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State of Florida v. Daniel C. Atkinson

APPROXIMATELY 40 MONTHS, WHICH MEANT THAT, HAD HE RECEIVED THAT ORIGINALLY, HE WOULD HAVE BEEN RELEASED FROM CUSTODY SOMETIME IN MID1998, BEFORE THE COMMITMENT ACT WENT INTO EFFECT. IT IS THE STATE'S FIRST POSITION THAT THE MERE FACT THAT HE WAS CURRENTLY IN CUSTODY ON THE EFFECTIVE DATE OF THE ACT IS SUFFICIENT, REGARDLESS OF WHETHER THAT CUSTODY WAS LAWFUL OR UNLAWFUL. THE FACT, ITSELF, SIMPLY SAYS CURRENTLY IN CUSTODY.

WOULD THAT BE THE SAME SITUATION IF HIS CONVICTION HAD BEEN SET ASIDE AND HE WAS DISCHARGED FROM CUSTODY, AS A RESULT OF HIS CONVICTION BEING SET ASIDE?

IN MOST CASES, IT WOULD NOT BE THE SAME, BECAUSE IN MANY, AND PERHAPS MOST CASES, THE CONVICTION WHICH WOULD BE SET ASIDE WOULD BE THE QUALIFYING PREDICATE SEXUAL VIOLENT OFFENSE AND IF YOU ELIMINATE, IF YOU ELIMINATE THAT, YOU ARE EFFECTIVELY ELIMINATING ONE OF THE ELEMENTS OF THE CAUSE OF ACTION THAT THE STATE MUST ULTIMATELY PROVE THAT THE PERSON HAS A QUALIFYING PRIOR SEXUALLY-VIOLENT OFFENSE CONVICTION.

THAT WOULD BE A SEPARATE REASON FOR IT NOT APPLYING, BUT AS FAR AS THAT HAVING ANY BEARING ON LAWFUL CUSTODY, IT WOULD NOT.

I DON'T BELIEVE EITHER OF THOSE SITUATIONS WOULD CREATE AN UNLAWFUL CUSTODY.

SO IF THERE WAS ANOTHER QUALIFYING CONVICTION, FOR INSTANCE, AND HAS CONVICTION FOR THE SECOND OFFENSE, IN WHICH HE WAS IN CUSTODY AT THE TIME BUT IT WAS LATER DETERMINED TO BE AN UNLAWFUL CUSTODY, THAT IF THE ACT WOULD STILL APPLY.

THIS CASE PROVIDES, I THINK, THE SITUATION THAT YOU ARE JUST CONTEMPLATING, BECAUSE HE HAD A MID1980s CONVICTION FOR A SEXUALLY-VIOLENT OFFENSE, WHICH HAD EXPIRED SOMETIME IN THE 1990s ON THE SENTENCE, AND THEN HE WAS INCARCERATED ON A NEW OFFENSE, IN THE MID TO LATE 1990s.

BUT IT IS NOT YOUR --.

RIGHT. WITHOUT A DOUBT IN THE MID 1990S 1990S. HE ALSO WAS APPROPRIATELY SENTENCED TO SOME TYPE OF A SENTENCE, ALTHOUGH THE LENGTH OF IT WAS ULTIMATELY QUESTIONED AND SHORT END.

ON THE FACTS -- AND SHORTENED SHORTENED.

ON THE FACTS, JUST SO I UNDERSTAND, HIS PREDICATE FELL ON THE, SOMETIME IN MID-1980s.

'85 OR '86.

AND THEN HE WAS SUBSEQUENTLY RELEASED OUT OF PRISON AND COMMITTED A NEW CRIME WHICH WAS NOT SEXUALLY HEALTHED, BUT FOR THE HEGGS ISSUE, THIS WOULDN'T BE A QUESTION THAT THE STATE HAS THE RIGHT TO GO BACK, EVEN IF THE CURRENT CONVICTION IS NOT FOR THIS.

THE SAME STATUTE APPLIES TO THOSE WHO ARE CURRENTLY IN CUSTODY AND HAVE A CONVICTION FOR A SEXUALLY-VIOLENT OFFENSE. THAT CONVICTION CAN BE AN EARLIER ONE. IT CAN BE THE CURRENT ONE.

IN OTHER WORDS THE STATUTORY SCHEME IS NOT TIED TO CUSTODY BEING FOR THE QUALIFYING OFFENSE.

NO, NOT NECESSARILY. IN MANY CASES IT OBVIOUSLY IS BUT NOT NECESSARILY. I THINK --

WELL, BUT WHEN YOU SAY, THAT IS WHAT I MEAN. IN OTHER WORDS, IS THE STATUTORY SCHEME, DOES IT CONTEMPLATE THAT THE PERSON THAT IS IN CUSTODY BE IN CUSTODY FOR A SEXUALLY-RELATED OFFENSE?

NO, NO, IT DOES NOT. I THINK WHAT THE STATUTORY SCHEME WAS CURRENTLY SAYING OR TRYING TO ACCOMPLISH WAS THAT FOR INDIVIDUALS IN D.O.C. ON THE DATE THAT THE STATUTE WAS EFFECTIVE, THE ADMINISTRATION WANTED TO PROVIDE AN ORDERLY MANNER IN WHICH THESE CASES COULD BE PROCESSED AND EVALUATED WITH THE PROSECUTORS GETTING THE NECESSARY INFORMATION THAT THEY NEED, SO AS INDIVIDUALS COME UP FOR RELEASE FROM JAIL --

HOW DID THE LEGISLATURE INTEND THAT PEOPLE THAT WERE INCARCERATED WERE IN JAIL FOR SEXUALLY-RELATED OFFENSES. IS THERE SOME EXPLICIT PROVISION THERE OR IS THERE SOME LEGISLATIVE HISTORY?

THERE IS EXTENSIVE LEGISLATIVE HISTORY. THERE WERE SEVERAL STAFF ANALYSIS REPORTS THAT WERE ISSUED, BOTH WITH RESPECT TO THE ORIGINAL ACT AND THE AMENDED ACT. I AM NOT AWARE OF ANY LANGUAGE IN THERE THAT GOES TO YOUR QUESTION. I THINK --

THAT SHE DID ANY LIGHT ON IT.

I THINK THE ANSWER TO YOUR QUESTION IS JUST BASIC RULE OF STATUTORY CONSTRUCTION.

THE PLAIN MEANING --

THE PLAIN MEANING OF THE LANGUAGE. IT SAYS YOU HAVE TO BE CURRENTLY IN CUSTODY AND HAVE A CONVICTION FOR A SEXUALLY-VIOLENT OFFENSE. IT DOES NOT SAY THAT YOU MUST CURRENTLY BE IN CUSTODY FOR THE SEXUALLY-VIOLENT OFFENSE, SO JUST APPLYING A PLAIN MEANING, YOU WOULD HAVE TO COME TO THAT CONCLUSION.

AND MR. ATKINSON DIDN'T RAISE THE QUESTION THAT HE WOULDN'T QUALIFY --

IT WAS NOT AT ISSUE IN THE DISTRICT COURT OF APPEAL PROCEEDING BELOW, SO IT IS NOT AT ISSUE NOW.

YOU KNOW, WE TALK ABOUT LAWFUL CUSTODY. IT HAS A TERM OF ART MEANING AT TIMES, FOR EXAMPLE, IN TERMS OF THAT NOW HE BECAME AN UNLAWFUL CUSTODY BECAUSE OF THE HEGGS DECISION, BUT AS I TAKE IT, IN GETTING BACK TO THIS QUESTION ABOUT, ALTHOUGH THE STATUTE JUST SAYS CUSTODY, IT SEEMS THAT YOU DO AGREE THAT, IF THERE WAS SOME INTENTIONAL MISCONDUCT ON THE PART OF THE STATE OR, SAY, A MISCALCULATION OF THE TIME, SO THAT IT WASN'T BECAUSE OF THE SITUATION WHERE THERE IS A CHANGE IN THE LAW OR SOMETHING SUBSEQUENTLY HAPPENED IN THE LEGAL PROCEEDINGS, THAT YOU ARE, THE STATE AGREES THAT THAT IS DISTINGUISHABLE, OR DO YOU?

CERTAIN CIRCUMSTANCES. I AM NOT SURE I WOULD AGREE WITH YOUR EXAMPLE ABOUT A MISCALCULATION AS TO THE TIME, BUT I CAN CERTAINLY ENVISION SOMETHING WHICH YOU

MIGHT CALL A TOTAL SHAM, WHICH ANYONE AT THE OUTSET WOULD HAVE TO RECOGNIZE THAT THIS PERSON COULD NOT OR SHOULD NOT BE HERE.

IF SOMEBODY WAS ENTITLED TO HAVE RECEIVED 365 DAYS' TIME AND IT IS CLEARLY A MISCALCULATION, THAT THAT WOULD STILL BE SUFFICIENT TO INVOKE THE JIMMY RYCE? IF SOMEONE RECEIVED 365.

JAIL CREDIT. THAT IS LITIGATED ALL THE TIME.

CREDIT FOR TIME SERVED AND YOU ARE SUPPOSED TO BE RELEASED, BEFORE YOU EVEN STEP INTO, THAT, WHEN, THAT ONE IMPLICATES EVEN FURTHER CONCERNS, BECAUSE THE ACT CONTEMPLATED THAT YOU WOULD BE INCARCERATED FOR TOTAL CONFINEMENT AT THE OUTSET, WHICH MEANS DEPARTMENT OF CORRECTIONS, AND ONE-YEAR SENTENCE WOULD JUST BE COUNTY JAIL TIME, SO YOU WOULD NEVER END UP IN THE DEPARTMENT OF CORRECTIONS IN THE FIRST PLACE,, SO, YES, THAT PROBABLY WOULD.

I DIDN'T GIVE A GOOD HYPOTHETICAL.

I CAN SEE SITUATIONS WHERE THAT HAPPENS WITH SOMEONE WHO IS EFFECTIVELY, PERHAPS, KIDNAPPED OFF THE STREET AND PLACED INTO THE DEPARTMENT OF CORRECTIONS IN A BIZARRE EXTREME SITUATION.

BUT THE CUSTODY, THAT THEY ARE IN THERE AND IT WAS A MISCALCULATION OR THERE WAS SOME NEGLIGENCE ON THE PART OF THE DOC, THAT UNDER THOSE CIRCUMSTANCES, THAT THE CUSTODY WOULD, IT WOULD STILL QUALIFY THEM, AS LONG AS THEY ARE IN THE D.O.C.'S CONTROL AT THE TIME?

IF THE LAW ENFORCEMENT AUTHORITY IS IN THE COURTROOM AT THE TIME OF THE CONVICTION OR SENTENCE, WITHOUT ANY JUSTIFICATION TRANSFERRED SOMEONE TO THE DEPARTMENT OF CORRECTIONS, UNDER FACTS LIKE THAT, I WOULD CERTAINLY AGREE. WHERE ANY INITIAL TRANSFER IS PURSUANT TO SOMETHING WHICH IS AN APPARENTLY, ON ITS FACE, VALID SENTENCE. YOU HAVE A CONVICTION. YOU HAVE A SENTENCE. YOU HAVE A TRANSFER TO THE DEPARTMENT OF CORRECTIONS. UNDER THOSE FACTS AND CIRCUMSTANCES, I AM HARD PRESSED TO THINK OF A SITUATION WHERE YOU WOULD HAVE A QUESTION REGARDING THE LAWFULNESS OF CUSTODY, WHICH COULD EVER MAKE A DIFFERENCE, AND SO, AND WHAT WE HAVE HERE, WHAT WE HAVE HERE, I THINK, CERTAINLY HAS TO BE VIEWED AS EVEN IF THE COURT WERE NOT TO AGREE THAT CURRENTLY IN CUSTODY DOES NOT CONTEMPLATE UNLAWFUL OR ILLEGAL CUSTODY, WHAT WE HAVE HERE CERTAINLY HAS TO BE VIEWED AS LAWFUL CUSTODY, AS OF JANUARY 1, 1999. YOU HAD A CONVICTION. YOU HAD A SENTENCE. HUH A TRANSFER. AT THE TIME OF JANUARY 1, 1999, EVERYONE IS UNDER THE PROPER LEGITIMATE AND APPROPRIATE BELIEF THAT HE IS PROPERLY IN THE DEPARTMENT OF CORRECTIONS. YOU HAVE THE ANALOGOUS SITUATION THAT I HAVE CITED IN OUR BRIEFS, WHERE YOU HAVE CONVICTIONS FOR INDIVIDUALS WHO ATTEMPT TO ESCAPE FROM PRISON OR WHO DO ESCAPE FROM PRISON. THEY ARE PROPERLY SENTENCED AND CONFINED ON THE DAY OF THEIR ESCAPE. SIX MONTHS OR ONE YEAR LATER, THEIR CRIMINAL CASES RESULT IN A REVERSAL OF CONVICTION, AND THE COURTS CONSISTENTLY HELD THAT IN FACT YOU WERE THERE ON THE DATE THAT YOU ATTEMPTED TO ESCAPE FROM PRISON. YOU CAN THERE FOR BE PROSECUTED FOR THAT, EVEN THOUGH LAWFULNESS OF CUSTODY IS REQUIRED. IT IS TREATED AS LAWFUL CUSTODY, BECAUSE THE SENTENCE WAS PROPER AND IN EFFECT AT THE TIME.

AND DID YOU SAY, DID I UNDERSTAND YOU CORRECTLY, THAT IF, IN FACT, THIS CONVICTION, INSTEAD OF THE SENTENCE, BEING RESENTENCED UNDER HEGGS, IF, IN FACT, ON APPEAL, THIS SENTENCE HAD BEEN REVERSED COMPLETELY.

THE SENTENCE OR CONVICTION?

THE CONVICTION HAD BEEN REVERSED COMPLETELY, HE WOULD STILL HAVE BEEN IN LAWFUL CUSTODY, AND YOU COULD STILL PROCEED UNDER JIMMY RYCE. IS THAT WAUR SAYING HERE?

IN THIS PARTICULAR CASE, YES, BECAUSE HE WOULD STILL HAVE HAD A SEXUALLY-VIOLENT OFFENSE QUALIFYING FROM THE MID1980s AND HE WOULD REMAIN INCARCERATED IN 1999. HE IS STILL THERE, UNTIL THAT SENTENCE GETS REVERSED ONE, TWO, OR FIVE YEARS LATER.

DOES THE JIMMY RYCE HAVE ANY STATUTE OF LIMITATIONS, FOR WANT OF A BETTER WORD, ON HOW FAR BACK YOU CAN GO WITH THESE SEXUAL OFFENSES, IF SOMEONE COMMITTED A SEXUAL OFFENSE 20 YEARS AGO, AND THEY ARE -- THEY ARE IN THE DEPARTMENT'S CUSTODY NOW FOR SOMETHING TOTALLY DIFFERENT?

IT IS NOT A QUESTION OF A STATUTE OF LIMITATIONS, BUT THERE ARE CERTAIN CONSTRAINTS THAT WOULD BE APPLICABLE. FIRST OF ALL, THE PERSON IS NOT BEING COMMITTED JUST MERELY BASED ON THE FACT OF AN OLD CONVICTION. ANYONE WHO IS BEING COMMITTED, IS BEING COMMITTED, BASED UPON A CURRENT MENTAL DISORDER, PERSONALITY DISORDER, MENTAL ABNORMALITY, AND THAT CURRENT MENTAL CONDITION MUST MAKE THE PERSON DANGEROUS.

BUT IF YOU CAN DEMONSTRATE THAT, EVEN THOUGH THE CONVICTION ITSELF, WAS SOME TIME AGO, YOU WOULD STILL BE SUBJECT TO THE JIMMY RYCE.

THAT IS A DISTINCT POSSIBILITY.

WHY WOULD THERE BE A CUSTODY REQUIREMENT, IF THAT IS THE RATIONALE? THAT IS WHAT IS THE, WHAT IS YOUR VIEW OF THE DISTINCTION BETWEEN PEOPLE THAT HAVE A PREDICATE QUALIFYING OFFENSE BUT ARE IN CUSTODY --

IF YOU ARE ASKING WHY --

WHY WOULD THE LEGISLATURE JUST PROVIDE THE ONE CATEGORY OF PEOPLE THAT ARE IN CUSTODY THAT SHOULD HAVE, YOU HAVE PEOPLE, PERHAPS, THAT ARE EVEN MORE DANGEROUS, AND HAVE HAD A PRIOR CONVICTION, BUT THEY ARE NOT IN CUSTODY. WHY WOULD YOU --

TWO REASONS. THE FIRST REASON IS THE ONE THAT I ALREADY SUGGESTED BEFORE, THAT THE LEGISLATURE WAS LOOKING FOR A REASONABLE ADMINISTRATIVE ORDERLY MANNER FOR PROCESSING AND EVALUATING THE CASES AND TYING THEM INTO A RELEASE DATE FOR THE DEPARTMENT OF CORRECTIONS PROVIDES THAT MECHANISM. SECOND AND PERHAPS EVEN MORE IMPORTANTLY, IF YOU TAKE A CASE THAT IS A 20-YEAR-OLD CONVICTION IF THE PERSON HAS BEEN RELEASED INTO THE COMMUNITY FOR THE PAST FIVE OR TEN YEARS AND HAS NOT COMMITTED ANY FURTHER SEXUALLY-VIOLENT OFFENSES, FIRST YOU ARE GOING TO HAVE A SITUATION WHERE THERE ARE PROBABLY GOING TO BE DUE PROCESS LIMITATIONS WHICH WOULD PRECLUDE COMMITMENT, ABSENT A RECENT OVERT ACT. WHEN A PERSON HAS BEEN INSTITUTIONALIZED IN CUSTODY, UP UNTIL THE TIME THAT THE ACT APPLIES, LET ALONE UNTIL THE FURTHER TIME WHEN THE PETITION FOR COMMITMENT GETS FILED, INSTITUTIONALIZATION DOES NOT PROVIDE THE SAME OPPORTUNITIES FOR COMMITTING VIOLENT ACTS, LET ALONE SEXUALLY-VILLE VIOLENT ACTS AND CRIMINAL ACTS, AND THEREFORE THE COURTS HAVE DETERMINED THAT YOU DO NOT NEED A RECENT OVERT ACT. THE COURTS COULD VERY WELL HAVE BEEN AWARE OF THAT AND ACCEPTED THAT. FURTHERMORE, EVEN IF IT WASN'T CONSTITUTIONALLY REQUIRED, SUCH ACTS TO UPHOLD THOSE PERSONS BEING RELEASED INTO THE COMMUNITY, THIS STATE IS GOING TO HAVE A DIFFICULT TIME PROVIDING THE DANGEROUS COMONENT THE -- COMPONENT, THE LACK OF RECIDIVISM, JUST FOR THE FACT, AND THE LEGISLATURE MAY HAVE WELL BEEN AWARE OF THAT AS WELL, IF THE PERSON WAS OUT IN THE COMMUNITY FOR THE PAST SEVEN OR TEN YEARS, WITHOUT HAVING COMMITTED A NEW SEXUALLY-VIOLENT OFFENSE OR SOME OTHER CONDUCT THAT THE STATE IS SOMEHOW AWARE

OF, HOW IS THE STATE GOING TO CON VINCE A JURY -- CONVINCE A JURY THAT, THERE IS REASON FOR COMMITMENT,, UNDER THE SEXUALLY-VIOLENT RECIDIVISM, IF HE HAS BEEN OUT -- CHIEF CHIEF YOU ARE IN YOUR REBUTTAL.

-- MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL.

GOOD MORNING. MY NAME IS HOWARD DIMMING. I AM THE ASSISTANT PUBLIC DEFENDER FROM THE TENTH CIRCUIT IN BARTOW.

WHERE IS THE PETITIONER? IS -- WHERE IS THE RESPONDENT IS HE RELEASED OR HAS HE BEEN INCARCERATEED?

HE IS RELEASED.

HAS HE BEEN DISCHARGED?

ACTUALLY HE HAS NOT. THE, WHEN THE ORIGINAL WRIT OF PROHIBITION WAS ENTERED BY THE SECOND DISTRICT COURT OF APPEAL, MR. ATKINSON FILED A MOTION FOR DISCHARGE WITH THE TRIAL COURT. THE TRIAL COURT INDICATED THAT, SINCE THE SECOND DISTRICT HAD SAID, HAD GRANTED THE WRIT OF PROHIBITION, THAT THE TRIAL COURT DID NOT HAVE JURISDICTION TO DISCHARGE HIM. THAT IS WHY THE WRIT OF HABEAS CORPUS WAS FILED WITH THE SECOND DISTRICT, AND THE SECOND DISTRICT DID RELEASE HIM, BUT TECHNICALLY THE CASE IS STILL PENDING. THE CASE HAS NOT BEEN DISCHARGED.

HAS ANYTHING FURTHER BEEN DONE ON IT?

NO. NOTHING FURTHER HAS PROCEEDED.

SO IF THIS WAS, IF WE QARBD THE SECOND DISTRICT, THEN THE EFFECT WOULD BE THAT MR. ATKINSON, AFTER, WOULD BE BACK INTO THE DEPARTMENT OF CORRECTIONS, UNTIL THE JIMMY RYCE ACTION WAS COMPLETED.

HE WOULD BE BACK IN THE CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES AT THEIR SECURE DETENTION FACILITY.

WHAT WAS, WHAT IS THE RECORD ABOUT WHAT HIS CONVICTION WAS THAT QUALIFIES HIM FOR THE JIMMY RYCE, POTENTIAL JIMMY RYCE TREATMENT?

IN 1986, HE WAS ARRESTED FOR KIDNAPING AND TWO COUNTS OF SEXUAL BATTERY. ONE OF THE KIDNAPING CHARGES AND ONE OF THE SEXUAL BATTERY CHARGES WERE NOLLE PROSSED BY THE STATE ATTORNEYS OFFICE. HE ENTERED A PLEA TO ONE COUNT OF SEXUAL BATTERY WITH SLIGHT FORCE. IT INVOLVED HIM BEING IN AN AUTOMOBILE WITH A 17-YEAR-OLD YOUNG LADY, AND HIS, HE INDICATED THEY BEGAN CERTAIN ACTIVITIES. SHE WANTED TO STOP AND HE ADMITS THAT HE PURSUED IT FURTHER.

THEN HOW LONG DID HE SERVE?

I AM NOT SURE. THE RECORD DOESN'T SHOW.

THEN HE WAS REINCARCERATED IN THE '90s, FOR SOMETHING --

IN 1995, HE COMMITTED A BURGLARY AND GRAND THEFT, IN WHICH HE STOLE A LOT OF STAINLESS STEEL-TYPE ITEMS, TOTALLY NOT A SEXUALLY-MOTIVATED CRIME, UNDER THE DEFINITION OF THE STATUTE, AND HE WAS SENTENCED TO 16 MONTHS.

HAVE YOU MADE AN ATTACK ON THE STATUTE ON THAT BASIS, THAT DID IS NOT REASONABLE TO TAKE AND USE THE PREDICATE QUALIFYING FELONY, IS SOMETHING WHERE THE PERSON IS NOT CURRENTLY INCARCERATED, OR MOST OF THE CASES THAT WE HAVE SEEN, THEY HAVE BEEN INCARCERATE THE FOR THE -- INCARCERATED FOR THE SEXUALLY-VIOLENT FELONY.

THAT WAS NOT CHALLENGED IN THIS PARTICULAR CASE, NO.

AND YOU DON'T KNOW THE DATE OF HIS RELEASE FROM THE SEX OFFENSE?

NO. I DO NOT. THE RECORD DOESN'T SHOW THAT IN ANY WAY. I AM NOT SURE WHAT IT IS. THE REASON THAT THE SECOND DISTRICT COURT OF APPEAL CONSTRUED STATUTE 392.295, THE SEXUAL-VIOLENT PREDATOR "JIMMY RYCE" ACT, TO BE THE REQUIREMENT OF LEGAL CUSTODY, ON THE DATE THE ACT CAME INTO EFFECT, WAS SO THAT THEY DID NOT HAVE TO ADDRESS MUCH MORE SIGNIFICANT CONSTITUTIONAL QUESTIONS WITH THAT PARTICULAR PROVISION. FLORIDA, IN SECTION 394.910, THE GENERAL INTENT SECTION AT THE BEGINNING OF THE "JIMMY RYCE" ACT, SAID THAT THE PURPOSE OF THE ACT WAS TO CREATE A SYSTEM WHEREBY THERE COULD BE INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY-VIOLENT PREDATORS, BUT INSTEAD OF MAKING ITS ACT APPLICABLE TO ALL PERSONS WHO WOULD MEET THE DEFINITION OF SEXUALLY-VIOLENT PREDATORS, FLORIDA LIMITED IT. NOW --

DID THEY CONSTITUTIONALLY HAVE, UNDER THE STATUTES THAT HAVE BEEN UPHELD IN OTHER STATES NOT REQUIRED CURRENT CUSTODY AS A PREREQUISITE TO REVOKE THE "JIMMY RYCE" ACT?

FLORIDA'S ACT IS DISTINCTLY DIFFERENT FROM ANY OTHER ACT THAT IS IN EXISTENCE AT THIS TIME. FLORIDA'S ACT, PARTICULARLY LOOKING AT THE REVISED ACT THAT BECAME EFFECTIVE MAY 26 OF 1999, IT PROVIDES THE ACT IS ONLY APPLICABLE IN TWO SETS OF CIRCUMSTANCES. ONE, IF THE PERSON HAS A PRIOR CONVICTION FOR SEXUALLY-VIOLENT OFFENSE AND IS IN CUSTODY ON THE EFFECTIVE DATE OF THE ACT. THE OTHER PEOPLE IT APPLIES TO ARE THOSE WHO COMMIT A SEXUALLY -- I AM SORRY. ARE CONVICTED OF A SEXUALLY-VIOLENT ACT AND SENTENCED TO TOTAL CONFINEMENT IN THE FUTURE IS THE WORDING THAT IS USED, SO YOU HAVE GOT TWO DIFFERENT STANDARDS, EVEN AMONGST PEOPLE WHO QUALIFY AS BEING SEXUALLY-VIOLENT PREDATORS PREDATORS. IF YOU QUALIFIED AND WERE IN CUSTODY, WHICH COULD MEAN IN THE CUSTODY OF YOUR LOCAL SHERIFF, HAVING BEEN PICKED UP FOR A NO-TAG VIOLATION OR FOR HAVING FAILED TO PAY CHILD SUPPORT ON A WARRANT FOR YOUR ARREST FOR CONTEMPT OF COURT HAS BEEN ISSUED, IF YOU HAVE GOT THE PRIOR CONVICTION OF A SEXUALLY' VIOLENT OFFENSE AND ARE IN -- OF A SEXUALLY-VIOLENT OFFENSE AND ARE IN CUSTODY ON THE DATE OF THE ACT, EITHER JANUARY 1 --

IS THIS FOR PEOPLE WHO WERE IN CUSTODY?

NOT THE PROVISION FOR PEOPLE WHO WERE IN CUSTODY ON THE DATE THE ACT BECAME EFFECTIVE. THERE IS A PROVISION ON THE DOC OR THE DEPARTMENT OF JUVENILE SERVICES, FOR OTHER PEOPLE, THOSE PEOPLE WHO ARE CONVICTED OF SEXUALLY-VIOLENT ACTS AND ARE SENTENCED IN THE FUTURE, THEY MUST HAVE TOTAL CONFINEMENT, AND TOTAL CONFINEMENT BEING IN THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF JUVENILE JUSTICE OR THE DEPARTMENT OF FAMILY SERVICES.

THE KAS GORE IS NOT DEFINED, THE FIRST CATEGORY YOU TALKED ABOUT?

THAT'S CORRECT. IT IS NOT DEFINED IN THIS PARTICULAR ACT IN ANY WAY.

WHY, GIVEN THAT, THAT IT IS NOT, WHEN YOU SORT OF SAY THAT FLORIDA'S ACT WAS DIFFERENT, WHAT I ASKED YOU WAS WHETHER CUSTODY WAS A CONSTITUTIONAL PREREQUISITE,

AND YOU, CAN YOU ANSWER THAT JUST, IS IT YOUR POSITION YES, IT IS, OR THAT, IF MR. ATKINSON WAS DETERMINED, AFTER THEY WERE, THEY WENT BACK TEN YEARS TO LOOK AT EVERYBODY WHO HAD SEXUALLY-VIOLENT CONVICTIONS, AND THEY JUST STARTED TO INITIATE PROCEEDINGS AGAINST INDIVIDUALS WHO HAD, IN THE PAST, COMMITTED VIOLENT ACTS WOULD THERE BE A CONSTITUTIONAL INFIRM FIT?

THAT HAS NEVER ACTUALLY BEEN -- INFIRMITY?

THAT HAS NEVER ACTUALLY BEEN LITIGATED. IT NEVER CAME UP.

WHY IS IT NECESSARY TO AVOID LEGAL COMPLICATIONS?

BECAUSE FLORIDA, IN DRAWING ITS LINE IN MAKING THE DISTINCTION TO PEOPLE WHO WERE SUBJECT TO THE ACT, BASED UPON A CONVICTION PRIOR TO THE EFFECTIVE DATE OF THE ACT, AND THOSE WHO WERE SUBJECT TO THE ACT SUBSEQUENT, BEING A REQUIREMENT THAT THEY BE IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS, WHAT THE SECOND DISTRICT WAS ABLE TO DO WAS SIMPLY REMOVE MR. ATKINSON FROM THE BODY OF PEOPLE, FROM THE POOL OF PEOPLE WHO THE ACT APPLIED TO, SO THEY DID NOT HAVE TO ADDRESS THE CONSTITUTIONAL ISSUE.

SO YOU ARE SAYING IT IS UNCONSTITUTIONAL TO HAVE IT APPLY TO PEOPLE WHO ARE NOT IN DLC OR DCF CUSTODY?

-- IN D.O.C. OR DCF CUSTODY?

I AM SAYING CHAPTER 324.125 IS VIOLATING EQUAL PROTECTION. IT TAKES THE POOL OF PEOPLE, THE ENTIRE GROUP OF PEOPLE WHO ARE SEXUALLY-VIOLENT PREDATORS, AND TREATS THEM DIFFERENTLY, BASED ON NOTHING MORE THAN THE TURNING OF THE CALENDAR. IF THIS PERSON --

THIS ARGUMENT WAS ADVANCED TO THE SECOND DISTRICT, AND THEY CHOSE TO ADDRESS IT IN TERMS OF LEGAL CUSTODY?

IT WAS NOT ADDRESSED TO THE SECOND DISTRICT, BECAUSE A, PARTICULARLY AN INTERMEDIATE APPELLATE COURT IS TO MAKE DECISIONS THAT DO NOT GO TO A CONSTITUTIONAL ISSUE, IF THEY CAN, AND IT WAS THE BELIEF AT THE LOWER LEVEL, THAT, BY MAKING A DETERMINATION THAT CUSTODY, THAT THE STATUTE COULD BE CONSTRUED TO REQUIRE LAWFUL CUSTODY, THAT THE SECOND DISTRICT WOULD NOT HAVE TO GO TO THE CONSTITUTIONAL ISSUE. SO THE ARGUMENT WAS SIMPLY --

I AM STILL NOT SURE, WHEN YOU SAY THAT, THAT IT WAS EVER PRESENTED TO THEM TO GO THAT FAR.

IT WAS NOT. THE WRIT OF PROHIBITION THAT WAS FILED WITH THE SECOND DISTRICT SIMPLY SAID THAT IT SHOULD BE A REQUIREMENT OF THE ACT, THAT THE CUSTODY BE LAWFUL.

BUT IF IT IS NOT, IF YOU ARE NOT MAKING A CONSTITUTIONAL CHALLENGE, AND WHAT OTHER PRINCIPLES ARE GOING TO BE GUIDING US, THE STATUTE SIMPLY SAYS CUSTODY, WE ARE NOT PRESENTED WITH AN ISSUE THAT, IF CUSTODY WAS EVEN A SHAM, THERE WOULD BE AN UNCONSTITUTIONAL PROBLEM. THERE MIGHT BE, YOU KNOW, SOMETHING ELSE GOING ON. WHAT PRINCIPLES OF STATUTORY CONSTRUCTION SHOULD GUIDE US TO READ ADDITIONAL WORDS INTO CUSTODY, IF THAT WAS JUST AN ADMINISTRATIVELY VENT WAY FOR THE STATE TO DECIDE WHO THEY WERE GOING TO REACH BACK AND SUBJECT TO THE ACT?

WELL, I THINK THIS IS A SITUATION WHERE YOU HAD A SHAM --

IT WAS HAPPENSTANCE THAT THIS COURT COMES OUT WITH HEGGS, WHICH JUST HAPPENS TO BENEFIT MR MR. ATKINSON. IF THE LEGISLATURE HAD PASSED THAT PARTICULAR ACT IN A WAY THAT DIDN'T VIOLATE THE SINGLE SUBJECT, MR. ATKINSON WOULDN'T BE HERE MAKING THIS ARGUMENT.

ACCEPT THAT MR. ATKINSON SHOULD HAVE BEEN RELEASED IN CUSTODY -- RELEASED FROM CUSTODY WELL BEFORE --

BUT YOU UNDERSTAND, THE POINT OF YOUR ARGUMENT ISN'T THAT HE IS BEING INCARCERATED OR SUBJECT TO THE "JIMMY RYCE" ACT FOR A REMOTE CONVICTION. AND BECAUSE THIS CUSTODY REQUIREMENT, IF IT DOESN'T RELATE TO THE SEXUALLY-VIOLENT FELONY, IT IS JUST SORT OF AN ADMINISTRATIVE CONVENIENCE. IF THERE IS NO CONSTITUTIONAL INFIRMITY BEING ADVANCED, THEN WHY SHOULD WE DO ANYTHING, OTHER THAN JUST READ THE STATUTE LITERALLY?

BECAUSE READING THE STATUTE LITERALLY, I THINK, DOES CREATE THE CONSTITUTIONAL PROBLEM THAT PEOPLE ARE BEING TREATED DIFFERENTLY, DEPENDING ON WHETHER THEY COMMITTED THEIR SEXUALLY VIOLENT OFFENSE OR WERE CONVICTED OF THEIR SEXUALLY-VIOLENT OFFENSE PRIOR TO THE EFFECTIVE DATE OF THE ACTOR SUBSEQUENT TO THE EFFECTIVE DATE OF THE ACT.

I DON'T KNOW HOW CHANGING CUSTODY, THAT SOME PEOPLE, IF MR MR. ATKINSON HADN'T COMMITTED ANOTHER CRIME, IN OTHER WORDS IF THE BURGLARY HAD SUBJECTED HIM TO PROBATION, HE WOULD HAVE WALKED AWAY AND NEVER HAVE BEEN SUBJECT TO THE "JIMMY RYCE" ACT. THAT DOESN'T SEEM TO BE A PRETTY A VERY RATIONAL SCHEME, IF THAT IS HOW IT, IN FACT, HOW THE LEGISLATURE DRAWS, IT BUT THAT ISSUE ISN'T BEFORE US.

I AGREE IT WOULDN'T BE VERY RATIONAL.

I DON'T KNOW HOW LAWFUL CUSTODY MAKES IT MORE RATIONAL.

WHAT IT DOES IS RESOLVES THE ONE CASE THAT THE SECOND DISTRICT HAD BEFORE T ALLOWED -- IT ALLOWED THE SECOND DISTRICT TO MAKE A DECISION THAT DID NOT HAVE TO ADDRESS CONSTITUTIONAL QUESTIONS, BY ELIMINATING MR. ATKINSON FROM THE POOL OF PEOPLE THAT THE ACT APPLIED TO.

WHAT YOU ARE BEING ASKED, THOUGH, IS THAT YOUR OPPONENT SAYS, THAT IF YOU JUST TAKE THE FACE OF THE STATUTE, THAT IT JUST SAYS, IN ITS PLAIN MEANING, CUSTODY, ANY CUSTODY. NOW, YOU ARE SAYING THAT IT SHOULD HAVE AN INTERPRETATION OF BEING LIMITED TO LAWFUL CUSTODY. AND SO WHAT WE ARE ASKING YOU NOW IS TO DESCRIBE, IN THE FEW MINUTES THAT YOU HAVE LEFT, WHAT THE POLICY REASONS ARE FOR INTERPRETING THE STATUTORY SCHEME TO BE LAWFUL. WHAT IS IT THAT WE SHOULD INTERPRET THE STATUTE VERY NARROWLY, BECAUSE OF THE STATUTE'S CONSEQUENCES, OR WHAT IS THE LEGAL REASON FOR INTERPRETING THE STATUTE TO MEAN LAWFUL CUSTODY, AS OPPOSED TO ANY CUSTODY?

WELL, AS A SECOND DISTRICT SAID, ONE OF THE PRIMARY RULES OF STATUTORY CONSTRUCTION IS NOT TO RESULT IN ABSURD OR HARSH CONSEQUENCES, AND THAT WOULD BE EXACTLY THE SITUATION THAT WOULD ARISE IN THIS PARTICULAR SITUATION, IF THE WORD LAWFUL WAS NOT CONSTRUED INTO THIS PARTICULAR STATUTE. MR. ATKINSON, UNDER ANY SET OF RULES OR PROCEDURES, SHOULD HAVE BEEN RELEASED FROM CUSTODY, WHEN HE WAS RESENTENCED IN, LET'S SEE THE ACTUAL RESENTENCING OCCURRED ON MAY 25 OF 2000. YET HE WAS NOT. HE WAS HELD EVEN LONGER THAN THAT. FOR WHATEVER PURPOSE. THE STATE, AT ONE POINT IN ITS BRIEF, MENTIONS THAT HIS PRESUMPTIVE RELEASE DATE AFTER HIS RESENTENCING WAS JUNE 6. THAT DATE APPEARS TO HAVE COME FROM A LETTER THAT WAS SENT TO THE STATE ATTORNEY

IN THE TENTH CIRCUIT, FROM THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES, RECOMMENDING THAT A PETITION FOR COMMITMENT BE FILED, BUT THAT DATE --

BUT YOU HAVE TO HAVE ANOTHER QUALIFIER IN YOUR CASE, IN THAT THERE ISN'T ANY REAL QUESTION THAT, ON THE BASIS OF THE STATE OF THE LAW, ON THAT DATE, HE WAS IN LAWFUL CUSTODY, CORRECT? IT WAS ONLY SUBSEQUENT, WHEN THIS COURT MADE A DETERMINATION AS TO HEGGS, THAT THAT CUSTODY, UNDER YOUR THEORY, BECAME UNLAWFUL.

WELL, THE HEGGS DECISION SAID THAT, WHEN THE LEGISLATURE ENACTED THE 1995 SENTENCING GUIDELINES, IT DID SO IN AN UNCONSTITUTIONAL MANNER, SO FROM ITS INITIALUATION, THE -- FROM ITS INITIATION, THE SENTENCE WAS UNLAWFUL. IT WAS NOT DETERMINED, IT WAS NOT KNOWN THAT THAT WAS THE CASE UNTIL THE ACTUAL HEGGS DECISION WAS REACHED.

BUT IN THE SECOND DISTRICT, AT THE TIME THAT HE WAS BEING HELD, HE WAS BEING HELD UNDER THE LAW OF THE SECOND DISTRICT. CORRECT?

I AM NOT SURE I UNDERSTAND WHICH TIME.

THAT DATE, HE WAS BEING HELD IN ACCORDANCE WITH WHAT THE SECOND DISTRICT SAID.

YES.

THE LAW WAS.

THAT'S CORRECT. THAT'S CORRECT.

AND IT WAS ONLY WHEN THIS COURT REVERSED THE SECOND DISTRICT, THAT THE LAW BECAME DIFFERENT. CORRECT?

THAT'S CORRECT. YES.

ARE YOU TAKING THE POSITION THAT, IF, THEN, THE CONVICTION WAS OVERTURNED, NOT THE QUALIFYING CONVICTION BUT THIS CONVICTION, THAT, ALSO, SUBSEQUENT TO THE DATE OF THE "JIMMY RYCE" ACT, ENACTMENT, THAT THAT, ALSO WOULD CONSTITUTE AN UNLAWFUL CUSTODY AS OF THAT DATE?

YES. THAT IS THE POSITION I WOULD TAKE.

DO YOU SEE ANY DIFFERENCE, THOUGH, BETWEEN, AGAIN, THE EXAMPLE OF THIS HEGGS SITUATION AND ONE WHERE YOU KNOW, WHERE THERE IS, I GUESS, WHAT IS REFERRED TO AS A MISTAKE OF LAW, VERSUS A MISTAKE OF FACT, WHERE UNDER MY HYPOTHETICAL, IT WOULD BE THAT, IN FACT, THE PERSON NEVER SHOULD HAVE BEEN IN CUSTODY ON THAT DATE TO BEGIN WITH, BECAUSE THE ISSUE OF EITHER GAIN TIME OR JAIL CREDIT OR SOME MATHEMATICAL FORMULA? DO YOU SEE ANY DIFFERENCE?

BECAUSE WE ARE TALKING ABOUT A LIBERTY INTEREST ON THE PART OF THE RESPONDENT IN THESE O'CLOCKS, NO, I DO NOT SEE A DIFFERENCE IN THOSE PARTICULAR ACTIONS.

THE LIBERTY INTEREST, AND I GUESS I AM GOING TO TRY TO HOUND ON IT AGAIN, BECAUSE I AM NOT UNDERSTANDING, IF THE CONVICTION THAT IS QUALIFYING THE PERSON FOR POTENTIAL "JIMMY RYCE" ACT TREATMENT, IS NOT THE CONVICTION THAT THE DEFENDANT IS CURRENTLY INCARCERATED FOR, THE FIRST, THEN THE CUSTODY REQUIREMENT DOES NOT HAVE A RELATIONSHIP TO THE PURPOSE OF THE ACT, BECAUSE, AGAIN, SOMEBODY WHO IS OUT ON PROBATION ON THAT DATE COULD BE, THAT HAD THE EXACT SAME HISTORY AS MR. ATKINSON, WOULD NEVER HAVE BEEN SUBJECT TO IT, BUT SO I DON'T, SO THE CUSTODY, SO WE HAVE TO

ACCEPT, THEN, THAT MR. COLLIN'S ARGUMENT, IF THAT IS TRUE, WHICH IS THAT THE CUSTODY REQUIREMENT, WHICH DOESN'T HAVE TO RELATE TO THE SEXUALLY-VIOLENT ACT, DOESN'T RELATE TO THAT, THAT IT ONLY RELATES, THEN, TO THE STATE HAVING MADE A DECISION THAT WE CAN'T GET EVERYBODY, YOU KNOW, WE CAN'T GO BACK AND FIND EVERY SEXUALLY-VIOLENT PREDATOR THAT IS IN THE LAST TWENTY YEARS, SO WE ARE GOING TO JUST LOOK AT THE ONES THAT ARE IN CUSTODY, BUT IF IT IS AN ADMINISTRATIVE CONVENIENCE, THEN WHERE IS, THEN I AM NOT SURE WHERE I SEE THE LIBERTY INTEREST IT, AND -- INTEREST IS, AND AGAIN THAT IS WHY I ASK YOU ON THE OTHER HAND, IF THE ISSUE WAS IT WOULD BE UNCONSTITUTIONAL TO TAKE PEOPLE THAT WERE NO LONGER IN CUSTODY FOR A SEXUAL LIL-VIOLENT OFFENSE THEN TO -- FOR A SEXUALLY-VIOLENT OFFENSE, THEN TO ME YOU YOU WOULD HAVE A GOOD ARGUMENT IF MR. ATKINSON WASN'T IN CUSS FOD FOR THAT AT ALL -- IN CUSTODY FOR THAT AT ALL, BUT YOU HAVEN'T RAISED THAT ARGUMENT.

IT HASN'T BEEN RAISED AT ALL AND HASN'T BEEN RAISED IN THIS STATE OR ANY OTHER STATE ACTION, TO SAY THAT THEY WERE NOT IN CUSTODY FOR A SEXUALLY-VIOLENT ACTION.

> TO SAY THAT THE STATE HAD NO RIGHT TO GO BACK AND USE A PREDICATE BACK IN THE 1980s THAT JUST AN AS A HAPPENSTANCE THAT HE HAPPENED TO BE IN CUSTODY ON A PARTICULAR DATE.

TO BE HONEST WITH YOU, I DON'T THINK THIS CASE IS BEFORE THIS COURT IN THE GREATEST POSTURE THAT IT CAN BE, BECAUSE OF THE VERY UNIQUE FACTS OF THIS CASE, AND I HAVE QUESTIONED AND QUESTION WHETHER OR NOT THIS IS A VALID CASE FOR PUBLIC IMPORTANCE. IT IS EXTREMELY FACT-DRIVEN, BECAUSE OF THE PARTICULAR CIRCUMSTANCES OF MR. ATKINSON'S CONFINEMENT.

THE HEGGS CASE, ARE YOU INVOLVED IN THAT CASE?

HE WAS MY CLIENT AT THE TRIAL LEVEL BUT NOT ON APPEAL.

HERE THEY HAVE GOT A SITUATION WHERE THEY CLARIFIED THAT HE WAS UNLAWFULLY CONFINED BEYOND THE TIME THAT HE SHOULD HAVE BEEN RELEASED, AND THAT SEEMS TO PRESENT YET ANOTHER, YOU KNOW, CONCERN ABOUT THE ISSUE OF THE STATE HOLDING SOMEBODY OVER.

CORRECT. HE WAS IN A PRESUMPTIVE RELEASE DATE, WHERE HIS RELEASE DATE CAME AND WENT AND HE WAS KEPT IN THE DEPARTMENT OF CORRECTIONS, APPARENTLY FOR THE SOLE PURPOSE OF CONDUCTING THE MENTAL HEALTH EVALUATION OF HIM, BUT THAT IS A DIFFERENT SITUATION THAN WE ARE DEALING WITH IN THIS PARTICULAR CASE.

NOT UNDER THE STATE'S VERSION. IF HE IS IN CUSTODY, HE IS IN CUSTODY, AND THAT WOULD BE THE END OF IT.

WELL, PART OF THE PROBLEM THAT I THINK ALL OF US DEALING WITH THE JIMMY RYCE SECTION OF THE VIOLENT PREDATOR ACT, IS THAT IT IS SO NEW. THERE HAS BEEN VERY LITTLE LITIGATION ON IT. IT PROGRESSES ALL THE TIME. MATTERS HAVE BEEN CHALHE COULD ON MANY DIFFERENT -- CHALLENGED ON MANY DIFFERENT FRONTS. IN THIS PARTICULAR CASE, ONLY ONE ASPECT OF THE PROBLEMS WITH THE ACT RELATED TO MR. ATKINSON WERE PRESENTED, AND THAT IS WHY I SAY IT MAY NOT BE IN ITS BEST POSTURE IN FRONT OF THIS COURT AT THIS PARTICULAR TIME, BUT I THINK THE SECOND DISTRICT COURT, IN LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES AND TRYING TO JUST DO FUNDAMENTAL FAIRNESS, SAID IT IS APPROPRIATE TO READ LEGAL CUSTODY INTO THE REQUIREMENTS FOR THIS ACT TO BE APPLICABLE. I SEE MY TIME HAS EXPIRED. THANK YOU VERY MUCH. CHIEF CHEF CHIEF THANK YOU, COUNSEL. MR. KOLLIN.

THE FIRST POINT I WOULD LIKE TO EMPZAS -- TO EMPHASIZE IS THAT THE STATUTE WE WERE TALKING ABOUT IS CREATED FOR THE BENEFIT AND SAFETY OF THE WELFARE OF THE PUBLIC, AND WHEN YOU HAVE A STATUTE THAT THE STATUTE MUST BE CONSTRUED IN THE LIGHT MOST FAVORABLE TO THE PUBLIC INTEREST AND THAT IS EXACTLY WHAT THE STATE OF CALIFORNIA DID WITH A SIMILAR SITUATION LANGUAGE IN CUSTODY WITH THEIR COMMITMENT ACT, ALTHOUGH THE TERM CUSTODY REFERRED TO THE DATE OF THE FILING OF THE PETITION, AND THEY SAID THAT THE COMPELLING INTEREST OF THE STATE, FOR THE PUBLIC AND ITS PROTECTION AND FOR THE TREATMENT OF INDIVIDUALS WHO NEED IT, CONCLUDED THAT CUSTODY MAY NOT BE LAWFUL FOR CURRENTLY IN CUSTODY.

DOES THE CALIFORNIA ACT REQUIRE THAT THE REASON THEY ARE IN CUSTODY BE FOR A SEXUALLY-VIOLENT OFFENSE?

I AM NOT, I AM NO CERTAIN. -- I AM NOT CERTAIN. I DON'T THINK THE ACTS DO, BUT I AM HESITANT TO SAY FOR SURE, WITHOUT GOING BACK AND LOOKING AT THE WIDE VARIETY OF VARIATION VARIATIONS THAT THE STATUTES DO HAVE. THE SECOND POINT I WANTED TO COME BACK TO, JUSTICE PARIENTE'S QUESTION ABOUT WHETHER THERE IS A CONSTITUTIONAL ISSUE HERE, AND I THINK IT IS NOT THAT IT IS STRICTLY A RULE OF STATUTORY CONSTRUCTION, AS A MATTER OF STATE LAW, THAT WE ARE DEALING WITH WHAT THIS TERM MEANS. I THINK THE SIMPLEST ANSWER TO THAT IS YOU DON'T NEED CUSTODY ON ANY GIVEN DAY WITHIN THE DEPARTMENT OF CORRECTIONS, DEPARTMENT OF CHILDREN AND FAMILIES OR ANY OTHER ENTITY WITHIN THE STATE, IN ORDER TO JUSTIFY A CIVIL COMMITMENT. THE CONSTITUTIONAL REQUIREMENTS FOR CIVIL COMMITMENT ARE BASICALLY THAT YOU HAVE A QUALIFYING MENTAL HEALTH CONDITION AT THAT TIME, AND THAT THAT MENTAL HEALTH CONDITION RENDERS YOU DANGEROUS, WHATEVER DANGEROUSNESS MAY MEAN. THERE IS NO CONSTITUTIONAL REQUIREMENT THAT ANYONE ALREADY BE IN CUSTODY OF THE STATE, BEFORE ANY TYPE OF CIVIL COMMITMENT PROCEEDING CAN BEGIN.

WELL, ON THE OTHER HAND, YOU CITED ONE REASON FOR, I GUESS YOU WOULD SAY A LIBERAL CONSTRUCTION OF THE STATUTE, BUT SINCE IT INVOLVES THE TOTAL DEPRIVATION OF LIBERTY WHY SHOULDN'T WE STRICTLY CONSTRUE THE TERMS OF THE STATUTE, IN TERMS WITH WHAT THE COURT HAS DONE?

TWO. FIRST THIS CASE IN STATE VERSUS HAMILTON, TO WHICH I PROVIDED SUPPLEMENTAL AUTHORITY TWO DAYS AGO, IN WHICH THE PUBLIC BENEFIT AND WELFARE AT ISSUE, EVEN IN A PENAL SITUATION, THE RULE THAT I JUST CITED, CONSIDERING THE LIGHT MOST FAVORABLE TO THE PUBLIC INTEREST PREVAILS, SO YOU HAVE A RESTRAINT ON LIBERTY AND THEREFORE THE PUBLIC INTEREST WOULD PREVAIL.

WHAT IS THE CASE ON THE ONE VERSUS -- WHAT IS THE CASE ON THE STATE VERSUS HAMILTON?

I AM SORRY. I CANNOT REMEMBER WHAT THE UNDERLYING PROVISION WAS, AND THE SECOND REASON IS THAT, EVEN IF YOU APPLY STRICT STATUTORY INTERPRETATION, THAT TAKES YOU BACK TO THE CLEAR LANGUAGE OF THE STATUTE, WHICH JUST SAID "CURRENTLY IN CUSTODY". IT DOES NOT SAY "CURRENTLY IN LAWFUL CUSTODY", WHICH IS AN INTERJECTION WHICH DOES NOT EXIST THERE.

WOULDN'T THAT BE SORT OF AN ANOMALY? WOULDN'T YOU ASSUME THAT THE LEGISLATURE WOULD WANT EVERYTHING TO BE DONE LAWFULLY AND WOULDN'T CONTEMPLATE PEOPLE BEING ILLEGALLY DETAINED.

I THINK IT IS REASONABLE CONSTRUCTION, GIVEN THE CONCERNS OF THE LEGISLATURE, THAT IF THESE INDIVIDUALS WHO ARE REASONABLY BELIEVED TO BE DANGEROUS AND A MENACE TO SOCIETY ARE IN ACTUAL CUSTODY, THE LEGISLATURE WOULD WANT TO SET IT UP SO THAT THESE INDIVIDUALS ARE EVALUATED AND GIVEN THE TREATMENT THAT THEY NEED AND THE

PROTECTION THAT THE PUBLIC NEEDS.

THE LANGUAGE THAT YOU ARE SAYING WOULD BE THERE WOULD BE AFTER "CUSTODY", LEGALLY OR ILLEGALLY, AND THAT THE LEGISLATURE WOULD HAVE CONTEMPLATED A PHRASE LIKE THAT.

AND THERE IS NO REASON FOR SAYING LEGAL OR ILLEGAL, WHICH WOULD BE A REDUNCE ANSWER I AND CONTEMPLATES BOTH. -- REDUNCEANCY, AND CONTEMPLATES BOTH. IT WOULD ONLY BE WHEN YOU ARE --

IT WOULD BE TO SAY, UNDER STRICT CONSTRUCTION, TO SAY LEGAL OR ILLEGAL.

ONLY WHEN THE STRICT CONSTRUCTION WOULD REQUIRE THAT THERE BE A DISTINCTION FOR ANY LEGISLATIVE LANGUAGE TO MAKE THAT LIMITATION. LASTLY, THERE HAS BEEN SOME REFERENCE TO AN EQUAL PROTECTION QUESTION, AND I WOULD JUST SAY THAT IT WASN'T BEFORE THE COURT. IT WASN'T RAISED IN THE LOWER COURT. WASN'T ADDRESSED. IT IS NOT PART OF A CERTIFIED QUESTION, AND THERE WAS NO CROSS PETITION FOR DISCRETIONARY REVIEW ON THAT BASIS AND IT IS NOT BEFORE THE COURT, AND FOR THAT REASON, WOULD REQUEST THAT THIS COURT REVERSE THE LOWER COURT'S OPINION. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.