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THOMAS D. HALL

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In The Supreme Court Of Florida

Willie F. Jones,
Petitioner,

vs.

Case No.: SC09-612

L.T. No.: 4D08-5206

Florida Parole Commn,
Respondent.

PROVIDED TO
OKEECHOBEE CORRECTIONAL
INSTITUTION
ON 4-27-09
FOR MAILING

Petitioner's Jurisdictional Brief

On Review from the District Court of Appeal,
Fourth District State of Florida

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The decision of the Fourth District Court of Appeal in this case expressly and directly conflicts with the decision of this Court in Allan v. Butterworth, 756 So.2d 52 (Fla. 2000) and other district courts in Martin v. Fla. Parole Commn., 951 So.2d 84 (1st DCA 2007), Presley v. Fla. Parole Commn., 904 So.2d 573 (1st DCA 2005) and Carpenter v. Fla. Parole Commn., 958 So.2d 564 (2d DCA 2007).

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Cases

Allen v. Butterworth, 756 So.2d 52 (Fla. 2000).

Carpenter v. Fla. Parole Commn, 958 So.2d 564
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(1st DCA 2005).

Smith v. Fla. Parole Commn, 987 So.2d 229
(4th DCA 2008).

Constitutional Provisions and Statutes

Art. V, Section 3(b)(3) Fla. Const. (1980).

95.11(5)(f) Fla. Stat. (2008).

Court Rules

Fla. R. App. P. 9.030(a)(2)(A)(iv).

Statement Of The Case And Facts

On May 25, 1982, petitioner was paroled by the Florida Parole and Probation Commission. On April 21, 1990, petitioner was arrested in Broward County, Florida, on the charge of "possession of controlled substance to wit: cocaine, however this charge was never filed.

On July 16, 1990, the Florida Parole and Probation Commission "revoked" petitioner parole based on condition eight [8] of his parole to wit: "Failing to live and remain at liberty without violating the law of the state."

Petitioner filed an habeas corpus in the Circuit Court In And For Okeechobee County, Okeechobee, Florida, the court rendered an order denying the petitioner's motion.

An appeal was filed to the Fourth District of Appeal, and on March 4, 2009 the appeal was denied. The district court held that the circuit court did not err in dismissing the habeas corpus petition as untimely. 95.11(5)(f), Fla. Stat. (2008); Smith v. Fla. Parole Comm., 987 So.2d 229 (4th DCA 2008); Cooper, 924 So.2d at 967.

Petitioner's notice to invoke the discretionary jurisdiction of this court was timely filed on March 24, 2009.

Summary Of The Argument

In this case, the district court of appeal held that under 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 that the petitioner's habeas corpus was untimely. The decision of 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. Fla. Parole Comm'n*, 951 So.2d 84 (1st DCA 2007). Thus, the petitioner contends that the decision of the district court expressly and directly conflicts with a previous decision of this Court and other district courts.

Jurisdictional Statement

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Art. V, Section 3(b)(3) Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

Argument

The Decision Of The District Court Of Appeal In This Case Expressly And Directly Conflicts With The Decision Of This Court In *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); And With Another District Court In *Martin v. Fla. Parole Commn.*, 951 So.2d 84 (1st DCA 2007).

The district court of appeal interpreted 95.11(5)(f) Florida Statutes (2008); *Smith v. Fla. Parole Commn.*, 987 So.2d 229 (4th DCA 2008); *Cooper*, 924 So.2d 967 to show that the petitioner's petition was untimely. The decision of the court conflicts with a decision of this Court holding that the legislature was without authority to establish deadlines for asserting claims traditionally remediable through habeas corpus. The petitioner respectfully submits that this court should grant discretionary review and resolve the conflict by quashing the decision of the district court. (See *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000). Also in *Martin v. Fla. Parole Commn.*, 951 So.2d 84 (1st DCA 2007) this district court held that the legitimacy of applying 95.11(5)(f) in this situation is questionable.

Conclusion

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the petitioner's argument.

Certificate Of Service

I Hereby Certify that a copy of this brief has been furnished to Kim Fluharty, General Counsel, Fla. Parole Commn, 2601 Blair Stone Road, Bldg-C, Tallahassee, Florida 32399-2500 by U.S. Mail this 27 day of April, 2009.

Willie F. Jones

Certificate Of Compliance

I Hereby Certify that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Willie F. Jones

In The Supreme Court Of Florida

Willie F. Jones,
Petitioner,

vs.

Fla. Parole Comm.,
Respondent.

Case No.: SC09-612

L.T. No.: 4D08-5206

Appendix

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2009

WILLIE F. JONES,
Appellant,

v.

FLORIDA PAROLE COMMISSION,
Appellee.

No. 4D08-5206

[March 4, 2009]

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.

WARNER, FARMER and HAZOURI, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Okeechobee County; F. Shields McManus, Judge; L.T. Case No. 2008CA629.

Willie F. Jones, Okeechobee, pro se.

No brief filed for appellee.

Not final until disposition of timely filed motion for rehearing.