Newton Carlton Slawson vs The State of Florida

JUSTICE QUINCE IS RECUSED IN THIS CASE AND WILL NOT BE PARTICIPATING. HOWEVER, JUSTICE ANSTEAD ANN LEWIS WILL BE PARTS -- ANSTEAD AND LEWIS WILL BE PARTICIPATING IN THE RESOLUTION OF THIS CASE. SLAWSON V STATE. MR. GRUBER.

THANK YOU, YOUR HONOR. GOOD MORNING. MY NAME IS MARK DPRUBER. I AM STAFF COUNSEL WITH CCRC, AND I WILL HERE RESPECT -- AND I AM HERE, PURSUANT TO A REQUEST OF THIS COURT AND BRIEFING. IN A NUMBER OF ATTACKS, I HAVE A CORE ARGUMENT AND CORE REQUEST THAT THE CASE BE REMANDED FOR EVIDENTIARY HEARING ON MR. SLAWSON'S ABILITY TO MAKE A KNOWING AND VOLUNTARY WAIVER, AND I AM ALSO ASKING, IN CONNECTION WITH THAT, THAT I OR SOMEONE BE APPOINTED AS A SPECIAL COUNSEL, TO CHALLENGE THE ISSUE OF MR. SLAWSON'S COMPETENCY TO WAIVE. I SUGGEST THAT THIS CASE MIGHT BE A REVISITATION FOR THIS COURT IN HAMBLIN, WIDE-RANGING, AS I CAN SEE, SELF DETERMINATION. I AM SAY BRIEFLY, LOOKING AT THE JURISPRUDENCE LANDSCAPE ON THIS CASE, I DON'T SEE HOW THE PRINCIPLES IN THE PHARR CASE CAN BE JUDICIAL PROCEDURE IN THE PROCEEDINGS.

ON THE HAMBLIN, I THINK YOU CAN AGREE WITH ME THAT, THE DEFENDANT DID PUT ON MITIGATING EVIDENCE. THERE WAS A PENALTY PHASE, WHERE HE HAD COUNSEL?

OH, YES.

SO HAMLIN, REALLY, DEALS WITH THE SITUATION DURING THE INITIAL DEATH PENALTY PROCEEDINGS, THE DEFENDANT MAKES A DECISION TO WAIVE THE PRESENTATION OF HAD MITIGATING EVIDENCE. IN THIS CASE, IF YOU HAVE A FULL PENALTY PROCEEDING, THIS IS, NOW, POSTCONVICTION. WHAT IS THE REASON FOR SAYING THERE SHOULD BE ANY FURTHER CHALLENGE TO THIS DEFENDANT'S SKIINGS THAT HE -- DECISION THAT HE DOESN'T IS WANT TO CONTINUE WITH POSTCONVICTION RELIEF, IF THERE IS NOTHING IN THE PROCEEDINGS, THE INITIAL PROCEEDINGS THAT WERE FUNDAMENTALLY UNFAIR?

FIRST OF ALL, I AGREE WITH YOU ABOUT THE DISTINCTION BETWEEN HAMBLIN AND THIS CASE, AND I AGREE IN SLAWSON'S CASE, THERE WAS A LOT OF MITIGATION PRESENTTED TRIAL LEVEL, EVEN THOUGH A GREAT DEAL OF IT WAS PRESENTED IN THE GUILT PHASE, WHEN DOCTORS MARINE AND MAHER -- WHEN DOCTORS MARIN AND MAHER TESTIFIED IN POSTCONVICTION. I REGARD POSTCONVICTION MOTIONS AS SOMEWHAT DERIVATIVE AS TO THE CLAIMS IN THE MOTION, AND IF ONE OF THOSE CLAIMS IS A LEGITIMATE CLAIM, THEN THE COURT, AND THE ONE THAT COMES TO MIND IS WHEN I THINK ABOUT IT A LITTLE BIT, IT IS NOT HAPPENING UNTIL SOMEDAY, WHEN A DEFENDANT RAISES A POSTCONVICTION ISSUE OF THE PORTIONALITY VIS-A-VIS A CODEFENDANT'S SENTENCE AND THE MERITS COULD HAVE NEVER BEEN CONSIDERED BY THE COURT BECAUSE OF THE TIMING OF THE DIFFERENT CASES, COULD THE DEFENDANT WAIVE, IN THAT POSTCONVICTION SETTING? I WOULD SUGGEST NOT, BECAUSE THAT WOULD AMOUNT TO THE ABDICATION OF THE REVIEW OF PROPORTIONALITY, AND IF THAT IS THE CASE, I WOULD GO FURTHER WITH IT, IN THE PRETTY TYPICAL DEFENSE ARGUMENT THAT, IN EFFECT, THERE WAS NO COUNSEL, BECAUSE THERE WAS NO TRIAL. THERE WAS A FLAWED TRIAL. SO CERTAINLY THESE ISSUES, IF THEY ARE IMPORTANT, IF THEY ARE LEGITIMATELY RAISED IN POSTCONVICTION TO BE CONSIDERED, REALLY, FOR THE FIRST TIME, THEN IT IS MY VIEW THAT THAT POSTCONVICTION, REALLY, HAS TO BE TREATED, ALMOST, AS AN INTEGRAL PART OF THE TRIAL, ITSELF. IN OTHER WORDS I DON'T THINK THE DISTINCTION BETWEEN THE TWO PROCEEDINGS IS ENOUGH TO DO

AWAY WITH SOCIETY'S INTEREST IN MAKING SURE THE DEATH PENALTY IS UNRELIABLE IN THE FACE OF A WAIVER.

ARE YOU SAYING THAT A COMPETENT DEFENDANT CANNOT -- HAVEN'T WE ALREADY SAID, OVER AND OVER, THAT A COMPETENT DEFENDANT CAN WAIVE POSTCONVICTION PROCEEDINGS?

YOU HAVE, AND ONCE MORE, IF I HAD HAD FOUND ANY CASE IN THE COUNTRY THAT SAID THAT, WITH REGARD TO POSTCONVICTION, I THINK I WOULD HAVE CENTERPIECED IT, AND I REALLY DIDN'T FIND IT.

HERE, REALLY, UNLESS WE WERE TO GO ALL THE WAY AND RECEIVE FROM A WHOLE SERIES OF CASES, LET'S FOCUS ON THE ISSUE, AT LEAST, THIS COURT HAS BEEN CONCERNED WITH, WHICH IS WHETHER THE MANNER IN WHICH COMPETENCY HAS BEEN DETERMINED REQUIRES AN EVIDENTIARY HEARING. ISN'T THAT, REALLY, THE SORT OF ONE ISSUE THAT WE NEED TO FOCUS ON, LOOKING AT THE QUESTION AS TO WHETHER THAT COMPETENCY PROCEEDING SHOULD BE SOMEWHAT NATURAL GUST TO -- ANALOGOUS TO WHAT WE DO OR WHAT WE DID IN PROFENS ANN-, SO LET'S HAVE THE TESTIMONY IN AN EVIDENCE -- IN PROFENS AND-, SO LET'S HAVE A -- IN PROVENSRA. NO, AND SO LET'S HAVE THE EVIDENTIARY HEARING RATHER THAN WHAT WAS IN COURT.

I BELIEVE I SAID THAT. THIS IS AN EVIDENTIARY HEARING, AND IN ADDITION TO THAT, TO APPOINT COUNSTOLL PRESENT THE ADVERSARIAL POSITION. HERE DR. MAHER AND DR. MARIN AND DR. MEYER HAD AN ASSOCIATION WITH THE DEFENDANT, GOING BACK OVER TEN YEARS. I THINK THEY WERE COMPLYING WITH 32.10 AND 32.11. THEY, HOWEVER, SPLIT. ONE SAYS HE IS COMPETENT AND ONE SAYS HE DIDN'T. AT THAT POINT THE JUDGE APPOINTED DR. ATHIEL. I HAVE CRITICIZED HIS REPORT AS BEING INSUFFICIENT, UNDER 32.10 AND 32.12. LET ME GET BACK TO THE MOMENT. THEY SPLIT ON THAT, AND THEN THE JUDGE CONDUCTED A HEARING OF, WHAT I HAVE CALLED OF SORTS, AND I DON'T MEAN TO BE TERRIBLY SARCASTIC ABOUT THAT, BUT IT WAS A TERRIBLY BRIEF HEARING. EVEN IN THE PAST, COUNSEL ARE ON BOTH SIDES AND THEY ARE DOING THEIR RESPECTIVE ROLES, AND THE REPORTS ARE ORDERED AND OFTEN THERE WILL BE REPORTS UPON REPORTS, IT IS OFTEN INTRODUCED AS A STIPULATION AND LET THE JUDGE READ ON THAT MATTER, SO I AM NOT SUGGESTING HERE THAT THE JUDGE IS CONFRONTED WITH THE SPLIT AND THE REPORT BY DR. APHIEL WAS SO SKIMPY THAT IT WAS NOT OPERATING WITHIN THE RULES, AND IT WAS THE JUDGE'S DISCRETIONARY MATTER TO CONDUCT A FULL HEARING ON THAT. SHE CONCLUDED IT BY SAYING, MADAM CLERK, PLEASE GET ME THE ORDER, SO I KNOW WHAT I AM RESPONDING TO, AND EVEN IN THOSE CASES WHERE I HAVE HAD, THE JUDGE, THAT I HAVE DESCRIBED, THE JUDGE WILL USUALLY DO A SORT OF HE UNDERSTANDS THE ADVERSARIAL PROCESS AND THE CHARGES AND THE NATURE THEREOF AND IS COMPETENT TO CONFER WITH COUNSEL AND SPITS IT OUT REAL QUICKLY AND --

THAT IS NOT WHAT SHE HAS TO FIND HERE.

I AM NOT SO SURE THAT IS TRUE, BECAUSE UNDER CARTER, THE COURT ORDERED THE TRIAL COURTS TO USE 32.10 AND 32.12, UNTIL THE NEW RULES WERE IN PLACE.

THE NEW RULES WERE PROPOSED. I KNOW WE HAVE HAD THEM SUBMITTED TO US. WOULD THAT REQUIRE AN EVIDENTIARY HEARING OR DO YOU KNOW HOW THE RULES --

THE NEW ONES?

THE NEW, PROPOSED RULES.

I DON'T KNOW. I DID FILE A NOTICE OF SUPPLEMENTAL AUTHORITY AND INCLUDED THOSE RULES AS PART OF THIS RECORD. I DON'T RECALL, OFF THE TOP OF MY HEAD, WHETHER THEY ORDER AN EVIDENTIARY HEARING. IF SO, IT WOULD BE SOMETHING OF A BREAK FROM THE OLD RULES, AND

I DO SORT OF FEEL THAT THERE ODD TO -- OUGHT TO BE AN EVIDENTIARY HEARING IN POSTCONVICTION CASES, SO THERE SHOULD BE THE DISCRETION NOT TO CONDUCT A FULL HEARING. I DON'T KNOW. I COULD LOOK FOR THEM AND TRY TO FIND T I WOULD RATHER MOVE ON A LITTLE BIT, IF I COULD, THOUGH. I DON'T KNOW IF THE NEW RULES --

ALL RIGHT. WE WILL FIND OUT.

OKAY. WITH REGARD TO THE FACTS OF THIS CASE, MR. SLAWSON, EVERY TIME THAT HE HAS HAD A CHANCE IN THIS PHASE OF THE PROCEEDINGS, HAS ADVANCED A SORT OF, IN MY VIEW, AN IRRELATIONAL, ILLOGICAL SORT OF SYLOGISM, WHERE HE SAYS I WANT TO DIE. I HAVE NOT COMMITTED ACTS OR HAD THE STATE OF MIND DURING THE ACTS WHICH WOULD J JUSTIFY THE DEATH PENALTY. MY LAWYERS ARE BAD, BECAUSE THEY ARE TRYING TO KEEP ME A LIVE. HE, ALSO, SAYS THINGS WHERE KEEPING HIM ALIVE IS PART OF -- AS A CASH COW OR SOMETHING OF THAT SORT. MY POINT IS, EVERY CHANCE THAT HE HAS HAD TO SAY SOMETHING FREE, TO EXPRESS HIMSELF FREE, WHETHER IT IS IN THE ORIGINAL MOTION. WE BROUGHT THIS CASE BACK FOR A WAIVER HEARING. WHETHER IT WAS IN THE DER OCHER HEARING, ITSELF, OR WHETHER, EVEN IN THE BRIEFING BEFORE THIS COURT, WHENEVER HE HAS HAD THE CHANCE TO SPEAK FREE, HE HAS COME UP WITH THIS ASSOCIATION OF THOUGHTS, WHICH I SUGGEST IS SORT OF IRRATIONAL ON ITS FACE.

WHAT IS IRRATIONAL ABOUT -- HE COULD BE UPSET WITH HIS COUNSEL. CCR. MIDDLE. HE COULD FEEL HORRIBLE ABOUT WHAT HAPPENED BUT THINK THAT HE DIDN'T RECALL WHAT HAPPENED BUT NOW, UNDERSTANDING THE JURY HAS FOUND THAT HE COMMITTED THESE ACTS, THAT HE AGREES THAT HE SHOULD DIE FOR THOSE ACTS. WHAT IS -- WHICH PART IS IRRATIONAL?

WELL, IF EVER AGREED THAT HE SHOULD DIE FOR THESE FACTS, I AM AFRAID I HAVE MISSED IT. I THINK EVERY CHANCE HE HAS HAD, HE SAID THAT HE SHOULD, USING THE WORD SHOULD, AND AS A JUST RESULT OR AN OBJECTIVE RESULT, HIS IMPLICATIONS HAVE ALWAYS BEEN, I THINK, THAT HE SHOULD RECEIVE SOME FORM OF RELIEF. I THINK HE HAS MADE THAT POINT OVER AND OVER AGAIN, THAT THE FACTS DON'T JUSTIFY A DEATH PENALTY IN THIS CASE. THEY JUSTIFY SOMETHING LESS. I AM NOT REAL CLEAR WHAT IT IS, EXACTLY, THAT HE THINKS, BUT THAT THEY JUSTIFY SOMETHING LESS.

I GUESS I HAVE TO GO BACK TO THE COLLOQUY. I THOUGHT THE COLLOQUY, HE WAS ASKED SPECIFICALLY IF HE UNDERSTOOD WHAT WOULD HAPPEN IF HE WENT ANY FURTHER COLLATERAL PROCEEDINGS, AND HE SAID HE UNDERSTOOD THAT, AND HE HAS GOT A GED. HE HAS GOT SOME COLLEGE EDUCATION. HE HAS GOT -- HE WAS 35 AT THE TIME OF THE MURDERS. AND THAT HE WAS WANTING TO DISMISS ALL PROCEEDINGS AND KNEW WHAT HE WAS DOING WHEN HE WAS -- BY DISMISSING THEM.

RIGHT. TOWARDS THE END OF THE COLLOQUY, WHEN HE WAS PINNED DOWN BY JUDGE ALLEN, HE DID SAY WORDS ALONG THOSE LINES. THERE ARE TWO THINGS SUGGESTED BY YOUR QUESTION THAT I WOULD LIKE TO TALK ABOUT. ONE IS HIS MOTIVATIONS IN THE SENSE THAT, WHAT I DID, AND THE JURY VERDICT, I ACCEPT, I DON'T THINK HE HAS EVER MADE THAT CONNECTION. HE SAYS HE WANTS TO DIE, BECAUSE -- WELL, BECAUSE HIS LAWYERS ARE TORTURING HIM OR SOMETHING OF THAT SORT, AND BECAUSE HIS EXISTENCE IN PRISON IS A HORRIBLE THING AND HE CAN'T TAKE IT ANYMORE. THOSE HAVE ALWAYS BEEN HIS MOTIVATIONS. I DON'T THINK THAT HE HAS EVER, ONCE, ANYWHERE IN THIS PROCEEDINGS, SAID THAT MORALLY, AS A MATTER OF JUSTICE, I SHOULD DIE FOR WHAT I DID.

LET ME QUICKLY ASK YOU ABOUT THE COMPETENCY ISSUE. WHAT IS THE ESSENTIAL DIFFERENCE BETWEEN THE TWO EXPERTS? WHY DO ONE SAY HE IS COMPETENT AND THE OTHER SAYS THAT HE IS NOT? COULD YOU SORT OF CAPSLIZE WHAT THAT DIFFERENCE IS?

YES. AND I THINK THIS IS AN ISSUE THAT, REALLY, CRIES OUT FOR THE ABILITY TO CROSS-

EXAMINE THESE DOCTORS IN THE CONTEXT OF AN EVIDENTIARY HEARING. THIS LITANY THAT I HAVE DESCRIBED, THIS LOGICAL OR ILLOGICAL PROGRESSION THAT SLAWSON DOES EVERY CHANCE HE GETS, HE SAID IT TO DR. MARIN, AND DR. MARIN, IF I READ THE REPORT CORRECTLY, ACCEPTED WHAT HE SAID AS TRUE, AND THEN, OF COURSE, DR. MARIN FOUND, THIS TIME HE FOUND THE ICHRONIC DYSTHIAMIA AND CHRONIC CONDITIONS, NOTHING APPARENTLY SEVERE, AND SAID THAT WHAT HE IS HE WAS TRUE AND HE IS COMPETENT. DR. MARIN LISTENED TO THE LITANY, ESPECIALLY THE COMPLAINTS ABOUT THE CCR AND WHATNOT, AND THEN, ACCORDING TO HIS REPORT, WENT OUT AND TALKED TO THE LAWYERS, CALLED THEM ON THE PHONE OR DID SOMETHING LIKE THAT, BUT FOLLOWED IT FURTHER AND CONCLUDED THAT THESE FACTS WERE FALSE, AND THAT IS WHERE HE SAID, INSTEAD, THEY ARE PART OF A DELUSIONAL SYSTEM.

WE HAVE MANY, MANY CASES WHERE, IN FACT, THE TRIAL COURTS GET THEM ALL THE TIME, WHERE DEFENDANTS ARE UNHAPPY WITH THEIR LAWYERS. THE LAWYER SAYS, NO, I AM DOING THIS, AND THE DEFENDANT SAYS YOU ARE NOT, AND THERE IS A DISCONNECT, BUT I AM NOT SURE -- MAYBE I AM NOT FOLLOWING -- SO BECAUSE HE DIDN'T PERCEIVE THAT HIS LAWYERS WERE DOING WHAT HE WANTED, AND YET DR. MAHER FOUND OUT THAT THE LAWYERS WERE DOING THINGS, THAT THAT IS WHY DR. MAHER FOUND THAT HE WAS INCOMPETENT?

REALLY THE BEST ANSWER THAT I CAN GIVE, THAT I THINK OF, IS I DON'T UNDERSTAND. I MEAN DR. MAHER CAN WRITE IT ALL OUT AND I DON'T THINK I UNDERSTAND EXACTLY WHAT WENT INTO HIS ULTIMATE EXPERT DECISION. I AM EMPHASIZING, HOWEVER, ON THE DATA IN AND GARBAGE IN, GARBAGE OUT SORT OF THINKING AND WHAT HAVE YOU, THAT THERE IS A SPLIT BETWEEN DOCTORS MARIN AND MAHER, AND THAT MAY HAVE CONTRIBUTED.

ARE YOU SAYING THAT HAS TO DO WITH HIS EXPRESSION OF THE CCR'S PERFORMANCE?

YEAH. THAT IS WHAT IS WRITTEN UP IN THE REPORT. THE REASON I SAY THAT IS BECAUSE IT IS SOMETHING I CAN UNDERSTAND AND SOMETHING THAT I CAN DEAL WITH UNDER CROSS-EXAMINATION OR APPROPRIATE FOR CROSS-EXAMINATION BY NONEXPERTS. IF YOU WERE ASKING ME TO FULLY EXPLAIN HOW THE EXPERTS COME BY THEIR DIAGNOSIS, I CAN'T.

WHAT YOU ARE SAYING, SHORT OF THAT, WHAT THE JUDGE DID WAS SIMPLY SAY, WELL, WE HAVE GOT ONE DOCTOR GOING THIS WAY AND ONE GOING THAT WAY. WE ARE GOING TO, NOW, FIND OUT WHAT ONE MORE SAYS, AND SINCE HE SAYS IS HE COMPETENT, TWO TO ONE WINS. IS THAT WHAT YOU ARE SAYING THE JUDGES ESSENTIALLY DID?

IT SURE -- THE JUDGES ESSENTIALLY DID?

IT SURE LOOKS LIKE IT TO ME. IF THE JUDGE HAD STOPPED THERE AND MADE IT A CONTRADICTORY REPORT AND STOPPED THE HEARING, THAT WOULD HAVE BEEN THE MATTER. BUT CLEARLY THE REPORT FROM DR. APHIEL DID DOES NOT SAY WHAT IT WAS SUPPOSED TO DO AND HAD THIS HEARING IN A MATTER OF MINUTES. MY LIGHT IS ON HERE. -.

I AM CAROL DITTMAR, REPRESENTING THE APPELLEE, THE STATE OF FLORIDA, FROM THE ATTORNEY GENERAL'S OFFICE OF THE STATE OF FLORIDA. I WANT TO PICK UP WHERE WE LEFT OFF WITH THE DIFFERENCE OF THE EXPERT'S OPINIONS IN THIS CASE. THE MAIN DIFFERENCES BETWEEN DR. AFIELD AND DR. MARIN, IN THEIR REPORTS, TOOK THIS AS A SITUATION IN THEIR REPORTS, AS TO WHETHER OR NOT A MAN WAS COMPETENT TO WAIVE HIS POSTCONVICTION RIGHTS AND DOCTOR MAHER DID NOT DO THAT TYPE OF PROCEDURE. HE DID A CARTER-TYPE PROCEDURE TO FIND OUT HIS SITUATION. HE FOUND OUT HE WAS AWARE OF HIS CONVICTIONS AND AWARE OF THE AVENUES OF APPEAL AVAILABLE TO HIM. HE WAS A CARE OF THE CONSEQUENCES OF WAIVING THOSE APPEALS. DR. MAHER HAD CONCERNS ABOUT HIS COMPETENCY TO PROCEED IN A POSTCONVICTION CASE, BECAUSE HE SAYS HE IS CONFUSED ABOUT HIS CAPACITY TO UNDERSTAND WHO IS WORKING IN HIS INTEREST AND WHO IS NOT

WORKING IN HIS INTEREST. I DON'T THINK THAT IS ANY GREAT SURPRISE ON THIS CASE, WHERE MR. SLAWSON HAS ASSERTED VERY CLEARLY HE WANTS ONE THING AND HIS LAWYERS ARE THE ONES HE SEES WORKING AGAINST HIM, BECAUSE THEY ARE THE ONES BEING ADVERSARIAL TO WHAT HE WANTS, SO I THINK, BASED ON INCOMPETENCE AND DR. MAHER'S CONCLUSION THAT I TALKED TO THIS MAN AND I TALKED TO THE LAWYERS AND THEY DON'T AGREE ON WHERE THIS CASE SHOULD BE GOING IS TOO SIMPLISTIC, AND I DON'T THINK IT HAS ANYTHING TO DO WITH WHETHER OR NOT MR. SLAWSON IS ABLE TO WAIVE HIS POSTCONVICTION RIGHTS. DR. MAHER'S ABILITY TO TESTIFY RELEVANTLY, HE HAD CONCERNS ABOUT WHETHER OR NOT HE COULD TESTIFY RELEVANTLY, AND, AGAIN, IF WHAT MR. SLAWSON IS TRYING TO DO IS WAIVE HIS POSTCONVICTION RIGHTS AND EXERCISE HIS CONSTITUTIONAL RIGHT TO CONTROL HIS OWN DESTINY, THEN HIS ABILITY TO TESTIFY RELEVANTLY ISN'T GOING TO BE A MATERIAL ELEMENT IN BEING ABLE TO DO WHAT HE WANTS TO DO THIS IN THIS CASE. I SEE THAT AS BEING THE BIG DIFFERENCE IN THE REPORTS IS THAT DR. MARIN AND DR. AFIELD LOOKS AT THIS AND SEE IF HE IS ABLE TO WAIVE HIS POSTCONVICTION RIGHTS AND WAIVE HIS RIGHT TO COUNSEL AND THAT IS THE WAY HE WANTS TO PROCEED, WHEREAS DR. MAHER LOOKED AT IT COULD HE PARTICIPATE IN A POSTCONVICTION TYPE PROCEEDING AND BE ABLE TO ASSIST IN HIS CASE? DR. MAHER NEVER SAID WHAT HE TRIED TO DO WAS WAIVE HIS POSTCONVICTION RIGHTS, AND IF YOU LOOK AT THE RECORD, MR. SLAWSON UNDERSTANDS EVERYTHING THAT IS ABLE TO BE APPRECIATED AS TO THE APPEALS THAT ARE AVAILABLE TO YOU, THE CONSEQUENCES OF WAIVING THESE APPEALS, HE FOUND THAT MR. SLAWSON WAS COMPETENT IN THOSE REGARDS. AS FAR AS THE COMPETENCY OF DR. AFI LE. EL -- DR. AFIELD'S REPORTS, IT DOES NOT GO TO THE COMPETENCE TOY STAND TRIAL, BECAUSE, AGAIN, THAT WAS NOT THE ISSUE BEFORE THE TRIAL COURT, AND IN THE SANCHEZ CASE, THIS COURT SAID THAT IF THE EXPERT OPINION WENT TO THE MATTERS BEFORE THE TRIAL COURT AND WAS RESPONSIVE TO THE NEEDS THAT THE TRIAL COURT HAD, IT WAS A SUFFICIENT REPORT.

IS IT NOT, THINKING OF PROVENSANO, BETTER WHEN YOU HAVE A SITUATION, TRYING TO LOOK AT COMPETENCE TOY WAIVE HIS RIGHT TO PROCEED WITH POSTCONVICTION RELIEF, AS OPPOSED TO THE RIGHT TO BE EXECUTED, AND YOU HAVE GOT CONFLICTING REPORTS, EVEN THORTION AS YOU SAY, ONE MAY NOT BE BASED UPON -- MAY BE BASED ON ERRONEOUS ASSUMPTION, ISN'T IT BETTER TO HAVE THOSE EXPERTS THERE, SO THAT THERE CAN BE APPROPRIATE EXAMINATION AND INQUIRY BY THE TRIAL COURT TO MAKE SURE THAT THAT IS, THAT EVERYONE IS ON THE SAME PAGE, SO TO SPEAK? WHAT IS WRONG WRONG WITH THAT, IN A CASE LIKE THIS?

WELL, THE BIGGEST DANGER WITH THAT IS YOU ARE INTERFERING WITH MR. SLAWSON'S RIGHT TO EXERCISE HIS CONSTITUTIONAL RIGHTS TO PROCEED.

THE PROBLEM, THOUGH, IS THE -- IT IS PREDICATED ON THE PERSON BEING COMPETENT, AND WHEN THE COMPETENCY IS CHALLENGED, AT LEAST ONE OF THE EXPERTS FINDS THAT HE IS INCOMPETENT TO DO THAT, THAT IS THE ONLY THING HE REQUIRES, JUST THAT HE BE COMPETENT TO BE ABLE TO WAIVE IT, SO IF THAT IS IN DISPUTE, ISN'T IT NORMALLY THE FACT THAT WE WOULD WANT TO HAVE THAT DONE IN SWORN TESTIMONY UNDER OATH, RATHER THAN BY REPORTS, WHICH WE CAN INTERPRET AND TRY TO FIGURE OUT WHY THEY ARE DIFFERENT AND WHY THEY ARE THE SAME.

I THINK YOU GET TO THE POINT, ONE OF THE PROBLEMS THAT HAS BEEN RAISED IN THIS CASE IS, WELL, DID JUDGE ALLEN JUST COUNT NOSES, AND IF YOU GET TO THE POINT OF SAYING IF YOU HAVE A DOCTOR AND THAT DOCTOR SAYS MY BOTTOM LINE IS THIS PERSON IS INCOMPETENT, THAT IS AUTOMATICALLY GOING TO ENTITLE SOMEONE TO A HEARING, I THINK THAT IS A DANGEROUS ROAD TO GO DOWN. I THINK THERE HAS TO BE REASONABLE GROUNDS, AND THIS IS WHAT WE HAD IN PROVENSANO. THERE HAS TO BE REASONABLE GROUNDS TO COMPETENT THE COMPETENCY, AND IT HAS TO BE THE COMPETENCY TO DO WHATEVER THE DEFENDANT IS TRYING TO DO AT THAT POINT. IN THE PROVENSANO CASE, DR. FLEMING HAD WRITTEN A REPORT WHICH RAISED REASONABLE GROUNDS THAT MR. PROVENSANO DID NOT HAVE THE RIGHT TO BE

EXECUTED. IN THIS CASE WAIVING POSTCONVICTION RIGHTS IS DISCOUNTED, BECAUSE HE FINDS HE UNDERSTANDS THE NATURE OF THE CONVICTIONS AND UNDERSTANDS THE APPEALS AVAILABLE TO HIM, AND HE UNDERSTANDS THE CONSEQUENCES OF WAIVING THOSE APPEALS, AND COMBINED WITH JUDGE ALLEN'S -- SHE REALLY HAD MORE THAN A DEROCHER HEARING, BECAUSE THE ATTORNEY ASKED HER TO KEEP ASKING MORE QUESTIONS AND SHE ULTIMATELY DID SO, SPECIFICALLY WENT THROUGH THE CONCERNS ABOUT WHAT HE IS NOT HAPPY WITH HERE IS HIS ATTORNEYS. SHE WAS VERY CONCERNED ABOUT THAT AND WANTED TO MAKE SURE THAT HE WASN'T SATISFIED WITH HIS LEGAL REPRESENTATION. HE HONESTLY WANTED TO PUT AN END TO IT ALL, AND I THINK THAT BECAME VERY CLEAR DURING THE TRANSCRIPT. THAT IS WHY WE HAVE THE REPORTS. THE DR. SAYS THE BASIS OF HIS -- THE DOCTOR SAYS THE BASIS OF HIS CONCLUSION, AND YOU CAN GENERATE A REPORT AS TO WHETHER THAT IS GROUNDS TO QUESTION SOMEONE'S'S INCOMPETENCE, AND THAT BASICALLY DOES NOT DO THAT, FOR THE PURPOSE MR. SLAUS SON TRYING TO ACHIEVE.

YOU ARE GOING TO HAVE TO REFRESH MY MEMORY, AND STATED SPECIFICALLY TO THE FINDINGS OF THE EXPERT, DID THE DEFENDANT ASK TO CALL THE DOCTORS AS LIVE WITNESSES?

MR. SLAWSON DID NOT ASK TO CALL THE DOCTORS AS LIVE WITNESSES, AND HE IS THE ONE HA STIPULATED TO THE FINDINGS. THERE WAS A CCR MIDDLE REPRESENTATIVE AT THE HEARING, AND SHE REQUESTED THE COURT TO HAVE AN EVIDENTIARY HEARING AND TO TAKE TESTIMONY, TO WHICH MR. SLAWSON OBJECTED. HE DOES NOT WANT THE PROCEEDING DELAYED ANY LONGER THAN IT HAS BEEN DELAYED. HE ASSERTED, BACK IN 1998, THAT HE WANTED TO PUT THIS TO AN END, AND SO IT KEEPS DRAGGING OUT, AND HE IS FRUSTRATED BY THAT AS MUCH AS ANYTHING, AND THAT COMES ACROSS, TOO, I THINK, WITH HIM OBJECTING TO THE FACT THAT CCR IS REQUESTING AN EVIDENTIARY HEARING. THE -- AS FAR AS HIS MOTIVATIONS, I DON'T THINK THERE IS ANY AUTHORITY TO SUGGEST THAT HE HAS TO HAVE A GOOD MOTIVATION FOR DOING WHAT HE IS DOING. I THINK HE HAS BEEN VERY RATIONAL ABOUT SAYING WHY HE IS TRYING TO DO WHAT HE IS TRYING TO DO, AND THIS IS A CASE APART -- IT IS NOT LIKE THE SAME SITUATION IN DEROCHER AND PHARR AND HAMBLIN AND THOSE CASES WHERE IT WAS WAIVED. WE HAD AN APPEAL THAT WAS UPHELD AND THERE WAS COMPETENCY EXPLORED AT HIS ORIGINAL TRIAL. ALL OF THE ASPECTS OF THAT, TAKE IT OUT, AND YET MR. SLAWSON HAS HAD MORE PROTECTION, ALREADY, ON THESE GROUNDS, THAN DEROCHE ERROR PHARR OR HAMBLIN HAD. THEY DID NOT HAVE A COMPETENCY HEARING. THEY HAD -- SO THEY HAD COMPETENCY EXPLORED AT THE TIME OF THEIR TRIAL, BUT ALL THEY HAD TO DO WAS BASICALLY GO IN AND HAVE THE FAR ETTA HEARING. -- THE FERETTA HEARING.

WHAT IS THE REASON THAT HE DOES NOT WANT TO PROCEED WITH THE POSTCONVICTION SFLOING.

HE IS TIRED OF FIGHTING THE GOOD FIGHT. HE THINKS THIS IS ALL A CHARADE. HE DOES NOT THINK, ALTHOUGH HE MAY HAVE SOME SORT OF DELUSION ABOUT HIS STATE OF MIND AT THE TIME OF THE CRIME, HE TESTIFIED THAT HE COMMITTED THIS CRIME BUT DOESN'T REMEMBER IT, BECAUSE HE WAS UNDER COCAINE INTOXICATION, BUT HE FEELS LIKE HE HAS DONE EVERYTHING THAT HE COULD. HE FEELS LIKE THE ARGUMENTS THAT HAD TO BE MADE EITHER ARE NOT GOING TO BE MADE OR HAVE ALREADY BEEN MADE AND BEEN REJECTED, AND HE DOESN'T SEE ANY CHANCE OF SUCCESS.

LET ME ASK YOU THIS QUESTION, AND THIS IS MY ONLY CONCERN. HIS CONVICTION, HE WAS AFFIRMED IN 1994, WHEN WAS IT THAT HE FIRST ASKED FOR THESE PROCEEDINGS TO BE STOPPED? WAS IT '96, '97?

IT WAS '98, WHEN -- HE -- WHEN HE GOES BACK AND HAS A DEROCHER HEARING, HE SAYS THAT HE DOES NOT KNOW, AT THAT TIME, WHAT HAD HAPPENED, THAT HE DID NOT KNOW ABOUT THE 3.850, WHAT WAS ACTUALLY IN THE 3.850.

MY ONLY CONCERN IS THIS. WE KNOW, FROM OTHER CASES, THAT FOR THE PERIOD '94 TO '96, '97, '98, THERE WAS GREAT TURMOIL IN CCR, THAT IT WAS DIVIDED. WE HAVE SEEN CASES WHERE CCR MIDDLE, WE HAVE HAD HAD TO HAVE THEM FILE NEW BRIEFS, BECAUSE OF THE LEVEL OF THE ADVOCACY, AND MY CONCERN IS THAT, BECAUSE OF WHAT HE PERCEIVES TO BE LESS THAN ADEQUATE REPRESENTATION, THAT IS WHAT IS MAKING HIM FEEL IT WAS IS A CHARADE AND THAT JUDGING FROM SOME OTHER CASES WHERE WE HAVE SEEN, THAT MAY HAVE BEEN JUSTIFIED. I HATE TO THINK THAT THAT IS -- THAT JUST BECAUSE OF THOSE CIRCUMSTANCES THAT HE WAS DROPPING IT.

WELL, JUDGE ALLEN ASKED HIM ABOUT THAT SPECIFICALLY AND ASKED HIM ABOUT, YOU KNOW, HOW ABOUT IF WE LOOK AT DIFFERENT ATTORNEYS, AND IS YOUR PROBLEM HERE JUST THAT YOUR ATTORNEYS ARE NOT TELLING YOU WHAT IS HAPPENING AND THAT YOU ARE BEING KEPT IN THE DARK, AND HE SAID, YOU KNOW, I HAVE HAD OTHER ATTORNEYS. I HAVE HAD OTHER ATTORNEYS AT TRIAL. THIS COURT HAS APPOINTED OTHER ATTORNEYS FOR ME, AND NO ONE ELSE IS GOING TO DO ANYTHING ELSE. HE DIDN'T FEEL IT WAS SO MUCH THESE PARTICULAR ATTORNEYS. HE JUST FELT LIKE THERE WAS NO WAY HE IS EVER GOING TO WIN HIS CASE OR GET ANY RELIEF, AND HE IS TIRED OF LIVING IN A CAGE.

THERE WASN'T ANY QUESTION OF ADMISSION OF GUILT IN THIS CASE WAS THERE?

HE TESTIFIED AT TRIAL THAT, BECAUSE OF HIS COCAINE ADDICTION, HE COULD NOT FORM PREMEDITATION, AND THAT WAS HIS DEFENSE AT TRIAL.

THE JURY WAS 9-3, 8-5, 7-4 ON THE MURDERS.

I THINK THAT MAY HAVE GONE TO A FCKT OR WAS HEINOUS, ATROCIOUS AND CRUEL, AND THE TWO CHILDREN HAD PRETTY MUCH BEEN SHOT AND EXECUTED, AND I THINK THE ATTORNEY CONCLUDED THAT THE HEINOUS AND CRUEL APPLICATION DID NOT APPLY TO THE CHILDREN, WHEREAS THE FATHER HAD BEEN STABBED AND IN ADDITION THE MOTHER HAD BEEN STABBED AND SLIT OPEN AND HAD HER BABY OUT AND SHE, ALSO, HAD CRAWLED OVER TO HER MOTHER'S HOUSE, SO I THINK THE JURY WAS ABLE TO FEEL LIKE THOSE CRIMES WERE MORE AGGRAVATED,, AND THAT IS WHY THEY HAD TO HIRE --.

IT WAS-3.

ON HER MURDER, IT WAS 9-3, SO THE DIMINISHED CAPACITY. ANOTHER MITIGATION WAS PUT FORTH BY DR. BURLIN IN THE PENALTY PHASE, SO THERE WAS A LOT OF TESTIMONY IN THE MITIGATION PHASE THAT COULD HAVE BEEN TAKEN, THERE WAS ALSO A VERY STRONG CASE IN THEIR DEFENSE, AS WELL AS THE JURY MAY HAVE TAKEN INTO ACCOUNT THE FACT THAT HE DIDN'T HAVE A VIOLENT HISTORY, AND THERE WERE SEVERAL FAMILY MEMBERS AND FRIENDS THAT TESTIFIED ABOUT HIS GOOD CHARACTER, ALSO, SO THAT WAS, ALSO, SOMETHING THAT THEY WERE ABLE TO WEIGH AT THE TIME. I THINK THE MOST IMPORTANT THING TO KEEP IN MIND IN THIS CASE IS THIS IS NOT A CARTER SITUATION. THIS, REALLY, ISN'T A COMPETENT TEBS I SITUATION -- A COMPETENCY SITUATION, BECAUSE THERE ARE NO REASONABLE GROUNDS TO QUESTION MR. SLAWSON'S COMPETENCY TO DO WHAT HE IS DOING. IT IS STRICTLY A FERETTA SITUATION. IT SHOULD BE HANDLED LIKE HAMBLIN AND PHARR AND THE GARY GILMORE CASES, WHERE WORKING THEIR WAY UP THE SYSTEM AND MERELY HAVE A FERETTA HEARING AND WITHOUT A PERSON'S COMPETENCE TO WAIVE THEIR POSTCONVICTION RIGHTS, THEY ARE ABLE TO DO SO, AND WHEREAS MR. SLAWSON IS ABLE TO HAVE THE PROCEEDINGS DELAYED, I WANTED TO, ALSO, BRING BACK, AT THE HUFF HEARING, WHICH I BELIEVE WAS IN 198997, THE SITUATION AT THAT -- WAS IN 1997, THE SITUATION AT THAT TIME WAS THAT MR. CARTER WAS REFUSING TO MEET WITH HIS ATTORNEYS, AND SO WHEN YOU MENTION THE DISSATISFACTION WITH THE YEARS OF CCR MIDDLE, I THINK HIS DISSATISFACTION PREDATES THAT, AND IF YOU GO BACK TO THE RECORD, IT GOES BACK TO THE TIME THAT THINGS WERE FINALIZED AND HE WAS

READY TO MOVE ON AND IS TIRED WITH DRAGGING THEM OUT, SO FOR THOSE REASONS I WOULD ASK THIS COURT TO AFFIRM JUDGE ALLEN'S FINDING THAT A COMPETENT, KNOWING, INTELLIGENT, VOLUNTARY WAIVER OF MR. SLAWSON'S POSTCONVICTION RIGHTS HAS BEEN MADE. THANK YOU.

REBUTTAL?

THE NEW -- THE PROPOSED RULE ON THAT SECTION DOES LOOK ABOUT THE SAME AS 3.812-A, AND IT GIVES THAT A HEARING WILL BE SET BUT DOESN'T GIVE A BLUEPRINT ON HOW TO CONDUCT THAT HEARING, SO I ASSUME THAT IS SOMEWHAT DISCRETIONARY. ASSUMING WHAT I KNEW, THAT COMPETENCY ISN'T MUCH OF AN ISSUE HERE AND THAT THE QUESTION IS A DEROCHER, FERETTA-TYPE HEARING, SLAWSON REPEATEDLY COMPLAINED THAT HIS ATTORNEYS KEPT HIM IN THE DARK AND WOULDN'T TELL HIM ANYTHING. THE MATTER HAD BEEN FILED AND THE MATTER BRIEFED AND THE HEARING WAS WAS BEFORE THIS COURT. AT THAT HEARING, AT THE PROMPTING OF THE STATE, THE JUDGE OFFERED MR. SLAWSON THE OPPORTUNITY TO AT LEAST READ THE 3.850 AND SEE WHAT CLAIMS WERE ACTUALLY THERE, AND SLAWSON CHOSE NOT TO DO SO, AND JUDGE ALLEN, ALSO, SAID THAT SHE WAS NOT GOING TO GO THROUGH THE ENTIRE STANDARDIZED FERETTA HEARING, SLAWSON INDICATED THAT HE WASN'T GOING TO FILE ANYTHING, AND THE JUDGE INDICATED SHE DIDN'T NEED TO DO SO, SO I WOULD SUGGEST THE PROCEDURE IS FUNDAMENTALLY FLAWED. EVEN IF YOU HAVE A VOLUNTARY WAIVER YOU, CERTAINLY DON'T HAVE A KNOWING ONE. CLAIMS HAD BEEN FILED ON HIS BEHALF. IT REMINDS ME OF A SITUATION WHERE A DEFENDANT IN A PLEA COLLOQUY GOING ON ACROSS THE STATE NOW, MAYBE DIDN'T CHOOSE TO READ THE PLEA FORM OR WHAT HAVE YOU.

DIDN'T THE JUDGE PRETTY MUCH EXPLAIN TO HIM WHAT WAS HAPPENING?

I DON'T -- MY FEELING IS SHE DIDN'T. SHE TALKED ABOUT THE COURT MIGHT ACCEPT THESE CLAIMS AND THEY MIGHT PROVIDE SOME RELIEF.

BUT DIDN'T SHE GO INTO SOME DETAIL ABOUT WHAT WAS BEING CLAIMED?

I DON'T BELIEVE SHE DID AT ALL. NOTHING. NO, SIR.

I DON'T BELIEVE SHE WENT INTO THE SPECIFIC CLAIMS AT ALL. THERE WERE 20 OR SO AND INCLUDED INEFFECTIVE ASSISTANCE AT BOTH THE GUILT AND PENALTY PHASES. AS I SAID, SHE SAID, HERSELF, THAT SHE WAS NOT GOING TO GO THROUGH THE ENTIRE FERETTA INQUIRY AT THAT POINT. THAT IS ESSENTIALLY IT. THANK YOU VERY MUCH.

THANK YOU VERY MUCH.

WE WILL BE IN RECESS FOR A VERY SHORT BREAK.