

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

OSVALDO PALAZON,
Petitioner,

v.

JAMES V. CROSBY, JR., Secretary of the Florida Department of
Corrections, and the **FLORIDA PAROLE COMMISSION,**
Respondents.

No. 4D05-2114

[November 2, 2005]

PER CURIAM.

We treat this case as a petition for writ of certiorari seeking review of an order from the circuit court denying a petition for writ of habeas corpus.

In 2004, the Florida Parole Commission issued an order revoking petitioner's conditional release. Petitioner did not receive a final hearing because an attorney, who represented him on a misdemeanor traffic charge and at the initial interview before the Parole Commission, faxed a letter to the Parole Commission stating that petitioner waives a hearing regarding the violation. Petitioner maintains that he did not waive his right to a hearing or authorize anyone to waive the right on his behalf.

Section 947.141(3), Florida Statutes (2004), provides that if a releasee is charged with violating conditional release, the releasee must be afforded a hearing within 45 days after notice to the Parole Commission of the releasee's arrest. Florida Administrative Code Rule 23-23.011(4)(c) states that a conditional release violation hearing "may be waived by the conditional releasee after an explanation of the consequences of a waiver. The waiver shall be in writing and shall be executed before a Commissioner or duly authorized representative of the Commission."

In *State v. Upton*, 658 So. 2d 86 (Fla. 1995), the supreme court held that a lawyer's written waiver is insufficient to waive a defendant's right to a jury trial. The court was concerned that the waiver of such an

important right be knowing and voluntary. *See id.* at 87-88. Rule 23-23.011(4)(c) embodies similar concerns about the waiver of a conditional release violation hearing; the rule requires that the consequences of the waiver be explained to the releasee. The purpose of the requirement that the waiver occur before a commissioner or representative is to ensure that the waiver is knowing and voluntary. We therefore read the administrative rule to require the releasee's signature on a waiver; the attorney's signature alone is insufficient.

We grant the writ, quash the order of the circuit court, and remand to the Parole Commission to conduct a final hearing on violation of conditional release.

WARNER, FARMER and GROSS, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Nineteenth Judicial Circuit, Okeechobee County; William L. Roby, Jr., Judge; L.T. Case No. 2004CA290.

Oswaldo Palazon, Okeechobee, pro se.

Beverly Brewster, Tallahassee, for respondent James V. Crosby, Jr.

Terri Leon-Benner, Tallahassee, for respondent Florida Parole Commission.

Not final until disposition of timely filed motion for rehearing.