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IN THE

# SUPREME COURT OF FLORIDA

| | |
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| ROBERT E. BANKS,<br><br>Petitioner,<br><br>v.<br><br>JULIE L. JONES,<br>SECRETARY, FLORIDA<br>DEPARTMENT OF CORRECTIONS,<br><br>Respondent. | Case No. SC16-1478<br><br>Lower Tribunal No(s).: 1D15-330<br>2014-CA-585 |

**JURISDICTIONAL BRIEF OF THE PETITIONER**

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## C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Robert E. Banks (hereinafter "Petitioner Banks"), a prisoner in the Department of Corrections, filed a *pro se* petition for writ of habeas corpus in the circuit court challenging his assignment to close management residential status. The circuit court denied the petition and Petitioner Banks filed a *pro se* petition for writ of certiorari in the First District Court of Appeal seeking review of the circuit court's order. The First District:

> subsequently ordered this case to be heard *en banc* regarding "whether the court should recede from decisions holding that an inmate seeking release from close management into the general prison population is entitled to proceed through a petition for writ of habeas corpus. *See, e.g. Kendrick v. McNeil*, 6 So. 3d 657 (Fla. 1st DCA 2009)."

*Banks v. Jones*, 41 Fla. L. Weekly D1584, D1585 (Fla. 1st DCA July 12, 2016). The First District then appointed undersigned counsel to represent Petitioner Banks on a *pro bono* basis and the parties submitted pleadings to address the question presented on *en banc* review. Ultimately, the *en banc* First District receded from decades of precedent and held that an inmate who seeks release from close management back into the general prison population must seek relief pursuant to a petition for writ of mandamus – *not* a petition for writ of habeas corpus:

> We now hold that a prisoner's claim that he has been improperly assigned to Close Management classification does not state a claim for relief by writ of habeas corpus under Article I, section 13 of the Florida Constitution or under the Due Process Clause of the Fourteenth

> Amendment to the United States Constitution. Thus, we hold that such a claim can only be considered by petition for writ of mandamus, asserting that the Department has not complied with its own Close Management procedures and filed in the Second Circuit Court in Leon County, as are other claims challenging disciplinary reports issued in state prisons.

*Banks*, 41 Fla. L. Weekly at D1584 (citations omitted). However, the First District acknowledged that its decision was in conflict with precedent from the Fifth District Court of Appeal:

> In addition to our holding today, we also certify conflict with the Fifth District Court of Appeal in *Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001), which cites prior decisions of this court from which we now recede.

*Id. See also id.* at D1590 ("Because we recede from our prior decisions in this court allowing such claims to be considered in habeas corpus, we certify conflict with *Holland*. We also acknowledge that in *Harvard v. Singletary*, 733 So. 2d 1020, 1024 (Fla. 1999), the Florida Supreme Court transferred a petition challenging a Close Management assignment to the county in which the prisoner was incarcerated.").

Judge Wolf, joined by Judges Makar, Bilbrey, Jay, and M.K. Thomas, wrote a concurring in part and dissenting in part opinion disagreeing with the majority's decision to recede from the First District's precedent:

> I concur in that portion of the majority opinion that determines that this particular inmate is not entitled to relief. I also concur in the decision to declare conflict with the Fifth District Court of Appeal's decision in *Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001). I would additionally certify a question of great public importance

> concerning the appropriate method and scope of judicial review of decisions to segregate prisoners from the general population. I respectfully dissent from the decision to overturn almost 35 years of precedent which allowed inmates to file habeas corpus proceedings in the state circuit courts to challenge their assignments to close management.

*Id.* at 1591 (Wolf, J., concurring in part and dissenting in part). Judge Makar, joined by Judge Bilbrey, wrote a dissenting opinion wherein he stated:

> Thirty-five years of precedent are jettisoned, replaced in part by a pastiche of legal concepts cobbled together to create a newfound remedy, proving the adage that a camel is a horse designed by committee. Neither constitutional text, precedent, nor changed circumstances support the result; conflict and confusion are created where none has existed; and unforeseen, hydra-like consequences are born. Little commends the end product; it's a solution for a non-existent problem.
>
> Let's put this *en banc* case – purportedly of exceptional importance – in context. It is one of a miniscule subcategory of inmate petitions comprising about 0.2% of our annual workload of approximately 5000 cases. About ten times a year, an inmate put in close management (CM) seeks judicial review, claiming his placement is so arbitrary or oppressive as to invoke judicial intervention. Relief is usually denied, sometimes summarily, but not always. The judicial burden of processing these few cases pales in comparison to the avalanche of prisoner petitions processed in this Court and others for which relief is most often denied. *See Harvard v. Singletary*, 733 So. 2d 1020, 1023 (Fla. 1999) ("Many prisoner petitions are successive, and a large number are completely without merit."). From a judicial administration perspective, we face greater challenges than the processing of this lilliputian sliver of our docket.
>
> For over three decades, our precedent has authorized this process, one that has proven neither unworkable nor controversial. *See, e.g., Costello v. Strickland*, 418 So. 2d 443 (Fla. 1st DCA 1982) (granting relief in prisoner's challenge to CM status raised in a habeas petition). Now, the Department wants us to depart from our long-standing

precedent, eliminating judicial review of its CM decisions entirely. It asks that we abandon an established constitutional remedy, the writ of habeas corpus, which is "granted freely and without cost" and "shall never be suspended," article I, section 13, Florida Constitution, because using it in the CM context is a "diminution of the Great Writ that must end." The Department says that the status quo "may have made sense years ago when little was known about the conditions of CM units and allegations of arbitrary placement abounded." Judicial review of CM challenges should be eliminated, we are told, because CM processes have evolved and become so "modern" as to operate independently of the judicial branch without fear that abuses in prison will occur.

The claim that judicial precedents over the past decades justify overruling our caselaw has no support whatsoever. Nothing in the Florida or United States constitutions has changed; no case from the United States Supreme Court or the Florida Supreme Court in the past thirty-five years suggests that our precedents on this topic should be abandoned; and decisions of our sibling courts are in accord with our precedents. Indeed, no court nationwide has done what the Department asks us to do.

The entire linchpin of the Department's theory is *Sandin v. Conner*, 515 U.S. 472 (1995), a twenty-year-old decision that limited – but did not eliminate – judicial review of disciplinary challenges. *Sandin* specifically left open review where an institution imposes an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484. Courts nationwide have cited *Sandin* 16,628 times, but none have read it as ushering in the elimination of judicial review of CM-type assignments. The Department also cites a smattering of cases that purportedly support the total elimination of an inmate's liberty interest in the CM context, but none specifically do so; and the cases are either unpublished, non-precedential, or they merely support the general concept from *Sandin* that only atypical and significant conditions create a protectable interest.

Moreover, though debate exists on the baseline of *Sandin's* standard, no debate exists on its application; courts have routinely applied it to decide whether a prison placement falls within its parameters. The United States Supreme Court has done so. *See, e.g., Wilkinson* [*v. Austin*], 545 U.S. [209,] 223 [(2005)] (concluding that "assignment to [Supermax prison] imposes an atypical and significant

hardship under any plausible baseline"). And, indeed, we've applied it a number of times and found it workable. *See, e.g., John v. Crews*, 149 So. 3d 149, 151 (Fla. 1st DCA 2014) ("Based on *Sandin*, appellant's placement in disciplinary confinement for forty-three days did not present an atypical, significant deprivation implicating the protections of the due process clause.").

Simply said, no precedent supports a deviation from *stare decisis*; no flawed logic has been shown; and recasting the status quo in another form serves no purpose. Our precedents have not thrust us into "improper judicial second-guessing" of governmental actions, whether dangerous or otherwise, as the Court believes; nor have they – as the Court claims – "encourage[d] excessive state judicial oversight and interference with prison management, without any real substance at stake or real benefit conferred on state prisoners while creating a risk of diminishing state prison security and safety." Maj. Op. at –. Not a single instance has been brought to our attention to support the claim that the judges of this Court or any other have acted improperly or, through excessive oversight, interfered with prison operations for no good reason.

And no "changed circumstances" warrant the exercise of *en banc* powers to overturn our caselaw. While it is highly laudable that Florida's prison system has adopted additional rules, procedures, and protocols for CM assignments, which are said to be solely non-punitive management tools, that does not logically mean that courts should fold up their tents and forego judicial review, particularly under separation of powers principles. Courts exist to protect rights, and no law or tradition exists to abdicate that responsibility absent the most compelling of justifications. We are in the business of reviewing governmental actions that may impinge on people's rights; administrative deference, not judicial abdication, is what's due.

What's more, the United States Supreme Court has made clear that the determination of an inmate's liberty interest is not based solely on what state regulations say (or how numerous and dense they are), but on the nature of prison conditions imposed relative to prison life generally. The Court explained this point as follows:

> After *Sandin*, it is clear that the touchstone of the inquiry into the existence of a protected, state-created liberty

> interest in avoiding restrictive conditions of confinement is not the language of regulations regarding those conditions but *the nature of those conditions themselves 'in relation to the ordinary incidents of prison life*.'

*Wilkinson*, 545 U.S. at 223 (citation omitted) (emphasis added). Thus, contrary to the Department's (and the Court's) view that inmates "do not have a liberty interest in their custody status while in prison," it is clear they do, albeit more narrowly circumscribed. We are in no position to overrule the United States Supreme Court on this point. And the high court has clearly said that facial readings of prison regulations are not the touchstone; instead, it is the nature of the actual conditions imposed. This makes sense because of the improbability of a state promulgating prison regulations that facially impose atypical, significant restrictions.

A few final observations. First, the Court concedes that by overturning long-standing precedent it creates conflict with our sibling courts and potentially our supreme court. The result is a judicial outlier in a sea of precedent to the contrary; no court anywhere has read *Sandin* as does this Court. We will be seen as straining to squeeze juice from *Sandin's* timeworn rind, overplaying its significance, and altering our caselaw for no good reason. Second, the Court's lengthy opinion and new-fangled remedy, much like a Rube Goldberg machine, are over-engineered to perform what has been a simple, uncomplicated, and non-controversial task; they will likely create unnecessary confusion and have the unintended consequence of increased prisoner litigation. It is said the new remedy specifically does not displace existing review via a petition for a writ of habeas corpus based on prison conditions in the CM system. Thus, inmates will now file two petitions, one seeking mandamus to review the CM placement decision, and another seeking a writ of habeas corpus to review the conditions of CM. This will undoubtedly result in more burdens on judicial administration, not fewer. And prisoners who pursue the new remedy, if indigent, as most are, will impose further burdens due to the process and paperwork necessary to waive filing fees in this new class of cases. Finally, courts have a role to play in making the law understandable and efficient; we accomplish neither in this case. If it ain't broke, don't fix it.

*Id*. at D1593-94 (footnotes omitted).

## D. JURISDICTIONAL STATEMENT AND SUMMARY OF ARGUMENT

The Court has jurisdiction to review a district court of appeal opinion "that is certified by it to be in direct conflict with a decision of another district court of appeal." Art. V, § 3(b)(4), Fla. Const. In the instant case, the First District certified that its decision is in conflict with the Fifth District's decision in *Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001). Thus, the Court has jurisdiction in this case to resolve the certified conflict regarding whether an inmate who seeks release from close management back into the general prison population is entitled to proceed through a petition for writ of habeas corpus or a petition for writ of mandamus.

## E. ARGUMENT AND CITATIONS OF AUTHORITY

**The decision below is within the discretionary jurisdiction of the Court because in the opinion below, the First District certified that its decision is in conflict with the Fifth District's decision in *Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001).**

The Court may review a district court of appeal opinion "that is certified by it to be in direct conflict with a decision of another district court of appeal." Art. V, § 3(b)(4), Fla. Const. In the instant case, the First District certified that its decision is in conflict with the Fifth District's decision in *Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001). Thus, the Court has jurisdiction in this case to resolve the certified conflict regarding whether an inmate who seeks release from close management back into the general prison population is entitled to proceed through a petition for writ of habeas corpus or a petition for writ of mandamus.

In *Kendrick v. McNeil*, 6 So. 3d 657, 658 (Fla. 1st DCA 2009), the First District – relying on six of its own cases and the *Holland* case from the Fifth District – held that an inmate who seeks release from close management back into the general prison population is entitled to proceed through a petition for writ of habeas corpus:

> This Court has consistently held that an inmate who seeks release from close management back into the general prison population is entitled to proceed through a petition for writ of habeas corpus. *See Ashley v. Moore*, 732 So. 2d 498 (Fla. 1st DCA 1999); *Norris v. Dep't of Corrections*, 721 So. 2d 1235 (Fla. 1st DCA 1998); *Taylor v. Perrin*, 654 So. 2d 1019 (Fla. 1st DCA 1995); *Guess v. Barton*, 599 So. 2d 770 (Fla. 1st DCA 1992); *Roy v. Dugger*, 592 So. 2d 1235 (Fla. 1st DCA 1992); *Thompson v. Dugger*, 509 So. 2d 391 (Fla. 1st DCA 1987); *see*

*also Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001).

The cases cited in *Kendrick* in support of its holding span almost three decades. *See also Costello v. Strickland*, 418 So. 2d 443 (Fla. 1st DCA 1982); *Granger v. Florida State Prison*, 424 So. 2d 937 (Fla. 1st DCA 1983); *Magwood v. Tucker*, 98 So. 3d 725 (Fla. 1st DCA 2012).

In the decision below, the *en banc* First District receded from *Kendrick* and *decades* of precedent by holding that an inmate who seeks release from close management back into the general prison population must proceed pursuant to a petition for writ of mandamus (rather than a petition for writ of habeas corpus). For all of the reasons set forth in the opinions written by Judges Wolf and Makar below, the Court should accept jurisdiction in this case in order to resolve the certified conflict.[1] As explained by Judge Wolf, guidance is needed from this Court regarding the appropriate method and scope of judicial review of decisions to segregate prisoners from the general population.

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[1] In his concurring in part and dissenting in part opinion, Judge Wolf noted that

> The effect of the majority's holding is to deny *any review* of any assignment to close management for any duration because this court has long held that a prisoner must have a liberty interest in order to bring a petition for writ of mandamus challenging the Department's actions.

*Banks v. Jones*, 41 Fla. L. Weekly D1584, D1592 (Fla. 1st DCA July 12, 2016) (Wolf, J., concurring in part and dissenting in part) (emphasis added).

## F. CONCLUSION

For the reasons set forth above, Petitioner Banks requests the Court to accept jurisdiction in this case in order to resolve the conflict between the First District and the Fifth District regarding whether an inmate who seeks release from close management back into the general prison population is entitled to proceed through a petition for writ of habeas corpus or a petition for writ of mandamus.

## G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing brief and the appendix have been furnished to:

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## H. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Jurisdictional Brief of the Petitioner complies with the type-font limitation.

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