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Thomas B. Gibson v. Florida Dep't of Corrections

23

LAST CASE ON THE COURT'S DOCKET IS GIBSON VERSUS 24 FLORIDA DEPARTMENT OF CORRECTIONS. 25

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GOOD MORNING. 111 1 MAY IT PLEASE THE COURT. 2 MY NAME IS ROBERT HARPER. 3 WITH ME IS MICHAEL UFFERMAN. 4 WE APPEAR TODAY PRO BONO AT THE REQUEST OF THE PRESIDING 5 JUDGE BELOW. 6 THE CASE BEFORE THE COURT IS A CERTIFIED QUESTION. 7 AND IF I MAY, I WOULD LIKE TO RESTATE THE CERTIFIED 8 QUESTION IN TERMS WHICH PERHAPS BRING THIS ISSUE A 9 LITTLE MORE CLEARLY BEFORE THE COURT. 10 AND I WOULD RESTATE THE QUESTION AS FOLLOWS. 11 DOES THE FORFEITURE OF GAIN TIME PENALTY IN ELDRIDGE 12 APPLY WHERE A DEFENDANT RECEIVES A SECOND SENTENCE ONLY? 13 ON ONE OFFENSE FOLLOWED BY SEPARATE PROBATION SENTENCE 14 FOR A SEPARATE OFFENSE. 15 EVEN IF BOTH CASES ARE SCORED ON A SINGLE SCORE SHEET. 16 AND THE TRIAL COURT AWARDS PRISON TIME CREDIT AS 17 REQUIRED BY TRIPP FOR VIOLATION OF PROBATION. 18 I ALWAYS TRY TO THINK OF THESE CASES IN TERMS OF SOME 19 REAL LIFE EXPERIENCES OF TRIAL JUDGES AND TRIAL LAWYERS. 20 AND THE BEST EXAMPLE I COULD COME UP WITH IN THIS CASE 21 WERE, WAS AN EXAMPLE, IF THE THIRD SENTENCE IN GIBSON 22 HAD BEEN FOR VIOLATION OF PROBATION, IF THE JUDGE HAD 23 REINVOKED PROBATIONARY SENTENCE, IS NOW THE DEPARTMENT 24 OF CORRECTION EMPOWERED TO COME BACK AND OPEN UP THAT 25 OLD CASE, WHICH HE SERVED HIS TIME, AND PUT THE MAN IN 26 JAIL WHEN THE TRIAL JUDGE SAID I WANT TO REINSTATE 112 1 PROBATION? 2 OR WHAT IF THE THIRD OFFENSE IN GIBSON WAS A MISDEMEANOR 3 AND THE DEPARTMENT OF CORRECTIONS SAYS WE WANT TO OPEN 4 UP THESE OLD CASES AND SERVE MORE THAN ONE YEAR IN 5 PRISON ON THIS NEW VIOLATION, EVEN THOUGH IT IS A 6 MISDEMEANOR PROBATION. 7

WE DON'T HAVE A CASE HERE WHERE WE ARE TALKING ABOUT 8 THE STATUTORY MAXIMUM BEING ASSERTED. 9 I WOULD THINK THE DOC WOULD AGREE IF THE DEFENDANT IN 10 THIS CASE HAD NOT SOUGHT TRIPP CREDIT, THAT THEY WEREN'T 11 GOING TO ATTEMPT TO FOR FEET THE GAIN TIME FROM THESE 12 OTHER OFFENSES. 13 YOU AGREE IT IS THE SEEKING OF THE TRIPP CREDIT FOR -- 14 WHAT WAS GAIN TIME ON ANOTHER OFFENSE THAT THEY 15 TRIGGERS, WAY SEE AS A QUID PRO QUO. 16 AND I GUESS THAT'S HOW THE FIRST DISTRICT SAW IT, WHICH 17 IS THAT, IT SENTENCES A SINGLE, ON A SENTENCING 18 GUIDELINES AND A SINGLE SENTENCING HEARING, WAS A SINGLE 19 SCORE SHEET. 20 TRIPP WAS NECESSARY IN CERTAIN WAYS TO MAKE SURE THAT 21 THE GUIDELINES WASN'T EXCEEDED. 22 BUT THEN ONCE, BUT EVEN IF IT IS NOT, YOU GET TO SEEK 23 THIS UNEARNED GAIN TIME. 24 OR GET THE GAIN TIME ON THIS OTHER OFFENSE. 25 I GUESS I'M HAVING A PROBLEM TO SEE WHY IT'S A, THERE IS 26 ANY CONSTITUTIONAL VIOLATION. 113 1 THERE IS NO CONSTITUTIONAL VIOLATION, UNLESS IT EXCEEDS 2 THE AMOUNT FORFEITED. 3 THEN WHY ISN'T IT A FAIR QUID PRO QUO IF THE DEFENDANT 4 IS SEEKING THAT GAIN TIME? 5

YOUR HONOR, I SEE TRIP AS BEING A DAY PER DAY GAIN 6 TIME, GAIN TIME IS A MISNOMER. 7 CREDIT IN TRIPP IS REALLY A DAY FOR DAY CREDIT FOR TIME 8 SERVED. 9

NOT ALWAYS UNEARNED? 10

THE UNEARNED GAIN TIME IS THE ELDRIDGE ISSUE. 11 EARNED. 12

GOOD CREDIT IS ONLY FOR TIME SERVED? 13

THAT'S THE WAY I SEE IT YOUR HONOR, IS A CREDIT 14 ISSUED THAT WAY OR AT LEAST SINCE 1989 IT'S BEEN THAT 15 WAY. 16 THE WAY I SEE THIS ISSUE, YOUR HONOR, IS THAT THE DOUBLE 17 JEOPARDY PRINCIPLES COME INTO PLAY IN THIS CASE BECAUSE 18 THE OLD CASES, THE FIRST CASES THAT HAVE BEEN SERVED AND 19 THOSE SENTENCES HAVE EXPIRED. 20 AND AFTER GIBSON WALKED OUT OF JAIL ON THE PROBATION 21 PORTION OF HIS SENTENCE, THEN THOSE SENTENCES ARE CLOSED 22 AND CANNOT BE REOPENED AND JUST LIKE A TRIAL JUDGE 23 COULDN'T GO BACK AND REOPEN THOSE SENTENCES AND INCREASE 24 THE TERM OF IMPRISONMENT. 25 NEITHER CAN THE DEPARTMENT OF CORRECTIONS REOPEN THOSE 26 FILES AND REOPEN THOSE CASES BY IMPOSING A FORFEITURE 114 1 UNDER ELDRIDGE. 2 THAT IS WHERE WE SAY. 3

BUT TRIPP ALLOWS YOU TO DO IT THE OTHER WAY. 4 ALTHOUGH THOSE CASES ARE CLOSED, YOU CAN GIVE HIM THE 5 CREDIT FOR TIME SERVED HE SERVED ON THESE CASES. 6 BUT THE CONVERSE OF THAT WOULD THEN NOT BE TRUE BECAUSE 7 THE CASES ARE CLOSED. 8

THAT'S RIGHT. 9

DOESN'T THAT SEEM SOMEWHAT UNFAIR? 10

WELL IF YOU'RE IN JAIL, IT SEEMS LIKE IT IS ALWAYS 33 11 YEARS I HAVE BEEN PRACTICING, ALWAYS BEEN FAIR. 12 I THINK JUST ADKINS SAID FROM THE INSIDE OF A JAIL, ALL 13 PRISONS LOOK LIKE. 14 SO START GIVING CREDIT FOR TIME IN JAIL AND TIME IN 15 PRISON. 16 IF TRIPP IS JUST GIVING TIME FOR -- CREDIT FOR WHAT THEY 17 SERVED IN JAIL, WHAT'S WRONG WITH THAT? 18

IS THAT ALL HE GOT, 1681 DAYS ONLY FOR TIME SERVED? 19 WASN'T IT FOR GAIN TIME ALSO? 20

YES, MA'AM. 21 BUT THE TECHNICAL CALCULATION, I AM GOING TO DEFER TO 22 MR. UFFERMAN IN REBUTTAL BECAUSE THAT IS HIS BAILIWICK. 23

AGAIN IN TERMS OF THE QUID PRO QUO, IF IT IS ONLY FOR 24 TIME SERVED, IT IS ONE THING. 25 BUT IF YOU'RE SEEKING THE CREDIT WAS NOT JUST FOR TIME 26 SERVED IN THIS CASE. 115 1

WELL THE PENALTY IS THE ELDRIDGE PENALTY COMES INTO 2 PLAY ON THE CREDITS THAT ARE GAINED, ARE GAIN TIME 3 CREDITS. 4 AND THAT'S WHAT IS I THINK THE MISNOMER THAT THE FIRST 5 DCA SUFFERED UNDER. 6 IN REVIEWING THIS CASE, IS NOT DISTINGUISHING. 7 I THINK THE POORE OPINION, P-O-O-R-E, THE POORE I GUESS 8 I SHOULD SAY, BECAUSE IT IS A GOOD OPINION. 9 THIS COURT WAS THE BEST READ THAT I HAD IN TERMS OF 10 UNDERSTANDING THE SITUATION. 11 AND AFTER READING THAT, YOU CAN SEE CLEARLY POORE SAYS 12 THAT ELDRIDGE ONLY APPLIES IN TWO INSTANCES. 13 AND IT ONLY APPLIES IN A TRUE PROBATIONARY SENTENCE, -- 14 PROBATIONARY SPLIT SENTENCE. 15 I'M CONFUSING TERMS. 16 ONLY APPLIES IN THE TRUE SPLIT SENTENCE OR A 17 PROBATIONARY SPLIT SENTENCE. 18 PROBATIONARY SPLIT SENTENCE IS A WAYNE SENTENCE AND THE 19 TRUE SPLIT SENTENCE IS A POORE SENTENCE. 20

ARE YOU CONTENDING THEN THAT THIS, THE SENTENCE THAT 21 WAS IMPOSED IN THIS CASE WAS NEITHER A PROBATIONARY 22 SPLIT SENTENCE NOR A TRUE SPLIT SENTENCE? 23

EXACTLY. 24

AND SO TRIPP WOULD NOT APPLY EITHER. 25 DOESN'T TRIPP ONLY APPLY TO PROBATIONARY SPLIT 26 SENTENCES? 116 1

ELDRIDGE DOESN'T APPLY. 2 TRIPP APPLIES BECAUSE THAT IS TIME SERVED. 3

ISN'T TRIPP ALSO A PROBATIONARY AND TRUE SPLIT 4 SENTENCE CASE? 5 WHEN THEY TALK ABOUT CREDIT FOR TIME, AREN'T THEY 6 TALKING ABOUT IT IN THE CONTEXT OF SPLIT SENTENCES? 7

THEY ARE. 8 BUT IN TERMS OF CREDIT TO THE TIME SERVED, YOU'RE 9 TALKING ABOUT THE OVERALL APPROPRIATE SENTENCE UNDER THE 10 SENTENCING GUIDELINES. 11 AND GET ALL YOUR DAYS THAT YOU SERVED IN JAIL UNDER 12 TRIPP. 13 OKAY? 14 AND WHAT WE'RE SAYING THEN THE PENALIZING, THE PART 15 WHERE ELDRIDGE COMES INTO PLAY, IT DOESN'T COME INTO 16 PLAY IN GIBSON BECAUSE HE SERVED THOSE PRISON SENTENCES 17 AND WALKED OUT OF THE DOOR. 18 BUT IN THE SENTENCES THAT THAN WAYNE SENTENCE, FOR 19 INSTANCE, A PROBATIONARY SPLIT SENTENCE, THERE IS A 20 FUTURE CONDITION INVOLVED WHEN HE WALKS OUT OF THE DOOR 21 A FUTURE CONDITION OF GOOD CONDUCT. 22

LET ME JUST MAKE SURE, IF THIS DEFENDANT HAD ONLY 23 GOTTEN TRIPP CREDIT, WHICH WAS CREDIT FOR TIME SERVED, 24 WHAT YOU'RE SAYING IS ELDRIDGE WOULDN'T COME INTO PLAY 25 BECAUSE ELDRIDGE ONLY SEEKS TO FORFEIT GAIN TIME, WHICH 26 IS TIME NOT SEARCHED, CORRECT? 117 1

RIGHT. 2

THAT'S TRUE ACROSS THE BOARD. 3 SO THE ONLY THING THAT ELDRIDGE IS DOING IS TAKING WHEN 4 YOU GET TRIPP TYPE CREDIT FOR GAIN TIME, WHICH WAS TIME 5 NOT SERVED, THEN THE DOC, THE STATUTE SAYS THAT YOU MAY 6 FORFEIT THAT GAIN TIME, WHICH WAS TIME NOT SERVED. 7 SO UNLESS THIS DEFENDANT HAD GOTTEN THAT TYPE OF GAIN 8 TIME CREDIT, THERE COULD BE NO FORFEITURE AGAINST IT. 9

WELL, I GET CONFUSED EASILY ON THIS POINT. 10 BUT THE POINT THAT IT SEEMS LIKE TO ME IN THIS CASE THAT 11 MAKES IT A LITTLE BIT DISTINGUISHABLE, YOUR HONOR, IS 12 THAT THE ELDRIDGE CREDITS ARE IMPOSED AFTER -- THIS 13 HELPED ME A LOT. 14 WHEN YOU FIGURING THE LENGTH OF THE SENTENCE, YOU USE 15 THE TRIPP CREDIT TO FIGURE THE LENGTH OF THE SENTENCE. 16 WHEN YOU FIGURE THE AMOUNT OF TIME TO BE SERVED, 17 ELDRIDGE COMES INTO PLAY. 18 ALL RIGHT. 19 GIBSON HERE HAS SERVED COMPLETELY SERVED AN EXPIRED TWO 20 SENTENCES AND WALKS OUT THE DOOR, ON A PROBATION 21 SENTENCE WHICH HAS NO CONDITION RELATED TO HIS PREVIOUS 22 INCARCERATION. 23 SO IT IS A NEW SENTENCE. 24 THAT IS WHY I FELT THESE ANALOGIES WERE GOOD OF A 25 MISDEMEANOR OR PROBATION BEING REINSTATED BECAUSE IT, 26 THERE IS SOME QUESTION WHETHER IT IS EVEN A SENTENCE OF 118 1 ANY SORT. 2

ISN'T THAT PART OF THE ISSUE HERE, HAVEN'T YOU IN 3 EFFECT THEN NULLIFIED THIS PROBATION SENTENCE BY THE WAY 4 THAT YOU HAVE CALCULATED THESE CREDITS? 5 THAT IS, THAT IN ESSENCE WHEN HE WALKED OUT THE DOOR 6 FROM SERVING THE FIRST TWO SENTENCES, WITH THE GAIN TIME 7 CREDITS AND EVERYTHING COMPUTED ALONG WITH THE ACTUAL 8 TIME SERVED, THAT HE UNDER THIS READING, HE WOULD 9 ACTUALLY BE ENTITLED TO HAVE HIS PROBATION TERMINATED? 10 THAT IS -- AND SO, I'M HAVING TROUBLE UNDERSTANDING HOW 11 THIS WOULDN'T IN EFFECT NULLIFY WHAT THE COURT HAD 12 SENTENCED HIM TO IN THIS SCHEME OF THREE SEPARATE 13 SENTENCES THAT THE COURT IMPOSED. 14 UNDER THE WAY YOU HAVE ANALYZED THIS. 15 AND I HAVE TROUBLE WITH THAT. 16 I CAN UNDERSTAND THE ACTUAL TIME SERVED UNDER OUR CASE 17 LAW, BUT WHEN IT COMES TO THEN ADDING IN THE GAIN TIME 18 AND THEN IN EFFECT THAT WHEN HE WALKS OUT FROM THE FIRST 19 TWO, THAT HE'S ENTITLED TO REALLY HAVE HIS PROBATION 20 TERMINATED SORT OF IN ADVANCE, HE'S UNDER NO REAL 21 RESTRICTIONS THEN OF PROBATION. 22 THAT CLEARLY WASN'T THE INTENT OF THE TRIAL COURT JUDGE 23 IN THIS CASE, WAS IT? 24

WELL, IT'S HARD TO SAY. 25 BUT I AGREE WITH YOUR ANALYSIS, YOUR HONOR. 26 AND I

UNDERSTAND WHAT YOU'RE SAYING HERE. 119 1 BUT IT LOOKS LIKE TO ME THAT ONE QUESTION HERE, AND THE 2 REASON I MENTIONED IT IS WHETHER THE PROBATION IS A 3 SENTENCE. 4 AND THE SECOND QUESTION HERE THOUGH IS PART OF THE 5 COURT'S REASONING IN THIS LINE OF CASES, IS THAT THE 6 ORIGINAL SENTENCE IS AN ANTICIPATORY PROBATION 7 VIOLATION. 8 AND MAYBE THAT LANGUAGE NEEDS TO BE REVISITED BUT THAT'S 9 THE LAW. 10

LET ME ASK YOU ABOUT JUDGE LEWIS QUOTES A CASE OUT OF 11 THIS COURT, IN 2001, WHICH SAYS INDEED THE FLORIDA 12 SUPREME COURT HAS STATED THAT OFFENSES TREATED TOGETHER 13 AT SENTENCING VIA SINGLE SCORE SHEET CONTINUE TO BE 14 TREATED AS A SINGLE UNIT FOR PURPOSES OF SENTENCING UPON 15 A VIOLATION OF PROBATION. 16 IS THAT CORRECT? 17

THAT'S CORRECT. 18 THAT'S THE -- THAT'S WHAT I WAS TALKING ABOUT THE 19 ANTICIPATORY VIOLATION SENTENCE. 20

WE HAVE MADE THIS SO COMPLICATED THAT IT'S HARD FOR 21 LAWYERS, JUDGES OR ANYONE ELSE TO TALK ABOUT IT IN 22 STRAIGHT ENGLISH. 23 IF IT'S ALL TO BE VIEWED AS A SINGLE SENTENCE BECAUSE IT 24 IS ON A SINGLE SCORE SHEET, THEN HOW DO YOU CLOSE ANY 25 PART OF THAT OUT BY, UNDER YOUR ANALYSIS THAT ONCE YOU 26 SERVED HIS PART, THEN YOU CAN NEVER GO BACK AND DEAL 120 1 WITH ANY OF THOSE PARTS THAT HAVE ALREADY BEEN SERVED, 2 IF IT'S ALL A CONTINUAL SENTENCE? 3

I THINK THAT'S THE MISNOMER OF IT BEING A CONTINUING 4 SENTENCE. 5

THAT'S THE REASON I ASKED THE QUESTION. 6

I THINK WE TREAT IT AS A SINGLE UNIT. 7 IN THE FEDERAL SYSTEM WE CALL IT WHOLE SENTENCING BUT IT 8 IS A SINGLE UNIT SENTENCE. 9

HOW IS THE PROBATION PART OF IT THOUGH -- THIS IS 10 WHERE, AND AGAIN WE ARE ALL, WE'D LIKE TO HAVE SOME 11 MASSIVE CHART IN THE SKY THAT DIAGRAMMED THIS FOR US IN 12 SOME WAY. 13 BUT THE EFFECT OF THE WAY THAT YOU WOULD TREAT THIS 14 WOULD BE JUST AS IF, INSTEAD OF PROBATION, HE RECEIVED 15 FIVE YEAR SENTENCE, FOR THAT OFFENSE TOO, IS THAT 16 CORRECT? 17 DID HE RECEIVE A FIVE YEAR SENTENCE FOR THE FIRST AND 18 THEN A FIVE YEAR SENTENCE FOR THE SECOND? 19 AND ACTUAL TIME AND GAIN TIME WAS APPLIED AGAINST THOSE 20 TWO SIMULTANEOUSLY, RIGHT? 21

YES, SIR. 22

AND HE WENT OUT. 23 AND SO, IF WE TREAT THE PROBATION NOW AS IF -- IF HE HAD 24 RECEIVED A FIVE YEAR SENTENCE INSTEAD OF PROBATION, HE 25 WOULD HAVE WALKED OUT THE SAME WAY, IN OTHER WORDS, 26 CREDITS AGAINST ALL THREE OF THOSE PARTICULAR JUDGMENTS 121 1 OF CONVICTION OF THREE SEPARATE OFFENSES, RIGHT? 2 BUT HE WASN'T GIVEN THAT SENTENCE. 3

THAT'S RIGHT. 4 THAT MAY BE WHERE THE JUDGE DEFEATED HIS OWN INTENT BY 5 THE WAY HE IMPOSED THESE SENTENCES. 6 IF HE'D IMPOSED SPLIT SENTENCE OR PROBATIONARY SPLIT 7 SENTENCE, THEN WOULD BE CONTINUING CONDITIONS OF GOOD 8 CONDUCT AND THE SENTENCE WOULD BE A CONTINUING SENTENCE. 9 BECAUSE THESE ARE SEPARATELY IMPOSED, SEPARATE COUNTS 10 AND HE SERVED THOSE SENTENCES AND CLOSED THEM OUT, THEN 11 EXPO FACTOR IS IMPLICATED WHEN YOU GO BACK IN EFFECT 12 PENALIZING THE FACT TAKING AWAY VESTED AND EARNED GAIN 13 TIME AND APPLYING UNIMPOSED SENTENCE. 14

BUT LOOK, THE TRIAL JUDGE IS UNDER AN OBLIGATION TO 15 HAVE ONE SCORE SHEET FOR ALL THESE SENTENCES, CORRECT? 16

YES, MA'AM. 17

AND SO WHAT YOU'RE TELLING US THEN IS THAT A TRIAL 18 JUDGE WOULD HAVE TO GIVE A PRISON SENTENCE TO EACH ONE 19 OF THEM TO MAKE THEM HAVE ANY EFFECT BECAUSE YOU COULD 20 NEVER GIVE A PROBATIONARY TERM. 21 UNLESS THEY ARE TREATED AS EITHER PROBATIONARY, SPLIT 22 SENTENCE OR TRUE SPLIT SENTENCE, IF YOU'RE SAYING IF 23 THEY'RE NOT, THEN THE TRIAL JUDGE WOULD ALWAYS HAVE TO 24 GIVE THIS DEFENDANT SOME KIND OF JAIL TIME, OTHERWISE IT 25 BECOMES A NULLITY. 26

I THINK THE TRIAL JUDGE ALWAYS HAS TO GIVE THE 122 1 CREDIT, THE TRIPP CREDIT FOR THE TIME BEHIND BARS. 2 I THINK THE ONLY QUESTION HERE IS WHEN DO YOU ALSO 3 IMPOSE THE PENALTY OF FORFEITURE THAT GAIN TIME? 4 WHAT WE ARE SIMPLY SAYING IS IN A CASE LIKE THIS WHERE 5 THOSE SENTENCES ARE SEPARATELY IMPOSED ON SEPARATE 6 CASES, SEPARATE CONDUCT, THEY HAVE BEEN PUNISHED, THE 7 MAN PAID HIS DUES AND WALKED OUT THE DOOR, YOU CAN'T GO 8 BACK AND TAKE THEM AWAY EVEN UNDER THE SINGLE UNIT 9 CONCEPT, SINGLE SCORE SHEET CONCEPT BECAUSE HE'S EXPIRED 10 THOSE SENTENCES. 11

WHY DID YOU GET THE RIGHT TO GET THAT GAIN TIME, WHY 12 SHOULD HE HAVE GOTTEN THE GAIN TIME CREDIT? 13

HE WAS A GOOD BOY WHEN HE WAS IN JAIL. 14

WHY WOULD HE SOUGHT IT FOR, AFTER THE SECOND 15 SENTENCING, REVOCATION OF PROBATION, THEN WE SHOULD HOLD 16 SINCE TRIPP ONLY DEALS WITH JAIL CREDIT, THAT NO ONE HAS 17 A RIGHT TO GET THE GAIN TIME AS PART OF A SINGLE UNIT 18 SENTENCE? 19

WELL, THAT MAYBE PARTLY WHY IT'S DELEGATED TO THE 20 DEPARTMENT OF CORRECTIONS, BECAUSE THEY MAY SAY WHILE HE 21 WAS IN HERE, HE WAS A GOOD INMATE AND HE IS A SNITCH AND 22 WE HAVE PROBLEMS KEEPING HIM IN THE SYSTEM, WE WANT TO 23 GIVE HIM CREDIT AND GET HIM OUT OF IT. 24

BUT THE JUDGE HAS TO WORRY ABOUT IT IF HE'S GOING TO 25 GIVE HIM CREDIT. 26

ONLY THE TRIPP CREDIT. 123 1 DOESN'T HAVE TO WORRY ABOUT THE ELDRIDGE PENALTY. 2 THAT IS NOT HIS JOB. 3

HE COULD HAVE GOTTEN 20, HE GOT SENTENCED TO 17 AND 4 HE ONLY SERVED 7.5 YEARS. AS A TRIAL JUDGE DOING THE 5 SENTENCING, WE ALWAYS WANTED TO KNOW, AS DEFENSE, HOW 6 MUCH F HOW MUCH TIME IS HE LOOKING AT SERVING? 7 IF YOU ACCEPT YOUR ARGUMENT, THEN HE'S ENTITLED TO 10 8 YEARS OF CREDIT AND THERE WOULD BE NO SANCTION FOR THE 9 SEPARATE OFFENSES. 10

THERE IS NO SANCTION, YOUR HONOR, IN A CASE LIKE THIS 11 WHERE THE MAN HAS COMPLETED THOSE SENTENCES. 12 AND, BECAUSE IT REQUIRES REOPENING THOSE COMPLETED CASES 13 AND IN EFFECT, YOU COULD SAY THE SITUATIONS WHERE 14 EXTENDING THE STATUTORY MAXIMUM, BEYOND STATUTORY 15 MAXIMUM, BUT CERTAINLY BEYOND THE STATUTORY GUIDELINES. 16

LET'S LISTEN TO THE STATE, WE WILL SAVE A COUPLE 17 MINUTES FOR YOU ON REBUTTAL. 18

GOOD MORNING. 19

I'M CAROLYN MOSLEY, REPRESENTING DEPARTMENT OF 20 CORRECTIONS. 21

AM I RIGHT OR WRONG? 22 DID THE DEFENDANT APPLY NOT ONLY FOR TIME SERVED CREDIT 23 FROM THE FIRST TWO OFFENSES, BUT ALSO FOR GAIN TIME 24 CREDIT? 25

YES, YOUR HONOR. 26 HE ASKED FOR CREDIT UNDER TRIPP AND THE JUDGE GRANTED 124 1 HIM BOTH PRISON TIME AND GAIN TIME. 2

NOW UNDER TRIPP, TRIPP WAS ONLY DEALING WITH TIME 3 SERVED. 4 YOU AGREE TRIPP HAS BEEN EXTENDED AND APPLIED TO GAIN 5 TIME AS WELL? 6

YES, YOUR HONOR. 7 THE RATIONAL UNDERLYING WHY, THE DEFENDANT'S GIVEN ANY 8 CREDIT APPLIES AS WELL TO THE GAIN TIME. 9

SO THAT THE ELDRIDGE CREDIT THOUGH SHOULD ONLY, WHICH 10 IS FORFEITURE OF GAIN TIME SHOULD ONLY APPLY TO THE 11 TRIPP CREDIT THAT IS THE -- THE GAIN TIME, WOULD YOU 12 AGREE WITH THAT? 13 IN OTHER WORDS, THE ONLY THING THAT CAN BE FORFEITED 14 UNDER ELDRIDGE IS THE AGAIN TIME? 15

THAT IS CORRECT. 16

MY PROBLEM HERE, THE DEFENDANT HAS SERVED HIS TIME, 17 BUT IF I'M -- YOU MAY HAVE A DIFFERENT MASS AND 18 MR. UFFERMAN MAY HAVE A DIFFERENT ONE. 19 HE DID 1681 DAYS OF TRIPP CREDIT. 20 BUT DOT FORFEITED 969 DAYS. SO WHY ISN'T THERE A 21 PROBLEM HERE THAT YOU CAN'T FORFEIT MORE THAN YOU'RE 22 GIVING IN TRIPP CREDIT WITHOUT VIOLATING DOUBLE 23 JEOPARDY? 24 IN OTHER WORDS, HE SERVED 288 DAYS MORE THAN HE SHOULD 25 HAVE SERVED. 26

IT'S THE RATIONAL FOR WHY YOU GET THE CREDIT UNDER 125 1 TRIPP TO BEGIN WITH. 2 THE CONCERN OF THIS COURT AND TRIPP WAS TO CONTROL THE 3 TOTAL PRISON TERM. 4 AND BECAUSE, IF YOU DO NOT USE A PROBATIONARY SPLIT 5 SENTENCE, WHAT YOU DO IS ADD EACH PRISON TERM TOGETHER 6 TO GET A TOTAL PRISON TERM. 7 AND THIS COURT IN TRIPP WAS CONCERNED THAT THAT WOULD 8 SKEW THE GUIDELINES. 9 NOW IN A PROBATIONARY SPLIT SENTENCE, THIS IS WHAT 10 HAPPENS. 11 THE NEW TERM IS CONSIDERED TO BE A CONTINUATION OF THE 12 OLD TERM. 13

BUT THIS IS NOT A -- THERE HAS NEVER BEEN A CASE, 14 OTHER THAN THIS CASE, AND AGAIN WE WILL BE CAREFUL WHAT 15 WE CALL IT, WHETHER, I LIKE THAT CONCEPT SINGLE UNIT 16 SENTENCE. 17 THIS IS NOT IN TERMS OF POORE OR THE OTHER CASES EVER 18 BEEN CALLED A PROBATIONARY SPLIT SENTENCE AND CERTAINLY 19 ISN'T A TRUE SPLIT SENTENCE. 20 DO YOU AGREE WITH THAT? 21 AND WE HAVE NEVER CALLED IT THAT. 22 TRIPP DOESN'T CALL IT THAT. 23

TRIPP DOES NOT IDENTIFY AS A PROBATIONARY SPLIT. 24 BUT IS THE REASONING FOR WHY HE GETS THE CREDIT, YOU 25 HAVE TO TIE THE SENTENCES TOGETHER. 26 AND IN A PROBATIONARY SPLIT SENTENCE, WITH A SINGLE 126 1 CRIME, THAT IS EXACTLY WHAT HAPPENS. 2 YOU GET A NEW TERM OF IMPRISONMENT. 3 YOU HAVE AN OLD ONE. 4 THEY IN EFFECT MERGE AND WHAT YOU DO IS YOU GET CREDIT 5 FOR THE TIME YOU HAVE ALREADY SERVED AND WHAT YOU 6 HAVEN'T SERVED IS WHAT YOU NOW SERVE. 7 NOW, IF THAT'S IN THE OLD TERM, THEN THAT'S THE SAME 8 THING AS GAIN TIME. 9 THAT'S JUST TIME NOT SERVED ON THE SENTENCE. 10 AND THE DIFFERENCE BETWEEN A GREATER AND A LESSER TERM, 11 WHEN I MEAN LESSER, SUPPOSE YOU COME BACK ON A SHORTER 12 SENTENCE. 13 IF YOU COME BACK ON A SHORTER SENTENCE, AND IT DOESN'T 14 MATTER WHETHER WE ARE TALKING ABOUT THE SAME CRIME OR 15 DIFFERENT CRIMES, YOU COME BACK ON A SHORTER SENTENCE, 16 ALL YOU'RE GOING TO SERVE IS THE TIME YOU DID NOT SERVE 17 ON THAT TOTAL TERM, WHICH IS THE GAIN TIME. 18 IN OTHER WORDS, MR. GIBSON HAS A TOTAL OF 17 YEARS. 19 TEN THE FIRST TIME, PLUS 7. 20 OUTSIDE THE GUIDELINES, HE WOULD SERVE A TOTAL OF 17 21 YEARS. 22 BUT UNDER THE GUIDELINES, BECAUSE WE TREAT HIS SENTENCE 23 AS A SINGLE SENTENCE, HE WILL ONLY SERVE 10 YEARS. 24 HE WILL NOT SERVE 17. 25 HE WILL SERVE 10. 26 AND THE REASON FOR THAT IS THAT THE NEW 7 YEAR TERM 127 1 MERGES WITH THAT OLD TEN YEAR TERM. 2 MR. GIBSON GETS CREDIT FOR TIME SERVED. 3

YOU'RE SAYING THAT HE, WHEN HE GOT SENTENCED UNDER 4 THIS SINGLE SENTENCING SCORE SHEET, THAT ALTHOUGH HIS 5 TOTAL EXPOSURE WAS 17 YEARS, THAT THE -- ABSENT 6 DEPARTURE REASONS, HE COULD ONLY, UNDER THE GUIDELINES 7 HE CAN ONLY SERVE 10 YEARS? 8

THAT IS RIGHT. 9

THAT'S ONE BASIC ISSUE. 10 NOW, I GUESS I'M STILL HAVING TROUBLE THOUGH WHETHER, 11 WAS THERE MORE -- WHETHER HE GOT MORE FORFEITED IN THIS 12 CASE, MORE BY DOC THAN HE GOT IN TRIPP CREDIT? 13

WELL, YES HE DID. 14 HE DID HAVE MORE -- THE FORFEITURE WAS GREATER THAN THE 15 PRISON TIME EARNED. 16

WAIT A MINUTE. 17 BUT HE GOT IN THIS CASE NOT ONLY THE TIME HE ACTUALLY 18 SERVED. 19

RIGHT. 20

BUT HE GOT ALL THE UNFORFEITED GAIN TIME. 21 SO ISN'T THAT REALLY A WASH? 22 WHAT THEY NOW ARE FORFEITING IS THE SAME AMOUNT OF TIME 23 THAT HE WAS GIVEN CREDIT FOR AND UNFORFEITED GAIN TIME, 24 ISN'T IT? 25

IF YOU LOOK AT IT, WHEN HE CAME BACK ON THAT 7 YEAR 26 TERM, HIS PRISON TERM, TOTAL TERM IS 10 YEARS. 128 1

I KNOW WHAT YOU SAID ABOUT THAT. 2 BUT I'M JUST LOOKING AT DISCRETE AMOUNT OF TIME THAT HE 3 WAS GIVEN FOR EACH THING. 4 HE WAS GIVEN 1660 DAYS AS ACTUAL TIME SERVED IN JAIL AND 5 HE WAS GIVEN, ACCORDING TO MY CALCULATIONS HERE, 1969 6 DAYS OF UNFORFEITED GAIN TIME. 7

YES. 8

AND ISN'T THAT THE SAME AMOUNT OF TIME THAT THE STATE 9 WAS ATTEMPTING TO PUT BACK ON HIS SENTENCE? 10

HE WAS GIVEN 10 YEARS OF CREDIT ON A 7 YEAR CREDIT. 11 IF THAT GAIN TIME IS NOT FORFEITED, HE GOES HOME 12 IMMEDIATELY. 13 HE HAS NO TIME TO SERVE. 14 BUT IF I COULD GET THE COURT TO THINK ABOUT A 15 TRADITIONAL PROBATIONARY SPLIT, WHERE YOU HAVE THE SAME 16 CRIME, TRIPP WORKS THE IDENTICAL WAY AND THE REASON FOR 17 THAT SENTENCE STRUCTURE IS SO THAT YOUR TOTAL TERM, IN 18 THE SINGLE, YOUR TOTAL TERM IS GOING TO BE THOSE TWO 19 TERMS MERGED. 20 YOU'RE NOT GOING TO HAVE THEM ADDED TOGETHER, SO YOU 21 HAVE A HUGE SENTENCE. 22 AND THE WAY YOU MAKE SURE IS BY MAKING THE NEW TERM A 23 CONTINUATION OF THE OLD ONE INSTEAD OF A TOTALLY 24 SEPARATE TERM. 25

SO IF HE GOT FIVE YEARS IN PRISON AND FIVE YEARS 26 PROBATION, IN THIS EXAMPLE OF THE SINGLE CRIME, HOW 129 1 WOULD THAT WORK? 2 IN OTHER WORDS, HE GOES NO NOW AND HE IS SERVING HIS 3 FIVE YEAR IN PRISON. 4 AND THE COMBINATION OF GAIN TIME AND ACTUAL TIME SERVED, 5 HE'S RELEASED. 6 KNOW COMMENCES HIS PROBATIONARY TERM. 7 VIOLATES PROBATION. 8 AND NOW THE JUDGE SENTENCES HIM TO ANOTHER FIVE YEAR 9 IMPRISONMENT TERM. 10 NOW WHAT CREDIT IS HE ENTITLED TO ON THE PROBATIONARY 11 TERM AFTER THE JUDGE HAS FOUND HIM IN VIOLATION AND HAS 12 ADJUDICATED HIM AND NOW GIVEN HIM A FIVE YEAR SENTENCE? 13

OKAY, WHEN HE COMES BACK -- COMES BACK ON THE SAME 14 TERM, LIKE HE HAS FIVE YEAR FIRST, WENT TO PROBATION 15 CAME BACK ON ANOTHER FIVE YEAR. 16 NOW, BECAUSE ONE

CRIME CONTINUES THE OTHER AND YOU 17 MERGE, HE ONLY HAS A FIVE YEAR SENTENCE. 18 HE WILL BE GIVEN PRISON CREDIT AND HE WILL SERVE WHAT IS 19 LEFT TO BE SERVED, WHICH IS THE TIME HE DIDN'T SERVE, 20 WHICH IS THE FORFEITED GAIN TIME. 21

SO HE WAS NOT RECEIVE CREDIT FOR THE GAIN TIME THAT 22 HE RECEIVED ON THE INITIAL SENTENCE OF FIVE YEARS? 23

IF IT'S AFTER TEN -- WELL, IF THE JUDGE GAVE HIM -- 24 IT DEPENDS ON THE CREDIT THAT THE JUDGE GAVE HIM,. 25 WHETHER THE JUDGE GAVE -- WEIGH GETS WHEN HE COMES BACK 26 ON THE SAME TERM, HE WILL GET THE PRISON TIME. 130 1 YOU SUBTRACT THE PRISON TIME FROM THE FIVE YEAR TERM AND 2 HE SERVES WHAT'S LEFT. 3 AND WHAT'S LEFT IS EQUIVALENT TO THE GAIN TIME HE 4 PREVIOUSLY -- IT'S THE SAME THING. 5

BUT COULDN'T THE JUDGE ALSO GIVE HIM CREDIT FOR THAT 6 UNFORFEITED GAIN TIME AND THEN HE WOULD END UP GETTING 7 IN? 8

IF THE JUDGE GAVE HIM CREDIT, THAT'S RIGHT. 9 IT WOULD WIPE THE SENTENCE OUT. 10 BUT AFTER 10-1-89, THE DEPARTMENT, WELL DECLARED 11 FORFEITURE OF THAT GAIN TIME. 12 AND HE'S GOING TO SERVE ON THAT FIVE YEAR TERM WEIGH 13 DIDN'T SERVE AND WEIGH DIDN'T SERVE IS THE GAIN TIME. 14

SO THE JUDGE'S HANDS ARE TIED WITH REFERENCE TO THAT. 15 IT IS UP TO THE DEPARTMENT TO MAKE THAT DECISION? 16

BY THE DEPARTMENT'S, THE STATUTE AND THE RULE, THE 17 FORFEITURE IS MANDATORY, SO IN EVERY CASE THAT HAPPENS. 18

ALL RIGHT. 19

IN TERMS OF THIS BEING, WE ARE TALKING ABOUT TRIPP 20 REALLY SEEMS TO, IT'S GOT POLICIES UNDER SENTENCING 21 GUIDELINE. 22 IS THIS A STATUTORY CONSTRUCTION CASE? 23 IN OTHER WORDS, ARE WE REALLY LOOKING AT WHAT THE 24 LEGISLATURE SAID IN THE, THIS PARTICULAR STATUTE AS TO 25 THE DOC'S AUTHORITY TO FORFEIT GAIN TIME CREDIT. 26

ELDRIDGE SAYS THAT OUR STATUTE SAYS UPON REVOCATION 131 1 OF PROBATION THE DEPARTMENT HAS THE AUTHORITY TO FORFEIT 2 GAIN TIME, WHETHER THE DEFENDANT RETURNS ON A SHORTER 3 SENTENCE OR A LONGER SENTENCE AND WHETHER THE JUDGE 4 DECIDES TO GIVE THE CREDIT OR DOESN'T,. 5 IF THE JUDGE --. 6

THERE YOU SAY POP REVOCATION OF PROBATION. 7 WHERE WE GET INTO A QUESTION OF WHETHER THE STATUTE IS 8 CLEAR THAT SINCE, THIS CONCEPT OF WHAT THIS SENTENCE IS, 9 THEY DON'T MENTION PROBATIONARY SPLIT SENTENCES OR SPLIT 10 SENTENCES OR SINGLE UNITS. 11 THE LEGISLATURE CLEARLY INTEND THAT ANY GAIN TIME THAT 12 WOULD BE, HAVE BEEN AWARDED, WOULD GET FORFEITED, EVEN 13 IF THE OFFENSE WAS SEPARATE, AS LONG AS THERE IS SINGLE 14 SCORE SHEET? 15 AND SEEMS TO ME, THAT WHEN YOU TRY TO LOOK AT THE 16 STATUTE, YOU HAVE GOT TO READ SOME OTHER PHRASES INTO 17 IT, DON'T YOU? 18

WELL I THINK UNDER THE TRIPP SCENARIO, THIS COURT HAS 19 SAID THAT PROBATIONARY SPLIT SENTENCE, AND THE TRIPP 20 SCENARIO, EVEN THOUGH IT FUNCTIONS IDENTICAL TO A 21 PROBATIONARY SPLIT SENTENCE WITH A SINGLE OFFENSE, SO TO 22 TIE THOSE TWO TOGETHER. 23

BUT THE LEGISLATURE, KNOWING MAYBE AS MUCH AS WE KNOW 24 ABOUT SENTENCING, WHICH IS, WE ARE ALL SORT OF TREADING 25 HERE, AT LEAST I AM. 26 REQUIRES BY STATUTE THAT IF IT IS A SINGLE OFFENSE, THAT 132 1 THERE BE TRIPP CREDIT. 2 BUT TRIPP IS REALLY A FUNCTION OF THIS COURT'S 3 INTERPRETATION OF SENTENCING GUIDELINES. 4 SO THERE REALLY DOESN'T HELP

US MUCH BECAUSE TRIPP, 5 THERE IS NO STATUTORY RIGHT TO TRIPP CREDIT IN A, THIS 6 TYPE OF CASE. 7 CORRECT? 8

THAT'S RIGHT. 9 HE WOULD NOT GET THE -- WITHOUT THE TRIPP SCENARIO, THE 10 WAY THE DEPARTMENT WOULD TREAT IT, THEY WOULD BE TWO 11 INDEPENDENT SENTENCES. 12 IN MR. GIBSON'S CASE, HE WOULD THEN BE SERVING A TOTAL 13 OF 17 YEARS. 14 IT WOULD BE TEN ON THE FIRST AND 7 ON THE SECOND. 15 AND THERE WOULD BE NO CONNECTION BETWEEN THE CREDIT. 16

I'M ASSUMING THE JUDGE SENTENCED TO THE 10 YEARS 17 MAXIMUM, SAID ABSENT TRIPP, THERE IS NO STATUTORY RIGHT 18 TO THAT GAIN TIME. 19 IT IS ONLY WHEN THE GAIN TIME IS SOUGHT, CORRECT? 20

RIGHT. 21

THAT HE THEN GETS FORFEIT THAT GAIN TIME. 22

THAT'S RIGHT. 23

AS JUSTICE QUINCE SAYS, IT WOULD HAVE TO BE A WASH. 24 YOU'RE GIVEN CREDIT FOR. 25

RIGHT. 26

THAT'S WHY I ASKED EARLIER. 133 1 AS A MASS WRONG, WASN'T MORE FORFEITED THAN HE GOT? 2

I DIDN'T MEAN TO MISLEAD THE COURT. 3 THE WAY THE DEPARTMENT LOOKS AT THE SENTENCE, WHEN IT 4 COMES BACK IN TRIPP SCENARIO AND JUDGE HAS GIVEN HIM 5 PRISON CREDIT, THEN THE DEPARTMENT FORFEITS WHATEVER 6 GAIN TIME WAS EARNED ON THAT FIRST PART OF SENTENCE 7 BECAUSE CONCEPTUALLY WE TREAT IT THE SAME AS A REGULAR 8 PROBATIONARY SPLIT SENTENCE. 9

DOES THE JUDGE GIVE LESS TRIPP SENTENCE THAN YOU 10 FORFEITED? 11

NO, YOUR HONOR, THE COURT GAVE FULL, HE GAVE 10 YEARS 12 OF CREDIT ON THE 7 YEAR TERM. 13

THE TIME SERVED AND TIME NOT SERVED? 14

AND INDICATING I THINK MAYBE BECAUSE OF CONFUSION, 15 THAT THE JUDGE WAS NOT GOING TO FORFEIT THAT GAIN TIME. 16 BUT DOC FORFEITS EVEN THOUGH THE JUDGE DIDN'T. 17 BECAUSE THE JUDGE GAVE HIM 10 YEARS OF CREDIT ON A 7 18 YEAR SENTENCE. 19 THE GAIN TIME IS NOT FORFEITED. 20 HE GOES HOME IMMEDIATELY. 21 HAS NO TIME TO SERVE. 22

SO THERE WAS REALLY NO DIFFERENCE IN THIS CASE THAN 23 IF THE JUDGE HAD ORIGINALLY SENTENCED HIM ON THE 24 ORIGINAL COUNT, 10 YEARS PRISON FOLLOWED BY FIVE YEARS 25 PROBATION? 26 THERE ARE FOUR COUNTS HERE AND 15 TOTAL YEARS PLUS FIVE 134 1 YEARS PROBATION WAS THE ORIGINAL SENTENCE. 2

RIGHT. 3

UNDER THE SCENARIO YOU'RE TALKING ABOUT, IS THERE ANY 4 FUNCTIONAL DIFFERENCE THAN IF THE JUDGE HAD SENTENCED 5 THIS PERSON TO 10 YEARS TOTAL ON THE THREE COUNTS 6 FOLLOWED BY FIVE YEARS PROBATION? 7 BECAUSE YOU'RE GOING TO GIVE HIM THE 10 YEARS CREDIT OR 8 TREAT IT AS A TEN YEAR SENTENCE ANYWAY. 9

AS LONG AS PROBATION, WHATEVER TERM YOU HAVE FIRST, 10 AND HE COMES BACK, THOSE TWO TERMS TOGETHER WILL BE 11 MERGED AND THE TOTAL SENTENCE WILL BE WHICHEVER ONE IS 12 GREATER. 13 FOR EXAMPLE, WITH MR. GIBSON, HE HAD A TEN YEAR FIRST 14 AND THEN A 7. 15 IF HE HAD A 7 FIRST AND THEN A TEN, THE RESULT WOULD BE 16 THE SAME. 17 HE'S STILL ONLY -- HE'D STILL ONLY SERVE A TEN YEAR TERM 18 AND HE WOULD GET CREDIT FOR PRISON TIME SERVED ON THAT 19 AND HE WOULD SERVE WHAT WOULD AMOUNT TO THE FORFEITED 20 GAIN TIME AND THE DIFFERS BETWEEN THE 7 AND TEN YEAR 21 TERM, WHICH WOULD BE THREE YEARS. 22 BUT IT WORKS OUT EITHER WAY. 23 BUT YOU DO NOT INCREASE THE, WHEN YOU'RE FOCUSING ON THE 24 TOTAL PRISON TERM AND WITH A SPLIT SENTENCE, WHAT THAT 25 ALWAYS -- WHAT ALWAYS HAPPENS IN THOSE TWO TERMS MERGE. 26 THEY'RE NEVER ADDED TOGETHER. 135 1 AND THE DEFENDANT ALWAYS ENDS UP ONLY SERVING THE LONGER 2 SENTENCE OF THE TWO TERMS. 3

ALL RIGHT. 4 THANK YOU VERY MUCH. 5 HOW MUCH TIME ON REBUTTAL? 6

TWO MINUTES. 7 ALL RIGHT. 8

MAY IT PLEASE THE COURT. 9 LET ME BE VERY CLEAR. 10 THIS IS A TRIPP PENALTY, NOT A TRIPP CREDIT. 11 MR. GIBSON NEVER RECEIVED CREDIT FOR THE GAIN TIME THAT 12 HE HAD SERVED ON THE PREVIOUS SENTENCES. 13 THAT HAS BEEN THE MISUNDERSTANDING FROM THIS CASE FROM 14 THE GET GO. 15 I THINK MAJORITY BELOW MAYBE MISUNDERSTOOD THAT AS WELL. 16 THERE HAS BEEN SOME STATEMENT THAT --. 17

EXCUSE ME, THE STATEMENT IN THE GIBSON OPINION THAT 18 SAYS THE SENTENCING COURT AGREES AND ENTERED AN ORDER 19 AWARDING CREDIT FOR TIME SERVED AND UNFORFEITED GAIN 20 TIME ACCRUED. 21

NOT TRUE. 22 HE RECEIVED NEW SENTENCE OF 2055, A 7 YEAR SENTENCE. 23

THAT'S INACCURATE? 24

WELL WHAT HAPPENS, IS, IF YOU LOOK AT THE OPINION IN 25 ELDRIDGE, TALKS ABOUT THIS IDEA THAT THE TRIAL JUNK 26 AFTER A RESENTENCING ON A PROBATION HAS THE OPTION TO 136 1 RETAIN PREVIOUS GAIN TIME. 2 I SUBMIT THAT'S ONLY IN A PROBATIONARY SPLIT SENTENCE OR 3 TRUE SPLIT SENTENCE. 4 THAT IS NOT THE TYPE SENTENCE IN THIS CASE. 5 I THINK IT IS NOT AN ISSUE. 6

JUST WANT TO MAKE SURE. 7 IN A CASE, YOU'RE SAYING TRIPP ONLY ALLOWS CREDIT FOR 8 TIME SERVED. 9

CORRECT. 10

YOU DON'T EVER GET CREDIT --. 11

HE WASN'T SEEKING GAIN TIME. HE GOT IT BUT. 12

NOT AN ISSUE RIGHT NOW IN FRONT OF THIS COURT. 13 HE RECEIVED 7 YEAR SENTENCE, 2055 DAYS. 14 THAT WAS DECREASED BY THE CREDIT FOR TIME SERVED, ACTUAL 15 DAYS SERVED ON THE PREVIOUS SENTENCE. 16 NEVER DECREASED BY THE 1900 DAYS GAIN TIME. 17 TRIAL COURT RETAINED THAT, MEANING HE DOESN'T LOSE IT. 18 MEANING WHEN HE GOES BACK INTO THE DEPARTMENT, THEY 19 CAN'T TAKE THAT AWAY FROM HIM. 20 THE DEPARTMENT ADMITTED I THINK IN THIS BRIEF CERTAINLY 21 BELOW THAT THEY ROUTINELY TAKE IT AWAY IN EVERY SINGLE 22 CASE. 23 SO THE TRIAL COURT'S ROLE IS MEANINGLESS. 24 WHETHER THEY RETAIN GAIN TIME, DOESN'T MAKE A 25 DIFFERENCE, THE DEPARTMENT FORFEITS. 26

THE DEPARTMENT SAID IT REQUIRED IT? 137 1

NOT IN THIS. 2 ONLY IN A TRUE SPLIT SENSE. 3 MR. GIBSON RECEIVED THREE SEPARATE SENTENCES, TWO 4 SENTENCES OF FIVE YEARS EACH AND PROBATION. 5 ALTHOUGH THEY ARE SUPPOSED TO BE TREATED IN RELATION, 6 THEY ARE STILL SEPARATE SENTENCES. 7 ELDRIDGE SHOULD BE LIMITED TO THOSE TWO TYPES OF 8 SENTENCES, TRUE SPLIT AND PROBATIONARY SPLIT SENTENCES. 9 AT THE END OF THE DAY MR. GIBSON WAS GIVEN 7 YEARS AFTER 10 THE VOP. 11 HIS SENTENCE WAS INCREASED BY TWO HUNDRED SOME ODD DAYS 12 BECAUSE OF TRIPP. 13 I SUBMIT THAT TRIPP NEVER INTENDED ITS HOLDING TO WORK 14 TO THE DETRIMENT OF CRIMINAL DEFENDANTS. 15 AND MR. GIBSON'S CASE, HE WAS GIVEN MORE DAYS TO SERVE 16 BECAUSE OF TRIPP. 17 IT WASN'T DECREASED AT ALL. 18 THANK YOU. 19

THANK YOU ALL VERY MUCH. 20 WE WANT TO ESPECIALLY THANK DEFENSE COUNSEL HERE FOR 21 SERVING PRO BONO IN REPRESENTING THIS DEFENDANT IN THIS 22 COURT. 23 WE COMMEND YOU, IT IS IN THE FINEST TRADITIONS OF THE 24 FLORIDA BAR AND OUR PRO BONO PROGRAM. 25 THANK YOU ALL FOR YOUR PRESENTATION. 26 COURT WILL STAND IN RECESS UNTIL 9:00 TOMORROW MORNING.