IN THE SUPREME COURT OF FLORIDA

WILLIE F. JONES, DC # 021739
Petitioner,

vs.

Case No. SC09-612
L.T. No. 4D08-5206

FLORIDA PAROLE COMMISSION,

Respondent.
_____/

APPELLEE'S ANSWER BRIEF ON THE MERITS

On petition for discretionary review from a decision of the District Court of Appeal, Fourth District of Florida

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PRELIMINARY STATEMENT

The Appellant/Petitioner below, Willie F. Jones, will be referred to as "Petitioner" in this brief. Appellee/Respondent below, the Florida Parole Commission, will be referred to as the “Commission” or “Respondent.” Petitioner’s initial brief will be referenced as “IB” followed by the corresponding page number.

The record on appeal, including the record before the district court and the trial court, is referred to herein in the Commission’s compilation appendix. Each exhibit referenced herein will be referred to as “FPC Appendix Exhibit” or “FPC Exh.” followed by the exhibit letter, and page number if necessary. References to Appellant’s Exhibits will be designated as “App. Exh.” followed by the exhibit letter and page number if necessary.

STATEMENT OF THE CASE AND THE FACTS

1. On March 22, 1968, Petitioner was convicted of Rape in Broward County Case No. Criminal 115 and on March 29, 1968, the court sentenced him to serve a term of ninety-nine (99) years in state prison. (FPC Appendix Exhibit A)

2. On April 26, 1968, Petitioner was convicted of Kidnapping in Broward County Case No. 67-22803-X and was sentenced to a term of ten (10) years in state prison. The court ordered the sentence to run concurrently with the sentence imposed in the above case. (FPC Appendix Exhibit B)

3. During the next ten (10) years of his confinement in state prison, Petitioner received a total of thirty-two (32) Disciplinary Reports. (FPC Appendix Exhibit C)

4. On December 19, 1979, Petitioner was convicted of Possession of a Weapon by a State Prisoner in Union County Case No. 79-77-CF and was sentenced to a term of one (1) year in state prison. The court ordered the sentence to be served consecutively to his active sentences. (FPC Appendix Exhibit D)

5. On December 16, 1981, the Parole Commission entered an order releasing Petitioner on parole. (FPC Appendix Exhibit E) Before his release, however, Petitioner was found guilty of Sexual Misconduct in prison with another inmate and the Parole Commission rescinded its parole order. (FPC Appendix Exhibit F)

6. On May 25, 1982, Petitioner was released from prison to parole supervision. (FPC Appendix Exhibit G)

7. On August 1, 1990, the Parole Commission revoked Petitioner's parole for violation of a condition of his release. (FPC Appendix Exhibit H)

8. On or about November 20, 2008, Petitioner filed a Petition for Writ of Habeas Corpus in the Nineteenth Judicial Circuit Court, Case No. 2008-CA-629. (FPC Appendix Exhibit I)

9. On December 5, 2008, the Honorable F. Shields McManus issued an Order Dismissing Petition for Writ of Habeas Corpus, stating:

> THIS MATTER is before the court in chambers on a petition for writ of habeas corpus. Insofar as the petition pertains to revocation of the petitioner's parole by the Florida Parole Commission, the pleading is reviewed under the Florida Rule of Appellate Procedure 9.100. The court, having reviewed the petition and being otherwise well-advised, finds and decides as follows:
>
> The petitioner Willie Jones ("Jones") previously filed a petition seeking relief in habeas corpus which was dismissed with

> prejudice. *See* "Order Dismissing Petition for Writ of Habeas Corpus", Okeechobee County Case 2008CA453, September 18, 2008. In that matter, Jones alleged that the Florida Parole Commission never responded to the merits of an earlier claim challenging revocation of his parole[1] and requested this court to review his claim anew. The court found that Jones failed to demonstrate a preliminary basis for relief, and that his petition was untimely pursuant to section 95.11, Florida Statutes. *Id.* Jones sought review of the court's decision, and his petition for writ of certiorari was denied on the merits. *Jones v. Fla. Parole Comm'n,* No. 4D08-4352, (Fla. 4th DCA Dec. 4, 2008).
>
> In the instant action, Jones again attempts to challenge revocation of his parole, alleging that he is illegally detained because the facts show he was innocent of the parole violation which resulted in the revocation of his parole. He maintains that "factual innocence in an exception to the limitations period." This argument is wholly without merit, and Jones' instant petition is untimely. § 95.11, Fla. Stat (2008). It is therefore
>
> ORDERED AND ADJUDGED that the petition for writ of habeas corpus is dismissed with prejudice.
>
> DONE AND ORDERED in chambers this 5th day of December, 2008 at Okeechobee in Okeechobee County, Florida.

(FPC Appendix Exhibit J)

10. On December 31, 2008, Petitioner filed a Petition for Writ of Certiorari in the Fourth District Court of Appeal, Case No. 4D08-5206. (FPC Appendix Exhibit K)

11. On March 4, 2009, the Fourth District Court of Appeal issued an Opinion, stating:

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[1] Jones challenged his 1990 revocation of parole in 2001 in Madison County, and eventually an order dismissing that action was entered on April 7, 2004. Jones subsequently sought review in the First District Court of Appeal, and certiorari was denied on the merits on March 3, 2008.

> Per Curiam.
>
> Willie F. Jones (Jones) filed a petition for writ of certiorari in this court, challenging an order dismissing his petition for writ of habeas corpus, filed in the circuit court in November 2008, in which he challenged the revocation of his parole, which occurred in 1990.
>
> We redesignate the certiorari proceeding as an appeal, *see Cooper v. Fla. Parole Comm'n*, 924 So.2d 966, 967 n.1 (Fla. 4th DCA 2006), *rev. pending*, No. SC06-1236 (Fla. June 21, 2006); *Roth v. Crosby*, 884 So.2d 407, 408 n.2 (Fla. 2d DCA 2004); *Green v. Moore*, 777 So.2d 425, 426 (Fla. 1st DCA 2000), and treat the petition as Jones' initial brief.
>
> We summarily affirm, pursuant to Florida Rule of Appellate Procedure 9.315(a), concluding that the circuit court did not err in dismissing the habeas corpus petition as untimely. *See* § 95.11(5)(f), Fla. Stat. (2008); *Smith v. Fla. Parole Comm'n*, 987 So.2d 229 (Fla. 4th DCA 2008); *Cooper*, 924 So.2d at 967.
>
> As we did in *Smith*, we certify conflict with *Martin v. Florida Parole Commission*, 951 So.2d 84 (Fla. 1st DCA 2007), *rev. dismissed*, 957 So.2d 635 (Fla. 2007), and *Carpenter v. Florida Parole Commission*, 958 So.2d 564 (Fla. 2d DCA 2007).
>
> *Redesignated as an appeal and Affirmed; Conflict Certified.*

(FPC Appendix, Exhibit L)

12. On March 25, 2009, the Petitioner filed a Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court. (FPC Appendix Exhibit M)

13. On April 3, 2009, the Fourth District Court of Appeal issued a Mandate. (FPC Appendix Exhibit N)

14. On April 27, 2009, Petitioner filed a Jurisdictional Brief in the Florida Supreme Court, Case No. SC09-612.

15. On May 13, 2009, the Commission filed a jurisdictional answer brief with the clerk, which was subsequently stricken by May 13, 2009 order of the Court. The Court directed the Commission to file an amended brief, which the Commission filed on or about May 19, 2009.

16. On or about October 23, 2009, Petitioner's attorney filed an Initial Brief on the Merits.

SUMMARY OF THE ARGUMENT

The Court's jurisdiction arises from the direct conflict between the Fourth District Court of Appeal and the First and Second District Courts of Appeal.

This Court should affirm the Fourth District's opinion and/or adopt a rule setting a reasonable time limit for which inmates can file habeas actions challenging the Commission's parole or conditional release revocation orders since these types of habeas actions do not usually challenge the validity of a criminal conviction or sentence since parole or conditional revocation is a matter of administrative law.

Effectuating a statute of limitations period in habeas actions involving parole and conditional release revocation would assist in the proper administration of justice in each case, protect other litigants' rights to access to

the courts, conserve judicial and state resources for proper disputes, and reduce taxpayer expense in defending frivolous or meritless inmate lawsuits. The doctrine of finality would also be furthered by such a time limit. This is evidenced by the federal system and other jurisdictions which use statutes of limitation in habeas proceedings.

If Section 95.11(5)(f), Florida Statutes is properly applied in this case, the Fourth District acted appropriately in affirming the trial court's dismissal of Appellant's habeas petition since Appellant's filing was untimely. A reasonable approach to determine timeliness is based on the date of parole or conditional release revocation, not a continued tortuous act. This approach would not run afoul of the intended goal of speedy determinations in habeas actions and finality. This approach has been implicitly or expressly utilized by many courts, and would provide inmates with a definite starting point for statute of limitations purposes. The rule of lenity would not apply to make an exception to the statute's application since the statute is clear and neither the statute nor Chapter 947 are penal in nature.

ARGUMENT

I. NATURE OF INTERDISTRICT CONFLICT

To the extent that the Fourth District Court of Appeal's decision of Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA 2008) and

Jones v. Florida Parole Commission, 4 So. 3d 91 (Fla. 4th DCA 2009) is in direct conflict with Martin v. Florida Parole Commission, 951 So. 2d 84 (Fla. 1st DCA 2007) and Carpenter v. Florida Parole Commission, 958 So. 2d 564 (Fla. 2d DCA 2007), the Commission concedes such. Accordingly, for the sake of brevity, the Commission ***only***[2] adopts Appellant's analysis of the interdistrict conflict concerning Section 95.11(5)(f), Florida Statutes, and Appellant's case summaries of Cooper v. Florida Parole Commission, 924 So. 2d 966 (Fla. 4th DCA 2006), Martin, Smith, and Jones. (IB, 14-17, 19-20). The Commission does not agree with Appellant's point concerning Sutton v. Florida Parole Commission, 975 So. 2d 1256 (Fla. 4th DCA 2008) that:

> Sutton therefore seemed to signal an approach in which the Fourth District would apply section 95.11(5)(f) to putative habeas petitions in which a prisoner did not seek immediate release, but would follow the rule set forth in Martin in instances in which an inmate did seek immediate release. However that approach, if such it actually was, was apparently abandoned less than five months later in Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA 2008).

(IB, 19).

The Commission contends that the Fourth District merely analyzed Martin briefly for purposes of understanding the issue on appeal but there does

[2] Emphasis supplied unless otherwise indicated.

not appear to be an indication that the Court would apply section 95.11(5)(f), Florida Statutes to future habeas petitions in which a prisoner does not seek immediate release as Appellant argues.

II. THE FOURTH DISTRICT'S DECISION SHOULD BE AFFIRMED BECAUSE ITS APPLICATION OF SECTION 95.11(5)(f), FLORIDA STATUTES DOES NOT VIOLATE SEPARATION OF POWERS PRINCIPLES

The Fourth District Court of Appeal in Jones v. Florida Parole Commission, 4 So. 2d 391 (Fla. 4th DCA 2009) cited Smith, and Cooper, *supra*, and found that the circuit court did not err in dismissing Appellant's habeas petition as untimely pursuant to Section 95.11(5)(f). Smith, supra, relied upon Cooper, and cited with favor Judge Thomas' concurring opinion in Presley v. Florida Parole Commission, 904 So. 2d 573, 574-575 (Fla. 1st DCA 2005).

Section 95.11(5)(f), Florida Statutes, states:

> Limitations other than for the recover of real property. –Actions other than for recovery of real property shall be commenced as follows:
>
> …
>
> Within One Year. –
>
> …
>
> (f) Except for actions described in subsection (8), a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. 57.085.

"Extraordinary writ" clearly includes habeas corpus actions since habeas actions can be considered extraordinary remedies. Fla. R. Civ. P. 1.630. Section 95.11(5)(f), Florida Statutes, hereinafter "Section 95.11(5)(f)", was enacted in April 1996 to thwart inmates' attempts to file frivolous lawsuits[3] against government at taxpayers' expense. 1996 Fla. Laws ch. 106. If Section 95.11(5)(f), Florida Statutes was enacted to reduce the number of frivolous inmate lawsuits against Florida state government, then adhering to the plain language of this provision would be consistent with the legislature's intent. *See further discussion of frivolous suits below.*

The Commission submits that there is no separation of powers violation here because habeas corpus actions, particularly those involving the Commission's functions of parole and conditional release regulation and

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[3] The house bill specified "civil lawsuits" as the type of actions the law was intended to cover. "Civil," as Appellant intimates in the context of its use of Allen v. Butterworth, 756 So. 2d 52, 63 (Fla. 2000), includes habeas corpus actions, even though they may not be considered typical of what is often considered "civil." State v. Weeks, 166 So. 2d 892, 895 (Fla. 1964) (noting that postconviction habeas corpus proceedings are not steps in a criminal prosecution. On the contrary, they are in the nature of independent, collateral civil actions which are not clothed with the aspects of a criminal prosecution); Tolar v. State, 196 So. 2d 1 (Fla. 4th DCA 1967) (motions for relief under rule [3.850], like habeas corpus, are not steps in the criminal prosecution, but are in the nature of independent, collateral civil actions, based on criminal actions; and appeals from the final judgments are governed by practice of appeals in civil actions). (IB, 24); Mayle v. Felix, 545 U.S. 644, 661 (2005), citing, Fisher v. Baker, 203 U.S. 174, 181, 51 L. Ed. 142, 27 S. Ct. 135 (1906). (Habeas corpus proceedings are characterized as civil in nature).

revocation, do not typically challenge the ***validity of criminal convictions and sentences***. Release on parole or conditional release supervision is an ***administrative*** function,[4] and the Florida courts have repeatedly reviewed parole and conditional release cases in the context of administrative law. See e.g. Richardson v. Florida Parole Commission, 924 So. 2d 908 (Fla. 1st DCA 2006); Griffith v. Florida Parole Commission, 485 So. 2d 818, 820 (Fla. 1986).

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[4] See e.g. Genung v. Nuckolls, 292 So. 2d 587 (Fla. 1974) (supervision of parole is an administrative matter rather than judicial function); State v. Scarlet, 800 So. 2d 220, 221 (Fla. 2001) ("a parole hearing is substantively different, as it is not part of a criminal prosecution. A parole hearing is an administrative proceeding conducted by non-lawyers in a non-judicial setting; traditional rules of evidence generally do not apply.") (internal citation omitted). See also e.g. Hansen v. Duggar, 536 So. 2d 1169 (Fla. 1st DCA 1988) ("Revocation of parole is not part of a criminal prosecution and therefore the full panoply of rights due a defendant in such a proceeding does not apply to parole revocation") (internal citation omitted); Mayes v. Moore, 877 So. 2d 967, 971 (Fla. 2002):

> Conditional release supervision is not a form of sentence, and it is not imposed by a court. Although the statute, Fla. Stat. ch. 947.1405 (2001), may impose an undesirable condition upon the release of those subject to the statutory requirements by converting gain time that might be awarded into post-release 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 Florida Parole Commission…

This fine distinction is of paramount importance because of particular concern to this Court in Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000) in determining the constitutionality of the legislature's deadlines stated in the Death Penalty Reform Act of 2000 appears to have been the fact that habeas corpus proceedings "are the primary avenue through which convicted defendants are able to ***challenge the validity of a conviction and sentence***…" Id. at 62.

This Court specifically held in Allen:

> Based on the foregoing, we conclude that the writ of habeas corpus and other postconviction remedies are not the type of "original civil actions" described in [Williams v. Law, 368 So. 2d 1285 (Fla. 1979)] for which the Legislature can establish deadlines pursuant to a statute of limitations. Due to the constitutional and quasi-criminal nature of habeas proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions.

Id. at 62.

Since Commission actions involving revocation of parole or conditional release are essentially administrative in nature and usually do not involve challenging the validity of an inmate's conviction and sentence (since revocation does not impose a new sentence), there is no separation of powers violation and the legislature and the Court can work together to set reasonable

time limits for which inmates can file habeas corpus actions attacking parole or conditional release revocation. See e.g. Kalway v. Singletary, 708 So. 2d 267 (Fla. 1998) (Court rejected separation of powers argument finding Section 95.11(8), Fla. Stats. and its interplay with Fla. R. Civ. 1.630 to be permissible. 30 day window to challenge inmate disciplinary proceedings reasonable and protects inmates' appellate rights).

Setting a time limit for filing habeas actions involving parole or conditional release revocation is necessary in order to properly administer justice in each case, protect other litigants' rights to access to the courts, conserve judicial resources for proper disputes, and reduce taxpayer expense in defending frivolous or meritless inmate lawsuits. In Smith, *supra*, the Fourth District Court of Appeals agreed with Judge Thomas' concurring opinion in Presley.

The Fourth District acted reasonably in favoring Judge Thomas' concurring opinion in Presley. Since Judge Thomas' concurrence is important for this Court's determination of the issue at hand, it is stated in its entirety:

> I agree with the majority opinion that this case must be remanded for an evaluation of Petitioner's claim that the parole examiner advised Petitioner to admit the parole violation. I note, however, that Petitioner apparently waited more than two years before filing this petition for habeas corpus challenging his parole revocation. While the Parole Commission asserted the defense of laches, the

order below does not address this issue. This court has noted that delayed challenges to parole revocations are subject to an affirmative defense of laches. See Johnson v. Fla. Parole Comm'n, 841 So. 2d 615, 617 (Fla. 1st DCA 2003) (holding that the issue of timeliness of a challenge to the revocation of parole may only be raised by the affirmative defense of laches). To date, the Florida Supreme Court has not adopted a uniform rule establishing a time limitation for filing petitions for habeas corpus challenging a parole revocation. I write to express my view that this case is a good example of the need for such a rule.

Unless the circuit court finds that laches bars consideration of the merits, that court will be required to consider the factual allegations regarding events that occurred in January 2001. When a petitioner files an untimely challenge to a parole revocation, that delay can cause significant difficulties for the circuit court, the Commission, and the petitioner. Habeas corpus petitions challenging parole revocations are generally based on allegations of fact as well as legal grounds. Delay in the evaluation of facts is an impediment to the proper administration of justice.

Time limitations apply to criminal appeals and other related proceedings. Criminal defendants must appeal their convictions within 30 days. Fla. R. App. P. 9.140(b)(3). Petitions for postconviction relief in non-capital cases must be filed within two years, subject to the exceptions provided in Florida Rule of Criminal Procedure 3.850. Habeas corpus petitions asserting ineffective assistance of appellate counsel must be filed within two years, subject to exception. Fla. R. App. P. 9.141(c)(4). In Jordan v. Fla. Parole Comm'n, 403 So. 2d 591 (Fla. 1st DCA 1981), this court held that a mandamus petition was untimely

> filed where a prisoner waited six months to challenge a presumptive parole release date. I believe that petitions for habeas corpus challenging parole revocations should be filed within a reasonable time that protects the rights of the parties to a reliable and fair adjudication of the asserted claims.

Id. at 574-575.

Judge Thomas was concerned about the proper administration of justice[5] since the litigant in Presley waited more than two years to bring his habeas action in the circuit court. Judge Thomas espoused the idea of the Court implementing a procedural rule to limit when inmates may bring habeas actions challenging parole revocation. Id. He referenced time limits for filing postconviction proceedings and habeas corpus actions asserting ineffective assistance of counsel. The doctrine of laches was briefly referenced by Judge Thomas as a current defense the Commission can use.

However, even though the equitable doctrine of laches is an option and the Commission can and does utilize it as an affirmative defense in

[5] In re McDonald, 489 U.S. 180, 184 (1989) ("Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice."); United States v. Robinson, 251 F.3d 594, 596 (7th Cir. 2001) (incessant filings of frivolous motions impose costs both in time and paperwork, burdening the court's staff and delaying disposition of meritorious pleadings); Glasco v. State, 914 So. 2d 512, 512 (Fla. 5th DCA 2005) (recognizing frivolous collateral appeals clog the courts and hurt meritorious appeals by inviting sweeping rulings and by engendering judicial impatience with all defendants).

litigation, laches may not be expansive enough to adequately protect other litigants' right to access to the courts since many inmates file frivolous or meritless petitions which strain limited state and judicial financial resources. Spencer v. Department of Corrections, 823 So. 2d 752 (Fla. 2002) ("Frivolous lawsuits significantly hinder prison administration and discipline. They also adversely affect the administration of justice as a whole."); Britt v. State, 931 So. 2d 209, 210 (Fla. 5th DCA 2006) (defendant's pro se filings were frivolous, an abuse of process, and a waste of the taxpayers' money). See e.g. Steele v. State, 14 So. 2d 321 (Fla. 2009) (inmate had filed 27 meritless or inappropriate petitions involving his conviction or sentence. Court instructed Clerk to reject future filings unless signed by member of Florida Bar); Epps v. State, 17 So. 2d 345 (Fla. 5th DCA 2009) (inmate barred from filing future pro se pleadings; successive claim rejected as appealing his 19 and 21 year old cases); Collins v. State, 10 So. 2d 375 (Fla. 5th DCA 2009) (inmate filed extensively over years challenging his criminal case. Inmate barred from filing future pro se petitions); Lanier v. State, 982 So. 2d 626 (Fla. 2008) (13 filings in two and a half years); Hamilton v. State, 945 So. 2d 1121 (Fla. 2007) (130 frivolous filings); Williams v. State, 936 So. 2d 1157 (Fla. 5th DCA 2006) (10 previous unsuccessful collateral appearances; inmate barred from filing future pro se pleadings); Martin v. State, 833 So.

2d 756 (Fla. 2002) (Court noted in footnote that inmate had filed thousands of lawsuits across the nation and Lexis search revealed 135 cases alone mentioning him by name).

If this Court deems the legislature's one year statute of limitations enunciated in Section 95.11(5)(f) to apply to habeas corpus actions involving parole or conditional release revocation, the Court's act would not be novel. Both the federal system and other states maintain statutes of limitation in habeas corpus actions.

A. STATUTE OF LIMITATIONS IN FEDERAL HABEAS CORPUS PETITIONS

The "Antiterrorism and Effective Death Penalty Act of 1996" ("AEDPA"), signed into law April 24, 1996, amended 28 U.S.C. section 2244 to provide a one-year statute of limitations governing habeas petitions filed by state prisoners:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by

the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

The federal one-year statute of limitations has been consistently upheld and arguments similar to Appellant's separation of powers argument in federal habeas corpus actions have been rejected. E.g. Hinton v. Pliler, CIV-S-01-1174 MCE JFM P (E.D. CA Nov. 30, 2006), adopted by, Hinton v. Pliler, CIV-S-01-1174 MCE JFM P (E.D. CA Feb. 21, 2007). The statute's intent was not only to preserve taxpayer and judicial resources, but to serve the interests of finality of state court judgments. *See generally* Thomas v. Crosby, 371 F.3d 782 (11th Cir. 2004); Day v. McDonough, 126 S.Ct. 1675, 1680 n.1 (2006); 28 U.S.C. § 2254, history and amendments notes. See also e.g. Rhines v Weber, 544 US 269 (2005); Duncan v Walker, 533 US 167 (2001).

Other states have also embraced statutes of limitation in habeas corpus proceedings, including Washington, Kansas, and California.

B. STATUTE OF LIMITATIONS FOR HABEAS CORPUS IN OTHER JURISDICTIONS

In the State of Washington, the legislature authorized and the courts have upheld statute of limitations for collateral attacks on criminal judgments and sentences, including those accomplished through habeas corpus petitions. Section 10.73.090, Rev. Code Wash. (2009) provides one-year time limits for said collateral attacks. In In the Matter of Personal Restraint of Richard Garrett Turay, 150 Wn.2d 71, 74 P.3d 1194 (2003), the Washington Supreme Court applied the statutory one-year statute of limitations to a personal restraint petition challenging a litigant's commitment as a sexually violent predator. The purpose behind the Washington statute of limitation is to manage the flow of post-conviction petitions while promoting finality. In re Pers. Restraint of Bonds, 165 Wn.2d 135, 141-142, 196 P.3d 672, 676 (2008).

In Kansas, the state legislature also enacted a statute of limitations for filing habeas corpus petitions. Kan. Stat. Ann. § 60-1501 (2008). Unlike Washington and the federal system, Kansas allows 30 days to file habeas corpus petitions from the time that administrative remedies are final and exhausted. Section 60-1501(2008) specifically states:

> (a) Subject to the provisions of K.S.A. 60-1507, and amendments thereto, any person in this state who is detained, confined, or restrained of liberty on any

> pretense whatsoever, and any parent, guardian, or next friend for the protection of infants or allegedly incapacitated or incompetent persons, physically present in this state may prosecute a writ of habeas corpus in the supreme court, court of appeals, or the district court f the county in which such restraint is taking place…
>
> (b) Except as provided in K.S.A. 60-1507, and amendment thereto, an inmate in the custody of the secretary of corrections shall file a petition for writ pursuant to subsection (a) within 30 days from the date the action was final, but such time is extended during the pendency of the inmate's timely attempts to exhaust such inmate's administrative remedies.

Battrick v. State, 267 Kan. 389, 985 P.2d 707 (1999) is illustrative. In Battrick, prisoners were challenging their disciplinary convictions and parole denial. The Court upheld the constitutionality of § 60-1501 and affirmed the lower court's dismissal of the inmates' habeas petitions. The Court found the statute did not bar the right to writ of habeas corpus.

In California, there is a broader statute of limitations that governs habeas corpus actions, but timeliness must be shown to the satisfaction of the court. In In re Gerald A. Gallego on Habeas Corpus, 18 Cal. 4th 825 (1998), the Court found the litigant to not be entitled to a presumption of timeliness because his petition was not filed within 90 days after the final due date for the filing appellant's reply brief on direct appeal and he did not

show either absence of substantial delay, good cause for the delay, or other exception.

If the Court holds Section 95.11(5)(f) to apply to Appellant's case, his habeas petition would have been untimely since Appellant's parole revocation date was the correct starting date for the running of the statute.

III. APPELLANT'S HABEAS COPRUS PETITION WAS UNTIMELY UNDER § 95.11(5)(f).

Appellant contends that his habeas corpus petition was timely under Section 95.11(5)(f), as the statute does not specify the commencement date for filing a habeas petition. (IB, 32-33, 35). He goes on to argue that the continuing torts doctrine applies to habeas petitions since the purpose of a petition for writ of habeas corpus is to inquire into the legality of a petitioner's present detention and the underlying trait of a habeas petition is the assertion of continued unlawful detention; there is essentially a continuous injury by the continued unlawful confinement. (IB, 34-35). The Commission disagrees.[6]

[6] See e.g. Tobin v. Damian, 772 So. 2d 13 (Fla. 4th DCA 2000) (continuing tort doctrine argument rejected in civil action alleging sexual abuse. Although the litigant suffered continued sexual abuse and may not have known the full extent of her injuries, statute of limitations period was not tolled. Actions for personal injuries resulting from wrongful acts accrue and statute begins to run from the time the injury was first inflicted, not from the time when the full extent of the damages sustained had been ascertained).

Appellant's reasoning is flawed. If Appellant's argument were correct, then there could be ten, twenty, thirty, or more years of a "continued" injury or unlawful imprisonment before an inmate seeks relief. This would result in a nearly endless time period for filing habeas petitions challenging parole actions and would do nothing to encourage inmates to seek timely relief of their claims. This certainly runs afoul of the intended purpose behind habeas petitions and its use for speedy determinations as well as the doctrine of finality. Kelly v. State, 92 So. 2d 172, 176 (Fla. 1956) (internal cite omitted):

> The object of the writ of habeas corpus is not to determine whether a person has committed a crime, or the justice or injustice of his detention on the merits, but to determine whether he is legally imprisoned or restrained by his liberty. The use of the writ of habeas corpus to test the sufficiency of the evidence upon which a charge may have been based is not sanctioned by the Florida Supreme Court, nor is that writ available to review the sufficiency of a substantive defense.
>
> …
>
> Yet by affirming these cases we would establish a precedent which could do great damage to the orderly administration of the criminal law of our State. A great many of those accused of crimes would automatically resort to habeas corpus to test the sufficiency of the evidence on which an indictment or information was based. Prosecutors, acting for the public, would be forced to display their evidence or suffer discharge of the accused. The accused could go on fishing expeditions into the evidence of the State.

The traditional purpose of habeas corpus is to furnish a speedy hearing and release to one who is unlawfully restrained or when illegality of detention is shown. Frederick v. Rowe, 130 So. 915 (1932); Murray v. Regier, 872 So. 2d 217 (Fla. 2002). For instance, a person arrested illegally is not required to await examination before a magistrate, but may present his petition immediately after he is arrested. People ex rel. Perkins v. Moss, 187 N.Y. 410 (1907).

In discussing the doctrine of finality relating to postconviction relief, the Court in Gusow v. State, 6 So. 3d 699, 704 (Fla. 4th DCA 2009) stated that "easy entitlement to postconviction relief damages the doctrine of finality**.** The legal system places a value on having a case come to an end; it is a serious thing to set aside a plea seven years after the fact. Witnesses disappear, files are lost, and memories fade."

The same is true of habeas corpus actions. The Court in White v. State, Case No.: 1101 (Tenn. App. April 21, 1987) briefly examined the doctrine of finality in habeas corpus actions, and stated:

> There must be finality to all litigation, criminal as well as civil. The courts, the executive branch of government, the legal profession, and the public have been seriously inconvenienced by the prosecution of baseless habeas corpus and post-conviction proceedings. Defendants to criminal prosecutions, like parties to civil suits, should be bound by the judgments therein entered.

Judge Harding, concurring, in Swafford v. State, 679 So. 2d 736, 741 (Fla. 1996) stated:

> Justice Wells is correct in his expressed concern regarding the importance of finality in legal proceedings. The doctrine of finality is a necessary and strong thread that runs through the fabric of our judicial system. Without finality, the affairs of a free society and the rights of its citizens would be severely jeopardized.

The Commission asserts that even though Section 95.11(5)(f) does not specifically identify the trigger date, numerous court have utilized the period of an inmate's parole or conditional revocation date as the trigger date,[7] and this is the most logical starting point. See e.g. Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA 2008); Carpenter v. Florida Parole Commission, 958 So. 2d 564, 565 (Fla. 2d DCA 2007); Martin v. Florida Parole Commission, 951 So. 2d 84, 85 (Fla. 1st DCA 2007); Cooper v. Florida Parole Commission, 924 So. 2d 966, 967 (Fla. 4th DCA 2006); Head v. McNeil, 975 So. 2d 583, 584-585 (Fla. 1st DCA 2008).

An inmate should be reasonably expected to know that his claims stem from the alleged illegal parole or conditional release revocation. See also e.g. Joseph v. State, 301 So. 2d 772 (Fla. 1974) (In a mandamus action seeking sentence recomputation, the Court held that the inmate's parole revocation was effective as of the date upon which the revocation order was

[7] Appellant himself admits this, although he argues against it. (IB, 33).

entered); Abimobola v. U.S., 369 F. Supp. 2d 249 (E.D. N.Y. 2005) (petitioner's second term of federal supervised release commenced on the date of his release from state custody on separate state charges and ended one year later. Petitioner was no longer in custody); Wade v. Robinson, 327 F.3d 328, 334 (4th Cir. 2003) (habeas corpus time frame triggered on factual predicate that inmate's claim could have been discovered: date the parole revocation became final). If the revocation date is utilized as the commencement date in Section 95.11(5)(f), inmates would have a clearer understanding of the starting and ending points in considering litigation.

Here, Appellant's parole was revoked in 1990. (FPC Appendix Exhibit H). Appellant had filed a habeas petition with the lower court on or about November 20, 2008. (IB, 6). (FPC Appendix Exhibit I). Utilizing the parole revocation date as the start date would result in an approximate 18 year delay although the statute of limitation for filing his habeas petition would have run in 1991.

Appellant's habeas petition is untimely pursuant to Section 95.11(5)(f) and the rule of lenity does not save it.

A. LENITY SHOULD NOT APPLY TO HABEAS CORPUS ACTIONS INVOLVING PAROLE OR CONDITIONAL RELEASE REVOCATION

Appellant impliedly argues that lenity applied or should have applied to Section 95.11(5)(f) application to his habeas petition. (IB, 39). The Commission disagrees. Although it is well-established that penal statutes must be strictly construed in favor of a defendant,[8] the statute at issue here is Section 95.11, Florida Statute, not a penal statute.[9] Section 95.11, Florida Statute in its entirety sets out time limits for judicial actions covering those other than for the recovery of real property. This includes legal or equitable actions, actions based on negligence, construction claims, monetary claims, contract claims, and other types of suits.

Additionally, as Appellant argues, if a statute is subject to differing construction, it should be construed in favor of lenity, the Commission submits Section 95.11(5)(f) is not subject to multiple interpretations. (IB,

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[8] See e.g. People v. Gonzalez, 973 P.2d 732, 734-735 (Col. App. 1999) ("The rule of lenity is applied to resolve an ambiguity in substantive criminal statutes in favor of the accused. However, the rule is to be applied only to resolve an 'unyielding statutory ambiguity,' not to create an ambiguity justifying a construction in favor of the defendant.")

[9] The authorities Appellant relies upon are for his lenity position are not directly on point. (IB, 39). For instance, Clements v. State, 979 So. 2d 256, 260 (Fla. 2d DCA 2007) centers around the time period for which the State can prosecute first degree felonies and sexual offenses. Also, Kasischke v. State, 991 So. 2d 803 (Fla. 2008) did not involve a statute of limitations period at all but an interpretation of statutory authority for specifying certain sex offender conditions in probation.

39). It is clear. Section 95.11(5)(f) sets out a one-year time limit for filing actions specifying: "(f) Except for actions described in subsection (8) a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. 57.085."

If the Court examines the rule of lenity as it applies to parole or conditional release revocation actions under Chapter 947, Florida Statutes, the Commission argues that since parole or conditional release revocation is essentially administrative in nature,[10] then the rule of lenity would not apply.

CONCLUSION

WHEREFORE, based on the above argument and authorities, the Commission respectfully urges the Court to affirm the Fourth District's opinion below and/or adopt a rule setting a reasonable time limit for which inmates can file habeas actions challenging the Commission's parole or conditional release revocation orders.

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[10] Genung v. Nuckolls, 292 So. 2d 587 (Fla. 1974) (supervision of parole is an administrative matter rather than judicial function); State v. Scarlet, 800 So. 2d 220, 221 (Fla. 2001) ("a parole hearing is substantively different, as it is not part of a criminal prosecution. A parole hearing is an administrative proceeding conducted by non-lawyers in a non-judicial setting; traditional rules of evidence generally do not apply.") (internal citation omitted). See also e.g. Hansen v. Duggar, 536 So. 2d 1169 (Fla. 1st DCA 1988) ("Revocation of parole is not part of a criminal prosecution and therefore the full panoply of rights due a defendant in such a proceeding does not apply to parole revocation") (internal citation omitted).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was furnished by U.S. Mail to John R. Hamilton, Foley & Lardner, LLP (Attorney for Willie F. Jones DC#021739), 111 N, Orange Avenue, Suite 1800, Orlando, Florida 32802-2193, this 9th day of November, 2009.

\s\Anthony Andrews
ANTHONY ANDREWS
Assistant General Counsel

CERTIFICATE OF COMPLIANCE

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

\s\Anthony Andrews
ANTHONY ANDREWS
Assistant General Counsel