

I AGREE WITH THAT.
BUT THERE'S NO REASON TO HEAR
FROM HIM.
THE INMATE AND HAVE HIM RESPOND.
WHEN DID THIS BECOME FINAL TO
HIM?
THIS IS TROUBLING ME.
WHAT IF HE'D WRITTEN ANOTHER
LETTER TO YOU BEFORE THE CASE
WAS RELINQUISHED, WOULD YOU HAVE
RELINQUISHED IT?
WE WENT FOR THE JUDGE IN THE LOW
REPORT.
>> HE SHOULD BE AT THE POINT WHERE
ONCE THE DEFENDANT IN FACT SAYS,
I DON'T WANT TO GO THROUGH THE
POSTCONVICTION THEY'LL SAY, I
DON'T WANT TO HAVE AN ATTORNEY
ANYMORE, ONCE THE TRIAL DOES
MAKE THE DETERMINATION THAT WAS
KNOWING AND VOLUNTARY IT WILL BE
THE END OF IT.
>> BUT IT'S NOT, WE HAVE AN
APPEAL.
>> THE APPEAL OF THE CORRELATOR
DECISION.
MAYBE THAT SHOULD BE THE POINT.
WHERE HE WON'T ACCEPT ANY MORE
COMING IN NOW, BAFFLING
BACK-AND-FORTH.
>> WELL, MY PROPOSED RULE IS IF
THE WAIVER IS NOT FINAL, MEANING
THE APPEAL IS NOT OVER, YOU MAY
TAKE IT BACK.
ONE TIME.
THAT'S IT.
IF IT IS FINAL, I HAVEN'T GOT TO
THAT PART OF IT, IF IT IS
FINAL YOU CAN'T TAKE IT BACK
AFTER SOME EXCEPTIONAL
CIRCUMSTANCE OR EXTRAORDINARY
CIRCUMSTANCE.

I DON'T HAVE ANY QUIBBLE WITH
THAT RULE.
>> ARE YOU ARGUING --
[INAUDIBLE]
THAT THE RULE WE HAVE COME UP
WHY SHOULDN'T WE ENFORCE THAT
ONE.
>> THE WAY WE ENFORCE THE RULE
IS THAT IT ISN'T FINAL YET.
HIS WAIVER IS NOT VITAL.
IT'S ON APPEAL.
AND HE CAN SPEAK.
THAT'S RIGHT FROM THE RULE.
IF HE CAN SPEAK, WHAT CAN HE
SAY?
WHAT YOU ARE INTERPRETING THE
RULE IS THE ONLY THING HE CAN
SAY IF HE SPEAKS, I STILL WANT
TO WAIVE.
>> YOU ARE TREATING IT --
[INAUDIBLE]
>> YOU GOT ME ON CIVIL RULES.
>> IT WASN'T THE PURPOSE OF THE
RULE BUT WHEN I FIRST CAME TO THE
COURT WE HAD NOTHING.
IT WAS NOTHING IN PLACE, NO WAY
TO LOOK AT THESE TO TRY TO
PROTECT SOCIETY AND THE
INDIVIDUAL.
AND THE RULES ADOPTED NOT FOR
THE PURPOSE OF ALLOWING
ADDITIONAL CHANGES OF MIND, BUT
TO VIEW WHAT'S IN THE RECORD AND
TO MAKE A DETERMINATION , AS
JUSTICE QUINCE SAID, THAT THIS
WAS A VALID WAIVER, NOT TO ALLOW
ANY ADDITIONAL.
FOR THIS GOING BACK AND FORTH.
BUT AGAIN, WE UNDERSTAND THAT
CERTAINLY THESE SITUATIONS CAN
COME UP FROM TIME TO TIME.
THE RULING YOU HAVE TO ADMIT WAS

DESIGNED AS A PROTECTIVE MEASURE FOR WHAT HAS OCCURRED, NOT TO PERMIT A VACILLATION BACK AND FORTH.

>> JUST TO BE SURE THE RECORD SUPPORTS THE WAIVER, I AGREE WITH THAT.

BUT THEN YOU CAN HEAR FROM THE PETITION, WHY?

I HAVE NO IDEA WHY THAT WOULD BE THERE FOR THEM TO ACTUALLY SPEAK.

>> AS A PRACTICAL ANSWER, I'M NOT SURE IT WAS PUT IN THERE FOR A PARTICULAR REASON.

IT WAS TO ALLOW PARTICIPATION IN THE PROCESS I THINK, BUT NOT TO COVER WHAT YOU ARE TALKING ABOUT.

IT WAS NOT DESIGNED FOR THAT. YOU MAY DO IT, BUT IT WASN'T DESIGNED FOR THAT.

>> LET ME MAKE ONE FINAL POINT. WITH THE COMPARATIVE BULLET LEAD ANALYSIS ISSUE THAT'S IN THIS CASE, THEY LET HIM WAIVE IN THE UPHELD THE LOWER DEPENDENT. YOU CAN FOLLOW SUCCESSOR WITH CDLA RIGHT NOW.

IT'S IN THIS CASE, BUT IN WIRED AND I CAN SUPPLEMENT EXTRA AUTHORITY THEY DEMANDED TO FOLLOW SUCCESSOR IF APPROPRIATE.

>> I THOUGHT -- HE AGREED TO MATCH HIS DISCHARGE COUNSEL, BUT HE WANTED TO WAIVE ALL POSTCONVICTION PROCEEDINGS.

>> HIS FIRST POSTCONVICTION PROCEEDING, THAT'S RIGHT.

>> YOU'RE INTERPRETING THE WAIVER TO BE ONLY FOR THAT ONE PROCEEDING.

AFTER DOING THAT, CAN STILL FOLLOW SUCCESSOR IS WHAT YOU'RE SAYING.

>> THIS NEW FILING OF BRADY COMES UP, WHY COULDN'T HE? NOW I'VE DISCOVERED I WAS FRAMED WITH THIS EVIDENCE, WHEN I WANTED TO FILE A SUCCESSOR. I DON'T SEE WHY HE WOULDN'T BE ABLE TO DO THAT.

>> PER SE.

>> WELL, THAT'S FINE.

>> AT THE POSTCONVICTION PROCEEDING.

IT DOESN'T SAY FIRST POSTCONVICTION PROCEEDING.

>> WHICH IS WHAT?

>> IN TERMS OF HOW WE WANT TO INTERPRET THIS TO HAVE IT ORDERLY, THERE IS SOMETHING TO BE SAID THAT AGAIN THIS IDEA OF KEEPING OF THE SYSTEM.

THE FACT THAT THIS IS STILL ON IT FIRST POSTCONVICTION AND THAT IT'S BEEN DONE, IT'S BEEN RETRACTED BEFORE A WAIVER IS FINAL ON APPEAL SEEMS LIKE A DIFFERENT SITUATION.

IF YOU SAY NO, WE WENT THROUGH THIS WHOLE PROCEDURE TO JUST LET THEM WAIVE THIS ONE, BUT HE CAN COME BACK AND KEEP FAILING, THAT WOULD REALLY BE AN ABUSE.

>> YOU KNOW, HE CAN'T COME BACK AND KEEP FILING.

THE DEFEAT DISCOVERS BROAD, WHY WOULD HE NOT BE ABLE TO FILE THAT?

IT SEEMS WE WOULD CUT THEM OFF FOREVER IF HE HAS FOUND SOMETHING THAT REALLY --

>> WE WOULD HAVE TO COME UP WITH

A LOT ABOUT WHICH ONES YOU COULD RAISE IF THERE IS TRULY A CLAIM OF INNOCENCE.

>> THE 3851 RULE SAYS YOU CAN RAISE A SUCCESSOR.

YOU KNOW, IT SAYS THINGS WHO COULD NOT UP TO AVERT IN THE EXCESS OF DUE DILIGENCE AT THIS TIME THE THOUGHT OF GOVERNMENT, THINGS LIKE THAT.

SO IT'S PRETTY RESTRAINED.

>> I THINK IT REALLY MIGHT BE AN ISSUE WE MIGHT HAVE TO ADDRESS THAT ANOTHER DAY.

BUT YOU ARE WELL INTO YOUR REBUTTAL IF YOU WANT TO SAY ANYTHING -- TO SAVE THE TIME YOU HAVE LEFT.

>> THANKS.

>> MAY I PLEASE THE COURT.

ASSISTANT ATTORNEY GENERAL AKE. THIS COURT IS HERE TO ADDRESS THE ISSUE OF WHETHER IT'S A CHOCOLATE ABUSE IS DEPRESSION AND FIGHTING OF MR. TREASE'S ALL COLLATERAL PROCEEDINGS AND VOLUNTARY INTELLIGENT KNOWING WAIVER.

>> CAN HE DO THAT?

BECAUSE WE DO HAVE THIS CASE INVOLVING CDLA WHERE THE FEDERAL GOVERNMENT HAS ADMITTED IT'S USE, THEY CALL IT JUNK SCIENCE, BUT DISCREDITED TESTIMONY AND COMPARATIVE LEAD ANALYSIS.

CAN HE BRING UP HIMSELF -- I MEAN --

>> THAT WAS PART OF HIS DEMENTED CONVICTION.

>> I'M ASKING YOU SOMETHING ELSE.

WE CONTEMPLATE SOMEONE WHO SAID
THEY WOULD WAIVE ALL
POSTCONVICTION PROCEEDINGS, CAN
BRING UP SOMETHING ELSE THAT
COMES UP IF THEY DISCOVERED
EVIDENCE?

>> I BELIEVE THAT SOMETHING WAS
TO COME UP NEXT YEAR AND THE
COURT AFFIRMED EVERYTHING TAKING
PLACE IN THE STATE, I DON'T KNOW IF
THERE'S A BAR OR IN THE CASE LAW
IN THAT IT STANDS.

>> I APPRECIATE YOUR CANDOR.
SO IN THIS CASE, THIS IS TO ME
DIFFERENT THAN JAMES.
DO YOU AGREE THAT AT LEAST IT'S A
NICE POSTURE DIFFERENCE.

>> POSTURE LEADS DIFFERENT, BUT
I THINK THE RATIONALE TERM STILL
APPLIES, THAT A SIMPLE CHANGING
OF THE MIND OF THE DEFENDANT IS
INSUFFICIENT TO UNDO THAT PRIOR
WAIVER.

>> AND JAMES WASN'T A
TWO-YEAR GAP?

>> WELL, WHAT HAPPENED TO JAMES
WAS WHAT TOOK PLACE WAS
PREDICTABLE.

THE RULE CAME ABOUT DURING THE
JAMES THING.

AND WHAT HAPPENED IS HE
DISCHARGED HIS COUNCIL AND WAIVES
EVERYTHING PRIOR TO THERE EVER
BEING AN EVIDENTIARY HEARING.
AND HE WAS GIVEN THE RIGHT TO
APPEAL THAT DUE TO NOTHING NEVER
HAPPENING BECAUSE THE RULE WAS NOT
IN EFFECT.

HAD THE RULE BEEN IN EFFECT IT
WOULD'VE AUTOMATICALLY BEEN
APPEALED UP THAT TIME.

IN 2001, WHEN THE COURT DID THE

HEARING, SUBSECTION

83.51 IT WOULD'VE, TO THIS
COURT.

OBVIOUSLY THAT RULE CAME ABOUT A
THIRD END OF DECEMBER 06, JULY
07 WHEN IT WAS EFFECTED.

>> WHAT'S THE HARM OTHER THAN --
IN TERMS OF THE INTEGRITY
COMPARED TO THE INTEGRITY TO THE
PROCESS, THAT WHEN THERE IS A
PENDING APPEAL, LIKE THERE IS
HERE, AND THE RECORD IS ALREADY
UP HERE, WE HAVE AN EVIDENTIARY
HEARING, THERE'S QUESTIONS ABOUT
GUILT, WHICH COULD, YOU
KNOW, I HAVE A LOOK AT THE
RECORD SO I DON'T KNOW, THEY MAY
BE COMPLETELY BOGUS AS FAR AS
WHAT IS BEING PRESENTED.

I DON'T MEAN BOGUS, I SHOULDN'T
SAY BOGUS.

I APOLOGIZE FOR THAT AND THE
APPEAL FOR THE WAIVERS.

AND WHAT WE ASK FOR RESPONSE
FROM THE DEFENDANT SHE SAYS NO I
DON'T WANT TO WAIVE.

AND WHAT HE IS SUGGESTING IS WE
SHOULD BE ABLE TO RETRACT IT
ONCE AND THAT IS THE END OF IT.

IS THERE SUCH A -- I MEAN, WE
DON'T HAVE THAT MANY OF THESE
CASES IT IS THAT SUCH A
DECEPTION OF THE SYSTEM VERSUS
GETTING TO MAKE SURE THE
CONVICTION HAS INTEGRITY AND
WHEN WE ARE READY TO EXECUTE
THIS PERSON, THAT WE CAN FEEL
WITH SOME LEVEL OF CONFIDENCE
THAT THERE HAS BEEN, YOU KNOW,
JUSTICE IN ALL ASPECTS HAVE BEEN
LIKE THAT TO MAKE SURE THAT WE
CAN SAY WITH CONFIDENCE THAT

THIS PERSON IS READY FOR
EXECUTION.

>> I BELIEVE BY MR. TREASE'S
ACTION HE HAS BEEN MANIPULATING
THE SYSTEM AND DELAYING THE
PROCEEDINGS QUITE A BIT.

7

IN THIS CASE WE'RE RIGHT, WE DID
HAVE THE EVIDENTIARY HEARING.
COUNSEL AT THE TIME HE WAS
REPRESENTED BY COUNSEL AND HE
FILED A BRIEF.

HE THEN INDICATED HE WANTED TO
WAIVE.

>> DO WE KNOW IF HE'S MANIPULATING
IT OR HE DOES HAVE MENTAL
ILLNESS THAT IS CAUSING THESE
PROBLEMS?

AGAIN, WE SEE AND BELIEVE ME, WE
HAVE -- I COULD NAME ON A COUPLE OF
HANDS SOME OF THESE FREQUENT
FILERS OF THEIR OWN MOTIONS.
I DON'T THINK MR. TREASE IS IN
THAT CATEGORY.

HE'S WRITTEN A LETTER SAYING, I
DO NOT WANT TO WAIVE MY
POSTCONVICTION PROCEEDING.

>> I DON'T BELIEVE THE MENTAL
ILLNESS EVIDENCE IS THAT STRONG.
I BELIEVE HE HAS CERTAINLY BEEN
DOING THIS WITH AN EYE TOWARDS
DRAGGING THIS OUT AS LONG AS HE
CAN AND HAS SUCCEEDED IN THAT.
I MEAN, WE HAD A HEARING IN 2001
AND HERE WE ARE IN 2010,
BASICALLY IN THE SAME POINT IN
TIME.

>> WELL, IN BETWEEN THAT IT
WAS A FULL EVIDENTIARY HEARING.

>> RIGHT.

BUT AT SOME POINT THERE HAS TO
BE FINALITY IN THIS.

IN NUMEROUS CASES THEREAFTER

WHEN A DEFENDANT IS CONFIDENT
AND WAIVER OF THAT THIS COURT
WILL UPHOLD THAT WAIVER AND THEN
AND JAMES IS THAT SIMPLY
CHANGING YOUR MIND IS NOT
SUFFICIENT TO GO BACK AND
UNDERMINE THEIR PREVIOUS WAIVER.
AND IF THIS COURT ADOPTS A
RULE YOU STRAIGHT TO PROMULGATE,
THIS IS GOING TO LEAD TO MORE
INSTANCE OF ABUSE.

I CAN SEE DEFENDANTS DOING THIS
ALL THE TIME BASICALLY CHARGING
THE POST CONVICTION PROCEEDINGS
OUT.

8

>> BUT IF THEY ACTUALLY HAVE THE
RIGHT FILTER BY SUCCESSIVE
POSTCONVICTION, WHICH AGAIN I
DON'T REMEMBER ANY OF THESE
DEFENDANTS WHO HAVE TRULY SAID I
WANT TO GIVE UP RIGHTS, AND ARE
DOING THAT.

SO THAT QUITE SURPRISED ME.
USUALLY THE SO-CALLED VOLUNTEERS
REALLY DO WANT TO BE EXECUTED.
AND MANY HAVE ACTUALLY UNDER THE
LAST EIGHT YEARS, THERE HAVE
BEEN --

>> I THINK JAMES IS THE ONLY
EXCEPTION OF ALL THESE WAIVER
CASES.

>> SO WE DON'T REALLY HAVE A
SITUATION WHERE, YOU KNOW,
THAT'S WHY I'M CONCERNED ABOUT
MAKING A STATEMENT THAT THIS IS,
YOU KNOW, THAT WE ARE PROLONGING
THE CASE AS OPPOSED TO JUST
TRYING TO MAKE SURE THAT WHEN
SOMEONE SAYS THEY DO NOT WANT TO
WASTE THEIR PROCEEDING, THEY'RE
POSTCONVICTION PROCEEDINGS, THAT
WE LOOK AND SAY NO, IT'S TOO

LATE.

BUT YOU CAN FILE SOMETHING IN
THE FUTURE IF YOU WANT.

I DON'T LIKE THAT IDEA EITHER.

>> NO, AND I'M NOT SURE -- WELL,
I'M SURE THAT DEFENDANT PRO SE
CAN PUT THIS WHETHER IT WILL
SURVIVE ANYWHERE I DON'T KNOW.
BUT I'M SURE THEY CAN CERTAINLY
FILE SOMETHING.

AND WHETHER IT WILL BE TIME-BARRED
WE CAN ARGUE THAT IT'S BEEN
WAIVED, THAT WOULD BE SOMETHING
WE'D HAVE TO TAKE A GOOD
ATTITUDE FOR THAT EXAMPLE IN THE
SQUARE BEFORE SO WE KNOW WHAT
WOULD HAPPEN UNDER THAT
SCENARIO.

>> I WOULD JUST REPEAT THAT THE
TIME COMES FOR EXECUTION AND ALL
OF THIS STARTS COMING UP AGAIN

9

AND THERE'S THAT MEANS THAT YOU
HAVE WHEN SOMETHING HASN'T BEEN
FULLY, YOU KNOW, PUT TO REST.

>> I CERTAINLY UNDERSTAND THAT,
YOUR HONOR.
WE WOULD SUBMIT IN THIS CASE BY
GOING THROUGH THE DUROCHER
HEARING IN MAKING A WAIVER IN
FRONT OF THE TRIAL COURT

YESTERDAY HELD TO THAT WE HAVE
TO HAVE SOME KIND OF FINALITY
HERE OR OTHERWISE IT WILL
JUST LEAD TO PEOPLE CHANGING
THEIR MIND AND THEY'LL SAY --

[INAUDIBLE]

>> I CHANGED MY MIND AGAIN THAT
SUDDENLY THAT SOMEHOW CHANGES
OUR PREVIEW OF THE CASE.

AND THAT BECAUSE THIS IS NOT A
FINAL DETERMINATION YET BECAUSE
OF THE APPEAL, MAKES HIM READY

ABLE TO CHANGE HIS MIND AGAIN.
>> YOUR HONOR, THE DEBATES OF
THE RULE IS TO REVIEW THE
DUROCHER HEARING AND WE'LL FIND
OUT WHETHER THERE'S EVIDENCE TO
SUPPORT HIS FINDING THAT IT'S A
VOLUNTARY KNOWING WAIVER.
THAT'S THE ONLY THING THIS COURT
IS DOING ON THE APPEAL PROCESS
IN THESE WAIVER CASES IS TO
DETERMINE WHETHER WHAT THEY KNOW
IS VOLUNTARY INTELLIGENT
WAIVER.

AND IN THIS CASE THE OFFICIAL
THE TRIAL COURT'S ABUSE TO THE
DISCUSSION.

WE CANNOT IN THIS CASE.

>> IN THE DUROCHER COURT, WAS
MR. TREASE'S COMPETENCY CALLED
INTO QUESTION AND HAVE THERE
BEEN ANY COMPETENCIES
DETERMINATION IN THE LAST FEW
YEARS?

>> ONE OF HIS EXPERTS AT THE
EVIDENTIARY HEARING, DR. CROWN
ON ACCOMMODATING 2006.
DR. MARION TESTIFIED THAT HE'D
BEEN TESTING FOR COMPETENCY
BECAUSE HE RELIED ON A DIFFERENT
DOCTOR'S DETERMINATION WHO FOUND
HIM COMPETENT AT THE TIME OF
TRIAL.

10

OF COURSE, DR. MARION DIDN'T
INDICATE HE WAS INCOMPETENT.
NOW HIS ATTORNEY IS DISCHARGED
ATTORNEY NESTOR AT THE
HEARING COULD MENTION A TERM I
THINK HE SAID IT QUESTIONS ABOUT
HIS COMPETENCY, BUT IN THE SAME
BREATH HE SAID MR. TREASE IS AN
INTELLIGENT MAN AND UNDERSTANDS WHAT
IS GOING ON IN THIS CASE.

HE NEVER FILED A MOTION FOR DISCOMPETENCY AND THERE'S THAT THING IT SHOWS HE IS AS COMPETENT IN THIS REGARD AND DID UNDERSTAND THE NOTION OF WHAT HE'S DOING WHEN HE DID THIS WAIVER.

THAT IS WHAT THEY HAVE TO SHOW. UNDER THIS CASE OF LAW AND LAWSON AND CASTRO THEY HAVE TO BUILD YOU SHOULD DO SOME KIND THAT WOULD REBUT.

WE HAD COMPETENCY PRIOR TO TRIAL AND THEN IN 2001 WHEN THEY DID THE DUROCHER HEARING BACK IN 2000 WHEN THE COURT FOUND HIM COMPETENT THEN TOO.

HE'S ALWAYS BEEN COMPETENT AND THERE'S RECORDS AND THE POSTCONVICTION DATE BACK IN THE 70'S HE WAS FOUND COMPETENT WHEN HE WAS GETTING DISCHARGED FROM THE MARINE CORPS.

SO THERE'S NEVER BEEN A SINGLE DOCTOR TO INDICATE HE'S NOT COMPETENT.

>> THE MARINE CORPS WHEN HE WAS DISCHARGED THAT WAS WHEN HE WAS 17?

>> YES.

>> I DON'T KNOW THE COMPETENCY WAS CALLED INTO QUESTION.

>> IT WAS FOR HIS DISCHARGE PROCEEDINGS I BELIEVE.

>> WHY WAS HE DISCHARGED FROM THE MARINES?

>> HE CUT ANOTHER INMATE.

11

>> WHAT WAS THEIR DIAGNOSIS ABOUT HIS MENTAL STATUS?

>> WHEN HE ATTENDED THE MARINE CORPS THERE WERE THREE DIAGNOSIS. I BELIEVE ONE WAS PARANOID

DELUSIONS.

>> I MEAN, HE'S HAD A LONG HISTORY OF DOCUMENTED MENTAL ILLNESS.

I MEAN THAT'S DIFFERENT HE CAN BE COMPETENT, BUT CAN YOU NOT BE COMPETENT AND MENTALLY ILL?

>> I WOULD DEBATE THAT HE HAS A LONG HISTORY OF MENTAL ILLNESS OTHER THAN THE MARINE CORPS.

I DON'T KNOW OF ANY HISTORY OF MENTAL ILLNESS THAT HE HAS THAT HE'D EVER HAD TREATED.

HE OWNED COMPUTER BUSINESS FOR SIX YEARS SELLING COMPUTER CHIPS.

HE WAS FUNCTIONING OUT IN THE EVERYDAY WORLD.

I DON'T BELIEVE THERE'S ANY KIND OF DOCUMENTED HISTORY OF HIM BEING IN ANY KIND OF MENTAL INSTITUTIONS OR ANYTHING LIKE THAT.

>> IT WAS JUST AN ABERRATION WHEN HE WAS 17?

>> I DON'T KNOW WHAT HAPPENED.

MY UNDERSTANDING FROM READING IT HE CUT THIS GUY AS A FAVOR TO HIM BECAUSE HE WANTED TO GET OUT OF THE MARINE CORPS.

I DON'T REALLY KNOW THE DETAILS OF THAT INCIDENT, BUT HE WAS DISCHARGED.

I FORGET THE TERMINOLOGY, IT WASN'T AN HONORABLE DISCHARGE, BUT WAS NOT DISHONORABLE.

IT WAS SOMETHING ELSE AND IT WAS THE RESULT FOR MY UNDERSTANDING A FAVOR TO THIS INDIVIDUAL TO TRY TO GET HIM OUT OF THE MARINE CORPS.

WE HAVE A VERY GOOD COLLOQUY BY JUDGE BENNETT AS FLORIDA NOTED

HERE IT IS INDICATING HE IS
READING EVERYTHING, INCLUDING
HIS STATE ASSAULT
POSTCONVICTION PROCEEDINGS AND
THERE'S NO EVIDENCE THAT WAS NOT
A KNOWING AND VOLUNTARY WAIVER
AND I WOULD SUBMIT THAT THE FACT
HE IS SIMPLY HIS MIND UNDER
JAMES IS INSUFFICIENT.

AND WE WOULD ASK THIS COURT TO
DISMISS HIS APPEAL WITH
PREJUDICE.
THANK YOU.

>> I BELIEVE YOU'VE GOT ABOUT 45
SECONDS.

IF THERE'S ANYTHING SIGNIFICANT
YOU NEED TO --

>> JUST ONE THING.

IT'S NOT WHETHER THEY SUPPORT
THE FINDING OF THE JOBS OR NOT.
THEY CAN ABUSE DISCRETION BY NOT
FOLLOWING THE RULE.

AND IN THIS CASE, ANY
PREHEARING.

AFTER THAT WHEN HE WENT TO
COUNSEL FOR THE STATE SAID TO
THE JUDGE, IF THE COURT HAD SAID
THIS IS PAGE 39 OF VOLUME ONE OF
THE SUPPLEMENTAL IF THEY HAVE
ANY QUESTIONS REGARDING
COMPETENCY, I DON'T KNOW WHETHER
YOU'RE PREPARED TO APPOINT
EXPERTS TO GO OUT THERE TO
DETERMINE COMPETENCY AT THIS
POINT.

SO THAT WAS PRESENTED AS AN
ISSUE TO THE COURT.

THE COURT DIDN'T DO THAT.

AND THEN MR. DUNN, IN TALKING TO
THE COURT AT THE END OF HIS
PRESENTATION, SAID THE MARINES
HAVE DOCUMENTED HIS BRAIN

DAMAGE, YOU SUFFERED TRAUMA
GROWING UP.
HE NEEDS MEDICATION.
YET WITH THE MEDICATION THIS WOULDN'T
BE HAPPENING.
HE'S NOT READY TO GIVE UP HIS
APPEALS.
HE NEEDS TO BE MEDICATED.
HE NEEDS TO ENSURE HE HAS A
CHANCE TO DO WHAT IS DONE AND
I HAVE QUESTIONS ABOUT HIS
COMPETENCY.
SO I WOULD ARGUE THAT AT THAT
POINT IN TIME IT WAS AN ABUSE OF
DISCRETION FOR THE JUDGE NOT TO
FOLLOW THE RULE IN A POINT TO
EXPERTS.
I DO NOT WANT TO GO BACK TO THE
LOWER COURT AND DO THAT.
I THINK THE WAIVER OF THE WAIVER
IS SUFFICIENT AT THIS POINT IN
TIME.
IF THERE'S ANY QUESTIONS I'LL
ENTERTAIN THEM, BUT I'VE GOT
ABOUT EIGHT SECONDS.
>> THANK YOU VERY MUCH.
THE COURT WILL TAKE ITS MORNING
RECESS FOR TEN MINUTES.
>> PLEASE RISE.