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James L. Brooks v. State of Florida

SC06-1266

THE NEXT
CASE ON THE DOCKET THIS
MORNING FINAL CASE IS BROOKS
VERSUS STATE OF FLORIDA
RUIZ MAY IT PLEASE THE COURT I'M
ISAAC RUIZ-CARUS I REPRESENT
THE PITCHER MR. BROOKS THIS
CASE PRESENTS A SINGLE ISSUE
WHAT IS THE HARMLESS ERROR
STANDARD UNDER 3.8001 OF THE
FLORIDA RULES OF CRIMINAL
PROCEDURE IN OUR SYSTEM --
SYSTEM, A CRIMINAL DEFENDANT
IS PRESUMEDN'T IN UNTIL THE
STATE PROVES BEYOND A
REASONABLE DOUBT, THAT THE
HAVE COMMITTED APPEAR OFFENSE,
IN OUR SYSTEM, IN REVIEWING A
VERDICT ONCE A DEFENDANT HAVE
A SHOWN AN ERROR, THE STATE
MUST PROVE BEYOND A REASONABLE
DOUBT, THAT THE ERROR DID NOT
AFFECT THE OUTCOME.
ON POST CONVICTION RELIEF,
ONCE THE DEFENDANT, HAS SHOWN
AN ERROR, THE BURDEN IS ON THE
STATE, TO PROVE BEYOND A
REASONABLE DOUBT, THAT THE
ERROR DID NOT AFFECT THE OUT!!\$\$!!!!
OUTCOME, HERE, TOO, UNDER RULE
3.8005 A MOTION TO CORRECT AN
ILLEGAL SENTENCE, THE BURDEN
UNDER THE FIRST DISTRICT, THE
SECOND DISTRICT, THE FIFTH
DISTRICT AND UNTIL VERY
RECENTLY THE THIRD AND FOURTH
DISTRICTS IS ON THE STATE TO
PROVE BEYOND A REASONABLE
DOUBT, THAT THE ERROR DID NOT
AFFECT THE OUTCOME.
THAT IS THE WOULD HAVE BEEN
IMPOSED TEST.
>> IS IT WOULD HAVE BEEN
IMPOSED TEST THAT CONTAINED

SOME ELEMENT OF
SUBJEBBINGTIVITY!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!
SUBJEBBINGTIVITY, IN OTHER
WORDS!!\$\$!!!!!!!

WORDS, IT ASKS WHETHER IN THE
TRIAL COURT, WOULD HAVE
IMPOSED THAT SAME SENTENCE, IF
THE IF IT HAD USED THE CORRECT
MEASURE OF THE GUIDELINES?
IS THAT RIGHT?

>> WELL JUSTICE I WOULD
DISAGREE WITH THE STATEMENT
THAT IT ENTERS ALL SUBJECT!!\$\$!!!!!!!!!!!!!!
SUBJECTIVITY INTO THE ISSUE.

>> USUALLY THIS HAPPENS WHERE
THERE IS A GUIDELINE AND LET'S
SAY IT IS -- THE MINIMUM
SENTENCED IS 66 MONTHS, AND
THE COURT, IMPOSES 66 MONTHS,
CLEARLY, ATTEMPTING TO
SENTENCE AT THE LOECHT RANGE
OF THE GUIDELINES -- BUT TURNS
OUT THAT THE REAL GUIDELINE
SENTENCE WAS 30 MONTHS, AND
SO, AND 3850 WE SAY THE
STAIRNSD WHERE THE COURT HAVE
IMPOSED THE SAME SENTENCE, IF
THE CORRECT GUIDELINES HAD
BEEN USED, MEANING IF THE
TRIAL COURT INTENDED TO THE
TRIAL COURT INTEND TO SENTENCE
FOR 66 MONTHS -- WHATEVER THE
GUIDELINES!!\$\$!!!!!!!!!!!!!!!!!!!!!!
GUIDELINES, OR DID THE TRIAL
COURT REALLY INTEND TO
SENTENCE AT THE LOWEST
POSSIBLE AT THE MINIMUM
SENTENCE?

>> THAT SEEMS TO ME WHAT WOULD
HAVE BEEN IMPOSED, MEANS.

>> WITH DUE RESPECT IF WE LOOK
AT THE LANGUAGE OF THE WOULD
HAVE BEEN IMPOSED TEST, IT IS
AS SCORE SHEET ERROR REQUIRES
RESENTENCING UNLESS THE
RECORD, CONCLUSIVELY SHOWS
THAT THE DEFENDANT OR THAT THE
SAME SENTENCE WOULD HAVE BEEN
IMPOSED UNDER A CORRECTED
SCORE SHEET SO IT IS.

>> LANGUAGE -- WE ARE REALLY
LOOKING UNDER THREE # 00, AND
I KNOW THAT -- 3800 I KNOW
SOME GROUPS ARE WORKING ON

MAYBE AMENDING THIS -- THIS PARTICULAR RULE, ERRORS, THAT BECAUSE OF THEIR NATURE SHOULD BE CORRECTED AT ANY TIME AND THE O'ER THE OTHER ISSUE IS WITHOUT AN EVIDENTIARY HEARING, FOR ME, THE PROBLEM I SEE IN LET ME TAKE JUST THIS CASE AS I'M UNDERSTANDING IT THEY AGREE THAT THE INCORRECT SCORE SHEET WAS USED BUT THE MOST THAT WOULD HAPPEN, WAS THAT IT LOWERED THE LOWEST PERMISSIBLE SENTENCE FROM 63 MONTHS, FIVE YEARS, TO 39 MONTHS, TO BE A LITTLE OVER THREE YEARS, THE JUDGE SENTENCED TO TEN YEARS. NOW THE ISSUE WOULD BE YOU CAN'T THERE IS NO EVIDENTIARY HEARING ON UNDER 3800, SO THE STATE WHO IS GOING TO -- AND THERE IS NOTHING IN THE RECORD EITHER WAY, I WOULD ARGUE THAT IT LOOKS TO ME LIKE EVEN UNDER THE WOULD HAVE, IT WOULD HAVE BEEN TEN YEARS, IS YOU KNOW SINCE THE JUDGE WAS SENTENCES\$!!!!ING SO FAR OVER THE LOWEST MINIMUM, MAKES NO DIFFERENCE, YOU WOULD ARGUE DIFFERENTLY, SO HOW WOULD YOU HOW WOULD THE STATE BE ABLE TO SHOW IT THAT IT WOULD HAVE BEEN IMPOSED ON IF WE WERE TO USE THIS, SINCE THERE IS NO EVIDENTIARY HEARING UNDER 800 ESSENTIALLY THEN YOU ARE SAYING THEY CAN'T I DON'T THINK WE O COULD HAVE POSSIBLY INTENDED THAT, FOR SENTENCES THAT SHOULD BE CORRECTED AT ANY TIME.

>> JUSTICE SINCE THE COURT IS CLEARLY CONCERNED WITH THE RULE AND UTSING THE RULE IN OTHER CASES NOT JUST IN THIS CERTAIN FACTS CERTAIN RECORDS MIGHT PRESENT COMMENTS BY THE JUDGE ABOUT WHEN OR NOT, THIS PARTICULAR OFFENDER WOULD HAVE BEEN SCORED AT THE MAXIMUM WHATEVER THE MAXIMUM WOULD BE OR MINIMUM WHATEVER THE MINIMUM WOULD BE.

YOU KNOW THOSE RECORDS EXIST.
AND SO UNDER THAT TYPE OF AN
INSTANCE THE STATE COULD MEET
ETS BURDEN UNDER THE WOULD
HAVE BEEN IMPOSED TEST COULD
IT MEET THE BURDEN THAT BASED
ON THE RECORD ONLY THE RECORD,
NOT ON THE RECOLLECTION OF THE
TRIAL JUDGE, WHICH MAY FADE
THE TRIAL JUDGE MY DIE THOSE
ARE THE CONCERNS JUSTICE
CANTERA YOU RAISED.

>> YOU AGREE THIS IS NOT A
SITUATION THAT ILLEGAL
SENTENCE.

>> THIS IS NOT A SITUATION --

>> AND IT INVOLVES, THEREFORE,
A RULE INTERPRETATION OF THIS
COURT THIS IS -- THIS \$\$COURT'S
RULE IN LIKE -- LOOKING AT THE
KINDS OF ERRORS THAT OCCUR,
THAT THE DEMAND CORRECTION
REARE SENTENCING, WHATEVER,!!\$\$!!!!!!!!!!!!!!!
WHATEVER,99WITHOUT REGARD TO
WHETHER IT OCCURS FIVE YEARS,
TONE YEARS, 15, FROM THEREFORE!!\$\$!!!!!!!!!!!!!!!
THEREFORE, SINCE WE DON'T IT
IS NOT CLEAR, EITHER WAY, MY
CONCERN, IS THAT BECAUSE THERE
IS NOT AN EVIDENTIARY HEARING,
AND, BECAUSE THERE ISN'T IN
MANY CASES, A RECORD ANY MORE,
YOU DON'T EVEN YOU KNOW YOUR
VIEW WOULD BE THERE SHOULD BE
WHAT WOULD BE THE REMEDY,
RESENTENCING?

.
>> RESENTENCING.

>> AND WITH USING A CORRECTED
SCORE SHEET.

>> USING THE CORRECTED SHORE
SHEET PERHAPS THERE IS
EVIDENCE, AS I THINK THERE IS
IN THIS CASE NOT ON THIS
SUMMARY RECORD ON APPEAL HERE,
BUT THAT THE STATE REFERENCE
THAT THERE IS A NEGOTIATED
PLEA THINGS THAT MIGHT AFFECT
AT A RESENTENCING MAYBE SAME
SENTENCE WOULD BE IMPOSED BY
THE TRIAL COURT ON
RESENTENCING BUT I THINK THE
PROPER REMEDY, IS STILL
RESENTENCING!!\$\$!!!!!!!!!!!!!!!

RESENTENCING, OTHERWISE WE ARE SHIFTING THE BURDEN, AWAY FROM THE STATE.

WE ARE TAKING AWAY THE BENEFIT OF THE DOUBT THAT IS GIVEN TO THE CRIMINAL --

>> BUT ONLY IN THOSE CASES, SINCE WE HAVE ALREADY HAD, ANDERSON!!\$\$!!!!!!!!!!!!!!!

ANDERSON, THAT ARE BEYOND THE TWO YEAR BASIS WOULD YOU AGREE THIS COURT CONSTITUTIONALLY COULD TAKE SCORE SHEET ERRORS OUT OF 3800 ALTOGETHER.

>> ABSOLUTELY.

>> THAT IS WHY I'M SAYING I THINK THERE IS SOME POLICY INTERPRETATION, ABOUT IT, THAT JUST CANTERO, ALLUDED TO, IN I THINK ANDERSON AND THE ANDERSON OPINION, ABOUT WHEN!!\$\$!!!!!! WHEN -- WHY STANDARD WOULD BE DIFFERENT, FOR 3800, AND I DON'T -- HOW O DO YOU.

>> IF WE FOLLOW THAT LOGIC, THEN 3800 IS STRIPPED OF THE ABILITY TO CORRECT INCORRECT SCORE SHEET ERRORS, THAT DON'T EXCEED THE MAX.

>> -- MAXIMUM.

>> PROBABLY, FRANKLY BECAUSE AT THE TIME THE RULE WAS INITIATED SCORE SHEET ERRORS WERE PROBABLY A RELATE BIG THING ABOUT MINIMUMS AND MAXIMUMS!!\$\$!!!!!!!!!!!!!!!

MAXIMUMS, BECAUSE SENTENCING IS SO DIFFERENT NOW, FRANKLY IT LOOKS LIKE SCORE SHEET ERRORS, HAVE ESPECIALLY BECAUSE THEY ONLY LOOK AT THE MINIMUM YOU DON'T LOOK AT THE MAXIMUM, PARTICIPANT OF THE SAME CONCERNS ARE NOT TLECH WOULD YOU AGREE WITH THAT.

>> UH-HUH.

>> YOU DO?

>> CERTAINLY WITH THE NEW AMENDED 1998 STENZING GUIDELINES WE ARE NOW LOOKING AT THE MINIMUM PERMISSIBLE SENTENCE AS OPPOSED TO MAXIMUM AND THAT BILL IN DISCRETION BUT I STILL THINK THAT WE

SHOULD NOT LIGHTLY RECEDE FROM THE BENEFIT OF THE DOUBT THAT IS GIVEN TO THE CRIMINAL DEFENDANT, IN EVERY OTHER ASPECT OF OUR JURISPRUDENCE, SIMPLY BECAUSE, IN THIS SITUATION, WE WOULD RATHER THERE BE THE ABILITY TO HAVE AN EVIDENTIARY HEARING TO GET A FULLER PICTURE WE ARE GIVING TOO MUCH THEN OF THAT BENEFIT BACK TO THE STATE.

>> YOU AGREE, WE CURRENTLY HAVE RULE 3800B.

>> AND THAT VERY MUCH ENCOURAGES A DEFENDANT TO RAISE THIS KIND OF ERROR, P BEFORE AN APPEAL, DURING THE PENDENCY OF APPEAL THIS PROBABLY THE ONLY PLACE IN THE RULES THAT SEEMS TO ALLOW, THE DEFENDANT OR ANY PARTY TO FILE A MOTION AFTER AN APPEAL HAS BEEN FILED, GO AHEAD AND FILE THE MOTION THE TRIAL COURT, TO MAKE INSURE THAT THE THIS SENTENCING ERROR IS TAKEN CARE OF, ON DIRECT APPEAL.

SO IT WILL SEEMS LIKE IF WE ARE EMPHASIZING THAT MUCH, AND 3800B, THAT THESE KINDS OF ERRORS SHOULD BE RAISED, AND DETERMINED, ON DIRECT APPEAL, IT WOULD SEEM INGRUNGOUS TO ME ON THE OTHER HAND WE ALLOW ISSUES TO BE RAISED AT ANY TIME EVEN 20, 30 YEARS AFTER THE SENTENCE.

>> IF WE LOOK AT THE FACTS, LET'S LOOK AT THE FACTS IN THIS CASE THAT WAY CAN PLAY IT OUT SEE WHAT IF RELIEF WERE GRANTED WHAT IT WOULD DO WERE A POLICY RATIONALES WOULD BE HERE WE HAVE ON THE INITIALLY SCORE SHEET 1999 CARJACKING LEVEL SEVEN OFFENSE, IN 2001, MR. BOOKS PICKS UP A NEW CHARGE VIOLATES PROBATION ON THE FIRST CHARGE, THE SECOND SHORE SHEET PREPARED HAS ARMED CARJACKING RATHER THAN CARJACK INITIAL OFFENSE SCORE AT LEVEL -- THE DIFFERENCE IS 36 POINTS!!\$\$!!!!!!!!!!!!

POINTS, NOT A DE MINIMIS
DIFFERENCE, NEARLY THREE YEARS
AS JUSTICE PARIENTE POINTED
OUT.

>> HE WAS AWARE THAT IF ANY
TIME FOR DIRECT APPEAL, HE WAS
COULD HAVE BEEN AWARE OF THAT
DURING THE TWO YEARS FOR
3.580; CORRECT?

>> AS THIS COURT POINTED OUT
IN WOODFIELD VERSUS STATE THE
PROSECUTION HAS EQUAL
PROFESSIONAL RESPONSIBILITY IN
PREPARING THE SCORE SHEET, AND
UP THE PREPARED A SCORE SHEET
THAT HAD THE ERROR, THIS AND
THIS INSTANCE WE HAVE, TWO
SETS OF PROSECUTORS.

>> MY POINT IS WE HAVE THE YOU
KNOW THIS BENEFIT OF THE
DOUBT, AND, GIVING THE
DEFENDANT THE BENEFIT OR YOU
KNOW, THE A-- APPEAL TIME TWO
YEARS AFTER THE SENTENCE SO HE
AS JUSTICE CANTERO WAS SAYING,
I THINK, IF WE ACCEPT YOUR
ARGUMENT, THEN THERE IS NO
TIME LIMIT.

>> THERE SHOULDN'T BE, FOR AN
ERROR SUCH AS THIS, EVER.

>> I DON'T BELIEVE THERE IS --
>> NO STINT -- NO INTEREST IN
STATE IN FINALITY.

>> NOT UNLESS THERE IS A
REQUISITE EVIDENTIARY HEARING,
ERROR SUCH AS THIS IS CLEAR
FROM THE SCORE SHEETS IF YOU
LOOK AT SCORE SHEET ONE YOU SEE
CARJACKING LEVEL SEVEN YOU
LOOK AT SCORE SHEET TWO, ARMED
CARJACKING LEVEL NINE THERE IS
AN ERROR, THAT ERROR.

>> BUT IT DIDN'T RESULT IN AN
ILLEGAL SENTENCE.

AND I AGREE WITH YOU RESULTED
IN ILLEGAL SENTENCED -- BUT WE
ARE NOT TALKING HERE ABOUT AN
ILLEGAL SENTENCE WE ARE
TALKING ABOUT DISCRETIONARY
SENTENCING OF THE TRIAL JUDGE
AND THIS SENTENCE WAS WITHIN
THAT DISCRETIONARY RANGE.

>> I AGREE JUSTICE BELL BUT IF
WITHIN THE DISCRETIONARY RANGE

OF YOU ALREADY CONCEDED IT IS NOT ILLEGAL SENTENCE THAT YOU CAN NEVER CHALIF THAT IS THE FACTS IF THE FACTS AS YOU LAID THEM OUT YOU CAN NEVER CHALA SENTENCES\$!!!!ING ERROR NO MATTER HOW GREAT SO LONG AS IT IS WITHIN THE CHANGE, I THINK, 3.8008 -- >> YOU CAN NEVER CHALLENGE I'M SAYING YOU HAVE THREE OTHER OPPORTUNITIES, UNDER THE WOULD HAVE.

P.

>> YOU CAN'T CHALLENGE AT ANY TIME --

>> I THINK THE RULE IS CURRENTLY WRITTEN IS FINE I THINK IT, FOR ONE IT MEETS, IT -- IT COVERS THE FACTS OF THIS CASE.

I DON'T THIP IT RUNS INTO THE PROBLEMS OF FINALITY THAT THE STATE WILL RAISE.

>> -- TI THERE IS ANY A HAPPY MEDIUM IN TERMS OF THIS SITUATION -- IN THIS CASE, THE MAXIMUM SENTENCE 30IS YEARS.

>> UM-HMM.

>> THE SCORE SHEET ERROR THE LOWEST PER MISS SO I BELIEVE THE JUDGE IMPOSED A MAXIMUM OF 30 YEARS.

IS THAT DIFFERENT THAN SAYING,99IN THIS CASE, AND I WOULD ASK THIS QUESTION TO THE STATE, THE JUDGE, IMPOSED THE MINIMUM, AND IMPOSED THE 63.3 MONTHS, MINIMUM, SO -- SHOULD THERE BE TO SAY, IF IT IS A SCORE SHEET ERROR IT AFFECTS THE MINIMUM PERMISSIBLE, AND THE JUDGE NONL THOSE CASES, WHERE THE JUDGE, SENTENCED AT THE MINIMUM -- THAT THOSE CASES!!\$\$!!!!!!!

CASES, WOULD BE EVEN THOUGH COULD HAVE DONE THE HIGHER ONE IT IS PRETTY OBJECT VEEUS FROM THE KNAVES RECORD, THAT THE JUDGE WAS SENTENCING AT THE MINIMUM, AND THOSE WOULD DEMAND RESENSE -- RESENTENCING NOT TO SAY EVERY CASE AGAIN I GAVE YOU THE 30 YEARS, THAT IS

THAT WOULD BE A THAT IS A USE!!\$\$!!!!
USEFUL -- USELESS ACTED --
DOES ANY -- I MEAN YOU DO SEE
THAT AS AN I DON'T KNOW.
>> AS THIS COURT REVISITS,
RULE 3.800A, I THINK THAT IS A
HAPPY MEDIUM OF COURSE BECAUSE
THEN IT IS COURSE OR IT IS
CLEARER THAN A CASE SUCH AS
THIS, WHERE IT IS SOMEWHERE
WITHIN THE REASONING AS
OPPOSED TO EITHER THE TOP OR
THE BOTTOM OF THE HE RANGE
THAT SOME ERROR HAS OCCURRED
YOU CAN SEE THAT FROM THE
RECORD
>> I DON'T KNOW WHY EVEN UNDER
CURRENT RULES, SINCE IT IS YOU
ARE I DON'T KNOW WHY, THAT IS
DISTYPE\$\$!!!!ION CAN'T BE MADE UNDER
THE CURRENT RULE DISTINCTION.
>> SOME COURTS HAVE ATTEMPTED
TO BUT THE ONLY.
>> BASICALLY THE WOULD HAVE
BEEN IMPOSED STASHED?
>> THAT IS THE WOULD HAVE BEEN
IMPOSED STANDARD IT SEEMS TO
ME.
>> WELL, SO I THINK SORT OF.
YOUR HONOR, IT IS -- THERE
WERE LIMITING THE --
>> GETTING BACK TO JUSTICE
PARIENTE!!\$\$!!!!!!!!!!!!!!
PARIENTE'S ORIGINAL QUESTION
ASSUME FOR THE MOMENT THE
WOULD HAVE BEEN IMPOSED
STANDARD APPLIES HOW YOU DO
MEET IT IN THIS CASE.
>> HOW DO I MEET THE WOULD
HAVE BEEN IMPOSED.
>> CORRECT.
>> IN THIS CASE FROM THE
RECORD ITSELF, WE SEE A SCORE
SHEET ERROR.
A DIFFERENT -- A DIFFERENCE OF
36 POINTS --
>> THERE WAS A TEN YEARS.
>> YES.
>> RIGHT?
>> THE ORIGINAL SENTENCE WAS
FIVE YEARS, THE MINIMUM, WAS
FIVE YEARS, AND THE MINIMUM
UNDER THE CORRECTED SCORE
SHEET WOULD BOE 3 1/2 YEARS.

>> UM-HMM.

>> SO HOW DO HOW IS THE RECORD CONCLUSIVELY SHOW THAT THE COURT HAVE BEEN WOULD HAVE IMPOSED THE SAME HOW DOES IT NOT EXCLUSIVELY SMO THE COURT WOULD HAVE IMPOSED SAME SENTENCE.

>> THE RECORD DOES NOT OLE FIRST OF ALL THE STATE HAS CONCEDED THAT, IN THEIR ANSWER BRIEF, THEY HAVE THEY SAID THAT THE RECORD DOES NOT CONCLUSIVELY SHOW, THAT THE SAME SENTENCE WOULD HAVE BEEN IMPOSED!!\$\$!!!!!!!!!!!!

IMPOSED.

WITH THE CORRECTED SHORE SHEET THAT IS ALREADY A CONCESSION SO IT IS NOT --

>> WAS THERE WAS THERE A FIND!!\$\$!!!!!! FINDING ON THE RECORD, THAT THE TRIAL COURT SAID I'M GOING TO I'M GOING SENTENCE YOU TO FIVE YEARS, GREATER THAN THE MINIMUM SENTENCE?

>> IF IT WAS IT IS NOT PART OF THE SUMMARY RECORD THAT IS BEFORE THIS COURT.

>> YOUR HONOR SO I WOULDN'T KNOW I DIDN'T HANDLE THE APPEAL.

>> SEEMS LIKE THAT IS THAT IS THE WAY YOU WOULDN'T MEET THE WOULD IMPOSE IF THERE IS SOME EVIDENCE THAT THE COURT DECIDED I'M GOING TO USE THE MINIMUM AS SOME KIND OF GUIDE EITHER BY IMPOSING THE MINIMUM SENTENCE, OR BY SENTENCING FROM ABOVE NOT GOING DOWN FROM THE MAXIMUM BUT GOING UP FROM THE MINIMUM.

>> I THINK THAT IS STILL SHIFT!!\$\$!!!!!! SHIFTING THE BURDEN AWAY, THIS COURT SAID THAT THE WOULD HAVE BEEN IMPOSED TEST IS THE SAME AS THE BEYOND A REASONABLE DOUBT TEST.

>> BUT THAT IS POECHL -- I MEAN THE COURT COULD DECIDE THAT IN THESE CASES, THAT IT WOULD BE, IT EVEN IF WE APPLIED THE WOULD HAVE BEEN

IMPOSED!!\$\$!!!!!!!!!!!!!!

IMPOSED, THAT BECAUSE OF WHEN
IT IS OCCURRING, WOULD IT BE
INCUMBENT THEN ON THE
DEFENDANT FROM THE FACE OF THE
RECORD TO SHOW A DIFFERENT
SENTENCE WOULD HAVE BEEN
IMPOSED!!\$\$!!!!!!!!!!!!!!

IMPOSED.

THAT STILL WOULD GIVE THE
RELIEF TO A VERY SMALL PERHAPS
A VERY MAUL PERHAPS A CASES
WHERE THE RECORD SHOWS, THAT
THE JUDGE SAID, I AM
SENTENCING AT THE MINIMUM, AND
YOU WOULD BE ABLE TO PREVAIL
IN, THAT AND SO, I KNOW NO ONE
IS SUGGESTED THAT ALTERNATIVE,
BUT, SORT OF APPEALS TO ME.
AS A WAY THAT IN THAT ONE RARE
CASE WHERE IT REALLY IS CLEAR
THAT IT COULD HAVE BEEN
IMPOSED BUT THEY REALLY WERE
JUST GIVING THE LOWEST
POSSIBLE THEY WOULD AT LEAST
BE RELIEF IN THAT CASE.

>> UNDER THAT ITERATION OF THE
WOULD HAVE BEEN IMPOSED TEST
WHICH ENT IS NOT THE KURNT ONE
UTILIZED IN OTHER AREAS YES, I
DON'T THINK CRIMINAL DEFENDANT
HERE WOULD BE ENTITLED TO
RELIEF BUT UNDER CURRENT WOULD
HAVE BEEN TEST I DON'T THINK
RUNS INTO FINALITY PROBLEMS
HOPEFULLY ON REBUTTAL I CAN
ADDRESS THAT.

>> SPEAKING OF REBUTTAL YOU
ARE INTO REBUTTAL TIME IF YOU
WOULD LIKE TO SAVE.

>> I WOULD LIKE TO SAVE.

>> MAY IT FLEES COURT MY IS IN
A IS LAURA FISHER ZIBURA I
REPRESENTATIVE -- REPRESENT
THE STATE OF FLORIDA ON THIS
CASE.

>> WE ADVOCATE FOR THE COULD
HAVE BEENING IMPOSED TEST
UNDER 3800A AS A DEFENDANT IS
GIVEN, AMPLE OPPORTUNITY TO
FIX THESE TYPES OF SCORE SHEET
ERRORS FOR DIRECT APPEAL, IS
GIVEN OPPORTUNITY AT THE TRIAL
LEVEL, DURING SENTENCING, TO

REVIEW!!\$\$!!!!!!!

REVIEW, THE GUIDELINES AND
CORRECT THEM, AND ALSO, 3800B
IS -- AND THEN 3850.

>> JUST AND I BASICALLY AGREE
WITH THAT BUT JUST TAKE, THIS
-- WITH THE SCENARIO WHERE IN
THIS CASE, THE JUDGE SENTENCED
AT THE LOWEST PERMISSIBLE
SENTENCE, 63 MONTHS, FOR FIVE
YEARS, AND RECORD IS CLEAR,
THAT THAT IS WHAT THE JUDGE
WAS DOING, UNDER YOUR -- IN
THE FOURTH DISTRICT COULD HAVE
BEEN IMPOSED THAT WOULD NOT
MATTER I JUST WONDERED IF THE
STATE HAD THOUGHT ABOUT THE
IDEA THAT EVEN IF YOU USE THE
WHOFB IMPOSED, BUT IT WOULD
HAVE TO BE CLEAR FROM THE FACE
OF THE RECORD, THE DEFENDANT
COULD ESTABLISH, THAT THE
ANOTHER SENTENCE WOULD HAVE
BEEN IMPOSED IN THOSE NARROW
CASES, THERE COULD BE
RESENTENCING BUT NO OTHERS.
YOU DO SEE THAT AS BEING A
POSSIBILITY.

>> YES, THAT IS DEFINITELY
SOMETHING THAT SHOULD BE
CONSIDERED, AND THE CONTEXT OF
-- DETERMINING WHAT 3800A
REALLY IS MEANT TO BE, IS IT
MEANT TO BEP SOMETHING THAT IS
OUT THERE IN THE FUTURE FOR
THESE TYPES OF CASES WHERE IT
IS APPARENT ON THE FACE OF THE
RECORD?

THAT THE LOWEST PERMISSIBLE
SENTENCE IS WERE A THE JUDGE
WANTED TO DO?

>> I GUESS THE PROBLEM, IN MY
EXPERIENCE, THAT YOU ARE
ALWAYS PRESENTED WITH, WITH
THAT IS WHAT IS THE LANGUAGE
THAT YOU ARE GOING TO USE TO
JUDGE THOSE WHAT IT IS ON THE
FACE OF THE RECORD.

IS IT SOME MAGIC WORDS THAT
HAVE TO BE ON THE FACE OF THE
RECORD.

>> RIGHT THEY THERE\$\$!!!!INLIZE THE
DIFFICULTY THAT IS PART OF THE
REASON IT WOULD HAVE IMPOSED

TESTS SORT OF, BUT UNDER THE
COULD HAVE BEEN THE PERSON
THAT GOT LET'S JUST SAY THIS
WAS A HORRIBLE SCORE SHEET
ERROR, HORRIBLE IN THAT IT WAS
THE LOWEST PERMISSIBLE WAS TEN
YEARS, AND IT REALLY SHOULD
HAVE BEEN TWO YEARS.

AND THE JUDGE SAYS IN THE FACE
OF THE RECORD, I'M I WOULD
THIS IS -- A MITIGATED CRIME
BUT I CAN'T GO BELOW THE
LOWEST PERMISSIBLE TEN YEARS
BUT YET AS WE KNOW, THE
MAXIMUM IS THE SKY, YOU KNOW
NOW.

SO THAT IS THE ONE I'M
CONCERNED ABOUT.

THEY MAY NOT AND I HAVE THE
THAT CASE, BUT I THINK IF WE
APPLIED THE COULD HAVE BEEN,
THEN THAT DEFENDANT, AND --
IMPACT -- CLEAR ON JUST IS OUT
OF LUCK NOT LUCK US -- IS OUT
>> SHE HAS THE OPPORTUNITY TO
ADDRESS THIS WITH THAT HIGHER
STANDARD DURING THE DURING
SENTENCING!!\$\$!!!!!!!!!!!!!!!!!!!!
SENTENCING, DURING DIRECT
APPEAL DURING 3850.

THAT GIVES SEVERAL YEARS TO
FIND THAT TYPE OF ERROR, AND

--

>> WHAT INTEREST DOES THE
STATE HAVE IF THAT IS THE --
YOU KNOW, THERE WAS THIS
ERROR, AND, AGAIN, IT IS NOT
THE DEFENDANT, THAT CAUSED THE
ERROR, IT IS THE STATE, THAT
CAUSED THE ERROR, AND THEN,
REQUIRING I MEAN WE'VE GOT
MOST OF DEFENDANTS, SERVING IN
A HUGE LONG SENTENCES IN THAT
THOSE CASES, HAVING THAT BE IF
IT IS ON THE FACE OF THE
RECORD, WHICH JUST WELLS MAY
BE CORRECT IF YOU CAN'T
ADEQUATELY DEFINE IT IT WOULD
HAVE TO BE CONCLUSIVELY SHOWN
ON THE FACE OF THE RECORD, AND
THAT MAY NEVER EXIST!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!.

>> THE STATE HAS AN INTEREST
IN FINALITY AS AN IN ALL RULES
PROCEDURAL RULES THAT BAR

EVERY CLAIM THERE HAS TO BE A POINT IN TIME WHERE IT BECOMES MORE AND MORE DIFFICULT, TO GIVE THE KIND OF RELIEF THAT IS NECESSARY, AS TIME PASSES -- PASSES!!\$\$!!!!!!!!!!!!

PASSES, AND THIS CASE, BECAUSE OF THE GUIDELINES, AND BECAUSE OF THEIR THE SUBJECTIVITY OF ALL -- DEFENDANT REALLY DOES GET QUITE A BIT OF OPPORTUNITY TO FIND THIS TYPE OF ERROR, AND HAVING A TIME LIMIT ON IT, PUTS -- THE TIME TO TELL YOU SENTENCING!!\$\$!!!!!!!!!!!!!!

SENTENCING, THIS TYPE OF ERROR IS FOUND THE MORE SPARE RESENTENCING HEARING WILL BE, BECAUSE -- THEIR WITNESSES WOULD BE AVAILABLE, AND -- EVERYTHING IS FRESH IN \$\$ EVERYONE'S MIND IF THERE IS ANY OTHER ISSUES NEED TO BE ADDRESSED THEY HAVE THE OPPORTUNITY TO HAVE A FULL EVIDENTIARY HEARING, AS TIME PASSES ON THAT EVEN IF YOU GRANTED THE EVIDENTIARY HEARING, IF YOU HAVE CASESES GOING BACK 10, 15 YEARS,\$\$!!.

>> I'M NOT SUGGESTING EVIDENTIARY HEARING.

>> OR RESENTENCES\$!!!!ING OR THE WHOLE THING IS DONE, IT IS JUST A BURDEN ON THE STATE, THAT -- IN LIGHT OF THE OPPORTUNITIES THAT THEY HAVE, IN THE FIRST FEW YEARS AFTER THEIR CONVICTION, THERE HAS TO BE A TIME, WHERE THIS HAS TO END.

EXCEPT FOR ARE THE EGREGIOUS CASES WHERE IT GOES OUT TYPE OF GLOOIPZ OR APPARENT FROM THE FACE OF THE RECORD, THAT THE ERROR, AND ALSO, HOW THE ERROR CAN BE FIXED.

>> AGAIN, ALSO, ARE YOU AGREEING, HAVE THAT IN THOSE CASES WHERE IT IS CLEAR ON THE FACE OF THE RECORD THAT THE JUDGE WAS INTENDING TO SENTENCE LOWEST PERMISSIBLE SENTENCE, THAT THE DEFENDANT

CAN SHOW THAT, THAT YOU RELIEF SHOULD BE GRANTED IN THOSE. >> A MATTER OF RESENTENCING BASED ON WHAT THE LOWEST WOULD BE --

>> BUT IF WE, PUT A COULD HAVE BEEN ACROSS THE BOARD, YOU WOULDN'T HAVE RESENTENCING IN THOSE CASES?

. >> RIGHT.

>> YOU AGREE THAT WOULD BE.

>> YES, THAT WOULD BE A GOOD, COMPROMISE ON THIS?

>> YES.

>> SAY THAT LOUD -- YOU DON'T WANT TO --

>> [LAUGHTER]

>> -- LET THE RECORD REFLECT THE WITNESSES IS NODDING HER HEAD WILL THE CLERK PLEASE SWEAR THE WITNESS.

>> PLEASE GO HEAD WE DIDN'T MEAN TO THROW YOU OFF!!\$\$!!!!!!RESPOND.

>> AGAIN, REALLY, THE ISSUE HERE IS THE FACT THAT 3800A CAN BE RAISED AT ANY TIME THERE, HAS TO BE A CUTTING OFF POINT, FOR THE STATE BE ABLE TO ADMINISTER JUSTICE THE TYPE OF ERROR WAY SENTENCING GUIDELINES ARE MISTAKES ARE GOING TO HAPPEN.

>> LET ME ASK YOU ABOUT THESE TESTS, AND THIS MAY BE ANOTHER QUESTION OUT OF LEFT FIELD, BUT, THESE TESTS THAT WE HAVE, WOULD HAVE BEEN IMPOSE COD HAVE BEEN IMPOSED, IT SEEMS LIKE THEY WERE DESIGNED, FOR SENTENCING GUIDELINES, WHERE THERE WAS A RANGE OF POSSIBLE STENZ!!\$\$!!!!!!!

STENZES, COULD UNDERSTAND HAVE BEEN IMPOSED TEST SAYS WELL YOU KNOW THE RANGE WAS, 11 TO 22 MONTHS, SO AS LONG AS IT FALLS WITHIN THAT RANGE, WE ARE GOING TO SAY, THAT IT WAS HARMLESS ERROR, STILL WITHIN THE RANGE, THE PROBLEM WE HAVE NOW, WITH THE CRIMINAL PUNISHMENT CODE IS THAT THE RANGE IS NOT A RANGE, IT IS

YOU KNOW, THREE YEARS, TO LIFE, SO, IT IS A MUCH BROADER KIND OF RANGE, IS THE IS THAT WOULD HAVE BEEN, COULD HAVE BEEN IMPOSED DISTINCTION APPROPRIATE FOR CRIMINAL PUNISHMENT CODE CASE --

>> IT NAY NOT BE APPROPRIATE, NOW THAT THE SENTENCING GUIDELINES SO ARE OPEN ENDED, WHEN THIS WAS ADDED TO 3800A, I BELIEVE AS YOU WERE SAYING JUSTICE CANTERO THERE WERE 20 TO 25 POINTS -- THAT THEY CALLED THEM CELLS, AND IF YOU WERE WITHIN THAT, IF BUT IT IS 20 IT IS AROUND 20 POINTS, AND THEN YOU CAN SAY IT IS HARMLESS BECAUSE YOU KNOW IT 20IS POINTS, HERE IT CAN BE, ANYTHING, A LOT OF THE CASES I READ FROM DIFFERENT DISTRICTS SOMETIMES WERE TALKING ABOUT 1.2 POINTS, 1.9 POINT THEY USED THE TERM HARMLESS ERROR, AS IT GETS MORE AND MORE AND MORE AS IN THIS CASE, YOU REALLY SAY YOU REALLY USE THAT TYPE OF TERMINOLOGY? UNDER THESE SITUATIONS BUT AGAIN WE DO HAVE TO CONSIDER THE FACT THAT THIS IS WAY OUT IN TIME, THIS CAN BE TEN YEARS, 15 YEARS --

>> WE REALLY NEED TO ME AMEND THIS PARTICULAR PART OF THE THE RULE AGAIN -- ERROR, DOES NOT -- MEANT FOR THE MODERN SENTENCING!!\$\$!!!!!!!!!!!!!!!!!!!! SENTENCING, I THINK, AND THAT MAY BE WHY WE ARE STRUGGLE IN THIS CASE, I HADN'T THOUGHT OF WHAT JUSTICE CANTERO SAID ABOUT COULD HAVE BEEN I GUESS THAT IS WHY I WAS CONCERNED ABOUT THE LOWEST PERMISSIBLE BECAUSE IT IS ALWAYS THE COPING IS GOING TO BE YOU KNOW, THE STATUTORY MAXIMUM. AND NOT A SOMETHING LESS THAN THE STATUTORY MAXIMUM.

>> AND AS FAR AS REMEDY HOW CAN DROOIM THAT TEN OR 15 YEARS OUT WOULD YOU -- IT IS A

RANGE, YOU COULD HAVE OH, YOU WOULD HAVE TO FIND ORIGINAL TRIAL JUDGE.

>> I THOUGHT YOU SAID, AGAIN, IN THOSE CASES WHERE IT IS CLAIRE THAT IT IS SENTENCING AT THE LOWEST END, THAT --

>> BUT IF A MATTER OF THREE YEAR -- THREE YEARS' DIFFERENCE I WOULD IMAGINE THE DEFENDANT WOULD WANT TO GO BACK AND HAVE THAT REVEALATED, TO SEE IF THAT WOULD HAVE CHANGES AND THAT IS ANOTHER ISSUE, DEPEND ON WHATTING THE RECORD SAYS WHETHER A NEGOTIATED PLEA GUIDELINES REALLY PLAYED THAT MUCH A PART IN IT THAT IS SOMETHING O NOT GOING TO BE APPARENT FROM THE FACE OF THE RECORD PROBABLYING IN MOST CASES

>> IF YOU AGREE WITH JUSTICE CANTERO -- SUGGESTION, THAT THE WOULD HAVE BEEN COULD HAVE BEEN DICHOTOMY, ISN'T TRULY APPLICABLE IN THE CRIMINAL PUNISHMENT CODE ERA, DO YOU HAVE ANY SUGGESTION AS TO HOW THESE SHOULD BE LOOKED AT THEN?

>> #.

>> I THINK THAT IS THAT GUIDELINES ERRORS, THERE HAS TO BE A POSSIBILITY A DIFFERENT RILE APPLIED TO THEM BUT ALSO, TIME LIMIT HAS TO BE PLACED ON IT.

>> THAT IS A PROBLEM WE HAVE HAD SCORE SHEET ERRORS BEING THE -- BEING A SPECIFIC CATEGORY, OTHER THAN A LEGAL SENTENCE!!\$\$!!!!!!!!!!!!!! SENTENCES, AND, IF WE IMPOSE, USE THE COULD HAVE BEEN, WE ESSENTIAL ARE WRITING OUT, IS A -- THE BECAUSE, COULD HAVE BEEN WILL BE, ALMOST 100% OF THE TIME OR ELSE IT WILL BE AN ILLEGAL SENTENCE IF IT IS OVER THE STATUTORY MAXIMUM SO WE ARE REALLY SIGNIFICANTLY SAYING WE SHOULD WRITE IT OUT OF THE RULES SO WE DON'T GIVE

A DEFENDANT, THOUGHT, WHICH IS MIGHT BE OKAY, I MEAN THAT MAY BE ASLUGS.

>> ONE MIGHT BE ALONG WITH 3850 THAT HAS TIME LIMIT, THAT SCORE SHEET CALCULATION ERRORS HAVE A CERTAIN AMOUNT OF FIVE YEARS OR SOMETHING.

>> WHATEVER YOU KNOW, DID DEEMDZ -- DEEMS TO BE REASONABLE AMOUNT OF TIME THAT MIGHT BE SOLUTION TO THIS.

>> SO WE WOULD THEN 3.850, REALLY JUST FO TRULY ILLEGAL STENZ!!\$\$!!!!!!! STENZES.

>> THAT IS POSSIBLY BE THE ANSWER --

>> WHAT WOULD HAPPEN IF THE CASE THE SCORE SHEET WAS BASED UPON AN OFFENSE THAT BEYOND THE TWO-YEAR PERIOD, AS -- HAS SINCE BEEN OVERTURNED, SO THE SCORE SHEET ERROR IS SOMETHING THAT IS DOES NOT BECOME YOU DON'T PUT THEM AWARE OF IT UNTIL YOU ARE BEYOND THE TWO-YEAR PERIOD.

>> RATE.

>> WHAT WOULD YOU DO IN THAT.

>> THERE ARE PROVISIONS FOR THAT IN THE LAWS THAT EXTEND, TIME LIMITS, BECAUSE, SOMETHING HAS JUST BECOME APARENT THAT WASN'T KNOWN BEFORE THOSE SAME TYPE OF RULES WOULD APPLY TO SITUATION LIKE THAT!!\$\$!!!!!!!I JUST WANTED TO MENTION IN THIS PARTICULAR CASE THAT THIS WAS A NEGOTIATED PLEA FOR TEN YEARS AND THAT IS ON THE TRANSCRIPT.

>> THIS IS TOTALLY --

>> SO IN THIS PARTICULAR CASE IF YOU WERE GOING TO APPLY THE WOULD HAVE IMPOSED TEST I THINK THERE IS AN ARGUMENT TO BE THAT I HAD MA IS EXACTLY WHAT THE JUDGE WOULD HAVE DONE IN THIS.

.
>> THERE ARE ANY OTHER QUESTIONS?

>> THANK YOU.

>> THANK YOU VERY MUCH THERE IS NO RULE THAT SAYS YOU HAVE TO USE UP EVERY MINUTE OF YOUR TIME EVERY SECOND. SO REBUTTAL?

>> JUST VERY BRIEFLY, THAT THE LAST ISSUE ABOUT THAT BEING ON THE RECORD, NOT PART OF THE SUMMARY RECORD THAT IS BEFORE THIS COURT, SO, PROPERLY LIKE IN WILSON VERSUS STATE THE BECAUSE IT WASN'T PART OF THE RECORD THE PROPER RELIEF WAS STILL REMAND FOR RESENTENCING.

>> IN THESE PROCEEDINGS, YOU CAN'T USE, THE PREVIOUS RECORD AS PART OF THE RECORD.

I MEAN, YOU HAVE TO SO IT'S NOT PART OF THE SUMMARY RECORD UNDER 3.800 BEFORE THIS COURT.

>> LAWYERS WAS DEFENDANT THAT FINAL DISCOVERED IT.

>> HE FOUND THIS OUT.

>> LET ASK YOU THE SAME QUESTION I ASKED THE STATE ATTORNEY.

>> YOU HAD MORE TIME.

>> I ASSUME THAT, YOUR ANSWER WOULD BE, THAT, NO, THE WOULD HAVE BEEN, COULD HAVE BEEN IMPOSED DICHOTOMY IS NOT APPROPRIATE FOR CRIMINAL PUNISHMENT CODE CASES?

>> I AGREE THAT THE COULD HAVE BEEN IMPOSED TEST IS UNTENABLE.

SHOULDN'T BE USED ANYWAY.

I AGREE WITH JUSTICE WELLS ROWLY DRAFTING THESE RULES IS EXTREMELY DIFFICULT.

RIGHT NOW YOU COULD HAVE A DE MINUTE MUST PROVISION, WHERE THE ERROR IS SO DEMINIMUS.

ONE MONTH ERROR ON.

30-YEAR SENTENCE.

THAT DOESN'T AFFECT THE OUTCOME.

WE HAVE NEARLY THREE-YEAR ERROR ON 10-YEAR SENTENCE,

NEARLY A THIRD.
SO THAT'S QUITE A LARGE
AREA.
THAT WOULD NOT FALL OUT ON D
E-MINI MUST TEST.
IT LEAVES BURDEN ON STATE.
GIVES US.
BENEFIT OF THE DESON THE
DOUBT ON DEFENDANT.
IT WOULD BE THREE YEARS TO
LIFE WE SHOULD GIVE THAT
BENEFIT OF THE DOUBT,
CONTINUE TO GIVE BENEFIT OF
THE DOUBT AS THIS COURT
REWORKS THIS RULE AS IT
CLEARLY WANTS TO DO.

PLEASE --

>> YOUR ARGUMENT WE SHOULD
USE WOULD HAVE BEEN IMPOSED
TEST IN CRIMINAL PUNISHMENT
CODE CASES?

>> I THINK THAT CONTINUES
THAT WOULD STILL COVER THE
CASE THAT JUSTICE PARIENTE
POINTED OUT.

IT WOULD COVER THOSE TYPES
OF ERRORS, THE ERRORS,
JUSTICE BELL POINTED OUT.

>> ASSUMING REGARDLESS WHAT
THE RECORD SHOWS HERE IN A
NEGOTIATED PLEA SITUATION,
THE COURT WOULD HAVE IMPOSED
THE SAME SENTENCE, SO, NO
NEW TRIAL WOULD BE REQUIRED
IN THOSE SITUATIONS.

>> NO RESENTENCING WOULD
BE --

>> NO RESENTENCING.

>> HERE, THE WORST-CASE
SCENARIO IS THAT, THE,
WHATEVER COURT IS SITTING IN
AN APPELLATE CAPACITY JUST
REMANDS FOR A RESENTENCING
AND THE JUDGE IMPOSES THE
SAME SENTENCE.

THERE IS NO NEED TO SPEND
THE MACHINATIONS AND HAVING
ANOTHER EVIDENTIARY HEARING
AND WITNESSES MAY HAVE
FORGOTTEN.

WE HAVE THE DOCUMENTS THAT
IS ALL THIS COURT NEEDS TO
LOOK AT, ANY APPELLATE COURT
NEEDS TO LOOK AT.

>> SINCE THE DEFENDANT WAS
PRO SE ARE YOU APPOINTED AS
PRIVATE COUNSEL OR --

>> I WAS APPOINTED BY THIS
COURT, THIS IS A PRO BONO
CASE.

>> THANK YOU VERY MUCH FOR
YOUR ADVOCACY.

>> THANK YOU VERY MUCH.
WITH THAT WE CONCLUDE OUR
FINAL CASE.

WE'LL TAKE THE CASE UNDER
ADVISEMENT.

THE COURT WILL STAND IN
RECESS UNTIL TOMORROW
MORNING.

PLEASE RISE.

>> COURT IS NOW ADJOURNED.