

IN THE SUPREME COURT OF FLORIDA

CHARLES A. HUCKELBURY,

Petitioner,

vs.

Case No. SC05-1213

L.T. No. 1D04-5692

THE FLORIDA PAROLE COMMISSION,

Respondent.

RESPONDENT'S BRIEF ON JURIDICTION

**On petition for discretionary review from a decision
of the District Court of Appeal, First District of Florida**

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**THIS COURT SHOULD
DECLINE TO ACCEPT
DISCRETIONARY
JURISDICTION IN THIS CASE
BECAUSE THE PETITIONER
HAS FAILED TO
DEMONSTRATE A CONFLICT
BETWEEN THE DISTRICT
COURT OPINION BELOW AND
THE FLORIDA SUPREME
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PRELIMINARY STATEMENT

The Appellant/Petitioner below, the Florida Parole Commission, will be referred to as either "Respondent" or "the Commission" in this brief.

Appellee/Respondent below, Charles A. Huckelbury, will be referred to as "the Petitioner".

STATEMENT OF THE CASE AND THE FACTS

On November 12, 1974, Petitioner Charles Huckelbury was convicted of First Degree Murder in Charlotte County case no. 043718 for the murder-for-hire killing of a Florida building contractor and was sentenced to Life in state prison with a 25 year minimum mandatory prior to consideration for parole. Petitioner's presumptive parole release date (PPRD) was originally established to be September 10, 2014, however the Commission reduced that date throughout the years, finally reducing it to September 10, 2003.

At the Parole Commission meeting held on October 29, 2003, the Commission, after examining the Petitioner's entire inmate record, decided pursuant to Section 947.18, Florida Statutes, that Petitioner should not be paroled at this time, and by Order dated November 5, 2003 suspended the Petitioner's PPRD.

On or about July 30, 2004, Petitioner filed a Petition for Writ of Mandamus in the Circuit Court of the Second Judicial Circuit, in and for Leon County, case no. 2004 CA 001882, seeking to have the court vacate the Parole Commission's November 5, 2003 Order declining to authorize his effective parole release date (EPRD) and to compel the Commission to reconsider its action without regard to input from the victim and state attorney. On December 6, 2004, the Circuit Court issued its Order Granting

Extraordinary Relief, finding that the Commission abused its discretion in declining to authorize the EPRD and remanding the case to the Commission for further consideration.

The Commission sought certiorari review in the District Court of Appeal, First District of Florida, case no. 1D04-5692, and the District Court reversed the decision of the Circuit Court, stating:

We grant the Florida Parole Commission's petition for writ of certiorari and quash the circuit court's order directing the Commission to reconsider setting an effective parole release date for Charles A. Huckelbury.

A decision by the Parole Commission to suspend an inmate's presumptive parole release date and defer setting an effective parole release date can be set aside by a court only for demonstrated abuse in the exercise of the Commission's discretion. See Fla. Parole & Prob. Comm'n v. Paige, 462 So.2d 817 (Fla. 1985; see also Williams v. Fla. Parole Comm'n, 625 So.2d 926 (Fla. 1st DCA 1993)). As we observed in Williams, an abuse of discretion may be established in various ways, including a showing that the Commission deviated from the legal requirements imposed upon it, such as the obligation to review the inmate's complete record and to articulate the basis for its decision. An abuse of discretion also occurs if the denial of parole is based upon illegal grounds or improper considerations. *Id.* At 937; see also Moore v. Fla. Parole & Prob. Comm'n, 289 So.2d 719 (Fla. 1974). Here, Huckelbury did not show that the Commission deviated from the legal requirements imposed upon it, and the record likewise fails to establish that the Commission based its decision upon illegal grounds or improper considerations. We therefore conclude that the circuit court departed from the essential requirements of law when it directed the Parole Commission to reconsider its decision.

Accordingly, the circuit court's order is QUASHED, and this matter is REMANDED for further proceedings consistent herewith.

Florida Parole Commission v. Huckelbury, ___ So.2d ___, 30 Fla. L. Weekly D 1187 (Fla. 1st DCA May 6, 2005).

STATEMENT OF THE ISSUE

THIS COURT SHOULD DECLINE TO ACCEPT DISCRETIONARY JURISDICTION IN THIS CASE BECAUSE THE PETITIONER HAS FAILED TO DEMONSTRATE A CONFLICT BETWEEN THE DISTRICT COURT OPINION BELOW AND THE FLORIDA SUPREME COURT CASES CITED

SUMMARY OF THE ARGUMENT

This Court should decline to accept discretionary jurisdiction over the instant case because the Florida Supreme Court cases cited as conflicting with the First District opinion below are in fact not in conflict.

ARGUMENT

ISSUE:

THIS COURT SHOULD DECLINE TO ACCEPT DISCRETIONARY JURISDICTION IN THIS CASE BECAUSE THE PETITIONER HAS FAILED TO DEMONSTRATE A CONFLICT BETWEEN THE DISTRICT COURT OPINION BELOW AND THE FLORIDA SUPREME COURT CASES CITED

The Petitioner seeks to invoke this Court's discretionary jurisdiction pursuant to Rule 9.030(2)(iv), Fla. R. App. P., asserting that the decision below expressly and directly conflicts with decisions of the Florida Supreme Court on the same question of law. Petitioner contends that this Court should exercise its discretion to review the First District's decision below because it is in direct conflict with this Court's decisions in Miami-Dade County v. Omnipoint Holdings, Inc., 863 So.2d 195 (Fla. 2003); Allstate Insurance Company v. Kaklamanos, 843 So.2d 889 (Fla. 2003); and Florida Power & Light v. City of Dania, 761 So.2d 1093 (Fla. 2000). The Parole Commission disagrees.

The narrow issue before the District Court below was whether the lower court departed from essential requirements of law by impermissibly substituting its judgment for the Parole Commission's reasoned exercise of discretion declining to authorize Petitioner's parole release and in failing to

apply the correct law by impermissibly directing the Commission to reweigh positive and negative factors contained in the Petitioner's inmate record.

The opinion below concerns the exercise of the Parole Commission's discretion in making parole decisions pursuant to Section 947.18, Florida Statutes, and the limits of a circuit court's review of such discretionary decisions. Because the cases cited by the Petitioner as being in express and direct conflict are **not** parole cases and have **no** facts in common with the instant case, this Court must decline to accept discretionary review of the instant case.

CONCLUSION

Based on the foregoing, Respondent respectfully urges this Honorable Court to decline accepting discretionary jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was furnished by U.S. Mail to Charles A. Huckelbury, #19320, New Hampshire State Prison, P.O. Box 14, Concord, NH 03302, this ____ day of July, 2005.

BRADLEY R. BISCHOFF
Assistant General Counsel

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY THAT the instant pleading was produced in Times New Roman 14-point font.

BRADLEY R. BISCHOFF
Assistant General Counsel