

>> Chief Justice Carlos Muniz: OUR NEXT CASE IS JESSE BELL V.STATE OF FLORIDA AND AND BELL VS SECRETARY, DEPT. OF CORRECTIONS CASE NO.SC2024-1264 AND SC2024-1556 WHENEVER YOU ARE READY.

>> Adrienne J. Shepherd,Appellant: GOOD MORNING AND MAY IT PLEASE THE COURT. MY NAME IS ADRIENNE SHEPHERD AND I AND MY CO-COUNSEL REPRESENT JESSE BELL. MR. BELL IS THE APPELLANT IN THIS CASE.

WE ARE HERE ON APPEAL FROM THE CIRCUIT COURT SUMMARY DENIAL OF MR. BELL'S INITIAL MOTION FOR POSTCONVICTION RELIEF FILED PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.851. I INTEND TO FOCUS MY ARGUMENT ON MR. BELL'S INVOLUNTARY WAIVER OF THE RIGHT TO COUNSEL.

AS AN INITIAL POINT I SHOULD STATE THAT IT DOES APPEAR THAT MR BELL'S CASE IS ONE OF FACTUAL FIRST IMPRESSION BEFORE THIS COURT AND THE CAPITAL DEFENDANT IS ASSERTING THAT HIS WAIVER OF HIS PENALTY PHASE COUNSEL WAS RENDERED INVOLUNTARY BY ABUSE AND MISTREATMENT THAT HE SUFFERED WHILE IN PRISON WHILE AWAITING TRIAL.

WITH THAT BEING ACKNOWLEDGED THE FACT I DO THINK THIS IS A CASE OF ACTUAL FIRST IMPRESSION MR. BELL'S REQUEST FOR REMEDY FOR THIS CONSTITUTIONAL VIOLATION IS BASED ON LEGAL PRINCIPLES THAT ARE NOT NEW.

>> Justice: BEFORE WE GET THERE, TALK ABOUT WHETHER YOU THINK THE FARETTA COLLOQUY OR ANY OF THE OTHER COLLOQUIES REQUIRED HAD THE COURT WERE INCOMPLETE OR

MISTAKEN AS A MATTER OF LAW CAN WE PUT ASIDE AT THE OUTSET THAT THE COURT DID WHAT IT HAD TO DO IN TERMS OF COLLOQUY FOR YOUR CLIENT.

>> Adrienne J. Shepherd,Appellant: YES YOUR HONOR.

>> Justice: ONCE WE ESTABLISH THE COURT DID THE RIGHT THING THE QUESTION THEN BECOMES WHY DIDN'T YOUR CLIENT,YOUR CLIENT WAS DEMONSTRABLY CAPABLE OF FOLLOWING THINGS WITH THE COURT AND RAISING ARGUMENTS BECAUSE HE DID. THE QUESTION THEN BECOMES WHY DID HE NOT AVAIL HIMSELF OF THOSE AVENUES AND RAISE THE ISSUES YOU'RE RAISING NOW BY SAYING HOLD ON THE FARETTA COLLOQUY FAILED TO CATCH THE FACT OF BEING ABUSED AND THAT WAS INVOLUNTARY WHY SHOULD WE LOOK PAST THAT SILENCE IN THE RECORD.

>> Adrienne J. Shepherd,Appellant: TO RESPOND TO YOUR QUESTION JUSTICE COURIEL I CAN MAKE TWO POINTS. NUMBER ONE MR BELL WAS BEING SEVERELY ABUSED AND MISTREATED BY CORRECTIONAL OFFICERS AT FLORIDA STATE PRISON THEY WERE TRANSFERRING HIM TO THE COURTROOM. THEY WERE IN THE COURTROOM .HE WAS AFRAID OF RETALIATION HE DIDN'T KNOW.

>> Justice Charles Canady: I HEAR YOU SAYING THAT I ALSO I THINK HE IS STILL IN THE FLORIDA STATE PRISON RIGHT?

>> Adrienne J. Shepherd,Appellant: NO HE IS AT UNION CORRECTIONAL INSTITUTION.

>> Justice Charles Canady: HE IS IN THE FLORIDA CORRECTION SYSTEM IF HE WAS AFRAID TO BLOW THE WHISTLE THEN BUT HE'S HAPPY TO BLOW THE WHISTLE NOW I

DON'T QUITE GET THAT.

BASICALLY SUBJECT TO THE SAME AUTHORITY AND SUBJECT TO THE SAME SITUATION HE WAS IN BEFORE. IT DOESN'T QUITE ADD UP THAT HE IS BLOWN THE WHISTLE NOW BUT HE WAS FOR SOME REASON WAS UNABLE OR UNWILLING TO BEFORE.

>> Adrienne J. Shepherd, Appellant: HE IS NOT IN THE SAME SITUATION JUSTICE CANADY. HE ESCAPED FROM THE ABUSE THAT WAS HAPPENING FROM THE FLORIDA STATE PRISON GUARDS. IT WAS WELL KNOWN TO THE INMATE POPULATION AT FLORIDA STATE PRISON THAT THAT PARTICULAR POPULATION OF CORRECTIONAL OFFICERS ABUSED INMATES WHO HAD A CHARGE FOR ATTACKING A CORRECTIONAL OFFICER. ONCE MR BELL MADE IT TO WHAT HE SAW WAS IMMEDIATE SAFETY OF UNION CORRECTIONAL INSTITUTION. HE IS NO LONGER BEING ABUSED HE IS NOW SAFE HE CAN NOW TALK ABOUT THIS.

I WOULD LIKE TO GO BACK TO MY SECOND POINT TO YOUR QUESTION, JUSTICE COURIEL, MR BEL WAS AFRAID THE FLORIDA STATE PRISON CORRECTIONAL OFFICER WERE IN THE ROOM AND AT THE TIME HE FELT SOMETHING AS A PRO SE DEFENDANT HE HAS TO HAND THAT PIECE OF PAPER TO THE CORRECTIONAL OFFICERS HE CANNOT TRUST THEY WILL NOT.

>> Justice: I GUESS THE TROUBLE WITH THAT ARGUMENT IF HE FELT THIS PRESSURE SO ACUTELY BY WAIVE OF COUNSEL?

WHY NOT JUST HAVE YOUR COURT APPOINTED LAWYER BLOW THE WHISTLE AND TAKE OTHER MEASURES TO SAFEGUARD YOU.

>> Adrienne J. Shepherd, Appellant: IT SPEAKS HOW INVOLUNTARY THE CHOICE WAS THE FACT IT WAS NOT MADE IN THE ABSENCE OF SUBVERTING FACTORS. IT WAS NOT FREE AND RESPONSIBLE HE SAID FLORIDA STATE PRISON FOR SIX MONTHS WITHOUT THE APPOINTMENT OF COUNSEL WITHOUT A SURF APPEARANCE YET KNOW WHAT TO SPEAK FOR HIM AFTER SIX MONTHS OF BEING ABUSED AND DENIED FOOD AND THE THREAT OF ABUSE.

I THINK IT AFFECTED HIS MENTAL STATE.

>> Justice: I THINK IF YOU'RE RIGHT WE CAN NEVER TRUST A FARETTA COLLOQUY. YOU ARE SORT OF PROPOSING TO US AND UNFALSIFIABLE HYPOTHESIS. THAT WOULD NEVER TRUST THAT SOMEONE WILL BE THE SORT OF SECRET POSITION AND THAT THAT'S WHY IT STARTED WITH WHETHER YOU THOUGHT THE FARETTA COLLOQUY WAS ADEQUATE BECAUSE IF YOU'RE MAKING THE ARGUMENT YOU'RE MAKING THEN I THINK WHAT YOU NEED TO ARGUE IS THAT THE COURT SHOULD ALWAYS OR AT LEAST IN CIRCUMSTANCES LIKE THIS, BE CONCERNED ABOUT VOLUNTARINESS. I DON'T KNOW COLLOQUY THE DEFENDANT IN A CLOSED COURT OR SOMETHING ARE YOU MAKING THAT ARGUMENT.

>> Adrienne J. Shepherd, Appellant: NO YOUR HONOR.

>> Justice: SO THEN HELP ME OUT I DON'T UNDERSTAND IT SOUNDS TO ME LIKE IN A CASE WHERE SOMEONE IS ALLEGED TO HAVE ATTEMPTED THE MURDER OF A GUARD WHAT YOU'RE REALLY SAYING WE SHOULD ALWAYS JUST ASSUME THAT THIS

PERSON IS BEING EXPOSED TO RISK AND THEREFORE FARETTA IS INADEQUATE AND WE NEED TO RETHINK HOW THAT PERSON IS COLLOQUIED. AS TO VOLUNTARINESS

>> Adrienne J. Shepherd,Appellant: I WILL STATE FIRST AS YOUR POINT ABOUT TRUSTING FARETTA INQUIRIES WE CAN BASICALLY AT A LEVEL TRUST THEM. [LISTING NAMES] DID THE INQUIRY QUICKLY BUT WE CANNOT TRUST AS MR. BELL'S INQUIRY IS WHAT WE DISCOVER POSTCONVICTION ESTATE THE LOWER COURT DENIED EVIDENTIARY HEARING THIS COURT MUST ACCEPT THE FACTUAL ALLEGATIONS IN OUR BRIEFING AS TRUE TO THIS EXTENT.

AND SO IT IS A CORROBORATION OF THIS ABUSE. AS FAR AS THE COURT HAVING TO ASK ABOUT ABUSE THAT EVERY SINGLE TIME IT IS THE CASE THAT MR BELL WAS INCARCERATED AT FLORIDA STATE PRISON IT WAS WELL KNOWN THE GUARDS WOULD ABUSE INMATES WHO HAD A CHARGE FOR ATTACKING A CORRECTIONAL OFFICER.

>> Justice: I GUESS THAT TAKES ME TO MY NEXT POINT WHICH IS A QUESTION WHICH IS HELP ME UNDERSTAND IF ANY, THE CAUSAL RELATIONSHIP BETWEEN THE ABUSE AND THE VOLUNTARINESS OF THIS PLEA.

>> Adrienne J. Shepherd,Appellant: YES YOUR HONOR TO ANSWER THAT I WOULD FIRST SAY AS PREREQUISITE MATTER WE REALLY NEED AN EVIDENTIARY HEARING.

>> Justice: ARE THERE ALLEGATIONS THOUGH? YOU WOULD AGREE AS A LEGAL MATTER AND THAT THE CONTEXT OF AN UNINTENTIONAL WAIVER THE CAUSATION ELEMENT IS LEGALLY SIGNIFICANT.

>> Adrienne J. Shepherd,Appellant: IT IS.

>> Justice: WHAT ALLEGATIONS DO YOU THINK WERE RAISED TO ESTABLISH THAT CAUSAL CONNECTION AS A FACTUAL ALLEGATION?

>> Adrienne J. Shepherd,Appellant: WHAT WE ARGUED IN OUR BRIEFING AND WHAT MR BELL WOULD TESTIFY TO IF HE COULD AT AN EVIDENTIARY HEARING IS AFTER BEING ABUSED FOR SO LONG HE COULD NOT SEE ANY WAY OUT IT WAS ABOUT HOW DO I REACH A PLACE OF IMMEDIATE SAFETY GET AWAY FROM FLORIDA STATE.

>> Justice: THAT WOULD BE CAUSAL TO A STATE OF MIND, LEGALLY SIGNIFICANT STANDPOINT ON POSITION IS THAT THE ABUSE HE WAS ABUSED AND IN ORDER TO PROCURE A WAIVER ESSENTIALLY BEFITTING MY ANSWER TO THAT WOULD BE NO >>

Adrienne J. Shepherd,Appellant: I WOULD POINT THIS COURT TO THE FIGUEROA. [LISTING NAMES] THE STATE OPINION.

>> Justice: NO NO FIGUEROA IS COMPLETELY DIFFERENT IN FIGUEROA.[LISTING NAMES] THE COURT PUT A FALSE CHOICE BEFORE THE DEFENDANT THE COURT WAS MISTAKEN IN CONDITIONING A WAIVER ON A SECTION ABOUT COUNSEL. AND YOU HAVE FORSWORN ANY TROUBLE WITH WHAT THE JUDGE SAID IN THE FARETTA COLLOQUY FIGUEROA.

[LISTING NAMES] RESPECTFULLY IS OF NO HELP TO YOU UNLESS YOU THINK I'M WRONG ABOUT IT.

>> Adrienne J. Shepherd,Appellant: I DO RESPECTFULLY, WE DISAGREE TO JUSTICE

SASSO'S QUESTION SHE WAS ASKING WHETHER OR NOT WE HAD TO PROVE CORRECT ME IF I'M WRONG THAT WE ARE TO ALLEGE THAT THE ABUSE WAS FOR THE PURPOSE OF CAUSING WAIVER IS THAT CORRECT.

>> Justice: YES.

>> Adrienne J. Shepherd, Appellant: FIGUEROA.

[LISTING NAMES] THE TRIAL COURT AND PERHAPS I MISREAD THE OPINION.

>> Justice: PERHAPS I MISS WROTE IT.

>> Adrienne J. Shepherd, Appellant: I KNOW HE AUTHORED THE OPINION THERE IS NO DISCUSSION IN THAT OPINION OF FIGUEROA HAVING TO PROVE THAT THE TRIAL COURT MISADVISED HIM FOR THE PURPOSE OF ELICITING THAT WAIVER THE TRIAL COURT DEFINITELY MISADVISED FIGUEROA ABOUT THE NATURE OF HIS RIGHT TO COUNSEL AND YOUR CRACK IN MR BELL'S CASE THIS EFFECTUALLY DIFFERENT TO WHAT WE ARE REQUESTING IS THAT THIS COURT TAKE THOSE FOUNDATIONAL LEGAL PRINCIPLES THAT YOUR HONOR AUTHORED THE WAIVER OF COUNSEL MUST BE MADE INTO ABSENCE OF SUBVERTING THE FACTORS SO THE CHOICE IS CLEARLY FREE AND RESPONSIBLE AND I NOTE THAT THIS COURT FOUND IN FIGUEROA. [LISTING NAMES] THAT MR. FIGARO CANNOT MAKE A VOLUNTARY CHOICE BECAUSE HE WAS FORCED INTO THE CONSTITUTIONALLY OFFENSIVE DECISION BASED ON TRIAL COURT MISADVICE. WE ARE REQUESTING THAT THIS COURT BASED ON TRIAL COURT MISADVICE. WE ARE REQUESTING THIS COURT TAKE THOSE FOUNDATIONAL LEGAL PRINCIPLES THAT ARE IMPORTANT AND APPLY THEM TO THE FACTS OF MR. BELL'S CASE I WOULD STATE THAT IN RESPONSE TO YOUR QUESTION THERE IS NOTHING IN THE FIGUEROA OPINION THAT APPLIES. MR BELL MUST PROVE THE ABUSE WAS FOR THE PURPOSE OF ELICITING THE WAIVER.

>> Justice: YOU CONCEDED THIS IS FACTUALLY A NEW CLAIM NOVEL. I GUESS I'M STRUGGLING WITH

IF WE TAKE YOUR FACTUAL ALLEGATIONS AS TRUE WHY WOULD THIS NOT BE CLOSER TO SOME COMPETENCY ISSUE RATHER THAN A WAIVER ISSUE TO ME IT DOES NOT FIT INTO A COERCED WAIVER WHEN YOU'RE BASICALLY SAVING THESE CONDITIONS IN HIS LIFE CREATED SO MUCH STRESS THAT HE WAS IN A MENTAL STATE THAT HE COULD NOT MAKE A DECISION THAT TO ME IS COMPLETELY DIFFERENT FROM WHAT WE TYPICALLY SEE IN THE COERCED WAIVERS.

>> Adrienne J. Shepherd, Appellant: MY UNDERSTANDING OF THE COMPETENCY WE'RE NOT ALLEGING ANYTHING RELATING TO HIS COMPETENCY. IF YOU HAVE TO HAVE A RATIONAL UNDERSTANDING OF THE PROCEEDINGS AND BE ABLE TO RATIONALLY CONSULT YOUR ATTORNEY IS OBVIOUS WE ACKNOWLEDGE MR BELL IS SMART HE HAD A RATIONAL UNDERSTANDING OF THE PROCEEDINGS HE KNEW IF I WAIVE COUNSEL I CAN GET OUT OF HERE. IF I

WAIVE COUNSEL I CAN SPEED THIS PROCESS UP.

THE VOLUNTARINESS COMES FROM THE FACT HE DID NOT WANT TO MAKE THAT CHOICE HE WAS FORCED INTO THIS CONSTITUTIONALLY OFFENSIVE CHOICE FROM SITTING AT FLORIDA STATE PRISON FOR SIX MONTHS WITH NO HELP BEING ABUSED

BEING DENIED FOOD AND HE GOT TO THE POINT BREE SAID, I CANNOT TAKE THIS ANYMORE HE UNDERSTOOD WHAT HE WAS DOING HE DID NOT WANT TO DO IT. I THINK UNDER THIS COURT'S DICTATES IN FIGUEROA.

[LISTING NAMES] THAT CANNOT BE OF VOLUNTARY CHOICE. IT IS CLEARLY NOT RESPONSIBLE TO TRY TO REACH A PLACE OF IMMEDIATE SAFETY BY INVITING A DEATH SENTENCE HE WAS SO TIRED AND SO DESPERATE THAT HE CANNOT RATIONALIZE I THINK HE CONSTRUCTIVELY UNDERSTOOD BUT HE CANNOT RATIONALIZE NOW REACHING A PLACE OF IMMEDIATE SAFETY THE GUARDS ARE NOT ABUSING ANYMORE BUT NOW I FACE PROLONGED SAFETY NOW I FACE A DEATH SENTENCE IT IS SIMPLY THAT A VOLUNTARY CHOICE BUT WE ARE NOT RAISING ANYTHING RELATED TO MR BELL'S COMPETENCY.

>> Justice Charles Canady: HELP ME UNDERSTAND AGAIN I APOLOGIZE, THE SEQUENCE OF THINGS. WHEN HE HAD COUNSEL, DID HE EVER COMPLAIN TO COUNSEL ABOUT THE ABUSE?

>> Adrienne J. Shepherd,Appellant: WE DON'T KNOW THAT'S WHY WE NEED AN EVIDENTIARY HEARING WE REQUESTED AN EVIDENTIARY HEARING.

>> Justice Charles Canady: YOU MADE AN ALLEGATION TO THAT.

>> Adrienne J. Shepherd,Appellant: AN ALLEGATION OF WHAT?

>> Justice Charles Canady: I MEAN YOU KNOW

I'M JUST STRUGGLING TO UNDERSTAND HOW THERE WAS NOT AN OPPORTUNITY TO BLOW THE WHISTLE AS I INDICATED BEFORE BECAUSE THERE IS COUNSEL LET ME ASK ABOUT THE SEQUENCE OF EVENTS.

DO WE KNOW THAT THE ABUSE WAS TAKING PLACE BASED ON WHAT YOUR CLAIM IS? THE TIME WHEN HE STILL HAD COUNSEL.

>> Adrienne J. Shepherd,Appellant: I DO BELIEVE SO I WOULD SAY THAT THE BEST WAY TO ANSWER THAT IS TO HAVE AN EVIDENTIARY HEARING.

>> Justice: WE CAN ALWAYS HAVE AN EVIDENTIARY HEARING YOU HAVE TO MAKE ALLEGATIONS THAT WE HAVE A BASIS FOR THAT.

>> Adrienne J. Shepherd,Appellant: THE BASIS FOR THE EVIDENTIARY HEARING IS 3.851 SUBSECTION F STATES THE TRIAL COURT SHALL NOT MAY, SHALL SCHEDULE AN EVIDENTIARY HEARING. IN CLAIMS AS REQUIRING A FACTUAL DETERMINATION WE HAVE SEVERAL THINGS THAT REQUIRE A FACTUAL DETERMINATION BEYOND WHAT WE ARE ABLE TO BRIEF NUMBER ONE, WHAT DID THE TRIAL COUNSEL KNOW ABOUT THE ABUSE?

DID TRY COUNSEL KNOW AT ALL? WHAT COULD TRIAL COUNSEL DO IN A WEEK? DID TRIAL COUNSEL HELP THE TRIAL COURT? WE DON'T KNOW WHAT WE DON'T KNOW. THAT IS WHY THE OTHER FACTUAL DETERMINATION WAS NEEDED.

>> Justice Charles Canady: AGAIN, IT SEEMS TO ME THAT PART OF YOUR CLAIM WOULD BE THAT HE TOLD COUNSEL ABOUT IT IN THE COUNSEL DID NOT DO ANYTHING. THAT IS WHY HE WAS IN THIS JAMMED UP SITUATION HE IS GOING TO KNOW WHAT HE TOLD COUNSEL YOU DON'T HAVE TO HAVE A HEARING ABOUT THAT.

IT SEEMS LIKE TO ME THAT WOULD BE PART OF YOUR ALLEGATIONS TO SHOW THAT THIS OR HE WAS IN THIS VICE OF ABUSE WITH NO WAY TO DO ANYTHING ABOUT IT

OTHER THAN TO WAIVE COUNSEL AND BE OFF TO DEATH ROW.

>> Adrienne J. Shepherd, Appellant: I RESPECTFULLY DISAGREE ON THE NEED FOR EVIDENTIARY HEARING EVEN IF MR. BELL SAID I TOLD TRIAL COUNSEL EVERY SINGLE TIME I SPOKE TO HIM WE NEED TRIAL COUNSEL SIDE OF THE STORY. NOT SAYING MR. BELL IS MAKING ANYTHING UP WE NEED TRIAL COUNSEL THAT TELLS WHAT HE KNEW.

>> Justice Charles Canady: THAT MIGHT BE BUT IF YOU MADE THE ALLEGATIONS AND POINTED US TO THAT ASPECT OF IT BUT WITHOUT HAVING MADE THOSE I'M JUST STRUGGLING TO SAY HOW THIS IS SOMETHING THAT IS KIND OF MADE UP.

>> Justice: YOU CAN SEE IN THE MOTION YOU'RE NOT ALLEGING THE TRIAL COUNSEL THAT YOUR CLIENT TOLD TRIAL COUNSEL ANYTHING.

>> Adrienne J. Shepherd, Appellant: WE ARE NOT ALLEGING THAT WE NEED TRIAL COUNSEL DETAILS ON THE RECORD.

>> Justice: I UNDERSTAND. IT SEEMS LIKE YOU'RE MOTION WOULD SORT OF HAVE TO PUT THAT ISSUE IN PLAY THEN YOU MAY NEED AN EVIDENTIARY HEARING TO SORT OF FLUSH OUT WHETHER IT IS TRUE AND WHAT CONSEQUENCES IT HAD. AS FAR AS IN TERMS OF SORT OF JUST THE DOCTRINE HERE, ONE WAY TO GET THIS IN FRONT OF US IN THIS CONTEXT IS THROUGH INEFFECTIVE ASSISTANCE OF COUNSEL. WHICH WOULD INVOLVE YOU HAVING HAD TO ALLEGE THAT COUNSEL KNEW I'M SUGGESTING THIS THAT YOU WOULD HAD TO ALLEGE THAT COUNSEL KNEW SOMETHING ABOUT THIS AND FAILED TO DO ANYTHING TO DO ENOUGH ABOUT IT TO MEET THEIR PROFESSIONAL OBLIGATIONS WITHIN THE AMOUNT OF TIME THAT THEY HAD EVERYTHING.

THAT IS KIND OF ONE SORT OF STATE TO THE EXTENT THAT THE APPOINTED COUNSEL SORT OF REPRESENTED IS TURNING UP THE STATES OBLIGATION THAT IS THAT.

IF THE KIND OF STATE WRONGDOING HERE IS THE CORRECTIONAL OFFICERS THEMSELVES, WHAT IS THE CLAIM THEN? DO YOU KNOW WHAT I'M SAYING HOW YOU FIT THIS IN?

>> Adrienne J. Shepherd, Appellant: I DO WANT TO RESPOND TO YOUR HONORS QUESTION ABOUT MAKING THE ALLEGATION OF SOMETHING TRIAL COUNSEL KNEW WE DO MAKE AN ALLEGATION AN ARGUMENT THAT.

>> Justice: IN THE MOTION.

>> Adrienne J. Shepherd, Appellant: IN THE INITIAL BRIEFING.

>> Justice: THE ALLEGATION IS CAPTURING THE MOTION.

>> Adrienne J. Shepherd, Appellant: IF YOU LOOK AT THE RULE 3.815 MOTION AND CLAIM NUMBER TWO IT DISCUSSES IN SUBSECTION A TRIAL COUNSEL RECEIVED A DISCOVERY EXHIBIT FROM THE STATE IS LISTED IN AUDIOTAPED INTERVIEWS THAT MR BELL HAD WITH A STATE ATTORNEY'S OFFICE INVESTIGATOR IN OCTOBER 2019.

>> Justice: THAT'S THE ONE WHERE HE SAID I WAS ROUGHED UP THEN THEY BOTH LAUGHED.

>> Adrienne J. Shepherd, Appellant: YES. HE MAY BE LAUGHING BECAUSE HE SCARED HE TRYING TO PUT ON A SHOW ALSO WE DON'T KNOW WHY PEOPLE RESPOND THE WAY

THEY DO DO, PEOPLE'S BRAINS ARE DIFFERENT BUT YOUR POINT, JUSTICE MUNIZ, TRIAL COUNSEL DID AT LEAST RECEIVED THAT DISCOVERY EXHIBIT WHAT WE DON'T KNOW WHAT THE TRIAL COUNSEL HAVE ENOUGH TIME TO LIST OF INTERVIEW THERE'S SOME EVIDENCE INDICATING THAT TRIAL COUNSEL COULD HAVE KNOWN BECAUSE HE DID RECEIVE THAT DISCOVERY EXHIBIT HE WAS COPIED ON IT. WE NEED TRIAL COUNSEL TO TELL US DID YOU LISTEN TO THE INTERVIEW.

>> Justice: THE ALLEGATIONS THOUGH, THEY SORT OF DRIVE WHAT THEN YOU WOULD NEED A HEARING FOR. LET'S PUT THE COUNSELS CONDUCT TO THE SIDE THEN COULD YOU EXPLAIN THIS IS AN UNUSUAL OBVIOUSLY AS YOU STARTED OFF ACKNOWLEDGING THIS IS AN UNUSUAL SORT OF CLAIM TO BE RAISING POSTCONVICTION. JUST HELP US UNDERSTAND SORT OF IF WE ARE JUST SORT OF TRYING TO FIT INTO THE AVAILABLE CATEGORIES FOR POSTCONVICTION HOW WE WOULD GET TO THIS?
IN THIS CONTEXT.

>> Adrienne J. Shepherd,Appellant: I KNOW YOU ARE ASKING ME TO PUT ASIDE TRIAL COUNSEL THE MOST OBVIOUS AVAILABLE AVENUE IS TRIAL COUNSEL BUT TO TRY TO PROVIDE ANOTHER AVENUE OF RELIEF TO ANSWER THE QUESTION WHAT WE HAVE IS A CIRCUMSTANCE BECAUSE THIS COURT HAS HELD ON DIRECT APPEAL SPEAKING ABOUT DIRECT APPEAL FOR A MOMENT THAT THE INVOLUNTARY WAIVER OF COUNSEL TO RESULT IN A COMPLETE DEPRIVATION OF THE RIGHT TO COUNSEL IS A FUNDAMENTAL ERROR THAT DOES NOT REQUIRE A CONTEMPORANEOUS OBJECTION AT TRIAL. I RECOGNIZE

>> Justice: THAT CUTS AGAINST YOU FELL IN A SENSE IT MEANS THAT YOU COULD'VE RAISED IT ON APPEAL.

>> Adrienne J. Shepherd,Appellant: MR BELL CANNOT RAISE IT BECAUSE THE ABUSE IS NOT APPARENT ON THE FACE OF THE APPELLATE RECORD. WHAT WE REQUESTED IN A BRIEFING IS THIS COURT RECOGNIZED IN THESE VERY NARROW VERY SPECIFIC CIRCUMSTANCES.

>> Justice: YOU ARE SAYING THE INEFFECTIVE ASSISTANCE OF COUNSEL WITHOUT APPARENT ON THE FACE OF THE RECORD RIGHT?

50 NO YOUR HONOR THE ABUSE.

>> Justice: BUT THE IN VOLUNTARINESS THEY COULD RAISE SOME SORT OF I DON'T KNOW WHAT WHO THE GOVERNMENT WHO COMMITTED FUNDAMENTAL ERROR WOULD BE I GUESS THE POINT IS IF THEY HAVE COULD BEEN RAISED AS FUNDAMENTAL ERROR THEN

WE KNOW INEFFECTIVE ASSISTANCE OF COUNSEL CANNOT BE RAISED ON APPEAL. WE KNOW THAT ANYTHING THEY COULD BEEN RAISED ON APPEAL CANNOT BE BROUGHT IN POSTCONVICTION.

BY TELLING ME THAT BY THEN BRING THEM BACK TO SORT OF DIRECT APPEAL YOU ARE DEFEATING YOUR ARGUMENT OF WHY WE CAN TAKE IT UP NOW.

>> Adrienne J. Shepherd,Appellant: I RECOGNIZE THAT THE CLAIMS THAT COULD'VE OR SHOULD HAVE BE RAISED IN DIRECT APPEAL ARE NOT COGNIZABLE IN POST CONVICTION THE FUNDAMENTAL ERROR PUTTING TRIAL COUNSEL ASIDE THE

FUNDAMENTAL ERROR CANNOT BE RAISED ON DIRECT APPEAL BECAUSE EVIDENCE OF THE ABUSE BUT NOT APPARENT ON THE FACE OF THE APPELLATE RECORD THERE IS NOWHERE BECAUSE MR BELL WAS AFRAID TO SPEAK ABOUT WHAT WAS HAPPENING THERE IS NO WAY THAT DIRECT APPEAL COUNSEL COULD LOOK AT THE RECORD AND SAY HE WAVED BECAUSE HE'S BEING ABUSED WE HAVE THIS SEVERE CONSTITUTIONAL VIOLATION THIS MANIFESTING OF INJUSTICE.

>> Justice: IS THERE ANY PRECEDENT OUTSIDE OF THE INEFFECTIVE ASSISTANCE OF COUNSEL IS THERE ANY PRECEDENT IN POSTCONVICTION FOR ESSENTIALLY WANTING SORT OF A DO OVER ON VOLUNTARINESS. IT SOUNDS LIKE THAT IS WHAT YOU ARE ESSENTIALLY ASKING FOR.

>> Adrienne J. Shepherd,Appellant: I CANNOT SPEAK TO ANY PRECEDENT YOUR HONOR.

>> Justice: YOU DON'T KNOW IF THERE IS PRECEDENT.

>> Adrienne J. Shepherd,Appellant: NOT AS I SIT HERE NOW. WHAT WE ARE REQUESTING NOT THAT THIS COURT OVERHAUL I SEE I'M ALMOST OUT OF TIME GOT ABOUT 30 SECONDS.

>> Justice: WILL GIVE YOU MORE TIME YOU WERE TALKING ABOUT, YOU STARTED OFF BY SAYING YOU WANT US TO SORT OF APPLY THESE FIRST PRINCIPLES IT SEEMS LIKE WE GOT THE FIRST PRINCIPLES ON INEFFECTIVE ASSISTANCE WE GOT THE FIRST PRINCIPLES ABOUT TRYING TO DO THINGS THAT DURING DIRECT APPEAL WHICH SEEM TO COME AGAINST YOU.

I'M JUST TRYING TO UNDERSTAND BECAUSE WE ARE TO FIT IT INTO A CATEGORY THAT WORKS FOR POSTCONVICTION. IT'S WHAT OTHER THAN INEFFECTIVE ASSISTANCE OF COUNSEL WHICH I THINK WOULD DEPEND ON YOUR ALLEGATIONS WHICH PERHAPS WERE NOT THERE BUT WE WILL LOOK AT IT. BUT THEN IF THAT BOX IS NOT AVAILABLE THEN WHAT IS AVAILABLE TO YOU.

>> Adrienne J. Shepherd,Appellant: I DON'T BELIEVE THERE IS ANOTHER BOX AVAILABLE WHAT MR BELL'S CASE REPRESENTS IS WE DO HAVE A MANIFEST INJUSTICE WE HAVE AN EXTREME CONSTITUTIONAL VIOLATION BUT I THINK IT JUST PROCEDURALLY WE DON'T QUITE HAVE THE PERFECT BOX WE ARE TRYING TO PUT A ROUND PEG IN A SQUARE HOLE.

THAT IS WHY WE ARE REQUESTING THIS COURT RECOMMENDS THAT VERY NARROW EXCEPTION SPECIFICALLY JUST ON THE WAIVER OF COUNSEL WHERE A FUNDAMENTAL ERROR HAS OCCURRED BUT IT CANNOT BE RAISED ON DIRECT APPEAL WE ARE REQUESTING THIS COURT RECOGNIZE IT IN POSTCONVICTION JUST FOR FUNDAMENTAL ERROR JUST FOR THE WAIVER.

WE ARE KIND OF ASKING FOR THIS COURT TO EXTEND THE FUNDAMENTAL ERROR DOCTRINE POSTCONVICTION.

>> Justice: I DON'T BLAME YOU FOR ASKING

>> Adrienne J. Shepherd,Appellant: THAT'S WHAT I'M ASKING FOR.

>> Justice: YOU CAN HAVE A THREE MINUTES IF YOU WANT TO WRAP UP YOU CAN TAKE 30 SECONDS TO WRAP UP.

>> Adrienne J. Shepherd,Appellant: I WILL WAIT UNTIL REBUTTAL THANK YOU.

>> Jason W. Rodriguez: MR. CHIEF JUSTICE MAY IT PLEASE THE COURT AGAIN JASON W. RODRIGUEZ ON BEHALF OF THE STATE OF FLORIDA. YOUR HONOR AS MR BELL DID I WILL FOCUS ON THE COUNSEL ISSUE I THINK WHERE WE ENDED IS GOOD PLACE TO START THAT IS THAT WHEN WE ARE DEALING WITH THIS ISSUE IT IS AN ISSUE THAT COULD IN FACT HAVE BEEN PRESERVED AND RAISED ON DIRECT APPEAL.

>> Justice: IN FACT, AM I RIGHT THAT MR BELL RAISES AS A MITIGATOR THE COURT ENGAGES WITH. THEN WE ON DIRECT APPEAL CONSIDER THE FOLLOWING. HE SAYS, MR BELL SAYS, AS IN MITIGATION I'VE NEVER ABUSED ANY OTHER GUARDS AT THE CORRECTIONAL INSTITUTE? RIGHT. >> Jason W.

Rodriguez, Appelle: YES.

>> Justice: I MAKE OF THAT FACT THAT HE WAS WILLING TO DISCUSS THE SUBJECT OF ABUSE AND INDEED HE SAID HEY, IN MY DEFENSE THIS IS THE ONLY GUARD I'VE TRIED TO MURDER, WOULD THAT NOT OF BEEN A GOOD TIME TO RAISE THE FACT THAT HE WAS BEING ABUSED?

>> Jason W. Rodriguez, Appelle: I WOULD THINK BASICALLY ANY TIME WITH COUNSEL WE KNOW HE HAD CONVERSATIONS WITH COUNSEL BEFOREHAND. HE IS APPOINTED COUNSEL I THINK ON DECEMBER 5.

THERE IS SOME CONVERSATION ABOUT HIM WANTING TO WAVE THERE IS CONSISTENT CONVERSATIONS AFTER THAT UP UNTIL THE 13TH WHERE HE SAYS IF THE COURT ASKS ME HAVE YOU TALKED WITH COUNSEL? AND HE SAYS YES I DON'T WANT COUNSEL. I THINK THERE IS NUMBER OF OPPORTUNITIES WHERE HE CAN SPEAK WITH COUNSEL WHO IS SUPPOSED TO BE THE ONE WHO IS HIS ADVOCATE AND WE TAKE WHATEVER REMEDIAL MEASURES AND TO BE TAKEN WHETHER THAT IS SETTING EX PARTE HEARING WITH THE COURT IF IT IS BETTER NOT DOING IT WHATEVER NEEDS TO BE DONE COUNSEL THE VEHICLE TO DO THAT. THE CASE THAT MR BELL CITED WAS [NAME] WHERE SOMETHING SIMILAR WAS ALLEGED TO HAVE OCCURRED AND THAT IS EXACTLY WHAT THE INMATE DID AND MR BELL CERTAINLY IS THIS COURT ANALYZED IN HIS COMPETENCY COMPETENT SUBSTANTIAL EVIDENCE ON HIS PLEA AND EVERYTHING ON DIRECT APPEAL IS NOT SHY ABOUT TELLING THE COURT WHAT IS GOING ON.

I THINK VERY EASILY FOR SOMETHING THAT COULD HAVE BEEN PRESERVED AND RAISED ON DIRECT APPEAL IF ONLY THROUGH THE AVENUE OF COUNSEL. AS IT PERTAINS TO WHERE ENDED. WE ARE IN AN AREA FOR THIS COURT SAID, THIS IS AN ISSUE THAT IS PROCEDURALLY BARRED FOR THIS TYPE OF ISSUE IS PROCEDURALLY BARRED RATHER. IT COULD'VE BEEN RAISED IN DEVELOPING DIRECT APPEAL THAT TO GET A CAN OF THE ALLEGATIONS THE REASON THAT 3851 MOTION THEY DID NOT ALLEGE COUNSEL KNEW. THEY ALLEGED THE COUNSEL SHOULD HAVE INVESTIGATED BASED ON THE JAKY WILLIAMS INTERVIEW WITH MR BELL ABOUT THE ABUSE.

AND SHOULD THEN HAVE FOUND THE INMATE WAS MET WITH NO OBLIGATION TO

COUNSEL IN FACT NO IT WAS COUNSEL FAILED TO INVESTIGATE THE ISSUE.
IN ESSENCE.

>> Justice: IN ORDER FOR US TO BE ABLE TO EVALUATE THAT THE AMOUNT OF TIME IS A RELEVANT CONSIDERATION WHAT IS THE AMOUNT OF TIME IT'S A PRETTY SHORT AMOUNT OF TIME I CAN REMEMBER EXACTLY.

>> Jason W. Rodriguez, Appellee: I COUNTED ABOUT 12 WORKING HOURS FROM WHEN THE STATE FILES AND GIVES THE INTERVIEW THAT SHOULD'VE PROMPTED ALL OF THIS ACCORDING TO MR BELL UNTIL THE WAIVER COLLOQUY ROUGHLY. IT'S ABOUT TWO DAYS I THINK STRAIGHT BUT IT'S ABOUT 12 WORKING HOURS. UNDER NO CIRCUMSTANCES IS COUNSEL GOING TO BE INEFFECTIVE FOR FAILING TO INVESTIGATE THE MASSIVE QUANTITY OF INFORMATION THAT THE STATE GIVE HIM. FIND THAT SINGULAR INTERVIEW AND THEN GO AND INTERVIEW AND FIND TWO OTHER INDIVIDUALS.

IF THERE WAS AN ALLEGATION THAT MR BELL TOLD COUNSEL SHE WAS BEING ABUSED OR THE COUNSEL KNEW SOME OF THE WAY WE WOULD BE HAVING A DIFFERENT CONVERSATION. BUT THEY HAVE ACCESS AND PART OF THE WHOLE PURPOSE OF 3851 THEY HAVE A YEAR TO INVESTIGATE THEIR CLAIM. TO ASK COUNSEL THESE QUESTIONS. TO ASK MR BELL THESE QUESTIONS THEN MAKE GOOD FAITH ALLEGATIONS IF THERE IS CONFLICT AND THEY HAD TO MAKE THE ONE THAT IS MOST BENEFICIAL TO THEM WE HAVE AN EVIDENTIARY HEARING. BUT THAT WASN'T WHAT WAS RAISED HERE. THIS IS A SITUATION WHERE WE HAVE A PROCEDURALLY BARRED ISSUE THAT CANNOT BE RAISED IN POSTCONVICTION AND I WOULD PUSH BACK AS WELL ON THE CONCEPT OF MANIFEST INJUSTICE IN THE SENSE.

WHEN WE ARE DEALING WITH JUST THE WAIVER OF COUNSEL THAT I DON'T THINK IT IS TO A MANIFEST INJUSTICE IN OF ITSELF.

BECAUSE, HE WOULD HAVE HAD COMPLETE CONTROL OF THE MITIGATION HE PRESENTED. IT DOES NOT GET US THE THIS IDEA WHERE THERE IS NO POSSIBILITY THAT HE WOULD'VE RECEIVED A DEATH SENTENCE AND WILL WE TALK ABOUT MANIFEST INJUSTICE IT'S INCREDIBLY HIGH STANDARD THAT THIS COURT IS VERY RARELY FOUND.

THE ONLY ILLUSTRATION THAT COMES TO MY HEAD WAS A BIASED JUDGE OVERRODE A LIFE SENTENCE AND SENTENCE OF A CAPITAL DEFENDANT TO DEATH. IT IS A RARE CIRCUMSTANCE THAT PART HAS BEEN FLUSHED OUT IN THE BRIEFING. I DON'T THINK THIS FITS INTO THAT PARADIGM.

IN THIS CONTEXT.

IF THE COURT HAS NO FURTHER QUESTIONS THE STATE WILL REST ON THIS BRIEF AND REQUEST THE COURT AFFIRM.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Adrienne J. Shepherd, Appellant: YOUR HONORS I WOULD LIKE TO ADDRESS TWO BRIEF POINTS AND CONCLUDE.

NUMBER ONE ABOUT INEFFECTIVE ASSISTANCE OF COUNSEL AT WHAT WE NEED TO ALLEGE,

IT IS COGNIZABLE IF WE ALLEGE THAT COUNSEL HAD LEADS ON AN INVESTIGATION AND FAILED TO PURSUE THEM FURTHER. THAT CAN BE INEFFECTIVE ASSISTANCE OF COUNSEL. YOU KNOW YOU NEED TO LOOK INTO SOMETHING YOU DON'T LOOK INTO IT ENOUGH YOU HAVE TO MAKE A REASONABLE INVESTIGATION YOU DON'T HAVE TO SPECIFICALLY STATE THAT HE ABSOLUTELY KNEW ABOUT THE ABUSE WE HAVE TO SAY THAT HE SHOULD HAVE KNOWN ABOUT THE ABUSE HE FAILED TO INVESTIGATE IT FURTHER THAT IS SUFFICIENT. THAT IS WHAT HAPPENED HERE.

HE SHOULD HAVE KNOWN.

HE HAD A DISCOVERY EXHIBIT WITH THAT INTERVIEW HE SHOULD HAVE KNOWN.

NOW WE NEED HIM TO TELL US WHY HE DID NOT KNOW OR WHY HE DID NOT INVEST IN FURTHER.

>> Justice: IS THAT DISCOVERY EXHIBIT THE SOUL PIECE OF EVIDENCE OF WHAT YOU NOW CLAIM IS THE SUSTAINED SYSTEMIC ABUSE OF YOUR CLIENT?

>> Adrienne J. Shepherd,Appellant: NO YOUR HONOR AS FAR AS THE EVIDENCE OF ABUSE WE HAVE THE ALLEGATIONS IN THE BRIEFING AND THE TWO AFFIDAVITS FROM THE INMATES WHO WERE AT FSP WITH MR. BELL KNEW THE ABUSE WAS OCCURRING.

I WILL ALSO WANT TO SPEAK TO-

>> Justice: I MEAN ON THE RECORD BEFORE COUNSEL AT THE TIME.

>> YES I'M SORRY

>> THAT IS IT.

>> Adrienne J. Shepherd,Appellant: YES FROM WHAT WE KNOW.

>> Justice: COUNSEL WOULD HAVE HAD TO FIND FROM THAT ONE STATEMENT THAT THERE IS CRUSHING ABUSE GOING ON THAT WAS RENDERING HIS DECISIONS INVOLUNTARY.

>> Adrienne J. Shepherd,Appellant: NOT NECESSARILY THAT WOULD HAVE PROMPTED COUNSEL TO SPEAK TO MR BELL AND WENT TO SPEAK TO THE FACT THAT AS FOR THE 12 WORKING HOURS WE DO NOT KNOW THAT THAT IS NOWHERE APPARENT ON THE FACE OF THE APPELLATE RECORD TRIAL COUNSEL LISA TELLS HOW MANY HOURS HE HAD TO WORK THAT IS ASSERTING A FACT INTO EVIDENCE THAT SIMPLY IS NOT THERE TRIAL COUNSEL.

>> Justice: WHAT IS THE RECORD ON THE FACE OF THE RECORD SHOWN ABOUT THE TIMING INVOLVED.

>> Adrienne J. Shepherd,Appellant: THE FIRST APPEARANCE WAS IN DECEMBER 5, 2019 THE WAIVER WAS ABOUT A WEEK LATER ON DECEMBER 13, 2019. YES IT IS SHORT AMOUNT OF TIME BUT I SUBMIT THAT IN ONE WEEK COUNSEL COULD SPEAK TO ITS CLIENT I SAVED THEM ABOUT ONE MINUTE AND OR CLAIMANT LEFT I WON'T GET TO MY SECOND POINT I WILL SIMPLY CONCLUDE THAT WE ARE REQUESTING THAT THIS COURT REMEDY THE EXTREME CONSTITUTIONAL VIOLATION THAT WAS CAUSED BY MR BELL'S INVOLUNTARY WAIVER OF THE RIGHT TO COUNSEL. WE OFFERED TWO AVENUES FOR RELIEF THAT THIS COURT MAY TAKE IN THE BRIEFING FOR THE FIRST OF COURSE IS TO REMAND FOR EVIDENTIARY HEARING PURSUANT TO FLORIDA RULE

OF CRIMINAL PROCEDURE 3.85 1F THAT WE CAN HAVE A FULL AND FAIR EVIDENTIARY HEARING AND GET ALL THE EVIDENCE ON THE RECORD TO ANSWER YOUR HONORS QUESTIONS IN THE ALTERNATIVE UNDER FIGUEROA

[LISTING NAMES] WE ARE REQUESTING THAT THIS COURT VACATE MR BELL'S DEATH SENTENCE AND REMAND TO THE LOWER-COURT FOR NEW PENALTY PHASE WHERE HE CAN SAFELY APPRISE HIMSELF OF THE RIGHT TO COUNSEL.

IF YOUR HONORS HAVE NO FURTHER QUESTIONS OF ME
THANK YOU. I APPRECIATE IT.

>> Chief Justice Carlos Muniz: YOU BOTH DID A GREAT JOB INTERESTING CASE.

>> Adrienne J. Shepherd,Appellant: THANK YOU.

>> Marshal: ALL RISE.