

>> Marshal: ALL RISE.

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

>> Chief Justice Carlos Muniz: OUR NEXT CASE IS SCOTTIE D. ALLEN V. STATE OF FLORIDA

2023-1662

>> Appellant's Attorney: MAY IT PLEASE THE COURT I AM.

[LISTING NAMES] I REPRESENT THE APPELLANT IN THIS CASE MR. ALLEN WE ARE HERE ON THE SUMMARY DENIAL OF ALL OF MR. ALLEN'S CLAIMS IN HIS INITIAL POSTCONVICTION MOTION UNDER 3851. I DO WANT TO POINT OUT THAT PRESUMPTIVELY WHEN THERE ARE FACTUAL DETERMINATIONS TO BE MADE WE ARE ENTITLED TO AN EVIDENTIARY HEARING THAT IS UNDER RESPECT ADDITIONALLY THERE SHOULD BE IN EVIDENTIARY HEARING ON CLAIMS

>> Justice Charles Canady: THE REALITY ARE THESE NOT ALL BECAUSE OF TRIAL COURT ERRORS AND THIS IS A SITUATION WHERE YOUR CLIENT REPRESENTATIVE THEMSELVES IN BOTH THE GUILT AND PENALTY PHASES HE DECLINED TO PRESENT MEDICATION TO THE JURY AND HE MADE HIS OWN CASE HERE NOW HE IS COMPLAINING ABOUT WHAT FOLKS ARE GOING TO DO AN INEFFECTIVE ASSISTANCE OF THE TRIAL COURT INEFFECTIVE ASSISTANCE OF STANDBY COUNSEL. IT SEEMS LIKE ALL OF THESE - WHY AM I WRONG IN THINKING ALL OF THIS IS PROCEDURALLY BARRED.

>> Appellant's Attorney: WE ARE RELYING ON THOSE FACTS THAT WERE NOT PRESENTED THOSE FOR WHAT OUR CLAIMS ARE PREDICATED ON THE FACT THAT ARE OUTSIDE OF THE RECORD DON'T SEE HOW THOSE WOULD'VE BEEN RAISED ON DIRECT APPEAL THESE ARE THINGS THAT WERE UNKNOWN TO THE TRIAL COURT THE TRIAL.

>> Justice Charles Canady: I THINK THAT IS BECAUSE OF THE CHOICES YOUR CLIENT MADE.

>> Appellant's Attorney: THE FIRST ISSUE I WOULD ADDRESS IN POSTCONVICTION WE HAD AN EXPERT LOOK BACK OVER THE RECORD AND SHE SAID SHE WOULD NOT HAVE FOUND HIM COMPETENT TO REPRESENT HIMSELF.

I DO WANT TO POINT OUT THAT IN IT THE EXAMINATION THAT WAS DONE AT THE TRIAL LEVEL THE PRETRIAL, DR. MEYER WROTE SHE DEFERS TO THE COURT TO DETERMINE HIS COMPETENCY FROM A LEGAL STANDPOINT GIVEN HIS INTENDED DEFENSE OR LACK THEREOF.

THE DOCTOR ALSO ACKNOWLEDGED THAT IT WAS SORT OF AN ISSUE THAT MR. ALLEN WANTED TO BE SENTENCED TO DEATH.

DID NOT PLAN TO CHALLENGE THE EVIDENCE. OR PRESENT ANY SORT OF MITIGATION.

ONE OF THE CRITERIA FOR BEING COMPETENT IS THEIR ABILITY TO PRESENT A DEFENSE. OR IF IT IS COMPETENCY TO PROCEED THEIR ABILITY TO ASSIST COUNSEL IN PRESENTING A DEFENSE. WHAT THE EXPERTS POSTCONVICTION FOUND IS THAT THERE IS A DIRECT LINK BETWEEN MR. ALLEN'S MENTAL ILLNESS OF PTSD AND HIS

INABILITY TO PRESENT MITIGATION.

SHE TOUCHED ON IN OUR EXPERTS REPORT SHE TOUCHED ON DEFENSIVE AVOIDANCE WHICH IS WHEN SOMEONE TRIES TO AVOID SITUATIONS WHICH WOULD CAUSE THEM TO REEXPERIENCE THEIR TRAUMA.

AND INTRUSIVE EXPERIENCE IS THAT WHEN THAT HAPPENS AND YOU ARE REEXPERIENCING YOUR TRAUMA BECAUSE OF THE DISTORTION THAT YOU'RE CURRENTLY IN. BY NOT HAVING AN ATTORNEY AND NOT HAVING HIS FAMILY CALLED TO TESTIFY TO MITIGATION MR. ALLEN WAS ACTIVELY AVOIDING RE-CONFRONTING THIS, THAT IS VERY MUCH LINKED TO HIS PTSD.

>> Justice John Couriel: LET'S STIPULATE ALL OF THAT IS TRUE IS IT YOUR POSITION THAT MR. ALLEN DID ENACT THE RIGHT TO WAIVE THAT REPRESENTATION.

>> Appellant's Attorney: THINK GIVEN HIS MENTAL ILLNESS IT WOULD HAVE TO BE REPRESENTED IN SOME OTHER FORM IF YOU WERE.
IF HE WAS SORT OF DEEMED.

>> Justice John Couriel: DO TAKE ISSUE WITH THE TRIAL COURT'S SUSTAINED I WANT TO SAVE MULTIYEAR COLLOQUY THE FARETTA INQUIRY I'M LOOKING AT DECEMBER 20, 2018 FEBRUARY 26, 2019 THERE IS AN EX PARTE THERE IS AN EXPERT APPOINTED TO EVALUATE THEM IN 2018 IS ALL OF THAT FOR NOT IT SEEMS LIKE THE TRIAL COURT WENT TO PRETTY CONSIDERABLE LENGTHS.

>> Appellant's Attorney: I WOULD SAY MR. ALLEN WAS VERY CLEAR ON HIS INTENTIONS OF WANTING TO REPRESENT HIMSELF NOT WANTING COUNSEL, AND HE WANTED TO BE SENTENCED TO DEATH.

BUT WHAT I THINK IS MISSING IS THE LINK BETWEEN THIS IDEA THAT HE WANTS TO BE SENTENCED TO DEATH AND HE WANTS TO WAIVE MITIGATION AND AT THE PTSD WHICH THE COURT SUBSEQUENTLY BECAME AWARE OF WHEN THE MITIGATION WAS PRESENTED. BUT THE DOCTOR AT THE PRETRIAL LEVEL NEVER MADE THAT LINK SOMEHOW.

>> Justice John Couriel: IS IT YOUR ARGUMENT THAT THE FARRETTA INQUIRY WAS FLAWED.

>> Appellant's Attorney: I DON'T THINK THERE'S A PROBLEM WITH THE FARETTA INQUIRY I THINK THE MAIN ISSUE THE COURT DID NOT HEED DR. MEYER'S ADVICE THAT SHE WAS GOING TO DEFER TO THE COURT FROM A LEGAL STANDPOINT THAT THIS GUY IS NOT GOING TO PRESENT A DEFENSE.

>> Justice John Couriel: .THE COURT LACKED DISCRETION TO DO THAT.
WAS THAT AN ABUSE OF THE COURT'S DISCRETION.

>> Appellant's Attorney: I THINK THE COURT DOES NOT HAVE THE KNOWLEDGE OF PTSD AND THE WAY IT INTERACTS WITH SOMEONE'S DECISION MAKING.

>> Justice John Couriel: IS THAT A YES OR NO IS IT AN ABUSE OF DISCRETION OR NOT.

>> Appellant's Attorney: I GUESS WE WILL SAY IT'S AN ABUSE OF DISCRETION HE SHOULD HAVE RELIED MORE HEAVILY ON A PSYCHOLOGICAL EXPERT.
ADDITIONALLY IN POSTCONVICTION THAT SAME EXPERT OPINES THAT EVEN MR. ALLEN'S DESIRE TO BE SENTENCED TO DEATH IS A RESULT OF HIS PTSD AND ATTEMPTING TO CONTROL HIS SITUATION AND BE SOMEWHERE WHERE HE IS NOT

EXPOSED TO HIS MANY STRESSORS AS IN GENERAL POPULATION.
AGAIN THAT WAS REALLY THE MISSING LINK . THE TRIAL COURT DID NOT HAVE AND
HAS NOW BEEN DEVELOPED. I GUESS THE ARGUMENT ABOUT IT BEING
PROCEDURALLY BARRED IS THAT THERE IS THIS INFORMATION THAT HAS BEEN
DEVELOPED IN POSTCONVICTION THAT SHOWS ALL OF THAT.

>> ALL OF THAT RESULT FROM YOUR CLIENTS CHOICES. I UNDERSTAND YOU ARE
SAYING HE WAS NOT IN A POSITION TO MAKE THE CHOICES BUT WE HAVE EXPERT
TESTIMONY TO THE CONTRARY.

IT SEEMS LIKE TWO DIFFERENT WAYS TO LOOK AT THIS YOUR CLIENT IS TRYING TO
EXERCISE SOME AGENCY HERE IN A DIFFICULT CIRCUMSTANCE ESSENTIALLY AN
INDEFENSIBLE CASE IN TERMS OF THE GUILT PHASE.

AM I WRONG?

>> Appellant's Attorney: I WOULD SAY THAT BECAUSE OF HIS SELF REPRESENTATION
THERE WERE OTHER SERIOUS OMISSIONS THAT SHOULD TROUBLE THIS COURT. THIS
WAS NOT AN ADVERSARIAL PROCEEDING BECAUSE MR. ALLEN WAS HELPING TO BE
HELPING HIMSELF.

>> Justice Charles Canady: WE HAVE OTHER PROCEEDINGS THAT ARE NOT
ADVERSARIAL.

FOR INSTANCE WHEN A DEFENDANT PLEADS GUILTY.
HE ADMITS IT.

THAT IS A LEGITIMATE THING WE DON'T SAY THAT IS NOT ADVERSARIAL WE ARE
GOING TO EVEN THOUGH HE WAS PLEAD GUILTY WE ARE GOING TO GO THROUGH
SOME MOTIONS TO TEST WHETHER TO CREATE AN ADVERSARIAL PROCESS.

IN THE FACE OF A GUILTY PLEA.

HE CHOSE WHAT HE WANTED .

>> Appellant's Attorney: I JUST THINK THIS COURT SHOULD HAVE A REAL PROBLEM
WITH SOMEBODY GETTING SENTENCED TO DEATH PERHAPS JUST BECAUSE THEY
WANT TO BE SENTENCED TO DEATH NOT BECAUSE OF THE EVIDENCE THAT IS
PRESENTED AS I WAS SAYING THE OTHER OMISSION OR TROUBLING.

MR. ALLEN ACTIVELY SUPPLIED THE STATE WITH AGGRAVATING EVIDENCE FOR THE
PURPOSE OF BEING SENTENCED TO DEATH.

THERE IS ALSO THE UNADDRESSED ISSUE OF WHAT THE PROSECUTOR IN THIS CASE
BEING A MAYOR OF A MUNICIPALITY IN THE JURISDICTION WHICH DOES AFFECT
EXTRINSIC TO THE RECORD BUT THE JURORS DID SAY THAT THEY KNEW THE STATE
ATTORNEY AND NORMALLY A DEFENSE ATTORNEY WOULD HAVE DONE SOME MORE
QUESTIONING ABOUT THAT HOW DO YOU KNOW HIM?

WHAT DO HIM AS?

THERE'S ALSO THE ISSUE OF PRIOR VIOLENT FELONY THAT WAS USED AS A
AGGRAVATOR THEY COULD BEEN SOME VERY SUBSTANTIAL CROSS-EXAMINATION
BECAUSE IT SORT OF WHAT YOU ARE DESCRIBING IT IS DOUBTFUL.

>> Justice Charles Canady: YOU GET INTO THE BALLPARK OF ARGUING THAT IT MIGHT
ACTUALLY THE PRIOR MURDER BUT ACTUALLY HAVE BEEN MITIGATING.

>> Appellant's Attorney: YES, BECAUSE IT IS DOUBTFUL WHETHER.

>> Justice Charles Canady: I THOUGHT I CAUGHT THAT.

>> Appellant's Attorney: IT'S DOUBTFUL WHETHER HE COMMITTED THAT CRIME

>> Justice Charles Canady: EXPLAINED TO ME HOW IT WOULD BE MITIGATING THAT WAS A PLEA OF CONVENIENCE THAT SEEMS TO BEEN TAKEN TO SHIELD HIS GIRLFRIEND FROM CRIMINAL REPERCUSSIONS DUE TO HER INVOLVEMENT IN THAT.

I THINK THAT THE FACT THAT HE MAY OR MAY NOT GUILTY.

>> Justice Charles Canady: IS THERE ANY CASE WHERE WE SAID THAT CIRCUMSTANCES SURROUNDING A PRIOR MURDER CONVICTION ARE MITIGATING?

>> Appellant's Attorney: I THINK THE JURY COULD LOOK AT IT AS A CHIVALROUS ACT THAT HE DOESN'T WANT HIS GIRLFRIEND WAS PREGNANT WITH THEIR CHILD TO BE INCARCERATED. AT THAT INSTEAD HE'S TAKING THE RAP FOR HER I THINK THAT SOME JURORS COULD SEE THAT AS A MITIGATING CIRCUMSTANCE OF THE DEFENDANTS BACKGROUND.

ADDITIONALLY IT KIND OF DIMINISHES THE WEIGHT OF THAT AGGRAVATOR IF THE JURY HAD BEEN LED TO QUESTION WHETHER HE COMMITTED THAT OR WHETHER IT WAS A PLEA FOR CONVENIENCE ALL OF THAT INVESTIGATION INTO THE PRIOR WAS DONE IN POSTCONVICTION AND WAS UNKNOWN TO THE JURY AND UNKNOWN TO THE TRIAL COURT ADDITIONALLY, THE COURT FORBIDDING EVERYONE TO CONTACT MR. ALLEN'S FAMILY HISTORICALLY THIS COURT HAS CONCERNS ABOUT DEFENDANTS.

>> Justice Charles Canady: THAT WAS AT THE REQUEST OF MR. ALLEN CORRECT.

>> Appellant's Attorney: AGAIN, I THINK WE HAVE ESTABLISHED BECAUSE YOU HAVE TO ACCEPT THE FACT FROM POSTCONVICTION AS TRUE SINCE THEY WERE SUMMARILY DENIED THERE WAS AGAIN A RESULT OF HIM NOT WANTING TO CONFRONT HIS FAMILY TESTIFYING ABOUT THIS PAST SEXUAL TRAUMA. OF HIS CHILDHOOD.

ONCE MR. ALLEN SORT OF INDICATED HE WAS GOING TO LIMIT THE AMOUNT OF MITIGATION HISTORICALLY THIS COURT HAS ISSUES WITH THAT. AND MOHAMMED ADDRESSES GIVES SOME GUIDANCE AS TO WHAT TRIAL COURT CAN DO AND THE COURT FOLLOWED THAT GUIDANCE IN APPOINTING SPECIAL COUNSEL AND MITIGATION INVESTIGATOR, AND ORDERING A COMPREHENSIVE PSI. THEN THE COURT SORT OF CIRCUMVENTED THE WHOLE PURPOSE OF MOHAMMED IN FORBIDDING ALL OF THESE PEOPLE TO CONTACT THE DEFENDANT'S FAMILY WHICH WOULD'VE BEEN THE SOURCE FOR ALL OF THIS MITIGATION THAT THE COURT IT SEEMED DID WANT TO HEAR.

IT'S PART OF MR. ALLEN'S WISHES I THINK THAT IS THE WHOLE POINT OF HAVING SPECIAL COUNSEL SO THAT THE COURT CAN BE INFORMED OF MITIGATION THAT THE DEFENDANT MAY OR MAY NOT WANT PRESENTED.

>> Justice Charles Canady: HAVE WE EVER REVERSED BECAUSE OF A MOHAMMED ERROR?

BECAUSE THE TRIAL COURT DID NOT DO SOMETHING UNDER MOHAMMED?

>> Appellant's Attorney: I THINK I DON'T BELIEVE YOU HAVE. I WOULD HAVE TO RESEARCH THAT AND I CONSUMMATE SUPPLEMENTAL BRIEFING. I BELIEVE THE

POINT HERE IS THAT THE COURT IT WOULD'VE BEEN WHAT THINK OF THE COURT IS NOT CONCERNED ABOUT HIS LACK OF MITIGATION BUT HERE THE COURT HAD CONCERNS AND THAT WAS THE REASON FOR HIM APPOINTING SPECIAL COUNSEL. IT REALLY.

>> Justice Charles Canady: IT SEEMS TO ME IF YOU LOOK AT WHAT HAPPENED HERE AT THE COURT IS TRYING TO CHART A CAREFUL COURSE WHERE THEY GET ACCESS TO MITIGATION THE COURT ALSO SHOWS RESPECT TO YOUR CLIENT. AND DOES NOT SAY YOU DON'T WANT US TO TALK TO THEM BUT WE'RE GOING TO TALK TO THEM ANYWAY.

IT SEEMS LIKE TO ME HE IS TRYING TO BE RESPECTFUL OF THE AUTONOMY OF YOUR CLIENT WHILE GETTING AS MUCH INFORMATION AS HE CAN WHILE RESPECTING THAT AUTONOMY . I DON'T THINK THE IDEA OF DENIGRATING THE TRIAL COURT FOR TAKING THAT APPROACH SEEMS TO ME TO BE MISPLACED.

>> Appellant's Attorney: I UNDERSTAND THE TRIAL COURT WAS PUT IN A VERY DIFFICULT POSITION HERE.

IT STILL STANDS THAT AN INDIVIDUALIZED SENTENCING REQUIRES THAT THE TRIAL COURT HEAR MITIGATION IN ORDER TO PROPERLY ASSESS WHAT THE SENTENCE SHOULD BE.

THEY HAVE TO HAVE SOME UNDERSTANDING OF WHAT MITIGATION IS OUT THERE. I WOULD POINT TO THIS COURT'S DECISION IN ROBINSON, WHERE YOU HELD THE TRIAL COURT HAS A RESPONSIBILITY TO WEIGH TO CONSIDER ALL AVAILABLE MITIGATION AND WEIGH IT. I WOULD ALSO POINT TO JUSTICE.

[LISTING NAMES]'S DISSENT IN.

[LISTING NAMES] WHICH WE SET OUT IN OUR BRIEF JUST TO KIND OF ADDRESS THE PROCEDURAL BAR ARGUMENT AGAIN.

IT'S NOT NECESSARILY ALWAYS ERROR FOR THE COURT TO FOR THE COURT TO SAY THAT COUNSEL CANNOT CONTACT THE FAMILY BUT IN THIS CASE IT WAS PREJUDICIAL. BECAUSE THE FAMILY HAD A WEALTH OF MITIGATION THAT WOULD HAVE COME AND TESTIFY TO.

ALL WE ARE ASKING HERE IS FOR AN EVIDENTIARY HEARING SO THAT THE TRIAL COURT CAN HEAR THAT AND AT THAT POINT CAN MAKE FACTUAL DETERMINATIONS. AND ASSESSMENTS.

THERE WERE ALSO OTHER OUTSIDE FACTORS BESIDES THE COURT PROHIBITION THERE WAS THE LACK OF GSA FUNDING FOR DUE PROCESS PROVIDERS WHICH SPECIAL COUNSEL CITED IN IT SAYING TO PRESENT AN EFFECTIVE PENALTY PHASE YOU WOULD WANT ALL OF THESE DIFFERENT EXPERTS BUT WE ARE UNABLE TO RETAIN THOSE CURRENTLY THE ABBREVIATED TIMEFRAME.

>> Justice Charles Canady: DID ANYBODY ASK FOR A CONTINUANCE TO DEAL WITH THAT THERE WAS A CONTINUANCE GIVEN BUT SUBSEQUENTLY DID ANYONE SAY WE NEED MORE TIME TO WORK ON GETTING WHAT WE NEED TO GET HERE.

OR WAS IT THE REAL PROBLEM FOR THE LIMITATION THAT YOUR CLIENT HAD PLACED ON CONTACTING PEOPLE?

>> Appellant's Attorney: I THINK THERE IS STILL OTHER PEOPLE THAT THE EXPERTS OF

COURSE COULD'VE BEEN CONTACTED THAT WASN'T PART OF WHAT THE COURT FORBID. ADDITIONALLY, I THINK THE MITIGATION SPECIALIST TESTIFIED THAT SHE NORMALLY WOULD GET SCHOOL RECORDS AND SHE WOULD SOMETIMES HAVE TO GO TO MICHIGAN TO DO THAT AND THAT WAS NOT DONE. BUT WE DID DO THAT POSTCONVICTION I DID HAVE TO GO TO MICHIGAN TO RETRIEVE THOSE.

JUST GIVING TIME, IN ADDITION TO LACK OF FUNDING I ALSO DON'T KNOW GIVEN THERE WERE SPECIAL COUNSEL I DON'T KNOW IF THEY FELT THAT THEY HAD TO PRESENT AN EFFECTIVE PENALTY PHASE.

THERE WERE THINGS THAT WOULD BE DONE AND WERE DONE IN POSTCONVICTION THE PREJUDICE IS THAT LET ME GO BACK TO THE RECORDS THAT WERE COLLECTED. SCHOOL RECORDS CAME FROM BOTH THE PUBLIC SCHOOL AND THE BOYS HOME THAT MR. ALLEN WAS AT. THEY SHOWED AN IEP WHICH IS SORT OF IMPORTANT. ADDITIONALLY, THOSE RECORD INDICATE TEACHERS AND COUNSELORS WHO CAN PROVIDE ADDITIONAL BACKGROUND INFORMATION FOR MR. ALLEN WHICH WOULD'VE BEEN WITHIN THE COURTS FORBIDDING HE FORBID THEM TALKING TO FAMILY BUT THAT IS STILL CONTACT OTHER PERIPHERY FOLKS WHO MIGHT'VE HAD A LOT OF INFORMATION THAT WERE INDICATED IN THE SCHOOL RECORDS. AS FAR AS THE EXPERTS IN POST CONVICTION WE RETAIN BOTH A TRAUMA EXPERT ANY DRUG ABUSE EXPERT.

WHO OPINED ABOUT MR. ALLEN'S DRUG ABUSE AND ITS EFFECTS ON HIS BRAIN AND I THINK THOSE ARE THINGS THAT WERE SORELY MISSED FROM THE SPENCER HEARING AND FROM WHAT THE TRIAL COURT HEARD.

>> Chief Justice Carlos Muniz: DO CONCEDE CONSTITUTIONALLY THE ONLY THING SOMEBODY IS ENTITLED TO IN TERMS OF MITIGATION A PROCESS PERSPECTIVE IS THAT THERE BE FULL AND FAIR CONSIDERATION OF WHATEVER THEY AFFIRMATIVELY WANT TO PUT FORWARD

>> NO I WOULD NOT CONSIDER THAT I THINK THAT INDIVIDUALIZED SENTENCING TAKES INTO ACCOUNT INDIVIDUAL CHARACTERISTICS OF THE DEFENDANT WHETHER THE DEFENDANT IS GOING TO PRESENT THEM OR NOT.

>> Chief Justice Carlos Muniz: WHAT IS YOUR AUTHORITY FOR THAT IT SEEMS LIKE ALL OF THESE ARGUMENTS ARE BASICALLY JUST KIND OF WE CAME UP WITH THIS KIND OF GOOD GOVERNMENT KIND OF THING IN BAJA BUT NOW WE ARE ARGUING ABOUT HOW TO IMPLEMENT THAT BUT REALLY THERE IS NO THERE IN THE SENSE OF AN ACTUAL CONSTITUTIONAL ENTITLEMENT.

>> Appellant's Attorney: IT IS IMPLICIT UNDER DUE PROCESS YOU HAVE IT INDIVIDUAL LIFE SENTENCING THAT CONSIDERS THE SPECIFIC BACKGROUND OF THE DEFENDANTS.

>> Chief Justice Carlos Muniz: OKAY.

>> Appellant's Attorney:

>> Chief Justice Carlos Muniz: YOU ARE DOWN TO THE LAST MINUTE YOU'RE WELCOME TO KEEP GOING.

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

>> Chief Justice Carlos Muniz: THANK YOU.

>> Jonathan Tannen, Appellee's Attorney: REPRESENTING THE STATE OF FLORIDA WITH RESPECT OF THE APPEAL OF POSTCONVICTION BELIEF IN THE SECRETARY OF THE DEPARTMENT OF CORRECTIONS WITH RESPECT TO THE HABOEIOUS PETITION. THE POSTCONVICTION COURT IN THIS CASE CORRECTLY DENIED MR. ALLEN'S MOTION FOR POSTCONVICTION RELIEF BASED ON ITS DETERMINATION THAT EACH OF THE ISSUES THAT HE RAISED IN THE MOTION WAS PROCEDURALLY BARRED. RULE 3051 STATES THIS RULE DOES NOT AUTHORIZE RELIEF BASED UPON CLAIMS THAT COULD HAVE OR SHOULD HAVE BEEN RAISED AT TRIAL AND IF PROPERLY PRESERVED ON DIRECT APPEAL OF THE JUDGMENT AND SENTENCE. IN THIS CASE AS JUSTICE CANADY STATED EACH OF THE CLAIMS THAT WAS RAISED IN THAT MOTION WAS AN ISSUE OF THE TRIAL COURT ERROR.

EACH ISSUE HAD SOMETHING TO DO WITH AN ERROR OR OMISSION BY THE TRIAL COURT DURING THE SPENCER HEARING. WITH RESPECT TO ISSUES NUMBER 1-12 OF MR. ALLEN'S MOTION.

AND ISSUE 13 INVOLVED COMMENTS THAT WERE MADE BY THE PROSECUTOR DURING THE JURY SELECTION.

ADDITIONALLY CLAIM NUMBER 14 WAS OF CLAIM OF SIMILAR ERROR-PRON OF THOSE ISSUES WERE MATTERS THAT HAVE BEEN RAISED BEFORE THE TRIAL COURT DURING THE TRIAL PROCEEDING. AND COULD THEREAFTER HAVE BEEN RAISED ON DIRECT APPEAL TO THIS COURT.

THE APPELLANT DID NOT DO THAT AND ON THAT BASIS THE POSTCONVICTION COURT CORRECTLY DETERMINED THAT HIS CLAIMS WERE PROCEDURALLY BARRED AND THEREFORE DENIED POSTCONVICTION RELIEF IN FULL.

AS TO THE MERITS OF THE CLAIMS MR. ALLEN'S COUNSEL HAS DISCUSSED THE CLAIMS 8 AND 9 ISSUES 8 9 AND IF THE INITIAL BRIEF REGARDING MR. ALLEN'S COMPETENCY FOR SELF REPRESENTATION. UNDER INDIANA V. EDWARDS THE STANDARDS FOR COMPETENCY FOR SELF REPRESENTATION IS SEVERE MENTAL ILLNESS THE RECORD MAKES CLEAR THAT THERE WAS NO SEVERE MENTAL ILLNESS IN THIS CASE.

IN ORDER TO CONSTITUTE SEVERE MENTAL ILLNESS IT HAS TO BE THE CASE THAT THE DEFENDANT IS UNABLE TO CARRY OUT THE BASIC TASKS NEEDED FOR HIS OWN DEFENSE INCLUDING AS THE SUPREME COURT HAS STATED THE ORGANIZATION OF THE FENCE MAKING MOTIONS ARE GOING POINT OF LAW PARTICIPATING IN A VOIRE DIRE QUESTIONING WITNESSES AND ADDRESSING THE COURT AND THE JURY IN THIS CASE MR. ALLEN WAS INITIALLY EVALUATED BY DR. MEYER PRIOR TO THE SECOND FARETTA HEARING AND PRIOR TO THE TRIAL COURT GRANTING HIS REQUEST FOR SELF REPRESENTATION.

HE HAD NO ISSUES IN SPEAKING WITH DR. MEYER SHE FOUND NO CONCERN AS FAR AS HIS UNDERSTANDING THE PROCEEDINGS HIS ABILITY TO COMMUNICATE WITH HER. HE EXPLAINED IN VERY GREAT DETAIL AS SHE DOCUMENTED IN HER REPORT HIS REASONS FOR SEEKING TO ABSENT HIMSELF AND TO WAIVE MITIGATION. HE ALSO HAD A PROBLEM COMMUNICATING WITH THE TRIAL COURT DURING THE TRIAL PROCEEDING. AND IT DURING THE TRIAL HE ULTIMATELY PRESENTED HIMSELF HE

FILED PRO SE DOCUMENTS HE EXAMINED PERSPECTIVE JURORS HE EXERCISE FOR COURSE CHALLENGES AND PEREMPTORY STRIKES HE GAVE AN OPENING STATEMENT HE CROSS-EXAMINE WITNESSES AND HE REPEATEDLY DISCUSSED LEGAL ISSUES WITH THE COURT THROUGHOUT THE PROCEEDING.

EVEN IF HE HAD CHALLENGED THIS ISSUE THERE WERE NOT HAVE BEEN A BASIS FOR THE TRIAL COURT TO DENY HER ALLEN'S REQUEST FOR SELF REPRESENTATION UNDER THE CIRCUMSTANCES. SINCE HE CLEARLY DID NOT SUFFER FROM SEVERE MENTAL ILLNESS WITHIN THE MEANING OF INDIANA V. EDWARDS.

AS TO ISSUE 11 I BELIEVE THAT WAS RAISED BRIEFLY THE PROSECUTOR'S COMMENTS DURING JURY SELECTION, THE FACT THAT THE PROSECUTOR WAS APPARENTLY A FORMER MAYOR OF THE TOWN HAD REALLY NO RELEVANCE TO THE PROCEEDING. IN ANY EVENT THE PARTICULARS COMMENTS WERE NOT A MISSTATEMENT OF LAW AS THE RECORD SHOWS.

HE QUESTIONED THE PERSPECTIVE JURORS AND WHETHER THEY WOULD BE ABLE TO WHETHER THEY BELIEVED THEY WOULD BE ABLE TO IMPOSE THE DEATH PENALTY IF THEY DETERMINE THE CIRCUMSTANCES WERE APPROPRIATE WHICH IS THE CORRECT LEGAL STANDARD. HE DID NOT TELL THE JURORS THAT IF THEY DETERMINE THAT THE AGGRAVATORS OUT WEIGHT THE MITIGATORS THEN THEY WOULD BE REQUIRED TO IMPOSE THE DEATH PENALTY. SINCE THE COMMENTS WERE NOT IN THE PROPER THERE WAS NO BASIS FOR BELIEF ON DIRECT APPEAL EVEN IF THIS ISSUE HAD BEEN RAISED OR CHALLENGED IN THE LOWER COURT.

AS FAR AS THE ORDER THAT MR. ALLEN'S FAMILY NOT BE CONTACTED, THIS COURT HAS REPEATEDLY STATED THAT THE DEFENDANT HAS THE RIGHT TO CONTROL THE OBJECTIVES AND CONTENT OF HIS MITIGATION.

IT HAS SPECIFICALLY APPROVED PRIOR INSTRUCTIONS BY A DEFENDANT THAT HIS FAMILY NOT BE CONTACTED.

IN ANY EVENT IT DID NOT VIOLATE HIS RIGHT TO AN INDIVIDUALIZED SENTENCING BECAUSE AS THE SUPREME COURT HAS STATED THE RIGHT TO AN INDIVIDUALIZED SENTENCING UNDER THE SUPREME THE US SUPREME COURT PRECEDENT IS RIGHT OF THE DEFENDANT TO PRESENT SENTENCORS WITH INFORMATION RELEVANT TO THIS SENTENCING DECISION AND APPLIED CENTER SERVES TO CONSIDER THAT INFORMATION IN DETERMINING THE APPROPRIATE SENTENCE.

IN KANSAS V. MARSH THE SUPREME COURT SAID THE THRUST OF OUR MITIGATION JURISPRUDENCE ENDS THERE.

MR. ALLEN INTENTIONALLY WAVED MITIGATION HE CHOSE NOT TO PRESENT IT HE CHOSE TO NOT ALLOW THE COURT TO CONTACT HIS FAMILY OR TO ALLOW SPECIAL COUNSEL TO CONTACT HIS FAMILY.

AND HE HAD THE RIGHT TO MAKE THAT DECISION UNDER THE CIRCUMSTANCES.

WITH RESPECT TO THE JAC FUNDING LABS THE SPECIAL COUNSEL EXPRESSLY SAID IN HIS FILING THAT HE WAS NOT RELIANT ON JAC FUNDING WAS MERELY KEEPING THE TRIAL COURT APPRAISED THE MATTER THE REASON EXPERTS WERE NOT HIRED AND RETAINED IS BECAUSE MR. ALLEN HAS SAID THAT HE WOULD NOT MEET WITH ANY MEDICAL EXPERTS. HE AGREED TO MEET WITH SPECIAL COUNSEL'S

PSYCHIATRIC EXPERT DR. [LISTING NAMES] HE DID SPEAK WITH. [LISTING NAMES] WHO TESTIFIED AT THE SPENCER HEARING BUT HE MADE VERY CLEAR WOULD NOT BE WITH ANY OTHER EXPERTS. FINALLY AS FAR AS THE QUESTION OF THE CONTINUANCE THE TRIAL COURT GRANTED THE ONLY CONTINUANCE THAT WAS REQUESTED PRIOR TO THE SPENCER HEARING AND MR. ALLEN HAD EXPLICITLY OBJECTED TO EVEN THAT REQUEST. DOES THE COURT HAVE ANY QUESTIONS ABOUT ANY OF THESE ISSUES? HEARING NO RESPONSE I WILL AGAIN RELY ON THE STATES FOR ANY FURTHER POINTS.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH.

>> Appellant's Attorney: JUST TO TOUCH BRIEFLY ON SOME OF THE ISSUES RAISED. BY THE STATE AS FAR AS THE CONTINUANCE AND THE WILLINGNESS TO MEET WITH EXPERTS MR. ALLEN WILLINGLY MET WITH DR. PRICHARD AND DR. [LISTING NAMES] INITIAL COURT NOTED BY THE END OF THE SPENCER HEARING THAT IT APPEARED THAT MR. ALLEN HAD A CHANGE OF HEART IN RELATION TO HIS MITIGATION. IT IS CLEAR THAT THE MR. ALLEN HAD MORE EXPERTS THAN BOB FORD WOULD HAVE MET WITH THEM DUE TO THIS CHANGE OF ABOUT THE MITIGATION ADDITIONALLY AT THE END OF THE SPENCER HEARING MR. ALLEN DID ASK FOR MORE TIME AND ASSISTANCE IN COMPOSING OR PIECES OF SPECIAL COUNSEL. THE STATE CITES TO MARSH WHICH EXPLICITLY STATES THAT A SENTENCE OR CANNOT BE PRECLUDED FROM HEARING MITIGATION I GUESS OUR ARGUMENT IS ESSENTIALLY THAT IS WHAT THE TRIAL COURT DID THEY IMPOSED THIS IMPEDIMENT TO HAMPER THE MITIGATION THAT THEY HEARD. ADDITIONALLY AS FAR AS FARETTA AND MR. ALLEN'S COMPETENCY EIGH FARETTA THIS QUOTE COMES FROM THE STATE ANSWER TO FROST COUNSEL UPON THE ACCUSED AGAINST HIS CONSIDERED WISH VIOLATES THE SIXTH AMENDMENT. THIS IS CONTEMPLATING SOMEONE WHO IS MAKING A CONSIDERED WISH WHO WAS WEIGHING THE PROS AND CONS . THAT IS NOT MR. ALLEN'S MR. ALLEN WAS COMPELLED TO REPRESENTS HIMSELF IN ORDER TO AVOID CONFRONTING PAINFUL MITIGATION.

I WOULD ASK THIS COURT TO REVERSE AND SEND IT BACK FOR AN EVIDENTIARY HEARING WHERE THESE FACTS CAN BE FURTHER DEVELOPED AND FACTUAL DETERMINATIONS CAN BE MADE BY THE TRIAL COURT AND I WOULD URGE THIS COURT TO LOOK AT THIS ON A CASE SPECIFIC BASIS SOME OF THESE COURT ERRORS THEY MAY NOT ALWAYS BE ERRORS BUT IN THIS CASE THEY APPEAR TO HAVE BEEN PREJUDICIAL AND WE WOULD LIKE THE OPPORTUNITY TO DEVELOP THAT FURTHER AT AN EVIDENTIARY HEARING.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH WE APPRECIATE IT.