>> OUR NEXT CASE IS DOTY VERSUS STATE OF FLORIDA CASE NUMBER 2023-1123.
>> GOOD MORNING.
MAY IT PLEASE THE COURT AND JUSTICES IS MY NAME IS TERESA HALL I REPRESENT MR. WAYNE DOTY WHO IS THE PETITIONER IN THE CASE. WE ARE HERE TODAY BEFORE YOU BECAUSE OF THE DENIED POSTCONVICTION MOTION FILED IN OCTOBER OF 2022.
MR. DOTY HAD BEEN IN A RECENT HEARING FROM 2018 WHERE HE WAS SENTENCED UNANIMOUSLY TO DEATH FOR THE KILLING OF MR. XAVIER RODRIGUEZ WHO WAS A FELLOW INMATE IN THE FLORIDA STATE PRISON.
FIRST I WILL ONLY ADDRESS A COUPLE ISSUES FROM THE BRIEF ALTHOUGH WE STAND ON THE ENTIRE BRIEF.
I ALSO HAVE ASKED TO RESERVE FIVE MINUTES FOR REBUTTAL.
THE FIRST ISSUE I WANT TO DISCUSS IS WHAT ARE WE ASKING FOR?
THE PETITIONER IS ASKING THAT THE TRIAL COURT BE REMANDED TO ALLOW US TO HAVE AN EVIDENTIARY HEARING ON HER ISSUES.
WE BELIEVE WE HAVE MADE FACTUAL DETERMINATIONS THAT ARE IN DISPUTE AND THAT SHOULD BE VETTED OUT IN AN EVIDENTIARY HEARING.
AS THE COURT WELL KNOWS AN EVIDENTIARY HEARING MUST BE HELD WHEN THERE IS FACTUAL CLAIMS THAT REQUIRE FACTUAL DETERMINATION.
AND THAT ANY QUESTION AS TO WHETHER A RULE 3851 MOVE HAS MADE A CLAIM THAT NEEDS FACTUAL DETERMINATION THE COURT WILL PRESUME THAT A HEARING IS NECESSARY.
AND IN MR. DOTY'S CASE TO TRIAL COURT DENIED EVERY CLAIM THAT WAS FILED IN THE MOTION.
>> ISN'T THIS AN UNUSUAL 3.851 BECAUSE THE DEFENDANT REPRESENTED HIMSELF. ORDINARILY IN THESE POSTCONVICTION PROCEEDINGS IT IS ABOUT INEFFECTIVE ASSISTANCE OF COUNSEL AND THEIR FACTUAL QUESTIONS ABOUT WHETHER COUNSEL PERFORMED ADEQUATELY AND IF THERE IS PREJUDICE RESULTING FROM ANY DEFICIENCY IN THE PERFORMANCE OF COUNSEL AND WE DON'T HAVE THAT HERE REALLY.
MR. DOTY DECIDED HE WOULD REPRESENT HIMSELF AND I KNOW YOU WANT TO ARGUE ABOUT WHETHER HE SHOULD HAVE BEEN ALLOWED TO DO. THAT IS THE WAY THE TABLE WAS SET AND IT PUTS IT IN DIFFERENT CATEGORY THAN THE ORDINARY POST CONVICTION CASE.
ISN'T THAT RIGHT?
>> I DO NOT DISAGREE AT ALL.
IT IS A UNIQUE POSITION AND A UNIQUE POSITION TO ARGUE THE CLAIMS THAT WE HAVE MADE BUT BECAUSE OF THE VERY FIRST CLAIM THAT I

REALLY WANT TO GET INTO IS THE FACT THAT WE DON'T BELIEVE MR. DOTY SHOULD HAVE BEEN ALLOWED TO REPRESENT HIMSELF AT ALL IN INDIANA VERSUS EDWARDS.
IS UNIQUE IN THE FACT THE INDIANA VERSUS EDWARDS COMES FROM MY HOME COURT IN INDIANA AND I WAS A LAW STUDENT WHEN THIS CAME ON AND SO I'M QUITE FAMILIAR WITH THE TRIAL COURT'S POSITION WHEN THEY TOOK THE STANCE TO MAKE MR. EDWARDS HAVE COUNSEL.
AND MR. DOTY'S CASE THE GOVERNMENT HAS AN INTEREST IN THE INTEGRITY AND FAIRNESS OF THE TRIAL.
AND THAT HAS BEEN SAID OVER AND OVER AGAIN.
WHETHER OR NOT IT IS A PRO SE LITIGANT OR A CLIENT THAT HAS A LAWYER.
AND TO BE ABLE TO DO THAT WE HAVE TO BE ABLE TO MAKE SURE THAT PEOPLE ARE.
IN THIS CASE I WILL NOT STAND HERE AND ARGUE THAT THERE WERE NOT INQUIRIES OF THE TRIAL COURT FOUND THAT HE WAS COMPETENT TO REPRESENT HIMSELF.
I AM SAYING THERE WAS NOT ENOUGH MITIGATION DONE OR EVALUATION DONE TO BRING OUT ALL OF THE FACTS THAT WOULD HAVE CAUSED MR. DOTY NOT TO BE ABLE TO REPRESENT HIMSELF.
IT IS DIFFERENT THAN BEING A COMPETENT PERSON TO STAND TRIAL VERSUS A COMPETENT PERSON TO REPRESENT HIMSELF.
THIS COURT HAS A GREAT COMPELLING INTEREST IN MAKING SURE THAT THE TRIAL IS FAIR AND THEN IT IS THE JUST AND PROPER OUTCOME.
THAT'S WHY WE ALL DO THIS WORK.
THERE NEEDS TO BE A HEIGHTENED RELIABILITY BY THE UNITED STATES CONSTITUTION.
MR. DOTY HAD A SEVERE MENTAL ILLNESS AND POSSIBLE BRAIN DAMAGE.
I WILL GET TO THE BRAIN DAMAGE PORTION IN THE SECOND ISSUE I WILL COVER BUT IT IS CLEAR FROM THE RECORD FROM BOTH TRIALS AND FROM THE EXPERTS THAT HE HAD MENTAL ILLNESS.
HE WAS ABUSED AS A CHILD PHYSICALLY AND EMOTIONALLY.
HE WAS IN NEGLECTED.
HE DID SUBSTANCE ABUSE AND ALCOHOL AT AN EARLY AGE AND HAD BEHAVIORAL PROBLEMS AT THE AGE OF 12.
POSTED A CONVICTION COUNSEL WALL WRITING AND DEVELOPING THE 3851 HIRED TWO DIFFERENT EXPERTS TO EVALUATE MR. DOTY.
DOCTOR VALERIE MCCLAIN ISSUED A REPORT AND IN THE BRIEF WE TALK ABOUT WHAT SHE FOUND INCLUDING THAT HE HAD PROBLEMS WITH DECISION MAKING PROBLEMS WITH HER SEXUAL REASONING AND HE HAD POSSIBLE DAMAGE TO THE FRONT TEMPORAL LOBE.

ALL OF CAUSING HIM TO HAVE A COMPLETE DISADVANTAGE REPRESENTING HIMSELF OR TRIAL.
IF YOU READ THE 2018 RESENTENCING TRANSCRIPT THE JURY SELECTION PROCESS WAS HARDLY ANYTHING.
>> AM I RIGHT HOWEVER THAT THIS WAS NOT RAISED ON DIRECT APPEAL?
>> YOU ARE CORRECT.
I DO NOT BELIEVE IT WAS RAISED ON DIRECT APPEAL.
>> WHAT WE DO ABOUT THAT?
ARE YOU ASKING US TO REVERSE OUR ARE FAIRLY WELL SETTLED CASE LAW THAT WE SHOULD JUST LOOK PAST THAT FAILURE?
>> WE BELIEVE BECAUSE IT IS A SUBSTANCE DUE PROCESS VIOLATION IT IS A FUNDAMENTAL AREA.
>> WHAT IS A FUNDAMENTAL ERROR HERE?
>> HE WAS NOT AFFORDED THE RIGHT TO COUNSEL.
SO IT VIOLATES HIS CONSTITUTION.
>> HE WAS AFFORDED THE RIGHT TO COUNSEL.
THAT IS THE PURPOSE OF THE FOR RENT INQUIRY TO DETERMINE THAT AND HE WAIVED IT AND SO I GUESS I AM MISSING WHAT FUNDAMENTAL ERROR YOU DIRECT US TO THAT CAUSES US TO LOOK PAST THE FAILURE TO PRESERVE THIS ON DIRECT APPEAL.
>> BASED ON INDIANA VERSUS EDWARD WE DO BELIEVE THAT THE COURT SHOULD HAVE BASICALLY BECAUSE OF THE GOVERNMENT'S COMPELLING INTEREST MADE HIM HAVE A LAWYER.
MADE'S FOR RESENTENCING.
>> IS THAT OUR LAW?
>> IF THEY HAD DONE THAT WOULDN'T YOU BE HERE ARGUING THAT HIS CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF AND DETERMINED TO BE COMPETENT WAS COMPROMISED?
AND THAT YOU KNOW?
IT'S LIKE EITHER WAY THAT GOES.
THE STATE WILL HAVE HANDLED IT INCORRECTLY SO I DON'T KNOW.
I STRUGGLE TO SEE ANY REASON THAT ANYONE THERE WOULD HAVE THOUGHT THAT HE DID NOT MEET THE BASIC STANDARD HE HAD TO MEET TO REPRESENT HIMSELF.
HE WANTED TO DO IT AND HE MADE IT VERY CLEAR AND HE IS A PERSON WITH AGE AND YOU KNOW HE DID HIS THING AND ACTUALLY I THINK HE DEMONSTRATED THAT HE COULD DO CERTAIN THINGS IN THE PROCESS.
AM I MISSING SOMETHING THERE?
>> I DO NOT DISAGREE THAT HE PERFORMED TO THE BEST OF WHAT HIS ABILITY IS BUT I WOULD LIKE TO POINT OUT TO THE COURT THE RULE IN OUR PROCEDURES 3.112 THAT NOT JUST ANY LAWYER CAN REPRESENT DEATH

PENALTY CLIENT.
WE MAKE THEM HAVE QUALIFICATIONS.
WE MAKE THEM BE A LAWYER FOR FIVE YEARS AND HAVE ALL OF THIS EXPERIENCE AND TRAINING.
IF WE DO THAT TO MAKE A LAWYER -
>> ARE YOU SAYING WE SHOULD HAVE A HEIGHTENED STANDARD FOR SELF REPRESENTATION IN DEATH CASES?
>> YES I AM.
>> YOU BELIEVE THAT IS CONSISTENT WITH WHAT THE U.S. SUPREME COURT HAS INSTRUCTED ON THESE ISSUES?
>> I DO.
ON INDIANA VERSUS EDWARDS I DO AND THAT IS MY ARGUMENT JUSTICE AND I KNOW THAT EVEN THIS COURT AND MR. DOTY'S DIRECT APPEAL AND I KNOW FILED WITH THE SENATE AND THE FACT THAT HE WANTED TO GET RID OF HIS APPELLATE COUNSEL AND THIS COURT RULED THAT HE COULDN'T BECAUSE THIS COURT BELIEVED THE GOVERNMENT HAD A FUNDAMENTAL INTEREST IN THE APPEALS PROCESS SO MR. DOTY WAS FORCED TO HAVE APPELLATE COUNSEL IN HIS 2013 APPEAL AND AGAIN I NOTE JUSTICE CANADY HAD DISSENTED IN THAT AND BASICALLY I BELIEVE AND I WILL BE CORRECTED IF I AM WRONG BUT IF HE MADE A KNOWING INTELLIGENT VOLUNTARY WAIVER OF APPELLATE PROCEDURE OR COUNSEL THAT IS WHAT HE SHOULD HAVE BUT THIS COURT RULED HE SHOULD NOT HAVE IT.
>> LET'S GO BACK TO THE PROCEDURAL BAR BECAUSE YOUR BROAD EXEMPTION FOR DUE PROCESS VIOLATIONS AND PROCEDURAL BARS AND I THINK IN SUPPORT OF THAT PROPOSITION THERE WAS A CASE AND IT REFERS TO THE RULE BUT TO ME THE RULE DOES NOT SAY IT.
IT SAYS IF IT COULD HAVE BEEN BROUGHT IT SHOULD HAVE BEEN BROUGHT BUT IF YOU AGREE WE FOLLOW THE SECOND CASE IT CREATES PROCEDURAL EXCEPTIONS FOR DUE PROCESS VIOLATIONS AND IT WOULD REQUIRE A DEVIATION FROM FLORIDA SUPREME COURT.
>> I BELIEVE THAT IT COULD LET ME SEE HOW TO PHRASE IT.
I BELIEVE THE FLORIDA SUPREME COURT HAS AT DIFFERENT TIMES FOUND INDIVIDUAL SHOULD HAVE LAWYERS.
IT WAS THE FLORIDA SUPREME COURT THAT FOUND MR. DOTY SHOULD HAVE APPELLATE COUNSEL.
IT IS A FLORIDA SUPREME COURT.
>> I'M TALKING ONLY PROCEDURAL.
BECAUSE I NEED TO GET PAST THESE QUESTIONS TO GO PAST THE PROCEDURAL BAR BECAUSE IT COULD HAVE BEEN RAISED IN DIRECT APPEAL BUT YOU ARE SAYING THE PROCEDURAL BAR DOES NOT APPLY BECAUSE YOU CHARACTERIZED IT AS A DUE PROCESS VIOLATION AND MY QUESTION IS THE

PRECEDENT ON THE BRIEF OUR PRECEDENT DOES NOT HAVE THIS CARVED OUT FOR CLAIMS THAT SHOULD HAVE BEEN BROUGHT FOR WITH DUE PROCESS VIOLATIONS AND IT WOULD EAT UP EVERYTHING IN POST CONVICTION.
WHY WOULD WE FOLLOW FOR THIS PROPOSITION WOULD NOT REQUIRE US COMPLETELY REWORKING THE FLORIDA SUPREME COURT PRECEDENT ON THE SOUL PROCEDURAL BARS SUBSTANCE OF THE ISSUE ASIDE?
>> I THINK BECAUSE THE FLORIDA CONSTITUTION FOLLOWS UNITED STATES CONSTITUTION AND BECAUSE THE UNITED STATES CONSTITUTION HAS TALKED ABOUT FUNDAMENTAL RIGHTS AND CARETTA VERSUS INDIANA VERSUS EDWARDS I BELIEVE BECAUSE OF THAT FLORIDA SUPREME COURT SHOULD BE LOOKING AT THEIR PRECEDENT AND POSSIBLY LOOKING AT THE EVALUATION FROM THE SECOND DCA WHICH WAS JOHNSON VERSUS STATE I THINK THAT'S THE CASE ARE TALKING ABOUT.
AND THAT IS DUE PROCESS FOR FUNDAMENTAL AREA SHOULD BE ABLE TO BE RAISED AT ANY TIME AND I BELIEVE THERE ARE SOME FLORIDA SUPREME COURT CASES THAT CITE THAT NOT TO THE SAME LANGUAGE BUT IT DOES TALK ABOUT FUNDAMENTAL ERROR AND HOW IT CAN BE RAISED.
IT GOES BACK TO THE VERY THING I STARTED WHICH IS THE FACT THAT I AM NOT ASKING AND WE ARE NOT ASKING THE COURT TO SAY YES ALL THESE CLAIMS ARE RIGHT HE GETS A RETRIAL.
WE ARE ASKING THE COURT TO AFFORD MR. DOTY AN OPPORTUNITY TO THAT ALL OF THIS OUT IN EVIDENTIARY HEARING FOR THE TRIAL COURT TO MAKE AN EDUCATED AND INFORMED DECISION.
I BELIEVE TRIAL COURT DID NOT HAVE ALL THE INFORMATION IT NEEDED AND BECAUSE PARTLY MR. DOTY REPRESENTED HIMSELF AND HE DIDN'T BRING OUT A LOT OF THE THINGS YOU SHOULD HAVE BECAUSE HE DID NOT KNOW.
IT GOES RIGHT BACK TO 3.112 WE DON'T LET LAWYERS WHO HAVE BEEN LAWYERS FOR TWO YEARS WHO HAVE NEVER TRIED TO MURDER CASE WE DON'T LET THEM REPRESENT DEATH PENALTY CLIENTS.
WE DID NOT LET MR. DOTY REPRESENT HIMSELF OR WAIVE HIS APPEAL IN HIS DIRECT BECAUSE OF THE FUNDAMENTAL INTEREST AND OVERARCHING GOAL TO MAKE SURE THE TRIAL IS FAIR.
>> THE SECOND ISSUE I WANTED TO BRING UP ALSO WAS IT TIES INTO THE FIRST AND THIRD AND IT IS THE FACT THAT THE TRIAL COURT DENIED THE ABILITY TO HAVE AN MRI SCAN.
THE EXPERT THAT WAS HIRED DOCTOR MACLEAN AND DOCTOR MICHAEL MAYOR ALL AGREED THAT FOR THERE TO BE FULL MITIGATION DEVELOPMENT A PET SCAN WAS NEEDED.
AND THE TRIAL COURT DENIED THE DEFENSE'S ABILITY.
WHAT WAS INTERESTING WAS AT THE TRIAL COURT LEVEL THE STATE ONLY

OPPOSE THE PET SCAN BECAUSE OF THE COST AND TRANSPORTATION SAFETY OF GETTING MR. DOTY TO A FACILITY TO DO THE PET SCAN.
I CAN TELL YOU FROM MR. DOTY'S HEALTH ISSUES HE HAS BEEN TO THAT FACILITY FOR HEALTH ISSUES AND THAT HAS BEEN ABLE TO BE AFFORDED.
HE HAS DONE IT FOR OTHER CLIENTS THAT WE REPRESENT.
WE ARE ASKING THAT BE REVERSED ON THAT ISSUE AND THAT WE BE ALLOWED TO HAVE MR. DOTY HAVE A PET SCAN AND MRI SO THAT OUR EXPERTS CAN ARTICULATE TO THE TRIAL JUDGE EXACTLY WHY THE THIRD ISSUE WHICH TO FULLY INVESTIGATE MITIGATION WASN'T DONE AND THAT IS BECAUSE ALL OF THE INFORMATION WASN'T THERE.
AND SO UNDER FARRELL WHICH IS THE FIRST SUPREME COURT CASE FIRST WE HAVE TO DETERMINE THE DEFENDANT MUST ESTABLISH A PARTICULARIZED NEED THAT THE TEST IS NECESSARY FOR EXPERTS TO MAKE MORE DEFINITIVE DETERMINATIONS.
BOTH DOCTOR MCCLAIN WROTE IN HER REPORT AND DOCTOR DAVID WROTE AN AFFIDAVIT THAT IT WAS ACTUALLY NEEDED TO BE ABLE TO MAKE A FULL EVALUATION.
MR. DOTY DID NOT ASK FOR THAT.
I AM NOT SURE THAT HE WOULD HAVE BEEN EDUCATED ENOUGH TO ASK FOR IT.
IT WOULD BE LIKE ASKING A CANCER PATIENT TO GO TO THE HOSPITAL AND SAY I'M GOING TO ORDER MY OWN PET SCAN BECAUSE I WANT TO SEE IF I HAVE CANCER SOMEWHERE ELSE.
WE WOULD NEVER DO THAT.
WE WOULD NEVER EXPECT A CANCER PATIENT TO DO THAT.
EVEN IF THE CANCER PATIENT WAS A DOCTOR WE WOULD NOT DO THAT.
SO WE ARE ASKING THAT MR. DOTY BE ABLE TO HAVE THE PET SCAN TO THE POST CONVICTION COUNSEL CAN DEVELOP WHAT MITIGATION WASN'T DEVELOPED.
>> IT SEEMS LIKE TO ME WHAT YOU ARE TRYING TO DO HERE IS GET AROUND THE FACT THAT HE DECIDED TO REPRESENT HIMSELF AND AT SOMETHING OF A DISADVANTAGE BECAUSE HE DECIDED TO REPRESENT HIMSELF.
YOU MADE YOUR FIRST ARGUMENT AND THAT'S INDIANA VERSUS EDWARDS BUT IF YOU DON'T PREVAIL ON THAT IT SEEMS LIKE THE REST OF THIS IS ALL ABOUT TRYING TO UNDO A CHOICE THAT HE MADE AND THE CONSEQUENCE OF CHOICES THAT HE MADE AND THAT IS NOT THE WAY IT WORKS.
WHEN A DEFENDANT DECIDES TO REPRESENT HIMSELF HE IS CHARTING THE COURSE AND HE HAS AGENCY AND HE HAS RIGHTS BUT THEN HE HAS TO LIVE WITH THE CHOICES HE MAKES.
WE SEE THIS OVER AND OVER AGAIN.

THIS IS NOT AT ALL UNIQUE.
AND SOME MIGHT THINK IT IS JUST GAMING THE SYSTEM BECAUSE ALL THESE THINGS LEAD TO DRAGGING IT OUT LONGER.
YOU CAN REPRESENT YOURSELF AND THEN SAY I SHOULD NOT HAVE BEEN ABLE TO OR I DIDN'T DO SOMETHING I SHOULD HAVE DONE AND THEN I GET A DO OVER.
THAT DELAYS THE EXECUTION OF THE SENTENCE.
BUT ALL OF THAT ASIDE IT SEEMS LIKE TO ME THAT THIS IS ALL ABOUT TRYING TO UNDO THE CONSEQUENCES OF SELF REPRESENTATION.
>> I WOULD NOT SAY IT'S TRYING TO UNDO CONSEQUENCES BUT THE ARGUMENT IS THAT IT WAS COMPLETELY VOLUNTARILY AND KNOWINGLY BECAUSE OF HIS MENTAL ILLNESS AND BRAIN INJURY.
JUSTICES I STARTED WITH 20 MINUTES I WANT TO RESERVE FIVE MINUTES I'M NOW DOWN TO THREE AND SO IF THERE ARE NO OTHER QUESTIONS I WOULD LIKE TO KEEP THAT THREE MINUTES FOR MY REBUTTAL IF THAT'S FINE.
THANK YOU.
>> THANK YOU.
>> MR. CHIEF JUSTICE MAY IT PLEASE THE COURT I REPRESENT THE STATE OF FLORIDA IN THIS CASE.
THE POSTCONVICTION COURT PROPERLY SUMMARILY DENIED ALL OF DOTY'S CLAIMS IN THIS CASE BECAUSE THEY WERE PROCEDURALLY BARRED AND ALSO REFUTED BY THE RECORD IN HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WAS INEFFICIENT THAT'S IN SUFFICIENTLY PLED.
WITH REGARD TO THE CORRECT INQUIRY HAS ACKNOWLEDGED THERE WAS INQUIRY DURING THE POST CONVICTION HEARINGS POST CONVICTION COUNSEL EXPLAINED AND ACKNOWLEDGE THAT IT WAS EXTENSIVE AND WAS SIGNIFICANT IN THIS CASE NOT ONLY WERE THE HEARINGS EXTENSIVE BEFORE JUDGE DAVIS BUT HE WAS THE JUDGE WHO HANDLED DOTY'S RESENTENCING POST HEARSE AND WAS ALSO THE POST CONVICTION JUDGE SO WE HAD THE BENEFIT OF SEEING DOTY REPRESENT HIMSELF PRO SE BUT THAT WAS NOT DOTY'S FIRST TIME REPRESENTING HIMSELF PRO SE.
HE HAD AND ORIGINAL PENALTY PHASE REPRESENTING HIMSELF PRO SE BEFORE JUDGE LEALMAN WHEN JUDGE DAVIS TOOK OVER THE CASE HE REVIEWED THE RECORDS AND REVIEWED THE FIRST INQUIRY AND SPOKE WITH JUDGE NEALON AND FOUND THAT DOTY REPRESENTED HIMSELF ADEQUATELY IN CORE AND PROFESSIONALLY THERE WAS NEVER ANY ISSUE WITH HIS PRESENTATION THAT HE WAS RESPECTFUL AND THE JUDGE WAS A VERY FAMILIAR WITH THE RECORD AND THEN STILL CONDUCTED ANOTHER EXTENSIVE HEARING AND MADE SURE DOTY ACKNOWLEDGE THE CONSEQUENCES OF REPRESENTING HIMSELF THAT HE WOULD NOT BE ABLE TO LATER THEN

ALLEGE INEFFECTIVE ASSISTANCE OF COUNSEL.
THIS CASE IS DIFFERENT IN THAT THERE WAS THE BENEFIT OF A PRIOR HEARING.
DOTY WENT FULL KNOWING THE CONSEQUENCES OF SELF REPRESENTATION BECAUSE HE HAD DONE IT BEFORE AND HE DID IT WELL.
HE WROTE HIS OWN MOTIONS AND ACKNOWLEDGED ON THE RECORD THAT THEY WERE DRAFTED BY HIMSELF.
HE DID NOT ACCEPT THE ASSISTANCE OF OTHER INMATES.
HE DRAFTED HIS OWN MOTIONS AND MADE PROPER OBJECTIONS AND REFERRED TO THE COURT APPROPRIATELY AND THAT HE WAS ABLE TO RECALL CASE LAW.
HE EXPLAINED CASE LAW AND CITED IT CORRECTLY.
HE WAS A SAVVY AND KNOWLEDGEABLE PRO SE DEFENDANT.
WHAT ELSE I WANT TO POINT OUT IS THAT THE COURT WAS OBLIGATED TO HONOR THE DEFENDANT'S RIGHT TO REPRESENT HIMSELF CONTRARY TO WHAT MY FRIEND MS. HALL HAS SUGGESTED.
BUT IN THE RECORD THERE IS DOCTOR CROSS REPORTS AND HE FOUND THAT THE DEFENDANT HAD NO SEVERE MENTAL ILLNESS IS RIGHT OR PRECLUDE HIS ABILITY TO REPRESENT HIMSELF.
THE SUGGESTION THAT DOTY WAS UNABLE TO MAKE THAT DECISION IS CONCLUSIVELY REFUTED IN THE RECORD BECAUSE DOCTOR CROPP MADE THIS FINDING OF NO SEVERE MENTAL ILLNESS.
IT IS OUR POSITION THAT IN VIENNA VERSUS EDWARD INDIANA VERSUS EDWARDS DOES NOT APPLY IN THIS CASE GIVEN THAT THERE WAS NO SEVERE MENTAL ILLNESS.
>> HAD AN EVIDENTIARY HEARING BEEN HELD THE FACT THAT HAVE BEEN ABLE TO BE DEVELOPED AND IT WOULD BE SUFFICIENT TO REFUTE THE EXISTING REPORT.
>> YES.
AN EVIDENTIARY HEARING WAS NOT NECESSARY BECAUSE THERE WAS NO NEED FOR FACTUAL DEVELOPMENT AS I STATED BECAUSE IN THE RECORD THERE WAS EVIDENCE ALREADY THAT HE HAD NO SEVERE MENTAL ILLNESS.
IN TERMS OF THE IMAGING THE POST CONVICTION COURT MADE FINDINGS THAT THE SUGGESTION THAT TESTING WAS REQUIRED WAS ACTUALLY REFUTED BY THE RECORD.
THE COURT RELAYED THAT THE DEFENDANTS FIRST POSTCONVICTION OR EXCUSE ME THE DEFENDANT'S FIRST PENALTY PHASE REPRESENTATION IS SECOND HIS ABILITY TO TESTIFY IN COURT AND ALSO THE DEFENDANT PRIOR TO THE POST CONVICTION PROCEEDINGS, THE DEFENDANT HAD TESTIFIED IN ANOTHER INMATE'S CASE LEO BOATMAN BEFORE THE COURT AND SO THAT JUDGE WAS ALSO FAMILIAR WITH THE DEFENDANT'S ABILITY

TO TESTIFY IN THAT CASE AND FOUND THAT THE SUGGESTION BY DOCTOR MACLEAN THAT THIS TESTING WAS REQUIRED WAS REFUTED BY THE RECORD BECAUSE DOCTOR MCCLAIN STATED THAT THE TESTING ROOM WAS NECESSARY TO COMPLETE HER REPORT BECAUSE THE DEFENDANT HAD IN I BELIEVE VERBAL PRESENTATION AND MEMORY RECALL AND THE COURT SAID IT WAS REFUTED BY THE RECORD.
THERE WAS NO NEED FOR FURTHER PRESENTATION OR FACTUAL DEVELOPMENT ON THE CLAIM WHEN IT WAS REFUTED BY THE RECORD AND DOCTOR MEIR AS WELL THE COURT FOUND THAT HIS HIS RECOMMENDATION FOR TESTING WAS MERELY CONCLUSIVE AND NOT AFFIRMATIVE IN THAT IT WOULD CONFIRM THAT HE HAD SOME SORT OF BRAIN DAMAGE AND SO THE COURT FOLLOWED THE PROPER ANALYSIS IN FINDING THAT THERE WAS NO PARTICULAR NEED FOR THE TESTING AND BASED ON THAT THIS COURT SHOULD FIND THAT THERE WAS NO ABUSE OF DISCRETION THERE BECAUSE THERE REALLY WAS NO NEED FOR FACTUAL DEVELOPMENT IN THIS CASE.
>> THERE'S ALSO THE PROCEDURAL BAR ISSUE AND IS THAT RIGHT?
>> YES.
>> IT ACTED AS IF IT COULD HAVE POSSIBLY BEEN A LIVE ISSUE BUT YOUR MAIN ARGUMENT IS THAT IT IS PROCEDURAL BAR AS WELL RIGHT?
>> YES YOUR HONOR ALL OF HIS CLAIMS WITH THE EXCEPTION OF THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AND THE BRAIN IMAGING CLAIM ARE PROCEDURALLY BARRED.
THE INEFFECTIVE ASSISTANCE OF COUNSEL YOU ALREADY MENTIONED IT DURING MS. HALL'S PRESENTATION THIS COURT HAS LONG HELD THAT A DEFENDANT CANNOT REPRESENT HIMSELF AND THEN LATER CLAIM INEFFECTIVE ASSISTANCE OF COUNSEL SAME WITH STANDBY COUNSEL.
SO THOSE CLAIMS ON ARE NOT LEGALLY SUFFICIENT CLAIMS AND THE REMAINING CLAIMS ARE PROCEDURALLY BARRED.
ALL OF THEM SHOULD HAVE BEEN RAISED ON DIRECT APPEAL AND COULD HAVE BEEN RAISED ON DIRECT APPEAL AND THIS COURT HAS LONG RECOGNIZED THAT THE DEFENDANTS IS NOT ENTITLED TO A SECOND APPEAL IN POST CONVICTION AND I THINK THERE IS NO REASON THE SECOND DCA CASE IS NOT ON POINT.
THIS COURT TO FOLLOW THAT WOULD BE DEPARTING FROM ITS OWN LONG STANDING PRECEDENT BUT I DO THINK THE FACTS ARE DIFFERENT FROM THIS CASE AND THAT IT WAS A CLAIM THAT THE COURT FOUND EVEN IF IT HAD BEEN PROCEDURALLY BARRED IT COULD NOT HAVE BEEN RAISED STILL IN THE 3850 CASE AND THAT IS NOT WHAT WE HAVE HERE.
AS I POINTED OUT THE CLAIM IS THEY SHOULD HAVE BEEN RAISED ON DIRECT APPEAL AND THEY DON'T EVEN MEET THE STANDARD OF THIS JULIO.
THERE IS ABSOLUTELY NO INDICATION THAT ANY STATEMENTS HERE WERE

CONCLUSIVELY FALSE AND SO THERE WOULD BE NO ALL OF THE CLAIMS ARE PROCEDURALLY BARRED.
IF THE COURT HAS NO FURTHER QUESTIONS THE STATE RESPECTFULLY REQUESTS THAT THIS COURT AFFIRMED THE LOWER COURT'S DENIAL OF POSTCONVICTION RELIEF BECAUSE NO FACTUAL DEVELOPMENT IS NECESSARY HERE.
THANK YOU.
>> THANK YOU.
>> THANK YOU.
I BELIEVE IT IS TRUE THE FACTS ARE NOT DEVELOPED ENOUGH AND THE EVIDENTIARY HEARING SHOULD HAVE BEEN HELD.
I DO NOT BELIEVE THE RECORD IS ENOUGH BASED OFF OF THE INVESTIGATION FROM POST CONVICTION COUNSEL TO REFUTE THE FACT THAT MR. DOTY HAD MENTAL ILLNESS.
DOCTOR CROPP SPOKE ABOUT IT.
SOME MITIGATING FACTORS ALLUDED TO IT.
WITNESSES TESTIFIED TO SOME OF IT BUT A FULL DEVELOPMENT OF ANY BRAIN DAMAGE WAS NOT DONE AND THAT IS BECAUSE NO ONE ASKED FOR A PET SCAN OR MRI EVEN AT THE TRIAL LEVEL.
THE TRIAL COURT APPOINTED DOCTOR CROPP FOR THE MITIGATION PORTION OF THE PENALTY PHASE HE IS A PSYCHOLOGIST AND AN EXPERT IN HIS FIELD.
WE DO NOT DISPUTE THAT BUT HE IS NOT A NEUROPSYCHOLOGIST NOR A NEUROLOGIST AND IN 2018 IT WAS COMMON PRACTICE FOR INDIVIDUALS WHO HAD A HISTORY LIKE THIS TO HAVE A PET SCAN DONE AND IT WAS TO DETERMINE WHETHER OR NOT SOMEONE HAD ORGANIC OR SOME KIND OF PERMANENT BRAIN DAMAGE.
>> HOW DO YOU RESPOND TO THE STATE'S ARGUMENT THAT THIS IS NOT THE FIRST TIME MR. DOTY HAS BEEN DOWN THIS ROAD.
HE WAS IN PRISON FOR ANOTHER MURDER WHEN HE COMMITTED THIS MURDER AND THAT THE PRIOR OCCASION ALL OF THESE ISSUES WERE ON RECORD AND IN THIS CASE THE JUDGE HAD ACCESS TO AND THOUGHTFULLY CONSIDER THE RECORD IN MAKING THE DECISION TO ALLOW HIM TO REPRESENT HIMSELF.
WHAT IS YOUR ANSWER TO THAT?
>> ALSO IN THE FACT THAT NONE OF THE MITIGATION WAS EVER DEVELOPED IN THE FIRST TRIAL EITHER.
IN 2013.
AGAIN MR. DOTY REPRESENTED HIMSELF WE DON'T AGREE.
WE BELIEVE IT WASN'T ADEQUATE.
WE DO NOT BELIEVE HE IS QUALIFIED AND I ALWAYS GO BACK TO THE RULE ABOUT LAWYERS.

>> BUT I THINK THE POINT IS HE IS PERFORMING.
HE IS REPRESENTING HIMSELF AND HE IS NOT A LAWYER BUT YOU KNOW YOU HAVE AN ACTUAL TRACK RECORD OF HAVING SEEN HIM MORE THAN ONCE REPRESENT HIMSELF THE JUDGE CAN LOOK AT THIS AND SAY HE IS DOING THE BASIC THINGS THAT SOMEONE REPRESENTING HIMSELF NEEDS TO DO AND SO THIS IS THERE.
THESE ARE FACTS THAT THE JUDGE HAS ACCESS TO AND WHAT YOU HAVE IS SPECULATION.
>> I THINK WE HAVE EVIDENCE TO PRESENT IF WE WERE ALLOWED.
I DO BELIEVE HE REPRESENTED HIMSELF TO THE BEST OF HIS ABILITY BUT NOT TO THE BEST OF THE ABILITY THAT SHOULD BE AFFORDED SOMEONE FACING DEATH.
I KNOW WE SAY DEATH IS DIFFERENT AND IT IS.
>> WAS IT YOUR POSITION THAT NO ONE FACING A DEATH SENTENCE SHOULD BE ALLOWED TO REPRESENT HIMSELF?
>> IT IS MY POSITION EXACTLY.
>> OKAY.
SO NOW WE HAVE IT.
HOW WOULD WE SQUARE THAT?
SOMEONE WHO IS A RHODES SCHOLAR MAY NOT A LAWYER BUT A RHODES SCHOLAR AND HIGHLY INTELLIGENT YOU WOULD SAY NO MENTAL HEALTH PROBLEMS YOU SAY THAT PERSON SHOULD NOT BE ALLOWED SELF REPRESENTATION?
>> AND THE FIRST THING A TRIAL JUDGE SAYS TO SOMEONE WHO WANTS A SELF REPRESENT HIMSELF WITH THOSE EXACT CREDENTIALS IS YOU ARE A FOOL IF.
>> YOU THINK THAT IS CONSISTENT WITH WHAT THE UNITED STATES SUPREME COURT HAS SAID?
>> I DO IN INDIANA VERSUS EDWARDS YES YOUR HONOR.
YES SIR.
>> I THINK WE READ A DIFFERENT VERSION OF THAT CASE.
>> I WOULD AGREE.
>> I APPRECIATE THAT SIR.
>> I THINK YOU ARE ARGUING FOR A CHANGE IN THE LAW THAT'S NOT THE CASE LAW AND IS NOT OURS.
YOU'RE ASKING US TO CHANGE THE LAW.
>> I AM ASKING IN CASES THAT ARE DEATH PENALTY INDIVIDUALS AND NOT REPRESENT THEMSELVES ESPECIALLY TO HAVE MENTAL ILLNESS AND LIKELY BRAIN DAMAGE YES.
WITH THAT MY TIME IS UP I THANK YOU VERY MUCH FOR YOUR ATTENTION TO THIS MATTER.

WE ARE ASKING THAT THE COURT REMANDED BACK TO THE TRIAL COURT TO ALLOW US TO HAVE AN EVIDENCE YEAR HEARING ON THE CLAIMS THAT WE FILED THANK YOU AND PLEASE HAVE A GOOD DAY.
>> THANK YOU TOO.
THE COURT WILL BE IN RECESS FOR TEN MINUTES.
>> ALL RISE.