Florida Law Review

Volume 49 | Issue 1 Article 6

January 1997

Just Not Fair: An Analysis of Florida's Retroactive Revocation of Early Prison Release Cards

Jonathan W. Newlon

CASE COMMENTS

JUST NOT FAIR: AN ANALYSIS OF FLORIDA'S RETROACTIVE REVOCATION OF EARLY PRISON RELEASE CREDITS

Calamia v. Singletary,
686 So. 2d 1337 (Fla. 1996)*

*Jonathan W. Newlon***

Petitioners are two Florida prison inmates serving sentences for second-degree murder.[1] Each petitioner asserted that two Florida statutes[2] violated the Ex Post Facto Clauses of the United States Constitution[3] and the Florida Constitution,[4] by retroactively revoking petitioners' awards[5] of early prison release days designated, "provisional credits"[6] and "administrative gain-time."[7] One petitioner sought a writ of mandamus to restore his revoked awards, and the other sought a writ

---

* *Editor's Notes*: This case comment received the George W. Milam Outstanding Case Comment Award for Spring 1997.

Prior to publication of this case comment, the United States Supreme Court vacated the Supreme Court of Florida decision upon which the comment is based. 117 S. Ct. 1309 (1997). Subsequently, the Supreme Court of Florida reversed its position on the issue, and granted the petitioners the requested writs. 694 So. 2d 733 (Fla. 1997). Although the Supreme Court of Florida decided to reinstate the petitioners' credits, the court did so in an extremely cursory opinion. It is our hope, therefore, that the legal analysis found in this case comment will contribute to the molding and articulation of Ex Post Facto Clause jurisprudence in Florida.

** With love and gratitude, I dedicate this comment to my wife Cathy, and to my daughters Amanda, Olivia, Alexandra, and Rebecca.

1. Calamia v. Singletary, 686 So. 2d 1337, 1338 (Fla. 1996).

2. FLA. STAT. § 944.278 (1995); FLA. STAT. § 944.277 (Supp. 1992) (repealed 1993).

3. U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . ex post facto Law. . . .").

4. FLA. CONST. art. I, § 10 ("No . . . ex post facto law . . . shall be passed.").

5. In conjunction, these statutes excluded certain classes of convicts—including murderers, like petitioners—from receiving provisional credits, and revoked from these classes all previously awarded provisional credits and administrative gain time. *See* FLA. STAT. § 944.278 (1995); FLA. STAT. § 944.277 (Supp. 1992). On the date of revocation, Calamia and Hock had accumulated 420 and 360 days of credit, respectively. *Calamia*, 686 So. 2d at 1338.

6. FLA. STAT. § 944.277 (1995).

7. FLA. STAT. § 944.276 (1987) (repealed 1987); *see Calamia*, 686 So. 2d at 1338 ("Because Calamia and Hock had been convicted of second-degree murder, their provisional credits were cancelled.").

of habeas corpus to effect his release from prison.[8] Respondent, Secretary of the Florida Department of Corrections, contended that the retroactive elimination of such credits and gain time violated neither constitution because the early release days were intended to be used by the Department of Corrections to alleviate prison overcrowding,[9] an administrative matter.[10] Respondent posited that the statutes were not a quantifiable part of petitioners' sentences and were procedural in nature;[11] therefore, the statutes were not subject to ex post facto scrutiny.[12] The Supreme Court of Florida consolidated consideration of the two petitions,[13] and HELD, that the statutes did not violate ex post facto prohibitions because the statutes were procedural in nature[14] and affected credits that were wholly unrelated to petitioners' sentences.[15]

As a general proposition, an ex post facto law is one that is passed "after the fact."[16] A prohibition on this type of law is found expressly in the United States Constitution,[17] but American courts have noted that ex post facto considerations were present even before America won its independence.[18] From an early point in American legal history, courts have found two major reasons to forbid ex post facto laws: prevention of arbitrary and vindictive legislation and provision of fair warning of

---

8. *Calamia*, 686 So. 2d at 1338. Hock sought the writ of mandamus, while Calamia sought the writ of habeas corpus. *Id.*

9. *See id.* at 1338-39. *See generally* FLA. STAT. § 944.277 (1995); FLA. STAT. § 944.276 (Supp. 1992) (repealed 1993). These statutes provided for the Secretary of the Department of Corrections to distribute provisional credits and administrative gain time when the prison population reached 98% capacity.

10. *See Calamia*, 686 So. 2d at 1338-39 (citing Blankenship v. Dugger, 521 So. 2d 1097, 1098-99 (Fla. 1988)). In *Blankenship*, the Supreme Court of Florida explicitly stated that gain time tied to prison population was solely for the administrative convenience of the Department of Corrections). *Blankenship*, 521 So. 2d at 1098-99.

11. *See Calamia*, 686 So. 2d at 1339.

12. *See id.* at 1340.

13. *Id.* at 1338. Petitioner Hock sought from the court a writ of mandamus that would require the Secretary of the Department of Corrections to reinstate Hock's revoked credits and gain time. On the same facts, Hock had previously been denied a writ of habeas corpus by the Eleventh Circuit Court of Appeals. Hock v. Singletary, 41 F.3d 1470, 1471 (11th Cir. 1995). Petitioner Calamia's petition for a writ of habeas corpus had previously been denied by the Florida Supreme Court. Calamia v. Singletary, 645 So. 2d 450, 450 (Fla. 1994). Subsequently, the United States Supreme Court vacated denial of Calamia's petition and remanded the case for reconsideration. Calamia v. Singletary, 514 U.S. 1124 (1995).

14. *Calamia*, 686 So. 2d at 1340.

15. *Id.*

16. Collins v. Youngblood, 497 U.S. 37, 41 (1990).

17. U.S. CONST art. I, § 10, cl. 1.

18. *See* Miller v. Florida, 482 U.S. 423, 429 (1987) (quoting Calder v. Bull, 3 U.S. (Dall.) 386, 391 (1798) (Chase, J.)). The term "ex post facto" was in use before the American Revolution. *See id.*

the effect of laws.[19] With these aims in mind, American courts have molded ex post facto jurisprudence.[20]

The United States Supreme Court furthered these objectives in *Weaver v. Graham*,[21] which marked Florida's introduction into the melee of ex post facto challenges to denial of gain time.[22] In *Weaver*, the State of Florida had enacted a statute that altered the amount of gain time an inmate could earn for good behavior.[23] This law was passed after the petitioner's trial,[24] and was retroactively applied to the petitioner, who challenged the application as a violation of the Ex Post Facto Clause.[25] The petitioner in *Weaver* asserted that the new statute would increase his sentence by reducing the amount of gain time he could receive.[26] The State of Florida contended, however, that the gain time was procedural in nature because it was never technically a part of the petitioner's sentence,[27] and therefore, did not implicate the Ex Post Facto Clause.[28]

The *Weaver* Court flatly rejected the contention of the State.[29] Although the Court recognized that purely procedural laws were not subject to ex post facto challenge,[30] the *Weaver* majority firmly established that seemingly procedural laws could be subject to ex post facto proscriptions because "the effect, not the form, of the law . . . determines whether it is *ex post facto*."[31] If the law was retroactive and worked to petitioner's disadvantage, then the law transgressed ex post facto proscriptions.[32] Following this rationale, the *Weaver* Court found that it was unnecessary for the gain time to be tied to the sentence

---

19. *Id.* at 429-30 (citing Weaver v. Graham, 450 U.S. 24, 28-29 (1980); *Calder*, 3 U.S. (Dall.) at 389).

20. *See, e.g., Weaver*, 450 U.S. at 28-29 (noting that the goals of governmental restraint and fair warning were intended by the Framers when the Ex Post Facto Clause was drafted).

21. 450 U.S. 24 (1981).

22. *See id.* at 25 (presenting an ex post facto challenge to a statute that had the effect of reducing the amount of early release time for good behavior that the petitioner could earn).

23. *See id.* at 25 & n.1. The newer statute reduced by 40% the amount of gain time an inmate could earn for good conduct. *See id.*; *see generally* FLA. STAT. § 944.275 (1995).

24. *See Weaver*, 450 U.S. at 25-27.

25. *Id.* at 27.

26. *See id.* at 27 & n.6 (implying that, although the statute was technically applied prospectively, it reduced the amount of gain time the petitioner would have earned under the statute effective when the crime was committed).

27. *Id.* at 31.

28. *See id.* (noting the respondent's contention that because the statute was not retrospective, no ex post facto issue was raised).

29. *See id.* at 31-32.

30. *See id.* at 29 n.12.

31. *Id.* at 31.

32. *See id.* at 29 (citing Lindsey v. Washington, 301 U.S. 397, 401 (1937)).

imposed.[33] The constriction of the petitioner's opportunity to earn early release proved that a substantial right was altered by the retroactive application of the new law to the petitioner.[34] Thus, the Court determined that the statute violated ex post facto principles.[35]

Despite the decision of the United States Supreme Court in *Weaver*, the Supreme Court of Florida subsequently heard a number of cases in which it held that certain early release statutes could be retroactively altered.[36] *Dugger v. Rodrick*[37] was one in a series of Supreme Court of Florida cases upholding statutes that denied inmates convicted of certain offenses the opportunity to receive provisional credits.[38] In *Rodrick*, an inmate challenged such a statute because it was enacted after commission of his crime, and it excluded him from provisional credit eligibility.[39] The inmate contended that the statute was an unconstitutional ex post facto law, as defined by the *Weaver* Court.[40]

The court rejected this contention on two alternative grounds.[41] First, the court concluded that provisional credits were distinguishable from the conduct-related gain time addressed in *Weaver*.[42] Conduct-related gain time, according to the *Rodrick* court, was quantifiable because it depended solely on an inmate's good behavior, which is controlled exclusively by the inmate.[43] Provisional credits, however, were not reasonably expected by an inmate because they were tied to highly variable prison population levels.[44] Second, the court determined

33. *Id.* at 32.

34. *Id.* at 35-36. Although the newer statutory scheme increased the overall amount of gain time an inmate could receive, it allowed the Department of Corrections significantly more discretion in awarding gain time than it possessed under the older statute. *See id.* at 35 & n.19.

35. *Id.* at 36.

36. *See, e.g., Blankenship*, 521 So. 2d at 1099 (differentiating between "good time" gain time as addressed in *Weaver* and gain time awarded as a result of prison overcrowding, and stating that "good time" gain time automatically accrues to inmates if they are well behaved, while administrative gain time is never guaranteed to accrue to inmates).

37. 584 So. 2d 2 (Fla. 1991).

38. *See, e.g., Blankenship*, 521 So. 2d at 1099. In several cases heard approximately ten years after the Supreme Court's decision in *Weaver*, the Florida Supreme Court made efforts to distinguish *Weaver*, and to find as baseless ex post facto challenges to legislative denial of various types of early release credits. *See, e.g., id.* (finding a distinction of legal significance between the automatically accruing gain time in *Weaver* and the contingent gain time being dealt with by the court).

39. *Rodrick*, 584 So. 2d at 2.

40. *See id.* at 4 (noting that respondent attempted to liken provisional credits to the "good time" gain time addressed by the *Weaver* Court).

41. *See id.* at 3-4.

42. *Id.* at 3 (quoting *Blankenship*, 521 So. 2d at 1099).

43. *See id.* at 4.

44. *Id.* The court noted that the basic difference between the two types of gain time was

that provisional credits were instituted only to assist the Department of Corrections in maintaining legal prison population levels.[45] The statutes were, therefore, procedural in nature[46] and were not subject to an ex post facto challenge.[47]

Shortly after *Rodrick*, the United States Supreme Court revisited the ex post facto issue in *California Department of Corrections v. Morales*.[48] The *Morales* Court approved a California statutory amendment[49] that provided for a parole board to hold hearings to evaluate certain classes of prisoners[50] for parole suitability.[51] The board was granted discretion in determining whether a prisoner within an affected class would be suitable for parole in subsequent years.[52] On a finding that the prisoner had a low likelihood of future parole suitability, the board could defer the next parole hearing for up to three years.[53] The board found that the respondent, a prisoner who belonged to an affected class,[54] would not likely be suitable for parole in subsequent years, and accordingly deferred his next suitability hearing for the three-year maximum period.[55] The respondent objected, asserting an ex post facto violation because the statute in effect at the time of his crime guaranteed annual suitability hearings.[56]

In the course of upholding the statute, the *Morales* Court clarified the standard for ex post facto interpretation.[57] Specifically, the Court stated that ex post facto classification was limited to those laws that retroactively either alter the definition of a crime or increase the penalty for

---

the connection—or lack thereof—to the sentence. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* (citing Dobbert v. Florida, 432 U.S. 282, 297 (1977)). The court stated that a law, even if it works to the detriment of a prisoner, is not ex post facto if it is found to be strictly procedural in nature. *Id.*

48. 514 U.S. 499 (1995).

49. CAL. PENAL CODE § 3041.5(b)(2) (West Supp. 1997).

50. Penal Code § 3041.5(b)(2) allowed the deferral of hearings for prisoners who had been convicted of more than one unlawful killing. *Morales*, 514 U.S. at 503.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* Respondent was twice convicted of murder in California; the second murder took place while respondent was out on parole for the first murder. *Id.*

55. *See id.* (stating that the board determined that respondent would not be suitable for parole within the subsequent two years).

56. *See id.* (citing 1977 Cal. Stat. 165, § 46).

57. *Id.* at 504 (citing Collins v. Youngblood, 497 U.S. 37, 41 (1990)). In *Collins*, the United States Supreme Court tried to remedy any confusion surrounding ex post facto interpretation by relegating the ex post facto definition to that which was intended at the time of the framing of the Constitution. *Collins*, 497 U.S. at 41-43.

criminal action.[58] The Court immediately concluded that the statute in question was retroactive, but that it did not alter the definition of the crime for which respondent was incarcerated.[59]

The more involved inquiry for the *Morales* Court was whether the newer statute increased the punishment for the criminal acts of the respondent.[60] In its analysis, the Court stated that the constitutionality of the statute rested on whether the statute produced a sufficient risk of increasing the penalty attached to a crime.[61] To assess the sufficiency of the risk, the *Morales* Court considered two variables: the likelihood that the respondent would be found suitable for release, and the likelihood that the actual term of confinement would be affected for any prisoner whose hearing was deferred.[62]

The Court found that there was little chance that the actual prison time for any convict would be affected by the amendment.[63] To support this finding, the Court considered statistical data[64] and determined that the respondent belonged to a class of convicts for whom parole suitability was highly unlikely.[65] In addition, the Court looked at the heavy evidentiary burden required for the board to defer a hearing and at the ability of convicts to seek expedited hearings during deferral periods.[66] In effect, the amendment took away nothing from the respondent.[67] He was unlikely to be suitable for release, but upon becoming suitable, he would not be denied a forum in which to plead

58. *Morales*, 514 U.S. at 504.

59. *See id.* at 505 (stating that the only question before the Court was whether the mendment increased the punishment attached to the respondent's crime).

60. *See id.* at 508-13. The Court dedicated approximately two lines of its opinion to dispensing with the possibility that the amendment changed the definition of a crime, but dedicated several pages of its opinion to determining whether the amendment increased punishment for a crime. *See id.*

61. *Id.* at 509 (citing Beazell v. Ohio, 269 U.S. 167, 171 (1925)). The *Beazell* Court stated that the question of what legislative action was sufficient to trigger the Ex Post Facto Clause was a matter of degree. *Beazell*, 269 U.S. at 171.

62. *See Morales*, 514 U.S. at 511-13 (analyzing the effect of the statute on respondent and convicts similarly situated to respondent).

63. *See id.* at 512.

64. *See id.* (relying on California Supreme Court statistics that stated that 90% of all inmates are found unsuitable for parole at their initial, and 85% are found unsuitable at subsequent hearings).

65. *Id.* at 510-11.

66. *See id.* at 512 (noting that the parole board must make a full hearing and review of relevant facts and state bases for its findings).

67. *See id.* at 512-13 (stating that the hearings are likely to be fruitless, even without referrals; that administrative appeal processes are farreaching; and that expedited hearings can remove all possibility of harm due to deferral).

his case.[68] Therefore, the degree of risk of increased punishment was insufficient to render the amendment an ex post facto law.[69]

The instant court briefly discussed *Morales*,[70] but relied on its own precedent to classify as procedural the revocation of provisional credits and administrative gain time.[71] The instant court also stated that the early release days were in no way related to the crimes committed by the petitioners.[72] Cursory application of the *Morales* rule did not result in a finding of an ex post facto violation because the court decided that the penalties for the petitioners' crimes were not increased.[73] Indeed, the instant court concluded that the petitioners' penalties were wholly unaffected.[74]

The dissent, however, contended that the Ex Post Facto Clause had been violated.[75] In its analysis, the dissent gave credence to the *Weaver* rationale that the seemingly procedural form of the statutes did not free the statutes from scrutiny.[76] Because the dissent could discern no difference between administrative and conduct-related—or incentive—gain time,[77] it was compelled to examine the statutes in light of *Weaver* and *Morales*.[78] Thus, it found the statutes unconstitutional as applied to petitioners.[79]

Both the majority[80] and the dissent,[81] however, realized that a broader issue of law and order underlay the conflict in the instant case. While the divergent outcomes of the two analyses rested on terms like "procedure," "substance," and "sufficient risks,"[82] both the majority and the dissent examined the greater question of societal justice.[83] The court addressed this issue in reference to an earlier case, in which the same statutes challenged in the instant case were upheld because, among

---

68. *See id.* at 513.
69. *Id.* at 514.
70. *Calamia*, 686 So. 2d at 1340.
71. *See id.* at 1338-39. The instant court cited to a litany of Florida Supreme Court cases that supported its proposition that provisional credits and administrative gain time are procedural in nature. *See id.*; *see, e.g.*, Griffin v. Singletary, 638 So. 2d 500 (Fla. 1994).
72. *Calamia*, 686 So. 2d at 1340.
73. *See id.*
74. *See id.*
75. *Id.* at 1341 (Harding, J., dissenting).
76. *Id.* at 1344 (Harding, J., dissenting) (quoting *Weaver*, 450 U.S. at 32).
77. *Id.* (Harding, J., dissenting).
78. *See id.* at 1342-44 (Harding, J., dissenting).
79. *Id.* at 1345 (Harding, J., dissenting).
80. *See id.* at 1339 (quoting Griffin v. Singletary, 638 So. 2d 500, 501-02 (Fla. 1994)).
81. *See id.* at 1342 (Harding, J., dissenting).
82. *See generally id.* at 1337-45.
83. *See id.* at 1339; *id.* at 1342 (Harding, J., dissenting).

other reasons, the State had a strong interest in protecting citizens from dangerous criminals.[84] The desire of the legislature to keep certain classes of offenders from obtaining early release was, therefore, a crucial issue for the instant court to consider.[85]

By denying the petitions, the instant court implicitly promoted this legislative goal.[86] Thus, the court maintained its historical position of allowing the State to cancel early release credits at will.[87] Further, the instant court solidified a process by which the legislature could enact laws that retroactively work to the detriment of criminal offenders.[88] Under the rule set forth by the instant court,[89] all criminal actors are subject to retroactive legislation because, to retroactively revoke rights, the legislature needs only to classify the legal change as procedural,[90] or to revoke rights that vest only upon the occurrence of a highly speculative variable.[91] According to the instant court, such legislative action would not violate the guidelines set forth in *Morales*.[92]

The instant court fit the revocation of early release credits into the class of statutory changes that do not violate ex post facto principles.[93] In so doing, the instant court granted considerable deference to its own precedent.[94] The court explicitly followed *Rodrick* by labeling the contested statutes procedural,[95] but failed to analyze the case in light of the principles articulated in recent years by the United States Supreme Court.[96] Specifically, the analysis of the instant court fell short in its finding that the challenged statutes were strictly procedural.[97]

---

84. *See id.* at 1339-40 (*citing Griffin*, 638 So. 2d at 501-02).

85. *See id.* In previous cases dealing with ex post facto challenges to gain time restrictions, the Supreme Court of Florida has recognized and approved the desire of the legislature to keep certain offenders away from society. *See, e.g., Griffin*, 638 So. 2d at 501-02.

86. *See Calamia*, 686 So. 2d at 1338; *see also supra* note 5 (stating that petitioners were denied a number of early release credits).

87. *See supra* note 38 and accompanying text.

88. *See Calamia*, 686 So. 2d at 1340 (stating that a law's disconnection with criminal penalties and classification as procedural will exempt such law from ex post facto proscriptions).

89. *See id.*

90. *See id.* at 1339.

91. *See id.*

92. *See id.* at 1340 (stating that the *Morales* holding supports the precedent upon which the instant court relied).

93. *See id.* (stating the position that provisional credits and administrative gain time are procedural in nature and are not vulnerable to ex post facto attack).

94. *See id.* at 1338.

95. *Id.* at 1339.

96. *See Morales*, 514 U.S. at 510-13; *see also Weaver*, 450 U.S. at 31-35 (recognizing that laws called procedural do not always leave substance untouched and treating the laws according to their effect).

97. *Compare Rodrick*, 584 So. 2d at 4 *with Weaver*, 450 U.S. at 29 n.12 (illustrating the

Such classification of the statutes resulted from the court's failure to apply the ex post facto determinants pronounced by the Supreme Court in *Weaver* and *Morales*.

The instant court failed to apply the reasoning from *Weaver* to determine whether the statutes at issue were appropriately considered procedural.[98] The finding of the court that the statutes were disconnected from petitioners' sentences, and were therefore procedural, is irreconcilable with *Weaver*.[99] Under *Weaver*, it is immaterial whether the statutory alteration is technically a part of the sentence;[100] the "effect, not the form, of the law" determines its characterization.[101] The effect on petitioners in the instant case is the loss of over two years of early release credits.[102] Thus, consideration of the *Weaver* rationale may refute the instant court's classification of the laws as procedural.[103] If the statutes lose that shield, they may be ex post facto according to the *Weaver* rationale;[104] indeed, the dissent contends exactly that point.[105]

Alternatively, the court could have utilized the process described in *Morales* to determine whether the statutes were ex post facto.[106] The instant court could have found that the statutes at issue created a sufficient risk of increasing the punishment attached to petitioners' crimes. The high likelihood of petitioners' receipt of benefits under the prior statutory scheme is evidenced by the fact that petitioners had already been awarded provisional credits and administrative gain time.[107] Undeniably, petitioners will spend more time in prison if the

---

difference in depth of analysis of classification of statutes as strictly procedural).

98. *See Weaver*, 450 U.S. at 29 & n.12.

99. *See id.* at 32 (stating explicitly that ex post facto principles will apply even if a statute alters punitive measures outside the sentence).

100. *See id.*

101. *Id.* at 31; *see supra* note 31.

102. *Calamia*, 686 So. 2d at 1338; *see supra* note 5.

103. *See Calamia*, 686 So. 2d at 1344 (Harding, J., dissenting) (contending that, under *Weaver*, a seemingly procedural law can be ex post facto if it affects a substantial right, and finding that provisional credits affect the substantive right of being freed from prison).

104. *See Weaver*, 450 U.S. at 36. If the petitioners' loss of early release credits is found to be a burden, then the punishment is likely more onerous under the new statute than under the old, thereby violating the rule set forth in *Weaver*. *See id.*

105. *Calamia*, 686 So. 2d at 1344 (Harding, J., dissenting) (using the language from *Weaver* to support its finding of an ex post facto violation).

106. *See Morales*, 514 U.S. at 510-13 (applying a two-part test to determine whether the statutory amendment presents a sufficient risk of increasing criminal punishment).

107. *Compare Calamia*, 686 So. 2d at 1338 *with Morales*, 514 U.S. at 512. Respondent in *Morales* was determined to be a member of a class for whom release on parole is highly unlikely, but petitioners in the instant case, evidenced by their amassing of a combined total of 780 days of credit, exhibited a high likelihood of receiving provisional credits.

new statutes are applied to them.[108] Days of liberty are taken away, and, according to the instant court, petitioners have no redress.[109] The instant court could have found that an application of *Morales* rendered the Florida statutes unconstitutional.[110]

The instant court's reliance upon its own precedent and its failure to perform a deep analysis of the question before it[111] have clouded the definition attached to the Ex Post Facto Clause. Not only did the court create a morass of difficulties through which Florida's lower courts must navigate, but it also afforded the legislature great latitude in passing retroactive laws.[112] Although the goals of the legislature may be seen as laudable by laypersons and legal authorities alike,[113] close scrutiny reveals the possibility of flaws in the process by which the court permitted accomplishment of those goals.[114] Fortunately, the United States Supreme Court recently has provided guidance for Florida's ex post facto jurisprudence,[115] and, the Supreme Court of Florida, if successful, will establish a rationale that strikes a satisfactory balance between society's need for justice and the criminal's need for fairness.

108. *Calamia*, 686 So. 2d at 1343 (Harding, J., dissenting); *see supra* note 5.

109. *See Calamia*, 686 So. 2d at 1341 (holding that provisional credits and administrative gain time could be taken away by the legislature and denying relief to petitioners).

110. *See supra* note 106 (describing the *Morales* test by which the ex post facto challenge was decided).

111. *See Calamia*, 686 So. 2d at 1340 (stating abruptly that provisional credits were unrelated to the penalties for petitioners' crimes and were, therefore, procedural in nature).

112. *See id.* at 1339-40 (reiterating *Rodrick*'s emphasis on procedure, and holding that a procedural law, creating a benefit based on a highly contingent occurrence, is not subject to ex post facto proscriptions).

113. *See id.* at 1339 (citing *Griffin*, 638 So. 2d at 501-02) (concluding that the state has an interest in protecting society from dangerous felons); *see also id.* at 1341 (Harding, J., dissenting) (agreeing with the goals of the legislature).

114. *See supra* notes 98-110 and accompanying text.

115. *See* Lynce v. Mathis, 117 S. Ct. 891 (1997).