



FDRAG address:
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Newsletter

Please share this newsletter with others who did not receive one because, for now, we are not able to cover every one of you. Do send us your ideas & suggestions for the next newsletter. We love hearing from you! Our next newsletter will be due around June 2015

If you have friends or family who can send you the newsletter please let us know or ask them to contact us. Our email address is at the last page.

Death Penalty 2014: Year End Report - Death Penalty Information Center *Fewest executions in 20 years - Fewest death sentences in 40 years

* Missouri, Texas and Florida were responsible for 80 % of executions in the country

* Seven Death Row Inmates Exonerated, Highest in Five Years

(Washington, D.C.) With 35 executions this year, 2014 marks the fewest people put to death since 1994, according to a report released today by the Death Penalty Information Center (DPIC). The 72 new death sentences in 2014 is the lowest number in the modern era of the death penalty, dating back to 1974. Executions and sentences have steadily decreased, as Americans have grown more skeptical of capital punishment. The states' problems with lethal injections also contributed to the drop in executions this year.

The number of states carrying out executions – seven – was the lowest in 25 years. Just three states – Texas, Missouri, and Florida – accounted for 80% of the executions. For the first time in 17 years, Texas did not lead the country in executions, being tied with Missouri at 10.

“The relevancy of the death penalty in our criminal justice system is seriously in question when 43 out of our 50 states do not apply the ultimate sanction,” said Richard Dieter, DPIC’s Executive Director and the author of the report. “The U.S. will likely continue with some executions in the years ahead, but the rationale for such sporadic use is far from clear.”

This is a just a short summary of the Year End Report of the DPIC, if you want to receive the full report please contact us and we will send it to you.

Legal Update

Several legal developments of importance to the death sentenced community arose since the last newsletter, which will now be addressed.

First, the new rules governing capital punishment (death sentenced) post conviction proceedings went into effect on January 1st. Last year the Florida Supreme Court "amended" these procedural rules technically known as Florida Rules of Criminal Procedure, Rule 3.851 to adopt a strict rule that will now prohibit death-sentenced prisoners from exercising self representation in capital cases. This rule was adopted despite strenuous opposition from various legal organizations and several of the Florida Supreme Court justices.

It appears that the adoption of this rule is in response to the United States Supreme Courts ruling in *Holland v Florida*, 560 US 631 (2010) and *Martinez v Ryan*, 132 S. Ct. 1309 (2012) which recognizes problems with incompetency by assigned lawyers in capital post conviction proceedings, and that equitable relief is available if the petitioner can establish that state assigned initial review collateral counsel failed to provide competent representation that resulted in the deprivation of review of substantive claims of constitutional deprivation.

Given the importance of establishing a record if and when assigned counsel fails to provide adequate post conviction representation, although this newly implemented rule prohibits "pro se" intervention, the individual should still attempt to submit complaints to the court as although the judicially created amendment to Rule 3.851 prohibits the exercise of self-representation, it apparently conflicts with the legislatively created Florida statutes, Chpt. 27.711 (12), which explicitly requires the courts to accept complaints regarding the quality of representation received by death sentenced prisoners. Especially in the light of *Holland v. Florida* and *Martinez v. Ryan*, it is important that the individuals document and keep a record of complaints regarding assigned counsel.

Second, on January 20, 2015 the United States Supreme Court issued a decision in *Christeson v. Roper*, 574 US --- (2015) that is significant to those still attempting to pursue equitable relief under *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). This case originated out of the Eight Circuit (Missouri) under circumstances only too familiar to many Florida death sentenced prisoners. In this case, Mark Christeson was scheduled for execution and requested that substitute "conflict-free" collateral counsel be assigned under *Martel v. Clair*, 565 US --- (2012), so that he could pursue equitable relief under *Martinez v Ryan*. The Eight Circuit denied the motion, relying only on the Florida Eleventh Circuit ruling in *Lambrix v Secretary, FDOC*, 765 F3d 1246 (11th Cir. 2014), which itself held that because pursuit of relief under *Martinez v Ryan* would be procedurally barred by the Anti Terrorist and Effective Death Penalty Act of 1996 (AEDPA) "one year" rule, appointing of substitute collateral counsel would be "futile".

In *Christeson v Roper* (by 7 to 2 votes) the Supreme Court reversed the Eight Circuit, and specifically found that the court improperly denied the motion for appointment of substitute "conflict free" collateral counsel, as under the facts pled the petitioner was entitled to a full and fair opportunity to establish that he would be entitled to equitable relief.

The significance of this case can not be overstated, as it makes it clear that the Eleventh Circuits denial of similar motions is erroneous - that under 28 U.S.C. Sect. 3599 and *Martel v. Clair*, the interests of justice mandates substitution of collateral counsel for the purpose of pursuing equitable relief under *Martinez v. Ryan*. In light of the Eleventh Circuits ruling in *Lambrix v. Sect, FDOC*, which relied on *Arthur v Thomas*, 739 F3d 611 (2014), a petitioner could argue that this decision in *Christeson v. Roper* establishes a new filing deadline for motions for appointment of conflict free collateral counsel, allowing those who missed the "one year" deadline in *Martinez v. Ryan* and *Trevino v. Thaler*, 133 S. Ct. 1911 (2013) to now file under *Christeson v. Roper*. It should also be noted that although the Supreme Court went to great lengths to avoid specifically mentioning *Martinez v. Ryan*, this *Christeson* case clearly was a *Martinez* claim case.

Third, in a civil case in *Holt v. Hobbs*, 574 US (2015) a unanimous Supreme Court ruled that there is no legitimate security interest in compelling prisoners to be clean-shaven if the prisoner has religious reasons for growing facial hair. This case was brought by Muslim prisoner in Arkansas, who challenged the prison rules prohibiting growth of facial hair by arguing that his religious beliefs required him to grow facial hair. The Court was openly skeptical of prison officials argument that the growth of facial hair created significant security risks and relying on the federal "Religious

Land Use and Institutionalized Persons Act of 2000" (RLUIPA), the Supreme Court found no legitimate security interest sufficient to overcome the prisoners right to exercise of religion existed. This case will undoubtedly be applied to Florida prisoners - but it remains to be seen just how the FDOC will change its rules to allow Florida prisoners to grow facial hair.

The Florida Supreme Court has stayed the Feb. 26 execution of Jerry Correll and all Florida executions are likely to be stayed until at least June when the U.S. Supreme Court is expected to rule on Oklahoma's lethal injection procedure that is virtually identical to Florida's

Greetings - Rudolph Horton - now serving a life sentence at Hardee CI, says hello to all of you on death row, he's thinking of you and " don't give up the fight ". **Carl Dausch**, presently at Newcastle CF in Indiana sends greetings to all and specifically for Paul Johnson and Mike Lambrix.

Water temperatures at Lowell CI - FDRAG received complaints about the water temperatures being low at Lowell CI. We contacted Mr. Mazorra, the warden, on January 12th: "Hot water temperatures are required to be set between 100-120 degrees in all inmate areas. We check all hot water showers, sinks and water fountains each month to ensure compliance. The water temperatures in the housing unit was found to be within the required range, when last checked during the last week of December" Do inform us if there continues to be a problem with the water temperature.

Canteen - Trinity no longer sells headphones, earbuds, radios, watches etc on the regular weekly canteen list but on the quarterly "dry goods" list. FDRAG received letters from several of you about this and we have contacted Deputy Secretary Cannon on your behalf. James R. Upchurch, Assistant Secretary for Institutions & Re-Entry replied: The Department understands your concerns and is working with our current statewide provider of inmate canteen services, Trinity Service Group, to add these items on the death row male and female menus. This will allow death row inmates to order these items on a weekly basis. In regards to the 6 foot headphone extension cords you referenced, it is my understanding this item hasn't been approved in the past as part of the Master Canteen Products List and may have been offered through a special order process from our previous canteen provider. We are working with our contractor to determine if they can offer the same type product and will present our findings to the Department's Canteen Review Team for review to determine if this product can be approved and added to the Master Canteen Products List for death row inmates only.

Corizon - Medical Issues - letter with all individual cases sent to Corizon, Secretary Jones and Deputy Secretary Cannon - by Karin Elsea

Re: Medical problems encountered by prisoners sentenced to death in Florida

On behalf of the Florida Death Row Advocacy Group (FDRAG) I would like to draw your attention to several important medical issues we have been made aware of. Your company's website states that "*you serve more prison inmates than any other private entity*" and that this experience provides your "*team {with} the confidence, expertise and experience to answer questions*". We received word from Mr Cannon that they are looking into it and we are awaiting further replies from

Corizon. We will publish general replies in the next newsletter and individual replies to each of you who have contacted us as soon as we receive them. In the meantime when you have medical problems that you feel are not adequately treated please let us know and we will submit those too.

Correspondences

Requests for assistance in finding someone to correspond with will be handled from now on by **Diane Thornton**. Please send your requests with your info to her directly (address at bottom of final page of the newsletter). If you have sent a request in the past there is no need to send it again. **We comply with Title 33 of the Florida Administrative Code and do not place inmate ads soliciting pen pals or market advertising services.**

Greeting Cards - Cards (for resending purposes) can be requested from our "card lady" **Gina Quick**, 325 Garden Lane , Atlantic Beach, FL 32233. If you are able to include some stamps for postage that would be greatly appreciated as Gina pays most of it out of her own pocket!

In Memoriam

Remembering those we have lost on the row since October 2014. May they now R.I.P.

Chadwick Banks
15 June 1971 – 13 November 2014

Victor M. Farr
3 July 1961 – 15 January 2015

Donald W. Dufour
22 March 1956 – 1 November 2014

Jerry M. Wickham
5 September 1945-21 January 2015

Johnny S. Kormondy
20 May 1972 – 15 January 2015

Our thoughts and prayers are with all their families, friends, pen-friends, and friends they have left behind on the row.

FDRAG (The Florida Death Row Advocacy Group) is dedicated to working to improve the living conditions on death row in Florida and we are here to try to help you with your concerns, complaints, issues etc. For those who would like help from FDRAG, we do ask that you contact us directly at the address on top of the newsletter.

Website: www.fdrag.kk5.org Email: fdragflorida@yahoo.com

Geesje de Jong - FDRAG Director - **new address** Maleme 17- 15237 Filothei - Athens, Greece

Janneke van Steenbergen - FDRAG Assistant Director - Maasdijk 1c W/S LEBA - 5317 KP Nederhemert - The Netherlands

Karin Elsea - Paralegal, General legal questions and Medical issues - Chemin de Beau Val 18 1012 Lausanne - Switzerland

Diane Thornton - FDRAG pen pal requests - 3 Thoresby Way, Ordsall, Retford, Nottinghamshire DN22 7WS England