

>> OUR NEXT CASE OF THE DAY IS
DEBRA LAFAVE VERSUS STATE OF
FLORIDA.

>> YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT.
I'M JULIUS AULISIO.

I REPRESENT DEBRA LAFAVE THE
PETITIONER IN THIS CASE.
WE'RE HERE ON A CERTIFIED
QUESTION FROM THE SECOND
DISTRICT COURT OF APPEAL
ESSENTIALLY, IT'S A QUESTION OF
WHETHER THE STATE MAY SEEK
REVIEW BY PETITION OF WRIT OF
CERTIORARI, A TRIAL COURT'S
ORDERLY TERMINATING PROBATION.
BACK IN 2005 MISS LAFAVE
ENTERED NEGOTIATED PLEA WITH
THE STATE AND ENTERED A
NEGOTIATED PLEA TO TWO COUNTS OF
LEWD AND LASCIVIOUS BATTERY.
SUBSEQUENT NEGOTIATED A PLEA SHE
WAS PLACED ON THREE YEARS
COMMUNITY CONTROL FOLLOWED BY
SEVEN YEARS PROBATION.

>> IN A NEGOTIATED PLEA BASICALLY
SAID THAT INSTEAD OF GOING TO
PRISON, FOR THE, GUESS IT WAS
LEWD AND LASCIVIOUS MOLESTATION
OF A 14-YEAR-OLD?

>> YES.

>> THAT SHE WOULD GET COMMUNE
CONTROL, PROBATION, WITH THE
CONDITION THAT, SHE WOULD NOT
SEEK EARLY TERMINATION OF HER
PROBATION.

THIS IS WHAT THE NEGOTIATED PLEA
WAS, CORRECT?

>> WELL, THAT'S NOT THE EXACT
LANGUAGE OF THE, THE
LANGUAGE THAT THE NEGOTIATED
PLEA SAID THAT, SHE CAN NOT SEEK
TO HAVE HER COMMUNITY CONTROL
CONVERTED TO PROBATION UNTIL SHE
SUCCESSFULLY COMPLETED AT LEAST
TWO YEARS OF COMMUNITY CONTROL.

>> SO YOU'RE TELLING US, IT WAS
NOT A, YOU WILL NOT SEEK EARLY
TERMINATION OF YOUR PROBATION?

>> WELL, I'M NOT FINISHED YET.

>> OKAY.

>> THE PART OF THE PROBATION IT SAID, YOUR CLIENT WILL NOT BE ALLOWED EARLY TERMINATION OF PROBATION.

SO THE, THE PLEA AGREEMENT, IT WAS VERY SPECIFIC LANGUAGE, THAT --

>> BUT WOULDN'T YOU CONCEDE THAT THAT STATEMENT, IMPLIES THAT, IF SHE IS NOT GOING TO BE ALLOWED, IT WOULD IMPLY THAT THE CLIENT COULD NOT SEEK IT?

>> CERTAINLY.

WE'RE, IT DOES IMPLY THAT HOWEVER, THERE IS CASE LAW THAT SAYS, WHEN DEALING WITH NEGOTIATED PLEAS, THE GOVERNMENT CERTAINLY IS IN A SUPERIOR POSITION THAN THE CLIENT OR THE DEFENDANT AND THAT THE GOVERNMENT IS HELD TO HIGHER RESPONSIBILITY FOR ANY AMBIGUITIES OR IMPRECISION.

>> THE FACT THAT IT IS UNAMBIGUOUSLY IMPLIES THAT, THE FACT THAT IT IS IMPLIED DOESN'T MEAN IT IS AMBIGUOUS? YOU CAN'T READ THAT AND COME TO THE CONCLUSION THAT NOT WITHSTANDING THAT, SHE WOULD BE PERMITTED TO SEEK SUCH EARLY TERMINATION OF PROBATION, CAN YOU?

>> WHY NOT?

IT DOESN'T SPECIFICALLY SAY, WELL, MAYBE STAND ALONE NO, BUT YOU HAVE TO COMPARE IT TO THE FIRST PART OF THE PLEA AGREEMENT WHERE THE PLEA AGREEMENT SAID THAT, YOU KNOW IT SPECIFICALLY SET OUT, SHE COULD NOT SEEK TO HAVE HER COMMUNITY CONTROL CONVERTED TO PROBATION, IF THE STATE WANTED TO BIND HER FROM SEEKING PROBATION, THEY COULD HAVE EASILY SAID IT BECAUSE THEY SAID IT IN THE PART ABOUT COMMUNITY CONTROL.

>> WE HAVE TO ASSUME FOR

PURPOSES OF -- HERE,
CONTRAVENE -- [INAUDIBLE]
IF SECOND DISTRICT IS WRONG ON
THE MERITS, THAT'S ONE THING BUT
IF THE QUESTION IS, IS THE THIRD
DISTRICT RIGHT IN 2002 WHEN IT
SAID YOU CAN NOT USE CERT FOR A
FINAL ORDER OR IS THE SECOND
DISTRICT RIGHT THAT IN CERTAIN
CIRCUMSTANCES YOU CAN?

SO I FEEL, IF YOU SAY NO, NO,
THE TRIAL COURT WAS RIGHT
BECAUSE IT DIDN'T VIOLATE THE
PLEA AGREEMENT, THEN IT'S, A
NON-ISSUE.

THE ISSUE OF CERT VERSUS AN
APPEAL IS NOT AT ISSUE.

DO YOU UNDERSTAND WHAT I'M
SAYING?

>> I'M NOT --

>> THE QUESTION IS, EVEN, I
THOUGHT WE WERE ASSUMING THAT
THE ORDER CLEARLY PROVIDED FOR,
THAT SHE COULDN'T SEEK EARLY
TERMINATION.

SO LET'S, LET'S ASSUME THAT IT
DOES, CLEARLY PROVIDE FOR IT.
IN THE TRIAL COURT STILL, CAN
THE TRIAL COURT STILL DO WHAT IT
DID AND EVEN IF THE TRIAL COURT
REALLY CAN'T, BECAUSE THE PLEA
AGREEMENT IS CLEAR, IS STILL A
REMEDY FOR THE STATE?

>> NO, I THINK THAT THE TRIAL
COURT COULD EARLY TERMINATE
PROBATION.

>> I KNOW YOU THINK THAT.
WHAT I'M, I THOUGHT THE ISSUE IS
THERE A REMEDY FOR THE STATE
EVEN IF IT'S WRONG THROUGH CERT?
THE THIRD DISTRICT IN 2002 SAID
THAT LEGISLATURE SHOULD CONSIDER
AMENDING THE STATUTE TO PROVIDE
FOR THE STATE'S RIGHT OF APPEAL
IN THIS TYPE OF SITUATION.

THE LEGISLATURE DIDN'T.
NOW WE'RE, WE KNOW THERE IS NO
RIGHT OF APPEAL.

THE QUESTION IS, YOU KNOW,
ASSUMING THERE'S A CASE AND

THAT CLEARLY PROVIDES, YOU CAN'T DO SOMETHING, AND THE JUDGE DOES IT, IS THERE A, DOES THE STATE HAVE A RIGHT TO SEEK A PETITION FOR WRIT OF CERTIORARI?

>> IF THERE'S A CASE THAT CLEARLY PROVIDE A JUDGE CAN NOT DO SOMETHING, AND IF IT IS AN INTERLOCUTORY PRETRIAL ORDER, THEN, YE, THEY CAN --

>> WE'RE TALKING ABOUT, THIS IS A FINAL ORDER, RIGHT?

>> THE PETITIONER CONTENDS IT'S A FINAL ORDER.

AND I MEAN THAT IS PART OF THE --

>> IT SEEMS TO ME, THAT THIS CASE IS IN A POSTURE WHERE EVERYONE HAS AGREED THAT THIS IS A FINAL ORDER.

SO WE'RE GOING TO ASSUME HERE THIS IS A FINAL ORDER. BECAUSE THE STATE SOUGHT CERT, I WOULD ASSUME THEY HAVE NO RIGHT TO APPEAL BECAUSE IT WAS A FINAL ORDER, AND IT DOESN'T FALL UNDER ANY OF THOSE CATEGORIES OF WHEN THE STATE CAN APPEAL A FINAL ORDER, OKAY?

SO IF WE ASSUME THAT, THEN LET'S GET TO THE ISSUE AS JUSTICE PARIENTE SAID, THE ISSUE HERE IS, DOES THE STATE, IN THIS FINAL ORDER HAVE A RIGHT TO SEEK CERT?

>> IF YOU SAY THEY DON'T, WHY DON'T THEY?

IS THIS A DEPARTURE FROM THE CENTRAL REQUIREMENTS OF LAW OR DOES THAT EVEN COME INTO PLAY AT THE POINT OF WHETHER OR NOT A COURT HAS JURISDICTION?

>> IT DOESN'T COME INTO PLAY WHETHER IT'S DEPARTURE FROM CENTRAL REQUIREMENTS OF LAW BECAUSE STATE v. PETTIS SAYS YOU CAN NOT TAKE, YOU CAN NOT USE A PETITION OF WRIT OF CERT FOR A FINAL ORDER.

IT IS CLEAR.

THERE'S, THERE ARE CERTAIN SITUATIONS WHERE THERE IS NO REMEDY FROM A TRIAL COURT'S DECISION, A TRIAL COURT IN CERTAIN INSTANCES IS THE COURT OF LAST RESORT.

FOR INSTANCE, ON A MOTION FOR JUDGMENT OF ACQUITTAL BEFORE VERDICT.

THE TRIAL COURT ENTERS A MOTION FOR JUDGMENT OF ACQUITTAL. IS THERE NO REMEDY TO THE STATE?

>> WELL, THAT IS BECAUSE OF THE DOUBLE JEOPARDY, PROTECTION, ISN'T THAT CORRECT?

>> YES.

>> OKAY.

WE'VE GOT A CATEGORY OF THINGS LIKE THAT.

THIS IS NOT ONE OF THOSE. THIS HAS GOT NOTHING TO DO WITH DOUBLE JEOPARDY HERE, IS THAT CORRECT?

>> I DISAGREE.

THE PROBATION, THE PROBATION, SHE CURVED COMMUNITY CONTROL, PROBATION, SHE PLEADED SUCCESSFULLY, COMPLETED UP TO THAT POINT.

ONCE THE TRIAL JUDGE ENTERS THE ORDER OF TERMINATION OF PROBATION, JEOPARDY IS ATTACHED, THE CASE IS COMPLETE.

THERE IS NO FURTHER ACTION TO BE DONE IN THE CASE.

SO IT IS OVER.

>> THAT, YOU WOULD ARGUE THAT IS ONLY, THAT IS ONLY SO BECAUSE THERE IS NO RIGHT OF APPEAL WITH RESPECT, THAT THE STATE HAS WITH RESPECT TO THAT?

IF THE STATE HAS, IF THE STATE HAD A RIGHT OF APPEAL, WITH RESPECT TO A DECISION SUCH AS THAT, WOULD DOUBLE JEOPARDY APPLY?

>> I --

>> WOULD PRECLUDE THE APPEAL?

>> YES.

THAT, THAT RULE MIGHT VIOLATE

CONSTITUTIONAL PROVISIONS
AGAINST DOUBLE JEOPARDY BECAUSE
ONCE A CASE IS COMPLETE, YOU
CAN'T COME BACK AND DO
ANYMORE --

>> BUT THEY, THEY CAN APPEAL THE
WHAT THE STATUTE REFERS TO AS
SENTENCES THAT ARE ILLEGAL,
RIGHT?

THAT IS NOT SUBJECT TO, IF THE
COURT, FOR INSTANCE, FAILS TO
IMPOSE A MANDATORY MINIMUM
THAT'S REQUIRED, THAT CAN BE
APPEALED, CAN'T IT?

>> I DON'T --

>> WITHOUT VIOLATING DOUBLE
JEOPARDY?

>> I DON'T THINK SO.

I THINK THERE ARE SOME CASES
THAT, I'M NOT POSITIVE ABOUT
THAT BUT I THINK THERE ARE SOME
CASES.

AS LONG AS IT IS NOT AN ILLEGAL
SENTENCE, IT CAN NOT BE
APPEALED.

THE STATE HAS A RIGHT TO APPEAL
AN ILLEGAL SENTENCE BUT IF IT IS
NOT ILLEGAL, THEN THEY DON'T
HAVE THAT RIGHT.

>> ISN'T THE ISSUE HERE, THE
LEGISLATURE HAS GRANTED THE
RIGHT OF APPEAL TO THE STATE IN
CERTAIN CATEGORIES OF FINAL
ORDERS, AND, WE HAVE IN,
RECOGNITION OF THAT, SAID NO,
THERE IS NO, WE CAN'T CREATE
OTHER APPEALABLE FINAL ORDERS.
IN PRETRIAL CERT'S AVAILABLE.
SO AGAIN WHAT I THINK, BUT IF
THEY DECIDED, IF TOMORROW THE
LEGISLATURE SAID, YOU KNOW, THIS
LAFAVE CASE IS A GOOD EXAMPLE OF
SOMETHING WE DON'T THINK SHOULD
HAPPEN.

ONCE THERE IS A CLEAR PLEA
AGREEMENT.

THE JUDGE OUGHT NOT TO BE ABLE
TO VARY THE TERMS BY TERMINATING
PROBATION EARLY.

I REALIZE, YOU SAY THEY STILL

HAVE THAT INHERENT RIGHT.
YOU'RE NOT SAYING THAT IF THAT
APPEAL WAS CREATED BY STATUTE,
THAT IT WOULD BE
UNCONSTITUTIONAL BECAUSE IT
WOULD VIOLATE DOUBLE JEOPARDY?

>> IT'S POSSIBLE.

I MEAN THAT'S --

>> BUT MANDATORY, DOWNWARD
DEPARTURES, I THINK IN THE LAST
10 YEARS OR SO THE STATE CAN
APPEAL DOWNWARD DEPARTURES I
BELIEVE.

I KNOW THEY CAN GET RELIEF IF
THE JUDGE DOWNWARDLY DEPARTS.
THERE IS NO RELIEF ON THE OTHER
SIDE BUT THERE IS RELIEF, THE
LEGISLATURE HAS EXPRESSED THIS
INTENT, TO NOT ALLOW JUDGES TO
GO BELOW SOMETHING THAT THEY
HAVE SET FORTH.

SO I DON'T SEE HOW IT WOULD BE A
CONSTITUTIONAL VIOLATION TO
ALLOW AN APPEAL OR, TO ALLOW
CERT IF WE OTHERWISE HAD THE
POLICY OF, OF IMPETUS OR THE
THIRD DISTRICT DON'T STAND FOR
THE SAME PROPOSITION.

SO I MEAN YOUR ARGUMENT HERE
SORT OF TO ME HAS TO BE, THE
COURT HAS SET A POLICY IN PETTIS
HAS STATED IN ITS CASE THAT CERT
SHOULD NOT BE USED IN FINAL
ORDERS.

I MEAN THAT IS THE RULE OF LAW.

>> RIGHT.

>> AND THEN MY QUESTION REALLY
IS, WHY IN A SITUATION LIKE THIS
IF THE, IF WE FIND THAT THE
COURT CLEARLY VIOLATED THE PLEA
AGREEMENT, OF THE PARTIES, WHY
SHOULDN'T WE ALLOW REVIEW BY
CERT?

I MEAN WHAT IS, LET'S ASSUME NO
DOUBLE JEOPARDY, WHAT IS THE,
ISN'T THERE HARM TO ALLOW A
DEFENDANT TO GET AROUND A
NEGOTIATED PLEA AGREEMENT IS,
REALLY, FOR THE COURT'S TO
SANCTION IT, WOULD BE BAD PUBLIC

POLICY?

>> WELL THERE'S, THERE IS NO AUTHORITY FOR THE STATE TO NEGOTIATE AWAY THE THIRD PARTY WHO IS THE JUDGE, THE TRIAL JUDGE, TO NEGOTIATE AWAY THE JUDGE'S STATUTORY AUTHORITY TO EARLY --

>> THE TRIAL COURT ACCEPTED, THE TRIAL COURT ACCEPTED THE PLEA. NOW, IF THERE'S NO SUGGESTION HERE THAT THERE WAS A PROBLEM IN THE PROCESS THAT WAS FOLLOWED.

THE, THIS CONTRACT, ASSOCIATED WITH THE PLEA AGREEMENT, WAS SOMETHING THAT WAS BEFORE THE TRIAL COURT.

THE TRIAL COURT ACCEPTED IT. IF THE TRIAL COURT DID NOT LIKE THIS PARTICULAR PROVISION, THE TRIAL COURT, I THINK COULD HAVE SAID, I'M NOT ACCEPTING THIS, ISN'T THAT CORRECT?

>> I'M SURE THE TRIAL COURT COULD HAVE REJECTED IT.

>> BUT THE TRIAL COURT DID NOT DO THAT?

>> I DON'T THINK IT WAS AN ISSUE AT THAT POINT.

>> OH, I UNDERSTAND.

>> WHEN THEY COME --

>> IT MIGHT HAVE BEEN AN ISSUE FOR THE STATE.

THAT'S WHY THEY PUT IT IN THAT AGREEMENT.

>> RIGHT.

BUT THERE IS CASE, THEY KNEW OR SHOULD HAVE KNOWN THAT THEY CAN NOT BIND THE TRIAL COURT BECAUSE THE, THAT INFRINGES ON THE TRIAL COURT'S JURISDICTION OF, OVER THE SUPERVISORY PROBATION.

THE TRIAL COURT ALWAYS HAS JURISDICTION OVER PROBATION.

THAT'S WHY PROBATION IS A WITHHOLD OF IMPOSITION OF SENTENCE.

IT IS NOT --

>> IN WHAT CASE DO YOU SAY THAT

THE STATE SHOULD HAVE BEEN AWARE THAT THEY COULDN'T PUT THAT PROVISION IN?

>> MARCENIK HOLDS THAT, OR, BAKER, BAKER WAS A CASE THAT SAID THAT YOU CAN'T PREVENT A JUDGE FROM, A FUTURE CIRCUIT COURT JUDGE FROM EARLY TERMINATING PROBATION.

AND THERE IS THE ARIZONA CASE WITH PATEL --

>> UNDER WHAT CIRCUMSTANCES OF THAT CASE?

>> THE BAKER CASE?

BAKER, THE TRIAL JUDGE IMPOSED A CONDITION OF PROBATION, NO EARLY TERMINATION OF PROBATION.

>> YOU SAID THE TRIAL COURT, THAT WAS THE TRIAL COURT'S DEAL, WITH THEM?

IT WASN'T THE STATE'S SEPARATE CONTRACT AS THE PLEA AGREEMENT IS WITH THE STATES?

>> THAT WAS NOT A PLEA AGREEMENT SITUATION.

THE ARIZONA CASE, STATE v. PATEL WAS A PLEA AGREEMENT SITUATION WHERE THEY ASKED --

>> LET ME ASK YOU EARLIER. YOU MENTIONED, FOR THE COURT, [INAUDIBLE]

SUCH AS GOING UNDERNEATH THE GUIDELINES FOR ILLEGAL PURPOSES NOT ALLOWED, THEY CAN APPEAL THAT YOU MENTIONED THAT.

>> THERE IS SPECIFIC PROVISION THEY CAN APPEAL UNDER GUIDELINES SENTENCE.

THAT IS NOT NECESSARILY ILLEGAL?

>> BUT A ILLEGAL SENTENCE THE STATE CAN APPEAL THAT?

>> RIGHT.

>> THERE IS NO DOUBLE JEOPARDY PROBLEM?

>> RIGHT.

BECAUSE BASICALLY THE SENTENCE IS VOID AB INITIO.

>> THERE IS STATUTES, THAT BASICALLY DON'T ALLOW PROBATION IN CASE, AREN'T THERE?

I MEAN MANSLAUGHTER?

>> SURE.

FIRST-DEGREE MURDER.

>> IF A COURT WERE TO SENTENCE
SOMEONE CONVICTED OF
FIRST-DEGREE MURDER TO
PROBATION, THAT COULD BE
APPEALED, BECAUSE THAT IS AN
ILLEGAL SENTENCE?

>> CORRECT.

>> IN THIS PARTICULAR CASE, THE
PARTIES ENTERED INTO A CONTRACT.
WOULD YOU A GUY THAT A PLEA
AGREEMENT IS CONTRACT BETWEEN
THE STATE AND THE DEFENSE?

>> YES.

>> AND THE CONTRACT PROVIDED
THAT IT WOULD BE NO EARLY
TERMINATION OF PROBATION?

>> YES.

>> OKAY.

COURT CLEARLY VIOLATED THAT
CONTRACT, DIDN'T?

>> THE CONTRACT IS BETWEEN THE
STATE AND THE DEFENDANT WHICH
CAN NOT BIND THE TRIAL COURT.

>> THAT IS YOUR POSITION?

>> YES.

>> UNDER THAT POSITION THEN THE
STATE AND THE DEFENSE CAN AGREE
TO AN ILLEGAL SENTENCE?

AND THE COURT ASKED HIM TO DO
PROBATION, FOR EXAMPLE IN A
FIRST-DEGREE MURDER CASE?

>> NO, THEY CAN'T AGREE TO AN
ILLEGAL SENTENCE.

>> JUST GETS TRICKY WITH ME.

I THINK WHAT YOU'RE ASKING US TO
DO IS WRITE AN OPINION THAT
BASICALLY SAYS THAT STATE AND
DEFENSE CAN AGREE, A NEGOTIATED
PLEA, THROUGH NO EARLY
TERMINATION OF PROBATION, AND
THAT IS GOING TO BE
NON-ENFORCEABLE?

>> NO.

IT COULD BE ENFORCEABLE IF THEY
SPECIFICALLY SAID, THAT THE
DEFENDANT CAN NOT SEEK EARLY
TERMINATION OF PROBATION.

>> ISN'T THAT WHAT THE DEFENDANT SAID HERE?

>> NO.

SAID IT WILL NOT BE ALLOWED EARLY TERMINATION OF PROBATION.

>> BUT IF YOU TAKE YOUR ARGUMENT TO THE EXTREME, SEEMS TO ME, DOESN'T MATTER WHETHER THE, IT'S, THE STATE, WHETHER THE LANGUAGE SAYS, THEY WON'T SEEK IT, OR, THAT, YOU SHOULDN'T HAVE IT.

IF YOUR ARGUMENT THAT THE TRIAL COURT ALWAYS RETAINS THE RIGHT TO EARLY TERMINATE, NO MATTER WHAT THE AGREEMENT SAYS, THEN IT DOESN'T MATTER WHETHER SHE ACTUALLY AGREED OR THE LANGUAGE WAS SOMEWHAT AMBIGUOUS?

THAT'S YOUR ARGUMENT, REALLY, ISN'T IT?

>> IF YOU MAKE IT A VIOLATION OF THE CONDITION OF PROBATION THEN SHE WOULDN'T BE ABLE TO SEEK EARLY TERMINATION, IF YOU MADE THAT PART OF THE PLEA AGREEMENT.

>> IF YOU MADE IT WHAT?

>> PART OF THE PLEA AGREEMENT, THAT --

>> SO UNDER THOSE CIRCUMSTANCES, THE TRIAL JUDGE, UNDER THE STATUTE THAT YOU REFERENCED, DOESN'T HAVE ANY AUTHORITY TO TERMINATE PROBATION?

>> THE TRIAL JUDGE ALWAYS HAS AUTHORITY TO TERMINATE --

>> YOUR THEORY IS THAT THE TRIAL JUDGE ALWAYS HAS THE RIGHT TO TERMINATE PROBATION EARLY, CORRECT?

>> RIGHT.

>> SO IT DOESN'T MATTER WHAT THE LANGUAGE OF THE AGREEMENT IS?

>> NO, BECAUSE, BECAUSE, EVEN IF, IF THE, IF MISS LAFAVE DID NOT SEEK EARLY TERMINATION OF PROBATION THE JUDGE COULD HAVE DONE IT ON HIS OWN.

WOULD LIKE THE REMAINDER

OF MY TIME FOR REBUTTAL.

>> OK.

>> CERESE TAYLOR FOR THE STATE.
THE APPEAL HAS TO DO WITH ERRORS IN
THE LAW.

MISCHARACTERIZATIONS OF JUSTICE
THAT AFFECT THE ADMINISTRATION
OF JUSTICE.

PETTIS IS THE RESOLUTION THAT
BEGAN IN JONES.

IF YOU DON'T HAVE TO RIGHT TO
APPEAL AND JUSTICE BOYD STEPS
FORWARD AND LET'S BE CLEAR WHAT
WE'RE TALKING ABOUT HERE.

>> CONCURRENCE IS NOTHING.

>> I RECOGNIZE THAT IT IS NOT
BINDING BUT IT DOES REPRESENT
AND ALSO REPEATED AGAIN A SECOND
TIME.

THE THOUGHT PROCESS BEHIND THAT
STATEMENT, BECAUSE THAT
STATEMENT OF KNOW APPEAL, NO
CERTIORARI, TAKEN LITERALLY,
WOULD FORECLOSE, AVAILABILITY OF
CERTIARI.

PETTIS DOESN'T DO THAT.

PETTIS SAYS, JONES, NO
CERTIORARI.

THAT IS TOO NARROW.

WE'LL TAKE IT BACK A STEP.

YOU DO HAVE A RIGHT TO
CERTIORARI IN NONFINAL ORDERS.

>> THAT GIVES THE RIGHT TO SEEK
REVIEW IN EVERY CASE THEN?

>> NO.

>> NO, YOUR HONOR.

>> IT DOES.

YOU'RE SAYING DON'T GO BACK.

IT IS TOO BROAD THERE.

CERTAINLY WHAT YOU'RE SUGGESTING
IS JUST AS BROAD IN THE
OTHER DIRECTION.

>> WITH ALL DUE RESPECT, YOUR
HONOR, WHAT I'M SUGGESTING THE
REMEDY WE'RE SEEKING IN THIS
CASE, RECOGNITION UNDER PETTIS
PETTIS, NEGOTIATED PLEA
AGREEMENTS REVOLVE IN THE
PARAMETERS OF PETTIS.

THESE, WITH ALL DUE RESPECT TO

THE COURT, I DO UNDERSTAND WHY THIS LOOKS LIKE A FINAL ORDER. MAYBE IT WAS INTENDED TO BE A FINAL ORDER BUT TO ACCORD IT FINALITY STATUS, TO PREVENT THE STATE FROM HAVING ANY BASIS TO ADDRESS A MISCARRIAGE OF JUSTICE.

>> WOULD THE LEGISLATURE IN DECIDING WHICH CATEGORIES OF ORDERS, FINAL ORDERS SHOULD BE APPEALED, MAKES THE DETERMINATION FROM THE MOST COMPELLING REASON TO THE LEAST COMPELLING.

AND THEY ARE NOT SET.

YOU'RE SAYING THIS IS SO COMPELLING.

IF IT IS SO COMPELLING, THERE OUGHT TO BE A RIGHT OF APPEAL?

>> I'M INTO THE SURE --

>> I'M NOT SURE IF WE ADOPT THE REASONING OF THE THIRD DISTRICT YOU'RE OUT OF LUCK IN THIS CASE, IS THAT CORRECT?

YES?

>> YES.

>> THE JORDAN CASE?

>> IS THAT THE THIRD DISTRICT? BUT JORDAN IS DISTINGUISHABLE.

>> SEEMS TO ME THEY ARE REALLY KIND OF PARALLEL CASES.

IF I RECALL JORDAN.

>> THAT WAS A, FAILURE TO DO SOME SUBSTANTIAL ASSISTANCE, RIGHT?

>> UH-HUH.

>> SO THE SENTENCE THAT THE DEFENDANT BASED ON, THE AGREEMENT THAT HE, ANOTHER, SORT OF CONTRACT, .

>> RIGHT.

>> THAT HE WOULD PROVIDE SUBSTANTIAL ASSISTANCE. AND WHEN HE DID NOT DO THE SUBSTANTIAL ASSISTANCE, THE TRIAL JUDGE GAVE HIM THE SENTENCE ANYWAY.

>> RIGHT.

>> RIGHT.

>> CORRECT?
>> RIGHT.
>> HOW DO YOU ACTUALLY GET
AROUND THAT CASE?
SEEMS VERY SIMILAR TO ME, TO
THIS SITUATION?
AND KEEPING IN MIND THAT PETTIS
WAS DECIDED IN 1988 AND THIS IS
A 2001, JORDAN IS A 2001 CASE?
>> YOUR HONOR.
PRESENTED A COUPLE OF THINGS I
WANT TO ADDRESS.
FIRST OF ALL, I CAN NOT EXPRESS
ENOUGH, THAT WE'RE NOT TALKING
ABOUT THE RIGHT OF APPEAL.
ALTHOUGH IT WOULD BE NICE TO SEE
AN EVOLUTION OF RIGHT OF APPEAL
FOR STATE TO REFLECT THE
SITUATION.
>> I UNDERSTAND BUT JORDAN SAYS,
YOU DON'T, THERE WAS NO RIGHT TO
APPEAL AND IT SAYS, THERE WAS NO
RIGHT FOR THE STATE TO SEEK
CERT.
>> DO YOU NOT AGREE, I MEAN THIS
COURT HAS NO POWER TO CREATE A
RIGHT OF APPEAL FROM FINAL
ORDERS?
>> ABSOLUTELY.
THAT IS WHY --
>> I'M AT A LOSS BECAUSE YOU'RE
ARGUING THAT IS WHAT OUGHT TO
HAPPEN IN THIS CASE.
>> WHAT I'M ATTEMPTING TO DO,
YOUR HONOR, MAYBE NOT AS
SUCCESSFULLY AS I WOULD LIKE, SO
LET ME BE CLEAR.
I'M TRYING TO ADDRESS JUSTICE
PARIENTE'S CONCERN ABOUT WHETHER
OR NOT WE'RE SEEKING AN
EVOLUTION IN THE LEGISLATIVE
BRANCH AND HAVING AN APPEAL
RIGHT ESTABLISHED.
THAT IS NOT WHAT WE'RE DOING.
WHAT I'M TRYING TO DO, JUSTICE
LEWIS I ASKED WHAT YOU HAVE ASKED
ABOUT IS PETTIS AND WHETHER
PETTIS COVERS THE CIRCUMSTANCES
IN THIS CASE.
WE'RE NOT LOOKING FOR, IN

JORDAN, YOUR HONOR THE STATE HAS NOT GIVEN ITS FULL MEASURE OF CONSIDERATION AND THE DEFENDANT HAD NOT CEDED FULL MEASURE OF CONSIDERATION.

WE WERE AT SORT OF A SENTENCING STAGE.

THIS IS A POST-SENTENCING, THERE IS A REASON THAT THE SECOND DISTRICT CALLED THIS A RARE POST SENTENCING ORDER.

THIS IS NOT THE KIND OF THING THAT PETTIS COULD CONTEMPLATE. THE CASE IS ESSENTIALLY DONE BUT THERE IS SUPERVISORY POSITION THAT THE TRIAL COURT HOLDS AT THAT TIME YOU HAVE ONE PARTY TO THE AGREEMENT, PETITIONER IN THIS CASE, FAILING TO ABIDE BY THE NEGOTIATING TERMS.

THESE WERE FAVORABLE, BEYOND FAVORABLE NEGOTIATED TERMS TO WHICH THE PETITIONER RECEIVED THE ENTIRE BENEFIT.

AT THE END THE DAY, WHEN THE STATE WAS STILL ENTITLED TO ITS CONSIDERATION, UNDER THE AGREEMENT, THE STATE WAS BARRED FROM THE ASSERTING THAT.

AND THAT IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF THE LAW WHICH PETTIS RECOGNIZES RETAINS ITS VIABILITY, DESPITE THE FACT THERE IS NO APPELLATE RIGHT BECAUSE THE FACT THERE IS NO APPELLATE RIGHT.

THAT IS WHY JUSTICE BOYD CAUTIONED AGAINST READING PETTIS TO SAY, THAT NO APPEAL IS NO CERTIORARI BECAUSE, IF THERE IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF THE LAW, THE DISTRICT COURTS OF APPEAL IN THEIR SUPERVISORY CAPACITY, MUST RETAIN THE POWER TO REACH DOWN AND CORRECT IT.

>> IF WE ALLOW THAT IN THIS CASE.

>> YES.

>> WHERE DO WE DRAW THE LINE?

>> OKAY THE --
>> WAIT A MINUTE.
>> SORRY.
>> SEEMS TO ME IT'S A PRETTY
CLEAR LINE RIGHT NOW LINE THAT
CERTIORARI IS AVAILABLE FOR
NON-FINAL ORDER.
>> OKAY.
WE'RE TAKING FOR THE SAKE OF
THIS ARGUMENT THIS IS A FINAL
ORDER.
>> OKAY.
>> I MEAN I CAN, ENVISION ANY
KIND OF FINAL ORDER COMING DOWN
AND THE STATE SAYING, OH THIS
WAS SO DISASTROUS.
WE SHOULD HAVE, WE REALLY NEED
TO BRING THIS ISSUE TO THE
COURT'S ATTENTION, AND WE'RE
OPENING UP CERTIORARI TO A
WHOLE, A WHOLE LINE OF OTHER
KINDS OF ISSUES.
>> I UNDERSTAND WHAT YOU'RE
SAYING, YOUR HONOR.
I UNDERSTAND THAT CONCERN.
TWO THINGS.
ONE, CERTIORARI IS SELF-LIMITING
BUT ITS OWN CREATION.
IT IS NOT ADDRESSING ERRORS.
IT IS ADDRESSING MISCARRIAGES OF
JUSTICE, DEPARTURES FROM THE
LAW, BY A JUDICIAL OFFICER.
SO, CERTIORARI TAKES CARE OF
ITSELF IN LIMITING ITSELF.
SECONDARILY, HOW THE STATE
FASHION THIS IS REMEDY IS TO
CONSIDER IT IN THIS WAY, WHEN
YOU HAVE A POST-SENTENCING
CONFLICT REGARDING THE
NEGOTIATED PLEA, AND ITS
APPLICATION, IN THAT LIMITED,
NARROW CIRCUMSTANCES, CERTIORARI
WOULD-BE LIE TO PERMIT THE STATE
REVIEW.
THE RESULT IF WE DO NOT HAVE
AN AVENUE OF REVIEW, AS THIS
COURT ALREADY RECOGNIZED, IS,
INDIVIDUALS FINDING THEMSELVES
NOT BOUND BY THE AGREEMENTS THAT
THEY ENTERED INTO WILLING,

KNOWINGLY, NEGOTIATED, RECEIVED
SUBSTANTIAL BENEFITS FOR.
IF THAT IS ALLOWED TO OCCUR, THE
STATE WOULD HAVE NO INCENTIVE TO
PARTICIPATE IN THE PLEA PROCESS.
WHAT INCENTIVE DOES THE STATE
HAVE TO PARTICIPATE, WHAT IS
SENTENCE ANYBODY HAS?

>> THIS HAS ONLY BEEN GOING ON
20 YEARS.

WHY DOESN'T THE LEGISLATURE, THE
STATE, CHANGE IT IF IT IS WRONG?

>> YOUR HONOR, BECAUSE PERHAPS
THIS CASE IS IN THE HIGHEST
COURT OF THE STATE SOME ACTION
WILL BE TAKEN.

WE CAN NOT WAIT FOR LEGISLATURE
TO ADDRESS MISCARRIAGES OF
JUSTICE IN A CERTAIN CONTEXT.
THAT IS THE DUTY OF THE COURT.

>> LET ME ADDRESS HOW AWFUL THIS
IS.

YOU DO HAVE 948.05 THAT GIVES, IT
WOULD APPEAR IT DOES
GIVE COURT AUTHORITY TO
BE ADMONISHED OR COMMENDED.
SATISFIED THE ACTION WILL BE
BEST INTEREST OF JUSTICE AND
WELFARE OF SOCIETY MAY DISCHARGE
THE PROBATIONER OR OFFENDER FROM
FURTHER SUPERVISION.

THE STATE DOES MAKE AN ARGUMENT
THAT MISS LAFAVE WAS ACTUALLY,
IF, BUT FOR THE PROVISION, THAT
SHE DIDN'T DESERVE TO BE
TERMINATED FROM PROBATION AND
ELIMINATE THE COST TO THE STATE
FROM CONTINUING TO SUPERVISE
HER.

THIS OCCURRED IN 2000, THE
SECOND DISTRICT CASE IS 2011.
WE'RE IN 2013.

WAS THIS ORDER STAYED?
I MEAN DID SHE COMPLETE HER
PROBATION THEN OR WHAT HAPPENED?
IS SHE --

>> SHE IS PRESENTLY SERVING
PROBATION.

>> SO SHE'S ACTUALLY, SO THE,
BECAUSE OF SOMETHING ELSE?

>> BECAUSE AFTER SECOND DISTRICT ORDER.

>> OKAY.

SO IN TERMS OF THIS, IF WE ARE TO QUASH THE SECOND DISTRICT, IN THIS PARTICULAR CASE, THE STATE GOT THE REMEDY OF, THAT SHE, STAYED ON PROBATION?

AND I'M NOT, I JUST, WHEN YOU TALK ABOUT SOMETHING BEING SUPER AWFUL, TERRIBLE, MISCARRIAGE OF JUSTICE, WANT TO BRING IT DOWN TO WHAT WE'RE TALKING ABOUT HERE.

>> OKAY.

>> IT JUST SEEMS, SO SHE IS, AND SHOULD HAVE, DOES SHE HAVE MORE YEARS OF PROBATION?

>> I DON'T KNOW EXACTLY THE NUMBER BUT THERE ARE MORE.

>> HAS SHE EVER, WAS THERE EVER ANY EVIDENCE SHE HAD VIOLATED THE PROBATION IN THE RECORD?

>> NOT SUBSTANTIAL, WILLFUL VIOLATION.

>> OKAY SO GOING BACK TO THIS, I'M STILL NOT SURE, FOLLOWING UP ON JUSTICE QUINCE'S QUESTION, WHY THE BETTER POLICY ISN'T TO SAY THE STATE HAS A THE RIGHT TO APPEAL WHEN THE TRIAL COURT ENTERS A ORDER, FINAL ORDER, THAT IS IN VARIANCE WITH THE PLEA AGREEMENT.

END OF THE STORY.

I MEAN, AND, THE BOTTOM LINE IS, I WOULD IMAGINE IN THE FUTURE THE STATE WILL TAKE MEASURE WHEN THEY'RE SEEKING APPROVAL OF THE TRIAL COURT TO MAKE SURE THE TRIAL COURT IS NOT ONLY ACCEPTING THE PLEA BUT SPECIFICS OF WHAT THEY CAN AND CAN'T DO.

I MEAN, AGAIN YOU'RE JUST PREDICT ALL THESE HORRIBLE THINGS HAPPENING AND I'M JUST NOT SURE THAT, THAT, THAT'S THE CASE.

>> WITH ALL DUE RESPECT, YOUR HONOR, SIDES OF THE BENCH ARE

CONCERNED WITH PARALLEL
QUESTIONS.

PUT ABILITY OF PETTIS AND NUTS
AND BOLTS OF THIS CASE, I DON'T
MEAN TO SUGGEST THAT THIS IS,
THAT'S NOT REALLY TRUE.

I DO MEAN TO SUGGEST, THAT THE
IMPACT OF THIS CASE IS
FAR-REACHING.

WITH REGARD TO WHETHER OR NOT
SHE COMPLIED WITH SPECIFIC
ELEMENTS OF HER PROBATION THAT
REALLY ISN'T WHY WE'RE HERE.
THAT IS A REALLY A QUESTION FOR
THE TRIAL COURT, IF 948.05 WERE
TO APPLY.

I NEED TO TALK ABOUT WHAT YOU
SAID ABOUT IN THE FUTURE WHEN WE
ENGAGE IN PLEA AGREEMENTS WE
WOULD SEEK TO BIND THE JUDGE OR
THAT KIND OF THING.

WHAT JUSTICE QUINCE SAID
EARLIER, IS ABSOLUTELY RIGHT.
NO MATTER WHAT LANGUAGE WE USE,
IF YOU GIVE THE PETITIONERS
THEIR ARGUMENT THERE IS NO WAY
FOR US TO OBTAIN RELIEF.

948.05 SAYS YOU CAN OBTAIN
RELEASE FROM EARLY TERMINATION
OF YOUR PROBATION IF IT IS IN
THE BEST INTEREST OF SOCIETY AND
SOCIETY'S WELFARE.

THAT IS SOMETHING THAT THE TRIAL
JUDGE CAN ENGAGE IN SUA SPONTE.
THAT IS NOT WHAT HAPPENED IN
THIS CASE.

THE PARTNER IN THIS CASE
CONTRACTED AWAY HER ABILITY TO
OBTAIN THAT RIGHT.

>> WHY WOULD YOU SAY THAT?

THE TRIAL JUDGE DID NOT APPLY
THAT STANDARD WHETHER IT WAS IN
THE BEST INTERESTS OF EVERYONE
TO CONTINUE PROBATION?

WHAT STANDARD DOES THE TRIAL
JUDGE USE?

I LIKE THE DEFENDANT.

LET, I'M GOING TO TERMINATE?

>> THE REASON WHY I SAY THAT
YOUR HONOR, WHAT THE TRIAL COURT

SAID, SHE COMPLIED LARGELY.
SHE DID WHAT SHE WAS SUPPOSED TO
DO.

BUT WHAT SHE DID NOT DO WAS
SERVE THE ENTIRE PROBATIONARY
TERM.

AND I, OUR POSITION IS THAT IT
IS NOT IN THE BEST INTERESTS OF
SOCIETY TO ALLOW SOMEONE WHO IS
ON SEXUAL OFFENDER PROBATION,
WHICH IS A SPECIFIC TYPE OF
PROBATION, INTENDED TO CONSIDER
THE PERSON, TO MONITOR THEM,
CAREFULLY FOR THE ENTIRE
SUPERVISORY PERIOD OF THE IT IS
NOT IN OUR BEST INTERESTS TO LET
SOMEONE ON SEXUAL OFFENDER
PROBATION OFF EARLY.

WHEN YOU LOOK NOT ONLY THE PLEA
BUT THE JUDGMENT AND SENTENCE
ITSELF, SIGNED BY THE COURT
SAYS, NO EARLY TERMINATION.
THE INTENT ALWAYS, FROM ALL THE
PARTIES WAS A 10-YEAR
SUPERVISORY SENTENCE.

AND IT IS A MISCARRIAGE OF
JUSTICE IN ANY FORM WHEN A TRIAL
COURT, DOES NOT ABIDE BY THE
TERMS OF THE PARTIES HAVE AGREED
TO, WHEN THEY DISREGARD THE LAW
OF CONTRACTS.

THE LAW OF AGREEMENTS, AND, AND
ASSERT AN AUTHORITY THEY DO NOT
HAVE AND THAT IS WHAT HAPPENED
IN THIS CASE AND ANY KIND OF
EXTRA JUDICIAL, ULTRABIASED
ACTION BY A TRIAL COURT IS A
DEPARTURE FROM THE CENTRAL
REQUIREMENTS OF THE LAW.

>> WELL THEN, PLEAS ARE
AGREEMENTS.

>> ABSOLUTELY, YOUR HONOR.

>> SO EVERY PLEA CASE WILL NOT
BE OPEN TO ASSERT IF IT IS
CHANGED BY THE TRIAL JUDGE UNDER
THE STATUTE?

>> NO, YOUR HONOR. POST --

>> WHY NOT?

YOU'RE SAYING THIS IS A CLASS OF
CASES, EVERYONE OF THEM.

YOU MAY DISLIKE THIS ONE MORE
BECAUSE OF WHATEVER THE
UNDERLYING FACTS WERE.

THEN THE NEXT ONE THAT COMES
ALONG, BUT YOU'RE GIVING THAT
REMEDY IN EVERY PLEA CASE?

>> I'M ASKING FOR THIS COURT TO
FASHION A NARROW REMEDY THAT
REFLECTS THE POSTURE IN THIS
CASE.

THAT IT IS NOT JUST ALL PLEA
NEGOTIATIONS.

IT IS POST-SENTENCING.

IT IS A CONFLICT IN THE PLEA
AGREEMENT LIKE THE CONFLICT IN
THIS CASE.

>> WELL ARE YOU ARGUING THAT
THEY AGREED TO IT.

WHICH IS IT?

EVERY TIME IT IS LIKE JELL-O.
I ASK A QUESTION AND IT CHANGES.
YOU WERE ARGUING THAT BECAUSE
THE DEFENDANT AGREED TO THIS,
THAT IT'S, THAT IT IS CONTRARY
TO THE CENTRAL REQUIREMENTS OF
THE LAW THAT NOT BE PULL
FULFILLED.

THAT IS THE PLEA AGREEMENT.
THAT IS WHAT YOU WERE ARGUING
WHEN I ASKED THE QUESTION.

>> YES.

>> ON THAT ARGUMENT WE WOULD
OPEN UP THE POSSIBILITY OF CERT
IN EVERY PLEA AGREEMENT THAT THE
STATE DOESN'T LIKE.

THAT IS VIRTUALLY ALL OF THEM
BECAUSE IF THEY WANTED TO DO IT,
THEY WOULD AGREE WITH IT.

>> NO.

YOUR HONOR, WHAT WE'RE TRYING TO
GET AT HERE, THE RELIEF THE
STATE IS ACCORDED WHEN THERE IS
VIOLATION OF THE PLEA AGREEMENT
IN THIS SENTENCING CONTEXT.

WE'RE NOT TRYING TO, AND THIS IS
WHAT PETTIS HAS AS ITS CONCERN.

IS THE STATE TRYING TO OBTAIN
THAT WHICH IT IS NOT ENTITLED
TO, GREATER RIGHTS THAN IT IS
ENTITLED TO?

THAT'S NOT WHAT WE'RE TRYING TO DO.

WHAT WE'RE TRYING TO SEEK FROM THIS COURT A REMEDY WHEN WE ENGAGE IN GOOD FAITH NEGOTIATION, WE DELIVER UP GOOD AND SUBSTANTIAL CONSIDERATION AND THEN THE TERMS OF THE AGREEMENT ARE IGNORED. AND THEY ARE, AND WE ARE BARRED FROM REVIEW OF THAT.

>> WHAT YOU'RE SAYING IS, WE NEED TO TAKE OUT A PENCIL AND ERASE THE STATUTE UNDER WHICH THE TRIAL JUDGE OPERATED IN THIS CASE?

>> NO, YOUR HONOR.

>> BECAUSE THAT'S SPECIFICALLY, ISN'T IT, ISN'T THAT STATUTE SPECIFICALLY DESIGNED TO BE APPLIED IN CASES WHERE THERE'S A PLEA?

I THOUGHT THAT'S WHAT THAT DID?

>> IT IS ABSOLUTELY APPLICABLE UNLESS YOU CONTRACT THE AWAY THE RIGHT OF --

>> A PLEA IS CONTRACT.

THAT IS A PLEA.

>> THAT'S WHAT I'M SAYING.

I'M TRYING TO SAY THAT THE DEFENDANT IN THIS CASE, THE PETITIONER IN THIS COURT, HAD THAT AVAILABILITY AS THE POTENTIAL.

IT'S A POTENTIAL AVAILABILITY.

IT IS NO AT GUARANTY.

AND IN EXCHANGE FOR NOT HAVING A 30-YEAR PRISON SENTENCE, SHE TOOK, AS A CONSIDERATION, AND GAVE AS A CONSIDERATION, THAT SHE WOULD NOT SEEK EARLY TERMINATION OF HER SUPERVISORY SENTENCE.

WE'RE NOT TRYING TO BIND THE DOC WE'RE NOT TRYING TO BIND THE TRIAL COURT.

THE TRIAL COURT COULD ACT.

SHE COULD NOT ACCEPT THE BENEFIT OF THAT ACTION.

>> IF WE, IF THE TRIAL COURT

COULD HAVE, AFTER THE SECOND DISTRICT CASE SUA SPONTE DONE WHAT IT DID, BUT WITHOUT MISS LAFAVE SEEKING IT, IS THAT WHAT YOU'RE SAYING?

>> YES. EXCEPT I --

>> I GUESS IT FEELS LIKE FORM OVER SUBSTANCE TO ME.

>> SHE COULDN'T HAVE ACCEPTED THE BENEFIT OF IT.

WE'RE NOT TRYING TO BIND THE TRIAL COURT.

WE'RE TRYING TO SAY WE COULD, SHE WAS BOUND.

IF YOU CONTRACT AWAY THE RIGHT. THE FACT THAT SOMEBODY CAN SAY THAT TO YOU, YOU CAN'T ACCEPT IT, THAT IS THE DIFFERENCE HERE. WE'RE NOT TRYING TO BIND THE TRIAL COURT.

WE CAN NOT.

I CAN NOT IN GOOD FAITH ARGUE TO THIS COURT. WHAT I CAN SAY, LAW OF CONTRACTS, THE LAW OF AGREEMENTS --

>> SEEMS TO ME THAT IS THE ONLY WAY THAT REALLY WORKS IS THAT THE TRIAL COURT CAN NOT ALSO VIOLATE THE PLEA AGREEMENT BECAUSE OTHERWISE, IT DOESN'T MAKE SENSE FOR YOU TO ARGUE, AT LEAST TO ME IT DOESN'T MAKE SENSE, THAT THE TRIAL JUDGE CAN DO IT BUT SHE CAN'T ACCEPT IT. THE TRIAL JUDGE ENTERS AN ORDER SAYS SHE IS NOT ON PROBATION ANYMORE, THEN SHE IS NOT ON PROBATION ANYMORE.

TO ARGUE SHE CAN'T ACCEPT IT DOESN'T RESONATE WITH ME.

IT JUST DOESN'T MAKE SENSE.

>> LET ME ATTEMPT TO CLARIFY.

>> IN THESE CIRCUMSTANCES, YOU CAN NOT, NO ONE CAN DO IT.

>> WHAT HAPPENS WHEN THE TRIAL COURTS ACTS IN THIS CASE WE'RE NOT TRYING TO BIND THEM.

WHAT HAPPENS WHEN THE TRIAL COURT ACTS IN THIS CASE IT RATIFIES THE TERMS AGREEMENT.

THAT IS RADICAL DEPARTURE.
NOT EARLY TERMINATION.
THE ALLOWING HER TO MAKE THIS
ARGUMENT.

FROM THE TIME THE MOTION TO
EARLY TERMINATE IS FILED ALL THE
WAY TO ACCEPTING THE HEARING
INSTEAD OF DISMISSING IT WHICH
IS THE COURT SHOULD HAVE DONE.
IT WAS UNAUTHORIZED MOTION AND
THE COURT SHOULD NOT HAVE HEARD
IT.

ALLOWING THAT TO OCCUR IS
DEPARTURE FROM THE CENTRAL
REQUIREMENTS OF LAW.

THE ORDER IN THIS CASE IS
CULMINATION, WHICH GRANTS THEIR
MOTION, WHAT THE ORDER ACTUALLY
DOES, IT CULMINATES IN THE FINAL
ACT OF DEPARTURE FROM THE
CENTRAL REQUIREMENTS OF THE LAW
BUT THROUGHOUT THE COURTS
ALLOWING THIS PROCEED, ACCEPTING
THIS, THAT IS THE DEPARTURE FROM
THE ESSENTIAL REQUIREMENTS OF
THE LAW THAT WE'RE TALKING
ABOUT.

THAT IS THE WAY IN WHICH THIS
COURT RATIFIES A BREACH OF THE
AGREEMENT THAT WHILE IT IS NOT A
DIRECT PARTY TO, BECAUSE I DON'T
BELIEVE THEY CAN BE DIRECT PARTY
TO THAT.

THE LAW DOES EXIST THAT WE CAN
NOT HOLD THEM TO FUTURE TRIAL
COURTS TO, TO ACT UNDER 948.05.
BUT WHAT JUDGE TIMMERMAN DID
WHEN HE SIGNED THAT ORDER, WHEN
HE RATIFIED THE AGREEMENT
BETWEEN THE PARTIES, WAS TO SAY
THAT THOSE PARTIES ARE BOUND
THEREBY.

AND ALLOWING HERE TO GET EARLY
TERMINATION TO SEEK EARLY
TERMINATION, TO HAVE THIS
PETITION BEFORE THE COURT,
DEPARTED FROM THE ESSENTIAL
REQUIREMENTS OF THE LAW BECAUSE
IT VIOLATED, IT RATIFIED HER
PREACH OF THE AGREEMENT.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU, YOUR HONORS.

>> REBUTTAL?

I'LL GIVE YOU ADDITIONAL TWO MINUTES.

>> THANK YOU, YOUR HONOR.

I WANT TO NOTE IN STATE v. RUTHERFORD I KNOW IS NOT BINDING ON THIS, IT IS AN ARIZONA CASE, THEY SAY BY PLEA AGREEMENT YOU CAN STATE A SPECIFIC TERM OF JAIL BUT THEN IT SAYS, ANY FURTHER ATTEMPT BY PROSECUTION TO CONTROL CONDITIONS OF PROBATION WOULD BE AN INFRINGEMENT ON THE COURT'S JURISDICTION OVER PROBATIONERS. THAT IS ESSENTIALLY WHAT HAPPENED HERE.

PROBATION IS NOT A SENTENCE. IT'S A WITHHOLD OF IMPOSITION OF SENTENCE SO THE TRIAL COURT CAN RETAIN JURISDICTION BECAUSE WE CAN'T FORESEE INTO THE FUTURE HOW THE PROBATIONER IS GOING TO PERFORM.

TO COMPLETE THIS COMMUNITY CONTROL, OBVIOUSLY THE COURT WAS VERY IMPRESSED WITH THIS BECAUSE VERY FEW PEOPLE ARE SUCCESSFUL.
AND --

>> SO THAT, AT THE TIME OF THE PLEA AGREEMENT, SHOULD SOMETHING HAVE BEEN SAID ABOUT NOT, THE TRIAL JUDGE, SHOULD THE TRIAL JUDGE HAVE SAID, WELL, YOU KNOW, I CAN ACCEPT THIS PLEA AGREEMENT BUT, YOU KNOW, I'M DENYING WHATEVER NUMBER STATUTE IS, I HAVE THE ULTIMATE AUTHORITY ABOUT TERMINATION OF PROBATION? IS THAT PROVISION OF THE PLEA AGREEMENT ILLEGAL, UNENFORCEABLE?
>> RIGHT.

I MEAN, I DON'T THINK IT WAS REALLY DISCUSSED.

THE TRIAL JUDGE --

>> WE KNOW IT WASN'T DISCUSSED BUT SHOULD IT HAVE BEEN DISCUSSED?

>> PROBABLY BUT THE TRIAL COURT,
WHEN HE GRANTED THE EARLY
TERMINATION OF PROBATION SAYS,
I'M NOT A PARTY TO THE PLEA
AGREEMENT MUCH THE PLEA
AGREEMENT IS BETWEEN THE STATE
AND THE DEFENDANT.

AND I'M GOING TO FOLLOW THE
STATUTE, 948.05 WHICH ALLOWS ME
TO EARLY TERMINATE PROBATION.
THERE WAS NO DISCUSSION ABOUT
THE STATUTE.

AND PROBABLY HAD THE STATE TOLD
THE JUDGE, WELL, JUDGE, YOU'RE
ENTITLED BY STATUTE TO EARLY
TERMINATE PROBATION BUT THIS
PLEA AGREEMENT IS GOING TO BIND
YOUR HAND AND WE'LL NOT ALLOW TO
YOU EARLY TERMINATE PROBATION.

>> BY STATUTE THE JUDGE WOULD BE
ENTITLED TO IMPOSE A SENTENCE
HOWEVER MANY YEARS IT WOULD BE
FOR THESE OFFENSES TO WHICH SHE
IS HAS ENTERED A GUILTY PLEA?
THE NOTION THAT THE PLEA
AGREEMENT CAN'T SOMEHOW RESTRICT
WHAT IS OTHERWISE, WITHIN THE
AUTHORITY OF THE TRIAL COURT TO
DO ONCE A GUILTY PLEA HAS BEEN
ENTERED SEEMS TO ME JUST TO BE
KIND OF NONSENSICAL.

WHAT AM I MISSING?

>> THE CASES CLEARLY HOLD THAT
IT CAN, PLEA AGREEMENT CAN
CONTROL THE INCARCERATIVE PORTION
OF A SENTENCE.

>> I GUESS MY POINT THAT I'M
STRIKING WITH, AND WANT TO GIVE
YOU AN OPPORTUNITY TO HELP ME,
IS, WHY IS THAT DIFFERENT THAN
WHAT HAPPENED HERE?

WHY IS THAT MATERIALLY
DIFFERENT?

>> BECAUSE --

>> HOW IS IT DIFFERENT?

>> INCARCERATION IS A SENTENCE
AND IT IS COMPLETE ONCE IT IS
IMPOSED.

PROBATION IS A WITHHOLD OF
IMPOSITION OF SENTENCE AND THE

COURT RETAINS JURISDICTION TO
MODIFY OR CHANGE THAT PROBATION
DURING THE ENTIRE TIME OF
PROBATION.

>> NOW LET ME ASK YOU ON THIS,
YOU SAY IT IS NOT, THE
IMPOSITION OF PROBATION IS NOT A
SENTENCE.

WHAT IF THERE IS A CASE OF
MANDATORY MINIMUM PRISON
SENTENCE AND THE JUDGE, IMPOSES
PROBATION INSTEAD.

CLEARLY NOT CONSISTENT WITH THE
STATUTES, IS THAT APPEALABLE BY
THE STATE?

>> YES. IT IS AN ILLEGAL SENTENCE.

>> BUT YOU JUST SAID, YOU JUST
SAID PROBATION IS NOT A
SENTENCE.

HOW CAN IT BE A ILLEGAL SENTENCE
IF, IF WHAT'S BEEN IMPOSED IS
PROBATION AND YOU SAY THAT IS
NOT A SENTENCE?

>> BECAUSE THE COURT IS REQUIRED
TO IMPOSE JAIL TIME OR PRISON
TIME.

SO IF THE JUDGE, DOES NOT DO
THAT, THEN HE IS NOT FOLLOWING
THE LAW.

IT IS ILLEGAL SENTENCE.

>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR
10 MINUTES.

>> ALL RISE.