

PROVIDED TO DESOTO C. I.
ON 06-04-18 FOR MAILING
INMATE INITIALS [initials]
OFFICER INITIALS [initials]

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FREDERICK E. MELVIN, Pro Se — PETITIONER
(Your Name)

VS.

Seap. Fla. Dept of Corr., et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
Supreme Court of Florida

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FREDERICK E. MELVIN
(Your Name)

Desoto Correctional Institution-Annex
(Address)

13617 S.E. Highway 70 Arcadia Fla. 34266-7800
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

(1). Would it be unconstitutional if the Florida Commission on Offender Review (formerly the Florida Parole Commission) knowingly operate Florida's Consolidated Senate and House Bill 1574, 1422, 1430, 1438, 1439, and 1567, which passed as Chapter 88-122 and, among other things, enacted Sec. 947.1405, Florida Statutes (1988), which was eliminated from the Senate's Journal on June 3, 1988, after the Senate amended the bill by striking everything after the enacting clause?

(2). Would it be unconstitutional if the Florida Commission on Offender Review (formerly the Florida Parole Commission) knowingly operate Florida's Consolidated Senate and House Bill 1574, 1422, 1430, 1438, 1439, and 1567, which passed as Chapter 88-122 and, among other things, enacted Sec. 947.1405, Florida Statutes (1988), which was eliminated from the Senate's Journal on June 3, 1988, after the Senate amended the bill by striking everything after the enacting clause, despite the bill not being finally enacted prior to the amendment of the statute, and a prisoner's offenses being committed?

(3). Does the Florida Commission on Offender Review (formerly the Florida Parole Commission) violate the ex post facto clause of both the United States and Florida Constitutions when it applies the 1988 version or the 1989 amended version of Sec. 947.1405, Florida Statutes, to a prisoner's sentence where the Florida Senate amended Consolidated House Bill 1574, 1422, 1430, 1438, 1439, and 1567, which passed as Chapter 88-122 and, among

other things, enacted sec. 947.1405, Florida Statutes (1988), which was eliminated from the Senate's Journal on June 3, 1988, after the Senate amended the bill by striking everything after the enacting clause, in which, neither the House Bill nor the Statute was re-enacted prior to the date a prisoner's offenses were committed ?

(A). Does the Florida Department of Corrections knowingly violates the ex post facto clause of both the United States and Florida Constitutions when it applies the 1989 amended version of sec. 944.28(1), Florida Statutes (effective date September 1, 1990), to a prisoner's sentence who's offenses were committed on October 1, 1989 and January 21, 1990, to forfeit a prisoner's previously awarded one-third statutory basic gain-time, earned incentive gain-time or their prison overcrowding early release provisional credits upon a prisoner's revocation of Conditional release when a prisoner's offenses were committed prior to the Statute's amended effective date ?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: *The Florida Department of Corrections, and The Florida Commission On Offender Review (formerly the Florida Parole Commission).*

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	14

INDEX TO APPENDICES

APPENDIX(A)- *Decision of State Court of Appeal.*

APPENDIX(B)- *Decision of State Trial Court.*

APPENDIX(C)- *Decision of State Supreme Court Denying Review.*

APPENDIX(D)- *Order State Court of Appeal Denying Rehearing.*

APPENDIX(E)- *Order State Court of Appeal Granting Extension for Certiorari.*

APPENDIX(F)- *Decision of State Court of Appeal Waiving Court cost.*

APPENDIX(G)- *Certificate of Conditional Release.*

APPENDIX(H)- *Certificate of Conditional Release.*

APPENDIX(I)- *Certificate of Conditional Release.*

APPENDIX(J)- *Florida Commission On Offender Review Revocation Memorandum.*

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Deason v. State</u> , 688 So.2d at 991 (Fla. 1st DCA 1997)	12
<u>Deason v. State</u> , 705 So.2d at 1375 (Fla. 1998)	12
<u>Duncan v. Moore</u> , 754 So.2d 708 (Fla. 2000)	13
<u>Foley v. State</u> , 969 So.2d 283 (Fla. 2007)	11
<u>Gomez v. Singletary</u> , 733 So.2d 199 (Fla. 1998)	12
<u>Grate v. State</u> , 750 So.2d 625 (Fla. 1999)	11
<u>Lynce v. Mathis</u> , 117 S.Ct. 891 (1997)	12
<u>Persaud v. State</u> , 838 So.2d 529 (Fla. 2003)	11
<u>Stallworth v. State</u> , 827 So.2d 974 (Fla. 2002)	11
<u>Torney v. Moore</u> , 804 So.2d 137 (Fla. 2002)	12
<u>Weaver v. Carham</u> , 101 S.Ct. 960 (1981)	12
<u>Whipple v. State</u> , 431 So.2d 1011 (Fla. 2d DCA 1983)	11

STATUTES AND RULES

Section 947.1405, Florida Statutes (1988)	pass
Sec. 947.1405, Florida Statutes (1989)	pass
Sec. 944.28(1)(note-1), Florida Statutes (1989)	pass
Sec. 944.275(a)(a), Florida Statutes (1983, 1994)	5

OTHER

Fla. House and Senate: Bill 1574, 1422, 1438, 1439, and 1567	II - III
Chapter 88-122	II - III
Florida Constitution	pass
Federal Constitution	pass
Amendment XIV, United States Constitution	4

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Circuit Court of the Twelfth Federal Circuit court appears at Appendix B to the petition and is

- ☐ reported at NA; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 11, 2018.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including rehearing (date) on June 16, 2017 (date) in Application No. A E.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Florida Commission on Offender Review (formerly the Florida Parole Commission) relies upon the Senate and House Consolidated Bill 1574, 1422, 1430, 1438, 1439, and 1567, which passed as Chapter 88-122 and, among other things, enacted Section 947.1405, Florida Statutes (1988), to place prisoners on Conditional Release supervision for the amount of time equal to the gain-time they have accrued. If the Conditional Release is revoked and the prisoner is returned to prison as a Conditional release violator, the Florida Department of Corrections declares a forfeiture of all a prisoner's gain-time earned up to the date of his or her release pursuant to Section 944.28(1), Florida Statutes (1989), despite the fact that:

(A) Consolidated House Bill 1574, 1422, 1430, 1438, 1439, and 1567, which passed as Chapter 88-122 and, among other things, enacted Section 947.1405, Florida Statutes (1988), was inoperative and officially eliminated from the Senate's Journal when the Senate took up the first engrossed bill on June 3, 1988, the Senate amended the bill by striking everything after the enacting clause and the consolidated bill was not finally enacted prior to the date in effect at the time the prisoner's offenses were committed.

(B) The prisoner's underlying criminal offenses were committed on October 1, 1989 and January 21, 1990, prior to the effective amended date of Section 944.28(1), Florida Statutes (1989), (effective date September 1, 1990), providing for forfeiture of gain-time upon Conditional release supervision, which violated the ex post facto clause when applied to prisoner's who's offenses were committed prior to the statutes amended effective date.

Amendment XIV, United States Constitution,

*"No State shall make or enforce any law which (...) shall
deprive any person of life, liberty, or property, without due
process of law; nor deny to any person within its jurisdiction
the equal protection of law."*

STATEMENT OF THE CASE

In 1990, Petitioner Melvin was originally charged with two felonies in each of two separate informations. In Miami-Dade County Circuit Court case no. 89-16022 the State charged Melvin with Attempted First-Degree Murder with a Firearm while engaged in a criminal offense and subsequently released on bond in November 1989. He was rearrested on January 21, 1990 on Case no. 90-3133 for separate charges of Second-Degree Murder with a Firearm while engaged in a criminal offense.

On June 14, 1990, the two informations were consolidated for judgment and sentencing. On that same date Petitioner Melvin's trial attorney informed the trial judge and the State Attorney that Melvin would withdraw his previously entered pleas of not guilty and, would enter into a negotiated plea agreement with the State where in he would plead no contest to both informations in exchange for a concurrent sentence of 30-years State prison with a three-year firearm minimum mandatory included under Florida's Sixty-Five (65) percent sentencing guidelines law and, the awards of Statutory basic gain-fine in a lump-sum and [additional] incentive gain-fine pursuant to Section 944.275 (4)(a), Florida Statutes (1983, 1994), to shorten his stay in prison with no other special conditions of any kind to follow.

Subsequently thereafter, the trial judge informed Melvin of certain constitutional rights that he would be giving up by entering into the plea agreement with the State:

"the right to remain silent; the right to a jury trial; the right to confront adverse witnesses; the right to present witnesses and, the right to appeal."

Melvin said that he was willing to give up those rights to enter into the plea agreement with the State based upon the information that his trial attorney had conveyed to him.

Consequently, the trial judge accepted Melvin's plea of no contest and adjudicated him guilty of attempted First-Degree Murder and Second-Degree Murder. Thereupon, the trial judge sentenced Melvin as follows:

Dade County Case No. 89-46022:

Count I: Attempted First Degree Murder: 30 years
(3-year firearm minimum mandatory)

Count II: Unlawful Possession of a Firearm while
Engaged in a Criminal offense: 15 years;

Dade County Case No. 90-3133:

Count I: Murder - Second Degree with a Firearm
(30 years) (3-year firearm minimum mandatory)

Count II: Unlawful Possession of a Firearm while
Engaged in a Criminal offense: (15 years).

All sentences were ordered by the Court to run concurrently one with the other under Florida's sixty-five percent sentencing guidelines law. The State Attorney's Office did not appeal the negotiated plea agreement.

On July 9, 1986, Petitioner Melvin entered into the Florida Department of Corrections' custody to begin service of his overall concurrent 30-year sentence.

Through the accumulation of (169 days credit for time spent in the County jail prior to his conviction, actual prison time served 4,865 days, or just over 12 1/2 years, 3,600 days of statutory basic gain-time awarded pursuant to section 944.275(4)(a), Florida Statutes (1983, 1994), or just under 10-years, 2,880 days of [additional] incentive gain-time earned for his institutional labor and good behavior, plus 1,109 days of prison overcrowding early release provisional credits awarded pursuant to Tormay v. Moore, 824 So. 2d 137 (Fla. 2002) (inmates entitled to overcrowding gain-time based on statutes in effect at the time of offense), less 120 days of gain-time forfeited due to disciplinary actions, Petitioner Melvin was conditionally released from the Department of Corrections' custody on July 25, 2002 to conditional release supervision until December 19, 2020 against his will in accordance with section 947.1405, Florida Statutes (1988, 1989).

There was no judicial order or any judgment to which Petitioner Melvin was required (or allowed) to object. So, when Melvin was presented with a "certificate of conditional release" by prison officials that outlined the conditions of his release and included the improperly calculated date on which his conditional release would become unconditional (unless earlier revoked), he refused to sign the certificate. See Exhibits (G) and (H).

Once again through the accumulation of actual prison time served (4,151 days, or just over 11 1/2 years and, 2,400 days, or just over 6 1/2 years of [additional] incentive gain - fine), Refitioner Melvin was conditionally released from the Department of Corrections' custody

was then set for December 30, 2000. From July 25, 2002 to March 18, 2003, Melvin's new tentative release date extended 233 days for the period of time he was released from custody amended date September 1, 1990, and Refitioner Melvin's release date was pursuant to section 944.08(1)(note-1), Florida Statutes (1989), (effective 30-year sentence were forfeited by the Florida Department of Corrections gain - fine previously applied to Melvin's original overall concurrent prison as a conditional release violator and, the 7,589 days of was ordered by the Commission on Offender Review to remain in Melvin's conditional release was revoked on November 5, 2003 and he for (2 days) out fine from February 12, 2003 to February 13, 2003. When revoked Melvin's conditional release effective March 18, 2003, with credit On November 5, 2003, the Florida Commission on Offender Review

committing a technical violation. Department of Corrections custody as a conditional release violator by rearrested and, on September 29, 2004, he was returned to the (formerly the Florida Parole Commission). On March 18, 2003, Melvin was filed a violation report with the Florida Commission on Offender Review shortly after Melvin's release, his conditional release officer

On August 1, 2014 to conditional release supervision until August 8, 2019, against his will in accordance with Section 947.1405, Florida Statutes (1988, 1989). As mentioned above, there was no judicial order or any judgment to which Melvin was required (or allowed) to object. So, when Melvin was presented with a third "certificate of conditional release" by prison officials that outlined the conditions of his release and improperly calculated the date on which his conditional release would become unconditional (unless earlier revoked), he again refused to sign the certificate. See Ex. (I).

On November 6, 2014, Petitioner Melvin violated the terms and conditions of his conditional release by committing a technical violation by testing positive for using marijuana and cocaine drugs. Subsequently, Melvin's conditional release officer filed a violation report with the Florida Commission On Offender Review (formerly the Florida Parole Commission). On November 24, 2014, Melvin was rearrested and, on January 7, 2015, he was returned to the custody of the Florida Department of Corrections to await a conditional release violation hearing.

On January 15, 2015, during the violation hearing the hearing examiner represented that if Petitioner Melvin would admit to the alleged violation that he would be restored to conditional release to include substance abuse treatment. See Ex. (J). On February 25, 2015, the Commission on Offender Review revoked Melvin's conditional release and ordered that he remain in prison. Consequently, the 2,400 days of incentive gain-time were forfeited by the

Department of Corrections pursuant to Section 944.28(1), Florida Statutes (1989), (effective amended date September 1, 1990), and Melvin's release date was extended 114 days for the period of time that he was released from custody from August 1, 2014 to November 24, 2014. Melvin's new tentative release date was then set for August 9, 2020. Since then, Melvin has sought various types of relief with respect to the placing him on conditional release, the revocation of his conditional release and the improper handling of his gain-time.

On July 20, 2016, Petitioner Melvin refiled an Emergency Petition for Writ of Habeas Corpus in the lower court Desoto County, Florida under case no. 2016-CA-350 after exhausting his administrative remedies. Generally, he raised several issues concerning both the Florida Commission on Offender Review (formerly the Florida Parole Commission) and the Florida Department of Corrections. The lower court in denying the habeas petition on April 6, 2017, discerned 6 specific claims arising from Melvin's general claims. See Ex. (B).

On April 18, 2017, Petitioner Melvin filed a motion for extension of time to file a timely motion for rehearing. On April 20, 2017, Melvin filed a timely Motion for Rehearing. On April 26, 2017, he filed a motion for enlargement of time to file a petition for writ of certiorari.

On May 4, 2017, Melvin filed a timely Petition for Writ of Certiorari in the Second District Court of Appeal of Florida Case no. 2017-1848.

On May 8, 2017, the lower court of DuSable County, Florida denied Melvin's motion for rehearing on the authority of Whipple v. State, 431 So. 2d 1011 (Fla. 2d DCA 1983).

On November 22, 2017, the Second District Court of Appeal of Florida denied Melvin's petition for writ of certiorari without a written opinion. See Ex. (A)

In December 2017, Melvin filed a motion for extension of time to file a timely motion for rehearing.

On December 21, 2017, the Second District Court of Appeal of Florida granted Melvin's motion for extension of time to file his motion for rehearing.

On March 8, 2018, the Second District Court of Appeal of Florida denied Melvin's motion for rehearing.

On April 1, 2018, Petitioner Melvin filed a Petition for All Writs in the Supreme Court of Florida. On April 11, 2018, the Supreme Court of Florida dismissed Melvin's petition for all writs on the authorities of Foley v. State, 969 So. 2d 283 (Fla. 2007); Persaud v. State, 838 So. 2d 529 (Fla. 2003); Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002); Grate v. State, 750 So. 2d 625 (Fla. 1999). See Ex. (C). And this Petition for Writ of certiorari follows where in Melvin has no other adequate remedies.

REASONS FOR GRANTING THE PETITION

The offenses were committed on October 1, 1989 and January 21, 1990. At the time of the offenses the following gain-time statutes were in effect:

(1) Statutory basic gain-time at the rate of 10 days for each month of the sentence imposed, (2) [additional] incentive gain-time up to 20 days per month, and (3) prison overcrowding early release provisional credits pursuant to Lynce v. Mathis, — U.S. —, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997), Gomez v. Singletary, 733 So.2d 499 (Fla. 1998), Tormey v. Moore, 824 So.2d 137 (Fla. 2002) Citing Weaver v. Graham, 450 U.S. 24, 29, 101 S.Ct. 960, 964, 67 L.Ed. 17 (1981).

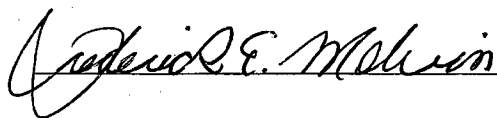
There was no statutory authority to place a Florida prisoner on Conditional Release supervision at the time of Petitioner Melvin's offenses pursuant to the inoperative function of section 947.1405, Florida Statutes (1988, 1989), for the amount of gain-time that he have accrued, because on June 1, 1988, two days prior to the favorable vote by both the Florida Senate and House on Consolidated CS/HB 1574, 1422, 1430, 1438, 1439, and 1567, passed as Chapter 88-122 and, among other things, enacted section 947.1405, was eliminated from the Senate's Journal on June 3, 1988, after the Senate amended the Bill by striking everything after the enacting clause, and the consolidated bill was not finally enacted prior to Petitioner Melvin's relevant offenses being committed which violated the Ex Post Facto Clause. See Deason v. State, 688 So.2d at 991 (Fla. 1st DCA 1997) approved Deason v. Dep't of Corrections, 705 So.2d at 1375 (Fla. 1998).

Also at the time of Melvin's offenses there was no statutory authority for forfeiture of a Florida prisoner's gain-time he or she have accrued upon revocation of conditional release pursuant to the 1989 amended version of section 944.28(1), Florida Statutes, (effective date September 1, 1990), which violates the ex post facto clause when applied to Petitioner Melvin's offenses committed on October 1, 1989 and January 21, 1990. See Sec. 944.28(1) (Note-1), Florida Statutes (1989). See also Duncan v. Moore, 754 So.2d at 711 (foot note -1) (Fla. 2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: June 4, 2018