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## Frank Mitchell v. State of Florida

NEXT CASE ON THIS MORNING'S DOCKET IS MITCHELL VERSUS STATE OF FLORIDA. ,,

MAY IT PLEASE THE COURT .

CHIEF JUSTICE: WAIT UNTIL MR. DUFFY SITS DOWN. THANK YOU.

MAY IT PLEASE THE COURT. COUNSEL. ROBERT FREEMAN ON BEHALF OF MR. MITCHELL WILL. THE MAIN ISSUE BEFORE THIS COURT TO DAY IS WHETHER OR NOT THE AUTOMATIC STAY RULE OF APPELLATE PROCEDURE 901.32 FALLS UNDER THE "JIMMY RYCE" ACT. I WOULD ALSO LIKE TO SPEND A LITTLE TIME DISCUSSING THE MERITS ISSUE IN MR. MITCHELL'S CASE, WHICH WAS IN MR. MITCHELL'S CASE, WHICH ALSO WAS DECIDED BY HALE, I WILL ARGUE - - BY HALE, REQUIRES THAT VIOLATION FOR A SEXUAL OFFENSE IS THE ONLY VIOLATION.

THE ONLY WAY WE CAN REcede FROM THAT ISSUE IS TO REcede FROM HALE?

THE FACT THAT HALE HAS BEEN DECIDED WOULD MOOT OUT THE ISSUE WITH RESPECT TO MR. MITCHELL, BUT I WOULD POINT OUT TO THE COURT, THERE ARE A NUMBER OF OTHER INSTANCES, WHERE THE AUTOMATIC STAY PROVISION OF THE RULES OF APPELLATE PROCEDURE SHOULD NOT APPLY TO THE "JIMMY RYCE" ACT. AND I AM TALKING ABOUT THE MERITS ISSUE.

EXCUSE ME?

I AM TALKING ABOUT THE MERITS ISSUE THAT YOU SAID WE HAD DECIDED ADVERSELY IN HALE.

CORRECT.

IN ORDER TO GRANT YOU RELIEF ON THAT ISSUE, WE WOULD HAVE TO REcede FROM HALE.

THAT WOULD BE CORRECT, AND MY POSITION ON THAT WOULD BE, WHICH I WOULD LIKE TO DISCUSS TODAY, IS THAT THIS COURT DID NOT ADDRESS THE FACT THAT THERE, IT WOULD BE A VIOLATION OF SUBSTANTIVE DUE PROCESS, TO APPLY THE "JIMMY RYCE" ACT TO SOMEBODY WHO IS NOT PRESENTLY INCARCERATED FOR SEXUALLY VIOLENT OFFENSE.

WAS THAT THE GROUND ON WHICH THE DISTRICT COURT GRANTED RELIEF OR DECIDED THIS CASE? DUE PROCESS.

YOUR HONOR, IT WAS RAISED IN THE TRIAL COURT, AND I WOULD POINT OUT TO THE COURT, IN THE RECORD PAGE, R-4 AND R-39, IT WAS RAISED IN THE TRIAL COURT. THE TRIAL COURT GRANTED RELIEF AND DISMISSED THE PETITION, BASED ON STATUTORY CONSTRUCTION. IT WAS, ALSO, RAISED IN THE FIRST DISTRICT COURT OF APPEAL, AND THE FIRST DISTRICT COURT OF APPEAL DID NOT ADDRESS IT IN ITS DECISION, BUT IT HAS BEEN RAISED UNDER SUBSTANTIVE DUE PROCESS, FROM THE TRIAL COURT TO THE FIRST DISTRICT, ALL ALONG.

LET ME ASK YOU, ON THE STATE ISSUE, YOU AGREED, DO YOU NOT, THAT EVEN IF THERE IS AN AUTOMATIC STAY, AND EVEN IF WE HOLD THAT IT APPLIES TO "JIMMY RYCE" ACT CASES, THAT DOESN'T STOP A RESPONDENT IN A "JIMMY RYCE" ACT CASE FROM SEEKING TO DISSOLVE THE

STAY IN THE TRIAL COURT, BASED ON THE PARTICULAR CIRCUMSTANCES OF THAT CASE. IS THAT RIGHT?

THAT'S CORRECT. THAT IS PRECISELY WHAT HAPPENED IN THIS CASE. AFTER THE STATE FILED ITS CONCURRENTLY WITH THIS NOTICE OF APPEAL, IT FILED A NOTICE OF RELIANCE ON THE AUTOMATIC STAY PROVISION 9.310 AND THEN I HAD GONE AHEAD AND MOVED TO VACATE THE STAY IN THE TRIAL COURT, WHICH WOULD HAVE DENIED, AND THEN I SOUGHT REVIEW IN THE FIRST DISTRICT COURT OF APPEAL, ON A 2-TO -1 DECISION, THEY FOUND THAT THE AUTOMATIC STAY APPLIES TO JIM RICE PROCEEDINGS. JUDGE PADOVANO DISSENTED, AND AFTER THE BRIEFS WERE FILED, IF I CORRECT MYSELF, IN DECEMBER, THE FIFTH DISTRICT COURT OF APPEAL, IN DUSHARME, AGREED WITH JUDGE PADOVANO'S DISSENT IN MITCHELL, WITH JUDGE SOLIA DISSENTING IN THE DUSHARME CASE.

LET ME ASK YOU THIS, DID YOU ARGUE ANYTHING OTHER THAN THE FACT THAT YOU BELIEVE THAT THE AUTOMATIC STAY PROVISION SHOULD NOT BE APPLICABLE TO JIMMY RYCE. DID YOU ARGUE ANYTHING ABOUT, EVEN IF IT IS APPLICABLE, THEN, UNDER THE CIRCUMSTANCES OF THIS CASE, FOR WHATEVER REASON, IT SHOULD BE DISSOLVED.

WELL, WE ARGUED WHAT COURTS LOOK TO, AS TO WHETHER OR NOT AUTOMATIC STAY SHOULD APPLY. A, THE LIKELIHOOD OF THE MARRIAGE, AND THEN, B, THE, WHAT WOULD BE THE HARM ON THE OTHER SIDE, AND IN THIS PARTICULAR CASE, AT THE TIME THE MOTION TO DISMISS IN MITCHELL WAS FILED, A WAS A CASE OF FIRST IMPRESSION, AND THE ONLY COURTS THAT HAD ADDRESSED THE ISSUE AS TO WHETHER OR NOT THE CURRENT TERM OF INCARCERATION HAD TO BE FOR A SEXUALLY VIOLENT OFFENSE, WHERE THE COURTS, IN THE DECISION IN IOWA, THE TRIAL COURT JUDGE, JUDGE FRANCES, SAID THAT THIS WAS A CASE OF FIRST IMPRESSION, PARTICULARLY IN HIS ORDER WHICH IS ATTACHED TO THE APPENDIX, HE FOUND THAT HE COULD NOT SAY WHETHER OR NOT THE STATE WOULD BE LIKELY, WOULD LIKELY BE SUCCESSFUL ON THE MERITS OR NOT.

SO BASICALLY WHAT WE HAVE HERE IS WE HAD A RULE THAT IS DESIGNED FOR CIVIL CASES, AND ALTHOUGH WE HAVE TERMED JIMMY RYCE TO BE CIVIL, WE ALL KNOW THAT INCARCERATION IS INVOLVED, SO, OR COMMITMENT, INVOLUNTARY COMMITMENT, SO THERE IS LOSS OF A LIBERTY INTEREST, HAS, IT SEEMS TO ME THAT, AND THIS HAPPENS, I THINK, MORE OFTEN THAN NOT, THAT ALTHOUGH MAYBE THE RULES HAD NOT BEEN CHANGED UP UNTIL LAST YEAR OR WHATEVER, WHEN THIS STARTED, HAS THERE BEEN ANY ATTEMPT TO TRY TO BRING THIS UP THROUGH THE RULES PROCESS, SO THERE COULD BE SOME REASONED DISCUSSION ABOUT WHETHER PROCEDURES SIMILAR TO THE PROCEDURES FOLLOWED IN A CRIMINAL CASE, WOULD APPLY IN THE JIMMY RYCE SITUATION?

I AM NOT AWARE AT TO AWARE AS TO WHETHER OR NOT THE APPELLATE RULES COMMITTEE HAS ADDRESSED THIS ISSUE, BUT I WOULD ENCOURAGE THIS COURT

AS A PUBLIC DEFENDER, YOU WILL AWE YOU ARE ALL VERY ACTIVE. WHY WOULDN'T YOU GO TO THE APPELLATE RULES COMMITTEE AND WORK THROUGH THIS, SO WE COULD HAVE SOME PROPOSALS IN PLACE AS TO WHETHER THE RULES SHOULD BE AMENDED?

BASED ON MY CONVERSATIONS WITH OTHER PUBLIC DEFENDERS AND MAYBE MY OWN EXPERIENCE, IT IS NOT UNTIL THIS COURT RECOMMENDS THE APPELLATE RULES COMMITTEE OR THE CRIMINAL PROCEDURE RULES COMMITTEE TO LOOK AT SOMETHING, THAT THINGS GET ACCOMPLISHED, SO IRRESPECTIVE OF THE WAY THIS COURT RULES IN THIS CASE, I WOULD STILL REQUEST THAT THE MATTER BE REFERRED TO THE APPELLATE RULES COMMITTEE.

WE HAVE SENT THE ISSUE ABOUT ADOPTING APPROPRIATE RULES IN "JIMMY RYCE" ACT CASES, TO AN APPROPRIATE COMMITTEE, ACTUALLY, TO OUR CRIMINAL ADVISORY COMMITTEE. SO THAT WAS DONE SOME TIME AGO.

I AM AWARE, WITH RESPECT TO AS FAR AS THE PLEA BARGAIN, BUT QUITE FRANKLY I AM UNAWARE OF ANY OTHER COMMITTEE THAT IS WORKING ON THAT, ON THIS PARTICULAR ISSUE.

HELP ME WITH, WHAT OTHER INSTANCES IS THE STATE ENTITLED TO APPEAL, IN JIMMY RYCE PROCEEDINGS? FOR INSTANCE, IS THE STATE, IF A JURY, AFTER THERE IS A PROCEEDING WITH REFERENCE TO THE FUTURE DANGERS OR LIKELIHOOD OF COMMITTING THESE ACTS IN THE FUTURE, IF A JURY FIND FOR THE DEFENDANT IN A PROCEEDING LIKE THAT, DOES THE STATE HAVE A RIGHT TO APPEAL THAT?

MY POSITION HAS NOT COME UP FOR ME, AND MY POSITION BEING THEY WOULD NOT, BUT

I AM NOT LOOKING FOR YOUR POSITION, SO MUCH AS WHETHER OR NOT YOU HAVE ANALYZED THE STATUTORY SCHEME AND WHETHER YOU CAN TELL US IN WHAT OTHER INSTANCES, OTHER THAN THE JUDGE DISMISSING THE CASE, HAS OCCURRED HERE, WOULD THE STATE HAVE THE RIGHT TO APPEAL, AND THEREFORE WE WOULD LOOK AT THE CONSEQUENCE OF WHETHER OR NOT THE AUTOMATIC STAY, AND THERE WOULD HAVE TO BE FURTHER PROCEEDINGS. DO YOU KNOW WHAT OTHER TIMES?

I CAN GIVE THE COURT THREE EXAMPLES, WHERE THE AUTOMATIC STAY, THE STATE WOULD SEEK AN AUTOMATIC STAY. PRESIDENT FIRST WOULD BE IN STATE V G WITH RESPECT TO THE 30 STATE V GOODE, WITH RESPECT TO THE 30-DAY RULE. WHERE THE TRIAL IS TO BE HELD WITHIN 30 DAYS AND THE LAWYER WOULD GO AHEAD AFTER 30 DAYS PRESUMABLY FILE A MOTION TO DISMISS AND PRESUMABLY THEY WOULD FILE A NOTICE OF APPEAL AND NOTICE OF RELIANCE ON THE AUTOMATIC STAY. IN THE CASE OF THIS COURT'S RECENT DECISION IN CAPEHEART, WHICH I BELIEVE CAME OUT ABOUT A WEEK AGO, WITH RESPECT TO THE PROBABLE CAUSE FINDING BY THE TRIAL COURT JUDGE, IF THE PETITION IS NOT SWORN TO, THIS COURT STATED IN CAPEHEART, THAT BASED ON THE MOTION TO DISMISS, IF THE STATE DID NOT FILE A SWORN-TO PETITION WITHIN THE 24 HOURS, THEY WOULD HAVE TO GO AHEAD AND FILE A SWORN-TO PETITION. IF YOU DIDN'T DO IT WITHIN THE 24 HOURS, THE STATE WOULD RELY ON THE APPEAL AND THERE WOULD BE ANOTHER AUTOMATIC STAY. ANOTHER EXAMPLE WOULD BE THIS COURT'S DECISION IN ATTKISSON, WHERE THIS COURT HELD THAT LAWFUL CUSTODY IS A PREREQUISITE TO THE FILING OF A PETITION UNDER THE "JIMMY RYCE" ACT. IF AN INDIVIDUAL IS NOT IN LAWFUL CUSTODY AT THE TIME OF THE "JIMMY RYCE" ACT, FOR EXAMPLE THE SENTENCE EXPIRED PRIOR TO THEM FILING THE PETITION, THE TRIAL LAWYER WOULD GO AHEAD AND FILE THE MOTION TO DISMISS AND PRESUMABLY THE STATE WOULD FILE A NOTICE OF APPEAL AND RELY ON THE AUTOMATIC STAY.

HAVE YOU RESEARCHED ANALOGOUS SITUATIONS SUCH AS "BAKER" ACT PROCEEDINGS OR OTHER MENTAL HEALTH COMMITMENT PROCEEDINGS, WHERE THERE MAY OR MAY NOT BE, THE STATE ARGUED

ANYTHING WESTERHEIDE, WHERE THE COURT, WHERE THE STATE ARGUED DIFFERENT POSITIONS. IRRESPECTIVE OF A NOTICE OF APPEAL BEING FILED OR NOT, A LOT OF THINGS CAN HAPPEN, BUT WITH RESPECT TO THE "JIMMY RYCE" ACT, AS THIS COURT HAS HELD FOR EXAMPLE IN GOODE, IT INVOLVES SUCH A MASSIVE CURTAILMENT OF LIBERTY, THAT WE SHOULD PRESUME THAT LIBERTY AND DUE PROCESS SHOULD APPLY.

SO THE ANSWER IS YOU HAVEN'T, WE DON'T KNOW WHAT THE SITUATION IS, "BAKER" ACT OR YOUR AUTOMATIC STAY PROVISION PLIK NBL "BAKER" ACT.

I AM NOT AWARE OF IT BEING APPLICABLE IN EITHER "BAKER" ACT OR

YOU DON'T KNOW.

I DON'T KNOW.

IS THE ARGUMENT BEFORE US WHETHER THE RULE APPLIES OR WHETHER THE APPLICATION OF THE RULE HAS A , DEPRIVES YOUR CLIENT UNCONSTITUTIONALLY, OF A LIBERTY INTEREST IN AN UNCONSTITUTIONAL MANNER, BECAUSE I SEE THAT IT IS TWO DIFFERENT THINGS. IT SEEMS TO ME THAT JUDGE PADOVANO 'S DISSENT WENT OFF ON A CONSTITUTIONAL ARGUMENT. DID YOU RAISE A CONSTITUTIONAL ARGUMENT IN THE TRIAL COURT , AS TO

WELL , YEAH. I ARGUED THAT THE APPLICATION OF THE RULE RESULTED IN A SERIOUS DEPRIVATION OF LIBERTY. SO I MEAN , YEAH , FROM STRICTLY CONSTRUCTING IT , I MEAN, THE RULE DOES SAY IT APPLIES IN CIVIL CASES , AND THIS COURT HAS FOUND AS THE SUPREME COURT HAS FOUND IN HENDRICKS, THAT THESE ARE CIVIL CASES, BUT THE APPLICATION OF THIS RULE , BECAUSE IT INVOLVES A LIBERTY INTEREST AND DUE PROCESS

WHY WOULDN'T THE ADEQUACY OF THE PROCEEDINGS TO CHALLENGE THE AUTOMATIC STAY , SUCH AS WHAT YOU DID HERE , OKAY , COMBINED WITH THE EXISTENCE IN THIS CASE OF THE EARLIER FINDINGS OF PROBABLE CAUSE, WHY WOULDN'T THOSE TWO THINGS BE ENOUGH TO SATISFY ANY PROCEDURAL DUE PROCESS CONCERNS WITH THIS PROCEDURE? IN OTHER WORDS , THE FACT THAT EVEN THOUGH THERE IS AN AUTOMATIC STAY , THAT YOU ARE ASSERTING, OF COURSE, THAT THERE IS AN IMPORTANT LIBERTY INTEREST AT STAKE , WHEN YOU GO TO THE JUDGE AND ASK FOR A DISSOLUTION OF THAT STAY, AND THEN WE HAD IN THIS RECORD , AN EARLIER DETERMINATION , THOUGH, OF PROBABLE CAUSE , WHICH EVEN JUDGE PADOVANO CITED TO AS BEING A REASONABLE BASIS , PERHAPS , FOR , YOU KNOW FOR THE STAY. WHY WOULDN'T THOSE TWO FACTORS BE ENOUGH TO SATISFY ANY PROCEDURAL DUE PROCESS CONCERNS?

WELL, IN THIS CASE , THE MOTION TO DISMISS THE PETITION, ALSO , WAS A MOTION TO VACATE THE PROBABLE CAUSE DETERMINATION. I THINK AS JUDGE PADOVANO POINTED OUT , I MEAN , THIS INDIVIDUAL IN THIS CASE , HAS NO PROCEEDING PENDING AGAINST HIM , AT THE TIME THE MOTION IS GRANTED . >> THIS IS WHY I ASKED YOU ABOUT OTHER INSTANCES IN WHICH THE STATE HAS THE RIGHT TO APPEAL . YOU DON'T HAVE A JURY DETERMINATION WHERE YOU DON'T HAVE A DETERMINATION WHERE

IT DOES NOT SAY SO IN THE STATUTE.

THAT SITUATION WOULD PRESENT , CERTAINLY , A PRETTY SERIOUS ONE. THAT IS IF THERE HAS BEEN A DETERMINATION THAT THE DEFENDANT DOES NOT QUALIFY , AND THEN THE STATE HAS AN AUTOMATIC STAY , IT APPEARS, THAT WOULD PRESENT A COMPELLING SITUATION FOR NOT ALLOWING THE , YOUR CLIENT TO REMAIN INCARCERATED .

WHAT I WOULD POINT OUT , JUSTICE ANSTEAD , IS I THINK , EVEN JUSTICE SOLIA IN HIS DISSENT IN THE FIFTH DISTRICT COURT'S DECISION IN DUSHARME, EVEN DISAGREED WITH THE APPROACH TAKEN BY THE MITCHELL MAJORITY. AND, I MEAN , THE TWO JUDGES IN THE MITCHELL MAJORITY , SAID THAT, YES, THE AUTOMATIC STAY APPLIES. THE MAJORITY IN DUSHARME TWO SAID, I GUESS WHERE I AM GOING

UNDER ANY VIEW THAT YOU HAVE , WOULD THE STATE , WITH A SHIFTING OF BURDENS , BE AT LEAST ENTITLED TO ASK THE TRIAL COURT TO ENTER A STAY ?

MY POSITION IS THAT , BECAUSE OF THE LIBERTY INTEREST IN DUE PROCESS INTEREST AT STAKE , THE BURDEN SHOULD BE ON THE STATE , TO MOVE IN THE TRIAL COURT, AND ESTABLISH LIKELIHOOD OF SUCCESS ON THE MERITS , AND THE HARM , VERSUS PLACING THE BURDEN ON RESPONDENT.

SO IT IS A BURDEN-SHIFTING ISSUE THAT TO SOME EXTENT WERE PRESENTED.

CORRECT, AND I THINK THIS COURT NEEDS TO LOOK AT THE HISTORICAL BASIS WHICH WAS APPOINTED OUT IN THE OPINION, AS TO THE POLICY BEHIND THE AUTOMATIC STAY. IT DEALT WITH LOSS OF MONEY DAMAGES THAT THE STATE WOULD BE, PRESUMABLY A SOLVENT ENTITY.

MY LAST QUESTION IS, HAVE YOU UPDATED YOUR RESEARCH, SO THAT WE CAN FEEL CONFIDENT HERE THAT THERE IS NOTHING FROM ANY OTHER STATE THAT WOULD BE HELPFUL ON THIS ISSUE?

I HAVE NOT DONE AN OUT-OF-STATE SEARCH ON THIS PARTICULAR ISSUE. THE LAST FLORIDA CASE WAS THE 'DID YOU SHARM' CASE IN WAS THE DUSHARME CASE IN DECEMBER, WHICH I THINK I SUPPLIED TO THE COURT.

THANK YOU.

CHIEF JUSTICE: YOU ARE SUBSTANTIALLY IN YOUR REBUTTAL.

OH,

GOOD MORNING. MAY IT PLEASE THE COURT. MR. FRIEDMAN. TIME TOM DUFFY. I AM HERE ON BEHALF OF THE STATE TODAY. OUR POSITION IS THERE IS NO REASON WHY THE RULE 9.310-B-2 SHOULD NOT APPLY.

DOES THE STATE HAVE A RIGHT TO APPEAL A JURY DETERMINATION THAT THE DEFENDANT DOES NOT QUALIFY?

THERE IS NO EXPLICIT RIGHT IN THE STATUTE. LET ME TELL BECAUSE THE STATUTORY SCHEME IS, AS REGARDS MISTRIAL.

LET'S ASSUME THAT THE STATE DID HAVE A RIGHT. WOULD YOU AGREE THAT THAT WOULD CERTAINLY PRESENT A COMPELLING CIRCUMSTANCE AGAINST THE ENTRY OF ANY AUTOMATIC STAY, WHERE YOU ACTUALLY HAVE THE LAWFUL DETERMINATION THAT THE DEFENDANT DOES NOT QUALIFY?

YEAH. THAT WOULD AND COMPELLING.

AND YET ON ITS FACE, AT LEAST, THE AUTOMATIC STAY WOULD SEEM TO APPLY JUST AS HERE, WITH A DISMISSAL. BUT YOU WOULD AGREE, AT LEAST, THAT IF THERE WAS AN APPEAL UNDER THOSE CIRCUMSTANCES, THAT IT BE VERY DIFFICULT FOR THE STATE TO DEFEND AN AUTOMATIC STAY.

YES. I THINK THAT WOULD BE THE CASE.

I APPRECIATE THAT CANDOR. WHY NOT, IF WE HAVE GOT A LIBERTY INTEREST HERE, WHICH COMES AWFULLY CLOSE TO THE CRIMINAL SITUATION OF INCARCERATION, WHY SHOULDN'T THE BETTER RULE BE TO PUT THE BURDEN ON THE STATE, TO HAVE TO SHOW THE LIKELIHOOD OF SUCCESS AND THE OTHER FACTORS THAT WE ORDINARILY REQUIRE? WOULDN'T THAT BE A BETTER PROCESS, IN VIEW OF THE FACT THAT, IN TERMS OF THE ACTUAL INTERESTS INVOLVED HERE, IT IS VERY SIMILAR TO INCARCERATION. WHY WOULDN'T THAT BE THE BETTER RULE, AND THE STATE WOULD, STILL, HAVE RELIEF THERE.

IT MIGHT BE A BETTER RULE, IF IT WENT THROUGH A RULE-MAKING PROCESS. RIGHT NOW WE HAVE A RULE IN PLACE THAT PROTECTS INTERESTS.

YOU ARE NOT SAYING IT THAT SOMEBODY WHO DRAFTED THE RULE ON THE RULES COMMITTEE

OR THAT THIS COURT , MANY , MANY YE ARS AG O, WHEN THAT WAS EN ACTED , LOOKED INTO A CRYSTAL BALL AND SAW THAT KANSAS WOULD PASS A LAW LIKE THIS AND EVENTUALLY FLORIDA WOULD GO ALONG , AND THE SUBSTA NTIAL CONSTITUTION , YOU KNOW , YOU ARE NOT T ELLING US

NO, SIR.

I APPRE CIATE THAT CAND OR.

JUSTICE CANTER O.

LE T ME ASK YOU SOMETHINGABOUT THE LIBERTY INTEREST , BECAUSE YOUR OP PONENT INSISTS THAT THERE IS A LIBERTY INTEREST HERE. MY UNDERSTANDING IS THAT THERE MAY BE A LIBERTY INTEREST INVOLVED , WHEN THEDEFENDANT OTHERWISE WOULD BE RELEASED FROM INCARCERATION , WERE IT NOT FOR THE J IMMY RYCE PROCEEDINGS, AND IN THAT PA RTICULAR CASE HERE , THE PROCEEDINGS WOULD BE INVOLVED?

THAT WAS NOT THE PAR TICULAR CASE HERE.

BU T IN TER MS OF SAYING THE AUTOMATIC STAY SHOULD REMAIN AND STAY IN PLACE OR WHETHER THE RULES BY THE TERM IT EMAPPLIES , OR WHETHER THE DEF ENDANT WHEN LIBERTY INTERESTS ARE INVOLVED CAN SEEK A DISSOLUTION OF THE STAY , THAT WOULD ENTER INTO THE ANALYSIS, WOULDN'T IT ?

YES.

BECAUSE THE DEFE NDANT CAN SAY THIS IS A SITUATIONWHERE I AM GOING TO GET OUT OF PR ISON , AND AS SOON AS THE COURT ENTE RS AN ORDER IN FAVOR OF THE DEFENDANT , THE DEFENDANT ON THE NEXT DAY, CAN ISSUE A MOTION TO DISSOLVE THE AUTOMATIC STAY , AND ALLOW THE DEFENDANT TO BE RELEASED FROM PRISON , PENDING THE APPEAL. CORRECT?

YES. YES.THAT'S CORRECT. AND THAT I S WHY I THINK JUDGE PADO VANO 'S DISSENT MISSED THE MARK. I HAVE A GREAT DEA L OF RESPECT FOR JUDGE PADO VANO BUT I HAVE TO DISAGREE WITH H IM IN THIS CASE . THERE WAS NO DUE PROCESSVIOLATION HERE A S COU NSEL HAS CONCEDED . HE WAS AB LE TO MOVE THE JUDGE TO SET IT ASIDE IN THE TRIAL COURT.HE WAS ABL E TO TAKE AN APPEAL FROM THAT TO THE DISTRICT COURT OF APPEAL , SO WE ALL ENDED UP FUSSING OVER THE TWO PRINCIPLE ISSUES THAT COME U P IN ANY STAY , WHEN IT S O UGHT TO DISSOLVE , WHICH IS THE LIKELIHOOD OF SUCCESS ON THE ME RITS , AND THE PROBABILITY OF IRREPARABLE HA RM.

DOES I T , THE PRESUMPTION OR THE POSTURE IN SHIFTING THE BURDEN TO AN INDIVIDUAL, WHO IN THIS CASE WOULD B E SUBJECT TO WALK FREE , THEPRESUMPTION THAT Y OU ARE NOT, THAT THIS IS GOING TO BE A STAY IN FA VOR OF THE STATE , D OES THAT IMPACT ANY CONSTITUTIONAL CONC ERNS OR INTERESTS THAT WE NEED TO ADDRESS ?

NOT IN THE ABSENCE OF AN EVIDENTIARY MA TTER. YOU HAVE THE BURDEN OF PERSUADING WHETHER YOU GO F IRST OR SECOND ON A LE GAL ISSUE.

LET ASSUM E THIS IS A CRIMINAL PROCEEDING.THE DEFENDANT, WHAT WAS THECRIME THAT THIS DEFENDANT WAS INCARCERATED FOR , THE NONSEXUAL

I BELIEVE IT WAS A DRUG CRIME BUT I AM NOT CERTAINOF THAT . DO YOU KN OW?

IT WAS A DRUG CR IME, AND IT WAS A FOUR-YEAR SENTENCE. EYE BELIEVE THAT'S CORRECT.

SO HE IS ABOUT TO GET OUT , AND THE STATE ACTUALLY FINDS THAT THERE IS ANOTHER CRIME THAT HE HAS COMMITTED , AND THEY FILE ON HIM , AND SO THEY, HE REMAINS IN CUSTODY , AND THAT CASE IS DISMISSED . NOW , TELL ME IN THAT SITUATION, HOW DOES IT WORK. IN OTHER WORDS, DOES THE STATE NOW WANT TO APPEAL THAT DISMISSAL . IT IS A DISMISSAL OF A CRIMINAL INFORMATION.

THAT WOULD GET HIM THE BOND AND BAIL AND SUPERSEDEOUS BOND . IT WOULD DEPEND, I THINK , LARGELY ON THE GROUNDS FOR DISMISSAL .

SO NOTHING IS PENDING, AND DOES THE DEFENDANT , WHAT ARE THE FACTORS? I GUESS THAT IS WHAT I AM TRYING TO UNDERSTAND, IS THAT WHEN SOMEONE'S LIBERTY IS AT STAKE WHICH IT IS IN A CRIMINAL CASE AND IT IS IN THIS CASE , THAT IT IS A DIFFERENT INQUIRY THAT GOES ON THAN THE INQUIRY IN AN AUTOMATIC STAY DISSOLUTION .

YEAH. THERE WOULD BE DIFFERENT , BECAUSE THE GOVERNMENT IS ENTITLED TO THE AUTOMATIC STAY, AND THAT MAKES SENSE IN THE JIMMY RYCE CASE , BECAUSE YOU HAVE A FINDING BY QUALIFIED EXPERTS , THAT IS PRESUMPTIVELY A FINDING OF PROBABLE CAUSE, IF THE PERSON IS DANGEROUS , AND THAT IS WHY THE DEFAULT HERE , ALMOST HAS TO BE TO THE STATE , BECAUSE OF THE STATE'S INTEREST IN PROTECTING ITS CITIZENS FROM PEOPLE WHO HAVE BEEN FOUND BY EXPERTS WHO EXAMINED THEM , TO BE DANGEROUS PEOPLE.

WELL , BUT, AGAIN , WE WANT TO GO BACK TO THE CRIMINAL CONTEXT, BECAUSE THERE COULD BE MANY SITUATIONS WHERE PROBABLE CAUSE IS FOUND TO BELIEVE THE PERSON HAS COMMITTED A CRIME , AND IT IS DISMISSED. OKAY. SO THERE IS NO CHARGE PENDING. WHAT HAPPENS? YOU GO , THE DEFENDANT IS ABOUT TO WALK FREE. THE STATE HAS TO GO IN AND WHAT DO THEY HAVE TO ESTABLISH?

THEY HAVE TO ESTABLISH THAT HE IS DANGEROUS , LARGELY , I MEAN , THEY WOULD HAVE TO ESTABLISH WHAT YOU ESTABLISH TO GET BAIL. I DON'T KNOW THAT IT WOULD BE, I MEAN , IT IS MORE SET OUT, AND I AM NOT REALLY PREPARED ON THE BAIL STATUTE OR THE RULES ON PRETRIAL RELEASE AND RULE AND RELEASE PENDING APPEAL , BUT MY SENSE OF IT WOULD BE THAT , IF THERE WERE NO PROBABLE CAUSE , IN OTHER WORDS, IF THE DETERMINATION WAS THAT PROBABLE CAUSE HAD FAILED , THEN THERE WOULD BE NO GROUND TO HOLD HOLDING , IRRESPECTIVE OF HOLDING , IRRESPECTIVE OF BAIL AND IRRESPECTIVE OF WHAT HE WAS CHARGED WITH. IF, HOWEVER , IT WAS TO SOME OTHER MATTER SUCH AS A DISPOSITIVE MOTION TO SUPPRESS, I THINK, THEN , IN THAT CASE , THE STATE COULD BE ABLE TO ESTABLISH THAT THE PERSON DID NOT NEED TO BE INCARCERATED , PRIOR TO OR DID NOT NEED TO BE JAILED OR HAD TO POST BOND, PRIOR TO THE APPEAL BEING FINALIZED .

SO IT IS A REAL , THE POINT IS , I GUESS, IT IS A REAL POLICY ISSUE, AND MY PROBLEM WITH IT IS THAT THE POLICY ISSUES THAT LED TO THE ADOPTION OF THE CIVIL RULE , HAD NOTHING AT ALL , COULDN'T BE FARTHER A WAY FROM THE "JIMMY RYCE" ACT , AND SO

ONE ASSUMES , BUT THAT DOESN'T NECESSARILY MEAN THAT THE RULES SHOULDN'T APPLY. I MEAN, SETTING ASIDE THE FACT THAT , SINCE THE RULE IS UNAMBIGUOUS , THAT YOU ARE NOT SUPPOSED TO GO INTO THAT, BUT I UNDERSTAND THAT IT HAS ALREADY BEEN GONE INTO.

JUST FROM A PRACTICAL POINT OF VIEW, I KNOW THAT WE HAVE HAD A WHOLE SPECTRUM OF CASES WHERE THINGS WEREN'T DONE RIGHT AND PEOPLE WERE GETTING FILED , RIGHT ON THE DAY OF RELEASE. TO YOUR KNOWLEDGE CANDIDLY , ARE THOSE ISSUES PRETTY WELL SET NOW, OR IS THIS ISSUE OF THIS AUTOMATIC STAY , SOMETHING THAT IS LIKELY TO OCCUR OVER AND OVER AGAIN?

I HAVEN'T SEEN IT TOO MUCH. IT HAS COME UP , WHEN JUDGES HAVE DISMISSED CASES AFTER INCARCERATION , AFTER THE INCARCERATIVE PORTION OF THE SENTENCE IS IN .

I N THOSE OTHER CASES , WE SORT OF ASSUMED THAT YOU COULD BE ABLE TO FILE AGAIN BUT I THINK THE SUMS WAS THAT THE PERSON WOULD BE ABLE TO BE OUT BUT THE ASSUMPTION WAS THAT THE PERSON WOULD BE ABLE TO BE OUT UN TIL THE FINDING . SO OUR ASSUMPTION IN WHICH WE DECIDE SOME OF THESE CASES UNDER REMEDY, IS SOMEHOW UNDERMINED , I F THE PERSON REM AINS , DO THEY REMAIN IN THE JIMMY RYCE FACILITY, IS THAT WHERE THEY GO?

GENERA LLY , YES , UNLESS THEY ARE BROUGHT BACK FOR APPEARANCE AT A HEARING OF SOME KIND , IN WHICH CASE THEY ARE USUALLY K EPT IN A SEPARATE FACILITY IN THE COU NTY JAIL.

THEY ARE ACT UALLY JAILED WHEN THEY COME BACK FOR

GEN ERALLY S O , THAT HAS BEEN M Y EXPERIENCE , ANYWAY. I THINK THE JAILS ACTUALLY HAVE TO HAVE A S E PARATE AREA FOR THESE PEOP LE TO BE KEPT .

FOR THE NONCRIMINAL PEOPLE.

FOR THE NON CRIMINAL PEOPLE. RIG HT.

DOES A ME NTAL FACILITY HAVE SOME AREA WHERE THEY KEEP THEM, SIN CE THEY ARE NOT BEING TREA TED BUT THEY ARE KEPT IN SOME KIND OF MENTAL FACILITY , AREN'T THEY?

KEPT AT THE FLORIDA COMMITMENT C ENTER , JUST LIKE THE PEOPLE WHO HAVE BEEN COMMITTED , BECAUSE WHEN THEY GO DOWN THERE , THEY DO HAVE A RIGHT TO BE PRET REATED , E VEN DURING TRIAL, AND THEY CAN CONSENT TO TREATMENT DOWN THERE AT THAT TIME.THAT IS ONE OF THE THINGS IN JUDGE SOLIA'S SEP ARATE CONCURRENCE/DISSENT IN DUSHARME, THAT HE NOTED THAT THAT ACTUALLY WORKED, THAT THE AUTOMATIC STAY WORKED IN THE "RYCE" ACT RESPONDENT 'S FAVOR TO SOME EX TENT , BECAUSE THEY CAN GET SOME TREATMENT WHILE THEY ARE BEING HE LD.

ON WHAT BA SIS? I MEAN , WHAT , U NDER WHAT AUTHORITY WOULD THEY BE ABLE TO GET TREATMENT?

THE AUTHORITY VESTED INTHE DEPARTMENT OF CHILDREN AND FAMILIES TO TREATANYBODY WHO IS IN THE FLORIDA CIVIL COMMITMENT CENTER.

WITH OUT ANY KIND OF COMMITMENT PAPERS.

WITHOUT ANY KIND OF COMMITMENT PAPERS.IT IS OF FERED TO THEM . THAT IS MY UNDERSTANDING ANY HOW. I DON'T KNOW WHETHER THEY HAVE THE STATUTORY AUTHORITYTO DO THAT. THEY HAVE , MY UNDERSTANDINGIS THAT THEY HAVE BEEN OFFERING IT.

LE T ME ASK YOU JUST ONE OTHER QUESTION HE RE, ABOUTTHIS PROBABLE CAUSE. YOU KNOW , IF YOU HAD A HEARING ON THE PROBABLE CAUSE ISSUE , AND UNDER SOME CIRCUMSTANCES , Y OU CAN HAVE A HEARING ON THE PROBABLE CAUSE ISSUE , CORRECT?

YES.

AND IF THE TR IAL JUDGE DETERMINES THAT THERE IS NO PROBABLE CAUSE, DOES THE STATE HAVE A RIGHT TO APPEAL THAT DETERMINATION?

I THINK S O , YES.

SO UNDER THOSE CIRCUMSTANCES, WOULD THE AUTOMATIC STAY PROVISION APPLY?

I WOULD ARG UE THAT IT DID O N THIS GROUND , THAT IT WOULD DEPEND TO SOME EXTENT ON

WHY THE STATE FAILED, I MEAN, IF THE STATE'S PETITION FAILED , AND THERE WAS NO FINDING OF PROBABLE CAUSE MADE IN THE EXP ARTE PROBABLE CAUSE, THAT SOUNDS LIKE AN EXTRAORDINARY THING , AND THE ONLY THING , EXTRAORDINARY CIRCUMSTANCE , AND I CAN ASSUME THAT IT WOULDN'T HA P PEN, WOULD B E BECAUSE THE I'S WEREN'T DOTTED AND THE T'S WEREN'T CROSSED. IN OTHER WORDS , THE STATE IS GOING T O FILE THE STATE ISN'T GOING TO FILE A PETITION AGAINST SOME ONE, UNLESS THE EXPERTS SAY THIS PERSON IS LIKELY TO REOFFEND.

DO ALL THE EXPERTS SAY THAT ? ASSUMING YOU HAVE A SP LIT OF OPINION , THE TRIAL JUDGE SAYS, NO , I AM NOT GO ING TO FIND PROBABLE CAUSE.

I WOULD ARGU E THAT THE AUTOMATIC STAY , STILL, SHOULD APPLY , BECAUSE THERE IS SOME OPINION. THERE IS SOME COMPETENT EVIDENCE. OTHER WISE WE WON'T GET TO A PETITION, IF ALL , IF EVERYBODY ON THE MULTIDISCIPLINARY TEAM SAYS THIS INDIVI DUAL DOES NOT MEET THE CRITERIA.

DO YOU AGREE THAT THE DEFENDANT WILL HAVE A COMPELLING CASE TO DISSOLVE THE STAY?

HE WOULD HAVE A BETTER CASE THAN ANOTHER "RYCE" ACT RESPONDENT MIGHT HAVE , BUT MY ARGUMENT , T ODAY , IS THAT THE AUTOMATIC STAY BEST ADVANCES THE AIMS OF THE "JIMMY RYCE" ACT , AND THAT IS TO PRE VENT SEXUALLY VIOLENT PREDATORS FROM BEING RELEASED FROM INCARCERATION, DIRECTLY INTO THE GENERAL POPULATION, UNTIL THERE IS A FINDING AS TO WHET HER THEY ARE DANGER OUS OR NOT , AND THAT FINDING I S MADE ULTIMATELY, BY A JURY. NOW, IF THE , LET'S T AKE ANOTHER EX AMPLE , JUS TICE QUINCE. IF THE , THERE IS A N ADVERSARIAL PROBABLE CAUSE HEARING , AND THE JUDGE FINDS ABSENCE OF PRO BABLE CAUSE, THAT COULD COME UP IN A COUPLE OF DI FFERENT WA YS. THE STATE COULD NOT GET ITS WITNESSES THERE, I N WHICH CASE THE DEFENDANT'S CASE IS NOT AS COMPELLING THAN IT IS IF THE TRIAL COURT LISTENS TO THE EVIDENCE ANALYSTENS TO SOME CONTRARY EVIDENCEAND DISAGREES. THE STATE WOULD HAVE A RIGHT TO SE EK A STAY IN THAT CASE , AND I THINK THE STATE COULD ARGUE THAT THIS PERSON , THERE IS SOME EVIDENCE, STILL, THAT THIS PERSON IS DANGEROUS , AND THAT SHOULD BE THE DEFAULT .

SO THIS DETENTION OF THE DEFENDANT, COULD POTENTIALLY GO ON , WELL , FOR AS LONG AS THE APPEAL PROCESS.

THAT'S CORRECT.

THE DIS TRICT COURT .

POSSIBLY , THAT'S CORRECT. AND MANY OF THEM HAVE GONE ON FOR YE AR S AND YEARS, AS , BEFORE TRIAL, AS THE V ARIOUS CONSTITUTIONAL ISSUES HAVE GOTTEN SH AKEN OUT BY THIS COURT AND OTHERS .

AND IS THERE , I GU ESS , IS THERE ANY , IF YOU ARE IN J AIL FOR A LONG TIME PRIOR TO TRIAL , YOU CAN GET SOME KIND OF C R EDIT FOR TIME SERVED, BUT UNDER THESE CIRCUMSTANCES , THE DEFENDANTS WOULDN'T EVEN GET ANY CRE DIT FOR THE TIME THEY HAVE AL READY SP ENT IN THE FACILITY, WOULD THEY?

NO, BECAUSE GETTING OUT DOESN'T DEPEND ON HOW LONG YOU HAVE BEEN IN. IT DEPE NDS ON YOUR PROGRESS AND HOW MU CH BETT ER YOU HAVE GOTTEN, AND I PRESUME THAT THAT IS ONE OF THE R AGS ALWAYS FOR RATIONALES FOR OFFERING PEOP LE WHO ARE PRETRIAL, THE OPTION OF CONSENTING T O THE TREATMENT PROGRAM , THAT IT WOULD BE WITHIN THEIR PO WER , BUT THAT WOULD ENABLE THEM T O POTENTIALLY FORSHORTEN , THE AMOUNT OF TIME WOULDN'T FORSHORTEN BUT IT WOULD PREVENT THEM FROM WAITING THREE OR FOUR YEAR S AND THEN ONLY CONSENTING TO TREATMENT AFTER THEY HAVE BEEN COMMITTED OFFICIALLY.

OUR ARGUMENT IS THAT THE PURPOSE OF THE RULE IS REALLY IMMATERIAL. THE PURPOSE OF ANY STAY IS TO KEEP THE PARTIES AT STATUS QUO. OUR POSITION IS THAT STATUS QUO IS BEST SERVED HERE: IT BEST SERVES THE INTERESTS OF ALL OF THE CITIZENS OF THE STATE, IN LIGHT OF A FINDING THAT THIS PERSON IS DANGEROUS. UNDER THESE FACTS, WE HAVE DEMONSTRATED THE LIKELIHOOD OF SUCCESS ON THE MERITS. THE UNDERLYING APPEAL IN THIS CASE, OUR POSITION IS, DISPOSES OF THIS CASE. THE DISPOSITION OF THIS CASE. THE CONSTITUTIONAL ISSUE THAT WAS MENTIONED IN PLEADINGS, WAS NOT PART OF THE TRIAL COURT'S DETERMINATION OR THE DISTRICT COURT OF APPEALS DETERMINATION. THE PROBABILITY OF IRREPARABLE HARM, THAT FALLS STRONGLY ON THE STATE, RATHER THAN ON THE PETITIONER IN THIS CASE, THE "RYCE" ACT RESPONDENT, AND WE ASK THAT YOU AFFIRM THE HOLDING OF THE FIRST DISTRICT COURT OF APPEAL.

CHIEF JUSTICE: THANK YOU VERY MUCH. REBUTTAL. THREE AND-A-HALF MINUTES.

WITH RESPECT TO THE STATE OF JIMMY RYCE LITIGATION TODAY, MOST OF THE ERRORS RULE INURE TO THE STATE WHEN THE MOTION TO DISMISS IS FILED, FOR EXAMPLE FAILURE TO TAKE RESPONDENT TO TRIAL WITHIN 30 DAYS, FAILURE TO HAVE A SWORN AFFIDAVIT, FAILURE TO FILE THE PETITION WHILE THE PERSON IS STILL IN LAWFUL CUSTODY, SO IN THAT RESPECT, I DON'T THINK WE WOULD BE PRESERVING THE STATUS QUO BY DEPRIVING SOMEBODY OF THEIR LIBERTY AND DUE PROCESS. WITH RESPECT TO JUSTICE PARIENTE'S QUESTION, I BELIEVE THE CRIMINAL CONTEXT, I BELIEVE THE CASE FROM THIS COURT, FROM, I THINK, BACK IN THE '70s OR MAYBE BEFORE THAT WAS YEOMAN'S. I AM NOT SURE IF I AM PRONOUNCING IT CORRECTLY, WITH RESPECT TO SUPERSEDEOUS BONDS, AND ONE OF THE MAIN ISSUES WHEN A SUPERSEDEOUS BOND IS ASKED THAT COMES UP, IS AN INDIVIDUAL'S PRIOR RECORD, AND I THINK A LOT OF THE OTHER THINGS THAT ARE DECIDED IS WHAT WOULD BE TRADITIONALLY DONE IN BOND HEARINGS, TIES TO COMMUNITY, RISK OF FLIGHT, ET CETERA.

DOES DANGEROUSNESS COME INTO IT?

I DON'T BELIEVE SO.

THERE WOULD VIRTUALLY BE NO INSTANCE WHERE THE CHARGES HAD BEEN DISMISSED AGAINST A CRIMINAL DEFENDANT, WHERE THE STATE WOULD BE ENTITLED TO STILL HOLD THE DEFENDANT.

CORRECT.

A CRIME CASE.

CORRECT. IN MOST CASES, SUPERSEDEOUS BOND IS

AND YOUR OPPONENT, ACTUALLY, CANDIDLY CONCEDED THAT DURING QUESTIONING.

BASED ON THE STATE OF WHAT TYPES OF MOTIONS WOULD BE GRANTED THESE DAYS, BASED ON THIS COURT'S DECISIONS, I THINK THE BURDEN SHOULD BE ON THE STATE TO MOVE IN THE TRIAL COURT, AS TO WHY THERE SHOULD BE A STAY, AND

DO YOU SEE, THERE, THEN, IF IT WAS ON THE STATE, THEN, WOULD THE CRITERIA, THOUGH, BE DIFFERENT THAN A CRIMINAL CASE? WOULD IT BE LIKELIHOOD OF SUCCESS AND HARM TO THE COMMUNITY, SINCE THAT IS WHAT YOU ARE LOOKING AT WITH THE JIMMY RYCE DEFENDANT?

I WOULD SAY YES, THAT THE TRIAL COURT JUDGES

IT WOULD BE A DIFFERENT INQUIRY THAN IN THE CRIMINAL CONTEXT?

CORRECT, GIVEN THE FACT THAT THESE CASES HAVE BEEN DEEMED TO BE CIVIL, EVEN THOUGH THEY ARE PROBABLY QUASI-CRIMINAL IN NATURE, BUT THE TRIAL COURT SHOULD LOOK AT WHAT A TRIAL COURT WOULD LOOK IN ANY CIVIL CASE. UNDER 9.310 .A, THEY CAN DECIDE WHETHER OR NOT TO, THE RESPONDENT IN THESE CASES CAN POST A BOND OR OTHER CONDITIONS OR BOTH. THEY WOULDN'T NECESSARILY BE YOU ARE OUT. THE RULES AS WRITTEN RIGHT NOW UNDER 9.310, ALLOWS THE TRIAL COURT TO DO THOSE TWO THINGS.

DO THEY HAVE THE AUTHORITY TO IMPOSE ONE OF THOSE MONITORING DEVICES?

I DON'T SEE WHY THEY, WHY THAT COULD NOT BE A CONDITION, A LAWFUL CONDITION IMPOSED BY THE TRIAL COURT. IT IS NOT UNCOMMON, EVEN, I MEAN, IN CRIMINAL CASES.

WOULD THEY HAVE THE AUTHORITY TO AUTHORIZE THAT, DURING THAT TIME THAT THEY RECEIVE AFFIRMATIVELY RECEIVE TREATMENT?

I DON'T BELIEVE, THAT WOULD RAISE A FIFTH AMENDMENT PROBLEM, I BELIEVE, BECAUSE PART OF TREATMENT WOULD BE TO ACCEPT RESPONSIBILITY, AND IF YOU MOVE TO DISMISS PRIOR TO GOING TO TRIAL, YOU MAY BE INCRIMINATING YOURSELF. THERE IS NO PSYCHOTHERAPIST PATIENT PRIVILEGE, SO IT IS KIND OF AN OTHER MURKY AREA. AND I THINK WE ARE GOING TO BE DECIDING THAT ISSUE NEXT MONTH OR SO.

IN MY REMAINING MOMENTS, I WOULD LIKE TO DO I HAVE ANY REMAINING MOMENTS?

CHIEF JUSTICE: NO.

IN THAT EVENT, I WOULD REQUEST THAT THIS COURT REVERSE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL AND HOLD THAT THE AUTOMATIC STAY DOES NOT APPLY TO JIMMY RYCE PROCEEDINGS, AND I RELY ON MY BRIEF, WITH RESPECT TO THE OTHER CERTIFIED QUESTION IN THIS CASE, THAT HAD BEEN DECIDED BY HALE, THAT THIS COURT SHOULD RECEDE FROM HALE, THAT ON THE BASIS OF SUBSTANTIVE DUE PROCESS, THAT THE MOST RECENT TERM OF PRISON INCARCERATION HAS TO BE FOR A SEXUALLY VIOLENT OFFENSE.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL TAKE ITS MORNING RECESS OF 15 MINUTES.

MARSHAL: PLEASE RISE.