

>> COUNSEL?

>> MAY IT PLEASE THE COURT,
STEPHEN AKE.

IN 2017 FOLLOWING THE U.S.
SUPREME COURT'S DECISION IN
HURST VERY FLORIDA AND THIS
COURT'S DECISION, THE RESPONDENT
FILED A SUCCESSIVE
POST-CONVICTION MOTION, AND THE
CIRCUIT COURT GRANTED HIM A NEW
PENALTY PHASE BASED ON HURST.
THE STATE DUD NOT FILE AN APPEAL
FROM THAT ORDER, AND THEN HIS
RESENTENCING HAD NOT TAKEN PLACE
AS OF THIS DATE.

AND IN EARLY 2020, FOLLOWING
THIS COURT'S DECISION IN POOLE,
THE STATE FILED A MOTION TO
REINSTATE THE TWO DEATH
SENTENCES THAT MR. JACKSON HAD.
THE CIRCUIT COURT RULED THAT IT
LACKED JURISDICTION TO ENTERTAIN
THE STATE'S MOTION BASED ON TWO
CASES, ONE BEING SIMMONS OUT OF
THE FIRST DISTRICT COURT OF
APPEAL, AND THE OTHER BEING THIS
COURT'S DECISION IN TAYLOR.
THE STATE NOW IS SEEKING THIS
COURT'S INVOCATION OF THE
JURISDICTION IN ORDER TO ISSUE
AND RECONSIDER THE STATE'S
MOTION ON THE MERITS.

IT IS THE STATE'S POSITION THAT
THE COURT DOES HAVE JURISDICTION
OVER THAT PROCEEDING.

THE ORDER GRANTING A NEW PENALTY
PHASE WAS NOT A FINAL ORDER
BECAUSE THERE IS STILL JUDICIAL
LABOR THAT NEEDS TO BE TAKING--

>> WASN'T THAT THE RATIONALE OF
THE FIFTH DISTRICT COURT OF
APPEALS FINDING THAT THIS KIND
OF ORDER WASN'T THE FINAL ORDER
IN TAYLOR?

>> YES, YOUR HONOR--

>> WASN'T THAT REJECTED BY
UNANIMOUS SUPREME COURT IN
DISAPPROVING TAYLOR?

>> IN TAYLOR, YOUR HONOR, THIS
COURT DEALT WITH AN TO ORDER

THAT DENY CANNED THE GUILT PHASE CLAIMS AND GRANTED RESENTENCING PHASE.

AND NOWHERE IN TAYLOR DID THIS COURT ADDRESS THE CIRCUIT COURT'S ABILITY TO GRANT RELIEF. WHAT TAYLOR SAID WAS A PROCEDURAL TRAP FOR PRO SE DEFENDANT BECAUSE HE DIDN'T A APPEAL HIS GUILT PHASE CLAIMS AND TAYLOR DID SAY, HAD SOME LANGUAGE THAT--

>> BUT ALL CONCEDE THAT UNDER TAYLOR AND OTHER CASES THIS WOULD BE THE JUNE 2017 ORDER WOULD BE A FINAL ORDER IN THE POST-CONVICTION PROCEEDING, CORRECT?

>> IT IS, ACCORDING TO TAYLOR, IT IS A FINAL ORDER FOR THE PURPOSES OF APPEAL.

I BELIEVE--

>> DO WE HAVE, DO WE HAVE A THIRD CATEGORY OF ORDERS THAT ARE FINAL BUT NOT FINAL?

I MEAN--

>> I AGREE THAT THE TERMINOLOGY IS PROBABLY NOT THE BEST, AND THERE IS DEFINITELY SOME CONFUSION OUT THERE REGARDING THAT.

IN THE 3851 WHEN THE COURT GRANTS RELIEF, THE STATE IS ENTITLED TO REPEAL THAT. HOWEVER, IT'S NOT FINAL IN THE INCIDENCE THAT THERE'S STILL JUDICIAL PROCEEDINGS THAT MUST TAKE PLACE BETWEEN THE PARTIES INVOLVED HERE.

>> AREN'T THERE CONSEQUENCES-- IF SOMETHING IS FINAL, AND I'LL EVEN GRANT YOU FOR PURPOSES OF APPEAL, ALTHOUGH I DON'T KNOW THAT WE HAVE A DISTINCTION OF FINAL FOR PURPOSES OF APPEAL AND NOT FINAL FOR OTHER PURPOSES, BUT ASSUMING THAT WE DO, DOESN'T THE LAW SAY THAT IF YOU DON'T APPEAL AND RAISE AN ISSUE WITH RESPECT TO THAT ORDER, YOU WAIVE

IT?

I MEAN, THAT'S ONE OF THE BASIC FINALITY PRINCIPLES THAT GOVERNS EVERY KIND OF CASE IN EVERY KIND OF PROCEEDING IN EVERY KIND OF FINAL ORDER, WOULDNT YOU AGREE?

>> I AGREE IN ORDERS THAT ARE FINAL, YOUR HONOR, AND THAT'S WHERE WE HAVE THE DISTINCTION.

>> BUT, I MEAN, YOU CONCEDED THAT IT WAS AT LEAST FINAL FOR PURPOSES OF APPEAL.

ARE YOU ARGUING THAT WE SHOULD RECEDE FROM TAYLOR?

>> YES, EXACTLY.

FROM SOME OF THE LANGUAGE IF TAYLOR.

I THINK THE PROBLEM WITH TAYLOR IS THAT IT CONFLATES DIFFERENT-- AS YOU POINTED OUT, THE FINALITY FOR PURPOSES OF APPEALS SECTION, IN TAYLOR IT SAID IT HAS TO BE POST-CONVICTION MOTION AS OPPOSED TO THE CAUSE.

AND I THINK THEREIN LIES THE DIFFERENCE.

IF YOU LOOK AT THE FIRST DISTRICT COURTS OF APPEALS--

>> THERE ARE A LOT OF PLACES WE COULD GO, BUT LET'S START WITH THAT.

BACK TO MY QUESTION, I MEAN, IF CONCEALED THAT TAYLOR PROPERLY FOUND THAT THIS KIND OF ORDER WAS FINAL FOR PURPOSES OF APPEAL, DOESN'T IT MEAN THAT WHEN YOU DIDN'T APPEAL AND DIDN'T RAISE THE ISSUE, YOU HAVE WAIVED THE ISSUE BY FAILING TO CHALLENGE THE FINAL ORDER THAT YOU'RE NOW TRYING TO RAISE?

>> NO, YOUR HONOR.

BECAUSE, AGAIN, I DON'T BELIEVE IT'S A FINAL ORDER THAT, WHEN THE CIRCUIT COURT HAS THE INHERENT AUTHORITY TO RECONSIDER RULES BASED ON A CHANGE IN PRECEDENT, THAT COURT STILL HAS JURISDICTION OVER THE CAUSE.

TRIAL COURT IS THE ONE THAT GRANTED THE ORDER ALLOWING THE RESENTENCING, AND THEN THE CASE STILL SITTING IN THAT TRIAL COURT'S JURISDICTION.

AND THE COURT NOW, BASED ON POOLE, REALIZES THAT MR. JACKSON'S DEATH SENTENCE HAS NEVER HAD ANY CONSTITUTIONAL ERROR IN IT WHATSOEVER.

>> YOU SAY THAT THE COURT HAS JURISDICTION, BUT THERE ARE OTHER CASES-- VELENDEZ, I THINK IS ONE OF THEM.

THE UNANIMOUS SUPREME COURT SAID THAT A SENTENCE THAT'S BEEN VACATED IS A NULLITY.

SO THE PROCEEDING THAT'S BEFORE THE TRIAL COURT AFTER THE FINAL ORDER THAT YOU DIDN'T APPEAL PUTS THE CASE IN A POSTURE OF AN UNSENTENCED DEFENDANT.

WITH THE PRIOR SENTENCING DECISION BEING A NULLITY.

SO ARE YOU SAYING THAT VELENDEZ WAS WRONG IN THAT RESPECT?

>> I'M NOT FAMILIAR WITH THAT RULING, YOUR HONOR.

BUT IN THE SENSE THAT HIS CONVICTION HAS BEEN FINAL, HE HAD BEEN SENTENCED, IT WAS A VERY, IT WAS A LEGAL SENTENCE, AND THE TRIAL COURT GRANTED A RESENTENCING PROCEEDING WITH THE EXPECTATION OF A POSSIBLE NEW SENTENCING HEARING.

THAT HAS NOT OCCURRED AT THIS POINT IN TIME, AND UNTIL THAT OCCURS IT'S NOT FINAL.

AND THAT'S OUR POSITION--

>> COUNSEL, CAN YOU ADDRESS THE ISSUE THOUGH OF THE SEPARATE PROCEEDING?

BECAUSE IT SEEMS LIKE THAT'S REALLY WHAT IT COMES DOWN TO.

I MEAN, I THINK IF IT WERE THE SAME PROCEEDING, THEN, YOU KNOW, WAIVER ASIDE, I MEAN, THE COURT ARGUABLY WOULD HAVE THE INHERENT AUTHORITY TO RECONSIDER ITS OWN

DECISION WHICH IS WHAT I UNDERSTAND YOU TO BE SAYING. BUT IT SEEMS LIKE THE REAL HURDLE FOR YOU HERE IS THE PRECEDENT SAYING THAT, ESSENTIALLY, THE ONE PROCEEDING-- THE POST-CONVICTION PROCEEDING ENDS, AND WE, YOU KNOW, EITHER REVERT TO THE ORIGINAL UNDERLYING PROCEEDING, OR IT'S A THIRD PROCEEDING.

I DON'T KNOW WHAT THE RIGHT WAY TO THINK ABOUT IT IS, BUT ESSENTIALLY IT'S NO LONGER A SITUATION WHERE THE COURT IS REALLY CONSIDERING SOMETHING ON ITS OWN IN THE SAME PROCEEDING. IT'S A DIFFERENT PROCEEDING. TO COULD YOU ADDRESS THAT?

>> YES, YOUR HONOR. IT'S STILL THE SAME PROCEEDING. IT'S STILL THE STATE OF FLORIDA V. MICHAEL JACKSON, STILL THE SAME CIRCUIT COURT JUDGE AND SAME PARTIES INVOLVED IN THIS CASE.

WE DO LABEL THINGS POST-CONVICTION, AND WE HAVEN'T, YOU KNOW, THE POST-CONVICTION COURT GRANTED THE MOTION. BUT THE UNDERLYING CAUSE AND WHAT THIS COURT HAS SAID IN SOME OF THE CASES AS TO FINALITY WHEN THERE'S STILL JUDICIAL LABOR THAT MUST BE EXPANDED IN THE CASE, IT IS CAUSE THAT YOU'RE LOOKING AT.

AND THAT'S WHAT WE'RE ARGUING IN THIS CASE. BECAUSE IT'S A CIRCUIT COURT AND HE HAS THE INHERENT AUTHORITY TO RECONSIDER HIS OWN PRIOR RULING, WE WOULD SUBMIT THAT THERE'S NOTHING IN CASE LAW OR IN STATUTES OR IN RULES THAT PROHIBIT THIS.

>> I'M JUST LOOKING AT TAYLOR RIGHT HERE. IT SAYS AS WE HAVE PREVIOUSLY

EXPLAINED IN OTHER CASES, POST
CONVICTION PROCEEDINGS AND
RESENTENCING PROCEEDINGS ARE
SEPARATE, LEGALLY DISCREET.
AND THEN IT CITES THE CASE.
AND I'M NOT SURE THAT WHAT IS
CITED THERE NECESSARILY SUPPORTS
IT AS STRONGLY AS WHAT'S SAID,
BUT IT DOES SEEM LIKE WE WOULD
HAVE TO BACKTRACK FROM THAT IN
ORDER TO GIVE YOU THE RELIEF
THAT YOU'RE ASKING FOR.

>> I THINK THIS COURT MAY HAVE
TO BACKTRACK FROM TAYLOR.
I DO BELIEVE THAT'S THE CASE.
I THINK THERE'S SOME LANGUAGE IN
THERE THAT THE COURT OR MAY HAVE
TO RECEDE FROM.

AND I UNDERSTAND THAT WHEN THERE
IS A NEW PENALTY PHASE, THAT
IT'S A SEPARATE PROCEEDING.
OUR POSITION THAT HAS NOT TAKEN
PLACE YET, SO THERE IS NO
SEPARATE PROCEEDING IN THIS
CASE.

HAD MR. JACKSON HAD THAT NEW
PENALTY PHASE, THEN OBVIOUSLY
ALL BETS ARE OFF, AND JEOPARDY
WOULD HAVE ATTACHED.

THIS IS THE ONLY REMEDY THE
STATE HAS AT THIS POINT BECAUSE
IF HE GOES BACK FOR A NEW
PENALTY PHASE, HE MAY GET A LIFE
SENTENCE AT WHICH POINT WE CAN'T
DO ANYTHING ABOUT THAT, OR THE
COURT MAY REIMPOSE DEATH.

BUT THE COURT WOULD STILL HAVE
GONE THROUGH A NEEDLESS PENALTY
PHASE BASED ON POOLE THAT WE
DIDN'T NEED, THE CIRCUIT COURT
DIDN'T NEED TO GO THROUGH ALL
THAT COST AND ANGUISH TO THE
VICTIM'S FAMILY.

SO I THINK THAT WHAT WE NEED IS
FOR THIS COURT TO ADOPT
BASICALLY THE RATIONALE OF THE
FIRST DISTRICT COURT OF APPEAL
IN ROGERS WHICH WAS THE EN BANC
DECISION THAT OVERRULED SIMMONS.
I THINK THAT COURT GOT IT RIGHT,

THE RATIONALE THERE AS FAR AS
EVEN THOUGH SOMETHING MAY BE
APPEALED BY THE STATE-- IN THIS
CASE THE GRANTING OF A NEW
PENALTY PHASE THAT'S NOT FINAL
FOR PURPOSES OF DIVESTING THE
LOWER COURSE JURISDICTIONS TO
RECONSIDER HIS PRIOR RULING.
IF THERE ARE NO FURTHER
QUESTIONS, I WANT TO SAVE MY
TIME FOR REBUTTAL.

>> BEFORE YOU GO--

>> OKAY.

>>-- YOU WOULD AGREE THAT
ROGERS DEALT WITH 3800 WHICH IS
A RULE THAT ALLOWS ISSUES TO BE
RAISED AT ANYTIME, AND EVEN THE
ROGERS COURT DISTINGUISHED AND
MADE CLEAR THAT THAT'S DIFFERENT
FROM 3850 WHICH IS SIMILAR TO
3851 WHICH HAS THE STRICT TIME
LIMIT.

>> YES, YOUR HONOR.

BOTH SIMMONS AND ROGERS WERE
3800 CASES.

I STILL THINK THE RATIONALE OF
THE ROGERS COURT, THEY DO
DISTINGUISH THE RULES, 3851
VERSUS 3800, BUT I STILL THINK
THE LOGIC OF THE PROCEEDINGS
HAVEN'T FINALIZED YET.

THEREFORE, THE COURT HAS
INHERENT JURISDICTION TO
ENTERTAIN IT.

I SAVE MY TIME FOR REBUTTAL.
THANK YOU.

>> ALL RIGHT, THANK YOU.
COUNSEL, YOU'RE RECOGNIZED.

>> MAY IT PLEASE THE COURT, MY
NAME IS MARIA DeLIBERATO,
AND I RESPECT THE RESPONDENT,
MICHAEL JACKSON.

THIS COURT SHOULD UNEQUIVOCALLY
DENY THE STATE'S EXTRAORDINARY
REQUEST TO REVERSE A 3-YEAR-OLD
BINDING FINAL ORDER, AN ORDER
FROM WHICH THE STATE EFFECTIVELY
DECLINED TO SEEK ANY TIMELY
APPELLATE RELIEF.

REINSTATING MR. JACKSON'S DEATH

SENTENCE WOULD BE AN EXCEPTIONAL RESULT WITH FAR-REACHING CONSEQUENCES AND COULD ONLY BE ACHIEVED BY IGNORING THE PLAIN AND UNAMBIGUOUS LANGUAGE OF THE FLORIDA RULES OF CRIMINAL AND APPELLATE PROCEDURE.

AS THIS COURT HAS REPEATEDLY HELD, ALL ITS JURISDICTIONS SHOULD BE RARELY EXERCISED, AND IT IS IMPROPER HERE WHERE THE STATE IS USING IT AS A SUBSTITUTE FOR THEIR KNOWING AND WILLFUL CHOICE TO ABANDON THEIR APPELLATE RIGHTS YEARS AGO.

AND SO I WOULD CERTAINLY AGREE WITH WHAT JUSTICE LAWSON WAS SAYING, THAT THE STATE HAS MADE AN AFFIRMATIVE DECISION, THEY'VE WAIVED ANY RIGHT TO APPEAL THE SENTENCE, AND IT'S NOT PROPER WHERE THE STATE HAS A REMEDY AND THEY CHOSE NOT TO USE IT.

SO IT SHOULD BE RARELY USED, IS EXTRAORDINARY THE, AND SHOULD ONLY BE USED IN CASES WHERE THE STATE HAS NO OTHER REMEDY.

IT'S NOT AN END-AROUND, IT'S NOT A LAST DITCH EFFORT FOR THE STATE TO BREATHE LIFE INTO THEIR OLD, ABANDONED ARGUMENTS.

AND BASICALLY, THIS COURT-- THE STATE IS ASKING THIS COURT TO EXPAND ITS JURISDICTION AND IMPOSE A SENTENCE OF DEATH BY REINSTATING MR. JACKSON'S DEATH SENTENCE.

THE STATE'S RIGHT TO APPEAL IN CRIMINAL CASES ARE LIMITED BY STATUTE.

WE KNOW UNDER 3.851 THAT THEY HAD A LIMITED RIGHT-- THEY HAD A RIGHT TO APPEAL, THEY HAD AN AFFIRMATIVE RIGHT TO APPEAL UNDER 3.851F8.

THIS WAS A FINAL ORDER.

TAYLOR TELLS US THAT IT'S A FINAL ORDER, AND THEY SHOULD HAVE APPEALED THE GRANT OF RELIEF IF THEY FELT THAT IT WAS

UNCONSTITUTIONALLY DONE OR WHETHER IT WAS IMPROPER. THE STATE CONCEDES IN ITS RESPONSE HERE THAT THEY'RE NOT SEEKING TO REINSTATE ANY OF THE SENTENCES WHERE THE DEFENDANTS HAVE ALREADY BEEN SENTENCED TO LIFE.

SO IT'S NO DIFFERENT. THEY CAN NO SOONER GO BACK AND TAKE A CLIENT THAT HAS BEEN RESENTENCED THE LIFE OR WHERE THE STATE DECLINED TO SEEK DEATH ON RESENTENCING AND GO IN AND TRY TO TAKE AWAY AND REINSTATE MR. JACKSON'S DEATH SENTENCE. THERE'S JUST NO LEGAL OR PROCEDURAL MECHANISM FOR THEM TO DO THAT, AND THIS COURT DOES NOT HAVE THAT JURISDICTION HERE. I THINK TAYLOR IS DIRECTLY ON POINT.

POST-CONVICTION PROCEEDINGS AND RESENTENCING PROCEEDINGS ARE SEPARATE AND DISTINCT. THE STATE'S ARGUMENT, TOO, IS DISINGENUOUS AT BEST IN THE SENSE OF IT'S IMPORTANT NOT TO HAVE AN UNNECESSARY SENTENCING PROCEEDING OR TO BRINGING YOU KNOW, FINALITY TO THE VICTIMS IN THIS CASE WHICH IS CERTAINLY A CONSIDERATION FOR THIS COURT. I'M NOT DENYING THAT IT IS. THAT WOULD HAVE BEEN DONE BUT FOR THE STATE'S ACTION IN THIS CASE.

I MEAN, THE STATE FILED THIS PETITION ON THE EVE OF MR. JACKSON'S TRIAL.

THIS COURT STAYED THE TRIAL ON FRIDAY AFTERNOON, AND THE TRIAL WAS SET TO GO ON MONDAY IN FEBRUARY.

THIS MATTER WOULD HAVE BEEN DECIDED, THERE WOULD HAVE BEEN A DECISION ONE WAY OR ANOTHER BUT FOR THE STATE'S ACTIONS OF BRINGING THIS CASE FORWARD AND BEFORE THE COURT.

AND SEEKING THIS WAS EFFECTIVELY
A HAIL MARY ON THEIR PART TO TRY
TO RENEW AND DO A BELATED
APPEAL.

THAT'S JUST NOT WHAT THIS
COURT'S JURISDICTION IS FOR, NOT
WHAT IT'S DESIGNED FOR, IT'S NOT
WHAT THIS COURT IS SUPPOSED TO
DO IN ORDER TO MAKE SURE THAT
OUR DEATH PENALTY IS FAIR AND
JUST.

AND IF THE STATE OF FLORIDA IS
GOING TO HAVE ANY CONFIDENCE IN
THE DEATH PENALTY AND IF WE HAVE
AS A STATE HAVE DECIDED THAT WE
WANT TO HAVE THE DEATH PENALTY,
FOR IT TO BE FAIRLY AND, FAIRLY
APPLIED, THERE HAS TO BE
CONFIDENCE IN THE PROCESS.

THERE HAS TO BE FINALITY.

THERE CAN'T BE THIS GRANTING THE
STATE THIS EXTRA EXCEPTION THAT
CAPITAL DEFENDANTS DON'T HAVE.

IT'S A PERFECT EXAMPLE DEALING
IN THE DEATH PENALTY CONTACTS.

MR. SYLVIA HAD WAIVED HIS
POST-CONVICTION PROCEEDINGS AS,
YOU KNOW, HE WENT THROUGH THE
PROCESS IN CIRCUIT COURT.

THE SIR IS CIRCUIT COURT GRANTED
A WAIVER.

HURST V. FLORIDA CAME OUT, HURST
VERY STATE CAME OUT.

HE WOULD HAVE BEEN ENTITLED TO A
NEW PENALTY PHASE.

THE CIRCUIT COURT SAID THAT'S AN
EXTRAORDINARY THING THAT YOU
COULD NOT HAVE FORESEEN COMING,
AND YOUR WAIVER WASN'T KNOWING.

AND THIS COURT REVERSED AND
SAID, NO, SAID THAT THE STATE,
THAT YOU CANNOT HOLD ON, YOU
CANNOT SORT OF HOLD YOUR CARDS
TO YOUR VEST AND THEN PLAY THEM
DOWN THE ROAD WHEN YOU THINK YOU
HAVE A MORE FAVORABLE OUTCOME.
AND THE STATE SHOULD BE TREATED
NO DIFFERENTLY HERE THAN THE
STATE WAS IN, THAN MR. SYLVIA
WAS.

AND THIS COURT HAS REPEATEDLY SAID THAT PROCEDURAL RULES APPLY EQUALITY TO THE STATE AND TO THE DEFENSE.

AND THE STATE HAS OFFERED NO LEGAL OR PROCEDURAL JUSTIFICATION HERE TO RECEDE FROM ANY-- TO RECEDE FROM TAYLOR, TO CHANGE THE RULES. THIS COURT WOULD HAVE TO REWRITE THE FLORIDA RULE OF CRIMINAL PROCEDURE, REWRITE FLORIDA APPELLATE RULES OF PROCEDURAL, AND AS THIS COURT KNOWS, RULEMAKING HAS TO BE DONE WITH NOTICE AND OPPORTUNITY FOR PUBLIC COMMENT.

THERE'S NO POSSIBLE WAY TO GIVE THE STATE THE REMEDY IT SEEKS HERE WITHOUT ADOPTING A RESULTS-ORIENTED APPROACH.

AND THAT IS INCONSISTENT WITH THIS COURT'S APPROACH.

THAT IS INCONSISTENT WITH READING THE PLAIN AND UNAMBIGUOUS LANGUAGE OF THE STATUTES.

AND SO I'M HAPPY, OF COURSE, TO ANSWER ANY QUESTIONS FROM THE COURT HAVING HAD NO QUESTIONS YET, BUT I'M CERTAINLY HAPPY TO ENTERTAIN ANY.

THERE IS NO LEGAL OR PROCEDURAL JUSTIFICATION FOR REINSTATING MR. JACKSON'S DEATH SENTENCE. AND IF THERE ARE NO FURTHER QUESTIONS, I WILL--

>> CAN I ASK YOU A QUESTION?

>> YES.

>> I UNDERSTAND EVERYTHING THAT YOU'RE SAYING ON THE MERITS.

AS TO JURISDICTION, COULD YOU SORT OF-- WHAT'S YOUR BEST ARGUMENT FOR WHY WE DON'T HAVE JURISDICTION, ENTERTAIN THE POSITION AT ALL?

PUTTING ASIDE GRANTING OR DENYING IT, BUT JUST WHETHER WE CAN ENTERTAIN IT AT ALL.

IT SEEMS LIKE OUR PRECEDENT ON

WHEN WE HAVE JURISDICTION AT ALL, THAT WE'VE TAKEN RIGHT OR WRONG, FOR BETTER OR WORSE A VERY BROAD VIEW OF OUR AUTHORITY OVER ANYTHING RELATING TO THE DEATH PENALTY, THAT SORT OF THING.

DO YOU THINK THAT WE-- DOES THAT APPLY HERE OR DO YOU THINK THE RIGHT ANSWER IS TO SAY WE CAN'T CONSIDER IT AT ALL ON THE MERITS PERIOD BECAUSE WE DON'T HAVE JURISDICTION?

>> I THINK THAT YOU DO NOT HAVE ALLRED 'S JURISDICTION OVER THIS CASE BECAUSE IT IS NOT TO BE USED AS A SUBSTITUTE FOR A REMEDY.

AND THE STATE HAD A REMEDY HERE, AND THEY CHOSE NOT TO USE IT.

SO ALLRED'S JURISDICTION IS SUPPOSED TO BE A WRIT OF-- BASICALLY, OF LAST RESORT, WHEN THERE'S NO OTHER POSSIBLE WAY FOR THE PARTIES TO REACH THIS COURT AND TO GET TO THIS COURT. SO, NO, I DON'T BELIEVE THIS COURT HAS ALLRED'S JURISDICTION BECAUSE THE STATE HAD AN AFFIRMATIVE REMEDY UNDER THE RULE AND AFFIRMATIVELY CHOSE TO ABANDON IT.

SO THAT'S THE DISTINCTION HERE, WHICH IS MY ARGUMENT.

>> THANK YOU.

>> AND IF THERE ARE NO FURTHER QUESTIONS, MY-- WE'RE ASKING THAT THIS COURT DECLINE THE BREATHE NEW LIFE INTO THE STATE'S LONG-ABANDONED APPELLATE ARGUMENTS AND DECLINE TO REINSTATE MR. JACKSON'S DEATH SENTENCE AND DENY THE STATE'S WRIT.

THANK YOU VERY MUCH.

>> THANK YOU.

MR. AKE.

>> YES, JUST A FEW BRIEF POINTS. FIRST, ON THE ALLRED'S JURISDICTION, I CERTAINLY THINK

THIS COURT HAS JURISDICTION WHEN IT HAS EXCLUSIVE JURISDICTION OVER ALL DEATH PENALTY CASE, IT HAD JURISDICTION OVER MR. JACKSON'S CASE BEFORE. THE CASE LAW SAYS ALLRED'S IS APPROPRIATE TO PRESERVE THE JURISDICTION THAT'S BEEN INVOKED OR FOR PROTECTION OF JURISDICTION THAT LIKELY WILL BE INVOKED IN THE FUTURE. I THINK BOTH OF THOSE ARE APPLICABLE HERE. SO I THINK UNDER THE LAW WE CITED IN OUR PETITION, I THINK CLEARLY THIS IS EXERCISED ALLRED'S JURISDICTION. COUNSEL'S ARGUMENT THAT WE'RE SEEKING A BELATED APPEAL, THAT'S NOT WHAT WE'RE DOING. MR. JACKSON WAS GIVEN RELIEF IN 2017 BASED ON HURST. WE DID NOT APPEAL THAT DECISION. WHAT WE ARE SEEKING NOW IS FOR THE COURT TO RECOGNIZE THE CIRCUIT COURT'S INHERENT AUTHORITY TO RECONSIDER ITS OWN RULING PRIOR TO ANY OTHER ACTIONS BEING TAKEN IN THE CASE CAUSING FINALITY. BASICALLY, THE RESENTENCING. >> BUT, COUNSEL, IT DOES SEEM LIKE THERE'S SOME MERIT TO WHAT THE COUNSEL ON THE OTHER SIDE SAYING. YOU KNOW, BASICALLY, I MEAN, IT SEEMS LIKE WE FREQUENTLY DON'T GIVE DEFENDANTS A PASS WHEN THEY DON'T APPEAL BECAUSE OF PERCEIVED FUTILITY. AND IT SEEMS LIKE THE STATE HERE-- I GUESS BECAUSE OF THE PERCEIVED FUTILITY AT THE TIME OF APPEALING-- CHOSE NOT TO. AND NOW IT DOES SEEM LIKE YOU'RE TRYING TO GET A VERY BELATED SECOND BITE AT THE APPLE. HOW DOES THAT A MAKE SENSE? >> WELL, AGAIN, YOUR HONOR, I DON'T THINK WE'RE TRYING TO

ATTACK THE UNDERLYING RULING
FROM 2017.

WE NOW KNOW IN 2020 THAT IT WAS
THE WRONG RULING, AND THAT IS
WHAT WE'RE TRYING TO ADDRESS
HERE, WHAT IS THE CIRCUIT COURT
TO DO IN 2020 GIVEN POOLE AND
THE PROSPECT OF ORDERING A
COSTLY RESENTENCING PROCEEDING
FOR A CASE THAT THERE IS NO
REASON FOR.

THAT'S WHAT WE'RE TRYING TO
ADDRESS.

IT'S A VERY SPECIFIC ISSUE AS TO
JURISDICTION-- PROCEDURAL
JURISDICTION OF A CIRCUIT COURT
AND HIS ABILITY OR INABILITY TO
ENTER AN ORDER BASED ON A CHANGE
IN THE LAW PRIOR TO ANY FINALITY
ATTACHING TO THE DECISION.

AND THAT'S--

>> BUT THERE IS, THERE IS A
REASON FOR IT IN THE SENSE OF
THE LEGISLATURE CHOSE TO CHANGE
THE LAW ON SENTENCING.

AND SO THAT'S, THAT'S THE
GOVERNING LAW.

OBVIOUSLY, THE GOVERNING
CONSTITUTIONAL LAW SET BY POOLE,
BUT, YOU KNOW, THE SENTENCE WAS
VACATED, YOU GUYS DIDN'T APPEAL,
THERE IS NO SENTENCE NOW.

AND THE DEFENDANT IS ENTITLED TO
THE PANOPLY OF PROTECTIONS AND
PROCESS THAT HE HAS UNDER THE
STATUTES AS THEY EXIST TODAY.

>> WELL, YOUR HONOR, I WOULD
JUST POINT OUT JUST LIKE IN
ROGERS AND SOME OF THESE OTHER
CASES WHERE THEY REINSTATE THE
SENTENCE THAT WAS PREVIOUSLY
IMPOSED, I THINK THAT'S ALL
WE'RE ASKING FOR, THE COURT'S A
ABILITY TO RECONSIDER IT.

HIS SENTENCE SHOULD HAVE NEVER
BEEN OVERTURNED, BUT IT WAS.
IT WAS VACATED AND A NEW PENALTY
PHASE WAS ORDERED.

BUT THE TRIAL JUDGE HAS TO BE
ABLE TO RECONSIDER ITS OWN

RULINGS.

THERE'S NOTHING THAT PROHIBITS THAT IN THESE STATUTES OR RULES AS TO SPECIFICALLY ON THAT POINT OF THE TRIAL COURT'S INHERENT AUTHORITY TO RECONSIDER ITS OWN RULING.

AND WE WOULD ASK THIS COURT TO ISSUE AN ORDER TO THE COURT TO CONSIDER THE STATE'S MOTIONS ON THE MERITS AND THAT IT DOES HAVE JURISDICTION TO ADDRESS THAT.

IF THERE ARE NO FURTHER QUESTIONS, THANK YOU.

>> ALL RIGHT.

WELL, WE THANK BOTH OF YOU FOR YOUR ARGUMENTS IN THIS CASE.