

>>> THE NEXT CASE FOR THE DAY IS
ROCHESTER VERSUS STATE OF
FLORIDA.

>> THAT HAVE RESTRICTIVE
LANGUAGE.

>> WELL, AND THAT'S WHAT WE'RE
HERE ON.

>> CORRECT.

>> THE SECOND DISTRICT SEEMS TO
GO AND SAY, LOOK, THERE HAS TO
BE -- THEY SHOULD HAVE SPECIFIC
LANGUAGE THAT SAYS MANDATORY
MINIMUM.

>> EITHER THE LANGUAGE IS
MANDATORY MINIMUM SPECIFICALLY,
OR IT SAYS "SHALL," OR IT SAYS
"NO SUSPENSION" --

>> AND THAT'S WHAT I WAS TRYING
TO FIGURE OUT.

THE STATUTES THEY CITE IN THEIR
OPINION AND, OF COURSE, IN
MONTGOMERY I DON'T KNOW IF THE
STATE CONCEDES AND WE AGREE THAT
MONTGOMERY'S SENTENCE IS NOT A
MINIMUM MANDATORY SENTENCE, I'M
NOT SURE WHAT THAT MEANS.

BUT THEY POINT TO OTHER STATUTES
THAT SPECIFICALLY USE LANGUAGE
THAT SAYS "SHALL SERVE THIS
SENTENCE OR USES" --

>> CORRECT.

CORRECT.

>> BUT ON THE OTHER HAND, THE
STATUTE SEEMS TO GIVE THE JUDGE
TWO CHOICES ONLY.

THAT'S THE OTHER PART OF IT.

>> WELL --

>> SO THAT THAT'S WHAT WE HAVE
TO DECIDE.

>> READING, THERE IS VARIOUS
MATERIAL READINGS HERE.

>> I DON'T --

>> YES.

>> I'M READING THE STATUTE IN
FRONT OF ME HERE.

775082 SAYS "A PERSON WHO HAS
BEEN CONVICTED OF ANY OTHER
DESIGNATED FELONY MAY BE
PUNISHED AS FOLLOWS: ONE, LIFE
IN PRISON, LIFE IMPRISONMENT OR

A SPLIT SENTENCE OF NOT LESS THAN 25 YEARS IN PRISON."
WHAT IS CONFUSING ABOUT THAT?
>> [INAUDIBLE]
>> IT'S GIVING THE TRIAL JUDGE THE CHOICE.
>> THERE IS, THERE'S A CHOICE --
>> EITHER WAY YOU'RE GOING TO GET 25 YEARS.
YOU'RE GOING TO DO A LIFE SENTENCE OR YOU'RE GOING TO DO A MINIMUM --
>> UNLESS THERE'S A REASON TO DEPART, AND THAT'S THE POINT WE'RE MAKING, THAT THERE IS NO RESTRICTIVE LANGUAGE ON AN ALTERNATIVE SENTENCE BASED UPON --
>> DON'T WE KNOW --
>> DOESN'T THE TERM -- WHAT DO YOU THINK THE STATUTE MEANS WHEN IT SAYS "A TERM OF NOT LESS THAN 25 YEARS INCARCERATED"?
WHAT DOES THAT MEAN, "NOT LESS THAN 25 YEARS"?
>> MAY -- IN THE BEGINNING OF THE STATUTE, 775082A MAY IMPOSE THE FOLLOWING, "MAY IMPOSE LIFE IN PRISON" OR --
>> OR "NO LESS THAN 25 YEARS."
>> CORRECT.
HOWEVER, IT DOESN'T SAY "SHALL IMPOSE NO LESS THAN 25 YEARS," IT DOESN'T SAY "A MINIMUM MANDATORY SENTENCE OF 25 YEARS."
MY POINT IS, YES --
>> I KNOW THAT THE WORDS "MINIMUM MANDATORY" IS NOT THERE.
WE CAN ALL AGREE WITH THAT BECAUSE WE LOOK AT THE STATUTE, AND WE SEE THOSE WORDS ARE NOT THERE.
BUT TELL ME WHAT IS -- IF THIS -- IF YOU'RE -- IF THIS IS AN AMBIGUOUS STATEMENT, WHAT ARE THE MEANING OF THE WORDS "A TERM OF NOT LESS THAN 25 YEARS"?
IS THERE MORE THAN ONE MEANING TO THAT PHRASE?

>> THERE ISN'T MORE THAN NECESSARILY ONE MEANING FOR THAT PHRASE, BUT IT DOESN'T PROHIBIT DEPARTURE.

THAT'S THE POINT.

>> SO I'M CLEAR ON YOUR ARGUMENT ASSUMING YOU'RE CORRECT, WHAT LANGUAGE SHOULD HAVE BEEN USED TO MAKE IT A MANDATORY MINIMUM?

>> IT SHOULD HAVE SAID "A MINIMUM MANDATORY OF 25 YEARS."

>> SO "A SPLIT SENTENCE THAT IS A TERM OF A MINIMUM OF 25 YEARS IMPRISONMENT," THAT'S WHAT IT SHOULD HAVE SAID?

>> OR "A MANDATORY SENTENCE OF 25 YEARS IN PRISON."

>> WELL, LET ME -- I MEAN, I LOOK AT THE STATUTES THAT THEY CITED, AND THE LEGISLATURE KNOWS HOW TO SAY -- THEY SAY IT IN THE DRUG TRAFFICKING AND A LOT --

"SHALL BE SENTENCED TO A MANDATORY MINIMUM TERM OF IMPRISONMENT," YOU KNOW, AND THIS IS A RECENT STATUTE.

I MEAN, I DON'T, I JUST DON'T -- I UNDERSTAND THAT THE JUDGE IS GIVEN TWO ALTERNATIVES.

BUT THE QUESTION -- THAT'S WHY I ASKED YOU IS WHAT IS THE LANGUAGE THAT SAYS "BUT YOU SHALL --

>> IT DOESN'T SAY "SHALL."

>> I DON'T THINK ANY STATUTE THAT -- AND TELL ME THIS -- THAT GIVES WHAT THE SENTENCE IS SAYS "OR DEPARTING ANYWHERE BELOW IT," RIGHT?

YOU'VE GOT TO GO TO THE DEPARTURE STATUTE TO KNOW WHAT, WHETHER YOU CAN OR CANNOT DEPART AS A JUDGE.

IS THAT CORRECT?

TO KNOW WHETHER YOU CAN DOWNWARDLY DEPART FROM THE SENTENCE THAT IS ESTABLISHED BY THE LEGISLATURE?

>> WELL, I DON'T THINK IT SAYS WITHIN THE DEPARTURE SENTENCE

PER SE WHETHER YOU CAN DEPART ON THIS CRIME OR THAT CRIME. IT STATES WHAT THE RECOGNIZED GROUNDS OF DEPARTURE AND ONE PROHIBITED GROUND OF DEPARTURE --

>> IS THERE AN ISSUE HERE AS TO WHETHER THIS OTHERWISE COULD HAVE QUALIFIED AS A DEPARTURE?

>> THERE IS EVIDENCE IN THE RECORD THAT THIS COULD HAVE QUALIFIED AS A DEPARTURE --

>> BUT, I MEAN, IF WE FIND -- IF THERE IS NO BASIS BECAUSE THE JUDGE NEVER GOT THERE --

>> CORRECT.

>> -- THE BEST THAT COULD HAPPEN IS IT GOES BACK TO THE JUDGE TO CONSIDER --

>> BASED UPON THE TRIAL.

>> BUT IN OTHER WORDS, THERE'S NOTHING -- ALL YOU WOULD ASK --

>> THE OPPORTUNITY, YES.

>> -- IS THAT IT WOULD HAVE TO GO BACK.

>> RIGHT.

CORRECT.

>> THERE'S NO GUARANTEE THAT HE WOULD GET ANY SENTENCE LESS THAN THE 25 YEARS.

>> WE'RE ON THE ARGUMENT THAT HE'S ENTITLED TO A DEPARTURE SENTENCE.

I'M ARGUING THAT THIS STATUTE DOESN'T PROHIBIT CONSIDERATION OF THE DEPARTURE SENTENCE FOR THE TRIAL COURT TO EXERCISE ITS DISCRETION UPON PROPER PROOF.

>> I'M NOT SURE YOU ANSWERED JUSTICE PARIENTE'S QUESTION WHICH WAS A SOFTBALL QUESTION AS I UNDERSTOOD IT.

AS I -- SHE WAS ASKING YOU THAT IN ANY DOWNWARD DEPARTURE CIRCUMSTANCE YOU HAVE TO LOOK ONLY TO THE DEPARTURE STATUTE, NOT THE SENTENCING STATUTE ITSELF TO DETERMINE THE DEPARTURE.

IS THAT -- BECAUSE YOU DON'T

FIND THE DEPARTURE LANGUAGE IN THE SENTENCING STRUCTURE ITSELF.

>> THAT'S A DIFFICULT QUESTION BECAUSE --

>> OH.

>> AND I'LL EXPLAIN WHY.

IT DOESN'T REALLY APPLY TO THIS PARTICULAR SET OF FACTS BECAUSE IN ALL OTHER STATUTES WHERE THE COURTS HAVE SAID YOU CAN'T DEPART, THERE'S LIMITING -- IT'S IN THE BODY OF THE KLEIN STATUTE ITSELF.

>> THAT SAYS YOU CANNOT DEPART?

>> YOU CANNOT.

RIGHT.

>> AND IT SAYS IT IN SO MANY WORDS?

>> "SHALL" OR "NO SUSPENSION" OR "MANDATORY."

IT'S IN THE STATUTE --

>> OKAY.

>> EXCEPT FOR FIREARMS WHICH IS ALSO A SUBSTANTIVE PART OF THE CRIME AS WELL WHERE YOU HAVE THE 10-20-LIFE STATUTE.

IT SAYS SHALL -- THE PRR WHICH IS --

>> WELL, I DON'T KNOW WHY -- THE QUESTION, AGAIN, IS IT DOESN'T SAY IN ALL THE OTHER STATUTES OR THIS IS --

>> RIGHT.

>> -- THE SENTENCE, BUT THIS IS SUBJECT TO THE JUDGE CONSIDERING DEPARTURE.

THE JUDGE --

>> -- RIGHT.

>> GOES TO THE DEPARTURE STATUTE.

>> YES.

>> I'D LIKE TO ASK YOU ABOUT THE TITLE, IS IT CHAPTER 2005-28?

ISN'T IT PRETTY CLEAR -- WELL, ISN'T IT CLEAR BEYOND ANY DOUBT FROM THE TITLE TO THAT SESSION LAW WHICH ENACTED THE PARTICULAR PROVISIONS THAT WE ARE DISCUSSING HERE THAT THE LEGISLATURE INTENDED TO PROVIDE

FOR A 25-YEAR MINIMUM MANDATORY
TERM OF IMPRISONMENT?

>> JUST FROM THE LUNSFORD ACT?

>> YOU DON'T KNOW WHAT CHAPTER
2005-28 IS?

>> I, I DON'T RECALL, JUDGE.
BUT NEVERTHELESS, IT'S NOT --

>> ARE YOU FAMILIAR WITH THE
SESSION LAW, THE TITLE OF THE
SESSION LAW THAT ADOPTED THE --

>> I AM NOT FAMILIAR WITH THE
TITLE OF THE SESSION LAW.

HOWEVER --

>> IT WAS MENTIONED IN THE, IN
THE, IN THE OTHER SIDE'S BRIEF.

>> I DON'T RECALL IT, YOUR
HONOR.

I APOLOGIZE.

I DON'T RECALL IT.

NEVERTHELESS, THE --

>> WELL, I MEAN, YOU ARGUED
ABOUT IT AND SAID IT WAS
IRRELEVANT.

>> IT IS IRRELEVANT.

>> BUT YOU DON'T REMEMBER IT?

>> NO, I DON'T.

IT'S NONETHELESS IRRELEVANT AS
WELL AS THE PREAMBLE BECAUSE IT
IS WHAT THE LEGISLATURE STATES
IN THE BODY OF THE TEXT THAT
MATTERS.

AND THE BODY OF THE TEXT IS NO
MINIMUM MANDATORY RESTRICTIONS
AS TO AN INABILITY TO DOWNWARDLY
DEPART.

THAT'S THE ESSENCE.

>> SO DO WE HAVE ANY CASE THAT
SAYS WE CANNOT LOOK TO THE TITLE
OF A LAW IF THERE'S AN AMBIGUITY
IN THE TEXT?

>> THERE'S OTHER STATUTORY
CONSTRUCTION TOOLS THAT ARE USED
BEFORE THAT, AND IN THIS CASE
IT'S A DUE PROCESS
CONSIDERATION.

IT IS A CRIMINAL LAW.

AND I BELIEVE --

[INAUDIBLE]

AS A STATUTORY PROVISION TAKES
PRECEDENCE OVER LOOKING AT THE

LEGISLATURE'S TITLE OF THE LAW.

>> OKAY.

SO EVEN THOUGH WE KNOW THAT THE LEGISLATURE INTENDED FROM THE TITLE, WE KNOW THAT THE LEGISLATURE INTENDED FOR THIS PROVISION TO ESTABLISH A MINIMUM MANDATORY SINCE THEY SAID THEY WERE PROVIDING FOR A 25-YEAR MINIMUM MANDATORY, THAT'S IRRELEVANT TO THE ANALYSIS?

>> BECAUSE THEY DIDN'T PUT IT IN THE TEXT OF THE STATUTE.

IT'S WHAT THEY SAY, IT'S NOT NECESSARILY WHAT THEY INTEND TO SAY, BUT IT WAS --

>> WELL, BUT THEY SAY THE TITLE. THEY ADOPT THE TITLE.

THAT IS PART OF WHAT THEY ADOPT. THAT'S IN THAT, THAT'S IN THAT PACKAGE OF PAPER ON THE DESK OVER THERE, AND THEY VOTE ON THAT.

DON'T THEY?

>> THEY DO.

BUT THERE ARE OTHER STATUTES WHERE THEY ACTUALLY EXPRESS THEIR SPECIFIC INTENT FOR MINIMUM MANDATORY SUCH AS THE, EXCUSE ME, THE PRR STATUTE WHERE IT SAYS "WITHIN THE TEXT OF THE BODY OF THE STATUTE THERE SHALL BE NO LESSER SENTENCE," AND THE SAME THING WITH THE 10-20-LIFE. THAT INTENT IS PART OF THE STATUTORY ELEMENTS.

[INAUDIBLE]

ALSO, TO GO BACK AND LOOK AT THE ACTUAL PROPOSED BILLS, THE SENATE BILL DID NOT HAVE ANY RESTRICTIVE LANGUAGE.

IT DIDN'T HAVE 25 YEARS.

SENATE BILL 1216, IT WAS LIFE OR A TERM OF YEARS UP TO LIFE WITH LIFETIME PAROLE.

EXCUSE ME, LIFETIME PROBATION.

THE HOUSE BILL HAD A 25-YEAR MINIMUM TERM.

WHEN THEY PUT THEM TOGETHER, IT WAS ON AN AMENDMENT TWO DAYS

BEFORE THE COMPLETE BILL PASSED,
AND IT WAS SIGNED BY THE
GOVERNOR, YET THERE IS NO
CONDITIONAL RESTRICTIVE LANGUAGE
AS YOU FIND IN OTHERS.

CONSEQUENTLY, IT'S BASED UPON
THE WAY THE SAUSAGE WAS MADE, SO
TO SPEAK.

IT WASN'T THE INTENT OF THE
LEGISLATURE IN TOTAL TO REQUIRE
A MINIMUM MANDATORY.

>> SO UNDER THE STATUTE IF YOU
ARE NOT GOING TO DO THE
ALTERNATIVE OF LIFE, YOU COULD
DO, SAY, FOR EXAMPLE, 45 YEARS?
>> YES.

>> AND YOU WOULD NOT HAVE TO
SERVE 25 OF THOSE 45 YEARS?

>> NO, BECAUSE THERE'S NO
MANDATORY.

>> WELL, BUT YOU'D -- FROM THE
OTHER STATUTES YOU PROBABLY
WOULD END UP, I MEAN, YOU'D HAVE
TO --

>> OH, YEAH.

YOU WOULD HAVE 85%.

>> BEYOND THAT, YOU'D HAVE TO GO
TO THE OTHER STATUTE THAT TALKS
ABOUT --

>> 85%.

>> -- 85%.

>> AND THAT'S --

>> UNDER THE PLAIN LANGUAGE, I'M
LOOKING AT THE PLAIN LANGUAGE OF
THIS STATUTE, YOU COULD BE
SENTENCED TO ANY TERM OF YEARS
THAT IS AT LEAST 25 YEARS, BUT
IT COULD BE, FOR EXAMPLE, 75
YEARS MAYBE.

I'M NOT SURE OF THAT, BUT ANY
NUMBER OF YEARS.

BUT IT COULD NOT BE ANY NUMBER
OF YEARS LESS THAN 25.

>> AND --

>> [INAUDIBLE]

>> CORRECT.

UNLESS THE ISSUE OF DEPARTURE IS
RAISED AND PROVEN.

>> WELL --

>> AND THAT WOULD BE INVOKED AND

APPROVED BY A TRIAL JUDGE.
AND THOSE ARE VERY LIMITED, VERY
UNIQUE SITUATIONS.

IT'S CERTAINLY NOT A
GET-OUT-OF-JAIL-FREE CARD FOR --

>> WE DON'T KNOW HERE -- AGAIN,
YOU'RE IN YOUR REBUTTAL -- BUT
WE DON'T KNOW THAT THIS MAN
WOULD QUALIFY FOR A DOWNWARD
DEPARTURE OF LESS THAN 25 YEARS.

>> EXCEPT TO THE EXTENT THAT THE
JUDGE SAID, AND THIS IS WHY
WE'RE HERE TO BEGIN WITH, BASED
UPON WHAT HE HEARD AT TRIAL HE
WOULD DEPART IF HE COULD DEPART,
BUT THE JUDGE BELIEVED HE COULD
NOT, SO HE DID NOT.

TO SAY THERE IS SOME EVIDENCE,
BUT THERE HASN'T BEEN A
HEARING --

>> BUT THE JUDGE, THIS WOULD NOT
BE A CASE IF THE JUDGE SAID
YOU'RE GETTING 25 YEARS.

IT'S BECAUSE THE JUDGE EXPRESSED
A CONCERN THAT THE FACTS AND
CIRCUMSTANCE OF THIS CASE DID
NOT JUSTIFY THIS DEFENDANT
HAVING TO SERVE 25 YEARS IN
STATE PRISON.

>> CORRECT.

CORRECT.

AND IF THERE'S ANY OTHER
QUESTIONS, I'LL RESERVE MY
REMAINDER FOR REBUTTAL.

THANK YOU.

>> THANK YOU.

>> GOOD MORNING.

MY NAME IS RICHARD VALENTIS, AND
I REPRESENT THE STATE OF
FLORIDA.

JUSTICE PARIENTE, YES, WE DID
HAVE A HEARING.

IN FACT, THE DEFENDANT PUT ON
NOT ONE, NOT TWO, NOT THREE, BUT
FOUR WITNESSES TO TRY, I GUESS,
TO ESTABLISH HIS ABILITY TO GET
A DOWNWARD DEPARTURE.

NONE OF THOSE PEOPLE DID THAT.
THAT WAS BEFORE THE JUDGE MADE
ANY --

>> WELL, THEN THIS WOULD BE REALLY -- THERE'S NO ISSUE THEN.

>> EXACTLY.

>> THIS WOULD BE MOOT AS TO HIM.

>> IT SHOULD BE.

>> I THOUGHT THAT MR. SEIDELIN JUST THOUGHT THAT THE JUDGE -- AND WE CAN LOOK AT THE SENTENCING HEARING -- SAID, "I DON'T FEEL LIKE I HAVE ANY DISCRETION TO DOWNWARDLY DEPART."

>> RIGHT.

THAT IS AFTER ALL THE EVIDENCE WAS PRESENTED, AND NONE OF THE EVIDENCE THAT HE PRESENTED -- SEE, WE --

>> I MEAN, WE CAN SOLVE THAT. IF THE COURT OR ANY MAJORITY OF THE COURT THINKS THERE IS ANY AMBIGUITY BY NOT ESTABLISHING WHAT I'D CALL MAGIC WORDS, "MANDATORY MINIMUM" -- WHICH THE LEGISLATURE KNOWS HOW TO SAY -- OR "SHALL," WHICH THE LEGISLATURE KNOWS HOW TO SAY, BUT USE "THIS," "MAY," AND "THOSE" WERE THE CHOICES, IT GOES BACK.

IF THE JUDGE SAYS, NOPE, I MEANT 25 YEARS, THE STATE IS, YOU KNOW, MR. ROCHESTER IS STILL IN PRISON.

SO WE'RE HERE ON THE LEGAL ISSUE THOUGH --

>> RIGHT.

>> -- WHICH IS, IS THERE LANGUAGE THAT THEY USED HERE THAT ESTABLISHES THE INTENT WAS THAT A DEFENDANT SERVE A MANDATORY MINIMUM OF 25 YEARS.

SO TAKING JUSTICE QUINCE'S HYPOTHETICAL, I GUESS, IF WE WENT TO THAT, THE JUDGE GAVE 26 YEARS AND YOU HAVE THE, AND YOU HAVE GAIN TIME AND WHATEVER, THE DEFENDANT COULDN'T GET OUT IN ANY LESS THAN 25 YEARS EVEN IF IT WAS A 26-YEAR TERM.

>> SEE, AND I THINK THAT'S WHERE

THE PROBLEM COMES UP BECAUSE WHAT HAPPENED IN MONTGOMERY, AS JUSTICE QUINCE SAID -- OR MAYBE IT WAS YOU, JUSTICE PARIENTE -- THE JUDGE IN THAT CASE SPECIFICALLY SAID THE ISSUE WAS THE GUY GOT 25 YEARS, AND THE JUDGE WROTE ON THE SENTENCING ORDER THAT IT'S A "MIN/MAN," MEANING YOU'RE SERVING DAY FOR DAY, YOU DON'T GET DAY AND TIME, YOU DON'T GET OUT EARLY, OKAY? AND THE STATE CONCEDED OVER THERE SAYING, LOOK, WE DON'T -- BECAUSE THE LANGUAGE IN THE STATUTES THAT ACTUALLY HAVE MINIMUM MANDATORY MEANING YOU'RE SERVING DAY FOR DAY, THAT LANGUAGE IS DIFFERENT FROM THE STATUTE --

>> OKAY.

SO --

>> -- TO THE LANGUAGE WE HAVE HERE.

>> YOU'RE NOT SAYING THIS IS A MANDATORY MINIMUM.

>> I'M SAYING IT'S A MANDATORY MINIMUM IN THE SENSE THAT HE MUST BE SENTENCED TO X.

HOWEVER, HE DOES NOT HAVE TO SENTENCE, HE DOES NOT HAVE TO SERVE THE X DAYS.

HE'S ELIGIBLE FOR GAIN TIME, SO HE COULD GET A 25-YEAR SENTENCE AND GET OUT EARLIER THAN 25 YEARS.

>> WELL, THEN WHAT'S THE REAL ISSUE HERE?

>> EXACTLY.

>> ARE YOU SAYING -- BECAUSE YOU'RE NOW SAYING THAT IF HE'S SENTENCED TO 25 YEARS, HE DOES NOT HAVE TO SERVE EVERY DAY OF THAT 25 YEARS --

>> CORRECT.

>> -- THEN IS HE ELIGIBLE, AS YOUR OPPONENT SEEMS TO SAY, FOR A DOWNWARD DEPARTURE SENTENCE?

>> NO.

>> THAT SEEMS TO BE THE REAL

CRUX OF WHAT --

>> OH, NO.

>> -- THE ISSUE HERE AS OPPOSED TO WHETHER IT'S A MINIMUM MANDATORY.

>> OH, NO.

ABSOLUTELY NOT.

>> WHAT DO YOU MEAN, "OH NO"?

>> THE LAW IS CLEAR.

THE LEGISLATURE ENACTED THE JESSICA LUNSFORD ACT AND SAID, TRIAL COURTS, IF SOMEONE -- NOT ONLY DID WE CHANGE IT TO A LIFE FELONY FROM A FIRST-DEGREE FELONY, WHAT WE DID IS SAID, TRIAL JUDGES, YOU NOW HAVE TWO OPTIONS -- TWO -- WHEN YOU HAVE AN ADULT WHO MOLESTS A CHILD. YOU GET LIFE, OR YOU GET 25 YEARS, A TERM OF YEARS OF 25 OR GREATER.

>> THE JUDGE WANTED TO SENTENCE THIS PERSON TO LESS THAN 25 YEARS.

>> CORRECT.

>> PUT ASIDE THE -- I AGREE WITH YOU THAT THE STATUTE AS WORDED DOES NOT REQUIRE A PERSON SENTENCED TO 25 YEARS TO SERVE DAY FOR DAY AS A PERSON WOULD HAVE TO UNDER A MANDATORY MINIMUM SENTENCE.

>> UH-HUH.

>> THE ISSUE HERE IS THAT THE JUDGE FELT COMPELLED BY THE WORDING OF THE STATUTE TO SENTENCE HIM TO AT LEAST 25 YEARS WHEN HE WANTED TO SENTENCE HIM TO SOMETHING LESS. MORE OR LESS IN LINE WITH THE PLEA OFFER IN THE CASE.

>> RIGHT.

>> SO I THINK THAT'S WHAT THE ISSUE IS.

>> OKAY.

AND THE LEGISLATIVE HISTORY AND, I THINK, THE PLAIN LANGUAGE OF THE STATUTE IS CLEAR.

THE JUDGE CANNOT GO BELOW 25 YEARS.

>> WELL, LET'S -- WITH THAT, LET ME MAKE SURE I UNDERSTAND.

IT IS CLEAR THAT THIS DEFENDANT WAS NOT A REOFFENDER, PREVIOUSLY RELEASED FROM PRISON, CORRECT?

>> CORRECT.

>> BECAUSE THAT'S THE ONLY -- AS FAR AS THE STYLE OF THE STATUTE ITSELF, THE HEADING SAYS

"MANDATORY MINIMUM SENTENCES FOR CERTAIN REOFFENDERS PREVIOUSLY RELEASED FROM PRISON."

IT DOESN'T SAY THAT EVERYONE HAS A MANDATORY MINIMUM SENTENCE UNDER THIS SECTION.

>> BUT THE CHAPTER --

>> CORRECT?

>> CORRECT.

BUT THE CHAPTER LAW DOES SAY --

>> WELL, THEN WE GET INTO THE STATUTE THOUGH.

>> RIGHT.

BUT IT'S TELLING YOU WHAT THE STATUTE IS BEING ENACTED FOR.

>> WELL --

>> AND IT DOESN'T SAY THAT WE'RE -- IT SAYS SPECIFICALLY "PROVIDING FOR 25-YEAR MANDATORY MINIMUM TERM OF IMPRISONMENT."

>> BUT NOW YOU'RE -- SEE, WE USE "MANDATORY MINIMUM" TO MEAN THE DAY FOR DAY.

NOW WE'RE --

>> IT GETS USED AS BOTH.

SEE, THAT'S THE PROBLEM.

"MINIMUM MANDATORY" AND "MANDATORY MINIMUM," I THINK, ARE DIFFERENT THINGS.

>> BUT SINCE WE'RE TALKING ABOUT A DEFENDANT'S LIFE --

>> UH-HUH.

>> -- SHOULDN'T WE REQUIRE THE LEGISLATURE TO BE PRECISE IN WHAT THEY WANT THE JUDGE TO DO? SO LET ME GO BACK TO THE QUESTION.

WHAT IS -- BECAUSE I DIDN'T HAVE IT IN FRONT OF ME -- WHAT IS THE STATUTE NUMBER THAT ALLOWS JUDGES TO DOWNWARDLY DEPART?

>> IT'S 921.0026.

>> OKAY.

>> AND, IN FACT, THAT SPECIFIC STATUTE, WHICH THE FOURTH DCA DID NOT ADDRESS BELOW, THAT DOESN'T ALLOW YOU TO DEPART FROM SENTENCES SET FORTH IN A SUBSTANTIVE STATUTE.

THAT ALLOWS YOU TO DEPART DOWNWARDLY FROM THE SENTENCING POINTS CALCULATED UNDER THE CRIMINAL PUNISHMENT CODE.

NOW, THE DEFENDANT HASN'T CITED ONE CASE WHERE YOU HAVE A SITUATION WHERE THE STATUTE SAYS, LOOK, YOU GET LIFE, OR YOU GET 25 YEARS.

OH, NO.

BUT WE'RE GOING TO GO TO THE NOT 210026 WHICH ONLY DEALS WITH THE CRIMINAL PUNISHMENT CODE POINTS AND GET A DOWNWARD DEPARTURE. AND THAT TROUBLED ME ABOUT THE CASE.

I HAVE FOUND NO CASE --

>> BUT THAT'S A BIG POINT.

>> RIGHT.

>> IF THE DOWNWARD DEPARTURE STATUTE IS NOT EVEN APPLICABLE TO TERMS OF YEARS AS OPPOSED TO SENTENCING GUIDELINES, NOW WE'RE DEALING WITH SOMETHING THAT THIS IS A CURVEBALL -- RIGHT? -- FOR US.

IS IT?

>> IT SHOULDN'T BE.

I ARGUED IT TO THE FOURTH, AND IT'S IN THE OPINION, AND THEY SAY WE REFUSE TO --

>> I JUST WONDER, THE PRISON OFFICIALS, I JUST WONDER HOW THEY'RE CLASSIFYING THIS PERSON AS A MANDATORY MINIMUM WHERE HE'S GOING TO DO DAY FOR DAY, OR ARE THEY GOING TO INTERPRET THIS STATUTE TO MEAN SOMETHING LESS SO THAT HE CAN GET GAIN TIME AND THOSE KINDS OF THINGS?

>> WELL, I THINK, JUSTICE LABARGA, WHAT THEY DO IS THEY

LOOK AT THE SENTENCING ORDER,
AND IN THIS CASE I'LL CONCEDE IT
LOOKS LIKE THE SENTENCING ORDER
SAYS MIN/MAN, AND I THINK THAT'S
WHAT THE FOURTH DCA CONCLUDED IN
THIS CASE --

>> BUT YOU'RE SAYING THAT'S
WRONG.

YOU'RE SAYING --

>> CORRECT.

I DO.

I THINK THE MONTGOMERY
CONCESSION WAS ONLY CORRECT ON
THAT POINT, THAT IT'S NOT DAY
FOR DAY.

THE GUY STILL HAS TO GET AT
LEAST 25 YEARS IN PRISON, BUT
THAT DOESN'T MEAN HE'S GOING TO
SERVE EVERY SINGLE ONE OF THOSE
25-YEAR DAYS IN PRISON.

>> SO HE'S SUBJECT TO GETTING
GAIN TIME, HE COULD GET OUT OF
PRISON, THEORETICALLY, IN 15
YEARS, AND THEN THE REST OF HIS
LIFE WOULD BE ON PROBATION.

IS THAT --

>> WELL, THAT'S THE WAY IT
SHOULD WORK, BUT THAT'S NOT THE
WAY IT'S GOING TO WORK IN THIS
CASE, BECAUSE HE DIDN'T GET THE
PROBATION IN THIS CASE.

SO --

>> HE DIDN'T GET --

>> HE DIDN'T GET SENTENCED TO
PROBATION FOR THE REST OF HIS
LIFE.

SO HE ONLY GOT A 25-YEAR
SENTENCE.

>> ISN'T THAT WHAT THAT SPLIT
SENTENCE SAYS?

>> THAT'S EXACTLY WHAT IT SAYS,
AND THAT'S NOT WHAT HAPPENED,
YOUR HONOR.

>> WELL, WHY DIDN'T YOU APPEAL
THAT?

>> WELL, THERE WAS NO OBJECTION
BELOW, YOUR HONOR.

>> I --

>> BUT IS THAT AN ILLEGAL
SENTENCE THEN?

[LAUGHTER]

>> THE CASE LAW SAYS IF THE STATE DOESN'T OBJECT TO THE SENTENCE, WE CAN'T RAISE IT AS AN ISSUE ON APPEAL.

>> EVEN IF IT'S AN ILLEGAL SENTENCE.

[LAUGHTER]

>> WELL, AGAIN, TO BE FAIR, THE STATE HAD OFFERED THIS DEFENDANT SEVEN YEARS?

>> BEFORE TRIAL, SEVEN AND A HALF YEARS AND PROBATION, CORRECT.

>> OKAY.

>> AND LIFE PROBATION OR JUST PROBATION?

>> NOT LIFE.

>> I THINK IT JUST -- I THINK IT MAY HAVE BEEN ABOUT SEVEN YEARS OR SO.

THEY WERE GOING TO PLEAD HIM DOWN.

IT WASN'T GOING TO BE THE LIFE FELONY.

HE WAS GOING TO PLEAD DOWN, AND I THINK IT WAS SEVEN OR SO YEARS OF PROBATION AFTER THE SEVEN AND A HALF YEARS IN PRISON WHICH HE REJECTED.

>> I WOULD JUST STRONGLY SUGGEST TO COUNSEL FOR THE DEFENDANT THAT IF THINGS DON'T GO WELL FOR YOU HERE, YOU MAY WANT TO CONTACT THE PRISON AND MAKE SURE THAT THIS PERSON'S PROPERLY CLASSIFIED BEFORE IT'S TOO LATE.

>> WELL, AGAIN, I THINK IN THIS CASE, JUSTICE LABARGA, THEY'RE PROBABLY CLASSIFYING HIM AS MIN/MAN LIKE THEY DID IN MONTGOMERY UNTIL THAT WAS REVERSED, BECAUSE IT SAYS ON THE SENTENCING ORDER "MINIMUM MANDATORY."

AND THAT -- SEE, THE FACT IS THAT ALL THE CASES THAT DEFENSE COUNSEL CITES, THOSE ARE ALL ONES, YOU KNOW, WITH THE "SHALL," AND "YOU WILL SERVE DAY

FOR DAY" AND ALL OF THOSE THINGS, OKAY?
THAT'S GREAT, BUT THAT JUST SHOWS THAT ALL THOSE PEOPLE ARE SERVING THE DAY FOR DAY.
TO ME, A MANDATORY MINIMUM SENTENCE IS YOU MUST BE SENTENCED TO X AMOUNT OF YEARS. DOESN'T PRECLUDE -- AND, IN FACT, FOR EXAMPLE, THE 10-20-LIFE USES THE LANGUAGE, THEY USE THE TERM "MINIMUM TERM OF IMPRISONMENT OF NOT LESS THAN 25 YEARS."
"MINIMUM" SPECIFYING DAY FOR DAY.
WHAT WE HAVE IN THIS STATUTE IS "TERM OF NOT LESS THAN 25 YEARS IN PRISON."
AND AS JUSTICE QUINCE SAID, WHAT ELSE DOES THAT MEAN EXCEPT FOR YOU'RE GETTING AT LEAST A 25-YEAR SENTENCE?
>> WELL, THAT'S TRUE IF, IF THE DOWNWARD DEPARTURE ABILITY DOES NOT COME WITH SENTENCES THAT ARE NONGUIDELINE SENTENCES.
>> CORRECT.
AND IT SHOULDN'T, YOUR HONOR, UNDER --
>> BUT THAT HAS NOT BEEN ANALYZED, IT WASN'T ANALYZED BY THE FOURTH DISTRICT.
>> IT WAS NOT.
HOWEVER, THIS COURT REALLY RESOLVED THAT IN MCHENRY WHICH SAID WE HAVE A SPECIFIC SENTENCING STATUTE DEALING WITH ONLY ONE CRIME, THE ONLY ONE IN THE ENTIRE PART OF THAT STATUTE. IT DEALS WITH ONE CRIME. IT DEALS WITH ADULTS WHO MOLEST CHILDREN.
THE LEGISLATURE WANTED TO PROTECT THE CHILDREN OF THIS STATE, AND THEY DECIDED, HEY, WHAT WE'RE GOING TO DO IS GIVE THESE PEOPLE LIFE OR A TERM OF NOT LESS THAN 25 YEARS IN PRISON.

>> WELL, IF --
>> FOLLOWED BY LIFE PROBATION.
>> AND, SO IT'S NOT ONLY IS, NOT ONLY IS THIS THE MOST SPECIFIC STATUTE ON IT BECAUSE THE GENERAL STATUTE, OBVIOUSLY, CANNOT CONTROL OVER THE SPECIFIC STATUTE THE LEGISLATURE ENACTED, IT'S ALSO THE MOST RECENT IN TIME.

SO WE'VE GOT A '98 STATUTE THAT THE DEFENSE IS TRYING TO SAY CONTROLS OVER AN '05 STATUTE.

>> I STILL THINK THAT THE BEST -- I MEAN, AGAIN, IF YOU ARE CORRECT, WE WOULD THEN SAY THAT THIS IS A SENTENCING STATUTE THAT REQUIRES AT LEAST A 25-YEAR SENTENCE BUT NOT A MINIMUM MANDATORY AND AT LEAST MAKE SURE -- AND THAT WOULD BE OKAY WITH THE STATE.

>> AND I THINK THAT'S CORRECT. THAT'S WHY THEY CONCEDED, I BELIEVE, IN MONTGOMERY ON THAT --

>> OKAY, I DIDN'T GET THAT.

>> AND THAT LOGICALLY MAKES SENSE WHY THEY USED DIFFERENT LANGUAGE IN THE DIFFERENT STATUTES.

ALL THE STATUTES THAT ARE CITED IN MONTGOMERY ARE THE ONES WHERE PEOPLE HAVE TO SERVE DAY FOR DAY.

AND THIS ISN'T A DAY-FOR-DAY STATUTE TO ME, BECAUSE IF THEY WOULD HAVE PUT "MINIMUM" IN THERE, THE ARGUMENT'S DIFFERENT. BUT THEY DIDN'T.

>> SO THE STATE ACTUALLY, THE STATE OFFER TO THE DEFENDANT WOULD NOT HAVE BEEN PROPER. THE STATE OFFERED SEVEN YEARS AND SEVEN YEARS' PROBATION, CORRECT?

>> IT WOULD HAVE BEEN -- IT WAS A LESSER STATEMENT.

THEY DIDN'T OFFER --

>> WERE THEY LESSENING THE

CRIME?

>> YES.

THEY WEREN'T REDUCING -- THEY WEREN'T OFFERING A SENTENCE, THEY WERE GOING TO DOWNGRADE THE CHARGE.

IT WASN'T GOING TO BE LEWD AND LASCIVIOUS --

>> OKAY.

>> THEY WERE DOWN CHARGING IT, YES.

THEY WOULDN'T HAVE DONE THAT, ABSOLUTELY.

>> OKAY.

>> IT WAS DIFFERENT THAN THE INFORMATION THAT WAS IN PLACE AT THE TIME THE PLEA OFFER WAS MADE, THAT'S MY UNDERSTANDING. THAT THE STATE JUST AMENDED THE INFORMATION.

>> DOWNWARD.

>> NO.

NO.

THEY CHARGED HIM WITH THE LIFE FELONY OF AN ADULT MOLESTING A CHILD UNDER THE AGE OF 12.

>> BUT THEY WERE GOING TO LET HIM PLEAD --

>> YEAH, THEY WERE GOING TO LET HIM PLEAD TO SOMETHING LESS, BUT HE REFUSED --

>> TWO TERMS, RIGHT?

>> PARDON ME?

OH, YES.

HE DIDN'T LIKE -- HE ROLLED THE DICE AND WENT TO TRIAL AND DIDN'T LIKE HIS 25-YEAR SENTENCE.

>> WE'VE GOT TO BE MORE PRECISE SO THE TRIAL JUDGES ALSO ARE CLEAR AND THE DEPARTMENT OF CORRECTIONS.

WE HAVE TO USE THE WAY A MINIMUM MANDATORY IS, SHOULD BE A TERM OF ART TO MEAN DAY FOR DAY, NO GAIN TIME.

AND WHEN THE -- AND THE LEGISLATURE, AS YOU SAID IN THE STATUTES THAT ARE REFERRED TO, HAVE SPECIFIED THAT.

>> AND --
>> AND WHAT YOU'RE NOW SAYING --
I MEAN, NOT NOW, YOU'RE
REITERATING -- THAT IN A TERM OF
YEARS STATUTE NOT SUBJECT TO THE
SENTENCING GUIDELINES, THE JUDGE
CANNOT DOWNWARDLY DEPART.
>> CORRECT.
>> ALL RIGHT.
WELL --
>> HOW DO YOU RESPOND, I BELIEVE
JUSTICE CANADY BROUGHT ABOUT THE
TITLE OF 775082 PROVIDES FOR
MANDATORY MINIMUM SENTENCE.
THAT'S WHAT IT SAYS --
>> WELL, THE WAY I INTERPRET
MANDATORY MINIMUM, AND I MEAN,
EVEN THE STATUTES USE THEM
INTERCHANGEABLY, BUT I THINK
THERE IS A DIFFERENCE.
TO ME, MINIMUM MANDATORY
CONNOTES TWO THINGS.
ONE, NOT ONLY DO YOU HAVE TO BE
RECEIVING A CERTAIN SENTENCE,
BUT, NUMBER TWO, YOU'RE SERVING
DAY FOR DAY.
TO ME, MANDATORY MINIMUM AS
OPPOSED TO MINIMUM MANDATORY,
MANDATORY MINIMUM MEANS YOU HAVE
TO GET SENTENCED TO AT LEAST X.
>> THAT'S EXTREMELY CONFUSING.
>> OH, IT -- NO.
I THINK, I AGREE --
>> DO YOU THINK THERE'S A BETTER
PHRASE --
>> YES.
THERE MAY BE -- WELL, SPECIFIC
SENTENCE --
>> WHAT WOULD YOU CALL WHAT YOU
ARE ARGUING HERE TODAY THAT THIS
PARTICULAR STATUTE DOES?
WHAT WOULD YOU CALL THIS?
>> I WOULD CALL IT A SPECIFIC
SENTENCE STATUTE, I GUESS,
BECAUSE IT REQUIRES A SPECIFIC
SENTENCE.
A SPECIFIC TERM OF YEARS.
>> IS THAT THE EQUIVALENT,
THOUGH, OF A MINIMUM MANDATORY
OR A MANDATORY MINIMUM?

>> NO.
SPECIFIC SENTENCING CONNOTES
THAT YOU HAVE TO BE SENTENCED TO
A SPECIFIC THING.
EITHER IN THIS CASE LIFE OR AT
LEAST 25 YEARS WHEREAS MANDATORY
MINIMUM, MINIMUM MANDATORY, THAT
CAN CONNOTE DAY FOR DAY.
>> LET ME JUST SEE IF I CLEARLY
UNDERSTAND --
>> OKAY.
>> -- WHAT THE STATE IS ARGUING
HERE.
>> UH-HUH?
>> YOUR BASIC ARGUMENT IS THAT
UNDER THIS STATUTE, THE
DEFENDANT WAS NOT ENTITLED TO A
DOWNWARD -- AS LONG AS HE WAS
CHARGED WITH THE LEWD AND
LASCIVIOUS OF AN ADULT ON A
CHILD, AS LONG AS HE WAS CHARGED
WITH THAT OFFENSE, HE WAS NOT
ENTITLED TO A DOWNWARD DEPARTURE
AND THAT HE HAD TO GET A
SENTENCE THAT WAS AT LEAST 25
YEARS WITH LIFE PROBATION.
>> PROBATION, YES.
THAT'S WHAT THE LAW REQUIRES.
YES, YOUR HONOR.
IF THE COURT DOESN'T HAVE --
>> YOU GOING BACK TO THAT?
IT APPEARS THAT THAT STATUTE DID
GO THROUGH AN ENTIRE SCHEDULE OF
MINIMUM MANDATORY -- MANDATORY
MINIMUM, EXCUSE ME, MANDATORY
MINIMUM SENTENCES FOR PRISON
RELEASEE REOFFENDERS.
SO IT SEEMS TO ME THAT'S WHERE
THAT COMES IN -- AND THEN IT'S
LAID OUT IN THE STATUTE.
BUT, I MEAN, AS FAR AS YOUR
ARGUMENT THAT IT DID NOT MAKE IT
INTO THE HEADING OF 775.082 IF
YOU HAVE THE STATUTE IN FRONT OF
YOU --
>> 775 -- YES, I DO.
>> IT DID NOT MAKE IT INTO, INTO
THE HEADING OF THAT STATUTE THAT
THIS IS AS BROADLY HAS BEEN
DISCUSSED AND THAT IT APPLIES

FULL, A FULL DEFINITION THAT YOU MUST BE SENTENCED AS A PRISON RELEASSEE REOFFENDER, IS WHAT IT SEEMS TO ME.

>> [INAUDIBLE]

>> THEN IT IS MANDATORY MINIMUM WITH REGARD TO PRISON RELEASSEE OFFENDERS.

>> BUT I THINK THEY USE THE TERM OR THEY USE LANGUAGE IN THAT TERM, YOUR HONOR, SAYING YOU AIN'T GETTING OUT EARLY.

>> RIGHT.

[INAUDIBLE CONVERSATIONS]

>> REOFFENDERS, NOT THIS OFFENDER.

>> YES, CORRECT.

AND, AGAIN, THE ENTIRE STATUTE THAT YOU'RE CITING, THERE'S ONLY ONE CRIME THAT IS SPECIFICALLY DELINEATED AND HAS APPLICABILITY TO THE UNIVERSE OF ONE CRIME, WHEREAS PRISON RELEASSEE HAS A BUNCH OF DIFFERENT THINGS.

>> YEAH.

>> THE LEGISLATURE, I THINK AS JUSTICE CANADY POINTED OUT, MADE IT ABUNDANTLY CLEAR WHAT IT WAS TRYING TO DO TO PROTECT FLORIDA'S CHILDREN IN THE WAKE OF THE JESSICA LUNSFORD TRAGEDY.

>> THE -- I WANT TO GO BACK TO 920.0026, MITIGATING CIRCUMSTANCES.

>> CORRECT.

>> THIS SECTION APPLIES TO ANY FELONY, CAPITAL FELONY.

>> CORRECT.

>> AND THEN IT TALKS "A DOWNWARD DEPARTURE FROM THE LOWEST PERMISSIBLE SENTENCE," AND YOU --

>> AND A COMMA.

>> -- "AS CALCULATED ACCORDING TO THE TOTAL SENTENCE IS PROHIBITED UNLESS THERE ARE CIRCUMSTANCES OR FACTORS THAT REASONABLY JUSTIFY THE DOWNWARD DEPARTURE."

>> RIGHT.

>> SO IF THE SENTENCE -- SO
MITIGATING CIRCUMSTANCES UNDER
THAT, AGAIN, WOULD NOT APPLY IF
IT'S NOT A CRIMINAL PUNISHMENT
CODE SENTENCING FACTOR.
>> CORRECT.
BY THE PLAIN LANGUAGE --
>> SO ANY TERM OF YEARS THAT'S
SPECIFIED WHETHER IT SAYS "MAY,"
"SHALL" OR WHATEVER, THAT GIVES
THE JUDGE NO DISCRETION IN THE
SENTENCE CANNOT BE GIVEN A
DOWNWARD DEPARTURE.
THAT WOULD BE THE RULE OF LAW
THAT YOU WOULD WANT US TO
ENUNCIATE.
>> ABSOLUTELY.
IF IT'S SET FORTH IN THE
SENTENCE AND WE'RE NOT TALKING
ABOUT --
>> 921.0026 NO MATTER -- UNLESS
THEY SAID --
>> IT ONLY APPLIES, IT SAYS
HERE, "AS CALCULATED ACCORDING
TO THE TOTAL SENTENCE POINTS."
THE LOWEST PERMISSIBLE SENTENCE
CAN BE IN ANOTHER STATUTE, AND
IF ANOTHER STATUTE SAYS IT'S TEN
YEARS AND YOUR GUIDELINES POINT
AND SAY IT'S THREE, YOU'RE
GETTING TEN YEARS BECAUSE THIS
SHOULD NOT APPLY.
>> OKAY.
THANK YOU.
>> THANK YOU.
IF YOU DON'T HAVE ANY QUESTIONS,
STATE WOULD REQUEST YOU AFFIRM.
>> REBUTTAL.
>> I -- COULD YOU -- MAYBE
THAT'S WHY YOU WERE NOT
REFERRING TO THIS.
DO YOU, DO YOU AGREE THAT
921.0026 ONLY APPLIES TO
SENTENCES THAT ARE CALCULATED
PURSUANT TO THE CRIMINAL
PUNISHMENT CODE?
>> THIS IS A SENTENCE --
[INAUDIBLE]
>> SO YOU DON'T AGREE.
>> NO, I DO.

AND IT FALLS, IT FALLS WITHIN
IT, AND I'LL EXPLAIN WHY.
UNDER 9 -- WAS IT 9210022?
THERE IS THIS CRIME, 800045B IS
A CATEGORY NINE OFFENSE.
A GUIDELINE SCORE OR A CPC SCORE
SHEET IS REQUIRED TO BE MADE OUT
FOR THIS CRIME.
IT FALLS WITHIN THE CODE.
IF IT FALLS WITHIN THE CODE,
IT'S SUBJECT TO DEPARTURE EXCEPT
OTHERWISE STATED.
>> BUT THERE WAS, WAS THERE A
SHEET PREPARED?
>> YES, THERE WAS.
IT'S IN THE RECORD.
>> OKAY.
SO NOW THOUGH --
[INAUDIBLE CONVERSATIONS]
THE JUDGE COULDN'T USE THAT
GUIDELINE BECAUSE OF THE
STATUTE, BUT YOU'RE SAYING THAT
THEY COULD USE 0026 TO DEPART?
AND THAT'S, I MEAN, I
UNDERSTAND --
>> THE CODE ESTABLISHES A
MINIMUM.
AND THEN WHETHER YOU DEPART, YOU
HAVE TO GO BELOW THAT MINIMUM
BECAUSE THERE'S A FLOOR IN
FLORIDA AND THE CEILING IS A
STATUTORY MAX --
>> WELL, NOW, WAIT A MINUTE.
WHAT DID YOU JUST SAY HIS SCORE
SHEET CAME OUT TO?
>> THE OFFENSE CATEGORY IS 92
POINTS, THEY SCORED 40 POINTS
FOR SEXUAL CONTACT LESS 25% --
SEVEN AND A HALF YEARS.
>> OKAY.
SO YOU'RE TELLING ME THEN THAT
HIS SCORE SHEET WAS SEVEN AND A
HALF YEARS, JUDGE COULDN'T GET
IT MET BECAUSE THE STATUTE SAYS
HE HAS TO HAVE AT LEAST 25
YEARS, BUT THEN THIS JUDGE CAN
TURN AROUND AND UNDER THE OTHER
STATUTE GIVE HIM THE SEVEN AND A
HALF YEARS?
IS THAT WHAT YOU'RE TELLING ME?

>> FOR MOST CASES THE --
>> I'M TALKING ABOUT -- NO, NO.
I'M TALKING ABOUT THIS LEWD AND
LASCIVIOUS --

>> YEAH.

>> THAT'S WHAT THIS STATUTE IS
REFERRING TO.

THAT UNDER HIS SCORE SHEET HE
SCORED SEVEN AND A HALF YEARS,
BUT THE TRIAL JUDGE COULD NOT
GIVE HIM THAT SCORE SHEET
SENTENCE BECAUSE THE STATUTE
SAYS AT LEAST 25 YEARS.

>> UNLESS THERE'S A --

>> BUT NOW THE JUDGE CAN TURN
AROUND AND UNDER 921.00265 GIVE
HIM THE SEVEN AND A HALF YEARS.

>> UNDER THIS STATUTORY SCHEME,
YES.

AN AVERAGE MAN WHO LOOKS AT THE
STATUTE IS GOING TO SEE, OKAY,
25 WITH LIFETIME PROBATION OR
LIFE IMPRISONMENT.

BUT THEN YOU'RE SUPPOSED TO GO
IN READING MATERIAL, YOU THEN GO
TO THE CODE.

YOU SCORE IT ON THE CODE.

AND THE CODE SAID "ANY
NONCAPITAL OFFENSE."

WELL, WHAT IS IT?

THIS IS A NONCAPITAL OFFENSE
WHICH GIVES A MINIMUM SENTENCE.
BUT IT DOESN'T SAY ANY TYPE OF
RESTRICTION AGAINST DEPARTURE.

AND WHEN YOU PUT IT ALL
TOGETHER, AN AVERAGE PERSON'S
GOING TO SAY, GEE, WELL, I HAVE
A REASON, PERHAPS.

I CAN TRY TO GET A DEPARTURE.

>> BUT CAN IT REALLY MAKE ANY
REAL SENSE THAT IF HE COULD NOT
HAVE SENTENCED HIM UNDER THE
SENTENCING PUNISHMENT CODE
BECAUSE THE ACT SAYS THAT
775.082 SAYS HE HAS TO BE
SENTENCED TO AT LEAST 25 YEARS?
YOU CAN'T SENTENCE HIM UNDER THE
PUNISHMENT CODE, HE HAS TO GIVE
HIM 25 YEARS, YET HE CAN TURN
AROUND AND NOT GIVE HIM THE 25

YEARS.

I MEAN, IT JUST, TO ME, DOES NOT
MAKE A LOT OF SENSE.

>> I UNDERSTAND WHAT YOU'RE
SAYING, BUT THE LEGAL FACTS ARE
HE IS SENTENCING HIM UNDER THE
CODE.

A SCORE SHEET IS REQUIRED.

>> WHICH IS PRETTY FUNNY.

I MEAN, NOT FUNNY, IT SEEMS LIKE
A WASTE OF RESOURCES IF THEY'RE
PREPARING A SENTENCING SHEET
THAT CAN'T EVEN BE USED BY THE
JUDGE.

>> WELL, THEN YOU WEIGH THE
AMBIGUITY, AND LENNEDY KICKS IN.
IF LENNEDY KICKS IN, THEN YOU
HAVE -- DUE PROCESS REQUIRES --

>> DO YOU AGREE THAT YOUR CLIENT
AT LEAST DOESN'T HAVE TO SERVE
25 YEARS?

OR --

[LAUGHTER]

I HOPE YOU WANT --

[INAUDIBLE CONVERSATIONS]

I WOULD ASSUME YOU WANT --

>> AT THE VERY LEAST.

UNDER THE JESSICA LUNSFORD ACT.
BUT THEN AGAIN, WE'RE BACK TO
SQUARE ONE.

>> WELL, BUT THAT'S A PRETTY BIG
CONCESSION FROM THE STATE THAT
IT'S NOT 25 YEARS DAY FOR DAY.
I DON'T KNOW WHAT THAT WOULD
GIVE HIM, BUT, YOU KNOW, HERE'S
A YOUNG MAN --

>> YES.

>> -- AT THE VERY LEAST --

>> AT THE VERY LEAST.

>> YOU DON'T LOOK A GIFT HORSE
IN THE MOUTH.

>> I'M NOT.

AND AT THE VERY LEAST, I DO NOT
CONCEDE THAT BASED UPON THE
QUESTIONS ASKED AND THE
ARGUMENTS GIVEN, WE HAVE
AMBIGUITY.

AND THE STATUTORY CONSTRUCTION
RULES DON'T RESOLVE IT.

LENNEDY MUST APPLY, AND THE

TRIAL JUDGE SHOULD DEPART.

THANK YOU.

>> DOES THAT MEAN THAT HE'S NOT ENTITLED TO THE LIFE PROBATION?

>> THAT -- WELL, JUST BY THE STATUTE LIFE PROBATION --

>> UNDER THE STATUTE IT SAYS 25 YEARS, "NO LESS THAN 25 YEARS FOLLOWED BY LIFE PROBATION."

SO UNDER YOUR THEORY HE WOULD NOT HAVE THE LIFE PROBATION EITHER.

>> WELL, THAT'D BE UP TO THE JUDGE WHEN YOU REMAND IT FOR RESENTENCING CONSIDERATION FOR CONSIDERING A DEPARTURE SENTENCE.

>> OKAY.

>> THEN IT'S A BRAND NEW BALL GAME.

AND BEING THAT PROBATION IS LESS HARSH THAN PRISON, PERHAPS HE CAN GET PROBATION.

BUT AS IT STANDS NOW, APPARENTLY NOT.

BUT THEN AGAIN, HE'S GOT TO DO 25 YEARS IN PRISON LESS GAIN TIME.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.

>> THANK YOU.

COURT IS ADJOURNED.

>> ALL RISE.