

>> Chief Justice Carlos Muniz: OUR LAST CASE TODAY DAMAS V. STATE SECRETARY DEPARTMENT OF CORRECTIONS NUMBERS OF FLORIDA SC2023-1476 AND 2024 0565.

>> Michael T. Cookson, Appellant's Attorney: GOOD MORNING MAY IT PLEASE THE COURT. ON BEHALF OF MESAC DAMAS.

>> Appellant's Attorney: MR. DAMAS WAS PUSHED THROUGH THE COURT SYSTEM AND AS A RESULT HIS SENTENCE IS UNRELIABLE HE WAS DENIED THE FUNDAMENTAL PROTECTION OF THE CONSTITUTION HE WAS NOT COMPETENT TO PROCEED DURING THE TRIAL THE COURT PROCEEDINGS WITHOUT COMPETENT DURING POSTCONVICTION WHEN HE WAS RUN THROUGH THE SYSTEM HE WENT THROUGH WITHOUT THE PROTECTION OF THE COUNSEL THAT THE SIXTH AMENDMENT GUARANTEES.

COUNSEL SHOULD'VE ACTED AS HIS ADVOCATE AND CONTESTED HIS COMPETENCY. IF MR. DAMAS WAS GOING TO BE FORCED THROUGH THE COURTS HIS COUNSEL SHOULD'VE PROBABLY DEVELOPED AND PRESENTED AS MITIGATION AFTER COUNSEL FAILED THE CONSTITUTION WAS GIVEN THE RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND THAT COUNSEL FAILED HIM AS WELL. MR. DAMAS WAS HAD A NUMBER OF COMPETENCY PROCEEDINGS AND IN 2014 HE WAS FOUND INCOMPETENT AND HE WAS SENT OFF TO GO CARE FOR SO-CALLED TREATMENT.

HE WAS THERE FOR ABOUT 20 DAYS AT WHICH TIME THEY RAN HIM OUT OF THE TREATMENT CENTER AND SENT HIM BACK TO THE COURT. AT THAT POINT RATHER THAN CONTEST THE FINDINGS OF THE DOCTORS THAT WERE REAPPOINTED TO EVALUATE HIM HIS COUNSEL NOT ONLY STIPULATED TO CONSIDERING THE REPORT ONE OF WHICH WAS BY.

[LISTING NAMES] WHICH WAS A REPORT WHICH WAS BASICALLY A CHARACTER ATTACK ON MR. DAMAS THEY ALSO STIPULATED TO COMPETENCY.

>> Chief Justice Carlos Muniz: IF YOU PUT ASIDE THE REPORT FINDING HIM COMPETENT DON'T WE ALSO HAVE THE.

[LISTING NAMES] REPORTS.

>> Appellant's Attorney: HE WAS FOUND INCOMPETENT EARLIER.

>> Chief Justice Carlos Muniz: THE LAST HARBOR REPORT IS AUGUST 26, 2020 THERE IS ANOTHER ONE ON AUGUST 30.

>> Appellant's Attorney: THAT WAS FOR POSTCONVICTION.

>> Chief Justice Carlos Muniz: YOU ARE DOING A GREAT JOB ARGUING FOR YOUR CLIENT I THINK IT WOULD BE DISINGENUOUS TO IGNORE BY MY COUNT EIGHT DIFFERENT REPORTS FINDING HIM COMPETENT TO PROCEED.

>> Appellant's Attorney: HE WAS FOUND COMPETENT TO PROCEED HE WAS FOUND COMPETENT BY.

[LISTING NAMES] EARLIER RIGHT BEFORE IT SAID HE WAS BOTH MENTALLY FIT AND INCOMPETENT ALL OF A SUDDEN.

>> Justice Charles Canady: THE FACT THEY EARLIER FOUND HIM TO BE INCOMPETENT IT SEEMS TO ME ACTUALLY STRENGTHENS THEIR SUBSEQUENT DETERMINATION THAT THE TREATMENT HAD RESTORED HIS COMPETENCY. THAT IS WHY HE WAS SENT TO THE TREATMENT FACILITY TO RESTORE HIS COMPETENCY. AND THEY DETERMINE WHATEVER HAD BEEN DONE THERE HAD BEEN EFFECTIVE IN RESTORING HIS COMPETENCY. THE FACT THEY PREVIOUSLY SAID HE WAS INCOMPETENT RATHER THAN UNDERMINING THEIR SUBSEQUENT DETERMINATION OF COMPETENCY ACTUALLY STRENGTHENED THAT THEY WERE WILLING TO DETERMINE HIM TO BE INCOMPETENT BUT THAT IS COMPETENCY IT HAS TO BE DETERMINED AT A PARTICULAR TIME BUT AFTER AM I WRONG IN THINKING THAT AFTER FEBRUARY 2014 WHEN THERE WAS A DETERMINATION OF INCOMPETENCY THAT THERE WAS ONE DETERMINATION OF COMPETENCY AFTER ANOTHER? 2014, 2017, 2020.

THEN UP THROUGH UNTIL 2022.

>> Appellant's Attorney: THERE WAS COMPETENCY POSTCONVICTION COUNSEL MOVED ENDED HEARING ON THAT . THAT IS WHAT COUNSEL NEVER DIID FOR MR. DAMAS WHEN WITHIN 20 DAYS HE IS MIRACULOUSLY CURED IF YOU LOOK AT THE REPORTS OF.

[LISTING NAMES] AND LOOK AT THE REPORT OF.

[LISTING NAMES] WHO HAD SAID I THINK THE DOCTOR SAID HE HAD BIPOLAR DISORDER AND.

[LISTING NAMES] SAID HE WAS ON THE SCHIZOPHRENIC SPECTRUM ALL OF A SUDDEN AFTER THIS REPORT BY.

[LISTING NAMES]

>> Justice John Couriel: YOU KEEP CALLING IT [LISTING NAMES]THE REPORT FOUND THAT YOUR CLIENT WAS MALINGERING THERE WAS FIVE WEEKS OF OBSERVATION AND YOU CALL IT [LISTING NAMES].

>> Appellant's Attorney: IS A PERSONAL ATTACK ON MR DAMAS.

>> Justice John Couriel: IS A PERSONAL ATTACK OBVIOUSLY IT IS PERSONAL TO MR. DAMAS HOW IS IT AN ATTACK.

>> Appellant's Attorney: IT'S AN ATTACK ON HIS CHARACTER IF YOU LOOK AT THAT IF I PUT THAT IN A BRIEF I WOULD BE ACCUSED OF MAKING AN AD HOMINEM ATTACK THAT IS WHAT.

[LISTING NAMES] DID.

>> Justice John Couriel: THE REALITY IS IF HE DETERMINES HE IS MALINGERING THAT AN ATTACK ON HIS CHARACTER THERE IS NO WAY AROUND IT.

WE KNOW PEOPLE DO MALINGER IT THEY ARE NOT ALWAYS MALINGERING BUT PEOPLE DO MALINGER IT'S AN ESTABLISHED CATEGORY OF EVALUATION IN THE SOURCE OF EXAMINATIONS.

THE BOTTOM LINE IS AFTER THEY WATCHED HIM AND THEY SAW WHAT WAS GOING ON THEY DETERMINED HE WAS A MALINGERER.

>> Appellant's Attorney: I DON'T THINK THE DOCTOR SPENT 24 HOURS A DAY WITH

THEM THERE WAS A REPORT THAT WAS NEVER PART OF THE HEARING BECKHAM AND CONTESTED IF COUNSEL HAD JUST ACTED EFFECTIVELY. BUT WHAT THE DOCTOR WHAT SHE DID WAS CREATED A NARRATIVE AND A FALSE ONE THAT MR. DAMAS WAS RELATIONAL OBSTRUCTING THE COURT SYSTEM I BELIEVE MY COLLEAGUE MY OPPOSING COUNSEL WOULD GET UP AND ARGUE THAT THIS WAS SOME SORT OF GAMESMANSHIP BUT WHAT GAME IS MR. DAMAS PLAYING OTHER THAN TRYING TO GET HIMSELF KILLED.

IT COULD HAVE BEEN AND THERE WERE OPPORTUNITIES WE ARE TALKING ABOUT 2014 WHERE HE WAS FOUND INCOMPETENT THEN FOUND INCOMPETENT AGAIN. TIME GOES BY AND THOSE REPORTS BECOME STALE. WHAT HAPPENED IN 2017 IT WAS NOT CANCELED THE MOVE FOR HIM TO BE EVALUATED FOR COMPETENCY IT WAS THE JUDGE THE SAME JUDGE THAT EVENTUALLY FOUND HIM COMPETENT WHAT DO YOU CALL IT RECORDED THE COMPETENCY WAS CONDUCTING HIS OWN INVESTIGATION ON WHETHER MR. DAMAS PLAYED CHESS AND THINGS OF THE LIKE. THERE WAS NEVER A PROPER HEARING WHERE COUNSEL CONTESTED THE IDEA THAT THIS WAS MALINGERING THAT THIS WAS RELATIONAL IN 2014 COUNSEL STIPULATED TO COMPETENCY WHICH IS NOT SUPPOSED TO HAPPEN.

>> Chief Justice Carlos Muniz: LET'S SAY WE AGREE WITH YOU MORE COULD HAVE BEEN DONE JUST HYPOTHETICALLY TO EXPLORE THE CLAIM OF MALINGERING, CORRECT THAT AT THE END OF THE DAY THE TRIAL COURT DENIAL OF RELIEF YOUR IS A MATTER OF ABUSE OF DISCRETION?

>> Appellant's Attorney: YES YOUR HONOR IT IS CONTRARY TO THE FACTS.

>> Justice John Couriel: WORKING WITH THAT YOU WOULD HAVE TO SHOW THAT NO REASONABLE JUDGE COULD HAVE CONSIDERED MORE THAN HALF A DOZEN CONSISTENT COMPETENCY FINDINGS THEN THEY WOULD'VE DETERMINED I'M GOING TO FIND THIS PERSON COMPETENT.

>> Appellant's Attorney: THAT WOULD BE FOR THE COMPETENCY THIS IS A STRICKLAND CLAIM. WE ARE LOOKING AT THE PERFORMANCE OF COUNSEL COUNSEL WAS DEFICIENT BY STIPULATING TO COMPETENCY.

>> Justice John Couriel: BECAUSE IT WAS NOT RAISED ON DIRECT APPEAL WAS WAIVED ON DIRECT APPEAL.

>> Appellant's Attorney: THERE WAS NOT A WHOLE LOT RAISED ON DIRECT APPEAL WHICH I CAN GET TO.

>> Justice John Couriel: THAT IS GETTING TO ANOTHER PROBLEM WHICH IS WHAT IS FORECLOSED BUT I DIGRESS.

>> Appellant's Attorney: MR. DAMAS NEEDED HEARING WHERE COUNSEL COULD HAVE CROSS-EXAMINED.

[LISTING NAMES] OR COUNSEL COULD'VE PUT ON AS I CITED A COMPETENT EXPERT LIKE.

[LISTING NAMES] WHO COULD EXPLAIN WHY IT IS NOT JUST HIM BEING OBSTRUCTIVE HOW HIS SINCERELY HELD RELIGIOUS BELIEFS INTERACT WITH HIS SCHIZOPHRENIA SPECTRUM. THAT WAS NEVER HEARD THAT WAS NEVER DONE AND AT THE END NOBODY COULD HELP MR. DAMAS BECAUSE HE WAS SO MENTALLY ILL HE COULD

NOT INTERACT WITH HIS COUNSEL AT TIMES HE WOULD AND AT TIMES HE WOULDN'T WHICH IS CONSISTENT WITH HIS MENTAL ILLNESS. THE FACT THAT THE DOCTOR SAID THINGS LIKE HE GOT THINGS WHEN HE WAS AT THE CENTER. IT IS NOT LIKE HE HIS 24 SEVEN THAT IS ACTING OUT IS WHEN CERTAIN PERIODS, IT GETS VERY CUTE HE CYCLES IN AN OUT OF THE PSYCHOSIS.

AT THE END OF THE DAY THE STATE OF FLORIDA THE JUDGE SENTENCE AND INCOMPETENT MEN TO DEATH AND THEY DID SO WITHOUT PROPERLY CONSIDERING HIS MITIGATION THAT BRINGS UP THE OTHER CLAIMS WHERE MR. DAMAS COULD'VE SHOWN THAT IN FACT HE WAS NOT MALINGERING HAD A MENTAL ILLNESS IT BECAME WHOLE THING THAT SENTENCING ORDER THAT THE JUDGE THE SENTENCING JUDGE DISCOUNTS HIS MENTAL ILLNESS WHEN IN FACT HE IS SCHIZO RUNNING AND THAT WAS FOUND BY.

[LISTING NAMES] AND THAT WAS ALSO FOUND BY.

[LISTING NAMES] ON THE SCHIZOPHRENIC SPECTRUM WE HAVE THAT.

MULTIPLE DOCTORS ASKED THESE ATTORNEYS PLEASE GET US THESE VERY PRECISE SCANS AND WE CAN SEE THE SCHIZOPHRENIA . THAT WOULD NOT RELY ON MR. DAMAS THOSE PICTURES WOULD'VE BEEN ABLE TO PINPOINT AND SHOW THAT IN FACT HE DOESN'T SUFFER FROM A MENTAL ILLNESS IT IS NOT JUST VOLITIONAL IT IS NOT A PERSONAL DISORDER IS SEVERELY MENTALLY ILL IN ADDITION TO BEING BRAIN-DAMAGED. BUT THE COURT DOES NOT ALLOW THE SCANS TO BE DONE AND DOES NOT FUND DR. WU TO COME AND DO THAT. INSTEAD THE GOAL I EXPENSE OR HEARING AT WHICH POINT THEY PUT ON DR. RUBINO WHO IS A UROLOGIST WHO HAS NO BUSINESS TESTIFYING THAT MR. DAMAS HAS SCHIZOPHRENIA HE COULD ONLY LOOK AND SAY THERE IS PART OF HIS BRAIN THAT WERE CONSISTENT AND THAT DR. STILL WANTED THOSE ADDITIONAL SCANS BECAUSE IT WOULD'VE BEEN A MORE PRECISE PICTURE. IT WOULD'VE BEEN SOMETHING THAT THE SENTENCING COURT COULD NOT HAVE IT DISCOUNTED AND IT DENIED MR. DAMAS AT THEIR PENALTY PHASE.

HIS DEATH SENTENCE IS BEYOND THE EIGHTH AMENDMENT BECAUSE OF MR. DAMAS INCUMBENCY NONE OF THE RIGHTS COULD PROTECT HIM NONE IT'S UNRELIABLE HIS SENTENCING AT THE END OF THE DAY IT SHOULD BE REVERSED.

MOVING ON TO IN ADDITION TO THAT IF MR. DAMAS IS NOT SEVERELY MENTALLY ILL AND HE'S JUST ANNOYING HE SHOULD HAVE BEEN ALLOWED TO REPRESENT HIMSELF. I PRESENTED TO THE COURT WHICH WAS OMITTED ON APPEAL THAT MR. DAMAS HAD MOVED TWICE TO PRESENT HIMSELF IF NOT MORE TIMES. THE ONE THAT WAS OMITTED BY THE APPELLATE COUNSEL IN 2011 MR. DAMAS STANDS UP AND SAID I WOULD LIKE TO RESENT MYSELF AT WHICH POINT THE COURT SAYS THAT IS FINE IT MR. DAMAS BUT WILL HAVE TO WAIT FOR ANOTHER DOCTOR YOU COME BACK AND WILL DO THE FARETTA INQUIRY THEN BASICALLY AT WHICH POINT THE SAME EXACT DAY THE JUDGE ISSUES AN ORDER DENYING HIMSELF REPRESENTATION. IF MR. DAMAS IS JUST IS NOT SEVERELY MENTALLY ILL AS WE SUBMIT AND WHICH IS THE ABSOLUTE TRUTH THEN HE SHOULD'VE BEEN ALLOWED TO REPRESENT HIMSELF AND SO THERE WAS NO INDIANA V. EDWARDS IF HE DOES

NOT HAVE A MENTAL ILLNESS A SEVERE MENTAL ILLNESS. IN FACT IN 2011 HE WAS TOLD WOULD BE HEARD AND HE COULD PRESENT HE COULD ASK FOR HIS SELF REPRESENTATION AND THE VERY VERY SAME DAY, AFTER THE JUDGE HAD TOLD HIM WE WILL COME BACK AND CONSIDER YOUR SELF REPRESENTATION MR. DAMAS, THE VERY SAME DAY THAT JUDGE DENIED IT.

THAT IS A VIOLATION OF MR. DAMAS' CONSTITUTIONAL RIGHTS. AN ADDITIONAL IN THE HABAEOUS I ARGUE ABOUT THE REPORT OF.

[LISTING NAMES] WHICH HAS NO BUSINESS BEING CONSIDERED ESPECIALLY CONSIDERING MR. DAMAS WAIVED MITIGATION.

I WAS VERY UPFRONT WITH THE COURT THAT COUNSEL ASKED THE COURT TO CONSIDER TO LOOK AT THAT TO SEE WHETHER HE RECEIVED ANY TREATMENT WHILE HE WAS AT THE CENTER.

THAT LIMITED PURPOSE. THAT MR. DAMAS IF HE HAS COMPETENT COUNSEL SHOULD NOT MAKE THAT DECISION WAIVED HIS PRIVACY RIGHTS AND DENY HIM WHAT IS GUARANTEED BY BOTH THE FLORIDA AND THE UNITED STATES CONSTITUTION.

HE HAD A RIGHT TO HAVE THAT HELD CONFIDENTIAL AND THEN HE NEVER WAIVES IT. THERE IS NO RECORD NOTHING ON THE RECORD COUNSEL JUST GOES FORWARD PROBABLY AGAINST HIS WISHES NOBODY REALLY KNOWS WHAT MR. DAMAS WISHES ARE GOES FORWARD ALERTS THE COURT TO.

[LISTING NAMES] FOR VERY SPECIFIC PURPOSE AT WHICH POINT THE SENTENCING COURT CAME BACK IN AND USED THE DOCTORS OVERWHELMINGLY JUSTIFY IT DEATH SENTENCE IT BECAME NONSTATUTORY AGGRAVATOR THE STATE ITSELF COULD NOT HAVE WRITTEN A WORSE REPORT THAN WHAT THE DOCTOR WROTE ABOUT MR. DAMAS.

IN ADDITION TO THAT, WE HAVE WE HAVE I BELIEVE I ALLUDED TO IT EARLIER WE HAVE MR. DAMAS HE HAD COUNSEL ON SEPTEMBER 1 FIVE DAYS BEFORE THE TRIAL IS GOING TO BEGIN COUNSEL FINALLY MOVES FOR THE ADDITIONAL SCANS AND TO HAVE DR. WU TRAVEL TO COME TESTIFY.

AT WHICH POINT IF YOU LOOK AT THE RECORD THERE WAS NEVER ANY DOUBT THAT MR. DAMAS WAS GOING TO TAKE A PLEA YOU WANT TO TAKE A PLEA FROM THE BEGINNING THAT WOULD MEAN IF YOU DON'T WAIVE THE PENALTY PHASE YOU ARE GOING FORWARD WITH A PENALTY PHASE IN FRONT OF A JURY AND COUNSEL WAS STILL ASKING FOR SCANS FIVE DAYS BEFORE THE JURY WAS WOULD'VE BEEN SELECTED.

HE DOESN'T HAVE THAT.

IT IS PARTICULARLY EGREGIOUS WHEN YOU CONSIDER HOW THE SENTENCING COURT DISCOUNTED HIS MITIGATION AND HEALTHY USED THAT TO JUSTIFY A DEATH SENTENCE . OVERWHELMINGLY CONSULTED AT THE SPENCER HEARING PRESENT SOME EVIDENCE BUT THEN WHATEVER THEY WERE PRESENTED WAS EVENTUALLY TURNED AROUND AGAINST MR. DAMAS AND THAT WAS PARTICULARLY UNFAIR PAREN ESPECIALLY SINCE HE NEVER CONSENTED TO THE DOCTORS REPORT AND ESPECIALLY CONSIDERING HE WAS DENIED THE VERY PRECISE SCANS THAT HE NEEDED TO SHOW THAT HE HAD SCHIZOPHRENIA.

THAT IS IN ADDITION TO COUNSEL NOT DEVELOPING ANY OTHER EXPERTS. THEY HAD A WHOLE PERIOD OF TIME THEY HAD THE WHOLE PERIOD OF TIME.

>> Justice John Couriel: [LISTING NAMES] GETS AN MRI AND PET SCAN.

>> Appellant's Attorney: TO GET THE BASIC VERSION THERE IS A DEVELOPMENT IN THE PET SCAN THAT SHOWED THINGS I SCHIZOPHRENIA THINGS LIKE HIS BRAIN DAMAGE. IT'S LIKE THE DIFFERENCE.

>> Justice John Couriel: WHICH CASE A BAR HOLDS THE SOMEONE IS ENTITLED TO A PARTICULAR PET SCAN OR AND MRI SCAN.

>> Appellant's Attorney: IN AN ANOTHER CASE HE IS RIGHT TO DEVELOP HIS MITIGATION AND PRESENT IT. THE LAW MOVES ALONG WITH TECHNOLOGY IF THAT PET SCAN AND THAT MRI I THINK IT WAS THE MRI WHICH WAS MORE PRECISE IF THAT WOULD'VE SHOWN THAT MR. DAMAS WAS SCHIZOPHRENIC AND FURTHER SHOW HIS BRAIN DAMAGE AND IT CAN DO SO MORE ACCURATELY.

>> Justice John Couriel: WHEN YOU REFER TO BRAIN-DAMAGED ARE YOU REFERRING TO THE CAR ACCIDENT

>> NO HE PROBABLY HAD BRAIN-DAMAGED HIS OWN LIFE THERE IS ALSO SOME THINGS BUT THAT NEVER COULD BE PINPOINTED BECAUSE THEY DID NOT HAVE THE RIGHT EXPERTS TO WORK WITH HIM BY THE TIME THEY GET AROUND TO BRINGING THE DOCTOR INTO THE CASE BY THAT TIME HE HAD BEEN COMPENSATED SO FAR HE WOULD NOT MEET WITH THE DOCTOR SOMETIMES HE WOULD MEET WITH AN EXPERT HE MET WITH THE VERY ABLE DR. McALLISTER WHO PROVIDED VERY IMPORTANT ALLEGATION IN THIS CASE AND IT SHOWED THE BACKGROUND OF MR. DAMAS.

THAT WAS A PROFESSOR OF AFRICAN-AMERICAN STUDIES NOT A PSYCHOLOGIST NOT A PSYCHIATRIST. NOT A NEUROPSYCHOLOGIST PAREN MR. DAMAS NEEDED TO HAVE THAT IN ORDER TO PROPERLY DETERMINE WHETHER SHE IS IN THE CLASS OF INDIVIDUALS WHO MAY BE SUBJECT TO DEATH. IT IS A CRITICAL EIGHTH AMENDMENT PRINCIPLE THAT WE ARE SAYING IS THAT AFTER FURMAN IN ORDER TO IMPOSE DEATH WITH GENERIC THE CLASS OF INDIVIDUALS OR SUBJECT TO DEATH. INDEED MR. DAMAS A LOT OF AGGRAVATION I WILL CONCEDE THAT BUT THERE WAS LOT OF MITIGATION THAT SHOULD'VE BEEN PRESENTED SO WHEN THE JUDGE DETERMINES WHETHER HE SHOULD LIVE OR DIE THE JUDGE KNEW ALL THE TRUTH AND KNOW ALL THE FACTS BUT HE COULD NOT DEVELOP THAT BECAUSE HE WAS NOT GIVEN FUNDING FOR THOSE ADDITIONAL TESTS AND OF COURSE THAT WAS DUE TO COUNSEL BEING INEFFECTIVE . ADDITIONALLY, BY NOT HAVING HIM EVALUATED EARLIER ON THE PROCESS PAREN I DON'T KNOW HOW THEY WERE GOING TO GET HIM IF MR. DAMAS DID NOT COME IN ON THE FIFTH AND TAKE A PLEA AND SAY I PLEAD GUILTY AND WAIVE THE PENALTY PHASE WITH A JURY IF HE CAME IN AND SAID NOTHING, THERE WERE GOING TO A JURY TRIAL. THAT IS HOW CLOSE UP THAT IS HOW CLOSE TO THE LINE THIS DEFENSE COUNSEL DID AND I WAS INEFFECTIVE. WHEN WAS IT MR. DAMAS GO TO GET HIS PET SCAN AND MRI IF IN FACT HE IS SITTING THERE IN THE COURTROOM THE WHOLE TIME?

WHEN WAS THIS SUPPOSED TO TAKE PLACE?

I'VE DONE PET SCAN'S AND MRIS I DON'T THINK THEY HAVEN'T MADE OURS THAT WAS BECAUSE COUNSEL WAS DEFICIENT DID NOT BOTHER TO PREPARE AND WAITED MUCH TOO LONG THEY DID NOT GET ACTIVE IN THIS CASE UNTIL AFTER THE. [LISTING NAMES] THEY.

>> Chief Justice Carlos Muniz: COUNSEL YOU'RE WELCOME TO KEEP GOING. YOU HAVE ONE MINUTE FOR YOUR REBUTTAL TIME.

>> Appellant's Attorney: I WILL SAVE IT.

>> Appellee's Attorney: I KNOW THE CALENDAR INDICATES THAT.

[LISTING NAMES] WAS TO ARGUE THIS. I AM.

LET'S START WITH ISSUE ONE AND THE QUESTION OF COMPETENCY.

FIRST I WANT TO ADDRESS THE ISSUE THAT WHETHER IT WAS PROPER FOR TRIAL COUNSEL TO STIPULATE TO THE DEFENSE COMPETENCY.

THE STATES PERSPECTIVE ON THAT OUR VIEW IS IT IS RELEVANT.

TRIAL COUNSEL CANNOT STIPULATE TO THE COMPETENCY OF THE CLIENT THE ROLE OF THE ATTORNEY IS TO BE ADVISORY TO SET THINGS IN MOTION TO TELL THE JUDGE WE HAVE A GOOD FAITHFUL BELIEVE THE CLIENT IS NOT COMPETENT WHEREBY THE EXPERTS COMMIT AND MAKE AN EVALUATION AND THE COURT MAKES A DETERMINATION BASED UPON BOTH EXPERTS.

ON OCTOBER 8 HE WAS RETURNED FROM TREASURE COAST LONG-TERM TREATMENT FACILITY.

[LISTING NAMES] REPORTED THAT POINT PLUS THE OTHER TWO EXPERTS ALL CONCLUDED HE WAS COMPETENT I HAVE THE ORDER WHICH IS ATTACHED TO THE TRIAL COURT'S ORDER DENYING POSTCONVICTION RELIEF. IT STATES "A HEARING WAS SCHEDULED FOR OCTOBER 8 AT WHICH TIME THE PARTIES RELATED TO THE DEFENSE COMPETENCY IT DOESN'T SAY THAT. I THINK THAT WAS FOR THE PURPOSES OF MEMORIALIZING WHAT HAD HAPPENED ON THAT DAY. IF YOU CONTINUE TO READ THE BALANCE OF THAT ORDER, THE FACT THAT THE PARTIES STIPULATED COMPETENCY IS NOT MENTIONED EVER AGAIN. INSTEAD.

>> Justice Charles Canady: WHAT AMAZES ME THEY DO NOT OBJECT TO THE DETERMINATION OF COMPETENCY.

>> Timothy A. Freeland, Appellee's Attorney: THE COURT COULD RELY UPON THE REPORTS IN ORDER TO SATISFY WHICH IS WHAT THE COURT WOULD HAVE TO DO IN ANY EVENT.

THE DEFENDANT WAS INITIALLY FOUND TO LACK COMPETENCY IN MARCH 2014 HE WAS SENT TO THE GO CARE/TREASURE COAST LONG-TERM TREATMENT FACILITY WHEN HE RETURNED HE WAS DEEMED COMPETENT ON OCTOBER 8. AS THE COURT NOTED EVERY COMPETENCY EVALUATION EVER SINCE THEN HAS FOUND HIM TO BE COMPETENT.

OPPOSING COUNSEL JUST REFUSES TO ACCEPT THE FACT THAT SINCE HE WAS RETURNED FROM TREASURE COAST EVERY EXPERT TO EXAMINE HIM FOUND HIM TO BE COMPETENT.

IF WE TURN TO THE SECOND ISSUE MITIGATION.

THE VAST MAJORITY OF MITIGATION THAT COUNSEL OBTAINED IN THIS CASE WAS OVER AT THE DEFENDANT'S OBJECTION THE DEFENDANT DID IT QUITE CLEAR HE DID NOT WANT ANY MITIGATION TO BE PRESENTED. HE ACTIVELY OBSTRUCTED COUNSEL'S EFFORTS TO TRY TO GATHER THAT MITIGATION PAREN IN SPITE OF THOSE OBSTRUCTIONS THAT OBSTRUCTION COUNSEL DID REMARKABLY GOOD JOB OF GATHERING MITIGATION. THEY HIRED A MITIGATION EXPERT WHOSE NAME IS MURRAY PAREN THEY HAD A CULTURAL EXPERT DR. McALLISTER AND THE TWO OF THEM TRAVLED TO HAITI IN DIFFICULT CIRCUMSTANCES HAITI FOR LONG TIME HAS BEEN ON THE DO NOT TRAVEL LIST FOR THE STATE DEPARTMENT AT THE TIME THEY JUST HAD A MAJOR EARTHQUAKE.

THEY WENT DR. McALLISTER WAS ABLE TO LOCATE MEMBERS OF THE FAMILY AND SPOKE TO THEM I THINK AN UNCLE. SHE ALSO WENT TO A SCHOOL AND GOT INFORMATION ABOUT HIS FAMILY FROM THE PRINCIPAL OF THE SCHOOL WILL REMEMBERED HIM. THIS IS NOT A CASE WHERE ANSELL SAT ON THEIR HANDS AND DID NOTHING TO EVALUATE OR TO ASSESS THE MITIGATION.

WAS THERE MORE MITIGATION AVAILABLE?

YES. BUT THE DEFENDANT REFUSED TO COOPERATE.

THE STATE HIRED TWO EXPERTS TO DO THE ADDITIONAL TESTING.

THE DEFENDANT REFUSED TO MEET WITH THOSE EXPERT PAREN WHAT IS INTERNING SUPPOSED TO DO UNDER THOSE CIRCUMSTANCES. THEY DO THE BEST THEY CAN CANCEL CAME UP WITH A LIST OF I THINK 42 THEN THEY BROUGHT IT DOWN TO A LIST OF THIRTYSOMETHING MITIGATORS THAT THEY WOULD'VE PRESENTED HAD THE CLIENT COOPERATED.

TURNING TO THE QUESTION OF THE FARETTA HEARING.

THERE WERE TWO FARETTA HEARINGS AND APPELLATE COUNSEL SOUGHT TO HAVE AT THIS COURT REVIEW THE FIRST ONE IN 2017 AND ELECTED NOT TO CHALLENGE THE ONE THAT WAS IN 2011.

THE ONE IN 2017 WAS THE STRONGER OF THE TWO THAT IS ONE OF THE THINGS THE APPELLATE COUNSEL IS SUPPOSED TO DO IS TO WHITTLE OUT THE WEAKER ARGUMENTS.

THE FACT THAT THE REPORT WAS INTRODUCED WAS CLEARLY DONE WITH THE WAIVER OF COUNSEL HE INVITED THE COURT TO EXAMINE IT.

I DON'T HAVE ANY OTHER ARGUMENT IF ANYBODY HAS ANY QUESTIONS I'M OPEN OTHERWISE I CAN CLOSE. THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Appellant's Attorney: JUST BRIEFLY, MR. DAMAS DID NOT NEED AN ADVISOR FOR THE COURT MR. DAMAS NEEDED AN ADVOCATE THAT IS WHAT THE SIXTH AMENDMENT GUARANTEES AND THEY ARE SUPPOSED TO TEST THESE THINGS THEY ARE SUPPOSED TO ACT ON HIS BEHALF.

AND CHALLENGE THINGS JUST BECAUSE AN EXPERT SAYS SOMETHING THAT IS NOT THE END OF COMPETENCY IT IS A LEGAL DECISION AND A LEGAL DECISION BASED ON OPINIONS BUT EACH OPINION CAN BE CHALLENGED. AND THEY CAN HIRE THEIR OWN EXPERT AND BROUGHT.

[LISTING NAMES] WHICH I MENTIONED OR SOME OTHER EXPERT WHO IS NOT SO AGAINST MR. DAMAS.

THE OTHER THING IS I MUST TAKE ISSUE WITH THE FACT THAT THERE WAS ANY SORT OF.

WHITTILING IN THIS YOU GET 25,000 WORDS ON A DIRECT APPEAL. MR DAMAS GOT 4,000.

>> Appellant's Attorney: OPPOSING COUNSEL MENTIONED THAT APPELLATE COUNSEL LIMITS THE ISSUES APPELLATE COUNSEL HAD PERHAPS 21,000 MORE WORDS WHICH TO USE AND WHAT ANOTHER.

>> Justice John Couriel: YOU MEAN IN TERMS OF THE BRIEF LIMITS I'M NOT SURE THAT WE JUDGE BRIEFS BY HOW LONG THEY ARE.

WE JUDGE THEM IN REVERSE SOMETIMES.

>> Appellant's Attorney: WE DON'T BUT WE DO JUDGE THEM OR WHETHER THEY MEET THE REQUIREMENTS OF STRICKLAND.

IN IT THIS CASE IT CERTAINLY DID NOT. WHEN MR. DAMAS MOVED FOR COMPETENCY WAS PROMISED THAT AND THEN HE ULTIMATELY WAS DENIED. I SEE I'M ALMOST OUT OF MY TIME UNLESS THERE IS ANY MORE QUESTIONS I WILL ASK THE COURT TO RELY ON THE BRIEFS AND ASK YOU TO GET MR. DAMAS RELIEF.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH WE ARE ADJOURNED FOR TODAY.

>> Marshal: ALL RISE.