

>> THE FLORIDA SUPREME COURT IS NOW IN SESSION.
PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: OKAY OUR THIRD AND FINAL CASE TODAY IS DONALD OTIS WILLIAMS V STATE OF FLORIDA SC2023-1000 COUNSEL WHENEVER YOU ARE READY.

>> Appellee: MAY IT PLEASE THE COURT MY NAME IS GEORGE BURDEN AND I AM HERE ON BEHALF OF DONALD WILLIAMS.

MR. WILLIAMS IS HERSTORY SENTENCING.

THIS CASE IS A WONDERFUL OPPORTUNITY FOR THIS COURT TO STRENGTHEN THE SIXTH AMENDMENT AND MAKE A DOUBLE DOWN ON IMPORTS OF DUE PROCESS IN THE STATE.

THE FIRST THREE POINTS OF APPEAL ARE REALLY INTERRELATED.

THE FIRST ONE OF COURSE IS ABOUT A CONTINUANCE AND AS WE ALL KNOW THE BLACK LETTER LAW ABUSE AND DISCRETION AND ALL OF THAT AND VERY RARELY ARE THESE ISSUES EVER GETTING RELEASED.

NOW THERE ARE EXCEPTIONS AND FOR EXAMPLE IN THE DAYS WHERE ANY OF YOU WERE INVOLVED IN CAPITAL TRIAL CASES YOU GET HIT BY A TURNIP TRUCK THE NIGHT BEFORE TRIAL THEY WOULD NOT GO FORWARD WITH TRIAL THE NEXT DAY EVEN IF IT WAS PENDING FOR SIX YEARS BECAUSE IT WOULD BE A VIOLATION OF DUE PROCESS.

LIKEWISE IN THIS CASE THE ANALOGY IS THIS GENTLEMAN DESPITE HIS BEST EFFORTS COULD NOT GET A MITIGATION SPECIALIST.

AND I HAVE TO SAY ONE THING THAT DID US A FAVOR, MR. NUNNALLY WAS A LONGTIME ATTORNEY GENERAL NO PROSECUTOR IN LAKE COUNTY MADE A RECORD AS TO WHY MR. WILLIAMS DID THE EXTREMELY STUPID THING OF WAVING A JURY TRIAL.

I CAN'T THINK OF A DUMBER THING TO DO IN A HERSTORY SENTENCING WAIVER JURY TRIAL.

BUT HE DID SO BECAUSE HE WASN'T PREPARED AS PER HIS SIXTH AMENDMENT RIGHT TO MAKE A CASE IN MITIGATION BECAUSE HE HAD NO MITIGATION ASSISTANCE.

HE DID INITIALLY AND THIS IS WHAT I WANT THE COURT TO THINK ABOUT.

BECAUSE THE CASE LAW AGAINST ME IS REPEAT FOR 10 YEARS.

YOU GUYS HAVE WRITTEN GREAT CASES AGAINST ME AND THEY ARE WRONG BECAUSE THEY ARE DENYING DUE PROCESS AND THE FULL SIXTH AMENDMENT RIGHT.

>> Justice John Couriel: THIS IS UNPRESERVED, RIGHT?
FOR STARTERS?

>> Appellee: WHICH ASPECT?

>> Justice John Couriel: THE ARGUMENT OF CONTINUANCE.
IS THIS BELOW?

>> Appellee: YES HE MADE A MOTION TO CONTINUE AND IT WAS DENIED.
I BELIEVE SO.

I APOLOGIZE IF I GOT THAT WRONG.

>> Justice John Couriel: IT WAS DENIED.

DOES HE MAKE ANY SUBSEQUENT ARGUMENT ABOUT THIS BEING A VIOLATION OF HIS SIXTH AMENDMENT RIGHT?

>> Appellee: WITH PROSECUTOR NUNNALLY, WHEN HE WAVED HIS JURY TRIAL, HE MADE A RECORD AS TO WHY THIS WAS SO.

MUCH TO THE BENEFIT OF THIS CASE AND MR. WILLIAMS EXPLAINED HE WAS INITIALLY AT THE LAKE COUNTY JAIL AND HE HAD ACCESS TO THE MATERIALS AND WAS GETTING MITIGATION MATERIALS WITHIN HE WAS SENT BACK TO UCI EVEN THOUGH HE WAS NO LONGER UNDER THE SENTENCE OF DEATH HE WAS TREATED AS SUCH.

IF YOU KNOW WHEN YOU ARE THERE YOUR ABILITY TO PRESENT ANY KIND OF DEFENSE FOR YOURSELF IS LIMITED.

THE COURTS DEFER TO THE CORRECTION AUTHORITIES TO SECURITY AND SO FORTH.

>> BUT HE KNEW ABOUT THEM WHEN HE CHOSE TO GO PRO SE.

>> THAT'S NOT GOOD ENOUGH JUSTICE KENNEDY.

>> YOU'RE HERE TO ARGUE FOR HIM. HE'S GOT AGENCY. I KNOW YOU THINK HE'S STUPID , MAYBE YOU DON'T THINK HE'S STUPID BUT HE HAS THE RIGHT TO DO STUPID THINGS.

>> HE DOES BUT YOU CAN'T SAY IF YOU WANT TO INSERT YOUR SIXTH AMENDMENT RIGHTS BY THE WAY YOU ARE SCREWED YOU WON'T PRESENT MITIGATION PROPERLY OR GET YOUR DISCOVERY PROPERLY BECAUSE YOU HAVE A DVD PLAYER IN THIS RECENT CASE THAT YOU HAD WITH SEXTON THAT YOU GUYS ROLLED. THE CASE LOG WAS TERRIBLE AND I ADMIT THAT NOW BUT IT HAS TO CHANGE.

>> Justice Charles Canady: BUT AGAIN THEIR CERTAIN CONSEQUENCES THAT FLOW FROM SELF REPRESENTATION AND IT SEEMS TO ME YOU ARE ARGUING THAT WE SHOULD WAIVE ALL OF THAT OFF AND SAY THE WHOLE WORLD HAS TO BE REARRANGED BECAUSE HE WANTS TO AT LEAST SOMETIMES TO SELF REPRESENT HIMSELF AND HE HAD STANDBY COUNSEL.

HE COULD HAVE GONE WITH STANDBY COUNSEL FOR MITIGATION, RIGHT?

>> Appellee: YES.

>> Justice Charles Canady: HE CHOSE NOT TO DO THAT, RIGHT?

>> YES, SIR.

>> Justice Charles Canady: WHY DOES HE GET THE BENEFITS OF THE CHOICES HE MADE?

>> Appellee: I TELL YOU WHEN THESE BAD DECISIONS CAME RAINING OUT THINGS HAVE CHANGED.

THERE'S MORE TECHNOLOGY.

IT CAN BE DONE.

I'M NOT SUGGESTING YOU GIVE HIM AN OFFICE AT UCI WITH A VIEW TO PREPARE HIS CASE.

I'M NOT REQUESTING THAT.

IF HE WAS PLACED IN LAKE COUNTY JAIL AND HAD THE LIBRARY AND HAD THE MITIGATION EXPERTS BECAUSE IF YOU SEE THIS RECORD THIS CASE WENT ON FOR

SIX YEARS TRYING TO GET A MITIGATION SPECIALIST.
SIX YEARS!

THE PUBLIC IS CYNICAL FOR ALL THIS TIME IT TAKES.

>> Justice John Couriel: I'M GLAD YOU POINTED TO THOSE SIX YEARS BUT I COUNT THE FOLLOWING BRANTLEY INVESTIGATIONS LOUISE GODFREY, SEAN FISHER, DOCTOR SHERRY SCHWARTZ, CASEY GALLAGHER, COLLEEN QUINN, JACKIE ROSS, SHOTWELL INVESTIGATIONS, LISA SULLIVAN, JANITA JOHNSON.

[CROSS TALK] LET ME GET TO MY QUESTION.

IT SOUNDS LIKE IT WASN'T FOR LACK OF TRYING AND IT WASN'T FOR LACK OF OPTIONS.

PERHAPS YOU HAVE A SLIGHTLY MORE PERSUASIVE ARGUMENT IF THERE HAD NOT BEEN OVER THE COURSE OF SIX INTERVENING YEARS A NUMBER OF PEOPLE WHO MR. WILLIAMS DISCHARGED SAID GET LOST.

I DON'T WANT YOU AS MY MITIGATION SPECIALIST.

>> Appellee: RECORDS ARE NOT CLEAR IN THAT REGARDS, SIR.

>> Justice John Couriel: DID I MISREPRESENT?

>> Appellee: THERE WERE SUBSTITUTIONS THAT WE DON'T KNOW.

THERE WERE SUBSTITUTIONS EDUCATION SPECIALIST AND THEN IN THE LAST ONE WE HAD SHE JUST DISAPPEARED UNDER COURT ORDER AND THAT WAS PERMITTED. WE DON'T KNOW WHERE SHE WENT.

SHE MET WITH HIM ONCE AND THEN WAS GONE.

AND THEY ALERTED THE COURT THIS IS A PROBLEM.

YOU MIGHT THINK BACK TO THE BARN'S CASE WERE MR. BARNES WANTED TO DO THE SAME THING.

WHAT THE JUDGE DID IS FOUND THEIR OWN MITIGATION EXPERT TO DO IT DESPITE MR. BARNES WANTING TO DO SO.

WHY CAN'T WE GO BACK TO THOSE DAYS AND DO SOMETHING LIKE THAT WHERE YOU HAVE A TRUE DID NOVO SENTENCING WHICH WE DIDN'T HAVE IN THIS CASE WHICH YOU GUYS ALSO HAVE NO TROUBLE WITH BASED ON THE SEXTON DECISION. I KNOW WHAT I AM UP AGAINST HERE BUT HERE IS A CHANCE TO START NEW AND FALL IN LOVE WITH THE SIXTH AMENDMENT AND DUE PROCESS.

>> Justice Charles Canady: ARE THE PROBLEM HERE AND THE RECORD AND THE ARGUMENTS BEING PRESENTED REALLY ARE HERE.

YOU ARE ASKING US TO START A NEW WITHOUT A PREDICATE REALLY FOR THAT. AND YOU ARE SAYING THE THINGS ABOUT MITIGATION THAT WE REALLY DON'T KNOW.

WELL, YOU HAVE TO BUILD THE RECORD AND I UNDERSTAND IT IS PART OF THE PROBLEM WHEN HE CHOOSES TO DO IT HIMSELF BUT TO ASK US TO START ANEW ON THE BASIS OF WHAT WE'VE GOT HERE?

IT DOESN'T SEEM LIKE A PROPITIOUS STARTING POINT FOR STARTING A NEW.

>> Appellee: WELL IF YOU BELIEVE AS THE FOUNDING FATHERS DID IN THE SIXTH AMENDMENT TO DUE PROCESS YOU WOULD BECAUSE THIS IS A SHAM PROCEEDING.

>> Justice Jamie Grosshans: IF WE ARE REALLY STARTING ANEW DO YOU AGREE WE WOULD HAVE TO FIND A CONSTITUTIONAL RIGHT FOR MITIGATION SPECIALIST?

>> Appellee: I DON'T THINK WE HAVE GOTTEN THERE YET BUT WE SHOULD.

>> Justice Jamie Grosshans: OKAY AND WHERE WOULD WE FIND THAT?

>> Appellee: PARDON ME MA'AM?

>> Justice Jamie Grosshans: WHERE WOULD WE FIND THAT?

>> Appellee: I AGREE WITH YOU THERE HAS NOT BEEN A RIGHT FROM AN EXPERT.

>> Justice Jamie Grosshans: WHERE WOULD WE LOOK IN THE CONSTITUTION FOR THAT?

>> Appellee: YOU HAVE CREATED THE STATUTORY SCHEME UNDER 921 WITH MITIGATION.

IT IS STATUTORILY CREATED AND YOU GUYS HAVE TO FOLLOW OR HOW ARE YOU GOING TO MAKE IT HAVE ANY MEANING?

HOW ARE YOU GOING TO DO THAT: THESE ARE THE THINGS THAT ARE VERY TECHNICAL AND NOT EASY AND THAT IS WHY THIS WHOLE INDUSTRY BIRTHED MITIGATION SPECIALIST WHICH HAVE TO GO THROUGH TALLAHASSEE REAPPROVED. AND THAT'S PART OF THE PROBLEM.

THE JNC TO PAY FOR IT THEY HAVE TO BE ON THE APPROVED MITIGATION SPECIALIST LIST.

AND SO SINCE HE WAS REPRESENTING HIMSELF THERE WAS A BUNCH OF PEOPLE WHO SAID WE DON'T DO THAT.

HE'S REPRESENTING HIMSELF.

AND THE WHOLE REASON WHY HE GAVE UP A JURY TRIAL IS BECAUSE HE WASN'T READY.

AS PART OF THE CHARACTER OF STATION OF A SHAM PROCEEDING.

NO JURY TRIAL OR BENCH TRIAL WITH MITIGATION.

>> Justice: THE SHAM PROCEEDING, THOSE ARE FIGHTING WORDS.

WHAT PART OF THIS IS A SHAM EXACTLY?

>> Appellee: THE FACT THAT HE WAS FORCED TO GIVE UP A JURY TRIAL.

>> Justice: IT IS A VERY CONSPICUOUS USE OF THE -- WHO FORCED HIM?

>> Appellee: THE MITIGATION.

>> Justice John Couriel: I'M LOOKING FOR A QUESTION OF WHO FORCED HIM.

YOU SAID HE WAS FORCED TO GIVE UP HIS RIGHT.

WHO FORCED HIM?

>> Appellee: THE JUDGE.

THE TRIAL JUDGE DID BY MAKING THIS TRIAL GO FORWARD WITHOUT HIM HAVING MITIGATION SUPPORT.

THAT IS WHO.

AND LIKE I SAID THEY HAVE A LOT OF DISCRETION IN THESE MATTERS AND IN MY INITIAL EXAMPLE GETTING HIT BY A TURNIP TRUCK THE NIGHT BEFORE A TRIAL.

>> Justice John Couriel: YOUR ARGUMENT IS THE TRIAL JUDGE FORCED HIM TO JETTISON COUNSEL AND A MITIGATION SPECIALIST BY DENYING THIS MOTION TO CONTINUE AFTER SIX YEARS OF PROCEEDINGS TO ESTABLISH WHETHER OR NOT HE COULD -

>> Appellee: YOU STATED IT PERFECTLY JUSTICE.

>> Justice John Couriel: I JUST HATE IT WHEN PEOPLE CALL IT A SHAM TRIAL WHEN

THERE'S DNA EVIDENCE INVOLVED.

>> Appellee: I'M NOT TALKING ABOUT THE GUILT PHASE HERE, SIR, WERE TALKING ABOUT THE PENALTY PHASE.

>> Justice: I'M NOT SURE IF THAT'S THE WORD I WOULD'VE CHOSEN.

>> Appellee: I UNDERSTAND BUT IT CERTAINLY GETS YOUR ATTENTION.

>> Justice John Couriel: IT GOT MY ATTENTION ALL RIGHT!

>> Justice Charles Canady: THAT CAN BE A GOOD THING OR NOT A GOOD THING.

>> Appellee: THAT'S CORRECT.

>> Justice Charles Canady: I THINK THERE'S A CERTAIN AMOUNT OF RESPECT THAT KIND OF NORMATIVE.

>> Appellee: YES SIR.

AND I THINK EVERYONE WHO STANDS BEFORE YOU ACCEPT THAT AND RESPECTS THAT.

AND I REALLY BELIEVE THAT I HAD THIS GENTLEMAN ALTHOUGH HE DECIDED TO REPRESENT HIMSELF, IF YOU HAD KEPT HIM IN THE LAKE COUNTY JAIL WITH ACCESS TO MATERIALS AND ACCESS TO A MITIGATION SPECIALIST THE FIRST ONE HAD A STROKE.

THAT'S HOW HE LOST THE FIRST ONE.

WE DON'T KNOW WHY THE OTHER ONES GOT SUBBED OUT AND WE DON'T KNOW WHY THE LAST ONE DISAPPEARED.

THE RECORD IS COLD ON THAT.

IT GOES TO MY EXAMPLE AS AN ATTORNEY.

I BELIEVE A MITIGATION SPECIALIST IN A PENALTY PHASE RESENTENCED IT IS AS IMPORTANT AS HAVING COUNSEL.

THE CASE LAW WILL SUPPORT THAT STATEMENT BUT IN REALITY THAT IS A FACT.

IT IS THE TRUTH OF THE MATTER.

>> Justice: YOU BELIEVE IT IS A DUE PROCESS, RIGHT?

>> Appellee: YES SIR ABSOLUTELY AND BASED ON THE DECISIONS THIS COURT HAS MADE OVER THE PAST 10 YEARS, I AM SWIMMING UPSTREAM, NO QUESTION ABOUT IT.

BUT I CHALLENGE YOU TO GIVE IT SOME THOUGHT AS TO HOW WE CAN CRAFT -BECAUSE THIS IS GOING TO HAPPEN AGAIN IN AGAIN.

THESE DEFENDANTS REPRESENTING THEMSELVES WHICH NO ONE EVER THINKS THAT'S A GOOD IDEA BUT IT WILL HAPPEN AGAIN.

IF YOU WANT TO HAVE IT MEANINGFUL AND I GO BACK TO BARNES WHERE THE JUDGE APPOINTED A MITIGATION SPECIALIST AND DID MITIGATION INDEPENDENT MR.

BARNES AND THIS COURT ADOPTED THAT AND IT WAS A GOOD IDEA.

WHILE WE ARE NOT DOING THAT ANYMORE.

AND I THINK WE SHOULD.

AND WITH THAT I WILL LET MY LEARNED ATTY. GEN. TELL ME HOW I AM WRONG.

THANK YOU.

>> Appellee: GOOD MORNING MAY IT PLEASE THE COURT DORIS MEACHAM ON BEHALF OF THE STATE.

THE DEFENDANT KNEW WHAT HE WAS GETTING INTO WHEN HE DECIDED TO GO PRO

SE.

AND WHEN HE DECIDED TO WAIVE THE JURY AND WAIT MITIGATION.

THOSE CHOICES WERE ALL DONE KNOWINGLY AND VOLUNTARILY.

IN FACT ONE OF THE JUDGES HE HAD OVER THE SIX YEARS DID NOT FEEL THAT HE WAS NOT INCOMPETENT BUT OUT OF AN ABUNDANCE OF CAUTION WANTED TO HAVE HIM OBSERVE TO MAKE SURE HE WAS COMPETENT.

THIS WAS AFTER ADVISING HIM OVER AND OVER AGAIN YOU NEED TO GET HELP.

YOU KNOW YOU CAN HAVE COUNSEL APPOINTED WHICH HE REFUSED.

YOU KNOW YOU HAVE STANDBY COUNSEL AND WHICH HE REFUSED.

SO THE JUDGE HAD HIM EVALUATED AND HE WAS.

ACCORDING TO THAT REPORT DOCTOR MACULA STATED THAT THE DEFENDANT KNEW VERY WELL WHAT HE WAS DOING.

IN FACT HE SAID IF I LOSE THIS CASE HE WOULD TAKE SOLACE IN IT BECAUSE HE LOST IT HIMSELF AND NOBODY ELSE DID IT.

AND HE KNEW THE DISADVANTAGES AND ADVANTAGES OF GOING PRO SE AND THE ISSUES HE WAS HAVING THE MITIGATION SPECIALIST.

SO EVERYTHING HE DID WAS PROBABLY NOT THE SMARTEST DECISION BUT IT WAS A DECISION THAT HE MADE ON HIS OWN AND IT FORCED HIM TO DO ANYTHING HE DID.

THIS WAS A GROWN MAN WHO MADE HIS OWN DECISIONS TO GO FORWARD.

AS FAR AS THE MOTION FOR CONTINUANCE I WOULD TAKE SOME ISSUE WITH IT.

I KNOW IT IS ARGUED WITH A MOTION OF CONTINUANCE FOR MITIGATION SPECIALIST AND IN ACTUALITY THE MOTION TO CONTINUE IS FOR ANOTHER EVALUATOR.

THIS WAS BASICALLY ANOTHER ONE OF HIS TAX PICS TO GET A CONTINUANCE BECAUSE HE KNEW HE COULD NOT GET ANOTHER MITIGATION SPECIALIST.

SO THAT IS WHY HE PUT IT IN TERMS OF ANOTHER EVALUATOR IN FACT THE JUDGE AND STATE ATTORNEY WERE CONFUSED TO THAT.

HE MADE IT CLEAR HE WAS CONTINUING IT FOR AN EVALUATOR.

BUT EVEN IF YOU WANT TO -

>> Justice Charles Canady: WHAT CAN WE TELL ABOUT THE RECORD WHY THESE MITIGATION SPECIALISTS CAME AND WENT?

I UNDERSTAND THERE MAY BE THINGS WE DON'T KNOW BUT WHAT CAN WE KNOW?

>> Appellee: ON SOME THERE WERE INJURIES, ON SOME THEY GOT SICK.

A LOT OF IT WE DON'T KNOW WHAT WE DO KNOW IS THAT AS OF JULY 2022, THE MITIGATION SPECIALIST HAD BEEN BILLED TO JAC IN THE AMOUNT OF \$22,000.

SO I'M NOT SURE WHAT THEY HAD DONE OR NOT DONE OR WHAT THE REASONS WERE FOR NOT.

FOR NOT GOING FORWARD IN HIM SWITCHING SO MANY TIMES.

BUT WE CAN ONLY GUESS THAT PERHAPS HE MADE IT DIFFICULT.

I KNOW THAT HE WASN'T THE EASIEST TO WORK WITH AS FAR AS STANDBY COUNSEL AND WE DON'T KNOW WHAT THE ISSUES WERE BETWEEN HIM AND THE MITIGATION SPECIALIST.

EVERY TIME HE ASKED FOR ONE HE WAS GRANTED ONE AND THE JUDGE WENT BACKWARDS TO HELP HIM.

HE WAS ACTUALLY GRANTED A CONTINUANCE ONCE BASED ON A MITIGATION

SPECIALIST.

THAT SHE WOULDN'T BE READY FOR TRIAL AND SO THERE WAS A CONTINUANCE. SO THERE IS RECORD SUPPORT THAT THERE WERE MITIGATION SPECIALIST AND HE DID MEET WITH THEM.

WHAT WAS UNCOVERED OR NOT UNCOVERED WE DON'T KNOW.

THE DEFENDANT NEVER SAYS WHAT MITIGATION WAS LACKING BECAUSE IF YOU LOOK AT THIS, THE TRIAL COURT CONSIDERED ALL OF THE MITIGATION FROM THE PRIOR TRIAL AND IN FACT FOUND AN ADDITIONAL STATUTORY MITIGATE OR INTO ADDITIONAL NON-STATUTORY MITIGATER'S.

SO EVEN IF YOU WERE TO FIND THAT THERE WAS ABUSE OF DISCRETION, IT WAS HARMLESS.

YOU CANNOT FIND ANY PREJUDICE TO THE DEFENDANT IN THIS CASE.

THIS WAS A RESENTENCING AND IT HAD BEEN DONE PRIOR.

HE WAS ACTUALLY PRO SE IN THE FIRST TRIAL AND SAID HE WANTED HIS COUNSEL BACK BECAUSE HE THOUGHT IT WAS DIFFICULT AND THAT PART OF THE TRIAL WAS DEVELOPED BY TRIAL COUNSEL AND STATE COURT CONSIDERED ALL OF IT.

SO NO PREJUDICE CAN BE FOUND BY NOT GIVING THE CONTINUANCE BECAUSE HE GOT MORE MITIGATION THAN HE HAD IN THE FIRST TRIAL.

AS FAR AS AGAIN BEING FORCED TO TRIAL, BEING FORCED TO WAIT MITIGATION, THOSE WERE HIS CHOICES.

HE ALSO HAS STANDBY COUNSEL WHICH HE REFUSED TO EMPLOY TO HELP HIM.

IF YOU WERE TO GET A MITIGATE, A CONTINUANCE FOR MITIGATION SPECIALIST WHO WOULD HE HAVE GOTTEN?

AT THIS POINT WE CAN SEE IT WASN'T GOING TO HAPPEN.

AND THE FACTORS THAT YOU LOOK AT ASKING FOR CONTINUANCE, IT WAS FORESEEABLE.

HE KNEW HE WAS NOT GOING TO HAVE ONE.

HE KNEW HE WAS HAVING ISSUES WITH IT.

HE WAS REMINDED OVER AND OVER AGAIN.

I UNDERSTAND COUNSEL'S CONCERN WITH THE DEFENDANT'S RIGHT.

HE WANTS TO PROCEED PRO SE HE WANTS TO HAVE A JURY TRIAL.

WELL, HE ALSO HAS TO UNDERSTAND THAT THERE ARE PITFALLS IN THAT AND HE ACCEPTED THOSE PITFALLS AND HE WAS REMINDED EVERY TIME HE WENT INTO COURT ABOUT THOSE PITFALLS AND HE HAD EVERY OPPORTUNITY TO GET HELP AND HE CHOSE NOT TO.

THERE'S ONLY SO MUCH A JUDGE CAN DO.

EVERY JUDGE HE HAD BEFORE HIM DID EVERYTHING THEY COULD TO HELP HIM.

THE STATEMENT BENT OVER BACKWARDS AS WELL AND BROUGHT ALL THE DISCOVERY TO HIM IN COURT AND IT WAS HANDED OVER TO HIS INVESTIGATOR AT THE DEFENDANT'S REQUEST.

EVERYTHING.

>> Chief Justice Carlos Muniz: TO FOLLOW UP ON JUSTICE CANADY'S REQUEST, DOESN'T IT SHOW THAT JUDGE FISHER MOVED TO WITHDRAW FROM THE CASE UPON THE DEFENDANT'S REQUEST?

>> Appellee: HE HAD YES.

IT WASN'T THAT IT JUST DISAPPEARED.

IN FACT IT GOT SO MUCH THAT IT SEEMED LIKE EVERY FEW MONTHS HE WANTED A NEW INVESTIGATOR OR MITIGATION SPECIALIST AND HE WOULD FILE THESE MOTIONS AND IT GOT TO THE POINT WHERE THE JUDGE WAS -YOU ARE NOT GOING TO FILE THESE MOTIONS ANYMORE.

WERE GOING TO HAVE A HEARING ON IT AND HEAR FROM BOTH SIDES OF WHY THEY ARE BEING DISMISSED.

YES IT GOT TO THAT POINT WE NEED TO KNOW WHAT IS GOING ON AND YES THERE IS RECORD EVIDENCE THAT HE DECIDED TO JUST DISMISS THE INVESTIGATOR AND SAID THAT THE INVESTIGATOR HAD COMPLETED EVERYTHING HE NEEDED TO DO AND YET A FEW MONTHS DOWN THE LINE HE REQUESTED ANOTHER INVESTIGATOR. SO YES THERE IS RECORD EVIDENCE BUT NOT SO MUCH THAT THE MITIGATION SPECIALIST DIDN'T WANT TO WORK WITH HIM THAT HE SEEMED TO GO THROUGH QUITE A FEW OF THEM.

BASED ON THE RECORD, BASED ON THE EVIDENCE IN THIS CASE, WE WOULD ASK THAT YOU AFFIRM THE LOWER COURTS DEATH SENTENCE.

THE JUDGE DID EVERYTHING IN THEIR POWER TO ACQUIESCE TO THE DEFENDANT'S REQUEST AND EVEN WHEN THEY WENT FORWARD WITH THAT MITIGATION SHE AFFORDED HIM ANOTHER OPPORTUNITY TO PRESENT MITIGATION AND HE REFUSED. WHAT WE HAVE HERE IS A DEFENDANT WHO IS STUBBORN AND WHO'S GOING DOWN WITH THE SHIP IF HE HAD TO BASED ON HIS OWN DECISIONS.

AND THIS WAS NOT A SHAM TRIAL.

HE WAS GIVEN A TRIAL AND A PENALTY PHASE AND THE JUDGE TOOK EVERYTHING INTO CONSIDERATION AND THE CONVICTION AND THE SENTENCE SHOULD STAND. THANK YOU.

>> Justice: CAN ASK A QUESTION SINCE THE COUNCIL IS ASKING THE WHOLE QUESTION I'M NOT DISPUTING THE RIGHT BUT I'M CURIOUS.

WE ONLY SEE THE CASES WERE THE MEDIATION DIDN'T OVERCOME THE AGGRAVATION.

HOW MUCH DIFFERENCE DO THINK IT MAKES WHEN PEOPLE DON'T GET THE DEATH PENALTY IN THESE CASES?

HOW OFTEN DOES MITIGATION MATTER AS OPPOSED TO THE JURY AND THE JUDGE'S ASSESSMENT OF THE SEVERITY OF THE CRIME ITSELF AS TO THE MITIGATION?

>> Appellee: I THINK WE CAN LOOK AT THE LAST CASE WE HAD WHICH WAS 44 MITIGATER'S AND THE JURY DIDN'T FIND ANY OF THEM.

AS FAR AS THE MITIGATION SPECIALIST IT SELF, HOW IMPORTANT IT IS TO THE CASE, I'M NOT SURE.

YOU HAVE THE DOCTORS EXPERTS, THE MITIGATION SPECIALISTS ARE JUST DIGGING UP FACTS FROM CHILDHOOD AND FROM FAMILY WHICH THE ATTORNEYS CAN DO THEMSELVES AS WELL.

I BELIEVE THAT MUCH OF THE MITIGATION THAT THE DEFENSE COULD'VE PRESENTED, HE COULD HAVE PRESENTED HIMSELF ON HIS OWN.

IT'S HIS OWN BACKGROUND AND HIS OWN CHILDHOOD.

HE HAD EVALUATORS BEFORE, HE HAD DOCTORS BEFORE.

HE WASN'T EVEN CONCERNED WITH THEM IN FACT THAT WAS ONE OF THE ISSUES THAT THE JUDGE BROUGHT UP.

HE PUT EVERYTHING, YOU PUT ALL YOUR EGGS IN ONE BASKET ON ONE MITIGATION SPECIALIST AND YOU COULD CARE LESS ABOUT AN EVALUATOR AND DOCTORS TESTIMONY WHICH I THINK AS THE JUDGE WAS SAYING IS PROBABLY MORE IMPATIENT SILLY IMPORTANT THAN THE MITIGATION SPECIALIST BECAUSE THEY CAN COME IN THERE AND SAY THAT HE GREW UP IN A BAD NEIGHBORHOOD AND HIS DAD HIT HIM OR WHATEVER IT IS.

I DON'T THINK THE MITIGATION SPECIALIST IS AS IMPORTANT AS THE INFORMATION HE CAN GIVE TO HIS OWN ATTORNEYS OR THE INFORMATION THAT A DOCTOR OR EXPERTS CAN GIVE.

AND AGAIN AS I STATED IN THE LAST CASE THERE WAS A MITIGATION SPECIALIST AND THERE WERE 44 MITIGATER'S AND THE JURY DIDN'T BUY IT.

I THINK A LOT OF IT GOES INTO WHAT THE FACTS OF THE CASE ARE.

AND NOT SO MUCH WHAT A MITIGATION SPECIALIST CAN PRODUCE AT TRIAL.

>> Chief Justice Carlos Muniz: OKAY, THANKS.

I APPRECIATE IT.

>> Appellee: VERY BRIEFLY SIR I THINK THAT JUSTICE HAD AN EXCELLENT QUESTION ABOUT THE VALUE OF MITIGATION SPECIALIST AND WHETHER THERE IS A CONSTITUTIONAL REQUIREMENT.

I ASKED THE COURT TO TAKE THE OPPORTUNITY IN THIS CASE TO ACTUALLY DISCUSS THAT AND FOR THE REST OF THE STATE TO GIVE THEM GUIDANCE ON HOW IMPORTANT WHETHER IT IS CONSTITUTIONALLY REQUIRED OR NOT OR WHAT HAVE YOU FOR MITIGATION SPECIALISTS.

THIS CASE IS TEED UP FOR THAT AND I HOPE YOU TAKE THE OPPORTUNITY.

>> Chief Justice Carlos Muniz: SERIOUSLY, WHAT WOULD YOU WANT US TO SAY ABOUT THAT?

>> Appellee: ADOPT THE STANDARDS.

IT'S AN ESSENTIAL PART OF THE DEFENSE AND THAT'S WHAT.

>> Chief Justice Carlos Muniz: WHAT CONSEQUENCE WOULD THAT HAVE? AN UNWAIVABLE PART OF THE CAPITAL DEFENSE?

>> Appellee: YES IT IS UNWAIVABLE IN A SENSE AND I GO TO BARNES.

BARNES WAVED BUT THEY STILL PUT IT ON ANYWAY WITH AN INDEPENDENT MITIGATION SPECIALIST APPROVED BY THE COURT.

IT HAS TO BE A PART OF THE RECIPE FOR DUE PROCESS BECAUSE THIS IS HEIGHTENED DUE PROCESS AS YOU ALL RECALL AND THEY SHOULD GET IT IN THIS CASE.

THE DUE PROCESS AND SIXTH AMENDMENT.

>> Chief Justice Carlos Muniz: IT SOUNDS LIKE IT WOULD MAKE A MUDDLED THEORY OF THE LAW EVEN WORSE.

>> Appellee: WELL, REASONABLE MINDS CAN DIFFER.

>> Justice: YOU DON'T BELIEVE THE CLIENT SUBJECT LIVES TO DETERMINE THE OBJECTIVE OF THE LAWYER?

>> Appellee: TRADITIONALLY THAT WAS EXACTLY THE CASE.
THOUGH THEY WERE.

THE FEDERAL LAW, THEY ARE THE CAPTAIN OF THE SHIP AND THEY CAN DO
WHATEVER THE HELL THEY WANT TO DO BUT NOT HERE IN FLORIDA.
YOU HAVE INDIVIDUALIZED SENTENCING AND YOU CAN HAVE MITIGATION PUT ON
WHETHER THEY WANT IT OR NOT.

>> Chief Justice Carlos Muniz: ALRIGHT THANKS SO MUCH.
WE ARE ADJOURNED FOR TODAY.
THANK YOU.

>> ALL RISE!