IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TEENA FOY,

Plaintiff,

v. Case No.: 4:24-cv-00140-MW/MAF

FLORIDA COMMISSION ON OFFENDER REVIEW, and MELINDA N. COONROD, Chairperson and Commissioner, Florida Commission on Offender Review, in her official capacity,

Defendants.

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DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

On June 17, 2011, Scott Graham-Foy and his mother got into an argument that led to Mr. Graham-Foy's arrest, conviction, and sentence of fifteen years in prison. On that night, while allegedly under the influence of a drug addiction, Teena Foy Dec. ¶ 5, Mr. Graham-Foy punched his mother in the face and body repeatedly, cut her with a knife several times, and struck her in the face with a frying pan. His mother lost consciousness twice during the assault. When his mother asked him to call for medical assistance, Mr. Graham-Foy refused and stuffed gauze in her mouth to prevent her from calling for help herself. Mr. Graham-Foy then paced the house

with a hammer and prevented his mother from leaving her home. When Ms. Foy eventually escaped, she fled from her home to a neighbor's house and called the Sheriff's Office. Mr. Graham-Foy fled the scene of his crime and law enforcement was unable to locate and arrest him until receiving an anonymous tip on June 24, 2011. Scott Foy pled guilty to aggravated battery, aggravated battery with a deadly weapon, and false imprisonment. He was adjudicated a habitual felony offender pursuant to section 775.084(1)(a), Florida Statutes, and sentenced to 15 years in prison.

Mr. Foy was conditionally released from prison on March 21, 2024, to serve the remainder of his fifteen-year sentence subject to mandatory conditional release. Conditional release is not to be confused with early release for "good behavior." In fact, the conditional release program was created to monitor the most serious repeat offenders. *See* § 947.1405(8), Fla. Stat. (stating that the population of offenders qualifying for conditional release pose "the greatest threat to the public safety of the groups of offenders under community supervision."). Conditional release is *mandatory* for convicted felons who meet the requirements of section 947.1405. *See* § 947.1405(2), Fla. Stat., (stating that a qualifying inmate *shall* be released under supervision subject to specified terms and conditions).

Conditional release is "an additional post-prison supervision program for certain types of offenders that the legislature has determined to be in need of further

supervision after release." *Rivera v. Singletary*, 707 So.2d 326, 327 (Fla. 1998). This supervision lasts until the date on which the inmate would have originally been released or until ordered by the Commission. *Duncan v. Moore*, 754 So.2d 708, 710 (Fla. 2000) (while gain time may shorten the length of incarceration for certain "at risk" offenders, they will have to remain under supervision after release from prison for a period of time equal to the amount of gain time awarded).

As reflected by his 2011 adjudication as a habitual felony offender, Scott - Graham-Foy's felony convictions resulting from the brutal attack on his mother were not his first. On February 9, 2001, Scott Graham-Foy pled guilty to 26 counts of obtaining or attempting to obtain a controlled substance by fraud in violation of section 893.13(7)(a), Florida Statutes, each count a third-degree felony, and one count of making a false insurance claim in violation of section 817.234(1), Florida Statutes, also a third-degree felony. Doc. 26, Ex. A. He was adjudicated guilty of all 27 third-degree felonies and sentenced to probation for a term of 60 months. *Id*. On October 19, 2001, Mr. Graham-Foy was found to have violated his probation, the February 6, 2001 sentence of 60 months' probation was revoked, and he was sentenced to 24 months' incarceration. Doc. 26, Ex. B. Mr. Graham-Foy was incarcerated with the Florida Department of Corrections from November 6, 2001 until April 19, 2003.

Following his 2003 release from incarceration, Mr. Graham-Foy apparently fell back into drug addiction, eventually attacking the Plaintiff with his fists, a knife, and a frying pan and falsely imprisoning her to prevent her from summoning medical attention or law enforcement. After Plaintiff was finally able to escape his assault, Mr. Graham-Foy fled and evaded arrest for one week.

With that background in mind, Defendants[1] oppose the entry of a preliminary injunction for the following reasons:

ARGUMENT

I. Plaintiff Cannot Satisfy the Elements Required for Entry of a Preliminary Injunction.

"A district court may grant injunctive relief only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). "A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly

[1] Defendants Florida Commission on Offender Review and Melinda Coonrod in her official capacity as Chairperson and Commissioner will be hereinafter referred to as "the Commission" or "Defendants."

established the 'burden of persuasion' as to the four requisites." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998).

a. Plaintiff is unlikely to succeed on the merits.

i. Sovereign immunity bars Plaintiff's federal constitutional claims.

Plaintiff brought this action under 42 U.S.C. § 1983 alleging multiple violations of her constitutional rights. None of these claims can stand against the Commission because it is entitled to Eleventh Amendment immunity. The Eleventh Amendment to the Constitution of the United States directs that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996). The United States Supreme Court has consistently held that absent waiver of Eleventh Amendment immunity, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415 U.S. 651, 662-63, (1974).

The sovereign immunity from suit in federal courts afforded states by the Eleventh Amendment applies equally to agencies acting under their control. *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc*., 506 U.S. at 144. "Absent waiver, neither a State nor agencies acting under its control may 'be subject to suit in federal court.'" *Id.,* quoting *Welch v. Texas Dept. of Highways and Public*

Transportation, 483 U.S. 468, 480 (1987) (plurality opinion). Nor may Plaintiffs avoid application of Eleventh Amendment immunity by seeking injunctive relief against the Department. "[W]e have often made it clear that the relief sought by a Plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment." *Seminole Tribe of Florida*, 517 U.S. at 58; *see also Cory v. White,* 457 U.S. 85, 90 (1982) ("It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money is sought."); *Hess v. Port Authority Trans-Hudson Corp*.,513 U.S. 30, 48 (1994) (Eleventh Amendment does not exist solely to "preven[t] federal-court judgments that must be paid out of a State's treasury"). To the contrary, the Eleventh Amendment serves to avoid "the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Puerto Rico Aqueduct and Sewer Auth*., 506 U.S. at 146.

Plaintiff's Motion for Preliminary Injunction seeks to enjoin "Defendants," including the Commission, from enforcing the "no victim contact" special condition of Scott Graham-Foy's conditional release. Because the Commission is an agency of Florida's state government, it enjoys Eleventh Amendment Immunity and the Motion for Preliminary Judgment must be denied as to it.

Ex parte Young, 209 U.S. 123 (1908) stablished a narrow exception to Eleventh Amendment immunity. That exception permits suit in federal court against

a state official, but not the state itself, to prospectively enjoin further violations of a right arising under the Constitution of the United States by the named state official. *Edelman v. Jordan*, 415 U.S. at 664. However, the Eleventh Amendment bars suits against state officials sued in their official capacities when the state is the real party in interest. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 101 (1984) ("When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself… The Eleventh Amendment bars a suit against state officials when 'the state is real, substantial party in interest'".

In the present case, the "real, substantial party in interest" is clearly the Commission and not Chairperson Coonrod. It is the Commission and not individual commissioners who will enforce the conditions of Mr. Graham-Foy's release. Further, Exhibit G to Megan Higgins's affidavit establishes that the two Commissioners who initially set the conditions of Mr. Graham-Foy's release are RDD (Richard D. Davidson) and DAW (David A. Wyant), not Chairperson Coonrod. As will be discussed below, to the extent that individual commissioners may be deemed responsible for enforcing the conditions of Mr. Graham-Foy's release, that responsibility would fall to Commissioners Davidson and Wyant, not Chairperson Coonrod. Accordingly, enjoining Commissioner Coonrod from enforcing the conditions of Mr. Graham-Foy's release would not redress Plaintiff's claimed injury.

Because Chairperson Coonrod is not a real, substantial party in interest and Plaintiff's claims against her are barred by Eleventh Amendment immunity as well.

ii. Plaintiff lacks standing as to all counts.

Federal court jurisdiction is limited to actual cases and controversies. U.S. Const., Art. III, § 2. To establish standing, Plaintiff must show (1) injury-in-fact, meaning a concrete and particularized invasion of a legally protected interest; (2) a causal connection between that injury and the complained-of conduct; and (3) redressability, meaning a favorable decision would eliminate the injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

Plaintiff fails to allege a discrete, concrete injury, which is the bare minimum requirement for standing, because Plaintiff's allegations involve restrictions on a person other than herself. Plaintiff alleges that the "no victim contact" term of Mr. Graham-Foy's conditional release violates a plethora of her own constitutional rights. But the problem lies in the fact that the "no victim contact" term can only be enforced against Mr. Foy, and Plaintiff is free to exercise all of her own constitutional rights without any consequence to her.

The contact restriction, and any potential consequences of violating that restriction, are personal to Mr. Foy. *See Zargarpur v. Townsend*, 18 F. Supp. 3d 734, 737 (E.D. Va. 2013) (holding that a student-victim failed to allege a concrete injury in seeking to quash the no-contact provision of teacher-offender's probation);

Drollinger v. Milligan, 552 F.2d 1220, 1227 n.5 (7th Cir. 1977) (concluding that a father failed to allege an injury in challenging his daughter's terms of probation); *Clark v. Prichard*, 812 F.2d 991, 999 (5th Cir. 1987) (Hill, J., concurring) (adding that probationer's children lacked standing to "contest the conditions of their mother's probation"). Plaintiff does not point to a single condition imposed by the Commission that requires her to do, or refrain from doing, anything at all. Plaintiff confirms that the conditions of release only limit Mr. Foy's actions. *See* Pltf's Mot. for Prelim. Inj. at 2 ("Defendants forbid Mr. Graham-Foy from having any contact with his mother."); Pltf's Mot. for Prelim. Inj. at 4 (The Commission imposed a requirement that Mr. Foy have no contact with the victim."); Teena Foy Decl. at ¶ 14 ("The Commission refuses to allow *Scott* to have any contact with *me*."). Because Plaintiff fails to allege a legally cognizable injury, she has no standing and her claims cannot proceed.

Even if this Court finds that Plaintiff does allege an injury, her claims are not redressable by a favorable decision. An injunction against the named defendants in this case would not redress Plaintiff's injuries because the two commissioners who determined that Mr. Graham-Foy should have no contact with his victim, Richard D. Davidson and David A. Wyant, have not been sued. Consequently, they cannot be enjoined from enforcing the no-contact provision of Mr. Graham-Foy's conditional

release. Plaintiff therefore cannot demonstrate the requisite redressability even if she could establish a discrete, concrete injury.

iii. Plaintiff fails to state a claim as to all counts.

As discussed above, Plaintiff fails to allege a concrete injury. Because Plaintiff frames her claims as violations of her own rights, based on conditions of release placed on an entirely different person, Plaintiff's claims cannot be analyzed in a constitutional context. Even so, Plaintiff fails to state a claim as to all counts.

Freedom of Association

Plaintiff frames her claim for freedom of association as a right to familial association. However, the "no victim contact" condition does not target the association between a mother and son, but rather the association between a victim and offender. Plaintiff cites no authority for a constitutional right to associate with one's victimizer. *Zargarpur v. Townsend*, 18 F. Supp. 3d at 737 establishes that victims of crime lack standing to challenge no-contact conditions imposed on their assailants. *Drollinger v. Milligan,* 552 F.2d at 1227 n.5 and *Clark v. Prichard,* 812 F.2d at 999 (Hill, J., concurring) establish that family members lack standing to challenge terms of supervision in situations not involving incarceration. In this case

Plaintiff lacks standing to challenge the no-contact provision of supervised release applied to her assailant who is also a family member.

Freedom of Religion

Plaintiff claims that the "no victim contact" condition prohibits her from exercising her religious obligation to forgive Mr. Foy. However, Plaintiff's own papers admit that she has already exercised that obligation and forgiven Mr. Foy. Pltf's Mtn. for Prelim. Inj. at 2, 4; Teena Foy Dec. at ¶ 7. Plaintiff alleges no fact showing that the Commission's decision in any way restricts her from forgiving Mr. Foy, as she already has. The no-contact provision of Mr. Graham-Foy's release has caused no injury to Plaintiff and she therefore lacks standing. Nor would an injunction preventing enforcement of the no-contact provision redress any injury that Plaintiff could possibly claim.

Freedom of Association and of Speech

Plaintiff's Motion for Preliminary Injunction alleges that the no-contact provision of Mr. Graham-Foy's conditional release violates her First Amendment rights of freedom of speech and freedom of association. Plaintiff makes the conclusory statement that "Defendants' no-contact condition does not satisfy strict scrutiny in that it neither satisfies a compelling government interest, nor is it narrowly tailored…" Mot. at 11-12. This is incorrect. *See T.M v. State*, 784 So. 2d 442 443 (Fla. 2001) (the State had a compelling interest in reducing juvenile crime).

Surely there can be no doubt that the State of Florida has a compelling interest in protecting victims of crime from their attackers upon their release from prison.

Further, the no-contact provision is narrowly tailored to meet the State's compelling interest in protecting victims of crime from the violent felon who victimized them in the first instance. Mr. Graham-Foy is not prohibited from associating with anyone other than the victim of his crime. While Plaintiff seems to argue that the Commission has no reason to believe that that Mr. Graham-Foy could be a threat to Plaintiff, the facts say otherwise. Mr. Graham-Foy was previously incarcerated from 2001 to 2003 as a result of seriously appears to have been a serious problem with drug abuse. He was released from incarceration, went back to living with his mother, apparently relapsed into drug abuse, and eventually violently attacked her with his fists, a frying pan, and a knife. Under those circumstances , the State has a compelling interest in doing all it can to insure that Mr. Graham-Foy's past does not become prologue.

Nor is Plaintiff's argument that she was able to visit Mr. Graham-Foy during his incarceration without incident. Plaintiff's visits with Mr. Graham-Foy while he was in prison took place in a stringently controlled environment. Upon his release, any contact between Plaintiff and Mr. Graham-Foy would not take place in a controlled environment. Mr. Graham-Foy has been out of prison since March 21, 2004, a very brief time. He is now back in society where he has found it very difficult

to govern himself on at least two prior occasions. The State has a compelling interest in protecting victims of violent crime from their attackers, and the no-contact condition of Mr. Graham-Foy's release is narrowly tailored to meet that compelling interest.

Plaintiff admits that she could send "one-sided communications" to Mr. Foy, but in the same breath claims that the Commission's decision violates her freedom of speech. For this contention, Plaintiff cites the fact that Mr. Foy is not permitted to speak to her. On its face, this contention fails to state a claim for a constitutional violation because it relies on the fact that *someone else* is unable to speak, rather than Plaintiff herself. In fact, Plaintiff is free to communicate with Mr. Foy. The conditions provide that *Mr. Foy* is not permitted to be in the same location as Plaintiff or communicate with her either directly or through a third person. Again, Plaintiff cannot establish Article III standing necessary to justify a preliminary injunction.

b. The balance of equities and public interest favor denying the motion.

The balance of equities and the public interest further support denying Plaintiff's motion. They are best addressed together in this case because, as the Eleventh Circuit noted in *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010), "[w]hen the state is a party, the third and fourth [preliminary injunction] considerations are largely the same," citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1455 (11th Cir. 1986)).

The balance of equities here favors the Defendants and weighs against the extraordinary remedy of preliminary injunctive relief. As discussed above, the Commission's decision does not infringe on any of Plaintiff's constitutional rights, but rather follows the Commission's duty to protect the public from the offenders which the Florida legislature has determined to be the greatest threat to the public safety. *See* Fla. Stat. § 947.1405(8).

Additionally, the Commission's decision plainly promotes public safety such that the interests of the State and the public coincide. And, where "there is any question as to whether the public safety and welfare is threatened, the Court must rule on the side of that public interest." *Martinez v. Sch. Bd. of Hillsborough Cnty.*, 675 F. Supp. 1574, 1582 (M.D. Fla. 1987).

c. Plaintiff has not shown irreparable injury.

Plaintiff fails to show that she will suffer irreparable harm absent a preliminary injunction. Mr. Foy was sentenced to 15 years in prison for a particularly heinous, violent offense against Plaintiff. The Commission exercised its broad discretion in determining that Mr. Foy should not have contact with his victim for the remainder of the time constituting his original sentence.

Furthermore, as discussed above, Plaintiff fails to show that any of her own constitutional rights are violated by this decree. Plaintiff argues that her allegations of First Amendment violations "represent *prima facie* irreparable harm." Pltf's Mot.

for Prelim. Inj. at 19. But because she has not shown any likelihood that the Commission's decision *actually violates* any First Amendment freedoms, this presumption simply does not apply.

II. This Court should abstain from ruling on Plaintiff's Motion for Preliminary Injunction.

The Burford doctrine urges federal courts to abstain from ruling on cases where federal intervention could undermine state agency decisions on local matters. *Burford v. Sun Oil Co.*, 319 U.S. 315, 317-18 (1943) (stating that it is in the public interest for federal courts to "exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy."). Where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern," abstention is warranted. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976); see also *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Parish Gov't*, 849 F.3d 615, 622 (5th Cir. 2017) ("[U]nder Burford, abstention is proper where the issues so clearly involve basic problems of State policy that the federal courts should avoid entanglement.") (internal citations omitted).

Plaintiff asks this Court to review the propriety of the Commission's conditions on her son's release via multiple claims for constitutional violations. That

is an improper use of this Court's jurisdiction. Plaintiff's initiation of this lawsuit is essentially an attempt to work around Florida's established processes for modifying or removing conditions of release. This Court should abstain from ruling on the case.

The Commission's authority over Florida's conditional release program derives form Article IV, § 8(c), of the Florida Constitution, which states in pertinent part, "[t]here may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime." In 1988, the Florida Legislature enacted the Conditional Release Program Act, which established the conditional release program and provides that the Commission has exclusive jurisdictional authority over the program and those subject to conditional release supervision. Fla. Stat. § 947.1405.

The Commission is uniquely situated to determine which conditions of release are appropriate for a given inmate. The conditional release program is part of a statutory scheme "whose sole purpose is the protection of the public through a system of apprehension, conviction and incarceration of criminal offenders." *Andrews v. Fla. Parole Comm'n*, 768 So.2d 1257, 1261 (Fla. 1st DCA 2000). Under Florida law, the Commission has very broad discretion to review a qualifying inmate's record and "impose any special conditions it considers warranted[.]" Fla. Stat. § 947.1405(6). The Program requires "a determination and consideration of numerous factors concerning the inmate after an inmate review by a member of the

Commission and a review of the inmate's record by the Commission before it finally acts." *Andrews*, 768 So.2d at 1261.

Because Plaintiff invokes this Court's jurisdiction in an attempt to override an agency decision on a matter of state policy, and because the Commission's decisions are based on numerous factors within a complex statutory scheme, this Court should abstain from ruling on this case.

CONCLUSION

Based on the foregoing, Plaintiff's Motion for Preliminary Injunction should be denied.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served via the Court's CM/ECF system, which provides notice to all parties, on this 26th day of April, 2024.

/s/ Timothy L. Newhall