Filing # 47709896 E-Filed 10/17/2016 03:27:56 PM

**SC16-1478**

# In the Supreme Court of Florida

ROBERT E. BANKS,

*Petitioner*,

v.

JULIE L. JONES,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

*Respondent*.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIRST DISTRICT
CASE NO.: 1D15-330

## RESPONDENT'S BRIEF ON JURISDICTION

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RECEIVED, 10/17/2016 03:28:30 PM, Clerk, Supreme Court

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## STATEMENT OF THE CASE AND FACTS

Petitioner seeks this Court's discretionary review of an en banc decision of the First District certifying conflict with a decision of the Fifth District. Because the certified conflict has unique potential to resolve itself, this Court should decline to exercise jurisdiction.

Petitioner, Robert Banks, is a state prisoner serving a 30-year sentence. He is assigned to Close Management status, a more restrictive prison classification than general population. Inmates in Close Management retain basic privileges and are incentivized to exhibit good behavior to earn additional leniency. The Department of Corrections ("Department") uses Close Management to ensure institutional order and safety in its facility, and the Department's decision to assign an inmate to Close Management is an internal, administrative process. Petitioner's assignment to Close Management came after he spat in the face of a doctor treating him and had to be escorted out of the doctor's office by security. The incident led to a disciplinary report being filed and Petitioner's referral to Close Management assignment.

Petitioner challenged his assignment to Close Management. He asserted entitlement to incarceration in the prison's general population and not, of course, to release from incarceration entirely. Petitioner sought this relief by petition for writ of habeas corpus. The essence of Petitioner's challenge was an assertion that the

Department had not complied with its own Close Management assignment procedures. Because Petitioner was not claiming that his imprisonment itself was unlawful, the First District concluded that no constitutionally protected liberty interest was implicated. Accordingly, the First District held that Petitioner's claim may be brought only by petition for writ of mandamus. App. at 3.[1]

In holding that a petition for writ of mandamus is the proper vehicle for Petitioner's challenge, the First District acknowledged it was receding from its prior decisions to the contrary. App. at 2. The First District explained that its prior decisions "relied on an analytical foundation . . . rejected more than 20 years ago by the United States Supreme Court in *Sandin v. Conner*, 515 U.S. 472 (1995)." App. at 2. *Sandin* had clearly announced that any prison regulation not imposing an atypical and significant hardship on a state prisoner does not implicate due process protections affording habeas corpus relief. 515 U.S. at 483. Likewise, *Sandin* rejected the argument that a prisoner may have a generic liberty interest in remaining in the prison's general population. *See id.* at 484. Observing that its precedent had not properly heeded *Sandin*, the First District's en banc majority set out over several pages a detailed, reasoned analysis of why a habeas petition is not the proper procedure for challenging whether the Department complied with

[1] Citations to "App. at [pg. #]" refer to the Appendix to Petitioner's Jurisdictional Brief.

internal prison management procedures. App. at 3–4, 12–24. Moreover, the First District concluded that its prior approach did not accord due deference to the executive function of managing state prisons and the related difficulties and dangers. App. at 2, 11, 20. Accordingly, because Petitioner was not asserting entitlement to immediate release from prison but simply challenging an administrative, typical hardship of incarceration, the First District concluded that habeas relief was procedurally improper.

At the same time, the First District acknowledged that the Fifth District, in *Holland v. State*, 791 So. 2d 1256 (Fla. 5th DCA 2001), had affirmed a circuit court order denying a petition for writ of habeas corpus filed by a prisoner seeking release from Close Management assignment. The Fifth District in *Holland* did not discuss the propriety of the relief sought, but cited to the First District's decisions in *Taylor v. Perrin*, 654 So. 2d 1019 (Fla. 1st DCA 1995), and *Granger v. Florida State Prison*, 424 So. 2d 937 (Fla. 1st DCA 1983), which involved prisoners filing petitions for writs of habeas corpus. Because the Fifth District in *Holland* had looked to prior First District decisions from which the First District receded in its en banc opinion, the First District certified conflict with *Holland*.

## SUMMARY OF THE ARGUMENT

The Court should decline to exercise jurisdiction over this case, which is premature for review and in which review may never be necessary. The sole

conflicting decision in the Fifth District follows prior First District precedent, making it likely that the Fifth District will simply adopt the First District's en banc holding here and adjudicate future petitions accordingly. Should the Fifth District continue to look to the First District on this issue, the conflict will be resolved without any address from this Court. There is no present need for this Court's review.

In addition, the First District's decision affects a tiny fraction of cases, hardly warranting this Court's time and attention on such a shallow, potentially ephemeral split. As Judge Makar noted in dissent, the holding pertains to "a non-existent problem" and would touch on no more than 0.2% of the First District's workload. App. at 55. The decision below leaves available the procedurally proper avenue for prisoners seeking to challenge their Close Management status: they may seek relief by petition for writ of mandamus in the Leon County Circuit Court. Indeed, this is the same procedure by which inmates may raise other challenges to disciplinary reports in state prison or appeal other administrative decisions. Access to justice is not impaired by the First District's correct en banc decision.

The Court should deny review.

## ARGUMENT

### I. THE COURT SHOULD DENY REVIEW BECAUSE THE CONFLICT IS UNIQUELY POISED TO RESOLVE ITSELF.

The certified conflict is uniquely poised to resolve itself without this Court's attention. First, the Fifth District's opinion in *Holland* did not directly address whether writ of habeas corpus or writ of mandamus was the proper means for challenging Close Management status. Neither the analysis nor the holding in *Holland* focuses on the central question in the decision below. The *Holland* decision also did not address the significance of *Sandin*; it merely cited two First District cases that involved habeas corpus petitions, in a footnote and without any discussion. This hardly creates a notable conflict. More importantly, to the extent that *Holland* was relying on the First District's prior precedent regarding habeas petitions, that is all the more reason why the Court should allow the issue to develop among the district courts. Should the Fifth District continue looking to the First District for guidance, it will follow suit with the decision below, and any conflict will be resolved.

The conflict is strikingly shallow. Petitioner has not cited any other case from any other district court that conflicts with the decision below. Nor did the First District indicate that any other decisions were in conflict. Indeed, there appears to be no other case statewide in conflict. Accordingly, the split is shallow

and very recent, with plain potential to resolve itself. Therefore, this Court should allow the issue to percolate to resolution in the district courts.

## II. ACCESS TO JUSTICE WILL REMAIN UNIMPEDED THROUGH THE PROPER CHANNELS.

Petitioner incorrectly suggests as a reason for this Court's review that the First District's decision forecloses relief to state prisoners seeking to challenge their Close Management status. Pet. Juris. Br. at 9, n. 1 (quoting App. at 48 (Wolf, J. concurring in part and dissenting in part)). To the contrary, the First District's decision articulates the clear and proper procedure for such challenges: An inmate may file a petition for writ of mandamus challenging his Close Management assignment. "[S]hould the inmate state a prima facie case that the Department failed to comply with its own rules [regarding confinement assignments,] . . . a circuit court could be required to issue a show cause order to the Department, necessitating further evaluation in that court." App. at 31. As the First District noted, App. at 31, this procedure is akin to what this Court outlined in *Moore v. Florida Parole & Probation Commission*, 289 So. 2d 719, 720 (Fla. 1974)—namely that habeas corpus is not available to challenge a Department decision not entitling an inmate to a reasonable expectation of imminent release from incarceration; instead, mandamus relief may be sought.[2]

[2] However, as the First District noted, if a state prisoner claims that his Close

Indeed, a petition for writ of mandamus has long been the procedure used for other inmate appeals of administrative decisions or challenges to disciplinary actions in state prisons. *See* App. at 2–3 (citing *Holcomb v. Dep't of Corrections*, 609 So. 2d 751 (Fla. 1st DCA 1992)). Nothing has changed regarding the mandamus procedure, which remains available to inmates for such appeals. And nothing in the First District's decision prevents Petitioner himself from challenging his Close Management status in the future, using the same arguments, through a petition for writ of mandamus.

## CONCLUSION

This Court should deny review.

Respectfully submitted,

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Management confinement is cruel and unusual punishment in violation of the Eighth Amendment, that claim could be appropriately advanced by petition for writ of habeas corpus. *See* Pet. App. at 29.

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ *Denise M. Harle*
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on this 17th day of October, 2016, to the following:

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