George L. Wright v. State of Florida

THE LAST CASE ON THIS MORNING'S DOCKET IS WRI GHT VERSUS THE STATE OF FLORIDA. OKAY. PARTIES READY? MAKE SURE. READY. OKAY. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM MATT CONIGLIARO A NDWITH ME IS HU NTER CAROL. WE ARE HERE FROM CAR LTON FIELDS AND HERE TO DAY O N BEHALF OF MR . GEORGE WRIGHT. MR. WRIG HT WAS CONVICTED OF TWO COUNTS OF AR MED ROBBERY. HE RECEIVED A SENT ENCE OF 7 5 YEARS FOR EAC H. WITH EACH SENTENCE, THE TRIAL COURT RESERVED JURISDICTION OVER H ISSENTENCE. FOR THE PURPOSE OF MAINTAINING THE POWER TO VETO HIS PAR OLE , SHO ULD HE EVER RECE IVE IT FROM THE PAROLE BO ARD.

DE EVER APP EAL THAT SENTENCE?

I DO NOT BE LIEVE SO, YOUR H ONOR.

AND IS THERE ANY QU ESTION THAT, AT THE TIME THAT THAT SENTENCE WAS IMPOSED, THAT THE STAT UTES DID ALLOW TRIAL COURTS TO , IN FACT , RE TAIN JURISDICTION, UNDER STANDING THAT THEY HAD TO G IVE REASONS, BUT THERE IS NO QUESTION BUT THAT THE J UDGEAT THAT T IME, HAD THE STATUTORY AUTHORITY TO DO THAT?

YES, YOUR HONOR. IN FACT, THAT IS ST ILL TR UE TODAY.

IF IT IS FOR A CRIME THAT OCCURRED BEFORE,, WHAT 19

I AM NOT SURE THERE IS A DATE RESTRICTION. THERE IS A L IST O F SUBSTANTIVE CRIMES T HAT QUALIFY.

IT SEEMS SO OUT D ATED , BASED ON THE WAY SENTENCING GOES TODAY, TO THINK THAT YOU WOULD BE G IVING A JU DGE THE AUTHORITY TO MA KE SURE THE SENTEN CE WAS GOING TO BE STRICTER.

YES, YOUR HONOR. WELL, IN 19 83 , THE ABILITY OF DEFENDANTS O R INMATES TO BE PAR ROLL ED WAS BASICA LLY EVISCERATED , AND SO SINCE THEN, THE RESERVATION ISSUE HAS NOT PERCOLATED UP, AT LEAST NOT ON D I RECT APPEAL. IT HAS , OVER THE YEARS , COME UP THROUGH THESE 3.800 PROCEEDINGS, AND THAT IS WHY WE ARE HERE TODAY.

WHY ISN'T THE SITUATIONHERE, REALLY, LIKE FAI LINGTO GIVE REASONS FOR A DEPARTURE SENTENCE?

THE COURT IN DAVIS , DECIDED THAT, UNDER THOSE CIRCUMSTANCES , THAT WAS NOTAN ILLE GAL SENTENCE. HERE, WE HAVE SO ME OF THE SAME HALLMARKS OF WHAT WE HAD IN DAVIS , BUT THERE I S ONE ADDITIONAL CRI TICAL ELEMENT, AND THAT IS THAT , IN FAI LING TO COM PLY WITH THE STATUTE, THAT AUTHORIZES THIS RESERVATION OF JURISDICTION, THE JUDICIARY IS ENCROACHING UPON THE EXECUTIVES ' ROLE , AND IN PARTICULAR THE

WHICH WOULD BE HE LD TO BE CONSTITUTIONAL?

THIS COURT I N STATE V BOARD FOUND THAT TO BE CONSTITUTIONAL WITHIN THE CONFINES OF

THE STATUTE, BUT HERE THE STATUTE IS FOUNDNOT TO BE COMP LIED WITH. I DON'T KNOW IF THIS FOR SURE, B UT I WOULD SUG GEST THAT PERHAPS THE STATE WOULD ACKNOWLEDGE THAT, IN THE A BSENCE OF THIS STATUTE , THERE WOULD BE NO WAY THE TRIAL COURT COULD EVER HAVE THE AUTHORITY TO V ETO A PAROLE BOARD'S DECISI ON.

BUT WE HAVE THE STATUTE, AND THE STATUTE REQ UIRES REASONS FOR DOING SO , AND THE SENTENCING GUIDELINES REQUIRE REASONS FOR A DEPARTURE , AND WE HAVE HELD IN THAT KIND OF CASE T HAT YOU CAN APPEAL I T , BUT YOU CAN'T, IT IS NOT AN IL LEGAL SENTENCE.

YES, YOUR HONOR.

SO WHAT IS THE CRIT ICAL DISTINCTION, SINCE WE HAVE ALREADY HELD THE STATUTE CONSTITUTIONAL , WHERE IS THE CRITICAL DISTINCT ION?

BECAUSE HERE THE , IN FAILING TO COMPLY WITH THE STATUTE , YOU ARE , THE COURT IS GIVING RISE TO AN UNCONSTITUTIONAL ENROACHMENT . IF THE ENCROACHMENT. IF THE STATUTE IS WHAT AUTHORIZES ENCROA CHMENT AND THAT IS CONS TITUTIONAL , AND WE DO DISP UTE THAT, FAILING TO COMPLY WITH THE STATUTE DOESN'T GIV E THE COURT THE CONSTITUTIONAL AUTHORITY TO ENCROACH ON THE PAROLE BOARD'S DECISION TO PAROLE SOMEONE , AND THAT IS THE CRITICAL DISTIN CTION BETWEEN HERE AND DAVIS.

I GUES S IF THIS UNCONSTITUTIONAL I GUESS IF IT IS UNCONSTITUTIONAL, THE STATUTE CAN'T MAKE IT CONSTITUTIONAL, SO WITHOU T THE REASONS FOR THE SENTENCE , HE WOULDN'T HAVE STATUTORY AUTHORITY.WE HAVE AL READY HELD HE HAS GOT THE CONSTITUTIONAL AUTHORITY, CONSTITUTION ALLY IT COULD HA PPEN , SO IT IS THE STATUTE HE IS VIO LATING , IF HE DO ESN'T PROVIDEREASONS, NOT THE CONSTITUTION . IT SEEMS TO ME.

IF THE STATUTE IS THE ONLY AUTHORIZ ATION FOR THE TRIAL COURT TO MAKE THIS RESERVATION AND THE TRIAL COURT DOES NOT COMPLY WITH THE STATUTE , WE THINK THAT THE ENCROACHMENT BECO ME S UNCONSTITUTIONAL. IF THE ONLY AUTHORIZ ATION IS THIS STATUTE FORM.

AREN'T YOU SUGGESTING IF THE LEGISLAT URE

WHAT IS THE DIFF ERENCE , WHEN, I AM HAVING A HARD TIME FOLL OWING THE LOGI C OF YOUR ARGUMENT , BECAUSE WHAT IS THE DIFFERENCE , W H EN YOU TALK ABOUT DEPARTING , YOU CAN ONLY DEPART, BASED ON THE STATUTE, ALSO , AND THAT STATUTE SAYS YOU HAVE TO GIVE REASONS, AND UNDER DAVIS, YOU KNOW , YOU HAVE TO GIVE THOSE REASO NS.

YES, YOUR HONOR.

BUT IT IS NOT , IT DOESN'T MAKE THE SENTENCE ILLEGAL. SO HOW, WHY IS THIS STA TUTE, I AM HAVING A HARD TIME FIGURING OUT HOW T HIS STATUTE ABOUT RE TENTION , DIFFER S AND I THINK WE STARTED OUT THIS ARG UMENT WITH QU ESTIONS WITH T HAT, HOW DOES THAT MAKE IT DIFFERENT FROM THE STATUTE WHERE YOU HAVE AN UPWARD DEPARTURE?I AM STIL L, I D ON'T GET THE CONNECTION THAT YOU ARETRYING TO MAKE HERE.

THE COURT IS ACTING , T HETRIAL COURT IS ACTING WITHIN ITS CONSTITUTIONAL ROLE. ITS TRADITIONAL ROLE OF SENTENCING, IN THE ORDINARY CASE WHERE A DEPA RTURE SENTENCE IS ENTERED. AND IF THE LEGISLATURE HAS ENACTED A STATUTE THAT REQUIRES CERTAIN FINDINGS TO BE MADE TO DEPART UP WARD OR DOWNWARD, THEN IT IS A M ERE VIOLATION OF THE STATUTE, TO NOT COMPLY. THE SENTENCE FU NCTION T HAT THE COURT IS PERFORMING , IS STILL THE COURT'S CONSTITUTIONAL ROLE.HERE, B Y NOT FOLLOWING THE ONLY STATUTE THAT WOULD AUTHORIZE THE TRIAL COURT TO SUDDENLY ENCROACH UPON THE EXECUTIVE'S ROLE, IN GRANTING PAROLE .

BUT IS IT , BUT IN YOUR BUSINESS, CORPORATE SENSE , THIS IS NOT AN U LTRA VIRIES ACT. HERE WE ARE T ALKING A BOUTTHE JUDGE HAD THE AUTHOR ITY TO DO IT. THE QUESTION IS WHETHER THE JUDGE FOLL OWED THE ABC , ASFAR AS ADEQUATELY ARTICULATING THE REASONS F ORWHICH HE HAD THE UNDERLYING AUTHORITY TO DO .

WE DISAGREE .

DO YOU AGREE OR DISAGR EE WITH THAT?

HERE THE STATUTE ARISES THAT IS THE UL TRA V ARIES EQUIVALENT, THAT, WITHOUT THE SCHEME, THE COURT HAS ESSENTIALLY CRE ATED A POWERS PROBLEM AND INJ ECTED ITSE LF IN THE ROLE OF THE STATUTE AND THE STATUTE OTHERWISE WOULD PROHIBIT IT , WERE THAT STATUTE NOT ON THE BOOKS AND ASSUMING IT IS CONSTITUTIONAL.

IN OUR ANALYSI S , THO UG H , OF UPHO LDING THE SCHEME , WE DID NOT MAKE A PO INT OF SAYING THE ESSE NTIAL INGREDIENT IN MAINTAINING THIS CONSTITU TIONALITY OF IT IS IN STRICT COMPL IANCE WITH EVERY AS PECT OF THE STATUTE, DID WE?

NO , YOUR HONOR, THE COURT DID NOT.

SO AREN'T YOU SUGGESTING THAT , IF THE LEGISLATURE WAS TO DELEGATE THIS AUTHORITY TO TRIAL COURT JUDGES , WITHOUT THE REQUIREMENT O F GIVING REASONS, THAT THAT WOULD BE UNCONSTITUTIONAL? IS THAT WHAT YOU ARE SUGGESTING?

WELL , I DON'T WANT TO MIX THE TWO ARGUMENT S. WE BELIEVE THAT THIS SHOULD BE AN ILLEGAL SENTENCE . CREATED AS IDE FROM THE CONSTITUTIONAL.

WOULDN 'T YOU AGR EE ON THE SURFACE , DOESN'T IT APPEAR THAT IT IS A M UCH G REAT ER SENTENCE OUTSIDE THE DEADLINES WITHOUT GIVING REASONS, BECAUSE THAT ENDS UP, REALLY , BE ING A GREA TER SENTENCE, THAT IS IM POSED , THAN JUST RET AINING JURISDICTION OVER THE CASE FOR PURPOSES OF SAYING IF , LATER THERE IS A GR ANT OF PAROLE? ON THE SURFACE AT LE AST , ISN'T THAT, REALLY , A MORE HARMFUL CONSEQUENCE TO A DEFENDANT, TO HAVE A JUDGE ACTUALLY IMPOSE A LO NGER SENTENCE IN THE CASE , WITHOUT GIVING REASON , THAN MERELY RETA INING SOME SUPERVISORY AUTHORITY OVER PAROLE?

IT COULD BE , YOUR HONOR , BUT I THINK IN THE END I T WORKS OUT TO BE EITHER THE SAME HARM OR ARGUABLY IT IS A GREATER HARM , WHERE

HOW ABOUT GIVING US YOUR, THE BASIS FOR ARGUING THAT. HOW IS IT A GREATER HARM?

THAT HERE, IT IS A HARM NOT ONLY TO THE DEFENDANT , THE INDIVIDUAL PERSON. IT IS HARM T O THE SYSTEM. THE IN TEREST OF JUSTICE REQUIRE THE SEPARATION OF POWERS, AND FOR E ACH BRAN CHTO RESPECT THE OT HERS HERE.

YOU MADE THE COMMENT J UST A MINUTE AG O THAT THIS IS AN ILLEGAL SENTENCE , AND THE , QUOTE , CLASSIC SENSE. WHAT IS A CLAS SIC SENSE T HAT YOU ARE REFERRING TO? I ME AN WE HAVE HAD MA NY MACHINATIONS OF A DEFINI TIONOF AN ILLEGAL SENTENCE EVER SINCE I HAVE BEEN HERE. WHAT ARE YOU REFERRING TO? HOW DOES THIS REACH THE DEFINITION THAT WE USE , OF AN ILLEGAL SENTENCE?

THE COURT HAS LO OKED FOR C ERTAIN GUIDE PO STS , WITHOUT EVER ADOPTING AN EX-CLUSIVE DEFINITION OF ILLEGAL SENTENCE, AND THIS I S PERHAPS AN EXCE LLENT CASE TO SHOW WHY IT IS A GOOD I DEA NOT TO HAVE FIRM AND RI GID GUIDELINES FOR WHAT IS AN ILLEGAL SENTENCE. THE THINGS THE COURT HAVE LOOKED FOR OR HAVE LOOKE D FOR IN THE

PA ST, INCL UDE THE ERROR BEING PATENT. HERE IT IS A PATENT. EVIDENTIARY HEARING IS NOT REQUIRED IN OR DER TO MAKE A DETERMINATION AS A MAT TER OF LAW, THAT IS HERE. SOMETHING HAS BEEN DONE .

OKAY. GO AHEAD AND FINISH, THEN I WILL

IF I MAY , IN THE SENSE OF CLASSIC , WHAT I MEANT , THE SOMEWHAT NONCLASSIC IS WHAT WE HAVE IN OUR SECOND POINT THAT, THIS ENTIRE SCHEME IS UNCONSTITUTIONAL .

YOU ARE BASIC ALLY, THE ILLEGAL SENTENCE, THEN, I S BECAUSE YOU WOULD SAY THE PATENT, SO THAT YOU DON'T NEED AN EVIDENTIARY HEARING , IT IS AN ILLEGAL SENTENCE , BUT WE HAVE GONE FAR BEYO ND THAT, AND IN CA RTER , G AVE A DEFINITION ADOPTED FROM BLAKELY. IT IS A KIN D OF PUNISHMENT THAT NO JUDGE UNDER THE E NTIRE BODY OF SENTENCING STATUTES, COULD POS SIBLY INFLICT UNDER ANY SET O F FACTUAL CIRCUMSTANCES. WELL, HERE THE JUDGE WAS EMPOWERED UNDER THE SENTENCING STATUTES, TO IMPOSE THIS T YPE OF SENTENCE , BUT THE INGREDIENT MISSING, WHICH IS SNT A HARM TO THE SYSTEM WH ICH IS N'T A H ARM TO THE SY STEM, APPARENTLY A HARM TO THE DEF ENDANT, WAS THAT THE JUDGE DI DN'T GIVE A REASON. NOW, YOU ARE GIVING THAT AS BEING THE ULTI MATE SEPARATION OF POWERS ISSUE, BUT IF WE DON'T AGRE E WITH THAT, THEN AT THAT POINT , HOW IS THAT IN THE HOW IS THAT AN ILLEGAL SENTENCE UNDER CARTER?

CARTER EXPLAINED THAT THAT DEFI NITION WAS WHAT IT CALLED THE WORKABLE DEFINITION, ACCEPTING WHAT JUDGE FARME R STATED IN BLAKELY THERE.IS A COUPLE OF WAYS TO LOOK AT IT. ON THE ONE HAND HERE, YOU COULD NOT GIVE THIS SENTENCE AND COMPLY WITH THE STATUTE , WHILE GIVING

THAT IS THE SA ME THING O N DAVIS. NOW YOU GO BACK TO

THAT IS TRUE , YOUR HONOR , AND THAT IS WHY WE DISTINGUISHED THIS FROM DAVIS BY ATTEMPTING TO EMPHASIZE THE CONSTITUTIONAL ROLE OF THE COURT AND THE EXECUTIVE AND THE DIF FERENCE BETWEEN THEM, AND WHY

BEFORE WE GET TO THAT , DO YOU AGREE OR DISA GREE THAT, IF THIS MATTER HAD BEEN FILED AS AN 8 00 CO RRECT SENTENCING ERROR, AND IT WAS SENT BACK TO THE JUDGE AND THE JUDGE ARTICULATED THE REASONS TO DO SO, THA T THE ERROR WOULD OR WOULD NOT BE CORRECTED?

IT WOULD BE CORRECTED, YOUR HONOR.

IT WOULD BE.

YES. I AGREE.

SO IT IS A SENTENCING ERROR THAT COULD BE CORRECTED.

YES, YOUR HONOR.

SO HOW WOULD YOU DISTINGUISH THIS, IF WE ACCEPT YOUR ARGU MENT, HOW DO WE DISTINGUISH BETWEEN AN 800 -A AND 80 ON -B , BECAUSEIT SEEMS TO ME THAT 800- B, BECAUSE IT SEEMS TO ME THAT WHAT JUSTICE QU INCE WAS TALKING ABOUT WAS IT W ASSOMETHING THAT THE JUDGE WAS JUST SUPPOSED TO DO AND DID DO IT BUT JUST NOT SUFFICIEN TLY.

THE KINDS OF SENTENCESTHAT CAN BE DE EMED ILL EGAL, SHOULD NOT BE LIMITEDNECESSARILY, TO THINGS THAT ARE CORRECTABLE. OR THING THAT IS ARE NOT CORRECTABLE. HERE, WHERE WE HAVE THIS SIGNIFICANT SEPARATION OF POWERS ISSUE

OVERRIDING W HAT IS GOING ON , IT , TO SU GGEST THAT THE COURT CAN ENTER THIS TYPE OF SENTENCE , MAKE NO FINDINGS WHEN FIND INGS ARE REQUIRED, AND THEN THERE IS OPENING UP THE DOOR TO THIS CONSTITUTIONALLY SIGNIFICANT PROBLEM OF AN ENCROACHMENT ON THE EXECUTIVE'S FUNCTION, THISIS THE KIND OF THING T HAT THE INTEREST OF JUSTICE

SO BASICALLY WHAT YOU A RESAYING IN THE ARGUMENT IS IT IS NOT REALLY AN ISSUE WHETHER MY CLIENT IS SER VING M ORE TIME , NOT G ETTING GAIN TIME, NOT HING IMPACTING YOUR CLIENT'S LIBE RTY INTERE ST. IT IS REALLY MORE A SYSTEMIC ISSUE OF WHETHER OR NOT THERE IS A SEPARATION OF POWERS PROBLEM.

IN LARGE PART , Y ES, YOUR HONOR.

THAT IS WHY I SA ID THE LINCHPIN OF YOUR ARGUMENT I S REALLY THE SEPARATION O F POWERS ISSUES IS WHAT MAKES THIS SENTENCE ILL EGAL.

YES.

JUSTICE QUI NCE HAD A QUESTION.

WELL, I WAS TRYING TO GET TO WHETHER OR NOT , IF WE FIND THAT THERE IS N O SEPARATION OF POWERS ISSUE , WHETHER OR NOT W E STILL ENDUP WITH AN ILLEGAL SENTENCE .

YES, YOUR HONOR, AND I DON'T NT - - , I WANT TO BE CLEAR WHY, BASICA LLY THE SECOND POINT THAT , THE SCHEME, WHAT WE ARE SUGGESTING IN THE FIRSTPOINT IS THAT , BY NOT COMPLY ING WITH THE STATUTE , THERE IS AN ILLEGAL SENTENCE HERE. BUT WE ARE ARGUING I N ADDITION TO THAT, THAT EV EN IF THE STATUTE IS COMPLIED WITH, THE SENT IS STILL ILLEGAL BECAUSE IT IS UNCONSTITUTIONAL. THE RESER VATION OF JURISDICTION IS UNCONSTITUTIONAL.

UNDER THE SEPA RATION OF POWERS VIOLATION.

YES, YOUR HONOR.

BUT IF WE RE JECT THAT , GOING BACK TO JUSTICE , IT IS ASSUMED N O SEPARATION OF POWERS VIOLATION IN THE STATUTE OR NOT COMPLYINGWITH THE STATUTE , THEN YOU HAVE NO BASIS FOR SAY ING THE SENTENCE IS ILLEGAL. CORRECT?

YES, YOUR HO NOR. THOSE ARE OUR T WO BASES BASIS.WE BELIEVE WITH RESP ECT TO THE COURT'S DECISION IN BORDEN THAT, THE COURT ERRED , AND WE THINK THAT ERROR IS SHOWN , HIGHLIGH TED BY THE RECENT DECISION INVOLVING THE WORKERS COMPEN SATION RULES.

ARE YOU FAMILIAR WITH THESTATE OF THE LAW THAT HAS EXISTED, REALIZ ING THERE AREN'T A LOT OF THESE CASES , IN TERMS OF WHAT THE DISCRETION THE TRIAL COURT HAD IN DETERMINING REASONS FOR RETA INING JU RTS DICTION ? JURISDICTION? ARE YOU FAMILIAR WITH , TELL ME WHAT YOU ARE DE MING . WAS IT WHAT YOUR DETERMINATIONING. WAS IT A B ROAD I DIDN'T LIKE THE LOOK ON HIS FACE THE D AY HE APPE ARED BEFORE ME, OR WAS IT A V ERY NARROW THING THAT SAYS YOU HAVE GOT T O CONSIDER THE FACTS JUST AS TO THIS PARTICULAR CASE , WITH REGA RD TO JURISDICTION.

THE STATUTE CONTAINS TEXAS WITH REGARD T O INDIVIDUALIZED FINDINGS , AND WHAT IT SAID OVER THE YEARS IS THAT, IF YOU DID NOT GIVE INDIVIDUALIZED FINDINGS WITH REGARD TO THE PARTIC ULAR INDIVIDUAL, YOU MAY NOT RELY ON THE ELEMENT OF THE OFFENSE. YOUR REASONS MAY NOT BE VAGUE.THEY HAVE TO BE GENERALIZED. THEY HAVE TO BE PARTICULAR .

INDIVIDUALIZED FINDINGS CONCERNING WHAT PRINCIPLES?

THAT IS NOT CLEAR , YOUR HONOR, AND THE CASE LAW I S SORT OF DEVELOPED IN THE NEGATIVE SENSE , THAT WHEN CERTAIN THINGS ARE N OTPRESENT, TH OSE RESERV ATIONS ARE VACATED.

UNDER YOUR ARGUMENT , THEN, THE STATUTES WH ICH RE QUIRE MANDATORY MINIMUMS , WOULD THEY AFFECT WHE THER OR NOT YOU ARE GOING TO GET OUT ON PAROLE AND ALL OF THAT, THEN THOSE WOULD, ALSO , B E SEPARATION OF POWER PROB LEMS CASES, AL SO?

NO , YOUR HONOR. WHAT DISTINGUISHES THIS FR OM THE OTHER S ITUATIONS , I S ARTICLE IV SE CTION 8 OF THE CONSTITUTION OF FLORID A, WHICH EXPRES SLY SAYS THE POWER TO GRANT PAROLE IS GIVEN TO A PAROLE COMMISSION , SHOULD THE LEGISLAT URE CHOOSE TO CREA TE T ONCE THAT CHOICE HAS BEEN MA DE AND THE POWER T O GRANT PAROLE HAS BEEN GIVEN TO THAT COMMISSION, THEN IT IS THAT COMMISSION'S DECISION .

BUT IF YOU HAVE A MANDATORY MINIMUM , YOU ARE NOT ENTITLED TO PAROLE , UNTIL AF TER YOU HAVE SER VED THESE MANDATORY MINIMU MS , S O HOW DOES THAT DIFE R?

THE LEGISLATURE, T HIS COURT HAS PREVIOUSLY HELL AND WE DON'T PREVIOUSLY HELD AND WE DON'T DISA GREE IN ANY WAY THAT , THE LEGISLATURE HAS THE ABIL ITY TO DEFINE WHO IS ELIG IBLE FOR PAROLE. THAT CAN INCLUDE CLASSES OF CONVI CTIONS. THAT CAN INCLUDE RANGES WITHIN CONVICTIONS. IF YOU ARE CONV ICTED OF A CERTAIN OFFENSE THAT , FOR THE FIRST 25 YEARS OR SO YOU ARE NOT ELIGIBLE FOR PAROLE , THAT SCHEME IS SET BY THE LEGISLATURE.

YOU ARE SAYING THIS SCHEME DOESN'T EXIST ANYMORE.

IT DOES EXIST BUT IT IS NOT U TILIZED , BEC AUSE PAROLE IS NOT ELIG IBLE ANY MORE FOR MOST OFFENSES.

WHAT WOULD BE FOR T HIS DEFENDANT , OUR DETERMINATIONTHAT THE STATUTE IS UNCONSTITUTIONAL, IS NOTGOING TO AFFE CT A GREAT MANY CASES, IS IT?

THAT IS TAKE FAIR TO SAY THIS IS NOT HE GGS IN ANY SENSE, YOUR HONOR , BUT THERE ARE A NUMBER OF PEOPLE THAT ARE , UNFORTUNATE THAT THELY , STILL IN UNFORTUNATELY , STILL INCARCERATED FROM THE PERIOD OF TIME WHEN THIS WAS IN EFFECT, BASI CALLY FROM 1978 TO 198 3.

ARE THE J UDGES S TILLAROUND?

I WOULD GUESS THAT SOME ARE BUT PROB ABLY PRECIOUS FEW.

CHIEF JUSTICE: WE HAVE USED A GO OD DEAL OF YOUR REBUTTAL TIME WITH O URQUESTIONS, IF YOU WOULD LIKE TO SAVE THE REST.

THANK YOU, YOUR HONOR .

MS. WEINER.

MAY IT PLEASE THE COURT. MY NAME IS ANN S HEER WEINER AND I REPRESENT THE STATE I N THIS APPEAL. BEFORE WE GET INTO THE FACTS, WE DO , I WOULD LIKE TO ASSERT THERE IS NO CONF LICT HERE AND JURISDICTION SHOULD NOT HAVE BEEN GRANTED .

THERE IS CERTIFIED CONFLICT, RIGHT?

THERE IS CERT IFIED CONFLICT HERE, BUT I THINK THE SEC OND DCA OVERLOOKED THE BASIC

FACTS OF THIS CASE , AND THAT IS ALSO BECAUSE THE PETITIONER DIDN 'T ARGU E THE FACTS OF THIS CASE , BECAUSE THE FACTS OF THE CASE ARE SO DISTINGUISHABLE THAT WE DON'T HAVE TO GO M UCH FURTHER THAN THE FACTS OF THIS CASE .

WHAT AB OUT THE INTERNAL INCONSISTENCY THAT YOUR OPPONENTS POINT OUT IN THE DECISION OF THE SECOND DCA AND

THE SECOND

AND THAT THE TRIAL COURT WAS CORRECT OR THAT THE DEFENDANT WAS ENTIT LED TO RELIEVE .

YOUR HONOR, THAT IS WHAT I WOULD LIKE TO SAY. RIGHT NOW , WHAT WE HAVE I N FRONT OF THIS COURT , I S A NEGOTIATED PLEA SENTENCE. AND NOBODY IS TALKING ABOUT THE FACT THAT HE NEGOTIATED THIS PLEA . MR. WRIGHT WAS FACING TH REE LIFE SENTENCES , A T THE TIME HE ENTERED THIS PLEA. IN A D DINGS I TO , HE IN ADDITION TO, HE HAD SIX RESIDENTIAL BURGLARIES. HE HAD NUMEROUS COMMER CIAL BURGLARIES, AND HE WAS FACING THREE LIFE SENTENCES.

AND THE RETENTION OF JURISDICTION WAS PART OF THE NEGOTIATED

WAS PART OF IT, AND THE RECORD BEFORE THE COU RT THAT THE PETITI ONER HAS SUBMITTED , SHOWS IT ON ITS FACE , AND THE SECOND EXHIBIT THAT I S SHOWN , IS THE RE CORD O F THE HEARING HELD BEFORE T HETRIAL COURT, IN WHICH THE DEFENSE ATTORNEY WITH MR . WRIGHT PRESENT , STA NDS BEFORE THE TRIAL COURT AND SAYS, PURS UANT TO OTHER UNRECORDED CONVER SATIONS , WEWOULD LIKE TO ENTER A PLEA OF GUILTY , W ITH THE UNDERSTANDING THAT, IF WE DID , ANY SENTENCES THAT YOU IMPOSE, WOULD RUN CONCURRENTLY WITH A 75-YEAR CAP , AND YOU WOULD RET AIN ONE-THIRD JURISD ICTION OVER THE SENTENCES . AND THE TRIAL COURT STOPSTHE PROCEEDINGS AT THAT POINT AND SAYS TO MR . WR IGHT INDIVIDUALLY, THIS IS ON PAGE 4 OF THE TRANSCRIPT OF THE CHANGE OF PLEA , DO YOU UNDERSTAND WHAT YOU R ATTORNEY JUST SAID? AND HE SAYS , Y ES, YOUR HONOR , I AM FACING A LOT OF TIME. HE SAYS , WELL , NO, IF I DO, THIS AND I CAP THIS A T 7 A YEARS , I WILL AT 7 A YEARS, I WILL RETAIN AT 75 YEARS, I WILL RETAIN JURISDICTION FOR THAT ONE-THIRD ANNUL NOT BE ABLE TO RECE IVE PAROLE. DO YOU UNDERSTAND THAT? AND HE SAYS , YES, SIR , I DO.

WAS THERE ANY CASE LAW OUT THERE AT THE T IME THAT HELD THAT , NOTWITHSTANDIN G AN AGREEMENT TO A PLEA OR A NEGOTIATED PLEA , THAT , IN THE REGULAR APPE LLATE SITUATION, THAT YOU COULD APPEAL , OR IN A POSTCONVICTION CLAIM, ARGUE AGAINST THE RETENTION OF JURISDICTION? WAS THERE ANY CASE LAW OUT THERE?

AT THAT TIME, I MEAN , I THINK IT IS ACTUALLY YOU CAN'T ENTER A PLEA TO I ILLEGAL SENTENCE, AND AT THE TIME, I WOULD ALSO LIKE TO SAY BEF ORE I CONTIN UE TO ANSWER, YOUR HONOR , WITH ALL DUE RESPECT, THE STATE , AT THAT HEARING, SAYS WE O B. THIS MAN WE OBJ ECT. THIS MAN USED A WE APON , AND YOU KNOW, HE IS FACING THREE LIFE SENTENCES. WE WOULD OBJECT TO ANYTHING LESS THAN A LIFE SENTENCE, AND THEN THE TRIAL COURT WENT ON AND OVER RIDING THE OBJECTIONS, WENT ON AND ASKED THEM TO GIVE A RECITATION OF THE FACTS THAT THE STATE WOULD PROVE, AND THEY WERE PRETTY OVERWHELMING.

OKAY.

SO I AM INTE RESTED IN WHETHER THERE WAS CASE LAW SPECIFICALLY ABOUT THIS CLAIM OF ILLEGALITY , THAT IS WHETHER NOTWITHSTANDING A PLEA, YOU COULD ST ILL, EITHER ON APPEAL OR IN A POSTCONVICTION MOTION , CLAIM, WELL , THIS STILL WAS ILLEGAL , AND I STILL

HAVE

YES. YOUR HONOR, W HAT I WAS GO IN G TO SAY IS , IF IT EXCEE DED THE STATUT ORY MAXIMUM, BUT HERE IT CLEARLY DIDN'T. I MEAN, THAT WOULD BE ILLEGAL.

I AM TALKING ABOUT THIS VERY SPECIF IC

UNDER THE JURISDICTION , RETAINING JURISDIC TION.

RIGHT. WHETHER THAT ISSUE COULD STILL BE RAISED , NOTWITHSTANDING THE FACTTHAT YOU HAD ENTE RED INTO A PLEA THAT DIDN'T E XCEED THE STATUTORY , W AS THERE ANY CASE LAW THAT SAYS YOU COULD DO THAT?

APPEAL THAT?

THAT YOU COULD RAISE THAT ISSUE OF THE ILLEGALITY OF THE RETENTION OF JURISDICTION, NOTWITHSTANDING

YOUR HONOR, I THINK WHEN HE NEGOTIATED THE PLEA , HE CONCEDED THAT THERE WERE SUFFICIENT REASONS FOR THE JURISDICTION.

I REALI ZE THE GENE RAL - -

I DON'T KNOW OF ANY C ASE LAW , I DON'T KNOW OF ANY CASE LAW WHERE THEY FOUND THAT THEY COULDN'T ATTEMPT TO, AND THE 3.850 , HE COULD HAVE BROUGHT IT UP ON INEFFEC TIVE ASSISTAN CE. IT COULD HAVE BEEN RAISED IN A POSTCONVICTION , AND HE COULD HAVE RAISED IN A 3.800-A AT THAT TIME .

SO ARE YOU SAY ING THE DIFFERENCE IN THE CASE S ARE THAT, IN THIS CASE , THERE WAS , B Y THE PLEA , THERE WAS , THIS PLEA WAS IN LIEU OF HAVING TO GIVE REASON FOR RETAINING JURISDICTION?

YES. I AM SAYI NG THAT THIS COURT , I AM SAYING THAT THIS COURT'S DEC ISION IN KING , WHICH WAS REFERRED TO IN THIS COURT'S RECENT OPIN ION IN CA RTER , WAS VERY SP ECIFIC , WHEN THEY HELD KING OUT AS SAYING, AND I HAVE IT RIGHT HERE , KING DISTINGUISH ES A NEGOTIATED SENTENCE DISTINGUISH ES A NEG OTIATED SENTENCE NOT SPECIFICALLY AUTHORIZED BY STATUTE, FROM A SENTENCE THAT EXCEEDS THE STATUTORY MAXIMUM, IN T HECASE OF SHOWING AN ILLEGAL SENTENCE, FOR PURPOSES OF R ULING UNDER 3.800-A. HERE WE HAVE, CLEARLY BY THE RECORD ON ITS FACE , A NEGOTIATED PLEA THAT IS NOT IN EXCESS

DOES IT HAVE TO BE AN EXPLICIT WAIVE R OF ANY ADDITIONAL REQUIREMENT OF SETTING OUT REASONS .

RIGHT

BUT THE SECOND DC A'S HOLDING DIDN'T DEPEND ON THEFACT THAT THIS WAS A NEGOTIATED PLEA.THAT IS WHERE THE CONFLICT LIES, RIGHT?

THE CONF LICT, ACTUALLY THE HOLDING IS CORRECT , BECAUSE UNDER THE FACTS THAT AREN'T, THAT ARE MENTIO NED , THE SECOND D KRACHLT IS RIGHT AND THERE IS CONFLICT , BUT THE CONFLICT IS NOT WITH THE SECOND DCA AND THIS COURT'S HOLD HAD GONE INDAVIS OR THIS COURT'S HOLDING.

THE OTHER D CA.

THE OTHER DCA'S , SO IDON'T KNOW IF THIS IS T HECASE TO COME FOR WARD TO CHALLENGE

THAT.

WELL , WE HAVE A CERT IFIED CONFLICT.

WE HAVE A CERTIFIED CONFLICT, SO THE BE NCH ANDBAR IS GOING TO THINK THERE IS A CONFLICT BETWEEN CASES.

I WOULD SAY THE

SECOND DCA DIDN'T JUST SAY, WELL , BECAUSE THIS IS A PLEA AGREEM ENT, THAT IS THE REASON TO CONTRA DICT THE OTHER DISTRICT.

THEY WERE RIGHT FOR THE WRONG REASONS, YOUR HONOR. THEY WERE RIGHT

THE MERITS

IF WE GO THROUGH ON THE MERITS, UNDER THE DEFINITION THAT THIS COURT HAS BEEN WORKING UNDER FROM JUDGE FARMER'S OPINION IN BLA KELY THAT WE RECITE ED IN CARTER, IT IS NOT AN ILLEGAL SENTENCE, BECAUSE, WELL , FIRST OFF HERE , IT IS NOT ON THE FACE OF THE REC ORD. THE FACE OF THE RECORD DOES NOT SHOW THAT THIS WAS ILLEGAL, BECAUSE THE

DOESN'T THE FACE OF THE RECORD SHOW THAT , THOUGH , BECAUSE IF WE HAVE A STATUTE THAT SAYS THE JU DGE CAN D O THIS, BUT HE CAN, HE MUST SET OUT RE ASONS , AND WE LOOK AT THE RECORD OF THE RETENTION OF JURISDICTION IN THE SENTENCE , AND IT DOESN'T HAVE TH OSE REASONS , AND SO WHY ISN'T THAT A FACIAL DEMONSTRATION OF NONCOMPLIANCE WITH THE STATUTE THAT AUTHORIZES THIS TO BE DONE AT AL L?

BECAUSE COMPLIANCE WITH THE STATUTE DOES NOT MAKE , NONCONFORMANCE WITH THE STATUTE DOES NOT MAKE I T ILLEGAL UNDER OUR DEFINI TION, BECAUSE THE DEFI NITION

THAT IS A DI FFERENT ARGUMENT, BUT WE CAN TELL ON THE FACE OF THIS RECORD , THAT THE JUDGE DID NOT GIVE REASONS FOR RETENT ION. CAN WE OR CAN WE?

WE CAN'T FIND THIS ON THIS RECORD, AND I WOULD SUBMIT TO YOU IT IS BECAUSE

ARE THERE WRIT TEN SENTENCING ORDERS?

THERE IS A W RITTEN SENTENCING ORDER, NOT WITH ANYTHING, FIRST OFF, YOUR HONOR , LET ME STA RT AT THE VERY BEGINNING, SO I DON'TGET AHEAD OF MYSELF. THERE IS NOTHING THAT SAYS IT HAS TO BE WRITTEN.

WHERE IS IT

IT HAS TO BE STATED IN SPECIFICITY , BEYOND THE FACE OF A TRANSCRIPT. IT DOESN'T HAVE TO BE A WRITTEN SEPARATE ORDE R, BUT WE DON' T HAVE THE SENTENCING TRANSCRIPT IN FRONT OF THIS CURT! THAT IS WHAT I N FRONT OF THIS COURT! THAT IS ONE THING, THIS RECORD ISN'T COMPLETE. THIS IS A CHANGE OF PLEA THAT THEY HAVE PUT BEF OR E THE COURT. IT SAYS , CLEARLY, AND WH AT WE HAVE BEFORE THIS COURT AND WHAT WAS BE FORE THE SECOND DCA , WAS HE IS ACCEPTING THE GUILTY PLEA, SUBJECT TO THE COMPLE TION OF A PSI WITH SENTENCING T O BE DONE LATER . WELL, I DON'T SEE A PSI , AND THERE DOESN'T SEEM TO BE A SENTENCING TRANSC RIPT .

IS THERE A JUDGMENT AND SENTENCE IN THE RECORD?

THERE IS A , WE HAVE THE SENTENCE, BUT WE DON'T HAVE THE TRAN SCRIPT OF A SENTENCING

HEARING.

BUT I THINK WHAT JUST ICE ANSTEAD'S QU ESTION GO ES TO , IS ON THE JU DGMENT AND SENTENCE THAT YOU SAY IS IN THE RECORD, IT SAYS A SENTENCE OF 75 YEARS , RETENTION OF JURISDICTION , BUT IT DOESN'T SAY, AND I AM RETAINING JURISDICTION BECAUSE OF X YZ , IS THA T CLEAR ON THE FACE OF THE JUDGMENT OF SENTENCE?

IT DOESN'T HAVE TO BE THERE.

SO THE ANSWER IS , WHAT YOU ARE SAYING IS THE JUDGE COULD HAVE GIVEN REASONS AT THE SENTENCING HEA RING.

HE COULD HAVE BEEN , I T COULD HAVE BEEN D URING THE NEGOTIATIONS OF THE PLEA I N THE EARL IER

LE T'S ASSU ME THAT HE DIDN'T GIVE IT, AND EITHER HE DIDN'T GIVE IT BECAUSE IT WAS PART OF THE NEG OTIATED PLEA OR HE JUST FOR GOT . WHY DOESN'T, WHY DOES THAT NOT MAKE THIS AN ILLEGAL SENTENCE?

WELL, WE CL EARLY CAN GO UNDER THE REASON ING IN D AVIS , BECAUSE THIS IS EXACTLY THE SAME IDEA. IT IS NOT AN ILLEGAL SENTENCE, BECAUSE IT COULD HAVE BEEN GIVEN, IF THEY HAD GIVEN THOSE REASONS.

WHAT AR E THE , JUST SO , I AM NOT FAMI LIAR WITH THIS TYPE OF SENTENCE. WHAT ARE THE KIND OF REASONS THAT ARE ENVI SIONED , THAT A JUDGE WOULD GIVE FOR RETAINING JURISDICTION?

THE REASON WHY THE LEGISLATURE SO UGHT TO ENACT THIS PARTICULAR STATUTE A NDGIVE THIS RETENTION OF JURISDICTION, WAS BECAUSE OF THE POSSIBILITY THAT SOME ONE WHO WAS A DA NGER TO SOCI ETY, COULD ACTU ALLY CAUSE HARM T O THE COMMUNITY , MIGHT BE RELEASED EAR LIER , B ASED ON PAROLE OR GAIN TIME , W HEN BASED ON THE FACT OF THEIR INDIVIDUAL CASE AND THEIR PROPENSITY OF VIOLEN CE. THAT IS WHY THEY L ISTED THE SPECIFIC AND , CRIME S FOR WHICH THEY COULD RETAIN JURISDICTION, WAS TO PRO TECT THE COMMUNIT Y.

SO WHAT WOULD BE, SO THAT IS ALL THE JU DGE WOULD HAVE TO SAY IS , I FIND THAT RETAINING JURISDICTION IS NECESSARY TO PROT ECT THE COMMUNITY?I MEAN , O R DO THE REASONS NEED

IT HAS TO BE TAYLORED T O THE INDIVIDUAL AND HIS PARTICULAR PROPENSITY. IT COULDN'T BE A BOILER PLATE , IF THAT IS WHAT YOU ARE SAYING.

BUT SOMETHING TO DO WITH THE NAT URE OF THE OFFENSE I S SUCH THAT I D ON'T WANT , I WANT TO KEEP JURISDICTION , BECAUSE I DON'T WANT TO CHANCE THAT THIS DEFENDANTIS GOING TO BE LET O UTBEFORE AT LE AST ONE- THIRD OF HIS SENTENCE IS COMPLETED .

WELL , YOU KNOW , THAT IS A MISCONCEPTION, THOUGH , BECAUSE ALTHOUGH IT RETAINS JURISDICTION, THE DEFEN DANT STILL IS GETTING HIS G AIN TIME. IT IS STILL ACCR UING. IT IS NOT SAYING THAT H E CAN'T BE RE LEASED ON PAROLE.IT IS JUST SAYING THAT IF THE PAROLE COMM ISSION AT ANY TIME DURING THE FIRST THIRD OF THEIR SENTENCE , F IND T HAT THEY ARE APPROPRIATE FOR PAROLE, THE Y HAVE TO SEN D IT TO THE TRIAL COURT AND G IVE THE TRIAL COURT TEN DA YS

I AM NOT SAYING , JUST SO WE UNDERSTAND , THE KINDS OF REASONS THAT A JUDGE WOULD GIVE IS SORT OF DIFFER ENT T SOUNDS LIKE IT IS E VEN MORE GENERAL THAN THE DEPARTURE

REASONS.IT IS SOMET HING TO THE EFFECT THAT , BECAUSE OF THIS CRIME, I WANT TO MAKE SURE THAT, BEFORE THIS DEFENDANT IS LET OUT, THA T I HAVE ANOTHER CHECK ON I T .

YES, YOUR HONOR. THAT IS EXACT LY IT. IT DOES NOT HAVE TO BE A S INTENSE OR AS SPE CIFIC AS THE, IN FACT , DEPARTURE SENTENCE, AND IT COULD S AYTHAT I FIND THAT YOU ARE A ANGRY P ERSON WHO U SED A GU N.

SO DO WE KNOW IN THIS CASE WHETHER THE PAROLE COMMI SSION RECOMMENDED T HAT HE BE RELEASEED?

NO. THERE HAS NEVER BEEN ALLE GED THAT ANYONE

WE ARE SORT OF REA LLY IN A THEORETICAL STATE HERE.

NO ONE HAS ASKE D THE TRIAL COURT IF THEY WOULD LIKE TO RETAIN JURISDICTION , BECAUSE THE PAROLE COMMISSION HAS NOT COME FORWARD AND WANTED TO.

I AM NOT SURE I HEARD AN ANSWER TO YOUR PREVIOUS QUESTION IF YOU GAVE ONE. IF THE SECOND DCA IS COR RECT , HOW COULD IT HAVE AFFIR MED THE TRIAL COURT'S RELINQUISH ING JURISDICTION AS TO ONE O F THE SENTENCES?

BECAUSE ON THIS , THERE IS, UNDER THE DEFINITION F ROM BLAKELY , THE RETENTIO N OF JURISDICTION ON TWO CONSECUTIVE SENTENCES IS CLEARLY NOT AUTHORIZED UNDER THE STATUTE. THAT IS UNDER NO SET O F FACTS, NO FACTUAL CIRCUMSTANCES , COULD A SENTENCING JUDGE EVER IMP OSE THAT, BECAUSE THE STATUTE SPECIFICALLY SAYS , WHEN YOU HAVE CONCUR RENT SENTENCES , YOU CAN ONLY RETAIN JURISDICTION OVER ONE . SO IN THAT CASE , IN THAT PARTICULAR PART OF IT.

SO UNDER K NO W CIRCUMSTANCES , THIS SENTENCE COULD EVER BE IM POSED .

UNDER THE LA W AS A MATTER OF LAW. SO THAT PORTION WAS CLE ARLYWITHIN OUR DEFINITION. IT IS THE SECOND PORTION , AND THEY CONC EDED , THE PETITIONER CONCEDES , UNDER A SPECIFIC SET OF CIRCUMSTANCES, HAD H E SPECIFICALLY GIVEN FACTS , THIS SENTENCE COULD HAVE BEEN IMPOSED , SO UNDER OUR DEFINITION WHICH WORK S HERE , THE SECOND DCA WAS CLE ARLY RIGHT . UNDER OUR DEFINITION OF WHAT AN ILLEGAL SENSE IS FOR PURPOSES OF A 3.800-A , THIS IS, WAS

DID HE , BY A PLEA BARGAIN , WAIVE THE REQUIREMENT OF THERE BEING REASONS , WHY COULDN'T HE WAIVE THE RESTRICTION IN THE STATUTE THAT YOU COULDN'T DO IT O N TWO?

I AM SORRY .

YOU ARE TELL ING ME THAT , UNDER THE STATUT ORY SCHEME , THAT THE JUDGE COULDN'T RETAIN JURISDICTION OVER TWO CONCURRENT SENTENCES. IS THAT

RIGHT. THE STATUTE SPEC IFICALLY SAYS YOU CANNOT.

THE STATUTE , ALSO , S AYS THAT , IN ORDER TO RETAIN JURISDICTION, YOU HAVE TO GIVE REASONS , AND YOU ARE SAYING THAT THE DEFENDANT WAIVED THE REQUIREM ENT OF THE STATUTE GIVING REASONS, BECAUSE THIS WAS A PLEA BARGAIN , SO I , WHEN YOU ARE SAYING THAT THE SECOND DISTRICT WAS RIGH T IN THE ONE INSTANCE , I AM HAVING TROUBLE OF WHETHER OR N OTTHAT CON FLIB TS WITH Y OUR POSITION CONFLI CTS WITH YOUR PO SITION ABOUT WAIVER IMPLICIT, AND A PLEA AGREEMENT.

WELL, YOUR HONOR , HE , CLEARLY IT HAS BENE FITED FROM THIS BARGAIN. THE STATE WAS,

WANTED A LIFE SENTENCE.

I THINK JUST ICE ANST EAD IS ASKING YOU WHY COULDN'T YOU PLEAD TO TWO CONSECUTIVE RETENTIONS OF JURISDICTION? IF YOU CAN PLEAD T O WAIVE THE REQUIREMENTS , WHY WOULDN'T YOU BE ABLE TO COMPLETELY AGREE T O SOMETHING THAT THE STATUTE DOESN'T AUTHORIZE ?

BECAUSE IN T HIS INS TANCE , THE STATUTE

THE STATUTE , A LSO , DOESN'T ALL OW YOU TO RETAIN JURISDICTION, WITHOUT GIVING REASON, AND SO I AM , YOUR ARGUMENT NOW, IN SAYING THE SECOND DISTRICT WAS RIGHTABOUT THAT, SE EMS TO UNDERMINE YOUR ARGUMENT THAT

WE LL

THE PLEA AGR EEMENT WAIVES THIS OTHERREQUIREMENT.

THAT WOULD GO RIGHT UNDER YOUR HOLD ING IN DAVIS. THAT IT IS EXA CTLY WHAT DAVIS FWAURX IS AN ENHANCEMENT.

DID THE DAVIS, BECAUSE IT IS AN ENHANC EMENT.

DID THE STATE ARG UE IN THE WAIVER TO THE T RIALJUDGE?

I DON'T THINK IT WAS RAISED.

THAT MAY BE THE EXPLANATION, ISN'T IT?

THE PETI TIONER NEVER ARGUED IT. IN FACT, THE PET ITIONER NEVER R A ISED

BUT DID THE STATE EVER ARGUE THAT, BY REASON OF T HEPLEA, THAT ANY DEFICIENCY , ANY ILLEGAL SENTENCE, BY REASON OF THE FAME EW OF THE FA ILURE TO FO LLOW T HESTATUTE , WAS WAIVED?

NO, YOUR HONO R. I DON'T THINK THIS IS SUE HAS EVER BEEN , THAT IS ONE OF THE REASONS WHY I WANTED T O BRING THE FACTS BEFORE THIS COURT, BECAUSE UNDER KING, THIS COURT HAS DISTINGUIS HED A NEG OTIATED PLEA SENTENCE FOR A LE SSER SENTENCE. I M EAN , THE STATE , HE WAS FACING THREE L IFE SENTENCES. IN AD DITION TO AN OTHER 1 45 YEARS, ADDITIONAL YEARS I N PRISON, AND HE STOOD BE FORETHE TRIAL COURT AND SA ID I WANT TO PLEAD GU ILTY BECAUSEI DID IT.

AND MAYBE THIS IS TO TRY TO UNDERSTAND IT, YOU HAD SAID EARLIER YOU CAN'T PLEAD TO AN ILLEGAL SENTENCE, S O YOU REALLY GO AROUND IN A CIRCLE. YOU KNOW, FOR EXAMPLE , I F IN THIS CASE THE COURT HAD RETAINED JURISDICTION FOR THE EN TIRE LE NGTH OF T HESENTENCE, IS THAT - - T HIS STATUTE DOES NOT AUTHORIZE THAT AT ALL.

RIGHT .

YOU COULDN'T PLEAD , YOU CAN'T PLEAD TO A SENTENCE THAT IS MORE THAN ANY SET OF THE LAWS WOULD ALLOW YOU TO HAVE. I MEAN , THERE ARE SOME B ASIC THINGS THAT YOU CAN'T A GREET O.

RIGHT. AND I THINK, IN THE CASE OF REASONS FOR RETAIN ING AND NAMING SPECIFIC ITY , IN THIS CASE WHERE YOU HAVE A NEGOTIATED PLEA , IT IS A QUID PRO QUO . I WILL AGREE TO SOM ETHING THAT IS NOT ALWA YS STATUTORILY AUTHORIZED AND THAT IS WHAT KING STAPDZ FOR , IS I CAN NEGO TIATE KING STANDS FOR, IS I CAN NEGOTIATE THAT TO GET A LESSER SENTENCE ,

SO EVEN IF YOU WERE TO SAY THAT HE FAILED TO FOLLOW THE STATUTORY AUTHORI TY, UNDER KING YOU CAN DO THAT TO GE T THE 7 A- YEAR SENTENCE , BECAUSE THE 75-YEAR SENTENCE, BECAUSE TRIL THE STATE WANTED THE THREE LIFE SENTENCES AND THE ADDITIONAL 145 YEAR S, AND MR . WRIGHT NEGOTIATED IN A QUID PRO Q UO , TO GET THE 75 -YEAR SENTENCE , AND WENT AHEAD AND SAID HE IS EITHER CONCEDING T HAT THERE WERE REASONS, AND IN THIS CASE THERE WERE FACTS TO SUPPORT. THAT HE DID USE A GUN AND HE DID QUALIFY THAT HE HAD THE PROPER OF FICES TO QUALIFY FOR RETENTION , BUT UNDER T HESTATUTE TO RUN IT , THE SENTENCES CONCURRENTLY , THATWOULD BE MORE THAN JUST A PROCEDURAL RULE. THAT IS MORE OF A STATUTORY MANDATE . IT IS LIKE TRYING TO RETAIN JURISDICTION OVER A L IFE SENTENCE. YOU CAN'T DO THAT. BECAUSE THAT IS NOT A DEFINITIVE NUM BER OF YEARS , AND CASE LAW HAS SAID THAT , UNDER THE SENTENCING SC HEME , YOU COULDN'T HAVE RETAINED JURISDICTION IN THAT INSTANCE, EITHER . IF THE TRIAL COURT H ADWANTED TO RETAIN JURISDICTION, EVEN LON GER , HE COULD HAVE RUN THEM CONSECUTIVE AND GONE FOR ONE-THIRD OF THE T OTALSENTENCE, BUT , IN THIS CASE, THIS WAS A QUID PRO QUO NEGOTIATED SENTENCE , AND KING DOES SAY THAT THAT DOES NOT, EVEN WHERE THE TRIAL COURT COULD NOT HAVE IMP OSED IT. IF IT DOES NOT EXCE ED THE STATUTORY MAXIMUM AND IT IS THE RESULT OF A NEGOT IATED PLEA BARGAIN , THAT THIS WOULD BE NOT AN ILLEGAL SENTENCE, FOR PUR POSES OF 3.800-A.

SO IT WAS GOOD FOR US EVERY COUPLE OF YEARS TO HAVE ONE OF THESE. [LAUGHTER]

YES, AND

NO MORE FREQUENTLY , EITHER.

I WAS ABOUT TO SAY , U NDERTHE GUIDELINES , I T DOESN'T APPLY, I BE LIEVE , SO MR . WRIGHT WILL BE ONE OF, YOU HAVE TO HAVE HAD , BEEN SENTENCED TO MORE THAN 75 YEARS.

WE UNDERSTAND. I HAVE SEEN ONE OF THESE CASES. I MEAN ONE WHERE WE STRUGGLE WITH THE DEFINI TION OF WHAT IS AN ILLEGAL SENTENCE , UNDER

SECOND DIS TRICT 'S REASONING DOES WORK , UNDER THE DEFINITION, BUT BECAUSE OF THE NEGOTI ATED PLEA BARGAIN, WHICH I DON'T BELIEVE WAS ADDRESSED SUFFICIENTLY, D URING THE BRIEFING OF THIS, AND SINCE THIS COURT DID RES ERVE THE JURISDICTIONAL ISSUE, I WANTED TO MAKE SURE W E BROUGHT THAT BEFORE THE COURT.

CHIEF JUSTICE: THANK YOU VERY MUCH.REBUTTAL.

THANK YOU. VERY BRIEFLY. I DO NOT BELIEVE THAT THERE WAS CASE LAW NOR DO IBELIEVE THAT THERE HAS SINCE BEEN CASE LAW , REGARDINGWHETHER THIS CAN BE WAIVED OR HOW THAT M IGHT BE ACCOMPLISHED. NOTHING IN THIS RECORD SUGGESTS THAT THERE WAS A NYKNOWLEDGE ON MR . WRIGHT'S PART THAT HE WAS WAIVING ANYTHING OF THE SORT.

HOW ABOUT THIS ISSUE O F WHETHER OR NOT THE RETENTION HAS TO BE I N WRITING , AND , OR, IN OTHER WOR DS , IS THERE CASE LAW THAT SAYS I T DOESN'T HAVE TO BE ON THE WRITTEN SENTENCE. IT CAN BE STATED ON TO THE RECORD, AND IT IS JUST AS EFFECTIVE?

I BELI EVE THERE IS , YOUR HONOR.THERE IS NO REQUIREMENT IN THE STATUTE THAT IT B E WRITTEN.

SO HOW DO WE KNOW, THEN, FROM THE FACE OF THIS RECORD, THAT THERE HAS BEEN A VIOLATION OF THE STATUTE?

TO OUR KNOWLEDGE, WHAT IS IN THIS RECORD IS ALL THAT THERE IS. IF THE STATE HAD WISHED TO , AT SOME PO INT SUPPLEMENT THE RECORD, THEY ARE MORE T HAN WILLING TO, AND IF WE

ARE WRONG , THAT THIS WAS ACTUALLY ADDR ESSED IN FINDINGS MADE , THEN WE WOULD BE INCORRECT IN OUR POSITION HERE.

ORDINARILY, WHEN WE TALK ABOUT SOMETHING BEING PATENT ON THE FACE OF THE RECORD, WE ARE TALKING AB OUT, REALLY, WHERE IT IS UNDISPUTED THAT EVERYTHING THAT WOULD BE NECESSARY, YOU KNOW , WAS THERE TO SHOW US THIS , SO THERE IS NO TRANSCRIPT OF THE SENT ING HEA RING HERE OR THERE IS?

TO OF THE SENTENCING HEARING HERE OR THERE IS?

TO MY KNOWL EDGE , WHAT TRANSCRIPT THERE IS, HAS BEEN INCLUDED. I DON'T KNOW THAT THERE IS ANOTHER. IF WE COULD EMPHASIZE ONE LAST POINT TO YOUR HONOR AND TO THE COURT, IF THIS SC HEME IS UNCONSTITUTIONAL, IF T HERULE THE COURT APPL IED I N THE WORKERS COMPENSATION CASE RECENTLY DE CIDED , IS THE LAW OF FLORIDA , AND IF GORDON INCORREC TLY DETERMINED THE LEGIS LATURE HAS THE RIGHT TO DELE GATE OR TO ASSIGN THE PAROLE DECISION TO AN EXECUTIVE OR TO THE JUD ICIARY , THEN ALL OF THE ARGUME NTS THAT YOU HAVE HE ARD TO DAY , SI MPLY SLIP BY. THIS REMA INS UNCONSTITUTIONAL. IT CAN'T BE WAIVED, IN ESSENCE, AND THIS IS, FOR THAT REASON, AN ILL EGALSENTENCE, AND WE WOULD ENCOURAGE THE COURT TO REVISIT GORD ON. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH.I WANTED TO THANK BOTH SIDES , AND IN PARTICULAR , I WANT TO THANK THE LAW F IRM OF CARLTON FIELDS AND TO THANK MR. CA ROL AND MR . CONGRESSLY ARROW FOR D O ANE - - AND MR . CONIGLIARO FOR DON ATING THEIR TIME PRO BO NO . WE KNOW THAT YOU HAVE DONE THIS BEFORE, AND IT IS OF GREAT USE TO THE COURT TO HAVE LAW FIRMS SUCH AS YOU RS, WILLING TO DEDI CATE THEIR TIME AND LEGAL TA LENT , TO PRO BONO ACTIVITIES. THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS UNTIL TOMORROW MORNING AT NINE O'CLOCK.

MARSHAL: PLEASE RISE.