

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RICKEY J. CARTER,

Petitioner,

v.

FLORIDA PAROLE COMMISSION,

Respondent.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED.

CASE NO. 1D04-2853

Opinion filed May 18, 2005.

Petition for Writ of Certiorari -- Original Jurisdiction.

Rickey J. Carter, pro se, petitioner.

Kim M. Fluharty, General Counsel, and Bradley R. Bischoff, Assistant General Counsel, Florida Parole Commission, Tallahassee, for respondent.

ON MOTION FOR REHEARING

PER CURIAM.

We withdraw our previous opinion in this cause issued February 28, 2005, and substitute the following therefor.

Upon consideration of the petition for writ of certiorari, we determine that petitioner is not entitled to relief on his claims concerning revocation of parole or the imposition of restitution. As to the claim requesting recalculation of petitioner's

presumptive parole release date, the petition is denied because the Commission seeks to use exactly the same number of months for aggravating circumstances as initially used in establishing the presumptive parole release date. See Terry v. Florida Probation and Parole Comm'n, 634 So. 2d 228 (Fla. 1st DCA 1994) (holding that during a determination of a new presumptive parole release date after revocation of parole, the Commission may rely on the same aggravating factors that were considered in the first calculation, but that the number of months may not exceed the initial number; agreeing with Tubb v. Florida Parole Comm'n, 580 So. 2d 616 (Fla. 5th DCA 1991)); McClain v. Florida Parole Comm'n, 647 So. 2d 973 (Fla. 1st DCA 1994) (same).

DENIED.

VAN NORTWICK, POLSTON AND THOMAS, JJ., CONCUR.