IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-612

WILLIE F. JONES,

Petitioner,

vs.

FLORIDA PAROLE COMMISSION,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FOURTH DISTRICT COURT OF APPEAL

INITIAL BRIEF OF APPELLANT

John R. Hamilton
Florida Bar No. 0774103
jhamilton@foley.com
FOLEY & LARDNER LLP
111 N. Orange Ave., Suite 1800
Post Office Box 2193
Orlando, Florida 32802-2193
Telephone: (407) 423-7656
Facsimile: (407) 648-1743

Attorneys for Petitioner

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PRELIMINARY STATEMENT

In this brief, the petitioner, Willie F. Jones, is referred to as "Jones." The respondent, Florida Parole Commission, is referred to as the "Commission."

The four-page certiorari petition that Jones filed with the Fourth District will be cited as "Cert. Pet., at ___," according to the actual page cited. In that regard, Jones's counsel notes that the handwritten page numbers that Jones put on his pro se petition were wrong. Specifically, although Jones's petition consisted of four pages, he numbered his second page as page 1, his third page as page 2, and his fourth page as page 3. Jones's counsel will disregard Jones's page numbering when citing to that petition--and will cite to page 1 when referring to the unpaginated first page of Jones's petition, cite to page 2 when referring to the second page of that petition (even though Jones labeled that page as page 1), and so on.

The "record" before the district court consisted, in pertinent part, of only two items, both of which were attached to Jones's certiorari petition.[1] The first attachment to that petition was a copy of the order through which the trial court dismissed Jones's habeas corpus petition. In this brief, that two-page order will be cited as "Dismissal Order, at ___,"

[1] The Commission filed nothing in the district court.

according to page number (although the actual order has no page numbers on it).

The second attachment to Jones's certiorari petition was a copy of the "Petition For Writ Of Habeas Corpus Claiming Factual Innocent [sic]" that Jones filed with the trial court. In this brief, that seven-page habeas corpus petition will be cited as "Habeas Pet., at ___," according to page number, notwithstanding Jones's failure to put actual page numbers on that handwritten petition.

Jones's habeas corpus petition, in turn, had four attached exhibits: (1) Exhibit A, which was a copy of a memorandum entitled "Inter-Office Communication" from the Commission; (2) Exhibit B, which was a copy of a court filing reflecting the State of Florida's announcement of a "No Information" with respect to the arrest that eventually led to the revocation of Jones's parole; (3) Exhibit C, which was a copy of the order revoking Jones's parole; and (4) Exhibit D, which was a copy of the statement of the conditions of Jones's parole. When cited in this brief, the exhibits to Jones's habeas corpus petition will be cited as "Habeas Pet., Ex:___," according to the letter that Jones assigned to that exhibit.

STATEMENT OF THE CASE

On October 11, 2006, Jones filed a pro se petition for a writ of habeas corpus in the Circuit Court for the Nineteenth Judicial Circuit, in and for Okeechobee County, Florida. Habeas Pet., at 1-7. In that petition, Jones challenged the revocation of his parole, which had occurred in 1990. Habeas Pet., at 2.

On or after December 5, 2008, the circuit court rendered a final order (the "Dismissal Order") dismissing Jones's habeas petition.[2] Dismissal Order, at 1-2. The basis for the dismissal was the trial court's conclusion that Jones's petition was untimely under section 95.11(5)(f) of the Florida Statutes. Dismissal Order, at 2. Section 95.11(5)(f) is a statute of limitations prescribing a one-year period for "a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner." § 95.11(5)(f), Fla. Stat.

Jones, still acting pro se, filed a petition for a writ of certiorari with the Fourth District Court of Appeal on December 31, 2008. Cert. Pet., at 1-4. The petition was timely under

[2] The documents before the Fourth District do not reflect the precise date that the Dismissal Order was formally rendered for appellate purposes--the date the signed Dismissal Order was filed with the clerk of the trial court. See Fla. R. App. P. 9.020(h). However, that date could have been no earlier than December 5, 2008, the date the trial judge signed the Dismissal Order. See Dismissal Order, at 2.

either rule 9.100(c)(1) (providing 30 days for filing petitions for certiorari) or rule 9.110(b) (providing 30 days for filing a notice of appeal directed to a final order).

In his certiorari petition, Jones argued that the trial court erred in applying section 95.11(5)(f) to dismiss his habeas petition as untimely. Cert. Pet., at 2-3.

The Fourth District did not issue an order to show cause directed to the Commission. Instead, that court redesignated the certiorari proceeding as an appeal from a final order--and treated Jones's petition as his initial brief. See Jones v. Florida Parole Comm'n, 4 So. 3d 91, 91 (Fla. 4th DCA 2009). The Commission did not file an answer brief or otherwise file anything with the Fourth District in response to Jones's certiorari petition.

On March 4, 2008, the Fourth District rendered a decision summarily affirming the Dismissal Order pursuant to rule 9.315(a) of the Florida Rules of Appellate Procedure. See id. In its decision, the Fourth District certified 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). Jones, 4 So. 3d at 91.

On March 25, 2009, Jones timely filed a notice to invoke this court's discretionary jurisdiction. See Fla. R. App. P.

9.120(b). Through an order dated September 9, 2009, this court accepted jurisdiction and appointed appellate counsel for Jones.

STATEMENT OF FACTS

According to his habeas corpus petition, Jones was sentenced to prison for a term of 99 years on March 29, 1968. Habeas Pet., at 2. After serving over 14 years in prison, Jones was paroled on May 25, 1982. Habeas Pet., at 2. However, on April 21, 1990, he was arrested in Broward County, Florida, on charges of possession of cocaine and prowling. Habeas Pet., at 2. But he was never convicted of either offense. Instead, the State of Florida filed a formal "No Information" on April 30, 1990, with respect to that arrest. Habeas Pet., at 2; Habeas Pet., Ex:B.

Nevertheless, at a hearing held on July 16, 1990, the Commission revoked Jones's parole. Habeas Pet., at 2; Habeas Pet., Ex:A, at 2; Habeas Pet., Ex:C. The Commission found that Jones had violated "Condition 8" of his parole--a condition stating: "I will live and remain at liberty without violating the law." Habeas Pet., Ex:D. The Commission found that Jones had violated that condition "by failing to live and remain at liberty without violating the law in that on or about April 21, 1990, in Broward County, Florida he did unlawfully possess a controlled substance, to-wit: cocaine." Habeas Pet., Ex:C.

As far as the record reflects, Jones has remained incarcerated from the time his parole was revoked in July 1990 until the present. On November 20, 2008, he served the Commission with the habeas corpus petition that is at issue in this case. Habeas Pet., at 7. In that petition, Jones asserted his factual innocence of the alleged offense that led to the revocation of his parole. Habeas Pet., at 3. He also alleged facts in support of his claim of actual innocence. Habeas Pet., at 4-5. Moreover, Jones asserted that his petition was not successive or an abuse of the writ of habeas corpus because the merits of his petition had never been ruled upon previously. Habeas Pet., at 3.

The record does not contain any response by the Commission to Jones's habeas petition. Instead, the trial court apparently dismissed Jones's petition sua sponte. The Dismissal Order reads as follows:

> 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 [sic] 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[FN1] 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).[3]

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 [sic] 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.

[FN1] 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

[3] The Southern Reporter contains no reference to this decision by the Fourth District. A review of the district court's online docket nevertheless confirms that the decision exists.

> District Court of Appeal, and certiorari was denied on the merits on March 3, 2008.[4]

Dismissal Order, at 1-2.

Jones filed his certiorari petition with the Fourth District on December 31, 2008. Cert. Pet., at 1-4. In that petition, he argued that the trial court erred in dismissing his habeas petition as untimely under section 95.11(5)(f). Cert. Pet., at 2-3. In that regard, Jones argued, among other things, as follows:

> In Martin v. Fla. Parole Comm., 951 So. 2d 84 (Fla. App. 1st Dist. 2007): the Court ruled that the legitimacy of applying section 95.11 in this situation is questionable in light of Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000), in which the Court held that the legislature was without authority to establish deadlines for asserting claims traditionally remediable through habeas corpus. More to the point, the fundamental characteristic of a habeas corpus claim is an assertion of continued unlawful detention, and the "purpose of a habeas corpus proceeding is to inquire into the legality of the petitioner's present detention." See Sneed v. Mayo, 69 So. 2d 653 (Fla. 1954).

Cert. Pet., at 2.

Without requiring the Commission to respond to Jones's certiorari petition, the Fourth District, on March 4, 2009, issued a decision treating Jones's petition as an initial brief and

[4] Jones's counsel has been unable to identify the decision of the First District to which the trial court referred. Neither the Southern Reporter nor the First District's online docket discloses the existence of such a decision.

summarily affirming the trial court's Dismissal Order. See Jones v. Florida Parole Comm'n, 4 So. 3d 91,91 (Fla. 4th DCA 2009). The court concluded "that the circuit court did not err in dismissing the habeas corpus petition as untimely." Id. In support of that conclusion, the court cited not only section 95.11(5)(f), but also its prior decisions in Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA 2008), and Cooper v. Florida Parole Commission, 924 So. 2d 966 (Fla. 4th DCA 2006). Jones, 4 So. 3d at 91.

Jones timely filed a notice to invoke this court's discretionary jurisdiction on March 25, 2009. This court accepted jurisdiction through an order dated September 9, 2009. In that same order, Jones's appellate counsel was appointed.

SUMMARY OF THE ARGUMENT

This court's jurisdiction in this case arises both because of a certified conflict and because the Fourth District's decision in fact expressly and directly conflicts with decisions of other district courts of appeal on the same question of law. The issue on which conflict exists is whether the one-year statute of limitations set forth in section 95.11(5)(f) of the Florida Statutes applies to petitions for writs of habeas corpus filed by petitioners challenging the

revocation of parole or conditional release supervision. The Fourth District's decision was in error on this point.

Under binding precedent from this court and well-settled principles of Florida constitutional law, the Florida legislature is without authority to adopt rules for the practice and procedure for the courts of this state. Those constitutional separation-of-powers limitations upon the legislature preclude it from creating deadlines for filing petitions for writs of habeas corpus--and this court has previously so held expressly. The Fourth District's decision in this case therefore represents an unconstitutional application of section 95.11(5)(f).

The legislature's impairment of the right to habeas corpus is particularly improper--as is the Fourth District's validation of the legislature's action--because of the unique role that habeas corpus plays in the law. It is accorded special protection, both constitutionally and historically, against curtailment and interference, and the judiciary has the highest duty to safeguard and preserve the right to habeas corpus zealously. This court thus cannot condone either the legislature's encroachment upon the court's own authority or its abridgment of the rights of the citizens of this state.

But even if section 95.11(5)(f) can be applied to habeas corpus petitions, the Fourth District's decision should still be quashed because it erroneously concluded that Jones's habeas petition was filed outside the one-year limitations period prescribed by that statute. In actuality, under a correct, proper construction of section 95.11(5)(f), a habeas petition is timely filed as long as it is filed within one year of the date of a petitioner's current confinement. The Fourth District erred in assuming that the one-year limitations period began to run when Jones first became confined following the revocation of his parole. On the contrary, because Jones challenged his current confinement as illegal, his habeas petition concerned a continuing wrong, for which no statute of limitations could have expired when he filed his petition.

This court should therefore quash the Fourth District's decision here for two independently-dispositive reasons: (1) the district court erroneously held that section 95.11(5)(f) applied to Jones's habeas petition; or (2) Jones's habeas petition was timely under section 95.11(5)(f) even if the petition was subject to that statute.

ARGUMENT

A. THIS COURT HAS JURISDICTION TO REVIEW THIS CASE

1. Certified Conflict Exists

This court has discretionary jurisdiction to review Jones's case under article V, section 3(b)(4), of the Florida Constitution because the Fourth District certified that its decision in this case conflicted with decisions of two other district courts of appeal on the same question of law: 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). See Jones v. Florida Parole Commission, 4 So. 3d 91, 91 (Fla. 4th DCA 2009); see also Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi).

2. Express and Direct Conflict Exists

Even without the Fourth District's certification, it would nonetheless be clear that conflict jurisdiction existed here under article V, section 3(b)(3), of the Florida Constitution. Additionally, as discussed more fully later in this brief, the Fourth District's decision expressly and directly conflicts not only with Martin and Carpenter on the same question of law, but it also expressly and directly conflicts with this court's decision in Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000). See Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

Even the Commission has agreed that this court has jurisdiction here and has urged this court "to accept discretionary jurisdiction in this case in order to render a clear binding prospective opinion on all Florida courts" based on "the likely recurrence that this issue will arise again." Respondent's Amended Brief on Jurisdiction at 6. Indeed, both the interdictrict conflict and the need for this court's resolution of that conflict are obvious.

The original basis for the Fourth District's decision here can be found in its prior decision in Cooper v. Florida Parole Commission, 924 So. 2d 966 (Fla. 4th DCA 2006). In Martin, the First District certified conflict with Cooper.[5] 951 So. 2d at 86. In Carpenter, the Second District did so as well. 958 So. 2d at 565.

The Fourth District nevertheless followed Cooper in Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA

[5] Without further acknowledging the existing interdistrict conflict, the First District has, in at least four other reported decisions, followed Martin and reversed orders in which trial courts denied habeas corpus petitions as time-barred under section 95.11(5)(f) in cases in which inmates challenged the revocation of parole or conditional release supervision. See Barrera v. Florida Parole Commission, 987 So. 2d 810 (Fla. 1st DCA 2008); Kelley v. Florida Parole Comm'n, 987 So. 2d 786, 786 (Fla. 1st DCA 2008); Ressler v. McNeil, 993 So. 2d 1069, 1069 (Fla. 1st DCA 2008); Small v. Florida Parole Comm'n, 956 So. 2d 1269, 1269 (Fla. 1st DCA 2007). The Fourth District's decision here is in conflict with those decisions, just as they are in conflict with Martin and Carpenter.

2008), and certified conflict with Martin and Carpenter. Id. at 229-30. And the Fourth District again followed Cooper (along with Smith) in this case--and once again certified conflict with Martin and Carpenter. 4 So. 3d at 91.

3. The Nature of the Interdistrict Conflict

The issue in this case that has given rise to interdistrict conflict concerns the effect, if any, of section 95.11(5)(f) of the Florida Statutes as applied to a petition for a writ of habeas corpus filed by an inmate challenging the revocation of his or her parole or conditional release supervision. That statute provides, in pertinent part, as follows:

> **95.11 Limitations other than for the recovery of real property.--**Actions other than for recovery of real property shall be commenced as follows:
>
> . . .
>
> (5) 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.

§ 95.11(5)(f), Fla. Stat.[6]

Section 95.11(5)(f) became effective on July 1, 1996. See Ch. 96-106, § 7, at 75, Laws of Fla.[7] But it did not receive its first substantive attention in the case law until Cooper v. Florida Parole Commission, 924 So. 2d 966 (Fla. 4th DCA 2006). In that case, an inmate sought appellate review of a circuit court's order dismissing the inmate's petition for a writ of habeas corpus. The inmate had challenged the revocation of his conditional release supervision. Id. at 966. The trial court treated the inmate's habeas petition as a petition for a writ of mandamus and held that the petition was untimely under rule 9.100(c)(2) of the Florida Rules of Appellate Procedure. Id. at 967. That rule imposes a 30-day time limitation for filing petitions challenging quasi-judicial action of local governmental bodies. Id.

On review, the Fourth District observed that the trial court had incorrectly converted the inmate's habeas petition into

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[6] Subsection (8) of section 95.11 concerns actions challenging correctional disciplinary proceedings; the subsection grants 30 days to file actions of that nature. See § 95.11(8), Fla. Stat. Section 57.085 of the Florida Statutes defines "prisoner" as "a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing." § 57.085(1), Fla. Stat.

[7] Section 95.11(5)(f) was created as part of a bill that was expressly intended to address frivolous inmate lawsuits. See Ch. 96-106, Preamble, at 72, Laws of Fla.

a mandamus petition, but nevertheless affirmed the order dismissing the inmate's petition. Id. In a one-sentence holding, the Fourth District concluded, without elaboration, that the inmate's petition was untimely under section 95.11(5)(f). Id.

In Martin v. Florida Parole Commission, 951 So. 2d 84 (Fla. 1st DCA 2007), the First District was presented with the same issue that had arisen in Cooper. The inmate in question had been released into conditional release supervision in August 2003, but the Commission revoked his supervision through an order of December 15, 2004, and the inmate was returned to custody. Id. at 85. Through a habeas corpus petition placed into the hands of prison officials for mailing on December 21, 2005, the inmate challenged the revocation of conditional release supervision and his continued incarceration. Id. The trial court, similar to the what the trial court did in Cooper, viewed the inmate's petition as an effort to obtain certiorari review of the Commission's revocation order and dismissed the petition as time-barred under the 30-day time limitation set forth in rule 9.100(c)(2). Id.

Upon appellate review, the First District first concluded that the trial court had erred in applying rule 9.100(c)(2) to the inmate's petition and in converting that petition into one seeking something other than habeas relief. Id. The court then addressed section 95.11(5)(f) and Cooper, which the

Commission had argued as an alternative ground for affirming the trial court's dismissal of the inmate's habeas petition. Id. The court rejected the Commission's argument, concluding that its reasoning (and that of Cooper) was "flawed for two reasons." Id.

> First, the legitimacy of applying section 95.11(5)(f) in this situation is questionable in light of Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000), in which the court held that the legislature was without authority to establish deadlines for asserting claims traditionally remediable through habeas corpus. More to the point, the fundamental characteristic of a habeas claim is an assertion of continued unlawful detention, and the "purpose of a habeas corpus proceeding is to inquire the legality of the petitioner's present detention." See Sneed v. Mayo, 69 So. 2d 653 (Fla. 1954). Inasmuch as Martin alleged that he continued to be unlawfully detained, his claim was necessarily filed within the one-year time limitation established by the statute.

Id. at 85-86 (footnote omitted). The court, as previously noted, certified conflict with Cooper. Id. at 86.

The Second District aligned itself with Martin in Carpenter v. Florida Parole Commission, 958 So. 2d 564 (Fla. 2d DCA 2007). That case too involved an inmate who filed a petition for a writ of habeas corpus challenging the revocation of his conditional release. Id. at 565. The trial court denied the petition both on timeliness grounds and on the merits. The Second District disagreed with the trial court on the timeliness issue, stating its agreement with the inmate's contention "his habeas

petition was not time-barred by section 95.11(5)(f)." Id. The court expressly adopted the reasoning set forth in Martin and certified conflict with Cooper. Id.

After Martin was decided, the Fourth District seemed to make one effort to try to reconcile Martin and Cooper. That effort appeared in Sutton v. Florida Parole Commission, 975 So. 2d 1256 (Fla. 4th DCA 2008), which involved an inmate who filed a motion under rule 3.800(c) of the Florida Rules of Criminal Procedure to correct a purportedly illegal sentence--and who expressly disclaimed habeas corpus as a remedy that he sought. Id. at 1260. In denying relief (on rehearing), the Fourth District contrasted the inmate to the litigant in Martin. As to the inmate in Martin, the Fourth District stated:

> [Sutton's] circumstances should be compared with [Martin's]. [Martin's] claim resembles this one, except for the question of immediate release. He too has been given early release, later revoked by the Commission. He challenged the revocation by habeas corpus, but the trial court held that his remedy was by certiorari because he was seeking review of the agency's decision. On appeal the district court reversed, finding habeas appropriate because he was seeking immediate release. The court also held that the one-year time limit on seeking review of such action was not applicable because there can be no statutory time bar to seeking immediate release under habeas corpus.
>
> Here the prisoner disclaims immediate release, even though he does make plain that his true release date is imminent. His

> circumstance is thus like the prisoner's in [Cooper]. There the prisoner challenged the revocation of his early release by filing a petition for habeas corpus but did not claim entitlement to immediate release. We held that his remedy was to petition for mandamus to correct the agency's interpretation of the statute and that mandamus relief was covered by the one-year time limitation of section 95.11(5)(f), rather than rule 9.100(c)(2). We also made clear that habeas corpus was not available at that point because he did not seek immediate release. Plainly, the prisoner in this case is also seeking judicial review of the three-year old Commission decision to deny him credit against his sentence for the time he was confined under [the Jimmy Ryce Act]. As in Cooper, such a claim is covered by the one-year statute of limitations on prisoner petitions for extraordinary writs not challenging a conviction.

Id. at 1261 (emphasis in original).

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). In that case, the court merely cited Cooper to "affirm the circuit court's order dismissing as untimely the petition for writ of habeas corpus challenging appellant's parole revocation." Id. at 229. The

court certified conflict with Martin and Carpenter on the issue of whether section 95.11(5)(f) "applies to a petition for writ of habeas corpus that seek review of an order revoking parole or conditional release supervision." Id. at 229-30.

The next appellate decision of note on this issue was Jones's case. See Jones v. Florida Parole Comm'n, 4 So. 3d 91 (Fla. 4th DCA 2009). In affirming the Dismissal Order, the Fourth District simply cited to section 95.11(5)(f), Cooper, and Smith and stated: "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." Id. at 91. The court then again certified conflict with Martin and Carpenter.[8]

This court should now clarify which line of cases is correct: Those of the Fourth District or those of the First and Second Districts. As explained below, the latter are right. The Fourth District's decision here to the contrary should therefore be quashed, and its earlier decisions to the same effect in Smith and Cooper should be disapproved.

[8] Like Jones, the inmates in Cooper, Martin, Carpenter, and Smith were all pro se. See Jones, 4 So. 3d at 91; Smith, 987 So. 2d at 229; Carpenter, 958 So. 2d at 564; Martin, 951 So. 2d at 85; Cooper, 924 So. 2d at 966. The same is true for virtually all of the reported cases cited in this brief in which the Commission was a party.

B. THE FOURTH DISTRICT'S DECISION SHOULD BE QUASHED BECAUSE ITS APPLICATION OF SECTION 95.11(5)(f) OF THE FLORIDA STATUTES RENDERS THAT STATUTE UNCONSTITUTIONAL AS APPLIED

1. The Fourth District Applied Section 95.11(5)(f) in Violation of Separation-of-Powers Principles of the Florida Constitution

The Fourth District's decision in this case cannot be reconciled with this court's decision in Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000)--or with the well-settled principles of Florida constitutional law that this court applied in Allen. The same fatal deficiency taints the Fourth District's decisions in Cooper v. Florida Parole Commission, 924 So. 2d 966 (Fla. 4th DCA 2006), and Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA 2008). The ultimate consequence is that the Fourth District's applied section 95.11(5)(f) of the Florida Statutes unconstitutionally in this case.[9]

In Allen, this court addressed the constitutionality of the Death Penalty Reform Act of 2000("DPRA"), chapter 2000-3, Laws of Florida. Id. at 54. The court held that the DPRA was "an unconstitutional encroachment on this Court's exclusive power to 'adopt rules for the practice and procedure in all courts.'" Id. (quoting Art. V, § 2(a), Fla. Const.).

[9] The Fourth District did not mention Allen either in its decision in this case or in its prior decisions in Smith or Cooper. Jones, however, argued and relied upon Allen in the certiorari petition that he filed in that court. See Cert. Pet., at 2.

The invalid DPRA provisions in question were the deadlines that the legislature created for filing postconviction motions in death penalty cases. See id. at 59-60. This court concluded that those legislatively-created deadlines were unconstitutional under the separation-of-powers provisions of the Florida Constitution. Id. The court stated:

> We find the resolution of the separation of powers claim to be dispositive in this case. Article II, section 3 of the Florida Constitution prohibits the members of one branch of government from exercising "any powers appertaining to either of the other branches unless expressly provided herein." Article V, section 2(a) states that the Florida Supreme Court has the exclusive authority to "adopt rules for the practice and procedure in all courts, including the time for seeking appellate review." The Legislature has the authority to repeal judicial rules by a two-thirds vote, but the authority to initiate rules rests with the Court.

Id. at 59.

The state nevertheless argued in Allen that the legislature acted within its authority in enacting the DPRA's deadlines for filing postconviction motions because those deadlines were "statutes of limitations and are therefore substantive." Id. at 60. This court rejected that argument, explaining that postconviction proceedings, although "technically civil actions," are "unlike other traditional civil actions." Id. Indeed, postconviction proceedings--including motions under rules

3.850 and 3.851 of the Florida Rules of Criminal Procedure as well as habeas corpus and coram nobis proceedings--are unique.

> Technically, habeas corpus and other postconviction relief proceedings are classified as civil proceedings. Unlike a general civil action, however, wherein parties seek to remedy a private wrong, a habeas corpus or other postconviction relief proceeding is used to challenge a validity of a conviction and sentence. [Citations omitted.] Consequently, postconviction relief proceedings, while technically classified as civil actions, are actually quasi-criminal in nature because they are heard and disposed of by courts with criminal jurisdiction.

Id. at 61 (quoting State ex rel. Butterworth v. Kenny, 714 So. 2d 404, 408-10 (Fla. 1998)).

This court also emphasized that the writ of habeas corpus, in addition to being quasi-criminal, is also explicitly derived from the text of, and expressly protected by, the Florida Constitution.[10] See id. (citing Art. I, § 13, Fla. Const.).

In further explaining the absence of merit to the state's argument that the legislature was authorized to enact the "statutes of limitations" embodied in the DPRA, this court stated

[10] The constitutional provision in question reads as follows:

> The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

Art. I, § 13, Fla. Const.

that "'[a]s a general rule . . . whatever power is conferred upon the courts by the Constitution cannot be enlarged or abridged by the Legislature.'" Id. (quoting State ex rel. Buckwalter v. City of Lakeland, 150 So. 508, 512 (Fla. 1933)). On the ultimate issue of the constitutionality of the legislatively-created deadlines in the DPRA, this court's holding was as follows:

> 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 (footnote omitted).

Moreover, this court noted that it had not "cede[d] to the Legislature the power to control the time in which extraordinary writ actions must be commenced." Id. at 62 n.4. Thus, the invalidity of the deadlines that the legislature inserted in the DPRA necessarily followed as a matter of law.

> [W]e conclude that the establishment of time limitations for the writ of habeas corpus is a matter of practice and procedure and, therefore, the judiciary is the only branch

> of government authorized by the Florida Constitution to set such deadlines. Accordingly, we hold the DPRA in large part invalid as an encroachment on this Court's exclusive power to "adopt rules for the practice and procedure in all courts." Art. V, § 2(a), Fla. Const.

Id. at 64 (emphasis added).

The application of Allen here is obvious--as is the inconsistency between Allen and the Fourth District's decision in this case. Applying section 95.11(5)(f) to habeas corpus petitions is no more constitutional than were the postconviction deadlines that the Florida legislature improperly inserted in the DPRA. The former is constitutionally impermissible for precisely the same reasons as were the latter. As this court expressly held in Allen, the legislature is without constitutional authority to establish time limitations for filing petitions for habeas corpus relief; under the Florida Constitution, that authority rests exclusively with this court.

Thus, unless and until this court adopts a rule imposing a time limitation for the filing of habeas corpus petitions by individuals in Jones's situation (such as what this court has done in rules 3.850 and 3.851 of the Florida Rules of Criminal Procedure), Florida law has no formal deadline for habeas

petitions of that nature.[11] Section 95.11(5)(f) cannot constitutionally be applied for that purpose, and the Fourth District's conclusion to the contrary was simply wrong.[12] Its decision should therefore be quashed.

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[11] Nevertheless, even current law does not provide inmates such as Jones with the unrestrained ability to seek habeas relief forever, irrespective of the passage of time. An unexplained, inexcusable delay in filing a petition for a writ of habeas corpus can potentially result in waiver. See Chastain v. Mayo, 56 So. 2d 540, 542 (Fla. 1952). Moreover, laches can also bar a habeas corpus petition. See, e.g., McCray v. State, 699 So. 2d 1366, 1368 (Fla. 1997). But before laches can preclude habeas relief, the state must show that it has been prejudiced by a petitioner's unreasonable delay in filing the habeas petition. See, e.g., id.; Johnson v. Florida Parole Comm'n, 841 So. 2d 615, 617 (Fla. 1st DCA 2003); see also Edmond v. Mississippi Dep't of Corrections, 783 So. 2d 675, 678 (Miss. 2001). The determination of whether laches bars a habeas petition is therefore fact-specific, and it should be made in the first instance by a trial court; it is inappropriate to decide that issue for the first time at the appellate level. See, e.g., Bryant v. Florida Parole Comm'n, 965 So. 2d 825, 825 (Fla. 1st DCA 2007). Jones nonetheless suggests that principles of waiver or laches should rarely be used to bar an otherwise-meritorious habeas petition. "The longer the unlawful imprisonment, the greater the wrong that the prisoner has suffered, and the stronger, not the weaker, are the reasons for judicial interference." State v. Cynkowski, 88 A.2d 220, 223 (N.J. App. Div.), aff'd, 92 A.2d 782 (N.J. 1952) (quoted in State v. Sutphin, 164 P.3d 72, 77 (N.M. 2007)).

[12] The First District has noted that "the Florida Supreme Court has not by rule adopted a . . . time limit to challenge orders of [the Commission] or [presumptive parole release date] proceedings. Accordingly, the question of timeliness must be raised by the affirmative defense of laches." Johnson, 841 So. 2d at 617; see also Presley v. Florida Parole Comm'n, 904 So. 2d 573, 574 (Fla. 1st DCA 2005) (Thomas, J., concurring) ("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").

2. The Conclusion That Section 95.11(5)(f) Cannot Constitutionally be Applied to Habeas Corpus Petitions is in Furtherance of the Purposes, History, and Principles of Habeas Corpus

The conclusion that no statute of limitations does--or properly can--bar Jones's habeas corpus petition is not an unusual or remarkable one. On the contrary, it is one that is fully consistent with not only the law in other jurisdictions of this nation, but also the purposes of, history of, and principles underlying the Great Writ of habeas corpus.

The general rule in this country is that "[t]here is no fixed time limit within which an application for a writ of habeas corpus may, or must, be made." 39A C.J.S., Habeas Corpus § 281 (June 2009) (footnotes omitted). In fact, the typical rule is that "[t]he court on habeas corpus proceedings is not bound by any statute limiting the time within which application for the writ may be made, or by any legal or equitable rule applying such a limitation by analogy." Id.; see also Atmore v. State, 530 So. 2d 905, 907 (Ala. Ct. Crim. App. 1988); Julian v. State, 966 P.2d 249, 253-54 (Utah 1998).

The courts' zealous protection of habeas corpus has its roots in antiquity--as does their refusal to recognize any efforts to impair the exercise of the right to habeas relief. For example, Blackstone referred to the writ of habeas corpus, or the

Great Writ, as "the most celebrated writ in the English law." 3 Blackstone Commentaries 129. Blackstone described the writ as follows:

> If a probable ground be shown that the party is imprisoned without just cause, the writ of habeas corpus is then a writ of right, which may not be denied, but ought to be granted to every man that is committed, or detained in prison or otherwise restrained, though it be by the command of the king, the privy council, or any other.

3 Blackstone Commentaries 133.

Similarly, the United States Supreme Court has stated that habeas corpus is

> a writ antecedent to statute, and throwing its root deep into the genius of our common law. . . . It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I [in the late thirteenth century].

Fay v. Noia, 372 U.S. 391, 399-400 (1963).[13]

This court too has celebrated the venerated position that the writ of habeas corpus holds in our law. This court has observed that "[t]he writ of habeas corpus is a common-law writ of ancient origin designed as a speedy method of affording a judicial inquiry into the cause of any alleged unlawful custody of an

[13] In Wainwright v. Sykes, 433 U.S. 72 (1977), the Court receded from some unrelated dicta in Fay. Id. at 87-88.

individual or any alleged unlawful actual deprivation of personal liberty." Porter v. Porter, 53 So. 546, 547 (Fla. 1910). As more fully explained in State ex rel. Deeb v. Fabisinski, 152 So. 207 (Fla. 1933):

> The great writ, commonly known by the name of "habeas corpus," was a high prerogative writ known to the common law, the object of which was the liberation of those who were imprisoned without sufficient cause. . . .
>
> . . .
>
> [W]hile the writ had been in use in England from remote antiquity, it was often assailed by kings who sought tyrannical power and the benefits of the writ were in a great degree eluded by time-serving judges who assumed a discretionary power in awarding or refusing it and were disposed to support royal and ministerial usurpations. Owing to such abuses, the writ became powerless to release persons imprisoned without any cause assigned. In the fight by the people against the abuses of the writ, petitions of rights were submitted to the king, and during the reign of Charles I, A. D. 1641, provisions were enacted intended to make the writ effectual. These activities were, however, in vain. At last, in 1679, the Statute 31 Chas. II, chap. 2, was enacted. That act is known as the habeas corpus act. That act has been substantially incorporated into the jurisprudence of every state in the Union and the right to it secured by their Constitutions.
>
> . . .
>
> The great writ of habeas corpus is the one mentioned in Magna Carta in the year 1215; the writ which alone was the subject of the acts of 16 Chas. I and 31 Chas. II. It was

> the writ referred to in the Declaration of Independence and secured to the people of this country by the Constitution of the United States and the Constitutions of the different states.

Id. at 209.

The United State Supreme Court has made a similar observation.

> Received into our own law in the colonial period, given explicit recognition in the Federal Constitution, Art. I, § 9, cl. 2, incorporated in the first grant of federal court jurisdiction, Act of September 24, 1789, c. 20, § 14, 1 Stat. 81-82, habeas corpus was early confirmed by Chief Justice John Marshall to be a "great constitutional privilege."

Fay, 372 U.S. at 400 (quoting Ex parte Bollman, 8 U.S. (4 Cranch) 75, 95 (1807)).

Owing to the crucial role that habeas corpus plays in our system, this court has emphasized the need to protect the right to habeas corpus jealously and without significant burden. For example, this court has said that "[n]either the right to the writ nor the right to be discharged from custody in a proper case is made to depend upon meticulous observance of the rules of pleading." Ex Parte Amos, 112 So. 289, 292 (Fla. 1927). On the contrary, "[i]f it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities

and issue such appropriate orders as will do justice." Anglin v. Mayo, 88 So. 2d 918, 919 (Fla. 1956); see also Amos, 112 So. at 291 ("The writ of habeas corpus is a writ of right"); Chase v. State, 113 So. 103, 106 (Fla. 1927) ("It is well settled in this state that the writ of habeas corpus is a writ of right").

"Habeas corpus, then, like the unicorn, is a unique animal. Public policy demands that it be readily, speedily and constantly available. The judiciary has been singularly zealous in responding to that policy." Jamason v. State, 447 So. 2d 892, 895 (Fla. 4th DCA 1983), aff'd, 455 So. 2d 380 (Fla. 1984); see also Bowen v. Johnston, 306 U.S. 19, 26 (1939) ("[I]t must never be forgotten that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired").

This case presents one of those occasions in which the courts are again called upon to observe their time-honored responsibility to safeguard the Great Writ against dilution and encroachment. The legislature, according to the Fourth District, has the power to impair the right of habeas corpus by imposing a one-year limitation upon the exercise of that right. But Florida law grants the legislature no such authority. This court should accordingly quash the district court's decision to the contrary.

C. JONES'S PETITION FOR A WRIT OF HABEAS CORPUS WAS TIMELY EVEN UNDER SECTION 95.11(5)(f) OF THE FLORIDA STATUTES, AS THAT STATUTE IS CORRECTLY CONSTRUED AND INTERPRETED

Even if this court rejects the foregoing argument--and holds that section 95.11(5)(f) can constitutionally be applied to petitions for writs of habeas corpus--the Fourth District's decision in this case should be quashed nevertheless. The district court erred in concluding that Jones's petition was filed outside the limitations period prescribed by that statute. In truth, a proper interpretation of that statute reveals that Jones's habeas petition was timely.

The mistake that the Fourth District made was its apparent assumption as to when the one-year period prescribed by section 95.11(5)(f) began to run. Although the court did not identify the commencement date for the limitations period, it seemed to assume that the one-year period began to run in 1990, when Jones's parole was revoked.[14] See Jones v. Florida Parole Comm'n, 4 So. 3d 91, 91 (Fla. 4th DCA 2009) (referring to Jones's "petition for writ of habeas corpus, filed in the circuit court in November 2008, in which he challenged the revocation of his

[14] The trial court, when dismissing Jones's petition as untimely under section 95.11(5)(f), likewise did not identify the date on which it believed the one-year statute of limitations began to run. See Dismissal Order, at 1-2.

parole, which occurred in 1990"). That assumption by the court was erroneous as a matter of law.[15]

The language of section 95.11(5)(f) itself does not specify when its one-year period begins to run. It therefore becomes necessary to resort to other principles of law to ascertain the answer to that question. Once one does so, the error in the district court's assumption is readily revealed.

Under section 95.031 of the Florida Statutes, a cause of action accrues when the last element constituting that cause of action occurs. But a cause of action does not accrue for purposes of a statute of limitations until an action can be brought. See, e.g., State Farm Mut. Auto. Ins. Co. v. Lee, 678 So. 2d 818, 821 (Fla. 1996); New York State Dep't of Taxation v. Patafio, 829 So. 2d 314, 317 (Fla. 5th DCA 2002). These principles have been applied to section 95.11(5)(f). See Canete v. Florida Dep't of Corrections, 967 So. 2d 412, 415 (Fla. 1st DCA 2007).

[15] In the other reported cases in which this same issue has arisen, the courts (without any discussion and without challenge by the pro se inmates) have apparently indulged the same assumption--that the one-year period in section 95.11(5)(f) began to run upon the revocation of the inmate's parole or conditional release supervision. See Smith v. Florida Parole Comm'n, 987 So. 2d 229, 229 (Fla. 4th DCA 2008); Carpenter v. Florida Parole Comm'n, 958 So. 2d 564, 565 (Fla. 2d DCA 2007); Martin v. Florida Parole Comm'n, 951 So. 2d 84, 85 (Fla. 1st DCA 2007); Cooper v. Florida Parole Comm'n, 924 So. 2d 966, 967 (Fla. 4th DCA 2006); see also Head v. McNeil, 975 So. 2d 583, 584-85 (Fla. 1st DCA 2008).

These rules are modified somewhat, however, in cases involving a continuing wrong or continuing tort, a doctrine that this court has long recognized. See, e.g., Seaboard Air Line R.R. Co. v. Holt, 92 So. 2d 169, 170 (Fla. 1956). Those cases are characterized by "'continual tortious acts, not by continual harmful effects from an original, completed act.'" Suarez v. City of Tampa, 987 So. 2d 681, 686 (Fla. 2d DCA 2008) (quoting Horvath v. Delida, 540 N.W.2d 760, 763 (Mich. Ct. App. 1995)) (emphasis in original).

In such cases, the statute of limitations "runs from the time of the last tortious act." Millender v. State Dep't of Transp., 774 So. 2d 767, 769 (Fla. 1st DCA 2000); see also Halkey-Roberts Corp. v. Mackal, 641 So. 2d 445, 447 (Fla. 2d DCA 1994); Laney v. American Equity Invest. Life Ins. Co., 243 F. Supp. 2d 1347, 1357 (M.D. Fla. 2003) ("Under the continuing torts doctrine, the statute of limitations runs from the date that the tortious conduct ceases").

A habeas corpus proceeding is the quintessential example of a continuing wrong--an ongoing, continuing act of illegal detention that renews and recurs anew each day the illegal confinement persists. Thus, a straightforward application of basic principles of Florida statute-of-limitations law leads inescapably to the conclusion that the one-year limitations period

in section 95.11(5)(f), as applied to a petition for a writ of habeas corpus, cannot commence as long as a petitioner remains illegally confined, given that the statute does not otherwise specify when the limitations period commences. Jones's habeas petition was therefore timely under section 95.11(5)(f), and the Fourth District's conclusion to the contrary was erroneous as a matter of law.

Case law supports this view. For example, as previously noted, in Martin v. Florida Parole Commission, 951 So. 2d 84 (Fla. 1st DCA 2007), the First District expressly held that the inmate's habeas petition would be timely under section 95.11(5)(f) even if that statute applied. In that regard, the court noted that "the fundamental characteristic of a habeas claim is an assertion of continued unlawful detention, and the 'purpose of a habeas corpus proceeding is to inquire into the legality of the petitioner's present detention.'" Id. at 85-86 (quoting Sneed v. Mayo, 69 So. 2d 653, 654 (Fla. 1954)). That principle led inescapably to the conclusion that the habeas petition by the inmate, Martin, was timely.[16] Specifically, the court stated that "[i]nasmuch as Martin alleged that he continued to be unlawfully detained, his

[16] Jones raised and preserved this issue before the Fourth District by arguing, citing, and quoting from Martin. See Cert. Pet, at 2.

claim was necessarily filed within the one-year time limitation established by the statute." Martin, 951 So. 2d at 86.

Martin does not stand alone on this issue. But the concurring opinion of a judge on Utah Court of Appeals perhaps contains the best, and most expansive, explanation of why a habeas petition such as the one Jones filed would be timely under a statute of limitations such as section 95.11(5)(f). In that case, Currier v. Holden, 862 P.2d 1357 (Utah Ct. App. 1993), the court held unconstitutional a Utah statute that imposed a three-month time limitation for filing a habeas petition. Id. at 1358, 1372.

The concurring judge, Judge Orme, addressed the State of Utah's position that the statute required petitioners to file their habeas petitions within three months of a particular event. Id. at 1373 (Orme, J., concurring). Judge Orme analyzed the issue as follows:

> While the State's interpretation is a plausible one, an alternative interpretation of the statutory scheme is also possible. Under the alternative view, the petitions for writs of habeas corpus were timely filed because illegal imprisonment is an ongoing violation of constitutional rights, from which it follows that a new cause of action accrues with each day of illegal confinement. Under this alternative interpretation, which recognizes the gravamen of a habeas corpus action to be illegal confinement rather than the particular occurrence which makes the confinement illegal, these petitions were timely because they were filed while these petitioners were allegedly confined

unlawfully, and thus well within three months of such confinement.

. . .

. . . I favor the alternative interpretation. . . . But does the interpretation I favor have a firm underpinning in jurisprudence? I believe it does, for two basic reasons. First, the alternative interpretation is more consistent with the paramount role that "the Great Writ" plays in our legal system. Second, this interpretation conforms with the theory of a "continuing wrong," which has long been recognized in analogous circumstances.

. . .

In order to arrive at just results where illegal imprisonment or other restraint of liberty is challenged in habeas corpus proceedings, there must be a delicate balancing of two competing goals: finality and liberty. . . . The realization that the State violates the constitutional rights of a person each day he or she is illegally confined comports with the conceptual underpinning of the Great Writ. Consequently, such an interpretation best promotes just results in cases where a prisoner's claims of illegal confinement or restraint arguably have merit.

. . .

Generally, "a cause of action accrues upon the happening of the last event necessary to complete the cause of action." Becton Dickinson & Co. v. Reese, 668 P.2d 1254, 1257 (Utah 1983). In a typical case, the application of this rule is reasonably straightforward because a single event occurs, such as a punch in the nose or trespass upon one's property, which completes a cause of action. Courts however, have

> adapted to rarer instances where a defendant's wrongful actions occur over a period of time. In such cases, "where a continuous chain of events or course of conduct is involved the cause of action accrues at the time of the final act in that series of events or course of conduct." Barbaccia v. County of Santa Clara, 451 F. Supp. 260, 266 (N.D. Cal. 1978). The focus of an inquiry into whether plaintiff's allegations are governed by the continuing wrong theory is on the defendant's wrongful activities. New Port Largo, Inc. v. Monroe County, 706 F. Supp. 1507, 1516 (S.D. Fla. 1988)[, vacated, 985 F.2d 1488 (11th Cir. 1993)].
>
> Courts have applied the "continuing wrong" theory in a variety of contexts, particularly where civil rights are at stake. [Citations omitted.]
>
> Assuming that petitioners' substantive claims are factually true and legally cognizable, their daily confinement is a continuing wrong because it is based on convictions which were obtained in violation of their rights under the Sixth Amendment. Because these petitioners allege that the State is unlawfully detaining them on an ongoing basis, application of the continuing wrong doctrine here is consistent with its application in a variety of other situations where justice so dictates. Because the last act necessary to complete a habeas corpus cause of action is illegal confinement and illegal confinement is a continuing wrong, the three-month statute of limitations did not commence at the time a certain affidavit was filed or a particular motion denied, but starts anew each day petitioner is illegally confined.

Id. at 1373, 1376-78 (Orme, J., concurring; emphasis in original).

Judge Orme's reasoning is sound--and it applies with equal force here, as the First District recognized when it applied the same rationale in Martin. This court should recognize that it represents the proper approach to the construction of section 95.11(5)(f) as applied to petitions for writs of habeas corpus (assuming, of course, that the statute can constitutionally be applied to habeas petitions at all).

Moreover, the case law and well-settled principles of statutory construction supply yet additional support for the conclusion that Jones's habeas petition was timely under section 95.11(5)(f). For example, if that statute is subject to differing construction, it should be construed in favor of lenity towards Jones, for it is well-established that penal statutes must be strictly construed in favor of a defendant. See, e.g., Kasischke v. State, 991 So. 2d 803, 814 (Fla. 2008).

Additionally, Florida law is clear that statutes of limitations in criminal cases must be liberally construed in favor of a defendant. See, e.g., Clements v. State, 979 So. 2d 256, 260 (Fla. 2d DCA 2007). And even in civil cases, an ambiguity in a statute of limitations must be construed in favor of a plaintiff. See, e.g., Major League Baseball v. Morsani, 790 So. 2d 1071, 1078 (Fla. 2001); Silva v. Southwest Fla. Blood Bank, Inc., 601 So. 2d 1184, 1187 (Fla. 1992).

In short, this court should conclude that Jones's habeas petition was timely filed even if it was subject to the one-year limitations period set forth in section 95.11(5)(f). The Fourth District erred in concluding otherwise, and its decision should therefore be quashed.

CONCLUSION

For the foregoing reasons, Jones respectfully requests that this court quash the decision of the district court and remand this case to that court with instructions to reverse the Dismissal Order. The district court should be further instructed to remand this case to the trial court for further proceedings on Jones's petition for a writ of habeas corpus.

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John R. Hamilton
Florida Bar No. 0774103
jhamilton@foley.com
FOLEY & LARDNER LLP
111 N. Orange Ave., Ste. 1800
Post Office Box 2193
Orlando, Florida 32802-2193
Telephone: (407)423-7656
Facsimile: (407) 648-1743

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail this 22nd day of October, 2009, to Anthony Andrews, Assistant General Counsel, Florida Parole Commission, 2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450.

_____
John R. Hamilton

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

_____
John R. Hamilton