

>> THE FINAL CASE WE WILL HEAR TODAY, IS HENRY VERSUS SANTANA.

>> GOOD MORNING.

EXCUSE ME.

MAY I GET SOME WATER?

I'LL TRY AGAIN.

GOOD MORNING, I'M CAROLYN MOSELY, REPRESENTING THE PETITIONER, FLORIDA DEPARTMENT OF CORRECTIONS.

WHAT THIS ABOUT IS HABEAS CORPUS AUTHORITY TO DISMISS A HABEAS PETITION ON ITS OWN INITIATIVE BECAUSE THE INMATE FAILED TO ALLEGE EXHAUSTION OF ADMINISTRATIVE REMEDIES.

AND THE DEPARTMENT RESPECTFULLY REQUESTS THE COURT TO HOLD THAT THE HABEAS COURT DOES HAVE THAT AUTHORITY.

AND FUNDAMENTAL TO THIS TYPE OF ISSUE, WHAT THE INMATE IS DOING, WHEN HE FILES A MANDAMUS OR A HABEAS PETITION AGAINST THE DEPARTMENT, HE IS ALLEGING THAT THE DOC HAS MISCALCULATED HIS RELEASE DATE AND WHILE, OFTEN THE INMATE THINKS HE KNOWS WHAT DOC HAS DONE, HE CAN'T REALLY KNOW THAT WITHOUT ASKING DOC AND IN OUR GRIEVANCE PROCEDURE AND ONCE WE GIVE HIM A CALCULATION, THEN HE CAN LOOK AT THAT AND COMPARE IT TO THE WAY HE THINKS THE AMOUNT OF CREDIT AND, ALL THE INFORMATION WE HAVE ON THERE.

>> SEEMS TO ME, AS I WENT THROUGH THIS AND READ IT AND WHAT JUDGE BENTON AND THE OTHER JUDGES ON THE FIRST DCA WERE SAYING IS THAT YOU HAD AN

INDIVIDUAL WHO SAID, I'M ENTITLED TO BE FREE AND ATTACHED TO THAT, THE ORDER FROM THE TRIAL COURT, THAT SET FORTH WHAT THE CREDITS WERE, FOR TIME SERVED AND IN CALCULATING THAT I'M ENTITLED TO BE FREE.

AND THE JUDGE THEN, WITHOUT DOING ANYTHING FURTHER, JUST DISMISSED IT.

AND IT SEEMS TO ME WHAT THEY'RE SAYING IS, THERE'S NOT, I MEAN AT THAT POINT THERE IS NOT A QUESTION FOR, YOU KNOW, GOOD BEHAVIOR, OR WHATEVER. I MEAN IT IS NOT ALL THIS STUFF THAT MOST OF US DON'T UNDERSTAND TO BEGIN WITH, ABOUT ALL THESE CALCULATIONS FOR THIS AND FOR THAT.

BUT FACIALLY, IT SHOWED, AS I UNDERSTAND IT, IS THAT CORRECT, IT SHOWED FACIALLY, IF YOU JUST LOOK AT THAT ORDER HE OUGHT TO GET OUT --

>> YOUR HONOR --

>> JUST TELL ME DID IT SAY THAT?

>> NO, SIR.

>> DID NOT?

>> THAT IS NOT QUITE CORRECT. THE SENTENCING ORDERS AND THE TRANSCRIPT DID NOT MATCH UP. AND --

>> WAS THE TRANSCRIPT ATTACHED AS WELL.

>> IT WAS ATTACHED --

>> IT WAS ATTACHED.

IF YOU READ THE TWO TOGETHER THERE IS A CONFLICT?

>> THE PROBLEM, YOUR HONOR, WAS

NOT WITH DOC AND THAT IS WHAT THE HABEAS COURT SAID.

THERE IS DISCREPANCY BETWEEN ORAL PRONOUNCEMENT AND THE WRITTEN AND THERE WAS NEVER CLEARLY ESTABLISHED THE REAL AMOUNT OF CREDITS WAS TO GET. AND WHAT THE HABEAS COURT SAID, THERE WERE TWO RULINGS FOR THE HABEAS COURT.

NUMBER ONE, HE TOLD THE INMATE, GO BACK TO THE SENTENCING COURT AND CITED A CASE.

I CAN'T FIX THAT PROBLEM.

THEN THE SECOND RULING WAS, TO THE EXTENT THAT YOU'RE COMPLAINING ABOUT THE DOC, YOU NEED TO EXHAUST IT, WHAT THE SENTENCING ORDER SAID, ONLY GAVE HIM 142 DAYS OF JAIL CREDIT.

CHECKED THE PRISON CREDIT BOX. HE HAD NEVER EVEN BEEN TO PRISON.

AND THEN ON TWO OF THE THREE SENTENCING ORDERS, IN A SECTION CALLED, RECOMMENDED, THE STATE HOSPITAL TIME AND NEVER IDENTIFIED THE SOURCE OF THAT OR THE AMOUNT.

>> I THINK THAT THE ISSUE ABOUT WHERE IT SHOULD HAVE BEEN FILED AND WHETHER THIS WAS OR SENTENCING COURT, IS NOT DIRECTLY BEFORE US BUT IT IS A CONCERN BECAUSE I UNDERSTAND DOC'S POSITION.

AGAIN YOU'VE GOT HUNDREDS OF THOUSANDS OR HOWEVER OF INMATES AND WE KNOW THEY ARE FILING ALL THE TIME AND, YOU KNOW WE WANT TO MAKE SURE THAT, IF THERE IS

A PROBLEM, THAT REALLY IT IS
RESOLVED AT THE EARLIEST
POSSIBLE TIME.

>> CORRECT.

>> MANY TIMES, IF IT IS GAIN
TIME OR WHATEVER, PROBABLY
SIMPLEST WAY IS TO GO THROUGH
WITH THE DOC PROCEDURE.

MY CONCERN HERE IS, THIS IS A
DEFENDANT THAT APPARENTLY, AT
LEAST, WHETHER HE WAS ENTITLED
TO IMMEDIATE RELEASE ON THE DAY
THAT HE FILED IT, HE WAS
RELEASED WITHIN, BY OCTOBER, I
MEAN, WITHIN A SHORT TIME.

ISN'T THAT CORRECT?

WASN'T HE RELEASED?

>> A LITTLE OVER A YEAR LATER.

>> WAS IT A YEAR?

>> RIGHT.

>> THE ISSUE IS, I DON'T KNOW,
YOUR GRIEVANCE, IF SOMEBODY
SAYS I'M ENTITLED TO IMMEDIATE
RELIEF, YOU GO WELL, NO, BEFORE
YOU CAN SAY THAT, YOU'RE GOING
TO HAVE, YOU ARE, AS A MATTER
OF LAW GOING TO NOT ONLY HAVE
TO GO THROUGH THIS GRIEVANCE
PROCEDURE AND EXHAUST BUT
YOU'RE GOING TO HAVE TO ALLEGE
IT, WE HAVE THE RISK THEN, THAT
SOMEBODY THAT IS BEING
UNLAWFULLY HELD IS DETAINED
BEYOND THE TIME THAT HE OR SHE
IS, SHOULD BE, INCARCERATED.
SO HOW DO YOU, SO, SEEMS TO ME
THERE IS, DOC PROBLEM, THE BIG,
OVERALL PROBLEM, AND THEN
THERE'S THE INDIVIDUAL ISSUE
FOR THAT INMATE WHO ISN'T
SERVING A LIFE SENTENCE AND IS
ASKING FOR SOME ADDITIONAL GAIN

TIME OR SOMETHING BUT SOMEBODY WHO HAS A SHORT ENOUGH SENTENCE THAT THIS CAN MAKE A DIFFERENCE BETWEEN WHETHER THEY STAY IN FOR A FEW MORE MONTHS OR NOT?

>> WELL, AND I THINK REALLY THE FIRST DCA SOLUTION IS NOT HELPFUL.

THE FIRST HABEAS COURT GAVE THE INMATE THE ABSOLUTE CORRECT ANSWER.

WHAT HE SAID WAS, THERE IS SOMETHING WRONG WITH YOUR SENTENCE.

IF HE GOT THAT FIXED HE WOULD BE RELEASED IMMEDIATELY.

SAY HE WENT BACK TO THE SENTENCING COURT.

HABEAS COURT CAN'T HOLD AN EVIDENTIARY HEARING AND RESOLVE THAT FOR THE INMATE.

BUT IF HE WENT BACK TO THE SENTENCING COURT, AND I THINK THIS COURT, IN THE WILLIAMS CASE SAID 3.800-A IS THE REMEDY WHEN THERE IS A DISCREPANCY BETWEEN THE WRITTEN AND THE ORAL SENTENCE.

THE SENTENCING COURT ACTUALLY SAID IN THE TRANSCRIPT, WE MIGHT NEED A HEARING ON THIS ISSUE.

SO THE HABEAS COURT WASN'T TELLING HIM TO GO BACK TO US FOR PURPOSES OF CALCULATING HIS, FOR HIS RELEASE DATE.

HE GAVE HIM TWO REMEDIES.

HE SAID, ONE IS NOT THE HABEAS AT ALL.

AND THE SECOND IS, I CAN'T TELL FROM THIS WHAT DOC HAS DONE

BASED JUST ON THE WRITTEN
SENTENCING ORDER.

>> WHY WOULD YOU HAVE TO, IF
THERE IS A DISCREPANCY BETWEEN
THE ORAL PRONOUNCEMENT AND
WRITTEN SENTENCE HAVE TO
EXHAUST ADMINISTRATIVE
REMEDIES?

>> WELL HE DOESN'T, AND --

>> HE DOESN'T?

>> WELL, DID YOU SAY HE DOES
NOT?

>> NO. NOT IF THE CLAIM IS
WITH THE SENTENCING COURT.
IT IS ONLY IF DOC HAS
MISCALCULATED THE RELEASE DATE.
WHAT NORMALLY HAPPENS, INMATES
WHEN THEY GRIEVE, SOMETIMES
THEY THINK THEY HAVE A DISPUTE
WITH DOC, AND WE LOOK AT THE
RECORD AND WE FIND WE'VE MADE A
MISTAKE AND WE CORRECT IT.
SO THERE IS NO DISPUTE.

SOMETIMES WE TELL THE INMATE,
YES, WE SEE YOU HAVE A PROBLEM
WITH YOUR COURT-ORDERED CREDIT.
THAT'S NOT A PROBLEM WITH DOC.
GO TO THE SENTENCING COURT AND
GET IT FIXED.

AND SOMETIMES THE RECORD THAT,
THE GRIEVANCE RECORD HELPS THE
SENTENCING COURT.

BASED ON TIME TO ASK DOC FOR A
RESPONSE ON THOSE KINDS OF
ISSUES.

>> THAT IS 3.800 MOTION, RIGHT?

>> CORRECT, YOUR HONOR.

AND SO WE JUST TELL HIM, TO GO
BACK.

SO THAT'S TWO SCENARIOS WHERE
IN THE GRIEVANCE PROCEDURE,
INMATES THINKS DOC SENTENCING

IS WRONG, WE TELL HIM, THEY MADE A MISTAKE IT IS NOT DOC, IT IS SENTENCING COURT.

THE THIRD THING THAT CAN BE DONE, SOMETIMES THE INMATES REALLY DON'T UNDERSTAND.

THEY DON'T UNDERSTAND LIKE ELDRIDGE DECISION AND THINGS LIKE THAT.

AND WE EXPLAIN THE LAW TO THEM.

>> I'M GLAD YOU CAN EXPLAIN IT BECAUSE PROBABLY HALF OF US MIGHT HAVE TROUBLE.

>> WELL, WE GIVE AN EXPLANATION TO THE INMATES THAT HERE'S THE PROBLEM.

NOW IF THIS SENTENCE WITH HIS NEGOTIATED PLEA AGREEMENT FOR EXAMPLE, HE THOUGHT HE WASN'T GOING TO SERVE ANYMORE TIME BECAUSE WE TOOK THE GAIN TIME. WE TELL HIM THIS WE SAY, GO BACK, WE DON'T TELL THEM TO GO BACK TO THE SENTENCING COURT BUT THAT I WAS ABOUT HIM THE INFORMATION HE NEED TO GO BACK TO THE SENTENCING COURT.

THE FOURTH, SCENARIO, WHERE INMATES GRIEVE WITH IS THAT HE ENDS UP IN THE HABEAS COURT IS WHEN WE LOOK AT HIS, GRIEVANCE AND WE SAY NO, WE THINK WE'RE RIGHT.

YOU KNOW, WE HAVE REVIEWED YOUR ISSUE AGAIN AND CONSULTED LEGAL IF THEY NEED TO. THEY DO THAT.

WE THINK THAT WE'RE RIGHT.

AND IF YOU THINK -- AND THEN THE INMATE HAS THAT RECORD.

HE GOES TO THE HABEAS COURT, AND HE HAS THE FACTS HE NEEDS.

>> I GUESS YOU'RE DESCRIBING,

AGAIN, FROM DOC'S POINT OF VIEW
A VERY ORDERLY PROCESS, ALMOST
MAKES IT SOUND LIKE YOU'RE JUST
THERE TO HELP THE PRISONERS GET
THESE THINGS FIGURED OUT.

MAYBE YOU ARE, BUT, THE REALITY
IS, IN THAT, AGAIN, IN A
SITUATION WHERE RELATIVELY
SHORT SENTENCE, WOULD YOU,
WOULD YOU HAVE SAID, IN THIS
CASE THAT, HE FILED THE WRONG
REMEDY, THE WRONG TYPE OF
ACTION?

HE SHOULD HAVE ACTUALLY FILED A
RULE, 3.800-A ACTION?

>> WOULD HAVE TO AGREE WITH THE
HABEAS COURT ON THAT BECAUSE WE
CAN'T FIX --

>> SO WOULDN'T IF, THE SOLUTION
OF THE JUDGE IN THAT SITUATION,
ORDERING TO SHOW CAUSE, WHY
THIS RELIEF SHOULDN'T BE
GRANTED, YOU WOULD BE ABLE TO
THEN, IN A SHORT WRITTEN
PLEADING ADVICE, NOT THAT HE
HAD TO EXHAUST HIS REMEDIES BUT
THIS LOOKS LIKE A SENTENCING
ERROR AND THE JUDGE CAN
TRANSFER THE CASE THEN TO THE
SENTENCING COURT.

SO WE, GET, WE, ACCOMPLISH
SOMETHING THAT IS JUST WITHOUT
MAKING SOMEBODY GO THROUGH
HOOPS THAT WILL MAKE NO
DIFFERENCE?

>> WELL, IT ACTUALLY, THAT IS
WRONG FOR THE INMATE.
ONCE AGAIN, THE JUDGE, CAN
SIMPLY DISMISS THE PETITION
BECAUSE I'M THE WRONG COURT OR
TRANSFER IT.

AND TO THE SENTENCING COURT,

WITHOUT EVER HEARING FROM DOC.
I MEAN THIS, THESE, THIS IS
WHAT, THE HABEAS COURT HAS --
>> SEE IF I UNDERSTAND WHAT YOU
SAID.

IN THIS CASE, THE TRIAL JUDGE,
ARE YOU AGREEING THAT THE TRIAL
JUDGE WAS INCORRECT WHEN HE
SAID THAT UNDER THESE
CIRCUMSTANCES, YOU HAVE TO
EXHAUST THE ADMINISTRATIVE
REMEDIES?

>> HE GAVE --

>> I'M JUST TALKING ABOUT THE
ADMINISTRATIVE REMEDIES?
HE DID NOT HAVE TO GO BACK TO
DOC? SO THE TRIAL JUDGE IS
INCORRECT?

>> YOUR HONOR, NO, HE WASN'T
INCORRECT FOR THIS REASON.
THE JUDGE SAID TO THE EXTENT
YOU'RE COMPLAINING ABOUT WHAT
DOC DID, NO ONE CAN TELL FROM
THE RECORD OF THE INMATE WHAT
DOC HAD DONE.

AGAIN, THE SENTENCING ORDER
SAID, PRISON CREDIT, HE DIDN'T
KNOW WHAT THAT WAS, BUT, FOR
HIM TO GO BACK TO THE
SENTENCING COURT IS WHAT HE
NEEDED.

THE JUDGE COULD HAVE SENSED THE
INMATE WAS TRULY, THE INMATE
WASN'T COMPLAINING ABOUT DOC.
IN THE HEARING MOTION HE TOLD
THE JUDGE A MANIFEST INJUSTICE
OCCURRED HERE BY THE
PROSECUTOR, DEFENSE COUNSEL AND
SENTENCING COURT.

HE TRULY WAS NOT COMPLAINING
ABOUT DOC IN HIS PETITION.

SO --

>> SO HE DIDN'T HAVE TO GO BACK TO DOC? THAT'S ALL I'M ASKING YOU.

>> YOUR HONOR, NOT, BECAUSE OF THE JUDGE QUALIFIED HIS ANSWER, HE SIMPLY SAID TO THE EXTENT YOU ARE COMPLAINING ABOUT DOC GO EXHAUST.

HE DIDN'T KNOW WHETHER HE WAS OR NOT.

THE INMATE WANTED OUT.

HE THOUGHT THAT THE HABEAS COURT COULD FIX THE PROBLEM WITH THE SENTENCING GUIDELINES.

>> IN THIS CASE THE PROBLEM WAS THE CREDIT, PRESENTENCING RIGHT?

SO REALLY THAT SHOULD HAVE BEEN RESOLVED, ANY ERRORS ARE ALLEGED ERRORS THAT HAD TO DO WITH A CREDIT SERVED AND ALL THAT AROSE AT THE TIME OF THE SENTENCING, AS YOU SAID, SHOULD HAVE BEEN IN THE SENTENCING COURT, WOULDN'T THAT BE RESOLVED IN A 3.800 MOTION?

>> YES, SIR.

THAT WAS THE INMATE'S REMEDY.

>> NO. LET'S GO TO A SITUATION I DON'T

THINK WAS PRESENT HERE BUT IF THERE WAS, AN ASSERTION THERE WAS A PROBLEM WITH, PERHAPS GAIN TIME OR SOMETHING OF THAT NATURE, THAT INVOLVED THE DEPARTMENT OF CORRECTIONS.

THEN IS IT YOUR POSITION THEN THERE WOULD HAVE TO BE EXHAUSTION OF ADMINISTRATIVE REMEDIES WITH THE DEPARTMENT BEFORE SOME TIME OF SHAPE JUST PETITION WAS FILED -- SOME TYPE.

>> YES, SIR, FOR THIS REASON AGAIN.
THE ONE PART OF THE SENTENCING
DOCUMENTS DOES AND THE OTHER
PART WHAT DOC DOES.
THE INMATE WON'T KNOW, THERE
MAY NOT BE A DISPUTE WITH DOC.
HE MAY NOT KNOW.
GIVE YOU AN EXAMPLE, ISSUE THAT
COMES UP IS JAIL CREDIT ON
CONCURRENT SENTENCES.
INMATES THINK THEY ADD THE JAIL
CREDIT TOGETHER AND SHOULD GET
THAT AMOUNT ON EACH SENTENCE.
WELL, THEY CAN DO THEIR
DOCUMENTS THROUGH THE
SENTENCING COURT, I MEAN THE
HABEAS COURT WITHOUT SAYING
WHAT DOC DONE AND, THERE
DOESN'T APPEAR TO BE AN ERROR
BUT IF THEY GO AND GRIEVE WITH
US, WHAT WE TELL THE INMATE WHAT.
IF THE INMATE THOUGHT HE SHOULD
HAVE MORE JAIL CREDIT THEN HE
GOES BACK TO THE SENTENCING
COURT AND GETS IT DONE.
I MEAN IF SENTENCING COURT IS
WILLING TO DO IT.
BUT THE REASON AGAIN, THE,
EXHAUSTION IS SO THAT THE
INMATES CAN KNOW WHAT DOC HAS
DONE.
THAT'S NOT EVIDENT FROM THE
SENTENCING ORDER.
THE SENTENCING ORDER MAY NOT BE
THE CONTROLLING SENTENCE.
IT MAY NOT SHOW THE STARTING
DATE.
IT MAY HAVE BEEN AMENDED.
SO JUST GIVING HABEAS COURT THE
SENTENCING DOCUMENT IS NOT
ENOUGH TO SHOW WHAT DOC HAS
DONE.

>> LET ME JUST MAKE SURE.

I MEAN, AS I READ THE DCA
OPINION, THE JUDGE BENTON AND
JUDGE ROBERTSON AND --

>> WEBSTER.

>> JUDGE WEBSTER, THEY DIDN'T
ADDRESS THIS ISSUE WHICH
SENTENCING COURT AND ALL THAT.
THEY ONLY ADDRESSED THE
EXHAUSTION ISSUES ISN'T THAT
CORRECT?

>> THAT'S ALL THEY ADDRESSED.

>> OKAY, I'M JUST MAKING SURE.
NOW WE'RE LOOKING AT SOMETHING
THEY DIDN'T RULE ON.

SO I'M TRYING TO UNDERSTAND
EXACTLY WHAT POSTURE WE'RE IN
HERE BECAUSE THERE'S A COUPLE
OF ISSUES.

ANOTHER ISSUE THAT OF THE
SENTENCING AND WHETHER THE
TRANSCRIPT OF THAT HEARING AND
THE ORDERS AND ALL THIS MATCH
OR DON'T MATCH OR WHETHER THIS
IS THE RIGHT COURT OR TRIAL
COURT, THEY DIDN'T ADDRESS ANY
OF THOSE ISSUES.

>> THEY DIDN'T HELP THE INMATE
IF THEY DIDN'T --

>> THAT'S NOT, I'M JUST TRYING
TO MAKE SURE I UNDERSTAND WHAT
THAT COURT RULED ON AND WHAT WE
WOULD BE HOLDING AS ERROR,
THAT'S INVOLVED WITH THAT
OPINION.

THEY DIDN'T DISCUSS ANY OF
THESE OTHER THINGS.

>> NO. THAT'S TRUE, YOUR
HONOR.

>> I JUST, THEY SIMPLY SAID
THAT --

>> YOU ARE NOW INTO YOUR

REBUTTAL TIME.

>> THANK YOU. I WILL RESERVE THE
REMAINDER OF MY TIME.

>> MR. ^CHIEF JUSTICE, JUSTICES,
MAY IT PLEASE THE COURT.

MY NAME IS HENRY GYDEN.

I REPRESENT RESPONDENT, RUNNER
SANTANA.

WHAT JUSTICE LEWIS JUST SAID,
THE FIRST DISTRICT DID ONLY
ADDRESS THE ISSUE OF HABEAS.

AS THEY VIEWED MR. ^SANTANA'S
PETITION THAT IS ESSENTIALLY
WHAT HE WAS ALLEGING.

THERE WAS A DISCREPANCY BETWEEN
THE SENTENCING ORDERS.

THERE WASN'T REALLY A
DISCREPANCY BUT THE SENTENCING
ORDERS WERE NOT CLEAR EXACTLY
ON THE AMOUNT OF CREDIT HE WAS
INTENDED TO GET BUT THAT WAS
STATED IN THE TRANSCRIPT.

AND IT WAS MR. ^SANTANA'S
POSITION THAT BASED ON THE
CREDIT STATED IN THE
TRANSCRIPT, INCLUDING HIS STATE
HOSPITAL STAY, THAT HE WAS
ENTITLED TO IMMEDIATE RELEASE
AND THAT IS WHY, THAT IS WHY
THAT WAS THE ONLY ISSUE THE
FIRST DISTRICT RESOLVED BECAUSE
ALL OBVIOUSLY IF THAT WAS HIS,
THE ISSUE, THE QUESTION OF
VENUE WOULD GO AWAY.

HE WOULD HAVE BEEN IN THE
PROPER VENUE.

>> SEE THAT IS I THINK THE HARD
THING ABOUT WHERE, I AGREE WE
OUGHT TO PRESERVE HABEAS AND IT
IS A GREAT RISK AND WE ALSO
HAVE THE ISSUE WHETHER THE
COURT WHERE THIS IS BEING FILED

CAN GRANT THAT REMEDY.
ISN'T IT, ISN'T THIS, AND
BECAUSE, I THE DEFENDANT SAYING
I'M ENTITLED TO IMMEDIATE
RELEASE BUT IS ALLEGING GAIN
TIME ERROR, IS IN A DIFFERENT
SITUATION THAN A DEFENDANT
SAYING I'M ENTITLED TO
IMMEDIATE RELEASE
BECAUSE I HAVE AN ILLEGAL SENTENCE.

>> YOU'RE CORRECT, YOUR HONOR.

>> IF WE JUST SAY, I DON'T WANT
TO -- MY CONCERN WE'RE EITHER
TOO BROAD OR TOO SCENARIO.

I WOULD NEVER WANT TO SAY YOU
HAVE TO ALLEGE EXHAUSTION IN
MANY OF THESE CASES BUT IN SOME
THAT MIGHT BE APPROPRIATE.

SO HOW WOULD YOU FRAME THE,
WOULD YOU JUST SAY WE SHOULD
NOT LOOK AT REALLY WHAT THE
UNDERLYING ACTION IS, BUT JUST
SAY, INMATE NEVER HAS TO ALLEGE
EXHAUSTION NO MATTER WHAT THE
NATURE OF THE HABEAS CLAIM?

>> WELL, I THINK THE FIRST
DISTRICT STRUCK THE PROPER
BALANCE.

WHAT THEY SAID, IS ESSENTIALLY,
THE NEEDS TO LOOK AT THE
PETITION AND EXAMINE IT AND
DETERMINE WHETHER IT STATE AS
REASONABLE BASIS FOR RELIEF.
WHETHER PETITIONER IS ALLEGING
THAT HE IS ENTITLED TO
IMMEDIATE RELIEF AND WHETHER
THERE IS EVIDENCE SUPPORTING
HIS CLAIM.

AND IF THERE'S PROBABLE CAUSE
OR REASONABLE BASIS TO BELIEF
HE IS ENTITLED TO IMMEDIATE
RELIEF, THE JUDGE NEEDS TO HAVE

THE STATE OR THE DEPARTMENT
RESPOND AS TO WHY HE IS BEING
DETAINED AND THAT STRIKE AS
PROPER BALANCE.

IN CERTAIN SITUATIONS THE JUDGE
MAY NOT DETERMINE WHETHER THERE
IS REASONABLE OR MAY NOT BE
ABLE TO CONCLUDE THERE IS
PROBABLE CAUSE BASIS FOR
BELIEVING HE IS ENTITLED TO
IMPLEAD I CAN'T THINK RELIEF
BECAUSE THERE MAY BE
PROVISIONAL CREDITS OR SOME
OTHER ISSUE THAT MIGHT BE
EXCLUSIVELY WITHIN THE
CONTINUUM OF THE DEPARTMENT.

>> I GUESS I'M TRYING TO FIGURE
OUT HOW RULE 3.800-A THOUGH
DOVETAILS?

THAT IS REALLY, THAT IS A RULE,
A CREATURE OF RULE BUT IT'S
CERTAINLY DERIVE FROM WHAT
WOULD HAVE OTHERWISE BEEN A
FORM OF HABEAS, ENTITLED TO,
IMMEDIATE RELEASE BECAUSE MY
SENTENCE IS ILLEGAL.

AND OF COURSE, AND, OF COURSE
WE HAD THAT ACTUALLY RECENTLY
ALTHOUGH WE DISCHARGE
JURISDICTION IN CASES IN SECOND
DISTRICT WHERE THE SECOND
DISTRICT FELT THAT, WHEN THAT
IS ALLEGED, EVEN IF IT IS
PRODUCT OF A LEGAL SENTENCE YOU
CAN SEEK HABEAS.

IS THIS REALLY THE EXTENSION OF
THAT KIND OF DOVETAILING OF THE
TWO REMEDIES?

>> I THINK THE FIRST DISTRICT
LIMITED THEIR FOCUS ON THIS
FACTUAL SCENARIO WHERE YOU'RE
DEALING WITH NOT A CLAIM THAT

THE SENTENCE WAS ILLEGAL BUT THAT THE DEPARTMENT IS ESSENTIALLY HOLDING THE PRISONER BEYOND THE TERM THAT THE COURT HAD DIRECTED. AND IN THAT SCENARIO, WHAT THE COURT SAID IS THAT IF THERE IS A REASONABLE BASIS, AND WHAT I WILL POINT THE COURT TO IS, SECTION 79.01 WHICH IS THE FLORIDA STATUTE THAT SETS FORTH THE CRITERIA FOR WRITS. IT ESSENTIALLY SAYS WHEN A PETITION SHOWS BY AFFIDAVIT OR EVIDENCE PROBABLE CAUSE TO BELIEVE THAT THE PETITIONER IS DETAINED WITHOUT LAWFUL AUTHORITY, THE COURT, THE JUSTICE OR JUDGE TO WHOM SUCH APPLICATION IS MADE SHALL GRANT THE WRIT FORTHWITH. WHAT ESSENTIALLY THAT IS SAYING, IF THERE IS EVIDENCE TO SUPPORT YOUR ASSERTION THAT YOU'RE ENTITLED TO IMMEDIATE RELIEF, THEN THE COURT CAN'T SUMMARILY DENY IT.

>> IMMEDIATE RELEASE.

>> IMMEDIATE RELEASE.

>> IMMEDIATE RELIEF, BUT WE'RE CONCERNED WITH THOSE BEING HELD BEYOND THEIR --

>> CORRECT, YOUR HONOR. IF THERE IS EVIDENTIARY BEAR SIS SUPPORTS YOUR ASSERTION YOU'RE ENTITLED TO IMMEDIATE RELEASE, THEN THE COURT MUST ASK THE STATE OR DEMAND THAT THE STATE RESPOND TO THAT AND IT CAN NOT SUMMARILY DENY THE PETITION.

NOW WHAT I WANT TO STRESS I

THINK IS, FIRST THE FIRST DISTRICT DID NOT SAY THAT THE COURT CAN NEVER APPLY THE EXHAUSTION OF ADMINISTRATIVE REMEDIES.

WHAT IT ESSENTIALLY SAID IS THAT THE PRISONER NEEDS TO HAVE A NOTICE AND OPPORTUNITY TO RESPOND TO THAT.

AND THE REASON THAT'S IMPORTANT BECAUSE EVEN IN THE CASE THAT THE DEPARTMENT CITES AS IN CONFLICT IN THE POPE CASE, HE DIDN'T ALLEGE THAT HE HAD EXHAUSTED HIS ADMINISTRATIVE REMEDIES BUT LATER ON APPEAL THEY FOUND OUT THAT HE ACTUALLY HAD SUBMITTED A GRIEVANCE AND HAD THAT RULED ON BY THE DEPARTMENT AND SIMPLY, HE DIDN'T, HE DIDN'T GET A FAVORABLE RULING.

SO, THE DANGER HERE AND THE ASSUMPTION OF THE DEPARTMENT IS OPERATING UNDER IS THAT THESE PRISONERS HAVE NOT SOUGHT GRIEVANCES WHICH MAY NOT BE THE CASE.

IN FACT IN THIS CASE, ITSELF AS THE DEPARTMENT NOTED IN ITS BRIEF, MR. SANTANA HIMSELF HAD ALSO FILED A GRIEVANCE AND HAD OBTAINED A RULING FROM THE DEPARTMENT AS TO HIS ASSERTION THAT HE WAS ENTITLED TO IMMEDIATE RELEASE.

HE DIDN'T AGREE WITH THE RESULT BUT HE HAD FOLLOWED THE PROCEDURES THAT THE DEPARTMENT OUTLINED.

THAT IS THE DANGER HERE.

IF THE COURT HAD REQUIRED THE

DEPARTMENT TO RESPOND AND
ISSUED A ORDER TO SHOW CAUSE
ORDER THE DEPARTMENT MIGHT HAVE
CONCEDED YES, MR.^SANTANA HAS
COMPLIED OR HAS EXHAUSTED HIS
ADMINISTRATIVE REMEDIES.
THEY MIGHT HAVE ASSERTED A
DEFENSE AND MR.^SANTANA WOULD
HAVE OPPORTUNITY TO REPLY TO
THAT JUDGE, I DID DO THAT HERE
IS WHAT THE DEPARTMENT RULED ON
AND HE COULD HAVE PROCEEDED
WITH RESOLVING THE UNDERLYING
ISSUE WHETHER OR NOT HE WAS
ENTITLED TO IMMEDIATE RELEASE.
GO AHEAD.

>> LET ME ASK A COUPLE
QUESTIONS TO SEE PERHAPS WHAT
WE CAN AGREE ON.

IF THERE IS ERROR THAT HAS TO
DO WITH THE SENTENCES ITSELF
YOU WOULD AGREE THAT WOULD GO
THROUGH A 3.800, NOT A HABEAS?

>> UNDER CURRENT LAW, THAT
WOULD BE A 3.800 OR EITHER A
WRIT -- ACTUALLY FOR THE
SENTENCING ITSELF I BELIEVE
THAT WOULD BE 3.800.

>> THAT WOULD INCLUDE ANY
ERRORS ABOUT WHAT THE CREDIT
WAS?

>> IF THERE IS ERROR, YES.

>> ERROR AT THE TIME OF
SENTENCING.

>> ERROR AT THE TIME OF
SENTENCING YES, YOUR HONOR.

>> OKAY.

NOW WHAT ABOUT A SITUATION
WHERE THERE'S AN ALLEGATION
THAT THERE IS AN ERROR IN THE
GAIN TIME, BY THE DEPARTMENT OF
CORRECTIONS?

>> WELL, YOUR HONOR, IT WOULD,
IT WOULD DEPEND.

THAT'S WHY YOU CAN'T HAVE
BRIGHT LINE RULES BECAUSE,
THERE MAY BE SITUATIONS WHERE
THE ERROR, WHERE THE PRISONER
CAN, THE INMATE CAN SHOW THAT
THE DEPARTMENT HAS ERRED BASED
ON EVIDENCE HE IS ABLE TO
PRESENT TO THE COURT AND THE
COURT IS IN A POSITION TO MAKE

--

TO MAKE A DETERMINATION OR
FIND PROBABLY CAUSE.

OKAY, SO IF IT'S AN ERROR
THAT HAS TO DO WITH HOW THE
GAME TIME IS COMPUTED OR
WHETHER THE INMATE WAS
ENTITLED TO ADDITIONAL TIME

--

>> I THINK WHAT THE FIRST IS
SAYING, IS THAT A DECISION
THAT CAN'T BE DECIDED ON A
PER SE RULE.

THE COURT NEEDS TO EXAM THE
FACTS OF EACH DECISION AND
TERM.

PERHAPS THE COURT CAN'T MAKE
THAT DECISION AND I NEED TO
GET SOMETHING FROM THE
DEPARTMENT BEFORE I CAN
DETERMINE WHETHER OR NOT YOU
PRESENTED ENOUGH EVIDENCE,
AND IN THAT CASE IT MAY BE
PROPER FOR THE COURT.

>> YOU NEED TO EXHAUST ALL
OF YOUR ADMINISTRATIVE
REMEDYING.

>> I CAN SEE IF THE
ALLEGATION IS THERE'S NO
DISPUTE HERE ON THE GAME
TIME, THERE WAS NO PROBLEM

WITH THE SENTENCES AS IT
WENT DOWN, SO I REALLY DON'T
HAVE A 3800, AND I DON'T
HAVE ANY PROBLEM WITH THE
COMPUTATION OF THE GAME TIME
AND SO FORTH.

IT'S SIMPLY THEY HAVE NOT
LET ME OUT AT THE TIME THAT
I AM SUPPOSED TO BE OUT.
AND AS YOU SAID EARLIER,
THEY'RE HOLDING ME WITHOUT
ANY LAWFUL AUTHORITY AND I
CAN SEE WHERE THE HABEAS IS
WHAT IT SAYS.

>> THAT IS OUR POSITION, AND
THAT'S WHAT THE FIRST
DISTRICT CONCLUDED.

BASED ON THE SENTENCING
ORDER AND THE TRANSFER AND
THE CREDITS AS CALCULATED
THAT HE WAS ENTITLED TO
IMMEDIATE RELEASE.

AND THAT IS THE ISSUE THAT
THE TRIAL COURT CERTAINLY
WAS CAPABLE OF EXAMINING.
AND AGAIN --

>> HE FULFILLED HIS SENTENCE
THERE'S NO REASON FOR ME TO
BE HERE ANYWHERE.

>> CORRECT.

YOU HAVE TO LOOK AT THE
MERITS, YOU CANNOT SIMPLY
GET THE PETITION AND SAY YOU
DIDN'T ALLEGE THAT YOU
EXHAUSTED YOUR

ADMINISTRATIVE REMEDIES.
WE HAVE TO EXAMINE THE
MERITS AS MANDATED BY THE
STATUTE AND MANDATED
POSITION, WHICH I'M SURE THE
COURT IS AWARE OF.

IT HAVE A CONSTITUTIONAL

RIGHT TO A WRIT OF HABEAS
CORPUS.

>> MY CONCERN IS WHAT IS THE
TRIAL COURT SUPPOSED TO DO?
TRIAL JUDGES GET ABOUT FIVE
OR SIX OF THESE A DAY.

ESPECIALLY IF YOU HAPPEN TO
BE A CIRCUIT --

WHETHER IT'S A PRISON.

THEY'RE GOING TO GET THESE
EVERY DAY.

SO ANY TIME A PRISONER SETS
FORTH SOMETHING IN A
POSITION, YOU SAY IN A TRIAL
COURT IS SUPPOSED TO DO
SOMETHING OTHER THAN MERELY
DENY IT BECAUSE HE HASN'T
EXHAUSTED --

SOMETHING THE JUDGE IS
SUPPOSED TO DO.

>> THAT'S NOT OUR POSITION.
I THINK THE FIRST STRUCK A
GOOD BALANCE.

ESSENTIALLY THE JUDGE NEEDS
TO LOOK AT THE PETITION AND
EXAMINE IT BASED ON WHETHER
THE PETITIONER PRESENTED HE
HAS A PROBABLY CAUSE OF
BELIEF THAT THE PETITIONER
IS ENTITLED TO IMMEDIATE
RELEASE.

IF HE DOESN'T HAVE ENOUGH
EVIDENCE TO DETERMINE THAT
HE CAN DENY --

>> WHEN YOU SAY EVIDENCE YOU
MEAN SET FORTH IN THE
PETITION?

>> CORRECT, IT'S NOT JUST
THE AGENCY ALLEGATIONS, BUT
EVIDENCE TO SUPPORT THE
ALLEGATIONS.

>> HOW DOES A TRIAL COURT

DETERMINE THAT?

>> THAT'S THE I MEAN, THAT'S THE DIFFICULT ISSUE, AND THAT'S WHERE WHEN YOU GET INTO GAME TIME, SOME CASES MAY WARRANT SOME, AND SOME MAY NOT.

>> BUT BECAUSE IT'S A HABEAS.

IF SOMEONE IS SAYING I'M SERVING A 30 YEAR SENTENCE, AND THEY'RE COMPLAINING ABOUT LOSING TEN DAYS OF GAME TIME WITHIN JUDGE CAN DETERMINE THAT THEY'RE NOT ENTITLED TO IMMEDIATE RELEASE.

WE WANT TO MAKE SURE, AGAIN IF WE'RE GOING TO BE DEALING WITH THIS, WHAT IT PROBABLY IS.

A MUCH NARROWER SUBSET OF CASES, WHERE WE ARE CONCERNED THAT SOMEONE IS BEING HELD BEYOND THE TIME OF THEIR LAWFUL SENTENCE.

IF THEY HAVE A LONG SENTENCE, IT'S GOING TO BE IMPROBABLY IN MOST CASES, THAT THEY WERE.

AND THE SECOND, WE HAD A CASE RECENTLY, THE SECOND DISTRICT, BASED ON WHAT THEY EXAMINED, THAT THE DEFENDANT WAS BEING HELD BEYOND.

SO GOING BACK TO THEM, I'M SIMPLY TAKING WHAT CIRCUIT COURTS SAY, IF IT'S A GENERIC PETITION, MY INDICTMENT WAS SALACIOUS, THEY'VE BEEN THROUGH THE SYSTEM SEVERAL TIMES, THOSE,

WE'RE NOT SUGGESTING IN THOSE CASES THAT THERE WOULD BE A NEED FOR A RESPONSE, ARE WE?

>> NO, EXACTLY, WE AREN'T, AND BASICALLY THIS COURT'S DECISION IN BUSH VS. STATE, HE OR SHE IS ENTITLED TO IMMEDIATE RELEASE, THEN THE HABEAS PETITION IS NOT THE PROPER REMEDY, IT WOULD BE A WRIT OF MANDAMUS, AND WE DISCUSSED THAT ISSUE, AND IT SAYS, THE ONLY THING WE'RE DECIDING IS WHETHER THE PETITIONER IS STATING WHETHER THEIR ENTITLED TO IMMEDIATE RELEASE, AND THEY'VE SET FORTH REASONABLE FACTS AND EVIDENCE TO SUPPORT THAT CLAIM.

>> SO AS THE TRIAL JUDGE LOOKS AT IT, DOESN'T SEE ANYTHING ATTACHED THAT WOULD REMOTELY SUGGEST THAT THEY'RE ENTITLED TO IMMEDIATE RELEASE AND THEY CAN DISMISS IT.

>> UNDER THE FIRST DISTRICTS OPINION CAN DISMISSION THE PETITIONER TO THE REMEDIES.

>> UNDER THE EXAMPLE ABOUT THEM NOT GETTING APPROPRIATE GAME TIME, WOULD YOU HAVE TO EXHAUST REMEDIES WITH THE DEPARTMENT IN THAT HYPOTHETICAL?

>> IT --

WELL THERE, OBVIOUSLY THERE COULD BE SEVERAL FACTORS THE JUDGE MIGHT TO THE BE AWARE OF, BUT FOR SOMETHING LIKE

PROVISIONAL GAME TIME,
CERTAINLY THAT'S SOMETHING
EXCLUSIVE WITHIN THE
DEPARTMENT, THE FORFEITURE
OF GAME TIME, THE DEPARTMENT
AMOUNT DONE, I COULD SEE AN
ARGUMENT THAT --

>> BECAUSE WE'RE ABOUT TO
OPEN THE FLOOD GATES EVEN
MORE POST CONVICTION WORLD
IN CIRCUIT AND APPELLATE
COURTS.

>> WHAT I'M CONCERNED WITH,
IS ANY HARD FACTS OR RULES.
I THINK WHAT THEY WERE
SAYING, IS THAT BASED ON THE
CONSTITUTIONAL RIGHT OF WRIT
OF HABEAS CORPUS THAT EACH
CASE NEEDS TO BE JUDGED ON
IT'S OWN MERIT.

>> I KNOW YOU'RE CONCERNED
AND YOU WANT TO SPEAK
DIRECTLY TO THOSE ENTITLED
TO ENTITLED TO IMMEDIATE
RELEASE, BUT, ALL OF THE
PETITIONS ARE GOING TO SAY,
I WOULD BE ENTITLED TO
IMMEDIATE RELEASE, BUT FOR
THE FACT THAT THEY FORE
FITTED GAME TIME, YOU KNOW
BEING A BAD PRISONER.
UNDER THAT CIRCUMSTANCE, WE
WOULD HAVE TO REQUIRE A
RESPONSE.

AGAIN, THESE GUYS ARE
CRAFTY.

ONCE THEY CATCH ON, THAT'S
WHY THEY NEED TO HAVE THAT
HEARING TO BE BROUGHT BACK
AND SO ON, YOU'LL HAVE THAT
LANGUAGE.

>> I --

>> BUT DON'T YOU HAVE TO HAVE THE PETITION HAS TO BE SUBSTANTIATED WITH ATTACHMENTS THAT BECOME A PART OF THE RECORD, AND YOU HAVE TO BUILD IT TO MAKE THAT DETERMINATION BASED ON THE RECORD, THE COMPLETE RECORD.

I THINK HERE THEY HAD TRANSCRIPT AND ORDER, IN FRONT OF THE JUDGE.

AND BASICALLY WHAT FIRST IS SAYING, IF YOU HAVE THAT, YOU CAN'T JUST SUMMARILY DENY --

COUPLES WITH THE WORDS RIGHT TO IMMEDIATE RELEASE, YOU DON'T HAVE TO SET IT BACK.

YOU CERTAINLY HAVE DEPARTMENT CAUSE AND THEY COME IN AND LOOK AT IT AND THEY MAKE A DETERMINATION FROM THERE.

>> YES, YOUR HONOR, YOU'RE EXACTLY RIGHT.

>> THAT DOESN'T MEAN YOU HAVE TO TURN THEM LOSE.

>> YES, AND TO RESPOND TO THE GAME TIME QUESTION, IF FROM THE FIRST DISTRICT, THEY DID DISTINGUISH THE FACT THAT THIS CASE DID NOT INVOLVE GAME TIME TO BE CALCULATED BY THE DEPARTMENT.

SO THAT MAY SIGNAL THAT THEY VIEWED GAME TIME THAT WOULD HAVE TO BE CALCULATED BY THE DEPARTMENT THAT IS SOMETHING THAT MAY NEED TO BE RESOLVED.

THE JUDGE MAY BE DENYING THE PETITION IF IT RERAISES THAT FACT.

THAT WASN'T THE FACTS IN THIS PARTICULAR CASE.

BUT, ASSUMPTION, YOUR HONOR, THE FIRST DISTRICT STUCK A BALANCE FOR HABEAS CORPUS AND THE CONCERN OF MAKING SURE THAT COURTS AREN'T OVERWHELMED BY FRIVOLOUS PETITIONS.

AND THEY LEFT OPEN A MEANS FOR COURSE, WHILE AT THE SAME TIME PROTECTING THE CONSTITUTIONAL RIGHTS THESE INMATES HAVE WHEN THEY DO SUFFICIENTLY ALLEGE THEY ARE ENTITLED TO IMMEDIATE RELEASE.

IF THERE ARE NO OTHER QUESTION LINGS WE'LL -- THE OTHER, I APOLOGIZE.

>> I ACTUALLY HAVE A QUESTION.

IN THIS CASE, YOU, I'M SURE, WERE APPOINTED BY YOU'RE COURT APPOINTED?

>> DID YOU DETERMINE IF HE WAS ENTITLED TO IMMEDIATE RELEASE.

>> IF YOU DON'T KNOW THAT OR

--

I'M JUST, YOU DON'T HAVE TO ANSWER THAT.

>> HONESTLY, I DON'T KNOW, I CAN'T TELL YOU THAT HE ABSOLUTELY WAS, I CAN HONESTLY SAY THAT TO YOU. THERE WAS DIFFERENCE WITH HOW MUCH TIME HE GOT FROM THE STATE HOSPITAL, SO NO,

BUT I THINK THIS CASE.

>> WAS THERE AMBIGUITY ON THAT OR LACK OF INFORMATION AND FILING.

>> I THINK HIS TESTIMONY THAT WAS THERE WAS 6 MONTHS IN THE STATE HOSPITAL.

HE SPENT 6 MONTHS IN STATE HOSPITAL, BUT THERE WAS ALSO SUGGESTION SOMEWHERE THAT HE SPENT MORE TIME IN A STATE HOSPITAL FACILITY, AND A COURT HAD AWARDED HIM THE TIME THAT HE STAYED IN A STATE HOSPITAL.

HE HAD MENTAL ISSUES, BUT THE COURT HAD AWARDED HIM THAT GAME TIME.

BUT BASED ON THE CREDITS THEMSELVES, YOU CAN CALCULATE AND DETERMINE THAT ISSUE.

I JUST DON'T HAVE THAT ANSWER FOR YOU.

>> BUT HE IS OUT NOW?

>> HE IS OUT.

HE WAS RELEASED BACK IN NOVEMBER OF LAST YEAR.

>> THANK YOU, YOUR HONOR.

>> PERHAPS ONE SOLUTION TO THE PROBLEM, A CONCERN WITH THE ILLEGAL SENSE THAT THE INMATE HAS AND THE HABEAS, MAY BE FOR THE HABEAS COURT TO TRANSFER THAT CASE TO THE SENTENCING COURT.

NOW THE GLITCH IN THE MATTER, IS WHILE THE INMATE MAY BE SHOWING, BASED ON THE SENATE, THAT HAS AN ILLEGAL SENTENCE, THAT STILL DOESN'T TELL US WHAT DOC AS DONE.

>> BUT THAT'S NOT THIS CASE.
THIS CASE IS NOT ILLEGAL
SENTENCE.

HIS ARGUMENT IS I HAVE
SERVED MY SEASONS SENTENCE.

>> WELL I THINK THE PROBLEM
IS, THE ANSWER TO THAT IS,
WE DON'T KNOW WHETHER YOU
HAVE OR NOT BECAUSE THE
WRITTEN SENTENCING ORDER IS
WHAT DOC EXECUTED.

>> HE SAID THAT.

I'M TROUBLED THAT DOC STARTS
BECOMES INVOLVED AS ANOTHER
PROSECUTOR IN SO MANY OF
THESE THINGS.

THAT WAS HAPPENING ONCE
BEFORE, BUT AS I UNDERSTAND
THIS ARGUMENT, THE COURT
MUST HAVE DETERMINED THAT
FROM THE FACE OF THESE
DOCUMENTING, DOC HAD NOTHING
TO DO WITH IT, IT'S A
QUESTION FROM THE FACE OF
THESE DOCUMENTS HE HAD
FULFILLED HIS SENTENCE.

WELL THE HABEAS COURT CANNOT
GIVE HIM THE RELIEF HE WANTS
BECAUSE WHAT INMATE IS
RELYING ON IS LANGUAGE IN
THE --

>> THAT'S A DIFFERENT ISSUE.
I HEAR WHAT YOU'RE SAYING.

THAT YOU CONSTRUE THE TWO
TOGETHER WITH, YOU'RE SAYING
NO COURT CAN CONSTRUE THESE
TWO TOGETHER.

IT HAS TO GO BACK TO A
DIFFERENT COUNTRY, AND >>
HABEAS COURTS CANNOT DO
THAT.

AND THE DOC CAN'T DO IT.
I THINK THE OTHER CONCERN
ABOUT THE INMATE EXHAUSTING,
YOU KNOW LET'S SAY, LIKE THE
PETITION, THE JUDGE
DISMISSES IT, IF THE INMATE
HAS EXHAUSTED, HE HAS
REHEARING, HE CAN REHEAR AND
INCLUDE HIS DOCUMENT, I MEAN
MR. SANTANA DID A REHEARING
IN HIS CASE.

SO HE'S NOT DENIED A REMEDY.
LET'S SAY HE DIDN'T KNOW
THAT HE HAD TO EXHAUST FOR
SOME REASON, THEN HE CAN DO
THE REHEARING AND SAY WAIT
JUDGE, I DID THAT.

HE CAN SHOW THAT AND THAT
WOULD GIVE THE JUDGE THE
INFORMATION HE NEEDED.

I WILL TELL YOU THAT INMATES
HAVE STARTED CITING SANTA IN
A IN THEIR HABEAS POSITIONS
SAYING THEY DON'T HAVE TO
EXHAUST OR SHOW.

SO THAT TREND HAS ALREADY
BEGUN.

I'M NOT SO SURE THAT IF AN
INMATE TRULY SHOULD BE
RELEASED, REQUIRING DOC TO
RESPOND JUST ADDS DELAY TO
THE PROCESS.

AGAIN, THEY, THE COURT HERE
DID THE RIGHT THING, AND IT
WAS THE INMATE THAT CHOOSE
TO GO THROUGH THE APPELLANT
PROCESS RATHER THAN THROUGH
THE SENTENCING COURT TO GET
THAT PROBLEM FIXED.

SO, I DON'T KNOW THAT THE
FIRST DECISION IS CERTAINLY
FOR THE BENEFIT OF THE

COURTS.