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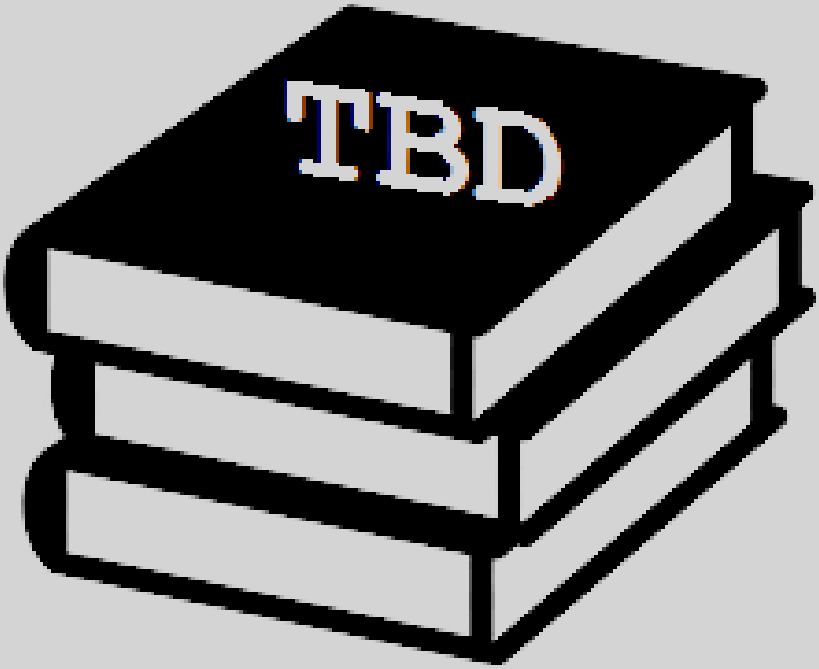

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IN THE SUPREME COURT OF FLORIDA

SAMMY WEATHERSPOON,

Petitioner,

v.

FLORIDA COMMISSION ON OFFENDER REVIEW,

Respondent.

_____/

PROVIDED TO AVON PARK CORRECTIONAL INSTITUTION On 12-21-17 FOR MAILING BY _____

Case No.

FILED
JOHN A. TOMASINO
DEC 29 2017
CLERK, SUPREME COURT
BY

PETITION FOR WRIT OF MANDAMUS

In accordance with Florida Rule of Appellate Procedure 9.100, the petitioner, Sammy Weatherspoon, *pro se*, respectfully files this petition for writ of mandamus to challenge the establishment of his presumptive parole release date ("PPRD") and next interview date ("NID") by the respondent, the Florida Commission on Offender Review.

I. JURISDICTION

A. Existence

This court has jurisdiction to issue a writ of mandamus. *See* Fla. Const. Art. V § 3(b)(8); Fla. R. Civ. P. 9.030(a)(3) (2017). An inmate may file a petition for writ of mandamus to challenge the Commission's establishment of his or her PPRD and NID. *See Harper v. Fla. Parole Comm'n*, 626 So. 2d 336, 337 (Fla. 1st

DCA 1993); *see also* Philip J. Padovano, *Florida Appellate Practice* § 30:2 (2017 ed.).

B. Acceptance

"While there is no absolute right to parole, there is a right to a proper consideration for parole," *see Moore v. Fla. Parole & Prob. Comm'n*, 289 So. 2d 719, 720 (Fla. 1974), and yet the Commission is **not** giving Weatherspoon and more than 4,000 other parole-eligible inmates "proper consideration for parole," *see infra* at 8-39 §§ V.A.-F.[1]

Thus, Weatherspoon believes that this court should accept jurisdiction and authoritatively decide whether a writ of mandamus should be granted to remedy this ongoing and wide-reaching problem involving himself and more than 4,000 other parole-eligible inmates. *See, e.g., Gwong v. Singletary*, 683 So. 2d 109, 110-14 (Fla. 1996); *Waldrup v. Dugger*, 562 So. 2d 687, 688-95 (Fla. 1990); *Hatten v. State*, 561 So. 2d 562, 563-65 (Fla. 1990); *Griffith v. Fla. Parole & Prob. Comm'n*, 451 So. 2d 457, 457-58 (Fla. 1984).

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[1] This court has already found that a life sentence **with** the possibility of parole for first-degree murder, based on the way Florida's "existing" parole system operates, actually resembles a life sentence **without** the possibility of parole "that is **not** 'proportionate to the offense and the offender.'" *See Atwell v. State*, 197 So. 3d 1040, 1048 (Fla. 2016) (quoting *Horsley v. State*, 160 So. 3d 393, 406 (Fla. 2015)) (all emphasis added unless otherwise noted); *see also* Jane Musgrave, *Desperate pleas fail to sway parole panel*, The Palm Beach Post, Jan. 29, 2015, at A1, A6.

II. FACTS

A. The Crime

The Second District Court of Appeal of Florida found that:

> Five young men, [Sammy Weatherspoon] and Willie Brown among them, were standing on a corner in Sebring outside a bar, watching two men, Joaquin Moralez-Lesendes and Benito Rivera, playing pool inside. A witness overheard Brown say that one of the men had a fifty dollar bill and that he had to have it. She then heard another man, Demond Hall, say he was going to get his gun.
>
> The five men followed Moralez-Lesendes and Rivera with the gun. Brown gave chase to Moralez-Lesendes shooting the gun into the air and handing to [Weatherspoon]. [He] held the gun on Moralez-Lesendes while Brown went through his pockets. He then pointed the gun at Rivera who swung a stick at him. The gun went off killing Rivera. [Weatherspoon] testified that as he was running away from the scene, he saw Brown going through Rivera's pockets.

Weatherspoon v. State, 624 So. 2d 405, 406 (Fla. 2d DCA 1993).

B. The Convictions and Sentences

The Second District Court of Appeal of Florida found that:

> [Weatherspoon] received a life sentence for first-degree murder[FN1] including a twenty-five year minimum mandatory term.FN3 He was sentenced to a concurrent five-and-a-half year term for attempted armed robbery[FN2] including a three-year minimum mandatory term,FN4 and to a concurrent five-and-a-half year term for the second attempted armed robbery including a three-year minimum mandatory term.
>
> FN1 § 782.04(1)(a)1., Fla. Stat. (1991).
>
> FN2 §§ 812.13(2)(a), Fla. Stat. (1991); 777.04(1) and (4)(b), Fla. Stat. (1991).

FN3 § 775.082(1), Fla. Stat. (1991).

FN4 § 775.087(2)(a)1., Fla. Stat. (1991).

Weatherspoon, 624 So. 2d at 406 & nn.1-4.

C. The Direct Appeal

The Second District affirmed Weatherspoon's convictions and sentences for first-degree murder (count I) and affirmed both of his convictions for attempted robbery (counts II and III) but reversed his upward departure sentences for attempted robbery, remanding for resentencing within the guidelines and without consecutive stacking of the minimum mandatory terms. *See Weatherspoon*, 624 So. 2d at 406-07.

D. Parole

On June 29, 2017, as Weatherspoon neared completion of the twenty-five year minimum mandatory term on his life sentence for first-degree murder, the Commission investigator, Scott Harris, interviewed him at Avon Park Correctional Institution, recommending that his PPRD be set at **June 30, 2032**, based upon the following calculations:

B. Salient Factor Score: 1=1, 2=0, 3=0, 4=1, 5=0, 6=0, TOTAL 2 or RCF ___.

C. Offense Severity: Level 6, Capital Offense Case No. 92-0006, First-Degree Murder.

D. Matrix Time Range: 180-240 Set at 240

E. Aggravating/Mitigating Factors (*Explain each with source*):

1. Offense involved use of a firearm or dangerous weapon, to wit: a knife (arrest affidavit) +60 months

2. MSO, Case #92-0006, Ct. II, Attempted Robbery w/ Firearm, 5½ yrs., conc w/ Ct I, (J & S) +60 months

3. MSO, Case #92-0006, Ct. III, Attempted Robbery w/ Firearm, 5½ yrs., Conc w/ Ct II, (J & S) +60 months

4. MSO, Case #91-MM-000732, Petit Theft, 6/25/91, adj/g, 6 mths probation. VOP, 5/21/92, prob. revoked, 60 days county jail (CCIS) +6 months

5. Offense was committed for pecuniary gain to wit: inmate planned to rob the victims (Arrest Affidavit) +60 months

F. Time Begins: 12/30/1991

G. Months Recommended: 486

H. Recommended Presumptive Parole Release Date: 06/30/2032

App. 1, Presumptive Parole Release Date Commission Action for Inmate Sammy Weatherspoon DC#769728 at 1 §§ I.B.-H. (Fla. Comm'n on Off. Rev. Aug. 31, 2017) ("Commission Action for Inmate Weatherspoon").

However, on August 16, 2017, the Commission did **not** affirm Harris' recommended PPRD of **June 30, 2032**, instead restructuring Weatherspoon's case so as to establish his PPRD at **December 30, 2032**:

1. Salient Factor Score: 1=0, 2=0, 3=0, 4=1, 5=0, 6=0, TOTAL 1 or RCF ___.

2. Offense Severity: Level 6 Degree: Capital Felony Offense: Ct. 1 First-Degree Murder Case No. 92-0006.

3. Matrix Time Range: 120-180 Set at: 180 Months

4. Aggravating/Mitigating Factors (*Explain each with source*):

    1. The scored offense involved the use of a firearm. Per the PSI. 60 Months

    2. Multiple separate offense Case# 92-0006 Ct. 2 and Ct. 3 Attempted Robbery (120 each). 240 Months

    3. Multiple separate offense Case# 91-732 Ct. 1 Petit Theft 12 Months

5. Time Begins: 12/30/1991

6. Total Months for Incarceration: 492 Months

At the Commission meeting held on 08/16/2017 your Presumptive Parole Release Date was ESTABLISHED to be 12/30/2032. You will be reinterviewed for your Subsequent interview during the month of April, 2024.

The Commission finds that your next interview date shall be within 7 years, rather than within 2 years from your last interview based on your conviction/sentence for First Degree Murder and the Commission's finding that it is not reasonable to expect that you will be granted parole during the following years. The basis for the finding is as follows:

1. Use of a firearm
2. Unreasonable risk to others
3. Multiple separate offenses

*The Commission considered mitigation.

App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.

Thus, on September 20, 2017, Weatherspoon timely requested administrative review of his PPRD and NID pursuant to section 947.173, Florida Statutes. *See* App. 2, Request for Review of Presumptive Parole Release Date for Inmate Sammy Weatherspoon DC#769728 at 1-19 (Fla. Comm'n on Off. Rev. Sept. 20, 2017).

Later, on October 25, 2017, the Commission actually **granted** administrative review of Weatherspoon's appeal pursuant to section 947.173, but it still found "no reason" at all to modify his PPRD and NID. *See* App. 3, Review Request Commission Action for Inmate Sammy Weatherspoon DC#769728 at 1 (Fla. Comm'n on Off. Rev. Nov. 20, 2017).

III. RELIEF

Weatherspoon is now timely filing this petition for writ of mandamus to challenge the Commission's establishment of his PPRD and NID. *See infra* at 10-39 §§ IV.B.-F. He is also seeking an order directing the Commission to reimburse him for all reasonable costs and expenses incurred in prosecuting this case. *See Ledger v. City of St. Petersburg*, 135 So. 3d 496, 497-99 (Fla. 2d DCA 2014).

IV. ARGUMENT

A. Introduction

The Objective Parole Guidelines Act of 1978 (the "OPGA of 1978") "has restricted the Commission's previously unbounded discretion in granting parole" and its "ultimate intent is to prevent arbitrary and capricious action by the commission." *See Gobie v. Fla. Parole & Prob. Comm'n*, 416 So. 2d 838, 840 (Fla. 1st DCA 1982). "Despite this concerted effort, abuse of discretion or misinterpretation of the law [has] continued to creep into the process." *See Roberson v. Fla. Parole & Prob. Comm'n*, 444 So. 2d 917, 920 (Fla. 1983).

Indeed, "the rules and policy developed by the Commission apparently attempt to afford it the broad discretion it possessed prior to the enactment of the" OPGA of 1978, *see James v. Fla. Parole & Prob. Comm'n*, 395 So. 2d 197, 198 (Fla. 1st DCA 1981), and "it is apparent that the Commission continues to ignore the requirements of Chapter 947," Florida Statutes, *see id.* at 197.

In fact, review of the Commission's official actions and orders establishing PPRDs for inmates,[2] as indexed and published by the Florida Division of Administrative Hearings ("FDOAH") on its website, www.doah.state.fl.us,[3] from

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[2] This court can take judicial notice of the Commission's official actions and orders. *See* § 90.202(5), Fla. Stat.; *see also Wencel v. State*, 915 So. 2d 1270, 1272 (Fla. 4th DCA 2005).

[3] The DOAH "has been designated as the centralized electronic databases of agency final orders." *See* Fla. Admin. Code R. 1B-32.003(1).

July 8, 2015, until present or December 9, 2016,[4] confirms that the guidelines developed by the Commission are so **undisciplined** and thoroughly infected with the **subjectivity** of individuals that the Commission's very own trained professionals (its commission investigators/hearing officers), *see* Fla. Admin. Code R. 23-21.002(34), can rarely, if ever, make a recommendation that commissioners will affirm **without change**, which is certainly **not** what the Legislature intended when it enacted the OPGA of 1978, *see* ch. 78-417, Laws of Fla. (1978); ch. 947, Fla. Stat. (Supp. 1978); *see also* House of Representatives Committee on Corrections, *Oversight Report: The Florida Parole and Probation Commission*, May 1978.

Not surprisingly, then, this court has found that a life sentence **with** the possibility of parole for first-degree murder, based on the way Florida's "existing" parole system operates, actually resembles a life sentence **without** the possibility of parole "that is **not** 'proportionate to the offense and the offender,'" **regardless of whether they were an adult or juvenile at the time of their crime**, *see Atwell*, 197 So. 3d at 1048 (quoting *Horsley*, 160 So. 3d at 406),[5] which violates the

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[4] Agency final orders shall be electronically transmitted to the DOAH within 90 days after being rendered, but the Commission evidently has **not** done so since December 9, 2016. *See* Fla. Admin. Code R. 1B-32.003(3)(b).

[5] Had Mr. Weatherspoon been a juvenile (or less than eighteen years old) at the time of his crime, he would now be entitled to take advantage of the new juvenile sentencing scheme enacted by the Legislature in chapter 2014-220, Laws of Florida. *See Atwell*, 197 So. 3d at 1041-50.

OPGA of 1978,[6] as well as the Due Process and Equal Protection Clauses of the United States and Florida Constitutions.[7]

B. Partiality, Bias, and Prejudice

1. Partiality of the administrative agency

The Commission, a constitutionally authorized, quasi-judicial decision-making body, is proud and touts the fact that it is partial to law enforcement, prosecutors, and victims and their families, *see, e.g.,* Florida Commission on Offender Review, *2016 Annual Report* at 2-13, and thus review of the

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[6] *See* ch. 78-417, Laws of Fla. (1978); ch. 947, Fla. Stat. (Supp. 1978-2017); *see also Moore*, 289 So. 2d at 720 ("While there is no absolute right to parole, there is a right to a proper consideration for parole").

[7] *See* U.S. Const. amends. V, XIV; Fla. Const. art. I, §§ 2, 9; *see also Monroe v. Thigpen*, 932 F.2d 1437, 1442 (11th Cir. 1991) (citing *Thomas v. Sellers*, 691 F.2d 487, 489 (11th Cir. 1982) (*per curiam*), for the proposition that even though a state's parole statutes are "discretionary" and do not confer a "liberty interest" in parole, a parole board's "discretion" is **not** "unlimited," and a parole board may **not** engage in "flagrant" or "unauthorized" action **nor** exceed its authority under state law and treat an inmate arbitrarily and capriciously in violation of due process); *Boddie v. N.Y. State Div. of Parole,* 285 F. Supp. 2d 421, 428 (S.D.N.Y. 2003) (citing *Monroe*); *Irons v. Carey*, 505 F.3d 846, 851 (9th Cir. 2007) ("We have held that 'the Supreme Court ha[s] clearly established [in *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985),] that a parole board's decision deprives a prisoner of due process with respect to this interest if the board's decision is not supported by 'some evidence in the record,' or is 'otherwise arbitrary'"); *Block v. Potter*, 631 F.2d 233, 236 (3d Cir. 1980) (observing that "even if a state statute does not give rise to a liberty interest in parole release under [*Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979)], once a state institutes a parole system, all prisoners have a liberty interest . . . in not being denied parole for arbitrary or constitutionally impermissible reasons").

Commission's official actions and orders,[8] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[9] from July 8, 2015, until present or December 9, 2016,[10] confirms that virtually all of the Commission's decisions favor law enforcement, prosecutors, and victims and their families, thereby violating the OPGA of 1978,[11] as well as the Due Process and Equal Protection Clauses.[12] [13]

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing that his PPRD be reestablished by an administrative agency that is **not** partial to law enforcement, prosecutors, and victims and their families. *See* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ I.-II.[14] Indeed, in the context of an administrative adjudication like this, "a biased decisionmaker [is] constitutionally unacceptable," *see Withrow*, 421 U.S. at 47; *see also Schweiker*, 456 U.S. at 195, and the administrative process "requires the appearance of fairness and the absence of a probability of outside influences on the

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[8] *See supra* note 2.

[9] *See supra* note 3.

[10] *See supra* note 4.

[11] *See supra* note 6.

[12] *See supra* note 7.

[13] *See Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975) ("Not only is a biased decision-maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness"); *see also Schweiker v. McClure*, 456 U.S. 188, 195, 102 S. Ct. 1665, 72 L. Ed. 2d 1 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities") (citations omitted).

[14] *See supra* notes 6-7, 13.

adjudicator; it does **not** require proof of actual partiality," *see Utica Packing Co. v. Block*, 781 F.2d 71, 77 (6th Cir. 1986).

2. Partiality, bias, and prejudice of the individual decision-makers

The Commission's individual decision-makers (two former prosecutors and a former law enforcement officer, champions of victims' rights, etc.) are (1) partial to law enforcement, prosecutors, and victims and their families, *see, e.g.,* Florida Commission on Offender Review, *2016 Annual Report* at 3; and (2) biased and prejudiced against inmates, *see, e.g.,* Jane Musgrave, *Desperate pleas fail to sway parole panel*, *supra*, at A1, A6, and thus review of the Commission's official actions and orders,[15] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[16] from July 8, 2015, until present or December 9, 2016,[17] confirms that virtually all of the Commission's decisions favor law enforcement, prosecutors, and victims and their families, thereby violating the OPGA of 1978,[18] as well as the Due Process and Equal Protection Clauses,[19]

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing that his PPRD be reestablished by decision-makers that are **not** (1) partial to law enforcement, prosecutors, and victims and their families; and

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[15] *See supra* note 2.
[16] *See supra* note 3.
[17] *See supra* note 4.
[18] *See supra* note 6.
[19] *See supra* notes 7, 13.

(2) biased and prejudiced against inmates. *See* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.[20] Indeed, in the context of an administrative adjudication like this, "a biased decisionmaker [is] constitutionally unacceptable," *see Withrow*, 421 U.S. at 47; *see also Schweiker*, 456 U.S. at 195, and the administrative process "requires the appearance of fairness and the absence of a probability of outside influences on the adjudicator; it does **not** require proof of actual partiality," *see Utica Packing Co.*, 781 F.2d at 77.

C. Matrix Time Range

1. Background

According to the OPGA of 1978, "**[o]bjective** parole criteria will be designed to give primary weight to [(1)] the seriousness of the offender's **present** criminal offense[;] and [(2)] the offender's **past** criminal record." *See* § 947.002(2), Fla. Stat. (1978 Supp.-2017); *Battis v. Fla. Parole & Prob. Comm'n*, 386 So. 2d 295, 296 (Fla. 1st DCA 1980).

More specifically, the Legislature has provided that "[t]he **objective** parole guidelines . . . **shall** be based on [(1)] the seriousness of offense[;] and [(2)] the likelihood of favorable parole outcome." *See* § 947.165(1), Fla. Stat. (1978 Supp.-2017); *Carr v. Fla. Parole & Prob. Comm'n*, 510 So. 2d 995, 996 (Fla. 1st DCA 1987). Thus, the Commission has seemingly complied with the OPGA of 1978 by

[20] *See supra* notes 6-7, 13.

creating a "matrix time range" for adults and youthful offenders. *See* Fla. Admin. Code R. 23-21.009(5)-(6).[21]

Indeed, the "matrix time range" for adults and youthful offenders is the appropriate range of months found where the inmate's "salient factor score total" (the indices of his or her **present** and **prior** criminal behavior and related factors found by experience to be predictive in regard to parole outcome), *see* Fla. Admin. Code R. 23-21.007, intersects with the inmate's "severity of offense behavior" (the statutorily assigned degree of felony or misdemeanor for the **present** offense of conviction), *see* Fla. Admin. Code R. 23-21.008.

2. Problems

a. the first, second, and third categories

"There are . . . **no** [specific] published rules [or **objective,** *i.e.*, fair and uniform, criteria] guiding [each individual hearing examiner and commissioner's] discretion on the number of months to select within the [appropriate] matrix time range," *see* App. 4, Petitioner's Amended Supplemental Brief, Argument at 12, *Angelo Atwell v. State of Florida*, No. SC14-193 (Fla. Jun. 11, 2015) ("Atwell Brief"), even though the OPGA of 1978 provides that the Commission **shall** develop and implement such things, *see* § 947.165(1); *James*, 395 So. 2d at 198

[21] *See supra* note 6.

(recognizing that the OPGA of 1978 "contemplates an **objective** system") (emphasis in original).[22] [23]

In other words, Florida's "existing" parole system, *see Atwell*, 197 So. 3d at 1048, **still** lacks "**objective**," *i.e.*, fair and uniform, criteria, *see* § 947.002(1), Fla. Stat. (1978 Supp.-2017),[24] and thus review of the Commission's official actions and orders establishing PPRDs for inmates,[25] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[26] from July 8, 2015, until present or December 9, 2016,[27] confirms that **unless** the inmate has a capital (level 6) offense and a "salient factor score total" falling within the fourth or fifth category (8-11 points or "recidivist criminal factor"), *see* Fla. Admin. Code R. 23-21.009(5)-(6), the Commission exercises **no** discretion whatsoever, instead following its blanket, *sub rosa* policy of mechanically setting the inmate's time at the very "top" **without** any consideration for individual circumstances, thereby

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[22] *See supra* notes 6-7.

[23] *See Westar Energy, Inc. v. Fed. Energy Regulatory Comm'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2017) ("[T]he Commission's dissimilar treatment of evidently identical cases . . . seems the quintessence of arbitrariness and caprice"); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 1074, 145 L. Ed. 2d 1060 (2000) (recognizing that the equal protection guarantee safeguards not only groups of people, but also individuals who would constitute a "class of one" and thus a plaintiff can establish a "class of one" claim by showing that he or she was "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment").

[24] *See supra* notes 6-7, 23.

[25] *See supra* note 2.

[26] *See supra* note 3.

[27] *See supra* note 4.

abdicating its responsibility to actually exercise its discretion under the OPGA of 1978, *see United States v. Mooney*, 654 F.2d 482, 487 (7th Cir. 1981).[28]

b. the fourth and fifth categories

Review of the Commission's official actions and orders establishing PPRDs for inmates,[29] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[30] from July 8, 2015, until present or December 9, 2016,[31] confirms that the "matrix time range" for adults and youthful offenders is flawed on its face and as applied to inmates with capital felony (level 6) offenses and "salient factor score" totals falling within the fourth and fifth categories (8-11 points and "recidivist criminal factor"). *See* Fla. Admin. Code R. 23-21.009(5)-(6).

Indeed, there is overlapping of the ranges of months (unlike the seamless transition between the first, second, and third categories), *see* Fla. Admin. Code R. 23-21.009(5)-(6), which is "irrational," *see State v. Iacovone*, 660 So. 2d 1371, 1373 (Fla. 1995); *see also State v. Stevens*, 714 So. 2d 347, 348 (Fla. 1998), because it allows the Commission to **arbitrarily** and **capriciously** set the time for an inmate with a "salient factor score" total of just 8 points at **1,000 months** (or

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[28] *See supra* note 6.
[29] *See supra* note 2.
[30] *See supra* note 3.
[31] *See supra* note 4.

much, much more) before **arbitrarily** and **capriciously** setting time for another inmate with a "recidivist criminal factor" (thus indicating that he or she has a substantially greater risk of recidivism) at a mere **400 months**, thereby violating the OPGA of 1978, *see* § 947.002(2), Fla. Stat. ("In considering the risk of recidivism, practice has shown that the best predictor is **prior** [criminal] record").[32]

3. This particular case

With a capital felony (level 6) offense and a **minimal** "salient factor score total" falling in the first category (0-1 point), the appropriate "matrix time range" for Weatherspoon, an adult, is just **120 to 180 months**, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.1.-3., but the Commission exercised **no** discretion whatsoever, instead following its blanket, *sub rosa* policy and mechanically setting his time at the very "top," or **180 months**, *see id.* at 1 § II.D.3., **without** consideration of the individual circumstances of the case, *see Mooney*, 654 F.2d at 487, thereby violating the OPGA of 1978,[33] as well as the Due Process and Equal Protection Clauses.[34]

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules or "**objective**," *i.e.*, fair and uniform, criteria to guide each individual hearing

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[32] *See supra* notes 6-7, 23.
[33] *See supra* note 6.
[34] *See supra* note 7.

examiner and commissioner's discretion on the number of months select within the appropriate matrix time range for adults and youthful offenders, *see* § 947.165(1); and (2) actually exercise its discretion under the OPGA of 1978, using "**objective**," *i.e.*, fair and uniform, criteria to **accurately** determine where Weatherspoon's time should be set within the appropriate "matrix time range" for adults, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.3., **based upon the individual circumstances of the case**, *see Mooney*, 654 F.2d at 487, thereby complying with the OPGA of 1978,[35] as well as the Due Process and Equal Protection Clauses.[36]

D. Aggravating and Mitigating Factors

1. The erroneous application of aggravating factors

a. use of purely subjective methods

There is just one aggravating factor that is "**objectively**," *i.e.*, uniformly and fairly, applied in each and every case where it actually exists: "The Commission **shall** use as an aggravating factor **all** existing consecutive sentences, including parole ineligible sentences." *See* Fla. Admin. Code R. 23-21.010(3).[37]

But other than that, the Commission uses an **undisciplined** system of **subjective** decision-making to **freely** pick and choose which aggravating factors to

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[35] *See supra* note 6.
[36] *See supra* notes 7, 23.
[37] *See supra* notes 6-7, 23.

apply (or to not apply), **even in evidently identical cases,** *see* Fla. Admin. Code R. 23-21.010(1), (4)-(5), *i.e.*, the Commission simply applies aggravating factors "as it sees fit," *see Earley v. Fla. Comm'n on Off. Rev.*, 152 So. 3d 691, 693 (Fla. 1st DCA 2014),[38] which violates the OPGA of 1978,[39] as well as the Due Process and Equal Protection Clauses.[40]

Here, because there is no **objective**, *i.e.*, **fair** and **uniform**, criteria for selecting which aggravating and mitigating factors to apply, *see* Fla. Admin. Code R. 23-21.010(1), (4)-(5), the Commission used an **undisciplined** system of purely **subjective** decision-making to decide whether to aggravate Weatherspoon's PPRD by **312 months** for three different reasons, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.4.1.-3., thereby violating the OPGA of 1978,[41] as well as the Due Process and Equal Protection Clauses.[42]

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules or "**objective**," *i.e.*, fair and uniform, criteria to require that any and all aggravating factors be applied in each and every case where they exist, *see* § 947.165(1); and

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[38] *See supra* note 23.
[39] *See supra* note 6.
[40] *See supra* notes 7, 23.
[41] *See supra* note 6.
[42] *See supra* notes 7, 23.

(2) actually use "**objective**," *i.e.*, fair and uniform, criteria to apply any and all aggravating factors found to exist in this case, *see, e.g.*, App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.4.1.-3., thereby complying with the OPGA of 1978,[43] as well as the Due Process and Equal Protection Clauses.[44]

b. unilateral determination of facts

Under the Commission's rules, a decision may be rendered above or below the appropriate matrix time range based on any "competent" and "persuasive" evidence relevant to aggravating or mitigating circumstances if the inmate is furnished a written explanation of such a decision. *See* Fla. Admin. Code R. 23-21.010(1); *see also Taylor v. Florida Parole & Prob. Comm'n*, 543 So. 2d 367, 368-69 (Fla. 1st DCA 1989) (recognizing that "competent" and "persuasive" evidence relevant to aggravating or mitigating circumstances **must** support the Commission's decision to establish an inmate's PPRD above or below the appropriate matrix time range).

However, "Florida law requires that parole decisions be based on 'evidence which passes the constitutional muster,'" *see Damiano* v. *Fla. Parole & Prob. Comm'n*, 785 F.2d 929, 932 (11th Cir. 1986) (quoting *Moore*),[45] and if an aggravating factor justifying the Commission's decision **above** the appropriate

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[43] *See supra* note 6.
[44] *See supra* notes 7, 23.
[45] *See supra* notes 6-7.

matrix time range was **neither** submitted to a jury **nor** found beyond a "reasonable doubt," the inmate's Sixth Amendment right to trial by jury will be violated, *see* U.S. Const. amends. VI, XIV; *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005); *Speights v. State*, 102 So. 3d 671, 674 (Fla. 2d DCA 2012) (pointing out that *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), along with *Booker*, now requires that under a guidelines sentencing scheme, the relevant maximum sentence pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), is the upper end of the guidelines range, **not** the statutory maximum).[46]

Virginia's parole system used to be just as flawed as Florida's in that it allowed the **unilateral determination** of facts following a mere administrative review of things like police reports, witness statements, **presentence investigation** ("**PSI**") **reports**, and so forth. *See* App. 5, Complaint, Count I at 8 ¶ 40, *Jerry David Lee v. Karen D. Brown, et al.*, No. 3:15-cv-00114-REP (E.D. Va. Feb. 27, 2015) ("The question of whether [Virginia inmate Jerry David] Lee presented a firearm or other deadly weapon during the commission of the robberies was neither admitted by Mr. Lee nor submitted to a jury and found beyond a reasonable doubt. Therefore, it was illegal and unconstitutional for [the Virginia Parole Board ('VPB') and the Virginia Department of Corrections ('VDOC')] to deprive Mr.

[46] *See supra* notes 6-7.

Lee of his parole eligibility based on its **unilateral determination** [-- after a mere administrative review of police reports, witness statements, and a **PSI report** --] that Mr. Lee had used a firearm or other deadly weapon during the commission of the robberies."); App. 6, Joint Stipulation of Dismissal at 1, *Jerry David Lee v. Karen D. Brown, et al.*, No. 3:15-cv-00114-REP (E.D. Va. Jun. 2, 2015) (the parties' quick stipulation to the dismissal of Mr. Lee's federal civil rights complaint against the VPB and VDOC "with prejudice"); App. 7, *Virginia: Unproven Facts Used to Deny Parole Subject of Lawsuit, Settlement*, Prison Legal News, Aug. 2016, at 51 ("A settlement was reached on June 2, 2015 in which the [VPB and] VDOC agreed that [Mr.] Lee would be deemed eligible for parole and a parole hearing would be held. He has since been released from prison.").

Here, the Commission **unilaterally determined** that the offense involved the use of a firearm, aggravating Weatherspoon's PPRD by **60 months**, after a mere **administrative review** of the **PSI report**, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.4.1., thereby violating his Sixth Amendment right to trial by jury, *see* U.S. Const. amends. VI, XIV; *Booker*, *supra*; *Speights, supra*.[47]

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules

[47] *See supra* notes 6-7.

or "**objective**," *i.e.*, fair and uniform, criteria to prohibit the rendering of a decision **above** the appropriate matrix time range due to application of any aggravating factor that was **neither** submitted to a jury **nor** found beyond a "reasonable doubt," *see* § 947.165(1); and (2) delete this aggravating factor and the **60 months** assigned to it, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.4.1., thereby protecting his Sixth Amendment right to trial by jury, *see* U.S. Const. amends. VI, XIV; *Booker*, *supra*; *Speights*, *supra*.[48]

c. no "source" cited

Under the Commission's rules, the "source" of an aggravating and mitigating factor **must** be cited when rendering a decision above or below the appropriate matrix time range. *See* Fla. Admin. Code R. 23-21.010(1). Thus, when recommending and establishing an inmate's PPRD, the individual examiners and commissioners are specifically instructed to explain each and every aggravating or mitigating factor with its "source." *See* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ I.E., II.D.4. ("Aggravating/Mitigating Factors (*Explain with each source*):").

Here, the Commission aggravated Weatherspoon's PPRD by **252 months** without citing any "source" whatsoever for the putative aggravating factors, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.4.2.-3., thereby

[48] *See supra* notes 6-7.

violating the OPGA of 1978,[49] as well as the Due Process and Equal Protection Clauses.[50]

Thus, Weatherspoon believes that the Commission should delete these putative aggravating factors and the **252 months** assigned to them, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.4.2.-3., thereby complying with the OPGA of 1978,[51] as well as the Due Process and Equal Protection Clauses.[52]

d. use of an essential element of the crime

Under the Commission's rules, "[a]ny element of the crime," *see* Fla. Admin. Code R. 23-21.010(2)(a), *i.e.*, "that which was specifically contained in the statutory definition of the crime on the date [it] was committed," *see* Fla. Admin. Code R. 23-21.002(15), "shall **not** be used" as an "aggravating factor," *see* Fla. Admin. Code R. 23-21.010(2)(a) (2017); *Taylor*, 543 So. 2d at 369 (observing that the Commission may **not** aggravate an inmate's PPRD based upon the elements of the crime).[53]

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[49] *See supra* note 6.
[50] *See supra* note 7.
[51] *See supra* note 6.
[52] *See supra* note 7.
[53] *See supra* notes 6-7.

Here, on date on which the crime was committed by Weatherspoon and his codefendant, Willie Brown, *see supra* at 3 § II.A., first-degree felony murder (with the underlying felony of attempted robbery) was specifically defined as follows:

> (1)(a) The unlawful killing of a human being:
>
> * * *
>
> 2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
>
> * * *
>
> d. Robbery,
>
> * * *
>
> is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

§ 782.04(1)(a)2.d., Fla. Stat. (1991).

However, the Commission used Weatherspoon's attempted robbery convictions (counts II and III) to aggravate his PPRD by **240 months**, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.4.2., even though those underlying felonies were an essential element of his first-degree murder conviction (count I), *see* § 782.04(1)(a)2.d.; Fla. Admin. Code R. 23-21.010(2)(a); *Taylor*, 543 So. 2d at 369.[54]

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to delete this aggravating factor and the **240**

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[54] *See supra* notes 6-7.

months assigned to it, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.4.2., thereby complying with the OPGA of 1978,[55] as well as the Due Process and Equal Protection Clauses.[56]

2. The arbitrary and capricious assignment of the number of months to aggravating and mitigating factors

a. in general

At a roulette table, the banker, or *croupier*, chants a little ditty, "*Round and round it goes, where it stops, nobody knows*," to inform both players and spectators alike that roulette is a true "game of chance" in which "nobody knows" ahead of time where the rolling ivory marble will ultimately stop in one of the counter-spinning wheel's thirty-six alternating black and red compartments. *See generally* "Roulette," *Microsoft® Encarta®* (2017 ed.).

Likewise, the Commission's establishment of an inmate's PPRD is also a true "game of chance" in which "nobody knows" ahead of time (even remotely) where his or her PPRD will eventually be established under what is supposed to be "**objective**" parole system. *See* ch. 78-417, Laws of Fla. (1978); ch. 947, Fla. Stat. (Supp. 1978-2017).

One source of this unpredictability derives from the little known fact that "the number of months [aggravating and mitigating factors] are assigned is up to

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[55] *See supra* note 6.
[56] *See supra* note 7.

[the purely **subjective** determination of] each [individual] hearing examiner and commissioner; there are **no** [specific] published rules [or **objective**, *i.e.*, fair and uniform, criteria] guiding their discretion," *see* App. 4, Atwell Brief, Argument at 12, which violates the OPGA of 1978,[57] [58] as well as the Due Process and Equal Protection Clauses.[59]

Here, the Commission violated the OPGA of 1978,[60] as well as the Due Process and Equal Protection Clauses,[61] by using its **undisciplined** system of purely **subjective** decision-making, *see* App. 4, Atwell Brief, Argument at 12, to **arbitrarily** and **capriciously** assign a total of **312 months** to three putative aggravating factors, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.4.1.-3.

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules or "**objective**," *i.e.*, fair and uniform, criteria to guide each individual hearing examiner and commissioner's discretion as to the number of months aggravating

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[57] *See supra* note 6.

[58] *See Earley*, 152 So. 3d at 693 ("[U]nder the Commission's view that it may [assign] or not [assign months to aggravating factors] **as it sees fit** . . ., the parole guidelines are no longer **objective**, [*i.e.*, fair and uniform,] as [the OPGA of 1978] requires that they be"); *James*, 395 So. 2d at 198 (recognizing that the OPGA of 1978 "contemplates an **objective** system") (emphasis in original).

[59] *See supra* note 7.

[60] *See supra* notes 6, 58.

[61] *See supra* notes 7, 23.

factors should be assigned, *see* § 947.165(1); and (2) actually use "**objective**," *i.e.*, fair and uniform, criteria to **accurately** determine the number of months that should be assigned to the putative aggravating factors, *see, e.g.*, App. 1, Commission Action for Inmate Weatherspoon at 1 §§ II.D.4.1.-3., **or at least those surviving judicial review**, *see supra* at 18-26 §§ V.D.1.a.-d., thereby complying with the OPGA of 1978,[62] as well as the Due Process and Equal Protection Clauses.[63]

b. particular to this case

(i.) <u>The scored offense involved the use of a firearm</u>

Review of the Commission's official actions and orders establishing PPRDs for inmates[64] confirms that even when the Commission does properly aggravate an inmate's PPRD because the offense involved the use of a deadly weapon or firearm, *see supra* at 18-26 §§ V.D.1.a.-d., it will assign as little as **36 months** per deadly weapon or firearm, *see, e.g.,* App. 8, Presumptive Parole Release Date Commission Action for Inmate Johnny Dewitt DC#638457 at 1 § II.D.4.1. (Fla. Comm'n on Off. Rev. Jun. 3, 2016) ("Commission Action for Inmate Dewitt").

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to reduce the **60 months** assigned to this

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[62] *See supra* notes 6, 58.
[63] *See supra* notes 7, 23.
[64] *See supra* note 2.

aggravating factor, *see* App. 1, Commission Action for Inmate Weatherspoon at 1 § II.D.4.1., down to just **36 months**, *see* App. 8, Commission Action for Inmate Dewitt at 1 §.II.D.4.1., thereby complying with the OPGA of 1978,[65] as well as the Due Process and Equal Protection Clauses.[66]

(ii.) The multiple separate offenses of attempted robbery

Review of the Commission's official actions and orders establishing PPRDs for inmates[67] confirms that when an inmate is charged, tried, and convicted of the "multiple separate offense" of attempted robbery, the Commission will assign **0 months**, yes, **0 months**, per attempted robbery because the crime/underlying felony/aggravating factor was an element of his or her first-degree felony murder conviction. *See, e.g.,* App. 9, Order on Initial Interview for Inmate Ulises Carrazana DC#452294 at 1 (Fla. Comm'n on Off. Rev. Feb. 3, 2016) ("Order for Inmate Carrazana"); App. 10, Presumptive Parole Release Date Commission Action for Inmate Mitchell Watson DC#413047 at 1 § II.D.4.2. (Fla. Comm'n on Off. Rev. Jun. 3, 2016) ("Commission Action for Inmate Watson").

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to reduce the **240 months** assigned to this aggravating factor, *see* App. 1, Commission Action for Inmate Weatherspoon at 1

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[65] *See supra* notes 6, 58.
[66] *See supra* notes 7, 23.
[67] *See supra* note 2.

§ II.D.4.2., down to **0 months**, *see* App. 9, Order for Inmate Carrazana at 1; App. 10, Commission Action for Inmate Watson at 1 § II.D.4.2., because his attempted robbery convictions (counts II and III) were underlying felonies and an essential element of his first-degree murder conviction (count I), *see supra* at 24-26 § V.D.1.d., thereby complying with the OPGA of 1978,[68] as well as the Due Process and Equal Protection Clauses.[69]

3. The blanket, *sub rosa* policy against actually applying any mitigating factors

Review of the Commission's official actions and orders,[70] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[71] from July 8, 2015, until present or December 9, 2016,[72] confirms that the Commission has a blanket, *sub rosa* policy against actually applying any mitigating factors when establishing inmates' PPRDs, thereby violating the OPGA of 1978,[73] as well as the Due Process and Equal Protection Clauses.[74] [75]

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[68] *See supra* notes 6, 58.
[69] *See supra* notes 7, 23.
[70] *See supra* note 2.
[71] *See supra* note 3.
[72] *See supra* note 4.
[73] *See supra* note 6.
[74] *See supra* note 7.
[75] *See United States v. Rosales-Gonzales*, 801 F.3d 1177, 1183-84 (9th Cir. 2015) (finding that it is an abuse of discretion to implement a blanket policy against downward departures).

Here, if the Commission would have actually exercised its discretion under the OPGA of 1978, using "**objective**," *i.e.*, fair and uniform, criteria to **accurately** determine whether it should apply the mitigating factors present in this unfortunate case, a robbery gone horribly wrong when one of the victims, Benito Rivera, "swung a stick" at Weatherspoon and the gun "went off," accidentally killing him, *see supra* at 3 § II.A., Weatherspoon's PPRD would have been mitigated because:

- He, as an 18-year-old, "was of such a young age as to diminish his capacity to fully understand the seriousness of his action and its direct consequences," *see* Fla. Admin. Code R. 23-21.010(5)(b)1.b.;
- He, as an 18-year-old, "acted under strong provocation or duress" of his older codefendant, Willie Brown, *see* Fla. Admin. Code R. 23-21.010(5)(b)1.e.;
- He, as an 18-year-old, had only a "peripheral role" in Brown's attempted robbery of the victims, albeit resulting in one of their untimely deaths when he was shot accidentally, *see* Fla. Admin. Code R. 23-21.010(5)(b)1.f.;
- He, as an 18-year-old, had "diminished mental capacity" to contemplate the "seriousness" of Brown's attempted robbery of the victims and that a death could result, even accidentally, *see* Fla. Admin. Code R. 23-21.010(5)(b)1.g.;

- He, as an 18-year-old, attempted to and did, in fact, "withdraw" prior to Brown's "completion" of his attempted robbery of the victims, *see* Fla. Admin. Code R. 23-21.010(5)(b)1.h.;
- He, as a 46-year-old, now "has the availability of extremely strong community resources," *see* Fla. Admin. Code R. 23-21.010(5)(b)2.b.;
- He, as a 46-year-old, now "has strong family ties," *see* Fla. Admin. Code R. 23-21.010(5)(b)2.c.;
- He, as a 46-year-old, now "has education and skills which make him or her employable within the community," *see* Fla. Admin. Code R. 23-21.010(5)(b)2.d.; and
- He, as a 46-year-old, "has made a record of clearly exceptional program achievement," *see* Fla. Admin. Code R. 23-21.010(5)(b)2.j.

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules or "**objective**," *i.e.*, fair and uniform, criteria to require that any and all mitigating factors be applied in each and every case where they exist, *see* § 947.165(1); and (2) actually use "**objective**," *i.e.*, fair and uniform, criteria to apply any and all mitigating factors found to exist in this case, *see*, *e.g.*, Fla. Admin. Code R. 23-

21.010(5)(b)1.b.. 1.e.-1.h., (5)(b)2.b.-d., 2.j., thereby complying with the OPGA of 1978,[76] as well as the Due Process and Equal Protection Clauses.[77]

E. Next Interview Date

Review of the Commission's official actions and orders,[78] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[79] from July 8, 2015, until present or December 9, 2016,[80] confirms that the Commission uses an **undisciplined** system of **subjective** decision-making to **arbitrarily** and **capriciously** extend inmates' NIDs, **sometimes** making the finding required by section 947.174(1)(b), Florida Statutes that it is **not** "reasonable" to expect that they will be granted parole in the next five to seven years, based solely on (1) the existence of aggravating factors; and (2) unsubstantiated, boilerplate findings that any release on parole would pose an "unreasonable" risk to others, thereby violating the OPGA of 1978,[81] [82] as well as the Due Process and Equal Protection Clauses.[83]

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[76] *See supra* note 6.
[77] *See supra* notes 7, 23, 75.
[78] *See supra* note 2.
[79] *See supra* note 3.
[80] *See supra* note 4.
[81] *See supra* note 6.
[82] *See Earley*, 152 So. 3d at 693 ("[U]nder the Commission's view that it may [extend] or not [extend inmates' NIDs] **as it sees fit** . . ., the parole guidelines are no longer **objective**, [*i.e.*, fair and uniform,] as [the OPGA of 1978] requires

Indeed, the Commission uses an **undisciplined** system of **subjective** decision-making to **arbitrarily** and **capriciously** to set and extend inmates' NIDs because there is no "**objective**," *i.e.*, fair and uniform, criteria to guide each individual hearing examiner and commissioner's discretion. *See* App. 4, Atwell Brief, Argument at 12.

Here, the Commission violated the OPGA of 1978,[84] as well as the Due Process and Equal Protection Clauses,[85] by using its **undisciplined** system of **subjective** decision-making, *see* App. 4, Atwell Brief, Argument at 12, to **arbitrarily** and **capriciously** set and extend Weatherspoon's NID until sometime in **April 2024** based solely on (1) the existence of the aggravating factors it just applied, *i.e.*, "[u]se of a firearm" and "[m]ultiple separate offenses"; and (2) an unsubstantiated, boilerplate finding that any release on parole would pose an "[u]nreasonable risk to others," *see* App. 1, Commission Action for Inmate Weatherspoon at 1.

Had the Commission actually used "**objective**," *i.e.*, fair and uniform, criteria in accordance with the OPGA of 1978, Weatherspoon's NID would **not** have been extended until sometime in **April 2024** because:

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that they be"); *James*, 395 So. 2d at 198 (recognizing that the OPGA of 1978 "contemplates an **objective** system") (emphasis in original).

[83] *See supra* notes 7, 23.

[84] *See supra* notes 6, 82.

[85] *See supra* notes 7, 23.

- His "actions from years ago may not, **without more**, be indicative of [a **negative**] parole prognosis, in view of the rehabilitative function of prisons," *see Jackson v. Fla. Parole & Prob. Comm'n*, 424 So. 2d 930, 932 n.4 (Fla. 1st DCA 1983);
- He will be entitled to a significant reduction of his PPRD of **December 30, 2032** within the next two years by simply volunteering for and successfully completing a self-betterment/reentry program, *see, e.g.*, App. 11, Order on Subsequent Interview for Inmate Owen Fine DC#096957 at 1 (Fla. Comm'n on Off. Rev. Jul. 24, 2015) (reducing the inmate's PPRD of **June 14, 2070** by **600 months**, or fifty years, after his successful completion of a self-betterment/reentry program at Wakulla); and
- His **minimal** salient factor score total (0-1 point), *see* Fla. Admin. Code R. 23-21.007, *i.e.*, "the indices of the offender's present and prior criminal behavior and related factors found by experience to be predictive in regard to parole outcome," *see* Fla. Admin. Code R. 23-21.002(44), had already "**objectively**," *i.e.*, fairly and uniformly, determined that such a release would **not** pose an "[u]nreasonable risk to others," *see id.*; *see also Battis v. Fla. Parole & Prob. Comm'n*, 386 So. 2d 295, 296-97 (Fla. 1st DCA 1980) ("A [**minimal**] salient [factor] score [falling in the] zero [to one point range]

is the most **favorable** category, **indicating in actuarial terms that the risk of an inmate violating the terms of any subsequent parole is slight**").

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules or "**objective**," *i.e.*, fair and uniform, criteria to guide each individual hearing examiner and commissioner's discretion as to the setting and extension of inmates' NIDs, *see* § 947.165(1); and (2) actually use "**objective**," *i.e.*, fair and uniform, criteria to **accurately** determine when his NID should be set, thereby complying with the OPGA of 1978,[86] as well as the Due Process and Equal Protection Clauses.[87]

F. Referral to Self-Betterment/Reentry Program

Review of the Commission's official actions and orders,[88] as indexed and published by the FDOAH on its website, www.doah.state.fl.us,[89] from July 8, 2015, until present or December 9, 2016,[90] confirms that the Commission uses an **undisciplined** system of **subjective** decision-making to **arbitrarily** and **capriciously** to refer inmates to self-betterment/reentry programs, thereby

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[86] *See supra* notes 6, 82.
[87] *See supra* notes 7, 23.
[88] *See supra* note 2.
[89] *See supra* note 3.
[90] *See supra* note 4.

violating the OPGA of 1978,[91] [92] as well as the Due Process and Equal Protection Clauses.[93]

Indeed, the referral of an inmate to a self-betterment/reentry program is up to the purely **subjective** determination of each individual hearing examiner and commissioner because "there are **no** [specific] published rules [or **objective**, *i.e.*, fair and uniform, criteria] guiding their discretion," *see* App. 4, Atwell Brief, Argument at 12, which violates the OPGA of 1978,[94] as well as the Due Process and Equal Protection Clauses.[95]

Here, the Commission used an **undisciplined** system of **subjective** decision-making, *see* App. 4, Atwell Brief, Argument at 12, to **arbitrarily** and **capriciously** deny Weatherspoon a much-needed referral to a self-betterment/reentry program, like, for example, the Hardee Life Path Program, the Sumter Lifer's Program, Wakulla, or the Dr. Regina B. Shearn Corrections Transition Program at Everglades, *see* App. 1, Commission Action for Inmate Weatherspoon at 1, even though it is entirely **undisputed** that:

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[91] *See supra* note 6.

[92] *Earley*, 152 So. 3d at 693 ("[U]nder the Commission's view that it may [refer] or not [refer inmates to self-betterment/reentry programs] **as it sees fit** . . ., the parole guidelines are no longer **objective**, as [the OPGA of 1978] requires that they be"); *James*, 395 So. 2d at 198 (recognizing that the OPGA of 1978 "contemplates an **objective** system") (emphasis in original).

[93] *See supra* notes 7, 23.

[94] *See supra* notes 6, 92.

[95] *See supra* notes 7, 23.

- Other inmates with PPRDs many decades after his were referred to self-betterment/reentry programs, *see, e.g.*, App. 12, Review Request Commission Action for Inmate Jason S. Holstone DC#195159 at 1 (Fla. Comm'n on Off. Rev. Jun. 17, 2016) (referring the inmate to the Hardee Life Path Program even though his PPRD remained at **May 8, 2051**); App. 13, Order on Initial Interview for Inmate Thomas R. James DC#420931 at 1 (Fla. Comm'n on Off. Rev. Feb. 26, 2016) (referring the inmate to the Sumter Lifer's Program even though his PPRD was established at **July 17, 2070**); and
- He would be entitled to a significant reduction of his PPRD of **December 30, 2032** upon his successful completion of one of those programs, *see, e.g.*, App. 11, Commission Order for Inmate Fine at 1 (reducing the inmate's PPRD of **June 14, 2070** by **600 months**, or fifty years, after his successful completion of a self-betterment/reentry program at Wakulla).

Thus, Weatherspoon believes that this court should enter a writ of mandamus directing the Commission to (1) develop and implement specific rules or "**objective**," *i.e.*, fair and uniform, criteria to guide each individual hearing examiner and commissioner's discretion as to the referral of inmates to self-betterment/reentry programs, *see* § 947.165(1); and (2) actually use "**objective**," *i.e.*, fair and uniform, criteria to **accurately** determine whether he should be

referred to a self-betterment/reentry program, thereby complying with the OPGA of 1978,[96] as well as the Due Process and Equal Protection Clauses.[97]

DATED on this 21st day of December, 2017.

Respectfully submitted,

SAMMY WEATHERSPOON

Sammy Weatherspoon

SAMMY WEATHERSPOON #769728
Avon Park Correctional Institution
8100 Highway 64 East
Avon Park, FL 33825-6801

Petitioner *Pro Se*

DECLARATION

UNDER THE PENALTIES OF PERJURY, I hereby declare that I have read this petition for writ of mandamus and that the facts stated in it are true and correct. *See* § 92.525, Fla. Stat. (2017). Executed on this 21st day of December, 2017.

Sammy Weatherspoon

SAMMY WEATHERSPOON

[96] *See supra* notes 6, 92.
[97] *See supra* notes 7, 23.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition for writ of mandamus and its separately bound appendices were, in fact, served by prepaid first-class mail on Mark Hiers, Assistant General Counsel, Florida Commission on Offender Review, 4070 Esplanade Way, Tallahassee, FL 32399-2450, on this 21st day of December, 2017.

Sammy Weatherspoon
SAMMY WEATHERSPOON

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition for writ of mandamus does, in fact, comply with the font requirements set forth in Florida Rule of Appellate Procedure 9.100(l) because it is printed in a Times New Roman 14-point font. Executed on this 21st day of December, 2017.

Sammy Weatherspoon
SAMMY WEATHERSPOON

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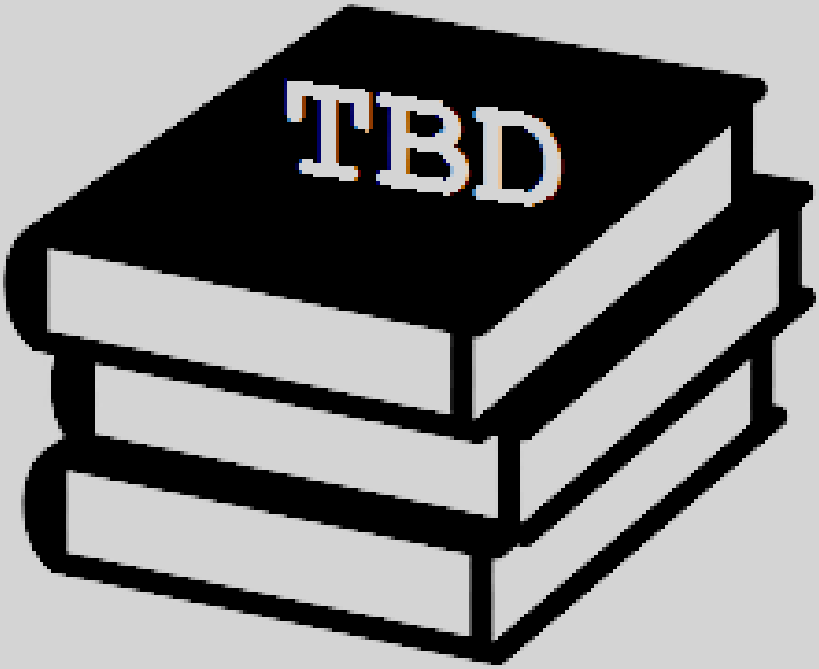

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