FLORIDA PRISON LEGAL

Perspectives

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Former Parole Commission Chairman Sentenced to Prison

by Teresa Burns Posey

TALLAHASSEE – The former chairman of the Florida Parole Commission is going to prison, not to visit parole-eligible prisoners that the commission refuses to parole to justify its continued existence, but to serve a three-year sentence himself for state expense account and time sheet fraud. (See: *FPLP*, Vol. 9, Iss. 5, "Former FPC Chairman Arrested, Investigation Continues.")

Jimmie L. Henry, 54, was sentenced May 10, 2004, to three years in prison followed by 25 years of probation and ordered to pay more than $109,000 in restitution by Second Judicial Circuit Court Judge Tom Bateman. Henry has already repaid about $26,000 of the money he stole from taxpayers out of the parole Commission's multi-million dollar budget and will have to pay about $400 a month after he gets out of prison.

Henry, who was arrested and charged last August, pleaded no contest in February 2004 to 109 counts of falsifying his expense and time sheets while head of the Parole Commission (FPC). He had been forced to resign from his $85,355-a-year job at the commission in May 2003 when information was furnished to the Florida Department of Law Enforcement (FDLE) that Henry and several other top commission officials were stealing taxpayers' money, falsifying records, misusing commission funds, engaged in a cover-up of an alleged homosexual rape attempt by a top FPC official and allowing commission property to be improperly disposed of. (See: *FPLP*, Vol. 9, Iss. 4, "Florida Parole Commission: A Culture of Corruption.")

Henry was the Parole Commission's chairman from 1998 until his resignation last year. According to the FDLE's investigation, in the two years before he was forced to resign Henry padded expense reimbursement vouchers for trips to commission field offices, meetings and other official appointments. In some cases Henry even put in reimbursement claims for entire trips that never occurred or during which Henry conducted personal business. He was also charged with using state funds and credit cards to make thousands of dollars of personal purchases or to pay personal bills with.

Although Henry was the only one charged with crimes at the commission, he was not the only criminal at the agency, according to a report released by the state Auditor General's Office on August 1 last year and the FDLE's investigation report. Four top FPC administrators were also found to have either known about Henry's illegal activities and worked with him to make his fraud possible or had themselves engaged in questionable acts related to state expenditures. All four of those administrators had received large salary increases and bonuses during Henry's tenure running the agency that state auditors later concluded were unjustified.

ON THE INSIDE

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Those administrators were allowed to resign without making any reimbursements after FPC Commissioner Monica David took over as the commission's chairman when Henry left.

Other FPC employees were also implicated in wrongdoing at the agency, which makes parole decisions on Florida's approximately 5,000 remaining parole-eligible prisoners (parole-eligible sentencing was essentially abolished in Florida for most crimes in 1983).

The auditor general's and FDLE's investigations found that Henry's personal assistant knowingly participated in preparing Henry's fraudulent expense and time sheets and falsified records to try to hide discrepancies. Auditors also found that between 2001 and 2003 other FPC employees used FPC purchase cards to make over $80,000 in purchases for which no documentation was kept showing receipt by the FPC. Some employees were found to have FPC property at their homes that was not authorized and others "disposed" of valuable state property without following proper procedures to verify whether the property should have been disposed of or showing where it went. Neither Henry's personal assistant nor any of the other FPC employees were ever charged with a crime. That was not the only anomaly in the situation.

Even though the arrest, conviction and actual sentencing to prison of the head of a state agency for public fund fraud, and documented corruption among other top agency officials, would normally invoke a large scandal and elicite widespread media coverage in Florida, for some reason it didn't.

When Henry resigned last year there was almost no mention of it on television news shows anywhere in the state. Only a couple of newspapers covered it with small, brief articles only vaguely referencing his resignation *might* have something to do with an investigation of the FPC. Nor did the mainstream media provide much coverage a few months later when it came to light that a top FPC administrator had been accused of a homosexual rape attempt in 2001 by a fellow FPC employee, who Henry had approved being paid more than $50,000 in taxpayer hush money.

When Henry was finally arrested in August, again television and radio news avoided reporting it and only a couple of newspapers covered it, only one of which provided any information about the auditor general and FDLE investigators' findings of other FPC employees' involvement and illegal activities. Henry's sentencing received even less mainstream media coverage. Very odd, according to some who have been following the case.

Last year when it was discovered that employees of the Department of Children and Families had lost track of some children they were supposed to be supervising, resulting in the head of that agency simply being replaced, it garnered widespread media coverage for weeks. Yet, when the head of the FPC is charged with several crimes,

sentenced to prison, and widespread corruption documented among numerous top agency officials, it was non-news, largely unreported to the victims — Florida taxpayers.

There is little doubt that the FPC maintains a low profile and likes it that way. Tucked away in a building next to Department of Corrections in Tallahassee, most Floridians are unaware that their tax dollars fund an agency that obstensibly is devoted to the parole of incarcerated felons, when, in fact, parole sentencing was abolished for all but a narrow category of capital crimes in Florida in 1983. Before then the FPC did serve a useful function, the majority of people sent to prison in the state were eligible to be paroled under supervision. When parole-eligible sentencing was changed to guideline sentencing in 1983, however, the number of parole-eligible prisoners dwindled, until now only about 5,000 of Florida's 80,000 state prisoners are eligible to be paroled by the FPC.

To survive, the FPC has retreated to the shadows of Florida government. There is little attention or oversight given to the agency. It largely operates in a vacuum, for example: parole-eligible prisoners up for parole never see or appear before the commissioners who decide their fate, parole interviews held at the prisons between lower level parole examiners (who can only make recommendations to the Commission) and parole-eligible prisoners are closed to the public, victims and the press. Whenever state auditors conduct performance reviews of the FPC, the resultant reports are compendiums of incompetence; missing, incomplete and inaccurate records; duplication of work performed by the DOC; mismanagement of resources and funds, and the list goes on, and has for many years.

Perhaps the whole scenario with Henry and the underlying scandals that came to light concerning the FPC this past year were non-news to the media because no one expects anything more out of a defunct agency that few understand why it still exists. Or, perhaps it was too embarrassing to Jeb Bush's administration to publicize widely.

It could be interesting if Henry decides to tell all he knows, now that he will experience firsthand a measure of the incarceration he perpetuated on others. ■

Taxation Without Justification

by Mark Osterback

Have you ever heard another prisoner claim that the state can't tax our canteen purchases because we're incarcerated? Well, unfortunately that is simply not true. Section 212.06(3)(a), Fla. Stat. (2003) provides that any "dealer" in Florida (prison canteen) making sales of taxable personal property for distribution, use or consumption shall, at the time of making a sale, collect tax from the purchaser. But sales tax is not across-the-board on all sales — only certain items are subject to them. Section 212.08(1)(a) and (b), Fla. Stat., contains exemptions for what are loosely defined as "general grocery items." A term, which includes bakery products.

When Keefe Commissary Network (KCN), a private company, recently took over operations of Florida Department of Correction's prison canteens statewide, they expanded the number of food items offered for sale, including several different bakery products. Upon arriving at Sumter Corrections Institution earlier this year, where KCN had only recently taken over canteen operations, it came to my attention, almost by accident, that two identically priced packs of cookies had different actual costs.

An acquaintance, with whom I was talking, was in the canteen line and got into an argument with the fellow in front of him who claimed all cookies cost $.54. Much to our mutual astonishment, the fellow turned out to be correct as the Iced Oatmeal Cookies, priced at $.54, actually cost $.58 with sales tax. Having previously researched tax laws, I immediately realized that KCN was either ignorant of the tax exemption on bakery products in Florida, or someone was trying to make some extra income. In addition to Iced Oatmeal Cookies, KCN was levying sales tax on Iced Honey Buns, Iced Cinnamon Rolls, Dunkin Sticks, Chocolate Iced Donuts, Moon Pies, Chocolate Cupcakes, Swiss Rolls and Caramel Popcorn.

An inquiry was made to the Sumter CI Keefe representative about why those items were having sales tax levied on them. The representative responded that the taxation of those items was justified because each had a glaze or icing on them and were considered "candy". While it is true that candy (such as Snickers Bar) is not exempt from sales tax under Section 212.08(1)(c)11, Fla. Stat., the KCN representative had embraced a far broader definition of candy than the one employed by the Florida Department of Revenue.

"Candy and similar items do not include: jams, jellies, honey, preserves or syrups; *frosting*; dried fruit; breakfast cereals; prepared fruit in sugar or a similar base; *candy primarily, intended for decorating baked goods*; and similar items."

Rule 12A-1.011(1)(a) 1.a., Fla. Admin. Code (2004) (emphasis added).

A more extensive challenge was mounted to this practice which resulted in KCN's eventual capitulation and removal of the taxable designation (which appears as a "Y" on canteen receipts) on the items in question from the canteen's computer inventory.

Whether this was a localized practice here at Sumter CI or one that is in effect statewide is not known. The primary intent of this article is statewide notice of the problem that existed here at Sumter CI and our successful correction of same. This way, if the practice exists and /

or persists elsewhere, conscientious prisoners at those places where it does exist or persist can take steps to correct it there.

Getting them to adhere to the law and stop levying sales tax on exempt items was the easy part. Obtaining a *refund* of the improperly collected tax is another matter altogether. According to Rule 12A-1.014(7), Fla. Admin. Code:

"A taxpayer who has overpaid tax to a dealer, or who has paid tax to a dealer when no tax is due, must secure a refund of the tax from the dealer and not the Department of Revenue."

If you have retained your canteen receipts, then calculating the amount of the improperly levied tax should not be difficult in requesting a refund of same. Even with receipts, KCN isn't going to make it easy in obtaining a refund. It may become necessary to grieve the matter, but, as with all dealings with the Department and its hirelings, its best to submit an Inmate Request first and give the KCN representative a reasonable amount of time to respond before filing a grievance.

If you have not retained your canteen receipts, you're still entitled to a refund, but it will likely be more difficult to obtain one.

KCN is req. by Section 212.13(2), Fla. Stat., to maintain records of tax levied pursuant to Section 212.06(3). The canteen computer system can produce a receipt that lists each purchase a prisoner has made at that location. You should request one of these receipts, which I believe is called a "site of purchase" receipt, to help you calculate the amount of erroneously collected sales tax you are due to be refunded. If KCN claims it cannot be done or refuses to produce it, that too should be grieved to the KCN representative.

If efforts to secure your refund are thwarted or your grievances (after going to Tallahassee) are denied, then the Dept. of Revenue should be contacted to formally lodge a complaint against KCN. The agency can be contacted at: **Dept. of Revenue, Tallahassee, FL 32399-0100.** You may have better results, however, by writing: **Tax Information Services, Dept. of Revenue, 1379 Blountstown Hwy., Tallahassee, FL 32304** (Phone # 850/ 488-6800). Copies of Rules 12A-1.011 and 12A-1.014, Fla. Admin. Code, can be obtained by requesting them from Tax Information Services as well. ■

Life Sentences Increase As Crime Rates Drop

Since 1992 the number of convicted felons serving life sentences — 127,000 nationwide — has increased 83 percent. Over a quarter of such all-time-high number of "lifers" are ineligible for any type of parole, meaning they will die in prison.

The increase is a result of the "get-tough" policies of the 1990s, a decade during which mandatory minimum sentences, three-strikes and truth-in-sentencing laws were implemented or expanded, leading to longer prison sentences and limited or eliminated parole options. Today, the average prisoner serving a life sentence spends 37 percent more time in prison than those a decade ago—up from 21 years to 29 years—and more than ever are being sentenced to "natural life" without any possibility of ever being released.

Those findings are from a new, first of its kind, 50-state study of life sentences conducted by the Sentencing Project, a Washington, DC, criminal justice reform organization. The report on the study's findings was released during May 2004.

Supporters of the "get-tough" policies say the fact that so many criminals are locked up for life has contributed to the national crime rate coming down 35 percent during the same period. They claim the study shows the "get-tough" policies have been successful *in* reducing crime.

"What we're seeing is the high crime rates we suffered starting in the 1960s caused public policymakers to finally realize one contribution they could make toward restoring law and order is to increase the number of serious and violent offenders in prison and also to increase the sentences which they serve," says Dave Muhlhausen, senior policy analyst at the Heritage Foundation. "Its worked."

Critics of the policies, however, claim the inflexibility of them has packed American prisons with juveniles, indigents, mentally ill people, elderly inmates and battered women. In California, close to 60 percent of those sentenced to life under the state's three-strikes law are serving time for non-violent offenses. The Sentencing Project's report estimates that 23,500 of those sentenced to life in U.S. prisons suffer from mental illness.

"These sentences are having very significant impact on the size and costs of incarceration," says Marc Mauer, the assistant director of the Sentencing Project and one of the authors of the report. "Every time a judge makes a determination to sentence a person to life, conservatively speaking it will cost $1 million to keep them locked up for life," said Mauer. "If that person is Charles Manson, few people will have a problem with that. On the other hand, if it's a battered woman who strikes back at her accuser and kills him, that presents a different set of questions."

Some corrections officials are expressing concern over the challenges they face on a daily basis trying to house, feed, guard and provide medical care to an increasing number of prisoners sentenced to long terms.

"Given the budget crisis it's a challenge to get the resources. You have to reexamine everything that you're doing to find the money to fund the healthcare in particular, which is the fastest growing expenditure within

a facility," says Joe Weedon, director of government affairs for the American Correctional Association.

Feeling the impact, state legislatures around the country have been passing reforms, changing some mandatory sentencing laws so they're more flexible, and even increasing funding for reentry programs to try to reduce recidivism. However, some reform advocates and corrections experts warn that any savings realized from the recent changes could be negated by the increasing costs associated with imprisoning a record number of lifers. "If these 'lifer' trends continue, they're very likely to overwhelm any reform that takes place," said Mauer.

The report referenced in this article can be obtained by contacting: The Sentencing Project, 918 F. ST., NW, Ste. 501, Washington, DC 20004, Ph. # 202/ 628-0871. ■

– OPINION –
Land of Second Chance?

by Linda Hanson

As I listened to President Bush's latest State of the Union address, I thought my mind was playing tricks on me. After all, I'm reaching middle-age where those sort of things begin coming into play. But this wasn't one of those times, thankfully.

Buried underneath all that political mumbo jumbo, Bush outlines a surprising new initiative to help prisoners reintegrate back into their communities once released. The "prisoner re-entry initiative" he proposed is admirable considering that record budget deficits are forcing reductions in most other non-entitlement domestic programs. Bush's modest $300 million over four years is long overdue and suggests the seriousness of our nation's ever-growing ex-prisoner population.

For over three decades our nation has incarcerated more than any other nation. We currently own the title as having the highest incarceration rate in the world. More than 14 million Americans have felony convictions; more than 600,000 prisoners will be released from our prisons and jails this year.

As recognized by Bush and demonstrated by the best social science research, if these ex-prisoners can't find work, or a home, or community support, they are much more likely to commit a crime and return to prison. Certainly a successful re-entry program should benefit public safety as well as prisoners and their families. By expanding job training and placement assistance as well as transitional housing and support for counseling services, ex-prisoners would reap huge benefits.

While this initiative is commendable, we must also focus on many other hurdles such as employment and other legal restrictions and prohibitions on a wide range of civil and political rights that keep ex-offenders from finding their place in society.

The war on crime has continued to push the envelope to the point where a large number of legal restrictions have made successful reintegration much more difficult for ex-prisoners. These recent restrictions include prohibitions on occupational licensing, access to public housing and other types of social programs aimed at the poorest Americans. In addition, political rights abrogated include the right to vote, serve on juries, and to hold public office. Many states, including Florida, make a criminal history easily discoverable, branding an ex-offender for life.

I understand the limitations may in some cases have good logic behind them, but many of the restrictions seem aimed more at extending punishment than serving any socially useful purpose. For example, in 1998, Congress passed the Higher Education Act that barred ex-felons from being allowed to receive Pell Grants, the largest type of federal student loans. How can the people of our society expect ex-prisoners to build better lives for themselves if we don't allow them to compete for grants and scholarships like everyone else?

Similarly, many restrictions on the types of jobs that can be held defy logic. What purpose does it serve to prohibit an ex-offender from becoming a barber, contractor or social worker? Other restrictions relate to participation in public life. While we expect ex-offenders to abide by the law, most states prevent those with felony convictions, or who are on probation or parole, from voting.

Ironically, most all of our ex-offenders are citizens, and the Supreme Court has repeatedly ruled that no one can be stripped of citizenship because of a criminal offense. Yet we deny millions of ex-offenders one of the most basic rights of citizenship, the right to vote.

As I pondered Bush's startling initiative his concluding remarks continued to echo in my mind. "America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life." But unless my mind is indeed playing tricks on me, I am sure that when the path is blocked by laws that make it much more difficult for offenders to find their way to a better life, we prevent them from capitalizing on this second chance. ■

Yet Another Injustice: Does It Ever End?

When the issue of chronic pain intersects with this nation's draconian drug laws, common sense and compassion often take a holiday. Consider the case of Richard Paey, a 45-year-old father of three who sits in a wheelchair, debilitated by multiple sclerosis and chronic pain from botched back surgery, and who now faces a 25-year mandatory minimum sentence for having forged prescriptions to treat his pain.

Paey's case is just one example of the skewed priorities that result from the nation's drug war:

Mandatory minimums tie the hands of judges to offer leniency; and the looming threat of prosecution dissuades doctors from aggressively treating pain.

Paey and his wife moved to Florida from New Jersey in 1994. Earlier, a car accident and disastrous back surgery left him in debilitating pain, putting him on disability. Paey claimed he couldn't find a local doctor to treat him and so his New Jersey physician sent him undated but signed prescriptions for Percocet, Lortab, and Valium.

In January 1997, investigators from the Drug Enforcement Administration met with Paey's New Jersey doctor about the illegal prescriptions. When that source dried up, the government says Paey filled out old prescriptions he had photocopied. Despite months-long surveillance of Paey's activities, there was never any evidence that he resold the 1,200 painkillers he bought between January and March. It was all apparently for his personal use.

Still, in 1997 he was charged with drug trafficking, among other drug-related crimes.

To the credit of Pinellas-Pasco State Attorney Bernie McCabe, Paey was offered a generous plea deal of house-arrest and probation, but he stubbornly refused it. Later plea offers for a five-year prison sentence were also rejected. Paey didn't feel that medicating his pain should have been a crime.

And he has a point. While altering a prescription is certainly a criminal act, the under-treatment of pain has been a long-running health care problem in this country, now exacerbated by the increased recreational use of prescription medications such as OxyContin. As the DEA and other law enforcement agencies have stepped up their scrutiny of doctors, many have been frightened away from offering their patients aggressive pain treatment.

The result has been making drug traffickers out of patients who doctor-shop and engage in other unlawful practices to get sufficient quantities of painkillers. This is an abuse of our criminal justice resources. Paey is not a man who belongs in prison. What he and other pain patients need is a health care system that will respond to their affliction. (Paey now has a morphine pump in his back to dull the pain, which provides him with more narcotics than he was getting from the Percocet that is 98.5 percent Tylenol.)

But it looks like prison is very much on the horizon. After two trials were set aside due to irregularities, Paey was convicted by a New Port Richey jury in March in a third trial. He was found guilty of 15 counts of drug trafficking, obtaining a controlled substance by fraud and possession of controlled substances. He faces multiple 25-year mandatory minimum sentences, since Florida's rigid drug laws treat everyone with a certain amount of medicine like a drug dealer. Sentencing was scheduled for April 16, 2004.

Plenty of blame can be spread around for this travesty, including Paey himself for not accepting the initial plea deal, but the drug laws are the main problem. Mandatory minimum sentencing laws result in breathtaking injustices and remain in place because lawmakers refuse to act rationally where drug issues are involved. With the law stripping Florida's judges of discretion, Paey's only hope is another generous plea offer. Otherwise, this man of failing health will probably spend the rest of his years behind bars.

[Source: *St. Pete Times*, 4/5/04] ■

Supreme Court to Decide The Retroactivity of Ring v. Arizona

Before the close of the Supreme Court's term in October, the justices will contemplate ordering new sentences for more than 100 convicted prisoners who are on death row.

Capital punishment cases often are the most dramatic at the nation's high court, but the mood was restrained as the justices heard arguments in the most far-reaching death penalty issue this term. At least four states could be forced to settle for prison sentences for the inmates or spend millions of dollars for new sentencing hearings.

The court ruled two years ago that the constitutional right to a trial by jury means that jurors should weigh factors that determine whether a particular crime merits death or life in prison. Now the court will decide whether to apply that ruling retroactively.

Justice Stephen Breyer worried about "the spectacle of the man going to his death having been sentenced in violation of that principle."

The Supreme Court's decision, expected by the end of June, could affect the cases of more than 85 Arizona death row inmates, including the case under review above. Other states that will likely be affected include Idaho, Montana, Nebraska, Alabama, Delaware, Indiana, Nevada, and Florida.

John Todd, an assistant Arizona attorney general, said the sentencing challenge required by the court two years ago was not significant enough to warrant reopening old cases. Bush administration lawyer James Feldman warned that a favorable prisoner ruling could put in doubt convictions in non-capital cases handled by judges, a scenario that seemed to worry several of the justices.

[Source: *St. Pete Times*, 4/19/04] ■

POST CONVICTION CORNER

by Loren Rhoton, Esq.

Each and every person accused of a crime is entitled to certain constitutional rights. One such right is the trial by jury. *See Sixth Amendment of the United States Constitution; and, Article 1, §22, Florida Constitution.* Inherent in said right is the right to plead not guilty and the right to make the State prove the charges. A criminal defendant can never be forced to plead guilty to the charges against him. And, although an attorney has the right to make tactical decisions regarding trial strategy, the determination to plead guilty or not guilty in a criminal matter is a matter which is left completely to the defendant. Nixon v. Singletary, 758 So.2d 618 (Fla. 2000). In the absence of the client's consent, a trial attorney should never admit his client's guilt to the crimes charged or any lesser included offenses. Unfortunately, though, that is often what occurs during closing arguments. Quite often trial counsel will concede guilt to a lesser included offense in order to avoid having his client found guilty of the primary charge. While such a course of action may or may not be a wise choice, an attorney should never do so without the consent of his client.

The Due Process Clause of the United States Constitution does not permit an attorney to admits facts at trial that amount to a guilty plea without the client's consent. Brookhart v. Janis, 384 U.S. 1 (1966). The constitutional right of a criminal defendant to plead not guilty entails the obligation of his attorney to structure the trial of the case around his client's plea. Wiley v. Sowders, 647 F.2d 642 (6th Cir., 1981). Where defense counsel admits guilt without his client's consent, and thereby fails to subject the prosecution's case to meaningful adversarial testing, such a defendant is denied of his right to effective assistance of counsel and prejudice to said defendant is presumed. Nixon v. Singletary, 758 So.2d 618 (Fla. 2000). In such a situation the conviction should be set aside and a new trial should be granted.

In Nixon v. Singletary, 758 So.2d 618 (Fla. 2000), the defendant, Joe Nixon, was convicted of first degree murder, kidnaping, robbery, and arson. At his trial, Nixon's attorney made remarks during opening and closing statements which admitted Nixon's guilt on the charges against him. Id. After being convicted as charged, Nixon filed a 3.850 motion alleging that his attorney effectively entered a guilty plea without Nixon's consent. Id. at 621. The trial court summarily denied Nixon's 3.850.

In Nixon, the Florida Supreme Court acknowledged that the standard typically used to determine an ineffectiveness of counsel claim is the two pronged test enunciated in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, in order to establish an ineffective assistance of counsel claim, a defendant must demonstrate both: (1) deficient performance by counsel; and, (2) prejudice to the defense. Nixon argued, though, that the proper test for his counsel's conduct was the standard set out in United States v. Cronic, 466 U.S. 648 (1984). In Cronic the United States Supreme Court created an exception to the Strickland standard for ineffectiveness of counsel and acknowledged that certain circumstances are so egregiously prejudicial that ineffective assistance of counsel will be presumed. One such circumstance under Cronic would be if trial counsel entirely fails to subject the prosecution's case to meaningful adversarial testing; In such a situation there has been a denial of Sixth Amendment Rights which

makes the adversary process itself presumptively unreliable. Nixon at 622.

The Nixon Court held that the determinative issue as to which test, Strickland or Cronic, should be used is whether Nixon gave his consent to his attorney to concede guilt during his trial. Nixon at 622. The Nixon Court remanded his cause for an evidentiary hearing, determined that Cronic was the proper standard in Nixon's case, and held that:

> "[b]ecause counsel's comments were the functional equivalent of a guilty plea, we conclude that Nixon's claim must prevail at the evidentiary hearing below if the testimony establishes that there was not an affirmative, explicit acceptance by Nixon of counsel's strategy. Silent acquiescence is not enough." Id. at 625

Thus, in a situation where an attorney has conceded the guilt of his client at trial, without the client's consent, the conviction should be vacated. Such an issue should be raised in a timely Florida Rule of Criminal Procedure 3.850 Motion for Postconviction Relief. Said motion should present argument, based upon Nixon, that trial counsel conceded the accused's guilt, without the consent of the accused. If it can be proven that this has happened, prejudice will be presumed and the Judgment and Sentence should be overturned.

Loren 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 Level. He has assisted hundreds of incarcerated persons with their cases and has numerous written appellate opinions.

– CRIMINAL LAW – PCA vs. Exhaustion of State Remedies

by Dana Meranda

Prisoners in Florida, having dealt with the state's appeal courts, will likely have encountered the commonly issued "Per Curiam Affirmed" (PCA) decision.

The question most often brought up by one seeking federal habeas corpus review pursuant to 28 U.S.C.§ 2254 is, "I was PCAed; do I have to file something to the Florida Supreme Court in order to satisfy the requirements set forth in *O'Sullivan v. Boerckel*, 526 U.S. 838, 845, 119 S.Ct. 1728, 1732-33 (1999), regarding exhaustion of available state court remedies"?

The answer may be two-fold in nature.

First, in Florida the state Supreme Court lacks jurisdiction to review a PCA denial of an appeal, where no opinion was given. *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980); Article V, § 3(b)(3), Fla. Constitution. In Addition, a party may not invoke the Florida Supreme court's extraordinary writ jurisdiction to review a PCA affirmance or denial. *Stallworth v. Moore*, 827 So.2d 974 (Fla. 2002); *Grate v. State*, 750 So.2d 625 (Fla. 1999).

Second, a PCA decision that merely cites a controlling precedent (case cited with no written opinion) does not expressly conflict with another appellate court's decision, even if a conflict could be demonstrated from the cited precedent. That kind of decision sometimes referred to as a "citation PCA," is unreviewable even if the cited precedent was decided contemporaneously with the decision sought to be reviewed.

There are two exceptions. The first is that a citation PCA is reviewable if the case cited as precedent has been reversed. *Jollie v. State*, 405 So.2d 418 (Fla. 1981); *Larnesi v. Ferry Pass United Methodist Church*, 826 So.2d 955 (Fla. 2002). The second is that a citation PCA is reviewable if the case cited as precedent is pending review.* *Walker v. State*, 682 So.2d 555 (Fla. 1996).

In either of those situations, the Supreme Court has discretionary jurisdiction to accept review of the per curiam decision controlled by the cited authority.

Based upon this application of law, a bare PCA decision, without any cited case law or opinion, ends the state appeal process. It is presumed that avenues to the Florida Supreme Court are jurisdictionally foreclosed in this situation because further review is not a part of Florida's established appellate review process.

On the other hand, if the case meets one of the two exceptions of a "citation PCA," and mindful of conservative federal court rulings following the enactment of the AEDPA in 1996, out of an abundance of caution it would be wise to make efforts to invoke the jurisdiction of the Florida Supreme Court in a timely fashion and in accordance with the appropriate Florida Rules of Appellate Procedure that govern discretionary jurisdiction, rather than later being procedurally barred by the federal courts for failure to exhaust all available state remedies.

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* "Pending review" means that the court must have accepted the case cited as precedent in the citation PCA order for review. *Harrison v. Hyster*, 515 So.2d 1279 (Fla. 1987).

[Editor Note: Dana Meranda is a Florida prisoner-bp] ■

From the Associate Editor...

Recently, as I made my journey to my institutional job assignment, I was approached by a fellow prisoner who wanted me to know that my sarcastic writing style has made him chuckle more than once. Even my wife has made such an observation. Now I'm not sure how I've earned that label nor am I sure if it's truly a "good thing". I became a member of this organization because I share in the ideology of its founders, but I also recognize the important need to share valuable information with the Florida prison population. Unfortunately our funding and resources does not afford us the ability to get the information out as quickly as I would like to see it delivered, but under the circumstances we do the best that we possibly can. Now back to that sarcastic side of me.

Occasionally I run across articles that spark interest and provide helpful insights into my own ideas, viewpoints or philosophy. So, from time to time I will incorporate those insights to publish my own little diatribe about our plagued criminal justice system. And just how has our system reached this dreadful condition? Law and order is experiencing its rapid collapse, not only because of criminals but also because of prosecutors, medical examiners, and police.

Those declining crime rates you have been hearing about are probably nothing but public-relations propaganda as evidenced a recent article in the Atlanta Journal-Constitution (Feb. 20, 2004) where it reported that the city's crime reports were suppressed to protect the city's image for tourism. Doesn't that mean some official or officials committed fraud on the community?

One of the main reasons crime is exploding is the over-criminalization of behavior. Almost daily you can find laws that criminalized behavior that really shouldn't be criminalized. Most often, criminal legislation is a knee-jerk reaction to some offense committed by some individual and a lawmaker somewhere begins drafting a legislative bill. For example, a few months ago a horrible crime was committed in Sarasota where a young girl was abducted and murdered. Before the autopsy was complete lawmakers were vigorously drafting the Carlie Brucia bill

that will, among other things, seek electronic monitoring of probationers, pre-trial detainee releases and whoever else is deemed appropriate for monitoring.

In case you haven't heard, you can now be arrested for using politically incorrect words or phrases. Really.

But by far, some of the worst crimes are committed by police, medical examiners, and prosecutors. Take the case of Steven and Marlene Aisenberg. The couple reported their 5-month-old daughter missing on November 24, 1997. Instead of looking for the baby and the abductor, the police in Hillsborough County decided to frame the parents. Police eavesdropped on the couple's conversations for two years, wrote out a transcript allegedly based on the recordings and indicted the couple.

When federal district judge Steven D. Merryday demanded the actual recordings and compared them with the police transcript, he found "the disparity was shocking." Medberry ordered $2.7 million to the Aisenbergs for "bad-faith prosecution" and ordered the grand jury transcript released to the public as a way of holding the corrupt police and prosecutors accountable. To protect themselves, "law enforcement" appealed. The 11th Circuit appeals panel reduced the award to $1.3 million and overturned the district judge's order to release the grand jury transcript. If the transcript is released "law enforcement" cannot pretend that the wrongful prosecution of the parents was a mistake. The appeal panel evidently decided that a white wash was needed to protect the public's confidence. But when does the need to protect the public's confidence give way to the actual protection of individual rights? How long do we hide behind the speculative to avoid the substantive?

I've worked with criminal cases where the accused was charge, tried, and convicted on scant, if not plausible, evidence. For example, one case involved evidence of an alleged confession and the transcript of the purported confession was not reflective of what was actually on the audiotape. In another case Armand Perrault was convicted solely on the evidence of a Pinellas medical examiner who was later removed from her position for allegedly providing false testimony in a criminal trial. In yet another case, Mark Ellis, while on probation, was arrested and charged with being in possession of a firearm by a convicted felon. His arrest occurred as he drove to his home. No weapons were found in his possession. His wife had been engaged in a lesbian relationship and had conspired with her lover to remove Ellis from their marital home. Ellis's probation officer conducted an interview and subsequently filed a written report. During the interview, Ellis's probation officer had in his possession an audio tape recorder.

As months passed it appeared Ellis would be vindicated since there was no substantial evidence to prove he was in actual or even constructive possession of a firearm. The night before a scheduled hearing, Ellis's probation officer called the state attorney over the case at approximately 8:45 p.m. and made a shocking relevation. The probation office had somehow forgotten to tell ANYONE that Ellis had made a "confession" during the jail interview several months earlier. There was no written admission, no report, no audiotape to corroborate this amazing piece of evidence. Ellis was later convicted and sentenced to prison.

Stories like these are not novel or unique; they happen daily all across our nation.

Last December, the U.S. Court of Appeals for the 9th Circuit ordered the release of Thomas Lee Goldstein, wrongfully convicted for murder 24 years ago. The only evidence against Goldstein was a notorious jailhouse snitch, appropriately named Edward F. Fink, who, on nine occasions, testified for prosecutors against cellmates, claiming they had confessed their crimes to him. In exchange for his testimony, Fink received leniency on numerous felony convictions.

Americans should be outraged that they live under a criminal system in which prosecutors are able to convict people on the sole basis of purchased or perjured testimony. –Oscar Hanson ■

Florida Juvenile Justice Agency, A Den of Abuse and Corruption

by Bob Posey

Although it was only created a decade ago, the Florida Department of Juvenile Justice (FDJJ), which is responsible for about 9,000 juveniles around the state, has become almost a mirror image of its big brother, the Florida Department of Corrections. Over the past several months the juvenile agency has been rocked from a series of troubling events, including two juvenile deaths, allegations of sex between guards and locked-up girls, abuse, excessive force used against children by staff, and falsified records and reports.

The FDJJ was created in October 1994, spun off of the same former agency that split up to also create the chronically troubled Department of Children and Families. Florida lawmakers in that heyday of the "get tough" climate decided a separate agency was needed to imprison and "get tough" on juvenile offenders following several attacks on foreign tourists by juveniles globally embarrassed the state.

The tragedy that focused attention on the FDJJ and peeled it open like a can of rotten tomatoes was the death of 17-year-old Omar Paisley at the Miami-Dade County Detention Center in June 2003. Paisley, who was locked-up for slashing a neighbor with a soda can, died at the center from a burst appendix. Before he died, for three days, staff at the center ignored his pleas for help, until finally one guard noticed him balled up on the floor

holding his stomach. His cell and clothes were covered in diarrhea and urine. By the time paramedics arrived, he was dead.

Two nurses who allegedly failed to treat Paisley have been charged with murder. The FDJJ's Secretary William G. Bankhead and Deputy Secretary Frank Alarcon are on "extended" leaves of absence, three other top level managers have been replaced, and as of March 2004 18 other agency employees have been suspended or quit.

The deputy secretary of the Department of Corrections, George Denman, has taken over as Interin Secretary of the FDJJ. When he started in February he found about 3,000 pages of grand jury reports, auditor's evaluations and other documents detailing department problems waiting for him on his desk. Denman acknowledged that the agency is "not doing well."

Florida's House of Representatives convened a select committee late in 2003 to look at the FDJJ's growing list of problems. Rep. Gus Barreiro, R-Miami Beach, who chaired the committee, commenting on the committee's findings, said, "The callousness, the coldness, the indifference, it kept coming across and across and across and across."

Paisleys death was only one incident. Another detainee, Danny Mathews, 17, was killed in a jailyard fight with another detainee at a Pinellas County juvenile detention center in May 2003. Guards at a West Palm Beach juvenile prison for girls faced allegations of having sexual relationships with teen detainees.

Last year the Inspector General's Office received 45 complaints about FDJJ employees falsifying records. Of those, 17 were proven true, 12 unsubstantiated, and 16 inconclusive or still pending. Now the office is investigating whether guards at the center where Paisley died lied about another teens supposed suicide attempts. The FDJJ waited a month before investigating a Palm Beach County incident where an 11-year-old child's wrist was broken by a center guard. "There are so many close calls that were not even talking about," Barreiro said. "It could go on forever. I think that's why it's so important to do a complete overhaul of the system."

Solving the problems with the 5,000-employee, $624 million budget agency is going to be difficult, if not impossible. Denman said the real changes have to be in the agency's culture. Unfortunately, the corrections' field, whether it is the imprisonment of adults or children, appears to attract personnel that create and then perpetuate a culture of incompetence and abuse.

[Source: Lakeland, *The Ledger*, 3/22/04] ■

Hundreds of Abuse and Neglect Cases Uncovered at Detention Centers

by Randy Sherrill

According to the Orlando Sentinel, more than 600 cases of youth abuse or neglect have taken place at Department of Juvenile Justice facilities in the past decade, with nearly two-thirds of the cases occurring since 2000.

The 661 confirmed cases at department facilities since 1994 were scattered across the state, and range in type from physical to sexual abuse, according the state records.

The department has been coping with a series of high-profile incidents in the past year, including the death of 17-year-old Omar Paisley from a burst appendix in a Miami-Dade County detention facility last June.

Since then, nearly two dozen agency employees have taken extended leaves, stepped down or been pushed out. Six children have died under the department's care since 1998.

The Department of Children and Families, which investigates all reports of child abuse throughout Florida, attributes two deaths to abuse or neglect: the 2001 suicide of Shawn D. Smith at a Volusia County center, and the 2000 death of Michael Wiltsie, who was crushed by a 320-pound counselor at a center near Ocala. A grand jury attributed paisley's death to abuse or neglect.

A review of DCF records found the number of abuse or neglect cases peaked in fiscal year 2001-02, with 119 verified incidents. Last year, that number dropped to 72.

Polk County facilities reported the largest number of confirmed cases, 93 in the past decade. Fifty-seven of those took place at the Polk Youth Development Center in Polk City, one the biggest facilities in the state, with 350 high-risk offenders.

The department oversees about 9,000 youth offenders between ages 11 and 18, at nearly 200 programs and facilities. Eighty percent of the juveniles in custody are at long-term facilities, the majority of which are run by private contractors.

A House Select Committee investigating the facilities has focused on the 25 short-term centers holding an average of 2,000 youths daily. However, most cases of abuse and neglect took place at residential facilities, where an average of 6,600 youth offenders are serving sentences each day.

Chairman of the House Committee, Rep. Gus Barreiro, R-Miami Beach, openly criticized the limited inquire. Barreiro wants to expand the scope of the inquiry which requires approval from House Speaker Johnnie Byrd.

More recently, a report surfaced that a 16-year-old boy was choked by guards in early April at the same juvenile facility where Paisley died. According to late news reports, an investigation is under way to determine how Jerry Byron, 16, suffered a concussion April 14, 2004, while at the Miami-Dade Regional Detention Center.

[Source: *Orlando Sentinel*, 4/11/04; *St. Pete Times*, 4/22/04] ■

FDOC Kosher Meal Program a Joke, Critics Say

Some critics of the Florida Department of Corrections' (FDOC) new program to provide kosher food to Jewish prisoners say its appropriate the program took effect on April 1, otherwise known as April Fool's Day, because the program proposed by the department is a joke.

The FDOC Kosher Meal Program, as its called, was implemented four days before the start of Passover, ostensibly offering Jewish prisoners kosher food for the first time – with some conditions.

The program is the result of a federal lawsuit filed by state prisoner Alan Cotton, an Orthodox Jew, that was settled by the FDOC in October 2003 with prison officials agreeing to furnish Cotton Kosher meals to satisfy religious requirements. (See: FPLP, Vol. 10, Iss. 1, "Florida Prisoner Receives Kosher Food.") Following the settlement the FDOC, concerned about other lawsuits being filed by Jewish prisoners, began looking to develop a program to offer a kosher meal option in the state's prisons.

Advocates for Cotton and other Jewish prisoners, however, claim what the FDOC has come up with falls very short of kosher standards for other commercial and institutional kitchens. Under the FDOC's Kosher program, rather than hire a rabbi to supervise kosher food preparation, as other institutions do, the FDOC wants Jewish prisoners to prepare their own food. The FDOC claims it will provide kosher ingredients, a separate set of pots and pans, and an area set aside in the regular prison kitchen to prepare the food.

Rabbi Menachem Katz of the Aleph Institute, a Jewish organization that assists Jewish prisoners and their families and that provided legal representation in Cotton's lawsuit, commented, "The inmates are going to run the kitchen? That's a joke. These inmates are not knowledgeable of kosher law. Who's going to say what ingredients are kosher and what ingredients are not kosher? They're not even starting with a kosher kitchen."

Katz's comment references the FDOC's position that communal kosher prison kitchens should be held to the lower standard of Jewish family kitchens, rather than the higher standards of restaurants, hotels and other institutions. Under kosher law, institutional kitchens have to be "kosherized," a purification process that uses boiling water and flame, and that is supervised by a reputable rabbinic authority. Family kitchens, on the other hand, do not require rabbinical supervision.

Lou Vargus, acting deputy secretary of the FDOC claims the department's kosher meal program is "analogous to a family situation. We're essentially going to allow any inmates who want a kosher diet to cook and prepare their own food."

The program, open to the approximately 600 Jewish prisoners in Florida's prisons, is unacceptable to the Aleph Institute and the Becket Fund for Religious Liberty, a Washington D.C. group that also represented Cotton. "What they appear to be trying to do is make this as undesirable as possible for Jewish inmates," said Pat Korten, who's with the Becket Fund.

The FDOC started collecting applications from prisoners who want to participate in the program, but according to FPLP sources few are signing up. A procedure directive drafted by the FDOC (P.D. 503.005) concerning the program provides it will only be available at five prisons, meaning those who sign up and aren't already at one of the five prisons will be transferred to one of them. That, in many cases may mean being moved further from hometowns and families.

Another problem is likely to be the FDOC's refusal to provide any meat or fish for kosher meals. Vargus, the FDOC deputy secretary, said in April that meat and fish aren't excluded from the menu, they just won't be made available for now, for cost reasons.

[Sources: *Miami Herald*, 4/2/04; personal interviews and correspondence] ■

–PRISONER RIGHTS– Staff Assistance in the Disciplinary Process and Disapproved Mail Return Policy

In this case Senior U.S. District Judge William Stafford adopted the Feb. 17, 2004, Third Report and Recommendation of U.S. Magistrate Judge William Sherrill which granted the Florida Department of Correction's ("hereinafter "Department") summary judgment in Count I and denied same in Count II. The case had been remanded to the magistrate judge in 2003 (See: *Osterback v. Crosby*, 16 Fla.L.Weekly Fed. D513a) to consider two matters: First, whether Plaintiff Mark Osterback's status as a prisoner serving a life sentence without parole had a bearing on the due process analysis in Count I, and second, whether Osterback had submitted

sufficient evidence of harm to avoid summary judgment in Count II.

In Count I, Osterback sued the Department for declaratory and injunctive relief that its rules providing staff assistance, in both the investigative and hearing phases of the prison disciplinary process, were inadequate to enable the effective collection and presentation of exculpatory evidence and thereby infringed upon his right to due process of law.

In his Second Report and Recommendation (16 Fla.L.Weekly Fed. D513a), Magistrate Judge Sherrill agreed with Osterback's assertions, but the Department objected, claiming Osterback's sentence of life in prison without parole meant he could not earn gaintime and thus had no liberty interest which had to be protected by due process. Upon reconsideration of that matter upon remand, Magistrate Judge Sherrill, after allowing Osterback to submit additional evidence in regard to Count I, acquiesced to the Department's argument, which was based on its assertion that while it *awarded* gaintime to Osterback, his sentence prevented him from actually *benefiting* from it through reduction of his term of incarceration. That was crucial to survival of Count I, since placement in disciplinary confinement does not in itself implicate a due process liberty interest because simple confinement does not constitute *an atypical or significant hardship in relation to the normal incidents of prison life, Sandin v. Conner*, 515 U.S. 472 (1995), and the only other injury suffered by Osterback in disciplinary proceedings had been forfeiture of accrued gaintime. Further, benefiting from that accrued gaintime by way of a sentence commutation was too speculative to give rise to a liberty interest protected by due process, according to magistrate Judge Sherrill.

Additionally, Osterback's evidence and argument that other liberty and property interests, such as forfeiture of privileges, confiscation of property and imposition of restitution, were found to be unpersuasive by the court. That was due to Osterback's inability to demonstrate evidence that such interests had been infringed.

Although in his Second Report and Recommendation Magistrate Judge Sherrill recognized the shortcomings and inherent unfairness of the Department's rules in regard to staff assistance, upon remand, and in light of Judge Stafford's instructions, Magistrate Judge Sherrill was forced to recommend summary judgment in favor of the Department on this count based entirely upon the sentence Osterback is serving.

In Count II, Osterback challenged the Department's disapproved mail return policy as violative of due process for its failure to allow effective review of any decisions to disapprove incoming mail based on content because disapproved mail is immediately returned to the sender by the Department. On remand, Osterback was required to submit sufficient evidence of harm as a result of the policy to have standing to challenge it.

Osterback was able to submit evidence that an incoming letter had been had been disapproved because it allegedly contained "inflammatory language." He also submitted evidence that another letter was disapproved for allegedly being sent to him by another prisoner when, in fact, the alleged other "prisoner" had been released from prison several months prior to writing the letter to Osterback.

Neither of those disapprovals, argued Osterback, could be effectively challenged due to the Department's mail return policy, which required disapproved mail to be returned to the sender within 24 hours of receipt.

Ironically, it was Osterback's life sentence which was a factor in saving this count from summary judgment. As he sought prospective (future) injunctive relief, in the form of a rule changing the disapproved mail return policy, the court found he had standing to challenge the policy as he would be forever subject to it by virtue of his life sentence. Summary judgment as to Count II was therefore denied by the Department. *Osterback v. Crosby*, 17 Fla.L.Weekly Fed. D517a (N.D. Fla. 3/25/04).

[**Note:** As part of an attempt to settle the above case now that the Court cleared the way for Count II (the disapproved mail return policy challenge) to go to trial, on May 14, 2004, the Department posted a Notice of Propose Rule Development to amend its mail rules to ameliorate the due process violation inherent in the present policy. Pertinently, the proposed addition to the rules would require that in disapprovals, (rejections) of incoming mail to prisoners, based upon written or pictorial content, that a photocopy would be made of the alleged offensive material to facilitate prisoners' appeals. The mail, however, would still be returned to the sender as has been the Department's policy. Notably absent from the proposal are *any* provisions to establish a procedure providing effective and meaningful due process to *nonprisoner mail senders* whose mail the Department rejects. That "oversight" needs to be addressed by the Department.] ■

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Daniel E. Manville

Co-Author of the "Prisoner's Self-Help Litigation Manual" 3rd Edition

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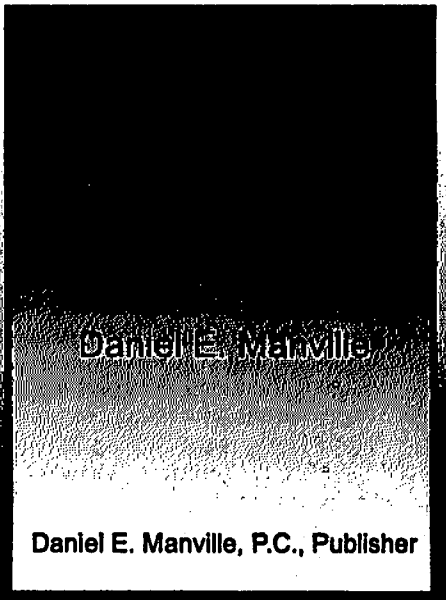

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Inmate Account Processing Fees to be Charged

On May 31, 2004, Gov. Jeb Bush signed new legislation into law concerning the state correctional system. Included in that legislation is a new provision that allows the Florida Department of Corrections (FDOC) to charge prisoners an "administrative processing fee" on their inmate bank accounts. The law becomes effective July 1, 2004.

The processing fee provision was sponsored by the House Appropriations Committee and Rep. Frederick "Fred" Brummer, R-Apopka, and was, along with the other provisions in the legislation concerning the prison system, passed unanimously by both the state House and Senate during this year's regular legislative session.

The legislation concerning the administrative processing fee provision, that is now law in Florida, provides that paragraph (h) is added to subsection (1) of section 944.516, Florida Statutes, to read:

(1) The Department of Corrections may:
(h) Charge an administrative processing fee of up to $6 each month to inmates for banking services. Such fees shall be deposited into the department's Grants and Donations Trust Fund and shall be used to offset the costs of the department's operations. If the inmate account has a zero balance at the end of the billing cycle, a hold will be established to collect the processing fee when available.

Rep. Brummer said staff from the FDOC and the governor's office had initially suggested the processing fee provision. He defended the provision, saying free citizens have to pay a service charge on their bank accounts, so why shouldn't prisoners be charged a monthly fee?

FDOC spokesman Sterling Ivey said the money in prisoners' accounts with the department, that can be used to purchase items out of the prison canteens, comes from prisoner's families and friends. Ivey also claimed, somewhat mendaciously, that prisoners also earn money working prison jobs. Less than 3,000 of Florida's 80,000 state prisoners have jobs inside the prisons that pay anything. There are approximately, 2,500 prisoners who work for the prison industry program, P.R.I.D.E., who can earn up to a maximum of $.55 per hour for what many critics call "slave-labor." The only other prisoners who can receive small wages each month are the approximate 300-400 prison canteen operators and prisoners who cut guards' hair or shine their shoes. The majority of prisoners, however, are prohibited by department rules from engaging in any activity that might generate revenue.

When Randall Berg, an attorney with the Miami-based Florida Justice Institute, heard about the processing fee legislation he said "You have got to be kidding. These people don't have much money to begin with." Berg thinks prisoners will be outraged by the processing fee and especially by the clause that will allow a lien to be placed on their accounts even when they haven't had any money to be "processed." According to Berg, "This is mean-spirited legislation."

Potentially, the FDOC could stand to collect almost $6 million a year from prisoners on the account processing fees, but the actual amount will be less. Many prisoners, who don't have a paying job in prison, come from low-income families and backgrounds and receive little or no money from the outside. Many family members struggle to send an incarcerated loved one even a few dollars a month so they can purchase hygiene items, shoes, sweatshirts or underwear from the prison canteens—all items the FDOC has cut back on furnishing to prisoners in recent years. Prisoners can also purchase snacks and a small radio in the prison canteens, if they have money, but only at high prices now that the FDOC has contracted out the canteen operations to the privately-owned Keefe Commissary Network within the past year for a cut of the profits.

"Its just one thing after another with the [FDOC] gouging the families," said Irene Smalley, 73, who has a son incarcerated in Florida. "I'm a taxpayer like everyone else in Florida. Out taxes are suppose to be used to support the prison system. But prisoners' families are being taxed extra," Smalley said. "When I go to visit my son I have to pay high costs for vending machine food so the Department [of Corrections] can make a profit off me. If I accept my son's collect phone calls I'm charged rates higher than anyone else in the country so the Department can get a profit. If my son gets sick and goes to the clinic, he's charged $4 a visit out of the money I send him to by necessities. Now they want to take another $6 a month of my money to fund Department operations, if I send him $20 or $30. It's like the Department is trying to split up families by burdening them financially," said Smalley.

When a phone call was made to the FDOC's central office about how the processing fee provision was going to be implemented, the caller was told that *all* prisoners who have *any* money deposited into their inmate account during the month will be charged the full $6 processing fee. If a prisoner only receives a few dollars and spends it before the $6 charge is deducted for that month, then a lien will be placed on the prisoner's account for the $6 to be collected next time he or she receives any money. However, if a prisoner does not receive any money during the month, then no lien will be placed on the account, according to the FDOC staff person who answered the family member's questions by phone.

It is yet to be seen how the prison population reacts to this new scheme to make money off of them and their families to support the system that's keeping them imprisoned. As noted in the processing fee provision, the fees collected will go into the FDOC's Grants and Donations Trust Fund, which is the department's slush fund that can be spent on anything the department wants, without authorization from the Legislature. Many prisoners believe the processing fee provision was suggested by the FDOC to make up for the loss the department suffered last year when the Legislature abolished the Inmate Welfare Trust Fund (IWTF) and turned all the money over to the state's General Revenue Fund. The department had been notorious for stealing from the IWTF, which was only suppose to fund inmate benefit or family programs, to fund unauthorized projects.

It does not appear that the FDOC, in suggesting it be allowed to charge and keep the processing fee, informed Rep. Brummer or other legislators that ever since the inmate account system was set up a few decades ago that the money is deposited into an interest-earning bank account, but the interest, amounting to a couple of million dollars a year, is not paid to prisoners—the department always claimed the interest was kept as an "administrative processing fee.

[Sources: *Lake City Reporter*, 6/1/04: HB 1875; correspondence and personal interviews] ■

NOTABLE CASES

BY OSCAR HANSON & ANTHONY STUART

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

Grosvenor v. State, 29 Fla.L.Weekly. S125 (Fla. 3/25/04)

The Supreme Court of Florida accepted jurisdiction in this certified conflict case to resolve an issue where a defendant asserted a claim of ineffective assistance of trial counsel for failing to advise of a possible defense. The Court had to decide whether, in asserting prejudice, defendants must allege that the defense would have succeeded at trial.

In reaching their decision, the Court analyzed the standards established by the U.S. Supreme Court in *Strickland v. Washington* and *Hill v. Lockhart.* Under *Strickland,* a defendant alleging ineffective assistance of counsel must prove both deficient performance of counsel and prejudice to the defendant. See: *Strickland v. Washington,* 466 U.S. 668 (1984). In *Hill*, the Court established a two-pronged test for determining claims of ineffective assistance of counsel relating to guilty pleas. The first prong is the same as the deficient performance prong of *Strickland.* Regarding the second prong, the Supreme Court in *Hill* held that a defendant must demonstrate "a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." See: *Hill v. Lockhart*, 474 U.S. 52 (1985).

In sum, the Florida Supreme Court followed the holding in *Hill.* This case arose out of charges that Bodden was driving under the influence in violation of section 316.193(1), Fla. Stat. (2002). During a traffic stop the police officer noticed that Bodden had red eyes and slurred speech, swayed while he stood, and smelled of alcohol. The officer read Bodden the implied consent warning, and Bodden agreed to a breath test and a urine test. The breath test results indicated that Bodden's blood-alcohol level was between .060 and .065 percent. The urine test results indicated the presence of a controlled substance.

Bodden filed two motions *in limine* requesting that the trial court suppress any reference to his urine test results because no regulatory criteria for testing had been promulgated in accordance with Chapter 120, F.S. A claim of Administrative Procedure Act, codified in Florida statutes. Bodden argued that section 316.1932, part of the implied consent law pertaining to the operation of motor vehicles, requires that any scientific test conducted pursuant to the implied consent law, including a urine test, be an "approved" test (meaning that the testing procedures be approved through formal rulemaking promulgation in accordance with the Administrative Procedure Act).

The sole issue under review by the Supreme Court was whether the term "approved" in section 316.1932(1)(a)(1) refers to urine test as well as breath and blood tests. The Court conducted an extensive analysis of the relevant statutes and concluded that the implied consent law for operators of motor vehicles *does not* require that urine testing methods be approved in accordance with the Administrative Procedure Act (APA).

State v. Bodden, 29 Fla.L.Weekly S153 (Fla. 4/15/04)

DISTRICT COURT OF APPEAL

Burgess v. Crosby, 29 Fla.L.Weekly D718 (1st DCA 3/23/04)

While Lance Burgess was serving sentences imposed by Orange and Lake County Circuit Courts, he filed a petition for writ of mandamus in the Leon County Circuit Court (Leon Court). In the complaint for mandamus, Burgess challenged the revocation of his conditional release by the Florida Parole Commission and the subsequent forfeiture of gain time by the Florida Department of Corrections (DOC). He further argued that DOC's sentence and ruled a defendant who has pleaded guilty who later claims that defense counsel was ineffective for failing to advise of an available defense established *Strickland's* prejudice prong by demonstrating a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial.

This ruling reversed the Fifth DCA decision that held defendants making such claims as above must show that they had a "viable" defense. This ruling marks a significant change in post conviction proceedings.

calculation resulted in his serving more time in prison than was proper.

The Leon Court determined that it did not have jurisdiction over the complaint, ruling that the challenge to the computation of a sentence was a collateral criminal proceeding to the judgment and sentence that resulted in the incarceration, citing *Schmidt v. Crusoe*, 28 Fla.L.Weekly S367 (Fla. May 1, 2003), motion for rehearing filed, No. SC00-2512 (Fla. May 21, 2003).

The Leon Court further determined Burgess was serving a sentence that it had not imposed; therefore, the Leon Court did not have jurisdiction over the collateral criminal proceeding stemming from a conviction and sentence entered by another circuit court. The petition for writ of mandamus was dismissed without prejudice for Burgess to file in the sentencing court for the appropriate relief.

On appellate review, the First District Court of Appeal (DCA) granted review as an appeal rather than certiorari, citing *Green v. Moore*, 777 So.2d 425 (Fla. 1st DCA 2000) (holding that an appeal, rather than certiorari, is the proper method to review the circuit court's denial of an inmate's petition for writ of mandamus where the proceeding is concluded on grounds other than merits).

After reviewing the *Schmidt* case the DCA found that the Supreme Court intended to limit the application of its holding to the question Schmidt's rehearing brought before it: whether the prison indigency statute applied to challenges concerning the forfeiture of gain time. The DCA ruled that the Leon Court erred in concluding otherwise.

In *Schmidt*, the Supreme Court held, "that an inmate's petition for writ of mandamus challenging a loss of gain time is a collateral criminal proceeding and not a civil lawsuit as contemplated by the Prisoner Indigency Statute." Furthermore, it held, "a gain time challenge is [similar] to a collateral challenge to a sentence in a criminal proceeding because the end result is the same, the inmate's time in prison is directly affected."

The DCA explained that to hold that any administrative action affecting a sentence as a collateral criminal proceeding, and that an inmate must seek relief in the sentencing court, extends the holding in *Schmidt* to areas not explicitly addressed and raises a whole series of issues that were not discussed by the Supreme Court in *Schmidt*.

After a review of the venue issue, noting that there would be no guidance to which of the two sentencing courts would be the proper court to seek relief, and a showing of examples regarding different venue issues, the DCA concluded that the sentencing court is not the appropriate venue for the action a tissue. The challenged revocation of conditional release and the subsequent forfeiture of gain time, both have to do with an inmate's behavior on release and the penalty imposed by forfeiture of gain time after revocation.

The DCA however, because of its, and those that dissented, concerns, brought a certified question to the Florida Supreme Court: "*Does the holding in Schmidt apply to all challenges which affect the length of a sentence, including the award or forfeiture of gain time, such that any challenge must be brought in the sentencing court?*" – a.s.

[Note: FPLP alerted readers to the 2d Jud. Cir. Ct. claiming a lack of jurisdiction in cases involving gain time pursuant to the *Schmidt* decision in Vol. 9, Iss. 5, in the notice "Judicial Alert." Hopefully, the S.Ct. will clarify exactly where the jurisdiction lies in such cases quickly. – bp]

Spradley v. State, 29 Fla.L.Weekly D623 (Fla. 2d DCA 3/12/04)

In this case the Second DCA addressed an issue where a defendant who entered a guilty plea to probation violation claimed in a Rule 3.850 motion that his trial counsel misadvised him that he would receive credit for all previously earned gain time when the DOC applied credit for time served, and that he would not have pleaded guilty to the violation of probation had he known that the DOC had the authority to forfeit the gain time he previously earned. Because Spradley's motion was untimely the trial court denied relief.

Spradley filed a motion for rehearing alleging that the claim is based on newly discovered evidence because he did not learn of the DOC's authority until he exhausted his administrative grievances, which did not occur until the time expired for seeking post conviction relief.

The DCA held that Spradley's motion for rehearing was not under oath, and therefore the trial court was not required to consider the motion for rehearing, citing *Melton v. State*, 720 So.2d 577 (Fla. 1st DCA 1998).

The DCA did grant Spradley 60 days to resubmit a facially sufficient Rule 3.850 motion based on the newly discovered evidence and that such motion shall not be deemed successive.

[Editor's Note: As this case demonstrates, it should be the policy of every prisoner litigant to submit all adversarial pleading under the penalty of perjury oath found under Florida Statutes 92.525 -oh]

Dillard v. State, 29 Fla.L.Weekly D801 (Fla. 4th DCA 3/31/04)

Florida prisoner Kevin Dillard appealed his upward departure sentence imposed by the trial court on re-sentencing following remand where the DCA had reversed

Dillard's habitual felony offender sentence.

At re-sentencing, the state asked for an upward departure sentence based on multiple grounds. Among the grounds urged as a basis for departure was that the "offense created a substantial risk of death or great bodily harm to many persons." Section 921.00163(3)(i), Fla. Stat. (1997). The trial court imposed an upward departure sentence. The court found that Dillard created a substantial risk of death or great bodily harm to many persons when he ran across high-speed lanes of traffic on I-95 to bury the drugs he carried in an effort to "continue trafficking in those drugs." In departing from the presumptive range, the judge made it clear that he was not relying upon Dillard's fleeing conduct (since he had been acquitted of that charge), but rather his conduct in attempting to conceal the drugs in the ground.

The DCA reversed based on the holding in *Barr v. State*, 674 So.2d 628 (Fla. 1996), where the Supreme Court held that a departure sentence cannot be based on conduct that could have supported a separate charge and conviction.

Malcolm v. State, 29 Fla.L.Weekly D807 (Fla. 4th DCA 3/31/04)

The Fourth DCA has held it is erroneous to sentence a defendant as a prison releasee reoffender and also under 10/20/Life statute where the mandatory terms under 10/20/Life statute were not greater than the PRRA sentences. On remand the trial court was instructed to vacate the 10/20/Life sentences.

Davis v. State, 29 Fla.L.Weekly D672 (Fla. 5th DCA 3/18/04)

The Appellant in this case sought an enlargement of time for the trial court to consider and rule on a Motion to Correct Sentence made pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). The issue under consideration was whether extensions of the 60-day time limit are authorized for motions of this nature.

Florida Rule of Criminal Procedure 3.800(b)(2), adopted in 2000, provides a procedure by which sentencing errors may be corrected by the trial court during the initial stage of the appeal without the need for the appellate court to relinquish jurisdiction. The rule provides that, within 60 days of the filing of a Rule 3.800(b)(2) motion, "the trial court shall file an order ruling on the motion." Otherwise, the motion is "considered denied."

The Fifth DCA held that the time period is self-executing and there is no authority of either the trial court or the appellate court to extend the time period.

[**Editor's Note:** This decision has no effect on extensions of time as they relate to Florida Rule of Criminal Procedure 3.800(c). Under that rule, the 60-day limit is not self-effectuating and extensions of time do not delay the appellate process. See: *Abreu v. State*, 660 So.2d 703 (Fla. 1995).-oh] ■

Children of Prisoners, Children of Promise

Earlier this year Jeb Bush launched a trial program that will pair the children of 60 inmates with mentors. If the children can maintain a performance contract that requires them to do well in school and stay out of trouble, the program will pay for their higher education. The program is mainly supported by the private sector by such companies as Pride Enterprises, Aramark, Wexford Medicine in Corrections, and Bridges of America.

The Department of Corrections chose the initial 60 children from parents who were participating in faith-based programs at their prisons. Faith-based programs encourage inmates to turn their lives around through religion.

Florida has 60,000 children with at least one parent in prison, according to the Federal Department of Health and Human Services.

The program will begin with 42 children whose parents are at the Broward Correctional Institution, and the rest will be children whose parents are at Tomoka. The program will later expand to Everglades Correctional Institution in Miami-Dade County and the Lowell Correctional Institution in Marion County and include the children of prisoners who aren't in faith-based programs.

The bulk of the expense will go toward the $4,500 cost of each prepaid scholarship. In addition to the mentors, students will get a case manager to ensure students get the support to succeed academically. ■

Broward County Sheriff's Office Falsified Crime Statistics

Pompano Beach, FL – Broward County Sheriff Ken Jenne said that he is expanding an internal investigation into allegations that his department has been using knowingly false and dubious confessions from criminal defendants to close cases and bolster the county's crime statistics.

In April 2004 Sheriff Jenne announced that he would review two years of county crime reports and closely analyze each instance where multiple cases were closed on a single suspect without charges being filed. The reports are from 2002 and 2003, when the BSO boasted of having one of the highest crime clearance rates in the U.S.

The investigation began with police officers in other Broward departments saying BSO regularly manipulates crime statistics by obtaining dubious confessions to clear cases to make the image-sensitive department look better to the public. The investigation was forced when *The Miami Herald* started its own investigation and identified situations in which suspects used to close cases couldn't have committed the alleged crimes.

In one recent instance found by the *Herald*, a man blamed for 16 burglaries is a mentally ill drug addict who was in jail in Miami at the time at least one of the crimes he confessed to occurred. The Broward Sheriff's Office cleared the 16 burglaries with Marc Anderson's confessions, and closed the cases, though he was never actually charged with the crimes or match his fingerprints with and physical evidence. His mother said Anderson would be a good candidate for police to pin crimes on; he's a frightened, mentally ill drug addict.

Sheriff Jenne's announcement about widening his investigation came as the *Herald* was pursuing related records about a fifth case in which as alleged suspect couldn't have committed the crimes to which he confessed.

Two Pompano Beach detectives "exceptionally cleared" almost 60 cases, citing Ronald Williams as the culprit. "Exceptional clearance" is a law enforcement term meaning the person who committed the crime has been found but not charged because of "some reason beyond law enforcement control." However, when writing their reports, the detectives failed to note that more than a dozen of the crimes Williams confessed to occurred while he was in jail, report sources.

Jenne's internal investigation office stated questioning detectives in April, especially those who took suspects on tours of crime scenes in hopes of clearing multiple cases. The office is also talking to deputies who rode along on such tours and allegedly witnessed confessions. The internal investigation office claims it is trying to determine if detectives used coercion or promises of leniency to induce confessions.

The Broward State Attorney's Office's public corruption department said it is pursuing its own investigation of the BSO crime clearance statistics.

[Source: FPLP Wire Services] ■

– CRIMINAL LAW –
The Rise and Fall of Habeas Corpus in Florida Post Conviction Proceedings

by Oscar Hanson

Over the past few years the Supreme Court of Florida has attempted to close their original extraordinary writs jurisdiction window regarding prisoner petitions seeking post conviction review of criminal judgments. Usually the petitions are filed as a last effort following the exhaustion of existing procedural vehicles (such as Rule 3.850 and Rule 9.141) in hope the high court would grant

some relief. Frustrated that prisoners continue to flood the high court with habeas corpus petitions, the Court has now closed the window for good.

In the case of *Baker v. State*, 29 Fla.L.Weekly S105 (Fla. 3/11/04), the Court consolidated three cases that were representative of an increasingly large percentage or original writ petitions for habeas corpus filed with the supreme court. The Court provided a comprehensive overview of the history of post conviction remedies and established a new procedure for dealing with future filings in their court.

History of Rule 3.850

The history of Rule 3.850 clearly indicates that it was intended to be the sole procedural mechanism for raising collateral post conviction challenges to the legality of criminal judgments that were traditionally cognizable in petitions for writs of habeas corpus. In sum, this rule essentially transferred consideration of these traditional habeas claims from the court having territorial jurisdiction over the prison where the prisoner is detained to the jurisdiction of the sentencing court.

In 1963, the state of Florida faced an impending post conviction crisis that began with the United States Supreme Court decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), which held that the Sixth Amendment right to the assistance of counsel in criminal cases applied to state criminal prosecutions by virtue of the Fourteenth Amendment to the United States Constitution because it was one of those fundamental rights essential to a fair trial and, therefore, to due process of law.

During 1963 the Florida Supreme Court attempted to provide a mechanism for meeting the demands for post conviction relief following the *Gideon* decision by promulgating the first rule of criminal procedure, Rule 1, the predecessor of the current Rule 3.850. See: in re Criminal Procedure Rule No. 1, 151 So.2d 634 (Fla. 1963).

According to the Justices, the Court became immediately concerned over the procedural facilities available to state prisoners who might have belatedly acquired rights which were not recognized at the time of their conviction. When *Gideon* was announced, the only practical procedures available in Florida for a post conviction assault upon a judgment were by habeas corpus, or writ of error coram nobis.

On September 15, 1962, the Florida Judicial Council instituted a study of post conviction remedies and the advisability of establishing some expeditious method of disposing of post conviction claims of deprivation of organic rights which occurred at trial. At its meeting on October 27, 1962, the council specifically recommended the adoption of a rule or the enactment of a statue which would facilitate and expedite the handling of post conviction claims.

The Division of Corrections reported on June 30, 1962, that there was approximately 8,000 state prisoners in custody. Of this group 4,065 entered pleas of guilty without the benefit of counsel. Four hundred seventy-seven (477) entered pleas of not guilty but were convicted without benefit of counsel. The announcement of the *Gideon* decision made it obvious that a substantial number of prisoners would seek release or new trials because of this recently recognized constitutional privilege.

In 1962 the Florida Supreme Court received 304 petitions for habeas corpus. Practically all of them were from indigent prisoners in the state prison system.

As recognized in the decision of *Roy v. Wainwright*, 151 So.2d 825 (Fla. 1963), Rule 1 was promulgated to establish an effective procedure in the courts best equipped to adjudicate the rights of those originally tried in those courts. Rule 1 was further intended to provide a complete and efficacious post conviction remedy to correct convictions on any grounds that subject them to collateral attack.

In *State v. Bolyea*, 520 So.2d 562 (Fla. 1988), the Supreme Court explained that the post conviction rule is a procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus, and was designed to simplify the process of collateral review, plus prescribe both a fact-finding function in the lower courts and a uniform method of appellate review.

While the Florida Constitution provides a basic guarantee that the writ of habeas corpus shall be grantable of right, freely and without cost, the Florida Supreme Court held that such a constitutional right is subject to certain reasonable limitation consistent with the full and fair exercise of that right. See: *Haag v. State*, 591 So.2d 614, 616 (Fla. 1992).

According to the Court, Rule 1, the historical predecessor to Rule 3.850, was created to strike a balance necessary to protect both the right to habeas corpus relief in Florida *and* the institutional needs of the state courts system.

As originally promulgated, the rule specifically preserved the right to obtain habeas corpus relief in certain limited circumstances. Yet the rule provided recognized limitations on that right. Specifically, the rule provided that an application for a writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief by motion pursuant to the post conviction rule, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court that sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. See: Rule 3.850 (h).

This language has survived virtually unchanged throughout the entire history of the rule. The last clause of Rule 3.850(h) suggests that a petition for writ of habeas corpus would be permissible to test the legality of a

prisoner's criminal judgment when, for whatever reason, he or she can no longer obtain collateral post conviction relief by motion. However, the courts of this state have interpreted this provision to mean that habeas corpus may not be used as a *substitute* for an appropriate motion seeking post conviction relief under Rule 3.850. See: e.g. *Harris v. State*, 789 So.2d 1114 (Fla. 1st DCA 2001). Nor will the courts permit habeas corpus to be used as a means to circumvent the limitations provide in the rule for seeking collateral post conviction relief in the sentencing court, See: *Breedlove v. Singletary*, 595 So.2d 8 (Fla. 1992).

Instead, the last clause of what is now subdivision (h) of the rule was intended only to allow for habeas corpus relief in limited circumstances where a petitioner is not seeking to collaterally attack a final criminal judgment of conviction and sentence, or where the original sentencing court would not have jurisdiction to grant the collateral post conviction relief requested even if the requirements of the rule had been timely met. See: e.g. Williams v. State, 777 So.2d 947, 950 (Fla. 2000).

Thus, as clearly established by Florida courts, habeas corpus relief is not authorized to obtain collateral post conviction relief because most claims can be raised by motion under Rule 3.850. The limitations placed on the right to habeas corpus relief in such circumstances has been subject to much litigation, all to no avail.

When Rule 1 was first promulgated by the Supreme Court in 1963, it specifically provided that all motions filed pursuant to the rule "may be made at any time." In 1983, the law on the scope of relief available under the rule began to change. In November 1984 the Court amended Rule 3.850 (formerly Rule 1) to include language codifying the law as set forth in the majority opinion in *McCrae v. State*, 437 So.2d 1388 (Fla. 1983), which discussed foreclosure of matters that could have been presented on appeal, second or successive motions, and suggestions to establish time limitations.

First, the prohibition against relief under the rule based on claims that could have been raised on appeal, as stated in *McCrae*, was explicitly stated in the rule as follows: "This rule does not authorize relief based upon grounds which could have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence." *Id.* At 908. This language now appears at the end of subdivision (c) of the rule.

Second, the then existing prohibition against the filing of second or successive motions for post conviction relief under the rule was codified to not only set forth in explicit detail the state of the law, as explained in *McCrae*, regarding when the prohibition would be applicable, but also to expand the scope of that prohibition to include not only claims that were raised but also those that could have been raised in a previous motion denied on the merits.

Finally, the two-year limitations period for filing motions for collateral post conviction relief under the rule was adopted in the same 1984 amendments. This new time limitation on seeking relief pursuant to the rule became effective on January 1, 1985. Prisoners adjudicated guilty prior to January 1, 1985, were specifically given until January 1, 1987, to file motions for post conviction in accordance with the new amended rule. This time limitation provision, with the additional exception for those circumstances where "the defendant retained counsel to timely filed a 3.850 motion and counsel, through neglect, failed to file the motion," now appears in subdivision (b) of the rule.

Habeas Corpus and Rule 3.850 Relief

As the foregoing discussion makes clear, the Supreme Court has repeatedly revisited the parameters of the post conviction remedy provided by Rule 3.850 in an effort to reasonably balance the needs of the state courts system against the necessary right to habeas corpus relief in Florida.

Recently the Supreme Court took the opportunity to remind those convicted of noncapital crimes (this group includes those defendants convicted of crimes that may be classified as capital in the statutes, but who were not actually sentenced to death), that in this state Rule 3.850 is the mechanism through which they must file collateral post conviction challenges to their convictions and sentences. See: *Baker v. State*, 29 Fla.L.Weekly S105 (Fla. 3/11/04).

The Court explained that it has experienced a steady increase in the number of habeas corpus petitions filed by prisoners seeking collateral post conviction relief from noncapital criminal convictions and sentences. As a result, the Court made explicit what previously had only been implicit. The Court held that the common law remedy of habeas corpus *is not* available in Florida to obtain the kind of collateral post conviction relief available by motion in the sentencing court pursuant to Rule 3.850. The Court recognized that by simply denying such petitions as procedurally barred or without merit instead of transferring them, they have inadvertently encouraged prisoners to file their collateral post conviction challenges directly in the Supreme Court, rather than the appropriate trial court, "because our denials of such petitions have given prisoners false hope that the high court may one day grant them some relief."

Thus, the Supreme Court will henceforth dismiss petitions in which the Court can clearly discern either that the claims raised are procedurally barred or that the petition does not meet the requirements of the rule. *Baker v. State*, 29 Fla.L.Weekly S105 (Fla. 3/11/04). ■

Florida Prison Legal Perspectives
Resource List
June 2004

FLORIDA
Government

Governor (Jeb Bush)
PL-05, The Capitol
Tallahassee, FL 32399-0001
850/ 488-4441
www.myflorida.com

Attorney General (Charlie Crist)
PL-01, The Capitol
Tallahassee, FL 32399-1050
850/ 487-1963
www.oag.state.fl.us

Department of Corrections
Secretary James V. Crosby
2601 Blair Stone Rd.
Tallahassee, FL 32399-2500
850/ 488-7480
www.dc.state.fl.us

Department of Health
2585 Merchants Row Blvd.
Tallahassee, FL 32399
850/ 245-4321

Department of Law Enforcement (FDLE)
PO Box 1489
Tallahassee, FL 32302-1489
850/ 410-7000
www.fdle.state.fl.us

Department of State
PL-02, The Capitol
Tallahassee, FL 32399-0250
850/ 245-6500
www.dos.state.fl.us

Website contains all state agencies' rules (Florida Administrative Code) and "Florida Administrative Weekly" detailing current agency rulemaking info.

Florida Corrections Commission
2601 Blair Stone Rd.
Tallahassee, FL 32399-2500
www.fcc.state.fl.us

Office of Executive Clemency
(Parole Commission)
2601 Blair Stone Rd.
Bldg. C. Room 229
Tallahassee, FL 32399-2450
850/ 488-2952

Office of Vital Statistics
PO Box 210
Jacksonville, FL 32231-0042
904 /359-6900

Maintains state birth/death certificates, etc.

Parole Commission
2601 Blair Stone Rd., Bldg. C
Tallahassee, FL 32399-2450
850/ 922-0000
www.fpc.state.fl.us

Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
850/413-6055
www.floridapsc.com

Regulates in-state utilities; including telephone services.

Florida House of Representatives
402 S. Monroe Street
Tallahassee, FL 32399-1300
850/ 488-1157 (Clerk)
www.leg.state.fl.us

Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100
850/ 487-5270 (Secretary)

Website contains contact info for all state legislators; a copy of all current Florida laws (statutes); and bills that have been introduced in the Legislature and their history, including in many instances "staff analyses" valuable for understanding legislative intent.

FLORIDA
Legal Aid / Advocacy Organizations

Florida Prisoners' Legal Aid Org., Inc.
PO Box 660-387
Chuluota, FL 32766
407/ 568-0200
Fax: Same
www.fplao.org
fplp@aol.com

Services: Membership-based organization. Provides information / advocacy to state prisoners and their families and advocates. Conducts grassroots organizing of prisoners' families and handles impact litigation concerning civil rights / administrative law affecting prisoners, their families and children. Publishes bi-monthly news journal, "Florida Prison Legal Perspectives."

Florida Justice Institute
2870 First Union Financial Ctr.
200 S. Biscayne Blvd.
Miami, FL 33131-2310
305/ 358-2081
Fax: 305/ 358-0910

Services: Handles civil rights litigation concerning jail / prison conditions. Makes referrals for damage / civil-rights cases. Prison advocacy, lobbying, develops strategies for alternatives to incarceration.

Florida Institutional Legal Ser., Inc.
1110-C NW 8th Street
Gainesville, FL 32601
352/ 955-2260
Fax: 352/ 955-2189
www.afn.org/~fils

Services: Legal assistance to Florida state prisoners. Post conviction assistance to three prisons only: FSP, UCI and FCI. Impact litigation: conditions of confinement, civil rights, medical, etc. Some individual services.

FLORIDA
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Specializes in Florida post conviction, direct appeals, sentence corrections, new trials, federal habeas corpus, 3.850, 3.800.

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Monticello, FL 32345
850/ 997-8111

Specializes in all area of post conviction relief, including, appeals, 3.850, 3.800 state-federal habeas corpus, parole hearings, clemency, etc.

**The hiring of an attorney is an important decision that should not be based solely upon advertisements. Before you decide, ask the attorney to send you free written information about their qualifications.*

FLORIDA
Books/Publications/Journals

Legal

"Florida Prisoner's Litigation Manual".

Provides legal information on prison discipline, mandamus and appellate review. Softcover, 330 pgs. Price $24.95 plus $3.95 S & H. Order from: FPLP, Attn: Litigation Manual, PO Box 660-387 Chuluota, FL 32766

Continuing Legal Education Publications (CLE)

CLE publications are produced by the Florida Bar in collaboration with LexisNexis. These are excellent books covering Florida-specific legal topics, such as Administrative Law, Appellate Practice, Family Law, Legal Research Legal Writing, Trial Practice, Civil Law. Rules of Court, etc. To obtain more info and prices for available publications in the CLE series contact: LexisNexis, Attn: Order Fulfillment, 1275 Broadway, Albany, NY 12204 (Ph# 800/ 562-1197). Ask for Fla. Bar CLE Publication catalog.

FLORIDA
Other Groups / Organizations

Citizens United for Alternatives to the Death Penalty
177 N. US Hwy 1, Ste. B-297
Tequesta, FL 33469

Services: Grassroots organizing of people opposed to death penalty.

Aleph Institute
9540 Collins Ave.
Surfside, FL 33154
305/ 864-5553
www.aleph-institute.org
admin@aleph-institute.org

Services: Provides Jewish religious education, counseling, emergency assistance and referrals to Jewish prisoners and their families.

Time for Freedom
Pastor Bernie DeCastro
PO Box 819
Ocala, FL 34470
352/ 351-1280
Email: tff@gate.net

Services: Provides parent education; self-help support; info; referrals; mentoring; religious ministry; advocacy for male prisoners, ex-prisoners and their families.

Kairos Outside
140 N. Orange Ave., #180
Winter Park, FL 32789
407/ 629-4948
www.kiarosprisonministry.org
kairosjo@aol.com

Services: Provides mentoring, religious ministry, family reunification support and weekend retreats for female adults with incarcerated loved ones.

Prison Connection, Inc.
1859 Polo Lake Dr. East
Wellington, FL 33414
888/ 218-8464
www.theprisonconnection.com
seeacon@aol.com

Services: Provides bus transportation and meals to prison visitors. Also provides gifts for prisoners' children.

Faith-based Support Group
1937 Lakeville Road
Apopka, FL 32703
Email: prett.1@netzero.com
(Little house behind the church)

Services: Monthly meetings to provide info and support for grieving families of prisoners.

The Buddha Inside
PO Box 3910
Brandon, FL 33509-3910

Services: Provides teaching and mentoring services to prisoners on Buddhism.

NATIONAL
Newsletters/Journals

California Prison Focus
2940 16th Street, Ste. B5
San Francisco, CA 94103
www.prisons.org

Quarterly news journal reports on issues/conditions in CA SHU prisons. Some national info. Prisoners $4 per yr., all others $20. Sample copy $1.

Coalition for Prisoners Rights Newsletter
PO Box 1911
Santa Fe, NM 87504-1911

Prison-related newsletter published monthly. Free to prisoners and their families, all others $12 per yr. Donations/stamps appreciated to help with publishing/mailing.

FAMMGram
1612 K. St., NW, Ste. 1400
Washington, DC 20006
www.famm.org

Quarterly news journal focused on fight against mandatory minimum prison sentences. Published by Families Against Mandatory Minimums – a National organization. Prisoners $10 individuals $25, professionals $50. Membership-based organization.

Fortune News
53 W. 23rd St., 8th Floor
New York, NY 10010
www.fortunesociety.org

Quarterly magazine of the Fortune society carrying wide variety of articles and info about prisons, prisoners, criminal justice, rehabilitation, etc. Free to prisoners.

Hepatitis C Awareness News
PO Box 41803
Eugene, OR 97404

Bi-monthly newsletter published by hepatitis C Prison Coalition with news and info about Hep C and HIV/HCV. Free upon request, but stamp donations needed and welcomed.

Justice Denied Magazine
PO Box 881
Coquille, OR 97423

Quarterly magazine dedicated to exposing wrongful conviction cases. Prisoners $18 per 6 issues, $30 for others

Justice Matters
PO Box 40085
Portland, OR 97240-0085

Quarterly newsletter published by the Western Prison Project. Prisoners $7 per year, $15 all others. Good resource info.

Justice Xpress
PO Box 1226
Occidental, CA 95465

Quarterly news journal. Includes political, prison/prisoner info and articles. Write for subscription info.

Prison Legal News
2400 NW 80th St.
Seattle, WA 98117
Web site: www.prisonlegalnews.org

Monthly journal carries summaries and analysis of recent prisoner rights cases, self-help litigation articles, prison-related news. Prisoners $18 per year, $25 others. Sample copy $1.

Nolo News
50 Parker St.
Berkeley, CA 94710

Quarterly self-help newsletter covers (non-prison) civil litigation issues. Two-year subscription $12.

NATIONAL
Book Projects

The following sources provide free books to prisoners. However, these projects rely on volunteers and donations to operate. Whenever possible, prisoners should help these projects when requesting free books by sending a few stamps for postage. Requests for specific books can rarely be honored, instead, request books by type, e.g. mystery, legal, historical, novel, etc. Requests are usually limited to 2 or 3 books at a time.

Books for Prisoners
c/o Groundwork Books
0323 Student Ctr.
La Jolla, CA 92037

Books Through Bars
4722 Baltimore Ave.
Philadelphia, PA 19143-3503

Books Through Bars
c/o Experienced Books
2150 S. Highland Dr.
Salt Lake City, UT 84106-2807

Prison Book Program
c/o Lucy Parsons Ctr. & Bookstore
110 Arlington St.
Boston, MA 02116

Prison Book Program
c/o The Readers Corner
31 Montford Ave.
Asheville, NC 28801-2529
(Southeastern US only)

Prison Book Project
PO Box 396
Amherst, MA 01004-0396

Women's Prison Book Project
c/o Arise Bookstore
2441 Lyndale Ave., S.
Minneapolis, MN 55405-3335

NATIONAL
Resource Lists

"ACLU Prisoner Assistance Directory"
(Florida prisoners see Volume 4 of "Prisoners and the Law" in major institutions' law library – contains above directory.)

"Resource Directory for Prisoners"
available for 4 stamps from:
Naljor Prison Dharma Service
PO Box 628
Mt. Shasta, CA 96067
www.naljorprisondharmaservice.org
(Directory can be printed off website for free.)

"National Prisoner Resource List"
available free from:
Prison Book
110 Arlington St.
Boston, MA 02116

"Resource and Organizing Guide"
available from:
Prison Activist Resource Center
PO Box 339
Berkeley, CA 94701
(Donation/stamps requested to help offset printing/mailing costs.)

"Directory of Programs Serving Families of Adult Offenders"
available free from:
National Institute of Corrections
Information Center
1860 Industrial Circle, Ste. A
Longmont, CO 80501

NATIONAL
Groups/Organizations

The Sentencing Project
918 F. St., NW, Ste. 501
Washington, DC 20004
202/ 628-0871

Services: Provides technical assistance to develop alternative sentencing programs and conducts research on criminal justice issues. No direct services to prisoners.

Stop Prisoner Rape
6303 Wilshire Blvd., #204-A
Los Angeles, CA 90048
www.spr.org

SPR works to end sexual violence against prisoners. Counseling resource guides for prisoners and released rape victims and advocates are available for: AL, AZ, CA, CO, FL, GA, IL, LA, OK, OR, MI, MS, NC, NY, TX, WI or nationwide. Specify state with request.

Amnesty International, USA
322 Eighth Ave.
New York, NY 10001
www.amnesty.org

AI is an independent, international organization that works to protect human rights.

CURE (Citizens United for Rehabilitation of Errants)
National Capitol Station
PO Box 3210
Washington, DC 20013
202/ 789-2126
www.curenational.org

Services: Organizes prisoners and their families to work for criminal justice reform. Many state chapters.

National Death Row Assistance
Network of CURE
Claudia Whitman
6 Tolman Rd.
Peaks Island, ME 04108
www.ndran.org

NDRAN is a new CURE project formed to help death row prisoners across U.S. gain access to legal, financial and community support and to assist prisoners' efforts to act as self-advocates.

NATIONAL
Services

Let My Fingers Do Your Typing
PO Box 4178-FPLP
Winter Park, FL 32793-4178

Services: Professional typing services by mail. Computer, typewriter, transcription, black/color printing and photocopying. Free price list upon request. Special rates for prisoners.

Tightwad Magazines
PO Box 1941-FPLP
Buford, GA 30515

Services: Offers up to 90% discount on magazine subscriptions, offers some subscriptions for stamps. Free catalog if you send self-addressed, stamped envelope.

Death Row Support Project
PO Box 600, Dept. P
Liberty Mills, IN 46946

Services: Penpal services for death row prisoners.

INTERNET RESOURCES

Information on the Internet is available to prisoners with family or friends on the outside with online access who will print and mail material in. The amount of info on the 'Net' is tremendous. Info on almost any subject can be found online. The following lists some websites that may be useful for info.

Legal/Legislative

General

www.lawcrawler.com
Searches government and other sites for law.

www.nolo.com
Provides some general legal info and sells books on wide variety of legal topics useful to the public.

www.findlaw.com
Good site for searching out federal and state law.

www.washlaw.edu
Legal search engine for locating primary legal sources at the federal and state levels.

www.prisonactivists.org
Provides wide variety of prison-related info. Includes large "Link" section to many other related legal and nonlegal websites.

www.martindale.com
Provides info on lawyers nationwide, including contact info, area of practice, how long, etc.

Federal

www.thomas.loc.gov
Source for federal legislative material.

www.uscourts.gov
Links and information about U.S. Supreme and other federal courts.

www.call.uscourts.gov
Eleventh Circuit Court of Appeal website.

www.flnd.uscourts.gov
U.S. District Court, Northern District of Florida website.

www.flmd.uscourts.gov
U.S. District Court, Middle District of Florida website.

www.flsd.uscourts.gov
U.S. District Court, Southern District of Florida website.

Florida

www.myflorida.com
Links to state agency and government offices' websites.

www.leg.state.fl.us
Florida Legislature's website. Provides directory of state legislators; complete Florida statutes (laws); Senate and House bills, bill histories and analyses.

www.flcourts.org
Provides directory and links to Florida courts' websites.

www.FCLA.edu
Florida State University law library website.

www.law.miami.edu/library
University of Miami law library website.

www.law.ufl.edu
University of Florida law library website.

www.stetson.edu/departments/library/law
Stetson University law library website.

www.legal.firn.edu
Posts the "Government in the Sunshine Manual" (Public meetings and public records manual).

www.flabar.org/newflabar/memberservices/CLE
Sells continuing Legal Education series of legal books concerning Fla. law.

FPLP intends to update this list on a continuing basis as a service to readers. Please let us know if you are aware of other resources that prisoners, their families or advocates maybe interested in at the below address or by email:

FPLP
Attn: Resource List
PO Box 660-387
Chuluota, FL 32766
fplp@aol.com

IN THE NEWS

AL – State prison officials began reviewing prison drug testing during Apr. '04 after questions arose about the accuracy of the drug test used to test prisoners. According to drug testing experts, cold medicines, prescription drugs and other substances can cause false positives in urine tests.

AL – A news report release Apr. 20, '04, stated that a judge dismissed a lawsuit by two male prisoners at Fountain prison who sought the right to get married in prison. Daruis Chambers and Jonathan Jones alleged that Alabama state law banning same-sex marriages violates the constitutional rights to due process and free speech. The dismissal was without prejudice to Chambers and Jones pursuing their claims once released from prison.

AR – In Mar. '04. after prisoner Shawanna Nelson grieved the Arkansas DOC over a policy requiring that female prisoners be shackled to their bed before and after giving birth, prison officials said they would not change the policy. By Apr. 16, '04, bad publicity forced the ADOC to reverse its position and adopt a new policy dictating that pregnant prisoners will no longer be shackled while in labor. Instead, women considered flight risk will be held with soft restraints and those not considered a risk will be supervised by a guard.

AZ – In a report March 18, 2004 it was said that former Perry County sheriff's deputy Lloyd King pleaded guilty in federal court to filing a false report. King claimed that a drug suspect shot him. He was fired after the sheriff determined the claim was false and that King shot himself to gain the sympathy of a woman. King faces up to five years in prison and a $250,000 fine.

AZ – One of the two inmates who held a pair of guards hostage in a state prison tower admitted raping a kitchen worker and a female guard, said a report March 18, 2004. Steven Coy pleaded guilty to 14 charges, including escape, kidnapping, assault, and sexual assault. Prosecutors said they made no deals with Coy in exchange for the pleas. Coy will be sentenced April 30. Coy and inmate Ricky Wassenaar took two guards hostage Jan. 18 at the AZ State Prison Complex – Lewis in Buckeye. The male guard was released Jan. 24 and the female guard was set free Feb. 1 – the same day the inmates surrendered. Wassenaar claims that the standoff began after a failed escape attempt, Coy denys this is the case. In early May '04, Coy, as part of a deal he made to free the hostages, was transferred to the Maine prison system in an interstate compact exchange.

AZ – A report filed March 12, 2004, stated Maricopa County has the first juvenile chain gang in the USA. Nine teenagers were put to work pulling weeds on the first detail. They're serving sentences of less than one year for crimes ranging from drug possession to armed robbery. Maricopa County began chain gangs for males in 1995 and for females in 1996.

CO – During early Apr. '04, two candidates for district attorney in Grand Junction, Colorado, claimed someone broke into their homes and planted porn on their computers. One, Ann Duckett, said she didn't want the sheriff to investigate because he was endorsing the incumbent prosecutor.

CT – Eight female Connecticut prisoners who contributed to an award-winning book, "Couldn't Keep It To Myself: Testimonies From Our Imprisoned Sisters," will pay a portion of their royalties to offset the cost of their incarceration. The state had went to court trying to seize the book's royalties under a CT law that allows recovery of incarceration costs, in reaction to criticism from some victim rights advocates who said the women should not gain fame or money from their writings. One prisoner, Barbara Parsons Lane, won a $25,000 prize for her writings that appeared in the book. Each woman agreed to pay the state $500 to settle the state's lawsuit.

[AP, 4/20/04]

CT – On Mar. 12, 2004, a teenager was arrested after jumping into the back of an unmarked police car and tried to sell the officers crack cocaine, according to police. The teen, after offering to sell the crack told the officers, "You guys look like cops." The officers were wearing jackets with the word "POLICE" on them.

FL – Calvin Lee Banks, 49, a former prison guard at Polk Corr. Inst. resigned from the Dept. of Corrections Nov. 7, '03 – several months after he pleaded no contest to two counts of unlawful sale of a game animal, three counts of selling or transporting freshwater game fish, along with charges of unlawful sale of game animal without a license. He was sentenced in July '03 to six months probation but allowed to stay on as a prison guard for several more months while prison officials decided what to do about him, according to FDOC spokesman Sterling Ivey. According to police investigators, Banks was the ringleader of a large, commercial poaching operation in several Central Florida counties, illegally selling thousands of rabbits,

speckled perch and gopher turtles – an endangered species – as food, Investigators estimated Banks was making more than $60,000 a year poaching wildlife. Two other prison guards were arrested in Sept. '03 and allowed to remain on the job. Michael A. Vargus, 48, a guard at Bartow Work Release Center, was arrested Sept. 25, '03, on two charges of battery on a firefighter and aggravated assault on a law enforcement officer. He was accused of attacking two firefighters and two Polk Co. Sheriff's deputies at his Winter Haven home. John Owen Stanton, a prison guard trainee at Avon Park Corr. Inst., was also arrested in Sept. '03, charged with impersonating a law enforcement officer, a felony. Stanton was accused of using exterior strobe lights to pull over a woman he claimed was speeding and threatened to arrest a man in another incident. Prison guards are not law enforcement officers, and are not allowed to make arrests or stop drivers for traffic violations.

FL – In 1960 Eddie Mayes was serving a 35-year sentence in Georgia for robbery and burglary when he escaped. Earlier this year Mayes, using the alias Eddie Miller, submitted an application to visit his son at Avon Park Corr. Inst. When FDOC prison officials ran a routine criminal background check on "Miller's" visiting application using the CyberLINXX system, information came back showing he was really Mayes and an escaped GA prisoner. Mayes was arrested at his home in Fort Pierce, FL, on Feb. 27, '04 – almost 44 years after his escape.

FL – Two men, one being released from prison and one picking him up, were arrested at Sumter Corr. Inst. Forestry Camp on Mar. 17, 2004, behind an investigation conducted by the Sumter Co. Sheriff's Dept. and Sumter Corr. Inst. that discovered drugs were going to be left on the prison grounds for pickup by another prisoner. The prisoner being released from prison, Mackie V. Shelton, 26, was charged with conspiracy to deliver marijuana into a state prison. His bond was set at $25,000. His buddy, who had intended to give Shelton a ride home, Terrill Q. Holey, 28, was charged with introduction of contraband into a state prison and possession of less than 20 gms. of marijuana. His bond was set at $10,500. Apparently Shelton never understood the old adage: Loose Lips Sink Ships.

FL – At least 26 prisoners on death row at Union Corr. Inst. became sick with food poisoning in Nov. 2003. The prisoners claim they were fed rotten food. Food service at the prison is provided by the private company Aramark. The last issue of FPLP reported that several dozen UCI prisoners got food poisoning from a Christmas dinner served at the prison by Aramark in December 2003.

FL – In the first week of March, 2004, a prison guard, Daniel Dwayne Dickerson, of Jacksonville was charged with causing a crash that killed a woman in Ocala. He was arrested after witnesses reported seeing him driving erratically and striking a pickup, a Florida Highway Patrol report states. Dickerson was charged with driving in a reckless manner resulting in a death.

FL – March 18, 2004, jail officials in Miami accidentally released an inmate awaiting trial for attempted murder of a police officer. They confused him with another inmate with the same last name. Neither, Victor Rodriguez or Rolando Rodriguez, were due to get out to begin with. Victor Rodriguez was recaptured and taken back into custody.

FL – Orange County deputies said they had to subdue Alfredo Diaz, 29, with two jolts with a Taser stun gun because he had taken off his clothes and was running through the streets shouting. Diaz died after being shocked with the device on Apr. 19, '04. An autopsy was scheduled to determine the cause of his death.

FL – On April 26, '04, Gov. Jeb Bush directed his inspector general to investigate whether the Correctional Privitization Commission, which oversees Florida's five private prisons, violated the law last year when they hired former Department of Correction's secretary Michael W. Moore (three months after he resigned as secretary) to act as a contract consultant. Moore, who started MWM and Associates consulting company after resigning from the DOC, was paid $64,000 to oversee the commission's efforts to rebid two of the state's five private prison contracts. State law prohibits the commission from hiring ex-DOC employees for two years after they leave the department. The commission claims it didn't hire Moore, they hired his company. Constant disputes with the commission had the Legislature looking at abolishing it again this year.

FL – On May 6, '04, state election officials ordered local election supervisors to purge voter rolls of the names of convicted felons, which could result in almost 40,000 names being removed. Documentation from the 2000 election showed that election officials used out-of-state lists which improperly denied the right to vote to ex-felons that had their voting rights restored in the states where their crimes had been committed.

FL – On May 13, '04, Orlando television station Channel 9, WFTV, on the 6 pm news, ran an investigative segment comparing the amount of money spent by the Department of Corrections for law books for prison law libraries to the

amount spent on books for public schools. According to the report, the FDOC spends $1.5m in taxpayer money each year to buy new law books for the state's prison law libraries, or approximately $20 per prisoner compared to only $6 per child that is spent on average statewide to purchase new school books. The report also noted that within the past 5 years, prisoners, using the law books, have filed approximately 5,000 lawsuits against the FDOC, costing taxpayers an average of $5,100 for each suit filed for a total cost of over $25.5 million.

[**Editor's Note**: The WFTV report did not mention where it obtain the numbers concerning the prison law books or number of lawsuits filed, the latter of which is definitely exaggerated. WFTV, instead of presenting a biased position as balanced reporting, could have found a much more interesting story if it had investigated where the money actually goes that is budgeted by the FDOC for prison general and law libraries. – bp]

ID – During Apr. '04 the Idaho prison population reached an all-time high of 6,085 prisoners. Prison Director Tom Beauclair said that hundreds of prisoners may soon be relocated to prisons in other states. Until then, the IDOC is adding tents and cots to existing prisons and workcamps to handle overcrowding.

ID – During early May '04, people in a Coeur d'Alene neighborhood caused an uproar over four paroled prisoners living in the neighborhood. A city attorney said the four men can reside in the rented home. State officials said the dispute underscores the challenge of ex-prisoners in finding a place to live. All four of the men had been in prison for non-violent offenses.

LA – Forty-eight unsolved crimes, mostly rapes, have been tentatively linked by a statewide DNA database to people already in jail, said a report March 17, 2004. The matches are the product of three private labs analyzing evidence that hadn't been processed in about 500 cases, said Capt. Brian Wynne of the State Police Crime Lab. Another 500 cases are scheduled to be tested.

LA – Two female prison guards, Tammie Davis and Chico Cain, who worked at Angola State Penitentiary were arrested Apr. 27, '04, as part of an investigation into improper conduct with prisoners. Both guards were accused of corresponding with prisoners by mail and sending them items using false names.

LA – On May 13, '04, a judge ruled that a fourth trial for Wilbert Rideau, a prison journalist who was convicted of killing a bank teller in 1961 and who gained renown as the editor of *The Angolite*, will begin Oct. 25. The judge ruled Rideau can get a fair trial with a jury from outside Calcasieu Parish. Two former trials of Rideau had been overturned because of the racial makeup of the juries. The third was thrown out because there were no blacks on the grand jury that indicted him.

MA – During Apr. '04, a commission appointed by Gov. Mitt Romney completed a report with recommendations they say would create a nearly foolproof death penalty system for the state. Romney, a republican, has vowed to reinstate the death penalty in Massachusetts. He says his staff will draft legislation to do that based on the report. The commission suggested changing the standard of guilt in the sentencing phase of death penalty cases from "beyond a reasonable doubt" to "no doubt," while giving capital defendants better lawyers and the opportunity to face two juries, one for trial and one for sentencing. It also recommended increased use of DNA science to corroborate guilt. The plan faces an uncertain future in the state's Democrat-controlled Legislature. Massachusetts abolished capital punishment in 1984 and has not held an execution since 1947.

NC – Death row prisoner Jonathan Hoffman was granted a new trial in Apr. '04 after prosecutors who persuaded a jury to convict him admitted they withheld critical evidence at his trial. Hoffman is the sixth person sentenced to death in North Carolina to get a new trial in recent years after it was discovered prosecutors withheld evidence.

NC – The number of death-penalty convictions in the state has dropped in each of the past five years, said a March 15, 2004, report. District Attorney Tom Keith said its because juries have become more skeptical of the justice system. Flaws revealed during the process to exonerate Darryl Hunt in the death of Deborah Sykes in 1984, as well as other high-profile convictions that have been overturned by DNA evidence, have led to juries questioning more of what they see from prosecutors.

NJ – In early May '04, officials at the Essex County Jail cut 600 calories from inmates' diets to save up to $1 million-a-year in food costs and allegedly to improve the health of the 2,200 inmates. Officials said they will feed inmates more fiber and less fat, salt and cholesterol. Inmates complain the new portions are too small.

NY – Two men caught up in a dragnet following 9/11 filed a lawsuit the first week of May alleging they had been abused by federal agents. Javaid Iqbal, a Pakistani, and Ehab Elmaghraby, an Egyptian, were held for several months in a Brooklyn jail, the same jail where last year the U.S. Justice Dept. discovered widespread prisoner abuse. The two men claim they were frequently hit and cursed as "bastard Muslims" by federal

agents. One of the men states an agent sodomized him with a flashlight during a body-cavity search. Both men were released from jail in 2002 and deported, after pleading guilty to minor crimes unrelated to terrorism.

NY – The New York ACLU said during Apr. '04 that the ion scanners used by state prisons to detect contraband on visitors are subject to giving false positive readings for illegal drugs and explosives. Prison officials defended the use of the devices at 15 prisons, saying those prisons have reported declining numbers of prisoners testing positive for illegal drugs.

OH – A report dated March 12, 2004, stated Timothy Howard and Gary Lamar James are suing the state for compensation after being wrongfully convicted of killing a security guard in 1976. Howard and James spent 26 years in prison before a judge released them last year because of evidence not available at trial. They could receive up to $40,330 for each year in prison, plus lost wages and attorney fees.

OR – Thomas Smolka, 56, a Virginia attorney, was arrested in Portland on Mar. 24, 2004, as a fugitive who had absconded after being convicted on federal charges of mail and wire fraud for bilking prisoners and their families out of money for legal services he never performed. After pleading guilty to the charges, Smolka disappeared. He was arrested by federal marshals in a Portland condo where he had been living since June 2003 under a false identity. As part of Smolka's plea agreement he is required to repay 17 victims almost $75,000. Smolka had previously went to prison in Florida for allegedly killing his wife, but that conviction had been overturned on appeal and he was never retried.

[Source: *Prison Legal News*, 4/04]

RI – Woonsocket patrolman Paul Rondeau was convicted of assaulting a 15-year-old boy in August 2003 in an incident witnessed by fellow officers and then filing an inaccurate report. A judge found Rondeau guilty of assault and filing a false police report March 17, 2004. He received a one-year suspended sentence and was suspended from the force with pay, pending his appeal.

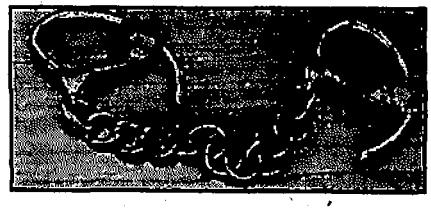
RI – A report from May 2, '04, said state forensic officials are seeking legislation requiring *all* convicted felons to provide DNA samples. Officials say it would help solve more crimes. Currently the state only collects DNA samples from specific categories of violent felons.

UT – A report March 18, 2004 revealed that corrections officer Larry Van Cox was accused of smuggling contraband into prison for bribes totaling $11,000. Cox allegedly smuggled cigarettes, chewing tobacco, cell-phones, a DVD player and DVD's between May and December last year. He also was accused of smuggling in a portable computer printer in which prison officials found a .32 caliber handgun.

UT – A report dated May 4, '04, said two more people had been charged with helping to smuggle contraband into the Utah State Prison. Prison guard Larry Van Cox had been arrested in March in connection with the smuggling. Anna Anderson, 33, has now been accused with giving Cox about $5,000 to smuggle tobacco, a cell phone, a DVD player and a printer in which a gun was hidden into the prison. Prisoner Jeffrey Roberts was accused of helping to deliver the gun.

VA – An increasing number of people on probation or parole who haven't committed new crimes are being returned to prison on technicalities (breaking release conditions), according to a report on a study by the VA Criminal Sentencing Commission March 15, 2004. From 1998 to 2002, the number climbed 47% to 1,551. Often, they repeatedly skipped appointments with their officers, failed drug tests or disappeared without permission.

WA – The state Court of Appeals ruled March 17, 2004 that prosecutors can call defendants liars when evidence suggests they're not telling the truth. The decision upholds the conviction of Indle King, Jr. who is serving a 29-year term for strangling his mail-order bride. King argued that his conviction was tainted because Snohomish County prosecutors repeatedly called him a liar. ■



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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 36 page monthly magazine which has been published since 1990. It is edited by Washington state prisoner Paul Wright. 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 advise. 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 to send $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 yearly 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:

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