Gloria Pullen v. State of Florida

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS PULLEN VERSUS STATE. 4 MR. BRINKMEYER.

YES, SIR.

MAY IT PLEASE THE COURT. MY NAME IS DOUGLAS BRINKMEYER FROM THE PUBLIC DEFENDER'S OFFICE, ON BEHALF OF PATTER. PETITIONER WAS IN VOLUME -- OF PETITIONER. THE PETITIONER WAS INVOLUNTARILY COMMITTED UNDER THE "BAKER" ACT AND THE HOSPITAL APPLIED FOR CONTINUED HOSPITALIZATION, AS THEY ARE REQUIRED TO DO EVERY SIX MONTHS. THE HEARING OFFICER ORDERED THE PETITIONER TO CONTINUE TO BE HOSPITALIZED. WE RECEIVED THE APPEAL AND WE FILED A NO-MERIT ANDERS BRIEF IN THE FIRST DISTRICT.

DO YOU CERTIFY, WHEN YOU FILE THAT, THAT YOU HAVE MADE A KONKSIOUS REVIEW OF THE RECORD AND THAT THE RECORD REVEALS THAT THERE ARE NO MERITORIOUS ISSUES?

YES, MA'AM. SHE WAS GIVEN THE OPPORTUNITY TO FILE A BRIEF. HOWEVER, SHE DID NOT FILE A BRIEF. THE STATE, ON THE OTHER HAND, MOVED TO DISMISS THE APPEAL, AND ARGUED THAT THE APPEAREDERS PROCEDURE DID NOT HE HAVE -- THE ANDERS PROCEDURE DID NOT EVEN APPLY TO THIS APPEAL. THE STATE DISAGREED WITH THAT POSITION AND DISMISSED THE APPEAL, WITHOUT ANY REVIEW OF THE RECORD WHATSOEVER.

IS AN APPEAL FILED OF EVERY CIVIL COMMITMENT ORDER OR RECOMMITMENT ORDER?

NO, MA'AM.

SO, WELL, YOU HAVE GOT PEOPLE THAT ARE -- IN THOSE CASES WHERE A

EEL IS NOT FILED, HOW -- WHERE AN APPEAL IS NOT FILED, HOW DOES, DOES THE CLIENT HAVE TO FILE A WRITTEN CONCEPT? IS THERE A CONSENT THAT IS OBTAINED?

I AM NOT AWARE. THIS CASE ARE A ROASTS IN SANTA ROSA COUNTY, AND IT WAS A DIFFERENT PUBLIC DEFENDER THAT REPRESENTED THE PETITIONER AT THE HEARING, SO I DON'T KNOW WHAT THEIR POLICY OCCURRED, IN TAKING A POSITION ON AN APPEAL.

WHAT IS THE POLICY BEHIND APPOINTING THE PUBLIC DEFENDER IN THESE KINDS OF CASES?

THE POLICY IS IT IS A MATTER OF DUE PROCESS. THE PATIENT HAS A RIGHT TO A HEARING IN FRONT OF A NEUTRAL AND DETACHED MAGISTRATE, AND THIS COURT HELD, IN BEVERLY, MANY YEARS AGO, THAT DUE PROCESS WHILE IT DOESN'T COVER ALL OF THE GUARANTEES OF A CRIMINAL TRIAL, IT DOES COVER THE APPOINTMENT OF COUNSEL, AND A HEARING BEFORE A NEUTRAL MAGISTRATE WITH THE RIGHT TO CONFRONT WITNESSES, PRESENT WITNESSES AND SO FORTH, ALL OF THE OTHER DUE PROCESS CONSIDERATIONS THAT YOU WOULD HAVE IN A CRIMINAL TRIAL, WITH THE EXCEPTION OF NO JURY, AND THE EXCEPTION BEING THAT THE STANDARD OF PROOF IS NOT BEYOND A REASONABLE DOUBT. IT IS CLEAR AND CONVINCING, BUT BEYOND THAT, EVERY OTHER DUE PROCESS PROTECTION THAT A CRIMINAL DEFENDANT HAS ARE, ALSO GIVEN TO ONE WHO IS FACING A INVOLUNTARY COMMITMENT, BECAUSE AFTER ALL, THIS IS A RESTRICTION ON A PERSON'S LIBERTY.

JUST FOLLOWING UP ON MY THOUGHT, IF YOU HAVE TWO CASES, ONE PUBLIC DEFENDER DOES NOT FILE AN APPEAL AT ALL AND THE OTHER WHERE THEY FILE AN APPEAL BUT SAY THERE IS NO MERIT, WHAT IS THE -- BUT YET NOW WE ARE GOING TO SAY THAT, IN A CASE WHERE THE PUBLIC DEFENDER FILES AND ACTUALLY CERTIFIES THERE IS NO MERIT, NOW WE ARE GOING TO HAVE, ARE WE GOING TO HAVE THE APPELLATE COURT REVIEW THE ENTIRE RECORD?

YES, MA'AM. I THINK IT DEPENDS ON THE WISHES OF THE CLIENT. I KNOW, IN MY OFFICE IN PARTICULAR, OUR POLICY IS THAT, IF THE CLIENT REQUESTS AN APPEAL WE FILE IT. THAT WOULD APPLY TO CRIMINAL OR GUILTY PLEAS. THAT WOULD APPLY TO CIVIL COMMITMENTS. THAT WOULD APPLY TO ANY JUVENILES, ANYTHING, WHERE WE WOULD COUNSEL THE CLIENT AND EXPLAIN THAT THE CHANCES OF GAINING ANY RELIEF ON APPEAL ARE VERY SLIM. HOWEVER, IF THE CLIENT IS INSISTENT UPON APPEAL, THEN WE GO AHEAD AND FILE IT.

IT IS EASY TO ASSUME THAT IN THESE CASES WHERE THE CLIENT HASN'T INSISTED THAT AN APPEAL BE FILED, EVEN THOUGH IF, IN THE OPINION OF THE ASSISTANT PUBLIC DEFENDER, THERE IS NO MERIT TO THE APPEAL.

I WOULD ASSUME THAT THAT POLICY ALSO EXISTS IN THE PUBLIC DEFENDER'S OFFICE IN THE FIRST CIRCUIT, ALTHOUGH I DON'T KNOW THAT FOR A FACT.

WHATEVER RULE THAT WE ADOPT IN THIS CASE, DOES IT HAVE TO BE THE SAME RULE AS THE DETERMINATION FOR PARENTAL RIGHTS? DO YOU SEE A DIFFERENCE BETWEEN THOSE --

THERE IS A VERY LARGE DIFFERENCE BETWEEN THOSE TWO AREAS. FIRST OF ALL, THIS COURT HAS NEVER RULED ON THE ANDERS AND TERMINATION. IN THE LOWER DCA'S IN THIS CASE, THEY HAVE HELD THAT THERE IS NO RIGHT TO AN ANDERS PROCEDURE HAD, IN THE TERMINATION OF PARENTAL RIGHTS PROCEDURE. HOWEVER, THIS COURT HAS NEVER ADDRESSED THAT POINT. NUMBER TWO, THERE IS A VERY LARGE DIFFERENCE BETWEEN THE TERMINATION OF PARENTAL RIGHTS AND INVOLUNTARY COMMITMENT, SIMPLY BECAUSE THE PERSON WHO IS INVOLUNTARILY COMMITTED HAS A DEPRIVATION OF THEIR LIBERTY. ANOTHER MAJOR DIFFERENCE IS THAT BY THE VERY NATURE, PEOPLE WHO ARE COMMITTED UNDER THE "BAKER" ACT, CANNOT ACT ON THEIR OWN BEHALF. THEY ARE IN NEED OF CARE AND TREATMENT, SO IF WE ASSUME THAT IT IS CORRECT, THAT A PARENT WHO IS AT-RISK OF LOSING THEIR CHILD WOULD HAVE A RIGHT TO FILE THEIR OWN BRIEF, AND MAKE AN ARGUMENT AGAINST THE TERMINATION, I DON'T THINK WE CAN MAKE THAT SAME ASSUMPTION THAT A "BAKER" ACT PATIENT WOULD, ALSO, HAVE THE WHEREWITHAL TO FILE THEIR OWN BRIEF AND MAKE A --

HOW DO THEY HAVE THE ABILITY, THEN, TO TELL YOU THAT THEY DON'T -- THAT THEY AGREE THAT THEY ASCENT TO NOT FILING AN APPEAL? I MEAN IF THEY ARE NOT CAPABLE OF MAKING ANY DECISION, HOW CAN YOU EVEN ACT NOT TO FILE AN APPEAL, WHEN THEY --

I THINK THERE IS A BIG DIFFERENCE BETWEEN THE ABILITY TO SAY, YES, I WILL TAKE MY MEDICINE VOLUNTARILY, BECAUSE WE ALSO, HAVE A PROCEDURE THAT, IF SOMEONE DOES NOT WANT TO TAKE THEIR MEDICINE VOLUNTARILY, THE HOSPITAL CAN GO TO COURT AND GET AN ORDER REQUIRING THEM TO TAKE THEIR MEDICINE, SO I THINK MENTAL PATIENTS, WHILE THEY MAKE OR -- WHILE THEY MAY OR MAY NOT HAVE THE WHEREWITHAL TO MAKE A LEGAL ARGUMENT AND FILE A WRITTEN BRIEF, THEY MIGHT HAVE THE WHEREWITHAL TO MAKE A DECISION, YES, I WANT TO TAKE MY MEDICINE OR, YES, I WANT TO FILE AN APPEAL.

TALKING ABOUT ANDERS MORE BROADLY, HAS THE U.S. SUPREME COURT EVER EXPLICITLY SAID THAT IT A COMPONENT OF ANY ANDERS PROCEDURE, THAT THE COURT MAY UNDERTAKE, THAT THE COURT, ITSELF, HAS A RESPONSIBILITY TO EXAMINE THE ENTIRE RECORD AND DETERMINE IF THERE IS ANY REASONABLE CAUSE TO BELIEVE THERE IS A MERITORIOUS ISSUE THERE? HAS THE U.S. SUPREME COURT EVER MANDATED THAT THAT REVIEW, BY THE APPELLATE COURT, OF THE RECORD, BE PART OF ANY ANDERS PROCEDURE?

THERE IS SOME LANGUAGE IN ANDERS, ITSELF, THAT SUGGESTS THAT. I DON'T EVER, I DON'T THINK THAT EXPRESSLY SAID THAT, BUT THIS COURT CERTAINLY HAS SAID IT ON MANY OCCASIONS.

DOES IT STRIKE YOU AS UNUSUAL THAT THE LAWYER, NOW, REPRESENTING THE PARTY WHO HAS CERTIFIED THAT THEY HAVE PROVIDED COUNSEL AND GONE THROUGH THE RECORD AND, IN GOOD FAITH, CAN FIND NO BASIS FOR, TO RAISE ANY ISSUE, THEN, ADDITIONALLY, ASK THE COURT TO DO THAT? IN OTHER WORDS THAT COUNSEL IS PROVIDED. COUNSEL DOES WHAT COUNSEL ORDINARILY DOES. THAT IS EXAMINES THE RECORD, TO SEE IF THERE IS ANY BASIS FOR RAISE AGO ISSUE. DOES IT STRIKE YOU AS UNUSUAL THAT THAT SAME COUNSEL, THEN, WOULD ASK THE COURT TO DO THAT OVER AGAIN?

I DON'T SEE A PROBLEM WITH THAT WHATSOEVER, YOUR HONOR, BECAUSE THE ANDERS PROCEDURE WAS INVENTED TO ADDRESS A SITUATION WHERE, NUMBER ONE, WE HAVE COURT-APPOINTED COUNSEL AS OPPOSED TO RETAINED COUNSEL.

WHAT IF WE HAVE RETAINED COUNSEL AND THEY GO THROUGH THE RECORD AND THEY FIND ONE ISSUE?

THERE IS NO SUCH --

THEY FIND ONE ISSUE ONLY, AND IT IS A NO-MERIT ISSUE, YOU KNOW AS DETERMINED BY AN APPELLATE COURT, BUT OF COURSE THE APPELLATE COURT IN THAT CASE WOULD NOT EXAMINE THE RECORD ON THEIR OWN. DO WE HAVE THE APPEARANCE, THEN, THAT, IN ANDERS SITUATIONS, THAT REALLY, THE INDIGENT PERSON IS GETTING AN EXTRA AND VERY IMPORTANT LAYER OF RELIEF THAT SOMEBODY THAT CAN AFFORD TO RETAIN COUNSEL COULD PERCEIVE?

I DON'T SEE ANYTHING WRONG WITH THAT, BECAUSE IF YOU ARE RETAINED COUNSEL, YOU CANNOT FILE AN ANDERS BRIEF. YOU WOULD HAVE A DUTY TO GO TO YOUR CLIENT AND SAY I HAVE EXAMINED THE RECORD, AND I DON'T FIND ANY POINTS OF ERROR, AND I WILL NOT FILE A BRIEF, AND I WILL NOT TAKE YOUR CASE, AND I WILL GIVE YOU YOUR MONEY BACK.

BUT THE SAME THING HAPPENS WHEN THEY DO FIND A BASIS OF ARGUING, BUT IT IS JUST ONE POINT, FOR INSTANCE, IT IS NOT POTENTIALLY OTHER POINTS.

I DON'T KNOW. I HAVE NEVER BEEN IN PRIVATE PRACTICE, SO I DON'T KNOW HOW I WOULD ADDRESS THAT, BUT I DO KNOW THAT I FILE A NUMBER OF ANDERS BRIEFS IN THE FIRST DCA, AND I DON'T SEE A PROBLEM WITH DOING THAT IS, NUMBER ONE, BECAUSE IT IS THE ROLE OF COURT-APPOINTED COUNSEL TO POINT OUT ANY POSSIBLE ARGUABLE ERROR TO THE COURT, AND NUMBER TWO, THERE HAVE BEEN OCCASIONS WHERE THE COURT HAS FOUND THINGS THAT I HAVE MISSED.

DOESN'T THAT PUT THE COURT, THOUGH, IN A POSITION, REALLY, OF BEING AN ADVOCATE FOR A PARTY? THAT IS IF THE COURT, ITSELF, EITHER THROUGH THE USE OF STAFF COUNSEL OR THE JUDGE'S, THEMSELVES, IS GOING TO EXAM IB THE RECORD WITH THE EX-POLICE -- EXAMINE THE RECORD WITH THE EXPLICIT PURPOSE OF TRYING TO FIND AN ISSUE TO BE RAISED, YOU DON'T PERCEIVE THAT THERE IS ANY DIFFICULTY THERE, WITH THE COURT STEPPING IN AS AN ADVOCATE?

THIS COURT HAS SAID, IN THE CRIMINAL ARENA, THAT THE APPELLATE COURTS ARE NOT REQUIRED TO FINE-TOOTH-COMB THE RECORD TO FIND REVERSIBLE ERROR, BUT THEY ARE REQUIRED TO LOOK AT IT. IN THE SITUATION WE HAVE PRESENT HERE, THE POLICY OF THE FIRST DCA, APPARENTLY, IS, NOW, HAVING DECIDED THAT THEY DON'T HAVE TO ENTERTAIN ANDERS BRIEFS, THEY DON'T HAVE TO DO ANY SORT OF REVIEW WHATSOEVER, THE SITUATION WE HAVE

HERE IS THAT THEY NEVER EVEN OPENED THE COVER OF THE RECORD TO LOOK AND SEE IF ANYTHING OCCURRED THAT MIGHT BE REVERSIBLE ERROR OR EVEN ARGUSEABLE, WHICH THAT POINT BOTHERS ME THE MOST.

BY FOLLOWING UP ON JUSTICE ANSTEAD, IF YOU FOUND IN THIS CASE THAT THERE WAS ONE DISCREET ISSUE, YOU ARE GOING TO RAISE THAT, BUT YOUR CLIENT SAYS BUT I WANT YOU TO RAISE ALL THESE OTHER ISSUES, AND YOU GO, NO, I HAVE, IT IS MY GOOD FAITH BELIEF THIS IS THE ISSUE, THERE IS NOTHING IN THE PROCEDURE THAT, THEN, SUGGESTS THAT YOU ARE SUPPOSED TO TELL THE COURT THERE ARE FIVE OTHER ISSUES THAT MY CLIENT WANTS TO RAISE. I DON'T THINK THEY ARE MERIT TORTIOUS, AND -- MERIT ORIOUS, AND THEN THAT WOULD REQUIRE THE APPELLATE COURT TO LOOK AT THOSE FIVE OTHER ISSUES, TO SEE IF THEY COULD FIND, IN THE RECORD, ANY OTHER BASIS FOR IT.

NO, YOUR HONOR. UNDER STATE VERSUS BARNES, THE COUNSEL MAKES THE DECISION TO FILE A MERE FORCE BRIEF RAISING ONE POINT, THAT THE CLIENT HAS NO RIGHT TO RAISED AITIONAL POINTS AND IT IS A MERIT-BASED SITUATION NOT AN ANDERS SITUATION.

DOES THE DEFENDANT THAT HAS THE POTENTIAL THAT THERE IS THE LEAST MERIT, BECAUSE WE HAVE GOT TO ASSUME, AND IN THIS DAY AND AGE, ASSUME THAT COUNSEL, PUBLIC DEFENDERS ARE ACTING IN GOOD FAITH, ACTUALLY GET MORE APPELLATE REVIEW THAN ANY OTHER CLASS OF APPELLANTS?

THAT ARGUMENT WAS MADE BY THE STATE, IN THE STATE V JEFFERSON CASE, WHICH WAS ONE OF THE COMPANION CASES TO MADDOX, SEVERAL YEARS AGO, WHICH WAS A GUILTY PLEA, AND THE STATE'S ARGUMENT WAS THERE, THAT WE SHOULD NOT ALLOW PLEAS, APPEALS FROM GUILTY PLEAS, BECAUSE FOR ONE REASON, IF APPELLATE COUNSEL FILES AN ANDERS BRIEF, THEN THE COURT IS REQUIRED TO COMB THE RECORD AND FIND IF THERE ARE ANY ARGUABLE OR REVERSIBLE POINTS ON APPEAL, BUT THIS COURT REJECTED THAT POSITION AND SAID THAT THE CLIENT DOES HAVE THE RIGHT TO APPEAL, EVEN IF IT IS A GUILTY PLEA, AND IN OTHER CASES THIS COURT HAS HELD THAT THE APPELLATE COURT HAS THE DUTY TO EXAMINE THE RECORD. NOW, WE ARE NOT ASKING THAT THIS COURT FINE-TOOTH-COMB EVERY "BAKER" ACT APPEAL. NUMBER ONE, THERE AREN'T THAT MANY THAT ARE APPEALED. NUMBER TWO, THE SIZE OF THE RECORDS ARE VERY SMALL, NORMALLY SPEAKING. IT IS A VERY SHORT HEARING, AND THERE IS NOT A WHOLE LOT TO THE RECORD. SO IT IS NOT AN UNDUE BURDEN ON THE APPELLATE COURTS, TO CONDUCT AN ANDERS REVIEW OF AN ORDER OF INVOLUNTARY COMMITMENT OR RECOMMITMENT.

I AM NOT SURE I UNDERSTAND WHAT YOUR CHARGE TO THE APPELLATE COURT WOULD BE, ASSUMING YOU WERE DESCRIBING THE CHARGE TO THE APPELLATE COURT IN AN ANDERS SITUATION HERE. YOU HAVE SAID THE APPELLATE COURT HAS NO RESPONSIBILITY TO FIND FINE-TOOTH-COMB, FOR INSTANCE. AND YET YOU HAVE SAID MY COMPLAINT HERE IS THEY DIDN'T EVEN OPEN UP THE RECORD AND LOOK AT IT AT ALL.

THAT'S CORRECT.

WHAT IS THE CHARGE TO AN APPELLATE COURT, THEN, TO EXAMINE THE RECORD, TO DETERMINE IF THERE IS ANY ERROR? HOW WOULD YOU DESCRIBE THAT CHARGE?

I WOULD DESCRIBE IT THAT THEY SHOULD, NUMBER ONE, READ THE ANDERS BRIEF. NUMBER TWO, UNLIKE THE DISPOSITION OF THIS CASE, IT SHOULD NOT DEPEND ON WHETHER THE PATIENT FILES A BRIEF OR NOT. THE DISPOSITION IN THE HOLDING IN THIS CASE IS THAT, IF THE PATIENT FILES NO BRIEF, THEY DISMISS IT SUMMARILY. THEY DON'T EVEN LOOK AT THE RECORD. NOW, THAT BOTHERS ME GREATLY.

WELL, WHEN WE GET TO LOOK ING AT THE RECORD, THOUGH, HOW WOULD YOU DESCRIBE THE

DUTY, IF YOU WERE DESCRIBING TO THE JUDGES OF THE FIRST DISTRICT, HERE IS THE DUTY THAT I BELIEVE YOU HAVE UNDER ANDERS, HOW WOULD YOU DESCRIBE THAT CHARGE?

I WOULD SUGGEST THAT THEY READ THE BRIEF THAT WAS FILED BY COUNSEL AND THEY WOULD READ THE TRANSCRIPT OF THE HEARING, AND THEY WOULD LOOK AT THE ORDER, IN THIS CASE OF THE HEARING OFFICER AND SEE IF THERE IS CLEAR AND CONVINCING EVIDENCE TO SUPPORT THE FINDING THAT THE PATIENT NEEDS TO BE HOSPITALIZED.

AND THAT WOULD BE IT.

THAT IS NOT A VERY GREAT BURDEN TO THE APPELLATE COURT.

BUT THAT WOULD BE IT.

THAT WOULD SATISFY ME.

HOW DOES THAT DIFFER FROM A COMPLETE READING? THAT SOUNDS TO ME LIKE A PRETTY COMPLETE READING OF EVERYTHING THAT IS FILED, SO HOW WOULD THAT DIFFER FROM ANY OTHER REVIEW OF A RECORD?

I DON'T KNOW HOW THEY REVIEW GUILTY PLEA APPEALS, BUT I WOULD SAY IT IS ALONG THE SAME LINES. THEY WOULD READ THE TRANSCRIPT AND THE PLEA, AND THEY WOULD LOOK AT THE JUDGMENT AND SENTENCE, TO SEE IF THE SENTENCE WAS LEGAL, AND IN ACCORD WITH THE PLEA AGREEMENT, BUT THEY WOULDN'T GO HUNTING AND LOOKING FOR ISSUES THAT MIGHT BE HIDDEN IN THERE SOMEPLACE.

SO WHAT YOU ARE SUGGESTING IS THAT THE PROCEDURE FOR ANDERS IN CRIMINAL BE THE PROCEDURE FOR ANDERS IN THIS SITUATION OF INVOLUNTARY COMMITMENT.

ABSOLUTELY. ABSOLUTELY.

NO MORE AND NO LESS.

IT MAKES NO SENSE TO HAVE ALL OF THESE DUE PROCESS PROTECTIONS AT THE HEARING LEGAL, WHEN -- HEARING LEVEL, AND ALSO TO ALLOW AND REQUIRE AN APPEAL BE FILED, IT MAKES FOR SENSE FOR THE APPELLATE COURT NEVER TO OPEN THE COVER OF THE RECORD, TO LOOK AND SEE IF ANY OF THOSE DUE PROCESS CONSIDERATIONS WERE NOT ABIDED BY.

YOU ARE IN YOUR REBUTTAL TIME.

I WILL RESERVE THE REMAINING TIME. THANK YOU.

MR. McCOY.

THANK YOU, YOUR HONORS. I AM CHARLIE McCOY HERE. IF IT PLEASES YOUR HONORS, THERE ARE TWO POINTS THAT I WANT TO STRESS FOR THIS MORNING. FIRST IT IS THE PROCESS THAT WAS ADOPTED IN THE ORDER BELOW, FORGED A PROCESS UNDER THE U.S. CONSTITUTION, AND SECONDLY IF YOU ALL WERE TO TO FIND THAT SOMEHOW THAT THAT PROCESS WERE LEGAL ANY INSUFFICIENT, IT WOULD BE WHOLE SAIL INCORPORATE ANDERS INTO NO-MERIT CIVIL APPEALS. IN FACT I WOULD SUGGEST THAT THE ALTERNATIVES ARE BETTER AND DON'T RAISE THE CONCERNS THAT ANDERS WOULD. JUST IN PASSING, ANDERS --

WHAT ARE THE CONCERNS THAT YOU WOULD HAVE IN APPLYING ANDERS TO THIS PROCEDURE?

YOUR HONOR, ANDERS INHERENTLY CAUSES SO MUCH DELAY, THAT IN LIGHT OF THE FACT THAT CIVIL COMMITMENT CAN LAST, AT MOST, SIX MONTHS, IT WOULD ALMOST FORCE, EVERY TIME

THE APPELLATE COURT DID A SECOND INDEPENDENT REVIEW OF THE RECORD, REMEMBER COUNSEL FOR THE PERSON HAS ALREADY REVIEWED THE RECORD, YOU WOULD UNVOIDBLY TAKE MORE THAN THE SIX MONTH'S MAXIMUM ON THE COMMITMENT, AND I WOULD SUGGEST THE PARADOX THAT GIVING MORE PROCESS, WHICH IS WHAT THE PUBLIC DEFENDER WANTS, YOU ARE ACTUALLY GIVING LESS DUE PROCESS.

SHOULDN'T YOU ERR ON THE SIDE OF PROVIDING COUNSEL AND GIVING THE SAME PROTECTION YOU WOULD GIVE IN A CRIMINAL OR RELATIVE TO A BRIEF?

NO, YOUR HONOR. THERE ARE SEVERAL REASONS. FIRST THIS IS OBVIOUSLY A CIVIL APPEAL, BUT THE IMPINGEMENT ON A PERSON'S LIBERTY THROUGH CIVIL COMMITMENT CAN BE SUBSTANTIAL, BUT IT IS VASTLY DIFFERENT FROM IMPRISONMENT. IT IS MAXIMUM OF SIX MONTHS. AWFUL CONTINUES RIGHT. IT IS THE STATE'S BURDEN TEN TO CONTINUALLY REVIEW SOMEONE'S CONDITION AND AS SOON AS THEY NO LONGER MEET THE REQUIREMENTS FOR COMMITMENT, THEY EITHER HAVE TO BE RELEASED OUTRIGHT OR TRANSFERRED TO A LESS RESTRICTIVE ALTERNATIVE.

IF THE PERSON IS COMPLAINING THAT IT IS AN IMPROPER COMMITMENT, IT DOESN'T MAKE MUCH DIFFERENCE TO HIM, IF HE IS BEING LOCKED UP, WHETHER HE CALL IT CIVIL OR WHETHER YOU CALL IT CRIMINAL.

YOUR HONOR, THE COURT DRAWS THE DISTINCTION BETWEEN CIVIL AND CRIMINAL ALL THE TIME. THERE IS A BIG DIFFERENCE HERE, NOT ONLY IN THE NATURE OF THE COMMITMENT BUT, ALSO, INHERENT IN THE "BAKER" ACT PROCEEDING, ITSELF, IF YOU GO TO THE TRIAL LEVEL. FIRST, THE, AT THE TRIAL LEVEL, YOU HAVE WHAT IS USUALLY A RELATIVELY SHORT, FACTUALLY FACTUALLY-SIMPLE HEARING. I HAVE NEVER HEARD OF MENTAL ILLNESS ACTUALLY BEING CONTESTED. USUALLY THE ONLY ISSUE ON APPEAL OTHER THAN SOME BLATANT PROCEDURAL ERROR WHICH IS NOT GOING TO BE SUBJECT TO A NO-MERIT APPEAL, ANYWAY, IS WHETHER THE STATE'S EVIDENCE ROSE TO CLEAR AND CONVINCING, AS OPENESED TO PREPONDERANCE. CLEAR AND CONVINCING OR ACTUALLY THE LEGAL SUFFICIENCY OF PROOF IS SOMETHING THAT THE PUBLIC DEFENDER FULLY SENDS OF DOING IN CRIMINAL CASES HERE THERE IS NOTHING THEY WOULD DO OTHERWISE. SECONDLY, IF YOU LOOK AT THE THIRD PRONG OF THE MATURES VERSUS ELDERS TEST THAT THE SUPREME COURT USED IN THAT CASE AND BY THE WAY USED LATER IN THE CONTEXT OF DETERMINING TERMINATION OF PARENTAL RIGHTS OUT OF MICHIGAN, THAT HAD THE THREE ELEMENTS, AND THE THIRD IS THE VALUE-ADD PROCEDURE, VERSUS THE LIKELIHOOD THAT, IF THAT IS NOT DONE, THE ERROR WOULD GO UNDETECTED, AND HERE IT IS VERY LOW.

WHY WOULDN'T THERE BE GREATER CONCERN HERE, WHEN THE INVOLUNTARY CONFINEMENT, WHICH IF YOU ARE CONFINED, WHETHER IT IS PRISON OR INVOLUNTARILY YOUR FREEDOM HAS BEEN TAKEN AWAY, AT LEAST THERE THE WE ARE TALKING ABOUT THE SAME THING, WHY SHOULDN'T THE CONCERN BE EVEN GREATER HERE, WHEREAS IN THE NORMAL CRIMINAL CASE, WE AT LEAST, ORDINARILY, HAVE A COMPETENT DEFENDANT, WHEREAS IN THE "BAKER" ACT CASE, IN ESSENCE WE HAVE AN INCOMPETENT DEFENDANT. REALIZING THAT THERE IS DISTINGUISHING THINGS ABOUT THE DEFINITION OF COMPETENCY, BUT YET WE OBVIOUSLY HAVE, AS YOU SAID IN MOST INSTANCES, THERE IS A CONCESSION ABOUT THE MENTAL ILLNESS, SO WHY WOULDN'T THERE ACTUALLY BE A GREATER CONCERN, WHEN THERE IS INVOLUNTARILY -- INVOLUNTARY COMMITMENT, BASED ON MENTAL ILLNESS, AS OPPOSED TO COMMITTING A CRIMINAL ACT, AS FAR AS PROVIDING THESE LAYERS OF DUE PROCESS.

WELL, YOUR HONOR, FIRST LET'S EMPHASIZE THAT, IF SOMEONE IS COMMITTED TO LESS THAN A FULL INSTITUTION, THE LIBERTY INTEREST IS GREATLY REDUCED. SECLY, PEOPLE CAN BE COMMITTED -- SECONDLY, PEOPLE CAN BE COMMITTED THAT ARE INTELLECTUALLY CAPABLE OF FILING SOMETHING, DESPITE THEIR ILLNESS. IT CAN'T BE CATAGORICALLY INCOMPETENT. IF

SOMEONE IS VERY BRIGHT BUT THEY ARE DEPRESSED AND SUICIDAL, THEY CAN FILE -- MOST OF THE TIMES NEVADARY "BAKER" ACT COMMITMENT, AT LEAST A FIRST-TIME COMMITMENT BY A JUDGE, A GUARDIAN IS APPOINTED. I DON'T RECALL A GUARDIAN BEING APPOINTED HERE. THAT PERSON IS THERE AND AVAILABLE AND SHOULD BE RECOGNIZED OR SHOULD BE RECOGNIZED TO ACT SOMEONE ON BEHALF OF THE PERSON WHO HAS BEEN COMMITTED. IF THERE IS ANY CONCERN ABOUT THE ORDER BELOW, I THINK IT WOULD BE THE, PERHAPS, INADVERTENT RELIANCE OF THE FIRST DCA SAYING FILE A PRO SE BRIEF. SOMEONE WHO IS IN A MENTAL INSTITUTION, IF THEY CAN WRITE A COGENT LETTER SAYING THIS IS WHY I SHOULDN'T HAVE BEEN COMMITTED AND MAIL IT TO THE COURT, WHY SHOULD THEY HAVE TO COMPLY WITH THE TECHNICAL REQUISITES OF A BRIEF AND WHY SHOULDN'T THAT GUARDIAN, IF THERE IS ONE, BE ABLE TO HELP THEM, BUT YOUR HONORS, I WANT TO STRESS THAT, UNLESS YOU FIND THE PROCEDURES BELOW ARE, ON ITS FACE, NOT PROVIDING DUE PROCESS UNDER THE U.S. CONSTITUTION, THEN YOU ARE PROVIDED, BY AUTHORITY, TO REQUIRE MORE, BECAUSE WHAT YOU WOULD BE DOING IS ADOPT A PROCEDURE TO CREATE A SUBSTANTIVE RIGHT THAT DOESN'T EXIST, AND IN EFFECT THAT WOULD AND SEPARATION OF POWERS PROBLEM.

HAVE WE GOTTEN TO THE POINT YET WHERE WE KNOW WHETHER OR NOT THE ANDERS PROCEURES ARE APPLICABLE IN THE SEXUAL PREDATOR CONTEXT?

WELL, YOUR HONOR, THAT IS A GOOD QUESTION. IN FACT IT FOLLOWS UP ON JUSTICE PARIENTE'S QUESTION ABOUT TERMINATION OF PARENTAL RIGHTS. I THINK THIS CASE, ANYTHING YOU SAID WOULD BE HIGHLY PERSUASIVE FOR TERMINATION OF PARENTAL RIGHTS, BECAUSE THAT PRIVACY INTEREST HAS BEEN DESCRIBED AS FUNDAMENT BY THIS COURT IN THE CONTEXT, AND VALIDATING THE STATUTE THAT GRANTS GRANDPARENTS STATUTE OF LIMITATION RIGHTS. THE LONG-TERM CONFINEMENT OF VIOLENT SEXUAL PREDATORS, UNDER THE "JIMMY RYCE" ACT, IF ANDERS IS REQUIRED HERE, THERE CERTAINLY WOULDN'T BE ANY OTHERS BECAUSE I CERTAINLY DON'T THINK THERE IS ANY ABSOLUTE STATUTORY TIME THAT THOSE PEOPLE ARE COMMITTED.

IS THAT WRONG?

I THINK THAT THE GREAT DIFFERENCE BETWEEN THOSE TWO ACTS WOULD CERTAINLY LEAD YOU TO BELIEVE, I STARTED TO SAY IF YOU REQUIRE ANDERS IN THIS CASE, IT WOULD HAVE TO BE REQUIRED IN THE OTHER, NOT NECESSARILY VICE VERSE, A YOUR HONOR, AND, YES, IT REQUIRES ANDERS HERE, BECAUSE YOU HAVE VERY SIMPLE FACTUAL APPEALS THAT TRAINED COUNSEL UP-FRONT HAS SAID THERE IS NO MERIT TO THEM. YOU ARE DEVOTING WHAT COULD BE A SIGNIFICANT AMOUNT OF JUDICIAL RESOURCES TO THESE, THE JIMMY RYCE, AND PERHAPS EVEN TERMINATION OF PARENTAL RIGHTS, ALL TAKEN TOGETHER.

BUT THAT IS THE ARGUMENT THAT THEY ALL USED IN ANDERS.

NO, YOUR HONOR. THE SITUATION IN ANDERS WAS ALL FACTUALLY DIFFERING. ALL THAT HAPPENED IN CALIFORNIA WAS THAT BASICALLY WROTE A LETTER TO THE CLERKS, THE COUNSEL DID, SAYING THERE WAS NO MERE TIGHT THIS APPEAL. THAT WAS FOUND CONSTITUTIONALLY DEFICIENT IN A CRIMINAL CASE. NOW, YOUR HONORS, I WANT TO POINT OUT THAT WHAT HAPPENED IN THE FIRST DCA DOES STRIKE A BALANCE BETWEEN THE PROCESS AFFORDED YOUR CIVIL APPELLATE AND YOUR TYPICAL APPELLANT.

HOW CAN YOU SAY THAT, WHEN YOU HAVE A PRESUMPTION OR AT LEAST A PROBLEM OF SAYING THIS PERSON HAS BEEN ADJUDICATED TO BE YOU CAN ABLE TO -- UNABLE TO CARE FOR THEMSELVES OUTSIDE OF AN INSTITUTIONAL KIND OF SETTING OR SOME RESTRICTIVE SETTING, BUT THEY ARE COMPETENT ENOUGH TO PROVIDE A BRIEF, AND I AM HEARING TODAY THAT YOU ARE SAYING THIS OVERWHELMS A JUDICIARY, WHEN WE ARE TOLD THAT IT IS A VERY SMALL TRANSCRIPT, VERY FEW NUMBERS OF CASES AND VERY FEW YOUR HONOR. I AM MISSING HOW -- AND VERY FEW ISSUES. I AM MISSING HOW THAT OVERBURDENENS THE JUDICIARY, WHEN YOU

HAVE A FUNDAMENTALLY FAIR SYSTEM.

I AM SAYING THIS WOULD SET A PRECEDENT FOR ALL OTHER TYPES OF CASES.

ARE YOU NECESSARILY? IS THERE A VAST DIFFERENCE BETWEEN A BATTLING PARENT, WHO IS ANGRY ABOUT THE LOSS OF A CHILD, AND SOMEONE WHO IS HAVING PROBLEMS AND ASSUMED THAT THEY CAN'T FUNCTION IN A NORMAL FASHION? THAT, TO ME, SOUNDS LIKE A DIFFERENCE OF NIGHT AND DAY.

YOU ARE SAYING IF THERE IS NO MORE PROCESS DUE IN PARENTAL TERMINATION RIGHTS, YOU ARE SAYING THERE IS A PROSES DUE HERE. -- A PROCESS DUE HERE. A PERSON AT THE HEARING LEVEL EXPENSEANT HEARING LEVEL ON APPEAL, THE MOST TO WITHDRAW THAT THE FIRST DCA IS REQUIRING, IS BASED ON A CON SCENESIOUS REVIEW OF THE ERROR, AND THAT IS THE BASIS OF THE MOTION TO WITHDRAW. I WOULD SAY THAT THAT IS THE SAME THING IN SUBSTANCE THAT WOULD BE IN AN ANDERS BRIEF, ANYWAY. THAT IS FAR MORE DETAILED AND FAR MORE IN A MOTION TO COURT THAN IN A TYPICAL MOTION ON APPEAL, THE COURT TAKES REPRESENTATIONS AS SUFFICIENT.

BUT THEY ALREADY NOT GOING TO LOOK AT IT, UNLESS THE PRO SE, THE PERSON WHO HAS ALREADY BEEN DECLARED TO HAVE A PROBLEM, FOLLOWS UP WITH IT.

YOUR HONOR, WITH ALL DUE RESPECT, YOU MAKE ONE POINT F THESE HEARINGS ARE SO FACTUALLY SIMPLE AND SHORT, THE LIKELIHOOD THAT AN ERRONEOUS COMMITMENT WOULD GO UNDETECTED IS VERY SMALL COMPARED TO THIS, YOUR HONOR, THE VALUE OF THE ANDERS PROCEEDING. THE ANDERS PROCEEDING IN THIS CASE, IN WHICH THE COURT DIDN'T REVIEW THE RECORD, WHICH IS 90 DAYS OUT OF THE MAXIMUM ROUGHLY 180 THAT SOMEBODY COULD BE COMMITTED ANYWAY. THERE ARE OTHER ALTERNATIVES.

WHY WOULDN'T THE ALTERNATIVE BE TO BE EXPEDITE THE PROCEEDING PROCEEDING? URNS, EXPECT --

YOUR HONOR, EXPEDITING THE PROCEEDING IS ONE THING.

HAVING A GUARDIAN APPOINTED.

I DON'T KNOW THAT ONE WAS APPOINTED IN THIS CASE. I KNOW THE TYPICAL PRACTICE, EVERY TIME SOMEONE IS COMMITTED, IS TO APPOINT A GUARDIAN. MAYBE THERE IS ONE THAT SHOULD BE. I DON'T RECALL IT IN THE RECORD, YOUR HONOR.

DOES THE STATE RECOGNIZE IT AS A DUE PROCESS PROBLEM HERE?

I DON'T THINK THERE IS A DUE PROCESS PROBLEM UNDER THE U.S. CONSTITUTION, NO, YOUR HONOR, AND I WANT TO STRESS THAT IN NO WAY HAS THE FLORIDA CONSTITUTION BEEN INVOLVED IN THE FIRST DCA IN LOCK UP HERE.

YOU CAN LOCK UP A CHILD UNDER THE CIVIL COMMITMENT WITHOUT DUE PROCESS? IS THAT WHAT YOU ARE SAYING TO US?

NO, YOUR HONOR. I AM NOT SAYING THAT.

I AM TRYING TO DETERMINE WHAT YOU ARE SAYING, WE ALL ARE, BECAUSE IT COMES CLOSE TO UNDERSTANDING THAT YOU ARE SAYING THAT.

NO, YOUR HONOR. IT IS THE PROBLEM THAT ANDERS IS NOT CONDUCTED IN WHOLE SAIL. IN FACT, THE U.S. SUPREME COURT SAID, IN SMITH VERSUS ROBBINS LAST YEAR, THAT ANDERS DOES NOT

HAVE TO BE FOLLOWED WITH COMPLETE EXACTTUDE, EVEN IN CRIMINAL PROCEDURES. NOW, THE INDEPENDENT RECORD BY THE APPELLATE COURT IS THE PROMINENT PROCEDURE, BUT WE ARE DEALING HERE WITH A CIVIL PROCEEDING, ONE IN WHICH YOU ALL HAVE RECOGNIZED THAT THEY TEND TO BE FACTUALLY SIMPLE AND SHORT AND THAT GOES RIGHT TO THE THIRD PRONG OF THE SUPREME COURT'S TEST IN ELDRIDGE, THAT THE LIKELIHOOD OF AN ERRONEOUS COMMITMENT IS SO SMALL THAT IN ANDERS, IT IS HARMFUL AND WILL MAKE THE APPEAL GO FAR LONGER THAN THE MAXIMUM TERM OF COMMITMENT.

WELL, WOULD YOU SACRIFICE, I GUESS YOU WOULD HAVE TO CONCEDE YOU WOULDN'T SACRIFICE DUE PROCESS FOR EXPEDIENCY, WOULD YOU?

NO, YOUR HONOR.

THE STATE WOULDN'T STAND HERE AND ARGUE THAT, WOULD THEY?

NO, YOUR HONOR. IN FACT LET ME STATE THAT IT TOOK EIGHT DAYS FOR THE COMMITMENT ORDER TO BE RENDERED IN THIS CASE. I DON'T KNOW WHY. THEN THE PUBLIC DEFENDER USED 29 DAYS TO FILE THE NOTICE OF APPEAL, SO ONE FIFTH OF THE MAX NUMBER TIME FOR COMMITMENT HAD RUN, JUST TO GET THE NOTE -- THE NOTICE OF APPEAL FILED. THERE IS NO REASON WHY THEY COULDN'T LIMIT THE NOTICE OF AND TIME TO 15 DAYS. THAT SAVES TIME RIGHT THERE. THE MOTION OF THE PUBLIC DEFENDTORY WITHDRAW. THE SAME AS IN THE ANDERS BRIEF, WHY NOT MAKE THE PUBLIC DEFENDTORY MAKE A STATEMENT WHETHER OR NOT THEY TALKED TO THE BEYOND A REASONABLE DOUBT BEGAN -- THEY TALKED TO THE GUARDIAN. YOU ARE HERE, THOUGH, TO DECIDE WHETHER THE PROCEDURES ADOPTED COMPORT WITH THE DUE PROCESS ONLY.

IS THE PRIMA FACIE REASON, THE REASON THAT THE STATE IS TAKING THE PROCEDURE HERE TODAY? THAT IS WHAT YOU ARE COMING BACK TO THAT, THIS TAKES UP TIME S THAT YOUR POSITION?

NO, YOUR HONOR. IF WE WERE HERE IN A CRIMINAL CASE, I WOULD NOT BE STRESSING SO MUCH THE DELAY FACTOR. REMEMBER, AGAIN, CIVIL COMMITMENT CAN LAST ROUGHLY SIX MONTHS, 180 DAYS MAXIMUM. EVEN IN THIS CASE, WITHOUT THE APPELLATE REVIEW OF THE RECORD, IT BURNED UP ABOUT, AS I CAN TELL, 90 DAYS. I CAN GO THROUGH THE TIME LINE IN DETAIL, BUT THREE MONTHS WENT BY, BY THE TIME THE PUBLIC DEFENDER SERVED THEIR ANDERS BRIEF. 45 DAYS FOR THE ORDER I SHOULD THAT SAYS YOU HAVE 30 DAYS TO DELIVER YOUR PRO SE BRIEF AND 20 DAYS FOR THAT TIME. AND IF THAT HAPPENED, THE TIME WOULD HAVE BEEN GONE. YOUR HONORS HAVE SAID TIME AND TIME OVER. DUE PROCESS IS A FLEXIBLE CONCEPT. IT HAS TO DO WITH THE PROCEEDING AT ISSUE. TO RECOGNIZE THAT THE SIX-MONTHS MAXIMUM COMMITMENT, THE DELAY WITH A WHOLESALE INCORPORATION OF ANDERS, EFFECTIVELY IT TAKES TIME TO REVIEW.

HOW MANY CASES ARE WE TALKING ABOUT ACROSS THE FIVE DISTRICTS?

YOUR HONOR, I CAN'T ANSWER YOU THAT EXACTLY, BUT I CAN GO OFF-THE-RECORD BASED ON MY PERSONAL EXPERIENCE, WHICH I HAVE DONE DOZENS EVER THESE APPEALS OVER THE YEARS. I THINK 15 A YEAR IN THE FIRST DCA IS A LITTLE ON THE LOW SIDE, BUT THAT DOESN'T REFLECT THE FACT OF HOW MANY CASES MAY BE APPEALED IN OTHER COURTS, WHERE THEY DON'T HAVE THE SAME DOCKETING. IT CERTAINLY DOESN'T REFLECT THE FACT THAT MAYBE A LOT OF APPEALS THAT AREN'T TAKEN, COUNSEL WOULD FEEL OBLIGATED TO FILE AN ARNOLDERS BRIEF INSTEAD. BEYOND THAT -- AN ANDERS BRIEF INSTEAD. BEYOND THAT I CAN'T EVEN ANSWER YOUR QUESTION ABOUT HOW MANY CASES, YOUR HONOR. THE REPORTED POSITIONS, THAT IS ONLY RIGHT WHEN THERE IS A REVERSAL.

WE HAD THIS PROCEDURE IN PLACE IN FLORIDA FOR HOW LONG?

THE ANDERS PROCEDURE OR THE CIVIL --

WE HAVE HAD "BAKER" ACT, AND THEN WE HAVE HAD CIVIL COMMITMENTS AND WE HAVE HAD POLICY, JUST BY DEFAULT, CORRECT SINCE WE HAVE HAD THE "BAKER" ACT?

THIS ANDERS HAS NEVER BEEN RAISED BEFORE, IN "BAKER" ACT.

WHAT HAS BEEN HAPPENING IN THE DISTRICT COURTS WITH THESE CASES? I CAN TELL YOU BASICALLY, PERSONAL EXPERIENCE, BETWEEN THREE AND FIVE ARE AFFIRMED WITHOUT OPINION, FOR EVERY REVERSAL, AND BECAUSE THEY ARE ALWAYS STYLED SOMEBODY'S NAME VERSUS THE STATE, THEY ARE IN DISTINGUISHABLE IN REPORTERS FROM DCA CRIMINAL OPINION, SO THAT IS WHY IT IS HARD TO TELL YOU AND GIVE YOU A QUANTITY OF CASES, IF THAT IS WHAT YOU ARE LOOKING FOR.

DOES YOUR OFFICE HANDLE THEM ANY DIFFERENTLY THAN THEY DO THE CRIMINAL APPEALS?

THEY ARE NOT HANDLE ANY DIFFERENTLY THAN REGULAR CIVIL APPEALS, YOUR HONOR.

IN MERIT, WHERE THERE IS A MERIT APPEAL FILED.

YES, YOUR HONOR.

IS THERE A PROCEDURE FOR EXPEDITING THOSE APPEALS, BECAUSE IT STRIKES ME WHAT YOU ARE, THE WAY YOU ARE TALKING ABOUT IT, EVEN THE REAL CONCERN IS WHEN AN ASSISTANT PUBLIC DEFENDER THINKS THERE IS MERIT THAT SOMEONE IS BEING WRONGFULLY COMMITTED, THAT BY THE TIME 30 OR 40 DAYS GO BY JUST TO FILE THE NOTICE OF APPEAL, THAT THE APPEAL GETS DECIDED AFTER THE SIX MONTHS IS OVER. WHAT IS THAT, WHAT HAPPENS IN THE REAL WORLD IN THAT SITUATION?

WELL, IN THE REAL WORLD, YOUR HONOR, THE PUBLIC DEFENDER, AND I AM NOT CRITIZING, BUT THEY USUALLY TAKE MOST OF THE 30 DAYS TO FILE THE NOTICE OF AFTERNOON EEL AND ONE OR TWO -- OF APPEAL AND ONE OR TWO MONTHS MORE TO FILE THE INITIAL BRIEF AND THE STATE, NORMALLY, 15 TO 20 DIES REPLY, SO VIRTUALLY THE SIX MONTHS HAS RUN IN ALL OF THIS.

SO REGARDLESS OF WHETHER THE APPEAL HAS MERIT OR NOT MERIT, IT ALL BECOMES MOOT, BECAUSE IN SIX MONTHS, YOU HAVE TO LET THE PERSON OUT OR DO A RECOMMITMENT?

THERE ARE MANY RECOMMITMENTS DONE. PEOPLE DON'T RECOVER SUFFICIENTLY WITHIN THE SIX MONTHS, BUT THEY ARE NOT LEGALLY MOVED --.

SO YOU START THIS PROCEDURE OVER AGAIN?

NO, YOUR HONOR, AT SOME POINT THE PEOPLE ARE, ALSO, RELEASED, BUT THE POINT THAT I HIM TRYING TO MAKE IS THAT ANDERS CERTAINLY DOESN'T MAKE THE SITUATION BETTER, AND IN FACT IT IS NOT PARTICULARLY PRODUCTIVE AT ALL, HAVING THE APPELLATE COURT DO A VERY SIMPLE REVIEW OF THE RECORD IN SUCH FACTUALLY STRAIGHTFORWARD CASES WHERE THEY HAVE NO MERIT.

JUSTICE HARDING HAD A QUESTION.

YOU HAVE BEEN INTERRUPTED THREE OR FOUR DIFFERENT TIMES, WHEN YOU ARE EXPLAINING YOUR ALTERNATIVES. THE FIRST ALTERNATIVE WAS TO EXPEDITE AND THE SECOND WAS TO APPOINT A GUARDIAN, AND I WANT TO MAKE SURE WE UNDERSTAND ALL OF YOUR ALTERNATIVES.

YOUR HONOR, AS LONG AS YOU UNDERSTAND I AM NOT CONCEDING ANY DUE PROCESS PROBLEM WITH THAT. IF WE WERE IN A RULE-MAKING SITUATION HERE, I WOULD SUGGEST RESPECTFULLY TO THE COURT THAT YOU EXPEDITE THE TIME FRAME FOR ALL "BAKER" ACT APPEALS. WHETHER MERIT OR NOT. THERE IS NO REASON THAT IT CAN'T BE FILED WITHIN 15 DAYS, JUST AS THE STATE TAKES THE POSITION IN A CRIMINAL APPEAL.

AND THEN?

YOU MIGHT FILE LIKE IS DONE IN NON-FINAL ORDERS APPEALS. CERTAINLY WHEN A GUARDIAN IS APPOINTED, THERE IS NO REASON THAT THE PUBLIC DEFENDER STATEMENT COULDN'T REFLECT THAT THEY HAVE NOT CONSULTED WITH THE GUARDIAN. I DON'T WANT TO GO SO FAR AS TO SAY THAT EVERY RECOMMITMENT THAT IS DONE ADMINISTRATIVELY, AS WAS DONE IN THIS CASE OF THE HOSPITAL ADMINISTRATOR THAT, A GUARDIAN SHOULD BE APPOINTED, BUT LEAVE THAT POSSIBILITY THERE YOUR HONOR, AT LEAST THOSE FOUR THINGS, AND ALSO, YOUR HONOR, WHY SHOULD THE PRO SE FILING NECESSARILY, BY SOMEONE WHO IS CERTAINLY MENTALLY VERY AFFLICTED, IF NOT SO ILL THEY CAN'T DO ANYTHING, WHY SHOULD THAT HAVE TO CONFORM TO ALL OF THE TECHNICAL REQUIREMENTS OF A BRIEF, AND SHOULDN'T THE GUARDIAN, WHEN THERE IS ONE, BE ABLE TO ASSIST THAT PERSON IN WRITING A LETTER FACTUALLY SAYING WHY THEY SHOULDN'T HAVE BEEN COMMITTED AND SEND IT TO THE COURT. THIS IS NOT AN ADVERSARIAL APPEAL THIS. IS A CASE WHERE THE LAW IS TRYING TO MAKE THE BEST AFTER DIFFICULT SITUATION.

THESE PUBLIC GUARDIANS ARE, WHO NORMALLY WORKS THAT?

SOMETIMES A SPOUSE. SOMETIMES THE COURTES SAYS I ORDER YOU TO APPOINT A PERSON, AND THEN THEY TURN THAT OVER TO THE GUARDIANS, AND I DON'T KNOW, THEY FIND A PERSON SOMETIME LATER. YOUR HONOR, I DO WANT TO STRESS THAT YOU DON'T JUST LOOK TO THE PRIVATE INTERESTS AT STAKE. YES, IT IS COMPELLING, BUT THERE ARE THREE PRONGS IN THAT TEST FROM ELDRIDGE, AND IT IS THE PRIVATE INTEREST. THE COURTS HAVE DESCRIBED THE STATE'S INTEREST IN TREATING THE MENTALLY ILL, SO THAT THEY ARE PROTECTED FROM THEMSELVES AND OTHER PEOPLE ARE PROTECTED FROM THEM, WHEN IT IS A SERIOUS ILLNESS, AS COMPELLING, ALSO FORM THE STATE NEEDS TO KNOW, AS PROMPTLY AS POSSIBLE, WHETHER IT IS LEGAL AUTHORITY TO HOLD AND STREET SOMEONE IS ESTABLISHED AND, OF COURSE, THEN THE LAST THING YOU LOOK AT IS WHAT IS THE VALUE OF THE ADDITIONAL PROCEDURE, AND I WOULD SUGGEST TO THE COURT, IN LIGHT OF THE ALTERNATIVES THAT I HAVE SPOKEN TO JUSTICE HARDING, THAT WHOLESALE INCORPORATION OF ANDERS, WHICH IS NECESSARY FOR CRIMINAL PROSECUTION, SHOULD NOT BE FOLLOWED. ANDERS IS A BAD MODEL FOR CIVIL COMMITMENTS. I DON'T THINK IT WOULD BE A GOOD MODEL FOR A LONG-TERM COMMITMENT OF A VIOLENTLY SEXUAL PREDATORS, ALTHOUGH SINCE THEY TEND TO BE CONFINED LONGER THAN SIX MONTHS, THE DELAY ATTRIBUTABLE TO ANDERS WOULDN'T BE AS SIGNIFICANT.

MR. McCOY, YOUR TIME IS UP.

THANK YOU, YOUR HONORS. I WOULD ASK THAT YOU ALL AFFIRM THE ORDER.

MR. BRINKMEYER, REBUTTAL.

MAY IT PLEASE THE COURT. IT SEEMS MR. McCOY IS SO CONCERNED ABOUT DELAY, BUT IF WE DON'T HAVE ANY REVIEW AT ALL, WHAT DIFFERENCE DOES IT MAKE HOW LONG IS TAKES TO HE -- IT TAKES TO HAVE NO REVIEW AT ALL. IT SEEMS LIKE THE PROCEDURE THAT WE HAVE HAD REGARDING ANDERS IS WORKING WELL IN THE DCA'S AND THERE IS NO REASON TO THROW THE BABY OUT WITH THE BATH WATER.

LET ME ASK YOU WAS THIS THE FIRST TIME THAT THE PUBLIC DEFENDERS OFFICE HAD RAISED THE ANDERS BRIEF WITH THE FIRST DCA?

WE DIDN'T RAISE T WE HAVE FILED ANDERS BRIEFS IN THE PAST. THIS IS THE FIRST TIME THAT THE STATE HAS MOVED TO DISMISS.

SO WE HAVE HAD ESSENTIALLY THIS PROCEDURE.

YES, SIR.

SINCE THE "BAKER" ACT WENT INTO EFFECT.

I ASSUME WE HAVE.

AND DO YOU KNOW WHETHER THAT HAPPENS IN THE OTHER DISTRICTS?

I HAVE NO IDEA WHAT THE OTHER DISTRICTS DO. MR. McCOY'S MAIN CONCERN, TODAY, SEEMS TO BE THAT THERE IS NOTHING FEDERAL DUE PROCESS WHICH REQUIRES AN ANDERS PROCEDURE IN THIS CASE CASES, BUT I WOULD -- IN THESE CASES, BUT I WOULD POINT OUT THAT WE HAVE A STATE CONSTITUTION WHICH ALSO HAS A DUE PROCESS CLAUSE AND ALSO IN ACCESS TO THE COURT'S CLAUSE, WHICH THE FEDERAL CONSTITUTION DOES NOT HAVE, THIS COURT HAS, IN THE ANDERS PROCEDURE IN CRIMINAL CASES AT LEAST, GONE BEYOND WHAT ANDERS REQUIRES ON ITS FACE. FOR INSTANCE IN STATE V CAUSEY, THIS COURT HELD THAT THE STATE HAS A RIGHT TO BE HEARD, BEFORE THE DISTRICT COURT REVERSES A CRIMINAL CONVICTION ON AN ANDERS BRIEF. NOW, I HAVE NO PROBLEM WITH THAT. WE DID NOT OPPOSE THAT REQUEST IN STATE V CAUSEY, SO IT SEEMS SOMEWHAT IN CONGRESS REDUCE TO ME, TO -- INCONGRUOUS TO ME FOR THE STATE TO SAY WE DON'T NEED AN ANDERS PROCEDURE IN THESE CIVIL COMMITMENT CASES, BECAUSE IT IS NOT REQUIRED BY THE FEDERAL CONSTITUTION, BUT YET THEY GET THE BENEFIT OF BEING ABLE TO FILE A BRIEF IN AN ANDERS CRIMINAL CASE, WHEN THE DCA INTENDS TO REVERSE IT.

ON THE ISSUE OF WHETHER SOMETHING GETS EXPEDITED OR NOT, IS THERE A PROCEDURE, SEEING THAT THESE ARE SIX-MONTH COMMITMENTS, FOR WHERE THERE IS A MERIT BRIEF FILED? WHAT IS YOUR RESPONSE, THE IDEA THAT EVEN IN THE MERIT ORIOUS CASES, THAT THERE IS DELAY THAT GOES UP UNTIL THE SIX-MONTH PERIOD?

WELL, IF YOU HAVE 30 DAYS TO FILE A NOTICE AND YOU HAVE TIME FOR THE CLERK TO GET THE RECORD PREPARED, WHICH, I BELIEVE, IS 50, AND THEN YOU HAVE TIME FOR THE LAWYER TO FILE THE BRIEF, SO YOU ARE ALREADY TALKING ABOUT FOUR OR FIVE MONTHS, EVEN BEFORE THE BRIEF IS FILED, SO I THINK IT IS A RED HERRING, TO SAY THAT THE DELAY WOULD BE A RESULT.

NO. I AM SAYING THAT IN A CASE, HASN'T THAT BEEN A CONCERN, SHOULDN'T THAT BE A CONCERN THAT IN CASES WHERE THERE -- THE ASSISTANT PUBLIC DEFENDER OR THE PUBLIC DEFENDER THINKS THERE IS MERIT, THAT IS A PERSON IS BEING COMMITTED INVOLUNTARILY AND THERE IS PROCEDURAL DEFICIENCIES THAT THE APPEALS TAKE LONGER THAN THE TIME THAT THERE IS FOR THE COMMITMENT?

I THINK THAT IS GOING TO HAPPEN, EVEN IF WE MOVE THE COURT, THE DCA, TO EXPEDITE A PARTICULAR APPEAL. I THINK IT IS GOING TO HAPPEN ANYWAY.

BUT IT MUST NOT BE A SIGNIFICANT, SINCE NO ONE HAS PROPOSED ANY KIND OF RULE TO ADDRESS TRYING TO EXPEDITE THESE HEARINGS. THE PUBLIC DEFENDER HAS NEVER DONE THAT.

IT IS NOT A PROBLEM FOR MY OFFICE, BECAUSE WE DON'T TAKE EXTENSIONS ON "BAKER" ACT APPEALS. WE FILE THE BRIEF, SWENKTS THE RECORD.

RIGHT. BUT THE NORMAL TIME IS, AS YOU JUST DESCRIBED.

YES, SIR.

AND IT IS ALMOST, TAKES UP A FULL SIX MONTHS OR MORE.

YES, SIR.

> ARE YOU SAYING THAT WE CAN ASSUME, HERE, THAT THE PUBLIC DEFENDERS DO NOT ASK THE PUBLIC COURT TO EXPEDITE, SO THAT THERE WILL BE A -- THAT THE PUBLIC DEFENDERS DO NOT ASK THE COURT TO EX-PEDITE, SO THAT THERE WILL BE A MEANINGFUL PROCEDURE WHEN THE TIME EXPIRES?

IN THE ANDERS SITUATION?

IN THE MERIT ORIOUS SITUATION WHERE THE EVIDENCE WAS NOT PRESENTED, FOR INSTANCE, BUT RECOGNIZING THAT THE SIX MONTHS IS GOING TO PASS, IF YOU DON'T ASK THE COURT TO EXPEDITE THIS OR TREAT IT AS AN EMERGENCY?

THE ONLY TIME THAT I HAVE SEEN IT DONE IS, IF THE LAWYER FEELS THAT STRONGLY ABOUT IT, WE WILL FILE A PETITION FOR HABEAS CORPUS AS OPPOSED TO DIRECT APPEAL, AND THAT WILL MOVE VERY QUICKLY THROUGH THE DCA WE HAVE THE SAME PROBLEM WITH JUVENILE APPEALS, AND WE HAVE, ON OCCASION, DONE A HABEAS CORPUS IN A JUVENILE APPEAL, WHEN IT IS OBVIOUSLY THAT THE CHILD WILL BE OFF SUPERVISION BEFORE THE DIRECT APPEAL WAS EVEN, BEFORE THE MERIT BRIEF IS EVEN FILED, SO WE WILL DO A HABEAS IN THAT SITUATION.

WHAT IS YOUR OBSERVATION ABOUT THE PRACTICE OF APPOINTING GUARDIANS AND THE USEFULNESS OF THAT?

I DON'T KNOW WHAT SOLUTION THAT WOULD BE TO THE PROBLEM, BECAUSE IN MY EXPERIENCE, IT HAS ALWAYS BEEN A FAMILY MEMBER WHO IS NOT A LAWYER, SO I DON'T THINK WE CAN RELY ON THE YARD BEGAN TO -- ON THE GUARDIAN TO MAKE THE LEGAL DECISION WHETHER THERE THIS IS A MERIT ORIOUS APPEAL OR NOT A MERITORIOUS APPEAL.

THANK, MR. BRINKMEYER. YOUR TIME IS UP. THANK COUNSEL FOR YOUR ASSISTANCE.