

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
FLORIDA, TALLAHASSEE DIVISION

Gary Scott Selway v. Florida Commission on Offender Review and  
Florida Department of Corrections

Selway · No. 4:25-cv-34-AW-MAF · Decided May 19, 2026

SUMMARY

The United States District Court for the Northern District of Florida denied Gary Scott Selway's federal habeas petition challenging the Florida Commission on Offender Review's authority to revoke his conditional release after his sentence expiration date. The court held that Selway's petition presented a state-law issue and that he had not established a violation of federal law or an unforeseeable interpretation of state law. The court adopted the magistrate judge's report and recommendation, denied a certificate of appealability, denied related motions, and directed the clerk to close the case.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of Florida, Tallahassee Division                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Allen Winsor                                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | United States District Court for the Northern District of Florida, Tallahassee Division                                                                                                                                                                                                                             |
| DECIDED               | May 19, 2026                                                                                                                                                                                                                                                                                                        |
| DOCKET                | 4:25-cv-34-AW-MAF                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | denied                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Federal habeas corpus action under 28 U.S.C. § 2254 challenging the State's authority to revoke Petitioner's conditional release after the stated expiration date of his sentence. The magistrate judge recommended denial, Petitioner objected, and the district court conducted de novo review of the objections. |
| STANDARD OF REVIEW    | De novo review of the issues raised in Petitioner's objections to the magistrate judge's report and recommendation. Federal habeas relief is limited to violations of the Constitution, laws, or treaties of the United States.                                                                                     |
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|---------------------------|------------------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | Unpublished district court final order; precedential status is unknown in the source metadata. |
| <b>PARTIES</b>            | Gary Scott Selway v. Florida Commission on Offender Review, Florida Department of Corrections  |

## TOPICS

federal habeas corpus post-conviction relief exhaustion of remedies due process administrative law

## PRACTICE AREAS

Federal habeas corpus Post-conviction relief Constitutional law Administrative law

## QUESTIONS PRESENTED

1. Whether Selway was entitled to federal habeas relief based on the Florida courts' interpretation of state law concerning the effect of a conditional-release warrant on the expiration of his sentence.
2. Whether Selway properly presented and exhausted a federal constitutional claim.
3. Whether the state court's interpretation of Florida law was so unexpected and indefensible as to violate federal constitutional rights.

## HOLDINGS

1. Federal habeas relief was unavailable because Selway's petition challenged the Commission's jurisdiction and lawful authority under state law and did not properly present a violation of the Constitution, laws, or treaties of the United States.
2. Even assuming Selway properly raised and exhausted a federal claim, he failed to show that the state court's interpretation of Florida law violated his federal rights.

## KEY QUOTATIONS

*“But he cannot change the nature of his claim in his reply. His petition did not frame his challenge as one based on federal law.”* (Final Order)

*“Regardless, even if Selway had properly raised (and exhausted) the federal claim, he has not shown that the state court’s interpretation of state law created a violation of Selway’s federal rights.”* (Final Order)

## FACTUAL BACKGROUND

A Florida court sentenced Gary Scott Selway to thirty years in prison, with the sentence set to expire on July 14, 2023. Approximately ten years before that date, Florida placed him on conditional release; after his arrest, the State revoked the release and returned him to prison. Although a warrant for retaking conditional release issued in May 2023, the revocation occurred on July 26, 2023, twelve days after the stated expiration date, and was made effective May 12, 2023. Selway argued that the State lacked authority to revoke his conditional release after his sentence expired.

## PROCEDURAL HISTORY

Selway's conditional release was revoked after a warrant had issued before the stated expiration of his sentence, and Florida state courts rejected his challenges to the revocation. Selway then filed a federal habeas petition. The magistrate judge recommended denial; the district court adopted the recommendation, denied the petition, denied a certificate of appealability, denied related motions, and closed the case.

## DISPOSITION

denied

## CASES CITED

- Swarthout v. Cooke, 562 U.S. 216, 219 (2011)
- Estelle v. McGuire, 502 U.S. 62, 67 (1991)
- Rogers v. Tennessee, 532 U.S. 451, 461 (2001)
- Bouie v. City of Columbia, 378 U.S. 347, 354 (1964)
- Gibbs v. Cochran, 142 So. 2d 276, 277-78 (Fla. 1962)

## OPINION

SELWAY

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

GARY SCOTT SELWAY,

Petitioner, v. Case No. 4:25-cv-34-AW-MAF

FLORIDA COMMISSION ON

OFFENDER REVIEW and FLORIDA

DEPARTMENT OF CORRECTIONS,

Respondents. \_\_\_\_\_/

FINAL ORDER

A Florida court sentenced Petitioner Gary Scott Selway to 30 years in prison. His sentence was set to expire July 14, 2023. Some ten years before that, the State put Selway on conditional release until that date. Under Florida law, a person on conditional release must comply with certain conditions, and if he does not, he can be required to serve in prison the amount of time he was authorized to be on conditional release. That is what happened here. Selway was arrested, had his conditional release revoked, and was returned to prison for approximately ten more years. A “warrant for retaking conditional release” issued in May 2023 (ECF No. 9- 5 at 20), which was a few months before the July 14, 2023, expiration of his term. But the actual revocation came on July 26, 2023—twelve days after that expiration. The order said the revocation was effective May

12, 2023. ECF No. 9-5 at 31. In Selway's view, the order came too late, and the State lacked authority to revoke conditional release because his sentence already expired. The State disagrees. It contends the warrant tolled the release date. State courts rejected Selway's multiple claims on this point, and Selway filed this federal habeas action. The magistrate judge issued a report and recommendation concluding the court should deny the petition. ECF No. 21. Selway filed objections, ECF No. 28, and I have considered de novo the issues he raised in those objections. In his report and recommendation, the magistrate judge analyzed the state-law issue and concluded the state courts correctly decided it. But as Respondents argue, Selway is not entitled to federal habeas relief without showing a violation of some federal right. See 28 U.S.C. § 2254(a) (limiting federal habeas relief to "the ground that [a state prisoner] is in custody in violation of the Constitution or laws or treaties of the United States"); see also *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011) ("We have stated many times that federal habeas corpus relief does not lie for errors of state law." (marks omitted) (quoting *Estelle v. McGuire*, 502 U.S. 62, 67 (1991))). Selway insists his claim is based on federal law. In his objections, he points to his reply, which says his detention "violates his right under the Fourteenth Amendment." ECF No. 14 at 4; accord ECF No. 28 at 5 ("However, the Report and Recommendation fails to mention that within Petitioner's reply he belied the Commission's assertion that he had not raised any Federal Constitutional issues." (cleaned up)). But he cannot change the nature of his claim in his reply. His petition did not frame his challenge as one based on federal law. See ECF No. 1 at 6-7 (stating the Commission "was divested of jurisdiction" and "exceeded its scope of authority"); accord *id.* at 15 (requesting relief based on the Commission's lack of "jurisdiction or lawful authority"). This is enough to justify denial of his petition. Regardless, even if Selway had properly raised (and exhausted) the federal claim, he has not shown that the state court's interpretation of state law created a violation of Selway's federal rights. He has not shown that the state court's interpretation was "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue." *Rogers v. Tennessee*, 532 U.S. 451, 461 (2001) (quoting *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964)); see also *Gibbs v. Cochran*, 142 So. 2d 276, 277-78 (Fla. 1962) (concluding the Parole Commission retained jurisdiction over a parolee after his parole terminated when the Commission timely issued a warrant for a pretermination violation). I now adopt the report and recommendation and incorporate it into this order to the extent it is consistent with the discussion above. The clerk will enter a judgment that says, "The petition is DENIED." A certificate of appealability is DENIED. The motion for leave to file a request for admissions (ECF No. 35) is DENIED as moot. The motion to supplement the record (ECF No. 22) is DENIED because the proposed supplement would make no difference. The clerk will close the file. SO ORDERED on May 19, 2026. s/ Allen Winsor Chief United States District Judge