No. SC 18-46

IN THE
SUPREME COURT OF THE UNITED STATES

ANGEL BARREIRO
Petitioner,

Florida, et. al
Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Angel Barreiro
Everglades Correctional Inst.
1599 S.W. 187th Avenue
Miami, Florida 33194

QUESTION PRESENTED

Whether all 4,626 pre-1994 parole eligible Inmates in the State of Florida whom all are equally situated under the statutory schemes and criteria's of Fla. Stat. 947, just like the pre-1994 Juvenile Inmates, should also benefit from the Florida Supreme Court's ruling in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016) that based on the Florida's Parole process under the existing statutory scheme, it is unconstitutionally altering a life sentence with parole eligibility into a de facto life without parole because the presumptive parole release dates (PPRD) being established are far exceeding a parole eligible inmate's life expectancy.

LIST OF PARTIES

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 subject of this petition is as follows:

1. *The Eleventh Judicial Circuit Court* of Miami-Dade County, Case No.: F84-2946, before Honorable Judge Tinker Mender, filed April 27, 2017.

2. *The Third District Court of Appeal*, Miami-Dade County, Case No.: 3D17-1180, before Honorable Judge Rothenberg, Lagoa and Scalles, filed June 28, 2017.

3. *The Twentieth Judicial Circuit Court* of Charlotte County, Florida, Case No.: 17-348CA, before Honorable Judge Lisa S. Porter, filed April 24, 2017.

4. *The Second District Court of Appeal*, Lakeland, Florida. Case No.: 2D17-2492, before Honorable Judge Kelly, Black and Salario, filed December 01, 2017.

5. *The Florida Commission on Offender Review*

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Petitioner respectfully prays that a *Writ of Certiorari* issues to review the judgment below.

OPINION BELOW

The opinion of the highest State Court to review the merits appears at Appendix A to the petition and is reported at *Atwell v. State*, 197 So.3d 1040 (Florida Supreme Court, decision filed May 26, 2016).

JURISDICTION

The date on which the highest State Court decided my case was MARCH 13, 2018. A copy of that decision appears at Appendix B. therefore, the jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause; The constitutional Provision that prohibits the government form unfairly or arbitrarily depriving a person of life, liberty ... those rights under the 5th, 6th, and 14th Amendments are so fundamentally important as to require compliance with due process standards of fairness and justice.

Equal Protection Clause, U.S.C. 5TH and 14th Amendment Provision requiring the states to give similarly situated persons or classes similar treatment under the law.

Equal Protection Clause, Florida Constitution Article I, § 2, all natural persons, female and male alike are equal before the law. Both Sections §2 and 9 of Florida Constitution States: No State shall deprive any person life or liberty without due process, nor deny to any person within its jurisdiction the equal protection of the laws.

Cruel and Unusual Punishment, U.S.C. 8th Amendment an Florida Constitution, Article I, §17 provides the interpretation of the cruel and unusual punishment clause is to be construed in conformity with the United States Supreme Court's decisions.

Florida Statute § 947, which governs the Florida parole process and criteria's to all Florida eligible inmates in the State of Florida.

STATEMENT OF THE CASE

The Petitioner was found guilty of First Degree Murder with a Firearm and sentenced to Life with Parole eligibility after 25 years under Fla. Sta. §775.082 (1)(1984).

On May 27, 2009, an initial parole interview was conducted where based on Petitioner's accomplishments and signs of rehabilitation the Parole Examiner recommended that the Parole Commission set his presumptive parole release date (PPRD) at October 29, 2025. See: (Appendix C). However, on August 5, 2009, the Parole Commission ruled not to accept the examiner's recommendation, thereby establishing a presumptive parole release date for January 29, 2051 (Appendix D).

On Petitioner's subsequent Parole Interview which was set for March of 2014, his presumptive Parole release date for the year 2051 remained the same (Appendix E). On Petitioner's next interview, which have been set for the year 2021, he will be 64 years old and he will have a total of 24 years worth of excellent institutional conduct. However, regardless of the obvious mitigating evidence and signs of rehabilitation with set goals in place, based on the Florida parole process under the existing statutory scheme as ruled in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016) the Petitioner has no realistic chance of a change in his presumptive parole release date.

In the year 2051, when the Petitioner is set to be paroled, he will be 94 years old or dead. This realistic dilemma is shared by all pre-1994 parole eligible inmates, since most have been given presumptive parole release dates which far exceeds his or her life's expectancy.

Also to this matter, the Florida Supreme Court's in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016) ruled that the Florida's parole process under the existing statutory schemes unconstitutionally alters a life sentence without parole eligibility into a de facto life without parole. However, the Court unreasonably applied this favorable relief only to pre1994 juvenile inmates and not to all pre-1994 parole eligible inmates whom are equally situated under Fla. Stat. §947.

The Court in *Atwell* clearly and unambiguously judicially scrutinized the way Florida's parole process operates under the existing statutory scheme of chapter 947. this chapter, governs the objective statutory criteria's and numerous subsections which determines the presumptive parole release dates of all pre-1994 parole eligible inmates regardless of age when his or her crimes were committed or what type of crime.

Any parole eligible inmate falls under Fla. Stat. 947, which its process under the existing statutory scheme have been ruled to be unconstitutional. Ruling that Fla. Stat. § 947 is unconstitutional only for one selected group of parole eligible inmates, and not the others violates due process as well as equal protection under the law.

Because of this decision in *Atwell*, the Petitioner marshaled together a logical categorical challenge as to why only one selected group of the pre-1994 parole eligible inmates can benefit, instead of all pre-1994 parole eligible inmates as they all are equally situated and fall under the same statutory scheme of chapter 947.

On April 10, 2017, he filed a rule 3.800 (a) motion in the Miami-Dade County, 11th Judicial Circuit Court which got denied (Appendix F). This Denial was appealed to the Third District Court of Appeal on June 28, 2017, which got denied (Appendix G).

On April 14, 2017 he also filed a Petition for Writ of Habeas Corpus in the County he is a prisoner at, Charlotte County 20th Judicial Circuit Court. The Trial Court entered an order to transfer said Petition to the Miami Court (Appendix H). The Petitioner filed an objection, but it got denied (id). An appeal was taken in the Second District Court of Appeal but got denied on December 01, 2017 (Appendix I). In these lower Court's proceedings, the Petitioner argued that the rest of the pre-1994 parole eligible inmates not benefiting from the *Atwell*, are not being provided due process and equal protection under the current law and that the presumptive parole release dates they also have far exceeds their life expectancy thereby it is cruel and unusual punishment. However, this issue of great public interest (which consist of 4,626 parole eligible inmate's family members and others advocates) has evaded any type of review.

Under both the State and United States, Constitution equal protection does not require identity of treatment. It only requires that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate as to be wholly arbitrary. *Damiano v. Florida Parole*, 785 So.2d 929(11th Cir. 1986). When the Florida Supreme Court selected this particular course of action against the way Florida's parole process operates in establishing presumptive parole release dates that far exceeds an inmate's life expectancy it did it because of the adverse effect upon the pre-1994 parole eligible inmates whom committed their crimes as Juveniles.

However, the same adverse effect the Florida's parole process has on this selected group of inmates is the same adverse effect on the rest of the pre-1994 parole eligible inmates. Applying the rational basis test, there does not exist any conceivable State of facts or plausible reasons to justify the favorable ruling in *Atwell*. For only the pre-1994 Juvenile inmates who's PPRD far exceeds his or her life expectancy and not for the other pre-1994 parole eligible inmates who's PPRD far exceeds their life expectancy.

In the instant petition, the Petitioner's established presumptive parole release date (PPRD) is for the year 2051, which far exceeds his life expectancy, as he will be either 94 years old or dead. In 1984 when he was convicted of First Degree Murder and sentenced to life with parole eligibility after serving 25 years, he actually had an opportunity at being released. However, after his initial parole

interview on May 27, 2009 his opportunity at release through the parole system vanished by such lengthy years in which unconstitutionally alters his parole eligible sentence into a de facto life without parole (Appendix C and D).

It is cruel and unusual punishment to provide release to only one group of pre-1994 parole eligible inmates because their presumptive parole release date far exceeds their life expectancy and denied the same favorable release to the others pre-1994 parole eligible inmates which are equally situated under the same statute rendered unconstitutional, but are being unreasonably left to die in prison. This is contrary to the United States Supreme Court's decision in *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641 (2008)("That the Eighth Amendment protection against excessive or cruel and unusual punishment flows from the norms that currently prevail and it's applicability must change as society changes"). Society has now changed in its overall view on the way Florida's parole process operates.

Statistic's show the cruel and unusual punishment being unnecessarily inflicted as it is practically guaranteed that pre-1994 parole eligible adult inmates will die in prison. Based on the 2016 Bloombers Report into the average American life span, a study (PDF) released by the society of actuaries, the average 65 year old man should die in a few months short of his 86th Birthday. It has also been recently reported on December 22, 2017 by CBS this morning "that the average life expectancy for U.S. men and woman has dropped to 78 years of age". This was gathered by the U.S. Census Bureau.

In an article by the Human Rights watch (2016) a study using data from the United States Bureau of Justice Statistic (BJS) between the years of 2001 and 2007 a total of 8,486 prisoner's age 55 years or older died in prison. This number has increased since.

Yet, by the Florida Parole Commission's own report, it states that in the fiscal year of 2013 – 2014 only 23 of the 4,626 parole eligible inmates less than half of 1% were granted parole. Of the total parole eligible inmates, about 85% has already spent in prison over 35 years and their age averages from 55 or older. In the fiscal year of 2014 – 2015, no offenders were paroled. In the fiscal year of 2015 – 2016, a total of 619 parole interviews were conducted and nobody was paroled.

Thus, based on the way Florida's parole process operates by establishing presumptive parole release dates (PPRD) far exceeds a parole eligible inmates life expectancy and based on these statistical reports, it is cruel and unusual punishment simply because the others pre – 1994 inmates under Fla. Stat. 947 being unaccounted for, have no realistic chance at being paroled.

The U.S.C. 5th , 8th and 14th Amendment requires an evaluation as to this constitutional question presents an issue of great importance beyond the Petitioner himself. A resolution on the rights of equal protection under the law decided in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016) will have an immediate effect on all 4,626 parole eligible inmates and their families in the State of Florida.

REASONS FOR GRANTING THE PETITION

Because there is no rational reason for the differential in treatment, when both pre-1994 parole eligible Juvenile and Adult inmates are equally situated under the Florida's parole existing statutory scheme and criteria's of Fla. Stat. §947. Which has been ruled to be unconstitutionally altering a life sentence with parole eligibility into a de facto life without parole.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Barreiro Angel

Angel Barreiro

3/23/18

Date