>> PLEASE RISE.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> THE NEXT CASE IS STATE VERSUS
MCGRIFF.
>> MAY IT PLEASE THE COURT,
CHRISTINE GUARD ON BEHALF OF THE
STATE OF FLORIDA.
AGAIN, I JUST WANT TO WALK
THROUGH A LITTLE BIT OF THE
PROCEDURAL HISTORY FOR MCGRIFF
BECAUSE HE IS IN A DIFFERENT
POSTURE THAN THE OTHER
DEFENDANTS THAT ARE HERE TODAY.
MR. MCGRIFF WAS CHARGED IN 1987
WITH A HOMICIDE.
HE WAS CONVICTED IN 1988.
HIS DIRECT APPEAL BECAME FINAL
WHEN THE MANDATE ISSUED AFTER
THE ORDER DENYING A REHEARING ON
JANUARY 4, 1990.
HE HAD TWO SUBSEQUENT APPELLATE
PROCEEDINGS IN 93 AND 97 PRIOR
TO THE DECISION IN APPRENDI.
>> WHAT WAS THE SENTENCE?
>> HE WAS SENTENCED TO LIFE IN
PRISON ON A HOMICIDE,
SECOND-DEGREE MURDER WITH A
FIREARM.
THERE WAS AN ARMED BURGLARY AND
AN ARMED ROBBERY.
THEN, AGAIN, I AM SORRY IN 2000
IN APPRENDI THERE WAS AN ISSUE
INVOLVING THE DESIGNATION THAT
APPEARED ON HIS SENTENCE.
HE WAS RESENTENCED FOR MOVING
THE DESIGNATION AND THE STATE
APPEALED THAT BECAUSE HE WAS IN
PRISON AND MR. MCGRIFF AVOIDED
APPEAL.
AND DURING THAT TIME, WHICH WAS

MAY 23, 2003, THE COURT GRANTED A 3800 MOTION AND HE WAS RESENTENCED JUNE 20, 2003, SIMPLY REMOVING THE HSO DESIGNATION AND NOTHING ELSE. EVERYTHING ELSE WAS IDENTICAL TO THE PAST PROCEEDINGS.
HE APPEALED AND HIS APPEAL BECAME FINAL SOMETIME AFTER SEPTEMBER 29, 2004, WHICH WAS AFTER BLAKELY, BUT ALSO AFTER THAT MANDATE ISSUE, PROBABLY THE SEPTEMBER 29, 2004 DECISION.
HE DID NOT RAISE APPRENDI OR BLAKELY IN THAT PROCESS WITH APPEAL NOW ON A 3800A MOTION FILED NOVEMBER 9, 2004 AND AMENDED 3800A MOTION IN 2005, WHICH WERE DENIED JANUARY 6, 2005.
THE FIRST DISTRICT APPLIED ISAAC TO THE SENTENCE.
>> HOW IS THIS DIFFERENT THAN ISAAC?
I UNDERSTAND DIFFERENT THINGS HAPPEN ALONG THE WAY, BUT IN TERMS OF THE PROCEDURAL POSTURE WE ARE AND NOW, PUTTING ASIDE THE FACT THAT WE HAVE THE SUBSEQUENT ISAAC FOUR, HOW IS IT DIFFERENT FROM THE PROCEDURAL POSTURE OF ISAAC THREE?
>> THE STATE ASSERTS THAT REALISTICALLY THIS WAS A MINISTERIAL ACTION, REMOVING THE DESIGNATION MANY YEARS AFTER THE SENTENCE WAS IMPOSED AND IT SHOULD'VE BEEN HANDLED IN A MINISTERIAL WAY.
IT WAS INSTEAD PROJECTED TO SENTENCING.
>> OKAY.

BUT WHATEVER HAPPENED THERE WAS FINAL BACK ON SEPTEMBER 29, 2004.
>> OR SHORTLY THEREAFTER.
>> OR THEREABOUTS, OKAY?
SO WHAT WE ARE ACTUALLY HERE ON NOW, AS WE WERE IN ISAAC, IS TO REVIEW THE DECISION OF THE FIRST DISTRICT, WHICH REVIEWED THE DENIAL OF THE 3800 MOTION.
>> CORRECT.
>> WE ARE IN POST-CONVICTION LAND.
>> CORRECT, AND AS THE STATE ASSERTED, BEFORE BLAKELY HAD NOT BEEN APPLIED COLLATERALLY BY THE FEDERAL COURT AND IT WAS IN THE ALASKA COURT AND WOULD NOT BE RETROACTIVE IN COLLATERAL PROCEEDINGS.
THESE CASES ARE ALL CITED AND REFERENCED IN OUR BRIEF.
>> I THOUGHT-- AND I WAS LOOKING ALL THREE TOGETHER-- THAT THE RESENTENCE IN THIS CASE OCCURRED BEFORE APPRENDI AND BEFORE BLAKELY WAS ISSUED.
>> IT IS NOT, YOUR HONOR.
IT WAS JUNE 20, 2003, REMOVING THE HSO DESIGNATION.
>> WAS THAT THE ISSUE OR WAS THAT THE RESENTENCING ISSUE?
[INAUDIBLE]
>> HE EITHER AGREED WITH IT OR THAT WOULD NOT MAKE THIS-- WHETHER IT WAS ACTUALLY A RESENTENCING.
>> AGAIN, THE GRANT IN THE FIRST DISTRICT APPLIED LATELY TO THIS CASE.
THEREFORE, IT IS IN CONFLICT WITH THE REST OF THE DISTRICTS.

>> YEAH, BUT ON THE FIRST ISSUE
THERE WAS RESENTENCING EVEN
UNDER-- THE WAY I LOOK AT THIS.
I LOOK AT THIS THAT, IF THE
SENTENCE, IF THERE IS A
RESENTENCING OF DE NOVO, AND
BLAKELY AND APPRENDI WERE
ADDED-- THAT I DON'T SEE A
REASON WHY THE STATE, IF THEY
ARE TRYING TO PROVE SOMETHING,
THAT HASN'T BEEN PREVIOUSLY
PROVED LIKE IN CAPITAL CASES,
THEY CAN'T HAVE A JURY TRIAL IF
THAT IS WHAT THE DEFENDANT WANTS
ON THAT ISSUE.
THAT IS WHERE I WOULD BE.
WHETHER WE GET THERE IN ANY OF
THESE CASES-- SO THE OTHER
APPELLATE COURT IS WITHHOLDING A
DIFFERENT REASON EITHER TODAY OR
FIVE YEARS FROM NOW THAT ISSUE
HAS TO BE SOLVED.
SO LET'S GO ON THIS CASE, SAYING
THAT NO RESENTENCING EVER
OCCURRED AND WE ONLY GET TO THE
ISSUE AS TO WHETHER SOMEHOW
BLAKELY WOULD BE RETROACTIVE,
BUT IT STILL HAS TO BE--
YOU ARE SAYING THE SENTENCE
OCCURRED BACK IN THE '90S.
>> OUR ARGUMENT IS THAT
BLAKELY--
I UNDERSTAND YOUR HONOR'S
DECISION.
OUR ARGUMENT IS, FIRST OF ALL,
BLAKELY NOR APPRENDI SHOULD HAVE
BEEN APPLIED TO THE
RESENTENCING, SO ASSUMING THIS
COURT REJECTS THE STATE'S
POSITION WITH RESPECT TO THE HSO
DESIGNATION BEING REMOVED AND
FINDS IT IS A RESENTENCING, THEN

THE FIRST DISTRICT APPLIED
BLAKELY, AFTER THE RESENTENCING,
AGAIN, BECAME FINAL ON ITS
RESENTENCING DIRECT APPEAL.
NOW THIS CONVICTION WAS FINAL IN
1990, SO NOW WE HAVE BLAKELY AND
ISAAC BEING APPLIED TO A
DECISION FROM 1990.
IT IS NOW 23 YEARS OLD SO.
>> YOU HAVE GOT A LOT OF
DIFFERENT ARGUMENTS HERE AND I
UNDERSTAND THAT BUT ISN'T THIS
THE MOST OBVIOUS WAY TO LOOK AT
THIS CASE THAT WE ARE IN
POST-CONVICTION LAND HERE, AND
APPRENDI, APPRENDI DOES NOT
APPLY AND IF BLAKELY DOES NOT
APPLY, THEN THEY DON'T APPLY.
>> YES YOUR HONOR--
[INAUDIBLE]
>> LET ME ASK YOU ABOUT THE
2003A RESENTENCING THAT YOU
REFERRED TO AS SIMPLY
MINISTERIAL.
IF IN FACT AT THIS HEARING DONE
WHAT THEY DID IN ISAAC WOULD
JUST SAY OKAY, WE CAN'T HAVE, IN
ISAAC IT WAS A-- ISSUE BUT IN
THIS CASE WE CAN'T HAVE THE OF
HABITUAL OFFENDER DESIGNATION
ANYMORE BUT LET ME TELL YOU WHY
YOU COULD EXCEED THE GUIDELINES
OR WHATEVER ELSE THEY COULD DO.
WOULD THAT BE A RESENTENCING?
>> I THINK ARGUABLY THAT WOULD
BE A RESENTENCING IN AND THE
QUESTION IS HOW THE COURT
APPLIES BLAKELY AND APPRENDI TO
THAT.
>> SO, IF IN FACT THAT WAS A
RESENTENCING AND THAT KIND OF
SITUATION HAD TAKEN PLACE, AND

APPRENDI HAD COME OUT THREE YEARS BEFORE, APPRENDI WOULD BE APPLICABLE.
WOULD YOU CONCEDE THAT APPRENDI WOULD BE APPLICABLE TO THAT KIND OF PROCEEDING?
>> NO, YOUR HONOR BECAUSE IN THIS CASE THE STATE ASSERTS THAT THE CONVICTION IS WHAT CONTROLLED.
>> YOU STILL MAINTAIN THAT IF THE CONVICTION DATE AND NOT THE SENTENCING DATE, THAT WE ARE DEALING WITH--
>> YES, AND WE TAKE THAT LANGUAGE FROM THIS COURT'S OPINION IN HUGHES.
>> THE LANGUAGE SAYS SPECIFICALLY WHAT?
>> THIS COURT IN HUGHES STATED THAT THIS COURT HAD ACHIEVED AN INTEREST IN FINALITY OF THE SENTENCE AT THE TIME THE CONVICTION BECAME FINAL ON DIRECT APPEAL.
>> THE FINALITY OF THE SENTENCE.
>> IN HUGHES THEY SEPARATED CONVICTION AND SENTENCE AND THEY SAY THE STATE ACQUIRED ITS INTEREST IN FINALITY ON THE CONVICTION AS THE APPRENDI DIRECT APPEAL BECAME FINAL.
IN OTHER WORDS MR. MCGRIFF'S CONVICTION BECAME FINAL SOMETIME AROUND JANUARY 4, 1990 AND AS A RESULT THAT IS WHEN THE STATE ACQUIRED ITS INTEREST IN THE FINALITY OF THIS.
THAT IS WHEN THE STATE LAST HAD THE CHANCE TO PUT THIS INFORMATION BEFORE THE JURY THAT HAD BEEN IMPANELED ALREADY IN

MCGRIFF AND OBTAINED A RULING.
>> LET ME ASK YOU THIS.
DID YOU SEE ANY CONSTITUTIONAL IMPEDIMENT AND PANELING A JURY IN A RESENTENCING PRECEDING IF THE CONSTITUTION REQUIRES THAT CERTAIN FACTS BE FOUND BY A JURY IN ORDER FOR THAT SENTENCE TO BE ENHANCED?
>> I HAVE WATCHED THE ARGUMENTS IN GALINDEZ AND ACTUALLY I WAS HERE FOR ISAAC THIS MORNING, AND EACH TIME THIS ARGUMENT IS PRESENTED BY THE DEFENDANT, THERE IS ALWAYS SOME KIND OF DOUBLE JEOPARDY ATTACK RAISED.
>> THAT IS JUST THROWN OUT THERE.
THERE HAS BEEN NO SUPPORT FOR IT.
CAN YOU THINK OF ANY REASON THAT THERE WOULD BE A DOUBLE JEOPARDY PROBLEM IN THIS CONTEXT OR ANY OTHER SORT OF PROBLEM IN THIS CONTEXT IF WE PERMISSIBLY IMPANELED JURIES IN DEATH CASES?
>> NO I DON'T, GIVEN WHAT WE DO IN DEATH CASES, BUT I CAN'T AGAIN--
>> I THINK YOU WOULD RATHER NOT HAVE TO GO THERE.
>> CORRECT.
>> YOU WOULD RATHER NOT IMPANEL THE JURY.
BUT YOU HAVE NO IMPEDIMENT TO IMPANELING A JURY--
>> I DO NOT, OFF THE TOP OF MY HEAD.
THE OTHER THING THAT I WILL ASSERT TO THE COURT IS THIS CASE IS, AGAIN, 23 YEARS OLD TODAY, OR IN THE VICINITY-- ACTUALLY

MORE THAN 23 YEARS OLD, SO THE
STATE NOW HAS A HUGE IMPEDIMENT
OF BEING ABLE TO PROVE ANY OF
THESE THINGS BECAUSE WE DON'T
HAVE LIVE WITNESSES TO PRESENT
TO THE JURY POTENTIALLY.
IT IS HARD TO KNOW WHO IS STILL
ALIVE FROM THE POLICE FORCE IN
QUINCY AT THE TIME THIS CASE WAS
DONE.
IT IS HARD TO KNOW WHAT EXPERTS
WE HAVE AVAILABLE.
THAT IS WHY THERE HAS TO BE A
FINALITY POINT IF THAT IS WHY
THE COURT AND THE STATE ASSERTS
THAT THE CONVICTION IS
CONTROLLING HERE.
THE BLAKELY AND APPRENDI ERROR
OCCURS AT THE TIME OF TRIAL.
THEY BECOME MANIFEST DURING THE
SENTENCING PROCESS BUT IT
ACTUALLY OCCURS DURING THE JURY
TRIAL.
>> PUTTING ASIDE THE ACTUAL
POSTURE IN THIS CASE, AND WE ARE
IN POST-CONVICTION LAND, IF WE
WERE DEALING WITH THE
RESENTENCING DIRECTLY WITHOUT
THE THREAT OF APPEAL FROM A
RESENTENCING, ISN'T IT THE CASE
THAT THIS COURT HAS TIME AND
TIME AGAIN REFERRED TO
RESENTENCING PROCEEDINGS AS DE
NOVO PROCEEDINGS?
HOW DO YOU GET AROUND THAT?
I UNDERSTAND YOU HAVE SOME CASE,
BUT IN THIS CONTEXT IT CAN'T BE
ALLOWED TO TURN THE WHOLE RULE
AROUND, CAN IT?
>> IT IS A TINY EXCEPTION BUT IT
IS A TRUE EXCEPTION TO THE RULE,
SO IT IS NOT TRUE ALL SENTENCING

PROCEEDINGS IN FLORIDA ARE DE NOVO.
THAT IS THE POINT OF THIS ARGUMENT IN THAT PARTICULAR CASE.
>> THIS COURT DECIDED TO CARVE OUT AN EXCEPTION, BUT YOU ADMIT, DON'T YOU, THAT THE BASIC FUNDAMENTAL RULE IS RESENTENCING PROCEEDINGS ARE DE NOVO.
>> YES, YES.
>> AGAIN, IN ISAAC THE STATE ACTUALLY OFFERED A REASON THAT WAS NEVER, TO THE DEFENDANTS DETRIMENT, HAD NEVER BEEN ARGUED BEFORE BECAUSE IT WASN'T NECESSARY.
>> AGAIN, IN ISAAC I BELIEVE THE STATE'S POSITION IS, BECAUSE OF THE SPECIFIC FINDINGS OF THE TRIAL JUDGE THERE, THE ESCALATING PATTERN OF CRIMINAL CONDUCT AS IT IS LAID OUT IS MISDEMEANOR TO FELONY IN THE SECOND-DEGREE.
>> IT STILL IS--
THE DEFENDANT SOUGHT THE BENEFIT OR THE STATES OUT THE BENEFIT OF SOMETHING THAT WOULD INCREASE THE SENTENCING SUBSTANTIALLY.
>> TYPICALLY IN THESE KINDS OF CASES WHAT HAPPENS--
[INAUDIBLE]
WHAT HAPPENS IN THESE CASES IS THE DEFENDANT WILL SEEK THE BENEFIT ALSO.
IT IS NOT JUST THE STATE BENEFIT.
>> IF SOMEONE IS SENTENCED TO 50 YEARS, 40 YEARS AND THEY CAN CUT 10 YEARS OFF OF THEIR SENTENCE BECAUSE THERE HAS BEEN A CHANGE

OF LAW THAT BENEFITS THEM, THAT IS NOT A FRIVOLOUS ARGUMENT.
>> AND I WASN'T SUGGESTING IT WAS FRIVOLOUS.
WHAT I WAS SUGGESTING WAS, BECAUSE THEY HAVE THAT OPPORTUNITY, SOMETIMES WHEN YOU ROLL THE DICE, SOMETIMES YOU WIN AND SOMETIMES YOU LOSE.
SOME OF THESE CASES THE DEFENDANT WILL LOSE BECAUSE THE JUDGE IS ABLE TO FIND OTHER REASONS OR BECAUSE THEY WERE PREVIOUSLY FOUND LIKE IN MCGRIFF.
ONE OF THE DEPARTURES OF MCGRIFF IS ALSO THE PATTERN OF CRIMINAL CONDUCT AND IT IS SPELLED OUT.
>> IN THAT CONTEXT, SOME OF THEM ARE NOT, HOWEVER, REASONS THAT ARE A PRIOR RECORD, CORRECT?
>> CORRECT.
>> THOSE ARE THE KINDS OF THINGS YOU WOULD HAVE TO HAVE A JURY DETERMINATION ON.
IS THERE ANY LAW ABOUT IF SOME ARE PROPER AND SOME ARE NOT?
>> YES, YOU ONLY NEED ONE REASON IN ORDER TO PRESERVE THE SENTENCE, PARTICULARLY IN THESE KINDS OF CASES AND THAT MAY NOT ALWAYS BE TRUE.
BUT IN THIS TYPE OF CASE WHERE THE AGGRAVATORS ARE PRIMARILY RECIDIVIST, THE ONLY AGGRAVATOR IN THIS CASE WAS THE BODY, WHICH HE HID.
>> HE WAS NOT AMENABLE TO REHABILITATION?
>> YOU HAVE TO READ WHAT THE TRIAL JUDGE FINDS IN THE FINDINGS, NOT JUST WHAT THE

PREAMBLE SAYS.
UNDER THE GUIDELINES, WE HAVE CERTAIN CATEGORIES THAT THEY CAN FIND UNDER--
AND IT DEPENDS ON WHAT THE TRIAL JUDGE SAYS WITH RESPECT TO THE CATEGORIES, WHETHER IT WILL BE RECIDIVIST OR NOT BE RECIDIVIST.
I AGREE WITH THE COURT ON THAT POINT.
THEY ARE BASED ON ONE PRIOR CHARGE, AND THEN YOU WOULD HAVE AN ESCALATING PATTERN.
YOU WOULDN'T HAVE A RECIDIVIST BASED--
>> ALL THE OTHER FOUR DISTRICTS HAVE HELD THAT IF THE CONVICTION AND ORIGINAL SENTENCE WERE FINAL FOR APPRENDI AT RESENTENCING.
THEY DON'T GET THE BENEFIT OF APPRENDI.
IS THAT CORRECT?
>> THAT IS CORRECT.
IF IT HAPPENED UNDER APPRENDI.
THEY FOUND THE SAME THING FOR THE BLAKELY APPLICATION.
>> ARE THERE CASES THEN--
WHAT I'M CONCERNED ABOUT IS THAT IF THIS COURT, IF WE CAN'T REACH THAT ISSUE IN ANY OF THESE THREE CASES, WE HAVE A SITUATION WHERE THIS CONFLICT, WHICH IS WHETHER IT APPLIES, IS GOING TO CONTINUE IN ALL THOSE COURTS AND THEN THE QUESTION IS IF WE DECIDE THAT THAT SHOULD HAVE BEEN APPLIED.
AND OUR DECISION FIVE YEARS LATER IS GOING TO BE RETROACTIVE, AND IN THE MEANTIME WE ARE HAVING THESE RESENTENCINGS.
I DON'T KNOW HOW MANY OCCUR, BUT

WHERE THEY HAVE TAKEN THE
POSITION OF BLAKELY OR APPRENDI,
THAT DO NOT APPLY.
>> I AM NOT CERTAIN WHAT
HAPPENED SPECIFICALLY ONCE HE
REMANDED.
I ASSUME SOME OF THOSE WERE
DEFENDED.
>> IF WE REMANDED THEM, WE MUST
HAVE THOUGHT THERE WAS ANOTHER
BASIS.
>> CORRECT AND THE BIGGER
PROBLEM IS, YOUR HONOR, THE
NUMBER OF CASES THAT HAVE BEEN
SUBJECTED TO RESENTENCING.
WE HAVE THOSE OPEN.
ANYTIME IT IS STRICKEN OFF OF A
POTENTIAL SENTENCING DOCUMENT
WE, ARE GOING TO BE ABLE TO DO
THIS.
>> NOW YOU ARE TALKING, THOUGH,
ABOUT A NARROW ISSUE THAT IS
SOMEWHAT SYMPATHETIC.
>> OBVIOUSLY, BUT HFO SENTENCE
IS GAMETIME.
FOR INSTANCE A TWOFER DAY
SENTENCE THINGS LIKE THAT.
THOSE ARE OUTGOING TO BE PERFECT
IF WE UNDERMINE THE SENTENCES OR
STRIKE OUT AGAINST THE RELEASE
DATE WILL BE SOONER.
>> IF CREDIT FOR TIME SERVED AND
THAT'S AN ISSUE IN DEMAND TO BE
CORRECT.
IT WOULD OPEN EVERYTHING ELSE.
>> I DON'T KNOW, YOUR HONOR.
BUT THAT'S THE QUESTION.
[INAUDIBLE]
>> POTENTIALLY YES.
AS BY THE STATE ASSERTS HE
SHOULD NOT BE FOUND RETRO.
>> IN THAT SITUATION TO STAY

TRUE A GREATER SENTENCE THAT
WOULD BE DOUBLE JEOPARDY.
EVERYTHING GETS OPENED UP WITH
THE STATE AT THE CHANCE TO ARGUE
FOR A HARSHER SENTENCE SEEMS TO
ME.
>> CORRECT.
I JUST WANT TO POINT OUT HE DID
RECEIVE A LIFE SENTENCE AND IS A
NATURALIZED SENTENCE.
>> I'M JOHN MILLS ON BEHALF OF
JULIUS MCGRIFF.
[INAUDIBLE]
>> I DID.
I'M VERY HAPPY TO BE HERE AND I
DO THINK THIS IS THE CASE WHERE
YOU CAN DECIDE THIS VERY
IMPORTANT ISSUE.
THERE CLEARLY IS A CONFLICT
AMONG THE DISTRICTS.
WE DON'T HAVE A LITMUS ISSUE.
LAST CASE YOU HEARD WAS MOVED.
THE FIRST IS THAT THIS WAS A
RESENTENCING AND THE SECOND IS
JUSTICE CANADY, WHILE THIS MIGHT
RELY IN POSTCONVICTION ANSWER TO
STORIES ARE AND WHERE IT IS
WE'RE SAFE.
I'LL GET THAT IN A MINUTE IF I
COULD DO THIS IS A RESENTENCING.
IT EVOLVED A RESENTENCING FROM
AT LEAST WE CAN TALK ON THE
RECORD.
>> THAT'S WHAT IS MY CONCERN.
IS THAT A LIFE ISSUE AS TO WHAT
HAPPENS QUOTE TO SIMPLY REMOVING
THE HFO DESIGNATION.
>> IT'S AN UNRESOLVED COURT THAT
NO ONE HAS BEEN PRESENTED WITH
UNTIL NOW.
THEY DID VIOLATE THIS RESPONSE
AND FOLLOW THE RESPONSE IN THE

DCA.
THEY DIDN'T RAISE IT.
>> THEY DIDN'T RAISE THAT WASN'T THE REASON BEING?
>> THEY STILL COULD.
THEY APPLY TO CASES WITH A RESENTENCING WAS NOT FINALLY BLAKELY DECIDED.
I CAN GO BACK AND MAKE THOSE ARGUMENTS.
I WOULD HAVE VERY LIMITED RECORD UNDER 9.41.
ALL WE ARE ALLOWED TO HAVE IN THE RECORD IN THIS CASE IS THE POSTCONVICTION RESPONSE ORDER YOU TO READ NO MOTIONS FOR REHEARING, NO MOTIONS FOR ATTACHING.
HOWEVER, FROM THE RECORD A THINK YOU CAN CLAIM WHY THEY MAY NOT HAVE RAISED THIS ARGUMENT THAT IT WAS A RESENTENCING TEAM.
WHEN THE HFO CAME OUT THAT IT WAS NOT A RESENTENCING, THE HFO CAME OUT ON A 3800 IT WAS AN APPEAL IN THE FIRST DCA REVERSED FOR CONSIDERATION OF A 3.800 TO ARGUE THAT THE HFO AFFECTED THE CIRCUIT COURT TO ARGUE THAT IT DOESN'T APPLY.
IT WOULD TAKE DOWN THE CIRCUIT COURT, ENTERED AN ORDER THAT IT DOESN'T APPLY IN A MENTORING THE SAME SENTENCE.
THERE WAS THE RESENTENCING.
HE JUST DID IT.
NOBODY WAS THERE, THE STATE WASN'T THERE, THERE WASN'T ANYTHING.
AND THE STATE REPEALED THAT.
THE STATE APPEALED THAT BECAUSE THEY WERE IMPROVISED -- WE DON'T

KNOW WHY.
THE RECORD DOESN'T SAY.
BUT WE KNOW THEY APPEALED.
THEY DISMISS THAT APPEAL BECAUSE
THAT'S THEN ORDER THE STATE CAN
APPEAL.
>>
[INAUDIBLE]
BOTH PARTIES.
>> THE DEFENDANT WOKE UP AND
SAID MR. MCGRIFF SAID IT BETTER
APPEAL AND FOUND A BETTER APPEAL
WHICH WAS ACCEPTED AND THEN I
WENT BACK DOWN IN THIS TRIAL
JUDGE ON HIS OWN SIDE I AM GOING
TO RESENTENCE AND I'M GOING TO
RESENTENCING ME IN THE STATE HAS
INVITED HIM THAT DEFENSE IS
INVITED AND THEY HAD A HEARING
IT NOT FIGURING THERE WAS A
DECISION TO REIMPOSE THE SAME
SENTENCE.
AND THAT WOULDN'T HAVE DIRECT
APPEAL.
WHILE THAT WAS ON DIRECT APPEAL,
BEFORE THAT MANDATE ISSUED WAS
WHEN BLAKELY WAS DECIDED.
SO BLAKELY, THIS IS DIFFERENT
FROM THE FIRST CASE.
YOU DON'T HAVE TO WORRY ABOUT
THE INTERIM.
BETWEEN LIKELY INDEPENDENTLY.
THIS DID NOT BECOME FINAL UNTIL
BOTH APPRENDI AND BLAKELY HAVE
BOTH DECIDED.
WE'RE IN POSTCONVICTION LAND.
>> IT'S ALL GOING TO FOLD.
OVERARCHING REALITY.
[INAUDIBLE]
WHY IS IT THAT APPRENDI AND
BLAKELY CAN BE APPLIED TO GIVE
RELIEF IN THIS POSTCONVICTION

PROCEDURE?
PRO SE BECAUSE THIS IS NOT A POSTCONVICTION LOCATION.
THEY TWO TERRITORIES IF YOU BOTH HEARD ONE AREA WHERE YOU'RE SAYING I WANT RELIEF BASED ON THIS DECISION CAME DOWN AFTER MY CASE WAS FINAL.
I WANT RELIEF PLACED ON THAT.
THAT'S PROACTIVE.
YOU CAN DID IN APPRENDI, PUBLIC INTO IT AND BLAKELY EITHER.
THIS IS THE PACE FOR THE POSTCONVICTION MOTION SAYS THAT THE TIME THE SENTENCE HAD BECOME FINAL IT WAS ILLEGAL UNDER EXISTING ONE.
>> OKAY.
WHERE IS THIS DESCRIPTION, TWO DIFFERENT TERRITORIES OF POSTCONVICTION LAND SET FORTH IN OUR CASE?
>> IT'S NOT SET FORTH IN YOUR CASE LAW.
>> WHERE IS IT BUT FOR THE MANY CASELAW?
>> I DON'T THINK IT'S SET FORTH IN ANYONE CASELAW.
>>
[INAUDIBLE]
WHY IS IT NOT A NOVEL IDEA?
DENIED BECAUSE IT DOESN'T HAPPEN VERY OFTEN.
ALL THE CASES THEY TALK ABOUT WHICH OR ACTIVITY, THE COURT CASES, THEY ARE CASES WHERE YOU'RE SEEKING TO APPLY A CASE THAT WAS NOT THE LAW OF THE LAND THAT TIME THE CONVICTION BECAME FINAL.
THAT'S A RETROACTIVE MEANS.
HERE AT THE TIME THE SENTENCE

BECAME FINAL, BLAKELY WAS THE
LAW OF THE LAND AND THE SENTENCE
VIOLATED THE SISTER-IN-LAW OF
THE LAND.
>> THEY SAID -- THIS DECISION
SAYS APPELLANT WAS RESENTENCED
ON JUNE 20, 2003 AFTER THE
SUPREME COURT DECISION IN
APPRENDI.
FURTHER IN JUNE 24, 2005 WHILE
APPELLANT'S APPEAL OF THIS NEW
SENTENCE WITH PENDING AND NOT
GET FINAL, THE SUPREME COURT
DECIDED BLAKELY.
NOW SO THEY'RE TALKING ABOUT AN
APPEAL OF THE NEW SENTENCE, BUT
THEN THEY SAY IN THE LAST
PARAGRAPH FOR THEIR VERY FIRST
SUMMARY TO KNOW OF THIS
POSTCONVICTION RELEASE.
BUT IT WASN'T REALLY.
IT WAS AN APPEAL.
WASN'T IT AN APPEAL FROM THE
RESENTENCING?
>> YES, THAT APPEAL WAS AFFIRMED
ERRONEOUSLY IN VIOLATION OF
BLAKELY.
>> THE POINTS YOU MADE WAS
BLAKELY WAS THE LAW THEN.
WELL, UNDER OUR NOTION ABOUT THE
FINALITY OF JUDGMENTS ON WHAT
HAPPENS IN POSTCONVICTION LAND,
WASN'T THAT SOMETHING HAD TO BE
BROUGHT UP?
MAYBE THERE'S AN INEFFECTIVE
CONSISTENT CLAIM?
>> I THINK THERE IS.
>> AT THE END APPELLATE IN
EFFECT TO ASSISTANCE CLAIM.
BECAUSE IT'S A DIFFERENT ROUTE
AND STANDARD THAT APPLY.
BUT WHY ISN'T THE SUBJECT TO THE

RULE THAT YOU CAN'T BRING A
SOMETHING UP POSTCONVICTION THAT
YOU COULD'VE BROUGHT UP IN YOUR
DIRECT APPEAL?
>> IT MAY BE.
IF THAT HAS NOT BEEN DEVELOPED
AND I MAYBE AN ARGUMENT THAT THE
STATE CAN DEVELOP BACK AT THE
CIRCUIT COURT.
THEY KEEP TALKING ABOUT THIS
BEING A 3800 MOTION.
AND HE SAID IT'S 350 OR 300.
>> I DON'T UNDERSTAND.
I DON'T UNDERSTAND WHAT HAS TO
BE DEVELOPED.
BLAKELY WAS THE LAW.
THE APPEAL IS GOING ON.
SOMEONE CAN STEP FORWARD AND SAY
BLAKELY.
>> YOU CAN USE 3850 WHICH HAS TO
BE FILED IN TWO YEARS TO RAISE
ANY CONSTITUTIONAL AREA NEAR
SENTENCE.
IF YOU RAISED IT BEFORE OR
SHOULD'VE RAISED IT BEFORE AND
IT WAS AFFIRMED TO ME CASE
ISSUES.
AND THERE IS A LOT OF THE CASE
ISSUE IN THIS CASE.
BUT THE LAW OF THE CASE WAS
ESTABLISHED BY THE FIRST DCA'S
OPINION THAT WAS DIRECTLY
CONTRARY TO BLAKELY.
NOW THEY DIDN'T KNOW BECAUSE NO
ONE BOTHERED TO TELL THEM A WEEK
BEFORE THAT BLAKELY HAD COME
OUT.
>> I DON'T UNDERSTAND WHY THAT
DOESN'T THROW US INTO --
[INAUDIBLE]
>> IT MIGHT.
>>

[INAUDIBLE]
>> ARE NOT RETROACTIVELY
APPLYING IT.
YOU ARE SAYING THAT IT APPLIED
AT THAT TIME.
WE'RE NOT GOING BACK IN TIME.
>> IT WOULD BE HELPFUL IF WE HAD
SOME AUTHORITY.
AND I CAN HAVE LOOKED FOR IT AND
I COULDN'T FIND IT.
>> COULD YOU FIND -- CAUSE I WAS
UNABLE TO FIND A CASE THAT
APPLIES A RETURN TO THE DENIAL
IS OTHER THAN THESE DCA OPINIONS
WHICH HAVE NO ANALYSIS WITH THE
LETTER.
I HAVEN'T FOUND THE CASE IN THE
COUNTRY THAT APPLIES TO
RETROACTIVITY ANALYSIS HERE.
AND I MAY HAVE MISSED IT.
BUT I THINK MAYBE I CAN.
MAYBE A MARKETING SOMETHING THAT
HASN'T BEEN THOUGHT OF BEFORE
BUT I THINK IT'S PRETTY CLEAR.
>> I THOUGHT THE WAY YOU GO IS
THAT IF A DECISION IS FINAL AT A
POINT WHERE HE DECISION COMES
OUT AFTERWARDS, IT WOULD
MARKEDLY CLARIFY SOME THINGS
THAT IF THE COURT KNEW ABOUT IT,
THERE WOULD BE A WHOLE DIFFERENT
RESULT.
THAT GOES INTO THE PEORIA V.
WHITE, IT VERY NARROWED TO
PROCESS EXCEPTION.
SO IT'S NOT WORTH THE
CLARIFICATION OF EARLIER LAW.
THAT'S A VERY, VERY NARROWLY
APPLIED.
I CAN'T REMEMBER THE CASE --
[INAUDIBLE]
SO IT'S NOT CALLED

RETROACTIVITY, BUT IT'S A VERY NARROW DECISION.
HERE THE DEFENSE LAWYER ON APPEAL -- WAS THERE A LAWYER?
>> I DON'T KNOW.
IT'S NOT IN THE RECORD.
>> IT COULD JUST BE THAT THIS GUY --
>> I JUST THINK THAT THIS --
>> THE SENTENCING WAS NEVER A TRUE RESENTENCING.
>> I THINK IT WAS A TRUE RESENTENCING.
>> YOU MAY NOT HAVE BEEN APPOINTED COUNSEL BECAUSE BOTH SIDES REPEALED BY SUSPECT THEY WOULDN'T HAVE BEEN A LAWYER PLUS BY THE TIME IT'S FINAL AUTHORITY RUN.
YOU HAVE TWO YEARS FROM THE DATE, ASSUMING THERE WAS EARLIER.
>> YEAH, UP TO DATE FOR THE MANDATE APPEAL AND HE'S WITH THEM NOT.
HE'S WITHIN LESS THAN A YEAR OF THAT.
[INAUDIBLE]
>> THAT COULD BE ANYTHING RACY CAN HAVE HIS LAWYER BECAUSE SHE IS PRO SE AND HE DOESN'T UNDERSTAND ANY OF THOSE THINGS.
>> THIS IS WHAT NEEDS TO BE BROUGHT UP IN THE DIRECT APPEAL.
>> I THINK RESPECTFULLY THESE ARE ALL ISSUES THAT NEED TO BE BROUGHT UP IN FRONT OF A CIRCUIT JUDGE FOR THE FIRST INSTANCE.
THIS COURT WAS BRIEFING ORDERS I SUCCESSFULLY BID TO STRIKE THEIR INITIAL BRIEF BECAUSE THEY'RE MAKING THE ARGUMENT THAT THIS IS

A VERY IMPORTANT ISSUE.
THE DISTRICTS ARE VERY SPLIT.

IT AFFECTS A LOT OF CASES.
AND YOU NEED RESPECTFUL YOU NEED
TO DECIDE THIS ISSUE.
THEY MAYBE THE CASE AT THE END
OF THE DAY, JULIUS MCGRIFF CAN'T
WIN BECAUSE HE DIDN'T RAISE THE
RIGHT ARGUMENT ON APPEAL, DIDN'T
HAVE A WIDE VARIETY OF REASONS.
BUT I DIDN'T BRIEF THOSE TO YOU
BECAUSE THE CIRCUIT COURT NEVER
HEARD ABOUT IT.
THE DCA NEVER HEARD ABOUT IT.
YOU ISSUED AN ORDER SAYING BRIEF
THIS ISSUE WHETHER BLAKELY AND
APPRENDI APPLIED.
THE STATE DECIDE THAT ORDER,
ADDED THESE THINGS THEN.
I MOVE TO STRIKE RESPECTFULLY
SAME HE SAID DON'T DO THAT.
MAKE THEM NOT DO THAT.
HE MADE AN ORDER TELLING THEM
NOT TO DO THAT AND THEY DID IT
AGAIN AND I WAS UP HERE AND
ARDUOUS THINGS THAT WEREN'T
CITED IN THIS CASE.
AND RESPECTFULLY, YOU ARE THE
SUPREME COURT OF FLORIDA.
YOU SHOULD DECIDE THIS ISSUE
THAT'S UP TO YOU.
IF THERE ARE OTHER THINGS,
THERE'S ENOUGH IN THE TO BE
DECIDED, THEY ARE EASY ISSUES.
>> I AGREE WE SHOULD ONLY DECIDE
THE CASE
[INAUDIBLE]
>> CORRECT.
>> THAT MAYBE UNFORTUNATE, BUT
WE'VE JUST GOT TO WAIT UNTIL A
CASE ACTUALLY PRESENTS THE
ISSUE.
>> WELL, I THINK THIS PRESENTS
THE ISSUE.

I THINK YOU CAN FIND WAYS IN ANY GIVEN CASE.
THE WHOLE WORLD WAS WAITING TO SEE AND THEN YOU DISAPPOINTED US ALL.
AS YOU'RE ENTITLED TO DO AND YOU SHOULD NOT REACH OUT TO DECIDE UNNECESSARY --
[INAUDIBLE]
[LAUGHTER]
>> SO WHEN DOES WAS ACTUALLY A PROCEDURAL --
>> IT WAS A INDIRECT APPEAL.
AND MR. FLEMING VIEWED AT NEXT IS ON DIRECT APPEAL.
>> LET ME ASK A QUESTION.
I WASN'T HERE.
>> DISCLAIMERS.
>> IN THIS MCGRIFF, THEY SAID THE TRIAL VACATED THE SENTENCE.
DOES NOT MEAN --
[INAUDIBLE]
>> I THINK THAT'S VERY CLEAR.
[INAUDIBLE]
>> IT'S NOT MINISTERIAL AT ALL.
THE STATE WOULD'VE APPEALED IT.
I THINK THIS A RECOGNIZE WHERE THE FUNDAMENTAL ERRORS HERE.
THEY CAN RESENTENCING, RESENTENCE WITHOUT ANYBODY HERE THAT TERM.
THEY FILED AN APPEAL.
IT WAS DISMISSED IN THE DEFENSIVE WE WERE SUPPOSED TO APPEAL TO ATTEND IT.
SOME OF THE WAS PENDING THE TRIAL JUDGE RECOGNIZED THERE AND GRIN AT THE 3800 WHICH ENDED THE APPEAL AND HE CAME BACK AND HAD A NEW SENTENCING PROCEEDING.
SO THERE WAS A RESENTENCING HERE.

THERE WAS A DE NOVO SENTENCING
HEARING ON THE SAME OUTCOME OF
THE RECORD DISCLOSES A PERSON
LIKE THAT.
I'M GOING OFF OF A PRO SE MOTION
BUT THAT CAN ALSO BE DEVELOPED.
IN THE IMPORTANT POINT HERE IS
YOU GUYS, YOU JUST REALLY NEED
TO DECIDE THE ISSUE.
THE ISSUE YOU NEED TO DECIDE
THIS WHEN HE SENTENCES OR NOT,
AT 3.800 FLORIDA LAW HAS LONG
SAID THERE IS NO FIDELITY TO ANY
OF THE GO SENTENCE RAISED AT ANY
TIME.
WITHIN THE LEGAL FUNDED THROUGH
GOING TO HAVE A NEW SENTENCING
PROCEDURE.
THE QUESTION YOU NEED TO DECIDE
SUSPENDED QUESTION PRECEDING ARE
YOU GOING TO COMPLY WITH
EXISTING LAW OR IGNORE EXISTING
NOT BECAUSE IT WAS IN PLACE WITH
THE CONVICTION WAS THERE.
[INAUDIBLE]
>> IT SHOULD'VE BEEN.
I CERTAINLY WOULD'VE RAISED
THAT.
>> WE'RE NOT HERE ON THAT.
WE'RE HERE ON A POSTCONVICTION
CHALLENGE AND YOU'VE RAISED AN
ISSUE.
THE ISSUE YOU'VE DESCRIBED ABOUT
WHAT CAN APPROPRIATELY HAPPEN IN
THE RESENTENCING IS NOT ACTUALLY
BEFORE US BECAUSE WE'RE NOT HERE
ON A RESENTENCING.
>> I THINK YOU ARE HERE ON THE
QUESTION.
THERE'S A MOTION THAT'S BEEN
FILED.
>>

[INAUDIBLE]
>> YOU ARE HERE IN THE CASE IT GOT BACK INTO A COURT SYSTEM ON THE 3850 MOTION AT THEM AND SERVING AN ILLEGAL SENTENCE BECAUSE IT WAS SENTENCE BASED ON FACTS THAT WERE DETERMINED BY A JUDGE OR A CHARIOT AT THE TIME IT WAS DONE BY REQUIRED THAT BE THE CASE.
>> SO IT'S YOUR POSITION THAT ANY APPRENDI ERROR OR ANY BLAKELY ERROR RENDERS THE SENTENCE ILLEGAL.
BUT ALTHOUGH SENTENCES AND ALL THOSE PEOPLE ARE UP FOR GRABS.
>> IT'S ILLEGAL IN THE SENSE --
>> IT ILLEGAL IN THE SENSE OF 38 A?
>> NO IT'S 3850.
I DON'T HAVE TO SIT HERE AND ARGUE.
I'M NOT CONCEDING THAT IT'S NOT.
BUT WHETHER THIS WOULD FOLLOW UNDER 3800 A OR NOT IS NOT AN ISSUE IN THIS CASE.
THIS WAS A 3850 ISSUE THAT WAS TIMELY.
WHAT YOU CAN'T ASSERT HIS RETROACTIVELY REAPPLY A CASE THAT WASN'T THE LAW WHEN THE UNDERLYING CASE BECAME FINAL.
>> SO YOUR ARGUMENT REALLY IS THAT THIS IS AN ILLEGAL SENTENCE BECAUSE OF THE TIME OF THE RESENTENCING AND HE APPEALED THEREOF AT BLAKELY AND APPRENDI WAS THE LAW AND HE WAS NOT SENTENCED ACCORDING TO THAT LAW.
THAT WAS THE BASIS OF YOUR ILLEGAL SENTENCE ARGUMENT.
>> THAT'S ABSOLUTELY CORRECT.

[INAUDIBLE]
[INAUDIBLE]
>> YEAH, I'VE GOT THE DATES
RIGHT HERE.
>> THE FIRST DCA ISSUED THE
MANDATE IN 2004.
EVEN THE AMENDED MOTION WAS
FILED IN JUNE OF 2005.
SO WE'RE WITHIN EIGHT MONTHS OF
WHEN IT BECAME FINAL THAT THE
AMENDED MOTION WAS FILED.
>> IN THE AMENDED MOTION ALLEGED
THAT THE TRIAL COURT IN THE
APPELLATE COURT ARE BY NOT
APPLYING BLAKELY.
>> YES.
THE AMENDED MOTION.
>> THAT'S CORRECT.
>> AT THE TIME THE RESENTENCING
BECAME FINAL.
THE TRIAL JUDGE DIDN'T HAVE THE
BENEFIT OF BLAKELY.
PROBABLY THE FIRST DCA WHEN THEY
WROTE THE OPINION ABOUT THE TIME
HE GOT OUT.
BUT BEFORE THEY HAD RENDERED
THEIR DECISION, BEFORE THEY MADE
THEIR DECISION IT DID COME OUT.
IF I WERE TRAPPED IN THIS I
WOULD'VE FILED IN THE FIRST DCA
HAS A POSITION FOR HABEAS CORPUS
AND APPELLATE COUNSEL FOR NOT
SEEING BLAKELY WAIVER THAT CAME
OUT.
BUT I DIDN'T DO IT AND
RESPECTFULLY, JUSTICE CANADY, I
GET WHERE YOU'RE COMING FROM.
BUT YOU KNOW, I MOVE TO STRIKE
THE STATE'S ARGUMENT THEY DIDN'T
RAISE BELOW AND NOW THIS IS AN
ARGUMENT THAT EVEN ONCE THE
STATE MADE THEY'RE NOT MAKING

NOW.
>> I WILL BE FIRST TO SAY
PROCEDURAL POSTURE OF ALL OF
THIS IS RATHER ODD.
>> WELL, YOU KNOW, I'M STANDING
UP HERE TELLING YOU THAT I THINK
YOU NEED TO DECIDE THIS ISSUE
AND I THINK YOU DO.
BUT I'VE ALSO FILED A MOTION
THAT YOU SHOULDN'T DECIDE THIS
ISSUE IN OUR CASE BECAUSE OF ALL
THE TIME THAT'S BEEN WASTED,
BECAUSE THE STATE JUST DIRECTLY
DISOBEYED A VERY CLEAR ORDER OF
THIS COURT.
IN A NEW NOTICE FOR ORAL
ARGUMENT YOU SAID YOU WANTED TO
YOUR ARGUMENT ON THAT MOTION.
>>
[INAUDIBLE]
>> I THINK EITHER WAIVE OR
DISMISSAL OR APPROVAL IN THE
FIRST DCA.
EITHER WAY WHAT HAPPENS IS THE
FIRST DCA'S MANDATE IS NO LONGER
STATED.
AND IT GOES BACK TO A CIRCUIT
JUDGE IN QUINCY AND THE STATE IS
GOING TO RESPOND AND THEY CAN
MAKE WHATEVER ARGUMENTS THEY
WANT TO MAKE, BUT IT WASN'T
REALLY, THE ERROR WAS GALINDEZ
HARMLESS ERROR.
>> THE DISTRICT COURT SAYS FROM
HIS BACK, YOU NEED A
RESENTENCING WHERE APPRENDI AND
BLAKELY ARE APPLICABLE.
>> HE DIDN'T EVEN DO THAT.
THEY SENT IT BACK UNDER 91.41
THE APPELLATE COURT'S JOB IN THE
SUMMER DENIAL OF POSTCONVICTION
RELIEF IS EXTREMELY NARROW.

THE RULE SAYS, UNLESS THE RECORD
IN THE RECORD IS JUST THE ORDER
IN ATTACHMENTS MOTION IN
RESPONSE, UNLESS THE RECORD
SHOWS CONCLUSIVELY THAT THE
APPELLANT IS TITLED TO NO
RELEASE, THE ORDER SHALL BE
REVERSED IN THE CAUSE REMANDED
FOR AN EVIDENTIARY HEARING OR
OTHER APPROPRIATE RELEASE.
SO THE ONLY ISSUE -- THE ONLY
REASON THIS TRIAL JUDGE DENIED
THE MOTION WAS ERRONEOUS.
AND SO THAT BASIS DOES NOT
SUPPORT ITS RULING.
SO IT GOES BACK AND THEY CAN
FIGHT ABOUT ALL OF THESE THINGS.
AND MR. MCGRIFF I PROMISE WE'LL
BE ASKING YOU TO AMEND HIS
CONVICTION MOTION TO STATE MORE
CLEARLY WITH SOME OF HIS RIGHTS
WERE AND THERE MAY BE
INEFFECTIVE ASSISTANCE CLAIMS
AND THERE'S LOTS OF LEGAL ISSUES
OF WHETHER THAT RELATES BACK, OF
WHETHER THERE'S A LOT OF
DISCRETIONARY.
THERE'S LOTS OF STUFF THAT GOES
ON BEFORE WE GET TO THESE
ISSUES.
AND I DON'T THINK YOU WOULD BE
APPROPRIATE FOR YOU TO ADDRESS
THESE ISSUES IN THIS CASE.
>> THANK YOU VERY MUCH.
>> THANK YOU.
>> ANY REBUTTAL?
>> YES, YOUR HONOR WITH RESPECT
TO MOTION THE LIST BY COUNSEL.
TO BE CLEAR, THE MOVE
SPECIFICALLY TO STRIKE A PORTION
OF THE BRIEF BECAUSE IT REFERRED
TO THE SUPPLEMENTAL RECORD WHICH

THIS COURT HAD GRANTED AT THE TIME.
HE THEN RENEWED HIS MOTION TO STRIKE THE SUPPLEMENTAL RECORD.
THE STATE WOULD MOVE ALL PORTIONS OF ITS BRIEF, WHICH REFERENCED THE DEFENDING -- WHAT IS NOW OFFENDING MATERIAL.
WE REMOVED ALL OF IT.
THE STATE IS FREE TO ARGUE IN AN APPEAL THE ISSUES THAT IT THINKS ARE THE IMPORTANT ISSUES TO BE RAISED.
THIS COURT REQUESTED BRIEFING INITIALLY ON TWO SPECIFIC ISSUES, THE GALINDEZ ANALYSIS WHICH ATTENDANCE RECEDED FROM THE ISSUE OF THE BLAKELY APPRENDI.
[INAUDIBLE]
>> NO, YOU REMOVE THAT FROM OUR CONSIDERATION AT THAT POINT IN TIME.
THAT IS WHAT THE STATE DID HEAR THE STATE DID NOT DO ANYTHING IMPROPER.
>> THANK YOU BOTH FOR YOUR ARGUMENTS AND I LIKE TO ESPECIALLY THANK THE PRO SE COUNCIL IN BOTH THE CASES THAT WE PRO BONO COUNSEL, I'M SORRY.
IN BOTH OF THESE CASES THAT WE'VE HEARD TODAY FOR YOUR WILLINGNESS TO ASSIST THE COURT.
THANK YOU.