

>> ALL RISE.
HEAR YE, HEAR YE, THE SUPREME
COURT OF FLORIDA IS NOW IN
SESSION.
ALL WHO HAVE CAUSE TO PLEAD,
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.
>> GOOD MORNING.
AFTER I ADJUST MY CHAIR HERE FOR
A SECOND.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET
THIS MORNING IS EUSTACHE VERSUS
STATE.
WHENEVER YOU'RE READY.
>> MR. CHIEF JUSTICE, JUSTICES
GOOD MORNING.
MAY IT PLEASE THE COURT.
DAVID LUCK AND PETER WEBSTER
FROM CARLTON FIELDS ON BEHALF
THE PETITIONER, MR. ROBIN
EUSTACHE, OUR COLLEAGUE WHICH IS
WITH THE FIRM OF STUMP, HOUSER
AND SLOMAN WE'RE HERE TO ADDRESS
A ISSUE OF STATUTORY
CONSTRUCTION REGARDING FLORIDA'S
YOUTHFUL OFFENDER ACT ORIGINALLY
PASSED IN 1978 TO PROVIDE
ADDITIONAL SENTENCING MODALITY
FOR SPECIFIC CATEGORY OF
OFFENDERS, NO LONGER JUVENILES,
WERE STILL SUBJECT TO DIFFERING
CONCERNS THAN THEIR FULL ADULT
COUNTERPARTS.
IN THIS CASE, MY CLIENT,
MR. ROBIN EUSTACHE, 18 AT TIME
OF SENTENCES, 19 AT TIME OF
SENTENCING AND 24 AT THE TIME OF
HIS VIOLATION OF PROBATION.
WE'RE STILL DEALING WITH A YOUNG
PERSON.
THE ISSUE OF STATUTORY
CONSTRUCTION HERE, YOUR HONORS,

INVOLVES WHETHER MANDATORY SENTENCING ENHANCEMENTS SUCH AS 10, 20 TO LIFE 10-YEAR ENHANCEMENT OF COMMISSION OF A FELONY WITH A FIREARM APPLIES WHEN A YOUTHFUL OFFENDER SUBSTANTIVELY VIOLATES HIS OR HER PROBATION OR COMMUNITY CONTROL.

>> WOULD'N'T YOU HAVE TO AGREE THAT THE STATUTE DOES IN FACT HAVE A DIFFERENT SENTENCING SCHEME FOR WHETHER OR NOT IT IS A TECHNICAL VIOLATION OF PROBATION VERSUS A SUBSTANTIVE VIOLATION OF PROBATION? SO IF IT'S A TECHNICAL VIOLATION OF PROBATION, I BELIEVE YOU HAVE A MUCH BETTER ARGUMENT BECAUSE, I THINK THE STATUTE WOULD PROVIDE FOR CONTINUED YOUTHFUL OFFENDER TREATMENT, IS THAT CORRECT?

>> YOU'RE CORRECT, YOUR HONOR. THE SIX-YEAR CAP NOW POST-1990 APPLIES ONLY TO TECHNICAL VIOLATION OF PROBATION OR COMMUNITY CONTROL. AS TO SUBSTANTIVE VIOLATIONS THE LEGISLATURE ADDED DIFFERENT LANGUAGE. STATUTE, SECTION 958.14, AND DIFFERING LANGUAGE IS, PARDON ME.

THAT IS THE FIRST STATUTE ISSUE. THAT PROVIDES THAT THEY CAN BE SENTENCED TO MAXIMUM SENTENCE OF THE OFFENSE WHICH HE OR SHE IS FOUND GUILTY.

THAT STATUTE REFERS TO 948-POINT6.

>> THE MAXIMUM, YOU CAN BE SENTENCED UP TO THE MAXIMUM OF THE CRIME FOR WHICH YOU WERE CONVICTED.

>> CORRECT.

>> IN PARTICULAR CASE THE CRIME WAS ARMED ROBBERY, CORRECT? SO THE MAXIMUM SENTENCE FOR THAT WAS 20 YEARS?

>> MAXIMUM SENTENCE FOR ARMED ROBBERY WITH A FIREARM IS LIFE, YOUR HONOR.

>> AND WHAT IS, YOU HAVE TO HAVE A MINIMUM MANDATORY WITH PRIOR CONVICTION.

>> FOR AN ADULT, YES, YOUR HONOR.

>> THAT WOULD BE 10 YEARS?

>> CORRECT, YOUR HONOR.

>> ISN'T THAT WHAT HIS SENTENCE WAS?

>> HIS ORIGINAL SENTENCE AFTER THE VIOLATION OF PROBATION WAS 15 YEARS.

THEN THROUGH SEVERAL POST-CONVICTION MOTIONS THE TRIAL COURT BECAME AWARE OF THE FACT THERE WAS ISSUE HERE WITH REGARD TO MANDATORY MINIMUMS AND HE WAS SUBSEQUENTLY RESENTENCED TO A 15 YEAR TERM WITH A 10-YEAR MANDATORY MINIMUM.

THE DISTINCTION THAT YOUR HONOR IS DRAWINGS, HOWEVER IS DOES NOT INDICATE CLEAR UNAMBIGUOUS LANGUAGE OF THE LEGISLATURE BY REMOVING THE SIX-YEAR CAP THAT THE COURT ADDRESSED IN ARNETT. MOVING THAT LANGUAGE WOULD MEAN ALL ADULT SENTENCING ENHANCEMENTS WOULD APPLY TO SOMEONE WITH FULL OFFENDER STATUS.

>> IF HE HAD NOT BEEN A YOUTHFUL OFFENDER, SAY HE WAS 25 WHEN HE COMMITTED THESE ARMED ROBBERIES, WHAT WOULD THE SENTENCE HAVE BEEN?

WHAT WAS THE STATUTORY SENTENCE?

>> IF HE WAS AN ADULT, YOUR HONOR, WHO IS NOT ELIGIBLE FOR YOUTHFUL OFFENDER STATUS HIS CRIMINAL PUNISHMENT SCORE SHEET SHOWED A RANGE OF APPROXIMATELY FOUR YEARS UP TO LIFE.

>> ALL RIGHT.

SO, NINE, 958.14 SAYS IF PROBATION OR COMMUNITY CONTROL IS REVOKED, THE COURT SHALL,

SHALL, MOVE DOWN A LITTLE BIT,
IMPOSE ANY SENTENCE WHICH MIGHT
HAVE ORIGINALLY IMPOSED BEFORE
PLACING PROBATIONER ON PROBATION
OR THE OFFENDER INTO COMMUNITY
CONTROL.

SO, I MEAN, AS SOMEONE WHO WAS A
TRIAL JUDGE IN THE CRIMINAL
DIVISION AND HAD TO DEAL WITH
THIS STATUTE OVER AND OVER
AGAIN, HOW DO YOU GET AROUND
THAT?

>> YOUR HONOR, I GET AROUND THAT
BECAUSE OF THIS COURT'S DECISION
IN ARNETT.

THE LANGUAGE, SHALL, NO PERIOD
LONGER THAN THE MAXIMUM SENTENCE
FOR THE OFFENSE.

THAT WAS NOT THERE BUT THE
ORIGINALLY-- WHICH MIGHT HAVE
ORIGINALLY IMPOSED LANGUAGE FROM
948.06 WAS THE SAME WHEN THIS
COURT DECIDED ARNETT AND THE
COURT IN ARNETT ADDRESSED THAT
LANGUAGE AND LOOKED BACK TO HOW
THE OFFENDER COULD HAVE
ORIGINALLY BEEN SENTENCED AS, AS
A YOUTHFUL OFFENDER.

IT DID NOT LOOK BACK HOW THE
OFFENDER--

>> WASN'T THAT, THERE WAS A TIME
WE HAD THE CAP?

WE HAD A CAP APPLICABLE WHEN
THERE WAS ANY VIOLATION OF
PROBATION.

BUT WHEN THAT GOT CHANGED, BY
THE LEGISLATURE, AND WE HAD THIS
DISTINCTION BETWEEN TECHNICAL
VIOLATIONS AND THE SUBSTANTIVE
VIOLATIONS, IT SEEMS LIKE THEY
INTERPLAY BETWEEN THOSE TWO
STATUTES CHANGES SUBSTANTIALLY.
WHAT AM I MISSING IN VIEWING IT
THAT WAY?

>> I DON'T THINK YOU'RE MISSING
ANYTHING, JUSTICE CANADY.

I THINK WE'RE READING FAR TO
MUCH OF REMOVAL OF SIX YEAR CAP
WITH THE LEGISLATURE TO APPLY
ADULT SENTENCING STANDARDS.

>> WE KNOW FOR SUBSTANTIVE VIOLATION THERE IS NO CAP, THERE IS NO SIX-YEAR CAP.

THAT IS KIND OF IN THE REAR VIEW MIRROR ONCE THERE IS SUBSTANTIVE VIOLATION.

WHEN WE LOOK OVER THERE AT ANY, THIS LANGUAGE THAT THE CHIEF JUSTICE WAS JUST QUOTING, THERE IS REFERENCE TO IMPOSING ANY SENTENCE WHICH MIGHT HAVE ORIGINALLY IMPOSED, WE HAVE GOT TO BE LOOKING AT SOMETHING OTHER THAN THE SIX-YEAR CAP, OR A SENTENCE WITHIN THE SIX-YEAR CAP.

SO, WE'RE LOOKING AT THE OTHER STATUTORY SCHEME WHICH ESTABLISHES THE SENTENCES THAT ARE APPLICABLE, AND THERE WE HAVE A MANDATORY MINIMUM.

IT IS HARD FOR ME TO SEE HOW YOU CAN SAY THAT THE COURT, CAN IMPOSE A SENTENCE, THE SENTENCE WHICH MIGHT HAVE ORIGINALLY IMPOSED IS GOING TO BE A MANDATORY MINIMUM SENTENCE AT LEAST.

WHAT AM I MISSING THERE?

>> WELL, YOUR HONOR THE DOCTRINE OF MATERIA, THESE ARE NOT THE ONLY TWO STATUTORY SUBSECTIONS.

>> WHAT ELSE ARE WE LOOKING AT?

>> YOUR HONOR, WE FOCUSED CENTRALLY IN OUR BRIEFING ON THE FACT THAT YOUTHFUL OFFENDERS CONTINUE TO HAVE A RIGHT TO POTENTIAL EARLY RELEASE BASED UPON THE RECOMMENDATION OF THE DEPARTMENT OF CORRECTIONS.

>> WHAT IS THE PREREQUISITE FOR THAT?

>> SUCCESSFUL PARTICIPATION IN THE PROGRAM.

>> ALL RIGHT, SUCCESSFUL PARTICIPATION.

CAN WE SAY THAT PREREQUISITE OF SUCCESSFUL PARTICIPATION IS MET WHEN AN OFFENDER HAS COMMIT AD SUBSEQUENT CRIME THAT IS A

SUBSTANTIVE VIOLATION OF THE
CONDITIONS OF THE, OF THE
CONDITIONAL OR THE, THE
PROBATION?

>> YOUR HONOR, I THINK WE CAN
BECAUSE THIS COURT IN ARNETT THE
STATUS CONTINUE UNLESS THE
LEGISLATURE STATES CLEARLY
OTHERWISE.

THERE IS NO INDICATION, AND
THERE HAS BEEN YEARS OF CASE LAW
FOLLOWING ARNETT--

>> HOW CAN IT BE SUCCESSFUL
PARTICIPATION?

WHAT WAS THE OFFENSE COMMITTED
HERE?

>> HE HAD POSSESSION OF DRUGS,
MARIJUANA AND COCAINE, YOUR
HONOR.

>> WHAT CATEGORY OF OFFENSE?

>> THE MARIJUANA WAS A
MISDEMEANOR AND COCAINE
POSSESSION WITH INTENT TO
DISTRIBUTE WAS A FELONY.

>> SO WE HAVE A FELONY OFFENSE
HERE.

HOW CAN YOU SAY SOMEONE WHO IS
OUT, THAT AT LARGE, SUBJECT TO
PROBATION, AND COMMITS A FELONY
OFFENSE IS A PERSON WHO IS
SUCCESSFULLY PARTICIPATING IN
THE YOUTHFUL OFFENDER PROGRAM?
IT JUST DEFIES REASON?

>> YOUR HONOR, I WOULD SAY THAT
VIOLATION IS THE NOT END POINT
OF DETERMINATION WHETHER HE IS
SUCCESSFULLY PARTICIPATING IN
THE PROGRAM.

THE STATE CONCEDES IN THE ANSWER
BRIEF, THAT YOUTHFUL STATUS
CONTINUES.

YOUR BRIEF SAYS NOTHING ABOUT
THE YOUTHFUL STATUS INCLUDES
POTENTIAL BY THE DEPARTMENT OF
CORRECTIONS FOR EARLY RELEASE.

>> LET ME ASK YOU.

LET ME GO TO THE SENTENCE HE
GOT.

DID THE JUDGE HAVE DISCRETION
UPON THIS VIOLATION OF PROBATION

TO HAVE CONTINUED HIS YOUTHFUL OFFENDER STATUS.

>> THE STATE NOW ACKNOWLEDGES THAT HE COULD HAVE.

THEY MAINTAIN THAT THERE IS DISCRETION TO EITHER SENTENCE UNDER THE CAP, THE ORIGINAL CAP, OR, IF THE COURT ELECTS TO IMPOSE THE MANDATORY MINIMUM IN AN ADULT FASHION IT, THEN HAS TO DO THAT.

THE DISSENTERS FROM THE FOURTH DISTRICT BELOW, JUDGES CONNOR AND FORCE, BELIEVED THE COURT HAD DISCRETION TO IMPOSE A LENGTHIER SENTENCE, FOR INSTANCE THE 15 YEAR SENTENCE AT ISSUE HERE, WITHOUT A MANDATORY MINIMUM.

>> ISSUE OF DISCRETION, A JUDGE COULD LOOKING AT SAME THING, IT IS A NON-VIOLENT OFFENSE, HAVE SAID I WANT TO STILL GIVE THIS GUY A CHANCE.

I'M GOING-- I DO NOT WANT TO IMPOSE THE MANDATORY MINIMUM. THE ONLY WAY I CAN DO THAT IS TO KEEP HIM AND CONTINUE HIS YOUTHFUL OFFENDER SENTENCE? BECAUSE THE JUDGE UNDERSTAND THAT?

>> HE DID NOT, YOUR HONOR. HE WAS MISINFORMED BY COUNSEL FOR BOTH THE STATE AND MY CLIENT THAT HE WAS REQUIRED, UNLESS HE PUT MY CLIENT BACK ON YOUTHFUL OFFENDER PROBATION, TO INCLUDE THE 10-YEAR MANDATORY MINIMUM. THERE IS NO DISPUTE THAT WAS THE CASE.

NOW THE FOURTH DISTRICT SAID, WELL, WE THINK HERE IT IS CLEAR THAT HE WOULD IMPOSE THE SAME SENTENCE--

>> WHY ISN'T THAT THE CASE? IT SEEMS TO ME IF YOU'RE GOING TO DO THE YOUTHFUL OFFENDER, HE HAS A LOT MORE DISCRETION. BUT ONCE HE DECIDES TO SENTENCE HIM AS AN ADULT, THEN I DON'T

THINK HE HAS THAT SAME
DISCRETION, DOES HE?

>> YOUR HONOR, THERE IS NO
SPECIFIC MENTION IN EITHER THE
YOUTHFUL OFFENDER STATUTORY
SCHEME OR IN THE ADULT STATUTORY
SCHEME RELATING BACK TO YOUTHFUL
OFFENDERS THAT SPECIFICALLY SAYS
THAT THESE MANDATORY SENTENCING
ENHANCEMENTS FOR ADULTS HAVE TO
APPLY TO YOUTHFUL OFFENDERS.

>> WAIT A MINUTE.

LET ME LOOK AT THIS.

AS AN ADULT, HIS SCORE SHEET
WAS, YOU SAID FROM FOUR YEARS TO
LIFE, RIGHT?

>> CORRECT.

>> IF HE WERE AN ADULT, AND HE
HAD THAT SCORE SHEET, BUT IT IS
A ARMED ROBBERY OFFENSE, EVEN
THE SCORE SHEET WAS AS LOW AS
FOUR, YOU WOULD HAVE TO HAVE
SENTENCED HIM TO AT LEAST THE
10-YEAR MINIMUM MANDATORY, IS
THAT CORRECT?

>> IF HE HAD BEEN INITIALLY
SENTENCED AS AN ADULT, THAT'S
CORRECT, YOUR HONOR.

>> SO, SHOW ME SPECIFICALLY
WHERE IT SAYS, NOW YOU DON'T
HAVE TO, ON ARMED ROBBERY
CONVICTION, TREATING HIM AS AN
ADULT, GIVE HIM A 10-YEAR
MINIMUM MANDATORY?

THAT IS WHERE, I'M STUCK HERE.
SEEMS TO ME THAT ONCE THE TRIAL
JUDGE DECIDED TO TREAT HIM AS AN
ADULT, 10-YEAR MINIMUM MANDATORY
CAME INTO PLAY?

>> WELL, YOUR HONOR, THE
LANGUAGE FROM 958.14 IS HOWEVER,
NO YOUTHFUL OFFENDER SHALL BE
COMMITTED TO THE CUSTODY OF THE
DEPARTMENT FOR SUBSEQUENT
VIOLATION FOR PERIOD OF LONGER
THAN MAXIMUM SENTENCE FOR THE
OFFENSE.

THAT LANGUAGE DOES NOT INDICATE
A SHORTER SENTENCE, FOR
INSTANCE, THE 15-YEAR SENTENCE

MENTIONED HERE, COUPLED WITH EARLY RELEASE RECOMMENDATION BY THE DEPARTMENT OF CORRECTIONS, SINCE HIS YOUTHFUL OFFENDER STATUS CONTINUES THAT IS AGAINST STATUTORY CONSTRUCTION.

INDEED--

>> HASN'T THE SENTENCE HE HAS BEEN GIVEN FIT WITHIN THAT LANGUAGE BECAUSE IT IS WITHIN THE STATUTORY MAXIMUM, ISN'T IT?

>> IT IS, YOUR HONOR, HOWEVER THE TRIAL JUDGE BELIEVED THAT HE WAS REQUIRED TO IMPOSE A MANDATORY MINIMUM.

EVEN--

>> I STILL DON'T, I STILL STRUGGLING WITH WHY HE WAS NOT REQUIRED TO DO SO?

>> THERE HAVE BEEN DECADES OF CASES, I WILL EVEN POINT OUT THE SECOND DCA IN YEGGE, THE FOURTH DCA BELOW INTO THIS CASE SAID THAT MAJORITY OPINIONS WE DON'T DISPUTE YOUTHFUL STATUS DOES NOT CONTINUE AND REMAINS ENTITLED TO THE BENEFIT OF THE ACT OTHER THAN THE SIX-YEAR--

>> THAT IS WHERE YOU'RE HANGING YOUR HAT.

IT MAKES NO SENSE.

WHAT ARE THE BENEFITS OF YOUTHFUL OFFENDER STATUS IF NOT TO BE IN A DIFFERENT FACILITY? IS HE IN A DIFFERENT FACILITY?

>> I BELIEVE THAT HE IS, YOUR HONOR, BUT THE TWO PRIMARY BENEFITS OF THE ACT IN ADDITION TO THE DIFFERENT PROGRAMING, EDUCATIONAL OPPORTUNITIES, ETCETERA, ARE THE SIX-YEAR CAP WHICH NO LONGER APPLIES TO HIM AND OPPORTUNITY FOR AN EARLY RELEASE RECOMMENDATION.

>> IT IS REALLY LOOKING AT THAT, TOGETHER.

HERE IS WHAT IS-- I'M GOING TO ASK THE STATE, BECAUSE I'M TROUBLED ABOUT THE ISSUE OF DISCRETION.

IF HE HAD COMMITTED ANOTHER
ARMED ROBBERY.

WE WOULDN'T BE HERE BECAUSE HE
WOULD BE ON THAT SECOND ARMED
ROBBERY, HE WOULD GET A LIFE
SENTENCE-- THERE IS NO QUESTION
ABOUT THAT CORRECT?

>> CORRECT THE YOUTHFUL OFFENDER
ACT DOES NOT APPLY TO--

>> AT ANYTIME THE STATE CAN
CHARGE THE SUBSTANTIVE OFFENSE
AND MAKE SURE NOTHING ABOUT THIS
YOUTHFUL OFFENDER SENTENCE COMES
IN.

SO THERE IS A SUBSTANTIVE
VIOLATION BUT YOU CAN--
SUBSTANTIVE VIOLATION.

ONLY HAPPENS WHEN THE STATE
DOESN'T WANT TO PROVE BEYOND A
REASONABLE DOUBT THE CRIME.
NOW THE STATE SAYING JUDGE
SITTING THERE, JUDGE SMITH CAN
GO, THIS WAS, I UNDERSTAND THERE
WERE EXTENUATING CIRCUMSTANCES.
HE DID WELL WHILE IN THE
YOUTHFUL OFFENDER FACILITY.
I WILL CONTINUE HIM ON YOUTHFUL
OFFENDER STATUS.

ANOTHER JUDGE USING DISCRETION
SAYS NOPE, I'M GIVING HIM NOW A
LIFE SENTENCE WHICH YOU SAY
WOULD BE APPROPRIATE AND,
MANDATORY MINIMUM BECAUSE I HAVE
DECIDED I CAN DO THAT.

DOESN'T THAT RANGE MAKES DOCTOR
WHERE IS THE DISCRETION IN THIS
CASE ABOUT WHY THE JUDGE WAS
DOING ONE VERSUS THE OTHER?
I MEAN MAYBE THAT IS NOT AN
ISSUE HERE BUT THAT SURE BOTHERS
ME ABOUT TRYING TO TREAT PEOPLE
IN SOME WAY THAT IS CONSISTENT.

>> THIS JUDGE INDISPUTABLY
LABORED ON THE MISIMPRESSION
THAT HE WAS REQUIRED TO IMPOSE A
10-YEAR MANDATORY MINIMUM.
EVEN UNDER THE MAJORITY DECISION
BELOW HE WOULD HAVE HAD THE
DISCRETION TO CONSIDER OTHER
OPTIONS.

>> DID HE LABOR UNDER THE VIEW THAT HE COULDN'T REIMPOSE A YOUTHFUL OFFENDER SENTENCE?

>> WAS UNDER THE IMPRESSION HE COULD PUT HIM BACK ON YOUTHFUL OFFENDER PROBATION.

HE WAS NOT UNDER THE IMPRESSION HE COULD HAVE IMPOSED A DIFFERENT YEAR TERM SENTENCE SUBJECT TO POTENTIAL EARLY RELEASE RECOMMENDATIONS BY THE DEPARTMENT OF CORRECTIONS.

>> SO WE'RE CLEAR, HE WOULD HAVE REINSTATED HIM ON PROBATION?

>> CORRECT.

>> SO THAT IS IN 958.14, WHERE IT SAYS IF PROBATION OR COMMUNITY CONTROL IS REVOKED.

>> RIGHT.

>> NOW HE COULD HAVE FOUND HIM GUILTY BUT NOT REVOKED PROBATION.

HE COULD HAVE REINSTATED HIM BACK ON YOUTHFUL OFFENDER PROBATION.

>> THAT IS CORRECT.

>> THAT IS AS FAR AS HIS DISCRETION GOES, DOESN'T IT?

>> NO, YOUR HONOR.

>> HE COULD HAVE DONE THAT. WAS THAT ASKED BY COUNSEL DOWN BELOW AT THE TRIAL COURT LEVEL.

>> I'M SORRY, YOUR HONOR WHAT WAS ASKED.

>> DID DEFENSE COUNSEL ASK THE COURT TO REINSTATE THE DEFENDANT ON PROBATION, NOT REVOKE HIM.

>> THAT WAS PRESENTED TO THE JUDGE.

>> THAT WAS PRESENTED TO JUDGE. AND THE JUDGE MADE DISCRETION TO REVOKE THE PROBATION.

>> YES BUT HE DID NOT UNDERSTAND, EVEN THE FOURTH DCA MAJORITY INDICATES HE COULD HAVE BEEN SENTENCED TO LENGTHIER YEAR OF TERMS WITHIN THE CAPS. HE DID NOT UNDERSTAND THAT HE COULD DO THAT.

>> AT THE TIME OF THE PROBATION

VIOLATION, HOW MUCH TIME WAS LEFT OF THE SIX-YEAR PERIOD?
>> OF THE SIX-YEAR PERIOD?
HE SERVED APPROXIMATELY FOUR YEARS IN PRISON, YOUR HONOR, AND HE SERVED APPROXIMATELY 15 MONTHS, SO A LITTLE OVER HALF OF HIS PROBATION.

>> WASN'T MUCH TIME LEFT?

>> NO, YOUR HONOR.

>> IN THE SIX-YEAR PERIOD?

>> THERE WAS NOT.

I ALSO POINT OUT HIS PROBATION OFFICER TESTIFIED OTHER THAN NEW OFFENSES WHICH WERE SUBSEQUENTLY DISMISSED HE WAS A MODEL PROBATIONER.

HE DID EVERYTHING REQUIRED OF HIM WITH THE EXCEPTION--

>> OF THE FELONY OFFENSE.

>> WHICH HE WAS NOT CONVICTED.

WHICH HE WAS NOT TRIED AND WHICH WAS DISMISSED.

>> WAS HE ADMITTED HE COMMITTED?

>> HE ACKNOWLEDGED GUILT FOR PURPOSES OF SEEKING MORE LENIENT SENTENCE.

AS YOUR HONOR KNOWS, THERE IS OTHER REASONS TO ACKNOWLEDGE GUILT OTHER THAN ACTUAL GUILT BUT YES HE DID PLEAD GUILTY TO TRY TO SECURE A MORE LENIENT SENTENCE.

HE WAS MISADVISED BY HIS TRIAL COUNSEL INITIALLY HOW LENIENT SENTENCE HE COULD HAVE RECEIVED.

I ALSO POINT OUT, YOUR HONORS, WE CITE ON PAGE 6 OF OUR REPLY BRIEF NUMEROUS INSTANCES IN THE FLORIDA STATUTES WHERE THE LEGISLATURE EXPRESSLY DISCUSSES MANDATORY MINIMALS.

HAD THE LEGISLATURE WANTED TO IMPOSE A MANDATORY MINIMUM HERE REGARDING YOUTHFUL STATUS SUPPOSEDLY CONTINUES NOTWITHSTANDING A SUBSTANTIVE VIOLATION IT COULD HAVE SAID IN NO UNCERTAIN TERMS.

THAT WAS JUDGE DAVE'S POINT IN

THE YEGGE, SPECIAL CONCURRENCE AND JUDGE FORCE IN PARTIAL DISSENT BELOW ALSO INDICATED AS WELL HERE.

>> BUT THE LEGISLATURE IN THE TEXT OF THE STATUTE IS POINTING US BACK TO 948.06, 2-B.

WHICH REFERS TO THIS SENTENCE WHICH MIGHT ORIGINALLY MIGHT HAVE IMPOSED WHICH IS A MANDATORY MINIMUM SENTENCE.

>> IN ARNETT AND FIFTH DCA CHRISTIAN DECISION ORIGINALLY IMPOSED THE SENTENCE ORIGINALLY IMPOSED FOR A YOUTHFUL OFFENDER NOT AS AN ADULT.

>> IT CAN'T MEAN THAT NOW BECAUSE WE KNOW, WE KNOW, WE'VE HAD THIS DISCUSSION ALREADY, WE KNOW IT CAN NOT MEAN EXACTLY WHAT THEY SAID THEN, YOU WOULD CONCEDE?

>> EXCEPT WE HAVE DECISION FROM THE SECOND DCA AND FOURTH DCA SAY ON ONE HAND YOUTHFUL STATUS CONTINUES AND THEY NEVER ADDRESS--

>> I'M NOT TALKING ABOUT WHAT THE OTHER COURT SAYS, I'M TALKING ABOUT WHAT THE TEXT SAYS.

>> LEGISLATURE HAS NOT SAID UNAMBIGUOUSLY THAT YOUTHFUL OFFENDER STATUS DOES NOT CONTINUE.

THAT WOULD INCLUDE OPPORTUNITY FOR EARLY RELEASE.

IT AT MINUTE UP IN THERE IS A AMBIGUITY, A RULE OF LENITY, INTERPRETED BY THE COURT YOU WOULD BE REQUIRED TO INTERPRET THE AMBIGUITY IN LIGHT MOST FAVORABLE TO MY CLIENT, NOT TO THE STATE.

THE FINAL POINT JUSTICE PARIENTE TOUCHED ON--

>> YOU HAVE FOUR SECONDS. WHOLE TIME.

>> FINAL POINT THE JUDGE LABORED UNDER MISAPPREHENSION OF

DISCRETION HERE.
IT SHOULD BE REMANDED TO A
MINIMUM PROPERLY UNDERSTAND THAT
DISCRETION.

THANK YOU, YOUR HONORS.

>> YOU USED UP ALL YOUR TIME.

WE HELPED YOU A LITTLE BIT.

WHAT I WILL DO, GIVE YOU TWO
MINUTES OF REBUTTAL.

>> APPRECIATE THAT.

>> TWO MINUTES.

>> MAY IT PLEASE THE COURT.

RACHAEL, KAIMAN, ASSISTANT
ATTORNEY GENERAL OF THE STATE OF
FLORIDA.

SECTIONS 958.14 AND 948.06 ARE
AMBIGUOUS.

IN A TRIAL COURT CHOOSES TO
REVOKE YOUTHFUL OFFENDER
PROBATION OR COMMUNITY CONTROL
FOR SUBSEQUENT VIOLATION AN
CHOOSES NOT TO REIMPOSE A
SENTENCE WITHIN THE YOUTHFUL
OFFENDER CAP, WHERE THE OFFENSE
REQUIRES A MINIMUM MANDATORY
SENTENCE THE COURT MUST IMPOSE
IT.

SECTION 958--

>> LET ME ASK YOU SOMETHING
ABOUT THAT.

WHAT'S A LITTLE CONFUSING TO ME
IS THAT IF, SO YOUR POSITION IS,
SEEM TO AGREE, IF THE TRIAL
JUDGE REVOKED PROBATION THE
TRIAL JUDGE CAN SENTENCE THE
OFFENDER TO PRISON FOR SIX YEARS
AND AVOID ANY MINIMUM MANDATORY.

>> CORRECT.

>> OKAY.

AND THE THEORY IS THAT BECAUSE
ORIGINALLY WHEN THE TRIAL JUDGE
WAS SENTENCING, THE TRIAL JUDGE
COULD EITHER CHOOSE YOUTHFUL
OFFENDER OR CHOOSE AN ADULT
SANCTION, CORRECT?

>> THAT IS CORRECT.

>> IF TRIAL JUDGE CHOOSES
YOUTHFUL OFFENDER THERE IS NO
MINIMUM MANDATORY, BUT IF THE
TRIAL JUDGE CHOOSES ADULT

SANCTION THE MINIMUM MANDATORY HAS TO JUSTIFY.

CORRECT.

>> THE ORIGINAL SENTENCE THE TRIAL COURT COULD HAVE ORIGINALLY IMPOSED AND AS YOU JUST MENTIONED IF THE COURT DECIDED NOT TO SENTENCE UNDER THE YOUTHFUL OFFENDER ACT THE MINIMUM ANDER TO IS JUST THAT.

>> YOUR POSITION IT IS NO LONGER A YOUTHFUL OFFENDER SENTENCE? THE TRIAL JUDGE GOES BACK AND IF THE TRIAL JUDGE DOESN'T IMPOSE A YOUTHFUL OFFENDER SENTENCE WITH SIX-YEAR CAP THE TRIAL JUDGE IS IMPOSING AN ADULT SANCTION, IT IS NOT A YOUTHFUL OFFENDER SENTENCE?

>> CORRECT.

>> HOW DOES THAT SQUARE WITH YOUR CONCESSION THAT IN ARNETT AND ALL THE DCA CASES THAT ADDRESS THIS, THAT THE YOUTHFUL OFFENDER STATUS STILL APPLIES?

>> AS THE SECOND DISTRICT COURT OF APPEAL NOTED THERE IS A LOT OF CONFUSION SURROUNDING THE TERM, YOUTHFUL OFFENDER STATUS BECAUSE IT IS NOT ACTUALLY USED IN THE YOUTHFUL OFFENDER ACT AND IT HAS NOT BEEN SPECIFICALLY DEFINED.

THE SECOND DISTRICT NOTED IT IS USED IN DIFFERENT WAYS TO MEAN DIFFERENT THINGS AND WHAT THE YOUTHFUL OFFENDER STATUS ACTUALLY ENCOMPASSES TWO DISTINCT ASPECTS OF THE YOUTHFUL OFFENDER ACT.

IT REALLY REFERS TO THE INITIAL DISPOSITION SENTENCE UNDER 958.04--

>> WHAT IS CONFUSING TO ME, SEEMS LIKE YOU'RE ARGUING WITHOUT BEING DIRECT, THAT ARNETT WAS WRONG AND THAT THE DCA CASES ARE WRONG. IF YOU'RE GOING BACK TO THE BEGINNING AND CHOOSING AN ADULT

SANCTION IT IS NO LONGER A YOUTHFUL OFFENDER SENTENCE AND YOUTHFUL OFFENDER STATUS DOESN'T APPLY.

SEEMS IT IS EITHER ONE OR THE OTHER.

I DON'T SEE WHERE IN THE LANGUAGE IN THE STATUTE YOU WOULD GET TO-- I GO BACK I'M POSE AN ADULT SANCTION BUT SOMEHOW A YOUTHFUL OFFENDER SENTENCE?

>> I THINK THE LANGUAGE IS NOT JUST ACCURATE IN ALL CASES BECAUSE IF YOU LOOK AT FOLLOWING A VIOLATION OF PROBATION, THERE IS THE YOUTHFUL OFFENDER SENTENCE UNDER THE SIX-YEAR CAP AND THERE IS YOUTHFUL OFFENDER DESIGNATION OR CLASSIFICATION WITHIN THE DEPARTMENT OF CORRECTIONS.

SO THESE ARE DISTINCT AND I THINK THE LANGUAGE REGARDING THAT IN THE SECOND DISTRICT COURT OF APPEAL AND FOURTH DISTRICT COURT OF APPEAL IS REFERRING TO THE FACT THAT IT IS--

>> WHAT POSITION, WHAT PROVISION OF THE STATUTE WOULD YOU POINT TO AND WHY WOULD TO MAKE SENSE TO SAY YOU CAN EITHER IMPOSE YOUTHFUL OFFENDER OR ADULT SANCTION, IF YOU IMPOSE A ADULT SANCTION WITH MANDATORY MINIMUMS APPLY, IT IS YOUTHFUL OFFENDER SENTENCE?

>> BECAUSE UNDER CERTAIN AGE RANGE, YOUTHFUL OFFENDER CAN STILL BE HOUSED WITHIN A YOUTHFUL OFFENDER AT THAT SILT WITHIN THE DEPARTMENT OF CORRECTIONS AND HAVE ACCESS TO SOME OF THE BENEFITS.

>> WHY WOULD YOU PUT SOMEBODY NOW AN ADULT, NO LONGER HAS YOUTHFUL OFFENDER SENTENCE, HAS ADULT SANCTION WITH MINIMUM MANDATORY IN YOUTHFUL OFFENDER

FACILITY?

THAT SEEMS LIKE IT WOULD BE INCONSISTENT WITH THE PROVISIONS OF THE YOUTHFUL OFFENDER ACT WHICH SAYS THE WHOLE REASON FOR THE YOUTHFUL FACILITY TO SEPARATE YOUNG OFFENDERS FROM MORE SEASONED OFFENDERS.

>> SECTION 958.11, SUBSECTION 3, SPECIFICALLY ALLOWS THE DEPARTMENT OF CORRECTIONS TO TRANSFER A YOUTHFUL OFFENDER FROM A YOUTHFUL OFFENDER FACILITY TO A NON-YOUTHFUL OFFENDER FACILITY UNDER CERTAIN CIRCUMSTANCE.

FIRST ONE BEING WHEN A YOUTHFUL OFFENDER CONVICTED AFTER NEW FELONY OFFENSE.

YOU'RE CORRECT UNDER THOSE CIRCUMSTANCES IT WOULD NOT MAKE SENSE TO KEEP A YOUTHFUL OFFENDER, TO KEEP--

>> HE WASN'T CONVICTED OF A NEW OFFENSE, WAS HE?

>> THAT'S CORRECT.

I'M EXPLAINING WHEN THE STATUTE SPECIFICALLY ALLOWS FOR THE TRANSFER.

BUT ADDITIONALLY THE STATUTE, 958.11, SUBJECTS 6, INDICATES BEYOND AGE OF 25 THERE ARE NO YOUTHFUL OFFENDER FACILITIES IN FACT THE DEFENDANT WAS RESENTENCED ON HIS VIOLATION OF PROBATION AT AGE 27.

HE IS NOW 31.

HE IS NO LONGER IN A YOUTHFUL OFFENDER FACILITY.

AND WOULD NOT--

>> CAN I ASK?

>> YES.

>> ASSUMING YOU'RE CORRECT.

EVEN IF YOU GO BACK TO 948.06 AND TRIAL JUDGE IMPOSES AN ADULT SANCTION IT IS STILL A YOUTHFUL OFFENDER SENTENCE.

IT STILL FALLS UNDER THE YOUTHFUL OFFENDER ACT.

WHY WOULDN'T, IN LIEU OF

LANGUAGE OF 958.04 APPLY?
IT SAYS IN LIEU OF OTHER
CRIMINAL PENALTIES THE TRIAL
JUDGE CAN DO ALL OF THESE
THINGS?

THERE IS EVEN INTENT LANGUAGE
EARLIER, SAYS THE WHOLE REASON
TO GIVE THE TRIAL JUDGE
FLEXIBILITY IN SENTENCING.
SO THE IN LIEU OF LANGUAGE IS
WHAT ALL THE COURTS USE TO SAY
MINIMUM MANDATORIES DON'T APPLY
TO YOUTHFUL OFFENDER SENTENCE.
IT DOESN'T SAY THAT IN THE ACT.
IF IT'S A STILL A YOUTHFUL
OFFENDER SENTENCE, WHY WOULDN'T
LANGUAGE WOULD APPLY?

WHICH MEANS THAT THE MANDATORIES
WOULD BE DISCRETIONARY?

>> YOUR HONOR THE STATE'S
POSITION ON THAT IS TWOFOLD.
FIRST OF ALL IN LIEU OF LANGUAGE
IS UNDER 958.04 WHICH APPLIES TO
THE INITIAL DISPOSITION
SENTENCE.

IT APPLIES TO THE--

>> YOU JUST TOLD ME EVEN AFTER A
VIOLATION OF PROBATION, IF
PROBATION IS REVOKED, EVEN IF
ADULT SANCTIONS ARE GIVEN IT IS
STILL AN OFFENDER SENTENCE
OF 958.

I COULD UNDERSTAND YOUR ARGUMENT
IF YOUR POSITION WAS ARNETTE IS
WRONG.

>> I DO THINK A GNAT, I THINK
THE LANGUAGE IN ARNETT NEEDS TO
BE RECONSIDERED IN LIGHT OF
AMENDMENTS TO SECTION 958.14.
I THINK IT IS IMPORTANT BECAUSE
IN ARNETTE MAKING A STATEMENT
THAT THE YOUTHFUL OFFENDER
STATUS CONTINUES LOOKED AT WHEN
958.14 FIRST ENACTED.

THE FIRST AMENDMENT IN 1985.
SUBSEQUENT AMENDMENT IN 1990
WHICH APPLIES TODAY I THINK HAS
LAWRENCE RECONSIDERING THAT
LANGUAGE.

WHEN 958.14 WAS FIRST ENACTED IT

STAYED YOUTHFUL OFFENDERS UPON A VIOLATION OF PROBATION SHALL BE SUBJECT TO THE PROVISIONS OF 948.06 WITH NO QUALIFICATIONS. IN ARNETTE THE COURT NOTED THAT THE DISTRICT COURT EXPRESSED SOME UNCERTAINTY WHAT SENTENCING WAS PERMITTED FOLLOWING A SUBSTANTIVE VIOLATION OF PROBATION.

THIS COURT THEN NOTED THAT THE 1985 AMENDMENT, NOW, AGAIN, SAID THAT NO YOUTHFUL OFFENDER SHALL BE COMMITTED TO THE DEPARTMENT FOR A SENTENCE OF SIX YEARS OR THE MAXIMUM SENTENCE OF THE OFFENSE WHICHEVER IS LESS AND THIS COURT NOTED THAT BASED ON THAT LANGUAGE IT WAS AN INDICATION OF THE LEGISLATURE'S PRIOR INTENT TO NOW LIMIT A YOUTHFUL OFFENDER SENTENCE ALSO TO ALL VIOLATIONS OF PROBATION AND THAT WAS THE CONTEXT IN WHICH THIS COURT DETERMINED THAT YOUTHFUL OFFENDER STATUS CONTINUES.

I THINK IT IS IMPORTANT TO NOTE WE HAVE THE STATUS BETWEEN THE CLASSIFICATION IN THE DEPARTMENT OF CORRECTIONS AND THE YOUTHFUL OFFENDER CAP SENTENCE.

IN 1990, WHEN THAT 958.14 WAS AGAIN AMENDED, THIS IS WHEN THE LANGUAGE WAS ADDED, HOWEVER NO YOUTHFUL OFFENDER SHALL BE COMMITTED TO THE CUSTODY OF THE DEPARTMENT FOR A SUBSTANTIVE VIOLATION FOR A PERIOD LONGER THAN THE MAXIMUM SENTENCE, AND IT LIMITED ONLY TO THAT INITIAL DISPOSITION SENTENCE OR WHAT IS OFTEN REFERRED TO AS THE YOUTHFUL OFFENDER SENTENCE AS FOR THOSE WHO COMMIT A TECHNICAL OR NON-SUBSTANTIVE VIOLATION. SO I DO THINK THAT LANGUAGE NEEDS TO BE CONSIDERED IN LIGHT OF THE ADDITIONAL AMENDMENT THAT WAS NOT CONSIDERED IN ARNETTE

WHEN THAT STATEMENT WAS MADE.
>> DO YOU KNOW, I DIDN'T LOOK, I
DON'T KNOW, AND I WOULDN'T BLAME
YOU IF YOU DIDN'T LOOK IT UP,
BUT FURTHER INTENT LANGUAGE IN
958.021 WAS THAT ADDED AT SAME
TIME THE STATUTE WAS AMENDED,
THE STATUTE WE ARE LOOKING AT?
>> I'M SORRY, YOUR HONOR, I
DON'T--

>> ADDITIONAL SENTENCING
ALTERNATIVE TO BE USED IN THE
DISCRETION OF THE COURT WHEN
DEALING WITH OFFENDERS WHO
DEMONSTRATED THEY CAN NO LONGER
BE HANDLED SAFELY AS JUVENILES,
AND WHO REQUIRE MORE SUBSTANTIAL
LIMITATIONS UPON THEIR LIBERTY
TO INSURE THE PROTECTION OF
SOCIETY.

SO IT SEEMS LIKE IT IS TALKING
ABOUT PROBATION VIOLATIONS, TO
ME.

HOW, IT SEEMS INCONSISTENT WITH
THE NOTION THAT A TRIAL JUDGE
WHEN DEALING WITH A PROBATIONER,
OR JUVENILE WHO HAS DEMONSTRATED
THAT THEY ARE NO LONGER ABLE TO
LIVE OUT ON PROBATION, SEEMS
INCONSISTENT TO SAY THAT THE
TRIAL JUDGE CAN PUT HIM IN
PRISON FOR SIX YEARS, AND COULD
PUT HIM IN PRISON FOR 15 YEARS,
IN THIS CASE, BUT COULDN'T PUT
HIM IN PRISON FOR NINE YEARS?
HOW IS THAT CONSISTENT WITH THE
EXPRESS INTENT LANGUAGE IN
958.21 SAYS WE'RE TRYING TO GIVE
JUDGES MAXIMUM DISCRETION TO
DEAL WITH JUVENILES WHEN THEY
REINCARCERATE THEM?

>> WELL, THE STATE'S POSITION
WOULD BE THAT AGAIN, THE
LEGISLATURE HAS INDICATED ITS
INTENT TO TREAT YOUTHFUL
OFFENDERS WHO COMMIT A
SUBSTANTIVE VIOLATION
DIFFERENTLY FROM THOSE WHO
COMMIT A TECHNICAL OR
NON-SUBSTANTIVE VIOLATION AND A

LOT OF THOSE, FOR THOSE WHO COMMIT A TECHNICAL OR NON-SUBSTANTIVE VIOLATION, AGAIN THE LEGISLATURE INDICATED AN EXPLICIT EXCEPTION TO THE REFERENCE TO 948-POINT6. THERE IS EXPLICIT EXCEPTION THAT THAT SIX-YEAR SENTENCE OR THE MAXIMUM SENTENCE FOR THE OFFENSE, WHICHEVER IS LESS STILL APPLIES, BUT THE LEGISLATURE MADE NO FURTHER EXCEPTIONS. SO THE PLAIN LANGUAGE AGAIN GIVES THE COURT THE OPTION, WHATEVER SENTENCE UNDER 948.06, IT COULD HAVE ORIGINALLY IMPOSED.

SO THE COURT DOES HAVE DISCRETION AT THAT POINT. THE DISCRETION IS LIMITED. EITHER YOU IMPOSE A SENTENCE WITHIN THE INITIAL YOUTHFUL OFFENDER CAP OR THE COURT CHOOSES THE OTHER OPTION.

>> HOW DO YOU DO THAT?

I'M LOOKING TO SEE HOW SOMEBODY IN ONE COURTROOM COULD END UP WITH A LIFE SENTENCE FOR HAVING A POTENTIAL OF COCAINE AND SOMEONE IN ANOTHER COURTROOM COULD END UP CONTINUING WITH A YOUTHFUL OFFENDER SENTENCE? HOW DOES, THIS IS, THAT'S, AND YOU'RE ACKNOWLEDGING THAT THE JUDGE WOULD HAVE THE DISCRETION THINKING THAT, TO HER, HE WAS MODEL PROBATIONER, NO, I'M CONTINUING TO, ON YOUTHFUL OFFENDER, EITHER PROBATION AS JUSTICE LABARGA SAID, OR SENTENCING YOU TO THE REMAINDER OF YOUR INCARCERATION TERM, OR, BUT I CAN'T DO, BUT YOU STATE, OR TELLING ME THAT I CAN NOT, AS, DO SOMETHING MORE? I CAN'T GIVE HIM A COUPLE OF MORE YEARS IN PRISON BECAUSE THAT WOULD EXCEED THE MAXIMUM. SO MY ONLY CHOICE IS, TO GIVE HIM A MANDATORY MINIMUM OF 10

YEARS PLUS WHATEVER ELSE I WANT HIM TO HAVE.

WHAT GUIDES THE DISCRETION?

WHAT IS, IN, WITH THIS, AND AGAIN, ACKNOWLEDGING THAT IF IT WAS SUBSEQUENT ARMED ROBBERY, THIS WOULDN'T BE ISSUE.

THE STATE PROSECUTES, AND HE COULD GET A LIFE SENTENCE FOR THE ARMED ROBBERY?

>> IT IS IMPORTANT POINT TO REMEMBER THAT YOUTHFUL OFFENDER SENTENCING IS NOT ENTITLEMENT AND FROM--

>> I UNDERSTAND.

WE'RE TALKING ABOUT THE JUDGE'S DISCRETION.

I'M ASKING YOU, AND JUDGES OUT THERE ALL THE TIME ARE MAKING THESE DIFFICULT DECISIONS, WHAT'S TO GUIDE BETWEEN WHETHER THIS YOUTH GETS ANOTHER-- HE IS 31, THIS PERSON GETS ANOTHER CHANCE, OR, GOES TO PRISON FOR THE REST OF HIS LIFE?

>> IT WOULD HAVE TO BE THE SAME CONSIDERATIONS THAT GO INTO THE INITIAL SENTENCE WHEN THE COURT CHOOSES, WHEN THE COURT IS CHOOSING FROM THE VERY BEGINNING TO EITHER SENTENCE UNDER THE YOUTHFUL OFFENDER ACT OR SENTENCE ACCORDING TO THE GENERAL ADULT SENTENCING GUIDELINES, THE COURT HAS ALWAYS, TAKES INTO CONSIDERATION THE CIRCUMSTANCES OF THE PARTICULAR CRIME, THE CIRCUMSTANCES OF THE DEFENDANT, PRIOR HISTORY.

>> SO, MAYBE YOU ANSWERED IT FOR JUSTICE LAWSON, SO WHAT DOES IT MEAN TO HAVE CONTINUED YOUTHFUL OFFENDER STATUS?

OR SHOULD WE REALLY SAY, YOU LOSE, YOU COMMIT A SUBSEQUENT CRIME AND YOU'RE OVER THE AGE OF 21, AND, NO MORE OF THIS YOUTHFUL-- YOU HAD YOUR ONE CHANCE?

THAT IS WHAT I THINK THE
CONFUSION, THAT JUDGES, THAT
JUDGES IN THE APPLE COURTS HAVE
BEEN RULING THIS WAY, NEED SOME
CLARITY?

>> I AGREE.

I THINK PART OF THE DIFFICULTY
WITH THE YOUTHFUL OFFENDER
STATUS BECAUSE IT PERTAINS TO
THE CLASSIFICATION OR
DESIGNATION WITHIN THE
DEPARTMENT OF CORRECTIONS AND
THAT RELATES TO THE
CIRCUMSTANCES OF CONFINEMENT OF
FACILITIES AND PROGRAMS TO WHICH
THE YOUTHFUL OFFENDER IS
ENTITLED.

>> WHERE ARE YOU GETTING THAT?
YOUTHFUL OFFENDER STATUS AS YOU
POINT OUT ISN'T IN THE STATUTES.
AND WHAT COURTS TALK ABOUT AS
CHRISTIAN?

>> DISTRICTS COURT OF APPEAL
CONFLATED THE CAP SENTENCE FOR
THE INITIAL DISPOSITION SENTENCE
AND THE CLASSIFICATION WITHIN
THE DEPARTMENT OF CORRECTIONS
WHICH ALLOWS THE DEFENDER,
YOUTHFUL OFFENDER ACCESS--

>> LET ME ASK YOU THIS.
THIS LANGUAGE IN 948.14
SURPLUSAGE?

SAYS HOWEVER, NO YOUTHFUL
OFFENDER, AFTER THE SHALL, FOR
VIOLATION OF PROBATION, THEY
SHALL BE SUBJECT TO 948.06.
IT GOES ON TO SAY, HOWEVER, NO
YOUTHFUL OFFENDER SHALL BE
COMMITTED TO CUSTODY FOR
SUBSEQUENT VIOLATION FOR A
PERIOD LONGER THAN THE MAXIMUM
OF THE OFFENSE.

IF THAT LANGUAGE WASN'T IN
THERE, IS THERE ANY QUESTION
THAT THE JUDGE COULD NOT GO
ABOVE THE MAXIMUM OF THE OFFENSE
ON YOUTHFUL OFFENDER, RIGHT?

>> WELL, THAT LANGUAGE, THERE IS
THE ADDITIONAL LANGUAGE THAT
LIMITS THE SIX-YEAR CAP.

>> TECHNICAL, I GET THAT.

>> RIGHT.

I THINK, I DON'T THINK THAT ABSENT THAT LANGUAGE, I'M SORRY, TO YOUR QUESTION, I THINK THAT IN SOME WAYS IT WAS UNNECESSARY BECAUSE THE 958.14 REFERS TO 948.06 WHICH SAYS AGAIN, ANY SENTENCE THAT THE TRIAL COURT COULD HAVE ORIGINALLY IMPOSED. EVEN ABSENT THAT LANGUAGE, THE LIMITATION FOR THE FOR THE CAP IS ONLY FOR THOSE WHO COMMIT A TECHNICAL OR NON-SUBSTANTIVE VIOLATION.

SO THE LEGISLATURE CREATED ONE EXPLICIT EXCEPTION BY REFERRING TO 948.06 AND AGAIN--

>> BUT THEY USED THE HOWEVER TO TALK ABOUT SUBSTANTIVE VIOLATIONS.

THERE IS A HOWEVER THERE.

I THINK THAT, REAL POINT, THAT THE PETITIONER IS MAKING IS THAT THE, THEY MADE AN EXCEPTION, OKAY WE'LL SEND YOU BACK TO 948.06, BUT, WE'RE GOING TO HAVE DIFFERENT RULES, MAY STILL CALL HIM A YOUTHFUL OFFENDER, IN THE STATUTE IT STILL SAYS THE SENTENCE FOR SUBSTANTIVE VIOLATIONS THE YOUTHFUL OFFENDER, THE ONLY LIMITATION THEY GAVE, YOU DON'T GO OVER THE CAP.

THEY COULD HAVE SAID IF THEY WANTED TO BE CLEAR, MINIMUM MANDATORIES NOW APPLY.

>> THE STATE'S POSITION IS THAT, THAT IS UNNECESSARY BY REFERRING BACK TO 948.06 AND STATING--

>> THAT LANGUAGE, THAT HOWEVER LANGUAGE IS COMPLETELY UNNECESSARY.

BECAUSE YOU WOULD AGREE THEY COULD HAVE SAID, THEY COULD HAVE LEFT THAT FIRST HOWEVER OUT DEALING WITH SUBSTANTIVE VIOLATIONS AND YOU STILL COULDN'T GO OVER THE CAP.

IS THAT CORRECT, YOU COULDN'T GO OVER THE CAP?

>> I'M SORRY, CAN YOU REPEAT YOUR QUESTION ONE MORE TIME?

>> RIGHT.

IF I'M SENTENCING FOR A SUBSTANTIVE VIOLATION UNDER 948.06 FOR A SECOND DEGREE FELONY I CAN'T GIVE A 16 YEAR SENTENCE, RIGHT?

I CAN'T GO OVER THE CAP?

>> I THINK YOU CAN GO OVER THE CAP.

>> THE STATUTORY MAXIMUM PENALTY FOR THE?

MAXIMUM SENTENCE IS WHAT I'M TALKING ABOUT.

SAYS HOWEVER, YOU CAN'T, FOR A SUBSTANTIVE VIOLATION YOU CAN NOT COMMIT THE OFFENDER FOR A PERIOD LONGER THAN THE MAXIMUM SENTENCE FOR THE OFFENSE FOR WHICH HE OR SHE WAS VIOLATED? SO I'M TALKING ABOUT, I'M NOT TALKING ABOUT THE YOUTHFUL OFFENDER CAP.

I'M TALKING ABOUT THE MAXIMUM SENTENCE, FOR A SECOND-DEGREE FELONY THAT IS 15 YEARS.

>> RIGHT.

>> IF I'M SENTENCING FOR A SECOND-DEGREE FELONY I CAN'T GIVE 16 YEARS, CORRECT?

>> I'M SORRY.

I MISUNDERSTOOD.

>> SO THAT FIRST HOWEVER, YOUR ARGUMENT IT IS COMPLETELY SURPLUS?

>> NOT ENTIRELY BECAUSE THERE COULD BE CIRCUMSTANCES WHERE THE CRIMINAL PUNISHMENT FOR A SCORE SHEET SHOWED A MAXIMUM SENTENCE THAT EXCEEDED MAXIMUM FOR THE OFFENSE.

SO THERE COULD BE A CIRCUMSTANCE WHICH THIS LANGUAGE WOULD LIMIT TO THE MAXIMUM SENTENCE FOR THE OFFENSE AS OPPOSED TO A HIGHER SENTENCE SHOWING UP ON THE DEFENDANT'S CRIMINAL PUNISHMENT

SCORE SHEET.

NOW--

>> ARE THERE CIRCUMSTANCES WHERE THE MINIMAL MANDATORY WOULD BE ABOVE THE MAXIMUM PENALTY?

>> NOT THAT I'M AWARE.

>> FIREARM?

PROBABLY NOT.

OKAY.

>> AGAIN I THINK, IN CLOSING I DON'T HAVE MUCH TIME LEFT, BUT AGAIN THE LANGUAGE OF 948-POINT6 IS ANY SENTENCE THE TRIAL COURT COULD HAVE IMPOSED-- 948.06.

IF WE LOOK FROM THE FLIP SIDE, COULD THE TRIAL COURT IMPOSE SENTENCE OF 15 YEARS WITHOUT THE 10-YEAR MINIMUM MANDATORY?

NO, THAT WOULD HAVE BEEN AN ILLEGAL SENTENCE BECAUSE THE TRIAL COURT WAS REQUIRED TO IMPOSE A 10-YEAR MINIMUM MANDATORY SENTENCE.

AGAIN THE TRIAL COURT HAS OPTION OF IMPOSING UNDER, UPON A SUBSTANTIVE VIOLATION A CONTINUING UNDER THE YOUTHFUL OFFENDER CAP IF ASSUMING THERE IS INCARCERATIVE TIME REMAINING, OR ANY SENTENCE IT COULD HAVE ORIGINALLY IMPOSE WHICH THEREFORE REQUIRES MINIMUM MANDATORY SENTENCE.

>> YOU REACHED YOUR CAP ON TIME.

>> YES.

VERY BRIEFLY, THE STATE WOULD ASK YOU THAT YOU AFFIRM THE FOURTH DISTRICT COURT OF PEEL OPINION BELOW AND HOLD A SUBSTANTIVE VIOLATION THAT THE COURT CHOOSES NOT TO IMPOSE A YOUTHFUL OFFENDER CAP, MINIMUM MANDATORY SENTENCES ARE REQUIRED WHEN THE OFFENSE REQUIRES IT.

>> THANK YOU.

TWO MINUTES.

>> THE OFFENSE CONTINUES TO RECEIVE CERTAIN YOUTHFUL OFFENDER BENEFITS ALTHOUGH GIVEN THE INTERPRETATION BELOW UNCLEAR

WHETHER HE WOULD BE ENTITLED TO
A EARLY RELEASE RECOMMENDATION
FROM THE DEPARTMENT OF
CORRECTIONS IS.

THE SECOND POINT--

>> WHAT BENEFITS HAS HE
RECEIVED?

>> YOUR HONOR, FOR INSTANCE, HE
IS AFFORDED MUCH MORE LENIENT
ACCESS TO ME THAN ANY OF MY
OTHER PRIOR PRO BONO CRIMINAL
CLIENTS INCARCERATED AS REGULAR
ADULTS.

HE RECEIVES ADDITIONAL TRAINING,
EDUCATIONAL OPPORTUNITIES,
ETCETERA.

HE MENTIONED THAT DURING THE
PROBATION REVOCATION HEARING.

>> WAS JUDGE RESENTENCED HIM THE
ORIGINAL JUDGE COMMITTED HIM TO
YOUTHFUL OFFENDER STATUS.

>> NO, MA'AM.

NO, YOUR HONOR.

THE SECOND POINT, YOUR HONOR THE
STATE CONTEND THAT THE STATUTES
ARE UNAMBIGUOUS.

TWO CASES WHERE THE STATE QUOTES
REFER TO 948.06, LANGUAGE, ANY
SENTENCE WHICH IT MIGHT HAVE
ORIGINALLY IMPOSED STATE ADDS
ITS OWN LANGUAGE, IRRESPECTIVE
THE INITIAL YOUTHFUL OFFENDER
RECOMMENDATION.

THIS COURT IN ARNETTE TOLD THE
LEGISLATURE IF YOU WANT TO
CHANGE THE STATUS, STATE SO
CLEARLY.

775.087, 2, SUB C PART OF
10-20-LIFE STATUTE RECOGNIZES
THERE IS DISTINCTION BETWEEN THE
MAXIMUM SENTENCE FOR OFFENSE AND
MAXIMUM SENTENCE APPLIES WITH A
ADULT SENTENCING ENHANCEMENT.
THE QUOTED LANGUAGE, MINIMUM
MANDATORY TERMS OF IMPRISONMENT
IMPOSED PURSUANT TO THIS SECTION
EXCEED THE MAXIMUM SENTENCES
AUTHORIZED BY 775.082, 775.084
OR THE CONTROL PUNISHMENT CODE,
THEN THE MANDATORY MINIMUM

SENTENCE MUST BE IMPOSED.
THAT IS TO ADULT THE.
THERE IS DISTINCTION BETWEEN
MAXIMUM SENTENCE FOR THE OFFENSE
AND MAXIMUM SENTENCE FOR
SENTENCE ENHANCERS.
THANK YOU, YOUR HONORS.
WE REQUEST THAT YOU QUASH THE
DECISION BELOW.
>>> THANK YOU FOR YOUR
ARGUMENTS.
THE SECOND CASE IS ANDRES VERSUS
STATE OF FLORIDA.