

>> ON TODAY'S DOCKET, EARL V.
THE STATE OF FLORIDA.
COUNSEL?

>> MAY IT PLEASE THE COURT,
CHRISTINE DAVIS WITH CARLTON
FIELDS ON BEHALF OF THE
PETITIONER, JERMAINE EARL.
THE ISSUE IN THIS CASE IS
WHETHER A DEFENDANT HAS THE
RIGHT TO CHALLENGE AN ILLEGAL
SENTENCE EVEN IF THE RESULT IS
THAT DEFENDANT WILL END UP WITH
AN INCREASED SENTENCE.
THIS QUESTION IS EASILY ANSWERED
BY REFERENCE TO THE PLAIN
LANGUAGE OF RULE 3.800A AND
WELL-SETTLED LAW.

FIRST, EVERY CASE THAT HAS
DECIDED THIS ISSUE INCLUDING
DECISIONS FROM THIS COURT AND
THE FIRST DISTRICT IN THE
DECISION BELOW, HAS HELD THAT
THE IMPOSITION OF A MANDATORY
MINIMUM SENTENCE IS NOT
DISCRETIONARY AND MUST BE
IMPOSED AND THAT THE FAILURE TO
DO SO RENDERS THAT SENTENCE
ILLEGAL.

AS THIS COURT HELD IN
McDONALD, THIS IS SO EVEN IF
THE MANDATORY MINIMUM SENTENCE
IS LESS THAN THE SENTENCE THAT
THE DEFENDANT RECEIVES FOR OTHER
OFFENSES.

>> COUNSEL, LET ME ASK YOU THIS:
ISN'T IT PART OF THE FRAMEWORK
OF OUR LAW THAT PEOPLE GO TO
COURT WHEN THEY HAVE SUFFERED AN
INJURY OR THEY ARE IN SOME
MANNER AGGRIEVED TO SEEK A
REMEDY FOR THE HARM THAT THEY
HAVE SUFFERED AND TO OBTAIN
RELIEF FROM THAT HARM?
AND I'M JUST STRUGGLING TO
UNDERSTAND HOW THIS, I MEAN, I
DON'T KNOW HOW YOU CHARACTERIZE
THIS.

IS THIS RECREATIONAL LITIGATION?
I'M JUST TRYING TO UNDERSTAND
HOW THIS FITS WITHIN THE, THAT

KIND OF GENERALLY UNDERSTOOD
FRAMEWORK OF THE LAW.
PEOPLE DON'T JUST GO TO COURT TO
PICK AT NITS.
THEY GO BECAUSE THEY HAVE
SUFFERED AN INJURY.
AND IT SEEMS HERE THAT-- I
MEAN, YOU'VE ARTICULATED NO
CLARITY UNDER WHICH THIS
SENTENCE HAS CAUSED AN INJURY TO
YOUR CLIENT.
SO WHAT AM I MISSING ABOUT THAT?
>> WELL, FIRST, I WOULD SAY THAT
THE LAW IS CLEAR THAT A
DEFENDANT HAS A RIGHT TO A LEGAL
SENTENCE.
AND SO I WOULD SUBMIT THAT AN
ILLEGAL SENTENCE IS ADVERSE TO
THE DEFENDANT.
ALSO UNDER THE FIRST DISTRICT'S
RULING YOU'RE ESSENTIALLY TAKING
AWAY OR YOU'RE ESSENTIALLY
GRANTING DISCRETION TO THE TRIAL
COURT TO REFUSE TO IMPOSE A
MANDATORY MINIMUM SENTENCE.
SO IF THE TRIAL COURT FOR SOME
REASON--
>> NO, I DON'T THINK THAT, I
DON'T THINK THAT WOULD BE THE
CASE.
WE WOULD BE SAYING THAT, IN
THOSE CIRCUMSTANCES, THAT'S FOR
THE STATE.
THE STATE HAS SUFFERED THE
INJURY IN THOSE CIRCUMSTANCES,
AND THE STATE WOULD BE THE ONE
TO PURSUE THAT.
>> WELL, I WOULD RESPECTFULLY
SUBMIT THAT THE DEFENDANT HAS A
RIGHT TO A LEGAL FINAL SENTENCE,
AND WITHOUT THAT LEGAL FINAL
SENTENCE THAT IS AGREED EVEN
THOUGH IT WOULD RESULT IN AN
INCREASED SENTENCE.
BECAUSE WHEN UNDER THE FIRST
DISTRICT'S DISCUSSION IF THE
TRIAL COURT CAN DECIDE NOT TO
IMPOSE A MANDATORY MINIMUM AND
THE DEFENDANT HAS NO RIGHT TO
SEEK RELIEF OF THAT, THE STATE

COULD COME BACK AT ANY TIME A
DECADE LATER AND CORRECT THAT
ILLEGAL SENTENCE UNDER RULE
300A.

AND SO THEY'RE ALWAYS AT PERIL.
AND THEN ALSO YOUR CONTRAVENING
THE LEGISLATURE'S EXPLICIT
STATUTORY SCHEME THAT THESE
MANDATORY MINIMUMS ALWAYS BE
IMPOSED BECAUSE THE TRIAL JUDGE
DOES NOT HAVE DISCRETION--

>> THE PERIL HERE, IT SEEMS TO
BE SOMEWHAT INCONSEQUENTIAL IN
LIGHT OF THE FACT THAT YOUR
CLIENT HAS A LIFE SENTENCE.
THIS IS ABOUT A MINIMUM
MANDATORY 10-YEAR SENTENCE, IS
THAT CORRECT?

>> THAT'S CORRECT.

THIS COURT HELD IN McDONALD
THAT A MANDATORY MINIMUM
SENTENCE IS REQUIRED TO BE
IMPOSED EVEN IF IT IS LESS THAN
THE OFFENSES THAT THE DEFENDANT
WILL RECEIVE FOR HIS OTHER
CRIMES.

SO I THINK THE LAW IS CLEAR THAT
REGARDLESS OF WHETHER THE
SENTENCE IS LESS THAN AND MAY
NOT INCREASE THE SENTENCE, IT'S
NONETHELESS ILLEGAL, AND HE HAS
A RIGHT TO HAVE THAT IMPACTED.
ALSO THE COURT IN DUNBAR MADE
CLEAR ON THE FLIP SIDE THAT WHEN
A MANDATORY MINIMUM IS NOT
IMPOSED, IT'S AN
UNCONSTITUTIONAL SENTENCE, AND
THERE'S NOTHING, THERE'S NO
DOUBLE JEOPARDY VIOLATION TO
INCREASE A SENTENCE BECAUSE HE
HAS NO EXPECTATION OF FINALITY
IN THAT SENTENCE.

SO WHILE IT SEEMS STRANGE THAT A
DEFENDANT WOULD SEEK TO HAVE HIS
SENTENCE INCREASED, HE IS
ADVERSELY AFFECTED BY AN ILLEGAL
SENTENCE THAT A STATE CAN COME
BACK IN AND ATTEMPT TO CORRECT
AT ANY TIME UNDER 3800A OR THAT
A COURT COULD AT ANY TIME.

AND SO A DEFENDANT HAS THE RIGHT TO BE SUBJECT TO A LEGAL, FINAL SENTENCE.

>> COUNSEL, LET'S SAY THE COURT UNDERSTANDS YOUR ARGUMENT ABOUT THE IMPORTANCE OF VINDICATING THE IMPORTANCE OF A LEGAL SENTENCE.

LET'S JUST-- CAN WE GET FROM YOU SOME CANDOR ABOUT THE PROCEDURAL IMPLICATIONS OF A CORRECTION OF THE SENTENCE AND LET, YOU KNOW, AGAIN, UNDER THE LIGHTS THAT IT IS ALL LEGAL.

WE'RE ASSUMING THAT POSTULATE. A NEW SENTENCE ISSUES, WHAT ARE THE PROCEDURAL IMPLICATIONS FOR YOUR CLIENT, AND ARE THOSE WHAT'S MOTIVATING THIS LAWSUIT?

>> THE RECORD ISN'T CLEAR AS TO WHAT THE MOTIVATIONS ARE OF THESE DEFENDANTS WHO ARE FILING THESE MOTIONS OTHER THAN TO SAY THAT THEY ARE ENTITLED TO A LEGAL SENTENCE AND THAT'S WHAT THEY'RE SEEKING.

TO ANSWER YOUR QUESTION DIRECTLY, A NEW SENTENCE COULD LIKELY ALLOW THEM TO HAVE-- COLLATERALLY ATTACK THEIR SENTENCE AGAIN.

>> I'M JUST WONDERING WHY NOT BE UP FRONT ABOUT THAT, YOU KNOW? IF THAT'S WHAT YOU'RE SEEKING, I FEEL LIKE YOU SHOULD BE ABLE TO STAND AND SAY SO AND THEN DEFEND THAT ARGUMENT ABOUT WHY THAT SHOULD BE THE REMEDY.

CAN I HEAR AN ARGUMENT ABOUT THAT?

>> WELL, I, I DON'T HAVE-- THE RECORD BELOW DOESN'T, THE RECORD BELOW EARL DID NOT MAKE THAT ARGUMENT, AND HE HAS NOT MADE THAT INTENTION CLEAR.

BUT TO THE EXTENT THAT IS WHAT HAPPENS, IT'S A FUNCTION OF A TRIAL COURT COMMITTING ERROR AND NOT IMPOSING A LEGAL SENTENCE. AND SO THE REMEDY IS FOR TRIAL

COURTS TO IMPOSE MANDATORY
MINIMUM SENTENCES AS THEY ARE
UNQUESTIONABLY REQUIRED TO DO SO
THEY HAVE NO DISCRETION
OTHERWISE.

AND IF THEIR ERROR RESULTS IN A
DEFENDANT BEING ABLE TO AGAIN
COLLATERALLY ATTACK A SENTENCE,
THEN THAT'S ONE REPERCUSSION
THAT SHOULD BE FIXED BY
REQUIRING TRIAL JUDGES TO IMPOSE
THEIR NONDISCRETIONARY
OBLIGATION TO IMPOSE A LEGAL
SENTENCE.

>> LET ME ASK YOU, LET ME ASK
YOU THIS, BECAUSE YOU MENTIONED
EARLIER THAT HE COULD BE
ADVERSELY AFFECTED BY THE FACT
THAT THE STATE COULD COME BACK
ANYTIME LATER AND MOVE TO
CORRECT THE SENTENCE.

HOW WOULD HE BE?

YOU'RE CLIENT WAS SENTENCED TO
LIFE IMPRISONMENT AS A
PRISONER-- REOFFENDER WHICH
MEANS HE HAS TO SERVE DAY FOR
DAY OF HIS LIFE.

SO LET'S SAY THE STATE COMES
BACK TEN YEARS FROM NOW AND FOR
WHATEVER REASON DECIDES TO MOVE
THE COURT TO, YOU KNOW,
REINSTATE THE TENURE OF--

[INAUDIBLE]

HOW IS HE ADVERSELY AFFECTED BY
THAT?

>> WELL, AN ILLEGAL SENTENCE IS
ONE THAT NO JUDGE UNDER ANY SET
OF CIRCUMSTANCES CAN IMPOSE,
WHICH IS WHAT THIS IS.

AND HE WOULD BE ADVERSELY
AFFECTED BY COMING BACK TEN
YEARS FROM NOW AND HAVING TO
IMPOSE AN ADDITIONAL SENTENCE.
IN McDONALD THIS COURT
RECOGNIZES, ACTUALLY, THAT EVEN
THOUGH IT SEEMS THAT IMPOSING A
LESSER SENTENCE THAN THE LIFE
SENTENCE MAY HAVE NO PRACTICAL
EFFECT IN MOST CIRCUMSTANCES,
THERE ARE SOME CIRCUMSTANCES

WHERE THAT COULD HAPPEN.
SO, FOR EXAMPLE, WE HAVE
CONSTITUTIONAL AMENDMENTS ALL
THE TIME OR CHANGES TO THE
LEGISLATURE'S SENTENCING SCHEME
ALL THE TIME.

AND THE EXAMPLE GIVEN IN
McDONALD IS THAT IF THE PRR
SENTENCE IS FOR SOME REASON
VACATED IN THE FUTURE, MAYBE A
STATUTE IS AMENDED THAT SAYS
YOUR LIFE SENTENCE, AFTER A LIFE
SENTENCE YOU SHOULD BE ABLE TO
CHALLENGE THAT AND, YOU KNOW,
GET OUT IN LESS TIME, THAT PRR
SENTENCE COULD BE VACATED, AND
THEN HE WOULD STILL HAVE TO
SERVE THE MANDATORY MIN
SENTENCE.

SO YOU NEVER KNOW WHAT'S GOING
TO HAPPEN TO THE OTHER SENTENCE,
YOU DON'T KNOW WHAT'S GOING TO
HAPPEN IN THE FUTURE, AND SO HE
HAS A RIGHT TO A FINAL LEGAL
SENTENCE THAT HE KNOWS IS GOING
TO, HE KNOWS THE TERMS AND HE
KNOWS WHAT'S GOING TO HAPPEN AND
HE KNOWS WHAT THE PARAMETERS OF
IT ARE AS OPPOSED TO BEING AT
ARE RISK OF HAVING THE STATE OR
THE COURT--

>> THE IDEA THAT HE DOESN'T
KNOW, THAT SOMEHOW THIS GIVES
HIM SOMETHING HE DOESN'T KNOW, I
MEAN, HE'S ASSERTING, YOU'RE
ASSERTING THAT THE STATE COULD
DO IT.

SO HE KNOWS WHAT-- THE
CORRECTNESS OF THAT.
BUT HE'S ASSERTING THAT THAT
COULD BE DONE AT ANY POINT BY
THE STATE.

SO I DON'T KNOW WHAT HE GAINS BY
HAVING IT DONE NOW AS OPPOSED TO
POTENTIALLY BE DONE LATER.
I MEAN, THIS SEEMS TO BE A VERY,
A VERY FANCIFUL ADVANTAGE FOR
HIM, TO GET THAT AT THIS POINT
AS OPPOSED TO BEING EXPOSED TO
THE POTENTIAL OF IT LATER.

WHAT AM I MISSING ABOUT THAT?

>> WELL, I THINK YOU HAVE TO GO TO THE MAIN LANGUAGE OF RULE 3800A, AND THAT PLAIN LANGUAGE ALLOWS A DEFENDANT TO CHALLENGE A ILLEGAL SENTENCE AT ANY TIME AS WELL AS THE STATE.

IT DOESN'T LIMIT THE DEFENDANT'S RIGHT TO SEEK AN-- TO SEEK TO CORRECT HIS SENTENCE ONLY IF HE'S ADVERSELY AFFECTED.

THERE'S NO RIGHT ANYTHING THERE OR THERE'S NO REQUIREMENT IN THERE THAT HE BE ADVERSELY AFFECTED.

IT SAYS THAT HE CAN SEEK TO CORRECT HIS SENTENCE AT ANY TIME, AND THAT'S EXACTLY WHAT HE'S DOING.

IT'S A RIGHT THAT HE HAS.

>> COUNSEL, ISN'T IT-- I THINK THIS SORT OF GET TO THE CHIEF JUSTICE'S QUESTION THOUGH.

THE TEXT OF THE RULE TALKS ABOUT WHERE THE RECORDS DEMONSTRATE ON THEIR FACE AN ENTITLEMENT TO THAT--

[INAUDIBLE]

AND ISN'T IT SORT OF JUST A BACKGROUND PRINCIPLE OF LAW THAT IN ORDER TO BE, QUOTE-UNQUOTE, ENTITLED TO RELIEF THAT YOU ACTUALLY HAVE TO BENEFIT FROM THE RELIEF OF?

I MEAN, WHY-- I UNDERSTAND SORT OF, I MEAN, IT JUST SEEMS LIKE YOU'RE KIND OF IGNORING, YOUR ARGUMENT IGNORES THE CONTEXT IN WHICH WE WOULD READ THESE WORDS IN TERMS OF VINDICATING, YOU KNOW?

YOU'RE ENTITLED TO THINGS THAT WOULD MAKE A DIFFERENCE FOR YOU AS OPPOSED TO HAVING COURTS LITIGATE CASES THAT AREN'T GOING TO HAVE ANY PRACTICAL CONSEQUENCE.

>> WELL, I THINK YOU HAVE TO COMPARE IN THAT INSTANCE THE LANGUAGE OF 3800A VERSUS 3800B.

3800B SPECIFICALLY SAYS THE STATE CAN ONLY APPEAL A SENTENCING ERROR THAT IS HARMFUL TO THE DEFENDANT.

THAT LANGUAGE IS NOT IN 300A. SO WHAT WE'RE LEFT WITH HERE IS THE PLAIN AND UNAMBIGUOUS LANGUAGE OF A STATUTE THAT ALLOWS HIM TO SEEK TO CHALLENGE AND CORRECT HIS ILLEGAL SENTENCE.

THERE'S NO BAR UNDER THE CURRENT LAW THAT ALLOWS HIM TO DO THIS. EVEN IF IT RESULTS IN AN INCREASED SENTENCE.

AND THIS COURT IN DUNBAR RECOGNIZED THAT THE FAILURE TO IMPOSE A MANDATORY MINIMUM RESULTS IN AN ILLEGAL SENTENCE, AND HE SHOULD BE RESENTENCED EVEN IF IT RESULTS IN A HARSHER SENTENCE.

SO THE COURTS RECOGNIZE-- A ALTHOUGH NOT PRECISELY IN THIS SCENARIO-- IT'S RECOGNIZED THAT AN ILLEGAL SENTENCE MUST BE CORRECTED, THE DEFENDANT HAS A RIGHT TO A LEGAL SENTENCE, AND THE RULE DOES NOT PRECLUDE OTHERWISE.

I DON'T KNOW, I WOULD SUBMIT THAT THE RULE COULDN'T BE CHANGED TO REQUIRE AN ADVERSE EFFECT WHICH COULD BE ONE REMEDY THE COURT MIGHT CONSIDER BECAUSE, AGAIN, YOU WOULD THEN EFFECTIVELY BE TAKING THE DISCRETION TO REFUSE A MANDATORY MINIMUM SENTENCE WHICH IS EXACTLY CONTRARY TO THE LEGISLATURE'S SENTENCING SCHEME WHICH REQUIRES THAT A MANDATORY MINIMUM SENTENCE BE IMPOSED UNDER EVERY IS CIRCUMSTANCE EVEN IF IT'S A LESSER SENTENCE THAN WHAT THE DEFENDANT IS GOING TO RECEIVE FOR HIS OTHER OFFENSES. HE HAS A RIGHT TO THAT LEGAL SENTENCE.

THE STATE HAS ATTEMPTED TO

CATEGORIZE THE ERRORS IN THIS CASE AS UNLAWFULLY LENIENT OR INCOMPLETE.

AND, RESPECTFULLY, THOSE ARE NOT SUPPORTED BY THE LAW.

EVERY CASE THAT THE STATE CITES HAS NOTHING TO DO WITH THE IMPOSITION OF A MANDATORY NONDISCRETIONARY SENTENCE.

THOSE CASES DEALT WITH WHERE THE TRIAL COURT HAD SOME SORT OF DISCRETION IN IMPOSING THE SENTENCE.

SO, FOR EXAMPLE, IN ONE CASE THE COURT IMPOSED A DOWNWARD DEPARTURE SENTENCE FROM THE SENTENCING GUIDELINES WITHOUT PROVIDING WRITTEN REASONS.

AND THE COURT HELD THAT INCOMPLETE AS OPPOSED TO ALL LEGAL BECAUSE IT IS A SENTENCE THAT THE JUDGE COULD HAVE IMPOSED HAD IT PROVIDED THE WRITTEN REASONS.

THE SAME IS TRUE FOR THE OTHER CASES THAT THE STATE CITES AS SUPPOSEDLY INCONSISTENT OR INCOMPLETE SENTENCES.

AND NONE OF THOSE CASES APPLY HERE.

IT'S UNDISPUTED THAT THE TRIAL COURT HAD NO DISCRETION BUT TO IMPOSE A MANDATORY MINIMUM SENTENCE AND THAT GIVES THE RIGHT TO HAVE A SENTENCE CORRECTED.

AND THAT THE TRIAL COURT SHOULD NOT BE GIVEN THE DISCRETION TO REFUSE TO IMPOSE A MAPPED TOUR MINIMUM SENTENCE OR THAT THE STATE HAS DISCRETION TO HOW THE DEFENDANT TO SERVE LESS THAN A MANDATORY OR TO NOT HAVE A MANDATORY MINIMUM SENTENCE.

SO I UNDERSTAND THE COURT'S CONCERN OF RECREATIONAL FILINGS AND NOT, AND WHY WOULD DEFENDANTS BE SEEKING TO DO THIS WHEN IT'S ONLY GOING TO INCREASE THEIR SENTENCE.

BUT THIS LAW IS CLEAR FROM THIS COURT THAT THEY HAVE A RIGHT TO A FINAL LEGAL SENTENCE.

AND NOTHING IN THE CURRENT LAW AND NOTHING UNDER THE MAIN LANGUAGE OF RULE 3800A LIMITS THAT OR REQUIRES THAT HE BE ADVERSELY AFFECTED.

IF THE COURT HAS NO OTHER QUESTIONS, I'LL RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL.

>> COUNSEL?

>> MR. CHIEF JUSTICE, ASSOCIATE JUSTICES, MAY IT PLEASE THE COURT, MY NAME IS CHARLIE LEE. I REPRESENT THE STATE OF FLORIDA.

THE ISSUE IN THIS CASE IS NOT WHETHER EARL'S SENTENCE WAS ALL LEGAL OR NOT.

THE QUESTION IS WHETHER HIS, THE CIRCUIT COURT'S DENIAL OF HIS 3800 MOTION WHICH WAS PURELY ACADEMIC, AS JUSTICE CANADY, CHIEF JUSTICE CANADY POINTED OUT, RECREATIONAL, AND IT WAS POINTLESS.

DOES HE HAVE A RIGHT TO APPEAL THAT POINTLESS MOTION, AND THE ANSWER SHOULD BE NO.

>>COUNSEL, WASN'T THE, DOESN'T THE-- I MEAN, TO VIEW IT AS PURELY ACADEMIC, IT SEEMS LIKE YOU GET BACK THOUGH TO THE QUESTION OF WHETHER THERE'S AN ENTITLEMENT TO BEING OR YOU KNOW, THE LEGAL SENTENCE.

IT DOES SEEM LIKE, IT DOES SEEM LIKE IF THE COURT ERRED BY NOT GIVING THAT RELIEF, THAT CORRECTING THE ERROR WOULDN'T BE ACADEMIC ANY MORE THAN THE UNDERLYING ERROR--

>> TO ANSWER YOUR QUESTION, JUSTICE MUNIZ, HE HAS A RIGHT TO A LEGAL SENTENCE BUT NOT THE PERFECT SENTENCE.

IN THIS CAUSE IT'S NOTHING MORE THAN A TECHNICALITY BECAUSE IT

DOESN'T CHANGE HIS SENTENCE AT ALL.
HE'S SERVING PRR LIFE SENTENCES ON BOTH COUNTS.

ANOTHER--

>> SO, SO BY THAT LOGIC THOUGH WOULD THERE, WOULD THERE BE NO ERROR AT THE TRIAL COURT LEVEL TO DENY THIS RELIEF?

>> NO, THERE WOULD BE NO ERROR. HIS SENTENCE IS FINAL, EARL'S SENTENCE IS FINAL.

RULE 300A TALKS ABOUT THE COURT'S POWER TO CORRECT--

[INAUDIBLE]

RULE 300B TALKS ABOUT HOW THE STATE WOULD GO ABOUT DOING THAT. IT SAYS FOR THE STATE TO CORRECT AN ILLEGAL SENTENCE, IT HAS TO BENEFIT THE DEFENDANT.

SO THE STATE IS COMPLETELY BARRED FROM EVER CHANGING EARL'S SENTENCE.

THE FACT THAT EARL DIDN'T GET WHAT HE WAS SUPPOSED TO GET AS FAR AS A MANDATORY SENTENCE TO HAVE 10-20-LIFE STATUTE, THE STATE CAN'T DO ANYTHING ABOUT THAT AFTER APPEAL.

DUNBAR ALSO TALKS ABOUT THAT, AND DUNBAR HINTS AT THE FACT THAT THE TRIAL COURT DOESN'T HAVE AN UNLIMITED POWER THROUGH 3800A EITHER.

DUNBAR TALKS ABOUT THE TRIAL COURT HAVING THE ABILITY TO CHANGE DUNBAR'S SENTENCE AND IMPOSE A MINIMUM MANDATORY SENTENCE UP TO THE POINT THAT THE STATE'S TIME FOR APPEAL HAS RUN OUT.

I CITED SOME OTHER CASES WHERE THEY TALKED ABOUT-- AND THAT'S ONE OF THE INCOMPLETE SENTENCE CASES-- IT TALKED ABOUT THE COURT'S ABILITY TO CHANGE A DEFENDANT'S SENTENCE WITHIN THE 60 DAYS UNDER RULE 3800C. BUT TO SAY THAT THE COURT, EIGHT YEARS DOWN THE ROAD WHEN THEY

DECIDED TO FILE THE MOTION,
WOULD HAVE ANY POWER TO ADD,
THAT SEEMS THAT IT WOULD RAISE,
THAT WOULD RAISE DOUBLE JEOPARDY
ISSUES THAT WOULD NOT ALLOW THE
COURT TO DO THAT.

SO AS FAR AS THE STATE'S
CONCERNED AND THE COURT'S
CONCERNED, THE SENTENCE IS
FINAL, IT'S LEGAL.

IT'S INCOMPLETE.

IT MIGHT NOT CONFORM WITH EVERY
ASPECT OF THE LAW, BUT ONE OF
THE POINTS I'D LIKE TO MAKE IS
NONE OF THE DRAFTERS OF THE
10-20-LIFE OF STATUTE WOULD BE
UPSET BY EARL'S SENTENCE.

HE'S SERVING A MANDATORY LIFE
SENTENCE ON BOTH COUNTS.

THE FACT THAT A PROVISION WAS
NOT ADDED TO--

>> YEAH, THE PROBLEM, THE
CONCERN I HAVE WITH IT, I MEAN,
AND IT MAY NOT BE MUCH OF A
CONCERN, BUT THE THIRD DCA AND
THE FIFTH DCA CONCLUDED THAT FOR
PURPOSES OF 3.800 SUB A, THIS IS
AN ILLEGAL SENTENCE.

IN THE 10-20-LIFE STATUTE, IT
REQUIRES A MANDATORY MINIMUM.
NOW, I DON'T GET FROM THE RECORD
HOW THIS HAPPENED.

I THINK THE JUDGE THAT PRESIDED
OVER THE TRIAL AND DID THE
INITIAL DID THE INITIAL
SENTENCING, I GUESS HE RETIRED
AND A SECOND JUDGE CAME LATER.
BUT HOW WAS IT THAT THIS GOT BY
THE PROSECUTOR IN THE COURTROOM
WHEN THE SENTENCING WAS HANDED
DOWN?

USUALLY PROSECUTORS JUMP ON
THIS.

>> RIGHT, YOUR HONOR.

IT'S NOT CLEAR FROM THE RECORD.
THERE'S ONLY ONE PAGE OF
SENTENCE IN TRANSCRIPT, AND THEN
THE WRITTEN SENTENCE.

THE WRITTEN SENTENCE, IT WAS
EITHER OMITTED AS A SCRIVENER'S

ERROR OR JUST NOT PUT IN THERE.
THERE WAS A JURY FINDING ON THE
ROBBERY THAT HE HAD A WEAPON, SO
IT SHOULD HAVE BEEN-- THE
PROSECUTOR COULD HAVE APPEALED
THIS HAD THEY CAUGHT IT.
BUT IT'S NOT CLEAR.
FROM THE ONE PAGE OF SENTENCING,
THE JUDGE SIMPLY DOESN'T MENTION
IT AS FAR AS THE ROBBERY COUNT.
BUT--

>> LET ME--

>> SORRY.

>> NO, GO AHEAD.

>> A QUESTION, I MEAN, THE RULE
OF LAW IS BASICALLY WHAT WE LIVE
UNDER, AND THE LAW HERE IS THAT
THE 10-20-LIFE STATUTE'S A BIG
DEAL.

IT WAS A BIG DEAL WHEN IT WAS
ENACTED.

PUTTING, YOU KNOW, REQUIRING
MANDATORY MINIMUMS WITH THE USE
OF A FIREARM.

AND ISN'T THAT A BIGGER QUESTION
HERE?

I MEAN, JUST FOR THE SAKE OF
CONSISTENCY, JUST TO MAINTAIN
THE RULE OF LAW THAT IT REQUIRES
AND, THEREFORE, WE SHOULD HAVE
IT?

>> I AGREE.

I THINK WHAT YOUR HONOR IS
GETTING AT IS WHETHER THERE'S
ONE DEFINITION OF A LEGAL
SENTENCE AND WHAT AN ILLEGAL
SENTENCE MEANS UNDER 3800A.
AND IT'S NOT DEFINED IN THE
RULE.

AND CARTER TALKS ABOUT, CARTER'S
DEFINITION-- WELL, THE DECISION
IN STATE V. CARTER, CARTER V.
STATE TALKS ABOUT A SENTENCE, AN
ILLEGAL SENTENCE BEING THE KIND
OF JUDGMENT NO JUDGE WOULD
INFLICT UNDER THE ENTIRE BODY OF
SENTENCING LAW UNDER ANY FACTUAL
CIRCUMSTANCE.

IN CARTER THAT WAS HABITUAL
FELONY OFFENDER WHERE THE

STATUTE DIDN'T PROVIDE IT.
SO THERE WAS NO STATUTORY
AUTHORIZATION TO IMPOSE THE
SENTENCE AS OPPOSED TO CARTER.
THAT'S NOT THE CASE HERE.
THE STATUTE CALLED FOR MORE THAN
WHAT THE COURT GAVE.
CARTER'S THE OPPOSITE.
THERE WAS NO STATUTE TO
AUTHORIZE THE TRIAL COURT'S
SENTENCE.
THERE'S NOT A ONE SIZE FITS ALL,
AND THIS IS WHERE I THINK MY
COLLEAGUE AND I DISAGREE THE
MOST.
THERE'S NOT A ONE-SIZE-FITS-ALL
DEFINITION IN EVERY CIRCUMSTANCE
ACROSS THE ENTIRE BODY OF
CRIMINAL LAW.
>> BUT THE STATE, THE STATE'S
POSITION IS THAT THE SENTENCE IS
NOT ILLEGAL?
IT'S IMPERFECT BUT NOT ALL
LEGAL?
IS THAT YOUR POSITION?
>> YOUR HONOR, IT'S NOT ILLEGAL
FOR THE PURPOSES OF RULE 3800A.
>> BUT IT'S ILLEGAL FOR OTHER
PURPOSES?
FOR WHAT PURPOSE IS THE SENTENCE
ILLEGAL?
>> IT'S UNLAWFUL.
I MEAN, I CITED A JUDGE--
>> UNLAWFUL BUT NOT ILLEGAL?
NOW YOU'RE LOSING ME.
IS THE SENTENCE LEGAL OR NOT
LEGAL FROM THE STATE'S
PERSPECTIVE?
>> IT'S LEGAL.
IT SIMPLY DOES NOT CONFORM WITH
THE LAW.
>> OKAY.
SO IT'S, SO IF WE AGREE--
[LAUGHTER]
THAT IT'S LEGAL BUT IT DOESN'T
CONFORM WITH THE LAW, THEN IT
WOULD SEEM TO ME THEN THE
REMAINING QUESTION IS WHETHER OR
NOT THE MOTION WAS PROPER.
SO WHY DON'T WE GO TO THE PLAIN

LANGUAGE OF 3800B, THE LAST SENTENCE OF IT, RIGHT?

MOTIONS MAY BE FILED BY THE STATE UNDER THIS SUBDIVISION ONLY IF THE CORRECTION IN THE SENTENCING ERROR WOULD BENEFIT THE DEFENDANT OR TO CORRECT A SCRIVENER'S ERROR.

HOW DO YOU DEAL WITH THE FACT THAT THE WORDS BY THE STATE ARE IN THERE AND THAT THE LEGISLATURE COULD HAVE EXCLUDED THOSE WORDS IF IT WANTED TO MAKE THIS A BILATERAL PROVISION?

>> WELL, I'D AGREE WITH YOU, YOUR HONOR.

I'M SORRY.

I DON'T KNOW WHY THAT WAS OMITTED.

HOWEVER, IT DOESN'T MAKE SENSE THAT A DEFENDANT COULD, WOULD HAVE MORE RIGHTS THAN, SAY, THE COURT OR THE STATE TO CHANGE HIS SENTENCE TEN YEARS DOWN THE ROAD.

I'M NOT SURE WHY THAT WAS OMITTED, AND I'M NOT SURE WHY-- I DON'T INTERPRET RULE 3800B TO PROVIDE THE DEFENDANTS WITH THAT, THE TYPE OF POWER THAT'S GIVEN TO THEM BY CLERKS SOLOMON AND VARGAS WHERE THEY'D HAVE UNLIMITED ABILITY AT ANY TIME TO CHALLENGE THEIR SENTENCE.

>> I DON'T, SEE, I DON'T READ 3800B AS GIVING A DEFENDANT ANY POWER.

IT'S REMOVING A POWER OF THE STATE, RIGHT?

IT SAYS MOTIONS MAY BE FILED BY THE STATE ONLY IF SOMETHING IS TRUE.

NO SUCH RESTRICTION IS APPLIED BY THE STATUTE TO THE DEFENDANT.

I GUESS MY QUESTION TO YOU IS WHAT DO YOU TAKE FROM THAT?

SHOULD WE READ IN A NEW SENTENCE THAT SAYS, HOWEVER, IN THE CASE OF A DEFENDANT THIS IS NOT TRUE? IS THAT WHAT YOU'RE ASKING US TO

DO?

>> NO, YOUR HONOR.

I THINK WHEN THE RULE WAS DRAFTED BEFORE THE U.S. SUPREME COURT HELD THAT ANY RESENTENCING CAN OPEN UP FEDERAL HABEAS, OPEN UP THE TIME BAR FOR FEDERAL HABEAS CONDITIONS, IT DIDN'T CONSIDER THAT.

THE RULE, I DON'T THINK, CONSIDERED THE FACT THAT DEFENDANTS WOULD TRY TO GET A MORE SEVERE SENTENCE LIKE IN EARL IS.

THE ONLY REASON THEY'RE TRYING TO DO IS THIS IS TO OPEN UP CLAIMS.

PERHAPS THE RULE COULD BE CHANGED TO KEEP UP WITH THAT, THIS TREND, BUT I DON'T THINK THAT THE RULE WAS DESIGNED WITH THAT TREND IN MIND.

I THINK MR. EARL'S USE--

>> THIS GOES BACK TO THE SAME QUESTION I ASKED MS. DAVIS.

I WISH THE PARTIES COULD JUST BE CANDID ABOUT THIS.

IF THAT REALLY IS WHAT'S AT STAKE HERE, LET'S JUST AGREE THIS IS GOING TO GIVE THE DEFENDANT A FRESH SET OF DEADLINES IN ACTUALITY.

HOW SHOULD THAT CHANGE THE ASPECT AT ALL FROM THE STATE'S PERSPECTIVE?

>> IT SHOULDN'T, YOUR HONOR.

RULE 3800-- AND I KEEP SAYING MR. EARL'S MISUSED 3800, AND HE DID IT IN A NUMBER OF WAYS.

RULE 3800 WAS DESIGNED TO REPLACE HABEAS CORPUS RISKS IN FLORIDA.

AND HABEAS CORPUS IS DESIGNED TO PREVENT DEFENDANTS FROM SERVING AN UNLAWFUL DETENTION.

AND MR. EARL'S IS NOT SERVING AN UNLAWFUL DETENTION.

AND-- JUST A MOMENT, YOUR HONOR.

SO THE FACT THAT, YOU KNOW, I

CITED THE NEW CASE, FRANCIS, AND FRANCIS TALKS ABOUT IN THAT CASE THE DEFENDANT HAD A THREE-PART PLAN AND INVALIDATING HIS SENTENCE WAS PART OF THAT PLAN. AND THE SAME THING GOES FOR EARL.

IN RULE 3800, AS I CITED IN MY BRIEF, IT IS DESIGNED TO ATTACK THE SENTENCE U.S., NOT THE UNDERLYING CONVICTION.

>> IN THE ATTACK ON THE SENTENCE IN THE 3800, DOES THE DOCTRINE OF HARMLESS ERROR EVER COME INTO PLAY?

>> I THINK IT MIGHT, YOUR HONOR. IN THIS CASE IT'S NOT THAT MR. EARL'S WAS NEGATIVELY AFFECTED OR-- HE WASN'T AFFECTED AT ALL, MR. EARL'S SENTENCE WON'T CHANGE.

EVEN IF HE'S RESENTENCED, HIS PRR LIFE SENTENCE-- I THINK ANY ERROR IN THE COURT'S OMISSION OF THE 10-20-LIFE SENTENCE, AS JUSTICE LABARGA POINTED OUT, IT'S A SERIOUS OMISSION. IT SHOULDN'T HAVE HAPPENED, BUT SINCE IT WON'T CHANGE HIS SENTENCE, HE SHOULDN'T BE ENTITLED TO HAVE HIS, BE RESENTENCED UNDER 3800A.

>> MR. LEE, CAN I ASK A QUESTION?

>> YES, YOUR HONOR.

>> I'M INTERESTED IN SORT OF THE DISCUSSION OF WHETHER THIS IS AN ILLEGAL SENTENCE IN THE SPECIAL CONTEXT OF 3800A, AND I THINK ONE OF THE PROBLEMS WITH THIS CASE IS THAT ILLEGAL SENTENCE MEANS SOMETHING VERY DIFFERENT THERE THAN IT MEANS IN OTHER CONTEXTS.

BUT UNDER-- IN CARTER AND OTHER CASES, WE SAY IT'S A SENTENCE THAT NO JUDGE WOULD GIVE UNDER ANY SET OF FACTUAL CIRCUMSTANCES.

AND DOES THE FACT THAT A TRIAL

JUDGE ROUTINELY GIVES AND GIVE A SENTENCE WITHOUT A MINIMUM MANDATORY IF THE STATE WAIVES IT, I MEAN, THAT WOULD SEEM LIKE A FACTUAL CIRCUMSTANCE WHERE A SENTENCE COULD BE IMPOSED THAT DID NOT INCLUDE A MINIMUM MANDATORY AND HAPPENS ALL THE TIME.

>> I AGREE, YOUR HONOR.

>> WHY IS THIS EVEN AN ILLEGAL SENTENCE IF IT'S ONE THAT COULD BE IMPOSED AND IS IMPOSED REGULARLY THROUGHOUT THE STATE OF FLORIDA?

>> I AGREE, YOUR HONOR.

IN CASES WHERE THE COURT FAILS TO CHARGE THE JURY CORRECTLY ON 10-20-LIFE, IT'S NOT IMPOSED. I'VE CITED CASES WHERE THE COURT HASN'T IMPOSED

STATUTORILY-MANDATED SEX OFFENDER PROBATION.

THAT'S A STATUTE THAT THEY HAVE TO FOLLOW THAT THEY DON'T. AND COURTS HAVE FOUND THAT'S NOT AN ILLEGAL SENTENCE.

MANDATORY RESTITUTION PROVISIONS, COURTS HAVE FOUND IN THAT'S NOT AN ALL LEGAL SENTENCE.

SO NOT EVERY TIME-- THERE'S MANY CASES WHERE THE STATUTES HAVE CALLED FOR A CERTAIN SENTENCE.

THAT SENTENCE HAS NOT BEEN IMPOSED.

WHETHER IT'S AN OMISSION BY THE COURT, THE STATE OR MAYBE AGREED UPON BY THE PARTIES, IT'S NOT AN ILLEGAL SENTENCE.

>> BUT IN INSTANCES IN WHICH A TRIAL JUDGE AND PROSECUTORS AGREE NOT TO IMPOSE A REQUIRED MANDATORY MINIMUM SENTENCE, TYPICALLY THAT'S AS A RESULT OF A NEGOTIATED PLEA.

AND WHAT TYPICALLY HAPPENS IN THOSE CASES IS THAT THE STATE COMES IN WITH AN AMENDED--

AMENDED INFORMATION THAT DOES NOT CONTAIN THE LANGUAGE THAT REQUIRES A MANDATORY MINIMUM. AND TYPICALLY THAT INFORMATION'S NOT FILED UNTIL AFTER THE JUDGE HAS ACCEPTED THE PLEA AND THEN THE STATE FILES THAT. BUT THAT'S THE WAY THAT'S USUALLY DONE.

I MEAN, THE STATE DOESN'T FILE, THE DEFENDANT DOES NOT PLEAD GUILTY TO A CHARGE THAT REQUIRES A MANDATORY MINIMUM.

NOW, THIS IS AFTER TRIAL IN OUR CASE TODAY, AM I CORRECT?

>> THAT IS CORRECT BUT TO ANSWER YOUR QUESTION WHEN CARTER TALKS ABOUT A SENTENCE THAT CANNOT BE IMPOSED UNDER FACTUAL CIRCUMSTANCES THE PLEA ARRANGEMENT IS ONE OF THE FACTUAL CIRCUMSTANCES.

THERE ARE FACTUAL CIRCUMSTANCES AND THE LAW DOES ALLOW FOR MISTAKES IN THE PLEA AGREEMENT WHERE IF EARL ENTERED A PLEA THEY WOULD HAVE FILED AMENDED INFORMATION.

FACT THAT REALLY HAPPEN TO GET A ROLLOUT OF THE PUNISHMENT BASED ON THE CRIME HE COMMITTED.

THAT MAKES HER A LAPSE IN ITS SOMETHING THE COURT SHOULD DO UNDER CERTAIN FACTUAL CIRCUMSTANCES, THE CIRCUMSTANCES DIDN'T EXIST.

>> IT WOULD NOT BE AN ILLEGAL SENTENCE, THE LANGUAGE REQUIRING A MANDATORY MINIMUM.

IT WOULD NOT BE AN ILLEGAL SENTENCE, REQUIRING A MANDATORY MINIMUM.

>> NOT THE DEFINITION OF CARTER BECAUSE IT IS SOMETHING THAT CAN'T HAPPEN.

A CARTER THAT WASN'T -- I WOULD LIKE TO MAKE A POINT.

RULE 9140 TALKS ABOUT DENIAL AND NOT DENY ANY RELIEF.

SUPPLEMENTING THE RECORD, I

SUPPLEMENTED THE RECORD, SECTION 9240, THAT IS THE STATUTE GOVERNING JURISDICTIONS ON CRIMINAL APPEALS AND 9140, REQUIRES A BEARER BUT I ASK THIS POINT TO READ THOSE THAT 9140 REQUIREMENT FOR RELIEF, WITH ERROR, EARL WAS NOT ENTITLED TO APPEAL BECAUSE HE DIDN'T SUFFER PREJUDICIAL ERROR.

THE JUSTICES HAVE ANY QUESTIONS I ASK THIS COURT TO AFFIRM THE FIRST DISTRICT DECISION IN EARL THAT FINDS POINTLESS MOTION TO CORRECT SENTENCE IS NOT APPEALABLE.

>> COUNSEL?

>> THERE IS NOT ONE CASE THAT WE HAVE FOUND, AND IF RECORD INCLUDING THIS ONE SAYS THE FAILURE TO IMPOSE A MANDATORY MINIMUM SENTENCE IS AN ILLEGAL SENTENCE.

I DON'T THINK WE CAN QUESTION THE SENTENCE IS ILLEGAL.

WE GO TO THE PLAIN LANGUAGE OF 308 A WHICH IS THE APPLICABLE RULE UNDER WHICH HE SOUGHT RELIEF HERE AND THAT DOES NOT -

>> ARE ANY OF THOSE CASES?

>> YES THEY ARE.

I CAN FILE A SUPPLEMENTAL AUTHORITY ON THIS BUT THERE IS THE STATE VERSUS JIMENEZ, 308 CASE GUARD TRAIL, IN GUARDTRAIL THOSE WERE 300 A CASES THAT THEY HAD DIFFERENT FACT AND THE COURT FOUND IT WASN'T ILLEGAL BECAUSE THE COURT HAD DISCRETION TO ENTER THE SENTENCE BUT THERE ARE 308 CASES WHERE MCDONALD MAY HAVE BEEN ONE.

THEY ACKNOWLEDGED THIS IS AN ILLEGAL SENTENCE THAT HAS TO BE CORRECTED.

A TRIAL JUDGE HAS NO DISCRETION BUT TO ENTER A MANDATORY MINIMUM SENTENCE AND THE FAILURE TO DO THAT RENDERS THE SENTENCE ILLEGAL.

>> LET ME GO BACK TO A POINT
RAISED BY JUSTICE PAULSON.
WHY IS IT FROM THE PERSPECTIVE
OF YOUR CLIENT A HARMLESS ERROR?

>> TWO REASONS.

FIRST THERE IS NO LAW THAT I AM
AWARE OF THAT I HAVE SEEN THAT
ALLOWS A HARMLESS ERROR ANALYSIS
TO BE APPLIED TO AN ILLEGAL
SENTENCE WAS ALL OF THE CASES OF
THIS COURT AND OTHERS HAVE HELD
THERE IS AN ILLEGAL SENTENCE
REQUIRES THEM TO BE RESENTENCED.
THE NEXT ANSWER IS YOU DON'T
KNOW WHAT IS GOING TO HAPPEN IN
THE FUTURE.

HE HAS A LIFE SENTENCE OR TWO
LIFE SENTENCES BUT YOU DON'T
KNOW WHAT WILL HAPPEN IN THE
FUTURE.

SOMETHING COULD VACATE THAT AND
YOU DON'T HAVE THE MANDATORY
MINIMUM IN PLACE.

HE HAS A RIGHT TO A FINAL LEGAL
SENTENCE.

UNLESS THE LEGISLATURE WANTS TO
ALLOW THE TRIAL COURT TO HAVE
SOME DISCRETION DECIDING WHETHER
OR NOT TO IMPOSE THE MANDATORY
MINIMUM SENTENCE WHICH IT DOES
NOT HAVE RIGHT NOW THEN THE
SENTENCE IS ILLEGAL AND HAS TO
BE CORRECTED.

OTHERWISE YOU ARE GIVING THE
TRIAL COURT, JUSTICE LAWSON
MENTIONED THIS HAPPENS ALL THE
TIME, THAT IS GIVING THE TRIAL
COURT DISCRETION WHETHER TO
IMPOSE A MANDATORY MINIMUM
SENTENCE AND THAT IS NOT
ALLOWED.

THE STATUTE IS VERY CLEAR AND
THE CASES CONSTRUING THE STATUTE
IS CLEAR.

>> THAT IS CONFLATING THE ISSUE
WITH WHETHER IT CAN BE REMEDIED,
A DEFENDANT CAN ONLY BE WORSE
OFF IF THE SENTENCE CHANGES.
YOU KEEP TALKING ABOUT PLAIN
LANGUAGE BUT THE RULE DOESN'T

SAY THAT YOU CAN CORRECT AN ILLEGAL SENTENCE AND SEEK RELIEF EVEN IF RELIEF WOULD BE ADVERSE, OUR DRAFTERS OF POOLS AND STATUTE SUPPOSED TO DRAFT AROUND THESE POSSIBILITIES OR ASSUME PEOPLE ARE GOING TO BE SEEKING RELIEF FOR THINGS TO MAKE THEM WORSE OFTEN HAVE TO PREEMPTIVELY SAY YOU CAN'T DO THAT?

>> UNDER OUR LAW AS CURRENTLY WRITTEN UNDER THE CASE LAW THE STATUTE AND THE RULES THERE IS NOTHING THAT SAYS AN ILLEGAL SENTENCE DOES NOT NEED TO BE CORRECTED BECAUSE IT IS HARMLESS.

THERE IS NOTHING THAT SAYS THAT. ALL THE CASES SAY AN ILLEGAL SENTENCE MUST BE CORRECTED. UNLESS THE LAW CHANGES WHICH WOULD EFFECTIVELY GIVE DISCRETION TO THE TRIAL COURT AND THE LEGISLATURE COULD CHANGE THAT JUST LIKE IN THE FRANCIS CASE.

>> THAT IS PROBABLY BECAUSE IN THOSE CASES THEY DIDN'T SEE SOMETHING THAT WOULD BE ADVERSE.

>> THAT MAY BE A CHANGE IN THE LAW THAT IS NOT HOW THE LAW EXISTS RIGHT NOW BUT LET ME MENTION, DUNBAR, ALLEN AND JIMENEZ, ALLEN IS FROM THE 50 SIXTH DCA AND JIMENEZ IS FROM THE FOURTH DCA THEY RECOGNIZED OPPOSING COUNSEL MENTIONED DOUBLE JEOPARDY, THEY MENTIONED EXPLICITLY HOLD IT DOES NOT VIOLATE DOUBLE JEOPARDY WHEN A MANDATORY MINIMUM SENTENCES NOT BEEN IMPOSED, THE SENTENCE IS ILLEGAL AND THE RESULT IS AN INCREASED SENTENCE.

THAT DOESN'T VIOLATE DOUBLE JEOPARDY.

YOU HAVE TO IMPOSE A LEGAL SENTENCE AND I SUBMIT APPLYING PLAIN LANGUAGE OF THE RULE AND THE FACT THERE IS NO LAW THAT

SAYS THERE CAN BE HARMLESS ERROR
FOR AN ILLEGAL SENTENCE REQUIRES
THIS SENTENCE BE VACATED AND HE
BE RESENTENCED, UNLESS IN A
FUTURE INSTANCE THE LAW CHANGES
AND SO WE WOULD ASK TO QUASH THE
DECISION UNDER REVIEW AND
APPROVE THE DECISION IN VARGAS
AND SO ON.
>> THANK YOU BOTH FOR YOUR
ARGUMENTS.