

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

State of Florida v. Gary Matthews

ALL RIGHT. IF COUNSELLOR READY, YOU MAY PROCEED. GOOD MORNING.

THANK YOU VERY MUCH AND GOOD MORNING TO ALL OF YOU. MAY IT PLEASE THE COURT. MY NAME IS JEANENE GERMANOWITZ, AND I AM HERE TODAY IN THE MATTER OF THE OPINION ISSUED BY THE FOURTH DISTRICT COURT OF APPEAL. LET ME JUST BRIEFLY STATE THAT THE ISSUE IN THIS CASE IS WHETHER OR NOT CREDIT SHOULD BE APPLIED TO HABITUAL OFFENDERS, AND LET ME START WITH A BRIEF PROCEDURAL OVERVIEW OF THIS UNDULY COMPLEX CASE, AND I WILL TRY TO KEEP IT AS SHORT AS POSSIBLE. BASICALLY IN 1990, THE DEFENDANT WAS COMMITTED OR I AM SORRY, CHARGED WITH SIX CRIMES. HE ULTIMATELY PLEADED NO CONTEST TO THREE OF THOSE CRIMES. THE OTHER THREE WERE NOLLE PROSSED. HE CENTERED ON THE FIRST TWO CRIMES TO FIVE YEARS IN PRISON AS A HABITUAL OFFENDER. THE THIRD CRIME HE WAS NOT SENTENCED AS A HABITUAL OFFENDER. HE WAS SENTENCED UNDER THE GUIDELINES TO FIVE YEARS IN PROBATION, TO ONE CONSECUTIVE TO THE PREVIOUS HABITUAL OFFENDER SENTENCES.

MAY I ASK A QUESTION AT THIS POINT. WITH REGARD TO THE PORTION WITH REGARD TO ESCAPE, WAS THE SENTENCE FOR ESCAPE UNDER THE GUIDELINES, IN ANY WAY DEPENDENT UPON THE AMOUNT OF TIME SENTENCED FOR THE, AS THE HABITUAL OFFENDER?

THE HABITUAL OFFENDER PORTION OF THE HABITUAL OFFENDER SENTENCE IS IN THE GUIDELINES AND THE SENTENCES WERE NOT CONDITIONED UPON EACH OTHER. OKAY.

SO DOES THAT MEAN DOES THAT MEAN THAT THEY WERE NOT ON THE SAME SCORE SHEET?

WELL, OKAY. IN 1990, THERE WAS A LITTLE FLUX IN THE LAW. HABITUAL OFFENDERS SCORING ON THE SAME SCORE SHEET OR NOT. IT WASN'T UNTIL 1993, I BELIEVE, THAT A DEFINITIVE CASE CAME OUT SAYING HABITUAL OFFENDER SENTENCES SHOULD NOT BE SCORED ON THE SAME SCORE SHEET, BUT ON THIS CASE IT IS CLEAR THAT THE TRIAL COURT NEVER INTENDED TO HAVE CONSIDERED THE TWO TOGETHER, BECAUSE IF YOU LOOK AT THE SCORE SHEET THAT IS USED IN THE CASE, YOU WILL NOTICE THAT THE TRIAL COURT AND THE DEPARTMENT SENTENCE TALKED ABOUT THE HABITUAL OFFENDERS AND THE DEPARTMENT IN THE SENTENCE AND IN OTHER WORDS HE NEVER INTENDED TO FALL UNDER THE CEILING FOR THE GUIDELINES RANGE, PERMISSIBLE CEILING, SO YOU CAN CLEARLY SEE, OF COURSE THE STATE PREMISE IS THIS IS WHY TRIPP DID NOT APPLY IN THIS CASE IS BECAUSE TRIPP PERTAINS TO SENTENCES THAT ARE SUPPOSED TO BE A TOTAL, FALL WITHIN THE MAXIMUM GUIDELINES RANGE, AND THESE HABITUAL SENTENCES CLEARLY DON'T.

SO WHAT WAS, UNDER THE LAW AT THE TIME IN 1990, WHAT WAS THE MAXIMUM SENTENCE THAT THIS COURT COULD HAVE IMPOSED, BEGIN THE FACT THAT THIS DEFENDANT WAS A HABITUAL FELONY OFFENDER?

WELL, THE MAXIMUM SENTENCE THAT COULD HAVE BEEN IMPOSED, WHEN THE TRIAL JUDGE PRONOUNCED THE HABITUAL SENTENCE ON ALL THREE, HE COULD HAVE GOTTEN 30 YEARS FOR THE THIRD DEGREE FELONY AND TEN YEARS FOR THE SECOND-DEGREE FELONY.

AND THEY COULD HAVE BEEN RUN CONSECUTIVE? OR WOULD THEY HAVE HAD TO HAVE

BEEN RUN CONCURRENT ?

THEY WOULD HAVE HAD TO RUN, WELL THERE , IS A QUESTION ABOUT THAT.THEY WOULD ONLY HAVE TO BE RUN CONSECUTIVE , IF THEY WERE PART OF THE SAME CRIMINAL EPISODE UNDERHILL , OF COURSE, BUT IF THEY WERE NOT PART OF THE SAME CRIMINAL EPISODE , THEN CERTAINLY THEY COULD HAVE BEEN RUN CONSECUTIVE TO EACH OTHER.

SO HE COULD HAVE GOTTEN A 30-YEAR SENTENCE.

HE COULD HAVE GOTTEN , YES. OKAY . WHAT I WAS SAYING IS THE PLEADING OF NO CONTEST TO THESE CRIMES . DURING THE PRISON PORTION OF THE HABITUAL OFFENDER SENTENCES , HE FINISHED SERVING THOSE AND STARTEDSERVING THE PROBATIONPORTION OF THE GUIDELINE SENTENCE, AND UNFORTUNATE LY BUT NOT SURPRISINGLY , HE VIOLATES PROBATION ON THAT GUIDELINE SENTENCE. THAT IS IN 1995. NO. I AM SORRY. THAT IS IN 1994. HE ENDS UP PLEADING NO CONTEST TO THE VIOLATION OF PROBATION , AND ALSO TO THE TWO NEW SUBSTANTIVE CRIMES. HE HAD VIOLATED PROBATION FOR. AND THEY ARE ALL SENTENCEDAT THE SAME TIME IN 1995 , AND HE WAS SENTENCED TO FOUR AND-A-HALF YEARS I N PRISON ON THE VIOLATION O F PROBATION, WHICH IS THE GUIDELINE MAXIMUM I S THREE AND-A-HALF YEARS PLUS THE ONE-STOP BUMP UP , AND ON THE 1994 CASES , WHICH ARE SOMEWHAT PROCEDURAL COMPLEX AND I DON'T WANT TO GET INTO IT BECAUSE THAT IS STRICTLY IRRELEVANT HERE. HE WAS SENTENCED TO ADDITIONAL TIME OF COURSE. IN 1996, H E FINISHES SERVING HIS SENTENCE ON THEVIOLATION OF PROBATION , AND HE COMMENCES SERVING HIS PRISON SENTENCE I N THE 1994 , WHICH I SHOULD TELL YOU HE WAS SERVED , HE WAS ORDERED TO SERVE PRISON TIME AND PROBATION IN THE 1994

HIS PRESENT STATUS IS WHAT? HIS PRESENT STATUS.

HIS PRESENT STATUS IS THE CASE IS IN THE FOURTH DCA , AND ULTIMATELY IN THIS COURT , BECAUSE WHAT HAPPENED IS HE VIOLATED PROBATION IN THE 1994 CASES AS WELL.

BUT H E REMAINS IMPRISONED TODAY?

NO.HE IS CERTAINLY OUT OF PRISON. HE HAS COMPLETELY SERVED HIS TIME AND SENTENCE , COMPLETELY MOVED , AND THE REASON THAT WE ARE PROCEEDING WITH THIS CASE IS BECAUSE THERE IS STILL A CERTIFIED CONFLICT OUT THERE , BETWEEN THE FOURTH DISTRICT COURT OF APPEAL AND THE SECOND DISTRICT COURT OF APPEAL THAT REALLY D O NEED TO BE RESOLVED , REGARDLESS , SO THAT IS WHY WE ARE HERE.

AND THAT GOES TO THE SPECIFIC ISSUE OF WHAT ? THE SPECIFIC ISSUE THAT WE NEED TO RESOLVE , IS IT , IS WHAT?

THE ISSUE THAT W E NEED TO RESOLVE TODAY I S WHETHER TRIPP SHOULD BE APPLIED TO HABITUAL OFFENDER SENTENCES , AND , OF COURSE THE CONFLICT BETWEEN THE FOURTH D KRACHLTAND THE SECOND DCA THE SECOND DCA SAYS THE CONCERNS THAT ARE PRESENT I N TRIPP , DO NOT PERTAIN TO HABITUAL OFFENDER SENTENCING , SUCH THAT TRIPP NEED NOT APPLY , AND , OF COURSE , THE FOURTH DISTRICT COURT OF APPEAL HAS REACHED THE OPPOSITE CONCLUSION , AND PERHAPS THIS WOULD BE A GOOD TIME FOR ME TO TELL YOU WHY IT IS THE STATE'S POSITION THAT TRIPPDID NOT APPLY TO HABITUAL OFFENDER SENTENCES .

IN TERMS OF THE FACTS , THE ONLY FACTS THAT WE REALLY NEED TO KNOW IS THAT THE SENTENCE THAT THE DEFENDANT SOUGHT TO HAVE CREDIT APPLIED , WAS A HABITUAL OFFENDER SENTENCE . AS COMPLEX AS THE CASE IS, THAT IS ALL WE REALLY NEED TO WORRY ABOUT , FOR OUR UNDERSTANDING .

THE PURPOSE OF WHAT WE ARE LOOKING AT , ALL WE NEED TO WORRY ABOUT , IS HE ENTITLED

TO TRIPP CREDIT ON THE HABITUAL OFFENDER ?

AND THE ONLY SENTENCE WE ARE LOOKING AT IS THE EVENT THAT OCCURRED IN 1990.

YES . OKAY.

WELL , WE ARE LOOKING AT THE '94 SENTENCE, TO THE EXTENT THAT HE WAS CURRENTLY SERVING THE '94 SENTENCE, WHEN THE TRIPP CREDIT WAS ULTIMATELY APPLIED, CORRECT ?

RIGHT. EXACTLY. AND THAT IS THE DIFFERENT ISSUE, ACTUALLY , BECAUSE WHAT HAPPENED IS BECAUSE WE ARE UP HERE ON APPEAL FROM THE VIOLATION OF PROBATION AND THE SENTENCE IMPOSED ON VIOLATION OF PROBATION IN THE 1994, WE ARE ACTUALLY TRYING TO BOOST THE 1990 CASE INTO THIS APPEAL OF THE 1994 CASE , AND THE STATE DOESN'T BELIEVE THAT , REALLY , QUITE PROCEDURALLY IT IS THE APPROPRIATE WAY TO DO IT.

BUT THE ISSUE IS WHETHER OR NOT THE HABITUAL OFFENDER GLOSS MAKES A DIFFERENCE .

THE ISSUE IS WHETHER OR NOT THE

THE HABITUAL OFFENDER GLOSS ON THIS SENTENCING SCHEME, MAKES A DIFFERENCE .

IT COULD MAKE A DIFFERENCE . THE METHOD SHOULDN'T THE DEFENSE POSITION IS IT SHOULDN'T MAKE A DIFFERENCE , BECAUSE IF TRIPP COULD HAVE HAPPENED WITH THE HABITUAL OFFENDER SENTENCES , THEN HE WOULD HAVE FINISHED THOSE SENTENCES EARLIER , AND THEN HE WOULD HAVE STARTED HIS SENTENCE IN THE 1994 CASE EARLIER SO THAT HE COULD HAVE BEEN RELEASED EARLIER IN THE 1994 CASE, AND OF COURSE THAT IS ANOTHER POSITION THAT THE STATE IS ARGUING IS THAT WE BELIEVE THAT HE IS NOT ENTITLED TO CREDIT FOR FUTURE SENTENCES NOT YET COMMITTED AT THE TIME THAT THESE SENTENCES WERE COMMITTED. IT IS ALMOST LIKE WHAT HE IS TRYING TO DO IS SAY , OKAY , YOU MADE A MISTAKE. I AM GOING TO SENTENCE YOU , SO WHAT I AM REALLY ENTITLED TO DO IS I AM ENTITLED TO BANK THE CREDIT THAT IS FOR TIME WRONGFULLY SERVED AND I CAN USE IT AGAIN IN ANY FUTURE CRIMES THAT I SERVE IN THE FUTURE.

ISN'T THAT A DIFFERENT ISSUE, REALLY ?

IT IS A DIFFERENT ISSUE. THAT IS THE REASON WHY THEY ARE ARGUING THAT YOU CAN RAISE THIS ISSUE IN THE 1994, IN THE APPEAL FROM THE 1994 VIOLATION OF PROBATION , BECAUSE THEY ARE SAYING , AGAIN , THE VIOLATION OF PROBATION , I AM SORRY , THEY ARE SAYING, AGAIN, THAT THE 1994 CASE SHOULD HAVE STARTED RUNNING EARLIER.

THAT IS AN ISSUE THAT WE WOULD HAVE TO REACH , IF AND ONLY IF, WE HELD THAT TRIPP APPLIES TO A HABITUAL OFFENDER SENTENCE.

ABSOLUTELY. YES . OKAY. AND LET ME GET TO THE QUESTION OF WHY TRIPP SHOULD NOT APPLY TO HABITUAL OFFENDER SENTENCES. I AM SURE THE COURT IS FAMILIAR WITH TRIPP AND REMEMBERS THAT THE REASON FOR TRIPP IS BECAUSE THEY BELIEVE THAT THE SENTENCING METHOD THAT WAS BEING USED IN TRIPP, WAS INCONSISTENT WITH THE INTENT OF THE GUIDELINES, WHICH IS TO SERVE , THE GUIDELINE COULD BE CIRCUMVENTED AND VERIFICATION OF PROBATION, THAT IS THE TOTAL INCARCERATED PORTION OF THE GUIDELINE COULD BE EXCEEDED , AND THEY SAID, BECAUSE THE LEGISLATURE DID NOT AUTHORIZE THE INCREASE OF THE SENTENCE ABOVE THE DEADLINES MAXIMUM

LET ME ASK YOU.

- - ON THE INDICATION OF PROBATION , I SHOULD SAY.

LET ME ASK YOU THIS, IF YOU HAVE GUIDELINE OFFENSES AND HABITUAL OFFENDER OFFENSES , YOU CAN SENTENCE THE HABITUAL OFFENDER SENTENCE, WITHOUT REGARDS TO THE GUIDELINES, CORRECT ?

I AM SORRY . WOULD YOU REPEAT THAT LAST PART AGAIN.

THE HABITUAL OFFENDER SENTENCE CAN BE WITHOUT REGARDS TO THE GUIDELINES , CORRECT?

RIGHT. EXACTLY. AND

BUT IF YOU PUT ALL OF THE OFFENSES ON THE SAME SCORE SHEET , WOULD YOUR ARGUMENT BE DIFFERENT ? IF ALL OF THE SENTENCE , THE OFFENSES, WHETHER THEY QUALIFY FOR HABITUAL OFFENDER OR NOT , ARE PUT ON THE SAME SCORE SHEET , WOULD YOU THEN B E ENTITLED TO TRIPP CREDIT ?

OKAY . WHAT YOU ARE SAYING , LET ME SEE IF I UNDERSTAND YOUR QUESTION, YOU ARE SAYING THAT, IF YOU GO AHEAD AND YOU PREPARE A SCORE SHEET AND YOU SCORE FOR REPEAT OFFENDER SENTENCES AND GUIDELINE SENTENCES TOGETHER ON THAT SAME SCORE SHEET.

YES. RIGHT.

THE REASON THAT IS NOT A PROBLEM HERE IS BECAUSE IT IS VERY CLEAR , FROM THE ORIGINAL SCORE SHEET THAT WAS USED IN THIS CASE , THAT THE TRIAL COURT PUT THE HABITUAL OFFENDER SENTENCE PORTION IN THE GUIDELINE DEPARTURE SENTENCE ABOVE THE GUIDELINE , WHICH

I UNDERSTAND THAT , BUT MY QUESTION, REALLY, I S , IN THE WHOLE SCHEME O F SENTENCING , DO YOU HAVE TO MAKE SURE THAT THE HABITUAL OFFENDER SENTENCE OR OFFENSE, IS NOT ON THE SCORE SHEET, IN ORDER FOR YOUR ARGUMENT TO HOLD WATER ?

WELL , IN THIS CASE , IT IS INTERESTING THAT THE SENTENCE REMAINS EXACTLY THE SAME, REGARDLESS O F WHETHER YOU SCORE THE HABITUAL OFFENDER SENTENCES ON THE SCORE SHEET OR WHETHER YOU DO NOT SCORE THEM ON THE SAME SCORE SHEET. THE MAXIMUM GUIDELINE RANGE REMAINS EXACTLY THE SAME . SO THE HABITUAL OFFENDER SENTENCES IN THIS CASE HAD ABSOLUTELY NO IMPACT ON WHAT THE GUIDELINE SENTENCE WAS IN THIS CASE, AND, AGAIN, AS I SAID, THE TRIAL COURT CHOSE TO TREAT THE HABITUAL OFFENDER SENTENCES I N THE DEPARTURE SECTION OF THAT SCORE SHEET , INDICATING THAT THEY ARE NOT SUPPOSED TO BE CONSIDERED OUTSIDE OF THE TOTAL SENTENCE T HATS TO FALL WITHIN THE GUYARDO !!!!!!!!!!!!!!!GUYARDO-SENTENCE. IT HAS TO FALL WITHIN THE GUIDELINE SENTENCE. IT HAS T O FALL WITHIN THE GUIDELINE RANGE, AND CLEARLY THESE SENTENCES DON'T.

SO IF THE JUDGE , IF THE DEFENDANT DIDN'T QUALIFY AS A HABITUAL OFFENDER , BUT DEPARTED FROM THE GUIDELINES , WOULD YOU, THEN , SAY THAT TRIPP WOULD NOT APPLY, EVEN THOUGH ALL THOSE OFFENSES WERE SCORED ON A SINGLE SCORE SHEET?

YES. THAT IS THE STATE'S POSITION. TRIPP STILL DOESN'T APPLY.

SO IT IS JUST NOT THE HABITUAL OFFENDER IDEA.IT WOULD BE ANY TIME THAT A JUDGE DEPARTED FROM THE GHID LINES, THAT RATIONALE FROM THE GUIDELINES THAT , THE RATIONALE OF TRIPP SHOULD NOT APPLY .

YES , BECAUSE THE STATE OF RATIONALE OF TRIPP IS THEY DON'T WANT THE JUDGE TO SAY CIRCUMVENT THE INTENT OF THE SENTENCING GUIDELINES, WHICH IS TO MAKE SURE THAT ALL OF THE SENTENCES FALL WITHIN THE TOP OF THE CRIMINAL SENTENCING RANGE, WHICH THERE IS NOTHING ABOUT SENTENCES THAT DON'T FALL WITHIN THE TOP OF THE CRIMINAL SENTENCING

RANGE, AND THE COROLLARY T O THAT,OF COURSE , IS THOSE SENTENCES REMAIN TOGETHER AS A GROUP, UNDER THE GUIDELINES AND THEY TRAVEL TOGETHER AS A GROUP UNDER THE GUIDELINES , AND THAT IS THE INTENT OF THE GUIDELINES , THAT THEY TRAVEL TOGETHER AS A GROUP , BUT WHEN H E LOOKED AT THE HABITUAL OFFENDER SENTENCE, IT IS CLEAR THAT HAS BEENITYULE OFFENDER SENTENCES DO NOT TRAVEL OUTOF THE GROUP.

CHIEF JUSTICE: THE MARSHAL HAS HONORED YOUR REQUEST TO REMIND YOU THAT YOU ARE INTO YOUR REBUTTAL TIME, IF YOU WANT TO PAUSE AT THIS TIME .

OKAY , AND IF THERE ARE NO NOT ANY OTHER QUESTIONS AT THIS TIME, I AM GOING TO RESERVE THE TIME. THANK YOU.

CHIEF JUSTICE: THANK YOU .

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME I S MARCY ALLEN AND TODAY I HAVE THE PLEASURE OF REPRESENTING GARY MATTHEWS.

WOULD YOU ADDRESS THE ISSUE , FIRST OF ALL , OF WHETHER OR NOT THE ISSUE THAT WE HAVE BEFORE US IS MOOT.

I WOULD SUGGEST TO THE COURT THAT THE ISSUE IS MOOT FOR SEVERAL REASONS. FIRST OF ALL , THIS IS A GUIDELINE SENTENCE THAT W E ARE TALKING ABOUT HERE , SO THERE IS NO CONFLICT IN THE CASE LAW. THE COUNT THREE SENTENCE THAT IS UNDER REVIEW , WAS A GUIDELINE SENTENCE. I CAN'T OVEREMPHASIZE THAT ENOUGH, AND THEREFORE , AND

WHEN YOU SAY IT WAS A GUIDELINE SENTENCE, I UNDERSTOOD THAT HE WAS ASKING FOR WHAT MR . MATTHEWS WAS ASKING FOR , WAS CREDIT FOR TIME HE HAD SERVED ON A HABITUAL OFFENDER SENTENCE , NOT A GUIDELINE SENTENCE.

THE SENTENCE THAT HE WAS ASKING FOR THE CREDIT ON , WAS COUNT THREE. COUNT THREE , HE WAS SENTENCED PURSUANT TO THE GUIDELINES. SO THE SENTENCE THAT IS UNDER REVIEW AT THIS TIME, IS COUNT THREE , WHICH WAS

COUNT THREE , HE HAD TIME IN PRISON AS OPPOSED T O PROBATION.

HE WAS SENTENCED ON COUNTS ONE AND TWO TO FIVE YEARS. HIS ORIGINAL 1990 SENTENCE WAS COUNTS ONE AND TWO , FIVE YEARS IN PRISON AS A HABITUAL OFFENDER. COUNT THREE , WHICH I S THE ONLY REMAINING COUNT AT THE TIME THE MOTIONS WERE FILED , WAS FIVE YEARS' PROBATION. HE SUBSEQUENTLY VIOLATED THAT PROBATION BY COMMITTING THE 1994 SENTENCES. HE WAS SENTENCED TO A GUIDELINE SENTENCE ON THAT CASE , ON THAT COUNT, AGAIN, OF FOUR AND-A-HALF YEARS. THAT IS THE COUNT THAT WE WERE CONTESTING THE CREDIT FOR TIME SERVED ON. REGARDING THAT COUNT

BUT YOU ARE ASKING FOR CREDIT, THOUGH, FROM THE PORTION OF THE TIME THAT HE SERVED ON THE HABITUAL SENTENCE, CORRECT? THAT WAS HER QUESTION.

RECEIVED CREDIT FROM THE HABITUAL OFFENDER SENTENCES.

ON THE ESCAPE PORTION.

ON THE GUIDELINE SENTENCES.

THAT WAS HER QUESTION.

I GUESS I MISUNDERSTOOD . THIS CASE IS EXTREMELY CONVOLUTED. EXTREMELY CON VOLLEY

YOUTHED.

BUT EXTREMELY CONVOLUTED.

BUT DOESN'T IT BOIL DOWN TO THE SENTENCE IN 1990 AND THE CONSECUTIVE SENTENCE BEING GUIDELINES . THAT IS REALLY , I F YOU LOOK , YOU CAN FORGET ABOUTEVERYTHING ELSE.

ANT GUIDELINES SENTENCE UNDER REVIEW WAS ONE SCORE SHEET. COUNT THREE WAS SCORED AS AN ADDITIONAL OFFENSE ON THAT SCORE SHEET. COUNT ONE THE BATTERY WAS SCORED AS A PRIMARY OFFENSEAND COUNT TWO WAS ALSO SCORED AS AN ADDITIONAL OFFENSE.

PLEASE , YO U HAVE READ THESE CASES FOR YEARS AFTERTRIPP T HAS CREATED ALL KINDS OF SITUATIONS. AS I READ TRIPP AND ITS PROGENY , IT SEEMS TO SAYTHAT, AS YOUR OPPONENT SUGGESTS , THAT THE REASON FOR TRIPP WAS SO THAT WE ARE CONSIDER ING NOT JUST THAT I T IS A SINGLE SCORE SHEET, BUTTHAT THAT SINGLE SCORE SHEETLIMITS WHAT A TRIAL JUDGE CAN DO , WITH REGARD TO THE TIME FOR INCARCERATION, ANDYOU CAN'T USE PROBATION AND THEN A VIOLATION OF PROBATION , TO EXCEED THAT ORIGINAL COLLECTIVE GUIDELINES SENTENCE. AS I READ ALL THOSE CASES , I MEAN, IT SPECIFICALLY STATES THAT.

I HAVE T O DISAGREE , IN THE SENSE THAT THE THREE SUBSEQUENT CASES IN ALL THREE OF THE CASES , COOK , HODGE AND WITHERSPOON , THOSE THREE CASES DID NOT INVOLVE THE POTENTIAL FOR DEPARTURE SENTENCE, AND IN OTHER WORDS AND THAT RATIONALE , THERE WERE TWO RATIONALE S FOR TRIPP. ONE WAS RECOGNIZING THE INTERRELATED NATURE O F THECOUNTS, WHICH THIS COURT DID ALSO IN THE COURSE OF HABITUAL OFFENDER , WHEN IT DECIDED HILL AND HEAL , AND I THINK THE HILL AND HALE, AND I THINK THE REALITY IS NOT ONLY THAT IT PREVENTED THE DEPARTURE SENTENCE , BUTTHAT IT VIEWED THEM AS ALL THE COUNTS COMING BEFORE THE COURT AS AN INTERRELATED PROCESS, AND THAT SENTENCING IS INTERRELATED.

NOT ONLY IS IT INTERRELATED BUT THE LENGTH OF THE TERM. THEY COULD BE INTERHEALTH ED INTERRELATED , BUT TRIPP

HOWEVER, THIS COURT HAD TO APPLY A DEPARTURE SENTENCE IN ORDER T O RECEIVE TRIPP CREDIT. IN WITHERSPOON AND I N HODGKINS, THIS COURT SPECIFICALLY SAID THAT THEFACT OF COMBINED SENTENCES ON VIOLATION OF PROBATION DID NOT EXCEED THE GUIDELINES, WAS NOT A BASISFOR LIMITING THE TRIPP DECISION.

BUT THE GUIDELINES SENTENCE IS DETERMINED BY THE SUM TOTAL OF THE OFFENSES SCORED , WHEREASHERE, YOU HAVE GOT , THE TWO OFFENSES ARE SCORED SEPARATELY AND GIVEN AS HABITUAL OFFENDER SENTENCE , AND THEN THE ESCAPE CHARGE , COUNT THREE , IS , IS, EVEN THOUGH IT IS ON THE SAME SCORE SHEET, IT I S A SEPARATE, HOW DID THE , I GUESS , WHERE IS THE INTERRELATIONSHIP THAT WE ARE TALKING ABOUT I N TRIPPAS BEING THE MOTIVATING POLICY REASON?

IN DETERMINING WHAT HIS SENTENCE WAS ON COUNT THREE , THE COURT USED THE OTHER TWO OFFENSES IN CALCULATING THE SCORE SHEET, AND IF WE WERE TALKING ABOUT A TRUE HABITUAL OFFENDER SENTENCE

IN WHAT WAY , GIVE U S , THE ESCAPE WAS PROBATION.

WAS A N ADDITIONAL OFFENSE UNDER THE GUIDELINES , AND SO HIS PRIMARY OFFENSE O N HIS GUIDELINES , IN OTHER WORDS , HE WAS SENTENCED PURSUANT TOTHE GUIDELINES ON COUNT THREE.THE GUIDELINE RANGE WAS AT THE VIOLATION OF PROBATION WITH THE ONE-CELL BUMP UP TO FOUR AND-A-HALF YEARS. HE GOT FOUR AND-A-HALF YEARS N CALCULATING THE FOUR AND-A-HALF YEARS, THE OTHER TWO OFFENSES WERE TAKEN INTO ACCOUNT ON THE SCORE

SHEET.

BUT NOT THE LENGTH OF THE SENTENCE ON THE OTHER TWO. THE FACT THAT THEY WERE THERE BUT NOT THE LENGTH, CORRECT?

CORRECT. OKAY.

SO THEY WERE NOT INTERRELATED WITH REGARD TO TIME.

BUT HABITUAL OFFENDER SENTENCES ALSO HAVE BEEN VIEWED AS INTERRELATED, BY THIS COURT, AND IN THE TILL DECISION, WHERE THIS COURT HELD THAT YOU CANNOT IMPOSE CONSECUTIVE SENTENCES WHERE THERE IS ONE CRIMINAL EPISODE, AND ALSO IF YOU LOOK

THIS IS A COMPLETELY DIFFERENT KIND OF ANIMAL HERE, BECAUSE AS I LOOK DOWN THE ROAD LOGICALLY, WHAT YOU SEEM TO BE SAYING IS THAT, ANY TIME PEOPLE ARE SENTENCED AT THE SAME SENTENCING, WHETHER THEY ARE SENTENCED AS GUIDELINES, UNDER THE GUIDELINES OR WHETHER THEY ARE HABITUAL OFFENDERS, THAT YOU HAVE GOT TO FURTHER DOWN THE ROAD, WHEN THERE IS ANY KIND OF VIOLATION OF PROBATION, GIVE THEM ALL THE CREDIT FOR ALL OF THE SENTENCES, NO MATTER HOW THEY WERE SENTENCED. THAT IS ESSENTIALLY WHAT YOU ARE SAYING.

ESSENTIALLY, AND WHAT I AM BASING THAT UPON, IS THE FACT THAT THIS COURT HAS VIEWED THE GUIDELINES CASES AS INTERRELATED, AND I MIGHT ADD THAT, IF THIS WERE THREE, BECAUSE I THINK THIS IS REALLY AN IMPORTANT POINT, BECAUSE TRUTHFULLY I THINK THIS COURT SHOULD DECLINE TO REACH THIS CASE FOR SEVERAL REASONS. ONE, THERE IS NO CONFLICT. NUMBER TWO, THE ISSUE IS MOOT AS TO - -

CAN YOU EXPLAIN THE NO CONFLICT.

THERE IS

THERE IS A CERTIFIED CONFLICT, RIGHT?

CORRECT.

SO AT LEAST WE HAVE TWO CASES. ONE SAYS IT CERTIFIES THAT THERE IS CONFLICT, BUT HOW IS THERE NOT ACTUAL CONFLICT?

IN ORDER FOR THERE TO BE CONFLICT, THE COURT HAS TO REACH THE SAME RULE OF LAW ON THE SAME SET OF FACTS. THE SET OF FACTS IN DUNCAN AND THE SET OF FACTS BEFORE THIS COURT ARE DIFFERENT IN THE SENSE THAT COUNT THREE IN THIS CASE, IS A GUIDELINE SENTENCE. THAT IS A BIG DISTINCTION. ALSO, SUBSEQUENT TO DECIDING DUNCAN, THE SAME DISTRICT COURT OF APPEAL DECIDED SYLVESTER, NUMEROUS YEARS LATER. IN THE INTERIM, THIS COURT CAME OUT WITH ITS LODGE KINCE DECISION AND ITS WITHERSPOON DECISION, WHICH MADE CLEAR IN MY MIND, THAT THE DEPARTURE RATIONALE WAS NOT THE SOLE BASIS FOR THE TRIP DECISION. SO THE SAME DISTRICT

WHAT WAS THE BASIS?

THE OTHER BASIS THAT THE COUNTS WERE TREATED, THEIR RELATIONSHIP TO ONE ANOTHER ON THE SAME SCORE SHEET, AND THAT WAS WHAT WAS THE OVERRIDING CONCERN IN COOK, IN HODGE KIN AND IN WITHERSPOON.

DESPITE THE FACT THAT THE LENGTH OF THE SENTENCE WAS NOT CONTROLLED BY THAT ONE SCORE SHEET.

WELL , AND THOSE WERE PURE GUIDELINE CASES, AND THIS IS A HYBRID . BUT

IT IS HARD TO SAY THAT THEY ARE APPLICABLE IN A SITUATION WHERE ALL OF THE SENTENCES ARE NOT CONTROLLED OR ALL OF THE LENGTH OF THE SENTENCES ARE NOT CONTROLLED BY THAT SCORE SHEET.

I UNDERSTAND THE COURT'S POSITION. HOWEVER , IF WE ARE LOOKING STRICTLY AT CONFLICT, WE HAVE TO BE FINDING TWO SETS OF THE EXACT SAME FACTS , AND WE DON'T HAVE TWO SETS OF THE SAME FACTS IN THIS CASE AND IN DUNCAN. WE, ALSO , HAVE

DID DUNCAN INVOLVE SCORE SHEET CASES AND A HABITUAL OFFENDER CASE?

DUNCAN WAS STRAIGHT HABITUAL OFFENDER. OKAY. SO THAT IS A BIG DISTINCTION VERSUS WHAT WE HAVE HERE WHICH IS A HYBRID .

DON'T BOTH CASES CONFLICT, IN THE SENSE THAT ONE CASE SAYS THAT TRIPP DOES NOT APPLY TO HABITUAL OFFENDER SENTENCES AND THE OTHER CASE SAYS, NO , IT DOES APPLY ? ISN'T THAT THE

IT APPLIES , IF YOU IGNORE THE FACTS IN THE TWO CASES AND JUST LOOK AT THE RULES OF LAW AND NOT HOW THEY ARE APPLIED TO THE PARTICULAR FACTS , AND I ALSO HAVE TO EMPHASIZE THAT THE SAME DISTRICT COURT OF APPEAL RECEDED SUB SILENTIO , WHICH I KNOW IS A VERY

LET'S GET TO THE DUNCAN WAS AN EN BANC DECISION AND SYLVESTER WAS A PANEL DECISION.

CORRECT.

SINCE WHEN DOES A PANEL DECISION , SUB SILENTIO , OVERRULE A PREVIOUSLY EN BANC DECISION OF THIS COURT?

BECAUSE THERE WAS A DECISION IN THIS COURT THAT WOULD HAVE CHANGED THE OUTCOME , BY APPLYING THE RATIONALE OF WITHERSPOON AND DUNCAN.

IT IS NOT THE PANEL DECISION THAT OVERRULES IT. IT IS OUR DECISION THAT OVERRULES IT.

I GUESS, AND ALSO THE FACT THAT THE SAME COURT, ALSO, THAT DECIDED DUNCAN AND SYLVESTER, ALSO HAS HELD IN THE CONTEXT OF THE CRIMINAL PUNISHMENT CODE , THAT YOU GET TRIPP CREDIT , AND WE KNOW IN THE CRIMINAL PUNISHMENT CODE CONTEXT , WE DON'T HAVE A CEILING LIKE WE DO UNDER TRADITIONAL GUIDELINES.

IF WE DECIDE THAT , IN THE CRIMINAL PUNISHMENT CODE CASES , THAT TRIPP CREDIT DOES NOT APPLY , THEN WOULD THAT SAME RATIONALE LEAD TO REJECTING YOUR POSITION HERE?

NO. BECAUSE MY CLIENT WAS SENTENCED PURSUANT TO THE GUIDELINES , WHICH WAS A PREDAYS PREDECESSOR .

I AM STILL HAVING A HARD TIME, AND MAYBE THAT IS WHERE WE GET INTO THE FACTS OF THIS. I THOUGHT THAT THE HABITUAL OFFENDER SENTENCES FOR COUNTS ONE AND TWO WERE NOT GUIDELINE SENTENCES.

CORRECT.

OKAY.

BUT THE SENTENCE UNDER REVIEW, AND I DON'T THINK THAT YOU CAN DISCOUNT THE FACT THAT

THE SENTENCES ACTUALLY UNDER CONSIDERATION WAS A GUIDELINE SENTENCE, AND I WOULD ALSO LIKE TO

BUT YOU ARE ASKING FOR CREDIT FROM HABITUAL OFFENDER SENTENCES.

THAT WAS SCORED ON THE SAME SCORE SHEET AS THE ORIGINAL SENT AND ARRIVING AT WHAT THE SENTENCE WAS .

LET ME MAKE SURE AGAIN, BECAUSE I KNOW YOU WENT OVER THIS WITH JUSTICE LEWIS , HOW WERE THE OFFENSES , HABITUAL OFFENDER SENTENCES OFFENDER SENTENCES , FACTORED INTO THE GUIDELINE SENTENCES? YOU SAID THEY WERE SCORED ON THE SAME SHEET.

HE WAS ACCORDED POINTS FOR THOSE OFFENSES IN ARRIVING AT WHAT HIS GUIDELINE RANGE SHOULD BE , SO THEY WERE FACTORED INTO DETERMINING WHAT AN APPROPRIATE GUIDELINE SENTENCE WAS , BY SCORING ONE OF THOSE COUNTS AS THE PRIMARY OFFENSE AND THE SECOND COUNT AS AN ADDITIONAL OFFENSE, AND I WOULD JUST LIKE TO

ARE YOU TALKING ABOUT THE '90 SCORE SHEET OR '94?

IN THE '90 THE ORIGINAL SCORE SHEET , AS WELL AS THE SCORE SHEET THAT WAS USED ON THE VIOLATION OF PROBATION. ANOTHER SCORE SHEET ON THE VIOLATION OF PROBATION , IF YOU HAD REMOVED , BECAUSE WHEN THEY ARE SCORED , IT IS NOT AS SIGNIFICANT , SO IF YOU LOOK AT THE '94 SCORESHEET AND REMOVE OR CORRECT, IF WE WANT TO ARGUE CORRECTTHE SCORE SHEET, WHAT WOULD HAVE BEEN A DIFFERENCE IN THE RANGE?

YOU KNOW, I DIDN'T RESCORE IT WITH THE ESCAPE AS THE PRIMARY OFFENSE. IT DIDN'T OCCUR TO ME , BUT YOU WOULD HAVE HAD TO PREPARE AN ENTIRELY NEW SCORE SHEET , BECAUSE YOU WOULD HAVE TO SCORE THE ESCAPE AS THE PRIMARY , AND NOT SCORE THE OTHER TWO , AND IN ALL CANDOR , I DIDN'T ANTICIPATE THAT.

I AM TALKING ABOUT IN THE '94 CASE , WASN'T THE ESCAPE THE PRIMARY?

NO. THEY USED THE EXACT SAME SCORE SHEET ON

THEY DIDN'T PREPARE A NEWS CORE SHEET.

CORRECT. SO THEY WERE USING THE TRAVELING END OF THE SAME SCORE SHEET IN BOTH INSTANCES.

LET ME ASK YOU BEFORE YOU SIT DOWN, BECAUSE IF WE REACH, IF WE HOLD IN YOUR FAVOR ON THE HABITUAL OFFENDER AND SAY THAT TRIPP APPLIES, THEN WE HAVE TO REACH THE SECOND ISSUE, WHICH IS NOW , CAN WE APPLY THAT TRIPP CREDIT TO THE '94 SENTENCE, AND THE PROBLEM I AM HAVING WITH THAT ARGUMENT , IS IF THERE WAS NO '94 SENTENCE , AND THE DEFENDANT HAD JUST SIMPLY BEEN RELEASED , AND WHERE DOES THIS CREDIT GO, THEN , CREDIT THAT HE WAS ENTITLED TO? HOWEVER, IF YOU HAVE SOMEBODY THAT IS NOW INCARCERATED FOR SOMETHING ELSE, THEN HE GETS THE TRIPP CREDIT, SO ISN'T THAT , ISN'T A DEFENDANT WHO COMMITS ANOTHER CRIME IN A BETTER POSITION THAN WHO IS NOW IN PRISON GETS THE TRIPP CREDIT , THAN SOMEBODY WHO IS OUT THERE AND CAN'T USE HIS TRIPP CREDIT?

I WOULD JUST POINT OUT THAT HE WAS SENTENCED ON THE 1990 VIOLATION OF PROBATION , AND THE 1994 SUBSTANTIVE CHARGES, ON THE SAME DATE . SO THOSE TWO CASES WERE TOGETHER , AND HAD THE JUDGE GRANTED THE TRIPP CREDIT AT THE 1994 VIOLATION OF PROBATION SENTENCING HEARING , THEN HIS SENTENCE , IT WOULDN'T HAVE BEEN AS IF HE HAD BANKED IT. IT IS NOT LIKE WE ARE SAYING , WELL , WAIT FIVE YEARS AND THE TWO CASES ARE NOT AT ALL INTERRELATED. THE VOP SENTENCING AND THE SUBSTANTIVE SENTENCING , HAPPENED ON THE

SAME DATE , SO WE ARE UNDER VALUCCI VERSUS COCHRAN , WHICH THIS COURT HELD, YEARS AND YEARS AGO , THAT YOU DO CREDIT. I MEAN, WHEN THE PERSON IS INCARCERATED O N THE TWO CASES THAT ARE SERVED CONSECUTIVELY AND THEY HAVE BEEN SERVING THE FIRST SENTENCE WRONGFULLY , YOU GET THE CREDIT ON THE SECOND SENTENCE. IT JUST DOESN'T DISAPPEAR. I WOULD LIKE TO POINT OUT THAT MR . MATTHEWS HAS BEEN RELEASED YEARS AND YEARS AGO ON THESE CASES, WHILE THE MOTION FROM THE REHEARING FROM THE FOURTH WAS PENDING , SO THAT THIS ISSUE IS CLEARLY MOOT AS TO MR . MATTHEWS.

IT IS IN THIS CASE BUT ARE THERE NOT A LOT OF CASES OUT THERE WHERE THIS SAME ARGUMENT CAN BE ASSERTED AND YOU ARE GOING TO B E BACK AGAIN?

I WOULD LIKE TO POINT OUT, NO , IT COULDN'T , BECAUSE UNDER A TRUE HABITUAL OFFENDER SENTENCE , HE WOULD NOT HAVE RECEIVED A CONSECUTIVE SENTENCE. WHAT THE JUDGE SHOULD HAVE DONE WAS IMPOSED A TEN-YEAR SENTENCE ON COUNT TWO , SUSPEND FIVE AND PLACE HIM ON PROBATION. AND TRUTHFULLY UNDER HALE , THIS SITUATION SHOULD NOT HAVE OCCURRED , AND , REALLY , THE CORRECT WAY TO HAVE PRONOUNCED THIS SENTENCE, GOING BACK TO POORE WAY BACK IN THE '80 SES, IS TO HAVE ANNOUNCED A TRUE SPLIT SENTENCE. I A M SENTENCING YOU TO TEN YEARS IN PRISON. I AM SUSPEND ING D FIVE YEARS OF THOSE AND PLACING YOU O N PROBATION. I AM SENTENCING YOU T O COUNTS ONE AND TWO CONCURRENT FIVE YEARS. THAT WOULD BE THE TRUTH OF THE MATTER AND WE WOULD NOT BE IT Y IN G SITTING HERE .

THAT IS TRUE IN MOST CASES, IF THOSE SENTENCES WERE DONE, WE WOULD NOT WORRY ABOUT HABITUAL OFFENDER.

IF THOSE SENTENCES WERE DONE , BECAUSE OF THE DOCTRINE THAT THIS COURT ANNOUNCED IN HILL , YOU WOULD NOT HAVE HAD IT IN THIS CASE.

THE JUDGE ANNOUNCED IT 30 YEARS AND SUSPENDED 25 OF THEM.

CERTAINLY COULD HAVE.

SO W E WANT TO ENCOURAGE JUDGE TO SAY GIVE LENGTHIER SENTENCES SO THAT WE DON'T END UP WITH THIS SITUATION WHERE YOU ARE ENTITLED TO AS MUCH CREDIT , BASICALLY , AS YOU WOULD GET IN THE LENGTH OF YOUR SENTENCE , SO YOU ARE OUT OF THE DOOR AND SERVING NO MORE TIME.

WE REALLY WOULD LIKE TO , IN PARTICULARLY IN THE CONTEXT OF THE SENTENCING , IS ENCOURAGE JUDGES TO PRONOUNCE THE SENTENCES AS SIMPLY AS POSSIBLE , SO AS TO AVOID THESE TYPES OF SCENARIOS. I MEAN AS A PRACTITIONER , I SEE THE MOST COMPLICATED SENTENCING PRONOUNCEMENTS , AND I THINK IF WE JUST ENCOURAGED OUR COURT TO GO FOR A STRAIGHTFORWARD PRONOUNCEMENT , WE WOULD NOT BE SEEING AS MANY O F THESE CASES TODAY , AND I THINK TRUTHLY , PRONOUNCING THE TRUE SPLIT SENTENCE , IS PERHAPS THE MOST STRAIGHTFORWARD WAY , WHICH IS WHAT THEY USED TO DO WAY BACK , BEFORE GUIDELINES , BEFORE CRIMINAL PUNISHMENT CODE , BEFORE HABITUAL OFFENDER SENTENCES , WHEN JUDGES HAD COMPLETE DISCRETION.

THEY WOULD GIVE YOU THE MAXIMUM ON ALL OF THEM.

AND WE WOULD B E DONE WITH IT.

DIDN'T HAVE TO WORRY .

SO WITH ALL DUE RESPECT , I WOULD ASK THE COURT TO DISMISS THIS CASE OR ALTERNATIVELY , HOLD THAT MR . MATTHEWS IS ENTITLED TO HIS CREDIT. THANK YOU .

CHIEF JUSTICE: OKAY. MR. MARSHAL , HOW MUCH TIME?

FOUR AND-A-HALF MINUTES.

CHIEF JUSTICE: FOUR MINUTES.

LET M E JUST TOUCH REAL QUICKLY UPON EVERYTHING. FIRST OF ALL WITH REGARD TO THE SCORE SHEET PROBLEM, I DID CALCULATE THE SCORE SHEET WITH AND WITHOUT THE HABITUAL OFFENDER SENTENCES ADDED IN . THE SCORE SHEET REMAINS EXACTLY THE SAME. THE TOP OF THE GUIDELINES RANGE REMAINS EXACTLY THE SAME, NO MATTER, S O IT IS CLEAR THAT THE HABITUAL OFFENDER SENTENCES HAD NO IMPACT ON THE GUIDELINES.

HOW IS THAT POSSIBLE ? IT SOUNDS LIKE YOU HAVE GOT NO POINTS.

IT IS POSSIBLE , BECAUSE THE ESCAPE IS A THIRD-DEGREE FELONY, THE ESCAPE, HE SCORED ON , REMEMBER THE 1990 GUIDELINES. YOU HAD ALL THESE DIFFERENT FORMS , BASED ON WHAT KINDSOF CRIMES WERE COMMITTED, AND THE THIRD DEGREE FELONY OF ESCAPE WAS COMMITTED ON A DIFFERENT FORM THAN THE SECONDARY FELONY O F RESISTING ARREST AND BATTERY ON A LAW ENFORCEMENT OFFICER , SO SOMEHOW IF YOU SCORE ONE AND ON ONE SCORE SHEET , AND THEN YOU PREPARE THE SAME THING ON ANOTHER SCORE SHEET , IT RESULTS IN EXACTLY THE SAME SENTENCE, ODDLY ENOUGH.

WAS THE SAME SCORE SHEET USED IN 1994, AS HAD BEEN USED IN 1990?

YES . OKAY . LET ME MOVE ON TO THE HILL ISSUE. THE HILL ISSUE, REALLY , IS AREAD HERING IN THIS CASE, BECAUSE WE ARE HERE ON A VERY LIMITED POINT , WHERE THE CERTIFIED BETWEEN THE FOURTH DISTRICT COURT OF APPEAL AND THE SECOND DISTRICT COURT OF APPEAL O N HOW TO RESOLVE THAT CONFLICT, AND IT MIGHT BE MORE RELEVANT IN A CASE WHERE THE DEFENDANT IS STILL SITTING IN PRISON AND WHO MIGHT BE AFFECTED BY THE HILL ISSUE. HERE THE DEFENDANT IS OUT OF PRISON, SO YOU DON'T NEED TO ADDRESS HILL, TO GRANT HIM SOME SORT OF RELIEF IN THIS CASE, BUT YOU STILL DO NEED TO ADDRESS THE CERTIFIED CONFLICT BETWEEN THE TWO FOURTH DISTRICTS AND SECOND DISTRICT.

WHAT DO YOU DO WITH SYLVESTER?

THE SYLVESTER CASE , I HAVE TO TELL YOU , IS FIRSTOUT OF THE SECOND DCA. OF COURSE IT CAME OUT OF THE DUNCAN CASE , SOME YEARS AFTER THE DUNCAN CASE. THERE IS NO REFERENCE OF THE DUNCAN CASE IN THE SYLVESTER CASE, AND THE DUNCAN CASE IS AN EN BANC OPINION FROM THEENTIRE COURT. YOU WOULD THINK THAT, IF SILVERVESTER HAD BEEN AWARE OF THE DUNCAN CASE, IT WOULD HAVE MENTIONED IT AT LEAST IN PASSING, WHY WE WERE GOING TO DUNCAN.

SO SYLVESTER WOULD HAVE TO BE DISAPPROVED AS WELL, IF WE FOLLOW DUNCAN?

YES. ABSOLUTELY. IT DOESN'T MAKE SENSE, IN THE CONTEXT OF WHAT HAPPENED IN DUNCAN. OKAY. THE NEXT THING I WANTED TO SAY IS THAT THEY WERE TALKING ABOUT HOW THERE IS NO ACTUAL CONFLICT IN THIS CASE , BUT THERE STILL I S A NATURAL CONFLICT CASE , BECAUSE CONFLICT CAN BE BASED ON A RULE OF LAW , AND TWO DIFFERENT RULES OF LAW THAT ARE ANNOUNCED DIFFERENTLY IN TWO DIFFERENT CASES AND NOT JUST BECAUSE THERE IS A DISTINCTIONBETWEEN THE SAME SET O F FACTS , AND HERE YOU HAVE THE SECOND DCA ANNOUNCING A RULE OF LAW . HILL, I AM SORRY , TRIPP DIDNOT AND FLY HABITUAL OFFENDER SENTENCES, AND THEN YOU HAVE THE FOURTH DCA ANNOUNCING A COMPLETELY DIFFERENT RULE O F LAW . HILL AND TRIP OFFENDER SENTENCES. STILL THERE IS CLEARLY A CONFLICT, REGARDLESS OF THE CASE LAW. OKAY. THE NEXT POINT I WANT TO MAKE IS THAT THE CREDIT

FOR FUTURE OFFENSES IS ABSOLUTELY AGAINST PUBLIC POLICY, AND I THINK THE JUSTICES HAVE ALREADY MADE THAT POINT QUITE WELL , YOU CAN SIMPLY NOT ENCOURAGE SOMEBODY BANKING CREDIT FOR CRIME THAT , CREDFOYT TIME SERVED THAT WAS WRONGLY IMPOSED IN SAYING , COMING BACK TEN YEARS LATER AND SAYING , OH, LOOK, I HAVE CREDIT FROM THE LAST TIME, SO I CAN GO AHEAD AND COMMIT A NEW CRIME AND HAVE IMPUNITY , BECAUSE I KNOW I AM NEVER GOING TO SERVE A DAY ON THAT CRIME BECAUSE IHAVE GOT CREDIT IN THE BANK SO TO SPEAK. OKAY. AND THE NEXT THING I WANT TO MENTION IS HOW IT HAPPENED IN THIS CASE IS SIGNIFICANT, BECAUSE IT ALSO AFFECTS WHAT HAPPENS IN ANOTHER CASE THAT IS ALSO PENDING BEFORE THIS COURT, WHICH IS THE CASE OF JEANETTE AMORA , WHICH HAS TO DO WITH WHETHER TRIPP CREDIT APPLIES TO CRIMINAL PUNISHMENT CODE CASES AS WELL, AND SO I THINK THAT ANYTHING THAT HAPPENS IN THIS CASE KIND OF HAS TO PLAY INTO WHAT HAPPENS IN THAT CASE AS WELL , AND THAT IS ANOTHER REASON WHY YOU REALLY NEED TO RESOLVE THE CONFLICT BETWEEN THE FOURTH AND THE SECOND. ARE THERE ANY OTHER QUESTIONS?

CHIEF JUSTICE: NO. THANK YOU.

THANK YOU VERY MUCH. AND THE STATE WOULD ASK THE COURT TO RECEDE FROM THE FOURTH DCA .

CHIEF JUSTICE: THANK YOU BOTH VERY MUCH AND ESPECIALLY THIS LIVELY DISCUSSION THAT WE HAVE HAD.THE COURT IS GOING TO TAKE ITS REGULAR MORNING RECESS OF 15 MINUTES , BEFORE WE HEAR THE LAST CASE ON THE DOCKET THIS MORNING. THE COURT WILL STAND IN RECESS.

MARSHAL: PLEASE RISE.