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Walter A. McNeil v. Edison Canty

SC08-2369

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION, AND
YOU SHALL BE HEARD.

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

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE, MONDAY MORNING ARGUMENTS
AT THE FLORIDA SUPREME COURT.

THE FIRST CASE ON OUR AGENDA
THIS MORNING IS, McNEIL VERSUS
CANTY.

THE PARTIES REAYY?

YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT.

I'M CAROLYN MOSLEY,
REPRESENTING THE PETITIONER,
FLORIDA DEPARTMENT OF
CORRECTIONS.

THE RESPONDENT, EDISON CANTY, IS
AN INMATE IN THE DEPARTMENT'S
CUSTODY.

THE ISSUE BEFORE THE COURT IS
SENTENCE STRUCTURE, HOW
CONCURRENT SENTENCES ARE TO BE
SERVED.

INMATE CANTY RECEIVED
CONCURRENT SENTENCES, FIVE OF
THOSE SENTENCES WERE SUBJECT TO
CONDITIONSAL RELEASE
SUPERVISION, AND OUT OF THOSE
FIVE SENTENCES, TWO WERE FOR 10
YEARS, AND THREE WERE FOR 15
YEARS, AND, FOUR OF THE FIVE
ENDED BEFORE THE LAST SENTENCE
END HE HAD.

>> BUT THE INTENT OF THE JUDGE
WAS FOR THE CONCURRENT
SENTENCES FOR THE MAXIMUM

SENTENCE FOR CANTY TO SERVE,
WOULD BE 15 YEARS, THAT WAS THE
MAXIMUM OF ALL THE
CONCURRENT SENTENCES?

>> THAT'S CORRECT, YOUR HONOR.

>> AND THE WAY, HAVE LOOKED AT
MATH AND I THINK I FIGURED OUT
HOW THIS HAPPENED BUT THE WAY
THAT THE DOC CALCULATED THE
GAIN TIME FORFEITURE, IT ENDS
UP AT MR.^CANTY WOULD BE
SERVING, WHAT, 795 MORE DAYS ON
A 15-YEAR SENTENCE.

YOU AGREE WITH THAT IS THE
EFFECT OF WHAT THE DEPARTMENT OF
CORRECTIONS HAS DONE IN THIS?

>> YES.

HE WOULD, IF YOU LOOKED AT THIS
AS AN OVERALL 15-YEAR TERM,
THEN YES, HE WOULD BE SERVING
MORE THAN THAT 15 YEARS, BUT
THE EXPLANATION FOR THAT IS,
THAT, EACH SENTENCE IS UNIQUE
AND IT HAS ITS OWN ENDING DATE.
SO, WHEN -- GO AHEAD.

>> HAS ITS OWN ENDING DATE BUT
THEY ALL BEGAN ON THE SAME DATE
AND SO WHAT THE DEPARTMENT OF
CORRECTIONS WOULD ESSENTIALLY
BE SAYING IS THAT EVEN THOUGH
ON THE SENTENCE WITH THE MOST
AMOUNT OF GAIN TIME, HE WAS NOT
RELEASED, FROM PRISON BECAUSE
HE WAS SERVING ANOTHER SENTENCE
THAT HAD LESS GAIN TIME, THAT
EVEN THOUGH HE WAS SERVING THE
795 EXTRA DAYS IN WHICH HE
WOULD OTHERWISE BEEN RELEASED.
YOU'RE NOT GOING TO GIVE HIM
CREDIT FOR HAVING SERVED TIME
IN PRISON, FOR THE GAIN TIME?
IS THAT CORRECT?

>> THAT'S CORRECT.

>> WHICH IS WHAT -- THAT'S
CORRECT, THAT'S WHAT YOU'RE
DOING, BUT THAT SEEMS COMPLETELY
CONTRARY TO PRONOUNCEMENTS WE
HAVE MADE REGARDING SENTENCING
AS WELL AS THE VERY FACT THAT I
STARTED OUT WITH, WHICH IS THAT
THE 15-YEAR SENTENCE IS THE
MAXIMUM HE CAN SERVE.

>> WELL, I, WHAT HAS HAPPENED
IS THE PRODUCT OF SOME

SENTENCES REQUIRE MORE PRISON TIME.

SOME REQUIRE MORE SUPERVISION TIME.

BUT THEN WHEN THE INMATE GETS TO SERVE THOSE SENTENCES A MIXTURE OF THOSE CONCURRENTLY, THEN WHAT HAPPENS THEN, AS THE SENTENCE WITH THE SUPERVISION ENDS FIRST AND HE CAN NOT GO TO SUPERVISION, THEN HE HAS TO WAIT UNTIL HE SERVES MORE PRISON TIME ON THE OTHER SENTENCES.

>> BUT SHOULDN'T THE BOTTOM LINE, BE, AND I CONFESS, THAT GAIN TIME SOMETIMES IS VERY CONFUSING, BUT SHOULDN'T THE BOTTOM LINE BE THAT NO MATTER WHAT, YOU ADD GAIN TIME TO THIS ONE AND LESS GAIN TIME TO ANOTHER, IF IT IS A 15-YEAR SENTENCE, THAT IS ALL HE CAN ACTUALLY SPEND IN PRISON?

>> FOR THAT TO BE THE CASE, THEN THE WAY THAT YOU DEPARTMENT CALCULATES ENDING DATES ON A SENTENCE, WHEN THEY WERE BEING SERVED CONCURRENTLY, HAS TO BE DIFFERENT.

RIGHT NOW, THE ENDING DATE ON ALL SENTENCES IS CALCULATED THE SAME WAY WHETHER THEY ARE SERVED ALONE, CONSECUTIVELY OR CONCURRENTLY.

>> SO, YOU'RE TELLING ME THAT DESPITE THE FACT THAT THIS GENTLEMAN WAS GIVEN 15 YEARS, THAT THERE ARE CIRCUMSTANCES WHERE HE WILL SERVE MORE THAN 15 YEARS?

>> EACH SENTENCE IS LOOKED AT INDIVIDUALLY.

IN ORDER FOR HIM TO SERVE THE ONLY 15 YEARS IN CANTY'S CASE, WHAT WOULD HAPPEN IS, THIS COURT WOULD HAVE TO HOLD THAT CONCURRENT SENTENCES REMAIN ACTIVE UNTIL THE ACTUAL RELEASE DATE.

WHAT WOULD HAPPEN THEN IS THAT ONCE HIS SENTENCE ENDED THROUGH TIME SERVED IN GAIN TIME, FOR EACH DAY HE REMAINS

INCARCERATED THEREAFTER, A DAY OF PRISON TIME WOULD BE SUBSTITUTED FOR THE GAIN TIME. SO, WHEN HE WAS RELEASED FROM PRISON, THEN THE PRISON TIME WOULD MATCH UP.

AND IF HE HAD ANY TIME LEFT, HE WOULD GO TO SUPERVISION.

IF HE DIDN'T, THEN IT WOULD BE OVER.

>> [INAUDIBLE]

>> YES, I AM.

>> [INAUDIBLE]

>> YES I AM.

>> WHAT'S YOUR POSITION ON JUSTICE WELLS'S OPINION?

>> IN THAT CASE, SEVERAL THINGS WERE HELD.

ONE, JUSTICE WELLS, HE UNDERSTOOD THAT THE SENTENCE WAS OVER.

THERE COULD BE TOING OF SUPERVISION, BUT THEN HE SAID THE LENGTH OF THE SUPERVISION COULD NOT EXCEED THE LEAST AMOUNT OF THE GAIN TIME.

AND THEN, HE SAID THAT WHEN THE INMATE COMES BACK, BECAUSE OF CONCURRENT SENTENCES, THE INMATE GETS THE PRISON CREDIT. NOW, WHAT THAT ALL BOILS DOWN TO IS THAT THE SENTENCES REMAIN ACTIVE.

IF, IN ORDER FOR ALL OF THOSE THINGS TO HAPPEN, IT IS THE SAME THING AS SAYING THAT THE SENTENCES CONTINUE TO RUN UNTIL THE RELEASE DATE.

OR UNTIL THE INMATE REACHES HIS MAX DATE.

SO, IF THAT IS THE WAY THE COURT WANTS TO RULE IN THIS CASE, THE DEPARTMENT THEN WOULD REQUEST THAT THAT BE DONE UP FRONT.

THAT THE COURT JUST SIMPLY SAY, FOR PURPOSES OF CONCURRENT SENTENCES, THEY REMAIN ACTIVE UNTIL THE RELEASE DAY.

AND THAT WOULD TAKE CARE OF THE LENGTH OF SUPERVISION AND THE LENGTH OF INCARCERATION WHEN HE COMES BACK.

>> I WILL JOIN THE CHIEF JUSTICE'S CONCESSION THAT THIS

IS CONFUSING.

THAT THE CASE LAW IS CONFUSING.
THE WHOLE SUBJECT IS CONFUSING.
SOMETIMES IT IS HARD TO FOLLOW
THE ARGUMENT, BUT, WHY, IS IT
OVERSIMPLIFYING THIS, TO SEE
THE STATUTORY PROVISION AT
ISSUE, AS A PROVISION THAT IS
DESIGNED TO ENSURE THAT IF
SOMEBODY GETS OUT EARLY,
BECAUSE OF GAIN TIME, AND THEN
THEY DON'T BEHAVE DURING THAT
CONDITIONAL RELEASE PERIOD,
THEY'RE GOING TO FORFEIT THE
GAIN TIME?

THAT IS THE AMOUNT OF TIME THEY
GOT OUT EARLY.

ISN'T THAT WHAT THIS IS ABOUT?
ISN'T THAT WHAT IT SHOULD BE
ABOUT?

>> THIS IS THE WAY IT SHOULD BE
BUT THE SENTENCING LAW HAS
GOTTEN SO COMPLEX --

>> YOU'RE CONCEDED THAT'S THE WAY
IT SHOULD BE?

>> I AM EXPLAINING WHY IT IS
NOT THAT WAY.

>> UNDERSTOOD BUT TO ME THAT IS
CONCEDED WAY IT SHOULD BE.
ULTIMATELY WHAT WE'RE HERE
ABOUT TO DETERMINE THE WAY IT
SHOULD BE.

>> ALL RIGHT.

>> THE PROPER INTERPRETATION OF
THE STATUTORY PROVISION AND
WHAT IS DESIGNED TO ACCOMPLISH.

>> OKAY.

>> IT DOESN'T SEEM LIKE TO ME
THERE IS ANY WAY TO UNDERSTAND
IT.

THAT IT IS DESIGNED TO
ACCOMPLISH KEEPING, MAKING
SOMEBODY MAKE UP FOR GAIN TIME,
FOR WHICH THEY NEVER RECEIVED
ANY BENEFIT.

>> THE REASON HE DOESN'T
RECEIVE THE BENEFIT OF THAT
GAIN TIME IS BECAUSE HE HAS
ANOTHER SENTENCE TO SERVE, AND
THE LEGISLATURE HAS REQUIRED
THAT MORE TIME BE SPENT IN
PRISON ON THAT SENTENCE.
SO IT IS A PRODUCT OF THE
DIFFERENT SENTENCING LAWS THAT

CREATES THAT DILEMMA.

>> I THINK THAT IF, WE GO BACK, THIS IS A STATUTORY INTERPRETATION QUESTION, THEN WE STILL GO BACK TO THE INITIAL QUESTION, AND, I THINK THE OVERRIDING ONE WHICH IS THAT, IN, THERE IS NO LEGISLATIVE INTENT TO OVERRIDE THE TRIAL COURT'S DETERMINATION OF WHAT THE MAXIMUM SENTENCE WOULD BE. WHICH IN THIS CASE WAS 15 YEARS.

THERE IS NO LEGISLATIVE INTENT FOR A DEFENDANT WHO IS SERVING MULTIPLE CONCURRENT SENTENCES FOR THEIR CRIME TO BE, WHEN THEY'RE IN PRISON, AND NOT RELEASED BECAUSE OF ANOTHER SENTENCE.

BUT THAT GAIN TIME TO BE SUSPENDED AS IF THEY WEREN'T ACTUALLY IN PRISON.

AND ESPECIALLY BECAUSE IT CREATES THE REALITY OF EXTENDING THE SENTENCE BY THAT TIME, WHICH IN THIS CASE, AS WE SAY, IS 795 DAYS.

WHEN YOU SAY THERE IS LEGISLATIVE INTENT, THE LAST THING THIS COURT WOULD WANT TO DO IS FRUSTRATE LEGISLATIVE INTENT.

AND WE HAVE MANY, MANY DEFENDANTS THAT ARE SERVING, EXTREMELY LONG TIMES IN PRISON, INCLUDING MR. ^CANTY, WHO IS AGREEING THAT HE IS TO SERVE 15 YEARS.

HE JUST DOESN'T WANT TO SERVE 17 YEARS.

AND SO WHERE, WHEN YOU SAY THERE'S LEGISLATIVE INTENT, YOU WOULD AGREE THAT WITHIN THE FOUR CORNERS OF THE STATUTE THAT WE'RE LOOKING AT, THERE IS NO LEGISLATIVE INTENT FOR A DEFENDANT TO SERVE LONGER THAN A SENTENCE IMPOSED BY THE JUDGE, WOULD YOU AGREE WITH THAT?

>> THAT IS NORMALLY THE CASE BUT WHAT HAPPENS IS WHEN, AGAIN, WHEN DIFFERENT TYPES OF

SENTENCES ARE TO BE SERVED CONCURRENTLY, IF THEY WERE SERVED CONSECUTIVELY, OR INDIVIDUALLY, THEN, THE GAIN TIME LAW WOULD BE SATISFIED, AS WOULD ALL OF THE SENTENCING LAW.

BUT IT IS WHEN THOSE TWO ARE SERVED CONCURRENTLY, THAT THAT CREATES THE DILEMMA WHERE THE GAIN TIME ON ONE OF THE SENTENCES, CAN NOT BE USED TO GET THE INMATE OUT AT THAT MOMENT IN TIME BECAUSE HE IS SERVING ANOTHER SENTENCE.

>> BUT, I DON'T THINK EVEN DISAGREES WITH THAT. THAT HE SHOULD HAVE GOTTEN OUT AT THE POINT OF THE, THE SENTENCE WITH THE MOST AMOUNT OF GAIN TIME.

HE DOESN'T SAY HE SHOULD HAVE GOTTEN OUT EARLY. HE JUST SAYS, SINCE I HAD TO STAY IN PRISON FOR THAT ADDITIONAL 795 DAYS, ALMOST TWO YEARS, I, CAN'T BE WHEN I GET OUT ON THAT SENTENCE YOU CAN'T REFORFEIT THAT TIME THAT I SPENT IN PRISON AND CALL THAT GAIN TIME THAT I GOT AN ADVANTAGE FROM.

ISN'T THAT WHAT HE IS SAYING?

>> HE IS COMPLAINING ABOUT HAVING TO SERVE --

>> COMMON SENSE, I KNOW YOU'RE SAYING THE COURT SHOULD MAKE SOME PRONOUNCEMENT. ALL THE COURT SEEMS TO ME NEEDS TO SAY, WHEN SOMEBODY IS ON CONDITIONAL RELEASE, AND CONDITIONAL RELEASE IS REVOKED THAT THE PERSON GETS CREDIT FOR ALL THE TIME THAT HE SERVED IN PRISON ON THE CONCURRENT SENTENCES.

AND THAT IS CONSISTENT WITH OUR RECENT OF STATE VERSUS RABEDEAU.

HE WAS SERVING TIME. SERVING BOTH SENTENCES CONCURRENTLY, THEREFORE THE GAIN TIME THAT GETS FORFEITED HAS TO BE THE GAIN TIME ON THE

SENTENCE THAT HE SERVED THE MOST TIME IN PRISON.

NOT THE LEAST TIME IN PRISON.

>> BUT THAT WOULD ALSO EFFECT OF SUPERVISION BECAUSE LENGTH OF SUPERVISION IS DETERMINED BY THE AMOUNT OF GAIN TIME THAT THE INMATE RECEIVES ON EACH SENTENCE.

SO, IF, THE PROBLEM IS THAT, THIS GAIN TIME IS NOT BENEFITING THE INMATE, THEN, A WAY TO ADDRESS THAT IS TO SIMPLY SAY, THOSE SENTENCES CONTINUE TO RUN UNTIL THE ACTUAL RELEASE DATE.

BECAUSE OTHERWISE, HIS SUPERVISION PERIOD WHEN ADDED TO HIS PRISON TERM, IF YOU LOOKED AT THE OVERALL TERM, WOULD EXCEED 15 YEARS.

SO, IT'S NOT NECESSARILY WHEN HE COMES BACK OR SUPERVISION. IT IS WHAT HAPPENS INITIALLY. EVERYTHING FLOWS FROM THE WAY WE STRUCTURE SENTENCES, AND THE DEPARTMENT HAS ALWAYS STRUCTURED THEM IN THE SAME MANNER.

THEY ALL END THROUGH THE GAIN TIME STATUTE, WITHOUT THAT STATUTE, ALL SENTENCES WOULD HAVE TO BE SERVED DAY FOR DAY INCARCERATED.

THE DEPARTMENT USES THAT STATUTE, AND EACH SENTENCE IS UNIQUE.

SO IT CALCULATES AN ENDING DATE ON EACH SENTENCE.

IF THE, IF THE INMATE CAN'T BE RELEASED ON CONSECUTIVE SENTENCES THAT SUPERVISION IS TOLLED UNTIL HE DOES GET OUT. AND THE DEPARTMENT DOES THE SAME THING EVEN THOUGH HE IS SERVING THOSE SENTENCES CONCURRENTLY.

WHEN HAPPENS WHEN THE SENTENCES ARE CONCURRENTLY, IF HE HAS TO REMAIN INCARCERATED ON ANOTHER SENTENCE, THEN THE GAIN TIME ADDED TO THE TIME SPENT ON THAT OTHER SENTENCE COULD EXCEED THE MAXIMUM TERM THAT THE JUDGE

IMPOSED.

THAT IS THE PROBLEM.

>> WITH ALL DUE RESPECT, YOU'RE DESCRIBING WHAT YOU DO, WHICH IS NOT AN EXPLANATION OF WHY THAT IS WHAT THE STATUTE REQUIRES THAT YOU DO.

>> BUT THAT --

>> WELL, WHAT IS OF INTEREST FOCUS, WE UNDERSTAND WHAT YOU'RE TO US, WE UNDERSTAND WHAT YOU'RE DOING, THAT'S WHY YOU'RE HERE.

WHAT WILL SUPPORT YOUR POSITION HERE IS THE EXPLANATION WHY YOU'RE REQUIRED TO DO THAT BY THE STATUTE?

>> BECAUSE THE STATUTE SAYS THAT'S HOW EACH SENTENCE IS TO END.

THEY ALL MUST HAVE AN ENDING DATE.

AND THAT'S WHAT THE STATUTE SAYS.

SO THE DEPARTMENT IS ACTUALLY IMPLEMENTING THE GAIN TIME STATUTE WHEN IT EXECUTES A RELEASE DATE.

>> I GUESS THE STATUTE I WAS LOOKING AT, I DON'T HAVE THE EXACT WORDING BUT UNDER THE CONDITIONAL RELEASE STATUTE, WHEN A PRISONER IS RELEASED DUE TO GAIN TIME IF THEY VIOLATE SUPERVISION, GAIN TIME IS FORFEITED AND THE PRISONER IS RETURNED TO PRISON TO CONTINUE TO SERVE THE SENTENCE.

AND SO THE PLAIN READING WOULD SHOW, SEEMS TO SHOW THAT SENTENCE TO BE SERVED IS THAT THE ONE THAT IS ORIGINALLY IMPOSED BY THE TRIAL JUDGE. AND THE WAY THAT THE DOC IS CURRENTLY CALCULATING THIS, THE SENTENCE, AGAIN, AND YOU'VE BEEN VERY HONEST ABOUT IT, WILL BE IN EXCESS OF THE SENTENCE ORIGINALLY IMPOSED BY THE TRIAL JUDGE.

SO THERE'S GOT, THAT'S WHERE I THINK, THAT ALTHOUGH I UNDERSTAND THAT WE SAID IN EVANS THAT CONDITIONAL RELEASE

IS TOED YOU CAN SERVE
CONDITIONSAL RELEASE IN PRISON,
I DON'T LIKE THINK WE EVER SAID
THAT GAIN TIME, THAT YOU'RE NOT
GETTING THE BENEFIT OF IS NOT,
ESSENTIALLY, YOUR, INSTEAD OF
GETTING GAIN TIME YOU SERVE
THAT GAIN TIME IN PRISON, THAT
THERE'S ANYTHING WRONG WITH
THAT PARADIGM WHICH IS WHAT
WOULD HAPPEN HERE.

THAT HE SERVED THE 795 DAYS OF
GAIN TIME HE WOULD HAVE BEEN
ENTITLED TO.

YOU CAN'T REFORFEIT IT AND
ADD IT TO HIS SENTENCE.

>> THAT'S NOT WHAT HAPPENED.
EVANS --

>> EVANS WAS DIFFERENT.

I DON'T THINK WE'RE BOUND BY
EVANS.

IN EVANS WE JUST SAID THAT THE
CONDITIONAL RELEASE WAS TOLLED.
NOT UPON REINCARCERATION THAT
THE GAIN TIME THAT HE, YOU
KNOW, WHICH GAIN TIME YOU WOULD
USE TO ADD BACK TO THE
SENTENCE.

>> IF THE SUPERVISION IS TOLLED
THAT IS BECAUSE TOLLED, THE
SENTENCE HAS ENDED, WHAT HE
SERVES UNDER SUPERVISION AND
WHAT HE DOES WHEN HE COMES
BACK.

WHAT THE DEPARTMENT COMES BACK,
IS EXACTLY WHAT HAPPENED IN THE
EVANS CASE.

IF YOU ADDED ONCE THAT FIRST
SENTENCE ENDED IN EVANS, IF YOU
ADDED THAT GAIN TIME TO THE
OTHER SENTENCE, THE PRISON
TIME, IT WOULD HAVE EXCEEDED
THE MAXIMUM TERM THAT THE JUDGE
HAD IMPOSED ON THOSE TWO
CONCURRENT SENTENCES.

IF THIS HOLDS THAT
CONCURRENT SENTENCES REMAINS
ACTIVE THERE IS NO TOLLING EVER.
THERE IS NEVER NEED FOR TOLLING
UNDER CONCONCURRENT SENTENCES.

>> WOULD WE HAVE TO RECEDE UNDER
EVANS?

>> I BELIEVE SO, YOUR HONOR.
IF THE STATE PREVAILS IT SHOULD

BE CLARIFIED.

IF THE INMATE WINS, YOU HAVE TO SAY THERE IS NO TOLLING BECAUSE THAT IS INCONSISTENT WITH THE SENTENCE CONTINUING TO RUN.

THERE IS NEVER ANY TOLLING.

>> IN THIS CASE, LET ME SEE IF I UNDERSTAND.

WHAT HAPPENED HERE

IS YOU'RE CONTENDING AT TIME DEFENDANT BECAME ELIGIBLE FOR CONDITIONAL RELEASE ON TWO SENTENCES WHAT WAS HAPPING? I HAD TO STAY IN PRISON ON THE 31.

>> THAT IS CORRECT.

>> TELL ME WHAT HAPPENED UNDER THOSE SENTENCES.

TELL ME WHAT YOU BELIEVE WAS HAPPENING TO HIS TWO SENTENCES AT THAT POINT.

WHEN HE HAD TO STAY IN PRISON BECAUSE OF THE THIRD ONE.

>> THOSE SENTENCES WERE OVER.

THE DEPARTMENT LOST JURISDICTION OVER THE INMATE FOR THOSE SENTENCES.

THEY WERE IN A HOLDING PATTERN UNTIL THE INMATE WAS RELEASED.

THAT HAPPENS WITH JUDICIAL SUPERVISION AS WELL.

BUT HE WAS IN A HOLDING PATTERN.

THEN WHEN HE WAS RELEASED.

THEN HE COMMENCED SERVING THE SUPERVISION ON THAT.

BUT --

>> SO HE WAS IN PRISON BUT GOT NOTHING ON THOSE TWO SENTENCES, AS A RESULT OF BEING IN PRISON?

>> THAT IS CORRECT.

BECAUSE THEY WERE OVER.

IF THIS, IF CANTY HAD ESCAPED

FROM PRISON AFTER THOSE

SENTENCES ENDED HE WOULD NOT HAVE ESCAPED FROM THEM.

THE DEPARTMENT HAD ABSOLUTELY NO JURISDICTION OVER CANTY ON THOSE SENTENCES THAT ENDED.

IT WOULD ONLY BE THE ONES THAT WERE ACTIVE.

SO, AGAIN, UNLESS THIS COURT

HOLDS THAT THESE SENTENCES

REMAIN ACTIVE WHEN THEY ENDED,

THEY ARE OVER, FOR OUR PURPOSES.

WE HAVE DONE OUR JOB. WE HAVE EXECUTED THOSE SENTENCES.

>> BUT BECAUSE HE WAS ON CONDITIONAL RELEASE, WHEN HE WENT BACK INTO PRISON, WE REACTIVATED THOSE SENTENCES THAT YOU SAY HAD EXPIRED.

>> THAT IS CORRECT.

>> AND, NOW, GETS TO SERVE TWO ADDITIONAL YEARS ON THEM, BEYOND HIS 15?

>> IT IS MORE LIKE THREE, BUT YOU KNOW, HE DOES HAVE AN ADDITIONAL.

>> THAT HELPS.

>> HE DOES HAVE ADDITIONAL TIME TO SERVE, BUT AGAIN, NOT ON THE SENTENCE, ON THE SENTENCES THAT HE DID EARLIER.

>> DOES THAT MAKE ANY SENSE? YOU TELL ME, THAT IF HE HAD ESCAPED, AFTER THOSE SENTENCES WERE OVER, THERE IS NOTHING WE COULD DO?

BUT BECAUSE HE WAS ON CONDITIONAL RELEASE AND HE VIOLATED IT, NOW WE CAN GIVE HIM THREE MORE YEARS?

>> THAT'S BECAUSE HE IS RETURNED TO THE DEPARTMENT'S JURISDICTION.

THE SAME THING HAPPENS WHEN JUDICIAL SUPERVISION.

WHEN A SENTENCE IS OVER, THROUGH GAIN TIME OR WHATEVER, AND WE RELEASE HIM, WE HAVE NO AUTHORITY OVER HIM.

A COURT CAN SEND HIM BACK TO US OR THE COMMISSION CAN BUT ONLY IF THEY SENDS BACK, DO WE THEN HAVE JURISDICTION THEN OVER THE HOW MANY SENTENCES ARE INVOLVED.

>> THIS IS MATTER -- HOW LONG WAS HE ON CONDITIONAL RELEASE?

>> I THINK HE WAS ON THERE ABOUT THREE YEARS.

>> THANK YOU.

>> LIKE TO RESERVE THE REST OF MY FOR REBUTTAL.

THANK YOU.

MY TIME FOR REBUTTAL.

>> MR.^SHANNIN.

>> MAY IT PLEASE THE COURT.

MY NAME IS NICK SHANNIN.

I'VE BEEN APPOINTED TO

REPRESENT MR.^CANTY ALONG WITH

BILL PONELL.

ALONG WITH KIRKCONNELL,

LINDSEY AND GATES WE'RE HERE TO

EXPLAIN DO THE COURT WHY

MR.^CANTY HAS BEEN PENALIZED

ADDITIONAL AMOUNT OF TIME BY NO

COURT, BY NO TRIBUNAL BUT

INSTEAD BY A INTERESTING BUT

UNFORTUNATE INTERPRETATION OF

MATH.

>> AS A PRACTICAL MATTER THE RELEASE

DATE THE WAY DOC CALCULATED IT,

2012.

>> CORRECT.

>> WHAT WOULD BE IF WE AGREE

WITH THE FIRST DISTRICT, WHEN

IS HE DUE TO BE RELEASED?

>> THE CALCULATION THAT

ORIGINALLY APPEARED IN THE

MOTION TO EXPEDITE THIS MATTER

FILED BY THE DEPARTMENT TO

WHICH MR.^CANTY THOROUGHLY

AGREES THAT EXPEDITION IS

APPROPRIATE, WOULD BE JUNE 9,

2009.

IT IS COMING SOON NOW.

NOW THE GAIN TIME CALCULATION

AS JUSTICE CANADY CAN BE VERY,

VERY CONVOLUTED.

IT COULD BE ALREADY PASSED.

IT COULD BE LATER THAN THAT.

DEPENDING ON FURTHER ACTIONS OF

MR.^CANTY.

>> IT IS THREE-YEAR DIFFERENCE.

>> IT IS A THREE-YEAR

DIFFERENCE, THAT IS EXACTLY

RIGHT.

BECAUSE MR.^CANTY AS AT LEAST

OF JUNE OF THIS YEAR SERVED 15

FULL YEARS OF HIS TIME HE

SHOULD BE ALLOWED TO BE RELEASE

PURSUANT TO THE.

>> SENTENCE IMPOSED ON

HIM. I'M GOING TO ADDRESS THE

ISSUE --

>> HOW DO YOU DO THAT?

IF YOU AGREE HE IS RIGHTFULLY

IN PRISON ON THE THIRD

SENTENCE?

>> NO DISPUTE OF THE FACT THAT HE WAS CONDITIONALLY RELEASED ON THAT THIRD SENTENCE. HE WAS OUT DOING THE RIGHT THING FOR A COUPLE YEARS. THEN HE MESSED UP. AND HE WAS RETURNED BACK. AND HE UNDERSTOOD THAT BY DOING SO, HE FORFEITED ABOUT FIVE PLUS YEARS OF GAIN TIME. AND HE HAD TO SERVE THAT.

>> WHAT DO WE DO WITH HIM? I MEAN AS A PRACTICAL MATTER, IF HE IS RIGHTFULLY IMPRISONED ON THE THIRD SENTENCE WHAT DO WE DO ABOUT THE OTHER TWO. >> YOU DO AS THIS COURT ALREADY SUGGESTED WE DO.

WE COUNT THAT TIME SERVED IN PRISON AS TIME SERVED IN PRISON.

THAT THERE IS A FICTION THAT HAS BEEN CREATED BY THE MATHEMATICAL PERMUTATIONS OF DEPARTMENT, MR. PONELL WILL ADDRESS INTRICACIES OF THAT IN PERHAPS GREATER DETAIL THAN I CAN.

DEPARTMENT'S CALCULATIONS ARE SUCH THEY CREATED A THING CALLED DEAD TIME.

THAT WAS AT LEAST REFERRED TO IN THE BRIEF.

EVEN THOUGH YOU ARE NOT IN PRISON YOU ARE NOT IN PRISON.

YOU ARE IN PRISON FOR THE SENTENCE AND NOT IN PRISON FOR THAT SENTENCE.

OBVIOUSLY THAT IS A FICTION THAT CAN NOT COMPLY WITH LOGIC. CERTAINLY DOESN'T COMPLY WITH THE JUDICIAL SENTENCE THAT WAS IMPOSED.

WHEN THE JUDGE MAKES CONCURRENT SENTENCES, THOSE 15-YEAR SENTENCES, THOSE 15-YEAR SENTENCES SHOULD RUN CONCURRENTLY.

>> WOULD YOU ADDRESS THE CONCEPT WHETHER WE NEED TO RECEDE SOME OF OUR PRIORITY AUTHORITY WITH REGARD TO TOLLING AND HOW DOES THAT

FACTOR INTO OUR DISCUSSION THIS MORNING?

>> BELIEVE THAT THE ANSWER IS NO.

THAT EVANS CAN STAND ALONGSIDE OF CANTY AFTER THIS COURT'S PRONOUNCEMENT WITHOUT A FORMAL RECISION.

>> WOULD YOU EXPLAIN THAT.

>> I WILL START TO.

MY GOAL HERE IS TO HELP EXPLAIN ON JURISDICTION AND DEPARTMENTAL AUTHORITY AND MR. PINNELL IS, A CRIMINAL APPELLATE ATTORNEY THAT WOULD BE MORE HIS FORTE.

THAT SAID, YOUR HONOR, EVANS CAN EXIST BECAUSE THE TOLLING CAN EXIST IN NUMBER PERMUTATIONS IF YOU HAVE A SHORT IN WHICH THE CONDITIONAL RELEASE IS TOLLED AND LONGER SENTENCE EXISTS THE TOLLING COULD ACT IN SUCH A WAY AS, ONCE, OR, PERHAPS REVERSE THAT. WHEN, IF THE SHORT SENTENCE IS THE ONE THAT GOT TOLLED, THEN YOU CAN STILL HAVE THE CONDITIONAL RELEASE WOULD OCCUR THE SHORT SENTENCE IS DONE.

ANOTHER, PERMUTATION OF COURSE IS CONCURRENT SENTENCES.

AS THE DEPARTMENT JUST SAID WHEN THEY WERE MAKING THEIR ARGUMENTS IN A CONCURRENT SENTENCE SITUATION BY TOLLING THE TIME, YOU CAN MAKE SURE THAT YOU STILL GET TO HAVE THE TRANSITION AIRY PERIOD ENVISIONED LEGISLATURE TO BE BENEFIT OF SOCIETY YOU HAVE HAVE THAT AT END OF LONGER OF THE SECOND SENTENCE THAT IS CONSECUTIVELY LINKED IF THEY'RE CONCURRENT AND SAME TYPE OF SENTENCES WE HAVE HERE YOU WIPED UP WITH ABSOLUTELY IMPOSSIBLE SCENARIO OF HAVING A DEPARTMENT EXCEED ITS AUTHORITY, VIOLATE THE SEPARATION OF POWERS BY HAVING ADMINISTRATIVE AGENCIES ESSENTIALLY OVERRULE WHAT A HAS

SAID.

WHEN A JUDGE SAYS A 15-YEAR
CONCURRENT SENTENCE WILL ONE
WITH ANOTHER 15-YEAR CONCURRENT
SENTENCE, YOU CAN'T HAVE --

>> I GUESS WHAT MY TROUBLE IS,
THAT IN EVANS WE SAID THAT YOU
CAN'T SERVE CONDITIONAL RELEASE
TIME IN PRISON.

>> CORRECT.

>> BUT YET TO DO THAT, WE
AGREED THAT THE RUNNING OF THAT
SENTENCE WOULD BE TOLLED.

ALL THE DEPARTMENT IS SAYING
THAT THAT SAME LOGIC WOULD
TELL YOU THAT WHEN, ON THE
SENTENCE OTHERWISE BEEN
RELEASED BECAUSE YOU HAD MORE
GAIN TIME, INSTEAD THAT TIME
YOU'RE IN PRISON.

THAT SENTENCE IS TOLLED AS OF,
THE DATE YOU WOULD HAVE BEEN
RELEASED AND YOU'RE NOT DOING
ANYTHING ON THAT SENTENCE.
YOU'RE JUST WAITING AROUND, BUT
YOU GOT SOME ADVANTAGE BECAUSE
THERE'S STILL CONCURRENT
SENTENCES.

IT IS STILL BETTER THAN IF THIS
WAS CONSECUTIVE SENTENCES FOR
MR. ^CANTY.

>> THAT WOULD BE THE ONE
SHINING, SILVER LINING, IF YOU
WERE TO LOOK AT THAT WAY FOR
HIM AT LEAST HE IS SERVING DEAD
TIME AT LEAST THE SENTENCES
WERE COMPLETELY CONSECUTIVE.
BUT OF COURSE, PERMUTATION
COULD BE ENVISIONED WHEREBY TWO
SENTENCES COULD BE ALMOST MADE
TO BE CONSECUTIVE.

IF HIS CONDITIONAL RELEASE
WOULD HAVE STARTED ONE YEAR IN
ON HIS 15 YEAR SENTENCE,
FORTUNATELY SENTENCES WEREN'T
CONSTRUCTED LIKE THAT BUT IF
THEY DID HE COULD HAVE TO START
TO SERVE THESE 14 YEARS AGAIN
AT THE END OF HIS 15 YEARS EVEN
THOUGH THE SENTENCES WERE
ORIGINALLY SUPPOSED TO BE
CONCURRENT.

>> WELL, CAN YOU HAVE THE
DIFFERENT LENGTHS OF THE

CONDITIONAL RELEASE?

IT WOULD SEEM TO ME THE MORE LOGICAL THING TO DO IN THESE SITUATIONS IS, THE TWO SENTENCES THAT WERE HE HAD TO STAY IN PRISON AS OPPOSED TO GETTING ON HIS CONDITIONAL RELEASE, THAT THE CONDITIONAL RELEASE ON THOSE SENTENCES WOULD BE A SHORTER PERIOD OF TIME THAN THE CONDITIONAL RELEASE ON THE SENTENCE WHERE HE WAS STILL IN PRISON ON?

>> THAT IS CERTAINLY MORE LOGICAL.

I BELIEVE THAT INTERPRETATION WOULD WORK WELL.

>> THAT WOULD REQUIRE US TO RECEDE FROM EVANS, WOULDN'T ISN'T?

>> I WOULD DIRECT THE COURT TO JUSTICE WELLS'S DISSIDENTING OPINION IN BOLDEN THAT HE EXPLAINED HOW, HE RELIED ON EVANS AND YET EXPLAINED ALONG WITH JUSTICE PARIENTE HOW THIS COULD WORK IN A WAY THAT MAKES SENSE.

>> DO YOU AGREE WITH JUSTICE WELLS'S DISSIDENT IN BOLDEN?

>> WE DO.

>> EACH PART OF IT?

>> WE, PART OF OUR BRIEF ADDRESSED JURISDICTIONAL ISSUE AT OUTSET.

THAT MAKES BOLDEN A VERY UNUSUAL CASE FOR US THAT WE CAN ACTUALLY RELIE ON BOTH THE PRIMARY RULING OF THE COURT THAT THE COURT WAS WITHOUT JURISDICTION ON THAT ISSUE.

THAT WOULD OF COURSE SUPPORT INMATE CANTY, AND THE DISSIDENT OF JUSTICE WELLS MAKES CLEAR YOU CAN NOT HAVE A SITUATION WHERE A MAN IS IN PRISON AND NOT IN PRISON AT THE SAME TIME. THAT THAT'S SIMPLY, THIS COURT RULED THAT BEFORE AND CONTINUES TO CLEARLY MAKE THAT POSITION --

>> I FIGURED AT AT THE TIME I MUST HAVE BEEN PERSUADED BY THE LOGIC OF WHAT JUSTICE WELLS

SAID.

WHEN I WAS REREADING IT I THINK THIS ALL MAKES SENSE BUT IT IS GOOD TO HEAR THAT YOUR ANALYSIS IS THAT THAT WOULD BE INTELLECTUALLY HONEST WAY TO RESOLVE WHAT THE APPARENT INCONSISTENCY BETWEEN EVANS AND WHAT WE'RE NOW SAYING.

BUT, IS PART OF THE PROBLEM THAT WHEN THE FIRST DISTRICT CERTIFIED THE QUESTION, THEY ASSUMED THAT ONE OF THE SENTENCES, THE SENTENCE THAT HE WAS SERVING THE LONGEST AMOUNT OF TIME WAS ON, WAS NOT A CONDITIONAL, WAS NOT ELIGIBLE FOR CONDITIONAL RELEASE AND THAT IS NOT THE CASE?

>> THAT'S CORRECT, YOUR HONOR. THAT WAS PART OF OUR INITIAL ARGUMENT IN OUR BRIEF THE JURISDICTION OF THE COURT HAS A QUESTION MARK RIGHT AT THRESHOLD.

THE QUESTION PRESENTED BY THE FIRST DCA ISN'T ACTUALLY THE QUESTION THAT WAS BEFORE THE COURT.

>> BUT WE DO HAVE A CONFLICT WITH THE FIFTH DISTRICT IN TERMS HOW THIS IS BEING CALCULATED AND THE DEPARTMENT CORRECTIONS IS SAYING, WHATEVER WE DECIDE IN THIS CASE IS GOING TO EFFECT SENTENCES ALL OVER THE STATE.

SO THIS IS SOMETHING, IF WE'RE GOING TO DO IT, WE'VE GOT TO MAKE SURE WE DO RIGHT AND USE THE RIGHT TERMS.

IT OF I GET VERY CONCERNED ABOUT, I THINK ALL OF US ARE, NOT GAIN TIME EXPERTS, AND, SO, LET'S GO BACK.

ARE YOU JUST, YOU'RE JUST, WHEN YOU SAID YOU'RE DEALING WITH THE JURISDICTION --

>> I'M DEALING WITH JURISDICTION AND, I'M SORRY THE DEPARTMENTAL'S AUTHORITY. ISSUES OF SEPARATION OF POWER WHICH WE ALREADY DISCUSSED THE FACT TO MAKE A PERSON SERVE JAIL TIME BEYOND THE SENTENCE

IMPOSED BY A COURT OF LAW WOULD BE VIOLATIVE OF THE FLORIDA CONSTITUTION, UNITED STATES CONSTITUTION, AND THIS COURT'S PRECEDENT.

>> WHAT WOULD BE, WHAT WOULD HAPPEN HERE?

ASSUMING WE GO BACK, HE WOULD STILL BE IN JAIL ON THE OTHER SENTENCE?

>> HE WOULD REMAIN IN JAIL ON THE OTHER OFFENSE UNTIL HIS GAIN TIME WAS SUCH HE HAD FINALLY GOTTEN TO HIS TRUE 15 YEARS OF SENTENCE.

AND THAT SHOULD OCCUR, IF IT HASN'T ALREADY OCCURRED IT WILL OCCUR VERY SOON AS OPPOSED TO COMPELLING THIS INDIVIDUAL TO SPEND AN ADDITIONAL AS THE DEPARTMENT CONCEDED THREE YEARS IN PRISON BEYOND THE 18-YEAR TERM ALREADY BEEN IMPOSED. BECAUSE THAT WOULD VIOLATE THE FLORIDA CONSTITUTION, THIS COURT'S OWN PRECEDENT AND THE COMMON SENSE ELEMENT THAT SIMPLY HAS TO EXIST HERE, AS ALREADY EXPRESSED BY THIS COURT YOU CAN'T HAVE A SITUATION WHERE A PERSON LOSES TIME, BY GETTING GAIN TIME.

IT SIMPLY DOESN'T MAKE SENSE. AND I WOULD, PERHAPS THIS WOULD SUMMARIZE BEST BY THE INMATE HIMSELF WHO ADDRESSED THIS ISSUE IN A LETTER TO ME.

MR. SHANNIN IT COMES DOWN TO SIMPLE MATH AND THE KNOWLEDGE THAT THE DEPARTMENT OF CORRECTIONS DOES NOT HAVE THE AUTHORITY TO EXTEND A SENTENCE SET BY THE COURT.

I'VE SERVED A LITTLE OVER 10 YEARS FROM 1992 TO 2002 AND ALMOST FOUR YEARS FROM 2005 TO THE PRESENT.

10 PLUS FOUR EQUALS 14. ADD ONE THAT 1, THAT IS 15 YEARS.

HE UNDERSTANDS GAIN TIME BETTER THAN ANY OF US ATTORNEYS.

>> HAD A LOT OF TIME TO THINK ABOUT.

>> BECAUSE HE SERVED HIS TIME DAY PER DAY PURSUANT TO THE PROVISIONS IN THE STATUTES WE BELIEVE THIS COURT SHOULD AFFIRM THE DECISION OF THE FIRST DCA AND I APPRECIATE THIS COURT'S TIME.

I WILL YIELD THE BALANCE OF MY TIME TO MR.^PINNELL.

>> MR.^PINNELL.

>> GOOD MORNING, MAY IT PLEASE THE COURT.

MY NAME, AS MR.^SHANNIN INDICATED MY NAME IS WILLIAM PONELL.

AND I ALSO REPRESENT THE RESPONDENT, EDISON CANTY IN THIS CASE.

WOULD REITERATE THE PROPOSITION A QUICK RESOLUTION OF THIS CASE IS IMPORTANT THAT MR.^CANTY MAY HAVE ALREADY SERVED HIS ENTIRE SENTENCE AT THIS POINT.

AS MR.^SHANNIN JUST INDICATED BEFORE, BEING RELEASED ON THE LONGEST SENTENCE HE SERVED 10.36 YEARS IN PRISON AND HAS SERVED ALMOST FOUR YEARS IN PRISON SINCE HIS --

>> I DON'T WANT TO THROW YOU OFF YOUR SCRIPT HERE.

BUT COULD YOU, SUCCINCTLY AS POSSIBLE, EXPLAIN TO US WHY EVANS IS DISTINGUISHABLE? I MEAN WHY EVANS ISN'T A PROBLEM?

WHY WE DON'T NEED TO REFROM IT?

>> SURE.

EVANS DID NOT ADDRESS, ADDRESS WHAT SENTENCE TO IMPOSE UPON THE REVOCATION OF CONDITIONAL RELEASE.

EVANS ADDRESSED THE, MR.^EVANS WAS ARGUING HE ALREADY SERVED HIS ENTIRE SENTENCE AND HIS SENTENCE EXPIRED AND HE COULD NOT BE HAVE CONDITIONAL RELEASE REVOKED AT ALL.

THEY DID NOT ADDRESS THAT THEY SAID THAT CONDITIONAL RELEASE COULD BE TOLLED TO THE END BUT DID NOT ADDRESS WHAT THE SENTENCE COULD BE ON REVOCATION.

AND WE BELIEVE, AS JUSTICE
WELLS BELIEVED AND --

>> SO IT WASN'T ABOUT A
FORFEITURE?

>> CORRECT, YOUR HONOR.

>> THAT IS THE BASIC
DISTINCTION.

THIS CASE IS ABOUT A FORFEITURE
OF GAIN TIME, AND THE
CONSEQUENCE OF THAT, WHEREAS
EVANS WAS NOT ABOUT THE
FORFEITURE OF GAIN TIME?

>> CORRECT, YOUR HONOR.

AND --

>> BUT WOULDN'T THE PROBLEM BE
THOUGH, THEY CAN ONLY GIVE
CONDITIONAL RELEASE FOR THE
PERIOD OF TIME THAT REPRESENTS
THE UNSERVED GAIN TIME?

>> CORRECT.

>> SO IF BY SOME CHANCE,
SOMEBODY ON A CONDITIONAL
RELEASE SENTENCE, WHILE THEY'RE
WAITING TO GET OUT, ACTUALLY
ENDS UP WITH, THEY DON'T GET
THE BENEFIT OF ANY GAIN TIME.

THEY'RE IN PRISON FOR THE
ENTIRE TIME, IS NO, AND THE
OTHER SENTENCE ISN'T A
CONDITIONAL RELEASE SENTENCE,
THAT PERSON THEN CAN NOT BE
SUBJECT, TO CONDITIONAL RELEASE
BECAUSE HE SERVED HIS, HE
SERVED HIS 15 YEARS.

WE DIDN'T REALLY ADDRESS THAT
IN, IN EVANS BECAUSE PRESUMABLY
THERE WAS SOME TIME LEFT THAT,
THAT HE HAD, OR MAYBE, WE
SHOULD HAVE.

I MEAN THAT'S THE QUESTION.

IS THAT FAIR TO THE INMATE, SAY
AGAIN, HE SERVED THE 15 YEARS
OF A 15-YEAR SENTENCE AND OTHER
SENTENCE CONCURRENT SENTENCE
WAS A 20-YEAR SENTENCE.

WHY SHOULD THAT INMATE HAVE TO
GO ON ANY CONDITIONAL RELEASE
IF HE SERVED HIS 15 YEARS?

>> WELL, YOUR HONOR --

>> MAYBE THAT WAS IN EVANS
EITHER.

>> IN EVANS THE LONGEST
SENTENCE OR ONE WITH LATEST
RELEASE DATE WAS NOT ELIGIBLE

FOR CONDITIONAL RELEASE.
I THINK THE FIRST ANSWER IS,
UNDER THAT SCENARIO, MAYBE YOU
SHOULDN'T GO ON CONDITIONAL
RELEASE.

>> IF YOU SERVE IN PRISON ALL
OF YOUR GAIN TIME, THERE WOULD
NOT BE CONDITIONAL RELEASE.
I THINK THAT IS WHAT THE FIRST
DISTRICT WAS SAYING.
IT MAY END UP IN CERTAIN
CIRCUMSTANCES FRUSTRATINGAL
RELEASE.

IF THE PERSON SERVED THEIR
WHOLE SENTENCE, THEY HAVEN'T
GOTTEN BENEFIT OF ANY GAIN TIME
ANY WAY.

>> SURE. JUSTICE THE PROBLEM
IS THE
LEGISLATURE HASN'T CLEARLY
INTENDED WHAT SHOULD HAPPEN IN
THAT SITUATION.
UNTIL THEY DO SO THE BENEFIT
HAS TO BE GIVEN TO THE INMATE.
UNDER THE RULE OF LENITY UNDER
THE PLAIN LANGUAGE OF THE STATUTES,
I WOULD NOTE THIS COURT REALLY
IMPOSED THE RULE OF LENITY,
WHEN THEY ADDRESSED CONDITIONAL
RELEASE STATUTES, BACK IN
1997 IN I BELIEVE THE COOPER CASE.
IF THERE IS ANY AMBIGUITY IT
MUST BE RESOLVED IN FAVOR OF
THE INMATE.

I THINK AS JUSTICE PARIENTE
INDICATED EARLIER THE PLAIN
LANGUAGE OF FLORIDA STATUTE,
947.141, SUBSECTION 3, UPON
REVOICATION OF CONDITIONAL
RELEASE THE INMATE IS RETURNED
TO PRISON TO SERVE THE SENTENCE
THAT WAS IMPOSED.
NOT SOME ADDITIONAL SENTENCE.
NOT SOME LONGER TERM.
THE SENTENCE THAT WAS IMPOSED.
AND THE POSITION PUT FORTH BY
THE DEPARTMENT AND THE WAY
THEY'RE CALCULATED CURRENTLY
THERE IS NO WAY AROUND IT,
THEY'RE IMPOSING AN ADDITIONAL
SENTENCE AND INMATES ARE BEING
REQUIRED TO SERVE A LONGER TERM
THAN WAS ACTUALLY IMPOSED BY
THE ORIGINAL SENTENCING JUDGE.

AND THERE'S NOTHING IN THE PLAIN LANGUAGE OF THE STATUTES. JUSTICE PARIENTE CORRECTLY DISTINGUISHED THE EVANS CASE AND JUSTICE WELLS IN THE BOLDEN CASE WHERE THEY SAID THAT TOLLING COULD BE APPROPRIATE BUT THE LENGTH OF THE CONDITIONAL RELEASE AT THE END SHOULD NOT BE, DOES NOT HAVE TO BE BASED ON THE EARLIEST TERMINATION DATE.

FOR INSTANCE, IN THIS CASE, THE LENGTH OF THE SENTENCE UPON REVOCATION COULD BE BASED ON LATER TERMINATION DATE. SO YOU WOULDN'T COMPLETELY ELIMINATE DASH.

>> THAT'S WHAT I WAS THINKING. HE WAS SERVING THE LONGER SENTENCE.

AND THAT IS THE SENTENCE HE GOT ON CONDITIONAL RELEASE ON. SO WHEN GETS, WHEN IT GETS REVOKED, WHY NOT USE THAT, THAT GAIN TIME AS, AND THAT WOULD END UP EQUALLYING, WOULD HAVE TO EQUAL 15 YEARS. JUST CAN'T EQUAL MORE THAN 15 YEARS.

>> CORRECT.

THAT'S THE WAY WE BELIEVE YOU COINCIDE EVANS WITH THE INSTANT CASE AND YOU DON'T FRUSTRATE LEGISLATIVE INTENT BY COMPLETELY ELIMINATING CONDITIONAL RELEASE.

BECAUSE YOU JUST SHORTEN THE TERM BUT YOU WOULD STILL HAVE THAT BRIDGE THE GAP PERIOD WHILE YOU'RE ON CONDITIONAL RELEASE THAT WOULD BE A TRANSFORMATION PERIOD FROM PRISON UNTIL COMPLETE FREEDOM. SO YOU WOULD HAVE THAT TRANSITORY PERIOD AVAILABLE IN THIS CASE.

>> BUT IT SEEMS TO ME MUST BE SOMETHING WE NEED TO DO WITH EVANS.

BECAUSE IF WE SAID IN EVANS, THAT WE'RE GOING TO BE TOLLING THIS MAN'S CONDITIONAL RELEASE TIME, YET HE IS STILL IN

PRISON, I MEAN, THEORETICALLY HE COULD FINISH UP HIS SENTENCE WHILE HE IS STILL IN PRISON, WAITING TO GET ON CONDITIONAL RELEASE FOR THE THIRD ONE. SO WHY IN THE WORLD WOULD WE EVEN EVER PUT HIM ON CONDITIONAL RELEASE IF HE IN FACT SERVES ALL OF THAT TIME? IN ESSENCE HE HAS SERVED THE TIME THAT WOULD HAVE BEEN HIS GAIN TIME.

>> JUSTICE, I AGREE.

WHILE I DON'T THINK IT IS ESSENTIAL THAT YOU RECEDE FROM EVANS I THINK THAT IS ONE AVENUE YOU COULD TAKE.

I WOULD NOTE I DO NOT BELIEVE THERE IS ANY LANGUAGE IN THE ANY OF THE CONDITIONAL RELEASE STATUTES THAT INDICATE THAT TOLLING IS APPROPRIATE.

BUT, WE RESPECT THE COURT'S PREVIOUS DECISION IN EVANS AND BELIEVE IN THIS PARTICULAR CASE THEY CAN BE RECONCILED.

>> IS IT YOUR POSITION THAT -- CREDIT FOR THAT TIME HE WAS ACTUALLY IN PRISON?

THAT WOULD CURE THAT CONCERN?

>> IN THIS PARTICULAR CASE I BELIEVE IT WOULD.

I THINK THAT WOULD BE THE APPROPRIATE WAY AND IT WOULD, WOULD SATISFY THE LEGISLATIVE INTENT OF HAVING THIS CONDITIONAL RELEASE BUT ALSO GIVE CREDIT ON ALL CONCURRENT SENTENCES WHICH JUSTICE WELLS AND JUSTICE PARIENTE SAID THAT IS INHERENT IN CONCURRENT SENTENCES.

>> IN THIS PARTICULAR CASE, GENERAL RULE WHICH WE HAVE TO COME UP WITH, WOULD THAT BE APPROPRIATE WAY FOR US TO RULE?

>> I BELIEVE IT IS, YOUR HONOR.

>> I MEAN THE BOTTOM LINE IS HE WAS IN PRISON EITHER 3645 DAYS, PRISON TIME, WITH 138 DAYS OF JAIL TIME, WHICH WAS 10.36 YEARS.

AND THAT IS THE TIME THAT HAD TO BE APPLIED TO EACH

CONCURRENT SENTENCE WHEN HE WAS RECOMMENDED.

THAT WAS THE MATH THAT YOU GAVE.

HE SERVED OVER 10 YEARS IN PRISON.

>> CORRECT.

>> AND HE HAS TO HAVE BEEN GIVEN CREDIT FOR THAT ON EACH CONCURRENT SENTENCE, WHICH SEEMS TO BE EXACTLY WHAT'S REQUIRED BY OUR RECENT CASE OF RABEDEAU WHICH YOU CITED IN THE BRIEF.

>> WE DID.

THERE WERE CONCURRENT SENTENCES AND THEY REVOKED PROBATION AND IMPOSED CON EXECUTIVES BASED ON REVOCATION.

THIS COURT INDICATED THAT THE DEFENDANT WAS ENTITLED TO CREDIT ON ALL THE SENTENCES AT THAT POINT.

I THINK THAT, SUPPORTS THE POSITION WE'RE ESPOUSING HERE.

MR. CANTY HAS SERVED OVER 14 YEARS AT THIS POINT WITH THE ADDITION OF ADDITIONAL GAIN TIME IT APPEARS HIS RELEASE DATE IS UPON US.

AND THAT, THAT AS JUSTICE WELLS INDICATED, IMPLICIT IN CONCURRENT SENTENCES THAT YOU GET CREDIT FOR ALL TIME SERVED ON ALL CONCURRENT SENTENCES. FOR THOSE REASONS WE BELIEVE THAT THIS COURT SHOULD APPROVE THE DECISION OF THE FIRST DISTRICT.

AND THANK YOU FOR YOUR TIME.

>> THANK YOU.

YOU HAVE USED OF YOUR TIME MISS MOSLEY.

I WILL GIVE YOU ONE MINUTE TO SUM UP.

>> JUST TO CLARIFY THAT THE SENTENCE THAT CANTY WAS RELEASED ON IS NOT THE ONE THAT WOULD CONTROL HIS NEW RELEASE DATE BECAUSE OF THE DIFFERENCES IN THE JAIL CREDIT.

IT WOULD BE THE SENTENCE WITH THE LEAST AMOUNT OF JAIL CREDIT, WHICH WAS 82 DAYS.

THAT MEANS HE WOULD HAVE TO SERVE AN ADDITIONAL 56 DAYS, IF HE WERE GIVEN ALL THE PRISON TIME CREDIT.

AND HIS MAXIMUM RELEASE DATE THEN WOULD BE MARCH THE 5th OF 2010.

HE IS READY TO BE RELEASED BUT HE WOULD HAVE TO BE ON SUPERVISION.

>> HE WAS SENTENCED IN 1992, CORRECT.

>> THAT IS CORRECT.

>> AND HOW MANY DAYS HAD HE ALREADY BEEN IN JAIL AT THAT TIME?

WELL, HE HAD BEEN IN JAIL, THERE WERE THREE DIFFERENT JAIL CREDITS.

THERE WERE 82, 116, AND 138.

SO ON ONE OF THE 15 YEARS SENTENCES HE WOULD HAVE TO SERVE MORE TIME IN PRISON BECAUSE HE GOT LESS JAIL CREDIT.

UNLESS THIS COURT IS GOING TO SAY THAT THE JAIL CREDITS MERGE INTO THE --

>> BUT UNDER THE CIRCUMSTANCES SEEMS, TO ME UNDER NO CIRCUMSTANCES SHOULD YOU HAVE TO SERVE MORE THAN 15 YEARS ON ANY 15-YEAR SENTENCE?

>> HE WILL, WELL, AGAIN, IF YOU TAKE THE JAIL CREDIT INTO ACCOUNT HE IS GOING TO SERVE 56 MORE DAYS ON THE SENTENCE WITH THE 82 DAYS OF JAIL CREDIT THAN HE WILL WITH THE ONE WITH 138 DAYS.

>> WHEN YOU THAT, DOC IS USING PARTICULAR SENTENCE OR PARTICULAR CHARGE THAT HAS THE LEAST AMOUNT OF TIME IN JAIL?

IS THAT THE WAY YOU'RE CALCULATING THESE? WHEN THEY ARE THEN, ADJUDICATED AS, CONCURRENT SENTENCES?

>> EACH SENTENCE IS UNIQUE AS TO JAIL CREDIT.

>> I UNDERSTAND THAT. SO THE ANSWER YES, TO THAT ONE?

>> YES. YES.

>> SO ANY TIME THAT THERE'S DIFFERENCES IN THE JAIL, CREDITS THAT ARE APPLIED INMATES, THAT ON THE FACE SEEM TO HAVE CERTAIN AMOUNTS OF TIME, THAT'S GOING TO VARY? IF THEY ONLY SERVED ONE DAY, FOR EXAMPLE, ON ONE OF THOSE, THEN THAT'S ALL THE DOC GIVES THEM, THEY MAY HAVE 200 ON SOME OTHER CRIME THAT THAT IS ALL BROUGHT TOGETHER?

>> THAT'S CORRECT.

>> THAT IS ALLOWED UNDER OUR STATUTORY SCHEME YOU BELIEVE?

>> AGAIN, YES, SIR.

EACH SENTENCE IS UNIQUE. WE CAN'T SWITCH JAIL CREDITS FROM ONE SENTENCE TO ANOTHER.

>> DOESN'T THE JUDGE, WHEN I HEAR, NOT ONLY THIS COURT OF COURSE, YOU KNOW, WE HAVE A FEW CASE BUT THE TRIAL COURTS GET A LOT AND APPELLATE COURTS ARE INUNDATED WITH PRISONERS JUST LIKE MR. ^CANTY WHO BECOME MORE EXPERT IN THIS THAN ANYONE OTHER THAN DOC.

SEEMS TO ME WHEN YOU'RE TALKING ABOUT 15-YEAR SENTENCE AND TALKING ABOUT A DIFFERENCE OF 50 DAYS HERE OR THERE, WE OUGHT TO ERR ON THE SIDE OF GIVE THAT PRISONER BENEFIT ON JAIL CREDIT TO AVOID LITIGATION.

I DON'T KNOW IF THERE IS SIMPLE SOLUTION.

IF THE JUDGE UP FRONT SAYS, I KNOW THERE ARE THREE DIFFERENT JAIL CREDITS BUT WE'LL GIVE JAIL CREDIT ON THIS FOR THE SENTENCE THAT HE SERVED THE MOST TIME IN JAIL ON, UP FRONT. THEN YOU DON'T EVER HAVE TO WORRY ABOUT THAT.

BUT THE JUDGES PROBABLY AREN'T TOLD THAT THERE IS THREE DIFFERENT JAIL CREDITS.

SO THEY JUST IMPOSE THE CONCURRENT SENTENCES.

THEN THE DOC WORRIES ABOUT IT. THEN THE INMATES SUES THE DOC AND THEN WE HAVE LITIGATION.

ISN'T THERE A WAY TO SOLVE

THIS.

>> THE DEPARTMENT DOES NOT HAVE THE DISCRETION TO MAKE THAT ADJUSTMENT WITH JAIL CREDIT. IF WE HAVE IT WE WILL BE GLAD TO DO THAT.

SO THAT THE INMATE, THE CONCERN OF THE COURT BEING JUST 15 YEARS.

BUT AS IT STANDS NOW, EACH SENTENCE IS UNIQUE AND WE CAN'T, YOU KNOW, GIVE THEM EXTRA CREDIT IF THE JUDGE HASN'T DONE IT.

WE WOULD NOT BE DOING WHAT THE JUDGE SAID.

IN THIS CASE --

>> WITH THAT, MISS MOSLEY, YOU'VE USED MORE THAN YOUR TIME.

THANK YOU VERY MUCH.

>> THANK YOU.

>> MR.^SHANNIN AND MR. PONELLE I UNDERSTAND THAT BOTH OF YOU ARE APPOINTED PRO BONO TO REPRESENT MR.^CANTY AND ON BEHALF OF THE COURT AND CITIZENS OF THE STATE OF FLORIDA, WE WANT TO THANK YOU BOTH OF YOU FOR YOUR SERVICE.

AND MISS MOSLEY, WE ALSO THANK YOU FOR YOUR SERVICE TO THE DEPARTMENT.

>> THANK YOU.

>> THE COURT WILL NOW BE IN RECESS.

WE ARE WAITING FOR THE ATTORNEY ON THE NEXT CASE.

AND AS SOON AS GETS HERE.

WE WILL RECONVENE.

>> PLEASE RISE. THE SUPREME COURT IS IN RECESS.