

AND WE'LL NOW PREPARE TO GO TO THE SECOND CASE ON TODAY'S DOCKET.

>> THANK YOU, YOUR HONOR.

>> GLENDON GORDON ON BEHALF OF THE PETITIONER FROM THE OFFICE OF THE PROBATE AMENDMENTS. WE ACTUALLY REQUEST FIVE MINUTES FOR REBUTTAL AS WELL.

THERE'S TWO ISSUES THAT THIS COURT MUST DECIDE, AND THE FIRST IS WHETHER THE TRIAL COURT HAS THE INHERENT AUTHORITY TO-- [INAUDIBLE]

AMOUNT OF TIME SERVED THAT WAS OVERREPORTED IN SENTENCING DOCUMENTS, AND THE SECOND QUESTION IS WHETHER SUCH A REDUCTION IN THE AMOUNT OF CREDIT FOR TIME SERVED AMOUNTS TO AN INCREASE, SENTENCE INCREASE AND VIOLATION OF THE DOUBLE JEOPARDY.

IT IS OUR POSITION THAT THERE IS NO PROCEDURAL MECHANISM THAT PERMITS THE TRIAL COURT TO SUA SPONTE AND SUCH A REDUCTION DOES, INDEED, AMOUNT TO A VIOLATION OF DOUBLE JEOPARDY.

JUST TO GIVE A BRIEF RECITATION OF THE FACTS BEFORE JUMPING INTO THE ISSUES AT HEART, IN 2018-- RECEDED TO A SENTENCING IN TWO CASES.

IN ONE CASE THE TRIAL COURT AWARDED 688 DAYS CREDIT FOR TIME SERVED WHICH WAS APPLIED TO EACH CONSECUTIVE COUNT.

AND IN THE SECOND CASE, HE WAS OF AWARDED 932 DAYS CREDIT FOR TIME SERVED.

IT APPEARS THESE AMOUNTS WERE CRATED BY THE DEPUTY CLERK, AND IT ALSO INCLUDED A COMBINATION OF JAIL AND-- [INAUDIBLE]

CREDIT.

SO JUMP INTO THE APPEAL AND JUMP INTO SOMETIME DURING THE APPEALS PROCESS IN 2018, THE DEPARTMENT OF CORRECTIONS WROTE AN EX PARTE LETTER TO THE JUDGE TO ESSENTIALLY SAY, HEY, PLEASE

REVIEW THE CREDIT, THIS IS SOME DISCREPANCY.

ON APRIL 2ND, THE DCA AFFIRMED THE APPEAL, AND THEN 20 DAYS LATER ON APRIL 26 IS WHEN THE MANDATE WAS ISSUED.

AND ON THAT SAME DAY THE MANDATE WAS ISSUED, THE TRIAL COURT'S AMENDED THE CREDIT.

SO IN HIS FIRST CASE, THE CREPT WAS REDUCED FROM 686 DAYS DOWN TO 656 DAYS AND ALSO APPLIED TO JUST ONE COUNT INSTEAD OF EACH CONSECUTIVE COUNT.

AND THEN IN THE SECOND CASE, IT WAS REDUCED FROM 932 DAYS TO 632 DAYS.

SO TURNING TO THE FIRST ISSUE, THE-- JUST WANT TO POINT OUT A COUPLE OF THINGS FROM THE DCA'S OPINION.

IT MENTIONED SPECIFICALLY THAT RULE 3801 FROM THE FLORIDA RULES OF CRIMINAL PROCEDURE ONLY APPLIES TO SITUATIONS THAT INVOLVE THE AWARD OF TOO LITTLE JAIL CREDIT, AND THEY ESSENTIALLY HELD THAT RULE 3800A WAS THE APPROPRIATE VEHICLE TO CHALLENGE THE INCORRECT AWARD OF PRISON CREDIT.

WHEN YOU ACTUALLY LOOK AT THE PLAIN LANGUAGE, THE 3800A, IT MENTIONS THAT AN ILLEGAL SENTENCE OR A COURT MAY AT ANY POINT IN TIME CORRECT AN ILLEGAL SENTENCE THAT WAS IMPOSED BY IT OR A MISCALCULATION IN SENTENCING SCORE SHEET WHEN IT'S AFFIRMATIVELY ALLEGED.

COUNSEL IS AWARE OF NO LAW THAT THE AWARD OF TOO MUCH CREDIT FOR TIME SERVED AMOUNTS TO AN ILLEGAL SENTENCE.

THE STATE NEVER ALLEGED THIS ERROR, AND, IN FACT, DURING THE SENTENCING HEARING THE STATE STOOD IDLY BY WHEN THE DEPUTY CLERK SAID, QUOTE, I DON'T KNOW MATH IN MY HEAD AND THEN PROCEEDED TO GIVE A CREDIT CALCULATION.

THE ONLY THING THAT SOMEWHAT RESEMBLES AN AFFIRMATIVE

ALLEGATION WAS THE EX PARTE COMMUNICATION BY THE DEPARTMENT OF CORRECTIONS THAT WAS ESSENTIALLY AN END RUN AROUND THE PROCEDURAL RULES WHICH VIOLATED MR. SPEARS' DUE PROCESS RIGHTS.

>> CAN I-- COUNSEL, I'M SORRY TO INTERRUPT YOU.

MAYBE THIS GOES MORE TO THE SECOND ISSUE--

>> YES, SIR.

>> IN THE SENTENCING DOCUMENT ITSELF, IT SEEMS LIKE IT MAKES THE DISTINCTION BETWEEN THE SENTENCE WHICH IS THE FIVE YEARS AND THEN THE SPECIAL PROVISIONS. IF WE FOCUSED ON THE SUBSTANCE, AND I UNDERSTAND WHAT YOU'RE SAYING ABOUT THE PROCEDURAL ASPECT, BUT IF WE FOCUS ON THE SUBSTANCE AND, YOU KNOW, WHAT ARGUABLY THE, YOU KNOW, THE DEFENDANT HERE WAS ENTITLED TO, IT SEEMS LIKE THE SENTENCE, THE DOCUMENTS AT LEAST TREAT THE SENTENCE AS THE FIVE YEARS, AND THEN THE CALCULATION OF THE CREDIT TIME DOESN'T SEEM TO BE THE ACTUAL SENTENCE OR PART OF THE SENTENCE.

IT'S MORE JUST SORT OF AN ADJUSTMENT TO THE SENTENCE OR, YOU KNOW, IT'S A WAY OF CALCULATING HOW WE'RE GOING TO, YOU KNOW, MEASURE THE ACTUAL TIME THAT THE PERSON WILL BE THERE.

SO COULD YOU ADDRESS THAT?

>> SO I UNDERSTAND THE QUESTION, HOPEFULLY, APPROPRIATELY.

IT APPEARS THAT BOTH THE STATE AND THE PETITIONER, WE AGREE THAT A DECREASE IN CREDIT NECESSARILY DECREASES THE AMOUNT OF TIME SPENT IN INCARCERATION.

IT JUST LOOKS LIKE THAT MAIN CONTENTION LIES IN HOW ONE DEFINES A SENTENCE.

I UNDERSTAND, I BELIEVE THERE WAS AN EXAMPLE THAT A JUDGE SENTENCED THE DEFENDANT TO THREE YEARS REGARDLESS OF HOW MUCH TIME IS AWARDED, THE SENTENCE

STILL REMAINS THREE YEARS.
SO THE QUESTION IS HOW DOES
REMOVING CREDIT AFFECT THE
THREE-YEAR SENTENCE.

AND IT IS JUST OUR POSITION THAT
THIS IS A VERY EXTREMELY NARROW
VIEW, AND IT PLACES THE
SENTENCING PROCESS IN A VACUUM.
IT'S OUR POSITION ALSO THAT A
SENTENCE INCLUDES THE CREDIT AS
WELL AS THE PERIOD OF
INCARCERATION ULTIMATELY
IMPOSED.

FOR EXAMPLE, ANYTIME THAT YOU DO
NOT AWARD THE CREDIT, THAT'S
GOING TO BE A DOUBLE JEOPARDY
VIOLATION BECAUSE THE DEFENDANT
WOULD ESSENTIALLY BE SERVING
MORE TIME OR, I GUESS, WILL BE
TWICE PUNISHED, AND THE SENTENCE
WOULD EXCEED THE MAXIMUM IF IT
WAS NOT AWARDED.

>> IS THERE ANY-- I MEAN, HOW
ARE WE SUPPOSED TO-- SO I KNOW
921.161 SAYS THAT THE CREDIT,
TALKS ABOUT THE COUNTING CREDIT.
THE CREDIT MUST BE FOR A
SPECIFIED PERIOD OF TIME AND
SHALL BE PROVIDED FOR IN THE
SENTENCE.

WHICH, TO ME, DOESN'T SEEM LIKE
IT NECESSARILY GIVES A CRYSTAL
CLEAR ANSWER TO THIS.

BUT HOW ARE WE-- THE DECISION
THAT YOU, YOU KNOW, THAT YOU'RE
TALKING ABOUT IN THIS KIND OF
PART OF MY QUESTION, YOU KNOW,
WHAT IS THE SENTENCE, I MEAN,
HOW ARE WE-- WHAT, WHAT SOURCE
OF AUTHORITY SHOULD WE BE
LOOKING TO TO RESOLVE THAT?

>> I HONESTLY, I'M NOT ENTIRELY
SURE.

THE ONE THING IS I KNOW THAT
921.161 DOES PROVIDE THAT A
TRIAL COURT HAVE THE ABILITY TO
CALCULATE PRISON CREDIT AS WELL.
AND THEN ALSO JUST POINTED TO
THE DOUBLE JEOPARDY, THE CLAUSE
IS MENTIONING THAT A DEFENDANT
HAS THE RIGHT TO RECEIVE CREDIT
FOR TIME SERVED.

I THINK THAT THOSE ARE TWO OF
THE SOURCES THAT THE COURT COULD

LOOK AT.

AND I DO BELIEVE WHAT I AM REFERRING TO IS NORTH CAROLINA V. PIERCE THAT MENTIONS A DEFENDANT WOULD BE TWICE PUNISHED, AND HIS SENTENCE WOULD EXCEED THE MAX IF IT WAS NOT AWARDED THE CREDIT.

>> YEAH, RIGHT.

I MEAN, IT WOULD OBVIOUSLY BE TO WHAT YOU ACTUALLY SERVED. YOU DON'T HAVE A RIGHT TO THE BENEFIT OF A CLERICAL ERROR.

I MEAN, IT SEEMS LIKE THE PROCEDURAL ISSUE THAT YOU STARTED WITH I KNOW GETS TO THAT, BUT IF WE FOCUS ON THE SUBSTANCE, YOU KNOW, PART OF-- ONE WAY OF LOOKING AT THIS IS JUST THE SORT OF VERY BASIC, MECHANICAL QUESTION.

IF YOU SAY DOUBLE JEOPARDY DOESN'T ALLOW YOU TO, QUOTE-UNQUOTE, INCREASE THE SENTENCE, IT SEEMS LIKE IN ORDER TO APPLY THAT RULE WE NEED TO DECIDE WHETHER THE CREDIT IS SORT OF POTENTIALLY INCLUDED IN THE SENTENCE OR WHETHER THE SENTENCE IS JUST THE FIVE YEARS AND THE CREDIT IS JUST SORT OF A MINISTERIAL THING THAT, YOU KNOW, ISN'T REALLY THE ACTUAL SENTENCE ITSELF.

SO HOW SHOULD WE-- WHAT'S, I GUESS, JUST TO COME BACK TO THE ISSUE OF HOW DO WE, JUST WHAT AUTHORITY DO WE LOOK TO TO RESOLVE THAT?

>> I'M HONESTLY NOT ENTIRELY SURE ABOUT THAT SPECIFIC QUESTION, BUT I COULD FILE AN AMENDED OR, I GUESS, A SUPPLEMENT AUTHORITY IF SOMETHING DOES COME TO MIND, BUT AT THIS POINT I'M NOT ENTIRELY SURE.

>> COUNSEL, DO YOU THINK THERE IS A DIFFERENCE OR SHOULD THERE BE A DIFFERENCE WHEN THERE IS A PLEA THAT STIPULATES A SET AMOUNT OF TIME, PART OF PERHAPS THE DEFENDANT'S CONSIDERATION AND IN ACCEPTING A PLEA OFFER

THAT THE STATE IS STIPULATING TO JAIL CREDIT VERSUS THIS SITUATION WHERE THE SENTENCE IS WHAT THE SENTENCE WAS, AND HE WAS ENTITLED TO JAIL CREDIT, PERIOD, AND SO THERE WAS NO REAL CONSIDERATION BY THE COURT OR THE PLEA PROCESS AS TO THAT AMOUNT.

DO YOU THINK THERE'S ANY, SHOULD BE ANY DIFFERENCE THERE?

>> NO, JUDGE, I DON'T THINK THERE SHOULD BE A DIFFERENCE. YOU KNOW, WHETHER THE STATE AGREES OR NOT, IF THE STATE AGREES TO MORE TIME, IT ACHIEVES THE SAME END WHETHER THE DEFENDANT ENTERED INTO A PLEA OR EVERYBODY KNEW AT THE SENTENCING HEARING THAT, HEY, HE IS GOING TO GET X AMOUNT OF TIME.

I DON'T THINK THAT NECESSARILY MAKES A DIFFERENCE.

AND AS WELL TOO, I WOULD SAY WHEN THE TRIAL COURT PLACES THE SIGNATURE ON THE SENTENCING DOCUMENTS, I MEAN, IT ESSENTIALLY RATIFIES THE CREDIT.

>> BUT IN THIS CASE, THEY DIDN'T-- IT WASN'T REALLY PART OF THE SENTENCING HEARING. I MEAN, HE DIDN'T HAVE HIS JAIL CREDIT TIMES OTHER CONSIDERATION, THE JUDGE DIDN'T OR CONSIDER IT, IT DOESN'T APPEAR, DURING THE SENTENCING PROCESS.

IT REALLY WASN'T UNTIL THE VERY END AS SORT OF AN AFTERTHOUGHT. SO HOW WOULD YOU THIS WAS PART OF THE SENTENCING PROCESS OTHER THAN THE FACT IT WAS JUST SORT OF THROWN OUT THERE AT THE VERY END?

>> WELL, THERE WAS DISCUSSION DURING THE SENTENCING HEARING. I UNDERSTAND IT WAS JUST THE CLERK MAKING IT KNOWN TO EVERYBODY LIKE, HEY, THIS IS A AMOUNT OF CREDIT THAT I THINK THE DEFENDANT IS ENTITLED TO. THE COURT WAS AWARE OF THAT AS WELL AS THE PARTIES AND NO ONE SPOKE UP.

I WOULD SAY IT WAS PART.

>> WOULD THIS WHOLE ISSUE HAVE BEEN AVOIDED IF COUNSELS FOR THE STATE AND FOR THE DEFENSE HAD JUST GOT TOGETHER, COME UP WITH AN AGREED-TO CALCULATION OF THE CREDIT OF TIME SERVED AND HAD THE COURT BASICALLY ACCEPT THAT AS THE AGREED-TO STIPULATION AS TO CREDIT?

I RECALL WHEN I WAS A TRIAL JUDGE, I WOULD DO THAT IN ALL MY PLEAS.

BOTH SIDES STIPULATE THAT THIS IS THE CREDIT THE DEFENDANT IS ENTITLED TO.

AND THAT WOULD BE IT.

WOULD THAT RESOLVE THIS?

>> I THINK SO.

WELL, IT--

>> WHAT IF LATER ON WHEN HE'S BACK IN PRISON AND HE STARTS ADDING THINGS UP, IT TURNS OUT THAT PERHAPS HE MAY HAVE BEEN CHEATED OUT OF 10 OR 15 DAYS IN CREDIT, YOU KNOW?

THAT MAY SEEM LIKE A LITTLE, BUT IF YOU'RE IN JAIL, THAT'S A LOT.

WHAT IF HE FIGURES OUT LATER IN IS THAT A WAY TO GET AROUND THAT STIPULATION, IF HE COULD COME BACK LATER AND SAY, SORRY, MY LAWYER MADE A MISTAKE?

>> I THINK-- AND THAT'S THE REASON WHY THERE'S OPPOSITION THAT THE DEFENSE PROBABLY TOOK THAT ONE OUT WHEN IT COMES TO AGREEING TO THAT, BECAUSE IT DOES EXPOSE A LAWYER TO INEFFECTIVE ASSISTANCE OF COUNSEL.

THE OTHER PART TO THAT AS WELL I WAS-- I BELIEVE THAT THERE IS AT LEAST ONE CASE THAT TOUCHED ON THE COURT COMING BACK EVEN WHEN THE DEFENDANT, THROUGH NO FAULT OF HIS OWN, RECEIVED A CERTAIN AMOUNT A OF CREDIT, THE COURT CAME BACK ANYWAYS AND WOUND UP REDUCING THAT.

I BELIEVE THERE'S SPECIFIC EXCEPTION FOR THAT.

BUT I THINK JUST FOLLOWING UP ON WHAT WAS MENTIONED, IT COULD

HAVE MADE A DIFFERENCE IN THE TERMS OF ALL THE PARTIES BEING AWARE OF, HEY, THIS IS THE AMOUNT.

BUT THEN AGAIN, I'M NOT ENTIRELY SURE BECAUSE IT SEEMS LIKE THAT'S EXACTLY WHAT HAPPENED IN THIS SITUATION.

EVERYONE-- THE CLERK MENTIONED, HEY, THIS IS THE AMOUNT OF TIME THAT THE DEFENDANT IS GETTING. THE JUDGE WAS THERE, BOTH OF THE PARTIES.

I DON'T THINK THAT, YOU KNOW, EVEN IF THE D.O.C. WROTE A LETTER AFTER THE FACT, I STILL THINK THE SAME THING WOULD HAVE HAPPENED.

>> IN MOST CASES, IN MOST CASES IT'S REALLY NOT THAT COMPLICATED.

THE DATE THE DEFENDANT'S BOOKED AND THE DATE THIS TAKES PLACE, THAT'S USUALLY THE CASE.

HERE HE HAD GONE TO PRISON, THEN BROUGHT BACK, AND YOU'VE GOT ALL THOSE THINGS.

AND THEN YOU'VE GOT THE CLERK JUST THROWING IN THE PRISON CREDIT INTO THE POT.

AND WHEN SHE MIXED THAT IN THERE, OR HE MIXED IT IN THERE, IT BASICALLY CAUSED A DISCREPANCY.

SO LET ME ASK YOU THIS.

DO YOU AGREE THAT THERE WAS A DISCREPANCY HERE IN THE CALCULATION OF CREDIT FOR TIME SERVED TO THE BENEFIT OF YOUR CLIENT?

>> YES, JUDGE, I DO BELIEVE THAT MY CLIENT DID RECEIVE A BENEFIT. AND THEN, TOO, I KNOW THAT PREVIOUS JUSTICE WANTED TO FOCUS ON THE SUBSTANCE, BUT I DO WANT TO POINT OUT IN RULE 3800B IT DOES MENTION THAT MOTIONS MAY BE FILED BY THE STATE UNDER THE SUBDIVISION ONLY IF A CORRECTION OF THE SENTENCING ERROR WOULD BENEFIT THE DEFENDANT.

IT JUST SEEMS LIKE-- I'M AWARE OF NO CASE THAT NECESSARILY SAYS THAT, YOU KNOW, WE'RE GOING TO

CONSTRUE DOUBLE JEOPARDY OR THIS PARTICULAR ISSUE WHEN IT COMES TO CREDIT AGAINST THE DEFENDANT.

>> I MEAN, IS THERE ANYTHING THAT WOULD HAVE KEPT THE STATE FROM RAISING THIS IN AN APPEAL?

>> HMM.

I DON'T THINK-- EVEN IF THEY RAISED IT ON AN APPEAL, I DON'T THINK IT WOULD HAVE BEEN MERITORIOUS--

>> WELL, WHY WOULD IT BE MERITORIOUS?

IT'S AN OBVIOUS MISTAKE.

[LAUGHTER]

>> OF COURSE.

I'M SORRY.

>> IT'S AN OBVIOUS ERROR.

OBVIOUSLY, THEIR MATHEMATICAL ABILITY, I GUESS, WASN'T THERE OR IT FAILED THEM, AND THEY-- SO IT'S-- AND YOU ADMIT THAT IT'S AN ERROR.

IT'S A WINDFALL.

IT'S A WINDFALL FOR YOUR CLIENT.

>> YES, JUDGE.

>> WHAT IS THE STATE SEEKING TO CORRECT THAT ERROR BY WAY OF APPEAL?

>> WELL, IT WOULD STILL--

>> THAT'S NOT WHAT WE'VE GOT HERE, I UNDERSTAND.

THAT'S NOT WHAT WE'VE GOT HERE.

BUT I'M ASKING-- BECAUSE THE STATE DIDN'T APPEAL, RIGHT IN.

>> CORRECT.

IT WAS THE EX PARTE LETTER.

>> RIGHT.

SO THIS IS BACK AFTER, AFTER THE FACT, THE UNTIL TRIAL COURT TAKE IT INTO ITS OWN HANDS.

BUT IF THE STATE APPEALED, IS THERE THINKING THAT YOU KNOW OF THAT WOULD HAVE PREVENTED THAT?

>> IT MENTIONS THAT 3800A WAS THE CORRECT AVENUE OR THE APPROPRIATE VEHICLE, THE STATE WOULD STILL HAVE TO PROVE, EVEN IF THEY COULD GO FORWARD, THEY WOULD STILL HAVE TO PROVE IT WAS AN ILLEGAL SENTENCE, AND I JUST DON'T THINK UNDER THE CIRCUMSTANCES IT WOULD BE ABLE TO SATISFY THAT.

BUT, YOU KNOW, I GUESS TO JUST ADDRESS THE QUESTION PLAINLY, PROBABLY.

THE STATE PROBABLY COULD FILE AN APPEAL.

>> ALL RIGHT.

>> DO YOU HAVE A POSITION ON WHAT THE RIGHT, WHAT THE RIGHT WAY TO FIX AN ERROR LIKE THIS IS?

>> HAVE TO QUOTE AN OLD FOOTBALL COACH, DO IT RIGHT, DO IT LIGHT.

DO IT WRONG, DO IT LONG.

AND UNDER THESE CIRCUMSTANCES, I THINK THAT, YOU KNOW, IT'S

PROBABLY BEST TO JUST DEFER TO THE APPROPRIATE PARTY TO MAKE THE CALCULATION BEFORE ACTUALLY HAVING THE DEFENDANT TO RELY UPON IT.

I THINK EVEN PREVIOUS JUSTICE MENTIONING THAT IT COULD BE ALL THE PARTIES UNDERSTANDING THAT THE DEFENDANT IS ENTITLED TO A CERTAIN AMOUNT, BUT--

>> ALL RIGHT, COUNSEL.

YOU'RE BURNING UP YOUR REBUTTAL TIME HERE.

>> YES.

SO-- OKAY.

I THINK THAT IS ALL FROM THE PETITIONER.

THANK YOU, JUDGE.

>> ALL RIGHT.

THANK YOU, COUNSEL.

WE'LL HEAR FROM THE STATE.

>> MAY IT PLEASE THE COURT, MY NAME IS KALEY--

[INAUDIBLE]

ON BEHALF OF THE STATE OF FLORIDA.

THE CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE SHOULD BE ANSWERED IN THE AFFIRMATIVE.

THE TRIAL COURT DOES HAVE THE AUTHORITY TO AMEND ITS SENTENCING ORDERS, CORRECT THE OVERREPORTING OF JAIL OR PRISON AND JAIL CREDIT AT ANY TIME, AND THIS AUTHORITY COMES FROM ITS OWN INHERENT AUTHORITY TO CORRECT CLERICAL MISTAKES AND SCRIVENER'S ERRORS IN ITS OWN DOCUMENTS.

AND IN THIS CASE, THE
OVERREPORTING OF THE JAIL CREDIT
WAS A CLERICAL MISTAKE,
SCRIVENER'S ERROR WHERE THE
CLERK MADE A MISTAKE IN THE
REPORTING OF THE JAIL CREDIT.

AND--

>> NOW WAIT A MINUTE.

EXCUSE ME.

THAT-- IT WASN'T JUST A
QUESTION OF THE CLERK JUST
WRITING DOWN THE WRONG NUMBER.
THE AMOUNT OF CREDIT TO BE GIVEN
WAS DISCUSSED IN OPEN COURT,
WASN'T IT?

THERE WAS A CONVERSATION BETWEEN
THE CLERK, THE LAWYERS AND SO ON
IN OPEN COURT.

THE COURT ACCEPTED THE CLERK'S
REPRESENTATION AS TO WHAT THE
CREDIT WAS AT THE TIME, AND
THAT'S WHAT WAS GIVEN.

>> YES.

WELL--

>> IS THAT WHAT HAPPENED?

>> NOT NECESSARILY.

WHAT HAPPENED WAS THAT THE CLERK
DID READ ORIGINALLY THE CORRECT
NUMBERS, THE CORRECT NUMBER FOR
THE JAIL CREDIT AND THE CORRECT
NUMBER FOR THE PRISON CREDIT AND
ADDED THEM TOGETHER.

AND I GUESS NOBODY NOTICED THE
DISCREPANCY AT THAT TIME.

THE TRIAL COURT DIDN'T EVER
REPEAT THE NUMBER, AND THE
INCORRECT NUMBER MADE IT INTO
THE RECORDING OF THE SENTENCING
DOCUMENT.

AND THEN AT A LATER TIME WHEN
THE COURT WAS MADE AWARE OF THAT
SCRIVENER'S ERROR, IT SIMPLY
AMENDED IT TO REFLECT THE
SENTENCE IT INTENDED TO OPPOSE,
AND IT WAS IMPOSED.

THE SENTENCE THAT THE TRIAL
COURT IMPOSED WAS FIVE YEARS
WITH CREDIT FOR TIME SERVED, AND
THE FACT THAT AN ERROR WAS MADE
IN THE REPORTING AND CALCULATION
OF THE JAIL CREDIT SIMPLY JUST
MADE IT INTO THE DOCUMENT
INCORRECTLY.

IT WAS A CLERICAL MISTAKE, IT

WAS A SCRIVENER'S ERROR WHICH THE TRIAL COURT HAD THE INHERENT AUTHORITY TO CORRECT.

>> WELL, IF THE STATE HAD FOUND THIS, WHAT WAS THE MECHANISM AVAILABLE FOR THE STATE TO HAVE THIS CORRECTED?

>> THE STATE COULD HAVE FILED A MOTION UNDER 3800B, THE STATE CAN FILE A MOTION UNDER THAT RULE TO CORRECT SCRIVENER'S ERRORS.

HOWEVER, IT'S A VERY LIMITED TIME FRAME IF THE STATE HAD NOTICED IT.

OBVIOUSLY, IN THIS CASE THE STATE DIDN'T CATCH THE ERROR, AND NOBODY CAUGHT IT FOR A WHILE.

>> IN THE A PART, THERE ISN'T A PROVISION THERE FOR CORRECTIONS WHEN THERE ARE AFFIRMATIVE ALLEGATIONS BASED UPON THE RECORD?

>> YES, THERE IS, FOR PRISON CREDIT.

AND I GUESS JAIL CREDIT AS WELL.

>> WAS THAT AVAILABLE THEN TO THE STATE UNDER A?

>> I BELIEVE THE STATE COULD HAVE DONE THAT UNDER A. FOR THE PRISON CREDIT.

BUT HERE IT WASN'T NET BECAUSE THE TRIAL COURT HAS THE INHERENT AUTHORITY TO CORRECT ITS OWN ORDERS.

>> WELL, WHAT I'M STRUGGLING WITH IS IN THE A THE AUTHORITY IS AVAILABLE TO THE STATE TO BRING A MOTION, AND THEN THE TRIAL COURT UPON THE MOTION CAN MAKE A RULING AND MAKE THAT CORRECTION.

BUT WHERE DO WE FIND THE INHERENT AUTHORITY OF THE TRIAL COURT TO SUA SPONTE DO THAT?

>> IT COMES ESSENTIALLY FROM THE COMMON LAW.

EVERY COURT HAS INHERENT POWERS TO DO ALL THINGS REASONABLY NECESSARY FOR THE ADMINISTRATION OF JUSTICE, AND AS FAR BACK AS 1927 THIS COURT HAS HELD THAT CLERICAL ERRORS CAN BE CORRECTED

IN A COURT'S DOCUMENT.
AND THAT'S WHAT THIS WAS.
IT WAS SIMPLY A CLERICAL
MISTAKE, IT WAS A SCRIVENER'S
ERROR THAT THE TRIAL COURT WAS
SIMPLY AMENDING TO REFLECT THE
CORRECT SENTENCING IN THE
SENTENCING DOCUMENT.

>> COUNSEL, WHAT IF-- GO AHEAD,
JUSTICE.

>> WHEN YOU SPEAK OF THIS
INHERENT AUTHORITY BY THE COURT,
IS THERE A TIME LIMIT ON THAT
INHERENT AUTHORITY?

>> THERE IS NOT.

THERE IS NO TIME LIMIT.

A COURT HAS THE AVAILABILITY
TO-- ANYTIME.

>> SO A DEFENDANT HAS ONE WITH
YEAR UNDER THE RULES TO BRING UP
THE FACT THAT THE COURT MAY HAVE
MISSED ANY AMOUNT OF JAIL
CREDIT, BUT UNDER YOUR PROPOSED
OR YOUR VIEW, THE COURT ITSELF
COULD REDUCE JAIL CREDIT
FOREVER.

A FOREVER TIME LIMIT TO DO THAT.

>> ESSENTIALLY, YES.

AND THE REASON IS BECAUSE, ONE,
A TRIAL COURT ALWAYS HAS THE
REASON TO CORRECT ITS OWN
DOCUMENT.

AND IN THIS CASE IN TERMS OF
SENTENCING, THE DEFENDANT IS
ENTITLED TO THE JAIL CREDIT FOR
THE TIME HE ACTUALLY SPENT IN
JAIL.

HE IS SIMPLY NOT ENTITLED TO
CREDIT FOR TIME HE DIDN'T SPEND
IN JAIL.

AND IN THAT SENSE, I THINK THE
TRIAL COURT HAS THE ABILITY AT
ANY TIME TO CORRECT THIS TYPE OF
SCRIVENER'S ERROR--

>> BUT THE POINT, I THINK YOU
REALLY DIDN'T GET THE THRUST OF
THE QUESTION.

OR MAYBE I MISUNDERSTOOD.

[LAUGHTER]

WHY SHOULD THE, WHY SHOULD THE
STATE GIVE FOREVER TO FIND THIS
AND GET IT FIXED WHEN THE
DEFENDANT HAS THE DOOR CLOSE
AFTER A YEAR?

I DON'T UNDERSTAND IN ANY UNIVERSE IN WHICH THAT IS EQUITABLE.
IT MAY BE THE LAW, BUT I JUST-- WHY WOULD THAT BE POSSIBLY FAIR?
>> I, I DON'T-- WELL, TO THAT, I WOULD KNOW THAT NOT EVERYTHING IS NECESSARILY FAIR.
AND IN THIS CASE I WOULD SAY THAT, AGAIN, HE'S JUST NOT ENTITLED TO ADDITIONAL JAIL CREDIT.
IF THE--
>> BUT BY THE SAME VIRTUE, THE STATE'S NOT ENTITLED TO HAVE HIM SERVE TIME THAT HE'S ALREADY SERVED.
>> CORRECT.
>> AFTER A YEAR THAT SHIP HAS SAILED.
>> THE COURT-- I'M SORRY, GO AHEAD.
>> I'M DONE.
>> IF THE COURT GETS AN UNTIMELY FILING FROM THE DEFENDANT, COULD IT SAY I'M INVOKING MY INHERENT AUTHORITY TO CORRECT THIS MISTAKE--
>> YES, IF IT WAS A CLERICAL MISTAKE, I THINK IT COULD. AND ALSO TO ADDRESS JUSTICE CANADY'S CONCERNS, IF THE COURT IS CONCERNED ABOUT SUCH A THING, IT COULD ALWAYS AMEND THE RULES TO INCLUDE A TIME LIMIT FOR THIS KIND OF CLARIFICATION AS WELL. I WOULD THEN LIKE TO TURN TO THE ISSUE OF DOUBLE JEOPARDY--
>> BEFORE YOU DO THOUGH, I HAVE A QUESTION THAT--
[LAUGHTER]
I'VE BEEN TRYING TO ASK. THERE'S, A LOT SEEMS TO HINGE UPON WHETHER THE NATURE OF THE MISTAKE IS CLERICAL. YOU KEEP SAYING THAT THERE IS A CLERICAL ERROR, A SCRIVENER'S ERROR.
WHAT IF WE DISAGREE WITH YOU ABOUT THAT?
WHAT IF WE INSTEAD THE CONCLUDE THAT A SCRIVENER'S ERROR WOULD HAVE BEEN, FOR EXAMPLE, THAT THE COURT PRONOUNCED THE CORRECT

NUMBER OF JAIL CREDIT, BUT THE ORDER REDUCED TO WRITING AN ERRONEOUS NUMBER, AN INVERSION OR CHANGE OF NUMBER?

THAT SOUNDS TO ME LIKE A SCRIVENER'S ERROR.

WHAT IF WE DISAGREE WITH YOU AND SAY THIS IS NOT A SCRIVENER'S ERROR, THIS IS A SUBSTANTIVE ERROR OF CALCULATION ON THE PART OF THE COURT?

DO YOU STILL BELIEVE THAT THE COURT RETAINS INHERENT AUTHORITY TO CORRECT SUBSTANTIVE ERRORS IN ITS ORDER SUCH THAT IF THE COURT USED THE WRONG MANDATORY MINIMUM OR CALCULATED INCORRECTLY THE LOWEST PERMISSIBLE SENTENCE OR USED THE SCORE SHEET INCORRECTLY, THOSE TOO WOULD CONSTANTLY AND FOREVER BE AMENDABLE BY THE COURT?

IS THAT THE STATE'S POSITION?

>> I THINK WHAT IT COMES DOWN TO IS WHETHER THE TRIAL COURT USES DISCRETION IN COMING UP WITH WHAT THE SENTENCE IS BEING IMPOSED.

IF THE TRIAL COURT IS USING ITS DISCRETION OF COMING UP WITH VARIOUS CALCULATIONS, WE'LL CALL THEM, THEN, NO, THEIR NOT SCRIVENER'S ERRORS.

IN THIS CASE, HOWEVER, IT WAS THE CLERK WHO-- AND IT DOESN'T MATTER EVEN IF IT WASN'T A CALCULATION, BUT SHE JUST READ THE WRONG NUMBER INTO THE RECORD BY READING A WRONG FILE OR JUST SIMPLY MISSPOKE.

AND IN THAT SENSE, I THINK IT IS A CLERICAL MISTAKE.

AS TO OTHER ERRORS, I THINK IT COMES DOWN TO JUST HOW MUCH DISCRETION THE TRIAL COURT USED IN COMING TO THOSE DECISIONS.

TURNING TO DOUBLE JEOPARDY--

>> COULD I FOLLOW UP ON THAT THOUGH FOR A SECOND?

SO IF IT'S NOT A SCRIVENER'S ERROR, THEN THAT TAKES 3.800B OFF THE TABLE AS AN OPTION.

>> YES.

>> FOR 3.800A TO BE AVAILABLE,

IT WOULD HAVE TO BE--

[INAUDIBLE]

SO WHICH-- I KNOW THAT THAT'S
SORT OF A COMPLICATED THING, BUT
I DON'T KNOW THAT THIS WOULD
QUALIFY FOR THAT.

SO WHAT IS, WHAT IS-- IF IT'S
NOT A SCRIVENER'S ERROR, THEN
HOW IS IT CORRECTABLE, IF AT
ALL?

OTHER THAN THROUGH THIS INHERENT
AUTHORITY?

>> IF IT'S NOT A SCRIVENER'S
ERROR, BECAUSE THE COURT USED
THE-- I DON'T KNOW THAT IT IS
CORRECTABLE.

I THINK, BUT IN THAT SENSE,
ESPECIALLY WHEN IT COMES TO JAIL
CREDIT, THE JAIL CREDIT IS THE
JAIL CREDIT.

IT IS WHAT IT IS.

IT'S NOT PART OF THE SENTENCE.
IT'S AN ACKNOWLEDGMENT THAT THE
DEFENDANT HAS ALREADY SPENT A
PART OF THAT SENTENCE IN
DETENTION PRIOR TO A SENTENCING
HEARING.

AND SO IN THAT SENSE WHEN THE
TRIAL COURT ISN'T USING
DISCRETION OR IT ISN'T PART OF A
PLEA AGREEMENT THAT WAS AGREED
TO BY ALL THE PARTIES, THEN WHEN
THE TRIAL COURT ITSELF ISN'T
MAGICALLY COMING UP WITH THIS
NUMBER, IT'S JUST A NUMBER BEING
READ FROM A FILE, I THINK IN
THAT SENSE THAT MAKES IT A
SCRIVENER'S ERROR AND COULD BE
CORRECTED THROUGH THE COURT'S
INHERENT AUTHORITY TO CORRECT
ITS OWN ORDERS.

TURNING TO DOUBLE JEOPARDY, THE
REDUCTION IN JAIL CREDIT DOES
NOT INCREASE THE SENTENCE
BECAUSE, AGAIN, THE JAIL
CREDIT'S NOT THE SENTENCE, THE
SENTENCE IS THE SENTENCE.

AND IF THE DEFENDANT IS
SENTENCED TO FIVE YEARS AND THEN
SOME OF HIS ERRONEOUS JAIL
CREDIT IS TAKEN AWAY, HE'S NEVER
GOING TO SERVE MORE THAN FIVE
YEARS.

IN FACT, IT JUST MAKES IT SO

THAT HE WILL SERVE THE FULL FIVE YEARS.

THE CONFLICT CASES THAT THE FIFTH HAS CERTIFIED CONFLICT WITH OUT OF FIRST AND SECOND DON'T REALLY EXPLAIN WHY A RESCISSION OF JAIL CREDIT--

>> WAIT A MINUTE.

>>-- OTHER THAN--

>> I MEAN, IF THE DEFENDANT IS SENTENCED TO FIVE YEARS IN PRISON, THAT MEANS HE'S GOT TO DO 60 MONTHS IN PRISON.

AND PRIOR TO THAT SENTENCE OF 60 MONTHS IN PRISON HE HAS SERVED, SAY, 90 DAYS IN THE COUNTY JAIL AWAITING TRIAL OR WHATEVER.

AND YOU TAKE THOSE 90 DAYS AWAY FROM HIM, HE'S DOING FIVE YEARS AND 90 DAYS.

SO--

>> ABSOLUTELY.

>> WELL, I MEAN, SO, I MEAN, SO IT DOES MAKE A DIFFERENCE.

>> YES, IT ABSOLUTELY DOES MAKE A DIFFERENCE.

AND, OBVIOUSLY, YOU CAN NEVER TAKE AWAY THE CREDIT THAT THE DEFENDANT IS ENTITLED TO HAVE BY THE TIME HE ACTUALLY SPENT IN JAIL.

WHAT WE'RE TALKING ABOUT IS TAKING AWAY AN OVERREPORTING OF THE JAIL CREDIT.

TO GIVE HIM ADDITIONAL CREDIT FOR TIME THAT HE NEVER SPENT IN PRISON FROM JAIL.

SO IN THAT CASE, THAT'S WHY IT'S NOT INCREASING THE SENTENCE.

AND THE OPINION IN GALENA IS A WELL-REASONED, LOGICAL OPINION THAT EXPLAINS WHY IT DOESN'T VIOLATE DOUBLE JEOPARDY.

AND THE FIRST REASON IS THAT, AS WE TALKED ABOUT, IT'S NOT A DECISION THAT HAS COME FROM FROM JUDICIAL DECISION MAKING.

IT'S NOT IN THIS TYPE OF SCENARIO WHERE A JUDGE HAS USED HIS DISCRETION OR PART OF A PLEA AGREEMENT WHERE THE PARTIES ALL UNDERSTOOD AND IT WAS JUST PART OF THE PLEA.

IT'S JUST A NUMBER THAT WAS

RECITED BY THE CLERK AND, IN THIS CASE, ADDED INCORRECTLY. THE SECOND REASON IS IT'S NOT A GAME WHERE ONE FALSE MOVE CREATES IMMUNITY FOR THE PETITIONER.

THE PETITIONER IS NOT ENTITLED TO A GET OUT OF JAIL EARLY CARD SIMPLY BECAUSE SOMEBODY MADE A MISTAKE OR SAID THE WRONG NUMBER.

>> COUNSEL, CAN I ASK YOU A QUESTION ON THAT THOUGH? WHERE DO WE GO TO ANSWER THE QUESTION OF WHETHER THE SENTENCE IS THE FIVE YEARS OR WHETHER THE SENTENCE IS WHATEVER THE NUMBER, WHATEVER, YOU KNOW, FIVE YEARS INCLUDING THE CALCULATION OF THE THE TIME?

>> I THINK THAT, I DON'T KNOW WHAT AUTHORITY NECESSARILY THAT WE WOULD TURN TO FOR THAT OTHER THAN TO SAY THAT, AS YOU NOTED, THE JAIL CREDIT IS IN THE OTHER PROVISIONS DOCUMENT.

AND I AGREE THAT JAIL CREDIT UNDER, YOU KNOW, THE STATUTE, JAIL CREDIT MUST BE GIVEN.

THE DEFENDANT IS ENTITLED--

>> WHEN THE STATUTE SAYS THAT THE CREDIT SHALL BE PROVIDED FOR IN THE SENTENCE, WHAT DOES THAT MEAN?

>> I THINK IT'S JUST-- I BELIEVE DEFENDANT IS ENTITLED TO RECEIVE THE CREDIT FOR THE TIME HE HAS ALREADY SPENT IN JAIL, WHICH IS THE JAIL CREDIT. BUT IT'S NOT NECESSARILY PART OF THE SENTENCE.

IN THE SENSE THAT IT'S, IN THE SENSE THAT WHEN THE TRIAL JUDGE IS GIVING A FIVE-YEAR SENTENCE, HE IS INTENDING FOR THE DEFENDANT TO SPEND FIVE YEARS IN PRISON WITH THE ADDITION OF THE TIME PRIOR TO THE SENTENCING HEARING AND THE TIME AFTER THE SENTENCING HEARING TO CREATE THAT FIVE-YEAR SENTENCE.

IF THE DEFENDANT IS GIVEN TWO MONTHS' JAIL CREDIT PLUS, AND A FIVE-YEAR SENTENCE, HE'S GOING

TO SPEND LESS THAN FIVE YEARS.
AND THAT IS, THAT'S THE ISSUE.
IT IS NOT, I MEAN, IT IS PART OF
THE SENTENCE, BUT IT'S NOT THE
SENTENCE.

THE SENTENCE IS FIVE YEARS.
JAIL CREDIT'S JUST THE
ACKNOWLEDGMENT DEFENDANT HAS
ALREADY SPENT PART OF THAT FIVE
YEARS IN DETENTION PRIOR TO THE
SENTENCING HEARING.

GOING TO THE LEGITIMATE
EXPECTATIONS OF FINALITY.
AT THE SENTENCING HEARING, THE
DEFENDANT ONLY HAS THE
EXPECTATION THAT HE WILL SERVE
HIS FULL SENTENCE AND BE
ENTITLED TO THE JAIL CREDIT THAT
HE IS ENTITLED TO.

HE IS NOT ENTITLED TO A
WINDFALL.

AND THE U.S. SUPREME COURT HAS
SAID THAT DOUBLE JEOPARDY
DOESN'T REQUIRE THAT THE
SENTENCE BE GIVEN A DEGREE OF
FINALITY THAT PREVENTS IT LATER
INCREASE.

IT'S DIFFERENT FROM AN
ACQUITTAL.

THE STATE CAN APPEAL ON-- AN
ILLEGAL SENTENCE, AND THE
SENTENCE CAN BE INCREASED.
IT DOESN'T NECESSARILY MEAN A
VIOLATION OF DOUBLE JEOPARDY.
AND THE LAST REASON IS THAT A
JUDICIAL RULE THAT SHORTENS THE
LEGAL SENTENCE-- EXTRACTING A
FULL AND FAIR PUNISHMENT IS
UNFAIR TO SOCIETY THAT THIS
DEFENDANT RECEIVES ADDITIONAL
CREDIT FOR TIME HE DIDN'T
ACTUALLY SERVE.

IF THERE ARE NO QUESTIONS--
>> I ACTUALLY HAVE A QUESTION.
>> YES.

>> GO BACK TO THE SCRIVENER'S
ERROR.

IF WE AGREED WITH YOU THAT THIS
WAS A SCRIVENER'S ERROR, AM I
CORRECT IN UNDERSTANDING THAT IT
WOULD HAVE BEEN CORRECTABLE
UNDER 3800B?

>> YES.
>> OKAY.

SO THAT WOULD HAVE EITHER BEEN A MOTION BEFORE APPEAL OR A MOTION PENDING APPEAL?

>> CORRECT.

>> OKAY.

WHY WOULDN'T WE CONCLUDE FROM THAT, THAT THAT'S WHEN THE STATE NEEDS TO DO IT?

ESSENTIALLY, ALTHOUGH THERE MAY BE SOME KIND OF INHERENT AUTHORITY THAT WE TALKED ABOUT IN THE CASE LAW, THAT WE CHANNELED THAT, THAT WE'VE LIMITED THAT HERE AND SAY, OKAY, YOU GOT A SCRIVENER'S ERROR, YOU NEED TO FIX IT NOW?

YOU NEED TO FIX IT OUT NOW.

I MEAN, THE WHOLE ISSUE HERE IS, I MEAN, CANDIDLY, IS BECAUSE THE STATE WAS SNOOZING ON THIS, RIGHT?

>> YES.

I SUPPOSE.

>> THE STATE WAS SNOOZING.

AND THERE IS A CARDINAL PRINCIPLE OF OUR LAW THAT I'VE MENTIONED BEFORE, AND THAT IS THE PRINCIPLE THAT YOU SNOOZE, YOU LOSE IN A LOT OF CASES.

AND I, I JUST WONDER WHY-- AND THERE ARE EXCEPTIONS TO THAT PRINCIPLE, WE KNOW.

BUT I JUST, I WONDER WHY THAT MIGHT NOT BE A PRINCIPLE THAT SHOULD BE APPLIED HERE.

I'M SURE YOU WILL DISAGREE, SO I WANT TO GIVE YOU AN OPPORTUNITY TO EXPLAIN TO ME WHY I'M WRONG ABOUT THAT.

>> YES, YOUR HONOR.

AND I THINK IT'S BECAUSE IT'S THE DUTY OF THE STATE AND THE COURT ITSELF, IT'S THE DUTY OF THE COURT TO SENTENCE THE PETITIONER AND THE DEFENDANT. AND, YES, THE STATE COULD HAVE FILED THIS MOTION.

IT DIDN'T.

BUT THAT DOESN'T NECESSARILY MATTER SIMPLY BECAUSE IT WAS A CLERICAL ERROR, IT WAS A SCRIVENER'S ERROR, AND THE COURT HAS THE AUTHORITY TO CORRECT ITS ERRORS ANYTIME.

THE STATE HAS LESS AUTHORITY TO DO THINGS AT ANY TIME.

THERE AREN'T NECESSARILY TIME LIMITS ON THE COURT TO CORRECT ITS OWN ORDERS AND DOCUMENTS.

>> SO I JUST WANT TO UNDERSTAND THE INHERENT AUTHORITY THING BECAUSE, OBVIOUSLY, IF YOU CHARACTERIZE THIS AS NOT BEING SOMETHING THAT THE STATE OR THE DEFENDANT IS ASKING FOR BUT THAT THE COURT IS JUST KIND OF DOING ON ITS OWN, WHAT ARE THE TYPES OF ERRORS-- BECAUSE, OBVIOUSLY, THAT'S A WAY TO KIND OF BE AN END RUN AROUND ALL KINDS OF PROCEDURAL RULES IF THE COURT JUST SAYS I'M DOING THIS MYSELF UNDER MY INHERENT AUTHORITY. SO WHAT ARE THE TYPES OF THINGS THAT A COURT CAN CORRECT UNDER ITS INHERENT AUTHORITY?

DOES IT HAVE TO BE, QUOTE-UNQUOTE, CLERICAL, OR CAN THEY CORRECT SUBSTANTIVE ERRORS UNDER THEIR OWN AUTHORITY?

>> NO, I DON'T BELIEVE THEY CAN CORRECT SUBSTANTIVE ERRORS. IT'S ONLY THE VERY NARROW TYPE OF ERROR AND INHERENT AUTHORITY, OBVIOUSLY, YOU DON'T HAVE THE AUTHORITY TO DO SOMETHING THAT'S OTHERWISE BARRED BY ANOTHER RULE OR STATUTE OR OTHER AREAS OBVIOUSLY LAW.

THERE'S ONLY THE INHERENT AUTHORITY OR TO DO ALL THINGS REASONABLE AND NECESSARY FOR THE ADMINISTRATION OF JUSTICE WITHIN THE SCOPE OF YOUR JURISDICTION AND NOT IN CONFLICT WITH VALID EXISTING LAWS.

AND SO IN THIS CASE, IT'S A VERY NARROW AREA--

>> SO THEN THAT BRINGS YOU BACK TO THE CHIEF'S QUESTION OF TO THE EXTENT THAT THE RULE, YOU KNOW, COVERS HOW THIS IS SUPPOSED TO BE FIXED, THEN ARGUABLY IT WOULD CONFLICT WITH THAT.

>> EXCUSE ME?

ARGUABLY--

>> IF THE RULE ADDRESSES THE

SCENARIO THAT WE'RE DEALING WITH AND TELLS THE WORLD HOW IT'S SUPPOSED TO BE FIXED, THEN IT SEEMS LIKE IT WOULD BE AN ABUSE OF THE INHERENT AUTHORITY TO DO SOMETHING THAT THE RULE ACTUALLY SPECIFICALLY TELLS YOU HOW TO DO.

>> I THINK THAT'S ONE WAY THAT IT COULD BE FIXED.

BUT I THINK WHEN IT COMES TO THESE KINDS OF ERRORS OR OTHER ERRORS, IT'S NOT NECESSARILY JUST-- IT COULD BE A TYPO IN THE DOCUMENT THAT THE TRIAL COURT SEES AND IT WANTS TO AMEND.

VARIOUS CLERICAL, SCRIVENER'S ERRORS LIKE THOSE I THINK THE TRIAL COURT HAS THE AUTHORITY TO DO ON ITS OWN WHERE UNDER 3800B I BELIEVE IT REQUIRES A MOTION. SO THE TRIAL COURT HAS THE AUTHORITY AND OPPORTUNITY TO CORRECT ITS OWN ERRORS ON ITS OWN WITHOUT A MOTION FROM EITHER PARTY.

THANK YOU.

AND WE ASK THAT YOU AFFIRM.

>> THANK YOU, COUNSEL.

WE'LL NOW HEAR REBUTTAL ARGUMENTS.

>> FROM THE PETITIONER, JUST-- I DON'T BELIEVE WE HAVE ANYTHING FURTHER TO ADD, BUT I'M WILLING TO ADDRESS ANY QUESTIONS THAT THE JUSTICES MAY HAVE.

>> COUNSEL, DO YOU THINK THE COURT HAS INHERENT AUTHORITY TO AWARD JAIL TIME AFTER THE ONE-YEAR DEADLINE?

>> NO, JUDGE.

>> IF THE DEFENDANT WROTE TO THE JUDGE TWO YEARS LATER AND SAID, HEY, YOU GOT THIS WRONG, I ACTUALLY GOT THIS MUCH TIME AND SURE ENOUGH THAT'S CONFIRMED, CAN THE JUDGE AWARD THAT TWO TO THREE YEARS LATER?

>> NO.

AND I THINK THAT WOULD ACTUALLY JUST BE FUNDAMENTALLY UNFAIR FOR A JUDGE TO CHANGE JUST SO MANY YEARS, SO MUCH TIME AFTERWARDS.

I JUST--

>> EVEN IF IT BENEFITS THE
DEFENDANT?

>> WELL, IF IT BENEFITS THE
DEFENDANT, I JUST BELIEVE THAT
THERE SHOULD-- DEFENDANT SHOULD
RECEIVE THE BENEFIT.

BUT IF IT'S AT THE STATE'S
EXPENSE, I JUST DON'T THINK THAT
IT'S SOMETHING THE DEFENDANT
SHOULD SUFFER.

I JUST IMAGINE A SITUATION IN
WHICH THE DEFENDANT WOULD BE,
YOU KNOW, SO MUCH TIME CLOSE OR
MAYBE THE DEFENDANT ACTUALLY
COMPLETED THE SENTENCE AND, OH,
HEY, WE ACTUALLY MADE AN ERROR
WITH THE CREDIT, WE'RE ACTUALLY
GOING TO PUT YOU BACK INTO
PRISON FOR JUST A LITTLE BIT
MORE, FOR THREE DAYS MORE, FOR A
HUNDRED DAYS MORE, I JUST DON'T
THINK THAT WOULD BE FAIR UNDER
THE CIRCUMSTANCES.

>> WOULDN'T AMENDING THE RULE TO
REQUIRE, TO PROVIDE THE SAME
ONE-YEAR LIMITATION TO THE STATE
TO CORRECT A SENTENCE LIKE THIS,
WOULDN'T THAT FIX THIS?

I MEAN, WHAT'S GOOD FOR THE
GOOSE SEEMS TO BE GOOD FOR THE
GANDER.

IF THE DEFENDANT HAS ONE YEAR,
THE STATE SHOULD HAVE ONE YEAR
TO CORRECT IT INSTEAD OF YOUR
CLIENT, LET'S SAY HE'S FINISHED
HIS SENTENCE AND AS HE'S WALKING
OUT SOMEBODY SAYS, NOT SO FAST,
HE STILL OWES US 40 DAYS WE JUST
FIGURED OUT FROM 20 YEARS AGO.

>> I THINK, I THINK THAT WOULD
BE FAIR.

SOMETHING TO SPECIFICALLY SAY,
YEAH, THE COURT DOES HAVE THE
INHERENT ABILITY TO CORRECT THE
ERROR, BUT UNDER CERTAIN
CIRCUMSTANCES, EXCEEDING THE
TIME WOULD ABUSE THAT AUTHORITY.
NOT SURE I HAVE ANYTHING FURTHER
TO ADD, BUT ARE THERE ANY OTHER
QUESTIONS THAT I CAN ADDRESS?

>> ALL RIGHT, COUNSEL, WE THANK
YOU.

WE THANK OPPOSING COUNSEL AS

WELL FOR YOUR ARGUMENTS IN THIS
CASE TODAY.

THE COURT IS NOW GOING TO TAKE A
RECESS OF ABOUT TEN MINUTES.

AND THEN WE'LL MOVE ON TO THE
THIRD CASE ON OUR DOCKET.

>> ALL RIGHT.