Fritz Major v. State of Florida

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS MAJOR VERSUS STATE.

MAY IT PLEASE THE COURT. BRUCE ROSEN THAT WILL ON BEHALF THE PETITIONER MR. MARRIAGEOR. THIS IS A QUESTION CERTIFIED, ONE OF GREAT PUBLIC IMPORTANCE, WHICH PARENTHETICALLY I MIGHT POINT OUT TO THE COURT WAS DECIDED BY THE COURT WITHOUT DEFENDANT HAVING THE BENEFIT OF COUNSEL. THE COURT ADJUDICATED THE MATTER AND THEN APPOINTED COUNSEL FOR THE CERTIFIED QUESTION. THE QUESTION IS WHETHER TRIAL COUNSEL HAS THE DUTY TO ADVISE THEDFT THAT HAS A PLEA IN HIS CASE THAT HIS SENTENCE MAY HAVE PENDING CONSEQUENCES, IF THE DEFENDANT COMMITS A CRIME IN THE FUTURE. I SUBMIT TO THE COURT TO BEGIN WITH, AND THERE ARE A NUMBER OF POLICY AS WELL AS CASE LAW CONSIDERATIONS THAT I HOPE TO REACH. I HOPE TO SUBMIT TO THE COURT IN THE FIRST INSTANCE, THE QUESTION IS TOO NARROWLY FRAMED, AND THE REASON FOR THAT IS POSSIBLY THE PECULIAR STRUCTURE OF FLORIDA LAW AS TO SENTENCING. IT IS NOT NECESSARY, THAT, LET ME REFER TO AN "A" AND A "B" OFFENSE. IF WE HAVE A "B" OFFENSE OCCUR SUBSEQUENT IN TIME, IT IS NOT NECESSARY AREA THAT IT OCCUR SUBSEQUENT IN TIME. YOU COULD HAVE A NOT-YET-SENTENCED CRIME COMMITTED FOR THE "A" OFFENSE, AND UNDER THIS COURT'S DECISION IN HARRIS, THAT GETS FACTORED IN SO THAT IS THE FIRST THING THAT I WANT TO POINT OUT IS ALTHOUGH IS NOT FACTUALLY INVOLVED IN THIS CASE APPARENTLY, YOU COULD HAVE A CASE WHERE A PLEA IN A CASE RESULTS IN A SENTENCE ENHANCEMENT FOR A CRIME WHICH OCCURRED BEFORE THAT OFFENSE.

DO YOU AGREE, FOR YOUR PURPOSES, THOUGH, THAT THERE IS THIS DEMARCATION BETWEEN COLLATERAL AND DIRECT CONSEQUENCES?

I AGREE, ALTHOUGH NOT WITH THE FORMATION OF HOW YOU REACH THAT CONCLUSION EMPLOYED BY THE LOWER COURT.

AND IS IT YOUR POSITION THAT THE COURT HAS TO, ONE -- HAS TO WARN THE DEFENDANT OF BOTH THE DIRECT AND THE COLLATERAL CONSEQUENCES?

WELL, PARTLY THIS IS A SEMANTIC SITUATION AND PARTLY IT IS A FUNCTIONAL ONE. IT IS HARD FOR ME TO MAKE THE BREAK POINT. IT IS CLEAR THAT THIS COURT'S DECISIONS HAVE, FIRST OF ALL, THIS COURT HAS NEVER ADOPTED THE FORMLATION OF COLLATERAL CONSEQUENCES TO WHICH IT HAS TAKEN AS A LABEL DOCTRINE, HAS NEVER, IT TO MY KNOWLEDGE, TAKEN THAT TO MEAN THAT WHICH THE LOWER COURT HAS TAKEN TO SKIING MY. THAT IS CONSEQUENCES WHICH MUST BE, QUOTE, A DIRECT, IMMEDIATE AND LARGELY AUTOMATIC. THIS COURT, I BELIEVE IN THE ONLY REFERENCE THAT I COULD FIND TO WHAT THIS COURT CONCEPTUALIZES AS A COLLATERAL CONSQUENCE, IS ONE WHICH IS NOT WITHIN THE POWER OF THE TRIAL COURT TO IMPOSE AS PART OF HIS SENTENCE, THAN COMES FROM GENEVA. HOWEVER, I AM SORRY.

GO AHEAD.

I AM SORRY. I THOUGHT THERE WAS A QUESTION. HOWEVER, THE DECISIONAL LAW OF THIS COURT SINCE GINEBRA, I THINK, HAS INDICATED A VERY IMPORTANT FUNCTIONAL TAKE ON WHAT IS COLLATERAL. COLLATERAL, I THINK, IS THE CONCLUSION THAT YOU PUT, POSSIBLY WHEN YOU DECIDE YOU DON'T NEED TO GIVE THE INFORMATION, BUT THIS COURT HAS SAID, IN ASHLEY, FOR EXAMPLE, THAT PRE-PLEA, NOT JUST PRESENTENCING, BUT PRE-PLEA FOR A

MANITYULE OFFENDER, A DEFENDANT MUST BE AND PRIZED NOT ONLY OF THE POSSIBILITY OF HABITUALIZATION BUT THE POSSIBLE EFFECT ON GAIN TIME. GAIN TIME IS NOT ANYTHING TYPICALLY THAT, THE TRIAL COURT HAS CONTROL OVER.

BUT SPECULATION THAT THE DEFENDANT MIGHT COMMIT FUTURE CRIMES, DOES IT FALL INTO EITHER ONE OF THESE CATEGORIES?

THAT COMES DOWN TO ONE OF THE CENTRAL PARTS OF THE CASE. IF YOU LOOK AT IT IN TERMS OF AN INDIVIDUAL, SURELY IT SEEMS CORRECT THAT THE LOWER COURT CONCLUDED THAT YOU NEED NOT ANTICIPATE ON THE PART OF A PARTICULAR INDIVIDUAL THAT YOU WILL COMMIT A CRIME AND THEREFORE YOU MUST INFORM. IF WE LOOK AT THIS INSIST TEM I CAN TERMS, IN THE EXTRAORDINARY PREDICATE OF RECIDIVIST PROVISIONS, EVERY YEAR THERE IS A NEW RECIDIVIST PROVISION COMING OUT AND I USED TO BE ABLE TO SAY THAT I COULD SUBMIT THEM AND KNEW THEM, BUT NOW I WOULD SAY THAT ONE WOULD NEED A POST GRADUATE DEGREE IN ACCOUNTING TO UNDERSTAND SENTENCING STRUCTURE. IT IS CLEAR THAT SOMETIMES FOLKS WHO ENTER PLEAS BEFORE TRIAL COURTS ARE GOING TO GET CAUGHT UP IN FUTURE SENTENCES, AND I THINK THAT IT IS ACTUALLY, I THINK THE LOWER COURT HAS RESPECTFULLY REVERSED THE APPLICABLE POLICIES. I THINK IT IS APPROPRIATE TO INFORM FOLKS, NOT ONLY ARE YOU GOING TO GET THIS PENALTY FOR THIS OFFENSE, BUT IF YOU DO ANYTHING IN THE FUTURE, YOU KNOW YOU MAY GET EVEN HANSED IN THAT.

IT MIGHT BE APPROPRIATE, BUT IS THERE A CONSTITUTIONAL REQUIREMENT OR WHAT IS THE REQUIREMENT? WHERE DOES IT COME FROM?

WELL, THIS COURT, I SUBMIT THAT IT COMES FRB, I BELIEVE, AND I DON'T COME TO THIS COURT, I HOPE, PRESUMPTUOUS. I MAKE VERY FEW PRESUMPTIONS ABOUT WHAT THIS COURT HAS DECIDED OR WHAT IT MIGHT DECIDE, BUT I BELIEVE WOOD DECIDED THIS. WOOD WAS THE DEFENDANT'S CLAIM WHICH WAS IDENTICAL TO MINE, WITH THE SINGLE MATERIAL EXCEPTION THAT MY DEFENDANT, MY PETITIONER WAS 16 AT THE TIME OF HIS PLEA. THERE IS NO MENTION OF JUVENILE STATUS AT THAT TIME. IN WOOD, THE DEFENDANT CLAIMED I WAS NOT INFORMED WHEN I ENTERED MY STATE PLEA, THAT I MIGHT BE ENHANCED IN FUTURE POSSIBLE FEDERAL OFFENSES.

IS THAT THE DIFFERENCE BETWEEN THE COURT ADVISING THE DEFENDANT THAT YOU WILL BE DEPORTED, YOU COULD BE POSSIBLY DEPORTED AS A RESULT OF YOUR PLEA, AND THE COURT ADVISING THE DEFENDANT THAT, IF YOU COMMIT FUTURE CRIMES, YOU MIGHT, THIS MIGHT COME UP TO ENHANCE YOUR PENALTY. IS THERE A DIFFERENCE?

SURE. I THINK ONE CAN GO EITHER WAY ON THE DIFFERENCE, DEPENDING ON THE SPECIFIC CONTEXT, THE SPECIFIC CIRCUMSTANCES. IN GINEBRA, THIS COURT REFERRED TO DEPORTATION AS A COLLATERAL CONSEQUENCE OF WHICH THE TRIAL COURT NEED NOT AND PRIZE.

BUT WHEN YOU AMENDED THE RULE.

THAT'S RIGHT.

BUT IN WOOD, WE REALLY WERE DECIDING A PROCEDURAL ISSUE. CORRECT?

WELL, I DON'T KNOW, JUSTICE, BECAUSE I THINK, I THINK ONE WOULD ASK THE QUESTION, WOULD SIGNIFY A VERY MARKED STEP IN THE RULE 3.8508 INTERPRETATION OF THE CORUM NOBIS RULE.

DID THE COURT SAY SPECIFICALLY WE WEREN'T DECIDING OTHER ISSUES?

NOT. ABSOLUTELY. BUT IN PERRY YOU DID SAY THAT THIS IS WHAT WE HELD IN WOOD, AND

WOOD WAS, I WOULD HOLD TO THE COURT, WOOD WAS 18 MONTHS POST COMPLETION OF SUBMIT BRIEFING. NONE OF US ARE PRIVY TO THE DISCUSSIONS OR CONSIDERATIONS, BUT THE FACT IS ONE MIGHT THINK THAT THE COURT WOULD NOT HAVE TAKEN A CASE WHERE NO CLAIM WAS STATED, WHERE THERE WAS NO VIABLE CLAIM TO ADDRESS THE VERY SIGNIFICANT QUESTION OF DOES CORUM NOBIS APPLY WITH INDIVIDUALS NO LONGER IN CUSTODY AND IS THERE A RULE LIMITATION THE EQUIVALENT OF THE STATUTE OF LIMITATIONS. IS THERE A TWO-YEAR STATUTE OF LIMITATION THAT IS APPLY TO THIS CHRARJS AND THIS COURT RULED THAT THE DIFFERENCE BETWEEN IN CUSTODY AND OUT OF CUSTODYALLY REALLY HAS NO SIGNIFICANCE AND WE ARE GOING TO BLEND THAT INTO A RULE 3.850 50 AND THE TWO ---A RULE 3.850, AND THE TWO-YEAR RULE APPLIES TO EVERYTHING. WHY WOULD WE SUBMIT TO THE COURT THAT THERE WAS A CLAIM, AND EVEN THE PETITIONER, HIMSELF, DID NOT PRESENT THAT ISSUE. THE ATTORNEY GENERAL PRESENTED THAT ISSUE IN ITS RESPONDENT'S BRIEF AND AND PRIZED THE COURT WHAT THE LOWER COURT HELD HERE AND THAT HIS CASE LAW.

ARE YOU ADVOCATING THAT WHAT THIS COURT WOULD HAVE TO DO WOULD BE TO SAY THAT THIS COULD HAVE ADVERSE CONSEQUENCES, IF YOU WERE TO COMMIT A CRIME IN THE FUTURE, WHICH WE HOPE YOU ARE NOT GOING TO DO? I MEAN, WHAT WOULD BE, OR ARE YOU ADVOCATING, SAYING, LOOK, RIGHT NOW THERE ARE THESE STATUTES OUT THERE. THERE IS THE PRISON RELEASEE ACT ACT.

NO. OF COURSE NOT.

SOME KIND OF A GENERAL STATEMENT.

A GENERIC STATEMENT.

AND YOU ARE SAYING THAT, WITHOUT THAT, BECAUSE RIGHT NOW THERE IS NO COMMENT IN THE PLEA COLLOQUY THAT THAT BE THERE, THAT A DEFENDANT'S PLEA COULD NOT BE KNOWING AND VOLUNTARY?

I AM NOT SAYING COULDN'T CATAGORICALLY. I AM SAYING IT POSSIBLY MIGHT NOT BE KNOWING AND VOLUME UNTAEFERMENT A DEFENDANT IN EVERY INSTANCE WOULD HAVE TO SUBSTANTIAL YACHT INDICATE THAT. --NOT KNOWING AND VOLUNTARY. A DEFENDANT IN EVERY INSTANCE WOULD HAVE TO SUBSTATILLY INDICATE THAT.

FIRST OF ALL, CAN YOU TELL US WHETHER THE SYSTEM PUBLIC DEFENDERS, WHEN THEY ARE ADD ADVISING THEIR HOE-ADVISING THEIR CLIENTS TO ENTER -- WHEN THEY ARE ADVISING THEIR CLIENTS TO ENTER PLEAS, THAT, AGAIN, YOU CAN PLEA TO THIS BUT IT CAN BE USED FOR ENHANCEMENT, IF THAT IS DONE?

THAT IS A QUESTION WHICH HONESTLY HAS NOT OCCURRED TO ME, AND BECAUSE OF THE DIFFERENCE IN FUNCTIONS OF OUR OFFICE, I HAVE SEEN SENTENCES AFTER THEY HAVE GONE TO THE FUNCTION OF SENTENCING DARK SCHRI. I AM UNABLE TO STATE, I -- SENTENCING, CHARACTER I AM UNABLE TO STATE -- I DO KNOW THAT GAIN TIME IS PART OF THE ISSUE.

BUT THAT ISSUE, TOO, PERHAPS THE BROAD ROLE OF COUNSEL AND PERHAPS COMPETENT COUNSEL AND WHAT THEY MIGHT HAVE BEEN DOING, AS OPPOSED TO REQUIRING THESE UPON THE TRIAL COURT, MY CONCERN IS IT SEEMS TO BE SORT OF AN OPEN ENDED KIND OF ANY, AND YOU KNOW, SO OF DO YOU HAVE TO TELL THE DEFENDANT THAT NOW HE HAS TO ANSWER YES, WHEN HE FILLS OUT EMPLOYMENT FORMS, AFTER HE DOES THIS, AND SO THAT WHEN THE DEFENDANT COMES BACK IN A COUPLE OF WEEKS AND SAYS, GEE, I GOT TURNED DOWN BY THIS JOB NOW, BECAUSE I PUT THAT I PLED TO THIS, AND IF I WOULD HAVE KNOWN THAT, AND DIDN'T GET THAT $1 MILLION A YEAR JOB, I WOULDN'T HAVE, AND SO HERE WE GO, AND YOU KNOW, I ASKED THIS GIRL TO MARRY ME, BUT AS SOON AS I TOLD HER I HAD, NOW I HAD A RECORD, SHE TURNED ME DOWN, AND THERE AGAIN, SHE WAS A MILLIONAIRE, AND ISN'T THERE JUST GOOD

SENSE IN WHAT THE THIRD DISTRICT HAS SAID HERE AND THAT IS THAT IT DOESN'T MAKE GOOD SENSE TO ANTICIPATE THAT THE DEFENDANT HERE IS GOING TO COMMIT ANOTHER CRIME, AND THEREFORE SHOULD BE TOLD IN ADVANCE, THAT BY THE WAY, NOW THAT YOU ARE GOING TO CREATE A RECORD HERE THAT IS GOING TO BE HELD AGAINST YOU WHEN YOU GO OUT AND ROB ANOTHER BANK, DOESN'T THAT JUST MAKE GOOD SENSE, AND THEREFORE GOOD POLICY?

THERE ARE A NUMBER OF PARTS TO ANSWER THAT. THE FIRST IS THAT I EMPHASIZED TO THE COURTS AT THE OUTSET THAT THIS DOCTRINE IS NOT DEPENDENT ON A FUTURE CRIME. THE QUESTION OF CONSEQUENCE OF A PRESENT PLEA ON FUTURE SENTENCING COULD APPLY TO FUTURE SENTENCING FOR A CRIME SIMPLY NOT SENTENCED, NOT COMMITTED IN SEQUENCE.

BUT THAT IS NOT THE SITUATION. WE ARE NOT TALKING ABOUT OVER ANOTHER DIVISION THAT MAYBE THE LEFT HAND DOESN'T KNOW WHAT THE RIGHT HAND IS DOING AND SOMEBODY HAS ENTERED A PLEA HERE, AND ALL OF A SUDDEN A PENDING CHARGE NOW CHANGES THE CHARACTER.

I ACKNOWLEDGE THAT THIS CASE DOESN'T DO THAT, BUT THE WAY IN WHICH THIS COURT ADD JUDD INDICATES IT, I SUBMIT THIS COURT MUST FACTOR THAT IN, BECAUSE THE COMPLICATIONS ARE MUCH BROADER THAN A SUBSEQUENT CRIME. IT IS A CRIME FOR WHICH YOU ARE BEING SUBSEQUENTLY SENTENCED, I THINK, IS A MORE APT PHRASING, AND THAT CRIME MAY HAVE BEEN COMMITTED BEFORE, SO THAT ANSWERS PERHAPS A MINORITY OF SITUATIONS, BUT IT ANSWER ONE PROSPECT OF FUTURE CRIMES. THE OTHER PART OF THAT IS THAT WHILE THERE IS A COMMONSENSE VIEW THAT CERTAINLY IS APPROPRIATE, THAT YOU NEED NOT, ON THE PART OF A PARTICULAR INDIVIDUAL, ASSUME THAT THAT PERSON WILL COMMIT A CRIME. THE FACT IS IT IS A SYSTEM THAT WE ARE APPLYING THE RULE FOR, AND THAT FOR SOME NUMBER -- FOR EXAMPLE, MOST FOLKS PRESUMABLY THAT COME BEFORE A COURT AND ARE SENTENCED ARE PROBABLY NOT SUBJECT TO DEPORTATION, BUT FOR THOSE THAT MIGHT BE, THAT HAS CONSEQUENCE, DISCORD AND CHANGES THE RULE IN THAT REGARD, AND I THINK IN TERMS OF ENTITLEMENT, REALLY THE REAL AND ADVICE, IN THE WAKE OF GINEBRA, COULD YOU NO HAVE BEEN ADVISED.

YOU ARE SAYING IT WOULD BE THE VOLUNTARINESS OF THE PLEA IS WHAT IT ALL BOILS DOWN TO.

THAT'S CORRECT.

SO WHAT WOOT DEFENDANT TESTIFY TO? -- SO WHAT WOULD THE DEFENDANT HAVE TESTIFIED TO? IF I WOULD HAVE KNOWN THAT, WHEN I AM ENTERING THE PLEA THEN, REALLY WHAT I AM THINKING ABOUT IS IN TWO WEEKS I PLANNED ANOTHER HEIST, AND IF YOU HAD TOLD ME, I NEVER WOULD HAVE, NOW IS THAT THE KIND OF SCENARIO WE ARE GOING TO HAVE? BECAUSE IT IS AT THAT TIME, AT THE TIME THAT HE IS ENTERING THE PLEA THERE, SO TELL ME WHAT THE TESTIMONY WOULD BE.

WELL, IT MIGHT BE, I DON'T KNOW, IT MIGHT BE THAT, HAD I KNOWN THAT JUST NOT THIS CASE LAW FOR PUNISHMENT BUT WHATEVER OFFENSE, OR WHATEVER REASON I MIGHT BE CAUGHT UP IN THE CRIMINAL JUSTICE SYSTEM, THAT THAT CASE WILL BE USED TO ENHANCE ALL PUNISHMENTS. IT MIGHT BE THAT -- I SUBMIT TO THE COURT EVIDENCE YAERL, IT MIGHT BE DIFFICULT FROM A -- EVIDENTIARYLY, IT MIGHT BE MORE DIFFICULT FROM A POINT OF VIEW THAT THE MIGHT BE CREDIBLE, THAT THEY WOULDN'T KNOW THE FACT OF THE FUTILITY OF FUTURE SENTENCING.

I GUESS I AM HAVING TROUBLE FOCUSING ON THE TIME THAT THE COURT WOULD BE EXAMINING IS AT THE TIME OF ENTERING THE PLEA. IT WOULD BE THEN THAT THE DEFENDANT IS SAYING THAT IT WAS INVOLUNTARY, AND THE REASON IT IS INVOLUNTARY IS BECAUSE WHAT?

I WAS NOT TOLD THAT THIS WOULD TAKE A, THIS OFFENSE THAT I COMMITTED IN THE FUTURE, AND INCREASE THE PUNISHMENT BY 50 PERCENT. I MEAN, THIS INDIVIDUAL WOULD HAVE HAD, I BELIEVE, ROUGHLY 24 YEARS, 20 YEARS OF PUNISHMENT.

ISN'T THAT ANOTHER SLIPPERY SLOPE, BECAUSE NOW WE ARE TALK ABOUT, IF YOU ENTER THIS PLEA AND IT IS A PLEA TO A MISDEMEANOR, AND IT DOESN'T HAVE VERY MANY CONSEQUENCES AT ALL. IF IT IS A THIRD-DEGREE FELONY, IF IT IS A VIOLENT OFFENSE, AND NOW YOU ARE GOING TO HAVE TO BE TOLD, WELL, YOU KNOW, THIS CATEGORY, AND LET'S SAY, HERE IS A RANGE OF CRIMES YOU MIGHT COMMIT IN THE FUTURE.

I AM NOT SUGGESTING THAT THE NATURE OF THE ADVICE MUST BE SO INTERNALLY CODIFIED AS TO CONTEMPLATE EVERY FACTUAL NUANCE. SIMPLY THAT NOT ONLY WILL YOU BE PUNISHED FOR THIS OFFENSE, BUT THE FACT THAT YOU ARE AGREEING TO ACCEPT THE PUNISHMENT HERE MAY, IN FACT, ENHANCE THE PUNISHMENT FOR ANY CRIME, ANY COURT IN WHICH YOU MAY COME BEFORE IN THE FUTURE, THAN IS A PRETTY SIMPLE PIECE OF ADVICE.

BUT ISN'T THAT, ALSO, SORT OF COMMON KNOWLEDGE THAT, GENERALLY THE PUBLIC IS ON NOTICE THAT PROBABLY THE PENALTY YOU GET IS GOING TO DEPEND ON YOUR RECORD. THAT IS THAT YOUR RECORD IS GOING TO RELATE TO WHAT HAPPENS TO YOU NEXT.

CLEARLY --

IF YOU HAVE GOT A RECORD, THAT IS GOING TO BE AN ADVERSE CONSEQUENCE.

CLEARLY THAT IS GOING TO BE THE CASE AS TO THE LAW OF WHAT THE PUBLIC UNDERSTANDS. THOSE OF US THAT LABOR WITH THE SENTENCING ISSUES OVER THE YEARS AND I WILL SAY TO YOU UNEQUIVOCALLY THEY GET MORE AND MORE COMPLICATED EVERY TIME. IT IS SOMETIMES DIFFICULT TO DETERMINE, SO I THINK THIS PIECE OF ADVICE -- MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU. MR. CHIEF JUSTICE

MR. NEIMAN.

THANK YOU. MAY IT PLEASE THE COURT. I AM MICHAEL NEIMAN ON BEHALF OF THE STATE.

AS SOON AS WE ACCEPTED THIS ARGUMENT THAT YOU SHOULD BE TOLD ABOUT ENHANCEMENTS, THIS ARGUMENT, YOU COMMIT YOUR FIRST OFFENSE, AND YOU ARE TOLD THAT YOU ARE ENTERING THIS PLEA, BUT IN THE FUTURE THIS MIGHT BE USED TO ENHANCE YOUR SENTENCE, ANY FUTURE SENTENCE. CORRECT?

YES.

SO ON THE SECOND PLEA, WOULD THIS LEAD US TO HAVING TO SAY ON THE SECOND OFFENSE, YOU KNOW, WE WOULD HAVE TO SAY, THERE IS A "THREE STRIKES" LAW OUT THERE, BECAUSE BE CAREFUL AND NOW YOU ARE GOING TO BE FACED WITH THAT KIND OF THING, OR WOULD TELLING A DEFENDANT AT THE INITIAL TIME IS HE SENTENCED, ENCOMPASS ALL OF THAT?

WELL, YOU REALLY, WINDING DOWN THAT SLIPPERY SLOPE, YOU ARE WINDING DOWN THE SLIPPERY SLOPE, BECAUSE THE MINUTE YOU TELL HIM ANYTHING, WE REALLY DON'T KNOW, AT THE TIME THAT HE PLEADS, WHAT HE IS GOING TO DO, AND IF, IN FACT, A NEW CRIME IS COMMITTED, IF, IN FACT, THAT CRIME IS AT THE POINT IN TIME HE PLEAS, IF THERE IS AN ENHANCEMENT FOR THAT CRIME, OR AT THE TIME THAT HE COMMITS A CRIME IS GOING TO BE AN ENHANCEABLE OFFENSE, OR AT THE TIME THAT HE COMMITS A CRIME AND IS PROSECUTED,

WHETHER OR NOT THERE ARE CIRCUMSTANCES THAT ARE GOING TO MITIGATE THE ENHANCEMENT, WHETHER HE PLEAS AGAIN, WHETHER HE PROVIDES FAVORABLE TESTIMONY, SUBSTANTIAL ASSISTANCE, OB OR THE PROSECUTOR DOESN'T HAVE ENOUGH EVIDENCE TO GO FORWARD ON THE ENHANCEMENT, SO REALISTICALLY, THE WHOLE CONCEPT OF ADVISEMENT OF THE DEFENDANT THAT HIS PRESENT PLEA MIGHT ENHANCE HIS SENTENCE REALLY GOES AGAINST THE WHOLE CONCEPT OF WHAT ARE THE RIGHTS THAT THE DEFENDANT IS BEING TOLD HE IS WAIVING, IN 3.172, FOR THE VOLUNTARINESS OF THE PLEA. WHEN WE LOOK AT WHAT 3.172 STANDS FOR, IT IS WHAT CONSTITUTIONAL RIGHTS THAT THE DEFENDANT IS WAIVING AND GIVING UP AND WHAT DEAL IS HE GETTING, FOR THE PLEA OF GUILTY.

BUT IN, LET ME GIVE YOU TWO CIRCUMSTANCES THAT CONCERN ME. ONE WOULD BE THERE ARE CERTAIN STATUTES, LIKE THE DRIVING UNDER THE INFLUENCE, WHERE AFTER, YOU KNOW, IT DOES --

RIGHT. INCREASES.

IT INCREASES. AND WE KNOW THAT THERE ARE INDIVIDUALS THAT COMMIT DRUG POSSESSION OFFENSES, DUI'S, THAT ACTUALLY HAVE UNDERLYING ADDICTIONS, THAN IS WHAT IS CAUSING THEM TO COMMIT FUTURE OFFENSES. MY CONCERN IS, AGAIN, IN TERMS OF JUST WHETHER THERE CAN BE A HARD AND FAST RULE, THAT ON THE SECOND OR FIRST OR SECOND OF ONE OF THE THREE WHERE YOU HAVE GOT, LIKE, THE DRIVING WHILE INTOXICATED, THAT MAYBE THERE IS A WAY THAT THAT PERSON SAYS, YOU KNOW WHAT? IT COULD BE MAYBE SOMETHING THAT COULD BE, HE COULD BE FOUND GUILTY BUT MAYBE THERE IS SOMETHING WRONG WITH THE RADAR EQUIPMENT OR SOMETHING, AND IT COULD BE CHALLENGED. IN TERMS OF IT BEING A KNOWING AND VOLUNTARY PLEA, WOULDN'T IT BE INCUMBENT ON SOMEONE TO SAY, YOU KNOW, YOUR SECOND OFFENSE, THIS IS WHAT IS HAPPENING, BUT THIS HAPPENS ONE MORE TIME, AND YOU WILL, YOUR CONSEQUENCE IS YOUR LICENSE WILL BE TAKEN AWAY FOR THE REST OF YOUR LIFE, AND THERE WILL BE A MANDATORY PRISON TERM OR WHATEVER IT IS. YOU KNOW, SO I AM THINKING IN PARTICULAR WITH DRUG CRIMES AND ALCOHOL-RELATED CRIMES, AND MY SECOND PART IS THAT THERE WAS MENTION, AT LEAST TODAY, THAT THIS PERSON WAS A JUVENILE, AND WE KNOW THAT THERE IS A GREAT DEAL OF JUVENILES THAT ENTER PLEAS OF GUILTY. SOMETIMES THEY ARE UNCOUNSELED, AND HOW DO WE KNOW THAT KNOW THAT NORMALLY YOU THINK JUVENILE CRIMES ARE NOT COUNTED IN THE ADULT WORLD, BUT WE KNOW AS A PRACTICAL MATTER THEY ARE, SO THOSE ARE THE TWO AREAS, I GUESS I HAVE SOME PARTICULAR CONCERNS FOR, AND AGAIN, WHEN WE DO A BROAD RULE, THIS CASE MAY BE AN EASY CASE, BUT BROADLY SPEAKING, FOR THE FUTURE, SHOULD WE CONSIDER SOMETHING TAILORED TO CERTAIN TYPES OF CRIMES AND FOR JUVENILES?

WELL, AS TO THE FIRST QUESTION AS TO THE NATURE OF THE DIFFERENT LEVELS OF CRIMES, THE LAW IS CLEAR THAT WE ARE ALL PUT ON STATUTORY NOTICE. IF, ON THE BOOKS, WHETHER WE HAVE EVER READ THE LAW OR NOT, WE ALL HAVE NOTICE THAT THIS IS A CRIME AND WHAT THE PENALTY IS FOR IT, SO PARTICULARLY TO ADVISE IN A DUI SITUATION THE EXACT NATURE OF THE OFFENSE, I THINK THAT IS A DUTY UPON COUNSEL BUT NOT A DUTY UPON THE COURT. THE SAME THING FOR PETTY THEFT OR ANY OF THESE INCREASED CRIMES IS ON THE BOOKS, AND WE ARE KNOWN TO DO, THE SAME THING AS PROBATION. WE DON'T HAVE TO TELL --

LET ME STOP YOU THERE. YOU SAID THE DUTY IS ON COUNSEL KNOLL THE -- AND NOT ON THE COURTS, BUT THE THIRD DISTRICT CASE THE DEFENDANT SAID DEFENSE COUNSEL FAILED TO TELL HIM THAT HIS CONVICTION COULD BE USED AS A BASIS, AND THE THIRD SAID NEITHER THE COUNSEL NOR THE COURT IS TO O OBLIGATED TO ADVISE, SO THIS -- IS OBLIGATED TO ADVISE, SO THIS BROADENS NOT JUST WHAT THE COUNSEL BUT WHAT THE COURT SHOULD DO. YOU ARE SAYING THE COURTS.

RIGHT. NOW. THEN, THE SECOND QUESTION IS IS IT INEFFECTIVE ASSISTANCE OF COUNSEL FOR

COUNSEL NOT TO HAVE DONE IT, BUT THAT IS A CASE-BY-CASE BASIS, AND WE DON'T NEED A BROAD RULE TO DETERMINE AN INEFFECTIVE ASSISTANCE OF COUNSEL. THE ALLEGATIONS MIGHT BE THERE. THE ALLEGATIONS MIGHT HAVE BEEN THAT THE DEFENDANT WOULD, IN HIS MOTION, MADE THE STATEMENT THAT HE WAS CONCERNED ABOUT THIS. HE ASKED COUNSEL ABOUT THIS. AND COUNSEL EITHER DIDN'T GIVE HIM THE ADVICE OR GAVE HIM ERRONEOUS ADVICE, SO BASED UPON THOSE KINDS OF ALLEGATIONS, IF THE ALLEGATIONS WERE SUFFICIENT, THEN IN FACT WE WOULD HAVE AN EVIDENTIARY HEARING AND WE WOULD HEAR FROM COUNSEL AND WE WOULD HEAR FROM THE DEFENDANT.

SO YOU WOULD AGREE THAT WE SHOULD JUST FOCUS THIS CERTIFIED QUESTION ON THE COURTS.

YES.

WOULD YOU ANSWER THE SECOND QUESTION THAT JUSTICE PARIENTE POSED? ANOTHER JUVENILE.

THE JUVENILE. AGAIN, WE ACCEPT JUFER MILE PLEAS UNDER THE SAME -- JUVENILE PLEAS UNDER THE SAME STANDARD AS WE DO ADULT PLEAS, KNOWING, INTELLIGENT AND VOLUNTARY. THAT IS DOES HE KNOW WHAT HE IS GIVING UP AND WHAT HE IS GETTING? WHAT CONSTITUTIONAL RIGHTS HE IS GIVING UP AND WHAT IS HE GETTING? AND THAT IS REALLY THE KEY. THE FACT IS THAT HE MIGHT BE SENTENCED LATER ON, ENHANCED SENTENCE LATER ON, BASED UPON THIS PLEA, REALLY GOES INTO THE SAME THING I HAVE JUST SAID ABOUT GENERAL CRIMINAL CONDUCT, BECAUSE I THINK IT ISN'T ANY DIFFERENT, BECAUSE IF THE PLEA IS NOT VOLUNTARY, IT IS NOT VOLUNTARY, AND IF THIS JUVENILE COMES FORWARD NOW WITH ALLEGATIONS SUFFICIENT TO HAVE THE EVIDENTIARY HEARING, THEN WE WOULD HAVE TO DETERMINE WHETHER OR NOT COUNSEL WAS INEFFECTIVE.

AS YOU READ THE CASE LAW, WHAT ROLE DOES THE SERIOUSNESS OF THE CONSEQUENCE PLAY, AND TO WHETHER OR NOT THERE HAS TO BE NOTICE ON, DOES IT PLAY A ROLE?

WELL, YOU KNOW, I DON'T THINK IT PLAYING A ROLE. ONE OF THE THINGS WE DO NOT TELL A DEFENDANT IS BECAUSE HE HAS BEEN CONVICTED, HE CAN NO LONGER CAREY A FIREARM. HE CAN NO LONGER POSSESS A FIREARM, AND YET THAT IS A VERY SERIOUS CONSEQUENCE, NOT BECAUSE HE THE POSSESSION OF A FIREARM THAT, IS A CRIMINAL OFFENSE, AND WE DON'T TELL HIM. THAT WE DON'T TELL HIM HE LOSES HIS RIGHT TO VOTE. HE ISN'T TOLD HE LOSES HIS RIGHT TO VOTE. A WHAUL LANED LIST OF ACTUAL AUTOMATIC OFFENSES OF THE EFFECT OF THE PLEA OF GUILTY.

MAYBE WE SHOULD. -- A WHOLE LAUNDRY LIST OF ACTUAL AUTOMATIC OFFENSES OF THE EFFECT OF THE PLEA OF GUILTY.

MAYBE WE SHOULD.

WHEN YOU LOOK AT THE VOLUNTARINESS OF THE NATURE OF IT, THOSE ARE NOT CONSTITUTIONAL MANDATES OF THE VOLUNTARINESS OF A PLEA. THOSE ARE EFFECTS OF THE PLEA BUT THOSE DO NOT AFFECT THE DIFFERENCE. THAT IS WHAT WE ARE REALLY TALKING ABOUT HERE TODAY IS HOW DOES THIS PLEA BECOME INVOLUNTARY, BY NOT BEING TOLD ABOUT --

BUT ONE OF THE FACTORS IS WHETHER OR NOT IT DOES NATURALLY AND IMMEDIATELY FLOW FROM THE ENTRY OF THE PLEA, AND I AM NOT SURE, IN POSING THOSE THINGS THAT WE DON'T TELL THEM, THAT THAT IS VERY CONVINCING, IN TERMS OF THAT THERE IS A REAL JUSTIFICATION FOR NOT TELLING SOMEBODY, WHEN YOU WALKOUT -- WHEN YOU WALK OUT THIS DOOR, YOU CAN'T VOTE ANYMORE. YOU CAN'T PARTICIPATE, AND WITH REFERENCE TO THE DANGER FROM ARMING THEMSELVES, THAT THEY MAYBE SHOULD BE TOLD, YOU KNOW, THAT

NOW YOU BETTER NOT CAREY A WEAPON, BECAUSE -- YOU BETTER NOT CARRY A WEAPON, BECAUSE IT WILL BE A VIOLATION OF THE LAW, ONCE YOU ENTER THIS PLEA.

IN ORDER TO DO THAT, WE WOULD HAVE TO CHANGE THE ENTIRE SECTION OF THE RULE AND GIVE IT A WHOLE DIFFERENT MEANING AS TO WHAT MAKES A PLEA VOLUNTARY, AND THAT IS REALLY WHAT WE ARE TALKING ABOUT HERE, NOT A WHOLE LAUNDRY LIST OF RIGHTS AND DUTIES AND PRIVILEGES THAT ARE BEING TAKEN AWAY. MOST PEOPLE KNOW, THROUGH THEIR LIFE EXPERIENCES, THAT WHEN THEY DO SOMETHING WRONG, THEY ARE GOING TO HAVE SERIOUS CONSEQUENCES. I THINK IT IS TAUGHT TO US IN GRADE SCHOOL, WHEN WE ARE BROUGHT TO THE PRINCIPAL'S OFFICE FOR THE FIRST TIME. IT MIGHT BE JUST A WARNING, BUT EACH TIME YOU DO SOMETHING ELSE, YOU ARE GOING TO LOSE CERTAIN PRIVILEGES. WE ARE NEVER TOLD EXACTLY WHAT IT IS. WE ARE NOT THERE SAYING JOHNNY, YOU BETTER NOT DO THIS AGAIN OR ELSE YOU ARE GOING TO GET IN BIGGER AND BIGGER AND BIGGER TROUBLE, BECAUSE THIS WILL HAPPEN LATER AND LATER ON. WE ARE TOLD JOHNNY, YOU BETTER STOP BEING A BAD BOY, BECAUSE YOU ARE GOING TO GET IN TROUBLE.

I WONDER IF YOU ARE NOT OPENING A NEW KAHN OF WORMS. WE HAVE THOUSANDS IF NOT HUNDREDS OF THOUSANDS OF PEOPLE OUT THERE, FOR INSTANCE THAT, DIDN'T KNOW THAT THEY WERE NOT ENTITLED TO VOTE BECAUSE THEY ONCE PLED GUILTY TO SOMETHING.

BUT THEY DO, BECAUSE IT IS PART OF THE CONSTITUTION AND PART OF STATUTORY LAW, AND THE PRESUMPTION IS, SEE, THIS IS WHERE WE HAVE TO LOOK. DO WE BELIEVE WHAT WE SAY, WHEN, WHETHER YOU READ THE LAW OR NOT, IF IT IS ON THE BOOKS, EVERY CITIZEN IS RESPONSIBLE TO KNOW THE LAW, AND HE IS GIVEN NOTICE.

THAT IS LARGELY A FICTION. DO YOU REALLY THINK THAT EVERY CITIZEN HAS ANY KNOWLEDGE WHATSOEVER OF THE SEVERAL VOLUMES OF THE FLORIDA STATUTES?

IF THAT IS A FICTION, WE ARE GOING TO HAVE TO THROW OUT A LOT OF CONVICTIONS, A LOT OF PROBATION VIOLATIONS, AND A LOT OF THE LAW THAT THIS COURT HAS BUILT UPON, THAT STATEMENT, THAT THAT IS A VALID STATEMENT OF THE LAW. AND THAT IS HOW THIS SOCIETY HAS BEEN WORKING FOR A LONG TIME. SO IF THAT IS THE CASE, IF THAT IS A GIVEN, WHETHER WE CHANGE IT OR NOT, BUT TODAY THAT IS A GIVEN, ALL THESE THINGS ARE ON THE BOOKS, AND ALL THESE THINGS, CITIZENS ARE SUPPOSED TO KNOW ABOUT, BEFORE THEY DO ANYTHING ELSE, AND WHEN THEY COMMIT A CRIME, THOSE THINGS ARE KNOWN, WHETHER THEY ARE ACTUALLY KNOWN OR NOT, THERE IS CONSTRUCTIVE KNOWLEDGE. NOW, THEN, SO THEN THEY COMMIT THE CRIME, AND WHAT MAKES THIS DEAL VOLUNTARY? ONLY WHAT IS IN FRONT OF THE COURT. THE CHARGES, THE PENALTY, THE CONSTITUTIONAL RIGHTS THAT ARE BEING GIVEN UP. YOUR FIFTH AMENDMENT RIGHT TO SELF-INCRIMINATION, SIXTH AMENDMENT RIGHT TO COUNSEL, SIXTH AMENDMENT RIGHT TO COMPULSORY PROCESS OF WITNESS. REAL CONSTITUTIONAL RIGHTS THAT THE DEFENDANTS HAVE TO KNOW THAT HE IS GIVING UP, GIVING UP THE RIGHT TO A JURY TRIAL, RIGHT TO APPEAL, ALL THESE CONSTITUTIONAL RIGHTS NEED TO BE KNOWN, IN ORDER TO SATISFY THE DUE PROCESS CLAUSE THAT THE PLEA IS VOLUNTARY. THE CONSTITUTIONAL RIGHTS. AND THE, IT IS A BIG DIFFERENCE, BECAUSE IT FLOWS OUT OF THE ACTUAL CRIMINAL CHARGES. NOW, WHAT WE HAVE HERE IS THE ANOMALY THAT WAS ADDED TO A 3.172 OF THE DEPORTATION CONSEQUENCES OF THE PLEA. WELL, WHATEVER THE REASONS FOR THAT, I WAS NOT PRIVY WHEN THE RULE WAS PASSED, BUT THAT, IN AND OF ITSELF, DOES NOT MEAN WE NEED TO GO ANY FURTHER FORWARD ON THIS ISSUE, BECAUSE IF A DEFENDANT IS A RESIDENT ALIEN, AND HE COMMITS THAT CRIME AT THAT POINT IN TIME, WHEN HE IS PLEAING, AT THAT POINT, IT IS A FATE ACOMPLI. HE CAN'T DO ANYTHING. IT GOES TO IMMIGRATION. IMMIGRATION SEES THAT PLEA, IT SOUTH OF THEIR HANDS, AND THEREFORE IT IS NOT FUTURE CONDUCT. WE ARE NOT TALKING ABOUT ANYTHING IN THE FUTURE. IT HAPPENS AT THE PLEA.

CAN I ASK YOU A QUESTION? LOOKING AT THE RULES, YOU ARE SAYING THAT IT IS THE SAME FOR

JUVENILES AS IT IS FOR ADULTS, BUT IN JUST BRIEFLY LOOKING AT THE RULES, IT LOOKS LIKE THERE IS VERY DIFFERENT RULES THAT ARE GOVERNING PLEA DISCUSSIONS AND AGREEMENTS UNDER 3.171 FOR ADULTS, THAN FOR JUVENILES UNDER THE JUVENILES, IT SAYS THERE IS NOTHING ABOUT WHO HAS WHAT DUTIES, WHICH IS THERE WITHIN THE ADULT THAT, IS WHETHER DEFENSE COUNSEL HAS DUTIES, PROSECUTION HAS DUTIES, AND ALL IT SAYS IS THAT AS FAR AS WHAT THE COURT MAY DO, IS THEY HAVE GOT, THEY CAN'T ENTER A PLEA WITHOUT FIRST DETERMINING IF IT WAS VOLUNTARILY MADE AND WITH A FULL UNDERSTANDING OF THE NATURE OF THE ALLEGATIONS AND THE POSSIBLE CONSEQUENCES OF SUCH A PLEA, SO WHAT IS YOUR TAKE? WHAT IS THE POSSIBLE CONSEQUENCES OF A PLEA?

I WOULD GO BACK TO THE FIRST STATEMENT THAT THE VOLUNTARINESS THING, AND WHAT IS THE VOLUNTARINESS. GO BACK TO THE JUVENILE SECTION, YOUR HONOR JUST READ, THAT SAID IT HAS TO BE VOLUNTARY WITH A POSSIBLE CONSEQUENCES OF THE PLEA. THE POSSIBLE CONSEQUENCES OF THE PLEA WOULD BE THE FACT THAT THEY ARE LOSING CERTAIN RIGHTS BY PLEADING AND WHAT THEY ARE POTENTIALLY FACING AND WHAT THEY ARE GOING TO GET, BASED UPON THE PLEA. NOT FUTURE CONSEQUENCES. I THINK THE LANGUAGE, ITSELF, IF YOU LOOK AT IT, IT REALLY DOESN'T LEND ITSELF, I MEAN IT CAN LEND ITSELF. I AM NOT GOING TO BE UP HERE AND SAY IT DOESN'T LEND ITSELF TO ANY INTERPRETATION THAT THE COURT IS TALKING ABOUT, BUT I DON'T THINK IT IS A REASONABLE INTERPRETATION, BECAUSE YOU HAVE TO LOOK AT IT IN THE PERSPECTIVE OF VOLUNTARINESS. AND THAT IS WHAT THIS ENTIRE ARGUMENT IS ABOUT IS VOLUNTARINESS. MORE THAN ANYTHING ELSE. AND THAT IS DUE PROCESS ANALYSIS UNDER THE FEDERAL CONSTITUTION, AND I DON'T THINK THAT WOULD MAKE A CHANGE OR A DIFFERENCE, THE POSSIBLE CONSEQUENCES OF THE PLEA, IN TERMS OF WHAT VOLUNTARINESS IS, AND THEN BECAUSE IF YOU DO, THEN THAT WILL HOPE OPEN THE ENTIRE KAHN OF WORMS OF EVERYTHING THAT CAN HAPPEN, POTENTIALLY CAN HAPPEN IN THE FUTURE. AND THAT WOULD OPEN UP A KAHN OF WORMS. WE HAVE PLEA COLLOQUYS GOING ON AND ON AND ON AND ON AND ON AND ON AND ON AND ON, AND THEN THE PROBLEM WOULD BE THE EVIDENTIARY HEARINGS COMING THEREAFTER. WELL, COUNSEL DIDN'T TELL ME ABOUT THIS, AND, WELL, WHEN YOU PLED IN 1970, THERE WERE NO ENHANCEMENTS, AND THEREFORE, BUT HAD I KNOWN THERE MIGHT HAVE BEEN SOME ENHANCEMENTS, I MIGHT NOT HAVE PLED GUILTY. IT IS JUST REALLY NOT VERY TIME-EFFECTIVE, COST-EFFECTIVE WAY TO AMEND THIS RULE AND TO PROVIDE THIS AT ALL, SO THE STATE'S POSITION WOULD BE THAT THIS COURT HAS NOT CHANGED THE LAW IN WOOD. I THINK WOOD IS CLEARLY A PROCEDURAL ARGUMENT. AND PERRY HAS CLEARLY JUST USED THAT AS AWAY TO SHOW THIS IS A CLAIM THAT CAN BE HEARD ON THE MERITS, NOT THAT IT IS MERITORIUS, BECAUSE, AGAIN, IF THE CLAIM WAS COUNSEL MISSED A ADVISED ME OR COUNSEL TOLD ME AND IT WASN'T TRUE OR I ASKED COUNSEL, THEN, ON A CORUM NOVIS CLAIM RAISING THAT PARTICULAR RELIEF, HE MIGHT BE ENTITLED TO RELY LEAVE. HE MIGHT BE ENTITLED TO AN EVIDENTIARY HEARING, BECAUSE RULE 3.850 IS VERY MUCH LIKE A CIVIL COMPLAINT. IF YOU CAN PLEAD THE CORRECT FACTS, YOU CAN GET YOUR EVIDENTIARY HEARING, AND THEN IT IS SUBJECT TO PROOF, AND IF HE PROVES IT, HE IS ENTITLED TO RELIEF. IF HE DOES NOT PROVE IT, THE COURT WILL DENY IT, AND IT WILL BE APPEALED, AND IF THE APPEAL IS UPHELD, IT IS AFFIRMED. PERRY, ON THE OTHER HAND, SIMPLY AGAIN, IF YOU READ PERRY, PERRY MAKES A STATEMENT IN CONTEXT WITH WOOD, IS THAT THIS IS A VIABLE CLAIM, NOT THAT IT IS A MERITORIOUS CLAIM BUT THAT, UNDER THE NEW CON CUSTODIAL -- THE NEW NONCUSS CODEIAL -- THE NEW NONCUSTODIAL RULE, IF IT IS A VALID 3.850 CLAIM, NOT THAT IT IS MERITORIOUS, BUT YOU CAN SAY IT IS PROCEDURALLY BARRED, AND THIS COURT WOULDN'T, IN THIS TYPE OF SITUATION, WOULD NOT IMPLICITLY OVERRULE A LINE OF CASES. I THINK CONSTITUTIONAL AND PRESIDENTIAL LAW DOES NOT -- PRECEDENTIAL LAW DOES NOT OVERRULE THE COURTS. NONE OF THE DEFENDANTS WHO HAVE PLED GUILTY UP UNTIL THIS COURT ISSUES AN OPINION HERE IN, SHOULD BE ENTITLED TO ANY CHANGE OF THE LAW, IF THERE IS A CHANGE OF THE LAW, BECAUSE IT WAS NEVER ANY REQUIREMENT ON THE TRIAL COURT TO GIVE THE STATEMENT, EVEN IF WE LOOK ATWOOD AND PERRY AS CHANGING THE LAW, WELL, WOULD THAT REVIEW -- WOULD THAT BE RETROACTIVE TO CLAIMS OPPOSE THE CONVICTION RELIEF? BECAUSE AT THE TIME, BECAUSE THIS IS THE THING, THE QUESTION BEFORE

THIS COURT, IS THAT WOOD CHANGED, OVERRULED ALL THE PRIOR CSES. WELL, IN POSTCONVICTION RELIEF, WE DON'T APPLY MAJOR CHANGES OF LAW RETROACTIVELY, BECAUSE OF HOW THEY WOULD AFFECT THE SYSTEM BECAUSE ALL OF THE DEFENDANTS WHO PLED GUILTY AT THE PERIOD OF TIME THAT WOOD, BEFORE WOOD COME OUT, THOSE ARE VALID PLEAS. THE JUDGES ARE FOLLOWING THE LAW. SO EVEN IF WE DECIDE WOOD CHANGES THE LAW, IT IS STILL A CHANGE IN THE LAW NOT TO BE APPLIED RETROACTIVELY. SO MR. MAJOR WOULD NOT HAVE BENEFIT FROM THE CHANGE IN THE LAW, BECAUSE HE PLED PRIOR TO WOOD, AND MOST OF THE DEFENDANTS WHO ARE NOW COMING IN BECAUSE THEY ARE USING THE WOOD TWO-YEAR PERIOD, PLED PRIOR TO WOOD, SO BASED UPON THAT POSITION AND HOW THE STATE READS THE CASE LAW AND HOW IT READS THE RULE 3.172, WE WOULD ASK THAT IT AFFIRMS THE DISTRICT COURT. THANK YOU VERY MUCH. MR. CHIEF JUSTICE

REBUTTAL.

COUNSEL, WOULD YOU AGREE THAT THERE WAS CAUTIONARY LANGUAGE IS IN THE DEPORTATION CASES THAT IN EFFECT SAID THAT IT IS BECAUSE OF THE DRACONIN CONSEQUENCES OF THE PLEA THAT THE PERSON IS ENTITLED TO BE INFORMED OF IT? WE MIGHT RULE A DIFFERENT WAY, IF TE CONSEQUENCES WERE NOT SO SEVERE.

I AGREE ONLY IN PART, JUSTICE JUSTICE.

IS THAT A FAIR READING?

NO. I AGREE ONLY IN PART, AND IN MATERIAL PART DISAGREE RESPECTFULLY. A FUNCTIONAL VIEW THAT THERE MAY BE INSTANCES WHERE DEPORTATION IS A MORE SERIOUS CONSEQUENCE THAN A PRISON SENTENCE, I SUBMIT IT IS A RULE THAT RUNS IN EITHER OF TWO DIRECTIONS. IT IS CERTAINLY PROBABLE TO A PRISON SENTENCE MIGHT BE, IN CERTAIN CIRCUMSTANCES, MORE SEVERE THAN DEPORTATION. THERE IS A WHOLE HOST OF CIRCUMSTANCES ONE WOULD NEED TO LOOK AT, AND I THINK THAT IS BEYOND THE SCOPE OF THE INQUIRY. THE QUESTION IS THIS INDIVIDUAL, WHO IS 16, HAD ENTERED A PLEA ON A NO CONTEST BASIS AND RECEIVED 18 MONTHS, HE CLAIMS THAT IN 1993 CASE, AND I WOULD POINT OUT THAT HIS PLEA IN THIS CASE WAS ENTERED, ALSO, I BELIEVE IN 1993 SO HE PICKED UP A FEDERAL OFFENSE, AND WE DON'T KNOW FROM THIS LIMITED RECORD THAT I HAVE INHERITED POST ADJUDICATION WHAT THE TIMING WAS OF THE FEDERAL OFFENSE, BUT THE TIMING BOTH WERE IN 1993.

HOW FAR DO YOU THINK THOSE CASES TAKE US, THEN, IN THE DEPORTATION THEORY? WHAT MUST BE THE WARNING? DO THEY TAKE YOU ALL THE WAY?

I THINK THE ANSWER IS THIS. I THINK THIS COURT HAS NEVER ADOPTED THE FORMLATION THAT IS URGED UPON THE COURT OF DIRECT, IMMEDIATE AND LARGELY AUTOMATIC. WHAT I SUBMIT THAT THIS COURT HAS DONE IS TAKEN A VIEW OF THE RELATIVE FREQUENCY OF EXPECTABILITY OF THE CONSEQUENCE AND THE SEVERITY OF IT, AND, ALSO, I WOULD SUBMIT WHETHER IT IS PENAL INNATE. THAT IS WHETHER THERE IS PUNISH -- PENAL IN NATURE, AND THAT IS WHETHER THERE IS PUNISHMENT INVOLVED TO MAKE A DEMARCATION LINE, AND CLEARLY A LINE DOES HAVE TO BE DRAWN. I AM NOT SUBMITING THAT THERE IS AN ENDLESS LAUNDRY LIST THAT THE WE HAVE TO HOLD A PERSON HARMLESS FOR ALL OF LIFE'S FUTURE ADVERSE ITS THAT OCCUR.

GINERA SAID THAT WE ARE GOING TO TREAT DEPORTATION AND USE THE RULE.

I AM SORRY?

GINEBRA SAID THAT THERE IS DIRECT CONSEQUENCES, THAT DEPORTATION DIDN'T FIT INTO THAT AND THEREFORE IF WE ARE GOING TO DO THIS IN THE FUTURE, THE RULE HAS TO BE CHANGED.

I WOULD INTERPRET GINEBRA DIFFERENTLY, WHICH THIS COURT SAYS IT DOESN'T CONSTITUTE

SOMETHING THAT IN VALIDATES A PLEA BUT THAT SOMEBODY NEEDS TO BE INFORMED ABOUT IT, AND WAP HAPPENS -- AND WHAT HAPPENS IF SOMEBODY IS NOT INFORMED ABOUT IT? AND THIS COURT REJECTED THE PROPOSITION THAT THEY WOULD HAVE HAD TO HAVE SHOWN A PROBABILITY OF ACQUITTAL, HAD THEY GONE TO TRIAL, AND THIS COURT DIDN'T SAY THAT THEY HAD TO BE DEPORTED.

BUT DEALING WITH GINEBRA, WHAT THIS COURT CONEIVED WAS A CONSEQUENCE THAT SHOULD BE ADD DROOIS ADVISEED -- SHOULD BE ADVISED.

CORRECT.

AND THEN WHAT IT DID WAS IT SAID WE ARE GOING TO SET THIS UP IN AN ORDERLY WAY, AND FOR THE FUTURE HAD, THIS IS GOING TO BE PART AFTER PLEA COLLOQUY. ORECT?

I AGREE WITH THAT, YES.

AND SO THAT IS THE STATE OF WHERE WE END UP, REALLY, TODAY, IS THAT WE GOT A RULE THAT SETS OUT THE SAME THING IT SET OUT HEN GINEBRA CAME ALONG.

I DON'T THINK WE GOT IRECTLY THERE TO HERE. I SUBMIT TO THE COURT THAT ASHLEY IS OF SIGNIFICANCE, THAT HURT IS OF SIGNIFICANCE AND THAT THE PERRY CASE OF SIGNIFICANCE. AND PART OF THE STATE'S ARGUMENT HAS KOJENCY, AND PART -- COGENCY AND IF YOU PLEA CORUM NOBIS, THE TRIAL COURT HAS TO DENY, I SUGGEST THAT THAT IS A FAIRLY LOSING INTERPRETATION, AND THE ONE THING IF I CAN HAVE A FEW SECONDS, THAT THE POINT I DIDN'T GET TO IS THIS PARTICULAR INDIVIDUAL SENTENCE WAS ENHANCED BY TWELVE ADDITIONAL YEARS AT ABOUT THE SAME AGE. IT IS A FEDERAL SENTENCE. WERE THIS A STATE CASE, THE QUESTION OF PERIMITY WOULD NOT BE MERELY VACATURE. ONE COULD LEAVE THE STATE CASE INTACT AND ADJUST THE FLORIDA SENTENCE, SO WHERE THE SUBSEQUENT CASE MIGHT OCCUR, ALSO, FACTORS INTO THE ANALYSIS. I DIDN'T GET TO THAT AND I HOPE THE COURT TAKES A GOOD LOOK ATWOOD AND PERRY IN DECIDING. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS MATTER. THE COURT WILL BE IN RECESS.