STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DAVID MORAN,

Petitioner,

vs. Case No. 17-5785

STATE BOARD OF ADMINISTRATION,

Respondent.
_____/

RECOMMENDED ORDER

Hetal Desai, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH), held a final hearing on February 20, 2018, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether, pursuant to section 112.3173, Florida Statutes (2017),[1/] Petitioner forfeited his Florida Retirement System Investment Plan account after he was found guilty by a jury of conspiracy to commit first degree murder.

PRELIMINARY STATEMENT

On August 11, 2017, Petitioner, David Moran, was found guilty by a jury of a first degree felony, "Conspiracy to Commit Murder," in violation of sections 777.04(3), (4)(a) and (4)(b), and 782.01(1)(a), Florida Statutes (conspiracy). The crime involved Petitioner--a former Florida Department of Corrections (DOC) employee--and other former and current DOC employees plotting to kill a former inmate.

On October 10, 2017, Respondent, the State Board of Administration (SBA), notified Petitioner that his rights and benefits under the Florida Retirement System Investment Plan had been forfeited based on the conviction of conspiracy. On October 13, 2017, Petitioner filed a timely Petition for Hearing in response to the SBA's letter and asserted the SBA's determination should be reversed. Petitioner requested a formal administrative hearing and asserted the crime for which he was convicted did not fall within the scope of section 112.3173(2)(e); and the conspiracy was not related to or associated with his employment at DOC, but rather related to his activity in the Traditional American Knights of the Ku Klux Klan (KKK) and, therefore, did not amount to a violation of the public trust.

On October 18, 2017, the SBA referred the matter to DOAH. The matter was assigned to an Administrative Law Judge and

noticed for a final hearing. After being continued once, a final hearing was noticed for February 20, 2018.

The parties filed a Joint Pre-hearing Stipulation and agreed to 11 facts, all of which have been incorporated into this Recommended Order.

A pre-hearing conference was held on February 13, 2018. The parties discussed, among other things, the joint pre-hearing stipulation and Petitioner's objections to SBA's exhibits. Specifically, the parties discussed the use of Petitioner's criminal trial transcript as evidence at the final hearing. Ultimately, the parties came to a resolution and agreed to allow the criminal trial transcript to be admitted, with the caveat that only the testimony portion of the transcripts cited to by the parties would be considered for the purposes of proposed recommended orders (PROs) and the recommended order. As a result, the undersigned has reviewed the criminal trial transcript, but has not considered the pretrial criminal documentation such as the arrest warrant, amended information, or Uniform commitment; or portions of the trial transcript reflecting voir dire, opening or closing arguments by counsel, or any sidebar discussions unless related to evidentiary rulings.

Petitioner was the only witness at the final hearing. Petitioner's Exhibits P1 through P16 were offered and accepted into evidence without objection; Respondent's Exhibits R1

through R5 and R7 through R18 were also offered and accepted, without objection. As mentioned above, Petitioner reserved his right to object to portions of the criminal trial transcript, Exhibit R6, but did not object to it in the entirety. As such, Exhibit R6 was also admitted into evidence.

The Transcript of the final hearing was filed on March 20, 2018. Petitioner requested and was granted two extensions for the parties to file their PROs. Petitioner did not timely file its PRO, but because there has been no objection to the late-filed PRO, it too has been considered. Respondent timely filed its PRO and it has been considered.

FINDINGS OF FACT

1. The Florida Retirement System (FRS) is a public retirement system as defined by Florida law. See § 121.021(3), Fla. Stat.

2. Petitioner was a state employee and a special risk class member of the FRS.

Work History

3. Petitioner was a 20-year DOC employee. Since 2004, he served as a sergeant at the Reception and Medical Center at Lake Butler, Florida (Center).

4. A sergeant is a supervisory position whose duties include the "care, custody and control of inmates."

5. Retaliating against an inmate is a violation of DOC policy and the oath administered to correction officers.[2/] Witnessing or having knowledge of a DOC officer's conspiracy to murder a former inmate, and failing to report that conspiracy would also be a violation of a DOC sergeant's duties. As explained by Petitioner, such conduct would be, "outside the guidelines. That's not the rules. That's not what [a DOC sergeant is] supposed to do."

Underlying Crime

6. On August 4, 2013, Thomas Driver, a DOC corrections officer who worked at the Center at the same time as Petitioner, was involved in an altercation with an inmate (referred to as Mr. Williams). During that altercation Mr. Williams bit Mr. Driver.

7. Charles Newcomb was a former DOC employee who knew Petitioner from the Center and also about Mr. Driver's incident with Mr. Williams. All of the DOC employees at the Center knew about the incident between Mr. Williams and Mr. Driver.

8. Based on information they gathered from working at the Center, Mr. Driver, Mr. Newcomb and Petitioner (collectively referred to as the conspirators) believed Mr. Williams had a contagious medical condition and intentionally bit Mr. Driver to infect him. After the incident Mr. Driver was subject to treatment for a possible infection.

9. Mr. Williams was African-American.

10. Although their race is not apparent from the record, in December 2014, the conspirators were members of a local chapter KKK.

11. Joe Moore, served as a Knighthawk for the KKK. A Knighthawk is the person responsible for security at KKK events and traditionally is responsible for the security and protection of the KKK Grand Dragon (the leader of the local KKK chapter).

12. Petitioner and his fellow KKK members (also referred to as "klansmen") knew that Mr. Moore was a veteran and had training as a sniper. Unbeknownst to the conspirators, however, Mr. Moore was a undercover informant for the Federal Bureau of Investigations (FBI).

13. Although Mr. Newcomb and Mr. Driver referred to each other and Mr. Moore as "Brother," they referred to and addressed Petitioner as "Sarge" based on his position as a DOC sergeant at the Center.

14. On December 6, 2014, Mr. Driver and Petitioner approached Mr. Moore at a KKK event. As they spoke, Mr. Newcomb stood nearby to ensure that the other klansmen would not interrupt or overhear the conversation. Mr. Driver and Petitioner showed Mr. Moore a picture of an African-American male. The picture was on an 8" x 10" piece of paper that looked as if it had been printed from a database. It was apparent to

Mr. Moore at the time that it was a picture of an inmate. After speaking with Petitioner and Mr. Driver, Mr. Moore believed they wanted his help to harm or kill Mr. Williams.

15. Mr. Moore immediately notified the FBI of his conversation with Petitioner and Mr. Driver. At the FBI's request, Mr. Moore began wearing a microphone and secretly, but legally, taping and transmitting his conversations with the conspirators.

16. Eventually, it was confirmed that the conspirators wanted Mr. Williams put "six-feet under." Mr. Driver explained to Mr. Moore the graphic nature of the altercation, his subsequent blood treatment as a result of Mr. Williams' attack, and the fact Mr. Williams served very little time for the attack before he was released on probation. Mr. Driver clearly wanted revenge.

> **Mr. Driver:** Yeah, it pissed me off. If I could I'd kick his fricking throat out.
>
> **Mr. Moore:** That's not necessary. . . . I'm all over it we're all over . . . how do you want [it] done?
>
> **Mr. Driver:** Well. I'm going to tell you like this: If it was me personally and I had another chance at him I'd stomp his larynx.

17. On January 30, 2015, Petitioner, Mr. Newcomb, and Mr. Moore met at a prearranged location and time to drive to the

area of Mr. Williams' home. Mr. Williams had been released and was no longer in custody at the Center.

18. Mr. Driver was intentionally absent from this drive so that he would not come under suspicion for the actions Petitioner and Mr. Newcomb were planning to take that night. In fact, based on his knowledge from working at the Center, Petitioner assured the group that Mr. Driver was working the night shift at the Center and, therefore, had an alibi.

19. Petitioner clearly knew the purpose of the drive was to attempt to kill Mr. Williams. Prior to the drive, Petitioner asked when they were going to "grab him" and discussed with the others whether he should bring his gun on the ride. He told the others that he had obtained the gun, a nine-millimeter, from "the guy that I work with." Petitioner also wanted to wear protective clothing because he knew, presumably from his work as a DOC sergeant at the Center, that Mr. Williams had a contagious infection or disease.

20. During the car ride, Petitioner discussed the best way to terminate Mr. Williams without raising suspicion. Mr. Newcomb suggested abducting Mr. Williams, injecting him with insulin, and leaving him near the water with a fishing pole. Petitioner said this would look suspicious unless Mr. Williams was known to go fishing.

21. The men also discussed how to dispose of Mr. Williams' body. Petitioner suggested a "complete disposal" by chopping up the body.

22. At some point that night Mr. Newcomb indicated a recent picture of Mr. Williams would be helpful; Petitioner agreed to "go to work and pull up [Mr. Williams'] picture."

23. When they arrived in Mr. Williams' neighborhood, Petitioner made numerous offensive and stereotypical remarks about African-Americans.

24. Neither Petitioner nor the others took any action against Mr. Williams the night of the January 30 drive; and Mr. Williams was never harmed.[3/]

25. On March 19, 2015, Mr. Moore met with Petitioner and showed him a staged picture of Mr. Williams' body lying on the ground in a pool of blood. Upon seeing the photo of what he believed was Mr. Williams' dead body, Petitioner laughed and stated, "I love it. F—king p-d on himself . . . good f-king job."

26. During that same meeting, Mr. Moore asked Petitioner if he was happy with the results. Petitioner seemed elated:

> **Mr. Moore:** And, we need to make sure that everybody was happy with it.
>
> **Petitioner:** Hell yeah . . . uh Brother I love you, man. . . . I will call [Mr. Driver] as soon as I get – dude you

> don’t know how happy . . . I love you, brother. I love you, brother. I love you brother.

27. At the final hearing, Petitioner claimed he did not intend to hurt Mr. Williams, but only went along with the others because he believed it was part of the KKK initiation process; and that he was entrapped by the FBI. He also argued he did not know the victim was Mr. Williams or that he was a former inmate. Petitioner’s assertions are not credible and his testimony is unbelievable for a number of reasons.

28. First, the evidence at the underlying criminal trial established the conspirators did not want KKK leaders to know about the plan to attack Mr. Williams. Petitioner admitted the KKK oath includes a promise not to commit acts of violence. These facts contradict the assertion that Petitioner was pretending to plan the death of an African-American (who coincidentally happened to be a former inmate) just to prove his loyalty to the KKK.

29. Second, although he claimed he was unaware of the purpose of the January 30 car ride or that Mr. Williams was a former inmate, the transcripts of the taped recordings clearly establish this is not true. In fact, Petitioner not only knew who the intended victim was, but knew he had attacked Mr. Driver and that he allegedly had an infectious disease.

30. Third, Petitioner’s testimony that he was a passive participant induced by the FBI informant into planning the death

of Mr. Williams is also implausible. Again, Petitioner offered to bring a gun along on the ride, offered advice on how to possibly set up the attack so that it looked like an accident, and suggested how to dispose of Mr. Williams' body. Petitioner's reaction to seeing Mr. Williams' body in the photo also contradicts any contention that he did not intend harm to Mr. Williams or that he did not derive any pleasure from his death.

31. Finally, Petitioner testified he was not racist. This was clearly contradicted by the statements he made about African-Americans during the January 30 car ride. Similarly, his testimony that he was a passive KKK member who only participated in its social aspects (i.e., picnics and "fellowship") was belied by his own acknowledgment that his wife did not want him to be a member of the KKK, and that he participated in cross-burnings.[4/]

32. On August 11, 2017, a jury found Mr. Moran guilty of Conspiracy to Commit Murder in the First Degree.[5/]

Findings of Ultimate Fact

33. The evidence clearly establishes there is a nexus between Petitioner's employment as a DOC correctional sergeant at the Center and the commission of the felony of conspiracy to commit murder.

34. Petitioner's actions were intentional and he knew his participation in the conspiracy was illegal.

35. Petitioner knowingly violated his obligation as a sworn correctional officer by participating in the conspiracy and not reporting the criminal activity committed by the other conspirators.

36. Petitioner defrauded the public from receiving the faithful performance of his duties as a DOC sergeant. The public had a right to expect that one entrusted with guarding inmates would not act as a violent vigilante to exact revenge for a fellow correctional officer.

37. Petitioner realized a profit, gain, or advantage from the commission of the crime in the form of self-gratification and comradery with and respect from Mr. Driver.

38. Petitioner used his power, rights, privileges, and the knowledge accessible to him through his work as a correctional officer to facilitate his crime.

CONCLUSIONS OF LAW

39. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

40. The FRS is a public retirement system as defined by Florida law, and the SBA's proposed action to forfeit Petitioner's FRS rights and benefits is subject to administrative review. See § 112.3173(5)(a), Fla. Stat.

41. Article II, section 8, Florida Constitution, titled "Ethics in Government," states in pertinent part:

> A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:
>
> * * *
>
> (d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

42. Section 112.3173 implements Article II, section 8, Florida Constitution, and is part of the statutory code of ethics for public officers and employees. The statute states in pertinent part:

> (1) INTENT.—It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.
>
> (2) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:
>
> * * *
>
> (e) "Specified offense" means:
>
> * * *
>
> 6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public

> officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position
>
> * * *
>
> (3) FORFEITURE.—Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

43. As the party asserting that Petitioner has forfeited his rights and benefits under the FRS pursuant to section 112.3173(3), the SBA bears the burden of proof in this proceeding. See Rivera v. Bd. of Trs. of Tampa's Gen. Emp't Ret. Fund, 189 So. 3d 207, 210 (Fla. 2d DCA 2016).

44. The statutory forfeiture provision at issue, section 112.3173(3), is not penal in nature. Therefore, the standard of proof in this proceeding is a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.; Combs v. State Bd. of Admin., Case No. 15-6633, 2016 Fla. Div. Admin. Hear. LEXIS 262, at *21 (Fla. DOAH May 10, 2016; SBA July 26, 2016).

45. Where, as here, the crime committed by the public officer is not a violation of a specific statute or type (as

defined in sections 112.3173(2)(e)1. through 5. or subsection 7.), the question is whether the employee's crime falls within section 112.3173(2)(e)6., which has been called the "catch-all" provision of the forfeiture statute. See Bollone v. Dep't of Mgmt. Servs., 100 So. 3d 1276, 1280 (Fla. 1st DCA 2012). To fall under this "catch-all" provision, the criminal act must be:

(a) a felony;

(b) committed by a public officer or employee;

(c) done willfully and with the intent to defraud the employee's public employer of the right to receive the faithful performance of the employee's duty;

(d) done to realize or obtain a profit, gain, or advantage for the employee or some other person; and

(e) done through the use of the power, rights, privileges, duties, or position of the employee's public employment. See Bollone, 100 So. 3d at 1280-81.

46. Ultimately, whether a particular crime falls under the "catch-all" provision "depends on the way in which the crime was committed." See Bollone, 100 So. 3d at 1280 ("this Court has held that the term 'specified offense' is defined by the conduct of the public official, not by the elements of the crime for which the official was convicted.").

47. There is no dispute Petitioner was a public employee when he committed the acts described above. There is also no

dispute Petitioner was found guilty of a felony by a jury. Thus, the first two criteria for section 112.3173(2)(e)6. are satisfied.

48. On the question of whether Petitioner defrauded the public or DOC, this requirement is satisfied if there is evidence of a "nexus between the crimes charged against the public officer and his or her duties and/or position." DeSoto v. Hialeah Police Pension Fund Bd. of Trs., 870 So. 2d 844, 846 (Fla. 3d DCA 2003). The nexus is satisfied where a state employees violates his or her duties as a public officer in failing to safeguard the public's faith in that public office or position. Id.

49. In DeSoto, the petitioner was a law enforcement officer who had identified the victim through his role as an officer; used information about the victim he learned because of his role as an officer; and provided his accomplice, another officer, information about the victim's whereabouts so that the crime could be committed. Id. at 846 ("DeSoto informed his accomplices that this individual was a drug dealer, provided surveillance prior to the robbery, contacted a police officer accomplice to notify him that the victim was leaving work so that the officer could conduct a traffic stop, and provided the handcuffs used to restrain the victim."). As in DeSoto, here the facts demonstrate there was a nexus between Petitioner's role as a DOC sergeant and the conspiracy to kill a former inmate. See also Maradey v. St. Bd. of Admin., Case No. 13-4172, 2014 Fla. Div. Admin. Hear. LEXIS 21,

22 (Fla. DOAH Jan. 16, 2014; Fla. SBA Apr. 7, 2014)("But for her employment with MDT, petitioner would not have had access to, or enjoyed the relationships with, the other MDT employees she recruited for participation in the criminal scheme, and she would not have had the knowledge of their conditions, which made them targets for her recruitment efforts.").

50. Moreover, the public and DOC had a right to expect that Petitioner would not engage in plotting the murder of a former inmate with other past and current co-workers. As a sworn correctional officer, Petitioner had an obligation to refrain from getting revenge on former inmates. He also had an obligation to report criminal activity committed by another correctional officer. Petitioner obviously violated his oath by not reporting the illegal activity by Mr. Driver and Mr. Newcomb. That fact (in and of itself) would be sufficient to establish the nexus between Petitioner's offense and his duties as a public employee. See Zeh v. Bd. of Trs. of the City of Longwood Police Officers' and Firefighters' Pension Trust Fund, Case No. 14-0870, 2014 Fla. Div. Admin. Hear. LEXIS 355 (Fla. DOAH June 30, 2014; Bd. of Trs. Oct. 24, 2014)(evaluating the nexus between petitioner's duties as a police officer, noting employee took an oath which he violated by committing the underlying felonies).

51. As for the fourth criterion, while satisfying one's thirst for revenge is not a monetary gain, the personal gain

referenced in section 112.3173(2)(e)6. is not limited to finances. See Zeh v. Bd. of Trs., 2014 Fla. Div. Admin. Hear. LEXIS 355, at *10 (rejecting Petitioner's argument that Respondent failed to demonstrate that the offense was committed to obtain a profit by concluding that "the statute does not provide that only economic gain can be considered personal gain.")

52. In Bollone, petitioner committed his crime for passion, not money; he believed his conduct would stop an affair between his wife and the victim of his crime, and save his marriage. Such personal benefits obtained while employed as a law enforcement officer "are the types of profits and intended benefits chapter 112 was enacted to prohibit." Bollone, 100 So. 3d at 1282 (noting that "[n]umerous hearings under this forfeiture statute and similar statutes have consistently concluded that sexual gratification constitutes personal gain."). Here, based on his reaction to the photograph of Mr. Williams' body, it is reasonable to infer that Petitioner received gratification; and that he also may have benefitted in his relationships with Mr. Driver and Mr. Newcomb.

53. The fifth and final criterion for a specified offense under section 112.3173(2)(e)6. requires that the felonious conduct be done through the use or attempted use of the "powers, rights, privileges, duties, or position of the employee's environment." Bollone v. Dep't of Mgmt. Servs., 100 So. 3d at 1281.

54. As stated previously, there is no dispute Petitioner conspired with another DOC employee and a former DOC employee to plan the murder of a former inmate. There was no evidence that Petitioner would have come into contact with the victim inmate through any other means other than his role as a DOC sergeant. In other words, but for the knowledge, relationships and privileges of his position, Petitioner would not have been involved in the conspiracy to kill Mr. Williams. Under the circumstances of this case, SBA has satisfied its burden of showing the required nexus. See Maradey, 2014 Fla. Div. Admin. Hear. LEXIS at *22 (using the "but for" to establish nexus between position and disqualifying offense); see also Bollone, 2011 Fla. Div. Admin. Hear. LEXIS 259, at *22 (concluding petitioner's "gain or advantage to himself was effected through the use of the power, rights, privileges and position of his employment at [the community college]. His use of the public computer was a power, right and privilege of his position which he exercised to possess child pornography"); Holsberry v. Dep't of Mgmt. Servs., Div. of Ret., Case No. 09-0087, 2009 Fla. Div. Admin. Hear. LEXIS 933 (Fla. DOAH July 24, 2009; Fla. DMS Oct. 22, 2009)(concluding petitioner "used or attempted to use the power, rights, privileges, duties, or position of his public office, and his contact with R.D. was made possible only as a result of his position as a teacher."); Maryland v. Dep't of Mgmt. Servs., Div. of Ret., Case No. 08-4385,

2008 Fla. Div. Admin. Hear. LEXIS 294, at *19 (DOAH Dec. 15, 2008; Fla. DMS Jan. 20, 2009)(concluding the petitioner "used or attempted to use the power, rights, privileges, duties, or position of his public office. Petitioner's actions were made possible only as a result of his position as a teacher."). Based on the facts cited above, this fifth criterion has been satisfied.

55. Petitioner argues SBA failed to prove either the nexus or the motive element of the "catch-all" provision at the hearing and cites Rivera v. Board of Treasurers of Tampa's General Employment Retirement Fund. In Rivera, the employee pled guilty to the underlying offense, and the only evidence as to why or how the crimes were committed was in the form of police reports and other documents, which were deemed inadmissible hearsay. Rivera, 189 So. 3d at 212-213. In contrast, in this case there was a full jury trial. The undersigned finds there was competent substantial evidence supporting both a finding of Petitioner's benefit from the conspiracy and the necessary nexus. This evidence was in the form of Petitioner's own testimony at the final hearing; the eye-witness testimony of the FBI informant; and the taped FBI recordings, which were admissible as a party admission pursuant to section 90.803(18)(a), Florida Statutes.

56. Petitioner also relies on the case of Paul G. Tillis v. State Bd. of Admin., S.B.A. Case No. 09-1581 (Apr. 19, 2010).[6/] The issue in Tillis, however, was whether the state employee's

benefits could be forfeited for committing a federal crime. There, the analysis involved a comparison of the elements of the underlying federal crime and the equivalent crime under Florida law. Additionally, unlike this case, in Tillis there was insufficient evidence establishing the employee's motivation or the benefit derived from the underlying crime. As such, Tillis is inapplicable and unpersuasive.

57. In sum, the evidence establishes Petitioner (1) was convicted of a felony; (2) was a public employee; (3) committed the crime willfully and with intent to defraud the public of the right to receive the faithful performance of his duty as a DOC employee; (4) realized, obtained, and attempted to realize or obtain, a profit or gain for himself; and (5) made his criminal act possible through his public employment position.

58. Accordingly, the offense to which Petitioner was found guilty qualifies for the "catch-all" provision under section 112.3173(2)(e)6., and therefore falls under the definition of "specified offenses."

59. As such, all of the requirements in section 112.3173(3) for forfeiture are met. Petitioner is deemed to have forfeited all of his rights and privileges in his FRS Investment Plan account, except for the return of his accumulated contributions as of the date of his termination.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the State Board of Administration issue a final order finding that Petitioner was a public employee convicted of a specified offense committed prior to retirement; and that pursuant to section 112.3173, he has forfeited all of his rights and benefits in his Florida Retirement System Investment Plan account, except for the return of his accumulated contributions as of the date of his termination.

DONE AND ENTERED this 15th day of May, 2018, in Tallahassee, Leon County, Florida.

HETAL DESAI
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of May, 2018.

ENDNOTES

[1/] All statutory citations will be to the 2017 version of the Florida Statutes unless indicated otherwise.

[2/] Petitioner admitted that he was required to take an oath upon becoming a DOC officer. Although not offered into evidence, official recognition can be taken of the DOC Code of Conduct, which states:

> I. I will never forget that I am a public official sworn to uphold the Constitutions of the United States and the State of Florida.
>
> II. I am a professional committed to the public safety, the support and protection of my fellow officers, and co-workers, and the supervision and care of those in my charge. I am prepared to go in harm's way in fulfillment of these missions.
>
> III. As a professional, I am skilled in the performance of my duties and governed by a code of ethics that demands integrity in word and deed, fidelity to the lawful orders of those appointed over me, and, above all, allegiance to my oath of office and the laws that govern our nation.
>
> IV. I will seek neither personal favor nor advantage in the performance of my duties. I will treat all with whom I come in contact with civility and respect. I will lead by example and conduct myself in a disciplined manner <u>at all times</u>.
>
> V. I am proud to selflessly serve my fellow citizens as a member of the Florida Department of Corrections. (emphasis added).

[3/] As a result of the FBI's knowledge of the car ride and that the men would be traveling to Mr. Williams' home to harm him, it created a diversion to prevent any action from being taken that night.

[4/] Whether Petitioner was racist or a member of the KKK, or whether the KKK is a white supremacy group is irrelevant and has no bearing on whether he violated section 112.3173(2)(e). It is mentioned here as a comment on Petitioner's credibility and because Petitioner made it the focus of his defense at the hearing. As argued by his counsel, "[t]he fact that [Mr.] Williams was an inmate at DOC a year before this happened had

nothing to do with a plan. It had to do with a black man attacking a white man who is a member of a racist organization, the KKK."

[5/] The conspirators were all charged with conspiracy. Mr. Newcomb was tried with Petitioner and found guilty; Mr. Driver pled guilty prior to trial. Mr. Moran has appealed his conviction.

[6/] Tillis was an informal unpublished administrative opinion. The undersigned has taken official notice of the recommended and final orders in Tillis which were submitted as an exhibit to the Joint Pre-trial Stipulation.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.