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## Travis Tanguay v. State of Florida

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: PLEASE BE SEATED.

CHIEF JUSTICE: THE LAST CASE THIS MORNING IS TANGUAY VERSUS STATE. IF YOU ARE READY, YOU MAY PROCEED.

GOOD MORNING, YOUR HONOR. MY NAME IS DEBORAH BRUECKHEIMER. I AM HERE TO REPRESENT MR. TANGUAY, WHO WAS HELD WITHOUT A PROBABLE CAUSE HEARING. HE WAS JUST HELD UNTIL THE STATE COULD GET AROUND TO AN INTERVIEW BY THEIR DOCTORS.

WHAT IS HIS STATUS NOW?

HE IS OUT. HE HAS BEEN OUT SINCE THE SECOND DCA ORDERED HIS RELEASE IN MARCH 2001. IS HE STILL OUT. HE STILL HAS THE PETITION OVER HIS HEAD THAT HAS NOT BEEN DISMISSED AND HE IS STILL FACING POSSIBLE DISMISSAL PROCEEDINGS.

HOW LONG HAS IT BEEN CHRONOLOGICALLY HAS NOT HOW LONG TAKES HAS IT BE?

THE PETITION WAS FILED IN MARCH 1999. HE SHOULD HAVE BEEN RELEASED FROM HIS INCARCERATION IN, ON FEBRUARY 24, 1999. THE SECOND DCA'S ORDER, ORDERING HIM RELEASED FROM CUSTODY FROM THE COMMITMENT CENTER CAME OUT IN FEBRUARY OF 2001, AND SOMEWHERE WITHIN A COUPLE OF WEEKS AFTER THAT, HE WAS RELEASED. SO HE HAS BEEN OUT SINCE APPROXIMATELY MARCH OR SO, OF 2001.

BUT HE WAS ACTUALLY COMMITTED FOR TWO YEARS BEHIND HIS -- BEYOND HIS RELEASE DATE?

OH, YES, IT WAS INCARCERATED OR HE WAS IN CUSTODY.

HAVE THEIR BEEN ANY ACTIVITIES AT THE TRIAL COURT LEVEL SINCE HIS RELEASE?

NOT THAT I AM AWARE OF, NO.

NO FILINGS?

JUST EVERYTHING HAS BEEN IN A HOLDING PATTERN WITH THIS.

OKAY. ALL RIGHT. WELL, WHERE ARE WE? WHAT, SINCE HE HAS BEEN RELEASED, WHAT ISSUE OR ISSUES REMAIN FOR US TO DECIDE AND HOW WILL THEY AFFECT THIS PARTICULAR CASE?

WELL, THE ISSUE THAT REMAINS IS, SHOULD THE PETITION HAVE BEEN DISMISSED WITH PREJUDICE? THE SECOND DISTRICT DID NOT DISMISS IT WITH PREJUDICE. THEY JUST RELEASED HIM FROM CUSTODY AND SAID HE CAN BE COMMITTED. THAT YOU CAN GO FORWARD WITH THE PETITION FOR COMMITMENT PROCEEDINGS, AND WE ARE SAYING THAT THAT IS NOT RIGHT. THE STATE --

THE ARGUMENT REALLY, IS THAT YOU HAVE TO, IN ORDER TO HAVE A VALID JIMMY RYCE

PETITION, YOU HAVE TO FILE THAT PETITION OR AT LEAST BEGIN THE PROCESS WHILE THE DEFENDANT IS LAWFULLY INCARCERATED.

YES. I WOULD SAY THAT THAT PETITION SHOULD BE FILED WHILE THEY ARE LAWFULLY IN CUSTODY, AND THEY DID NOT EVEN START THESE PROCEEDINGS WITH THE DOCTORS UNTIL AFTER HIS 19th BIRTHDAY AND WHEN HE SHOULD HAVE BEEN RELEASE.

THERE IS A -- HAVE BEEN RELEASED.

THERE IS A PROVISION IN THE STATUTE THAT SEEMS TO SUGGEST THAT ONE CAN BE TAKEN INTO CUSTODY AND THEREFORE IMPLY THAT THE PERSON WAS NOT IN CUSTODY TO BEGIN, WITH AND THAT IS SECTION 916.35-1, WHERE THE SECOND SENTENCE SAYS IF THE JUDGE DETERMINES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON IS A SEXUALLY-VIOLENT PREDATOR, THE JUDGE SHALL DIRECT THAT THE PERSON BE TAKEN INTO CUSTODY AND HELD IN AN APPROPRIATE, SECURE FACILITY. WHY DOESN'T THAT SUGGEST THAT PROCEEDINGS CAN BE COMMENCED AFTER THE PERSON IS RELEASED FROM INCARCERATION, EVEN THOUGH, AND HAS ALREADY, ON THE OUTSIDE WORLD?

FIRST OF ALL WITH MR. TANK WAY, WE CAN'T USE THOSE -- WITH MR. TANGUAY, WE CANNOT USE THOSE 199 AMENDMENTS. WE ARE DEALING WITH 394 THEN, NOW, INSTEAD OF 916. AND WHEN YOU LOOK AT THE 916 ONES, THEY, I MEAN THE 394 PROVISIONS, THEY TALK ABOUT REMAINING IN CUSTODY AND STAYING IN CUSTODY, AND YOU KNOW, EVERYTHING HAS TO DO WITH STAYING IN CUSTODY AND BEING IN CUSTODY. AS FAR AS THE STATE'S ARGUMENT THAT THEY SHOULD BE ABLE TO GO OUT AND GET THESE PEOPLE, EVEN AFTER THEY HAVE BEEN RELEASED, THERE REALLY AREN'T ANY PROCEDURES SET UP FOR THAT.

THE PROCEDURE WOULD BE, FROM WHAT I CAN SEE IN THE STATUTE, THAT YOU HAVE A PROBABLE CAUSE HEARING, AND IF THE JUDGE DETERMINES THAT THERE IS PROBABLE CAUSE, AND APPARENTLY THERE IS A PROVISION FOR EVIDENTIARY HEARING, THEN THE PERSON IS TAKEN INTO CUSTODY IN A SECURE FACILITY. I MEAN, THAT IS WHAT THE STATUTE PROVIDES.

IF YOU USE THOSE, THEN HOW WOULD THEY GET THE DOCTORS TO DO THEIR INTERVIEWS, AND DO THEY NEED OVERT ACTS, LIKE MICHIGAN STATUTES AND COURT RULINGS HAVE REQUIRED? I MEAN, THEY ARE TRYING TO CLAIM THAT THEY CAN USE THESE PROCEDURES THAT ARE JUST KIND OF OUT THERE BUT DON'T REALLY COME FORTH IN THE STATUTES.

I GUESS THE ANSWER, IF THE DOCTORS CAN'T CONDUCT THEIR INTERVIEW, THEN THEY CAN'T PETITION FOR THE STATUS.

WELL, THEY WOULD CLAIM THEY COULD. THEY COULD BASE IT SOLELY ON HIS RECORDS WITH THE PRISON SYSTEM AND ANY KIND OF MENTAL SYSTEM. HOWEVER, THEY WOULDN'T HAVE A PROCEDURE SET UP WHERE THEY COULD JUST DRAG THESE PEOPLE IN TO HAVE THE DOCTORS INTERVIEW THEM, AND UNDER THE MICHIGAN HAD ITS SYSTEM SET UP THAT, IF YOU ARE GOING TO RELEASE PEOPLE AND GO OUT AND GET THEM, YOU ARE GOING TO HAVE TO HAVE A NEW OVERT ACT THAT WOULD ALLOW SOMEBODY WHO HAS BEEN OUTSIDE FOR SOME TIME TO HAVE DONE SOMETHING MORE THAT WOULD REQUIRE THE ACT TO APPLY. HERE THEY JUST WANT TO RELEASE PEOPLE AND YOU KNOW, THEY DON'T WANT TO RELEASE PEOPLE. BASICALLY, WHAT WE ARE STARTING HERE WAS WHY DIDN'T THEY RELEASE HIM, IF THEY COULD DO THAT? THEY DIDN'T. THEY DIDN'T WANT, TO AND THE WHOLE ACT IS BASED ON THE IDEA THAT THERE IS NO PRETRIAL RELEASE AND THAT WE HAVE TO KEEP THEM IN CUSTODY AND SO THEREFORE WE ARE. I MEAN, I DON'T --

YOU ARE NOT SAYING THAT, IF THEY, IF HE HAS BEEN RELEASED, THAT THEY NOW HAVE TO SHOW THAT HE HAS DONE SOMETHING NEW NEW IN THE OUTSIDE WORLD. YOUR ARGUMENT IS IF HE HAS BEEN RELEASED, THEY ARE OUT OF LUCK. THEY CAN'T FILE ANYTHING.

IN MY PARTICULAR CASE, BECAUSE THEY HELD HIM CONSTITUTIONALLY, TWO DIFFERENT CONSTITUTIONAL AMENDMENTS, I MEAN DUE PROCESS AND THE FOURTH, THAT THEY SHOULDN'T BE ALLOWED. IT IS KIND OF THE SEARCH AND SEIZURE THING. THE STATE SHOULD BE PENALIZED FOR DOING THAT THEY DID TO MR. TANGUAY AND SHOULD REALIZE THAT THERE IS A PENALTY FOR DOING WHAT THEY DID TO MR. TANGUAY.

THE BALANCE POINT IS THE WELFARE OF SOCIETY AS OPPOSED TO YOUR CLIENT.

YES, AND IN THIS PARTICULAR CASE, WHEN THAT, WE ARE NOT LOOKING TO FOCUS ON SAVING SOCIETY FROM MR. TANGUAY. WE ARE LOOKING TO SAVE SOCIETY FROM THE STATE WHO, HAS DONE SOMETHING HORRENDOUS TO VIOLATE CONSTITUTIONAL PROVISIONS.

BUT IF THIS IS A SEXUAL PRODTER THAT HAS SOMEHOW, THE STATE HAS -- THE STATE HAS -- THIS IS A SEXUAL PREDATOR THAT THE STATE HAS SOMEHOW SLIPPED UP AND NOT LET HIM GO AND NOW THEY WANT TO GO OUT AND GET HIM AND SAY WAIT A MINUTE. WE HAVE MADE A MISTAKE HERE AND WE HAVE RELEASED A SEXUAL PREDATOR ON SOCIETY, WHAT IS WRONG WITH THE STATE BEING ABLE TO GO OUT AND GET HIM, SINCE THIS IS A CIVIL COMMITMENT SUPPOSEDLY?

RECENTLY IN THE ATKINSON CASE THAT I SUPPLEMENTED WITH NOTICE, SUPPLEMENTAL AUTHORITY, THERE IS ALSO A BALANCING TEST TO THE 30 DAYS. SHOULD THE STATE BE ABLE TO HOLD SOMEBODY INDEFINITELY AND NOT GO TO TRIAL PAST THE 30 DAYS, YOU KNOW, KEEP THEM FOREVER, AND THIS COURT FOUND THAT THERE IS --

THAT IS A LOT DIFFERENT FROM WHAT I JUST ASKED YOU.

BUT THEY ARE RELEASING MR. ATKINSON AND HE IS, IN THEIR OPINION, A SEXUAL PREDATOR, ALTHOUGH HE HASN'T BEEN FOUND TO BE A SEXUAL PREDATOR, A AND MR. TANGUAY HAS NOW BEEN FOUND.

THERE IS A PROCEDURE SET UP THAT HE GOES THROUGH TO BE DECLARED A SEXUAL PREDATOR. THE STATE IS SAYING WE WANT TO SUBJECT HIM TO THIS. WE BELIEVE THAT SOCIETY IS IN DANGER, WHEREVER THIS MAN IS, THAT HE IS GOING TO PREY UPON --

THERE IS A BALANCE, AND THE STATE HAS TO BE PART OF THAT BALANCE. THEY HAVE TO BE HELD TO SOME KIND OF STANDARD. YES, WE DO WANT TO PROTECT, I MEAN, I HAVE MY PROBLEMS WITH THE "JIMMY RYCE" ACT AND THE NEED TO PROTECT SOCIETY FROM PEOPLE WHO MAY OR MAY NOT COMMIT SOMETHING IN THE FUTURE BURKES IF WE ARE GOING TO LOOK AT THAT -- IN THE FUTURE, BUT IF WE ARE GOING TO LOOK AT THAT, THEN WHY SHOULD THE STATE BE ABLE TO TRAMPLE PEOPLE'S CONSTITUTIONAL RIGHTS TO GET TO THAT POINT?

I AM, THE ACT HAS BEEN AMENDED SEVERAL TIMES, CORRECT? AT THE PRESENT TIME, IS IT A PREREQUISITE OF THE "JIMMY RYCE" ACT THAT THE PERSON BE IN CUSTODY, WHEN A PETITION IS FILED?

I DON'T BELIEVE THAT THE STATUTE ADDRESSES THAT. I MEAN, I THINK IT IS STILL VERY VAGUE.

SEE, I GUESS I THOUGHT THAT WAS WHAT WE WERE INTERPRETING, IS THAT THE STATE, AS IT PUT THE "JIMMY RYCE" ACT INTO EFFECT, WAS MAKING CERTAIN DECISION AS TO WHETHER IT WAS GOING TO REACH BACK AND GET PEOPLE THAT HAD ALREADY BEEN CONVICTED AND MAY HAVE BEEN RELEASED BUT HAD SERVED THEIR SENTENCE, OR WAS GOING TO START OUT ONLY REACHING THOSE PEOPLE WHO WERE IN CUSTODY WHEN THE PETITION WAS FILED, AND THAT NOW THAT THAT ACT WAS BROAD END, AND SO IT IS IMPORTANT, SO I THOUGHT WE WERE INTERPRETING IN ABSENCE AND THEN IN HERE, WAS THE PROVISION OF WHETHER THE PERSON HAS TO BE IN LAWFUL CUSTODY, WHEN THE PETITION IS FILED. IT IS NOT, I MEAN, WHICH IS JUST

A STRICT STATUTORY CONSTRUCTION QUESTION NOT A LARGER DUE PROCESS QUESTION.

YES. WELL, AS FAR AS I KNOW, THAT WHEN YOU LOOK UNDER THE SECTIONS, YOU HAVE GOT THAT ONE VERY VAGUE SECTION THAT THE COURT CITES THAT SAYS THAT WE DON'T HAVE ANY TIME PERIOD WHEN WE CAN FILE A PETITION. WE CAN JUST FILE IT AFT MULTIDISCIPLINARY TEAM IS FINISHED WITH ITS WORK, AND THEY DON'T HAVE TO BE IN CUSTODY, AND WE CAN FILE IT FIVE YEARS DOWN THE ROAD. NOW, IT DOESN'T PUT ANY KIND OF TIME LIMITS OR BARRIERS ON THE STATE, BUT IF YOU GO DOWN TO OTHER PROVISIONS, IT SAYS THAT I BELIEVE 916.33 SAYS THAT, BEFORE RELEASE FROM CUSTODY OF A PERSON WHOM THE MULTIDISCIPLINARY TEAM RECOMMENDS FOR CIVIL COMMITMENT BUT AFTER THE STATE ATTORNEY FILES A PETITION, YOU KNOW, THE WHOLE CONTEXT OF THIS "JIMMY RYCE" ACT, I DON'T THINK HAS CHANGED, EVEN WITH ALL OF THE AMENDMENTS, TO SAY THAT WE DON'T WANT THESE PEOPLE RELEASED. WE DON'T WANT PRETRIAL RELEASE. WE DON'T WANT THESE PEOPLE OUT IN THE COMMUNITY.

BUT I THINK THE BASIC QUESTION HERE, AS I UNDERSTOOD WHAT JUSTICE PARIENTE WAS ASKING YOU, THAT UNDER THE "JIMMY RYCE" ACT AS IT EXISTS TODAY, CAN THE DEFENDANT BE RELEASED AND THE STATE THEN BEGIN THE JIMMY RYCE PROCEEDING?

I STILL DON'T KNOW OF ANY SPECIFIC PROCEEDINGS PROCEDURES THAT JUST -- ANY SPECIFIC PROCEDURES THAT JUST ALLOW FOR THAT. I THINK THERE IS STILL A LOT OF VAGUE STATUTORY CLAUSES.

WHAT IS THE --

I WOULD SAY NO.

JUSTICE WELLS, GOING BACK TO JUSTICE CANTERO'S ORIGINAL QUESTION, WHAT ABOUT THE PROVISION IN 916.35, WHICH SAYS THAT, IF THE JUDGE DETERMINES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON IS SEXUALLY PREDATOR, THE JUDGE SHALL DIRECT THE PERSON BE TAKEN INTO CUSTODY.

TAKEN INTO CUSTODY FOR THE COMMITMENT CENTER PURPOSES. I MEAN, IT GOES FROM, I THINK THE IDEA IS THAT IT IS SUPPOSED TO BE FROM THE PRISON SYSTEM TO THE COMMITMENTS THAT ARE TAKEN INTO CUSTODY FOR THE PURPOSE OF CIVIL COMMITMENT. IT IS JUST A MATTER OF TRANSFERRING FROM ONE TO THE OTHER.

THE STATUTE DOESN'T SAY TRANSFERRED FROM ONE TO THE OTHER BUT TAKEN INTO CUSTODY.

WELL, THEY ARE ALREADY IN CUSTODY.

WE DON'T KNOW FROM THE STATUTE, THAT IT ASSUMES THAT THEY ARE ALREADY IN CUSTODY OR NOT.

WELL, I THINK THAT WHEN YOU LOOK AT 916.33, THOUGH, IT TALKS ABOUT BEFORE THE RELEASE FROM CUSTODY.

BUT AS I UNDERSTAND THE ARGUMENT THAT IS BEING PURSUED HERE, IS THAT THIS IS A SUBJECT MATTER JURISDICTION PROBLEM. IS THAT THE BASIC ISSUE?

THE CLAIM WAS THAT THEY LOST SUBJECT MATTER JURISDICTION OVER THE PERSON, THE MINUTE THEY VIOLATED ALL OF HIS CONSTITUTIONAL RIGHTS AND HELD HIM.

THAT IS A SANCTIONS ISSUE.

WELL, IT IS A COMBINATION.

WHAT I WANT TO KNOW IS WHETHER, UNDER THE STATUTE, THERE IS SOME PROVISION IN THE STATUTE WHICH YOU SPECIFICALLY HANG YOUR HAT ON, THAT SAYS THAT THE CIRCUIT COURT NO LONGER HAS JURISDICTION IN THESE JIMMY RYCE PETITIONS, BECAUSE OF THE SUBJECT MATTER OF IT, ONCE THE PERSON IS NO LONGER IN CUSTODY.

WELL, AND I DON'T THINK YOU ARE GOING TO FIND THAT IN THE STATUTE, AND THE LEGISLATURE HAS SAID, IF THESE TIME PERIODS AREN'T FOLLOWED, THEY ARE NOT JURISDICTIONAL. THEY USE THAT SAME ARGUMENT IN ATKINSON, AND YOU KNOW, THE REALITY IS THAT THE STATUTE CREATED BY THE LEGISLATURE IS VOID IN A LOT OF PROCEDURES AND VOID AFTER LOT OF SPECIFICS, AND THE STATE CAN SAY BECAUSE IT IS NOT THERE, WE ARE ALLOWED TO DO, IT BUT THERE AREN'T ANY NEW PROCEDURES SET UP FOR IT EITHER. THERE IS NO PROCEDURES. NOW, THEY, IN THEIR OWN BRIEF, TALK ABOUT THE FACT THAT, WHAT WOULD KEEP YOU SAY YOU KNOW, FROM JUST GOING OUT FIVE YEARS LATER OR FIVE MONTHS LATER, AND THEN THEY TALK ABOUT THE MICHIGAN STATUTE, YOU KNOW, CASE, AND THE FACT THAT THEY REQUIRED AN OVERT ACT FOR THOSE PEOPLE TO BE RELEASED, SO THEY, THEMSELVES, ARE ADMITTING IN THEIR BRIEF THAT, AN OVERT ACT WOULD BE REQUIRED, ONCE SOMEBODY HAS BEEN RELEASED FROM CUSTODY.

WELL, UNDER THE LATEST VERSION OF THE STATUTE, YOU, IT SEEMS TO ME THAT WHAT THE LEGISLATURE IS SAYING THAT EVEN WHEN YOUR SENTENCE EXPIRES, THE STATE CAN HAVE YOU TRANSFERRED TO THE DEPARTMENT OF CHILDREN AND FAMILIES AND HAVE 72 HOURS TO THEN DO THIS EVALUATION AND THEN AN ADDITIONAL 48 HOURS, I BELIEVE IT IS, ON, TO FILE YOUR PETITION, SO THE LEGISLATURE HAS COME DOWN ON THE SIDE OF THAT YOU CAN CONTINUE TO AT LEAST TEMPORARILY HOLD A DEFENDANT, EVEN AT THE EXPIRATION OF THE SENTENCE. UNDER WHAT YOU ARE ARGUING HERE TODAY, IT SEEMS TO ME, WE WOULD HAVE TO INVALIDATE THIS PARTICULAR STATUTE, OR WOULD WE?

NO. I MEAN, THE, IN THE BRIEFS, THE STATE HAS AGREED THAT THAT STATUTE SECTION DID NOT APPLY TO MR. TANGUAY. IT WASN'T IN EFFECT AT THE TIME. THEY DIDN'T UTILIZE ANY CATCH-ALL PROVISION. THEY HAVE CREATED ONE. THEY DIDN'T FOLLOW IT, I MEAN, EVEN IF MR. TANGUAY HAD BEEN UNDER THAT PARTICULAR NEW STATUTE, WHICH HE WASN'T AT THE TIME, THEY HELD HIM WAY BEYOND THE FEW EXTRA DAYS THAT THEY COULD HAVE. IT IS JUST A NEW CATCH ALL PROVISION THAT THEY HAVE DONE, WHERE THEY DON'T RELEASE THEM FROM CUSTODY. THEY LET THEM KEEP THEM FOR A FEW MORE HOURS, A FEW MORE DAYS, TO DO WHAT THEY HAVE TO DO.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

ONLY THOSE DEFENDANTS WHO ARE --

UNDER -- UNDER 1999 --

BEFORE THIS AMENDMENT TO THE STATUTE WOULD BE APPLICABLE.

IF THEY USED T IN MR. TANGUAY'S CASE THEY DIDN'T EVEN BOTHER, IF IT EVEN EXISTED, AND I WOULD LIKE TO HOLD ON TO THE REST OF MY TIME. THANK YOU.

MAY IT PLEASE THE COURT. RICHARD POLIN ON BEHALF OF THE STATE. IT IS A LIMITED QUESTION THAT WE ARE HERE ON BEFORE YOU TODAY. THE QUESTION IS WHETHER, UNDER THE ORIGINAL VERSION OF THE ACT, BETWEEN JANUARY 1, 1999 AND ITS INITIAL AMENDMENT MAY 26, 1999, WHETHER AT THAT POINT IN TIME IT WAS MANDATORY THAT AN INDIVIDUAL BE IN THE CUSTODY OF THE STATE UNDER AN INCARCERATION SENTENCE WITH THE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF HAVE JUVENILE JUSTICE AT THE TIME.

WASN'T IT AT LEAST A READING OF THE STATUTE, ISN'T THAT AT LEAST IMPLIED BY THE

LANGUAGE THAT IS USED IN THE STATUTE THAT THESE PROCEEDINGS SHOULD COMMENCE WHILE THE DEFENDANT IS STILL UNDER LAWFUL SENTENCE?

NEW YORK CITY NOT AT ALL. THERE IS NOTHING REMOTELY WHICH APPLIES AT ALL. ALL OF THE PROVISIONS OF THE ORIGINAL VERSION OF THE ACT ARE TO THE CONTRARY. WHAT YOU HAVE UNDER THE ORIGINAL VERSION OF THE ACT, FIRST, UNDER 916.33, YOU HAVE THE INITIATION OF THE PROCESS. 90 DAYS BEFORE THE ANTICIPATED END OF A JUVENILE SENTENCE, 180 DAYS BEFORE THE ANTICIPATED END AFTER DEPARTMENT OF CORRECTIONS SENTENCE, KNOWS WOULD BE SENT OUT TO THE STATE -- NOTICES WOULD BE SENT OUT TO THE STATE ATTORNEY MULTIDISCIPLINARY TEAMS TO START YOUR DUE PROCESS. THE MULTIDISCIPLINARY TEAM THEN HAS 45 DAYS, UNDER THAT PROVISION, TO COMPLETE ITS WRITTEN REPORT. THAT STATUTE THEN SEEMS TO SAY THAT THE TIME REQUIREMENT SET FORTH IN THIS SECTION, THE ENTIRE SECTION, NOT JUST A LIMITED SUBSECTION, ARE NOT JURISDICTIONAL, SO THOSE TIME PERIODS WERE NOT MANDATORY. THE LEGISLATURE CLEARLY CONTEMPLATED THE POSSIBILITY THAT THE NOTICES MIGHT GO OUT LATE THAT, 45 DAYS MIGHT NOT BE ENOUGH IN WHICH TO COMPLETE THE WORK. THE NEXT PROVISION OF THE STATUTE THAT YOU GO ON TO WOULD BE 916.34, WHICH SAYS THAT, UPON RECEIPT OF THE MULTIDISCIPLINARY TEAM'S REPORT, THE STATE ATTORNEY MAY FILE THE COMMITMENT PETITION. THERE IS NO TIME LIMIT THERE. IT DOES NOT SAY THAT IT MUST BE FILED BEFORE THAT 180-DAY PERIOD EXPIRES, BEFORE THE 90-DAY PERIOD EXPIRES, BEFORE THE INCARCERATION SENTENCE ENDS, BEFORE THE INCARCERATION SENTENCE SHOULD HAVE ENDED OR ANY SUCH LIMITATION, AND THE REASON FOR THAT IS CLEAR. THE FOCUS IS ON THE HERE AND NOW. IT IS JUST LIKE A "BAKER" ACT PETITION. YOU ARE DEALING WITH SOMEONE WHO, AT THE TIME THAT A PETITION IS FILED, SUPPOSEDLY HAS A CURRENT MENTAL CONDITION WHICH RENDERS THAT PERSON DANGEROUS, IN THE FORM OF THE LIKELIHOOD OF FUTURE SEXUALLY-VIOLENT OFFENSES, IF THAT PERSON IS NOT COMMITMENTED FOR TREATMENT AND CUSTODY AND TO THE PROTECTION -- COMMITTED FOR TREATMENT AND CUSTODY AND TO THE PROTECTION OF THE PUBLIC, AND IF THAT WERE THE CASE WHAT WOULD IT MATTER IF THE PETITION WAS FILED ONE DAY BEFORE THE EXPIRATION OF THE PRISON SENTENCE OR ONE DAY AFTER IT? THE SAME PUBLIC POLICY CONCERNS EVERY BIT AS STRONG, WHETHER IT IS ONE DAY BEFORE OR ONE DAY AFTER.

BUT WHAT DO YOU MAKE OF THE PROVISION IN 916.35 PAREN 2, WHICH SPECIFICALLY STATES THAT, BEFORE THE RELEASE FROM CUSTODY OF A PERSON WHOM THE MULTIDISCIPLINARY TEAM RECOMMENDS FOR CIVIL, THE STATES ATTORNEY SHALL DO CERTAIN THINGS. NOW --.

I AM NOT CLEAR WHICH PROVISION THIS IS. BEFORE RELEASE FROM CUSTODY, THE PERSON -- THE SAME PROVISION THAT WE REFERRED TO EARLIER.

THE CIVIL COMMITMENT BUT AFTER THE STATE ATTORNEY FILES PETITION, THE STATE ATTORNEY MAY PETITION FOR AN ADVERSARIAL -- THAT IS TALKING ABOUT DIFFERENT CUSTODY AT THAT POINT IN TIME. WHAT WOULD HAVE HAPPENED IN THAT SCENARIO IS THAT YOU SKIPPED OVER A SUBSECTION ONE OF THAT PROVISION, WHICH HAS SAID THAT YOU HAVE THE INITIAL EXPARTE DETERMINATION OF PROBABLE CAUSE, WHICH JUSTICE CANTERO POINTED OUT WHICH SAYS YOU CAN TAKE SOMEONE INTO CUSTODY UNDER IT, SO YOU WOULD HAVE THE INITIAL EXPARTE PROBABLE CAUSE DETERMINATION, EVEN IF SOMEONE HAD BEEN OUT OF CUSTODY OF DJJ OR DOC, THEY ARE NOW UNDER PROBABLE CAUSE DETERMINATION, TAKEN INTO CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE COMMITMENT PROCEEDINGS, AND THAT NEXT SECTION, SUBSECTION 2 THAT YOU ARE ALLUDING TO, THEN SETS OUT FURTHER RIGHTS TO AN ADVERSE EARL PROBABLE CAUSE HEARING, AFTER THE PERSON IS IN THE CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES AND BEFORE NIL RELEASE FROM THAT CUSTODY -- AND BEFORE ANY RELEASE FROM THAT CUSTODY. THAT IS WHAT IS BEING ADDRESSED OVER THERE. THAT HAS NOTHING WHATSOEVER TO DO WITH THE DETERMINATION OF THE PRIOR DOC OR DJJ CUSTODY UNDER THE JUVENILE OR CRIMINAL CASES.

THAT FOCUSES ON IF THE PERSON HAS SERVED THEIR SENTENCE AND THEN THEY ARE RELEASED FROM CUSTODY, AND THEN THEY ARE BROUGHT BACK INTO CUSTODY UNDER THIS PROVISION, CAN THERE, THEN, BE REQUIRED TO GO THROUGH THE SAME TYPE OF EXAMINATIONS THAT WERE REQUIRED WHILE THE PERSON WAS IN THEIR PREVIOUS SENTENCE?

I WOULD SAY A COUPLE OF THINGS ARE GOING TO HAPPEN. FIRST, THE POSSIBILITY EXISTS THAT THE ENTIRE EVALUATION PROCESS, BOTH DOCUMENTARY REVIEW AND CLINICAL INTERVIEWS MAY HAVE BEEN COMPLETED BEFORE THE EXPIRATION OF THE INCARCERATION SENTENCE.

WHAT IF IT WAS NOT? WHAT IF THIS IS A YEAR LATER AND WE HAVE A SITUATION, CAN THEY, THEN, BE REVERTED BACK TO THE 916.33, WHICH CONTEMPLATES THERE WILL BE CERTAIN EVALUATIONS?

I WOULD NOT BE ASSERTING THAT THE 916.33 TIME PERIODS AND CLINICAL INTERVIEWS WOULD BE APPLICABLE FOR SOMEONE WHO HAS BEEN OUT, IF THE CLINICAL INTERVIEWS HAD NOT BEEN COMPLETED WHILE THE PERSON WAS SERVING THE ORIGINAL INCARCERATION CUSTODY WITH EITHER DOC OR DJJ. IF THE TEAM HAD NOT DONE CLINICAL INTERVIEWS, IT WOULD BE ABLE TO DO ITS EVALUATION AND REPORT, BASED UPON THE DOCUMENTARY HISTORY OF THE INDIVIDUAL, BASED UPON THE ENTIRE CRIMINAL HISTORY RECORDS, BASED UPON ANY PREVIOUS MENTAL HEALTH RECORDS WHICH EXIST, ANY OTHER RECORDS WHICH THEY HAVE ACCESS, TO MAKE THEIR RECOMMENDATION TO SAY THE STATE ATTORNEY ON THE BASIS OF THAT. THERE IS PROBABLY KNOW REASON WHY THEY COULD NOT APPROACH THE INDIVIDUAL WHO HAD BEEN RELEASED, IF THEY KNOW HIS LOCATION, TO DO A REQUEST FOR A VOLUNTARY --

HOW LONG WOULD THEY THEN HAVE TO DO IT?

THE TIME PERIODS ARE NOT JURISDICTIONAL FOR THOSE MATTERS IN ANY EVENT. THE PROBLEMS THAT ARE GOING TO COME UP WITH WHEN YOU HAVE THE STATE FILING A PETITION WEEKS, MONTHS OR YEARS AFTER THE RELEASE, ARE GOING TO BE IN THE NATURE OF DUE PROCESS PROBLEMS, WHETHER YOU REQUIRE A RECENT OVERT ACT UNDER SUCH CIRCUMSTANCES, WHICH IS SOMETHING THAT THE SUPREME COURT OF WASHINGTON HAS ADDRESSED IN A SERIES OF CASES. THE FIRST PROBLEM WOULD BE ON A CONSTITUTIONAL LEVEL WHICH I HAVE ACKNOWLEDGED, THAT WHEN SOMEONE IS OUT IN THE COMMUNITY HAVING BEEN RELEASED FROM CUSTODY, FROM PRISON, FROM DJJ ON THE JUVENILE CASE AND AFTER A LONG PERIOD OF TIME GOES BY DURING WHICH THEY HAVE NOT COMMITTED ANY SEXUALLY-VIOLENT OFFENSES THAT THE STATE IS AWARE OF, THE STATE HAS SOME VERY STRONG OBSTACLES THAT IT IS GOING TO HAVE TO OVERCOME UNDER THOSE CIRCUMSTANCES, WHEREAS AN INDIVIDUAL WHO IS INCARCERATED HAS RESTRAINTS, WITH LIMITED OPPORTUNITY TO COMMIT SEXUAL LIL-VIOLENT OFFENSES, AN INDIVIDUAL WHO IS HOW THE IN THE -- WHO IS OUT IN THE PUBLIC DOES NOT HAVE THOSE CONSTRAINTS AND THEREFORE THE DUE PROCESS BASED ON THE PERIOD OF TIME WHICH HAS GONE ON BASED ON A RECENT OVERT ACT WHICH TRIGGERED THE CONCERNS. EVEN IF THERE WERE NO SUCH OVERT ACT REQUIRED AS A MATTER OF DUE PROCESS, AS THIS COURT IS AWARE FROM ITS OPINIONS A FEW WEEKS AGO, THE UNITED STATES SUPREME COURT SAID THERE IS SERIOUS DIFFICULTY CONTROLLING BEHAVIOR. NOW, IF YOU ARE GOING TO HAVE EVIDENTIARY PROBLEMS, FACTUAL PROBLEMS ON A CASE-BY-CASE BASIS IF THE STATE GOES TOO LONG, BECAUSE IF A PERSON HAS BEEN OUT SIX MONTHS, NINE MONTHS, TWELVE MONTHS, WHAT EXPERT IS GOING TO OPINE THAT THOSE FACTORS ARE OF SERIOUS DIFFICULTY IN CONTROLLING BEHAVIOR? THE STATE IS NOT GOING TO HAVE AN EXPERT AND THERE WON'T BE A BASIS FOR THE PETITION, EVEN IF THERE IS A EXPERT WHO IS GOING TO CONTENT TEND ONE YEAR LATER -- CONTENT ONE YEAR LATER THAT THERE IS SERIOUS DIFFICULTY, WITHOUT THE ACT OF SERIOUS INTERVENING CONDUCT DURING THE PAST YEAR.

IF WE DON'T HAVE ALL OF THIS, AND I DON'T HAVE THE AMENDMENT IN FRONT OF ME, BUT THE STATE DID MAKE A DETERMINATION THAT THEY WERE, FIRST, ONLY GOING TO FILE PETITIONS

AGAINST THOSE WHO WERE IN CUSTODY ON THE EFFECTIVE DATE OF THE ACT, CORRECT? THAT THEY WEREN'T --

THAT IS A SEPARATE AND DISTINCT QUESTION. CUSTODY ON THE EFFECTIVE DATE OF THE ACT, WHICH IS DEALT WITH IN AT KIN CON SON, VERSUS -- IN ATKINSON, VERSUS WHETHER YOU HAVE TO BE IN CUSTODY WHEN THE STATE HAS FILED.

BUT IF THE STATE WAS GOING TO REACH BACK TO PEOPLE FOR WHO GOT OUT AND RELEASED SIX MONTHS BEFORE THEY QUALIFIED, SO IF YOU CALL IT SUBJECT MATTER JURISDICTIONAL OR WHETHER YOU ARE GOING TO CONSTRUE THE ACT NARROWLY, THE STATE OF FLORIDA SAID THIS IS WHO WE ARE GOING TO REACH ON THE EFFECTIVE DATE OF THE ACT, CORRECT?

CORRECT.

NOW WHAT WE HAVE IS A ACT SUBSEQUENT TO MR. TANGUAY'S SITUATION, WHICH SPECIFICALLY PROVIDES THAT A PERSON MAY BE HELD FOR A VERY SPECIFIC TIME, FOR 72 HOURS BEYOND THE EXPIRATION OF THE SENTENCE AND TO ENABLE THE STATE TO FILE A COMMITMENT PETITION, SO THERE IS, IS IT YOUR ARGUMENT THAT, AS TO THE CASES THAT ARE SUBSEQUENT TO THE EFFECTIVE DATE OF THAT AMENDMENT, THAT THE STATE, ALSO, CAN GO, THEY HAVE THAT BUT THEY ALSO CAN GO OUT AND GET PEOPLE THAT ARE ALREADY RELEASED FROM CUSTODY?

IF YOU READ THE CONCLUSION OF THE SECTION THAT YOU WERE JUST DRAWING ON, YOU WILL SEE THAT IT SPECIFICALLY PROVIDES FOR THAT. SUBSECTION 4, 394.9135 SUB4, THE PROVISIONS OF THIS SECTION, WHICH SET FORTH THE 72-HOUR AND 48-HOUR PERIODS, FIVE-DAY PERIODS THAT YOU JUST ALLUDED, TO THE PROVISIONS OF THIS SECTION ARE NOT JURISDICTIONAL AND FAILURE TO COMPLY WITH THE TIME LIMITATIONS WITH THE RELEASE OF A PERSON CONVICTED OF A SEXUAL LIL-VIOLENT OFFENSE, IS NOT DISPOSITIVE OF THE STATE AND DOES NOT PROVIDE FOR THE STATE ATTORNEY TO --

NOW WE ARE TALKING ABOUT BEFORE THESE AMENDMENTS, THERE WASN'T THAT KIND OF PROVISION.

THAT PROVISION DID NOT EXIST AT THAT PARTICULAR TIME.

WHY ISN'T IT CONSTRUED, AS MATTER OF STATUTORY CONSTRUCTION, SINCE WE KNOW THAT ON THE EFFECTIVE DATE OF THE ACT THE STATE WASN'T REACHING BACK AND NOW THEY ARE SAYING, YES, WE ARE GOING TO ALLOW THIS ADDITIONAL TIME, AND THAT IT IS NOT JURISDICTIONAL, SO YOU MAY HAVE A GOOD ARGUMENT FOR THE FUTURE FOR THE TIME IN BETWEEN, TO STRICTLY CONSTRUE THAT THERE WAS A REQUIREMENT FOR THE DEFENDANT TO BE IN LAWFUL CUSTODY, BECAUSE OTHERWISE WE ARE STARTING TO COME UP WITH WE HAVE TO MAKE UP PROCEDURES FOR THAT PERIOD OF TIME, AND WHY ISN'T IT BETTER TO JUST CONSTRUE IT NARROWLY, TO SAY THAT THE PERSON DID NEED UNTIL THESE RECENT AMENDMENTS, TO IN LAWFUL CUSTODY AT THE TIME THAT THE PETITION WAS FILED?

I AGREE WITH THE FIRST PART OF YOUR HONOR'S QUESTION THAT, THIS IS PURELY A QUESTION OF STATUTORY CONSTRUCTION AT THE TIME OF THE ORIGINAL ACT. AND THEREFORE YOU LOOK AT THOSE RELEVANT TERMS AND IN LOOKING AT THOSE RELEVANT TERMS, THERE WAS NO TIME LIMIT ON THE FILING OF THE COMMITMENT PETITION. THERE WAS NO STATUTE OF LIMITATIONS WRITTEN IN.

BUT THERE IS NOT NOW, EITHER. SO WHAT WOULD CHANGE? WHY --

THIS PROVISION --

WHY WERE THOSE AMENDMENTS NECESSARY?

THIS PROVISION, IF YOU LOOK AT THE LEGISLATIVE HISTORY OF IT WHICH I DIDN'T ADDRESS, BECAUSE I THINK IT IS BEYOND THE SCOPE OF THIS CASE AND IS NOT CONTROLLING IN THIS CASE, MY RECOLLECTION OF IT IS THAT IT WAS INITIATED BY THE DEPARTMENT OF CORRECTIONS. DOC WAS CONCERNED THAT THEY WERE GETTING SITUATIONS WHERE, TODAY THEY WERE LOOKING AT A CASE WHERE THEY ANTICIPATED THE RELEASE OF SOMEONE ONE YEAR DOWN THE LINE. IS NO PROBLEM SENDING OUT THE NOSE AND LETTING EVERY -- THE NOTICES AND LETTING EVERYONE GET THEIR JOBS IN A TIMELY AND DILIGENT MATTER. TOMORROW IF IT COMES DOWN FROM THE DISTRICT COURT OF APPEAL FROM AN ISSUE THAT SAYS ALL OF A SUDDEN THIS PERSON'S RELEASE DATE IS TODAY NOT TWELVE MONTHS FROM NOW AND THEY HAD CONCERN WHAT THEIR DUTIES WERE UNDER THOSE CIRCUMSTANCES, WHETHER THEY COULD RELEASE SOMEONE OR WHETHER THEY COULD TURN SOMEONE OVER TO THE DEPARTMENT OF CHILDREN AND FAMILIES AND THEY WANT THE EXPRESSION PREZ PROVISION INS THERE FOR THOSE -- EXPRESS PROVISION INS THERE FOR THOSE PARTICULAR PURPOSES. THAT IS NOT WHY IT WAS DONE. IT PROHIBITED THE FILING OF A COMMITMENT PETITION AFTER FILING OF THE ORIGINAL ACT, EVEN AFTER SOMEONE HAD BEEN RELEASED THERE. IS NO RELATION BETWEEN THE ADOPTION OF THAT AMENDMENT AND THE STATE'S POSITION UNDER THE FIRST FIVE MONTHS OF THAT ACT.

DOES THIS CASE AFFECT MORE THAN JUST THIS CASE? IN OTHER WORDS NOW THAT WE ARE INTO THE NEW ACT AND THE REASON I ASK IT, BECAUSE YOU, IT SOUNDS LIKE THERE WASN'T ANY PETITION PROCEEDINGS WITH RESPECT TO THIS PARTICULAR INDIVIDUAL WHO HAS NOW BEEN RELEASED IN THE REAL WORLD FOR TWO YEARS, AND WITHOUT HIM HAVING COMMITTED ANY OTHER ACTS, WHY WOULD WE WANT TO ANSWER THE QUESTION IN THIS CASE, IF IT DOESN'T PERTAIN, TO IF IT IS NOT EVEN --

I THINK THERE IS A VERY SERIOUS QUESTION HERE AS TO WHETHER IT IS TRULY A QUESTION OF GREAT PUBLIC IMPORTANCE AT THAT POINT IN TIME. I THINK YOU CAN PROBABLY COUNT ON ONE HAND THE MAXIMUM NUMBER OF CASES THAT THIS WOULD POTENTIALLY APPLY TO. YOU ARE DEALING WITH LAMENTED NUMBER OF COMMITMENTS, DEALING WITH THOSE WHERE COMMITMENT PETITIONS WERE FILED BETWEEN JANUARY 1 AND MAY 24 OF 1999 AND THE BALLPARK WOULD BE BETWEEN 75 AND 100 AND THEN NARROW THOSE DOWN FURTHER TO THOSE WHETHER THE COMMITMENT PETITION WAS FILED BY THE STATE ATTORNEY EITHER AFTER THE PERSON WAS RELEASED FROM PRISON OR AFT PERSON SHOULD HAVE BEEN RELEASED FROM PRISON, WHICH NATION A PRETTY NARROW POOL OUT OF THOSE 100 OR SO CASES.

BUT YOU LEAVE THIS PERSON SORT OF IN LIMBO, CORRECT?

NOT REALLY IN LIMBO. YOU HAVE WHAT IS OTHERWISE A FINAL DECISION FROM THE SECOND DISTRICT COURT OF APPEAL, WHICH IS PRESUMPTIVELY CAPABLE WITH DEALING WITH QUESTIONS WHICH DO NOT ARISE TO QUESTIONS OF DEALING WITH GREAT PUBLIC IMPORTANCE. YOU COULD GRANT IT AND SAY YOU DON'T THINK IS IMPORTANT AND LEAVE IT --

THE COURT HAS TOLD US THERE IS NOTHING THAT HAS PROCEEDED. IT HASN'T BEEN GOING FORWARD IN THE TRIAL COURT. IS THAT CORRECT? WAS A MANDATE --

IT IS NOT A MATTER OF RECORD BEFORE THIS COURT WHAT HAS TRANSPIRED AT WHICH TIME IS MY UNDERSTANDING THAT THE COMMITMENT PETITION IS STILL ACTIVE AND PENDING, BECAUSE OF THE SECOND DISTRICT'S DECISION.

DOES THE STATE HAVE TO ACTIVELY PURSUE IT OR COULD IT JUST LEAVE IT THERE?

I THINK THEY HAVE BEEN, I AM NOT CERTAIN, AGAIN, BECAUSE IT IS NOT A PARTY OF RECORD, BUT I THINK MY OWN UNDERSTANDING IS THAT THE DEFENSE WANTED TO WAIT FOR THE OUTCOME OF THESE PROCEEDINGS, TO SEE --

WHAT PROCEDURES WOULD APPLY AS --

WHAT PROCEDURES WOULD APPLY? WELL, BASICALLY IF THIS COURT APPROVED THE SECOND DISTRICT DECISION AS-IS, MEANING THAT THE COMMITMENT PETITION COULD GO AHEAD AND BUT HA HE IS RE-- BUT THAT HE IS RELEASED FOR THE PENDING OF THE COMMITMENT PROCEDURES, AND THERE WOULD BE AT SOME POINT IN TIME IN THE FUTURE WITH THE DEFENSE EXPERTS AND STATE EXPERTS AND IF THE STATE MEETS ITS BURDEN AND PROVES THAT THIS INDIVIDUAL IS A CURRENTLY VIOLENT FELON --

IS THERE ANY SPEEDY TYPE OF RULE THAT WOULD EXPIRE AS OF THAT POINT?

THAT HAS BEEN WAIVED AS OF THIS POINT IN TIME. IN THE LIMITED RECORD THAT YOU HAVE IN THIS COURT THERE, IS AT LEAST ONE MOTION FOR CONTINUANCE WITHIN THE ORIGINAL 30-DAY PERIOD FROM THE DEFENSE. YOU HAVE THE RECORD FROM THE SECOND DISTRICT COURT OF APPEAL FROM AN INTERRELATED APPEAL THAT HAD BEEN DISMISSED AND THAT INCLUDES A WRITTEN MOTION FOR CONTINUANCE FROM THE DEFENSE, SO WHATEVER RIGHTS THERE WERE TO A 30-DAY TRIAL, UNDER, HAVE, IN FACT, HAVE, IN FACT BEEN WAIVED.

COUNSEL, CAN YOU ADDRESS THE DCA'S OPINION INsofar AS IT SAYS THAT WHAT THE REMEDY IS HERE AND THAT HE HAS GOT TO BE RELEASED, PENDING THE HEARING? I THINK THERE IS SOME DISCUSSION IN YOUR BRIEF THAT, THAT DISAGREES WITH THAT.

CORRECT. IT IS OUR BELIEF THAT MR. TANGUAY HAS ALREADY GOTTEN MORE RELIEF THAN HE IS ENTITLED TO, WHEN THE DISTRICT COURT OF APPEAL LEFT THE COMMITMENT PETITION REMAINING PENDING BUT RELEASED HIM FROM CONFINEMENT, PENDING THE COMMITMENT TRIAL. SINCE IT IS OUR POSITIONANT SECOND DISTRICT SEEMS TO AGREE THAT THE COMMITMENT PETITION WAS TIMELY, BECAUSE THEY DID NOT SAY THERE WAS A LACK OF JURISDICTION, THE ACT PROVIDES THAT, AFTER A PROBABLE CAUSE DETERMINATION HAS BEEN MADE, THOU SHALT BE HELD INSECURE CONFINEMENT PENDING YOUR COMMITMENT TRIAL. THAT IS MANDATORY, SO THE PROBABLE CAUSE DETERMINATION HAS BEEN MADE. HE HAS TO BE HELD INSECURE CONFINEMENT, PENDING THE COMMITMENT TRIAL, IF IN FACT THERE WAS JURISDICTION TO PROCEED WITH THE CASE, WHICH THE SECOND DISTRICT SAID THAT THERE WAS, SO THEY GAVE HIM A BENEFIT THAT HE WAS NOT ENTITLED TO, AND I THINK THIS IS COMPOUNDED BY THE FACT THAT HE MAY VERY WELL HAVE RECEIVED A SECOND, EARLIER BENEFIT TO WHICH HE HAD NO ENTITLEMENT AT THE TIME OF HIS JUVENILE DISPOSITION, BACK IN 1996, FOR A THREE-YEAR PERIOD OF TIME, THE JUVENILE ACT HAD EXPRESSLY PROVIDED THAT THE NORMAL JUVENILE DISPOSITION WOULD BE THE TERM OF THE COMMITMENT MUST BE UNTIL THE CHILD IS DISCHARGED BY THE DEPARTMENT OR UNTIL HE REACHES THE AGE OF 21. THAT WAS IN SECTION 39.054 PAREN 1-C, ENACTED IN 1994 AND REMAINED IN EFFECT FOR THE NEXT THREE YEARS. THAT WAS THE NORM AT THE TIME.

BUT THE ORDER SPECIFICALLY REFERENCES THE AGE OF 19.

YES, IT D IT SAID 19 OR UNTIL -- YES, IT D IT SAID 19 OR UNTIL THE DEPARTMENT OF CHILDREN AND FAMILIES DECIDES TO RELEASE HIM.

WHICHEVER IS EARLIER, SO THE COURT SEEMS TO BE SAYING IF THE STATUTE SAYS 21 OR 19, I AM SAYING 19.

THAT'S CORRECT. AND THAT IS WHY I AM SAYING THAT I THINK HE OBTAINED A BENEFIT AT THAT TIME, TO WHICH HE WAS PROBABLY NOT ENTITLED, SINCE THERE WAS A MANDATORY DISPOSITION UNTIL 21, WHICH WEATHERED --, WHICH WHETHER THROUGH CARELESSNESS, IGNORANCE OR OTHERWISE, WITH THE CONSTANT CHANGING OF THE JUVENILE STATUTES, WHICH ARE CLEARLY DIFFICULT TO KEEP UP WITH, THAT HE MAY VERY WELL HAVE OBTAINED ONE

BENEFIT AT THAT TIME AS TO THE LENGTH OF THE JUVENILE DISPOSITION, AND THAT MAY VERY WELL HAVE EXPLAINED WHY THE DEPARTMENT OF JUSTICE DID NOT RELEASE HIM ON HIS BIRTHDAY JULY 24, 1999. THERE IS NO TESTIMONY FROM DCC OFFICIALS OR AFFIDAVITS EXPLAINING IT, BUT IT MAY VERY WELL BE AND I THINK THE MOST LIKELY ANSWER IS THAT AS A MATTER OF COURSE FOR ANYONE WHO IS IN FOR AN OFFENSE COMMITTED AT THE TIME OF MR. TANGUAY'S THAT THEY HAD NORMAL, STANDARD PRACTICES IN TREATING IT AS A TENTATIVE RELEASE DATE OF AGE 21, AND THAT MIGHT EXPLAIN WHY THERE WAS A MIX-UP AND WHY THERE WAS A DELAY IN GETTING HIM RELEASED, TO THE EXTENT THAT HE HAD A 16-DAY AND ONLY A 16-DAY DETENTION BEYOND HIS 19th BIRTHDAY. TO THE EXTENT THAT HE WAS RELIEVED OF THAT, HE HAD THE OPPORTUNITY TO FILE A HABEAS PETITION AND OBTAINED RELEASE. HE ALWAYS HAD AND PROBABLY STILL HAS AN ENTITLEMENT TO PURSUE A 1983 ACTION AGAINST INDIVIDUALS WHO WERE RESPONSIBLE FOR ANY UNCONSTITUTIONAL DEPRIVATION OF HIS LIBERTY DURING THAT 16 -- DEPRIVATION OF HIS LIBERTY DURING THAT 16-DAY PERIOD, SO HE HAD THOSE REMEDIES AND ONE OF THOSE WAS NOT AN UNLAWFUL COMMITMENT PETITION BASED ON THE STATUTE, IN ITS ORIGINAL AND AMENDED VERSIONS. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH.

FIRST OF ALL, I WOULD LIKE TO DISAGREE WITH COUNSEL'S INTERPRETATION OF 9.1 -- 916.635, AND THAT GOES BACK TO JUSTICE CANTERO'S THING. WHEN THE STATE ATTORNEY IS SEEKING TO HAVE A PERSON DECLARED THEN A JUDGE CAN TAKE HIM INTO CUSTODY. THAT IS THE FIRST SECTION. THE SECOND SECTION SAYS BEFORE RELEASE FROM CUSTODY OF A PERSON WHOM THE ATTORNEY RECOMMENDS BUT AFTER THE STATE ATTORNEY FILES A PETITION, THE STATE ATTORNEY MAY FILE FOR A DETERMINATION OF PROBABLE CAUSE. THE ORDERS ARE MIXED UP HERE. IT IS KIND OF LIKE ONE SHOULD COME AFTER TWO, BUT BASICALLY WHAT THEY ARE SAYING IS THAT THE STATE, YOU GET THE MULTIDISCIPLINARY TEAM, AND THEN THE STATE SHOULD FILE ITS PETITION, AND THEN BEFORE HE IS RELEASED FROM, BEFORE HE IS RELEASED FROM CUSTODY. I MEAN, IF YOU LOOK AT THOSE TWO SECTIONS TOGETHER, IT IS OBVIOUS THAT IT HAS NOTHING TO DO WITH THE STATE BEING ABLE TO FILE OR BRING HIM BACK INTO CUSTODY AFTER HIS RELEASE. I MEAN, IT IS CLEAR THAT THE STATE IS SUPPOSED TO BE FILING ITS PETITION WHILE THE PERSON IS STILL IN CUSTODY, AND I THINK THAT SECTION TWO MAKES THAT A LITTLE BIT MORE PLAINER, WHEN YOU READ THEM TOGETHER. I MEAN, HOW COULD HE, YOU KNOW, BE FILING AFTER THE STATE FILES A PETITION, YOU KNOW, BEFORE THE RELEASE OF CUSTODY WHOM THE TEAM HAS SEEN. IT JUST DOESN'T MAKE SENSE TO READ IT THE WAY THE STATE IS INTERPRETING IT.

WAS A MANDATE ISSUED IN THIS CASE -- WAS A MANDATE ISSUED IN THIS CASE BY THE DCA?

YES, I BELIEVE THERE WAS.

WAS THERE AN AGREEMENT AMONGST THE PARTIES NOT TO PROCEED IN THE TRIAL COURT?

AS FAR AS I KNOW, EVERYBODY HAS AGREED TO STAY, MR. TANGUAY DOESN'T HAVE ANY BIG TRIAL.

AS FAR AS THE 30 DAYS WOULD PREVAIL.

WE DON'T HAVE THAT HERE.

SO THAT PROCEDURE WOULD APPLY.

RIGHT. THE --

LET ME BE SURE ABOUT THAT. IN OTHER WORDS, YOU HAVE WAIVED THE 30-DAY PROVISION.

AS FAR AS I KNOW, YES. YES. I AM 99.9 PERCENT SURE THAT IS NOT A PROBLEM. THE STATE WANTS TO INFER A LOT OF LEGISLATIVE PROCEDURES THAT DON'T EXIST.

UNDER 916.33, AS IT EXISTED IN 1997, IT DOES HAVE THIS LANGUAGE IN IT THAT, HAVING TO DO WITH THESE TIME PERIODS FOR THE ASSESSMENT BY THE TEAM.

UM-HUM.

THAT THE PROVISIONS OF THIS SECTION ARE NOT JURISDICTIONAL.

AND YOU KNOW, THAT HAS BEEN A CATCH-ALL PHRASE THAT THE STATE HAS USED FOR A LOT OF IT AND THEY USED IT IN ATKINSON TO SAY IT IS NOT JURISDICTIONAL TO GO FOR A 30-DAY TRIAL, TOO. I MEAN THE REALITY OF IT IS THAT YOU SHOULDN'T BE ABLE TO VIOLATE PEOPLE'S CONSTITUTIONAL RIGHTS, BASED ON THESE CATCH-ALL PROVISIONS. I THINK THE LEGISLATURE INTENDED THAT ALL OF THIS RUN SMOOTHLY BEFORE THESE PEOPLE GOT RELEASED FROM CUSTODY, AND IF YOU LOOK AT THE NEW AMENDMENTS, THEY GIVE THEM TWO YEARS OR THREE YEARS NOW, BEFORE SOMEBODY CAN BE RELEASED.

YOU THINK THE JURISDICTIONAL LANGUAGE ASAP PLYING IN THE CONTEXT IS IT STILL IN CUSTODY UNDER THE ORIGINAL SENTENCE, BUT THAT THESE TIME PERIODS FOR 48-HOURS OR 72-HOURS, WHATEVER, NOT BEING JURISDICTIONAL BUT APPLY EQUALLY AS WELL.

RIGHT. AS FAR AS THE JUVENILE THING BEING THROWN IN, I MEAN, THAT PARTICULAR STATUTE SECTION IS A NO, MA'AMLY. NOBODY KNOWS WHERE IT CAME FROM AND -- AN ANOMALY. NOBODY KNOWS WHERE IT CAME FROM AND IT CHANGED FROM WHAT IT DID EXIST A COUPLE OF YEARS LATER.

AT THE TIME THAT IT DID EXIST, IT WAS MANDATORY?

NOBODY WAS FOLLOWING T NOBODY WAS IMPOSEING SENTENCES SAYING UNTIL YOU ARE 21 AND THE STATE DID NOT APPEAL IT. IF YOU LOOK AT THE REST OF THE STATUTORY SECTION, WHICH I CITE IN MY REPLY BRIEF, THEY TALK ABOUT SERIOUS HABITUAL OFFENDER, WHICH THE JUDGE COULD HOLD THEM UNTIL THEY ARE 21. IF IT WAS MANDATORY TO HOLD THEM UNTIL THEY ARE 21, THERE WOULD HAVE BEEN NO NEED FOR THE SHELL PROVISION. IF YOU HOLD THEM UNTIL THEY ARE 21, WHAT IF THEY COMMITTED A MISS QUEEN OR? YOU ARE GOING -- A MISDEMEANOR? YOU ARE GOING TO HOLD SOMEBODY FOR FIVE YEARS ON A MISDEMEANOR? THAT PROVISION DOES NOT MAKE SENSE.

CHIEF JUSTICE: YOU ARE GOING TO HAVE TO CLOSE.

I DO BELIEVE THAT, WHEN FILING FOR A HAB WAS -- A HABEAS PETITION, THEY DON'T SEEM TO HAVE ANY FACT THAT THEY VIOLATED THE CONSTITUTIONAL PROVISION. THANK YOU.

CHIEF JUSTICE: THE COURT WILL STAND IN RECESS UNTIL TOMORROW MORNING.

MARSHAL: PLEASE RISE.