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## **James V. Crosby, Jr. v. Johnny Bolden**

THE NEXT CASE ON THE COURT'S DOCKET IS CROSBY VERSUS BOLDEN. GOOD MORNING. GOOD MORNING. I AM CAROLYN MOSTLY, REPRESENTING THE PETITIONER, THE -- I AM CAROLYN MOSELY, REPRESENTING THE PETITIONER, THE DEPARTMENT OF KREINGSS. -- CORRECTIONS. THIS CASE IS ABOUT SUPERVISION AND THE GANG TIME LAW. THE RESPONDENT MR. BOLDEN, IN RELEVANT PART, RECEIVED THREE CONCURRENT SENTENCES THAT WERE SUBJECT TO CONDITIONAL RELEASE SUPERVISION, BUT THOSE SENTENCES DID NOT END AT THE SAME TIME, THE REASON BEING THAT, ON TWO OF THE SENTENCES, HE HAD A FIREARM MANDATORY TERM OF THREE YEARS THAT HE HAD TO SERVE WITHOUT ANY GAIN TIME. NOW, HE HAD A MINIMUM MANDATORY TERM ON THE OTHER SENTENCE, WHICH WE REFERRED TO AS A SHOTGUN SENTENCE, BUT HE COULD RECEIVE GAIN TIME DURING THAT TIME FRAME. NOW, WHAT THIS MEANT, WAS THAT THE SHOTGUN SENTENCE WOULD END EARLIER THAN THE OTHER TWO SENTENCES. SO THEREFORE, THE OTHER TWO SENTENCES, DETERMINED THE DATE HE WAS RELEASED --

COULD I JUST ASK FOR CLARIFICATION, AND WITHOUT GETTING INTO THE NUMBERS, IT SEEMS THAT THERE IS TWO COMPETING IDEAS HERE. ONE IS THAT, WHEN SOMEONE IS IN PRISON, THEY ARE NOT SERVING CONDITIONAL RELEASE, AND SO THAT, FOR THE TIME THAT HE REMAINED IN PRISON, AND ON THAT SENTENCE, HE COULDN'T BE ON CONDITIONAL RELEASE, AND THAT IS SORT OF WHAT YOUR POSITION IS, BUT THE OTHER ASPECT THAT CONCERNS ME IS THAT I ALWAYS HAD UNDERSTOOD, BEFORE ALL THIS GAIN TIME STUFF CAME INTO PLAY, THAT, WHEN A JUDGE WAS SENTENCING SOMEONE TO CONCURRENT SENTENCES ARISING OUT AFTER SINGLE CRIMINAL EPISODE, THE INTENT WAS THAT, WHATEVER THAT TOTAL SENTENCE WAS, WHICH IN THIS CASE WAS TEN YEARS, WOULD BE THE TIME THAT THE PERSON WOULD SERVE. BUT IN THIS CASE, IF WE TAKE THE POSITION OF CONDITIONAL RELEASE DIDN'T START, HE WILL SERVE 300-WHATEVER DAYS MORE, CORRECT? ZOO SO HOW, IN -- SO HOW, IN TERMS OF ADDRESSING THOSE TWO COMPETING ISSUES, HOW DOES IT, WHAT IS THE DEPARTMENT'S VIEW ON THAT, AND IN OTHER WORDS?

OKAY. AS A PRELIMINARY MATTER, I UNDERSTAND WHEN WE, AND THE CRIMINAL ISLE, WHEN YOU THINK OF -- IN THE CRIMINAL AISLE, WHEN YOU THINK OF CONCURRENT SENTENCES, THAT THEY WOULD BEGIN AT THE SAME TIME, AND IN THE MANDATORY MINIMUM, THAT CHANGES IT, BUT IT IS STILL WITHIN THE CONTROL OF THE JUDGE TO, THE JUDGE CONTROLS A MAXIMUM AMOUNT OF GAIN TIME THAT AN INMATE CAN EARN ON A SENTENCE, AND HE DOES THAT THROUGH THE LECTURE OF HIS SENTENCE -- THROUGH THE LENGTH OF HIS SENTENCE, SO IN MR. BOLDEN'S CASE, WE WOULD NOT EVEN BE HERE IF THE JUDGE HAD DONE OBJECT OF TWO THINGS -- HAD DONE ONE OF TWO THINGS, IF HE HAD, ON THAT SHOTGUN SENTENCE, MADE IT FIVE YEARS INSTEAD OF TEN YEARS.

DO YOU THINK JUDGES PRACTICALLY KNOW THE MYRIAD OF SENTENCING STATUTES AND GAIN TIME AND HOW THEY ALL INTERRELATE AND THE SEPARATE VERSUS THE CONGLOMERATION, I MEAN, ARE YOU SAYING THAT THE JUDGE, WHEN HE OR SHE SENTENCES, THE PERSON WAS TOLD ABOUT THE EFFECT THAT THEY DO IT THIS WAY, THERE IS GOING TO BE THIS CONSEQUENCE?

I THINK IT IS A PRACTICAL MATTER A LOT OF TIMES. THE JUDGES PROBABLY DON'T UNDERSTAND, BUT THEY ARE PRESUMED TO KNOW THE LAW, AND IF THE JUDGE IMPOSES A MANDATORY TERM ON SOME SENTENCES AND NOT ANOTHER, THEN THAT MEANS THAT THE OTHER SENTENCE IS GOING TO, HE IS GOING TO BE EARNING GAIN TIME ON IT.

YOU SAID WHEN THE JUDGE IMPOSES A MANDATORY SENTENCE. IF IT IS MANDATORY, THE JUDGE DOESN'T HAVE A CHOICE ABOUT MANDATORY MINIMUMS.

YEAH, BUT A LOT OF TIMES THE JUDGES DON'T IMPOSE THACK, BUT HE DOESN'T HAVE A CHOICE ABOUT THAT, BUT HE DOES HAVE A CHOICE ON THE LENGTH OF THE SENTENCE, AND TO GET BACK HERE, WE WOULD NOT BE HERE, IF THE JUDGE HAD MADE THAT OTHER SENTENCE FIVE YEARS LONG!

WHAT WOULD HAVE HAPPENED THEN, UNDER THOSE CIRCUMSTANCES? HE WOULD HAVE BEEN OUT OF JAIL WITHOUT CONDITIONAL RELEASE? AT THE TIME THAT HE WAS RELEASED?

NO, MA'AM. WHAT WOULD HAPPEN, IF HE HAD RECEIVED FIVE YEARS ON THE SHOTGUN SENTENCE, IT WOULD HAVE ENDED EARLIER WITH LESS GAIN TIME, THAN THE OTHER TWO SENTENCES. THE OTHER TWO SENTENCES, THEN, WOULD HAVE CONTROLLED BOTH THE PRISON TIME AND THE SUPERVISION TIME, BECAUSE CONDITIONAL RELEASE SUPERVISION IS THE AMOUNT OF GAIN TIME THAT IS AWARDED. SO ON A FIVE-YEAR SENTENCE, HE WOULD GET ABOUT 700 DAYS OF GAIN TIME. HE GOT 997 DAYS ON THE OTHER TWO SENTENCES, SO THOSE 997 DAYS WOULD CONTROL HIS, THE LENGTH OF HIS SUPERVISION, SO I JUST AS A PRELIMINARY MATTER, THE POINT TO MAKE THAT THIS, IT MAY BE COUNTERINTUITIVE TO THE JUDGE, BUT IT IS IN HIS CONTROL, AND IF HE INTENDED SOMETHING DIFFERENTLY FROM WHAT HAPPENED IN MR. BOLDEN'S CASE, HE CAN STILL FIX IT, IF THAT IS NOT WHAT THE PARTIES WANT, HE CAN FIX THAT.

YOU KNOW, OUR FIRST PROBLEM WITH THIS CASE IS, WHEN YOU LOOK AT WHAT YOU SAY IS THE ACTUAL POTENTIAL RELEASE DATE FOR MR. BOLDEN, YOU GET TO MARCH 11, 2004. YOU HAVE GOT A TEN-YEAR SENTENCE THAT WAS IMPOSEED IN '93, AND SO JUST ON THE SURFACE OF IT, IT LOOKS LIKE THIS IS BEYOND TEN YEARS. SO HOW DO WE RECONCILE THE FACT THAT IT LOOKS LIKE THIS MAN IS GOING TO SERVE MORE THAN THE TOTAL TEN YEARS THAT WAS GIVEN HIM?

SENTENCES ARE UNIQUE, AND THIS COURT SAID THAT, IN EVANS, MADE IT VERY CLEAR, ON EACH SENTENCE THAT HE RECEIVES, HE WILL NEVER SERVE MORE THAN TEN YEARS, DAY FOR DAY ON THAT SENTENCE, EITHER UNDER, IN PRISON OR UNDER SUPERVISION, SO YOU HAVE TO LOOK AT EACH SENTENCE INDIVIDUALLY.

LET ME GIVE A SHOT AT THAT AND SEE IF MY UNDERSTANDING IS ANYWHERE CLOSE TO WHERE THIS IS, AND THAT IS WHAT WE ARE REALLY BOILING DOWN TO, IS THE FACT THAT HE WAS SENTENCED TO TEN YEARS OF WHICH FIVE OF THOSE YEARS WAS A MINIMUM. HE WAS ABLE TO ACCRUE GAIN TIME DURING THAT PERIOD.

RIGHT.

OKAY.

AND SO THE GAIN "TIME" CAME IN WHILE HE STILL COULD NOT BE RELEASED ON THE CONCURRENT SENTENCES, SO HE THEN WENT OUT, AND HE VIOLATED, HE CAME BACK IN THE DEPARTMENT, AND IT PUT 336 OR 37, WHATEVER IT IS, DAYS THAT HE WAS, IN FACT, WAS IN PRISON ON THE CONCURRENT SENTENCES, WHICH HE WOULD HAVE BEEN, BUT FOR THOSE SENTENCES UNDER SUPERVISION, AND THEY TOLD THOSE -- AND THEY TOLD THOSE DAYS.

CORRECT -- AND THEY TOLLED THOSE DAYS.

CORRECT.

AND THAT MEANS IN FACT, FROM THE DATE OF HIS SENTENCE TO THE DATE THE END OF HIS SUPERVISION IS TEN YEARS PLUS 336 DAYS, SO THE QUESTION, THEN, BOILS DOWN TO WHETHER,

WHEN HE WAS SENTENCED FOR, TO TEN YEARS, DOES THAT, DOES THAT MEAN THAT HE HAS A RIGHT TO TEN CONSECUTIVE YEARS OR WHETHER ANY PORTION OF THAT TIME IS TOLLED BY REASON OF HIS ACTUALLY NOT BEING OUT FOR THE PERIOD OF TIME THAT HE IS NOT ON CONTROLLED SUPERVISION? IS THAT BASICALLY WHERE WE ARE?

I THINK SO. YOUR HONOR, I THINK THAT THE AUTHORITY TO TOLL IS IN THE CONDITIONAL RELEASE STATUTE, ITSELF. IT ANTICIPATES THAT THIS SUPERVISION WILL BEGIN WHEN THE INMATE, WELL -- WHEN THE INMATE, WELL, IT CLEARLY SAYS WHEN HE MEETS HIS TENTATIVE RELEASE DATE, AND THAT HAS TO BE THE DATE THAT HE IS ACTUALLY RELEASED FROM SUPERVISION, SO THEREFORE IT DOESN'T START UNTIL HE IS RELEASED THAT DATE. IF HE IS STILL THERE, BY IMPLICATION THAT, PERIOD HAS TO BE TOLLED, AND THIS IS WHAT THE COURT SAID IN EVANS.

BUT ISN'T THE EVANS, AND THAT IS GOING BACK TO THE ORIGINAL SENT OF THE SENTENCES. WHEN SOMEBODY -- THE ORIGINAL INTENT OF THE SENTENCES. WHEN SOMEBODY IS IN PRISON BECAUSE THEY HAVE DONE ONE CRIME ONE DAY AND THEN ANOTHER CRIME UNRELATED, SOME OTHER, THAT IS WHAT WE ARE DEALING WITH IN EVANS, CORRECT?

THAT WAS THE FACT PATTERN, YES.

THAT IS WHAT I GO BACK TO, AS FAR AS THE TWO COMPETING STATUTES OR POLICIES THAT WERE, WE ARE TALKING ABOUT HERE. WHAT WAS, DO WE KNOW THE UNDERLYING FACTS OF THESE CRIMES? WAS IT OUT OF ONE --

LOOKING --

-- CRIMINAL EPISODE?

-- AT THE PSI, HE DID ONE CRIME AND THEN ANOTHER INSIDE AN APARTMENT AND THEN DISCHARGED THE FIREARM IN AN APARTMENT COMPLEX, BUT IT WAS THE SAME WEAPON, SO HE DID POSSESS THAT ALL THROUGHOUT, SO IT IS NOT CRYSTAL CLEAR WHETHER THERE WOULD BE ONE EPISODE OR NOT, IT WOULD BE THE SAME AREA.

IT IS ONE EPISODE?

WE DON'T KNOW THAT FOR SURE, YOUR HONOR, BECAUSE THE JUDGE CAN IMPOSE CONCURRENT, EVEN IF THEY WERE DIFFERENT EPISODES.

SO FOR MY SITUATION, THAT WOULD BE IMPORTANT TO KNOW, BECAUSE IN THE ONE CRIMINAL EPISODE, I THOUGHT THERE IS A STATUTE THAT EXISTED THAT SAID THAT CONCURRENT, YOU CAN CONVICT HIM AS, OF MANY GIVE RENT CRIMES BUT THEY ARE ALL CONCURRENT SENTENCES.

UNDER THE HABITUAL OFFENDER LAW, IF IT IS ONE CRIMINAL EPISODE, HE HAS TO HAVE CONCURRENT SENTENCES, BUT AGAIN, THE JUDGE CAN CONTROL THE LENGTH OF THOSE CONCURRENT SENTENCES. THERE IS NO REASON WHY HE HAS TO MAKE THEM THE SAME LENGTH, AS FAR AS THAT GOES. TO REACH THE RESULT THAT HE WANTS, THAT WOULD BE COMPATIBLE WITH OUR GAIN TIME LAW. THE PROBLEM WITH THE FIRST DCA, WHAT THEY WANT US TO DO, THAT IS ANOTHER STEP FOR THE DOC AND ALSO THE COMMISSION, TO MAKE A FACTUAL FINDING WHETHER OR NOT OFFENSES ARE RELATED, AND EVEN IF THEY WERE RELATED, THERE COULD BE CIRCUMSTANCES WHERE THE INMATE WOULD HAVE NO SUPERVISION TO FOLLOW, AND SO THAT IS A PROBLEM WITH FOCUSING ON WHETHER SENTENCES ARE IMPOSED FOR THE RELATED OFFENSES OR NOT. IT IS NOT SELF-EVIDENT FROM THE CHARGING DOCUMENT, JUST BECAUSE THE CRIMES WERE COMMITTED ON THE SAME DATE, AND THIS COURT, IN A RECENT OPINION, THE NAME ESCAPES ME AT THE MOMENT, BUT THE ISSUE WAS WHETHER THE SENTENCING COURT COULD LOOK AT A PROBABLE CAUSE AFFIDAVIT, TO DECIDE WHETHER THE CRIMES WERE IN THE

SAME CRIMINAL EPISODE, AND THIS COURT SAID NO. I THINK BURGESS IS THE NAME THAT HAS COME TO MIND, SO THERE IS A FACTUAL PROBLEM WITH THE AGENCIES DOING. THAT WHETHER SENTENCES ARE CONSECUTIVE, CONCURRENT OR SERVED ALONE, IS NOT RELEVANT TO THE GAIN TIME LAW, UNLESS THE GAIN TIME STATUTE, ITSELF, SPEAKS TO IT, AND IT DOES SPEAK TO IT IN TWO CONTEXTS, AND ONE IS THAT, WHEN YOU HAVE CONSECUTIVE SENTENCES, THEY ARE TO BE TREATED AS ONE SENTENCE FOR THE, YOU GET THE OVERALL PRISON TERM, AND FOR APPLYING BASIC GAIN TIME, AND ALSO FOR FORFEITURE, BUT OTHER THAN THAT, THEY ARE ALL TREATED INDIVIDUALLY. THEY HAVE THEIR OWN RATE OF GAIN TIME ON EACH SENTENCE. NOW, THAT IS WITHIN OUR GAIN TIME STATUTE. WE HAVE ANOTHER PROVISION THAT MAKES CLEAR, WITH BASIC GAIN TIME, THAT YOUR SENTENCES ARE CONCURRENT, AND THAT BASIC IS TEN MONTHS PER EACH MONTH ON EACH SENTENCE. THE LEGISLATURE SAYS TREAT THAT AS A SINGLE SENTENCE, MEANING WE ARE NOT GOING TO ACCUMULATE THAT BASIC. YOU ARE JUST GOING TO GET THE BASIC, YOU HAVE THREE CONCURRENT SENTENCES AND YOU HAVE GOT 100 DAYS OF BASIC, IT IS GOING TO BE 100 ON EACH. IT IS NOT GOING TO BE A TOTAL OF 300, BUT OTHER THAN THAT, THE WAY THE GAIN TIME LAW IS STRUCTURED, IT IS STRUCTURED TO TREAT EACH SENTENCE UNIQUELY. THAT IS HOW THE DEPARTMENT TREATS EVERY SENTENCE, AND HERE THE PROBLEM HERE, IS THAT WE WOULD BE TREATING CONCURRENT SENTENCES DIFFERENTLY, AND THIS COURT HAS CARVED OUT AN EXCEPTION FOR SOME CONCURRENT SENTENCES, BUT IF WE GO WITH THE FIRST, THERE WOULD BE TIMES WHEN THERE WOULD BE NO CONDITIONAL RELEASE SUPERVISION AT ALL, EVEN WITH THE CONCURRENT SENTENCES, LIKE IN MR. BOLDEN'S CASE, IF, AFTER HE COMPLETED THE SHOTGUN SENTENCE, HE HAD MISS BEHAVED AND LOST ALL HIS GAIN TIME ON THOSE OTHER TWO SENTENCES, HE WOULD NOT GO TO SUPERVISION, THEN, BECAUSE HE WOULD END UP SERVING THE TEN YEARS ON THAT SENTENCE AND ON THE OTHER ONE THAT HE HAD EARNED GAIN TIME, WHICH THE LEGISLATURE CLEARLY WANTS TO BE SPENT UNDER SUPERVISION, UNDER THE FIRST WE WOULD NOT, HE WOULD NOT GO TO SUPERVISION. THAT WOULD ALL BE USED UP. SO THAT IS ONE OF THE PROBLEMS, THE TWO PRIMARY PROBLEMS WITH APPROACH THAT THE FIRST HAS TAKEN, AND I ALSO WANT TO MAKE CLEAR THAT --

WHAT HAPPENED, WHAT WOULD HAPPEN, IF MR. BOLDEN, WHILE THE TIME CAME FOR HIM TO BE ON CONDITIONAL RELEASE FOR THE SHOTGUN, AS HAPPENED IN THIS CASE, BUT HE HAD THESE OTHER SENTENCES TO SERVE, AND DURING THAT 337 DAYS, ASSUMING HE HAD BEEN IN JAIL ON THAT CASE, THAT SENTENCE REALLY WOULD HAVE EXPIRED. THAT WASN'T TEN YEARS BUT, SAY, SEVEN YEARS OR WHATEVER, AND THAT SENTENCE WOULD HAVE EXPIRED DURING THAT 337 DAYS. WHAT WOULD BE THE PRACTICAL EFFECT OF THAT? WOULD HE STILL HAVE TO GO ON CONDITIONAL RELEASE OR WHAT?

WELL, I AM NOT SURE I UNDERSTAND HOW WE GET TO THE POINT OF HOLDING HIS SENTENCE IN ABEYANCE AS IT WERE. THAT IS WHAT WE ARE REALLY DOING. IF YOU ARE SAYING HE -- THE SUPERVISION IS BEING HELD IN ABEYANCE, BUT WHETHER OR NOT, IF YOU DON'T TOLL ON THE SUPERVISION, AND IT JUST RUNS DAY FOR DAY, LIKE YOU ARE JUST IGNORING THE GAIN TIME LAW AND IT RUNS, A SENTENCE COULD RUN DAY FOR DAY AND END BEFORE YOU GO TO SUPERVISION, AND DEPENDING ON WHAT HAPPENS ON THE OTHER TWO SENTENCES, YOU MIGHT NOT GO AT ALL, IF THEY WERE INELIGIBLE OR IF YOU ENDED UP SERVING THOSE OTHER SENTENCES DAY FOR DAY. HE WOULD HAVE NO SUPERVISION TO FOLLOW. AND THAT WOULD BE CONTRARY TO THE CONDITIONAL RELEASE STATUTE AND MR. CHIEF JUSTICE

THE MARSHAL --

CAN I ASK A QUESTION. I AM JUST A LITTLE CONFUSED. IT SEEMS AS THOUGH WE HAVE A SENTENCE, CONCURRENT SENTENCES FOR TEN YEARS, AND DURING THAT PROCESS, BECAUSE WE HAVE STATUTES THAT GIVE YOU GAIN TIME AND STATUTES THAT SAY YOU CAN GET OUT ON CONDITIONAL RELEASE OR WHATEVER, BUT YOU CAN'T GET OUT BECAUSE YOU ARE IN THERE FOR SOME OTHER REASON, YOU HAVE NEVER ACTUALLY USED THAT AND THEN YOU ULTIMATELY DO GET OUT AND YOU ARE FORFEITED AND YOU HAVE GOT TO GET OUT AND

FORFEITURE GAIN TIME, THAT SOMEHOW AT THE END OF YOUR SENTENCE, YOU HAVE TO BE SUPERVISED -- YOU HAVE TO BE SUPERVISED ADDITION EARL BECAUSE YOU HAD AN ADDITION -- AN ADDITIONAL RELEASE KIND OF PROVISION WHICH YOU GOT, THEN THE STATE WOULD HAVE TO FOLLOW UP WITH THE SENTENCE IS THAT WHAT YOU ARE SAYING?

334 DAYS IS HOW MUCH GAIN TIME HE GOT. THAT IS HOW MUCH HE SERVES WHEN HE GETS OUT AND HOW MUCH TIME HE SERVES AS VIOLATE OR, NO MORE AND NO LESS.

BUT IN THIS CASE, HE IS STILL SERVING THAT SENTENCE.

IF HE IS STILL SERVING THAT SENTENCE, YES, YOUR HONOR, BUT WE HAVE TOLLING IN PROBATION. THERE IS TOLLING ALL THE TIME, AND ANY TIME THAT HAPPENS, THEN YOU ARE GOING TO HAVE A GAP INCOMPLETING THE SENTENCE. THAT TIME, IF YOU TOOK PRISON TERM PLUS A TOLLING PERIOD, PLUS SUPERVISION, YOU ADD ALL OF THAT TOGETHER, IT IS GOING TO BE LONGER THAN THE SENTENCE THAT THE JUDGE IMPOSED. IT ALWAYS IS.

AND WE HAVE IMPROVED, WHAT ARE YOUR STRONGEST CASES THAT YOU SUGGEST APPROVE THAT KIND OF CONCEPT?

YOUR HONOR, YOU PROVED IT IN EVANS. AND THE, THE CASES CITED IN EVANS, WHICH WERE FIFTH DCA CASES AND THAT WAS PROBATION, THAT YOU COULD HAVE A TOLLING PERIOD THERE. THERE COULD BE A GAP BETWEEN COMPLETING THE PRISON AND THE SUPERVISION.

AND THEN YOU WOULD HAVE THE SUPERVISION PERIOD AFTER THE SENTENCING PERIOD EXPIRED.

EXACTLY.

AND THOSE CASES SUPPORT THAT, IN YOUR ESTIMATION?

AND IF YOU ADDED THOSE TOGETHER, YOU COULD HAVE MORE THAN THE SENTENCE. RIGHT.

THANK YOU.

GOOD MORNING. DEBORAH MARKS, ON BEHALF JOHNNY BOLDEN. JUSTICE LEWIS, LET ME JUST ADDRESS YOUR, FOR A SECOND, LAST ISSUE FIRST, AND THAT IS NOT REALLY TALKING ABOUT COMING BACK AT THE END BECAUSE HE WAS REINSTITUTIONLIZED AND ADDING SUPERVISION. WHAT THEY HAVE DONE IN THIS CASE AND TO THE DECISION BY THE FIRST DCA IS TO PUT HIM BACK IN JAIL AND NOT HAVE GAIN TIME OR WHATEVER, AND CONDITIONAL RELEASE INSTEAD OF MARCH 2003 IS MARCH 2004, SO I THINK THAT IS A LARGE DISTINGUISHING FACTOR BETWEEN THIS AND WHAT YOU TALKED ABOUT IN EVANS. YOU NEVER REACHED THIS ISSUE. IT IS CLEAR IN EVERYBODY'S BRIEF. YOU KNOW, THE AMICUS, STAY, AND US, THIS ISSUE HAS NEVER BEEN TOUCHED, AND IT IS ABSOLUTELY MINDBLOWING, TO TRY TO KEEP TRACK OF THE NUMBERS.

THE TWO CONCEPTS ARE, WHAT I TALKED ABOUT AT THE BEGINNING, WHICH IS THAT YOU HAVE GOT A SENTENCING JUDGE THAT IS SENTENCED, AND, AND IS THIS ARISING OUT OF ONE CRIMINAL EPISODE, OR IS THERE A DISPUTE ABOUT THAT?

THE FINDING IN THE DCA'S OPINION AND APPEARS TO BE UNCONTESTED BECAUSE IT APPEARS IN THEIR BRIEF, IS THAT THIS SENTENCE OCCURRED ON DECEMBER 21, 1992. -- SENTENCE IS AS A RESULT OF WHAT OCCURRED ON DECEMBER 21, 1992.

THE JUDGE GIVES THREE CONCURRENT SENTENCES.

YES, AND IT WOULDN'T BE A PROBLEM, IF YOU READ MRS. MOSELY, THAT IT WOULDN'T HAVE

BEEN FIVE YEARS. ADDITIONAL JAIL TIME, IF YOU ADD UP ALL OF THE NUMBERS, IT WOULD STILL FALL WITHIN THE SAME PARAMETERS. THE TRAP THAT HAPPENED HERE WAS, I THINK, A VERY DIFFICULT AND CONFUSING SYSTEM AND LACK OF CLARITY WITHIN THE STATUTE.

WHAT IS THE STATUTORY BASIS UPON WHICH YOU SAY THAT 340 DAYS OF UNCONSPIRACYED RELEASE, BECAUSE IT SEEMS TO ME THAT WE HAVE GOT THESE STATUTES, ONE OF WHICH IS THE GAIN TIME STATUTE, WHICH COMES INTO PLAY UNIQUELY, AS FAR AS SHOTGUN SENTENCES IS CONCERNED, AND IT BRINGS IT INTO A POINT IN WHICH, AT THE TIME, THAT THIS MAN IS TO BE RELEASED, UNDER THE STATUTE, FROM BEING IN CUSTODY, THAT HE IS TO GO UNSUPERVISED RELEASE, AND THAT CANNOT OCCUR IN REALTY, BECAUSE OF THE FACT THAT HE IS IN PRISON ON THESE OTHER SENTENCES.

CORRECT.

AND SO HOW DO YOU, WHAT IS THE STATUTORY BASIS UPON WHICH YOU SAY THAT HE CAN, THAT WE DO NOT COUNT THESE 334 DAYS AS SUPERVISED?

IT IS NOT THAT WE ARE NOT COUNTING THEM, BUT BEFORE WE EVEN HIT THAT POINT, I THINK THERE IS ONE PRESENT THAT WAS NOT DISCUSSED TODAY THAT WE NEED TO DISCUSS, AND IT REALLY ISN'T THE DEFENDANT'S NEED TO POINT TO A STATUTORY BASIS. IT IS THE STATE'S NEED TO SHOW US A STATUTORY BASIS, BECAUSE IF THERE IS A ISSUE THAT STATUTORY, WE ARE SUPPOSED TO CONSTRUE THE STATUTES IN FAVOR OF DEFENDANTS.

BUT ISN'T THE STATUTORY CONSTRUCTION QUESTION, WHETHER SOMEBODY IS ON CONTROLLED RELEASE WHEN THEY ARE IN PRISON?

THAT IS ONLY A PIECE.

BUT IF WE CONSTRUE AND SAY YOU CAN'T BE, THE PURPOSE OF CONTROLLED RELEASE IS TO TAKE SOMEONE IN THEIR POST-PRISON STAGE AND CONVERT THAT INTO A PROBATIONARY SENTENCE, AND IT IS FOR MORE AT-RISK INDIVIDUALS, SO IF THE PERSON IS IN PRISON, THAT CERTAINLY CAN'T, HOW WOULD YOU CONSTRUE THAT TO BE CONTROLLED RELEASE, AND ISN'T THAT THE STATUTORY CONSTRUCTION QUESTION?

THAT IS ONE OF THE STATUTORY CONSTRUCTION QUESTIONS, BECAUSE THE NEXT LEVEL IS, IF THEY ARE PUT OUT ON CONDITIONAL RELEASE AND THEY MESS UP, FOR LACK OF A BETTER TERM, THEY, THEN, FORFEIT ALL THEIR GAIN TIME. IF, IN FACT, THIS GENTLEMAN DID NOT HAVE THAT GAIN TIME, HE WAS IN JAIL ON THE SHOTGUN SENTENCE BECAUSE HE WAS SITING THERE PHYSICALLY IN JAIL. HE SERVED IT. WHAT THEY POINT OUT IN THEIR BRIEF IS YOU HAVE GOT IT TWO-WAYS TO SERVE A -- YOU HAVE GOT TWO WAY TO SAY SERVE A SENTENCE. YOU SIT IN JAIL OR GAIN TIME. THERE ISN'T A POSSIBILITY OF A SENTENCE WHERE YOU SERVE NEITHER ON CONDITIONAL RELEASE OR ON GAIN TIME.

IN EVANS, WE SPECIFICALLY SAID THAT YOU CANNOT SERVE, SUPERVISE, RELEASE IN CUSTODY. THAT IS SOMETHING THAT WE DID SAY.

YES, YOU DID, BUT YOU LIMITED IT TO AT LEAST YOU DIDN'T EXTEND IT PAST A SITUATION WHERE YOU HAD UNRELATED OFFENSES, AND IT WAS BEFORE THE STATUTE THAT ESSENTIALLY SAID EVERYTHING IS GOING TO BE TREATED AS CONDITIONAL RELEASE, WHETHER THEY ARE CONDITIONAL RELEASE SENTENCES OR NOT. IT CAME OUT IN 1997.

IS THERE A STATUTORY RIGHT TO SERVE THE TEN-YEAR SHOTGUN SENTENCE CONSECUTIVE DAYS?

THE SENTENCE ITSELF DID. I DON'T KNOW IF THERE IS A STATUTORY RIGHT, BECAUSE THERE IS

NO QUESTION THAT, WHEN YOU DEAL WITH CONCURRENT SENTENCES, THEY HAVE THESE DIFFERENT GAIN TIMES AND DIFFERENT DAYS FARNKS YOU HAVE A SET OF SENTENCES, ALL OF WHICH START OUT AT TEN YEARS BUT THEY ARE FOR DIFFERENT THINGS, THEY COULD END AT DIFFERENT TIMES BECAUSE OF THE DIFFERENT GAIN TIME.

ISN'T THAT WHAT THIS BOILS DOWN TO, IS THE FACT THAT HE IS NOT SERVING TEN YEARS PLUS 334 THEORETICALLY, ON THE SHOTGUN, BECAUSE OF THE FACT THAT THEORETICALLY, THAT IS EITHER TOLLED OR HE IS SERVING ON SPECIFIESED RELEASE WHILE HE IS IN PRISON?

NO, AND FIRST, THERE IS NO TOLLING PROVISION IN THIS STATUTE, AND IN FACT IT SAYS THAT THE CONDITIONAL RELEASE IS SUPPOSED TO TAKE PLACE ON THE EARLIEST OF A SERIES OF DAYS. YOU EXTEND IT IN A PARTICULAR CIRCUMSTANCE IN EVANS BUT NEVER CALCULATED WHAT THE NEXT CONDITIONAL RELEASE DATE WOULD BE, IF IN FACT IT WAS A FAILURE OF SUPERVISION, SO YOU NEVER REACHED THE ISSUE OF HOW TO RECALCULATE FORFEITED GAIN TIME IN EVANS. BUT I THINK THAT THE MORE IMPORTANT ISSUE IS GOING TO BE LOOKING AT THE FACT THAT THESE WERE, IN FACT, INTER-RELATED SENTENCES, AND STILL LOOKING AT A TOTALITY OF A CERTAIN NUMBER OF DAYS, DAY-TO-DAY, EITHER IN GAIN TIME OR NOT, AND IN THIS CASE, YOU HAVE A GENTLEMAN WHO WAS OUT FOR 220-SOME-ODD DAYS BEFORE HE VIOLATED. IF HE HAD GOTTEN OUT WITH HIS FIRST --

YOU MEAN RELATED TO, HOW DO YOU DEFINE INTERRELATED?

THE FIRST DCA FOUND IT TO BE INCIDENTS THAT WERE FROM ONE CRIMINAL EPISODE. AND I THINK THAT THAT, THERE IS NO QUESTION THAT THERE PROBABLY NEEDS TO BE SOME STATUTORY CLARIFICATION HERE. IT WOULD BE A LOT EASIER FOR EVERYONE IF THERE WAS. UNFORTUNATELY, WE ARE ON THE WRONG SIDE OF DUVAL TO DO THAT.

SO, AGAIN, SO LET'S USE THE TERM OF ART OR NOT TERM OF ART, THE STATUTORY TERM, IS THAT, IF THERE ARE SEPARATE CRIMES, THE PERSON IS CONVICTED OF SEPARATE CRIMES ARISING FROM ONE CRIMINAL EPISODE, IS THERE A STATUTORY OBLIGATION ON THE PART OF THE JUDGE, TO, ALTHOUGH SENTENCE THAT DEFENDANT TO SEPARATE SENTENCES TO RUN THOSE SENTENCES CONCURRENT?

I DON'T KNOW THE ANSWER TO THAT.

OKAY. BECAUSE THAT, IS MY RECOLLECTION THAT THAT IS A REQUIREMENT, BECAUSE OTHERWISE IF YOU HAD, THE GUY HAS THE SHOTGUN WHEN HE ROBS, AND YOU CONVICT HIM OF YOU KNOW, POSSESSION OF A FIREARM BY A FELON, AND THEN THE ROBBERY AND THIS, YOU KNOW, THERE IS ALL THESE DIFFERENT CRIMES, BUT THEY REALLY OCCURRED AT ONE TIME.

MY RECOLLECTION AGREES WITH YOURS, BUT I CAN'T GIVE AWE STATUTORY NUMBER, AND I DON'T FEEL COMFORTABLE TELLING YOU THAT WITHOUT ACTUALLY HAVING THAT, BUT IN ANY EVENT THAT IS WHAT THIS JUDGE DID, AND WHAT THIS JUDGE DID, AND IN THESE FINDINGS, AND I THINK THAT THE FIRST DCA WAS REALLY CLEAR IN EXPLAINING ITS REASONS WHY IT WOULD BE AN INAPPROPRIATE STRETCH TO GIVE THE STATE THE AUTHORITY TO THEN EXTEND TIME, AND, AGAIN, THIS IS ALSO IN 1991 STATUTE CASE NOT A 1997 STATUTE CASE. I THINK THAT IT MAKES A DIFFERENCE.

ARE YOU SAYING, THEN, THAT FOR THOSE 337 DAYS, THAT HE WAS ACTUALLY SERVING TIME ON THE SHOTGUN OFFENSE?

I THINK THAT YOU COULD ARGUE THAT, ONCE HE LOST HIS GAIN TIME, YES, HE WAS. BECAUSE YOU HAVE RETROACTIVELY CLASSIFIED AS HAVING LOST HIS GAIN TIME, AND IF HE HAD NOT EARNED GAIN TIME, THEN HE WOULD HAVE BEEN IN THERE ON THE SHOTGUN SENTENCE.

BUT HE WASN'T EARNING ANY GAIN TIME ON THOSE 337 DAYS, WAS HE? AT LEAST NOT ON THE SHOTGUN.

NOT TOWARDS THE SHOTGUN EFFECT. THAT WAS BASICALLY SITTING THERE, BUT AT THAT POINT, HAD HE GOTTEN OUT, AND BEEN OUT FOR THE 200-SOME-ODD DAYS THAT HE WAS OUT, HE WOULD HAVE TO SERVE THOSE 200-SOME-ODD DAYS. NOW, BECAUSE HE STAYED IN THOSE 337, TO MEET HIS NEXT MANDATORY MINIMUM THEN WAS OUT FOR 220, HE COMES BACK AND SERVES NOT ONLY THOSE 220 THAT HE WAS OUT BUT, ALSO, AN ADDITIONAL 337 THAT HE WAS IN, BECAUSE WE COULDN'T LET HIM OUT --

JUST FOR PRACTICAL PURPOSES, IS HE NOW OUT BECAUSE OF THE FIRST DISTRICT CASE?

HE IS NOW OUT BECAUSE OF THE FIRST DISTRICT CASE, BUT AS WE SIT HERE TODAY, IF WE REVERSE IT --

-- THEN HE WILL BE BACK FOR 337 DAYS?

HE COULD BE BACK, BECAUSE IF YOU LOOK AT THE OPINION, IT HAS MADE IT VERY CLEAR THAT THE RELEASE DATE WAS MARCH 2004. NOW, THE REPLY BRIEF FROM THE STATE SAYS HE IS OUT. I DON'T KNOW WHAT HE IS COMPLAINING ABOUT. IF HE GOES BACK IN, IT IS HIS OWN FAULT. THE PROBLEM WITH THAT IS I REALLY DO BELIEVE THAT, IF YOU DO REVERSE THE DECISION, THEY HAVE THE ABSOLUTE AUTHORITY TO PUT HIM BACK IN, BECAUSE HE IS BEFORE THEM.

BUT WHAT ABOUT THE PROBLEM THAT YOUR AM POSITION RAISES ABOUT -- THAT YOUR OPPOSITION RAISES ABOUT THESE AGENCIES MAKING A DETERMINATION AS TO WHETHER THIS IS A SINGLE INCIDENT, A RELATED INCIDENT, I MEAN, WE HAVE GOT EVIDENCE OUT THERE IN WHICH EVIDENCE SAYS THERE IS NO, THAT YOU TOLL IT, AND THEN IF WE COME BACK AND WE CARVE AN EXCEPTION TO THAT, AREN'T WE JUST GOING TO HAVE AN EVEN FURTHER STATE OF CONFUSION?

NO. I THINK EVANS WAS YOUR CARVED EXCEPTION. AGAIN, IF YOU SIT THERE AND YOU CONSIDER THIS FROM THE PERSPECTIVE OF THE BENEFIT OF THE ACCUSED, YOU SAID, IN EVANS, THAT BECAUSE THERE WAS A NECESSITY THAT THERE BE CONDITIONAL RELEASE, SUPERVISION ON CERTAIN TYPES OF EPISODES, THEN IN FACT, WHEN YOU HAD UNRELATED INCIDENTS WHERE ONE OF THEM WAS NOT SUBJECT TO CONDITIONAL RELEASE, AND THAT WAS THE CIRCUMSTANCE, THE LONGER ONE IN EVANS, HAD NO CONDITIONAL RELEASE, AND BECAUSE OF THAT, YOU SAID AS A PRACTICAL MATTER, IT WOULD BE INAPPROPRIATE TO SAY SOMEONE WOULD GET NO CONDITIONAL RELEASE, NO SUPERVISION, BECAUSE THEY HAD A LONGER UNRELATED SENTENCE THAT WAS, IN FACT, NOT CAPABLE OF HAVING COMMUNITY CONTROL. SINCE THAT TIME, AGAIN, THE LEGISLATURE OR SINCE THE TIME OF THE SENTENCINGS IN HE HAVE ABS NOT -- IN EVANS NOT SINCE THE TIME OF THE OPINION, BUT SINCE THE TIME OF THE SENTENCING IN EVANS THAT HAS BEEN FIXED LEGISLATIVELY, BECAUSE THE 1997 AMENDMENT SAID THAT, IF YOU HAVE GOT CONDITIONAL RELEASE AND NONCONDITIONAL RELEASE, YOU TREAT THEM ALL AS CONDITIONAL RELEASE CASES. SO YOU WOULDN'T HAVE THAT WINDFALL. WHAT YOU FOUND IN EVANS WAS THAT THE DEFENDANT WOULD RECEIVE A WINDFALL, BY HAVING NO SUPERVISION, AND THE PEOPLE OF THE STATE WOULD BE HARMED BECAUSE OF THAT. YOU DON'T HAVE THAT IN BOLDEN. YOU DON'T HAVE THAT IN CASES WHERE EVERY THING IS SUBJECT TO CONDITIONAL RELEASE, BECAUSE THERE WILL ALWAYS BE EITHER SUPERVISION OR DAY FOR DAY SERVICE. WHAT YOU DO HAVE, WITH BOLDEN INTERPRETED AS IT IS, IS SOME FAIRNESS, WHEN YOU ARE DEALING WITH SINGLE-RELATED INCIDENTS, TO BALANCE OUT THIS TOTAL NIGHTMARE OF FIGURING OUT FOR A SENTENCING JUDGE, DO I NEED TO LOOK AT MY DIFFERENT RELATED SENTENCES AND MAKE THIS ONE SHORTER, BECAUSE OF THE GAIN TIME DIFFERENTIALS, SO THAT THE TOTALITY WILL NEVER BE MORE THAN THE TOTALITY? AND ABSOLUTELY CORRECT. IF THEY HAD LOOKED AT THAT AND SAID, WELL, THIS ONE IS GOING TO RUN DIFFERENTLY, AND IF, IN

FACT, THIS HAPPENS IN THE FUTURE, IT COULD HAVE BEEN CORRECTED WITH A FIVE-YEAR SENTENCE, NO DOUBT ABOUT IT. WITHOUT THAT TYPE 6 GUIDANCE, AND I THINK -- THAT TYPE OF GUIDANCE, AND I THINK IT IS REALLY DIFFICULT TO EXPECT SENTENCING JUDGES TO REALLY SIT THERE AND FIGURE THAT OUT, IT LEADS TO THIS TYPE OF UNFAIR SITUATION, WHERE THE TOTALITY OF THE INCARCERATED PERIOD WOULD BE MORE THAN TEN YEARS, AND THAT GOES BACK TO WHERE YOU STARTED, JUSTICE PARIENTE, WHICH IS THE TOTAL NUMBER OF DAYS IN JAIL, NOT EVEN THE TOTAL NUMBER OF DAYS ON JAIL PLUS SUPERVISION. THERE IS NO QUESTION WHAT THIS CONDITIONAL RELEASE IN AND OUT TYPE OF THING THAT WE HAVE. THE TOTALITY OF THE TIME YOU SPEND IN STATE CONTROL, CAN EASILY EXCEED THE TEN YEARS, BECAUSE YOU GAIN YOUR GAIN TIME. YOU GO OUT. YOU ARE OUT ON SUPERVISED CONTROL. WHEN YOU COME BACK, YOU HAVE LOST YOUR GAIN TIME. YOU PICK IT UP AND GO THROUGH THIS CONDITIONAL RELEASE SICKLE OVER AND OVER AGAIN, AND THE TOTALITY OF THE CONDITION IS LONGER.

IS THERE ANY BASIS NOT TO TREAT THESE SENTENCES, EVEN THOUGH THEY ARE RUNNING CONCURRENTLY, AS INDIVIDUALS SENTENCES?

I DON'T THINK SO. THERE IS SOME BASIS FOR THE CALCULATION OF GAIN TIME.

SO WHETHER HE SITS IN PRISON OR NOT, YOU HAVE GOT TO LOOK AT IT AS AN INDEPENDENT, AND THEN YOU HAVE GOT TO COME TO GRIPS WITH THE ISSUE OF WHETHER YOU CAN BE IN SUPERVISED RELEASE, WHEN YOU WERE IN CUSTODY.

OR WHETHER YOU ACTUALLY WERE SERVING TIME BECAUSE YOU HAD FORFEITED YOUR GAIN TIME, AND I THINK THAT THAT IS CERTAINLY ONE WAY OF LOOKING AT THIS WITH FAIRNESS. IF THE COURT HAS NO FURTHER QUESTIONS, I WOULD ASK THAT YOU AFFIRM THE DECISION OF THE FIRST DCA. THANK YOU.

CHIEF JUSTICE: THANK YOU. MR. MARCH -- MARSHAL, HOW MUCH TIME ON REBUTTAL? A COUPLE OF MINUTES.

THERE IS NO STATUTORY RIGHT TO SERVE, THIS IS JUSTICE WELLS'S WELL, -- JUSTICE WELLS'S QUESTION, NO STATUTORY RIGHT TO SERVE DAY FOR DAY. AUTHORIZED, THIS IS WHAT HAPPENS WITH PROBATION SUPERVISION OR EXECUTIVE SUPERVISION. JUSTICE PARIENTE'S QUESTION, YOUR CONCURRENT SENTENCES, HO, SAME CRIMINAL EPISODE, I THINK UNDER THE SENTENCING GUIDELINES, THE JUDGE CAN MAKE THEM CONSECUTIVE UP TO THE END OF THE RANGE THERE, THAT THEY WOULD NOT HAVE TO BE CONCURRENT.

WELL, THERE IS NO, SINCE THERE IS NO EXPLICIT, IN OTHER WORDS, THIS IS, AGAIN, ONE OF THOSE THINGS WHERE THE LEGISLATURE AND THESE SCHEMES HAS NOT GOTTEN DOWN TO THE DETAIL, WHY SHOULDN'T WE TAKE THE STATUTORY RULE THAT SAYS WHEN THERE IS THIS AMBIGUITY, AND TO CONSTRUE IT IN FAVOR OF THE DEFENDANT, THE PRISONER HERE, THAT SINCE THE STATE HAS MORE THAN CONDITIONAL RELEASE AUTHORITY OVER THE DEFENDANT, DURING THIS PERIOD OF TIME, THEN WHY ISN'T THAT THE CONDITIONAL RELEASE, SUBSUMED IN THE TIME THAT HE IS ACTUALLY PHYSICALLY BEING HELD? THAT IS THAT, AS WE ALL RECOGNIZE, YOU KNOW, WITH, AND I LOOK AT IT LIKE THREE GRAPHS HAVE GONE ALONG HERE, THAT WHEN HE WAS ELIGIBLE ON THE SHOTGUN SENTENCE TO BE RELEASED UNDER CONDITIONAL RELEASE, BECAUSE OF THE OTHER TWO SENTENCES HAVING MINIMUM MANDATORIES, HE WAS NOT ALLOWED TO BE RELEASED, BUT HE WAS HELD, AND THAT, REALLY, IS A MORE STRICT FORM OF SUPERVISION THAN CONDITIONAL RELEASE, SO WHY SHOULD WE CREATE, REALLY, A FICTION THAT, WHILE THE STATE IS HOLDING HIM UNDER EVEN MORE RESTRICTIVE CONDITIONS, WHY SHOULD WE SORT OF CREATE A FICTION? NO, YES, WE RECOGNIZE THEY HAVE, BUT THAT IS NOT REALLY ON HIS SENTENCE FOR THE SHOTGUN SENTENCE. I AM TRYING TO TAKE THIS, OUR OBLIGATION UNDER THE STATUTORY PROVISION, THAT WHEN THERE IS SOME AMBIGUITY IN THERE, CONSTRUE IT IN FAVOR OF THE PETITIONER.

OKAY, YOUR HONOR, BRIEFLY, IN THREE CASES, GAY, REVERE AND EVANS, AND IN ALL THREE OF THOSE CASES, YOU RECOGNIZED THAT THE AUTHORITY TO TOLL COULD BE IMPLICIT IN THE STATUTE. THE CONDITIONAL RELEASE STATUTE, BY SAYING WHEN SUPERVISION BEGINS, THE TRD NECESSARILY MEANS THAT THAT SUPERVISION SHOULD BE TOLLED. AND THE SECOND CONCERN IS, IF HIS SUPERVISION IS RUNNING IN PRISON, THEN THE QUESTION BECOMES CAN THE COMMISSION REVOKE THAT SUPERVISION WHILE HE IS STILL INCARCERATED, AND THEN WHAT HAPPENS WHEN HE COMES BACK, HE STILL IS GOING TO SERVE THE SAME AMOUNT OF GAIN TIME THAT, THE DAYS, UNLESS THE COMMISSION GIVES HIM CREDIT, AND THE COMMISSION DID GIVE HIM CREDIT. EVEN IF WE ASSUME THAT HIS TIME STARTED IN PRISON, IT WOULD BE THE COMMISSION THAT WOULD GIVE HIM CREDIT ON HIS SENTENCE.

BUT THE CONCERN AND THE CONDITIONAL RELEASE IS INDEED, THAT WE HAVE SOME STRENGTH ON THE DEFENSE, WHY ISN'T THIS STRENGTH OF ACTUALLY HAVING HIM PHYSICALLY INCARCERATED, AN EVEN GREATER STRAIN, IF YOU WANT TO CALL IT THAT, AND RESTRAINT, THAN THE CONDITIONAL RELEASE ITSELF WOULD BE, AND CERTAINLY THAT IT SERVED NOT ONLY THE PURPOSE OF CONDITIONAL RELEASE, IT SERVED IT IN A MORE EFFECTIVE WAY.

IT IS THIS ADJUSTMENT IN SOCIETY THAT IS THE CONCERN OF THE CONDITIONAL RELEASE. IT IS ONE THING FOR HIM TO BEHAVE IN PRISON, BUT HE NEEDS TO, IN SOCIETY, LIVING IN THE WORLD, BE WILL TO BEHAVE AND HAVE HIS CONDUCT MONITORED THERE.

CHIEF JUSTICE: THANK YOU VERY MUCH.

THANK YOU.

CHIEF JUSTICE: WE ARE GOING TO TAKE OUR MORNING RECESS AT THIS TIME. THE COURT WILL BE IN RECESS FOR 15 MINUTES, BEFORE WE HEAR THE NEXT CASE. THANK YOU.

MARSHAL: PLEASE RISE.