

IN THE CIRCUIT COURT OF SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

TERRANCE JOHNSON, DC #078187,

Petitioner,

v.

CASE NO. 2012-CA-003075

DIVISION: CHARLES A. FRANCIS

FLORIDA PAROLE COMMISSION,

Respondent(s).

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Reply to Supplemental Response to Mandamus Petition

Comes now the Petitioner, Terrence Johnson, through counsel, and replies as follows to the Supplemental Response of the Respondent in opposition to Mr. Johnson's Petition for a Writ of Mandamus.

Section 947.18, Florida Statutes, provides that before granting parole, the commission must find "that there is a reasonable probability that, if the person is placed on parole, he or she will live and conduct himself or herself as a respectable and law-abiding person and that the person's release will be compatible with his or her own welfare and the welfare of society." As the Respondent points out, courts have defined a reasonable probability as a "probability sufficient to undermine confidence in the outcome." (Supp. Resp. at 6 (citing Roberts v. State, 995 So. 2d 186, 189 (Fla. 2008); White v. State, 664 So. 2d 242, 244 (Fla. 1995) (outlining standard for determining whether evidence withheld from criminal defendant was "material" to defense in challenge to subsequent conviction))). The showing required for "a reasonable probability" is actually less than a preponderance of the evidence. Hurst v. State, 18 So. 3d 975, 988 (Fla. 2009) ("A showing of materiality does not require demonstration by a

preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. A reasonable probability of a different result is a probability sufficient to undermine confidence in the outcome.") (citations omitted)). Thus, by Respondent's reading of the term, a "reasonable probability" is some significant probability that is less than a preponderance.

Here, Respondent relies on the Commission's general conclusion that "there still exists a doubt as to whether this inmate would be able to perform well under the conditions of parole supervision." (Supp. Resp. Br., Exhibit E at 3, final para). The existence of "a doubt" as to Mr. Johnson's parole suitability under the statutory factors does not allow a conclusion that no reasonable probability exists that Mr. Johnson is suitable for parole. Put differently, a "doubt" is a less-than-preponderance standard; because there are only two possible findings, if the commission found a less-than-50% chance that Mr. Johnson would not successfully complete parole, it must have found a greater-than-50% chance that he would comply with the conditions of his parole. Because the law requires only some less-than-50% chance of successful parole, the failure to make a "positive finding that inmate Johnson's release on parole would be compatible with his welfare and the welfare of society" demonstrates the Commission's misapplication of the legal standard for parole release.

Similarly, based on five minor disciplinary reports over a 34-year period of incarceration, the commission found "there is still a doubt whether inmate Johnson might be able to perform well under the conditions of parole supervision." (Supp. Resp. Br., Exhibit E at 3., first para). Once again, the commission asks Mr. Johnson to make a showing beyond what the law requires.

In this context, "the conclusion that a reasonable doubt exists with regard to whether inmate Johnson would remain free of any criminal conduct should parole be granted in his case" does not just show a minor error with regard to a single statutory factor; rather, the "reasonable doubt" language illustrates the Commission's pervasive

use of a too-strict standard to evaluate parole suitability. The use of the “reasonable probability” formula in the Extraordinary Review action (Supp. Resp., Ex. E at 1, first para) should not distract this Court from the Commission’s failure to comply with the mandate of Florida law.

Accordingly, Mr. Johnson asks this Court to grant his Petition for a Writ of Mandamus and order the Parole Commission to conduct a new hearing in accordance with the proper legal standard for evaluating parole suitability.

DATED: January 9, 2014

Respectfully Submitted,

/s/ Gray R. Proctor

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2014, a true and correct copy of the foregoing Motion for Leave to File an Amended Petition for Writ of Mandamus has been furnished by email to counsel for Respondent via the Florida Parole Commission's e-filing account to the attention of Mark J. Hiers, Assistant General Counsel, Florida Parole Commission, 4070 Esplanade Way, Tallahassee, Florida 32399-2450, at MarkHiers@fpc.state.fl.us.

/s/ _____
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