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R.J.L. v. State of Florida

PLEASE RISE.

APPRECIATE COUNSEL BEING READY. SO WITH THAT R.J.L. VERSUS STATE OF FLORIDA. COUNSEL MAY PROCEED.

MY NAME IS MIKE DREWS, THE ATTORNEY FOR THE PETITION NEAR THIS CASE, R.J.L. AND I HAVE REQUESTED FOUR MINUTES FOR REBUTTAL. THE MATERIAL FACTS IN THIS CASE ARE AS FOLLOWS AND THEY DO BACK SOMETIME. IN 1953, R.J.L. WAS CONVICTED OF KIDNAPPING WITHOUT RANSOM. IN 1959, GOVERN LEROY COLLINS IN THE PARDON DONE BOARD ACTS UNDER THE 1887 FLORIDA CONSTITUTION GRANTED A FULL AND COMPLETE PARDON TO R.J.L.. IN 1999, R.J.L. APPLIED TO THE FDLE FOR A CERTIFICATE OF ELIGIBILITY FOR EX-PUNTIONMENT. THAT IS 40 YEARS LATER. THE FDLE DENIED THE APPLICATION. THE FDLE'S PRIOR PRACTICE HAD BEEN TO ISSUE CERTIFICATES OF ELIGIBILITY FOR EX-PUNTIONMENT WHEN THE APPLICANT HAD RECEIVED A PARDON FROM THE CONVICTION. SHORTLY BEFORE R.J.L.'S APPLICATION, THE FDLE CHANGED ITS PRACTICE BASED ON DIRECTIONS FROM GOVERNOR BUSH AND THE CLEM MONIES BOARD. R.J.L. THEN FILED --.

WAS THAT IN ANY WAY CONNECTED WITH THE CHANGE IN THE STATUTES?

NO, YOUR HONOR. IN FACT, THE FIRST DISTRICT IN RANDALL DID MAKE IT CLEAR THAT THERE REALLY WAS NO SUB IS THE STANDIVE CHANGE IN THE STATUTE FOR THE PURPOSES OF THE ISSUE BOTH IN RANDALL AND IN THIS CASE YOUR HONOR. R.J.L. THEN FILED THE PETITION REQUESTING VARIOUS FORMS OF RELIEF, INCLUDING EX-PUNTIONMENT WRIGHT OF MANDAMUS AND DECLARATORY RELIEF. I'D LIKE TO POINT OUT IN RANDALL IT WAS SIMPLY LIMITED TO A WRIT OF PETITION MANDAMUS.

TRIAL COURT ISSUED FINAL ORDER DISMISSING PETITION, FIRST DISTRICT AFFIRMS BASED ON RANDALL AND NOTING CONFLICT WITH THE DOE V STATE.

HOW ABOUT FRAMING THE ISSUE FOR US IN A WAY THAT YOU WOULD SUGGEST THAT WE USE AS A FORMULA FOR DECIDING THE CASE AND THAT IS, FRAME IT IN TERMS OF ARE WE TALKING ABOUT STATUTORY CONSTRUCTION HERE? THAT IS, OF THE EXPUNGEMENT STATUTE? ARE WE GOING BEYOND THAT? BUT I WOULD SUGGEST PERHAPS THAT YOU START WITH STATUTORY CONSTRUCTION. WHETHER YOU, YOU AGREE -- OR STATE YOUR POSITION AS TO WHETHER OR NOT THE LEGISLATURE IS OPERATED IN A FIELD OF AUTHORITY HERE WITH REFERENCE TO REGULATING THE EXPUNGEMENT OF CRIMINAL RECORDS. OBVIOUSLY SPECIFICALLY IN CASES WHERE THERE HAS BEEN A PARDON GRANTED. GIVE US YOUR -- THE WAY THAT YOU WOULD SUGGEST THAT WE GO ABOUT ANALYZING THIS ISSUE.

I'M GOING TO TAKE YOUR LEAD, YOUR HONOR AND START WITH THE STATUTORY CONSTRUCTION. AND THAT WAS TO BE MY SECOND POINT BUT LET ME GET RIGHT TO IT BECAUSE I ALSO BELIEVE THAT IN THIS CASE, IT'S QUITE CLEAR FROM THE PRIOR CASES OF THIS COURT, SPECIFICALLY THOOEL V STATE EVEN SAND LAND WHICH IS PREVIOUSLY RELIED ON BY THE RESPONDENTS IN THIS CASE, THAT THE LEGISLATURE NEVER INCLUDED, NEVER EXPRESSLY INCLUDED PARDON CONVICTIONS IN THE EXPUNGEMENT STATUTE.

AND THERE ARE OTHER STATUTES, ARE THERE NOT, WHERE THE SPECIFIC REFERENCE IS,

SPECIFICALLY HABITUAL FELONY OFFENDER, THE DEFENDANT HAS NOT RECEIVED A PARDON FOR ANY FELONS.

YES, YOUR HONOR.

THEY -- THEY KNOW WHAT A PARDON IS AND USED IT IN OTHER STATUTES.

THEY HAVE YOUR HONOR. THERE IS SOME QUESTIONS IN VARIOUS DECISIONS FROM THIS COURT AND FROM SOME OF THE DISTRICT COURTS OF APPEAL AS TO THE EXTENT TO WHICH THE LEGISLATURE CAN DELVE INTO THAT EXECUTIVE PROCESS. HOWEVER, THE LEGISLATURE HAS POINTED OUT BOTH IN THE STATUTE THAT YOU MENTIONED, AND IN ANOTHER STATUTE, I JUST HAPPENED TO RUN IT THROUGH LEXUS, JUST THE WORD PARDON THROUGH THE FLORIDA STATUTES. AND THERE ARE QUITE A FEW, YES, YOUR HONOR, AND IN FACT IN THE HABITUAL OFFENDER LOGS, AT THE TIME OF FIELD V STATE, THERE WAS NO REFERENCE.

I GUESS MY CONCERN, AND IT IS REALLY, AREN'T WE DEALING WITH STATUTORY CONSTRUCTION? YOU'RE SEEKING EXPUNGEMENT UNDER SUBDIVISION E. WHICH SAYS HAS NOT BEEN GUILTY OF OR ADJUDICATED DELINQUENT OF, WHICH IS AN ACCEPTED WAY WHEN SOMEBODY PLEEDZ NOLO AND ADJUDICATION IS WITHHELD, THAT'S COURT PROCESS. AND THERE IS NO MENTION OF A PARDON, HOW DO WE GET TO SOME STRAINED IDEA THAT WE SHOULD TURN A PARDON INTO, THAT THEY WERE NEVER ADJUDICATED GUILTY OF THE OFFENSE?

WELL, YOUR HONOR, IF YOU GET -- OBVIOUSLY THE GOAL OF THIS COURT IS TO FIND THE INTENT OF THE LEGISLATURE. AND IN THIS CASE, THE LEGISLATURE FAILED TO EXPRESSLY INCLUDE PARDON CONVICTIONS. THAT SAME ISSUE WITH RESPECT TO THE HABITUAL OFFENDER LAW WAS ADDRESSED BY THIS COURT IN FIELDS V STATE. AND IN FACT, IN THAT CASE, THE FAILURE -- THIS COURT HELD THAT THE FAILURE OF THE LEGISLATURE TO EXPRESSLY INCLUDE PARDONED CONVICTIONS IN THE HABITUAL OFFENDER LAW PREVENTED THE STATE FROM COUNTING A PARDON CONVICTION AGAINST THAT DEFENDANT. THIS COURT REFUSED TO COUNT IT BECAUSE, AND THESE ARE IN QUOTES HERE, THE FACTS OF A PRIOR CONVICTION WAS GIVEN AN ABSOLUTE INCONCLUSIVE EFFECT. MUCH THE SAME WAY AS THE FDLE NOW WANTS TO SUPPORT ITS POSITION THATS, UNLESS YOU GET THAT CERTIFICATE OF ELIGIBILITY, YOU CAN'T GET INTO COURT EVEN IF YOU HAVE HAD A PARDONED CONVICTION.

I GUESS YOU JUST SAID WE ARE REALLY LOOKING TO THE LEGISLATIVE INTENT. THIS ISN'T A CONSTITUTIONAL ISSUE THAT THIS, THAT YOUR CLIENT HAS A CONSTITUTIONAL RIGHT TO EXPUNGEMENT OF HIS PRIOR CRIMINAL HISTORY. SO, WITH THAT IN MIND, I JUST -- I GUESS AGAIN, HOW DO YOU CONVERT? IT IS UNDER E. THAT HAS NOT BEEN ADJUDICATED GUILTY OF, INTO MEANING THAT THAT IS, COVERS THE SITUATION WHERE THERE IS A PARDON.

AND YOUR HONOR, IN THIS PARTICULAR CASE, YOU HAVE TO LOOK TO OF COURSE THE LEGAL EFFECT OF A PARDON, WHICH IS ANOTHER ISSUE I CAN ADDRESS. BUT I DO BELIEVE IT BECOMES A CONSTITUTIONAL ISSUE BASED UPON THE ACTIONS OF GOVERNOR BUSH IN THE CLEMENCY BOARD IN CHANGING THIS FDLE PRACTICE AND ALLOWING THE FDLE TO IN ESSENCE LEGISLATE --

IF THAT WAS THE, YOU KNOW, THE ISSUE, I THINK I PROBABLY WOULD AGREE WITH. MAYBE I'LL END UP AGREEING WITH YOU ANYWAY. BUT WE HAVE TO RESOLVE THIS INTENT OF THE LEGISLATURE ASPECT FIRST. SO I THINK, OR I, JUST LIKE JUSTICE PARIENTE HAVE THIS FURTHER QUESTION. LEGISLATURE DIDN'T SAY IN TALKING ABOUT THIS AFTER ADJUDICATION OR WHATEVER, OR THAT THEY HAVE HAD AN ADJUDICATION, BUT THEY HAVE RECEIVED A PARDON. THAT IS, THAT THERE IS NOT CLEARLY IN THIS CASE, THERE HAS BEEN AN ADJUDICATION.

YES, YOUR HONOR.

THEN THERE HAS BEEN A PARDON. SO THE LEGISLATURE HAS SEEMINGLY SAID, YOU'RE NOT ELIGIBLE IF THERE HAS BEEN AN ADJUDICATION. AND THEY DIDN'T GO ON TO SAY THEN, AND OF COURSE THIS IS WHAT WE ARE ALL STRUGGLING WITH. I DON'T KNOW THAT FDLE, IF THE LEGISLATURE DID SAY OR BEEN ADJUDICATED AND RECEIVED A PARDON, FDLE WOULDN'T HAVE ANY AUTHORITY THEN TO HAVE A POLICY ONE TIME AND A POLICY ANOTHER WHERE IT SAID WELL WE DON'T CARE WHAT THE LEGISLATURE -- AND I'M SURE FDLE WOULDN'T DO THAT ANYWAY. BUT GO BACK AND COME TO GRIPS AGAIN WITH THE LEGISLATIVE INTENT HERE.

YES, YOUR HONOR.

AND THE ABSENCE OF, AFTER MAKING AN EXCEPTION, AND THAT YOU CAN'T GET THEM EXPUNGED. OBVIOUSLY IT SEEMS INITIALLY IF YOU CAN SORT OF COMFORTABLE WITH THAT, THEY'RE SAYING IF YOU WERE ADJUDICATED, WE ARE NOT GOING TO LET YOU EXPUNGE THESE RECORDS.

YOUR HONOR.,

THAT'S SORT OF AN EASY ONE TO START WITH. AND WHERE DO WE GO FROM THERE?

YOUR HONOR, FIRST OF ALL, I THINK THAT CAN ANSWER THE ENTIRE QUESTION BECAUSE IN *FIELDS V STATE*, AGAIN THE HABITUAL OFFENDER LAW AT THE TIME DID NOT ADDRESS PARDONED CONVICTIONS. IT JUST SAID YOU COUNT CONVICTIONS. THAT WAS THE WHOLE ISSUE, AT THAT TIME, AT THE TIME OF *FIELDS V STATE*, NO MENTION OF PARDONED CONVICTIONS AT ALL, WHETHER THEY'D BE COUNTED OR NOT. THIS COURT FOUND THAT THE FAILURE TO EXPRESSLY INCLUDE PARDONED CONVICTIONS MEANT THAT THE LEGISLATURE INTENDED NOT TO COUNT PARDONED CONVICTIONS FOR PURPOSES OF THE HABITUAL OFFENDER LAW. IN *SANDLAND*, YOUR HONOR, THIS COURT CONSIDERED THE APPLICATION OF A STATE EMPLOYMENT STATUTE FOR A LAW ENFORCEMENT OFFICER, WHICH CONCLUSIVELY, AGAIN THE SAME THING AS IN THIS EXPUNGEMENT STATUTE, BECAUSE YOU CAN'T GET INTO CONSIDERATE WITHOUT THE CERTIFICATE. IT CONCLUSIVELY PROHIBITED AN APPLICANT CONVICTED OF A CRIME FROM BECOMING A LAW ENFORCEMENT OFFICER. THIS ABSOLUTE AND CONCLUSIVE PROHIBITION WAS TO BE APPLIED AGAINST AN APPLICANT WHO WAS PARDONED FROM THE CONVICTION. SO WE HAVE A STATUTE JUST LIKE WE HAVE HERE, JUST LIKE WE HAD IN *FIELDS V STATE*, CONCLUSIVELY PROHIBITING. IF YOU HAVE BEEN CONVICTED, YOU CAN'T BECOME A LAW ENFORCEMENT OFFICER. THIS COURT FOUND A CONSTRUCTION OF THE STATUTE THAT WOULD ABSOLUTELY -- THAT IF IT WAS CONSTRUED TO ABSOLUTELY AND CONCLUSIVELY BAR THE APPLICANT FROM CONSIDERATION, IT WOULD IMPINGE ON THE PARDON ONING POWER EXERCISED BY THE EXECUTIVE BRANCH. THERE IS THE CONSTITUTIONAL SEPARATION OF POWERS ISSUE. THERE IS THE, THE IMPAIRMENT OF THE PARDON ISSUED FORTY YEARS BEFORE BY *GOVERN LEROY COLLINS*, WHICH THIS COURT ON MANY OCCASIONS INCLUDING *WADE V SINGLETARY* AND *SULLIVAN V AS SKI* HAS STATED THAT ITS FINAL AND IRRELEVANT REVOCABLE IF IT'S FULL AND COMPLETE PARDON. THIS WAS FINAL AND IRRELEVANT REVOCABLE, YOUR HONOR.

I HAVEN'T READ THE *FIELDS* CASE. IT'S BEEN CITED. AND 1956 CASE. BUT IN THERE THE EFFECT OF HAVING A PARDON, A CONVICTION FOR WHICH THE DEFENDANT WAS PARDONED, COUNT AS A CONVICTION FOR THE HABIT HABITUAL FELONY STATUTE, WOULD HAVE THE EFFECT OF INCREASING THAT DEFENDANT'S PUBLIC PUNISHMENT FOR A PRIOR CRIME. I GUESS THAT IS WHERE I GET BACK TO THE QUESTION, IT APPEARS THE COURT WAS CONCERNED ABOUT SOME CONSTITUTIONAL IMPLICATIONS OF DOUBLE JEOPARDY. AND OR EXPO FACTO THERE. IN THIS -- WHETHER YOU AGREE OR NOT, THAT WOULD BE MY TAKE. THAT'S WHEN I GO BACK TO HERE WE ARE TALKING ABOUT THAT BECAUSE OF THE PARDON, THERE CAN'T BE ANY ADDITIONAL PUNISHMENT OR LEGAL DISABILITY. BUT THE FACTS THAT THE RECORD OF THE CONVICTION IS IN THE FDLE HISTORY, WHAT IS THAT -- ARE YOU ASSERTING A CONSTITUTIONAL RIGHT THAT THAT

IS A DETRIMENT, A LEGAL PUNISHMENT THAT HE IS ENTITLED UNDER THE CONSTITUTION NOT TO HAVE?

YOUR HONOR, FIRST OF ALL, I BELIEVE THAT FIELDS V STATE, IT WAS A STATUTORY CONSTRUCTION RESULT. AND ARGUMENT OR DECISION, IF YOU WILL. IN FIELDS V STATE, THEY EXPRESSLY STATED, IN VIEW OF THE FORCE AND EFFECT OF A PARDON UNDER THE COMMON LAW, AND THEREFORE UNDER THE LAW OF THIS STATE, KNOWLEDGE AND UNDERSTANDING OF WHICH MUST BE IMPUTED TO THE LEGISLATURE AT THE TIME THE STATUTE WAS ENACTED, WE MUST CONSTRUE THEIR FAILURE TO EXPRESSLY INCLUDE PARDONED CONVICTIONS IN THE ACT, AS EVIDENCING AND INTENTION THAT THEY SHOULD NOT BE COUNTED. AND THEN YOUR HONOR, IF YOU ALSO LOOK AT DOE V STATE. DOE V STATE WAS DECIDED IN 1992. IT WAS DECIDED UNDER A PRIOR EXPUNGEMENT FORM OF STATUTE THAT WAS IN 1989, I BELIEVE. THAT STATUTE WAS AMENDED. IT WAS AMENDED AFTER DOE V STATE. IT WAS AMENDED AFTER, AGAIN AFTER THE FDLE BEGAN THIS PRACTICE --.

AN ANSWER TO THE QUESTION OF WHAT IS THE -- ARE YOU ASSERTING A CONSTITUTIONAL PROBLEM WITH THE FACT THAT THERE ISN'T EXPUNGEMENT? IN OTHER WORDS, IS THERE ADDITIONAL LEGAL PUNISHMENT THAT YOUR CLIENT IS BEING EXPOSED TO THAT IS TO ME, THAT COULD BE THE SAME OR QUALITATIVELY DIFFERENT THAN AN ENHANCED PUNISHMENT UNDER THIS HABITUAL OFFENDER STATUTE?

THE ANSWER TO THAT QUESTION IS NO, I WOULD NOT CONSIDER IT TO BE A CONSTITUTIONAL DEPRIVATION IN A CRIMINAL TYPE OF SETTING. WHAT I'M REFERRING TO IS THE FACT THAT A PARDON WHEN GRANTED IS A CONTRACT AND MUCH MORE THAN A CONTRACT. IT IS A GRANT BY THE GOVERN AND THE PARDON BOARD IN THIS CASE, WHICH DOES CERTAIN THINGS. AND AT THE TIME OF THE GRANT, WHICH IS THE RELEVANT TIME PERIOD TO DETERMINE THE FULL EFFECT OF THIS PARDON, THE LAW IN FLORIDA WAS EXTREMELY CLEAR AND GOVERN COLLINS, THE PARDON BOARD AND CERTAINLY THEIR LEGAL ADVISERS HAD CERTAIN CASE AUTHORITY TO DETERMINE WHAT IS THE EFFECT OF THIS PARDON? AND THAT LAW IS VERY CLEAR.

YOU DON'T WANT US TO DECIDE BECAUSE GOVERN COLLINS THAT GRANTED THE PARDON VERSUS GOVERNOR BUSH, THERE IS GOING TO BE A DIFFERENT LEGAL EFFECT?

YOUR HONOR, I WOULD SAY THAT THERE COULD VERY WELL BE IF THIS COURT FOUND THAT THE LAW HAD CHANGED IN SOME WAY AS TO THE EFFECT OF A FULL AND COMPLETE PARDON FROM 1959 WHEN THIS -- WHEN GOVERN COLLINS GRANTED THE PARDON TO MY CLIENT, OR IN 1999 OR IN 2003, WHEN LATER PARDONS WERE ISSUED. AND IN FACT, ONE OF THE KEY POINTS THAT I HAVE TRIED TO RAISE IN MY BRIEFS IS THAT GOVERNOR BUSH CANNOT IMPAIR OR DIMINISH THE EFFECT OF THE PARDON GRANTED BY A PRIOR GOVERN. AND -- GOVERNOR. YOUR HONOR, AGAIN THE STATUTE WAS AMENDED AFTER DOE. IT WAS AMENDED AFTER THE FDLE BEGAN ITS PRACTICE PURSUANT TO DOE IN ISSUING CERTIFICATES OF ELIGIBILITY FOR EXPUNGEMENT WHEN THERE WAS A PARDONED CONVICTION. NEVER ANY CHANGE BY THE LEGISLATURE. AND THIS COURT HAS ON A NUMBER OF CASES WHICH I CITED IN THE BRIEFS, FOUND THAT THE LEGISLATURE'S FAILURE TO INCLUDE, OR TO AMEND THE STATUTE AFTER SUCH JUDICIAL CONSTRUCTION ADMINISTRATIVE ACTION, WARRANTS A FINDING THAT THE LEGISLATURE DID NOT INTENT IN THIS CASE TO HAVE PARDONED CONVICTIONS ACT AS A BAR TO A CERTIFICATE OF ELIGIBILITY FOR EXPUNGEMENT.

COULD WE GO BACK TO THE QUESTION, I STILL DON'T THINK WE HAVE AN ANSWER TO AND I THINK IT IS IMPORTANT THAT YOU UNDERSTAND THE QUESTION. AND I THINK THE QUESTION THAT WAS BEING POSED IS THAT THE PARDON WAS IN THE NATURE OF ALLEVIATING OR WIPING OUT IF YOU WILL THE PUNISHMENT OR THE DETRIMENT. AND IS THE MERE, THE MERE FACT OF A CONVICTION EXISTING IN THE RECORD EQUIVALENT TO PUNISHMENT OR A DETRIMENT? -- DETRIMENT. I THINK THAT IS WHERE THE QUESTION WAS GOING THAT YOU REALLY NEED TO

ANSWER. AND I AM NOT SURE THAT YOU HAVE.

I WANT YOU TO RESPOND TO JUSTICE LEWIS'S QUESTIONS. BE AWARE YOU'RE IN YOUR REBUTTAL TIME.

YES, YOUR HONOR.

YOU UNDERSTAND THE QUESTION? IT'S IMPORTANT QUESTION. MAKE SURE WE ARE VERBALIZING IT IT'S THAT PAERD LIMB INTERESTS THE PUNISHMENT OR THE DETRIMENT OR SOMETHING BEING IMPOSED ON THE INDIVIDUAL, WHEREAS A MERE FACT OF A CONVICTION EXISTING IN A RECORD, WHEN YOU SAY I WANT THIS EXPUNGED, ARE YOU SAYING IT'S A CONTINUING PUNISHMENT? CONTINUING DETRIMENT? SO THEREFORE, IT'S PART OF THE PARDON? OR IS THE FACT OF THE CONVICTION JUST SITTING IN THE RECORD, SOMEWHAT DIFFERENT IN THE QUALITY TATETIVELY FROM PUNISHMENT?

YOUR HONOR, THE CONTINUATION IS A DEPRIVATION. CLEARLY IT IS A DEPRIVATION OF A RIGHT THAT'S BEEN GRANTED BY THE LEGISLATURE. AND I REALIZE RIGHT IN THE STATUTE IT TALKS IN TERMS OF, IT DOESN'T GRANT RIGHTS. BUT, HIS FAILURE, HIS INABILITY TO NOW SEEK THE EXPUNGEMENT OF HIS RECORDS, THAT IS A DEPRIVATION OF HIS RIGHTS. IT'S A DEPRIVATION OF THE RIGHTS GRANTED TO HIM IN THAT PARDON. AGAIN, IT'S A CONTRACT AND MUCH MORE. AND IN THIS CASE, TRUE, IT'S AN EXPUNGEMENT IS MORE IN THE NATURE OF A CIVIL TYPE OF REMEDY AND ACTION. BUT IT IS A DEPRIVATION AND HE IS PREVENTED UNJUSTLY FROM BEING ABLE TO PURSUE THAT. YOUR HONOR, I REALIZE I AM IN MY REBUTTAL SGLIM BEFORE YOU SIT DOWN, AT THE TIME THAT GOVERNOR COLLINS PARDONED YOUR CLIENT, WAS THERE ANY KIND OF EXPUNGEMENT STATUTE?

NOT AT ALL YOUR HONOR.

SO IF THERE IS NO EXPUNGEMENT STATUTE AT THE TIME, HOW CAN WE DETERMINE THAT GOVERNOR COLLINS' INTENT IN PARDONING YOUR CLIENT INCLUDED THE EXPUNGEMENT OF HIS CRIMINAL RECORD?

YES, YOUR HONOR. AND YOU KNOW, OBVIOUSLY ANY TIME SOMETHING NEW COMES IN, WE ARE NOT, YOU KNOW, PEOPLE THAT CAN ANTICIPATE THINGS THAT MAY COME ABOUT IN THE FUTURE. BUT WHAT WE CAN DO IS WE CAN LOOK AT THE LAW IN EFFECT AT THE TIME THE PARDON WAS GRANTED. AND AT THAT TIME, WHICH IS THE APPLICABLE TIME, THIS IS THE SETTLED LAW OF THIS STATE. WHEN THE PARDON IS FULL IT REMITS THE PUNISHMENT AND BLOTS OUT OF EXISTENCE THE GUILT SO THAT IN THE EYE OF THE LAW, THE OFFENDER IS AS INNOCENT AS IF HE HAD NEVER COMMITTED THE OFFENSE.

BUT DESPITE THAT STATEMENT AND DESPITE THAT LAW IN OUR COURT, WHEN GOVERNOR COLLINS PARDONED YOUR CLIENT, THERE WAS STILL A RECORD IN THE AGENCIES AND THAT RECORD WAS NOT EXPUNGED, CORRECT?

CORRECT.

SO EVERYBODY KNEW, INCLUDING GOVERNOR COLLINS THAT SGIT WHAT WE HAVE SAID IN CASES AND THAT LANGUAGE, THAT HIS RECORD WASN'T GOING TO BE EXPUNGED WHEN HE WAS PARDONED?

YOUR HONOR, THE 1885 CONSTITUTION UNDER WHICH THIS WAS GRANTED SPECIFICALLY PROVIDED THAT GOVERNOR COLLINS COULD ISSUE IT WITH LIMITATIONS OR RESTRICTIONS. HOWEVER, YOU KNOW, HE WANTED TO DO IT, HE COULD DO IT. IN THIS CASE, IT WAS FULL AND IT WAS COMPLETE. JUST THE FACT THAT WE DON'T KNOW EACH AND EVERY CONSEQUENTIAL DAMAGE TO LOOK INTO THE CIVIL ARENA HERE, THAT MAY ARISE DOESN'T MEAN THAT YOU

CAN'T GET CONSEQUENTIAL DAMAGES IN A CIVIL CASE. THANK YOU YOUR HONOR.

UNFORTUNATELY WE HAVE USED ALL YOUR TIME.

I'M SORRY.

THAT'S BEEN VERY HELPFUL. THANK YOU VERY MUCH.

GOOD MORNING.

GOOD MORNING, MAY IT PLEASE THE COURT MY NAME IS JOHN BOOTH, I'M HERE REPRESENTING THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT WITH MY CO-COUNSEL WILLIAM CAMMER, GENERAL COUNSEL AT THE PAROLE COMMISSION REPRESENTING THE OFFICE OF EXECUTIVE CLEMENCY. LIKE APOLOGIZING TO THE COURT AND STAFF FOR ARRIVING AT 9:00 INSTEAD OF 8:30. IF I AM GIVING THE PRIVILEGE OF APPEARING HERE AGAIN, IT WILL NOT HAPPEN. I WILL BE ON TIME. I'D LIKE TO BEGIN WITH REFERENCE TO THE STATEMENT THAT FDLE HAS CHANGED ITS PRACTICE AND EXPLAIN THAT BECAUSE THAT MAY BE A CONCERN. PROBABLY IS A CONCERN TO THE COURT. FDLE HAD ISSUED CERTIFICATES OF ELIGIBILITY TO PERSONS WHO HAD HAD THE RECORD, WHO HAD HAD A CONVICTION PARDONED BASED ON THE DOE DECISION BECAUSE DOE WAS AT THAT TIME SO FAR AS I'M AWARE THE ONLY EXTENT, FELLOW OPINION THAT ADDRESSED PARDONS AT ALL IN FLORIDA. SO THAT WAS DONE BASED ON DOE. AGAIN TO MY KNOWLEDGE, THE STATE, THE STATE OF FLORIDA HAD NOT CHANGED ITS POSITION ON THIS. THE STATE ARGUED IN DOE, IS RECITED IN THE DOE OPINION, STATE ARGUED AGAINST GRANTING A PARDON TO THAT EFFECT. IN THE AG OPINION THAT I MADE PART OF THE BRIEF, WHICH MR. CAMMER POINTED OUT TO ME, IT WAS CLEAR FROM THAT THAT THE ATTORNEY GENERAL'S OPINION WAS THAT A PARDON WOULD NOT HAVE THIS EFFECT.

IS THERE ANY -- FDLE DOESN'T HAVE ANY DISCRETION AS TO WHETHER IT GIVES OR DOESN'T GIVE THIS CERTIFICATE OF ELIGIBILITY?

NO, YOUR HONOR IT DOESN'T. AND I THINK THAT'S A CRITICAL POINT. THE FIRST DCA SAID THAT SUBSTANTIVE LAW HADN'T CHANGED. AND THEY'RE CORRECT. THE LAW YOU MUST NOT HAVE BEEN CONVICTED TO BE ELIGIBLE TO EXPUNGE HASN'T CHANGED. BUT WHEN FDLE ISSUES A CERTIFICATE OF ELIGIBILITY, THAT IS A MINISTERIAL ACT. THE SECOND DCA IN ROWL, WHICH THE FIRST DCA HAS APPROVED SAYS THERE IS NO DISCRETION, IT IS NOT QUASI-JUDICIAL. WE LOOK AT THE RECORD AND IT IS SORT OF A BUY NAER DECISION. BASED ON THE RECORD, EITHER THEY QUALIFY OR THEY DON'T. AND IF THEY, IF THEY QUALIFY, IF WE ARE BEING TOLD THAT A PARDON AUTOMATICALLY ENTITLES YOU TO A EXPUNGEMENT, THEN WE HAVE TO ISSUE A CERTIFICATE OF ELIGIBILITY TO SOMEONE WHOSE CONVICTION HAS BEEN PARDONED. AND I BELIEVE THAT GETS INTO THE ISSUE OF LEGISLATIVE INTENT HERE. AND IT'S A SENSITIVE ISSUE BECAUSE I THINK THE THREE BRANCHES ARE KIND OF BUMP UP AGAINST EACH OTHER.

WHAT ACTUALLY HAPPENS? CAN YOU ENLIGHTEN US? WHEN A CRIMINAL RECORD IS EXPUNGED, IS THERE -- WHAT'S THE DIFFERENCE BETWEEN FOR SOMEBODY, I THINK WE WERE TRYING TO GET TO SOME OF THESE QUESTIONS, PREVIOUSLY, BETWEEN A DEFENDANT WHO HAS HAD HIS OR HER RECORD EXPUNGED AND ONE WHO HASN'T FOR PURPOSES OF JOB APPLICATIONS, FOR APPLICATIONS, HOW DOES THAT WORK?

UNDER THE CURRENT STAT TURKTS 943.0858 5:EX-SPONGESMENT MEANS ALL HISTORY CRIMINAL RECORDS, AS DEFINED IN THE STATUTE, ANY INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM, STARTING WITH ARREST, ALL RECORDS THAT AGENCIES MAINTAIN OF THAT ARE EXPUNGED. AND EXPUNGED IS DEFINED AS MEANING PHYSICALLY DESTROYED, OBLITERATE.

ALL EXECUTIVE BRANCH AGENCIES?

YES, SIR.

AT ALL LEVELS? IN OTHER WORDS, WHETHER IT WOULD BE A MUNICIPAL CITY, A COUNTY, OR STATEWIDE? YES, SIR. WITH THE EXCEPTION THAT FDLE IS ALLOWED TO MAINTAIN AN ARC KIFAL COPY OF THAT RECORD. HOWEVER, THAT IS ACCESSIBLE ONLY UPON COURT ORDER. AND AS I READ THE STATUTE, THAT'S ANYBODY, MEANING IN EFFECT FDLE CAN'T LOOK AT IT. IT MAINTAINS IT BUT THE ONLY WAY SOMEONE CAN SEE THAT EXPUNGED RECORD IS IF THEY APPLY TO THE COURT AND GET AN ORDER TO OPEN IT. THERE ARE CERTAIN AGENCIES IN THE STATUTE THAT TO WHOM THE PERSON IS NOT GIVEN THE PRIVILEGE OF DENYING THE EXISTENCE OF THE RECORD. AND AMONG THOSE ARE FLORIDA BAR, CRIMINAL JUSTICE, BOARDS OF EDUCATION. EVEN THOUGH IN THAT CONTEXT THE PERSON CAN'T DENY THE EXISTENCE OF THE RECORDS, STILL NOBODY SEES AN EXPUNGED RECORD WITHOUT A COURT ORDER. AND AS FAR AS OTHER AGENCIES GO, IT'S LIKE IT DOESN'T EXIST. IT'S BEEN DESTROYED AND THE EFFECT OF THE LAW THAT NOW ISSUES A CERTIFICATE OF ELIGIBILITY I BELIEVE IS THAT ONCE FDLE ISSUES A CERTIFICATE OF ELIGIBILITY, THE COURT THEN, IF IT DENIES THE PETITION, AND THERE ARE SOME CASE LAW ON THIS I THINK, THE COURT HAS TO GIVE A REASON. THE COURT CAN'T JUST SAY WELL, THAT'S THE WAY IT IS, GET OVER IT. THE COURT HAS TO GIVE A REASON IF IT DENIES. HOWEVER, IF THE COURT GRANTS THE PETITION TO EXPUNGE, HONESTLY, FROM LOOKING AT THE LAW AND GIVING THIS A GREAT DEAL OF THOUGHT, DON'T BELIEVE THERE IS A GROUND FOR THE STATE TO APPEAL. I THINK BY DEFINITION THAT IS NOT AN ABUSIVE DISCRETION BECAUSE THE STATE THROUGH FDLE HAS CERTIFIED THAT THIS PERSON IS LEGALLY ELIGIBLE TO EXPUNGE THE RECORD. THAT'S WHAT THE CERTIFICATE MEANS. IT IS A CERTIFICATE OF ELIGIBILITY. ONCE THAT'S DONE, IT IS WITHIN THE SOUND DISCRETION OF THE COURT. AND IF THE COURT GRANTS THAT EXPUNGEMENT, I DON'T BELIEVE THE STATE HAS ANY BASIS TO COME IN AND ARGUE THERE HAS BEEN AN ABUSE OF DISCRETION. AND I THINK WHAT THAT MEANS IS THAT THE LEGISLATURE HAS NOT SAID THAT A PARDONED CONVICTION IS ENTITLED TO EXPUNGEMENT. AND I THINK THERE IS GOOD REASON FOR THAT.

WELL IS IT UP TO THE LEGISLATURE TO DEFINE A GOVERNOR'S EXECUTIVE BRANCH PARDON, WHAT IT IS, OR IS IT UP TO THE EXECUTIVE WHO ISSUES THAT TO DRAW THAT DEFINITION?

YOUR HONOR, IT'S OUR POSITION THAT, AND I BELIEVE IT IS THE LAW THAT IT IS UP TO THE EXECUTIVE BRANCH TO DEFINE THE EFFECT OF A PARDON. THIS COURT HAS BEEN CALLED ON, GOING BACK TO AT LEAST A HUNDRED YEARS, TO ADVISE WHAT THE EFFECT OF A PARDON IS. AND HAS GIVEN LEGAL OPINIONS AND ADVISORY OPINIONS ON THAT. BUT I THINK IT'S ULTIMATELY IT'S THE PREROGATIVE AND THE RESPONSIBILITY AND POWER OF THE EXECUTIVE BRANCH IN FLORIDA TO SAY WHAT THE EFFECT OF A PARDON IS. AND IF THE LEGISLATURE HAD AMENDED THE LAW AND IT DIDN'T AMEND THE LAW, IT HASN'T CHANGED SINCE DOE AS FAR AS THE REQUIREMENT NOT TO HAVE BEEN CONVICTED. IF THE LEGISLATURE HAD UNDERTAKEN TO AMEND THE LAW TO SAY THAT A PARDON DOES ENTITLE YOU TO EXPUNGE THE RECORD OF A CONVICTION, I THINK THEY WOULD HAVE BEEN ON DANGEROUS GROUND. I THINK THEY WOULD HAVE BEEN LIMITING THE EFFECT OF A PARDON OR LIMITING THE DISCRETION OF THE GOVERNOR AND CABINET TO ISSUE A PARDON BY TELLING THEM IN EFFECT ANY TIME YOU ISSUE A PARDON, YOU HAVE TO BE WILLING TO LET THE RECIPIENT OF THAT PARDON HAVE HIS OR HER RECORD EXPUNGED AT THE DISCRETION OF THE COURT.

WELL WHY IS THAT NECESSARILY SO? WHY WOULD YOU NOT CRAFT A PARDON TO THE EXTENT THAT THE EXECUTIVE DESIRES? AND IF IT IS AN EXECUTIVE, A GOVERNOR WANTS TO GRANT A PARDON, AND THAT THAT PARDON WOULD NOT OPERATE FOR AN EXPUNGEMENT OF ANY RECORDS, COULD SO STATE?

YOUR HONOR, THAT IS THE POSITION OF THE GOVERNOR AND CABINET, THAT THEY CAN IN FACT DO THAT. AND IN THE STATEMENT THAT THEY ISSUED ON OCTOBER 2, 1999 --.

BUT THAT'S WHAT THEY'RE DOING NOW. TO ME IT SEEMS AS THOUGH A CURRENT EXECUTIVE BRANCH CANNOT REACH BACK AND ALTER WHAT A PRIOR EXECUTIVE HAS ALREADY DONE. THAT'S WHERE I AM HAVING TROUBLE, THAT I CANNOT SEE A LEGAL BASIS OR HELP ME UNDERSTAND IF THERE IS ONE, HOW A CURRENT EXECUTIVE BRANCH CAN ALTER WHAT A PRIOR EXECUTIVE BRANCH AND THE NATURE OF A PARDON THAT'S ABSOLUTE, TO GO BACK AND SAY WELL, WE ARE GOING TO GO BACK AND CHANGE THAT AND WE WON'T CONSIDER THAT YOU WERE GUILTY OF THE KIDNAPPING, BUT YOU ARE GUILTY OF SOMETHING ELSE.

YES, YOUR HONOR, I WOULDN'T SAY THAT A CURRENT ADMINISTRATION COULD DO THAT. COULD GO BACK AND CHANGE THE EFFECT OF A PARDON. AND I DON'T THINK THAT'S AT ISSUE HERE. I DON'T THINK THAT'S BEING DONE. I DON'T THINK THE EFFECT OF A PARDON ISSUED IN 1959 WAS INTENDED TO ALLOW FOR THE EXPUNGEMENT OF A RECORD.

WOULD YOU ADDRESS THEN THE LANGUAGE THAT, REALLY PASSED ON THROUGH THE LAW FOR A NUMBER OF YEARS, THAT IN THE EYES OF THE LAW, THE OFFENDER IS CONSIDERED AS INNOCENT AS IF HE HAD NEVER COMMITTED THE CRIME.

YES, SIR. THAT LANGUAGE GOES BACK TO THE GARLAND DECISION FROM 1866 IN, WHICH THE U.S. SUPREME COURT HELD THAT AN ATTORNEY FROM ARKANSAS, WHO HAD TAKEN PART IN THE CIVIL WAR AND WAS BEING REQUIRED TO SWEAR AN OATH THAT HE HAD NOT, IN ORDER TO PRACTICE LAW, THE SUPREME COURT LOOKED AT THAT AND SAID NO, THAT'S EXPO FACTO, THAT'S A BILL OF OBTAINER, YOU CAN'T DO THAT. IN ADDITION THIS MAN HAS RECEIVED A PARDON AND THE PARDON BLOCKS IT -- BLOTS IT OUT.

THAT HAS BEEN CARRIED ONTO THE FLORIDA DECISION.

THAT FORMULA HAS BEEN QUOTED AND QUOTED. BUT I WOULD SUGGEST THAT THE UNITED STATES SUPREME COURT ITSELF NO LONGER TAKES THAT VIEW OF A PARDON. IF IT DID IN THAT CASE, BECAUSE THAT WAS LITERALLY DICK TIM WITHIN DICTUM.

BUT IT HAS BEEN ADOPTED ON MOST OF THE SUBSTANTIVE LAW HAS IT NOT, IN OUR DECISIONS? AND GETTING BACK TO WHAT A GOVERNOR OR EXECUTIVE MAY INTEND BY A DOCUMENT, WHY WOULD WE NOT LOOK TO THE LAW IN EFFECT AT THAT TIME? TO DETERMINE THE EXTENT OF WHAT THAT PARDON MEANS. WHY WOULD WE LOOK 50 YEARS IN THE FUTURE? DOESN'T MAKE ANY SENSE.

YOUR HONOR, I RESPECTFULLY DO NOT BELIEVE THAT THAT PARTICULAR LANGUAGE THAT TALKS ABOUT THE PERSON BECOMING AS INNOCENT IN THE EYES OF THE LAW AS IF YOU NEVER COMMITTED THE OFFENSE, I DON'T THINK THAT HAS BEEN ADOPTED AND APPLIED AS SUBSTANTIVE LAW IN FLORIDA. IT HAS BEEN CITED, BUT IN THE OPINIONS THAT I HAVE READ WHERE IT IS CITED, IT WAS NOT NECESSARY, I DON'T BELIEVE IT WAS PART OF THE HOLDING. THE HOLDING IN MOST OF THE CASES THAT WE ARE ARGUING ABOUT WAS TO THE EFFECT THAT EVEN THOUGH YOU HAVE BEEN PARDONED, A BOARD OR COMMISSION, A REGULATORY BODY THAT IS CONSIDERING WHETHER YOU'RE, CAN PRACTICE A PROFESSION OR HOLD A LICENSE, CAN CONSIDER THE FACT OF THE CONVICTION UNDERLYING CONDUCT. THEY CAN CONSIDER THAT. THEY SHOULD BE ALLOWED TO CONSIDER THAT. AND I THINK THAT'S BEEN THE POSITION OF THIS COURT'S PRECEDENT AND THAT'S BEEN THE EXECUTIVE'S POSITION. I DON'T THINK THAT'S CHANGED. I THINK WHAT CHANGED WAS THE DOE DECISION WENT BACK, LATCHED ON TO THAT DICTUM IN GARLAND, WHICH HAS HONORABLE HISTORY, IT GOES BACK TO SOME LANGUAGE IN BLACK STONE AECBBD SOME CASES BEFORE THAT AND APPLIED IT LITERALLY.

WHAT DO WE END UP WITH AS FAR AS WHAT VALUE A PERSON WHO HAS BEEN PARDONED THEN ACTUALLY RECEIVES AS A RESULT OF THIS VERY UNIQUE POWER THAT IS VESTED IN THE EXECUTIVE -- WHAT DOES A PERSON THEN, ASSUME THAT ALL THESE RECORDS ARE KEPT AND EVERYTHING, I ASSUME THEN THAT A PERSON OUT THERE IN SOCIETY, FOR INSTANCE, AND THE

MAJOR THING THAT HAPPENS IN SOCIETY IS THIS THING ABOUT YOU WANT TO GO GET A JOB, YOU HAVE GOT TO TELL THAT YOU HAVE BEEN CONVICTED OF A CRIME. YOU HAVE BEEN ADJUDICATED BECAUSE THAT'S A HISTORICAL FACT, YOU KNOW, THAT OCCURRED. AND SO WHAT BENEFIT DOES SOMEONE THAT REFUSES IS PARDON GET HE -- RECEIVES A PARDON GET?

IT REMITS PUNISHMENT. RESTORES ALL CIVIL RIGHTS, ALL RIGHTS OF CITIZENSHIP ENJOYED BY THE PERSON BEFORE HIS OR HER CONVICTION. AND I THINK THE COURT ANSWERED THAT QUESTION IN THE CORRECT WAY IN THE SAND LAND CASE WHERE THE ISSUE BEFORE IT WAS WHAT HAPPENS IF SOMEBODY WANTS TO BE A LAW ENFORCEMENT OFFICER, BE CERTIFIED, THEY HAVE A FELONY CONVICTION. THE STATUTE SAYS IF YOU HAVE BEEN CONVICTED OF A FELONY, YOU CAN'T ABSOLUTE BAR, YOU CAN'T BE A LAW ENFORCEMENT OFFICER. AND THE COURT LOOKED AT THAT, THAT ISSUE WHERE THE, YOU KIND OF GOT THE BRANCHES ARGUABLY COMING INTO CONFLICT AND SAID NO, WE ARE NOT GOING TO SAY A PARDON, WE ARE NOT GOING TO SAY A CONVICTION THAT HAS BEEN PARDONED IS STILL IN EFFECT AN IRRELEVANT REBUTTABLE PRESUMPTION THAT YOU CAN'T BE A LAW ENFORCEMENT OFFICER. WE ARE GOING TO STEER MIDDLE GROUND HERE AND SAY THE STANDARDS IN TRAINING COMMISSION CAN AND SHOULD CONSIDER THAT. THEY SHOULD CONSIDER THE FACT THAT YOU HAVE THIS IN YOUR PAST. THEY ARE NOT 0 BLIF VIEWS OF IT BUT NOT AS A RESULT PROHIBITION.

SO WE HAVE TWO EFFECTS. ONE IS THAT IT IS STILL IN THE CRIMINAL HISTORY. BUT PROBABLY THE MORE SIGNIFICANT EFFECT IS AS JUSTICE ANSTEAD WAS ALLUDING TO, IS THAT A PERSON WHOSE RECORD HAS BEEN EXPUNGED CAN ACTUALLY SAY LEGALLY WHEN THEY ARE APPLYING FOR EMPLOYMENT, OTHER THAN SPECIFIED EMPLOYMENT, SUCH AS WITH THE DEPARTMENT OF CHILDREN AND FAMILIES, THAT THEY HAVE NEVER BEEN ARRESTED FOR A CRIME. CORRECT?

CORRECT.

SO THIS PETITIONER R.J.L., HE WILL HAVE TO ON EVERY, IF IT IS ASKED, ON EVERY EMPLOYMENT APPLICATION, SAY THAT HE WAS CONVICTED OF A CRIME?

CORRECT.

THEN HE CAN SAY HE WAS GIVEN A FULL PARDON?

RIGHT.

SO THAT HE IS DENIED EMPLOYMENT BECAUSE OF THAT, ISN'T THAT A DETRIMENT?

THAT'S A CONSEQUENCE OF THE HISTORICAL FACT OF THE CONVICTION YOUR HONOR.

SO YOU'RE SAYING, THAT'S WHEN JUSTICE LEWIS WAS ASKING EARLIER ABOUT LEGAL PUNISHMENT. Y SEE THE FELONY, HABITUAL FELONY STATUTE, EVEN IF IT SAID IT OR DIDN'T, IF THERE IS A PARDON, THAT WOULD INCREASE THE PUNISHMENT. BUT ISN'T THE DETRIMENT HAVING TO STILL SAY -- HAVE TO ADMIT THIS FACT WHEN IT'S INQUIRED INTO IN.

YOUR HONOR, I DON'T BELIEVE THAT'S A PUNISHMENT.

YOU DON'T THINK THAT IS, AS THE PARDON HAS BEEN USED, THAT THAT, THAT WOULD NOT QUALIFY?

NO, YOUR HONOR, BECAUSE I DON'T THINK -- FIRST, THERE IS NO CONSTITUTIONAL RIGHT TO AN EXPUNGEMENT. AND THERE IS NO CONSTITUTIONAL RIGHT OF PRIVILEGE SITUATE IN CRIMINAL HISTORY RECORD.

THIS IS A STRANGE THING, THAT YOU END UP GRANTING THE LEGISLATIVE BRANCH OF

GOVERNMENT NOW, FULL AUTHORITY, OF ABSOLUTE AUTHORITY OVER THIS KIND OF RESOLUTION. AND YET, YOU END UP WITH A LIMITATION ON THE EXECUTIVE OF AUTHORITY THAT HISTORICALLY HAS BEEN RECOGNIZED AS ABSOLUTE AND UNTOUCHABLE. I FIND IT A STRANGE OBSERVATION. NOW THE LEGISLATURE CAN ACT AND THEY CAN FREE SOMEBODY UP AND IN TERMS OF THIS ACTUAL EFFECT AND EVERYTHING, SAY YES, THE EXECUTIVE CAN'T GRANT YOU A PARDON THAT HAS THIS EFFECT OF EXPUNGING THESE RECORD RECORDS AND EVERYTHING. BUT WE IN THE LEGISLATIVE BRANCH DO HAVE THE AUTHORITY TO DO THAT, SO NOW WE IN EFFECT HAVE THE PARDON POWER PLUS. NOW ISN'T THAT A STRANGE WAY THAT WE END UP HERE?

WITH RESPECT I DON'T THINK THAT'S WHAT'S HAPPENING HERE. IN THEIR STATEMENT FROM 1999, THE GOVERNOR INDICATED THAT IN CERTAIN CASES, THEY MIGHT INDICATE IN WHICH CHOOSE TO INDICATE THAT A PARDON SHOULD ALLOW THE PERSON TO HAVE THE RECORD EXPUNGED.

SO CAN BE SELECTIVE.

THEY INDICATED WHERE THEY BELIEVED IT WAS A CASE OF INNOCENCE, WHERE THE PARDON IS BEING USED TO CORRECT AN INJUSTICE, TO RIGHT A WRONG, THAT WOULD BE AN INSTANCE.

BUT THEY COULDN'T DO THAT -- THIS STATUTE, EVEN IF THEY SAY IT IS A FULL PARDON AND WE WANT THE RECORD EXPUNGED, THIS STATUTE WOULD TRUMP IT AS TO WHOSE RECORD -- WOULDN'T THAT BE THE CASE?

YOUR HONOR, OUR POSITION HAS NOT BEEN THAT THE LEGISLATURE CAN TRUMP THE EXECUTIVE IN SAYING WHAT THE EFFECT OF A PARDON IS. IF THE LEGISLATURE IS SAID THAT A PARDON CONVICTION CAN BE EXPUNGED, I THINK THEY WOULD BE LIMITING OR HEDGING THE DISCRETION OF THE GOVERNOR AND CABINET.

THAT GOES BACK THEN TO THE STATE OF WHAT WAS IN EFFECT IN 1950 IN THIS CASE. IF IN, AND I WILL HAVE TO GO BACK BECAUSE IT DOES APPEAR THAT THERE WAS BRAD LANGUAGE IN IN 1800S AS TO WHAT THE PARDON WAS. AND CONTINUED TO BE REALLY REALLY BROAD AND THEN SOMEWHERE IN 50'S OR 60 OTHER OR 70s, PEOPLE SAID, WAIT, WE DIDN'T REALLY MEAN THAT, THAT WAS TOO BROAD. WASN'T GOING TO BE THE TERM FORGIVENESS BUT NOT FORGETFULNESS. SO, GOING BACK TO THE RELEVANCY OF THE CASES, SHOULDN'T WE HAVE TO THEN LOOK AT WHAT CASE LAW EXISTED, IF THERE WAS NO STATUTE ON EXPUNGEMENT, WHAT THE STATUS OF THE LAW WAS IN THAT PERIOD OF TIME TO DETERMINE THE EFFECT OF THAT PARDON? NOT WHAT GOVERNOR COLLINS SUBJECTIVELY INTENDED BUT WHAT THE CASE LAW SAID THAT IN THOSE YEARS THAT THERE WAS A FULL PARDON MEANT FULL PAFERMENTD CONDITIONAL PARDON COULD MEAN YOU COULD CONDITION IT.

THE MULTI CASE THAT'S CITED IN THE BRIEF I THINK INDICATES THAT AT THAT TIME, THE COURT SAID EXPUNGEMENT WOULD BE AVAILABLE IF THERE WAS A STAT TUCHLT THERE WAS NO STATUTE. OR AN EXTRAORDINARY CIRCUMSTANCES WHERE THE COURT WAS CALLED UPON TO EXERCISE EQUITABLE POWERS. AND THEY INDICATED THAT -- WITHHELD ADJUDICATION AND CERTAINLY A CONVICTION WOULD NOT BE AMONG THOSE CIRCUMSTANCES. THERE IS NO INDICATION THAT THEY INTENDED OR CONTEMPLATED THAT A PARDON WOULD HAVE THAT EFFECT EITHER.

SO IF HE PETITIONED BACK IN, RIGHT AFTER THIS PARDON WAS GIVEN TO THE COURT, THERE WAS NO STATUTE, THE COURT THEN WOULD HAVE THE EQUITABLE AUTHORITY TO HAVE ORDERED THE EXPUNGEMENT OF THE RECORD?

ARGUABLY AT THAT TIME YOUR HONOR, BECAUSE THAT WAS PRIOR TO A STATUTE BEING ENACTED.

SO WHY ISN'T THAT A VESTED RIGHT THAT EXISTED BACK AT THAT TIME FOR THIS PARTICULAR PETITIONER?

WELL IN THE DHW DECISION, THE COURT HAS SINCE SAID THAT EXPUNGEMENT IS A LEGISLATIVE GRANTS CONDITIONED BY STATUTE. THAT IT IS NOT A RIGHT. IT RECITES IN THE STATUTE THAT IT IS AT THE DISCRETION OF THE COURT, ONCE YOU QUALIFY, IT IS NOT -- YOU DON'T HAVE A RIGHT TO EXPUNGE. YOU HAVE A RIGHT TO PETITION THE COURT TO ASK FOR AND EXPUNGE IF YOU QUALIFY. I THINK THE LANDSCAPE HAS CHANGED SINCE THE 506789S NOW THERE IS A STATUTE THAT SETS OUT THE CONDITIONS UNDER WHICH YOU ARE ENTITLED TO EXPUNGE A RECORD.

SO IF YOU ACTUALLY GOT A PARDON FROM THE GOVERNOR, THAT ACTUALLY HAD SAID THE WORDS, INCLUDING EXPUNGEMENT, YOU WOULD GIVE THEM A CERTIFICATE OF ELIGIBILITY?

YES, MA'AM. IF THE FACE OF THE PARDON INDICATED THAT IT WAS THE INTENT TO -- FOR THAT PARDON TO HAVE THAT EFFECT.

EVEN IF THERE WAS CONTRARY LEGISLATIVE INTENT?

YES, SIR, UNDER THE CURRENT STATUTE. IF THE PARDON SAID THAT IT WATTS INTENDED TO EXPUNGE THE RECORD.

OKAY. THANK YOU.

THANK YOU VERY MUCH. AS WITH YOUR COLLEAGUE, ON YOUR LEFT, WE HAVE USED UP ALL OF YOUR TIME TOO. WITH OUR EXCHANGE. WE APPRECIATE ALL OF YOU BEING WILLING TO HAVE THIS EXCHANGE UNDER VERY IMPORTANT ISSUE. THANK YOU VERY MUCH.