

IN THE SUPREME COURT OF FLORIDA

FLORIDA PAROLE COMMISSION,

Petitioner,

vs.

Case No. SC08-697

L.T. No. 4D07-3653

WILLIAM J. SUTTON,

Respondent.

**PETITIONER'S AMENDED BRIEF
ON JURISDICTION**

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

**KIM M. FLUHARTY
General Counsel
Florida Parole Commission
2601 Blair Stone Road, Bldg. C
Tallahassee, Florida 32399-2450
(850) 488-4460
Fla. Bar # 0975214**

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Contents	ii
Table of Citations	iii
Preliminary Statement	1
Statement of the Case and the Facts	2
Summary of the Argument	6
Statement of Issue	7

**THIS COURT SHOULD ACCEPT
DISCRETIONARY JURISDICTION IN THIS
CASE WHERE THE DISTRICT COURT
OPINION BELOW CERTIFIED AS PASSING
UPON A QUESTION OF GREAT PUBLIC
IMPORTANCE. ADDITIONALLY, THE
OPINION ISSUED BELOW CONFLICTS
WITH A DECISION OF THE FIRST
DISTRICT COURT OF APPEAL AND A
DECISION OF THIS COURT**

Argument	7
Conclusion	9
Certificate of Service	10
Certificate of Compliance	10

TABLE OF CITATIONS

	<u>PAGE</u>
<u>David v. Meadows</u> , 881 So.2d 653 (Fla. 1 st DCA 2004)	2, 3, 4, 6, 7, 8
<u>Tal-Mason v. State</u> , 515 So.2d 738 (Fla. 1987)	3
<u>Rivera v. Singletary</u> , 707 So. 2d 326 (Fla. 1998)	4, 6, 7, 9
<u>Sutton v. Florida Parole Com'n</u> , 975 So.2d 1256 (Fla. 4 th DCA 2008)	6, 7

OTHER

Section 944.291(2), Florida Statutes	8
Section 947.1405, Florida Statutes	3, 8
Section 947.141, Florida Statutes	8
Section 947.146, Florida Statutes	8
Rule 9.030(a)(2)(A)(iv) and (v), Florida Rules of Appellate Procedure	4

PRELIMINARY STATEMENT

The Appellee/Respondent below, the Florida Parole Commission, will be referred to as “the Commission” in this brief. Appellant/Petitioner below, William Sutton, will be referred to as “Sutton”.

STATEMENT OF THE CASE AND THE FACTS

A. PROCEDURAL HISTORY

1. On or about May 2, 2007, Sutton, through counsel filed a Motion to Correct Illegal Sentence with the Clerk of the Fifteenth Judicial Circuit.

The State filed its response to the Motion to Correct Illegal Sentence, requesting that the Commission respond to the issues raised therein. On July 2, 2007, the Circuit Court issued an Order Requiring Florida Parole Commission to File a Response to Defendant's Motion to Correct Illegal Sentence. The Commission filed its response to the Circuit Court's Order on or about July 23, 2007.

2. On August 2, 2007, the Circuit Court issued an Order Dismissing Defendant's Motion to Correct Illegal Sentence. Subsequently thereafter, a notice of appeal was filed by Sutton, followed by an Initial Brief, the Commission's Answer Brief and Reply Brief.

3. On October 24, 2007, the district court per curiam affirmed the circuit court's order without prejudice to pursue administrative remedies.

4. On November 8, 2007, Sutton, through counsel, served a Motion for Rehearing.

5. On March 12, 2008, the district court granted Sutton's Motion for Rehearing. The Court, relying on the First District Court's opinion in David v.

Meadows, 881 So.2d 653 (Fla. 1st DCA 2004), determined that Sutton was entitled to an award of credit for time spent under conditional release supervision while simultaneously serving a Jimmy Ryce detainer even though he violated his supervision, his supervision was revoked and the Commission denied him credit pursuant to its statutory authority. (Appendix)

6. On March 25, 2008, the Commission served a timely Motion for Rehearing.

7. On April 1, 2008, the district court denied the Commission's Motion for Rehearing and requested the Commission and the Department of Corrections to file a joint response regarding the "statutory authority for the STATE's contention, that, notwithstanding the holding in Tal-Mason v. State, 515 So.2d 738 (Fla. 1987), the Florida Parole Commission has discretion to treat Petitioner's confinement during the unsuccessful Jimmy Ryce Act proceedings as a true conditional release under section 947.1405 and may refuse to credit that period of confinement against Petitioner's 15-year sentence (minus 469 days of jail credit) imposed 7 July 1994."

8. On April 7, 2008, the lower court issued a subsequent order which included language amending its April 1, 2008 order and certifying the Court's March 12, 2008, decision as passing on a question of great public importance.

9. On April 9, 2008, the Commission timely filed its Notice to Invoke Discretionary Jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv) and (v), Florida Rules of Appellate Procedure in the Fourth District Court of Appeal. The decision is certified as passing upon a question of great public importance. Additionally, the decisions also expressly and directly conflict with the First District Court's decision in David v. Meadows, 881 So. 2d 653 (Fla. 1st DCA 2004) and expressly and directly conflict with the Florida Supreme Court's decision in Rivera v. Singletary, 707 So. 2d 326 (Fla. 1998).

B. FACTS

10. Sutton was previously convicted and sentenced to prison for Breaking and Entering, Larceny, and Manslaughter in 1976 and 1987. On September 17, 2001, Sutton was convicted of Sexual Activity with a Child and Attempted Sexual Activity with a Child in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida in Case No.: 91-3456-CF. He was sentenced to prison for a term of 1 year and 104 days for the Sexual Activity with a Child conviction, allowing 160 days of jail credit. He was given probation on the Attempted Sexual Activity with a Child conviction. On July 7, 1994, his probation was revoked and he was sentenced to a prison term of 15 years with credit for 1 year and 104 days.

11. On April 27, 2000, Sutton was released on Conditional Release Supervision and also released to a Jimmy Ryce Detainer.

12. Upon receipt of a violation report, on March 5, 2004 the Commission issued a Warrant for Retaking Conditional Releasee for violations of Conditions 10 and 18 of his Conditional Release. After Sutton received notice of the violations of Conditional Release, he was provided a violation hearing held on September 21, 2004. At the violation hearing, the hearing examiner found Sutton guilty of violating: Condition 10, agreeing to submit to random substance abuse testing as directed by the Conditional Release Officer to determine the presence or use of alcohol or controlled substance, in that on October 31, 2003 Sutton was instructed to submit to urinalysis testing by Conditional Release Officer Marsh Browning but he failed to do so; and Special Condition 18, participating in a sex offender treatment program in that Sutton had not attended sex offender treatment while on Conditional Release.

13. On November 10, 2004, the Commission sustained the hearing examiner's findings of guilt, chose to reject the hearing examiner's recommendation of reinstatement, revoked Sutton's Conditional Release and denied him credit for time spent unsuccessfully on conditional release supervision.

SUMMARY OF THE ARGUMENT

On April 7, the lower court amended its April 1, 2008 order denying rehearing and certified its March 12, 2008, decision as passing on a question of great public importance. Additionally, in Sutton v. Florida Parole Com'n, 975 So.2d 1256 (Fla. 4th DCA 2008), rehearing denied April 1, 2008, the Fourth District held that Sutton was entitled to credit for the time he spent under conditional release supervision while simultaneously serving a Jimmy Ryce detainer even though the Commission had revoked his supervision and had denied an award for credit. The Fourth District relied on David v Meadows, 881 So. 2d 653 (Fla. 1st DCA 2004) for such proposition, however, the First District's opinion in David squarely stated that “[i]f, on the other hand, Meadows is found in violation of the terms and conditions of release, the Commission has broad authority to either grant or deny him credit for time spent on conditional release when that release is revoked. See Rivera v. Singletary, 707 So. 2d 326 (Fla. 1998).” Therefore, inasmuch as there appears to be conflict regarding the Commission's discretionary statutory authority to award credit for time spent on supervision after revocation, the Commission strongly requests this Court accept jurisdiction to settle this issue.

STATEMENT OF THE ISSUE

THIS COURT SHOULD ACCEPT DISCRETIONARY JURISDICTION IN THIS CASE WHERE THE DISTRICT COURT OPINION BELOW CERTIFIED AS PASSING UPON A QUESTION OF GREAT PUBLIC IMPORTANCE. ADDITIONALLY, THE OPINION ISSUED BELOW CONFLICTS WITH A DECISION OF THE FIRST DISTRICT COURT OF APPEAL AND A DECISION OF THIS COURT

ARGUMENT

The Commission respectfully submits that this Court should exercise its discretion to review the appellate decision below because the district court in its April 7, 2008 order certified its March 12, 2008, decision as passing upon a question of great public importance. Additionally, the district court opinion directly conflicts with the First District Court's opinion in David and this Court's opinion in Rivera regarding the issue of the Commission's statutory authority to award or deny credit to a conditional releasee whose supervision was revoked.

In Sutton v. Florida Parole Com'n, 975 So.2d 1256 (Fla. 4th DCA 2008), rehearing denied April 1, 2008, the Fourth District squarely held that Sutton was entitled to credit for the time he spent under conditional release

supervision while simultaneously serving a Jimmy Ryce detainee even though the Commission had revoked his supervision and had denied an award for such credit. The Fourth District relied on David v Meadows, 881 So. 2d 653 (Fla. 1st DCA 2004) for such proposition. However, the Commission respectfully submits that the applicable portion of the First District's opinion in David squarely provided that if a conditional releasee's supervision is revoked the Commission has broad discretion to award credit for time spent unsuccessfully on supervision. The First District relied on this Court's opinion in Rivera which provided

In *this* case, the supervised release is Conditional Release. See Section 947.1405, Fla. Stat. (Supp.1992). (footnote omitted) Both Control Release and Conditional Release are programs administered by the Commission and have been in effect for nearly a decade. (footnote omitted) Since its inception, Control Release has always been an early release program which is activated by prison overcrowding. See Section 947.146, Fla. Stat. (1997). Conditional Release, on the other hand, has never been an early release program, but rather an additional post-prison supervision program for certain types of offenders that the legislature has determined to be in need of further supervision after release. See Section 947.1405, Fla. Stat. (1997). Nevertheless, we find this distinction to be irrelevant to the issue of whether the Commission has statutory authority to grant or deny credit for time spent on supervision; and, as we similarly found in *Gay*, we find here that the Commission has broad authority under sections 947.1405 (footnote omitted), 944.291(2)(footnote omitted) and especially section 947.141(footnote omitted), to either grant or deny a releasee credit for time spent on Conditional Release when that

release is revoked due to a violation of the terms and conditions of release. (footnote omitted)
Rivera, 707 So.2d at 326-327.

Therefore, inasmuch as there appears to be conflict regarding the Commission's discretionary statutory authority to award credit for time spent on supervision after revocation, the Commission strongly requests this Court accept jurisdiction to settle this issue.

CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Respondent respectfully urges this Honorable Court to accept discretionary jurisdiction in this case.

Respectfully submitted,

KIM M. FLUHARTY
General Counsel
2601 Blair Stone Road, Bldg. C
Tallahassee, Florida 32399-2450
(850) 488-4460
Fla. Bar # 0975214

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing was furnished by DHL to Margaret Good-Earnest, Assistant Public Defender, Chief, Appellate Division, 421 Third Street, 6th Floor, West Palm Beach, Florida 33401; Celia Terenzio, Assistant Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida, 33401; Leigh Miller, Assistant State Attorney, 401 N. Dixie Highway, West Palm Beach, Florida, 33401; and by interoffice mail to Max Changus, Assistant General Counsel, Florida Department of Corrections, 2601 Blairstone Road, Tallahassee, Florida this 20th day of May, 2008.

KIM M. FLUHARTY
General Counsel

CERTIFICATE OF COMPLIANCE

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

KIM M. FLUHARTY
General Counsel