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Daniel Kevin Schmidt v. John E. Crusoe

THE FINAL CASE ON THE COURT'S ORAL ARGUMENT CALENDAR THIS MORNING IS SCHMIDT VERSUS CREST-. -- CRUSOE GOOD MORNING. MAY IT PLEASE THE COURT. I AM WENDELL LOCK OF HOLLAND & KNIGHT, HERE ON BEHALF OF PETITIONER DANIEL KEVIN SCHMIDT, AND WE ASK THAT THIS COURT INSTRUCT THE TRIAL COURT TO PERMIT MR. SCHMIDT TO PROCEED WITH HIS ACTION, SEEKING TO HAVE HIS GAIN TIME RESTORED, WITHOUT HAVING TO PAY FILING FEES. BEFORE I GO INTO ARGUMENT, I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL TIME. NOW, THE FACTS OF THIS CASE ARE ACTUALLY PRETTY STRAIGHTFORWARD. PRIOR TO HOLLAND & KNIGHT BEING APPOINTED AS COUNSEL, THE PETITIONER, A PRO SE PRISON INMATE, CLEARED ENORMOUS HURDLES TO GET HIS CASE TO THIS POINT. AFTER EXHAUSTING HIS ADMINISTRATIVE REMEDIES WITH THE DEPARTMENT OF CORRECTIONS, SEEKING TO HAVE HIS GAIN TIME RESTORED, HE, THEN, SOUGHT TO HAVE HIS GAIN TIME RESTORED IN THE TRIAL COURTS, A RIGHT THAT HE CLEARLY HAS. MR. SCHMIDT --

WHAT WAS THE A NATURE OF THE ACTION THAT HE FILED IN THE TRIAL COURT?

HE FILED A PETITION FOR WRIT OF MANDAMUS.

SO IT WAS A WRIT OF MANDAMUS, AND IS THAT WHAT WE ARE DEALING WITH HERE, IS A WRIT OF MANDAMUS?

WELL, YES AND NO. IT IS A WRIT OF MANDAMUS, BUT IT IS A LEGAL EQUIVALENT OF A HABEAS CORPUS. IT IS, BECAUSE IT DEALS WITH UNLAWFUL DETENTION. 60 DAYS OF HIS GAIN TIME WERE REMOVED, AS A SBIP NARY SANCTION BY THE DEPARTMENT OF CORRECTIONS CORRECTIONS.

IS THAT AN ISSUE HERE, WHETHER THIS IS, IN FACT, A, THE EQUIVALENT OF A WRIT OF MANDAMUS OR OF A HABEAS CORPUS?

WELL --

DOES THAT BEAR ON THE ANALYSIS OF WHETHER IT IS A CIVIL PROCEEDING OR NOT?

I DON'T THINK IT DOES. I DON'T THINK IT DOES. THE COURT HAS DEFINED, HAS INDICATED THAT COLLATERAL CRIMINAL PROCEEDINGS ARE EXEMPT FROM THE FILING FEE REQUIREMENTS REQUIREMENTS. NOW, THE --

GET BACK TO THE MANDAMUS. IS IT CORRECT THAT FLORIDA'S APPELLATE COURTS HAVE TOLD PRISONERS THAT, IF YOU ARE UNSATISFIED WITH THE CONSEQUENCES OF THE ADMINISTRATIVE ACTIONS, THAT THE WAY THAT YOU ATTEMPT TO CORRECT THAT IN THE COURTS, IS TO FILE AN APPLICATION FOR A WRIT OF MANDAMUS IN THE CIRCUIT COURT?

YES, YOUR HONOR. AND IN FACT, THE CASE OF NORMAN VERSUS SINGLETERY, I WENT TO THE FIRST DISTRICT COURT OF APPEALS' OPINION THAT PROVIDES THAT. AFTER YOU HAVE EXHAUSTED YOUR ADMINISTRATIVE REMEDIES, YOU THEN SUBMIT A PETITION FOR WRIT OF MANDAMUS IN THE TRIAL COURTS. NOW, THE LAW IS CLEAR THAT HABEAS CORPUS PROCEEDINGS ARE COLLATERAL CRIMINAL PROCEEDINGS, AND THEREFORE ARE EXEMPT FROM THE FILING FEE REQUIREMENTS.

NOW HOW ABOUT GOING BACK AND MAKING, BUILD A BRIDGE FOR US, IF YOU WILL, SINCE YOU

CONCEDED IT IS MANDAMUS. OKAY. IS MANDAMUS A CIVIL PROCEEDING OR A CRIMINAL PROCEEDING, OR WHAT SOME.

THIS POINT IS HELD IN THE CASE OF SAUCER, THAT WHILE MANDAMUS IS A CIVIL WRIT, THAT THE COURT IS TO LOOK AT THE UNDERLYING CASE, THE UNDERLYING PROCEEDING TO DETERMINE WHETHER IT IS COLLATERAL CRIMINAL PROCEEDING.

WHAT IS IT ABOUT THE UNDERLYING PROCEEDINGS HERE THAT WOULD COMPEL US TO AGREE WITH YOU THAT THIS IS IN THE NATURE OF, REALLY, A CRIMINAL HABEAS?

WELL, THE SANCTION REMOVING 60 DAYS OF MR. SCHMIDT'S GAIN TIME IS, IN FACT, HAS AN IMPACT ON HIS SENTENCE. IN FACT, IT LENGTHENS HIS SENTENCE, AND THIS COURT HAS HELD THAT CHALLENGES TOWARD THE SENTENCING OR CONVICTION ARE COLLATERAL CRIMINAL PROCEEDINGS AND THEREFORE EXEMPT FROM THE FILING FEE REQUIREMENTS.

IS THERE ANYTHING IN THE STATUTORY SCHEME, IN SO FAR AS ITS PURPOSE, THAT WOULD HELP US WITH THIS?

WELL, THE PRISONER INDEMNITY STATUTE, ALONG WITH THE SANCTIONS STATUTES, WERE ENACTED AS ONE ACT, AND THE PRIMARY PURPOSE OF THAT ACT WAS TO REDUCE UNNECESSARY OR FRIVOLOUS PRISONER FILINGS. NOW, AND AT THE SAME TIME, WHILE --

WHAT KIND OF FAILINGS?

WELL, FOR EXAMPLE --

DOES THE ACT TELL US?

WELL, IT JUST SAYS UNNECESSARY OR FRIVOLOUS FILINGS BUT THE ACT ALSO PROVIDES AN EXEMPTION, THAT BEING FOR COLLATERAL CRIMINAL PROCEEDINGS. THIS IS NOT A CASE WHERE MR. SCHMIDT IS SAYING I SHOULD HAVE GOTTEN THREE PANCAKES AND I GOT TWO, AND THEREFORE I AM GOING TO FILE, I AM GOING TO SEEK RELIEF, AND I DON'T HAVE TO PAY FILING FEES. THIS IS NOT THAT AT ALL. INSTEAD THIS PERTAINS TO HIS SENTENCE, BECAUSE HIS GAIN TIME IS REMOVED. HIS INCARCERATION HAS BEEN EXTENDED, AND THEREFORE THIS IS A COLLATERAL CRIMINAL PROCEEDING PROCEEDING.

WHAT IS -- IF, INSTEAD OF REDUCING HIS GAIN TIME, DISCIPLINE HAD BEEN PUTTING THE PERSON IN SOLITARY CONFINEMENT FOR 60 DAYS. IS THAT A CIVIL OR, IT BRINGS HABEAS, BECAUSE THAT WOULD BE THE ACTION TO BRING, IS THAT CRIMINAL? IS THAT WITHIN THE ACTOR OUTSIDE THE ACT?

THE ACT HAS TO AFFECT EITHER THE SENTENCE OR THE CONVICTION, SO IF HIS SANCTION IS TO BE MERELY PUT IN ISOLATION, THEN I WOULD THINK THAT IS OUTSIDE OF THE ACT AND IS PART OF THE FILING FEE REQUIREMENTS.

SO YOUR LINCHPIN HERE IS WE DON'T LOOK AND SEE WHETHER IT IS CALLED HABEAS OR IT IS CALLED MANDAMUS. THE ISSUE IS THAT THIS DIRECTLY IMPACTS THE LENGTH OF HIS SENTENCE, AND THAT IS WHY THAT MUST BE CONSIDERED WITHIN COLLATERAL CRIMINAL PROCEEDINGS FORM.

YES. YES, YOUR HONOR.

IS THERE ANY DIFFERENCE, YOU KEEP SAYING THE LENGTH OF HIS SENTENCE, AND THE LENGTH OF THE SENTENCE GENERALLY IS THOUGHT OF IN TERMS OF WHAT THE TRIAL COURT IMPOSED. FIVE YEARS. YOU KNOW. TWO YEARS. WHATEVER. IS THERE ANY DIFFERENCE IN THE LENGTH OF

A SENTENCE AND THE PERIOD YOU ARE INCARCERATED?

IS THERE A DIFFERENCE?

THE TIME THAT -- THE ACTUAL TIME THAT YOU SPEND IN JAIL. IS THERE ANY DISTINCTION BETWEEN AN ACTUAL SENTENCE, THE LENGTH OF YOUR SENTENCE, AND THE TIME YOU SPEND IN JAIL? BECAUSE THAT IS WHAT WE ARE REALLY TALKING ABOUT HERE, IS HOW MUCH TIME HE IS ACTUALLY GOING TO SPEND ON THAT SENTENCE. THE SENTENCE, ITSELF, HASN'T CHANGED, HAS IT?

WELL --

I MEAN, IF HE WAS GIVEN FIVE YEARS, HE STILL HAS FIVE YEARS, CORRECT?

WELL, IN FACT, I THINK TO ANSWER YOUR QUESTION, THEY ARE INTERRELATED. THE UNITED STATES SUPREME COURT HAS DETERMINED THAT GAIN TIME AND THE AMOUNT OF TIME THAT A PERSON IS INCARCERATED, IS, IN FACT, A PART OF A PRISONER'S SENTENCE, AND IN FACT, THAT THE COURT SAYS THAT THE ELIGIBILITY FOR GAIN TIME BECOMES A MAJOR FACTOR IN, FOR EXAMPLE, PRISONERS ACCEPTING PLEA AGREEMENTS BUT, ALSO, FOR THE TRIAL COURTS, IN MAKING SENTENCING DECISIONS.

SO YOUR ARGUMENT IS THAT THE LENGTH OF THE SENTENCE AND THE TIME ACTUALLY SPENT INCARCERATED IS, IN FACT, THE SAME.

ONE AND THE SAME. RELATED. AND IN FACT, I AM, I GUESS I HAVE ALREADY RECITED THE LOGIC, ALSO, OF WEAVER VERSUS GRANT, WHICH TALKS ABOUT THE FACT THAT THE POTENTIAL FOR GAIN TIME ARE MAJOR FACTORS IN PLEA AGREEMENTS AS WELL AS SENTENCING. NOW, IN THE SCHMIDT CASE, IT BECAME AN ISSUE WHERE THE RESPONDENT MADE THE ARGUMENT THAT GAIN TIME AND THE SENTENCE WERE NOT RELATED. IN THEIR CASE, THE COURT SAID THAT THAT ARGUMENT WAS FORECLOSED BY THE PRECEDENT, BECAUSE GAIN TIME IS, IN FACT, A DETERMINATION NATIONAL OF A PRISON -- A DETERM NATIONAL OF A PRISONER -- A DETERMINATE, AND THAT THE PRISONER'S SENTENCE IS ALTERED, ONCE THAT DETERMINATE IS CHANGED. MR. SCHMIDT HAD 60 DAYS OF GAIN TIME REMOVED FROM HIS GAIN TIME, AND BECAUSE OF THAT, HIS SENTENCE IS CHANGED, AND BECAUSE HIS SENTENCE IS CHANGED, MR. SCHMIDT SHOULD BE ABLE TO PROCEED WITH THE ACTION SEEKING TO HAVE HIS GAIN TIME RESTORED, WITHOUT HAVING TO PAY FILING FEES. BASED ON THE FOREGOING, ON THE FACT THAT BEYOND HE HAD A RIGHT TO PROCEED IN THE TRIAL COURT WITHOUT HAVING TO PAY FILING FEES, ALSO ON THE FACT THAT HIS GAIN TIME IS, IN FACT, A PART OF HIS SENTENCE, WE RESPECTFULLY REQUEST THAT THIS COURT INSTRUCT THE TRIAL COURT TO PERMIT MR. SCHMIDT TO PROCEED WITH THIS ACTION, SEEKING TO HAVE HIS GAIN TIME RESTORED, WITHOUT HAVING TO PAY FILING FEES. THE REASON BEING THAT HIS UNDERLYING ACTION IS A COLLATERAL CRIMINAL PROCEEDING AND THEREFORE EXEMPT FROM THE FILING FEE REQUIREMENTS. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. MR. BRANHAM.

GOOD MORNING, MR. CHIEF JUSTICE, YOUR HONORS. MAY IT PLEASE THE COURT. MY NAME IS ROBERT BRANNON, AND I AM HERE, TODAY, REPRESENTING THE RESPONDENTS IN THIS CASE. PETITIONER SEEKS A RULING FROM THIS COURT, DECLARING THAT A CHALLENGE TO A PRISON DISCIPLINARY ACTION THAT HAS RESULTED IN THE LOSS OF GAIN TIME, IS A COLLATERAL CRIMINAL PROCEEDING AND THEREFORE EXEMPT FROM THE FILING FEE REQUIREMENTS OF 57.085. ACCORDING TO THIS COURT'S DEFINITION, HOWEVER, MR. SCHMIDT'S MANDAMUS PETITION IS NOT A COLLATERAL CRIMINAL PROCEEDING. CONSEQUENTLY IT IS NOT, IT DOES NOT FALL UNDER THE EXEMPTION CREATED BY 57.085-10. IN EACH OF YOUR CASES, COLE V STATE, SAUCER V STATE, AND GEFGEN V STRICKLER, THIS COURT HAS DETERMINED THAT, IN ORDER TO BE A CRIMINAL

COLLATERAL PROCEEDING, THE ATTACK MUST BE TOWARD THE UNDERLYING CRIMINAL CONVICTION AND/OR SENTENCE, CRIMINAL SENTENCE.

BUT THIS IS NOT APPLIED TO THE SENTENCE? THIS, THE CONCERN THAT IS BEING RAISED HERE DOES NOT APPLY TO THE SENTENCE?

NO, YOUR HONOR. WHEN, REGARDLESS OF THE RULING, THAT THE LOWER COURT WOULD MAKE ON THE MANDAMUS PETITION, THE PETITIONER WOULD LEAVE THAT COURT, STILL GUILTY OF THE CRIMINAL OFFENSE THAT HE WAS FOUND GUILTY OF, AND STILL SUBJECT TO THE SAME SENTENCE THAT THE COURT IMPOSED.

BUT WE, ALSO, HAVE THIS OVERLAY OF CONCERNS ABOUT THE LENGTH OF TIME THAT IS SERVED, UNDER A SPECIFIC SENTENCE, AS RAISED BY CALAMAI AND LISKE AND ALL OF THOSE SENTENCES. HOW IS THAT FACTORED?

WHEN THE SENTENCE IS IMPOSED FOR A NUMBER OF YEARS, THAT SENTENCE CAN BE CONSIDERED A MAXIMUM INCARCERATION. ACCORDING TO LENT AND WEAVER, THE GAIN TIME IS IMPORTANT TO THE INMATE. HOWEVER, THOSE CASES DEALT WITH LEGISLATIVE CHANGES TO THE ELIGIBILITY OF THE GAIN TIME FOR THE INMATE. THE LEGISLATIVE SCHEME THAT WAS IN PLACE AT THE TIME THAT HE WAS SENTENCED OR COMMITTED HIS CRIME.

AND THAT IS THE DISTINGUISHING FACTOR, NOT THE FACT THAT THE LENGTH OF TIME THAT YOU SERVE IS IMPACTED?

THAT'S CORRECT, YOUR HONOR. HIS, HE IS STILL GOING TO BE SUBJECT TO THE SAME ELIGIBILITY THAT HE WAS SUBJECT TO WHEN HE CAME IN, AND THE SAME PROVISIONS THAT PERMIT HIM TO LOSE THAT GAIN TIME, SHOULD HIS CONDUCT BE SUBSTANDARD.

JUSTICE LEWIS HAD A QUESTION. ' COVERED MY CONCERN. CHIEF. MR. CHIEF JUSTICE

THANK YOU. GO AHEAD.

GO AHEAD. MR. CHIEF JUSTICE

JUSTICE PARIENTE, GO AHEAD.

THE, I GUESS MY QUESTION IS, IF WE ACCEPT YOUR POINT OF VIEW, THEN, REALLY WHAT WE ARE LOOKING AT IS WHETHER THE LEGISLATURE INTENDED TO, REALLY, IMMUNIZE PRISON OFFICIALS FROM POTENTIALLY ARBITRARY ACTIONS IN REVOKING GAIN TIME, WHICH CAN HAVE A SUBSTANTIAL EFFECT ON THE LENGTH OF THE PRISONER'S SENTENCE, AND THAT THAT WAS REALLY THE EVIL THAT THE LEGISLATURE WAS LOOKING AT, WHEN THEY ENACTED THIS PROVISION THAT REALLY, RESTRICTS ACCESS TO COURTS. CAN YOU JUST ADDRESS THAT CONCERN, THAT THAT, THAT THIS IS REALLY A DIFFERENT PROBLEM THAN THE LEGISLATURE WAS LOOKING TO REMEDY, AND THAT IT CAN HAVE SOME VERY DIRE CONSEQUENCES, BECAUSE WHETHER WE CALL IT ADMINISTRATIVE OR NOT, IT DOES DIRECTLY IMPACT THE LENGTH OF THE DEFENDANT'S DAYS OF INCARCERATION.

IT WILL HAVE, IT CAN BE AN EFFECT ON THE AMOUNT OF TIME AN INMATE SPENDS INCARCERATED.

AND SO AN INMATE THAT HAS MONEY CAN BE ABLE TO CHALLENGE IT, BUT AN INMATE THAT HAS NO MONEY IS EFFECTIVELY DENIED ANY OPPORTUNITY TO SEEK ACCESS TO THE COURTS. ISN'T THERE A CONSTITUTIONAL PROBLEM THERE?

THERE IS NO PROBLEM THERE, BECAUSE THE INMATE, UNLIKE THIS INMATE, COULD HAVE FILED

AN AFFIDAVIT OF INDIGENCY IS, AS HE DID IN THIS -- IN INDIGENCY, AS HE DID IN THIS MATTER, IN ORDER TO PROCEED. THE CASE MANAGEMENT ORDER IN THIS CASE DID NOT ORDER HIM TO PAY A FEE OR GO HOME. THE CASE MANAGEMENT ORDER SPECIFICALLY SAID THAT HE PAY THE \$9.50 OR FILE AN AFFIDAVIT OF INDIGENCY, WHICH COULD HAVE FOUND AM ABLE TO PROCEED, WITHOUT HAVING TO PAY ANYTHING, OR IF HE HAD SOME MONEY, PAY SOMETHING, BUT HE WOULD NOT HAVE BEEN BARRED FROM ACCESS TO THIS COURT, IN THE APPELLATE COURT SAME PROCEDURE. HE COULD HAVE, HE WAS ORDERED TO PAY THE FILING FEE OR FILE AN AFFIDAVIT OF INDIGENCY. OBVIOUSLY, YOU KNOW, HERE TODAY, UNDER THIS STATUTORY SCHEME, AND HAS NOT BEEN DENIED ACCESS TO ANY COURT, AND AS FAR AS IMMUNIZING PRISON OFFICIALS FOR THE, YOU KNOW, WHEN THEY DO TAKE AWAY GAIN TIME, THE U.S. SUPREME COURT HAS SET FORTH THE PROCEDURE THAT IS NECESSARY FOR THEM TO FOLLOW, TO AVOID THE ARBITRARY FORFEITURE OF GAIN TIME, UNDER WOLF. DO YOU KNOW HOW --

DO YOU KNOW HOW THE FEDERAL COURTS HAVE DEALT WITH A SIMILAR FEDERAL POSITION? HAVE THEY ALLOWED THE COLLATERAL ATTACKS ON GAIN TIME FORFEITURE TO BE FILED, WITHOUT THE FEDERAL ACTS PROVISION TO BE APPLIED?

THE FEDERAL ACTS PROVISION IS DIFFERENT, IN THAT THEY PAY FOR HABEAS PETITIONS. THEY PAY A FILING FEE TO PROCEED IN A HABEAS ACTION. THERE IS NO COMPLETELY FREE FILING IN THE FEDERAL COURT. THEY DO HAVE A DIFFERENT MECHANISM, IN THAT THE INMATE WOULD BE, RATHER THAN MANDAMUS, THEY DON'T, THE STATE COURTS GO TO MANDAMUS, BUT THE FEDERAL COURTS DON'T UTILIZE THE MANDAMUS. THEY WOULD GO TO HABEAS ON IT, BECAUSE OF THE UNDERLYING SUBJECT MATTER OF THE LENGTH OF THE INCARCERATION, BECAUSE THEIR ONLY OTHER REAL AVENUE PROVIDES IN RELIEF, GOING UNDER THE 83.

I THINK THE QUESTION IS, DO THE FEDS HAVE A FRIVOLOUS LAWSUIT STATUTE, TOO?

YES, THEY DO.

AND HOW HAVE THEY APPLIED IT TO SITUATIONS LIKE THIS?

WELL, AS FAR AS THE FILING FEES, THEY ARE NOT PERMITTED TO FILE COMPLETELY FOR FREE, IF THEY ARE CHALLENGING THEIR GAIN TIME.

THE QUESTION IS, FIRST OF ALL DO THE FEDS HAVE A SIMILAR STATUTORY SCHEME?

THEY HAVE A SIMILAR SCHEME FOR PAYMENT FOR THE FILING FEES.

DO YOU KNOW IF THEY HAVE A SIMILAR SCHEME, WITH REFERENCE TO FRIVOLOUS FILINGS BY PRISONERS?

THEY HAVE, YES, SIR. THEY HAVE A THREE STRIKES PROVISION.

AND HAVE THEY CONSIDERED AN ISSUE LIKE THIS AND WHETHER IT COMES UNDER THE FEDERAL STATUTORY SCHEME FOR FRIVOLOUS LAWSUITS? DO YOU KNOW?

NO. I KNOW THAT --

YOU DON'T KNOW?

NO, I DON'T. REGULAR FEDERAL HAB YOUS DOES NOT -- HABEAS DOES NOT PROCEED UNDER THE SAME STATUTORY FRAMEWORK AS FRIVOLOUS LAWSUITS.

WE ARE REALLY ASKING WHETHER YOU ARE AWARE OF ANY CASES LIKE THIS IN THE FEDERAL SYSTEM, AND YOU ARE NOT.

NO, NOTHING LIKE THIS IN THE FEDERAL SYSTEM.

HAVE YOU RESEARCHED THAT?

YES, SIR.

AND YOU HAVEN'T BEEN ABLE TO FIND THAT.

HAVEN'T BEEN ABLE TO FIND ANYTHING ON THESE, ON THIS TYPE OF ISSUE.

THANK YOU.

AS I WAS SAYING, THIS WHOLE, THE WHOLE ISSUE IS WHETHER THIS IS A CRIMINAL COLLATERAL PROCEEDING. GRANTED THAT MR. SCHMIDT WILL, HIS SENTENCE OR NOT HIS SENTENCE HIS TERM OF INCARCERATION MAY BE EXTENDED. HIS SENTENCE WILL NOT BE EXTENDED. HE WILL HAVE THE SAME SENTENCE, THE SAME CONVICTION. AND HE IS STILL SUBJECT TO THE SAME GAIN TIME PROVISIONS, AND THOSE ARE TWO STATUTORY PROVISIONS, ONE WHICH ALLOWS HIM TO ACCRUE GAIN TIME, AND ANOTHER WHICH BASED ON HIS BEHAVIOR, ALLOWS FOR THE FORFEITURE OF THAT GAIN TIME. SO HIS LENGTH OF INCARCERATION CAN VARY ANYWHERE WITHIN THE CRIMINALLY-IMPOSEED SENTENCE, AND THAT WON'T BE CHANGED, REGARDLESS OF WHETHER HE GETS HIS 60 DAYS BACK OR NOT. HE WILL STILL HAVE THE SAME SENTENCE. HE WILL STILL HAVE IT. THE UNDERLYING, IN A COLLATERAL CRIMINAL PROCEEDING, THE UNDERLYING ACTION SEEKS TO OVERTURN ONE OF THOSE TWO THINGS. HIS CONVICTION OR SENTENCE. AND WE ARE NOT GETTING EITHER OF THOSE HERE, SO IT IS NOT A COLLATERAL CRIMINAL PROCEEDING. NOW, BECAUSE THIS IS NOT A COLLATERAL CRIMINAL PROCEEDING, IT DOESN'T FALL WITHIN THE STATUTORY EXEMPTION FOR THE FAILING FEES. AND WE WOULD ASK THAT THIS COURT HOLD THAT THESE MANDAMUS PETITIONS ARE STILL SUBJECT TO FILING FEE PROVISIONS OF 57.085.

THANK YOU.

THANK YOU, YOUR HONOR. MR. CHIEF JUSTICE

REBUTTAL.

COUNSEL, DO YOU KNOW WHETHER OR NOT THERE IS A SIMILAR FEDERAL STATUTORY SCHEME AND WHETHER ANY OF THE FEDERAL CIRCUIT COURTS HAVE DEALT WITH THIS ISSUE?

TO ANSWER YOUR QUESTION, YOUR HONOR, NO, I DO NOT KNOW. I DID LOOK BUT WAS UNSUCCESSFUL IN FINDING ANYTHING ON POINT. A COUPLE OF THINGS I WOULD LIKE TO BRING OUT HERE, AND THAT IS THAT --

WHAT IS REALLY AT STAKE HERE, IS WHETHER AN INMATE'S ACCOUNT IS GOING TO BE LIENED FOR THIS FILING FEE. ISN'T THAT WHAT IS AT STAKE?

IF HE DOES NOT HAVE THE FUNDS YES, YES.

OR WHETHER, I MEAN, IF HE HAS FUNDS, THEN HE WOULD HAVE TO PAY A FILING FEE.

RIGHT.

THAT IS WHAT WE ARE, THIS LAWSUIT IS ABOUT.

THIS LAWSUIT IS ABOUT BEING ABLE TO PROCEED IN HIS ACTION FOR SEEKING HIS GAIN TIME, WITHOUT HAVING TO PAY FILING FEES.

AND THE ONLY ISSUE IN WHICH YOU DON'T HAVE TO FILE, PAY A FILING FEE, IS IF THIS WAS A HABEAS. ISN'T THAT RIGHT?

A COLLATERAL CRIMINAL PROCEEDING.

OKAY. AND COLLATERAL CRIMINAL PROCEEDING, AS WE HAVE DEFINED IT, UNDER FLORIDA LAW, COMES WITHIN BASICALLY 3.850 OR 3.851. THOSE RULES. CORRECT?

AS FAR AS WHAT CONSTITUTES A HABEAS?

A COLLATERAL CRIMINAL PRCEEDING.

THIS COURT HAS ACTUALLY PROVIDED SOME DEFINITIONS AND EVEN GIVEN SOME EXAMPLES, AND FOR EXAMPLE HALL VERSUS STATE, THIS COURT SAID, THIS WAS IN FOOTNOTE 5 THAT A CHALLENGE TO A CONVICTION, NO EXAMPLE, WOULD -- TO EXAMPLE, WOULD BE A -- FOR EXAMPLE, WOULD BE A CRIMINAL PROCEEDING, AND A CHALLENGE TO HIS SENTENCE WOULD BE A COLLATERAL PROCEEDING, AND THE UNDERLYING PETITION FOR THE PETITIONER SEEKING RELIEF SHOULD CONTROL. SO THE FACT THAT HE IS SEEKING TO HAVE GAIN TIME RESTORED, AND BECAUSE THE LAW IS CLEAR THAT GAIN TIME IS, IN FACT, A PART OF HIS SENTENCE, THEN HE IS, IS HE ACTUALLY CHALLENGING HIS SENTENCE, AND THEREFORE IT FALLS WITHIN, UNDER THE UMBRELLA OF BEING A COLLATERAL CRIMINAL PROCEEDING, AND THEREFORE HE IS EXEMPT FROM THESE FILING FEES REQUIREMENTS. AND IN FACT, THE WEAVER COURT EVEN PROVIDES THAT A REDUCTION IN A PRISONER'S GAIN TIME, WHICH IN ESSENCE WHAT HAS HAPPENED HERE, LENGTHENS THE ACTUAL SENTENCE. IT LENGTHENS THE SENTENCE. AND THEN FINALLY, THERE IS THE POINT THAT FLORIDA LAW IS CLEAR THAT HABEAS PROCEEDINGS ARE COLLATERAL CRIMINAL PROCEEDINGS, AND THEREFORE EXEMPT FROM FILING FEE REQUIREMENTS. ACTIONS, CHALLENGING GAIN TIME, FORT FET YOUR, IN MANY INSTANCES -- FORFEIT YOUR, IN MANY INSTANCES IS DONE IN HABEAS CRIMINAL PROCEEDINGS, THAN IS THE LEGAL EQUIVALENT OF THAT. THE ONLY DIFFERENCE BETWEEN HABEAS AND A MANDAMUS IS THAT, UNDER THE HABEAS, HE WOULD BE ASKING THE COURT RELEASE ME NOW, WHEREAS UNDER THE MANDAMUS PETITION, HE IS SAYING RELEASE ME 60 DAYS EARLIER THAN I WOULD OTHERWISE BE RELEASED. SO BASED ON THE, BASED ON ALL ARGUMENT, BASED ON THE CASE LAW, NOT ONLY IN FLORIDA BUT, ALSO, THE UNITED STATES SUPREME COURT, WE ASK THAT THIS COURT INSTRUCT THE TRIAL COURT TO PERMIT MR. SCHMIDT TO PROCEED IN HIS ACTION, SEEKING TO HAVE HIS GAIN TIME RESTORED, WITHOUT HAVING TO PAY FILING FEES ON, GROUNDS THAT IT IS A COLLATERAL CRIMINAL PROCEEDING AND THEREFORE EXEMPT FROM THE FILINGFEE REQUIREMENTS. THANK OU. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. APPRECIATE COUNSEL'S ASSISTANCE IN THIS CASE FORM THE COURT WILL BE IN RECESS.