FLORIDA PRISON LEGAL

Perspectives

VOLUME 15 ISSUE 2 ISSN# 1091-8094 MAR/APR 2009

Guards Fired, Investigated at FSP and UCI for Beating Prisoners: Only the Tip of a Dirty Iceberg

by Teresa Burns Posey

"I want to be crystal-clear about this: I will never tolerate inmate abuse. I will take swift, decisive action anytime it occurs. My goal is to rid the Florida prison system of the handful of employees with this mindset and I will cooperate fully in prosecuting those engaged in criminal acts both on a local level and at the federal level as appropriate. I will also seek revocation of correctional officer certification for these officers."

The above statement was made by Florida Department of Corrections Secretary Walter McNeil in mid-April '09 following information leaking to the mainstream media and being reported that 15 prison guards at two North Florida Prisons had been fired or placed on administrative leave for beating and abusing prisoners.

Initially the *Gainesville Sun* reported on April 15 that 11 guards at Florida State Prison (FSP) had been placed on administrative leave after being accused of beating *prisoners* during a time period when they thought surveillance cameras were not working and that their actions were not being videotaped. The alleged incident at neighboring Union Correctional Institution (UCI) resulted in four guards being placed on leave was not related to the FSP incident, yet, the *Sun's* sources had no further information about what had happened there except that a prisoner, or prisoners, had also been beaten or abused.

Subsequent reports from other media sources reported that six guards had been terminated at FSP and another five placed on leave for, according to FDOC officials, beating a *single prisoner* in solitary confinement. According to the FDOC, the six guards who were terminated—a Lieutenant, three sergeants and two bottom-rung officers—thinking that the video cameras weren't working after a power failure shut off cameras' monitors, pulled a prisoner out of his cell for allegedly exposing himself to a nurse and beat him up. But, the cameras' recorders were on a backup charger that recorded the incident and a tip from another employee led the prison administration to review the tapes and take action, FDOC officials told the mainstream media.

The six guards terminated after the alleged April 8 incident were: Lt. William Hinson, (22 years with FDOC), Sgt. Anthony Reed (16 yrs), Sgt James Coleman (6 yrs), Sgt. Richard Kross (6 yrs), CO1 Raymond Williams (12 yrs), and CO1 Charles Reames (25 yrs). Reames reportedly quit while the others were actually fired. As for what the other five FSP guards who were placed on administrative leave did, the FDOC has been quiet stating an investigation is

ON THE INSIDE

FLORIDA PRISON LEGAL PERSPECTIVES

P.O. Box 1069
Marion, North Carolina 28752

Publishing Division of
FLORIDA PRISONERS LEGAL AID ORGANIZATION, INC.

A 501(c)(3) Non-profit Organization

E-mail: fplp@aol.com

FPLAO DIRECTORS

Teresa Burns-Posey
Bob Posey, CLA
David W. Bauer, Esq.
Loren D. Rhoton, Esq.

FPLP STAFF

Publisher — Teresa Burns-Posey
Editor — Bob Posey
Research — Anthony Stuart
Melvin Perez

Florida Prisoners' Legal Aid Organization, Inc., P.O. Box 1069, Marion, NC 28752, publishes FLORIDA PRISON LEGAL PERSPECTIVES (FPLP) up to six times a year. FPLP is a non-profit publication focusing on the Florida prison and criminal justice systems. FPLP provides a vehicle for news, information, and resources affecting prisoners, their families, friends, loved ones, and the general public of Florida. Reduction of crime and recidivism, maintenance of family ties, civil rights, improving conditions of confinement, promoting skilled court access for prisoners, and promoting accountability of prison officials are all issues FPLP is designed to address. FPLP's non-attorney volunteer staff cannot respond to requests for legal advice. Due to the volume of mail that is received and volunteer staff limitations, all correspondence that is received cannot be responded to, but all mail will receive individual attention. Permission is granted to reprint material appearing in FPLP that does not indicate it is copyrighted provided that FPLP and any indicated author are identified in the reprint and a copy of the publication in which their material is published is provided to the FPLP publisher. This publication is not meant to be a substitute for legal or other professional advice. The material in FPLP should not be relied upon as authoritative and may not contain sufficient information to deal with a legal problem. FPLP is automatically sent to all members of FPLAO, Inc. as a membership benefit. Membership dues for FPLAO, Inc. operate yearly and are $10 for prisoners, $15 for family members and other private individuals, $30 for attorneys, and $60 for agencies, libraries, and institutions.

being conducted and it's confidential until the investigation is completed. The identity of those five guards was not released by the FDOC.

Similarly, FDOC officials were tightlipped about an alleged incident of prisoner abuse that occurred one day later, on April 9, at UCI. The FDOC would only confirm that four unidentified UCI guards were also placed on leave while an (alleged) abuse investigation is conducted.

Another Perspective

As may be noted above, a careful distinction is made between what was initially reported in the media, what information the FDOC released, and what the mainstream media subsequently reported. That distinction is made for a reason.

FPLP began receiving information about the incidents at both FSP and UCI shortly after they occurred and several days before the mainstream media. *FPLP* has good sources for information at both of those facilities, sources that include FDOC staff and prisoners.

What actually occurred at FSP on April 8, according to *FPLP's* sources, is that there was a temporary power outage caused by the main circuit breaker for the institution exploding. During the outage, power was cut off to the security video cameras' monitors, thus giving the impression that the cameras and their recorders also were not working. It took almost all of that day before the electric company could install equipment to by pass the electrical problem and restore full power to the prison.

During the power outage, *FPLP* was informed, a gang of guards, thinking all the cameras were off, began a campaign of revenge. Sources state that the guards brutally beat not just one prisoner (as the FDOC claims) but that they beat, stomped, and kicked several several prisoners in their confinement cells, apparently the beatings were meted out for past transgressions by the prisoners that had to be overlooked at the time by guards under constant surveillance by the prevalent video cameras at FSP.

Guards at FSP no doubt are restrained by the video cameras that were installed there a decade ago following the beating death of prisoner Frank Valdes in a confinement cell by a group of prison guards. Prior to that it was common knowledge that guards routinely beat and abused prisoners at FSP. There was even a rite of passage, where prisoners newly arriving at FSP were led handcuffed and shackled up a ramp at the rear of the prison and into a side hallway. In that hallway was a "welcoming committee," a gauntlet of guards who beat the prisoners until they fell or were unconscious and then dragged them down the main hallway to a confinement cell.

As concerns the April 9 incident at UCI, *FPLP's* sources confirm that it did involve the beating of a single prisoner by a group of guards. Although it is unclear what sparked the beating, sources report that an elderly prisoner assigned to cut other prisoners' hair in a confinement dorm was severely beaten by guards. At some point in the beating

either a guard used it as a weapon or the prisoner to try to defend himself, the barber clippers were involved in the incident. There was no report that any of the guards were seriously injured. But the prisoner was and had to be taken to an outside hospital despite UCI being a major medical facility. The barber clippers were confiscated by investigators later as evidence. One source reported that they had blood on them.

Sources say they believe the prisoner's beating at UCI would probably have been covered-up, as most prisoner beatings there are by the guards and administration, except for the fact that the prisoner in this situation was taken to an outside hospital. Reportedly, once the prisoner told the hospital staff that he was beaten by guards a report was made to law enforcement (as is required by law) and the FDOC was forced to begin its own investigation. Four unidentified prison guards who worked in the confinement unit where the prisoner was allegedly beaten were placed on administrative leave.

FDOC officials said once the department completes its investigation into the FSP incident the case will be turned over to the State Attorney's and U.S. Attorney's offices for possible criminal prosecution.

More Action Needed to Stop Abuse

FDOC Secretary McNeil's statement that prisoner abuse will not be tolerated, as began this article, is welcome. But one wonders how seriously it will be taken.

In December 2008, *three* months before the above alleged prison beatings, I personally contacted Secretary McNeil's office about elderly and mentally-ill prisoners being beaten and abused by guards and staff at Union Correctional Institution. I provided Secretary McNeil with names, dates, and information on how to obtain verifying evidence concerning specific incidents of prisoners being beaten and abused at UCI. I was informed by the FDOC's central office that investigations would be conducted. Investigations were started, but to this date I have not received confirmation that any staff have been held accountable for the beatings and abuse reported.

Instead, sources at UCI inform me, shortly after I contacted the central office several of the more abusive and violent staff members were placed on different shifts and split up between different posts. That, sources report, has resulted in a lessening of beatings and abuse against prisoners at the facility, but not completely eliminated them. However, while beating and abusing any prisoner is illegal and deplorable, when one understands which prisoners have been being beaten and abused at UCI then it becomes clear that the obvious problems at the facility, are only, what I call, the tip of a dirty iceberg. What lies below the surface is even worse.

UCI has a multifaceted mission these days. That was not always the case. For most of the prison's history *it* was known as "The Rock," and its mission was to house the baddest of the State's prisoners. Their keepers, in turn, had to be bad themselves; violence or the threat of it established what control there was. But things change. The old "Rock" was torn down in the nineties and today the sprawling complex, in addition to housing most death row prisoners, also has a solitary confinement close management unit, two transitional care and two crisis stabilization units for mentally-ill prisoners, and an open population section as large as most major prisons in Florida that houses only elderly, geriatric prisoners.

The staff who work at UCI are largely the descendants of prison employees. The prison system has been the leading employer in the area for decades. Prisons, which now surround UCI, dominate the culture of that rural region and factor into every facet of the community, including politics, law enforcement and the courts. With the prison system having such leverage there, prison officials and employees have little or no fear of outside interference in whatever they may do to prisoners. And the general attitude, passed down from the past is, that prisoners are the scum of the earth and can be treated the same way, with impunity. Those employees who don't hold that view are quickly gotten rid of or convinced to conform with silence or experience ostrasization on the job and in the community.

Of the various groups of prisoners at UCI, those on death row have the least concern about being abused. Every prisoner on death row is closely monitored with cameras and they all have attorneys who would quickly respond to any abuse allegation. The staff who work on death row generally act professionally with those restraints, sources report. This has not been the case with the other groups of prisoners housed at UCI.

For some time now FPLP staff has been receiving consistent reports that prisoners housed in the close management and disciplinary confinement dorms (N and O Dorms), in the two TCU dorms (U and V), and elderly prisoners in open population (Southwest Unit) at UCI have been being almost routinely beaten and abused in various ways.

The problems in close management and disciplinary confinement dorms usually involve some prisoners newly arriving in those dorms being beaten. Sources report that such beatings are meted out by young, pumped-up, bored guards either as a way of establishing dominance over prisoners who they think might be a problem later on, or against prisoners who have been accused of disrespect towards other staff, or who've been convicted of an offense the guards think deserving of a beating. While there are surveillance cameras installed in those dorms supposedly to prevent such abuse, until recently those cameras only covered the hallways of the cell areas and had no view inside the cells or in other areas of the buildings where prisoners

would be taken to be beaten, such as the short halls leading to the outside recreation areas, storerooms, or nurse offices.

Rather than predominantly occurring upon arrival, the abuse towards prisoners housed in UCI's two, large Transitional Care Units (TCUs), where mentally-ill or prisoners with mental issues are locked up, has been ongoing. Many of these prisoners "act out" while in these units. Some yell and make noise constantly. Others harm themselves. Some curse at the guards or attempt to throw food, feces or urine on them, or spit at them. Many of the these prisoners are truly mentally-ill, some are faking mental illness for a variety of reasons that they think will benefit them.

The guards who work in the TCU's are the same ones who rotate with those who work in UCI's other confinement units. While some of them do a difficult job as professionally as they can, others seem to welcome any excuse to use violence towards or to abuse prisoners. The beating of prisoners has been common in these units. Sources also report guards starving prisoners by sliding empty food trays into their cells or sliding full trays in the door food slots and letting them drop on the floor inside the cell.

Recently, however, some of this abuse has been curtailed. Additional surveillance cameras have been installed in the TCU, CM, and disciplinary confinement dorms, and is a step in the right direction. Although blind spots still exist, it requires more effort to use them for beatings and abuse, sources say.

Oddly, some of the worse abuse at UCI has been against the most trouble-free prisoners, elderly prisoners in open population.

Targeting the Elderly

In 2000, at the urging of the now-defunct Florida Corrections Commission, the Florida Legislature was convinced to recognize that the number of elderly prisoners was increasing and expected to continue to increase, that they cost more to incarcerate, and are particularly vulnerable in a prison setting. To address the issue a law was enacted setting up one prison, River Junction CI, as a geriatric pilot project. That same law, §944.804, Florida Statutes, carefully established the conditions that were to exist at RJCI.

For example, prior to sending elderly prisoners to that facility modifications had to be made so that it complied with the Americans with Disabilities Act to *decrease* the likelihood of falls, accidental injuries, and other conditions hazardous to the elderly.

The law also mandated the establishment of fitness/wellness programs at RJCI and a diet designed to maintain the mental and physical health of elderly prisoners to help reduce medical costs. Under the law, staff at the facility are required to receive special training to supervise elderly prisoners and the FDOC required to adopt rules as to which prisoners will be housed there. The law requires that generally healthy elderly prisoners go to RJCI, but the FDOC, recognizing that the elderly cannot safely do all the physical work necessary to maintain a major prison, included in its rules that a certain percentage of those housed at RJCI be younger prisoners to serve as work support to the majority of elderly prisoners.

Once RJCI was up and running, in 2003 the FDOC decided it would also make UCI a geriatric facility, but one without all the statutorily-mandated conditions and protections set by the Legislature for RJCI. That year all the younger, healthy prisoners at UCI were transferred to other institutions and replaced with elderly, generally unhealthy prisoners in their 50s, 60, 70, and even 80s.

Neither prior to the switch-over, nor after it, were any modifications made to UCI so that it complies with the Americans with Disabilities Act, although many of the elderly prisoners sent there have disabilities.

Nor have any special fitness/wellness programs specifically designed for the elderly been officially set up at UCI. And the food there, high in processed meats and carbohydrates, is the same fed at all other state prisons.

If the staff at UCI receive any special training in how to supervise elderly prisoners, it is not apparent in many of them. Although many of the elderly at UCI suffer from age-related problems, like short-term memory loss, Alzheimer's, hearing loss, vision loss without updated corrective lenses, slowness of speech and movement, and occasional confusion, etc, many of the staff are intolerant and impatient with such disabilities. It is not uncommon for elderly prisoners to be verbally abused and cursed at by some staff when they don't remember something, or are slow to move or speak, or become confused. Often such staff intolerance results in elderly prisoners being punished with confinement, loss of gain-time, longer work hours, harder jobs, or extra duty.

Nor are there any younger, healthy prisoners at UCI to provide work support for the elderly prisoners. Without such a support group, it's the elderly prisoners, many with heart and other serious medical problems, some with disabilities requiring canes, crutches and walkers, and others who can barely remember how to get to the dining hall, who are assigned to do all the work required to operate not just the large open population section of UCI, but they also must do all the work necessary to operate the numerous confinement units at the prison. Of course, they are given a choice. They can either do the work assigned, no matter how exhausting, demanding, or dangerous to their physical/medical condition, or go to confinement for refusing to work and suffer the abuse going on in the confinement units. Progressive discipline, the FDOC's professed policy, is almost nonexistent at UCI.

Going to confinement presents another problem for elderly prisoners that is unique to UCI. Upon going to confinement it is very likely that anything they have of value is going to be stolen, either by staff or inmate orderlies who

are allowed to pack up other prisoners' property to save the staff work. For such orderlies, being allowed to steal like this has become a job perk.

And that is not the only way the elderly are victimized at UCI. During cell searches it's routine that prisoners not be allowed to observe the search, contrary to FDOC rules. Instead, when a team of guards descend on a dorm in open population to search, all the prisoners will be sent to the day room area. Often, once they are allowed to return to their cells they discover cigarettes, tobacco, and snack items that they purchased in the canteen and had in their lockers missing. Complaints about this are met with outraged denial that anything was taken. Or threats. Complaining too much has, in instances, resulted in fabricated disciplinary actions and confinement for "lying about staff."

UCI was apparently chosen to be a geriatric facility primarily because it has relatively large medical department. Unlike most major prisons in Florida, UCI has several doctors on staff and numerous nurses and medical support/administrative personnel. However, even such expanded medical services are often overwhelmed. Consider that here are approximately 1300 elderly prisoners concentrated at UCI, many with significant medical problems, along with several hundred mentally-ill prisoners in the TCU and CSU units, over 300 death-row prisoners, and about 200 prisoners in a confinement status at any time.

Like with other staff at UCI in security or the administration, some of the medical staff are professionals and carry themselves that way. They resolve and treat the medical problems of prisoners to the best of their abilities within the limits set by the FDOC.

Others among the medical staff are not professionals and seem to be motivated only by receiving a paycheck and state benefits. According to consistent sources, at least one of the doctors at UCI should not be practicing medicine. And several nurses, who act as gatekeepers one has to go through to see a doctor, are reportedly condescending, vindictive, and verbally abusive towards elderly prisoners. One problem all the medical staff at UCI share is maintaining silence to known or suspected physical abuse of elderly, and mentally-ill prisoners, whom often they must treat. Florida laws mandate the reporting of such actual or suspected abuse, with criminal penalties for not reporting. But it's not worth their jobs to blow the whistle at UCI, apparently.

Recently numerous elderly prisoners at UCI have contacted *FPLP* claiming that medications that they need and have previously been receiving without problem have been cut or reduced. One staff member has informed *FPLP* that the medical staff has been directed to reduce medication to save money during the budget crunch, or staff positions may have to be eliminated. This policy will, of course, lead to increased medical costs in the long run as medical conditions go improperly treated. There may even be a rise in the number of deaths at UCI, which already has the highest death rate of any major prison in Florida.

But with all those problems being faced by elderly prisoners at UCI one other problem stands out. Ever since the institution switched to being a geriatric facility elderly prisoners have had to live in fear of being beaten. That fear is justified.

Up until just 3 or 4 months ago elderly prisoners were being almost routinely beaten by guards at UCI. It was no secret on the compound that once or twice a week some unfortunate old man would be pulled into one of the inmate barber shops or an empty office in one of the areas at the Southwest Unit and be severely beaten, usually while handcuffed behind his back, by a gang of prison guards. Female guards who predominantly work the Southwest Unit, and who were the ones often initiating the beatings, are reported to have gleefully watched and even participated in some of these beatings.

Prisoners who have told *FPLP* that they have been beaten in open population at UCI most often state that there would be 4 or 5 male guards doing the beating. Usually they are guards who normally work in the confinement dorms, the prisoners state. Consistent reports are that these guards usually cautioned each other not to leave marks or bruising while the beatings were taking place, but occasionally they would get out of control. If no marks were left, prisoners say they were often let go after the beating with a warning not to say anything about what happened. If marks were left, prisoners say they were often given a bogus disciplinary report and placed in solitary confinement until the marks were gone, this with the complicity of higher ranking officers and disciplinary teams. These beatings came to a head late in 2008 after one elderly prisoner had an eye knocked out, another was beaten in the face with a metal walkie-talkie, and a 73-year-old man was beaten so bad not only his face but one whole side of his body was severely bruised. That latter prisoner told *FPLP* that he was beaten after being accused by a female guard of having his hands in his pant's pockets (on a freezing day). Reportedly, that female guard had made up her own rule that prisoners could not have their hands in their pockets around her.

Conclusion

As noted above, that several prisoners were beaten at FSP and that one was beaten at UCI only scratches the surface as to the abuse occurring at those facilities.

While the worse abuses are in a lull right now following the spotlight cast on the publicized abuse, the culture that allowed such abuse in the first place still exists and is simply laying low for a while.

There needs to be a sustained policy implemented by Secretary McNeil letting all FSP and UCI staff know that the old way of doing things are over, that swift and decisive

discipline will be taken for the abuse or suspected abuse of elderly and mentally-ill prisoners, that those in supervisory positions will also be held accountable, as will those who know of or suspect prisoner abuse and fail to report same. ■

FDOC Guard Fired After Shocking Children With Stun Gun

On "Take Our Daughters and Sons to Work Day" at Franklin Correctional Institution the children were in for a real shock. Sgt. Walter Schmidt wanted to give the kids an idea of how their parents treat prisoners. So, being in charge of the institution's armory, Schmidt took out a hand-held stun gun and zapped the children with 50,000 volts of electricity.

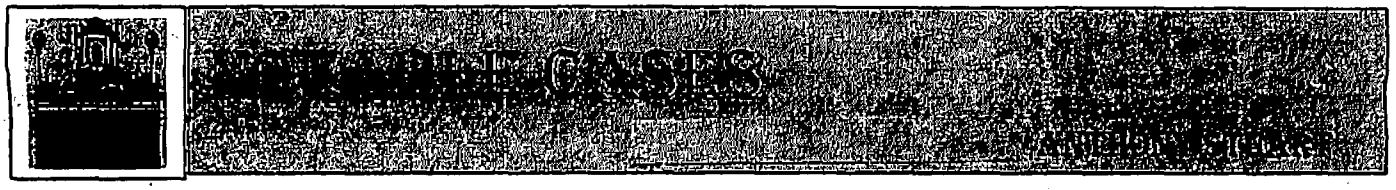
Schmidt, a 14-year veteran with the Florida Department of Corrections, said he asked the parents if it was okay to shock the kids. "When they said 'sure,' I went ahead and did it," Schmidt said after the incident.

Reportedly, after being zapped with the stun gun the children yelled, screamed, dropped to the ground and were flopping around holding the burn marks on their arms. One had to be taken to a nearby hospital.

Three days after the April 24 incident, Schmidt received a notice from FCI Warden Duffie Harrsion stating that his "retention would be detrimental to the state" because he had "engaged in inappropriate conduct while demonstrating weapons to several kids during a special event at the institution."

After he was terminated Schmidt said, "It wasn't intended to be malicious, but educational. The big shock came when I got fired."

It is not known how many of the children might still want to be a prison guard when they grow up after such an exciting day at work with their parents. ■



The following are summaries of recent state and federal cases that may be useful to or have a significant impact on Florida prisoners. Readers should always read the full opinion as published in the Florida Law Weekly (Fla. L. Weekly); Florida Law Weekly Federal (Fla. L. Weekly Federal); Southern Reporter 2d (So. 2d); Supreme Court Reporter (S. Ct.); Federal Reporter 3d (F.3d); or the Federal Supplement 2d (F.Supp. 2d), since these summaries are for general information only.

Florida Supreme Court

State v. Powell, 34 Fla. L Weekly S2 (Fla. 12/23/08)

The Florida Supreme Court revised its opinion in Kevin Powell's case. The original opinion was reported in *State v. Powel*, 33 Fla. L. Weekly S778 (Fla. 9/29/08)

As reported in the last issue of *FPLP*, the question that was presented remained answered in the affirmative in the revision. In fact, in this writer's investigation in both the original and revised opinion, no change took place as to the findings and decision. Both mirror each other except an addition to the notes in the revised opinion.

The additional note was inserted as number 9 toward the end of the Analysis section 2.-B. Florida Courts, just before section 3.-warnings given to Powell at page S5.

The added note pushed the original n.9 to n10 and brings attention to *State v. Modeste*, 987 So.2d 787 (Fla. 5th DCA 2008) (en banc), where it shows that the Fifth District receded from its previous opinions that were cited in the original and revised *Powell* decisions, which were" *Maxwell v. State*, 917 So.2d 404 (Fla. 5th DCA 2006); and *Octave v. State*, 925 So.2d 1128 (Fla. 5th DCA 2006) under the Analysis section of Florida Courts' decisions.

[Note: although the end result of the revision remains the same, so does the decision that the opinion is not to be applied retroactively *to cases that are already final on the date of the opinion*. This may raise a question, being that decision was in both the 9/29/08 and 12/23/08 opinions: If a case became final *prior* to the revision (12/23/08), but after the original opinion (9/29/08), would the Court's opinion apply to that case?]

State v. Kelly, 34 Fla. L. Weekly S15 (Fla. 12/30/08)

Subsequent to a very lengthy review of *State v. Kelly*, 946 So.2d 1152 (Fla. 4th DCA 2006), that certified a question of great public importance and was rephrased by the Florida Supreme Court, it was concluded that "Article I, section 16 of the Florida Constitution, as influenced by Florida's prospective – imprisonment standard, prevents the State from using uncounseled misdemeanor convictions to increase or enhance a defendant's later misdemeanor to a felony, unless the defendant validly waived his or her right to counsel with regard to those prior convictions. However, the State may constitutionally seek the increased penalties and fines short of incarceration associated with the defendant's relevant number of DUI offenses."

It was further concluded that to meet the initial burden of production, the defendant must assert under oath, through a properly executed affidavit that: "(1) the [prior] offense involved was *punishable by* imprisonment [emphasis added]; [2] the defendant was indigent and thus, entitled to court – appointed counsel; (3) counsel was not appointed; and (4) the right to counsel was not waived."

In its own conclusion, the Florida Supreme Court approved the Fourth District's decision in *Kelly*, but opined a disapproval to any of that district's reasoning that was inconsistent with the Florida Supreme Court's modified framework.

Accordingly, the *Kelly* case was remanded for further proceedings consistent with the concluded opinion.

In Re: Amendments to Florida Rule of Criminal Procedure 3.851 And Florida Rule of Appellate Procedure 9,142, 34 Fla. L. Weekly S30 (Fla. 12/30/08)

To reflect a comparable procedure to seek a belated appeal in capital cases (as to that in non-capital cases pursuant to Fla. R. Crim. P. 3.850 (g)), rule 3.851 was amended to include a subdivision (j) that shall provide that "[a] petitioner may seek a belated appeal upon the allegation that the petitioner timely requested counsel to appeal the order denying petitioner's motion for postconviction relief and counsel, through neglect, failed to do so."

Rule 9.142 of the Fla. Appellate Procedures was amended to qualify the circumstances upon which a belated appeal may be sought in a capital postconviction case. Specifically, the amendment places a one-year time limit on seeking a belated appeal from the expiration of the time for filing a timely notice of appeal.

[*Note:* A review of these amendments can be found in Volume 34, number 1A, of the January 9, 2009 issue of the Fla. L. Weekly at page S30.

State v. Rabedeau, 34 Fla. L. Weekly S51 (Fla. 1/29/09)

This case was presented to have the decision *in Rabedeau v. State*, 971 So.2d 931 (Fla. 5th DCA 2007), reviewed due to a conflict certified by that district court with the decision in *Gisi v. State*, 948 So.2d 816 (Fla. 2nd DCA 2007).

The Fifth District Court of Appeal opined in *Rabedeau*, a defendant is entitled to credit for time served on his concurrent sentences of each case upon a re-sentencing. The Second District in *Gisi* opined that such a defendant is not entitled to the credit.

After its analysis of both districts' opinions, the Florida Supreme Court concluded that the Fifth District was correct, approving the decision in *Rabedeau*, disapproving the Second District's in *Gisi*.

In Re: Amendments to Florida Rules of Appellate Procedure, 34 Fla. L. Weekly S60 (Fla. 1/29/09)

An out-of-cycle report was filed proposing amendments to Florida Rule of Appellate Procedure 9.110 – Appeal Proceedings to Review Final Orders of Lower Tribunals and Order Granting New Trial in Jury and Non-Jury Cases, and 9.360-Parties.

The amendments were proposed in response to legislation requiring a filing fee for cross-appeals and certain joinder notices or intervenor motions. See: ch. 2008-111, section 1, 11, 13, Laws of Florida (amending sections 25.241, 34.041, 35.22 Florida Statutes).

Rule 9.110 (g), Cross Appeals, was amended to require that a notice of cross-appeal be accompanied by any filing fee prescribed by law and filed in the same manner as a notice of appeal. Other amendments to 9.110 consisted of: instead of referencing "2 copies" to be filed, it was changed to "an original and 1 copy" (this change was made in rule 9.110 (b)- notice of appeal filings, 9.110(g) – cross – appeal filings).

Rule 9.360 (a), Joinder, which was silent as to filing fees, was amended to mirror the amended requirements for notices of appeals and cross-appeals. Subdivision (a) of the rule was further amended to clarify the time for filing a notice of joinder in original proceedings.

The amendments became effective on the date of the opinion.

In Re: Amendments To Florida Rule Of Appellate Procedure 9.141, 34 Fla. Weekly S61 (Fla. 1/29/09)

Pursuant to comments filed that followed the issuance of the Florida Supreme Court's opinion in *In Re: Amendments to Florida Rule of Appellate Procedure* 9.141, 922 So.2d 233 (Fla. 2008), rule 9.141 (c) was amended to clarify the procedure for seeking belated discretionary review or belated appeal of a district court decision. In *In Re: Amendments to Fla. R. App. P. 9.141*, subsection (c) - Petitions Seeking Belated Appeal or Alleging Ineffective Assistance of Appellate Counsel, extended the existing rule to include petitioners seeking belated discretionary, review or belated appeal in Florida Supreme Court.

It was recommended that rule 9.141 be revised to clarify whether certain provisions contained therein are or are not applicable to petitions discretionary review. Second, it was suggested that it would be considered to adopt a court commentary specifically referring to *Sims v. State*, 33 Fla. L. Weekly S698 (Fla. 9/25/08). Third, it was noted to be considered that the Criminal Practice Subcommittee of the Rules Committee had determined that subdivision (c), under rule 9.141, may benefit from a more comprehensive revision.

The amendments made were approved and became effective the date of the opinion.

[*Note:* A review of the above noted amendments and the former above noted amendments can be found in Volume 34, number 4, of the January 30, 2009, issue of the Florida Law Weekly at pages S60 through S62.]

Gisi v. State, 34 Fla. L. Weekly S94 (Fla. 1/29/09)

The Second District Court of Appeal in Michael Gisi's case (*Gisi v. State*, 948 So.2d 816 (Fla. 2nd DCA 2007)) issued a certified question of great importance: Is a defendant, on resentencing, entitled to credit on each newly imposed consecutive sentence for prison time already served on the original concurrent sentences?

The Florida Supreme Court resolved the question by answering it in the affirmative due to its review and approval of the decisions in *Rabedeau v. State*, 971 So.2d 913 (Fla. 5th DCA 2007) [See: *State v. Rabedeau*, 34 Fla. L. Weekly S51 (Fla. 1/29/09), and noted within this issue of the *FPLP* under Supreme Court of Florida, Notable Cases section.]

Accordingly, for the reasons set out in *Rabedeau*, the Second District's decision in *Gisi* was quashed and remanded for further proceedings consistent with the concluding approved opinion.

Valdes v. State, 34 Fla. L. Weekly S116 (Fla. 1/30/09)

The Third District Court of Appeal in Eli Enrigue Valdes' case (Valdez v. State, 970 So.2d 414 (Fla. 3rd DCA 2007) opined that no double jeopardy occurred in dual convictions for discharging a firearm from a vehicle within 1000 feet of a person, and the shooting into an occupied vehicle arising from the same criminal episode.

That opinion was in direct conflict with the Fifth District in *Lopez-Vasquez v. State*, 931 So.2d 231 (Fla. 5th DCA 2006), which opined that such did violate double jeopardy.

On review of the conflicting opinions and after a lengthy analysis, the Florida Supreme Court approved the Third District in *Valdes* where it was concluded that the dual convictions do

not violate the prohibition against double jeopardy.

Accordingly, the Third District's results were approved, but not the reasoning for the results, and the results and reasoning in the Fifth District's decision were disapproved.

Rigterink v. State, 34 Fla. L. Weekly S132 (Fla. 1/30/09)

In Thomas William Rigterink's case, it has been opined that yet another Florida County Sheriff (Polk county) right-to-counsel warning is defective.

The warning given to Rigterink regarding his right to counsel only depicted that he had a "right to have an attorney present prior to questioning." As the Florida Supreme Court determined in *State. v. Powell*, 33 Fla. L. Weekly S778 (Fla. 9/29/08), [Revised at 34 Fla. L. Weekly S2 (Fla. 12/23/08), noted in this issue of the *FPLP* under Supreme Curt of Florida Notable Cases section.], the right-to-counsel warning must specifically inform the defendant that that right is for counsel "during" the questioning also. Accordingly, *Rigterink's* first-degree murder convictions and sentences of death were reversed and the case was remanded for a new capital trial.

Cases Granted Review

C. E. L. v. State, 33 Fla. L Weekly D2120 (Fla. 2nd DCA 2008)

The Second District Court of Appeal opined in C. E. L's case that a person who knowingly fails to heed a police order to stop is guilty of resisting, obstructing, or opposing a law enforcement officer without violence under section 843.02, of the Florida Statutes.

It was further opined that an offense under section 843.02, Florida Statutes, is committed by a person fleeing the police who defies a lawful order to stop even if justification for detaining that person does not exist before he initially flees from police and even if initial flight was not a crime.

Review of the opinion was sought and granted by the Supreme Court of Florida, case no. SC08-1898 (C. E. L. v. State). Order was dated December 19, 2008, and oral argument will be set by a separate order.

State v. Jardines, 33 Fla. L. Weekly D2455 (Fla. 3rd DCA 2008).

The Third District Court of Appeal opined in Jardines' case that: An affidavit alleging a drug detection dog alerted to a marijuana odor from inside a residence is sufficient to establish probable cause for issuance of a search warrant for the residence; A canine sniff is not a Fourth Amendment search; where police had received a tip of criminal activity and observed other indications of criminal activity, officer and dog had a right to walk to front door and were lawfully present there at front door of residence; even if dog sniff constituted an illegal search, evidence seized at residence would be admissible under inevitable discovery rule because officer would have detected marijuana odor as he approached the residence door.

Review of the opinion was sought due to a certified conflict with other districts. The Supreme Court of Florida granted review of the case (no. SC08-201), and the order was dated February 4, 2009. Oral argument will be set by separate order.

Fleming v. State, 926 So.2d 475 (Fla. 1st DCA 2006)

The First Disctict Court of Appeal in *Fleming* opined, in pertinent part, that there was no error in the scoring of points for severe victim injury where such was found by jury when it convicted Fleming of aggravated battery by causing great bodily harm, permanent disability, or permanent disfigurement. However, it was error for upward departure from guidelines based on facts found by trial judge, not by jury.

Review of this opinion was sought and granted by the Florida Supreme Court (case no. SC06-1173, *State v. Fleming*). That order was dated February 11, 2009, and oral argument will be set by separate order.

Isaac v. State, 911 So.2d 813 (Fla. 1st DCA 2005)

The First District Court of Appeal in *Isaac* had opined: Two-year limit for amendment to a rule 3.850 motion that regarded defendant's resentencing began when appellate court issued the mandate in direct appeal of the resentencing; The trial court was bound by the decision in *Apprendi v. New* Jersey since it was decided prior to defendant's resentencing; Departure sentence imposed pursuant to a trial court determining a fact by merely a preponderance of the evidence violates holding of *Apprendi* as explained by *Blakely v. Washington*.

Review was sought and granted February 11, 1009, case no. SC05-2047 (State v. Isaac). Oral argument will be set by separate order.

McGriff v. State, 32 Fla. L. Weekly D520 a (Fla. 1st DCA 2007)

In McGriff, it was opined that the decisions in *Apprendi* and *Blakely* apply to cases where defendant is resentenced after those cases were decided.

Review was sought due to a certified conflict and was granted February 11, 2009, case no SCO7-436 (*State v. McGriff*). Oral argument will be set by a separate order.

Nelson v. State, 993 So.2d 1072 (Fla. 4th DCA 2008)

It was opined in *Nelson* that a motion for continuance of trial filed after speedy trial term expired but before any notice of expiration invoked the right of a recapture was nullity. Thus, a certified question was issued: Does a motion for continuance made after the expiration of the speedy trial period but before a defendant files notice of expiration under the rule, which activates the right of

recapture, waive a defendant's speedy trial rights under the rule?

Review was granted February 5, 2009, case no. SCO8-2325 *(Sate v. Nelson)*. Oral argument will be set by separate order.

District Courts of Appeal

State. V. Sinclair, 33 Fla. L. Weekly D2813 (Fla. 3rd DCA 12/10/08)

Lawrence Sinclair had filed a rule 3.850 motion in the circuit court to vacate his plea because he was not properly advised of the immigration consequences involved, and he asserted that had he known of those consequences he would not have accepted the plea. The lower court summarily granted Sinclair's motion, the State appealed.

On appeal, the State contended that Sinclair did not allege in his motion that he was subject to deportation based solely on the plea at issue. The State further asserted Sinclair failed to establish the prejudice required under *State v. Green*, 944 So.2d 208 (Fla. 2006), because he was subject to deportation on additional grounds other than his plea, i.e., overstaying his student visa.

In order to establish prejudice as a result of the failure to advise a defendant of the deportation consequences of a plea, "[t]he burden is on the movant to establish that the plea in the case under attack is the *only* basis for deportation. Only then can the movant show prejudice resulting from the failure to advise of deportation consequences in the case under attack." *Forest v. State*, 988 So.2d 38, 40 (Fla. 4th DCA 2008) (emphasis in original), see also *Dumenigo v. State*, 988 So.2d 1201 (Fla. 3rd DCA 2008).

The appellate court agreed with the State's contentions and found the lower court erred in granting Sinclair's motion, thus, reinstating Sinclair's sentence and judgment.. However, the opinion did not preclude Sinclair from filing a new motion with corrected allegations.

Web v. State,, 33 Fla. L. Weekly D2837 (Fla. 2nd DCA 12/12/08)

The appellate court in Robert Webb's case opined that the trial erred in reclassifying a second-degree felony conviction for aggravated battery to a first-degree felony because Webb used a firearm.

In the lower court the jury made no express or unambiguous finding of guilt for aggravated battery based on inflicting great bodily harm in which the use of a firearm was not an essential element of the crime. The appellate court further opined that because option on the verdict form did not permit the jury to find the bodily-injury type of aggravated battery without the use of a firearm or ability to expressly enhance that type with a separate fining that a firearm was used, use of the firearm "became" an essential element of the crime charged and could not be used to reclassify the degree of felony. See: *Dozier v. State*, 677 So.2d 1352 (Fla. 2nd DCA 1996); *Crawford v. State*, 858 So.2d 1131 (Fla. 2nd DCA 2003) (accord); and *Cabral v. State*, 944 So.2d 1026, 1027 (Fla. 1st DCA 2006).

Webb's judgment and sentence was reversed and the case was remanded for further proceedings in accord with the appellate court's opinion.

Williams v. State, 33 Fla. L. Weekly D2853 (Fla. 2nd DCA 12/17/08).

The appellate court opined that it was error for the lower court to impose a three-year mandatory minimum term for Cleveland B. Williams' offense of possession fo a firearm by a convicted felon where there was no evidence Williams was in actual possession of a firearm.

Section 775.087 (2) (a) (1) "enhances the sentence of a defendant who 'actually possessed' a firearm..." See: *Bundrage v. State*, 814 So.2d 1133, 1134 (Fla. 2nd DCA 2002). But in order for the enhancement to apply, the State must prove actual possession. See: id. In such context, "actual possession" means the firearm must be carried on the person. See: Washington v. State, 876 So.2d 1242, 1243 (Fla. 2nd DCA 2004).

Accordingly, Williams' case was reversed and remanded to the trial court to strike the mandatory minimum designation for the sentence.

Gilliam v. State, 33 Fla. L. Weekly D2855 (Fla. 2nd DCA 12/17/08)

Douglas Gilliam sought review of a trial court's denial order of his "Motion for Execution of Ministerial Duties By Proper Agency-Clerk of Court," Which lower court treated as a mandamus petition.

In the lower court Gilliam had filed, initially, a "Motion For Disclosure of Itemized Cost For Public Records Request." In that motion, Gilliam asked the circuit court to provide him with "the specific cost, attributable to him, of the sentencing transcript... [in his case]." The clerk of that court responded to Gilliam's, motion with an acknowledgment letter of receiving the motion, the letter included none of the information Gilliam sought.

Several months later, with no further response to his motion, Gilliam filed a "Motion For Execution of Ministerial Duties By Proper Agency-Clerk Of Court Pursuant To F.S. Chpt. 119-Public Records Statute." This motion was treated as a mandamus petition, and was denied. The lower court reasoned: Gilliam did not state a willingness to pay the cost of the items he sought and did not state what legal duty the clerk had allegedly failed to perform, further stating that Gilliam's motion failed to meet the requirements for a mandamus petition. The lower court also asserted that it would not determine whether Gilliam was complaining about not receiving an itemized cost or the clerk's failure to produce the items sought.

On appeal, the appellate court pointed out the obvious: An extraordinary petition, as Gilliam's motion was treated (mandamus petition),

must contain a statement of the facts on which the petitioner relies for relief and a request for the relief sought. See: Fla. R. Civ. P. 1.630 (b). If such petition states an insufficient claim for relief, the trial court may dismiss it. See: *Davis v. State*, 861 So.2d 1214, 1215 (Fla. 2nd DCA 2003); *Holcomb v. Dep't of Corrs.*, 609 So.2d 751, 752 (Fla. 1st DCA 1992). *However*, if such petition states a prima facie case for relief, the trial court must issue an "alternative writ," See Fla. R. Civ. P. 1.630 (d) (3), which "'is essentially an order to show cause why the requested relief should not be granted.' " *Bostic v. State*, 875 So.2d 785, 786 (Fla. 2nd DCA 2004) (quoting *Conner v. Mid-Fla. Growers Inc.*, 541 So.2d 1252, 1256 (Fla. 2nd DCA 1989) once such writ has issued, the burden is on the respondent to come forward with facts he contends supports his refusal to perform its legal duty. See: *Bostic*, 875 So.2d at 786 and *Smith v. State*, 696 So.2d 814, 816 (Fla. 2nd DCA 1997)

It was shown that Gilliam's motion *did* contain sufficient facts to support the relief he sought, i.e., cost of a specific transcript. As custodian of judicial records the clerk had a legal duty to respond to Gilliam's request for cost information. See: *Hogan v. State*, 983 So.2d 656, 657 (Fla. 2nd DCA 2008). Moreover, Gilliam substantiated his request by attaching his initial motion and the clerk's response to the "treated mandamus petition." Thus, the lower court should have issued a show cause order to the clerk.

Accordingly, the case was reversed and remanded for further proceedings, including issuance for a show cause order to the clerk and grant Gilliam's mandamus petition.

McDonald v. State, 34 Fla. Weekly D15 (Fla. 3rd DCA 12/24/08)

Anthony M. McDonald appealed the denial of his rule 3.850 motion, where the lower court reasoned that his claims of prosecution deliberately using false evidence in violation of *Gigleo v. State*, 405 U.S. 150 (1972), and destroying evidence in bad faith in violation of *Arizona v. Youngblood*, 488 U.S. 51 (1988), where not cognizable under rule 3.850.

The appellate court disagreed with the lower court's determination, opining that such claims are cognizable under rule 3.850. See: *Rivera v. State*, 33 Fla. L. Weekly S386 (Fla. 6/12/08); and *Swain v. State*, 937 So.2d 1160, 1160-1161 (Fla. 3rd DCA 2006).

Accordingly, McDonald's case was reversed and remanded for further consideration by the lower court.

Michaud v. State, 34 Fla. L. Weekly D23 (Fla. 4th DCA 12/24/08)

Michael Michaud appealed the summary denial of his rule 3.850 motion where he contended that trial counsel was ineffective for failing to object to improper scoring of his out of state convictions which, if properly scored, would have resulted in a reduced sentence.

Florida Rule of Criminal Procedure 3.704 (d) (14) requires a trial court to include, under prior record, offenses committed by the offender in other jurisdictions. These convictions "are scored at the severity level at which the analogous or parallel Florida crime is located." Fla. R. Crim. P. 3.704 (d) (14). In *Holybrice v. State*, 753 So.2d 621 (Fla. 4th DCA 2000), it was opined that when applying such rule, courts must review "only the elements of the out-of-state crime, and not the underlying facts..." Id. at 623. "[W]hen the degree of felony is ambiguous or the severity level cannot be determined, the conviction must be scored at severity level 1." Fla. R. Crim P. 3.704 (d) (14) (E).

In Michaud's case, it was opined that if there were ambiguities between the Connecticut and Florida Statues, as was claimed, counsel failed to determine this and object, making counsel's performance deficient. Such a claim is legally sufficient when filed pursuant to rule 3.850. If Michaud's score were lower, his sentence would be shorter.

Based the appellate court's findings, Michaud's rule 3.850 denial was reversed and the case was reversed and the case was remanded for an *evidentiary* hearing, or, in the alternative, an attachment of records that would refute the claims.

Parent v. McNeil, 34 Fla. L Weekly D29 (Fla. 1st DCA 12/24/08)

Richard T. Parent, a Florida prisoner, sought certiorari review of a circuit court's denial order against his mandamus petition.

This case's background began when, by prison officials, Parent was observed using a state prison computer to access a personal e-mail account. Parent was issued a disciplinary report and was charged with "possession or use of a cellular telephone or any other type of wireless communication device."

Contrary to the lower court's denial of Parent's mandamus, the appellate court opined that there was insufficient evidence presented in the cast to prove a *wireless* devise was used. Furthermore, the Department of Corrections did not refute Parent's factual allegation that the computer used was a hardwired desktop model, which was plugged into the wall and used a DSL connection to access the Internet. As a result, the Department of Corrections failed to satisfy the evidentiary standard of *Superintendent v. Hill*, 472 U.S. 445 (1985).

The mandamus denial was quashed, Parent's certiorari was granted, and the cause was remanded for further proceedings. [The FDOC has since moved to amend the rule to include hardwired computers.]

Barrett v. State, 34, Fla. L Weekly D30 (Fla. 4th DCA 12/24/08)

John Barrett had filed a rule 3.850 motion in the lower court that alleged ineffective assistance of counsel for

failure to advise of an involuntary intoxication defense. The motion was denied based on the reasoning of the State's response to show cause, where it was opined the claim was conclusively refuted by showing plea hearing records that indicated Barrett acknowledged there was no basis for an insanity defense.

On appeal from the denial, the appellate court noted reversal of a similar denial of a rule 3.850 motion, *Scott v. State*, 779 So.2d 284 (Fla. 2nd DCA 1998). However, the state did not dispute Barrett's allegation that counsel failed to advise of the involuntary intoxication defense. Rather, it suggested that Barrett's knowledge of the insanity defense was tantamount to knowledge of the involuntary intoxication defense.

The distiction between the two defenses was recognized by the Florida Supreme Court *in Cirack v. State*, 201 So.2d 760, 709 (Fla. 1967). While the insanity defense may subsume the involuntary intoxication defense, the defenses are not the same. See: *Brancaccio v. State*, 698 So.2d 597 (Fla. 4th DCA 1997) (opining that the standard jury instruction on insanity did not apprise the jury of the involuntary intoxication defense). Thus it was opined in Barrett's case that an involuntary intoxication defense would negate the specific intent element of a crime, whereas the insanity defense is a complete defense to a crime.

As a result of the findings in Barrett's case, it was opined that because Barrett's rule 3.850 motion alleged he had taken multiple prescribed drugs on the day of the crime, he may very well have been entitled to the involuntary intoxication defense.

The case was reversed and remanded for an evidentiary hearing, or to attach record to refute the claim.

Tapia v. State, 34 Fla. L Weekly D36 (Fla. 2nd DCA 12/31/08)

Javier Tapia sought review of the lower court's judgments and sentences for his offenses, where, in pertinent part, he claimed it was error for the lower court to impose investigative costs, which was preserved for appeal.

The investigative cost Tapia complained about are authorized by section 938.27 (1), Florida Statutes (2006). That section however, specifically provides that "convicted persons are liable for payment of the *documented* cost of prosecution, including investigative costs incurred by law enforcement agencies." (Emphasis added.) There was no documentation reflected of such costs in Tapia's case records. Therefore, the appeal court struck the imposed costs. See: *Jones v. State*, 988 So.2d 15, 16 (Fla. 2n DCA 2008).

Although the costs were struck, the case was remanded, with instructions that the lower court may reimpose the costs if the statutory requirement was met.

Rosado v. State, 34 Fla. L. Weekly D187 (Fla. 4th DCA 1/21/09)

Elias Rosado sought review of the lower court's order that denied his mandamus petition, where he requested the lower court to order his appointed counsel to submit to him copies of documentation from his previous litigation.

Although "[f]iles prepared and maintained by an attorney for the purpose of representing a client are the attorney's personal property.... Transcripts [or record documents] that were prepared at public expense on behalf of an indigent defendant must be provided to the defendant without charge for copying." See: *Potts v. State*, 869 So.2d 1223, 1225 (Fla. 2nd DCA 2004).

Accordingly, Rosado's case was reversed and remanded for the lower court to grant the mandamus petition to the extent that it will be consistent with the appellante court's opinion as found in *Potts*.

State v. McCartney, 34 Fla. L. Weekly D187 (Fla. 4th DCA 1/21/09).

The State sought an appeal of the lower court's decision that dismissed William F. McCartney's charge of first degree murder which was based on death cause by an overdose of methadone that was sold to the victim by McCartney.

Section 782.041(a)3, Florida Statutes shows that methadone is not a drug enumerated that enables one to be charged under that statute.

Consequently, the lower court was opined to be correct in dismissing McCartney's charge, thus affirming the decision over the State's arguments.

Jenkins v. State, 34 Fla. L. Weekly D190 (Fla. 3rd DCA 1/21/09)

Engino Jenkins argued on appeal that the only evidence the substance was crack cocaine came from the testimony of a detective, who had testified that he could not identify the substance; he could only say that the transaction he saw was consistent with "thousands" of similarly illegal "hand-to-hand transactions" he had seen throughout his career. (The substance had not been recovered at the time of *Jenkins'* arrest.)

To satisfy the elements of Jenkins' charged crime under section 893.13 (1) (c), Fla. Stat., the State must establish that (1) Jenkins sold, manufactured, delivered, or possessed; (2) a controlled substance; (3) within 1000 feet; (4) of a school or child care facility. It was opined that although the detective testified he had a clear view of the transaction, he did not testify he saw the substance or could identify it other than custom. The State failed to prove the second element aforementioned.

Citing numerous local, non-local, and federal cases, it was opined to reverse the case and remand for the entering of a judgment of acquittal for Jenkins. ■

Prison Guards Charged In Prisoner's Beating

Two former Charlotte Correctional Institution prison guards were arrested and charged Feb. 27,'09, after a Florida Department of Corrections investigation found that they brutally attacked and beat a prisoner at that institution and then lied, and tried to get others to lie, about the incident.

The investigation was sparked when a senior registered nurse at CCI, Maryann Henry, filed an incident report stating that while she was interviewing a prisoner (name withheld by FPLP) after he declared a psychological emergency saying he was feeling suicidal, that two guards who had escorted him to the exam room, Sgt. William Langenbrunner and Off. David Cox, suddenly attacked the prisoner when he exchanged words with one of them and began beating him. The incident turned even worse, according to the nurse, when three other guards arrived and while four of them held the handcuffed prisoner on the ground punching him, the fifth guard, Shaun Oppe, began kicking him in the groin. The nurse states that at no time did she observe the prisoner resisting or threatening the guards.

A few minutes later, after being ordered to leave by one of the guards, Nurse Henry told investigators that as she walked past another group of guards she was threatened by one of them. "Be careful what you say and write because there are officers here that will find out where you live and what you drive," Henry says she was told. She couldn't identify who made the threat, however, because she hadn't been working at CCI long and didn't yet know many of the staff there.

Although they failed to initially come forward and report the incident themselves (as required by Florida Law), during the ensuing investigation co-workers who were witnesses did provide incriminating testimony against the guards who beat the prisoner. According to an officer who was working in the control room of the confinement dorm where the beating allegedly took place, she observed a guard kicking the restrained prisoner in his genitals. But from her vantage point could not see the guard's head to positively identify who it was. This officer also said that she was later threatened by Sgt. Langenburnner who got in her face, repeatedly telling her, "You didn't see anything." She also testified that she had observed Langenbrunner in the past threaten *other* prisoners telling them such things as, "If you come out I'll split you from ear to ear," and telling inmates who made suicide gestures that he'd "stomp their guts for their trouble" and "bust the nigger's head," or "make sure the mother-f—ker bleeds."

Sgt. Ryan Rhodes, who was also in the control room when the altercation started and who rushed to the exam room, testified that he did not observe anyone punching the prisoner, but was present when Off. Oppe pushed his way into the room and with Langenbrunner's encouragement of, "Hey Oppe, come get some," saw him begin kicking the prisoner. Rhodes said he ordered Oppe to stop which he did.

Another guard who arrived on the scene, Clint Pigatare, also said that he did not observe anyone beat the prisoner but did see Off. Oppe kicking him as Langenbrunner and Cox held him down. Pigatare testified that later Langenbrunner tried to intimidate him into not reporting the incident.

The investigation noted that the Use of Force report prepared by Langenbruner and Cox after the incident claimed that the prisoner threatened them and then rushed them in the exam room, following which they restrained him as he continued to resist their order to stop. Then, they claimed, they simply held him down until assistance arrived.

The investigation concluded that Langenbrunner, Cox and Oppe had used unjustified and excessive physical force on the prisoner and that Langenbrunner and Cox falsified state records in an attempt to cover up their illegal actions.

On Feb. 24, '09, the FDOC's Inspector General's Office turned its investigation report over to the State Attorney's Office with a recommendation that criminal charges be pursued. Three days later Langenbrunner and Cox were arrested and charged with battery on a prisoner with malicious great bodily harm and submitting a false statement. Shaun Oppe was not immediately arrested and charged, though all three guards were fired by FDOC. ■

[**Source:** FDOC Investigation Report #08-54466; newspaper articles.]

-Commentary- Prison Canteen Prices Soar

By Mark Landon

On March 30, '09, without any warning, the private vender that operates the canteens inside all state-run Florida prisons increased prices so high that the prison population was stunned. The vender, Keefe Commissary Network, which is based out of St. Louis, Mo., has contracted with the Florida Department of Corrections since October 2003 to supply and run the canteens where prisoner purchase hygiene items, writing materials, tobacco products, coffee, sandwiches, snacks and soft drinks. The company, one of, if not the, biggest prison and jail commissary venders in the U.S., has always sought to charge prisoners the highest prices it could. On top of making a healthy profit the company also has to pay the FDOC for the privilege of getting the canteen monopoly. But this latest price increase has exceeded what

Keefe has done before and brings the economic downturn being experienced by those on the outside into the prisons.

Before Keefe took over operation of the canteens, when the FDOC itself ran them, a state law set a maximum cap on the amount of profit that could be made. That law allowed a maximum markup of 33 percent above wholesale cost and acted to keep prices reasonable for prisoners' families (who are the ones who generally supply prisoners with funds to spend in the canteens).

Under the administration of former Gov. Jeb Bush, however, the decision was make to privatize several areas within the FDOC, canteen operations being one. In order to entice private venders, and allow the FDOC to receive a substantial commission from the vender awarded a contract, the first step taken was to amend the State law setting the profit cap on prison canteen sales. The numerical profit cap was removed from the law and replaced with the ambiguous cap of "fair market value." Such undefined cap essentially allows prices to be charged up to, and even exceeding, convenience store prices for low quality, off brand items and where such operation is set up as a monopoly allowing no alternative choice and no competition, the consumers, prisoners, could be gouged at the whim of the private vender and FDOC. Which is what has occurred.

Under the initial no-bid contract awarded to Keefe the company was allowed to increase its prices for canteen items 10 percent every six months. This the company religiously did until 2006 when it was discovered that former FDOC Secretary James Crosby, Jr., had set up the canteen contract so that he received kickbacks. Keefe, in order to get the contract, had been required to subcontract part of the operation, the prison visiting park canteens, to a friend of Crosby's, who in turn charged visiting families exorbitant prices for food items and paid Crosby a kickback under the table. (Crosby and another FDOC official were later charged and convicted in Federal court on this kickback scheme and sentenced to federal prison.)

Once Crosby was ousted as secretary, then Secretary Jim McDonough ordered a review of all FDOC contracts, especially Keefe's. The result was Keefe having to bid for a new contract in 2007 that only allowed justified 10 percent markups once a year on canteen items, reduced the price of many items that were overpriced, and required many low quality items to be replaced with name brand products.

Last year Jim McDonough was forced out as FDOC secretary (when he became to vocal about reforming the prison system to include rehabilitation and to reduce recidivism) and replaced with Walter McNeil. Now it appears that Keefe has once again been given free rein to charge exorbitant prices in the canteens.

This latest price increase is apparently intended to allow Keefe to recoup profits that company felt that it lost in the past two years with the cost limitation former Secretary McDonough placed in effect. Abandoning any pretence at reasonableness, the average price increase for all products being sold by Keefe in the prison canteens is over 39 percent. While some items that don't sell very well only had slight price increases, most of the more popular items had their cost increased 50, 100 and 150 percent. Almost all of the lower cost small snack items were eliminated so prisoners have no alternative but to buy the higher priced snacks, if they can afford them.

It is going to be interesting to see how this situation works out inside the prisons. With the U.S. economy in a recession it's doubtful prisoners' families and friends are going to be able to send more money. In fact, the opposite is the probable reality.

Prisoners who were barely getting by before because they receive little or no money from home are going to find it hard to watch others be able to purchase hygiene items, tobacco, coffee, snacks and sodas when they can't. PRIDE workers who earn a pittance in the prison industries are going to find that their meager pay no longer stretches from one paycheck to the next. Even those whose families want to provide their incarcerated loved ones with money to go to canteen are going to find them more of a burden.

One can only hope that this situation does not lead to more thefts, robberies, or violence in Florida's prisons. However, when you take away or make it impossible for someone to have anything you often create a person who cares about nothing. Whoever's bright idea it was to allow Keefe to gouge prisoners and their families in this was should be held to bear responsibility for any consequences. ■

Cutbacks in Store for Florida Prisons

By Jason McCalley

As of Dec. 18, '08, there are now over 100,000 people incarcerated in Florida's prisons and 25,000 more are expected to increase that number in the next five years. In the past two decades, Florida's prison population has grown by almost 50 percent. Only two other states, California and Texas, join Florida in having more than 100,000 people in prison.

Every year Florida releases approximately 40,000 prisoner who complete their sentences back into the community, and eventually 90 to 95 percent of all prisoners will be released. The ones released are quickly replaced, however, by new offenders or by the same ones returning to prison for new crimes. Florida has one of the highest recidivism rates in the nation. By juggling the statistics, the Florida Department of Corrections claims its recidivism rate is "only" 33 percent. Yet, more than half the people in prison in the state now have been in prison before, meaning

the recidivism rate is actually over 50 percent. And that number can be expected to increase in the current economic situation as the FDOC and state lawmakers further cut programs that have been proven to reduce recidivism – specifically, education and substance abuse programs.

Already cut to the bone in recent years, those programs are intended to prepare prisoners for life after they are released and to help prevent a return to a life of crime. Florida's lawmakers, however, seem to be stuck in a tough-on-crime-and-prisoners mindset and damn the long-term consequences to state taxpayers or public safety.

FDOC's Secretary Walter McNeil, the former police chief of Tallahassee, even recognizes the problem of cutting the prison system's few remaining programs that have repeatedly been proven to help reduce crime and recidivism.

"If you can't read, if you don't have any employable skills, if you have a substance abuse problem and you've spent three years in prison and you come out and you still have those issues, what the heck are you going to do?" asks McNeil. "You're going to hit my mom or someone else's mom or somebody's child over the head breaking into someone's house. It's too costly to continue this uninformed way of trying to fight crime."

But efforts to find alternatives to prison and reduce recidivism find little support in Florida's Legislature where being labeled as "soft on crime" is a devastating insult and often an end to a career in politics or public service.

While most other states are looking at or implementing ways to prevent having to incarcerate nonviolent offenders and ramping up programs to help those in prison from coming back, Florida's solution is to forge ahead building more prisons while making devastating cuts to public schools and education.

Although nearly 30 percent of Florida's prisoners are serving time for drug violations, substance abuse programs in the prisons have essentially been eliminated. Likewise education programs, although the average literacy rate is about 7th grade.

The cuts have heightened concerns by some that Florida's tough-on-crime crime laws (enacted when the state was flush with money)–including a mandate that all prisoner, regardless of their crime, spend 85 percent of their sentence behind bars–are digging the state into a deeper crime hole. Others, however, see nothing wrong with the direction being taken. Sen. Victor Crist, chairman of the Senate criminal justice appropriations committee, says the 85 percent mandate is likely going to stay. "I'm confident that will not change, at least not in my lifetime," said Crist.

Secretary McNeil has set up two re-entry programs, one at Baker Correctional Institution and another at the newly-opened DeMilly Correctional Institution, in an effort to reduce the numbers returning to prison. But with the number being released each year two institutions devoted to re-entry efforts can only affect a drop in the bucket. Without funding to increase re-entry efforts, McNeil says he's going to have to rely on volunteers to prepare prisoners at the two facilities with work skills and intense education.

And it doesn't appear that will be the only cuts inside Florida's prisons. *FPLP's* sources report recent cuts in medicine and medical care to prisoners, one of the biggest expenses that FDOC has. Since the FDOC has taken back over food service in the prisons (from the private companies that had been providing same for the past several years, see last issue of FPLP), sources report that cuts have been made in what prisoners are fed, and that even more cuts to food is expected in coming months. And it's reasonable to expect other cuts will be made as the budget crunch continues. ■

POST CONVICTION CORNER

by
Ryan J. Sydejko

By now, frequent readers of the *Florida Prison Legal Perspectives* and, more specifically, *Post Conviction Corner*, are familiar with Florida Rules of Criminal Procedure 3.850 Motions for Post Conviction Relief. Issues raised in Rule 3.850 motions are frequently claims regarding the ineffective assistance of trial counsel. Some may not be aware, however, that a similar rule exists for examination of the performance of appellate counsel. Florida Rules of Appellate Procedure 9.141 pertains to the ineffective assistance of appellate counsel. For example, if trial counsel performed effectively by properly preserving a potential trial error, and appellate counsel failed to raise that issue on direct appeal, a rule 9.141 petition is the proper vehicle for review of appellate counsel's effectiveness. *Forisso v. State*, 968 So.2d 677 (4th DCA 2007). The ultimate remedy in such situations is commonly a new appeal on the particular ground in which ineffectiveness is established. *See Barnes v. State*, 993 So.2d 1012, 1013 (Fla. 2d DCA 2008).

Rule 9.141 petitions are to be filed in the district court of appeal where the direct appeal was taken or should have been taken. Fla. R. App. P. 9.141(c)(2). Similar to rule 3.850 motions, it is important to raise all potential grounds for relief in the first filing, as second or successive petitions can be dismissed without the court reaching the merits. Fla. R. App. P. 9.141(c)(5)(C). Once the potential grounds for relief have been chosen, the rule clearly sets forth the requisite contents of the petition. Fla. R. App. P. 9.141(c)(3). The petition must include, *inter alia*, the date and nature of the lower tribunal's order sought to be reviewed; the name of the lower tribunal rendering the order; the nature, disposition, and dates of all previous court proceedings; if a previous petition was filed, the reason the claim in the present petition was not raised previously; the nature of the relief sought; and, the specific acts sworn to by the petitioner or petitioner's counsel that constitute the alleged ineffective assistance of counsel. Fla. R. App. P. 9.141(c)(3)(A)-(F). The petitioner must also serve copies of the pleading on both the attorney general and the state attorney. Fla. R. App. P. 9.141(c)(5)(A). The petition must also conform with the requirements prescribed in Florida Rules of Appellate Procedure 9.100. Fla. R. App. P. 9.141(c)(1).

The most common hurdle to relief is most likely the time limitation for filing. The rule prescribes a two-year period of limitations for claims of ineffective assistance of appellate counsel. Fla. R. App. P. 9.141(c)(4)(B); *see also Melara v. State*, 997 So.2d 1135 (Fla. 3d DCA 2008). The two-year period is not tolled by the pendency of other post conviction relief proceedings, however. *Forisso v. State*, 968 So.2d 677, 678 (Fla. 4th DCA 2007). In other words, the deadline for filing rule 9.141 petitions is two-years following issuance of the mandate on direct appeal, regardless of how long subsequent post conviction proceedings may last. *Id.* Thus, there may be instances where pursuing a rule 3.850 motion for post conviction relief simultaneously with a rule 9.141 petition is prudent. *See Francois v. Klein*, 431 So.2d 165, 166 (Fla. 1983). The *Francois* court opined that the simultaneous filing of these types of motions is permitted as they do not overlap in the performance of counsel being reviewed. *Id.* "Allegations

of ineffectiveness of appellate counsel . . . do not relate to anything done by or transpiring before the trial court", and thus do not conflict with claims of ineffective assistance of trial counsel, which pertain to performance before the trial court. *Id.* Since the two collateral attacks are separate and distinct, there is no danger of conflicting or confusing ruling by different courts on the same issues. *Id.*

An exception to the two-year period of limitations does exist, however. Fla. R. App. P. 9.141(c)(4)(B). In the event the time period has expired, a petitioner may, although it appears rarely granted, present an untimely claim of ineffective assistance of appellate counsel by alleging, under oath with a specific factual basis, that the petitioner was affirmatively mislead regarding the results of the appeal by appellate counsel. *Melara v. State*, 997 So.2d 1135 (Fla. 3d DCA 2008).

Potentially the most important factor to consider when determining the timeliness of a rule 9.141 petition, is the existence of a resentencing hearing. Under previous versions of the rule, the two-year period of limitations began to run upon finality of the conviction. *In re Amendments to Fla. Rules of App. Pro. - Rule 9.141 and Rule 9.142*, 969 So.2d 357, 358 (Fla. 2007). This created the situation, however, where a conviction is affirmed on appeal, but the case is remanded to the trial court for resentencing. *Id.* Thus, the period of limitations would begin to run, despite the fact that a proper sentence had yet to be pronounced. *Id.* Expiration of the time for filing a 9.141 petition, therefore, could have potentially occurred prior to imposition of a lawful sentence at resentencing. *Id.* A 2007 amendment to rule 9.141 cured this deficiency. *In re Amendments*, 969 So.2d at 358. The rule now expressly states that the two-year period of limitations does not begin to run until both the judgment and sentence become final in noncapital cases. Fla. R. App. P. 9.141(c)(4)(B). In other words, should a resentencing occur pursuant to a rule 3.850 Motion for Post Conviction Relief, a rule 3.800 Motion to Correct Illegal Sentence, or potentially some other means, the two-year period of limitations for filing a rule 9.141 petition does not begin to run until that resentencing is complete; i.e. the judgment and sentence are final. *In re Amendments*, 969 So.2d at 358. Such a rule may breathe new life into claims that may otherwise appear procedurally barred.

Ryan J. Sydejko is an associate attorney at the law office of Loren Rhoton, P.A. in Tampa, Florida, and is a member in good standing with the Florida Bar. Mr. Sydejko is a published author on terrorist investigations and how they have reshaped the Fourth Amendment. Mr. Sydejko focuses primarily on representation of incarcerated persons with post conviction matters in both State and Federal courts.

Loren D. Rhoton is a member in good standing with the Florida Bar and a member of the Florida Bar Appellate Practice Section. Mr. Rhoton practices almost exclusively in the postconviction/appellate area of the law, both at the state and federal levels. He has assisted hundreds of incarcerated persons with their cases and has numerous written appellate opinions ■

MOST FREQUENTLY ASKED QUESTIONS ABOUT PRISONER LAWSUITS:

By Brett Fenster

Q: Do I need a lawyer to maintain a lawsuit?

A: You may file a lawsuit *pro se* (acting as your own lawyer) and take it to trial or settle it yourself without a lawyer.

Q: Will the court appoint a lawyer to me at some point?

A: Possibly. There is no *right* to counsel in civil cases but many lawyers will accept a *pro bono* case that is referred by the court. Florida has, for example, the Volunteer Lawyers Project. The ACLU National Prison Project or Florida Justice Institute are other possibilities. Look in The Florida Bar Directory or Yellow Pages under "Civil Rights" or "Trial Attorneys.

Q: Do I need to pay a filing fee or fee to serve the complaint on the defendants?

A: You may proceed w/o *pre*payment of costs even if you have no money at all. A lien will be placed against future monies in your canteen account and a payment plan established. (payments are usually 20% of avg. monthly bal.) The filing fee is $350.00 in federal court at this time.

Q: How much money can I get if I win?

A: In a Florida state court you are limited to $100, 000.00 per defendant. ($200, 000.00 maximum) In Federal courts the damages you ask for are only limited by what you can *prove* to the jury.

Q: It is my word against theirs – how can I possibly win with only inmate witnesses?

A: Many lawsuits have been won with "only" inmate witnesses. Inmate testimony, like any persons, may be cross-examined as to bias and credibility in front of the jury. The defendant officials may be impeached with their past history of abuse, disciplinary record and prior bad acts too...

Q: Must I file a grievance before filing?

A: Yes. You must *exhaust* your grievance procedure until you have a final decision from the Secretary of Corrections. The PLRA requires this for *prisoners* only.

Q: What is the time limit for filing suit in Florida?

A: 4 years, generally. The limitations period in *federal* court in Florida is governed by *state* law. See F.S. §95.11. The Statute of Limitations period runs from the latest of the last injury or when the cause of action was discovered by you exercising due diligence. The limitations period for medical *and legal* malpractice actions in Florida will be two (2) years. Other types of suits may be different so check state law.

Q: Should I file a §1983 civil rights suit in state or federal court?

A: In most cases it is to your advantage to file suits alleging a deprivation of (*federal*) rights in *federal* court, although you may file your §1983 in a state court. There is no pre-suit Notice of Intent to Litigate required in federal court, no limitation on damages and your jury pool isn't going to be filled with the Good Ole Boys' relatives and acquaintances like in some rural counties. Federal courts are also more hospitable to federal constitutional claims. State law claims may also be "piggybacked" on federal claims through the "Supplemental Jurisdiction" of the Federal court.

Q: Should I file a "class action" lawsuit on behalf of all the other prisoners?

A: Generally speaking: No. It will be virtually impossible for you, as class representative, to maintain the pace of litigation *pro se*. Also, your mistakes could cause the entire class to suffer. You may join *a few* other plaintiffs, however. That is not to say that an attorney won't become involved *at some point* in your suit, as class representative. Class Actions are the types of suits that the ACLU generally handles, although many begin as individual handwritten, *pro se* complaints.

Q: Will prison authorities retaliate against me for suing them?

A: Possibly. This is truer of the lower level line officers such as guards you sue for things like excessive force. It is less true of higher officials who tend to be more educated and concerned that their retaliatory acts might *help you prove your case in court* or cause you to amend your complaint with their latest violation.... Generally speaking, the Good Ole Boys will stop their intimidation game once they realize that your complaint has been taken *outside the confines* of their little world and is now *out of their control.*

Q: Will prison authorities counterclaim your suit to offset for "costs of imprisonment" or "subsistence fees?"

A: This is, in practice, much less of a problem as is popularly believed for the simple reason that most money suits are *settled.* Where a federal judgment is involved, the Federal remedy *may* "pre-empt" state law in this area and would prohibit the state from attaching the proceeds. See: F.S. §960.293 and §960.297. Rinaldo, 256 F.3d 1276(11th Cir. (Fla.) 2008); Beeks, 34 F.3d 658.

Q: How long will this take to go to trial or settle?

A: Two years for trials and one year for settlements. This varies greatly with the strength of the case, damages involved, considerations of lawsuit minimization and precedent as well as your preparedness to go to trial.

Q: Who should I name as a defendant?

A: A typical suit has three or four defendants but there is no limit to how many you may join. For example, in a typical excessive force lawsuit you would name the officer(s) who beat you, the officers who stood by and watched, the supervisor who ordered it, and the warden for his reckless or deliberate failure to train, control, supervise and discipline that officer in the past – proximately resulting in your injuries. There may be a (state law) negligent hiring/retention claim as to the Warden as well. To name supervisory officials it is necessary to show their *personal* involvement at some level such as maintaining a *custom and/or policy* of excessive force or an unwritten policy of retaliatory beatings during prison disturbances. Sometimes you'll name a defendant simply because you want discovery (interrogatories, request for production, subpoenas, etc) from that defendant. When you name multiple defendants you increase the "nuisance value" and/or /settlement value of your suit *but* you also increase the costs and complexity for yourself (photocopy and mail costs).

Q: The officer who beat me was fired/retired so the process server cannot serve him at the prison address any longer – How will they find their home address to serve the summons?

A: Public records. Most staff lives in the county the prison is situated in or a surrounding county, therefore have your investigator, attorney or friend visit the courthouse and search the Real Estate Deed Name Index under Grantor or Grantee names. Driving records are available online at most county courthouses. So are Voting Registration records. Also look up Tax Assessor records online and don't forget the phone book! If you don't have anyone to help you with this then you may use various fee-based information services online such as Autotrak™ or Intellius™.

Q: Where do I start?

A: Visit the law library and read some of the standard texts available there on the subject matter of your suit. Everything from Deliberate Indifference to Medical Care to Excessive Force to Bogus Disciplinary Reports is covered there. Better yet purchase your own copy of the "Prisoners Lawsuit Cookbook & Civil Rights Defense Manual" by Brett Fenster or the "Self Help Litigation Manual by Dan Manville. Also read your F.P.L.P. back issues!

Q: Why won't any lawyers reply to my letters?

Q: Only a tiny percentage of lawyers handle Civil Rights cases and they cherry pick their cases for the ones with the highest potential to generate punitive damages and *fees.* It isn't that your complaint is meritless; it's just that the lawyer has better pickings than a prisoner plaintiff. This is why most are handled *pro se.* However, once your pro se suit has survived the Summary Judgment or Motion to dismiss stage you may find more attorneys willing to sign on at that point. Go for it!

Prison Guard Goes on Rampage, Two Dead, Two Injured

My ex-boyfriend just stabbed the hell out of me. He stabbed me in my head, in my neck, in my chest and.... he was stabbing me with something. You have to hurry, I'm bleeding all over the place, Rebecca Ocker, 26, a Florida Department of Corrections prison guard, told a 911 operator March 6, 2009. That was the first call that authorities received about events that involved not only the stabbing of Ocker by her ex-boyfriend, who was also a prison guard, but that ended up with the ex-boyfriend dead, another prison guard killed, and another seriously injured.

While Union County deputies were at Ocker's Lake Butler home investigating her stabbing they received word that the pickup truck belonging to her ex-boyfriend, Donald Bazzell, 42, had apparently intentionally crashed head-on into a Department of Corrections van about three miles south of Lake Butler.

Both Bazzell, and the driver of the DOC van, Adam Sanderson, 32 died in the collision. Fred Jackson, 41, a passenger in the van was seriously injured in the crash and had to be airlifted to Shands Hospital in Gainesville. Ocker was also taken to Shands with serious but not life threatening injuries. In addition to being stabbed she told authorities Bazzell had beaten her with a baseball bat.

Union County Sheriff said it was suspected that the head-on crash almost immediately following Ocker's stabbing was not an accident. Investigation showed that Bazzell was going 88 mph and crossed the center line to strike the DOC van head-on with his pickup truck. There was no evidence that Bazzell tried to brake before slamming into the van that was traveling in the opposite direction on County Road 231.

"Certainly he was distraught, upset, emotional—some of those things you are when there's a domestic situation with a weapon involved. Was he fleeing and accidentally or intentionally... I just don't know," said Whitehead.

Investigators said the van carrying Sanderson and Jackson was on its way back to the North Florida Reception and Medical Center, where both of those guards worked, having just completed a training exercise. Bazzell and Ocker both worked at Florida State Prison in neighboring Bradford County.

Union County were the stabbing and crash took place is the smallest county in Florida but is where prisons dominate, the area is known as "The Triangle' or "cradle" of the FDOC since it's where some of the state's first prisons were built. There are now seven major prisons in the area. ■

Prison Guard Arrested on Drug Charges

A Florida Department of Corrections prison guard turned himself in to face federal drug charges March 5, 2009.

Louis Bunch, 39, was indicted by a federal grand jury for distributing cocaine twice in September 2008.

Bunch's attorney, Alex Morris, said none of the drug activity occurred on prison grounds at Wakulla Correctional Institution where Bunch had worked since July of 2007.

Bunch was fired by the FDOC on the same day that he turned himself in and at his first appearance a judge ruled that he can remain free until his trial in May. ■

Prison Guard Charged With Exposing Himself

The Florida Department of Corrections fired a prison sergeant shortly after he was arrested and charged with exposure of his sexual organs during the first week of March 2009.

Calvin Allen Tharpe, 64, of Chipley, had worked for the FDOC since 1994. According to the department, Tharpe was a dormitory sergeant at the Northwest Florida Reception Center, formerly Washington Correctional Institution.

According to a Bay County Sheriff's Office incident report, Deputy Larry Grainger noticed a suspicious vehicle near a playground early one morning at the McCall-Everett Park near Deer Point Lake dam off US 231. Grainger reported walking into the woods where he found three men standing in a circle about 1 to 2 feet apart. Two of the men, Tharpe and David Harry Phillips, 51, of Youngstown, were exposing themselves and "fondling one another," while the third man appeared to be watching, according to the report.

Grainger also reported that Tharpe asked him to overlook the incident because Tharpe was a fellow law enforcement officer, working with the FDOC. Grainger wrote that he could not overlook the incident because children frequently play in that park.

Both Tharpe and Phillips were arrested and charged with exposure of sexual organs. The third man was issued a trespassing citation. Tharpe and Phillips were both released on $500 bonds. ■

DEPARTMENT OF CORRECTIONS
BUDGET SUMMARY
FY 2007-08

Operating Funds

Expenditures by Budget Entity:

Department Administration	$	63,089,873
Security and Institutional Operations	$	1,472,988,769
Health Services	$	424,922,191
Community Corrections	$	268,434,193
Information Technology	$	24,679,670
Programs	$	44,503,242
Total Operating Funds	$	2,298,617,938

Fixed Capital Outlay Funds

To Provide Additional Capacity	$	107,441,753
To Maintain Existing Facilities	$	33,108,375
Total Fixed Capital Outlay Funds	$	140,550,128
Total	$	2,439,168,066

Local Funds

Collection Activities:

Cost of Supervision Fees	$	25,968,924
Restitution, Fines, and Court Costs	$	54,180,418
Subsistence, Transportation, and other Court-Ordered Payments	$	20,151,865

Inmate Banking Activities:

Total Deposits	$	104,333,374
Total Disbursements	$	103,237,385
June 30, 2008 Total Assets	$	13,733,125

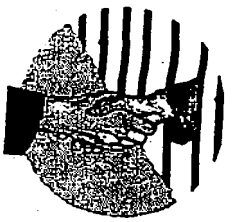
Other Activity:

Revenue from Canteen Operations	$	30,115,374
Inmate Telephone Commissions	$	5,514,505

Florida Prison Legal Perspectives

Florida Prisoners' Legal Aid Organization Inc.

BECOME A MEMBER



YES ! I wish to become a member of Florida Prisoners' Legal Aid Organization, Inc.

1. Please Check ✓ One:

- ☐ Membership Renewal
- ☐ New Membership

2. Select ✓ Category

- ☐ $15 Family/Advocate/Individual
- ☐ $10 Prisoner
- ☐ $30 Attorneys/Professionals
- ☐ $60 Gov't Agencies/Libraries/Orgs./etc.

3. Your Name and Address (PLEASE PRINT)

_____ DC#_____
Name

_____
Agency/Library/Institution /Org/

_____
Address

_____
City State Zip

_____
Email Address and /or Phone Number

☞ Please make all checks or money orders payable to Florida Prisoners' Legal Aid Org., Inc. Please complete the above form and send it along with the indicated membership dues to : FPLAO, Inc., P.O. Box 1069, Marion NC 28752. For family members or loved ones of Florida prisoners who are unable to afford the basic membership dues, any contribution is acceptable for membership. Memberships run one year. If you would like to make a donation to FPLAO, Inc., to help the organization continue its work for prisoners and their families, send donations in any amount to the same address. Thank You. All members receive *Florida Prison Legal Perspectives*.

SUBMISSION OF MATERIAL TO *FPLP*

Because of the large volume of mail being received, financial considerations, and the inability to provide individual legal assistance, members should not send copies of legal documents of pending or potential cases to *FPLP* without having first contacted the staff and receiving directions to send same. Neither *FPLP*, nor its staff, are responsible for any unsolicited material sent.

Members are requested to continue sending news information, newspaper clippings (please include name of paper and date), memorandums, photocopies of final decisions in unpublished cases, and potential articles for publication. Please send only copies of such material that do not have to be returned. *FPLP* depends on YOU, its readers and members to keep informed. Thank you for your cooperation and participation in helping to get the news out. Your efforts are greatly appreciated.

PRISON LEGAL NEWS

Prison Legal News is a 48 page monthly magazine which has been published since 1990. Each issue is packed with summaries and analysis of recent court decisions from around the country dealing with prisoner rights and written from a prisoner perspective. The magazine often carries articles from attorneys giving how-to litigation advice. Also included in each issue are news articles dealing with prison-related struggle and activism from the U.S. and around the world.

Annual subscription rates are $18 for prisoners. If you can't afford $18 at once, send at least $9 and *PLN* will prorate the issues at $1.50 each for a six month subscription. New and unused postage stamps or embossed envelopes may be used as payment.

For non-incarcerated individuals, the year subscription rate is $25. Institutional or professional (attorneys, libraries, government agencies, organizations) subscription rates are $60 a year. A sample copy of *PLN* is available for $1. To subscribe to *PLN* contact:

Prison Legal News
2400 NW 80th ST. #148
Seattle, WA 98117
(206)246-1022
http://www.prisonlegalnews.org
(Orders accepted by phone or online)

HAVE YOU MOVED OR BEEN TRANSFERRED?

If so, please complete the below information and mail it to FPLP so that the mailing list can be updated:

NEW ADDRESS (PLEASE PRINT CLEARLY)

Name _____

Inst. _____

Address _____

City _____ State _____ Zip _____

Mail to: FPLP, PO Box 1069 Marion, NC 28752

VOLUME 15 ISSUE 2 MAR/APR 2009

Florida Prison Legal Perspectives

PO Box 1069
Marion, NC 28752

NONPROFIT ORG.
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 28752
PERMIT NO. 3000