

>> NEXT CASE ON THE DOCKET THIS MORNING IS STATE OF FLORIDA VERSUS PURDY.

>> MAY IT PLEASE THE COURT. COUNSEL, MY NAME IS PAM KOLLER, I REPRESENT THE PETITIONER, STATE OF FLORIDA IN THIS CASE. THE RULING IN THIS CASE BY THE FIFTH DCA OPENS UP TWO VERY IMPORTANT ISSUES OF THE FIRST ONE IS, DOES THE VERY FACT THAT A DEFENDANT MOVES TO HAVE ONE SENTENCE, ONE COUNT MODIFIED, DOES THAT ALLOW THE COURT TO GO BEHIND AND RESTRUCTURE ALL OF THE COUNTS EVEN WHEN THEY HAVE NOT BEEN SPECIFICALLY INCLUDED IN THE MOTION FOR POST-CONVICTION RELIEF? AND IF SO, HOW DOES A COURT DO THIS WHEN THE SENTENCE IS NOT ILLEGAL AND IS NOT UNCONSTITUTIONAL?

>> LET ME ASK YOU THIS, JUST TO BE CLEAR AS TO WHAT THE SENTENCE IS AND WHAT THE COURT DID.

>> SURE.

>> HE WAS SENTENCED, MR. PURDY WAS SENTENCED TO LIFE IN IN PRISON FOR THE HOMICIDE COUNT, CORRECT?

>> CORRECT.

>> AND THEN HE WAS SENTENCED TO A TERM OF YEARS IN THE OTHER COUNTS.

>> EXECUTIVE TERMS-- CONSECUTIVE TERMS.

>> THOSE TERMS WERE CONSECUTIVE.

>> CORRECTS.

>> SO ONCE THE SENTENCE WAS REDUCED TO TIME SERVED, ONLY THEN DID THE TIME OF YEARS IN THE OTHER COUNTS BEGIN TO TAKE EFFECT, CORRECT?

>> CORRECT.

>> SO HE STARTED FROM GROUND ZERO FROM THAT DAY, SERVING HIS SENTENCE.

>> ON THE 9.4 YEARS.

>> SO, AND WHOLE ISSUE HERE IS

WHETHER THE COURT SHOULD  
CONSIDER AGGREGATE OR NOT.  
SO WHY, WHY IS NOT THAT IN THE  
SPIRIT OF MILLER?

>> WELL, NUMBER ONE THE STATUTE  
DOES NOT MENTION, NOTHING ABOUT  
AGGRAVATION.

THE STATUTE DOESN'T SAY IF A  
DEFENDANT IS BEING SENTENCED FOR  
OR RESENTENCED FOR A HOMICIDE  
OFFENSE, YOU LOOK AT THE ENTIRE  
SENTENCING OR IF ONE OF THE  
COUNTS IS A HOMICIDE, THEN  
THEREFORE YOU GET TO DECIDE AS  
FAR AS WHEN THE FURTHER JUDICIAL  
REVIEW IS ALLOWED TO HAVE THE  
JUDICIAL REVIEW FOR ALL OF THOSE  
COUNTS.

IT NEVER SAYS ANYTHING ABOUT  
THAT.

ANOTHER PROBLEM IS THAT THE  
STATUTE ONLY APPLIES TO  
HOMICIDE, CAPITAL LIFE AND  
FIRST-DEGREE FELONIES AND LIFE  
FELONIES THAT ARE NOT HOMICIDES.  
SO IN THIS CASE IT WOULD APPLY  
BECAUSE HE IS CONVICTED OF TWO  
FIRST PBLs IN ADDITION TO THE  
HOMICIDE BUT IN THOSE CASE WHERE  
THEY'RE CONVICTED OF SAY, JUST A  
STRONG-ARM ROBBERY, THAT DOESN'T  
FALL UNDER THE STATUTE AT ALL.  
SO WHERE DOES THE JUDICIAL  
REVIEW COME FROM IN THAT  
SITUATION?

AND WHY WOULD IT BE ABROGATED.

>> LET ME, I HAVE A QUESTION  
THAT REALLY WASN'T BRIEFED, OR A  
SERIES OF QUESTIONS BUT IT HAS  
TO DO WITH THE SECOND LINE OF  
U.S. SUPREME COURT CASES  
REGARDING EIGHTH AMENDMENT.  
THERE IS ONE LINE OF CASES THAT  
LAYS OUT CATEGORICAL RULES,  
CORRECT?

THAT'S GRAHAM, MILLER.

>> MONTGOMERY.

>> A LOT OF CASES.

AND THEN THERE IS ANOTHER LINE  
THAT ALLOWS FOR A, WHAT THEY

HAVE CALLED THE, THE SUPREME COURT A LIMITED PROPORTIONALITY REVIEW OF SENTENCES, CORRECT.

>> RIGHT.

>> SO A VERY INDIVIDUALIZED LOOK AT SENTENCES AND JUSTICES, AND JUSTICE ROBERTS CONCURRENCE IN GRAHAM HE SAID, AND I THINK IT'S CORRECT, THAT ALL OF THE JUVENILE SENTENCING PRECEDENT, EVEN ON THE CATEGORICAL RULES SIDE WOULD INFORM THE INQUIRY OF A COURT WHEN THEY WERE LOOKING AT THE PROPORTIONALITY.

IS THAT ACCURATE?

>> OKAY, EVEN, IN THIS CASE--

>> HERE'S MY POINT.

IF THEY, IF THE RESPONDENT IN THIS CASE HAD FILED A 38.50 CLAIM AND SAID THAT, AFTER GRAIL IT SEEMS LIKE PROPORTIONALITY BECOMES A VERY EASY THING TO DO FOR A JUVENILE NON-HOMICIDE OFFENDER BECAUSE YOU HAVE A CLEAR STANDARD.

IN OTHER WORDS, IF A LIFE SENTENCE WITHOUT PAROLE VIOLATES THE EIGHTH AMENDMENT FOR A JUVENILE CATEGORICALLY, IF YOU FILE AN INDIVIDUALIZE CLAIM, I DON'T SEE HOW, IF YOU'RE LOOKING AT PROPORTIONALITY, LIFE PLUS ANYTHING COULD NOT BE UNCONSTITUTIONAL IF YOU JUST LOOK AT THAT INDIVIDUAL CASE.

>> SURE.

>> OKAY.

SO IF THE RESPONDENT IN THIS CASE HAD SAID, I'M ASKING FOR PROPORTIONALITY REVIEW OF MY ENTIRE SENTENCE UNDER THE EIGHTH AMENDMENT, LOOK AT GRAHAM.

IF THAT IS UNCONSTITUTIONAL, CLEARLY PROPORTIONALITY WOULD TELL YOU THAT YOU HAVE TO CHANGE THE SENTENCE AND GET RID OF THAT CONSECUTIVE 15 YEARS.

WOULD YOU AGREE WITH THAT?

>> I UNDERSTAND WHAT--

>> I MEAN--

>> RIGHT.  
>> PROPORTIONALITY REVIEW.  
>> CORRECT.  
>> IF ONE IS UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT HOW COULD YOU POSSIBLY SAY LIFE WITHOUT PAROLE, PLUS MORE, IS NOT UNCONSTITUTIONAL IN THE, UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT?  
>> SAYING A JUDGE MUST AGGREGATE DOESN'T SERVE THAT PURPOSE. THE PROBLEM IS--  
>> THIS IS DIFFERENT FROM THE STATUTORY CONSTRUCTION QUESTION.  
>> I UNDERSTAND.  
THE PROBLEM IF THE JUDGE IS TOLD IN THIS CASE HE MUST AGGREGATE, HE IS NOT ALLOWED TO AGGREGATE, AND WE HAVE SENTENCE ULTIMATELY REDUCED TO 29 1/2 YEARS IS WHAT THIS DEFENDANT ENDS UP, POTENTIALLY SERVING. OBVIOUSLY HE WILL GET OUT A LOT SOONER THAN 29 YEARS, HOW IS THAT DISPROPORTIONAL?  
HOW IS THAT NOT PROPORTIONAL WHAT HE WAS CONVICTED OF?  
AND MAYBE WE HAVE A JUDGE WHO IS SITTING THERE LOOKING AT THIS SENTENCE, I MEAN WE HAVE TO UNDERSTAND THE JUDGE HAS SOME DISCRETION HERE.  
MAYBE THE JUDGE LOOKING, YOU KNOW WHAT?  
THIS IS FELONY MURDER.  
20 YEARS IS PLENTY ON FELONY MURDER.  
BUT WE KNOW HE WAS PARTICIPATING IN THE ARMED CARJACKING AND THE ARMED ROBBERY.  
I WANT HIM TO SERVE ANOTHER NINE YEARS.  
HE LOOKS, DOING GREAT, BUT I THINK HE NEEDS TO SERVE SOME TIME ON THESE COUNTS TOO.  
WANTS TO FASHION A SENTENCE DOING THAT IT IS NOT CONSTITUTIONAL-- NOT UNCONSTITUTIONAL BECAUSE LESS

THAN 30 YEARS HE IS GETTING.  
I UNDERSTAND THIS SOMEWHAT  
AMORPHOUS FAIRNESS ARGUMENT BUT  
IN THIS CASE, HE WILL BE SERVING  
LESS THAN 30 YEARS FOR A FELONY  
MURDER AND TWO COUNTS OF FIRST  
AGREE--

>> I GUESS MY STRUGGLE, HOW IS  
IT NOT UNCONSTITUTIONAL FOR A  
JUVENILE NON-HOMICIDE OFFENDER  
TO RUN ANY TERM OF YEAR SENTENCE  
CONSECUTIVE TO A LIFE SENTENCE  
WITHOUT PAROLE?

>> WELL IN THIS CASE IT WAS  
REDUCED.

WE DON'T HAVE A LIFE SENTENCE  
WITHOUT PAROLE ANYMORE.

>> RIGHT.

>> THEY DID REDUCE THE ONE, THE  
SENTENCE THAT WAS CLEARLY  
UNCONSTITUTIONAL.

>> I SAID I HAD A DIFFERENT LINE  
OF INQUIRY.

>> I UNDERSTAND BUT IN THIS  
CASE, THIS IS WHAT-- THE  
PROBLEM WITH AGGREGATING IS,  
WHAT HAPPENS WHEN YOU HAVE GOT,  
I MEAN HOW IS THIS FAIR, WHEN  
YOU HAVE A DEFENDANT WHO COMMITS  
ALL HIS CRIMES IN ONE  
JURISDICTION OR VERSUS-- SO HE  
GETS TO AGGREGATE.

THEN YOU GET A DEFENDANT WHO  
COMMITS THE SAME CRIMES BUT IN  
SEVERAL DIFFERENT JURISDICTIONS,  
YOU CAN'T AGGREGATE.

SO I GUESS HE IS ALLOWED TO THEN  
FILE MOTIONS IN EVERY  
JURISDICTION AND WHAT DO THEY--  
I MEAN IF THEY IMPOSE IT  
CONSECUTIVELY, DO THEY GET TO  
THEN MODIFY?

>> I UNDERSTAND YOUR STATUTORY  
CONSTRUCTION ISSUE.

I WAS ASKING ABOUT SOMETHING  
DIFFERENT.

>> I MEAN LOOKING EVEN LOOKING  
AT THE CONSTITUTIONAL  
IMPLICATIONS AS FAR AS WHEN YOU  
HAVE SOMEONE, YOU KNOW, WHO IS,

IF YOU AGGREGATE AND IN THIS CASE ALL THAT IS HAPPENING, HE IS AGGREGATED HIS THREE COUNTS OR THEY WANTED HIM TO AGGREGATE THE DIFFERENCE BETWEEN THIS, AN IF HE DID IT IN SEVERAL DIFFERENT JURISDICTIONS WHERE THERE CAN BE NO AGGREGATION, I DON'T KNOW.

WHAT HAPPENS WHEN A DEFENDANT GETS LIFE WITHOUT THE POSSIBILITY OF PAROLE IN ONE JURISDICTION AND GETS 15 YEARS SERVED CONSECUTIVELY IN ANOTHER JURISDICTION?

THAT IS THE PROBLEM THAT WE-->> LET ME ASK YOU TO ADDRESS THIS DIFFERENT ARGUMENT BY AMICUS.

THEY ARGUED WHEN CONTINUED INCARCERATION ADVANCES NO EUROPEAN LOGICAL PURPOSE IT FOR A JUVENILE, ALL THE PRECEDENT RELATES TO JUVENILE SENTENCING. COULD YOU ADDRESS THAT? THERE HAS BEEN A DETERMINATION THAT THERE IS NO FURTHER PENALOGICAL PURPOSE FOR IT SENTENCE.

>> FOR THE SENTENCE, WE'RE DOING, AS FAR AS THE HOMICIDE. I MEAN, WE JUST DON'T KNOW IF-- ANOTHER THING IS, I MEAN IF A JUDGE BASICALLY TOLD IT IS ALL OR NOTHING, I MEAN I UNDERSTAND THE PENALOGOCIAL PURPOSE BUT DOUBLE JEOPARDY DOESN'T APPLY. >> I SEE THE STATUTE THE WAY YOU SEE IT.

SO UNDER THE STATUTE YOU'RE RIGHT BUT I'M STRUGGLING WITH THE FACT THERE MAY BE SOME OTHER EIGHTH AMENDMENT PRINCIPLES THAT COMPEL ADDITIONAL RELIEF OTHER THAN THAT THAT IS CALLED FOR BY THE STATUTE.

AND ONE WOULD BE, IF IT IS CORRECT THAT CONTINUED INCARCERATION, THAT WHEN CONTINUED INCARCERATION ADVANCES

NO PENALOGICAL IT IS EIGHTH  
AMENDMENT VIOLATION.  
THEY COME TO THE JUDGE WITH TWO  
CLAIMS.

ONE I'M ASKING YOU TO REDUCE  
THIS UNDER THE STATUTE AND I'M  
MAKING AN EIGHTH AMENDMENT CLAIM  
BECAUSE THERE IS NO PENALOGICAL  
FOR THIS SENTENCE ANYMORE, FOR  
THIS SERIES OF EVENTS I'M  
ENTITLED TO RELIEF ON THE--  
SAYS SO BECAUSE THE EIGHTH  
AMENDMENT COMPELS THAT THAT IS  
THE ARGUMENT THAT IS ADVANCED IN  
THE AMICUS BRIEF.

I DIDN'T SEE THAT ADDRESSED IN  
YOUR BRIEF SO I'M ASKING TO YOU  
ADDRESS IT.

>> I THINK IT IS UP TO A TRIAL  
JUDGE AT THAT POINT.

I DON'T THINK WE SHOULD BE  
TELLING THE TRIAL JUDGE--  
UNFORTUNATELY WHAT HAPPENED IN A  
LOT OF THESE CASES IT SAYS IS  
VIOLATES MILL OTHER ARE GRAHAM  
AND YOU NEED TO SEND IT DOWN FOR  
RESENTENCING UNDER THE STATUTE.  
THE STATUTE DOESN'T APPLY FOR  
ALL CASES IN THOSE CONVICTIONS.  
IF IT IS ARGUED AS EIGHTH  
AMENDMENT AND THERE SOME SO  
SUPPORT FOR THAT, THAT IS  
DIFFERENT ISSUE.

THEN THEY CAN CERTAINLY BRING  
IT.

I DON'T THINK YOU SHOULD SAY THE  
COURT HAS TO AGGREGATE.

I THINK THE COURT CAN MAKE ITS  
DETERMINATION WHETHER OR NOT THE  
SENTENCE WOULD VIOLATE THE  
EIGHTH AMENDMENT AND--

>> I'M NOT SUGGESTING THAT THE  
COURT HAS TO AGGREGATE UNDER THE  
STATUTE.

I'M ASKING YOU WHETHER THEY, I'M  
ASKING ABOUT THE PRINCIPLE THAT  
IS ESPOUSED IN THE AMICUS BRIEF.  
AND THERE WHETHER'S, WHETHER  
THAT IS A CORRECT PRINCIPLE  
UNDER THE EIGHTH AMENDMENT THAT

MIGHT APPLY TO THIS F-2  
SEPARATELY FROM, APPLYING THE  
STATUTE AND WHETHER THE--  
>> YEAH, I MEAN, EVEN  
MONTGOMERY, I REALLY DON'T THINK  
IT IS, THE EIGHTH AMENDMENT  
ANALYSIS IS QUITE THAT  
EXPANSIVE.  
EVEN UNDER MONTGOMERY THE COURT  
SAID, YOU KNOW WHAT?  
YOU DON'T HAVE TO RESENTENCE ALL  
THE JUVENILES WHO GOT LIFE  
WITHOUT PAROLE.  
ALL YOU HAVE TO DO IS TACK ON  
PAROLE.  
THAT IS GOOD ENOUGH.  
I DON'T KNOW IT IS QUITE AS  
EXPANSIVE, ALL THEY HAVE TO  
GET IS MEANINGFUL OPPORTUNITY  
FOR REVIEW.  
I UNDERSTAND THIS DEFENDANT GOT  
MEANINGFUL OPPORTUNITY FOR  
REVIEW BUT WHAT IF THE TRIAL  
COURT MADE THE DETERMINATION,  
HEY HE NEEDS TO STAY IN A LITTLE  
BIT LONGER, SERVE HIS SENTENCE  
ON THIS.  
IF YOU BASICALLY TELL THE COURTS  
YOU HAVE TO AGGREGATE IN EVERY  
CASE, ALL OR NOTHING, MAYBE  
THEY'RE GOING TO START IMPOSING  
LIFE SENTENCES EVERY TIME JUST  
IN CASE RATHER THAN AGGREGATING,  
HAVING CONSECUTIVE SENTENCES OR  
THAT SORT OF THING.  
IF THAT IS GOING TO BE TAKEN  
AWAY FROM THEM, THAT BASICALLY  
IT IS ALL OR NOTHING WHEN THEY  
COME UP FOR JUDICIAL REVIEW IF  
YOU LET THEM OUT, THEY'RE OUT  
FOR EVERYTHING THEY MAY NOT LET  
THEM OUT.  
THEY MAY THINK YOU KNOW WHAT?  
HE NEEDS TO SERVE A LITTLE BIT  
MORE TIME.  
SO I THINK THAT, JUST BASICALLY,  
REQUIRING THEM TO AGGREGATE EVEN  
UNDER THE EIGHTH AMENDMENT, I  
JUST DON'T THINK IT IS QUITE  
THAT BROAD.

I THINK YOU HAVE TO LOOK, AND AS LONG AS THEY HAVE THE OPPORTUNITY TO REVIEW WHICH THEY DO IN THIS CASE, IF HE HAD GOTTEN, YOU KNOW, IF HE HAD GOTTEN A 20-YEAR, OR 25-YEAR CONSECUTIVE SENTENCE OBVIOUSLY HE WOULD HAVE GOTTEN REVIEW FOR THAT TOO.

BUT HE ONLY GOT A 9.4-YEAR SENTENCE.

>> WHAT IF THERE WERE A SERIES OF CAR BURGLARIES, WE SEE THAT A LOT.

THEY GO DOWN ONE CAR AFTER ANOTHER, 20 CARS.

IT WAS, 25 YEARS BUT IN FIVE-YEAR F-3s ALL RUN CONSECUTIVE?

>> OBVIOUSLY THE STATUTE WOULD NOT APPLY TO THAT.

AT THAT COURT THE COURT WOULD HAVE TO MAKE A DETERMINATION WHETHER OR NOT THAT WOULD VIOLATE THE EIGHTH AMENDMENT. THE COURT IS LEFT WITH MAKING THAT SORT OF DETERMINATION.

>> DOES HENRY HAVE AN APPLICATION HERE AT ALL IN CONNECTION WITH THE ANALYSIS FOR THE GRAHAM-MILLER PURPOSES?

>> DOES HENRY?

>> YES, MA'AM.

MAY NOT.

I MAY BE CONFUSED ON THIS I WOULD LIKE TO KNOW, IF IT DOES OR DOES NOT.

>> BASICALLY IN HENRY THIS COURT DETERMINED THAT FOR NON-HOMICIDES, AGGREGATED 90 YEARS DID NOT PROVIDE HIM WITH MEANINGFUL OPPORTUNITY FOR REVIEW AND SENT IT BACK FOR--

>> I'M TALKING ABOUT AGGREGATING OF THE SENTENCES.

AS A BASIC FOUNDATIONAL PRINCIPLE?

>> WELL IN THAT CASE THEY WERE ALL THE SAME, THE COUNTS WERE ALL THE SAME VICTIM AND ALL

IMPOSED CONCURRENTLY.  
THESE WERE ORIGINALLY IMPOSED  
CONSECUTIVELY.  
>> IN YOUR VIEW HENRY HAS  
NOTHING TO DO WITH THIS CASE--  
>> AGGREGATION.  
>> BECAUSE OF AGGREGATING ASPECT  
OF THAT CASE?  
>> RIGHT.  
BECAUSE THOSE WERE ORIGINALLY  
IMPOSED CONCURRENTLY.  
SO THERE WAS BY--  
>> IS THERE ANOTHER CASE, OTHER  
THAN HENRY ON THIS THAT TELLS US  
THAT IT MAKES A DIFFERENCE ON  
CONSECUTIVE OR CONCURRENCY WITH  
REGARD TO THE PRINCIPLE,  
FUNDAMENTAL PRINCIPLE OF WHAT  
YOU HAVE TO LOOK TO, TO MAKE  
THESE DETERMINATIONS?  
MEANING AGGREGATING, DO YOU HAVE  
TO LOOK AT THAT?  
>> I COULD NOT FIND ANY.  
I MEAN CERTAINLY IN THE ADULT--  
>> IT HASN'T BEEN DEFINED THEN  
YET?  
>> NO, YOUR HONOR, NOT DIRECTLY  
HAS BEEN ATTENDED TO.  
>> AND THE U.S. SUPREME OCCUR  
HAS NOT SPOKEN TO THIS?  
>> CORRECT.  
I DON'T THINK-- AGAIN,  
CERTAINLY A DEFENDANT COULD  
CHALLENGE HIS SENTENCE AS BEING  
UNCONSTITUTIONAL AND WHETHER OR  
NOT THE TRIAL COURTS WILL AGREE  
THAT THESE TYPES OF SENTENCES  
ARE UNCONSTITUTIONAL IS A  
DIFFERENT ISSUE.  
I KNOW THAT THIS COURT HAS  
TALKED ABOUT DE FACTO LIFE  
SENTENCES, EVEN IF YOU AGGREGATE  
THE SENTENCE OF THIS DEFENDANT  
GOT, HE GOT 29 1/2 YEARS, THAT  
IS NOT EVEN A DE FACTO LIFE  
SENTENCE.  
SO, AGAIN--  
>> FUNDAMENTAL, THE FUNDAMENTAL  
QUESTION, WHETHER YOU DO OR DO  
NOT HAVE TO CONSIDER WHAT ELSE

HAS BEEN DONE.

YOU KNOW, THE RESULT IS GOING TO CHANGE BASED UPON YEARS IN EVERY CASE.

BUT THE FUNDAMENTAL QUESTION, AS TO WHETHER YOU HAVE TO AGGREGATE OR NOT NEEDS TO BE, SEEMS TO ME, IT IS A THRESHOLD ISSUE.

NO MATTER WHAT THE YEARS ARE.

>> I MEAN TO BE HONEST, UNFORTUNATELY THIS STATUTE DOES NOT REALLY HELP US IN EVERY WAY WE NEED IT TO HELP US.

AS FAR AS DETERMINING, THAT IS WHY, CERTAIN EXTENT THE DEFENDANT FILES SOMETHING AND WANTS TO GET SOME KIND OF RULING ON THE UNCONSTITUTIONALITY THAT WILL BE SOME NEW KIND OF TERRITORY I ASSUME FOR THE TRIAL COURT BUT JUST RESENTENCING UNDER THE STATUTE ISN'T GOING TO HELP, BECAUSE MANY OF THESE CONVICTIONS DO NOT FALL UNDER THAT STATUTE AND, YOU KNOW, WHETHER OR NOT IT IS DE FACTO LIFE IF THAT IS EVEN CONSIDERED A VIOLATION OF THE EIGHTH AMENDMENT WE DON'T EVEN KNOW THAT YET.

THIS COURT RULED IT IS IN FLORIDA BUT OTHER THAN THAT WE DON'T KNOW THAT EITHER.

>> LET ME DIRECT YOU TO HENRY. I THOUGHT THAT INVOLVED CONSECUTIVE SENTENCES AND CONFIRMED THAT IT DOES.

>> IT DOES?

I THOUGHT IT WAS CONCURRENT.

>> HE WAS ORIGINALLY SENTENCED TO LIFE PLUS, 60 YEARS IN CONSECUTIVE SENTENCE.

>> ALL RIGHT.

>> HE WAS RESENTENCED ON LIFE BUT OTHER SENTENCES WERE RUN CONSECUTIVELY TO ADD UP TO TOTAL OF 90 YEARS.

>> MY MISTAKE.

>> IN LIGHT OF THAT WOULD YOU ADDRESS JUSTICE LEWIS' QUESTION

WHETHER THAT HAS ANY  
IMPLICATIONS HERE?

>> WELL, AGAIN I DON'T KNOW THAT  
A LOT OF THOSE OFFENSES FELL  
UNDER THE STATUTE.

HE HAD A SEX BAT, BURGLARY OF A  
DWELLING, KIDNAPPING, ROBBERY,  
ALL WITH THE SAME VICTIM.

SO I DON'T KNOW THAT EVEN ALL  
THOSE WOULD FALL UNDERNEATH THE  
STATUTE.

BASICALLY THE ARGUMENT WOULD  
HAVE TO BE, DOES THAT VIOLATE  
THE EIGHTH AMENDMENT?

YOU SEND IT BACK DOWN, TO BE  
RESENTENCED UNDER THAT STATUTE.  
IT'S, ESSENTIALLY-- I MEAN WHAT  
THE REMEDY IS, I MEAN I DON'T  
KNOW BECAUSE THIS STATUTE DOES  
NOT APPLY TO ALL OF THESE COUNTS  
THAT WE'RE GETTING HERE THAT ARE  
BEING AGGREGATED.

>> THE FUNDAMENTAL THING WOULD  
BE EXAMPLE, IF YOU HAD 10 COUNTS  
THAT ARE NOT IN THE CATEGORY OF  
GRAHAM-MILLER, 10 YEARS EACH,  
THAT IS 100 YEARS.

>> RIGHT.

>> IS THAT UNCONSTITUTIONAL OR  
NOT, RIGHT?

>> RIGHT.

U.S. SUPREME COURT--

>> WE HAVE NEVER, TO MY  
KNOWLEDGE ADDRESSED THAT  
PARTICULAR ISSUE HERE.

>> I MEAN, YOU HAVE TALKED ABOUT  
DE FACTO LIFE.

BUT AGAIN YOU BACKED OFF ON  
THAT.

YOU DON'T LOOK AT TERM OF YEARS.  
YOU BASICALLY, AS LONG AS THEY  
HAVE MEANINGFUL OPPORTUNITY FOR  
REVIEW AFTER 20 YEARS.

IN KELSEY, FOR THOSE CASES WHERE  
THEY GOT LIFE FIRST AND THEN A  
TERM OF YEARS.

BUT NO, HAS NOT BEEN ADDRESSED  
DIRECTLY.

THAT IS THE ISSUE.

>> YOU'RE WELL INTO REBUTTAL

TIME.

YOU'RE WELCOME TO CONTINUE IF YOU WISH.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT. CHIEF JUSTICE, JUSTICE OF THE FLORIDA SUPREME COURT.

MATTHEW MCLAIN, ON BEHALF OF RESPONDENT KENNETH PURDY. THE PURPOSE OF THE SENTENCE REVIEW HEARING TO DETERMINE WHETHER THE DEFENDANT IS REHABILITATED AND BELIEVED FIT TO REENTER SOCIETY.

BY NOT ALLOWING THE COURTS TO CONSIDER AN AGGREGATE SENTENCE UNDER THE CIRCUMSTANCES WOULD RENDER THE SENTENCE REVIEW PERIOD ESSENTIALLY MEANINGLESS. SUCH AS IN MR. PURDY'S CASE WHERE HE HAS BOTH HOMICIDE AND NON-HOMICIDE OFFENSES.

HE HAS BEEN FOUND TO BE REHABILITATED AND BE FIT TO ENTER SOCIETY, YET ALTHOUGH ALL THESE CRIMES OCCURRED IN THE SAME EPISODE HE REMAINS INCARCERATED ANOTHER DECADE. THE STATE MADE REFERENCE HE MIGHT NOT DESERVE FULL 29 YEARS. HE IS SERVING ADDITIONAL NINE YEARS AT THIS TIME IN DAYTONA BEACH AT THIS TIME.

>> HOW OLD WILL HE BE WHEN HE GETS OUT UNDER CURRENT SENTENCING?

>> HE WILL BE IN HIS MID 40s. BUT THE MAIN PROBLEM IS, IS THAT, THE CASE LAW AND JUVENILE RESENTENCINGS THE PURPOSE IS TO GIVE THAT PERSON THE OPPORTUNITY TO SHOW MATURITY IN REHABILITATION AND THAT THEY ARE NOT IRREPARABLY CORRUPT.

IF THEY'RE NOT ALLOWED TO CONSIDER AGGREGATE SENTENCES HOW IS THAT REALLY AN OPPORTUNITY.

>> MR. MCLAIN, LET ME DIRECT YOU TO MY EARLIER HYPOTHETICAL, A JUVENILE OFFENDER BREAKS INTO A

STRING EVER CARS, 20 CARS AND  
PLEADS DOWN TO A SENTENCE OF 40  
YEARS BUT IT IS IN EIGHT  
CONSECUTIVE FIVE-YEAR SENTENCES.  
ARE THEY ENTITLED TO  
ENTITLED TO RESENTENCING  
UNDER THIS STATUTE?

>> I DON'T BELIEVE THEY ARE.  
THERE NEEDS TO BE AT LEAST ONE  
QUALIFYING OFFENSE AND ONCE YOU  
HAVE A QUALIFYING OFFENSE  
WHETHER IT IS 15 OR 25 COURT CAN  
CONSIDER THE AGGREGATE SENTENCE,  
YOU MENTIONED HENRY, AS JUSTICE  
LAWSON STATED A SEXUAL BATTERY,  
30 YEARS AND SIX YEARS  
CONSECUTIVE, THE CARJACKING,  
BURGLARY AND MARIJUANA.  
IT DOESN'T STATE HOW THEY ADDED  
UP IN TOTAL BUT THE REMEDY THIS  
COURT CRAFTED, REMAINDER FOUR  
RESENTENCING PURSUANT TO  
2014-220, THE NEW JUVENILE  
RESENTENCING LAW.

THIS CASE AS A PRACTITIONER,  
WHEN MISTER KEARNEY FILED MOTION  
FOR POST CONVICTION RELIEF IN  
FALCON AND GRIDIRON.

IT WAS A COMBINATION, AND  
MURDER AND ATTEMPTED ROBBERY.  
AND SPECIFICALLY A MILLER CASE?

>> LET ME DIRECT YOU TO THE  
LANGUAGE OF THE STATUTE THERE  
ARE SEVERAL SECTIONS BUT IN  
921-142-2 A, A JUVENILE SENTENCE  
UNDER 77082, ENTITLED TO REVIEW  
OF HIS OR HER SENTENCE AFTER 20  
YEARS IN THE LATE WAS OF ALL THE  
OTHER PROVISIONS IS SIMILAR, A  
JUVENILE SENTENCED TO 50 YEARS,  
ENTITLED TO REVIEW ON HIS OR HER  
SENTENCE, WHAT LANGUAGE SEEMS  
CLEAR WHAT THE LEGISLATURE IS  
TALKING ABOUT IS RESENTENCING ON  
THE SENATE THAT IS REFERENCED IN  
THE LANGUAGE OF THE STATUTE.  
WHAT LANGUAGE WOULD YOU POINT TO  
TO SUGGESTS THAT YOU SENTENCE ON  
CHARGES THAT ARE NOT REFERENCED  
IN THE STATUTE?

>> DIRECTION TO SUBSECTION 7, IF THE COURT DETERMINES THE REVIEW HEARING THE JUVENILE OFFENDER HAS BEEN REHABILITATED AND IS FIT TO REENTER SOCIETY AND MODIFY THE SENTENCE, THE THRUST OF THE STATUTE IS REENTER SOCIETY.

LOOKING AT THE STATUTE TO BE SENTENCED AND THE QUESTION IS HOW CAN WE GET OTHER SENTENCES IN THE SENTENCE THAT WE START OUT WITH.

>> NOWHERE SAYS SENTENCES. DON'T KNOW IF THAT WAS PURPOSEFUL OR NOT, THE INTENT IS TO FOLLOW THE OPPORTUNITY BUT WHEN YOU LOOK AT WHAT THE PURPOSE IS TO ALLOW REENTRY INTO SOCIETY HOW CAN YOU HAVE A SITUATION OF SOMEBODY CONVICTED OF HOMICIDE, MURDER AND POSSESSION OF MARIJUANA AND AN ADDITIONAL 1-YEAR SENTENCE.

IS THE PURPOSE OF THE STATUTE TO LET YOU OUT OF YOUR HOMICIDE OFFENSE BUT CONSECUTIVE 1-YEAR SENTENCE, YOU HAVE TO REVIEW, I'M NOT ALLOWED TO LET YOU INTO SOCIETY AT THIS TIME BUT YOU WERE FIT TO ENTER SOCIETY. DOESN'T MAKE SENSE TO APPLY THE STATUTE IN A LIMITED WAY, IN SEVERAL DECISIONS TO FOLLOW THIS.

>> WHY ISN'T THE REMEDY AT THE TIME THE DEFENDANT CHALLENGES THE SENTENCE UNDER THE EIGHTH AMENDMENT, THE QUESTION I WAS ASKING, YOUR CLIENT COULD HAVE COMING AND CHALLENGED THE SENTENCE AND THIS IS UNCONSTITUTIONAL, REDUCE THE LIFE SENTENCE, IT IS CONSECUTIVE FOR JUVENILE NON-HOMICIDE, AND THE SENATE, JUDGE BERGER SEEMS TO SUGGEST, THE ISSUE WAS WAIVED

--

>> IT MAY HAVE BEEN DONE. MORE FULLY DEVELOPED, ULTIMATELY

AFTER THE FIRST RESENTENCING PROCEEDING THE COURT WAS ADVISING THE DEFENDANT, AFTER 15 OR 25 YEARS I WILL HAVE A SENTENCE REVIEW AND ORDERING YOU TO DO MORE TIME, AFTER RESENTENCING THE IMPRESSION GIVEN BY THE COURT, THE COURT FURTHER SAID SO YOU UNDERSTAND AFTER THIS PERIOD OF TIME BASED ON WHAT I HEARD ALREADY, YOU ARE REHABILITATED.

>> IS THERE A PROCEDURAL MECHANISM THAT WOULD ALLOW YOU TO GO BACK AND ADDRESS THE ORIGINAL SENTENCE AND CONSECUTIVE SENTENCE?

>> UNDER KELSEY, THE KELTY DECISION WHICH TALKS MORE ABOUT THE SENTENCE REVIEW, THE IMPORTANT THING, NOT NECESSARILY, AND NONHOMICIDE OFFENSES, WITH THIS CASE RESENTENCING.

>> AND FOR JUVENILE, NOT A HOMICIDE OFFENDER, UNDER THE EIGHTH AMENDMENT IS THAT A CLAIM YOU COULD BRING IN CONNECTION FOR RESENTENCING UNDER THAT.

>> IN THAT PROCEEDING.

>> DO YOU HAVE CONFIDENCE IN THAT LEGAL ARGUMENT TO ADDRESS 15 YEAR SENTENCE.

>> RESENTENCING AND THAT THE SENTENCE REVIEW HEARING STATING 9 YEARS, RUNNING UP TO A 20 YEAR SENTENCE FOR THE REVIEW.

WE ARE LOOKING UNDER THE STATUTE EVERY JUVENILE OFFENDERS SENSED TO NONHOMICIDE OFFENSES, TO REVIEW.

UNDER THE CURRENT STATUTE, NONHOMICIDE OFFENSES.

IT IS IN THE AGGREGATE.

AND THINGS THE STATUTE DOES NOT ADDRESS, WE HAVE TO GO BACK TO THE SPIRIT OF THE ISSUE OF WHY RESENTENCING WAS ENACTED TO PROVIDE JUVENILE OFFENDERS THE OPPORTUNITY TO OBTAIN RELEASE

AND READING THESE STATUTES FOR  
ABSURD RESULTS, THE STATE  
RECOGNIZES -- CALLED PERRY.  
AND THE DUSTBIN WHICH SHOULD GO  
AHEAD ON DO SO TO BE IN A  
CONSTITUTIONAL MANNER AND NOT  
ALLOWING COURT TO CONSIDER AN  
AGGREGATE SENTENCE IS  
PROHIBITING IT FROM BEING READ  
IN A CONSTITUTIONAL MANNER.  
STATES CAME FROM A POSITION,  
VERY NARROWLY LOOK AT EACH  
SUBSECTION INDIVIDUALLY AND  
LET'S IGNORE THE INTENT BEHIND  
THE STATUTE WHICH IS TO PROVIDE  
AFTER A CERTAIN TIME SAID 15, 20  
OR 25 TO GAIN RELEASE.  
>> THERE IS NO ISSUE WITH REGARD  
TO A SEPARATE CONSTITUTIONAL  
CHALLENGE TO THE STATUTE ITSELF.  
>> THE ISSUE HAS PRESENTED  
ORIGINALLY WAS DOES THE COURT  
HAVE DISCRETION TO CONSIDER THE  
SENTENCING SCHEME.  
>> IT IS NOT BECAUSE WE KNOW  
THIS WAS PRESENT AT A DIFFERENT  
TIME, CERTAINLY ALL THE  
SENTENCES WOULD BE SUBJECT TO  
THE CONSTITUTIONAL CHALLENGE.  
I AM TRYING TO THINK OF  
SOMETHING THAT PROHIBITS THE  
LEGISLATURE FROM HAVING THE  
STATUTE APPLY ONLY TO CERTAIN  
CRIMES AND WHAT I AM MISSING, IF  
YOU CAN CHALLENGE THE AGGREGATE  
SENTENCE ON THE CONSTITUTIONAL  
BASIS, WHAT IS THE  
CONSTITUTIONAL CHALLENGE TO THE  
STATUTE, THEY DECIDED THEY DON'T  
THINK IT IS NECESSARY TO HAVE  
THAT IN THAT CATEGORY.  
>> I DON'T THINK THE LEGISLATURE  
IS INTENDING THIS RESULTS.  
THE LEGISLATURE IS INTENDING  
AFTER CERTAIN PERIODS TO GO  
AHEAD AND PROVIDE REVIEW.  
IT CAN BE READ IN A  
CONSTITUTIONAL MANNER.  
>> IF IT LISTS CERTAIN CRIMES  
AND SENTENCES FOR CERTAIN CRIMES

AND YOU HAVE ONE THAT IS NOT IN THE LIST, UNDISPUTED IT IS NOT IN THE LIST, HOW DOES THAT -- AN OPPORTUNITY FOR SOMETHING THAT IS NOT EVEN A HINT OF BEING THERE.

>> ALL OF HIS OFFENSES ARE ON THE LIST, HE HAS A HOMICIDE EVENT AND TWO NONHOMICIDE OFFENSES PUNISHABLE BY LIFE AND THOSE FIT UNDER THE STATUTE.

>> WE WERE TALKING ABOUT SENTENCES THAT ARE NOT WITHIN THE STATUTE ITSELF.

>> THAT IS NOT THE CASE. IT WOULD BE THE CASE IF IT WAS A THIRD OR 2ND ∞ FELONY BUT IN THIS CASE, THERE IS, UNDER SUBSECTION D OF 921.1402, A TERM OF YOUR TO 20 MORE YEARS UNDER NONHOMICIDE OFFENSE, THEN YES, COURT CAN CONSIDER IT.

>> THE PROBLEM WITH CONSECUTIVE 15 YEAR SENTENCE IT DOESN'T COME WITHIN THE STATUTE BECAUSE IT IS NOT LONG ENOUGH.

>> THAT IS THE STATE'S ARGUMENT, HOW CAN IT FIT UNDER THE SENTENCE REVIEW STATUTE? WE NEED TO LOOK AT EACH SENTENCE NARROWLY, COUNT ONE, COUNT 2, COUNT 3, THAT IS HOW THEY ARE TRYING TO APPLY TO EACH SITUATION.

WHEN CRAFTING A SENTENCE THEY ARE NOT CRAFTING IT FOR ONE ACCOUNT BUT A SENTENCING SCHEME TO PUNISH THE DEFENDANT SO LOOKING AT THE STATUTE SO NARROWLY LOOK AT SUBSECTION 3, SUBSECTION D AND LET'S NOT MIX THE TWO, ULTIMATELY LOSING TRACK OF WHAT THE INTENT IS AFTER 15 YEARS, 20 YEARS, HE HAS DONE 20.5 YEARS, SHOULD THIS DEFENDANT HAVE REVIEW EVEN THOUGH WE LOOK INDIVIDUALLY AT THE SENTENCES ONE MIGHT NOT BE LONGER IN AND OF ITSELF 20 YEARS.

THAT OF THE ARGUMENT RAISED BY THE STATE, IT IS UNDER 20, THIS INDIVIDUAL SENTENCE DOESN'T FIT UNDER THE STATUTE THAT CAN'T BE THE INTENT OF THE STATUTE AND WE HAVE A HOUSE BILL ANALYSIS PROVIDED WHICH SAYS THE SENTENCE REVIEW HEARING IS TO DETERMINE WHETHER A JUVENILE OFFENDER HAS BEEN REHABILITATED AND DEEMED FIT TO ENTER SOCIETY.

THE LAST PART I BRING THE COURT'S ATTENTION TO REENTER SOCIETY.

HOW ARE WE TALKING ABOUT ALLOWING THEM TO DO ADDITIONAL TIME WHEN THE INQUIRY SHOULD THEY ENTER SOCIETY?

>> THE ARGUMENT SEEMS DIFFERENT FROM THE ONE THAT WAS BRIEFED BECAUSE I HAD THE SAME IMPRESSION JUSTICE LEWIS DID. THE WAY YOU ARGUED THIS, YOUR ARGUMENT WOULD CALL FOR CONSIDERATION OF ANY AGGREGATE SENTENCE WHETHER IT WAS PBL, F1 PBL, ANY AGGREGATE SENTENCE TO ONE THAT ALLOWS RESENTENCING. EVEN IF IT IS NOT INCLUDED.

>> THAT IS WHAT WE ARE ADVOCATING FOR, AND INITIAL QUALIFYING OFFENSE AND UNDER THE STATUTE ONCE YOU GET JUDICIAL REVIEW YOU GET REVIEW OF THE SENTENCING SCHEME BUT IN THIS CASE I DON'T KNOW IF THIS WAS MISSED BY THE TRIAL COURT AND THE COURT OF APPEAL BUT HE QUALIFIES UNDER SUBSECTION D OF THE STATUTE.

>> DID YOU ARGUE IN YOUR BRIEF?

>> I ARGUE THAT IN THE DISTRICT COURT OF APPEAL.

I BELIEVE IT WAS BRIEFED HERE AS WELL.

>> YOUR UNIQUE ARGUMENT TO THIS CONSECUTIVE, 15 YEAR SENTENCE IS WHEN YOU -- A JUVENILE OFFENDERS SENTENCED TO A TERM OF MORE THAN 15 YEARS UNDER, WHAT YOU HAVE TO

CONSIDER ANYTHING RUN CONCURRENT TO, THE STATUTORY REFERENCE TO THE CRIME THAT HAS BEEN COMMITTED, MORE THAN A 15 YEAR SENTENCE BECAUSE YOU AGGREGATE IT WITH THE SENTENCES THAT CAME BEFORE.

>> IF I UNDERSTAND YOUR STATEMENT, THAT IS THE POSITION.

>> YOU MAY HAVE A STATUTORY CONSTRUCTION ARGUMENT DIFFERENT FROM SOMEONE WHO HAS F 2 OR F1.

>> WE ARE NOT FACED WITH THE SAME DIFFICULTIES.

>> I DIDN'T UNDERSTAND THAT WAS THE ARGUMENT YOU ARE MAKING.

>> AT THE RESENTENCING I SPECIFICALLY CITED TWO -- SUBSECTION THE AT THE RESENTENCING HEARING AND ALSO THE INITIAL BRIEF TO THE COURT OF APPEAL I MADE THAT SPECIFIC ARGUMENT AS WELL, THE FIFTH DISTRICT COURT OF APPEAL WENT ON POSITION THAT ORIGINALLY THE DEFENDANT DID NOT APPLY UNDER MILLER AND GRAHAM, THAT COULD MODIFY THE MILLER SENTENCE, THAT IS HOW WE ENDED UP HERE, PERHAPS IT COULD BE DONE BETTER BY ARGUING MILLER AND GRAHAM ORIGINALLY BUT THAT SITUATION --

>> THAT IS THE DIFFICULTY DEALING WITH THE WORDING OF PARTICULAR CERTIFIED QUESTIONS, THAT IS THE CASE.

>> LOOKING AT THE CERTIFIED QUESTION, THE CERTIFIED QUESTION, THE BRIEF IS DIFFERENT CONSIDERING AGGREGATE SENTENCE.

>> YOU GET RELIEF ON THE ARGUMENTS.

YOU DON'T GET RELIEF OTHERWISE.

>> THAT IS CORRECT BUT EVEN UNDER THE MORE DIFFICULT ARGUMENT, WHEN THE COURTS FACE THE SITUATION WHERE IT IS, SOMEBODY IS QUALIFIED FOR JUDICIAL REVIEW PROCEEDING EVEN IF THEY HAVE CONSECUTIVE STATS,

FIRST TO BE MISDEMEANORS,  
SECOND-DEGREE FELONIES, THEY ARE  
ENTITLED TO REVIEW THE AGGREGATE  
SENTENCE UNDER THE STATUTE.  
LOOKING AT SPECIFIC LANGUAGE, A  
JUVENILE OFFENDER DEFINED AS A  
PERSON SENTENCED FOR AN OFFENSE,  
LOOKING AT AN OFFENSE COMMITTED  
ON JULY 1, 2014, BEFORE HE OR  
SHE OBTAINED THE AGE OF 18,  
PUTTING THE DEFINITION TO  
SUBSECTION 2 A, JUVENILE  
OFFENDER WHICH SOMEBODY  
CONVICTED OF AN OFFENSE, AFTER  
THIS PERIOD OF TIME IT WAS  
RETROACTIVELY APPLIED, LOOK AT  
THE AGGREGATE SENTENCE,  
ADVOCATING FOR A POSITION THIS  
COURT READS THE STATUTE TO BE  
CONSTITUTIONAL AND NOT IN AN  
UNCONSTITUTIONAL MANNER WHICH  
WOULD PROHIBIT ABSURD RESULTS  
LIKE STATES ADVOCATING FOR AND  
ALSO AFTER SERVING 20 PLUS YEARS  
HAS BEEN FOUND REHABILITATED AND  
FIT TO REENTER SOCIETY BUT  
SERVING ANOTHER DECADE IN  
PRISON.

I DON'T BELIEVE THAT IS THE  
INTENT BEHIND THE LEGISLATION.  
IF THERE ARE NO FURTHER  
QUESTIONS, WE ASK COURT TO  
ANSWER THE CERTIFIED QUESTION IN  
THE AFFIRMATIVE.

THANK YOU.

>> WE ARE NOT ALLEGING THE  
STATUTE IS UNCONSTITUTIONAL, IT  
ONLY APPLIES TO CERTAIN  
CONVICTIONS.

THE LEGISLATURE'S INTENT, EVERY  
JUVENILE DEFENDANT, RECEIVED A  
SENTENCE OF 20 YEARS, JUDICIAL  
REVIEW AFTER 20 YEARS.

IF THAT IS WHAT THEY WANTED TO  
DO, THAT IS WHAT THEY COULD HAVE  
BEEN BUT NOT WHAT THEY DID IN  
THIS CASE, WHEN HE RELIES ON  
SUBSECTION D, THAT REFERS YOU  
BACK TO THE SUBSECTION C WHICH  
HAS TO DO WITH NOTWITHSTANDING

THE HOMICIDE CONVICTIONS, NOT INCLUDED IN 72.04, LIFE FELONY OR PERSONABLE AND SO FORTH. AT 921, SPECIFICALLY REFERS TO THE 3C WHICH TALKS ABOUT THE LIFE FELONIES FOR NONHOMICIDE'S. THE DEFENDANT IS NOT AUTOMATICALLY RELEASED UNDER THE STATUTE BUT 5 YEARS PROBATION, HE WON'T BE WALKING FREEMAN HAS TO SERVE FIVE YEARS PROBATION, THE JUDGE IMPOSED 10 YEARS. IF THIS COURT HAS NO FURTHER QUESTIONS, THANK YOU.  
>> THANK YOU FOR YOUR ARGUMENT, THE COURT IS IN RECESS FOR TEN MINUTES.  
>> ALL RISE.