IN THE

SUPREME COURT OF THE UNITED STATES

October TERM, 2018

ARTHUR O'DERRELL FRANKLIN
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA STATE OF FLORIDA

Franklin v. State, 258 So.3d 1239 (2018)
43 Fla. L. Weekly S556

258 So.3d 1239
Supreme Court of Florida.

Arthur O'Derrell FRANKLIN,
Petitioner,
v.
STATE of Florida, Respondent.

No. SC14-1442
|
November 8, 2018

Synopsis
Background: Defendant filed a petition for post-conviction relief. The Circuit Court, Duval County, Tatiana Salvador, J., denied the petition. Defendant appealed. The District Court of Appeal, Ray, J., 141 So.3d 210, affirmed. Defendant petitioned for further review.

[Holding:] The Supreme Court held that concurrent sentences of 1,000 years in prison with parole eligibility did not violate the categorical rule of *Graham v. Florida*, 560 U.S. 48, that any life sentence for a juvenile nonhomicide offender be accompanied by some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation before the end of the sentence and during the offender's natural life.

Affirmed.

West Headnotes (1)

[1] **Sentencing and Punishment**
Total sentence deemed not excessive
Sentencing and Punishment
Juvenile offenders

350HSentencing and Punishment
350HIIISentence on Conviction of Different Charges
350HIII(D)Disposition
350Hk645Total sentence deemed not excessive
350HSentencing and Punishment
350HVIICruel and Unusual Punishment in General
350HVII(L)Juvenile Justice
350Hk1607Juvenile offenders

Defendant's concurrent sentences of 1,000 years in prison with parole eligibility did not violate the categorical rule of *Graham v. Florida*, 560 U.S. 48, that any life sentence for a juvenile nonhomicide offender be accompanied by some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation before the end of the sentence and during the offender's natural life.

6 Cases that cite this headnote

*1240 Application for Review of the Decision of the District Court of Appeal – Direct Conflict of Decisions, First District - Case Nos. 1D13-2516, 1D13-2517, and 1D13-2518, (Duval County)

Attorneys and Law Firms

Andy Thomas, Public Defender, and Glen P. Gifford, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida, for Petitioner

Pamela Jo Bondi, Attorney General, Trisha Meggs Pate, Bureau Chief, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, Florida, for Respondent

Opinion

PER CURIAM.

At the age of 17, Arthur O'Derrell Franklin committed a series of brutal crimes against women. In each case, the female victim testified that Franklin violently attacked her, kidnapped her, drove her to a secluded area and brutally battered, raped, and robbed her while evidencing an extraordinary cruelty and a perverse enjoyment of the suffering he was inflicting. In one case, "the physician who performed the sexual assault battery exam testified that the victim suffered the worst injuries the physician had ever observed." *Franklin v. State*, 141 So.3d 210, 215 (Fla. 1st DCA 2014) (Thomas, J., concurring). In each of three cases, Franklin was convicted of armed kidnapping, kidnapping, armed sexual battery, sexual battery, armed robbery, robbery, and aggravated assault, and was sentenced to three 1000-year concurrent sentences with parole. *Id.* at 213 (Thomas, J., concurring). The Parole Commission conducted Franklin's initial parole review and ten subsequent review hearings, and has calculated a presumptive parole release date of 2352. Following the United States Supreme Court's decisions in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), Franklin filed a motion to vacate his sentences pursuant to Florida Rule of Criminal Procedure 3.850, arguing that his sentences violate the Eighth Amendment to the United States Constitution as delineated in *Graham* and requesting resentencing. However, the trial court denied the motion, and the First District Court of Appeal affirmed on appeal. *Franklin*, 141 So.3d at 211. We accepted discretionary review,[1] and for the reasons explained below we now approve the First District's decision and hold that Franklin's sentences with the possibility of parole do not violate *Graham*, meaning that Franklin is not entitled to resentencing under chapter 2014-220, Laws of Florida.

1 *See* art. V, § 3(b)(3), Fla. Const.

In *Graham*, 560 U.S. at 75, 130 S.Ct. 2011, the Supreme Court held that the Eighth Amendment categorically forbids a sentence of life without parole for juvenile nonhomicide offenders, and required that any life sentence for a juvenile nonhomicide offender be accompanied by "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" before the end of the sentence ***1241** and during the offender's natural life. Notably, the Court did not require that the State actually release a juvenile offender during his natural life or guarantee his eventual freedom, as "those who commit truly horrifying crimes as juveniles may turn out to be irredeemable" and "will remain behind bars for life." *Id.*

Later in *Miller*, 567 U.S. at 479, 132 S.Ct. 2455, the United States Supreme Court extended the reasoning of *Graham* and created another Eighth Amendment rule prohibiting the imposition of a mandatory life sentence without the possibility of parole for juvenile homicide offenders. *Miller* did "not foreclose a sentencer's ability to [impose a life without parole sentence] in homicide cases," but required the sentencer to first "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480, 132 S.Ct. 2455.

Applying principles discussed in *Graham* and *Miller*, a majority of this court held in *Atwell v. State*, 197 So.3d 1040, 1048-50 (Fla. 2016), that a juvenile homicide offender's life *with parole* sentence violated the Eighth Amendment based largely upon a presumptive parole release date set far beyond Atwell's life expectancy. The decision below, finding no Eighth Amendment violation, despite a presumptive parole release date set far beyond Franklin's life expectancy, clearly conflicts with *Atwell*.[2]

2 The First District decided *Franklin* before we decided *Atwell*. However, we stayed *Franklin* pending resolution of several other cases.

However, instructed by a more recent United States Supreme Court decision, *Virginia v. LeBlanc*, —— U.S. ——, 137 S.Ct. 1726, 198 L.Ed.2d 186 (2017), we have since determined that the majority's analysis in *Atwell* improperly applied *Graham* and *Miller*. *See State v. Michel*, 257 So.3d 3, 6, 2018 WL 3613383 (Fla. July 12, 2018) (explaining that *LeBlanc* made clear that it was not an unreasonable application of *Graham* "to conclude that, because the [state's] geriatric release program employed normal parole factors, it satisfied *Graham*'s requirement that juveniles convicted of a nonhomicide crime have a meaningful opportunity to receive parole")(quoting *LeBlanc*, 137 S.Ct. at 1729)). As we held in *Michel*, involving a juvenile homicide offender sentenced to life with the possibility of parole after 25 years, Florida's statutory parole process fulfills

Graham's requirement that juveniles be given a "meaningful opportunity" to be considered for release during their natural life based upon "normal parole factors," *LeBlanc*, 137 S.Ct. at 1729, as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review, *Michel*, 257 So.3d at 6 (citing §§ 947.16-.174, Fla. Stat.).

As in *Michel*, because Franklin's sentences include eligibility for parole there is no violation of the categorical rule announced in *Graham*. *Michel*, 43 Fla. L. Weekly at S299-300, 257 So.3d at ——.

CONCLUSION

We approve the First District's decision in *Franklin* and hold that Franklin's 1000-year sentences with parole eligibility do not violate the categorical rule of *Graham*.

It is so ordered.

ANY MOTION FOR REHEARING OR CLARIFICATION MUST BE FILED WITHIN SEVEN DAYS. A RESPONSE TO THE MOTION FOR REHEARING/CLARIFICATION MAY BE *1242 FILED WITHIN FIVE DAYS AFTER THE FILING OF THE MOTION FOR REHEARING/CLARIFICATION. NOT FINAL UNTIL THIS TIME PERIOD EXPIRES TO FILE A REHEARING/CLARIFICATION MOTION AND, IF FILED, DETERMINED.

CANADY, C.J., and LEWIS, POLSTON, and LAWSON, JJ., concur.

PARIENTE, J., dissents with an opinion, in which QUINCE and LABARGA, JJ., concur.

PARIENTE, J., dissenting.

Arthur Franklin committed nonhomicide crimes at age 17 and received concurrent sentences of 1000 years. Now 51, he has spent his entire adult life in prison. Franklin has appeared before the Parole Commission 11 different times between 1987 and 2014. Yet, there is no indication that the Parole Commission has made the constitutionally required considerations regarding whether Franklin is entitled to release based on maturity and rehabilitation.

Most recently, when the trial court held a hearing to consider Franklin's motion for relief from his 1000-year sentences, Franklin was without counsel and no evidentiary hearing was held. At the very least, this case should be

remanded to the trial court for an evidentiary hearing, where Franklin is represented by counsel, to determine whether the parole process, as applied to his case, provides Franklin the constitutionally required individualized consideration and a meaningful opportunity for release based on demonstrated maturity and rehabilitation. *Montgomery v. Louisiana*, —— U.S. ——, 136 S.Ct. 718, 734-36, 193 L.Ed.2d 599 (2016).

As the record stands, the earliest Franklin could be released from prison based on existing parole guidelines is 2352—369 years after his crimes. At his first parole review in 1987, the Parole Commission assessed 4400 months for the aggravating factors of his multiple offenses, giving Franklin a presumptive parole release date (PPRD) of 2350. The PPRD varied only a few years in his ten subsequent parole reviews. There is no indication that Franklin has even a chance of being released before the end of his natural life expectancy. Thus, Franklin has no "hope for some years of life outside prison walls." *Id.* at 737.

Perhaps even more salient than the defendant in *Atwell*[3] or the defendant in *Michel*,[4] the operation of Florida's parole system in this case leaves Franklin with a sentence that is "guaranteed to be just as lengthy as, or the 'practical equivalent of,' a life sentence without the possibility of parole." *Atwell*, 197 So.3d at 1048. This case highlights how, contrary to the majority's suggestion, Florida's current parole system affords juvenile offenders no *meaningful* opportunity for release. As I have previously explained:

> In *Atwell*, this Court concluded that "Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder." 197 So.3d at 1041. We further explained that Florida's "current parole process ... fails to take into account the offender's juvenile status at the time of the offense and effectively forces juvenile offenders to serve disproportionate sentences." *Id.* at 1042.
>
> This Court could not have been clearer in its conclusion that "[p]arole is, simply put, 'patently inconsistent with the legislative intent' as to how to comply with ***1243** *Graham* [*v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010),] and *Miller* [*v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)]." *Id.* at 1049 (quoting *Horsley*[*v. State*], 160 So.3d [393,] 395 [(Fla. 2015)]). As the *Atwell* Court noted, while the Legislature could have chosen "a parole-based approach" to comply with *Miller* and *Graham*, it chose instead to fashion a different remedy of resentencing under a new law, which explicitly considers the *Miller* factors. *Id.*
>
> Specifically, Florida's current parole system does not provide juvenile offenders an opportunity to

demonstrate that release is appropriate based on maturity and rehabilitation for several reasons. First, the Commission relies on static, unchanging factors, such as the crimes committed and previous offenses, when determining whether or not to grant an offender parole. *See* Fla. Admin. Code. R. 23-21.007. Under *Graham*, however, a juvenile's "meaningful opportunity to obtain release [must be] based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75 [130 S.Ct. 2011]. Relying on static factors such as the offense committed ignores the focus on the "demonstrated maturity and rehabilitation" that *Graham* and *Miller* require. *Id.*

Second, an inmate seeking parole has no right to be present at the Commission meeting and has no right to an attorney. Although the hearing examiner sees the inmate prior to the hearing, the commissioners do not. Fla. Admin. Code R. 23-21.004(13); 23-21.001(6). Third, there is only a limited opportunity for supporters of the inmate to speak on the inmate's behalf. Fla. Comm'n on Offender Review, *Release and Supervision Frequently Asked Questions*, https://www.fcor.state.fl.us/mediaFactSheet.shtml (last visited April 10, 2018) ("All speakers, in support, must share the allotted 10 minute time frame for speaking. All speakers, in opposition, must share the allotted 10 minute time frame for speaking."). Finally, there is no right to appeal the Commission's decision, absent filing a writ of mandamus. *Armour v. Fla. Parole Comm'n*, 963 So.2d 305, 307 (Fla. 1st DCA 2007).

Michel, 257 So.3d at 15 (Pariente, J., dissenting).

3 *Atwell v. State*, 197 So.3d 1040 (Fla. 2016).

4 *State v. Michel*, 257 So.3d 3 (Fla. July 12, 2018).

The majority again displaces this Court's precedent in *Atwell*, arguing that it has somehow been overruled by the United States Supreme Court's opinion in *Virginia v. LeBlanc*, —— U.S. ——, 137 S.Ct. 1726, 198 L.Ed.2d 186 (2017). I again reiterate why the majority's reliance on that decision is misplaced:

> [T]here are two reasons why the plurality's reliance on *LeBlanc* is misplaced. First, the plurality fails to mention that the United States Supreme Court was considering only whether the Fourth Circuit had improperly intruded on the authority of the Virginia Supreme Court to conclude that its program satisfied the Eighth Amendment. As the *LeBlanc* court explained:
>
> > In order for a state court's decision to be an unreasonable application of this Court's case law, the ruling must be

> "objectively unreasonable, not merely wrong; even clear error will not suffice." *Woods v. Donald*, 575 U.S. ——, ——, 135 S.Ct. 1372, 1376, 191 L.Ed.2d 464 (2015) (per curiam) (internal quotation marks omitted). In other words, a litigant must "show that the state court's ruling ... was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Ibid.* (internal quotation marks omitted). This is "meant to be" a difficult standard to meet. ***1244** *Harrington v. Richter*, 562 U.S. 86, 102, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011).

Id. at 1728. Accordingly, even if the United States Supreme Court believed that the Virginia Supreme Court's decision was in error, this still would not have been enough to overturn the state court decision. Instead of looking at the *LeBlanc* decision in its proper context through the rigorous standard of review, the plurality uses the United States Supreme Court opinion to adopt the dissent written by Justice Polston in *Atwell*. *See Atwell*, 197 So.3d at 1050 (Polston, J., dissenting).

In fact, the United States Supreme Court's holding in *LeBlanc* made no mention of this Court's opinion in *Atwell*, nor was it considering a state statute similar to that at issue in this case. Despite the weight the plurality would give the opinion, *LeBlanc* has no precedential value in this instance and does not implicate this Court's requirement to construe our Eighth Amendment jurisprudence in conformance with the United States Supreme Court.

Second, a review of *LeBlanc* demonstrates that Virginia's geriatric release program is entirely different from Florida's parole system. Indeed, the program includes a consideration of many factors such as the " 'individual's history ... and the individual's conduct ... during incarceration,' as well as the individual's 'inter-personal relationships with staff and inmates.' " *LeBlanc*, 137 S.Ct. at 1729 (quoting *LeBlanc v. Mathena*, 841 F.3d 256, 280-81 (4th Cir. 2016) (Niemeyer, J., dissenting)). Consideration of these factors could lead to the individual's conditional release in light of his or her "demonstrated maturity and rehabilitation." *Id.* (quoting *Graham*, 560 U.S. at 75, 130 S.Ct. 2011). Florida's parole system, as we explained in *Atwell*, does not—with its primary concern being on the perceived dangerousness of the criminal defendant. Indeed, the Florida Commission on Offender Review's mission statement is "Ensuring public safety and providing victim assistance through the post prison release process." Fla. Comm'n on Offender Review 2016 Annual Report (2016),

https://www.fcor.state.fl.us/docs/reports/FCORannualreport201516.pdf.

Michel, 257 So.3d at 15 (Pariente, J., dissenting).

Franklin is clearly entitled to relief pursuant to this Court's opinion in *Atwell*. His PPRD of 2352 is 222 years beyond Atwell's PPRD, which we held unconstitutional. As this Court explained in *Atwell*:

> A presumptive parole release date set decades beyond a natural lifespan is at odds with the Supreme Court's recent pronouncement in *Montgomery*. Although a State's remedy to *Miller* could include a system for paroling certain juvenile offenders "whose crimes reflected only transient immaturity—and who have since matured," the parole system would nevertheless still have to afford juvenile offenders individualized consideration and an opportunity for release. *Montgomery*, —— U.S. ——, 136 S.Ct. 718, 736, 193 L.Ed.2d 599 (2016). Most importantly, "their hope for some years of life outside prison walls must be restored." *Id.* at 737.
>
> The United States Supreme Court concluded its *Miller* opinion by emphasizing that "*Graham*, *Roper* [*v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)], and [the Supreme Court's] individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Miller*, 132 S.Ct. at 2475. Even a cursory examination of the statutes and administrative rules governing ***1245** Florida's parole system demonstrates that a juvenile who committed a capital offense could be subject to one of the law's harshest penalties without the sentencer, or the Commission, ever considering mitigating circumstances.

Atwell, 197 So.3d at 1048-49.

Thus, I would conclude that Franklin's sentences clearly violate the United States Constitution. In doing so, I note that "[t]his result would not guarantee [Franklin] any particular term of years sentence ... but would require the sentencing court to consider all of the *Miller* factors when resentencing [Franklin]." *Michel*, 43 Fla. L. Weekly at S304, —— So.3d at —— (Pariente, J., dissenting).

CONCLUSION

For these reasons, I would quash the First District Court of Appeal's decision in *Franklin v. State*, 141 So.3d 210, 215 (Fla. 1st DCA 2014), affirming Franklin's sentences, and remand for resentencing. At the very

least, Franklin is entitled to an evidentiary hearing, with the representation of counsel, to determine whether the parole process will afford him a meaningful opportunity for release based on demonstrated maturity and rehabilitation, as the Eighth Amendment to the United States Constitution requires.

QUINCE and LABARGA, JJ., concur.

All Citations

258 So.3d 1239, 43 Fla. L. Weekly S556

Supreme Court of Florida

TUESDAY, DECEMBER 4, 2018

CASE NO.: SC14-1442
Lower Tribunal No(s).:
1D13-2516;
1D13-2517;
1D13-2518;
161983CF006211AXXXMA;
161983CF006212AXXXMA;
161983CF005854AXXXMA

ARTHUR O'DERRELL FRANKLIN vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Petitioner's Motion for Rehearing is hereby denied.

CANADY, C.J., and LEWIS, QUINCE, POLSTON, LABARGA, and LAWSON, JJ., concur.
PARIENTE, J., dissents.

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HON. RONNIE FUSSELL, CLERK
HON. KRISTINA SAMUELS, CLERK

141 So.3d 210
District Court of Appeal of Florida, First District.

Arthur O'Derrell FRANKLIN, Appellant,
v.
STATE of Florida, Appellee.

Nos. 1D13–2516, 1D13–2517, 1D13–2518.
|
May 19, 2014.
|
Rehearing Denied July 8, 2014.

Synopsis
Background: Defendant filed a petition for post-conviction relief. The Circuit Court, Duval County, Tatiana Salvador, J., denied the petition. Defendant appealed.

[Holding:] The District Court of Appeal, Ray, J., held that defendant's claim that his several concurrent sentences of 1,000 years in prison were unconstitutional under *Graham v. Florida* was facially insufficient.

Affirmed.

Thomas, J., filed a concurring opinion.

West Headnotes (3)

[1] **Criminal Law**
Sentencing

110Criminal Law
110XXXPost-Conviction Relief
110XXX(C)Proceedings
110XXX(C)1In General
110k1574Petition or Motion
110k1580Particular Issues
110k1580(12)Sentencing

Defendant's post-conviction relief claim that his several concurrent sentences of 1,000 years in prison were unconstitutional under *Graham v. Florida* was facially insufficient; defendant alleged no facts, cited no legal authority, and made no argument to show that the Parole Commission was precluded from ever establishing a presumptive parole release date (PPRD) during defendant's lifetime.

1 Cases that cite this headnote

[2] **Criminal Law**
Necessity for Hearing

110Criminal Law
110XXXPost-Conviction Relief
110XXX(C)Proceedings
110XXX(C)3Hearing and Determination
110k1651Necessity for Hearing
110k1652In general

A criminal defendant is not entitled to an evidentiary hearing on a motion for postconviction relief if (1) the motion, files, and records in the case conclusively show that the defendant is entitled to no relief, or (2) the motion or a particular claim is legally insufficient.

Cases that cite this headnote

[3] **Criminal Law**
Petition or Motion

110Criminal Law
110XXXPost-Conviction Relief
110XXX(C)Proceedings
110XXX(C)1In General
110k1574Petition or Motion
110k1575In general

It is the post-conviction defendant's burden to establish a prima facie case based upon a legally valid claim, and mere conclusory allegations are not sufficient to meet this burden.

Cases that cite this headnote

Attorneys and Law Firms

*211 Nancy A. Daniels, Public Defender, Glen P. Gifford, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Joshua R. Heller, Assistant Attorney General, Tallahassee, for Appellee.

Opinion

RAY, J.

In these consolidated cases, Arthur O'Derrell Franklin, Appellant, appeals the partial summary denial of his motion for postconviction relief. Below, he argued that his several concurrent sentences of 1,000 years in prison, imposed in 1984 for crimes committed in 1983, are unconstitutional under *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), despite the fact that they are parole-eligible. The circuit court rejected this claim, and Appellant now argues that he was entitled to either resentencing or an evidentiary hearing and to counsel to assist him at either proceeding. We affirm due to the facial insufficiency of Appellant's claim.

Appellant's motion argued that his sentences are unconstitutional under *Graham* because they do not afford him a meaningful opportunity for release upon a demonstration of maturity and rehabilitation. This argument was premised on the length of the 1,000–year sentences and the

fact that the sentencing court retained jurisdiction, under section 947.16(3), Florida Statutes (1982 Supp.), to approve or deny any decision by the Parole Commission to release him during the first third of his sentence, or for 333–1/3 years.

The State conceded that the retention of jurisdiction arguably removed any chance of Appellant's being released on parole. This concession was based partly on language in the sentencing court's order indicating, as the State phrased it, an "intention to essentially deny the Defendant any opportunity to be released during his lifetime." The State alleged that the retention of jurisdiction had "created" Appellant's presumptive parole release date ("PPRD"), which was set for September 1, 2352, as of the dates of the postconviction proceedings. The State then hypothesized that if the court struck the retention-of-jurisdiction language in the sentencing orders, Appellant's PPRD would be established within his lifetime.

The court agreed with the State and entered an order removing the retention of jurisdiction[1] but otherwise denying Appellant's motion.

1 We express no opinion on whether the striking of the retention of jurisdiction had any effect on the legality of Appellant's sentence.

[1] On appeal, Appellant suggests that, despite the relinquishment of jurisdiction, he may never receive a PPRD within his lifetime due to the length of his sentence or perhaps other barriers within the parole process unrelated to his failure to demonstrate maturity and rehabilitation. He argues that he is entitled to a remand and the appointment of counsel to present these arguments to the circuit court at an evidentiary hearing.

*212 [2] [3] A criminal defendant is not entitled to an evidentiary hearing on a motion for postconviction relief if "(1) the motion, files, and records in the case conclusively show that the [defendant] is entitled to no relief, or (2) the motion or a particular claim is legally insufficient." *Freeman v. State*, 761 So.2d 1055, 1061 (Fla.2000). It is the defendant's burden to establish "a prima facie case based upon a legally valid claim," and "[m]ere conclusory allegations are not sufficient to meet this burden." *Id.* This standard informs a trial court's discretionary decision to grant or deny a request for counsel because, according to our state supreme court, "[t]here is absolutely no duty to appoint counsel for an indigent defendant in a post-conviction relief proceeding unless the application on its face reflects a colorable or justiciable issue or a meritorious grievance." *Graham v. State*, 372 So.2d 1363, 1366 (Fla.1979).

The issue Appellant presented to the circuit court was based on the United States Supreme Court's holding in *Graham*, which forbids a sentence of life without the possibility of parole for a non-homicide offense committed by a juvenile. 560 U.S. at 77, 130 S.Ct.

2011. *Graham* does not foreclose the possibility that a juvenile non-homicide offender will remain behind bars for the duration of his or her life if that offender ultimately proves to be "irredeemable." *Id.* at 75, 130 S.Ct. 2011. What *Graham* requires is that a juvenile non-homicide offender have "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* This Court has applied *Graham* to invalidate term-of-years sentences that amounted to de facto life sentences due to the combination of their lengths and the lack of parole eligibility. *E.g.*, *Floyd v. State*, 87 So.3d 45, 46 (Fla. 1st DCA 2012); *Adams v. State*, —— So.3d ——, 2012 WL 3193932, 37 Fla. L. Weekly D1865 (Fla.2012). However, the extreme length of a sentence does not in itself establish a *Graham* violation when that sentence is parole-eligible and no constitutional deficiency in the parole system has been established.

In the proceedings below, Appellant alleged no facts, cited no legal authority, and made no argument to show that the Parole Commission is precluded from ever establishing a PPRD during his lifetime due to the sentence the court imposed. Although he argued that the parole system would not provide him with a meaningful opportunity for release, this argument was conclusory at best. Without allegations indicating an inherent deficiency in the parole system's ability to address a 1,000–year sentence consistently with *Graham*, as opposed to a failure on Appellant's part to demonstrate maturity and rehabilitation, Appellant's claim was legally insufficient to establish that his parole-eligible term-of-years sentence is unconstitutional.

The fact that Appellant's PPRD is currently set at September 1, 2352, does not establish a *Graham* error in the sentence. The Parole Commission, not the sentencing court, is responsible for setting a parole-eligible prisoner's PPRD and for periodically reviewing that determination. *See* §§ 947.13(1)(a), 947.16(4)-(5), 947.172, 947.174(2)-(3), Fla. Stat. (2013). If the Parole Commission violated the law or abused its discretion in establishing Appellant's current PPRD outside his life expectancy while being legally able to establish it otherwise, then that error is a matter for review in proceedings challenging the establishment of the PPRD, not in a motion challenging the legality of the sentence from the outset. *Cf. Johnson v. Fla. Parole Comm'n*, 841 So.2d 615, 617 (Fla. 1st DCA 2003) (recognizing that prisoners may seek review of final orders of the Parole Commission in circuit court through a petition for an extraordinary writ); *Fla. *213 Parole Comm'n v. Huckelbury*, 903 So.2d 977 (Fla. 1st DCA 2005) (reviewing a circuit court's order on a petition challenging the suspension of an inmate's PPRD).

We opine only that the claim before the circuit court did not provide the information or arguments necessary to hold Appellant's sentence unconstitutional, even assuming the

truth of every fact alleged. Because Appellant failed to set forth a prima facie case for relief, his motion was properly denied (to the extent it was). Moreover, due to the legal insufficiency of Appellant's claim, the trial court was not required to afford Appellant an evidentiary hearing or attach records conclusively refuting his claim. For the same reason, the court was within its discretion to deny Appellant's request for counsel. Accordingly, we AFFIRM.

SWANSON, J., concurs; THOMAS, J., concurs with opinion.

THOMAS, J., concurring.

I concur in the majority opinion but write to explain my reasoning. These three consolidated cases involve crimes committed in 1983 by Appellant at the age of 17. Appellant was convicted of 20 felony counts, including 17 life felony counts for armed robbery, unarmed robbery, armed kidnapping, aggravated assault, and armed sexual battery against multiple female victims, one of whom was raped ten times by Appellant and his co-defendants. The sentencing court in 1984 found that these crimes inflicted lifelong physical and mental injuries on the victims.

Citing these facts and other considerations, the trial court sentenced Appellant to concurrent parole-eligible terms totaling 1,000 years in state prison. In addition, the court retained jurisdiction over one-third of Appellant's sentence; thus, the trial court could exercise a judicial veto over the Parole Commission's authority to grant Appellant parole. *See* § 947.16(3), Fla. Stat. (1982 Supp.).

Under the United States Supreme Court's opinion in *Graham v. State*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), Appellant sought postconviction relief below in a rule 3.850 *pro se* motion. The trial court denied relief, but agreed to strike the original sentencing court's retention of jurisdiction of any parole decision during the first third of Appellant's sentence. Appellant now asserts through counsel that he is entitled to either an evidentiary hearing on his claim or resentencing with the appointment of counsel. Appellant claims he remains subject to a sentence imposed in violation of *Graham*, based on his Presumptive Parole Release Date ("PPRD") established under Chapter 947, Florida Statutes.

It is ultimately within the discretion of the Florida Parole Commission as to whether Appellant will be released on parole. *See* §§ 947.002, 947.16, 947.18, Fla. Stat. (1981). Based on this eligibility for parole, Appellant's sentence does not constitute cruel or unusual punishment under the Eighth Amendment to the United States Constitution, for the simple reason that Appellant remains eligible for parole

release, and *Graham* did not hold that Appellant must actually receive parole to comply with the Eighth Amendment to the United States Constitution: "It bears emphasis, however, while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives." *Graham*, 560 U.S. at 75, 130 S.Ct. 2011.

***214** In the first case, Appellant and a co-defendant forced their way into the victim's car while she was at a red light, then pushed the victim to the middle of the front seat, grabbed her hair, and slammed her head to the car floorboard. Appellant drove the car to another location. When the victim attempted to escape from the car, Appellant tackled her and smashed her head against the pavement, causing the victim to partially lose consciousness. Appellant then dragged the victim across the pavement, causing a burn on her skin. Appellant and the co-defendant then drove to a secluded area where Appellant raped the victim as his co-defendant searched the car for items of value, eventually taking $200 from the victim's purse. The victim testified at trial that Appellant choked her during the sexual assault.

At the sentencing hearing, the victim testified that the crime had ruined her life. She now lived in constant fear, could not work, could no longer engage in marital relations with her husband, and was afraid to leave her home, because the attack occurred only a few blocks from her residence. The trial court noted that during the trial and sentencing, this victim stood almost the entire time, and at the end of her testimony completely "broke down and had to be helped from the courtroom after a long recess." The court further noted that this criminal episode was committed by Appellant and his co-defendant showing a "conscious, well thought out, premeditated intent to commit these shameful, terrorizing and demeaning acts of violence."

In the second case, Appellant and his co-defendant robbed a convenience store, held a knife to the back of a male employee, then forced a female employee to give them her car keys. Appellant and his co-defendant then forced the victim into the car's back seat at gunpoint and drove the victim to a secluded area. During this time, Appellant told the victim that this was not the first time he and his co-defendant had committed similar crimes and "they would never serve a single day in jail." Appellant's co-defendant then asked Appellant if they should "take her where they took the other one." Appellant replied that they should "take her to the new place we found."

The sentencing court noted that while en route to the crime scene, the "defendants told the victim that they

knew her and knew she recently had a baby," which "terrified the victim." At the secluded area, Appellant sexually assaulted the victim while his co-defendant held a gun to her head. The two men then switched places, and Appellant held the gun "inches from the victim's head" while his co-defendant sexually battered her. The sentencing court noted that at some point, Appellant held the gun in the victim's ear and "told her he was going to blow her brains out."

Both Appellant and his co-defendant then searched the victim's car and stole jewelry from her, including her wedding ring, which the victim begged them to let her keep because it meant so much to her. After robbing the victim, one of the defendants then kicked her in the head before they stole her car and fled, leaving her "in a dazed condition until she found help."

At sentencing, the victim testified she was hospitalized for two weeks following the assault. Two days after the crime, "her physical and emotional condition deteriorated to the point that she had lost the use of her right arm and right leg" as a result of the emotional trauma caused by Appellant and his co-defendant. The trial court's sentencing order notes that the victim testified that "she lives in constant fear," could not care for her infant child, and "was not even emotionally able to leave her own home for six months following the crime." The victim's treating doctor ***215** testified that the acts committed against the victim "will have a crippling effect on all areas of her life—for the rest of her life." The doctor stated that the victim would need mental treatment for several years. During the sentencing hearing, the victim "shook uncontrollably during her testimony." She was "unable to be removed from her chair because of her emotional state for about 20 minutes."

In the third criminal episode, Appellant and two others forced their way into the victim's car and drove to a secluded area where all three men perpetrated various acts of sexual assault on her. The men then put the victim in the trunk of the car and drove to another location, where the assaults resumed. They later carried the victim to a railroad car where she was locked up for a period of hours, after which Appellant and one other co-defendant returned, removed the victim to a waiting car, and resumed the sexual assaults. Appellant was convicted of ten counts of sexual battery in this case. The sentencing order notes that the physician who performed the sexual battery exam testified that the victim suffered the worst injuries the physician had ever observed.

In the wake of *Graham,* Appellant argued that his 1000–year sentence, with the court retaining jurisdiction for 333–1/3 years, was disproportionate to his offenses, and thus in violation of the Eighth Amendment of the U.S. Constitution. Appellant also argued that his sentence violated the retroactive holding in *Graham,* because

it denied him of any meaningful opportunity to obtain release within his lifetime. Thus, he requested the trial court to resentence him with a guideline sentence and order an evidentiary hearing.

The court denied the motion as to the disproportionate sentence argument, and it declined to resentence Appellant with a guideline sentence, because that option was not available under Chapter 921, Florida Statutes. Appellant does not challenge those rulings here.

The court below agreed to strike the original sentencing court's retention of jurisdiction of any parole decision during the first third of Appellant's sentence. Despite this grant of partial relief, however, Appellant asserts that he is entitled either to an evidentiary hearing on his claim under *Graham,* or a resentencing hearing that Appellant asserts must comport with *Graham,* by ensuring that Appellant receives a meaningful opportunity "for release based on demonstrated maturity and rehabilitation." In essence, Appellant asserts that the trial court should not have considered any legal arguments regarding his claim without the appointment of counsel.

The State argues that no counsel was necessary, as the arguments involved do not require a complex legal analysis. In addition, the State asserts that because it is undisputed that Appellant has been and remains eligible for parole, his sentences comply with *Graham* regardless of whether his PPRD is set far beyond his life expectancy.

I agree with the State on both points. Regarding the merits of Appellant's claim, Appellant is eligible for parole, thus, his sentences do not violate the decision in *Graham. See* *Miller v. Alabama*, —— U.S. ——, ——, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012) ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without *possibility* of parole for juvenile offenders." (emphasis added)). *Graham* holds only that the State may not punish a juvenile convicted of a non-homicide crime with life in prison without the possibility of parole. *Graham*, 560 U.S. at 57, 130 S.Ct. 2011 ("Because Florida has abolished its parole system, a life sentence gives a defendant ***216** no possibility of release unless he is granted executive clemency.") (citation omitted).

The State did not abolish parole eligibility for Appellant, who committed the above crimes before the effective dates of the sentencing guidelines legislation in Chapter 921, Florida Statutes. *See* Ch. 1984–328, Laws of Florida (effective Oct. 1, 1984, and adopting court rules implementing sentencing guidelines); *Smith v. State*, 537 So.2d 982, 987 (Fla.1989) (holding sentencing guidelines and elimination of parole eligibility unconstitutional until date legislature adopted relevant rules, but valid thereafter, and discussing history of sentencing guidelines, noting that "the elimination

of parole was an integral part of the sentencing guidelines legislation, and we are convinced it could not be severed from the statute."). The United States Supreme Court has recognized that a life sentence with parole eligibility is necessarily a less punitive punishment than a non-parole-eligible sentence. *See Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 662–63, 94 S.Ct. 2532, 41 L.Ed.2d 383 (1974) (noting that when parole eligibility is removed, an "additional penalty" is imposed).

Appellant's sentences are parole eligible, and now that the trial court has ordered that it will no longer retain jurisdiction under section 947.16(3), Florida Statutes, the Florida Parole Commission will determine whether Appellant will be released from his 1,000–year prison term and placed on community supervision. *See* §§ 947.002, 947.16(4), 947.18, Fla. Stat. The sentencing court has eliminated its authority to veto that decision by retaining jurisdiction, and while I render no opinion on whether this was a necessary act to comply with *Graham*, the State agreed to this action below and does not challenge it here.

I disagree with Appellant's argument that the Parole Commission has somehow calculated Appellant's PPRD in violation of the requirements of *Graham*. I further note that Appellant will receive periodic reviews by the Parole Commission, at least every seven years, where additional information can be considered. *See* §§ 947.16(5) & 947.174(2–3), Fla. Stat. In fact, Appellant acknowledged below that he has received periodic reviews from the Parole Commission.

Appellant's reliance on *Cunningham v. State*, 54 So.3d 1045 (Fla. 3d DCA 2011), for the proposition that a parole-eligible inmate sentenced as a juvenile must have a PPRD established within his lifetime, is misplaced. Although the Third District in *Cunningham* noted that Cunningham had a PPRD in 2026, the context of that statement was simply to observe that Cunningham acknowledged that he was in fact eligible for parole as he had a PPRD in 2026, but not to hold that the date had to be within his natural lifetime. The court there further noted that Cunningham had a review in 2013, just as Appellant will receive his reviews by the Parole Commission. Even had the Third District held that an inmate sentenced for a crime committed when a juvenile must have a presumptive parole release date within his natural life, I would respectfully disagree, for the reasons stated above. *See also Atwell v. State*, 128 So.3d 167, 169 (Fla. 4th DCA 2013) (holding inmate sentenced for first-degree murder not entitled to postconviction relief where crime was committed when inmate was a juvenile, but sentence provided parole eligibility after serving 25–year minimum mandatory). Furthermore, the Third District's decision in *Lewis v. State*, 118 So.3d 291 (Fla. 3d DCA 2013), recognizes that an inmate sentenced for a crime committed as a juvenile has no

right to an eventual release on *217 parole, where the Parole Commission has set his PPRD in 2042 based on Lewis' misconduct in prison. And here, we cannot predict whether the Parole Commission will in fact one day accelerate Appellant's PPRD based on good conduct, such that he may in fact be released on parole. That decision must be made by the Parole Commission and will depend at least in part on Appellant's behavior.

I also find that Appellant's reliance on *People v. Caballero*, 55 Cal.4th 262, 145 Cal.Rptr.3d 286, 282 P.3d 291 (2012), is misplaced. There, the defendant would not become eligible for parole until serving at least 110 years, and that court found the sentence to be the functional equivalent of a sentence of life without parole. Here, Appellant has always been, and remains, parole eligible.

Because Appellant has been and remains parole eligible, with periodic review for additional consideration, his sentence comports with the Eighth Amendment to the United States Constitution. Thus, under the undisputed facts of this case and the relevant law, Appellant is not entitled to postconviction relief, an evidentiary hearing, or resentencing, because his current sentence is legal under Florida law and is constitutional under federal law.

All Citations

141 So.3d 210, 39 Fla. L. Weekly D1018

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**IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT,
FOR LEON COUNTY, FLORIDA**

ARTHUR O. FRANKLIN, DC # 094027,

Petitioner,
vs.

CASE NO. 2015 CA 368

**FLORIDA COMMISSION
ON OFFENDER REVIEW,**

Respondent.
_____/

ORDER DISMISSING IN PART AND DENYING IN PART

THIS CAUSE comes before the Court upon Petitioner's "Complaint for Writ of Mandamus" filed on February 12, 2015. Having reviewed the petition, the Motion to Dismiss filed by Respondent, the Petitioner's Reply, and all other pleadings filed in this case, and being otherwise fully advised in the premises, the Court hereby FINDS:

In 1983, Petitioner was convicted and sentenced to an overall term of 1000 years in case numbers 83-6211; 83-6212; and 83-5854. (Respondent's Ex. A, B and C) At Petitioner's initial parole interview in 1987, his Presumptive Parole Release Date (PPRD) was set for March 1, 2350. (Respondent's Ex. D) Petitioner did not request a subsequent review of the PPRD. Petitioner did not challenge this action until the instant petition for writ of mandamus was filed by his attorney on February 12, 2015. Petitioner now seeks recalculation of a presumptive parole release date in accordance with Graham v. Florida, 560 U.S. 48, 130 S.Ct.2011, 176 L. Ed. 2d 825 (2010). Additionally, Petitioner appears to be challenging the Commissions subsequent PPRD review on February 5, 2014.

The Court finds, however, that Petitioner's claims regarding the Commission's initial establishment of his PPRD are time-barred pursuant to Section 95.11(5)(f), Florida Statutes. Section 95.11(5)(f), provides that, except for challenges to disciplinary reports that must be brought within

30 days, and challenges to criminal convictions, all extraordinary writ petitions filed by or on behalf of a prisoner must be brought within one year. Pursuant to section 95.031, the one year statute of limitation began to run from the time that the cause of action accrued, in this case when Plaintiff's PPRD action became final, after review, on June 17, 1987. (Respondent's Ex. D). Moger v. Florida Parole Commission, 22 So.3d 138 (Fla. 1st DCA 2009), *cert. den.* 32 So.3d 59 (Fla. 2010). Additionally, The Court finds that Petitioner failed to exhaust his administrative remedies under § 947.173(1), Florida Statute. Law v. Florida Parole Com., 411 So. 2d 1329, 1330 (Fla. 1st DCA 1982); Polk v. Crockett, 379 So. 2d 369 (Fla. 1st DCA 1980); Pridgen v. Florida Parole Com., 380 So. 2d 557 (Fla. 1st DCA 1980). Regardless of Petitioner's procedural failures, Petitioner's claims are without merit. Atwell v. State, 128 So. 3d 167, 168-69 (Fla. 4th DCA 2013.)

To the extent that Petitioner is challenging the Commissions subsequent review of his PPRD, the Court finds that mandamus is proper to challenge the Commission's February 5, 2014 decision not to modify the PPRD. Barreiro v. Florida Commission on Offender Review, 40 Fla. L. Weekly D1334a (Fla. June 4, 2015) The scope of the circuit court's review is, however, limited to determining whether the reasons provided by the Commission to support its decision are "facially valid, supported by the record, and authorized by statute and rule." Harper v. Fla. Parole Comm'n, 626 So. 2d 336, 337 (Fla. 1st DCA 1993) (citing Baker v. Fla. Parole & Probation Comm'n, 384 So. 2d 746, 748 (Fla. 1st DCA 1980), which explained that "[a]bsent a violation of any statute or rule, this Court can review no further under mandamus, as the writ will not lie in any review by this Court of the discretionary acts of the Commission").

In conducting a Subsequent Interview the Commission investigator shall review the inmate's institutional file to determine if there is new information since the previous interview. F.A.C. Rule 23-21.013. In deciding whether to modify a PPRD, the Commission must review the entire record, including current progress and the seriousness of the original crimes. See, § 947.002, Fla. Stat.; see, also McCorvey v. Parole Comm., 625 So. 2d 1296 (Fla. 1st DCA 1993);

Parole & Probation Comm. v. Paige, 462 So. 2d 817 (Fla. 1985) (the Commission has the authority to rely on the complete record in its parole decisions.) The record reflects that all such information was considered. (Respondent's Ex. G)

The Commission's authority to set the next interview date out for a date greater than two years arises under Florida Statute §947.174(1)(b). Petitioner qualifies for this consideration because he was convicted of sexual battery (Respondent's Ex. A) Additionally, the Commission found that it was not reasonable to expect Petitioner to be granted parole during the intervening seven years and succinctly stated the reasons for this belief. (Respondent's Ex. G) Accordingly, this Court finds that the Commission's actions were "facially valid, supported by the record, and authorized by statute and rule." This Court finds no abuse of discretion.

It is therefore **ORDERED and ADJUDGED** that the Petitioner's "Petition for Writ of Mandamus" is hereby **DISMISSED** in part and **DENIED** in part.

DONE AND ORDERED on this 26th day of August, 2015.

JAMES C. HANKINSON
Circuit Judge

Copies to:

SARAH RUMPH
General Counsel
Florida Parole Commission
4070 Esplanade Way
Tallahassee, Florida 32399-2450

ARTHUR O. FRANKLIN, DC # 094027
Marion Correctional Institution (Male)
3269 NW 105th Street
Ocala, Florida 34475

The 2014 Florida Statutes

Title XLVII
CRIMINAL PROCEDURE AND CORRECTIONS

Chapter 921
SENTENCE

921.1401 Sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings.—

(1) Upon conviction or adjudication of guilt of an offense described in s. 775.082(1)(b), s. 775.082(3)(a)5., s. 775.082(3)(b)2., or s. 775.082(3)(c) which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

(2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

(a) The nature and circumstances of the offense committed by the defendant.

(b) The effect of the crime on the victim's family and on the community.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

(d) The defendant's background, including his or her family, home, and community environment.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

(f) The extent of the defendant's participation in the offense.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

(h) The nature and extent of the defendant's prior criminal history.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

(j) The possibility of rehabilitating the defendant.

History.—s. 2, ch. 2014-220.

juvenile offender is not resentenced at the initial review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

(3) The Department of Corrections shall notify a juvenile offender of his or her eligibility to request a sentence review hearing 18 months before the juvenile offender is entitled to a sentence review hearing under this section.

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(5) A juvenile offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

(6) Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(a) Whether the juvenile offender demonstrates maturity and rehabilitation.

(b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a 1general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

(7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

History.—s. 3, ch. 2014-220.

1Note.—The term "general educational development certificate" was changed to "high school equivalency diploma" in existing Florida Statutes text in ch. 2014-20, pursuant to s. 38, ch. 2013-51.

The 2014 Florida Statutes

Title XLVII
CRIMINAL PROCEDURE AND CORRECTIONS

Chapter 921
SENTENCE

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(1) For purposes of this section, the term "juvenile offender" means a person sentenced to imprisonment in the custody of the Department of Corrections for an offense committed on or after July 1, 2014, and committed before he or she attained 18 years of age.

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1.:

1. Murder;
2. Manslaughter;
3. Sexual battery;
4. Armed burglary;
5. Armed robbery;
6. Armed carjacking;
7. Home-invasion robbery;
8. Human trafficking for commercial sexual activity with a child under 18 years of age;
9. False imprisonment under s. 787.02(3)(a); or
10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the

FLORIDA PAROLE AND PROBATION COMMISSION
13[illegible] Vinewood Blvd., Tallahassee, Florida 3[illegible]01

PRESUMPTIVE PAROLE RELEASE DATE COMMISSION ACTION

I. Inmate Name: FRANKLIN, Arthur Date of Interview: 5/22/87

Inmate Number: 094027 Institution: UNION CI

II. HEARING EXAMINER'S RECOMMENDATIONS:

A. Eligible for Parole Consideration: No___ (If no, state reason(s):

If Yes X, then:

B. Salient Factor Score: 1- 1, 2- 1, 3- 1, 4- 2, 5- 0, 6- 0, 7- 0, TOTAL 5 or RCF ___.

C. Offense Severity: 1°&Life Felony-SEXUAL BATTERY (Case No. 83-6211).

D. Matrix Time Range: 120 - 140.

E. Aggravating/Mitigating Factors (Explain each with source):

XXXXXX

Alh	Kidnapping, Case #83-6211CF, 1000 years conc, Ct. I - Duval County, dated 9/19/85.	+ 120 mos.
Alh	Unarmed Robbery, Ct. 2, 15 years.	+ 60 mos.
Alh	Sexual Battery, Ct. 4, 1000 years.	+ 120 mos.
Alh	Sexual Battery, Ct. 5, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. 6, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. 7, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. 8, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. 9, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. 10, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. II, 1000 years.	CONSIDERED
Alh	Sexual Battery, Ct. 12, 1000 years.	CONSIDERED
Alh	Kidnapping, Case #83-6212, Ct. I - 1000 years conc., Duval County, dated 9/19/85.	+ 120 mos.
Alh	Sexual Battery, Case #83-6212, 1000 years conc., Ct. 2 - Duval County, dated 9/19/85.	+ 120 mos.
Alh	Unarmed Robbery, Case #83-6212, Ct. 3, 15 yrs. conc., Duval County.	+ 60 mos.

1/3 RET. JUR.

F. Time Begins: 7/1/83 G. Months Recommended: 740

H. Recommended Presumptive Parole Release Date: 3/1/2045

III. COMMISSION ACTION:

A. The Commission AFFIRMS the Hearing Examiner's Recommendation that you are NOT Eligible for consideration for parole. You will be scheduled for initial interview ___.

B. The Commission does NOT affirm the Hearing Examiner's Recommendation that you are not eligible for parole consideration and remands the case back to the field for immediate Presumptive Parole Release Date interview and recommendation.

C. The Commission AFFIRMS, without change, the Hearing Examiner's Recommended Presumptive Parole Release Date and thereby affirms any aggravating or mitigating factors found above in II.E.

(D.) The Commission does NOT affirm the Hearing Examiner's Recommended Presumptive Parole Release Date and restructures the case as follows:

1. Salient Factor Score: 1- 1, 2- 1, 3- 1, 4- 2, 5- 0, 6- 0, 7- 0, TOTAL 5 or RCF ___.
2. Offense Severity Rating: 1 &Life Felony-Sexual Battery (Case No. 83-5854, Ct. 4).
3. Matrix Time Range: 120-140.
4. Aggravating/Mitigating Factors: (Explain each with source) SRT 140 mos.

AGGRAVATE:

(1)	Case #83-5854, Ct. 5, Sexual Battery	+240
(2)	Case #83-5854, Ct. 3, Armed Kidnapping with Firearm	+240
(3)	Case #83-5854, Ct. 2, Aggravated Assault	+140
(4)	Case #83-5854, Ct. 1, Armed Robbery with Firearm	+240
(5)	Case #83-6211, Ct. 1, Kidnapping	+240
(6)	Case #83-6211, Ct. 2, Unarm Robbery	+140
(7)	Case #83-6211, Ct. 3, Sexual Battery	+240
(8)	Case #83-6211, Ct. 4, Sexual Battery	+240
(9)	Case #83-6211, Ct. 5, Sexual Battery	+240
(10)	Case #83-6211, Ct. 6, Sexual Battery	+240
(11)	Case #83-6211, Ct. 7, Sexual Battery	+240
(12)	Case #83-6211, Ct. 8, Sexual Battery	+240
(13)	Case #83-6211, Ct. 9, Sexual Battery	+240
(14)	Case #83-6211, Ct. 10, Sexual Battery	+240
(15)	Case #83-6211, Ct. 11, Sexual Battery	+240
(16)	Case #83-6211, Ct. 12, Sexual Battery	+240
(17)	Case #83-6212, Ct. 1, Kidnapping	+240

AGGRAVATION CON'T AT BOTTOM OF PAGE

STATE · OF · FLORIDA · IN · GOD · WE · TRUST

5. Time Begins: 7-1-83 6. Months for Incarceration: 4400

IV. At the Commission meeting held 6-17-87 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2350.

V. You will be Reviewed for your Subsequent ___ interview during the month of May 1988.

VI. Certified By [signature] Commission Clerk this 29 day of June 19 87.

FORM PCG-4: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File (September 1, 1981)

(18)	Case #83-6212, Ct. 2, Sexual Battery	+240 mos.
(19)	Case #83-6212, Ct. 3, Unarm Robbery	+140 mos.
		4400

mt

ITEM 1: **NUMBER OF ALL PRIOR CONVICTIONS:**	
•Four or more prior felony convictions at least two of which resulted in incarceration.	= Recidivist Criminal Factor
•Three or more prior convictions.	= 2 Points
•One or Two prior convictions.	= 1 Point
•No prior convictions.	= 0 Points
ITEM 2: **NUMBER OF PRIOR INCARCERATIONS:**	
•Two or more prior incarcerations.	= 2 Points
•One prior incarceration.	= 1 Point
•No prior incarcerations.	= 0 Points
ITEM 3: **TOTAL TIME SERVED IN YEARS:**	
•Two or more years served.	= 2 Points
•Up to two years served.	= 1 Point
•No time previously served.	= 0 Points
ITEM 4: **AGE AT OFFENSE WHICH LED TO THE FIRST INCARCERATION**	
•17 Years or younger	= 2 Points
•18 - 25 Years	= 1 Point
•26 Years or older	= 0 Points
ITEM 5: **NUMBER OF PROBATION, PAROLE or MCR REVOCATIONS:**	
•One or more revocations.	= 1 Point
•No Revocations	= 0 Points
ITEM 6: **NUMBER OF PRIOR ESCAPE CONVICTIONS:**	
•One or more prior escape conviction(s).	= 1 Point
•No prior escape conviction.	= 0 Points
ITEM 7: **BURGLARY OR BREAKING AND ENTERING AS THE PRESENT OFFENSE OF CONVICTION:**	
•Present Offense of Conviction involves burglary or breaking and entering.	= 1 Point
•Otherwise	= 0 Points

23-21.09 Matrix Time Ranges. (1) Calculate and total the Salient Factor Score. (2) Determine the degre conviction. (3) Locate the Matrix Time Range where the Salient Factor Score total intersects wit of the circumstances of the Present Offense of Conviction warrants a decision outside the Matrix T likelihood of favorable parole outcome which warrant a decision outside the Matrix Time Range, must be stated in writing with individual particularity.

SEVERITY OF OFFENSE BEHAVIOR [1]	SALIENT FACTOR SCORE [2] (0-1-)	(2-4)	(5-7)
1. Misdemeanor (Cumulative Sentence of one or more Years)	≦8	(8-12)	12-16
2. Felony 3° (Statutory Sentence-Maximum of 5 Years)	12-20	20-26	26-32
3. Felony 2° (Statutory Sentence-Maximum of 15 Years)	20-26	26-32	32-48
4. Felony 1° (Statutory Sentence-Maximum of 30 Years)	30-70	70-90	90-120
5. Felony 1° and Life Felony (Statutory Sentence--Maximum Life) [3]	80-100	100-120	120-140
6. Capital Felony (Statutory Sentence-Life)	120-180	180-240	240-300

NOTES: 1. *Length of Sentence as well as Salient Factor Score shall be considered when de*

2. *Matrix Time Ranges are reported in months.*

3. *Murder II, O Salient Factor Points, See 23-19.05 (VII) (1.)*

Specific Authority: ss. 120.53, 947.165, 947.071, F.S. Law Implemented: s. 947.165, F.S.

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur **Date of Interview:** 5/18/88

Inmate Number: 094027 **Institution:** UNION CI

Type of Interview: X Biennial ___ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION: 1/3 RET. JUR.

X A. No Change in Presumptive Parole Release Date.

___ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

2. Extend Presumptive Parole Release Date by _____ months.
Reason (source)

COMMISSION ACTION:

XX A. The Commission AFFIRMS the Hearing Examiner's Recommendation. DRs of 8/25/87, 9/19/87 and 2/27/88 were noted.

___ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

__1. No Change in Presumptive Parole Release Date.

__2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

(b) Extend Presumptive Parole Release Date by _____ months.
Reason (source)

STATE OF FLORIDA · IN GOD WE TRUST ·

Presumptive Parole Release Date does not change and remains: 3/1/2350

At the Commission meeting held 6/22/88 your Presumptive Parole Release Date was ESTABLISHED to be 3/1/2350

You will be Reinterviewed for your subsequent interview during the month of March 19 90

Certified By [signature] Clerk this 24 day of June 19 88

FORM PCG-4.2: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File.
(September 1, 1981)

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

1/3 RET. JUR.

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur **Date of Interview:** 3/22/90

Inmate Number: 094027 **Institution:** UNION CI

Type of Interview: X Biennial ___ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION:

X A. No Change in Presumptive Parole Release Date.

___ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
   Reason (source)

2. Extend Presumptive Parole Release Date by _____ months.
   Reason (source)

COMMISSION ACTION:

XX A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

___ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

__ 1. No Change in Presumptive Parole Release Date.

__ 2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

(b) Extend Presumptive Parole Release Date by _____ months.
Reason (source)

STATE OF FLORIDA · IN GOD WE TRUST · PAROLE COMMISSION

Presumptive Parole Release Date does not change and remains: 3-1-2350

At the Commission meeting held 5-2-90 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2350

You will be Reinterviewed for your subsequent interview during the month of January 19 92

Certified By Doria N. Chilton Commission Clerk this 9 day of May 19 90

FORM PCG-4.2: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File.
(September 1, 1981)

MT

1/3 RET. JUR.

FLORIDA PAROLE AND PROBATION COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32301

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur **Date of Interview:** 1/16/92

Inmate Number: 094027 **Institution:** Union CI

Type of Interview: X Biennial ___ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION:

X A. **No Change in Presumptive Parole Release Date.**

___ B. **Change Presumptive Parole Release Date as follows:**

1. **Reduce Presumptive Parole Release Date by _____ months.**
   Reason (source)

2. **Extend Presumptive Parole Release Date by _____ months.**
   Reason (source)

COMMISSION ACTION:

X A. **The Commission AFFIRMS the Hearing Examiner's Recommendation.**

___ B. **The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:**

__ 1. **No Change in Presumptive Parole Release Date.**

__ 2. **Change Presumptive Parole Release Date as follows:**

(a) **Reduce Presumptive Parole Release Date by _____ months.**
Reason (source)

(b) **Extend Presumptive Parole Release Date by _____ months.**
Reason (source)

Presumptive Parole Release Date does not change and remains: 3/1/2350

At the Commission meeting held 2/12/92 **your Presumptive Parole Release Date was ESTABLISHED to be** 3/1/2350

You will be Reinterviewed for your subsequent **interview during the month of** November 1993

Certified By Dana Edenfield **Commission Clerk this** 20th **day of** February 19 92

FORM PCG-4.2: 1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File.
(September 1, 1981)

jb

1/3 RET. JUR.

FLORIDA PAROLE COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32399-2450

RET. JUR.

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION 1/3

Inmate Name: FRANKLIN, Arthur Date of Interview: 11/23/93

Inmate Number: 094027 Institution: Union CI

Type of Interview: XX Biennial _____ Special

ESTABLISHED Presumptive Parole Release Date: 3/1/2350

HEARING EXAMINER'S RECOMMENDATION:

X A. No Change in Presumptive Parole Release Date.

_____ B. Change Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

2. Extend Presumptive Parole Release Date by _____ months.
Reason (source)

COMMISSION ACTION:

X A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

_____ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows

_____ 1. No Change in Presumptive Release Date.

_____ 2. Change Presumptive Parole Release Date as follows:

(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

(b) Extend Presumptive Parole Release Date by _____ months.
Reason (source)

STATE OF FLORIDA · IN GOD WE TRUST

Presumptive Parole Release Date does not change and remains: 3-1-2350

At the Commission meeting held 3-2-1994 your Presumptive Parole Release Date was ESTABLISHED to be 3-1-2350

You will be Reinterviewed for your subsequent interview during the month of September 19 95

Certified By Julia Gillette Commission Clerk

this 14 day of March, 19 94

DWM

PCG-4.2 (revised 7/93)

1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File

xc: copies to visitors notified (1)

FLORIDA PAROLE COMMISSION
1309 Winewood Blvd., Tallahassee, Florida 32399-2450

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

½ RET. JD.

Inmate Name: FRANKLIN, Arthur O. **Date of Interview:** 9-13-95

Inmate Number: 094027 **Institution:** UNION CI

Type of Interview: X **Biennial** _____ **Special**

ESTABLISHED Presumptive Parole Release Date: 3-01-2350

HEARING EXAMINER'S RECOMMENDATION:

_____ **A. No Change in Presumptive Parole Release Date.**

X **B. Change Presumptive Parole Release Date as follows:**

1. Reduce Presumptive Parole Release Date by _____ **months.**
Reason (source)

2. Extend Presumptive Parole Release Date by 6 **months.**
Reason (source) 947.16(5) & 947.174 F.S. and Rules 23-21.002(29)(48) and 23-21.013 FAC. Since the last interview of 11-23-93 and the last Commission Action of 3-2-94, Inmate Franklin's institutional record has been unsatisfactory as evidenced by the following processed disciplinary reports:
1-26-95, Disorderly Conduct, 15 days disciplinary confinement
6-26-95, Possession of Weapon, 30 days disciplinary confinement

COMMISSION ACTION:

_____ **A. The Commission AFFIRMS the Hearing Examiner's Recommendation.**

X **B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows.**

_____ **1. No Change in Presumptive Release Date.**

X **2. Change Presumptive Parole Release Date as follows:**

(a) Reduce Presumptive Parole Release Date by _____ **months.**
Reason (source)

Extend Presumptive Parole Release Date by 24 **months.**
Reason (source)

Same reasons as given by the Hearing Examiner above.

Presumptive Parole Release Date does not change and remains:

At the Commission meeting held 11-8-95 **your Presumptive Parole Release Date was ESTABLISHED to be** 3-1-2352

You will be Reinterviewed for your subsequent **interview during the month of** Jul **19** 97

Certified By Matthew Vickers **Commission Clerk**

this 16 **day of** November **, 19** 95 jg

xc: copy to visitors notified (1)

PCG-4.2 (revised 7/93)

1 Copy to Inmate; 1 Copy to Institution File; Original to Central Office File

FLORIDA PAROLE COMMISSION

2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

RET. JUR.

Inmate Name: FRANKLIN, Arthur D. DC #: 094027 Date of Interview: 7/16/97

Institution: UNION CI Type of Interview: ☒ Biennial ☐ Special

ESTABLISHED Presumptive Parole Release Date: 03/01/2352

HEARING EXAMINER'S RECOMMENDATION:

☐A. NO CHANGE in Presumptive Parole Release Date.
☒B. CHANGE in Presumptive Parole Release Date as follows:
1. Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

2. Extend Presumptive Parole Release Date by 6 months.
Reason (source)

Based on Chapter 947.16(5) and 947.174 Florida Statutes and Rules 28-21.02(30)(50) and 23-21.13 FAC - Since the last interview of 9/13/95 and Commission Action of 11/8/95, subject's institutional adjustment has been unsatisfactory based on the following processed disciplinary report:

11/27/96, Spoken or Written Threats, 30 days disciplinary confinement, 90 days loss of gain time.

COMMISSION ACTION:

☒A. The Commission AFFIRMS the Hearing Examiner's Recommendation.
☐B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
☐1. NO CHANGE in Presumptive Parole Release Date.
☐2. CHANGE in Presumptive Parole Release Date as follows:
(a) Reduce Presumptive Parole Release Date by _____ months.
Reason (source)

(b) Extend Presumptive Parole Release Date by _____ months.
Reason (source)

At a Commission meeting held 8-20-97, the Commission decided that your Presumptive Parole Release Date was ESTABLISHED to be 9-1-2352. You will be reinterviewed for your Subsequent interview during the month of May, 1999.

Certified by [signature], Commission Clerk, this 27 day of August, 1997

PCG-4.2 (Revised 3/96) 1 copy to inmate; 1 copy to institution file; original to Central Office file. nv

FLORIDA PAROLE COMMISSION

2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450

TRUST. JUR

BIENNIAL/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur DC #: 094027 Date of Interview: 5/18/99

Institution: UNION C.I. Type of Interview: ☒ Biennial ☐ Special

ESTABLISHED Presumptive Parole Release Date: 09/01/2352

HEARING EXAMINER'S RECOMMENDATION:

☐A. NO CHANGE in Presumptive Parole Release Date.
☒B. CHANGE in Presumptive Parole Release Date as follows:
1. **Reduce** Presumptive Parole Release Date by _____ months.
Reason (source)

2. **Extend** Presumptive Parole Release Date by 6 months.
Reason (source)

Based on: Section 947.16(5) and 947.174, Florida Statutes and Rules 23-21.002(29)(48) and 23-21.013 FAC -- Since the last parole interview conducted 7/16/97 and Commission Action of 8/20/97, inmate Franklin has received the following disciplinary reports: 02/16/98, Possession of Weapon, 60 days disciplinary confinement and 100 days loss of gain time.

COMMISSION ACTION:

☐A. The Commission AFFIRMS the Hearing Examiner's Recommendation.
☒B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
☐1. NO CHANGE in Presumptive Parole Release Date.
☒2. CHANGE in Presumptive Parole Release Date as follows:
(a) **Reduce** Presumptive Parole Release Date by months.
Reason (source)

(b) **Extend** Presumptive Parole Release Date by 24 months.
Reason (source)

The PPRD was extended 24 months for the same reasons listed above by the Hearing Examiner.

At a Commission meeting held 6/23/99 **, the Commission decided that your Presumptive Parole Release Date was ESTABLISHED to be** 9/1/2354 **. You will be reinterviewed for your** subsequent **interview during the month of** March **,** ~~19~~ 2004 (see back)

Certified by [signature] *, Commission Clerk, this* 9 *day of* July *,* 19 99.

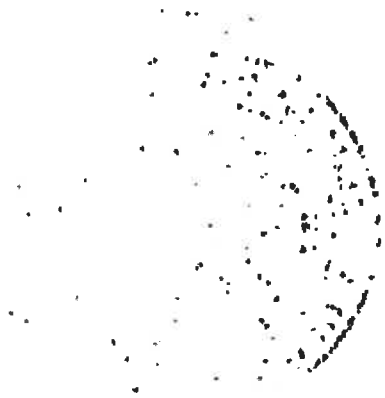
nv

xc: copy to visitor notified (1)

PCG-4.2 (Revised 3/96) 1 copy to inmate; 1 copy [illegible]titution file; original to Central Office file.

The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for Murder 2 and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:

1. The offense involved the use of a deadly weapon.
2. Poor, disruptive or assaultive institutional conduct.
3. The offense involved multiple victims or knowingly created a great risk or bodily injury or death to many people.
4. Extent of psychological or physical trauma to the victim(s) due to the criminal offense.
5. Mental health concerns.
6. Any release may cause unreasonable risk to others.



FLORIDA PAROLE COMMISSION

SUBSEQUENT/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur O. DC #: 094027 Date of Interview: 3/19/04

Institution Marion C.I. Type of Interview: ☒ Subsequent ☐ Special

ESTABLISHED Presumptive Parole Release Date: 9/1/2352

HEARING EXAMINER'S RECOMMENDATION:

☒A. NO CHANGE in Presumptive Parole Release Date.

COMMISSION ACTION:

☒A. The Commission AFFIRMS the Hearing Examiner's Recommendation.
☐B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
- ☐1. NO CHANGE in Presumptive Parole Release Date.
- ☐2. CHANGE in Presumptive Parole Release Date as follows:
  - ☐ (a) Reduce Presumptive Parole Release Date by _____ months.
    Reason (source)
  - ☐ (b) Extend Presumptive Parole Release Date by _____ months.
    Reason (source)

At the Commission meeting held 6/23/2004, your Presumptive Parole Release Date was established to be 9/1/2352. You will be re-interviewed for your subsequent interview during the month of January, 2009.

The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for Sexual Battery and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:

1. Used of a firearm or dangerous weapon.
2. The offense involved multiple victims.
3. The offense involved multiple offense.
4. Trauma to the victims.
5. Any release would pose a risk to the public.

Certified by Matthew J. Victors, Commission Clerk, this 9th day of July, 2004.

Xc: copy to visitor notified (1) nv

PCG-4.2 (Revised 3/96) **1 copy to inmate; 1 copy to institution file; original to Central Office file.**

FLORIDA PAROLE COMMISSION

SUBSEQUENT/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur O. DC #: 094027 Date of Interview: 1/28/09

Institution Marion Correctional Type of Interview: ☒ Subsequent ☐ Special

ESTABLISHED Presumptive Parole Release Date: 9/01/2352

HEARING EXAMINER'S RECOMMENDATION:

☐ A. NO CHANGE in Presumptive Parole Release Date.

☒ B. CHANGE in Presumptive Parole Release Date as follows:

1. Reduce Presumptive Parole Release Date by 12 months.
   Reason (source)
   Per Section 947.16(5) and 947.174 Florida Statutes and Rules 23-21.002 (29) and 23-21.013 FAC:
   Since the last interview of 3/19/04, and the last Commission Action of 6/23/04, Inmate Franklin's institutional conduct has been above satisfactory as evidenced by his maintaining an above satisfactory rating from his work and housing assignments. A Progress Report dated 1/23/09 recommended a 12 month reduction of his PPRD.
2. Extend Presumptive Parole Release Date by _____ months.

COMMISSION ACTION:

☐ A. The Commission AFFIRMS the Hearing Examiner's Recommendation.

☒ B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:

☒ 1. NO CHANGE in Presumptive Parole Release Date.

☐ 2. CHANGE in Presumptive Parole Release Date as follows:

☐ (a) Reduce Presumptive Parole Release Date by _____ months.

☐ (b) Extend Presumptive Parole Release Date by _____ months.

At the Commission meeting held 3/4/2009, your Presumptive Parole Release Date was established to be 9/1/2352. You will be re-interviewed for your subsequent interview during the month of November, 2013.

The Commission finds that your next interview date shall be within 5 years, rather than within 2 years from your last interview based on your conviction/sentence for Sexual Battery and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:

1. **The offense involved the use of a firearm.**
2. **Extent of physical and psychological trauma to the victim(s) due to the criminal offense.**
3. **The offense involved multiple separate offenses.**
4. **release may cause unreasonable risk to others.**

Certified and delivered by Elizabeth Cowen, Commission Clerk, this 23 day of March, 2009
Certified to inmate (6) eac

CR-1-2 (Revised 3/96)

1 copy to inmate; 1 copy to institution file; original to Central Office file.

FLORIDA PAROLE COMMISSION

Memorandum

DATE: 12/03/2013

TO: THE COMMISSION

FROM: William F. Whitehouse, Parole Examiner **OFFICE:** Region III – Ocala Field Office

RE: **FRANKLIN, Arthur O.** **DC # 094027**

PAROLE INTERVIEW
RATIONALE / BASIS FOR RECOMMENDATION

Interview Date: 11/26/2013 **Location: Marion Correctional Institution**

☐ Initial ☒ Subsequent ☐ Special ☐ Effective ☐ Extraordinary

Last Interview Date: 01/28/2009 Last Commission Action: 03/04/2009

Sentence Date	Case # & Offense	County	Sentence Structure	Guidelines
A# 05/04/1984	83-006211, I. Kidnapping, II. Unarmed Robbery, III – XII. Sexual Battery	Duval	I. 17 years II. 15 years, c/c III – XII. 1,000 years, c/c	No
	83-006212, I. Kidnapping, II. Sexual Battery, III. Unarmed Robbery		I. 17 years II. 1,000 years, c/c, III. 15 years, c/c	
	83-005854, I. Armed Robbery with Use of Firearm or Deadly Weapon, II. Aggravated Assault, III. Armed Kidnapping with Use of Firearm or Deadly Weapon, IV, V. Sexual Battery		I. 17 years II. 5 years, c/c III, IV, V. 1,000 years, c/c	

Following the interview, it is recommended that the 09/01/2352 PPRD previously established for this 48 year old inmate remain unchanged.

During the interview and when told of the recommendation, the inmate exhibited a positive attitude, explaining that he is going back to court. He has now completed more than 30 years of the sentences totaling 1,000 years. A Court Order dated 04/29/2013 removed the Jurisdiction Retained on all three cases.

According to the Justification to Order Retaining Jurisdiction, Franklin and a codefendant kidnapped, robbed and brutally raped and beat their female victims, physically and mentally torturing them. On 06/17/1987 the Commission established a 03/01/2350 PPRD.

Since his last parole interview, Franklin has not been found guilty of a disciplinary report resulting in disciplinary confinement and/or lost gain time. He was found guilty of (3-12) Possession of Contraband, a report written on 09/11/2011, and for which he received a sentence of Extra Duty.

There have been no recent progress reports written. He averages Above Satisfactory work evaluations from his assignment as a Confinement Orderly. He is prohibited from returning to work for PRIDE due to their offense and sentence length requirements. He has not been involved in any programs.

Franklin remains Close custody and has been at Marion since transferring from Union Correctional on 12/06/1999.

Franklin confirmed the tattoos listed in the DC data bank, but also added that his nickname "Darrell" and a mermaid are tattooed on his left arm. All his tattoos were received in 1986 when he was at Union. He denies any gang affiliation.

Submitted by:

William F. Whitehouse
Parole Examiner

Reviewed by:

Kevin P. Tiller date
Regional Administrator

FLORIDA PAROLE COMMISSION

SUBSEQUENT/SPECIAL INTERVIEW
COMMISSION ACTION

Inmate Name: FRANKLIN, Arthur O. DC #: 094027 Date of Interview: 11/26/2013

Institution Marion Correctional Type of Interview: ☒ Subsequent ☐ Special

ESTABLISHED Presumptive Parole Release Date: 09/01/2352

HEARING EXAMINER'S RECOMMENDATION:

☒ A. NO CHANGE in Presumptive Parole Release Date.

COMMISSION ACTION:

☒A. The Commission AFFIRMS the Hearing Examiner's Recommendation based on the same reasons provided by the hearing examiner.

☐B. The Commission does NOT affirm the Hearing Examiner's Recommendation and determines the case as follows:
☒1. NO CHANGE in Presumptive Parole Release Date.

At the Commission meeting held 2/5/2014, your Presumptive Parole Release Date was established to be 9/1/2352.
You will be re-interviewed for your subsequent interview during the month of September, 2020.

The Commission finds that your next interview date shall be within 7 years, rather than within 2 years from your interview based on your conviction/sentence for Sexual Battery, and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for this finding is as follows:

1. Use of a firearm
2. Physical and Psychological trauma to the victim
3. Unreasonable risk to others
4. Multiple separate offenses

Certified Mailed by Kelley J. Bruce *Commission Clerk, this* 14th *day of* February, 2014.
Certified (5)

PCG-4.2 (Revised 7/2013) 1 copy to inmate; 1 copy to institution file; original to Central Office file.

KFL

FLORIDA COMMISSION ON OFFENDER REVIEW PAROLE RELEASE DECISIONS FISCAL YEARS 2012-2018

Fiscal Year	Parole Eligible	Parole Release Decisions	Parole Granted	Percentage Release Decisions Granted	Percentage Eligible Granted
2017-18[1]	4275	1499	14	0.93%	0.33%
2016-17[2]	4438	1242	21	1.69%	0.47%
2015-16[3]	4545	1237	24	1.94%	0.53%
2014-15[4]	4561	1300	25	1.92%	0.55%
2013-14[5]	4626	1437	23	1.60%	0.50%
2012-13[6]	5107	1782	22	1.23%	0.43%

[1] Fla. Commission on Offender Review 2018 Annual Report 6, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf

[2] Fla. Commission on Offender Review 2017 Annual Report 8, available at https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202017%20for%20web.pdf

[3] Fla. Commission on Offender Review 2016 Annual Report 8, available at https://www.fcor.state.fl.us/docs/reports/FCORannualreport201516.pdf

[4] Fla. Commission on Offender Review 2015 Annual Report8, available at https://www.fcor.state.fl.us/docs/reports/FCORannualreport201415.pdf

[5] Fla. Commission on Offender Review 2014 Annual Report 6, 8, available at https://www.fcor.state.fl.us/docs/reports/FCORannualreport201314.pdf

[6] Fla. Commission on Offender Review 2013 Annual Report 8, available at https://www.fcor.state.fl.us/docs/reports/FCORannualreport201213.pdf

LIST OF INMATES RESENTENCED UNDER *ATWELL* AND RELEASED, OR SOON TO BE RELEASED

	Name	County	Case No.	Offense Date	DOC No.	Release Date
1	BARTH, CLIFFORD	ESCAMBIA	9100606	1/26/1991	216317	9/14/2017
2	GONZALEZ, ENRIQUE LIONEL	MIAMI-DADE	8840832B	11/21/1988	186274	4/19/2017
3	COATES, TYRONE	MIAMI-DADE	9130032A	7/18/1991	192711	8/25/2017
4	CLARINGTON, JERMAINE	MIAMI-DADE	9000354C	12/30/1989	192304	2/22/2018
5	HILTON, PERRY TEE	MIAMI-DADE	8421439	8/11/1984	096132	11/16/2017
6	MCMILLAN, WILLIE L	MIAMI-DADE	7610125	10/13/1976	059094	3/23/2018
7	REDDICK, ANGELO MAURICE	MIAMI-DADE	8712283	9/19/1986	184389	7/12/2017
8	COURTNEY, BRANDON PHILLIP	MIAMI-DADE	7604179B	9/1/1974	874784	10/26/2017
9	RIMPEL, ALLAN	MIAMI-DADE	9038716	9/6/1990	191195	11/1/2017
10	GRANT, ALAN RUDOLPH	MIAMI-DADE	8226401	9/23/1982	087912	4/11/2017
11	MILLER, RICARDO	MIAMI-DADE	7208754	4/16/1972	038649	4/11/2018
12	GONZALEZ, TITO	MIAMI-DADE	8411547	4/29/1984	099087	7/17/2017
13	MURRAY, HERBERT	MIAMI-DADE	7813136C	8/21/1978	067530	4/7/2017
14	TERRILL, CHRISTOPHER	MIAMI-DADE	9217844	5/3/1992	195060	12/22/2017
15	STIDHUM, JAMES RICKY	MIAMI-DADE	8222073D	9/6/1982	90384	4/20/2018
16	SHEPHERD, TINA KAY	MIAMI-DADE	8216103	6/29/1982	160407	11/7/2017
17	THOMAS, LESTER	MIAMI-DADE	8023444	10/7/1980	080877	12/22/2017
18	RIBAS, URBANO	MANATEE	8201196	10/8/1982	093472	5/11/2017
19	EVERETT, STEVEN L	MANATEE	7400468	7/11/1974	046717	4/12/2017
20	WORTHAM, DANIEL	MANATEE	9001844	7/3/1990	582950	10/20/2017
21	BRAXTON, CHARLES	MANATEE	8601920	11/28/1985	107687	7/7/2017
22	JOHNSON, ADRIAN LENARD	HILLSBOROUGH	8904764	3/17/1989	117404	6/14/2020
23	BEFORT, MARK R	HILLSBOROUGH	7905526	7/4/1979	072657	7/20/2017
24	IRVING, DEAN SWANSON	BAY	8201173	3/19/1981	092278	4/11/2018
25	CROOKS, DEMOND	BAY	9302523	12/15/1993	961761	1/22/2018
26	LEONARD, CARLOS	PALM BEACH	9204775	3/25/1992	896909	3/8/2017
27	THURMOND, KEVIN	PALM BEACH	8906616	5/5/1998	187400	2/6/2017
28	DOBARD, ANTHONY	PALM BEACH	8206935	1/7/1982	0953393	9/6/2017

29	BROWN, RUBEN	PALM BEACH	9204063	3/27/1992	780560	5/4/2017
30	LECROY, CLEO	PALM BEACH	104528	1/4/1981	104528	10/22/2018
31	STEPHENS, BARRY	BROWARD	8808481A	3/31/1988	186984	6/27/2018
32	CREAMER, DENNIS M	BREVARD	43686	5/30/1968	023801	6/27/2017
33	LAMB, WILBURN AARON	BREVARD	8600394	1/20/1986	106546	7/13/2018
34	ROBERSON, EUGENE	BREVARD	9100072A	12/10/1990	711333	12/12/2017
35	BISSONETTE, ROY I	BREVARD	7300440	5/12/1973	039295	7/3/2017
36	KENNEDY, BRIAN PATRICK	BREVARD	9100072	12/10/1990	704395	5/9/2017
37	ADAMS, RONNIE G	GLADES	7600025	7/6/1976	056056	2/16/2017
38	BRUNSON, THORNTON EMERY	DUVAL	9009095	5/19/1990	121312	6/18/2018
39	EDWARDS, EUGENE	DUVAL	9311766B	10/21/1993	123739	6/20/2018
40	THOMAS, CALVIN W	DUVAL	609501	6/9/1960	000984	4/24/2017
41	COOPER, ANTHONY JEROME.	DUVAL	7800349	2/2/1978	065615	2/21/2017
42	DIXON, ANTHONY A	DUVAL	7501613	6/4/1975	049671	5/9/2018
43	KELLY, CHRIS	PASCO	8902393	7/29/1989	118965	12/8/2019
44	HINKEL, SHAWN	PASCO	8300717	1/21/1983	089850	3/2/2018
45	SMITH, BENNY EUGENE	PINELLAS	8006738	8/2/1980	078908	11/14/2017
46	BELLOMY, TONY	PINELLAS	8510529	8/5/1985	100677	10/9/2017
47	CLARK, CHANTAY CELESTE	PINELLAS	9215418	8/15/1992	272025	11/3/2017
48	HARRIS, SYLVESTER A	PINELLAS	7505907	4/3/1975	054563	9/22/2017
49	DAVIS, HENRY M	PINELLAS	7223700	1/26/1972	033944	12/19/2017
50	STAPLES, BEAU	PINELLAS	265159	4/10/1989	265159	2/24/2019
51	FLEMMING, LIONEL	PINELLAS	842319	1/24/1984	095533	2/16/2018
52	ILLIG, LEON	PINELLAS	105411	1/1/1986	105411	10/24/2016
53	BLOCKER, TROY	PINELLAS	8714776	10/30/1987	115114	10/13/2016
54	BRYANT, DWIGHT	PINELLAS	15352	9/30/1964	015352	8/16/2018
55	DUNBAR, MICHAEL	PINELLAS	6415223	9/30/1965	015228	7/13/2018
56	JOHNSON, ROY L	ALACHUA	7109405	10/5/1970	029350	2/1/2018
57	DIXON, CHARLEY L.	BAKER	7000173	4/12/1970	027515	6/8/2018
58	LEISSA, RICHARD W	ORANGE	7502220	1/6/1975	049956	3/30/2017
59	SILVA, JAIME H	ORANGE	9212802	11/16/1992	371145	8/25/2016
60	WALLACE, GEORGE	PALM BEACH	8804700	3/11/1988	187487	7/7/2020