

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Lawrence Scott Andrews v. Florida Parole Commission

MR. CHIEF JUSTICE: GOOD MORNING, AND WE WILL CONTINUE WITH OUR ORAL ARGUMENT CALENDAR. I WOULD LIKE TO RECOGNIZE THAT WE HAVE, AS OUR GUESTS THIS MORNING, FROM THE OFFICE OF LEGISLATIVE AFFAIRS, JILLIAN PROVINCE, IN THE PEOPLE'S REPUBLIC OF CHINA, MR. MAO XIANG XIANG-XANG. THAT IS THE BEST THAT I CAN DO IN MY SOUTHERN ACCENT. HAPPY TO HAVE YOU HERE. THANK YOU FOR BEING HERE, AND HE IS WITH COUNSEL ROBERT PARKS. THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS ANDREWS VERSUS FLORIDA PAROLE COMMISSION.

MAY IT PLEASE THE COURT. MAY NAME IS JOHN MIDDLETON. I AM FROM MELROSE, FLORIDA. I REPRESENT LAWRENCE ANDREWS, WHO IS THE PLAINTIFF BELOW, AND WHO FILED A CIVIL ACTION AGAINST THE DEPARTMENT OF CORRECTIONS AND THE PAROLE COMMISSION, FOR FALSE IMPRISONMENT. BEFORE I GET TO THE FACTS OF THIS CASE, I WOULD LIKE FOR THIS COURT TO IMAGINE A COUNTRY WHERE A GOVERNMENT CAN LOCK UP ITS CITIZEN FOR 11 MONTHS, WITHOUT AUTHORITY, WITHOUT A TRIAL, AND THEN REALIZE THE MISTAKE AND RELEASE HIM AND SAY YOU HAVE NO REDRESS. YOU CAN'T SUE US. YOU CAN'T DO ANYTHING.

ON THE FIRST DAY AFTER THE, SUPPOSEDLY THIS ILLEGAL DETENTION STARTED, AND WE GET CASES LIKE THIS FROM TIME TO TIME, WHERE, WHAT WOULD HAVE STOPPED YOUR CLIENT FROM FILING A PETITION FOR WRIT OF HABEAS CORPUS US?

HE DID FILE A WRIT -- A PETITION FOR A WRIT OF HABEAS CORPUS, WHICH IS ALLEGED IN THE COMPLAINT, AND I REALIZE THE PETITION FOR WRIT OF HABEAS SAYS TIMELY OR IS SUPPOSED TO BE FORT WITH UNDER OUR CONSTITUTION AND THE FEDERAL CONSTITUTION, BUT THE REAL REALITY OF IT BEFORE HE FILES IT, HE HAS TO EXHAUST HIS ADMINISTRATIVE REMEDIES, THOUGH. WHEN YOU FILE YOUR WRIT, YOU HAVE TO SATISFY YOUR REQUIREMENTS FOR ADMINISTRATIVE REMEDIES. HE DID THAT, AND AS SOON AS HE GOT BACK INTO CUSTODY, HE SAID YOU DON'T HAVE ANY AUTHORITY OVER ME. I AM CITING WEST LAND, WHICH THE D.O.T. WAS A PARTY TO, AND THE DEPARTMENT OF CORRECTIONS HAS THE STATUTORY DUTY TO PROPERLY CALCULATE HIS SENTENCE.

IS THERE A DISTINCTION HERE, BECAUSE WE HAVE GOT THE PAROLE COMMISSION INVOLVED.

YES.

AND AS I READ THE STATUTES, IT SEEMS AS THOUGH THEY ARE REALLY RESPONSIBLE FOR THE CALCULATIONS AND ESTABLISHING THESE DATES THAT WE ARE TALKING ABOUT, AND THEN THE D.O.C WAS RELYING UPON WHAT APPEARED TO BE OR MY CONCERNS ARE IT APPEARED TO BE A YARBLLY-VALID WARRANT, WHICH HE WAS ---A FACIALLY-VALID WARRANT, WHEN HE WAS BROUGHT INTO THEIR CUSTODY, SO THAT IS AT LEAST A HURDLE THAT WE ARE TRYING TO GET OVER HERE, AS FAR AS THE D.O.C IS CONCERNED.

I RESPECTFULLY DISAGREE WITH THE COURT ON THAT ANALYSIS. I THINK IF YOU TRY TO COMPARE THE POLICE OFFICER WHO IS ON THE STREET, WHO GETS A WARRANT FROM A JUDGE AND THE POLICE OFFICER SAYS IT LOOKS GOOD TO ME. YOU ARE GOING, BUDDY THAT, IS CLEARLY COVERED BY THE IMMUNITY IN THAT SITUATION. DON'T DISPUTE. THAT IN THE STATUTORY SCHEME FOR CONDITIONAL RELEASE IS AS FOLLOWS. THE FLORIDA DEPARTMENT OF CORRECTIONS, UNDER CHAPTER, UNDER 944, AND I CAN GIVE YOU THE EXACT STATUTE NUMBER,

IS REQUIRED TO IDENTIFY THOSE INMATES THAT ARE ELIGIBLE FOR CONDITIONAL RELEASE, AND IN SO DOING, THEY ARE SAYING THIS IS THE INMATE. THEY ARE REQUIRED TO GIVE THE FLORIDA PAROLE COMMISSION THE TENTATIVE RELEASE DATE, AND THEY ARE REQUIRED TO GIVE THE PAROLE COMMISSION THE MAXIMUM RELEASE DATE. SO THE DEPARTMENT OF CORRECTIONS FIRST IDENTIFIES THE INMATE AND THEN TELLS THE PAROLE COMMISSION HOW LONG THEY MAY PUT THIS INMATE ON CONDITIONAL RELEASE. THEY SAID, UNDER 947.1405, THE PAROLE COMMISSION MAY NOT SET A CONDITIONAL RELEASE BEYOND THE MAXIMUM SENTENCE, MAXIMUM EXPIRATION DATE THAT THE COURT IMPOSED.

DOES THE COMMISSION DO THE CALCULATING, RATHER THAN DOC?

WELL, MAY I HEAR THAT QUESTION AGAIN, YOUR HONOR? I APOLOGIZE.

DOESN'T THE COMMISSION DO THE CALCULATING OF THE TIME, RATHER THAN DOC?

YOUR HONOR, I HAVE NOT GOTTEN INTO DISCOVERY IN THIS CASE. THE COMMISSION ISSUES THE ORDER, AND I THINK THAT THE D.O.C IS INVOLVED, THAT THE COMMISSION RELIES UPON THE DEPARTMENT OF CORRECTIONS CALCULATIONS, BUT I THINK THE COURT IS MISSING THE POINT HERE, IF YOU ARE LOOKING AT THAT ISSUE.

WELL, IF THE COMMISSION DOES THE CALCULATING, AND THE DEPARTMENT OF CORRECTIONS ONLY FOLLOWS WHAT THE COMMISSION SAYS DOES THAT MAKE A DIFFERENCE? WOULD THAT MAKE A DIFFERENCE, IN YOUR OPINION?

NOT IN THIS SITUATION, YOUR HONOR. AND THE REASON I THINK THIS IS REALLY IMPORTANT FOR THE COURT TO UNDERSTAND. I NOTICE, IN YOUR PRESS RELEASE, THAT YOU STATE THAT THE ISSUE IN THIS CASE IS WHETHER THE DEPARTMENT, WHETHER, QUOTE, THE DATE OF RELEASE FROM PRISON WAS IMPROPERLY CALCULATED, SO THAT HE SERVED MORE THAN 11 MONTHS BEYOND THE LAWFUL SENTENCE. THE ISSUE IS NOT THE CALCULATION OF THE DATE. WE DO NOT DISPUTE THE FACT, AND THE FACT --.

THE ISSUE IS FRAMED BY YOUR BRIEF. PLEASE DON'T BE MISLED. THAT IS FOR THE PUBLIC. SO, I MEAN, WE ARE REALLY NOT TALKING ABOUT THE CALCULATION. WE ARE TALKING ABOUT RESPONSIBILITY. CIVIL RESPONSIBILITY, IF THERE IS AN IMPROPER CALCULATION, OR A FAILURE IN CALCULATION. I MEAN IS THAT A FAIR SUMMARY? THAT THEY DIDN'T CALCULATE IT. THEY DIDN'T GO BACK IN AND READJUST IT, BECAUSE THE PERIOD WAS INCLUDED PREOCTOBER 1, 1988, AS PART OF THE SUPERVISED PERIOD AND SHOULD NOT HAVE BEEN, AND THAT WAS AN ERROR. I MEAN, I THINK THAT IS PRETTY CLEAR.

THAT IS HOW THE FIRST DCA WOULD LIKE TO PHRASE IT. THE REALITY OF IT IS THAT THE PAROLE COMMISSION ASSUMED JURISDICTION OVER A SENTENCE IT DID NOT HAVE. AND IT DOES NOT HAVE ANY LEGAL AUTHORITY TO MAKE ANY CALCULATION ON THAT SENTENCE.

LET'S GET BACK, I GERTION THE STARTING POINT HERE IS THAT IN COMMON LAW WE DIDN'T HAVE THESE PAROLE COMMISSIONS AND THIS KIND OF THING, BUT WE HAD A COURT THAT WOULD JUST SENTENCE TO YOU "X" NUMBER, AND THAT IS IT, AND SOMEBODY HAD TO CALCULATE IT AND PUT IT ON A PIECE OF PAPER. CORRECT?

YES.

AND IF YOU FOLLOW THAT ANALYSIS, THERE IS JUDICIAL IMMUNITY FOR THAT. THE JUDGE SITS DOWN AND SAYS HERE IS THE NUMBER OF DAYS AND THAT IS WHAT YOU HAVE, BUT WE HAVE DEVELOPED A STATUTORY SCHEME NOW AND HAVE A COMMISSION THAT HAS THAT OBLIGATION, IT APPEARS, BY STATUTE, IS THAT CORRECT? THE COMMISSION IS THE ONE THAT CALCULATES ALL OF THESE, AS I UNDERSTAND, IN THE STATUTES.

I DO NOT DISPUTE THE FACT THAT THE COMMISSION CALCULATES RELEASE DATES, CONDITIONAL RELEASE DATES, BASED UPON THE DEPARTMENT OF CORRECTION'S RECOMMENDATIONS. I DO NOT DISPUTE THAT, YOUR HONOR. WHAT I THINK THE PROBLEM IS WITH THAT CONCEPT IS THAT YOU ARE SAYING, ASSUME THAT THE COMMISSION AS DISCRETION ON A CONDITIONAL RELEASE ELIGIBLE SENTENCE, BUT THAT SHOULD SOMEHOW GIVE THEM JURISDICTION OVER A NONELIGIBLE CONDITIONAL RELEASE SENTENCE.

BUT I MEAN, DOES THAT POINT NOT TURN ON WHETHER IT IS A MISTAKE IN JURISDICTION OR SOMETHING THAT IS JUST TOTALLY IN EXCESS OF JURISDICTION?

THE LAW IN THE STATE OF FLORIDA, PRIOR TO AT HEES THIS CASE, WAS THAT WHEN AN IMAGE STRAIGHT OR A JUDGE ISSUES OR ASSUMES JURISDICTION, EVEN MISTAKENLY BY ERROR THERE, IS NO INTENT INVOLVED HERE BUT BY MISTAKE, THE LAW SET FORTH INFER INFERIES V SMOOTH, WARREN V RAY, BECKHAM V KLEIN, WHEN THEY HAVE NO JURISDICTION, THEY CAN BE LIABLE, JUDGES.

ARE WE TALKING ABOUT JURISDICTION HERE? AS A PRACTICAL MATTER, WHEN THE GUY WAS PLACED ON CONDITIONAL RELEASE, WAS HE PLACED ON CONDITIONAL RELEASE, UNDER THE CASE NUMBERS THAT WERE INVOLVED IN HIS POST-OCTOBER '88 CASES? I MEAN, WHAT WE REALLY ARE TALKING ABOUT, INSTEAD OF JURISDICTION, REALLY, IS CALCULATION, ISN'T IT?

I DISAGREE WITH YOU, YOUR HONOR. AS PLED IN THE COMPLAINT, AND I THINK --

ONE MORE QUESTION THEN. WAS, IN FACT, HE PLACED ON CONDITIONAL RELEASE, UNDER CASE NUMBER 88-642?

IF THAT IS THE ONE PRIOR TO OCTOBER, WITH THE CONDUCT OCCURRING PRIOR TO OCTOBER 1, 1988, AND THE COMPLAINT IT IS ALLEGED IN PARAGRAPH 10, THAT IS EXACTLY WHAT HAPPENED.

THAT THE PAPERS THAT HE WAS GIVEN FOR CONDITIONAL RELEASE HAVE THAT CASE NUMBER ON IT?

YOUR HONOR, I CANNOT REPRESENT TO YOU WHAT THOSE PAPERS SAY. I CAN REPRESENT TO YOU WHAT THE COMPLAINT SAYS, AND I THINK THIS COURT IS BOUND AND OBLIGED TO STAY WITHIN THE FOUR CORNERS OF --

WHAT PARAGRAPH OF THE COMPLAINT ACTUALLY ALLEGES THAT HE WAS PLACED ON CONDITIONAL RELEASE, UNDER THAT CASE NUMBER?

I AM REFERRING TO PARAGRAPH 10, I BELIEVE, YOUR HONOR, ON THE ACTUAL COMPLAINT. I BELIEVE IT IS ATTACHED TO THE APPENDIX AS APPENDIX 2. AT PARAGRAPH 10, READS AS FOLLOWS, UPON THE EX-PRAFINGS THE SENTENCES THROUGH GAIN TIME ON MAY 28, 1993, PLAINTIFF WAS RELEASED ON CONDITIONAL RELEASE, TO BE SPECIFIESED UNTIL DECEMBER 25, 1995. THE DATE WAS CALCULATED BY CONSIDERING THE TWO SEPARATE SENTENCES AS ONE 60-MONTH SENTENCE, DESPITE THE FACT THAT THE ONLY SECOND 30-MONTH SENTENCE WAS SUBJECT TO THE PROVISIONS OF FLORIDA STATUTE 947.1405-1 AND 2.

DOES THAT REALLY ANSWER THE QUESTION?

I THINK IT DOES ANSWER QUESTION.

BUT THERE IS NO REFERENCE TO THAT PARAGRAPH PRIOR TO THE COMPLAINT.

NO. I THINK WITH THE READING OF THE COMPLAINT, YOU CAN CLEARLY SEE THAT HE WAS PUT ON CONDITIONAL RELEASE, USING THAT PRE-OCTOBER 1, 1988 SENTENCE.

BUT YOU UNDERSTAND THAT IS NOT -- I WOULD JUST LIKE TO FOLLOW UP. THAT ISN'T THE QUESTION, WHETHER THAT WAS USED. THE QUESTION WAS WHETHER HE WAS PLACED ON CONDITIONAL RELEASE FOR THAT CASE.

ACCORDING TO THE COMPLAINT, YES, MA'AM, AND ACCORDING TO MY KNOWLEDGE, FACTS OUTSIDE THE RECORD, YES, MA'AM

AS YOU CAN SEE FROM OUR QUESTIONS, WE ARE PRETTY WELL FAMILIAR WITH THE FACTS AND CIRCUMSTANCES OF THE CASE.

YES.

WOULD YOU TAKE THE TIME HERE TO RESTATE YOUR POSITION OF LIABILITY, IN SO FAR AS THE COMMISSION AND DOC HAS, BECAUSE OF THE FACTS AND CIRCUMSTANCES HERE, AND THEN ADDRESS THE FIRST DISTRICT'S OPINION, WITH REFERENCE TO THE IMMUNITY AND THE HONORING OF THE WARRANT BY DOC.

YES, SIR. THE WAY THAT I WOULD RESTATE THE QUESTION IS, IS WHETHER OR NOT THE PAROLE COMMISSION, AND THE PAROLE COMMISSION CAN BE HELD LIABLE, WHEN IT EXERCISES JURISDICTION OVER A SENTENCE IT DOES NOT HAVE TO INCARCERATE SOMEONE. THAT IS THE FIRST, THE WAY I WOULD SAY IT TO THE PAROLE COMMISSION. THE SECOND ASPECT OF IT IS THAT I WOULD RESTATE THE ISSUE, AS FAR AS DOC IS CONCERNED, WHETHER THE FLORIDA DEPARTMENT OF CORRECTIONS CAN BE HELD LIABLE, WHEN THEY KEEP SOMEBODY IN JAIL BEYOND THE EXPIRATION OF THEIR SENTENCE, WHEN THEY HAVE FACTS AND INFORMATION AVAILABLE TO THEM, AS WELL AS THE STATUTORY MANDATE, TO ENSURE THAT THE SENTENCE OF THE COURT IS CARRIED OUT PURSUANT TO STATUTE. THAT IS HOW I WOULD STATE THE QUESTION. NOW, AS FAR AS THE FIRST DISTRICT --

CAN I ASK JUST A QUESTION? HOW DO WE ACCOMMODATE IN THERE THAT WE ARE TALKING ABOUT CASE LAW HAS TO BE INTERPRETED AND STATUTES, AS A BLANKET? I DON'T MEAN TO INTERRUPT YOU. I KNOW YOU WANT TO KEEP GOING, BUT PLEASE INCLUDE THAT AS WE GO.

WHEN YOU SAY HOW, I MAY NOT UNDERSTAND YOUR QUESTION, YOUR HONOR, IF I COULD PLEASE.

THIS IS NOT JUST DOC PICKING SOMEBODY OFF THE STREET AND LOCKING THEM UP AND NOT LET O'CLOCK THEM OUT.

THAT'S CORRECT -- AND NOT LETTING THEM OUT.

THAT'S CORRECT.

SO IT HAS TO ACCOMMODATE SOME OF THE FACTS OF THE CASE, WHEREVER WE GO. PLEASE CONTINUE.

AS FAR AS THE DISTRICT COURT OPINION IN RELATION TO THE PAROLE COMMISSION, WHAT THEY DO, AND IN THAT OPINION THAT I THINK IS WRONG IN MY LEGAL OPINION, THAT THEY EQUATE PAROLE WITH CONDITIONAL HE LEASE, AND THEY SAY, WELL, -- CONDITIONAL RELEASE, AND THEY SAY PAROLE DECISIONS YOU HAVE DISCRETION. WE DON'T DISPUTE. THAT UNDER BARRY V STATE, WE AGREE WITH THAT. THE PROBLEM IS THAT, IN CONDITIONAL RELEASE, THEY DON'T HAVE DISCRETION WHO TO RELEASE. THERE IS NO DISCRETION WHATSOEVER. THEY DON'T HAVE ANY DISCRETION HOW LONG TO SET THE DATE, SO AS TO EQUATE PAROLE WITH CONDITIONAL RELEASE IS NOT ACCURATE. THIS IS, YES, SIR.

LET ME ASK YOU SORT OF A BROAD GENERIC QUESTION, BUT IT IS SORT OF PART OF THE CLOUD OVER THE CASE. THAT IS THAT IT IS NO SECRET THAT, IN THE LAST TEN YEARS, PROBABLY, CERTAINLY THE LAST FIVE OR SIX YEARS, THAT THIS COURT, AND ALL THE COURTS, HAVE HAD THE CONSIDERABLE DIFFICULTY IN INTERPRETING THE STATUTORY SCHEME, AND ESPECIALLY IN VIEW OF THE EXPOS FACTO AND OTHER CONSTITUTIONAL PROVISIONS, AND SO I THINK IT IS FAIR TO SAY THAT DIFFERENT COURTS HAVE REACHED DIFFERENT CONCLUSIONS, IN TERMS OF WHAT THE LEGISLATURE CAN DO, AND WHAT STATUTORY SCHEME APPLIES, IN TERMS OF THE VARIOUS FORMS OF CREDITS AND THAT KIND OF THING, SO WHAT DO WE DO, IN A SITUATION WHERE THAT IS A FACTOR, AND THAT IS THAT IF THERE IS AN APPARENT GOOD FAITH ATTEMPT TO CONSTRUE THESE PROVISIONS AND COME TO A RESOLUTION, WHERE IS THE ROOM, IN TERMS OF YOUR SCHEME OF LIABILITY, FOR THERE TO BE ROOM FOR ERROR, AS CLEARLY HAS HAPPENED? THIS COURT HAS MADE RULINGS THAT THE U.S. SUPREME COURT HAS DISAGREED WITH. THE DISTRICT COURTS HAVE MADE RULINGS THAT WE ARE ALL, WE HAVE HAD ALL HAD CONSIDERABLE DIFFICULTY. WHERE IS THE ROOM OR THE FLEXIBILITY, WITHIN YOUR SCHEME OF LIABILITY, FOR THE COURTS AND THE COMMISSION TO OPERATE, TO TRY TO FIGURE OUT ALL THIS, AND NOT BE HELD LIABLE THE MINUTE THEY MAKE A MISTAKE?

I THINK THE CUTOFF DATE, YOUR HONOR, AND THAT IS WHAT YOU ARE ASKING. WHERE IS THE BRIGHT-LINE? I THINK THE BRIGHT-LINE IN THIS INSTANCE IS NOT WHEN THE COMMISSION RELEASED MR. ANDREWS. THAT IS NOT WHAT, BECAUSE AT THAT TIME, THEY HAD A LEGITIMATE AT LEAST THEIR OWN MIND, AN INTERPRETATION OF THE STATUTE THAT THEY TOOK TO THE COURTS ON WEST LAND. I UNDERSTAND THAT FIRST ASPECT OF IT, AND WE ARE NOT SAYING THAT THE COMMISSION SHOULD BE HELD LIABLE IN AN INSTANCE WHERE THERE IS NOT CLEAR DECISIONAL CASE LAW THAT TELLS THEM TO DO SOMETHING. WE ARE NOT SAYING THAT. WE ARE SAYING THAT, WHEN WEST LAND CAME OUT, THE COMMISSION DIDN'T HAVE A MISTAKE, A MISTAKEN IMPRESSION OF WHAT THE STATUTE SAID. THE COURT SAID WHAT THE STATUTE SAID. WE BELIEVE THAT THE COMMISSION, AT THAT POINT IN TIME, THAT ANY PROTECTION THAT THEY MAY HAVE HAD FOR A QUASI-JUDICIAL OR JUST AN ARGUMENT THAT WE DON'T KNOW WHAT THE STATUTE SAYS. WE WANT JUDICIAL INTERPRETATION, THAT ARGUMENT GOES OUT THE WINDOW AT THAT POINT IN TIME, AND WHAT HAPPENED HERE IS YOU HAVE TWO WARRANTS THAT WERE ISSUED, WELL AFTER WEST LAND, WELL AFTER THERE WAS NO QUESTION OF CASE LAW, WHAT THE STATUTE MEANT. THAT IS WHEN THE LIABILITY ATTACHES.

SO YOU ARE SAYING THAT THERE WAS NO DISCRETION BUT I THOUGHT YOU ARE, ALSO, SAYING THAT THERE IS NO JURISDICTION, BECAUSE WHAT I AM THINKING ABOUT IS WE SEE, ALL THE TIME, ALL THESE JAIL CREDIT CASES.

YES.

WHERE, WERE THERE JUST MISTAKES? BECAUSE IT IS, ALSO,. THE MATSUSHITACAL BUT COMPLICATE -- MATHEMATICAL BUT COMPLICATED, WOULD THOSE OPINIONS, IF WE FILE A DISSENT IN THIS CASE, DOES THAT OPEN THE TIME, ANYTIME SOMEONE SERVES A DAYLONG OR TWO DAYS LONG, BECAUSE OF A MISCALCULATION OF JAIL RED CREDITY, THAT THE -- CREDIT THAT THE D.O.C IS NOT GOING TO BE LIABLE CIVILLY?

NO, AND THAT IS WHAT I HAVE BEEN TRYING IT TO CONVEY TO THE COURT THIS MORNING. I HAVE NOT NECESSARILY JUMPED ON THE DISSENT BANDWAGON HERE, BECAUSE THE DESCENT SAYS NO JURISDICTION, END OF STORY. I AM SAYING IF THE PAROLE COMMISSION HAD TAKEN A 30-MONTH ELIGIBLE SENTENCE AND MADE A MISCALCULATION TO 31 MONTHS, THE RELEASE ONE MONTH LATE, I DON'T THINK THAT THE COMMISSION SHOULD BE HELD LIABLE IN THAT INSTANCE, BECAUSE THAT IS TRULY A MISCALCULATION, BUT --

ISN'T THAT MINISTERIAL, THOUGH, IF THEY DID THAT?

THAT IS MINISTERIAL. I DON'T THINK THE COURT HAS TO REACH THAT ISSUE TODAY. WHAT I AM SUGGESTING TO YOU IS, WHEN THE COMMISSION ASSUMES JURISDICTION ON SOMETHING THEY HAVE NO JURISDICTION OF THAT, IS WHERE YOUR LIABILITY ATTACHES. NOT A MISCALCULATION.

JUSTICE QUINCE'S QUESTION WAS THAT THE JURISDICTION WAS ASSUMED IN A CASE OVER WHICH THEY HAD JURISDICTION.

THAT IS -- JURISDICTION.

MY POINT IS THAT THE COMMISSION SHOULD BE HELD LIABLE AND THE DEPARTMENT OF CORRECTIONS, BECAUSE OF THE STATUTORY SCHEME THAT JURISDICTION, JURISDICTION IS ASSUMED WHERE THEY HAVE NONE, AND THE DEPARTMENT OF CORRECTIONS HAD A DUTY, AFTER O'CLOCK PUT ON NOTICE OF THIS ERROR, TO CORRECT IT. MR. CHIEF JUSTICE: YOU ARE INTO YOUR REBUTTAL TIME.

YES, YOUR HONOR. THANK YOU. A. MR. CHIEF JUSTICE: MR. HUBENER.

MAY IT PLEASE THE COURT. LOUIS HUBENER WITH THE OFFICE OF THE ATTORNEY GENERAL, REPRESENTING THE RESPONDENTS. THE PAROLE COMMISSION AND THE DEPARTMENT OF CORRECTIONS. THE QUESTION CERTIFIED, ASSUMES THAT THE PAROLE COMMISSION EXERCISED ITS JURISDICTION UNDER 947.1405, AND MADE AN ERROR IN ITS DETERMINATION OF HOW LONG ANDREWS WAS UNDER SUPERVISION. NOW, TO ANSWER YOUR QUESTION, I THINK, PROBABLY, WHAT HAPPENED, ALTHOUGH IT IS NOT CLEAR FROM THE COMPLAINT, IS THAT THE COMMISSION ASSUMED THAT THEY COULD, THAT THEY HAD AUTHORITY TO CALCULATE THE DATE, BASED ON THE SENTENCES THAT WERE FOR CRIMES AFTER OCTOBER 1, 1998, 1988, AND BEFORE.

LET ME ASK YOU THIS, WHEN SOMEONE IS PLACED ON CONDITIONAL RELEASE, I WOULD ASSUME THERE IS SOME KIND OF FORM, AND I AM INTERESTED IN KNOWING WHETHER OR NOT HE WAS ACTUALLY PLACED ON CONDITIONAL RELEASE UNDER THE CASE NUMBER THAT IS THE POST OCTOBER '88 NUMBERS.

THERE ARE NO DOCUMENTS IN THIS RECORD. I DON'T KNOW. THIS WAS DECIDED ON A MOTION TO DISMISS.

LET ME ASK YOU A SIMPLER HYPOTHETICAL AND THEN ASK YOU TO WORK INTO THIS CASE FROM THERE. LET'S ASSUME THAT THERE IS A STATUTE FOR, A LAW THAT IS VIOLATED, AND IT HAS A PRECISE PENALTY, AND THE PENALTY IS TWO YEARS IN THE DEPARTMENT OF CORRECTIONS. AND THE PERSON IS SENTENCED TO THAT TWO YEARS, AND THE TWO YEARS EXPIRES, AND BY MISTAKE, THE COMMISSION ENTERS AN INSTRUCTION TO THE DEPARTMENT OF CORRECTIONS TO HOLD THAT PRISONER INDEFINITELY, AFTER THAT, AND THE PRISONER CONTINUES TO BE HELD, AND HE IS HELD FOR A YEAR BEYOND THE TWO YEARS, AND THEN HE IS RELEASED WITH A LETTER OF APOLOGY. WE MADE A MISTAKE IN YOUR CASE. WE THOUGHT THERE WAS A VERY SIMILAR STATUTE THAT HAS A THREE-YEAR SENTENCE PROVISION, AND WE DIDN'T GO BACK AND LOOK AT EITHER THE JUDGE'S SENTENCE OR THE STATUTE. WE LOOKED AT THIS SIMILAR STATUTE, AND WE THOUGHT YOU WERE ONE, WE HAD PUT YOU ERRONEOUSLY IN THAT CATEGORY. UNDER THAT HYPOTHETICAL, IS THERE ANY CIVIL LIABILITY OF THE COMMISSION OR THE DEPARTMENT OF CORRECTIONS, FOR KEEPING THE PRISONER, IN OTHER WORDS NOBODY DISPUTES THAT, AT THE END OF THE DAY, THAT THAT PRISONER WAS KEPT FOR A YEAR BEYOND ANY POSSIBLE AUTHORIZATION, AND IT WAS DUE TO A MISTAKE. WOULD YOU ADDRESS THAT HYPOTHETICAL.

YES, YOUR HONOR. THERE ARE TWO DIFFERENT DEFENDANTS HERE, AND I THINK WE NEED TO RECOGNIZE THAT, AND THE LEGAL THEORIES THAT APPLY TO EACH ARE SOMEWHAT DIFFERENT, BUT AS TO THE DEPARTMENT OF CORRECTIONS, I CAN WHEN IT -- I THINK WHEN IT RECEIVES AN OFFICIAL COMMUNICATION OF SOME NATURE, LIKE YOU HAVE DESCRIBED FROM THE PAROLE

COMMISSION, THAT THAT, AS FAR AS THE DEPARTMENT OF CORRECTIONS IS CONCERNED, SHOULD BE AN ACT THAT IS TAKEN UNDER COLOR OF LEGAL AUTHORITY, AND THE CASE LAW IS THAT AN ACT UNDER COLOR OF LEGAL AUTHORITY, WHILE IT MAY BE ERRONEOUS, IS NOT A BASIS FOR FALSE IMPRISONMENT. THE FALSE IMPRISONMENT MAY BE IMPROPER, BUT IF IT IS UNDER COLOR OF LEGAL AUTHORITY, THEN THERE IS NO FALSE IMPRISONMENT, AND I THINK THE DEPARTMENT OF CORRECTIONS HAS THE RIGHT, IN THAT CIRCUMSTANCE, TO RELY ON THE PAROLE COMMISSION'S OFFICIAL ACTIONS, AND I THINK IN THIS CASE, THAT IS EXACTLY WHAT IT DID, TO RELY ON FACIALLY-VALID WARRANTS THAT WERE ISSUED, PURSUANT TO PROCEEDINGS UNDER 947.141, WHERE SOMEBODY --

I WANT YOU TO CONTINUE UP TO THE COMMISSION, BUT BEFORE YOU GET OFF OF THE DEPARTMENT, LET'S ASSUME, IN MY HYPOTHETICAL, THAT THE DEPARTMENT, ITSELF, WAS DISGREEK WITH THE COMMISSION. -- DISAGREEING WITH THE COMMISSION, AND THE DEPARTMENT WAS SAYING TO THE ECONOMIST, IN MY HYPOTHETICAL, NO, THAT IS WRONG. YOU HAVE MADE A MISTAKE HERE, BUT IT TOOK A YEAR BEFORE THE COMMISSION REALIZED IT HAD MADE ITS MISTAKE. WOULD THAT HAVE ANY DIFFERENCE IN MY HYPOTHETICAL?

NO. I DON'T THINK SO. BECAUSE IF THEY RECEIVE AN ORDER FROM THE COMMISSION, AND I AM NOT SURE THE COMMISSION WOULD REALLY GIVE THEM AN ORDER. THE ORDER WOULD CONCERN COMPLAINAL RELEASE. BUT -- CONDITIONAL RELEASE. BUT THEY HAVE THE RIGHT TO RELY THAT, I THINK.

GO -- TO RELY ON THAT, I THINK.

GO ON, WITH THE POTENTIAL HYPOTHETICAL LIABILITY OF THE COMMISSION.

THERE ARE THREE THEORIES, I THINK, THAT PERTAIN HERE, AND THAT THE DECISION BELOW COULD BE AFFIRMED ON.

I AM JUST TALKING ABOUT MY HYPOTHETICAL. I AM NOT TALKING ABOUT THIS CASE.

I THINK THEY ALL APPLY TO YOUR HYPOTHETICAL, AND THEY ARE ACTIONS TAKEN UNDER COLOR AUTHORITY. THERE IS QUASI-JUDICIAL IMMUNITY AND THERE IS SOVEREIGN IMMUNITY. NOW, DEPENDING ON EXACTLY WHAT THE COMMISSION DID, IN TERMS OF FACTS AND THE LAW UNDER WHICH IT WAS OPERATING, IS IMPORTANT TO KNOW. I THINK, AS LONG AS THEY WERE ACTING AND ARE PROCEEDING IN WHICH THEY HAD AUTHORITY TO ACT, AS WAS THE CASE HERE, AND THEY PROCEED, UNDER THAT LEGAL AUTHORITY, THEN THEY ARE ACTING UNDER COLOR OF LEGAL AUTHORITY, AND IT IS UP TO THE INMATE TO TAKE SOME APPROPRIATE LEGAL ACTION, WHETHER IT BE IMMEDIATELY FILE A HABEAS CORPUS PETITION, OR IF THE COMMISSION HAS ENTERED SOME KIND OF OFFICIAL ORDER, TO SEEK JUDICIAL REVIEW OF THAT, IF THAT WOULD BE AVAILABLE. AND UNTIL THIS LEGAL PROCESS RUNS ITS COURSE, AND HE IS STILL HELD AFTER THE PROCESS HAS RUN ITS COURSE, THEN THERE MIGHT BE AN ACTION, BUT UNTIL THE LEGAL PROCESS HAS RUN ITS COURSE, NO, THERE WOULD BE NO LIABILITY.

WHEN YOU SAY RUN ITS COURSE, FOR INSTANCE IN A TRIAL COURT JUDGE HAD GRANT ADD APPLICATION FOR HABEAS, AND -- AN APPLICATION FOR HABEAS AND ORDERED THE RELEASE, AND THE COMMISSION OR THE DEPARTMENT STILL HELD THE PRISONER, THERE WOULD BE LIABILITY THEN?

THAT IS AN ENTIRELY DIFFERENT CASE. YES, I THINK THERE WELL MIGHT BE.

WELL, HOW DOES THAT PLAY INTO THE HANDS OF OR THE CONSIDERATION OF THE CASE OUT OF THE FIRST DISTRICT THAT ESSENTIALLY RESOLVE THIS LEGAL ISSUE, AND SAID TO THE COMMISSION AND THE DEPARTMENT, HERE ARE YOUR MARCHING ORDERS IN THIS REGARD. CAN WE ASSUME THAT THE COMMISSION RECEIVED THAT DECISION AND LOOKED TO SEE WHO IT

APPLIED, TO AND INSTRUCTED THE DEPARTMENT?

NO. I DON'T THINK THAT IS -- I DON'T THINK THAT IS WHAT HAPPENED. I THINK WHAT HAPPENED HERE, IS THAT IN MAY OF 1993, THIS MATTER CAME BEFORE THE COMMISSION. AND AN ORDER WAS ENTERED THAT SAID THAT MR. ANDREWS WOULD BE SUBJECT TO SUPERVISION ON RELEASE, UNTIL DECEMBER OF 1995. AND THAT ORDER WAS NOT CHALLENGED BY MR. ANDREWS. APPARENTLY THERE IS NO ALLEGATION HE SOUGHT ANY SORT OF REVIEW OF IT OR OTHERWISE CHALLENGED IT, SO HE WAS OUT ON RELEASE. A YEAR LATER, IN MAY OF '94, THE WEST LAND DECISION CAME DOWN. NOW, I THINK THE COURT FUNCTIONS MUCH LIKE A PAROLE COMMISSION, FOR EXAMPLE WHEN YOU ISSUE AN OPINION THAT BROADLY AFFECTS SENTENCING, THE CIRCUIT JUDGES DON'T GO LOOKING THROUGH THEIR PAST CRIMINAL FILES TO SEE WHO IS AFFECTED. IT IS BROUGHT TO THEIR ATTENTION.

SO THE RECORD IS UNREFUTED THAT THE ORDER WAS ISSUED BEFORE --

YES, WESTLAND. A YEAR BEFORE WESTLAND. SO AFTER IT CAME DOWN, I THINK FROM ANDREWS, HAD HE BEEN A -- I THINK MR. ANDREWS, HAD HE BEEN AWARE OF IT, WRITTEN A LETTER TO THE COMMISSION AND SAID I AM OFF. THIS CASE IS CONCLUSIVE. BUT HE DIDN'T. LATER THAT YEAR, IN '94, HE WAS ARRESTED PURSUANT TO A COMMISSIONED WARRANT, FOR VIOLATION OF HIS TERMS OF RELEASE AND BROUGHT BACK. HE WAS ENTITLED TO A HEARING, AT WHICH HE COULD HAVE RAISED THE WESTLAND DECISION. HE DIDN'T.

WAS THERE AN ACTUAL HEARING ON THE FIRST VIOLATION?

I DON'T KNOW. THE COMPLAINT DOESN'T SAY, BUT HE WAS --

WAS IT ALLEGED?

HE WAS CLEARLY ENTITLED TO ONE. HE WAS CLEARLY ENTITLED TO A HEARING. IF THEY HAD MOVED TO REVOKE HIS RELEASE, AND HE COULD HAVE RAISED THE WESTLAND DECISION AT THAT.

SO DOES IT MATTER THE REASON THE ERROR OCCURS IN THIS CASE?

I DON'T --

BECAUSE, AGAIN --

NO, IT DOESN'T, BECAUSE --

IF THIS WAS THE WRONG PERSON, FOR EXAMPLE, OBVIOUSLY EXPECT THE PERSON, IF THEY GOT WRONGFULLY BROUGHT IN, TO SAY THAT I AM NOT THE PERSON, BUT WHAT, HEARING WHAT YOU ARE SAYING IS THAT, EVEN IF THERE IS NO JURISDICTION TO HAVE DONE SOMETHING, THAT BECAUSE MR. ANDREWS DIDN'T DO WHAT HE NEEDED TO DO, THAT THAT IS A DEFENSE, AND I AM HAVING A LITTLE TROUBLE WITH IT, CONCEPTUALIZING HOW WE, THEN, PHRASE THE ISSUE.

I DON'T THINK YOU CAN CLEARLY SAY THERE WAS NO JURISDICTION, UNTIL THE WESTLAND DECISION CAME DOWN. AND WHEN HE WAS BROUGHT BACK AFTER THAT, I THINK HE HAD AN OBLIGATION TO RAISE IT. I MEAN, IF YOU DON'T TELL A COURT WHAT IT NEEDS TO KNOW, THEN THE COURT NECESSARILY IS NOT NECESSARILY GOING TO KNOW EVERYTHING IT NEEDS TO KNOW.

SO AT THE TIME THAT THE ORDER WAS ENTERED, THERE WAS JURISDICTION, BECAUSE WESTLAND WAS STILL IN DOUBT.

YES.

AND SO THEY WEREN'T ACTING OUTSIDE OF THEIR JURISDICTION.

THAT ORDER, YOU SEE, THAT '93 ORDER CONTINUED THROUGH THIS PROCESS UNCHALLENGED, SO THE COMMISSION WAS ACTING, I SUBMIT, UNDER COLOR OF LEGAL AUTHORITY, ALL THE WAY ALONG.

I AM HAVING SOME DIFFICULTY WITH YOUR ANALOGY TO THE COMMISSION OR DEPARTMENT OF CORRECTIONS, WHICH IS HOLDING PEOPLE. THAT IS IMPRISONING PEOPLE. TO A TRIAL COURT JUDGE THAT RECEIVES AN OPINION FROM AN APPELLATE COURT.

NO. I WASN'T ANALOGYZING.

AND GOES BACK AND LOOK.

I WASN'T ANALOGYZING THE DEPARTMENT OF CORRECTIONS TO THAT DIRECTION. I WAS ANALOGIZING THE PAROLE COMMISSION.

I AM CONCERNED ABOUT WHAT WE HAVE HERE IS THE LIBERTY INTEREST OF PEOPLE. OKAY. AND I GUESS WE ASSUME, HERE, ON THE COURTS, THAT IF A CONTROLLING DECISION OF THE COURT OF APPEALS COMES OUT, INTERPRETING AN IMPORTANT STATUTORY PROVISION WITH REFERENCE TO THE DEPARTMENTS OR THE COMMISSION'S JURISDICTION TO IMPRISON PERSONS, THAT THERE WILL BE A RESPONSE TO THAT, SYSTEM-WIDE, AND WOULD BE LIKE SAYING, WELL, WE NEED TO CHECK IMMEDIATELY AND SEE WHETHER OR NOT WE ARE HOLDING, IN PRISON, ANYBODY THAT WE ARE NOT JUSTIFIED IN HOLDING IN PRISON, YOU KNOW, BECAUSE OF THIS DECISION, AND YOU ARE TELLING ME THAT THAT DOESN'T OCCUR?

I THINK, TO A CERTAIN EXTENT, THAT IS A RESOURCE PROBLEM, BEGIN THE NUMBERS. -- GIVEN THE NUMBERS, BUT I, ALSO, THINK THAT YOU ARE ASSUMING THAT QUESTION ASSUMES, AT LEAST TO ME, THAT THERE IS SOME KIND OF STATUTORY OR COMMON LAW DUTY TO MAKE THIS CHECK, AND I DON'T THINK THERE IS, AND THE COURT BELOW, UNANIMOUSLY, HELD THAT MR. ANDREWS HAD NO ACTION FOR A BREACH OF ANY STATUTORY PROVISION.

SO IF A COURT, IF THIS COURT DECLARED A PARTICULAR CRIMINAL STATUTE UNCONSTITUTIONAL AND SAID THAT ANYBODY THAT HAS BEEN SENTENCED UNDER THAT STATUTE IS ENTITLED TO BE RELEASED, WE CANNOT ASSUME THAT THE DEPARTMENT OR THE COMMISSION WOULD GO FORWARD IMMEDIATELY AND CHECK TO SEE IF THEY WERE HOLDING ANYBODY UNDER THAT.

NO. YOU SHOULDN'T. NO. I THINK YOU SHOULD ASSUME THAT THE DEPARTMENT WILL DO THAT, BUT THE QUESTION IS WHEN A MISTAKE IS MADE AND IT IS NOT DONE, WHETHER THERE IS A CAUSE OF ACTION FOR FALSE IMPRISONMENT. AND AS LONG AS THEY ARE HELD UNDER COLOR OF LEGAL AUTHORITY, THERE ISN'T, AND THIS, YOU REALIZE, WAS A PROBLEM THAT, OR A MISTAKE OR AN ASSUMPTION THAT CONTINUED THROUGHOUT THIS AND WAS, THESE YEARS, AND WAS NEVER CALLED SPECIFICALLY TO THE COMMISSION'S ATTENTION, UNTIL THE PETITION FOR HABEAS CORPUS WAS FILED, AND THEN HE WAS RELEASED, BUT YOU KNOW, BEYOND COLOR OF LEGAL AUTHORITY, THERE IS THE QUASI-JUDICIAL IMMUNITY BAR, AND THAT APPLIES AND CONSTITUTES A BAR TO AN ACTION, AS, EVEN WHEN A JUDICIAL OFFICER ACTS IN EXCESS OF HIS AUTHORITY, AND I WOULD SUBMIT HERE THAT IF WE CAN CHARACTERIZE THE COMMISSION'S ACTION IN A PARTICULAR WAY, THE WORST THAT CAN BE SAID OF IT WAS THAT IT WAS CONTINUING TO ACT IN EXCESS OF ITS AUTHORITY, BECAUSE IT HAD JURISDICTION OVER THE PERSON OF MR. ANDREWS, AND IT HAD JURISDICTION OVER THE CLASS OF CASES, CONDITIONAL RELEASE CASES UNDER 947.1405, AND WHILE A COURT MAY MAKE A MISTAKE AS TO THE FACT OF ITS JURISDICTION AND ACT INAPPROPRIATELY WHEN IT DOES NOT HAVE JURISDICTION IN A

PARTICULAR CASE, IF IT DOES HAVE JURISDICTION OVER THE SUBJECT MATTER AND THE PERSON, THEN THERE IS NO LIABILITY.

BUT THE REAL PROBLEM HERE IS MAKING THAT JUMP, TO SAY THAT THIS EXECUTIVE BRANCH OPERATION IS, REALLY, QUASI-JUDICIAL, AND THAT IS THE DIFFICULTY. WHAT IS THE BEST AUTHORITY THAT YOU CAN POINT US TO, BECAUSE I MEAN, CERTAINLY IT IS NOT IN EVERY CIRCUMSTANCE THAT THEY OPERATE IN A QUASI-JUDICIAL, IS IT, OR IS IT?

WELL, I WOULD SAY THAT, WHEN THEY ARE OPERATING UNDER 947.1405 AND MAKING ALL OF THE DETERMINATION THAT IS NEED TO BE MADE UNDER THERE PARTICULARLY WHEN THEY ARE OPERATING UNDER 947.141, WHERE THEY ISSUE ARREST WARRANTS, WHICH, AS THE DISTRICT COURT POINTED OUT IS A JUDICIAL ACT, AND THEY ARE OBLIGATED TO PROVIDE THOSE WHO ARE BROUGHT BACK HEARINGS, THEN VERY CLEARLY IN THAT CIRCUMSTANCE, JUDGE, THEY ARE ACTING IN A QUASI-JUDICIAL CAPACITY.

IN THAT, UNDER THAT LIMITED STATUTORY SCHEME, IT WOULD BE --

I THINK UNDER BOTH STATUTES. THE ONE WHERE, THE ONE THAT IS, CONSTITUTES THE CONDITIONAL RELEASE PROGRAM, AND THEN THE ONE THAT FOLLOWS THAT DEALS WITH AUTHORITY TO ISSUE ARREST WARRANTS AND HOLD HEARINGS.

JUSTICE QUINCE HAD A QUESTION. I AM SORRY.

DOES THAT MATTER, THEN, IN THIS JURISDICTIONAL SCHEME, WHAT CASE HE WAS ACTUALLY PLACED ON CONDITIONAL RELEASE UNDER?

NO. IN MY OPINION, IT DOESN'T.

SO EVEN IF WE LOOKED AT THE DOC SCREENS OR THE PAROLE COMMISSION SCHEMES, -- SCHEMES, OR THE PAROLE COMMISSION SCHEMES AND WE SEE THAT HE WAS PLACED ON CONDITIONAL RELEASE FOR THE '88 CASE NUMBER, AND WE ALL AGREE THAT THAT OCCURRED PRIOR TO OCTOBER 1 OF 1988, THEN THE COMMISSION STILL HAD JURISDICTION?

THEY HAD JURISDICTION OVER THAT CLASS OF CASES, AND THEY HAD JURISDICTION OVER MR. ANDREWS.

DOES THE CLASS OF CASES INCLUDE WHETHER OR NOT IT OCCURRED AFTER OCTOBER 1, 1988?

NO. IT APPLIES TO ALL CASES THAT ARE BROUGHT BEFORE THEM UNDER THAT STATUTE. WHAT THEY DID, APPARENTLY, WAS MAKE AN ERROR IN ASSUMING THAT HE WAS SUBJECT TO CONDITIONAL RELEASE. BUT HE WAS BROUGHT BEFORE THEM, PURSUANT TO THAT STATUTE. HE WAS UNDER THE OTHER SET OF SENTENCES, ENTITLED TO CONDITIONAL RELEASE, AND THEY MISTAKENLY ASSUMED THAT, IN THAT PARTICULAR CASE, HE COULD BE, THAT THEY COULD TAKE INTO ACCOUNT THE SENTENCE FOR THE PREOCTOBER 1, 1998, OFFENSES. MR. CHIEF JUSTICE: JUSTICE SHAW.

I HAVE LISTENED TO WHAT YOU HAD TO SAY, AND DOESN'T IT AMOUNT TO OR AREN'T YOU SAYING THAT, IF A MISTAKE IS MADE, IN THE CALCULATION, THAT DOC IS, THEN, OPERATING UNDER COLOR OF LAW, AND THAT THERE WOULD BE NO LIABILITY. ISN'T THAT YOUR BOTTOM LINE?

WELL, AS FAR AS THE DEPARTMENT OF CORRECTIONS IS CONCERNED, THE MISTAKE THAT WAS MADE HERE WAS NOT THEIRS. IT WAS THE COMMISSION'S, AND THEY RELIED ON COMMISSION WARRANTS AND OFFICIAL ACTION TAKEN BY THE COMMISSION. THEY HAD THE RIGHT TO RELY ON THAT. I THINK JUST AS MUCH AS A POLICE OFFICER HAS TO RELY ON A FACIALLY-VALID

WARRANT.

BUT, WELL, SO YOU ARE SAYING IF THE MISTAKE IS MADE BY DOC, THERE IS A DIFFERENCE?

WELL, IT WOULD DEPEND ON THE NATURE OF THE MISTAKE.

A MISTAKE ON THE TIME THAT THE PERSON IS TO BE RELEASED. THAT IS THE MISTAKE.

ORDINARILY NOT. I MEAN, THE INMATE HAS REMEDIES BY WHICH HE CAN GET OUT, AND A SIMPLE MISTAKE DOES NOT SUBJECT THE DEPARTMENT TO LIABILITY. I MEAN, IF IT DID, THERE ARE GOING TO BE A LOT OF CASES OF THIS NATURE, BECAUSE THE POTENTIAL, YOU KNOW, GIVEN THE WAY THE LAWS ARE WITH GAIN TIME AND EVERYTHING ELSE, THAT --

IF THE DEPARTMENT, IF DOC IS BEING PUT ON NOTICE BY CASE LAW AND BY THE PRISONER, THAT HE OUGHT NOT TO BE IN JAIL OR IN PRISON, AND DOC INSISTS THAT OUR CALCULATION SAYS THAT HE SHOULD BE HERE, AND THEY KEEP HIM THERE AN EXTRA YEAR, IS THERE LIABILITY?

ONLY IF THEY CLEARLY KNEW THAT HE WAS, THAT THE INMATE WAS DUE TO BE RELEASED ON A CERTAIN DATE AND THEY KEPT HIM ANYWAY.

WELL, AT THE POINT WHERE, IN THIS CASE, AND, AGAIN, WE ARE HERE ON A MOTION TO DISMISS, AT THE POINT THAT MR. ANDREWS FILED A COMPLAINT, AND IT WAS REPRESENTED THAT HE DOESN'T GET OUT IMMEDIATELY. YOU HAVE GOT TO GO THROUGH ADMINISTRATIVE REMEDIES AND SO FORTH, WHY WOULDN'T HE, THEN, AT THE POINT THAT IT IS BROUGHT TO THEIR ATTENTION, AND I DON'T KNOW WHERE IN THE 11 MONTHS THAT IS, BUT I AM HEARING THAT IT WASN'T, LIKE, AS SOON AS THEY, SOMEONE SAID WESTLAND, THEY GO YOU ARE RELEASED. WHY WOULDN'T THERE, THEN, BE LIABILITY FROM THE TIME THAT THEY WERE TOLD, BY THE PRISONER, YOU HAVE MADE A MISTAKE?

BECAUSE HE WAS THERE PURSUANT TO PROCEEDINGS CONDUCTED BY THE COMMISSION. THAT THE D.O.C HAD THE RIGHT TO RELY ON. I THINK YOU ARE ASKING, WITH ALL DUE RESPECT, I THINK YOU ARE ASKING THAT THE DEPARTMENT OF CORRECTIONS SECOND-GUESS WHAT THE PAROLE COMMISSION DOES, AND THEN, IF THE PAROLE COMMISSION IS WRONG, THEN THE DEPARTMENT OF CORRECTIONS IS WRONG, TOO. AND I DON'T THINK THAT SHOULD BE THE CASE. THEY SHOULD HAVE THE RIGHT, TO RELY ON FACIALLY-VALID WARRANTS AND PROCEEDINGS THAT ARE CONDUCTED BY THE COMMISSION. I AM NOT AWARE OF ANY CASE IN THIS STATE, IN WHICH, WHERE CERTAIN RESPONSIBILITIES ARE CLEARLY ASSIGNED TO ONE AGENCY THAT. THE AGENCY HAS AN OBLIGATION TO SECOND-GUESS THOSE, AND IF IT DOESN'T, DO IT, THEN IT IS LIABLE, IT IS, YOU KNOW, SUBJECT TO LEGAL LIABILITY. AND I JUST DON'T --. MR. CHIEF JUSTICE: MR. HUBENER, I THINK YOUR TIME IS UP. THANK YOU VERY MUCH. MR. MIDDLETON.

THANK YOU. IN RELATION TO THE QUESTION THAT WAS JUST POSED TO OPPOSING COUNSEL, AS FAR AS THE DEPARTMENT OF CORRECTIONS, I THINK THIS COURT WOULD HAVE TO FIND THAT THERE IS NO COMMON LAW DUTY FOR A JAILER TO LET A PRISONER OUT WHEN HIS SENTENCE IS UP, AND THAT IS WHAT THEY ARE ASKING YOU TO DO, AND THAT IS CONTRARY, I BELIEVE, TO WHAT THE COMMON LAW IS, AND THAT IS BECAUSE PROSER SAYS SO AND A FEW OTHER CASES.

HAVEN'T THINGS CHANGED DRAMATICALLY, FROM THE DAY THAT WE HAD JUST JAILER AND A CLEAR LOCK HIM UP FOR TEN DAYS OR WHATEVER, THAT OBVIOUSLY WITH THE COMMISSION AND WITH THE KINDS EVER SENTENCING LAWS THAT WE HAVE -- KINDS OF SENTENCING LAWS THAT WE HAVE NOW AND CREDIT RELEASES AND EVERYTHING, CAN WE SAFELY ANALOGIZE THIS TO THE JAILER SITUATION? I AM CONCERNED IN THAT.

I UNDERSTAND YOUR CONCERN. BUT WHAT YOU ARE ASKING, WHAT YOU ARE SUGGESTING IS THAT YOU EXCUSE AGENCIES FROM NOT DOING WHAT THEY ARE REQUIRED, MANDATED BY

STATUTE, TO DO, AND I THINK THAT, WHEN YOU SIT HERE AND SAY THAT THIS ACTION, EITHER ONE BY THE DEPARTMENT OF CORRECTIONS OR BY THE PAROLE COMMISSION, HAS SOME SORT OF QUASI-JUDICIAL ATTACHMENT TO IT, YOU ARE FAILING TO RECOGNIZE THE FACT, FOR EXAMPLE, CONDITIONAL RELEASE IS ENFORCEABLE BY MANDAMUS.

BUT WHAT WE ARE REALLY DEALING WITH HERE, YOUR COMPLAINT IS BASED ON 768.28. RIGHT?

YES, SIR.

SO WE ARE NOT SAYING, AS I UNDERSTAND WHAT THE FIRST DISTRICT MAJORITY IS SAYING, THEY ARE NOT SAYING THAT THERE IS GOING TO BE ANY IGNORING OF RIGHTS, THAT THERE IS A FULL PANOPLY OF WRITS AND MANNERS IN WHICH TO GET THE ERROR ADDRESSED THROUGH THE PROPER PROCEDURES, BUT THE QUESTION IS WHETHER THE LEGISLATURE INTENDED FOR THERE TO BE A REPEAL OF SOVEREIGN IMMUNITY, SO THAT THIS TYPE OF CONDUCT WOULD BE ADDRESSED BY MONEY DAMAGES? I MEAN, THAT IS THE QUESTION.

AND I AGREE, YOUR HONOR, AND I THINK YOU HAVE TO DO A DISCRETIONARY VERSUS OPERATIONAL ANALYSIS, UNDER COMMERCIAL CARRIER, KOD, AND ALL OF THOSE CASES, AND IF YOU DO THAT NLZ IN THIS CASE AND UNDERSTAND WHAT EACH OF THESE AGENCY'S RESPONSIBILITIES ARE UNDER THE STATUTE, YOU WILL FIND THAT THE COMMISSION'S DISCRETION OR ACTUALLY THE COMMISSION HAS NO DISCRETION WHO TO RELEASE, NUMBER ONE, AND THE COMMISSION IS, THEIR DISCRETION IS SPECIFICALLY LIMITED BY STATUTE, BY SAYING YOU MAY NOT, NUMBER ONE, CONSIDER A SENTENCE, AND I AM READING THE STATUTE. IT SAYS THAT FOR A CRIME COMMITTED ON OR AFTER OCTOBER 1, 1988 THAT, IS THE ONLY CRIMES THAT YOU MAY CONSIDER, SO IT IS LIMITED BY 947.1405 IN TWO PLACES, WHERE IT SAYS AT THE BOTTOM THAT YOU CAN NOT IMPOSE A CONDITIONAL RELEASE TERM LONGER THAN THE MAXIMUM SENTENCE IMPOSED BY THE COURT. NOW, THE COMMISSION, THIS IDEA THAT THE COMMISSION MADE A MISTAKE, THAT IS NOT A MISTAKE. THE COMMISSION PUT FORTH A BELIEF OF WHAT THE STATUTE SAID. THEY TREATED MR. ANDREWS IN THAT WAY. BUT AFTER THE COURT SAID, NO, YOU ARE WRONG, THEY KNEW THEY DIDN'T HAVE JURISDICTION, AND THEY SHOULD HAVE KNOWN, AND THE WHOLE POINT I HAVE BEEN TRYING TO MAKE IS THAT PRIOR CASE LAW, IN THIS STATE, FROM THIS COURT, STATES EVEN MISTAKEN EXERCISE OF JURISDICTION CAN SUBJECT A JUDICIAL OR QUASI-JUDICIAL OFFICER TO JURISDICTION, AND THAT, ANYWAY THAT, IS MY POSITION, YOUR HONOR. MR. CHIEF JUSTICE: THANK YOU, MR MR. MIDDLETON. YOUR TIME IS UP. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.