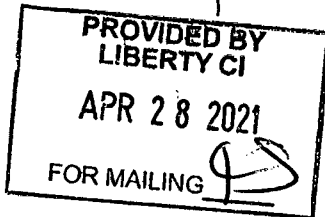


No. 20-8100



IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS R. MCGILL — PETITIONER
(Your Name)

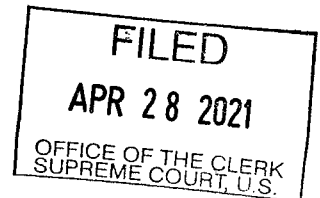
vs.
FLORIDA DEPARTMENT
OF CORRECTIONS — RESPONDENT(S)

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

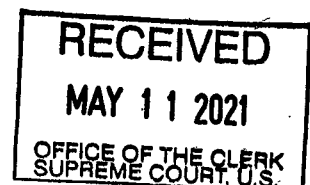


Thomas R. McGill, DC#982800
(Your Name)

11064 N.W. Dempsey Barron Rd.
(Address)

Bristol, Florida 32321
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

(1) Did the Florida Department of Corrections award Mr. McGill approximately 4,148 days of gain-time before changing their interpretation of s. 944.275, Florida Statutes (1994), and forfeiting the earned credits resulting in:

(a) a Due Process violation for not following their own duly promulgated rules;

(b) a violation of the Ex Post Facto Clause of the Fourteenth Amendment where the Department's changed interpretation of the gain-time law was applied retroactive to the detriment of Mr. McGill; and

(c) a Due Process violation for failing to give Mr. McGill prior notice of the forfeiture and a hearing in which he could present witnesses and evidence?

(2) Does the Department's current interpretation of s. 944.275, Florida Statutes (1994), violate the Equal Protection Clause of the Fourteenth Amendment where it does not further a compelling government interest nor is it reasonably related to a government interest?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

N/A

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-7
REASONS FOR GRANTING THE WRIT	8-19
CONCLUSION.....	20

INDEX TO APPENDICES

APPENDIX A	Decision of the State Court of Appeals
APPENDIX B	Decision of the State Trial Court
APPENDIX C	Email Communication Between Sonya Rudenstine and Stacey Haynes
APPENDIX D	Sworn Affidavit of Sonya Rudenstine
APPENDIX E	DC6-236, Inmate Request Form
APPENDIX F	Thomas McGill's Disciplinary Actions

TABLE OF AUTHORITIES CITED

Cases:	Pages:
Buffa v. Singletary, 652 So.2d 885 (Fla. 1st DCA 1995)	12
Grider v. City of Auburn, Ala., 618 F.3d 1240 (11th Cir. 2010)	17
Griffin Indus. v. Irvin, 496 F.3d 1189 (11th Cir. 2007)	17
Horsley v. State, 160 So.3d 393 (Fla. 2015)	4
Knuck v. Wainwright, 759 F.2d 856 (11th Cir. 1985)	16
Lindquist v. City of Pasadena, 669 F.3d 225 (5th Cir. 2012)	17
Lynce v. Mathis, 519 U.S. 433 (1997)	9
Miller v. Alabama, 567 U.S. 460 (2012)	4
Plymel v. Moore, 770 So.2d 242 (Fla. 1st DCA 2000)	16
United States v. Hope, 642 Fed. Appx. 961 (11th Cir. 2016)	17

Weaver v. Graham,

450 U.S. 24 (1981)

16

Wolff v. McDonnell,

418 U.S. 539 (1974)

16

Statutes and Rules:

28 U.S.C. § 1257(a)

2

Section 921.001, Florida Statute

5

Section 921.0012, Florida Statute

5-6

Section 921.0013, Florida Statute

5-6

Section 944.275, Florida Statute (1994)

5-19

Section 944.28, Florida Statute

12

Rule 3.800, Florida Rules of Criminal Procedure

5

Rule 33-11.0065, Florida Administrative Code (1994)

13-5

Rule 33-601.104, Florida Administrative Code

12

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

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

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

The opinion of the Second Judicial Circuit, Florida court appears at Appendix B to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 12/30/2020.
A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10, United States Constitution

No State shall enter into any Treaty, Alliance, or Confederation; grant Letter of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto law; or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

14th Amendment, United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a case where the actions of the Florida Department of Corrections will leave the Petitioner in prison for almost 20 years longer than he's lawfully entitled to be, and resulted in four other inmates being lawfully released and soon thereafter unlawfully rearrested.

In 1996, Thomas McGill was convicted of first-degree murder and robbery with a firearm for an incident that occurred on December 27, 1994. Mr. McGill was sentenced to life imprisonment without the possibility of parole for the murder conviction and a concurrent sentence of 15 years' imprisonment for the robbery conviction. At the time of the offenses, Mr. McGill was 17 years old.

The Florida Department of Corrections ("the Department") began tracking Mr. McGill's behavior and awarding him incentive gain-time as soon as he was taken into custody by the Department in 1996. Every month, the Department has provided Mr. McGill with reports of this accrued gain-time.

The Department forfeited Mr. McGill's gain-time on one occasion. On September 27, 1998, the Department subtracted 90 days from his accrued gain-time after he was found guilty of "spoken threat." (Appx. F). Mr. McGill was given notice of this forfeiture.

Following the United States' Supreme Court's ruling in *Miller v. Alabama*, 567 U.S. 460 (2012), and the Florida Supreme Court's ruling in *Horsley v. State*, 160 So.3d 393 (Fla. 2015), Mr. McGill filed a Florida

Rule of Criminal Procedure 3.800(a) motion to correct his illegal sentence. The rule 3.800(a) motion was subsequently granted and Mr. McGill was resentenced in 2017. On February 1, 2016, in preparation for Mr. McGill's resentencing hearing, his attorney, Sonya Budenstine, contacted a Department employee, Stacey Haynes, to request an estimated release date with Mr. McGill's gain-time calculation if he was to receive a 40 year sentence for his murder conviction.

Ms. Haynes advised Ms. Budenstine that although Mr. McGill had accrued over 4,000 days of gain-time at that point, the Department had changed their interpretation of the gain-time law and was in the process of deleting the gain-time from Mr. McGill's file. Ms. Haynes provided Ms. Budenstine with an email detailing their new policy. The policy states:

Capital Felonies are not included within the sentencing guidelines (s. 921.001(4)(b)2:

"The 1994 guidelines apply to sentencing for all felonies, except capital felonies, committed on or after January 1, 1994.

Any revision to the 1994 guidelines applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision.") Beginning 1/1/94 and until

9/30/95, the authorization to award incentive gain-time was based on the guideline severity level of the underlying offense (s. 944.275(4)(b)2: "For offenses ranked in offense severity

levels 1 through 7, under s. 921.0012 or s. 921.0013, up to 25 days of incentive gain-time may be granted. For offenses ranked in offense severity levels 8, 9, and 10, under s. 921.0012 or s. 921.0013, up to 20 days of incentive gain-time may be granted. Since capital crimes are not included within the guidelines sentencing scheme, they are not assigned a severity level. For term-of-year sentences imposed for capital crimes committed 1/1/94 to 9/30/95, no gain-time is authorized.

(Appx C, p 1)

On June 16, 2017, following his Miller resentencing hearing, the state trial court resentedenced Mr. McGill to 50 years' incarceration for his murder conviction. The sentence was to run concurrent to his robbery conviction sentence.

Based on Mr. McGill's defense counsel's February 2016 communication with Ms. Haynes, he engaged in the grievance process offered by the Department regarding the revocation of his gain-time. The grievances were denied at every level of the process.

After Mr. McGill exhausted his administrative remedies with the Department, he filed a petition for a writ of mandamus in the state circuit court raising various state and constitutional issues. The Department subsequently responded to the petition and Mr. McGill filed a reply. On Friday, July 26, 2019, the circuit court rendered an order

denying the mandamus petition. (Appx. B)

On August 27, 2019, Mr. McGill sought certiorari review of the circuit court's order by filing a petition for writ of certiorari in the First District Court of Appeal in Florida. The Department filed a response and Mr. McGill filed a reply. Oral arguments were ordered and held on December 17, 2020. Thereafter, on December 30, 2020, the District Court entered a per curiam order that stated "[t]he petition for writ of certiorari is denied on the merits." (Appx. A).

REASONS FOR GRANTING THE PETITION

Mr. McGill presented four constitutional claims to the state court relating to the Department of Corrections' forfeiture of over eleven years worth of his earned gain-time credits and his inability to earn future credits. The claims presented were:

1. "In forfeiting Mr. McGill's gain-time, the Department violated its own rule, thereby depriving Mr. McGill of his right to due process under the Florida and United States Constitution."
2. "The Department's retroactive revocation of Mr. McGill's gain-time violates the Ex Post Facto Clause of the Florida and United States Constitution."
3. "The forfeiture of Mr. McGill's gain-time credits without due process violates clearly established state and federal law."
4. "The forfeiture of Mr. McGill's gain-time credits violates constitutional principles of equal protection."

The state court dispensed with the first three issues by determining that Mr. McGill had only ever "potentially (but not actually) earned" incentive gain-time. (Appx B, pp. 10-13). The equal protection issue was reviewed under the rational basis standard, as opposed to strict scrutiny, because of the court's determination that Mr. McGill never actually earned any gain-time. The court concluded that s. 944.275, Florida Statutes (1994), was reasonably related to the "eminently legitimate interest in subjecting all convicted

offenders to consequences which they had constructive notice of at the time they committed their offenses." (Appx B., p. 14)

Mr. McGill alleges that, like *Lynce v. Mathis*, 519 U.S. 433 (1997), the state court addressed important questions of federal law that has not been, but should be, settled by this Court. Although Mr. McGill had never been released due to his accumulation of these gain-time credits and later rearrested due to the Department's forfeiture of them, at least four inmates have.

The pivotal question before this Court is whether or not Mr. McGill had ever earned gain-time to invoke the constitutional principles at issue here. Accepting the Department's position on the matter, the state court determined that Mr. McGill had never actually earned gain-time. Instead, the state court held that the Department had merely been posting potentially earned gain-time for Mr. McGill in the event he was ever deemed eligible to have it applied to his sentence. They reasoned that this was so the Department could keep administrative track of his potentially earned gain-time and that the Department had never interpreted s. 944.275, Florida Statutes (1994), or any of their administrative rules as authorizing Mr. McGill to earn gain-time.

Mr. McGill alleges that several facts belie the state court's reasoning and will address each in turn.

The first fact that contradicts the state court's ruling is the Department's own explicit declarations as to their changed interpretation of the gain-time

statutes and their revocation of Mr. McGill's gain-time. On February 1, 2016, in preparation for Mr. McGill's resentencing following a change in juvenile law, Sonya Budenstien, Esquire (one of Mr. McGill's attorneys) emailed Stacey Haynes (a Correctional Services Consultant for the Department) to request an estimated release date, including Mr. McGill's gain-time calculation, if Mr. McGill were to be resentedenced to 40 years' incarceration for his murder conviction. Ms. Haynes initially informed Ms. Budenstien by email on February 5, 2016, that she would have to check with her supervisor before she could provide an estimated release date (Appx. C, p. 2).

On February 10, 2016, Ms. Haynes emailed Ms. Budenstien that it would be best to discuss Mr. McGill's gain-time over the phone rather than by email (Appx. C, pp. 1-2). Ms. Budenstien called Ms. Haynes and Ms. Haynes reported that although Mr. McGill had accrued over 4,000 days in gain-time, the Department was currently in the process of backing up and deleting gain-time from the active files of various individuals because the Department changed its interpretation of gain-time eligibility for these individuals (Appx. D, pp. 1-2). Specifically, the Department had concluded that individuals convicted of first degree murder between January 1, 1994, and September 30, 1995 (including Mr. McGill), were not entitled to gain-time under the statutes. (Appx. D, p. 2). Ms. Budenstien asked Ms. Haynes to email her documentation detailing their new policy as well as a breakdown of Mr. McGill's

gain-time. Ms. Haynes provided this email on February 26, 2016. (Appx C, p. 1)

The veracity of Ms. Rudenstien's sworn affidavit detailing the above transaction with Ms. Haynes was never disputed in the state court. The Department never denied this transaction occurred.

Further, on June 20, 2018, Mr. McGill submitted a DC6-236, Inmate Request, asking whether he accumulated gain-time for his murder conviction during the three year minimum mandatory term on his armed robbery conviction. (Appx E.) The Sentencing Specialist at Liberty Correctional Institution, Ms. Pennington, responded on June 26, 2018, that "[a]ll gain time has been removed." (Appx E.) She didn't tell Mr. McGill that he never earned gain-time or that they were tracking potentially earned gain-time, she said his gain time was removed.

How the state court was able to reach a contrary position than that of what the Department had prior to litigation is unexplainable. The Department should not be able to claim that Mr. McGill was earning gain-time and then later during litigation, realizing their error in revoking it, say they never awarded him any.

Also disputing the state court's ruling is the fact that the Department had previously forfeited 90 days of Mr. McGill's earned gain-time. On September 27, 1998, the Department forfeited 90 days of Mr. McGill's gain-time after he was found guilty of a "spoken threat" in a disciplinary hearing. (Appx F.) He was given notice and a hearing where he was afforded the opportunity to present witnesses and evidence.

The Florida Statutes, the Department's rules, and judicial opinions from the state courts all reveals that the Department is only able to forfeit earned gain-time. Florida Statutes s. 944.28, titled Forfeiture of Gain-time and the Right to Earn Gain-time in the Future, states:

"All or any part of gain-time earned by a prisoner according to the provisions of law is subjected to forfeiture if such prisoner... violates... any rule or regulation of the department or institution."

The statute then details the procedures that must be adhered to before forfeiting such earned gain-time, procedures that Mr. McGill received before the Department forfeited the 90 days of his earned gain-time in 1998.

Florida Administrative Code, Rule 33-601.104, is titled Withholding or Forfeiture of Gain Time. Subsection (1) merely states "Earned Gain Time" and the remainder of the rule then details how the Department may forfeit earned gain-time in a disciplinary hearing, among other circumstances. This rule, nor any other, details how the Department may forfeit "potentially earned gain-time." As a matter of fact, the First District Court of Appeal for the State of Florida has held that the Department is only authorized to forfeit earned gain-time and cannot revoke gain-time that was never actually earned. *Buffa v. Singletary*, 652 So.2d 885 (Fla. 1st DCA 1995).

The state court and the Department were unable to refute this obvious fact that reveals Mr. McGill had been earning gain-time in the past.

Mr. McGill also alleges that Rule 33-11.0065(5)(c), Florida Administrative Code (1994), demonstrates that the Department did interpret the gain-time statute as authorizing individuals who were convicted of capital murder between January 1, 1994, and September 30, 1995, to receive gain-time. The rule states:

"Death or Life sentences cannot be reduced by gain time. However, any inmate serving a death or life sentence will be considered for incentive gain time and the gain time will be posted so that in the event the death or life sentence is commuted to a number of years, the accumulated incentive gain time will be applied to the inmates sentence."

The state court and the Department both reasoned that by invoking this rule, Mr. McGill conceded that he was never awarded gain-time. Specifically, the state court held:

"First, it is notable that Petitioner invokes this rule, as by doing so he implicitly concedes that he has never been awarded gain time. Instead, for the last twenty-two years or so, he has been 'considered' for gain time, and that gain time has only been 'posted,' not awarded, in the event he becomes eligible to receive it."

(Appx B, p. 11)

The state court read this section of the rule in a vacuum. It must be read in conjunction with the whole rule. The "posted" that the rule is referring to is the posting that occurs after an inmate is awarded gain-time, not the posting of gain-time "not

awarded." Rule 33.11.0065(4), Florida Administrative Code (1994), states in full:

"When processed. Incentive gain time is to be processed at the end of each month or upon receipt of progress reports on inmates housed by other agencies. All incentive gain time awards should be posted in the Offender Based Information System by the close of business no later than the 12th of each month following the month of the award."

It is only awarded gain-time that is posted contrary to the state court's belief.

It's also interesting that this rule became effective April 17, 1994 (and was amended June 24, 1994), right in the middle of the 21 month window period where the Department is alleging that capital defendant's are not entitled to gain-time. Had the Department always interpreted that capital defendants convicted between January 1, 1994, and September 30, 1995, were not entitled to gain-time, they would not have enacted this rule during that time period or they would have excluded death sentence inmates as their crimes had to be capital.

This rule clearly demonstrates that Mr. McGill had been earning gain-time for the approximate twenty-two years that the state court and the Department would have you believe otherwise.

The most glaring and blatant shewing of Mr. McGill's years of earning gain-time is the circumstances surrounding other defendants convicted of capital crimes between January 1, 1994, and September 30, 1995.

There are four defendants that this Court should take note of: Kenneth Purdy; Josephus McCloud, Jr.; Paul Clayton; and Derrick Powell. These four defendants, like Mr. McGill, were convicted of capital crimes between January 1, 1994, and September 30, 1995. The only difference is these inmates were actually released from the Department of Corrections with the accumulation of their gain-time and later rearrested after the Department changed their interpretation of the gain-time law and retroactively forfeited their gain-time.

The Department cannot, with any reasonable excuse, put forth a convincing argument that they have not been awarding these defendants gain-time. The facts are clearly mounted against such an argument.

As such, it is also clear that the Department revoked Mr. McGill's earned gain-time. This revocation was prompted by the Department's changed interpretation of the gain-time law, as detailed by Ms. Haynes in her conversation with Ms. Rudenstien.

Mr. McGill avers that this revocation violates his Due Process Right under the Fourteenth Amendment of the United States Constitution because the Department failed to follow its own rule that mandates it to apply all of Mr. McGill's earned gain-time to his sentence when it was reduced to a term of year sentence from a life sentence. See Rule 33-11.0065(5)(c), Florida Administrative Code (1994).

The Department also failed to give Mr. McGill notice that they were revoking his earned gain-time and a hearing in which he could present witnesses and evidence. This notice and hearing is required

in order to uphold an individual's procedural due process rights. *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974).

Additionally, by retroactively forfeiting Mr. McGill's gain-time based on the Department's changed interpretation of the rules and laws governing gain-time, it violated the Ex Post Facto Clause of the United States Constitution. See *Weaver v. Graham*, 450 U.S. 24, 31 (1981) ("it is the effect, not the form, of the law that determines whether it is ex post facto."); *Knuck v. Wainwright*, 759 F.2d 856, 857 (11th Cir. 1985) (holding that *Weaver* extends to the Department's methods of calculating gain-time).

Finally, Mr. McGill avers that the Department's interpretation of s. 944.275, Florida Statutes (1994), as prohibiting him from earning gain-time runs afoul of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Initially, Mr. McGill believes, contrary to the state court, that this claim should be reviewed under strict scrutiny since he has demonstrated that he did in fact earn gain-time that was revoked. The Department's interpretation of s. 944.275, Florida Statutes (1994), prevents Mr. McGill from having his earned gain-time applied to his sentence and Mr. McGill has a vested liberty interest in earned gain-time. *Plymel v. Moore*, 770 So.2d 242, 248 (Fla. 1st DCA 2000).

The Department has not, nor could, show that the statute furthers a compelling interest and is narrowly tailored to achieve that interest.

However, the state court applied the rational basis standard to address the equal protection claim. Even

assuming this standard is correct, the state court was wrong in denying this claim.

The court defined those similarly situated to Mr. McGill as those who were convicted of capital crimes between January 1, 1994, and September 30, 1995.

There is no precise formula to determine whether an individual is similarly situated to comparators. *Lindquist v. City of Pasadena*, 669 F.3d 225, 233 (5th Cir. 2012). Too narrow a definition of similarly situated could exclude from the zone of equal protection those who are plainly treated disparately and without justification. *Griffin Indus. v. Irvin*, 496 F.3d 1189, 1203 (11th Cir. 2007). To be similarly situated, the comparators must be *prima facie* identical in all relevant respects. *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1264 (11th Cir. 2010). The equal protection guarantee broadly prohibits the government from drawing distinctions between individuals based on differences that are irrelevant to a legitimate government purpose. *United States v. Hope*, 642 Fed Appx 961, 965 (11th Cir. 2016).

It is clear that Mr. McGill is similarly situated to other capital inmates who crimes were committed prior to January 1, 1994, and after October 30, 1995, in that:

- 1) They all committed capital offenses;
- 2) As it relates to the juvenile offenders who had their sentences reduced to a term of years, they all have term of year sentences; and
- 3) They are all subjected to the control of the Florida Department of Corrections.

The only distinction the state court identifies in addressing the similarly situated element is the date the offense was committed. (Appx B, p. 14) However, it is this date classification that Mr. McGill is arguing runs afoul of equal protection. To argue this is a relevant factor that distinguishes Mr. McGill from those he alleges are similar to him would bar him from ever coming forth with this argument. Mr. McGill is, in fact, similarly situated to the comparators in all relevant respects for the purpose of equal protection.

The state court identified a single "eminently legitimate interest" in which s. 944.275, Florida Statutes (1994), is purportedly related to. That being "subjecting all convicted offenders to consequences which they had constructive notice of at the time they committed their offenses." (Appx B, p. 14).

Mr. McGill alleges that this is not a legitimate government interest for the purpose of equal protection. The stated interest is merely the Legislature's general power to have the laws they enact enforced. The law itself must still address a legitimate government interest and not be based on the whim of the Legislature or arbitrary.

Section 944.275(4)(c)2, Florida Statutes (1994), does not prohibit capital offenders, like Mr. McGill, from earning gain-time. By using the sentencing guidelines severity ranking chart found in s. 921.0012, Florida Statutes (1994), to determine whether an inmate receives 20 or 25 days of gain-time each month, the Legislature unwittingly failed to explicitly address how much gain-time a capital inmate should receive. This was a Legislative oversight, and

not a decision based on a government interest.

The Legislature merely intended to award inmates with less severe crimes 25 days of gain-time each month and inmates with more severe crimes 20 days. For years, the Department had given the statute an interpretation to accomplish the legislative intent of it and was awarding Mr. McGill 20 days of gain-time every month. The Department's changed interpretation of the statute is the cause of action before this Court now.

There is no legitimate government interest that justifies Mr. McGill being prohibited from earning gain-time, while those similarly situated to him that committed their crimes prior to January 1, 1994, and after October 30, 1995, does earn gain-time.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas R. McGill

Date: 4/28/2021