**IN THE SUPREME COURT OF FLORIDA**

**JAMES V. CROSBY, Jr., ETC.,**

**Petitioner,**

**vs.** **Case No. SC03-137**

**JOHNNY BOLDEN,**

**Respondent.**
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# BRIEF OF AMICUS CURIAE FLORIDA PAROLE COMMISSION ON BEHALF OF PETITIONER CROSBY

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**On Certified Question of Great Public Importance from the District Court of Appeal, First District of Florida**

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## PRELIMINARY STATEMENT

The Petitioner below, Johnny Bolden, will be referred to as "Respondent" or “Bolden” in this brief. Respondent below, James V. Crosby, Jr., Secretary of the Florida Department of Corrections, will be referred to either as "Petitioner" or "the Department." References to the record on appeal will be designated "R" followed by the appropriate page number(s).

## STATEMENT OF THE CASE AND THE FACTS

Amicus Curiae Florida Parole Commission adopts and incorporates by reference the Statement of the Case and Facts set forth in Petitioner Crosby's Brief on the Merits.

## STATEMENT OF THE ISSUE

**WHEN AN INMATE WHO IS SERVING SEVERAL RELATED SENTENCES SUBJECT TO CONDITIONAL RELEASE SUPERVISION FOR MULTIPLE CRIMES OCCURRING IN THE SAME CRIMINAL EPISODE HAS VIOLATED CONDITIONAL RELEASE SUPERVISION, SHOULD THE DEPARTMENT OF CORRECTIONS, IN CALCULATING THE NEW RELEASE DATE, CONSIDER TIME SERVED FOLLOWING THE EXPIRATION OF ONE SENTENCE, WHILE AWAITING EXPIRATION OF THE INCARCERATIVE PORTIONS OF THE OTHER RELATED SENTENCES, AS TOLLED, PURSUANT TO EVANS V. SINGLETARY, 737 So. 2D 505 (Fla. 1999), AND, IF SO, SHOULD THE DEPARTMENT ADD SUCH TOLLED TIME ONTO THE SENTENCE IN CALCULATING THE NEW RELEASE DATE?**

## SUMMARY OF THE ARGUMENT

This Court should answer the certified question in the affirmative and hold that where an inmate is serving concurrent Conditional Release eligible sentences which,

due to disparate minimum mandatory provisions, have different amount of gain time leading to different tentative release dates (TRDs), that the gain time between an earlier TRD and a later TRD on which the inmate is released to supervision is not supervision served in prison, but is added to the gain time remaining on the sentence with the later TRD to comprise the term of Conditional Release supervision.

## ARGUMENT

**ISSUE:**

**WHEN AN INMATE WHO IS SERVING SEVERAL RELATED SENTENCES SUBJECT TO CONDITIONAL RELEASE SUPERVISION FOR MULTIPLE CRIMES OCCURRING IN THE SAME CRIMINAL EPISODE HAS VIOLATED CONDITIONAL RELEASE SUPERVISION, SHOULD THE DEPARTMENT OF CORRECTIONS, IN CALCULATING THE NEW RELEASE DATE, CONSIDER TIME SERVED FOLLOWING THE EXPIRATION OF ONE SENTENCE, WHILE AWAITING EXPIRATION OF THE INCARCERATIVE PORTIONS OF THE OTHER RELATED SENTENCES, AS TOLLED, PURSUANT TO EVANS V. SINGLETARY, 737 So. 2D 505 (Fla. 1999), AND, IF SO, SHOULD THE DEPARTMENT ADD SUCH TOLLED TIME ONTO THE SENTENCE IN CALCULATING THE NEW RELEASE DATE?**

The Florida Parole Commission respectfully submits that this Honorable Court should answer the certified question herein in the affirmative. The instant proceeding implicates the operations of the Parole Commission inasmuch as this case involves Conditional Release supervision and statutes pertaining to the Parole Commission's operations regarding the administration of Conditional Release supervision and the revocation of such supervision pursuant to Sections 947.1405 and 947.141, Florida Statutes. The Commission thus has a substantial interest in the outcome of the instant case.

As this Court recently noted in Mayes v. Moore, 827 So.2d 967 (Fla. 2002),

…conditional release is not a form of sentence, and it is not

> imposed by a court. Although the statute may impose an undesirable condition upon the release of those subject to the statutory requirements by converting gain time that might be awarded into postrelease supervision, neither gain time nor conditional release is a true part of a criminal sentence. An inmate's eligibility for conditional release is established by statute. Inmates who are subject to conditional release are identified and their placement on conditional release is required, not by the sentencing court, but by the Parole Commission.
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> *****
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> Prior to the 1988 enactment of the conditional release statute, prison inmates' sentences expired when, with the combination of actual time served and gain time, they were released from prison. Since 1988, however, the Legislature has provided that certain inmates must remain under supervision, as determined by the commission, after release from prison for a period equal to the amount of gain time awarded.

Mayes, *supra* at 971, 972.

Pursuant to Section 947.1405, Florida Statutes, Respondent Bolden was released from prison to Conditional Release supervision as to three (3) concurrent ten (10) year Habitual Felony Offender prison sentences, two of which had 997 days of gain time remaining and one which had 1334 days of gain time remaining. The incarceration portion of these sentences ended at different times resulting from the application of gain time due to the sentencing provisions mandated by statute and imposed by the sentencing court, namely 3 year minimum mandatories on two of the sentences which as a consequence received less gain time. Due to this fact, the incarceration portion of the non-minimum mandatory sentence expired first, and Bolden remained in prison pending expiration of the incarceration portion of the two remaining sentences (337 days). The Parole Commission did not grant

Bolden credit for the interim as to the non-minimum mandatory sentence, and this period of supervision was tolled pursuant to Evans v. Singletary, 737 So.2d 505 (Fla. 1999).

Following Bolden's release from prison to Conditional Release supervision, he violated his supervision and the Commission revoked said supervision. Following revocation, the Department of Corrections necessarily treated Bolden's sentences individually for purposes of gain time forfeiture because of the disparity in accrued gain time. Section 947.141(6), Florida Statutes, provides in pertinent part that upon revocation of Conditional Release supervision "…the releasee, by reason of the misconduct, shall be deemed to have forfeited **all gain-time**…as provided by law, earned up to the date of release." (emphasis supplied). Further, Section 944.28(1), Florida Statutes, states in pertinent part that

> If a prisoner is convicted of escape, or if the ...conditional release as described in chapter 947... granted to him is revoked, the department may, without notice or hearing, declare a forfeiture of **all gain-time earned** according to the provisions of law by such prisoner prior to...his release under such...conditional release...

(emphasis supplied)

As specifically authorized by these statutory provisions, the Department of Corrections necessarily added the tolled period of supervision (337 days) to Bolden's remaining gain time based on the principles set forth in this Court's opinion in Evans, *supra*. The Department's action was in harmony with the legislative intent expressed in Section 947.1405, 947.141,

and 944.28(1), Florida Statutes, and prevented an undue windfall for Bolden for having committed firearms offenses with minimum mandatory provisions.

This Court has consistently held that "…an agency's interpretation of a statute it is charged with enforcing is entitled to great deference. Ameristeel Corp. v. Clark, 691 So.2d 473, 477 (Fla. 1997)(citations omitted). *See also*: Department of Health & Rehabilitative Services v. A. S., 648 So.2d 128 (Fla. 1995); Florida Cable Television Ass'n v. Deason, 635 So.2d 14 (Fla. 1994); Department of Environmental Regulation v. Goldring, 477 So.2d 532 (Fla. 1985). The Department's actions in this case are entitled to this level of deference, which the District Court below failed to accord.

The reviewing circuit court denied Bolden's mandamus petition, but on further review the District Court below concluded that the Circuit Court departed from essential requirements of law by approving the tolling of Bolden's term of Conditional Release. The Parole Commission respectfully submits that the District Court arrived at an erroneous conclusion because there is no logical reason to treat different sentences as the same merely because they are all Conditional Release covered sentences and are concurrent. The First District's opinion on rehearing in this case impermissibly reduces the amount of time on Conditional Release supervision required to be served by statute by providing that an inmate can serve a portion of his supervision time in prison, contrary to this Court's established caselaw. *See e.g.* Brumit v. Wainwright, 290 So.2d 39 (Fla. 1973); Voulo v. Wainwright, 290 So.2d 58 (Fla. 1974). In Voulo, this Court

held that

> As was stated in both *Law v. Wainwright*, 264 So.2d 3 (Fla.1972), and *Adams v. Wainwright*, 275 So.2d 235 (Fla.1973), a person cannot be on parole and at the same time be in jail. Admittedly, a person on parole is not completely at liberty, albeit he does have substantially more freedom than when he is incarcerated…As we indicated in *Brumit, Law* and *Adams*, 'everybody's got to be some place,' and you cannot be both free on parole and incarcerated at the same time. To so hold would be in clear violation of the underlying rationale of the three cases cited above.

*Id*. at 59, 60.

In Duncan v. Moore, 754 So.2d 708, 710 (Fla. 2000), this Court recognized that, as to persons released on Conditional Release supervision, "…while gain time awards will shorten the length of their incarceration, they will have to remain under supervision after release from prison for a period of time equal to the amount of gain time awarded." *See also* Evans, *supra* at 507: "…offenders are placed on supervision for the amount of time equal to the gain time they have accrued."

The District Court herein failed to accord this principle the proper weight by judicially reducing the amount of gain time to be served by Bolden on supervision from 1334 days to 997 days, in contravention of established Florida Supreme Court precedent

[1], and in contravention of the statutory authorization to forfeit "all gain time" upon revocation. The District Court in effect established two different

[1] The First District's opinion reduced the amount of gain time forfeited upon revocation of Bolden's previous term of Conditional Release supervision thus reducing the amount of time Bolden must now spend under his current term of supervision.

regimes for calculating Conditional Release eligible inmates' sentences depending upon whether their sentence structure is composed of "related" or "unrelated" sentences, which needlessly complicates the Department of Corrections' and the Parole Commission's ministerial functions, and which results in an undue windfall for those offenders who fortuitously committed their offenses in a "related" manner.

The Parole Commission respectfully submits that the District Court misinterpreted Evans to mean that the tolling of a period of supervision attached to a sentence whose incarceration portion has expired pending expiration of a longer sentence is dependent solely upon whether the sentences are "related crimes arising from the same incident". Bolden, 28 Fla. L. Weekly D188 (Fla. 1st DCA January 8, 2003).

In its opinion on rehearing, the District Court relied on this Court's citation in Evans to State v. Savage, 589 So.2d 1016 (Fla. 5th DCA 1991) and Bradley v. State, 721 So.2d 775 (Fla. 5th DCA 1998) to support the novel proposition that tolling may **only** be applied to concurrent Conditional Release sentences if the sentences are "unrelated". The fact is that in those cases the Fifth District was considering situations that factually consisted of bundles of "unrelated" sentences. Those cases did not specifically limit the concept of tolling to only those scenarios, nor did this Court in Evans. The reasoning supporting the tolling of periods of supervision pending expiration of other sentences being served applies with equal logic to concurrent sentence structures as to consecutive sentence structures, and to "related"

sentences as to "unrelated" sentences. Fairness and the well-ordered administration of justice dictate that a uniform and understandable system of administration be applied to all sentences equally without artificial distinctions.

Accordingly, Amicus Curiae Florida Parole Commission respectfully urges this Honorable Court to answer the certified question herein in the affirmative.

## CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Amicus Curiae Florida Parole Commission respectfully urges this Honorable Court to answer the question certified to this Court in the affirmative.

Respectfully submitted,

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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 Johnny Bolden, c/o Kathy Bolden, 3745 10th Avenue South, St. Petersburg, Florida 33711, and Carolyn J. Moseley,

Assistant General Counsel, Florida Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500, this ___ day of February, 2003.

_____

BRADLEY R. BISCHOFF
Assistant General Counsel

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY THAT the instant pleading was produced in Times New Roman 14-point font.

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BRADLEY R. BISCHOFF
Assistant General Counsel