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**Demello Bolware v. State of Florida
SC04-12**

AND WE WILL TAKE THE CASE
FOR CONSIDERATION.
THANK YOU VERY MUCH.
WE WILL MOVE TO OUR SECOND
CASE.
BOLWARE VERSUS STATE OF
FLORIDA.
92 MAY IT PLEASE THE COURT
I'M JEFF WHITTON FROM PANAMA
CITY I'M HERE ON BEHALF OF
DEMELLO BOLWARE.
THERE ARE NO FACTS TO
BELABOR IN THIS CASE.
>> WELL, WHAT WAS THE --
WHAT WAS THE SENTENCE?
HE PLED NO LOW?
>> HE PLED NO LOW RECEIVED
\$253 COST IN FINES, SUBJECT
TO 15 DAYS IF HE DID WANT
PAY IT, HE DIDN'T PAY IT.
HE WAS ARRESTED BRIEFLY.
AND WAS --
>> SO THE ARGUMENT IS ALL HE
THOUGHT WAS GOING TO HAPPEN
WAS HE WAS GOING TO HAVE
THIS FINE.
HE DIDN'T KNOW HE WAS GOING
TO HAVE -- HIS LICENSE WAS
ALREADY SUSPENDED HE DIDN'T
KNOW HIS LICENSE WOULD
CONTINUE TO BE SUSPENDED?
>> THE SUSPENSION WAS
INSURANCE FOR SOMETHING --
FAILURE TO PAY INSURANCE OR
SOMETHING OF THAT NATURE.
HE HAD NO IDEA THAT THERE
WAS A FIVE-YEAR AUTOMATIC
SUSPENSION COMING AS A
RESULT OF THE --
>> WELL HIS LICENSE HAD BEEN
SUSPENDED HOW MANY TIMES

BEFORE?

>> I DO NOT KNOW, YOUR HONOR.

>> WELL, THIS -- HE WAS A HABITUAL.

>> YES, HE WAS A HABITUAL TRAFFIC OFFENDER I DON'T KNOW THAT THERE HAD BEEN SUSPENSIONS BEFORE.

IT MAY HAVE BEEN A COUPLE OF PREVIOUS SUSPENSIONS, DRIVING WITH SUSPENDED LICENSES.

THE MAN IS NOT A GOOD -- DID NOT HAVE A GOOD DRIVING RECORD UP TO THIS TIME.

I MEAN, THERE'S NO QUESTION ABOUT THAT.

>> REFRESH MY MEMORY BECAUSE LOOKING AT ALL THESE VARIOUS STATUTES WITH REFERENCE TO DRIVER'S LICENSE SUSPENSION AND, YOU KNOW, NAT DOING IT WITH TEENAGERS, WITH EVERYBODY HERE, IS THIS THE STATUTE -- DID YOUR -- FALL UNDER THE ONE WHERE THE PROVISION ACTUALLY SAYS THAT THE COURT SHALL DIRECT THE DEPARTMENT TO SUSPEND THE LICENSE?

IS THAT THE STATUTE THAT WAS INVOLVED IN YOUR CASE OR IS IT ANOTHER ONE --

>> IT'S ANOTHER ONE.

IT IS A HABITUAL TRAFFIC OFFENDER STATUTES THAT SAYS UPON NOTIFICATION OF THE OFFENSE OF SUSPENSION THE DEPARTMENT SHALL SUSPEND OR REVOKE FOR FIVE YEARS SUBJECT TO HAVING PETITION FOR REINSTATEMENT.

>> WHO'S RESPONSIBILITY IS IT TO NOTIFY --

>> THE CLERK NOTIFIES THE DEPARTMENT.

>> THE CLERK OF THE COURT?

>> THE CLERK OF THE COURT AUTOMATICALLY NOTIFIES THE DEPARTMENT OF --

>> SHOULD WE DRAW A DISTINCTION MOJEST THESE PROVISIONS -- AMONGSTS THESE

PROVISIONS, I READ YOU ONE THAT VERY EXPRESSLY SAYS THAT THE COURT, YOU KNOW, SHALL DIRECT, OKAY, THE DEPARTMENT TO SUSPEND THE LICENSE.

NOW THAT, THAT ONE --

>> THERE THERE'S A NUMBER. THEY'VE COVERED THE WATERFRONT.

>> SHOULD WE DECIDE THIS CASE ON THE BASIS OF THESE VARYING PROVISIONS AND SAY, WELL, WHERE IT SAYS THAT THE COURT SHALL ACTUALLY DIRECT THE DEPARTMENT TO DO IT, THEN MAYBE WE OUGHT TO REQUIRE THE COURT TO TELL THE DEFENDANT BEFORE HE PLEASE.

WHERE IT'S ONE WHERE WHEN THE DEPARTMENT FINDS OUT THAT SOMETHING IS HAPPENED, THEN STARTS ITS OWN PROCEEDINGS, MAYBE WE SHOULD SAY, WELL, NOW, THE IN THAT INSTANCE, THE COURT SHOULDN'T BE INVOLVED?

>> WELL, I DON'T THINK SO, YOUR HONOR, AND THE REASON FOR THAT IS THIS, IN THESE RELATIVELY MINOR TRAFFIC OFFENSES, AND THERE ARE SOME BEFORE YOU, SOME RELATED CASES, THAT ARE SERIOUS TRAFFIC OFFENSES, FELONY TRAFFIC OFFENSE SAID, -- OFFENSES, NOT THIS CASE, THE ISSUE REALLY IS WHAT DOES THE DEFENDANT WHAT IS HE TOLD?

WHAT DOES HE UNDERSTAND ABILITY ABOUT THE SENTENCE, THE ACTUAL CONSEQUENCES OF HIS PLEA?

AND I DON'T THINK FROM THE STANDPOINT OF THE DEFENDANT IT MATTERS TO HIM WHICH AGENCY SUSPENDS HIS LICENSE, WHETHER THE COURT DIRECTS IT, WHETHER THE COURT DOES IT ITSELF, WHETHER THE COURT TELLS THE DEPARTMENT TO, WELL THE DEPARTMENT DOES IT

AUTOMATICALLY.

THE POINT IS, THE DEFENDANT TO UNDERSTAND HIS PLEA HAS TO BE TOLD SOMETHING REALISTIC ABOUT WHAT HIS LIFE CONSEQUENCES ARE GOING TO BE?

>> BUT YOU WOULD AGREE THAT THIS COURT, SLAUNG AGO AS THE CITY OF GAINESVILLE CASE.

>> RIGHT.

>> HAS -- IT'S MADE A DIFFERENCE TO THIS COURT INsofar AS IT HAS DETERMINED THAT THE SPENSION OF THE DRIVER'S LICENSE IS NOT A PUNISHMENT.

>> THE COURT HAS USE SAID THAT PHRASE NOT A PUNISHMENT IN JURISDICTIONAL CONTEXT, YES, JUST GOING BACK INTO THE ZBIFRTS.

>> RIGHT.

>> AND --

>> NOBODY.

>> REPEATED IT IN THE 70s.

>> 70s, 80s, YES, AND IT'S A NUMBER OF CIRCUMSTANCES AND WE'RE NOT ASKING THE COURT TO REcede IN ANY SENSE FROM THE SMITH CASE THAT SAYS THE LEGISLATURE CAN DIRECT A DRIVER'S LICENSE TO BE REVOKED OR FROM BOYD OR ANY OF THE OTHERS THAT SAY THE TRIAL COURTS DON'T HAVE THE AUTHORITY TO TELL THE DEPARTMENT TO CHANGE ITS REVOCATIONS IN CRIMINAL SENTENCING PROCEEDINGS.

ALL I'M SAYING IS THAT THIS IS A VERY REAL CONSEQUENCE OF THE PLEA TO THIS MAN.

>> BUT WE HAVE -- WE'VE NOT MADE OUR DECISIONS ON WHAT HAS TO BE PART OF THE PLEA COLLOQUY ON THE BASIS OF REAL CONSEQUENCES.

WE HAVE MADE IT ON THE BASIS OF WHETHER -- OF A CRITERIA THAT SAYS THAT IT IS THE PUNISH: I MEAN WE USE THAT LANGUAGE IN MAGER AND

PARLOW.

>> RIGHT, YOU USE THE WORD PUNISHMENT.

RIGHT.

BUT YOU DON'T DEFINE THE WORD PUNISHMENT IN THAT SENSE, AND WHAT I AM SUGGESTING TO THE COURT IS THAT THIS IS PUNISHMENT. THIS IS PUNISHMENT TO THE ORDINARY CITIZEN.

>> BUT WHEN A LAWYER IS CONVICTED OF A FELONY,.

>> OKAY.

>> THEN HES ARE AUTOMATICALLY SUSPENDED UNDER OUR SCHEME OF RELULATING LAWYERS, AND SO ARE WE GOING TO REQUIRE TRIAL JUDGES NOW THAT WHEN THE DEFENDANT IS A LAWYER TO SAY, WELL, THEN PLEAING NOLOW OR GUILTY TO THIS, DO YOU REALIZE THAT YOU'RE PRIVILEGED TO PRACTICE LAW IS GOING TO BE AUTOMATICALLY SUSPENDED?

WE DON'T REQUIRE THAT.

>> YOU HAVEN'T REQUIRED IT. SO WHY THE PRIVILEGE OF DRIVING AN AUTOMOBILE ON THE HIGHWAYS OF FLORIDA IS -- HAS BEEN CHARACTERIZED AS A PRIVILEGE JUST AS THE PRIVILEGE OF PRACTICING LAW, SO WHY SHOULDN'T WE JUST DRAW AN ANALOGY THERE?

>> WELL, THE PROBLEM THAT I SEE WITH THAT IS, OF COURSE,, OF COURSE, LAWYERS ARE A FAIRLY SMALL SUBSET AND PERHAPS SHOULD UNDERSTAND THE CONSEQUENCES OF THAT ACTION.

THE LAWYERS GENERALLY OUGHT TO HAVE GOOD LEGAL ADVICE, AND IF THE LAWYER THOUGHT SOMEHOW HE WAS GOING TO BE CONVICTED OF A FELONY, LEADS TO A FELONY CONTINUE TO PRACTICE, MAYBE HE SHOULD'S BEEN WARNED BY HIS COUNSEL THAT HE SHOULD -- THAT THIS WAS GOING TO FOLLOW AS AN

AUTOMATIC SANCTION, AND --
>> THIS IS -- LET ME TRY TO
GET THIS PROCEDURAL POSTURE
OF THIS CASE.

FIRST OF ALL, ARE YOU
ADVOCATING THAT THIS COURT
ADOPT A RULE OF THAT THAT
SAYS A TRIAL JUDGE IN EVERY
CASE WHERE THE LICENSE
SUSPENSION IS MANDATORY
SHALL ADVISE THE DEFENDANT
OF THAT?

IS THAT, THAT YOU'RE --
WOULD PUT THAT OBLIGATION ON
THE JUDGE OR ARE THE WAY, AT
LEAST THE LOWER COURT
REFERENCES WHAT THE CIRCUIT
COURT SAID.

IT SAID THAT THE DEFENSE
COUNSEL WAS REQUIRED TO WARN
THE DEFENDANT OF THE
CONSEQUENCE PRIOR TO THE
ENTRY OF THE PLEA.

IN OTHER WORDS, WHAT I'M
HAVING TROUBLE WITH, AND
I'VE -- I KNOW WE SAID IN
MAJOR IT HAD TO BE A
PUNISHMENT BUT I'M TRYING TO
THINK OF A DEFENSE LAWYER
DEFENDING THIS GUY YOU CAN
PLEAD NOLO TO DRIVING WHILE
YOUR LICENSE IS SUSPENDED OR
REVOKED GET A \$250 FINE SO I
SUGGEST YOU PLEAD TO IT.

IS THAT WHAT SUPPOSEDLY
HAPPENED IN THIS CASE
CEPHAL?

NAT IS EXACTLY HAPPENEN.

>> WHY DIDN'T HE CLAIM FOR
INEFFECTIVE ASSISTANCE OF
COUNSEL.

>> HE DID.

THAT'S WHY WE'RE HERE.

>> SO NOT AS A DIRECT MOTION
TO WITHDRAW THE PLEA?

>> NO.

THIS WAS FILED AS A 3.850
ACTION WHEN HE GOT THE
NOTICE OF SUSPENSION ABOUT
SIX MONTHS LATER.

AND JUDGE WELCH IN THE
COUNTY COURT HELD A EFFDENGSRY
HEARING, AND FOUND THAT --
AND THE ONLY EVIDENCE AT THE

HEARING WAS MR. BOLWORTH
SAYING MY --

>> MY LAWYER DIDN'T TELL
HIM.

>> MY PUBLIC DEFENDER NEVER
MENTIONED THAT I MIGHT LOSE
MY LICENSE OVER THIS.
THE COUNTY COURT FOUND THAT
WASN'T GOOD ENOUGH.
AND THAT HE DENIED THE
MOTION TO WITHDRAW THE PLEA.
AND THAT'S WHEN I WAS
APPOINTED TO TAKE AN APPEAL
TO THE CIRCUIT COURT.

JUDGE -- THE CIRCUIT JUDGE,
BAYH THEN THE PREAUNT AI
CASE HAD COME OUT OF THE
FOURTH DIRECT.

THE CIRCUIT JUDGE FOLLOWED
THE CASE.

YOU GOT TO TELL HIM THIS IS
WHAT THE CASE WAS FOR.

>> YOU WOULD THINK AS A
DEFENSE LAWYER CAN YOU
IMAGINE A DEFENSE LAWYER
THAT WOULDN'T DISCUSS THE
LOSE AGLICENSE WITH A
CLIENT?

>> I DON'T PRACTICE IN
TRAFFIC COURT A LOT, BUT I
CANNOT VISUALIZE GOING TO
TRAFFIC COURT AND NOT
TALKING ABOUT LICENSE
CONSEQUENCES.

>> IT SEEMS TO ME --

>>.

>> THE DRIVING RECORD IS
RIGHT THERE IN FILE.
IT'S RUNNING EVERYTHING
TRAFFIC COURT CASE IN BAY
COUNTY.

>> I CAN'T IMAGINE WHAT A
JUDGE IN COUNTY COURT IS
GOING TO DISCUSS WITH A --
IN TERMS OF VOLUNTARY PLEANE
TRAFFIC OFFENSE OTHER THAN,
SINCE THEY'RE NOT GOING TO
JAIL, OTHER THAN THEIR
LICENSE.

>> IT'S VERY ABBREVIATED
PROCESS AND THEY RELY ON
THEIR PUBLIC, THE COUNSEL.

>> THAT IS A POLICY, IN
OTHER WORDS, THAT OBLIGATION

SHOULDN'T BE PLACED ON THE TRIAL JUDGE.

BUT IT SHOULD BE PLACED -- DO YOU THINK THAT THERE CAN BE BE A DISTINCTION DRAWN BETWEEN WHAT A DEFENSE LAWYER HAS AN OBLIGATION TO DO AND WHAT A -- AS A MATTER OF QUAMITANT COUNSEL AND WHAT A TRIAL JUDGE HAS A RESPONSIBILITY TO DO?

>> VERY MUCH SO.

>> SO YOU ARE NOT ADVOCATING FOR THIS BEING PART OF A PLEA COLLOQUY, NOR AM I ASKING YOU TO CHANGE THE CRIMINAL RULES.

I SIMPLY COMPETENT TRIAL COUNCIL IN TRAFFIC COURT NEEDS TO BE THINKING ABOUT DRIV DRIVER'S LICENSES. THE FIRST THING THAT A TRAFFIC DEFENDANT ASKS WHEN THEY WALK IN, USUALLY, IS, WHAT'S GOING TO HAPPEN TO MY LICENSE.

BECAUSE YOU HAVE TO HAVE A LICENSE TO FUNCTION IN THIS STATE REALLY.

>> SO THAT WHAT WAS HE PLED BELOW HE ASKED HIS ATTORNEY

--

>> THIS IS NOT A MISADVICE CASE.

>> THIS IS NOT MISADVICE CASE.

THERE ARE SOME PENDING BEFORE THE COURT THAT ARE MISADVICE CASE.

THIS IS NOT A MISADVICE CASE.

HE JUST SIMPLY NEVER MENTIONED IT.

>> AND IN THIS CASE, THE DETERMINATION OF WHETHER THIS PERSON WAS A HABITUAL OFFENDER OR NOT, WAS THAT MADE BY THE COURT OR WAS THAT MADE BY THE DEPARTMENT?

>> THE DEPARTMENT.

HE WAS A HABITUAL TRAFFIC OCHEDER IN CHAPTER 322.

>> SO THAT WAS A DETERMININATION NOT

NECESSARY TO BE MADE DURING THE COURT.

>> JUDGE WELCH NEVER TALKED ABOUT THAT IN COURT.

>> JUSTICE CANTERO HAS A QUESTION.

>> I'M SORRY.

>> THE COURTS HAVE HELD DEPORTATION IS A COLLATERAL CONSEQUENCE.

TERMINATION OF PARENTAL RIGHTS IS COLLATERAL CONSEQUENCE.

SEXUAL OFFENDER REGISTRATION IS A COLLATERAL CONSEQUENCE.

WOULDN'T IT BE -- WHEN THOSE THINGS ARE COLLATERAL CONSEQUENCES TO SAY THAT REVOCATION OF A DRIVER'S LICENSE, WHICH TO ME WHICH FRANKLY IS NOT AS IMPORTANT OF TERMINATION OF PARENTAL RIGHTS IS A DIRECT CONSEQUENCE?

SHOULDN'T THERE BE SOME KIND OF UNIFORMITY IN LAW OF WHAT IS A DIRECT AND COLLATERAL CONSEQUENCE.

>> YOUR HONOR, I BELIEVE MOST OF THOSE TURN ON THE QUESTION OF HOW AUTOMATIC THE CONSEQUENCES ARE. IS THERE DISCRETION IN ANOTHER AGENCY, IMMIGRATIONARY SOMETHING OF THAT NATURE THAT PREVENTS THEM FROM BEING DIRECT CONSEQUENCE OF THE PLEA.

THERE IS NO DISCRETION IN THE DEPARTMENT IN THIS CASE. IT SIMPLY WILL HAPPENS.

YOU'RE NOT GOING TO GO BEFORE A IMMIGRATION JUDGE, NOT GOING TO GO BEFORE A FAMILY COURT JUDGE AND TALK ABOUT --

>> IN PART LOW IT WAS PRETTY AUTOMATIC TOO.

THERE WAS NO DISCRETION.

>> YES.

REGISTRATION I THINK DOESN'T CARRY THAT KIND OF SANCTION ALTHOUGH GIVEN CURRENT ZONING LAWS THAT MAY BE

SOMETHING THAT SOME OTHER
LAWYER BRINGS.

>> I AGREE WITH YOU THAT --
BUT ON THE OTHER HAND,
DIDN'T WE SAY THAT IT WAS --
IT'S NOT THAT IT WAS NOT AS
IMPORTANT BUT WE SAID THAT
IT WAS NOT PUNISHMENT AT
ALL.

>> RIGHT.

>> SO WAS THIS CASE TURN ON
WHETHER REVOCATION IS A
PUNISHMENT OR WHETHER IT'S
ANTRATIVE PROCEEDING?

>> MY POINT WITH THIS IS
THAT WE HAVE GOTTEN PERHAPS
AWAY FROM COPPEN
UNDERSTANDING OF THE WORD
PUNISHMENT WHEN WE START
MAKE!!ING THESE DISTRINGSS --
DISTINCTIONS TO THE PERSON
THAT IS DOING -- PLEADING TO
RELATIVELY MINOR TRAFFIC
OFFENSES IT IS VERY A PART
OF THE SANGTION A PART OF
THE PUNISHMENT.

AND IF WE -- WE DOENT DON'T
NEED TO DIVORCE THE COURT
FROM THE COURT SYSTEM FROM
COMMON UNDERSTANDING SO THAT
THESE PEOPLE KNOW --

>> SHOULDN'T OUR EMPHASIS
HERE THOUGH BE ON THE
COMPETENCY OF THE LAWYER IN
TERMS OF HAVING KNOWLEDGE OF
THE LAW AT THE TIME THAT THE
LAWYER IS COUNSELING HIS
CLIENT IN A PARTICULAR CASE?

>> I THINK SO, YOUR HONOR, I
MEAN I CANNOT IMAGINE NOT.

>> AS OPPOSED TO FOCUSING SO
MUCH ON THE ISSUE OF, OF
WHAT OCCURS DURING A PLEA
COLLOQUY, AND, AND, THOSE
MATTERS IT'S STRICTLY AN
ISSUE THAT YOU'VE PRESENTED
AS TO THE COMPETENCY OF A
LAWYER, IS THAT A FACT?
THAT IS CORRECT.

BUT THAT IS NOT WHAT THE
DISTRICT COURTS SAID.

THE DISTRICT COURTS SAID
THIS WAS A MATTER OF WHETHER
THE PLEA WAS VALITARY.

AND IN -- AND THE COUNTY COURT DID NOT DEAL WITH THIS AS A MATTER OF INEFFECTIVE ASSISTANCE OF COUNSEL.

I RECOGNIZE JUDGE HESS THAT THE CIRCUIT COURT LEVEL MADE A STATEMENT ABOUT THAT BUT THAT'S NOT WHAT THE COUNTY COURT DID --

>> THE ENTIRE RECORD BEFORE THE COUNTY COURT AND BEFORE THE CIRCUIT COURT SHOULD HAVE BEEN IN THE RECORD FROM THE DISTRICT COURT TO YOU APPENDED TO THE ANSWER BRIEF.

>> WHAT IS THE MOTION -- WHAT WAS THE MOTION? A MOTION FOR POST-CONVICTION RELEASED BASED ON INEFFECTIVE ASSISTANCE?

>> YES, YOUR HONOR, UNQUESTIONABLY WAS THAT AND THERE WAS A BRIEF HEARING ON IT.

>> DID YOU -- AND SO YOU FILED?

>> NO, I WAS NOT IN THE CASE AT THAT TIME.

BUT --

>> AND, AND, IN FAIRNESS, I SEE THAT THE DISTRICT -- THAT THE COUNTY COURT DID SAY THAT THERE WAS NO DUTY IMPOSED UPON DEFENDANT'S TRIAL COUNSEL TO WARN OF CONSEQUENTIAL CONSEQUENCES.

BUT WAS DEALING WITH THIS ON THE BASIS OF WHETHER THE PLEA WAS VOLUNTARY OR NOT.

>> RIGHT.

I'M INTO MY REBUTTAL TIME.

I DO WANT TO MAKE ONE ADDITIONAL POINT THOUGH. WE HAVE NOT ARGUED THE JURISDICTIONAL ISSUE IN THE DCA.

I THINK IF THIS COURT COULD VERY EASILY HOWEVER FIND THAT NO DECISION OF THIS COURT HAS DIRECTLY ADDRESSED THE ISSUE BEFORE THAT THE DCA SEE THAT ITS

JURISDICTION WHEN IT --
REVIEW OF THIS CASE, AND
SAID THAT THE TRIAL JUDGE
SHOULD NOT HAVE FOLLOWED --
I DON'T MEAN TO WAIVE THAT
ARGUMENT.

I'M NOT WASING IT TODAY.
I JUST RELY ON THE BRIEF IN
THAT REGARD.

>> OKAY, THANK YOU.
YOU'VE RESERVED SOME TIME
FOR YOUR REBUTTAL.

MR. HILLS?

>>> MAY IT PLEASE THE COURT,
EXCUSE ME.

MY NAME IS EDWARD HILL AND I
WAS APPEARING ON BEHALF OF
THE STATE ATTORNEY GENERAL
OF THE STATE OF FLORIDA.

>> THE STATE'S POSITION ON
THIS HAS BEEN PRETTY
CONSISTENT, YOUR HONOR, THAT
THIS IS NOT PUNISHMENT.

WHAT ABOUT THE --

>> WHAT ABOUT THE ISSUE
THOUGH THE WAY THAT THIS
THING HAS COME UP, THAT IS
THAT THIS HAS COME UP IN A
POST-CONVICTION COMPETENCY
OF COUNSEL --

>> WELL, YOUR HONOR --

>> ISN'T THAT REALLY A
SEPARATE ISSUE AS OPPOSED TO
ENDING UP, YOU KNOW,
PHRASING THE ISSUE IN TERMS
OF WHAT THE TRIAL JUDGE HAS
TO TELL A DEFENDANT BEFORE
HE CAN ACCEPT A GUILTY OR A
NOLO PLEA?

>> WELL,,

>> YOU'RE RIGHT JUSTICE
ANSTEAD ABOUT WHO HAS TO
PROVIDE THE ADVICE --

>> WELL, IT'S BIGGER THAN
THAT.

THE FRAMEWORK IS MUCH LARGER
IN TERMS OF THE EXAMINING
WHETHER COUNSEL ACTED
EFFECTIVELY IN REPRESENTING
HIS CLIENT.

THAT'S A MUCH BROADER
QUESTION.

THAN THE NARROW QUESTION OF
WHAT A TRIAL JUDGE IS

OBLIGATED TO INFORM A
DEFENDANT WHEN TAKE AGPLEA.

>> THERE'S A BROADER
QUESTION BUT THEY
INTERTWINE AND THEY
INTERTWINE IN THE ARENA OF
DEFICIENT PERFORMANCE AND
THIS COURT HAS BASICALLY
HELD PREVIOUSLY THAT COUNSEL
IS NOT DEFICIENT IN NOT
ADVISING A CLIENT REGARD TO
SOMETHING THAT IS NOT A,
THAT IS NOT A DIRECT
CONSEQUENCE OF THE PLEA.

>> ISN'T COUNSEL CHARGED
WITH KNOWING THE LAW WHEN HE
REPRESENTS SOMEBODY?
IN A CIRCUMSTANCE LIKE THIS
AND THEN IF, IF THE
REVOCATION OF THE LICENSE IS
AUTOMATIC, WHY SHOULDN'T
COUNSEL BE CHARGED WITH
KNOWING THAT?
AND TELLING HIS CLIENT ABOUT
THAT BEFORE THE CLIENT
PLEASE?

IF IT'S AUTOMATIC, I MEAN,
WHERE YOU KNOW,.

>> YOUR HONOR, COUNSEL DOES
HAVE A DUTY TO ADVISE HIS
CLIENT AS TO WHAT TO DO.
BUT JUST IN THE SAME WAY
THAT WE DON'T REQUIRE
COUNSEL TO ADVISE HIS CLIENT
WHEN HE IS IN FACT GOING TO
BE CONVICTED OF A FELONY
THAT HE LOSE LOSES HIS RIGHT
TO VOTE, HE LOSES HIS OTHER
CONSTITUTIONAL RIGHTS TO
BARE ARMS TOO, HOLD PUBLIC
OFFICE, --

>> WAIT, WAIT, WAIT, WAIT A
SECOND.

LET'S GET TO REALITY HERE.
WE'RE IN TRAFFIC COURT.
THERE IS A LICENSE.

HE'S DRIVING WITHOUT --

>> HE'S DRIVE OGAN REVOKED
LICENSE.

SO HIS LICENSE IS ALREADY
REVOKED OR SUSPENDED AND HE
KNOWS HE'S DRIVING ON A
REVOKED OR SUSPENDED
LICENSISM.

>> AND HE PLEASE NOLO AND
WHAT IS THE PUNISHMENT HE
CAN RECEIVE?

>> WELL TDEPENDS ON NUMBER
OF TIMES IN HIS CIRCUMSTANCE
HE EASILY WOULD'VE BEEN
INCARCERATED FOR UP TO I
BELIEVE A YEAR IN COUNTY
JAIL.

>> AND SO HE'S TOLD THOUGH
THIS IS A GOOD DEAL FOR HIM
PRESUMABLY BECAUSE THE ONLY
PUNISHMENT HE'S GOING TO GET
IS NO JAIL TIME.

>> HE'S TOLD THERE WILL BE
NO JAIL TIME UNLESS HE
DOESN'T PAY.

>> BUT -- AND HIS PUNISHMENT
IS HE WILL PAY HOW MUCH?

>> I THINK IT WAS \$275 PLUS
MAYBE COURT FINES.

>> AND WE ARE SAYING THAT A
LAWYER IN THE STATE OF
FLORIDA ADVISING SOMEBODY OF
A CONSEQUENCE OF A TRAFFIC
OFFENSE COULD GET AWAY WITH
SAYING, LISTEN, THIS IS A
GREAT DEAL FOR YOU.

YOU'LL ONLY HAVE TO PAY \$250
WHEN IN FACT THE VERY NEXT
MONTH HE WILL HAVE AN
AUTOMATIC SUSPENSION OF HIS
DRIVER'S LICENSE FOR FIVE
YEARS?

>> YOUR HONOR, HIS -- HIS --

>> DOES THAT --, I MEAN,
LAST CASE WE TALKED ABOUT
WHAT THE PUBLIC THINKS.
DOES THIS SEEM TO YOU LIKE A
-- AND LISTEN, I'VE BEEN IN
DISSENT ON ONE OF THESE BUT
THIS ONE SEEMS LIKE WE ARE
GOING FAR AFIELD ABOUT WHAT
A DEFENDANT WOULD WANT TO
KNOW.

DO YOU NOT SEE THAT AS BEING
DIFFERENT THAN THE OTHER
CASES WE'VE DECIDED?

>> ACTUALLY, NO YOUR HONOR,
I DON'T.

I THINK THAT THE LEGISLATURE
HAS SET OUT A STRUCTURE THAT,
THAT A LICENSE RECHBICATION
IS A CIVIL ADMINISTRATIVE

ACT.
IT'S FOR PROTECTION OF THE
PUBLIC IN THE FUTURE.
AND UNDER THE DISCOURSE
HOLDINGS THAT THAT TYPE OF,
THAT TYPE OF EFFECT ON A
PERSON THAT HE'S GOING TO
LOSE HIS LICENSE IS NOT A
UNGSMENT WHICH IS REQUIRED
TO BE -- PUNISHMENT WHICH HE
IS REQUIRED TO BE INFORMED
OF IN THE COURSE OF A, OF A
PLEA.

NOW --

>> NOW, I UNDERSTAND THAT,
AND I GUESS, THAT'S WHAT I
JUST -- I TIDDANT TALK ABOUT
WHAT THE JUDGE HAD TO DO.
I'M TALKING ABOUT WHAT A
COMPETENT DEFENSE LAWYER
WOULD HAVE TO DO.

>> WELL HE -- EVEN GET THE
LICENSE, IT HE HAS TO TAKE A
TEST TO OBTAIN THE LICENSE.
HE HAS TO LOOK AT -- IF YOU
GO TO THE DEPARTMENT OF
MOTOR VEHICLES HAND BOOK, IT
INFORMS AN INDIVIDUAL OF ALL
OF THESE DIFFERENT -- OF ALL
OF THESE DIFFERENT THINGS
THAT IF YOU DO THIS, THAT
YOUR LICENSE WILL BE
SUSPENDED OR REVOKED.
AS A MATTER OF FACT, IN THIS
PARTICULAR CASE, YOU CAN GET
THE HABITUAL TRAFFIC
OFFENDER REVOCATION WITHOUT
EVER SEEING A LAWYER BECAUSE
IT CAN BE DONE BY 15 CIVIL
INFRACTIONS.

IF YOU GET 15 CIVIL
INFRACTIONS WITHIN A CERTAIN
PERIOD OF TIME, THE
DEPARTMENT OF MOTOR
VEHICLICIZE GOING TO SEND
YOU THAT ORDER AND SAYING
YOUR LICENSE NOW REVOKED YOU
HAVE A RIGHT FOR A HEARING
INFRONT OF THE
ADMINISTRATIVE HEARING
OFFICER AND YOU CAN UNDER
CERTAIN CIRCUMSTANCES APPLY
FOR A WORK PERMIT.

>> WHAT I AM LOOKING THROUGH

HERE IS WAS THIS A CASE
ARGUED HERE AS AN
INEFFECTIVE ASSISTANT TO
COUNSEL CLAIM OR WAS IT
ARGUED AS AN INVOLUNTARY
PLEA CAME?

>> IT APPEARS TO ME THAT
IT'S BEEN PRESENTED AS
INVOLUNTARY PLEA CAME CLAIM.
NOW IN THE TRIAL COURT I
WASN'T THERE SO I DON'T KNOW
EXACTLY HOW IT WAS ARGUED
BUT PRIMARILY IT WAS THE
PLEA -- HE WAS ASKING TO
WITHDRAW HIS PLEA BECAUSE IT
WAS INVOLUNTARY BECAUSE HE
WASN'T NOTIFIED BECAUSE OF
THE OTHER CONSEQUENCES.
THAT'S THE WAY I UNDERSTOOD
IT TO BE IN THE TRIAL COURTS
ORD OR THE CIRCUIT COURT'S
ORD IN APPEAL.

>> WAS --

>> BECAUSE IT WAS --

>> AM I CORRECT THAT DANIEL
OUT OF THE FOURTH DISTRICT
WAS AN INVOLLENITARY PLEA
CAME?

>> -- INVOLUNTARY PLEA CAME
CLAIM?

>> DANIEL WAS --

>> OR WAS IT INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM?

>> I BELIEVE IT WAS AN
INVOLUNTARY PLEA CLAIM IT
WAS SUSPENSION FOR DRUG
VIOLATIONS.

HE WAS CONVICTED OF FELONY
DRUG VIOLATIONS AND HIS
LICENSE WAS SUSPENDED
BECAUSE OF THAT.

>> AND IT WAS MY
RECOLLECTION WAS IT WAS THAT
IT WAS AN INVOLUNTARY PLEA
CLAIM.

>> THAT'S MY RECLEGS TOO,
YOUR HONOR, AND I DON'T SEE,
CORRECT ME FPLIER ARE WRONG
BECAUSE I'M CONCERNED ABOUT
THIS, WHETHER EITHER THE
MAJORITY, THE CONCURRING
OPINION, OR THE DISSENT IN
THE DISTRICT, FIRST DISTRICT
IN THIS CASE, DEALT WITH

THIS AS AN INEFFECTIVE ASSISTANCE TO COUNSEL.

>> NO, THEY DID NOT.

AND THE CIRCUIT COURT IN ITS APPELLATE OPINION DIDN'T REALLY DEAL WITH IT AS AN INEFFECTIVE DEFENSE CLAIM BECAUSE IT DIDN'T ANALYZE IT UNDER STRICKLAND IT WAS WHETHER THE DEFENDANT WAS REQUIRED TO BE ADVISED OF THE CONSEQUENCES OF HIS PLEA AND IT FOUND THAT IT WAS A DIRECT AND IMMEDIATE CONSEQUENCE.

DIDN'T EVEN DEAL WITH THE EFFECT ON THE RANGE OF PUNISHMENT, WHICH IS THE TARDP THAT SHOULD'VE BEEN APPLIED.

>> BUT THE CIRCUIT COURT DID HOLD THAT IT WAS THE OBLIGATION OF DEFENSE COUNSEL IN THIS CASE. COMPETENT DEFENSE COUNSEL. IS THAT RIGHT?

92 WELL, HE PUT IN -- HE PUT IN ONE LINE.

THIS ONE LINE AT THE END THAT SAYS COUNSEL SHOULD'VE ADVISED HIM.

I BELIEVE IS THE ESSENCE OF THAT, OF THAT ONE LINE.

>> THERE SEEMS TO BE AN INCONGRUITY IN THE DISTRICT COURT CASES ON THESE ISSUES IN THAT SOME TALK ABOUT THE INVOLUNTARINESS OF THE PLEA BECAUSE THEY WEREN'T INFORMED AND OTHERS TALK ABOUT WHETHER THERE WAS COMPETENT COUNSEL BECAUSE IT WASN'T INFORMED.

IT SEEMS TO ME THAT IF SOMEONE IS TRYING TO WITHDRAW THE PLEA BECAUSE COUNSEL DID NOT INFORM OF THE RAMIFICATIONS, THAT ONE SHOULD CONDUCT A STRICTLAND ANALYSIS AS WE DID IN GRAUSNER AND AS WE HAVE IN SOME OTHER CASES.

NOT NECESSARY IN INVOLUNTARINESS ANALYSIS BUT

SHOULD WE CLARIFY THE LAW IN THIS?

IS THE LAW KIND OF UNCLEAR ABOUT WHICH ANALYSIS YOU USE IN THIS CIRCUMSTANCE?

>> THE LAW IS A LITTLE UNCLEAR AS TO WHICH APPROACH TO TAKE TO THAT REQUEST TO WITHDRAW THE, THE PLEA, AND MANY INSTANCES IT MAY -->> SOME ALSO SEEM TO HAVE THE SAME ANALYSIS WHEREWHERE WHETHER IT WAS THE LAWYER ADVISING OR WHETHER IT WAS THE TRIAL JUDGE ADVISING. THAT SEEMS TO BE UNCLEAR AS WELL.

>> IN THE DISTRICT COURT CASES, I HAVE RARELY SEEN REFERENCE IN THE REFERENCE TO STRICKLAND, THE APPROPRIATE STANDARD, WHEN THEY'RE ARGUING THE -- THAT HAD LAWYER WAS INEFFECTIVE FOR NOT ADVISING. THEY SEEM TO LOOK MORE AT THE CONSEQUENCES OF THE PLEA, AND THAT IS PROBABLY IN PART BECAUSE IN ORDER FOR COUNSEL TO BE INEFFECTIVE, THERE MUST BE SOMETHING THAT HE IS ABSOLUTELY REQUIRED TO ADVISE THEM OF X. THIS COURT HAS PREVIOUSLY HELD THAT THOSE TYPES OF CONSEQUENCES OF CIVIL ADMINISTRATIVE ACT DON'T AMOUNT TO DEFISH WANT PERFORMANCE.

I THINK THAT WAS PART OF DICKEY. THAT WAS DECIDED I BELIEVE LAST YEAR OR THE YEAR BEFORE.

>> DICKEY DIDN'T HEAR THE MAJORITY OPINION FOR, FOR WHICH PRONG OF THE ANALYSIS IT RELIED ON.

ALL IT IS WAS IT WASN'T INEFFECTIVE ASSISTANT OF COUNSEL. SOME JUSTICE SAID IT WASN'T DEFICIENT PERFORMANCE. OTHERS SAID IT WASN'T PREJUDICE.

>> I AGREE, BUT IN EITHER
EVENT THEY SAID THAT IT WAS,
IT WAS NOT INEFFECTIVE
ASSISTANCE.

>> IT WASN'T DICKEY HAVING
TO DO WITH WHAT MIGHT HAPPEN
IN A FUCHER TO A DEFENDANT
THAT MIGHT COMMIT A CRIME,
WAS THAT NOT DICKEY?

>> DICKEY HAD TO DO --

>> GO AHEAD.

>> DPIKY DID HAVE TO DO WITH
THAT.

>> AND THAT'S WHY, AND AGAIN,
WE MAY BE IN A SITUATION
WHERE THE LAW MAYBE DOES
NEED TO BE CHRAURIFIED
BECAUSE I AM ONE SURE
REQUIRING MORE AND MORE
REQUIREMENTS ON TRIAL JUDGES
TO, YOU KNOW TOO, PUT EVERY
SINGLE THING AND THE KITCHEN
SINK IN BUT IN THIS CASE,
THE ONLY PART OF THE SINK
THAT SEEMS LIKE IT NEED --
NEEDED TO BE DISCUSSED BY
SOMEBODY WAS THE ONLY PART
OF THIS CRIME THAT WAS GOING
TO TRULY AFFECT THE
DEFENDANT LOSING HIS LICENSE
FOR FIVE YEARS.

>> WELL, IT WAS ONLY GOING
TO AFFECT HIM BECAUSE OF THE
FACT THAT THAT NEGOTIATATE
ADPLEA WHERE HE WOULDN'T
HAVE TO GO TO JAIL FOR A
YEAR.

AND, THE --

>> AND SO THEREFORE, HE
WOULD MAKE, A MAKE A
VOLUNTARY DECISION WITH HIS
TRIAL COUNSEL EITHER I HAVE
ON ONE HAND I GO TO JAIL AND
THE OTHER HAND I PAY \$250.
WELL THAT'S A PRETTY EASY
DECISION.

>> THAT'S A PRETTY --

>> IF SOMEONE SAYS ON ONE
TIME YOU MIGHT GO TO JAIL
FOR 60 DAYS AND THE OTHER 2
HN \$50 AND I LOSE MY LICENSE
FOR FIVE YEARS YOU KNOW I'M
GOING TO TRY GOING TO TRIAL
OR I'M GOING TO PICK GOING

TO JAIL FOR 60 DAYS BECAUSE
I CAN'T BE WITHOUT MY
LICENSE FOR FIVE YEARS.

>> WELL, YOU ONLY GET YOUR
LICENSE REVOKED FOR FIVE
YEARS AS A HABITUAL TRAFFIC
OFFENDER IN HIS PARTICULAR
CIRCUMSTANCE WHERE HE'S GOT
MULTIPLE PRIORS AND IN HIS
SITUATION IS LICENSE WAS
STILL ALREADY REVOKED AT THE
TIME THAT HE ENTERED HIS
PLEA.

>> I DON'T THINK THAT'S
RESPONSIVE.

MOST RESPECTFULLY.
IT WAS AUTOMATIC, THAT IS,
HE GETS CONVICTED OF HIS
OFFENSE AND IT IS AN
AUTOMATIC.

>> THAT IS CORRECT.

>> SUSPENSION.

>> DID YOU HAVE THE
OPPORTUNITY TO FINISH
JUSTICE ANSTEAD'S QUESTION?
HE WAS REQUIRING WITH REGARD
HOW TO LOWER COURT JUDGES
REALLY ADDRESS THIS ISSUE?
AND I THINK YOU'RE IN THE
PROCESS OF RESPONDING TO
THAT?

S.

>> WELL, I THINK THAT THE
CIRCUIT COURT HAS APPELLATE
POSITION --

>> AS A PART OF THAT.

EXCUSE ME, I DON'T KNOW I
KNOW YOU WEREN'T ON THE
TRIAL COURT LEVEL BUT IF YOU
COULD TELL US WHAT WAS PLED
AT THE TRIAL COURT LEVEL IN
RESPONSE TO THIS QUESTION WE
MIGHT BE --

>> I DON'T KNOW THAT THOSE
DOCUMENTS ARE IN THE RECORD,
YOUR HONOR?

>> THEY WERE NOT PART OF THE
RECORD AT ALL?

THE 3..850.

>> THERE WAS NO APPENDIX FOR
CERT?

>> NO APPENDIX FOR CERT.

>> YOU HAVEN'T GONE BACK AND
LOOKED AT WHAT THE ACTUAL

CLAIM WAS --

>> WE'VE GOT THE OPINION AND THE ORDER.

>> WE HAVE THE OPINION AND ORDER BUT THEY WERE ASKING ABOUT THE MOTION.

>> THE FAILURE AND WHETHER THE ISSUE WAS, GWEN HAD WROTE, THEN THE ADMINISTRATIVE ACT OF DIRECT CONSEQUENCE THE FAILURE TO ADVISE RENDERS COUNSEL INEFFECTIVE FOR THE PURPOSE OF 3.850.

>> THAT WAS WROTE ON THE APPEAL.

HE WAS THUPELLET JUDGE.

>> YEAH.

>> AND THE COUNSEL COUNTY COURT.

>> WASN'T THERE A HEARING IN THE REPLY BRIEF HERE THAT TALKED -- THE DEFENDANT SAID MY ATTORNEY THE ASSISTANT PUBLIC DEFENDER I CAN'T REMEMBER THE NAME DID NOT TELL ME THAT MY LICENSE WOULD BE SUBJECT TO --

>> TLUS WAHEARING.

THE HEARING WASN'T IN THE -- IT WASN'T IN THE RECORD EITHER, YOUR HONOR, AS FAR AS THE, THE CERT AP PENDX. MY UNDERSTANDING IS THAT THE DEFENDANT DID SAY THAT HIS LAWYER DIDN'T TELL HIM. THAT IS MY UNDERSTANDING.

>> ASSUMING YOU DON'T HAVE THE LEAD PLEADING AND YOU COULDN'T UNDERSTAND THAT. ANSWER JUDGE ANSTEAD'S QUESTION.

WE'LL GET BACK TO --

>> UM, I THINK THERE IS AN INTERACTION AS I WAS STARTING TO SAY AND IF I REMEMBER YOUR QUESTION CORRECTLY, AT THIS POINT, JUSTICE ANSTEAD.

>> WELL, I THINK YOU AGREED THAT THERE IS PROBABLY A BROADER ISSUE WITH ISSUE TO THE COUNSEL'S REPRESENTATION, AND WAS THAT

THE DECISION THAT THE
CIRCUIT COURT SITTING IN ITS
APPELLATE CAPACITY MADE,
THAT IS THAT ON, ON THE
RECORD THAT IT HAD FROM THE
COUNTY COURT, IT DECIDED
THAT, YES, AN
INEFFECTIVENESS CLAIM WAS
PROVEN BASED ON ITS
CONCLUSION THAT COUNSEL
SHOULD'VE ADVISED THE
DEFENDANT OF THE REVOCATION
AS A FOREGONE CONCLUSION.
OF THE CONSEQUENCE OF HIS
PLEA.

>> IN MY OPINION, I DON'T
THINK THAT'S CLEAR FROM THE
ORDER IN THE WAY THAT THE,
YOU'RE OF THE OPINION OF THE
DCA, THE CIRCUIT COURT
ESSENTIALLY RULED SUSPENSION
OF REVOCATION OF A DRIVER'S
LICENSE, A STATUTORILY
MANDATED STRGS STRTIVE ACT
IS A DIRECT CONSEQUENCE OF A
PLEA TO A SPECIFIED DRIVING
OFFENSE REQUIRING DEFENSE
COUNSELS TO WARN THE
DEFENDANT PRIOR TO THE ENTRY
OF THE PLEA.

>> THAT'S WHAT THE --

>> THAT A DIRECT COURT DEALT
WITH.

>> THAT IS CORRECT.

HOWEVER, IN THE SHORT ORDER
THAT THE CIRCUIT COURT AND
ITS APPELLATE CAPACITY
ENTERED, IT IS THAT CASE LAW
HAS BEEN CITED TO ME, I'M
GOING TO LOOK AT THE
DICTIONARY FOR WHAT'S A
DIRECT CONSEQUENCE.
I FIND THIS WAS A DIRECT
CONSEQUENCE.

AND --

>> COME THE LAWYER SHOWED --

>> BUT THERE WAS NEVER ANY
STRICKLAND ANALYSIS AS TO
DEFICIENT PERFORMANCE AND
PREJUDICE.

IT WAS ACTUALLY HANDLED MORE
AS IF IT WAS.

>> INVOLUNTARY.

>> INVOLUNTARY.

THAT'S THE STATE'S READ FROM THAT PARTICULAR ORDER.

>> AS IF IT WERE A MOTION TO WITHDRAW A PLEA.

>> IT'S --

>> YOU CAN WITHDRAW A PLEA THAT WASN'T VOLUNTARY AND IT SEEMS A LOT OF COURTS USE THAT ANALYSIS EVEN THOUGH WE'RE IN POST-CONVICTION.

>> THAT IS, THAT IS, THAT IS CORRECT.

>> AND I WOULD JUST LIKE TO SAY THAT THE THIS TYPE OF STRUCTURE WHERE INDIVIDUALS HAVE THEIR LICENSES SUSPENDED FOR THE PROTECTION OF THE PUBLIC, ISN'T AS JUSTICE ANSTEAD SAID, THAT DOESN'T JUST HAVE TO DO WITH DRIVER'S LICENSES, LAWYERS WHO COMMIT OFFENSES IN CHAPTER, -- CHAPTER 456 INVOLVING MEDICAL DOCTORS AND OTHER MEDICAL PROFESSIONALS, IF YOU COMMIT A, IF YOU COMMIT A FELONY VIOLATION OF SERVILE STATUTES INCLUDING FRAUD STATUTES, MEDICAID STATUTES, YOUR LICENSE IS GOING TO BE SUSPENDED AUTOMATICALLY IF YOU FAIL TO -- IF YOU HAVE TO GIVE A URINE SAMP FRL SOME REASON AND IT'S DIRTY, YOUR LICENSE IS SUSPENDED AUTOMATICALLY.

IF YOU FAIL TO PAY YOUR STUDENT LOANS, YOUR LICENSE IS SUSPENDED AUTOMATICALLY. SO THIS SORT OF LICENSING SUSPENSION AS A PROTECTION FOR THE PUBLIC, WHICH IS WHAT THIS COURT HAS FOUND PREVIOUSLY IN -- I THINK IT IS, IS A, IS A, PRACTICE THAT HAS THROUGHOUT THE LICENSING STATUTES, IS A PRACTICE WHICH THE LEGISLATURE IS WELL AWARE OF, AND THEY CREATE THEIR STATUTES BASED ON THAT, THAT PARTICULAR KNOWLEDGE.

>> I TOLD YOU THAT I'VE READ,

YOU KNOW, AS MANY AS I COULD
ANYWAY, OF THESE PROVISIONS.
AND AT LEAST ONE OF THEM,
YOU KNOW, HAS THE LANGUAGE
THAT UPON CONVICTION, OF ONE
OF THESE TRAFFIC OFFENSES OR,
OR OTHERWISE, THAT THE COURT
SHALL DIRECT THE DEPARTMENT
TO SUSPEND THE LICENSE.

NOW.

WOULD YOU AGREE, FIRST OF
ALL, THAT WE LOOK AT THIS
THING THROUGH A DIFFERENT
PRISM IF WE CONSIDER THE
ISSUE OF WHAT THE COURT IS
SUPPOSED TO TELL THE
DEFENDANT.

AS OPPOSED TO WHAT A LAWYER
SHOULD ADVISE HIS CLIENT?

>> YES, YOUR HONOR, THERE IS
A, THERE IS A, THERE ARE
DIFFERENT LEGAL STANDARDS
APPLICABLE TO EACH OF THOSE

--

>> WHAT THE OBLIGATION OF
THE LAWYER IS AS OPPOSED TO

-- ALL RIGHT.

WHEN -- WHAT WOULD BE YOUR
POSITION WHEN WE HAVE SUCH
AN EXPRESS PROVISION THAT
SAYS THAT UPON CONVICTION OR
ACCEPTED A PLEA, THAT THE
COURT SHALL DIRECT THE
DEPARTMENT TO SUSPEND THE
LICENSE?

IN OTHER WORDS, THE COURT
SHALL ORDER, IN ESSENCE,
UNDER THAT LANGUAGE, THE --

>> ORDERING THE LICENSE
SUSPENDED, IS THAT A, DOES
THAT CONTEMPLATE A HEAVIER
RESPONSIBILITY ON COUNSEL?

>> AT THIS POINT IN TIME, NO,
YOUR HONOR, THE COURTS THAT
HAVE EXAMINED THAT
PARTICULAR SITUATION, HAVE
HELD THAT IT'S STILL A CIVIL
ADMINISTRATIVE ACT, AND I
BELIEVE IN THE BACK I'VE
CITED SOME OF THOSE CASES IF
THE COURT DESIRES I COULD
ALWAYS SUPPLEMENT WITH THAT.
BUT EVEN MORE SO, THE CASES
REFLECT THAT IN MANY

INSTANCES, THE DRIVERS IN APPLYING THAT PARTICULAR STATUTORY LANG WJ, THE COURT SUSPENDED THE LICENSE FOR SIX MONTHS AND, IT GOT UP TO THE DEPARTMENT OF MOTOR VEHICLES AND THE MOTOR VEHICLES DETERMINED THAT THE COURT APPLIED THE WRONG SUSPENSION STANDARD BASED ON HOW MANY PRIOR CONVICTIONS WITHIN A CERTAIN PERIOD OF TIME.

THE COURTS OF THIS STATE HAVE SAID THAT IS THE COURT'S RESPONSIBILITY AND HELD THE DEPARTMENT'S INCREASED SUSPENSION SO IT'S REALLY MORE THE COURT ACTING AS AN ADMINISTRATIVE ARM IN THAT PARTICULAR CONTEXT FOR THE CIVIL ADMINISTRATIVE AGENCY IMPOSING THE PENALTY. HE'S THERE IN FRONT OF THEM AT COURT IN FRONT OF THE STATUTORY THING.

IF HE DID IT WRONG THE ADMINISTRATIVE AGENCY CORRECTED IT.

>> MR. HILL WITH --

>> YOU DON'T THINK THAT THE COURT UNDER THOSE CIRCUMSTANCES, WHEN THEY'RE TALKING TO THE DEFENDANT, THEY SAID, OKAY, I'M GOING TO GIVE YOU THIS \$250 FINE. YOU GOING TO HAVE TO SERVE 15 DAYS IN JAIL.

AND, I HAVE TO SPEND THIS. HAVE TO TAKE THE NEXT STEP AND SAY, AND I HAVE TO TELL THE DEPARTMENT THAT YOUR LICENSE NEEDS TO BE REVOKED. WHEN IN-THE JUDGE HAS NO OPTION, BUT TO TELL THE DEPARTMENT HEAD TO REVOKE THE LICENSE UNDER THE STATUTE.

>> YOUR HONOR, THE STATE IS NOT IN FAVOR OF PUTTING ADDITIONAL BURDENS ON THE TRIAL JUDGES IN SENTENCING CONTEXT. WITH THE PREVIOUS ARGUMENT

WE -- THE BURDENS HAVE BECOME
PUNISHMENT INCREASINGLY GREAT
OVER THE YEARS AND I DON'T
THINK THAT'S A REQUIREMENT.

>> AND IF THE JUDGE HAS NO
OPTIONS, DOESN'T THAT BECOME
A DIRECT CONSEQUENCE OF THE
PLEA?

>> IT WAS A DIRECT
CONSEQUENCE OF THE PLEA BUT
THE STATE'S POSITION IS THAT
IT IS NOT PUNISHMENT AND IT
HAS BEEN DETERMINED NOT TO
BE PUNISHMENT AND THEREFORE
IT IS NOT SOMETHING THAT
DOES HAVE TO BE ADVISED TO
THE TRIAL JUDGE.

>> MR. HILL, WITH YOUR
ASSISTANCE YOU HAVE WASTED
ALL YOUR TIME.

>> I APOLOGIZE FOR YOUR
MISPRONUNCIATION.

MY SHEET HAS AN S.

MR. WHITTON, REBUTTAL PLEASE,
SIR.

>> MAY IT PLEASE THE COURT.
FIRST LET ME TALK ABOUT THE
RECORD ISSUE.

MY RESPONSE TO THE PETITION
FOR SERVICE YOURS HAD ITS
APPENDS.

SO THE MOTION THAT WAS FILED
IN COUNTY COURT AND THE
TRANSCRIPT OF THE HEARING
THAT WAS CONDUCTED IN COUNTY
COURT SHOULD BE IN THE
RECORD THAT THE DCA
FURNISHED IF YOU.

I'M LOOKING, PAGE 83 ON
THEIR RECORD AND IT'S 87 --

>> AND IT INCLUDED THE
DEFENDANT'S TESTIMONY AS
TO WHAT HIS COUNSEL HAD
ADVISED HIM?

>> IT SHOULD HAVE, YOUR
HONOR, NOW I WILL TELL YOU I
HAVE NOT PHYSICALLY
INSPECTED YOUR COURT'S FILE.

>> BUT THERE WAS A
TRANSCRIPT OF THAT HEARING?

>> THERE WAS A TRANSCRIPT OF
THAT HEARING.

IT'S ABOUT TEN PAGES LONG.

IT'S NOT A LENGTHY TRINENT

AT ALL.

>> DO YOU AGREE THERE SHOULD BE A DIFFERENT STANDARD FOR WHAT A TRIAL JUDGE HAS TO ADVISE A DEFENDANT AND WHAT COUNSEL.

>> I THINK THAT THERE IS ONE, AND I THINK THAT THAT'S THE POINT OF HAVING COUNSEL THERE IN FACT FOR MOST OF THESE CASES AND WHY UNDER THE -- BE EVEN UNDER ALABAMA v. SHELDON CASE YOU HAVE TO HAVE COUNSEL EVEN FOR THESE RELATIVELY MINOR CASES.

>> YES, YOUR HONOR.

>> IN DETERMINING WHETHER COUNSEL'S PERFORMANCE WAS DEFICIENT UNDER STRICKLAND, DO YOU PROPOSE THE SAME KIND OF ANALYSIS IN THAT COUNSEL HAS TO ADVISE HIS CLIENT OF DIRECT CONSEQUENCES BUT NOT COLLATERAL?

OR THAT COUNSEL HAS TO -- ITS DEFICIENT PERFORMANCE IF COUNSEL DOES NOT ADVISE OF EVEN COLLATERAL CONSEQUENCES?

>> I THINK THAT COUNSEL HAS TO ADVISE THE CLIENT OF THOSE THINGS THAT WOULD MAKE A MATERIAL DIFFERENCE IN HIS PLEA AND AVOID THE DIRECT COLLATERAL SORT OF THING. AND MR. BOLWARE CLEARLY TESTIFIED HE WOULD NEVER HAVE ENTERED HIS PLEA IF HE ENTERED A FIVE YEAR PLEA.

>> THAT GOES PREJUDICE PLEA. HE SAID I WOULD NOT HAVE PLED BUT MY IF MY COUNSEL HAD ADVISED ME OF THIS WHETHER HE WAS PREJUDICE BUT IS IT -- DOES IT GO TO DEFICIENT PERFORMANCE IF IT WAS COLLATERAL CONSEQUENCE? OR IS IT SOME OTHER ANALYSIS -- FOR TRIAL COURTS OR NOT FOR -- STRICKLAND PURPOSES.

>> PERSONALLY NEVER LIKED THE DIRECT COLLATERAL ANALYSIS THAT THE COURT HAS ADOPTED IN THIS CONTEXT

BECAUSE THERE ARE MANY THINGS YOU GET A LAWYER FOR THAT YOU ARE GOING TO ASK YOUR LAWYER QUESTIONS OR YOUR LAWYER SHOULD ANTICIPATE QUESTIONS BUTS IT IS THE RULE, I THINK, THAT HAS KIND OF EVOLVED BECAUSE YOU KNOW, THE DISTRICT COURTS AND THE CIRCUIT COURTS DON'T REALLY GET INTO A LOT OF DISTINCT AND ANALYSIS BETWEEN WHAT THE THE JUDGE ADVISE THE DEFENDANT AND WHAT THE COURTS --

>> IN, IN, IN, IN YOUR BRIEF, YOU DIDN'T ARGUE THAT AT ALL.

>> I DID NOT MAKE THAT DISTINCTION AT ALL.

>> AND YOU DIDDANT ARGUE GROESNER.

I MEAN WHAT YOU DIDN'T ARGUE IS THIS IS AS INEFFECTIVE COUNSEL CLAIM.

>> YOUR HONOR, I SEE IT AS INEFFECTIVE ASSISTANCE.

IT WAS BROUGHT AS INEFFECTIVE ASSISTANCE.

I THINK THE DISTRICT COURT RULED ON IT AS INEFFECTIVE ASSISTANCE.

>> YOU DIDN'T MENTION INEFFECTIVE ASSISTANCE.

>> NO, MY STATEMENT OF THE COURSE BEGAN AS IT WAS AN INEFFECTIVE ASSIST SKPPBS I JUST TOOK IT FROM THAT AND THAT'S --

>> YOU DIDN'T STRICKLAND v. WASHINGTON.

>> NOBODY ARGUED STRICKLAND ANYWHERE AND THAT'S SOMEHOW, WHAT GETS INTO THESE CASES. THONG, YOUR HONOR.

>> THANK YOU VERY MUCH.

>> WE'LL TAKE THE CASE UNDER ADVISEMENT.

THE COURT WILL TAKE ITS MORNING RECESS.

>> PLEASE RISE.