

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.

CHIEF JUSTICE CHARLES CANNADY PRESIDING.

>> WELCOME TO THE SESSION OF THE FLORIDA SUPREME COURT.

WE HAVE THREE CASES ON TODAY'S DOCKET.

THE FIRST CASE IS STATE OF FLORIDA VERSUS RIDGE GABRIEL. COUNSELOR FOR THE PETITIONER IS RECOGNIZED.

>> THANK YOU, MISTER CHIEF JUSTICE.

MY NAME IS RICHARD PALLAS. I REPRESENT THE STATE OF FLORIDA.

IN THIS CASE, ON RESENTENCING, THE TRIAL JUDGE IMPOSED A 15 YEAR SENTENCE ON ATTEMPTED ROBBERY WITH A FIREARM, SECOND DEGREE FELONY, 107.25 MONTH SENTENCE ON AGGRAVATED ASSAULT WITH A FIREARM, THIRD-DEGREE FELONY AND RESISTING A LAW ENFORCEMENT OFFICER WITH VIOLENCE.

ALSO A THIRD-DEGREE FELONY. ALL THREE OF THESE SENTENCES WERE TO RUN CONSECUTIVELY TO EACH OTHER AND IN UNRELATED 10 YEAR SENTENCE PRIOR BURGLARY CHARGE HE WAS CURRENTLY SERVING. THE FIFTH DISTRICT REVERSED THIS SENTENCE BECAUSE THE SENTENCES EXCEEDED THE FELONIES.

THEY CERTIFIED CONFLICT WITH THE SECOND DISTRICT IN THE CASE CHAMPAGNE.

THERE IS A CERTIFICATION OF PUBLIC IMPORTANCE WHICH TO PARAPHRASE IS THE LOWEST PRESENT VISIBLE -- PERMISSIBLE SENTENCE AS DEFINED IN SECTION 921.0024 SUBSECTION 2.

IS IT AN INDIVIDUAL MINIMUM SENTENCE AND NOT A COLLECTIVE SENTENCE WHEN THERE IS A SINGLE SCORESHEET WITH MULTIPLE CONVICTIONS?

THE ANSWER SHOULD BE YES BASED ON THE PLAIN LANGUAGE OF THE STATUTE AS WELL AS THE COURT'S DECISIONS IN BUTLER AND MORE REGARDING THE PLAINLY WHICH OF THE STATUTE, IT IS CLEAR AND UNAMBIGUOUS THE CRIMINAL PUNISHMENT CODE CONVEYS A CLEAR AND DEFINITE MEANING THE LOWEST PERMISSIBLE SENTENCE IS AN INDIVIDUAL MINIMUM SENTENCE WOULD IF I MAY QUOTE SOME PORTIONS OF THAT PARTICULAR STATUTORY SECTION AT THE BEGINNING OF SUBSECTION 2 OF THE RELEVANT SENTENCE IT SAYS THE LOWEST PERMISSIBLE SENTENCE IS THE MINIMUM SENTENCE THE TRIAL COURT MAY IMPOSE ABSENT A REASON FOR DEPARTURE.

GOING NOW TO THE PERMISSIBLE RANGE IT STATES THE TOTAL SENTENCE POINTS SHALL BE CALCULATED ONLY AS A MEANS OF DETERMINING LOWEST PERMISSIBLE SENTENCE WAS THE PERMISSIBLE RANGE PER SENTENCING SHALL BE THE LOWEST VISIBLE -- PRINCIPLE SENTENCE UP TO AND INCLUDING THE STATUTORY MAXIMUM AS DEFINED IN SECTION 775.082, FOR THE PRIMARY OFFENSE AND ANY ADDITIONAL OFFENSES BEFORE THE COURT FOR SENTENCING.

NOW GOING TO THE LOWEST PERMISSIBLE SENTENCE EXCEPTION PORTION OF THIS IT STATES IF THE LOWEST PERMISSIBLE SENTENCE UNDER THE CODE EXCEEDS THE STATUTORY MAXIMUM SENTENCE AS PROVIDED IN SECTION 775.08 TO THE SENTENCE REQUIRED BY THE CODE MUST BE IMPOSED.

IN THIS SECTION IT DOES NOT CONTAIN THE LANGUAGE FROM THE SECTION PERMISSION TO THE SENSIBLE RANGE IT IS REFERRING TO THE PRIMARY AND ADDITIONAL OFFENSES INSTEAD OF STATING THE STATUTORY MAXIMUM AS DEFINED BY

THE SECTION WITH THE STATUTORY  
MAXIMUMS FOR MULTIPLE OFFENSES.  
IT JUST STATES THE STATUTORY  
MAXIMUM SENTENCE AS PROVIDED IN  
775.082.

TO SAY THAT THAT MEANS IT REFERS  
TO THE INDIVIDUAL SENTENCE, THAT  
IS CONSISTENT WITH WHAT THE  
COURT HELD IN PUBLIC.

IN BUTLER, THAT ONLY REFERRED TO  
ONE FELONY COUNT.

THE COURT CLEARLY HELD WHEN THE  
LOWEST PERMISSIBLE SENTENCE  
EXCEEDS THE STATUTORY MAXIMUM  
THE LOWEST PERMISSIBLE SENTENCE  
BECOMES THE MAXIMUM SENTENCE  
WHICH THE TRIAL COURT CAN  
IMPOSE.

LATER THE COURT ALSO HELD IN  
MORE THAT UNDER THE, PUNISHMENT  
CODE, TOGETHER INDIVIDUAL  
SENTENCES ESTABLISH THE MINIMUM  
SENTENCE THAT MAY BE IMPOSED A  
SINGLE MAXIMUM SENTENCE IS NOT  
ESTABLISHED.

EACH INDIVIDUAL OFFENSE HAS ITS  
OWN MAXIMUM SENTENCE, MAINLY THE  
STATUTORY MAXIMUM.

MORE NECESSARILY WASN'T  
REFERRING TO DEFINING THE LOWEST  
PERMISSIBLE SENTENCE AT THIS  
TIME.

THIS WAS JUST TO SAY TRIP VERSUS  
STATE AND ITS PROGENY WERE ONLY  
APPLICABLE TO SENTENCES IMPOSED  
UNDER THE PRIOR SENTENCING  
GUIDELINES, NOT THE CURRENT  
CRIMINAL PUNISHMENT CODE.

IT APPEARS ANY AMBIGUITY BEING  
CITED TO THIS STATUTE IS NOT IN  
THE STATUTE ITSELF.

THE LOWER COURT DECISIONS APPEAR  
TO TAKE MORE ISSUE WITH THIS  
LANGUAGE IN SAYING BEFORE IS  
STILL A COLLECTIVE BUT THE  
CEILING IS NOT.

IT DOESN'T GO WITH COMMON SENSE  
THAT WE WOULD STILL HAVE ONE  
COLLECTIVE AND THEN EVERYTHING  
ELSE IN SEPARATE STATUTORY

MAXIMUM SENTENCE.

FURTHER THIS COURT APPLICATING WITH FAMILY PERMISSIBLE SENTENCE BECOMES THE NEW MAXIMUM IN THE COURT -- THAT WAS THE COURT'S LANGUAGE IN BUTLER AND THE COURT'S LANGUAGE IN MORE SAYING THERE IS MAXIMUM FOR EACH SENTENCE.

OF THE LOWEST PERMISSIBLE SENTENCE IS THE NEW MAXIMUM THE MAXIMUM CLEARLY IS THE LOWEST PERMISSIBLE SENTENCE WHICH SHOULD BE FOR EACH INDIVIDUAL SENTENCE THAT WE HAVE.

I NOTE THAT IN OUR REPLY BRIEF WE ADDRESS THE STAFF ANALYSIS AS ADDRESSED BY DEFENDANT TALKS ABOUT HOW IT COULD BE READ IN A WAY THEY WANTED A COLLECTIVE FLOOR.

FIRST LANGUAGE AND THE STAFF ANALYSIS IS IRRELEVANT BECAUSE THE PLAN LANGUAGE SUPPORTS THE STATE'S POSITION THAT IS AN INDIVIDUAL SENTENCE BUT IT IS ALSO MEANINGLESS.

IT HAS BEEN HELD IN UNITED STATES -- IT HAS BEEN SAID IN UNITED STATES SUPREME COURT AND THIS COURT THAT STAFF ANALYSES ARE NEITHER COMPATIBLE WITH THE COURT'S JUDICIAL RESPONSIBILITY OF ASSURING REASONABLE CONSISTENT EFFECTIVE APPLICATION OF THE STATUTES NOR CONDUCIVE OF THE GENUINE EFFECTUATION OF LEGISLATIVE INTENT.

GOING INTO THIS HYPOTHETICAL, IF IN THE FIRST HYPOTHETICAL IN ITS INITIAL BRIEF, IF WE ARE TO TAKE THE DEFENDANT'S POSITION WE DON'T HAVE GUIDANCE IN THE STATUTE AS TO HOW THAT SHOULD BE.

IT IS NOT WRITTEN IN THEIR THAT IN OUR FIRST HYPOTHETICAL OF TWO, THIRD-DEGREE FELONIES WITH STATUTORY MAXIMUM OF 10 YEARS TOGETHER BUT THE LOWEST

PERMISSIBLE SENTENCE OF 60.1 MONTHS, THERE IS NO GUIDANCE TO SAY PUT 60 MONTHS ON THE FIRST OF THE THIRD-DEGREE FELONIES AND CONSECUTIVELY SENTENCE ON THE OTHER ONE TO POINT ONE -- THAT IS SOMETHING THE TRIAL COURTS WILL HAVE TO STRUGGLE TO APPLY CONSISTENTLY.

GOING INTO THE STATE'S HYPOTHETICAL AND ITS REPLY BRIEF WHERE WE HAVE MULTIPLE FELONIES OF 10, THIRD-DEGREE FELONIES, STATUTORY MAXIMUM OF 50 YEARS WE ARE NOW LOOKING ANYWHERE FROM 60.1 AS WELL OR 75 FOR A MORE CONSISTENT NUMBER.

IN THAT CASE DO WE SENTENCE THE FIRST COUNT OF THOSE 10 COUNTS TO 16 MONTHS AND 15 MONTHS FOR ALL CONSECUTIVE COUNTS BUT THEN COUNT ONE IS REVERSED EITHER ON APPEAL OR BY SOME CALL LATERAL METHOD ARE 23 SENTENCE THEM TO GET THE TRIAL COURTS THE ORIGINAL INTENT ON THOSE 15 MONTHS SENTENCES ARE WE VIOLATING DOUBLE JEOPARDY PRINCIPLES?

>> WHAT YOU MAKE OF MISTER GILBERT'S ARGUMENT FOR SCORESHEET WE'RE USING IS IN SOME WAYS A COLLECTIVE SCORESHEET?

THAT TAKES INTO CONSIDERATION NOT JUST THE PRIMARY OFFENSE BUT ADDITIONAL OFFENSES AND IT STANDS TO REASON INTUITING FROM THE FACT THAT IT IS AN INTEGRATED SCORESHEET WE SHOULD READ THE WHOLE TEXT OF THE STATUTE TO MAKE IT COLLECTIVE IN APPLICATION.

WHAT DO YOU MAKE OF THAT ARGUMENT?

>> IT IS TRUE THAT THESE POINTS ARE TOTALED TOGETHER WITH PRIMARY AND ADDITIONAL OFFENSES, ALSO PRIOR ACTS AND OTHER POTENTIAL POINTS THAT CAN BE

ASSESSED BY VICTIM INJURY OR  
LEGAL STATUS.

WHILE THESE POINTS ARE COLLECTED  
TOGETHER, WE STILL DON'T GIVE  
GENERAL SENTENCES IN THIS STATE  
AND THE LANGUAGE OF THE LOWEST  
PERMISSIBLE SENTENCE SECTION  
COUPLED WITH PERMISSIBLE RANGE  
IT IS CLEARER TO SAY THIS IS AN  
INDIVIDUAL SENTENCE BECAUSE WE  
IMPOSE SENTENCE ON EACH AND  
EVERY.

>> YOU ARE ASKING THE COURT TO  
READ THE WORDS LOWEST  
PERMISSIBLE SENTENCE, LOWEST  
PERMISSIBLE SENTENCES.

>> THAT IS CORRECT.

HERE OF COURSE THE LANGUAGE  
SPECIFICALLY STATING THE LOWEST  
PERMISSIBLE SENTENCE, BUT BY  
SAYING THERE ARE MULTIPLE  
SENTENCES WE HAVE LOWEST  
PERMISSIBLE SENTENCES AND  
MULTIPLE STATUTORY MAXIMUMS FOR  
EACH FELONY AS DEFINED IN  
SECTION 775.082.

>> IF THE COURT HAS NO OTHER  
QUESTIONS I WILL RELY ON MY  
BRIEFS AND I ASK THAT YOU  
APPROVE THE SECOND DISTRICT'S  
REASONING IN CHAMPAIGN AND  
REVERSE THE FIFTH DISTRICT'S  
DECISION WITH DIRECTIONS TO  
AFFIRM THE TRIAL COURT'S  
SENTENCES.

>> IF YOU COULD WALK ME THROUGH  
THIS LANGUAGE IN 922.002, THE  
TOTAL SENTENCING POINTS IN THE  
MIDDLE OF SUBPARAGRAPH 2 SHALL  
BE CALCULATED ONLY AS A MEANS OF  
DETERMINING THE LOWEST  
PERMISSIBLE SENTENCE SO THAT IS  
SAYING WE COMBINE ALL SENTENCING  
POINTS TO OFFENSES.

YOU AGREE WITH THAT?

>> YES.

>> SINGULAR LOWEST PERMISSIBLE  
SENTENCE AND THE NEXT SENTENCE,  
THE PERMISSIBLE RANGE FOR  
SENTENCING WILL BE THE LOWEST

PERMISSIBLE SENTENCE UP TO AND INCLUDING STATUTORY MAX AS DEFINED IN 775082, PRIMARY OFFENSE AND ANY ADDITIONAL OFFENSES.

THAT SENTENCE WOULD SEEM TO SAY TO ME, I WONDER WHAT I AM MISSING THAT WHATEVER THE NUMBER IS FROM THE COMBINED TOTAL GIVES YOU A SENTENCE, MINIMUM SENTENCE THAT APPLIES TO ALL OF THE OFFENSES, THE PRIMARY AND ADDITIONAL WHICH IS CONTRARY TO YOUR ARGUMENT.

CORRECT?

>> YES, I CAN SEE THAT READING IT THAT WAY WOULD BE CONTRARY TO WHAT THE STATUS SAYING.

>> WHEN THE NEXT SENTENCES THE SENTENCING COURT MAY IMPOSE SUCH SENTENCES CONCURRENTLY OR CONSECUTIVELY SO WE ARE TALKING ABOUT A MINIMUM SENTENCE.

LET'S CALCULATE IT FROM ALL THE SENTENCING POINTS FROM EACH OF THE CONVICTIONS AND THEN THOSE SENTENCES WILL EITHER BE RUN CONSECUTIVE THE CONCURRENTLY, DOESN'T THAT ALSO MAKE CLEAR THAT ALL THE POINTS ARE USED TO DETERMINE THE MINIMUM SENTENCE FOR THE INDIVIDUAL CONVICTION?

>> WE ARE JUST CALCULATING THE LOWEST PERMISSIBLE SENTENCE FOR EACH OF THESE SENTENCES.

WE ARE CLARIFYING IN LANGUAGE THE COURT MAY IMPOSE THESE SENTENCES CONCURRENTLY OR CONSECUTIVELY BY SAYING THERE'S ONLY GOING TO BE ONE LOWEST PERMISSIBLE SENTENCE.

WE DON'T USE SEPARATE SCORESHEET.

>> THE SCORE IS USED TO DETERMINE OVERALL SENTENCE IN WHICH CASE, WE NEED TO TALK ABOUT OVERALL SENTENCE IN TERMS OF SENTENCES THAT COULD BE RUN CONSECUTIVE OR CONCURRENTLY BECAUSE WE ARE TALKING ABOUT THE

SENTENCE, IT IS DERIVED USING THE FORMULA TO GET THE LOWEST PERMISSIBLE SENTENCE FOR THE PRIMARY OFFENSE, I AM HAVING A HARD TIME STRUGGLING TO SEE WHERE YOU GET AN ARGUMENT THAT IS CONSISTENT WITH THAT LANGUAGE AND LEADS THE RESULT YOU ARE SEEKING.

>> THE REASON IS BECAUSE AFTER DEFINING WHAT THE PERMISSIBLE RANGES IT QUALIFIES IT WITH THE LANGUAGE OF PRIMARY OFFENSE AND ADDITIONAL OFFENSE, WHETHER ONE OR MANY MORE.

THE FACT THAT WE THEN GET TO THE LOWEST PERMISSIBLE SENTENCE SECTION AND ONLY REFERRING TO THE STATUTORY MAXIMUM SENTENCE WITHOUT MENTIONING PRIMARY OFFENSE, ADDITIONAL OFFENSES, WE ARE NOT SEEING ALL OF THE OFFENSES.

THAT IS WHY THE STATE READS THESE SECTIONS THAT WAY.  
YOUR HONOR.

>> IF THERE ARE NO OTHER QUESTIONS I ASK YOU REVERSED THE FIFTH DISTRICT'S DECISION WITH DIRECTIONS TO AFFIRM THE TRIAL COURT'S SENTENCES.

>> COUNSEL FOR THE RESPONDENT IS RECOGNIZED.

>> MAY IT PLEASE THE COURT.  
MY NAME IS SCOTT HUBBARD ON BEHALF OF THE DEFENDANT RIDGE GABRIEL.

I WOULD LIKE TO CONVEY TWO POINTS, THE FIRST IS THAT THE LINKAGE OF THE STATUTE AT ISSUE IS NOT CLEAR GIVEN THAT IT IS NOT CLEAR I BELIEVE APPLYING THE CANNONS OF STATUTORY CONSTRUCTION, THE CONCLUSION AS IDENTIFIED IN THE FIFTH DISTRICT COURT OF APPEAL BELOW IS THE LOWEST PERMISSIBLE SENTENCE IS A COLLECTIVE MINIMUM SENTENCE TO BE APPLIED TO ALL AVAILABLE OR TO ALL OFFENSES FOR SENTENCING

AND THEY ARE NOT INDIVIDUAL SENTENCE.

HAVING SAID THAT THE LANGUAGE WAS DISCUSSED.

THE SENTENCE SAYS THAT IF THE LOWEST PERMISSIBLE SENTENCE SEIZED THE STATUTORY MAXIMUM SENTENCE IS DEFINED IN 7705082 THE SENTENCE REQUIRED BY THE CODE BEING IMPOSED, THE LANGUAGE, WHETHER IT APPLIES TO ADDITIONAL OFFENSES OR PERMANENT AND ADDITIONAL OFFENSES TOGETHER IS JUST NOT THERE, IT IS SILENT AS TO THAT ISSUE.

THERE IS LACK OF CLARITY WHAT IT APPLIES TO.

THE OTHER SENTENCE TALKING ABOUT THE RANGE THE PERMISSIBLE RANGE FOR SENTENCING, THE LPA US UP TO THEM STATUTORY MAXIMUM FOR PRIMARY AND ADDITIONAL OFFENSES.

I SUBMIT WE SHOULD APPLY THE WORD AND IN THE CONJUNCTIVE SENTENCES RELATES TO THE RANGE THAT IS CREATED, THE LPS WHICH IS A COLLECTIVE ENDEAVOR.

AS WAS MENTIONED IT CONSIDERS THE PRIMARY OFFENSE, ADDITIONAL OFFENSES.

>> CAN I TAKE YOU TO MORE FOR A SECOND.

DOES IT HELP OR HURT YOU?

>> IT IS HOPEFUL TO US BECAUSE FOR TWO REASONS.

THE FIRST, IT DISCUSSES THE TRANSITION FROM THE PRIOR SENTENCING GUIDELINES TO THE CRIMINAL PUNISHMENT CODE.

IT CONVEYS THE IDEA THAT PART OF THE PURPOSE OF ENACTING THE CRIMINAL PUNISHMENT CODE WAS TO INCREASE, OVERTURN RATHER THE SENTENCING COURTS THAT WASN'T THERE AND THE GUIDELINES AND TALKS ABOUT WHAT IS THERE FOR THE SENTENCES BUT EACH OFFENSE HAS A STATUTORY MAXIMUM AND THE COURT IS FREE TO SENTENCE THE INDIVIDUAL UP TO STATUTORY

MAXIMUM FOR ANY OFFENSE AND THE TOTAL SENTENCE MUST MEET THAT LPS.

MORE CONVEYS THE UNDERSTANDING OF WHAT THE LEGISLATURE INTENDED IN ADOPTING THE CRIMINAL PUNISHMENT CODE.

>> GO AHEAD.

>> GO AHEAD, CHIEF.

>> LET ME TAKE YOU BACK TO THE TEXT OF SUBSECTION 2.

IT SAYS THE LOWEST PERMISSIBLE SENTENCE, I'M SORRY.

THE PERMISSIBLE RANGE SHALL BE THE LOWEST PERMISSIBLE SENTENCE UP TO AND INCLUDING STATUTORY MAXIMUM.

FOR THE PRIMARY OFFENSE AND ANY ADDITIONAL OFFENSES BEFORE THE COURT FOR SENTENCING TALKING ABOUT THAT PERMISSIBLE RANGE THAT APPLIES TO PRIMARY OFFENSE, YOU SAY THAT IS ROLLING THOSE 2 TOGETHER.

WHERE I GET TRIPPED UP IS THE NEXT SENTENCE WHICH SAYS THE COURT MAY IMPOSE SUCH SENTENCES CONCURRENTLY OR CONSECUTIVELY. I AM STRUGGLING TO UNDERSTAND HOW IF THAT IS ROLLED INTO ONE, THE SENTENCE REFERRING TO THE LOWEST PERMISSIBLE SENTENCE SEEMS LIKE HOW THAT CAN BE RECONCILED WITH CONSECUTIVE SENTENCING.

HELP ME UNDERSTAND THE WAY THAT IS STRUCTURED, THE STRUCTURE OF YOUR ARGUMENT.

>> THE CONCEPT WHETHER YOU HAVE ONE OFFENSE OR MORE, EACH OFFENSE WILL BE GIVEN AN INDIVIDUAL SENTENCE, THE LOWEST PERMISSIBLE SENTENCE AS COMPARED TO SENTENCES RECEIVED IN THE AGGREGATE FOR EACH INDIVIDUAL --

>> I UNDERSTAND THAT IS YOUR ARGUMENT BUT I'M STRUGGLING WITH HOW TO RECONCILE IT WITH THAT TEXT.

IT TALKS ABOUT THAT PERMISSIBLE

RANGE, THE LOWEST PERMISSIBLE SENTENCE FOR THE PRIMARY OFFENSE AND TALKING ABOUT, SEPARATE THINGS AND UNDERSTAND YOUR ARGUMENT ABOUT THIS, IT IS A CENTRAL CONFLICT IN THE ARGUMENT.

IS HAVING TROUBLE FINDING THAT IN THE TEXT.

THE MOST NATURAL READING, DOES NOT FIT THE CONCEPT.

>> TWO THINGS THERE.

>> IF I CAN CLARIFY, IT SEEMS MY NOTES FROM ALL MY WILL ARGUMENT PREPARATION DISAPPEARED, I AM SCRAMBLING AND CAME UP WITH QUESTIONS I HAD BUT DELIVERED THEM TO THE WRONG PARTY SO THE QUESTIONS, -

>> COUNSEL.

WE ARE HAVING TROUBLE HEARING YOU.

AT LEAST I AM HAVING TROUBLE.

>> I WILL TRY TO SPEAK LOUDER.

CAN YOU HEAR ME?

WITH THAT THE NEXT SENTENCE THEY ARE DISCUSSING IMPOSING SENTENCES CONCURRENTLY OR CONSECUTIVELY.

THAT IS A TRANSITION AWAY, BY THE SENTENCING COURTS, CONSECUTIVELY OR CONCURRENTLY IF THE COURT FINDS IT IS

APPROPRIATE, IF YOU LOOK TO CHAPTER 921 IT WILL DISCUSS, 921002, THE PENALTY IMPOSED COMMENSURATE WITH THE CIRCUMSTANCES SURROUNDING THAT. THE SEVERITY INCREASES WITH THE LENGTH OF THE PRIOR RECORD AND ON AND ON AS IT DEFINES TERMS, LAYS OUT THE FRAMEWORK, CONCERNED WITH THE OVERALL OFFENSES BEFORE THE COURT PROVIDING DISCRETION TO THE COURT IF IT FINDS IT APPROPRIATE, TO CONSECUTIVE SENTENCES.

THAT IS A TRANSITION AWAY FROM SENTENCING GUIDELINES IN AN

EFFORT BY THE LEGISLATURE, TO  
RETURN DISCRETION FROM  
SENTENCING COURTS.

>> I UNDERSTAND MOVING AWAY FROM  
THE SENTENCING GUIDELINES BUT  
IMPORTANT ELEMENTS OF THIS,  
WOULD YOU AGREE?

THE LOWEST PERMISSIBLE SENTENCE  
SPECIFICALLY, JUDICIAL  
DISCRETION, NOT AN ABSOLUTE  
REQUIREMENT BUT CREATES A  
CONSTRAINT -- IS IT CORRECT?

>> THE NOTION, PRIOR TO 1983  
COURTS HAVE UNFETTERED  
DISCRETION UP TO STATUTORY  
MAXIMUM AND THAT IS REFLECTIVE  
OF AN EFFORT BY THE LEGISLATURE  
TO IMPOSE SENTENCES FOR  
DEFENDANTS WHO WERE IN SOME  
CASES, PART OF THE CDC, SOME OF  
THE ADMINISTRATIVE RELEASE, THAT  
ELIMINATED.

THE REASON WAS THEY WANTED TO  
PUNISH OFFENDERS, FOR THE  
OFFENSES BUT WANTED TO RETURN  
DISCRETION TO THE COURTS IF THEY  
DETERMINE A MORE SEVERE SANCTION  
WAS APPROPRIATE, THEN WOULD HAVE  
BEEN A CASE UNDER THE  
GUIDELINES.

>> LET ME GO BACK TO A PORTION  
OF THE TEXT I'M TALKING ABOUT  
AND GO TO THE NEXT SENTENCE,  
THAT SEEMS TO FURTHER REINFORCE  
THAT WE ARE TALKING LOWEST  
PERMISSIBLE SENTENCE APPLICABLE  
TO THE INDIVIDUAL OFFENSE.  
IT IS CONSECUTIVE OR CONCURRENT.  
IF THE LOWEST PERMISSIBLE  
SENTENCE IS THE STATUTORY  
MAXIMUM THE SENTENCE REQUIRED BY  
THE CODE MUST BE IMPOSED.  
KEEPS TALKING ABOUT THESE AS  
INDIVIDUAL SENTENCES.  
IT IS ALL INTERSPERSED WITH  
REFERENCES TO THE LOWEST  
PERMISSIBLE SENTENCE.

>> WITH THAT IT APPEARS CLEAR TO  
ME THAT THE LPS IS A CUMULATIVE  
ENDEAVOR LOOKING AT THOSE OTHER

FACTORS.

>> WHAT I AM STRUGGLING TO FIND IS A SOURCE OF CLARITY. THE POSITION IS REALLY AMBIGUOUS BUT IT IS CLEAR TO YOU, I AM TRYING TO FIND WHAT GIVES YOU THE CLARITY IN THE TEXT OF THE STATUTE.

I'M FINDING CLARITY IN THE OPPOSITE DIRECTION TO THE OPPOSITE CONCLUSION.

>> TO THAT EXTENT I ARGUE THE LANGUAGE ITSELF ISN'T CLEAR AND DOESN'T SET OUT ONE WAY OR THE OTHER AND BECAUSE IT IS NOT CLEAR I SUBMIT THIS COURT SHOULD LOOK INTO STATUTORY CONSTRUCTION.

PART OF THAT IS LOOKING AT THE EVIL TO BE CORRECTED AND WHY THE LEGISLATURE CHOSE TO GO AWAY FROM SENTENCING GUIDELINES IN AN ACTIVE CRIMINAL CODE.

>> THAT SOUNDS LIKE AN ARGUMENT FROM LEGISLATIVE INTENT. WHAT CANON OF STATUTORY CONSTRUCTION GETS YOU WHERE YOU WANT TO GO?

>> THE EVIL TO BE CORRECTED FIRST OF ALL, LOOKING AT THE LEGISLATIVE HISTORY, LOOKING THROUGH -- EXCUSE ME. LOOKING THROUGH -- THE LEGISLATIVE INTENT.

>> THOSE ARE ALL QUESTIONS, THE CHIEF TOO, HOW DO YOU READ THE TWO SENTENCES WE FOCUSED ON WHICH REFER TO INDIVIDUAL MAXIMUMS FOR EXAMPLE AND COME TO THE RESULT THAT IN FACT THE LEGISLATURE MEANT HERE THAT THIS WAS A CUMULATIVE PROJECT. HELP ME WITH A CANON OF INTERPRETATION FROM THE TEXT THAT GETS YOU WHERE YOU WANT TO GO?

>> FROM THE TEXT?

>> FOR EXAMPLE COULD YOU MAKE AN ARGUMENT FROM THE WHOLE TEXT CANON OR DOES A READING OF THE

WHOLE TEXT ULTIMATELY COME DOWN  
ON THE STATE SIDE?  
WITHOUT RECOURSE TO ARGUMENTS  
ABOUT LEGISLATIVE INTENT CAN YOU  
USE IT TO STATUTES OF STATUTORY  
INTERPRETATION TO SQUARE THE  
SENTENCES WITH MAXIMUMS WITH  
YOUR RESULT OR NOT?

>> THAT IS THE BEGINNING OF THE  
STATUTORY CONSTRUCTION.  
THE REST OF CHAPTER 921, I WOULD  
LIKE TO POINT OUT 924.06 WAS  
PASSED AT THE SAME TIME WITH THE  
SAME BILL AS CRIMINAL PUNISHMENT  
CODE THAT ALLOWS THE DEFENDANT  
TO APPEAL THE STATUTORY MAXIMUM  
OR CONSECUTIVE STATUTORY  
MAXIMUMS SO I THINK THAT  
LANGUAGE IS IMPORTANT BECAUSE IT  
SHOWS IN TAKING CONTEXT TO  
GATHER YOU HAVE THE STATUTE THAT  
TALKS ABOUT WHERE THE STATUTORY  
MAXIMUM IS IMPOSED, 924.06 SAYS  
THE DEFENDANT, YOU GET TO THE  
POINT THAT AS A WHOLE THE  
SENTENCING FRAMEWORK WAS  
DESIGNED TO INCREASE THE COURT'S  
DISCRETION AND CREATE A RANGE  
THAT WAS A DIFFERENT SET OF  
RANGES THEN WAS UNDER THE  
GUIDELINES.

>> SORRY TO INTERRUPT BUT I AM  
HAVING A HARD TIME, HAVING  
LISTENED TO WHAT YOU SAID.  
I'M STILL NOT COMPLETELY CLEAR  
ON WHAT YOU ARE SAYING IS THE  
SOURCE OF THE AMBIGUITY IN THE  
LANGUAGE WE HAVE BEEN FOCUSING  
ON.

CAN YOU ARTICULATE THAT AS  
PRECISELY AS POSSIBLE?

>> 00242, THE SENTENCE THAT SAYS  
IF THE LOWEST PERMISSIBLE  
SENTENCE UNDER THE CODE EXCEED  
STATUTORY MAXIMUM AS PROVIDED IN  
775, THE SENTENCE MUST BE  
IMPOSED, THAT DOES NOT ADDRESS  
EITHER PRIMARY OFFENSE OR  
ADDITIONAL OFFENSE, OR  
COLLECTIVE SENSE.

THE LANGUAGE IS UNCLEAR, IT DOESN'T ADDRESS IT.  
THE PREVIOUS SENTENCE THAT TALKS ABOUT THE RANGE DOESN'T PROVIDE CLARITY BECAUSE IT SAYS I ARGUE IT IS MORE TOWARD COLLECTIVE, ANY ADDITIONAL OFFENSES --  
>> LET ME ASK YOU ABOUT THAT. IF IT SAYS FOR THE PRIMARY OFFENSE AND FOR ANY ADDITIONAL OFFENSES. SENTENCING DOES THAT RESOLVE THE AMBIGUITY?  
>> THERE ARE SEVERAL WAYS THE LEGISLATURE COULD HAVE RAISED THE LANGUAGE.  
>> LET ME ASK YOU THAT. MY UNDERSTANDING IS IT IS A MATTER OF BASIC GRAMMAR THAT IT IS APPROPRIATE TO BE LINKED, OR ANY ADDITIONAL OFFENSES, THERE ISN'T IN TERMS OF GRAMMAR AND CONVEYING MEANING YOU WEREN'T REQUIRED TO REPEAT THE PREPOSITION.  
IS THAT WHAT IT COMES DOWN TO?  
>> THE WORD AND THERE IS USED IN A CONJUNCTIVE SENSE.  
>> I WANT TO BE CLEAR. IF IT SAID FOR THE PRIMARY OFFENSE OR ADDITIONAL OFFENSES, WILL THAT TAKE AWAY THE AMBIGUITY YOU ARE RELYING ON?  
>> IT BECOMES CLEARER, IF THE LEGISLATURE HAD SAID EITHER INSTEAD OF AND.  
AND IT IS A GUIDELINE THAT MUST BE ENFORCED, AND IN ITS DETERMINATION ON WHAT IT FEELS THE SENTENCE IS APPROPRIATE.  
IF I MAY, IN THE BRIEF TIME I HAVE LEFT I WOULD LIKE TO DISCUSS, WITH THE INTERPRETATION ADOPTED HERE, IN ADDITION TO THE RESTRAINT OF JUDICIAL DISCRETION, THIS TALKED ABOUT ANOTHER CASE PARTICULARLY CHAMPAGNE.  
THERE MAY BE -- COULD BE OTHER ISSUES BY HAVING A SENTENCE BUT

MOST BE IMPOSED WITH A FINDING BY THE JURY IN ADDITION THERE MIGHT BE DUE PROCESS ISSUES COMING UP WITH THIS.

I KNOW SPECIFICALLY IN COLOGNE THEY TALK ABOUT JAIL CREDIT ISSUES INVOLVED, BECAUSE GLOBALLY A TIMEFRAME, THEY DON'T GET THE APPROPRIATE JAIL CREDIT. THERE ARE A MULTITUDE OF ISSUES THAT WILL COME UP IF THE STATE INTERPRETATION IS CONFIRMED. THE FIFTH DISTRICT COURT OF APPEALS -- THE LEGISLATIVE INTENT THE WAY THE SENTENCING GOES IN FLORIDA, THE COURTS HAVE DISCRETION TO SENTENCE A DEFENDANT AS APPROPRIATE BOUNDED BY LOWEST PERMISSIBLE SENTENCE ABSENT A BALLOT FOR DEPARTURE, UPWARDLY POUNDED BY STATUTORY MAXIMUM.

THE LANGUAGE POINTS TO THAT, TALKING THE TRANSITION AWAY FROM THE GUIDELINES.

>> I DON'T UNDERSTAND, TO SUBSTANTIALLY LIMIT THE DISCRETION OF THE SENTENCING. FOR ONE THING THE SENTENCING COURT CAN ALWAYS RUN THESE SENTENCES CONCURRENTLY. IT IS RUN CONCURRENTLY, THAT DISCRETION IS A WITHOUT QUESTION AND SEEMS TO BE A SIGNIFICANT THING THAT FUNDAMENTALLY UNDERMINES YOUR ARGUMENT ABOUT DISCRETION.

>> THE POINT ABOUT DISCRETION, IT MUST BE IMPOSED, IN THIS CASE.

>> FOR ONE OF THE SENTENCES, THE CIRCUMSTANCES IT HAS TO BE IMPOSED FOR ONE OF THE SENTENCES BUT NOT THE OTHER IN YOUR VIEW, THE COURT IN THE STATE'S VIEW, HAS TO BE IMPOSED FOR ALL OF THEM.

IT SEEMS THE ISSUE IS RESOLVED, IF THE COURT WANTS TO BE LENIENT, FOR THOSE SENTENCES

CONCURRENTLY AS OPPOSED TO  
CONSECUTIVELY.  
MAYBE I AM MISSING SOMETHING.  
>> IF THE COURT - IS  
APPROPRIATE.  
AND THE PORTION OF INFORMATION,  
WOULDN'T BE ABLE TO, 8.93 YEARS.  
IT MUST IMPOSE THAT AND HAVE  
DISCRETION ABOVE OR BELOW THAT  
INTERPRETATION TO EXCEED THE  
LPS.  
WHAT ARGUE IS THE CORRECT  
INTERPRETATION WAS ABLE TO  
SENTENCE HIM FROM THE 8.3 YEARS  
TO 25 YEARS, SOME SENTENCE OF 15  
YEARS AND 10 YEARS PROBATION TO  
FASHION THAT IN A COMPOSITE  
SENTENCE.  
>> YOU HAVE GONE OVER TIME WITH  
A LOT OF HELP FROM ME.  
>> THANK YOU FOR THE EXTRA TIME.  
I WILL BRIEFLY SAY THIS COURT  
UPHOLDS THE DECISION IN THE  
FIFTH DISTRICT COURT OF APPEALS  
THAT THE LPS IS A COLLECTIVE  
MAXIMUM THAT MUST BE IMPOSED  
WHEN IT EXCEEDS THE MAXIMUM.  
IN THIS CASE IT WAS NOT AND THE  
TRIAL COURT AS FOR AFFIRMANCE OF  
THE FIFTH DISTRICT DECISION.  
>> THANK YOU.  
REBUTTAL FROM THE STATE.  
>> THANK YOU, MISTER CHIEF  
JUSTICE.  
THE STATE HAS 3 SHORT POINTS OF  
REBUTTAL.  
FIRST, THE STATE REITERATES THE  
LANGUAGE IS CLEAR AND  
UNAMBIGUOUS BUT IF RESORT TO  
STATUTORY CONSTRUCTION, THE  
VIEWING OF THE WHOLE TEXT STILL  
SUPPORTS OUR INTERPRETATION.  
WHILE ONLY BRIEFLY MENTIONED IN  
OUR INITIAL BRIEF THE DOCTRINE  
EXPRESSED IN COLLUSION AND  
IMPLIED EXCLUSION WOULD ALSO  
SUPPORT THAT IF THE COURT  
DETERMINED THE LANGUAGE WAS  
UNCLEAR OR AMBIGUOUS.  
FURTHER, THIS COURT RECENTLY

MENTIONED IN ONE OF ITS PRIOR OPINIONS IN THOMPSON MENTIONING THE USE OF A VARIATION OF MATERIAL TERMS, WHICH THE STATE HAS MENTIONED, IN THE PERMISSIBLE RANGE OF A MENTION AFTER STATUTORY MAXIMUM DEFINED IN SECTION 775.082, FOR THE PRIMARY OFFENSE AND ADDITIONAL OFFENSES, THAT IS LACKED WHEN REFERRING TO THE WAS PERMISSIBLE SENTENCE IN THE NEXT SECTION. THAT WAS NOT BRIEFED AND THE STATE WOULD BE WILLING TO PERFORM SUPPLEMENTAL BRIEFING IF REQUESTED, AND THE STATUTE WAS NOT AMBIGUOUS, THE SOURCE OF AMBIGUITY IS ONLY IN THE LOWER COURT'S INTERPRETATIONS OF MORE WHICH CAN BE CLARIFIED BY THE COURT AND THE FIFTH DISTRICT IN GABRIEL TOOK A LOT OF CREDENCE FROM HAVING A JUDGE WARNED TO SEND WHICH THAT CASE, SHE ACTUALLY ENDED THE DISSENT STATING WHILE HER INTERPRETATION SUPPORTS IT BEING A COLLECTIVE STATUTORY MAXIMUM, THAT RUNS AFOUL OF BUTLER AND SHOULD ONLY BE INSTEAD FOR THE PRIMARY EFFECTS RATHER THAN THE POOL PERMISSIBLE RANGE AS DEFINED BY THE PRIMARY OFFENSE PLUS OTHER ADDITIONAL OFFENSES. FOR THE STATE'S -- DUE PROCESS WHILE NOT BRIEFED, FORGIVE ME FOR NOT BEING ABLE TO MORE ARTFULLY ADDRESS THESE, THEY ARE NOT AFFECTED WHEN FELONY OFFENDER SENTENCES ARE GIVEN, EVERYTHING INVOLVING THE STATUTORY MAXIMUM GROWING BASED ON CONDUCT THAT IS ALLOWED IN OTHER PORTIONS OF THE SENTENCING STATUTE, WHAT HAPPENS HERE IN SUBSECTION 2 OF SECTION 921.0024.

>> CAN I ASK A PRACTICAL QUESTION?  
DO YOU THINK SOME OF THE

CONFUSION LIES IN THE STRUCTURE OF THE SCORESHEET ITSELF AND THAT IT ONLY ASKS FOR STATUTORY MAXIMUM THAT SEEMS TO COMBINE THE TOTALS?

>> I CAN SEE SOME INFUSION WHERE IT FIRST STARTS ON SCORESHEET WITH THE STATUTORY MAXIMUM, THEN SHOW THE LOWEST PERMISSIBLE SENTENCE, MADE TO THE JUDGE, IT WOULD AMEND ITS OWN RULES, LAYING OUT THE SCORESHEET THAT IT WOULD LIKE, THAT MAY CONTRIBUTE TO SOME AMBIGUITY, THE STATUTE ITSELF, WHEN GUIDED BY THE STATUTE THEY COME TO THE PROPER CONCLUSION THAT IT IS AN INDIVIDUAL SENTENCE.

IF THERE ARE NO OTHER QUESTIONS I REQUEST YOU APPROVE THE DECISION TO REVERSE THE FIFTH DISTRICT'S.

REMAINED IN WITH DIRECTIONS TO AFFIRM THE SENTENCES.

>> THANK YOU FOR THE ARGUMENT IN THIS CASE TODAY.

THE COURT WILL NOW PREPARE TO TAKE UP OUR SECOND CASE IN A MOMENT.