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

JONATHON GLEN HARRELSON,

Petitioner,

CASE NO.: 2014 CA 30

vs.

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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ORDER GRANTING EXTRAORDINARY RELIEF

THIS CAUSE came before the court upon Petitioner's "Petition for Writ of Mandamus." The Court, having considered the pleadings and the applicable law, and being otherwise advised in the premises, makes the following findings and rulings:

In 2008, Mr. Harrelson was charged in Gadsden County, Florida, with one count of lewd or lascivious conduct. In the information filed by the State, the prosecution alleged that the offense occurred between February 15, 1995, and August 1, 1998. The case proceeded to a jury trial in 2012. At the conclusion of the trial, the jury returned a verdict of guilty as charged. Notably, on the verdict form, the jury did not specify the date on which the alleged offense occurred. However, during the sentencing hearing, the trial judge found the offense date was February 15, 1995.

After Mr. Harrelson began serving his sentence, he sought incentive gain-time pursuant to section 944.275(4)(b)2.a., Florida Statutes, which permits gain-time at the rate of twenty-five days per month. Section 944.275(4)(b) was later amended, *see* ch. 95-294, § 2, at 2717-18, Laws of Fla. (Stop Turning Out Prisoners Act), however, to halve the rate at which incentive gain-time can be awarded and to provide that, as to "sentences imposed for offenses committed on or after

October 1, 1995, . . . no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85% of the sentence imposed." 944.275(4)(b)3., Fla. Stat. (1995).

When DOC applied the Stop Turning Out Prisoners Act to Mr. Harrelson, Mr. Harrelson sought administrative redress. He exhausted administrative remedies by filing first an informal grievance, then a formal grievance with DOC, then an appeal to DOC under provisions of chapter 33-29, Florida Administrative Code. In denying his administrative appeal, DOC stated:

> In your case, the trial transcript was reviewed. The evidence presented at trial established that the crime was committed after October 1, 1995. In fact, the defense attorney engaged in a line of questioning the point of which was to establish that the crime was not committed until sometime in 1996 at the earliest. Since the evidence indicates the crime was committed after October 1, 1995, the gain-time statute limits the amount of gain-time you can earn to 10 days a month, and requires you to serve at least 85% of the sentence imposed.

Mr. Harrelson submits that DOC's order is contrary to *Duer v. Moore*, 765 So. 2d 743 (Fla. 1st DCA 2000), and the rule of lenity. This Court agrees.

In *Duer*, 765 So. 2d at 744-45, the First District Court of Appeal considered a similar claim and stated the following:

> Petitioner has been convicted of offenses that may or may not have been committed on or after October 1, 1995. A plea of *nolo contendere* establishes what the information alleges and no more. *See Falco v. State*, 407 So. 2d 203 (Fla. 1981); *Vinson v. State*, 345 So. 2d 711 (Fla. 1977). The information in Case No. CR96-3353 alleges offenses in the plural, possibly as few as two per count, but fails to specify precisely when over a period exceeding ten months the offenses took place. No evidence established the dates on which the offenses actually occurred.
>
> The present case thus resembles *Gilbert v. State*, 680 So. 2d 1132 (Fla. 3d DCA 1996), where offenses were alleged to have occurred on unspecified dates between December 13, 1993, and March 24, 1994. Until January 1, 1994, the guidelines permitted a sentence of up to life imprisonment for the offenses alleged, while the guidelines that took effect on January 1, 1994, permitted a sentence of no more than 38.5 years. The court ruled:

> It is admittedly impossible to determine from either the information or the evidence whether the crimes were committed before or after January 1, 1994. Because the conclusion that they occurred after that date, which results in the application of the lower, 1994, guidelines, is more favorable to the defendant, the familiar "rule of lenity" requires that he be given the benefit of that doubt. § 775.021(1), Fla. Stat. (1995); *see State v. Griffith*, 675 So. 2d 911 (Fla. 1996) (uncertainty as to the date of offenses resolved in favor of being committed before defendant reached sixteen and thus subject to lesser penalties).

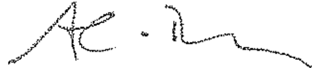
Gilbert, 680 So. 2d at 1132-33. Similarly, it is impossible to determine from the information filed in Case No. CR96-3353 – no evidence was put on – whether the crimes were committed before or after October 1, 1995. In the present case, however, the conclusion that the crimes occurred before rather than after the date on which the law changed is more favorable to the defendant and is, under the rule of lenity explicated in *Gilbert*, the appropriate presumption in order to give the defendant the benefit of the doubt. *See State v. Griffith*, 675 So. 2d 911, 912 (Fla. 1996).

Pursuant to *Duer*, Mr. Harrelson is entitled to relief. As in *Duer*, Mr. Harrelson has been convicted of an offense that may or may not have been committed on or after October 1, 1995. The information filed by the prosecutor in the case alleged that the offense occurred between February 15, 1995, and August 1, 1998. At the conclusion of the trial, the jury did not specify the date on which the alleged offense occurred, and the jury did not make a factual finding that the offense definitively occurred on or after October 1, 1995.

More importantly, the sentencing court made a factual finding that the offense occurred on February 15, 1995. This Court finds that it has no jurisdiction to review the legality of judgments and sentences entered by other circuit courts. *Zuluaga v. Fla. Dep't of Corr.*, 32 So. 3d 674 (Fla. 1st DCA 2010) (citing *Leichtman v. State*, 674 So.2d 889 (Fla. 4th DCA 1996). As such, this Court is not empowered to review the propriety or sufficiency of Petitioner's sentencing order.

Accordingly, it is hereby **ORDERED and ADJUDGED** that Plaintiff's "Petition for Writ of Mandamus" is hereby **GRANTED**.

DONE and ORDERED in Tallahassee, Leon County, Florida, November 17, 2014.



ANGELA C. DEMPSEY
Circuit Judge

Copies to:

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