

>> ALL RISE.

HEAR YE, HEAR YE, HEAR
YE, THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION, ALL WHO HAVE
CAUSE TO PLEAD, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA, PLEASE BE
SEATED.

>> GOOD MORNING, WE WILL TAKE UP
CASE NUMBER 22338, RODERICK
MICHAEL ORME VERSUS THE STATE OF
FLORIDA, I APOLOGIZE IF I DID
NOT PRONOUNCE YOUR CLIENT
HAPPENING CORRECTLY.

>> I AM BARBARA BUSHARIS
REPRESENTING RODERICK MICHAEL
ORME.

I RESERVE 5 MINUTES FOR
REBUTTAL.

THANK YOU.

RODERICK MICHAEL ORME IS ASKING
THIS COURT TO CONSIDER THE CLAIM
THAT UNDER SENTENCE OF DEATH FOR
THREE DECADES IS ITSELF CRUEL
AND UNUSUAL PUNISHMENT RISING TO
A LEVEL THAT VIOLATES THE UNITED
STATES CONSTITUTION AND BY
VIRTUE OF THE CONFORMITY CLAUSE
THE STATE CONSTITUTION.

WE ARE AWARE THIS COURT HAS
REJECTED SIMILAR CLAIMS IN THE
PAST, BUT BELIEVE THAT THERE ARE
REASONS TO RECONSIDER THAT IN
LIGHT OF THE CIRCUMSTANCES
PRESENTED BY THIS PARTICULAR
CASE.

RODERICK MICHAEL ORME HAS TWICE
BEEN SENTENCED IN A MANNER LATER
FOUND TO BE ERRONEOUS OR
UNCONSTITUTIONAL.

HE NEVER RECEIVED A UNANIMOUS
JURY VERDICT.

HIS FIRST DEATH SENTENCE WAS
HANDED DOWN AFTER A JURY
RECOMMENDATION BY A VOTE OF 75,
WHICH UNDER NO STRETCH OF THE
IMAGINATION WOULD SATISFY THE
STANDARDS THAT WE HAVE IN PLACE
TODAY.

MOREOVER --

>> HE DECIDED HE DIDN'T WANT A

JURY IN THIS RESENTENCING, IS
THAT CORRECT?

HE WAS VERY EXPLICIT ABOUT THAT
AND THERE WAS -- YOU ARE NOT
RAISING AN ISSUE ABOUT HIS
WAIVER.

>> WE ARE NOT.

>> OR ANYTHING ABOUT THE WAIVER.
HE WAVED THE JURY AND IT SEEMS
AT LEAST AT THAT POINT, HE WAS
WILLING TO ACCEPT RESPONSIBILITY
FOR THE CRIME AND ACCEPT THE
DEATH SENTENCE IF THE JUDGE
THOUGHT THAT WAS APPROPRIATE.
THAT'S WHAT HE SAID.

>> THAT IS WHAT HE SAID.

>> HAS HE CHANGED HIS MIND NOW?

>> RODERICK MICHAEL ORME HAS NOT
WAIVED HIS APPEAL.

THERE'S A DIFFERENCE BETWEEN
WILLING TO ACCEPT SENTENCE OF
DEATH AND ACQUIESCING IN GIVING
UP THE APPEAL TO WHICH HE IS
ENTITLED.

HE'S NOT WAIVING THE RIGHT TO
HAVE THIS SENTENCE REVIEWED BY
THIS COURT.

GIVING HIS WAIVERS OF
MEDICATION, OF HIS PRESENCE OF
THE JURY AND HIS THIRD AND MOST
RECENT SENTENCING, THE GROUND
WHICH WAS ARGUED IN THE TRIAL
COURT IS THE GROUND THAT IS
PRESENT FOR THIS COURT TO
REVIEW.

>> I WANT TO FOLLOW-UP IN THE
DISTINCTION ABOUT THERE BEING A
DIFFERENCE BETWEEN HIS
ACCEPTANCE OF RESPONSIBILITY AND
HIS NOT GIVING UP HIS RIGHT TO
APPEAL HIS SENTENCE TO THIS
COURT, A DISTINCTION THAT I SEE
BUT I WANT TO PRESS ON.

WHAT REMEDY DO YOU SEEK?

>> THE REMEDY IN THIS CASE,
BASED ON THE LACKEY CLAIM, WOULD
BE TO FIND THAT HIS SENTENCE IS
UNCONSTITUTIONAL, AND SENTENCE
HIM TO LIFE IN PRISON WHICH
WOULD STILL BE A SEVERE
PUNISHMENT FITTING THE CRIME.

>> DOESN'T THAT MAKE -- DOESN'T
THAT DISSOLVE THE DISTINCTION
YOU JUST MADE?

IF IN FACT THE REMEDY YOU ARE
SEEKING ON HIS BEHALF IS
CONTRARY TO THE REMEDY THAT HE
WAVED, AREN'T WE LEFT EXACTLY
WHERE YOU WERE BEFORE JUSTICE
CANNADY ASKED HIS QUESTION,
WHICH IS US NOT BEING ABLE TO
MAKE SENSE OF WHAT HE REALLY
WANTS?

>> RESPECTFULLY NO, YOUR HONOR,
BECAUSE HE DIDN'T WAIVE THE
RIGHT NOT TO BE KILLED, HE WAVED
A JURY, HE WAVED MITIGATION, HE
PUT HIS FATE IN THE HANDS OF A
TRIAL JUDGE, BUT IT WAS POSSIBLE
AT THAT POINT THOUGH HIGHLY
UNLIKELY THAT THAT PARTICULAR
TRIAL JUDGE COULD HAVE SENTENCED
HIM TO LIFE BASED ON THE
COMBINATION OF AGGRAVATING AND
MITIGATED CIRCUMSTANCES.

I WOULD SAY IF HE DID NOT WAVE
THE RIGHT FOR A LIFE SENTENCE TO
BE CONSIDERED, THAT IS WHAT IS
IN FRONT OF THE COURT NOW.

>> THE LACKEY CLAIM YOU ARE
RAISING HERE TODAY, THE WHOLE
PREMISE OF IT DERIVES FROM AN
ASSENT BY JUSTICE BREYER IN
1998.

>> FIRST, JUSTICE STEVENS IN 95
AND THEN JUSTICE BREYER IN 1998.

>> SO WHETHER THAN THOSE
DISSENTS, HAS THERE EVER BEEN A
MAJORITY OPINION FROM THE UNITED
STATES SUPREME COURT ABOUT
ADOPTING THIS LACKEY CLAIM THAT
SOMEONE SITS ON DEATH ROW TOO
LONG IT BECOMES CRUEL AND
UNUSUAL TO EXECUTE?

>> NO, THERE HAS BEEN NO
MAJORITY OPINION EITHER ADOPTING
OR REJECTING THAT.

THE COURT HESITANTLY REFUSED TO
HEAR A NUMBER OF CASES AND
ALLOWED THE DECISIONS OF LOWER
COURTS TO STAND, THE COURT
HASN'T ADDRESSED THE ISSUE.

>> IN THIS PARTICULAR CASE, HOW
LONG HAS RODERICK MICHAEL ORME
BEEN ON DEATH ROW?

>> HE WAS SENTENCED TO DEATH IN
1993 AFTER HIS FIRST TRIAL.

>> HAS ANY OTHER -- IN LINE WITH

THIS QUESTION HAS ANY OTHER
STATE SUPREME COURT ADOPTED A
LACKEY THEORY TO YOUR BELIEF?

>> NOT YET, YOUR HONOR.

>> SO IF WE ADOPTED THIS THEORY,
WE WOULD GO AGAINST PRESIDENT WE
HAVE SET, WE WOULD BE A SINGULAR
OUTLIER IN THAT RESPECT.

>> WE WOULD BE.

ALTHOUGH FLORIDA HAS BEEN AN
OUTLIER IN OTHER RESPECTS, THAT
DOESN'T DETERMINE WHETHER THE
CLAIM IS VALID OR SHOULD BE
CONSIDERED BY THIS COURT.

>> SO YOUR POSITION ON THE
CONFORMITY CLAUSE IS IT DOESN'T
PRECLUDE US FROM BEING
INNOVATORS ON AN ISSUE AS LONG
AS THERE'S NOT A US SUPREME
COURT DECISION THAT IS DIRECTLY
ADDRESSING THE SAME ISSUE BEING
RAISED?

>> THAT IS CORRECT.

THERE'S NOTHING TO CONFORM TO AT
THIS POINT IN SUPREME COURT
JURISPRUDENCE.

>> OTHER THAN ON THIS PRECISE
ISSUE BUT THE ANALYTICAL
FRAMEWORK, WE WOULD NEED TO
CONFORM TO IF IT HASN'T BEEN
CONSIDERED IN THE CONTEXT OF
THIS, YOU THINK WE HAVE FREE
REIGN TO APPLY THAT AND REACH
WHATEVER CONCLUSION.

>> YES.

AT THAT THAT IF THE UNITED
STATES SUPREME COURT DISAGREES
AND WANTS TO TAKE A STEP
FURTHER, THAT COURT WOULD BE
ABLE TO DO SO ON REVIEW BUT THE
COURT HAS NOT PRECLUDED A LACKEY
CLAIM, THE COURT IS SIMPLY NOT
RECOGNIZED IT TO DATE AND ONE OF
THE THINGS THAT HAS HAPPENED AND
CONTINUES TO HAPPEN, AS
DOCUMENTED BY THE DEATH PENALTY
INFORMATION CENTER IS THAT THE
LENGTH OF TIME THAT PEOPLE ARE
BEING KEPT UNDER SENTENCE OF
DEATH HAS SLOWLY AND STEADILY
CONTINUED TO RISE IN RECENT
YEARS, THE AGE OF PRISONERS ON
DEATH ROW HAS SLOWLY AND
STEADILY CONTINUED TO RISE.

AND AT THE SAME TIME,
EXONERATIONS HAVE CONTINUED TO
HAPPEN.

ACCORDING TO THE DEFINITELY
INFORMATION CENTER, EXONERATIONS
OFTEN TAKE ANYWHERE FROM 20 TO
25 YEARS BEFORE THEY WORK THEIR
WAY THROUGH THE JUSTICE SYSTEM,
AND SOMEBODY WHO IS DESERVING OF
THAT CAN GET THE REMEDY THAT HE
OR SHE NEEDS.

NOW OF COURSE EXONERATION IS NOT
AN ISSUE HERE BUT THAT IS THE
BACKDROP AGAINST WHICH IT IS
APPROPRIATE AND IMPORTANT FOR
THE COURTS TO BEGIN LOOKING AT
THE LENGTH OF TIME FOR KEEPING
PEOPLE SUBJECTED TO THESE
CONDITIONS AND PROCEDURES.

>> WHAT'S THE LIMITING PRINCIPLE
YOU HAVE TO OFFER THIS COURT IN
THE RULE YOU ARE ASKING US TO
ADOPT?

HOW LONG IS TOO LONG FOR LACKEY
PURPOSES?

>> I THINK IT WOULD HAVE TO BE
BASED ON THE CIRCUMSTANCES OF
THE CASE, THE AGE OF THE
DEFENDANT AT THE TIME THEY WERE
SENTENCED, THE REASONS FOR THE
DELAY, THE COURT HAS ALWAYS
CONSIDERED THAT WHEN REJECTING
THOSE CLAIMS, I THINK IT WOULD
STILL BE PART OF THE ANALYSIS.
ANYTIME YOU TRY TO DRAW A BRIGHT
LINE IN THESE CASES --

>> YOU ARE ASKING US TO
INNOVATE, ASKING US TO OUT LIE,
TO PROCLAIM A RULE.
SO PROCLAIM IT FOR ME.
WHAT IS THE RULE YOU ARE ASKING
US TO ADOPT EXACTLY?

>> IN THIS CASE, ALTHOUGH THE
COURT HAS REJECTED SIMILAR TIME
PERIODS IN THE PAST, WE ARE
ASKING YOU TO HOLD THAT BEING
UNDER SENTENCE OF DEATH FOR 30
YEARS IS ITSELF CRUEL AND
UNUSUAL PUNISHMENT.

>> BUT NOT 29?

>> THAT'S THE LINE DRYING, YOUR
HONOR.

>> WHAT I'M GETTING AT IS YOU
ARE NOT ASKING US TO DRAW A VERY

SATISFYING RULE FOR YOU.

>> IT IS NOT A VERY SATISFYING
RULE TO KEEP PEOPLE ON DEATH ROW
FOR DECADES EITHER, WITHOUT ANY
FINALITY TO THEIR CASES, FOR
THEM OR THE VICTIMS, FOR SOCIETY
IN GENERAL.

>> I'M STRUGGLING A LITTLE BIT
HERE BECAUSE TO THE EXTENT THAT
IT IS CRUEL AND UNUSUAL
PUNISHMENT, IT IS DONE, THAT HAS
HAPPENED, SO I DON'T KNOW HOW
YOU ARE -- REMEDY, CORRECTS WHAT
YOU SAY IS WRONG.

>> BECAUSE, YOUR HONOR, THE
POINT IN TIME THAT THE DEFENDANT
OR THE INMATE IS NO LONGER ON
DEATH ROW, THE CRUEL AND UNUSUAL
PUNISHMENT HAS CEASED.

>> IT WOULD CEASE WHEN THE
EXECUTION IS CARRIED OUT.

>> THAT IS TRUE, BUT WE DON'T
KNOW WHEN THAT WILL HAPPEN.
THESE TIME PERIODS -- GETTING
LONGER AND LONGER.

>> BUT AGAIN, IT SEEMS CURIOUS
TO ME THAT IN A CASE WHERE THE
DEFENDANT SAID HE WANTED THE
DEATH SENTENCE THAT WE ARE HERE
ARGUING ABOUT THIS AND ARGUING
THAT THIS IS TAKING TOO LONG.
THIS PARTICULAR MANNER -- BASED
ON THESE PARTICULAR
CIRCUMSTANCES.

>> I HAVE TO RESPECTFULLY
DISAGREE THAT HE SAID HE WANTED
THE DEATH SENTENCE.
WHAT HE SAID, YOU CAN WATCH THIS
ON THE INTERNET, HE SAID HE
DOESN'T WANT TO DIE, BUT HE IS
WILLING TO ACCEPT THE SENTENCE
THE COURT HANDED DOWN.
HE'S NOT SEEKING TO DIE.
YOU HAVE SEEN DEFENDANTS IN THIS
COURT BEFORE WHO HAVE REQUESTED
EXECUTION, THIS IS NOT ONE OF
THOSE.

>> HE DID SAY, I HAVE THE
TRANSCRIPT HERE, WHAT IS
REPRODUCED FROM THE TRANSCRIPT
OF THE COURT ORDER, AFTER HE
SAYS HE DOESN'T WANT TO DIE, HE
IS NOT SUICIDAL, HE DOES GO ON
TO SAY, BASICALLY, I'M ASKING,

BASICALLY, TO HAVE MY DEATH
SENTENCE REINSTATED.

HE DID SAY THAT.

>> HE DID SAY THAT BECAUSE IT
HAD BEEN HANDED DOWN PREVIOUSLY
AND THAT WAS THE ISSUE --

>> YOUR HONOR, I'M HOPING THAT
YOU, YOUR HONOR, WILL AGREE WITH
MY CLAIM, MY MOTION, GO AHEAD
AND REINSTATE MY DEATH SENTENCE.
THAT IS MY GOAL.

>> ALONG WITH THE FACT THAT HE
SAID HE IS NOT SUICIDAL AND
DOESN'T WANT TO DIE, HE'S ASKING
FOR REINSTATEMENT OF THE
SENTENCE HAS TO DO WITH HIS
ACCEPTANCE OF RESPONSIBILITY AND
THE FACT THAT HE, AS HE SAYS,
SEES THAT AS A WAY TO BRING
JUSTICE AND BRING IT TO A CLOSE.
AS WAS ARGUED IN THE TRIAL
COURT, THE DEFINITIVE LIFE
SENTENCE WOULD BRING THE CASE TO
A CLOSE.

A DEFINITIVE LIFE
SENTENCES SUBJECT TO LESS
REVIEW, SCRUTINY, LESS
COLLATERAL ATTACK THAN A DEATH
SENTENCE IS.

SO THE GOAL OF FINALITY DOESN'T
REQUIRE KILLING STEPHEN MATTHEW
BANDER 7 RODERICK MICHAEL ORME.
THE RECORD ALSO SHOWS, AND I
THINK IT IS IMPORTANT THAT THIS
COURT CONSIDER THAT HE'S NOT THE
PERSON THAT HE WAS IN 1992 WHEN
THIS HORRIBLE CRIME HAPPEN.
HAPPENED.

HE'S NOT THE PERSON HE WAS IN
1993 WHEN HE FIRST WAS SENTENCED
TO DEATH.

THE EXPERT REPORT AT HIS MOST
RECENT SENTENCING, ALTHOUGH IT
FOUND NO CURRENT MENTAL HEALTH
ISSUES REQUIRING CONSIDERATION
AS ADDITIONAL MITIGATION NOTED
THAT HE IS NO LONGER ABUSING
SUBSTANCE, NO LONGER
EXPERIENCING MENTAL HEALTH
ISSUES, HAS HAD NO DISCIPLINARY
REPORTS SINCE HE STOPPED TAKING
PSYCHOTROPIC MEDICATION IN 2012,
OVER A DECADE AGO, THE INTEREST
WE HAVE --

>> WHEN WAS HIS BIPOLAR DISORDER
DIAGNOSED?

>> I DON'T REMEMBER THE YEAR IT
WAS FIRST DIAGNOSED BUT THE
FAILURE TO FURTHER INVESTIGATE
IT WAS THE REASON HIS FIRST
SENTENCE WAS OVERTURNED ON
COLLATERAL ATTACK WHICH WOULD
INDICATE THERE WAS EVIDENCE OF
BIPOLAR DISORDER BACK TO THE
1990s.

>> THAT DIAGNOSIS HAS BEEN
DISPUTED.

>> THE DIAGNOSIS THAT WAS NOTED
AT HIS MOST RECENT AND
SENTENCING.

THAT IS THE MOST --

>> EXPERT THAT DISPUTED THE
BIPOLAR DISORDER DIAGNOSIS, HE
HAS PROBLEMS, THAT WAS DISPUTED.

>> AT HIS RESENTENCING, YES.
HAS HIS FIRST RESENTENCING,
YES.

>> I UNDERSTAND WHY HE WOULD
MAKE THIS A CLEMENCY CONTEXT BUT
WHAT RELEVANCE DOES THIS HAVE TO
THE LEGAL ARGUMENT YOU RAISED?

>> BECAUSE IT GOES -- I WILL GO
BACK TO THE ORIGINAL DISSENTS
FROM WHICH THESE CLAIMS HAVE
SPRUNG.

IT GOES TO THE PURPOSES WE USE
TO JUSTIFY EXECUTING PEOPLE,
RETRIBUTION AND DETERRENCE.
WHEN YOU HAVE SOMEBODY WHO HAS
SHOWN THAT HE IS NOT THE SAME
PERSON, HE HASN'T COMMITTED
ADDITIONAL OFFENSES IN PRISON
LET ALONE VIOLENT OFFENSES, HE
HASN'T COMMITTED NONVIOLENT
OFFENSES, HIS DISCIPLINE --
SUBSTANCE ABUSE.

>> SOUNDS LIKE THAT WOULD
TRANSFORM REPORTS, YOU COULD
KEEP RAISING THIS AS NEW
EVIDENCE, THAT WOULD TURN COURTS
INTO PERPETUAL CLEMENCY BOARDS
FOR AS LONG AS PEOPLE ARE ON
DEATH ROW.

>> I DON'T THINK SO BECAUSE IT
WOULD HAPPEN IN THE CONTEXT OF A
RESENTENCING WHICH RODERICK
MICHAEL ORME HAD, BECAUSE THIS
COURT HAD MAINTAINED A JURY

SYSTEM.

>> WOULDN'T YOU BE ABLE TO KEEP SAYING THIS PERSON HAS BEEN SUBJECT TO A DEATH SENTENCE, THEY ARE NOT THE SAME PERSON ANYMORE, YOU ARE VIOLATING THEIR RIGHT -- ET CETERA ET CETERA. WOULDN'T YOU ETC. ETC.

.
WOULDN'T YOU JUST KEEP MAKING THOSE ARGUMENTS AT EVERY KIND OF WHATEVER INCREMENTS IN TIME YOU THOUGHT WERE APPROPRIATE, RELITIGATING IT?

>> OUTSIDE OF THE FRAMEWORK OF DIRECT APPEAL AND COLLATERAL ATTACK ON A SENTENCE, I AM NOT -- IF YOU ARE SUGGESTING THAT SOMEBODY COULD BRING REPEATED HABEAS CORPUS PETITIONS AND THAT THEY HAD CHANGED --

>> WOULDN'T YOU CHARACTERIZE THIS THAT YOU COULD KEEP LITIGATING THAT?

>> THIS IS EVIDENCE THAT WAS IN FRONT OF THE COURT OF THE MOST RECENT SENTENCING, IT'S IN THE RECORD SO IT IS APPROPRIATE TO CONSIDER.

AND AGAIN, IT DOES GO TO THE PURPOSES FOR WHICH WE SAY WE EXECUTE PEOPLE, THOSE PURPOSES, THE GOALS OF RETRIBUTION AND DETERRENCE DIMINISH OVER DECADES.

AND ESPECIALLY WHEN YOU HAVE A DEFENDANT WHO HAS NOT COMMITTED A VIOLENT OFFENSE, IS NOT THE SAME PERSON HE WAS WHEN THE OFFENSE TOOK PLACE IT IS WORTH ASKING THE QUESTION, DOES IMPOSING A DEATH SENTENCE ON THIS DEFENDANT SERVE ANY GOALS? OR IS IT JUST, AS JUSTICE STEVENS SAID, THE POINTLESS AND NEEDLESS EXTENSION OF LIFE WITH MARGINAL CONTRIBUTIONS TO ANY DISCERNIBLE SOCIAL OR PUBLIC PURPOSES?

IF I COULD RESERVE THE REMAINDER OF MY TIME.

THANK YOU.

>> GOOD MORNING.

STEVE WOODS ON BEHALF OF THE
STATE.

MAY IT PLEASE THE COURT,
BEGINNING WITH THE LACKEY CLAIM
I WOULD BEGIN BY, IT IS HARD TO
ADD ANYTHING TO WHAT HAS BEEN
SAID ABOUT LACKEY CLAIM.
THIS IS A FACIALLY INVALID
CLAIM.

THE TIME ON DEATH ROW, HOWEVER
PROLONGED CANNOT CONSTITUTE A
VIOLATION OF THE EIGHTH
AMENDMENT EVEN IF THERE WERE SAY
30 YEARS OR SOME EXCESSIVE
DURATION THAT DID CONSTITUTE A
VIOLATION OF THE EIGHTH
AMENDMENT, STILL, RODERICK
MICHAEL ORME COULD NOT PREVAIL.
THE REJECTION OF SEVERAL LACKEY
CLAIMS, THESE ARE LACKEY CLAIMS
FROM DEPENDENTS WHO HAVE BEEN ON
DEATH ROW LONGER THAN MISTER
LACKEY, ON DEATH ROW 33 YEARS.
FERGUSON AND LAMPREY, OVER 30.
SO EVEN A AND THERE IS NOT, BUT
EVEN IF THERE WERE, A PERIOD OF
TIME THAT WAS TOO EXCESSIVE HE
COULD NOT PREVAIL.

WE WOULD ALSO POINT OUT THE
DEFENDANT CONTRIBUTED TO THIS
DELAY.

THERE HAS BEEN NO REASON PUT
FORTH TO DEPART FROM THE
CONTROLLING PRECEDENT ON THIS
ISSUE.

THE DEFENSE SAYS YOU SHOULD
CONSIDER MY CIRCUMSTANCES, I
HAVE CHANGED, AND THERE WAS 11-1
NONUNANIMOUS VOTE AND HE POINTS
OUT, I'M NOT RESPONSIBLE FOR ALL
OF THE DELAY, WE RESPOND TO THAT
BY POINTING OUT, THERE ARE
CIRCUMSTANCES THAT COULD BE
SUFFICIENT, NO CIRCUMSTANCES CAN
BE RELEVANT AND EVEN IF THEY
WERE, THE ENTIRE ISSUE WOULD
HAVE TO BE RESOLVED BY ARTICLE 1
SECTION 17, HE CANNOT PREVAIL.

>> HOW DOES THE CONFORMITY
CLAUSE FIND US GIVEN THE SILENCE
FROM THE SUPREME COURT OF THE
UNITED STATES?

>> THERE MUST BE A PERFECT -- AS
YOU SAY, THE FEDERAL SUPREME

COURT HAS NOT SPOKEN ON IT,
GIVEN THERE MUST BE A PERFECT
OVERLAP BETWEEN EIGHTH AMENDMENT
PROTECTIONS AND CRUEL AND
UNUSUAL PROHIBITION IN FLORIDA.

THIS COURT COULD NOT DO IT
BECAUSE IT WOULD NOT BE
PERFECTLY IN LINE WITH WHAT THE
FEDERAL SUPREME COURT HAS DONE.

>> YOU THINK WE ARE PRECLUDED
FROM APPLYING THE SUPREME
COURT'S STANDARDS TO AN ISSUE
THEY HAVEN'T DIRECTLY RESOLVED?
THAT GETS TO THE INNOVATION
QUESTION.

DO YOU VIEW THE CONFORMITY
CLAUSE IS REQUIRING US TO
ESSENTIALLY SORT OF SIT BACK
UNTIL SPECIFIC ISSUES ARE
RESOLVED BY THE SUPREME COURT
AND THEN SOMEONE CAN BRING THE
IDENTICAL CLAIM HERE?
BECAUSE IT SEEMS LIKE ON THE
FACE OF IT AS LONG AS WE ARE
ANALYTICALLY GOING THROUGH THE
SAME STEPS SUPREME COURT WOULD
IN THE EIGHTH AMENDMENT CASE AND
NOT REACHING AND ANSWER THAT IS
DIFFERENT THAN WHAT THEY HAVE
REACHED ON THE SAME ISSUE THAT
THE CONFORMITY CLAUSE WOULDN'T
PREVENT US FROM BEING THE ONES
WHO ARE THE INNOVATORS.

>> THE CONFORMITY CLAUSE IS A
SECONDARY ARGUMENT.
WE PRIMARILY RELY ON, THIS COURT
HAS ADDRESSED THIS QUESTION NO
FEWER THAN 12 TIMES, THREE OF
THEM THROUGH DEFENDANTS WHO
SPENT LONGER ON DEATH ROW THAN
RODERICK MICHAEL ORME.

THE CONFORMITY CLAUSE IF THIS
COURT WERE TO SAY UNDER
CONFORMITY CLAUSE, LACKEY CLAIM
-- THAT WOULD BE A NON-PERFECT
OVERLAP BETWEEN THE EIGHTH
AMENDMENT AT THE FEDERAL LEVEL
AND ARTICLE 1 SECTION 17
PROVISION.

IF I COULD BRIEFLY ADDRESS ISSUE
2, THIS ISSUE ABOUT WHETHER
SUFFICIENCY AND WEIGHT, I WILL
POINT OUT UNDER THE CLEAR
PRECEDENT FROM THE FEDERAL

SUPREME COURT AND THIS COURT,
THERE'S NO QUESTION AS TO
WHETHER SUFFICIENCY AND WEIGHT
ARE ELEMENTS THAT NEED PROOF
BEYOND REASONABLE DOUBT.
THERE HAS BEEN NO REASON STATED
TO DEPART FROM THE PRECEDENT
THAT IS CONTROLLING, AND NO
REASON TO REVISIT WHAT HAS BEEN
WELL-SETTLED.
WELL SETTLED.
IT IS ONLY THE EXISTENCE OF AN
AGGRAVATED -- TO THE EXCLUSION
OF EVERY REASONABLE DOUBT.
IF THERE ARE NO QUESTIONS.
THE STATE WOULD RESPECTFULLY ASK
THIS COURT OF FIRM, THANK YOU.
THANK YOU.
>> THANK YOU, YOUR HONORS.
AS TO ISSUE 2, WHICH WAS RAISED
FOR PRESERVATION PURPOSES.
I WILL DEFER TO WHAT IS IN THE
BRIEFS WHICH I WOULD LIKE TO
POINT OUT THAT THIS CASE
ILLUSTRATES THE BROKENNESS OF
THE DEATH PENALTY SYSTEM.
WE CANNOT IMPOSE IT FAIRLY
WITHOUT ALLOWING PEOPLE TO
ATTACK THEIR SENTENCES.
RODERICK MICHAEL ORME DID ATTACK
HIS SENTENCE FOR A VERY WERE
VALID REASONS, HE DIDN'T FILE
FRIVOLOUS APPEALS, HE DIDN'T
BRING FLAVORLESS CLAIMS AND HIS
SENTENCE WAS OVERTURNED TWICE.
WE CAN'T EXECUTE PEOPLE MORE
QUICKLY WITHOUT RUNNING THE RISK
OF THAT SOMEBODY WHO EITHER WAS
SENTENCED IMPROPERLY WILL BE
EXECUTED OR SOMEBODY WHO IS
FULLY INNOCENT WILL BE EXECUTED
AND SO THAT IS THE CONUNDRUM
THAT IS BEFORE THIS COURT.
WE SIMPLY SUGGEST THAT IN THIS
CASE, BASED ON THE SITUATION
RODERICK MICHAEL ORME PRESENTS,
HE'S ARTIE BEEN PUNISHED AND TO
KEEP HIM IN DEATH ROW WOULD BE
CRUEL AND UNUSUAL, THANK YOUR
HONORS.
>> THANK YOU, AND WE ARE
ADJOURNED.