frivolous than actions seeking immediate release. The mere potential that some frivolous mandamus actions may be filed if this Court holds that filing fees are not required is not sufficient to overcome the Legislature's clear pronouncement that inmates need not pay fees to challenge their sentences.

Nor is the State's assertion that the courts will lose the sanction of removing gain time for frivolous mandamus petitions meritorious. The Legislature determined that the sanction of loss of gain time was not available when inmates filed "frivolous" collateral criminal claims. The State again provides no distinction or basis for treating the habeas and mandamus petitions on gain time in a different manner when it comes to the availability of such sanctions.

Finally, the State's brief concludes by arguing that justice should be available for purchase by those with means. Either Florida has a system of justice that permits inmates to pursue collateral criminal actions without paying a filing fee or asserting indigency or it does not. The status of Mr. Schmidt's prisoner account is irrelevant to the Court's determination of a rule applicable to all Florida inmates.

Accordingly, Petitioner urges the Court to find that petitions for writ of mandamus asserting the right to speedier release be deemed collateral criminal proceedings that can be pursued without payment of filing fees pursuant to Fla. Stat. §57.085(10).

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail this 5th day of August, 2002, to: JON S. WHEELER, Clerk of Court, First District Court of Appeal, 301 Martin Luther King Jr. Blvd., Tallahassee, FL 32399-1850; HON. JOHN E. CRUSOE, Leon County Circuit Court, 301 South Monroe, Tallahassee, FL 32301; and on JOSEPH BELITZKY Attorney General, Florida Attorney General's Office, State Capitol, Tallahassee, FL 32399-1050.

Susan L. Kelsey

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Petitioner Schmidt certifies that this brief is typed in 14 point (proportionally spaced) Times New Roman in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

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