

JUSTIFIED?

By James W. Harkleroad

In 1972, in the landmark case of Furman v Georgia, the United States Supreme Court ruled that the way that death sentences had been handed down up to that time was unconstitutional.

So it was that every prisoner on death row at that time suddenly found that they were incarcerated under an illegal sentence.

The question that fell to the various state then became: What shall these individuals be sentenced to?

The Florida Supreme Court decided to "resentence" those individuals who had not yet been resentedenced by their respective trial courts to "natural life".

In abrogating to itself this "resentencing" procedure, however, the Florida Supreme Court ignored one basic point.

Under the Florida Rules of Criminal Procedure, Florida Legislative Law and Florida appellate court case law, sentencing is to be done by the trial court.

That includes "resentencing".

The question most people will have is - So what?

Beyond the fact that the Florida Supreme Court violated the law (which is why people end up in prison), their violation of the law created a number of other illegal acts.

I will use my own case as an example.

- (1) Denied the right to speak at a sentencing hearing.
- (2) Denied the right to ask the trial judge for credit for the time served in the county jail before the original sentencing. (This credit was made mandatory at a later date.)
- (3) Denied the right to credit for the time served on the previous, illegal, sentences. (When an individual is resentedenced the new sentence starts on the day of the resentedencing. The trial court - not the Department of Corrections - is to provide an order giving credit for the time previously served.)

(4) Denied "Good Time Credit" for the county jail time and the time served on the previous illegal sentences. (Gain time credit is recorded even for those with an indeterminate sentence in case the sentence is later changed to a number of years.)

(5) Denied the right to seek appellate review of the new "sentence" because my original appeal was still before the Florida Supreme Court.

(6) Denied the right to have accurate information from the trial court and the sheriff's department on the documents required by law justifying my incarceration.

(7) Denied a real, legal, sentence. "Natural life" was a nonexistent (illegal) sentence at that time.

(8) Incarcerated for committing a nonexistent crime. (The Florida Supreme Court ruled that in the absence of a "capital sentence" there was no "capital offense". The Legislature defined first degree murder as a "capital" crime at that time.)

This last point created special problems.

Because there was no "capital offense" to be convicted of ALL of those who had received simply a "life" sentence for committing a "capital" crime ~~were ALSO~~ before FURMAN were ALSO incarcerated illegally. Because when a statute is determined to be illegal it is illegal from the day it first came into effect - not simply from the day that it is ruled to be illegal.

In other words, Florida had 100 prisoners on death row who were incarcerated for committing nonexistent crimes. PLUS an UNKNOWN NUMBER of prisoners serving life sentences for committing the very same nonexistent crimes.

(The Florida Supreme Court justified the issuing of a "life" sentence to myself and others on the grounds that it was the only sentence left for those who had been convicted of committing a capital crime. But legally there was no sentence of any kind when there was no capital crime for a person to be convicted of.)

You can guess what Florida has done.

Make believe that the problem does not exist by refusing to acknowledge its existence. Enough time passes all of the

affected individuals will have died.

Problems solved.

Except, of course, for the fact that Florida has knowingly and deliberately held people in prison illegally.

There are those, of course, who will claim that this is all "technical" stuff and that those who have been incarcerated illegally were guilty of committing serious crimes.

To which I would point out that it is the "technical" rules that everybody is supposed to follow all of the time which help to keep innocent people out of prison. That when the government is permitted to abandon the "rule of law" then the government has "rule by humans".

And all we need to do is look at countries like Russia, China and others to see what "rule by humans" is like.

I would further point out that at least two (2) of those on death row with me at that time had their convictions overturned. In other words - they were found to be innocent of committing any crime.

But what do the reader's of this archive have to say?

Is Florida justified in breaking the law to punish citizens who have been convicted of breaking the law?

(The author is a former death row prisoner who has been ~~incarcerated~~ incarcerated in FL since 1971.)