

IN THE SUPREME COURT OF FLORIDA

WILLIE F. JONES
Petitioner,

vs.

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

FLORIDA PAROLE COMMISSION,

Respondent.

RESPONDENT'S AMENDED BRIEF ON JURISDICTION

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

ANTHONY ANDREWS
Assistant General Counsel
Florida Parole Commission
2601 Blair Stone Road, Bldg. C
Tallahassee, Florida 32399-2450
(850) 488-4460
Fla. Bar # 0749001
E-mail: tonyandrews@fpc.state.fl.us

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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 jurisdictional brief will be referenced as "PB" followed by corresponding page number as numbered by Respondent from the Statement of the Case and Facts page as page one forward since the brief was not numbered by Petitioner.

STATEMENT OF THE CASE AND THE FACTS

1. On October 11, 2006, Petitioner filed a Petition for Writ of Habeas Corpus in the Nineteenth Judicial Circuit Court, Case No. 2008-CA-629.

2. On December 5, 2008, the Honorable F. Shields McManus issued an Order Dismissing Petition for Writ of Habeas Corpus, seemingly dismissing the petition based on timeliness.

3. On December 29, 2008, Petitioner filed a Petition for Writ of Certiorari in the Fourth District Court of Appeal, Case No. 4D08-5206.

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

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, Exh. A)

5. On March 26, 2009, Petitioner filed a Notice to Invoke Discretionary Jurisdiction.

6. On April 3, 2009, the Fourth District Court of Appeal issued a Mandate.

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

8. On May 13, 2009, Respondent filed a jurisdictional answer brief with the clerk, which was subsequently stricken by May 13, 2009 order of the Court. The Court directed Respondent to file an amended brief.

STATEMENT OF THE ISSUE

**WHETHER THE COURT SHOULD ACCEPT
DISCRETIONARY JURISDICTION IN THIS CASE**

SUMMARY OF THE ARGUMENT

This Court should agree to accept discretionary jurisdiction over the instant case because there is a direct conflict between the Fourth District Court of Appeal and the First District Court of Appeal, and it is likely that the underlying issue regarding timeliness in habeas corpus proceedings involving the Florida Parole Commission will recur again.

ARGUMENT

ISSUE:

WHETHER THE COURT SHOULD ACCEPT DISCRETIONARY JURISDICTION IN THIS CASE

Petitioner contends that this Court should exercise its discretion to review the appellate decision below because the “the district court cannot be reconciled with the previous decision of this Court in Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000) and another district court in Martin v. Florida Parole Commission, 951 So. 2d 84 (1st DCA 2007).” (PB, 2). The Commission agrees in so far as there is an express and direct conflict with Smith v. Florida Parole Commission, 987 So. 2d 229 (Fla. 4th DCA 2008) and Martin v. Florida Parole Commission, 951 So. 2d 84 (Fla. 1st DCA 2007) regarding whether the statute of limitations of Section 95.11(5)(f), Florida Statutes is applicable to habeas corpus proceedings involving the Commission. Smith holds that Section 95.11(5)(f), Florida Statutes applies to bar habeas corpus actions involving the Commission. Id. Martin holds otherwise. Id. As a result, this Honorable Court should exercise its

discretionary jurisdiction pursuant to Fla. R. App. 9.030(a)(2)(A)(iv) to entertain this case.¹

Additionally, the Fourth District Court of Appeal below has certified this matter to be in direct conflict with Martin and Carpenter v. Florida Parole Commission, 958 So. 2d 564 (Fla. 2d DCA 2007). (Resp. Exhibit A). Consequently, this provides another basis for this Honorable Court to exercise its discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(2)(A)(vi).

Finally, it should be noted that considering the conflicting opinions in the various district courts, and the likely recurrence that this issue will arise again, it would behoove the Court to accept discretionary jurisdiction in this case in order to render a clear binding prospective opinion on all Florida courts.

¹ Respondent of course is reserving its right to respond on the merits if the Court agrees to accept discretionary jurisdiction.

CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Respondent respectfully urges this Honorable Court to accept discretionary jurisdiction in this case.

Respectfully submitted,

\S\Anthony Andrews
ANTHONY ANDREWS
Assistant General Counsel
Florida Parole Commission
2601 Blair Stone Road, Bldg. C
Tallahassee, Florida 32399-2450
(850) 488-4460
Fla. Bar # 0749001
E-mail: tonyandrews@fpc.state.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was furnished by U.S. Mail to Willie F. Jones DC#021739, Okeechobee Correctional Institution, 3420 NE 168th Street, Okeechobee, Florida 34972, this 18th day of May, 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