

SUPREME COURT OF FLORIDA

Lowry v. Parole and Probation Comm'n

473 So. 2d 1248 (Fla. 1985) · No. No. 66773 · Decided June 13, 1985

SUMMARY

The Supreme Court of Florida held that a prisoner serving the first of consecutive sentences was eligible for consideration for parole before beginning the subsequent sentence. The court concluded that the Parole and Probation Commission acted in good faith but improperly rescinded the petitioner's parole release date and Mutual Participation Agreement based on Attorney General Opinion 85-11, while withholding issuance of a writ because prompt administrative review was expected.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Ehrlich, Justice; Boyd, C.J.; Adkins, J.; Overton, J.; Alderman, J.; McDonald, J.; Shaw, J.                                                                                                                                                                                                                              |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | June 13, 1985                                                                                                                                                                                                                                                                                                            |
| DOCKET                | No. 66773                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | writ_denied                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Petitioner sought mandamus, or alternatively habeas corpus, to enforce a written Mutual Participation Agreement providing for his parole release. The Supreme Court of Florida reviewed the Parole and Probation Commission's rescission of the agreement after the commission adopted Attorney General's Opinion 85-11. |
| STANDARD OF REVIEW    | Abuse of discretion review of the commission's rescission of the effective parole release date and Mutual Participation Agreement; statutory interpretation guided by legislative intent.                                                                                                                                |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of Florida; precedential.                                                                                                                                                                                                                                                         |
| PARTIES               | Robert W. Lowry, a/k/a John Corley v. Parole and Probation Commission, State of Florida, Louie L. Wainwright, Secretary, Department of Corrections, State of Florida                                                                                                                                                     |

TOPICS

administrative law

judicial review of agency action

statutory interpretation

legislative intent

exhaustion of remedies

## PRACTICE AREAS

administrative law

parole

statutory interpretation

post-conviction relief

## QUESTIONS PRESENTED

1. Whether the commission abused its discretion by rescinding Lowry's effective parole release date and Mutual Participation Agreement.
2. Whether a prisoner serving consecutive sentences is eligible for consideration for parole before beginning to serve the subsequent consecutive sentence under section 947.16(1), Florida Statutes.
3. Whether subsequent legislation clarifying calculation of presumptive parole release dates could be considered as evidence of the legislature's prior and continuing intent.

## HOLDINGS

1. The commission did not abuse its discretion in rescinding Lowry's effective parole release date and Mutual Participation Agreement because it acted in good faith after determining that honoring the agreement could violate the law and undermine the goals of consecutive sentencing.
2. A prisoner serving consecutive sentences is eligible for consideration for parole before beginning to serve the subsequent consecutive sentences.

## KEY QUOTATIONS

*"Thus we hold that while AGO 85-11 is a reasonable interpretation of the law, it does not represent legislative intent."* (473 So. 2d at 1250)

*"We therefore hold that petitioner is eligible for consideration for parole before he has begun to serve consecutive sentences."* (473 So. 2d at 1250)

*"We find there was no abuse of discretion in the commission's rescinding the effective parole release date and the Mutual Participation Agreement."* (473 So. 2d at 1249)

## FACTUAL BACKGROUND

Lowry was convicted of robbery in 1977 and sentenced to six months to fifteen years, then convicted of aggravated assault in 1981 and sentenced to five years consecutive to the first sentence. In 1984, he entered into a written Mutual Participation Agreement with the Florida Parole and Probation Commission providing for release on parole on February 26, 1985. After the Attorney General issued Opinion 85-11 stating that a prisoner serving consecutive sentences was not eligible for parole before beginning the later sentence, the commission adopted that position, prevented Lowry's release, and withdrew the agreement.

## PROCEDURAL HISTORY

Lowry had exhausted his administrative remedies after the commission withdrew his parole release agreement and directed that he not be released on the agreed date. He petitioned the Supreme Court of Florida for mandamus or habeas corpus. The court held that the commission acted in good faith and did not abuse its discretion in rescinding the agreement, but held that Lowry remained eligible for consideration for parole before beginning to serve his consecutive sentence. The court withheld issuance of mandamus because it expected the commission to promptly review the case and take appropriate action.

#### DISPOSITION

writ\_denied

#### REMAND INSTRUCTIONS

No formal remand was ordered. The court withheld issuance of the writ of mandamus because it expected the commission to conduct an expeditious review of Lowry's case and take appropriate action.

#### CASES CITED

- Beverly v. Division of Beverage of Department of Business Regulation, 282 So. 2d 657 (Fla. 1st DCA 1973)
- State ex rel. Boyles v. Florida Parole and Probation Commission, 436 So. 2d 207 (Fla. 1st DCA 1983)
- Florida Parole and Probation Commission v. Paige, 462 So. 2d 817 (Fla. 1985)
- Tampa-Hillsborough County Expressway Authority v. K.E. Morris Alignment Services, Inc., 444 So. 2d 926 (Fla. 1983)
- Tyson v. Lanier, 156 So. 2d 833 (Fla. 1963)
- United States ex rel. Guest v. Perkins, 17 F. Supp. 177 (D.D.C. 1936)
- Hambel v. Lowry, 264 Mo. 168, 174 S.W. 405 (1915)
- Gay v. Canada Dry Bottling Co., 59 So. 2d 788 (Fla. 1952)