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Charles Murray v. Kathleen A Kearney

THE FINAL CASE ON THE COURT'S ORAL ARGUMENT CALENDAR THIS MORNING IS MURRAY VERSUS KEARN I. -- KEARNEY MR. MORRISON.

GOOD MORNING. I AM CHARLES MORRISON ON BEHALF OF KATHLEEN KEARNEY. MAY IT PLEASE THE COURT. I THINK IT SHOULD GO WITHOUT COMMENT THAT SOME OTHER COURT IN THIS STATE, OTHER THAN THIS COURT, MUST HAVE JURISDICTION TO HEAR MR. MURRAY'S PETITION FOR WRIT OF HABEAS CORPUS.

LET ME ASK YOU ABOUT THIS COURT'S JURISDICTION.

YES, SIR.

DOES THIS COURT HAVE CONFLICT JURISDICTION?

YES, SIR.

ON WHAT BASIS?

ON THE BASIS THAT THE THIRD AND THE FOURTH DISTRICT COURT OF APPEAL SPECIFICALLY CONFLICTED ON THIS CASE AS TO WHO HAD JURISDICTION.

ON THIS CASE.

ON THIS PARTICULAR CASE. YES, YOUR HONOR. I WOULD SUBMIT THAT THAT IS ABOUT AS CLEAR A CONFLICT AS YOU ARE EVER LIKELY TO GET, WHEN TWO DIFFERENT COURTS BOTH THINK THE OTHER ONE HAS JURISDICTION. I THINK BOTH CITE ALACHUA REGIONAL FOR THAT PROPOSITION.

THERE WERE CONFLICTING DECISIONS AS TO WHETHER THEY HAD JURISDICTION, IN THAT THE FOURTH DENED THEY -- DENIED THEY HAD JURISDICTION. DENIED IT HAD JURISDICTION.

THE FOURTH, ALSO, IT WAS A PING-PONG, FOR LACK OF A BETTER WORD, BETWEEN --

DID THE THIRD INDICATE THAT THE FOURTH HAD JURISDICTION?

IT DID BY TRANSFERRING IT BACK TO THE FOURTH. I FOLLOWED ALACHUA REGOLAND FILED IT IN THE FOURTH. THE FOURTH TRANSFERRED IT BACK TO THE THIRD, CITING ALACHUA REGIONAL AND THE THIRD TRANSFERRED IT BACK TOE H,NG AGIONAL. THAT IS ABOUT ASCLEAR OF CONFLICT SSCOURTS -- CAS T ILY TO GET. RESPECTIVE OF THAT, THIS COURT OBVIOUSLY HAS HABEAS CORPUS JURISDICTION. THE ISSUE IS WHETHER ANY OTHER COURT WOULD HAVE HABEAS DORP US -- CORPUS JURISDICTION, AND ANY ONE OF THEM HAS TO. I THOUGHT, LONG AND HARD BEFORE COMING BEFORE THIS COURT THAT, YOU RECEDE FROM ALACHUA GENERAL IN PART. I OBVIOUSLY HIM AWAE OF THE DOCTRIE AO NOT LIKELY TAKE THIS COURT'S PRESENCE.EVER,RIGT JUST HOW THESES HAVO WT BECAME CLEAR TO ME THAT THE IMPORTANCE FT, IN SAS TE THIRICT COURT F ,ECALLEF THAT COURT ISPORTANT IN DECIDING THIS. IN THIS SITUATION, THE THIRD DISTRICT COURT OF APPEAL HAS SEEN THESE PLEA AGREEMENTS BEFORE. THIS WAS, PLEA AGREEMENT WAS NOT DRAFTED FOR MR. MURRAY'S CASE. THIS PLEA AGREEMENT WAS A FAIRLY STANDARD PLEA AGREEMENT IN THE THIRD. ALSO BECAUSE OF THE JUDGES ON THE THIRD HAVE SERVED IN THE ELUIT COURT, THEY UNDERSTAND HOW THESE PLEA AGREEMENTS ARE

INTERPRETED. THEY UNDERSTAND THE PROCESSES THE STATE ATTORNEYS OFFICE GOES THROUGH, BEFORE GIVING ONE OF THESE ORDERS IN THE INTERNAL REVIEW PROCESS, UNDERSTANDING WHY UNDER THE RIGOROUSNESS OF THIS SEX TREATMENT PROGRAM IS.

ARE THOSE THE BASIS UPON WHICH JURISDICTION ATTACHES?

I BELIEVE THOSE ARE THE BASIS ON WHICH THIS COURT CAN DECIDE WHICH OF THE DCA'S WOULD BE IN THE BEST POSITION TO DECIDE JURISDICTION. I AM SORRY.

IT IS YOUR POSITION THAT EITHER ONE CAN DO IT, AND WE JUST HAVE TO PICK ONE OF THE TWO?

IT IS MY DECISION THAT, UNDER THE STATE CONSTITUTION, THAT THERE IS A, WHERE IT TALKS ABOUT THE JURISDICTION OF THE COURTS OF APPEALS TO DECIDE HABEAS CORPUS, IT REFERS TO THE COURT'S SUPERVISORY TOTALITY, AND THAT THAT PROVISION SHOULD CONTROL, AND I BELIEVE THAT IT IS BECAUSE OF THAT THAT THIS COURT SHOULD RECONSIDER ITS POSITION IN ALACHUA REGIONAL.

DOES THAT MAKE IT CONFLICT WITH ALACHUA?

DOES?

THAT, IF WE RULE THAT WAY, WOULD BE CONSISTENT OR INCONSISTENT WITH ALACHUA?

THAT WOULD BE INCONSISTENT WITH ALACHUA, YOUR HONOR. THE COURT WOULD HAVE TO REcede FROM ALACHUA, TO THE EXTENT THAT IT DEALS WITH HABEAS CORPUS ALG THE ORDER OF A TRIAL COURT. THERE IS OBVIOUSLY HABEAS CORPUS PETITIONS THAT GO TO THE CONDITIONS OF CONFINEMENT. AN ALACHUA REGIONAL MAKES PERFECT SENSE. ONCE AGAIN, IT IS THE LOCAL COURTS THAT WOULD HAVE LOCAL KNOWLEDGE OF THE INSTITUTIONS, BUT HERE, IN THIS SENSE, IT IS THE TRIAL COURT THE DEERST ISSUE, ENORIC OF LT DE THAT TRIAL COURT, I THINK, IS BY FAR THE BETTER COURT. WHAT WE ARE TRYING TO DECIDE, THOUGH, IS NOT NECESSARILY THE DETENTION ORDER BUT THE RULING ON THIS PETITIONER'S CLAIM TO HAVE A PLEA ENFOR. IS THAT CORRECT?

THAT IS ONE OF THE ISSUES. I OBVIOUSLY FILED THE WRIT OF HABEAS CORPUS IN THIS. IO, UNDERSTAND, AS A R OF PRACTICE THIS COURT AT NRDES WRITS OF HABEAS CORPUS, THAT THOSE ALMOST ALWAYS IN APPROPRIATE COURT OF APPEAL. I WOULD BE DELIGHTED TO GO INTO THAT SPECIFICS WITH THIS COURT, BUT IN A SENSE, AND I THINK WILLING ABOUT IT -- IN THINKING ABOUT, IT ALL OF THE THINGS I HAVE JUST EXPLAINED TO YOU ABOUT WHAT THE THIRD DISTRICT COURT OF APPEALS WOULD KNOW, I THINK, MAKES IT A FAR BETTER COURT IN THIS SITUATION, TO RESOLVE IT. IF THE COURT WISHES ME TO GO INTO THE SPECIFICS OF THE SPECIFIC PERFORMANCE ISSUES, I WILL.

I WOULD LIKE TO JUST GO BACK TO QUESTION THERE WAS A PING-PONG MATCH GOING ON, AND ULTIMATELY THE FOURTH DISTRICT ENDED UP RULING THAT THE TRIAL COURT'S ORDER WAS ENTERED WITH JURISDICTION AND WAS NOT ILLEGAL. DIDN'T THEY MAKE A RULING ON THE MERITS?

NO, YOUR HONOR. THAT IS A RULING. I TAKE THE FOURTH DISTRICT COURTS OF APPEAL DECISION QUITE LITERALLY, WITH WHEN IT SAYS "WE CONCLUDE THAT WE DO NOT HAVE JURISDICTION AND DISMISS THE PETITION." I BELIEVE THAT THAT IS VERY CLEAR, FROM THE FORCE. WHAT THEY DID IS OBVIOUSLY THEY WERE LOOKING AT THE ALLEGATION ANSWER THE NATURE OF THE ALLEGATIONS AND WHETHER OR NOT THE NATURE OF THOSE ALLEGATIONS COULD BE HEARD IN HABEAS CORPUS. THERE WAS AN OBVIOUS PROBLEM IN THERE, WHERE THEY TALK ABOUT, AND I BELIEVE, LET'S SEE IF I HAVE THE EXACT LANGUAGE WHERE THEY SAY THAT HABEAS CORPUS, HE DID NOT ALLEGE A VIOLATION OF THE ACT. WELL, THAT WAS NOT THE

ALLEGATION. THE ALLEGATION WAS A VIOLATION OF THE CONSTITUTION, WHICH IS CLEARLY HEARABLE IN HABEAS CORPUS.

IF THE THIRD DISTRICT DID THE SAME THING AND SAID OUR HABEAS JURISDICTION IS LIMITED TO WHETHER THE CHALLENGED -- IN OTS IF IT IS IN THE THIRD DISTRICT AND IT IS STILL HABEAS, THE SCOPE OF THE INQUIRY IS A VERY NARROW ONE IN THE ORIGINAL WRIT JURISDICTION, AS TO WHETHER THE COURT THAT ISSUED THE ORDER HAS JURISDICTION AND WHETHER THE CONFINEMENT OF THESON IS ILLEGAL. T ENQUIRY, NO MATTER WHICH, WHETHER WE DECIDE THAT, WHETHER THE THIRD, THE FOURTH, THE FIRST. CORRECT?

THAT IS CORRECT. AND THAT IS, I THINK, SOMETHING THAT THE FOURTH DISTRICT COURT OF APPEALS DID NOT UNDERSTAND, FROM THE ALACHUA REGIONAL. THE ALACHUA REGIONAL OPINION HAS THE LANGUAGE ABOUT CERTAIN RESTRICTIONS THAT ARE SOMEHOW GREATER IN THIS SITUATION THAN IN A NORMAL WRIT OF HABEAS CORPUS.

YOU ARE REALLY SAYING MORE THAN JUST IT WAS, YOU ARE SAYING THAT THEY, NOT ONLY THAT ALACHUA SHOULD BE REVISITED TO SAY THAT, WHEN IT COMES TO THE ORDER THAT IS BEING REVIEWED, IT SHOULD BE IN THE DISTRICT WHERE THE TRIAL COURT IS, BUT YOU ARE, ALSO, SAYING THAT THE FOURTH DISTRICT MISS APPLIED ALACHUA BY TWO NARROWLY READING THE COP SEPTEMBER OF "-- THE CONCEPT OF "LEGAL"?

YES. BY READING THE ALACHUA REGIONAL TO GIVE A LESSER RIGHT OF HABEAS CORPUS REVIEW, FOR SOMEONE WHO IS BEING HELD OUTSIDE OF THEIR JURISDICTION.

BUT AS A PRACTICAL MATTER, AND I THINK WE HAVE SEEN THIS IN SOME, IN A CASE LAST YEAR, MW, WHERE THERE WAS A CIVIL COMMITMENT, I GUESS THE PROBLEM, AND MAYBE THAT IS A PROBLEM OF ALACHUA'S IS THAT YOU HAVE GOT A TRIAL COURT IN ONE JURISDICTION AND YOU HAVE GOT AN APPELLATE COURT IN ANOTHER JURISDICTION THAT IS TRYING TO LOOK AT IT, AND WHATEVER JURISDICTION IT IS IN, THEY OUGHT TO BE LOOKING AT IT IN THE SAME WAY, WHETHER IT IS, WHETHER THE COURT WAS IN THERE --

YOUR HONOR HAS THE ADVANTAGE ON ME. I AM NOT FAMILIAR WITH MW, SO I WILL NOT COMMENT ON THAT CASE, BUT ABSOLUTELY. MR. MURRAY HAD THE RIGHT OF THE SAME LEVEL OF HABEAS CORPUS REVIEW, IF HE HAD BEEN HOUSED IN THE THIRD DISTRICT COURT OF APPEAL AS OPPOSED TO THE FOURTH. THAT CANNOT VARY.

WHAT IS IT THAT YOU SENTED, IN FILING A PETITION OF HABEAS CORPUS IN THE FOURTH DISTRICT? DIDN'T YOU HAVE ANY OTHER WAY TO GET MEAD RELIEF FROM THE THIRD DISTRICT, FROM THIS -- MEAD RELIEF FROM, IN THE THIRD DISTRICT, FROM THIS ORDER?

I AM AT A LOSS AS TO HOW, YOUR HONOR. IT SEEMS TO ME THE ISSUE HERE IS AN ILLEGALITY OF DETENTION, BASED ON THE PREVIOUS CONTRACT WITH THE STATE. THAT IS HABEAS, AS FAR AS I KNOW AND MOST PROPERLY HABEAS. THERE HAVE BEEN SOME OTHER, THAN ISOTHERMWITHA REGIONAL. THERE HAVE BEEN SOME OTHER DISTRICT COURTS OF APPEALS THAT HAVE NOW BEEN, FOR LACK OF A BETTER WORD, PERVERTING SOME EXTRAORDINARY REMEDIES. ONE COURT ISSUED A WRIT OF MAN DAME WAS, TO RE-- MANDAMUS, WHICH WAS TO RELEASE A PERSON. THAT SOUNDS LIKE ANOTHER HABEAS TO ME. THERE WAS ANOTHER COURT THAT ISSUED A WRIT OF PROHIBITION. IT WAS NOT ON THE CASE BUT PROHIBITING THEM FROM CONTINUING TO DETAIN THE PERSON. I FIND THAT THOSE ARE JUST HABEAS CORPUS IN DISGEESE, AND IT, ALL OF THESE ARISE OUT OF THESE SAME SEXUALLY-VIOLENT PREDATOR CIVIL COMMITMENTS, AND I REALLY FOUND THAT AS SORT OF A HYDRAULIC PRESSURE FROM THE COURTS, SEEKING TO SORT OF ACTUALLY GET AROUND ALACHUA REGIONAL, BECAUSE IT IS JUST SUCH A WALK WARD OPINION. I, ALSO, DO NOT BELIEVE IT IS SUPPORTED BY THE LANGUAGE OF THE CONSTITUTION, AS I SPOKE OF EARLIER, OR SOME OF THE REASONING IN ALACHUA REGIONAL. I DO NOT BELIEVE THAT THE POWER OF THE MARSHAL TO EXECUTE PROCESS, GOES TO THE JURISDICTION OF THE

COURT.

LET ME ASK YOU THIS. I AM NOT SURE IF I UNDERSTAND FROM THE RECORD WHETHER OR NOT, AT THE TIME OF THE DETENTION, PURSUANT TO JIMMY RYCE,, WAS THE ISSUE RAISED, IN THAT PROCEEDING THAT YOU CAN'T DETAIN ME BECAUSE I AM SUPPOSED TO GO ON PROBATION ONCE MY INCARCERATION IS OVER?

THE ORIGINAL ORDER OF DETENTION IS AN EXPARTE ORDER. THE XPARTE GOES TO THE JUDGE, SO IT WAS NOT RAISED AT THAT. VERY SHORTLY AFT CASES FID, D HAVE -- AFTER THE CASE WAS FILED, AND I WOULD HAVE TO GO BACK AND DIG THROUGH THE TIME LINES, A MOTION TO RELEASE FOR SPECIFIC PERFORMANCE WAS PRESENTED TO THE COURTS AND THE COURTS DENIED IT. IT WAS AFTER THAT THAT WE TOOK THE WRIT OF HABEAS CORPUS.

AFTER THAT AND PURSUANT TO YOUR DENYING YOUR SPECIFIC PERFORMANCE --

I DO NOT BELIEVE IT WAS THE FINAL ORDER IN THE CASE. I DO NOT BELIEVE IT USE BE -- IT COULD BE APPEALED. I DO NOT BELIEVE THAT THE HARRIS CASE IS CERTIORARI APPROPRIATE. HARRIS IS THE MOST OBVIOUS CASE IN THIS SITUATION, YOUR HONOR. I WOULD BE DELIGHTED FOR THE COURT TO TELL ME WHAT I MISSED AND TO GO DO, IT BUT FRANKLY THIS IS HABEAS CORPUS. I MEAN, CUT TO THE CHASE. THIS IS ASKING FOR THE RELEASE OF SOMEONE WHO HAS BEEN ILLEGALLY DETAINED. THAT IS THE PURPOSE AND THE FUNCTION OF THE GREAT WRIT OF HABEAS CORPUS, AND EVERYTHING ELSE IS SECOND BEST OR TRYING TO COBBLE TOGETHERc SOMETHING ELSE TO AVOID, REALLY, THE PROBLEMS, WHERE WE HAVE THE SITUATION OF AHALLAIGN DISTRICT FPEAL FORLATERRD, EER M A TRIAL T ISOT WITHIN ITS JURISDICTION.

IN ALACHUA, WE SEEM TO BE CONCERNED WITH THE FACT THAT THERE WAS A LIMIT ON THE DISTRICT COURT HAVING ACONSPOWUE A WRIT TOELEAEY FROM --

I UNDERSTAND THAT CONCERNS, AND I DON'T -- I BELIEVE IT WAS BASED ON BOTH THE MARSHALLS, WHICH I DON'T BELIEVE GOES TO THE JURISDICTION AND THE CONSTITUTION. THOSE ARE SEPARATE PROVISIONS, AND IT GOES TOE IDENTITY OF CUSTODIAN, AS THE PROPER PARTY IN A HABEAS CORPUS PROCEEDING. IN SOME HABEAS CORPUS PROCEEDINGS, THE CUSTODIAN IS, WHERE WE CHALLENGE CONDITIONS OFON. U LISTED KATHLEEN KEARNEY.

I CERTAINLY DID. WHO NEVER MADE AN APPEARANCE IN THIS CASE. THIS IS A LEGAL FICTION, FOR LACK OF A BETTER WORD. HABEAS CORPUS DOES NOT DEAL WITH LEGAL FIXES. OF ALL -- LEGAL FIX-FICTIONS, FOR LACK OF A BETTER -- WITH LEGAL FICTIONS, FOR LACK OF A BETTER WORD. I FIND THAT THOSE REASONS MAY NEED TO BE RECONSIDERED, FROM ALACHUA REGIONAL, AND I RESPECTFULLY ASK THIS COURT TO RECONSIDER THAT OPINION AND PLACE THIS BACK INTO THE THIRD DISTRICT COURT OF APPEAL, WHERE THEY HAVE THE LOCAL KNOWLEDGE TO DECIDE THIS CASE. I THINK MOST QUICKLY, ADEQUATELY AND SIMPLY. THANK YOU. MR. CHIEF JUSTICE: MR. POLIN.

MAY IT PLEASE THE COURT. RICHARD POLIN ON BEHALF OF THE STATE AND THE DEPARTMENT OF CHILDREN AND FAMILIES. I WOULD LIKE TO START OFF WITH ADDRESSING JUSTICE WELLS'S QUESTION AT THE BEGINNING, TOO WHETHER THERE IS ANY CONFLICT HERE. I BELIEVE THERE IS NO CONFLICT. BOTH THE THIRD DISTRICT AND THE FOURTH DISTRICT, PROPERLY CONCLUDED, UNDER ALACHUA REGIONAL, THAT THEY DO NOT HAVE HABEAS CORPUS JURISDICTION IN THE INSTANT CASE. THE THIRD DISTRICT'S REASON IS SIMPFOALE HABEAS CORPUS JURISDICTION, YOU HAVE TO HAVE CUSTODY OF THE INDIVIDUAL WITHIN GEOGRAPHICAL TERRITORY, AND MR. MURRAY WAS BEYOND THE TERRITORIAL LIMITS OF THE THIRD DISTRICT. THEREFORE THE THIRD DISTRICT DID NOT HAVE HABEAS CORPUS JURISDICTION. AS TO THE FOURTH DISTRICT, SINCE YOU HAVE THIS MIXING AND MATCHING OF THE APPELLATE COURT WITH THE TRIAL COURT, WHERE PROCEEDINGS ARE PENDING, THE FOURTH DISTRICT HAD LIMITED HABEAS CORPUS JURISDICTION,

UNDER THE ALACHUA REGIONAL DECISION, AND COULD ONLY REACH AN ISSUE WHICH COULD BE FOUND TO INVOLVE PROCEEDINGS WHICH ARE VOID OR ILLEGAL OR A LACK OF JURISDICTION.

EXCUSE ME. IS THERE ANY WAY THAT THIS ISSUE CAN EVER BE RESOLVED THEN?

I THINK THERE ARE A COUPLE OF POSSIBILITIES. I THINK WE OUGHT TO HAVE TO START WITH THE PREMISE THAT IT DOES NOT NECESSARILY HAVE TO BE A HABEAS CORPUS REMEDY OR ANY OTHER REMEDY PRIOR TO TRIAL. THERE ARE AN AWFUL LOT OF PROCEEDINGS, BOTH CIVIL CASES AND CRIMINAL CASES, WHERE THE LINCHPIN OF OUR APPELLATE SYSTEM IS THAT YOU DON'T ENCE PIECEMEAL LITIGATION. THE NORM IS THAT ISSUES ARE RAISED PRIORO TRIAL. SOME YOU WIN, SOME YOU LOSE, AND FOR MOE TO UL E EETION,N ORDER TO RAISE IT FROM A FULL DIRECT APPEAL, AS IN THE COMMITMENT CASE OR AS IN A CRIMINAL CASE. NATURALGIZING THIS TO -- ANALOGIZING THIS TO A CRIMINAL CASE, WHERE YOU HAVE A RESTRAINT ON LIBERTY, THERE IS A AWFUL LOT OF MOTIONS THAT THE DEFENSE FILES IN CRIMINAL TRIAL CEEDINGS, SWORN ASSORTED MOTION TO SAY DISMISSURR ANDSSODDDED OF ECH RIGHTS.

HOW LONGHASTHISNENERT?

HETUAY UNROMMISF Y. HIS COMMITMENT TRIAL HAS NOT BEEN HELD.

HOW LONG HAS HE BEEN DETAINED?

SINCE FEBRUARY OF '99, ABOUT TWO AND-A-HALF YEARS.

AND WHEN DID HE FILE HIS REQUEST FOR DETERMINATION?

IT WAS FOOLS FILED --

---AS TO THE LEGALITY OF DETENTION?

A FEW MONTHS AFTER THE FILING OF THE COMMITMENT PETITION. AND --

YOU ARE TELLING US, WHAT YOU ARE TELLING US, THEN, IS THAT YOU CAN HAVE SOMEONE DETAINED AND NO COURT HAS HABEAS JURISDICTION TO DETERMINE WHETHER OR NOT THAT DEEXTENSION LEGAL? THAT WE HAVE TO WAIT YOU MEAN SOMETHING ELSE HAPPENS?

FIRST, HE HAS THE RIGHT TO AN EXPEDITIOUS TRIAL. THE STATE HAS NOT DELAYED THE TRIAL IN THIS CASE. IN THE DADE COUNTY CASE, THE STATE HAS CONTINUOUSLY STATED THAT IT IS PREPARED TO GO TO TRIAL. THE CASE IS DELAYED FOR WHATEVER THE DEFENSE MAY BE, AND HE DOES HAVE, AS THIS COURT IS AWARE FROM THE PENDING CASE IN KINDER, WHICH SETS THE NORM THAT THE LEGISLATURE EXPECTED QUICK TRIALS IN 30 DAYS, SIMILAR TO "BAKER" ACT PROCEEDINGS, WHERE COMMITMENTS ARE SUPPOSED TO BE DONE QUICKLY, AND YOU GO TO A QUICK TRIAL, AND THEN THE FIRST DISTRICT HAS INDICATED, IN THE HARRIS DECISION AND OTHER DECISIONS, THAT COMMITMENT APPEALS SHOULD BE EXPEDITED, SO THAT SHOULD BE --

BUT ALL OF THAT NONG, I MEAN, THE DEFENDANT, WE WILL ACCEPT IT IS THE DEFENDANT'S FAULT THAT NO HEARING HAS TAKEN PLACE, BUT I MEAN IT JUST SEEMS TO ME THAT YOUR STATEMENT IS THAT YOU CAN KEEP SOMEBODY, AND WE DON'T HAVE TO FIGURE OUT WHAT COURT HAS TIO HI. T HAPPENL CASES EVERYDAY, WHEE S BG AINED,E WHO ARE NOT TNIL, HAVETTE THEY WOULD EO GETRIORO T EY CA MEBODYARDE MOTIO. ANOTHER TRIAL COURT HEARD THE MOTION.

MAYBE WE ARE MISSING SOMETHING. YOU DON'T, REALLY WHAT WE ARE TALKING ABOUT HERE, IS THIS FICTION THAT, WHEN YOU HAVE GOT ESPECIALLY PRETRIAL DETENTION, IN A CRIMINAL CASE, MOST OF THE TIME EITHER IT IS A PERSON BEING PRETRIAL DETAINED, THEY ARE

PROBABLY IN THE JAIL IN THE CIRCUIT WHERE THE TRIAL COURT IS AND THE APPELLATE COURT HEARS THE CASE FROM THE TRIAL COURT. THEY ARE USED TO HEARING APPEALS FROM. THEY LOOK AT A HABEAS AND IT IS A BOND AND THEY WEREN'T ALLOWED OUT ON BOND. THERE IS A QUICK HABEAS PETITION FOR HABEAS RIGHT TO THAT COURT. WE HAVE GOT A FEW CASES, AND WITH THE JIMMY RYCE CASE PROBABLY BEING THE MOST PREVALENT, WHERE THE REVIEW, WHERE THE CIVIL COMMITMENT HEARING IS GOING TO BE HELD, IS GOING TO BE IN DADE COUNTY, BUT BECAUSE OF WHERE JIMMY RYCE PEOPLE ARE O'CLOCK HOUSED, HE OULDBEE IN FR DIFFT SRISTRIC, ISN'T ITM AINT OF VIEWREE,, I ,ATO THEST HAVENGTT E HSTRIC, S THE ISTR? TATE HASYO INNOUA ATCHEDERT ING OR SNEOES OFELTDES. INS CASENGO DECIDE WHETHER IT GOT HEARD OR NOT GOT HEARD OR PRECIPITOUS ULTIMATELY BEING FILED. WHAT WE HAVE GOT HERE IS KATE KEARNEY, WHO IS DETAINING MR. MURRAY, BECAUSE THE DCF IS CHARGED WITH THE HOUSING OF THESE, OF THE JIMMY RYCE INDIVIDUALS. CORRECT?

CORRECT.

HE IS NOT CHALLENGING THAT THE CONDITIONS AT THIS FACILITY ARE INHUMANE OR SUB12D, WHICH WOULD -- OR SUBSTANDARD,, WHICH AGAIN, IS HE ATTACKING THE ORDER SO WHY WOULDN'T IT BE BETTER OR CAN WE ONLL, RE FROM ALACHUA, TO SAY THAT, WHEN WE ARE, WHEN THE ORDER IS BEING CHALLENGED, THAT CAN BE PROPERLY DONE, WITHIN THE APPELLATE COURT WHERE THE ORDER WAS ENTERED, AND IT REALLY MAKES MORE SENSE FOR EVERYBODY TO HAVE IT THAT WAY.

I DON'T THINK YOU CAN DO IT THAT WAY, BECAUSE YOU ARE DEALING WITH A STATE CONSTITUTIONAL LIMITATION, WHICH YOU CANNOT JUST IGNORE, AND THE STATE CONSTITUTION LIMITS THE SCOPE OF THE MARSHAL'S AUTHORITY FOR SERVING PROCESS TO THE TERRITORIAL LIMITS TO THE DISTRICT COURT OF APPEAL, AND WE CANNOT JUST IGNORE THAT. AS FAR AS --

WHAT YOU ARE SAYING IS CONSTITUTIONALLY WE CANNOT RECEDE.

RIGHT. NOW, I THINK IN TERMS OF PRACTICAL ANSWERS, AND I THINK THE FIRST QUESTION THAT HAS TO BE ASKED HERE, IS I THINK A FUNDAMENTAL MATTER HAS TO BE DECIDED AS TOES OF ORDERS SHOULD AN INDIVIDUAL IN THESE A CASES BE ABLE TOc SEEK SOME FORM OF APPELLATE REVIEW, NO MATTER WHAT YOU CALL IT, WHAT TYPES OF ORDERS SHOULD BE SUBJECT TO THAT REVIEW, BECAUSE ONCE YOU DECIDE THAT AN ARER SUCH AS THIS, WHAT AMOUNTS TO -- THAT AN ORDER SUCH AS THIS, WHAT AMOUNTS TO A DENIAL OF A MOTION FOR COMMITMENT PROCEEDING, WHICH IS WHAT IT IS, ELFIN THOUGH IT WAS A MOTION -- EVEN THOUGH IT WAS A MOTION FOR COMMITMENT OF A PLEA, IT WAS AGAINST ME, SO IT IS BASICALLY A DENIAL OF THE MOTION TO DISMISS, ONCE YOU START ON THE PATH OF OPENING THE DOOR TO SOME FORM OF PRETRIAL REVIEW SUCH AS THIS, WHETHER YOU CALL IT HABEAS, SERIOUSRARY OR WRIT OR SOME OTHER -- CERTIORARI WHERE THE WHOLE PURPOSE OF THIS ACT IS TO REQUIRE QUICK TRIALS AND QUICK REVIEW, AND HOW LONG ARE YOU GOING TO DELAY THE TRIALS BY BUILDING IN AN ENDLESS SERIES OF SOME FORM OF PRETRIAL REVIEW, WHICH CAN LAST SIX MONTHS TO 18 MONTHS TO TWO YEARS BEFORE DID YOU GET A TRIAL SUCH AS THIS, AND I THINK THAT IS AN APPROPRIATE QUESTION WHICH COULD BE DEALT WITH BY AN APPROPRIATE RULES COMMITTEE.

HAS THAT ONE DELAYED THIS JIMMY RYCE PROCEEDING THAT IS THIS PENDING HABEAS HERE?

IT IS A PART OF IT. I K IT IS THE ENTIRE THING. THERE ARE MULTIPLE CAUSES THAF SEEN IN DADE COUNTY IN PARTICULAR, WHICH WOULD CONTRIBUTE TO THE DELAYS IN CASES THAT ARE SEPARATE AND APART FROM, THAT ARE SEPARATE AND APART FROM THIS.

MR. POLIN, YOU INDICATED THAT I THINK IN YOUR RESPONSE AT THE FOURTH DCA HAS RULED ON THE MERIT, OF THIS CASE, AND I WENT BACK AND LOOKED.

I AM NOT SURE I SAID THAT THEY RULED ON THE MERITS IN MY BRIEF. I DON'T RECALL HAVING

QUITE SAID THAT. I THINK --

MAYBE I READ SOMETHING THAT INTO WHAT WAS SAID, BUT THEY HAVE, THEY ADDRESSED THOSE ISSUES BUT THEY SAID WE CONCLUDE THAT WE DO NOT HAVE JURISDICTION AND DISMISS THE PETITION, SO SHOULD WE CONSIDER ANYTHING THAT THEY SAID BEYOND THAT, AS BEARING ON THE CASE?

I THINK SO, BECAUSE IF YOU LOOK AT THE REASON WHY THEY ARE SAYING IT IS BEYOND OUR JURISDICTION, IT IS BASED ON THE ALACHUA REGIONAL CASE. THEY ARE SAYING WE HAVE LIMITED JURISDICTION, BECAUSE WE CAN ONLY GO TO SOMETHING WHICH IS ILLEGAL OR RENDERS THE PROCEEDINGS VOID, AND THIS DOES NOT ARISE TO THAT LEVEL OF RENDERING THE PROCEEDINGS VOID OR ILLEGAL, SO IT IS IMPLICIT IN THEIR LACK OF JURISDICTION RULING, THAT THEY DO NOT FIND THIS AS ARISING TO THE LEVEL OF ILLEGALITY, AND THEREFORE --

LIKE IN CERT, IF YOU SAY THERE IS NO IRREPARABLE HARM, SOME COURTS SAID THAT IS A DISMISSAL VERSUS A DENIAL.

THERE IS A DISPUTE THAT I HAVE SEEN AMONGST DISTRICTS, AS TO EXACTLY WHAT A DENIAL OF CERT MEANS, BUT I THINK THIS IS EVEN A LITTLE MORE FOCUSED. THIS IS A LITTLE MORE FOCUSED.

DO YOU SEE ALACHUA AS SAYING THAT, WHEN THIS KIND OF HABEAS OCCURS THAT, IS WHEN A COURT IN ANOTHER JURISDICTION IS LOOKING AT HABEAS, THAT SOMEHOW THEIR VIEW OF THE ORDER OR THEIR REVIEW UNDER HABEAS IS NEAREMBER THAN IF, FOR EXAMP-- IS NARROWER THAN IF, FOR EXAMPLE, MR. MURRAY HAD STAYED IN THE THIRD DISTRICT AND THEY WERE ABLE TO FILE IT IN THE THIRD DISTRICT, IS THERE A DIFFERENCE, HAVE WE SET UP INADVERTENTLY, A MORE RESTRICTIVE OR NARROW STANDARD FOR HABEAS, IN ALACHUA, THAT NEEDS TO BE CLARIFIED?

I THINK IT SENP, AND I AM NOT SURE THAT IT IS INADVERTENT, AND I THINK THERE WAS A SOUND REASON FOR IT.

YOU ARE SAYING THERE IS, AND SOMEHOW BECAUSE MR. MURRAY WAS HOUSED UP IN THE FOURTH DISTRICT IS GETTING LESS OF A REVIEW UNDER HABEAS THAN IF HE HAD BEEN HOUSED IN THE THIRD DISTRICT?

I THINK THAT THAT IS PROBABLY TRUE, BECAUSE OF THIS RESTRICTION TO MATTERS WHICH ARE DEEMED VOID JURISDICTIONAL OR ILLEGAL.

IS THAT A PROBLEM --

I, WELL, I THINK THE REASON FOR IT SEEMS EVIDENT TO ME, BECAUSE YOU HAVE THIS MIXING AND MATCHING OF APPELLATE COURTS WITH TRIAL COURTS, AND I THINK THERE IS A NAL HESITANCY TO PLACE AN APPELLATE COURT JUDGE OR, FT MATTER ITD EVEN BE A CIRCUIT COURT JUDGE IN PALM BEACH OR MARTIN COUNTY PLACED IN A SIMILAR POSITION, TO BE STEPPING ON THE TOAST OF A JUDGE BEYOND THAT JURISDICTION.

-- ON THE TOES OF A JUDGE BEYOND THAT JURISDICTION.

SO DOESN'T THIS ALMOST PRESENT AN EQUAL PROTECTION PROBLEM THAT, IF MR. MURE HI BEEN HOUSED IN DADE COUNTY -- IF MR. MURRAY HAD BEEN HOUSED IN DADE COUNTY OR HAD BEEN ADJUDICATED BY A JUDGE IN THE FOURTH DISTRICT, HIS REVIEW OF HABEAS, WHETHER IT IS AN OVERUSED REMEDY, IT CERTAINLY IS IMPORTANT IN CIVIL CONTEMPT CASES AND JUVENILE CASES THAT IT BE AVAILABLE, IS GETTING A DIFFERENT TYPE OF REVIEW, BECAUSE THE FOURTH DISTRICT FEELS RELUCTANT TO BE DOING ANYTHING AGAINST A JUDGE IN THE THIRD DISTRICT, A

TRIAL JUDGE THAT IS IN THE THIRD DISTRICT?

I DON'T, WELL, I THINK IT IS ONLY A POTENTIAL PROBLEM, IF YOU THINK THAT THERE SHOULD HAVE TO BE SOME FORM OF REVIEW PRETRIAL, FOR SOMETHING LIKE THIS IN THE FIRST PLACE, AND IT IS OUR POSITION THAT THIS IS NOT THE TYPE OF ORDER OR RULING THAT SHOULD BE SUBJECTED TO ANY FORM OF PRETRIAL REVIEW, NO MATTER WHAT YOU CALL IT, THAT THIS IS AMONG YOUR ROUTINE RULINGS IN PENDING TRIAL COURT LITIGATION, WHICH SHOULD BE TREATED AS ANY, AS ANY OTHERS, AND BASICALLY IF IT IS NOT ON THE LIST OF ENUMERATED INTERLOCUTORY APPEALS UNDER .130, AND IF IT -- UNDER 9.130, AND IF IT DOESN'T HAVE DEPARTURE FROM IRREPARABLE HARM AND THE DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW, IF IT DOESN'T SATISFY THOSE STANDARDS OR OTHER STANDARDS FOR PROHIBITION, YOU BASICALLY WAIT UNTIL THE END OF THE TRIAL.

LET ME ASK YOU, PART OF THE REASON OR MAYBE THE REASON THAT HABEAS WAS SOUGHT IN THIS CASE WAS BECAUSE THERE WAS NO WRITTEN ORDER ON THE MOTION TO PUT SPECIFIC PERFORMANCE OF THE PLEA AGREEMENT THAT THE CIRCUIT COURT IN DADE COUNTY WAS ASKED TO GRANT SPECIFIC PERFORMANCE ON THAT PLEA AGREEMENT, AND THEY, THE COURT DENIED THAT, BUT NO WRITTEN ORDER WAS ISSUED, AND SO THERE WAS NO ABILITY TO APPEAL. IS THAT WHY WE HAVE A HABEAS STARTED?

WELL, I AM NOT -- I CAN'T SPECULATE AS TO THE REASON WHY PETITIONER CHOSE THE HABEAS, BUT I THINK THERE IS SOME SIGNIFICANCE TO THE FACT THAT YOU HAVE PICKED UP ON THAT. THERE IS NO WRITTEN ORDER HERE.

IF THERE HAD BEEN A WRITTEN ORDER, WOULD IT HAVE BEEN SUBJECT TO APPEAL TO THE THIRD DCA?

I DON'T BELIEVE THAT IT WOULD BE SUBJECT TO APPEAL, BECAUSE I DON'T SEE ANY PROVISION OF 9.130 WHICH WOULD ENCOMPASS AN ORDER OF THIS NATURE. I THINK THE MORE SIGNIFICANT QUESTION TO ASK IS WOULD IT BE SUBJECT TO CERTIORARI REVIEW IN THE THIRD DISTRICT, ABSENT ASSIGNED, FILED WRITTEN ORDER, THERE IS NO POTENTIAL FOR CERTIORARI JURISDICTION. NOW, THE STATE OBVIOUSLY DENIES THAT THE UNDERLYING ISSUE HAS ANY MERIT, BUT FOR THE SAKE OF ARGUMENT, WOULD IT BE ONE WHICH WOULD POTENTIALLY BE SUBJECT TO CERTIORARI REVIEW, GIVEN A LACK OF AN ADEQUATE REMEDY BY WAY OF APPEAL? DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW AND SUBSTANTIAL HARM THROUGHOUT THE REMAINDER OF THE PROCEEDINGS, NOW, THE FIRST DISTRICT HAS ENTERTAINED THAT IDENTICAL QUESTION IN THE HARRIS CASE. THE EXACTLY SAME TYPE OF QUESTION, SAME TYPE OF MOTION IN A "JIMMY RYCE" ACT PROCEEDING, AND THEY HAVE SAID THAT WE DON'T BELIEVE THAT THIS ORDER IS SUBJECT TO CERTIORARI REVIEW, EVEN WHEN IT IS A WRITTEN ORDER, BECAUSE IT DOESN'T SATISFY THOSE CRITERIA. WE BELIEVE THAT WE HAVE GOT THE PRINCIPLE OF AVOIDING PIECEMEAL LITIGATION THAT, LIKE ANY OTHER ORDER IN CIVIL OR CRIMINAL CASES DENYING MOTIONS TO DISMISS, IT SHOULD AWAIT THE END OF THE TRIAL COURT PROCEEDINGS, AND IF NECESSARY, TAKEN UP ON APPEAL AT THAT TIME, AND IF YOU DON'T DO THAT, THE FIRST DISTRICT FELT THAT THIS WOULD BE OPENING THE FLOOD FLOODGATES TO MASSIVE QUANTITIES -- OPENING THE FLOODGATES TO MASSIVE QUANTITIES OF EVERY KIND BEING APPEAL, AND IF YOU START IT IN A CIVIL COMMITMENT CASE SUCH AS THIS, HOW DO YOU DRAW THE LINE AND WHERE ARE YOU, THEN, GOING TO BE ABLE TO SAY THAT ALL KINDS OF MOTION TO SAY DISMISS IN CRIMINAL CASES SHOULD NOT BE SUBJECT TO THE SAME TYPE OF d DISMISS ON ANY GROUNDS DENIED?

ISN'T THIS CIVIL COMMITMENT UNIQUE, IN THAT A PERSON COULD BE HELD FOR AN UNCON SHUNBLY LONG TIME LONG TIME BEFORE AN APPEAL BEFORE THIS COURT, SO SHOULDN'T HE HAVE SOME KIND OF LIBERTY? -- SOME KIND OF HEARING? ISN'T THERE A LIBERTY INTEREST AT STAKE THERE?

AS FAR AS BEING HELD FOR A LONG TIME PRIOR TO A TRIAL AND PRIOR TO A COMMITMENT ORDER, I DON'T THINK THAT THAT IS A VALID ASSERTION. WHILE IT HAS HAPPENED IN THIS CASE, IT IS NOT BECAUSE YOU OF THE STATE. IF A DEFENDANT IN A COMMITMENT CASE WANTS TO GO TO A QUICK TRIAL, THEY CAN GET PREPARED QUICKLY AND THEY CAN HAVE A QUICK TRIAL.

BUT IS THAT, REALLY, PRACTICALLY TRUE? THESE MRI CASES ARE SO UNIQUE, I UNDERSTAND YOU PROBABLY CAN'T GIVE AN ANSWER AND I CAN'T, EITHER, BUT ISN'T IT TAKING SOME TIME TO GET THESE CASES THROUGH NOW?

THE EXPERIENCE VARIES WIDELY ACROSS THIS STATE AT THIS STAGE.

WHAT IS THE AVERAGE TIME THEY ARE TAKING?

THERE ARE MANY CASES THAT HAVE GONE WELL OVER A YEAR OR TWO AT THIS POINT. THERE ARE OTHERS THAT HAVE GONE TO TRIAL WITHIN A FEW MONTHS, AND ESPECIALLY ON THE WEST COAST OF FLORIDA IN THE TAMPA-ST. PETERSBURG AREA, WHERE THEY HAVE BEEN MOVING THESE CASES QUICKLY. I DON'T KNOW FOR SURE ALL THE REASONS THAT ACCOUNT FOR DIFFERENCES FROM ONE AREA TO ANOTHER, WHETHER IT IS DIFFERENT ATTITUDES OF JUDGES, WHETHER IT IS DIFFERENT TRIAL STRATEGIES BY THE DEFENSE OR APART FROM THE HANDFUL OF CASES THAT HAVE SLIPPED THROUGH THE CRACKS, WHERE THE STATE DIDN'T PROPERLY MONITOR THE 30-DAYTIME PERIODS, IT IS MY -- 30-DAY TIME PERIODS, IT IS MY UNDERSTANDING THAT, WHEN THE CASES ARE BEING PROLONGED, IT IS VIRTUALLY ALWAYS A DEFENSE REQUEST FOR CONTINUEANCES IN THOSE CASES, BUT THE EXPERIENCE ACROSS THE STATE IS NOT UNIFORM.

WHEN IT IS PROLONGED, WHAT IS HIS RELIEF?

WHERE IT IS PROLONGED, I THINK THE, WELL, I THINK, AGAIN, THE ANSWER FOR RELIEF IS YOU CAN HAVE A TRADE-OFF. YOU ARE ENTITLED TO A QUICK TRIAL AND YOU ARE ENTITLED TO EXPEDITED APPELLATE REVIEW ON A COMMITMENT CASE. YOU HAVE TO SOMETIMES TRADE ONE RIGHT FOR ANOTHER. YOU CAN'T ALWAYS ENFORCE RIGHTS, IT HAS OFTEN BEEN SEED IN THE CONTEXT OF CRIMINAL CASES, THAT IN ORDER TO EXERCISE ONE RIGHT, YOU HAVE TO FORFEIT ANOTHER RIGHT. YOU HAVE TO MAKE CHOICES. IT IS ONE OR THE OTHER, IT IS NOT NECESSARILY BOTH. APART FROM THAT, THERE IS, ALSO, THE POSSIBILITY, IN OTHER CASES OF THIS NATURE, IF THEY HAVE SUFFICIENT FACTS AND IF, IN FACT THERE IS A LEGAL PROBLEM THAT THEY CAN GO BACK TO THE CRIMINAL COURT ON EITHER A 3.850 MOTION OR, IF THEY ARE NO LONGNER CUSTODY AS A RESULT OF THIS COURT'S REASONING IN PERT, ITS PROGENY, 3.850 MOTIONS AND PLEA UNDER SIMILAR THEORIES. THAT IS A POSSIBLE REMEDY, ALSO, WHICH CAN GIVE RISE TO APPEALS IN A CRIMINAL CASE AND YOU, ALSO HAVE THE POSSIBILITY OF CERSYEAR REVIEW. THE FIRST DISTRICT -- CERTIORARI REVIEW. THE FIRST DISTRICT AN ADDRESSED IT BUT THE THIRD DISTRICT DIDN'T HAVE A CHANCE. THEY, THE DEFENSE, FILED THEIR MOTION AND COULD HAVE SUBMIT ADD WRITTEN ORDER FOR THE JUDGE TO SIGN BUT APPARENTLY IT WASN'T DONE. IF THEY GOT A WRITTEN ORDER, IF THEY GET A WRITTEN ORDER NOW, THEY CAN PRESENT THE ISSUE TO THE THIRD DISTRICT ON CERTIORARI REVIEW. WILL THE THIRD DISTRICT ACCEPT IT OR NOT THERE, IS NO WAY OF KNOWING. THE FIRST DISTRICT HASN'T. WILL THE THIRD DISTRICT AGREE WITH THE THEIRS? -- WITH THE FIRST? OBVIOUSLY A QUESTION MARK.

MY QUESTION WAS WE HAVE GOT A SITUATION HERE WHERE THE "JIMMY RYCE" ACT HAS, RIGHT NOW, SEEMED TO BE CIVIL, BY LOWER COURTS, AND YET WE HAVE GOT EARMARKED CRIMINAL PROCEEDINGS. MY CONCERN IS THAT, IS THERE A GAP, IN TERMS OF THE APPELLATE RULES, THAT HAVE LOOKED OVER, YOU KNOW, THEY HAVE MADE CAREFUL DECISIONS IN YOUR REGULAR CRIMINAL CASES OR IN CIVIL CASES AS TO WHAT NONFINAL ORDERS OUGHT TO BE REVIEWED IN AN EXPEDITIOUS WAY, AND SO IS THIS SOMETHING THAT NEEDS TO BE REVIEWED BY THE APPELLATE RULES COMMITTEE, TO SEE WHETHER THERE ARE CLASSES OF JIMMY RYCE ORDERS

THAT NEED TO EITHER GET INTO THE CRIMINAL OR CIVIL RULES, WHATEVER THEY BE, AND JUST NOBODY HAS ATTENDED TO IT? I MEAN, UNDERSTAND THAT YOU DON'T THINK THAT THIS ONE SHOULD BE REVIEWED. DO WE NEED TO, IS THERE A GAP THERE?

IN VARIOUS PLEADINGS AND BRIEFS THAT I HAVE SUBMITTED TO APPELLATE COURTS THROUGHOUT THE STATE, INCLUDING THIS COURT, I HAVE SUGGESTED THAT IT WOULD BE APPROPRIATE FOR RULES COMMITTEES TO STUDY A WIDE VARIETY OF ISSUES UNDER THESE CASES. I THINK THE ANSWER, IN THE "JIMMY RYCE" ACT CASES, WOULD BE TO HAVE, AS IN ANY OTHER CIVIL CASE OR CRIMINAL CASE, AN ENUMERATED LIST OF ORDERS WHICH THIS COURT DEEMS APPROPRIATE FOR PRETRIAL APPELLATE REVIEW, AND BASICALLY BARRING EXCEPTIONAL CIRCUMSTANCES BEYOND THOSE, THAT SATISFY CERTIORARI ON AN OCCASIONAL CASE OR PROHIBITION, THAT SHOULD BE IT.

THAT WOULD, THEN, GET OUT, THAT WOULD SATISFY, IF, BUT THAT DIDN'T EXIST IN THIS CASE.

NO. THERE IS NO PRETRIAL RULE THAT WOULD COVER IT IN THIS CASE, BUT THAT IS CERTAINLY AN EASY AND PRACTICAL ANSWER TO DECIDE. SINCE I HAVE GONE BEYOND MY TIME JUST A FINAL STATEMENT IS AS TO THE UNDERLYING ISSUE FOR THE REASONS STATED IN OUR BRIEF, THAT THERE IS NO BASIS FOR THIS CLAIM THAT THE PLEA COLLOQUY, THE PLEA AGREEMENT WOULD HAVE ANY BAR ON THE SUBSEQUENT CIVIL COMMITMENT CASE. THANK YOU. MR. CHIEF JUSTICE: THANK YOU, MR. POLIN. MR. MORRISON, REBUTTAL.

THANK YOU, YOUR HONOR. I THINK THE STATE'S POSITION THAT MR. MURRAY, I BELIEVE, UNIQUELY AMONGST PEOPLE DETAINED BY THE STATE, WOULD HAVE NO RIGHT OF HABEAS CORPUS IN ANY COURT, SPEAKS VOLUMES FOR THE PROBLEMS OF THE PRESENT SYSTEM. JUSTICE PARIENTE SUGGESTED THAT PERHAPS RULES COULD SOLVE THIS, AND PERHAPS IT COULD, BUT ULTIMATELY HABEAS CORPUS WILL ALWAYS BE THE BACK STOP FOR THE RULES. EVEN WITH 3.850, HABEAS CORPUS SOMETIMES IS STILL NECESSARY, TO BE REFERRED TO, AND THAT STILL LEADS TO THE ALACHUA REGIONAL PROBLEM, WHICH NEEDS TO BE ADDRESSED. I AM SORRY, YOUR HONOR.

NO PROBLEM. HAS THIS ISSUE BEEN RAISED IN THE JIMMY RYCE PROCEEDINGS?

HAS WHICH ISSUE?

THE ISSUE ABOUT THE, QUOTE, SPECIFIC PERFORMANCE OF THE PLEA AGREEMENT.

WAS IT RAISED IN THE, YES, ABSOLUTELY. IT WAS FILED AS A MOTION FOR SPECIFIC PERFORMANCE IN THE TRIAL COURT BELOW.

BUT WAS THAT FOR THE SENTENCING JUDGE OR WAS THAT IN THE JIMMY RYCE --

YOUR HONOR, IN MIAMI-DADE COUNTY IT IS THE SAME JUDGE.

SAME JUDGE. I SHOULD PROBABLY -- AND THIS IS FOR ONE OF THOSE LOCAL BITS OF KNOWLEDGE THAT I WAS TALKING ABOUT EARLIER.

IS IT THE SAME PROCEEDING?

I DON'T KNOW WHAT YOU MEAN. NO, IT IS NOT THE SAME PROCEEDING. IT IS OBVIOUSLY A SEPARATE CIVIL PROCEEDING.

AND SO IN WHICH -- WAS THE MOTION FILED IN THE SEPARATE CIVIL PROCEEDING, OR WAS IT FILED IN THE PREVIOUS CRIMINAL?

THAT WILL BE, IT WAS FILED IN THE CIVIL PROCEEDING, WHICH I BELIEVE IS THE APPROPRIATE PLACE TO DO SO. HOWEVER, IN MIAMI-DADE COUNTY, BECAUSE OF THE JOINER OF JUDGES AND, ALSO, BECAUSE OF THE JOYNER OF CASE NUMBERS DOWN THERE -- JOINER OF CASE NUMBERS DOWN THERE, A LITTLE BIT OF LOCAL KNOWLEDGE THAT THIS CASE GETS INTO, IT WAS FILED WITH BOTH CASE NUMBERS ON IT, A AND SO IF, FOR SOME REASON, THE JUDGE THOUGHT IT WAS APPROPRIATELY IN ONE PROCEEDING OR THE OTHER, THE JUDGE COULD HAVE DONE IT IN THE HABEAS CORPUS. IT IS STILL THE MOST OBVIOUS REMEDY FOR AN ILLEGAL DETENTION. IT SEEMS TO ME, I MEAN, THE STATE'S SUGGESTION --

THE JUDGE ENTERED NO WRITTEN ORDER ON THE, WHAT WAS SPECIFICALLY REQUESTED.

NOP. NO, YOUR HONOR, THE JUDGE DID NOT. PRECISELY BECAUSE HABEAS CORPUS DOES NOT REQUIRE A WRITTEN ORDER.

BUT WAS THERE ANY ATTEMPT TO GET THE TRIAL JUDGE TO ENTER AN ORDER?

NO, YOUR HONOR. I NEVER ASKED IT, BECAUSE HABEAS CORPUS DOES NOT REQUIRE A WRITTEN ORDER. IT REQUIRES AN EFFORT TO GO BEFORE THE TRIAL COURT AND PRESENT THE ISSUE, BUT WRITTEN ORDER OR NOT, SHOULDN'T MATTER FOR HABEAS CORPUS. AS I SAID, THIS IS --

BUT COULD YOU HAVE NOT BEEN IN A BETTER POSITION, IF YOU HAD ASKED FOR A WRITTEN ORDER, AND THEN THE THIRD DCA WOULD HAVE HAD --

THAT WOULD HAVE HAD TO GO UP ON CERTIORARI[, WHICH, THEN YOU GET TO THE PROBLEMS WITH HARRIS TALKED ABOUT. CERTIORARI IS A GREAT REMEDY, IF YOU HAVE A DISCOVERY PROBLEM. IT IS A REALLY BAD REMEDY FOR LIBERTY. THAT IS WHY WE HAVE --

YOU DIDN'T WANT CERT. YOU WANTED HABEAS.

HABEAS CORPUS SEEMS TO BE THE MOST APPROPRIATE REMEDY. YOU MIGHT BE ABLE TO COERCE CERT INTO TAKING OVER HABEAS CORPUS, BUT IF I UNDERSTAND IT, HABEAS CORPUS IS THE GREAT WRIT. IT IS THE WRIT THAT PROTECTS OUR LIBERTY, NOT CERTAIN YEAR. -- NOT CERTIORARI. CERTIORARI DEALS WITH DIFFERENT TYPES OF PROBLEMS. IT WAS SET UP FOR DIFFERENT TYPES OF PROBLEMS, AND I WOULD ASK THIS COURT TO --

WHY WOULD CERT NOT HAVE BEEN, WHY COULD IT HAVE NOT BEEN USED, IN THIS INSTANCE, TO RESOLVE YOUR PROBLEMS?

THE REASON IN HARRIS, IT WOULD SEEM TO BE THE OBVIOUS SORT OF ISSUE, WHERE THEY ARE SAYING THIS CAN BE RESOLVED ON APPEAL, ALBEIT YEARS LATER. THEREFORE WE WON'T RESOLVE IT ON CERT. THAT IS A PROBLEM WITH THE WAY THE WRIT OF CERTIORARI IS SET UP. IT IS KIND OF CAT OUT OF A BAG SORT OF THING FOR PROBLEMS. THIS IS NOT A CAT OUT OF THE BAG. THIS IS A MAN SEEKING TO BE RELEASED FROM PRISON FOR CONDITIONS, AND THAT REQUIRES A DIFFERENT ISSUE AND A DIFFERENT REMEDY, AND WE HAVE HISTORICALLY ALWAYS REFERRED TO HABEAS CORPUS AS THE GREAT WRIT FOR PRECISELY THAT PURPOSE THAT CUTS THROUGH THOSE KIND OF LEGAL TECHNICALITIES AND DEALS WITH FREEDOM IN A VERY DIRECT WAY. THE REAL FACTOR, I THINK, IS THE CONSTITUTIONAL LANGUAGE, WHEN IT TALKS ABOUT THE TERRITORIAL JURISDICTION OF THE DISTRICT COURTS OF APPEAL, TALKS ABOUT THE TERRITORIAL JURISDICTION AS IT RELATES TO THE COURTS THEY SUPERVISE, NOT AS IT RELATES TO THE DETENTION FACILITIES, A AND WITH THAT CONSTITUTIONAL LANGUAGE, I SUGGEST THAT ALACHUA REGIONAL NEEDS TO BE RECONSIDERED. IT SEEMS TO BE THE CONTROLLING LANGUAGE. WHEN I WENT BACK AND CHECKED THE BRIEFS IN ALACHUA REGIONAL, NEITHER SIDE, ACTUALLY, EVEN CITED THE CONSTITUTIONAL LANGUAGE TO THIS COURT. I THINK THIS COURT SHOULD HONESTLY RECONSIDER THAT. ARE THERE ANY OTHER QUESTIONS FROM THE BENCH, BEFORE I CONCLUDE? ONE COMMENT I SHOULD, PROBABLY, SAY. THERE HAS BEEN SOME

DISCUSSION OF THE ABILITY OF A QUICK APPEAL. THIS IS WHY I PROVIDED THE NUMBERS TO THIS COURT. THERE HAVE BEEN ALMOST 50 ON OF THESE CASES -- 500 OF THESE CASES FILED IN THE STATE OF FLORIDA. THERE HAVE BEEN 50 TRIED. THESE ARE VERY LONG, VERY COMPLICATED, VERY SERIOUS CASES, WITH A LOT OF LEGAL AND MENTAL HEALTH ISSUES, AND THAT IS SIMPLY WHY THEY TAKE MORE THAN 30 DAYS. THIS IS NOT A "BAKER" ACT COMMITMENT, WHERE SOMEONE IS GOING TO BE GETTING OUT IN JUST A FEW WEEKS. MR. CHIEF JUSTICE: THANK YOU, MR. MORRISON. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THE CASE. THE COURT WILL BE IN RECESS.