>> May please the court my name is Sara Macks, and I represent the court.
In Baker this court had repeatedly revisited the parameters of those convictions to balance the needs of the court system against the rights to his release.
With limited conception defendants must file post conviction.
>> You agree if the sentence is illegal it can be attacked at any time.
>> Through a post conviction motion, yes, Your Honor.
>> What is habeas?
Does habeas have any relevance to individuals serving sentences?
>> Habeas is proper for issues attacking the Department of Correction functions, not for issues attacking sentencing court functions.
>> Something entered in this case.
Here I am, fat, dumb, and happy sitting in a jail cell someplace.
Unknown to me and unknown to my lawyer or anyone the DOC is communicating with the court.
The court is entering judgment.
I don't even know it.
>> It can be properly filed as a post conviction motion.
Yes.
>> You got that sentence correct.
You got that sentence down.
I understand that sentence.

>> There is an avenue of relief available, yes, as a post conviction motion.
>> What case is this in conflict with?
>> This is in conflict with Baker, Your Honor.
What the court did, the second District did, it decided to T.O.
It decided to Murray.
These are two pre-trial habeas cases.
Their authority to handle this.
That was inappropriate, a misapplication.
Ignored the Baker case.
This was not a pretrial case.
Pretrial does not have a set of rules that must be used as in the posttrial context.
Pretrial relies exclusively on habeas.
And a pretrial habeas case is a misapplication of this court through prior precedent.
>> We would have -- you're claiming a conflict based on misapplication of Baker?
>> Misapplication of both T.O. and Murray, and ignoring Baker.
Yes, correct, Your Honor.
And this court went even farther and ignored the collateral and ignored the credit for time served law Mancino.
The primary issue, the primary misapplication is in the Baker.
>> And McBride recognize that if there was a manifest injustice that

was an exception to the prior adjudication of the same issue.
>> The manifest -- I'm glad you brought that up.
The manifest injustice issue is a proper issue and can be raised as a secondary post conviction issue.
It does not give a defendant an ability to raise habeas.
>> Second District had re-designated this as a 3800A then they would have had a transfer to the Fourth District?
The Fourth District could have granted his release if they determined the same thing as the Second District.
>> Correct.
>> The procedural.
You are really claiming a procedural error.
>> Correct.
Whether or not the court had authority to grant release.
That is really the issue.
Second District did not have authority to grant release.
Only the sentencing court had authority to grant release or who had appellate court jurisdiction over the sentencing court.
In this case the Fourth District.
You brought up the manifest injustice.
The manifest injustice does not then give a Defendant the ability to file

habeas petition when they are attacking the sentence.
What it would do, this manifest injustice would then give a Defendant the ability to file a successive 3800.
>> Let's get on with what Justice Lewis brought up.
I have never seen a situation -- maybe they do it all the time.
The sentence is entered.
Somebody is represented by counsel.
The case is going on appeal.
They write to the conference of judges and a new sentence is entered to the defendant's detriment after the time that the jurisdiction of the court has expired.
Do we have that as the, is that a regular process of the Department of Corrections?
>> Yeah.
And let me kind of answer the question two ways.
One, this memo from the Department of Corrections was entered to clarify the order, the sentencing order because it was internally inconsistent, and they didn't understand that order.
>> Why wouldn't, why wouldn't an individual affected by that be entitled to know what was happening?
>> I agree with you.
The parties were entitled to know what was happening.
>> They weren't, were they?

>> No, they were not.
>> You said this happens on a regular basis.
I am sitting here saying, my goodness.
What is going on?
>> The Department of Corrections has changed the way they do this.
The internal operating procedure is to notify the parties when the send out these letters.
Absolutely.
But when they are enforcing these sentences, administering these sentences, that is a better word, they will get these orders that they don't understand.
They communicate with the trial court saying, okay.
We don't understand this order.
We need some clarification.
When it is on appeal, as in this case, the court did not have jurisdiction to enter an amended order.
So the issue then becomes, well, what is appropriate?
In this case they entered an amended order when they did not have jurisdiction.
Okay.
Well, that is not valid.
You can't do that.
>> And I appreciate that candor.
That is a pretty significant issue, that a court has entered an amended sentence to the detriment of the

defendant when they had no jurisdiction to do so.
Doesn't that render that amended sentence void and illegal?
>> Absolutely, yes, Your Honor.
The order, the sentence itself, remember, comes from the sentencing transcript.
The sentence itself is not void or illegal.
The sentencing transcript which was in the, attached to the amicus brief clearly states 27 years with 1,915 days of credit.
>> Was that before the Second District?
>> It was not.
When the Second District asked the state to respond it was a petition for writ of cert from Hardee County.
The only thing that Hardee Court had, the only thing the Hardee County Court had issued in its order was whether or not Hardee County had jurisdiction over that.
Hardee County said, no, we don't have jurisdiction.
This is to be transferred to Palm Beach County.
So when the State responded they only responded to that issue.
Sentencing transcript was not essential to that.
So the Second District never had that sentencing transcript.

That was essential to determine the habeas corpus in this issue, but they determined it without it.
I mean obviously, we have it in front of us now, and we know that court pronounced it clear.
>> You would say that if this had come up -- what would have been the method, the correct method when after the time, you know, the court has lapsed jurisdiction.
There is discovered to the defendant's advances a discrepancy between written sentence and your alternate.
What law we have that says that, the law that says the oral pronouncement prevails are those cases that say that you can't create a harsher sentence by the entry of a written sentence that wasn't orally pronounced.
The reverse issue which is if a mistake is made and gives the defendant credit, as was given on page two of the sentencing order, what law says that can be taken away?
>> Right now in that order we don't have any advantage because that order is internally inconsistent.
>> But I'm asking you an exact question.
In other words, let's assume what has happened is there is no internal inconsistency.

An error in the written sentence document that gives the defendant more credit than was intended.
>> Well --
>> Don't you agree that once that credit is given that there is ample case law that it cannot be taken away to the defendant's disadvantage?
>> Both yes and no.
No if it is a scrivener's error.
It depends on what type of error.
If it is a scrivener's error, it can be changed.
If it is more than a scrivener's error, it cannot be changed, if that makes sense.
>> It depends what a scrivener's error is.
>> Right.
And that was explained.
>> Involved in this case because the document is internally inconsistent.
It can't be reconciled.
>> It could not be reconciled.
>> It had to be a scrivener's error.
>> Yes, and that would be the second page as the judge reflected in her amended order.
Although void she did reflect that in her amended order.
We know that now the second page, the scrivener's error, and we have the oral pronouncement which reflects what the judge did in her amended order.

So we now know all of that information in hindsight.
>> But the fundamental point you're making, that has nothing to do with the circuit court in Hardee County.
>> It has nothing to do with what the Second District has the authority to do.
The Second District did not have the authority to touch the merits of this case at all is really the point the State is making.
All of this stuff should have been done in Palm Beach County, the Fourth District Court of Appeals.
In fact, you know, as the State pointed out and as the Defendant pointed out in his brief in Hardee County he had filed a post convection 3850 in Palm Beach County on his credit for time served before he filed his Hardee County habeas petition.
So he had already attempted to raise this credit for time served claim.
So --
>> If we send this back to Palm Beach County what happens?
>> Well, the state would urge that based on Baker, in Baker they say if the defendant had already raised a prior claim the appropriate thing to do is actually dismiss the petition.
>> We have on the record, and nothing can be done, a trial judge --
>> Well, we do have the void order issue.

That issue is still out there.
So the State would say, yes.
On that particular void order issue
only that can be sent to Palm Beach
County so that the trial judge can
address her void order and enter a
new order to address the fact that
her original sentencing order from
March 2005 is internally inconsistent.
That particular issue she can now
deal with.
>> And then if it is done that way the
issues of whether double jeopardy.
>> Any of those issues as well.
But again, so any order attached to
that void order issue.
[INAUDIBLE]
>> Wasn't this issue already
determined on the merit?
>> The credit for time served issue.
Yes.
It was.
>> And it was appealed to the, I think,
it was Fourth?
>> It was appealed to the Fourth.
The court remanded it back, and the
defendant failed to appeal.
>> Isn't that procedurally barred?
>> It is.
The credit for time served issue.
>> Tell me why the original order is
internally inconsistent again?
>> Let me grab it.
On the first page of the order what
we have is, it says in the area, the

judge wrote five years, five years, five years.
Under that what the judge wrote is it is further ordered that the defendant shall be allowed a total of 1,915 days of credit.
So that is what the judge wrote on the front.
>> Prior to the acquisition of the sentence.
>> Right.
So that is the total of time from, you know, 1994 when he was originally arrested.
>> And going to what?
>> Those arrows are, those arrows, you mean for a term of, that arrow? That is for the five years, five years, five years.
That is showing how she figured out the sentence and all the counts.
>> Okay.
>> And on the second page what we have is where the box is checked, it is further ordered that the defendant be allowed 1,915 days time certain the date of arrest as a violator following release from prison to the date of re-sentencing.
That is only for the time period when he was arrested on his violation of probation to the date that he was sentenced.
>> And the other page says credit for time incarcerated prior to the inquisition.

>> The defendant in this case had already served a five-year prison term before he was arrested on his violation of probation.
So there is no way he could have 1,915 days if he had served a five-year prison term before because those two numbers cannot be consistent.
That would mean that the 1,915 days in total cannot also be 1,915 days of time that he had served after he was arrested on his violation.
Those two numbers are inconsistent.
So you can't have those two numbers.
It is because 1,800-plus days is how much time you would serve on a five-year prison sentence.
So if you figured that, that is how much of the 1,915 days was his prior prison sentence.
He served I can't remember how many days prior to from his date of arrest on the violation of probation to his date of being sentenced, but it was less than a year.
So that puts that into context.
What the Department of Corrections was so confused about where this 1,915 days.
>> These sentencing gives me some concern.
You end up with, what was there, seven or five different sentences here.

Originally there were a number of them.
Some of them he gets incarcerated for.
The others he gets probation for.
It's always interesting to me how you can suspend, I guess, some of these other ones until it's probation time.
And so that is why I think you always end up with these problems with how much credit you're going to give them because for all intents and purposes they are in jail or in prison.
They have been convicted of those crimes.
And so don't they get some credit for these other crimes that they are going to later be on probation for?
>> And he absolutely got his credit.
He got his 1,800-plus days.
He got his time that he served prior to being incarcerated, his jail time for that, and he got his jail time on the time he got after he got arrested.
>> Where does the record show that he first learned of the amended sentence?
>> There is not an exact time period.
What the defendant's claim is that he had gotten documents, requested documents from the Department of Corrections and that when he received those documents that is when he received the memo from the Department of Corrections.

>> When you said it had already been adjudicated, it was sent back.
Probably apparently no hearing.
Then supporting his claim that the credit would be applied to each count, not the total sentence.
We don't know if he was talking about page one or page two of the order or the amended order.
>> The amended order was not.
He has always made it on the original 2005.
>> So therefore it may not have went before the trial court.
>> Like I said, the void order issue was not.
That is why I wanted to be clear on that.
>> I asked that question.
>> The credit for time served issue has that.
>> He did not know about the amended order until 2007.
>> The credit for time served issue is about the original order, not the amended order.
I want to be clear on that.
The credit for time served issue is about the original order.
The original order issues are about it being void, double jeopardy.
Those are the amended order.
The credit for time served issue is on the original order.

That issue has already been adjudicated by the post conviction motion.
>> Has it been adjudicated in a way that is consistent with the amended order?
>> Yes.
>> Okay.
>> Yes, it has.
In fact, when it was adjudicated.
>> So this issue about the amended order not being valid is really kind of of no real significance.
>> It is of no real significance.
It is also important for what the Second District did.
They believe that they had authority over this case because it was void.
The amended order was void.
Well, okay.
Even if they did have authority over it for being void they still couldn't look at this order and analyze it because they didn't have authority to analyze a non-void order.
That is clearly not their authority in habeas because if anything the cases that they have cited, T.O. and Murray, which are pre-trial cases and are not appropriate issues does not give them authority over non-void issues.
So, I mean, the Second District in this case surpassed their authority on multiple levels.

And so the State takes that, believes that what this court can do to clear up the future, you had brought up, Justice Pariente, you have brought up the issue of specifically the issue of manifest injustice.
Some clarity on the issue of manifest injustice.
When an issue is brought up on manifest injustice that does not mean that a defendant gets a chance at habeas release.
It would mean that they get a successive motion in post conviction.
There seems to be some confusion out there about what exactly manifest injustice provides a defendant.
That would be one area of clarification that this court could provide.
>> Manifest injustice claim relates to the order, something that the sentencing court has done, not something the Department of Corrections has done.
>> Correct.
>> And therefore it should be something that would go back to the circuit in which the sentence was imposed.
>> Correct.
Clarity on that would then provide the sentence and the ability to understand where to correctly file their claims of manifest justice.

They don't get the habeas claim.
They would get the post conviction claim.
>> With that, I believe you have used more than your time.
>> Okay.
Thank you, Your Honor.
>> Good morning.
May it please the court, my name is David Luck.
Along with Mr. John Blue, I represent the respondent in this matter, Warren Stang, who is currently incarcerated.
Your Honors --
>> How did you get appointed to this case?
>> Your Honor, I received an e-mail from Mr. Brian Malady notifying the court needed counsel to volunteer to represent Mr. Stang.
I beat everyone else to the punch.
Admittedly this is a unique case.
Just to clarify before I forget to answer Justice Pariente's question, this issue is not previously been resolved by the rule 3850 motion because in response to Mr. Stang's -- pardon me, rule 3850 motion the State relied upon the original written sentence and never acknowledged that there was an amended sentence.
The trial court which was the same trial judge who entered the original sentence also adopted the State's

response and reconfirmed the validity.
>> There is no amendment, though. That is a void order.
Isn't that your position?
>> Right, Your Honor.
>> In fact, that doesn't exist.
>> Correct.
>> How does what your saying make a difference?
>> The State has had five years to raise an inconsistency between the oral positions, plural, sentenced in which we contend themselves are internally inconsistent, and at least four junctions the State never raised this issue.
They never raised issue in the 3850 response.
They never raised an oral and consistency in either of the habeas, one of which was denied without prejudice.
The state Contended in their brief incorrectly.
It is not a procedural bar.
It was denied without prejudice because the Department of Corrections misled Mr. Stang into believing he fully exhausted his administrative remedies, which he had not.
What we have here is really --
>> In those prior instances was the same issue presented?

Was that on entirely something different?
>> Your Honor, we don't have that information directly in the record because the record doesn't actually contain Mr. Stang's 3850 motion.
The second DCA decision indicates that Mr. Stang's 3850 motion sought to have his jail credit applied as it was stated in the March 2005 written sentence.
However, in denying the 3850 motion the Court adopted the response and the state was relying upon the original written sentence.
Your Honors --
>> This case seems to break down into a procedural posture to me.
How did the Second District get authority to do what it did?
>> Right.
>> Address that.
>> Yes, Your Honor.
That also brings up the jurisdictional issue.
The reason the Second District addressed this case is that it thought it was dealing with an expired sentence.
At least according to the Florida Department of Corrections the sentence, if implemented, including the second page of the written sentence, would have expired.
So there is word of precedent most recently from the First District Court

of Appeal in 2009, a case called State v. Santana that states that when an incorporated individual is seeking immediate relief based on an expired sentence habeas corpus is an appropriate procedural mechanism.
There is also the decision of Kirkman v. Wainwright from the Fifth DCA.
There is Negs v. Wainwright.
There is Dave v. Florida Department of Corrections.
Now the state attempts to distinguish most of these decisions by contending that they involve situations where a sentence has expired and the Department of Corrections simply isn't carrying out the sentence properly and does not involve a situation where the Trial Court has done something improper.
The decisions as written don't indicate a distinction.
The sentence as written is expired.
The state has never filed the proper motion alleging any inconsistency between an oral position and a written sentence.
The only logical thing for a defendant to do is to file a habeas petition because he believes his sentence has expired.
That segues into the jurisdictional issue.
Baker v. State involves true collateral attacks.

Actually, three habeas, three original habeas petitions were filed in this Court.
Petitioner Baker alleged that jurors were not properly qualified.
Petitioner Brook alleged that the jury was not proper this one.
And Petitioner Sly alleged conflict with his counsel rendered his guilty plea in voluntary.
None of those instances involved an expired sentence.
Looking at conflict jurisdiction, as Your Honor's know, you have to look at the four corners of the decision below.
The second DCA's a decision indicates we're dealing with an expired decision.
It does not indicate any inconsistency written sentence.
With regard to State V. McBride that case involves rule 3800 motions and procedural bars.
First of all, this case as it is appearing before this court does not involve a Rule 3800 motion.
Second, there is not applicable procedural bar because with regard to the Rule 3850 motion the trial court reconfirmed the validity of the March 30th sentenced by adopting the state's response which attached the sentence.
It was denied without prejudice so that Mr. Stang could fully exhaust his

administrative remedies and file another habeas petition.
And the direct appeal are meritless as well because Mr. Stang was unaware there was an amended sentence.
>> Let me ask you about that one on the direct appeal.
If Mr. Stang and his lawyer thought that the sentence provided for immediate relief there wouldn't have been in the need for an appeal.
So there is something about that that if we go back and say, well, it is the original sentence that prevails.
>> Correct.
>> That was, and if the idea was that there was a question as to whether the first page conflicted with the second, why wasn't that already apparent at the time that the direct appeal was filed?
That is the sentence that were operating under.
>> Your Honor, the only response I can provide is non-record based, and that is what my client has told me in my interview with him.
He was represented by counsel at that time and was not able to articulate his own arguments.
All of this involving his challenges to the sentence in terms of it being expired have been conducted pro se.
>> Let's assume that we strip away the idea of this void act by the trial judge which the state has conceded.

We go back to the actual sentence.
Is there, do you agree there is an inconsistency or an ambiguity between page one and two?
>> In all fairness with the court would have to agree that there is a possible inconsistency.
However, the sentence, the written sentence has never been properly amended through any procedural mechanism, either 3800A motion, 3800B motion, or their decision to recognize trial courts authority to correct clerical errors and the sentences.
All those decisions involve adequate due process.
>> If we were to crush the Second District, if there was a jurisdictional basis to say that there really is a question as to whether this is truly an expired sentence or it is a clerical error, would it then go back to the Second District or the trial court? What would be the next step?
>> Your Honors, if you do not you the sentence has expired and permit Mr. Stang to be immediately released I think the most analogous case is a decision called Jory v. State from the Fifth District Court of Appeal.
In that case the trial court amended sentences while the defendants appeal was pending.
Then the Fifth District Court of Appeals struck those as void.

Because the trial court's prior sentences were arguably inconsistent and confusing the Fifth DCA vacated all the prior.
At a minimum.
If Mr. Stang is not entitled to immediate release because the entire process.
He should at least the entire to notice and opportunity for new sentencing.
Preferably before a different judge.
>> What would be the basis for giving him a new sentencing proceeding?
If you throw out the amended sentence, and you just rely on this sentence is there, and again, I realize this is, you know, you are here as an officer of the court.
Is the case law that says there is ambiguity in written sentence where at least the second page totally to the benefit of the defendant that the defendant should get the benefit of the ambiguity.
>> I am not aware of any Florida precedent that is directly on point.
Both the state and the Department of Corrections both contend that the state and the oral impositions, most of the time they use the term in the singular form, but it is really plural.
There are two oral impositions.
This is on page 118 of the record supplement.
The first oral imposition of sentence arguably and probably based on our

reading only adds up to 22 years of incarceration.
The court also --
>> The oral pronouncement truly did not intend to send him home, did they?
>> Your Honor, the trial court the state.
>> Because of the ambiguities he would be released immediately.
That is absolutely not the intent by the oral pronouncement of the court.
You're a con artist.
You have done it this time.
And he did it twice.
Twenty-seven year credit for time served.
>> That's correct, Your Honor.
However, if there is an inconsistency between the written sentence and the oral imposition of sentence the burden in this case would be on the state to seek a correction for a proper procedural mechanism.
Again, that never occurred here because the sentence was amended ex parte with no notice to anyone.
>> I agree.
>> So here we are left with the written sentence.
Because the state had never previously raised an oral imposition inconsistency argument, they should not be able to do it for the first time.
>> The bottom line is that the only way that the state could get any relief

would be to show that it is a scrivener's error, correct?
>> They would have to show that there is a clerical error in the written sentence and that the trial court's oral imposition should control, not withstanding the fact that a trial court has not previously entered another valid sentence.
>> I think we have case law that says -- I am a little concerned.
Again, I want to be fair to both sides here.
If the sentence is already, the time for appeal has run the State does not have the ability to seek an amendment that will be prejudiced the defendant.
I don't know case law that is going to allow that.
I thought case law ran contrary.
If there is an erroneous award of credit the defendant gets back benefit.
>> Did the trial judge right this order?
>> I believe so, Your Honor.
>> Wrote the order.
>> It is not clear.
>> The second page.
She not done anything on the second page you would not be here.
The clerk made a scrivener's error.
>> I'll take your word for that.
I have not previously been a trial judge.

If you're telling me that the clerk is the individual who fills out the sentencing former I will take your word for that.
I would just give back to the point that if there is an error and the written sentenced it is the state's burden to try and seek a correction.
>> Was this correction done before the actual direct appeal was over?
>> Yes, it was.
State's Direct appeal in the 40CA case number 051556 was pending from April 26, 2005, until November 3rd, 2006.
The amended sentence was entered on June 7th.
>> Under direct appeal the defendant appeals that judgment and sentence. If the state sees a sentencing order like this then there is some problem with it.
The state can cross appeal as the impropriety of the sentencing order.
>> Your Honor, they can even file a 3800D2 motion while the appeal is pending.
Florida rule provides the state the ability even while the defendants direct appeal is pending to file a 3000D2 motion to correct it scrivener's error.
>> Isn't only if it is to benefit the defendant?
>> No.

If it benefits the defendant, and it is disjunction.
>> So if they recognize there is an error, which it was the first sentences, and they don't do that, wouldn't that be waived by the state?
>> Well, it is our contention that it is waived.
However, the state in its brief also makes the arguments under Williams and Ashley coming two decisions from this court, that the oral imposition controls over a written sentence.
An oral imposition that conflicts with a written sentenced produces a written sentence that is the illegal.
Both of those cases that in the context of situations that benefited the defendant.
I am not sure if the same reasoning.
I don't believe the state has cited the case where the same rule 3800A would permit the state to now.
>> I was asking you.
I don't know if you had a chance to answer.
If an error is made and it enures to the benefit of the defendant such as jail credit, an amount being wrongfully or erroneously awarded, are the cases that say once it is given can take it away?
>> I want to be entirely honest with the Court.

There are at least two decisions in Florida that don't say that the state has the ability to do so.
They said that the trial court has the inherent authority at any time to correct clerical errors in mid-sentence.
>> What case?
>> The first one is a decision called Drumwright from the Fifth District Court of Appeal.
572721029.
And a case called Carson v. State.
497212.
However, in each of those decisions the trial court did so by affording the defendant all necessary due process protections.
That being procedural due process.
Notice and an opportunity to be heard and to participate in the recent and process.
The court did not just received an ex parte communication from the Department of Corrections and then enter a non pro tunc amended sentence.
Those cases would still require proper due process protection.
Your Honors, the state treats this case as a garden variety collateral attack on a judgment of conviction and sentence.
I am not sure if it really fits within the parameters.

They don't cite the case, and we haven't found a case where there is a validly entered sentence that according to, at least, the Department of Corrections would have resulted in potential immediate relief.
And a later amended sentence that was void because it was entered without jurisdiction.
None of the cases they set them including Baker, and all that type of situation.
What we are left with are the this is that are previously mentioned we have an expired sentence.
You can use habeas corpus.
We're dealing with a layperson, my client, who is quite remarkable for having no legal training.
He saw these cases and recognized that, hey, there is a written sentence in my case.
The way I read it and the way the Department of Corrections reads it it entitles me to immediate release.
What does case law say I should do?
File a habeas petition.
That is what I did.
The last point that I would really like to mention relates -- I know they are not here to argue in response.
I have no objections of the state would like to bring this up I have rebuttal.

The cases cited by the Department of Corrections in their amicus brief totally informal process.
None of them actually support what the Department of Corrections as requesting.
The first is the decision In RE: Matter of Chapman.
Washington State decision for 1990.
In that case Washington State Legislature recognized the potential for this type of situation to arise and provided a statute that allowed the Department of Corrections to petition an Appellate Court when the Department of Corrections that the trial court has made a mistake in a sentence.
The statute provides, again, necessary due process protection.
That didn't occur here.
Regardless of what the Department of Corrections current practice is in terms of dealing with the situation we know for a fact here as conceded by the state that no one ever provided notice to my client.
The second case, similar situation.
A statute that permits the Department of Corrections to challenge a sentence that a trial court arguably entered erroneously.
That case is unpublished.
It is found in a 2009 West Law 3489987.

From the First District Court of Appeals.
The Department of Corrections also relies on a decision called State v. Bishop which is a Kansas Court of Appeal decision that is also unpublished.
In that case the Department of Corrections sent a letter to the state attorney but cc'd the trial court and prompted the state attorney to file a motion to correct an illegal sentence.
Totally distinguishable.
Prosecutor was not even involved.
It is simply the Department of Corrections and the trial court clerk.
That final decision the Department of Corrections relies on for this request is Wilkens L. v. Marbury which is an unreported decisions from the Seventh Circuit.
There the Federal Bureau of Prisons did not seek to amend a sentence but merely sought to determine whether the defendant was sentenced under the federal sentencing guidelines.
There was an issue as to whether he was entitled to parole.
Your Honors, I see that my time is almost an end.
We would respectfully request that the court either discharge jurisdiction because there is no proper conflict, or the Court approved the Second District's decision below that habeas

is not an appropriate mechanism to use for an expired sentence.
Thank you, Your Honors.
>> Thank you, both.
You have used more than your time.
Yes.
Thank you both for your arguments today.
The Court will now be in recess until tomorrow morning.
>> Please rise.