Filing # 54968608 E-Filed 04/12/2017 11:13:32 AM

RECEIVED, 04/12/2017 11:18:26 AM, Clerk, Supreme Court

IN THE

SUPREME COURT OF FLORIDA

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

REPLY BRIEF OF THE PETITIONER

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

Counsel for Petitioner **BANKS**

A. TABLE OF CONTENTS

Page

A. TABLE OF CONTENTS. ii

B. TABLE OF CITATIONS. iii

1. Cases. iii

2. Statutes. iii

3. Other Authority.. iii

C. ARGUMENT AND CITATIONS OF AUTHORITY.. 1

D. CONCLUSION. 4

E. CERTIFICATE OF SERVICE. 5

F. CERTIFICATE OF COMPLIANCE. 6

B. TABLE OF CITATIONS

Page

1. Cases

Banks v. Jones, 197 So. 3d 1152 (Fla. 1st DCA 2016).. 3

Holly v. Auld, 450 So. 2d 217 (Fla. 1984) 1-2

J.M. v. Gargett, 101 So. 3d 352 (Fla. 2012) 2

Kight v. Dugger, 574 So. 2d 1066 (Fla. 1990) 1

Pino v. Bank of New York, 76 So. 3d 927 (Fla. 2011) 1

2. Statutes

§ 985.037, Fla. Stat.. 2

3. Other Authority

Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431 (2005) 1

Fla. R. App. P. 9.210(a)(2). 6

C. ARGUMENT AND CITATIONS OF AUTHORITY

In her Answer Brief, the Respondent argues that this case is now moot because the Petitioner has been released from his close management assignment. *See* Answer Brief at 14. "There is, however, an important exception for moot cases that present important questions capable of repetition yet likely to evade review." Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 488 (2005) (footnote omitted). There are numerous cases where the Court has continued to exercise jurisdiction over a matter when it is both of great importance and "capable of repetition, yet evading review." *See Kight v. Dugger*, 574 So. 2d 1066, 1068 (Fla. 1990) ("We agree with CCR that although the files have been disclosed in this case, thereby rendering the issue moot, this Court should address the issue because it is 'capable of repetition, yet evading review.'"); *Pino v. Bank of New York*, 76 So. 3d 927, 930 (Fla. 2011) ("Although the issues underlying this litigation may be moot as to the parties involved, our precedent clearly establishes that mootness does not defeat appellate jurisdiction, and a reviewing court has the discretion to retain jurisdiction over a case to decide the merits notwithstanding a notice of dismissal filed by the parties denoting a settlement of their dispute."); *Holly v. Auld*, 450 So. 2d 217, 218 n.1 (Fla. 1984) ("It is well settled that mootness does not destroy an

appellate court's jurisdiction, however, when the questions raised are of great public importance or are likely to recur."); *J.M. v. Gargett*, 101 So. 3d 352, 355 n.4 (Fla. 2012) ("J.M. acknowledges in his Initial Brief that his sentence has long since been served in full. He argues, however, that the case should not be dismissed as moot because the conflict between the district courts will likely continue to result in inconsistent applications of section 985.037 in future cases. We agree.").

The Court should retain jurisdiction over the instant case. The question presented in this case is both of great importance and "capable of repetition, yet evading review."[1] The Court's decision in this case will impact every Florida prison inmate who is subjected to close management custody.

Regarding the merits,[2] for all the reasons set forth in the Initial Brief, the

---

[1] Undersigned counsel is grateful that the Petitioner is no longer in close management custody. Nevertheless, undersigned counsel notes that the Respondent is the one who ultimately decides when inmates will be released from close management – meaning that the Respondent will have the ability to render moot any similar case that might come before the Court.

[2] The Petitioner relies on the arguments set forth in his Initial Brief in support of his claim that he is entitled to relief because "spitting" on another person is *not* "an act causing injury or an act which could have resulted in injury to another." Undersigned counsel concedes that the Court need not address this issue now that the Petitioner has been released from close management custody (but as explained above, the Court should decide whether habeas corpus or mandamus is the proper vehicle for an inmate to pursue when seeking release from close management into the general prison population).

Petitioner continues to assert that habeas corpus – not mandamus – is the proper vehicle for an inmate to pursue when seeking release from close management into the general prison population (and the Petitioner continues to assert that his due process rights were triggered by being placed in close management). As explained by Judge Wolf in his concurring in part and dissenting in part opinion below, the First District's conclusion that habeas review is no longer available to inmates placed in close management "denies the prisoner *any meaningful judicial review of the decision to be placed in close management, no matter the duration*." *Banks v. Jones*, 197 So. 3d 1152, 1174 (Fla. 1st DCA 2016) (Wolf, J., concurring in part and dissenting in part) (emphasis added).[3] The Petitioner again requests the Court to adopt the well-reasoned opinions written by Judge Wolf and Judge Makar.

Accordingly, for all of the reasons set forth above and contained in the Initial Brief – and for all of the reasons articulated in Judge Wolf's opinion and Judge Makar's opinion – an inmate seeking release from close management into the general prison population should be permitted to seek review pursuant to a petition for a writ of habeas corpus. The First District's decision below should be quashed.

---

[3] Judges Makar, Bilbrey, Jay, and M.K. Thomas joined Judge Wolf's opinion.

D. CONCLUSION

The appropriate remedy is to quash the district court's decision and to hold 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.

E. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing brief has been furnished to:

Deputy Solicitor General Denise M. Harle and Assistant Attorney General Daniel A. Johnson
The Capitol, PL-01
Tallahassee, Florida 32399-1050
Email: denise.harle@myfloridalegal.com
daniel.johnson@myfloridalegal.com

by email delivery this 12th day of April, 2017.

Respectfully submitted,

/s/ Michael Ufferman

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

Counsel for Petitioner **BANKS**

F. CERTIFICATE OF COMPLIANCE

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

/s/ Michael Ufferman
MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

Counsel for Petitioner **BANKS**