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Wilmann Renaud v. State of Florida Docket Number: SC05-1005

MARSHAL: LAE BLING , THE FLORIDA -- LADIES AND GENTLEMEN, THE FLORIDASUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: NOW , WE DIDN'T WANT YOU ALL TO FEEL BADLY THAT EVERYBODY WAS LEAVING BEFORE YOUR ARGUMENT , BUT WE ARE HERE FOR YOU . THE NEXT CASE ON THIS MORNING'S DOCKET IS RE NAUD VERSUS STATE OF FLORIDA .

THANK YOU , CHIEF JUSTICE PARIENTE. GOOD MORNING, MEMBERS OF THECOURT.I AM MARGARET GOOD EARNACY -- GOOD ERNEST , AN AELATE DEFENDER FROM WEST PALM BEACH , FLORIDA. TODAY HERE BEFORE YOU ON CERTIFIED CONFLICT , THE PROCEDURAL QUESTION , THE FOURTH DISTRICT DOES NOT RECOGNIZE A CHALLENGE OF AFFIRMATIVE ALLEGATION THAT THE WRITTEN SENTENCE DOES NOT COMPLY WITH THE ORAL PRONOUNCEMENT AS STATING A CLAIM FOR AN ILLEGAL SENTENCE.

JUSTICE: LET ME GET RIGHT TO THE POINT AND ASK YOU THIS QUESTION.DOES IT MAKE A LEGAL DIFFERENCE IN THIS CASE THAT THE WRITTEN SENTENCE WAS ISSUED AT THE SAME TIME OR JUST AFTER THE ORAL SENTENCE, SO THAT THE DEFENDANT HAD NOT YET BEGUN TO SERVE HIS SENTENCE ?

THE ANSWER TO THAT IS I DON'T KNOW, BECAUSE THIS IS THE RECORD. THIS IS ALL OF THE RECORD.IT IS JUST MOTION , THE SPONSOR'S RESPONSES, THE JUDGE'S ORDER -- THE RESPONSES , THE JUDGE'S ORDER , AND IN THE OLDER CASES WHEN THE DEFENDANT CLAIMED IT SHOULDN'T HAVE GOTTEN THE MANDATORY MINIMUM , I WASN'T IN POSSESSION OF A FIREARM , THE 300-A CASES SAY THAT IS A QUESTION OF FACT AND YOU CANNOT DETERMINE IT FROM THE FACE OF THE RECORD. GENERALLY THOSE WERE PLEAS .

JUSTICE: IF YOU CAN'T DETERMINE IT FROM THE FACE OF THE RECORD , THEN YOU CAN'T ASSERT IT IN A 3.800 MOTION.

HOWEVER, DUE TO THE LAW AND WITH OVERFELT, THIS CASE WAS WAY AHEAD OF ARENDI, IT SAID YOU HAD TO BE IN POSSESSION OF THE INFORMATION, THE ALLEGATION OF POSSESSION OF A FIREARM AND THERE HAD TO BE A SPECIFIC FINDING BY THE JURY , AND PERHAPS TODAY YOU COULD TELL FROM THE RECORD WHETHER A PERSON SHOULD GET THE MANDATORY MINIMUM.

JUSTICE: MY QUESTION WAS THE TIMING AND IT SEEMS THAT BOTH OUR CASES AND SOME OF THE DISTRICT COURT CASES BASE THE LAW ON DOUBLE JEOPARDY ANALYSIS AND THE FACT THAT , ONCE A DEFENDANT GAINS SERVING THE SENTENCE, YOU CANNOT CHANGE THAT, BUT IN THIS CASE APPARENTLY THE DEFENDANT HAD NOT BEGUN TO SERVE HIS SENTENCE, WHEN THE WRITTEN SENTENCE WAS ISSUED , AND THEREFORE YOU DON'T HAVE A DOUBLE JEOPARDY PROBLEM.

WELL , I DON'T KNOW IF THAT IS APPARENT , AND THE REASON I SAY THAT IS THIS .

JUSTICE: DO WE HAVE A TRANSCRIPT? WOULD IT BE OBVIOUS FROM THE TRANSCRIPT?

THE DEFENDANT DID ATTACH TO HIS MOTION , A PAGE OF THE TRANSCRIPT OF THE SENTENCING

TRANSCRIPT, WHEN THE JUDGE PRONOUNCED THE SENTENCE, AND I THINK THE ATTORNEY GENERAL WILL AGREE THAT NO MANDATORY MINIMUM WAS PRONOUNCED. HOW QUICKLY THE JUDGE SIGNS AN ORDER THAT IS DIFFERENT AND MORON REDUCE SENTENCE AND LONGER - - AND A MORE ONEROUS SENTENCE AND LONGER , I DON'T KNOW THE ANSWER TO THAT AND MOST PEOPLE DON'T.

JUSTICE: THERE HAS TO BE AN ANALYSIS OF THAT , BECAUSE , ONE , A VIOLATION OF A CONSTITUTIONAL NATURE. CORRECT?

YES.

JUSTICE: AND IF NOT , THEN IT BECOMES A PROCEDURAL RULE VIOLATION, AND IT CHANGES THE NATURE. NOW , IS THAT WHAT WE NEED TO GET AWAY FROM IN ADDRESSING THESE?

I THINK IF, EVEN IF IT IS ONLY MOMENTS LATER, IF WE HAVE A SITUATION WHERE THE JUDGE PRONOUNCES A FIVE-YEAR SENTENCE IN PRISON AND THEN SOMEHOW THE WRITTEN DOCUMENT SAYS 15 , HE HAS TEN THE DEFENDANT DOESN'T KNOW HOW TO READ AND WRITE AND DOESN'T LEARN ABOUT IT FOR DECADES , LET'S SAY IT WAS FIVE AND 50 , CAN STILL COME BACK AND CLAIM THIS WRITTEN SENTENCE DOES NOT CONFORM TO THE ORAL PRONOUNCEMENT, BECAUSE IN FLORIDA THE ORAL PRONOUNCEMENT IS THE SENTENCE NOT THE WRITTEN DOCUMENT.

CHIEF JUSTICE: BUT ANSWERING JUSTICE LEWIS 'S QUESTION, IS THAT BECAUSE OF THE PROCEDURAL RULE OR BECAUSE OF A CONSTITUTIONAL MANDATE ?

IT IS A CONSTITUTIONAL MANDATE THAT , ONCE, THAT A SENTENCE CAN'T BE ENHANCED.

CHIEF JUSTICE: I UNDERSTAND BUT WHAT CONTROLS , THE ORAL OR THE WRITTEN PRONOUNCEMENT?

THE ORAL OR THE WRITTEN PRONOUNCEMENT, WHAT CONTROLS IS THE RULE, BECAUSE WE HAVE A RULE THAT SAYS.

CHIEF JUSTICE: SO IT IS A PROCEDURAL ISSUE NOT A CONSTITUTIONAL ISSUE. THE CONSTITUTIONAL ISSUE IS THAT , AFTER A SENTENCE IS ENTERED --

YES.

CHIEF JUSTICE: -- THAT IT CAN'T BE ENHANCED , AND TO ME I HAVE A GREAT INTEREST IN THIS SUBJECT, BECAUSE I HAVE BEEN WORKING WITH VARIOUS COMMITTEES FOR SEVERAL YEARS , TO TRY TO GET THE WRITTEN SENTENCE ENTERED AT THE SAME TIME OF THE SENTENCING HEARING AND HAVE THE DEFENDANT SIGN IT , AND IT MAY MEAN THAT THE WRITTEN SENTENCE, REALLY, SHOULD CONTROL AND THE DEFENDANT SIGNS IT. OTHERWISE, WE ARE GOING TO NOT BE ANY CLOSER TO SOLVING THE ISSUE OF THE DISPARITY BETWEEN THE ORAL PRONOUNCEMENT AND THE WRITTEN SENTENCE, BUT I DON'T SEE IF IT IS ALL DONE AT THE SAME HEARING , HOW THERE IS A CONSTITUTIONAL VIOLATION, SO IF YOU COULD ADDRESS THAT ISSUE ABOUT WHY, THEN , IT WOULD HAVE TO BE RAISED THROUGH OR COULD IT BE RAISED .

GENERALLY SPEAKING, I KNOW THE RULE SAYS WE ARE SUED TO GET THE WRITTEN DOCUMENT WITHIN TEN DAYS. AS YOU KNOW WITH THE WORK THAT YOU HAVE BEEN DOING , WE DON'T GET IT WITHIN TEN DAYS. WE DON'T GET THE DOCUMENT RIGHT AWAY AND THE DEFENDANT DOESN'T SIGN IT, AND IT IS JUST A PARENT THAT THAT WRITTEN DOCUMENT IS ENTERED LATER , SIGNED LATER SOME TIME.

JUSTICE: BUT BACK TO THIS CASE , PLEASE, YOU NEED TO HELP US.

I DON'T KNOW ABOUT THIS CASE. I CAN'T HELP YOU WITH THAT BECAUSE I DON'T KNOW. IN EVERY INDIVIDUAL CIRCUIT, HOW THE WRITTEN DOCUMENT GETS ENTERED MIGHT DIFFER, ACCORDING TO THE PRACTICES OF THE CLERK.

JUSTICE: IN ORDER TO ASSERT A 3.800 MOTION, ISN'T THAT SOMETHING THAT THE DEFENDANT HAS TO ALLEGE IN THE MOTION? ISN'T IT THE DEFENDANT'S BURDEN TO SHOW THE COURT THAT THE DEFENDANT HAD ALREADY DONE GUN TO SERVE HIS SENTENCE - - HAD ALREADY BEGUN TO SERVE HIS SENTENCE AT THE TIME THAT THE WRITTEN SENTENCE HAD BEEN ISSUED. OTHERWISE YOU DON'T HAVE A CAUSE FOR RELIEF IN A 3.800 MOTION.

THAT, ALSO, BRINGS ANOTHER QUESTION OF WHAT DOES THE DEFENDANT HAD TO ATTACH. I THINK THE DEFENDANT ONLY HAS TO AFFIRMATIVELY ALLEGE THAT THERE IS THIS DISPARITY. THEN THE JUDGE HAS TO LOOK AT THE RECORD WITHOUT AN EVIDENTIARY HEARING, TO SEE IF WE ARE GOING, IF YOU ACCEPT THIS AS A DOUBLE JEOPARDY VIOLATION, THAT IS AT LEAST FACIALLY SUFFICIENT TO MAKE A JUDGE LOOK AT THE RECORD. THE JUDGE LOOKS AT THE RECORD AND THE DATE STAMPED IN THE CLERK'S OFFICE IS THREE DAYS LATER AS TO WHEN IT IS FILED OR WHEN IT IS SIGNED, THEN THAT IS ENTERED LATER THAN WHEN THE ORAL PRONOUNCEMENT WAS MADE IN COURT. THE JUDGE DIDN'T EVEN DO THAT IN THIS CASE.

JUSTICE: IN A SITUATION LIKE THIS WHERE IT IS ALLEGED.

YES.

JUSTICE: AND YOU SAY YOU DON'T KNOW WHETHER IT IS TRUE OR NOT. WHERE IT IS ALLEGED THAT THE DEFENDANT HAD AN ORAL PRONOUNCEMENT AND A WRITTEN SENTENCE AT THE SAME HEARING, ISN'T IT INCUMBENT UPON A DEFENDANT AND HIS ATTORNEY IN THAT SITUATION, IT TO BRING IT TO THE COURT'S ATTENTION RIGHT THEN AND THERE? THAT THERE IS SOME DISCREPANCY HERE?

I DON'T THINK SO BECAUSE IT IS NOT DONE IMMEDIATELY. YOU DON'T, THE DEFENSE ATTORNEY DOES NOT SEE THE WRITTEN DOCUMENT AT THAT TIME.

JUSTICE: AS I UNDERSTOOD THE FACTS OF THIS CASE, THAT IT WAS IN FACT DONE AT THE SAME HEARING.

WE DON'T KNOW BECAUSE THERE IS NO SENTENCING DOCUMENT IN THIS RECORD. WHEN THE 3.800-A, THEY ARE GENERALLY FILED PRO SE BY DEFENDANTS, THE RULE REQUIRES AN AFFIRMATIVE ALLEGATION.

JUSTICE: LET ME CLARIFY. LET ME GO ON THE RULE SAYS, IF IT IS AFFIRMATIVELY ALLEGED THAT THE COURT RECORDS DEMONSTRATE ON THEIR FACE, AN ENTITLEMENT TO RELIEVE. YOU SEEM TO BE INVERTING THE RESPONSIBILITY AND RESPONSE TO JUSTICE CANTERO'S QUESTION.

SO IF THE DEFENDANT ALLEGES I WAS SENTENCED IN COURT TO FIVE YEARS IN PRISON, AND THE WRITTEN SENTENCE THAT WAS ENTERED LATER HAS 15 YEARS, ON ITS FACE THAT ALLEGES A DOUBLE JEOPARDY VIOLATION.

JUSTICE: DOES IT DEMONSTRATE, ABSENT THAT IT WAS, THE SENTENCE WAS LATER, DOES IT DEMONSTRATE ON ITS FACE, AN ENTITLEMENT TO RELIEVE THOUGH? I GUESS THE FUNDAMENTAL POINT IS, THE MOTION HAS TO SUFFICIENTLY ALLEGE ON ITS FACE --

CORRECT.

JUSTICE: -- THAT THE RECORDS DEMONSTRATE ENTITLEMENT TO THE RELIEF.

AND YOU ARE POINTING OUT SOME DETAILS IN PROCEDURES THAT THIS 3. WILL 00-A DOES IN THE -
 - THIS 3.800-A DOES NOT REFLECT. THE FIRST LINE OF 3.800 A IS PLEASE REMEMBER I AM A PRO-
 SE PRISONER AND YOU ARE SUED TO LIBERALLY CONSTRUCT WHAT HE WAS SAYING AND WHAT
 HE WAS SAYING IS I WAS ORALLY PRONOUNCED A SENTENCE AND THE DOCUMENTS, I DON'T
 THINK IT WAS ENTERED LATER, LET US JUST ASSUME THAT THE JUDGE CAN LOOK AT THE
 SENTENCING RECORD TO SEE WHETHER THEY WERE ENTERED LATER, THAT ALLEGES A DOUBLE
 JEOPARDY VIOLATION. IF HE GETS BEYOND THE THRESHOLD OF ALLEGING A CLAIM, THEN THE
 COURT HAS TO EXAMINE THE RECORD OF THE COURT CASE, AND I DON'T THINK THE BURDEN
 SHOULD BE ON THE DEFENDANT TO ATTACH THE COURT RECORDS TO HIS ALLEGATION, BECAUSE
 IT IS THE COURT AND THE STATE THAT HAVE THE GREATER RESOURCES AND HAVE ACCESS TO
 THE RECORD. HE CAN JUST ALLEGE WHAT IT IS HE IS ALLEGING. I AM ALLEGING AN
 ENHANCEMENT OF SENTENCE AFTER IT WAS INITIALLY ENTERED. ONCE HE ALLEGES THAT, THEN
 THE COURT HAS TO JUST LOOK AT THE RECORD, AND ANOTHER POINT OF CONFLICT WITH THE F
 OURTH DISTRICT SEEMS TO POINT OUT IN THESE CASES AS TO WHY THEY ARE DIFFERENT IS
 BECAUSE THE OTHER DISTRICT COURTS SEEM TO SAY, AND THE TRIAL COURT DIDN'T ATTACH
 PORTIONS OF THE RECORD TO SHOW, THE SAME LANGUAGE THEY USE IN 3.850 TO
 AFFIRMATIVELY SHOW HE WAS ENTITLED TO NO RELIEF. THAT IS NOT THE LANGUAGE OF THE
 RULE, BUT I SUBMIT THAT, WHEN THE JUDGE GOES TO THE RECORD, WHO HAS THE COURT
 RECORD WITHOUT AN EVIDENTIARY HEARING, HE SAYS I HAVE LOOKED AT THIS JUDGMENT, AND
 I HAVE LOOKED AT THE SENTENCING PRONOUNCEMENT, AND THEY SEEM TO BE
 CONTEMPORANEOUS. I AM GOING TO DENY IT. THEN HE HAS TO ATTACH WHAT HE LOOKED AT, IN
 ORDER TO MAKE AN AELLATE RECORD. IF HE LOOKS AT THE TWO AND SAYS OH, NO, THESE ARE
 DIFFERENT. THIS WAS INTORD DAY ONE AND THIS ENTERED ON DAY FIVE AND SO THAT IS AN
 ENHANCEMENT AND SO ON ITS FACE, YES, IT SEEMS TO BE A TROUBLE JEOPARDY VIOLATION.
 THEN HE GRANTS THE MOTION AND STRIKES THE ENHANCEMENT.

CHIEF JUSTICE: AS WE THINK ABOUT AND LOOKING AT WHETHER WE ARE AMENDING OR GOING
 TO AMEND THESE RULES AND ABOUT WHETHER THIS IS SOMETHING THAT SHOULD BE RAISED
 WITHIN THE TWO-YEAR PERIOD OR FOREVER, IT SEEMS TO ME ALTHOUGH YOU ARE TALKING
 ABOUT A PRO SE DEFENDANT WHO HAD COUNSEL AT THE SENTENCING HEARING, HAD AN AEAL,
 HAD A 3.850, THAT THE RECORD OF THE, THAT THE SENTENCE WHICH IS THERE AS THE WRITTEN
 SENTENCE, IS WHAT THE DEPARTMENT OF CORRECTIONS HAS, AND, OF COURSE, THIS PERSON IS
 SERVING THREE LIFE SENTENCES, SO WE ARE KIND OF TALKING VERY ACADEMIC HERE, SINCE
 ABOUT WHETHER HE GETS A TEN-YEAR MANDATORY ON THREE LIFE SENTENCES, CORRECT,
 BUT IT SEEMS IN THAT SITUATION THAT YOU KNOW, THIS IDEA THAT FOREVER, LIKE, 50
 YEARS LATER, THAT WE ARE SAYING THAT THE JUSTICE SYSTEM SHOULD GO BACK AND FIND
 THE JUDGE WHO PRONOUNCED THE SENTENCE AND DETERMINE WHETHER IT WHAT IS DONE ON
 THE SAME DAY OR NOT, SEEMS LIKE IT IS REVERSING THE BURDEN, WHEN IT IS OUT OF THE
 TWO-YEAR PERIOD, AND THAT IS WHAT WE ARE REALLY TALKING ABOUT HERE, TAKES TO
 WHETHER AT SOME POINT, THE PRINCIPLE OF THE ORAL PRONOUNCEMENT TRUMPING THE
 WRITTEN SENTENCE, BECOMES NOT A QUESTION OF A LEGALITY BUT THAT, AT THE POINT THAT
 THE DEFENDANT, AFTER TWO YEARS, THAT THE WRITTEN SENTENCE OUGHT TO CONTROL, AND
 IF THAT SENTENCE WAS ENHANCED BEYOND THAT DEFENDANT'S UNDERSTANDING, THEN HE
 WOULD HAVE TO AFFIRMATIVELY SHOW THAT, AND SO WHAT IS THE ANSWER TO THAT? THAT IS
 THAT YOU ARE LOOKING TO THE ORAL PRONOUNCEMENT AS BEING SOMETHING THAT THE COURT
 WILL HAVE TO FIND AND DETERMINE, AND I AM JUST WONDERING HOW THAT IS A FAIR
 ALLOCATION OF A BURDEN FOR SHOWING AN ILLEGAL SENTENCE.

I THINK THAT IS A FAIR ALLOCATION, BECAUSE THE COURT IS IN CHARGE OF THE COURT RECORD.
 I AM, AND I AGREE THAT I AM SPEAKING, HERE, WE ARE TALKING ABOUT, MORE ACADEMICALLY
 THAN ON BEHALF MR. RENAUD.

CHIEF JUSTICE: YOU DO AGREE WITH THAT.

HE HAS A RIGHT TO HAVE HIS SENTENCE BE CORRECT , AND IT IS MORON REDUCE TO HAVE A -- MORE ONEROUS TO HAVE A LIFE SENTENCE WITH A TEN-YEAR MANDATORY THAN WITHOUT , AND FOR THAT REASON I AM HERE , BECAUSE IT IS NOT ENTIRELY ACA DEMIC AS TO HIM .

JUSTICE: HOW WOULD WE HAVE DEFINED THE BEGINNING OF THE SERVING OF A SENTENCE. CAN YOU HELP US WITH THAT?

WHEN THE DEFENDANT IS REMOVED FROM THE COURT ROOM TO BEGIN TO SERVE THE SENTENCE IS THE WAY TR OPE VERSUS R OWE DEFINED IT AND I WOULD LIKE TO ADVOCATE THAT YOU NOT PUT A TWO- YEAR LIMIT ON A CONSTITUTIONAL CLAIM OF A SENTENCE, AND I WANT TO REFER THE COURT BACK TO ONE OF THE FIRST DOUBLE JEOPARDY CASES THAT THEY FOUND ENHANCED SENTENCE , IN HOING. IN THAT CASE HE GOT 30 MONTHS INCARCERATION FOLLOWED BY 36 MONTHS SENTENCING IN PRISON , AND HE THOUGHT IT WAS A 6 SIX-MONTH SENTENCE, AND HE FILED A CORRECTING ORDER AND THE JUDGE FOUND THAT WOULD BE A VIOLATION SO HE CORRECTED IT AND HE CORRECTED TO, THOUGHT TEINGT CORRECTED TO 66 MONTHS. THE STATUTORY MAXIMUM FOR A THIRD-DEGREE FELONY , IT WAS CORRECTED , AND THEN SOMEBODY HELPED HIM WITH HIS MATH AND THEN THEY SAID, NO , THAT WAS AN ENHANCEMENT. EVEN THOUGH YOU ASKED THE JUDGE TO DO THAT, THE JUDGE COULDN'T DO THAT , SO THAT WAS A VIOLATION OF DOUBLE JEOPARDY , SO HE FILED A SECRETARY 3.800 MOTION AND SAID MY SENTENCE WAS ENHANCED AFTER I BEGAN TO SERVE IT , CHANGED FROM 30 MONTHS TO 60 MONTHS, AND THIS COURT IN HOING SAID THAT THE ALLEGATION THAT THIS IS AN ILLEGAL SENTENCE IN VIOLATION OF DOUBLE JEOPARDY CAN BE DETERMINED AS A PARTY OF LAW , AND WE CAN SEE THAT AFTER IT WAS IMPOSED , THROUGH A SERIES OF HAEN H A STANCE AND -- HAENSTANCE AND UNFORTUNATE CIRCUMSTANCES , IT WAS ENHANCED, AND THE DEFENDANT CAN'T AGREE TO AN ILLEGAL SENTENCE, SO THERE NEEDS TO BE A PROVISION IN OUR LAW.

CHIEF JUSTICE: THAT IS WHERE THE ENHANCEMENT WAS BEYOND WHAT THE LIMIT WAS FOR THAT PARTICULAR --

THE STATUTORY MAXIMUM.

CHIEF JUSTICE: THAT IS, NOW, IN A WHOLE DIFFERENT , A DIFFERENT TYPE OF ILLEGALITY . I THINK EVERYBODY AGREES.

THAT CAN ALWAYS BE RAISED BUT HE GOT HIS 30-MONTH ORIGINAL SENTENCE BACK, BEFORE IT HAD BEEN CHANGED - -

CHIEF JUSTICE: THE VALUE THERE IS NOT SERVING MORE THAN WHAT THE STATUTORY MAXIMUM WOULD BE. NOW LET'S GET BACK TO MY ISSUE , WHICH IS THAT THE, IN THIS CASE , AT A CERTAIN POINT IN TIME AFTER HE STARTS SERVING THE SENTENCE , ISN'T , SHOULDN'T THERE BE A PRESUMPTION THAT THE WRITTEN SENTENCE CONTROLS NOT THE ORAL PRONOUNCEMENT , IF IT IS NOT CHALLENGED FOR , IN A TWO-YEAR PERIOD FOR THE 3.850 , BECAUSE OTHERWISE , AGAIN , YOU ARE HAVING THE JUDGE HAVING TO , YOU KNOW , DECIDE, AND A TRANSCRIPT AND TO SEE WHAT WAS PRONOUNCED. WHY WOULDN'T THERE BE A PRESUMPTION THAT THEY WERE ENTERED AT THE SAME TIME ?

WELL , CURRENTLY THERE IS NOT SUCH A PRESUMPTION IN FLORIDA LAW, AND I WOULD BEG TO DIFFER WITH YOU AS TO HOING WASN'T JUST ABOUT THE STATUTORY MAXIMUM. IT WAS ABOUT THE FACT THAT HE WAS SENTENCED TO IMPRISONMENT TO 30 MONTHS AND THEN IT WAS INCREASED TO FIVE YEARS, AND THAT WAS AN ILLEGAL ENHANCEMENT OF THE SENTENCE, DONE AT HIS REQUEST , YOU KNOW, BECAUSE HE HAD DONE THE MATH WRONG.

THAT WASN'T THE SITUATION HERE, WHERE THE WRITTEN ORDER WAS ENTERED ON THE SAME DAY , AND I THINK THAT IS WHAT WE ARE TRYING TO GET AT.

I DON'T KNOW THAT THE WRITTEN ORDER WAS ENTERED ON THE SAME DAY , JUSTICE CAN CAN'T. THAT IS WHAT I AM SAYING.

JUSTICE: ISN'T THAT SOMETHING THAT YOU HAVE TO ALLEGE AND SHOW THAT IT WAS NOT DONE ON THE SAME DAY , IN ORDER TO HAVE A 3.800 MOTION?

I DON'T KNOW THAT ANY CASE HAS REQUIRED SUCH RESITUATION IN ALLEGATIONS -- PRECISION IN ALLEGATIONS JUST TO STATE THE THRESHOLD CLAIM IN A PRO SE PETITION. HE DID SAY THAT I WAS FIRST SENTENCED , WITHOUT A MANDATORY MINIMUM, AND THEN LATER THE WRITTEN SENTENCE HAS, AND THAT IS ALL HE SAID . NO, HE DIDN'T SAY WITH UTMOST TECHNICALITY , THE EXACT DIFFERENCE IN TIME SPAN. HE DID NOT SAY. THAT I AGREE HE DIDN'T SAY THAT.

JUSTICE: DOESN'T THE FACT THAT YOU SAY WE DON'T KNOW THIS, THAT THE RECORD DOESN'T SUPPORT IT , DOESN'T THAT SUPPORT THE FACT THAT THIS SHOULD BE A 3.850? IT SHOULD BE BROUGHT AS A , UNDER A 3.850 , AND IT IS NOT ON ITS FACE , A 3.800 SITUATION.

I CONTINUE TO MAINTAIN IT IS A 3.800 SITUATION, BECAUSE WHAT HE DID ALLEGE WAS SUFFICIENT TO HAVE THE STATE AND THE JUDGE LOOK AT THE RECORD , WHICH IS THE JUDICIAL RECORD , WHICH WAS ASCERTAINABLE IN THIS CASE . THERE ARE CASES IN WHICH THEY FIND THAT A PORTION OF THE RECORD IS THE TRANSCRIPT , WHEN IT HAS BEEN PREPARED FOR APPEAL . THERE ARE CASES AND THERE WILL BE TIMES, WHEN IT WILL BE MORE IMPORTANT THAN IT IS, PERHAPS TO MR . RE NAUD , AND IT DOESN'T ARISE AND THEY DON'T FIND OUT FOR MORE THAN TWO YEARS.

JUSTICE: ARE THERE CASES WHERE THERE WAS NO TRANSCRIPT OF THE SENTENCING?

YOU MEAN IN THE SENTENCE THAT THERE WAS NO TRANSCRIPT OF THE SENTENCING ATTACHED?

JUSTICE: NO , WHERE THERE IS NEVER A TRANSCRIPT MADE OF THE SENTENCING HEARING.

THERE IS ONE CASE WHERE THE JUDGE DENIED IT WITHOUT LOOKING AT THE TRANSCRIPT , AS OPPOSED TO LOOKING IT AT THE SENTENCING ORDER AND THE DISTRICT COURT SENT IT BACK .

JUSTICE: MY QUESTION IS MORE GENERAL. IN CASES WHERE DEFENDANTS EITHER PLEAD GUILTY AT SENTENCING OR SOMETHING LIKE THAT, ARE THERE CASES WHERE THERE IS NO TRANSCRIPT IN THE RECORD , AT THE TIME THE 3.800 MOTION WAS FILED BECAUSE NO TRANSCRIPT OF THE SENTENCING HEARING WAS EVER ORDERED?

AND THAT IS CORRECT. IT IS POSSIBLE TO RAISE THIS ISSUE ON A GUILTY PLEA YEARS LATER, WHEN NO APPEAL WAS TAKEN AND NO TRANSCRIPT HAS EVER BEEN PREPARED , YES, SIR.

JUSTICE: LET ME ASK YOU ONE MORE ACADEMIC QUESTION. YOU MENTIONED THAT THERE IS A CASE THAT WE SAID THAT THE SENTENCE BEGINS WHEN THEY LEAVE THE COURTROOM ? TO SERVE .

I THINK THAT WAS TROPE VERSUS ROWE , WHICH IS THE CASE - -

JUSTICE: LET ME ASK YOU A QUESTION THAT HAPPENS ALL THE TIME. LET'S SAY YOU HAVE A DEFENDANT SERVE A COUNTY JAIL SENTENCE. HE IS IN THERE FOR A YEAR AND THEN HE IS COMES AND SENTENCED ON A SEPARATE CASE TO STATE PRISON BUT HE DOESN'T SERVE THAT CASE UNTIL HE COMPLETES THE COUNTY SENTENCE OR THE OTHER SENTENCE. HOW DOES THAT FIT IN THAT CONTEXT , AS FAR AS WHEN YOU BEGIN TO SERVE THE SENTENCE?

I THINK THAT HE ACTUALLY BEGINS TO SERVE THE SENTENCE , IN THE SENSE THAT HE GETS

CREDIT FOR TIME SERVED, I F IT IS A CASE WHERE HE I S GOING TO GET C REDIT FOR TIME SERVED IN THE COUNTY JAIL.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL , I WA NT TO REMIND YOU.

I AM I N MY REBUTTAL AND I WILL SIT DO WN NO W. THANK YOU. JUST SJUTS BEFORE YOU SIT DOWN, PLEASE UNDERSTAND THE COURT IS CONCER NED WITH A WRITTEN ORDER BEING ENTEREDAT THE SAME HEARING AT THE SAME TIME.

YES. YOU ARE CONCERNED THAT IT SHOULD BE DONE .

JUSTICE: WE ARE CONCERNED WITH THAT ISSUE, THAT IT HAP PENED IN THIS CASE.HAVE YOU RESPONDED TO OURCONCERNS TO YOUR SATISFACTION?

MY RESPONSE IS I DO NOT KNOW WHEN THE WRITTEN ORDER --

JUSTICE: THAT IS NOT A RESPONSE. I WANT YOU TO A C CEPT , IF YOUWILL ACCEPT FOR THE PURPOSEOF THIS ARGUMENT THAT THEWRITTEN ORDER WAS ENTERED ONTHE DAY OF THE ORAL PRONOUNCEMENT AT THE SAME HEARING AT THE SAME TIME .

YES.

JUSTICE: WOULD YOU PLEASE ADDRESS THAT AS TO YOUR LEGAL ARGUMENT.

IF IT WAS ENTERED IN THESAME HEARING AT THE SAME T IME .

JUSTICE: YES, MA'AM.

THEN YOU STILL , HE COULD STILL MAKE A CLAIM THAT HE DOESN'T QUALIF Y FOR IT . YOU HAVE TO LOOK AT THE FACE OF THE RECORD , TO SEE IF THE INFORMATION AND THE VERDICT MAKE THE ADEQUATE FIND INGS TO QUALIFY HIM FOR IT, ANDTHEN, YES , HE COULD IN FACT , G ET THE MANDATORY MINIMUM.

JUSTICE: BUT THE ISSUEWOULD BE THAT , IF IT IS THEN CHANGED , IS IT A PROCEDURAL VIOLATION OR IS IT AN ILLEGAL SENTENCE UNDER DOUBLE JEOPAR DY?

I ACTUALLY THINK IF THE TIMING IS SIMULTANEOUS.

JUSTICE: YES, MA'AM.

IT IS MORE , THEN IT WOULD BE MORE LIKE ARENDI ISSUE, WHERE YOU ARE ARGU ING THAT IT IS NOT ALLEGED AND THE FACTS WERE NOT FOUND BY THE JURY . THAT WOULD NOT BE A DOUBLE JEOPARDY VIOLATIO N. THAT WOULD JUST BE A DUE PROCESS VIOLATION, BUT IF THEY WERE ENTERED SIMULTANEOUSLY, WHICH IT IS MY BELI EF THAT IS NOT CURRENTLY THE PRACTICE IN MOST CIRCUIT COURTS IN FLORIDA , THEN THAT IS NOT A DOUBLE JEOPARDY VIOLATION. DID I ANSWER YOUR CONCERN?

JUSTICE: YOU ANSWERED. THANK YOU .

THANK YOU.

CHIEF JUSTICE: WE HAVE, WITH YOUR -- WITH OUR HELP,USED UP YOUR TIME.

GOOD MORNING. MELANIE DALE SURBER ON BEHALF OF THE STATE. I WANT TO POINT OUT ON SECOND GLANCE , WITH RE GARD TO JURISDICTION, WHEN YOU YOU LA Y THE CASES SIDE-BY-SIDE THERE IS A CLEAR FACT UA L DIFFERENCE. IN B OTH FITZPATRICK AND BETHUNE , THERE

WAS A DISCRETION ISSUE. ONCE IT IS INDIVIDUALIZED, THEN A MINI MUM MANDATORY COMES INTO PLAY. IN THIS CASE THIS DEFENDANT WAS FOUND GUILTY UNDER 10-20-LIFE, WHERE THE JUDGE WAS REQUIRED UNDER DE ALAS AND ROW TO -- UNDER D' ALLESSANDRO , TO OOSE THAT.

THERE IS A CONFLICT HERE , YES?

YES.

JUSTICE: SO IF HE THERE IS NO CONFLICT AT ALL AND ONE IS IS A CRIMINAL AND ONE IS A CIVIL CASE , WE WOULD COMPARE THE CASES.

YES .

CHIEF JUSTICE: HOW ABOUT THE FACTUAL DIFFERENCES? DOES THE STATE AGREE, THAT IS ALWAYS TOUGH BEGINNING, BUT DOES THE STATE AGREE THAT, IF THERE IS A DIFFERENCE WHERE THERE IS A ORAL PRONOUNCEMENT AND THEN A MONTH LATER , THE WRITTEN SENTENCE IS ENTERED , THAT THAT IS DIFFERENT, AND THEY DIFFER , THE WRITTEN SENTENCE IS MORE ONEROUS , THAT IF THE WRITTEN SENTENCE IS ENTERED AT THE TIME OF THE SENTENCING HEARING AND THERE IS A DIFFERENCE BETWEEN THE ORAL PRONOUNCEMENT, IS THAT A DIFFERENCE FOR ILLEGALITY PURPOSES?

IT CAN BE. IN THIS CASE IT DOESN'T MATTER, BECAUSE THE DEFENDANT'S ARGUMENT IS THAT THE WRITTEN SENTENCE IS ILLEGAL. THAT IS NOT THE CASE HERE. TO REALLY GET TO THE MEAT OF IT, WHAT WOULD HAVE BEEN ILLEGAL WOULD HAVE BEEN THE ORAL PRONOUNCEMENT, AND THE STATE COULD HAVE BROUGHT THIS DEFENDANT BACK WITHOUT VIOLATING DOUBLE JEOPARDY, TO ORALLY PRONOUNCE.

JUSTICE: I DON'T THINK IT IS BEING ARGUED THAT IT DEFERRED FROM WHAT WAS SAID. THEY ARE ARGUING THAT THE DIFFERENCE IS ILLEGAL , EVEN IF THE ORAL PRONOUNCEMENT WAS WRONG , THEY ARE CLAIMING HAD GONE THAT THE ORAL PRONOUNCEMENT GOVERNED FOR PURPOSES OF SENTENCING , EVEN IF IT CONFLICTS WITH A CORRECT WRITTEN SENTENCE, AND THAT SEEMS TO BE THE CASE, WHERE THE DEFENDANT HAD ALREADY BEGUN SERVING HIS SENTENCE, SO THE QUESTION HERE IS WHETHER THE DEFENDANT IN FACT, HAD BEGUN SERVING HIS SENTENCE AT WHICH TIME IS NOT WHETHER THE WRITTEN ORDER WAS ILLEGAL PER SE.

I UNDERSTAND THAT. HOWEVER , ASHLEY IS KIND OF THE DOUBLE JEOPARDY CASE THAT BRINGS THIS ALL TO THE FOREFRONT BEFORE THIS COURT AND ASHLEY HAS BEEN INTERPRETED BY THE FIFTH DCA IN A VERY SIMILAR SITUATION. HOWEVER , AS I SAID MY DEFENDANT WAS NEVER BROUGHT BACK TO COURT FOR RESENTENCING, AND THE SENTENCING ORDER HAS THE SAME DATE AS THE ORAL SENTENCING PROCEEDING.

CHIEF JUSTICE: SO, A GAIN , I THOUGHT THAT THAT WAS WHAT I WAS ASKING YOU , WHICH IS THAT IN A SITUATION WHERE THEY ARE DONE IN THE SAME SENTENCING HEARING , THAT PRESENTS A DIFFERENT QUESTION FOR PURPOSES OF 3.800 , THAN IF IT OCCURS IF THE WRITTEN SENTENCE OCCURS A MONTH LATER .

YES. FOR THIS CASE. IT DOES. BECAUSE, I MEAN , I THINK IT REALLY COMES DOWN TO CASE-BY-CASE ANALYSIS WHETHER OR NOT A 3.800-A IS GOING TO BE PROPERLY A CERTAIN SCENARIO , BECAUSE YOU HAVE TO LOOK AT --

CHIEF JUSTICE: WELL, YOUR ARGUMENT ABOUT HOW THE TEN-YEAR MANDATORY MINIMUM IS MANDATORILY IMPOSED AND IT WOULD BE IMPROPER , AGAIN , MS. GOOD -EARNAC Y IS TALKING ABOUT THE ARENDI ISSUE. WE ARE TRYING TO STAY WITH THE ORAL PRONOUNCEMENT AND IF THAT CAN BE RAISED AT ANY TIME OR WHETHER THAT CAN BE RAISED IN A TWO-YEAR PERIOD OF TIME, SO IF THIS CASE FACTUALLY PRESENTS A SITUATION WHERE THEY WERE

PRONOUNCED AT THE SAME HEARING , THEN THAT IS A SIGNIFICANT FACTUAL DISTINCTION FROM THOSE CASES WHERE THE PRONOUNCEMENT, THE WRITTEN SENTENCE IS PRONOUNCED, WERE ENTERED SUBSEQUENTLY.

YES. IT IS VERY DIFFERENT. AND I THINK THAT IS WHAT, THAT, I MEAN AS SPECIFIC TO THIS CASE, YOU GO TO WHAT IS PROPERLY RAISED ON 3.800-A, WHICH IS REALLY THE , IS THIS AN ILLEGAL SENTENCE AND IT IS NOT IN THIS CASE , AND IT WAS MORE PRO PERLY RAISED EITHER IN THE 3.800-B-2 OR IN A 3.850 , WHICH THE DEFENDANT HAD IN THIS CASE. PROCEDURALLY THIS DEFENDANT HAD HIS DIRECT A EAL, HAD A 3.850. THEN HAD A SUCCESSIVE 3.850 IS HO W THIS ISSUE WAS A CTUALLY RAISED , AND THE STATE CONCEDED , YES, THERE IS A DIFFERENCE BET WEEN THE OR ALAN WRITTEN. HOWEVER, YOU CAN NOT RAISE IT HERE UNDER THE FOURTH D KRACHLT CASE LA W AND THAT OR ALAN WRITTEN IS NOT - - DCA CASE LAW AND THAT ORAL AND WRITTEN IS NOT SOMETHING THAT GETS RAISED IN A 3.800-A, AND THAT IS OOSSED WITH RE SPECT TO CAMPBELL AND WHAT CONSTITU TES ILLEGA L, AND I THINK THEY ARE CORRECT THAT IN T HIS CASE THIS IS NOT ILLEGAL .

CHIEF JUSTICE: DO YOU , THE RULE THAT THE ORAL PRONOUNCEMENT PREV AILS OVER THE WRITTEN SENTENCE , IS THAT CONSTITUTIONALLY BASED OR RULE-BASED?

IT IS RULE-BASED PROCEDURALLY. IT IS 3. 1.

CHIEF JUSTICE: WHAT IS THE POLICY? IS THERE A CONSTITUTIONAL POLICY BEHIND THAT, DO YOU KNOW, FROM A POINT OF VIEW OF CONSTITUTIONAL OR STATUTORY LAW OR THE CASE LAW OF THIS COURT, WH Y THAT DEVELOPED?

NO, I DON' T, BECAUS E THE WAY THIS CASE DEVELOPED , I THINK THE DEFENDANT WAS TRYING TO BR ING IT UP THAT THERE MIGHT BE A DOUBLE JEOPARDY IMPLICATION, BUT I THINK THAT THAT IS NOT SPECIFIC TO THIS CASE. THERE IS NO DOUBLE JEOPARDY IMPLICATION, SO IT DOESN' T RAISE TO THE LEVEL OF CONSTITUTIONAL VIOLATION .

CHIEF JUSTICE: WELL , AGAIN , THE RE WOULD B E A DOUBLE JEOPARDY VIOLATION IF THE SENTENCE IS ENHA NCED BY THE WRITTEN SENTENCE , A FTER HE BEGINS SERVING THE SENTENCE, LIKE OCC URRED IN ASHLEY.

NO , AND I THINK THAT IS WHAT GETS ME TO THE INTERPRETATION OF ASHLEY, WITH RESPECT TO STATUTORILY IMPOSED M INIMUM MANDATORY UNDER 10-20-LIFE VER SUS M I N I M U M MANDATORY . I INTERPRETED ALLEN UNDER THE SE PARATE SITU ATION , BUT SIMILAR WHERE THE DEFENDANT WAS CONVICTED UNDER THE 10-20-LIFE STATUTE. IT WAS ATTEMPTED TO IMPO SE AND THE STATE WAS PERMITTED TO BRING BAC K THE DEFENDANT AND IMPOSE THE H I GHER MINIMUM MANDATORY , I BE LIEVE ERRONEOUSLY A THREE-YEAR M I N I M U M, SO THAT DOESN' T JEOPARDIZE BECAUSE THE ORAL SENTENCE WAS ILLEGAL IN THAT CASE.

JUSTICE: IS THAT SOMETHING THE STATE COULD HAVE RAISED ON A EAL? S AY THE STATE DIDN' T REALIZE IT UN TIL SO ME TIME LATER. COULD THE STATE RAISE AN ISSUE ON A EAL THAT THE TRIAL JUDGE'S SENTENCE WAS ERRONEOUS?

I THINK THAT IS WHAT , A FTER ASHLEY, THAT IS WHAT ALLEN SEEMS TO SAY , ONLY IN A SITUATION WHERE THE ORAL PRONOUNCEMENT WAS COMPLETELY ILLEGAL , WITH RESPECT TO, SAY , A 10-20-LIFE STATUTE. I THINK IT DEPENDS , WH EN YOU GET INTO AREAS SUCH AS HABITIZATION BECAUSE THEY ARE DISCRETIONARY. SO THAT IS WHERE, WHEN YOU GET TO THE DOUBLE JEOPARDY CONCERN , YOU NE ED TO LOOK AT WHERE IS IT GOING TO GO. IN A CASE LIKE THIS WITH A 10-20-LIFE MINIMUM MANDATORY INVOLVED, THE JUDGE CANN OT DEPART .

CHIEF JUSTICE: IT DOES SEEM TO ME AND I WAS LO OKING AT MY FOOTNOTE IN ASHLEY , ABOUT THIS, TRYING TO GET WRITTEN SENTENCES ENTERED AT THE TIME OF THE HEARING, THAT THE

STATE HAS A SUBSTANTIAL RESPONSIBILITY IN THIS AREA, TO TRY TO SEE THAT THESE THINGS ARE OCCURRING , AS SENTENCING IS BECOMING MORE AND MORE COMPLICATED. YOU KNOW , TO SORT OF SAY IT IS ALL UP TO THE JUDGE, WHEN THE SENTENCING LAWS CHANGE EVERY YEAR , THAT IT , REALLY , OUGHT TO BE THE STATE'S RESPONSIBILITY TO MAKE SURE THAT AN ACCURATE SENTENCE IS PRONOUNCED AT THE TIME OF THE SENTENCING HEARING, IF THESE ARE MANDATORY. IF THE JUDGE HAS NO CHOICE . DO YOU AGREE WITH THAT?

WELL , I THINK IT SHOULD BE WE NEED TO MAKE SURE THAT THE ORAL AND THE WRITTEN ARE COMPLY -- THE ORAL, AND THE WRITTEN, ARE COMPLYING WITH EACH OTHER. HOWEVER IN THIS CASE AGAIN , WE DON'T HAVE ALL THE RECORDS. FRANKLY THIS IS MY FIRST APPEARANCE IN THIS CASE. WE HAVE POSTCONVICTION. IT WAS A SUMMARY DENIAL , I NEVER APPEARED IN THE DISTRICT COURT BELOW AND ALL I HAVE IS THE RECORD, SO I DON'T KNOW WHAT HAPPENED AT THE SENTENCING HEARING. I ONLY HAVE THE INTERPRETS THAT ARE ATTACHED.

JUSTICE: IS THIS SOMETHING THAT YOU COULD DETERMINE FROM THE DOCKET SHEET, THAT THE SENTENCE , THE ORAL PRONOUNCEMENT AND THE WRITTEN ORDER WERE ISSUED ON THE SAME DAY? IS THAT SOMETHING THAT ONE CAN DISCERN FROM THE DOCKET?

I THINK SO. I THINK IN THIS CASE THERE IS NOT EVEN A QUESTION. I THINK WE KNOW HE WAS ORALLY PRONOUNCED AUGUST 30 , AND I KNOW THERE IS A DATE ON SOME OF THE SENTENCING ORDERS THAT ARE ATTACHED OF AUGUST 30.

JUSTICE: WE DON'T KNOW. WHY IS THERE DISCREPANCY THERE?

WE KNOW THAT THE SENTENCING ALL HAPPENED ON AUGUST 30. I THINK THAT THAT WAS CONCEDED BY THE STATE BELOW, IN THE 3.850 RESPONSE THAT HE FILED TO THE SUCCESSIVE MOTION. THE STATE CONCEDED THAT THERE WAS AN ORAL AND A WRITTEN -- AN ORAL, AND A WRITTEN DONE ON AUGUST 30 , BUT THEY SEEM TO BE DIFFERENT WHERE THE ORAL DID NOT ANNOUNCE THE 10-YEAR MINIMUM MANDATORY UNDER 10-20-LIFE, SO I THINK WE KNOW THAT HE WAS SENTENCED ON AUGUST 30, SO FRANKLY I THINK YOU CAN DETERMINE THAT FROM THE DIRECT REAL RECORDS , BUT WE ARE ON 3.800-A. WE ONLY HAVE WHAT IS ATTACHED, SO REALLY ON ITS FACE, YOU HAVE TO LOOK. THE TRIAL JUDGE FOUND TO BE SUCCESSIVE 3.850 AND NOT A PROPER CLAIM TO BE RAISED IN 3.800-A , BECAUSE ON ITS FACE IT DIDN'T APPEAR TO BE ILLEGAL , WHERE THE WRITTEN WAS AN ILLEGAL SENTENCE.

JUSTICE: I AM A LITTLE CONCERNED ABOUT THE AREA OF YOUR DISCUSSION OF 3.800 AND THE RIGHTS THAT THE STATE MAY HAVE UNDER THAT AND THE SUPPLEMENTATION BY ALLEN. AS THIS RULE WAS PASSING THROUGH THE SYSTEM AND BEING ANALYZED, THE ISSUE WAS PRESENTED, SHOULD THE STATE HAVE ACCESS TO RELIEVE UNDER THE .800 , AND THE SAME -- UNDER THE 3.800 AND THE DOUBLE JEOPARDY KIND OF CONCEPT WAS ASSERTED , AND IT IS MY RECORD OF THOSE DISCUSSIONS THAT THE 3.8008 WOULD BE USED BY THE STATE TO LESSEN SENTENCES NOT TO INCREASE SENTENCING. ALLEN AND YOUR ARGUMENT THIS MORNING SEEM TO RUN HEADLONG INTO THAT CONCEPT. WOULD YOU CARE TO COMMENT ON THAT?

YES. I THINK THERE IS A BIG DIFFERENCE BETWEEN 3.800-B-2 AND 3.800-A. IN THIS CASE 3.800-A WAS CREATED TO CORRECT AN ILLEGAL SENTENCE. I DON'T THINK IT SHOULD MATTER IN THAT REALM WHETHER OR NOT THE ORAL AND THE WRITTEN ARE DIFFERENT, BECAUSE IN THIS CASE THE DEFENDANT WOULD HAVE GOTTEN AN ILLEGAL SENTENCE, SO IN THIS CASE THERE CANNOT BE A DOUBLE JEOPARDY VIOLATION. HE KNEW HE IS IN JAIL SERVE A GO LIFE SENTENCE WITH A TEN-YEAR MINIMUM MANDATORY WITH A WRITTEN SENTENCE THAT IS ILLEGAL.

JUSTICE: SO IF I UNDERSTAND YOUR POSITION THAT IF A SENTENCE IS RENDERED AND IF IT IS FOR "X" NUMBER OF YEARS AND THAT HAPPENS TO BE BELOW WHAT OTHERWISE WOULD BE REQUIRED THAT, THERE IS NO DOUBLE JEOPARDY IMPLICATION, IF THAT SENTENCE IS LATER

ENHANCED OR INCREASED, FIVE OR TEN YEARS DOWN THE ROAD.

ONLY, I THINK THAT IS ONLY IN A SITUATION WHERE THERE IS A DISCREPANCY. I MEAN, UNDER THE 10-20-LIFE, I THINK IT IS CLEAR IT HAS TO BE IMPOSED, SO I WOULD SAY THERE WOULD BE NO DOUBLE JEOPARDY BECAUSE THE DEFENDANT WAS PUT ON NOTICE THAT HE WAS GOING TO BE.

JUSTICE: DOES THE JURISPRUDENCE OF THIS COURT SORT THAT ANALYSIS, DO YOU THINK?

I THINK THAT IT HASN'T BEEN FULLY EXPLORED YESTERDAY YET -- I THINK THAT IT HASN'T BEEN EXPLORED YET. I THINK THAT WE HAVE ASHLEY AND ASHLEY HASN'T BEEN INTERPRETED. THAT ASHLEY IS UNIQUE TO THAT SITUATION.

JUSTICE: HOW ABOUT IN THE ABSTRACT OF THAT SITUATION. A SENTENCE IS IMPOSED AND IT IS BELOW WHAT MAY HAVE BEEN THE LAW AT THE TIME. WHAT IS OUR JURISPRUDENCE ALONG THOSE LINES, IF SOMEONE LATER COMES IN AND INCREASES THAT, DOES THAT INDICATE DOUBLE JEOPARDY OR DOES IT NOT, BECAUSE THAT SENTENCE, THAT IS ILLEGAL IN YOUR FRAME OF REFERENCE.

I THINK IT DEPENDS. IT IS HARD TO ANSWER SUCH A HYPOTHETICAL, WHEN WE HAVE THIS CASE. WE HAVE A LOT OF DOCUMENTS THAT WERE PREPARED, AND WE KIND OF KNOW WHAT THE INTENTIONS WERE. I THINK SIMPLY PUTTING OUT THE JUDGE WAS REQUIRED TO DO IT AND FAILED TO DO IT IS HARD, BECAUSE IN ALLEN IT WAS HARD. THERE WAS A MINIMUM MANDATORY IMPOSED. IT WAS THE WRONG ONE, SO I THINK IT REALLY DEPENDS UPON THE FACTS OF THE CASE. IN THE ABSTRACT, I DON'T KNOW IF YOU COULD BRING A DEFENDANT BACK JUST TO SAY YOU KNOW WHAT? I SHOULD HAVE IMPOSED THIS MINIMUM, UNLESS, I MEAN, IF IT GOT OVERLOOKED FOR YEARS, I REALLY DON'T KNOW. IT REALLY DEPENDS ON THE FACTS OF THE CASE, SO -- IT REALLY DEPENDS ON THE FACTS OF THE CASE, SO IN THIS CASE AGAIN, WE HAVE ARGUED THAT IT IS NOT AN ILLEGAL SENTENCE. THE COURT CORRECTLY HELD THAT THE ORAL VERSUS WRITTEN IS NOT SOMETHING THAT CAN BE RAISED ON OUR 3.800-A IN THIS CASE, AND IF THERE ARE NO FURTHER QUESTIONS, THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. ALL RIGHT. THE COURT WILL TAKE ITS MORNING RECESS OF 15 MINUTES.

MARSHAL: PLEASE RISE.