

>>> SUPREME COURT IS NOW
IN SESSION.

>> THE COURT WILL NOW TAKE THE
CASE OF FLETCHER VERSES THE
STATE.

COUNCIL.

>> GOOD MORNING, YOUR HONORS.

I'M BARBARA BUSHARIS

REPRESENTING THE APPELLANT.

I'D LIKE TO RESERVE 5 MINUTES OF
MY TIME.

I'D LIKE TO START WITH THE
MOTION TO DISMISS ISSUE RATHER
THAN THE MERITS OF THE BRIEF.
THAT MAKES MORE SENSE TO BEGIN
THERE.

I'D LIKE TO START WITH A FEW
POINTS THAT SEEM FAIRLY
STRAIGHTFORWARD.

ONE IS THAT THE ISSUES THAT ARE
RAISED IN THE MOTION TO DISMISS
COULD HAVE BEEN MADE AT THE
TRIAL COURT.

THE MOTION TO DISMISS --

>> THE PRECEDENT, I MEAN THE
TRIAL COURT COULD HAVE NOT
GRANTED THAT, RIGHT.

>> THE TRIAL COURT WOULD HAVE
HAD TO RULE ON THEM BUT THEY
COULD HAVE HAD A FULLER
EXPOSITION OF THE ISSUES.

WE COULD HAVE HAD COLLOQUY
BEFORE MAKING THE RULING THAT WE
GIVE THE COURT, YOU HONOR, A
BETTER RECORD ON WHICH TO
CONSIDER THE KIND OF SWEEPING
CHANGES THE STATE IS TRYING TO
ACCOMPLISH IN THE MOTION TO
DISMISS.

>> I COULDN'T TELL FROM THE
PAPERS BUT WHAT IS THIS
DEFENDANTS CURRENT POSITION ON
WHETHER HE WOULD LIKE THIS
APPEAL TO GO FORWARD?

>> MR. FLETCHER WOULD LIKE THE
APPEAL DECIDED ON IT'S MERITS
AND DOESN'T WANT ADDITIONAL
PROCEEDINGS.

>> OKAY.

>> I MEAN --

>> IS THAT IN THE RECORD OR
BASED ON YOUR PERSONAL
KNOWLEDGE?

>> THIS IS BASED ON THE FACT THAT EVERYTHING I FILED IN THE COURT IS IN CONSULTATION WITH MY CLIENT.

I CAN'T GO FARTHER INTO CONVERSATIONS WITH HIM.

THIS COURT IS AWARE THAT THE COURTS PRECEDENT PLACES COUNCIL IN SORT OF UNIQUE POSITION IN CASES LIKE THAT I'M CERTAINLY NOT GOING TO ADVOCATE AGAINST MR. FLETCHER BUT I'M ALSO, I BELIEVE, CHARGED WITH PRESENTING ARGUMENT REGARDING THE PROPRIETY AS OPPOSED TO THE LAW.

>> IF I UNDERSTOOD YOU CORRECTLY, YOU SAID MR. FLETCHER WOULD LIKE THE APPEAL TO GO FORWARD AND BE DECIDED ON IT'S MERITS.

>> THAT'S CORRECT YOUR HONOR.

>> A NOTICE OF APPEAL HAS BEEN FILED AND PENDING IN THE CASE.

WHAT PROVISION OF OUR CONSTITUTION WOULD GIVE US JURISDICTION TO CONSIDER A DEATH SENTENCE THAT HAS NOT BEEN APPEALED, WOULD YOU AGREE NO PROVISION OF THE CONSTITUTION WOULD DO THAT?

>> WHAT PROVISION OF THE CONSTITUTION WOULD LET THE COURT CONSIDER A DEATH SENTENCE THAT HAS NOT BEEN APPEALED?

>> THAT'S RIGHT.

>> I DON'T BELIEVE THERE IS SUCH A PROVISION.

>> OKAY, IF WE AGREE THAT ARTICLE 5, SECTION 3B REQUIRES AUTOMATIC CONSIDERATION OF APPEALS TO THE COURT AND NOT SENTENCES.

IF WE AGREE IT'S THE APPEAL THAT CAUSES OUR JURISDICTION TO ATTACH, THEN HOW CAN WE REVIVE A RULE LAW THAT THAT CHOSE NOT TO APPEAL.

>> BECAUSE OF THE AUTOMATIC REVIEW OF SECTION 921.

YOU ARE SAYING THE ONLY REQUIREMENT FOR US, IF THERE IS A REQUIREMENT FOR US TO REVIEW A SENTENCE OF DEATH.

IT'S STATUTORY AND NOT

CONSTITUTIONAL IN NATURE AND NOT ADDRESS THE STATUE.

>> THE AUTOMATIC PROVISION IN THE FLORIDA CONSTITUTION AND DOESN'T USE THAT WORD.

THE FLORIDA CONSTITUTION CONFERS DISCRETIONARY JURISDICTION. THE AUTOMATIC COMES FROM SECTION 9231.1.

THIS IS SINCE THE STATUE THAT HAS BEEN ENACTED.

>> IT'S YOUR POSITION THE STATUE OR LEGISLATURE REMOVE THEIR CONSTITUTIONAL RIGHT TO DIRECT THE COURSE BY FILING AND NOT FILING AN APPEAL.

I DON'T AGREE THAT IS THE DIFFERENCE OF THE CONSTITUTIONAL RIGHTS.

I BELIEVE IT BALANCES THE DEFENDANTS RIGHT TO AUTONOMY AND CONTROL ASPECTS OF THE LITIGATION.

THE DEFENDANTS RIGHTS TO SET THE GOALS OF THE LITIGATION WITH OVERRIDING AN IMPORTANT INTEREST.

THE DEFENDANTS RIGHTS ARE IGNORED.

THAT HAPPENS WITH THE SIXTH AMENDMENT.

THERE IS NO ABSOLUTE RIGHT OF THE DEFENDANT TO DO ANYTHING.

>> FAIR ENOUGH.

CAN YOU SITE A U.S. SUPREME COURT CASE THAT ENSHRINES THIS BALANCING FUNCTION OF THE LEGISLATURE OF THAT OF AN INDIVIDUAL.

>> I WISH I COULD POINT YOU TO A SINGLE CASE I DON'T THINK I CAN OR WOULD HAVE.

WHAT I CAN POINT TO IS SUBSTANTIAL JURISPRUDENCE OF THE SUPREME COURT TALKING ABOUT BOTH THE EIGHTH AND SIXTH AMENDMENT RIGHTS AND SHOWING THOSE RIGHTS HAVE TO BE FLEXIBLE IN CERTAIN CONTEXT.

SHOWING THE RIGHTS ARE NOT ABSOLUTE.

FOR EXAMPLE, I'M THINKING OF -- I'M TRYING TO THINK OF MARTINEZ THAT TALKS ABOUT SELF

REPRESENTATION THAT'S ENSHRINED
IN THE SIXTH AMENDMENT.

THERE ARE OTHER INTEREST THAT
ALLOW THEM TO LIMIT THE
DEFENDANTS AUTONOMY WHEN IT
COMES TO THE COURSE OF THE
APPEAL.

WHEN YOU LOOK AT THE DECISIONS
IN THEIR ENTIRETY I'D LIKE TO
SAY THE SIXTH AMENDMENT RIGHTS
AND AUTONOMY RIGHTS BY THE SIXTH
AMENDMENTS CAN BE LIMITED OR
BALANCED IN CERTAIN WAYS WHEN
THERE ARE COMPELLING INTERESTS
TO DO SO.

WHEN YOU TALK ABOUT IMPOSING A
DEATH PENALTY THE MOST FINAL AND
UNAPPEALABLE SECTION ONCE IT'S
BEEN CARRIED OUT IS A COMPELLING
REASON FOR SLIGHT LIMITATIONS ON
THE DEFENDANTS AUTONOMY.

>> JUST A MATTER OF BASIC
STATUTORY INTERPRETATION, TO THE
EXTENT YOU REASONABLY READ THE
STATUTE IS NOT A CLEAR
EXPRESSION OF THE LEGISLATURE
WANTING TO OVERRIDE WHATEVER
INTEREST MIGHT BE OR
CONSTITUTIONAL RIGHT THERE MIGHT
BE.

WE WOULD READ IT AS NOT MAKING
THE APPEAL NON WAIVABLE AND
BEFORE WE DECIDED THIS QUESTION
WE WAIT FOR THE LEGISLATURE TO
SPEAK WITH MORE CLARITY.

IT SEEMS LIKE THE TEXT DOESN'T
SUPPORT THE IDEA THE APPEAL
CAN'T BE WAIVED.

I THINK IT MIGHT BE A CLOSER
CALL IN THE AUTOMATIC REVIEW.
TO THE EXTENT IT TALKS ABOUT AN
AUTOMATIC APPEAL AND CAN BE READ
IS ALLUDING TO THE FACT THERE IS
NON DISCRETIONARY.

GETTING CLOSE TO CONSTITUTIONAL
VIOLATIONS EVEN RAISING A
CONSTITUTIONAL QUESTION WHEN YOU
DIDN'T HAVE TO.

WHY STRAIN TO CONTRIBUTE TO THE
LEGISLATURE MEANING WHEN IT
DOESN'T SEEM TO REQUIRE.

>> I DON'T THINK IT'S STRAINING
AT ALL.

AUTOMATIC HAS A MEANING AND THE

LEGISLATURE HAS THE MEANING FOR
A REASON.
THEY GIVE THE COURT NON
DISCRETION JURISDICTION.
IT DOESN'T SPEAK TO THE OTHER
ISSUES YOU ARE ALLUDING TO.
THE LEGISLATURE AFTER FERMAN,
THE REPLACEMENT STATUTE INCLUDED
AUTOMATIC REVIEW.
AT THE TIME THAT WAS UNDERSTOOD
TO MEAN NON WAIVABLE APPEAL.
THAT WAS DONE BECAUSE OF REVIEW
OF SENTENCES SEEN IN THE PART OF
AVOIDING THE CONCERNS OF
ARBITRARY OF THE DEATH PENALTY.
YOU CAN BE INVALIDATED.
>> THE SUPREME COURT, POLICE IN
SOME PLACES THE RIGHT IS THE
RIGHT OF INDIVIDUALS.
NOT TO BE SUBJECTED TO
VIOLATIONS.
THE EIGHTH AMENDMENT.
>> I CAN TELL YOU.
>> YOU USED THE EXACT LANGUAGE
YOU HAVE TALKED ABOUT.
THERE ARE MANY, MANY, QUOTES
ABOUT.
IT'S NOT LIMITED TO A SINGLE
PERSON.
IT'S THE BROADER CONCERN THAT
MEANS THE IMPOSITION OF THE
DEATH PENALTY.
>> THIS IS NOT CONSISTENT WITH
AN INDIVIDUAL RIGHT.
ALL OF THOSE OTHER THINGS ARE
ENTIRELY CONSISTENT WITH BEING
AN INDIVIDUAL RIGHT THAT IS
THERE TO PROTECT THE RIGHT OF A
PARTICULAR INDIVIDUAL.
>> YES.
>> OBVIOUSLY, YOU AGREE THAT'S
PART OF IT.
>> THAT'S ABSOLUTELY PART OF IT.
>> I THINK -- I THINK I HAVE
TROUBLE UNDERSTANDING HOW THAT
INDIVIDUAL RIGHT, LIKE ALL OF
THE OTHER INDIVIDUAL RIGHTS IN
THE CONSTITUTION THAT ARE
WAIVABLE.
WHY THIS ONE, THIS RIGHT OF
APPEAL IS NOT WAIVABLE WHEN ALL
SORTS OF RIGHTS ARE WAVED ALL OF
THE TIME.
YOU WANT TO MAKE SURE THE WAVER

IS KNOWING AND THEY ARE DOING IT
CONFIDENT.

>> EXACTLY, YOUR HONOR, A
PERSONAL RIGHT IS WAIVABLE.
JUST BECAUSE IT CAN BE WAVED
DOESN'T GIVE US THE RIGHT TO
INSIST ON THE OPPOSITE OF THAT
RIGHT.

THE DEFENDANT COULD WAVE HIS
RIGHT TO BE FREE FROM CRUEL AND
YOU THINK USUAL PUNISHMENT BUT
CAN'T INSIST OF NOT BEING
EXECUTED THROUGH TOWN BY HORSES.
THERE ARE LIMITS.

I'M BEING EXTREME.

THERE ARE LIMITS TO WHAT THE
DEFENDANT CAN AGREE TO.

>> IF I UNDERSTAND YOUR ARGUMENT
IT'S THE STATUTE THAT TELLS US
THE BALANCE AND TO HANG WITH THE
WEIGHT OF YOUR ARGUMENT ON AS
THE BALANCE THAT STRUCK.
THE HOW FAR WE WENT IN SAYING
HOW MUCH THE INDIVIDUAL CAN
WAVE.

LET'S DO THAT.

LET'S GO TO 921-9415.

LET'S ENGAGE WITH THE TEXT.

THE JUDGMENT OF CONVICTION SHALL
BE SUBJECT TO AUTOMATIC REVIEW
BY THE SUPREME COURT OF FLORIDA
AND THIS CAN BE RENDERED TWO
YEARS AFTER THE FILING OF AN
APPEAL.

OKAY, IT SEEMS LIKE YOUR
ARGUMENT WOULD BE A LOT STRONGER
IF THE LEGISLATURE HAD NOT
PURPOSEFULLY INCLUDED THE WORDS
RENDERED TWO YEARS AFTER THE
FILING OF NOTICE OF APPEAL.

WOULDN'T YOU CONCEDE THE STATUTE
CLEARLY CONTEMPLATES THERE IS AN
APPEAL.

IF THERE IS FILING OF APPEAL.

THE FIRST PART OF THE SENTENCE
DOESN'T OPERATE.

>> I THINK, YOUR HONOR, THE
STATUTE AND FLORIDA'S HISTORY IN
THE AREA TREATS THIS
INDISTINGUISHABLE.

>> I'M ASKING YOU TO ENGAGE IN
THE TEXT WITH ME AND NOTHING
ELSE.

IF THERE IS NO NOTICE TO APPEAL

THERE IS NO AUTOMATIC REVIEW.

>> I WOULDN'T, YOUR HONOR.

THE AUTOMATIC REVIEW REQUIRES
THE FILING OF THE NOTICE OF
APPEAL.

>> SO, YOU DO CONCEDE THE
AUTOMATIC REVIEW.

HERE IS WHAT I'M GETTING AT.

I DON'T THINK THE LEGISLATURE
STRIPS AWAY FROM THE NARRATIVE.
THEY STRIKE THE BALANCE BY
TAKING AWAY THE CONSTITUTIONAL
RIGHTS THE INDIVIDUAL HAS.

IT DOESN'T SAY ANYTHING ABOUT
MAKING OUR REVIEW AUTOMATIC AND
DISPLACING THE REQUIREMENT.

>> IF I ARGUE WHAT YOU JUST SAID
I SPOKE BADLY.

I DO NOT THINK THE AUTOMATIC
REVIEW PROVISION STRIPS AWAY
RIGHTS THE DEFENDANT HAS.

IT'S COUPLED WITH THE WAY IT'S
BEEN INTERRUPTED AND APPLIED IN
THE COURT FOR YEARS GOES WITH
THE DEFENDANTS RIGHTS OF WHAT HE
WANTS.

SUBJECTS THE DEATH SENTENCE TO
REVEAL THROUGH THE VEHICLE OF AN
APPEAL.

TO READ THE NOTICE OF APPEAL
PROVISION THE WAY THAT I THINK
YOU ARE READING IT BASICALLY
STRIKES OUT THE WORD AUTOMATIC.

YOU CAN TAKE THE WORD OUT.

YOU CAN TAKE THE WORD OUT OF IT
COMPLETELY AND THE STATUTE WOULD
DO WHAT YOU ARE SAYING.

>> I DISAGREE WITH YOU.

IT'S AUTOMATIC.

NOT GOING TO DCA.

>> THAT HAPPENS IF SAYS SHALL BE
REVIEWED BY THE SUPREME COURT.
YOU DIDN'T NEED THE WORD
AUTOMATIC.

>> I'M NOT SURE ABOUT THAT.

IT SEEMS TO ME GOING BACK TO
WHAT THE PREVIOUS JUSTICE WAS
SAYING ABOUT GOING BACK TO
CONSTITUTIONAL QUESTION.

MY READING OF THE STATUTE THAT
GIVES EFFECT TO THE NOTICE OF
APPEAL IS IT AVOIDS THE QUESTION
IF THE STATUTE OPERATES TO
REMOVE THE DEFENDANTS RIGHT TO

APPEAL OR NOT.

>> I'LL BACK-UP JUST A LITTLE
BIT YOUR HONOR.

I'D LIKE TO GO BACK TO THE
LANGUAGE OF CONSTITUTION AND
STATUTE.

THE CONSTITUTION SAYS THIS COURT
SHALL HERE APPEALS OF DEATH
SENTENCES AND THE STATUTE SAYS
DEATH SENTENCE SHALL HAVE
AUTOMATIC REVIEW BY THE COURT.
THAT, IT'S NOT MY POSITION THAT
STRIPS AWAY THE DEFENDANTS
RIGHT.

YES, THERE IS SOME LIMITATIONS
ON THE DEFENDANTS RIGHT TO
COMPLETELY WAVE ANY RIGHT OF THE
DEATH SENTENCE.

THAT IS COMPELLED BY OTHER
CONSTITUTIONAL CONCERNS.

I DON'T THINK THIS COURT CAN
AVOID CONSTITUTIONAL ISSUES BY
TREATING THE NOTICE OF APPEAL AS
DETERMINATIVE.

THEY WILL STILL BE
CONSTITUTIONAL ISSUES WHEN IF
YOU HAVE A SITUATION WHERE A
SINGLE COURT COULD ACCEPT THE
PLEA AND WAIVER OF MITIGATION AND
SENTENCE SOMEONE TO DEATH AND
ABSOLUTELY NO REVIEW OF THIS.
THAT GOES AGAINST EVERYTHING
THEY HAVE SAID WITH THE REVIEW
OF DEATH SENTENCES FOR LEGALITY
AND MAKE SURE THEY ARE NOT
OPPOSED ARBITRARILY.

>> COUNCIL, ESSENTIALLY YOUR
POSITION THAT THE AUTOMATIC
REVIEW IS ALMOST SEPARATE FROM
WHAT WE WOULD CONSIDER AN
APPEAL.

THE AUTOMATIC REVIEW IS A
CONSTITUTIONAL SENTENCE AND WAS
EVERYTHING FOLLOWED.

THE LEGISLATURE ADDITION OF THE
TIME FRAME AND NOTICE OF APPEAL
IN A VEHICLE ON WHICH THAT
AUTOMATIC REVIEW TRAVELS TO US.
THAT'S NOT NECESSARILY TALKING
ABOUT THE SAME THING.

IS THAT WHAT YOU ARE SAYING?
THE AUTOMATIC REVIEW IS
SOMETHING WE HAVE TO DO AS A
MATTER OF CONSTITUTIONAL

AUTHORITY BASED ON U.S. SUPREME COURT DECISIONS OR WHAT HAVE YOU.

THE NOTICE OF APPEAL MECHANISM IS HOW WE DO THAT?

>> I BELIEVE THAT'S TRUE.

IT'S A PROCEDURAL MECHANISM THAT STARTS THE CLOCK RUNNING ON THAT PROCESS.

>> DO YOU BELIEVE IF A NOTICE OF APPEAL WAS NOT FILED.

SAY IT WAS AN ERROR OR SAY THE DEFENSE ATTORNEY SAID I WOULDN'T DO IT BECAUSE MY CLIENT DOESN'T WANT ME TO DO IT.

WE COULD REVIEW THE CASE?

>> I BELIEVE THIS COURT WOULD STILL HAVE JURISDICTION TO HEAR THE CASE.

>> HOW?

HOW DOES IT COME TO US?

WE STEP-IN ON WHAT?

EXPLAIN MECHANICALLY?

>> THAT'S THE PROBLEM, THE RIGHTS DEPEND ON SOMEONE REVOKING THEM.

>> LET'S --

>> THAT'S THE HEART OF THE MATTER.

WHAT I WANT YOU TO DO, IF THAT'S YOUR VIEW, HELP ME UNDERSTAND AND LEDGE IMAGE YOUR CLIENT DECIDES.

I WOULD LIKE TO FILE A REVEAL IN MY CASE.

I HAVE DID RIGHT TO THE ASSISTANCE OF COUNCIL.

THEY DO NOT FILE FOR THE REPEAL.

ARE YOU SAYING THE COUNCIL.

HELP ME LOCATE COUNCILS

OBLIGATION TO FILE THE NOTICE OF APPEAL OR IF YOU SAY COUNCIL

DOESN'T FILE THE NOTICE OF

APPEAL HOW THE AUTOMATIC REVIEW.

HOW DOES IT WORK.

>> IT HAPPENS BRING THE GROUP OF FILING OF THE NOTICE OF APPEAL.

THIS IS BY THE DETERMINATION OF ALL DEATH SENTENCES.

>> WITH SOME SORT OF ANALYSIS

WHERE THE LAWYER SAYS I HAVE

CONSIDERED MY CLIENTS EXPRESS

INSTRUCTIONS NOT TO APPEAL THE

CASE.

WITH THIS PRECEDENCE I'M FILING
THIS APPEAL BECAUSE IT'S
AUTOMATIC.
>> THERE HAVE BEEN CASES IN THE
PAST WHERE THE MOTIONS WERE
FILED IN THIS APPEAL.
WE WOULD LIKE ADVERSARIAL REVIEW
OF THE DEATH SENTENCE.
I JUST WANTED TO GO BACK TO THAT
AUTOMATIC REVIEW PROVISION.
THE READING I THINK IS THE
CORRECT READING OF THE TERM THAT
GIVES FULL EFFECT TO THE WORD
AUTOMATIC IS CONSISTENT WITH
EVERY OTHER JURISDICTION.
IT'S CONSISTENT WITH HOW THE
U.S. SUPREME COURT HAS VIEWED
DEATH PENALTY SENTENCING SCHEMES
EVER SINCE THE STATUTES WERE
ENACTED.
IF YOU GO BACK TO THE 1976
TRILOGY.
THEY MENTIONED EACH ONE THE
DEATH SENTENCE WAS SUBJECT TO
SOME FORM OF REVIEW BY THE
JURISDICTION WHEN THEY FOUND THE
DEATH PENALTY SENTENCES WERE
CONSTITUTIONAL.
SO, COULD THE REQUIREMENT BE
CRAFTED MORE CONSISTENCY?
I COULD HAVE.
THERE ARE STATES THAT EXPLICITLY
USE THE PROCEDURES LIKE THAT.
WHAT FLORIDA HAS DONE SAID WE
HAVE AUTOMATIC REVIEW OF DEATH
SENTENCES AND THIS MEANS YOU
NEED TO PROVIDE ON ADVERSAL.
IT'S LESS SO AT THE APPELLATE
STAGE AT THE CONVICTION.
THERE ARE SEPARATE ISSUES OF
WHAT THE JOB IS.
I HOPE I GET TO BETWEEN THE
WAIVER OF THE APPEAL AND
MITIGATION.
ONCE YOU GET TO AN APPEAL, THE
DEFENDANT WHO HAS BEEN CONVICTED
WHETHER IT'S THROUGH A JURY
VERDICT OR GUILTY PLEA --
>> IS THERE ANY CASE LAW THAT
SUPPORTS YOUR NOTION THE
INDIVIDUAL RIGHT TO WAIVE AN
APPEAL IS DIMINISHED BY
ANYTHING.
THAT ANY CASE LAW BECAUSE OF

EIGHTH AMENDMENT CONCERNS AND BEEN RECOGNIZED BY THE U.S. SUPREME COURT.

WE WOULDN'T BE HERE.

THAT'S APART OF WHAT'S BEFORE THE COURT TODAY.

THERE ARE MANY OTHER CONTEXT.

>> WOULD IT SATISFY THE EIGHTH AMENDMENT CONCERNS IN THERE WAS A PROCEDURAL RULE IN PLACE THAT PROVIDED FOR REVIEW OF FUNDAMENTAL ERROR.

THEY FILE WITH THE COURT.

THE DEFENDANT WANTS TO MAKE ANY ARGUMENT ON APPEAL AND WANT TO STAND BUT ALLOW THEM TO CONDUCT A REVIEW THAT THERE IS NO FUNDAMENTAL ERROR.

THE SIXTH AND MY MEND CONCERN AND EIGHTH AMENDMENT CONCERN.

>> WHAT WE HAVE ALREADY DOES THAT?

>> HOW DOES IT WHEN IT FORCES THE DEFENDANT TO BE SUBJECTED TO AN APPEAL THAT HE OR SHE DOESN'T WANT?

>> BECAUSE CASE LAW ALLOWS DEFENDANTS TO VOICE THEIR WISHES IF THEY WANT TO AND CERTAINLY WOULD BE NOTHING RESTRICTING THE COURT FROM EVEN APPOINTING COUNCIL FOR THAT PURPOSE.

IT'S BEEN LIMITED TO ALLOW PRO SE BRIEFS WHEN THEY WOULD LIKE TO FILE A BRIEF IN THE COURT ARGUING THE FAVOR OF THE DEATH PENALTY, THAT WOULD BE ALLOWED.

THEY HAVE SAID WE USED DEATH SENTENCES FOR SUFFICIENCY AND LEGALITY.

AT ONE POINT, THAT PHRASE ALSO INCLUDED PROPORTIONALITY.

SINCE THE DECISION IN LAWRENCE, THAT'S NO LONGER AN ISSUE LAWRENCE DIDN'T OVERRULE.

WHAT YOU HAVE IS A SYSTEM WHERE COUNCIL ON APPEAL IS ALLOWED OR REQUIRED TO MAKE ARGUMENTS POINTING OUT POTENTIAL DEFICIENCIES IN THE DEATH SENTENCE.

THE DEFENDANT IS ALLOWED TO VOICE WHAT HE WANTS.

IF WHAT HE WANTS IS A DEATH

SENTENCE.

THE COURT HAS THE OBLIGATION TO REVIEW SUFFICIENCY AND LEGALITY. THAT'S THE BALANCING OF RIGHTS THAT THIS COURT HAS STRUCK AND I DON'T THINK COMPLETELY STRIPPED THE DEFENDANT OF THE SIXTH AMENDMENT RIGHTS.

>> I'M CURIOUS ABOUT SOMETHING. YOUR ARGUMENT SUGGESTIONS THAT THE FLORIDA DEATH PENALTY SCHEME WOULD BE THROWN INTO QUESTION ON EIGHTH AMENDMENT GROUNDS IF WE APPLY THE SIXTH AMENDMENT AND SAY THE DEFENDANT HAS THE RIGHT TO WAVE THE APPEAL.

I'D LIKE YOU TO EXPLAIN THE BASIS FOR THAT.

>> THE BASIS GOES BACK TO THE THREE CASES I MENTIONED BEFORE UPHOLDING THE FIRST WAVE OF POST FURMAN DEATH SENTENCES AND THE NEED FOR INDIVIDUALIZED SENTENCING.

FOR EXAMPLE CONSIDERING MITIGATION.

MITIGATION CAN BE IN THE STATE'S CASE AND THEY MUST CONSIDER IT.

I'D SAY THAT THE ALLOWING THE SIXTH AMENDMENT RIGHT TO ABSOLUTELY OVERCOME --

>> HOW DOES THAT SQUARE WITH THE FACT THERE IS NO CONSTITUTIONAL RIGHT TO AN APPEAL AT ALL?

>> THERE IS NO FEDERAL CONSTITUTIONAL RIGHT TO AN APPEAL BUT IN DEATH SENTENCES THERE IS A PRECEDENCE.

REVIEW OF DEATH SENTENCES IS PART OF THE CONSTITUTIONAL SCHEME.

SO, IF THE COURT COMPLETELY GAVE PRECEDENCE TO THE SIXTH AMENDMENT VALUES.

THIS CAN BE LIMITED IN MANY OF THE CONTEXT, I THINK THAT WOULD CALL THE CONSTITUTIONALITY OF THE SENTENCING STATUTE INTO QUESTION.

>> CAN WE CIRCLE BACK TO WHERE WE STARTED.

YOUR ARGUMENTS ARE WEAK ON THE MERITS.

IF IN FACT YOUR CLIENT WOULD

LIKE THERE TO BE AN APPEAL,
GIVEN THE SIGNIFICANCE OF THE
ISSUE.

ONE IS TAKE YOUR WORD FOR THAT.
ANOTHER POSSIBILITY IS REMAND
FOR SOME KIND OF WAVER HERE.

IS THERE ANYTHING ELSE THE COURT
SHOULD HAVE ON IT'S RADAR AS A
WAY OF DEALING WITH THE ISSUE?

>> WELL, I THINK THE COURT HAS
ALREADY DEALT WITH IN SIMILAR
SITUATIONS RESOLVING THE CASES
ON THE MERITS RATHER THAN TAKING
CONSIDERATION TO MAKE SWEEPING
CHANGES IN THE LAW BASED ON NOT
WANTING AN APPEAL.

>> THAT'S NOT .

>> I'M NOT TRYING TO AVOID THE
QUESTION BECAUSE IT'S DIFFICULT
TO ANSWER THIS BECAUSE YOU ARE
TOUCHING ON CONVERSATIONS I HAD
WITH MR. FLETCHER THAT I DON'T
WANT TO GET INTO.

>> I GUESS -- SO, IT WOULD BE
STRANGE FOR THE COURT TO DO --
TO TAKE THIS STEP-IN A CASE
WHERE FROM YOUR TELLING HE WANTS
THERE TO BE AN APPEAL.

IF WE ARE OPEN TO RECONSIDER THE
QUESTION THAT SHOULD BE DONE IN
A CASE WHERE THE DEFENDANT WOULD
LIKE THERE TO BE AN APPEAL.

MY QUESTION IS WHAT IS AN
APPROPRIATE WAY TO VERIFY WHAT
YOUR CLIENTS WISHES ARE.

WE COULD TAKE YOUR WORD FOR IT.

>> YOU COULD RELY ON ME UNLESS
YOU HAVE A REASON TO QUESTION
I'D BE CANDID WITH THE COURT
WHICH I HOPE YOU DIDN'T.

>> WE COULD RELY ON THE FILING
OF THE NOTICE OF APPEAL, RIGHT.

>> THE FILING OF THE NOTICE OF
APPEAL.

WHEN THE NOTICE OF APPEAL WAS
DISCUSSED AT CHILD TRIAL COUNCIL
MADE CLEAR IF THE DEFENDANT WERE
WRITTEN ON A CLEAN SLATE HE
WOULDN'T WANT AN APPEAL.

>> STATUTORILY SPEAKING IF WE
GET NOTICE OF APPEAL WE ARE ON A
TRAJECTORY RECONCILABLE WITH THE
SIXTH AMENDMENT CONCERNS.

I WONDER WHY YOU ARE FIGHTING

FOR A BROADER RULE THAN THAT.
IF A NOTICE OF APPEAL HAS BEEN
FILED WE HAVE BEFORE US THAT
IRREFUTABLE EXPRESSION OF WHAT
TO DO AND WHAT THE APPELLANT
WANTS IN THE CASE.

I DON'T KNOW IF WE SHOULD ARGUE
WHEN NO NOTICE OF APPEAL HAS
BEEN FILED BECAUSE OF SOME CON
SINNER FOR THE EIGHTH AMENDMENT
REASON.

I DON'T KNOW WHY YOU ARE
STRETCHING TO THAT.

>> I APOLOGIZE JUSTICE COURIEL.
>> IN PRACTICE WHEN A DEATH
SENTENCE IS HANDLED DOWN BECAUSE
OF THE COURTS PRECEDENCE THE
TRIAL COURT DIRECTS THE FILING
OF THE NOTICE OF APPEAL AS A
MATTER OF COURSE.

IT'S A PROCEDURAL TASK THAT
HAPPENS.

I'M NOT ENVISIONING A TIME WHEN
THAT WOULD HAPPEN.

>> YOU USED YOUR REBUTTAL TIME
PLUS A MINUTE.

I'LL GIVE YOU 5 MINUTES OF
REBUTTAL.

>> GOOD MORNING, MAY IT PLEASE
THE COURT.

JENNIFER DAVIS ON BEHALF THE
STATE OF FLORIDA.

I'D LIKE TO TOUCH ON THE STATUTE
FOR A MOMENT.

>> COULD WE ADDRESS THE ISSUE
ABOUT THE DEFENDANTS WISHES.
I MEAN, SO WHAT DO YOU SAY TO
WHAT COUNCIL SAID -- OPPOSING
COUNCIL SAID ABOUT THE DEFENDANT
WANTING THE APPEAL TO GO FORWARD
IF I'M CHARACTERIZING WHAT SHE
SAID ACCURATELY.

>> I THINK THAT WE SHOULD HAVE
BEEN NOTIFIED IF THAT WAS
ACTUALLY THE APPELLANTS WISHES.
EVERYTHING HE WROTE TO THE COURT
AND JUDGE SAID HE WANTED TO WAVE
AN APPEAL.

THIS IS THE FIRST I'M HEARING.
THERE IS NO NOTICE OTHERWISE.
THEY WOULD HAVE NOTIFIED ME TO
DISMISS THAT HER CLIENTS
POSITION HAS CHANGED.

THIS IS NEWS TO ME THE POSITION

HAS CHANGED.

IF THE APPEAL WANTS TO GO FORWARD WE CAN JUDGE IT ON THE MERITS.

>> IT WAS SUGGESTED EARLIER TO REMAND THE CASE BACK AND HAVE THE DEFENDANT ON THE RECORD STATING WHAT HIS WISHES ARE TODAY.

WOULD YOU HAVE ANY OPPOSITION TO THAT?

>> I WOULDN'T HAVE ANY OPPOSITION TO THAT.

IN FACT, CHIEF JUSTICE SUGGESTED THE SAME THING.

YOU THOUGHT IF THE DEFENDANT WANTED TO WAVE HIS RIGHT TO AN APPEAL IT WAS HIS FUNDAMENTAL RIGHT AND SAID IT WAS UNJUSTIFIABLE USE OF CRIMINAL DEFENDANTS SIXTH AMENDMENT RIGHT TO DECIDE WHETHER OR NOT HE WOULD LIKE TO TAKE AN APPEAL.

YOU SUGGESTED TO SEND IT BACK TO THE TRIAL COURT FOR A COLLOQUY ON THE RECORD SO IT WOULD BE ON THE RECORD SO IT WAS KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF THE RIGHT TO APPEAL.

>> IT SOUNDED LIKE BEFORE YOU GOT ASKED ANOTHER QUESTION THAT IT SOUNDED LIKE YOU WERE WILLING DO ACCEPT THE REPRESENTATION FOR COUNCIL ABOUT THE DEFENDANTS CURRENT WISHES AND ON THAT BASIS WITHDRAWAL YOUR MOTION TO DISMISS.

THAT I MISHEAR THAT.

>> I'M NOT WITHDRAWING THE MOTION TO DISMISS.

IT WOULD BE GOOD TO SEND IT BACK IF THAT'S HER -- I CAN'T MAKE THAT DECISION IF IT GOES BACK OR NOT.

THE STATE'S POSITION IS THAT EVERYTHING WE KNOW FROM THE RECORD AND WHAT WAS SAID IN COURT THAT THIS APPELLANT DIDN'T WANT THE APPEAL AND THE BASIS OF US WRITING THE MOTION TO DISMISS THAT'S BEEN ON RECORD SINCE 2021.

IF THE CLIENT'S POSITION HAD CHANGE I THINK SHE WOULD HAVE

FILED SOMETHING TO ALERT THE STATE.

>> DO YOU RECALL WHAT WAS FILED IN RESPONSE OF THE MOTION TO DISMISS.

>> YES, IT WAS A RESPONSE.

>> A RESPONSE THAT OPPOSED THE MOTION TO DISMISS.

>> IT DIDN'T DO SO ON GROUNDS THAT MR. FLETCHER WANTED TO PROCEED.

>> THAT'S CORRECT.

>> IT WAS BASED ON OUR PRIOR PRECEDENT?

>> CORRECT.

>> PART OF MY ISSUE WITH THE STATUTE THAT IT'S AN AUTOMATIC APPEAL.

AUTOMATIC AND MANDATORY IS TWO DIFFERENT THINGS.

AUTOMATIC MEANS THOSE WHO RECEIVE THE DEATH SENTENCE THIS COURT HAS JURISDICTION.

>> WHAT WORK IS THE WORD AUTOMATIC DOING.

THE CONSTITUTION GIVES US THAT CORRECT?

>> CORRECT.

>> WHY WOULD THAT ENTIRE SUBSECTION BE NECESSARY.

>> IF A NOTICE OF APPEAL IS FILED IN A CASE OF A CRIMINAL DEFENDANT IN THE DEATH PENALTY THE COURT WOULD AUTOMATICALLY HAVE JURISDICTION.

>> WE HAVE THAT ANY WAY, DO WE NOT.

ONLY IF THE APPELLANT FILES A NOTICE OF AN APPEAL.

IF THEY DIDN'T FILE A NOTICE OF APPEAL THERE IS NO VEHICLE TO BRING THE APPEAL TO THE COURT.

>> THE POINT IS SECTION 3B1 PROVIDES WHEN A NOTICE OF APPEAL IS FILED IT COMES TO US.

WE HAVE JURISDICTION.

>> SO WHY THIS PROVISION IN THE STATUTE?

WHAT WORK IS IT DOING WHINING IT SAYS WHEN IT'S APPEALED IT COMES TO US WHAT IS THIS DOING?

I GUESS IT'S ENFORCING WHAT THE CONSTITUTION IS SAYING.

IT SHALL COME TO THIS COURT IF

IT'S A SENTENCE UNDER DEATH AND AN APPEAL BE IN THE CASE. YOUR VIEW FOR THE STATE IS THIS SUBSECTION IS CODIFYING A CONSTITUTIONAL PROVISION IN THE STATUTE.

>> YES, TO AN EXTENT.

>> IT GOES BEYOND THAT.

IT SAYS THE JUDGMENT OF CONVICTION AND SENTENCE OF DEATH SHALL BE JUST ABOUT SUBJECT TO AUTOMATIC REVIEW.

THE QUESTION IS IF IT'S AUTOMATIC AND WE ARE SUPPOSE TO REVIEW THE JUDGMENT OF CONVICTION AN SENTENCE OF DEATH. IT DOESN'T SAY IF A NOTICE OF APPEAL IS FILED.

IT SAYS IT SHALL BE.

DOESN'T THAT SUGGESTION IF A NOTICE OF APPEAL IS FILED IT CONFLICTS WITH FEDERAL LAW AND STRIPS THE DEFENDANT FOR AN APPELLANT OF THE SIXTH AMENDMENT RIGHT.

>> THE STATUTE IS CONSTITUTIONAL.

>> I'M ARGUING TO THE EXTENT THE SIXTH AMENDMENT DOESN'T ALLOW WITH THE DIFFICULTY TO NOT TAKE AN APPEAL IN THE STATE OF FLORIDA.

WE WERE JUST ASKING FOR DEPARTURE FROM COON, MUHAMMAD, AND MOOR THAT ALLOWS A CRIMINAL DEFENDANT TO TAKE AN APPEAL.

>> THAT'S BECAUSE OF BARNS.

>> BARNS, GARZA, AND JUSTICE KENNEDY.

BEFORE WE GO DOWN THAT ROAD. THE CONSTITUTION A SAID THEY SHALL HAVE SENTENCES.

THAT MEANS OUR COURT HAS TO RESOLVE CASES ABOUT THOSE THINGS.

THE STATUTE YOU SAY GIVES VOICE TO THAT, SPECIFIES IT, AND THE WORK OF THE RECORD AUTOMATIC IN THAT INSTANCE IS THAT IT IS PAILING.

THIS COMES TO US AND SET FORTH IN THE CONSTITUTION.

AM I HEARING YOU RIGHT, IT'S IMPORTANT TO GIVE EFFECT TO

AUTOMATIC.

WE SHOULD HEAR WHAT THE WORD
AUTOMATIC IS?

>> I BELIEVE AUTOMATIC, LIKE I
SAID SENDS IT FROM SOMETHING
THAT HAPPENS NATURALLY.
ONCE I GET CONVICTED OF A CRIME,
I FEEL A NOTICE OF APPEAL THE
COURT HAS AUTOMATIC
JURISDICTION.

IT DOESN'T GO TO THE THIRD DCA.

>> I MEAN, THAT'S NOT WHAT IT
SAYS.

THERE WILL BE AUTOMATIC OF
REVIEW OF JUDGMENT AND
CONVICTION OF THE COURT.

>> WE ARE NOT ASKING ABOUT THE
BY THE COURT PART.

IT'S THE AUTOMATIC PART.

THAT MEANS WITHOUT ANY OTHER
PROCESSOR PROCEDURE.

>> I AGREE.

I BELIEVE THAT'S WHERE THE
CONFLICT COMES IN.

THERE ARE DIFFERENT WAYS TO
INTERRUPT THE CONSTITUTION AND
STATUTE.

THIS IS NOT GOING TO BE, THIS IS
A TYPE OF ISSUE CAPABLE OF
REPETITION.

THE SIXTH AMENDMENT RIGHT TO
AUTONOMY MUST GO THROUGH THE
PROCESS.

LET'S FOCUS ON AUTOMATIC.

THAT GENERALLY MEANS SOME USER
INPUT IS NO LONGER NECESSARY.

SOME HUMAN IS NO LONGER
EXERCISING DISCRETION.

ONE WAY TO READ THAT IS TO SAY
THE HUMANS THAT'S DISCRETION TO
BE REMOVED IS THE DEFENDANT.

WE ARE OVERRIDING THE DEFENDANTS
RIGHT.

THE COURT DOESN'T HAVE THE
ABILITY TO OVERRIDE IT.

THEY DIDN'T HAVE THE
JURISDICTION.

IS IT THE STATE'S POSITION THAT
THE COURT TO DECLINE TO EXERCISE
THE JURISDICTION IT'S GIVEN IN
3B1 IN ANY DEATH PENALTY CASE OR
THE STATE CONCEDES WE DIDN'T GET
THAT DISCRETION.

>> I CAN SEE AT THIS JUNCTURE

YOU DIDN'T GET THIS.
IF THEY WANT TO TAKE THE APPEAL
THEY DIDN'T HAVE THE RIGHT.
THEIR RIGHTS ARE STRIPPED AWAY
BECAUSE OF OUR AUTOMATIC PROCESS
THAT'S IN PLACE.

>> YEAH, I MEAN, I DON'T THINK
THERE IS A WAY TO GO ONTO FOCUS
ON THE WORD AUTOMATIC.
IT SAYS SUBJECT TO AUTOMATIC
REVIEW.
IT DOESN'T SAY THE SUPREME COURT
SHALL AUTOMATIC REVIEW.
IT'S REASONABLE TO READ THE
FIRST PART BUT THE SET UP FOR
THE REAL WORK THAT'S GIVING US A
TWO YEAR DEADLINE TO RENDER A
DECISION.

IT'S EASY TO READ THAT IT'S
SUBJECT TO AUTOMATIC REVIEW.
IT'S BASICALLY SAYING IF THERE
IS A NOTICE OF APPEAL FILED
JURISDICTION IS IN THE COURT AND
THIS IS THE NEW PART.
WE ARE TOLD BY THE LEGISLATURE
TO RENDER OUR DISPOSITION WITHIN
TWO YEARS THAT DOESN'T APPEAR IN
THE CONSTITUTION.
IT DOESN'T SEEM LIKE IT HELPS
YOU TO ADOPT THEIR UNNECESSARY
READING OF THE STATUTE AND FORCE
US TO MAKE CONSTITUTIONAL
DETERMINATION WHEN THERE IS A
REASONABLE LIMIT TO AVOID THIS
CONSTITUTIONAL QUESTION.

>> OKAY.
WOULD YOU LIKE ME TO ADDRESS THE
MERIT OF APPEAL?

I CAN.
THE TRIAL COURT IN THE CASE
COMPLIED WITH THE COURTS
REQUIREMENT FOR DEFENDANT, WHO
WANTED TO WAVE MITIGATION.
THE TRIAL COURT COMPLIED WITH
COON AND DID A COLLOQUY ON THE
RECORD.

THE TRIAL COURT COMPLIED WITH
MORQUAT THAT COMPLIED WITH
INDEPENDENT SPECIAL COUNCIL.
THE TRIAL COURT DID EVERYTHING
THE COURT REQUIRED FOR A WAVER
OF MITIGATION TO BE VALID.
THERE IS NO ERROR IN THE CASE.
THE RECORD IS CLEAR THE

APPELLANT WANTED TO WAVE
MITIGATION.

THERE WAS A COLLOQUY ON THE
RECORD.

HE WROTE A LETTER TO JUDGE AND
COURT DETAILING HIS CRIME
DETAILING HE WANTED TO WAVE THE
MITIGATION TO MOVE THINGS ALONG.
HE DIDN'T COOPERATE WITH THE
DEPARTMENT OF CORRECTIONS PSI
AND HE WAVED A SPENCER HEARING.
IT'S THE STATES OPINION IT'S
ABSURD TO FAULT THE TRIAL COURT
FOR NOT DEVELOPING FARTHER
MITIGATION WHEN IN FACT THE
APPELLANT WENT OUT OF HIS WAY TO
LET EVERYONE KNOW HE DIDN'T WANT
THE MITIGATION.

HE WAVED HIS IT WAS A WAIVER OF
MITIGATION.

HE CAN'T CREATE AN ERROR AND
HOPE TO BENEFIT FROM THAT.

THE RECORD IS CLEAR WHAT HIS
POSITION WAS ON THE WAVER OF
MITIGATION.

ALSO, BY SOME CHANCE IF THE
COURT FINDS THERE IS AN ERROR
IT'S A HARMLESS ERROR.

THIS WAS A HEAVY MITIGATED
MURDER.

>> HEAVY AGGRAVATED.

>> I'M SORRY, YES, HEAVILY
AGGRAVATED MURDER.

THE CAPITOL FELONY WAS COMMITTED
BY A PERSON THAT WAS ALREADY
CONVICTED OF A FELONY AND UNDER
SENTENCE OF IMPRISONMENT.

THE CAPITAL FELONY WAS COMMITTED
BY SOMEONE WHO WAS CONVICTED OF
ANOTHER CAPITAL FELONY.

THIS CAPITAL FELONY WAS HEINOUS
AND CRUEL.

THIS CAPITAL FELONY WAS A
HOMICIDE DONE IN A COLD,
CALCULATED, AND PREMEDITATED
MANOR.

UNDER THE CIRCUMSTANCES, THIS IS
A HEAVY AGGRAVATED MURDER AND
THE TRIAL COURT GOT IT RIGHT.

THANK YOU.

>> LET ME ASK YOU THIS, COUNCIL.

WE HAD THE MERITS HERE WHICH YOU
ALREADY -- WOULD I BE WRONG
THINKING THE STATE'S OBJECTIVE

IS GET TO THE FINALITY OF THE
CASE AS SOON AS POSSIBLE.

>> YES, CHIEF JUSTICE.

>> NOTHING FARTHER THE STATE
WISHES THE COURT UPHOLDS THE
CONVICTION AND SENTENCE.

THANK YOU.

>> YOUR HONORS, JUST A FEW
POINTS.

I WANT TO RETURN BRIEFLY TO JUST
THE FACT THAT THE SIXTH
AMENDMENT RIGHTS ARE NOT
ABSOLUTE AND MENTION SOME OF THE
WAYS THEY CAN BE LIMITED OR
QUALIFIED.

IN PLEADING THE DEFENDANT CAN
DECIDE TO ACCEPT THE PLEA BUT
CAN BE QUESTIONED ABOUT IT AND
CANNOT FORCE THE STATE TO GIVE
HIM A PLEA OFFER TO A PARTICULAR
OFFENSE.

AFTER PLEA THE COURT HAS TO
ACCEPT THE PLEA.

THAT'S ONE OF THE RIGHTS
MENTIONED IN BARNES AND MCCOY.
IT'S NOT ABSOLUTE.

THERE ARE OTHER INTERESTS AT
WORK.

SORRY.

THE RIGHT TO COUNCIL DOESN'T
MEAN YOU CAN COMPEL THE COURT TO
DO SO.

WHAT WE HAVE IS AN AUTOMATIC
REVIEW PROVISION THAT TAKES AWAY
CONTROL FROM THE DEFENDANT.

AS WAS MENTIONED DURING THE
STATES ARGUMENT IT'S MORE OF A
RESTRICTION ON THE COURT OR
DIRECTIVE TO THE COURT SAYING,
YOU NEED TO REVIEW CERTAIN TYPES
OF SENTENCES.

>> YOU DIDN'T WANT TO ADDRESS
THE MERITS OF THE CASE.

>> I'D LIKE TO SAY SOMETHING
BRIEFLY BUT I WANTED TO RETURN
TO THAT.

I THINK THE AUTOMATIC REVIEW
PROVISION IS CRUCIAL HERE.

I WANTED TO NOTE THAT BARNES AND
MCCOY TALKING ABOUT THE RIGHT TO
FARGO AN APPEAL OR TAKE AN
APPEAL DIDN'T INVOLVE A
PROVISION LIKE WE HAVE AT ISSUE
HERE.

WHEN YOU HAVE EVERY STATE
MAINTAINING THE DEATH PENALTY
HAVING A FORM TO REVIEW THE
DEATH PENALTY SENTENCE WOULD
CALL OUR SCHEME TO QUESTION IF
THERE WERE NO REVIEW OF A
SENTENCE BECAUSE THE DEFENDANT
DOESN'T WANT AN APPEAL.

THE DEFENDANT IS NOT FORCED TO
APPEAL.

THE DEFENDANT CAN MAKE HIS
WISHES KNOWN.

THE DEFENDANT CONTROLS WHAT YOU
HEAR ON AN APPEAL BY CONTROLLING
THE TRIAL COURT.

THEY MAINTAIN CONSIDERABLE
AUTONOMY IN THE CASES.

>> LET ME JUST TAKEBACK THE
CONUNDRUM WE HAVE.

YOU REPRESENTED SOMETHING.

IT'S NOT THAT WE DIDN'T TRUST
YOU BUT AWAY APPEALS WORK WE ARE
BOUND BY THE RECORD AND THE
RECORD IS CLEAR THE DEFENDANT
DIDN'T WANT THE APPEAL.

WHEN YOU HAVE A OPPORTUNITY TO
APPEAL TO THE MOTION TO DISMISS
AND YOU HAVEN'T FILED ANYTHING.
HOW COULD WE DO ANYTHING OTHER
THAN SEND IT BACK FOR
DETERMINATION IF WE WANT TO
ADDRESS THAT?

>> I THINK WHAT THE RECORD MAKES
CLEAR IS THE DEFENDANT
UNDERSTOOD WHAT THE LAW IS AND
ACTING WITHIN THE PARAMETER OF
THE LAW IN A WAY THAT WOULD
RESOLVE THIS CASE AND GIVE HIM
THE FINALITY HE WANTS.

YES, IF YOU LOOK AT THE CERTAIN
POINTS AND TIME HE EXPRESSED IT
IN SLIGHTLY DIFFERENT WORDS.
I CAN'T FIND THE RECORD.

>> IF YOU WANT TO SPEND THE REST
OF YOUR TIME ON THAT.

>> IN THE FUTURE I'D LIKE TO
WAVE ALL OF THE APPEALS I CAN.
HE CLEARLY INDICATED THAT SOME
REVIEW WAS NON WAIVABLE AND
OTHERS WERE NOT.

WHAT I WANTED TO SAY ON THE
MERITS THIS WAS A HEAVY
AGGRAVATED CASE AND WE DIDN'T
CONTEST THAT IN THE APPEAL.

THE ISSUE WAS LIMITED TO THE
RELIANCE ON OUT DATED OR AT
LEAST STALE MITIGATION AND
FAILURE TO UPDATE THAT OR
CONDUCT ANY INQUIRY IF THERE WAS
ADDITIONAL MITIGATION.

I CAN'T REPRESENT THERE WASN'T
SUBSTANTIAL MITIGATION
CONSIDERED BECAUSE THERE WAS.

THERE WAS SUBSTANTIAL
AGGRAVATION AND MITIGATION.
SO, THE ISSUE BEFORE YOU IS
WHETHER RELIANCE ON THAT
MITIGATION FROM A PREVIOUS CASE
WITH NO ADDITIONAL INVESTIGATION
AS SUMMARIZED IT WAS SUFFICIENT
TO REVIEW THE TRIAL COURTS
RESPONSIBILITY UNDER THE
PRESENCE.

THE ISSUE IS NOT MORE THAN THAT
OR LESS THAN THAT.

WITH THAT, YOUR HONORS, I'D
RETURN TO WHAT MR. FLETCHER
WANTS, THAT'S FOR THE CASE TO BE
RESOLVED.

IN SIMILAR CASES HAS RESOLVED
THE CASE ON THE MERITS WITHOUT
GETTING INTO THE OTHER ISSUES OF
WAVER OF THE APPEAL.

I THINK THAT'S WHAT IS
APPROPRIATE IN THIS CASE AS
WELL.

IF YOU HAVE NO OTHER QUESTIONS.
I THANK YOU VERY MUCH.

>> THANK YOU COUNCIL.

WE THANK BOTH OF YOU FOR
ARGUMENTS IN THE CASE TODAY.
THAT'S THE LAST CASE ON THE
DOCKET TODAY.

THE COURT WILL STAND IN RECESS.