>> THE COURT NOW TAKES THE CASE
OF DARRYL LEN MORGAN VERSUS DAY.
>> I'M MAUREEN SURBER
ON BEHALF OF
DARRYL LEN MORGAN.
MAUREEN SURBER WAS CONVICTED OF
SECOND DEGREE MURDER AND
SENTENCED TO LIFE WITH
POSSIBILITY OF PAROLE AFTER 25
YEARS.
AFTER THE CASE OF MILLER VERSUS
ALABAMA AND ATWELL DARRYL LEN
MORGAN FOUNDED A MOTION TO
CORRECT LEGAL SENTENCE AT THE
TRIAL COURT.
AND SET IT FOR RESENTENCING.
AND IT EXPLAINED.
AND A SON THIS RULING, DID THE
ORDER GRANTING RECENT --
RESENTENCING.
THE ISSUE IS THE ORDER BRANDING
IT WAS APPEALABLE ORDER, IT WAS
AN INTERLOCUTORY ORDER.
>>
>> IT IS NOT APPEALABLE,
>> LET ME ASK ABOUT THAT, WHERE
DOES DISTRICT COURT DERIVE OR
OBTAIN THIS AUTHORITY TO HEAR
FINAL APPEALS FROM CIRCUIT COURT
DECISIONS?
>> FOR THE STATE APPEALS?
YOUR HONOR?
OR ANYTHING?
THE STATE TO APPEAL --
>> WHAT IS THE SOURCE OF ANY
JURISDICTION FOR THE DISTRICT
COURT?
>> IF THEY ARE IN THE TIME LIMIT
TO APPEAL THEY CAN'T APPEAL.
>> IN THE CONSTITUTION?
>> ABSOLUTELY.
IT WAS A NONFINAL ORDER.
POSTCONVICTION PROCEEDING, IT
WAS NOT FINAL ORDER BECAUSE IT
IS CONTINUATION OF THE ORIGINAL
CASE AS 3800 A AND NOT A
SEPARATE CASE.
IT IS A SEPARATE CASE.
IT IS SEPARATE FROM THE ORIGINAL
PROSECUTION AND SOME OF THAT
AUTHORITY COMES FROM THE COURT'S
OPINION IN TAYLOR AND FRANKLIN
WAS REALLY CLEAR ABOUT IT.

>> I WANT TO RAISE ONE THING.
HOW DO YOU RESPOND TO THE
DISTINCTION BETWEEN AN
AUTHORIZATION AND 3850, TO
VACATE THE SENTENCE AND
AUTHORIZATION NUMBER 3800 A TO
CORRECT A SENTENCE THAT SEEMS TO
RELY, SOMEHOW DIFFERENT.
FOR THE PURPOSES OF QUESTIONS
THAT ARE BEFORE US TODAY.
>> I WOULD SAY THEY ARE NOT
DIFFERENT BECAUSE TO CORRECT A
SENTENCE MOST OF THE TIME, IN
THAT SENSE, 3850, IT IS
DIFFERENT IF YOU'RE IN THE 3800
BE ROLE.
BEFORE AND DURING APPEAL, YOU
CAN RAISE THAT ANY TIME.
THIS IS A VIABLE MOTION 30 YEARS
LATER.
>> IN A PERFECT WORLD IT IS
LEGALLY THE RIGHT THING TO DO.
THE ANSWER THAT CAN APPLY BEYOND
THIS, THE IDIOSYNCRASIES OF IT
AND THE SENTENCE HASN'T BEEN
VACATED BUT NOTHING HAS
HAPPENED.
>> THERE HAS BEEN AN ORDER.
>> TO MAKE A DECISION LATER,
HASN'T VACATED THEM OR CORRECTED
ANYTHING, THE QUINTESSENTIAL
THING THAT COULD BE RECONSIDERED
BY THE COURT.
>> IS SO FINAL IT CAN'T BE
REVISITED.
EVEN IF IT HASN'T CHANGED YET,
CHANGING IT AT ANY POINT.
>> WHEN THE SENTENCE GETS
VACATED, IT MAKES NO SENSE
THEORETICALLY.
>> THAT IS TRUE.
>> THE SENTENCE TOOK PLACE.
WHAT IS IT -- CAN YOU KIND OF
EXPLAIN TO ME WHAT IS IT THAT
HAS BEEN DONE THAT SHOULD
INCLUDE WHAT HAPPENED?
>> THE ORDER GRANTING THE
RESENTENCING, AT THE END OF
JUDICIAL LABOR, THAT WAS THE
FINALITY AND THAT IS HOW YOU
DETERMINE FINALITY, THE TEST AND
THE TEST IS WHEN JUDICIAL LABOR
FINISHED FOR THE MOTION, THE
JUDICIAL LABOR TO RESOLVE THE

MOTION, EVERYTHING THAT MIGHT HAPPEN AS A RESULT OF THE MOTION IN THIS COURT HELD CRIMINAL PROCEEDINGS, POSTCONVICTION PROCEEDINGS ARE DIFFERENT, AND ORDER THAT IS RESOLVING THE CLAIM AND THE RESENTENCING AS A RESULT OF THE ORDER IS A TOTALLY SEPARATE PROCEEDING.
THE FACT THAT THEY ARE SEPARATE, THE THREAT UTILIZATION THIS COURT, THE FACT THAT THEY ARE SEPARATE BECAUSE COLONEL PROSECUTION AND RESENTENCING IS SEPARATE, AND FINAL INTERLOCUTORY OVER, THE FINAL JUDGMENT, THE ORDER FOR THE POSTCONVICTION PROCEEDINGS WAS THE FINAL JUDGMENT.
IT CAN'T BE REVISITED AGAIN.
EVEN THOUGH THE SENTENCE IS NOT BEEN VACATED, IT IS A FINAL JUDGMENT.
>> I DON'T WANT TO PUT WORDS IN YOUR MOUTH BUT YOU ARE SAYING BY VIRTUE OF THE ORDER IT IS EFFECTIVELY VACATED ALTHOUGH THE MAGIC WORDS WERE NOT USE THAT IT IS VACATED.
IS THAT ACCURATE A DESCRIPTION?
>> THAT IS CORRECT.
>> THAT GETS BACK TO THE QUESTION ABOUT THE TEXTUAL DIFFERENCES BETWEEN 3850 AND 3800, ARGUABLY IF YOU LOOK AT THE TEXT, WHAT THE AUTHORITY IS IS TO CORRECT THE SENTENCING AND THAT HASN'T HAPPENED.
>> THAT IS TRUE BUT IF THE COURTS RULE AN ILLEGAL SENTENCE THE ORDER IS FINAL.
AT THAT POINT THE STATE WOULD HAVE TO WAIT TO APPEAL AFTER THE RESENTENCING.
>> IS THE LOGIC OF 3850 THAT 3850, THE STILL SIDE, THE QUASI-CIVIL QUASICRIMINAL IS ENDED WHEN THE VACATUR HAPPENS IN THE REMEDIAL PART GOES BACK TO THE KIND OF ORIGINAL SIDE AND THIS SEEMS THE LOGIC OF THIS RULING, SEEMS THERE'S AN ARBITRARINESS TO ALL OF THIS BUT IT SEEMS LIKE THE LOGIC OF THIS

RULE IS DIFFERENT.
>> THE LOGIC OF 3800 A VERSUS 3850?
IN SUBSTANCE IT REALLY ISN'T THAT MANY TIMES DEFENDANTS FOLLOW 3800 A AND TREATED AS 3850 AND VICE VERSA, 3850, 38 A, THEY DO ENDS UP OVERLAPPING CLAIMS SOMETIMES WITH 3800 A IS MUCH MORE NARROW, WHETHER THE SENTENCE IS LEGAL OR NOT AND WHEN THIS JUDGE ANDREW THE ORDER HIS SENTENCE WAS ILLEGAL AND HE WAS ENTITLED TO BE RESENTENCED.
>> EVEN TEXTUALLY WHERE THE BULL SAYS THE COURT -- THE RULE SAID THE SENTENCE WAS IMPOSED BY IT, WHICH SUGGESTS THE CONTINUATION OF THE SAME CASE WHEREAS THE LOGIC OF 3850 IS IT IS A PARALLEL PROCEEDING COMPLETELY SEPARATE FROM WHAT HAPPENED BEFORE.
>> I WOULD DISAGREE WITH THAT. THE FACT HE IS ENTITLED TO A NEW SENTENCE THE SENTENCE WOULD BE CHANGING, A SIMILAR RESULT OF 3850.
SOMETIMES.
THE RESULT IS RESENTENCING AND THAT IS THE ORDER TRIGGERS SEPARATE PROCEEDING IS NECESSARY SO THE END OF JUDICIAL LABOR, THAT ORDER, WHEN WE GET TO RESENTENCING THAT IS ANOTHER STORY.
>> THE SORT THAT WERE HERE FOR REVISITED ASIAN OF JUVENILE SENTENCES BASED ON CHANGE IN THE LAW THAT WAS THERE FOR A WHILE. CAN THOSE BE MADE UNDER 3850 ALSO?
>> CAN MISTER MORGAN'S NAME BE MADE UNDER 3850?
YES, I THINK IT COULD.
>> IT IS AN ANOMALOUS THING. IT CAN BE RAISED UNDER 3850 AND THERE WILL BE DIFFERENT CONSEQUENCES WITH RESPECT TO FINALITY AND IF IT IS RAISED UNDER 3800 POTENTIALLY BASED ON THE WAY DIFFERENT THINGS ARE STRUCTURED AND ONE TALKS ABOUT JUDGMENT BEING VACATED.

THE OTHER TALKS ABOUT
CORRECTION.
>> THAT IS ONE OF THE REASONS IT
IS SO DIFFERENT BECAUSE COULD
HAVE FILED UNDER THE OTHER ONE.
>> I ASSUME THERE ARE SOME
CLAIMS LIKE THIS, WHAT I BE
WRONG IN ASSUMING CLAIMS LIKE
THIS WERE FILED UNDER 3850?
>> ABSOLUTELY.
THEY ARE ALL OVER THE MAP ON
THESE AND THE THING IS TREATING
THEM DIFFERENTLY IS ALMOST THE
SAME PROCEDURE AND SUBSTANCE
ONLY 3800 IS MORE STREAMLINED.
MUCH MORE NARROW, IT IS ILLEGAL
OR NOT.
ONE OF THE THINGS IN THE MORGAN
SECOND DCA CASE TEND TO HARP ON
IS THE FACT THAT THE STATE CAN
APPEAL THIS ORDER, BUT--
>> LET ME ASK YOU THIS.
ALSO FOR THIS SORT OF CASE, THIS
SEEMS LIKE AN ODD THING FOR A
SIMPLE CORRECTION.
[LAUGHTER]
BECAUSE--
>> WELL, NO, IT'S NOT--
>> IF WHAT WAS CONTEMPLATED WAS
SOME KIND OF EXTENSIVE HEARING
AND NOT JUST THE SIMPLE
CORRECTION.
3800A IS LIKE, OH, WE CAN LOOK
AT THIS AND SAY, OH, THIS IS
WRONG, IT SHOULD BE THIS.
WHEREAS UNDER THE CIRCUMSTANCES,
THE SORT OF CLAIM HERE IS THAT'S
NOT AT ALL WHAT WOULD HAPPEN,
RIGHT?
>> WELL, THAT'S TRUE.
THE BEGINNING OF THE INITIAL
THING, YES, HE IS, HE DOES HAVE
AN ILLEGAL SENTENCE.
THAT WAS A CLEAR-CUT THING.
SO THAT WAS A CLEAR ANSWER.
AND JUST THE RESULT MEANS THE
RESENTENCING WOULD HAVE TAKEN A
LITTLE BIT OF TIME.
ANY SORT OF RESENTENCING,
UNCONSTITUTIONAL STATUTE, YOU
WOULD HAVE HAD A RESENTENCING.
SO EITHER THE SENTENCE IS
ILLEGAL OR IT ISN'T.
AND THIS SENTENCE WAS ILLEGAL AT

THE TIME.
BUT IT ALSO DOESN'T SEEM FAIR
TO, TO TRY TO DIFFERENTIATE THE
3800A FROM 3850 WHEN REALLY BOTH
POST-CONVICTION PROCEEDINGS.
YOU KNOW, THERE'S A FINALITY TO
THE ORDER.
I ALSO WANTED TO ADDRESS THE
STATE'S CONCLUSION THAT, YOU
KNOW, IF IT'S A FINAL ORDER, IF
THIS COURT AGREES THAT IT'S A
FINAL ORDER, THEN RES JUDICATA
APPLIES.
AND I'M GOING TO DISAGREE WITH
THAT BECAUSE THE CASE OF STATE
V. McBRIDE CITED IN STATE'S
BRIEF ACTUALLY SPECIFICALLY
HOLDS THAT RES JUDICATA IS
TOTALLY INAPPLICABLE TO 3800A
MOTIONS.
SO I WANTED TO BRING THAT UP
BECAUSE THERE IS NO RES JUDICATA
AND, THEREFORE, CAN'T OVERRIDE
BY MANIFEST INJUSTICE ARGUMENT.
AND THEN, AGAIN, NOT LET HIM GET
RESENTENCED.
SO I THOUGHT THAT WAS AN
IMPORTANT THING TO BRING UP.
IF THE COURT DOESN'T HAVE ANY
MORE QUESTIONS, I'M GOING TO
SAVE THE REST FOR REBUTTAL.
>> ALL RIGHT.
>> THANK YOU.
>> VERY GOOD.
THANK YOU, COUNSEL.
COUNSEL FOR THE STATE.
>> MR. CHIEF JUSTICE AND MAY IT
PLEASE THE COURT, I'D LIKE TO
GET STRAIGHT INTO WHY WE THINK
THAT RULE 3800A IS IMPORTANT
RESPECTS FROM THE TRUE
COLLATERAL ATTACK
POST-CONVICTION RULES.
I'D LIKE TO DO SO IN THREE PARTS
WHICH, I THINK, TOUCH ON SOME OF
THE COMMENTS THE JUSTICES HAVE
MADE.
THE FIRST IS THE LEGAL EFFECTS
OF THESE COMPETING RULES, THE
SECOND IS ABOUT THEIR DIFFERENT
PLAIN TEXT, AND THE THIRD IS
THEIR DIFFERENT HISTORICAL
PROFILES.
SO--

>> LET ME-- BEFORE YOU LAUNCH INTO THAT, COUNSEL, LET ME GET BACK TO THE POINT THAT WE'VE JUST DWELLED ON A LITTLE BIT.
DO YOU DISAGREE THAT THE SORT OF CLAIM THAT WAS MADE HERE BY MR. MORGAN UNDER 3800A COULD HAVE, IN FACT, BEEN MADE UNDER 3850?
>> I THINK THAT IS CORRECT, YOUR HONOR.
>> YOU THINK IT COULD HAVE BEEN?
>> IF IT WERE, IF IT WERE TIMELY FILED WITHIN THE TWO-YEAR TIME BAR, YES, I THINK IT COULD HAVE BEEN RAISED IN 3850.
THE REASON WE DON'T THINK THAT'S DISPOSITIVE IS BECAUSE THE AVAILABILITY OF MULTIPLE REMEDIES DOESN'T CHANGE THE UNDERLYING CHARACTER OF AN ORDER GRANTING RESENTENCING UNDER 3800A.
NOW, THIS DEFENDANT COULD HAVE BROUGHT HIS CLAIM UNDER 3850, BUT THE CHOICE OF VEHICLE IS NEVERTHELESS SIGNIFICANT.
>> SO WOULD THAT BE THE STATE'S POSITION THAT IN AN IDENTICAL SITUATION UNDER, IF IT HAD BEEN BROUGHT UNDER 3850, THE MAGIC WORDS, THE SENTENCE IS VACATED, AND THEN IT WENT OFF AND FLOATED LIKE THIS ONE HAS, IN THAT CASE THAT'S OVER, THAT'S DONE WITH? WHEREAS IN THIS CASE BECAUSE THEY CHOSE 3800A AS THE RULE, THE ROUTE, THE PROCEDURAL ROUTE THAT WE'RE GOING TO FOLLOW, THEN IT'S STILL UP FOR GRABS.
>> YES.
AND I'D LIKE TO EXPLAIN WHY WE THINK THAT THAT IS AND WHY THAT IS FAIR AND THAT'S A FAIR READING OF 3800A.
SO JACKSON AND TAYLOR, THEY'VE ESTABLISHED THAT 3850 AND 51 ARE TRUE POST-CONVICTION COLLATERAL ATTACKS.
SO WHAT YOU'VE SAID IN THOSE CASES IS THAT THOSE RULES CREATE A VERY SPECIFIC SORT OF INDEPENDENT PROCEEDING SEPARATE FROM THE UNDERLYING CASE.

AND SO IN A SENSE, WHEN YOU ARE DONE WITH THE JUDICIAL LABOR AS TO THOSE POST-CONVICTION MOTIONS; THAT IS, WHEN YOU HAVE VACATED THE SENTENCE, YOU'RE DONE WITH THE POST-CONVICTION CLAIM.
YOU'RE DONE WITH THAT PROCEEDING.
YOU HAVE A FINAL ORDER.
AND THEN YOU RETURN TO THE UNDERLYING CRIMINAL CASE FOR RESENTENCING.
3800A, AND I THINK THIS GOES TO JUSTICE MUNIZ'S POINT, 3800A OPERATES DIFFERENTLY.
IT DOESN'T AUTHORIZE A TRIAL JUDGE TO VACATE A SENTENCE.
IT AUTHORIZES THE CORRECTION OF A SENTENCE.
AND THAT'S SIGNIFICANT IN TWO WAYS.
THE FIRST THING IS THAT CORRECTION IS DIFFERENT FROM VACATUR BECAUSE IT'S A TWO-STEP PROCESS.
THE FIRST COMPONENT IS CORRECTION THAT THE JUDGE HAS TO JUSTIFY LEGAL ERROR, AND THAT'S HAPPENED HERE, AND THERE'S AN ORDER BASED ON ATWELL.
BUT THAT IS NOT THE END OF THE LABOR THAT IS INVOLVED IN CORRECTION.
CORRECTION, WE THINK, ENTAILS A SECONDARY PROCESS OF IMPOSING A CORRECTIVE, LAWFUL SENTENCE.
THAT'S SIGNIFICANT BECAUSE UNDER THE PETITIONER'S THEORY, WE KNOW THAT YOU HAVE A FINAL ORDER IF THE LABOR AS TO THE ALLEGED POST-CONVICTION CLAIM IS DONE.
BUT WE ARE NOT DONE WITH THAT MOTION BECAUSE THERE HAS BEEN NO CORRECTION YET.
WE DON'T HAVE THAT YET.
ALL WE HAVE IS AN ORDER GRANTING RESENTENCING.
SO WHAT WE ARE SAYING, FIRST AND FOREMOST, I THINK IF YOU ACCEPTED THIS, YOU WOULD GO NO FURTHER IN THIS CASE.
IF YOU AGREE WITH US THAT CORRECTION REQUIRES A

RESENTENCING BY ITS NATURE, THE IMPOSITION OF A CORRECTIVE SENTENCE, THEN WE ARE NOT DONE WITH THE LABOR AS TO THIS MOTION WHETHER YOU WANT TO CALL IT POST-CONVICTION OR WHETHER OR NOT YOU WANT TO AGREE WITH US AND CALL IT SIMPLY PART OF THE UNDERLYING SENTENCING PROCEEDING.
THE SECOND THING THAT I THINK THAT DISTINCTION BETWEEN VACATING AND CORRECTING TELLS US IS THAT WHEN YOU ARE IMPOSING SENTENCE, WHAT YOU ARE DOING IS QUINTESSENTIALLY A CRIMINAL TASK FOR A CRIMINAL JUDGE.
VACATING A SENTENCE, THAT HISTORICALLY HAS BEEN DONE IN CIVIL HABEAS, THAT'S A LITTLE BIT DIFFERENT, BUT WHEN YOU ARE ACTUALLY IMPOSING A SENTENCE INCLUDING CORRECTING A SENTENCE, THAT HAS TO BE CRIMINAL IN NATURE AND, THEREFORE, MUST BE A PART OF THE UNDERLYING CRIMINAL CASE.
I THINK THAT MAKES SENSE OF WHY IN STRUCTURING THE RULES OF CRIMINAL PROCEDURE, THIS COURT HOUSED 3800A IN THE PART DEALING WITH THE SENTENCE, NOT IN POST-CONVICTION RELIEF.
3800A IS INHERENTLY PART OF THE CRIMINAL CASE AND PART OF THE SENTENCING PROCESS.
THAT'S AN IMPORTANT DISTINCTION.
>> LET ME ASK YOU, DO YOU KNOW-- I DON'T KNOW THE ANSWER TO THIS.
I SHOULD, MAYBE, BUT I DON'T.
DO YOU KNOW IN-- IF ANY OF OUR CASES WERE REFERRED TO RESENTENCINGS UNDER 3800A AS DE NOVO PROCEEDINGS?
>> DON'T KNOW THAT YOU'VE SPECIFICALLY ADDRESSED THAT.
THEY ARE DE NOVO IN THE SENSE THAT THE CASES CITED IN TAYLOR WERE DE NOVO MEANING THE JUDGE IS NOT BOUND BY PRIOR CONSIDERATIONS, THE DEFENDANT HAS THE OPPORTUNITY TO OFFER NEW EVIDENCE, NEW ARGUMENT.

IT'S DE NOVO IN THAT SENSE.
IT'S NOT DE NOVO IN THE SENSE IT
IS SOMEHOW A SEPARATE PROCEEDING
ENTIRELY FROM THE 3800A MOTION.
SO I WOULD DRAW THAT
DISTINCTION.
AND, AGAIN, THAT FOLLOWS FROM
THE FACT THAT YOU ARE CORRECTING
AND YOU ARE NOT DONE CORRECTING
SIMPLY BECAUSE A JUDGE HAS
GRANTED AN ORDER OF
RESENTENCING.
NOW, THE SECOND POINT I'D LIKE
TO TALK ABOUT IS THE DIFFERENT
PLAIN TEXT OF THESE TWO RULES.
I'VE ALREADY TALKED ABOUT WHAT
WE THINK THE INTENTIONAL
DECISIONS TO USE DIFFERENT
VERBS, CORRECTING VERSUS
VACATING.
BUT THERE ARE OTHER SIGNIFICANT
PLAIN TEXT DISTINCTIONS BETWEEN
3800A AND THE TRUE COLLATERAL
ATTACK RULES, 3850 AND 51.
THE FIRST AND MOST OBVIOUS IS
WHAT THIS COURT ITSELF STARTED
WITH IN JACKSON WHICH IS THAT
3850 AND 51 BY THEIR TERMS TELL
A COURT HOW TO TREAT THEM WITH
RESPECT TO FINALITY.
THEY CONTAIN A SPECIAL TEXTUAL
DIRECTIVE SAYING THAT THEY ARE
FINAL ORDERS FOR PURPOSES OF
APPEAL.
AND I THINK IT'S SIGNIFICANT
THAT RULE 3800A CONTAINS NO SUCH
DIRECTIVE.
I ALSO THINK IT'S SIGNIFICANT,
AND JACKSON DID AS WELL, THAT
THOSE COLLATERAL ATTACK RULES
CONTAIN REHEARING PROVISIONS.
THEY BOTH ALLOW FOR REHEARING
WITHIN 15 DAYS.
WE KNOW THAT REHEARING IS USED
TO REHEAR FINAL ORDERS OR FINAL
JUDGMENTS.
SO THAT WAS A STRONG TEXTUAL
INDICATION THOSE ARE TRUE
POST-CONVICTION COLLATERAL
ATTACK, THEY'RE FINAL JUDGMENTS,
AND SO REHEARING WAS
APPROPRIATE.
IT DOESN'T CONTAIN ANY SORT OF
TEXTUAL DIRECTIVE ABOUT

HEARINGS, AND THAT MAKES SENSE WITH WHAT WE'VE SAID.
THE LAST POINT TO DISTINGUISH 380A FROM THE TRUE POST-CONVICTION RULES IS ONE OF HISTORY, AND SO I HOPE YOU'LL BEAR WITH ME FOR A MOMENT.
IF YOU WERE TO GO BACK TO THE 1960s, THERE WERE TWO WAYS TO CHALLENGE A CRIMINAL SENTENCE.
THERE WAS, ON THE ONE HAND, THE WRIT OF HABEAS CORPUS WHICH HAD ALWAYS BEEN UNDERSTOOD TO BE AN INDEPENDENT CIVIL PROCEEDING.
HABEAS CORPUS IN A COUNTERINTUITIVE WAY, YOU'D ACTUALLY FILE IN THE CIVIL COURT, NOT IN FRONT OF THE SAME JUDGE WHO PRESIDED OVER THE CRIMINAL CASE AND IMPOSED SENTENCE.
BUT IT WAS ALWAYS UNDERSTOOD TO BE A TRULY SEPARATE PROCEEDING.
YOU HAD THE UNDERLYING CRIMINAL CONVICTION IN THIS CASE, THEN HABEAS GOT ITS OWN CASE NUMBER, AND YOU DID A TRUE COLLATERAL ATTACK.
THAT WAS THE FIRST WAY TO CHALLENGE A SENTENCE.
THE SECOND WAY WAS ACTUALLY BY STATUTE 921.24, AND IT WAS WORDED ALMOST VERBATIM THE SAME AS MODERN 3800A.
IT SAID A JUDGE COULD CORRECT AT ANY TIME A SENTENCE IMPOSED BY IT, IMPOSED BY IT.
SO THE CORRECTOR OF SENTENCE UNDER THAT STATUTE, YOU WOULD FILE YOUR MOTION TO CORRECT IN THE CRIMINAL CASE IN FRONT THE JUDGE WHO IMPOSED THE SENTENCE.
IN 921, THE CHAPTER WHERE THAT STATUTE WAS HOUSED, DEALT WITH JUDGMENT AND SENTENCE.
SO THESE ARE TWO DISTINCT WAYS BACK BEFORE THE ADOPTION OF THE CRIMINAL RULES TO CHALLENGE A SENTENCE.
THIS COURT, I THINK, POINTED OUT IN JACKSON THAT, LOOK, 3850 AND 51 ARE TRUE POST-CONVICTION RULES IN THE MOLD OF 3850-- IN THE MOLD OF HABEAS.

HABEAS BECAME THOSE RULES, SO IN A SENSE, IT IS FAIR TO CONTINUE TREATING THEM AS TRUE INDEPENDENT PROCEEDINGS THAT ARE SEPARATE FROM THE UNDERLYING CRIMINAL CASE.
WHEN YOU ARE DONE VACATING IN THE POST-CONVICTION ATTACK, YOU REVERT BACK TO THE UNDERLYING CRIMINAL CASE.
SO, OF COURSE, THE HABEAS WAS ALWAYS A FINAL JUDGMENT IN THE SENSE THAT YOU HAVE HELD IN TAYLOR AND JACKSON THAT THE GRANT OF 3850 RELIEF IS A FINAL JUDGMENT.
NOW, THE REASON I'M TELLING YOU IS THIS BECAUSE 3800A DOES NOT COME FROM HABEAS.
HISTORICALLY, IT COMES FROM 921.24.
THAT'S IN THE COMMITTEE NOTES.
IT USES THE IDENTICAL LANGUAGE, AND WE, THUS, THINK THAT IT IS FAIR TO TREAT IT IN THE SAME WAY.
AND UNDERSTOOD IN THAT WAY, YOU CAN UNDERSTAND WHY THESE OPERATE DIFFERENTLY, WHY ONE TALKS IN TERMS OF CORRECTING VERSUS VACATING, WHY ONE IS HOUSED IN THE PARKER RULES DEALING WITH THE SERVICE AND NOT IN THE PARKER RULES DEALING WITH POST-CONVICTION RELIEF.
SO FOR ALL THOSE REASONS, WE THINK AT LEAST THE CONCLUSION THAT ORDERS GRANTING RESENTENCING UNDER 3800A ARE NOT ENTERED IN THEIR OWN PROCEEDING, THEY'RE ENTERED IN THE UNDERLYING CASE, AND THEY ARE NOT SUBJECT TO--
>> COUNSEL, SO UNDER 3800A IF A RESENTENCING IS ORDERED BASED ON ILLEGALITY OF THE SENTENCE AND THEN THE RESENTENCING TAKES PLACE, IS THAT, IS THAT THE ORDER-- THE ORDER OF RESENTENCING, IS THAT UP FOR GRABS IN THE, IN THE FINAL APPEAL OF THE NEW SENTENCE?
>> WE HAVEN'T STAKED OUT A POSITION AS TO THAT.

I THINK-- SO, CERTAINLY, IF YOU WERE TO HOLD AGAINST US, IT WOULD BE UP FOR GRABS FOR A NUMBER OF REASONS.
I THINK WE WOULD HAVE A REASONABLE ARGUMENT THAT IT COULD BE APPEALED UNDER 9.140C1.
BUT, CERTAINLY, IF YOU WERE TO RULE AGAINST US, YOU WOULD BE SAYING THAT GRANT OF RESENTENCING WAS FINAL.
THAT'S WHY IT CAN'T BE RECONSIDERED.
AND WE THEN THINK THAT SECTION 924.066 SUB 2 WOULD MOST LIKELY APPLY.
IT APPLIES TO GRANT OF POST-CONVICTION RELIEF, AND WE WOULD ARGUE IT WOULD BE IMMEDIATELY REPEALABLE.
WE'VE ASKED YOU WHETHER YOU RULE FOR US OR AGAINST US TO CONSIDER A RULES CHANGE THAT WOULD SPECIFICALLY NUMERATE IN 9.140C, I BELIEVE, J, 3800A GRANTS ORE SENTENCING.
THAT IS ANOTHER FUNDAMENTAL DISTINCTION THE BETWEEN 3850, 51 AND 3800A.
WE ARE NOT GIVEN SPECIFICALLY THE-- BY RULE 9.140.
SO THE ONLY WAY CURRENTLY IN THE MOMENT OF THE RESENTENCING IS GRANTED THAT WE COULD DEAL WITH THAT PROBLEM BEFORE THE COST AND EXPENSE OF RESENTENCING IS IF WE HAD SOME RIGHT ON THE PART OF THE JUDGE TO RECONSIDER WITH INHERENT AUTHORITY.
SO I THINK THAT'S A SIGNIFICANT POINT THAT SHOULDN'T BE LOST, AND THAT UNDERSCORES WHY REALLY THERE'S NO UNFAIRNESS HERE AND, CERTAINLY, JUST TO MY OPPOSING COUNSEL'S POINT, THESE DO LOOK IN TERMS OF THE END RESULTS LIKE 3850.
BUT THEY FUNCTION IN IMPORTANT AND DIFFERENT RESPECTS IN THAT WE CAN'T TAKE AN IMMEDIATE REPEAL.
AND SO I THINK IT IS ONLY FAIR THAT THE JUDGE BE ABLE TO RECONSIDER AS IN THIS CASE WHEN

IT TURNS OUT THE SENTENCE HAS
BEEN LAWFUL ALL ALONG, AND WE
KNOW THAT BASED ON--
[INAUDIBLE]
FROM THIS COURT.
EVEN TO THE EXTENT THE COURT
DISAGREES WITH OUR VIEW OF 3800A
GRANT OF RESENTENCING AS BEING
NON-FINAL, WE STILL THINK THAT
WE SHOULD PREVAIL HERE, AND
THAT'S BECAUSE OF THE MANIFEST
INJUSTICE EXCEPTION TO RES
JUDICATA.
AT MOST, IF YOU WERE TO HOLD
AGAINST US AND CONCLUDE THAT
THIS IS A FINAL ORDER, THEN YOU
WOULD HAVE A FINAL ORDER IN A
POST-CONVICTION PROCEEDING-- I
THINK THAT WOULD BE YOUR
HOLDING, THAT'S THE WAY TO GET
TO THAT HOLDING-- AND THEN THE
QUESTION WOULD BE IS THAT RES
JUDICATA WHEN YOU RETURN TO THE
UNDERLYING CRIMINAL CASE FOR
RESENTENCING.
WE THINK THE ANSWER IS, NO, FOR
THE REASONS WE'VE HATE OUT--
>>-- WE'VE LAID OUT--
>> I GUESS MAYBE I'M MISSING
SOMETHING HERE, BUT IT SEEMS TO
ME ONCE YOU GET INTO THAT DE
NOVO PROCEEDING, YOU'RE JUST
UNDER WHATEVER CURRENT LAW IS.
CURRENT LAW WOULD APPLY TO THAT
PARTICULAR SENTENCE.
THAT PARTICULAR OFFENSE.
AND SO ALL THIS ABOUT MANIFEST
INJUSTICE, I MEAN, IT SAYS HERE
IN THE DE NOVO PROCEEDING YOU'RE
STUCK WITH WHATEVER CURRENT LAW
IS, ISN'T THAT THAT TRUE?
>> I THINK THAT WOULD BE
CORRECT.
WHAT I'M SAYING, YOUR HONOR--
THIS HEARKENS BACK TO THE POINT
EARLIER, AND MY OPPONENT ON THE
OTHER SIDE WAS CORRECT, THE NOTE
THERE HAS BEEN NO VACANTURE
HERE, THE REASON YOU COULD NOT
REINSTATE THE VACATED SENTENCE
IN OKAFOR AND JACKSON WAS
BECAUSE THERE HAD BEEN A
VACANTURE.
YOU CANNOT RETROACTIVELY

REINSTATE A SENTENCE THAT
DOESN'T EXIST BECAUSE THAT
DEFENDANT IS PUT BACK IN THE
POSITION OF A DEFENDANT WHO'S
NEVER HAD A SENTENCE OR NEVER
HAD A CONVICTION.
THE SAME'S NOT TRUE HERE.
EFFECTIVELY, WHAT WE ARE ASKING
THIS COURT TO DO IS NOT
REINSTATE SOMETHING THAT HAD
BEEN VACATED, BUT SIMPLY TO
LEAVE IN PLACE SOMETHING THAT
WAS STILL THERE.
AND THE ONLY BARRIER TO THAT,
IF, IN FACT, YOU RULE EXISTENCE
US ON OUR FIRST ARGUMENT, WOULD
BE RES JUDICATA.
EFFECTIVELY, LOOK, THERE WAS A
FINAL ORDER GRANTING
RESENTENCING, NOW THE JUDGE MUST
GO THROUGH WITH THE RESENTENCING
EVEN THOUGH THERE'S A SENTENCE
IN PLACE.
SO WE THINK THAT THAT POINT IS
SIGNIFICANT.
I'LL POINT YOU TO JUDGE LAGOA'S
DECISION FOR THE THIRD DISTRICT
IN ADAMS WHERE SHE MADE THIS
POINT, THAT MERELY GRANTING
RESENTENCING UNDER 3800A DOES
NOT HAVE THE EFFECT OF VACATING
A SENTENCE.
THAT SENTENCE IS STILL IN.
UNDER OUR RES JUDICATA MANIFEST
INJUSTICE ARGUMENTS, WE'RE JUST
ASKING THE COURT TO LEAVE THAT
IN PLACE BECAUSE IT IS NO LONGER
BOUND BASED ON THIS INTERVENING
CHANGE IN LAW TO GRANT A
RESENTENCE.
I'D LIKE TO ADDRESS ANY OTHER
QUESTIONS THE COURT MAY HAVE,
OTHERWISE I'M HAPPY TO CEDE THE
FLOOR TO OPPOSING COUNSEL.
THANK YOU.
>> ALL RIGHT.
THANK YOU THE, COUNSEL.
REBUTTAL.
>> YES, YOUR HONORS.
I DON'T REALLY HAVE MUCH TO ADD
TO REBUTTAL, EXCEPT I DO-- I
HATE TO ADMIT IT, BUT I DO AGREE
IF IT GOES BACK TO DE NOVO
SENTENCING, THEY ARE SUBJECT TO

THE SAME LAW AS THE CORRECT LAW
WHICH BASICALLY PUTS MY CLIENT
IN THE SAME SORT OF POSITION.
BUT IT DOESN'T MEAN YOU CAN SKIP
THE STEP OF SAYING HE DOESN'T
HAVE A FINAL ORDER.
I THINK HE'D HAVE TO GO ALL THE
WAY THROUGH THE PROCESS.
IT'S A FINAL ORDER, HE GETS
RESENTENCED, AND SO BE IT IF WE
GETS LIFE WITH POSSIBILITY OF
PAROLE AFTER 25 YEARS EVEN
THOUGH I DON'T LIKE THAT.
I DISAGREE WITH THAT.
OTHER THAN THAT, I DIDN'T REALLY
HAVE ANY OTHER POINTS TO
ADDRESS.
SO IF THE COURT HAS NO
QUESTIONS, I'M GOING TO
RESPECTFULLY ASK THAT YOU QUASH
MORGAN AND FIND THAT THE ORDER
IS A FINAL ORDER.
THANK YOU.
>> ALL RIGHT.
WE THANK YOU BOTH FOR YOUR
ARGUMENTS.
THAT IS THE LAST CASE ON OUR
DOCKET TODAY.
AND THE LAST CASE OF THIS WEEK.
THIS SESSION OF COURT IS NOW