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David A. Gore v. State of Florida

SC04-1458 | SC05-733

NEXT CASEGOER

VERSUS STATE OF FLORIDAA

MR. GRAHAM.

>> THANK YOU YOUR HONOR PLAY
IT HE MAY IT PLEASE THE
COURT.

>> THANK YOU.

>> MY NAME ANDREW GRAHAM
PRIVATE ATTORNEY REGISTERED
ATTORNEY PRACTICES\$!!!!ING MELBOURNE
FLORIDA APOINTED IN 1999 TO
REPRESENT MR. GORE, THIS
PROCEEDING TODAY, IS AN
APPEAL FROM THE DENIAL OF
3.850 MOTION AFTER HEARING,
BEFORE THE TRIAL JUDGE IN ST.
LUCIE COUNTY.

>> DID OF YOU AN ENORMOUS
NUMBER OF ISSUES WOULD YOU --
>> ACTUALLY NOT ALL THAT MANY
ISSUES BECAUSE -- ONES I READ
EVERY WEEK IN THE LAW WEEKLY
SOME OF THE CASES, IF YOU ARE
GOING TO ADDRESS SOME OF THEM
PLEASE DIRECT OUR ATTENTION
SO WE KNOW EXACTLY WHERE YOU
ARE GOING.

>> YES I'D LIKE TO ADDRESS
THE ISSUE OF MATTER OF FACT
-- OF COUNSEL AS IT PERTAINS
TO THE JUMIO VIOLATION AND
GUZMAN VIOLATION I HAVE
ALLEGED IN THE BRIEFS.
IN THIS PARTICULAR CASE, IT
WAS -- WELL SHGS!!\$\$!!!!!!!, WE START FROM
THE BEGINNING.

THE JURY IN THIS CASE DID NOT
HAVE ACCURATE INFORMATION IN
ORDER TO FUNCTION AS A JURY
IS REQUIRED TO FUNCTION UNDER
6TH AMENDMENT AND INTEND ED
TO FUNCTION MAKING A
SENTENCING RECOMMENDATION
BECAUSE IT DID NOT KNOW OF
ALL OF THE MANDATORY TIME

THAT MR. GORE WOULD HAVE TO SERVE THEREFORE DID NOT KNOW OR UNDERSTAND HOW MUCH -- WHAT A LIFE RECOMMENDATION REALLY MEANT.

>> ESSENTIALLY YOU ARE SAYING IS THAT -- PAROLE WOULD NOT HAVE BEEN AVAILABLE TO HIM CONSECUTIVE SENTENCE 50G YEARS RATHER THAN 25, LET'S ASK -- WE NEED PARTICULAR TO PROBABLY ANSWER A PRELIMINARY QUESTION, AND THAT IS WHY DID THE DIRECT APPEAL ON HOW THAT WAS HANDLE INITIALLY NOT REALLY DISPOSE OF THE GUTS OF THIS ARGUMENT WITH THE COURT FINDING NO ERROR THERE?

>> THERE ARE TWO FACTS. THAT HAVE BEEN DEVELOPED, SINCE THE APPEAL WAS DECIDED. THIS COURT, IN THE APPEAL, POINTED OUT THAT THE LAWYER FOR MR. GOER DID NOT OBJECT, TO THE TESTIMONY OF MR. STONE ON CROSS-EXAMINATION MR. STONE WAS THE FORM ER!!\$\$!!!!ER STATE ATTORNEY, WHO PROSECUTED MR.GOER IN THE ORIGINAL TRIAL AND WATERFIELD AS CO-DEFENDANT.

>> DID COURTREST DECISION ON THE FAILURE TO OBJECT.

>> DID NOT REST ITS DECISION NEVERTHELESS POINTED OUT THAT WAS WAIVE SNOOER I UNDERSTAND.

>> AS A RESULT OF THE ALLEGATION 3S #.85 # 0 MOTION HEARING HELD IN INEFFECTIVE ASNOOIVENTS DID THE COURT ADDRESS SUBSTANCE NOTWITHSTANDING FAILURE TO OBJECT.

>> YES, THE COURT DID NOT HAVE THE FACT THAT INDEED, MR. STONE HAD NOT EXCUSE ME, THE ATTORNEY REPRESENTING MR. GORE HAD NOT INVESTIGATED ANY -- ANYTHING THAT MR. STONE WAS LIABLE TO TESTIFY TO EVEN THOUGH HE CALLED HIM AS A WITNESS IN THE PROCEEDING. IN OTHER WORDS HE DIDN'T

DEPOSE HIM IDENTITY TALK TO HIM.

AND THE STATE ATTORNEY WHO WAS PROSECUTING THE CASE ON THE RETRIAL ON THE STENGs RETRIAL, HAD TALKED TO MR. STONE, AND THEY HAD DISCUSSED HIS TESTIMONY, IN REGARD TO WHAT HE WOULD SAY AS TO THE POSSIBILITIES OF PAROLE.

>> HOW ABOUT, QUESTION IF THE COURT HELD THAT THAT WAS NOT A PROBLEM, NOT AN ERRONEOUS CIRCUMSTANCE, ON THE SUBSTANCE AND HOW CAN YOU DEMONSTRATE PREJUDICE, WITH REGARD TO THE INEFFECTIVE ASSISTANCE ON THAT ONE POINT.

>> BECAUSE THE JUMIO GUZMAN REQUIRE THREE THINGS FALSE TESTIMONY KNOWLEDGE OF THE FALSE TESTIMONY, AND MATERIALITY, IN THIS CASE, THE FALSE TESTIMONY WAS TESTIMONY BY THE STATE ATTORNEY ON CROSS-EXAMINATION THAT MR. GORE COULD BE RELEASED AT ANY TIME.

THE KNOWLEDGE OF THAT WAS THAT HE AND THE PROSECUTOR HAD DISCUSSED THAT AHEAD OF TIME, AMONGST THEMSELVES, AND THEY KNEW THAT THAT WAS GOING TO HAPPEN NCHLT ADDITION THERE WAS AN ATTORNEY FROM PROBATION AND PAROLE SITTING AT COUNSEL TABLE, WHEN THAT TESTIMONY WAS MADE.

AND THAT PERSONAL CERTAINLY HAVE HAD A DUTY UNDER -- TO BRING IT TO THE COURT ATTENTION THAT THAT TESTIMONY WAS FALSE NOW THOSE FACTS WERE NOT DEVELOPED TALKED ABOUT OR KNOWN OF DURING THE DIRECT APPEAL AND UND ER!!\$\$!!!!ER MA HA SAYS YOU DON'T RELITIGATE ISSUES SAYS WHEN DISPUTED FACTS OF YOU TO DEVELOP THOSE FACTS OF DUTY TO DO THAT.

>> DO WE HAVE YOU THINK WE HAVE SATISFIED THE J\$\$!! KNOWLEDGEABLE PRESENTATION OF

FALSE EVIDENCE.

>> YES, AND YOUR BASIS FOR THAT.

>> YES SHGS!!\$\$!!!!!!!, MR. STONE'S TESTIFIED IN RESPONSE TO A QUESTION THAT THIS COURT FOUNDED -- OBJECTED TO -- THAT MR. GORE COULD BE RELEASED AT ANY TIME IF THERE WAS LIFE RECOMMENDATION.

>> AND YOUR POSITION IS THAT THE STATE INCORRECT WHEN IT SAYS THAT WAS REALLY JUST REALLY DIRECTED TO THOSE TWO NONCAPITAL CRIMES, REALLY WAS NOT IF YOU LOOK AT THE TRANSCRIPT RULING IN REFERENCE TO EVERYTHING THAT. NOT A FAIR --

>> MR. CRIMINAL LAW CLASS THAT WOULD BE ABSOLUTE CORRECT ANSWER IN OTHER WORDS IN THE REAL WORLD THAT JURY THOUGHT THAT WHEN THEY SAID THAT THEY RELEASED AT ANY TIME THAT IS WHAT THEY THOUGHT THEY DID NOT UNDERSTAND IT WAS CLEAR BECAUSE THEY ASKED QUESTIONS, THERE WERE TWO JURY QUESTIONS WHICH IS ANSWERING THE FURTHER ANSWER TO YOUR EARLIER QUESTION, THAT THE JURY WANTED TO KNOW HOW LONG THIS GUY WAS GOING TO HAVE STAY IN JAIL IF THEY JADE JURY RECOMMENDATION OF LIFE THEY ASKED WHEN -- CRED FOR TIME SERVED YES, OF COURSE CREDIT FOR TIME SERVED ABSOLUTELY CORRECT STATEMENT OF THE LAW TWO WHEN WOULD HE GET OUT ON TWO COUNTS THE ANSWER THERE IS CABINET GET OUT ON THOSE TWO COUNTS UNTIL HE SERVES HIS ENTIRE MANDATORY 50-YEAR SENTENCE, SO THAT WAS A WRONG ANSWER TO RELY ON THE TESTIMONY PROVIDED BY MR. STONE, AND THAT DECEIVED OR INADVERTENTLY MAYBE, CONFUSED THE JURY HERE, AND SO JURY REALLY DIDN'T UNDERSTAND, NOW

THIS JURY.

>> ISN'T THAT FALSE STATEMENT OF LAW MODERN A FALSE STATE OF FACT.

>> OPINION CLEARLY CLEARLY PIN THERE IS NO QUESTION I THINK OBJECTIONABLE ON INDICATION OF BEING PIN.

>> JULIO ISN'T THAT DESIGN WHERE YOU PRESENT FALSE TESTIMONY AS TO FACTS NOT -- FALLS PIN ERRONEOUS PIN.

>> UNDER OE!!\$\$!-- PHENOMENON, TWO SOUTH CAROLINA CASES, SHAFER, SUPREME COURT OF THE UNITED STATES SAYS A JURY IS ENTITLED TO KNOW WITH THE THE EFFECT OF LIFE RECOMMENDATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! RECOMMENDATION --

>> JULIO VIOLATION, ON THIS SO.

>> YES I AM.

>> AND ISN'T JULIO DESIGNED TO PROHIBIT THE STATE FROM PRESENTING TESTIMONY ABOUT FALSE FACTS NOT FROM PRESENTING ERRONEOUS OPINION OF WITNESS.

>> JUDGE CONSIDERED IT FACT, EVIDENCE, HE SAID IT IS IN EVIDENCE, I DON'T KNOW WHETHER CORRECT OR NOT CORRECT BUT IT IS IN EVIDENCE AND EP ASKED THE JURY TO RELY ON THE EVIDENCE, SO THE JUDGE VIEWED IT AS EVIDENCE THE JURY VIEWED IT AS EVIDENCE, I DON'T DISAGREE WITH YOUR PREMISE, IN FACT IN JULIO ITSELF IT WAS NOT -- TESTIMONY THAT WAS IT WAS FALSE TESTIMONY BUT IT WAS NOT LIKE FRAUDULENT TESTIMONY OR PERJURED TESTIMONY IT WAS ONE STATE ATTORNEY FORGETTING TO TELL ANOTHER STATE ATTORNEY U.S. ATTORNEYS, THAT THEY OFFERED A DEAL TO A WILTES IN SO IT WAS MORE A NEGLIGENT ISSUE AS OPPOSED TO PURPOSELY, YOU KNOW RENDERING FALLS TESTIMONY PURCHASEJERED TESTIMONY NOT SAYING PERJURED TESTIMONY SAYING CLEARLY A

FALSE STATEMENT IT IS PIN
RENDERED BY PERSON WHO WAS A
STATE ATTORNEY THAT THE JUDGE
AND THE JURY BOTH VIEWED AS
EVIDENCE.

NOW SHGS!!\$\$!!!!!!!!!!!!!!

NOW, I'M NOT -- I -- I DON'T
HAVE AN ANSWER DON'T KNOW
WHETHER I ANSWERED YOUR
QUESTION OR NOT.

>> THANK YOU TO THE BEST OF
YOUR ABILITY.

>> I'M TRYING TO.

IT WAS CLEAR THAT THE STATE
ATTORNEY IN THIS CASE, THE
FEATURE OF THE CASE, FROM
BEFORE VOIR DIRE STARTING
WITH MOTION N\$\$!!IN LIMINE, VOIR
DIRE SPEECH BY STATE ATTORNEY
TO VIN IRE AS WELL AS ALL THE
QUESTIONS THAT PEOPLE IN
FRONT OF EACH OTHER CLEAR HIS
PLAN TO MAKE SURE THAT JURY
UNDERSTOOD THAT IF THEY MADE
A LIFE RECOMMENDATION
MR. GORE COULD BE RELEASED IN
25 YEARS.

OR IN ABOUT TEN YEARS, FROM
THE RETRIAL, THE DATE THIS
WAS GOING ON THIS HAPPENED IN
1992, AND, THE CRIME OCCURRED
IN 1983.

SO THAT WILL BECAME A FEATURE
OF THE CASE, RIGHT FROM THE
BEGINNING AND ALL THE WAY
THROUGH.

AT THE FINAL ARGUMENT, STATE
ATTORNEY STOOD UP TOLD THE
JURY THAT THE DEFENSE LAWYER
WILL ARGUE TO YOU, THAT HE IS
GOING TO DIE IN PRISON HE
STILL A THERE FOREVER HE HAS
NO RIGHT TO MAKE THAT
ARGUMENT, OF COURSE HE DOES
HAVE THE RIGHT TO MAKE THAT
ARGUMENT -- NEVERTHELESS WE
HE REEMPHASIZING THE BUSINESS
THE ONLY HAD 25 HE ONLY HAD
TO SERVE 25 YEARS IF THEY
MADE A LIFE RECOMMENDATION.
THERE WAS JUROR ON THERE, WHO!!\$\$!!!!
WHOCOURT POINTED OUT -- IN
GORE CASE, WHO HEARD THIS
CASE TO THE END WHO HAD BEEN

ATTACKED AND RAPED BY A PRISONER ON EARLY RELEASE SIX YEARS OF A 20 YEAR CERTIFY TENNIS HEARD THIS CASE, SHE WAS ONE OF THE JUROR, OBVIOUSLY PARTICIPATED WHEN JUROR CANY CAME BACK WITH QUESTIONS HOW LONG WOULD HE HAVE TO SERVE STILL WANTED TO KNOW THIS JOOIR HAD PROBLEMS, THE JUDGE BELOW FOUND AS MITIGATING CIRCUMSTANCE THAT MR. GORE WAS MODEL PRISONER IN FACT HAS BEEN THERE 23 # YEARS NOW WITHOUT A DR. AND, HE HAD BEEN AT THE TIME. HE FUNCTIONING WELL IN PRISON ENVIRONMENT I THINK, THE JURY CONSIDERED THAT THEY WANTED TO KNOW WHAT WAS GOING TO HAPPEN HERE, AND OUR MY POINT IS IT WAS ERROR NOT TO TELL THEM THAT HE HAD TO SERVE 50 YEARS BEFORE HE COULD BE CONSIDERED FOR PAROLE. THAT IS A CONSTITUTIONAL ARGUMENT ISSUE AND THAT IN FACT, THE LAWYER SHOULD HAVE AT LEAST INTERVIEWED HIS WITNESS, TRIED TO DETERMINE WHAT HE IS GOING TO SAY TO BOTH JUROR.

>> I INSTRUCTION SAID HE WOULD HAVE TO SERVE 50 YEARS DIDN'T DO THAT THIS INSTRUCTION SAID SERVE ALL THIS HIS LIFE IF PRISONS THAT IS FALSE STATEMENT PROPER FOR THEED JUDGE TO DENY THAT I DON'T I WILL CONCEDE THAT, UP FRONT.

IN FACT, HIS MOTION IN LIMINE THE SAME THING PROPER FOR THE JUDGE TO DENY THAT HE SHOULD HAVE BEEN ASKING FOR INSTRUCTION THAT SAID HE WOULD HAVE TO SERVE 50 YEARS, HE COULD HAVE JUST AS EASILY, GOTTEN TO CERTIFIED COP I'VE JUDGMENT SENTENCE WATERFIELD HAD PUBLISHED TO THE JURY WHO -- TO SHOW HE ONLY GOT MAUN SLAUGHTER GOT LESSER SENTENCE DIDN'T NEED MR. STONE TO DO

THAT.

AND, HIS FAILURE, ALL THOSE
RECORD TO MY PIN POIN OPINION
AMOUNTS TO INEFFECTIVE
ASSISTANCE OF COUNSEL, THAT
IS BASICALLY MY ARGUE EXSOE
ARGUMENT EXCEPT I WOULD ALSO
LIKE TO POINT OUT EVEN THOUGH
HE ESPECIALLY AFTER JUSTICE
CANTERO'S EXCELLENT
EXPOSITION ON THE
NONRETROACTIVITY OF RING,
THAT NEVERTHELESS, EVEN UNDER
LOCKIT IT IS A POWERFUL
MITIGATOR RECOGNIZED
THROUGHOUT THE UNITED STATES
CASES IN STATES THAT HAVE
DEATH SENTENCE, THAT LIFE
WITHOUT PAROLE, OR LONG
MANDATORY PRISON TIMES IS A
POWERFUL MITIGATOR, IN THIS
CASE, EVEN UNDER LOCKETT OF
COURSE PREDATES THAT IS CAME
BACK FIRST TIME FOR
RESENTENCING UNDER LOCKETT,
THERE IS A PRECLUSIONER HAVE
FOR THE JURY TO HEAR THAT
MITIGATOR, THEY NEVER HEARD
THAT LITIGATOR, WHY?
BECAUSE THE ALL OF THIS.

>> COMBINATION OF HE VEJTS
BETWEEN STATE ATTORNEY OF
THEING LAWYER, MAKE ME -- THE
MISTAKES HE DID IN THAT
REGARD,!!\$\$!!!!!!!!!!!!!!
REGARD,AND THE JURY CANNOT
RENDER, CAN'T DO ITS JOB
CAN'T FUNCTION UNDER 6TH
AMENDMENT UNLESS IT
UNDERSTANDS WITH THE
RECOMMENDATION MEANS
RECOMMENDATION OF LIFE AND IN
THIS CASE UNDER OTHER OLD
STATUTE 25 YEARS BEFORE BEING
CONSIDERED FOR PAROLE,
BECAUSE OF THE OTHER 25 YEAR
MANDATORY SENTENCE, CONSVIE
TO THIS ONE, HAD TO SERVE THE
50 YEARS BEFORE IT COULD
RELEASED ON ANYTHING
REGARDLESS OF WHAT MR. STONE
TESTIFIED TO MY ANSWER TO
YOUR QUESTION CHIEF JUSTICE
THAT UNDER IN CONTEXT, HIS

ANSWER WAS FALSE.

--

>> WANT TO TALK ABOUT ANY OTHER POINTS YOU ARE MOVING NOT INTO YOUR REBUTTAL BUT -- TALK ABOUT ANY OF THE OTHER POINTS?

>> I THINK THAT THE ONLY OTHER POINT THAT I WOULD LIKE TO ADDRESS IS THE EX PARTE ISSUE, THERE WAS AFFIDAVIT SIGNED BY THEE\$\$\$!! DEFENSE LAWYER, MR. UDECHLT!\$\$\$!!!!!!LL ACCOMPANIED THE INITIAL MOTION 3.850 MOTION THE AFFIDAVIT SAID THAT HE DID NOT RECEIVE DID NOT RECALL RECEIVING THE COPY -- >> THAT IS A BIG DIFFERENCE ISN'T IT.

>> YES YES, I WANT TO BE ACCURATE HE DID NOT RECALL AND.

>> HE FILE DIDN'T RAUL RECEIVING COPY.

>> DID THE STATE TESTIFY AND THE EVIDENCE IN -- INDICATE THAT A COPY WAS SENT?

>> THERE WAS A THE ONLY -- NO.

THE JUDGE FOUND IN HIS ORDER!\$\$\$!!!!!!! ORDER -- THE MOTION DENIED HUFF ORDER DENIED HEARING ON THAT POINT, FOUND THAT HE CAREFULLY CONSIDERED BOTH SIDES THAT THE DOCUMENT HAD A CCAT THE BOTTOM SHOWING IT WILL HAD BEEN SENT.

>> UNDER OUR LAW, ISN'T IT A VALID PRINCE\$\$\$!!IPLE OF FLORIDA LAW THAT -- ONE THE ABSENCE TESTIMONY AS TO -- I THE ABSENCE OF SOMETHING DOES NOT OVERKOEM!\$\$\$!!!!!!! OVERCOMEPROOF OR EVIDENCE OF THE AFFIRMATIVE OF THAT FOR EXAMPLE, A TRAIN CROSSING IS, DIDN'T HEAR A WHISTLE, DOES NOT OVERCOME THE TESTIMONY OF AN INDIVIDUAL SAYING I DID HEAR THAT WHISTLE BLOW. BECAUSE IT IS THE NEGATIVE OR ABSENCE OF --

>> NO CERTIFICATE OF SERVICE.

>> THIS DOCUMENT WAS.

>> A ALERT WASN'T IT.
>> A ALERT WITH A MEMORANDUM ATTACHED.
AND MEMORANDUM AT THE BOTTOM OF THE A LETTER CCTO COUNSEL BUT THERE USE NO CERTIFICATE OF SERVICE.
THE DEFENSE ATTORNEY SAID HE DID NOT KNOW THAT HE HAD THE RIGHT TO SUBMIT HIS OWN MEMORANDUM NO MEMORANDUM NO DEFENSE MEMORANDUM WAS SUBMITTED THEREFORE WE HAVE CERTIFICATE OF SERVICE IT IS A PLEADING, EVEN IF IT IS A ALERT, IT IS A PLEADING.
AND DEATH CASES I THINK ULTRA SENSITIVE TO THIS SHOULD HAVE BEEN CERTIFICATE OF SERVICE ON THERE, THERE WAS NOT TLEERNGS WE HAVE CERTIFICATE OF SERVICE IS TO PRECISELY -- DO AWAY WITH THE PROBLEM YOU DESCRIBED WITH TRAIN WHISTLE CERTIFICATE OF SERVICE IS PRESUMPTION THAT IS TRUE AND CORRECT THE C.C. IS NOT SEVERITY SERVICE PARTICULAR IS MY POINT.
AND THE OTHER THING WAS THAT OF THE THREE MOTION S THAT!!\$\$!!!!!!!!!!!!S THAT WERE THREE THINGS BROUGHT UP IN THE FIRST EX PARTE MOTION, TWO WERE SIGNIFICANT EVEN THOUGH ONE CLEARLY ADMINISTRATIVE THE MOTION TO MOVING TO BACK TO THE JAIL, WAS AD ADMINISTRATIVE MATTER BUT THE POINT OF COUNSEL WHEN THEY APPOINTED PUBLIC DEFENDER PUBLIC DEFENDER HAD A CONFLICT REPRESENTED THE CODEFENDANT EARLIER DAYS -- CASE APPOINTED PUBLIC DEFENDER EX PARTE THAT ISSUE COULD HAVE BEEN RESL OFSHG RESOLVED RIGHT THERE IF NOT EX PARTE SENDING THE CASE FOR PRETRIAL CONFERENCE IN SIX DAYS, FROM THAT EX PARTE HEARING, A CASE THAT ULTIMATELY WENT TO TRIAL -->> WASN'T EX PARTE HEARING IF SUPPOSEDLY A TRANSMISSION --

OF AGGRAVATING MITIGATING FACTORS, AND THAN HE REQUEST FOR WAS THERE NOT, A MOTION IN FEBRUARY, THAT DEALT WITH APPOINTMENT OF COUNSEL THE SETTING OF THE HEARING, AND TRANSPORTATION OF THE DEFENDANT.

>> CORRECT.

>> YES.

>> OKAY.

>> AND THEN AND THEN THERE IS AN ORDER ENTERED SETTING A PRETRIAL CONFERENCE IN SIX DAYS, I MAINTAINED THAT SETTING OF THE PRETRIAL CONFERENCE AND APPOINTMENT OF COUNSEL TURNED OUT TO HAVE TO BE UNDONE BECAUSE THERE WAS CONFLICT, SHOULD NOT HAVE BEEN DONE IN ANY KIND OF EX PARTE FASHION, SO YOU KNOW, I ADMIT THAT IS NOT -- CONSTITUTIONAL POINT NEVERTHELESS PART OF THE WHOLE THE WHOLE ISSUE HERE.

>> THANK YOU, RESERVE MY TIME FOR REBUTTAL.

>> OKAY.

MR. CAMPBELL.

..

.

>> GOOD MORNINGLESSLY CAMPBELL MATE PLEASE THE COURTLESSLY CAMPBELL ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE, EXCUSE ME.

WITH REGARD TO ISSUES ONE AND I GUESS IT IS FIVE THE INEFFECTIVENESS OF COUNSEL FOR NOT HAVING DEPOSED MR. STONE, IT APPEARS FROM THIS ARGUMENT THAT WHAT COUNSEL IS ASKING FOR IS FOR THE TRIAL COURT TO HAVE MISINFORMED THE JURY, AND TOLD THE JURY THAT MR. GORE WOULD NOT HAVE BEEN ELIGIBLE FOR PAROLE.

AT THE MIN, YOU MIGHT HAVE BEEN ELIGIBLE FOR PAROLE AT 50 YEARS.

MIGHT I POINT OUT THAT THE DEFENSE IS THE ONE THAT

REFUSED TO ALLOW THE STATE TO
PUT ON ANY EVIDENCE ABOUT
MR. WATERFIELD'S TRIAL, AND
EXCUSE ME NOT MR. !!\$\$!!!!!!
MR. WATERFIELD'S TRIAL BUT
THE ADDITIONAL FIVE MURDERS
TO WHICH MR. GORE PLED.
THAT WOULD HAVE ALLOWED THE
DEFENSE TO THEN PLEAD THAT
THERE WOULD BE A MINIMUM OF
-- 50 YEARS IN PRISON.
WE ARE USING 50 YEARS HERE,
HOWEVER THAT 50 YEARS IS
QUITE CONFUSING.
IT IS FOR FIVE OTHER MURDERS
THAT CAME AFTERWARDS THERE
WERE PLED AFTERWARDS.
AND THAT'S WHERE THAT 50 #
YEARS COME IN.
-- COMES NCHLT WHAT THE.
COURT HAD BEFORE IT WERE THE
CONVICTIONS OF MR. GORE FOR
MURDER, AND FOR THE SEXUAL
BATTERIES AND KIDNAPPING IN
THAT PARTICULAR CASE.
AND IF THIS COURT READS THE
TRANSCRIPT IT IS CLEAR THAT
WHAT MR. STONE WAS TALKING
ABOUT WERE THE PAROLE
POSSIBILITIES FOR THE
KIDNAPPING AND SEXUAL BATTERY
WHICH HAD NO MINIMUM
MANDATORY AS THIS COURT FOUND
ON DIRECT APPEAL.
THIS COURT ALSO FOUND ON
DIRECT APPEAL, THAT THERE WAS
ABSOLUTELY NOTHING WRONG WITH
TELLING THE JURY AND IT WAS
PROPER TO TELL THE JURY THAT
THERE WAS A POSSIBILITY OF
PAROLE AFTER 25 YEARS BECAUSE
THAT IS THE LAW.
WHETHER MR. STONE WAS DEPOSED
OR NOT IS REALLY NOT THE
QUESTION.
IT IS CLEAR THAT THE INTENT
OF CALLING HIM BY THE DEFENSE
WAS TO SHOW THAT THERE WERE
OTHER CONVICTIONS AND THAT IT
ALLOWED THE DEFENSE TO THEN
ARGUE THAT THERE IS GOING TO
BE LONG PERIOD OF TIME IN
JAIL.
AND ALSO THAT MR. WATERFIELD

WAS EQUALLY CULPABLE PER
MR. STONE'S OPENING STATEMENT
OF MR. WATERFIELD'S TRIAL
THAT THERE WOULD BE DISPARATE
TREATMENT THIS COURT DEALT
WITH BOTH OF THOSE ISSUES ON
DIRECT APPEAL AND TO NOW
SUGGEST THAT THERE IS ANY
POSSIBILITY OF PREJUDICE
UNDER AN INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM
SHOULDN'T BE ALLOWED TO
STAND.

ANY OTHER QUESTIONS ANY
QUESTIONS ON THAT?

>> I THINK WITH THE -- I SEE
HE IS ASSERTING THIS ARGUMENT
TWO WAYS ONE INEFFECTIVE
ASSISTANCE ARGUMENT THE OTHER
IS UNDER!!\$\$!!!!ER A GIG LEO KIND OF
ERROR APPROACHING IT TWO
DIFFERENT WAYS, SO ARE YOU
ASSERT!!\$\$!!!!!!!!!!

ASSERTING THAT HE IS TAKING
THE POSITION THAT AS A MATTER
OF LAW THE TIME THIS TRIAL
WAS GOING ON THAT THE PAROLE
WAS NOT AFTER 25 YEARS WAS
AFTER 50 YEARS AND THE
QUESTION IS DID THIS COURT
ALREADY LOOK AMOUNT THAT
ARGUMENT BEFORE AND HAS IT
ALREADY CONSIDERED IT I THINK
REALLY IS --

>> ABSOLUTELY.

THERE'S NO QUESTION.

BUT POINTS ONE AND TWO WERE
RAISED ON DIRECT APPEAL DEALT
WITH ON DIRECT APPEAL.

AND THE INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM
FALLS RIGHT UNDER THAT,
BECAUSE THIS COURT HAS
ALREADY FOUND THAT THE JURY
WAS INSTRUCTED PROPERLY AND
THAT THERE WAS NO ERROR.
AND THEREFORE, THERE COULD BE
NO PREJUDICE AND THERE WILL
CERTAINLY ISN'T ANY
INEFFECTIVENESS THERE IS NO
DEFICIENCY IN WHAT MR. !!\$\$!!!!
MR. NICKERSON DID WITH REGARD
TO MR. SNOWE.

>> WHAT'S THE STORY ABOUT IT

APPEARS THAT THE ATTORNEY
THAT WAS GIVEN PRIMARY
RESPONSIBILITY THREE YEARS
OUT OF LAW SCHOOL.
THREE YEAR LAWYER.

>> MR. YOU WOULD SNOOEL
MR. NICKERSON.

>>IES WHAT'S -- THAT IS IS A
LOOK THROUGH THIS TROUBLED ME
SOME THAT EVERYONE DEFERRED
TO A LAWYER APPARENTLY NEVER
HAD DONE ONE OF THESE ALL OF
THE SUDDEN THE PERSON IS NOW
DISAPPEAREDOR IS -- WHAT'S
THE STATUS OF THE RECORD WITH
REGARD TO THIS OTHER LAWYER
HAVE A WAS REALLY THE LAWYER
IN THE CASE APPARENTLY?

>> FROM THE EVIDENTIARY
HEARING DISCUSSION THAT
MR. UDALL HAD ON THIS
SUBJECT, HE UNDERSTOOD
MR. NICKERSON WAS
WELL-RESPECTED HAD DONE MANY,
MANY OF THESE CASES HAD DONE
A LOT OF THE POSTCONVICTION
AT THE TIME.

THAT HE WAS SOMEONE WHO IS
VERY BRIGHT AND UNDERSTOOD
CAN THE SYSTEM HE KNEW WITH
THE WAS GOING ON, IN CAPITAL
LITIGATION.

>> THIS DISP PROVEN DURING
THE HEARING BELOW?

>> NO.

THERE WAS NO MR. NICKERSON
WASN'T FOUND -- I MEAN --

>> DO WE KNOW WHY?

>> NO.

>> ANY DISCUSSION IN THE
RECORD ANYTHING IN THE RECORD
ABOUT THAT.

>> THE TRIAL COURT ACTUALLY
SAYS THAT IT IS JUST OE!!\$\$!-- THAT
THERE WAS REALLY NOTHING
THERE WAS NO EVIDENCE
PRESENTED ON THAT PARTICULAR
MATTER, AND THAT -- JUST THAT
THEY COULDN'T FIND HIM.

>> THE JUDGE NEVER SAID WHERE
IS NICKERSON?

>> I DON'T BELIEVE HE ASKED
SPECIFICALLY WHERE HE I, BUT
THERE WAS -- WE NEED

ADDITIONAL TIME OR ANYTHING
LIKE THAT JUST COULDN'T FIND
HIM, I BELIEVE MR. UDALL MAY
HAVE MINGE SOMETHING THAT HE
WAS IN HE MENTIONED THAT HE
WAS IN GEORGIA WE DON'T HAVE
ANYTHING FURTH ON THAT AS FAR
AS HAVE I ANSWERED ALL YOUR
QUESTIONS?

>> HOLD ON.

>> AND AS FAR AS EX PARTE,
THE ONLY WAY TO GET THE
DEFENDANT COUNSEL WOULD BE TO
PUT THE COURT ON IN TIS THE
DEFENDANT WAS COME BAK\$\$!!CK HE
FROM FEDERAL COURT HAD TO
HAVE COUNSEL.

SO UNLESS THE COURT HAS ANY
OTHER QUESTIONS?

I WILL ASK THAT YOU AFFIRM
THE DENIAL OF POSTCONVICTION
RELEASE AND ALSO DENYING
HABEAS REQUEST.

>> MATE PLEASE THE COURT.

AT THE HUFF HEARING BELOW, I
STOOD UP PUT THIS IN THE
BRIEF PART OF THE RECORD
INFORMED THE COURT THAT I
COULD NOT FIND MR. NICKERSON
LOOKED FOR HIM HAD MY
INVESTIGATOR LOOKING FOR HIM
HE WAS NO LONGER A MEMBER OF
THE FLORIDA BAR AT 3\$\$8 --
3.850 HEARING I INTRODUCED
HIS GRIEVESANCE RESULTS THE
PROCESS OF GRIEVANCE GOING ON
AT THE SAME TIME HE WAS
DEFEND THIS CASE HE WAS NEVER
APPOINTED TO REPRESENT
MR. GORE, HE WAS UNPAID HE
FILED A MOTION TO BE PAID
THAT WAS MOTION WAS DENIED.
IN THIS CASE.

AND PART OF MY ARGUMENT ON
THEE\$!!!! IN INEFFECTIVE ASSISTANCE
OF COUNSEL UDALL, WHO WAS
APPOINTED PAID IMPROPERLY
DEFERRED TO NICKERSON
SHOULDN'T HAVE DONE THAT,
THAT IN ITSELF INEFFECTIVE
ALLOWING NICKERSON TO MAKE
ALL ZOOEGZS YOU ARE RIGHT OF
I DID INTRODUCE AT 3.850
HEARING HIS BAR THAT HE HAD

SAY IN DEATH STATION
ESPECIALLY WHEN HOSTILE TO
YOU YOU KNOW HE IS NOT GOING
TO BE YOUR FRIEND SEEMS TO ME
TO BE BASIC TO NOT OBJECT
FROMSOR'S QUESTION THAT WAS
OBJECTIONABLE BECAUSE IT WAS
OPINION JUSTICE CANTERO AS
WELL AS OBJECTIONABLE FACT A
STATEMENT OF LAW NOT A FACT
AND THE COURT SHOULD HAVE
OBJECTED TO THAT. !!\$\$!!
>> DID NOT CALL A WITNESS,
COULD CLEARLY STATE HE WOULD
HAVE TO SERVE 50 # YEARS
BEFORE HE WOULD BE ELIGIBLE
FOR PAROLE ON ANYTHING.
>> ON THAT ONE SHGS!!\$!!!!!!!, WHAT A ABOUT
THE FACT THAT YOU WANTED KEPT
OUT ABOUT THESE OTHER MURDERS!!\$!!!!!!!
MURDERS.
>> SURE I THINK THE COURT
EASILY COULD HAVE KEPT OUT
THE FACT OF THE OTHER MURDERS
BUT NEVERTHELESS, CRAFTED A
VERY SIMPLE JURY INSTRUCTION
OR STATEMENT TO THE JURY SAID
IN THIS CASE, THE
RECOMMENDATION OF LIFE MEANS
HE WOULD HAVE TO SERVE 50
YEARS BEFORE HE COULD BE
CONSIDERED FOR PAROLE
WOULDN'T HAVE TO TELL HIM
FIVE OTHER MURDERS, BUT, THAT
IS WHAT THEY ASKED CAN THE
QUESTION, AND THAT IS WHAT
SHOULD HAVE BEEN THE ANSWER.
>> CLAURNFY SOMETHING IN THE
-- SAYS THAT NICKERSON WAS
NOT PRESENTED AS WITNESS THEN
THE TRIAL COURT WRITES THERE
WAS NO EXPLANATION AS TO WHY
AND OR NO EVIDENCE THAT --
WHAT AESTS WERE MADE TO
SECURE --
>> YES IS, DIDN'T --
REITERATE WAIT HAWKED TO
JUDGE ABOUT AT HUFF HEARING
AT THE HUFF HEARING I DID
ADVISE THE CORT THAT I HAVE
HAD NOT BEEN ABLE TO FIND
MR. NICKERSON THAT WAS JUST A
COUPLE MONTHS PRIOR TO
EVIDENTIARY HEARING IN THIS

CASE BUT I DID NOT REITERATE
THAT AT THE EVIDENTIARY
HEARING AT THE EVIDENTIARY
HEARING HEARINGS SZS 50IS SZ
HEARINGS SZS 50IS SZ