

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

ORESTES RODRIGUEZ,

Petitioner,

v.

FLORIDA PAROLE COMMISSION,

Respondent.

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

CASE NO. 1D07-5924

Opinion filed May 27, 2008.

Petition for Writ of Certiorari -- Original Jurisdiction.

Orestes Rodriguez, pro se, Petitioner.

Kim Fluharty, General Counsel, and Sarah J. Rumph, Assistant General Counsel,
Florida Parole Commission, Tallahassee, for Respondent.

PER CURIAM.

Orestes Rodriguez seeks review of an order of the circuit court denying his petition for writ of mandamus, in which he challenged the Parole Commission's computation of his presumptive parole release date.

Of the four arguments presented by petitioner, we find merit in two. First, Rodriguez is correct in his assertion that the Commission erred in assessing a salient factor score of one point, based on a finding that he was between 18-25 years of age at the time of the offense which led to his first incarceration. The Parole Commission assessed this point based on the fact that Rodriguez was 23 years old at the time he committed the offense for which he is presently incarcerated. Petitioner asserts and the Parole Commission does not dispute that he has no prior criminal record that resulted in incarceration. As we held in Battis v. Florida Parole Commission, 386 So. 2d 295 (Fla. 1st DCA 1980), where that is the case, the appropriate score is zero points, since under the Commission's rules, the salient factor at issue is to be "calculated on the inmate's criminal record." See Fla. Admin. Code R. 23-21.007,.

Secondly, we likewise concur with petitioner that the Commission failed to demonstrate the existence of sufficient evidence to justify its determination that additional aggravation was warranted based on the conclusion that petitioner committed his offense for pecuniary gain. Under rule 23-21.010(1), the Commission may render a decision outside the matrix time range based on "any competent and persuasive evidence relevant to aggravating or mitigating circumstances...." See also Taylor v. Florida Parole and Prob. Comm'n, 543 So. 2d 367 (Fla. 1st DCA 1989) (competent and persuasive evidence relevant to the aggravating or mitigating

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Accordingly, the petition for writ of certiorari is granted, the circuit court's order denying mandamus relief is quashed, and the matter is remanded for further proceedings consistent herewith.

WOLF, THOMAS, and ROBERTS, JJ., CONCUR.

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