FLORIDA PRISON LEGAL

# Perspectives

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## - FLORIDA PAROLE - Examining Aspects of Five-Year Setoffs

by Bob Posey

Increasingly, Florida's parole-eligible prisoners [1] are being considered for parole only every five years. The Florida Parole Commission (FPC) is the beneficiary of such long-term setoffs between parole hearings, as it means even less work for the Commission that almost everyone, even state lawmakers, agrees is incompetent, duplicative of other agencies' work, and a "dinosaur" that should be abolished. (See: Last issue of *FPLP*, Vol. 11, Iss. 2.) The Commission was no doubt relieved when a 1997 change in Florida's laws [2] allowed for five-year setoffs between parole hearings for specific, and the remaining majority of, parole-eligible prisoners, instead of having to conduct hearings every two years as had previously been the law.[3] Yet, although an increasing number of parole-eligible prisoners are being subjected to five-year setoffs between parole hearings, few have given any time to understanding how the five-year setoffs came about or to understanding how, in cases, they are imposed illegally.

This article examines the history of the length of time allowed between parole considerations in Florida law. It will also examine the evolution of case law that has allowed longer setoffs between parole hearings. And it will discuss various aspects of laws and rules concerning parole hearing setoffs that may provide viable grounds to challenge improperly imposed five-year setoffs.

**Setoff Timeline**

Before 1978 all prisoners in Florida became parole-eligible upon being sentenced to prison and the majority were released from prison under parole supervision. Prior to 1978 Florida parole statutes provided that parole hearings for all prisoners should be conducted "at periodic intervals not less often than annually."[4]

In 1978 numerous changes were made to the state's parole laws. In addition to requiring the (then named) Parole and Probation Commission to develop and implement objective parole criteria, in an attempt to reduce what legislators saw as arbitrary and capricious paroles and parole denials, changes were also made to the allowed length of parole hearing setoffs. A new statute adopted that year allowed the Commission to set off parole hearings (interviews) for those prisoners sentenced to more than five years for two-year periods, instead of just one year.[5]

Almost twenty years later, with only a relatively few parole-eligible prisoners left in the prison system, those who were serving the longest sentences,[6] the state Legislature amended the statute created in 1978 to provide for even longer hearing setoffs for most of the remaining parole-eligible prisoners. That amendment allows for five-year setoffs between parole hearings (interviews) for prisoners who are parole-eligible and who were convicted


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of murder, attempted murder, sexual battery, attempted sexual battery or who are serving a 25-year minimum mandatory sentence. [7] Most of Florida's remaining 5,500 parole-eligible prisoners fall within one of those categories.

Florida is not the only state that has parole and that has increased the length of time between parole consideration hearings or interviews. However, there is, in most cases, a significant difference between Florida's parole situation and that in other states. While many other states' entire prison populations are parole-eligible, Florida only has a small number of remaining parole-eligible prisoners in relation to the number of its total state prisoners. [8] The relevance of that difference to the legality of extending the length of time between parole considerations, when such extensions affect a majority instead of a specific minority of parole-eligible prisoners in a given system, may be legally significant, but discussion of same is beyond the limited scope of this article. It is worth mentioning, however, to provide context to the following discussion.

**Challenges to Parole Setoffs**

Parole-eligible prisoners have not been totally lax in challenging the extensions of time between parole hearings or interviews. Although the most significant case law to be developed on the issue has originated out of other states (specifically states that still have active parole-eligible sentencing in place). That litigation and the few cases that have originated in Florida have almost exclusively been *ex post facto* challenges to the extension of parole setoffs.

Following Florida's revision of its parole laws in 1978 (including allowing two-year parole hearing setoffs instead of only one year for those parole-eligible prisoners with more than a five-year sentence), prisoner Charles Damiano challenged the changes in federal court. He claimed the changes violated the *Ex Post Facto* Clause of the US Constitution. [9] That Clause prohibits states from retroactively altering the definition of crimes or increasing the punishment for a crime after the fact. However, Damiano was unsuccessful. The Eleventh Circuit Court of Appeals held that the 1978 revisions of Florida's parole laws do not violate the *Ex Post Facto* Clause. [10] However, Damiano had not specifically challenged the parole hearing setoff provision. That issue was not directly addressed until a few years later.

In 1991 the Eleventh Circuit was faced with a direct challenge to parole hearing setoffs. At that time the court distinguished the *Damiano* case as challenging the change to factors used to determine parole, not a challenge of the change of eligibility in parole reconsideration hearings. In the case of *Akins v. Snow* [11] the Eleventh Circuit explained that: "The elimination of a parole reconsideration hearing does not simply alter the methods employed to determine whether an otherwise eligible

inmate is granted parole. A parole reconsideration hearing is both in law and in practice an important component of a prisoner's parole eligibility. The change is a substantive one that effectively disadvantages an inmate..." [12]

Consequently, the Eleventh Circuit in *Akins* found that a Georgia change in the law that allowed eight-year parole setoffs instead of one-year setoffs, as was the law in effect at the time the prisoners were convicted, was a retroactive *Ex Post Facto* Clause violation.

However, four years later the US Supreme Court called the rationale in the *Akins* decision into question in a case out of California. In *California Dep't of Corrections v. Morales* [13] the Supreme Court upheld a change to California's parole laws that allowed up to a three-year setoff in parole hearings for prisoners who had been convicted of more than one offense involving the taking of a life and if the parole board found it was not reasonable to expect that parole would be granted at a hearing during the following years and stated the bases for the findings. [14] The *Morales* Court found that it was significant that the California changes did not have any effect on the date of a prisoner's initial parole hearing and only affected subsequent hearings, and that the amended law only applied to "a class of prisoners for whom the likelihood of release on parole [was] quite remote." [15]

The Supreme Court concluded that the amendment to California parole laws did not violate the *Ex Post Facto* Clause because it "create[d] only the most speculative and attenuated risk of increasing the measure of punishment attached to the covered crimes." [16]

Florida responded to the *Morales* decision two years later (in 1997) by amending its parole laws to allow five-year setoffs between subsequent parole hearings for parole-eligible prisoners who had been convicted of specific crimes. [17] Florida carefully crafted its amendment to comply with the findings in *Morales* so that it could survive any *ex post facto* challenges. To that end, the amended statute: (1) has no effect on the date of a prisoner's initial parole hearing, affecting only subsequent hearings; (2) requires that a hearing must be held on the matter; (3) mandates that a five-year setoff is only allowed if "the commission finds that it is not reasonable to expect that parole will be granted at a hearing during the following years..."; and (4) requires that the Parole Commission state the basis for the decision to impose a five-year setoff in writing. [18]

Florida's 1997 amendment allowing five-year setoffs was challenged as an *ex post facto* violation by prisoner Herbert Tuff, unsuccessfully, in state courts. [19] The state courts, relying in large part on *Morales*, held that Florida's five-year setoff scheme was constitutional.

During that same period other states with parole systems were moving to amend their laws to allow longer parole setoffs, Alabama being one. That state went even further. The parole board in Alabama amended its rules to allow eight-year setoffs between parole hearings for specific prisoners. Yet, the rule lacked some of the safegurards determined to be important in *Morales*, and therefore sparked litigation that again went all the way to the Supreme Court.

Reviewing the Alabama amendments, the Eleventh Circuit found them to be deficient in *Jones v. Garner*. [20] However, when the case went to the Supreme Court, as *Garner v. Jones*, [21] the Eleventh Circuit's decision was reversed and a new hurdle added for prisoners to jump when challenging extended parole setoff provisions.

The Supreme Court in *Garner* dismissed as inconsequential the deficiencies found by the Eleventh Circuit in the Alabama rules, and instead emphasized that "[t]he question is 'a matter of degree'....The controlling inquiry [in *Morales*] was whether retroactive application of the change in California law created 'a significant risk of increasing the measure of punishment attached to the covered crimes.'" [22] Applying that standard, the Supreme Court concluded there was not a significant risk inherent in the Georgia rule to find it an *ex post facto* violation.

In *Garner*, the Supreme Court ultimately held that: "When the rule does not by its own terms show a significant risk, the [prisoner] must demonstrate, by evidence drawn from the rule's practical implementation by the agency charged with exercising discretion, that its retroactive application will result in a longer period of incarceration than under the earlier rule." [23] Thus, the Supreme Court concluded that if the rule [statute, etc.] does not by its own terms show a significant risk, the prisoner "must show that as applied to his own sentence" the risk is increased. [24]

Subsequently, the Eleventh Circuit applied the reasoning in *Garner* to hold that "an analysis of claims that [the statute at issue] violates the *Ex Post Facto* Clause...must be made on a case-by-case basis," with the prisoner showing the amended statute or rule, *as applied to his sentence*, "created a significant risk of increasing his punishment." [25]

The result of those decisions is that as long as states generally include the safeguards approved in *Morales* in any changes to its parole laws (or rules) to avoid them, on their own, from exhibiting any obvious risk of increasing punishment, then the, perhaps insurmountable, burden is shifted to the prisoner to show, by evidence, that he *will* serve longer in prison with application of the longer parole hearing setoff. A perhaps impossible burden to carry.

One might best be served, therefore, in looking at other means of challenging the longer setoffs.

**Examine the Angles**

Often prisoners contemplating litigation to correct what they perceive is an injustice believe that the most effective remedy is to bring some type of constitutional challenge in the federal courts. That perception is a

holdover from the days when the federal courts were more willing to give prisoners fair and impartial consideration on constitutional claims. Those days are largely gone. The rights of prisoners recognized in the 1970s and 80s have been rolled back, reduced, or even eliminated by Congress, legislatures, and the courts over the past 15 years. Yet, prisoners persist in looking to the Constitution and federal courts for relief, when they might more quickly and effectively achieve their goal by examining all angles of a situation before assuming that a constitutional claim is the only way to go.

Administrative and state court remedies should not be overlooked in the quest to challenge, what is afterall, an administrative agency. Especially when that agency, like the FPC, has a reputation of incompetence and mismanagement. Earlier this year even state legislators criticized the FPC, calling it a "bad nightmare," " dinosaur," "ineffective," "obsolete," and "like a bad movie." [26] When an agency garners such criticism it is making mistakes, and mistakes can be exploited.

For example, the 1997 statute which created the authority for the FPC to defer parole hearings for specific parole-eligible prisoners for five years mandates that the FPC comply with certain requirements when imposing such setoffs. Pertinently, the FPC must hold a hearing to impose such setoffs, make a finding that it is not reasonable to expect that parole will be granted during the deferred five years, and state the bases for that finding in writing. [27]

The Commission is not likely to skip a parole hearing. They have to hold the hearing to deny parole anyway. Nor are they likely to forget making a statement on the "Commission Action/Presumptive Parole Release Date" or "Commission Action/Subsequent/Special Interview" forms provided to prisoners after the hearing stating that the next hearing will be held in five years because the FPC finds it's "not reasonable to expect parole will be granted during that period." That's easy enough to type onto the form. But, when it comes to stating the bases for that finding, someone actually has to do a little work and go through the files and write down a few reasons for the five-year setoff.

Although writing down a few reasons may not be a big job, FPC commissioner and employees must have a lot of distractions. They have been known to write down reasons that don't apply to the prisoner being setoff, as if they are reasons from another prisoner's file. Also, especially during 2003 when the former FPC chairman, Jimmie Henry, was being charged for misusing FPC funds and subsequently four top FPC administrators were forced to resign, [28] *some* "Commission Action" forms had *no* written reasons provided on them to justify five-year setoffs.

The FPC has no established grievance procedure to seek administrative relief for such errors. [29] And in order to correct such errors a new parole hearing would have to be afforded, since the reasons for a five-year setoff have to be found *at a hearing*. [30] In such cases a letter to the FPC requesting a new hearing to correct erroneous reasons for setoff, or to provide written reasons for the setoff, would satisfy the requirement that a "demand" be made to perform a statutory duty before seeking mandamus or declaratory and injunctive relief in the circuit court. [31]

However, the above opportunity to obtain a new hearing before the five years have expired would only be available to a limited number of parole-eligible prisoners. Affecting more, possibly all, parole-eligible prisoners who have been set off five years is another situation.

The FPC's formal administrative rules, located at Chapter 23, Florida Administrative Code (F.A.C.), [32] have not been updated since 1994. [33] That serious error on the FPC's part creates an opportunity to challenge all five-year setoffs.

Although the Legislature amended the statutes to allow the FPC to impose five-year setoffs in 1997, the Commission never got around to changing its rules from allowing only two-year setoffs to allowing five-year setoffs. Currently, FPC rules only allow, at a maximum, two-year parole hearing setoffs. [34] The FPC's written Procedure Directives, which clarify the Commission's formal rules, are even more clear that the maximum parole hearing setoff allowed is two years. [35]

While it might be assumed that it doesn't matter that the FPC has not adopted a rule allowing five-year setoffs, that assumption would be a mistake. [36] But the key to challenging five-year setoffs under this situation is that the FPC must follow its own rules, and they only allow a maximum two-year setoff. It is well-established that agencies must follow their own rules. [37] A petition for writ of mandamus is the proper vehicle to use to compel the FPC to follow its own rules. [38]

**Conclusion**

Between now and next March when the 2006 legislative session begins, Florida's long-suffering parole-eligible prisoners have a unique opportunity to, by their efforts, be part of bringing enough pressure on the FPC that it will contribute to finally breaking the Commission's back. [39] If the FPC is allowed to use the time between now and the next legislative session to correct the problems that legislators have with the Commission, without its many other problems being exposed, then parole-eligible prisoners will only have themselves to blame. The more challenges and distractions that the FPC has right now, especially if it has to provide new hearings to all those prisoners who have been set off five years, the better it is. And, it beats sitting back, doing nothing, and waiting for your life to slowly slip away in five-year increments.

## End Notes

1. Parole is a form of post-prison supervision. Parole-eligible sentencing was essentially abolished in 1983 when Florida switched to a guideline sentencing scheme. Since then no new prisoners are parole-eligible, except for those sentenced to life with a 25-year minimum mandatory who were sentenced before natural life sentences became the alternative to the death penalty in 1994. Currently there are approximately 5,500 parole-eligible prisoners remaining in Florida's prisons, all of whom were either sentenced before 1983 or who are serving a pre-1994 life with 25-year minimum mandatory sentence. Florida's total prison population currently exceeds 82,000, making parole-eligible prisoners a minority.
2. § 947.174 (1997)
3. § 947.174 (1978)
4. § 947.16(3) (1941)
5. Chapter 78-417 § 15, Laws of Florida, creating § 947.174, Florida Statutes.
6. See Note 1., above.
7. Chapter 97-289 § 2, Laws of Florida. Section 947.174(1)(b), Florida Statutes currently states:

   "For any inmate convicted of murder, attempted murder, sexual battery, attempted sexual battery or who has been sentenced to a 25-year minimum mandatory sentence..., and whose presumptive parole release date is more than 5 years after the date of the initial interview, a hearing examiner shall schedule an interview for review of the presumptive parole release date. Such interview shall take place once within 5 years after the initial interview and once every 5 years thereafter if the commission finds that it is not reasonable to expect that parole will be granted at a hearing during the following years and states the bases for the finding in writing. For any inmate who is within 7 years of his or her tentative release date, the commission may establish an interview date prior to the 5-year schedule."

8. See Note 1., above.
9. Article I, § 10, US Constitution.
10. *Damiano v. Fla. Parole and Prob. Comm'n*, 785 F.2d 929 (11th Cir. 1986) (Damiano did not directly challenge the two-year setoffs, his challenge primarily focused on the 1978 Objective Parole Guidelines as applied retroactively to deny him parole.)
11. *Akins v. Snow*, 922 F.2d 1558 (11th Cir. 1991)
12. *Id.* At 1565
13. *California Dept' of Corrs. V. Morales*, 514 U.S. 499, 115 S.Ct. 1597 (1995)
14. *Id.* at 503, 115 S.Ct. at 1600
15. *Id.* at 507, 510, 115 S.Ct. at 1602-03
16. *Id.* at 514, 115 S.Ct. at 1605
17. See Note 7., above
18. See Note 7., above
19. *Tuff v. State*, 732 So.2d 461 (Fla. 3d DCA 1999)
20. *Jones v. Garner*, 164 F.3d 589 (11th Cir. 1999)
21. *Garner v. Jones*, 529 U.S. 244, 120 S.Ct 1362 (2000)
22. *Id.* at 250, 120 S.Ct. at 1367 (quoting *Morales*, 514 U.S. at 509, 115 S.Ct. at 1597)
23. *Id.* at 255, 120 S.Ct. at 1370
24. *Id.*
25. *Harris v. Hammonds*, 217 F.3d 1346, 1349-50 (11th Cir. 2000)
26. Gary Fineout and Debbie Cenziper, "Parole Commission Faces Ax," *The Miami Herald*, 2 April 2005.
27. See Note 7., above.
28. Bob Posey, "FPC Chairman Resigns Under Fire," *FPLP*, Vol. 9, Iss. 3, pg. 22; Bob Posey, "FPC: Culture of Corruption," *FPLP*, Vol. 9, Iss. 4, pg. 30; Bob Posey, "Former FPC Chairman Arrested," *FPLP*, Vol. 9, Iss. 5, pg. 16.
29. The only instance in which the FPC has an established administrative grievance/appeal process is to request review of the *initial* setting of a Presumptive Parole Release Date (must be requested within 60 days of the prisoner being notified of the initial setting of the PPRD). The only thing reviewable, however, in such appeal is the PPRD.
30. See Note 7., above.
31. What judicial relief to be sought would depend on what response is received to the letter to the FPC. If no response is received, it can be taken as a refusal to act and mandamus used to compel the requested action. If the FPC responds and disputes that the written reasons given are erroneous, or disputes that no written reasons were given (creating a controversy), then a complaint for declaratory judgment and injunctive relieve under Chapter 86, Florida Statutes, would appear to be a proper remedy. (Keep copies of all correspondence, it is evidence.) In either case, a request that a new hearing be ordered (to either provide valid reasons or some reasons) should be included in the relief requested from the court. The correct venue for either action would be the Second Judicial Circuit Court in Leon County.
32. A copy of Chapter 23, F.A.C., is available in every major institution's prison law library in the *Florida Administrative Code Annotated.* (Red Binder).
33. Actually, one section of Chapter 23, F.A.C., was amended in 2004 concerning Definitions, Rule 23-21.002, but that is not pertinent to this article. No other section of Chapter 23, F.A.C., has been amended since 1994, which is pertinent.
34. See: Rules 23-21.013(1), (3) and (b), and 23-21.002(32)(a), F.A.C.
35. FPC Procedure Directives 3.03.01.01 § V, and 3.03.02.03 § III. The Commission's Procedure Directives are not available in institutional law libraries. An outside source, however, can obtain copies of them from the FPC with a public records request.
36. See: § 120.54(1), Florida Statutes.
37. *Bass v. Perin*, 170 F.3d 1312 (11th Cir. 1999); Campos v. INS, 32 F. Supp. 2d 1337(S.D. Fla. 1998); *Aultman v. Singletary*, 708 So.2d 1004 (Fla. 1st DCA 1998); *Cleveland Clinic v. Agency for Health Care*, 679 So.2d 1237 (Fla. 1st DCA 1996); *Decarion v. Martinez*, 537 So.2d 1083 (Fla. 1st DCA 1989); *Woodley v. Health and Rehabilitative Services*, 505 So.2d 676 (Fla. 1st DCA 1986); *Clark v. Wainwright* 490 So.2d 1055 (Fla. 1st DCA 1986; *Granger v. FSP*, 424 So.2d 937 (Fla. 1st DCA 1983); and *Gadsden State Bank v. Lewis*, 348 So.2d 343 (Fla. 1st DCA 1977).
38. *Williams v. James*, 684 So.2d 868 (Fla. 2d DCA 1996), citing *Turner v. Singletary*, 623 So.2d 537 (Fla. 1st DCA 1993). And there should be no filing fee charged for such action per *Schmidt v. Crusoe*, 28 Fla.L.Weekly S367a (Fla. 2003).
39. See: Last issue of FPLP, Vol. 11, Iss. 2., "FPC Escapes Abolishment, At Least for Another Year." ■

# Dog Sniff Alert Okay

McGruff, the crime dog, is doing more than just taking a "bite" out of crime, he is sniffing it out too. Whether you are walking down a pedestrian sidewalk and authorities stop you to check for identification, or you are being stopped on the highway because your car has a cracked taillight lens, as long as it's a legal stop, you may very well get dog sniffed and the United States Supreme Court has ruled that it does not violate your constitutional

rights under the Fourth Amendment.

That was the high court's ruling in a recent case from the state of Illinois. *Illinois v. Cablles*, 18 Fla.L.Weekly Fed. S100 (1/24/05). A state trooper had pulled over a speeding car. He called the stop into headquarters and a second trooper overheard the call. Since the second trooper was nearby, he decided to go by the scene. The second trooper happened to be carrying a narcotics-detection dog with him.

At the scene, while the speeder was sitting in the first trooper's patrol car, in the process of getting off on a warning ticket, the second trooper arrives and decides to take his dog for a walk, *around the speeder's car*. When the dog-walk reached the rear of the car, the dog alerted the trooper's attention to the speeder's trunk. Being alerted, both troopers searched the trunk where they found drugs (marijuana). As a result of the find, the speeder did not get off on a warning ticket but was arrested, and it was not for speeding. He was arrested and convicted of a narcotics offense and subsequently sentenced to 12 years' prison and a $256,136 fine.

At trial, the speeder had motioned the court to suppress the seized evidence and quash the arrest due to a violation of his Fourth Amendment rights. The trial judge denied the motion and upheld the seizure, basing his decision on the officers had not prolonged the stop and the dog alert was sufficiently reliable to provide probable cause to conduct the search. The appellate court affirmed the decision, however, the Illinois Supreme Court reversed it.

The state Supreme Court concluded that the use of the dog unjustifiably enlarged the scope of a routine traffic stop into a drug investigation. Subsequent to that decision the State of Illinois sought review of the decision in the United States Supreme Court.

In granting review of the case, the high court noted that the initial seizure of the speeder, when he was stopped on the highway, was based on probable cause and was concededly lawful. Further, the stop was not prolonged more than it would take to process the speeder for a warning ticket. Despite knowing that, the state Supreme Court held that the initially lawful traffic stop became an unlawful seizure solely as a result of the canine sniff that occurred outside the car. That is, the state Supreme Court had characterized the dog sniff as the cause rather than the consequence of a constitutional violation.

The high court's view was that "conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner unless the dog sniff itself infringed on the speeder's constitutionally protected interest in privacy," which was found it did not. It related that "the use of a well-trained narcotics-detection dog—one that does not expose non-contraband items that otherwise would remain hidden from public view, during a lawful traffic stop, generally does not implicate legitimate privacy interests. Any intrusion on the person's privacy expectations does not rise to the level of a constitutionally cognizable infringement."

The high court's conclusion was based on and consistent with, it noted, its recent decision in a case that regarded the use of a thermal-imaging device that detects the growth of marijuana in a home. It was found that the use of such a device constituted an unlawful search because it was capable of detecting lawful activity. For example: intimate details such as at what hour each night the lady of the house takes her daily sauna and bath.

In its conclusion the high court decided that the legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from the speeder's hopes concerning the non-detection of contraband in the trunk of his car. A dog sniff conducted during a lawful traffic stop that reveal no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment, so ruled the United State Supreme Court.

Would the question arise, however, of a constitutional issue if an individual was subjected to a search during a lawful stop when a "well trained narcotics-detection dog" alerted to drug residue? Otherwise, if you carry paper money, rent cars, drive the company vehicle, anything that has been in contact with numerous other people and where drugs could have been used in or around, where the drug's residue has been left, be sure to wash it well or you may get dog sniff alerted too. ■

## Populations in isolation in biggest prison systems

The nation's five largest state prison systems, and the number of inmates reported to be in solitary confinement this year:

| State | Total inmates | Inmates in isolation | Pct. in isolation |
|---|---|---|---|
| California | 163,000 | 7,135 | 4.4% |
| Texas | 150,000 | 9,867 | 6.6% |
| Florida | 84,000 | 6,242 | 7.4% |
| New York | 63,242 | 4,292 | 6.8% |
| Illinois | 43,418 | 2,789 | 6.4% |

Source: Research by Kevin Johnson, USA TODAY

# Holiday Visiting Schedule Expanded

On May 5, 2005, a Florida Department of Correction's (FDOC) visitation rule, 33-601.722, was amended, and the amendments became effective, which increases the number of holidays upon which family visitation will be allowed and providing that if an approved visiting holiday falls on a weekend day then either the preceding Friday or following Monday will also be observed as a holiday and visiting allowed on those days.

The amended rule now states:

**33-60.722 Visiting Schedule.**

*(1) Regular visitors shall be allowed to visit between 9:00 a.m. and 3:00 p.m. Eastern Standard Time (EST) – 8:00 a.m. and 2:00 p.m. Central Standard Time (CST) – each Saturday and Sunday.*

*(c)Regular visiting shall occur on the following holidays:*

1. *New Year's Day*
2. *Birthday of Martin Luther King, Jr., third Monday in January.*
3. *Memorial Day*
4. *Independence Day*
5. *Labor Day*
6. *Veteran's Day, November 11*
7. *Thanksgiving Day*
8. *Friday after Thanksgiving [and]*
9. *Christmas Day*

*(d) If any of the holidays listed in paragraph (c) above falls on a Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on a Sunday, the following Monday shall be observed as a holiday.*

FDOC visitation rules are required to be posted at the entrance to every institution's visiting park (but often those are out of date). The visiting rules can also be located on the Internet at: www.dc.state.fl.us/secretary/legal/ch33/rulindex.html ■

# Former Warden Charges Prisoner Abuse Rampant in Florida

A former Florida prison warden has claimed that Florida prisoners are routinely abused and that gangs of prison guards use violence to intimidate prisoners. Ron McAndrew, who spent 23 years working corrections in Florida and was warden at three prisons, spoke out at a public hearing held in Tampa during April, 2005. He also claims that prisoner abuse in the state system is condoned by many prison administrators and top Department of Corrections officials. His description of a prison system out of control and mismanaged largely drew only silence out of Tallahassee.

The Department of Corrections denies that prisoner abuse is occurring. The governor's, Jeb Bush's, office had no comment on McAndrew's claims. The only one who expressed any interest in Tallahassee was Florida's attorney general, Charlie "Chain Gang" Crist. Charlie, who gave himself the sobriquet "Chain Gang" in the 1990s when as a state legislator he tried to restart prison chain gangs in Florida, said he will review McAndrew's abuse claims.

The public hearing at which McAndrews spoke out was held by the newly created Commission on Safety and Abuse in America's Prisons. The Commission is sponsored by the Vera Institute of Justice and co-chaired by former US Attorney General Nicholas Katzenbach and includes former FBI director William Sessions. The Tampa hearing was the first of four hearings that will be held around the US. The purpose of the hearings is to gather testimony from witnesses concerning serious and systemic abuse in America's prisons.

The US now incarcerates more than 2-million people—over 82,000 just in Florida's prisons—and the treatment of those prisoners reflects our society's values, is the Commission's message. Most of those prisoners will be released back into the nation's communities once they serve their time. Their future behavior will reflect their experiences in prison.

No one from the Florida Department of Corrections attended the two-day hearing in Tampa to dispute McAndrew's claims about what he knows is happening in Florida's prisons. He emphasized that part of Florida's problem is that whistle-blowing guards who come forward to report abuse face repercussions.

Whether Charlie "Chain Gang" Crist really intends to investigate abuse in Florida's prisons remains to be seen. Knowing Charlie and his never-miss-an-opportunity to appear the toughest on crime and criminals, he might just want to know where all the fun is going on that he's been missing. ■

# FDOC Visitor Dress Code

With summer upon us family members or friends visiting Florida state prisoners will be dressing lighter to try to stay cool. The Florida Department of Corrections (FDOC) has a rule that covers correctional facilities statewide that governs what is appropriate visitor attire. Unfortunately, most FDOC employees working in the visitor check-in areas only have a vague idea what that rule states and many will try to decide on their own what visitors may or may not wear. Therefore, visitors should familiarize themselves with the dress code rule to avoid or know how to clear up problems that may arise when visiting a prisoner. The dress code rule states:

**33-601.724 Visitor Attire.**

*Persons desiring to visit shall be fully clothed including shoes. Small hats such as baseball caps, religious coverings, or surgical caps are permissible attire. Visitors shall not be admitted to the visiting area if they are dressed in inappropriate attire. The warden, assistant warden or duty warden shall be the final decision*

*authority and shall assist in resolving inappropriate attire situations. * Inappropriate attire includes:*

*(1) Halter tops or other bra-less attire,*
*(2) Underwear type tee shirts,*
*(3) Tank tops,*
*(4) Fish net shirts,*
*(5) Skin tight clothing or spandex clothing,*
*(6) Clothes made with see-through fabric unless a non-see-through garment is worn underneath,*
*(7) Dress, skirts, or Bermuda-length shorts more than three inches above the knee,*
*(8) Any article of clothing with a picture or language which presents a potential threat to the security or order of the institution.*
*(9) A visitor shall be subject to suspension of visiting privileges and the visit shall be terminated if, after admission to the visiting area, the visitor changes, removes or alters his or her attire so that it is in violation of subsections [(1) – (8)].*

* The warden, assistant warden or duty warden is required to be at the institution during visiting hours. When a dispute arises over clothing the visitor has a right, according to the above rule, to request to see the warden, assistant warden or duty warden to resolve the dispute. Do not let the disapproving employee convince you their word is final or a warden isn't available, as many will try to do. Have a good visit. ■

## War on Drugs Focuses on Marijuana

According to a new report from the Washington, DC-based The Sentencing Project, the United State's $35 billion-a-year war on drugs has turned into a war on low-level marijuana users, and the US is losing the war.

Statistics show that marijuana is the most widely used illegal drug in the US. Reports show about 15 million people smoke marijuana and police arrest almost 700,000 people a year on marijuana-related charges. That's almost half of all drug-related arrests in America each year.

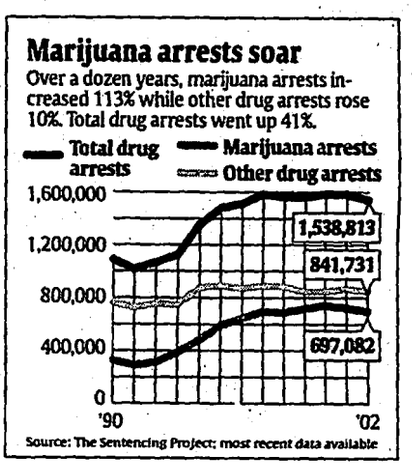
The Sentencing Project's study notes that: marijuana arrests increased 113 percent from 1990 through 2002, while all other drug arrests only rose 10 percent and that four out of five marijuana arrests are for possession, not dealing.

The idea behind the war on drugs is that a large number of arrests will reduce both supply and demand. However, that doesn't appear to be working with increased marijuana arrests. Both private and government studies show that overall marijuana use is the same as it was in 1990, while daily use by high school seniors has almost tripled, from 2.2 percent to 6 percent. And since 1992, while the potency of marijuana has doubled, the inflation-adjusted cost of marijuana has fallen about 16 percent, according to those same studies.

Some critics are questioning this focus on marijuana arrests, claiming it is diverting resources from fighting against hard drugs, like cocaine, heroin and methamphetamines and those who traffic in them.

While few of those arrested for marijuana are going to prison, the consequences are severe, adding to a growing underclass. Where the arrests result in a felony conviction, marijuana users may face voter disenfranchisement, disqualification for student loans or public housing and certain jobs. And they will be stuck with a criminal record making it hard to compete in the job market at all.

Recent government research claims that today's more potent marijuana carries even more health and societal risks than before. It can contribute to depression, suicidal thoughts and schizophrenia, especially among teens, according to the research. However, while its use should be discouraged, using such skewed arrest numbers to claim the war on drugs is working is simply blowing smoke in the public's eyes. ■




**REMINDER**

**On April 1, 2005, the yearly membership dues for prisoners to become or remain a member of Florida Prisoners' Legal Aid Organization, Inc., was increased one dollar, from $9 a year to $10 a year. Dues received and postmarked after April 1 in the old amount of $9 will be prorated for a 10 month membership instead of a full year. All members receive *Florida Prison Legal Perspectives*. If you aren't an FPLAO member, join us today with the above form. If you are already a member, don't forget to renew your membership before it expires.**

# POST CONVICTION CORNER

by Loren Rhoton, Esq.

Sometimes a criminal defendant will have several cases pending before one court for sentencing at the same time. If the defendant has different attorneys representing him on the different cases (as can be the case with people represented by the Public Defender or court appointed counsel), sometimes the attorneys may not properly communicate with each other to ensure that the most favorable sentencing arrangement for all cases is presented. In a situation where a criminal defendant will have several cases pending before one court for sentencing at the same time, defense counsel should attempt to ensure that all cases be sentenced together under a single sentencing guidelines scoresheet. *See* F.R.Cr.P. 3.703(d)(2) ["One scoresheet shall be prepared for all offenses committed under any single version or revision of the guidelines, pending before the court for sentencing."].

Clark v. State, 572 So.2d 1387 (1991), held that a defendant should be allowed to move a trial court to delay sentencing so that a single scoresheet can be used in two or more cases pending against the same defendant in the same court at the same time whether or not a plea of guilty or a conviction has been obtained. In such a situation, the defendant should be entitled to a delay in sentencing so that a single scoresheet can be used if the defendant can show that the use of the single scoresheet would not result in an unreasonable delay in sentencing. Id.

The burden does fall on the defendant to assert his desire for such simultaneous sentencing and to demonstrate to the trial court's satisfaction that simultaneous sentencing will not result in unreasonable delay. Id. 1391. And, if defense counsel fails to object to the court's use of a single scoresheet in two or more cases pending against the same defendant, in the same court, at the same time, the failure to object waives the issue for appellate review. Id. Therefore, if trial counsel had an opportunity to ensure simultaneous sentencing, under a single sentencing guidelines scoresheet, for several pending offenses and failed to do so, then counsel also precluded the defendant from raising the issue on appeal.

If defense counsel fails to ensure simultaneous sentencing under one guidelines scoresheet, then it may be possible to file a Florida Rule of Criminal Procedure 3.850 Motion for Postconviction Relief alleging ineffective assistance of counsel at sentencing. Before any such motion is filed, though, it would be wise to make sure that the guidelines calculations under the single scoresheet are more favorable than the calculations used under the multiple scoresheets. If this is indeed the case, then it may be advisable to pursue sentencing relief via a 3.850 Motion.

As always, when one is alleging ineffective assistance of counsel, the movant must allege a facially sufficient claim of a denial of effective assistance of counsel. The two pronged test for such ineffectiveness is set out in Strickland v. Washington, 466 U.S. 668 (1984). I have addressed the Strickland standard in past articles and, therefore, will not go into detail about the test for ineffectiveness of counsel. Nevertheless, one should allege that the attorney was ineffective for failing to move for simultaneous sentencing of the pending offenses under a single scoresheet. It should further be alleged that trial counsel's ineffectiveness sufficiently prejudiced

the proceedings to the extent that there is a substantial likelihood that, in the absence of the ineffectiveness, the outcome of the proceedings would have been different (i.e., that a lesser sentence would have resulted).

The above information is also important for persons who are before the trial court for resentencing if there are several cases pending before the court for resentencing. If there are several cases pending in the same court and at the same time, counsel should ensure that they are being resentenced under the same scoresheet. This will likely help to ensure the most favorable potential sentencing outcome.

*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.*

# FDOC Legal Photocopying Costs Rule is Invalid

by Sherri Johnson

On May 23, 2005, the First District Court of Appeals held that the Florida Department of Corrections (FDOC) does not have, and has never had, statutory authority to adopt and implement a rule requiring Florida prisoners to pay $.15 a page for legal photocopies, or if they are indigent, to have a lien placed on their inmate accounts for photocopy costs. Accordingly, the First DCA held that those portions of FDOC Rule 33-501.302, F.A.C., requiring prisoners to pay legal photocopy costs or have liens placed on their accounts for same, are invalid. This decision by the First DCA should result in thousands of indigent prisoners having photocopying costs liens wiped off their inmate accounts and solvent prisoners who have paid such costs for many years being reimbursed the money they illegally had deducted from their accounts.

The case began when Florida prisoners Glenn Smith and Thomas P. Wells, Jr., filed a petition for declaratory judgment in the Leon County Circuit Court seeking a declaration that those portions of FDOC Rule 33-501.302, F.A.C., entitled "Copying Services for Inmates," that authorize deductions from and liens imposed on prisoners' bank accounts to cover costs for legal photocopies, be declared invalid on grounds that the FDOC had, and has, no statutory authority to adopt or enforce such costs provisions. Specifically, Smith and Wells alleged that neither § 20.315 nor § 945.04 of the Florida Statutes, which had been cited as authority for the challenged rule by the FDOC, actually contain any specific or general authority for the FDOC "to make any assessment against inmates for copying costs."

The circuit court, Judge L. Ralph Smith, however, granted summary judgment to the FDOC, finding that § 20.315, Florida Statutes, does authorize the FDOC to "make" monetary assessments against prisoners. Glenn Smith appealed that decision, and the appeal court disagreed with Judge Smith's faultly findings.

The appeal court noted that the FDOC has had its photocopying services rule in effect, in one form or another, since 1983, and that the rule appears to have been originally adopted in response to prisoner litigation concerning access to the courts. The appeal court discussed that while federal courts have held that prisoners' right of access to the courts does not require free and unlimited photocopies for purposes of litigation, federal courts have held that prison officials must provide prisoners access to photocopying services, for which a fee may be charged, to the extent necessary to present claims in the courts.

From its original adoption in 1983 the FDOC's photocopying rule established a set fee of $.15 a page to be paid for each regular size copy. The only statutes ever cited by the FDOC as authority for the rule were §§ 20.315 and 945.04, Florida Statutes. That is until after the circuit court granted summary judgment to the FDOC in Smith's and Wells' case, then the FDOC amended the rule to delete the reference to § 945.04, Florida Statutes, as authority for the rule and replaced it with a citation to § 944.09, Florida Statutes. That amendment became effective in April 2004. Obviously, the FDOC itself did not believe § 945.04 provided authority for the rule and sought to change the cited statutory authority after an appeal was filed challenging the denial of Smith's and Well's petition for declaratory relief.

Before examining the authority granted to the FDOC in the cited statutes, the appeal court briefly examined what statutory authority must be granted to an agency under Florida law in order to validly adopt rules.

Pursuant to Chapter 120, Florida Statutes, which sets forth agency rulemaking requirements:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret *the specific* powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

Section 120.52(8), Florida Statutes. See also: § 120.536, Florida Statutes (2004).

And accordingly, a proposed or existing rule is an "invalid exercise of delegated legislative authority if...[t]he agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.," or "[t]he rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1." §§ 120.52(8)(b)-(c), Florida Statutes (2004).

The appeal court noted that under the above statutory standards, as interpreted by it in *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000), "[a]n administrative rule must certainly fall within the class of powers and duties delegated to the agency, but that alone will not make a rule a valid exercise of legislative power." Id. at 599. "The question is whether the statute contains a specific grant of legislative authority for the rule, not whether the grant of authority is specific *enough*." *Id.*

(emphasis in original). "Either the enabling statute authorizes the rule at issue or it does not." *Id.*

Section 20.315, Florida Statutes, creates the FDOC and defines its structure and purpose. Among the goals of the department listed in that statute is the duty "[t]o ensure that inmates work while they are incarcerated and that the department make [ ] every effort to collect restitution and other monetary assessments from inmates while they are incarcerated or under supervision." § 20.315(1)(b), Florida Statutes (2004). The appeal court explained, however, that contrary to the FDOC's position, as adopted by the circuit court, nothing in that provision authorizes the FDOC to *make* monetary assessments; it only authorizes the department to *collect* monetary assessments. Which is in keeping with legislative intent. To hold otherwise, the appeal court noted, would give the FDOC unbridled discretion to charge prisoners for any or all services rendered by the department. Which, while that may be appropriate public policy, such a policy decision would have to be made by the Legislature, not the FDOC.

The appeal court also exampled that if § 20.315 granted FDOC the authority it claims, then the Legislature would not have had to enact specific legislation to allow the FDOC to collect medical co-payments from prisoners, meaning that law would be useless, contrary to a basic rule of statutory construction.

Thus, the appeal court reasoned, § 20.315(1)(b), Florida Statutes, does not provide a specific grant of legislative authority for the challenged provisions in Rule 33-501.302, F.A.C.

Turning next to § 945.04, Florida Statutes, the appeal court notes it only sets forth general functions of the FDOC, and that nowhere in that statute does it state the department may assess monetary charges for services rendered to prisoners.

Then turning to § 944.09, Florida Statutes, which FDOC tried to assert as authority for the rule's provisions after the appeal was commenced, the appeal court noted that section merely sets forth the department's general rulemaking authority, but although it grants authority to the department to adopt rules on a variety of topics, nowhere in that statute is authority granted to the FDOC to assess monetary costs for any particular service provided to prisoners.

In fact, the appeal court noted, the Florida Supreme Court recognized that "[s]ection 944.09 is merely the general statutory authority for the Department to promulgate rules," and that the Department has "long looked" to other statutory provisions for the specific authority to promulgate particular rules. See: *Hall v. State*, 752 So.2d 575, 579 (Fla. 2000). Therefore, nothing in that statute authorizes the provisions to assess photocopying costs on prisoners as in the challenged rule, the appeal court determined.

Accordingly, the appeal court held that the challenged provisions of Rule 33-501.302, F.A.C., are not supported by specific legislative authority and are thus invalid.

The appeal court expressed no opinion on whether the other relief requested in the declaratory judgment petition should be granted (likely a request that FDOC be ordered to remove photocopy cost liens or reimburse money deducted for same from the prisoners' inmate accounts). The circuit court was directed to address such supplemental relief on remand.

See: *Smith v. Florida Department of Corrections*, __So.2d__, 30 Fla.L.Weekly D1299 (Fla. 1st DCA 5/23/05).

[Note: Glenn Smith and Thomas Wells, Jr., deserve the thanks of every Florida prisoner who has ever been gouged by the FDOC for legal photocopying costs. The rule has been challenged several times over the years, always unsuccessfully, until Smith and Wells went at it just right with their lack-of-statutory-authority claim. Of course, with this decision finding that FDOC not only does not now have, but has never had, lawful authority to deduct money from prisoners' accounts for photocopying costs or to place liens on their accounts for same, prisoners are entitled to reimbursements or to have the liens removed. However, they will likely have to file individually to obtain same, the FDOC is not going to voluntarily reimburse the millions it has illegally taken as photocopy costs.

Prisoners seeking reimbursement should exhaust the grievance procedures before filing a legal action seeking return of their money. Those seeking removal of liens should also exhaust the grievance procedures before seeking injunctive relief from a court. The reimbursement action could in most cases be filed in small claims courts at a lower filing fee than in a circuit court (the amount claimed will govern which type court has jurisdiction). Upon winning, any filing costs and fees could also be recovered, that should be included in the relief requested section of the complaint.

The *Smith* decision could also open Pandora's Box for the FDOC, if prisoners use it to challenge other rules of the department. Many FDOC rules exist that were adopted prior to 1996 when the Legislature repealed the department's former "general rulemaking authority" at former § 944.09(1)(r), Florida Statues (1994). That same year the Legislature enacted the "specific statutory authority" provision in § 120.52(8), Florida Statutes, as set out in the above article. The FDOC, however, never obtained specific statutory authority for many of its previous "general authority-adopted" rules as provided by §§ 120.536(2) and (3), Florida Statutes. Yet, the FDOC is still enforcing many of those now-invalid rules, that lack specific statutory authority to exist, against prisoners (just like it was the photocopying costs rule) for one simple reason—because no one has challenged them. –bp] ■

# NOTABLE CASES

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.*

## U.S. SUPREME COURT

*Pace v. DiGuglielmo*, 18 Fla.L.Weekly Fed. S250 (4/27/05)

This case points out that a state post conviction petition that is rejected by the state court as untimely is not a *properly filed* application for state post conviction or other collateral review that tolls the Antiterrorism and Effective Death Penalty Act's (AEDPA) one-year limitations period under 28 U.S.C. section 2244(d)(2).

The background of this particular case began when John A. Pace, a Pennsylvania state prisoner, filed an untimely post conviction petition which was dismissed and Pace appealed. Pace argued that the time limit was inapplicable to him. The appeals court affirmed the dismissal and opined that Pace's petition did not come within the state statutory requirements nor had he "neither alleged nor proven" that he fell within any statutory exception. Further, the state Supreme Court denied review.

When Pace filed his 28 U.S.C. 2254 petition, the Magistrate Judge in the federal district recommended dismissal under AEDPA's limitations, but the district court rejected it. It recognized that, without tolling, petitioner's petition was time barred. But it held that petitioner was entitled to both statutory and equitable tolling. It opined that even though the state court rejected his petition as untimely, that did not prevent the petition from being "properly filed" within the meaning of section 2244(d)(2). It reasoned that because the state's Post Conviction Relief Act set up judicially reviewable exceptions to the time limit, the Act's time limit was not a "condition to filing" but a "condition to obtaining relief" as described in *Artuz v. Bennett*. Thus, the district court alternatively found extraordinary circumstances justifying equitable tolling.

The Federal Circuit Court of Appeals for the Third Circuit reversed. It relied on its line of cases to conclude that the state's post conviction time limit constitutes a "condition to filing" and that, when a state court deems a petition untimely, it is not "properly filed." It further ruled that there were not extraordinary circumstances justifying that remedy. Because of the issue of whether an untimely post conviction petition that's rejected by state court nonetheless may be "properly filed," the United States Supreme court granted certiorari.

It was found that time limits on post conviction petitions are conditions to filing, such that an untimely petition would not be deemed "properly filed." Thus, the Supreme Court affirmed the Circuit Court's decision.

## U.S. APPEALS COURT

*Johnson v. Governor of the State of Florida*, 18 Fla.L.Weekly Fed. C406 (11th Cir 4/12/05)

This case was brought by Thomas Johnson and several others on behalf of all ex-felon citizens of Florida in regards to the permanent disenfranchisement of convicted felons. It involved a Fourteenth Amendment Equal Protection Clause challenge and a Section 2 Voting Rights Act challenge to Florida's felon disenfranchisement law which provides that "...no person convicted of a felony...shall be qualified to vote or hold office until restoration of civil rights or removal of disability." Fla. Const. Article VI, Section 4 (1968).

In brief, the 11th Circuit held that a state's decision to permanently disenfranchise convicted felons does not, in itself, constitute an equal protection violation. Under the two-step test articulated by the United States Supreme Court in *Hunter v. Underwood*, a court must first examine whether racial discrimination was a substantial or motivating factor in a state's decision to deny the right to vote to felons and, if there is evidence that racial discrimination was a motivating factor, whether the state can show that the provision would have been enacted in the absence of any racially discriminatory motive.

Assuming without deciding that racial animus motivated the adoption of Florida's 1868 disenfranchisement law, Florida's 1968 re-enactment of its disenfranchisement provision through a deliberative process eliminated any taint from the allegedly discriminatory 1868 provision, so opined the 11th Circuit.

In addition to their equal protection claim, the challenge regarding the felon disenfranchisement provision through the Voting Rights Act, it was held that the Act was never intended

by Congress to reach felon disenfranchisement provisions.

In its opined wisdom of the policy, the 11th Circuit noted that several civil rights groups argue that felons should be enfranchised, particularly those who have served their sentences and presumably paid their debt to society. Even if it was to agree with this, the 11th Circuit wrote, "this is a policy decision that the United States Constitution expressly gives to the state governments, not the federal courts. U.S. Const. Amend. XIV, section 2." Florida has legislatively reexamined the provision since 1868 and affirmed its decision to deny felons the right to vote. Federal courts cannot question the wisdom of the policy choice, stated the 11th Circuit.

The district court's grant of summary judgment in favor of the Governor was therefore affirmed.

## FLORIDA SUPREME COURT

*In Re.: Amendments To The Florida Rules Of Criminal Procedure—Conform Rules To 2004 Legislation*, 30 Fla.L.Weekly S244 (Fla. 4/7/05)

In 2004 legislation there were changes made to section 27.52, Florida Statutes, (Ch. 2004-265, sec. 9, at 959, Laws of Florida) which provide that the circuit court clerks shall use "a form developed by the Supreme Court" to determine indigency.

To conform to this change, the Florida Bar's Criminal Procedure Rules Committee filed an out-of-cycle report that proposed a new rule, Rule 3.984, in the Fla.R.Crim. P., entitled *Affidavit of Indigent Status*. Under that rule will be given the form that was approved for use by the circuit court clerks and that shall be used also by the accused.

Because of this new rule, wording in Rule 3.111(b)(5)(C) was amended to "require the accused to execute an affidavit of insolvency as required by sec. 27.52 Florida Statutes."

The Florida Supreme Court adopted both the new rule and the amendment and they became effective immediately upon the release of its opinion.

*Garcia v. State*, 30 Fla.L.Weekly S263 (Fla. 4/21/05)

The Florida Supreme Court accepted review of this case to resolve a conflict between the decisions in *Garcia v. State*, 854 So.2d 758 (Fla. 2d DCA 2003) and *Goodman v. State*, 839 So.2d 902 (Fla. 1st DCA 2003).

The conflicting issue was based on when a defendant denies knowledge of the presence of an illegal substance, he or she automatically places into dispute any knowledge of the illicit nature of the substance, which was the holding in *Goodman*.

The background of Jorge Garcia's case began when he was pulled over in his truck and arrested for driving while under the influence. Subsequent to his arrest, the truck was searched where an item was found underneath the passenger's seat. It was described as looking like a white softball wrapped in black electrical tape. Garcia claimed then and throughout his entire trial that he did not know what the item was, nor did he know that it was in his truck. He also claimed that his truck had been used numerous times by other individuals and at one point it was stolen, missing for about five days before he was able to recover it.

Lab tests found that the item retrieved from the truck contained a mixture of methamphetamines and a cutting agent. Consequently, Garcia was charged with trafficking in the discovered drug. During his trial Garcia *disputed* the standard jury instructions, maintaining his claim of not knowing what the substance was or that it was in his truck, and *moved for a judgment of acquittal* on the trafficking charge.

The trial court denied his judgment of acquittal and rejected his proposed special instruction, overruling his objection regarding the *trafficking* jury instructions. After giving those instructions on the charge it further instructed the jury on the elements of the lesser included offense of simple possession. Here, Garcia failed to object when the trial court failed to include the element of "knowledge of the *illicit nature* of the substance" in the lesser included offense jury instructions.

Subsequent jury deliberations, Garcia was acquitted of trafficking but found guilty of possession, the lesser included offense and guilty of the DUI offense as well. On appellate review, the Second District found that the trial court erred in both denying Garcia's judgment of acquittal and failing to further instruct the jury of "knowledge of the illicit nature of the substance" element, i.e., the "guilty knowledge element."

The appellate court rejected the State's argument that section 893.101, Florida Statutes (2002), provides that knowledge of the illicit nature of a controlled substance is not an element of drug offenses, but lack-of-knowledge is an affirmative defense. That statute became law after Garcia committed *his* offense. It was then concluded that the instruction given was clearly inadequate and erroneous. However, the error was not preserved, and the Second District opined that it was not fundamental, thus the conflict.

The Florida Supreme Court noted that when it read three of its prior case decisions together regarding the conflicting issue, *State v. Medlin*, *Scott v. State*, and *Chicone v. State*, "guilty knowledge" is an element of the offense of possession and must be proven beyond a reasonable doubt. Further, in *Reed v. State*, 837 So.2d 366 (Fla. 2002), it was held that the failure to give a jury instruction on an element of a crime is fundamental error if the *element* was disputed at trial. *F.B. v. State*, 852 So.2d 226 (Fla. 2003), held that the insufficiency of the evidence to prove one element of a

crime does not constitute fundamental error where the defendant failed to object *or to move for a judgment of acquittal on that ground.*

Garcia did dispute the element of guilty knowledge which should have determined the trial court's requirement to give the jury instruction on the guilty knowledge element. Also, Garcia did motion the trial court for a judgment of acquittal based on that issue. As such, it was fundamental error for the trial court to fail to give the further instruction.

The First District's decision in *Goodman* was approved and the Second District's, in that it was not fundamental error, was quashed.

## FLORIDA APPEAL COURTS

*Whalen v. State*, 30 Fla.L.Weekly D575 (2d DCA 3/2/05)

The appellate court in this case concluded in its opinion that a lower court was in error to assess points in a sexual offense charge for penetration (victim injury points) because the information failed to specifically allege penetration.

However it further opined that even if the information alleged penetration, the United States Supreme Court decision in *Blakely v. Washington* now precludes the assessment of penetration points when a *jury* does not make the specific finding of penetration.

*Jones v. State*, 30 Fla.L.Weekly D631 (2d DCA 3/4/05)

Brian Edward Jones in this case appealed the denial of his motion to suppress illegal narcotics and narcotic paraphernalia that were seized from his home although Jones voluntarily agreed to the search without being issued a warrant to do so.

In brief, Jones allowed and accompanied a law enforcement officer into his home without a search warrant seeking a stolen boat motor and a 12-gauge shotgun. In the course of the search, the officer lifted a mattress in Jones' bedroom. Between the mattress and the boxspring a clear, plastic tackle box (approx. 2 inches deep and 8 inches by 10 inches square) was found. In order to see what was in the box the officer had to pick it up, where it was noted that the box contained the contraband items submitted into evidence.

In trial court, Jones entered a plea of guilty to possession of methamphetamines and possession of drug paraphernalia reserving his right to appeal the denial of his motion to suppress the seized items. Judgment was issued and Jones was sentenced withholding adjudication.

The appellate court opined that the State failed to meet the second of the three prongs of the plain view doctrine found in *Pagan v. State*, 830 So.2d 792, 808 (Fla. 2002). That is, the incriminating nature of the contraband items was not immediately apparent. A tackle box beneath a mattress alone is not sufficient to suggest an incriminating nature. There could have been any number of perfectly legitimate items in the small box underneath Jones' mattress. Furthermore, although the officer testified that the box was transparent, he also stated that in order to identify the items inside the box he had to pick it up.

Over and beyond those facts found, it was undisputed that the items that the officer originally entered the home to search for, a boat motor and 12-gauge shotgun, could not have been contained in the small tackle box. Therefore, the picking up of the box and examining its contents extended the search beyond the scope permitted by Jones' voluntary consent. Thus, Jones' judgment and sentence were reversed and the case remanded with instructions to grant Jones' motion to suppress the evidence seized and to vacate the judgment and sentence.

*Grasso v. State*, 30 Fla.L.Weekly D854 (4th DCA 3/30/05)

In this case there was a charge of burglary with a battery against Nicolo J. Gian-Grasso which he took to trial by jury. During jury deliberations, the jury sent the judge a note asking whether it could convict of both trespass and battery, which were listed individually as lesser-included offenses, or if they had to choose only one. The reply was that they could only choose one and Gasso's defense counsel agreed with the Court's reply. Consequently, Grasso was convicted of the charged burglary with a battery. Grasso subsequently filed a timely Rule 3.850 motion claiming that his counsel was ineffective for not objecting to the above issue. The trial court summarily denied the motion, whereupon Grasso appealed.

In the appellate court it was found that the trial court erred in summarily denying the sufficient claim that was not refuted by the records. In further reviewing Grasso's issue, the appellate court opined that a defendant is entitled to have a jury consider convicting of the two separate component offenses of a compound offense such as burglary with a battery.

It was explained that burglary with a battery is a legislative combination of two separate common law crimes allowing a judgment to be entered on both the lesser-included offenses of trespass and battery since the information did include the facts necessary to support convictions for both offenses. *Bledsoe v. State*, 764 So.2d 927, 929 (Fla. 2d DCA 2000).

Under the circumstances that were presented, the appellate court determined that the jury should have been permitted to convict on the two separate component offenses. It opined further that counsel may have been ineffective in failing to preserve the issue for appellate review by objecting to it. Accordingly, Grasso's case was reversed and remanded for an evidentiary hearing for the trial court to determine whether counsel made a strategic

decision to waive the possible conviction of both lessers.

*Gay v. State*, 30 Fla.L.Weekly D960 (2d DCA 4/13/05)

Matthew Gay's case reflects on resentencing by a substitute judge when the original sentencing judge is still available.

Without a showing of necessity, it is error to permit resentencing by a different judge other than the one who heard the evidence at trial and originally imposed sentenced. *Persaud v. State*, 821 So.2d 411, 414 (Fla. 2d DCA 2002); Also See: Fla.R.Crim.P. 3.700(c).

The error was conceded by the State in Gay's case and his sentence was reversed and remanded. ■





## Donations Needed

Florida Prisoners' Legal Aid Org., Inc., conducts many projects besides just publishing *FPLP*. The organization depends on members, readers and other concerned people to fund those projects, usually through donations. Please consider making a donation to help FPLAO continue those projects and to continue working for Florida state prisoners and their families and friends. Donations, in any amount, should be sent to FPLAO at the address given on the form on page 23 of this issue of *FPLP*. Thank you for your support.

# Florida Prison Legal Perspectives
## Resource List
July 2005

### 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
www.doh.state.fl.us

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

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

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.flhouse.gov

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

*Websites contain 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
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
www.FloridaLawHelp.com

*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.criminaljusticeforum.com/Prison-Issues-Files/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.*

Families & Friends for Committed Victims, Inc.
P.O. Box 1426
Pinellas Park, FL 33780-1426
727/545-9268 or
727/424 -249
www.abettersolution.org
FFCV2001@aol.com

*Organizes family members and friends of inmates civilly committed or detained under Florida's Jimmy Rice Act. Works to improve conditions at the Arcadia Civil Detention Center. Publishes newsletter. Needs members and donations. Contact for more info.*

Florida Innocence Project
Nova Southeastern Univ.
Shepard Broad Law Ctr.
3305 College Ave.
Ft. Lauderdale, FL 33314
754/262-6174

**FLORIDA**
**Attorneys**

Loren Rhoton, Attorney
Rhoton & Hayman, P.A.
412 E. Madison St., Ste. 1111
Tampa, FL 33602
813/ 226-3138
E-mail: rhoton167@aol.com

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

David W. Collins, Attorney
PO Box 541
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.*

Daniel D. Mazar, Attorney
2153 Lee Road
Winter Park, FL 32789
1-888-645-5352 (Toll free)
407/645-5352
407/645-3224 (Fax)

*Provides representation in Direct Appeals, Belated Appeals, 3.850 motions, 3.800 motions, State and Fed Habeas Corpus, Detainers, and other Post Conviciton matters. Over 30 yrs. exp. in criminal law.*

**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

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.*

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
3325 Wilshire Blvd., Ste. 340
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.*

*Services: Offers discount magazine subscriptions. Send $1 or 3-fcs for catalog.*

WriteAPrisoner.com
PO Box 10-FPLP
Edgewater, FL 32132
*Services: Internet penpal services, Write for info.*

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

*Services: Penpal services for death row prisoners.*

Center for Constitutional Rights
666 Broadway
New York, NY 10012
www.jailhouselaw.org

*CCR is one of the organizations that cooperates to produce the "Jailhouse Lawyer's Manual." Copies of the manual are provided to prisoners at no charge. The JLM can also be downloaded and printed from the above website at no cost.*

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

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.flsenate.gov
www.flhouse.gov

*Florida Legislature's websites. 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.*

**Florida Supreme Court:** www.flcourts.org

**District Courts of Appeal:**
First DCA: www.1dca.org
Second DCA: www.2dca.org
Third DCA: www.3dca.flcourts.org
Fourth DCA: www.4dca.org
Fifth DCA: www5dca.org

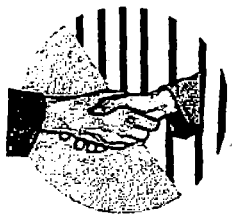
**Circuit Courts:**
1st Circuit: www.firstjudicialcircuit.org
2nd Circuit: www.2ndcircuit.leon.fl.us
3rd Circuit: www.jud3.flcourts.org
4thCircuit:www.coj.net/Departments/Fourth+Judicial+Circuit+Court/default.htm
5thCircuit http//jud5.flcourts.org/courts/index.htm
6th Circuit: www.jud6.org
7th Circuit: www.circuit7.org
8th Circuit: www.circuit8.org
9th Circuit: www.ninja9.org
10th Circuit: www.jud10.org
11th Circuit: http://jud11.flcourts.org
12th Circuit: http://12circuit.state.fl.us
13th Circuit: http://jud13.flcourts.org
14th Circuit: for information call 850-747-5327
15thCircuit:www.co.palmbeach.fl.us/cadmin
16th Circuit: www.jud16.flcourts.org
17th Circuit: www.17th.flcourts.org
18th Circuit: www.jud18.flcourts.org
19th Circuit: www.circuit19.org
20th Circuit: www.ca.cjis20.org

**County Clerks of Court:**
Alachua:www.clerkalachuafl.org/clerk/index.html
Baker: http://bakercountyfl.org/clerk
Bay: www.baycoclerk.com
Bradford: www.bradfordclerk.com
Brevard: www.clerk.co.brevard.fl.us
Broward: www.browardclerk.org
Calhoun: www.calhounclerk.com
Charlotte:www.co.charlotte.fl.us/cirkinfo/clerk_default.htm
Citrus: www.clerk.citrus.fl.us
Clay: http://clerk.co.clay.fl.us
Collier: www.clerk.collier.fl.us
Columbia: www.columbiaclerk.com
Dade :www.miamidadeclerk.com/dadecoc
Desoto: www.desotoclerk.com
Dixie: www.dixieclerk.com
Duval: www.duval.fl.us.landata.com
Escambia: www.clerk.co.escambia.fl.us
Flagler: www.myflaglercounty.com
Franklin: www.franklinclerk.com
Gadsden: www.clerk.co.gadsden.fl.us
Gilchrist: www.gilchristclerk.com
Glades: www.gladesclerk.com
Gulf: www.gulfclerk.com
Hamilton: www.myhamiltoncounty.org
Hardee: www.hardeeclerk.com
Hendry: www.hendryclerk.org
Hernando: www.clerk.co.hernando.fl.us
Highlands:www.clerk.co.highlands.fl.us/index_new.html
Hillsborough: www.hisclerk.com
Holmes: www.holmesclerk.com
Indian River: www.clerk.indianriver.org
Jackson: www.jacksonclerk.com
Jefferson: www.jeffersonclerk.com
Lafayette: www.lafayetteclerk.com
Lake: www.clerk.lake.fl.us
Lee: www.leeclerk.org
Leon: www.clerk.leon.fl.us
Levy: www.levyclerk.com
Liberty: www.libertyclerk.com
Madison: www.madisonclerk.com
Manatee: www.manateeclerk.com
Marion: www.marioncountyclerk.org
Martin:http://clerkweb.martin.fl.us/ClerkWeb
Monroe: www.monroe.fl.us.landala.com
Nassau:www.nassauclerk.com/clerk/clerk_main.htm
Okaloosa: www.clerkofcourts.cc
Okeechobee:www.clerk.co.okeechobee.fl.us
Orange: http://orangeclerk.onetgov.net
Osceola: www.osceolaclerk.com
Palm Beach: www.pbcountyclerk.com
Pasco: www.pascoclerk.com
Pinellas: www.pinellasclerk.org
Polk: www.polkcountyclerk.net
Putnam: www.putnam-fl.com/clk
St. Johns: www.co.st-johns.fl.us/Const-Officers/Clerk-of-Court/index.htm
St. Lucie: www.slcclerkofcourt.com
Santa Rosa: www.santarosaclerk.com
Sarasota: www.sarasotaclerk.com
Seminole: www.seminoleclerk.org
Sumter:http://home.earthlink.net/%7Esumtercco
Suwannee: www.suwclerk.org
Taylor: www.taylorclerk.com
Union: www.unionclerk.com
Volusia: www.clerk.org/index.html
Wakulla: www.wakullaclerk.com
Walton: www.co.walton.fl.us/clerk
Washington: www.washingtonclerk.com

*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

Florida Prisoners' Legal Aid Organization Inc.



# BECOME A MEMBER

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

**1. Please Check ✓ One:**

- ☐ Membership Renewal
- ☐ New Membership

**2. Select ✓ Category**

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

**3. Your Name and Address (PLEASE PRINT)**

_____ DC#_____
Name

_____
Agency/Library/Institution /Org/

_____
Address

_____
City State Zip

_____
Email Address and /or Phone Number

☞ Please make all checks or money orders payable to: Florida Prisoners' Legal Aid Organization, Inc. Please complete the above form and send it with the indicated membership dues or subscription amount to: *Florida Prisoners' Legal Aid Organization Inc., P.O. Box 660-387, Chuluota, FL 32766.* For family members or loved ones of Florida prisoners who are unable to afford the basic membership dues, any contribution is acceptable for membership. New, unused , US postage stamps are acceptable from prisoners for membership dues. Memberships run one year.

## MEMBERSHIP RENEWAL

Please check the mailing label on this issue of FPLP to determine when you need to renew so you don't miss an issue. On the top line of the mailing label will be a date, such as ***Nov 07***. That indicates the month and year that your FPLAO membership dues are paid up to. Please renew your membership by completing the above form and mailing it and the appropriate dues amount to the address given a month or two before the date on the mailing label so that the membership rolls and mailing list can be updated within plenty of time. Thanks!

## March on Washington

Submitted by Richard Geffken

On August 13, 2005, fifty-two groups with speakers and musicians will march on Washington, D.C., to protest America's role as the world's biggest jailer. The theme is: "We have bad laws, not a nation of bad people." To imprison 3 to 10 times more people per capita than any other democracy, it has corrupted the law. This approach is not protecting the public and has removed the legitimacy to govern. For more info contact: www.JourneyForJustice.org or [illegible]ms@aol.com. To join the march contact: Roberta Franklin, 2243 Ajax St., Montgomery, AL 36108, ph. # 334/220-4670 or 334/834-9592.

## SUBMISSION OF MATERIAL TO *FPLP*

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

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

## PRISON LEGAL NEWS

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

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

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

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

## HAVE YOU MOVED OR BEEN TRANSFERRED?

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

NEW ADDRESS (PLEASE PRINT CLEARLY)

Name

Inst.

Address

City State Zip

Mail to: FPLP, P.O. Box 660-387, Chuluota, FL 32766

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**Florida Prison Legal Perspectives**

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Chuluota Fl 32766

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