

THE NEXT CASE ON THE COURT'S
AGENDA IS JOHNSON V. STATE AND
JOYNER V. STATE.

>> WE'LL JUST GIVE THEM A MINUTE
TO CLEAR THE COURTROOM.

>> YES, YOUR HONOR.

>> ALL RIGHT.

>> GOOD MORNING AND MAY IT
PLEASE THE COURT, SHANNON
McKENNA ON BEHALF OF JOHNSON
AND JOYNER.

THE STATE FAILED TO PROVE THAT A
VOLUNTARY WAIVER WAS CLEARLY
SHOWN ON THE FACE OF THE RECORD.

>> COULD WE GO RIGHT TO THE
HEART OF, REALLY, WHAT THIS IS
ABOUT?

MANY TIMES SO MANY OF THESE
CASES TURN INTO PLAY ON WORDS,
AND WE'RE DEALING WITH PEOPLE'S
LIVES.

>> YES.

>> AND THIS MAY GIVE US TODAY AN
UNUSUAL OPPORTUNITY, ACTUALLY.
AS I UNDERSTAND IT, IN BOTH OF
THESE CASES THE INDIVIDUALS
INVOLVED ARE NO LONGER
INCARCERATED, AND SO YOU'VE EVEN
ARGUED THAT IT'S MOOT.

AND IT MAY BE.

YET WE HAVE COMPETENT COUNSEL
BEFORE US THAT COULD HELP US
RESOLVE WHAT APPEARS TO ME TO BE
A PROBLEM.

AND IT COMES UP FROM TIME TO
TIME, AND AS I LOOK AT THIS, WE
OUGHT TO BE ABLE TO DECIDE IT ON
COMMON SENSE AND APPROACH, AND
WE APPEAR TO BE ON THE HORNS OF
A DILEMMA A LITTLE BIT.

AND IT HAPPENS IN THE LAW WHERE

WE HAVE COMPETING VALUES.
I MEAN, IT HAPPENS A LOT.
BUT HERE I'M CONCERNED, I'D LIKE
BOTH OF YOU TO ADDRESS THIS, I'M
CONCERNED AS TO HOW AN
INDIVIDUAL CAN BE CONSIDERED
UNDER THE LAW AS A MATTER OF LAW
OF GIVING UP SOMETHING IF THEY
DON'T KNOW WHAT IT IS THEY'RE
GIVING UP.
AND BY THAT I MEAN TO KNOW WHAT
THEY'RE ENTITLED TO.
THE BOOT CAMP CASE, WHETHER THIS
IS THE BOOT CAMP OR NOT, BUT WE
CAN'T EXPECT EACH ONE OF THESE
INDIVIDUALS TO KNOW PRECISELY
WHAT THEY HAVE.
YET ON THE OTHER HAND, I'M
CONCERNED ABOUT THE PRACTICAL
PROBLEMS THAT OUR TRIAL JUDGES
AND DEFENSE COUNSEL AND
ASSISTANT STATE ATTORNEYS FACE,
AND THAT IS HOW DO YOU KNOW WHEN
YOU'RE STANDING THERE IN THE
COURTROOM EXACTLY WHAT IT IS?
I MEAN, IT'D BE WONDERFUL IF
EVERYTHING WAS HOOKED INTO OUR
JIS SYSTEM, PUNCH A BUTTON
AND --
[INAUDIBLE]
SO I'D LIKE FOR BOTH OF YOU TO
ADDRESS THAT DILEMMA THAT WE
FACE, BECAUSE IT'S GOT TO BE A
WORKABLE SYSTEM SO THAT EVERY
ONE OF THESE DOESN'T HAVE TO BE,
YOU KNOW, TAKEN THROUGH THE
APPELLATE COURTS AGAIN.
BUT AT THE SAME TIME IT SEEMS TO
ME THAT JUST ALL OF US MUST
AGREE THAT HOW CAN YOU GIVE
SOMETHING UP IF YOU DON'T KNOW
WHAT IT IS THAT YOU'RE SUPPOSED

TO BE GIVING UP?

SO WITH THAT, THAT'S KIND OF A
SPEECH MADE, BUT IT GETS TO THE
HEART OF WHAT OUR PROBLEM IS
THIS MORNING THAT WE KEEP SEEING
OVER AND OVER.

>> YES, YOUR HONOR.

WHAT WE WOULD PROPOSE IS THAT
THIS COURT SHOULD FIND THAT THE
TRIAL COURT MUST INSURE THAT
THERE'S AN UNDERSTANDING OF THE
WAIVER OF CREDIT FOR TIME
SERVED, AND THAT WOULD REQUIRE
THREE THINGS.

ONE, THAT THE DEFENDANT HAVE A
KNOWLEDGE THAT HE SERVED PRIOR
CREDIT FOR TIME SERVED.

TWO, THAT THEY'RE ENTITLED TO
THIS CREDIT FOR TIME SERVED AND,
THREE, A VOLUNTARY
RELINQUISHMENT OF THIS RIGHT.
AS THIS COURT HAS POINTED OUT
BEFORE IN 1999 THEY ACTUALLY
ASKED THE CRIMINAL REPEALS
REFORM COMMITTEE TO LOOK AT THE
ISSUE FOR CREDIT FOR TIME
SERVED, AND THEY NOTED THAT JAIL
LOGS ARE KEPT IN SOME FILES, NOT
KEPT IN OTHER FILES, DEFENDANTS
MAY HAVE TIME FROM OTHER
COUNTIES OR NOT.

>> SO LET'S START WITH --

[LAUGHTER]

LET'S JUST START WITH THE FIRST
ITEM.

YOU SAID THERE ARE THREE
THINGS --

>> YES.

>> OKAY, SO KNOWLEDGE.

HOW DO YOU, HOW DO YOU
CONTEMPLATE THE KNOWLEDGE ASPECT
OF IT?

IS THE TRIAL JUDGE SUPPOSED TO SAY, LOOK, YOU WERE IN ONE OF THESE CASES, THERE WAS A BOOT CAMP.

YOU WERE IN THIS BOOT CAMP FOR THREE YEARS.

YOU UNDERSTAND THAT BY SAYING THAT YOU'RE GOING TO ONLY GET CREDIT FROM THIS POINT THAT YOU NO LONGER HAVE OR ARE ENTITLED TO THE CREDIT FOR THE BOOT CAMP, IS THAT GOING TO BE A TRIAL COURT'S PROBLEM?

DEFENSE ATTORNEY?

HOW WOULD YOU DO THE KNOWLEDGE ASPECT?

>> IDEALLY, IT SHOULD BE IN THE PLEA COLLOQUY.

IN THE PLEA COLLOQUY, AS THE TRIAL COURT ADDRESSES OTHER ISSUES THE TRIAL COURT COULD STATE TO THE DEFENDANT, YOU KNOW, DO YOU UNDERSTAND YOU'RE ONLY RECEIVING CREDIT FOR TIME SERVED FROM YOUR LAST ARREST? YOU'RE ENTITLED TO ANY OTHER CREDIT FOR TIME SERVED THAT YOU'VE RECEIVED, YOU KNOW, WHEN YOU WERE INITIALLY ARRESTED OR IF YOU WERE IN JAIL FOR WHATEVER PERIODS OF TIME --

>> WOULD IT ALSO REQUIRE THAT THERE BE A SPECIFICATION OF THE EXACT NUMBER OF DAYS?

>> I THINK THAT AS LONG AS THEY'RE AWARE THAT THERE WAS PRIVATE CREDIT FOR TIME SERVED AND A GENERAL AMOUNT, A GENERAL PERIOD.

LIKE YOU KNOW THAT WHEN YOU WERE INITIALLY SENTENCED, YOU WERE INITIALLY SENTENCED TO A PERIOD

OF 364 DAYS IN COUNTY JAIL AND THEN PROBATION FOR THREE YEARS. NOW, WE DON'T KNOW --

>> WOULDN'T THE TIME CERTAIN WORK THAT IF YOU HAVE 120 DAYS, I MEAN, DOING IT EXACTLY BECAUSE OTHERWISE SOMEBODY'S GOING TO MISSTATE THE TIME, THEN IT'S GOING TO COME UP AGAIN ANYWAY.

>> IDEALLY, IN A PERFECT WORLD IT WOULD BE BEST TO KNOW HOW MANY DAYS THEY'VE SERVED AND EXACTLY HOW MANY DAYS THEY'VE WAIVED.

>> BUT IT'S NOT A PERFECT WORLD, AND THAT'S WHAT JUSTICE LEWIS IS TALKING ABOUT.

>> CORRECT.

>> MY CONCERN IS THIS IS COMING UP IN PLEA AGREEMENTS.

>> YES.

>> BECAUSE WE KNOW IN OTHER CASES IF THE JUDGE SENTENCES THEM TO A TERM AND THEN SAYS CREDIT FOR 364 DAYS' TIME SERVED AND THEY DON'T GET IT RIGHT AND THEY FILE THEIR 3800 MOTION AND THEY'LL GET THE CREDIT EVENTUALLY.

I MEAN, IT WOULD BE NICE TO HAVE IT AT THE TIME.

>> CORRECT.

>> IF WE REQUIRE ANYTHING, I MEAN, I AM SYMPATHETIC TO THIS IDEA THAT THERE SHOULD BE SOMETHING THAT SAYS AND I'M WAIVING ALL OTHER CREDIT FOR TIME ALREADY SERVED, BUT IF WE REQUIRE THERE TO BE, I KNOW I SHOULD GET 340 DAYS, AND I'M WAIVING THAT, AND THEN WE FIND OUT, NO, IT WAS REALLY 380 DAYS,

THEN THAT WILL BE A BASIS TO SET
ASIDE THE PLEA.

SO, TO ME, IT'S, IT WOULD BE --
I'M ASKING YOU IF YOU
ACKNOWLEDGE THAT THAT COULD
CREATE SOME OTHER PROBLEMS, THAT
IT WOULD BE BETTER NOT TO HAVE A
SPECIFIC NUMBER, BUT TO SAY
BECAUSE THE JUDGE DOESN'T KNOW
AND MAYBE THE JUDGE CAN ASK,
DOES ANYONE KNOW THE EXACT
AMOUNT OF TIME HE WOULD BE
ENTITLED TO?

IS HE WAIVING ANY OTHER TIME?
AND MAYBE THE ISSUE IS, NO.
OUR INTENT IS HE SHOULDN'T WAIVE
ANY OTHER TIME, AND THEY CAN PUT
IN THE PLEA.

HE'S GETTING THIS PLUS ANY OTHER
TIME SERVED WHICH WE THINK IS
THIS.

HOW WOULD THAT WORK?

>> I AGREE WE DON'T NEED A
SPECIFIC NUMBER TO SAY YOU'RE
WAVING 360 DAYS FOR TIME SERVED
VERSUS 345 --

>> BECAUSE YOU REALIZE THAT
COULD CAUSE A LOT OF PROBLEMS.

>> COULD I JUST STIPULATE TO THE
TIME?

IF YOU AGREE TO IT, THAT'S WHAT
IT IS.

>> YOU CAN, BUT WE DO HAVE
PROBLEMS, FOR EXAMPLE, IN MANY
CASES THE DEFENDANTS, THE
DEFENDANT KNOWS WHETHER OR NOT
HE'S SERVED TIME.

HE MAY NOT KNOW THE EXACT
PERIODS OF TIME --

>> OR WHAT QUALIFIES, LIKE THE
BOOT CAMP.

>> OR WHAT QUALIFIES.

AS IN THIS CASE DEFENDANT
JOHNSON SERVED TIME IN BOOT
CAMP.

HE MAY NOT HAVE HAD ANY IDEA
THAT BOOT CAMP QUALIFIES FOR
CREDIT FOR TIME SERVED.

WHAT WOULD BE BEST, AND I KNOW
AT LEAST IN MIAMI-DADE COUNTY
WHILE THEY DON'T HAVE EXACT DAYS
OF CREDIT FOR TIME SERVED THEY
DO HAVE, YOU KNOW, ON THE CASE
HISTORY SHEET, YOU KNOW, PICKED
UP ON A PROBATION VIOLATION OR
ORIGINAL SENTENCE, YOU KNOW?
PROBATION WAS REINSTATED WITH 30
DAYS OF CREDIT FOR TIME SERVED.
THERE ARE CERTAIN NOTATIONS THAT
COULD GENERALLY REFERENCE
PERIODS OF TIME THAT YOU WERE
INCARCERATED.

FOR EXAMPLE, YOU KNOW, WHEN
YOU'RE WAIVING ANY CREDIT FOR
TIME SERVED THAT YOU'VE
PREVIOUSLY SERVED UPON YOUR
INITIAL ARREST, UPON ANY OTHER
ARRESTS, YOU KNOW, FOR PROBATION
VIOLATIONS.

AND THOSE TYPE OF THINGS.
SO THAT YOU LOOK AT THE GENERAL
PERIODS OF TIME.

>> LET ME INTERJECT MYSELF HERE.

>> YES.

>> BECAUSE I HAVE SOME
EXPERIENCE IN THIS AREA.

>> YES.

>> YOU KNOW, WE'RE DISCUSSING
THESE THINGS AS THE, AS IF WE
WERE IN FEDERAL COURT WHERE THE
ONLY CASE BEFORE THE JUDGE AT
THAT MOMENT IS THE CASE.
THERE'S NO ONE ELSE IN THE
COURTROOM.

THERE'S ALL A VACUUM AND LAWYERS
HAVE PLENTY OF TIME TO TALK TO
THE LAWYERS ABOUT THE CASE.
THE PROSECUTORS HAVE PLENTY OF
TIME TO CONFER AND ALL THAT.
WHAT IS HAPPENING PARTICULARLY
IN MIAMI OR PALM BEACH OR
BROWARD OR TAMPA, ORLANDO IS YOU
HAVE A COURTROOM WITH ABOUT 150
PEOPLE IN THERE.
YOU'VE GOT A JURY BOX WITH ABOUT
20 PRISONERS.
YOU'VE GOT THE PUBLIC DEFENDERS
WHO ARE WHISPERING TO THEIR
CLIENT WHILE THE COURT IS GOING
ON WITH OTHER CASES.
AND THIS NEGOTIATIONS, THIS PLEA
BARGAINING IS GOING ON DOWN TO
THE LAST MINUTE.
AND SOMETIMES IT CALLS FOR
WAIVER OF THIS AND WAIVER OF
THAT.
THERE'S NO WAY AT THAT MOMENT TO
GATHER UP THIS INFORMATION AS TO
HOW MUCH CREDIT HE DID 20 YEARS
AGO WHEN HE WAS FIRST PLACED ON
PROBATION AND HOW MUCH CREDIT HE
GOT WHEN HE GOT OUT AND GOT
BOOKED AGAIN.
IT'S IMPOSSIBLE.
SO SOMETIMES YOU HAVE TO COME IN
AND MAKE AN AGREEMENT THAT,
LOOK, ALL YOU'RE GETTING CREDIT
FOR IS THIS, FROM TODAY ON.
PERIOD.
AND THERE'S NO TIME TO GATHER UP
THAT PREVIOUS INFORMATION.
SO THAT'S THE REALITY OF WHAT
GOES ON IN THESE COURTROOMS.
SO THE ARGUMENT YOU'RE MAKING
SEEMS TO THINK THAT EVERYBODY'S
SITTING AT A TABLE WITH A

COMPUTER, AND THIS INFORMATION
CAN BE GATHERED JUST LIKE THAT.
IT'S NOT POSSIBLE.

>> I UNDERSTAND THAT, YOUR
HONOR, BUT AT THE LEAST THE
COURT SHOULD QUESTION THE
DEFENDANT, HAVE YOU SERVED ANY
PREVIOUS TIMES?

HAVE YOU SERVED TIME IN BOOT
CAMP?

>> WHY CAN'T THE COURT ASSUME
THAT THE LAWYER MET WITH HIS
CLIENT AND HAD THAT INFORMATION
AND TOLD THE CLIENT, LOOK,
YOU'RE WAIVING ALL THIS TIME,
YOU'RE GETTING A GREAT DEAL HERE
TODAY, YOU'RE GOING TO WAIVE ALL
THIS TIME, AND ALL YOU'RE
GETTING CREDIT FOR IS THIS?

WHY CAN'T THE COURT ASSUME THAT
THAT CONVERSATION OCCURRED
BETWEEN THE LAWYER AND THE
CLIENT?

>> IF THE COURT WERE TO ASK,
HAVE YOU DISCUSSED WITH -- YOU
KNOW, THE COURT HAS TO INSURE
THAT THERE'S AN UNDERSTANDING,
AND MAYBE NOW'S A GOOD POINT TO
BRING UP --

>> THE COURT ASKED THE QUESTION,
DID YOU DISCUSS THE MATTER OF
HOW MANY DAYS YOU'RE WAIVING
WITH YOUR LAWYER, WOULD THAT
SUFFICE?

>> A QUESTION SIMILAR TO THAT,
YES.

YOU KNOW, HAVE YOU DISCUSSED --

>> SO WHAT'S THE LAWYER --

>> EXCUSE ME, YOUR HONOR?

>> WHAT IF THE LAWYER IS WRONG?

I MEAN, WE'RE RIGHT BACK TO
WHERE WE ARE AGAIN.

THE LAWYER'S WRONG, THEN WE'VE GOT INEFFECTIVE COUNSEL, AND WE GO BACK THROUGH THIS AGAIN.

I MEAN, THERE'S GOT TO BE AN ANSWER TO THIS SOMEHOW.

WE'VE GOT TO HAVE A WORKABLE SYSTEM.

>> YES, I, I --

[LAUGHTER]

>> I'M SORRY.

>> I'M NOT REALLY SURE.

YOU KNOW, I THINK ABOUT, YOU KNOW, IN SOME OF THESE CASES WE HAVE CREDIT FOR TIME SERVED CHECKLISTS.

THEY'RE TRYING TO AMELIORATE THE PROBLEM, BUT IN EFFECT THEY'RE NOT REALLY CHANGING ANYTHING BECAUSE EVEN WHEN YOU HAVE A CHECKLIST, THE COURT STILL IN A PLEA-TYPE SITUATION STILL HAS TO INQUIRE IF THE DEFENDANT'S AWARE OF THE RIGHTS HE'S WAIVING, IF HE'S READ THE AGREEMENT, IF HE KNOWS ANY OF THOSE TYPE OF THINGS UNDER PLEA POLICIES.

>> WELL, ISN'T IT THE CASE THAT WE ARE HERE DEALING WITH THE QUESTION OF THE RELIEF THAT WILL BE AVAILABLE ON A 3800A?

>> YES.

>> WHICH IS A VERY SPECIALIZED THING.

YOU KNOW, IT SEEMS -- WHY AM I WRONG TO THINK THAT ALL THESE QUESTIONS ABOUT WHAT THE DEFENDANT KNEW OR DIDN'T KNOW AND WHAT HIS LAWYER HAD TOLD HIM AND ALL THOSE SORTS OF THINGS ARE NOT THINGS THAT CAN BE DETERMINED IN A 3800A UNLESS IT'S SHOWN ON THE RECORD?

AND IT SEEMS TO ME THAT WE'RE REALLY TALKING ABOUT INEFFECTIVE ASSISTANCE HERE.

THERE'S A ROUTE TO DEAL WITH THAT.

IT IS NOT 3800A.

THERE'S ANOTHER ROUTE.

OR THERE'S ANOTHER ROUTE YET TO DEAL WITH THIS, EMOTION TO WITHDRAW A PLEA.

NOW, THERE ARE TIME LIMITS ON THAT.

BUT I DON'T UNDERSTAND, I DON'T UNDERSTAND WHY THOSE ARE NOT MORE APPROPRIATE VENUE OR PLACES TO DEAL WITH THIS SORT OF ISSUE ABOUT WHAT THE DEFENDANT KNEW AND WHAT HIS ATTORNEY HAD TOLD THEM AND HOW HE UNDERSTOOD IT.

SO IF YOU COULD ADDRESS THAT.

AND THEN ADDRESS THE QUESTION OF HOW IT IS FAIR IN A 3800A IN GIVING RELIEF THERE TO UNDO A PLEA AGREEMENT BECAUSE THAT'S WHAT WE WOULD BE DOING BY ORDERING THAT CREDIT BE GRANTED, AM I WRONG?

>> YES, YOUR HONOR.

>> TELL ME WHY I'M WRONG ON THAT SECOND ONE.

[LAUGHTER]

>> I'LL ADDRESS THEM IN REVERSE ORDER.

>> OKAY.

>> THE FIRST IS THAT THE DEFAULT IS THAT A DEFENDANT IS ENTITLED FOR ALL CREDIT FOR TIME SERVED UNLESS THAT CREDIT FOR TIME SERVED IS WAIVED.

SO HERE WE HAVE --

>> BUT WHAT ABOUT THE PLEA AGREEMENT?

>> WELL, BECAUSE --

>> THE PLEA AGREEMENT TRUMPS
OTHER THINGS THAT ARE DEFAULT
ALL THE TIME.

>> IF THERE'S A CLEAR WAIVER IN
THE PLEA AGREEMENT, AND AS THIS
COURT FOUND IN McCOY V. STATE,
IT'S THE STATE'S RESPONSIBILITY
TO INSURE WHEN ENTERING INTO A
PLEA AGREEMENT THAT THE TERMS OF
THE --

>> WELL, THERE'S THE QUESTION OF
THE VOLUNTARINESS OF THE WAIVER.
THAT'S A SEPARATE ISSUE.

BUT THERE'S CLARITY, ABSOLUTE
PERFECT CLARITY IN THE PLEA
AGREEMENT ABOUT HOW MUCH TIME
THERE'S GOING TO BE GRANTED FOR
JAIL CREDIT.

I MEAN, IT'S THERE.

IT SAYS FROM THIS DAY TO THAT
DAY OR SOMETIMES THEY MIGHT
CHECK THE BOX, NO CREDIT.

AND THAT'S GOING TO, THAT'S
GOING TO BE UNAMBIGUOUS,
ABSOLUTELY CLEAR, WHAT WAS
AGREED TO.

>> WELL, WE DON'T KNOW IF THAT'S
WHAT'S AGREED TO, AND THAT'S
WHAT THE PROBLEM HEREIN LIES.

>> WELL, YOU MAY NOT, YOU MAY
NOT -- I UNDERSTAND YOU MAY NOT
KNOW IF THE DEFENDANT UNDERSTOOD
WHAT HE WAS GIVING UP WHEN HE
AGREED TO THAT.

>> YES.

>> I UNDERSTAND THAT.

THAT'S NOT NECESSARILY GOING TO
BE REFLECTED THERE.

BUT THAT'S A, THAT'S A DIFFERENT
QUESTION THAN WHAT WAS ACTUALLY
AGREED TO.

>> YES.

YES.

WHEN YOU HAVE THIS TYPE OF SITUATION WHEN THE COURT AWARDS THE CREDIT FOR TIME SERVED, IT CAN BE THREE DIFFERENT THINGS THAT ARE HAPPENING.

ONE, THERE COULD BE A KNOWING VOLUNTARY WAIVER OF ALL OTHER PERIODS OF CREDIT FOR TIME SERVED.

TWO, IT COULD BE A MISAPPLICATION OF THE LAW WHERE THE TRIAL COURT THINKS, OKAY, HE'S ONLY ENTITLED TO CREDIT FROM HIS LAST BOOKING DATE.

OR, THREE, IT COULD BE A CALCULATION ERROR.

AND THAT'S WHAT WE DON'T KNOW IN THESE SITUATIONS.

>> WELL, GET BACK TO MY -- I DON'T THINK YOU'VE ANSWERED MY QUESTION --

>> YES, YOUR HONOR.

>> -- ABOUT HOW YOU EXPRESS THE CONCERN THROUGH GIVING THIS SORT OF RELIEF WE'RE EFFECTIVELY UNDOING A PLEA AGREEMENT, THE DEFENDANT IS GETTING THE BENEFIT OF THE PLEA AGREEMENT THAT HE WANTS, BUT SOME DETRIMENT HERE FROM THE PLEA AGREEMENT AS IN THE LIMITATION ON THE CREDIT IS BEING LOST BY THE STATE.

WE'RE UNDOING THIS AGREEMENT THAT THEY HAD THROUGH THIS MECHANISM.

ISN'T THAT TRUE?

>> AND I WOULD ARGUE, NO, BECAUSE IT'S THE STATE'S BURDEN TO SHOW THAT THERE'S A CLEAR --

>> WAIT.

>> -- FOR TIME SERVED ON THE RECORD.

>> BUT THAT ANSWER REALLY, I THINK, IS A BIT DISINGENUOUS HERE BECAUSE LET'S LOOK AT, I'M NOT SURE IF IT'S JOHNSON OR JOYNER.

>> YES.

>> ONE OF THESE CASES THE DEFENDANT REALLY COULD HAVE GOTTEN A LIFE SENTENCE, WASN'T IT?

BUT HE ENDED UP GETTING A FOUR-YEAR SENTENCE --

>> YES.

>> -- AND HE GOT 100-AND-SOME DAYS' CREDIT FOR TIME SERVED. NOW, IF WE REALLY LOOK AT THIS, HE GOT AN ABSOLUTELY WONDERFUL BARGAIN OF FOUR YEARS AS OPPOSED TO WHAT HE COULD HAVE GOTTEN, AND HE GOT SOME CREDIT FOR TIME SERVED.

I MEAN, IT SEEMS TO ME THAT WAS A GREAT BARGAIN.

BUT NOW IN HINDSIGHT THERE'S THIS, OH, OKAY, WOW.

IF I GET SOME MORE CREDIT FOR TIME SERVED, I COULD BE OUT.

AND IN THAT SENSE IF WE GAVE HIM THE CREDIT -- I THINK IT'S THE SAME DEFENDANT WHO'S THE BOOT CAMP DEFENDANT, ISN'T IT?

>> YES, THAT'S CORRECT.

>> AND THAT BOOT CAMP WAS, WHAT, THREE OR FOUR YEARS?

>> NO, IT WAS NOT THAT LONG.

>> HOW LONG DID HE SERVE IN BOOT CAMP?

>> IT WOULD HAVE BEEN 120 DAYS.

>> OKAY.

SO HOW IN THE WORLD CAN WE EVEN

IMAGINE THAT THE STATE WOULD HAVE ENTERED INTO THIS KIND OF AGREEMENT IF HE WAS GOING TO, ALSO, GET ALL THIS OTHER CREDIT FOR THE BOOT TIME?

>> WELL --

>> I JUST, IT'S TROUBLING TO ME IN THESE PLEA SITUATIONS BECAUSE THERE ARE SOME QUID PRO QUO GOING ON.

I'LL SETTLE FOR THE FOUR YEARS IF YOU SETTLE FOR THE WHATEVER DAYS THAT WAS AS OPPOSED TO ALL OF THESE ADDITIONAL DAYS WHICH WOULD, IN ESSENCE, ALMOST NORMALLY HAVE TO SERVE A VERY SHORT PERIOD OF TIME.

>> OKAY.

WELL, WE DON'T KNOW WHAT TYPE OF QUID PRO QUO WAS GOING ON THERE, FIRST OF ALL, AND WE'RE NOT SURE IF THERE WAS A QUID PRO QUO.

OKAY, WE WANT YOU TO SERVE EXACTLY X AMOUNT OF TIME.

FOR EXAMPLE, IN ONE OF THE EARLIER CASES ON THIS IN EPLER V. JUDGES OF THE 13TH JUDICIAL CIRCUIT, THERE WAS A DISCUSSION BETWEEN THE COURT AND THE PARTIES.

THE SENTENCE WAS FOR 15 MONTHS WITH ALL CREDIT FOR TIME SERVED, AND THE ATTORNEY SAID, WELL, HE WANTS TO SERVE LOCAL TIME.

AND THE COURT SAID, WELL, IF YOU'RE GOING TO SERVE LOCAL TIME, IT'S ONE YEAR WITHOUT ANY CREDIT FOR TIME SERVED.

THERE WAS AN ACTUAL DISCUSSION ON THE RECORD REGARDING HOW MUCH TIME SHOULD ACTUALLY BE SERVED AND HOW MUCH CREDIT FOR TIME

SERVED SHOULD BE APPLIED.

>> WELL, BUT, YOU KNOW, HONESTLY, NOW, I UNDERSTAND THERE ARE GOING TO BE ALL SORTS OF FACTUAL VARIATIONS AND ONE CIRCUMSTANCE OR ANOTHER WILL COME UP, BUT CAN YOU STAND THERE AND DENY THAT BY ADOPTING THE APPROACH THAT YOU WANT FOR US TO TAKE THAT THERE ARE GOING TO BE SOME CIRCUMSTANCES WHEN THE STATE WILL LOSE A BENEFIT THAT IT BARGAINED FOR AS PART OF THE PLEA AGREEMENT?

>> THERE MAY BE SOME CIRCUMSTANCES, BUT --

>> ISN'T THE ANSWER, THOUGH, ON THAT --

>> YES.

>> LET ME JUST, AND, YOU KNOW, I DIDN'T REALLY PICK UP ON WHETHER THIS IS A 3800A ISSUE, BECAUSE IN THIS CASE THE VIOLATION OF PROBATION HEARING WAS IN APRIL OF 2006, AND THE MOTION BY JOHNSON WAS IN 2007.

SO IT WAS IN THE TWO-YEAR PERIOD, AND I THINK THERE IS SOME, THE QUESTION ON THE REMEDY AS TO WHETHER WHEN THERE IS AN ALLEGATION THAT THE DEFENDANT DID NOT KNOW HE WAS ENTITLED TO A DIFFERENT AMOUNT OF TIME SERVED AND IT WASN'T PART OF THE BENEFIT OF THE BARGAIN, THAT THE ANSWER AS IT GOES TO THE -- HE GETS TO EITHER WITHDRAW THE PLEA OR CLAIM INEFFECTIVE ASSISTANCE OF COUNSEL.

I THINK ON THAT, I MEAN, I DON'T KNOW IF WE'RE TALKING ABOUT SOMETHING THAT HAPPENED TEN

YEARS LATER, BUT WHY ISN'T THAT REALLY THE APPROPRIATE WAY TO GO WHICH IS TO TREAT IT AS A MOTION TO WITHDRAW THE PLEA BASED ON A MISAPPREHENSION OR THAT IT WAS A MISCALCULATION -- WHATEVER IT WAS -- AND THEN WE GET BACK TO THE SQUARE ONE?

AND, I'M SORRY, BECAUSE IT JUST OCCURRED TO ME THAT IN THIS CASE I WASN'T PREPARED REALLY TO LOOK AT IT AND SAY THAT IT'S ALWAYS, THAT IT'S AN ILLEGAL SENTENCE, THAT YOU'RE ENTITLED TO CORRECT IT ANYTIME, BUT THAT IT'S A CLAIM TO BE ABLE TO WITHDRAW THE PLEA BECAUSE IT WASN'T DONE KNOWINGLY.

WHAT'S WRONG, I MEAN, WHY ISN'T THAT A MORE APPROPRIATE WAY TO DEAL WITH THESE KINDS OF CASES?

>> WELL, IN THE RULE 3800A, OF COURSE, AS YOU STATED IT DOESN'T ALLOW FOR THE EVIDENTIARY HEARING.

SO IN CASES THAT ARE AFTER THE TWO YEARS THEN DEFENDANTS, YOU KNOW, MAY BE PRECLUDED FROM RAISING THIS TYPE OF ISSUE IF YOU STATE THAT IT SHOULD BE HANDLED IN A RULE --

>> BUT IN THIS CASE IF WE DON'T --

>> BUT WE DON'T HAVE THAT IN THIS CASE.

THE SECOND OF ALL IS THE DEFAULT LAW IS YOU ARE ENTITLED TO ALL CREDIT FOR TIME SERVED UNLESS IT'S WAIVED.

AND SO WE DON'T HAVE AN ISSUE OF WHAT WE'RE LOOKING AT HERE IS WAS THERE A WAIVER.

SO A DEFENDANT IS ENTITLED TO IT UNLESS IT'S WAIVED, AND IN THAT SITUATION --

>> BUT IF HE DIDN'T WAIVE IT AND GOES, I WOULDN'T HAVE ENTERED THIS PLEA IF I HAD KNOWN I HAD ANOTHER 120 DAYS --

>> RIGHT.

>> BECAUSE IT STRIKES ME, I WAS THINKING ABOUT THIS BENEFIT OF THE BARGAIN.

IF THE STATE KNOWS OR IS CAPABLE OF KNOWING HOW MUCH TIME IS SERVED, IT'S REALLY A KIND OF A PLEA AGREEMENT THAT BARGAINS FOR AN AMOUNT OF TIME THAT'S KNOWN.

I MEAN, ALL THEY'VE GOT TO DO IS INCREASE THE SENTENCE TO FOUR YEARS AND, YOU KNOW, 120 DAYS TO -- AND THEN GIVE THEM CREDIT TO GET TO THE SAME POINT.

>> CORRECT.

>> SO I DON'T REALLY SEE THIS AS ONE OF THESE THINGS WHERE SOMEHOW THE DEFENDANT'S GETTING A WINDFALL.

I'M JUST SUSPECTING IT'S HARD TO FIGURE OUT THE AMOUNT OF TIME. JUST WHAT JUSTICE LABARGA SAID, WE'RE GOING TO GIVE IT FROM A SET DATE AND THAT WAY WE DON'T HAVE ANY MISUNDERSTANDING, AND THIS IS GOING TO BE YOUR SENTENCE.

I THINK IT GOES TO THE KNOWING AND VOLUNTARY NATURE OF THE PLEA WHICH THEN THE REMEDY IS TO WITHDRAW THE PLEA, AND IF THE STATE GOES, WELL, OKAY, WE'D ONLY AGREE TO THE SAME SENTENCE BUT WITH ADDITIONAL, YOU KNOW, WE'RE GOING TO ADD ON THE TIME

TO THE SENTENCE, AND THEN HE CAN GET MORE CREDIT.

>> OKAY.

WELL, FIRST OF ALL, PROSPECTIVELY WHAT WE CAN DO TO PREVENT THESE SITUATIONS FROM HAPPENING IS TO INSURE THAT THERE IS A KNOWING AND VOLUNTARY WAIVER TO INSURE THAT THE TRIAL COURT SAYS DURING THE PLEA COLLOQUY TO THE DEFENDANT, YOU'RE AGREEING TO CREDIT FOR TIME SERVED FROM THE DATE OF YOUR LAST ARREST.

ACTUALLY YOU'RE ENTITLED TO ALL THE CREDIT FOR TIME SERVED THAT YOU'VE SERVED --

>> AND --

[INAUDIBLE]

THE PLEA SHEET THAT THE DEFENDANT SIGNED IN CAPITAL, BOLD LETTERS THE STATEMENT, "I AM WAIVING ALL OTHER CREDIT FOR TIME ALREADY SERVED."

>> YES.

>> WOULD THAT SUFFICE?

>> THAT WOULD BE A LOT CLOSER TO GETTING WHERE WE WOULD NEED TO BE.

IN THIS SITUATION, YOU KNOW, IF WE'RE TALKING ABOUT WHAT IS THE BEST FOR THIS COURT TO SUGGEST THAT TRIAL COURT SHOULD DO, IF YOU ALSO LOOK AT THE ROEDICK'S OPINION OUT OF THE THIRD DISTRICT COURT OF APPEALS, IN THAT CASE --

>> IF YOU COULD JUST DO AS JUSTICE PARIENTE SUGGESTED, THIS IS THE NET TIME YOU'LL SERVE. PERIOD.

THIS IS OUR BARGAIN.

>> YES.

AND THEN JUST SAY I'M WAIVING
ALL OTHER CREDIT FOR TIME
SERVED.

WHAT THE COURT IN ROEDICK
SUGGESTED IN '05 IS IT MAY BE
PRUDENT FOR THE TRIAL COURT TO
CONSIDER IN THE COLLOQUY A
QUESTION TO THE DEFENDANT, YOU
KNOW, THAT YOU'RE EXPRESSLY
ACCEPTING THIS PLEA, YOU'RE
ACKNOWLEDGING IT INCLUDES SOME
OR ALL OTHER CREDIT FOR TIME
SERVED THAT YOU'RE ENTITLED TO.
AND IF THERE IS A WRITTEN CREDIT
FOR TIME SERVED AGREEMENT
BECAUSE NOT ALL CASES INCLUDE A
WRITTEN CREDIT FOR TIME SERVED
AGREEMENT, TO MAKE SURE ON THE
WRITTEN AGREEMENT IT ALSO STATES
AS IT DID ON THE WHITE CASE IN
BOLD, CAPITAL LETTERS, I AM
ENTITLED TO TIME SERVED, I AM
WAIVING --

>> HOW DOES THAT RESOLVE THE
BOOT CAMP ISSUE?

>> FOR MR. JOHNSON?

>> HOW DOES IT RESOLVE A CASE IN
WHICH THE POOR SLOB STANDS
BEFORE A JUDGE AND SAYS I'M
GIVING IT UP, YET DOESN'T KNOW
THAT HE OR SHE IS ENTITLED TO
ADDITIONAL TIME?

>> WELL, THEN --

>> THAT'S WHERE MY CONCERN IS.

>> WELL, THEN THE COLLOQUY
SHOULD SAY, YOU KNOW, ANY
ADDITIONAL TIME, AND THIS MAY BE
TIME SERVED IN COUNTY, TIME
SERVED IN OTHER COUNTIES, IT MAY
BE TIME SERVED IN BOOT CAMP.
AND THEN YOU ALSO HAVE TO

ADDRESS THE ISSUE OF PRISON CREDIT BECAUSE THERE HAVE BEEN SOME CASES WHERE DEFENDANTS WAIVED JAIL CREDIT, AND THE DEFENDANT THEN GETS TO PRISON, AND THE PRISON SYSTEM SAYS, OH, WELL, YOU'VE WAIVED YOUR PRISON CREDIT ALSO.

SO ANY TYPE OF COLLOQUY WOULD ALSO HAVE TO ADDRESS PRISON CREDIT.

I'M WAIVING MY JAIL CREDIT, BUT I'M NOT WAIVING MY PRISON CREDIT.

>> CAN I -- HAVE WE MADE ANY PROGRESS?

JUSTICE LEWIS ASKED ABOUT THE JIS SYSTEM.

I HOPE -- I DON'T KNOW IF YOU'RE FAMILIAR WITH IT, BUT IT'S A WAY TO CAPTURE DATABASES.

>> YES.

>> THERE WAS A SUGGESTION AT ONE TIME THAT THE DEPARTMENT OF CORRECTIONS REALLY IS IN THE BEST POSITION TO KEEP ON GATHERING AND HAVING THIS INFORMATION.

IT JUST SEEMS TO ME THAT ALL THE STATE, THE COURT SYSTEM, PUBLIC DEFENDERS, THE INDIVIDUALS, YOU KNOW, THAT HAVING AN ACCURATE ACCOUNTING SHOULDN'T BE UP TO -- I MEAN, THE PUBLIC DEFENDER MAY BE IN THE WORST POSITION TO HAVE THIS INFORMATION.

THE CLIENT DOESN'T NECESSARILY KEEP TRACK.

SO DO WE KNOW OF ANY SYSTEM THAT EXISTS AROUND THE STATE WHERE THEY CAN GET ACCURATE INFORMATION ON THE NUMBER OF

DAYS?

I MEAN, IT'S JUST, IT'S A
STRAIGHT COMPUTATION.

>> I DON'T KNOW, YOUR HONOR.
AND ONE OF THE PROBLEMS AT LEAST
IN MIAMI-DADE IS EVERY TIME THAT
YOU REENTER A JAIL YOU'RE GIVEN
A NEW JAIL CARD.

SO IF YOU ENTERED, IF YOUR
SENTENCE WAS IN 2000 AND YOU
SERVED, YOU KNOW, SIX MONTHS AND
THEN YOU WERE ON PROBATION AND
YOU WERE FINED FOR FIVE YEARS,
WHEN YOU COME BACK AND YOU
REENTER THE JAIL, YOU'RE GIVEN A
NEW JAIL NUMBER, AND YOU HAVE A
NEW JAIL CARD.

SO OFTEN IN THESE CASES -- YES,
YOUR HONOR.

>> WHAT I JUST THINK IS
IMPORTANT, AGAIN, WHAT I SAID
BEFORE, THE PERSON THAT GETS
ARRESTED TODAY AND GOES TO JAIL
AND GETS OUT IN 30 DAYS ON BOND
AND THEN SIX MONTHS LATER COMES
IN FOR A PLEA, THE CLERK CAN
JUST LOOK AT THE FILE AND SEE
HOW MUCH TIME HE SERVED.
THOSE ARE EASY CASES.

>> YES.

>> THE DIFFICULT CASES ARE A GUY
WHO'S BEEN ON PROBATION FOR 20
YEARS.

IN AND OUT, IN AND OUT DURING
THOSE 20 YEARS.

>> YES.

>> DIFFERENT SYSTEMS OF KEEPING
RECORDS THROUGHOUT THOSE 20
YEARS.

>> YES.

>> MAYBE, PERHAPS, IN AND OUT OF
JAIL IN DIFFERENT COUNTIES.

>> YES.

>> IT IS IMPOSSIBLE TO GET THAT INFORMATION SO WE CAN TELL THIS GUY, LISTEN, ALL TOGETHER YOU HAVE SERVED 375 DAYS. YOU'RE WAIVING THAT, AND WE'RE STARTING CREDIT FROM TODAY ONLY. IT IS IMPOSSIBLE TO DO THAT IN THIS TYPE OF CASES. SO WHAT THE STATE MAY DO IN THOSE KIND OF CASES IS JUST THROW THEIR HANDS UP IN THE AIR. IT'S JUST EASIER TO TRY THAT.

>> I'M NOT SURE --

>> I'M NOT SURE THAT DEFENSE WANTS THAT.

>> -- THAT THAT WOULD BE THE STATE REMEDY.

THERE ARE A COUPLE OF THINGS. IDEALLY, WHAT CAN WE ASK FOR NOW?

PERHAPS THIS COURT CAN REFER AGAIN TO THE RULES COMMITTEE BEFORE -- THERE WAS A CRIMINAL REPEALS REFORM COMMITTEE AND THE SUGGESTION ABOUT WHAT ARE WE GOING TO DO ABOUT THIS CREDIT FOR TIME SERVED ISSUE.

THE LAST TIME THAT HAPPENED WAS 1999, AND FROM WHAT I FOUND OUT NOTHING REALLY HAPPENED WITH THAT.

THE COURT LOOKED AT 3700 AND AMENDED THAT TO SAY, WELL, IF THE COURT KNOWS, PUT JAIL CREDIT IN THE SENTENCE.

NOW --

>> I MEAN, THAT'S A PROBLEM WHETHER THERE'S A PLEA AGREEMENT OR NOT.

>> CORRECT.

>> THOSE THAT ARE NOT ENTERED AS

A RESULT OF PLEAS AND, AGAIN,
JUST AS JUSTICE LABARGA SAID,
IT'S THE SAME PROBLEM IF THEY'RE
SENTENCING, THEY DON'T HAVE AN
ACCURATE NUMBER.

AND THEN ON THOSE CASES THE
PERSON CAN COME BACK AND BACK
AGAIN, SO IT BEHOOVES EVERYBODY
TO GET THIS RIGHT.

>> THAT'S CORRECT.

NOW, THAT'S THE IDEAL SITUATION
AND PROSPECTIVELY IF WE CAN
HANDLE THAT IN THE SITUATION
JUSTICE LABARGA SPEAKS ABOUT,
PERHAPS IT WOULD BE APPROPRIATE
IF THE TRIAL COURT SAYS, LISTEN,
YOU'VE BEEN ON PROBATION FOR 15
YEARS.

OBVIOUSLY, YOU'VE BEEN TAKEN IN
AND OUT OF JAILS, YOU'RE
ENTITLED TO CREDIT FOR ALL THAT
TIME SERVED.

THE STATE'S OFFER IS YOU
ACTUALLY SERVE TEN YEARS OF TIME
WITH ONLY ONE YEAR OF CREDIT FOR
TIME SERVED.

SO ANY OF THOSE OTHER PERIODS OF
CREDIT FOR TIME SERVED YOU'RE
NOT GOING TO BE ELIGIBLE FOR.

>> WITHOUT GIVING A SPECIFIC
NUMBER.

>> RIGHT.

THAT WOULD SATISFY THE
REQUIREMENT THAT THERE BE A
KNOWING AND VOLUNTARY --

>> IT STILL DOESN'T ANSWER WHAT
JUSTICE CANADY, I THINK, HAS
BROUGHT UP A GOOD POINT, THAT AT
THE MOST THESE CLAIMS CAN BE
BROUGHT IN A TWO-YEAR PERIOD AS
AN INVOLUNTARY PLEA, NOT AS
SOMETHING UNDER 3800 THAT IS

COGNIZABLE --

>> AND I WOULD STRONGLY
DISAGREE --

>> YOU DON'T AGREE WITH THAT.

[LAUGHTER]

>> NOW, WHAT I MAY POINT THIS
COURT -- SO BECAUSE THESE CASES
WERE STATE, AND IN THE CASE OF
RIVERA V. STATE THERE'S A LITTLE
BIT OF A DIFFERENT CASE WHERE
THE DEFENDANT WOULD HAVE BEEN --
EVERYBODY CONTEMPLATED THE
DEFENDANT SERVING ABOUT TWO AND
A HALF YEARS.

WITH THE APPLICATION OF THE
CREDIT, HE WOULD HAVE BEEN OUT
IN 10 OR 11 MONTHS.

THERE WAS A QUESTION THERE,
WELL, WHAT DO WE DO IN THAT
SITUATION?

THE THIRD DISTRICT POINTED IN A
DIFFERENT RESULT.

IN THAT CASE WE MORE FULLY
DELVED INTO THE QUESTION OF PLEA
BARGAINING AND WHAT IS THE
APPROPRIATE REMEDY.

IN CONTRACT LAW WE RAISED THE
ARGUMENT THAT UNDER CONTRACT LAW
THE STATE IS NOT ABLE TO
WITHDRAW THE PLEA, AND I KNOW
THAT STATE ATTORNEY -- THE
ATTORNEY GENERAL MAY NOT BE
FAMILIAR WITH THOSE CASES.

I DID BRIEF RIVERA, SO I'M
FAMILIAR WITH IT, BUT THE COURT
MAY WANT TO LOOK AT THOSE
ARGUMENTS ON THE QUESTION OF,
YOU KNOW, WHETHER THERE SHOULD
BE A 3800 OR 3850 AND, IF
NECESSARY, YOU KNOW, I'D BE
HAPPY TO BRIEF THOSE.

>> YOU SAY THAT WASN'T FULLY

DEVELOPED IN THIS CASE?

>> NO.

IN THIS CASE, YOU KNOW, IT WAS NOT FULLY DEVELOPED AS WE LOOK AT CONTRACT LAW.

IN RIVERA WE LOOKED AT THE STATEMENT OF CONTRACTS AND WHO BEARS THE BURDEN --

>> YOU SEE, WHAT YOU SAID IN THE END IS A DEFENDANT IS AGREEING TO A CERTAIN SENTENCE.

>> YES.

>> EVERYONE'S GIVING UP SOMETHING.

SO IT DOES SEEM TO ME THAT THIS ANSWER IS THIS GENERAL IDEA, LISTEN, YOU'VE BEEN IN AND OUT OF -- ON AND OFF OF PROBATION, NO ONE KNOWS THE EXACT NUMBER OF DAYS, YOU KNOW THERE ARE DAYS, BUT WHAT YOU'RE AGREEING TO IS A SENTENCE THAT GIVES YOU THIS MUCH TIME INCARCERATED. THAT'S WHAT YOU'RE GETTING.

>> YES.

AS LONG AS THE DEFENDANT HAS KNOWLEDGE THAT HE SERVED PRIOR TIME, THAT HE --

>> WELL, HE KNOWS HE SERVED PRIOR TIME.

[LAUGHTER]

>> BUT YOU DON'T KNOW WHETHER IT QUALIFIES.

IT GOES BACK TO THE BOOT CAMP.

>> THAT'S RIGHT.

>> IF JUSTICE PARIENTE'S STATEMENT IS CORRECT, THEN ALL OF THESE ARE FINE BECAUSE THEY GIVE YOU DATES, BUT THEY DON'T ANSWER THE QUESTION, DID YOU KNOW THAT YOU WERE ENTITLED TO MORE THAN THAT?

>> THAT'S WHAT'S MISSING.
DO YOU KNOW YOU HAVE PRIOR TIME
THAT'S ELIGIBLE?

THAT WOULD BE THE BOOT CAMP.
THAT YOU ARE ENTITLED TO RECEIVE
THAT TIME AND THAT YOU
VOLUNTARILY RELINQUISH THAT
TIME?

>> AND WITH OUR HELP, YOU HAVE
USED MORE THAN YOUR 30 MINUTES.

[LAUGHTER]

>> THANK YOU, YOUR HONOR.

>> THANK YOU.

>> FIRST OF ALL, JUSTICE LEWIS,
IN TERMS OF WHETHER A PLEA
LIFTING SATISFIES THE QUESTION
OF WHETHER OR NOT THE DEFENDANT
HAS SUFFICIENT KNOWLEDGE TO
WEIGH, I WOULD SUBMIT TO YOU
THAT THAT JUST OPENS A PANDORA'S
BOX BECAUSE YOU'RE NOT TALKING
ABOUT BOOT CAMP, YOU'RE ALSO
TALKING ABOUT PRISON TIME
CREDIT, YOU'RE ALSO TALKING
ABOUT TIME WHEN A PERSON IS
SPENDING, OR IS COMMITTED WHILE
HIS OR HER COMPETENCY'S BEING
DETERMINED.

SO YOU'VE GOT A WIDE VARIETY OF
COMMITMENT TIME WHERE CREDIT CAN
BE ARGUED BUT NOT SUFFICIENTLY
ADDRESSED AT THE TIME EITHER BY
COUNSEL, BY THE COURT OR BY THE
STATE ATTORNEY.

>> BUT SHOULDN'T THE
OBLIGATION -- LET ME GO TO THIS
SITUATION BECAUSE WE DON'T HAVE
BOOT CAMP.

WE DON'T KNOW ON THIS RECORD
WHETHER THE STATE WAS AWARE THAT
IT WAS ONE OF THESE, THAT IT WAS
A MISUNDERSTANDING,

MISCALCULATION OR A WAIVER,
CORRECT?

IS THAT TRUE?

>> THAT'S THE ARGUMENT BEING
ADVANCED, YES.

>> AND THAT'S WHAT I THINK THE
POINT BEING THAT WHEN YOU HAVE
THE INTENT OF SOMETHING WHICH
SAYS YOU'RE GETTING CREDIT FROM
A SPECIFIC DATE IS TO CONVEY TO
THEM, THAT DEFENDANT WHO MAY BE
A VERY YOUNG DEFENDANT, THAT YOU
ARE ENTITLED TO OTHER CREDIT,
BUT IT'S TOO COMPLICATED RIGHT
NOW OR IT'S TOO MUCH TIME OR
WHATEVER.

AND THIS IS THE TIME YOU'RE
GOING TO SERVE.

THAT THAT SEEMS TO BE WHAT THE
PROBLEM IS IN THE THIRD
DISTRICT'S APPROACH WHICH IS
ASSUMING THAT THE DEFENDANT MUST
KNOW THAT HE OR SHE WAS WAIVING
ALL THIS ADDITIONAL TIME.

SO HOW DO YOU, HOW DO YOU REMEDY
THAT?

>> SURE.

THE CONCEPT OF WAIVER IS VERY
COMMON.

IT'S NOT REALLY UNIQUE TO THE
DEFENDANTS IN THIS CASE OR
PEOPLE BEING IN PRISON.

YOU AND I AND THE PUBLIC OUT
THERE WAIVE OUR RIGHTS
CONSTANTLY.

>> BUT WE ALWAYS, OF ALL THE
THINGS THAT WE'VE TAKEN IN THIS
STATE THIS THE COURT SYSTEM,
CREDIT FOR TIME SERVED, THE IDEA
THAT SOMEBODY SHOULDN'T SERVE
ONE DAY MORE --

>> CORRECT.

>> -- THAN THEY'RE LEGALLY
REQUIRED TO DO.

>> AND I SUBMIT TO YOU FOR THOSE
DEFENDANTS WHO SERVE TIME
AWAITING DISPOSITION GOES TO
TRIAL AND GET A CREDIT, THEY
DON'T HAVE ANY CREDIT COMING TO
THEM BECAUSE CREDIT CAN ONLY BE
APPLIED TO THE CASE THAT CARRIES
AN INCARCERATED SENTENCE.

FOR THOSE PEOPLE WHO ARE FOUND
INNOCENT, THEY DON'T HAVE ANY
REDRESS FOR THE TIME THEY SPENT.
THE STATUTE WAS ENACTED TO
ADDRESS THE SITUATION OF PEOPLE
WITH LIMITED FINANCIAL MEANS SIT
IN JAIL LONGER THAN THOSE WHO
HAVE.

AND SO WITH THAT IN MIND, NOT
ALL STATES OFFER CREDIT FOR TIME
SERVED.

AND REALLY WHEN YOU THINK ABOUT
THE CONTEXT OF VIOLATION OF
PROBATION, THE CREDIT FOR TIME
SERVED GIVES THE DEFENDANT
LEVERAGE, A LEVERAGE THAT HE
WOULD NOT HAVE IN THE FIRST TIME
SENTENCING.

BASICALLY, THE JUDGE WILL JUST
ANNOUNCE THE SENTENCE AND IMPOSE
A CERTAIN AMOUNT OF TIME.

IN --

[INAUDIBLE]

THE PERSON COMES IN, AND HE'S
BEING PRESENTED WITH OFFERS.
THE OFFER WOULD BE I GIVE YOU
THIS MUCH TIME NET, AND I WOULD
SUBMIT TO YOU, AS JUSTICE
LABARGA HAS POINTED TO THE
REALITY OF TRIAL, THE PROSECUTOR
WOULD BE REMISS TO ENTER INTO A
DEAL NOT KNOWING WHAT THE NET

TIME IS.

YOU KNOW, THE PARTIES OF THE --
THE CONTRACT HERE HAS TO BE
INFORMED OF THE BASIS OF THEIR
BARGAIN.

>> BUT THE QUESTION REALLY,
THOUGH, BECOMES HOW DO WE -- ANY
COURT THAT'S REVIEWING THIS
KNOWS THAT THIS WAS A GOOD
BARGAIN BECAUSE THE DEFENDANT
KNEW AND UNDERSTOOD EXACTLY WHAT
HE WAS, WHAT HE OR SHE WAS
BARGAINING FOR.

>> SURE.

YES.

AND THE STATE SUBMITS TO YOU
THAT THE VERY FORM THAT
MR. JOYNER AND MR. JOHNSON FIND
IN THIS CASE BEING AIDED BY
COUNSEL IS EVIDENCE OF THAT
INTENT.

>> BUT IT'S NOT.

BUT, AGAIN, IT'S NOT.

RESPECTFULLY.

IF THEY HAD STAYED WITH THE FORM
AND NOT STARTED WRITING
HANDWRITTEN NOTES ON IT, I AGREE
WITH YOU.

ALL, NONE, WHATEVER IT WAS.

YET THEY JUST STARTED ENTERING
DATES, AND WHETHER THOSE ARE THE
CORRECT DATES OR NOT IT DOESN'T
ASSURE YOU IF I'M STANDING
BEFORE YOU AS THE JUDGE THAT I
KNOW THAT I'M ENTITLED TO
SOMETHING MORE OR NOT.

YOU CAN'T DETERMINE -- I MEAN,
YOU'VE JUST SAID IT.

YOU CAN'T DETERMINE WHEN YOU
WAIVE SOMETHING UNTIL YOU
DETERMINE IF YOU KNEW IT.

>> YES.

>> BUT JUST BY SEEING IT ON THE PAPER, IT JUST GIVES YOU TWO DAYS.

>> CORRECT.

>> BUT THE INTENT OF THE PARTIES IN ENTERING INTO THE BARGAIN IS THAT THE DEFENDANT WILL GIVE UP SOMETHING OF AN UNCERTAIN NATURE.

>> BUT, YOU KNOW, SEE, BUT THAT'S THE UNCERTAINTY USUALLY IS THAT IF I GO TO TRIAL, I'M GOING TO GET -- I DON'T KNOW WHAT KIND OF SENTENCE I'M GOING TO GET.

>> IT COULD BE --

[INAUDIBLE]

EXPOSURE.

>> BUT HERE BECAUSE IT'S COMPLICATED -- NOT FOR THE TRIAL JUDGE, BUT MAYBE THE DEPARTMENT OF CORRECTIONS OR STATE -- WELL, WE DON'T WANT TO WASTE OUR TIME TRYING TO FIGURE OUT EXACTLY WHAT THIS PERSON'S ENTITLED TO. SO IT'S A LITTLE DIFFERENT THAN THE UNCERTAINTY OF TRIAL AND GOING -- AND THAT'S WHY I'M KIND OF, MY QUESTION REALLY IS FROM THE STATE'S POINT OF VIEW WHEN THEY ENTER THESE PLEA AGREEMENTS WHERE THEY GIVE CREDIT FOR TIME SERVED FROM A DATE CERTAIN, ARE THEY DOING IT IN ORDER TO, BECAUSE IT'S TOO HARD FOR THEM TO FIGURE OUT WHAT THE TIME IS SERVED AND THEY SAY THIS IS JUST BETTER?

WE'LL ALL KNOW WHAT THE TIME IS? OR ARE THEY REALLY SAYING, WELL, I WANT -- HOW MUCH TIME DID THIS GUY HAVE IN BOOT CAMP, 120 DAYS?

>> 120 DAYS.

>> I'M GOING TO GIVE THE SENTENCE OF FOUR YEARS, BUT I'M GOING TO HAVE THEM WAIVE THE 120 DAYS.

I MEAN, REALLY, THEY COULD ACCOMPLISH THE SAME THING --

>> CORRECT.

>> AND HE GETS CREDIT.

>> THAT IS CORRECT, JUDGE.

>> SO IF YOU DON'T KNOW THE CREDIT, YOU REALLY DON'T KNOW WHAT THE NET IS THAT YOU, THAT IS FAIR.

>> BUT IT'S SUBJECT TO, BUT IT'S SUBJECT TO CONTRACT LAW. THE PARTIES MAY NOT KNOW WHAT THE EXACT NUMBER IS, BUT THEY ARE WILLING TO FORGO THAT KIND OF --

>> BUT WHY DON'T THEY, WHAT I'M ASKING YOU.

THIS IS NOT ROCKET SCIENCE.

>> IT'S NOT ROCKET SCIENCE.

>> IT'S A BUREAUCRATIC NIGHTMARE, BUT IT'S NOT ROCKET SCIENCE.

IT'S A CALCULATION OF DAYS.

>> THE PRACTICALITY OF IT IS THAT YOU WOULD HAVE TO CONTACT THE JAIL AND EACH OF THE JAILS THE DEFENDANT HAD EVER SERVED TIME WOULD HAVE TO GET BACK TO YOU ABOUT THE NUMBER --

>> BUT THE OBLIGATION THAT THE STATE HAS, THE STATE WHICH HAS INCARCERATED THIS DEFENDANT TO FIGURE IT OUT OR SAY, LISTEN, WE KNOW YOU'VE BEEN IN A LOT OF JAILS, AND YOU'VE BEEN IN A LOT OF DIFFERENT PLACES.

SO -- BUT WE DON'T HAVE THE TIME

TO FIGURE IT OUT, SO WE JUST WANT YOU TO KNOW THAT WE'RE OFFERING YOU A NET DEAL. AND THERE'S PROBABLY OTHER TIME YOU'RE ENTITLED TO, BUT JUST IN THE INTEREST OF YOUR CERTAINTY AND OURS AND PREVENTING ANY FUTURE LITIGATION --

>> CORRECT.

>> -- LET'S JUST SET IT AT THIS DATE.

>> CORRECT.

>> THAT'S ALL YOU'D HAVE TO SHOW.

>> THAT'S CORRECT.

>> THE DEAL BEING OFFERED IS GOING TO BE INFLATED BY THE EXACT SAME NUMBER OF CREDITS AS ANYBODY WHO HAS DONE TRIAL WORK KNOWS, THE CALENDAR IS QUITE -- YOU HAVE PEOPLE COMING TO COURT WITH THE IDEA THEY MAY GO TO HEARING, AND AT THE LAST MINUTE THEY'RE TALKING ABOUT DEALS. AND TO ME THE TIME PRESSURE IS THERE, ADMITTEDLY, BUT THE TIME PRESSURE IS ACTUALLY A MOTIVATION FOR A DEFENDANT, YOU KNOW, FOR THE DEFENDANT TO LOOK AT HIS OPTIONS.

AND I'M GOING BACK TO THE FORM BECAUSE THE FORM DOES GIVE YOU A VERY GOOD IDEA AS TO WHETHER OR NOT THE DEFENDANT HAD SOME INKLING OF WHAT HE'S GIVING UP.

>> THAT'S WHAT I HAVE A DIFFICULT TIME WITH.

IF THAT WERE THE CASE, THEN WE WOULDN'T BE HERE.

BECAUSE YOU'RE ALWAYS TALKING ABOUT WAIVER.

MAYBE, YOU KNOW, THE PROBLEM IS

WE START WITH A FUNDAMENTAL --
[INAUDIBLE]

>> YES.

>> MAYBE THE RULE OF LAW, AND
THAT'S BASED ON THE CASE LAW OF
FLORIDA.

MAYBE THIS COURT OUGHT TO SAY
THAT IN PLEA DEALS DOESN'T
APPLY, AND IT'S ONLY WHAT'S
STATED IN THE PLEA.

MAYBE THAT'S THE ANSWER TO GET
RID OF ALL THIS CONTROVERSY,
BUT, YOU KNOW, WE CAN PLAY WORD
GAMES ALL DAY, BUT THE CASE LAW
AS YOU SIT AND READ IT, IT
DOESN'T ANSWER THOSE QUESTIONS.
SO IF WE DON'T TALK ABOUT
WAIVER, THAT'S FINE.

>> YOU'RE ABSOLUTELY RIGHT.

>> LET'S FORGET ALL THIS STUFF.

>> YOU'RE ABSOLUTELY RIGHT,
JUSTICE LEWIS.

YOU KNOW, REALLY AT THE END OF
THE DISCUSSION YOU REALIZE THERE
ISN'T ANY FELONY ISSUE THAT HAS
TO BE RESOLVED BECAUSE WHATEVER
QUESTION YOU'RE ASKING, THERE'S
AN ANSWER.

AND WITH REGARDS TO WHAT HAS
BEEN DONE SINCE 1999, THE
LOGISTICS OF IT, PERHAPS IT'S
NOT SO DIFFICULT, BUT IT'S
PULLING EVERYBODY TOGETHER AND
BEING ON THE SAME PAGE.

YOU STILL HAVE THE PROBLEM WITH
PEOPLE INPUTTING DATA ON JAIL
CREDITS AND DEPOSITING ONE PLACE
AND PEOPLE CAN DRAW FOR IT.

>> HAS THERE BEEN SOMETHING DONE
SINCE '99?

>> NOT THAT I KNOW OF.

>> SO WHAT WE'RE REALLY SAYING

IS THAT THE COURT REQUESTED THAT SOMETHING BE DONE, THAT THE STATE WITH ALL THESE COMPUTER SYSTEMS THAT THE STATE HAS HASN'T DONE SOMETHING THAT, AGAIN, TO ME IT HELPS JUDGES AND LITIGANTS NOT JUST IN THESE PLEA CASES, BUT IN THESE OTHER JAIL CASES WHERE THEY CAN ASK FOR 3800 RELIEF AT ANY TIME.

IF WE COULD GET THAT DONE, WE WOULDN'T HAVE TO WORRY ABOUT ALL OF THIS OTHER COLLOQUY.

>> AND I ASSURE YOU, WHEN YOU GET THAT DONE, THE PLEA BEING OFFERED IS GOING TO BE VERY DIFFERENT.

BECAUSE AS I INDICATED, YOU KNOW, THE HIGHLIGHT OF THESE CASES IS WHAT THE INTENT OF THE PARTIES ARE.

>> LET ME, LET ME TAKE YOU BACK TO THE SUBJECT I RAISED EARLIER WHICH IS THE SIGNIFICANCE OF THE FACT THAT THIS IS PRESENTED AS A 3800A.

NOW, IS IT CORRECT THAT THE DEFENDANT HAS THE BURDEN OF ESTABLISHING THE CLEAR ENTITLEMENT TO RELIEF UNDER 3800A?

>> ON THE FACE OF THE RECORD.

>> ON THE FACE OF THE RECORD.

AND ISN'T IT ALSO THE CASE THAT WHAT THE DEFENDANT'S LAWYER TOLD HIM ABOUT ALL THE COMPLEXITIES OF WHAT HE WAS ENTITLED TO OR NOT ENTITLED TO IS NOT SOMETHING THAT CAN BE DETERMINED ON THE FACE OF THE RECORD?

IT COULD BE THAT IT WAS LAID OUT IN SOME TYPE OF COLLOQUY --

>> CORRECT.
>> BUT YOU COULD HAVE A
DEFENDANT THAT KNEW EXACTLY WHAT
HE HAD AND EXACTLY WHAT HE WAS
GIVING UP --
>> AND STILL MAKES THE SAME
CLAIM.
>> -- AND IT WOULD STILL BE
UNDER THE THEORY THE PUBLIC
DEFENDER WAS HERE GETTING
RELIEF --
>> BECAUSE THE DOCUMENT DOESN'T
SAY TO.
>> -- BECAUSE THERE'S NOT SOME
DOCUMENT THAT REFLECTS THAT.
ISN'T THAT INCONSISTENT, THE
APPROACH OF THE PUBLIC DEFENDER
HERE, INCONSISTENT WITH THE
BASIC FRAMEWORK WE HAVE UNDER
3800A WHICH PLACES THE BURDEN ON
THE DEFENDANT?
>> ABSOLUTELY.
>> OR YOU FILE THE PLEA AND THE
TRANSCRIPT OF THE HEARING, AND
IT SHOWS ON ITS FACE THAT THE
DEFENDANT DID NOT KNOW THAT THEY
WERE ENTITLED TO MORE CREDIT?
SHOWS ON THE FACE OF IT.
BECOMES AN ILLEGAL SENTENCE.
>> AND, AND IF THAT IS THE CASE
BEING PRESENTED TO THE DISTRICT
COURT, THEY WOULD HAVE THE POWER
TO SEND IT BACK AND TO APPLY THE
CREDIT.
>> IT'S THE -- WE CAN GET
INVOLVED IN TRYING TO APPLY ALL
THESE RULES, AND THEN YOU BECOME
RULE-ORIENTED RATHER THAN
SOLVING THE PROBLEM.
>> YES.
>> AND THAT'S WHAT WE NEED TO DO
HERE TODAY TO SOLVE THIS

PROBLEM, AND I THINK THE STATE NEEDS TO BE PART OF THE ANSWER. I UNDERSTAND IT'S, I MEAN, NEXT TO IMPOSSIBLE TO DETERMINE IN EVERY CASE EXACTLY WHAT THE CREDIT IS.

>> YES, AND I DON'T --

>> STANDING THERE IN THE COURTROOM, IT'S DONE.

>> JUSTICE LEWIS, AND I DON'T KNOW THAT IT IS SUCH A, IT IS SUCH A ISSUE THAT WOULD CAUSE YOU TO LIE AWAKE AT NIGHT.

WITH REGARDS TO WHAT THIS COURT HAS DONE, FOR EXAMPLE, AND I'LL GIVE YOU ONE EXAMPLE, RULE 3.260 REQUIRES A WRITTEN WAIVER FOR JURY TRIAL.

IT'S GROUNDED IN THE CONSTITUTION.

AND IN CASES BEING, YOU KNOW, THAT CAME UP IN FRONT OF YOU FOR REVIEW, THE DEFENDANT WOULD SAY, I SIGNED THE WAIVER, BUT THERE'S NO PLEA COLLOQUY OR NO COLLOQUY ON THE RECORD THAT SHOWS THAT I ACTUALLY UNDERSTOOD WHAT I SIGNED.

AND THIS VERY SAME COURTHOUSE SAID, SO WHAT?

>> YOUR SUGGESTION IS GET RID OF THIS WAIVER CONCEPT.

I MEAN, IT'S -- YOU DON'T EVER DISCUSS IT, IT'S GONE.

THAT PAPER SPEAKS FOR ITSELF.

>> ON THIS FORM ISN'T THAT AN OPTION UNDER THREE, NO CREDIT FOR TIME SERVED, CHECK IT?

THAT'S IT AND YOU DON'T HAVE THIS --

>> JUSTICE PERRY, WHAT IT DOES IS THAT IT'S A STAND-ALONE

DOCUMENT, DOUBLE-SPACED,
TYPEWRITTEN IN VERY PLAIN
LANGUAGE, AND WE CAN PLAY WITH
WORDS, AND I SUBMIT TO THIS
COURT IT HAS NEVER BEEN ABOUT
MAGIC WORDS.

IF THE PERSON READS IT AND
UNDERSTANDS IT, THEN THE PURPOSE
HAS BEEN ACHIEVED.

BUT THE FIRST PART TALKS ABOUT
THE ACTION OF THE DEFENDANT, "I
AM HEREBY ADMITTING TO VIOLATION
OF PROBATION."

AND THEN THE TRANSITION PHRASE
IS WRITTEN IN FIRST PERSON
VOICE, "I UNDERSTAND AND AGREE
THAT AS PART OF THIS PLEA
BARGAIN I WILL RECEIVE THE
FOLLOWING CREDIT FOR TIME
SERVED."

THE COURT UNDERSTANDS ANY --
[INAUDIBLE]

COMPORTS WITH THE STATUTE
MANDATE BECAUSE THE SENTENCING
COURT IS MANDATED TO ALLOW
CREDIT.

SO IF THE SENTENCING COURT
GIVES, THEN THE DEFENDANT
RECEIVES.

>> SO YOUR ARGUMENT, REALLY, IS
IF YOU HAVE THIS FORM AND IT HAS
BEEN SIGNED BY THE DEFENDANT --
>> AND HIS ATTORNEY.

>> -- THE JUDGMENT SHOULD BE
THAT THE DEFENDANT KNOWINGLY AND
VOLUNTARILY WAIVED ANY
ADDITIONAL CREDIT.

>> ABSOLUTELY.

>> DO YOU AGREE -- HAVE ANY OF
THESE CASES -- BECAUSE I DIDN'T
REALLY LOOK AT ANY OF THE CASES
BEFORE US WHETHER IT WAS

APPROPRIATE FOR 3800A VERSUS
3850 --

>> THE STATE HAS ADDRESSED THAT
IN ITS BRIEFING, YOUR HONOR.

>> OKAY.

>> IN FACT, WE MOVED TO DISMISS
MR. JOYNER'S CASE.

AND WE FILED A MOTION IN JANUARY
OF THIS YEAR TO DISMISS THE
CASE, YOU KNOW, IN THIS COURT
FOR THE VERY REASON THAT HE HAS
SERVED OUT HIS TIME, AND IT'S
MOOT, AND HE CANNOT GET RELIEF
WHEN THE SENTENCE HAS BEEN FULLY
COMPLETED.

>> WELL, I'M -- BUT, THE
MOOTNESS ISSUE IS DIFFERENT AS
TO WHAT IS THE PROPER TYPE OF
RELIEF THAT CAN BE SOUGHT.

AND MR. -- SINCE LET'S ASSUME
WE'RE ADDRESSING THIS,
MR. JOHNSON --

>> SURE.

>> -- FILED HIS MOTION PRO SE,
HE FILED IT WITHIN TWO YEARS,
DIDN'T HE NOT?

>> HE FILED THE 3800A, AND HE
DOESN'T ALLEGE THAT HE DID NOT
KNOW WHAT HE WAIVED.

HE SIMPLY CITED TO THE STATUTE
AND SAID I'M DUE ALL THE CREDIT,
AND ALL CREDIT WASN'T GIVEN TO
ME.

SO THAT ISSUE AS FAR AS THE
STATE IS CONCERNED HAS BEEN, WAS
NOT RAISED BELOW, HASN'T BEEN
PRESERVED WITH REGARD TO THE
ACTUAL KNOWLEDGE.

>> AND WAS THAT THE KIND OF
ARGUMENT MADE IN THE DISTRICT
COURT ALSO?

>> CORRECT, YES.

>> THAT BECAUSE IT'S THE BURDEN OF THE DEFENDANT -- YOU SEE, I THOUGHT THE ISSUE WE WERE REALLY LOOKING AT WAS WHETHER THERE WAS A KNOWING AND VOLUNTARY WAIVER WHICH REALLY WOULD BE PART OF A 3850 ISSUE ABOUT VOLUNTARINESS OF A PLEA.

>> BUT THAT'S WHAT THE CLAIM HAS BEEN TRANSFORMED INTO.

ORIGINALLY MR. JOHNSON AND MR. JOYNER FILED A 3800A SAYING THE ERROR IS APPARENT ON THE FACE OF THE CONTRACT.

>> OKAY.

SO THEY REALLY DID TREAT IT AS A 3800 -- 3850, DIDN'T THEY?

>> YES.

AND WHILE TREATED AS A 3800A AND THE SUGGESTION IS IF YOU HAVE CLAIM OUTSIDE OF THE RECORD, YOU HAVE TO RESORT YOURSELF TO THE 3850.

>> BUT WAIT.

WHAT'S THE IMPACT ON THE PLEA AGREEMENT THOUGH?

>> UNDER 38 --

>> BECAUSE IF YOU GO UNDER A 3850, THE IMPACT -- THERE'D BE A DIFFERENT IMPACT ON THE PLEA AGREEMENT THAN THERE IS IF YOU GO IN UNDER 3800.

>> ABSOLUTELY.

YES.

BECAUSE UNDER 3850 IF YOU CLAIM THAT --

>> WAS THERE AN EVIDENTIARY HEARING IN THIS --

>> NO, YOUR HONOR.

NO.

IF YOU WERE TO CONSIDER THE SAME CLAIM UNDER 3850, AN EVIDENTIARY

HEARING WOULD BE HAD, AND THE
LAWYER --

>> BUT I THOUGHT YOU SAID THEY
TRANSFORMED THIS INTO 3850?
I'M CONFUSED.

>> WELL, I'M TALKING ABOUT THE
NATURE OF THE CLAIM.

THEY'RE NOT SAYING I DIDN'T HAVE
KNOWLEDGE OF WHAT I WAIVED.

>> BUT THE COURT DIDN'T TREAT
IT --

>> NOT AT ALL.

I'M SORRY IF I CONFUSED YOU.

>> I THINK WE GO BACK TO THE
ISSUE, AND I DO THINK THERE'S A
SEPARATE QUESTION AS TO THE
APPROPRIATE STATUTE, I MEAN, THE
APPROPRIATE RULE TO BRING IT
UNDER.

BUT GOING BACK TO JUST THE
REASONABLENESS OF WHAT'S GOING
ON IS THAT, AGAIN, WITHOUT IT
BEING EXPLICIT, WE REALLY DON'T
KNOW IF THERE'S MISCALCULATION,
MISUNDERSTANDING OR WAIVER.
AND IT JUST SEEMS TO ME THAT IF
SINCE THERE ARE THREE CHOICES,
ONE IS THE NUMBER OF DAYS CREDIT
THAT THEY ACTUALLY CAN EITHER
ALSO AGREE TO ALL CREDIT FOR
TIME SERVED, NOW, IF THEY DO
THAT AND SAY WE WANT, I WANT ALL
CREDIT FOR TIME SERVED, DOES THE
IN THE PLEA -- IS THAT WITH THE
UNDERSTANDING, THEN, THAT THAT
TIME SERVED MAY BE CALCULATED
AFTER THE --

>> YES.

THE LATTER TIME.

>> OKAY.

SO WHY ISN'T IT, AGAIN, WHETHER
WE DO THIS PROSPECTIVELY, WHEN

YOU HAVE THE OPTION OF BLANK DAYS CREDIT FOR TIME SERVED TO SAY, AND I UNDERSTAND THAT I MAY BE ENTITLED TO ADDITIONAL TIME SERVED SINCE WHATEVER TIME -- >> ABSOLUTELY.

>> -- AND I AM WAIVING THAT, THAT THAT BECOMES EXPLICIT AND WE REALLY, THEN, DON'T HAVE ANY QUESTION ABOUT WHAT IS, WHAT'S THERE, BUT WE KNOW THAT IT'S SOMETHING IMPORTANT THAT EITHER THE STATE SHOULD BRING TO THE JUDGE'S ATTENTION OR THE DEFENSE OR THE LAWYER THAT, YOU KNOW, THIS IS, YOURS IS ONE OF THESE CASES THAT'S A NIGHTMARE FOR US. SO BECAUSE WE CAN'T REALLY KNOW THE EXACT DATE, YOU UNDERSTAND YOU'RE AGREEING TO THIS FROM A SPECIFIC DATE.

>> YES.

AND THAT HAS BEEN SUGGESTED THROUGH CASE LAW WITHIN ALL THE DISTRICT COURTS.

IN FACT, YOU KNOW, IN THE BRIEFING WE MENTION THE HAGAN CASE OUT OF FIRST DCA WHERE THE COURT HELD THAT, YOU KNOW, THERE'S A SPECIFIC LANGUAGE INDICATING SPECIFIC DATES FROM THIS DATE TO THIS DATE, AND I WOULD SUBMIT TO YOU THAT THESE DATES ARE SIGNIFICANT BECAUSE IT TRIGGERS THE PERSON, THE READER, THE DEFENDANT, HIS ATTORNEY TO THE EVENT OF THE ORIGINAL ARREST, THE ORIGINAL SENTENCING DATE, THE FIRST VIOLATION ARREST DATE, THE FIRST VIOLATION SENTENCING DATE. THESE ARE CLUES AND CUES.

>> I WANT TO CORRECT MY ONE THING, JUSTICE PARIENTE MENTIONED IT.

THE REASON FOR THIS TYPE OF AGREEMENTS IS NOT ALWAYS THAT WE CAN'T FIGURE OUT HOW MUCH TIME YOU SERVED.

I MEAN, SOMETIMES -- I THINK JUSTICE QUINCE MENTIONED A CASE WHERE SOMEONE MAY BE CHARGED WITH A FIRST-DEGREE FELONY AND THEY'RE DROPPING IT DOWN TO A SECOND-DEGREE FELONY OR THIRD-DEGREE FELONY, AND THE DEAL IS I'M GOING TO DROP IT DOWN FROM LIFE TO, LIKE, A 15-YEAR POSSIBLE.

I DON'T CARE WHAT YOU SERVED BEFORE, YOU'RE GETTING CREDIT ONLY FROM TODAY'S DATE IN EXCHANGE FOR US DROPPING TWO DEGREES DOWN.

THERE ARE MANY REASONS WHY IT HAPPENS, NOT ALWAYS BECAUSE WE CAN'T FIGURE IT OUT.

>> THAT'S RIGHT.

>> IN MOST CASES, IN MOST CASES WE CAN FIGURE IT OUT, AND THAT'S --

>> YOU DO RECOGNIZE THAT HAGAN OUT OF THE FIRST IS SPECIFICALLY IN CONFLICT WITH TWO OTHER DECISIONS FROM THAT COURSE, BOTH VELAZQUEZ AND GIDGET, WHICH SPECIFICALLY HOLD THAT STIPULATION TO A SPECIFIC AMOUNT DOES NOT SHOW THE WAIVER.

>> AND I SUBMIT TO YOU THAT WE DON'T SEE EVERYTHING, YOU KNOW, IN THE FOUR CORNERS OF THE OPINIONS BECAUSE FACTS ON WAIVER VARY.

>> WELL, THAT'S RULE OF LAW.
THAT PRINCIPLE OF LAW IS IN
THOSE TWO CASES, IT'S IN REID
OUT OF THE SECOND DISTRICT, AND
IT'S IN DAVIS OUT OF THE FIFTH.
SO THAT'S WHAT WE HAVE TO --
THAT'S WHY WE'RE HERE TO RESOLVE
THOSE THINGS.

YOU CITE HAGAN WITHOUT TELLING
US, YOU KNOW, THAT YOU
UNDERSTAND THAT IT'S IN CONFLICT
WITH WHAT THE WEIGHT OF
AUTHORITY THERE IN THE FIRST IS
TO THE CONTRARY.

>> AND I DON'T THINK IT'S A
MATTER OF THAT.

IF YOU PICK A SPECIFIC NUMBER
THAT IS PREFERRED OVER A RANGE
OF DATES AS I INDICATED TO YOU,
THE RANGE OF DATES IS USEFUL TO
CLUE PEOPLE INTO WHICH PERIOD OF
TIME ARE YOU TALKING ABOUT.
BUT IT DOESN'T TAKE CARE OF BOOT
CAMP, AND IT DOESN'T TAKE CARE
OF MODALITY TREATMENT PROGRAMS,
YOU KNOW?

SO IT'S IMPERFECT.

AND THAT'S WHY THESE PROVISIONS
ARE TO BE READ TOGETHER.

SO IF YOU HAVE THE RANGE OF
DATES, AND I'M READING IT AND
I'M SAYING, OKAY, JOG MY MEMORY
HERE, WHAT DATES ARE WE TALKING
ABOUT, THE SECOND BOX ALLOWS YOU
TO PICK A NUMBER.

AND IT'S A BALLPARK NUMBER.

IT'S NOT PRECISE.

AND IT COULD BE JUST A LITTLE
BIT OF THE MODALITY PROGRAM, A
LITTLE BIT OF BOOT CAMP, AND
THEN A BUNCH OF DAYS THAT I SAT
IN COUNTY JAIL WAITING.

SO I PICK A NUMBER, BUT IT'S
AGREED UPON.

AND THAT HAPPENS ALL THE TIME IN
COMPROMISE AND SETTLEMENT IS
THAT WE MAY NOT KNOW THE EXTENT
OF YOUR CLAIM, BUT YOU'RE SAYING
THE CLOCK STOPS HERE.

AND THEN THE THIRD BOX SAYS ALL
CREDIT FOR TIME SERVED.

NOW, YOU'RE TALKING ABOUT
UNIVERSAL CREDIT FOR TIME
SERVED, AND I'M SITTING HERE
LOOK AT THE FORM.

JUST LIKE TAKING A MULTIPLE
CHOICE QUESTION TEST, YOU KNOW,
I HAVE TO READ ALL THE ANSWERS
BEFORE I SELECT THE ONE THAT I
THINK IS RIGHT.

SO MY MEMORY'S BEING JOGGED, I'M
BEING CLUED INTO ALL THESE
DIFFERENT OPTIONS.

I HAVE OPTIONS.

I'M NOT PRESENTED JUST ONE
CHOICE.

SO WHEN I'M LOOKING AT THAT BOX
SAYING ALL CREDIT FOR TIME
SERVED I, NATURALLY, REASONABLY
AS A PERSON WOULD SAY, WHAT'S
OUT THERE?

>> WE'VE TALKED A LOT TODAY
ABOUT, YOU KNOW, WHEN A
DEFENDANT FILES THESE TYPE OF
MOTIONS, THEY COULD BE ASKING
FOR A LOT OF DIFFERENT THINGS.
BUT ONCE YOU HAVE THIS FORM, THE
FORM SIMILAR TO WHAT WE HAVE
HERE, ISN'T IT INCUMBENT UPON
THE DEFENDANT -- OR IS IT
INCUMBENT UPON THE DEFENDANT --
TO DEMONSTRATE THAT IT WAS A
MISCALCULATION OR THAT I DIDN'T
KNOW THAT THERE WERE OTHER

CREDITS OUT THERE AND I
SUBSEQUENTLY FOUND OUT OR
WHATEVER IT IS THE ISSUE THAT
HE'S SUPPOSED TO BE RAISING?

>> YEAH.

>> SO IN THIS CASE WHAT -- TAKE
JOHNSON FOR AN EXAMPLE.

WHAT WAS THE EXACT ARGUMENT THAT
HE MADE IN HIS 3800 MOTION ABOUT
THE CREDIT FOR TIME SERVED?

>> HE RELIES SOLELY ON THE
STATUTE.

AND SAYS, I AM DUE ALL CREDIT
FOR TIME SERVED.

AND IT WASN'T GIVEN TO ME.

AND THE SENTENCING COURT IN
RESPONSE ATTACHED PART OF THE

PLEA COLLOQUY IN THE SIGNED
FORM, AND THE PLEA COLLOQUY

SHOWS THAT PRIOR TO THE COURT
TAKING THE CASE, DEFENSE COUNSEL
ADVISED THE COURT, WE'RE STILL
TALKING ABOUT THE DEAL, YOUR
HONOR, WE'RE NOT DONE.

AND THAT, IN FACT, MR. JOHNSON
HAS A COUNTEROFFER.

SO THE SENTENCING JUDGE SAID,
WELL, GO BACK, TALK ABOUT IT,
WHEN YOU'RE DONE, YOU'RE GOING
TO COME OUT, AND WE'RE GOING TO
TAKE YOUR PLEA.

>> I GUESS WHAT DISTURBS ME
ABOUT THESE KINDS OF CASES IS,
YOU KNOW, THEY'RE LEGITIMATE
CASES WHERE THE DEFENDANT MAY
NOT HAVE KNOWN THAT HE WAS, AS
JUSTICE LEWIS WAS SAYING
EARLIER, ENTITLED TO BOOT CAMP
CREDIT.

>> YEAH.

>> YOU KNOW, MOST OF THEM KNOW
THAT WHEN YOU'RE IN JAIL OR

PRISON, YOU'RE ENTITLED TO
CREDIT.

BUT MAYBE NOT BOOT CAMP.

>> SURE.

BUT THEN ON THE OTHER HAND,
THERE ARE THESE POSSIBLE CASES
WHERE THE DEFENDANT KNOWS THAT
ALL THIS CREDIT THAT'S
AVAILABLE, AGREES TO THIS
BARGAIN AND THEN TURNS AROUND --

>> BELATEDLY FILES --

>> -- OH, GOTCHA, YOU KNOW,
THERE WAS SOME OTHER CREDIT.
THE STATUTE SAYS I'M ENTITLED TO
ALL OF THIS CREDIT, SO NOW I
WANT ALL OF THIS CREDIT.

AND I DON'T KNOW HOW WE WEED
OUT --

>> WE, WE HAVE TO --

>> -- THOSE SITUATIONS.

>> WE --

>> WHY CAN'T YOU JUST HAVE A
LAUNDRY LIST OF THE POSSIBLE
INSTANCES FOUND IN THE STATUTE?

>> AND IT WOULD BE EXHAUSTIVE
BECAUSE TREATMENT PROGRAMS GET
CREATED, AND YOU'VE GOT --

>> WELL, THESE ARE THE POSSIBLE
AREAS.

>> THAT IS ONE THING, JUSTICE --

>> AT LEAST YOU WOULD CUT IT
DOWN.

I MEAN --

>> YOU CERTAINLY, YOU
CERTAINLY --

>> [INAUDIBLE]

>> AND THE SUGGESTIONS HAVE
ALWAYS BEEN THAT IF YOU MAKE IT
CLEARER, IF YOU USE THE WORDS
"WAIVER" AND "ENTITLEMENT" AND
YOU BOLDFACE THEM OR UNDERLINE
THEM, THEN SURELY THEY CAN'T

COME BACK AND SAY, I DON'T KNOW
WHAT I WAS DOING.

SO ALL YOU HAVE, AND I DON'T
KNOW WHY WE, WHY WE WALK AWAY
FROM A SIGNED DOCUMENT.

WHERE THE TERMS ARE SIMPLE,
OBVIOUS AND UNAMBIGUOUS.

>> WELL, I THINK THE ANSWER,
FRANKLY, IS I'M LEANING
TOWARDS -- AND I GUESS I JUST
WANT TO LOOK AT IT AGAIN, THAT
I'M NOT SURE IT IS APPROPRIATE
AS A 3800A IF THERE IS A PLEA
AGREEMENT THAT SPECIFIES WHAT
THE TIME SERVED IS.

I THINK IT PROBABLY WOULD NEED
TO BE BROUGHT AS A 3850 MOTION
TO WITHDRAW THE PLEA.

THEN WE WOULD KNOW IF IT'S A
SITUATION, AS JUSTICE QUINCE
SAID --

>> GENUINE.

>> -- WHETHER IT WAS A TRUE
BARGAIN OR LACK OF KNOWING THAT
THERE WAS THIS OTHER SOURCE OF
DAYS AND NOBODY TALKED ABOUT IT.

>> CORRECT.

YES.

>> WHAT WOULD BE WRONG WITH
REQUIRING IN A PLEA AGREEMENT IN
CAPS, CAPITAL LETTERS SUCH AS
LIKE THE FOURTH DISTRICT DID IN
WHITE, I AM WAIVING ALL OTHER
CREDIT FOR TIME ALREADY SERVED
INCLUDING ANY TIME SERVED IN
TREATMENT PROGRAMS, BOOT CAMP,
JUST THAT KIND OF THING?
THAT WOULD SEEM TO ME THAT WOULD
SOLVE THE PROBLEM.

SHORT OF FIGURING OUT EXACTLY
HOW MANY DAYS HE SERVED OR SHE
HAS SERVED BECAUSE WE MAY NOT BE

ABLE TO FIGURE THAT OUT.

>> CERTAINLY.

CERTAINLY.

AND THAT WORKS AS A DISCLOSURE,
ENCOMPASSING THE VARIETY OF TIME
YOU MAY NOT BE ENTITLED TO.

>> THAT WOULD TEND TO CUT OFF
3850s BECAUSE --

>> ABSOLUTELY.

>> -- YOU HAVE CONCLUSIVELY
REFUTED IT IN THE RECORD.

>> SO SINCE AT LEAST SOME OF US
THINK, YEAH, THAT SOUNDS GREAT,
THAT DIDN'T HAPPEN HERE.

SO THAT'S WHAT WE'RE BACK WITH
THIS CONFLICT BETWEEN THE OTHER
DISTRICT COURTS OF APPEAL THAT
HAVE SAID THESE KINDS OF
EXPLICIT STATEMENTS DO OPERATE
AS A WAIVER VERSUS ONES THAT YOU
HAVE TO READ BETWEEN THE LINES.

>> YOU KNOW, AND --

>> AND WHEN WE'RE ALL AGREEING,
I'M NOT SURE -- IT SEEMS TO ME
THAT IF THIS IS IN THE CORRECT
PROCEDURAL POSTURE, THE THIRD
DISTRICT HAS SAID THAT'S NOT
NECESSARY, RIGHT?

ISN'T THAT WHY WE'RE HERE?

BECAUSE THE THIRD DISTRICT
THINKS THERE DOES NEED TO BE
THAT EXPLICIT STATEMENT.

>> WE HAVE ALWAYS SUGGESTED THAT
CONFLICT DOESN'T EXIST BECAUSE
THE FACTS OF THESE CASES VARY
SLIGHTLY AND ALSO IN THE CASES
RELIED UPON BY THE PETITIONER,
HINKEL, AND I CAN ONLY THINK OF
HINKEL AS ONE THAT IS MOST
COMPELLING IN TERMS OF
SUGGESTING CONFLICT.

BUT THE DISCUSSION ON THE MERITS

DID THAT.

AND IF YOU LOOK AT THE POSTURE
OF THESE TWO CASES, MR. JOHNSON
AND MR. JOYNER HAVE BEEN
RELEASED.

SO, YOU KNOW --

>> BUT THE ISSUE IS STILL, THE
ISSUE IS STILL THERE.

>> BUT THAT DOESN'T --

>> I MEAN, WE DIDN'T DEAL WITH
IT IN RIVERA, SO IT SEEMS TO ME
THAT IT CERTAINLY IS AN ISSUE
CAPABLE OF REPETITION, AND SO
WHY --

>> IT IS, IT CERTAINLY IS, YEAH.
AND THE COURT CERTAINLY COULD
WAIT FOR A CASE WHERE IT'S NOT
MOOT, OR THE COURT CAN TAKE THE
OCCASION AND, YOU KNOW, DECIDE
WHAT WOULD BE THE APPROPRIATE
REMEDY.

HOWEVER, WITH REGARDS TO THE
FORM, THE STATE SUBMITS TO YOU
THAT IN THE EVOLUTION OF CASE
LAW, YOU KNOW, FIRST WE GOT THE
PLEA COLLOQUY, KIND OF SKETCHY,
AND THEN WE HAVE A NOTATION IN
JUDGMENT IN SENTENCE, AND THEN
WE HAVE A NOTATION IN A PLEA
FORM, AND NOW WE FINALLY COME TO
A STAND-ALONE DOCUMENT.

AND WE CERTAINLY COULD IMPROVE
UPON IT, BUT DON'T INVALIDATE
IT --

>> BUT THEN JUDGES START FOOLING
WITH THIS ONE BECAUSE IT SAYS
CREDIT FOR ALL TIME SERVED --

>> I REALIZE IT'S THE SAME FORM,
FILLED OUT SLIGHTLY DIFFERENTLY.

>> AND, AGAIN, HOW MUCH TAXPAYER
MONEY NEEDS TO BE SPENDED FOR
YOU ALL TO KEEP COMING BACK UP

HERE?

WE NEED TO GET THIS THING
FIGURED OUT.

>> IT'S JOB ASSURANCE.

[LAUGHTER]

>> AND CERTAINLY, YOU KNOW, THE
COURT CAN DEVISE A RULE TO HAVE
THE SENTENCING COURT INCORPORATE
THAT AS A LITANY, YOU KNOW, AS
THE PUBLIC DEFENDER HAS
SUGGESTED --

>> [INAUDIBLE]

I THINK WHAT'S BEING SUGGESTED
AND I DON'T KNOW, WE HAVE TO
LOOK BACK AGAIN, IT JUST SEEMS
TO ME WE COULD GET A LOT OF
ASSISTANCE FROM THE DEPARTMENT
OF CORRECTIONS AND THE STATE
BECAUSE THE AMOUNT OF TIME YOU
SPEND DEFENDING THESE CASES IF
WE CAN PUT IT UP FRONT --

>> YOU CAN SEE THE SHEER
NUMBERS.

>> WE WOULD HAVE IT, AND IT
WOULD BE FAIR TO EVERYBODY AND
NOT PUT THIS ON THE JUDGE TO
HAVE TO BE THE ONE TO, YOU
KNOW --

>> CULL THE DATA.

AND, YOU KNOW, I HAVE SEEN CASES
WHERE THE PLEA COLLOQUY IS QUITE
NICE.

AND IT EASES EVERYBODY'S MIND
WHEN THEY READ IT BECAUSE --

>> YOU MUST HAVE READ ONE OF
MINE.

[LAUGHTER]

>> AND ALTHOUGH IT SEEMS THAT
THESE CASES GIVE CAUSE FOR
CONCERN, I WOULD ASSURE YOU
THAT, YOU KNOW, THE WHEEL OF
JUSTICE DOES TURN --

>> WELL, ISN'T THAT REALLY, AND I THINK, YOU KNOW, JUSTICE LABARGA TALKS ABOUT AND WE ALL APPRECIATE HOW MANY DEFENDANTS THERE ARE, WE KNOW WE LOOK AT THE FOURTH DISTRICT, THE THIRD, MANY JUDGES DO TAKE THAT EXTRA MINUTE OR TWO --

>> ABSOLUTELY.

>> AND THAT'S WHAT WE REALLY WANT TO ENCOURAGE.

>> AND THE FINAL NOTE AS YOU HAVE ALL SEEN THROUGH THIS EXERCISE IS THAT, YOU KNOW, WE HOLD -- THE STATUTE CERTAINLY HOLDS THE SENTENCING COURT RESPONSIBLE FOR DOING ITS JOB, AND THAT THE SUGGESTIONS OF THIS COURT IS, YOU KNOW, IN 1999 WHEN THIS COURT COMMENTED ON THE SAME ISSUE IS THAT THE DEFENDANT KNOWS BEST.

THE DEFENDANT MAY NOT KNOW PRECISELY, BUT HE KNOWS APPROXIMATELY HOW MANY DAYS OR HOW MANY PLACES HE'S BEEN, AND IT'S THE JOB OF THE PUBLIC DEFENDER OR THE DEFENSE ATTORNEY TO REALLY BE THOUGHTFUL ABOUT THE DISCUSSION OF PLEA.

AND SO EVERYBODY TAKES RESPONSIBILITY, AND MAYBE THAT'S HOW WE'RE GOING TO SOLVE THE PROBLEM FINALLY.

>> AND WITH THAT, YOU HAVE ALSO CONCLUDED YOUR TIME.

I WANT TO THANK BOTH OF YOU FOR YOUR ARGUMENTS HERE TODAY.

>> THANK YOU.

>> THE COURT WILL NOW TAKE ITS MORNING RECESS FOR TEN MINUTES.

>> PLEASE RISE.

SUPREME COURT'S NOW IN RECESS.