

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

TEENA FOY,

Plaintiff,

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

v.

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

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

1.0 INTRODUCTION 1

2.0 FACTUAL BACKGROUND..... 3

3.0 LEGAL STANDARD 6

4.0 ARGUMENT 6

 4.1 Plaintiff is Likely to Succeed on the Merits 6

 4.1.1 Freedom of Association..... 7

 4.1.2 Freedom of Religion..... 9

 4.1.3 Freedom of Speech..... 10

 4.1.4 Due Process and Violation of Florida’s Constitution..... 12

 4.1.4.1 Substantive Due Process 13

 4.1.4.2 Procedural Due Process..... 14

 4.1.5 Declaratory Judgment..... 17

 4.2 Plaintiff’s Harm is Irreparable 18

 4.3 The Balance of Equities & Public Interest Favor Plaintiff..... 20

5.0 BOND REQUIREMENT 23

6.0 CONCLUSION..... 24

TABLE OF AUTHORITIES

CASES

Alexander v. United States,
509 U.S. 544 (1993)11

Armstrong v. Manzo,
380 U.S. 545 (1965)15

Beauharnais v. Illinois,
343 U.S. 250 (1952)20

Brandenburg v. Ohio,
295 U.S. 444 (1969)20

Burk v. Augusta-Richmond Cty.,
365 F.3d 1247 (11th Cir. 2004)11

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993)10

Clark v. Cmty. for Creative Non-Violence,
468 U.S. 288 (1984)11

Cleveland Bd. of Educ. v. LaFleur,
414 U.S. 632 (1974)13

Cleveland Bd. of Educ. v. Loudermill,
470 U.S. 532 (1985)15

Cmty. House, Inc. v. City of Boise,
490 F.3d 1041 (9th Cir. 2007)21

Cty. of Sacramento v. Lewis,
523 U.S. 833 (1998)13

Doe v. Harris,
772 F.3d 563, 583 (9th Cir. 2014)21

Doe v. Moore,
410 F.3d 1337 (11th Cir. 2005)8, 14

Elrod v. Burns,
427 U.S. 347 (1976)19

Emp’t Div. v. Smith,
494 U.S. 872 (1990)9

Foxy Lady, Inc. v. City of Atlanta,
347 F.3d 1232 (11th Cir. 2003).....14, 17

Gaines v. Wardynski,
871 F.3d 1203 (11th Cir. 2017).....7

GeorgiaCarry.Org, Inc. v. Georgia,
687 F.3d 1244 (11th Cir. 2012).....10

Giboney v. Empire Storage & Ice Co.,
336 U.S. 490 (1949)20

Hand v. Desantis,
946 F.3d 1272 (11th Cir. 2020).....22

Hand v. Scott,
285 F. Supp. 3d 1289 (N.D. Fla. 2018).....22

Harrel v. The Fla. Bar,
608 F.3d 1241 (11th Cir. 2010).....20

K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.,
710 F.3d 99 (3d Cir. 2013).....22

Kennedy v. Bremerton Sch. Dist.,
597 U.S. 507 (2022)9

Kupke v. Orange Cty.,
293 F. App’x 695 (11th Cir. 2008)14, 17

Kusper v. Pontikes,
414 U.S. 51 (1973)22

Maddox v. Stephens,
727 F.3d 1109 (11th Cir. 2013).....12, 13

Mathews v. Eldridge,
424 U.S. 319 (1976) 15

McBreairty v. Sch. Bd. of RSU22,
616 F. Supp. 3d 79 (D. Me. 2022) 22

McCabe v. Sharrett,
12 F.3d 1558 (11th Cir. 1994)..... 7

McKinney v. Pate,
20 F.3d 1550 (11th Cir. 1994)..... 13

Melendres v. Arpaio,
695 F.3d 990, 1002 (9th Cir. 2012)..... 22

Moore v. E. Cleveland,
431 U.S. 494 (1977) 13, 14

Mullane v. Cent. Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 15

Ne. Fla. Ch. of Ass’n of Gen. Contractors v. Jacksonville,
896 F.2d 1283 (11th Cir. 1990)..... 19

Palko v. Connecticut,
302 U.S. 319 (1937) 13

Pittman v. Cole,
267 F.3d 1269 (11th Cir. 2001)..... 20

Reno v. Flores,
507 U.S. 292 (1993) 8, 14

Roberts v. United States Jaycees,
468 U.S. 609 (1984) 7

Roth v. United States,
354 U.S. 476 (1957) 20

Se. Promotions, Ltd. v. Conrad,
420 U.S. 546 (1975) 11

Thai Meditation Ass’n of Ala., Inc. v. City of Mobile,
83 F.4th 922, (11th Cir. 2023).....9

Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,
425 U.S. 748 (1976)20

Waddell v. Hemerson,
329 F.3d 1300 (11th Cir. 2003).....13

Ward v. Rock Against Racism,
491 U.S. 781 (1989)11

Winter v. NRDC, Inc.,
555 U.S. 7 (2008)6

Zablocki v. Redhail,
434 U.S. 374 (1978)8

CONSTITUTIONAL PROVISIONS

Fla. Const. article I, § 1612, 17, 18

U.S. Const. amend. XIV12

RULES

Fed. R. Civ. P. 651, 23

OTHER AUTHORITIES

M. Nimmer, *Nimmer on Freedom of Speech* § 4.03 (1984).....11

U.S. Department of Health and Human Services, “HHS, SAMHSA Release 2022
National Survey on Drug Use and Health Data” (Nov. 13, 2023).....3

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Teena Foy moves this Court for a preliminary injunction pursuant to Fed. R. Civ. P. 65 and requests that this Court enter an order enjoining Defendants Florida Commission on Offender Review and Melinda N. Coonrod from continuing to violate Plaintiff's constitutional rights, including from enforcing or threatening to enforce their "No Victim Contact" order in a manner that keeps Foy away from her son (Graham-Foy). Defendants' actions violate Ms. Foy's due process rights and unconstitutionally restrict Ms. Foy's First Amendment rights of freedom of association, religion, and speech. Ms. Foy asks that this Honorable Court restore her rights under the First and Fourteenth Amendments to the United States Constitution, informing its decision by giving weight to Article I, Section 16 of the Florida Constitution.

1.0 Introduction

Family is, above all else, central to our humanity. No family is perfect. Families love and families fight. Families grow and families fracture. Families argue and families forgive. Nevertheless, families persevere. Here, however, the government has decided that since "rules are rules," this family must cease to exist.

This case is about the love between a mother and a son. It is about both the *power* to forgive and the *right* to forgive. The controversy in this case arises from the State of Florida elevating the form of its punitive actions over the substance of

the Plaintiff's rights. The gears of bureaucracy perseverate on form, no matter how they may grind both love and the constitution into dust. Those gears must be jammed, in this specific circumstance, as they have now run out of control.

Scott Graham-Foy, the Plaintiff's son, attacked his mother and severely injured her. Florida charged him for that crime and rightfully sentenced him to prison. During that time in prison, the system's rehabilitative function succeeded. He has been rehabilitated enough that he has been released. He can function like any other member of society, but for one restriction – he cannot be hugged by his mother, because the State has deemed her a “victim,” and has taken away her autonomy in doing so. Ms. Foy understands that the man that attacked her was not the son she sees today—he was a person consumed by addiction. Ms. Foy has seen her son reform, and she has forgiven her son for what he did to her. She loves him, and she wants to be with him for however long she has left to live. But Florida will not abide this mother's love for her son.

Defendants forbid Mr. Graham-Foy from having any contact with his mother. Typically, a crime victim is delighted to have the State prevent their attacker from having contact them. However, this is not a typical situation. Ms. Foy wants to be with her son more than she wants anything else. She loves him and forgives him. Defendants have been unmoved in their desire to keep mother and son apart, and

their best rationale so far is “because we said so.” The ignobility of this position should shock the conscience of anyone with a heart.

Defendants actions violate Ms. Foy’s constitutional rights. They violate Ms. Foy’s First Amendment rights of association, speech, and religion. They violate Ms. Foy’s rights to substantive and procedural due process. They violate the very Constitutional authority which gives crime victims rights. Ms. Foy seeks injunctive relief from this Court to allow her to see her son. For Ms. Foy, who is aging and ailing from a cancer diagnosis, time is running out. She can not wait for a trial to conclude. She seeks mercy from this Court in the form of immediate relief.

2.0 Factual Background

Like nearly 50 million Americans,¹ Teena Foy’s son Scott Graham-Foy suffered from serious drug addiction. *See Exhibit 1*, Declaration of Teena Foy (“Foy Decl.”) at ¶ 3. During the time Mr. Graham-Foy was in the clutches of substance use disorder, fell into a life of crime. *Id.* at ¶ 4. Mr. Graham-Foy’s addiction borne psychosis culminated in an attack on his own mother. *Id.* at ¶ 5. For that crime, Mr. Graham-Foy was justifiably sentenced to prison. *Id.* at ¶ 6.

¹ *See* U.S. Department of Health and Human Services, “HHS, SAMHSA Release 2022 National Survey on Drug Use and Health Data” (Nov. 13, 2023), available at: <https://www.samhsa.gov/newsroom/press-announcements/20231113/hhs-samhsa-release-2022-nsduh-data> (last accessed Mar. 27, 2024) (“In 2022, 48.7 million people aged 12 or older (or 17.3%) had a substance use disorder (SUD) in the past year”).

While serving his sentence, Ms. Foy and Mr. Graham-Foy rekindled their relationship. Foy Decl. at ¶¶ 7-9. Ms. Foy, a devout Catholic, believes that the Lord expects us to forgive one another as he has forgiven us, sought reconciliation with her incarcerated son. *Id.* at ¶ 10.

Mr. Graham-Foy was released on March 21, 2024. Foy Decl. at ¶ 11. In prison, Mr. Graham-Foy turned his life around. He earned a college degree in water management and, now released from prison, has secured gainful employment at three different jobs. *Id.* at ¶ 12. Prior to his release, on January 29, 2024, Defendants ordered the terms of his conditional release, which are in effect until June 21, 2026. *See Exhibit 2*, Order of Conditional Release. Mr. Graham-Foy's release was made subject to standard conditions, but the Defendants also imposed an additional requirement: that he have no contact, whatsoever, with the victim—his own mother. *See id.*; Foy Decl. at ¶¶ 13-14. If Mr. Graham-Foy so much as picks up the phone to call his mother, or reaches out to hug his mother, he will be returned to prison.

Ms. Foy wants to have a relationship with her son. Foy Decl. at ¶ 17. Her Catholic faith led her to forgive her son, and she wants her son feel the full warmth of that forgiveness. *Id.* at ¶ 18. Ms. Foy wants to help her son, and her son wants to help her. *Id.* at ¶ 22. Defendants will not voluntarily step out of the way.

Plaintiff has serious and significant health issues, and is of advanced age. Ms. Foy will be seventy-eight years old this year, and Mr. Graham-Foy is her only

remaining relative. *Id.* at ¶ 19. Plaintiff has kidney cancer and severe cardiovascular issues, having had two heart bypasses. *Id.* at ¶ 20. Plaintiff has mobility issues and difficulty with everyday activities. *Id.* How long she has left to live is uncertain, but it is certain that 27 months will be either the rest of her life or a significant portion of it. *Id.* at ¶ 21. Beyond the desire to have a relationship with her son, as a practical matter, Plaintiff wishes for Mr. Graham-Foy to live with her, so that he may help aid her as she ages. *Id.* at ¶ 23.

After Defendants imposed the no-contact condition on Mr. Graham-Foy's conditional release, *he* moved the Circuit Court overseeing his sentence for relief from that condition, with Plaintiff's blessing. *See Exhibit 3*, Motion to Modify Sentence. The Circuit Court granted that Motion on February 13, 2024, modifying the No Victim Contact condition to permit Mr. Graham-Foy to have "non-violent contact" with Plaintiff. *See Exhibit 4*, Docket Sheet. The Commission Defendant successfully intervened in the Circuit Court action. *See Exhibit 5*, Motion to Intervene and Motion to Vacate. The Circuit Court vacated the Order on March 15, 2024, having found that it did not have jurisdiction to modify the Order of Supervised Release. *See Exhibit 4*. At no point did Defendants take into account what the only victim of the crime actually wanted. Foy Decl. at ¶ 25.

3.0 Legal Standard

“A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

4.0 Argument

The Defendants’ actions in preventing Ms. Foy from communicating with her son are an affront to freedom of association, freedom of speech, freedom of religion, and due process. Their actions violate the Florida Constitution’s guarantee of rights to crime victims. Plaintiff is likely to succeed on her claims, and this Court should implement injunctive relief to right this wrong.²

4.1 Plaintiff is Likely to Succeed on the Merits

In her Complaint against the Defendants, Plaintiff brought seven claims for relief: (1) violation of Plaintiff’s freedom of association, (2) violation of Plaintiff’s freedom of religion, (3) violation of Plaintiff’s freedom of speech, (4) violation of Plaintiff’s procedural due process rights, (5) violation of Plaintiff’s substantive due process rights, (6) violation of Plaintiff’s rights under the Florida Constitution, and (7) declaratory judgment. Plaintiff is likely to succeed on each of these claims.

² To the extent this Court finds that preliminary injunctive relief is not appropriate, Plaintiff asks this Court to enter an injunction pending appeal.

4.1.1 Freedom of Association

Plaintiff is likely to succeed on her Freedom of Association claim because Defendants have deprived her of her right to associate with her son without any governmental interest at all, compelling or otherwise. The United States Constitution grants protection to two forms of association, “intimate association” and “expressive association.” *Gaines v. Wardynski*, 871 F.3d 1203, 1212 (11th Cir. 2017), *McCabe v. Sharrett*, 12 F.3d 1558, 1562-63 (11th Cir. 1994). “[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme.” *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984).

The right to intimate association includes “personal relationships that attend the creation and sustenance of a family—marriage, childbirth, the raising and education of children, and cohabitation with one’s relatives,” and is “protected from undue governmental intrusion as a fundamental aspect of personal liberty.” *McCabe*, 12 F.3d at 1563. Mr. Graham-Foy is Ms. Foy’s son, and the no-contact condition violates Ms. Foy’s right to associate with a member of her family. Accordingly, the relationship is protected.

Burdens on intimate association rights are subject to strict scrutiny. *See McCabe*, 12 F.3d at 1566 (applying strict scrutiny); *see also Zablocki v. Redhail*,

434 U.S. 374, 98 (1978) (state action that “directly and substantially” interferes with intimate association is subject to strict scrutiny). To survive strict scrutiny, the challenged state action must be “narrowly tailored to serve compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Doe v. Moore*, 410 F.3d 1337, 1342-43 (11th Cir. 2005). The state’s actions do none of these things.

Plaintiff has a fundamental right to associate with her son, and the Defendants’ restriction on her ability to communicate with her is unconstitutional. Defendants’ no contact condition of Mr. Graham-Foy’s restricts Plaintiff’s free association rights. Even though direct punishment for violating the condition falls upon Mr. Graham-Foy and not Ms. Foy herself, Ms. Foy is still injured by the condition because she is chilled from exercising the intimate relationship. After all, if she associates with him in any way, it will be the last time – as he will be returned to prison. If she exercises *her* rights, her son goes to prison. Her son is held hostage, and if she exercises her rights, he goes into a cage for potentially the rest of her life.

There is no compelling state interest in keeping Ms. Foy from her son. Mr. Graham-Foy has demonstrated that he is not a threat to Ms. Foy. Even if he were, Ms. Foy is a free person who chooses to assume any such risk (although there is none). The condition is not narrowly tailored. As the Circuit Court already found in attempting to amend the condition, any state interest in preventing recurrent violence on victims of crimes could be satisfied by forbidding non-violent contact

rather than any contact whatsoever. Moreover, since Mr. Graham’s crime involved a single incident of physical violence and not something such as harassment or stalking. While Mr. Graham-Foy was *incarcerated*, Plaintiff and her son were free to have contact—both physical and remote. Foy Decl. at ¶¶ 8, 27. It makes no sense that they have fewer associational rights now that he is free than they had when he was in prison. The condition violates Plaintiff’s right to Freedom of Association with Mr. Graham-Foy and fails to satisfy strict scrutiny.

4.1.2 Freedom of Religion

The Free Exercise Clause “protects not only the right to harbor religious beliefs inwardly and secretly,” but also the right for people to “live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (citation omitted).

“[G]overnment action may incidentally burden religious practices—subject to rational basis review—so long as it is both ‘neutral’ and ‘generally applicable.’” *Thai Meditation Ass’n of Ala., Inc. v. City of Mobile*, 83 F.4th 922, 928 (11th Cir. 2023), quoting *Emp’t Div. v. Smith*, 494 U.S. 872, 880 (1990). Where a state action is neutral and generally applicable, the action will be held unconstitutional where a plaintiff shows that there is no legitimate government interest or the law is not rationally related to protect that interest. *GeorgiaCarry.Org, Inc. v. Georgia*, 687

F.3d 1244, 1255 n.21 (11th Cir. 2012) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993)).

Plaintiff has a sincerely held religious belief which requires her to forgive her son. Foy Decl. at ¶ 10. Such forgiveness is not only practiced through internal forgiveness; it must also be practiced through her actions and through communications with her son. *Id.* at ¶ 18.

The no-contact condition as applied here serves no legitimate government interest. As discussed *supra*, the State has no legitimate interest in preventing a willing victim from contact or communication with the perpetrator—particularly where the victim is the perpetrator’s mother. Further, even if there was a legitimate interest in preventing physical contact, a condition that forbids all contact, including contact by telephone or other remote means, is not rationally related to protecting such an interest. Accordingly, the no-contact condition burdens Plaintiff’s free exercise of her religion, and the condition does not pass rational basis review.

4.1.3 Freedom of Speech

Plaintiff would like to communicate with her son because she has forgiven him and she wishes for her son to be a part of her life. The Defendants’ actions have made it so that Plaintiff is not able to communicate with Mr. Graham-Foy. The Defendants’ actions in forbidding Plaintiff from communicating with her son constitute an unlawful prior restraint.

An order, whether administrative or judicial, is a prior restraint if it “forbid[s] certain communications when issued in advance of the time that such communications are to occur.” *Alexander v. United States*, 509 U.S. 544, 550 (1993), citing M. Nimmer, *Nimmer on Freedom of Speech* § 4.03, p. 4-14 (1984). Any prior restraint bears “a heavy presumption against its constitutional validity.” *Southeast Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558 (1975).

Here, the condition is a prior restraint on Plaintiff’s speech. Although she may theoretically send one-sided communications to Mr. Graham-Foy, her ability to communicate with Mr. Graham-Foy is hampered by the fact that he could not respond to her without committing a violation of his conditional release and having to go back to prison. Ms. Foy’s ability to communicate with her son, which is protected by the First Amendment, has thus been violated.

“Prior restraints are presumptively unconstitutional and face strict scrutiny.” *Burk v. Augusta-Richmond Cty.*, 365 F.3d 1247, 1251 (11th Cir. 2004). Although reasonable time, place, and manner restrictions may be constitutional if they meet intermediate scrutiny, such restrictions must “leave open ample alternative channels for communication of the information.” *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

As discussed *supra*, Defendants’ no-contact condition does not satisfy strict scrutiny in that it neither satisfies a compelling government interest, nor is it

narrowly tailored to address any such interest. Moreover, the restriction is not based on time, place, or manner, and leaves no alternative channels for communication open—instead, it bans all potential communication between Mr. Graham-Foy and Ms. Foy. Accordingly, it fails to meet constitutional muster and must be enjoined.

4.1.4 Due Process and Violation of Florida’s Constitution

Defendants’ actions in preventing Plaintiff from speaking with her son violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 16 of the Florida Constitution because they violate Plaintiffs’ rights to due process of law. The Fourteenth Amendment protects against deprivation by state action of a constitutionally protected interest in “life, liberty, or property” without due process of law. *See* U.S. Const. amend. XIV, § 1; *Maddox v. Stephens*, 727 F.3d 1109, 1118 (11th Cir. 2013). Likewise, the Florida Constitution’s Declaration of Rights states that “every victim is entitled to ... (1) [t]he right to due process and to be treated with fairness and respect for the victim’s dignity.” Fla. Const. article I, § 16(b).³ The protections of due process can be broken down into two types, which each protect different rights: procedural due process and

³ Because Plaintiff’s rights under the Florida Constitution overlap with her rights under the Fourteenth Amendment, these rights are addressed alongside Plaintiff’s Federal rights. Further, the Court is not asked to enforce the Florida Constitutional rights independently, as doing so may have 11th Amendment implications. However, the Florida Constitution grants her rights, which have been taken away in violation of her procedural and substantive due process rights, and accordingly have merged with her 14th Amendment rights.

substantive due process. *See McKinney v. Pate*, 20 F.3d 1550, 1555 (11th Cir. 1994). Defendants' actions violate both types.

4.1.4.1 Substantive Due Process

Defendants' actions in separating Plaintiff from her son without any legitimate justification shock the conscience and violate her substantive due process rights. Substantive due process protects "fundamental" rights, including those which are "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). Conduct violates substantive due process protections if it is "arbitrary or conscience shocking in a constitutional sense." *Maddox*, 727 F.3d at 1119, quoting *Waddell v. Hemerson*, 329 F.3d 1300, 1305 (11th Cir. 2003). The sort of conduct which typically constitutes a substantive due process violation is the type that is "intended to injure in some way unjustifiable by any government interest." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998).

As further discussed in Section 4.1.1 *supra*, Plaintiff's right to associate and spend time with her son is a fundamental right. Personal choice in matters of family life is one example of a substantive liberty protected by the Due Process Clause of the Fourteenth Amendment. *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974). "[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Moore v. E. Cleveland*, 431 U.S. 494, 503 (1977). Constitutional protections

extended to the family include family living arrangements. *Id.* at 499. Plaintiff wishes to see her son, communicate with her son, spend time with her son, and have her son live in her house with her. Moreover, Defendants' actions in preventing this association are shocking to the conscience. As the Supreme Court has repeatedly found, such familial relations are protected by the Due Process clause.

Where a government action infringes on fundamental rights, courts apply strict scrutiny and will uphold it "only when it is 'narrowly tailored to serve a compelling state interest.'" *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005), citing *Reno v. Flores*, 507 U.S. 292, 302 (1993). As discussed herein, Defendants cannot show that the no-contact condition meets strict scrutiny because it does not serve any compelling government interest and it is not narrowly tailored. Accordingly, the no-contact restriction violates Plaintiff's substantive due process rights under the Fourteenth Amendment and should be enjoined.

4.1.4.2 Procedural Due Process

In establishing a procedural due process claim under 42 U.S.C. § 1983, a plaintiff must show: (1) "a deprivation of a constitutionally-protected interest"; (2) state action; and (3) a "constitutionally inadequate process." *Foxy Lady, Inc. v. City of Atlanta*, 347 F.3d 1232, 1236 (11th Cir. 2003). A plaintiff must also show a "causal connection between the state action and the property deprivation." *Kupke v. Orange Cty.*, 293 F. App'x 695, 697 (11th Cir. 2008). The Due Process Clause

requires “that a deprivation of life, liberty or property ‘be preceded by notice and opportunity for hearing appropriate to the nature of the case.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985), quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). As discussed at length, *supra*, the no-contact condition directly implicates Plaintiff’s fundamental liberty interest, *i.e.*, her familial interest in communicating with her son. Accordingly, Defendants must satisfy procedural due process. Where procedural due process must be followed, “[t]he fundamental requirement ... is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Plaintiff was afforded no particularized notice of hearing as to the revocation of her ability to speak with her son, and she was afforded **no** opportunity to be heard. Foy Decl. at ¶ 24. Although Plaintiff attended the lengthy Commission hearing during which Mr. Graham-Foy’s Order of Supervised Release was considered, the Commission offered Ms. Foy no opportunity to be heard on the matter and stated that the Commission does not allow the public to participate. Foy Decl. at ¶ 24. The commissioners cut Ms. Foy off when she tried to speak and told her that the conditions placed on her son’s supervised release will stand. *Id.* She was not even a party to that proceeding, and there was no semblance of Due Process that took her rights into consideration. Meanwhile, the Florida Constitution, Art. I § 16 should

have kicked in and protected her rights. She had an expectation that they would do so, and that expectation was dashed by the perfunctory nature of the proceedings. This alone creates a procedural due process violation.

The Procedural Due Process claims are informed by Ms. Foy's status under the Florida Constitution. "Victimhood" is a status granted under Art I §16 in order to grant *privileges* and *protections* to crime victims. To turn that on its head into a punitive status should require at least a hearing and a meaningful opportunity to be heard. If Ms. Foy is to lose her rights due to the State designating her as a "criminal," then she would certainly have received due process. But, as a "victim" the state claims that it can punish someone with no due process at all?

Additionally, since there was no particularized notice given, the procedures used by the government were inadequate. The Commission only published public notice of its planned hearing and did not notify Plaintiff of the hearing or of any ability she may have to attend and participate. Finally, the Defendants would not be unduly burdened by providing notice to victims such as Plaintiff when they intend to prevent contact between the victim and the perpetrator. Although surely in most instances the victim would support a restriction on contact, domestic violence and subsequent forgiveness by the parties is common enough to warrant such notice. Moreover, the fact that the Defendants intend to enforce a provision forbidding a perpetrator from contacting his victim implies that the Defendants *know* who the

victim is and where they reside. This is particularly salient where the victim herself has communicated to the Commission that she opposes the proposed condition. Accordingly, the balancing test weighs in favor of providing notice and suggests that the notice provided by the Defendants was inadequate.

Plaintiff can satisfy the requirements set forth in *Foxy Lady* and *Kupke*. She has been deprived of a fundamental right, the deprivation of her rights is directly caused by state action, and she received no adequate process, in that she received no notice and her spoken opposition to the condition was not considered by the Defendants. Accordingly, this Court should consider that in depriving Plaintiff of her fundamental rights, the Defendants deprived Plaintiff of her procedural due process rights.

4.1.5 Declaratory Judgment

As alternative relief in her Complaint, Plaintiff asks for declaratory relief holding that she may waive or rescind her ‘victim’ rights under the Florida Constitution so that she is not burdened by their consequences as applied by Defendants. Should the Court find that Plaintiff is not likely to succeed on her other claims, it should find that Plaintiff do so, and hold that Plaintiff is no longer a ‘victim’ under Florida law.

In her Complaint, Plaintiff suggests that Article I, § 16(b)(3) of the Florida Constitution, which grants victims “[t]he right within the judicial process, to be

reasonably protected from the accused and any person acting on behalf of the accused,” is either mandatory, and thus applies whether or not the victim wishes to be “protected from the accused,” or it is voluntary, and thus allows the victim to choose whether she wishes to seek protection. Defendants seem to assert that the ‘protections’ set forth in § 16(b)(3) are mandatory, and thus cannot be waived, but as discussed above, Defendants are turning victimhood into a punitive status, not a privileged one. If that is the case, then Ms. Foy should be permitted to shed this designation without any delay at all.

Either the designation is mandatory, and thus the structure of statutory authority of the Commission Defendant and their actions is unconstitutional, or the designation is optional, and Plaintiff may opt out of the protections afforded to victims by Florida law. Accordingly, in the alternative to the other relief sought herein or in the Complaint, Plaintiff asks this Court to find that she is likely to succeed on her declaratory judgment claim and enjoin the Defendants under a finding that she has withdrawn from the protections of victims.

4.2 Plaintiff’s Harm is Irreparable

As a result of the Defendants’ unconstitutional no-contact condition, Plaintiff has suffered irreparable harm and will continue to suffer irreparable harm unless this Court enters a preliminary injunction.

Regarding Plaintiff's claims for deprivation of her freedom of association and freedom of speech, the Supreme Court has long held that, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Ne. Fla. Ch. of Ass'n of Gen. Contractors v. Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) ("[C]hilled free speech ... because of [its] intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole.") Here, Plaintiff is likely to succeed on her First Amendment claims, and the deprivation of these speech rights represent *prima facie* irreparable harm.

Moreover, Plaintiff is suffering and will continue to suffer irreparable harm due to her health condition. Plaintiff is aging and is suffering from kidney cancer. Foy Decl. at ¶¶ 19-20. Absent injunctive relief, Plaintiff would not be able to contact her son for another 27 months, and Plaintiff is not certain that she will even *live* for another 27 months. *Id.* at ¶ 21. With each passing day, Plaintiff's irreparable injuries are compounded. If Plaintiff does survive, it is not likely that she will live much longer than those 27 months. *Id.* Plaintiff's inability to see her son for this period of time—a period of time which could represent her last months on Earth—surely represent irreparable harm.

4.3 The Balance of Equities & Public Interest Favor Plaintiff

The weight of the balance of equities and the public interest tips sharply in favor of Plaintiff, and this Court should issue injunctive relief.

Freedom of speech is not absolute; however, narrow restrictions may be permitted in limited situations. For example, these restrictions include obscenity, *Roth v. United States*, 354 U.S. 476, 483 (1957), defamation, *Beauharnais v. Illinois*, 343 U.S. 250, 254-255 (1952), fraud, *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976), incitement, *Brandenburg v. Ohio*, 295 U.S. 444, 447-49 (1969) per curiam), and speech integral to criminal conduct, *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). Because Defendants' no-contact mandate clearly does not fall under any of these exceptions, the Plaintiff has demonstrated a *prima facie* showing of an unlawful restriction on her freedom of speech.

Moreover, "it is well-established that an actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences. In such an instance ... the injury is self-censorship." *Harrel v. The Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010), citing *Pittman v. Cole*, 267 F.3d 1269, 1283 (11th Cir. 2001) (citation omitted). Here, Plaintiff's prior restraint is a real and immediate injury as she is forced to restrain her freedom of expression to avoid potential legal consequences of her son

going back to prison. The Defendants are not only holding Plaintiff's communication hostage but are also forcing Plaintiff into self-censorship. They have subjected Plaintiff into an inescapable Catch-22—the contradictory limitations on both her free speech and free will have left her choosing between suffering in self-censorship to protect her son from going back to prison or violating the no-contact order thereby punishing Mr. Graham-Foy in the process. It ironically seems the only solution for Plaintiff to be able to liberally exercise her free speech and maintain a relationship with her son is if Mr. Graham-Foy goes back to prison, where both Plaintiff and her son enjoyed regular communication under the circumstances. We are thus presented with a vicious cycle that this Honorable Court is begged to shatter.

Because “[P]laintiff[] ha[s] raised ‘serious First Amendment questions, [this] compels a finding that ... the balance of hardships tips sharply in [the Plaintiff’s] favor.’” *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1059 (9th Cir. 2007) (internal quotation marks omitted). Further, courts have “consistently recognized the significant public interest in upholding First Amendment principles.” *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014) (granting preliminary injunction to plaintiff sex offenders who completed their probation and parole terms alleging added provisions to Californians Against Sexual Exploitation (CASE) Act violated their First Amendment right to free speech). “It is always in the public interest to

prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted).

Moreover, "protecting rights to free speech is ipso facto in the interest of the general public," *McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79, 98 (D. Me. 2022), and "the enforcement of an unconstitutional law vindicates no public interest." *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013). This Court has made clear in past decisions that "a significant encroachment upon associational freedom cannot be justified upon a mere showing of a legitimate state interest." *Hand v. Scott*, 285 F. Supp. 3d 1289, 1300 (N.D. Fla. 2018), vacated and remanded sub nom. *Hand v. Desantis*, 946 F.3d 1272 (11th Cir. 2020), citing *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973).

Here, because Plaintiff has colorable First Amendment claims, she has thus demonstrated she will likely suffer irreparable harm if a preliminary injunction is not granted. Practically, there is no harm to the Defendants, nor anyone else, in allowing Plaintiff and Mr. Graham-Foy to reunite. They have already been communicating during Mr. Graham-Foy's prison sentence, and Ms. Foy wholeheartedly supports their contact. There can be no valid state interest in keeping this mother and son apart and allowing them to be together as their wish to be together threatens no harm to the public. That the Defendants are concerned about potential unfounded safety risks is not enough to justify the usurping of Plaintiff's

associational and religious freedoms. Finally, if Mr. Graham-Foy is not able to assist in the care of his aging and sick mother, Ms. Foy will need to spend money, or possibly rely on government assistance, to assist her. Because it is *always* in the public interest to not only correct, but prevent, individual constitutional rights violations, Plaintiff's freedoms must be protected and upheld. Accordingly, both the balance of equities and the public interest favor issuing a preliminary injunction, and this Court should grant the requested relief.

5.0 Bond Requirement

Federal Rule of Civil Procedure 65(c) requires Courts issuing injunctions to require the movant to post security "in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Here, there is little chance that Defendants will suffer any costs or damages even if it is later determined that Defendants were wrongfully enjoined. No bond should be required. Ms. Foy is on disability and on a very limited income. To whatever extent a bond could even be justified, Ms. Foy would be unlikely to be able to pay it. Accordingly, the Court is requested to mercifully waive any bond requirement, or require a token bond of \$100, but with the condition that it may be paid by a third party.

6.0 Conclusion

In light of the foregoing, Plaintiff asks that this Court issue an Order enjoining Defendants from continuing to violate the Plaintiffs rights under the United States Constitution and under the Florida Constitution and from enforcing or threatening to enforce their “No Victim Contact” order against Plaintiff or Graham-Foy. In the alternative, Plaintiff asks this Court to issue an order that unburdens Plaintiff from the designation of “Victim.”

Dated: April 2, 2024.

Respectfully submitted,

/s/ Marc J. Randazza

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Carrie Goldberg
Pro Hac Vice
C.A. Goldberg, PLLC
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Tel: (646) 666-8908
carrie@cagoldberglaw.com

Attorneys for Plaintiff,

Teena Foy

Case No. 8:23-cv-00530-JLB-CPT

ATTORNEY CONFERENCE CERTIFICATION

Pursuant to Local Rule 7.1(B), counsel for Plaintiff contacted Rana Wallace, General Counsel for the Florida Commission on Offender Review via telephone on March 26, 2024, to discuss the merits of this Motion. Defendants declined to consent to the relief requested herein.

/s/ Marc J. Randazza

MARC J. RANDAZZA

WORD LIMIT CERTIFICATION

The undersigned certifies that this document complies with word limits set forth in Local Rule 7.1(F) because the memorandum contains 5,649 words which includes the headings, footnotes, and quotations, but does not include the case style, signature block, Table of Contents, Table of Authorities, or Certificates of Word Count, Attorney Conference, and Service.

/s/ Marc J. Randazza

MARC J. RANDAZZA

Case No. 8:23-cv-00530-JLB-CPT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 2, 2024, a true and correct copy of the foregoing document is being served upon Defendants via electronic mail and U.S.

Mail to the addresses below:

Florida Commission on Offender Review

Attn: Rana Wallace, General Counsel

4070 Esplanade Way

Tallahassee, FL 32399

<ranawallace@fcor.state.fl.us>

<fcorlegal@fcor.state.fl.us>

Attorney for Defendants

/s/ Marc J. Randazza _____

MARC J. RANDAZZA

Exhibit 1

Declaration of Teena Foy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TEENA FOY,

Plaintiff,

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

v.

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

Defendants.

DECLARATION OF TEENA FOY

I, TEENA FOY, declare as follows:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify thereto.
2. I am the Plaintiff in the above-captioned matter. I submit this declaration in support of my Motion for a Preliminary Injunction (the "Motion").
3. My son, Scott Graham-Foy ("Scott"), suffered from a serious drug addiction.
4. During his active addiction, my son made many poor choices and fell into a life of crime.

5. In or about June 2011, Scott attacked me while he was in a drug-modified mental state, seriously injuring me in the process.

6. Because of this, he was sentenced to 15 years in the custody of the Florida Department of Corrections.

7. I was troubled with Scott's situation, but nevertheless, over the years, I have since forgiven and reconciled with my son while he was still incarcerated.

8. I visited Scott every month at various correctional facilities upon gaining approval of the warden of each facility.

9. We have rebuilt and strengthened our relationship throughout the years of his incarceration.

10. I hold my religious beliefs as sacred to me. I am a devout Catholic, and I sincerely believe in the Catholic tenets of forgiveness and reconciliation.

11. On March 21, 2024, Scott was released from prison on conditional release supervision.

12. My son turned his life around while in prison, obtaining a college degree in water management. I understand he is now gainfully employed at three different jobs.

13. As a condition of his supervised release, the Florida Commission on Offender Review (the "Commission") imposed a "No Victim Contact" condition, which prevents Scott from communicating with me, his own mother, in any way.

14. The Commission refuses to allow Scott to have any contact with me. We are not allowed to speak over the telephone, over video call, or even writing letters to each other.

15. If I wanted to speak with my own son, then Scott would face termination of his supervised release.

16. During Scott's time being incarcerated, I was able to freely visit him, speak with him on the telephone, and communicate by way of letter.

17. I want to have a relationship with my son.

18. My Catholic faith requires that I forgive my son, and that he feel the warmth of my forgiveness through my actions and through communication.

19. I will soon be 78 years old. Scott is my only remaining relative.

20. Over the last few years, I have been in poor health. I have serious and significant health issues that leave my life uncertain. I have been diagnosed with kidney cancer and severe cardiovascular issues. I have had two bypasses. I have difficulty with mobility, and I struggle with everyday activities like walking up the steps of my condominium, especially when carrying things like groceries. Due to my age and co-morbidities, I am not certain how much time I have left to live.

21. Scott's conditional release will last for at least 27 months making the No Victim Contact condition last for at least the same amount of time. I believe that these 27 months will either be the rest of my life, or a significant portion of it.

22. I require immediate assistance from my son and wish to spend all my remaining time with my son as long as I am alive. My son wants to help me.

23. I want my son to live with me so that he can help me as I age.

24. The Commission deprived me of my First Amendment rights to freely associate and communicate with my son without even providing me with any process or recourse. The No Victim Contact condition was automatically ordered as a condition of his release without giving me an opportunity to question or object at the hearing. The commission stated that they do not allow the public to participate. At that hearing, The commissioners cut me off when I tried to speak, and told me that the conditions placed on my son's supervised release will stand.

25. When Scott gave me permission to move in state court to modify the conditions of his supervised release, the Commission intervened. They argued that the state court did not have "jurisdiction over any conditional release matter, including any modification or deletion of a condition imposed by the Commission." The Commission refused to listen to me and insisted over my vehement objections to enforce the No Victim Contact order. Because of its intervention, the state court vacated the modification order it initially entered.

26. Since reconciling with my son, I believe I am no longer a victim. I do not fear my own son. My only wish is to spend the remainder of my life rebuilding the relationship we have lost.

27. During the time Scott was incarcerated and when we were freely able to communicate with each other, I never felt like a victim. Now that he is released, under the restrictive conditions of the No Victim Contact order, I somehow do feel like I am a victim all over again. But not of my son, but of the Commission and of Melinda N. Coonrod.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that his Declaration was executed on April 1, 2024, in Duval County, Florida.

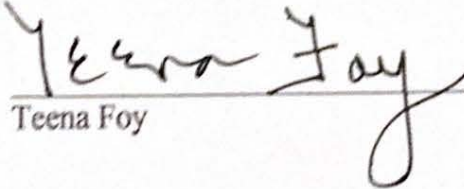

Teena Foy

Exhibit 2

Order of Conditional Release

CRI0630

FLORIDA COMMISSION ON OFFENDER REVIEW

ORDER OF CONDITIONAL RELEASE

RDD DAW

AFTER THOROUGH CONSIDERATION OF ALL AVAILABLE INFORMATION, THE FLORIDA COMMISSION ON OFFENDER REVIEW FINDS THAT GRAHAM-FOY, SCOTT M. , DC# A J15659, IS ELIGIBLE TO BE PLACED ON CONDITIONAL RELEASE AS PROVIDED IN CHAPTER 947, FLORIDA STATUTES.

IT IS ORDERED THAT THE TERM OF CONDITIONAL RELEASE SHALL BE FOR:

X EXPIRATION OF MAXIMUM PERIOD FOR WHICH SENTENCED (TERM MORE THAN TWO YEARS, FOR REASON(S) C04 C05 C08

OR UNTIL OTHER ACTIONS MAY BE TAKEN BY THE COMMISSION.

IT IS ORDERED THAT THE INMATE SHALL BE SUBJECT TO THE STANDARD CONDITIONS OF CONDITIONAL RELEASE AS ESTABLISHED BY THE COMMISSION PURSUANT TO 947.1405, FLORIDA STATUTES. IN ADDITION TO THE STANDARD CONDITIONS, THE INMATE SHALL BE E03 E33 E41 E55 E56

THE FLORIDA COMMISSION ON OFFENDER REVIEW IMPOSES THESE CONDITIONS UNDER DISCRETIONARY AUTHORITY PURSUANT TO SECTION 947.1405(6), FLORIDA STATUTES.

IT IS ORDERED THAT THE INMATE SHALL BE RELEASED ON THE TENTATIVE RELEASE DATE AS ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS.

IT IS FURTHER ORDERED THAT THE RELEASE ADMINISTRATOR SHALL ISSUE A CERTIFICATE OF CONDITIONAL RELEASE UNDER THE SEAL OF THE COMMISSION.

DONE AND ORDERED AT THE COMMISSION MEETING HELD 01/24/2024.

Campy Butler

FLORIDA COMMISSION ON OFFENDER REVIEW

CERTIFIED BY _____, DEPUTY COMMISSION CLERK

THIS 29TH, DAY OF JANUARY, 2024.



CRI0634

FLORIDA COMMISSION ON OFFENDER REVIEW
CONDITIONAL RELEASE DOCKET

PAGE 36 OF 90

DOCKET DATE: 01/24/2024

COMMISSIONERS: RDD DAW

NAME: GRAHAM-FOY, SCOTT M.
C4, C5, C8

PRISON #: A J15659
PRD: 03/21/2024 A1-A2

E_3_ E_41_ E_56_ E_____ E_____ E_____ E_____ E_____

E_33_ E_55_ E_____ E_____ E_____ E_____ E_____ E_____

SA

1107109

NAME: GREEN, VONICE C.
C4, C5, C8

PRISON #: 297693
PRD: 04/05/2024 01

E_3_ E_33_ E_55_ E_____ E_____ E_____ E_____ E_____

E_13_ E_41_ E_56_ E_____ E_____ E_____ E_____ E_____

SA

\$7,485.36 NLT \$50/MO IN CASE # 1107676

1107676

- E01-THERAPY PROGRAMS
- E02-MAND THERAPY PROGRAMS
- E03-MAND EVALUATIONS
- E04-SEARCH AND SEIZURE
- E05-NO ALCOHOL
- E06-PROGRAMS
- E07-MANDATORY PROGRAMS
- E08-NO DRIVING
- E09-NO CONTACT W/ CHILDRE
- E10-NOT TO ENTER COUNTY
- E11-NOT TO ENTER FLORIDA
- E12-NOT TO ENTER USA
- E13-RESTITUTION
- E14-NO CHECKING ACCOUNT
- E15-CHILD SUPPORT
- E16-ADMIN. CASELOAD
- E17-DRUG OFFENDER PROBATI
- E53-COMM CTRL: SPECIF DTE
- E18-US MARSHALL/FL SHERIF
- E19-OUT OF STATE DETAINER
- E20-DEPT. OF HOMELAND SEC.
- E21-TWO OR MORE DETAINERS
- E22-DRIVING FOR EMPLOYMEN
- E24-REGISTER AS A SEX OFF
- E25-NOT TO ENTER BUSINESS
- E26-MONTHLY URINALYSIS TS
- E27-GENERIC C.R. S CONDI1
- E28-GENERIC C.R. S CONDI2
- E29-MAND CURFEW 10PM-6AM
- E30-MANDATORY CURFEW
- E31-MAND HOURSING REST.
- E32-MAND SEX OFFEND THERAPE
- E33-NO CONTACT W/ VICTIM
- E34-MAND WORK RESTRICTIONSE
- E35-NO SEXUALLY MATERIAL
- E54-COMM CTRL: REMAINDER
- E36-MAND BLOOD SPECIMEN
- E37-NO CONTACT W/ CHILDREN
- E38-ELECTRONIC MONITORING
- E39-RELEASE OF INFORMATION
- E40-POLYGRAPH FOR SEX OFF
- E41-MAND ANGER/STRESS PGM
- E42-DRIVING RESTR. FOR SEX
- E43-PO BOX REST. SEX OFFEN
- E44-HIV TST FOR SEX OFFEN
- E45-MANDATORY ELECTRONIC M
- E46-COMPUTER ACCESS
- E47-1,000 FOOT RESIDENCE I
- E48-NO CONT W/GANG MEM
- E49-NO CANDY2KIDS/COSTUME
- E50-NO KIDS AREAS W/O OK
- E51-GENERIC CRS SPEC CON3
- E52-GENERIC CRS SPEC CON4
- E55-FIRST STEP FEE/FUND
- E56-MAND CURFW 1YR 10P-6A

FPC-WP-006(02/97)
REVISED 12/99

REVISED 09/01

AS

Exhibit 3

Motion to Modify Sentence

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY,
FLORIDA.

CASE NO.: 162011CF007109

DIVISION: CR-D

STATE OF FLORIDA

VS.

SCOTT MICHAEL GRAHAM FOY

MOTION TO MODIFY SENTENCE

Defendant, SCOTT MICHAEL GRAHAM FOY, by and through the undersigned attorney, pursuant to 3.800(a), Florida Rules of Criminal Procedure, respectfully moves this Honorable Court to modify the sentence imposed upon Defendant by this Court in the above-styled cause. As grounds therefore Defendant states the following:

1. On October 26, 2011, pursuant to his plea of Guilty to the charges of Aggravated Battery; Aggravated Battery with a Deadly Weapon; and False Imprisonment, this Honorable Court adjudged the Defendant guilty and sentenced him to 15 years in the custody of the Department of Corrections, with credit for 124 days time served.
2. The Defendant has almost completed that sentence, with credit for gain time, and anticipates being placed on a type of supervision. A condition of that supervision is apparently no contact with Defendant's mother, the victim in the underlying case.
3. Defendant's mother, Teena Foy, petitioned the Department of Corrections and was granted permission to visit her son, the Defendant, for approximately six years of his sentence. These visits were without incident and Defendant was a model prisoner, earning a college degree and transitioning to work release where he has flourished.

4. Defendant's mother lives alone and has been diagnosed with cancer. It is her wish that she be allowed contact with Defendant upon his release from work release and that he be allowed to reside with her and help in her care. She has been denied that request by the Department of Corrections.
5. Defendant respectfully asks that this court review his mother's request and that this Honorable Judge approve contact with the victim in this case.

WHEREFORE, Defendant respectfully requests this Honorable Court to grant this motion.

I HEREBY CERTIFY that a copy of the above and foregoing Motion to Modify Probation has been furnished to the Office of the State Attorney, by hand, this 6th day of February 2024.

Respectfully submitted,



JANET E. JOHNSON, ESQUIRE

Florida Bar No.: 0012149
3219 Atlantic Blvd.
Jacksonville, Florida 32207
Telephone: (904) 634-8991
Attorneys for Defendant

Exhibit 4

Docket Sheet

Case 16-2011-CF-007109-AXXX-MA

Agency	JSO	Department	Felony
Division	CR-D	Case Status	DISPOSED
SAO Number	11CF047620AD	Offense Date	5/17/2011
File Date	6/25/2011	Incident Number	2011482761
Judge Name	BORELLO, MARK	Officer	
State Attorney	Brown, Elizabeth Caroline	Private Attorney	Johnson, Janet Ellen

Parties

Name / DOB / DL / ID #	Party Type Race / Sex	Address
<u>SCOTT MICHAEL GRAHAM FOY</u> DOB: 4/2/1975 License: G651793751220 Offender: 2011-020984 JSO ID: 474035	DEFENDANT W / M	3669 VALENCIA RD JACKSONVILLE, FL32205

Attorneys

Attorney	Address	For Parties
<u>Johnson, Janet Ellen</u> Private Attorney (12149)	3219 Atlantic Blvd Jacksonville, FL32207-8901	
<u>Brown, Elizabeth Caroline</u> State Attorney (1039493)	State Attorney's Office Jacksonville, FL	

Charges

Initial		Prosecutor		Court		
Count	Statute #	Statute Description w/Qualifier				
	Plea	Status	Level	Action	Minimum Fine	
1	S784.045(1)(A)1	AGGRAVATED BATTERY				
	GUILTY	SAME	F2	ADJUDICATED GUILTY WITH FINGERPRINTS	---	
2	S784.045(1)(A)2	AGGRAVATED BATTERY WITH A DEADLY WEAPON				
	GUILTY	SAME	F2	ADJUDICATED GUILTY WITH FINGERPRINTS	---	
3	S787.02(1)(A)	FALSE IMPRISONMENT				
	GUILTY	SAME	F3	ADJUDICATED GUILTY WITH FINGERPRINTS	---	

Fees

Date	Description	Assessed	Paid	Balance
01/05/2024	RESTITUTION FEE	\$3.50	\$3.50	\$0.00
02/29/2024	RESTITUTION FEE	\$3.50	\$3.50	\$0.00
03/15/2024	RESTITUTION FEE	\$3.50	\$3.50	\$0.00
03/26/2024	RESTITUTION FEE	\$3.50	\$3.50	\$0.00
12/01/2023	RESTITUTION FEE	\$3.50	\$3.50	\$0.00
05/16/2017	COPY FEE/CERTIFICATION FEE	\$8.00	\$8.00	\$0.00
06/27/2011	PD APP FEE (\$50)	\$50.00	\$0.00	\$50.00
10/26/2011	FELONY A/DEFAULT CASE FEE b 7/1/09	\$666.00	\$0.00	\$666.00






Restitution






Order Number	Amount	Paid	Balance
	404.7200	\$136.85	267.8700
	1500.0000	\$0.00	1500.0000
Total	1904.7200	\$136.85	1767.8700



Court Events

Date	Time	Type	Location	Courtroom	Cancelled
7/25/2011	9:00 AM	ARRAIGNMENT DATE	330 E BAY ST (CIRCUIT)	4	
8/23/2011	9:00 AM	PRETRIAL	330 E BAY ST (CIRCUIT)	4	
9/14/2011	9:00 AM	PRETRIAL	330 E BAY ST (CIRCUIT)	4	
10/4/2011	9:00 AM	PRETRIAL	330 E BAY ST (CIRCUIT)	4	
10/26/2011	9:00 AM	PRETRIAL	330 E BAY ST (CIRCUIT)	4	
3/15/2024	9:00 AM	HEARING ON MOTION	3rd Floor	306	













Dockets



Line / Document	Count	Effective Entered	Description	Pages	Image
1 D1	--	6/25/2011 6/27/2011	ARREST & BOOKING REPORT 2011-020984 6/24/2011	1	Available  VOR, Ready to view
2	1	6/25/2011 6/27/2011	S784.045(1)(A)1 AGGRAVATED BATTERY		
3 D3	--	6/25/2011 6/27/2011	DEFENDANT DECLARED INDIGENT, ORDER APPOINTING PUBLIC DEFENDER - FILED	1	Request  View on request
4 D4	--	6/25/2011 6/27/2011	APPLICATION FOR CRIMINAL INDIGENT STATUS - FILED	1	Request  View on request
5	--	6/25/2011 6/27/2011	ARRAIGNMENT COURT DATE: 07/18/2011 SUBJECT TO CHANGE. CALL FOR VERIFICATION		
6	1	6/25/2011 6/27/2011	BOND SET AT \$100,003.00		
7	--	6/25/2011 6/27/2011	NO VICTIM CONTACT		
8	--	6/25/2011 6/27/2011	PD APP FEE 50.00 IMPOSED		
9 D9	--	7/14/2011 7/19/2011	MOTION FOR ADVERSARY PRELIMINARY HEARING	2	Request  View on request
10	--	7/15/2011 7/15/2011	ARRAIGNMENT COURT DATE: 07/25/2011 SUBJECT TO CHANGE. CALL FOR VERIFICATION		
11 D11	1	7/15/2011 7/15/2011	INFORMATION FILED S784.045(1)(A)1 AGGRAVATED BATTERY	2	Request  View on request
12	2	7/15/2011 7/15/2011	INFORMATION FILED S784.045(1)(A)2 AGGRAVATED BATTERY WITH A DEADLY WEAPON		
13	3	7/15/2011 7/15/2011	INFORMATION FILED S787.02(1)(A) FALSE IMPRISONMENT		
14	--	7/15/2011 7/15/2011	ARRAIGNMENT DATE 07/25/2011 9:00 AM - 4 330 E BAY ST (CIRCUIT)		
15	--	7/25/2011 7/26/2011	JUDGE COOPER, MALLORY		

Line / Document	Count	Effective Entered	Description	Pages	Image
16	--	7/25/2011 7/26/2011	ASST. STATE ATTY. DORSEY, DOUGLAS ANDREW		
17	--	7/25/2011 7/26/2011	ASST. PUB. DEF. LORIMIER, JON		
18	--	7/25/2011 7/26/2011	DEFENDANT PRESENT		
19	--	7/25/2011 7/26/2011	DEF. W/READING OF INFO & PLEAD NG		
20 D20	--	7/25/2011 7/26/2011	STATE'S DISCOVERY EXHIBIT AND DEMAND FOR RECIPROCAL DISCOVERY	2	Request  View on request
21	1	7/25/2011 7/26/2011	PLEA OF NOT GUILTY		
22	2	7/25/2011 7/26/2011	PLEA OF NOT GUILTY		
23	3	7/25/2011 7/26/2011	PLEA OF NOT GUILTY		
24	--	7/25/2011 7/26/2011	PRETRIAL 08/23/2011 9:00 AM - 4 330 E BAY ST (CIRCUIT)		
25 D25	--	7/26/2011 7/27/2011	PUBLIC DEFENDER REQUEST FOR COPY OF JSO PHOTOS	1	Available  VOR, Ready to view
26 D26	--	7/26/2011 7/27/2011	DEMAND FOR SPECIFIC DISCOVERY	1	Request  View on request
27 D27	--	8/3/2011 8/8/2011	PRAE, FOR WITNESS SUBPOENA- MEDICAL RECORDS	1	Request  View on request
28	--	8/23/2011 8/24/2011	JUDGE COOPER, MALLORY		
29	--	8/23/2011 8/24/2011	ASST. STATE ATTY. DORSEY, DOUGLAS ANDREW		
30	--	8/23/2011 8/24/2011	ASST. PUB. DEF. LORIMIER, JON		
31	--	8/23/2011 8/24/2011	DEFENDANT PRESENT		
32	--	8/23/2011 8/24/2011	PRETRIAL 09/14/2011 9:00 AM - 4 330 E BAY ST (CIRCUIT)		
33	--	8/26/2011 8/26/2011	TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Stevens, Justin Lee PER SAO		
34	--	9/14/2011 9/15/2011	JUDGE COOPER, MALLORY		
35	--	9/14/2011 9/15/2011	ASST. STATE ATTY. STEVENS, JUSTIN LEE		
36	--	9/14/2011 9/15/2011	ASST. PUB. DEF. LORIMIER, JON		
37	--	9/14/2011 9/15/2011	DEFENDANT PRESENT		
38 D38	--	9/14/2011 9/15/2011	NOTICE OF INTENT TO CLASSIFY DEF. AS HABITUAL OFFENDER	1	Request  View on request
39	--	9/14/2011 9/15/2011	PRETRIAL 10/04/2011 9:00 AM - 4 330 E BAY ST (CIRCUIT)		
40	--	10/4/2011 10/5/2011	JUDGE COOPER, MALLORY		
41	--	10/4/2011 10/5/2011	ASST. STATE ATTY. STEVENS, JUSTIN LEE		

Line / Document	Count	Effective Entered	Description	Pages	Image
42	--	10/4/2011 10/5/2011	ASST. PUB. DEF. LORIMIER, JON		
43	--	10/4/2011 10/5/2011	DEFENDANT PRESENT		
44	--	10/4/2011 10/5/2011	PRETRIAL 10/26/2011 9:00 AM - 4 330 E BAY ST (CIRCUIT)		
45	--	10/4/2011 10/5/2011	12/01/11 FPT; 12/05/11 JS		
46	--	10/21/2011 10/21/2011	TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Mauerberger, Brittany Rose PER SAO		
47	--	10/26/2011 10/27/2011	JUDGE COOPER, MALLORY		
48	--	10/26/2011 10/27/2011	SITTING JUDGE - SENTERFITT, ELIZABETH A		
49	--	10/26/2011 10/27/2011	ASST. STATE ATTY. MAUERBERGER, BRITTANY ROSE		
50	--	10/26/2011 10/27/2011	ASST. PUB. DEF. LORIMIER, JON		
51	--	10/26/2011 10/27/2011	DEFENDANT PRESENT		
52	--	10/26/2011 10/27/2011	DEF. PERMITTED TO W/D PLEA OF NG/G		
53 D53	--	10/26/2011 10/27/2011	ACKNOWLEDGE. OF RIGHTS & VOLUNTARINESS OF ENTRY OF PLEA	2	<p>Available</p>  <p>VOR, Ready to view</p>
54	--	10/26/2011 10/27/2011	STRIKE FPT & JS		
55	--	10/26/2011 10/27/2011	SENTENCING HEARING HELD IN FULL		
56 D56	--	10/26/2011 10/27/2011	CLERKS MEMO OF HEARING	1	<p>Request</p>  <p>View on request</p>
57 D57	--	10/26/2011 10/27/2011	STATE'S EXHIBITS 1 & 2 ENTERED BY STIPULATION OF COUNSEL DEFT. FOUND TO BE HFO PER F.S. 775.084(4)(A)	7	<p>Available</p>  <p>VOR, Ready to view</p>
58	1	10/26/2011 10/27/2011	DEFENDANT PLEAD GUILTY		
59	1	10/26/2011 10/27/2011	DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN		
60 D60	1	10/26/2011 10/27/2011	JUDGMENT AND SENTENCE TO STATE PRISON FOR 15 YEARS BOOK 15754 PAGE 1490-1497	8	<p>Request</p>  <p>View on request</p>
61	1	10/26/2011 10/27/2011	CREDIT TIME: 124 DAYS		
62	1	10/26/2011 10/27/2011	COUNTS 1 & 2 CONCURRENT EACH COUNT		
63	1	10/26/2011 10/27/2011	COUNT 3 CONCURRENT W/COUNT 1		
64	1	10/26/2011 10/27/2011	SENTENCED AS A HABITUAL FELONY OFFENDER PER F.S. 775.084(4)(A) AS TO COUNTS 1,2 & 3		
65	1	10/26/2011 10/27/2011	LEEA 3.00 IMPOSED		
66	1	10/26/2011 10/27/2011	CCT 50.00 IMPOSED		
67	1	10/26/2011 10/27/2011	LGTF 225.00 IMPOSED		

Line / Document	Count	Effective Entered	Description	Pages	Image
68	1	10/26/2011 10/27/2011	PD FEE 100.00 IMPOSED		
69	1	10/26/2011 10/27/2011	TNC 3.00 IMPOSED		
70	1	10/26/2011 10/27/2011	SOCIF 100.00 IMPOSED		
71	1	10/26/2011 10/27/2011	AACC 65.00 IMPOSED		
72	1	10/26/2011 10/27/2011	SAIEF 100.00 IMPOSED		
73	1	10/26/2011 10/27/2011	CSTF 20.00 IMPOSED		
74	--	10/26/2011 10/27/2011	FEES DUE: 3/1/2027		
75	2	10/26/2011 10/27/2011	DEFENDANT PLEAD GUILTY		
76	2	10/26/2011 10/27/2011	DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN		
77	2	10/26/2011 10/27/2011	JUDGMENT AND SENTENCE TO STATE PRISON FOR 15 YEARS		
78	2	10/26/2011 10/27/2011	CREDIT TIME: 124 DAYS		
79	3	10/26/2011 10/27/2011	DEFENDANT PLEAD GUILTY		
80	3	10/26/2011 10/27/2011	DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN		
81	3	10/26/2011 10/27/2011	JUDGMENT AND SENTENCE TO STATE PRISON FOR 10 YEARS		
82	3	10/26/2011 10/27/2011	CREDIT TIME: 124 DAYS		
83 D83	--	10/26/2011 10/27/2011	PAYMENT AUTHORIZATION SHEET	1	Request View on request
84 D84	--	10/26/2011 10/27/2011	COURT ORDERED COSTS/FINES/FEES BOOK 15754 PAGE 1499-1500	2	Request View on request
85 D85	--	10/26/2011 10/27/2011	SENTENCING GUIDELINES	2	Request View on request
86 D86	--	10/26/2011 10/28/2011	WAIVER OF PRE-SENTENCE INVESTIGATION	1	Request View on request
87 D88	--	10/27/2011 10/27/2011	UNIFORM COMMITMENT TO CUSTODY OF DEPT. OF CORRECTIONS	1	Request View on request
88 D87	--	10/27/2011 10/31/2011	PRAE, FOR WITNESS SUBPOENA- JURY SELECTION	1	Request View on request
89 D89	--	10/28/2011 10/28/2011	COMMITMENT CHECKLIST SENT	1	Request View on request
90 D90	--	11/7/2011 11/7/2011	RESTITUTION ORDER CREATED FOR: \$ \$1,500.00 BOOK 15763 PAGE 1582-1583	2	Request View on request

Line / Document	Count	Effective Entered	Description	Pages	Image
91 D91	--	1/11/2012 1/11/2012	RESTITUTION ORDER CREATED FOR: \$ \$404.72 BOOK 15819 PAGE 1521-1522	2	Request  View on request
92	--	1/27/2013 1/27/2013	TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Stevens, Justin Lee PER SAO		
93	--	5/16/2017 5/16/2017	COPY FEE 8.00 IMPOSED		
94 D94	--	5/16/2017 5/16/2017	CASE FEES PAID: \$8.00 ON RECEIPT NUMBER 2929324	1	Request  View on request
95 D96	--	6/27/2017 6/27/2017	MOTION FOR REDUCT OF SENT - REDUCE & MODIFY 3.800(C)	3	Request  View on request
96 D95	--	6/27/2017 6/27/2017	ORDER FOR REDUCTION OF SENTENCE - REDUCE OR MODIFY - 3.800(C) DENIED	3	Request  View on request
97 D97	--	6/27/2017 6/27/2017	LETTER TO JUDGE-HRS	11	Unavailable  Confidential
98 D98	--	12/27/2017 12/28/2017	REQUEST FOR DOCUMENTS	2	Request  View on request
99 D99	--	1/10/2018 1/10/2018	REQUEST FOR DOCUMENTS	4	Request  View on request
100 D100	--	1/10/2018 1/10/2018	APPLICATION FOR CLEMENCY	2	Available  VOR, Ready to view
101 D101	--	11/1/2019 11/5/2019	REQUEST FOR DOCUMENTS	2	Request  View on request
102	--	12/1/2023 12/1/2023	MISCELLANEOUS FEES (SB1718 2009) 3.50		
103	--	12/1/2023 12/1/2023	CASE FEES PAID: \$3.50 ON RECEIPT NUMBER 4534870		
104 D104	--	12/1/2023 12/1/2023	CASE RESTITUTION PAID: \$57.78 ON RECEIPT NUMBER 4534870	1	Request  View on request
105	--	1/5/2024 1/5/2024	MISCELLANEOUS FEES (SB1718 2009) 3.50		
106	--	1/5/2024 1/5/2024	CASE FEES PAID: \$3.50 ON RECEIPT NUMBER 4554074		
107 D107	--	1/5/2024 1/5/2024	CASE RESTITUTION PAID: \$115.13 ON RECEIPT NUMBER 4554074	1	Request  View on request
108 D108	--	2/7/2024 2/7/2024	NOTICE OF APPEARANCE JOHNSON, JANET ELLEN	1	Request  View on request

Line / Document	Count	Effective Entered	Description	Pages	Image
109 D109	--	2/7/2024 2/7/2024	WAIVER OF APPEARANCE	1	Request  View on request
110 D110	--	2/7/2024 2/7/2024	NOTICE OF DISCOVERY	1	Available  VOR, Ready to view
111 D111	--	2/7/2024 2/7/2024	MOTION TO REDUCE AND MODIFY SENTENCE - 3.800(C)	1	Available  VOR, Ready to view
112	--	2/8/2024 2/8/2024	TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Brown, Elizabeth Caroline PER SAO		
113 D113	--	2/13/2024 2/13/2024	ORDER TO REDUCE AND MODIFY SENTENCE - 3.800(C) GRANTED	1	Request  View on request
114	1	2/13/2024 3/4/2024	PER ORDER 2/13/24- NO VIOLENT CONTACT WITH VICTIM (MOTHER)		
115 D114	--	2/16/2024 2/20/2024	FLORIDA COMMISSION ON OFFENDER REVIEW'S MOTION TO INTERVENE AND MOTION TO VACATE ORDER GRANTING MOTION TO MODIFY SENTENCE	1	Request  View on request
116	--	2/29/2024 2/29/2024	MISCELLANEOUS FEES (SB1718 2009) 3.50		
117	--	2/29/2024 2/29/2024	CASE FEES PAID: \$3.50 ON RECEIPT NUMBER 4591759		
118 D117	--	2/29/2024 2/29/2024	CASE RESTITUTION PAID: \$133.37 ON RECEIPT NUMBER 4591759	1	Request  View on request
119	--	3/11/2024 3/11/2024	HEARING ON MOTION 03/15/2024 9:00 AM - 306 3RD FLOOR, 501 W ADAMS ST JACKSONVILLE FL 32202		
120 D120	--	3/11/2024 3/11/2024	PER JA EMAIL; @ 10:30 AM	1	Request  View on request
121 D121	--	3/11/2024 3/11/2024	FL DOC FINANCIAL OBLIGATION SUMMARY	1	Request  View on request
122 D123	--	3/11/2024 3/13/2024	NOTICE OF HEARING ON DEFENDAT'S MOTION TO MODIFY SENTENCE	1	Request  View on request
123 D124	--	3/11/2024 3/13/2024	NOTICE OF HEARING ON DEFENDANT'S MOTION TO MODIFY SENTENCE	1	Request  View on request
124 D122	--	3/12/2024 3/12/2024	NOTICE OF APPEARANCE HIERS, MARK JERRY	1	Request  View on request
125	--	3/15/2024 3/15/2024	JUDGE BORELLO, MARK		
126	--	3/15/2024 3/15/2024	ASST. STATE ATTY. BROWN, ELIZABETH CAROLINE		
127	--	3/15/2024 3/15/2024	ATTY. FOR DEF. JOHNSON, JANET ELLEN		



Line / Document	Count	Effective Entered	Description	Pages	Image
128	--	3/15/2024 3/15/2024	MOTION - - DEFENSE MOTION TO MODIFY SENTENCE - SET ASIDE WITHOUT PREJUDICE		
129	--	3/15/2024 3/15/2024	MISCELLANEOUS FEES (SB1718 2009) 3.50		
130	--	3/15/2024 3/15/2024	CASE FEES PAID: \$3.50 ON RECEIPT NUMBER 4603057		
131 D131	--	3/15/2024 3/15/2024	CASE RESTITUTION PAID: \$260.39 ON RECEIPT NUMBER 4603057	1	Request  View on request
132	--	3/26/2024 3/26/2024	MISCELLANEOUS FEES (SB1718 2009) 3.50		
133	--	3/26/2024 3/26/2024	CASE FEES PAID: \$3.50 ON RECEIPT NUMBER 4609958		
134 D134	--	3/26/2024 3/26/2024	CASE RESTITUTION PAID: \$176.25 ON RECEIPT NUMBER 4609958	1	Request  View on request

Exhibit 5

Motion to Intervene and
Motion to Vacate

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 16-2011-CF-007109
Division CR-D

SCOTT MICHAEL GRAHAM FOY,

Defendant.

FLORIDA COMMISSION ON OFFENDER REVIEW'S MOTION TO INTERVENE AND
MOTION TO VACATE ORDER GRANTING MOTION TO MODIFY SENTENCE

COMES NOW, the Florida Commission on Offender Review ("the Commission"), by and through undersigned counsel and pursuant to Rule 3.030, Fla. R. Crim. P., and hereby files this, its Motion to Intervene and Motion to Vacate Order Granting Motion to Modify Sentence. In support thereof, the Commission states as follows:

1. SCOTT MICHAEL GRAHAM FOY [DC 156959] ("Inmate Foy") is currently a state prison sentenced inmate serving an overall fifteen (15) year prison commitment resulting from his Duval County convictions for Aggravated Battery, Aggravated Battery with a Deadly Weapon, and False Imprisonment. Inmate Foy's mother was the victim of these three violent offenses. Inmate Foy has been designated by this Court a habitual felony offender. A copy of the Uniform Commitment to Custody for Duval County Case 16-CF-007109, which contains, among other documents, the Judgment and Sentence and the arrest report and warrant detailing the facts and circumstances of these crimes, is included herewith as Exhibit "A". A copy of Inmate Foy's

Corrections Offender Network page¹, detailing the portions of his lengthy criminal history that resulted in prison commitments, is included herewith as Exhibit “B”.

2. As of the date of the instant filing, Inmate Foy is set to be released from prison to conditional release supervision on March 21, 2024. A copy of the January 29, 2024, Order of Conditional Release and the related Commission on Offender Review Docket page is included herewith as Exhibit “C”. See also Exhibit “B”. As a condition of Inmate Foy’s conditional release supervision, the Commission has entered a No Victim Contact condition². See Exhibit “C”.

3. On or about February 7, 2024, Inmate Foy, through counsel, filed with this Court a Motion to Modify Sentence, seeking this Court through a Rule 3.800(c), Fla. R. Crim. P., motion, to modify a condition of his conditional release supervision to permit him to reside with his mother, the victim of his violent crimes, to “help her in her care.” The motion was not served on or otherwise provided to the Commission.

4. On or about February 13, 2024, this Court entered its Order Granting Motion to Modify Sentence which modified the No Victim Contact condition of Inmate Foy’s conditional release supervision, as set by the Commission, to permit Inmate Foy to have “non-violent contact” with his mother.

5. On Friday, February 16, 2024, counsel for Inmate Foy provided to the Commission by email a copy of this Court’s February 13, 2024, Order Granting Motion to Modify Sentence. A copy of the email from counsel for Inmate Foy is included herewith as Exhibit “D”. Prior to this

¹ The information on this page, especially as to Current Release Date, may change as the inmate gets closer to his projected release date. A current view of this page may be accessed at <https://fdc.myflorida.com/offenderSearch/detail.aspx?Page=Detail&DCNumber=J15659&TypeSearch=IR>.

² Special Condition E33 is the Commission database code for No Victim Contact. A special conditions key or legend may be found at the bottom of the Docket Page in Exhibit “C”.

February 16, 2024, email, the Commission had no knowledge of the motion filed on behalf of Inmate Foy, of any hearing that may have been held on the matter, or of this Court's February 13, 2024, order granting the motion.

6. The Commission respectfully submits this Court is without jurisdiction over any conditional release supervision matter, including any modification or deletion of a condition imposed by the Commission.

7. The Commission moves to intervene in the instant matter for the limited purposes set forth herein.

ARGUMENT

Notice requirement.

Florida courts have universally recognized that the rights of an individual or corporation cannot be adjudicated in judicial proceedings to which the party has not been made a participant. Moretto v. Staub, 370 So. 2d 1220, 1221 (Fla. 3d DCA 1979). See also Algiers v. Peters, 88 So. 2d 903 (Fla. 1956) (holding it is fundamental to our concept of justice that the rights of an individual cannot be adjudicated in a judicial proceeding to which he has not been made a party); Chastain v. Uiterwyk, 462 So. 2d 1212 (Fla. 2d DCA 1985); Hub Financial Corp. v. Olmetti, 465 So. 2d 618 (Fla. 4th DCA 1985).

The Commission had no notice of the February 7, 2024, Motion to Modify Sentence nor of this Court's February 13, 2024, Order Granting Motion to Modify Sentence. As a party affected by the motion and the order, the Commission respectfully submits that it was improperly denied notice and an opportunity to be heard on this matter. Consequently, as a matter of law, this Court's February 13, 2024, Order Granting Motion to Modify Sentence is void. See Singletary v. Duggins, 724 So. 2d 133 (Fla. 2d DCA 1999) (order quashed where the Department was not given notice of

proceedings); Dept. of Corrections v. Wilson, 594 So. 2d 330 (Fla. 3d DCA 1992) (order quashed where the Department was not given notice of proceedings). See also Dept. of Corrections v. Williams, 901 So. 2d 169 (Fla. 2d DCA 2005) (failure to provide an indispensable party notice and an opportunity to be heard prior to adjudicating its rights constitutes fundamental error); Chase v. Turner, 560 So. 2d 1317 (Fla. 1st DCA 1990) Pan Am Bank of Miami v. Osgood, 383 So. 2d 1095 (Fla. 3d DCA), *rev. denied*, 392 So. 2d 1377 (Fla. 1980).

Lack of jurisdiction.

The Commission respectfully submits that this Court is without jurisdiction over any conditional release matter, including any modification or deletion of a condition imposed by the Commission. Conditional release supervision is a matter that falls under the exclusive purview of the Commission. See s. 947.1405, Fla. Stat. Recognizing that all courts, whether civil or criminal, have the jurisdiction prescribed by the constitution and general law, courts do not have the jurisdiction over placement, revocation, release, or supervision of conditional releasees. This absence of authority or lack of jurisdiction is grounded in the legislature's determination that the Commission is to operate the conditional release supervision program. The Commission's jurisdiction over the conditional release program derives from Article IV, §8(c), of the Florida Constitution, which states in pertinent part, that "[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 sentence for crimes[.]" In 1988, the legislature enacted s. 947.1405, Fla. Stat., which established a conditional release program and provided that the Commission has exclusive jurisdictional authority over the program and those subject to conditional release supervision. See s. 947.1405, Fla. Stat.

These specific grants of authority take precedence over a court's general authority over felons. See Gretz v. Unemployment Appeals Comm'n., 572 So. 2d 1384, 1386 (Fla. 1991) (a statute dealing specifically with a subject matter takes precedence over another statute covering the same subject and other subjects in general terms); Adams v. Culver, 111 So. 2d 665, 667 (Fla. 1959); Dept. of Health and Rehabilitative Svcs. v. Gross, 421 So. 2d 44 (Fla. 3d DCA 1982) (statute providing that the Department and HRS jointly determine eligibility for sex offenders for treatment program governs over trial judge's general discretionary powers to formulate conditions of probation).

An overview of the conditional release program.

The conditional release program was created for the purpose of monitoring the most serious of repeat offenders, such as Inmate Foy. See s. 947.1405(8), Fla. Stat. (requiring intensive supervision of conditional releasees because of their threat to public safety); Duncan v. Moore, 754 So. 2d 708, 710 (Fla. 2000), *citing* Rivera v. Singletary, 707 So. 2d 326, 327 (Fla. 1998). For qualified inmates, placement on conditional release supervision is automatic and mandatory, as opposed to placement on probation or community control, which are court-imposed sanctions in lieu of incarceration. See s. 947.1405(2), Fla. Stat. (directing mandatory placement on conditional release supervision, stating that a qualified inmate "shall, upon reaching the tentative release date" be "released under supervision"). See also e.g., chapter 948, Fla. Stat. Conditional release supervision is not a function of the sentencing court, but is instead a statutory requirement for certain inmates. See Rivera, 707 So. 2d at 327 (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").

Administration of the conditional release program, including modification or deletion of a condition imposed by the Commission, is a matter exclusively within the jurisdiction of the Commission. See ss. 947.141, 947.1405, Fla. Stat. The Commission is an agency created within the executive branch. See s. 20.32, Fla. Stat. The State Constitution gives the Commission, not the courts, the power to make parole and other post-prison release program decisions, including conditional release. See Article IV, section 8(c), Fla. Const. See also Harvin v. State, 690 So. 2d 652 (Fla. 1st DCA 1997); Mayes v. Moore, 827 So. 2d 967 (Fla. 2002) (holding that the Commission's authority derives from the State Constitution and not the legislature). Pursuant to s. 947.1405(2), Fla. Stat., only the Commission may "determine whether the terms and conditions of such release have been violated[.]" In State. Fla. Parole Comm'n v. Kendrick, 866 So. 2d 1290 (Fla. 4th DCA 2004), the Fourth District Court of Appeal set aside a trial court's attempt to terminate a term of supervision under the Commission's authority. In setting aside the trial court's action, the Fourth District Court of Appeal noted that the trial court's action "divested the Commission, a part of the executive branch, from its supervisory authority in violation of the separation of powers doctrine." Id. at 1291, *ref. Marsh v. Garwood*, 65 So. 2d 15, 21 (Fla. 1953) and Singletary v. Duggins, 724 So. 2d 1234 (Fla. 3d DCA 1999).

Separation of powers prohibits judicial intervention at the trial court level in conditional release proceedings.

Under the separation of powers doctrine, a court may not direct an executive agency on the performance of executive functions. See Fla. Const. art. II, §III; State v. Turnpike Auth., 89 So. 2d 653 (Fla. 1956) (courts will not interfere with the fair judgment and findings of those who execute delegated executive authority). When a trial court enters an order modifying or deleting a condition of conditional release supervision imposed by the Commission, it infringes upon the Commission's executive authority. See Singletary v. Benton, 693 So. 2d 1119, 1120-21 (Fla. 4th

DCA 1997) (where statute authorizes the Department to regulate inmate visitation, the court lacks subject matter jurisdiction to grant visitation rights to an inmate because such order would usurp the Department's statutory authority and violate separation of powers doctrine).

CONCLUSION

The Commission respectfully moves to intervene in the instant matter, for the limited purposes set forth in this motion. Specifically, the Commission respectfully moves this Court to vacate its February 13, 2024, Order Granting Motion to Modify Sentence. Recognizing the incredible workload of the judiciary, the Commission respectfully requests a timely resolution of these matters prior to Inmate Foy's release from prison to conditional release supervision.

The issues raised in the instant motion are ones of law and not fact and are suitable for disposition upon written memoranda, and the Commission respectfully moves this Court to so dispose of the matter. The Commission's headquarters and all its legal staff are located in Tallahassee and travel to Duval County to attend a hearing would be costly, time consuming, and contrary to the goal of all state employees to curtail state expenses where possible. If, however, this Court deems a hearing necessary, the Commission respectfully requests permission to appear at the hearing telephonically, by Zoom, or by another accessible digital platform.

Respectfully submitted,



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E: fcorlegal@fcor.state.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was E-FILED with copies to ELIZABETH CAROLINE BROWN, Assistant State Attorney, Office of the State Attorney, Fourth Judicial Circuit, E: lcbrown@coj.net, sao4duvalcriminal@coj.net; and JANET JOHNSON, Janet E. Johnson, P.A., Attorney for Inmate Foy, E: info@janetejohnsonlaw.com, jeannie@janetejohnsonlaw.com, on this, the 16th day of FEBRUARY, 2024.



RANA WALLACE