

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA,
DRAW NEAR, GIVE ATTENTION, YOU
SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
FIRST CASE FOR THE DAY IS
ENGLAND VERSUS STATE OF
FLORIDA.
YOU MAY PROCEED, COUNSEL.
>> GOOD MORNING.
MAY IT PLEASE THE COURT, I'M
ALI SHAKOOR HERE TO ARGUE
CLAIM ONE, THAT THERE'S
INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL BECAUSE THEY
FAILED
>> CAN YOU DO ME A FAVOR?
CAN YOU PICK UP THE MIC?
GET IT CLOSER?
THANK YOU.
>> YOU CAN TURN IT
>> THANK YOU.
I'M HERE TO RAISE THE CLAIM OF
CLAIM ONE OF INEFFECTIVE
ASSISTANCE OF APPELLATE
COUNSEL FOR FAILING TO RAISE
THE CLAIM THERE WAS ERROR AT
THE TRIAL COURT LEVEL WHEN THE
COURT OVERRODE AND FORCED
COUNSEL TO GO TO TRIAL WITHOUT
THE PROPER TIME TO INVESTIGATE
AND PREPARE FOR A CAPITAL CASE
IN VIOLATION OF 6TH AMENDMENT
RIGHTS AND CORRESPONDING
RIGHTS
>> IS THERE ANY QUESTION ABOUT
MR. ENGLAND'S COMPETENCE TO
DECIDE WHETHER HE WOULD WAIVE
HIS RIGHT TO SPEEDY TRIAL?
>> NO QUESTION AT ALL, YOUR

HONOR.

HE WAS COMPETENT.

>> HE WAS TOTALLY COMPETENT.

>> HE WAS COMPLETELY
COMPETENT.

>> SO THAT'S NOT AN ISSUE
HERE.

WELL, MR. †ENGLAND DECIDED
AFTER HE SIGNED THE WAIVER
ISN'T IT TRUE THAT HE DECIDED
UPON REFLECTION THAT HE WAS
READY TO GO TO TRIAL AND THAT
HE DID NOT WANT TO WAIT AND HE
DIDN'T THINK THERE WAS MUCH TO
IT AND HE SAID LET'S GO.

AND THE JUDGE TRIED TO TALK
HIM OUT OF IT.

HE WAS HE COULD NOT BE
DISSUADED.

AND THE JUDGE AGREED TO ALLOW
HIM TO DO WHAT HE WANTED TO
DO.

ISN'T THAT CORRECT?

>> YOUR HONOR, THAT IS
CORRECT, BUT MR. †ENGLAND HAS
CONSTITUTIONAL PROTECTIONS.
AND THAT WAS NOT MR. †ENGLAND'S
DECISION TO MAKE.

FIRST OF ALL, MR. †ENGLAND
WAIVED SPEEDY TRIAL IN A
WRITING AND THE COURT ON THE
RECORD STATED THAT I HAVE A
SIGNED WAIVER OF SPEEDY TRIAL
RIGHT HERE.

>> WELL, DO WE HAVE A CASE OR
SOME AUTHORITY THAT SAYS ONCE
IT'S SIGNED AND NOTHING HAS
HAPPENED, THAT A RESPECTIVE
DEFENDANT CANNOT WITHDRAW THAT
WAIVER AND SAY I DEMAND A
SPEEDY TRIAL?

>> MR. †ENGLAND DID NOT DEMAND
A SPEEDY TRIAL.

FIRST OF ALL, WE DO HAVE A
CASE, AUTHORITY, GIDIARS
VERSUS STATE CITED IN OUR
PETITION THAT NOT ONLY DOES
COUNSEL HAVE A RIGHT TO BE
EFFECTIVE NOT ONLY DOES
COUNSEL HAVE A RIGHT TO MAKE

SURE HE'S PROPERLY PREPARED FOR A CAPITAL CASE AND IN THAT CASE THIS COURT HELD THAT TRIAL COUNSEL CAN WAIVE SPEEDY TRIAL WITHOUT THE CLIENT'S PERMISSION OR EVEN HIS KNOWLEDGE IF IT'S DONE IN GOOD FAITH AND IF THE WAIVER WOULD BENEFIT THE ACCUSED.

>> BUT IN THE FACE OF A DEFENDANT SAYING I WANT TO GO TO TRIAL, WE DON'T NEED ANY MORE TIME, WHAT IN THE WORLD IS A TRIAL COURT SUPPOSED TO DO?

THE DEFENDANT IS THERE. I CAN UNDERSTAND IF THE COUNSEL HAD WAIVED SPEEDY TRIAL AND NO ONE WAS THERE, YOU KNOW, YOU CAN DO IT BY WRITTEN AGREEMENT OR AT A HEARING OR WHATEVER AND THE DEFENDANT'S NOT THERE.

BUT IN THE FACE OF A DEFENDANT SAYING, YOUR HONOR, THIS CASE NEEDS TO GO ON TO TRIAL, WHAT IS A TRIAL COURT SUPPOSED TO DO?

>> IN THIS CASE WHAT THE TRIAL COURT SHOULD HAVE DONE WAS THAT I HAVE A SIGNED WAIVER OF SPEEDY TRIAL, GIDIARS VERSUS STATE ALLOWS ME TO LET YOUR TRIAL COUNSEL WAIVE WITHOUT YOUR KNOWLEDGE OR YET ALONE CONSENT.

I HAVE A SIGNED WAIVER OF SPEEDY TRIAL, SEE YOU NEXT TIME.

THE 6TH AMENDMENT RIGHT IS A RIGHT TO EFFECTIVE COUNSEL.

>> WHAT CASE DO YOU HAVE THAT SAYS THAT'S WHAT A TRIAL SHOULD DO WHEN A DEFENDANT IS STANDING THERE SAYING I WANT TO GO TO TRIAL?

CERTAINLY THE FIRST CASE YOU CITED DIDN'T HAVE ANYTHING TO DO WITH THAT.

>> YOUR HONOR, GIDIARS VERSUS

STATE DEALS WITH WAIVER OF
SPEEDY TRIAL WHERE COUNSEL IS
ALLOWED TO WAIVE SPEEDY TRIAL.

>> COUNSEL.

COUNSEL.

>> COUNSEL IS ALLOWED TO WAIVE
SPEEDY TRIAL.

>> LET'S LOOK AT THE OTHER
SIDE OF IT THEN.

IF IN FACT THE DEFENSE
ATTORNEY HAD WAIVED SPEEDY
TRIAL, TRIAL JUDGE HAD
ACCEPTED THAT, EVEN IN THE
FACE OF THE DEFENDANT SAYING I
WANT TO GO TO TRIAL NOW AND
YOU WOULD THE ISSUE NOW BE
THAT THE TRIAL JUDGE OVERRULED
A DEFENDANT'S EXPRESS REQUEST?
AND HOW WOULD WE RULE ON SUCH
A MOTION AS THAT OR ISSUE AS
THAT?

>> YOUR HONOR, IF FIRST OF
ALL, THE TRIAL JUDGE WOULD
HAVE JUST STUCK WITH THE
WAIVER AND STUCK WITH HIS ORAL
PRONOUNCEMENT OF A WAIVER OF
SPEEDY TRIAL, WE WOULDN'T BE
SITTING HERE RIGHT NOW BECAUSE
MR. †KEATING WOULD HAVE PROPER
TIME TO PREPARE.

WE WOULDN'T BE DEALING WITH AN
ISSUE OF

>> BUT ASSUME WE WERE.

WOULD THIS COURT REVERSE THAT?

>> NO.

ABSOLUTELY NOT.

YOU HAVE NO AUTHORITY TO.
THERE WAS NO DEMAND FOR SPEEDY
TRIAL AND WE NEED TO BE
SPECIFIC AND CRYSTAL CLEAR.
THE STATE CITED 3.191B AND
CALLED THIS A DEMAND FOR
SPEEDY TRIAL.

THERE WAS NO DEMAND FOR SPEEDY
TRIAL.

A DEMAND FOR SPEEDY TRIAL
REQUIRES AN ABSOLUTE, VALID
DEMAND.

3.191A, THE 175DAY RULE.

>> BUT IT SEEMS LIKE TO ME

THAT'S A VERY FINE DISTINCTION YOU'RE TRYING TO DRAW. THE REALITY HERE IS WE'VE BEEN DISCUSSING IS THAT YOUR CLIENT GOT EXACTLY WHAT HE ASKED FOR. AND NOW YOU'RE HERE ON HIS BEHALF SAYING THAT HE SHOULD NOT HAVE BEEN GIVEN WHAT HE ASKED FOR, EVEN THOUGH HE WAS COMPETENT TO EXPRESS HIS VIEWS ON THAT AND THERE'S NO QUESTION ABOUT THAT. AND IT JUST SEEMS LIKE TO ME THAT HE SHOULD NOT BE HEARD TO COMPLAIN ABOUT BEING TREATED THE WAY HE REQUESTED HE INSISTED THAT HE BE TREATED.

>> YOUR HONOR, A CLIENT FIRST OF ALL, WE HAVE RULE OF LAW, CASE LAW, THE FLORIDA CONSTITUTION AND UNITED STATES CONSTITUTION. THE CLIENT DOESN'T GET TO RUN THE SHOW IN THE COURTROOM. IF MR. †ENGLAND WANTED THIS CASE DONE IN SPANISH, WE WOULDN'T ALLOW HIM TO DO THAT. WE HAVE RULES. AND THE RULES IN THIS CASE ALLOWED MR. †ENGLAND TO FILE DEMAND FOR A SPEEDY TRIAL AT A LATER DATE. ONCE THE JUDGE HAD A SIGNED WAIVER, MR. †ENGLAND SHOULD HAVE BEEN ESCORTED FROM THE COURTROOM. IF HE DECIDED AT SOME OTHER POINT TO DEMAND A SPEEDY TRIAL, WE'D BE AT A DIFFERENT JUNCTURE NOW.

>> I'VE BEEN DOWN THIS ROAD SO MANY TIMES AS A LAWYER AND AS A TRIAL JUDGE. THE FOLKS WHO ARE CHARGED WITH CRIMES SEEM TO THINK THAT THERE'S SOMETHING MAGICAL ABOUT THE SPEEDY TRIAL BUSINESS. THEY THINK THAT IF THEY DEMAND SPEEDY OR IF THEY DON'T WAIVE

SPEEDY, THAT SOMETHING MAGICAL IS GOING TO HAPPEN IN THEIR CASE WHEN THEY SHOW UP FOR TRIAL.

THAT'S THE TALK THEY GET UP WITH THEMSELVES.

THAT'S THE TALK THE OTHER PRISONERS TALK ABOUT.

IT BECOMES IMPOSSIBLE FOR LAWYERS TO REASON WITH THEM. THIS LAWYER IN THIS CASE DID WHAT HE WAS SUPPOSED TO DO.

HE INFORMED HIS CLIENT I'M GOING TO NEED LOTS OF TIMES. IN CASE YOU GET CONVICTED OF THIS, THEN I NEED TO WORK ON THE PENALTY PHASE.

IT TAKES A LOT OF TIME, GOING BACK INTO YOUR SCHOOL RECORDS, WHERE YOU GREW UP, ALL THAT STUFF.

IT MAY TAKE A YEAR TO DO IT PROPERLY.

I'M SURE HE TOLD HIM THAT. AND THIS GUY SAID, NO, I WANT THIS SPEEDY TRIAL BECAUSE THIS MAGICAL THING'S GOING TO HAPPEN.

THEN HE MOVED TO WITHDRAW FROM THE CASE, WHICH THE COURT DENIED.

AND THEN HE DID WHAT HE COULD WITHIN THE TIME PERIOD WE HAD.

BUT, YOU KNOW, THE WHOLE BUSINESS OF SPEEDY TRIAL, I AGREE WITH JUSTICE CANADY.

ONCE IT IS DETERMINED THAT A DEFENDANT IS COMPETENT, THAT THERE IS NO MENTAL ISSUES CAUSING HIM TO MAKE SUCH A DEMAND, ONCE THAT'S DETERMINED, IT BELONGS TO HIM.

>> YOUR HONOR, COMPETENCY IS NOT AN ISSUE.

WE'RE NOT EVEN ARGUING THE FACT THAT COMPETENCY IS AN ISSUE.

3.919A, THIS IS ABOUT MATHEMATICS.

IN NOVEMBER†MR.†ENGLAND WAS

INDICTED.

HE WAS BROUGHT TO TRIAL IN
EARLY MAY.

INDICTED EARLY NOVEMBER,
BROUGHT TO TRIAL IN EARLY MAY.
THAT MEANS WE'RE UNDER 3.191A.
IF THERE WAS A DEMAND FOR
SPEEDY TRIAL ON APRIL†16, WAS
WHAT THE STATE'S TRYING TO
ARGUE AND WHICH I FEEL LIKE
SOME OF THE JUSTICES ARE
TRYING TO IMPLY, IF THERE WAS
AN ACTUAL, VALID DEMAND FOR
SPEEDY TRIAL (INAUDIBLE) WHICH
WOULD HAVE GIVEN MR.†KEATING
MORE TIME.

>> YOU SAID IT WAS BROUGHT AS
A HABEAS.

>> YES.

>> MEANING THAT THE APPELLATE
COUNSEL COULD HAVE RAISED WHAT
ISSUE ON APPEAL?

WHAT WAS THE ISSUE THAT WE
SHOULD HAVE CONSIDERED AND HOW
WOULD WE HAVE HAD A RULE?
SO NOT REALLY THE QUESTION OF
THE STRATEGY.

>> RIGHT.

>> YOU'RE SAYING ON THE FACE
OF THIS RECORD APPELLATE
COUNSEL WAS DEFICIENT IN NOT
RAISING WHAT ISSUE?

>> APPELLANT COUNSEL WAS
DEFICIENT FOR NOT RAISING THE
ON THE RECORD ISSUE THAT THE
TRIAL COURT IN HASTE COMMITTED
ABUSIVE DISCRETION BY
OVERRIDING THE DEMAND FOR
SPEEDY TRIAL.

>> BUT YOU SEE HERE, AS YOU
STATED THAT, I DON'T THINK
THERE IS ANY WAY THIS COURT
WOULD HAVE FOUND THAT TO BE A
MERITORIOUS ISSUE.

HOW WOULD IF THE DEFENDANT
SAYS, NO, I WANT TO GO TO
TRIAL, HOW DOES THE JUDGE
ABUSE HIS DISCRETION?

AND THAT'S WHAT THE QUESTIONS
ARE GOING TO.

LET'S JUST NOT A QUESTION
WHETHER IT WOULD HAVE BEEN
BETTER IF THE TRIAL WAS SET AT
A LATER DATE.

THAT'S NOT FOR THE STATE
HABEAS.

YOU'VE GOT TO SHOW THAT THE
TRIAL THAT THE APPELLANT
COUNSEL SHOULD HAVE RAISED THE
ISSUE AND THAT WE WOULD HAVE
REVERSED THE CASE BASED ON IT.

>> ABSOLUTELY.

>> SO WHAT AUTHORITY DO YOU
HAVE FOR THAT?

>> THE TRIAL COURT WOULD HAVE
BEEN BOUND TO REVERSE THE CASE
BASED ON

>> YOU MEAN THIS COURT.

>> I'M SORRY.

THE SUPREME COURT.

YOU ALL.

THE FLORIDA SUPREME COURT
WOULD HAVE HAD TO REVERSE,
REMAND AND REVERSE BASED ON
THAT CASE AND THE CASE OUT OF
THE 11TH CIRCUIT.

IN VERDANA PERSON WAS BROUGHT
TO TRIAL AFTER MULTIPLE
MOTIONS FOR CONTINUANCE.
TRIAL COURT DENIED THOSE
MOTIONS FOR CONTINUANCE.

>> WHAT WAS THE DEFENDANT'S
WISHES AT THAT POINT?

>> THE DEFENDANT ALSO WANTED A
CONTINUANCE.

>> BUT THAT'S THIS CASE.

>> WE'RE ALSO MISSING GIDIARS.

>> TELL ME HOW THAT COMPELS

>> HE DID NOT NEED PERMISSION
TO WAIVE SPEEDY TRIAL.

>> I DON'T SEE THAT AS THE
ISSUE.

THE ISSUE IS THAT YOU ARE
SAYING THIS COURT WOULD HAVE
BEEN COMPELLED TO REVERSE THE
ENTIRE TRIAL BASED ON THE
TRIAL COURT'S ABUSE OF
DISCRETION IN HONORING THE
DEFENDANT'S WISHES.

>> IT'S NOT ABOUT HONORING
>> NO.
I'M ASKING YOU.
THAT'S WHAT YOU'RE SAYING.
>> EXACTLY.
>> LET ME ASK YOU THIS.
DOES IT SOUND LIKE THIS COURT
WOULD HAVE REVERSED ON APPEAL?
>> ABSOLUTELY YOU SHOULD
REVERSE ON APPEAL BECAUSE MR.
ENGLAND HAS A 6TH AMENDMENT
RIGHT TO EFFECTIVE AND
PREPARED COUNSEL.
IF TRIAL COUNSEL HAD TIME TO
PREPARE, FIRST OF ALL
>> COULD MR.†ENGLAND JUST
WAIVE COUNSEL, PERIOD, IF HE
WANTED TO?
DID HE HAVE A RIGHT TO DO
THAT?
>> IF THERE'S A PROPER
COLLOQUY, ABSOLUTELY.
>> OKAY.
SO YOU'RE SAYING HE COULD
WAIVE COUNSEL, BUT CAN'T WAIVE
SPEEDY TRIAL.
>> MR.†ENGLAND THE RULE
STATES THAT MR.†ENGLAND HAS A
RIGHT TO 6TH AMENDMENT
>> HE HAS A RIGHT, BUT HE ALSO
HAS A RIGHT TO WAIVE, DOES HE
NOT?
>> HE HAS A RIGHT TO WAIVE
SPEEDY TRIAL, BUT THAT DOESN'T
OVERRIDE HIS RIGHT TO PREPARED
COUNSEL.
>> HE DOESN'T HAVE TO HAVE
COUNSEL IF HE DOESN'T WANT TO,
DOES HE?
>> NO.
BUT WE'RE NOT DEALING WITH
THAT, YOUR HONOR.
WE'RE DEALING WITH A FACT THAT
A DEFENDANT, FIRST OF ALL,
WAIVED SPEEDY TRIAL.
>> BUT WHAT YOUR ARGUMENT
BREAKS DOWN TO IS IN ORDER FOR
THE DEFENDANT TO HAVE
EFFECTIVELY ASKED TO DEMAND
SPEEDY TRIAL, THAT HE ALSO HAD

TO DISCHARGE HIS LAWYER.
I MEAN, THAT'S WHAT IT ALL
BREAKS DOWN TO, YOUR ARGUMENT.
YOU CAN'T HAVE ONE WITHOUT THE
OTHER.

>> THERE'S NOTHING THERE'S
NOTHING ON THE RECORD, THERE'S
NOTHING ABOUT MR. ENGLAND
WAIVING HIS RIGHT TO COUNSEL.

>> I KNOW THAT, BUT WHAT YOUR
ARGUMENT IS SAYING TO ME IS
THAT HE COULD NOT EFFECTIVELY
DEMAND SPEEDY TRIAL WHILE HE
HAD A LAWYER WHO WANTED TO
CONTINUE THE TRIAL.

>> HE COULD DEMAND SPEEDY
TRIAL, BUT THAT'S NOT WHAT
WE'RE DEALING WITH.
WE KEEP USING THIS WORD DEMAND
FOR SPEEDY TRIAL.

>> WELL, WAIT.
LET'S CLARIFY THIS RIGHT NOW.
I MEAN, IS IT YOUR POSITION
THAT IN THIS CASE THERE WAS
NOT A DEMAND?

BECAUSE A DEMAND FOR SPEEDY
TRIAL, THAT MEANS SOMETHING
SPECIAL.

>> RIGHT.
I WILL BE CRYSTAL CLEAR, YOUR
HONOR.

THERE WAS NEVER AT ANY POINT
IN THIS TRIAL RECORD A DEMAND
FOR SPEEDY TRIAL.

>> SO WHAT WE'RE DEALING WITH
IS A WAIVER OF SPEEDY TRIAL.

>> WE'RE DEALING WITH A WAIVER
OF SPEEDY TRIAL.

THERE WAS NEVER A DEMAND FOR
SPEEDY TRIAL.

I DON'T WANT TO CONFUSE THIS
ISSUE AT ALL.

IF WE KEEP MISREPRESENTING THE
FACTS OFTEN ENOUGH AND LOUD
ENOUGH, PEOPLE ARE GOING TO
START BELIEVING.

WHEN WE ARGUE TO THE UNITED
STATES SUPREME COURT, THEY'RE
GOING TO

>> SO IF YOU SAY THERE WAS NO

DEMAND, WHAT HAPPENED?

>> WHAT HAPPENED WAS MR. ENGLAND WAIVED SPEEDY TRIAL AND THEN HE SAID, HEY, I CHANGED MY MIND.

NOT IN WRITING, NOT VIA A PLEADING.

>> WELL, HE DID IT IN OPEN COURT, THOUGH.

HE REVOKED THE WAIVER IN OPEN COURT.

NOW, WHY IS THAT NOT VALID?

>> THAT'S NOT HIS RIGHT, YOUR HONOR.

HE DOESN'T HAVE A RIGHT TO REVOKE AN ORDER.

THE JUDGE PRONOUNCED ON THE ORDER AND IT'S IN THE TRANSCRIPT.

>> SO THAT'S KIND OF A GOT YOU.

AND EVEN THOUGH HE MAKES AN INFORMED CHOICE TO REVOKE IT, THE TRIAL COURT CAN'T EVEN CONSIDER THAT.

>> ABSOLUTELY NOT.

IF THE TRIAL COURT'S TO CONSIDER, IT SHOULD BE A SIGNED PLEADING.

WHAT THE GOTCHA IS, TOO LATE, YOU CHANGED YOUR MIND, TOO BAD ON YOU.

WE'LL TEACH YOU A LESSON.

THAT'S NOT WHAT WE'RE HERE ABOUT.

>> MY CONCERN AND, AGAIN, IF WHAT YOU'RE TELLING US IS THE CORRECT THING AND I BELIEVE YOU THAT THERE WAS NOT A DEMAND, THERE WAS A WAIVER, WHAT CONCERNS ME ABOUT WHAT HAPPENED, THOUGH, IS THE FACT THAT THE JUDGE IMMEDIATELY SET THE CASE FOR TRIAL AS IF TO PUNISH HIM, WHEREAS YOU'RE TELLING US THAT HE HAD MONTHS LEFT WITHIN THE SPEEDY TRIAL PERIOD IN WHICH TO SET THIS DEATH PENALTY CASE.

IS THAT WHAT HAPPENED?

>> WITH THE WAIVER OF SPEEDY TRIAL, MR.†KEATING WOULD HAVE HAD HIS ALLOTTED 12 TO 18 MONTHS, WHICH IS THE NORMAL AMOUNT OF TIME TO PREPARE FOR A CAPITAL CASE.

>> WITHOUT THE WAIVER, HOW MUCH MORE TIME DID HE HAVE?

>> WITHOUT THE WAIVER, HE WOULD HAVE HAD UNTIL ABOUT MAY.

>> SO HOW MANY MONTHS IS THAT?

>> 175 DAYS FROM THE TIME THAT HE GOT INDICTED.

>> SO

>> BUT THE ACTUAL HEARING WAS I THOUGHT THAT WAS IN APRIL.

>> THE HEARING WAS IN APRIL.

>> EXACTLY.

SO HE HAD A MONTH LEFT.

>> ABOUT A MONTH LEFT.

HE WAS BROUGHT TO TRIAL IN LESS THAN A MONTH.

IF THERE WAS A DEMAND, HE WOULD HAVE GONE TO TRIAL SOMETIME IN JUNE.

IF THERE WAS AN ACTUAL DEMAND, WHICH THERE WAS NOT, IF THERE WAS A DEMAND, MR.†KEATING WOULD HAVE HAD MORE TIME.

>> YOU'RE IN YOUR REBUTTAL, BUT I WANT TO ADDRESS THE QUESTION OF THE PREJUDICE.

>> EXACTLY.

THANK YOU, YOUR HONOR.

I WANT TO DEFINITELY DISCUSS PREJUDICE.

>> YOU REALLY HAVE TO SHOW THAT THE ENTIRE TRIAL, THAT THE THIS COMING GOING TO TRIAL WHEN IT DID UNDERMINED COMPETENCE, THAT IN EVERY WAY THIS TRIAL WAS NOT A FAIR TRIAL FOR THE DEFENDANT.

>> ABSOLUTELY.

FIRST OF ALL, WHEN IT COMES TO PENALTY PHASE, THE PREJUDICE LIES IN THE FACT THAT HE GOT A 84 RECOMMENDATION.

THE ONLY THING THE JURY HEARD
IN PENALTY PHASE, THEY HEARD
THAT MR. †ENGLAND WAS GOOD AT
LAYING TILE FLOOR REALLY WELL

>> WHAT WAS THE TIME BETWEEN
THE GUILT AND WHEN THE PENALTY
PHASE STARTED?

>> IT WAS STILL IN MAY.

IT WAS LESS THAN A MONTH.

>> WAS THERE A REQUEST FOR
THERE TO BE A LONGER PERIOD BY

>> THERE WAS NO POST VERDICT
CONTINUANCE.

THEY DID NOT HEAR ABOUT MR.
ENGLAND GETTING

>> NO.

I'M ASKING DID THE TRIAL
LAWYER AFTER THE GUILT PHASE
ASK FOR FURTHER TIME?

>> NO, THEY DID NOT.

>> SO IS THAT YOU'RE SAYING
THAT'S DEFICIENCY?

THEY SHOULD HAVE ASKED FOR
CONTINUANCE?

>> THEY ABSOLUTELY SHOULD
HAVE.

MR. †KEATING WAS TRYING TO
PREPARE FOR STATE V MCDUFFY
THIS COURT REVERSED THAT
TRIAL JUDGE IN 2007 FOR
ABUSIVE DISCRETION.

>> THAT HAS ABSOLUTELY NOTHING
TO DO WITH THIS CASE.

THAT IS IT SEEMS TO ME THAT
IS TRYING TO BESMIRCH THE
TRIAL JUDGE BECAUSE WE DECIDED
HE MADE AN ERROR IN ANOTHER
CASE.

IT HAS NOTHING TO DO WITH THIS
CASE, DOES IT?

>> THAT IS NOTHING ABOUT
BESMIRCHING THE TRIAL JUDGE.

I AM SHOWING A PATTERN OF
CONDUCT ON THE PART OF OUR
TRIAL JUDGE.

>> IS IT PART OF OUR LAW THAT
WE ARE LIKELY TO FIND A JUDGE
HAS ABUSED HIS DISCRETION

BECAUSE WE LOOK AT OTHER CASES WHERE WE DECIDED HE ABUSED HIS DISCRETION?

>> NO.

THE WAY WE ANALYZE CASES IS BASED ON THE TRIAL COURT RECORD, NOT INVENTING DEMANDS THAT DID NOT HAPPEN.

>> YOU'RE WAY IN YOUR REBUTTAL.

>> YES, YOUR HONOR.

I WANT TO FINISH TALKING ABOUT PREJUDICE.

MR. †ENGLAND WAS NOT ALLOWED TO PRESENT TO THE JURY THAT HE HAD TO EAT HIS BROTHER'S VOMIT, THAT HE HAD TO PROSTITUTE HIMSELF ON THE STREETS.

>> NOW YOU'RE TOTALLY GOING TO USE UP YOUR TIME.

WHY WOULDN'T YOU HAVE STARTED WITH THAT THE TRIAL COUNSEL WAS DEFICIENT IN THE WAY HE PREPARED FOR THE PENALTY PHASE?

ISN'T THAT A BETTER ARGUMENT FOR YOU?

>> NO.

THE INEFFECTIVENESS LIES WITH ABUSE OF DISCRETION.

I'D LIKE TO SIT DOWN AND SAVE TIME FOR REBUTTAL BECAUSE I'D LIKE TO TALK ABOUT PREJUDICE SOME MORE.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS MITCH BISHOP ON BEHALF OF THE STATE OF FLORIDA.

THERE WAS NOT A DEMAND IN THE STRICT CONTEXT OF RULE 3.191 THE WAY WE WOULD HAVE SEEN PERHAPS IN THE LANDRY CASE, WHERE EVERYBODY ON THE DEFENSE TEAM WAS ON BOARD WITH A DEMAND FOR SPEEDY TRIAL. BECAUSE AS THIS COURT HAS POINTED OUT IN ITS QUESTIONING, THE ATTORNEYS AND THE DEFENDANT DIDN'T AGREE

WITH ONE ANOTHER AND THE
DEFENDANT WAS INSISTING THAT
HE GO TO TRIAL.

THIS IS WHAT HE WANTED TO DO.
BUT THE ATTORNEYS DID NOT
AGREE WITH THAT.

SO WE DON'T HAVE THAT FORMAL,
WRITTEN DEMAND UNDER THE RULE.
BUT AS JUSTICE CANADY HAS
POINTED OUT, IF HE DOES THAT
IN OPEN COURT, HE IS HE HAS
CERTAINLY MADE CRYSTAL CLEAR
WHAT HIS WISHES ARE AND HE
INSISTS THERE IN OPEN COURT,
AFTER HE HAS SIGNED THE
WAIVER, THAT HE IN FACT WANTS
TO GO TO TRIAL, HE WANTS IT TO
HAPPEN RIGHT NOW.

>> BUT IF HE HAD HE HAD A
MONTH LEFT, ASSUMING HE DID
NOT WAIVE.

WITHIN THE SPEEDY TRIAL
PERIOD.

>> HE HAD A MONTH LEFT IN THE
SPEEDY TRIAL CLOCK.

>> CORRECT.

>> BUT I THINK IT WOULD HAVE
GONE INTO ANOTHER MONTH, IN
JUNE.

>> IF HE HAD A MONTH OR TWO
LEFT WITHIN THE SPEEDY TRIAL
PERIOD, WHY DID THE JUDGE
SCHEDULE THE TRIAL SO QUICKLY?

>> ONE OF THE DYNAMICS THAT
WAS AT PLAY HERE AND THAT MR.
KEATING WAS MAKING CRYSTAL
CLEAR ON APRIL†16, WHENEVER
MR.†ENGLAND INSISTED THAT HE
GO TO TRIAL, MR.†KEATING WAS
MAKING IT CLEAR TO THE TRIAL
COURT THAT HE HAD AN ABUNDANCE
OF THINGS THAT HE WAS STILL
TRYING TO DO IN INVESTIGATING
AND REVIEWING THIS CASE AND
PREPARING THIS CASE AND THAT
HE ALSO HAD ANOTHER CAPITAL
CASE THAT HE WAS TRYING IN
THE JUNE, JULY†TIME FRAME AS
IT WENT INTO THAT SAME
CALENDAR YEAR.

AND SO BASICALLY IT FELL ON THE SCHEDULE THAT WAS AVAILABLE TO GO AHEAD AND SET MR.†ENGLAND FOR TRIAL ON MAY THE 10TH OF 2004, IS WHEN HE WENT TO TRIAL.

AND HE HAD MADE THE DEMAND HE HAD INSISTED.

I'LL USE THAT WORD.

>> NOT WAIVING.

>> HE INSISTED THAT HE GO TO TRIAL.

HE MADE THAT INSISTENCE ON APRIL†16 OF 2014.

SO IT WAS JUST A LITTLE BIT LESS THAN A MONTH.

BUT THAT WAS AFTER A COLLOQUY IN THE DIRECT APPEAL RECORD OVER BASICALLY COURT SCHEDULING, COUNSEL REALIZING NOW AT THIS POINT, THIS IS WHAT HE'S GOING TO HAVE TO DEAL WITH.

HE'S NOT GOING TO GET HIS CONTINUANCE.

HIS CLIENT IS NOT COOPERATING WITH HIM AND HIS CLIENT IS INSISTING ON A COMPLETELY DIFFERENT STRATEGY AND HE'S NOT GOING TO BE ALLOWED TO WITHDRAW.

SO MR.†KEATING REALIZING THAT CIRCUMSTANCE AT THIS POINT IS ESSENTIALLY, YOU KNOW, WELL, I HAVE TO GO WITH WHAT I HAVE AND THEY SET IT FOR MAY BECAUSE, AGAIN, MR.†KEATING'S ALSO PREPARING FOR ANOTHER CAPITAL DEATH PENALTY CASE JUST A MONTH AFTER, MONTH, MONTH AND A HALF AFTER MR. ENGLAND'S CASE.

>> I THINK THE CONFUSION HERE IS THE USE OF THE WORD DEMAND. I THINK PERHAPS THE BETTER USAGE HERE WOULD BE HE REFUSED TO WAIVE SPEEDY TRIAL.

>> HE WITHDREW HIS WAIVER.

>> RIGHT.

>> AND REFUSED TO REFUSED

TO AGREE WITH HIS ATTORNEY.
THE WORD DEMAND DOES CERTAINLY
IS THE TERM OF ART UNDER
FLORIDA RULES OF CRIMINAL
PROCEDURE AND WE DON'T HAVE
THE FACTUAL SCENARIOS TO
COMPLETELY FIT WITHIN THAT
WHEELHOUSE EXCEPT

>> SO WHAT DID HE SAY?
DID HE SAY I MEAN, BECAUSE
THE EQUIVALENT OF A DEMAND IS
I WANT TO GO TO TRIAL RIGHT
NOW, SORT OF.

SO WHAT DID MR. †ENGLAND SAY
THAT FORCED THE TRIAL JUDGE TO
WANT TO DO THIS WITHIN A MONTH
PERIOD OF TIME?

>> AND I'M PARAPHRASING, BUT
ENGLAND WAS ESSENTIALLY SAYING
THAT HE WAS READY TO GO TO
TRIAL, HE KNEW THAT HIS
ATTORNEY HAD DISCUSSED WITH
HIM THAT HE NEEDED MORE TIME
TO PREPARE.

HE WASN'T WORRIED ABOUT THAT.
HE DIDN'T THINK THAT THERE WAS
MUCH TO THIS CASE AND HE
THOUGHT HE COULD BEAT THIS
CASE AND HE WAS READY TO GO.
HE WANTED TO GO TO TRIAL AND
HE DIDN'T WANT TO WAIT.
HE DIDN'T WANT TO DELAY THIS
ANY LONGER AND HE WAS READY.
HE MADE THAT SORT OF
EQUIVALENT VERBAL INSISTENCE
THAT HE'S READY TO GO TO
TRIAL.

HE JUST DIDN'T AGAIN HAVE IT
IN THE WRITING AS THE RULE
WOULD LIKE.

>> WELL, CAN WE APPROACH IT
THIS WAY?

WE DO HAVE A PROCEDURE WHERE A
DEFENDANT CAN FILE A WRITTEN
DOCUMENT DEMANDING CERTAIN
RIGHTS.

>> YES, YOUR HONOR.

>> AND DO WE HAVE ANY
AUTHORITY WHERE THAT PROCEDURE
HAS NOT BEEN FOLLOWED, BUT IT

HAS BEEN DONE IN OPEN COURT,
AS JUSTICE CANADY HAS
EXPLAINED?

A DEFENDANT IN OPEN COURT HAS
MADE THE REQUEST OR WHATEVER
WORD WE WANT TO USE SO THAT WE
DON'T CONFUSE IT WITH A
WRITTEN REQUEST AND HAS
INSISTED THAT HE OR SHE GO TO
TRIAL.

AND HAS THAT DEFENDANT BEEN
AFFORDED RELIEF UNDER OUR
RULES, IF NOT GIVEN AN
IMMEDIATE TRIAL OR TRIAL
WITHIN THE APPROPRIATE PERIOD?

>> BECAUSE OF THE UNIQUE
NATURE OF THIS THESE
CIRCUMSTANCES WHERE WE HAVE
THE DEFENDANT AND THE DEFENSE
COUNSEL NOT ON THE SAME PAGE
WITH THIS PARTICULAR ISSUE AT
TRIAL, I'M NOT AWARE OF A
PARTICULAR CASE IN THIS COURT
WHERE

>> SO WE DON'T HAVE IT FROM
THE BACK SIDE, THAT THAT
PARTICULAR WAIVER OR THAT
STATEMENT IS GIVEN THE SAME
EFFECT AS UNDER A FORMAL,
WRITTEN DEMAND.

>> CORRECT, BECAUSE

>> OKAY.

THAT'S FINE.

YOU DON'T HAVE TO GO FURTHER.
JUST TRYING TO GET WHERE WE
ARE EXACTLY.

>> I DIDN'T FIND A CASE WHERE
WE HAD THIS PARTICULAR
PROCEDURAL AND FACTUAL
SCENARIO THAT WAS AT PLAY.
AND THE DISTINGUISHING FACTOR
IN THE GIDIARS CASE IS THAT
DOES CONTEMPLATE THAT THE
ATTORNEY ACTING AS THE COUNSEL
IT'S A CORE FUNCTION OF THE
ATTORNEY'S MINISTERIAL DUTIES
THAT HE CAN WAIVE SPEEDY TRIAL
AND THAT DOESN'T CONTEMPLATE
THE DEFENDANT IN OPEN COURT
STEPPING UP AND COMPLETELY

DISAGREEING WITH THAT STRATEGY.

SO THAT'S A VERY IMPORTANT DISTINCTION IN THAT PARTICULAR CASE BECAUSE IT DOESN'T CONTEMPLATE THAT.

>> I WANT TO MAKE SURE YOU'RE SAYING WHAT I THINK I'M HEARING, IS THAT THE DEFENDANT WAS OBJECTING IN THAT CASE BECAUSE COUNSEL HAD WAIVED SPEEDY TRIAL.

BUT HE WAS NOT THERE TO COUNTERACT THAT WAIVER.

>> THAT IS THAT IS WELL, WHAT WE DON'T HAVE IS THE OPEN COURT DIALOGUE.

I DON'T KNOW PARTICULARLY PROCEDURALLY WHETHER IN THAT CASE THE DEFENDANT WAS STANDING IN COURT WHENEVER COUNSEL FILED THE WAIVER, BUT WHAT WE DON'T HAVE IN THAT CASE IS THE SAME THING THAT RICHARD ENGLAND DID, WHERE HE VEHEMENTLY STOOD UP AND INSISTED ON A PROCEDURAL STRATEGY OF GOING TO TRIAL THAT WAS COMPLETELY DIFFERENT FROM WHAT HIS ATTORNEY WAS ADVISING HIM HE SHOULD DO. ESSENTIALLY, JUST TO TAIL OFF ON WHAT I THINK JUSTICE CANADY OPENED UP WITH REGARD TO THE DEFENDANT DECIDING, EXERCISING HIS FREE WILL TO GET WHAT HE WANTED IN THIS CASE, LET'S SAY THAT THE TRIAL JUDGE HAD DENIED HIS INSISTENT REQUEST TO GO AHEAD AND GO TO TRIAL?

I SUPPOSE THAT THE REVERSE CLAIM WOULD BE THAT THEY IN FACT SHOULD HAVE HONORED THAT REQUEST.

WE WOULD BE HERE ARGUING ABOUT THAT PARTICULAR ISSUE IF JUDGE FOXMAN HAD NOT ALLOWED ENGLAND TO GET WHAT HE WANTED IN THIS PARTICULAR CASE.

YOU KNOW, I WAS GOING TO BEGIN MY ARGUMENT WITH A QUOTE FROM JUDGE HILL FROM STEWART V DUGAR IN 1989 WHERE TRIAL COURT CANNOT BE FAULTED FOR TRYING TO MAKE THE BEST OF A BAD SITUATION.

THAT APPLIES TO THIS CASE. MR. †KEATING DID EVERYTHING HE COULD UNDER THE CIRCUMSTANCES THAT RICHARD ENGLAND HEMMED HIM INTO.

THE TRIAL COURT CAN ALSO NOT BE FAULTED FOR MAKING THE BEST OF A BAD SITUATION.

MR. †ENGLAND PUT THE TRIAL COURT IN A VERY STRANGE SITUATION AND IS ALSO NOW KIND OF PUTTING THIS COURT IN THAT SAME SITUATION OF ASKING FOR RELIEF

>> LET'S TALK ABOUT HIS ARGUMENT THAT HE DIDN'T REALLY COMPLETE ABOUT THE PREJUDICE THAT FLOWED FROM NOT BASICALLY ALLOWING THE CONTINUANCE OF SPEEDY TRIAL. AND HE SAYS THAT THERE WAS LOTS OF MITIGATING INFORMATION THAT THE TRIAL COUNSEL COULD HAVE FOUND IF HE HAD HAD MORE TIME.

>> A LOT OF THE MITIGATING INFORMATION AND THE BEST WAY TO ANSWER THAT PARTICULAR QUESTION IS TO LOOK AT WHAT WAS PRESENTED IN THE POSTCONVICTION EVIDENTIARY HEARING.

AND WHAT WE SEE IN THIS SORT OF NEW MITIGATION THAT WAS PRESENTED WASN'T REALLY A LOT OF NEW MITIGATION ABOUT RICHARD ENGLAND.

A LOT OF THE THINGS THAT WERE TESTIFIED TO AT THE HEARING ABOUT RICHARD ENGLAND WERE THINGS THAT WERE COVERED FOR THE MOST PART IN THE PENALTY PHASE OR THE SPENCER HEARING

AT HIS TRIAL BELOW.

>> BUT I THINK THE ONE PART THAT WAS NOT I THINK COVERED IN THE HEARING WAS ABOUT ANY KIND OF SEXUAL ABUSE THAT MR. ENGLAND MAY HAVE SUFFERED IN THE PAST.

>> WELL, THE OPERATIVE TERM I GUESS IN YOUR QUESTION IS MAY HAVE AND I WOULD EVEN GO LESS THAN THAT.

IT'S PURELY SPECULATIVE AS TO WHETHER HE SUFFERED ANY SEXUAL ABUSE.

THEY REFERENCED THAT IN THEIR PLEADINGS AS IF IT'S SOMETHING CONCRETE AND SOMETHING THAT HAPPENED.

HE DENIED IT.

IT'S BASED ON FACTS THAT ARE DENIED OR CONTRADICTED BY OTHER EVIDENCE.

ENGLAND'S MOTHER AND SISTER WHO TESTIFIED WHO TESTIFIED AT THE SPENCER HEARING TELEPHONICALLY, WHOSE TESTIMONY WAS PRESENTED THROUGH THE DEFENSE INVESTIGATOR AT THE PENALTY PHASE TO THE JURY, AND THEN THEY DID FINALLY COME AROUND AND TESTIFY FOR ENGLAND AT THE POSTCONVICTION HEARING.

THEY TESTIFIED ABOUT ALLISON ENGLAND, THE SISTER, HAVING BEEN SEXUALLY ABUSED BY ONE OF THE STEPFATHERS, BUT IT WAS PURELY SPECULATIVE AS TO WHETHER RICHARD ENGLAND HAD SUFFERED THAT ABUSE.

>> MR. †ENGLAND WAS LIVING WITH THE FORMER HUSBAND; IS THAT CORRECT?

>> HE WAS LIVING WITH HIS ADOPTIVE FATHER, THE MAN WHOSE NAME HE BEARS.

HE WAS NOT LIVING WITH THE MOTHER AND THE SISTER AND THE OTHER BROTHER AT THE TIME THAT THIS PARTICULAR STEPFATHER IN

QUESTION WAS ABUSING THE
SISTER.

AND ACCORDING TO THE MOTHER'S
TESTIMONY IN THE EVIDENTIARY
HEARING, ENGLAND VISITED MAYBE
TWO TIMES DURING THAT TIME
PERIOD THAT THIS STEPFATHER
WAS AROUND, THIS SEXUALLY
ABUSIVE STEPFATHER.

AND THERE IS NO EVIDENCE TO
SUGGEST THAT RICHARD ENGLAND
WAS SEXUALLY ABUSED BY THIS
MAN.

AND THEY CAN ONLY SPECULATE
ABOUT IT JUST BECAUSE THEY
KNOW THAT THE SISTER SUFFERED
THAT PARTICULAR ABUSE.

BUT, AGAIN, ENGLAND WASN'T
AROUND.

>> AND HE DIDN'T FINISH HIS
STATEMENT, BUT SOMETHING ABOUT
SELLING HIMSELF ON THE WHAT
IN OUR RECORD SUPPORTS THAT?

>> THERE'S SOME INDICATION
THERE'S SOME INDICATION
THROUGH MULTIPLE LEVELS OF
HEARSAY FROM THE FAMILY THAT
ENGLAND EXPERIENCED THIS
SITUATION WHEN HE WAS A
TEENAGER ABOUT A COACH RUBBING
HIS BELLY OR SOMETHING TO THAT
EFFECT AND BUT ENGLAND
AGAIN FLATLY DENIES THAT, THAT
PARTICULAR FACT.

AND THEN HE YOU KNOW, THAT
IN AND OF ITSELF WAS JUST
SIMPLY SOMETHING THAT THE
FAMILY MEMBERS HEARD FROM
SOMEBODY WHO HEARD IT FROM
SOMEBODY, SO TO SPEAK.

SO, YOU KNOW, THE JURY WAS
PRESENTED WITH MITIGATION
EVIDENCE ABOUT, FIRST OF ALL,
THE FATHER'S ABANDONMENT
AND THIS IS THROUGH THE
THIS IS THROUGH THE
INVESTIGATOR, JAKE ROSS, WHO
TESTIFIED, BECAUSE THE MOTHER
AND THE SISTER DIDN'T STAY
AROUND, WOULDN'T STAY AROUND

AFTER THEY HAD BEEN PLEADED WITH BY DEFENSE COUNSEL TO STAY FOR THE PENALTY PHASE. THEY LEFT AND WENT BACK HOME. BUT THE INVESTIGATOR TESTIFIED ABOUT A LOT OF THE FAMILY BACKGROUND, ABOUT THE FACT THAT THE FATHER HAD ABANDONED THE FAMILY, THAT THE STEPFATHER HAD PHYSICALLY ABUSED ENGLAND AND THAT WAS CLEAR AND THAT WAS PRESENTED TO THE JURY MEMBERS AND TO THE TRIAL COURT THAT SENTENCED ENGLAND.

AND ABOUT ENGLAND'S DRUG ABUSE AT AN EARLY AGE AND ALSO A LOT OF THE OTHER THINGS ABOUT ENGLAND BEING, YOU KNOW, GOOD TO HIS GIRLFRIEND AND HIS GIRLFRIEND'S CHILDREN, BEING A GOOD COWORKER AND A GOOD EMPLOYEE AND THAT HE WAS PRODUCTIVE WHILE HE WAS INCARCERATED PREVIOUSLY AND ACHIEVED HIS DIPLOMA AND GOT SOME VOCATIONAL TRAINING.

SO THERE WAS A LOT OF MITIGATION THAT WAS PRESENTED TO THIS JURY AND A LOT OF THE MITIGATION THAT WAS PRESENTED IN THE POSTCONVICTION HEARING WAS CUMULATIVE TO WHAT WAS ALREADY PRESENTED TO THE JURY MEMBERS AND TO THE SENTENCING COURT.

IF THERE ARE NO FURTHER QUESTIONS, WE WOULD ASK THAT THE TRIAL COURT OR THAT THIS COURT AFFIRM THE TRIAL COURT'S DENIAL OF POSTCONVICTION RELIEF.

>> REBUTTAL?

>> THANK YOU.

FIRST OF ALL I'D LIKE TO CORRECT THE RECORD. REGARDING PREJUDICE, MR. ENGLAND TOLD OUR EXPERT, DR. CARPENTER, THAT A MAN USED TO RUB HIS BELLY.

>> THAT WHAT?

>> MR. †ENGLAND TOLD OUR EXPERT
THAT A COACH RUBBED HIS BELLY.

MR. †ENGLAND DOES NOT LIKE TO
TALK ABOUT SEXUAL ABUSE.

BUT HE WAS ABLE TO CONCEDE
THAT.

TWO MORE JURORS HEARD THAT HE
WOULD HAVE GOTTEN LEFT.

THE INVESTIGATOR TESTIFIED IN
GENERAL TERMS ABOUT ABUSE.

WE HEARD THE KIDS WERE FORCED
TO LAY ON THEIR BACK WITH

THEIR HANDS AND FEET IN THE
AIR.

THE JURY DID NOT GET A CHANCE
TO HEAR ABOUT THE SPECIFICS OF

MR. †ENGLAND EATING HIS
BROTHER'S VOMIT BECAUSE HIS

STEPFATHER USED TO MAKE THEM
EAT COOKIES UNTIL THEY THROW

UP AND EAT THEIR THROW UP.
THE JURY DID NOT HEAR THAT.

TWO MORE JURORS HEARD THAT,
MR. †ENGLAND WOULD BE SERVING A

LIFE SENTENCE.

AND REGARDING GUILT PHASE

>> YOU'RE OUT OF TIME.

THANK YOU FOR YOUR ARGUMENTS.