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MR. PERMAR.

YES.

THIS IS N.W. VERSUS THE STATE OF FLORIDA.

YES. THANK YOU. MAY IT PLEASE THE COURT. MY NAME IS BRAD PERMAR. I REPRESENT THE APPELLANT PETITIONER N.W., A JUVENILE. THIS CASE CAME TO THE COURT BY CERTIFICATION OF CONFLICT. THE SECOND DISTRICT COURT OF APPEAL CERTIFIED CONFLICT WITH THE FIFTH DISTRICT ON THE LIMITED ISSUE OF LAW, AND THAT LIMITED ISSUE OF LAW IS WHETHER A JUVENILE COURT JUDGE CAN IMPOSE A HARSHER PENALTY AFTER WITHHOLDING ADJUDICATION, THAN HE COULD, IF HE ADJUDICATED THE DEFENDANT GUILTY. OF COURSE HE WOULD SAY THAT THE GRA OPINION, WHICH WAS THE OPINION OF THE FIFTH DISTRICT, WAS THE CORRECT OPINION, BUT EVEN IF IT ISN'T THE CORRECT OPINION, THE FACT THAT YOU HAVE THE SAME STATUTORY LANGUAGE, AND YOU HAVE THREE DIFFERENT OR THREE DISTRICT COURTS OF APPEAL REACHING TWO ENTIRELY DIFFERENT CONCLUSIONS, TO ME THAT MEANS THAT THE STATUTORY LANGUAGE IS AMBIGUOUS, AND BECAUSE IT IS AMBIGUOUS, IT SHOULD BE CONSTRUED MORE FAVORABLY TO THE DEFENDANT, IN THIS CASE N.W. NOW, THE POINT, THE FACT OF THE MATTER IS THAT N.W. IS BEYOND THE JURISDICTION OF THE COURT, ACCORDING TO THE RECORD, BY NOW, SO THE CASE, AS TO HIM IS MOOT, BUT IT IS AN ISSUE THAT CAN AND PROBABLY WILL ARISE AGAIN, UNTIL THIS COURT CLARIFIES THE MATTER.

WOULD YOU SHARE, WITH US, YOUR THOUGHTS FROM THE PRACTICAL APPLICATION? CERTAINLY WE FIND THE LANGUAGE, WITH REGARD TO WITHHOLDING ADJUDICATION IN 053. THEN WE PROCEED ON TO 054, AND IT TALKS IN TERMS OF UPON ADJUDICATION. WHAT ARE THE PRACTICAL BENEFITS? LET'S JUST PLAY THE DEVIL'S ADVOCATE FOR A MOMENT. WHAT ARE THE PRACTICAL BENEFITS TO A JUVENILE, UNDER A WITHHOLD, THAT WOULD JUSTIFY HAVING SOME TYPE OF INDETERMINATE TYPE OF POWER OVER THAT CHILD?

THAT IS A GOOD POINT, AND I CAN IMAGINE THAT THERE WOULD BE BENEFITS TO A JUVENILE BEING ABLE TO WAIVE THE LIMITATION IN EXCHANGE FOR WITHHOLD OF ADJUDICATION. CLEARLY THAT IS A BENEFIT TO HIM, BUT IN THIS CASE, AND I DON'T THINK THE SECOND DISTRICT COURT OPINION CLARIFIED THAT, THE BAD PART ABOUT THIS CASE, FOR N.W., WAS THAT HE ALMOST CERTAINLY DID NOT KNOW, WHEN HE ACCEPTED THE INITIAL PLEA, WHERE ADJUDICATION WAS WITHHELD, HE DIDN'T KNOW ANYTHING -- HE DIDN'T KNOW THAT HE WAS SUBJECTING HIMSELF TO GREATER JEOPARDY, SO, AGAIN, THERE ARE BENEFITS. THERE ARE POSSIBLE BENEFITS, BUT TO ME THAT IS A POLICY DECISION. WHERE YOU HAVE AMBIGUOUS STATUTORY LANGUAGE.

SHARE WITH US WHAT SOME OF THOSE ARE, FROM PRACTICAL APPLICATION, BECAUSE WE CAN'T DEAL WITH THIS IN A VACUUM, AND IT IS CLEAR THAT THEY ARE IN TWO SEPARATE SECTIONS, AND WE HAVE TO, SOMEHOW, WORK WITH THESE AND COORDINATE THEM, IF AT ALL.

THAT IS TRUE. YOU SHOULD COORDINATE THEM, IF POSSIBLE. I DON'T THINK THE COURT WANTS TO MAKE POLICY DECISIONS, AND IF YOU HAVE, LIKE I SAID, AMBIGUOUS STATUTORY LANGUAGE, THIS COURT'S JOB IS TO SAY WE CAN'T -- WE HAVE TO RULE IN FAVOR OF THE DEFENDANT. LEGISLATURE, IF YOU WANT TO CLARIFY THIS MATTER AND GET THOSE BENEFITS, YOU HAVE TO MAKE THE LANGUAGE CLEARER. OR AT LEAST THIS COURT SHOULD SAY, IF A JUVENILE IS GOING TO ACCEPT A WITHHOLD OF ADJUDICATION, IN EXCHANGE FOR MORE, POSSIBLY MORE TIME ON

COMMUNITY CONTROL, HE HAS TO BE ADVISED OF THAT, AND ANOTHER THING THAT THE SECOND DISTRICT COURT OPINION DIDN'T BRING OUT WAS THE FACT THAT, IF IT HADN'T BEEN FOR A NOSEY PUBLIC DEFENDER IN THE COURTROOM WHEN, I BELIEVE IT WAS ON SEPTEMBER 2, THE SEPTEMBER 2 HEARING, HE JUST POKED HIS NOSE INTO THIS AND SAID WAIT A MINUTE. THIS ISN'T RIGHT. IF HE HADN'T DONE THAT, THE DEFENDANT N.W. MIGHT STILL BE ON COMMUNITY CONTROL FOR AN INDEFINITE PERIOD OF TIME, SO, YES, I AGREE WITH YOUR POINT. THERE CAN BE BENEFITS IN EXCHANGE FOR A DEFENDANT TO SAY I WILL ACCEPT THIS WITHHOLD OF ADJUDICATION, BECAUSE IT IS A BENEFIT TO ME, RUNNING THE RISK OF GREATER JEOPARDY OF AN INDETERMINATE PERIOD OF COMMUNITY CONTROL.

MR. PERMAR, IF THIS DEFENDANT, THIS JUVENILE, HAD BEEN PLACED ON COMMUNITY CONTROL AT THE INITIAL HEARING, BACK IN, WHAT WAS THAT, DECEMBER?

DECEMBER '96.

IF HE HAD BEEN PLACED ON COMMUNITY CONTROL THEN, I MEAN, AND THERE WAS NO DOUBT ABOUT IT, THAT HE WAS ON COMMUNITY CONTROL. AND DURING THOSE FIRST SIX MONTHS, BETWEEN DECEMBER AND JUNE, HE HAD, IN FACT, VIOLATED THAT COMMUNITY CONTROL.

RIGHT.

WHAT WOULD HAVE BEEN -- WHAT COULD THE COURT HAVE DONE TO HIM?

WELL, I SUPPOSE THE COURT COULD HAVE -- WELL, THE COURT DID, AT ONE POINT, FIND HIM GUILTY OF CONTEMPT OF COURT.

COULD HE VIOLATE HIS COMMUNITY CONTROL? IF HE HAD VIOLATED HIS COMMUNITY CONTROL, AND HE HAD FOUND GUILTY OF VIOLATING THAT, COULD THAT COMMUNITY CONTROL HAVE BEEN EXTENDED?

PROBABLY SO, BUT THAT IS NOT THE ISSUE, ACCORDING TO THE SECOND DISTRICT. I MEAN, AGAIN, I CAN SEE YOUR POINT, BUT THE NARROW ISSUE PRESENTED BY THE SEC DISTRICT MIGNON -- BY THE SECOND DISTRICT OPINION IN THE CERTIFIED CONFLICT WAS LIMITED TO WHETHER --

I UNDERSTAND THAT, BUT I AM TRYING TO GET, AS A PRACTICAL MATTER.

AS A PRACTICAL MATTER. CERTAINLY.

IF HE HAD, IN FACT, VIOLATED HIS COMMUNITY CONTROL DURING THAT INITIAL SIX-MONTH PERIOD, THE COURT COULD HAVE VIOLATED HIM AND, IN FACT, EXTENDED HIS COMMUNITY CONTROL?

AND IT IS POSSIBLE THE DISTRICT COURT OF APPEAL COULD HAVE EXTENDED, BASED ON THE POINT OF LAW, BUT THAT WAS NEVER RAISED, I DON'T THINK, IN THE LOWER COURT. I DON'T THINK THE PROSECUTOR BROUGHT THAT UP. COULD HAVE BEEN BROUGHT UP BUT IT WASN'T.

WHAT IS THE STATUS, THEN, OF A JUVENILE? WHAT HAPPENS TO A JUVENILE WHO, IN FACT, ADJUDICATION IS WITHHOLD? WHAT -- IS WITHHELD? WHAT KIND OF STATUS IS HE IN, HE OR SHE?

WELL, THE POINT IS THAT IF HE BEHAVES HIMSELF FOR THOSE SIX MONTHS, THE COURT SHOULDN'T BE ABLE TO -- I MEAN, AFTER THAT SIX-MONTH TERM EXPIRES, THE COURT SHOULDN'T BE ABLE TO COME BACK AND SAY, HEY, I --

BUT IN THIS CASE, HE DID NOT GO THROUGH THE INITIAL SIX MONTHS.

NO, HE DIDN'T.

THIS ACTUAL SECOND APPEARANCE BEFORE THE COURT, ACTUALLY, WAS ABOUT THE FOURTH APPEARANCE.

RIGHT.

WAS DURING THAT INITIAL SIX-MONTH PERIOD?

RIGHT. SO AS --

I AM CONFUSED NOW. ARE YOU SAYING THAT, IF HE HAD BEEN PLACED UNDER COMMUNITY CONTROL, AND ADJUDICATED GUILTY, THAT HE COULD HAVE HAD HIS COMMUNITY CONTROL EXTENDED FOR MORE THAN SIX MONTHS?

WELL --

I THOUGHT THAT IS THE WHOLE POINT OF THIS 9039.0541, IS THAT HE IS NOT SUPPOSED TO EXCEED THE PERIOD OF TIME FOR A MISDEMEANOR OF A SECOND-DEGREE, WHICH WOULD BE SIX MONTHS. IS THAT --

I THINK THAT, UNDER CERTAIN CIRCUMSTANCES -- I AM NOT THAT FAMILIAR WITH JUVENILE, ALL THE PARTICULARS, ABOUT CERTAINLY IN ADULT COURT, IF YOU HAVE A DEFENDANT VIOLATING COMMUNITY CONTROL, THEY CAN EXTEND.

TO THE MAXIMUM OF WHAT THE MAXIMUM PENALTY SENTENCE, CORRECT?

I SEE WHAT YOU ARE GETTING AT. THERE IS A STATUTORY MAXIMUM, AND IN THIS CASE THE STATUTORY MAXIMUM WOULD BE SIX MONTHS, SO I WAS WRONG WHEN I ANSWERED YOUR QUESTION THAT WAY.

BUT COULD HE BE PLACED IN DETENTION? I GUESS THAT WOULD BE THE EQUIVALENT OF BEING PUT IN JAIL.

I SUPPOSE THAT, IF HE HAD 15 DWAS LEFT ON HIS SIX ---IF HE HAD 15 DAYS LEFT ON HIS SIX-MONTH COMMUNITY CONTROL, THAT HE COULD BE PLACED IN JUVENILE DETENTION FOR THAT 15 DAYS, OR EARLY ON, THAT HE COULD BE PLACED FOR THAT PERIOD.

SO IF IT IS DURING THE PERIOD, THE COURT COULD DO NOTHING.

UNDER THE LAW. LIKE I SAID TO JUSTICE LEWIS, THERE COULD BE BENEFITS TO BOTH THE COURT SYSTEM AND THE DEFENDANT FOR A JUVENILE TO SAY I WILL ACCEPT THIS WITHHOLD BECAUSE IT IS A BENEFIT TO ME, IN EXCHANGE FOR GREATER JEOPARDY, BUT IN THIS CASE HE DIDN'T KNOW ABOUT IT. HE WASN'T REPRESENTED BY AN ATTORNEY, AND THAT, OF COURSE, RAISES ANOTHER ISSUE. WAS HE COMPETENT TO WAIVE HIS RIGHT TO COUNSEL AT THIS IMPORTANT FIRST PLEA HEARING, WHERE HE ACCEPTED THE PLEA? HE ACCEPTED THE WITHHOLD OF ADJUDICATION. ALMOST CERTAINLY HE DID NOT KNOW THAT THAT PLACED HIM IN GREATER JEOPARDY. HAVE I ANSWERED YOUR QUESTIONS?

BUT IT SEEMS YOUR MINGS -- IT SEEMS YOUR POSITION IS THAT IT CANNOT PLACE HIM IN GREATER JEOPARDY BECAUSE OF THE STATUTORY SCHEME. THAT SEEMS TO BE WHAT YOUR ARGUMENT IS. THE COURT LOSES POWER, LOSES JURISDICTION OVER THAT JUVENILE IN SIX MONTHS, LESS THE CIRCUMSTANCES THAT WE ARE DEALING WITH TODAY. AS I UNDERSTAND YOUR ARGUMENT. I AM TRYING TO MAKE SURE.

IT KIND OF CAME OUT OF LEFT FIELD, BECAUSE THAT IS AN ISSUE THAT ADDRESSES WHEN ADJUDICATION, WHEN THE DEFENDANT IS ADJUDICATED.

RIGHT.

I FOCUSED ON THE NARROW ISSUE, CAN YOU IMPOSE A GREATER PENALTY, AFTER WITHHOLDING ADJUDICATION, THAN YOU COULD AFTER ADJUDICATING THE DEFENDANT GUILTY? I HAVE TO SAY THAT I DIDN'T EXPECT THAT QUESTION. I CAN ADDRESS THAT IN REBUTTAL OR IN A SUPPLEMENTAL BRIEF.

SO IS THIS WITHHOLD SITUATION, IS EQUIVALENT TO OR SIMILAR TO A PRETRIAL INTERVENTION?

IT CAN.

I AM HAVING A HARD TIME TRYING TO UNDERSTAND WHAT IS GOING TO GO ON DURING THIS WITHHOLD PERIOD.

ASSUME -- WELL, IF YOU HAVE A WITHHOLD, AND THE DEFENDANT SAYS I WILL TAKE THIS WITHHOLD IN EXCHANGE FOR MORE THAN SIX MONTHS, YOU KNOW, THAT IS SOMETHING TO BE WORKED OUT BETWEEN THE JUDGE AND THE DEFENDANT, REPRESENTED BY AN ATTORNEY. THERE ARE ALL KINDS --

WHAT IS THE DEFENDANT ACTUALLY TOLD? I MEAN WHEN YOU COME UP BEFORE THE COURT, AND -- WHAT DOES THE COURT TELL YOU, AT THE TIME THEY ARE WITHHOLDING ADJUDICATION? THAT YOU ARE SUPPOSED TO BE A GOOD PERSON, UNTIL, DURING THIS PERIOD OF TIME, AND THAT YOU WOULD HAVE NO FURTHER RECORD? THIS WILL THIS WOULD NOT BECOME A PART OF YOUR RECORD?

I ASSUME YOU ARE RIGHT. IN THIS CASE UNFORTUNATELY WE DON'T KNOW, AND I WOULD ASSUME WE DON'T KNOW BECAUSE HE WASN'T REPRESENTED BY AN ATTORNEY AT THAT POINT AND NEVER WOULD HAVE BEEN, IF THE ASSISTANT PUBLIC DEFENDER HADN'T INJECTED HIMSELF.

DID YOU ATTEMPT TO GET A TRANSCRIPT?

I READ THROUGH THE TRANSCRIPTS, AND THE COURT AND THE PROSECUTOR AND THE DEFENSE ATTORNEY, AFTER HE HAD BEEN APPOINTED, WERE TRYING TO GO BACK AND RESTRUCTURE WHAT HAD HAPPENED, AND THEY WERE PRETTY UNCLEAR ABOUT IT, SO THEY DIDN'T EVEN KNOW. BUT IF THIS COURT DOESN'T SAY ANYTHING ELSE ABOUT THIS KIND OF SITUATION, I THINK IT SHOULD SAY THAT, IF A JUVENILE IS GOING TO PLEAD TO A NEGOTIATED PLEA AND ACCEPTS A WITHHOLD OF ADJUDICATION, HE MUST BE ADVISED PREFERABLY WHILE BEING REPRESENTED BY AN ATTORNEY, THAT THIS PLACES HIM IN GREATER JEOPARDY, AND UNFORTUNATELY THAT IS NOT WHAT HAPPENED IN THIS CASE. IN THIS CASE, THE JUVENILE HAD NO IDEA WHAT WAS GOING ON AND PROBABLY NEVER WOULD HAVE, UNLESS THE ASSISTANT PUBLIC DEFENDER HAD COME IN ON HIS OWN RECOGNIZANCE, AS IT WERE. I WOULD JUST SAY THAT, AGAIN, THAT THIS BECAUSE THE STATUTORY LANGUAGE IS UNCLEAR, THIS IS PROBABLY A MATTER BETTER LEFT TO THE LEGISLATURE. I THINK THIS COURT SHOULD SAY THE LANGUAGE IS UNCLEAR. YOU NEED TO CLEAR THIS UP. IF YOU WANT TO GIVE A JUVENILE COURT JUDGE THIS POWER, YOU NEED TO SAY THAT IN CLEAR AND UNEQUIVOCAL LANGUAGE.

WHY WOULD IT BE INCORRECT FOR US TO SAY THAT THE LEGISLATURE HAS SPOKEN AND HAS PLACED TIME LIMITATIONS ON 054 BUT HAS FOUND THAT, WITHIN THE LEGISLATIVE WISDOM TO NOT PLACE THOSE LIMITATION UNDER A WITHHOLD CIRCUMSTANCE, SO WE CAN GET A KID'S LIFE BACK TOGETHER. IS THAT AN UNREASONABLE INTERPRETATION OR IMPOSSIBLE ANALYSIS HERE?

I DON'T THINK THAT IS UNREASONABLE, BUT I THINK THIS COURT IS THEN GETTING INTO POLICY-

MAKING.

ARE WE GETTING INTO REWRITING THE LEGISLATION, HOWEVER, IF WE PLACE THE TIME LIMITATIONS IN A SECTION WHERE THEY DON'T APPEAR?

WELL, PROBABLY NOT, BUT, AGAIN, THAT IS NOT THE ISSUE THAT WAS PRESENTED.

BUT CAN WE, ON THE NARROW ISSUE THAT YOU ARE TRYING TO KEEP US IN --

YES.

-- AND I UNDERSTAND IT, WITHOUT LOOKING TO THE ENTIRE STATUTORY SCHEME, THAT IS WHAT ALL OF THESE QUESTIONS ARE ADDRESSED TO.

RIGHT. I UNDERSTAND THAT.

AND IT SEEMS TO ME THAT PLACES NEW A VERY DIFFICULT POSITION TO JUST SAY, WELL, YOU SHOULDN'T BE ABLE TO GIVE MORE TIME AND JUST IGNORE THE REST OF THE RAM PHYSICIAN BES -- OF THE RAMIFICATIONS. CAN WE DO THIS? REALISTICALLY?

YOU CAN DO WHATEVER YOU WANT, BECAUSE YOU ARE THE SUPREME COURT.

SHOULD WE DO THIS, AS A POLICY?

AGAIN, YOU CAN MAKE THAT DECISION. YOU CAN SAY THAT, YEAH, JUVENILE COURT JUDGE DOES HAVE THIS POWER, THE POWER THAT THE SECOND DISTRICT COURT OF APPEALS SAYS IT HAS, BUT AT THE VERY LEAST, YOU HAVE TO MAKE SURE THAT, WHEN THIS HAPPENS, THE JUVENILE KNOWS WHAT HE IS GETTING HIMSELF INTO.

I UNDERSTAND, BUT YOU HAVE GOT A VERY SLENDER REED.

I AM KIND OF USED TO THAT.

RIGHT.

IF THERE ARE NO FURTHER QUESTIONS.

REALLY, AGAIN, I JUST WANTED, THE SECOND PART OF THAT, KNOWING AND VOLUNTARY PLEA ON THE PART OF JUVENILE. THAT ISSUE WAS NOT RAISED BELOW? AGAIN, WE DON'T EVEN KNOW -

IT WASN'T IN THE SECOND DISTRICT COURT OF APPEALS' OPINION, BUT THAT IS ONE OF THE SUBISSUES.

WE DON'T KNOW THAT HE DOESN'T KNOW.

WE DON'T, BUT I WOULD SUBMIT THAT THAT IS THE ONLY RATIONAL CONCLUSION IN THIS RECORD. I MEAN, IF HE KNEW, THE PROSECUTOR WOULD HAVE SAID, HEY, THIS GUY, WE TOLD HIM. BUT THAT WAS NEVER BROUGHT UP.

THANK YOU. MS. BOCK.

GOOD MORNING, YOUR HONORS. MY NAME IS DIANA BOCK. I AM WITH THE ATTORNEY GENERAL'S OFFICE, REPRESENTING THE SPONENT, THE STATE OF FLORIDA IN THIS CASE -- THE RESPONDENT, THE STATE OF FLORIDA IN THIS CASE. THE THERE ARE THREE POINTS WHICH I WANT TO ADDRESS. THE FIRST HAS BEEN NOT BEEN TOUCHED ON BY MR. PERMAR, AND THE SECOND THAT THIS DOES

TO THE VEST IN THE FIRST DISTRICT COURT OF APPEAL BECAUSE OF A LATE NOTICE OF FILING OF APPEAL. THE STATE HAS EXPRESSED, IN THEIR BRIEFS, THAT THERE WAS AN OPPOSITION, BECAUSE THE SECOND HEARING WAS HELD IN OCTOBER AND THEN SUBSEQUENTLY THE NOTICE OF APPEAL WAS FILED. IF YOU LOOK IN THE RECORD, I THINK THAT YOU ARE GOING TO FIND --

YOUR ARGUMENT IS THAT THEY SHOULD FILE A NOTICE OF APPEAL, BASED ON THEIR MOTION TO DISMISS? THAT IS A FINAL ORDER?

YES, I BELIEVE IT WAS, IN THE RELIEF THAT THEY SOUGHT, BECAUSE WHAT IT DID IN OCTOBER WAS BACK STEP TO THE ORDER THAT WAS DISMISSED. IF YOU LOOK AT WHAT JUDICIAL FINDINGS ARE BEING REVIEWED ON APPEAL, IT SPECIFICALLY STATES THE ORDER DENYING THEIR MOTION TO DISMISS. THAT MEANS THAT THAT IS THE RELIEF THEY WERE TRYING TO GET WAS A RELIEF FROM THAT ORDER. I THINK THERE WAS NO ADDITIONAL ADJUDICATION --

BUT UNDER WHAT SECTION OF THE APPELLANT RULES, WHICH INDICATES WHAT A DEFENDANT CAN APPEAL, UNDER WHAT SUBSECTION WOULD YOU APPEAL THE DENIAL OF A MOTION TO DISMISS?

I THINK THAT I CAN'T QUOTE YOU THE SECTION, OFF THE TOP OF MY HEAD, BUT I THINK WHAT IT WOULD BE IS AS TO THAT PARTICULAR JUVENILE, IT WAS DETERMINATIVE OF WHAT HE, NOW, FACED IN THE SYSTEM. I THINK IT WAS FOR THAT PURPOSE, AS IT WAS DISPOSITIVE OF WHAT WAS GOING TO HAPPEN TO THIS JUVENILE. HE HAD NOW BEEN ADJUDICATED. HE HAD, NOW, BEEN COMMITTED TO THE SYSTEM, RATHER THAN PLACED IN COMMUNITY CONTROL, WHICH IS WHAT HAD HAPPENED FROM DECEMBER OF '97 THROUGH JUNE OF '97. I THINK, AT THAT POINT IN TIME, THE ORDER WAS DISPOSITIVE FOR THE JUVENILE.

THE DENIAL OF THE MOTION TO DISMISS OCCURRED AT A TIME, AT A POINT DIFFERENT FROM THE ACTUAL WITHHOLD OF ADJUDICATION AND TELLING HIM THAT HE HAD TO COMPLY WITH THESE PARTICULAR CONDITIONS, CORRECT?

YES, HE DID. FROM THE WITHHOLD IT DID, BUT FROM THE ADJUDICATION, WHICH IS FROM WHEN IT WAS FIRST RAISED, AS MR. PERMAR POINTED OUT, ON SEPTEMBER 2, WHEN ALL OF THE PARTIES WERE PRESENT IN THE COURT AND WE HEAR, FOR THE FIRST TIME, FROM THE PUBLIC DEFENDER AND THE PUBLIC DEFENDER STEPS UP, AT THE VERY END, AND MAKES A STATEMENT ABOUT JURISDICTION, THAT IS WHERE THE -- WHY THE PUBLIC DEFENDER STOOD UP AND MADE A STATEMENT. HE MADE THE STATEMENT THAT, AT THAT POINT IN TIME, WHEN AN ADJUDICATION WAS TAKEN PLACE, THAT HE FELT THERE WAS NOW A JURISDICTIONAL PROBLEM, BECAUSE HE HAD ALREADY RUN SIX MONTHS UNDER COMMUNITY CONTROL. THAT IS WHEN THE ISSUE WAS RAISED, AT THE POINT THERE WAS NO ADJUDICATION, AND I THINK THAT IS WHY IT IS DISPOSITIVE, BECAUSE I THINK NOW, THE POSITION OF THIS COURT IS WE CAN'T HAVE BOTH. WE CAN'T HAVE THE COMMUNITY CONTROL BEING FOR AN INDETERMINATE AMOUNT OF TIME UNDER .053 AND THEN, UNDER .054, WHICH THE COURT DENIED REPEATEDLY, IT MOVES DOWN TO .054, THEY ARE BARRED. THEY CAN NO LONGER USE .054 TO ADJUDICATE HIM, BECAUSE AT THIS POINT THEY HAVE LEFT SIX MONTHS GO ALONG, TRYING TO LET THIS CHILD GET HIS LIFE TOGETHER. AT THAT POINT IT WAS TRIGGERED LATER. OF COURSE THE STATE'S POSITION IS YOU DO HAVE BOTH, AND JUSTICE WILLIS POINTED OUT QUITE CLEARLY WHAT WOULD BE THE PURPOSE OF .053 AND .054, IF, AT THE POINT YOU ARE DOING A .053 AND TRYING TO GET A COMMUNITY CONTROL, WHERE THE CHILD IS GIVEN AN OPPORTUNITY TO BREAK THE CYCLE OF CRIMINAL RECORD, AND TO HELP HIMSELF, AND YOU HAVE A LIMIT OF SIX MONTHS, WHICH IS NOT IT THE IN THE STATUTE, THE CHILD VIAL AT -- VIAL ATS, NOW WHAT DID YOU -- VIAL ATS? NOW WHAT DO YOU DO? YOU ARE NOW DOING WHAT THE COURT WAS PERMITTED TO DO AT THE INITIAL DISPOSITION. I THINK THE STATUTE CLEARLY SAYS, IF YOU LOOK AT .053, SUBSECTION 3, I BELIEVE, IT STATES THAT, ONCE A VIOLATION HAS OCCURRED AND THE COURT DECIDES TO, NOW, MOVE TO ADJUDICATION, THEY HAVE ALL THE RIGHTS, UNDER .054.

WHAT IS THE STATUS OF THE JUVENILE, AT THE TIME THAT THE WITHHOLD TOOK PLACE? WAS HE OR WAS HE NOT ON COMMUNITY CONTROL?

I BELIEVE THAT HE WAS ON COMMUNITY CONTROL, IN THE SENSE THAT HE WAS NOW PLACED WITH HIS FATHER, AND HE WAS GIVEN CERTAIN CONDITIONS THAT HE HAD TO MEET AND CERTAIN RULES THAT HE HAD TO FOLLOW, AND THAT IS WHY SUBSEQUENTLY, IN APRIL, AND THEN AGAIN IN MAY AND THEN AGAIN IN JUNE, WE SEE HIM BACK IN COURT FOR VIOLATING THOSE RULES AND CONDITIONS.

SO IN JUNE, WHEN WE HAVE SIX MONTHS LATER, WHAT CAN THE COURT DO TO HIM, EVEN THOUGH HE HAS VIOLATED WITHIN THE SIX MONTH'S PERIOD, WHAT CAN THE COURT DO TO HIM? WHAT IS THE PENALTY THEY CAN NOW IMPOSE?

I BELIEVE THAT THEY CAN, NOW, MOVE ON TO ADJUDICATION, WHICH IS WHAT THEY DID, AND NOW BRING IN 054.

WHAT CAN YOU DO AS A PART OF 5D JUDD INDICATION?

YOU CAN -- OF ADJUDICATION?

YOU CAN NOW COMMIT THE CHILD. IF THAT MEANS DETENTION FOR A PROLONGED PERIOD OF TIME OF SIX MONTHS, THAT IS WHAT THE COURT CAN DO. COMMUNITY CONTROL IS AN ATTEMPT TO ALLOW A CHILD TO HAVE A CHANCE TO BREAK THE CYCLE OF CRIMINAL BEHAVIOR, TO MAKE A DIFFERENCE IN THIS CHILD'S LIFE, A SECOND OPPORTUNITY. WE DON'T GET MANY OF THOSE. THAT IS WHAT THIS IS. THIS IS A CHANCE FOR THE CHILD TO HAVE A SECOND OPPORTUNITY.

COMMUNITY CONTROL IS NOT A COMMITMENT OPTION?

I DO NOT BELIEVE THAT IT IS A COMMITMENT. I BELIEVE THAT IT IS A PLACEMENT, AND I THINK THAT IS A KEY DIFFERENCE HERE. I THINK THAT PLACEMENT MEANS THE CHILD IS NOW UNDER SUPERVISION BUT IS NOT COMMITTED FOR PURPOSES -- I THINK TO COMMIT, YOU MUST HAVE ADJUDICATION. THAT IS THE WAY I RETHE STATUTE. -- THAT IS THE WAY I READ THE STATUTE. THE STATUTE REQUIRES THERE BE SOME TYPE OF A PENALTY INVOLVED. WHICH IS ANOTHER THING THAT I WANTED TO TOUCH ON. I AM SORRY.

IN ADDITION TO COMMUNITY CONTROL?

YES. SOME TYPE AFTER PENALTY.

WHAT WOULD BE, IF THE JUDGE WANTED TO PLACE HIM ON COMMUNITY CONTROL, WHAT IS THIS EXTRA PENALTY?

I WOULD SAY WORKING COMMUNITY HOURS OR SOME TYPE OF FINANCIAL REMUNERATION, DEPENDING ON IF THERE WAS DAMAGE DONE IN THE UNDERLYING OFFENSE. IN THIS CASE IT WASN'T. IT WAS A FISTFIGHT.

COULD THE JUDGE PLACE HIM UNDER COMMUNITY CONTROL?

I BELIEVE THAT THEY HAVE THE OPTION TO DO THAT, BUT I DON'T BELIEVE THAT THE STATUTE REQUIRES ANY SPECIFIC PENALTY, IF YOU WILL, BUT I THINK THAT IT IS A MUCH STRICTER IMPACT UPON THE CHILD I THINK IT IS MEANT TO BE STRICTER. I THINK THAT THE COMMUNITY CONTROL PLACEMENT, UNDER .053 IS MORE, AGAIN, OF AN OPPORTUNITY, A WINDOW OF OPPORTUNITY, AND I THINK THAT IS WHY IT IS IMPORTANT THAT IT BE FOR AN INDETERMINATE AMOUNT OF TIME.

IF HE IS ADD JUTED PLACEMENT UNDER COMMUNITY CONTROL, HOW WOULD THIS SIX-MONTH MAXIMUM WORK? IF HE VIOLATED COMMUNITY CONTROL?

I BELIEVE THAT, IF HE VIOLATED IT, THEN, AT THAT POINT, HE WOULD HAVE TO BASICALLY -- I WILL USE THE WORD INCARCERATE HIM, PUT HIM INTO DETENTION, RESTRICT HIS FREEDOM.

IF HE VIOLATED COMMUNITY CONTROL, AFTER FIVE AND-A-HALF MONTHS INTO IT, WHAT WOULD BE THE MAXIMUM PENALTY THAT THE COURT COULD IMPOSE ON HIM?

15 DAYS OF DETENTION, I BELIEVE.

SO HE COULDN'T EXTEND THE COMMUNITY CONTROL?

I DO NOT BELIEVE THAT HE COULD. I BELIEVE IT IS CLEAR THAT SIX MONTHS IS THE LIMIT, UNDER .054, AFTER ADJUDICATION.

BUT HE CAN EXTEND COMMUNITY CONTROL.

I BE -- I BELIEVE THAT HE CAN, UNDER .053.

WHAT WAS THE CRIMINAL ACT?

I HOPE I DIDN'T CHARACTERIZE IT AS A CRIMINAL ACT. IT WAS A FISTFIGHT BETWEEN TWO CHILDREN AT SCHOOL. DURING CLASS.

BY THE WAY, YOU -- MAYBE, AGAIN, I DIDN'T HEAR YOU CORRECTLY, BUT YOU WERE, IN ANSWER TO JUSTICE ANSTEAD'S QUESTION, YOU WERE SAYING THAT .053 WAS REALLY LIKE A SECOND CHANCE AND REALLY NOT ANALOGOUS TO COMMUNITY CONTROL THAT WE WOULD THINK OF IN COMMUNITY CONTROL OR AN ADULT SITUATION, BUT UNDER .053, IT SAYS THAT, AS A CONDITION OF THE PROGRAM, THAT THE COURT MAY IMPOSE, AS A PENALTY COMPONENT, UNDER .053, SO THEY TALK ABOUT PENALTY. RESTITUTION AND MONEY OR COMMUNITY SERVICE, A CURFEW, URINE MONITORING, REVOCATION OR SUSPENSION OF THE DRIVER'S LICENSE OF THE CHILD OR OTHER NONRESIDENTIAL PUNISHMENT APPROPRIATE TO THE OFFENSE. I SEE NOTHING ABOUT THAT TYPE OF COMMUNITY CONTROL THAT SOUNDS LIKE THIS IS SOME TYPE OF A PROGRAM TO HELP THE CHILD BE BACK AS A FUNCTIONING MEMBER OF SOCIETY, OTHER THAN -- YOU KNOW, DIFFERENT THAN COMMUNITY CONTROL IS FOR OTHER PURPOSES. COULD YOU HELP ME ON WHERE YOU ARE FINDING THAT DISTINCTION IN THE LANGUAGE OF THE STATUTE?

I THINK THE KEY WORD IS "MAY". I THINK "MAY". IT GIVES THE COURT DISCRETION MORE DISCRETION THAN AFTER THE 5D ADJUDICATION, WHERE -- THAN THE ADJUDICATION, WHERE THERE IS, NOW, A COMMITMENT PLAN. THESE INDIVIDUALS COME TO THE COURT AS INDIVIDUAL CHILDREN, AND THE COURT WILL BE MORE FAMILIAR WITH WHAT THAT CHILD NEEDS TO HAVE AN OPPORTUNITY TO BREAK THE CYCLE OF CRIMINAL BEHAVIOR, TO AVOID THE NEXT STEP, WHICH WILL BE IN THE ADULT SYSTEM AS A HABITUAL OFFENDER. I THINK WHAT THIS IS THE ABILITY OF THE COURT TO EVALUATE THE CIRCUMSTANCES OF EACH CHILD, UNDER THE CIRCUMSTANCES PRESENTED TO THAT COURT, AND TO GIVE THE CHILD A CHANCE. THAT IS WHERE I THINK THE DIFFERENCE IS. MAY. ALL OF THOSE THINGS THAT YOU MENTIONED MAY BE IMPOSED. THAT IS CORRECT. THEY MAY NOT BE IMPOSED AS WELL. THAT IS THE DISCRETION OF THE COURT. I THINK THERE IS A RECORD CREATED FOR THIS CHILD IN THE JUVENILE JUSTICE SYSTEM.

AS FAR AS THE INDIVIDUAL COURT SYSTEM, WE DON'T HAVE, AGAIN, WE ARE REALLY TALKING ABOUT WHAT HAPPENED IN THE JUVENILE SYSTEM. WE DON'T KNOW IF THIS CHILD WAS BEFORE THE COURT FOR A HALF A MINUTE OR WHETHER THERE REALLY WAS AN ATTEMPT TO TRY TO CUSS TOMBIZE SOME -- CUSTOMIZE SOME TYPE OF PROGRAM FOR THIS CHILD, WHO MAY HAVE



ANGER MANAGEMENT PROBLEMS OR SOMETHING ELSE, TO REALLY SEE WHETHER SOMETHING COULD BE DONE TO ADDRESS AN UNDER LYING PROBLEM, IF ONE EXISTED, SO WE DON'T KNOW THAT HERE?

THE RECORD SEEMS TO INDICATE THAT HE HAD A COUNSELOR APPOINTED AND THAT THE COUNSELOR HAD BEEN MAKING INVESTIGATION INTO DIFFERENT AREAS OF TREATMENT FOR THIS CHILD. I THINK YOU WILL FIND THAT IN THE RECORD. I THINK THAT YOU WILL FIND THAT THIS CHILD WAS ATTEMPTED TO BE PLACED WITH HIS FATHER. THE FATHER WAS IN A WHEELCHAIR AND HAD SOME OTHER PROBLEMS, INCLUDING OTHER CHILDREN THAT WERE PROBLEMATIC, BUT I DO THINK THAT THE COURT LOOKED THAT. THEY LOOKED AT WHAT ISSUES WOULD GET THIS CHILD'S LIFE BACK TOGETHER. THEY PUT HIM IN THE FATHER'S HOME WITH RULES TO BE FOLLOW. IT IS UNFORTUNATE THAT IN THIS CASE THAT OPPORTUNITY WAS WASTED, BECAUSE I THINK FOUR TIMES WE HAD VIOLATIONS AND THEN ADJUDICATION.

DO YOU AGREE THAT, AS FAR AS THE ISSUE IN THIS CASE OR NOT, THAT IF THIS TYPE OF A PLEA IS BEING ENTERED, THAT IS WITHHOLD ADJUDICATION, AND WE INTERPRET THE STATUTE, AS YOU ARE SUGGESTING, WHICH IS AN IN DIF DEFINITE PERIOD OF COMMUNITY -- AN INDEFINITE PERIOD OF COMMUNITY CONTROL, UNTIL HE VIOLATES IT, THAT HE SHOULD BE, HE OR SHE SHOULD BE TOLD THAT THAT IS THE DOWN SIDE, SO TO SPEAK, OF THIS PLEA?

I DON'T BELIEVE THAT IT IS A REQUIREMENT TO DO SO, BECAUSE WHAT HAS HAPPENED IN THIS CASE, ESPECIALLY, HE WAS WITH A GUARDIAN OR A PARENT AT ALL PROCEEDINGS, AND HE SIGNED A WAIVER SAYING THAT HE WAS ENTITLED TO COUNSEL. HE WAS ENTITLED TO OTHER RIGHTS THAT HE HAD, AND HE SIGNED THAT. AND SAID NO.

I GOT THE IDEA THAT HE IS ACTUALLY GETTING, HE IS GOING TO BE ON SOME TYPE OF RESTRICTION FOR A POTENTIALLY LONGER PERIOD OF TIME, IN OTHER WORDS, IF THEY HAD ADJUDICATED HIM, SIX MONTHS, AND IT WOULD HAVE BEEN FINISHED.

THAT IS A HARD ONE TO ANSWER. I THINK THAT, IT WOULD BE WISE TO GIVE HIM -- I THINK IT WOULD BE WISE TO GIVE HIM INFORMATION, YES. HOWEVER, THIS CHILD UNDERSTOOD WHAT THE CONDITIONS WERE, AND HE ACCEPTED THOSE, AND HE BENEFITED FROM THOSE FOR A PERIOD OF SIX MONTHS.

I AM NOT TALKING ABOUT THE CONDITIONS. I AM TALKING ABOUT THE FACT THAT HE WOULD BE EXPOSED TO A GREATER PERIOD OF SUPERVISION THAN IF HE HAD SIMPLY SAID I WILL TAKE THE PENALTY.

NO. I DON'T. I THINK WHAT THE TERMS HERE ARE HARSHER PENALTY OR GREATER PENALTY, I THINK WHAT IT IS IS A CHANCE, SO TO BE INFORMED THAT YOU HAVE A CHANCE, THIS IS NOT A SORT OF DAMOCLESE HANGING OVER THIS CHILD'S HEAD.

IN AN ADULT SITUATION, WHETHER THE PLEA IS MADE FREE AND VOLUNTARILY, YOU DO, IF IT IS THE DEFENDANT, YOU TELL HIM HOW LONG IS HE GOING TO BE ON PROBATION, AND EVEN IF YOU WITHHOLD ADJUDICATION, YOU INDICATE THE TERMS AND CONDITIONS OF THE PROBATION. THAT IS PART OF THE UNDERSTANDING.

I BELIEVE THAT IS, WHEN, IN FACT THERE, IS A PENALTY BEING IMPOSED. I DON'T KNOW THAT THERE IS A PENALTY BEING IMPOSED, UNDER COMMUNITY CONTROL.

THERE IS A SANCTION. THERE IS A SANCTION THAT IS AUTHORIZED BY LAW, AND IT IS THE SAME TYPE AS A SANCTION FOR PROBATION IN AN ADULT SITUATION. COMMUNITY CONTROL CERTAINLY IMPOSES SOME RESTRICTION ON ONE'S LIFE. ON ONE'S LIFE, AND I DON'T KNOW THAT CAN BE A CONTROL OR RESTRICTION ON LIFE.

I SEE A DIFFERENTIATION BETWEEN A PLACEMENT AND A COMMITMENT, AND ONCE A COMMITMENT BEGINS, I THINK THAT IS WHEN THE JUVENILE WOULD BE ENTITLED TO HAVE MORE INFORMATION, BECAUSE NOW WE HAVE CREATED A JUVENILE RECORD. BEFORE THAT WE ARE TALKING ABOUT SIMPLY FOLLOWING REGULAR RULES AND REGULATIONS, TO KEEP HIM IN LINE AND NOT HAVE ANY CRIMINAL BEHAVIOR. IN OTHER WORDS, WHAT HAPPENS AT THE POINT OF ADJUDICATION IS WHEN THERE IS A CRITICAL STAGE. I DON'T KNOW THAT THAT FLOWS BEFORE THAT, BECAUSE -- I AM SORRY.

HOW OLD IS THIS CHILD?

AT THE TIME OF THE OFFENSE, I BELIEVE HE WAS 13, AND I BELIEVE DURING THAT PERIOD OF TIME HE TURNED 14.

LET ME SEE IF I UNDERSTAND, IS IT THE POSITION OF THE STATE THAT, UNDER THIS WITHHOLD, THAT THE STATE, IN ESSENTIAL, THROUGH THE COURT, COULD CONTINUE JURISDICTION OVER THIS CHILD, UNTIL HE TURNS 1 YEARS OLD? -- TURNS 19 YEARS OLD? IN OTHER WORDS FROM 13 TO 19?

I BELIEVE THAT THEY COULD UNDER THE STATUTE, YES, YOUR HONOR. AS A PRACTICAL MATTER, I DON'T BELIEVE THAT IT WOULD HAPPEN.

IT COULD UNDER THE STATUTE.

UNDER THE STATUTE. YES, YOUR HONOR.

AND HE WOULD NEVER HAVE TO BE TOLD THAT, IN TERMS OF ENTERING A PLEA.

I BELIEVE AT ANY POINT IN TIME THAT HE COULD BE. IS HE REQUIRED TO BE? I DON'T BELIEVE THAT THE STATUTE REQUIRES THAT, NO.

I DON'T RECALL, AS A PUBLIC DEFENDER, THAT THERE ARE INSTANCES WHERE AN ADULT WOULD RATHER GO AHEAD AND JUST SERVE THE SIX MONTHS RATHER THAN BEING ON PAROLE UNDER SUPERVISION 6 THE COURT, AND -- SUPERVISION OF THE COURT, AND NOT BEING TOLD ABOUT IT, ISN'T THERE A PROBLEM THERE?

I UNDERSTAND THE COURT'S CONCERN ABOUT THAT, BUT I, ALSO, UNDERSTAND THAT THE COURT, IN A JUVENILE JUSTICE SYSTEM, IS CHARGED WITH WHAT IS IN THE BEST INTEREST OF THE CHILD. THAT IS A LITTLE DIFFERENT THAN THE ADULT SYSTEM. WE ARE DEALING WITH A JUVENILE SYSTEM, AND THE CASE LAW STATES THAT THE COURT'S INTEREST IS THE BEST INTEREST OF THE CHILD, AS WELL, AND I THINK THAT IS A TRUE DISTINCTION.

BUT THOSE WORDS, FOR THE BENEFIT AFTER CHILD, A JUVENILE, HARKING BACK TO 15 YEARS, JUVENILES USED TO GET TERRIBLE TREATMENT, AND WE USED THESE CATCH WORDS "THIS IS FOR THE BENEFIT OF THE JUVENILE" AND HE DIDN'T GET HIS DUE PROCESS RIGHTS AND ALL OF THE OTHER RIGHTS THAT ADULTS GOT. IT IS PROBLEMATIC, WHETHER THIS REALLY IS IN THE BEST INTEREST TO THAT. I DON'T THINK THAT IS THE ANSWER TO IT, BUT JUST FOR THE BENEFIT OF THE JUVENILE.

WELL, I, ALSO, THINK THAT YOU NEED TO REMEMBER THAT IS HE A CHILD, AND HIS PARENTS OR GUARDIAN WERE WITH HIM. IT WAS EITHER HIS GRANDMOTHER AT ONE POINT AND HIS FATHER IN ANOTHER, IN THE RECORD. YOU CAN FIND THAT THEY WERE PRESENT, AND THEY, TOO, WERE THERE FOR HIS BEST INTEREST, AND THEY, TOO, WERE A PART OF MAKING THE DECISION THAT HE HE WITHHOLD ADJUDICATION AND THAT HE TAKE BENEFIT FROM THE WITHHOLD, AND AT THE TIME THAT HE COULD NOT FULFILL THAT WITHHOLD, THEN THERE WAS NO QUESTION ABOUT IT, AND THE PUBLIC DEFENDER STEPPED IN.

WHY DO YOU THINK IT IS UNLIKELY THAT THE COURT WOULD KEEP HIM UNDER JURISDICTION UNTIL HE WAS 19? AS A PRACTICAL MATTER WOULD BE LIKELY TO HAPPEN?

I THINK, AS A PRACTICAL MATTER, THEY ARE LOOKING AT THE INDIVIDUAL STATUS OF THE CHILD. I THINK THAT YOU FIND STATUS HEARINGS ALL THE TIME. THAT IS WHAT HAPPENED IN OCTOBER OF '97 IN THIS CASE. THERE WAS A STATUS HEARING, AND THEY LOOKED TO SEE WHERE THE CHILD WAS AND HOW HE WAS DOING, AND IN FACT IT WAS ADJUDICATION, BUT THERE ARE, ALSO, STATUS HEARINGS ON NONADJUDICATION, TO FIND OUT HOW THE DOG. AT THAT TIME IT DOES NOT BEHOVE THE COURT TO KEEP A CHILD THAT HAS ACCOMPLISHED THE GOAL, THAT HAS DONE WHAT IS NECESSARY IN THE COMMUNITY CONTROL PLACEMENT, IT TO MAINTAIN HIM IN THE SYSTEM. IT HAS NO RATIONALE.

DOES THIS CHILD -- OR DO WE EVEN KNOW WHAT THIS CHILD WAS TOLD AT THE TIME OF THE WITHHOLD? IF YOU DO THESE THINGS FOR X PERIOD OF TIME, THEN THIS CASE WILL BE OVER?

I AM NOT AWARE THAT WE HAVE ANY RECORD OF EXACTLY WHAT HE WAS TOLD. NO. I DO NOT KNOW THAT. THE ONLY OTHER THING I WOULD LIKE TO SAY IS THAT I BELIEVE THAT, UNDER THIS CASE, IT IS CLEAR THAT, UNDER 017B 053, THERE -- THAT, UNDER .053 THERE, IS A WINDOW OF OPPORTUNITY GIVEN THAT IS EXPRESSED ON BEHALF OF THE CHILD. ONES THERE IS A PROBLEM WITH -- ONCE THERE IS A PROBLEM WITH .053, THE COURT DETERMINES THAT, UNDER .054 HAD, THERE MUST BE AN ADJUDICATION THAT, TRIGGERS THE SIX MONTHS FOR A MISDEMEANOR. I DON'T THINK THAT YOU CAN POOT STRAP THE TIME SET FORTH BY THE LEGISLATURE IN .054 INTO .053. YOU WOULD DO THAT, AND I THINK IT IS VERY TEMPTING, PERHAPS, TO PUT MORE RESTRICTIONS ON .053, BUT I DON'T THINK THAT WAS INTENDED BY THE LEGISLATURE, BECAUSE EACH CHILD MAY NEED A DIFFERENT AMOUNT OF TIME TO MAKE THAT CHANGE AND BREAK THAT CYCLE OF CRIMINAL BEHAVIOR, AND EACH CHILD MUST BE GIVEN THE OPPORTUNITY, AS LONG AS WE CAN. THANK YOU, YOUR HONORS.

THANK YOU, MS. BOCK. MR. PERMAR.

JUST BRIEFLY. AS TO THE JURISDICTIONAL ISSUE, THE STATE IS SAYING THAT, BECAUSE THE ORDER DENYING THE NOTION DISMISS WAS FILED ON SEPTEMBER 29, THAT THE NOTICE OF APPEAL WAS UNTIMELY, I THINK WHAT YOU HAD THERE WAS THE FUNCTIONAL EQUIVALENT OF WHAT HAPPENS A LOT IN ADULT COURT. YOU WILL HAVE A MOTION TO SUPPRESS DENIED ON A GIVEN DATE, BUT THEN THE DEFENDANT IS SENTENCED A MONTH OR TWO LATER. AND, OF COURSE, THE NOTICE OF APPEAL WOULD, THEN, BE FILED WITHIN 30 DAYS AFTER SENTENCING. THAT IS BASICALLY WHAT HAPPENED HERE, I BELIEVE, SO I DON'T THINK THERE IS A PROBLEM WITH JURISDICTION. THE OTHER THING THAT THE STATE WAS SAYING, IF I UNDERSTOOD CORRECTLY, WAS THAT A 13-YEAR-OLD CHILD CAN ACCEPT A DEAL IN WHICH THERE IS A WITHHOLD OF ADJUDICATION, NOT KNOWING OR NOT BEING TOLD THAT, ACCORDING TO THE STATE, AGAIN, HE COULD BE PLACING HIMSELF UNDER THE COURT'S JURISDICTION UNTIL HE WAS 19 YEARS OLD. BEYOND THE STATUTORY LIMIT OF SIX MONTHS. I THINK THAT IT IS CLEARLY EGREGIOUS AND ERRONEOUS. I DON'T THINK -- HOPEFULLY NO JUVENILE COURT JUDGE WOULD DO THAT, BUT WE DON'T KNOW. WE DON'T HAVE ANY GUARANTEE. THAT IS WHY WE HAVE DUE PROCESS OF LAW. THE COURT, THE STATE MADE A POINT OF SAYING THAT WE ARE ACTING OR TRYING TO ACTOR THE JUVENILE COURT JUDGE IS TRYING TO ACT FOR THE BEST INTERESTS OF THE CHILD, AND I AGREE, AND IT IS PRECISELY BECAUSE OF THAT THAT PERCEPTION IS EVERYTHING. IF THE JUVENILE COURT JUDGE PULLS A FAST ONE ON A TEENAGER, HE IS GOING TO KNOW THAT, AND HIS PERCEPTION 6 THE COURT -- OF THE COURT SYSTEM IS GOING TO BE DIMINISHED. THAT IS A POLITE WORD FOR IT. ONE OF THE THINGS JUVENILES HAVE TO LEARN IS THAT YOU FOLLOW THE RULES, THAT YOU PLAY FAIR, AND I THINK THAT IS WHAT THE JUVENILE JUSTICE SYSTEM HAS TO DO. IF NOTHING ELSE, IF NOTHING ELSE, EVEN IF THIS COURT SAYS THAT, YES, A JUVENILE CAN ACCEPT A WITHHOLD AND BE SUBJECTED TO MORE THAN SIX MONTH'S COMMUNITY CONTROL, HE MUST BE ADVISED OF THAT. OTHERWISE YOU HAVE A TRAVESTY OF

JUSTICE.

WOULD YOU AGREE THAT, IF WE DON'T INTERPRET THE STATUTE AS SAYING THERE IS SIX MONDAYS, EVEN IF THERE IS A WITHHOLD, THAT IS THERE A CONSTRUCTION THAT IS INDEFINITE WITH THE WITHHOLD, UNTIL THE CHILD REACHES 19, IS THE ONLY OTHER INTERPRETATION?

WELL, HOPEFULLY YOU WOULDN'T DO THAT.

WHAT ELSE -- WHERE ELSE WOULD YOU -- IF IT IS NOT SIX MONTHS, THEN WHAT IS IT?

WELL, THAT IS LIKE, I THINK, THAT AT ONE POINT, YOU HAVE, BEFORE YOU, THE ISSUE OF ADULT COMMUNITY CONTROL AND THE JUDGE BEING ABLE TO KEEP ON VIOLATING, BASICALLY, UNTIL THE GUY WAS ON PROBATION FOR THE REST OF HIS LIFE. YOU COULD FIND THAT. LIKE I SAID, YOU ARE THE SUPREME COURT. I DON'T THINK THAT WOULD BE RIGHT. BUT --

IS THERE ANOTHER OPTION? I GUESS... WE CAN'T -- WE ARE THE SUPREME COURT BUT WE ARE NOT THE LEGISLATURE, SO WE CAN'T SAY, NO, IT IS TWO YEARS.

YOU DON'T HAVE ANY BASIS FOR THAT.

I THINK THAT WAS THE VERY EVIL THAT YOU ARE SAYING WOULD OCCUR, IF WE DON'T INTERPRET IT THE WAY YOU SEE IT, THAT IS IF WE DON'T INTERPRET IT THAT WAY, THE WITHHOLD --

I THINK YOU SHOULD INTERPRET IT.

I UNDERSTAND, BUT THE QUESTION THAT WAS ASKED OF YOU IS, ASSUMEING THAT WE FIND THAT THE STATUTE CLEAR --

YOU ARE SAYING THAT THERE IS NO POINT BETWEEN SIX MONTHS AND UNTIL THE CHILD'S 19th BIRTHDAY. IS THERE ANY --

ASSUMING THAT WE FIND THAT THERE IS NO AMBIGUITY. THAT IS THAT, IN THESE TWO DIFFERENT SECTIONS OF THE STATUTES, THAT UNAMBIGUOUSLY PROVIDES THAT THE MAX HIM BE THE -- THE MAX WILL BE THE AMOUNT OR THE PENALTY FOR THE CRIME, IF IT WAS PROSECUTEED IN ADULT COURT, SIX MONTHS, IN OTHER WORDS, BUT THAT IT DOESN'T HAVE THE INTENT TO WITHHOLD ADJUDICATION, BUT THAT THE PRACTICAL EFFECT OF THAT STATUTE, THEN, IS TOAL LOW THE -- ALLOW THE COURT, OR A 13-YEAR-OLD CHILD, TO CONTINUE THAT CHILD UNDER THE SPECIFICS OF THE COURT FOR SIX YEARS. I MEAN, WOULDN'T YOU AGREE THAT IS THE OTHER OPTION?

YEAH. BUT THAT JUST STRIKES ME WRONG.

I UNDERSTAND THAT. I THOUGHT --

I THINK IT WOULD STRIKE THE AVERAGE TEENAGER WRONG, TOO. BUT I THINK WHAT THIS COURT NEEDS -- IF YOU MAKE THAT RULING, YOU ARE SAYING, BASICALLY, THAT THE JUDGE IS ON THE GRA PANEL ARE UNREASONABLE. I THINK THAT THEY WERE REASONABLE, AND THAT MEANS YOU HAVE TWO REASONABLE SETS OF PEOPLE, READING THE SAME LANGUAGE AND COMING TO TWO ENTIRELY DIFFERENT CONCLUSIONS. BUT, AGAIN, IF NOTHING ELSE, IF THAT SCENARIO PLAYS OUT AND IF THAT IS YOUR RULING, ESPECIALLY THEN THE CHILD HAS TO BE ADVISED, BECAUSE I DON'T THINK ANY CHILD IN HIS RIGHT MIND WOULD ACCEPT A DEAL UNDER THOSE CONDITIONS. I HOPE I ANSWERED YOUR QUESTIONS. THANK YOU.

THANK YOU, COUNSEL. THANK YOU. WE WILL BE IN RECESS. BAILIFF: PLEASE RISE.

