

>> Chief Justice Carlos Muniz: THE LAST CASE TODAY IS JEROME SAFFOLD V. STATE OF FLORIDA CASE NO. SC2023-1749.

>> Petitioner: GOOD MORNING YOUR HONOR.

MY NAME IS TIMOTHY WANG AND I PREVIOUSLY REQUESTED 4 MINUTES OF MY TIME FOR REBUTTAL. BEFORE THIS COURT IS A CERTIFIED CONFLICT BETWEEN THE FIRST AND FOURTH DISTRICT OF APPEAL REGARDING WHAT PROCEDURAL RULES APPLY WHERE A SENTENCE IS REVERSED FOR A RESENTENCING HEARING.

WHERE THE ORIGINAL SENTENCE WAS REVERSED AFTER AN APPEAL OR VACATED FOLLOWING A POST CONVICTED MOTION.

IN THIS CASE YOU WISH TO REMOVE THE PLEA IN THE HEARING AS I WOULD REFER TO A SOUTH ONE.

THE MOTION WAS DENIED AND HE TOOK A SECOND APPEAL.

IT HELD AND THE PETITION WAS NOT ALLOWED TO FILE SUCH MOTION UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.170 SUBSECTION F.

THAT RULE ONLY APPLIED TO MOTIONS FILED BEFORE THE ORIGINAL SENTENCING HEARING AND NOT ANY SUBSEQUENT REHEARING.

AND CERTIFIED CONFLICT WITH THE STATE IN THE SECOND DISTRICT.

PETITIONER ASKED THIS COURT TO DISAPPROVE THE COURT DISTRICT OPINION FOR THREE REASONS OUTLINED IN MY BRIEFS.

>> Justice: COUNSEL IF I WERE TO ASK YOU IF WE WERE TO SAY THAT THE SECOND WAS GENERALLY CORRECT THAT A MOTION TO WITHDRAW A PLEA WOULD BE ALLOWED WHAT WOULD BE THE LIMITATIONS ON THAT? PROCEDURALLY?

>> Petitioner: I BELIEVE THEY WOULD HAVE THE SAME LIMITATIONS AS THE ORIGINAL SENTENCING HEARING.

THE RULE DOES NOT MAKE EXCEPTIONS OR DIFFERENTIATIONS BETWEEN RESENTENCING HEARING AND ORIGINAL SENTENCE.

>> Justice: BUT THERE IS STILL A JUDGMENT AND CONVICTION THAT REMAINS, CORRECT?

THAT DOESN'T GET VACATED ON A RESENTENCING.

>> Petitioner: IF THE CONVICTION IS THAT A RESENTENCING, CORRECT. IF IT'S NOT ON A RECHALLENGE CORRECT.

>> Justice: COULD IT SAY A DEFENDANT CHALLENGED HIS CONVICTION AND IT WAS UPHOLD BUT SINCE BACK FOR RESENTENCING WOULD HE BE ABLE TO WITHDRAW HIS PLEA?

SPEEDS FIVE I BELIEVE AT THAT POINT.

>> Justice: SO HE GETS ANOTHER CHANCE?

HE LOST ON APPEAL BUT HE GETS ANOTHER CHANCE UNDER A PROCEDURAL RULE?

>> Petitioner: CORRECT.

PROCEDURE RULE DOES NOT MAKE A DIFFERENCE ON THE RESENTENCING HEARING AND THE ORIGINAL SENTENCE HEARING.

>> Justice: RIGHT BUT WE LOOK AT THESE AS RULES.

WE HAVE A LOT OF RULES ON FINALITY AND TIME BARS.

A LOT OF TIME IS SPENT ON THAT.

SO THE WAY YOU ARE ASKING THIS AHEAD OF THE WAY YOUR BRIEF LAYS THIS OUT AND ARGUING THAT YOU SECONDED IT IS VERY BROAD AND ESSENTIALLY GIVES NO LIMITATION ON WHEN THAT WOULD COME INTO PLAY AT RESENTENCING.

DO YOU UNDERSTAND THAT THAT COULD CAUSE ISSUES?

>> Petitioner: ANY PROCEDURE RULE WHERE DEFENDANT IS ASKING RELIEF COULD CAUSE ISSUES.

THE QUESTION BEFORE THIS COURT IS IF THE DEFENDANT IS ENTITLED BY THE RULE TO MAKE THIS TYPE OF MOTION AT A RESENTENCING HEARING.

NOW FLORIDA RULE PROCEDURE REQUIRES THAT RULES BE CONSTRUED FOR SIMPLICITY AND PROCEDURE AND FAIRNESS ADMINISTRATION.

WHILE THE RULE OBVIOUSLY AT A RESENTENCING HEARING I THINK YOUR HONOR IS ASKING WHETHER THERE SHOULD BE LIMITATIONS AND I DON'T BELIEVE THERE IS. IF WE ARE INTERPRETING THE RULES FOR SIMPLICITY AND FAIRNESS WE SHOULD NOT BE TREATING A RESENTENCING HEARING ANY DIFFERENT FROM THE ORIGINAL HEARING.

>> Justice: ESSAY FAIRNESS IS THE CONSIDERATION I THINK THE RULE IS THAT WE WRITE THOSE IN THE BACKGROUND IN SCHOOL OF LAW INCLUDING THE LIMITED NATURE OF A TRIAL COURT'S ABILITY TO ADDRESS CASES ON REMAND.

BUT IF THE POINT OF A PLEA IS TO OBTAIN A CONVICTION THE BASIS BEHIND THE JUSTIFICATION BEHIND ALLOWING DEFENDANTS TO WITHDRAW PLEA IS THAT IT TAKES THE RIGHT TO JURY TRIAL.

THAT RIGHT IS STILL PROTECTED IF THE PLEA IS AFFIRMED ON APPEAL OR NOT ADDRESSED.

AND THEN THE NARROW ISSUE OF THE SENTENCE IS RECONSIDERED.

SO WE KIND OF HAVE TO PULL YOUR TEXTUAL ARGUMENT IS VERY LITERAL AND PULLS EVERYTHING OUT OF THAT BACKGROUND PRINCIPLE OF LAW THAT THIS OPERATES IN.

>> Petitioner: I WOULD ARGUE, THIS IS OBVIOUSLY A CASE INVOLVING A PLEA SO I IMAGINE THERE'S GOING TO BE VERY FEW CASES WHERE SOMEONE IS APPEALING A PLEA AND ALSO CHALLENGING HIS CONVICTION.

EVEN IF THERE IS A SITUATION LIKE THAT THE QUESTION IS NOT WHETHER HE IS CHALLENGING THE CONVICTION, HE IS ARGUING IF THERE IS GOOD CAUSE TO ESTABLISH THAT THEY ESTABLISH IN WITHDRAWING A PLEA.

IN THE SPECIFIC SITUATION HE'S ARGUING HIS PLEA WAS INVOLUNTARY AND IS ALSO RIGHT THAT HE IS ENTITLED TO AT A RESENTENCING.

>> Justice: UNDER YOUR THEORY WOULD THEY BE ABLE TO ARGUE GOOD CAUSE THAT THEY COULD HAVE ARGUED THE FIRST TIME ON APPEAL?

OR IS IT JUST GOOD CAUSE RELATED TO THE NEW ISSUE AND THE RESENTENCING?

>> Petitioner: I WOULD ARGUE THE RULE DOES NOT LIMIT.

>> Justice: SO EVERYTHING WE HAVE EVER SAID YOU HAVE A CHANCE TO ARGUE AND IF YOU DON'T IS WAIVED THIS ONE RULE JUST ELIMINATE NOT UNDER YOUR

THEORY?

>> Petitioner: THE ONLY LIMITATION THE RULE PROVIDES IS THAT THE MOTION HAS TO BE FILED BEFORE THE SENTENCE.

>> Justice: LOOK, I'M GLAD YOU USE THE DEFINITE ARTICLE THERE BUT LET'S TALK ABOUT THE USAGE OF ARTICLES IN THIS ROLE.

WHEN YOU LOOK AT 3.1 70F YOUR ARGUMENT ESSENTIALLY IS THAT IN THE PHRASE BEFORE A SENTENCE THE INDEFINITE ARTICLE A SHOULD BE READ AS ANY.

OKAY WHICH BY THE WAY IS A CHOICE THAT WE OR OTHERS WHEN DRAFTING THE RULE COULD HAVE MADE.

IT COULD SAY ANY BUT INSTEAD IT SAYS A. BUT THEN WHEN YOU TURN TO 3.7 10L IT REFERS TO THE SENTENCE IS AS A DEFENDANT WHO PLEADS GUILTY WITHOUT EXPRESSLY RESERVING THE RIGHT TO APPEAL ILLEGALLY MAY FILE A MOTION TO WITHDRAW THE PLEA SINGULAR DEFINITE WITHIN 30 DAYS OF RENDITION OF THE SENTENCE.

SO READING THE RULE TOGETHER IS IN IT MORE REASONABLE TO READ THAT A NOT AS ANY BUT AS A SINGLE TRANSACTION THAT THE RULE IS CONTEMPLATING AS THE SENTENCING?

STATED DIFFERENTLY IF F SAID THE SENTENCING INSTEAD OF A SENTENCE WOULDN'T YOU AGREE THAT YOU ARE OUT OF LUCK?

>> Petitioner: NO YOUR HONOR.

MY ARGUMENT IS THAT THERE CAN ONLY BE ONE SENTENCE.

IT HAS TO BE SINGULAR.

THE USE OF ANY IS GOING TO OPEN UP THE DOOR AND THE MOTION CAN BE WITHDRAWN ON ANY SENTENCE AND ANY UNRELATED CASE.

>> Justice: I GUESS I AM SAYING IS YOU HAVE IMPORTED INTO THIS ARTICLE SOMETHING IT WOULD NOT THERE GIVEN THE TEXT OF THE RULE AS IT STANDS ALTOGETHER.

THAT SEEMS TO BE MY POINT AND IT SEEMS LIKE YOU ARE ALMOST CONCEDING THAT.

IT SEEMS LIKE YOU'RE SAYING YES THIS ROLE 3.170 AS A RULE ENVISIONS ON SENTENCING NOT ANY SENTENCING.

>> Petitioner: CORRECT A SENTENCE THAT HE IS FILING A MOTION TO WITHDRAW THE PLEA FROM AND I AGREE WITH YOU ON THE SENTENCE.

BUT I BELIEVE THE ARTICLE IS BEING USED IN THE OTHER SUBSECTION, SUBSECTION L BECAUSE A IS AN INDEFINITE ARTICLE AS YOU MENTIONED BUT PRIOR TO THE SENTENCE IT'S MORE GRAMMATICALLY CORRECT.

>> Justice: OR THE WHOLE RULE IS VIEWING THE SENTENCING.

I GUESS MY POINT IS IF YOU CAN SEE THE SENTENCING INSTEAD OF A SENTENCE YOU WOULD LOSE.

>> Petitioner: NO.

I DON'T BELIEVE THAT.

>> Petitioner: WHY NOT?

>> Petitioner: I BELIEVE THERE'S ONLY ONE SENTENCE THE ONLY REASON THERE

WERE DIFFERENCES IN THE SUBSECTION IS BECAUSE THE SENTENCE HAS BEEN IMPOSED PRIOR TO THE SENTENCE OBVIOUSLY AND AFTER THE SENTENCE HAS BEEN IMPOSED THE DEFINITE ARTICLE THE IS USED IS MORE GRAMMATICALLY CONCISE BUT IT DOES NOT LIMIT A RESENTENCING HEARING IS ANY DIFFERENT THAN THE ORIGINAL SENTENCE.

THIS COURT HAS UPHELD AND THE OTHER DISTRICT COURTS HAVE APPEALED IN FLORIDA HAVE HELD TIME AND AGAIN THAT THERE WILL BE NO RESENTENCING PROCESS AND IT BEGINS THE SENTENCING PROCESS ALL OVER.

>> Justice: WITH THE PRINCIPAL THERE HAS NO BEARING ON THE ISSUE HERE. BECAUSE THE PRINCIPAL THERE IS THAT YOU GO FOR A RESENTENCING YOU GET TO BRING IN THINGS THAT ARE RELEVANT TO THE SENTENCING. YOU GET TO START ON A FRESH SLIGHT WITH HOW THE SENTENCING IS GOING TO PROCEED.

THIS IS ABOUT THE CONVICTION!

IT'S NOT ABOUT THE SENTENCE.

SO BASICALLY YOU ARE ASKING FOR A DE NOVO ASPECT ON THE CONVICTION, WHICH IS NOT WHAT THAT LAW IS ABOUT AT ALL.

TELL ME WHY I AM WRONG ABOUT THAT.

>> Petitioner: I WOULD ARGUE THAT WHEN A CASE IS SET FOR THE DO NO VOTE RESENTENCING YOU ARE TAKING THE DEFENDANT BACK TO THE POINT IN TIME PRIOR TO THE ERROR OCCURRING.

>> Justice: BUT THAT IS NOT CONSISTENT TO WHAT WE DESCRIBE AS THE OPERATION OF THE NOVO AND RESENTENCING.

IF YOU LOOK AT THE LANGUAGE IT DOESN'T CARRY THAT IMPLICATION.

IT IS FOCUSED ON THINGS THAT ARE RELEVANT TO THE SENTENCING.

NOT THINGS THAT ARE RELEVANT TO THE CONVICTION.

>> Petitioner: I WOULD ARGUE THAT WHEN A NOVO RESENTENCING IS ORDERED IS NOT JUST THAT YOU ARE MANDATING THE TRIAL COURT TO CONDUCT A RUN NOVO SENTENCING YOU ARE ALSO VACATING THE SENTENCE AND THAT IS WHAT I REPLY TO IN MY BRIEF.

IT IS A VOIDED SENTENCE OR VACATED SENTENCE IS ESSENTIALLY NO SENTENCE AT ALL AND HAS NOT BEEN IMPOSED YET.

>> Justice: BUT AGAIN THAT'S DIFFERENT FROM THE CONVICTION.

>> Petitioner: I UNDERSTAND BUT BECAUSE IT IS A VOID SENTENCE WHEN YOU SEND A DEFENDANT BACK TO A DE NOVO RESENTENCING HEARING IT BEGINS A REPROCESSED AS IF THERE'S NO SENTENCE AND THEREFORE THE PRESENTENCE RULE SHOULD APPLY.

>> Justice: I GUESS IT IS WHAT PROCESS DOES IT RENEW AND THE STATE'S ARGUMENT IS IT DID NOT CONTINUE THE ENTIRE SENTENCE EXISTED IN A PRESENTENCE PHASE WHICH IS WHAT YOU'RE SAYING HERE YOU'RE SAYING IT STARTS ALL OVER.

FOR INSTANCE LET ME ASK IF YOU AGREE WITH THIS.

CAN HE WITHDRAW HIS PLEA AS TO ISSUES NOT DEMANDED AS TO COUNTS

BECAUSE THAT IS THE CASE.

IT IS ONLY REMANDED AS TO THE TWO COUNTS, CORRECT?

WHAT ABOUT ALL THE OTHER COUNTS?

>> Petitioner: MY POSITION THE PETITIONER'S POSITION IS ROMANCE THE ENTIRE CASE FOR RESENTENCING ON ALL COUNTS.

I UNDERSTAND THE STATES POSITION IS IT'S NOT AND ALSO STAFF OLD TWO DOES NOT SAY THAT AS WELL BUT THE PARTIES BELOW ALL BELIEVE THIS IS A RESENTENCING HEARING.

THE TRIAL COURT ISSUED A RESENTENCING ORDER AND AFTER THAT WAS CONDUCTED SHE ENTERED NEW SENTENCING DOCUMENTS ON ALL CASES NOT JUST THE TWO OF THE STATE ARGUED WAS ONLY SET FOR RESENTENCING. ON APPEAL THE PARTIES ALSO NEVER ARGUED INSIGHTFUL TO THAT ONLY TWO COUNTS WERE SET FOR RESENTENCING AND THEREFORE TUBES TO RECOUNT THE OTHERS.

IT IS THE PETITIONER'S ROUTE TO POSITION THE PARTIES BELOW AND PARTIES ON APPEAL ALL AGREED THIS WAS A RECENT MANDATE FROM THE COURT.

AND SO, AS TO, JUSTICE CHARLES CANADY YOUR QUESTION ABOUT IF IT ONLY IS REGARDING THE CONVICTION THE PLAIN LANGUAGE OF PROCEDURE ROLE IS PRETTY CLEAR.

IT SAYS A DEFENDANT A TRIAL COURT MAY WITHIN HIS DISCRETION SHALL PUNISH FOR THE CAUSE WITH PERMITTED DEFENDANTS WITHDRAW A PLEA AT ANY TIME BEFORE SENTENCE AND THE KEY OPERATIVE WORD IN THIS CASE IS BEFORE A SENTENCE.

THE STATE IS ARGUING THAT AT A RESENTENCING HEARING IT HAS TO BE TREATED DIFFERENTLY FROM A SENTENCING HEARING.

THERE'S NO OTHER RULE PROVIDED BY THIS COURT OR IN STATUTE BUT TREAT THESE TWO CONCEPTS DIFFERENTLY.

AND IF IT DID IT WOULD BE CONTRARY TO RULE 3.020 WHICH STATES THE RULES HAVE TO BE READ FOR SIMPLICITY AND PROCEDURE AND FAIRNESS OF ADMINISTRATION.

>> Justice: BUT THE FAIRNESS OF ADMINISTRATION YOUR INVOCATION OF THAT KIND OF MYSTIFIES ME BECAUSE IT SEEMS TO CRY OUT HERE THAT THERE WOULD BE GREAT UNFAIRNESS IN THE ADMINISTRATION OF THE RULE AND THE WAY YOU ARE SUGGESTING TO THE STATE BECAUSE THE IDEA THAT SOMEONE 10 YEARS LATER WHEN WITNESSES MAY HAVE DIED OR THE STATE'S ABILITY TO PROVE UP THE CASE MAY HAVE GONE AWAY WHEN THE STATE COULD HAVE EASILY PROVED IT EARLIER. THAT SOMEHOW THEY COULD DO THAT AND I GUESS I WILL JUST MAKE THAT AND LET YOU RESPOND TO THAT BUT ALONG WITH, WHY WOULDN'T WE JUST UNDERSTAND THIS RULE ABOUT A PLEA WITHDRAWAL IS REALLY SETTING TIME LIMIT. TIME LIMITS ON THE WITHDRAWAL IN THESE TWO DIFFERENT WAYS AND ONE, UNDER THE SECOND RULE IS ABOUT TO AVOID TO DEAL WITH ISSUES THAT COULD BE DEALT WITH OTHERWISE ON APPEAL.

SO YOU DON'T DEAL WITH THEM OR AS, AS SOON AS YOU CAN.

IN THE FIRST ROLE IS GIVING A SAFETY VALVE FOR THE PLEA AFTER IT IS ENTERED TO ALLOW THE POTENTIAL REGRETS OR WHATEVER THAT WOULD GET OVER THE HURDLE TO CONVINCING THE JUDGE TO ALLOW THE WITHDRAWAL. BUT THERE'S TIME LIMITS ON THAT WHICH MAKE NO SENSE AT ALL IN THE CONTEXT OF A RESENTENCING.

BECAUSE THE SHIP HAS SAILED IN THE TIME LIMITS HAVE PASSED.

>> Petitioner: MY RESPONSE TO THE LATTER PART OF YOUR QUESTION IS THERE IS NO SET TIME LIMITS.

I THINK WHAT YOU ARE SUGGESTING IN WHICH THE SAFFOLD TWO HAS RESPONDED BUT THE WAY THAT THE RULE IS SPREAD NOW DOES NOT HAVE SUCH TIME LIMITS.

>> Justice: WELL, WE WILL SEE.

>> Petitioner: BUT TO ANSWER THE FIRST PART OF YOUR QUESTION THE FAIRNESS OF ADMINISTRATION DEALS WITH THE PROCEDURAL RIGHTS THE DEFENDANT IS ALLOWED TO RAISE PRIOR TO THE RESENTENCING HEARING.

>> Justice: BUT HOW IS IT FAIR TO ALLOW SOMEONE TO WITHDRAW A PLEA IN THE STATE WOULD BE IN MANY CASES PREJUDICE IN A DEVASTATING WAY BY THIS LONG DELAY?

>> Petitioner: NOTHING IN THE RECORD BELOW SAYS THE STATE WAS PREJUDICE.

>> Justice: BUT YOU ARE ASKING US TO APPLY TO ALL THE CASES FROM HERE ON OUT TO WITHDRAW A PLEA.

SO AFTER 25 YEARS AND A PLEA IN A DEATH CASE HE DECIDES TO WITHDRAW HIS PLEA THAT IS GOING TO BE EQUALLY AN ISSUE.

SO WHY IS THIS A FOCUS ON THE QUESTION?

WHY IS THIS NOT AN ISSUE AS TO THE FINALITY TO THE STATE?

>> Petitioner: IT'S NOT AN ISSUE TO THE FINALITY BECAUSE TO ENSURE THIS COMING TO AN END THAT SUFFICE THE STATE IS DIFFERENT TO HER THE STATE RELIES HEAVILY.

THE LITIGATION IS NOT COMING TO AN END.

WHEN THE CASE IS SEPARATE FOR SENTENCING HE IS GOING TO ARGUE FOR A DEPARTURE SENTENCE OR A LOWER SENTENCE AND AFTER THE SENTENCE IS OVER HE MIGHT FILE POST CONVICTION MOTIONS OR FILE A THIRD APPEAL IN THIS CASE CLEARLY THE PRINCIPAL FINALITY IS NOT GOING TO BE AN ISSUE BECAUSE THE CASE IS STILL BEING LITIGATED.

TO ADDRESS SOME OF THE CONCERNS ABOUT THE FAIRNESS OF THE PROCEDURE, GOOD CAUSE STILL HAS TO BE ESTABLISHED BEFORE SOMEONE CAN WITHDRAW A PLEA.

IF A DEFENDANT ON REMAND FILES A MOTION TO WITHDRAW THE PLEA AND ARGUES THAT I PARTICIPATE IN THE FIRST SENTENCING BUT I'M AFRAID I'M GOING TO GET THE FIRST SENTENCE OR A WORSE SENTENCE AT A HEARING AND I AM WITHDRAWING A PLEA I VENTURE TO SAY THAT'S NOT GOOD CAUSE.

AND SO I BELIEVE OBVIOUSLY THE WAY THE RULE IS SET UP IS A DEFENDANT HAS TO ESTABLISH GOOD CAUSE.

IT CAN'T BE SUBSTANTIATED AND IT ALSO HAS TO APPEAR BEFORE THE COURT.

I AM INTO MY REBUTTAL TIME IF THERE'S ANY OTHER QUESTIONS I WILL TAKE THEM OR I WILL RESERVE MY TIME FOR REBUTTAL.

THANK YOU.

>> Justice: CAN YOU TAKE A POSITION ON THE CORYELL VERSUS SASSO DEBATE MATT CAN THIS BE DECIDED ON A LITERAL READING OF THE FOUR CORNERS OF THE RULE OR DO WE HAVE TO RESORT TO BACKGROUND AND SPOOLS IN ORDER FOR YOU TO WIN?

>> Respondent: I THINK IT COULD BE ONE ON BOTH THE LITERAL READING AS WELL AS THE BACKGROUND READING.

>> Justice: SHE REFUSES TO TAKE A POSITION.

[LAUGHTER]

>> Respondent: UNDER BOTH CIRCUMSTANCES FIRST I AGREE WITH JUSTICE JOHN COURIEL.

THE STATUTE WAS A DEMARCATION IN TIME.

YOU CAN LOOK AT THE LANGUAGE IN IT SAYS A SENTENCE AND 3.1 70F AND IT SAYS THE SENTENCE IN 3.1 07L.

IF YOU JUXTAPOSE THAT TO THE STATUTE THAT WAS REFERRED TO BY PETITIONER AND IN HIS BRIEF 3.700 WHICH IS ANOTHER PORTION OF THE RULES ON SENTENCING THERE IS NO ARTICLE IN THAT.

DESPITE BOTH OF THE RULES BEING ADOPTED IN 1968 THE SAME TIME AND AMENDED AGAIN IN 1972.

THE A WAS ADOPTED BY THIS COURT AND ADDED FROM THE PREDECESSOR STATUTE WHICH I BELIEVE WAS 909.13.

A WAS THERE FOR SOME REASON IT WAS TO DEMARK TIME.

THE POINT IS WHEN THERE IS A VACATION OF A SENTENCE AND A RESENTENCING THAT DOESN'T MEAN THAT THE ORIGINAL SENTENCE DID NOT OCCUR IN TIME OR THAT THE DEFENDANT DID NOT PREVIOUSLY HAVE THE OPPORTUNITY TO RAISE THE CLAIM.

>> Justice: YOU THINK HE IS OVER READING THE PRINCIPAL?

HE SAYING YOU CAN READ OUR CASES IN THE EFFECT OF A VACATION OF THE SENTENCE IS AS IF IT NEVER HAPPENS?

WE CAN LITERALLY DROP THE DEFENDANT BACK IN TIME TO WHERE HE HAS PLED GUILTY AND THERE HAS BEEN NO SENTENCE AND WE JUST LOOK AT A SENTENCE AND I DON'T HAVE A SENTENCE.

I HAVE ALL THE RIGHTS I HAD BEFORE AND YOU ARE SAYING THAT'S NOT REALLY THE PRINCIPLE THAT WE HAVE ESTABLISHED IS NOT THAT BROAD?

>> Respondent: YOU ARE CORRECT YOUR HONOR.

WHEN THERE IS A VOID SENTENCE IT DOES NOT MEAN THAT PROCEDURAL HISTORY DID NOT OCCUR.

IT DOES NOT MEAN THAT IN FACT OCCURRED IN TIME.

IT MEANS PROCEDURALLY YOU NO LONGER HAVE A SENTENCE AND YOU ARE GOING TO DENOTE THE SENTENCING.

AS TO JUSTICE CHARLES CANADY!

WHEN YOU ARE IN RESENTENCING YOU ARE LOOKING AT ISSUES THAT THEY ARE ON THE APPROPRIATE PENALTY.

YOU'RE NOT LOOKING AT ISSUES THAT CONTAINED TO THE UNDERLYING CONVICTION.

YOU WOULD NOT DO THAT AFTER YOU WERE CONVICTED BY TRIAL.

IT IS DIFFERENT AND JUST BECAUSE SOMETHING WAS VOID DOES NOT MEAN IT DID NOT HAPPEN IN TIME.

THE ACCEPTANCE OF THE PLEA DOES CONSTITUTE THE CONVICTION.

AND ONCE -THIS COURT HAS ALWAYS INSISTED THE ISSUES BE RAISED AT THE FIRST OPPORTUNITY OR THEY BE WAIVED.

THE TEXT OF RULE 3.170 IS A WHOLE CIRCUMSCRIBED TO THAT TIME FOR A DEFENDANT TO CONTEST A PLEA AND ASSIGNS A GREATER BURDEN FOR DOING SO AFTER SENTENCING AND THAT IS WHERE JUSTICE JAMIE GROSSHANS THE HISTORY OF OUR JURISPRUDENCE COMES INTO PLAY.

BECAUSE THIS COURT SPECIFICALLY STATED THAT SENTENCING IS THE CRITICAL JUNCTURE FOR PURPOSES OF WITHDRAWING A PLEA.

AND THEN IN CAMPBELL THIS COURT STATED THAT TO LOOK AT 3.172 YOU HAVE TO DO THAT HARMONIOUSLY WITH 3.1 7F WHICH A DEAD.

AND IT DECIDED THAT EVEN IF A PLEA HAS NOT BEEN FORMALLY ACCEPTED BY MAGIC WORDS BY A TRIAL COURT AT THE TIME OF THE ORIGINAL SENTENCING THAT PLEA IS DEEMED TO BE ACCEPTED.

THIS COURT HAS ALREADY ESTABLISHED SENTENCING, THE ORIGINAL SENTENCING TO BE THE CRITICAL JUNCTURE AND I ASKED THE COURT WHAT WOULD HAPPEN IF WE DID ACCEPT PETITIONER'S ARGUMENT.

WOULD THE SENTENCE THEN BE DEEMED UNACCEPTED AND THE CIRCUMSTANCES, FOR INSTANCE ON CAMPBELL, WHERE THERE WAS NO FORMAL ACCEPTANCE OF THE PLEA WOULD THEN BE DEEMED UNACCEPTED BECAUSE WE ARE BACK AT RESENTENCING?

BECAUSE YOU CAN ONLY DEFINE SENTENCE IN THE STATUTE IN ONE WAY.

IF YOU LOOK AT THE LANGUAGE THAT THE PETITIONER WOULD LIKE TO SEIZE UPON IN RULE 3.17 IT FOCUSES ON THE PROCEDURE THE SENTENCING PROCEDURE AND IT SPECIFICALLY SAYS SENTENCE.

NO A IS THE PRONOUNCEMENT OF A PENALTY OR JUDGMENT PENALTY.

THE DEFINITION PROVIDED BY THE STATE FROM THE DICTIONARY DOES IT BACKWARDS.

IT IS THE JUDGMENT ENTERED ON THE PRONOUNCEMENT OF A CONVICTION.

AND SO AGAIN STRESSING THE LANGUAGE THAT WAS ADOPTED BY THIS COURT WAS TO FOCUS ON TIME AND NOT PROCEDURE.

>> Justice: CAN I ASK YOU; IT WAS BROUGHT UP THAT MANY OR SOME DISTRICT COURTS HAVE FOUND THAT 3.17 0L APPLIES AFTER RESENTENCING.

DOES THE STATE HAVE A POSITION ON IF THAT IS CORRECT?

>> Respondent: YOUR HONOR I WOULD SAY THAT'S NOT CORRECT.

IF YOU LOOK AT WHAT HAPPENS WITH A LITANY OF CASES THAT OCCURRED IT

STARTED WITH FOX.

FOX WAS OUT OF THE FOURTH DISTRICT AND IN THAT CASE IT WAS 3.1 800C A MITIGATION.

IN THE COURT WENT TO SOME LENGTHS TO DESCRIBE WHAT A MITIGATION IS AND TO SAY IT IS NOT A RENDITION OF SENTENCE.

THAT BEING THE CASE I DECIDED THAT 3.170 L DID NOT COME INTO PLAY BECAUSE SPECIFICALLY IN THE LANGUAGE OF THAT SUBSECTION OF THE RULE IS DETERMINED RENDITION.

AND THEY COMPARE THE DUTY TO NOVA RESENTENCING PROCESS.

THEN WE MOVED TO PACASINO.

AND PACASINO THE ONLY EXPLANATION WAS A CITATION AND SAYING THIS IS PART OF THE DE NOVO RESENTENCING PROCESS.

AND THEN WE GO TO CHIPMAN.

AND CHIPMAN HAD TO DO WITH A JURISDICTIONAL ISSUE BEFORE THAT COURT STATED WELL AGAIN PACASINO AND FOX AND PARENTHETICALS REFERRING TO THE DE NOVO LANGUAGE AND THEN WE GET TO SCOTT.

AND SCOTT IS REALLY-

>> Justice: IT IS REALLY YOUR POSITION THAT 3.170 AS A WHOLE IS OFF THE TABLE BECAUSE IT IS A PROCEDURAL SET OF RULES THAT OCCUR IN TIME BEFORE A SENTENCE IS RENDERED AND IF SOMETHING GOES UP ON APPEAL THERE IS A DEMAND FOR RESENTENCING BUT WE DO NOT GO BACK TO THIS TIME PERIOD OR THE SECTION OF THE RULES IF ON RESENTENCING TO BE AN ISSUE THERE WOULD EITHER BE AN APPEAL ON THAT SENTENCE OR POSTCONVICTION?

>> Respondent: THAT'S CORRECT YOUR HONOR.

AND I REFER TO GRIFFIN.

IN GRIFFIN THEY SPECIFICALLY REJECTED THE DEFENDANT'S ARGUMENT THAT 3.1 70L IS NOT JURISDICTIONAL AND IN ADDITION THEY SAID IN THIS COURT STATED THAT IF YOU DON'T FILE THAT MOTION WITHIN 30 DAYS AFTER THE RENDITION OF THE SENTENCE IN YOUR COURSE OF ACTION IS A POSTCONVICTION RELIEF EITHER BY RULE 2.850 OR RULE 3.851.

TO ALLOW A MOTION TO WITHDRAW PLEA ON RECENT ZINC WILL RESULT AS POINTED OUT AS SOME OF YOUR HONORS AND I WOULD LIKE TO STRESS THAT WITHIN THE PLEA CONTEXT YOU DO NOT HAVE PRIOR TRIAL TESTIMONY.

AND OFTEN BECAUSE A PLEA CAN OCCUR EVEN AS EARLY AS THE ARRAIGNMENT THE STATE HAS NOT DEVELOPED ITS CASE.

THAT DOES MEAN THAT THERE MIGHT BE WITNESSES THAT ARE NO LONGER AVAILABLE THAT WE HAVEN'T OBTAINED THEIR CONTACTS AND WE DON'T HAVE THE SAME KIND OF EVIDENCE PORTFOLIO THAT YOU WOULD IF THERE WAS A REMAND FOR A RETRIAL.

IF THERE ARE NO FURTHER QUESTIONS BY THIS COURT I WOULD ASK THAT YOU ADOPTS AND APPROVE THE LANGUAGE OF THE SAFFOLD CASE AND QUASH THE DECISION IN SCOTT.

THANK YOU.

>> Petitioner: EXCUSE ME.

I WOULD LIKE TO ADDRESS AN ISSUE THAT HAS COME UP IN THIS ARGUMENT. IN TERMS OF THE UNFAIRNESS TO THE STATE BECAUSE OF THIS PROCEDURE. TIME AND PASSAGE OF TIME IS NOT THE ONLY CONCERN WHEN IT COMES TO THE PRINCIPAL FINALITY.

CASES SUCH AS THIS CASE ALSO DEALT WITH SITUATIONS WHERE THE CASE WAS HEARD DECADES AGO AND THEN CHANGED.

RECENTLY THE STATE WAS ENTITLED FOR A PANEL TO MAKE THESE FINDINGS.

I UNDERSTAND THAT THERE'S A POINT THAT THERE IS A DIFFERENCE BETWEEN CONVICTION AND SENTENCE BUT THE JURY WAS ASKED TO DEFINE WHETHER THE DEFENDANT INTENDED TO KILL OR ATTEMPTED TO KILL SOMEONE.

AND THAT IS AKIN TO A JURY FINDING.

I UNDERSTAND WHAT THE CONCERN IS BUT WITH THE REMEDY THIS COULD BE GIVEN TO THE STATE.

THE SAME REMEDY THE SAME SITUATION HE'S NOT GOING TO BE PREJUDICE IN THIS REGARD.

SO IN TERMS OF THE RULES REGARDING RESENTENCING THERE IS NO SEPARATE PROCEDURES WHEN IT COMES TO A RESENTENCING HEARING AND THE RULES ARE IN THE STATUTES.

THE STATE POSITIONS THAT MAY BE THERE SHOULD BE.

BUT IF WE ARE NOW READING THAT SUBSECTION F RESENTENCING DOES NOT APPLY TO SUBSECTION F BUT IT MAY APPLY TO SUBSECTION L IT'S NOT GOING TO BE READ FOR SIMPLISTIC PROCEDURE BECAUSE AT EVERY JUNCTURE OR THE TERM SENTENCE IS BEING MENTIONED THEY'RE GOING TO HAVE TO QUESTION WHETHER A RESENTENCING IS GOING TO APPLY IN THIS SITUATION OR THAT.

REGARDING WHETHER -REGARDING CAMPBELL ESTATE MENTIONED IT RELIES ON CAMPBELL IN THE FOURTH DISTRICT RELIES ON CAMPBELL EXTENSIVELY.

THE KEY DIFFERENCE IN CAMPBELL IS THE FACT THAT IN CAMPBELL THE DEFENDANT MOVED TO WITHDRAW HIS PLEA UNDER DIFFERENT RULE ALTOGETHER BUT MOVED TO WITHDRAW HIS PLEA 11 YEARS AFTER THE FACT.

THE LITIGATION AT THAT POINT WAS OVER.

IN THIS CASE THE LITIGATION WAS ONGOING AND AT A CERTAIN POINT THE DEFENDANT MAY FILE A POSTCONVICTION MOTION OR AN APPEAL BUT THERE'S NO GUARANTEE. THERE'S NO FINALITY IN AN UNFAIR SENTENCE OR UNJUST SENTENCE IN THIS CASE AND IS ALLOWED TO DO SO AGAIN.

SO I CAN SEE THAT MY TIME IS ALMOST RUNNING OUT ALTHOUGH IF THERE'S ANY OTHER QUESTIONS OF PETITIONER REQUESTED THIS COURT TO APPROVE OF SCOTT IN THE SECOND DISTRICT.

THANK YOU.

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

WE ARE ADJOURNED.

>> Marshal: ALL RISE!

