

>> PLEASE RISE.

HERE YE HERE YE, FLORIDA SUPREME COURT IS IN ORDER.

[INAUDIBLE]

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT.

BEFORE THE FIRST CASE ON THE COURT THIS MORNING.

ARE THE PRIORS READY TO PROCEED.

YOU MAY PROCEED.

>> GOOD MORNING.

MAY PLEASE THE COURT.

JOHN HAMILTON ON PETITION OF WILLIE F. JONES.

IT SHOULD BE THE DECISION FOR EITHER OR BOTH OF THOSE ERRORS.

FIRST, HIS APPLICATION OF

SECTION 95.115 AFTER THE FLORIDA STATUTES TO THAT HABEAS CORPUS

AND FIVE REPRESENTED

NONCONSTITUTIONAL OF NATIONAL

VIOLATION OF SEPARATION OF

POWERS PROVISIONS OF THE FLORIDA CONSTITUTION.

>> WHAT ABOUT THE SUBSTANCE OF THE HABEAS PETITION THAT WAS

FILED?

WAS HE CONSISTING HIS PAROLE

DETERMINATION OR WASN'T

CONTESTING THE FACTUAL JUDGMENT AND SENTENCE?

>> HE WAS FRAMED AND PHRASED AS STYLED AS A PETITION ALLEGING

ACTUAL INNOCENCE.

SO HE WAS CONTESTING THE

ALLEGATIONS OVER THE BASIS FOR

THE RAMIFICATIONS OF HIS PAROLE.

THE PAROLE WAS REVOKED ON THE

BASIS OF ASSERTIONS THAT HE WAS
IN POSSESSION OF COCAINE AND HAD
VIOLATED THE CONDITION THAT HE
REMAIN AT LIBERTY WITHOUT
HIGHLIGHTING THE LAW.

>> THE PROBLEM OF LAW.

I UNDERSTAND YOUR ARGUMENTS AND
I APPRECIATE YOUR CASE BEING PRO

BONO.

2

THIS WAS FILED 18 YEARS AFTER THE DETERMINATION WAS MADE TO REVOKE HIS PAROLE AND REQUIRE HIM I GUESS TO SERVE OUT THE BALANCE OF HIS SENTENCE 18 YEARS LATER.

EVEN IF THERE WASN'T A STATUTE OF ONE YEAR, THIS COURT UNDER HIS JURISPRUDENCE WOULD NEVER ALLOW A CLAIM 18 YEARS AFTER, CERTAINLY NOT ONE UNLESS THERE WAS NEWLY DISCOVERED EVIDENCE ATTACKING HIS CONVICTION.

SO WHY WOULD THERE BE A MORE LIBERAL STANDARD SERVICING FOR THOSE THAT ARE CHALLENGING THEIR CONVICTION AND SENTENCE.

>> WELL, THERE'S A SIMPLE ANSWER TO THAT, PERHAPS AN OVERLY SIMPLE.

THERE'S A RULE RULE, IF YOU'RE EXPRESSED WILL GOVERN IN TIME UPON SENTENCES.

3850 OR 3851 THAT THIS COURT HAS ADOPTED THERE IS A SPARE TIME AT SUBJECT TO EXCEPTIONS LIKE DISCOVERED EVIDENCE LIKE WHAT I REFERRED TO.

TWO YEARS FOR THE NONCAPITAL CONTACTS AT 3850 AND ONE YEAR UNDER 3851.

THERE IS NO CORRESPONDING RULE.

>> SO THAT'S REALLY JUST A CAP FOR WHATEVER THAT WOULD PERTAIN IN PAROLE PROCEEDINGS THAT WE NEED TO FILL THEM.

>> PERHAPS.

AND CERTAINLY THERE IS A COUPLE DECISIONS FROM THE FIRST JURY. ONE FROM A CERTAIN DCA AND THEN JUDGE THOMAS ON THE PRICEY

DECISION SUGGESTING A NEED FOR
SUCH A RULE IN THE CONTEXT.
AND CERTAINLY THERE ARE LOTS OF
ARGUMENTS FROM THE COMMISSION TO
BUY WILL BE A VERY GOOD IDEA.
I'M NOT SUGGESTING THAT WAS A
GOOD IDEA.
>> IN THIS CONTEXT, I GUESS WHAT

BOTHERS ME IS THE REAL BASICS OF THIS IS ISN'T HE ACTUALLY RAISING SOMETHING THAT WAS APPEALABLE?

DID HE HAVE AN OPPORTUNITY TO APPEAL THE REVOCATION?

>> TO REMEDY FOR PAROLE REVOCATION IS HABEAS CORPUS.

>> SO THEN YOU ARE SAYING THAT WE CAN SIT AROUND FOR A NUMBER OF YEARS AND APPEAL WHEN YOU WANT TO OREBODY OR HABEAS PETITION WHEN YOU WANT TO.

>> I'M NOT NECESSARILY SAYING THAT.

THERE IS NO TIME LIMITATION BY THE RMR PRECISELY SAME BY THIS STATUTE IS NOT A LIMITATION UPON THAT.

>> IS A DISTINCTION ORIGINAL PROCEEDING AND APPELLATE PROCEEDINGS RATHER THAN HERE? ESSENTIALLY YOU'RE SAYING THAT THIS IS A HABEAS CORPUS HE BEING, NOT REALLY AN APPEAL. THEREFORE THE TIME LIMITS, THE RESTRICTIONS THAT ARE APPLICABLE TO APPEALS DON'T COME INTO PLAY HERE.

IS THAT CORRECT?

>> THAT'S NOT ALL I'M SAYING.

>> I UNDERSTAND YOU'RE SAYING MORE THAN THAT.

YOU HANG YOUR HEART ON THE CONSTITUTIONAL PROVISION FOR YOUR CONSTITUTIONAL CHALLENGE HERE FOR YOUR CONSTITUTIONAL ARGUMENT ON THE PROVISION IN ARTICLE V, SECTION TWO, CORRECT?

>> OF COURSE I WOULD SAY ARTICLE II SECTION THREE AS WELL.

>> BUT THE HEART OF IT --

>> I WOULD AGREE WITH THAT, YOUR
HONOR.

>> PROCEDURAL RULEMAKING
AUTHORITY UNDER ARTICLE V
SECTION TWO.

SUPREME COURT SHOWS THE
PROCEDURE INCLUDING THE TIME FOR

SEEKING APPELLATE REVIEWS.
NOW I UNDERSTAND HOW A TIME
LIMIT HABEAS FOLLOWS THE
DEMONSTRATION AS IT DEALS WITH
THE TIME FOR APPELLATE REVIEW.
SO HABEAS IS NOT APPELLATE
REVIEW.
HABEAS IS AN ORIGINAL PROCEEDING
AND THAT IS SOMETHING THAT IS
RECOGNIZED IN THE STRUCTURE OF
OUR APPELLATE RULES.
IT'S NOT OBVIOUS APPELLATE
COURTS AT SOME POINT CONSIDER
HABEAS PROCEEDINGS, BUT
TYPICALLY THEY'RE INITIATED AS
TRIAL COURT AS THE ORIGINAL
PROCEEDING.
SO WHY DO YOU REALLY PRO BONO
UNDER THE LANGUAGE THAT THIS
CONSTITUTIONAL PROVISION THAT'S
ALSO ABOUT APPELLATE REVIEWS IN
OUR AUTHORITY WITH RESPECT TO
THE TIME FOR APPELLATE REVIEW.
AND WE'RE NOT TALKING ABOUT
APPELLATE REVIEW BUT AN ORIGINAL
PROCEEDING.
>> AND I'M SURE THAT THE
ARGUMENT WAS THE PROVISION OF
SUBSECTION 2A --
>> WHAT ELSE DOES THAT REST ON?
THIS IS THE CIVIC POSITION.
THERE'S GOT TO BE SOMETHING MORE
SPECIFIC INCLUDING THE APPELLATE
REVIEWS.
IF THE INTENT THERE WAS
INCLUDING DESIGN FOR APPELLATE
REVIEW IN THE INITIATION
ORIGINAL PROCEEDINGS, IT SEEMS
LIKE THEY WOULD HAVE
INCENTIVIZED.
I'M SURE THAT WE DON'T ESTABLISH
TIME LIMITS FOR THE FOLLOWING

ORIGINAL ACTIONS ORDINARILY.
WE DON'T HAVE A RULEMAKING
AUTHORITY TO ESTABLISH STATUTES
OF LIMITATION.

>> WELL, YOU DON'T HAVE ANY TIME
TO DISCOVER THE STATUTES OF
LIMITATION.

TO BE SURE YOU DO ESTABLISH TWO

PARTS OF THE RESPONSE.

YOU ESTABLISH BY RULE THE FILING OF THE ORIGINAL PROCEEDINGS ALL THE TIME.

RULE 100 HAS WITHIN IT A 30 DAY TIME LIMITATION FOR COMMITTING SEARCH AND LABOR LIMITATIONS.

AND THAT IS --

>> HAD RETIRED UP BACK TO THE TEXT HERE?

THAT DOES NOT REPORT TO BE IN THIS COURT HAS NEVER CONSTRUED THAT LANGUAGE TO BE AN EXCLUSIVE LIST OF WHAT THE RULEMAKING AUTHORITY OF THIS COURT IS.

AND CERTAINLY IN THE ALLEN V. MCGOVERN DECISION TO HABEAS CORPUS LIMITATIONS ESTABLISHED BY THE LEGISLATURE IN THAT CASE IS THAT THIS COURSE INSTRUCTOR IN VIOLATION OF 5628 WAS NOT EXPRESSLY SET FORWARD IN ARTICLE V SECTION 2A

SO I THINK, YOUR HONOR, IF YOUR HONOR IS READING THAT LIST IN TWO WAYS BEING AN EXCLUSIVE LIST OF WHAT THIS COURT RULEMAKING AUTHORITY EXTENDS TO A NEW MORE THAT HAS BEEN A DEPARTURE FROM THIS COURSE PROSPECT.

AND I SAID EARLIER THAT MY ARGUMENT WAS NOT LIMITED TO THE WAY YOUR HONOR CHARACTERIZED IT.

AND PART OF MY ARGUMENT ABSOLUTELY RESTS UPON NOT JUST EXTRAORDINARILY WITH IN GENERAL, BUT A SPECIFIC AND UNIQUE ROLE IN HABEAS CORPUS IN PARTICULAR.

CONSTITUTIONALLY IT ESPECIALLY IS UNIQUE THAT THE CASE IN THE FOR DCA CALLED IT THE UNICORN.

>> THAT'S TRUE.

BUT IT WAS SAID THAT HABEAS
CANNOT BE USED FOR ISSUES THAT
COULD'VE SHOULD'VE BEEN RAISED
ON DIRECT APPEAL.
NOW YOU'RE SAYING THE ONLY WAY
TO BRING AND AN ATTACK ON THE
REVOCATION OF PAROLE WOULD BE BY
HABEAS, NOT PAROLE.

BUT YET WE ARE CREATING SOME ANIMALS ARE ONLY FOR THIS OF CASE THAT WOULD BE UNLIMITED ABILITY TO ATTACK THE CONVICTION BECAUSE THE SECOND PART ABOUT THE FIRST CHOICE HAS SAID IS A CONTINUOUS DETENTION AND THERE IS NO TIME LIMIT ON EVERY DAY THE PERSON IS ILLEGALLY DETAINED IS ANOTHER -- IS A TERM FROM WHICH HABEAS RELEASE CAN BE THOUGHT.

AND CERTAINLY A TRUE CASE OF AN ILLEGAL DETENTION, WE DO WANT TO PRESERVE THE RETURN OF HABEAS CORPUS.

I THINK THEY'RE LOOKING BACK ON WHAT IS UNDERLYING THIS IS THAT HE'S QUARRELING WITH THE DECISION THAT WAS MADE 18 YEARS BEFORE ABOUT HIS PAROLE BEING REVOKED, NOT SOMETHING THAT IS -- GOES TO THE ESSENCE OF HIS DETENTION IS ILLEGAL, BUT HE'S JUST CHALLENGING THE CORRECTNESS OF THE DECISION.

ISN'T THAT WHAT THE UNDERLYING IS, THE NATURE OF WHAT IT CAN JUSTICE QUINCE SAID THE NATURE OF WHAT HE IS BRINGING IS JUST A GARDEN-VARIETY ATTACK ON WHAT THE PAROLE COMMISSION DID BEFORE?

>> AS FAR AS THE RECORD SHOWS THERE'S NEVER BEEN AN ADJUDICATION OF THE TIME OF MERITS OF WHETHER THAT IS PROPER.

>> SORT OF, I GUESS IN ONE WAY IT'S A CRY OF THE JUSTICE BECAUSE HE WAITED 18 YEARS OR IT MAKES YOU THINK THEY CAN'T DO

MUCH MERIT TO IT BECAUSE HE WAS
JUST IMPRISONED FOR 18 YEARS AND
NOT ATTEMPT TO CHALLENGE THIS?
>> THE RECORD DOESN'T SHOW ONE
WAY OR ANOTHER ON THIS.
IT WAS DISMISSED -- I'M SORRY.
>> IF THIS WERE A CASE WHERE YOU
COULD HAVE BROUGHT THE CHALLENGE

ON A DIRECT APPEAL, WE WERE CERTAINLY 8 YEARS LATER SAY THAT THIS MAN CANNOT NOW BRING THIS DIRECT APPEAL, WOULDN'T WE?

>> I THINK HE PROBABLY WOULD.

>> AND SO IN ESSENCE, WE HAVE THE SAME KIND OF CASE, BUT YOU'RE SAYING BECAUSE HE HAS TO BRING IT IN A HABEAS PETITION, THEN THE 18 YEARS MAKES A DIFFERENCE?

>> WELL, YOU WOULD SAY THAT IN THE CRIMINAL CONTEXT BECAUSE OF LIMITATIONS IN THE ROLE.

WE DON'T HAVE A ROLE.

AND I SAY WHAT YOUR HONOR A SET UP THOUSAND VERY APPELLATE REASONS FOR ADOPTING THE RULE.

BUT WE DON'T HAVE A RULE.

AND THERE ARE EXISTING LEGAL PRECEDENTS THAT TO FORECLOSE THE TYPE OF ABUSE OR SUCCESSIVE PETITIONS OR THE TYPES OF MISCHIEF THAT I THINK IS OF CONCERN HERE.

I MEAN, THERE ARE PROHIBITIONS AGAINST --

>> IF WE RULED THE WAY ARE YOU SUGGESTING, WOULDN'T EVERYONE WHO IS IN FIRST ON THE REVOCATION OF THEIR PAROLE WHO HAS NEVER HAD THAT TESTED NOW HAVE AN OPPORTUNITY TO COME BEFORE A COURT AND FILE A HABEAS PETITION?

>> PERHAPS.

THERE ARE PRINCIPLE OF LACHES. THEY'RE PRINCIPLES OF WAIVER.

>> CERTAINLY 18 YEARS SEEMS LIKE A DOCTRINE OF LACHES.

>> IS THAT PART OF WHAT THE DEFENSE HAS RAISED?

THERE IS NO WAIVER, NO LACHES
COME AT THEM WITH THE STATUTE OF
LIMITATIONS?

AND LACHES IS A QUINTESSENTIAL
PASSIONATE DETERMINATION.

THAT'S TO BE SOMETHING IN THE
FIRST TRIAL COURT.

MAYBE THEY COULD ESTABLISH THAT

DEFENSE, BUT I DON'T THINK YOU SHOULD BE -- THE QUESTION IS WHETHER THE STATUTE OF LIMITATIONS REQUIRED IN THE PROCEDURE IS APPROPRIATE? THAT'S THE ISSUE, YOUR HONOR. I THINK THAT ISSUE IS DEFINITELY AND EXPRESSLY RESOLVED IN THE ALLEN V. BUTTERWORTH DECISION. GOING BACK TO THE STATUTE OF LIMITATIONS BEGAN TO RUN HE SEEMS TO ME GET TO THE ANSWER THAT THE COMMISSION WANTS THE COURT TO PROVIDE THAT ONLY BY READING INTO THE STATUTE BY WHICH THE LEGISLATURE TO PUT THEIR PERIOD OF LANGUAGE THAT SAYS IN THE ONE-YEAR PERIOD BEGINS TO RUN UPON THE PAROLE REVOCATION. THAT'S NOT WHAT IT SAYS. IF YOU RESORT BACK IN THE ABSENCE OF THAT LANGUAGE THE GENERAL PRINCIPLES OF LAW THE CONCLUSIONS THE FIRST DCA REACHED THAT THE LEGAL CONFINEMENT IS A CONTINUOUS BLOCK I THINK HE THEMATICALLY TO THE INCLUSION OF THE STATUTE OF LIMITATIONS HAD NOT EXPIRED. >> LET ME ASK YOU THIS. DOES THE HABEAS FLY WHEN A PERSON HAS BEEN WITH THESE. CAN A PRISONER GET OUT OF PRISON A YEAR AGO FILE A HABEAS ACTION? >> THE FLORIDA LAW HAS NOT ANSWERED THAT QUESTION. >> ISN'T THE REMEDY IN HABEAS IS RELEASED. SO IT IS NONSENSICAL THAT YOU HAVE A REMEDY FOR RELEASE WHEN

YOU'VE ALREADY BEEN RELEASED.
IF THAT'S TRUE -- IF THAT'S TRUE
DOESN'T THAT RENDER YOUR READING
OF THIS ONE-YEAR PROVISION AS
NONSENSICAL BECAUSE ESSENTIALLY
THERE WOULD NEVER BE A TIME WHEN
THE ONE-YEAR LIMITATION WOULD
COME INTO PLACE.

THAT WOULD BE MEANINGLESS.

>> UNDER FEDERAL LAW AND IN THE LAW ABOUT HALF THE STATES, HABEAS REMAINS AVAILABLE AFTER SOMEONE HAS BEEN RELEASED FROM PHYSICAL CUSTODY BECAUSE IF THERE CONTINUED TO BE RESTRAINTS UPON THAT PERSON'S LIBERTY. THAT'S NOT THE CASE THAT REQUIRES LITERAL PHYSICAL RESTRAINTS.

SO IT'S A POSSIBLE, PROBLEMATIC OF MY ARGUMENT IN THAT REGARD. YES, I CAN SEE THAT.

BUT I DON'T THINK YOU CAN GET TO THE CORRECT CONCLUSION BASED ON THE LANGUAGE OF THE STATUTE AND THE OTHER WAY, THOUGH.

BECAUSE IT REQUIRES, AS I SAID, READING INTO THE STATUTE LANGUAGE IS NOT THERE AND IT REQUIRES OVERLOOKING WHAT TO ME AN OBVIOUS OPPOSITION.

IF YOU ARE BEING ILLEGALLY CONFINED THAT IS AN ONGOING WRONG.

I DON'T THINK YOU CAN REALLY GET PAST THAT.

>> BUT REALLY YOUR FIRST AND PROBABLY BEST ARGUMENT IS THAT THE STATUTE IS UNCONSTITUTIONAL UNDER ALLEN V. BUTTERWORTH. THERE'S NO WAY TO GET AROUND THE FACT THAT ALLEN V. BUTTERWORTH SPECIFICALLY SAYS THIS COURT HAS THE AUTHORITY WITH REGARD TO EXTRAORDINARY RISK, WHICH MAKES SENSE IN MOST SITUATIONS BECAUSE THE ORIGINAL WRIT, ALL THE REASONS HE SAID THE WRIT OF HABEAS CORPUS IS IMPORTANT TO MAINTAIN TO ENSURE THAT THEIR

INSTANCES OF INJUSTICE THAT THEY
CAN BE REMEDIED.

>> I THINK THAT'S RIGHT.

AND THESE OTHER PROBLEMS DELAYED
THE POSSIBILITY OF LACHES.

ALL THESE OTHER POTENTIAL ISSUES
ARE THINGS THAT CAN BE RAISED,
SHOULD BE RAISED AND SHOULD BE

RESOLVED.

THE ISSUE RIGHT NOW IS WHETHER THIS STATUTE CAN BE CONSTITUTIONALLY APPLIED TO THE PREVIOUS PETITION AND WHETHER IT ENCROACHES UPON THIS COURT'S EXCLUSIVE RULEMAKING AUTHORITY AND TO ME THAT QUESTION WAS ANSWERED IN AN HOUR.

IT DOESN'T ENCROACH UPON THE RULEMAKING AUTHORITY.

I'M GOING TO SAVE MY TIME FOR REBUTTAL.

>> THANK YOU.

>> MAY I PLEASE THE COURT?

GOOD MORNING I AM SARAH RUMPH. 9115 AS IS CONSTITUTIONAL AS APPLIED IN THIS CASE AND AS IT WAS WRITTEN.

[INAUDIBLE]

THE IMPORTANT PART OF ALLEN IS ITS PETITION IF THE STATUTE IS PROCEDURAL OR SUBSTANTIVE. IF ALL THE REFERENCES FROM ALLEN TO HABEAS PETITION IS REMOVED, THEN ALLEN COMES DOWN TO THE BASE OF WHETHER WAS PROCEDURAL OR SUBSTANTIVE.

9115 AS WAS RETURNED IS TO IS IS IS THAT IT IS IS THIS STATUTE IS WAS AS GOOD AS.

>> NOW IN FAIRNESS, AND NOW IS A QUARTERLY RECORD I RULE 3850 THAT'S FROM QUOTING AN EARLIER CASE.

IT IS A PROCEDURAL VEHICLE FOR HABEAS CORPUS.

I MEAN, WE WOULD ESSENTIALLY ESTABLISH THAT A 3850 AND 3851 HAS THE MECHANISMS BY WHICH CLAIMS THAT OTHERWISE WOULD'VE BEEN CONSIDERED AS HABEAS CORPUS

OUGHT TO BE CONSIDERED, ISN'T
THAT CORRECT?

>> I AGREE.

WHAT ALLEN HAD SAID IS THAT THE
REASON WE LOOK AT HABEAS
PETITIONS WAS THOSE WITH THE
MOST COMMON TYPES OF CHALLENGES

AND THE CRIMINAL DEATH SENTENCES
AND CONVICTIONS.

BUT THAT DOESN'T MEAN THAT ALLEN
HINGES ON THAT.

ALLEN STILL HINGES ON WHETHER
HIS PROCEDURALS ARE SUCCESSIVE.
AND THEN WE HAVE CALLAWAY AND
THE COURT SPECIFICALLY REJECTED
THE STATE'S ASSERTION YOU RELY
ON CALLAWAY BUT AS CALLAWAY
APPLIES TO THE HIDEOUS PETITION
SAYING WE CLARIFY CALLAWAY TO
MAKE SURE IT DOES NOT PROCEED TO
THE LEGISLATURE FOR THE TIME AND
WHICH EXTRAORDINARY RATE ACTIONS
MUST BE COMMENDED.

WE COULD'VE BEEN CLEAR THAT IN
HABEAS PETITIONS, NOT CIVIL
ACTIONS, BUT HABEAS CORPUS WHICH
ARE CHALLENGING SOMEONE'S
DETENTION AND PRISON, THAT THOSE
ARE A CHALLENGE TO EXTRAORDINARY
RISKS.

IT DOES SEEM LIKE WE HAVE A SORT
OF A GAP IN WHICH WE OUGHT TO
ADOPT FRANKLY -- I WOULDN'T
THINK THAT THE ONE, TWO HEAR FOR
THE ONE-YEAR IS A REASONABLE
TIME LIMITATION.

SO WE COULD AGREE AND ADOPT IT
SEEMS TO ME IN THIS CASE.

BUT IT WOULD BE I THINK CONTRARY
TO ALLEN TO CARVE OUT THIS
SUBSECTION AND SAY THIS IS AN
HABEAS CONSTITUTION WE WERE
REFERRING TO.

I MEAN, HOW DO WE GET AROUND
THAT?

>> POINT OF THIS PETITION IS IF
THEY ARE CHALLENGING DETENTION,
BUT THEY'RE ALSO CHALLENGING
ADMINISTRATIVE CERTIFICATION

THERE THAT IS WHY CALLAWAY WAS
ONLY RESOLVED IN A POSSIBLE
RELEASE --

>> HISTORICALLY IS NOT WHAT
HABEAS IS USED FOR?

IT'S USED IN THE CONSTITUTION OR
ALCOHOLISM IN VARIOUS WAYS AND
THIS IS THE CLOSEST TO A

CRIMINAL APPLICATION, DIRECT
CRIMINAL IF NOT, THAT THAT WE
SEE.

SO I MEAN IT'S NOT -- THE HABEAS
IS NOT JUST THIS COURSE
CREATION.

THIS IS HISTORICALLY THE GREAT
WRIT.

WE CAN GO THROUGH ALL THOSE
FANCY WORDS, BUT THIS IS
CONSIDERED SIGNIFICANT IN
AMERICAN JURISPRUDENCE FOR A
HABEAS PETITION, ISN'T IT?

AS IT PERTAINS TO DETENTION, NOT
THAT YOUR COWS HAVE TO CROSS MY
FENCE AND WE HAVE AN
ADMINISTRATIVE HEARING.

THIS IS HUMAN DETENTION.

>> AND THAT'S WHAT'S IMPORTANT
TO LOOK, LIKE ALLEN SAID, AT THE
NATURE OF THE ACTUAL PROCEEDING,
WHICH IS NOT SIMPLY A HABEAS
PETITION BY THE CHALLENGES
ACTION WHICH FOLLOWS A DIFFERENT
PATH THAN IT WOULD FOLLOW SO ON
AND SO FORTH.

>> SO WITH THAT ARGUMENT IT IS
TO ME YOU'RE SAYING THAT IN SOME
HABEAS PETITIONS THE ONE-YEAR
LIMITATION AND 95.11 WOULD APPLY
IN ANOTHER SITUATION THAT WOULD
NOT?

>> I THINK THE STATUTE IS CLEAR.
THE STATUE WHEN SAYS 95115 AS
WERE NOT CHALLENGING CRIMINAL
CONVICTIONS.

THE UNAMBIGUOUS ACTION.

>> I JUST DON'T KNOW HOW TO GET
AROUND THIS PROCEEDING IS
PROPERLY BROUGHT AS YOU AGREE
WITH THE WRIT OF HABEAS CORPUS.
SO HE DIDN'T HAVE ANOTHER

ADMINISTRATIVE -- ARE NOT
CLAIMING HE DIDN'T EXHAUST IS --
>> I WOULD BE THE PROPER THING.
HE IS ADMINISTRATIVE HEARING, A
REVOCATION HEARING WHICH WORKS
JUST LIKE A TRIAL.
>> HE'S NOT LIKE ALLEGING HE CAN
BEAR FRUIT IN PRISON.

WE DON'T HAVE ONE OF THOSE CASES?

>> RIGHT, HE SEEMED A BASIS BY WHICH HE REVOKED HIS PAROLE, VIOLATION OF CONDITION OF RELEASE WHICH WAS AN ACT THAT HE WAS NEVER CONVICTED OF OF A CONTROLLED SUBSTANCE AND THEREAFTER SENT IT BACK TO PRISON TO SERVE A MINIMAL SENTENCE, WHICH WAS A 99 YEAR SENTENCE.

SO HE'S ESSENTIALLY IN PRISON FOR THE REST OF HIS LIFE.

THAT IS NOT A TRADITIONAL HABEAS CORPUS TYPE OF CLAIM?

>> NO, NOT IN THE SENSE THAT IT ORIGINALLY ORIGINATES FROM AN AGENCY ACTION.

I MEAN, THIS DOESN'T ORIGINATE FROM A TRIAL COURT.

IT ORIGINATES FROM AN AGENCY.

IT'S THE HABEAS CHALLENGING A DECISION.

>> SO WHAT WOULD HIS RECROSS BE TO THAT AGENCY DECISION?

HE WOULDN'T BE ALLOWED TO APPEAL THAT TO A COURT?

>> IT WOULD BE PROPER TO SOLVE OUR HABEAS ACTION AND WE DEFINITELY AGREE -- I CAN'T THINK OF ANY OTHER RIGHT THAT WOULD BE MORE APPROPRIATE THAN HABEAS.

IT IS CHALLENGING THE DETENTION AND I CAN'T THINK OF ANY OTHER WRIT THAT WOULD FOLLOW THROUGH.

NOW THIS COURT IN 1998, THAT THESE TYPES OF PETITIONS ARE APPELLATE AND THEY COULD BE CHALLENGED TO CHALLENGING THROUGH HABEAS.

>> WOULD YOU SAY THAT IF THIS COURT CHALLENGES FOR JUDGE THOMAS SAYS AND ESTABLISHED A PROCEDURE IN THE TIME LIMIT, THAT WE WOULD BE ACTING UNCONSTITUTIONALLY? WE WOULD BE ACTING AS PART OF OUR AUTHORITY?

>> NO, I DON'T THINK SO.
IT COULD BE CONSIDERED
PROCEDURAL WHEN THIS COURT TO
SET TO DO SO.

>> THE PROCEDURAL SUBSTITUTE
DEFINITION IS DETERMINED
[INAUDIBLE]

>> I DON'T THINK IT'S CLEAR.
I DON'T THINK IT'S 100% CLEAR.

>> IT'S ON THE BASIS OF A
CLASSIFICATION.
IT HAS TO BE -- MANY TIMES
THEY'RE VERY CLOSE I AGREE WITH
YOU, BUT CERTAINLY YOU CAN'T TIP
ON THAT FIRST.

>> NO, I DON'T THINK OF TWO
OTHER WHO RUNS THE RACE LINE
FIRST.
MEMORY V. STATE, THE COURT
STATED THAT WHEN THE RULE IS
PROMULGATED IN THE STATUTE WAS
FINE BECAUSE THE STATUTE CAME
FIRST, BECAUSE THE LEGISLATURE
CAME FIRST.

[INAUDIBLE]

>> THE ADMISSIBILITY OF THE
IMPACT.

AND IN THE AREA OF THE EVIDENCE
CODE WE HAVE TAKEN THIS VIEW AND
MADE A BALANCE BETWEEN THESE
DIVIDENTIALS TO THE LEGISLATURE
AND NOT QUITE CITING SUBSIDENCE
PROCEDURE.

BUT HERE, IF WE ACT IN A WAY AND
AGAIN AND NOT A STATUTE AFTER
ALL THAT ATTRACTS WITH THE
STATUTE HAD INTENDED, THAT WOULD
SERVE YOUR PURPOSES.

I MEAN, YOU ARE NOT MAKING A
POLICY ISSUE ARGUMENT ARE YOU
AND I TOO SHOULD BE DOING THIS?

>> NO, WE'D BE HAPPY WITH THE

ONE-YEAR.

TO OPEN UP TO HAVE AN 18 YEAR
CHALLENGE BACK AND FORTH.

WE SEE THEM CONSTANTLY, TO SEE
CHALLENGES TO REVOCATION THAT
THOSE CONTROLLED PAROLE.

>> TO SEE THEM AS SUCCESSES OR

DID SOMEBODY WAIT 18 YEARS TO
CHALLENGE WHAT SHE DID 18 YEARS
BEFORE?

I'M SURE YOU SEE A WHOLE LOT OF
THINGS IN THIS COURT.

WHAT ARE YOU SAYING
[INAUDIBLE]

>> THESE PETITIONS WHEN THEY
COME FORWARD AT CERTAIN TIMES
THEY MAY END UP BEING DISMISSED
BECAUSE OF LACHES OR BECAUSE OF
OTHER ARGUMENTS.
OR THEY'RE ALL SO GOOD ARGUED ON
THE MERITS.

THAT HAPPENS QUITE FREQUENTLY.

>> IN THE TRIAL COURT.

SO THE TRIAL COURTS RIGHT NOW
ARE IGNORING US ANYWAY?

>> SO THIS ISN'T SOMETHING THAT
WE SHOULD BE DEFINITELY
STRAIGHTENING OUT.

AND AGAIN, IF WE AGREE THAT THE
STATUTE AS CONSTITUTIONAL ON
FIRMITIES THAT THAT SOLUTION
WOULD BE AN ACTIVE ROLE THAT
ATTRACTS THE STATUTE AND THE
SIMILAR CERTAINLY TO MY POINT OF
VIEW OF SOMEONE WHO HAS HAD
THEIR CONDITIONAL RELEASE
REVOKED SHOULD GET MORE TIME TO
CHALLENGE IT THAN SOMEBODY WHO
IS CHALLENGING THEIR CRIMINAL
CONVICTION.

>> A CLEAR GOAL WOULD BE
WELCOME.

YOU KNOW, THESE CASES COME OUT
ALL OVER THE STATE OF FLORIDA
DEPENDING ON WHERE THE PRISON IS
LOCATED.

SO, YOU KNOW, WE HAVE CASES IN
THE COURT DISTRICT WHICH ARE
DIFFERENT THAN THE FIRST

DISTRICT IN THE SECOND DISTRICT.
AND OF COURSE WE HAVE OUR
FALLBACK IN SOME CERTAIN
CIRCUMSTANCES BUT THAT DOESN'T
ALWAYS APPLY.

IT DOESN'T ALWAYS APPLY THE
PERSON OF THE FILE BEFORE.
IT'S JUST A LIMITED RANGE AND

FORTUNATELY WE ALWAYS DO MERIT.
>> HE DIDN'T ARGUE WITH THEM
THAT HE'S GOT A GOOD MERIT.
>> IF THERE WOULD BE REASON TO
BRING IT BACK BEFORE THE
COMMISSION IT WOULD BE DOCKETED.
>> WHAT DO YOU SAY IN RESPONSE
TO THE FIRST DCA'S ARGUMENT
BESIDES THE FIRST CONSTITUTIONAL
IF WE HAD AN ARGUMENT BESIDES
THE FIRST IF YOU'RE ILLEGALLY
DETAINED, MANY ARE STILL
SUBJECT, WHAT DO YOU SAY IN
RESPONSE TO THAT?
>> WELL AGAIN, I WOULD SAY HAVE
TO COME BACK TO THE ACTUAL
AGENCY, THE ACTUAL SPACE OF THE
NATURE PROCEEDINGS IS THAT IT IS
SPURRING AGENCY ACTION.
AND IT WILL ALWAYS COME BACK TO
THAT AS WHERE IT STARTED, WHAT
THE BOTTOM LINE IS.
AND THAT IS ONE ACTION
CHALLENGING ONE PARTICULAR
AGENCY'S ACTION.
AND IT'S ALL IN ONE DAY.
AND THIS IS NOT SOMETHING THAT
ON BACK AND FORTH HERE THIS IS
NOT ANYTHING HAVING TO DO WITH
THE CRIMINAL CONVICTION.
IT ALL CHANGES A 99 YEAR
SENTENCE.
HE COULD BE REINSTATED ON
PAROLE.
>> SO LET'S JUST SAY JUSTICE
LEWIS
[INAUDIBLE]
I DON'T KNOW WHAT THE LIMITATION
ON THAT IS.
IF THERE IS LIMITATION ON THAT,
THEN THAT PERSON IS JUST OUT OF
LUCK EVEN THOUGH THEY MIGHT

THINK THAT THEY ARE UNLAWFULLY
DETAINED SO THEY CAN'T BRING
THAT ACTION UNDER AGENCY.

>> I'M NOT 100% FAMILIAR WITH
THE BAKER ACT.

I'M NOT SURE HOW LONG SOMEBODY
CAN BE HELD ON THE BAKER ACT,
YOU KNOW, UNLESS THERE'S A

PARTICULAR CIRCUMSTANCE YOU CAN BEHOLD FOR A WHOLE PERIOD OF HIS ORIGINAL CRIMINAL SENTENCE.

NOW IF HE HAPPENED TO HAVE A 30 YEAR SENTENCE, THEN IT WOULD EVENTUALLY END.

>> THE REASON FOR THE QUESTION IS WHEN WE DECIDE THE PRINCIPLE OF LAW AND IT DOES IMPLEMENT IN ANOTHER AREA, WE HAVE TO CONSIDER THAT AS WELL. AND THE BAKER ACT AS HE IS SUGGESTING TO YOU IS THAT INDIVIDUAL LIBERTY IS TAKEN AWAY IS CONTINUOUS AND IT CAN BE ACCORDING TO WHATEVER THE COURT ORDER IS.

BUT IS THERE LIMITATION ON THAT?

>> AND AGAIN I'M NOT FAMILIAR ENOUGH.

[INAUDIBLE]

[INAUDIBLE]

>> WE HOLD YOU IN COMTEMPT TODAY AND YOUR LAWYER IS NOT VERY GOOD AND YOU ARE A LOT TO DO YOU STAY THERE FOR THREE OR FOUR YEARS. AND THEN YOU FILE A PETITION. TOO LATE, SO SORRY.

DOES WITH THE SLEEVES DO IF YOU HAVE A BROAD -- YOU SEE WHERE THIS IS GOING.

>> I DON'T SEE IS ANY DIFFERENT THAN PROVEN LIMITATIONS ON CHALLENGING CRIMINAL CONVICTIONS.

I MEAN, THERE ARE LIMITATIONS ON CRIMINAL CONVICTIONS AND THERE SHOULD BE A LIMITATION ON OTHER AREAS AS WELL.

>> YOU JUST WANT TO MAKE SURE IT IS SET UP SO THERE IS A CLEAR PATH THAT SOMEONE CAN FOLLOW.

I THINK THE PROBLEM WITH THE
PAROLE REVOCATION LIKE SOMEBODY
WAS A CRIMINAL CONVICTION IS
THEY HAVE A LAWYER, SO YOU KNOW
THEY'RE GOING TO GET THEIR
DIRECT APPEAL.

AND THIS INSTEAD OF -- THIS IS
DIFFERENT BECAUSE THIS IS THEIR

DIRECT APPEAL AND MOST LIKELY THEY DON'T HAVE A LAWYER, SO YOU WANT TO MAKE SURE IN ANY PRECEDING THAT YOU DO COME WITH ALL DUE RESPECT FOR THE PAROLE COMMISSION THAT THOSE WHO CREATE DISCUSSION THAT THEY HAVE TO TAKE AWAY SOMEONE'S FREEDOM. YOU DO WANT TO MAKE SURE THAT IT CAN BE CHALLENGED APPROPRIATELY.

>> THE PAROLE IS DEFINITELY A UNIQUE ANIMAL, THERE'S NO DOUBT ABOUT IT.

AND THE CASES THAT COME FROM PAROLE REVOCATION AND FROM THE PAROLE CONSIDERATIONS ARE UNIQUE ANIMALS.

AS A CERTAIN STATE, PAROLE WAS NOT -- IS NOT PART OF SOMEONE SENTENCE.

>> SOMEONE WHO WAS SENTENCED TODAY WOULD NOT BE ELIGIBLE FOR PAROLE.

>> THESE ARE ALL CASES WHO ARE BEFORE WHAT YEAR?

>> BEFORE 1983 FOR THE MOST PART.

>> SO IT'S A CURRENT ISSUE BECAUSE PEOPLE ARE CONTINUING TO CHALLENGE?

>> IF YOU HAVE BROUGHT THIS ON THIS AND THIS ONE-YEAR TIME LIMITATION AND THEY HAD FOUND THERE'S SOMETHING WRONG, WITH THE REVOCATION, WITH THE PAROLE COMMISSION HAS BEEN BE REQUIRED TO RELEASE HIM?

AND SO THIS REALLY IS A MATTER DETENTION?

>> YES, THE COURT WOULD ORDER HIS RELEASE IF THEY WERE TO ORDER HIS RELEASE BACK ON

PAROLE, HIS REINSTATEMENT ON THE
ORIGINAL CONDITIONS OF RULE.
AGAIN, PAROLE IS ITS OWN ANIMAL.
IT'S STILL AN AGENCY.
THERE'S STILL ADMINISTRATIVE
ACTION.
IT JUST HAPPENS TO COME INTO THE
ATTENTION BECAUSE IT COMES WITH

THE ORIGINAL CONVENTION BEFORE
THE 80'S USUALLY.
IF THERE ARE NO OTHER QUESTIONS?
THANK YOU VERY MUCH.

>> REBUTTAL?

>> IT SEEMS TO ME THAT THERE IS
NO HIGHER DUTY OF THE JUDICIARY
THAN TO SAY THEY'RE READY FOR
HABEAS CORPUS.

AND IF SOMEONE IS BEING
ILLEGALLY CONFINED BY THE
SOVEREIGN THAT THE RIGHT TO
HABEAS CORPUS MEANS TO BE
PRESERVED REGARDLESS OF WHETHER
THE PROCEEDING THEY GAVE RISE TO
THE ILLEGAL CONFINEMENT WAS
CRIMINAL OR QUASI-CRIMINAL OR
CIVIL OR ADMINISTRATIVE IN
NATURE.

AND THAT'S THE CRUTCH OF THE
CASE.

DOES THE LEGISLATURE HAVE THE
RIGHT TO ENCOURAGE UPON THAT
RIGHT?

>> BUT YOU SAID YOU AGREE THAT
AS GREAT AS THE WRIT IS, WE HAVE
LIMITED IT CONSIDERABLY IN THE
AREA OF CRIMINAL CONVICTION THAT
WE SHOULD HAVE THE RIGHT TO
LIMIT IT IN THE CASE OF PAROLE
REVOCATION.

>> AND THAT'S EXCLUSIVELY WITH
BUSINESS PREROGATIVE, NOT THE
AUTHORITY TO LEGISLATURE AFTER A
CONSTITUTION.

AND IF THIS COURT SEEMS FIT TO
ADOPT THE RULE IN THIS AREA --

>> IT WOULD BE NICER TO KNOW IN
THIS CASE IN TERMS BECAUSE WE
TALK ABOUT ILLEGAL DETENTIONS
AND THE SOVEREIGN ACTING
ILLEGALLY.

AGAIN, YOU ARE NOT APPOINTED TO
REALLY LOOK AT WHETHER THERE IS
MERIT IN WHAT MR. JONES SAYS
ABOUT WHAT HAPPENED BACK IN
MAY 2009, CORRECT?

[INAUDIBLE]

>> THERE MAYBE MERIT TO THIS
PETITION AND --

[INAUDIBLE]

I DON'T KNOW THAT.

THAT'S A QUESTION FOR THE TRIAL COURTS.

>> IT WOULD BE CYNICAL THAT HE WAS RIP VAN WINKLE AND JUST HAPPENED TO WAKE UP 18 YEARS LATER AND SAID WHAT HAVE I BEEN DOING IN PRISON FOR 18 YEARS?

>> AND I DON'T KNOW THE ANSWER TO THAT.

I SUGGEST ONLY THAT THE TRIAL COURT SUMMARY DOES STATION BY THIS PETITION IS WRITTEN UNCONSTITUTIONAL OF THE STATUTE WAS ERRONEOUSLY INFORMED BY THE 18th DCA AND THE DECISION SHOULD BE CRUSHED.

I THANK THE COURTS TIME.

>> I THANK BOTH OF YOU FOR YOUR ARGUMENTS HERE TODAY.

>> LET ME ASK, IS THE GROUP OF HIGH SCHOOL FROM WESTERN HERE TODAY?

IS MR. FOX HERE?

I WANT TO WELCOME ALL OF YOU TO THE FLORIDA SUPREME COURT AND THANK YOU FOR INCLUDING US IN YOUR GOVERNMENT HISTORY PROJECT HERE TODAY.

SO THANK YOU FOR YOUR VISITS HERE.

[INAUDIBLE]

>> ALL RIGHT.

THE NEXT CASE ON THE COURT'S AGENDA IS BIFULCO V. PATIENT BUSINESS AND FINANCIAL SERVICES. MAY I PLEASE THIS HONORABLE COURT.

I'M FRIDERIC MORELLO.

I REPRESENT THE PETITIONER CHARLENE BIFULCO AND I'M HERE

TODAY TO HAVE CONVERSATION WITH
THE COURT ABOUT THE ISSUES THAT
HAVE BEEN RAISED.

ONE OF THE ISSUES THAT HAPPENED
BELOW IS THAT THE TRIAL COURT
APPLIED FOR FORCE 205 INSTEAD OF
CHAPTER 768286 NOTICE WAS
REQUIRED AS A MATTER OF LAW.

>> LET ME ASK YOU ABOUT THAT
ISSUE BECAUSE IT COMES TO US IN
WHAT SEEMS TO BE A RATHER ODD
PROCEDURAL ASPECT AND THAT IS --
[INAUDIBLE]

HE MIGHT FORGET YOUR PETITION FOR
REVIEW ABOUT IT.

HOW DO YOU HAVE STANDING TO
BRING THAT ISSUE ON
JURISDICTION?

>> CATHOLIC JURISDICTION.

>> WOULD YOU SAY THAT AGAIN?

>> CATHOLIC JURISDICTION.

>> YOU STILL HAVE AN OBLIGATION
TO OUTSTANDING AND USUALLY IN
THE CONTEXT OF STANDING YOU'RE
APPEASED BY WHATEVER

APPELLATE --

[INAUDIBLE]

[INAUDIBLE]

>> ON THIS ISSUE WERE TO GRADE
[INAUDIBLE]

>> THERE'S NO STANDING
REQUIREMENT THAT SHOULD BE
AGREED WHEN YOU RAISE
JURISDICTION?

[INAUDIBLE]

THE CATHOLIC JURISDICTION GETS
US INTO THE COURT.

THE SIXTH DCA DECISION WAS
DISTINCT AND OPPOSITE OF KELLY.

>> SO ANY PARTY ON A CASE IN
WHICH THEY WIN CAN BRING AN
APPEAL TO THE COURT WHEN THERE'S
A CONFLICT.

>> I BELIEVE SO IF THERE'S A
CONFLICT.

>> WELL, YOUR REASON IS YOU WANT
US TO LOOK AT THE ISSUE WHICH IS
YOUR SECOND ISSUE.

I'M ASSUMING YOU WOULDN'T HAVE
BROUGHT THIS IF -- I THINK MS.

POLSTER MAKES A GOOD POINT.
ONCE YOU WIN, LEAVE WELL ENOUGH
ALONE.
SO WHY ARE YOU HERE IS MAYBE THE
QUESTION?
MAYBE LEGALLY YOU CAN BE HERE,
WHY ARE YOU HERE?

>> TWO REASONS.

TO SET THE LAW CLEAR ON THE FIRST ISSUE, THE 44205 BECAUSE I BELIEVE WHAT ANNIKA'S ATTORNEY, MARK ZIKES ABOUT FOR 440.65 HAS NEVER BEEN ARGUED TO THE COURTS BEFORE.

AND I BELIEVE IT'S DISPOSITIVE WHEN IT COMES TO AWAY FOR AS ANYTHING RATHER THAN CHAPTER 440 BOTH SUBSTANTIVELY AND PROCEDURALLY.

SO I THOUGHT THAT WAS A VERY IMPORTANT ISSUE TO BRING UP TO THE COURT BECAUSE IN ALL THE CASES BELOW INCLUDING OURS TOO WASN'T POINTED OUT.

FURTHER, YOUR HONOR, ON THE SAME ISSUE, WE LEFT MAGGIO HANGING.

AND I WANTED TO GET THAT FINALLY RESOLVED.

AND THAT ISSUE IS OUR STATUTORY ACTIONS SUBJECT TO CHAPTER 768?

>> YOU WANT TO DO THAT, THEN LET'S JUST ASSUME THAT THE OTHER SIDE IS OKAY THIS DECISION.

DO WE STILL HAVE -- YOU WOULD SAY THAT WE OUGHT TO TAKE IT IN ORDER TO RESOLVE THIS CONFLICT, BUT, YOU KNOW, DON'T GO FARTHER THAN ACTUALLY WHAT IS AT ISSUE TO SAY TO WE HAVE TO REACH THE BORDER ISSUE THAT 768 IS NOT APPLICABLE TO ANY STATUTORY CAUSES OF ACTION.

>> I KNOW YOU DON'T HAVE TO IN THE SHORT HOLDING, THE CONSERVATIVE HOLDINGS WOULD BE TO FIND THAT FOR 440.55 IS ON POINT FOR THE 44205 CLAIM AND THAT WASN'T EVEN RAISED AT THE FIFTH, BUT THAT IS A SECTION OF

THE STATUTE I THINK EVERYONE
SHOULD BE AWARE OF.
BUT THEN I MOVE ON TO MY SECOND
ISSUE, WHICH IS MORE IMPORTANT.
A SPECIAL TAXING DISTRICT, WHICH
WAS HALIFAX MEDICAL CENTER, IT
CAN'T REPRODUCE ITSELF.
A SPECIAL TAXING DISTRICT CAN

ONLY BE ESTABLISHED BY THE
LEGISLATURE.

AND IN THIS CASE, HOW THE FACTS
ESTABLISH THE NONPROFIT
CORPORATION TO DO WITH BILLING.

I WOULDN'T BE UNLIKE HALIFAX
SUBCONTRACTING THE BILLING
SERVICES AS TO ANOTHER COMPANY,
ABC COMPANY.

>> JUSTICE LEWIS.

>> BEFORE YOU GO DOWN AND REALLY
IN DEPTH HERE.

PLEASE CORRECT ME IF I'M WRONG,
BUT IT APPEARS THAT THIS CASE,
YOU FILE YOUR ACTION AND AND A
NEW FILE SOME REQUESTS FOR
ADMISSIONS.

AND THE DEFENDANTS ADMITTED THAT
THEY WERE EMPLOYERS -- CORRECT
ME IF I'M WRONG BUT FOR THE
PURPOSES OF THIS ACTION.

IS THAT A CORRECT STATEMENT?

>> AND THEN HOW FAR ALONG DOES
THIS CASE GO BEFORE THEY
WITHDREW THAT IN THE TRIAL COURT
ALLOWED THEM TO WAS THAT AFTER
THE STATUTE OF LIMITATIONS WAS
ACQUIRED?

>> YES, UNDER 768 AND JUST ON
THE EVE AFTER A TRIAL
CONTINUANCE WHEN THEY SAID
THERE'D BE NO PREJUDICE.

>> THE STATUTE OF LIMITATIONS IS
GOING TO EXPIRE BECAUSE YOU
COULD HAVE FILED UNDER THE
PUBLIC WHISTLEBLOWER ASPECTS,
CORRECT?

>> YEAH, BUT THEY NEVER TOOK THE
PETITION UNTIL SUMMARY JUDGMENT.
ON THE EVEN THEY SAID WERE
NOT --

[INAUDIBLE]

LET'S GIVE THE JUDGE THE ABUSE
OF DISCRETION THERE.

I THINK THE CASE IS BROADER THAN
THAT.

>> I AGREE THAT IT MAY WELL BE.
BUT AS JUSTICE POLSTON SAYS WHY
IS THIS NOT AN ISSUE IN THE
APPELLATE COURT BELOW?

>> IT WAS.

>> THAT WAS AS FAR AS THIS PERMITTING A DEFENDANT TO WITHDRAW ADMISSION AND CONTRARY TO THEM BASICALLY EXTORTING THE CAUSE OF ACTION AFTER A STATUTE HAD ACQUIRED AND IT WOULD'VE BEEN AN ANOTHER STATUTORY PROCEEDING TOWARD IDENTICAL THING.

>> DO YOU ASK TO AMMEND YOUR COMPLAINT UNDER THE PUBLIC WHISTLEBLOWER SUIT RELAYED BACK TO WHAT IS THE STATUTE OF LIMITATIONS?

>> NO, BECAUSE THEN UNDER THE PUBLIC WOULD HAVE TO GET IT DEVOTED IN THE TIME IT ALLOWS. WE TIMED IT SO THE NOTICE TIME TO GET A THREE-YEAR NOTICE HAD ALREADY EXPIRED.

>> IF YOU MAKE AN ARGUMENT TO THE TRIAL JUDGE?

>> NO, I HONESTLY DON'T THINK THAT WHEN SHE MISSED THE STATUTE OF LIMITATIONS YOU CAN GO BACK IN TIME.

I THINK THE THREE-YEAR RULE IS PRETTY HARD AND FAST CASE LAW.

>> DID YOU RAISE THE ARGUMENT IN OPPOSITION TO THE AMENDMENT OFFERED?

>> WELL, YES.

>> DO YOU SEE DISCRETION YES, DON'T DO IT.

THESE ARE RARELY DONE.

>> ARE YOU SAYING THAT THE PUBLIC WHISTLEBLOWER IS SUBJECT TO THE 76826 WHATEVER IT IS STATUTORY NOTICE?

BECAUSE I BET YOU ARE ARGUING THAT NO STATUTORY CAUSE OF

ACTION SHOULD BE SUBJECT TO

768.28?

>> YOU SAID YOU DON'T WANT TO GO
THERE.

[INAUDIBLE]

>> IF YOU'RE RAISING NOW AS A
SECOND ISSUE YOU SAY IT COULDN'T

HAVE FILED THE PUBLIC WHISTLEBLOWER BECAUSE I WOULD'VE NEEDED TO GIVE THEM THAT NOTICE WHEN THEY'RE ALREADY FIRST WHILE THEY ARE TO HAVE NOTICED THAT THERE'S A CLAIM UNDER THE PRIVATE WHISTLEBLOWER AND SO THERE'S A DIFFERENT EXCEPTION LIKE THE STATUTE OF LIMITATIONS. SO I'M CONFUSED ABOUT YOUR PETITION ON THIS WHY WOULDN'T HAVE IT TRIED TO ADMINISTER THAT SHE WOULD GET A PUBLIC WHISTLEBLOWER ACTION GOING.

>> YOU'RE OUTSIDE THE THREE YEARS.

>> THREE YEARS OF WHAT?

>> UNDER 768.

>> BUT UNDER THE CIRCUMSTANCES OF THIS CASE YOU'RE TELLING ME THAT SHE DIDN'T EVEN TRY?

>> NO, BECAUSE I BELIEVE THE CASE IS HARD AND FAST.

>> SO THE ISSUE OF WHETHER 768.28 WOULD APPLY TO THE PUBLIC WHISTLEBLOWER IS NOT BEFORE US? THAT'S CORRECT BECAUSE YOU NEVER RAISED THAT.

>> CORRECT.

>> SO THE ONLY ISSUE NOW IS WHETHER BECAUSE EITHER OF THEM ADMISSION OR BECAUSE OF THE LANGUAGE OF THE STATUTE THAT YOUR CONTENTION IS THAT THEY WOULD QUALIFY AS A PRIVATE EMPLOYER.

>> YES AND LET ME EXPLAIN WHY. HALIFAX MEDICAL CENTER CREATED A NONPROFIT CORPORATION TO ITS BUILDING. THAT'S A SPECIAL TAXING DISTRICT.

SO THEN WHEN WE LOOK AT FOR THIS
TO FALL UNDER THE PUBLIC
WHISTLEBLOWER ACT, WE LOOK AT
THE DEFINITION OF AGENCY BECAUSE
THAT'S WHERE THEY WANT TO FALL.
THAT'S WHAT THE TRIAL JUDGE THAT
THEIR AGENTS, EVEN THOUGH
THEY'RE JUST A SET OF HALIFAX.

AGENCY MEANS AND THEN IT GOES ON, GOVERNMENT ENTITY IS ONE OF THE DEFINITIONS FOR POLITICAL SUBDIVISION.

SO THEN I GO BACK TO THE CASE OF ELDER FROM THIS COURT.

AND ELDER SAYS IT'S SPECIAL TAXING DISTRICT IS CREATED BY THE LEGISLATURE FOR PUBLIC PURPOSES AND UNDER 7862 UNDER THAT DEFINITION AS AN INDEPENDENT ESTABLISHMENT OF THE STATE.

THE POINT IS A SPECIAL TAXING DISTRICT CAN'T REPRODUCE ITSELF. THEY DIDN'T HAVE SPECIAL TAXING STATUS FINANCIAL SERVICE AND THAT WAS NEVER CHALLENGED SPECIAL TAXING DISTRICT.

THEY JUST WANTED TO SAY THEY WERE IN AGENCY BECAUSE THEY WORKED FOR THEM.

THEY COULD HAVE SUB COUNTER TO THE WORK TO ABC.

DON'T THINK THE LEGISLATURE OR THIS HONORABLE COURT WOULD EVER SAY ABC COMPANY IS NOW A SPECIAL PASSING DISTRICT AS AN AGENCY.

>> ISN'T IT AN INSTRUMENTALITY IN THE SPECIAL TAXING DISTRICT. IT'S ABSOLUTELY CONTROLLED BY THE NOTION SOMEHOW IS AN INDEPENDENT CONTRACTOR SEEMS TO ME TO BE QUITE A STRETCH WHEN IT'S AN ENTITY THAT IS ESTABLISHED BY THE TAXING DISTRICT FULLY RESPONSIBLE TO AND CONTROLLED BY THE TAXING DISTRICT.

ISN'T THAT THE CASE ABOUT THIS PARTICULAR ENTITY?

>> IT IS AN ENTITY THAT IS NOT A

SPECIAL TAXING DISTRICT.

>> IT ACTUALLY WAS ESTABLISHED
AS A NONPROFIT CORPORATION.

I MEAN, SO AS OF REGISTERED IN
THE STATE OF FLORIDA?

>> IT COULD HAVE CREATED
ANYWHERE THEY WANTED WANTED TO
PERFORM BILLING SERVICES.

COULD THEY HAVE JUST KEPT IT AND
DONE IT --

>> THEY KEPT IT TO THEMSELVES.
THEY CREATED A NONPROFIT
CORPORATION THAT COULD NOT UNDER
THE LAWS PRACTICE MEDICINE OR
HAVE ANYTHING TO DO UNDER
CHAPTERS SEVEN -- 617 TO
PRACTICE MEDICINE.

AND THEREFORE THEY SHOULD BE
TREATED LIKE ANY OTHER
INDEPENDENT CONTRACTOR.

>> MAYBE I'M NOW MISSING
SOMETHING.

I KNOW YOU WANT TO SHARE TIME,
BUT IF THEY'RE NOT A
GOVERNMENTAL ENTITY, THEN WHY IS
THE FIRST CLAIM NOT --

[INAUDIBLE]

WHY IS THE FIRST CLAIM NOT ALSO
DISPOSED OF THAT WAY?

THAT IS THAT THEY'RE NOT SUBJECT
TO 76.28 AT ALL BECAUSE THERE IS
NOT A GOVERNMENTAL ENTITY.

>> THAT WAS UNDER THE FIRST
44205 WHEN THERE WAS TO CASE LAW
AS TO WHETHER THAT TOO OWES DEAN
AND KELLY.

>> 72.8 ONLY APPLIES TO
PRE-NOTICE TO EVER MENTAL ENTITY
SUBDIVISIONS OF THE STATE.

HOW WAS THIS BILLING ENTITY AND
OF THE SAME RATIONALE AND ENTITY
OF THE STATE?

>> I DON'T SEE IT AS AN ENTITY
OF THIS STATE.

>> THAT IS A SEPARATE ARGUMENT
THEN.

ISN'T THAT A SEPARATE ARGUMENT?

>> IF YOU LOOK AT SPECIAL TAXING
DISTRICT TAKING AN ENTITY OF THE
STATE I SEE IT IS A SIMILAR

ARGUMENT.

MY POINT IS THEY CREATED -- I
DON'T ALL OF THE LEGISLATURE
EVER INTENDED A SPECIAL TAXING
DISTRICT TO REPRODUCE OTHER
SPECIAL TAXING DISTRICTS.
THE MERE FACT THAT I CREATE
ANOTHER CORPORATION TO DO SOME

WORK DOESN'T MEAN THAT I STAND AND MOST PROTECTIONS.

>> I'M NOT SURE THAT YOU'RE ANSWERING HER QUESTION.

HER QUESTION IS THAT THIS THING, WHATEVER IT IS, IS NOT GOVERNMENT THEN AS TO THE FIRST WORKERS COMP RETALIATION FIRING THAT THAT NOTICE UNDER THE 768 CAN APPLY EITHER.

THAT'S WHAT SHE'S ASKING.

>> IS THAT CORRECT?

THAT'S WHAT SHE'S ASKING YOU.

>> THAT IS ABSOLUTELY CORRECT.

>> I MEAN, I DON'T REMEMBER YOU MAKING THAT ARGUMENT.

>> I DIDN'T MAKE THE ARGUMENTS BECAUSE I BELIEVED THE SECTION THAT MARK BROUGHT UP --

>> YOU ARE TRYING TO MAKE THIS CASE FOR SOME OTHER PURPOSE THAN THE BENEFIT OF YOUR CLIENT IT SEEMS TO ME AND THAT'S BOTHERSOME.

I MEAN, BECAUSE THIS IS NOT A GOVERNMENT ENTITY, THAT WE DON'T PICTURE NECESSARILY THE BROADER ISSUE OF WHETHER 768.28 APPLIES TO WORKERS COMP RETALIATION THAT ARE BROUGHT AGAINST GOVERNMENTAL ENTITIES.

>> UNDERSTOOD.

>> YOU ARE WELL INTO YOUR REBUTTAL IF YOU WOULD LIKE TO SAVE SOME TIME.

>> I WILL SAVE SOME TIME.

>> ALL RIGHT.

>> MAY I PLEASE THE COURT?

TOM LEEKS, FROM DAYTONA BEACH FOR RESPONDENT.

[INAUDIBLE]

I'M UNHAPPY WITH THE DECISION

OVERTURNING OF THE SUMMARY
JUDGMENT WERE RECEIVED 44205.

>> WHY DON'T WE START THOUGH
WHERE HE LEFT OFF, WITH AND THAT
IS WHETHER OR NOT THIS COMPANY
CORPORATION IS IMPACT A
GOVERNMENTAL UNIT.

>> YES, YOUR HONOR, THIS ISSUE

HAS BEEN ADDRESSED MANY TIMES.
IN FULL, THIS COURT DECIDED THAT
THE ISSUE OF WHETHER A NONPROFIT
CORPORATION OR ANOTHER ENTITY
WAS IN FACT LOOSELY ENOUGH
RELATED TO THE STATE TO RECEIVE
SOVEREIGN IMMUNITY WAS ONE OF
CONTROL AND THEY WENT THROUGH
SEVERAL FIGHTERS HAD THE FACTORS
THEY WERE THROUGH OUR WAR THE
BOARD OF DIRECTORS WILL SEE IN
OUR CASE THE DISTRICT COURT OF
DIRECTORS IS ONE OF THE SAME THE
FINANCIAL SERVICES.

WHAT IS THE PURPOSE OF THE
SEPARATE CORPORATION?

OUR CASE THE PURPOSE OF THE
ARTICLE IS PLAINLY STATES IS TO
ASSIST THE DISTRICT IN CARRYING
OUT ITS PUBLIC SERVICE.

THE SHORT OF IT IS THIS.

BUT BUSINESS FINANCIAL SERVICES
WHICH WE CALL PPBS SAYS IS
SOLELY THE DILEMMA.

IT IS AN ARM OF THE BODY OF THE
DISTRICT.

SO IT IS ONE IN THE SAME.

>> WHAT IS THE CASE YOU SAY HAS
DECIDED THIS?

A SUPREME COURT CASE?

>> YES, STOLE V. NO FIXED 94
SOUTHERN SECOND NUMBER 11997.
THE ISSUE THAT SOUL DECIDED IS
PALACE IS PROGRAM TO DETERMINE
WHETHER HIS ENTITY --

[INAUDIBLE]

>> ALL THE REFERENCES THAT
DIDN'T REFERENCE TOOL.

>> SO WAS RAISED BEFORE THE
TRIAL COURT'S IN BOTH ISSUES OR
JUST ONE OF THE ISSUES THAT WE
HAVE BEFORE US?

>> THE ISSUE THAT -- I'M A
LITTLE CONFUSED.
BUT THE ISSUE ON WHAT THE COMING
TO THE TRIAL COURT ASKED THE
PUBLIC WHISTLEBLOWER SITE WAS
THAT THE PUBLIC
WHISTLEBLOWER'S -- KEEP IN MIND
THE UNDERLYING CLAIM IS A

PRIVATE WHISTLEBLOWER ACT CLAIM.
BUT THE PPBS WAS AN INDEPENDENT
CONTRACTOR WOULD BE CONSIDERED
UNDER THE WHISTLEBLOWER ACT IN
THE CONSIDERATION OF DOLE.

DIRECT THEY DID RAISE IT TO THE
PUBLIC WHISTLEBLOWER RIGHTS.

WHAT ABOUT THE RETALIATION
WORKERS COMP?

THEY NEVER SAID THAT THIS ENTITY
WAS NOT A PUBLIC ENTITY?

>> NO, NOT AS TO THAT SPECIFIC
ISSUE.

>> I MEAN, I HAVE TO LOOK AT
THIS BECAUSE IT SEEMS TO ME THE
LOGIC OF ONE SHOULD PERTAIN TO
THE OTHER.

IN OTHER WORDS, SOMEONE IS
EITHER -- OR ARE THEY SEPARATE
REASONS THAT THE ISSUE OF THE
IMPLICATION OF 768.28 WOULD BE
DIFFERENT FROM HOW YOU WOULD
INTERPRET THE PUBLIC
WHISTLEBLOWER'S.

>> ABSOLUTELY.

FOR DIFFERENT PURPOSES OF THE
PUBLIC WHISTLEBLOWER ACT.

>> NO CASES HAVE SAID THAT.

HAS THERE BEEN A CASE SAID THAT?

>> NO.

AND WHEN THEY SPECIFICALLY SAY
THE CLAIM THAT THE WHISTLEBLOWER
ACT IS ONE IT HAD BEEN DECIDED
IN THE FIRST IS FOR THE PUBLIC
WHISTLEBLOWER ACT IS NOT SUBJECT
TO 758 NOTICE REQUIREMENTS.

AND TWO, THERE'S A MORE
RESTRICTIVE LIMITATION.

BUT I'VE NOTICED WITH THE NILE
YOU ONLY HAVE A LIMITED PERIOD
OF TIME TO FILE THE PUBLIC
WHISTLEBLOWER ACT CLAIM.

HAS LONG SINCE PASSED.
KEEP IN MIND THIS PARTICULAR
AFTER THE DEMAND LETTER WAS SENT
TO THE DISTRICT.