**Troy L. Blocker v. State of Florida**

**SC07-2292**

THE NEXT CASE ON THE CALENDAR
THIS MORNING IS BLOCKER v.
STATE OF FLORIDA.
IT'S NOT THAT THEY'RE NOT
INTERESTED IN YOUR CASE.
THEY JUST HAVE OTHER THINGS.
>> NO OFFENSE TAKEN AT THEIR
DEPARTURE.
>> IT'S A PROGRAM GOING ON THIS
MORNING.
YOU'VE ALL PROBABLY
PARTICIPATED IN IT FROM TIME TO
TIME.
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
MY NAME IS PAUL McDERMOTT.
I REPRESENT THE PETITIONER TROY
BLOCKER AND WE ARE HERE TODAY
ON A VERY SIMPLE LEGAL ISSUE.
TO DETERMINE --
>> BEFORE WE GET TO THE LEGAL
ISSUE, I HAVE A, A
JURISDICTIONAL QUESTION.
THE ONE OF THE JUDGES ON THIS
PANEL CONCURRED IN RESULT ONLY.
SHE DIDN'T CONCUR IN THE
OPINION.
AND THEN DAVIS WRITES A
CONCURRENCE, BUT IN THE ACTUAL
CONCURRENCE, HE SEEMS TO BE
VERY CONCERNED ABOUT STATEMENTS
IN THE MAJORITY THAT YOU POINT
TO -- JUDGE ALDERNBURNDT'S
OPINION THAT ANYTIME A
TRANSCRIPT'S CHALLENGED, THAT'S
THE END OF IT.
HAS, HAS ANYONE RAISED THE
ISSUE THAT THERE REALLY ISN'T A
MAJORITY OPINION HERE?
BECAUSE JUDGE DAVIS'S OPINION
ALTHOUGH, NOT STYLED AS A
CONCUR IN THE RESULT, HE JUST
SAYS I CONCUR WITH THE RESULT.
SO DO WE LOOK AT -- IS THIS ONE
OF THESE CASES WHERE THERE

REALLY ISN'T A MAJORITY OPINION?
>> THAT ISSUE, JUSTICE HAS NOT BEEN RAISED.
>> IF MY JUSTICE CANTERO WAS HERE, I FEEL HE WOULD DEFINITELY BE RAISING IT, SO THAT'S NOTHING YOU'VE LOOKED AT.
>> THAT'S NOT RAISED.
>> IT'S VERY JURISDICTIONFUL THERE'S NO OPINION OF IT BUT I'M NOT GOING TO -- JUST SOMETHING I WAS AS I WAS REREADING THE OPINION, I THOUGHT THERE MIGHT BE SOME VERY BROAD LANGUAGE IN THIS OPINION THAT YOU'RE CONCERNED ABOUT FOR OTHER CASES THAT SEEM TO BE TROUBLING THE OTHER TWO JUDGES.
>> THAT'S CORRECT AND THERE ARE IMPORTANT STATEMENTS IN JUDGE DAVIS'S CONCURRENCE WHICH I WILL ADDRESS IN MY ARGUMENT THIS MORNING, AND IF I CAN COME BACK TO WHAT THE LEGAL ISSUE BEFORE THIS COURT --
>> WELL, THE PROBLEM I HAVE WITH IT IS THAT YOU SAY THIS IS A REALLY SIMPLE ISSUE.
I'M NOT SO SURE THAT IT REALLY IS SUCH A SIMPLE ISSUE BECAUSE OF THE FACTS.
YOU KNOW, IF THIS WERE AN INDIVIDUAL WHO HAD FILED THIS MOTION FIVE YEARS EVEN.
THAT'S NOT BEYOND THE NINE BUT 17 YEARS LATER, I MEAN, THIS WHOLE THING JUST, JUST TO ME, THE OLD PHRASE IN THE LAW WE DEAL WITH AND WE HEAR IN LAW SCHOOL THAT BAD FACTS MAKE BAD LAW.
THIS ONE JUST SCREAMS OUT AND SO IT DOESN'T SEEM SO JUST SIMPLE.
WHAT ABOUT THAT FEATURE ON THIS IS THAT THIS IS NOT CALLED TO THE ATTENTION OF THE COURTS FOR 17 YEARS?
AND ALL THE OTHER DOCUMENTS, YOU KNOW, IF WE TAKE THIS STERILE APPROACH THAT YOU'RE

REQUESTING, THAT OH, THIS
TRANSCRIPT SHOWS THAT IT'S NINE
AND, AND THAT'S IT, THAT'S THE
END OF THE GAME, BUT IT DOESN'T
APPEAR TO BE THE END OF THE
GAME FROM ALL OTHER CREDIBLE
DOCUMENTS.
AND IT'S ALMOST IT SEEMS AS
THOUGH THIS IS JUST A JUDICIAL
SYSTEM THAT WOULD BE ADVANCING
I GOTCHA.
YOU KNOW, THIS, THIS CAME OUT.
WE CAN'T EVEN LOOK AT THESE
THINGS.
YOU KNOW, THIS SAYS NINE YEARS
AND I HAVE BEEN HERE 17.
I NEVER SAID A THING ABOUT IT.
I FILED OTHER THINGS BUT ALL OF
THE SUDDEN -- YOU KNOW, THAT'S
WHAT I'M TROUBLED BY ON THIS
CASE THAT YOU ARE GOING TO NEED
TO ADDRESS AT LEAST FROM MY
SATISFACTION WHY IN THIS USING
THIS CASE AS THAT VEHICLE.
>> WELL, AS THIS COURT HAS
RECOGNIZED IN ITS CALLOWAY
DECISION, UNDER A RULE OR A
MOTION RATHER FOR PURSUANT TO
RULE 3.8003 THAT'S A MOTION
THAT CAN BE MADE AT ANY TIME IN
THE LEGAL SENTENCE AND THE
OTHER RECORD EVIDENCE IN THIS
CASE ONLY TENDS TO DEMONSTRATE
WHAT THE TRIAL COURT SHOULD
HAVE IMPOSED NOT WHAT THE
ACTUAL SENTENCE WAS.
THE ONLY RECORD IN THIS CASE OF
THE ACTUAL SENTENCE WAS THE
TRIAL TRANSCRIPT.
>> AND THAT'S IF YOU ASSUME THE
TRANSCRIPT IS CORRECT.
I MEAN, TRANSCRIPTS, AND THIS
IS -- WE EVEN HAVE AN
ADDITIONAL FACTOR.
IT'S NOT EVEN THE SAME COURT
REPORTER, CORRECT?
>> THAT'S CORRECT.
>> THAT'S CORRECT BUT FLORIDA
LAW WELL, GO AHEAD.
>> EVERYTHING FALLS TO THE
CATEGORY THAT THIS CAN'T BE
TRUSTED.
>> WELL, BECAUSE FLORIDA LAW
PRESUMES THAT TRANSCRIPTS ARE

TO BE FOUND TO BE ACCURATE --
>> CONCLUSIVELY?
CONCLUSIVELY PROM VIEWED.
>> IT'S A PRESUMPTION THAT THE SECOND DISTRICT IN THE TRIAL COURT BELOW FOUND TO BE IN FACT IRREFUTABLE THE TRANSCRIPT WAS WRONG BECAUSE THEY RELIED ON THE RECORD EVIDENCE OF WHAT THE TRIAL COURT SHOULD HAVE DONE.
>> IF YOU WERE GIVEN AN EVIDENTIARY HEARING.
LET'S JUST SAY THAT WE GO, I MEAN, I'M GOING TO ASK THE STATE THIS BECAUSE I AM TROUBLED THAT THERE IS SOME BROADER LANGUAGE IN JUDGE ALTERNBURNED'S OPINION.
THIS, TO ME, IN ALL DUE RESPECT YOU'RE TAKING THIS PROBOW BONO I THOUGHT YOUR BRIEF WAS EXCELLENT IT ALMOST HAD ME GOING YEAH THEN YOU LOOK AT THE FACTS AND SAY HOLD ON A SECOND.
YOU GOT SOMEBODY WHO IS ON -- PLED IN A PLEA AGREEMENT SAYS 99 YEARS.
YOU'VE GOT AND THAT'S -- AND YOU'VE GOT THE, THAT WAS WRITTEN -- THAT WAS SIGNED THE DAY OF THE SENTENCING, CORRECT?
THE DAY OF THE BE AGREEMENT?
>> THAT'S CORRECT.
>> SO WE'VE GOT -- THE DAY OF THE PLEA AGREEMENT, IS THAT CORRECT.
>> THAT'S CORRECT.
>> WE'VE ALSO GOT NOTES OF WHAT OCCURRED DURING THAT SENTENCE HEARING.
WAS THERE A CLERK'S ENTRY OF THE SENTENCE OR THE JUDGMENT -- HOW LONG AFTER WAS THE JUDGMENT IN SENTENCE ENTERED?
>> I DON'T KNOW THAT THAT'S CLEAR FROM THE RECORD.
THE WRITTEN SENTENCE DOES REFLECT A TERM OF 99 YEARS.
>> SHORTLY AFTER.
>> SHORTLY AFTER.
>> NOW IF YOU HAD THE OPPORTUNITY TO HAVE HAD SOME HEARING, LET'S JUST SAY IT'S

NOT AN EVIDENTIARY HEARING.
WE HAVE JUST SIMPLY THE FACT OF THAT YOU'RE GOING TO BE PERMITTED TO PUT SOME -- YOU PUT ON THE TRANSCRIPT.
WHAT ELSE WOULD YOU PUT ON TO SHOW THAT SHE -- HE IN FACT WAS SUPPOSED TO RECEIVE A NINE-YEAR SENTENCE?
>> WELL, LET ME FIRST ADDRESS IF I MAY YOUR POINT THAT THERE'S A PLEA AGREEMENT IN THIS CASE.
IN THIS COURT'S PREVIOUS DECISION IN ASHLEY, A CONFLICT DECISION FROM THE FOURTH DISTRICT EXAMINED WHETHER OR NOT A WRITTEN SENTENCE THAT CONFLICTED WITH THE ORAL PRONOUNCEMENT OF THE SENTENCE WASN'T A LEGAL SENTENCE IN AND THAT CASE EVANS WAS THE DEFENDANT HAD SIGN ADPLEA AGREEMENT WHERE HE AGREED TO A HABITUAL FELONY OFFENDER SENTENCE.

>> AS AN ORAL SENTENCE.
>> AND I REMEMBER ASHLEY VERY WELL.
BUT THE QUESTION I'M ASKING YOU IN THIS CASE IS, FIRST OF ALL, THE ORAL PRONOUNCEMENT IS, PREVAILS OVER WRITTEN SENTENCE.
BUT THE TRANSCRIPT WAS PREPARED SIX YEARS LATER OR MORE IS NOT NECESSARILY THE ORAL PRONOUNCEMENT.
THE ORAL PRONOUNCEMENT, YOU KNOW, IN THIS CASE IS, I GUESS IT'S BEEN DISPUTED AS TO WHAT IT IS.
I'M ASKING YOU, YOU HAVE A CHANCE TO GO BACK AND ESTABLISH SOMETHING.
WHAT DO YOU DO?
>> WELL, IT'S, I THINK, IMPORTANT FIRST TO RECOGNIZE THAT IT'S NOT MR. BLOCKER WHO NEEDS THE CHANCE, IT'S --
>> OKAY.
THEY PUT ON, AND THEY COME BACK

AND THEY SAY, HERE'S THE PLEA AGREEMENT, HERE IS THE COURT REPORTER GOT IT WRONG.
THEY PUT THAT ON.
IS THERE ANYTHING, I MEAN, AGAIN, WE'RE TALKING HERE ABOUT TRYING TO DO JUSTICE.
I MEAN, CLEARLY, THIS WAS A CASE WHERE HE WAS SUPPOSED TO GET A NINE-YEAR SENTENCE, AND HE GOT A 99-YEAR SENTENCE.
AND, YOU KNOW, THE TRANSCRIPT SAID 99 YEARS, AND HE WAS SUPPOSED TO GET NINE, I DON'T THINK ANYBODY WOULD BE SITTING HERE TRYING TO FIGURE OUT HOW TO MAKE SURE HE GOT A 99-YEAR SENTENCE.
THIS IS THE OPPOSITE.
I MEAN, YOU KNOW, UNLESS YOUR CLIENT, YOU KNOW, I GUESS HE'D SWEAR ON ANYTHING AT THIS POINT SINCE HE'S GOING TO BE IN FOR THE REST OF HIS LIFE, HOW ARE YOU GOING TO ESTABLISH THAT IT WAS THE ORAL PRONOUNCEMENT WAS FOR NINE YEARS?
>> WELL, THE EVIDENCE THAT COULD BE BROUGHT FORWARD ON THE SWORN TESTIMONY OF WILLIAM LOWREY WHO WAS THE STATE ATTORNEY PRESENT AT THE TIME, RODNEY -- WHO WAS MR. BLOCKER'S DEFENSE ATTORNEY, THE CLERK'S MINUTES IF THEY EXIST, A TAPE OF THE HEARING IF IT EXISTS.
>> BUT [INAUDIBLE] IN OTHER WORDS, NOW THAT IT WAS CONTESTED, THEN DOCUMENTS THAT ALSO ANTICIPATED THIS IN WILLIAMS WE MIGHT HAVE TO HAVE SOME OTHER DOCUMENT.
WE JUST WRONGLY THOUGHT THE TRANSCRIPT WAS ALWAYS GOING TO BE ACCURATE.
JUST WHEN YOU THINK YOU'VE GOT THIS WHOLE SYSTEM FIGURED OUT, SOMETHING OTHER COMES IN.
SO SOMEBODY NEEDS TO ATTACH THE CLERK'S MINUTES.
WE DON'T HAVE THAT YET.
>> THAT'S CORRECT.
AND WHAT WILLIAMS REQUIRED IS TO ATTACH THE TAPE OF COPY OF THE

TRANSCRIPT WHICH SHOWS A DISCREPANCY ON THE FACE OF THE COURT RECORD, AND THAT'S EXACTLY WHAT HE'S DONE.
>> WHY ISN'T THIS TANTAMOUNT TO A SUMMARY JUDGMENT THAT, YOU KNOW, COULD BE ENTERED IN A CIVIL PROCEEDING BUT THAT THERE'S, WITH WHAT THE STATE HAS SUBMITTED AND THERE IS, APPARENTLY, A VERY CONVINCING CASE MADE, OBVIOUSLY CONVINCING ENOUGH FOR THE SECOND DISTRICT AND THE TRIAL JUDGE TO GO THIS WAY, WHY ISN'T THIS TANTAMOUNT, REALLY, TO A SUMMARY DISPOSITION BASED ON EVERYTHING THAT IS THERE?
BECAUSE THIS IS NOT A CASE WHERE YOUR CLIENT, FOR INSTANCE, SAYS, YOU KNOW, I WAS IN THE COURTROOM, AND THE JUDGE SAID I ONLY HAD TO GO TO PRISON FOR NINE YEARS.
AND THEN WHEN I GOT THE WRITTEN JUDGMENT, IT SAID I HAD TO GO TO PRISON FOR 99 YEARS.
AND THAT'S WRONG.
YOU KNOW, THAT'S NOT CONSISTENT WITH WHAT THE JUDGE SAID, OR MY PLEA AGREEMENT, OR ANYTHING ELSE.
THIS IS A CASE, REALLY, WHERE THE ONLY THING THAT IS THERE, IF I UNDERSTAND IT, IS THE TRANSCRIPTION OF THE COURT REPORTER'S NOTES BY A SUBSEQUENT COURT REPORTER THAT CONTAINS THIS NINE-YEAR STATEMENT.
ISN'T THAT ALL THAT REALLY IS THERE TO SUPPORT THE CLAIM?

>> THAT'S CORRECT.
THE TRANSCRIPT AND THE RECORD IS THE RECORD EVIDENCE THAT SUPPORTS THE ORAL SENTENCE PRONOUNCED ON MR. BLOCKER OF NINE YEARS.
THE OTHER EVIDENCE IN THE RECORD ONLY DEMONSTRATES OR TENDS TO SHOW WHAT THE JUDGE SHOULD HAVE, SINCE MR. BLOCKER RECEIVED A TERM OF 99-YEARS.
>> YOU SAY SHOULD HAVE.

WHY DOESN'T IT LEND SUPPORT, LOGICALLY, TO A CONCLUSION THAT THE TRANSCRIPT WAS TRANSCRIBED ERRONEOUSLY?
>> BECAUSE THAT EVIDENCE OF WHAT THE JUDGE SHOULD HAVE DONE IS IRRELEVANT --
>> I'M NOT SAY WHAT THE JUDGE SHOULD HAVE DONE.
WE'RE TALKING ABOUT TWO DIFFERENT THINGS, OKAY?
YOU SEEM TO BE SUGGESTING THAT THE TRANSCRIPT IS CORRECT AND INFALLIBLE, OKAY?
LET ME TELL YOU, YOU KNOW, WE GET TRANSCRIPTS UP HERE WHERE THEY LEAVE OUT THE NOs OR THE NOTs OR WHATEVER, AND IT'S OBVIOUS, IN OTHER WORDS, THAT THERE ISN'T ANY.
SO COURT REPORTERS, JUST LIKE EVERYBODY ELSE WHETHER IN TAKE THINGS DOWN OR IN LATER TRANSCRIBING IT, MAKE MISTAKES.
SO WHY SHOULDN'T WE TREAT THIS ONE AS ONE WHERE THERE'S ENOUGH IN THIS RECORD TO DEMONSTRATE THAT THIS WAS A MISTAKE BY THE COURT REPORTER?

>> BECAUSE OF THIS COURT'S DECISION IN ASHLEY WHICH FOUND THAT, FOR EXAMPLE, WITH THE PLEA AGREEMENT WHERE THE DEFENDANT HAD AGREED TO A CERTAIN SENTENCE THAT WAS NOT ORALLY PRONOUNCED -- THE COURT FOUND THAT HAD THE, EVEN IF IT WAS A MISTAKE --
>> BUT THAT'S WHERE, AND THIS IS WHERE WE GET BACK TO, THERE THE ORAL PRONOUNCEMENT WAS NOT CONTESTED.
>> THAT'S CORRECT.
>> WHAT IF YOU HAVE A COURT REPORTER THAT'S THERE IN THE MORNING, AND THEY'RE DOING THREE OR FOUR SENTENCINGS, AND THEY HAPPEN TO PUT THE WRONG NAME ON IT, AND IT BECOMES TRANSPOSED.
IN X'S FILE, YOU'VE GOT THE Y SENTENCING.
THAT IS NOTHING BUT A CLERICAL OR SCRIVENER'S ERROR, IS IT NOT?

>> THAT WOULD BE CORRECT, JUDGE. THAT WOULD BE A CLERICAL ERROR, BUT IN THIS CASE -- EVEN IN THAT CASE BECAUSE THE TRANSCRIPT IS PRESUMED TO BE ACCURATE, AND I WOULD SUBMIT AND AGREE IT IS A REBUTTAL PRESUMPTION, BUT IN ORDER TO REBUT, THE STATE HAS TO COME FORWARD WITH EVIDENCE MORE THAN HEARSAY WHICH IS ALL THEY HAVE RIGHT NOW.
>> SEE, THIS RULE IS IN PLACE WHEN, TO PROTECT THE DEFENDANT WHEN A TRIAL JUDGE DOES ACTUALLY ENTER AN ORAL SENTENCE AND THEN LATER THE WRITTEN SENTENCE DOES VARY FROM WHAT THE JUDGE ACTUALLY DID.
I DON'T BELIEVE THAT'S REALLY WHAT IS BEING CLAIMED HERE, THAT WHAT IS BEING CLAIMED HERE BY THE STATE IS THAT, NO, THE JUDGE HERE DID NOT ENTER A NINE-YEAR SENTENCE.
THE JUDGE HERE ENTERED, YOU KNOW, BUT THE COURT REPORTER EITHER IN TAKING IT DOWN INITIALLY OR TRANSCRIBING IT HAS MADE A CLERICAL MISTAKE.
AND THE RULE CLEARLY WAS NOT INTENDED TO GRANT RELIEF WHEN CLERICAL MISTAKES LIKE THAT WERE MADE.
THE RULE WAS INTENDED TO GRANT RELIEF WHEN A JUDGE ACTUALLY DID ENTER, YOU KNOW, MAYBE SAID 15 YEARS IN THE ORAL SENTENCE, AND THEN WHEN THEY GET THE JUDGMENT THEY HAVE IN THERE 20 YEARS OR SOMETHING, YOU KNOW, THAT -- AND THERE REALLY IS NO CONTEST THAT THE JUDGE ENTERED A 15-YEAR SENTENCE.
SO I RETURN, THOUGH, WHY ISN'T THIS RECORD SUFFICIENT TO REALLY DEMONSTRATE WITHOUT THE NEED FOR AN EVIDENTIARY HEARING THAT THIS WAS A COURT REPORTER ERROR?
>> THE RECORD'S NOT SUFFICIENT BECAUSE OF THE LANGUAGE OF THE RULE WHICH PERMITS A DEFENDANT TO BRING A CHALLENGE TO A WRITTEN SENTENCE THAT'S INCONSISTENT WITH AN ORAL

SENTENCE AT ANY TIME.
AND AS THIS COURT HELD, AGAIN, WILLIAMS AND HOPPING AND MANCINO.

>> [INAUDIBLE] THE QUESTION THAT WAS ASKED TO YOU ABOUT WHAT EVIDENCE YOU PRESENT AT AN EVIDENTIARY HEARING, ARE YOU CLAIMING THE EVIDENCE WOULD BE ANY DIFFERENT?
ARE YOU CLAIMING, FOR INSTANCE, YOU WOULD PUT YOUR CLIENT UNDER OATH, AND YOUR CLIENT WOULD TESTIFY THAT I WAS THERE, AND I HEARD THE JUDGE SENTENCE ME TO NINE YEARS?
AND JUST BECAUSE I'VE ENJOYED BEING IN PRISON ALL THESE YEARS THAT I DIDN'T BRING IT TO ANYBODY'S ATTENTION?
ARE YOU CLAIMING THAT'S WHAT YOU WOULD DO WITH THIS CLIENT?
YOU'D PUT THIS CLIENT UNDER OATH AND SUBMIT HIM TO --
>> I'M NOT CLAIMING TO SHOW WHAT THE EVIDENCE WOULD BE AT ALL OTHER THAN THE TRIAL TRANSCRIPT.
ALL OF THE EVIDENCE SUBMITTED BY THE STATE IS EITHER HEARSAY, RECOLLECTIONS OF MR. LOWERY AND MR. -- WHICH CRY OUT FOR CROSS-EXAMINATION.
>> MOTION UNDER OATH IN 1994 WHERE HE SPECIFICALLY SAID UNDER OATH IN HIS OWN MOTION THAT THE PLEA, HE PLED GUILTY PURSUANT TO A PLEA AGREEMENT AND A LOWER -- [INAUDIBLE] SENTENCED HIM TO 99 YEARS.
>> THAT MOTION WAS FILED IN 1994, THAT'S CORRECT.
THE TRANSCRIPT OF THIS PROCEEDING WASN'T PREPARED UNTIL 1995, HOWEVER.
>> I UNDERSTAND.
BUT HE WAS THERE AT THE HEARING.
>> HE WAS THERE AT THE HEARING.
>> AND AFTER THE SENTENCING HE MAKES A SWORN STATEMENT, SWORN MOTION FILED WITH THE COURT ACKNOWLEDGING THAT THE SENTENCE WAS FOR 99 YEARS.
>> WHAT'S NOT CLEAR IS WHETHER

HE UNDERSTOOD THE JUDGE AT THE SENTENCING.
IT'S NOT CLEAR HE UNDERSTOOD THE DISCREPANCY BETWEEN THE ORAL PRONOUNCEMENT AND THE WRITTEN SENTENCE.
THE JUDGE EVEN ASKS HIM, DO YOU UNDERSTAND THE SENTENCE I'M ABOUT TO PRONOUNCE ON YOU?
AND HE SAYS, NO.
THAT'S FURTHER EVIDENCE IN THIS CASE THAT THERE'S THE DESPERATE NEED FOR AN EVIDENTIARY HEARING TO TEST WHAT THE STATE'S COME FORWARD WITH --
>> WELL, THAT WOULD BE VERY NICE IF IT WAS WITHIN THE FIRST TWO YEARS, BUT WE'RE HERE NOW HOWEVER MANY YEARS AFTER, AND I'M TRYING TO STILL UNDERSTAND HOW YOU THINK YOU'RE, ON THE FIRST POINT, HOW YOU'D BE ENTITLED TO RELIEF WHERE IT IS NOT CLEAR ON THE FACE OF THIS RECORD WHAT THE ORAL PRONOUNCEMENT WAS.
THAT'S REALLY, THAT'S THE PROBLEM.
THEY HAVE CONTESTED IT BY GIVING OTHER DOCUMENTS TO SHOW THAT IT IS NOT AN ISSUE OF THE JUDGE SPEAKING AT THE SENTENCING HEARING BUT ACTUALLY A TRANSCRIPTION ERROR.

>> THAT'S CORRECT.
AND TO THAT POINT OF WHETHER EVIDENCE COULD BE RECEIVED, THE LANGUAGE OF THE RULE DOESN'T EXPLICITLY PROHIBIT THE RECEIPT OF EVIDENCE AND, INDEED, RULE 9.141 THE FLORIDA CODE RULES EXPLICITLY CONTEMPLATES HOLDING AN EVIDENTIARY HEARING WHERE A MOTION IS DENIED, AND THE RECORD FAILS TO CONCLUSIVELY SHOW THAT THE DEFENDANT IS ENTITLED TO NO RELIEF.
IN THIS CASE, A WRITTEN SENTENCE --
>> LET ME ASK, IT IS CORRECT AS THE JUDGE'S OPINION HERE SAYS THAT ON, IN THIS RECORD FOR THE TRIAL JUDGE IS A WRITTEN PLEA

AGREEMENT FOR 99-YEAR SENTENCE, CORRECT?
>> THAT'S CORRECT.
>> AND THERE IS A WRITTEN SENTENCE FOR 99 YEARS?
>> THAT'S CORRECT.
>> YOU KNOW, IT ESCAPES ME HOW THIS RULE, WHICH WE DESIGNED AND WROTE TO TRY TO FACILITATE SOMETHING THAT WAS ON THE FACE OF A RECORD, COULD BE BROUGHT UP LATER THAN THE TWO YEARS, COULD BE STRETCHED IN THAT CIRCUMSTANCE TO FIT A SITUATION IN WHICH ALL OF THESE RECORDS BEFORE THE TRIAL COURT INDICATE THAT THERE WAS A 99-YEAR SENTENCE, CONTEMPLATED AT THE TIME THAT THE WRITTEN SENTENCE WAS ENTERED.
AND SO IT SEEMS TO ME THAT IN ORDER TO SAY THAT THERE'S AN EVIDENTIARY HEARING UNDER THIS RULE, WE'D JUST BE OPENING UP THIS WHOLE PROCESS TO EVIDENTIARY HEARINGS NO MATTER HOW LATE IN THE GAME A MOTION WAS FILED.
AND THAT'S NOT THE INTENT OF THIS RULE.

>> I WOULD AGREE, AND LET ME SAY THAT GRANTING MR. BLOCKER AN EVIDENTIARY HEARING IN THIS CASE DOES NOT OPEN THE FLOODGATES, BECAUSE THE MOTION HE'S PRESENTED TO THIS COURT IS SQUARELY WITHIN THE LANGUAGE OF THE RULE.
HE HAS PRESENTED A DISCREPANCY THAT CLEARLY APPEARS AFFIRMATIVELY, HE ALLEGES APPEARS ON THE FACE OF THE RECORD, AND THAT DISCREPANCY IS A SENTENCE OF 99 YEARS VERSUS THE ORAL PRONOUNCEMENT OF A SENTENCE OF NINE YEARS, AND AS THIS COURT HAS RULED IN WILLIAMS, THAT'S ILLEGAL.
AND BECAUSE THE LANGUAGE FALLS SQUARELY WITHIN THE LANGUAGE OF THAT RULE, HIS MOTION SHOULD BE UPHELD, AND THE DECISION OF THE COURT BELOW SHOULD BE REVERSED.

>> JUST ONE MORE QUESTION BEFORE YOU SIT DOWN.
ARE YOU SAYING, THEN, THAT THE TRIAL COURT HAD TO HAVE ERRED IN SOME PLACE?
SO DID HE ERR IN ASKING THE STATE TO SHOW CAUSE WHY YOUR CLIENT SHOULD NOT HAVE GOTTEN RELIEF?
AND ONCE THEY -- IS THAT AN ERROR IN ASKING THE STATE TO SHOW CAUSE?
I MEAN, HE PRESENTED THE TRANSCRIPT, AND HE PRESENTED HIS JUDGMENT OF SENTENCE THAT WAS OPPOSITE FROM IT.
DOES THE COURT HAVE A RIGHT TO THEN ASK THE STATE TO SHOW CAUSE?
>> THE COURT DOES HAVE THE RIGHT --
>> ONCE THE STATE DID SHOW CAUSE WHICH CALLS INTO QUESTION THE ACCURACY OF WHAT YOUR CLIENT HAS PRESENTED, WHAT -- YOU CONTEND, THEN, THAT AN EVIDENTIARY HEARING SHOULD FOLLOW?
>> THAT'S CORRECT, BECAUSE OF THIS COURT'S DECISION IN BOTH CALLOWAY AND BURGESS, FOR EXAMPLE, WHERE THE COURTS DID NOT ALLOW DEFENDANTS TO RELY UPON HEARSAY EVIDENCE TO PROVE UP IN THE RECORD, SO, TOO, SHOULD THE STATE NOT BE ALLOWED TO DISPROVE A DISCREPANCY THAT CLEARLY APPEARS ON THE FACE OF A RECORD.
AND I'LL RESERVE THE BALANCE OF MY TIME.
>> WHICH WE'VE EXHAUSTED WITH OUR QUESTIONS.
WE'LL GIVE YOU A REBUTTAL.
>> IF IT PLEASE THE COURT, PATRICIA McCARTHY.
-- CONCURRING OPINION IN THE SECOND DISTRICT, WE WOULD SUBMIT THERE IS NO JURISDICTIONAL CONCERN HERE BECAUSE JUDGE DAVIS, IN WRITING, WARNED THAT NOT EVERY DISCREPANCY CLAIM IS GOING TO GARNER AN EVIDENTIARY HEARING.
SO WE'D SUBMIT THAT THE

CONCURRING JUDGE DID CONCUR IN THE RESULT THAT WE'RE NOT GOING TO HAVE AN EVIDENTIARY HEARING IN MR. BLOCKER'S CASE.
>> NOW LET ME, NOW, THIS IS THE CASE, FIRST OF ALL, WHERE WE TALK ABOUT BAD FACTS MAKE BAD LAW.
THIS IS, FROM MY POINT OF VIEW, WOULD BE A TRAVESTY OF JUSTICE TO SAY WE'RE GOING TO IMPOSE A NINE-YEAR SENTENCE.
THAT'S LIKE OPTION DOOR ONE.
IT IS PRETTY, YOU KNOW, I THINK THAT I'M JUST ABOUT CLOSE TO A CERTAINTY THAT THIS MAN GOT A 99-YEAR SENTENCE.
HE KNOWS THAT EVERYONE ELSE KNOWS IT.
BUT WE ALWAYS, EVERY TIME WE THINK WE'VE FIGURED OUT THE SENTENCING, SOMETHING ELSE COMES UP.
AND WE WERE VERY CONCERNED IN WILLIAMS ABOUT, YOU KNOW, THAT WE HAVE ASSUMED THAT THE ORAL PRONOUNCEMENT IS NOW REDUCED TO WRITING BY THE -- I MEAN, THAT THERE'S GOING TO BE A TRANSCRIPT OF THE ORAL PRONOUNCEMENT, BUT MAYBE NOT AT THE TIME.
BUT WE DID AUTHORIZE THAT IT'S WITHIN THE TRIAL COURT'S AUTHORITY THAT THE STATE MAY HAVE AN OPPORTUNITY TO EXPLAIN AN APPARENT DISCREPANCY BEFORE THE MATTER IS ADJUDICATED.
SO MY QUESTION IS THAT IF THERE'S A SITUATION NEXT TIME, YOU KNOW, WHERE IT'S THE REVERSE WHICH IS THAT YOU'VE GOT A TRANSCRIPT THAT SAYS, WELL, I GUESS THAT SAYS NINE YEARS AND THIS SAYS 99, AND THE JUDGE IS -- THAT IS ACCURATELY TRANSCRIBED.
BUT THEN THE STATE SAYS, NO, IT WASN'T.
IS THAT ENOUGH, THEN, TO SAY THERE'S NOT GOING TO BE FURTHER INQUIRY INTO THE MATTER IN A 3800-A PROCEEDING?
>> UNDER YOUR HYPOTHETICAL I WOULD SUBMIT, YOUR HONOR, THE

POSTCONVICTION COURT COULD FIND
THAT THERE IS AN ERROR ON THE
FACE OF THE RECORD.
UNDER THE FLIP SIDE, IT WOULD BE
UNLIKELY THAT PROSECUTORS AND
OFFICERS OF THE COURT WOULD COME
FORWARD AND SAY, NO, IT WAS
REALLY THIS.
>> BUT THIS IS SUCH AN UNUSUAL
CASE, YOU KNOW, I HATE THE
THOUGHT THAT WE'RE GOING TO BE
PRONOUNCING SOMETHING ELSE WHERE
IT'S PRETTY CLEAR THERE IS AN
ERROR IN THE TRANSCRIPT.
AND NOT AN ERROR IN THE, YOU
KNOW -- I THINK IN ASHLEY IT WAS
THAT THE JUDGE, PROBABLY
MISTAKENLY, DIDN'T USE THE
WORDS.
AND, BUT HE SAID IT.
THERE WAS NO QUESTION THAT HE'D
SAID IT IN COURT.
LET ME ASK YOU THIS, WHAT IF
JUDGE PARNELL, YOU KNOW, HAD HAD
A BAD DAY AND ACTUALLY DID SAY
NINE YEARS AND CONTINUED TO SAY
NINE YEARS?
WOULD THAT BE, WOULD THIS
GENTLEMAN BE ENTITLED TO A
NINE-YEAR SENTENCE?
>> ASHLEY WOULD PROVIDE SOME
SUPPORT FOR THE CONCLUSION THAT
THERE WOULD BE SOME CONCERN
THERE.
BUT IF WE LOOKED AT THE WHOLE
PLEA COLLOQUY AND THE JUDGE MADE
OTHER REFERENCES TO 99, THE FACT
THAT THE COURT MISSED STEPS
WOULD NOT REQUIRE CONCLUSIONS --
>> DOESN'T IT SAY IN THIS
COLLOQUY, YOU UNDERSTAND YOU
WILL BE SERVING A 99-YEAR
SENTENCE?
>> WHAT HE DID WAS SAID, DO YOU
UNDERSTAND YOUR PLEA FORM?
AND THE PLEA FORM CLEARLY SAID
99.
HE'S NEVER CHALLENGED OVER THE
COURSE OF ALMOST TWO DECADES.
>> WHAT'S WRONG WITH THE
DEFENDANT'S SUGGESTION THAT A
BRIEF EVIDENTIARY HEARING BE
HELD?
IT APPEARS TO ME THAT IF THIS

WAS COMING UP AND THE JUDGE HAD HAD A HEARING AND THEN ENDED UP SAYING, LOOK, THE MINUTES SHOW THIS, THE PLEA AGREEMENT SHOWS THIS, THE DEFENDANT HIMSELF IN AN EARLIER PROCEEDING SAID THAT HE GOT A 99-YEAR SENTENCE UNDER OATH, YOU KNOW, KIND OF THING AND ARRAYED AGAINST ALL THAT IS THIS COURT REPORTER'S TRANSCRIPTION.
AND I FIND THAT THIS IS A CLERICAL ERROR, AND THE 99-YEAR SENTENCE STANDS.
I DENY THE MOTION.
YOU KNOW, IF WE WERE LOOKING AT SOMETHING LIKE THAT, NOW, IT SEEMS CLEAR THAT THE JUDGE HAVING ALL THAT EVIDENCE ON THE SIDE OF REACHING THAT CONCLUSION THAT THAT WOULD BE A PROPER AFFIRMANCE, YOU KNOW, OF THAT.
SO WHILE THIS DOES SEEM LIKE SUCH AN UNUSUAL SITUATION -- HOPEFULLY, IT IS AN UNUSUAL SITUATION, THAT COURT REPORTERS ARE NOT WILLY-NILLY, YOU KNOW, GOING FROM 99 TO NINE.
>> I'D LIKE TO ANSWER IN TWO PARTS, JUSTICE ANSTEAD.
THE FIRST IS THE PURPOSE OF 3.850, THE TWO-YEAR RULE.
IT WOULD GUT IT IF WE WOULD ALLOW EVIDENTIARY HEARINGS AT ANY TIME.
WE RESERVE THAT FOR A VERY NARROW PURPOSE OF ERROR.
>> BUT WHAT WE'RE TALKING ABOUT NOW IS DIFFERENT REASONS FOR DIFFERENT RULES.
>> BUT --
>> THIS IS THROUGH THE CASE LAW WE'VE ESTABLISHED THAT THIS IS A PROPER CLAIM TO BE BROUGHT.
OKAY?
HAVE WE NOT?
>> IF IT'S APPARENT --
>> A VARIATION, YOU KNOW, AND HERE, YOU KNOW, UNFORTUNATELY, THE TRANSCRIPT GOES THAT WAY.
THERE'S A LOT OF INDICATION THAT THE TRANSCRIPT CONTAINS A CLERICAL ERROR, BUT BECAUSE IT DOESN'T APPEAR THAT THERE'S

GOING TO BE A LOT OF THESE, WHY WOULDN'T THAT BE THE SIMPLEST SOLUTION?
>> WELL, BECAUSE --
>> JUST LIKE ALLOWING THE STATE TO RESPOND.
>> BECAUSE 3800 SPECIFICALLY SAYS THE ERROR HAS TO BE APPARENT FROM THE FACE OF THE RECORD.
IT WOULDN'T BE.
IT WOULD REQUIRE FACTUAL DEVELOPMENT.
THAT'S NOT THE CURRENT RULE AS IS LAID OUT IN 3800, AND THAT'S WHY THE COURT IS --
>> BUT THERE ARE OTHER ERRORS ON THE FACE OF THE RECORD THAT ALSO MIGHT BE CLERICAL ERRORS THAT WOULDN'T CONTROL THE ULTIMATE OUTCOME.
LET'S SAY THE ERROR HERE WAS THAT THE CLERK, OKAY, AND THERE IS NO COURT REPORTERS.
BUT THE CLERK PUT DOWN SENTENCED TO NINE YEARS, OKAY?
>> RIGHT.
>> AND SO NOW WE HAVE, YOU KNOW, THE CLERK DOING IT SO THAT, YOU KNOW, IT APPEARS OTHER PLACES.
>> BUT THAT CAN BE ASCERTAINED RIGHT ON THE BASIS OF THE RECORD AS A MATTER OF LAW.
THIS CANNOT BE, THIS PARTICULAR CLAIM, WHICH LEADS TO MY SECOND --
>> YOU MEAN IN THIS CASE, IF THE CLERK HAD DONE WHAT THE COURT REPORTER DID AND THERE WAS NO COURT REPORTER TRANSCRIPT --
>> OH, NINE.
>> YEAH.
THEY'D PUT -- THE STATE WOULD STILL OPPOSE THAT, WOULDN'T IT?
>> OF COURSE.
OF COURSE.
>> OKAY.
>> BUT I'M SAYING BY ALL RELIABILITY [INAUDIBLE] YOU WOULD HAVE AN ORDINARY CASE AS YOU CURRENTLY SET UP THIS RULE, AND IN WILLIAMS THE CHANCE TO SAY, LOOK, IF YOU PRONOUNCE SOMETHING ORALLY AND IT DOESN'T

CONFORM BECAUSE THE CLERK HASN'T CONFORMED WITH WHAT THE JUDGE HAS SAID, THAT CAN BE DETERMINED ON THE RECORD.
THIS CASE CANNOT, AND THE RULE SPECIFICALLY SAYS APPARENT ON THE RECORD.
THE COURT'S BEEN VERY CONSISTENT.
IT HAS, THIS KIND OF, ALL DIFFERENT KINDS OF CLAIMS THAT YOU'VE BROUGHT UNDER THE UMBRELLA OF 3800 BE SOMETHING THAT'S ASCERTAINABLE ON THE RECORD.
>> WE SAID THE ORAL PRONOUNCEMENT PREVAILS OVER THE WRITTEN SENTENCE, CORRECT?
THERE'S NO QUESTION ABOUT THAT.
AND I DON'T THINK WE EVER, AND NORMALLY THE ORAL PRONOUNCEMENT WOULD BE -- SO HE HAS BROUGHT THE TRANSCRIPT, AS WE TOLD HIM TO DO IN WILLIAMS, THAT SAYS THIS IS THE ORAL PRONOUNCEMENT.
SO IT IS APPARENT FROM THE FACE OF THIS RECORD WITHOUT ANYTHING ELSE THAT THE ORAL PRONOUNCEMENT WAS NINE YEARS.
NOW, THE STATE IS SAYING, NO, IT'S NOT.
AND IT IS REALLY, THE WAY I SEE IT, IT'S A QUESTION OF THE ISSUE OF THE BURDEN SHIFTING.
WHEN WE SAY THERE'S TO BE NO EVIDENTIARY HEARING AFTER TWO YEARS, WE'RE REALLY TALKING ABOUT QUESTIONS OF WITNESSES.
BUT THE QUESTION OF WHAT GOES ON IN A COURT PROCEEDING, WHAT IS THE SENTENCE, GOES TO THE ESSENCE OF OUR SYSTEM OF JUSTICE THAT WE WANT TO MAKE SURE IS FAIR.
SO WHAT IS GOING BACK SORT OF TO WHAT JUSTICE ANSTEAD IS SAYING, WHEN IT IS THE ORAL PRONOUNCEMENT, WHICH IS WHAT THIS IS, IS ONE THING, AND THEN YOU'RE CONTESTING IT THAT THERE AT LEAST BE A LIMITED HEARING.
YOU KNOW, WE KEEP ON GETTING EVIDENTIARY HEARING.
JUST TO VERIFY YOU PUT INTO

EVIDENCE, THEN, THIS IS THE
CLERK'S RECORD.
YOU PUT INTO EVIDENCE, YOU KNOW,
MAKE SURE THEY TAKE TRADITIONAL
NOTICE OF THAT SUBSEQUENT PLEA,
YOU KNOW, WHERE HE HAS SWORN
THAT IT'S 99 YEARS.
YOU PUT INTO THOSE INTO EVIDENCE
NOT REALLY THE SAME KIND OF
EVIDENTIARY HEARING THAT WE SEE
IN 3850, AND THEN THE RECORD
IT'S STRAIGHT ON IT, AND IT
SEEMS TO ME THE ADVANTAGE OF
THAT IS IT CAN WORK TO THE
ADVANTAGE OF THE STATE.
AND I'LL GIVE YOU THE EXAMPLE.
OFTENTIMES THERE ARE THESE
COMPLAINTS ABOUT WHETHER YOU
MEET THE SEQUENTIAL SENTENCING
REQUIREMENTS OR HABITUALIZATION,
AND SOMETIMES YOU HAVE, WHETHER
IT'S IN THE SAME PROCEEDING ON
THE SAME DAY OR DIFFERENT
SENTENCES.
AND THAT'S THE KIND OF THING
THAT I THINK IN BOVER WE SAID,
WELL, YOU MIGHT HAVE TO HAVE
THIS LIMITED SOMETHING OR OTHER
TO FIND OUT IF ON THAT DAY THERE
WERE TWO DIFFERENT SENTENCES OR
ONE.
SO THAT'S NOT THE SAME KIND OF
EVIDENTIARY HEARING, THAT'S JUST
TRYING TO ASCERTAIN WHAT THE
RECORD OF THE COURT PROCEEDINGS
ARE ON A GIVEN DAY.
AND I AM ASKING YOU THEN IN GOOD
FAITH, WHY WOULD THAT BE A
BURDEN TO THE STATE?
I CAN'T IMAGINE THIS HAPPENS
VERY OFTEN, TO BE ABLE TO SAY,
YES, YOU HAVE THAT.
ONCE THEY'VE SHOWN YOU'RE
PRONOUNCING IT THIS WAY, YOU'VE
GOT TO COME IN TO CONTEST IT,
THE JUDGE CONSIDERS IT, AND THEN
WE HAVE THE RECORD.

>> THE REASON, JUSTICE, WE WOULD
SUBMIT WOULD BE VERY COMPELLING
NOT TO DO SO IS MEMORIES FADE.
NOTES GET DESTROYED.
THERE'S NO TIME LIMIT UNDER
3800.

EVIDENCE GOES AWAY, PROSECUTORS GO AWAY, THEY GO INTO PRIVATE PRACTICE, DEFENSE ATTORNEYS GO ELSEWHERE, TRIAL JUDGES GET PROMOTED, WE'VE LOST THE BEST MEMORY.
THAT DEFENDANT, ON THE OTHER HAND, WAS PRESENT.
HE WAS PRESENT AT HIS SENTENCING, HE HAD THE JUDGMENT.
WE BELIEVE THAT SOMEONE HAS SAT 15 YEARS ON A NINE-YEAR SENTENCE SOUNDS INCREDULOUS ON ITS FACE, BUT WE DON'T EVEN HAVE TO LOOK TO WHAT THE PROSECUTOR SAID.
I KNOW, JUSTICE, YOU WERE CONCERNED ABOUT THE JUDGE'S REASONING PERHAPS MAYBE ON WHAT THE PROSECUTOR HAD COUNTERED.
THAT WAS JUST COOPERATION.
THIS DEFENDANT A DECADE AFTER HE RECEIVED HIS SENTENCE IN PRISON SAID IN THE 3800, HIS SECOND 3800 IN 2000 AT SENTENCING, THE COURT ORALLY PRONOUNCED THAT BLOCKER WAS BEING SENTENCED TO 99 YEARS.
NOW, THAT'S WHAT HE SAID IN 2000.
SO WE DON'T HAVE TO RELY SOLELY ON WHAT THE PROSECUTOR SAID.
WE HAVE ENOUGH EVIDENCE IN HERE TO REBUT.
>> ALL RIGHT.
SO IT'S NOT JUST THAT IF THEY HAD ATTACHED THE TRANSCRIPTS, YOU'RE NOT SAYING --
>> I'M NOT -- [INAUDIBLE] THE STATE IS NOT.
>> LET ME, BECAUSE WE'RE TALKING OVER -- BECAUSE THIS IS AN IMPORTANT PRINCIPLE.
AGAIN, WE HAVE THIS CASE AND THEN WE HAVE ALL THE OTHER CASES.
WE TOLD THE DEFENDANT IN WILLIAMS, ATTACH THE TRANSCRIPT OF THE PROCEEDING.
CORRECT?
>> CORRECT.
>> THAT WAS AN ADDITIONAL REQUIREMENT FOR -- DEFENDANT DOES THAT.
NOW THE STATE COUNTERS AND SAYS

IT'S NOT ACCURATE.
YOU'RE NOT SAYING THAT THAT ALONE, THE STATE JUST SAYING IT'S NOT ACCURATE, WOULD, THEREFORE, BE ENOUGH TO DENY RELIEF TO THE DEFENDANT?
>> THE STATE IS NOT SUBMITTING THAT.
>> [INAUDIBLE]
>> WE WOULD SUBMIT, AND THIS IS THE SECOND COMPONENT TO JUSTICE ANSTEAD'S QUESTION IN THIS CASE, IS THAT WE WOULD SUBMIT THE COURT SHOULD DECLINE JURISDICTION.
THIS IS NOT A CASE OF GREAT PUBLIC IMPORTANCE.
ALL THE CASES THE COURT HAS HANDED DOWN IN THE AREA OF 3800 HAVE ALWAYS SAID IF IT'S APPARENT ON THE FACE OF THE RECORD, HE'S ENTITLED TO RELIEF.
IT IS NOT APPARENT ON THIS RECORD, AND ESPECIALLY IN LIGHT OF HIS SWORN STATEMENTS AS WELL AS UNSWORN STATEMENTS OVER ALMOST TWO DECADES AS TO THE SENTENCE HE HAD GOT --
>> LET ME ASK YOU THIS, HOW DO WE LOOK AT THIS IN TERMS -- THIS WAS A PLEA AGREEMENT, CORRECT?
>> THIS WAS A PLEA AGREEMENT.
>> THE DEFENSE ATTORNEY COMES BEFORE THE COURT AND SAYS MY CLIENT WANTS TO PLEAD.
AND THE DEFENSE ATTORNEY ACTUALLY SAYS THE GUIDELINES CALL FOR LIFE, BUT THE DEFENSE ATTORNEY ALSO SAYS ACCORDING TO THE TRANSCRIPT NINE YEARS.
SO WE HAVE IN THE TRANSCRIPT THE DEFENSE ATTORNEY SAYING NINE YEARS, AND THEN THE COURT AT THE END SAYING NINE YEARS.
SO YOU'RE SAYING BOTH OF THOSE ARE INCORRECT?
>> WELL, AN INTERPRETATION OF THAT IS SIMPLY AS THE SECOND COURT REPORTER, MR. FRENCH, INTERPRETED THAT SAME SYMBOL ALL THE WAY THROUGH THE TRANSCRIPT ERRONEOUSLY.
>> BUT WE DON'T KNOW.

THAT WE DON'T KNOW WHAT THE SYMBOL WAS --
>> BUT WE DON'T NEED TO LOOK INTO THIS BECAUSE WE HAVE MR. BLOCKER'S --
>> LET ME JUST FINISH WHAT I WAS SAYING HERE.
>> YES.
>> I GUESS I WAS SOMEWHAT MORE PERSUADED WHEN I WAS THINKING IT WAS JUST THE JUDGE WHO SAID THE NINE YEARS.
>> UH-HUH.
>> BUT THEN WE HAVE AS A PART OF THIS TRANSCRIPT THE DEFENSE ATTORNEY ALSO SAYING THE NINE YEARS.
BUT IF YOU ARE SAYING THAT THE COURT REPORTER ACTUALLY HAS SOME SYMBOL THAT IS NOW BEING INTERPRETED IN A DIFFERENT MANNER, DON'T YOU THINK WE NEED SOME EVIDENCE ON, AS TO THAT?
>> IN ANSWER, IT WOULD BE THAT MR. BLOCKER HAD THE OPPORTUNITY TO ASK FOR THAT EVIDENCE WITHIN TWO YEARS IN A 3850 OR EVEN IN THE CONTENTION OF ASKING FOR REHEARING OR PURSUING IT ON DIRECT APPEAL OR IN A 3800-D.
I DON'T KNOW, QUITE FRANKLY, WHETHER THAT WAS IN PLACE AT THE TIME, SO I'LL STAND CORRECTED ON THAT, BUT AT LEAST TWO PRIOR SHOTS AT THIS.
IT'S NOT LIKE WE'RE DENYING HIM A CHANCE FOR FACTUAL DEVELOPMENT AND SECURING THROUGH PASSAGE OF TIME A SENTENCE WE DIDN'T NEGOTIATE.
THIS IS ONE WHERE MR. BLOCKER WAS PRESENT, HE HAS CONFIRMED WHAT EVERYTHING ELSE IN THE RECORD --
>> NINETY-NINE YEARS, FOR ME, DOESN'T SEEM LIKE MUCH OF A PLEA BARGAIN FOR LIFE.
I MEAN, 99 YEARS --
>> WELL --
>> PROBABLY IS A LOT MORE THAN LIFE WHEN YOU LOOK AT IT IN REALISTIC TERMS.
>> UNDER THE '87 GUIDELINES, THAT WAS, AS I SEE IT AND

INTERPRET THE GUIDELINES, WAS
WITHIN THE PERMITTED RANGE.
SO HE HAD AT LEAST AN
OPPORTUNITY TO GET.

WHAT UNDER THE 87
GUIDELINES THAT WAS AS I SEE IT
INTERPRET THE GUIDELINES WITHIN
THE PERMITTED ARENA SO HE HAD AT
LEAST AN OPPORTUNITY TO GAIN
TIME AT THE TIME.
WHEREAS A LIFE SENTENCE HE HAD NO
GUARANTEES ONE WAY OR ANOTHER.
SO REMEMBER, HE WAS FACED WITH VERY
DAMAGING EVIDENCE, BASED ON
FACTUAL INQUIRY NEED NOT BE
IGNORED.
WE ARE NOT ASKING THE
COURT TO INTERPRET THE
STATE'S UNDERLYING EVIDENCE.
IT IS BY HIS OWN ADMISSION HE GOT
99.
>> WHEN THE ORIGINAL SENTENCE
WAS CORRECTED CAN YOU GIVE ME
THE DATE THE MOTION WAS FILED?
OCTOBER OF 94, THE TRANSCRIPT
IN OCTOBER '95, WHEN WAS THE
ORIGINAL SENTENCE CORRECTED
PURSUANT TO THE FIRST 3.800A?
>> IN '95, THEN.
>> SO THAT WAS AFTER THE
PREPARATION OF THE TRANSCRIPT OR
BEFORE.
>> YES, AFTER.
>> CAN YOU GIVE ME A DATE.
>> YES, I DO HAVE THE DATE.
>> SO WHILE YOU GET THAT --
>> ON THE TRANSCRIPT -- TO LOOK
AT THAT, AND THE ORDER IS IN THE
RECORD [INAUDIBLE]
THE DATE OF THE TRANSCRIPT MR.
-- TRANSCRIPT IS LIKE ABOUT --
>> OCTOBER OF '95.
>> OCTOBER, AND IN THE
RECORD THE ORDER WAS -- GRANTING
THE -- I THINK LATE OCTOBER OF
THAT SAME YEAR BUT IT IS IN THE
RECORD, YOUR HONOR, THE ORDER
DENYING RELIEF -- THE RECORD
ISN'T CLEAR THAT HE ACTUALLY
FORMALLY ATTACHED THE TRANSCRIPT.
WE KNOW THE TRANSCRIPT IS DATED
BEFORE THE ORDER GRANTING THE --
>> WAS HE REPRESENTED BY COUNSEL

ON THAT --
>> BATTERY COUNTS?
>> WAS HE REPRESENTED BY COUNSEL
IN THAT PROCEEDING OR WAS HE --
>> PRO SE.
>> PRO SE.
>> BOTH OF -- HIS FIRST MOTION WHEN
SHE SAID SENTENCED TO 99 I
CAN'T SAY PRO SE, IT WAS SWORN,
HE SAID HE WAS SENTENCED TO 99.
AND 2000, A DECADE OVER, A DECADE
AFTER HIS PLEA HE SAYS THE COURT
ORALLY PRONOUNCED, DIDN'T JUST SAY
SENTENCE ON THESE, WE SUBMIT
THAT REALLY THE COURT CAN
DECLINE JURISDICTION IN THIS
CASE BECAUSE IT ISN'T A CASE OF
GREAT PUBLIC IMPORTANCE, IT IS
VERY FACT --
>> I THINK THE IMPLICATION HOW
BROADLY STATED I THINK IS WHY
THIS IS A CONCERN ON THAT, NOT SO
MUCH AS APPLIED IN THIS CASE BUT
BROADLY, ABOUT SOME OF THE
PRINCIPLES THAT WERE DISCUSSED.
I THINK THAT IS THE REAL
ISSUE.
>> I WOULD JUST LOOK BACK TO
LANGUAGE IN BOVER, WILLIAMS, MANCINO
WHICH IS CITED IN WILLIAMS,
AND CALLOWAY, AND EACH AND EVERY
ONE OF THOSE CASES HANDED DOWN
BY THIS COURT UNDER 3800 THE
COURT HAS SAID APPARENT ON THE
RECORD.
THIS CASE WOULD FALL
RIGHT ON IT, IT IS NOT APPARENT
ON THE RECORD HE WOULD IF
HE WANTED THAT FACTUAL
DEVELOPMENT, WE ARE NOT DEPRIVING
HIM OF IT.
HE JUST NEEDS
TO DO IT IN A PROCEDURALLY
CORRECT MANNER AS IN
MANY DIFFERENT TYPES OF
SENTENCING CLAIMS THAT REQUIRE
FACTUAL DEVELOPMENT --
>> BUT MY CONCERN 3850 NOT
FOOTNOTE IN WILLIAMS WE
UNDERSTOOD SOMETIMES THE RECORD
WOULDN'T JUST BE THERE IN A
NEAT PACKAGE.
THERE MIGHT HAVE TO
BE FURTHER DEVELOPMENT, AND WE

PUT A BURDEN ON THE DEFENDANT,
AND I JUST WANT TO BE CLEAR,
BECAUSE AS WE -- IF WE WRITE THIS
OPINION, YOU KNOW, THAT WE -- THIS
CASE CRIES OUT FOR THERE TO BE
AN AFFIRMANCE IN MY VIEW, I WANT
TO MAKE SURE WE DON'T SAY EVERY
TIME THAT IS DONE AND THEN THERE
IS SOME QUESTION OF DISCREPANCY
THE JUDGE IS POWERLESS TO TRY TO
RESOLVE THAT DISCREPANCY IN A
REASONABLE MANNER TO MEET THE
ENDS OF JUSTICE.
THIS WOULD BE A
TRAVESTY OF JUSTICE.
WE WANT TO
MAKE SURE IN THE NEXT CASE THERE IS
NOT A MISCARRIAGE OF JUSTICE.
THE PART OF THE FOOTNOTE IN WILLIAMS, THAT
SAYS THE JUDGE CAN ASK FOR THE
DOCUMENT.
THEN WHAT IS THE NEXT STEP?
ONCE THE DOCUMENTS SHOW
SOMETHING THEN WHAT?
>> YOUR HONOR, I WOULD URGE THE
COURT NOT TO ISSUE AN ORDER
THAT WOULD SAY THE PROSECUTOR
CAN'T SAY WHAT HAPPENED AT THE
SENTENCE, EVEN IF IT IS OUTSIDE
THE RECORD, I THINK HE COULD DO
THAT AS A MATTER OF
CORROBORATION IF HE WAS THERE, WE
HAD VALUABLE MEMORY, DEPOSING
COUNSEL, AN OFFICER OF THE COURT,
I WOULD ASK THE COURT NOT TO TIE
THE PROSECUTOR'S HANDS NOT BEING
ABLE TO SAY BACK TO THE
POSTCONVICTION COURT, THIS IS
A MISCARRIAGE OF JUSTICE THAT HE
MADE A NEW --
>> YOU ARE ENCOURAGING
THERE HAS
TO BE LIMITED EVIDENCE SOMETIMES
TAKEN.
>> NO, NO, IN THE AREA OF 3800,
I WOULD URGE THE COURT TO FIND
THE DEFENDANT BEARS THE
RESPONSIBILITY OR THE RISK, THAT
IF IT IS DEEMED NOT APPARENT,
THAT HE HAS GOT TO GO TO 3850 IN
A TIMELY MANNER.
IT IS THAT SIMPLE.
>> WITH OUR QUESTIONS, WE HAVE
EXHAUSTED ALL OF YOUR TIME.

>> I ASK YOU TO APPROVE THE DECISION, YOUR HONOR.
THANK YOU.
>> REBUTTAL.
>> JUSTICES, AN IMPORTANT ISSUE IS THAT WHERE A DEFENDANT BRINGS A CLAIM THAT IS APPARENT ON THE FACE OF THE RECORD, A WRITTEN SENTENCE THAT IS INCONSISTENT WITH THE ORAL SENTENCE, DID THE STATE WIN BECAUSE WE ASSUMED IT IS RIGHT, OR WHAT IS -- MUST THE STATE PROVE IT IS RIGHT THROUGH EVIDENCE?
THAT IS EXACTLY THE CONCERN JUSTICE DAVID HAD, JUSTICE DAVID HAD IN A CONCURRING OPINION BELOW, THAT MERELY UPON THE SUGGESTION THAT THE TRANSCRIPT IS WRONG THE DEFENDANTS MUST LOSE EVEN WITHOUT THAT SUGGESTION BEING
--
>> -- CONCEDE THAT IT WOULDN'T JUST BE ENOUGH FOR THE STATE TO GO IT IS WRONG, THEY HAVE TO ASSERT A REASONABLE BASIS THAT THE ORAL PRONOUNCEMENT IS OTHER THAN WHAT APPEARS IN THE TRANSCRIPT.
>> THAT IS CORRECT.
>> A REASONABLE BASIS IN THE RECORD THEY CAN'T JUST COME IN SAY IT IS WRONG.
>> THE STATE MADE THAT CONCESSION IN THE SECOND DISTRICT OPINION ALL JUDGE ALTERNBERND FOUND THE TRANSCRIPT WAS ENOUGH, AND THAT THE STATE HAS GONE BEYOND THAT SAID THE TRANSCRIPT IS NOT ENOUGHT, THERE HAS TO BE SOMETHING BEYOND THE THAT, AND HERE WHAT THEY SAY IT HAS COME FORWARD WITH THE HEARSAY MEMORIES UNCONTESTED WHAT THE SENTENCE IMPOSED WAS THE STATE IN RESPONSE DANCES AROUND THE POINT THAT THESE TWO --
>> WOULD YOU ASK THAT MR. LOWRY AS AN OFFICER OF THE COURT, I WANT TO MAKE SURE, HAD BEEN AT THAT TIME, SWORN, SWORN TO TELL THE TRUTH IT IS NO QUESTION IT WAS 99 YEARS.
THAT WOULD BE THEN, AT THAT

POINT, NO LONGER APPARENT ON THE FACE OF THE RECORD IF THAT EVIDENCE IS BROUGHT FORWARD, THAT EVIDENCE IS ALLOWED TO BE TESTED BY MR. BLOCKER AS MR. BLOCKER, IS ALLOWED TO BRING FORWARD EVIDENCE THAT HE HAS WHATEVER IT MIGHT BE THAT THE TRANSCRIPT IS AN ACCURATE REFLECTION OF THE ORAL PRONOUNCEMENT, PURSUANT TO THIS COURT'S PREVIOUS DECISION THAT ORAL PRONOUNCEMENT HAS TO CONTROL THE EFFECT OF THE STATE'S ARGUMENT IS TO PLACE ANY DEFENDANT WHICH I THINK THIS COURT RECOGNIZES, INTO A VERITABLE CATCH-22.
ON THE ONE HAND THE STATE SAYS, MR. BLOCKER'S MOTION MUST BE DENIED, BECAUSE THE TRANSCRIPT IS WRONG, BUT THEN TO SAY THE TRANSCRIPT IS WRONG THE STATE HAS TO COME FORWARD WITH UNTESTED HEARSAY ASKING THIS COURT TO ACCEPT THAT --
>> I THINK WHAT THE RULE CONTEMPLATES IS THAT IF THEY ARE GOING TO BE -- SOMETHING THAT IS GOING TO REQUIRE THERE TO BE EVIDENTIARY TESTING, THAT HAS TO BE DONE WITHIN TWO YEARS.
BECAUSE OF THE NEED TO HAVE FINALITY IN THIS POSTCONVICTION PROCESS.
>> THAT IS CORRECT.
WHERE AN ERROR DOES NOT APPEAR ON THE FACE OF THE REPORT IN 3.8005 THIS COURT CONCLUDED IT IS MORE IMPORTANT TO GET IT, BE RELIABLE THAN TO HAVE FINALITY BECAUSE THOSE MOTIONS CAN BE BROUGHT AT ANY TIME.
I SEE I -- MAY I ASK THE DECISION OF THE DISTRICT COURT BELOW BE REVERSED.
>> THANK YOU VERY MUCH.
LET ME TAKE THIS OPPORTUNITY TO EXPRESS THE APPRECIATION OF THE ENTIRE COURT FOR YOUR PRO BONO SERVICES IN CONNECTION WITH THIS CASE, AT

TIMES OUR QUESTIONING BECOMES
QUITE DIFFICULT.
THAT IS CERTAINLY NO
REFLECTION ON PERFORMANCE.
YOU HAVE A CASE TO DO, YOU HAVE DONE
YOUR VERY BEST.
WITHOUT IT, WITHOUT YOU THE SYSTEM DOESN'T
WORK, SO WE REALLY THANK YOU AND
ALL OF US, ALL THE PEOPLE OF
FLORIDA THANK YOU FOR GIVING OF
YOUR TIME TO TRY TO MAKE THE
SYSTEM WORK.
TO YOUR FIRM PLEASE EXPRESS OUR
APPRECIATION, TO THE
LEADERS OF YOUR FIRM, FOR
PERMITTING YOU TO DO THESE
THINGS, AND WE JUST REALLY THANK
YOU FOR DOING THIS.
>> THANK YOU.
>> WE'LL TAKE THE CASE UNDER
ADVISEMENT.
COURT WILL STAND IN
RECESS UNTIL 8:30 TOMORROW
MORNING.
>> THANK YOU.
>> PLEASE RISE.