

>>> THE NEXT CASE FOR THE DAY IS
TURNER VERSUS STATE OF
FLORIDA.

>> MAY IT PLEASE THE COURT,
GOOD MORNING.

MY NAME IS RAHEELA AHMED AND I
AM HERE ON BEHALF OF THE
APPELLANT, MR. †JAMES DANIEL
TURNER.

MR. †TURNER SITS ON DEATH ROW
TODAY, HAVING BEEN CONVICTED
OF THE MURDER OF MISS †RENEE
HOWARD.

THIS MATTER COMES BEFORE THIS
COURT ON AN APPEAL OF A
POSTCONVICTION MOTION THAT WAS
DENIED BY THE POSTCONVICTION
CIRCUIT COURT, PARTICULARLY
REGARDING CLAIM THREE.

AND THAT IS ENCOMPASSED IN
ARGUMENT ONE OF OUR BRIEF AND
THAT IS THE ARGUMENT THAT I
WISH TO ARGUE BEFORE THIS
COURT THIS MORNING.

CLAIM THREE ARGUED THAT TRIAL
COUNSEL HAD NOT PROVIDED
EFFECTIVE ASSISTANCE OF
COUNSEL AT PENALTY PHASE
BECAUSE THEY FAILED TO PROVIDE
A COMPETENT MENTAL HEALTH
EVALUATION BEFORE THE JURY AND
THE JUDGE WHEREBY THEIR
INVESTIGATION LACKED,
PARTICULARLY IN FAILING TO
PROVIDE THE FAMILY MEMBER
INTERVIEWS TO THEIR EXPERTS.

>> WELL, THE MANY OF THESE
CASES ARE DIFFICULT TO
PRESENT.

AND WE TRY NOT TO SHOOT THE
MESSENGER.

BUT YOU'RE WORKING WITH FACTS
HERE THAT ARE TROUBLING, THE
ARGUMENT THAT YOU'RE MAKING.
I MEAN, VERY DIFFICULT FOR YOU
TO DEAL WITH.

THERE WERE FIVE MENTAL HEALTH
EXPERTS, WERE THERE NOT?

>> YES, YOUR HONOR.

THEY HAD PRESENTED DR. BLOOMFIELD AND DR.†EDWARDS AT THE PENALTY PHASE.

>> SPENCER.

AND THEN THEY HAD TWO OTHERS THAT THEY DIDN'T CALL BECAUSE THEY MADE A STRATEGIC DECISION THAT THOSE WOULD HARM THEIR CASE.

>> THERE WERE IN ALL FAIRNESS, THERE WERE THREE OTHERS, DR. YOUNG, DR.†SOSHEY AND DR.†GAMUT.

AND WHAT IS CONSISTENT WITH THE EXPERTS IS THAT NONE OF THEM SPOKE TO THE FAMILY MEMBERS, SO THERE'S THESE GAPS.

>> WHAT DOES ONE DO?

WE'RE NOW IN THIS AGE WHEN I FIRST CAME TO THIS COURT, I DON'T THINK THERE WAS SOMETHING CALLED A MITIGATION EXPERT.

AND NOW WE HAVE THOSE AND IT'S MY UNDERSTANDING FROM THIS RECORD THAT A MITIGATION EXPERT WAS SENT TO THE COMMUNITY AND EVEN GOT TO THE HOME WHERE THE MOTHER WAS LOCATED AND SHE WENT TO THE BEDROOM, CLOSED THE DOOR AND SAID I'M NOT GOING TO TALK TO YOU.

HOW DO WE DEAL WITH THOSE TYPES OF THINGS?

>> IN THIS PARTICULAR CASE, THE MITIGATION EXPERT IS DR.

OR MR.†WILLIAM SCOTT, AND HE TALKED ABOUT HOW THE DIFFICULTY WAS GETTING THE MOTHER AND THE FAMILY TO COME TO COURT TO TESTIFY. HE TALKS ABOUT HOW IT WAS SORT OF AN UNNERVING AND FEARFUL EXPERIENCE.

BUT WHAT IS CLEAR IS LISTENING TO WHAT MR.†SCOTT SAID AT THE

SPENCER HEARING AND ALSO LISTENING WHAT TRIAL COUNSEL SAID, IS THAT THE FAMILY WAS AT LEAST TALKING TO THEM. EVEN THE MOTHER CAME ALL THE WAY DOWN TO FLORIDA AND THEY HAD A MEETING I BELIEVE OUTSIDE THE PUBLIC DEFENDER'S OFFICE.

SHE WAS TALKING TO THEM. AND CERTAINLY IN THIS CASE EVEN THOUGH THEY HAVE THE FEAR OF GOING ON THE STAND, THEY COULD HAVE SPOKEN TO THE EXPERTS.

THE RECORD DOESN'T SUPPORT THAT ANY SUCH EFFORTS WERE MADE BY TRIAL COUNSEL TO AT LEAST HAVE THE EXPERTS TALK TO THE FAMILY SO THAT THEY COULD USE THE INFORMATION TO SUPPORT THE OPINIONS THAT THEY CAME TO.

IT WAS JUST THAT THEY DIDN'T WANT TO TAKE THE STAND, IS WHAT DR.†SCOTT INDICATED. BUT SOME OF THE FAMILY DID EVEN TAKE THE STAND, SUCH AS HOPE TURNER, HIS SISTER, HIS BROTHER MICHAEL TURNER, A COUPLE OF NIECES AND HIS MOTHERINLAW.

AND THAT TESTIMONY THEY EVEN TESTIFIED AT THE PENALTY PHASE, BUT THEY STILL DIDN'T TALK TO THE EXPERTS IN THIS CASE.

AT POSTCONVICTION WE'RE PRESENTED THE TESTIMONY OF EISENSTEIN.

HE TALK TO THE MOTHER, TO HOPE, TO A NIECE, MISS†BETTY MCCALLISTER AND HIS BROTHERS. AND SO HE WAS ABLE TO LEARN ABOUT MR.†TURNER, YOU KNOW? HIS YOUTH, HIS PROBLEMS WITH EDUCATION, THESE IMPULSIVITIES HE WOULD HAVE, THIS RECKLESS BEHAVIOR HE HAD.

THOSE KIND OF INTERVIEWS

WEREN'T DONE AT TRIAL LEVEL,
THEY WEREN'T DONE AT PENALTY
PHASE, THEY WEREN'T AT PEN
CERTIFICATE.

EVEN THE ASSISTANT STATE
ATTORNEY IN CLOSING REMARKED
THAT AND ALSO DURING
CROSSEXAMINATION THAT THESE
EXPERTS DIDN'T KNOW MR. †TURNER
AND THEY DIDN'T KNOW MR.
TURNER BECAUSE THE EXPERTS
WEREN'T PROVIDED HIS FAMILIES
SO THAT THEY COULD AT LEAST BE
INTERVIEWED FOR PURPOSES OF
THEIR OPINIONS.

AND THE DOCTOR IN SPEAKING TO
THE FAMILY AND ALSO LOOKING AT
THE RECORDS CAME TO CERTAIN
MAJOR MENTAL DIAGNOSES, THE
FIRST ONE BEING THAT MR.
TURNER SUFFERED FROM ATTENTION
DEFICIT, HYPERACTIVITY
DISORDER AND THE SECOND ONE
BEING THE BIPOLAR MENTAL
ILLNESS.

>> WELL, WHAT DID THE TRIAL
JUDGE THERE WAS AN
EVIDENTIARY HEARING, CORRECT?
>> YES, YOUR HONOR.

>> AND AS WE KNOW WITH TRIAL
COURT FINDINGS BASED ON ACTUAL
TESTIMONY, THOSE FINDINGS ARE
ENTITLED TO DEFERENCE,
CORRECT?

>> THAT IS CORRECT, YOUR
HONOR.

>> SO WHAT DID THE TRIAL COURT
SAY ABOUT THE TESTIMONY OF DR.
DANINGER VERSUS THE TESTIMONY
OF DR. EISENSTEIN.

>> THE TRIAL COURT FOUND THAT
DR. †DANINGER'S TESTIMONY WAS
MORE CLEAR AND CONCISE.

>> AND THE TRIAL COURT FOUND
THAT THE INFORMATION DIDN'T
WARRANT THE DIAGNOSIS OF ADHD,
BIPOLAR AND BORDERLINE
PERSONALITY DISORDER.
SO WHAT DO WE DO WITH EVEN

IF WE FIND SOME DEFICIENCY,
WHICH I'M HARDPRESSED TO FIND
ON THIS RECORD, WHAT DO WE DO
ABOUT PREJUDICE?

I MEAN, THE TRIAL COURT'S
SAYING THIS NOT ONLY WAS
SOMETIMES WE SAY JUST BECAUSE
YOU FIND A BETTER EXPERT, BUT
THE TRIAL COURT'S SAYING THIS
ISN'T A BETTER EXPERT.

>> THE TRIAL COURT'S SAYING
THE PRESENTATION AT THE
POSTCONVICTION WAS BETTER.

HOWEVER, THE TRIAL COURT DID
MAKE A FINDING THAT IT WOULD
NOT HAVE CHANGED THE OUTCOME
OF THE CASE, BUT

>> THEY SPECIFICALLY SAY AS TO
THOSE DIAGNOSES, THAT THEY
THE EVIDENCE DIDN'T SUPPORT
IT.

NOW, IS THAT FINDING ENTITLED
TO DEFERENCE AS THE TRIAL
COURT BEING THE FACTFINDER ON
THE CREDIBILITY OF THAT EXPERT
AND THE EXPERT TESTIMONY?

>> IN ANSWERING THAT QUESTION,
LET'S LOOK AT WHAT THE DOCTOR
DIDN'T HAVE IN TERMS OF HE
DIDN'T DO ANY INTERVIEWS
EITHER INTO MR.†TURNER'S LIFE.
HE CANDIDLY SAID THAT HE HAD
NO INFORMATION REGARDING MR.
TURNER'S EARLY CHILDHOOD,
WHICH THE DOCTOR TESTIFIED WAS
ABLE TO DETERMINE THAT FOR
PURPOSES OF

>> SEE, THAT'S WHERE IT'S SORT
OF AN UNFAIR THING.

YESTERDAY ONE OF THE
REPRESENTATIVES OF THE STATE
SAID YOU DO BETTER IN
POSTCONVICTION BECAUSE YOU
HAVE MORE TIME THAN YOU CAN AT
TRIAL AND I THOUGHT THAT WAS
REALLY A STARTLING REVELATION
OF HOW LOPSIDED OUR DEATH
PENALTY SYSTEM IS.

BUT HERE, AS JUSTICE LEWIS
SAID, THE FAMILY SAID WE'RE

NOT GOING TO COOPERATE.
AND THIS UNFORTUNATELY HAPPENS
MORE OFTEN THAN IT SHOULD.
THEN WHEN THE DEATH PENALTY'S
IMPOSED AND THEN YEARS LATER
ALL OF A SUDDEN THEY'VE GOT AN
AWAKENING, OH, MAYBE WE BETTER
HELP OUT, SO THAT'S NOT A
FAULT OF THE EXPERT OR OF THE
LAWYER IF NOW THE FAMILY
DECIDES WE'RE GOING TO BE
FORTHCOMING.

>> WELL, THE FAMILY IN THIS
CASE, FROM WHAT IT LOOKS LIKE
IN THE RECORD AND FROM THE
TESTIMONY OF MR. †WILLIAM SCOTT
FROM THE SPENCER, IS THAT
THEIR MAIN FEAR WAS COME TO GO
COURT AND TESTIFYING.

>> I THOUGHT THE INVESTIGATOR
WENT UP TO WAS IT SOUTH
CAROLINA?

>> THAT'S CORRECT.

>> AND KNOCKED ON THE DOOR AND
SAW THE MOTHER IN THE KITCHEN
AND APPARENTLY SHE SENT
SOMEBODY OUT AND SHE WHEN
HE TRIED TO TALK WITH HER, SHE
WENT IN ANOTHER ROOM AND
CLOSED THE DOOR.

>> THAT'S WHAT

>> SO I DON'T UNDERSTAND HOW
HOW DOES THAT TRANSLATE TO
HER WANTING TO TALK TO HIM?

>> THERE'S TESTIMONY ABOUT MR.
SCOTT WHERE THAT IS
CORRECT, THAT WHEN HE WENT ON
THE SECOND TIME UP TO SOUTH
CAROLINA, THEY SORT OF BOARDED
HERSELF AND DIDN'T WANT TO
COME OUT.

BUT THERE IS TESTIMONY THAT
SHE DID EVENTUALLY MAKE IT TO
FLORIDA PRIOR TO TRIAL, AND
THEY DID HAVE A MEETING WITH
HER, AND I BELIEVE MAYBE ONE
OR TWO OTHER FAMILY MEMBERS, I
CAN'T RECALL, REGARDING, YOU
KNOW, THE CASE.

AND SO, I MEAN, SHE MADE IT ALL THE WAY DOWN HERE. JEFFREY TURNER, WHO WAS IMMENSELY HELPFUL IN THIS CASE IN TERMS OF BRINGING THE FAMILY DOWN.

THEY COULD HAVE HAD THE EXPERT SPEAK TO THE FAMILY EVEN THOUGH THE MOTHER WANTS TO TAKE THE STAND AT ALL IN TERMS OF GETTING INFORMATION TO MAKE THESE DIAGNOSIS.

ESPECIALLY A DIAGNOSIS OF A MAJOR MENTAL DISORDER IN THIS CASE.

>> AS I LOOK AT THESE, YOU DISABUSE ME OF THIS IDEA, OKAY? SEEMS AS THOUGH THE STATE'S EXPERT AT THE POST-CONVICTION EVIDENTIARY HEARING ESSENTIALLY WAS SAYING THIS IS INDIVIDUAL WITH SUBSTANCE ABUSE PROBLEMS AND THE PROOF IS THAT HE HAS NO MENTAL HEALTH ISSUES, IS THAT WHILE INCARCERATED AND SEPARATED FROM THE EVILS OF THE DRUGS THAT HE FUNCTIONED, BASICALLY DID NOT HAVE THE EVIDENCE OF BIPOLAR.

THERE WAS NO EVIDENCE OF ANY MANIC EPISODES AND, IT SEEMS WHAT THEY WERE SAYING HE HAD SOME -- ADJUSTMENT DISORDER. BEING LOCKED IN A CAGE I EXPECT THAT IS REASONABLE.

WHY IS THAT A MORE REASONABLE APPROACH THAT THE TRIAL JUDGE FOUND THAN ALL OF THESE OTHER THINGS AND WHY SHOULD A TRIAL JUDGE NOT ACCEPT, WHY IS IT WRONG, OR ILLEGAL THAT THE TRIAL JUDGE WOULD ACCEPT THE TESTIMONY OF THAT EXPERT BASED UPON THAT?

>> CERTAINLY THE COURT'S CORRECT IN SAYING THAT THE, THAT WE DO GIVE DIFFERENCE TO THE TRIAL JUDGE'S FINDINGS AND CREDIBILITY.

WHAT I WOULD ARGUE TO THE COURT

IN TERMS OF THE SUBSTANTIAL
COMPETENT EVIDENCE THAT THE
COURT LOOKED AT, WHEN YOU LOOK
AT DR. DANZINGER'S TESTIMONY, HE
DOESN'T COMPLETELY SAY THAT
THERE IS NO ADHD. HE JUST DIDN'T
HAVE ENOUGH INFORMATION.

>> HE ACTUALLY SAID HE MAY HAVE
BUT I MEAN THAT'S CORRECT.

>> WITH RESPECT TO THE BIPOLAR,
HE DIDN'T HAVE ENOUGH
INFORMATION REGARDING ONSET
BEFORE THE AGE OF SEVEN AND SO
OF THE MANIC EPISODES AND
IMPULSIVITY EPISODES

WHICH DR. EISENSTEIN TALKED IN
DETAIL, CAME FROM THE FAMILY,
RECKLESS DRIVING, \$25,000 THAT
HE BLEW ON CLOTHES, CARS AND
WOMEN.

EVERY TIME HE HAD PROBLEMS
PARTICULARLY WITH HIS FORMER
WIVES HE WOULD JUST, YOU KNOW,
HAVE THESE IMPROPER BEHAVIORS,
IMPULSIVE BEHAVIORS.

HE WOULD SELF-MEDICATE BECAUSE
OF THE PROBLEMS.

IT IS QUITE CLEAR HE WOULD NOT
RESPOND TO BAD SITUATIONS IN AN
APPROPRIATE WAY AND THAT IS SORT
OF MANIC IMPULSIVE INCIDENTS
CAME OUT MORE.

IN DR. EISENSTEIN'S TESTIMONY AND
DR. DANZINGER, HE WAS CANDID HE
DIDN'T HAVE INFORMATION AS TO
MANIC EPISODE TO SUPPORT THAT
BIPOLAR DISORDER.

>> DIDN'T HE USE THAT AS A BASIS
TO SAY, I THINK THIS IS SUBSTANCE
ABUSE AND NOT SOME TYPE OF
UNDERLYING MENTAL HEALTH ISSUE
OR DISORDER?

>> THAT WAS DR. DANZINGER'S
FINDING BECAUSE HE DIDN'T HAVE
THE ADDITIONAL INFORMATION
DR. EISENSTEIN, WE SUBMIT TO YOU
THAT DR. EISENSTEIN HAD.

>> YOU ADMIT THAT OUR CONFIDENCE
IN THE OUTCOME IS UNDERMINED AND
WE'RE TALKING NOW ABOUT THE

PENALTY PHASE.

>> THAT'S CORRECT.

>> THERE WERE FIVE AGGRAVATORS WITH THE FIRST ONE BEING THAT THE DEFENDANT HAD BEEN CONVICTED OF A FELONY AND WAS UNDER SENTENCE OF IMPRISONMENT. THEN THERE IS AN AGGRAVATED MURDER.

I'M SORRY, ONE MURDER AND THEN AN AGGRAVATED ASSAULT AND YOU'VE GOT ON THE OTHER HAND, EVEN IF YOU TAKE AND GIVE CREDIT TO THAT MIGHT HAVE A BIPOLAR DISORDER I'M NOT JUST SEEING WHERE THIS MITIGATION BEING OF SUCH A NATURE AS TO UNDERMINED OUR CONFIDENCE IN THE PENALTY PHASE.

IF YOU COULD ADDRESS THAT WITH THESE EXTREMELY STRONG AGGRAVATORS AND THIS REALLY -- AGAIN MOST OF THESE MURDERS ARE TERRIBLE BUT THIS ONE IS, WHAT HE DID AND COMING INTO THIS HOTEL ROOM PRETTY PURPOSEFULLY DECIDING WHO HE WAS GOING TO KILL AND WHO WAS GOING TO LET GO, HOW IT EVER CHANGED THE OUTCOME OF THE DEATH PENALTY.

>> I RECOGNIZE THAT IT WAS A VERY AGGRAVATING CASE WITH THE FIVE AGGRAVATORS AND I MEAN --

>> CAN'T GET MANY, MAYBE YOU COULD GET A COUPLE MORE BUT THAT IS PRETTY WELL UP THERE.

>> AND I UNDERSTAND, YOUR HONOR. WHAT I WOULD SUBMIT TO THE COURT IS, AS AGGRAVATED AS THIS CASE WAS AT TRIAL LEVEL IT WASN'T MITIGATED.

HERE'S, YOU KNOW, HIS SITUATION WHEN YOU ARE TRYING TO LOOK --

>> YOU SAY THAT. DIDN'T THE JUDGE FIND TWO STATUTORY MITIGATING CIRCUMSTANCES?

>> SHE DID AS TO --

>> SO WHEN YOU SAY, I REALIZE YOU'RE ADVOCATING FOR YOUR CLIENT BUT AS JUSTICE LEWIS SAID AT BEGINNING THIS ISN'T A CASE

WHERE THERE WERE NO MENTAL
HEALTH EXPERTS AND THE JUDGE
FOUND TWO STATUTORY MITIGATORS.

>> RIGHT.

AND SHE DID FIND, AND SHE
GARNERED THEM WITH MODERATE
WEIGHT.

SHE FOUND WITH RESPECT TO
INFLUENCE OF EXTREME EMOTIONAL
DISTURBANCE AND MENTAL DISORDER.
IN HER SENTENCING ORDER SHE
FOUND THAT IT RELIED ON, IT
AFFECTED MORE HIS ESCAPE AND NOT
SO MUCH AS THE HOMICIDE AND THAT
IS WHY SHE AFFORDED IT MODERATE
WEIGHT, AND AS TO THE SECOND
STATUTORY MITIGATOR SHE DID HAVE
TROUBLE WITH RESPECT TO THE
OTHER INDIVIDUAL NAMED ORECI.

>> DO YOU HAVE A CASE CLOSE TO THIS
WHERE WE REVERSED FOR A NEW
PENALTY PHASE WHERE THE LAWYERS
DO A FAIRLY GOOD INVESTIGATION
AS FAR AS GETTING MENTAL HEALTH
EXPERTS, SENDS AN INVESTIGATOR
UP TO WHERE THE AREA IS, WHERE
THE JUDGE FINDS MITIGATING
CIRCUMSTANCES WHERE WE'VE SAID
THAT STRICKLAND REQUIRES A NEW
TRIAL?

>> BE CANDID TO THE COURT THERE --

>> NOT THAT THERE HAS TO BE
IDENTICAL ONE BUT DOESN'T STRIKE
ME THIS IS SORT OF IN THE
BALLPARK OF EITHER DEFICIENT
PERFORMANCE OR PREJUDICE?

>> AND I WOULD SUBMIT TO THE
COURT IN TERMS OF, WHEN YOU TRY
TO SAVE THE LIFE OF A CLIENT
SPECIFICALLY IN TERMS OF
MR. TURNER'S LIFE YOU WANT THE
WHOLE PICTURE OF MR. TURNER TO
BE THERE SO YOU CAN MITIGATE THE
SENTENCE.

HE --

>> IF THAT WERE THE STANDARD
THEN THERE WOULD BE DO-OVERS
EVERY TIME BECAUSE THERE'S
ALWAYS DUE TO GOOD EFFORTS OF
POST-CONVICTION LAWYERS, MORE IS

DEVELOPED BUT WHAT WE'VE GOT TO LOOK AT IS WHETHER THAT MORE SO UNDERMINES THE CONFIDENCE OF THE ORIGINAL RESULT, CORRECT.

>> THAT'S CORRECT, YOUR HONOR, AND I WOULD ARGUE IT DOES IN THIS CASE BECAUSE YOU JUST DON'T HAVE A MAN WHO'S GOT SUBSTANCE ABUSE PROBLEMS AND, YOU KNOW, IT WAS THE DRUGS.

THERE IS MORE TO MR. TURNER, THAT MORE IS THAT MENTAL ILLNESS, A MAJOR MENTAL ILLNESS THAT HE WAS SUFFERING FROM THE ADHD, THE BIPOLAR AND OTHER UNDERLYING MENTAL ILLNESSES AND THAT WAS PART AND PARCEL THAT LED TO HIS ACTIONS AND ON THE DATE OF THE OFFENSE THAT YOU TRY TO EXPLAIN TO THE JURY THAT IT WAS THIS GREAT MENTAL ILLNESSES ALONG WITH SUBSTANCE ABUSE.

AND DR. BLOOMFIELD RECOGNIZED IN HIS OVERALL EVALUATION THERE IS SORT OF A WHERE SUBSTANCE ABUSE CAN EXASPERATE THE MENTAL ILLNESS.

WHEN HE WAS LOOKING AT THE ADJUSTMENT DISORDER WHICH CAME OUT OF THE HOSPITAL RECORDS.

THIS MAN, MR. TURNER, WAS MENTALLY ILL BASED ON DR. EISENSTEIN'S COMPLETE WORK AND THAT ILLNESS LED TO THE OFFENSES, AND I THINK THAT IS SOMETHING IMPORTANT BEFORE A JURY AND A JUDGE TO EXPLAIN THIS MAN AND I SAVE THE REST OF MY TIME, YOUR HONOR, FOR REBUTTAL AT THIS POINT.

>> MAY IT PLEASE THE COURT.

I'M KEN NUNNELLEY, I REPRESENT THE STATE OF FLORIDA IN THIS PROCEEDING.

THE COURT'S BASIS FOR ITS DECISION IN THIS CASE I SUPPOSE COMES DOWN TO THE CREDIBILITY DECISION MADE BY THE CIRCUIT COURT BETWEEN DR. DANZINGER, DR. BROWN AND DR. EISENSTEIN.

THE CIRCUIT COURT CREDITS THE

TESTIMONY OF DR. DANZINGER AND DID NOT CREDIT THE TESTIMONY OF DR. EISENSTEIN WITH RESPECT TO THE MENTAL DIAGNOSES.

WITH RESPECT TO MR. TURNER'S FUTURE DANGEROUSNESS, THE TRIAL COURT CREDITED THE TESTIMONY OF DR. BROWN AND REJECTED THE TESTIMONY OF DR. EISENSTEIN.

THERE IS NO BASIS IN THIS RECORD AND IN THIS EVIDENTIARY HEARING TO FIND THAT COUNSEL'S PERFORMANCE WAS DEFICIENT.

IT WAS QUITE PROFICIENT.

A MISSPEAK THERE.

AND FURTHERMORE, THERE IS ABSOLUTELY NO BASIS WHATSOEVER FOR FINDING ANY PREJUDICE TO THE DEFENDANT.

ONE COULD MAKE THE SUGGESTION, I'M NOT SURE THAT IT MAKES ANY DIFFERENCE, BUT IT CERTAINLY LOOKS LIKE MR. TURNER GOT A WINDFALL AT THE SENTENCING PROCEEDING WHEN HE WAS CREDITED WITH BOTH THE MENTAL STATE MITIGATORS.

NOW IT APPEARS, VERY CLEARLY THAT NEITHER ONE OF THOSE EXIST. I WOULD ASK THE COURT, IF THERE ARE NO FURTHER QUESTIONS, TO AFFIRM THE DENIAL OF RELIEF THE APPELLANT REQUESTS.

>> REBUTTAL?

>> I JUST RELY ON WHAT I'VE ALREADY ARGUED BEFORE THE COURT. I THINK PREJUDICE, WE HAVE ESTABLISHED PREJUDICE AND INEFFECTIVENESS OF COUNSEL. WE JUST ASK THE COURT TO GRANT RELIEF IN MR. TURNER'S CASE. THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. THE COURT WILL BE IN RECESS FOR 10 MINUTES.

>> ALL RISE.