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## Florida Dep't of Revenue v. Kelvin M. Jackson

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR FOR THIS THURSDAY MORNING AT THE FLORIDA SUPREME COURT. AND THE FIRST CASE ON THE ORAL ARGUMENT CALENDAR IS DEPARTMENT OF REVENUE VERSUS JACKSON. MR. BRANCH.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. GOOD MORNING. MY NAME IS BILL BRANCH. I AM AN ASSISTANT STATE ATTORNEY WITH THE OFFICE OF THE ATTORNEY GENERAL. WE REPRESENT THE PETITIONER, THE DEPARTMENT OF REVENUE IN THIS APPEAL. THE FACTS OF THIS CASE ARE RELATIVELY STRAIGHTFORWARD. MR. JACKSON, WHO IS ONE OF THE RESPONDENTS, WAS ORDERED TO PAY CHILD SUPPORT IN 1992, PURSUANT TO A PATERNITY JUDGMENT. AT THE TIME HE WAS ORDERED TO KCHILD SUPPORT, HE WAS NOT INCARCERATED OR CONVICTED OF A CRIME. APPROXIMATELY SEVEN OR EIGHT YEARS LATER, HE WAS CONVICTED OF A CRIME AND HE WAS IN CARS RACE RAITED. DURING HIS -- AND HE WAS INCARCERATED. DURING HIS INCARCERATION --

WHAT WAS THE CRIME THAT HE WAS INCARCERATED FOR?

DRUG POSSESSION AND DEALING IN STOLEN PROPERTY AND MAYBE BURGLARY BUT I AM NOT SURE ABOUT THAT. BUT IT WAS DEFINITELY DRUG POSSESSION AND STOLEN PROPERTY. AFTER HE WAS INCARCERATED, HE FILED A MOTION WITH THE COURT SEEKING TO HAVE HIS CHILD SUPPORT ABATED DURING THE TERM OF HIS INCARCERATION.

WHAT WOULD THAT ACTUALLY MEAN IF YOU ABATE THE CHILD SUPPORT?

YOUR HONOR, WHAT HE WAS SEEKING WAS NOT THE DETERRENT -- WAS NOT THE DEFERMENT OF THE ACCRUING OF CHILD SUPPORT BUT ABATEMENT DURING THE TIME THAT HE WAS INCARCERATED, SO THAT NOTHING WOULD ACCRUE.

SO HE WAS NOT JUST SEEKING THE FACT NOT TO PAY IT BUT HE DIDN'T WANT THERE TO BE ANY CHILD SUPPORT DURING THAT PERIOD WHATSOEVER.

THAT'S CORRECT, YOUR HONOR. THAT'S CORRECT.

IF THEY DON'T SEEK ABATEMENT, THE DEPARTMENT OF REVENUE, DO THEY TRY TO COLLECT?

CERTAINLY NOT DURING THE PERIOD OF INCARCERATION, BECAUSE THERE IS CERTAINLY AN UNDERSTANDING AND RECOGNITION OF A LACK OF ABILITY TO PAY WHILE THEY ARE INCARCERATED, UNLESS THAT INMATE HAS ASSETS, PERHAPS, THAT MIGHT BE ABLE TO BE ATTACHED, TO GO AHEAD AND ENFORCE THAT OBLIGATION, BUT TYPICALLY, IF WE GO ON THE ASSUMPTION THAT THERE IS A LACK OF ABILITY TO PAY, THE DEPARTMENT IS NOT GOING TO ATTEMPT TO ENFORCE THAT OBLIGATION UNTIL THEY ARE OUT OF JAIL.

AND THEN WHAT HAPPENS? ONCE THEY ARE OUT OF JAIL, WHAT KIND OF PERIOD OF TIME NORMALLY ELAPSED BEFORE YOU TRY ANY KIND OF ENFORCEMENT ACTION?

YOUR HONOR, I DON'T THINK THERE IS ANY STANDARD PERIOD OF TIME. TO ANSWER THAT QUESTION, RECENTLY THE FIRST DISTRICT COURT IN THE HOLT APPEAL, DH INVOLVED THE

DEPARTMENT OF -- WHICH INVOLVED THE DEPARTMENT OF REVENUE, HELD IN THE POSITION THAT WE ARE TAKING TODAY AND STATED IN ITS OPINION THAT, WHAT OUGHT TO BE DONE IS AS SOON AS A PERSON IS RELEASED FROM JAIL OR SOMETIME AFTER THAT, THAT THERE BE AN ESTABLISHMENT PROCEEDING TO COME BACK BEFORE THE COURT AND DETERMINE WHAT THE ARREARAGE IS AND ESTABLISH AN ARREARAGE AND THEN ESTABLISH A PAYMENT PLAN ON THAT ARREARAGE.

THAT WOULD BE SOMETHING THAT WOULD BE AUTOMATICALLY DONE BY THE DEPARTMENT?

IT SHOULD BE AUTOMATICALLY DONE, IF THEY ARE TRACKING INMATES AND THEIR RELEASE DATES. I IMAGINE I COULD SUGGEST THAT THERE ARE MANY OCCASIONS WHERE PROBABLY A SIGNIFICANT AMOUNT OF TIME MAY GO BY, BEFORE SOMEBODY IS BROUGHT BACK INTO CIVIL COURT AFTER RELEASE.

IS THE, SO IT IS THE POSITION THAT NOT ONLY THAT IT SHOULDN'T BE ABATED BUT THE, CLEARLY THERE IS NO INCOME WHILE THEY ARE IN PRISON. THAT IT SHOULD GO TO, THAT THE IMPATATION SHOULD BE THE EXACT THAT THEY ARE PAYING BEFORE INCARCERATION. IT CAN BE NO AMOUNT OF MODIFICATION?

THAT IS CORRECT. THE SPECIFIC AND NARROW PRINCIPLE THAT WE ARE ASKING THIS COURT TO ADOPT IS THAT THE FACT OF INCARCERATION STANDING ALONE, SHOULD NOT BE SUFFICIENT TO JUSTIFY THE MODIFICATION OF A SUPPORT OBLIGATION DURING AN INCARCERATION.

I GUESS WHAT I AM THINKING ABOUT, THIS WAS A DRUG POSSESSION PROBLEM. WE DON'T KNOW MUCH MORE ABOUT IT BUT OF COURSE WE HAVE GOT DRUG COURTS NOW, AND SO ONE DEFENDANT WHO MIGHT HAVE A CRIME SIMILAR TO THIS WOULD BE PLACED IN A DRUG COURT, WHERE THEY COULD EARN MONEY, BUT IN THAT SITUATION, THEY HAVE COMMITTED A CRIME, BUT THEIR INCOME MAY BE AS REDUCED, BECAUSE THEY HAD THIS DRUG-RELATED CRIME. WOULD THAT DEFENDANT OR THAT FATHER BE ABLE TO REQUEST MODIFICATION IN ACCORDANCE WITH THEIR ACTUAL INCOME, OR WOULD THE DEPARTMENT'S POSITION BE THAT, BECAUSE THEY COMMITTED THE CRIME, THEY PUT THEMSELVES IN THE POSITION OF GETTING, OF MEETING THIS -- OF MAKING THIS MONEY?

THE POSITION OF THE DEPARTMENT WOULD BE THE SECOND POINT THAT YOU MADE, YOUR HONOR, THAT THEY PUT THEMSELVES IN THE POSITION OF NOT HAVING THE INCOME ABILITY TO PAY THEIR CHILD SUPPORT OBLIGATION. IT WOULD BE FORESEEABLE WHEN THEY COMMITTED A CRIME, THAT THAT COULD BE A RESULT OR RAMIFICATION OF THE CRIMINAL CONVICTION.

ISN'T THAT A RATHER SHORT SIGHT APPROACH THOUGH? HERE YOU HAVE A PERSON THAT OBVIOUSLY HAS NO INCOME COMING IN, SO HE BUILDS UP THOUSANDS OF DOLLARS' WORTH OF BACK SUPPORT. HE GETS OUT. HE HAS A CRIMINAL RECORD, AND ONCE HE GETS OUT, AND SO YOU TELL HIM YOU OWE \$5,000 IN BACK CHILD SUPPORT, AND THERE IS NO MODIFICATION, SO HE IS IMMEDIATELY SUBJECT TO BEING PUT IN JAIL FOR THAT.

YOUR HONOR, I DON'T THINK THAT WOULD BE THE POSITION THAT THE DEPARTMENT WOULD TAKE. IN TERMS OF BEING RELEASED FROM INCARCERATION, AS I STATED BEFORE, WHAT THE DEPARTMENT WOULD DO IS BRING THE PERSON BACK INTO COURT, IN THE CIVIL SIDE OF THE LAW, ESTABLISH WHAT THAT ARREARAGE IS, AND AS YOU STATED, LET'S SAY IT IS \$5,000. THE PERSON HAS A JOB OR IF THEY DON'T HAVE A JOB, I THINK THE DEPARTMENT IS GOING TO PUT HIM IN A WORK PROGRAM TO GET A JOB, AND THEN GO AHEAD AND REESTABLISH A PAYMENT PLAN FOR THAT \$5,000. THEY WOULD NOT HOLD HIM IN CONTEMPT FOR THE \$5,000, BUT IF A REPAYMENT PLAN IS ESTABLISHED AND AT SOME LATER TIME HE FAILS TO MEET THAT REPAYMENT PLAN, THAT WOULD BE CONTEMPTABLE.

BUT SUPPOSE THE WIFE INSISTS THAT SHE WANTS HER \$5,000 RIGHT NOW.

WELL, UNLESS HE HAS THE ASSETS TO DO IT, SHE IS NOT GOING TO GET HER \$5,000, AND UNDER THIS COURT'S DECISION IN BONE VERSUS BONE, UNLESS HE -- IN BOWEN VERSUS BOWEN, UNLESS HE HAS THE PRESENT ABILITY TO PAY IT, HE IS NOT GOING TO BE HELD IN CIVIL CONTEMPT FOR FAILURE TO PAY THAT \$5,000.

LET ME ASK YOU A QUESTION ABOUT THE CONTINUATION OF THE SUPPORT IN THE SAME AMOUNT. THAT IS PREMISED ON THE THEORY THAT SOMEBODY HAS VOLUNTARILY CHOSEN TO COMMIT A CRIME. THE DISTRICT COURT'S OPINION SAYS, SORT OF, YOU DO THE CRIME, YOU NOT ONLY DO THE TIME, BUT YOU CHOSE TO DO THAT VOLUNTARILY AND CERTAINLY THAT HAS GREAT APPEAL. MOST OF THE PREVIOUS CASES OR SITUATIONS WE HAVE SEEN, THOUGH, WHERE PEOPLE HAVE VOLUNTARILY CHOSEN TO DO SOMETHING, IT IS LIKE THAT SOMEBODY GETS SO EMOTIONALLY INVOLVED IN THE ISSUE, THAT THEY SORT OF BITE OFF THEIR KNOWS TO SPITE THEIR -- OFF THEIR NOSE TO SPITE THEIR FACE, IN TERMS OF EMPLOYMENT, SO IT MIGHT BE AN ARCHITECT, DOCTOR LAWYER, WHATEVER, AND THEY HAVE A GOOD CAPACITY TO EARN INCOME, BUT THEY DECIDE TO GO WORK AS A FORRESTER OR AS A HAND ON A SAILING SHIP, AND SOMETHING LIKE THAT, AND THE COURT SAYS, NOW, WAIT A MINUTE. AND WE HAVE ALREADY DECIDED CASES LIKE THAT. BECAUSE PRESUMABLY THERE, IF THEY DO WHAT THEY OBLIGATED THEMSELVES TO DO, THEY HAD THE CHILDREN AND THEY ARE RESPONSIBLE FOR THE CHILDREN, THEY COULD GO BACK AND WORK AS A LAWYER OR A DOCTOR, AN ARCHITECT CARPENTER, WHATEVER THE TRADE WAS THAT THEY HAD BEFORE. BUT HERE, WE ALL KNOW THAT IT IS VERY, VERY DIFFICULT FOR A PERSON, ONCE THEY HAVE BEEN IN STATE PRISON, TO BE EMPLOYED AGAIN. THAT IS THAT THAT IS A, WE KNOW THAT EVERYDAY WE ARE HOPEFULLY GETTING BETTER AT THESE BACKGROUND CHECKS AND THINGS LIKE THAT, AND SO PEOPLE, WHETHER IT IS DRIVING A TRUCK OR DOING WHATEVER, THAT THE GENERAL RULE OUT THERE IS, IF I HAVE GOT SOMEBODY ELSE TO HIRE THAT DOESN'T HAVE A CRIMINAL RECORD, I AM GOING TO HIRE THAT PERSON, AND I AM NOT GOING TO HIRE THE PERSON WITH THE CRIMINAL RECORD, SO IN THE REAL WORLD, THIS ISN'T THE PERSON THAT VOLUNTARILY, LIKE THE DOCTOR, LAWYER, CARPENTER, THERE HAS BEEN, REALLY, A VERY REAL AND SUBSTANTIAL REDUCTION IN THE CAPACITY OF THAT PERSON TO EARN MONEY, SO I AM TROUBLED BY THIS PART OF THE EQUATION. THAT IS THAT THE SAME CHILD SUPPORT IS ACCUMULATING AT THIS RATE. IN THE OTHER CASES, IT IS ON THE ASSUMPTION THEY CAN GO BACK AND WORK. HELP ME WITH THAT, BECAUSE THANK IS A CONSIDERABLE PROBLEM HERE, ASSUMING, IN OTHER WORDS, YOU HAVE GOT THE FIRST PART. THEY DID THE CRIME, AND THERE IS CERTAINLY A VOLUNTARINESS IN THAT. WHAT ABOUT THE SECOND FARTHER THAT DOESN'T FIT WITH THE OTHER -- WHAT ABOUT THE SECOND PART THAT DOESN'T FIT WITH THE OTHER INTENTIONAL CASES?

YES. UPON INCARCERATION AND RELEASE, YOU GO OUT AND LOOK FOR A JOB. I CAN'T FIND A JOB OR THE JOB I FOUND IS NOT GOING TO PROVIDE ME THE ABILITY TO, BEYOND THE SUPPORT, TO PAY TOWARDS THE ARREARS, AND BEYOND THAT THAT, IS THE REAL WORLD. I WOULD OPINE,, UNDER THOSE CIRCUMSTANCES, AS GOOD FAITH ATTEMPTS ARE BEING MADE TO FIND WORK, AND OVER THAT PERIOD OF TIME, I CAN'T SAY WHAT THAT PERIOD OF TIME WOULD BE, PROBABLY IT WOULD BE FACT-DRIVEN. IF HE HAS INCENTIVE TO PARTICIPATE IN WORK PROGRAMS THAT ARE SET UP BY STATUTE THAT THE COURT CAN REQUIRE HIM TO PARTICIPATE IN, THAT OVER A PERIOD OF TIME THERE IS AN INABILITY TO FIND EMPLOYMENT THAT IS GOING TO ALLOW HIM TO CONTINUE TO MEET THAT CHILD SUPPORT OBLIGATION AND WOULD PROBABLY HAVE MOVED INTO CIRCUMSTANCES WHERE IT WOULD BE JUSTIFIED FOR HIM TO PETITION THE COURT, AGAIN, TO MODIFY, AND UNDER THAT NEW SET OF FACT CIRCUMSTANCES, WHERE HE IS MAKING A GOOD FAITH EFFORT TO FIND EMPLOYMENT --

BUT THE PROBLEM IS THAT, FOR THAT PERIOD OF INCARCERATION, WHICH COULD BE FIVE, TEN, 15 YEARS, IF THE CHILD SUPPORT OBLIGATION IS ACCRUING AT THE PREINCARCERATION LEVEL, AND SAY THE PERSON WAS A DOCTOR WHO HAD A DRUG PROBLEM, NOT DOING SOMETHING LIKE TRYING TO KILL HIS WIFE IN ONE OF THESE CASES BUT SOMETHING UNRELATED AND NOW THEY

TOTALLY LOST THAT AND TOTALLY LOST THE ABILITY TO BECOME A DOCTOR, HOW WOULD CONTINUE AGO CHILD SUPPORT OBLIGATION -- CONTINUING A CHILD SUPPORT OBLIGATION THAT THEY WERE MAKING, AT THE SAME LEVEL THAT THEY WERE MAKING DURING THIS LENGTHY INCARCERATION, HOW IS THAT GOOD POLICY, BECAUSE, AGAIN, INJUSTICE SHAW'S SCENARIO YOU HAVE GOT THEM COMING OUT AND REALLY, THEY HAVE GOT THIS HUGE CHUNK THAT, REALISTICALLY THEY CAN'T PAY, BECAUSE THEY WEREN'T MAKING MONEY DURING THE PERIOD THEM IN.

OF COURSE, YOUR HONOR, I WOULD HAVE TO GO BACK TO THE CLEAR POLICY OR PRINCIPLE THAT WE ARE ASKING THIS COURT TO ADOPT, AND THAT IS THE RESULT OF THAT A CRUEL WAS THE VOLUNTARY ACT OF THAT PERSON THAT MADE IT FORESEEABLE THAT THAT COULD OCCUR.

DOES THAT HAVE TO GO IN THE SCENARIO? IN OTHER WORDS, ARE WE SAYING ANY CRIME MEANS THAT, FOLLOWS THAT THERE WAS AN INTENTION TO AVOID CHILD SUPPORT OBLIGATION?

NO, MA'AM. THAT IS NOT WHAT WE ARE SAYING. THAT IS, THAT SEEMS TO BE WHAT MASCOLLA SAYS THAT, THE CRIME YOU COMMIT HAS TO BE FOR THE INTENTION OF AVOIDING CHILD SUPPORT. WHAT WE ARE SAYING IS, WHEN YOU COMMIT A CRIME THAT IS A VOLUNTARY ACT THAT COULD RESULT IN YOUR INCARCERATION AND THE INABILITY TO MEET YOUR OBLIGATION.

HOW IS THAT DIFFERENT THAN THE CASE, AND I DON'T KNOW WHICH ONE IT WAS, WHERE THERE WERE LOST STAFF PRIVILEGES AT A HOSPITAL DUE TO ALCOHOLISM. NOW, ALCOHOL, PEOPLE THINK THAT IF THEY VOLUNTARILY DRINK EXCESSIVELY AND THEY LOSE THEIR JOB, YET OTHERS LOOK AT ALCOHOL AS A DISEASE. HERE WE DON'T KNOW THE RECORD HERE, BUT YOU HAVE GOT DRUG POSSESSION. THERE IS A CHANCE THAT THIS IS A PERSON THAT MAY HAVE A DRUG PROBLEM. I GUESS, YOU ARE ASKING FOR A BLANKET RULE. WHAT WOULD BE, LOOKING AT THE JURISDICTIONS, IS THERE ANY MIDDLE GROUND THAT WE COULD CONSIDER THAT WOULD BE, LOOK AT A QUALITATIVE LOOK AT WHAT THE CRIMINAL ACTIVITY WAS, WHAT THE JOB WAS BEFORE, SO THAT, YOU KNOW, THE COURT WASN'T COMPLETELY, THEIR HANDS WEREN'T TIED IN MODIFYING THE SUPPORT, IF THEY FOUND THAT THE CIRCUMSTANCES OF THE CRIME WERE OTHER THAN JUST, YOU KNOW, SOME VOLUNTARILY ACT.

A BURGLARY OR WHATEVER THE CASE WOULD BE. YOUR HONOR, FROM WHAT I HAVE SEEN, READING CASES FROM AROUND THE COUNTRY, IS THERE IS NOT A DISTINCTION BEING MADE THAT, IF A CRIME IS COMMITTED, THAT THAT IS A VOLUNTARY ACT TO PUT YOU IN THE POSITION OF NOT BEING ABLE TO PAY YOUR CHILD SUPPORT. IF THAT IS WHAT THE ULTIMATE RESULT IS, AND BECAUSE THAT WAS FORESEEABLE AND WAS VOLUNTARY ACT, YOU ARE NOT ENTITLED TO ANY TYPE OF MODIFICATION ON YOUR SUPPORT DURING THE PERIOD OF INCARCERATION.

REALISTICALLY, HOW OFTEN DOES THIS COME UP? I MEAN, THERE ARE LOTS OF, WE KNOW THE STATISTICS OF THE NUMBER OF PEOPLE WHO ARE IN JAIL AND IN THIS STATE AND OTHERS, SO HOW OFTEN DO WE, REALLY, GET CASES WHERE THE DEFENDANT IS ASKING FOR THESE KINDS OF MODIFICATIONS?

I THINK IT IS BECOMING MORE COMMON. I THINK WORD HAS GOTTEN AROUND. RIGHT NOW, I PRESENTLY, IN ADDITION TO THIS CASE, THERE IS A CASE PENDING IN FRONT OF THE FIRST DCA, NOT HOLT, WHICH IS ON REHEARING, BUT ANOTHER CASE, IN WHICH THAT IS THE ISSUE OF AN INMATE OVER IN APALACHEE CORRECTIONAL INSTITUTE. WE HAD ANOTHER ONE COME IN OUR OFFICE FROM, I THINK, CENTRAL FLORIDA, SO WE ARE SEEING, AT LEAST AT THE APPELLATE LEVEL I AM SEEING MORE OF THIS. AT THE CIRCUIT LEVEL, I AM NOT SURE IT IS A HUGE PROBLEM AT THIS TIME.

TO GET BACK TO JUSTICE PARIENTE'S POINT HERE, WHAT WOULD YOU SUGGEST AS A MIDDLE GROUND IF WE DON'T WANT TO TAKE YOUR POSITION THAT IT CONTINUE UNABATED UNMODIFIED, DURING THE COURSE OF INCARCERATION, CAN YOU SUGGEST SOME MIDDLE POINT

THAT WE COULD REACH IN THAT?

WELL, YOUR HONOR, IT IS EITHER MODIFICATION ISAL ALLOWABLE AS THE -- IS ALLOWABLE AS THE RESPONDENT IS ARGUING, BASED ON THE FACTS OF THE PARTICULAR CASE, OR IT IS NOT MOD FINAL, BASED ON THE -- IT IS NOT MODIFY ABLE, BASED ON THE GROUNDS THAT IT IS GOING TO BE IN IMPRISONMENT, BASED ON THE INABILITY TO FIND SUBSEQUENT EMPLOYMENT TO MEET THE OBLIGATION, THEN AT THAT TIME IT MIGHT BE RIGHT AND PROPER TO GO AHEAD AND MODIFY THE PROSPECTIVE OBLIGATION BUT NOT THE ARE A ARREARS, AND ONE THING THAT IS IMPORTANT ABOUT THE ARE A ARREARS -- MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL.

THANK YOU, YOUR HONOR. ONE OF THE THINGS ABOUT THE ARE A ARREARS IS CERTAINLY THIS, IF -- ABOUT THE ARREARS IS CERTAINLY THIS, IF I COME OUT OF JAIL OWING THIS AMOUNT OF DOLLARS OR WHATEVER, THE ENFORCEMENT OF THAT ARREARS BY CIVIL CONTEMPT, I CAN ONLY BE FOUND IN CIVIL CONTEMPT IF THE INABILITY TO PAY, THOSE TYPE OF CRITERIA, TO WHERE IT IS NOT SIMPLY THAT I HAVE AN OBLIGATION THAT HAS ACCRUED, I AM AUTOMATICALLY GOING TO BE BACK IN JAIL ON CIVIL CONTEMPT. THE LAW PROTECTS ONLY GOERS WHO ARE FRANKLY DELINQUENT BY PUTTING -- THE LAW PROTECTS OBLIGORS WHO ARE FRANKLY DELINQUENT BY PUTTING THEM IN JAIL, SO I THINK THAT IS PROTECTION, ONCE THEY GET OUT OF JAIL. IF THEY GET OUT OF JAIL, WE JUST DON'T THROW THEM RIGHT BACK IN. THANK YOU, YOUR HONORS.

MAY IT PLEASE THE COURT. I AM MITCHELL PRUGH FROM MELROSE. I REPRESENT THE RESPONDENTS, MR. JACKSON AND TILLERY. THERE IS NO QUESTION THAT YOU ARE BEING ASKED TO ADOPT A SPECIAL RULE JUST FOR INMATES TODAY. I BELIEVE THAT, BOTH ON EQUAL PROTECTION AND SOUND POLICY, YOU SHOULD NOT. WE RELY --

LET ME ASK A QUESTION IN THAT REGARD. IF I AMORD TORD PAY CHILD SUPPORT -- IF I AM ORDERED TO PAY CHILD SUPPORT AND I VOLUNTARILY QUIT MY JOB AND HAVE NO MEANS TO PAY THAT CHILD SUPPORT, THE CONTEMPT ASPECTS ASIDE AND NOT UNDER CONSIDERATION, IS THAT A GROUND FOR ME TO HAVE MY CHILD SUPPORT ABATED? MY OBLIGATION ABATED?

NO, JUSTICE HARDING, BECAUSE THAT IS VOLUNTARY.

AND WHY IS COMMIT AGO CRIME WHICH WOULD SUBMIT YOU TO -- AND WHY IS COMMITTING A CRIME WHICH WOULD SUBMIT YOU TO POTENTIAL INCARCERATION NOT A VOLUNTARY ACT?

IT IS A VOLUNTARY ACT, YOUR HONOR.

WHY WOULD THAT BE DIFFERENT?

BECAUSE INCARCERATION IS CERTAINLY NOT VOLUNTARY. IT IS A FORESEEABLE ACT, A FORESEEABLE CONSEQUENCE THAT EVERY ACT WILL HAVE ITS CONSEQUENCES, BUT NO ONE IS GOING TO TELL YOU THEY ARE VOLUNTARILY INCARCERATED.

BUT THAT IS MAKING THE CHOICE AFTER THE DECISION HAS BEEN, DECIDING WHEN THE CHOICE IS TO BE MADE. THE CHOICE IS NOT TO BE INCARCERATED. THE CHOICE IS TO COMMIT THE CRIME.

WELL, JUSTICE HARDING, YOU RAISE A GOOD POINT HERE. YOU HAVE A 3-2 SPLIT IN THE INTERMEDIATE APPELLATE COURTS ON THIS ISSUE. THE MACOLLA SAYS IT IS SPLIT, AS FAR AS COUNTING. I THINK THE ISSUE SHOULD BE ADDRESSED, AS FAR AS THESE ACTS AND HOW LONG ARE THE CONSEQUENCES? WHAT ACTS, AS IN THE NEBRASKA NEBRASKA-OHLER CASE, THE CHIEF JUSTICE THERE SAYS RACING, TAKING RISKS IS A CONSEQUENCE THAT IS IS THE POSSIBILITY OF BECOMING PERMANENTLY DISABLED. CERTAINLY IF I AM AN ACCOUNTANT AND BECOME

PERMANENTLY DISABLED AND CANNOT WORK AND SUPPORT, WHAT DISTINCTION IS THAT BETWEEN THAT AND BEING IN PRISON?

WHAT KIND OF WEIGHT ARE YOU GIVING? YOU ARE SAYING IF SOMEONE COMMITS MURDER, WE SHOULD LOOK AT THAT DIFFERENTLY FROM IF SOMEONE IS, IN FACT, IN AN ACCIDENT, AS YOU SAID, AND NEITHER ONE IS ABLE TO WORK, THAT IT SHOULD BE LOOKED AT IN A DIFFERENT MANNER?

NO, JUSTICE QUINCE. WHAT I AM SUGGESTING IS YOU TREAT THE INMATE THE SAME AS YOU WOULD ANY OTHER CITIZEN IN FLORIDA. I THINK YOU MAKE THE DISTINCTION ON LOOKING AT SOME OF THE OTHER CASES THAT WILL PROHIBIT MODIFICATION, WHEN THE CRIME WAS INTENDED TO BEAT THE SUPPORT. WHEN YOU HAVE INCARCERATION, BASED ON NONPAYMENT, WHERE THE, YOU BITE OFF OR YOU, AGAIN, ARE SPITING YOURSELF, WHICH YOU WILL SEE WHERE PEOPLE WILL SAY "PUT ME IN JAIL. I DON'T CARE!"

JUST SO YOU DON'T HAVE TO COMMIT -- THE KIND OF CRIMES THAT YOU WOULD COMMIT JUST SO YOU DON'T HAVE TO PAY SUPPORT, QIND OF CRIME WOULD THAT BE?

AS JUSTICE ANSTEAD SAID, WHEN YOU SAY, NO, I AM NOT GOING TO WORK. VOLUNTARILY, OR IN THE CASES OF MASCOLLA, WHERE SOMEONE IS TRYING TO KILL THE PERSON TO AVOID GUIDE SUPPORT.

SO -- TO AVOID CHILD SUPPORT.

SO YOU AGREE THAT THE MASCOLLA WOULD BE THE TYPE TO NOT PAY CHILD SUPPORT.

WHAT IF I JUST QUIT MY JOB AND CAN'T PAY CHILD SUPPORT ANYMORE.

THE DIFFERENCE IS YOU CAN GO OUT AND FIND ANOTHER JOB. THE PERSON IN PRISON CANNOT.

IF YOU TOOK THE EXACT SAME CRIME, THAT IS DRUG PROCEEDINGS, AND IN ONE CASE SOMEONE IS INCARCERATED AND IN THE OTHER CASE, SOMEBODY IS GIVEN PROBATION. ARE THERE ANY CASES OUT THERE, AND PROBATION OCCURS, AND THE GUY LOSES HIS OR HER, HIS JOB, IT SEEMS TO BE MALES THAT ARE IN THESE SITUATIONS, AND THEY PETITION FOR A MODIFICATION, BECAUSE NOW THEY ARE UNEMPLOYED. THEY ARE ON PROBATION, AND THEY LOST THEIR JOB. ARE THERE ANY CASES IN THE APPELLATE COURT, WHERE THEY ARE NOT INCARCERATED, BUT, AGAIN, THEY ARE ON PROBATION OR IN SOME OTHER TYPE OF SANCTION THAT THE COURT HAS IMPOSED. IS THERE A PER SE RULE IN THE SAME JURISDICTIONS THAT HAVE ADOPTED FOR INCARCERATION, THAT EVEN IF THEY ARE NOT INCARCERATED BUT THEY ARE MAKING LESS BECAUSE OF A CRIME, BECAUSE THEIR INCOME IS REDUCED, THAT THEY CANNOT HAVE A REDUCTION IN CHILD SUPPORT?

I AM AWARE OF ANY CASES, BUT -- I AM UNAWARE OF ANY CASES, BUT YOU RAISE THIS POINT ON THE RULE. UNDER SECTION 61-2-B, YOU ARE ALLOWED TO IMPUTE TO ANY VOLUNTARILY UNEMPLOYED PERSON. AGAIN, IN THE NEBRASKA CASE, IT POINTED OUT, IF YOU COME TO A CURIOUS CIRCUMSTANCE THAT SOMEONE WHO IS IN PRISON AND MARRIED WOULD NOT BE DENIED A MODIFICATION, BECAUSE NO ONE IS OPPOSING IT. IT WOULD ONLY BE SOMEONE WHO IS UNDER AN INVOLUNTARY SUPPORT ORDER. I SUGGEST TO YOU THAT YOU ARE ON THE TIP OF AN ICEBERG WITH 61-30. THAT AS SOON AS YOU SAY INCARCERATION, MEANS THAT YOU IMPUTE INCOME AT THE PRIOR INCARCERATION LEVEL, THAT IS GOING TO OCCUR FOR EVERYONE WHO IS MARRIED, THAT, WHETHER OR NOT THERE IS A SUPPORT ORDER ENTERED BECAUSE CLEARLY THE DUTY TO HAVE CHILD SUPPORT IS THERE, AND IF YOU CAN IMPUTE INCOME AT THE PREINCARCERATION LEVEL, THAT GOES FOR EVERYBODY IN JAIL.

AREN'T WE DEALING WITH A SITUATION WHERE WE ARE DEALING WITH THE PRESENT

OBLIGATION TO PAY SUPPORT IN THE CONTINUING RAISING OF CHILDREN, AND THEN WE ARE, ALSO, DEALING WITH THE POTENTIAL OF FUTURE ASSETS. WHAT HAPPENS WITH SOCIAL SECURITY IN A CHILD SUPPORT OBLIGATION? SOCIAL SECURITY GOES TO PAY THE CHILD SUPPORT, DOES IT NOT?

YOUR HONOR, I WOULD RESPOND AND FREELY CONCEDE THAT, IF THERE ARE -- AND FREELY CONCEDE THAT, IF THERE ARE OTHER ASSETS, SAY, EQUITY IN A HOME OR RETIREMENT.

BUT THAT IS FOR THE FUTURE. I MEAN, IF I AM HAVING THE FULL BURDEN OF PAYING THIS OBLIGATION AT THE PRESENT TIME, AM I NOT GOING TO HAVE ANY OPPORTUNITY FOR RECOMPENSE IN THE FUTURE -- FOR RECOMPENSE IN THE FUTURE, WHEN MY CHILD GETS SOCIAL SECURITY OR SOME INHERITANCE? IS THIS GOING TO BE WIPED OUT?

WELL, JUSTICE HARDING, YOU KNOW THE QUESTION AT THAT POINT WOULD BE IS IT IS THE CHILD OR THE SPOUSE THAT IS ENTITLED TO THE RECOMPENSE. I THINK IN FLORIDA, THAT WOULD DEPEND ON WHETHER THE CHILDREN HAVE EMANCIPATED.

WELL, BUT, SOMEBODY, BECAUSE OF THE OBLIGATION THAT HAS BEEN ESTABLISHED, IS ENTITLED TO THOSE ASSETS, IF THEY EVER BECOME AVAILABLE.

THEY WERE ENTITLED --

WHAT YOU ARE ASKING US TO DO IS TO SAY, NO, THERE IS NO OBLIGATION IN THE FUTURE, FOR ANY RECOMPENSE, BECAUSE OF WHAT HAS HAPPENED NOW.

NO, JUSTICE HARDING. I AM ASKING THAT YOU TREAT AN INMATE THE SAME AS YOU WOULD SOMEONE ON THE STREET. SOMEONE ON THE STREET THAT IS INVOLUNTARILY UNEMPLOYED, THROWN OUT OF WORK BECAUSE ENRON COLLAPSES, THERE WILL BE A DOWNWARD MODIFICATION TO ADJUST --

I GUESS THE DISTINCTION IS THAT AT WHAT POINT DO YOU SAY THEY ARE INVOLUNTARILY UNABLE TO IS THAT --

YES, YOUR HONOR, AND THEN WE ARE BACK TO THE DRUNK DRIVING INSTANCE. THE OTHER POINT I WOULD BRING OUT IS THAT YOU ARE TREATING INMATES DIFFERENTLY HERE, BECAUSE YOU ARE ENTERING AN ORDER OF INEQUITY THAT IS COMMANDING THAT PERSON TO PAY IMMEDIATELY.

IS THERE A CASE THAT SUPPORTS YOUR DRUNK DRIVING?

NOT A CASE, JUST DISSENT, THE CHIEF JUSTICE IN THE NEBRASKA CASE OF OHLER, WHICH IS CITED BY THE MASCOLLA DECISION.

THE THEORY, THERE, BEING THAT THE PERSON VOLUNTARILY GOT DRUNK AND DROVE THE CAR, THEN WAS INJURED, AND WAS INCAPACITATED, BECAUSE OF THE INJURY, CORRECT?

BECAUSE OF THE VOLUNTARY ACT, YES, YOUR HONOR.

AND THEREFORE LOST INCOME, AND BECAUSE OF THAT SHOULD BE RELIEVED FROM CHILD SUPPORT.

THAT'S CORRECT, YOUR HONOR. AND THAT IS THE WAY IT PROCEEDS IN FLORIDA COURTS TODAY, THE SAME WAY --

BUT THERE IS NO FLORIDA CASE THAT SAYS THAT.

I THINK, YOUR HONOR, THERE ARE PROBABLY NOT THAT MANY REPORTED DECISIONS ON THE WIDE VARIETY OF CRAZY THINGS PEOPLE CAN DO. I LIVE IN A TOWN OF 1,000 PEOPLE AND PRACTICE LAW THERE, 1,000 OR 2000, DEPENDING ON HOW MANY PEOPLE ARE IN JAIL AT A PARTICULAR TIME. THERE IS A JOKE IN MY TOWN THAT MY LAST WORDS BEING A COUNTRY BUMPKIN ARE GOING TO BE, HEY, WATCH THIS, BECAUSE THERE ARE SO MANY CRAZY THINGS THAT YOU CAN DO TO INJURY YOURSELF, PLUS THIS CAN RUN THE GAMUT DOWN TO SMOKING AND OBESITY, THAT IF YOU HAVE NOT TAKEN CARE OF YOURSELF AND YOU ARE 35 YEARS OLD AND ARE CARRYING AROUND OXYGEN AND HAVE CONGENITAL HEART FAILURE AND CAN'T WORK. THAT IS INVOLUNTARY AND CAN'T WORK AND THE COURT IS GOING TO SAY ABSOLUTELY.

BUT AREN'T YOU TALKING ABOUT A PROPOSED SITUATION, SO THAT AT THE RELEASE DATE OR SOMETIME THEREAFTER, YOU HAVE A MECHANISM SO THAT THIS IS ACCOUNTED FOR AND IS TAKEN INTO CONSIDERATION, AND SOME MODIFICATION OF THAT OBLIGATION IS ACTUALLY MADE? WHY WOULD THAT NOT BE A JUST AND FAIR SOLUTION, RATHER THAN JUST ERASING THE OBLIGATION DURING THAT PERIOD, BECAUSE IN FACT IT MAY BE ERASED THROUGH THESE LATER PROCEEDINGS, IF THERE IS A TOTAL INABILITY, BASED ON WHAT HAS OCCURRED, BECAUSE YOU STILL HAVE OCCURRED THAT PROTECTIVE MECHANISM THAT IS IN PLACE. MAYBE IT IS NOT REALLY A VALID ONE. I DON'T KNOW. MAYBE THESE FOLKS DON'T HAVE ACCESS TO REPRESENTATION TO HELP THEM THROUGH THAT KIND OF PROCESS, BUT IT JUST SEEMS TO ME THAT THAT IS A PRETTY FAIR PROCESS TO GO THROUGH THAT, WITHOUT JUST ERASING IT, THAT YOU PROVIDE FOR THE CONTINGENCY THAT IT MAY NEVER BE PAID.

JUSTICE LEWIS, MY UNDERSTANDING, BOTH AS A MATTER OF STATUTE IN CHAPTER 61 AND DECISIONAL LAW, IS THAT YOU CANNOT RETROACTIVELY MODIFY AN ACCRUED ARREARAGE.

BUT IF YOU ARE TALKING ABOUT IN PLACE, SOMETHING MODIFIED PAYMENT, IT MAY BE MODIFIED DOWN SO THAT AS A MATTER OF PRACTICALITY, YOU PAY TEN CENTS A WEEK.

YOU RAISE A GOOD POINT. AT WHAT LEVEL DO WE MODIFY IT DOWN TO.

THAT IS THE KIND OF THING. WHERE DOES IT GO?

I THINK, ONCE YOU HAVE DONE THAT, YOU HAVE ADMITTED THE PRINCIPLE THAT YOU CAN MODIFY WHILE YOU ARE INCARCERATED. NOW IS A QUESTION OF TO WHAT LEVEL. WHEN YOU WERE RELEASED, YOU WERE A DOCTOR BEFORE, ARE YOU NOW GOING TO BE RETRAINING TO BE A GRADER MAKING \$13 AN HOUR? I THINK OF THE EXAMPLE OF A MASTER ELECTRICIAN MAKING \$35 AN HOUR. WHEN YOU ARE RELEASED FROM PRISON, YOU ARE NOW GOING TO BE A PARIAH, BECAUSE YOUR OFFENSE WAS A SEXUAL OFFENSE. YOUR NAME IS PLASTERED UP EVERY WHERE. YOUR UNION HAS DROPPED YOU. YOUR EMPLOYMENT HAS DROPPED YOU.

THIS PROCESS WOULD PROTECT THE SAME INTEREST THAT YOU ARE TALKING ABOUT, WITHOUT JUST ERASING OR ELIMINATING, REALLY, UP FRONT, THE OBLIGATION.

YES, YOUR HONOR. YOU ARE TALKING ABOUT, WELL, LET'S IMPUTE INCOME WHILE INCARCERATED, AT A MUCH LOWER AMOUNT.

WHAT I AM SAYING IS THAT IT CONTINUES TO RUN, THAT IT CONTINUES, JUST AS IT IS, AND THEN YOU LOOK AT CIRCUMSTANCES, ONCE THERE IS A RELEASE, WHICH WILL ACCOMMODATE ALL THE WAY DOWN. YOU CANNOT PAY THAT ARREARAGE OR MAYBE YOU CAN PAY TEN CENTS A WEEK ON THAT ARREARAGE, SO IN EFFECT MAYBE THAT IS WHAT IS HAPPENING, SO AT LEAST YOU HAVE GOT THE EVENTUALITY THAT JUSTICE HARDING IS TALKING ABOUT. LATER ON DOWN THE ROAD, ASSETS, THOSE KINDS OF THINGS.

WELL, I THINK THEN, JUSTICE LEWIS, YOU ARE CONFINING THE PERIOD OF NONMODIFICATION, JUST TO INCARCERATION. THERE YOU HAVE MADE A DETERMINATIVE PUNISHMENT.

WHAT IS -- GO AHEAD.

THAT VERY WELL MAY BE SO, BUT ISN'T THERE JUST A LOGICAL INCONSISTENCY IN THE FACT THAT A PERSON, THAT THE REASON WE HAVE IMPRISONMENT IS TO ENFORCE AN INDIVIDUAL'S SOCIETAL OBLIGATIONS. THE REASON WE HAVE CHILD SUPPORT IS TO ENFORCE A PERSON'S, AN INDIVIDUAL'S OBLIGATION, AND SO WE ARE GOING TO SAY, WELL, IF YOU GET IN A SITUATION IN WHICH WE ARE ENFORCING SOCIETAL'S OBLIGATION BY IMPRISONING YOU, WE ARE GOING TO FORGIVE THE OBLIGATION THAT YOU HAVE TO PROVIDE FOR YOUR FAMILY. NOW, IT SEEMS TO ME THAT THERE IS A BASIC INCONSISTENCY IN WHAT WE ARE DOING, POLICY WEISS, WITH THAT.

I DON'T BELIEVE SO, CHIEF JUSTICE, BECAUSE I BELIEVE THEY ARE BEING PUNISHED, SO THEY ARE DOING THE TIME. I AM THINKING OF THE PHILOSOPHER MANUEL COTT, WHO SAID IN HIS ETHICAL TREATMENT, THAT ON THE IMPLIES CAN. YOU HAVE GOT AN IN NATO -- -- AN INMATE THAT CAN'T PAY. WE HAVE THE FIX THAT HE CAN PAY. I AM NOT SAYING THAT HE OR SHE IS NOT SHIRKING PAYING THE CHILD SUPPORT. THEY ARE SIMPLY UNABLE TO, AND AGAIN THIS RETURNS TO MY ARGUMENT THAT THIS IS AN ORDER INEQUITY, AND AS AN EXAMPLE, MR. TILLERY WAS TO PAY \$100 PER WEEK AND HE WAS TO BE INCARCERATED FOR THREE YEARS. YOU RUN THAT OUT AT 52 WEEKS IN A YEAR, YOU ARE GOING TO HAVE AN ACCRUED ARREARAGE OF \$15600.

THE CHILD SUPPORT IS REALLY IMPOSEED FOR THE BENEFIT OF THE CHILD, CORRECT?

THAT'S CORRECT, YOUR HONOR.

AND SOME SITUATIONS, I WOULD IMAGINE THAT, WHEN THE PARENT CAN'T PAY, DO WE HAVE, STILL HAVE A DEPARTMENT THAT COMES IN AND PAYS PART OF THIS OBLIGATION OR PAYS HIS OBLIGATION TO THE CUSTODIAL PARENT?

WELL, WHAT WE HAVE IS THE DEPARTMENT OF REVENUE STEPPING IN WITH BASICALLY WELFARE, AND THEN IS SUBROGATED FOR AN OPPORTUNITY TO RECAPTURE SOME OF THAT.

OKAY. SO IF THE CHILD ENJOYED A CERTAIN LIFESTYLE, WHEN THE PARENT WAS NOT INCARCERATED, I MEAN, WHY WOULDN'T IT BE A BETTER APPROACH THAT THE CHILD SUPPORT OBLIGATION CONTINUES, BECAUSE IN THAT INSTANCE, IT CONTINUES UNABATED, UNMODIFIED, BECAUSE IN THAT INSTANCE, THE DEPARTMENT IS GOING TO PAY WHAT THE PARENT WAS SUPPOSED TO PAY, AND THEN WHEN THE PARENT IS, IN FACT, NO LONGER INCARCERATED, THEY CAN COME IN AND EITHER PAY THE DEPARTMENT BACK ON A MODIFIED AMOUNT, OR AMOUNT THAT WE DECIDE OR SOME COURT DECIDES THAT THEY CAN ONLY AFFORD TO PAY THIS, AND THIS IS WHAT THE DEPARTMENT IS GETTING BACK, BUT ON THE OTHER HAND, THE CHILD HAS NOT SUFFERED IN THE MEANTIME. WHY ISN'T THAT A BETTER WAY TO APPROACH THIS?

I THINK, JUSTICE, THE CHILD IS NOT GOING TO SUFFER EITHER WAY, BECAUSE THE DEPARTMENT OF REVENUE WILL BE PROVIDING WELFARE. THE QUESTION NOW BECOMES ONE OF RECAPTURE. WHO HAS TO PAY FOR THAT PUBLIC FUNDS THAT WERE DISPERSED FOR THE CHILD.

BUT IF YOU MODIFY THE SUPPORT DOWNWARD, ISN'T THAT GOING TO DECREASE THE AMOUNT THAT THE DEPARTMENT WILL POSSIBLY PAY? WELFARE WILL POSSIBLY PAY?

I AM UNAWARE WHETHER IT WOULD OR NOT, YOUR HONOR. I BELIEVE THAT THE AMOUNT THE DEPARTMENT OF REVENUE PAYS --

LET'S ASSUME THAT IT WOULD, THEN, UNDER THOSE KINDS OF CIRCUMSTANCES, WOULDN'T IT BE A BETTER APPROACH, THEN, TO LEAVE THE CHILD SUPPORT AMOUNT UNMODIFIED AND THEREFORE THE CHILD DOESN'T SUFFER? THE DEPARTMENT MAY NOT, LATER DOWN THE ROAD, YOU KNOW, THREE OR FIVE YEARS FROM NOW, GIVE BACK THE MONEY THEY PAID, BUT IN THE

MEANTIME, THE CHILD IS NOT SUFFERING?

YOUR HONOR, THEN YOU ARE TALKING ABOUT REDISTRIBUTING THE WEALTH. I RESPECTFULLY SUGGEST THAT IS A MATTER FOR THE LEGISLATURE TO DECIDE, WHETHER THAT SORT OF RECAPTURE SHOULD HAPPEN.

THERE IS NO, IN FOLLOW-UP TO JUSTICE QUINCE, IF I QUIT PAYING MY CHILD SUPPORT, THERE IS NO ASSURANCE THAT SOMEONE ELSE IS GOING TO STEP IN AND PICK UP THAT OBLIGATION, IS THERE?

THAT'S CORRECT, JUSTICE HARDING. YOU WOULD APPLY FOR PUBLIC ASSISTANCE, BUT THERE IS NO GUARANTEE YOU WILL BE GIVEN THAT.

AND SO THERE IS NO ASSURANCE THAT THERE WILL NOT BE A SIGNIFICANT, IN FACT FROM THE, MY MANY YEARS ON THE TRIAL BENCH MOST OF THE TIME WHEN CHILD SUPPORT STOPPED FROM A PAYING PARENT, THERE WAS A SIGNIFICANT REDUCTION IN THE ABILITY OF THE CUSTODIAL PARENT TO MAINTAIN LIFE AND GO ON AS USUAL.

THAT IS ABSOLUTELY CORRECT, JUSTICE HARDING, AND RUNNING UP AN ARREARAGE FOR AN INCARCERATED PARENT IS NOT GOING TO CHANGE THAT HARD REALITY.

BUT AT THE SAME TIME, THE WELFARE BENEFITS OR THE ASSISTANCE IS NOT, DOES NOT MATCH, NECESSARILY, THE AMOUNT OF THE SUPPORT. WE ARE TALKING ABOUT, REALLY, JUST BASIC GUT EXISTENCE, AREN'T WE? I MEAN THAT IS WHAT WE ARE TALKING ABOUT. WE ARE NOT TALKING ABOUT GIVING THESE CHILDREN THOUSANDS AND THOUSANDS OF DOLLARS FOR FEEDING THEM.

CORRECT.

THAT IS REALLY WHAT YOU ARE TALKING ABOUT, AND YOU KNOW, IT JUST SEEMS TO ME THAT IF THERE IS AN OPPORTUNITY TO THE BACK END TO ADJUST IT SO THAT IT IS NOT A HARSH, AWFUL SYSTEM THAT, IT REALLY ACCOMPLISHES MANY OF THE PURPOSES, BECAUSE NO ONE IS GETTING RICH OFF THIS. WE ARE TRYING TO FEED CHILDREN.

I AGREE WITH YOU, JUSTICE LEWIS, BUT, AGAIN, WE HAVE GOT THE PROBLEM YOU CAN'T GET BLOOD OUT OF A STONE. THE INMATE IS INCARCERATED. THERE IS NO INCOME TO BE ABLE TO ASSIST THOSE CHILDREN. YOU ARE TALKING ABOUT A RECAPTURE RETROACTIVELY.

SO IN BOTH THESE CASES, IT IS THE DEPARTMENT OF REVENUE THAT IS BRINGING IT. THEY ARE SUBROGATED, BUT IF THERE IS A DIFFERENCE, SINCE THE CHILD SUPPORT IS \$100 A WEEK, \$400 A MONTH, THEY ARE NOT GETTING THAT MUCH IN PUBLIC ASSISTANCE OR DO WE KNOW THAT?

WE DON'T KNOW THAT FROM THE RECORD, YOUR HONOR.

IF THE PUBLIC ASSISTANCE IS LESS THAN THE \$400 AND THEY ARE ABLE TO COLLECTOR GET THE JUDGMENT FOR THE \$400 A MONTH, THE DIFFERENCE, THEN, GOES TO THE MOTHER, CORRECT? IN OTHER WORDS THEY ARE COLLECTING IT FOR THEIR BENEFIT AND --

THEY ARE REIMBURSING THEMSELVES, FIRST, BEFORE ANYTHING FLOWS TO THE PARENT. THAT I AM CERTAIN OF.

BUT THEN THE REMAINDER GOES BACK TO THE PARENT, FOR THE BENEFIT OF THE CHILD.

YES, YOUR HONOR. THAT IS MY UNDERSTANDING OF HOW THE PROCEDURE WORKS. MY TIME HAS EXPIRED. I WOULD ANSWER ANY OTHER QUESTIONS. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE. REBUTTAL?

YOUR HONOR, JUST BRIEFLY.

I WANT TO ASK YOU ONE QUESTION. DOES THAT ARREARAGE SHOW UP ON HIS CREDIT RATING? DOES IT AFFECT --

IT CAN SHOW UP ON THE CREDIT RATING, IF THE DEPARTMENT PURSUES IT IN THAT MANNER. ONCE THEY DO, IT IS AN ADMINISTRATIVE PROCESS WHERE THEY WOULD SEND HIM A NOTICE OF THEIR INTENT TO REPORT IT TO CREDIT BUREAUS. HE HAS THE OPPORTUNITY TO REQUEST A FORMAL HEARING ON THAT.

HAVE ANY STUDIES BEEN DONE, RELATIVE TO WHAT IS MORE LIKE TO HAPPEN? A PERSON WHO COMES OUT OF PRISON OWING \$30,000 OR \$40,000 IN ARREARAGE, AND EVEN THOUGH HE GETS IT MODIFIED LATER, THAT HE PAYS TOWARDS IT, HE STILL HAS THIS ALBATROSS OF \$40,000 THERE. OR A PRISONER WHO COMES OUT AND HAS HAD HIS PAYMENTS MODIFIED DURING THE TIME IS HE IN PRISON, AND DOES NOT HAVE THAT TREMENDOUS BACK MONEY -- BACK ALIMONY ON HIM. WHO IS MORE LIKELY TO PICK IT UP AND TRY TO REASONABLY MAKE PAYMENTS TOWARDS IT AND WHO IS MORE LIKELY TO JUST RUN OFF AND SAY THIS IS OVERWHELMING. I AM NEVER GONNA PAY IT OFF. I AM NEVER GONNA CATCH UP, AND IT IS ALWAYS GOING TO WORK AGAINST MY CREDIT. THIS IS JUST TOO MUCH. I AM GOING TO START LIFE OVER SOMEPLACE ELSE. IS THAT --

I THINK COMMON SENSE WOULD TELL ME THAT THE PERSON WHO HAS THE \$40,000 ARREARAGE AS OPPOSED TO THE PERSON WHO HAS, PERHAPS, ONLY A COUPLE THOUSAND DOLLARS, IS GOING TO BE THE ONE WHO SAYS --

THAT IS MY CONCERN. SO DOESN'T IT HELP THE CHILD, THEN, TO HAVE THIS OTHER SITUATION, WHERE THE HUSBAND WOULD COME OUT, OR THE FATHER WOULD COME OUT AND SAY, ALL RIGHT, I AM GOING TO WORK TOWARDS TRYING TO PAY THIS REASONABLE CHILD SUPPORT. THIS IS SOMETHING I CAN WORK TOWARDS AND SEE SOME LIGHT AT THE END OF THE TUNNEL? WHAT IS WRONG WITH THAT APPROACH?

WELL, I THINK WHAT THE PROBLEM THAT WE HAVE WITH THAT APPROACH IS WHAT THAT SIMPLY SAYS IS WHEN YOU ARE CONVICTED AND INCARCERATED, YOUR OBLIGATION TO SUPPORT YOUR CHILDREN IS GOING TO END WHILE YOU ARE IN JAIL. WE THINK THAT IS GOING TO WORK AGAINST PUBLIC POLICY, AND I WOULD LIKE TO TIE THAT INTO THE LAST DISCUSSION THAT WAS GOING ON BEFORE I GOT BACK UP, AND THAT IS THE QUESTION OF WELFARE PAYMENTS TO CHILDREN. IF FATHER IS INCARCERATED AND NO LONGER CAN MAKE THE CHILD SUPPORT PAYMENTS, LET'S ASSUME THAT MOTHER IS ELIGIBLE TO GO AHEAD AND RECEIVE PUBLIC ASSISTANCE BENEFITS. IF THE FATHER, INCARCERATED FATHER IS ENTITLED TO HAVE HIS CHILD SUPPORT ZEROED OUT DURING INCARCERATION, THE STATE OF FLORIDA IS NEVER GOTTEN AND ABLE TO RECOUP THE PUBLIC ASSISTANCE BENEFITS THAT HAVE BEEN PAID TO THAT FATHER'S CHILDREN WHILE HE IS INCARCERATED.

IS THERE ANY CORRELATION BETWEEN WHAT THE DEPARTMENT WOULD PAY AND WHAT THE CHILD SUPPORT OBLIGATION IS?

NO, THERE IS NOT. IT IS GOING TO BE BASED ON THE CIRCUMSTANCES, HOW MANY CHILDREN THE INCOME OF THE CUSTODIAL PARENT, THOSE TYPES OF SITUATIONS. MR. CHIEF JUSTICE

JUSTICE PARIENTE.

YOU TAKE THE SAME POSITION IF INSTEAD OF BEING INCARCERATED, HE PERSON WAS PLACED ON PROBATION. THAT IS THAT THEY HAVE GOT TO PAY AT THE FULL AMOUNT OF WHATEVER THEY WERE ORDERED TO PAY, BEFORE THE CRIME OCCURRED?

I WOULD TAKE THE POSITION, YOUR HONOR, INITIALLY, YES, THAT IS GOING TO ACCRUE. AGAIN, I WOULD GO BACK TO THE ARGUMENT THAT I MADE BEFORE, THAT, UPON RELEASE FROM INCARCERATION, IF GOOD FAITH EFFORTS ARE MADE TO FIND EMPLOYMENT, EMPLOYMENT CAN'T BE FOUND, THAT IS GOING TO ALLOW THAT PERSON TO MEET THAT OBLIGATION, THEN THERE MAY BE A JUSTIFICATION FOR REDUCTION AT A LATER TIME. MR. CHIEF JUSTICE

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