

>> Marshal Silvester Dawson: ALL RISE.

>> Chief Justice Carlos Muniz:

>> Marshal Silvester Dawson: ALL RISE.

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

>> Chief Justice Carlos Muniz: WE WILL NOW TAKE UP SC2022-1207 FLORIDA DEPARTMENT OF CORRECTIONS V MCMILLAN GOULD.

>> THANK YOU MR CHIEF JUSTICE AND MAY IT PLEASE THE COURT CHRISTOPHER BAUM FOR THE PETITIONER. IN 2014 TO LEGISLATURE SIGNIFICANTLY INCREASED PUNISHMENT FOR SEX OFFENDERS. AS RELEVANT HERE THE LEGISLATURE ENACTED SECTION 944.275 4E WHICH PROHIBITS THE DEPARTMENT FROM GRANTING INCENTIVE GAIN TIME TO INMATES WHOSE OFFENSES WERE "A VIOLATION OF AMONG OTHER THINGS THE SEXUAL BATTERY STATUTE. NOW PRECEDENTS PRACTICE AND POLICY ALL MAKE CLEAR THAT THE LEGISLATURE WAS USING A TERM OF ART WHEN USIN THE TERM A VIOLATION OF. THAT TERM OF ART ENCOMPASSES ATTEMP DEFENDERS LIKE THE RESPONDENT HERE

>> BEFORE YOU GET INTO THAT CAN WE ASK YOU IS OUR DECISION ON THIS ACADEMIC IN LIGHT OF THE STATUTORY CHANGES. I'M ASKING BECAUSE IT SEEMS LIKE NOW IF SOMEBODY WHO COMMITTED ONE OF THESE CRIMES GOES AND SAYS OKAY I WOULD LIKE TO BE CONSIDERED FOR INCENTIVE GAIN TIME AND YOU OPEN UP THE STATUTE BOOK IT SEEMS LIKE NOW BECAUSE OF THE CHANGE OF THE LEGISLATURE MADE WHETHER THEY NEEDED TO HAVE DONE THIS OR NOT THEY ARE CLEARLY DISTINGUISHING BETWEEN THE PERIOD BETWEEN OCTOBER 2014 AND JULY 2023 AND THEY ADDED.

ATTEMP TO THE OTHER ASSUMING THE CALCULATION IS GOING TO BE DONE AT THE TIME WHEN THE STATUTE IS IN EFFECT DOES IT REALLY MATTER WHAT WE SAY ABOUT WHAT THE PREVIOUS WORDING OF THE STATUTE MEANT?

>> I CERTAINLY THINK IT DOES MATTER YOUR HONOR I THINK IT IS PEGGED TO WHEN THE OFFENSE WAS COMMITTED THE PRIOR VERSION OF THE STATUTE WHICH IS AT ISSUE HERE I THINK IT APPLIES TO ALL OFFENSES COMMITTED AFTER 2014 NEW VERSION OF THE STATUTE IS ONLY AFTER 2023 SO IT'S ONLY PROSPECTIVE. YOU ARE ONLY STILL TALKING ABOUT UNIVERSAL OFFENDERS WHO FALL INTO THAT WINDOW.

>> Chief Justice Carlos Muniz: THE REVISED STATUTE SPECIFICALLY DEALS WITH 2014 AND 2023 ON ITS FACE?

IT ACCOUNTS FOR THAT GAP AND IT TREATS THEM DIFFERENTLY.

>> I DON'T THINK IT TREATS THEM ANY DIFFERENTLY ACCORDING TO THE TERMS OF THE STATUTE.

I'D BE HAPPY TO HEAR HOW IT TREATS THEM DIFFERENTLY.

>> Chief Justice Carlos Muniz: I'M SORRY GO AHEAD.

>> Justice Charles Canady: ON ITS FACE IT SURE LOOKS DIFFERENT.

>> AS TO THE NEW OFFENDERS THAT IS TRUE.

>> Justice Charles Canady: YOU COMPARE THE TWO. THERE IS SOMETHING NEW NOW, THE SCOPE OF IT HAS BROADENED UNDER THE PLAIN TERMS.

FROM WHAT IT WAS UNDER FROM THE EARLIER PERIOD.

>> I THINK THE STATUTE IS MORE CLEAR THAT THAT IS WHO IT APPLIES TO A DON'T THINK THE LEGISLATURE THE NEW STATUTE IN 2023 HAS ANY EFFECT ON THE ORIGINAL MEANING ON THE TEXT THE LEGISLATURE ENACTED IN 2014

> RIGHT MY POINT IS IT EVEN MATTER THERE IS NO WAY WE CAN NOW READ E1 IT IS WRITTEN AND SAY THAT IS A VIOLATION AND INCLUDES ATTEMPTS BECAUSE OF THE CONTEXT WITH WHAT IS BEEN ADDED RIGHT AFTER IT SO THAT IS NO LONGER AN OPTION.

>> I'M NOT SURE I AGREE WITH THAT I DON'T SEE WHY THE COURT COULD READ OR CANNOT READ " A VIOLATION TO INCLUDE AN ATTEMPT INCLUDE THIS PARTICULAR LEGISLATURE THOUGHT IMPORTANT TO CLARIFY THAT BECAUSE IT KNEW THIS CASE WAS PENDING.

>> Chief Justice Carlos Muniz: THE WAY THE STATUTE IS WRITTEN NOW HE WOULD SAY WE CAN STILL READ L E1 TO COVER ATTEMPTS EVEN THOUGH E2 TO MAKES A FULLY CONTEXTUAL DISTINCTION BETWEEN ATTEMPTS AND FULLY COMPLETED CRIMES.

>> YES YOUR HONOR I DO.

I DON'T THINK THIS LEGISLATURE'S ATTEMPT TO CLARIFY FOR THIS COURT THAT IT AGREED WITH THE DEPARTMENT'S INTERPRETATION OF THE STATUTE HAS ANY EFFECT ON THE ORIGINAL MEANING OF WHAT THE LEGISLATURE PROVIDED IN 2014 THAT IS WHAT THIS COURT IS LOOKING TO WHAT DID THE LEGISLATOR MEAN IN 2014.

>> Chief Justice Carlos Muniz:I AGREE WITH YOU THE POINT IS THAT STATUTE IS NOT THERE ANYMORE NOW IF THE DOC IS TRYING TO CALCULATE WHETHER SOMEBODY CAN BE ENTITLED TO THIS THEY WILL NOT LOOK AT WHAT THE OLD STATUTE SAID THEY WILL LOOK AT THIS IS THAT PREMISE INCORRECT.

>> I DON'T BELIEVE THAT IS INCORRECT I HAVE TO TAKE ANOTHER LOOK AT THAT.

>> Chief Justice Carlos Muniz: WHICH SEEMS IT MAKES THE WHOLE THING ACADEMIC.

>> Christopher Baum: I DON'T BELIEVE IT DOES.

>> Justice Charles Canady: BUT THAT IS INCONSISTENT WITH WHAT YOU SAID EARLIER IF I UNDERSTOOD WHAT YOU SAID EARLIER YOU SAID WHEN THEY ARE DETERMINING GAIN TIME THEY LOOK AT THE GANTIME REGIME STATUTORY REGIME THAT WAS IN EFFECT AT THE TIME THE OFFENSE WAS COMMITTED SO THEY WOULD NOT LOOK AT THIS STATUTE THEY WOULD GO BACK AND LOOK AT ACCORDING TO WHAT YOU SAID EARLIER TO BE CONSISTENT WITH WHAT IS BEEN DISCUSSED HERE.WHAT YOU SAID EARLIER IS THEY GO BACK AND LOOK AT THAT STATUTE TO DETERMINE GAIN TIME IS AVAILABLE.

>> I BELIEVE THAT IS CORRECT YOUR HONOR. SO YOUR ANSWER TO JUSTICE MUNIZ QUSTION IF I'M UNDERSTANDING CORRECTLY IT IS ACADEMIC AS TO THE PERSON WHO COMMITS AN OFFENSE TODAY BUT NOT ACADEMIC FOR THE CLASS OF PERSONS WHO COMMITTED OFFENSES BEFORE THE EFFECTIVE DATE OF THE STATUTE

>> THAT IS CORRECT THIS YOUR HONOR THERE IS 540 OFFENDERS THAT FALLS INTO THAT CATEGORY.

>> BUT THE NEW STATUTE THEY ADDED UNDERLINED LANGUAGE NOT WITHSTANDING SUBPARAGRAPH BLAH BLAH BLAH FOR SENTENCES IMPOSED FOR

OFFENSES COMMITTED ON OR AFTER OCTOBER 1, 2014 , NEW LANGUAGE AND BEFORE JULY 1, 2023, THE DEPARTMENT MAY NOT GRANT INCENTIVE GAIN TIME IF THE OFFENSE IS A VIOLATION OF YADA YADA

>> THAT IS EFFECTIVELY THE SAME LANGUAGE THAT WAS IN 2014 THEY MAY NOT GRANT INCENTIVE GAIN TIME IF THE OFFENSE IS A VIOLATION AS IN THIS CASE THE SEXUAL BATTERY STATUTE.

ATTEMPT OFFENDERS EXPRESSLY FALL INTO THE CATEGORY IF THE LEGISLATURE WAS USING A TERM OF ART WHEN USED THE TERM

>> CAN WE TALK ABOUT THAT THE STATE SPILLS A LOT OF INK ON THAT. CORRECT ME IF I'M WRONG THE CHARGING DOCUMENT CHARGES VIOLATIONS OF 794.0112 777.04. THE JUDGMENT OF CONVICTION CITES BOTH OF THOSE TWO STATUTES.

WHAT ARE WE DEBATING THE TECHNICAL MEANING OF IN VIOLATION OF. IT IS CLEAR THAT THOSE OF THE TWO STATUTES CHARGED THE DEFENDANT IS GUILTY AS CHARGED. WHATEVER THE TECHNICAL MEANING OF IN VIOLATION OF IS THOSE ARE THE TWO STATUTES THEY ARE BOTH CHARGED THOSE OF THE COUNT OF CONVICTION END OF STORY IT'S CLEARLY IN VIOLATION OF WHETHER IT'S A TERM OF ART OR IN PLAIN SORT OF LAYPERSON ENGLISH. IT WOULD SEEM TO ME IF THE CHARGING DOCUMENT AND THE JUDGMENT OF CONVICTION CHARGE BOTH STATUTES WE DON'T NEED TO GET INTO ANY OF THIS. WHAT DOES THE LAW OF ATTEMPT INCLUDE?

THEY ARE CHARGED AND HE IS CONVICTED OF THOSE THINGS. WHY DOESN'T THAT JUST END THE INQUIRY >> IF THAT ENDS INQUIRY FOR YOU IT ENDS INQUIRY FOR ME. I THINK COMMON SENSE BOLSTERS THAT INTERPRETATION BECAUSE THE STATUTE IS A DIRECTIVE TO THE DEPARTMENT IT SAYS TO DEPARTMENT HERE ARE THE PEOPLE YOU MAY NOT GIVE INCENTIVE GAIN TIME TO WHEN THEY'RE GOING THROUGH LOOKING AT THESE INMATES AND THEY'RE SAYING DOYOU GET INCENTIVE GAIN TIME THEY LOOK AT THE STATUTE AND SAY IF YOUR OFFENSE WAS IN VIOLATION OF THE SEXUAL BATTERY STATUTE YOU DON'T GET IT.

LET ME LOOK AT YOUR JUDGMENT IT SAYS HERE THAT YOUR OFFENSE WAS A VOLITION OF THE SEXUAL BATTERY STATUTE YOU DON'T GET IT. IT SEEMS LIKE COMMON SENSE BOLSTERS THAT CONCLUSION.

>> ONE THING THAT DOESN'T END INQUIRY IS TRULY A TERM OF ART OR IS IT CONSTRUCTION IF IT'S A TERM OF ART IS IT YOUR POSITION THAT A VIOLATION OF THROUGHT CRIMINAL LAW INCLUDES ATTEMPTS IN EVERY CIRCUMSTANCE.

>> Christopher Baum: I DON'T KNOW THAT WE HAVE TO GO THROUGH ALL OF CRIMINAL I THINK WOULD APPLY IN THIS CONTEXT AND THE MANDATORY PROBATION CONDITION STATUTE.

>> Justice Meredith Sasso: IT IS REALLY MORE A PRIOR CONSTRUCTION ISSUE I KNOW THOSE A RELATED RULES. BUT BECAUSE OF THE WAY THE DISTRICT COURTS INTERPRETED UP TO THE ADOPTION OF THE STATUTE THAT IS REALLY WHAT INFORMS THE CONTEXT OF A VIOLATION OF THE CONTEXT OF SEX OFFENDER

STATUTE

>> I THINK THAT IS ONE WAY TO LOOK AT IT YOUR HONOR IS THAT THE LEGISLATURE KNEW HOW THE COURTS WERE CONSISTENTLY USING THIS TERM IN BOTH THE CONTEXT OF ATTEMPTED SEXUAL BATTERY OF BEING A VIOLATION OF THE SEXUAL BATTERY STATUTE AND IN THE CONTEXT OF THE MANDATORY PROBATION CONDITION STATUTES THE LEGISLATURE CAN LOOK AT THAT AND SAY HOW DO COURTS USE THIS TERM?

HOW DO PROSECUTORS USE THIS TERM WHEN THEY CHARGE PEOPLE HOW DO COURTS USE THIS TERM IN JUDGMENTS?

ALL OF THOSE CONCLUSIONS POINT IN THE SAME DIRECTION FOR LEGISLATURE USE THE TERM AS WAS USED BY EVERYONE ELSE TO ENCOMPASS ATTEMPT OFFENDERS IN THIS CONTEXT. I THINK THE UNDERLYING POLICY IN 2014 SUPPORTS THAT CONCLUSION AS WELL. IN 2014 THE LEGISLATURE SIGNIFICANTLY INCREASED PUNISHMENTS FOR SEXUAL OFFENDERS AND THERE IS NO INDICATION THAT THEY INTENDED TO GRANT ANY ADDITIONAL LENIENCY TO ATTEMPT OFFENDERS IN THAT STATUTE.

IN FACT IT WOULD BE CREATING STRANGE CONSEQUENCES THAT MY FRIEND DOES NOT ADDRESS WERE A VERY SERIOUS ATTEMPT OFFENDER WAS SUBJECT TO PERHAPS A SENTENCE OF 30 YEARS WOULD BE ENTITLED TO INCENTIVE GAIN TIME WHILE A RELATIVELY MINOR OFFENDER WHO COMPLETED THE OFFENSE WOULD BE ENTITLED TO INCENTIVE GAIN TIME.

THERE IS NOTHING TO INDICATE THAT THE LEGISLATURE INTENDED SUCH STRANGE CONSEQUENCES. FOR ALL THESE REASONS WE THINK.

>> Justice Charles Canady: WHAT I STRUGGLE WITH THERE IS A DIFFERENCE BETWEEN A VIOLATION OF THE UNDERLYING STATUTE THE PROHIBITION OF SEXUAL BATTERY WHATEVER AND A VIOLATION OF THE ATTEMPT STATUTE.

FOR AN ATTEMPT TO VIOLATE THAT STATUTE.

SOMEBODY GETS CONVICTED OF THE SEXUAL BATTERY THAT'S A DIFFERENT PENALTY.

THESE ARE NOT THE SAME . SOMETIMES IN A TRIAL THE WHOLE ARGUMENT WILL BE OVER WHETHER IT WAS AN ATTEMPT OR A COMPLETED OFFENSE.

IT MAKES A BIG DIFFERENCE BETWEEN WHETHER IT WAS AN ATTEMPT OR COMPLETED OFFENSE. ISN'T THAT CORRECT?

THAT IS PART OF THE FRAMEWORK OF THE LAW ALSO.

>> Christopher Baum: CERTAINLY THEY ARE DIFFERENT OFFENSES. THE COMPLETED OFFENSE IS SUBJECT WITH ONE PUNISHMENT TANDHE ATTEMPT OFFENSE IS SUBJECT ONE STEP DOWN UNDER THE CRIMINAL PUNISHMENT CODE THAT DOESN'T SAY ANYTHING ABOUT WHETHER THE ATTEMPT OFFENSE IS ALSO A VIOLATION OF THE SUBSTANTIVE OFFENSE. BECAUSE THERE IS NO SUCH THING.

>> Justice Charles Canady: IN A TECHNICAL SENSE IT CAN'T BE BECAUSE ALL OF THE ELEMENTS. TO HAVE A VIOLATION OF SEXUAL BATTERY YOU'VE GOT TO SHOW THAT ALL OF THE ELEMENTS WERE PROVED. IF THERE IS AN ATTEMPT THAT MEANS THEY WERE NOT PROVED

>> I THINK THAT ASSUMES THE CONCLUSION YOUR HONOR. I THINK THAT ASSUMES WHAT VIOLATION MEANS IN THIS CONTEXT. SAY THAT A VIOLATION IS ONLY FOR COMPLETED OFFENSE THAT IS ASSUMING THAT THE VIOLATION IS ONLY FOR A COMPLETED OFFENSE. I THINK HERE YOU HAVE THE COURTS PROSECUTORS JUDGMENTS ALL USING THE TERM VIOLATION OF WHEN TALKING ABOUT AN ATTEMPT OFFENSE TO REFER TO THE SUBSTANTIVE STATUTE. FOR EXAMPLE TAKE SOMEBODY WHO ATTEMPTED TO CLIMB OVER OFFENSE AND TRESPASS ONTO GOVERNMENT PROPERTY. AND THEY WERE CAUGHT DURING THE ATTEMPT. NOW YOU WOULD SAY THAT COMMITTED A VIOLATION OF LAW. YOU SAY WELL OKAY WHAT LAW?

THE ATTEMPT STATUTE.

HE WOULD SAY ATTEMPT TO DO WHAT?

YOU CAN'T JUST BE CONVICTED OF ATTEMPT.

>> SIMILARLY CONSIDER AIDING AND ABETTING ISN'T THAT ANOTHER WAY TO FRAME THIS STRIKEOUT ATTEMPT AND SAY THAT HERE THE DEFENDANT WAS CHARGED WITH AIDING AND ABETTING AND THE SUBSTANTIVE OFFENSE. CONVICTED OF AIDING AND ABETTING THAT CRIME HAS NO REFERENCE WITHOUT THE SUBSTANTIVE OFFENSE. YOUR RULE WOULD SAY THAT IS IN VIOLATION OF BOTH AIDING AND ABETTING STATUTE AND THE SUBSTANTIVE OFFENSE. RIGHT.

>> I THINK THAT'S HOW IT WILL BE CHARGED I THINK THAT IS WHAT THE JUDGMENT WOULD SAY.

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>> Justice John Couriel: YOU WOULD NEVER CHARGE AIDING AND ABETTING DITTO SUBSTANTIVE OFFENSE WITH ATTEMPT.

>> Christopher Baum: THAT'S WHY I THINK IT'S A VIOLATION OF THE SUBSTANTIVE STATUTE WITHOUT THE SUBSTANTIVE STATUTE YOU HAVE NOT VIOLATED THE LAW. IN MY HYPOTHETICAL SOMEONR CLIMBING OVER AND TRYING TO TRESPASS ON GOVERNMENT PROPERTY WITHOUT THAT STATUTE THAT SAYS IT'S ILLEGAL TO DO THAT

>> THERE IS AN ATTEMPT TO VIOLATE THE SUBSTANTIVE STATUTE.

>> Chief Justice Carlos Muniz: [UNCLEAR AUDIO].

AS A MATTER OF LANGUAGE WE KNOW FROM THE NEW LAW IT IS CAPABLE OF MITIGATING AN UNDERSTANDING THE DISTINCTION BETWEEN THE ACTUAL COMPLETED OFFENSE AND THE ATTEMPT.

OTHERWISE WHAT YOU ARE SAYING THERE WOULD BE NO DIFFERENCE BETWEEN E1 AND E2.

>> Christopher Baum: THE ONLY THING THE NEW LAW MAKES CLEAR THE LEGISLATURE SAID THIS CASE WAS PENDING AND SAID IF WE LOSE THE CASE BECAUSE THIS COURT DISAGREES WITH THE DEPARTMENT WHAT WE MEANT IN 2014 WE WANT TO MAKE SURE GOING FORWARD WE ARE CRYSTAL CLEAR.

AM I CONTENDING THAT USING THE WORD A VIOLATION OF IS ABSOLUTELY AS CRYSTAL-CLEAR AS INCLUDING THE WORD ATTEMPT IN THE STATUTE?

CERTAINLY NOT. THAT DOESN'T MEAN THE LEGISLATURE COULD MEAN OR USE IT AS

A TERM OF ART OR PRIOR CONSTRUCTION AND MAKE IT OBVIOUS TO ALL INVOLVED THAT USING THAT TERM ENCOMPASSES ATTEMPT OFFENSES. WHAT ELSE.

>> Justice Meredith Sasso: TO FLIP THE QUESTION YOU WOULD AGREE IF WE PLAY ORDINARY USES ORDINARY USE OF VIOLATE YOU MIGHT NOT GET TO WHERE YOU NEED TO BE?

>> Christopher Baum: I DON'T KNOW IF THAT IS ENTIRELY TRUE YOUR HONOR. I THINK THERE WERE SOME UNDERSTANDING OF THAT WORD ORDINARY USE THAT COULD LEAD TO THAT CONCLUSION. BUT I THINK ANOTHER WAY OF LOOKING AT IS UNDER THE ORDINARY USE FOR THE DEPARTMENT TO WHOM THIS STATUTE IS DIRECTED WHAT IS THE PERSON LOOKING AT THE INMATES RECORD WHETHER THEY ARE ENTITLED TO INCENTIVE GAIN TIME.

IF THIER JUDGEMENT SAYS

WHEN IT SAYS IT ECHOES THE THIER OFFENSE WAS A VIOLATION OF THE SUBJECT STATUTE IT WOULD NOT BE COMMON SENSE TO SAY YES BUT IT WAS AN ATTEMPT OFFENSE AND THAT DOES NOT MEET THE DEFINITION OF THE STATUTORY LANGUAGE. I THINK IN THAT SENSE THEY ARE COMPETING COMMON SENSE UNDERSTANDINGS OF HOW THIS WOULD COME OUT.

IN ANY EVENT I DON'T THINK THE COMMON SENSE CARRIES THE DAY BECAUSE YOU'RE SUCH STRONG EVIDENCE.

>> Justice Meredith Sasso: CAN YOU TALK ABOUT METHODOLOGY A LITTLE BIT. WHY DO WE LOOK AT THE STATUTE AND CONCLUDE IT'S A TERM OF ART PRECONSTRUCTION FROM THE CONTEXT.

>> Christopher Baum: I THINK YOU LOOK AT IT FROM CONTEXT BECAUSE YOU LOOKED UP BACKDROP OF PRECEDENT IN WHICH IT WAS ENACTED SO RIGHT WHEN STATUTE WAS PASSED IN THE FIFTH DISTRICT. THE FIFTH DISTRICT ISSUED A DECISION WERE USED IN THE TERM EXACTLY AS WE ARE DEFINING HERE.

THAT USAGE WAS CONSISTENT WITH THE DECADES OF JUDICIAL DECISIONS USING IT THE SAME WAY. IN BOTH THIS SPECIFIC CONTEXT OF ATTEMPTED SEXUAL EVERY BEING A VIOLATION OF THE SEXUAL BATTERY STATUTE AND IN OTHER CONTEXTS LIKE THE MANDATORY PROBATION CONDITIONS CONTEXT I MENTIONED. YOU HAVE THEBACKDROP OF PRECEDENT YOU HAVE THE BACKDROP OF PROSECUTORIAL PRACTICE AND CHARGING PRACTICE. YOU HAVE THE BACKDROP OF THE JUDGMENTS WHICH IS WHAT THE DEPARTMENT TO WHOM THE STATUTE IS DIRECTED IS GOING TO LOOK TO. AND YOU HAVE THE POLICY. NOTHING IN THE 2014 STATUTE INDICATES THAT THERE WAS ANYTHING THAT THE LEGISLATURE WANTED IN ANY WAY TO CARVE OUT THESE ATTEMPT OFFENDER'S FOR SOME TYPE OF MORE LENIENT TREATMENT THAN THE COMPLETED OFFENSES.

FOR ALL THESE REASONS WE THINK THE DEPARTMENT'S INTERPRETATION IS CORRECT.

>> CAN I ASK YOU ONE THINK BRIEFLY I DON'T THINK IT TO BE TALKED ABOUT THIS IN THE BRIEFING.

IS THERE ANY CONCEIVABLE APPLICATION OF THE RULE OF.

VALIDITY. WHEN THE STATUTE SPECIFIES THESE OFFENSES THAT ARE SUBJECT TO GAIN TIME NOT IN A WAY THAT IS A DEFINITION OF AN OFFENSE AND WHEN WE LOOK AT THE DEFINITION OF OFFENSES, THE ACCUSED IS ENTITLED TO THE BENEFIT OF THE DOUBT?

>> Christopher Baum: FOR A COUPLE OF REASONS THE RULE OF VALIDITY HAS NO APPLICATION THIS IS NOT A SUBSTANTIVE CRIMINAL STATUTE THIS IS SOMETHING SETTING FORTH WHEN THE DEPARTMENT MAY GRANT INCENTIVE GAIN TIME WITHIN ITS DISCRETION TO CERTAIN OFFENDERS. IT IS NOT A QUESTION OF WHETHER DOES THE CRIMINAL DEFENDANT HAVE NOTICE OF WHAT TYPE OF OFFENSE THEY WOULD BE PUNISHED FOR.

EVEN IF THERE THE RULE OF VALIDITY COULD APPLY IN THIS CASE COULD APPLY IT DOESN'T APPLY HERE BECAUSE THIS COURT HAS MADE CLEAR THAT THE RULE OF VALIDITY APPLIES TO ONLY AFTER EXHAUSTING ALL OF THE TRADITIONAL TOOLS OF STATUTORY CONSTRUCTION THE COURT IS STILL LEFT WITH A GRIEVOUS AMBIGUITY ABOUT WHAT TO DO WHAT THE STATUTE MEANS?

I DON'T THINK THERE'S ANY QUESTION USING THE TRADITIONAL TOOLS OF STATUTORY INTERPRETATION THE COURT CAN COME TO A CONCLUSION ONE WAY OR THE OTHER.

I WILL RESERVE WHATEVER TIME I HAVE LEFT FOR REBUTTAL.

>> Terrance Kehoe, Respondent Atty: YOUR HONORS MAY IT PLEASE THE COURT MY NAME IS TERRANCE KEHOE I REPRESENT THE RESPONDENT IN THIS CASE MCMILLAN GOULD. THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL MUST BE AFFIRMED BECAUSE THE GAIN TIME STATUTE AT ISSUE 944.2754E DOES NOT APPLY MR GOULD'S CONVICTION FOR ATTEMPTED SEXUAL BATTERY. THE FACT THAT JUDGMENT AND CHARGING DOCUMENT STATES THAT 794.011 WAS A VIOLATION DOES NOT RESOLVE THIS ISSUE. THE QUESTION IS DID HE COMMIT A VIOLATION OF SECTION 794.011 AS JUSTICE CANADY POINTED OUT TO PROVE A VIOLATION OF SECTION 794.011 IF YOU LOOK AT HUNDRED PROSECUTORS IT WILL TELL YOU YOU HAVE TO LOOK AT THE TEXT OF 794.011 I THINK SUBSECTION 2 HAS THE CRIMS AND YOU HAVE TO BE ABLE TO POINT TO SOMEWHERE IN THAT STATUTE THAT THIS DEFENDANT VIOLATED. YOU CANNOT DO THAT IN MR. GOULD'S CASE BECAUSE WHAT HE VIOLATED HIS 777.04. 777.04 IS AN INDEPENDENT STATUTE AND THROUGHOUT THE STATUTE FIRST OF ALL SUBSECTION NUMBER ONE SETS FORTH A CRIME

>> IS THE JUDGMENT OF CONVICTION WRONG TO STATE THE SUBSTANTIVE OFFENSE.

>> Terrance Kehoe, Respondent Atty: IT IS.

>> Justice John Couriel: WOULD YOUR POSITION BE EVERY TIME A DEFENDANT IS CONVICTED OF AN ATTEMPT TO COMMIT SOME SUBSTANTIVE CRIME THE PROPER RULING TO EMERGE FROM OUR COURT WOULD BE THE JUDGMENT OF CONVICTION SHOULD ONLY STATE THE CRIME OF ATTEMPT WITH REFERENCE TO NO OTHER ELEMENT OR NO OTHER SUBSTANTIVE OFFENSE?

>> Terrance Kehoe, Respondent Atty: THE PROBLEM IS THE JUDGMENT OF CONVICTION OR THE CLERK DOES A JUDGMENT OF CONVICTION TAKES WHATEVER IS IN THE

CHARGING DOCUMENT.

>> Justice John Couriel: WE HOLD THOSE JUDGMENTS OF CONVICTIONS PRETTY SERIOUSLY IN REGARD.

>> THERE IS NO QUESTION ABOUT IT BUT THE WAY THOSE NUMBERS GETTING THERE IS THE CLERK TAKES IT FROM THE CHARGING DOCUMENT AND PUTS IT IN THERE.

THERE IS NO JUDGE THAT IS LOOKING AT THAT AND SAYING THESE ARE THE RIGHT NUMBERS AND THOSE ARE NOT THE RIGHT NUMBERS. BUT THE BOTTOM LINE IS.

>> IS IMPORTANT TO KNOW WHAT THE ATTEMPT RELATES TO BECAUSE YOU CAN'T DETERMINE THE PENALTY WITHOUT KNOWING WHAT IT RELATES TO.

>> Terrance Kehoe, Respondent Atty: WE AGREE THAT YOU CAN'T ATTEMPT IN THIN ARE. AN ATTEMPT YOU HAVE TO HAVE THE ATTEMPT AND YOU GOT TO HAVE A CRIMINAL STATUTE SET FORTH IN FLORIDA LAW THAT THE PERSON ATTEMPTED TO COMMIT. THAT PUTS THE DEFENDANT ON NOTICE.

TO SATISFY DUE PROCESS AND NOTICE REQUIREMENTS TO LET THE DEFENDANT KNOW WHAT IS IT THAT WE THINK YOU ATTEMPTED TO DO WRONG?

BUT THAT IS DIFFERENT FROM SAYING THE DEFENDANT YOU COMMITTED A SEXUAL BATTERY.

>> AREN'T THERE WORDS FOR THAT TO THE TERM OF ART DISCUSSION IN VIOLATION OF IS BROADER THAN A CONVICTION OF THIS SUBSTANTIVE OFFENSE?

>> Terrance Kehoe, Respondent Atty: THE DEPARTMENT IS USING THE TERM OF ART TO TRY TO GET AROUND THE PLAIN LANGUAGE THE PLAIN LANGUAGE IS A VIOLATION THERE IS NO AMBIGUITY HERE. COMMON SENSE TELLS YOU THAT A VIOLATION OF MEANS HE COMMITTED TO THAT SPECIFIC STATUTE. WE KNOW HE DID NOT COMMIT 794.011.

FIRST DCA SAYS COMMON SENSE REQUIRES YOU TO UNDERSTAND THAT YOU ARE CHARGED WITH ATTEMPTING TO DO SOMETHING THAT MEANS THAT YOU DIDN'T GET ALL OF THE WAY TO THE COMPLETED ACT.

AGAIN YOU HAVE TO LOOK AT 704 THE ATTEMPT STATUTE.

SUBSECTION 1 THEY TELL YOU WHAT IT IS.

WHAT IS ATTEMPT TALK. THROUGHOUT IT TALKS ABOUT THE CRIMINAL ATTEMPT SIX TIMES IN SECTION 4 AND IT TALKS ABOUT THE SUBSTANTIVE OFFENSE YOU HAVE TO VIOLATE. THE OTHER PART ABOUT IT IN SECTION 4, IT TALKS ABOUT I'M GOING TO READ THE LANGUAGE. IT DIFFERENTIATES FOR PENALTY PURPOSES FOR THE PURPOSE OF SENTENCING AND IT SAYS IN DETERMINING GAIN TIME ELIGIBILITY. RIGHT THERE IN THE ATTEMPT STATUTE IT IS DRAWING A DISTINCTION THE TYPE OF CRIME, THE TYPE OF PENALTY, GAIN TIME ELIGIBILITY IS DIFFERENT FROM THE SUBSTANTIVE OFFENSE.

774 ALL SET THAT OUT AND IT SETS OUT SPECIFIC DEFENSES IT SETS SPECIFIC JURY INSTRUCTIONS FOR ATTEMPT.

THIS IS A PLEA CASE.

THERE IS NO WAY THAT YOU CAN LOOK AT THIS CHARGE AND SAY THAT NO, THIS IS A CONVICTION UNDER 794 THE SEXUAL BATTERY 794.011 INSTEAD OF THE ATTEMPT

STATUTE.

>> I'M SORRY TO INTERRUPT WE UNDERSTAND THE LITERAL ARGUMENT YOU ARE MAKING OBVIOUSLY IT HAS SOME FORCE IT PERSUADED THE FIRST DCA. CAN YOU RESPOND TO WHY IF WE DON'T PUT THE BLINDERS ON AND LOOK AT IT LITERALLY, WHAT YOU DISAGREE ABOUT THE MORE CONTEXT INFORMED ARGUMENT? DO YOU HAVE AN ARGUMENT THAT IT WAS NOT AS CLEARLY ESTABLISHED AT THE TIME THE LEGISLATURE USED THESE WORDS?

>> Terrance Kehoe, Respondent Atty: THE CASES I CITED IN THE BRIEF.

[LISTING NAMES] THE ONLY HOMICIDE.

THIS COURT SAID ATTEMPTED HOMICIDE IS NOT A HOMICIDE OFFENSE TO HAVE A HOMICIDE OFFENSE YOU HAVE TO HAVE A DEATH AND IN AN ATTEMPTED HOMICIDE YOU DON'T HAVE A DEATH SO ATTEMPTED HOMICIDE IS NOT A VIOLATION OF 782.04. THE SAME THEORY HERE.

YOU HAVE AN ATTEMPT BUT YOU DON'T HAVE THE COMPLETED CRIME.

AN ATTEMPTED SEXUAL BATTERY IS NOT A VIOLATION OF THE SEXUAL BATTERY CRIME FOR THE SAME REASON THAT ATTEMPTED HOMICIDE IS NOT A VIOLATION OF THE HOMICIDE STATUTE.

YOU CAN TALK ALL OF YOU WANT ABOUT PRACTICE AND ALL OF THAT STUFF. BUT THE ONLY 4 CASES THAT HAVE EVER DISCUSSED GAIN TIME AND ATTEMPTED SEXUAL BATTERY HAVE SAID THAT A PERSON CONVICTED OF ATTEMPTED SEXUAL BATTERY IS ELIGIBLE FOR GAIN TIME . WETHER BASIC ON SOME CASES OR INCENTIVE UNDER GOULD.

ONE OF THEM IS FROM THE FIFTH DCA.

THE FIFTH DCA THE CASE THAT THE STATE IS ARGUING ARE ALL SEX OFFENDER PROBATION CASES FOR ATTEMPTED SEXUAL BATTERY. IF GOULD IS ALLOWED TO STAND WE WILL CHANGE THE LAW ON SEXUAL OFFENDER PROBATION. THAT IS NOT TRUE UNDER THE SEXUAL OFFENDER STATUTE AND THE SEXUAL PREDATOR STATUTE ATTEMPTS ARE ALREADY INCLUDED.

THE LAW IS NOT GOING TO CHANGE.

WHAT HAPPENS NOW IS THE LEGISLATURE IN 2014, THAT'S WHY THEY ARE RELYING ON THIS BIG CHANGE IN THE LAW. [LISTING NAMES] IS 1996 IN THE FIRST DCA SAID ATTEMPTED SEXUAL BATTERY IS ELIGIBLE FOR GAIN TIME.

ALL OF THOSE YEARS.

[LISTING NAMES] IS ON THE BOOKS AND THERE IS NO ADDITIONAL LINE WHICH.

THEN GOULD COMES ALONG IN THE LEGISLATURE SAYS WE NEED TO CLEAR THAT UP WE WANT TO CHANGE THAT.

WHICH IS THEIR PREROGATIVE NO PROBLEM.

I THINK THE QUESTION CAME UP EARLIER.

I THINK CHIEF JUSTICE YOU RAISED IT. THE 2023 STATUTE DOES NOT APPLY TO THIS APPEAL.

>> Chief Justice Carlos Muniz: WILL IT APPLY TO YOUR CLIENT REGARDLESS.

>> Terrance Kehoe, Respondent Atty: I DON'T THINK APPLIES TO MY CLIENT MY CLIENT IS UNDER THE GAIN TIME REGIME THAT WAS IN EFFECT WHEN HE WAS CONVICTED IN

2016 ON OUT.

THE 2023 STATUTE SAYS, IT APPLIES TO PEOPLE CONVICTED OF ATTEMPTS SOLICITATION, CONSPIRACIES AS WELL AS THE SUBSTANTIVE OFFENSES. I THINK IT SAYS ON OR AFTER JULY 1, 2023. IF GOULD WAS CONVICTED TODAY OF THIS OFFENSE NO INCENTIVE GAIN TIME ABSOLUTELY CLEAR AS A BELL. BUT MR.GOULD IF MR.GOULD WAS CONVICTED ON JUNE 30, 2023 HE DOESN'T FALL UNDER THAT STATUTE.

I THINK JUSTICE CANADY YOU ARE CORRECT. THE OLD STATUTE IS WHAT WE HAVE TO DEAL WITH.

I BRING UP THE NEW STATUTE BECAUSE IT SHOWS THE LEGISLATURE WHEN THEY WANT TO SAYCAN SAY THEY KNOW HOW TO PUT ATTEMPT IN THE STATUTE.

>> I DON'T KNOW IF THIS MAKES ANY DIFFERENCE IN TERMS OF THE ENACTMENT THIS LEGISLATION THERE IS NO INDICATION THAT THE LEGISLATURE WAS TRYING TO CLARIFY WHAT THEY HAD DONE PREVIOUSLY. SOMETIMES THE LEGISLATURE WILL SAY YOU ARE WRONG COURT THAT IS NOT WHAT WE MEANT WE ARE CLARIFYING IT TO ATTEMPT TO CLARIFY RETROACTIVELY WHETHER IT WILL WORK THAT'S A DIFFERENT QUESTION. BUT THERE WAS NOTHING LIKE THAT HERE.

>> Terrance Kehoe,Respondent Atty: JUDGE I'M GLAD YOU BROUGHT IT UP. YEARS AGO IT PREDATES ALL OF YOU.

THERE WAS A CASE.

>> Justice Charles Canady: THAT IS GOING WAY BACK.

[LAUGHTER]

>> Terrance Kehoe,Respondent Atty: IT PREDATES ALL OF YOU ON THIS COURT I SHOULD SAY I APOLOGIZE.

THERE WAS A CASE.

[LISTING NAMES] THAT DEALT WITH THE ELEMENT OF KNOWLEDGE PART OF PSSESSION OF DRUGS.

THIS COURT SAID THE VERY NEXT LEGISLATIVE SESSION THEY SAID WE ARE CHANGING THE STATUTE BECAUSE WE THINK BEFORE THE SUPREME COURT GOT IT WRONG IN.

[LISTING NAMES].

THAT IS ONE OF THE FIRST STATUTES IS 893.

IT SAYS THAT PLAIN AS DAY. THEY DIDN'T SAY THAT HERE THEY SAID YOU KNOW WHAT WE ARE GOING TO CHANGE ALL OF THE STUFF IT IS NOT JUST 944.275 THAT THEY CHANGED. THEY CHANGED A BUNCH OF STUFF TO MAKE SURE THAT ATTEMPTS, CONSPIRACIES AND SOLICITATIONS ARE NOW NOT ELIGIBLE FOR IN OUR CASE GAIN TIME AND SOME OF THE CASES FOR SOME OTHER STUFF.

THAT IS A REACTION TO AN OPINION IT IS NOT SAYING THE FIRST DCA GOT WRONG IN GOULD. IT IS SAYING WE DON'T LIKE THAT AND WE WANT TO CHANGE THAT PROSPECTIVELY.

THE IDEA THAT HISTORICALLY THIS IS A VIOLATION HAS TO BE BOTH ATTEMPT AND WHATEVER THE SUBSTANTIVE OFFENSE IS. I MENTIONED.

[LISTING NAMES].

A COUPLE OF CASES OUT OF THIS COURT THAT THE STATE RELIES ON FOR THE IDEA BOTH WETHERSPOON OR.

[LISTING NAMES] I'M NOT SURE HOW IT IS PRONOUNCED.

IS HOW IT IS SPELLED.

TH A VIERE IT SAYS A VIOLATION OF ATTEMPTED MURDER IS CODIFIED IN 774.04

782.04 IT WAS CODIFIED IN THE ATTEMPT PLUS THE SUBSTANTIVE.

AS THE FIRST DCA POINTS OUT THAT IS NOT SAYING IT IS A VIOLATION THE ATTEMPTED HOMICIDE IS A VIOLATION OF THE HOMICIDE STATUTE. THE COURT OLREADY SAID BEFORE THAT IN.

[LISTING NAMES] IT IS NOT.

THE FACT THAT THEY PICKED ONE SENTENCE OUT OF AN EIGHT PAGE OPINION AND SAYS IT SUPPORTS THEIR ARGUMENTS THOSE CASES HAVE TO DO WITH LESSER INCLUDED OFFENSES . NOBODY IS MAKING AN ANALYSIS IN THAT CASE OF WHAT THE ATTEMPT IS.

>> WHY AREN'T THOSE CASES INSTRUCTIVE FOR THE WAY LANGUAGE IS USED A VIOLATION OF THE SUBSTANTIVE STATUTE LIKE IN CHARGING DOCUMENTS AND JUDGMENTS AND IT SAYS AND IN THESE CASES DISCUSSING LESSER INCLUDED ETC.

>> Terrance Kehoe, Respondent Atty: THE REASON I BRING THEM UP THERE ARE TWO CASES THAT ARE HEAVILY RELIED UPON IN THE DEPARTMENTS BRIEF. MY ARGUMENT IS THEY DON'T DECIDE THIS ISSUE AT ALL. THERE IS LINE WHICH IN THERE THAT THE STATE RELIES ON BUT THAT LANGUAGE DOESN'T RESOLVE THIS ISSUE NOW BEFORE THE COURT. IT DOESN'T SAY IF YOU ATTEMPT IF YOU ARE CONVICTED OF ATTEMPTED HOMICIDE YOU'VE VIOLATED A HOMICIDE STATUTE.

THAT IS WHAT THE EQUIVALENT WHAT THAT WOULD BE FOR THE GOULD SITUATION. NEITHER OF THOSE CASES SAY THAT. IN FACT I WOULD BE CONTRARY TO THIS COURT'S DECISION IN.

[LISTING NAMES] WHICH IS ONLY A 26 TEAM CASE. VERY RECENT. 70 -YEAR-OLD CASE TIPTON FROM THE 50S.

I'M JUST POINTING THEM OUT TO SHOW WHY I THINK THE STATE'S ARGUMENT IS WRONG.

THAT'S WHY I BRING IT UP. THE OTHER THING IS THERE IS ONLY FOUR CASES I CAN FIND TO DISCUSS GAIN TIME FOR ATTEMPTED SEXUAL BATTERY. THEY GO MY WAY. TWO OF THE FIRST DISTRICT 1 OUT OF THE FIFTH AND ONE OF THE SECOND I CAN GUARANTEE YOU THE TWO OUT OF THE FIFTH AND SECOND ARE.

[LISTING NAMES].

THEY SAY WITH ATTEMPTED SEXUAL BATTERY GUIDE WOULD BE ELIGIBLE FOR GAIN TIME.

THE STATE HAVE THESE TERMS OF ART BUT THEY HAVE NO CASE IN ALL THE YEARS THAT GAIN TIME HAS BEEN IN EXISTENCE IN THE STATUTE 944.275 THEY HAVE NO CASE THAT SAYS ATTEMPTED SEXUAL BATTERY THE PERSON IS NOT ELIGIBLE FOR GAIN TIME.

OBVIOUSLY IN 2022.

>> Justice Meredith Sasso: WASN'T THERE AN OCCASION THAT THE FIRST NEEDED

DISCERN THEY NEEDED TO RESEED FROM PRECEDENT TO REACH DECISION HERE?

>> Terrance Kehoe, Respondent Atty: I APOLOGIZE JUSTICE I'M NOT HEARING.

>> Justice Meredith Sasso: IF YOU TAKE WILCOX FOR EXAMPLE.

IN THE FIRST DCA WHY COULDN'T THAT CASE HAVE BEEN INFORMATIVE IN DETERMINING WHETHER OR NOT.

>> Terrance Kehoe, Respondent Atty: BECAUSE WILCOX IS A SEXUAL OFFENDER PROBATION CASE IT IS NOT A GAIN TIME CASE.

GOULD IS A GAIN TIME CASE.

WILCOX HAVE TO DO WITH SEXUAL OFFENDER PROBATION. IT IS NOT THE SAME. THE WORDS GAIN TIME ARE NOT DISCUSSED AND WILCOX NOT DISCUSSED IN ANY OF THE 3 FIFTH DCA CASES THAT THE STATE HAS CITED FOR CONFLICT I ARGUED BEFORE THAT I DON'T THINK THERE IS A CONFLICT. WE ARE HERE TODAY I'M GOING TO ADDRESS THE ISSUE ON THE MERITS.

I'VE FIRMLY BELIEVE THERE IS NO DIRECT CONFLICT.

I THINK THIS IS A COMMON SENSE ISSUE.

I WILL SUBMIT TO YOU THAT A VIOLATION OF SECTION 794.011 MEANS THE FOUR CORNERS OF THAT STATUTE GOULD IS NOT CONVICTED OF THAT TYPE OF OFFENSE AND I WOULD ASK YOU TO AFFIRM THE FIRST DCA THANK YOU VERY MUCH.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Christopher Baum: JUST A COUPLE OF QUICK POINTS ON REBUTTAL.

THE QUESTION IS NOT WHAT THE ATTEMPT STATUTE SAYS. THE QUESTION IS WHAT THE 2014 STATUTE MEANS WHEN IT SAYS A VIOLATION.

AT BEST THEY WERE COMPETING COMMONSENSE CONCLUSIONS ABOUT WHAT THAT TERM MEANS.

FOR EXAMPLE AN OFFENSE CANNOT BE A VIOLATION OF THE ATTEMPT STATUTE. STANDING ALONE. IT HAS TO ALSO BE A VIOLATION.

>> COUNSEL I HAVE A QUICK QUESTION CAN YOU RESPOND DIRECTLY TO OPPOSING COUNSEL'S POINT THAT YOU DON'T HAVE A SINGLE CASE THAT SAYS THAT THE ATTEMPTED SEXUAL BATTERY IS NOT ELIGIBLE FOR GAIN TIME.

>> Christopher Baum: I DON'T THINK THIS ISSUE HAS COME UP SINCE 2014 EXCEPT IN THIS CASE.

>> Justice Jamie Grosshans: HE IS RIGHT THAT YOU HAVE NO CASE LAW SUPPORTING THAT?

>> Christopher Baum: THE QUESTION THAT WAS ADDRESSED IN THE PREVIOUS CASES WAS ABOUT BASIC GAIN TIME AND LANGUAGE IN THAT STATUTE WAS DIFFERENT AND DIDN'T INVOLVE "A VIOLATION OF". OF COURSE THOSE CASES COULD NOT HAVE BEEN INTERPRETING THE 2014 STATUTE BECAUSE THEY CAME FOR 2014.

SO YOU HAVE THESE COMPETING COMMONSENSE CONCEPTIONS OF WHAT A VIOLATION MEANS.

BUT THEN AGAINST THAT YOU HAVE THE BACKDROP OF PRECEDENT AGAINST WHICH THE LEGISLATURE WAS ACTING YOU HAVE THE PRACTICE OF THE PROSECUTORIAL CHARGING DOCUMENTS YOU HAVE THE JUDGMENTS YOU HAVE THE IDEA THAT LEGISLATORS TELLING THE DEPARTMENT WHO GETS INCENTIVE GAIN TIME AND WHO

DOES NOT.

WHAT IS THE DEPARTMENT GOING TO LOOK TO LOOK TO THE JUDGMENTS
JUDGMENTS SAY EXACTLY WHAT THE STATUTE SAYS. WHICH IS A VIOLATION OF.
THE DEPARTMENT HAS BEEN DOING IT IN THIS FASHION SINCE 2014.

THERE HAS BEEN, WHEN AN INDICATION AROSE THAT THAT INTERPRETATION MAY
NOT BE CORRECT OR THIS COURT MAY NOT AGREE WITH IT THE LEGISLATURE
STEPPED IN AND MADE CRYSTAL CLEAR THAT YES, THAT IS WHAT WE WANT GOING
FORWARD.

WE ARE NOT CONTENDING THAT IS SOME SORT OF LEGISLATIVE CLARIFICATION OR
ANYTHING. WE DON'T THINK IT SHEDS ANY LIGHT ON THE MEANING OF WHAT THE
LEGISLATURE ENACTED IN 2014. FOR ALL OF THESE REASONS THE PETITIONER
RESPECTFULLY REQUESTS THE COURT SQUASHES THE FIRST DISTRICT DECISION.

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