IN THE SUPREME COURT OF FLORIDA

ARTHUR O'DERRELL FRANKLIN,

Petitioner,

vs.

CASE NO. SC14-1442

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

**INITIAL BRIEF OF PETITIONER**
**ON THE MERITS**

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SECOND JUDICIAL CIRCUIT

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## INTRODUCTION

At 51 years of age, Arthur Franklin has been spent his entire adult life in prison for crimes he committed at age seventeen. Sentenced to concurrent, 1,000-year sentences for violent felonies in which no one died, he had his first parole review in 1987, three years after he was sentenced. The Parole Commission assessed 4400 months for the aggravating factors of his multiple offenses, giving him a presumptive parole release date (PPRD) of 2350. The PPRD varied only a few years in ten subsequent parole reviews, and now stands at 2352. Like the sentence of life with parole eligibility after 25 years struck down by this Court in Atwell v. State, 197 So. 3d 1040 (Fla. 2016), the operation of Florida's parole system leaves Franklin with a sentence that is "guaranteed to be just as lengthy as, or the 'practical equivalent of,' a life sentence without the possibility of parole." Id. at 1048.

This Court should quash the First District decision affirming this sentence and remand for resentencing. Further, the Court should hold that an indigent, pro se defendant who alleges in a postconviction pleading that he is serving a parole-eligible sentence of actual or de facto life in prison for crimes committed as a juvenile states a prima facie case for relief that necessitates appointment of counsel and an evidentiary hearing.

## STATEMENT OF THE CASE AND FACTS

Franklin was convicted of robbery, kidnapping, and several counts of sexual battery with force likely to cause serious injury in three separate cases. The offenses were committed from April to June, 1983, when Franklin, born October 10, 1965, was seventeen years of age. (R1.17)[1] In a suggestion of mental incompetence filed in August, 1983, defense counsel asserted that Franklin might have ingested a large amount of drugs or alcohol before his crimes. Counsel also noted that Franklin "suffered a gunshot wound to the head approximately one year ago. The damage from said wound is unclear to defense counsel." (R1.35) After a jury found him guilty of the offenses, Franklin received concurrent sentences, some of 1,000 years with retention of jurisdiction for one-third of that period. Several of these millennial prison terms remain in effect. (III.437-38)

The Parole Commission, now the Commission on Offender Review, reviewed Franklin's sentence eleven times from 1987 to 2014.[2] In 1987, a hearing

1. Record citations in this brief are by record volume and page number.

2. Franklin requests that the Court take judicial notice of the Commission Actions, as it did in Atwell v. State, 197 So. 3d 1040 (Fla. 2016). See id. at 1044 (discussing parole hearing conducted while case was pending in this Court). "A court may take judicial notice of … [o]fficial actions of the legislative, executive, and judicial departments of the United States and of any state…." § 90.202(5), Fla. Stat. (2016). See Schriver v. Tucker, 42 So. 2d 707, 709 (Fla. 1949) (taking notice of records of extradition proceeding on file with Secretary of State); Wencel

examiner assigned Franklin a matrix time range of 120 to 140 months for the primary offense of sexual battery. Using a salient factor score of 5, the examiner then added a total of 300 months for three additional convictions as aggravating factors. The examiner's calculations yielded a presumptive parole release date of March 1, 2045, when Franklin would be 79 years of age. The Commission rejected the hearing examiner's recommendation. Again using the salient factor score of 5, the Commission added either 140 or 240 months for each of Franklin's 19 additional convictions, 4400 additional months in total. The Commission set Franklin's PPRD at March 1, 2350. (App. B-1)

Franklin's PPRD has varied no more than four-and-a-half years from the initial PPRD range in ten ensuing Commission Actions. (App. C through L) In its most recent Action on February 5, 2014, after the decision in Graham v. Florida, 560 U.S. 48 (2010), the Commission reaffirmed the September 1, 2352, PRRD from its last two Actions in 2004 and 2009. (App. L-1)

Seeking to benefit from the 2010 decision in Graham, Franklin filed a pro se motion for postconviction relief in 2011. (III.458-473) He asserted that his sentences violated the Eighth Amendment to the U.S. Constitution as interpreted in

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v. State, 915 So. 2d 1270, 1272 (Fla. 4th DCA 2005) (holding trial court erred in concluding it could not take judicial notice of parole commission's order).

Graham by depriving him of a meaningful opportunity for release based on demonstrated maturity and rehabilitation. (III.463)

In a March 18, 2013 hearing, the state recommended that the court adhere to the 1,000-year sentences but strike the retention of jurisdiction for the first third of the term. (VIII.1492) According to the prosecutor, this would allow the court to "avoid an actual resentencing hearing." The unrepresented defendant told the court that "they won't give me no parole date because they're saying I have too much time," and observed that the parole system "ain't letting nobody go." (VIII.1495) The prosecutor noted that Franklin had a presumptive parole release date of 2352, but pointed to her written response asserting that one of Franklin's codefendants, Curtis Young, was eligible for parole on a life sentence and had a "release date" of 2032. (III.542, VIII.1495)[3]

The court reconvened on March 22, 2013. Franklin requested counsel but the state attorney informed the judge that counsel need not be appointed unless the court were to resentence Franklin. (VIII.1495) The court, believing that any sentence for a term of years with parole eligibility complied with Graham, opted to strike the 333-1/3-year retention of jurisdiction but otherwise leave the sentences

3. The prosecutor did not document her claim regarding Young's PPRD. Under the entry for "Current Release Date," Young's Department of Corrections web page (inmate number 093774) reflects only, "Sentenced To Life." Franklin's DOC web page (inmate number 094027) reflects his current PPRD of 9/1/2352.

intact. (VIII.1502) In its written order, the court specified that with this remedy "the Defendant would be eligible for parole, approximately in the year 2032, and would have a more meaningful opportunity for release." (III.570) Franklin pointed out during the March 22 hearing that he wanted an attorney "to discuss all this with him ahead of time." (VIII.1508) The court denied his request and in its written order explained that "striking the 1/3 reservation of jurisdiction previously imposed by the trial court is ministerial in nature, thus neither the presence of the Defendant nor his counsel were required (although the Defendant was indeed present for this court appearance on March 22, 2013)." (III.571) The judge said she would appoint an attorney for the appeal. (VIII.1509)

Franklin appealed, asserting he made a sufficient showing that his sentence precluded release to require an evidentiary hearing and appointment of counsel. The First District Court of Appeal disagreed:

> Although he argued that the parole system would not provide him with a meaningful opportunity for release, this argument was conclusory at best. Without allegations indicating an inherent deficiency in the parole system's ability to address a 1,000-year sentence consistently with *Graham*, as opposed to a failure on Appellant's part to demonstrate maturity and rehabilitation, Appellant's claim was legally insufficient to establish that his parole-eligible term-of-years sentence is unconstitutional.
>
> The fact that Appellant's PPRD [presumptive parole release date] is currently set at September 1, 2352, does not establish a *Graham* error in the sentence.…

> We opine only that the claim before the circuit court did not provide the information or arguments necessary to hold Appellant's sentence unconstitutional, even assuming the truth of every fact alleged.

Franklin v. State, 141 So. 3d 210, 212-13 (Fla. 2014). The court also suggested that Franklin's recourse for his astronomical presumptive parole release date lay in a petition challenging the actions of the Parole Commission. Id. at 212.

Franklin sought discretionary review. This Court initially stayed proceedings pending disposition of Henry v. State, 175 So. 3d 675 (Fla. 2015), and Gridine v. State, 175 So. 3d 672 (Fla. 2015), but ultimately granted discretionary review. This brief follows.

## SUMMARY OF THE ARGUMENT

I. In Atwell v. State, 197 So. 3d 1040 (Fla. 2016), this Court required resentencing for a juvenile first-degree murderer officially eligible for parole after serving 25 years, but highly unlikely to earn his release by showing maturity and rehabilitation. Stare decisis warrants the same relief to Franklin, who has been eligible for parole from the inception of his 1,000-year sentence but is barred by Florida's parole system from obtaining a release date during his lifetime. Franklin's eleven parole reviews from 1987 through 2014 demonstrate the parole system's official and actual indifference to maturity and rehabilitation as criteria for release of juvenile offenders more comprehensively than the single parole review discussed in Atwell. Like the "remote possibility" of clemency discussed in Graham v. Florida, parole eligibility does not mitigate the harshness of his sentence.

II. The First DCA misapplied this Court's precedent on the sufficiency of pro se postconviction motions to warrant appointment of counsel and an evidentiary hearing. Particularly in light of Atwell, decided after the district court decision, Franklin's pro se motion alleging that he had served 30 years of a 1,000-year sentence and had a presumptive parole release date of 2352 made out a prima facie case for relief compelling appointment of counsel and an evidentiary hearing.

## ARGUMENT

### I. Because parole eligibility cannot provide Franklin an opportunity based on rehabilitation and maturity for release from the 1,000-year sentences he is serving for crimes committed at age seventeen, he is entitled to resentencing under Chapter 2014-220, Laws of Florida.

Standard of review: This Court's resolution of conflict between the First DCA decision and the decision of another district court or this Court requires exclusively only legal determinations, which are performed de novo. Daniels v. State, 121 So. 3d 409, 413 (Fla. 2013).

Merits: This case falls within the holding of Atwell v. State, 197 So. 3d 1040 (Fla. 2016), and presents even stronger grounds for relief. This Court held in Atwell that a prison sentence of life with parole eligibility after 25 years for a first-degree murder committed by a juvenile offender does not provide the opportunity for release based on demonstrated maturity and rehabilitation required by Miller v. Alabama, 132 S.Ct. 2455 (2012), and Montgomery v. Louisiana, 136 S.Ct. 718 (2016). Atwell, 197 So. 3d at 1042.

The Court in Miller barred mandatory life sentences for juveniles who commit murder. In Montgomery, the Court applied Miller retroactively to sentences that were final when Miller was decided. The Court also reaffirmed the Eighth Amendment requirement that juvenile offenders have an opportunity to

demonstrate they are fit for life outside prison walls, possibly through parole. 136 S.Ct. at 736. Both Miller and Montgomery are extensions of Graham v. Florida, 560 U.S. 48 (2010), in which the Court ruled that the Eighth Amendment precludes life without parole sentences for juveniles who commit crimes short of homicide.

In Atwell, this Court probed Florida's parole system. The court noted the parole guidelines' use of salient and aggravating factors, as well as the lack of a requirement that the Commission consider an offender's youth in mitigation. The Court observed:

> In most respects, a sentence of life with the possibility of parole for first-degree murder, based on the way Florida's parole process operates under the existing statutory scheme, actually resembles a mandatorily imposed life sentence without parole that is not proportionate to the offense and the offender. [quotation marks and citation omitted]…
>
> … Using Florida's objective parole guidelines, [] a sentence for first-degree murder under the pre–1994 statute is virtually guaranteed to be just as lengthy as, or the "practical equivalent" of, a life sentence without the possibility of parole. Indeed, that is the case here, with Atwell's presumptive parole release date having recently been set to 140 years in the future.

197 So. 3d at 1048.

The Court also reviewed its decisions in Horsley v. State, 160 So.3d 393 (Fla. 2015), and Falcon v. State, 162 So. 3d 954 (Fla. 2012), which held the

sentencing and judicial review provisions in Chapter 2014-220, Laws of Florida, applicable to sentences that do not comply with Miller. The Court concluded:

> The Supreme Court has emphasized—and this Court's own case law has followed—that the Eighth Amendment requires a trial court to "take into account the differences among defendants and crimes" before imposing a sentence that is, in effect, a sentence to a lifetime in prison. Miller, 132 S.Ct. at 2469 n. 8; see Horsley, 160 So. 3d at 399; Falcon, 162 So. 3d at 959. Atwell's sentence effectively resembles a mandatorily imposed life without parole sentence, and he did not receive the type of individualized sentencing consideration Miller requires. The only way to correct Atwell's sentence, consistent with this Court's case law in Horsley, is to resentence Atwell in conformance with chapter 2014–220, Laws of Florida.

197 So. 3d at 1050. Following Atwell, this Court ordered resentencings in at least twelve cases involving sentences of life with parole for murders committed by juveniles.[4] District courts of appeal ordered resentencing in at least seven more.[5]

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4. Bonifay v. State, 2016 WL 7212327 (Fla. Dec. 13, 2016); Lecroy v. State, 2016 WL 7212336 (Fla. Dec. 13, 2016); Hegwood v. State, 2016 WL 7217220 (Fla. Dec. 13, 2016); Woods v. State, 2016 WL 7217231 (Fla. Dec. 13, 2016); Rembert v. State, 2016 WL 7217265 (Fla. Dec. 13, 2016); Enriquez v. State, 2016 WL 6353336 (Fla. Oct. 28, 2016); Wallace v. State, 2016 WL 7217278 (Fla. Dec. 13, 2016); Howard v. State, 2016 WL 6716109 (No. SC15-2314, Oct. 28, 2016); Allen v. State, 2016 WL 6354018 (No. SC14-2431, Oct. 28, 2016); McPherson v. State, 2016 WL 6357975 (No. SC14-1369, Oct. 28, 2016); Smith v. State, 2016 WL 6353115 (Fla. Oct. 28, 2016); State v. Weiand, 2016 WL 6354186 (Fla. Oct. 28, 2016).

5. Burgess v. State, 2017 WL 34569 (Fla. 4th DCA Jan. 4, 2017); Stokes v. State, 2017 WL 33712 (Fla. 4th DCA Jan. 4, 2017); McDonald v. State, 2016 WL

Currently pending in this Court is Michel v. State, 41 Fla. L. Weekly D2525 (Fla. 4th DCA Nov. 9, 2016), rev. pending, No. SC16-2187, on whether Atwell requires resentencing for offenders whose PPRDs, unlike Franklin's, fall within their life expectancy.

In contrast to Atwell, Franklin has been eligible for parole since the start of his sentence. Franklin's offenses occurred in May 1983, several months before Florida closed off parole eligibility for new offenders. See § 921.001(8), Fla. Stat. (1983) ("The provisions of Chapter 947 shall not be applied to persons convicted of crimes on or before October 1, 1983"). The eleven Parole Commission actions from 1987 through 2014 demonstrate the parole system's official and actual indifference to maturity and rehabilitation as criteria for release of juvenile offenders more comprehensively than the single parole review discussed in Atwell. In fact, Franklin's first review in 1987 made release permanently unattainable. In the 1987 Action, the Commission assigned him a salient factor score of 5, which included 2 points for committing his crimes at age 17 or younger. (App. B) The salient factor scoring then permitted the Commission to add 140 or 240 months for each of nineteen additional offenses, resulting in a PPRD in 2350. Once this date

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7469895 (Fla. 2d DCA Dec. 28, 2016); Landy v. State, 2016 WL 6776120 (Fla. 2d DCA 2016); Bissonette v. State, 201 So. 3d 731 (Fla. 5th DCA 2016); Jones v. State, 197 So. 3d 1111 (Fla. 4th DCA 2016); Michel v. State, 204 So. 3d 101 (Fla. 2016).

was set, it could be changed only for reasons of institutional conduct, acquisition of new information not available during the initial interview, or for good cause in exceptional circumstances.§ 947.173(3), Fla. Stat. (2014); Florida Parole and Probation Com'n v. Paige, 462 So. 2d 817, 819 (Fla. 1985).

Franklin's PPRD is now 2352. In the 2014 review, his most recent, the Commission affirmed the parole examiner's recommendation of no change in the PPRD. The Commission relied on the examiner's reasons, which included the circumstances of Franklin's offenses and his disciplinary report for possession of contraband three years earlier, in 2011. (App. L-1) The recommendation also reflects that Franklin "averages Above Satisfactory work evaluations from his assignment as a Confinement Orderly. However, he was "prohibited from returning to work for PRIDE due to their offense and sentence length requirements," and he had not been involved in any programs. (App. L-3) Evidently, PRIDE's qualifications had changed: the parole examiner noted in the 2004 Recommendation that Franklin "averages Outstanding work evaluations in the PRIDE Garment Factory and earned training certificates" each year from 2000 to 2003. (App. J-3)

In 2014, the Commission scheduled Franklin's next review seven years in the future, based on his use of a firearm, physical and psychological trauma to the victim, unreasonable risk to others, and multiple separate offenses. (App. L-1)

The Commission had relied on the same reasons in scheduling the next interview five years away rather than two in 2004 and 2009. (App. J-1, K-1)

Franklin's experience with parole reviews is consistent with the statutory command that the parole system is "designed to give primary weight to the seriousness of the offender's present criminal offense and the offender's past criminal record." § 947.002(2), Fla. Stat. (2016). These are static factors that an inmate cannot change. Of those factors within an inmate's control, "[n]o person shall be placed on parole merely as a reward for good conduct or efficient performance of the duties assigned in prison." § 947.18, Fla. Stat. (2016). Consequently, like the "remote possibility" of clemency discussed in Graham, 560 U.S. at 70, Franklin's parole eligibility does not mitigate the harshness of his 1,000-year sentence.

Under the principle of stare decisis, both the holding in Atwell and its rationale should yield the same result in this case: a new sentencing hearing under section 921.1401, Florida Statutes, (2016), and judicial review under section 921.1402. "It is an established rule to abide by former precedents … where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion." Tyson v. Mattair, 8 Fla. 107, 124 (1858)( quoted in Puryear v. State, 810 So. 2d 901, 904-05 (Fla. 2002)).

In his Atwell dissent, Justice Polston agreed with the First DCA panel judges in Franklin that the statutorily mandated seven-year parole review period "satisfies the Eighth Amendment." 197 So. 3d at 1050 (Polston, J., dissenting). However, none of Franklin's eleven reviews to date, at interims of one, two, and five years, has brought him any closer to a realistic opportunity for release. As noted by Justice Polston and the DCA panel members below, Graham and Miller do not require release on parole, only a "meaningful opportunity for release." Id. at 1051. To a greater degree than the single parole review discussed in Atwell, Franklin's eleven Parole Commission Actions from 1987 to 2014 demonstrate that when applied to juvenile offenders in general and Franklin in particular, Florida's parole machinery does not provide what Graham and Miller require.

Consequently, as in Atwell and its pipeline cases, Franklin's sentence must be vacated and the case remanded for resentencing "in conformance with chapter 2014-220, Laws of Florida." Atwell, 197 So. 3d at 1050.

**II. A pro se, postconviction pleading, not time-barred, which alleges that the movant is serving a parole-eligible sentence for an offense committed before he turned eighteen but has a presumptive release date outside his life expectancy, states a prima facie case for relief.**

Standard of review: This issue concerns the legal sufficiency of Franklin's pro se postconviction pleading. It requires application of the law to fixed facts, a task performed de novo.

Discussion: The First DCA panel concluded that Franklin's motion for postconviction relief "did not provide the information or arguments necessary to hold Appellant's sentence unconstitutional, even assuming the truth of every fact alleged." Franklin v. State, 141 So. 3d 210, 213 (Fla. 1st DCA 2014). As reflected in the opinion, these facts include: (1) a 1,000-year sentence imposed in 1984, and (2) a PPRD in 2352 (3) after serving almost 30 years of that sentence. Id. at 211-12. The court concluded that the motion did not necessitate either an evidentiary hearing or appointment of counsel for Franklin.

In ruling Franklin's motion insufficient to create a prima facie case of cruel and unusual punishment necessitating an evidentiary hearing, the First DCA construed the Eighth Amendment in a manner that cannot withstand this Court's subsequent decision in Atwell v. State, 197 So. 3d 1040 (Fla. 2016). This Court concluded in Atwell that "[a] presumptive parole release date set decades beyond a

natural lifespan is at odds with the Supreme Court's recent pronouncement in Montgomery [v. Louisiana, 136 S.Ct. 718 (2016).] As noted in Atwell, Montgomery emphasizes that the Court's Eighth Amendment decision in Miller "requires prisoners sentenced as juveniles 'must be given the opportunity to show their crime did not reflect irreparable corruption; and if it did not, their hope for some years of life outside prison walls must be restored.'" 197 So. 3d at 1042 (quoting Montgomery, 136 S.Ct. at 736-37).

In light of Atwell, the First DCA's approval of the trial court's denial of counsel and an evidentiary hearing on Franklin's pro se motion also results in misapplication of Graham v. State, 372 So. 2d 1363 (Fla. 1979), and Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000). The First DCA quoted a statement in Graham v. State that a trial court has no duty to appoint counsel to represent an indigent defendant on a postconviction motion "unless the application on its face reflects a colorable or justiciable issue or a meritorious grievance." Franklin, 141 So. 3d at 212 (quoting Graham v. State, 372 So. 2d at 1366). Applying this language, the First DCA ruled that "due to the legal insufficiency of [Franklin's] claim, the trial court was… within its discretion to deny [his] request for counsel." Id.

The excerpt quoted by the district court is part of a longer passage which, read in its entirety, justified appointment of counsel for Franklin—both before and

after this Court decided Atwell. This Court explained in Graham v. State that "the adversary nature of the proceeding, its complexity, the need for an evidentiary hearing, or the need for substantial legal research are all important elements which may require the appointment of counsel." The Court specified that doubts on the need for counsel must be resolved in favor of the indigent defendant. And the Court posed as the ultimate question whether, "under the circumstances, the assistance of counsel is essential to accomplish a fair and thorough presentation of the petitioner's claims." 372 So. 2d at 1365-66.

This Court's experience in Graham and Miller cases in general demonstrates the complexity of the proceedings, their adversary nature, and the frequent need for evidentiary hearings. In this case, the pro se Franklin begged for counsel. In the absence of a trained advocate, he was no match for a prosecutor and judge who denied him an evidentiary hearing on the erroneous belief that striking the court's retention of jurisdiction over the first third of his 1,000-year sentence would somehow yield him an achievable parole release date. Counsel was indispensable under these circumstances.

The First DCA misapplied language in Freeman specifying that "it is the defendant's burden to establish 'a prima facie case based upon a legally valid claim,' and '[m]ere conclusory allegations are not sufficient to meet this burden.'" 761 So. 2d 1061. The district court used this language to rule that Franklin's

assertion that he had a parole release date hundreds of years in the future after serving approximately 30 years of a 1,000-year sentence "failed to set forth a prima facie case for relief." Franklin, 141 So. 3d at 213. A prima facie case is one made "at first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure." Bryan A. Garner, Black's Law Dictionary 498 (Pocket Edition 1996). A motion creating a prima facie case of a violation of Graham v. Florida would show "at first sight" that the offender's sentence deprives him of "some realistic opportunity to obtain release" during his lifetime. 560 U.S. at 82. Franklin made that showing, particularly in light of the principle that pro se pleadings should be construed liberally "to effectuate justice and afford the [movant] ... the advantage denied him by his lack of legal training." Thomas v. State, 164 So.2d 857, fn. 1 (Fla. 2d DCA 1964); see also James v. Crews, 132 So. 3d 896, 899 (Fla. 1st DCA 2014) ("Generally, pro se pleadings are to be construed liberally and not held to the same technical standards as pleadings by a licensed attorney." (citing Prince v. State, 40 So. 3d 11, 12 (Fla. 4th DCA 2010)). The First DCA misapplied Freeman as authority to rule Franklin's pro se motion insufficient to set out a prima facie case for relief.

To ensure that other pro se litigants are not deprived of counsel and an evidentiary hearing on claims arising from Graham and Miller, this Court should hold: An offender who alleges in a pro se postconviction pleading which is not

time-barred that he or she is serving a parole-eligible sentence for criminal conduct committed as a juvenile, but has presumptive release date outside his or her life expectancy, states a prima facie case necessitating appointment of counsel and an evidentiary hearing.

## CONCLUSION

Franklin stated a prima facie case for relief compelling appointment of counsel and an evidentiary hearing on his Eighth Amendment challenge to his 1,000-year, parole-eligible sentences. In the wake of Atwell, and to an even greater extent than in that case, Franklin's parole eligibility does not provide him the meaningful opportunity for release based on maturity and rehabilitation required by recent Eighth Amendment precedent. Franklin requests that this Honorable Court quash the First District decision and remand with directions to order that he be resentenced in accord with Chapter 2014-220, Laws of Florida.

## CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished via the Florida Courts E-Filing Portal to Virginia Harris, Office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399-1050, this 12th day of January, 2017. I hereby certify that this brief has been prepared using Times New Roman 14 point font.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

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_____/

**INDEX TO APPENDIX**

# APPENDIX A

141 So.3d 210
District Court of Appeal of Florida,
First District.

Arthur O'Derrell FRANKLIN, Appellant,
v.
STATE of Florida, Appellee.

Nos. 1D13–2516, 1D13–2517, 1D13–2518.
|
May 19, 2014.
|
Rehearing Denied July 8, 2014.

**Synopsis**

**Background:** Defendant filed a petition for post-conviction relief. The Circuit Court, Duval County, Tatiana Salvador, J., denied the petition. Defendant appealed.

**[Holding:]** The District Court of Appeal, Ray, J., held that defendant's claim that his several concurrent sentences of 1,000 years in prison were unconstitutional under *Graham v. Florida* was facially insufficient.

Affirmed.

Thomas, J., filed a concurring opinion.

West Headnotes (3)

[1] **Criminal Law**
Sentencing
110 Criminal Law
110XXX Post-Conviction Relief
110XXX(C) Proceedings
110XXX(C)1 In General
110k1574 Petition or Motion
110k1580 Particular Issues
110k1580(12) Sentencing
Defendant's post-conviction relief claim that his several concurrent sentences of 1,000 years in prison were unconstitutional under *Graham v. Florida* was facially insufficient; defendant alleged no facts, cited no legal authority, and made no argument to show that the Parole Commission was precluded from ever establishing a presumptive parole release date (PPRD) during defendant's lifetime.

1 Cases that cite this headnote

[2] **Criminal Law**
Necessity for Hearing
110 Criminal Law
110XXX Post-Conviction Relief
110XXX(C) Proceedings
110XXX(C)3 Hearing and Determination
110k1651 Necessity for Hearing
110k1652 In general
A criminal defendant is not entitled to an evidentiary hearing on a motion for postconviction relief if (1) the motion, files, and records in the case conclusively show that the defendant is entitled to no relief, or (2) the motion or a particular claim is legally insufficient.

Cases that cite this headnote

[3] **Criminal Law**
Petition or Motion
110 Criminal Law
110XXX Post-Conviction Relief
110XXX(C) Proceedings
110XXX(C)1 In General
110k1574 Petition or Motion
110k1575 In general
It is the post-conviction defendant's burden to establish a prima facie case based upon a legally valid claim, and mere conclusory allegations are not sufficient to meet this burden.

Cases that cite this headnote

**Attorneys and Law Firms**

*211 Nancy A. Daniels, Public Defender, Glen P. Gifford, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Joshua R. Heller, Assistant Attorney General, Tallahassee, for Appellee.

**Opinion**

RAY, J.

In these consolidated cases, Arthur O'Derrell Franklin, Appellant, appeals the partial summary denial of his motion for postconviction relief. Below, he argued that his several concurrent sentences of 1,000 years in prison, imposed in 1984 for crimes committed in 1983, are unconstitutional under *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), despite the fact that they are parole-eligible. The circuit court rejected this claim, and Appellant now argues that he was entitled to either resentencing or an evidentiary hearing and to counsel to assist him at either proceeding. We affirm due to the facial insufficiency of Appellant's claim.

Appellant's motion argued that his sentences are unconstitutional under *Graham* because they do not afford him a meaningful opportunity for release upon a demonstration of maturity and rehabilitation. This argument was premised on the length of the 1,000-year sentences and the fact that the sentencing court retained jurisdiction, under section 947.16(3), Florida Statutes (1982 Supp.), to approve or deny any decision by the Parole Commission to release him during the first third of his sentence, or for 333–1/3 years.

The State conceded that the retention of jurisdiction arguably removed any chance of Appellant's being released on parole. This concession was based partly on language in the sentencing court's order indicating, as the State phrased it, an "intention to essentially deny the Defendant any opportunity to be released during his lifetime." The State alleged that the retention of jurisdiction had "created" Appellant's presumptive parole release date ("PPRD"), which was set for September 1, 2352, as of the dates of the postconviction proceedings. The State then hypothesized that if the court struck the retention-of-jurisdiction language in the sentencing orders, Appellant's PPRD would be established within his lifetime.

The court agreed with the State and entered an order removing the retention of jurisdiction[1] but otherwise denying Appellant's motion.

[1] On appeal, Appellant suggests that, despite the relinquishment of jurisdiction, he may never receive a PPRD within his lifetime due to the length of his sentence or perhaps other barriers within the parole process unrelated to his failure to demonstrate maturity and rehabilitation. He argues that he is entitled to a remand and the appointment of counsel to present these arguments to the circuit court at an evidentiary hearing.

*212 [2] [3] A criminal defendant is not entitled to an evidentiary hearing on a motion for postconviction relief if "(1) the motion, files, and records in the case conclusively show that the [defendant] is entitled to no relief, or (2) the motion or a particular claim is legally insufficient." *Freeman v. State*, 761 So.2d 1055, 1061 (Fla.2000). It is the defendant's burden to establish "a prima facie case based upon a legally valid claim," and "[m]ere conclusory allegations are not sufficient to meet this burden." *Id.* This standard informs a trial court's discretionary decision to grant or deny a request for counsel because, according to our state supreme court, "[t]here is absolutely no duty to appoint counsel for an indigent defendant in a post-conviction relief proceeding unless the application on its face reflects a colorable or justiciable issue or a meritorious grievance." *Graham v. State*, 372 So.2d 1363, 1366 (Fla.1979).

The issue Appellant presented to the circuit court was based on the United States Supreme Court's holding in *Graham*, which forbids a sentence of life without the possibility of parole for a non-homicide offense committed by a juvenile. 560 U.S. at 77, 130 S.Ct. 2011. *Graham* does not foreclose the possibility that a juvenile non-homicide offender will remain behind bars for the duration of his

or her life if that offender ultimately proves to be "irredeemable." *Id.* at 75, 130 S.Ct. 2011. What *Graham* requires is that a juvenile non-homicide offender have "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* This Court has applied *Graham* to invalidate term-of-years sentences that amounted to de facto life sentences due to the combination of their lengths and the lack of parole eligibility. *E.g.*, *Floyd v. State*, 87 So.3d 45, 46 (Fla. 1st DCA 2012); *Adams v. State*, — So.3d —, 2012 WL 3193932, 37 Fla. L. Weekly D1865 (Fla.2012). However, the extreme length of a sentence does not in itself establish a *Graham* violation when that sentence is parole-eligible and no constitutional deficiency in the parole system has been established.

In the proceedings below, Appellant alleged no facts, cited no legal authority, and made no argument to show that the Parole Commission is precluded from ever establishing a PPRD during his lifetime due to the sentence the court imposed. Although he argued that the parole system would not provide him with a meaningful opportunity for release, this argument was conclusory at best. Without allegations indicating an inherent deficiency in the parole system's ability to address a 1,000-year sentence consistently with *Graham*, as opposed to a failure on Appellant's part to demonstrate maturity and rehabilitation, Appellant's claim was legally insufficient to establish that his parole-eligible term-of-years sentence is unconstitutional.

The fact that Appellant's PPRD is currently set at September 1, 2352, does not establish a *Graham* error in the sentence. The Parole Commission, not the sentencing court, is responsible for setting a parole-eligible prisoner's PPRD and for periodically reviewing that determination. *See* §§ 947.13(1)(a), 947.16(4)-(5), 947.172, 947.174(2)-(3), Fla. Stat. (2013). If the Parole Commission violated the law or abused its discretion in establishing Appellant's current PPRD outside his life expectancy while being legally able to establish it otherwise, then that error is a matter for review in proceedings challenging the establishment of the PPRD, not in a motion challenging the legality of the sentence from the outset. *Cf. Johnson v. Fla. Parole Comm'n*, 841 So.2d 615, 617 (Fla. 1st DCA 2003) (recognizing that prisoners may seek review of final orders of the Parole Commission in circuit court through a petition for an extraordinary writ); *Fla.* *213 *Parole Comm'n v. Huckelbury*, 903 So.2d 977 (Fla. 1st DCA 2005) (reviewing a circuit court's order on a petition challenging the suspension of an inmate's PPRD).

We opine only that the claim before the circuit court did not provide the information or arguments necessary to hold Appellant's sentence unconstitutional, even assuming the truth of every fact alleged. Because Appellant failed to set forth a prima facie case for relief, his motion was properly denied (to the extent it was). Moreover, due to the legal insufficiency of Appellant's claim, the trial court was not required to afford Appellant an evidentiary hearing or attach records conclusively refuting his claim. For the same reason, the court was within its discretion to deny Appellant's request for counsel. Accordingly, we AFFIRM.

SWANSON, J., concurs; THOMAS, J., concurs with opinion.

THOMAS, J., concurring.

I concur in the majority opinion but write to explain my reasoning. These three consolidated cases involve crimes committed in 1983 by Appellant at the age of 17. Appellant was convicted of 20 felony counts, including 17 life felony counts for armed robbery, unarmed robbery, armed kidnapping, aggravated assault, and armed sexual battery against multiple female victims, one of whom was raped ten times by Appellant and his co-defendants. The sentencing court in 1984 found that these crimes inflicted lifelong physical and mental injuries on the victims.

Citing these facts and other considerations, the trial court sentenced Appellant to concurrent parole-eligible terms totaling 1,000 years in state prison. In addition, the court retained jurisdiction over one-third of Appellant's sentence; thus, the trial court could exercise a judicial veto over the Parole

Commission's authority to grant Appellant parole. *See* § 947.16(3), Fla. Stat. (1982 Supp.).

Under the United States Supreme Court's opinion in *Graham v. State*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), Appellant sought postconviction relief below in a rule 3.850 *pro se* motion. The trial court denied relief, but agreed to strike the original sentencing court's retention of jurisdiction of any parole decision during the first third of Appellant's sentence. Appellant now asserts through counsel that he is entitled to either an evidentiary hearing on his claim or resentencing with the appointment of counsel. Appellant claims he remains subject to a sentence imposed in violation of *Graham*, based on his Presumptive Parole Release Date ("PPRD") established under Chapter 947, Florida Statutes.

It is ultimately within the discretion of the Florida Parole Commission as to whether Appellant will be released on parole. *See* §§ 947.002, 947.16, 947.18, Fla. Stat. (1981). Based on this eligibility for parole, Appellant's sentence does not constitute cruel or unusual punishment under the Eighth Amendment to the United States Constitution, for the simple reason that Appellant remains eligible for parole release, and *Graham* did not hold that Appellant must actually receive parole to comply with the Eighth Amendment to the United States Constitution: "It bears emphasis, however, while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives." *Graham*, 560 U.S. at 75, 130 S.Ct. 2011.

*214 In the first case, Appellant and a co-defendant forced their way into the victim's car while she was at a red light, then pushed the victim to the middle of the front seat, grabbed her hair, and slammed her head to the car floorboard. Appellant drove the car to another location. When the victim attempted to escape from the car, Appellant tackled her and smashed her head against the pavement, causing the victim to partially lose consciousness. Appellant then dragged the victim across the pavement, causing a burn on her skin. Appellant and the co-defendant then drove to a secluded area where Appellant raped the victim as his co-defendant searched the car for items of value, eventually taking $200 from the victim's purse. The victim testified at trial that Appellant choked her during the sexual assault.

At the sentencing hearing, the victim testified that the crime had ruined her life. She now lived in constant fear, could not work, could no longer engage in marital relations with her husband, and was afraid to leave her home, because the attack occurred only a few blocks from her residence. The trial court noted that during the trial and sentencing, this victim stood almost the entire time, and at the end of her testimony completely "broke down and had to be helped from the courtroom after a long recess." The court further noted that this criminal episode was committed by Appellant and his co-defendant showing a "conscious, well thought out, premeditated intent to commit these shameful, terrorizing and demeaning acts of violence."

In the second case, Appellant and his co-defendant robbed a convenience store, held a knife to the back of a male employee, then forced a female employee to give them her car keys. Appellant and his co-defendant then forced the victim into the car's back seat at gunpoint and drove the victim to a secluded area. During this time, Appellant told the victim that this was not the first time he and his co-defendant had committed similar crimes and "they would never serve a single day in jail." Appellant's co-defendant then asked Appellant if they should "take her where they took the other one." Appellant replied that they should "take her to the new place we found."

The sentencing court noted that while en route to the crime scene, the "defendants told the victim that they knew her and knew she recently had a baby," which "terrified the victim." At the secluded area, Appellant sexually assaulted the victim while his co-defendant held a gun to her head. The two men then switched places, and Appellant held the

gun "inches from the victim's head" while his co-defendant sexually battered her. The sentencing court noted that at some point, Appellant held the gun in the victim's ear and "told her he was going to blow her brains out."

Both Appellant and his co-defendant then searched the victim's car and stole jewelry from her, including her wedding ring, which the victim begged them to let her keep because it meant so much to her. After robbing the victim, one of the defendants then kicked her in the head before they stole her car and fled, leaving her "in a dazed condition until she found help."

At sentencing, the victim testified she was hospitalized for two weeks following the assault. Two days after the crime, "her physical and emotional condition deteriorated to the point that she had lost the use of her right arm and right leg" as a result of the emotional trauma caused by Appellant and his co-defendant. The trial court's sentencing order notes that the victim testified that "she lives in constant fear," could not care for her infant child, and "was not even emotionally able to leave her own home for six months following the crime." The victim's treating doctor ***215** testified that the acts committed against the victim "will have a crippling effect on all areas of her life—for the rest of her life." The doctor stated that the victim would need mental treatment for several years. During the sentencing hearing, the victim "shook uncontrollably during her testimony." She was "unable to be removed from her chair because of her emotional state for about 20 minutes."

In the third criminal episode, Appellant and two others forced their way into the victim's car and drove to a secluded area where all three men perpetrated various acts of sexual assault on her. The men then put the victim in the trunk of the car and drove to another location, where the assaults resumed. They later carried the victim to a railroad car where she was locked up for a period of hours, after which Appellant and one other co-defendant returned, removed the victim to a waiting car, and resumed the sexual assaults. Appellant was convicted of ten counts of sexual battery in this case. The sentencing order notes that the physician who performed the sexual battery exam testified that the victim suffered the worst injuries the physician had ever observed.

In the wake of *Graham,* Appellant argued that his 1000-year sentence, with the court retaining jurisdiction for 333-1/3 years, was disproportionate to his offenses, and thus in violation of the Eighth Amendment of the U.S. Constitution. Appellant also argued that his sentence violated the retroactive holding in *Graham,* because it denied him of any meaningful opportunity to obtain release within his lifetime. Thus, he requested the trial court to resentence him with a guideline sentence and order an evidentiary hearing.

The court denied the motion as to the disproportionate sentence argument, and it declined to resentence Appellant with a guideline sentence, because that option was not available under Chapter 921, Florida Statutes. Appellant does not challenge those rulings here.

The court below agreed to strike the original sentencing court's retention of jurisdiction of any parole decision during the first third of Appellant's sentence. Despite this grant of partial relief, however, Appellant asserts that he is entitled either to an evidentiary hearing on his claim under *Graham,* or a resentencing hearing that Appellant asserts must comport with *Graham,* by ensuring that Appellant receives a meaningful opportunity "for release based on demonstrated maturity and rehabilitation." In essence, Appellant asserts that the trial court should not have considered any legal arguments regarding his claim without the appointment of counsel.

The State argues that no counsel was necessary, as the arguments involved do not require a complex legal analysis. In addition, the State asserts that because it is undisputed that Appellant has been and remains eligible for parole, his sentences comply with *Graham* regardless of whether his PPRD is set far beyond his life expectancy.

I agree with the State on both points. Regarding the merits of Appellant's claim, Appellant is eligible for parole, thus, his sentences do not violate

the decision in *Graham*. *See* Miller v. Alabama, — U.S. —, —, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012) ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without *possibility* of parole for juvenile offenders." (emphasis added)). *Graham* holds only that the State may not punish a juvenile convicted of a non-homicide crime with life in prison without the possibility of parole. Graham, 560 U.S. at 57, 130 S.Ct. 2011 ("Because Florida has abolished its parole system, a life sentence gives a defendant ***216** no possibility of release unless he is granted executive clemency.") (citation omitted).

The State did not abolish parole eligibility for Appellant, who committed the above crimes before the effective dates of the sentencing guidelines legislation in Chapter 921, Florida Statutes. *See* Ch. 1984-328, Laws of Florida (effective Oct. 1, 1984, and adopting court rules implementing sentencing guidelines); Smith v. State, 537 So.2d 982, 987 (Fla.1989) (holding sentencing guidelines and elimination of parole eligibility unconstitutional until date legislature adopted relevant rules, but valid thereafter, and discussing history of sentencing guidelines, noting that "the elimination of parole was an integral part of the sentencing guidelines legislation, and we are convinced it could not be severed from the statute."). The United States Supreme Court has recognized that a life sentence with parole eligibility is necessarily a less punitive punishment than a non-parole-eligible sentence. *See* Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 662-63, 94 S.Ct. 2532, 41 L.Ed.2d 383 (1974) (noting that when parole eligibility is removed, an "additional penalty" is imposed).

Appellant's sentences are parole eligible, and now that the trial court has ordered that it will no longer retain jurisdiction under section 947.16(3), Florida Statutes, the Florida Parole Commission will determine whether Appellant will be released from his 1,000-year prison term and placed on community supervision. *See* §§ 947.002, 947.16(4), 947.18, Fla. Stat. The sentencing court has eliminated its authority to veto that decision by retaining jurisdiction, and while I render no opinion on whether this was a necessary act to comply with *Graham*, the State agreed to this action below and does not challenge it here.

I disagree with Appellant's argument that the Parole Commission has somehow calculated Appellant's PPRD in violation of the requirements of *Graham*. I further note that Appellant will receive periodic reviews by the Parole Commission, at least every seven years, where additional information can be considered. *See* §§ 947.16(5) & 947.174(2-3), Fla. Stat. In fact, Appellant acknowledged below that he has received periodic reviews from the Parole Commission.

Appellant's reliance on Cunningham v. State, 54 So.3d 1045 (Fla. 3d DCA 2011), for the proposition that a parole-eligible inmate sentenced as a juvenile must have a PPRD established within his lifetime, is misplaced. Although the Third District in *Cunningham* noted that Cunningham had a PPRD in 2026, the context of that statement was simply to observe that Cunningham acknowledged that he was in fact eligible for parole as he had a PPRD in 2026, but not to hold that the date had to be within his natural lifetime. The court there further noted that Cunningham had a review in 2013, just as Appellant will receive his reviews by the Parole Commission. Even had the Third District held that an inmate sentenced for a crime committed when a juvenile must have a presumptive parole release date within his natural life, I would respectfully disagree, for the reasons stated above. *See also* Atwell v. State, 128 So.3d 167, 169 (Fla. 4th DCA 2013) (holding inmate sentenced for first-degree murder not entitled to postconviction relief where crime was committed when inmate was a juvenile, but sentence provided parole eligibility after serving 25-year minimum mandatory). Furthermore, the Third District's decision in Lewis v. State, 118 So.3d 291 (Fla. 3d DCA 2013), recognizes that an inmate sentenced for a crime committed as a juvenile has no right to an eventual release on ***217** parole, where the Parole Commission has set his PPRD in 2042 based on Lewis' misconduct in prison. And here, we cannot predict whether the Parole Commission will in fact one day accelerate Appellant's PPRD based on good conduct, such that he may in fact be released on parole. That decision must be made by

the Parole Commission and will depend at least in part on Appellant's behavior.

I also find that Appellant's reliance on *People v. Caballero*, 55 Cal.4th 262, 145 Cal.Rptr.3d 286, 282 P.3d 291 (2012), is misplaced. There, the defendant would not become eligible for parole until serving at least 110 years, and that court found the sentence to be the functional equivalent of a sentence of life without parole. Here, Appellant has always been, and remains, parole eligible.

Because Appellant has been and remains parole eligible, with periodic review for additional consideration, his sentence comports with the Eighth Amendment to the United States Constitution. Thus, under the undisputed facts of this case and the relevant law, Appellant is not entitled to postconviction relief, an evidentiary hearing, or resentencing, because his current sentence is legal under Florida law and is constitutional under federal law.

**All Citations**

141 So.3d 210, 39 Fla. L. Weekly D1018

Footnotes

1 We express no opinion on whether the striking of the retention of jurisdiction had any effect on the legality of Appellant's sentence.



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# APPENDIX B

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

## PRESUMPTIVE PAROLE RELEASE DATE COMMISSION ACTION

I. Inmate Name: FRANKLIN, Arthur Date of Interview: 5/22/87

Inmate Number: 094027 Institution: UNION CI

II. HEARING EXAMINER'S RECOMMENDATIONS:

A. Eligible for Parole Consideration: No ___ (If no, state reason(s):

If Yes X, then:

B. Salient Factor Score: 1- 1, 2- 1, 3- 1, 4- 2, 5- 0, 6- 0, 7- 0, TOTAL 5 or RCF ___.

C. Offense Severity: 1°&Life Felony-SEXUAL BATTERY (Case No. 83-6211).

D. Matrix Time Range: 120 - 140.

E. Aggravating/Mitigating Factors (Explain each with source):

| | | |
|---|---|---|
| Alh | Kidnapping, Case #83-6211CF, 1000 years conc, Ct. I - Duval County, dated 9/19/85. | + 120 mos. |
| Alh | Unarmed Robbery, Ct. 2, 15 years. | + 60 mos. |
| Alh | Sexual Battery, Ct. 4, 1000 years. | + 120 mos. |
| Alh | Sexual Battery, Ct. 5, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. 6, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. 7, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. 8, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. 9, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. 10, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. II, 1000 years. | CONSIDERED |
| Alh | Sexual Battery, Ct. 12, 1000 years. | CONSIDERED |
| Alh | Kidnapping, Case #83-6212, Ct. I - 1000 years conc., Duval County, dated 9/19/85. | + 120 mos. |
| Alh | Sexual Battery, Case #83-6212, 1000 years conc., Ct. 2 - Duval County, dated 9/19/85. | + 120 mos. |
| Alh | Unarmed Robbery, Case #83-6212, Ct. 3, 15 yrs. conc., Duval County. | + 60 mos. |

1/3 RET. JUR.

F. Time Begins: 7/1/83 G. Months Recommended: 740

H. Recommended Presumptive Parole Release Date: 3/1/2045

III. COMMISSION ACTION:

A. The Commission AFFIRMS the Hearing Examiner's Recommendation that you are NOT Eligible for consideration for parole. You will be scheduled for initial interview ___.

B. The Commission does NOT affirm the Hearing Examiner's Recommendation that you are not eligible for parole consideration and remands the case back to the field for immediate Presumptive Parole Release Date interview and recommendation.

C. The Commission AFFIRMS, without change, the Hearing Examiner's Recommended Presumptive Parole Release Date and thereby affirms any aggravating or mitigating factors found above in II.E.

(D.) The Commission does NOT affirm the Hearing Examiner's Recommended Presumptive Parole Release Date and restructures the case as follows:

1. Salient Factor Score: 1- 1, 2- 1, 3- 1, 4- 2, 5- 0, 6- 0, 7- 0, TOTAL 5 or RCF ___.

2. Offense Severity Rating: 1 Life Felony-Sexual Battery (Case No. 83-5854, Ct. 4).

3. Matrix Time Range: 120-140.

4. Aggravating/Mitigating Factors: (Explain each with source) SET 140 mos.

AGGRAVATE:

| | | |
|---|---|---|
| (1) | Case #83-5854, Ct. 5, Sexual Battery | +240 |
| (2) | Case #83-5854, Ct. 3, Armed Kidnapping with Firearm | +240 |
| (3) | Case #83-5854, Ct. 2, Aggravated Assault | +140 |
| (4) | Case #83-5854, Ct. 1, Armed Robbery with Firearm | +240 |
| (5) | Case #83-6211, Ct. 1, Kidnapping | +240 |
| (6) | Case #83-6211, Ct. 2, Unarm Robbery | +140 |
| (7) | Case #83-6211, Ct. 3, Sexual Battery | +240 |
| (8) | Case #83-6211, Ct. 4, Sexual Battery | +240 |
| (9) | Case #83-6211, Ct. 5, Sexual Battery | +240 |
| (10) | Case #83-6211, Ct. 6, Sexual Battery | +240 |
| (11) | Case #83-6211, Ct. 7, Sexual Battery | +240 |
| (12) | Case #83-6211, Ct. 8, Sexual Battery | +240 |
| (13) | Case #83-6211, Ct. 9, Sexual Battery | +240 |
| (14) | Case #83-6211, Ct. 10, Sexual Battery | +240 |
| (15) | Case #83-6211, Ct. 11, Sexual Battery | +240 |
| (16) | Case #83-6211, Ct. 12, Sexual Battery | +240 |
| (17) | Case #83-6212, Ct. 1, Kidnapping | +240 |

AGGRAVATION CON'T AT BOTTOM OF PAGE

5. Time Begins: 7-1-83 6. Months for Incarceration: 4400

IV. At the Commission meeting held 6-17-87 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2350.

V. You will be Reviewed for your Subsequent interview during the month of May 1988

VI. Certified By [signature] Commission Clerk this 25 day of June 19 87.

FORM PCG-4: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File (September 1, 1981)

| | | |
|---|---|---|
| (18) | Case #83-6212, Ct. 2, Sexual Battery | +240 mos. |
| (19) | Case #83-6212, Ct. 3, Unarm Robbery | +140 mos. |
| | | 4400 |

mt

| | |
|---|---|
| **ITEM 1:** **NUMBER OF ALL PRIOR CONVICTIONS:** | |
| *Four or more prior felony convictions at least two of which resulted in incarceration. | = Recidivist Criminal Factor |
| *Three or more prior convictions. | = 2 Points |
| *One or Two prior convictions. | = 1 Point |
| *No prior convictions. | = 0 Points |
| **ITEM 2:** **NUMBER OF PRIOR INCARCERATIONS:** | |
| *Two or more prior incarcerations. | = 2 Points |
| *One prior incarceration. | = 1 Point |
| *No prior incarcerations. | = 0 Points |
| **ITEM 3:** **TOTAL TIME SERVED IN YEARS:** | |
| *Two or more years served. | = 2 Points |
| *Up to two years served. | = 1 Point |
| *No time previously served. | = 0 Points |
| **ITEM 4:** **AGE AT OFFENSE WHICH LED TO THE FIRST INCARCERATION** | |
| *17 Years or younger | = 2 Points |
| *18 - 25 Years | = 1 Point |
| *26 Years or older | = 0 Points |
| **ITEM 5:** **NUMBER OF PROBATION, PAROLE or MCR REVOCATIONS:** | |
| *One or more revocations. | = 1 Point |
| *No Revocations | = 0 Points |
| **ITEM 6:** **NUMBER OF PRIOR ESCAPE CONVICTIONS:** | |
| *One or more prior escape conviction(s). | = 1 Point |
| *No prior escape conviction. | = 0 Points |
| **ITEM 7:** **BURGLARY OR BREAKING AND ENTERING AS THE PRESENT OFFENSE OF CONVICTION:** | |
| *Present Offense of Conviction involves burglary or breaking and entering. | = 1 Point |
| *Otherwise | = 0 Points |

23-21.09 Matrix Time Ranges. (1) Calculate and total the Salient Factor Score. (2) Determine the degree of felony or misdemeanor of the Present Offense of conviction. (3) Locate the Matrix Time Range where the Salient Factor Score total intersects with the Severity of Offense Behavior. (4) If the totality of the circumstances of the Present Offense of Conviction warrants a decision outside the Matrix Time Range, or if there are indicents relative to the likelihood of favorable parole outcome which warrant a decision outside the Matrix Time Range, the appropriate Aggravation or Mitigation factors must be stated in writing with individual particularity.

| SEVERITY OF OFFENSE BEHAVIOR [1] | SALIENT FACTOR SCORE[2] (0-1-) | (2-4) | (5-7) | (8-11) | RECIDIVIST CRIMINAL FACTOR |
|---|---|---|---|---|---|
| 1. Misdemeanor (Cumulative Sentence of one or more Years) | ≤8 | (8-12) | 12-16 | 16-22 | 24-32 |
| 2. Felony 3° (Statutory Sentence-Maximum of 5 Years) | 12-20 | 20-26 | 26-32 | 32-48 | 48-64 |
| 3. Felony 2° (Statutory Sentence-Maximum of 15 Years) | 20-26 | 26-32 | 32-48 | 48-64 | 90-120 |
| 4. Felony 1° (Statutory Sentence-Maximum of 30 Years) | 50-70 | 70-90 | 90-120 | 120-180 | 180-300 |
| 5. Felony 1° and Life Felony (Statutory Sentence--Maximum Life)[3] | 80-100 | 100-120 | 120-140 | 140-180 | 300-400 |
| 6. Capital Felony (Statutory Sentence-Life) | 120-180 | 180-240 | 240-300 | 300-9998 | 400-9998 |

*NOTES:* 1. *Length of Sentence as well as Salient Factor Score shall be considered when determining the Presumptive Parole Release Date.*

2. *Matrix Time Ranges are reported in months.*

3. *Murder II, 0 Salient Factor Points, See 23-19.05 (VII) (1.)*

*Specific Authority: ss. 120.53, 947.165, 947.071, F.S. Law Implemented: s. 947.165, F.S. History: New 7-22-81*

# APPENDIX C

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur Date of Interview: 5/18/88

Inmate Number: 094027 Institution: UNION CI

Type of Interview: X Biennial ___ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION: 1/3 RET. JUR.

X A. No Change in Presumptive Parole Release Date.

___ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
*Reason (source)*

2. Extend Presumptive Parole Release Date by _____ months.
*Reason (source)*

COMMISSION ACTION:

XX A. The Commission AFFIRMS the Hearing Examiner's Recommendation. DRs of 8/25/87, 9/19/87 and 2/27/88 were noted.

___ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

__1. No Change in Presumptive Parole Release Date.

__2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
*Reason (source)*

(b) Extend Presumptive Parole Release Date by _____ months.
*Reason (source)*

Presumptive Parole Release Date does not change and remains: 3/1/2350

At the Commission meeting held 6/22/88 your Presumptive Parole Release Date was ESTABLISHED to be 3/1/2350

You will be Reinterviewed for your subsequent interview during the month of March 19 90

Certified By [signature] Commission Clerk this 24 day of June 19 88

gc

FORM PCG-4.2: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File.
(September 1, 1981)

# APPENDIX D

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

1/3 RET. JUR.

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur Date of Interview: 3/22/90

Inmate Number: 094027 Institution: UNION CI

Type of Interview: X Biennial ___ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION:

X A. No Change in Presumptive Parole Release Date.

___ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
*Reason (source)*

2. Extend Presumptive Parole Release Date by _____ months.
*Reason (source)*

COMMISSION ACTION:

XX A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

___ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

__ 1. No Change in Presumptive Parole Release Date.

__ 2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
*Reason (source)*

(b) Extend Presumptive Parole Release Date by _____ months.
*Reason (source)*

STATE OF FLORIDA · IN GOD WE TRUST

Presumptive Parole Release Date does not change and remains: 3-1-2350

At the Commission meeting held 5-2-90 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2350

You will be Reinterviewed for your subsequent interview during the month of January 19 92

Certified By Doria N. Chidester Commission Clerk this 9 day of May 19 90

FORM PCG-4.2: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File.
(September 1, 1981)

MT

# APPENDIX E

2/3 RET. JUR.

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

**BIENNIAL/SPECIAL INTERVIEW**
**COMMISSION ACTION**

Inmate Name: FRANKLIN, Arthur Date of Interview: 1/16/92

Inmate Number: 094027 Institution: Union CI

Type of Interview: X Biennial ___ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION:

X A. No Change in Presumptive Parole Release Date.

___ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
   *Reason (source)*

2. Extend Presumptive Parole Release Date by _____ months.
   *Reason (source)*

COMMISSION ACTION:

X A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

___ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

__ 1. No Change in Presumptive Parole Release Date.

__ 2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
*Reason (source)*

(b) Extend Presumptive Parole Release Date by _____ months.
*Reason (source)*

Presumptive Parole Release Date does not change and remains: 3/1/2350

At the Commission meeting held 2/12/92 your Presumptive Parole Release Date was ESTABLISHED to be 3/1/2350

You will be Reinterviewed for your subsequent interview during the month of November 1993

Certified By Dana Edenfield Commission Clerk this 20th day of February 19 92

FORM PCG-4.2: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File.
(September 1, 1981)

jb

1/3 RET. JUR.

# APPENDIX F

FLORIDA PAROLE COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32399-2450

BIENNIAL/SPECIAL INTERVIEW/
COMMISSION ACTION 1/3 RET. JUR.

Inmate Name: FRANKLIN, Arthur Date of Interview: 11/23/93

Inmate Number: 094027 Institution: Union CI

Type of Interview: XX Biennial _____ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION:

X A. No Change in Presumptive Parole Release Date.

_____ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

2. Extend Presumptive Parole Release Date by _____ months.
Reason (source)

COMMISSION ACTION:

X A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

_____ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows.

_____ 1. No Change in Presumptive Release Date.

_____ 2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

(b) Extend Presumptive Parole Release Date by _____ months.
Reason (source)

STATE · OF · FLORIDA · IN · GOD · WE · TRUST

Presumptive Parole Release Date does not change and remains: 3-1-2350

At the Commission meeting held 3-2-1994 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2350

You will be Reinterviewed for your subsequent interview during the month of September 19 95

Certified By Julia Billette Commission Clerk

this 14 day of March, 19 94

DWM

PCG-4.2 (revised 7/93)

1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File

xc: copies to visitors notified (1)

# APPENDIX G

FLORIDA PAROLE COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32399-2450

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

1/2 RET. JR.

Inmate Name: FRANKLIN, Arthur O. Date of Interview: 9-13-95

Inmate Number: 094027 Institution: UNION CI

Type of Interview: X Biennial _____ Special

ESTABLISHED Presumptive Parole Release Date: 3-01-2350

HEARING EXAMINER'S RECOMMENDATION:

_____ A. No Change in Presumptive Parole Release Date.

X B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

2. Extend Presumptive Parole Release Date by 6 months. Based on: Section
Reason (source) 947.16(5) & 947.174 F.S. and Rules 23-21.002(29)(48) and
23-21.013 FAC. Since the last interview of 11-23-93 and the last Commission Action of 3-2-94, Inmate Franklin's institutional record has been unsatisfactory as evidenced by the following processed disciplinary reports:
1-26-95, Disorderly Conduct, 15 days disciplinary confinement
6-26-95, Possession of Weapon, 30 days disciplinary confinement

COMMISSION ACTION:

_____ A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

X B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows.

_____ 1. No Change in Presumptive Release Date.

X 2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

Extend Presumptive Parole Release Date by 24 months.
Reason (source)

Same reasons as given by the Hearing Examiner above.

Presumptive Parole Release Date does not change and remains:

At the Commission meeting held 11-8-95 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2352

You will be Reinterviewed for your subsequent interview during the month of July 19 97

Certified By Matthew J. Vickers Commission Clerk

this 16 day of November, 19 95 jg

xc: copy to visitors notified (1)

PCG-4.2 (revised 7/93)

1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File

# APPENDIX H

# FLORIDA PAROLE COMMISSION

2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

RET. JUR.

Inmate Name: FRANKLIN, Arthur D. DC #: 094027 Date of Interview: 7/16/97

Institution: UNION CI Type of Interview: ☒ Biennial ☐ Special

ESTABLISHED Presumptive Parole Release Date: 03/01/2352

**HEARING EXAMINER'S RECOMMENDATION:**

☐A. NO CHANGE in Presumptive Parole Release Date.
☒B. CHANGE in Presumptive Parole Release Date as follows:
1. Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

2. Extend Presumptive Parole Release Date by 6 months.
Reason (source)

Based on Chapter 947.16(5) and 947.174 Florida Statutes and Rules 28-21.02(30)(50) and 23-21.13 FAC - Since the last interview of 9/13/95 and Commission Action of 11/8/95, subject's institutional adjustment has been unsatisfactory based on the following processed disciplinary report:

11/27/96, Spoken or Written Threats, 30 days disciplinary confinement, 90 days loss of gain time.

**COMMISSION ACTION:**

☒A. The Commission AFFIRMS the Hearing Examiner's Recommendation.
☐B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
☐1. NO CHANGE in Presumptive Parole Release Date.
☐2. CHANGE in Presumptive Parole Release Date as follows:
(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

(b) Extend Presumptive Parole Release Date by _____ months.
Reason (source)

At a Commission meeting held 8-20-97, the Commission decided that your Presumptive Parole Release Date was ESTABLISHED to be 9-1-2352. You will be reinterviewed for your Subsequent interview during the month of May, 1999.

Certified by [signature] Vickers, Commission Clerk, this 27 day of August, 1997

PCG-4.2 (Revised 3/96) 1 copy to inmate; 1 copy to institution file; original to Central Office file. nv

# APPENDIX I

# FLORIDA PAROLE COMMISSION

2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450

SECRET JUR

**BIENNIAL/SPECIAL INTERVIEW**
**COMMISSION ACTION**

Inmate Name: FRANKLIN, Arthur DC #: 094027 Date of Interview: 5/18/99

Institution: UNION C.I. Type of Interview: ☒ Biennial ☐ Special

ESTABLISHED Presumptive Parole Release Date: 09/01/2352

**HEARING EXAMINER'S RECOMMENDATION:**

☐A. NO CHANGE in Presumptive Parole Release Date.
☒B. CHANGE in Presumptive Parole Release Date as follows:
1. **Reduce** Presumptive Parole Release Date by _____ months.
Reason (source)

2. **Extend** Presumptive Parole Release Date by 6 months.
Reason (source)

Based on: Section 947.16(5) and 947.174, Florida Statutes and Rules 23-21.002(29)(48) and 23-21.013 FAC – Since the last parole interview conducted 7/16/97 and Commission Action of 8/20/97, inmate Franklin has received the following disciplinary reports: 02/16/98, Possession of Weapon, 60 days disciplinary confinement and 100 days loss of gain time.

**COMMISSION ACTION:**

☐A. The Commission AFFIRMS the Hearing Examiner's Recommendation.
☒B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
☐1. NO CHANGE in Presumptive Parole Release Date.
☒2. CHANGE in Presumptive Parole Release Date as follows:
(a) **Reduce** Presumptive Parole Release Date by months.
Reason (source)

(b) **Extend** Presumptive Parole Release Date by 24 months.
Reason (source)

The PPRD was extended 24 months for the same reasons listed above by the Hearing Examiner.

**At a Commission meeting held** 6/23/99 **, the Commission decided that your Presumptive Parole Release Date was ESTABLISHED to be** 9/1/2354 **. You will be reinterviewed for your** subsequent **interview during the month of** March **,** ~~19~~ 2004 (see back)

*Certified by* _____, *Commission Clerk, this* 9 *day of* July *,* 19 99.

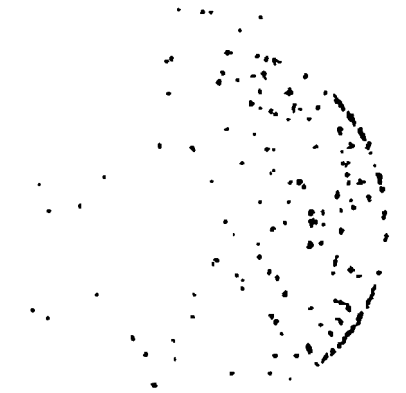
nv

xc: copy to visitor notified (1)

PCG-4.2 (Revised 3/96) 1 copy to inmate; 1 copy to institution file; original to Central Office file.

The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for Murder 2 and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:

1. The offense involved the use of a deadly weapon.
2. Poor, disruptive or assaultive institutional conduct.
3. The offense involved multiple victims or knowingly created a great risk or bodily injury or death to many people.
4. Extent of psychological or physical trauma to the victim(s) due to the criminal offense.
5. Mental health concerns.
6. Any release may cause unreasonable risk to others.



# APPENDIX J

FLORIDA PAROLE COMMISSION

SUBSEQUENT/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur O. DC #: 094027 Date of Interview: 3/19/04

Institution Marion C.I. Type of Interview: ☒ Subsequent ☐ Special

ESTABLISHED Presumptive Parole Release Date: 9/1/2352

**HEARING EXAMINER'S RECOMMENDATION:**

☒A. NO CHANGE in Presumptive Parole Release Date.

**COMMISSION ACTION:**

☒A. The Commission AFFIRMS the Hearing Examiner's Recommendation.
☐B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
- ☐1. NO CHANGE in Presumptive Parole Release Date.
- ☐2. CHANGE in Presumptive Parole Release Date as follows:
  - ☐ (a) Reduce Presumptive Parole Release Date by _____ months.
    Reason (source)
  - ☐ (b) Extend Presumptive Parole Release Date by _____ months.
    Reason (source)

**At the Commission meeting held 6/23/2004, your Presumptive Parole Release Date was established to be 9/1/2352. You will be re-interviewed for your subsequent interview during the month of January, 2009.**

**The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for Sexual Battery and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:**

1. Used of a firearm or dangerous weapon.
2. The offense involved multiple victims.
3. The offense involved multiple offense.
4. Trauma to the victims.
5. Any release would pose a risk to the public.

Certified by _____, Commission Clerk, this 9th day of July, 2004.

Xc: copy to visitor notified (1) nv

PCG-4.2 (Revised 3/96) **1 copy to inmate; 1 copy to institution file; original to Central Office file.**

# FLORIDA PAROLE COMMISSION

Memorandum **Retained Jurisdiction**

**DATE:** March 23, 2004

**TO:** THE COMMISSION

**FROM:** William Whitehouse, Parole Examiner **OFFICE:** Region III - Ocala

**RE:** **FRANKLIN, Arthur O.; DC #: 094027**

**PAROLE INTERVIEW**
**RATIONALE / BASIS FOR RECOMMENDATION**

**Interview Date: 3/19/04** **Location: Marion C.I.**

☐Initial ☒Subsequent ☐Special ☐Effective ☐Extraordinary

Last Interview Date: 5/18/99 Last Commission Action: 6/23/99

| Sentence Date | Case # & Offense | County | Sentence Structure | Guidelines |
|---|---|---|---|---|
| A#-5/4/84 | 83-6211, I. Kidnapping, II Unarmed Robbery, III – XII Sexual Battery | Duval | I. 17 y,<br>II.15 y. cc<br>III – XII. 1,000 years, c/c, RJ | No |
| 5/4/84 | 83-6212, I. Kidnapping,<br>II. Sexual Battery,<br>III. Unarmed Robbery | Duval | I. 17 years<br>II. 1,000 years, RJ, c/c<br>III. 15 years, c/c | No |
| 5/4/84 | 83-5845, I. Armed Robbery<br>II. Aggravated Assault<br>III. Armed Kidnapping With The Use Of A Firearm Or Deadly Weapon<br>IV., V. Sexual Battery | Duval | I. 17 years<br>II. 5 years, c/c<br>III., IV., V. 1,000 years, c/c, RJ | No |

Following the Interview, it is recommended that the 9/1/2352 PPRD previously established for this 38 year old inmate remain unchanged.

During the Interview and when told of the recommendation, the inmate exhibited a good attitude. He has now completed more than 20 years of the sentences totaling 1,000 years.

According to the Justification to Order Retaining Jurisdiction, inmate and co-defendant kidnapped, robbed and brutally raped and beat their female victims, physically and mentally torturing them. "On all 3 cases this (defendant) displayed an inhuman attitude and approach to his victims."

On 6/17/87, the Commission established a 3/1/2350 PPRD.

Since the last Interview, inmate has been found guilty of the following disciplinary report resulting in disciplinary confinement and/or lost gain time: 9/11/99 (9-17) Disorderly Conduct – 30 DC, 60 LGT.

No Progress Reports were completed. His is close custody and has been at Marion C.I. since his transfer from Union C.I. on 12/6/99. He averages Outstanding work evaluations in the PRIDE Garment Factory and earned training certificates on 7/14/00, 1/9/01, 1/3/02, and 2/28/03.

On 1/7/01 he was placed in administrative confinement pending investigation of an allegation that he punched another inmate in the face. He was subsequently released.

Completed by: _____
William F. Whitehouse, Parole Examiner

Reviewed & Approved by: _____
John Franks, Regional Administrator

Date: 3-29-04

# APPENDIX K

FLORIDA PAROLE COMMISSION

SUBSEQUENT/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur O. DC #: 094027 Date of Interview: 1/28/09

Institution Marion Correctional Type of Interview: ☒ Subsequent ☐ Special

ESTABLISHED Presumptive Parole Release Date: 9/01/2352

HEARING EXAMINER'S RECOMMENDATION:

☐A. NO CHANGE in Presumptive Parole Release Date.

☒B. CHANGE in Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by 12 months.
   Reason (source)
   Per Section 947.16(5) and 947.174 Florida Statutes and Rules 23-21.002 (29) and 23-21.013 FAC:
   Since the last interview of 3/19/04, and the last Commission Action of 6/23/04, Inmate Franklin's institutional conduct has been above satisfactory as evidenced by his maintaining an above satisfactory rating from his work and housing assignments. A Progress Report dated 1/23/09 recommended a 12 month reduction of his PPRD.
2. Extend Presumptive Parole Release Date by _____ months.

COMMISSION ACTION:

☐A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

☒B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

☒1. NO CHANGE in Presumptive Parole Release Date.

☐2. CHANGE in Presumptive Parole Release Date as follows:

☐ (a) Reduce Presumptive Parole Release Date by _____ months.

☐ (b) Extend Presumptive Parole Release Date by _____ months.

**At the Commission meeting held 3/4/2009, your Presumptive Parole Release Date was established to be 9/1/2352. You will be re-interviewed for your subsequent interview during the month of November, 2013.**

**The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for Sexual Battery and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:**

1. **The offense involved the use of a firearm.**
2. **Extent of physical and psychological trauma to the victim(s) due to the criminal offense.**
3. **The offense involved multiple separate offenses.**
4. **release may cause unreasonable risk to others.**

Certified a true and correct by Elizabeth Cowen, Commission Clerk, this 23 day of March, 2009
eac

Copies to inmate's counsel (6)

CR2-1.2 (Revised 3/96)

1 copy to inmate; 1 copy to institution file; original to Central Office file.

# APPENDIX L

FLORIDA PAROLE COMMISSION

**SUBSEQUENT/SPECIAL INTERVIEW**
**COMMISSION ACTION**

Inmate Name: FRANKLIN, Arthur O. DC #: 094027 Date of Interview: 11/26/2013

Institution Marion Correctional Type of Interview: ☒ Subsequent ☐ Special

ESTABLISHED Presumptive Parole Release Date: 09/01/2352

**HEARING EXAMINER'S RECOMMENDATION:**

☒ A. NO CHANGE in Presumptive Parole Release Date.

**COMMISSION ACTION:**

☒A. The Commission AFFIRMS the Hearing Examiner's Recommendation based on the same reasons provided by the hearing examiner.

☐B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
☒1. NO CHANGE in Presumptive Parole Release Date.

**At the Commission meeting held 2/5/2014, your Presumptive Parole Release Date was established to be 9/1/2352. You will be re-interviewed for your subsequent interview during the month of September, 2020.**

**The Commission finds that your next interview date shall be within 7 years, rather than within 2 years from your interview based on your conviction/sentence for Sexual Battery, and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:**

1. Use of a firearm
2. Physical and Psychological trauma to the victim
3. Unreasonable risk to others
4. Multiple separate offenses

*Certified Mailed by* Kelly Burse *Commission Clerk, this* 14th *day of* February, 2014.
*Copies to inmate notified (5)*

PCG-4.2 (Revised 7/2013) **1 copy to inmate; 1 copy to institution file; original to Central Office file.**

KFL

# FLORIDA PAROLE COMMISSION

Memorandum

**DATE:** 12/03/2013

**TO:** THE COMMISSION

**FROM:** William F. Whitehouse, Parole Examiner **OFFICE:** Region III – Ocala Field Office

**RE:** **FRANKLIN, Arthur O.** **DC # 094027**

PAROLE INTERVIEW
RATIONALE / BASIS FOR RECOMMENDATION

**Interview Date: 11/26/2013** **Location: Marion Correctional Institution**

☐ Initial ☒ Subsequent ☐ Special ☐ Effective ☐ Extraordinary

Last Interview Date: 01/28/2009 Last Commission Action: 03/04/2009

| Sentence Date | Case # & Offense | County | Sentence Structure | Guidelines |
|---|---|---|---|---|
| A# 05/04/1984 | 83-006211, I. Kidnapping,<br>II. Unarmed Robbery,<br>III – XII. Sexual Battery | Duval | I. 17 years<br>II. 15 years, c/c<br>III – XII. 1,000 years, c/c | No |
| | 83-006212, I. Kidnapping,<br>II. Sexual Battery,<br>III. Unarmed Robbery | | I. 17 years<br>II. 1,000 years, c/c,<br>III. 15 years, c/c | |
| | 83-005854, I. Armed Robbery with Use of Firearm or Deadly Weapon,<br>II. Aggravated Assault,<br>III. Armed Kidnapping with Use of Firearm or Deadly Weapon,<br>IV, V. Sexual Battery | | I. 17 years<br>II. 5 years, c/c<br>III, IV, V. 1,000 years, c/c | |

Following the interview, it is recommended that the 09/01/2352 PPRD previously established for this 48 year old inmate remain unchanged.

During the interview and when told of the recommendation, the inmate exhibited a positive attitude, explaining that he is going back to court. He has now completed more than 30 years of the sentences totaling 1,000 years. A Court Order dated 04/29/2013 removed the Jurisdiction Retained on all three cases.

According to the Justification to Order Retaining Jurisdiction, Franklin and a codefendant kidnapped, robbed and brutally raped and beat their female victims, physically and mentally torturing them. On 06/17/1987 the Commission established a 03/01/2350 PPRD.

Since his last parole interview, Franklin has not been found guilty of a disciplinary report resulting in disciplinary confinement and/or lost gain time. He was found guilty of (3-12) Possession of Contraband, a report written on 09/11/2011, and for which he received a sentence of Extra Duty.

There have been no recent progress reports written. He averages Above Satisfactory work evaluations from his assignment as a Confinement Orderly. He is prohibited from returning to work for PRIDE due to their offense and sentence length requirements. He has not been involved in any programs.

Franklin remains Close custody and has been at Marion since transferring from Union Correctional on 12/06/1999.

Franklin confirmed the tattoos listed in the DC data bank, but also added that his nickname "Darrell" and a mermaid are tattooed on his left arm. All his tattoos were received in 1986 when he was at Union. He denies any gang affiliation.

Submitted by:

William F. Whitehouse
Parole Examiner

Reviewed by:

Kevin P. Tiller date
Regional Administrator