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Renoit Saintelien v. State of Florida

SC06-1888

>> PLEASE RISE.

HEAR YE HEAR YE HEAR YE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION, ALL WHO HAVE CAUSE
TO PLEA, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

>> GOOD MORNING.

>> GOOD MORNING.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS AND
WELCOME TO THE ORAL ARGUMENT
CALENDAR FOR TUESDAY, JANUARY
5th, 2007, BEFORE WE BEGIN OUR
ARGUMENTS WE WOULD TAKE THE APP
TRUANT TO WELCOME THE FSU LAW
SCHOOL SUMMER UNDERGRADUATE
PROGRAM, WE ARE GLAD YOU ARE
HERE AND WILL BE OBSERVING FINE
ATTORNEYS AND FINE ARGUMENTS
THIS MORNING.

CASES OF MAJOR IMPORTANCE TO
THE STATE OF FLORIDA.

SO, WE MOVE DIRECTLY TO OUR
FIRST CASE.

CALL IT.

>> GOOD MORNING, MAY IT PLEASE
THIS COURT, BEVERLY POHL OF
BROAD & CASSEL, FOR RENOIT
SAINTELIEN.

THIS CASE PRESENTS YET ANOTHER
IN THE LONG LIST OF CASES
DEALING WITH THE FLORIDA SEXUAL
PREDATORS ACT AND, IN
PARTICULAR, WHETHER A CHALLENGE
TO THE LEGALITY OF A SEXUAL
PREDATOR DESIGNATION CAN BE
RAISED VIA A 3.800A
POSTCONVICTION MOTION.

>> MAY I ASK YOU, I KNOW THERE

IS A BROADER PROCEDURAL ISSUE
BUT AS FAR AS YOUR CLIENT --
AND I ASSUME YOU AREZZ!!\$\$
COURT-APPOINTED, ON THIS, HIS
CLAIM IS HE DIDN'T GET WHAT HE
BARGAINED FOR.

>> THAT'S CORRECT.

>> AND WOULDN'T THAT, IN ANY
EVENT, NOT BE A 3.800, EVEN
ASSUMING WE WOULD SAY IT COULD
BE CONSIDERED A LEGAL --
ILLEGAL SENTENCE AND SITUATION
WHERE CLEARLY THE PERSON
WOULDN'T QUALIFY IN A SITUATION
WHERE THEY ARE SAYING THAT
THEIR PLEA WAS -- DID NOT
INCLUDE IT, WOULDN'T IT -- HOW
WOULD THAT BE A 3.800 ANY WAY?
ASSUMING IT WAS, YOU KNOW, A
NORMAL PLEA CASE.

>> WELL, THE NAME OF HIS PRO SE
MOTION WAS IT WAS AN ILLEGAL
SENTENCE PRECISELY BECAUSE IT
WAS NOT PART OF THE BARGAINED
FOR, NEGOTIATED PLEA BUT I
WOULD LIKE TO POINT OUT, YOUR
HONOR, THE MERITS OF THE CASE
ARE NOT BEFORE THE COURT.
THE MERITS --

>> NO, NO, NO, BUT NORMALLY IF
WE ARE GOING TO CONSIDER
WHETHER SOMETHING IS PART OF A
NEGOTIATED PLEA AND WHETHER
SOMEBODY WAS SEEKING TO
WITHDRAW THE PLEA, WE WOULD
LOOK AT THAT ASSUMING IT WAS A
NORMAL CRIMINAL CASE, THROUGH
3850, BECAUSE IT MIGHT INVOLVE
THE TAKING OF TESTIMONY AS TO
WHAT WAS AGREED TO OR SOMETHING
OF THAT NATURE.

AND I DIDN'T SEE THAT AS BEING
PART OF WHAT ANYONE SAYS.

>> WELL, I DON'T THINK IT IS
APPROPRIATE TO GET DRAWN TOO
DEEPLY INTO THE MERITS OF THE
CASE BUT I THINK IT WOULD BE
POSSIBLE TO EXAMINE THE
LEGALITY OF THE SEXUAL PREDATOR
DESIGNATION BASED UPON THE
FACTS OF RECORD, WHICH DO
INCLUDE THE TRANSCRIPT OF THE
PLEA, COLLOQUY, THE PLEA
DOCUMENTS THEMSELVES AND THOSE

ALL GO TO THE MERITS WHICH WERE NEVER --

>> THE PROBLEM WITH THAT PROCEDURALLY IS THAT IF YOU HAVE TO GO INTO THE RECORD, AND INTO THE FACTS, OF THE CASE, THEN THE ONLY PROCEDURE WE HAVE ASSUMING WE DID THIS UNDER THE CRIMINAL RULE WOULD BE 3.850 AND THAT HAS A TWO-YEAR LIMITATION.

WHICH -- THIS FAR EXCEEDED TWO YEARS, CORRECT.

>> JUSTICE WELL, I RESPECTFULLY DISAGREE IT IS 3.800 IS PERFECTLY SUITED TO A CASE WHERE YOU HAVE TO LOOK AT THE RECORD, THE LIMITATIONS, THE KINDS OF CASES THAT CAN ONLY BE HEARD UNDER 3.850 ARE THOSE THAT REQUIRE FACTUAL DEVELOPMENT, A FACTUAL PRESENTATION AT IT HEARING BUT WHERE EVERYTHING IS DEVELOPED ALREADY AND ON THE FACE OF THE RECORD, 3.800 WOULD BE AN APPROPRIATE KIND --

>> BUT I CAN'T THINK OF A CASE THAT INVOLVES A NEGOTIATED PLEA WHERE SOMEBODY WOULD BE SAYING IT IS NOT PART OF THE BARGAIN AS OPPOSED -- AS OPPOSED TO UNDER NO SET OF CIRCUMSTANCES COULD IT BE IMPOSED, WHERE THAT COULD BE RAISED AT ANY TIME UNDER 3.800A.

>> WHERE THE BARGAIN IS IN WRITING AND IS OF RECORD, I DON'T SEE WHY IT WOULDN'T CONCEPTUALLY BE POSSIBLE, YOUR HONOR BUT AGAIN IT GOES TO THE MERITS, THAT WERE NOT BRIEFED AND REACHED BY THE 4th DISTRICT.

THE QUESTION FOR THIS COURT IS REALLY A PROCEDURAL QUESTION, ASSUMING THAT THERE IS COLORABLE ALLEGATION OF ILLEGALITY OF THE SEXUAL PREDATOR DESIGNATION CAN THAT BE RAISED IN A 3.--

>> AND YOUR POINT IS, IT IS AN IM PRACTICE KAELT TO TRY TO DO IT THROUGH A CIVIL PROCEEDING,

AS AN -- IT IS MORE OF A PRACTICAL SOLUTION AS OPPOSED TO WHETHER THIS IS A SENTENCE, BECAUSE WE CLEARLY SAID THIS TYPE OF DESIGNATION IS NOT PART OF THE SENTENCE.

>> AND I'M PERFECTLY WILLING TO FACE WHAT THE STATUS OF THE LAW IS NOW AND THIS IS, IT HAS BEEN ESTABLISHED THAT A SEXUAL PREDATOR DESIGNATION IS NOT A SENTENCE AND NOT A PUNISHMENT.

>> BUT WE HAVE SAID IT IS A COLLATERAL CONSEQUENCE OF THE PLEA OR THE CONVICTION, CORRECT?

>> YES, YOUR HONOR, YOU HAVE SAID THAT.

>> SO HOW DO WE DEAL WITH OTHER SITUATIONS THAT WE HAVE SAID ARE COLLATERAL CONSEQUENCES OF A PLEA OR CONVICTION?

HOW ARE THOSE KINDS OF ISSUES RAISED?

AREN'T THEY NORMALLY RAISED IN A 3.850 MOTION.

>> BUT THIS IS A UNIQUE SPECIES OF COLLATERAL CONSEQUENCE AND THIS COURT IN ROBINSON SAID THAT A SEXUAL PREDATOR DESIGNATION AND ONE REALLY CANNOT ARGUE, IS A SUBSTANTIAL INFRINGEMENT UPON A PERSON'S LIBERTY INTERESTS AND MAKE IT VERY DIFFERENT FROM ANY OTHER COLLATERAL CONSEQUENCE.

EVERY --

>> HOW DIFFERENT FROM THE COLLATERAL CONSEQUENCE OF BEING DEPORTED?

I MEAN, THAT SEEMS TO ME THAT IS A PRETTY SUBSTANTIAL BE LIBERTY INTEREST INVOLVED THERE.

YOU DON'T RAISE WHETHER OR NOT YOU WERE PROPERLY TOLD THAT YOU COULD BE DEPORTED IN A 3.800 MOTION, DO YOU?

>> BUT EVERY PLEA THAT IS ENTERED INTO NOW, THE TRIAL JUDGE HAS TO ADVISOR SEVER -- -- EVERY, SINGLE DEFENDANT OF THE POTENTIAL FOR DEPORTATION AND IN THIS CASE THERE IS NO REQUIREMENT THAT A DEFENDANT

WHO IS ENTERING INTO A PLEA BE TOLD ME MIGHT HAVE LIFELONG AND ONEROUS BURDENS IMPOSED ON HIM DUE TO THE SEXUAL PREDATOR ACT.

>> LET ME ASK YOU ABOUT THE LANGUAGE OF 3.800A.

YOU OBVIOUSLY ARE RELYING ON KING.

FROM THE 2nd AND IT SEEMS LIKE IN THAT CASE THE DCA REALLY DID NOT ANALYZE THE LANGUAGE OF 3.800A TO DETERMINE WHETHER THIS WOULD FIT UNDER THAT RULE. AND SAID IT IS NOT WORKING OUT IN THE CIVIL CONTEXT AND YOU CAN DO IT UNDER THE CRIMINAL CONTEXT, UNDER 3.800A AND SEEMS LIKE WHEN YOU ANALYZE THE LANGUAGE OF 3.800 A IT IS NOT ANYTHING THAT COMES UNDER THE TYPES OF LIMITED ORDERS THAT ARE DESIGNED TO BE FILED AT ANY TIME AND, YOU KNOW, 300A IS A VERY LIBERAL RULE IN THE SENSE THERE IS NO TIME LIMITATION WHATSOEVER AND CON COMET TAENL IS A NARROW RULE DESIGNED TO ADDRESS SPECIFIC TYPES OF ORDERS.

AND DOESN'T SEEM TO ME THAT IT IS AN ILLEGAL SENTENCE UNDER AN INCORRECT CALCULATION ON A SCORE SHEET, NOT GRANTED PROPER CREDIT FOR TIME SERVED OR OTHER VERY LIMITED THINGS AND UNDER WHAT SECTION WOULD IT FALL UNDER?

IN ORDER TO USE 3.800A THE COURT WOULD HAVE TO ADOPT A POSITION THAT THIS IS AT THE LEAST IN THE NATURE OF A SENTENCE OR PART OF THE SENTENCING PROCESS.

ITS SOMETHING IMPOSED BY THE CRIMINAL COURT EXCLUSIVELY AND THE DEFENSE --

>> EVEN IF WE SAE IT IS PART OF THE SENTENCING PROCESS AND I MAY AGREE WITH YOU ON THAT, IT MAY PUT IT UNDER 3.850 AND UNDER 3.800B IN THE SENSE YOU CAN APPEAL AFTER THE ORDER DURING THE APPEAL OF A CRIMINAL SENTENCING AND THOSE KINDS OF

THINGS BUT I THINK IT'S AN EVEN
STRETCH -- ALMOST AN ABYSS TO
SAY IT IS AN ILLEGAL SENTENCE.
>> AND I UNDERSTAND THE COURT'S
CONCERN WITH THAT AND PERHAPS
THE RIGHT ANSWER, IF 3.800A IS
NOT REALLY BROAD ENOUGH TO
ENCOMPASS THIS SORT OF
SITUATION, PERHAPS THE SANS IS
WE NEED ANOTHER RULE THAT --
>> CAN YOU ANSWER TO ADD IT
UNDER 3.850?

WHY IS THIS THE TYPE OF THING
THAT SHOULD BE ADDRESSED AT ANY
TIME WHEN EVEN UNDER KING YOU
HAVE FOUR OTHER METHODS OF
ADDRESSING THIS.

YOU CAN IMPOSE IT UNDER -- --
DURING THE APPEAL, RIGHT?
YOU CAN IMPOSE IT UNDER 3.800B,
YOU CAN DO IT UNDER 3.850.

IN THE KIFL CONTEXT, IF IMPOSED
IN A KIFL CONTEXT YOU WOULD DO
IT UNDER CIVIL -- CIVIL RULES,
1.-- 1.540.

>> THANK YOU, 1.540 OR UNDER
9.140.

IF IT WAS DONE AFTER THE
SENTENCING, DO IT UNDER 9.140.
BUT I THINK THE PROBLEM YOU
HAVE IS THAT IN ORDER FOR TO
YOU WIN THIS CASE, WE'D HAVE TO
GO TO THE COMPLETE OTHER
EXTREME AND SAY, NOT ONLY COULD
YOU DO IT UNDER ALL OF THOSE
TYPES OF PROCEEDINGS, BUT YOU
CAN ALSO DO IT AT ANY TIME.
WHY SHOULD WE GO TO THAT
EXTREME.

>> YOU SHOULD GO TO SOME -- IF
NOT DO THAT -- TO THAT EXTREME
YOU SHOULD FIND SOME WAY TO
MAKE IT SOMETHING THAT CAN BE
CHALLENGED AT ANY TIME OF THE
UNIQUE PROVISIONS OF THIS
STATUTE AND HOW THEY ARE
INCREDIBLY BURDENSOME ON A
PERSON FOR THEIR ENTIRE LIFE.

>> WE HAVE THE OTHER COLLATERAL
CONSEQUENCES SUCH AS THE
JUSTICE MENTIONED, DEPORTATION,
BUT WE ALSO HAVE THE MOUNTING
PUNISHMENTS THAT COME LATER ON
DUE TO THE NUMBER OF

CONVICTIONS YOU MAY HAVE AND THAT KIND OF SCENARIO AND MAY PLEAD GUILTY ON ONE -- ON ONE OCCASION, AND THEN IT COMES BACK TO HAWN YOU MANY YEARS LATER SO THE SAME ARGUMENT AND WE HAVE ALREADY CROSSED THAT BRIDGE, THOSE ARE COLLATERAL CONSEQUENCES OF THESE THINGS, HAVE WE NOT.

>> I'M NOT QUITE SURE I UNDERSTAND PRECISELY THE QUESTION.

>> THE QUESTION IS, IN THE CRIMINAL CAN TEXT, IF YOU PLEAD GUILTY TO A CERTAIN CRIME THAT IS USED TO HABITUALIZE YOU AND DO OTHER THINGS TO YOU LATER ON AND IS NOT PART OF THE PLEA COLLOQUY BUT ARE COLLATERAL CONSEQUENCES AND THOSE ARE ALL HANDLED, ARE THEY NOT, THROUGH A 3.850-TYPE MECHANISM.

>> THOSE CONVICTIONS, THOSE SENTENCES COULD BE BUT UNLESS THEY WERE ILLEGALLY IMPOSED. I'M NOT SAYING THAT NO ARGUMENT COULD BE FASHIONED --

>> YOU SAY THE SAME THING I THINK DID NOT AGREE THAT THIS COULD BE USED AGAINST ME, THAT WAS NOT PART OF MY PLEA IT COULD BE USED IN THE FUTURE AND WE'VE CROSSED THE BRIM BUT IS NOT A BASIS TO SET ASIDE THE PLEA --

>> I THINK IT IS IMPORTANT TO NOTE THAT NO COURT, NONE OF THE DISTRICT COURTS OF APPEAL, AND THERE HAVE BEEN MANY, MANY CASES INVOLVING THE STATUTE, HAVE SUGGESTED THAT THERE IS ANY KIND OF WAIVER, IF A DEFENDANT DOESN'T SEEK TO SET ASIDE AN ILLEGALLY IMPOSED SEXUAL PREDATOR DESIGNATION.

>> SEE, THE OTHER CASES -- AND THAT IS WHY I STILL HAVE PROBLEMS WITH THE FACTS OF THIS CASE -- THE OTHER CASES WERE WHERE THE STATE CONCEDED THAT THE QUALIFYING -- CRIME WAS NOT A QUALIFYING CRIME FOR SEXUAL PREDATOR STATUS AND IN THOSE

SITUATIONS I CAN UNDERSTAND THAT IT COULD EVEN POTENTIALLY FIT UNDER THE 3.800 MODE BECAUSE NO COURT COULD EVER HAVE IMPOSED IT.

THAT IS NOT WHAT WE ARE DEALING WITH HERE AND I THINK WHAT WE NEED TO COME UP WITH IS A WORKABLE SOLUTION SO WE DON'T, YOU KNOW, HAVE ALL OF THE COURTS KIND OF FASHIONING THEIR OWN REMEDY, BUT I'M NOT SURE THAT THE APS WOULD BE, WELL, EVERYTHING WOULD JUST GO -- BE THROWN INTO 3.800 AND I THINK THAT IS WHAT JUSTICE CON TAROT IS POINTING OUT, THAT THERE WOULD BE OTHER WAYS TO DEAL WITH IT, IF TRULY IT WOULD BE A BASIS FOR SET ASIDE THE PLEA OR SAYING THIS WASN'T PART OF WHAT WAS BARGAINED FOR, BUT AGAIN I WOULD THINK IT WOULD HAVE TO BE WITHIN A TIME-LIMITED SITUATION. AS OPPOSED TO THE ONE WHERE IT NEVER COULD BE QUALIFYING AND YOU AGREE THAT THIS CRIME WAS ONE THAT WOULD MEET THE QUALIFYING DEFINITION FOR SEXUAL PREDATOR STATUS.

>> YES.

I DO AGREE WITH THAT AND ITS IMPORTANT TO NOTE THAT HE DID NOT SEEK TO SET ASIDE HIS PLEA. ONLY TO SET ASIDE THE SEXUAL PREDATOR DESIGNATION ENTERED FOUR MONTHS AFTER --

>> THEY TRY AN PARSE IT AND THAT IS THE PROBLEM, ONE IS A NATURAL CONSEQUENCE AND I THINK THAT IS WHAT JUSTICE LEWIS WAS ALLUDING TO ABOUT THE CASES WHERE IT COMES BECAUSE OF THE NATURE OF THE -- NATURE OF THE CRIME BUT IS NOT NECESSARILY A BASIS FOR SETTING ASIDE THE PLEA.

>> THE 4th DISTRICT HAS NOT SQUARELY ADDRESSED THAT QUESTION IN THE PARTICULAR CONTEXT.

THERE IS A CASE FROM THE 2nd DISTRICT THAT HOLDS THAT IT DOESN'T VIOLATE A PLEA

AGREEMENT TO IMPOSE LATER
SEXUAL PREDATOR DEZ NATION BUT
AT LEAST IN THE 4th DISTRICT
IT'S NOT A DECIDED QUESTION AND
I WOULD HATE FOR THE PROCEDURAL
QUESTION BEFORE THIS COURT TO
GET CUT SHORT TALKING ABOUT THE
MERITS THAT HAVEN'T EVEN BEEN
BRIEFED.

>> LET ME ASK YOU ON THE
PROCEDURAL ASPECT, ON NICHOLSON,
IT SAYS FROM NOW ON THE -- IT
MUST BE OBSERVED BY CON TEM
PRAN NUS OBJECTION OR A RULE
800B MOTION, WHY ISN'T THAT
APPROPRIATE.

>> NICHOLSON WAS A DIRECT
APPEAL CASE AND SUBSEQUENT TO
THAT IN A CASE, CABRERA, THAT
COURT SUGGESTED AT THE END OF
THE DECISION THAT IT COULD BE
RAISED IN A 3.800A AND SO THE
5th DISTRICT DOES NOT LIMIT --
HAS NOT LIMITED ITSELF TO THE
3.800B REMEDY.

IT HAS GONE BEYOND THE STATUS
OF THE LAW IN NICHOLSON.

>> HOW ABOUT TAKING THE EXAMPLE
THAT JUSTICE PARIENTE HAS POSED
TO YOU AND SEE HOW YOU WOULD
APPLY IT.

TO THE ISSUES YOU HAVE HEAR.
THAT IS, WHAT SHE SAID IS THAT
FOR EXAMPLE, IF THE QUALIFYING
CRIME HAS BEEN DETERMINED NOT
TO BE A QUALIFYING CRIME UNDER
THE LAW SO THAT THESE
CONSEQUENCES CANNOT ATTACK --
ATTACH TO THAT, THAT WE IN
ESSENCE HAVE SAID THAT THAT
CLEARLY WOULD BE AN ILLEGAL
SENTENCE.

ALL RIGHT?

NOW, TAKING THAT, THAT IS, THAT
IF YOU GET CONVICTED OF
RECKLESS DRIVING, IF YOU DON'T
END UP BEING DESIGNATED AS A
SEXUAL PREDATOR, AND SINCE THAT
CONVICTION IS THERE, FOR ALL
TIME, AND YOU CAN SEE THAT ON
THE RECORD, AND IF THE LEGAL
RULING -- THE LAW IS, YOU KNOW,
THAT IS NOT A QUALIFYING
OFFENSE, THEN IT WOULD SEEM

THAT WOULD BE THE CLASSIC CASE FOR THE 3.800A.

NOW HOW IS IT THAT YOUR SITUATION HAS ALL THE EARMARKS OF THAT SAME ILLEGAL DEFINITION?

EXPLAIN TO US WHY WE SHOULD FIT YOUR SITUATION INTO THAT KIND OF, YOU KNOW, THE WAY THAT WE HAVE DEFINED ILLEGALITY.

>> YOU ARE ASKING ME AGAIN TO ARGUE THE MERITS OF THIS CASE, AND I --

>> HAS A LOT OF THE CASE, THEN, JUST BEEN SPENT ON THE ARGUMENT BETWEEN YOUR CLIENT AND THE STATE AND THE STATE SAYING, GO FILE A CIVIL ACTION OR, YOU KNOW, THAT AS OPPOSED TO RESOLVING THIS AND THROUGH A RULE OF CRIMINAL PROCEDURE, IS THAT A PART OF WHAT HAS HAPPENED HERE.

>> WHAT HAPPENED HERE WAS THAT THE 4th DISTRICT COURT OF APPEALS SAYS THAT YOU CAN'T USE 3.800A TO RAISE THE TYPE OF CLAIM THAT YOU HAVE RAISED. THE SEXUAL -- CHALLENGE TO THE SEXUAL PREDATOR DESIGNATION AND THEY SAID, PROCEDURAL WILL YOU IF USED THE WRONG PROCEDURE AND MUST FILE A CIVIL SUIT.

>> THAT IS THIS PROBLEM, SIMPLY STOPPED AND SAID THIS ISN'T A 3.800 TYPE OF CLAIM, PROBABLY WOULDN'T EVEN BE HERE BECAUSE, FRANKLY, I DON'T THINK IT IS. EVEN FIT WERE A CRIMINAL CASE, AND I THINK THAT IS WHY WE ARE STRUGGLING BECAUSE IF WE WERE TO SAY PRO NOUPS THESE CAN BE RAISED 3.800 I STILL SAY YOURS COULDN'T BE RAISED THAT WAY AND WE'D HAVE TO ADDRESS THAT. OTHERWISE WE'D CREATE HAVOC FOR ALL OTHER TYPES OF PLEA AGREEMENTS IN AN EFFORT TO FASHION SOMETHING FOR -- THAT IS FAIR WE DON'T WANT TO HAVE OUR OWN COLLATERAL CONSEQUENCES, DON'T YOU, AS A -- DON'T YOU SEE THAT THAT IS A PROBLEM FOR THIS COURT IN THE SITUATION.

>> I DO BUT I SEE THAT THE CIVIL REMEDY THE 4th DISTRICT SUGGESTED AND THE FIRST DISTRICT RECENTLY JOINED IS COMPLETELY THE WRONG APPROACH.

>> AND THAT MAY BE RIGHT BUT BEYOND THAT, I'M NOT SURE TO SAY BUT IT GOES IN TO 3.800 IS

--

>> AND MAY EVEN GO INTO SOME RULE THAT DOES NOT YET EXIST BECAUSE WHERE YOU HAVE A COLLATERAL CONSEQUENCE WHERE IT IS LIFELONG, IMPOSED BURDENS AND RESTRICTION AND PUBLIC STIGMA TO THE EXTENT THIS IS AND EVERYBODY UNDERSTANDS THERE HAS BEEN PLENTY OF LITIGATION ABOUT THE DEGREE OF A BURDEN THE STATUTE PUTS ON SOMEBODY, THERE MUST BE A WAY IF THERE IS A VALID ALLEGATION IT SHOULDN'T HAVE BEEN IMPOSED, MUST BE A WAY TO GET --

>> A LOT OF DECISIONS TRIAL COURTS AND JURIES MAKE THAT HAVE LIFELONG CONSEQUENCES, BUT WE DON'T ALLOW DEFENDANTS TO APPEAL THOSE OR OBJECT TO THOSE TEN YEARS AFTER THE FACT. WE GIVE A TWO-YEAR TIME ELIMINATION FOR THE -- LIMITATION FOR THE VAST MAJORITY OF DECISIONS RENDRD IN THE TRIAL COURTS.

>> AND I RETURN TO MY ARGUMENT THIS IS IN THE NATURE OF A SENTENCE EVEN FIT IS NOT --

>> ARE EVEN CERTAIN SENTENCES THAT CANNOT BE APPEALED TWO YEARS LATER.

IT HAS TO BE AN ILLEGAL SENTENCE FROM THE RECORD WITHOUT ANY TESTIMONY OR ANYTHING ADDITIONAL THAT YOU CAN DO IT AFTER TWO YEARS AND THE VAST MAJORITY EVEN OF SENTENCES ARE CONTAINED WITHIN THE TWO-YEAR TIME LIMITATION.

>> AND ONE COULD EXAMINE THE RECORD WITHOUT TAKING ANY TESTIMONY AND MAKE A DECISION ABOUT WHETHER OR NOT THIS SEXUAL PREDATOR DESIGNATION WAS

PROPERLY IMPOSED IN A GIVEN CASE AND ONE COULD DO THAT.

>> THAT MAY BE TRUE IN SOME CASES AND NOT OTHER, WOULDN'T YOU SAY?

>> NO.

>> IT WOULD DEPEND ON THE CASE.

>> I DON'T THINK SO.

THE RECORD WILL SHOW.

THERE IS ONE PROBLEM AND THAT IS THE PROBLEM JUSTICE PARIENTE MENTIONED, IF -- JUSTICE AM STEAD IF THE UNDERLYING CONVICTIONS WERE NOT QUALIFIES CONVICTIONS, THAT IS ONE SORT OF PROBLEM AND EVEN IN THAT CLASSIC CASE, WHAT I'M HEARING FROM THE COURT IS THAT THERE OUGHT NOT TO BE A REMEDY UNDER 3.800 AND THAT IS THE PERSON WHO HAS BEEN UNCONSTITUTIONALLY DESIGNATED AS A SEXUAL PREDATOR.

>> WHAT YOU ARE HEARING IS THAT WE ARE ASKING YOU TO FIT THIS WITHIN THE WAY THAT WE HAD DESCRIBED THIS REMEDY OF 3.800A.

FOR INSTANCE, HAVE YOU ARGUED HERE THAT THE TRIAL COURT LAST JURISDICTION, LOST AUTHORITY TO EVER IMPOSE THIS CLASSIFICATION AFTER 30 DAYS OR, YOU KNOW, AFTER THE TIME OF APPEAL --

>> I CAN'T --

>> IN OTHER WORDS, WHAT HAVE YOU ARGUED OR ASSERTED WHICH IS YOUR BURDEN UNDER THIS RULE TO SAY YOU FIRST SAY, WE ARE CLAIMING THAT THIS IS AN ILLEGAL SENTENCE, FOR PURPOSES OF RULE 3.800A.

BECAUSE -- AND WHAT THIS IS "BECAUSE" HERE?

>> WELL, THE "BECAUSE" ALLEGED IN THE MOTION IS BECAUSE IT WASN'T PART OF THE NEGOTIATED PLEA.

AND THAT IS A SEPARATE LEGAL QUESTION THAT IS NOT AT THIS MOMENT REALLY BEFORE THE COURT. AND I SEE I'M RUNNING INTO MY TIME --

>> ALREADY EXHAUSTED ALL OF

YOUR TIME.

THANK YOU VERY MUCH.

WE HAVE THE STATE.

>> GOOD MORNING, MATE PLEASE
THE COURT, DANIEL IN MAN,
ASSISTANT ATTORNEY GENERAL ON
BEHALF OF THE RESPONDENT AND WE
ARE ASKING THE COURT TO AFFIRM
THE DECISION OF THE --

>> DOES THE STATE REALLY HAVE
AN INTEREST IN WANTING TO HAVE
DEFENDANTS WHO REALLY HAVE A
LEGITIMATE GRIPE, WHICH IS\\\$\$
ISPDRIVING WITHOUT A LICENSE
AND GETS SEXUAL PREDATOR STATUS,
TO HAVE TO FILE A CIVIL CLAIM
OR WHATEVER?

IN OTHER WORDS, SENT BETTER TO
FASHION SOMETHING THAT FITS
WITHIN THE CRIMINAL CONTEXT
WHERE MOEZ OF THESE SITUATIONS
-- MOST OF THESE SITUATIONS ARE
IMPOSED THROUGH THIS CRIMINAL
COURT, TO THE FUTURE?

I MEAN, IS THE STATE POSITION
REALLY TO TAKE KING OUT AND
JUST TO SAY FILE THIS AS A
CIVIL DIVISION COMPLAINT FOR
DECLARATORY RELIEF.

>> CERTAINLY THAT WOULD BE
WITHIN THE RULE MAKING
AUTHORITY OF THIS COURT.
CERTAINLY 300A IS NOT THE
CORRECT REMEDY.

>> WOULDN'T IT BE THE CORRECT
REMEDY, THOUGH, FOR SOME OF THE
-- AND AGAIN, I THINK EACH OF
THE COURTS, WHEN THEY ARE
TRYING TO FATHOM A REMEDY THEY
LOOK AT WHAT THE WRONG IS AND
AGAIN THE CLASSIC WOULD BE I
MEAN, IT IS A PRETTY
SIGNIFICANT DESIGNATION, SEXUAL
PREDATOR DESIGNATION, YOU WOULD
AGREE WITH THAT.

>> SIGNIFICANT BURDEN.

>> CLEARLY NOBODY IN THE WORLD
COULD ARGUE THAT IT WASN'T A
QUALIFYING OFFENSE, DOESN'T THE
-- OUR SYSTEM OF JUSTICE HAVE
AN INTEREST IN THAT NARROW,
VERY, VERY NARROW
CLASSIFICATION OF CASES, THAT
THAT SHOULD BE SOMETHING THAT

COULD BE CHALLENGED OR DOES THE STATE SAY, NO, IF THE DEFENDANT, YOU KNOW, MISSES THE TWO YEARS, THAT THEY ARE OUT? >> WELL, RIGHT NOW, IT WOULD BE OUR POSITION THAT MR. SAINTELIEN DOES HAVE ADEQUATE REMEDIES BY WAY OF DIRECT APPEAL.

I WOULD MENTION THAT --

>> LET'S GO OVER THE DIRECT APPEAL.

DO YOU AGREE THAT HE COULD HAVE APPEALED THAT PART OF WHAT HE IS NOW COMPLAINING OF IN THE CRIMINAL APPEAL?

CAN CRIMINAL DEFENDANTS AS PART OF THEIR CRIMINAL APPEAL, HAVING AN ASSISTANT PUBLIC DEFENDER REPRESENTING THEM APPEAL SEXUAL PREDATOR DESIGNATION?

>> YES, JUSTICE PARIENTE UNDER 9.140B 1D CAN FILE AN APPEAL AND APPEAL THE ORDER OF THE TRIAL COURT.

>> BUT IS IT PART OF SOMETHING THE PUBLIC DEFENDER CAN REPRESENT THEM BECAUSE IT IS STILL PART OF THE CRIMINAL SENTENCE?

INTO AND MAYBE THAT WOULD MAKE A DIFFERENCE WHETHER IT HAPPENED AT SENTENCING OR AFTER SENTENCING AS IT HAPPENED IN THAT CASE.

I'M NOT TOO SURE OF THAT DISTINCTION.

CERTAINLY THE CRIMINAL DEFENDANT UNDER WHATEVER REPRESENTATION DOES HAVE A RIGHT TO APPEAL THAT.

>> SO IT IS PART OF THE CRIMINAL --

>> THE PROBLEM WE HAVE, OBVIOUSLY, IS THE -- ALL OF THESE CASES OUT THERE, THAT SAY THAT THE DESIGNATION IS NOT PART OF THE SENTENCE OR PUNISHMENT.

>> EXACTLY.

>> AND SO IF -- EITHER WE HAVE TO DO SOMETHING ABOUT THAT LANGUAGE, OR WILL HAVE TO CRAFT

A WAY TO DEAL WITH IT.

ARE WE NOT.

>> JUSTICE WELLS I'M NOT SURE
IF IT REALLY HAS BEEN SHOWN TO
BE A PROBLEM.

DIRECT APPEAL, THAT WOULD BE
THE TIME FOR THE CRIMINAL
DEFENDANT TO RAISE THIS, FOR
WHATEVER REASON MR. SAINTELIEN
DIDN'T DO THAT, THAT IS WHERE
TRIAL ERROR IS REVIEWED
INDIRECT APPEAL.

>> BUT I'M ASKING IF IT'S NOT
PART OF THE CRIMINAL SENTENCE,
THEN AND MAYBE IF THE STATE
DOESN'T OBJECT TO IT, WHY IS IT
GOING TO BE RAISED PER THE
CRIMINAL APPEAL BECAUSE WE
RECOGNIZE IT IS PART AND PARCEL
OF THAT BUNDLE OF BURDENS THAT
ARE -- OCCUR AT LEAST AT THE
TIME OF SENTENCE AND THE STATE
IS OBJECTING -- ONE MORE ISSUE
AND I THOUGHT ONE OF THE 2nd
DISTRICT CASES IT SAID THAT THE
LAWYER SAID AN ANDREWS CASE AN
COULDN'T RAISE IT AND WE DO
NEED TO CLARIFY THIS.

IT'S NOT -- U IT'S NOT A
PROBLEM.

LOOKS LIKE A PROBLEM IF YOU
LOOK INTO JUDGE --

>> AND WITH ALL DUE RESPECT
UNDER 9.140B 1D, A DEFENDANT
MAY APPEAL ORDERS ENTERED AFTER
FINAL JUDGMENT AND SO I THINK
IT IS VERY CLEAR MR. SAINTELIEN
HAD A RIGHT FOR DIRECT APPEAL
WITHIN 30 DAYS AFTER ENTRY OF
THE ORDER DECLARING HIM A
SEXUAL PREDATOR FOR WHATEVER
REASON HE DIDN'T EXERCISE HIS
RIGHT TO DIRECT APPEAL.
UNDER EXTRAORDINARY
CIRCUMSTANCES, PERHAPS HE ALSO
HAS A RIGHT TO DELAY APPEAL AND
-- A LITTLE BITED APPEAL AND HE
DID NOT, AND AS FAR AS THE
CIVIL RIM MAIDS, I DON'T
BELIEVE THAT THOSE ARE
INADEQUATE, I DON'T BELIEVE IT
IS SHOWN THAT IS INADEQUATE --
I WOULD CITE RULE 1.540,
RELEASE FROM JUDGMENT.

>> WHICH IS INCONGRUOUS TO SAY SOMEBODY HAS TO EXERCISE CIVIL REMEDIES WHEN THESE ORDERS ARE GENERAL ENTERED AS PART OF THE CRIMINAL CASE WITH THE CRIMINAL CASE NUMBER.

IF IT IS DONE IN THAT CONTEXT, THEN IT MAY BE A SEPARATE PROBLEM WITH ORDERS ISSUED IN THE CIVIL COMMITMENT CONTEXT BUT IF IN A CRIMINAL CONTEXT WHY DID WE FORCE THE DEFENDANTS TO FILE A CIVIL ACTION, DO WE DO THAT IN ANY OTHER AREA OF CRIMINAL LAW?

EVEN POSTCONVICTION HABEAS CASES ARE ALL DONE IN THE CRIMINAL CONTEXT THOUGH WE SAID THEY ARE NOT ACTUALLY CRIMINAL, THEY ARE QUASI-CRIMINAL, WHY ISN'T THIS A QUASI-CRIMINAL TYPE OF PROCEEDING.

>> BECAUSE IT'S NOT A SENTENCE AND THAT IS WHAT THE DISTINCTION IS BETWEEN A SENTENCE AND COLLATERAL CONSEQUENCE.

>> I UNDERSTAND IT IS NOT A SENTENCE BUT IT ISN'T A CIVIL CASE, EITHER, DONE IN THE CONTEXT OF A CRIMINAL CASE.

>> FINDING MADE BY THE CRIMINAL COURT JUDGE.

>> IN THAT VEIN, EVEN IF THE DEPARTMENT IS THE ONE AND SAYS, LOOK THIS PERSON QUALIFIES AS THE SEXUAL PREDATOR BECAUSE OF THE OUT OF STATE CONVICTION, YOU HAVE TO GO TO THE CRIMINAL COURT, DON'T YOU, IN ORDER TO GET THIS PERSON DESIGNATED THAT'S SEXUAL PREDATOR.

>> YES, JUSTICE.

>> AND SO, AND IT IS WHY, IF IT IS THIS CRIMINAL COURT THAT IS MAKING THE DECISION THAT THIS PERSON IS A SEXUAL PREDATOR, WHY WOULD YOU SAY, OKAY THE CRIMINAL COURT HAS DONE THIS, BUT YOU IN ORDER TO HAVE A CRIMINAL REMEDY HAVE TO GO TO THE CIVIL COURT.

>> BUT IN THAT CASE YOU'D HAVE A REMEDY OF DIRECT APPEAL FROM

AN ORDER OF A CRIMINAL COURT
AND HE CERTAINLY WOULD HAVE
THAT REMEDY AND SO --

>> YOU GET BACK TO JUSTICE
PARIENTE'S QUESTION IF YOU HAVE
A RIGHT TO A DIRECT APPEAL AND
HAVE A PUBLIC DEFENDER
REPRESENT YOU AND ALL OF THAT,
WHY ISN'T ALL OF THIS REALLY IN
THE NATURE OF A CRIMINAL
PROCEEDING.

>> I DID NOT MAKE THE
CONCESSION THE PUBLIC DEFENDER
WOULD HAVE THE RIGHT TO
REPRESENT THE DEFENDANT AND I
WAS SAYING IF IT HAPPENED WITH
THE SENTENCING IT WOULD BE AN
ISSUE THE PUBLIC DEFENDER --

>> WHO WOULD REPRESENT THE
DEFENDANT, IF THE STATE
ATTORNEY GOES BEFORE THE COURT
AND ASKS THE COURT TO MAKE SOME
-- TO DESIGNATE SOMEONE AS A
SEXUAL PREDATOR, WHO WOULD IN
FACT REPRESENT THE DEFENDANT?

>> HE WOULD PROCEED PRO SE IF
HE IS AN OUT OF STATE
DEFENDANT, THE SCENARIO YOU
MENTIONED, JUSTICE QUINCE, IF
HE CAME FROM OUT OF STATE AND
WAS A SEXUAL PREDATOR IN
ANOTHER STATED, ALASKA AND FIVE
YEARS LATER CAME IN TO FLORIDA
AND WAS DECLARED A SEXUAL
PREDATOR BY A FLORIDA COURT --
>> CRIMINAL COURT.

>> YES.
BEFORE A CRIMINAL COURT, HE WAS
TAKEN -- AND HE WOULD NOT.

>> HAVE THE RIGHT TO HAVE A
PUBLIC DEFENDER APPOINTED TO
REPRESENT HIM.

>> NO, THE SENTENCE IS NOT
BEING IMPOSED.

THAT IS -- THERE IS A SENTENCE
AND COLLATERAL CONSEQUENCE AND
AGAIN THIS IS JUST A COLLATERAL
CONSEQUENCE AND THE SENTENCE
WAS IMPOSED BY A FLORIDA COURT
AND --

>> AND IN THE OVERWHELMING
WOULD YOU BE OF CASES, THESE
ARE BEING IMPOSED NOW AS PART
OF THE SENTENCING PROCESS.

IS THAT CORRECT.

>> YES.

AND THAT IS THE INTENTION OF THE STATUTE.

>> I THOUGHT AND YOU CAN CORRECT ME, ALTHOUGH WE SAID SEXUAL PREDATOR DESIGNATION WAS NOT A DIRECT CONSEQUENCE, WE DID -- I THOUGHT WE REFERRED THIS TO THE RULES COMMITTEE, FOR A REQUEST THAT THIS BE PART OF THE PLEA COLLOQUY.

DO YOU KNOW, AM I INCORRECT ABOUT THAT OR DO YOU KNOW THE STATUS OF ANY SUCH REFERRAL? I MAY BE CONFUSING IT WITH SOMETHING ELSE.

>> NO, THERE WAS SOME LANGUAGE AND I BELIEVE IT WAS THE KING DECISION, THAT THOFT SECOND DISTRICT AND GOING ON MEMORY NOW, THEY REFERRED IT TO A RULES COMMITTEE, AND NOTHING CAME OF THAT AND I DON'T RECALL THIS COURT MAKING SUCH A REFERENCE.

>> NOT ON THIS PARTICULAR ISSUE, ON THE ISSUE THAT WHETHER THE DEFENDANTS IN THE FUTURE WOULD BE NOTIFIED AT THE TIME OF THE PLEA COLLOQUY, OF SEXUAL PREDATOR CONSEQUENCES.

>> I DON'T RECALL, JUSTICE --

>> ALL RIGHT.

NOW, AS FAR AS -- THE ISSUE SEEMS TO BE THIS IS A SOLUTION THAT IS -- NEEDS A SOLUTION THAT IS WORKABLE AND MAY NEED ITS OWN RULES AND WHAT CONCERNS ME IS ALMOST EVERY TIME WE REFER SOMETHING TO THE RULES OF CRIMINAL PROCEDURE COMMITTEE WE GET BACK THAT THEY CAN'T COME UP WITH SOMETHING AND THAT IS APPARENTLY -- THEY CONSIDERED IT AND COULDN'T COME UP WITH A WORKABLE RULE.

NOW, TO ME, THIS IS SOMETHING THAT IT SEEMS THE STATE AND THE PUBLIC DEFENDERS CAN SIT DOWN WITH AND HELP THE COURT OUT, INCOMING UP WITH A WORKABLE RULE.

THAT IS FAIR TO A SITUATION

WHERE I CAN'T BELIEVE THE STATE WOULD SAY SOMEBODY TEN YEARS LATER CAN FIND THEY SHOULD NEVER HAVE BEEN DESIGNATED AS A SEXUAL PREDATOR AND WE ARE GOING SAY WE NEED THEM TO GO FILE A CIVIL ACTION AND, YOU KNOW, GO BEFORE A CIVIL COURT. SO, DO YOU HAVE ANY REASON TO BELIEVE THAT A WORKABLE RULE CANNOT BE DEVELOPED IN -- FOR THIS SITUATION?

>> WELL, NO, IT WOULD BE BEYOND MY SCOPE TO REPRESENT THAT AS OUR POSITION TODAY AND IT IS NOT OUR POSITION TODAY THAT THERE ARE SUFFICIENT REMEDIES AND AGAIN, I WOULD COME BACK TO THE RIGHT TO DIRECT THE -- DIRECT APPEAL.

I MEAN, FIT WAS TRULY SOMETHING THAT THE COURT DID THAT WAS ILLEGAL AND MR. SAINTELIEN OR ANY SIMILARLY SITUATED DEFENDANT WAS BEING DECLARED A SEXUAL PREDATOR FOR THE INCORRECT OFFENSES AND DIDN'T HAVE A EFFICIENT -- WASN'T A REQUISITE OFFENSE WHY COULD THAT NOT BE RAISED ON THE DIRECT APPEAL AND CLEARLY, YOU HAVE -- YOU DON'T --

>> YOU AGREE --

>> HE PLED GUILTY, GENERALLY YOU DON'T HAVE AN APPEAL RIGHT IN A GUILTY PLEA SITUATION. SO HE HAS HAD -- WOULD HE HAVE HAD THE RIGHT TO FILE IT IF IT HAD BEEN DONE AT THE SAME TOMORROW THAT THE GUILTY PLEA WAS ENTERED.

>> AND WHO WOULD HAVE REPRESENTED HIM?

>> IF HE WAS OBJECTING TO IT -- IF HE OBJECTED TO IT AND PRESERVED THAT OBJECTION IT COULD BE BROUGHT UP AS ERROR. I THINK SITUATIONS ARE ALL DIFFERENT, HE WAS REPRESENTED BY THE PUBLIC DEVELOPEDDER AT THE TIME, PERHAPS THE PUBLIC DEFENDER WOULD REPRESENT HIM ON APPEAL.

I MEAN, THAT IS A POSSIBLE

SCENARIO.

I THINK MR. SAINTELIEN'S CASE THAT IS NOT WHAT HAPPENED, THE PLEA WENT -- STILL DON'T HAVE ANY PROBLEM WITH THE SENTENCE, HE'S NOT EVEN ATTACKING THE SENTENCE.

HE'S NOT SAYING IT'S AN ILLEGAL SENTENCE, HE IS ATTACKING THE SEXUAL PREDATOR DESIGNATION.

>> THIS IS THE ILLEGAL SENTENCE BECAUSE IT WAS NOT A PART OF WHAT HE HAD BARGAINED FOR. WHEN HE ENTERED HIS GUILTY PLEA.

>> AND HE HAS NO PROBLEM WITH THE DOC PART OF THE SENTENCE, PROBATION PART OF THE SENTENCE AND THE PROBLEM IS LIMITED TO THE SEXUAL PREDATOR DESIGNATION OF COURSE.

>> AND IN THIS CASE THE JUDGE IMPOSED THE DEZ NATION AFTER THE SENTENCE, AFTER THE PLEA AT SOME --

>> SEVERAL MONTHS AFTER.

>> AND YOU AGREE I THINK EARLIER YOU AGREED THAT THE DEFENDANT COULD HAVE APPEALED THAT DESIGNATION UNDER 9.140 B1D AS AN ORDER ENTERED AFTER JUDGMENT.

>> YES.

THAT IS CLEAR.

>> I BELIEVE IT'S THE KING CASE, THE COURT DECIDED MR. KING WAS DESIGNATED SEXUAL PREDATOR UNDER CIRCUMSTANCES WHERE THE LAW DOES NOT PERMIT THE DESIGNATION BUT NEVERTHELESS, FILED A DIRECT APPEAL, HIS ATTORNEY FIND AN ANDREWS BRIEF AND POINTED OUT THE DESIGNATION AS A SEXUAL PREDATOR WAS IMPROPER AND HIS LAWYER CONCLUDED THE ISSUE COULDN'T BE RAISED ON DIRECT APPEAL AND THIS IS WHERE AGAIN I THINK WE GET TRULY INTO AN ALICE IN WONDERLAND TYPE OF SITUATION.

I MEAN, I'M NOT ASKING YOU BECAUSE I'M SURE YOU --

>> YES.

>> LAWYER IN THE INITIAL KING

CASE BUT THIS IS WHAT I THINK
LED THE 2nd DISTRICT TO BE
FRUSTRATED.

>> PRECISELY AND THREW UP THEIR
HANDS I THINK BASED ON THIS,
WITH THE PROCEDURAL HISTORY
THAT YOU WERE RELATING, THAT IS
EXACTLY --

>> YOU WOULD AGREE MR. KING
WHEN HE FILED HIS DIRECT APPEAL,
HIS ATTORNEY COULD HAVE INSTEAD
OF JUST FILING THE ANDERS BRIEF
AND POINTING IT OUT OR IF THE
2nd DISTRICT LOOKED AT THAT AND
SAID WAIT THAT IS A MERITORIOUS
ISSUE THEY COULD HAVE --

>> RAISED -- THE ATTORNEY
SHOULD HAVE CHALLENGED IT AND
PERHAPS WOULDN'T HAVE GOTTEN A
KING DECISION, WORDED LIKE
THAT.

>> COULD HAVE FILED AS
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM -- I'M JUST
KIDDING!

>> WELL, SOME CLAIMS OF
ILLEGALITY DEALING WITH THE
SEXUAL PREDATOR DESIGNATION CAN
BE THE SUBJECT OF 3.800A
PROCEEDINGS, WHY SHOULDN'T ALL
CLAIMS, IF IT IS A CLAIM OF
ILLEGALITY BE TREATED UNDER
HERE AND THEN DEALT WITH ON THE
MERITS, THAT IS, I ASSUME THAT
THE STATE WOULD NOT ARGUE THAT
IF THERE WAS A SEXUAL PREDATOR
DESIGNATION AND THEN YOU JUST
LOOKED AT THE OFFENSE, AT THE
-- THAT PERSON WAS CONVICTED OF,
RECKLESS DRIVING, AND FOUND OUT
THEN JUST SAID, WELL, THAT HAD
TO BE A MISTAKE THEN AND THAT
IS CLEARLY ILLEGAL, TO DO THAT,
THAT -- WHY -- WOULD THAT BE
TREATABLE UNDER 3.800A?
THERE IT IS ON THE FACE OF THE
RECORD, HERE'S AN APPELLATE
OPINION, FROM THE FLORIDA
SUPREME COURT THAT SAYS YOU
CAN'T IMPOSE SEXUAL PREDATOR
DESIGNATION ON A RECKLESS
DRIVING CONVICTION.
AND SO, WOULD THAT BE TREATABLE
UNDER 3.800A.

>> IT MIGHT BE A REGRETTABLE SITUATION.

I DON'T BELIEVE THAT THAT WOULD BE TREATABLE UNDER 400A AND THAT IS NOT THE CASE WE HAVE NEAR.

>> WHY NOT?

IT MEETS ALL OF THE -- IN OTHER WORDS WE HAVE GIVEN OUT A FORMULA ILL LEE GALTED AN UNDER OUR LAW, NO JUDGE UNDER ANY CIRCUMSTANCES COULD IMPOSE THE SEXUAL PREDATOR DESIGNATION ON A CONVICTION FOR RECKLESS DRIVING.

>> THAT IS TRUE.

SO WHY WOULDN'T THAT QUALITYIE.

>> IT'S NOT AN ILLEGAL SENTENCE, P00A IS FOR ILLEGAL SENTENCE.

>> IT COMES BACK TO THE ISSUE OF, YOU KNOW, WHAT WE HAVE IS THAT THE CRIMINAL COURT JUDGE IN THIS CRIMINAL CASE ALL RIGHT HAS DONE THAT AND ALL OF OUR POLICY HAS BEEN WHEN YOU WANT TO COME BACK ON POSTCONVICTION WE WANT TO CHANNEL YOU BACK TO THAT SAME VENUE AND THAT SAME FORCE WE DON'T WANT ONE JUDGE AND ANOTHER DIVISION OF THE COURT SAYING TO THE JUDGE OVER HERE, IN THE CRIMINAL DIVISION, YOU KNOW, YOU DID SOMETHING WRONG OR WHATEVER, SO ALL OF OUR POLICY HAS BEEN TO CHANNEL THESE THINGS BACK, HOPEFULLY LOGICALLY, OKAY?

AND WHY WOULDN'T THAN APPROPRIATE TO DO UNDER THE HYPOTHETICAL I GAVE YOU, YOU KNOW, NOT TALKING ABOUT THE CASE YET.

>> BECAUSE I THINK THAT A DEFENDANT, CRIMINAL DEFENDANT COULD STILL HAVE A REMEDY IN FRONT OF A COURT WITH CIVIL RELIEF.

>> I'M NOT TALKING ABOUT THAT, I'M TALK ABOUT WHY WOULDN'T IT BE APPROPRIATE IF ALL YOU NEED TO DO IS LOOK AND KNOW IT FITS OUR DEFINITION, OF THE KIND OF CASE THAT SHOP PROPER FOR 3.800A RELIEF AND GET RID OF

THE SEXUAL PREDATOR DESIGNATION SINCE RECKLESS DRIVING IS NOT A QUALIFYING OFFENSE.

>> IN THOSE VERY RARE CASES, I DON'T THINK IT FITS WITHIN THE 3800A IF THE COURT THINKS OF FASHIONING A RULE TO ADDRESS THOSE LIMITED CASES.

>> THE STATE'S POSITION THEN IS THERE IS NO ILLEGALITY INVOLVING THE SEXUAL PREDATOR DESIGNATION THAT WHATEVER -- WOULD EVER QUALIFY FOR 3.800A RELIEF.

>> AND YOU ADOPT THE POSITION AND MYERS, THE MOST RECENT CASE

--

BOYER, AND MR. BOYER WAS ALLEGING HE DIDN'T HAVE THE PREDICATE OFFENSE AND THE FIRST DCA HELD POSTCONVICTION RELIEF IS NOT AVAILABLE AND HAD TO PURSUE INJUNCTIVE OR DECLARATORY RELIEF IN THE CIVIL ACTION.

>> YES.

WHICH HAS NOT BEEN SHOWN TO BE IN SUFFICIENT IN MR. BOYER'S CASE.

AND ANOTHER PROBLEM IS THE 3800A, YOU COULD BE BROUGHT AT ANY TIME, CLEARLY, NOT THE TYPE OF CHALLENGE WE'RE HAVING THIS. I THINK, YOU KNOW, WE HAVE LIMITATIONS ON 3850s, IF THIS COURT IS CONSIDERING A RULE WITHIN THE CRIMINAL RULES TO ADDRESS THE TYPE OF SITUATION

--

>> LET ME UNDERSTAND YOUR ANSWER TO JUSTICE AM STEAD'S QUESTION, IS, THAT THE STATE'S POSITION IS NOT THAT THE DESIGNATION AS FAR AS THE RECKLESS DRIVING IS NOT ILLEGAL, IT'S NOT A SENTENCE, IS THAT THE POSITION OF THE STATE?

>> IT IS NOT A SNS AND NOT AN ILLEGAL SENTENCE AN MIGHT HAVE BEEN TRIAL COURT ERROR.

I MEAN, I WOULD CONCEDE THAT THAT WOULD BE TRIAL COURT ERROR BUT ONCE WE HAVE TRIAL COURT ERROR WHAT IS THE REMEDY.

>> YOU TAKE THE POSITION THAT JUDGE GRIFFIN WROTE IN NICHOLSON THAT IT WAS AN ERROR IN SENTENCING AS OPPOSED TO AN ILLEGAL SENTENCE?

>> IT WOULD BE AN ERROR EITHER IN THE SENTENCING, PROCEEDING AT THE TIME OF SENTENCING OR, AGAIN COULD BE DONE AFTER SENTENCING, WELL AFTER SENTENCING AS WELL, SO, I WOULD CONCEDE UNDER THAT SCENARIO IT CERTAINLY IS TRIAL COURT ERROR BECAUSE THE PERSON WAS NOT SUPPOSED TO BE DESIGNATED A SEXUAL PREDATOR AND HE WAS AND CERTAINLY THAT IS --

>> -- INSTEAD OF DESIGNATING HIM A SEXUAL PREDATOR, WHAT IF HE SAID YOU ARE HERE BY ORDERED TO PUT A BUMPER STICKER ON THE BACK OF YOUR CAR THAT SAYS, I AM A SEXUAL PREDATOR. OKAY.

COULD HE CHALLENGE THAT.

>> HE -- ANSWER THIS QUESTION, YOU HAVE EXHAUSTED YOUR TIME, BUT JUST ANSWER THAT QUESTION, ANSWER THIS ONE QUESTION, PRECISELY.

>> JUSTICE AM STEAD IF IT IS NOT A SENTENCE I DO NOT BELIEVE THE PERSON AS A REMEDY UNDER 3.800 AND IN THAT SITUATION OR ANY SITUATION WHERE THE ERROR IS SO EGREGIOUS, NOT MR. IS IT THE LEAN'S CASE, BECAUSE THERE IS NO ERROR THERE, THEN THE TRIAL COURT DID SOMETHING THAT FAR BEYOND THE RULES, WHY WOULD THE PERSON NOT TAKE A DIRECT APPEAL WITHIN 30 DAYS AS HE CAN UNDER THE RULES AND THEN NOT PERHAPS SEEK A A LITTLE BITED APPEAL THROUGH SOME OTHER THING THAT WAS DONE AFTER, AND THAT IS HIS REMEDY, THE -- TO SEEK A -- AN APPEAL.

AND THAT WOULD BE MY ANSWER, WHY WOULD THAT PERSON NOT SEEK AN APPEAL IF SOMETHING WAS DONE THAT, GREEJS BY THE TRIAL COURT.

>> THANK YOU VERY MUCH I'M

GOING TO GIVE YOU ANOTHER
MINUTE TO GIVE YOUR CONCLUDING
THAUTSD, YOU HAVE EXHAUSTED ALL
YOUR TIME BUT OR QUESTIONING
USED UP MOST OF YOUR TIME, GIVE
US YOUR CONCISE --

>> THANK YOU.

>> FINAL THOUGHTS.

>> I WOULD LIKE TO RESPOND TO
THE STATE'S ARGUMENT THAT IF A
DIRECT APPEAL REMEDY IS
APPROPRIATE.

THE PROBLEM IS THERE IS NO
REQUIREMENT THAT A DEFENDANT BE
PRESENT FOR A HEARING TO IMPOSE
A SEXUAL PREDATOR DESIGNATION
THAT OCCURS SUBSEQUENT TO THE
SENTENCING AND NO REQUIREMENT
UNDER THE STATUTE OR THE RULES
THAT A DEFENDANT BE GIVEN A
COPY OF AN ORDER IMPOSING HIM
AS A SEXUAL PREDATOR AND THERE
IS NO REQUIREMENT THAT A
DEFENDANT WHO IS NOT
NECESSARILY EVEN THERE, BE
ADVISED THAT HE HAS A RIGHT OF
DIRECT APPEAL.

SO THAT MAY BE ONE AVAILABLE
REMEDY TO SOME PEOPLE WHO
HAPPEN TO BE THERE AND KNOW
WHAT IS GOING ON BUT CANNOT
FAIRLY BE THE ONLY REMEDY FOR
DEFENDANTS IN THIS SITUATION.

>> THANK YOU.

>> THE COURT WILL TAKE THE CASE
UNDER ADVISEMENT.

THANK YOU VERY MUCH FOR YOUR
TIME.