NEXT CASE ON THE COURT'S CALENDAR IS STATE OF FLORIDA VERSUS SAMMY COTTON. AND I UNDERSTAND THAT MANY OF THE ISSUES THAT HAVE PREVIOUSLY BEEN ARGUED HAVE -- ARE INVOLVED IN THIS CASE, AND IT WOULD BE HELPFUL TO THE COURT, IF YOU WOULD GO TO THE OTHER ISSUES THAT YOU HAVE RAISED. AS WELL.

YES, SIR. MY NAME IS RONALD NAPOLITANO. I AM AN ASSISTANT ATTORNEY GENERAL. I REPRESENT THE PETITIONER, STATE OF FLORIDA, IN THIS CASE. IT IS THE POSITION OF THE STATE OF FLORIDA THAT THE PRISONER RELEASEE REOFFENDER STATUTE, PARTICULARLY SUBSECTION D-1, WHICH SETS FORTH DISCRETIONARY FACTUAL MATTERS THAT ARE TO BE CONSIDERED IN DETERMINING WHETHER THE MANDATORY SENTENCES ARE TO BE IMPOSED, PLACE THAT DISCRETION IN THE HANDS OF THE STATE ATTORNEY. AND NOT THE TRIAL COURT. AND THAT THIS CAN BE GLAEND NOT ONLY FROM THE FACE OF THE STATUTE BUT -- GLEANED NOT ONLY FROM THE FACE OF THE STATUTE BUT FROM THE HISTORY OF THE STATUTE, AS WELL.

DO WE REALLY NEED TO -- HASN'T THE LEGISLATURE PRETTY MUCH TOLD US THAT THAT IS WHAT THEY MEANT NOW?

YES, IT HAS. I JUST WANTED TO MAKE A GENERAL STATEMENT AS TO WHAT THE STATE'S POSITION WAS. IN ADDITION TO THAT, THIS COURT HAS, ALREADY, COVERED, IN DETAIL, THE SEPARATION OF POWERS ARGUMENT. THE OTHER ISSUES RAISED BY THE DEFENSE IN THE COTTON CASE CONCERN CONSTITUTIONAL MATTERS INVOLVING CRUEL AND UNUSUAL PUNISHMENT, OVER BREADTH, AND SUBSTANTIVE DUE PROCESS. ORIGINALLY, AS I POINTED OUT IN MY BRIEF IN THIS CASE, THESE MATTERS WERE NEVER RAISED, EITHER AT THE TRIAL LEVEL OR ON DIRECT APPEAL, AND I QUESTION WHETHER THE COURT SHOULD EVEN CONSIDER THESE MATTERS, WHEN THEY ARE RAISED FOR THE FIRST TIME IN FRONT OF THIS COURT, ON DISCRETIONARY REVIEW. I AM AWARE OF THE TRUSKIN CASE. HOWEVER, IN THE TRUSKIN CASE, THE MATTER WAS THE FACIAL CONSTITUTIONALITY CHALLENGES WERE RAISED, IN FACT, ON DIRECT REVIEW, AND CAME TO THE FLORIDA SUPREME COURT. THESE MATTERS WERE NEVER RAISED ON DIRECT REVIEW. ASSUMING THE COURT IS GOING TO ACCEPT REVIEW OF THESE CONSTITUTIONAL ISSUES, THEN I WILL ADDRESS EACH ONE OF THEM IN TURN. THE CRUEL AND UNUSUAL PUNISHMENT QUESTION IS CLEARLY A NONISSUE EW IN THIS CASE. THE -- A NONISSUE IN THIS CASE. THE BASIS FOR THE CRUEL AND UNUSUAL ARGUMENT THAT IS MADE BY THE DEFENSE IS THAT THE STATUTE MAKES DISTINCTIONS BETWEEN PREVIOUS OFFENSES, WHERE THE PERSON WAS IMPRISONED, AND DOES NOT MAKE A DISTINCTION, BASED UPON THE FACT OF A PREVIOUS OFFENDER WHO, FOR INSTANCE, HAD A PRIOR CONVICTION FOR A FELONY BUT HE NEVER WENT TO PRISON, WAS IN JAIL, OR, FOR INSTANCE, WAS IN FEDERAL PRISON. SHE, ALSO, MAKES THE ARGUMENT THAT IT MAKES A DISTINCTION OF THREE YEARS, AND THEREFORE A PERSON WHO COMMITS A NEW OFFENSE THREE YEARS AND A DAY IS SUBJECT TO THE MANDATORY PUNISHMENT, WHEREAS A PERSON WHO COMMITS IT LESS, ONE DAY LESS THAN THREE YEARS, IS NOT SUBJECT TO THE MANDATORY PUNISHMENT. THESE ARGUMENTS ARE NOT, REALLY, CRUEL AND UNUSUAL PUNISHMENT ARRESTING YAUMENTS AT ALL. THEY ARE ARGUE -- ARGUMENTS AT ALL. THEY ARE AGO UNITE BASED ON SUBSTANTIVE DUE ON -- ARE ARGUMENTS BASED ON SUBSTANTIVE DUE PROCESS AND ARGUMENTS BASED ON EQUAL PROTECTION, AND THEY ARE BASED ON LAWS OF THIS STATE. OBVIOUSLY THE LEGISLATURE HAS A RIGHT TO SET CERTAIN SPECIFIC TIME LIMITATIONS ON THE BRINGING OF CERTAIN ACTIONS. IF THEY WERE NOT ALLOWED TO DO SO, THEN YOU COULD NOT SAY -- YOU COULD NOT SAY THAT A PERSON WOULD ONLY BE ABLE TO VOTE AT THE AGE OF 18. WELL, WHAT IF A PERSON WAS ONE DAY LESS THAN 18? OR A PERSON COULD NOT DRIVE UNTIL HE WAS 17 YEARS OF AGE. OR WHAT IF A PERSON WAS 16 YEARS AND 10 MONTHS? WHY SHOULD HE BE DENIED THE RIGHT? AS FAR AS SUBSTANTIVE DUE

PROCESS IS CONCERNED, THE ONLY QUESTION IS WHETHER THE STATUTE HAS A REASONABLE RELATION TO A LEGITIMATE GOVERNMENT PURPOSE AND IS NOT DISCRIMINATORY, CAPRICIOUS OR OPPRESSIVE AND. THAT IS WHAT THIS COURT SAID IN KING. THE COURT SPECIFICALLY SAID, IN THE KING CASE, THAT THE COURTS WILL NOT BE CONCERNED WITH WHETHER THE PARTICULAR LEGISLATION IS THE MOST PRUDENT CHOICE OR IS A PERFECT PANACEA TO CURE-ALL OR A CHIEF THE INTEREST INTENDED, IF THE LEGITIMATE STATE INTEREST WHICH IT AIMS TO EFFECT, AND IF THE LEGISLATION IS REASONABLY RELATED, MEANS TO A CHIEF THAT END, IT WILL BE UPHELD. THAT IS WHAT HAPPENS IN THE INSTANT CASE. IN KING, THEY SPECIFICALLY ADDRESSED THE QUESTION OF, WELL, THE HABITUAL OFFENDER STATUTE, AT THAT TIME, ONLY ADDRESSED DEFENDANTS WHO HAD PRIOR CONVICTIONS IN THE STATE OF FLORIDA, AND DIDN'T ADDRESS DEFENDANTS WHO HAD PRIOR FEDERAL CONVICTIONS. AND THIS COURT SAYS, WELL, THERE IS NOTHING WRONG WITH THAT. IT DOESN'T HAVE TO COVER EVERYTHING, AS LONG AS IT HAS A LEGITIMATE STATE PURPOSE. BUT WE HAVE A LEGITIMATE STATE PURPOSE HERE. THE LEGITIMATE STATE PURPOSE HERE, IS TO DETER RECIDIVISM, AND SPECIFICALLY RECIDIVISM WITHIN THREE YEARS AFTER BEING RELEASED FROM STATE PRISON. THE NEXT ARGUMENT THAT THE DEFENSE MAKES CONCERNS OVER BREADTH. I THINK, CLEARLY, THE OVER BREADTH ARGUMENT IS WITHOUT MERIT IN THIS CASE, BECAUSE OVER BREADTH ONLY CONCERNS MATTERS DEALING WITH FIRST AMENDMENT PRIVILEGES. WE ARE NOT DEALING WITH FIRST AMENDMENT PRIVILEGES HERE. THIS IS STRICTLY A SENTENCING STATUTE. AND A FACIAL CHAL TONK A LEGISLATIVE ACT -- CHALLENGE TO A LEGISLATIVE ACT, BASED ON OVER BREADTH, IS OBVIOUSLY THE MOST DIFFICULT CHALLENGE TO MOUNT SUCCESSFULLY, BECAUSE HE MUST CHALLENGE OR MUST ESTABLISH THAT THERE IS NO SET OF CIRCUMSTANCES UNDER WHICH THE ACT WOULD BE VALID. HIS OVER BRAET ARGUMENT, MR. COTTON'S OVER BREADTH ARGUMENT, IS BASED ON THE FACT THAT THE STATUTE MIGHT APPLY TO A PERSON WHO COMMITS A NEW CRIME WITHIN THREE YEARS AFTER HIS RELEASE, WHEN HIS RELEASE WAS BASED UPON THE FACT NOT THAT HE COMPLETED THE SERVICE OF HIS SENTENCE BUT BECAUSE HIS CONVICTION WAS OVERTURNED. AS I POINTED OUT IN MY BRIEF, NUMBER ONE, THAT IS NOT THE CASE HERE. HE IS NOT MAKING THAT ARGUMENT ON BEHALF OF HIMSELF. HE IS MAKING THAT ARRESTING YAUMENT ON -- NAEING THAT ARGUMENT ON BEHALF OF -- HE IS MAKING THAT ARGUMENT ON BEHALF OF THE STATUTE, IN GENERAL, AND CLEARLY THE STATUTE, ON ITS FACE, HAS CLEARLY NO INTENT TO APPLY IF A PERSON IS BEING RELEASED, BECAUSE IN THAT CASE HE WOULDN'T BE A REOFFENDER TO START WITH. HOW CAN YOU BE A REOFFENDER, IF YOU DON'T HAVE A CONVICTION UPON WHICH TO REOFFEND, TO START WITH. THE THIRD ARGUMENT THAT IS RAISED IS THE DUE PROCESS ARGUMENT. THE DUE PROCESS ARRESTING YAUMENT INITIALLY RAISED BY THE -- ARGUMENT INITIALLY RAISED BY THE DEFENSE HAD TO DO WITH THE VICTIM HAVING A VETO POWER. AS WAS ARGUED PREVIOUSLY, AND AS WAS CONSIDERED BYE-BYE THE FIRST DISTRICT COURT OF APPEAL IN -- AND AS WAS CONSIDERED, BAY THE FIRST DISTRICT COURT OF APPEAL IN TURNER, WHERE THEY SAID THAT THE DISCRETION LIED WITH THE STATE ATTORNEY, AND, ALSO, IN THE WEISS CASE OUT OF THE FOURTH DISTRICT, WHERE THE COURT STATED THAT THE DISCRETION LIES WITHIN THE TRIAL COURT, AND IN EITHER CASE, THE VICTIM DOES NOT HAVE A VETO POWER. THAT THESE ARE JUST MATTERS THAT ARE CONSIDERED BY THE, EITHER THE STATE ATTORNEY OR THE TRIAL COURT, IN DECIDING WHERE OR NOT -- WHETHER OR NOT THE MANDATORY SENTENCE SHOULD BE IMPOSED. THIS, IN THE CASE OF THE STATE ATTORNEY, IS SIMILAR TO WHERE THE STATE ATTORNEY IS DECIDING WHETHER TO PROSECUTOR NOT. HE CONSIDERS THE WISHES OF THE VICTIM BUT IS NOT BOUND BY THE VICTIM. HE CAN PROSECUTE, EVEN IF THE VICTIM DOES NOT WANT THE CHARGES TO BE BROUGHT. IT IS, ALSO, A MATTER SIMILAR TO WHEN THE COURT HAS THE DISCRETION IS SIMILAR TO THE COURT'S DISCRETION IN DEATH PENALTY CASES, WHERE THE VICTIM DOES NOT WANT THE DEATH PENALTY IMPOSED BUT THAT DECISION IS NOT FOR THE VICTIM TO MAKE, BUT IT IS A MATTER THAT IS CONSIDERED BY THE COURT. ASIDE FROM THE VICTIM, IT IS SIMILAR TO A JUDGE'S DECISION TO DEPART FROM THE GUIDELINES, EVEN THOUGH THERE MAY BE VALID REASONS FOR DEPART FROM THE GUIDELINES, THE TRIAL COURT IS NOT OBLIGATED TO DO SO, SO CLEARLY THE VICTIM DOES NOT HAVE ANY VETO POWER. REGARDING THE FAILURE TO DEFEIGN MATTERS SUCH AS MATERIAL -- DEFINE MATTERS SUCH AS MATERIAL WITNESS, CIRCUMSTANCES AND JUST PROSECUTION, OF

COURSE, EFFECTIVE JULY 1 OF '99, THOSE TERMS HAVE BEEN REMOVED AND IT IS JUST EXTENUATING CIRCUMSTANCES. THE FACT THAT IT IS NOT DEFINED, AS I STATED IN MY BRIEF, DOES NOT MAKE THE STATUTE CHALLENGEABLE UNDER DUE PROCESS, BECAUSE THE TERM "EXTENUATING CIRCUMSTANCES" CAN BE THE DEFINITION OF THE TERM CAN BE GLEANED FROM ANY DICTIONARY, SPECIFICALLY IN BLACK'S LAW DICTIONARY, WHERE IT TALKS ABOUT DUE TO CERTAIN FACTORS OF THE CASE, THE PERSON IS LESS CAPABLE. -- CULPABLE. THEN THE QUESTION, THEN, IS THE STATE APPLYING THAT STATUTE IN AN ARBITRARY MANNER. WHAT WE ARE DEALING WITH, THEN, IS AN EQUAL PROTECTION ARGUMENT, AND THEN THE DEFENDANT HAS TO COME FORWARD AND SHOW THAT THE STATUTE IS BEING BASED UPON ARBITRARY CONSIDERATIONS, SUCH AS RACE OR RELIGION, WHICH IS NOT THE INSTANCE IN THIS CASE, AND IT IS CLEARER THAT THE STATUTE, ON ITS FACE, IS NOT UNCONSTITUTIONAL IN THIS REGARD. AGAIN, THE DEFENSE MAKES THE ARGUMENT THAT THE STATUTE FAILS TO COVER THOSE WHO COMMIT OFFENSES, ONE DAY AFTER THREE YEARS, AND ONE DAY -- MAKES A DISTINCTION BETWEEN ONE DAY AFTER THREE YEARS AND ONE DAY BEFORE THREE YEARS, AND MAKES A DISTINCTION BETWEEN THOSE WHO HAVE HAVE PRIOR CONVICTIONS IN STATE PRISON AND NOT THOSE WHO HAVE NO PRISON SENTENCE AT ALL BUT HAVE CONVICTIONS RESULTING IN JAIL TIME OR FEDERAL PRISON. THIS COURT HAS REJECTED THAT ARGUMENT, AND I CITED SEVERAL CASES. THE KING CASE AND, ALSO, THE LeBLANC CASE, WHERE THE LEFT WAS ATTACKING A STATUTE, BECAUSE IT AUTHORIZED WARRANT LESS ARRESTS FOR SPOUSE BATTERY, AND HE WAS ATTACKING IT ON THE GROUNDS OF EQUAL PROTECTION, AND AS THE COURT STATED, IT IS NOT A REQUIREMENT OF EQUAL PROTECTION THAT EVERY STATUTORY CLASSIFICATION BE ALL IN CHRUF. -- ALL INCLUSIVE. RATHER THE STATUTE MUST APPLY EQUALLY TO MEMBERS OF THE STATUTORY CLASS, AND IT IS CLEAR THAT THE STATUTE, IN THIS INSTANCE, APPLIES TO THE DEFENDANT.

DOES IT MAKE ANY DIFFERENCE AT ALL, HOW DRACONIAN THE IMPACT OF THE STATUTE IS, THE ONE-DAY DIFFERENCE CAN MAKE A TREMENDOUS DIFFERENCE IN YEARS? SO DOES THAT FACTOR IN AT ALL?

I DON'T BELIEVE IT DOES, BECAUSE THE STATUTE IS NOT DRACONIAN ON ITS FACE. THE STATUTE IS NOT ACTUALLY ENHANCING SENTENCES. FOR INSTANCE, IT IS NOT TAKING A THIRD-DEGREE FELONY AND RECLASSIFYING IT TO A SECOND-DEGREE FELONY. IT IS NOT LIKE IN AN ANDITYULE -- IN A HABITUAL OFFENDER STATUTE, DOUBLING THE MAXIMUM PERIOD OF TIME INVOLVED. IT IS JUST SAYING THAT THE -- THIS IS THE STATUTORY MAXIMUM FOR THE OFFENSE, AND THIS IS WHAT THE PENALTY IS GOING TO BE, IF THE PERSON HAS A PRIOR RECORD. AGAIN, THE FACT THAT YOU HAVE TO DRAW A LINE SOMEWHERE, AND THE FACT THAT THE STATE DREW THE LINE AT THREE YEARS IS REASONABLE. IT SERVES THE GOVERNMENT'S PURPOSE TO CURB RESID VISMT -- RECIDIVISM, WHERE THE OFFENSE IS OCCURRING WITHIN A THREE-YEAR PERIOD OF TIME. IF YOU WANT TO TAKE THE ARGUMENT THAT, WHAT DIFFERENCE DOES A DAY MAKE, WELL, THE DIFFERENCE A DAY MAKES IS CONSIDERABLE, BECAUSE THE COURT HAS THE RIGHT TO DRAW A LINE SOMEWHERE, OR ELSE YOU CANNOT HAVE ANY STATUTES THAT HAVE ANY LINE TO BE DRAWN. YOU MIGHT AS WELL DO AWAY WITH STATUTE OF LIMITATIONS, BECAUSE, WELL, WHAT HAPPENS IF YOU FILE ONE DAY LATE? OR LIKE I SAID, IN THE CASE OF DRIVING, WELL, YOU ARE NOT OF DRIVING AGE, BUT YOU HAVE THE ABILITY TO DRIVE. WELL, SO WHAT? THERE IS A COMPELLING STATE INTEREST HERE, AND IT IS REASONABLE TO DRAW A LINE SOMEWHERE, AND THE STATE HAS DRAWN THE LINE AT THREE YEARS.

THE POINT WAS THAT NORMALLY, UNDER, LET'S SAY, THE OFFENSE THAT IS SUBSEQUENTLY COMMITTED, THE LEGISLATURE SAYS THIS IS A FIVE-YEAR, LET'S SAY, BUT BY OPERATION OF THIS STATUTE, IF IT HAPPENED IN THIS CON TEINGS, IT COULD BE A LIFE SENTENCE. -- IN THIS CONTEXT, IT COULD BE A LIFE SENTENCE.

NO. IT WOULD AND LIFE SENTENCE, IF THE LIFE SENTENCE, IF IT WAS, FOR INSTANCE, AN ARMED ROBBERY WITH A FIREARM OR A BURGLARY OF A DWELLING WHILE ARMED OR A BURGLARY OF

A DWELLING IN THE COMMISSION OF A SEXUAL BATTERY. IT IS NOT INCREASING THE SENTENCE. THE AMOUNT OF TIME IS BASED UPON THE SERIOUSNESS OF THE OFFENSE. I AM GOING TO RESERVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU.

YOU MAY DO SO. COUNSEL. MISS OLSON.

MAY IT PLEASE THE COURT. MY NAME IS MAY GO AND OLSON. I AM REPRESENTING MR. COTTON TODAY. I WOULD LIKE TO ADDRESS THE PUNISHMENT ISSUES, THE SEPARATION OF POWERS AND THE DISCRETION ISSUE. BASICALLY, I WOULD FIRST LIKE TO SAY THAT, AT THE TIME THAT COTTON WAS DECIDED, WHEN THE 1997 STATUTE WAS IN EFFECT, I THINK AT THAT TIME, COTTON WAS CORRECTLY DECIDED, THAT THERE WAS SOME AMBIGUITY IN SECTION 91, WHICH ALLOWED FOR DISCRETION FOR THE TRIAL COURT TO FIND DISCRETION PARTICULARLY IN THE CASE WHERE A VICTIM WRITES A LETTER, ASKING THAT THE SENTENCE NOT BE IMPOSED, THE MAXIMUM SENTENCE, OR IF OTHER EXTENUATEING CIRCUMSTANCES WERE AVAILABLE. I THINK THAT IT COULD BE READ EITHER WAY IN THAT INSTANCE, AT THAT TIME THAT COTTON WAS DECIDED. I WOULD, ALSO, LIKE TO ADDRESS THE FACT THAT, IN THE PREVIOUS ARGUMENT, THE ATTORNEY GENERAL KEPT REFERRING TO LENIENCY OF THE PROSECUTOR IN NOT SEEKING SENTENCING UNDER THE PRISON RELEASEE REOFFENDER ACT. WELL, LENIENCY IS A FUNCTION OF THE TRIAL COURT. IT HAS NEVER BEEN A FUNCTION, PARTICULARLY, OF THE PROSECUTION. IT IS A FUNCTION THAT HAS TO BE FOLLOWED, ALONG WITH DUE PROCESS. WITH INPUT FROM THE PARTIES ON BOTH SIDES HAVE TO BE PRESENT TO CONSIDER LENIENCY. AND THE EXAMPLE OF COTTON IS AN EXCELLENT ONE, WHERE THE VICTIM SAYS, YOUR HONOR, I DON'T WANT THE DEFENDANT IN THIS CASE TO RERECEIVE THIS MAXIMUM SENTENCE, AND HE TAKES THAT INTO CONSIDERATION, AND IT IS NOT GIVEN. HAD SHE COME, WITHOUT THE TRIAL COURT HAVING SUCH DISCRETION SHE WOULDN'T BE ABLE TO FACE THE TRIAL COURT.

DOES THE RECORD IN COTTON SHOW WHEN THAT OCCURRED? WHEN THE VICTIM CAME TO SENTENCING AND SAID THAT SHE DOESN'T OR HE DOESN'T WANT THE MAXIMUM SENTENCE IMPOSED? WHAT THE ASSISTANT STATE ATTORNEY'S POSITION WAS, AS TO WHY THEY WERE NOT GOING TO AGREE WITH THAT BEING AN EXCEPTION? IS THERE ANY --

NO, YOUR HONOR. I DON'T BELIEVE THERE IS ANYTHING.

THERE IS NOTHING ON THE RECORD OF SENTENCE. IS THERE NOT JUST A RECORD AT ALL?

NO. THERE IS A RECORD, BUT I DON'T BELIEVE THERE IS ANY -- THE STATE ATTORNEY NEVER SAID WE DON'T WANT TO FOLLOW THIS RECOMMENDATION FOR ANY SPECIFIC REASON. I THINK THEY WERE JUST OPPOSED TO THAT.

LET ME ASK YOU, JUST AS FAR AS YOUR SPECIFIC CLIENT'S CASE, YOU ARE SAYING THAT THE STATUTE, IN EFFECT IN 1997, COULD HAVE BEEN CONSTRUED EITHER WAY, TO HAVE SHARED DISCRETION.

TO HAVE SHARED DISCRETION.

AND THAT NORMALLY, THOUGH, IF THERE IS A CLARIFYING AMENDMENT, THAT CLARIFIES LEGISLATIVE INTENT, YOU, THEN, GO BACK AND CONSTRUE THAT STATUTE WITH THE BENEFIT OF THE SUBSEQUENT CLARIFYING INTENT. CAN YOU EXPLAIN ANY REASON WHY THAT PRINCIPLE WOULD NOT BE FAIR IN THIS CASE, TO EXERCISE FOR YOUR CLIENT? I MEAN IT IS NOT REALLY A RETRO ACTIVE APPLICATION. IT IS SAYING THEY HAVE NOW CLARIFIED IT, SO THAT IS WHAT IT MEANT, BACK IN '97.

NO. I CAN'T SAY WHY IT WOULDN'T BE FAIR.

WOULD, IN -- WOULD YOU STATE THAT, AT THE VERY LEAST, IF THERE WAS TO BE A REVERSAL,

THAT YOU WOULD WANT THE, AT LEAST THE OPPORTUNITY TO CONVINCE THE ASSISTANT STATE ATTORNEY TO EXERCISE ITS DISCRETION? BUT I GUESS THAT CAN'T -- THE DEFENDANT DOESN'T HAVE ANY -- DOES THE DEFENDANT HAVE ANY SAY SO IN ASKING THE ASSISTANT STATE ATTORNEY TO --

I THINK, UNDER THE STATUTE, THE DEFENDANT, AS WELL AS THE COURT, IS COMPLETELY EXCLUDED FROM ANY CONSIDERATION. THE STATUTE, AS I INTERPRET IT, IS TO BE ENTIRELY GIVING ALL DISCRETION TO THE STATE ATTORNEY AND NO ONE ELSE IS INVOLVED.

WASN'T THAT SOMEWHAT THE LEGISLATIVE SCHEME, THAT WAS UPHELD IN BENITY ES? WASN'T IT PRETTY MUCH LIKE THAT, WHERE THE COURT COULD NOT REDUCE, WITHOUT A MOTION FROM THE STATE? AND THE STATE COULD DECLINE REUCTION? AND THEN THE ONLY THING THE COURT'S POSITION WAS HIS THAT THE ONLY DISCRETION WAS WHETHER THEY WOULD REFUSE TO FOLLOW THE STATE REQUEST FOR THE DOWNWARD MOVEMENT ON THAT?

IT MAY WELL HAVE BEAN, YOUR HONOR, BUT I THINK, IN THAT INSTANCE -- HAVE BEEN, YOUR HONOR, BUT I THINK, IN THAT INSTANCE, THERE IS STILL SOME PARTICIPATION BY THE COURT IN THAT SENTENCING PROCEDURE, AND THERE IS ABSOLUTELY NONE HERE. THE TRIAL COURT, REALLY, HAS IN FUNCTION, UNDER THIS STATUTE. IT IS CONCEIVABLE THAT THEY, THE STATE ATTORNEY, COULD SIMPLY LINE UP PRISON RELEASEE REOFF ENDERS IN A ROW AND -- REOFFENDERS IN A ROW AND PARADE THEM PAST THE JUDGE, AND HE COULD STAMP EACH SENTENCE. THERE IS NO THOUGHT PROCESS AT ALL INVOLVED WITH THE COURT. IN TERMS OF REASONABLE RELATIONSHIP TO WHAT THE STATE OR THE LEGISLATURE IS TRYING TO OBTAIN WITH THIS TYPE OF SENTENCING, I AM NOT SURE THAT THAT IS ACTUALLY HERE. I MEAN I KNOW THAT, GIVEN THE PAST SENTENCING TYPES, SUCH AS A HABITUAL OFFEND ERROR THE CAREER CRIMINAL, THAT THERE DOESN'T SEEM TO BE ANY SUCCESS IN THESE PARTICULAR PROGRAMS. THE DECISION THAT, WELL, TO REDUCE RECIDIVISM, WE ARE SIMPLY GOING TO INCARCERATE PEOPLE WHO ARE RELEASED WITHIN THREE YEARS AND THEN COMMIT A NEW OFFENSE, THAT THERE IS ANY SHOWING THAT THAT IS EFFECTIVE IN REACHING IT THAT PARTICULAR GOAL. IF THERE ARE NO OTHER QUESTIONS FROM THE COURT AT THIS TIME, THANK YOU.

THANK YOU. ANY REBUTTAL?

JUST BRIEFLY, YOUR HONOR. THE FACT THAT THE STATUTE MAY NOT HAVE THE INTENDED CONSEQUENTIAL EFFECTS THAT THE LEGISLATURE WANTS IT TO HAVE, THE FACT THAT IT MIGHT NOT, IN FACT, REDUCE RECIDIVISM, DOESN'T MAKE THE STATUTE INVALID. SECONDLY, IN THIS PARTICULAR CASE, AND AS JUSTICE LEWIS STATED BEFORE, IN THE BENITEZ CASE, THE DISCRETION THE FINAL DISCRETION LIED WITH THE JUDGE, WHETHER TO GO BELOW THE MINIMUM, BUT ONLY IF THE STATE ATTORNEY ASKED THE JUDGE TO EXERCISE THAT DISCRETION. THE MINIMUM MANDATORY APPLIED, UNLESS THE JUDGE, UNLESS THE STATE ASKS THE COURT TO GO BELOW. OTHERWISE THE COURT HAD NO DISCRETION WHATSOEVER.

IN THIS CASE, THEN, WHAT WAS THE SENTENCE THE JUDGE GAVE TO MR. COTTON?

IN THIS CASE, THE JUDGE ULTIMATELY GAVE THE DEFENDANT 15 YEARS AS A HABITUAL OFFENDER.

AND IF THIS IS REVERSED, WHAT SENTENCE IS THERE ANY -- GOES BACK --

IF THE CASE IS REVERSED, I AM AFRAID THAT WE ARE GOING TO HAVE TO GO BACK TO SQUARE ONE, BECAUSE THIS WAS A PLEA NEGOTIATION BETWEEN THE DEFENDANT AND THE COURT, TO WHICH THE STATE VEE HEMET -- VEHEMENTLY OBJECTED, AND I THINK THE COURT USED ITS DISCRETION IN EVEN MAKING ANY KIND OF A PLEA AGREEMENT, BECAUSE THE COURT DOESN'T HAVE ANY RIGHT TO ENTER INTO PLEA AGREEMENTS WITH THE STATE.

THE SENTENCE WOULD BE SET ASIDE, AND THEN, IF THE STATE COULD STILL DETERMINE THAT IT WOULD EXERCISE ITS DISCRETION.

IF IT CAME BACK, THE STATE COULD STILL ASK FOR A SENTENCE AS A PRR, AND THE SENTENCE WOULD APPLY. YES.

WELL, THAT WOULD BE THERE WOULD BE NO DISCRETION THEN.

NO DISCRETION WITH THE TRIAL COURT. THE STATE WOULD ASK FOR THE PRR. REGARDLESS OF THE VICTIM'S WISHES, NOW, WHAT WE ARE DEALING WITH HERE, WE ARE NOT SAYING THAT THE STATE DIDN'T CONSIDER THE VICTIM'S WISHES.

THERE IS JUST NO RECORD. ANOTHER VICTIM FILED A LETTER.

THERE IS NO RECORD IN THIS CASE AS TO WHY THE ASSISTANT STATE ATTORNEY DID NOT EXERCISE --

NOT ON THE FACE OF THE RECORD, BUT EVIDENTLY, FROM THE CHANGE OF PLEA TRANSCRIPT AND FROM THE SENTENCING TRANSCRIPT, MAINLY FROM THE CHANGE OF PLEA TRANSCRIPT, THERE HAD BEEN SOME DISCUSSIONS PRIOR TO THE CHANGE OF PLEA, BUT THEY WEREN'T INCLUDED IN THE RECORD ON APPEAL BAY THE DEFENSE. -- ON APPEAL BY THE DEFENSE, WHEN THEY TOOK THE CASE UP ON APPEAL.

SO HE WOULD HAVE TO HAVE A RIGHT TO WITHDRAW HIS PLEA. YOU WOULD AGREE WITH THAT?

IT APPEARS HE WOULD HAVE TO HAVE A RIGHT TO WITHDRAW HIS PLEA, BECAUSE THE ONLY REASON HE ENTERED HIS PLEA INITIALLY WAS ON THE CONDITION THAT HE BE GIVEN A SUSPENDED -- A SENTENCE OF 15 YEARS SUSPENDED AFTER THREE, WHICH, IN AND OF ITSELF IS, ALSO, AN IMPROPER SENTENCE, BECAUSE -- EYE JUST WANT TO GET AN IDEA OF WHERE YOU WOULD BE GOING. OKAY. THANK YOU.

THANK YOU. JUSTICE QUINCE IS REACCUSED FROM THE NEXT CASE.