>> THE LAST CASE OF THE DAY
IS TAYLOR V. STATE OF
FLORIDA.
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
JOHN HAMILTON.
TO ME THE OVERRIDING
PRINCIPAL ERROR THAT THE
COURT MADE IS RATHER OBVIOUS.
THE COURT FAILED TO
APPRECIATE AND RECOGNIZE THAT
THE PROCEEDINGS ON THE 3850
MOTION WERE INDEPENDENT OF
AND ANCILLARY TO THE CRIMINAL
PROSECUTION ITSELF.
THE 3850 MOTION WAS DISPOSED
OF BY THE ORDER THAT GRANTED
IT IN PART AND DENIED IT IN
PART, AND WHEN MR.†TAYLOR
FILED HIS TIMELY MOTION FOR
HEARING DIRECTED TO THAT
ORDER, IT POSTPONED THE
RENDITION OF THAT ORDER FOR
APPELLATE PURPOSES.
THE RESENTENCING WAS NOT PART
OF THE RESOLUTION OF THAT
MOTION.
A RESENTENCING WAS PART OF
THE CRIMINAL PROSECUTION
ITSELF.
IT WAS ADMITTEDLY
NECESSITATED BY THE
DISPOSITION OF THE 3850
MOTION AND THE OUTCOME OF THE
3850 PROCEEDINGS.
BUT IT WAS NOT PART OF THE
PROCEEDINGS ITSELF AND NOT
PART OF THE RESOLUTION OF THE
MOTION ITSELF.
I THINK THAT'S A VERY SIMPLE
AND STRAIGHTFORWARD
EXPLANATION WHY THE FIFTH
DISTRICT ERRORED HERE.
NOW IN THE BRIEF, WE PROVIDE
SOME OTHER POLICY FOR THE
MOST PART, BASIC REASONS, WHY
THE FIFTH DISTRICT'S DECISION
SHOULD BE QUASHED.
NOTING, FOR EXAMPLE THAT THE
APPROACH THE FIFTH DISTRICT

FOLLOWED IN THIS CASE IS
INCONSISTENT WITH THE
APPROACH THAT THIS COURT
TAKES IN THE CAPITAL ARENA
WHEN DEALING WITH ORDER
GRANTING IN PART OR DENYING
IN PART A 3851 MOTION.
WE ALSO NOTE THAT THE FIFTH
DISTRICT'S APPROACH WOULD BE
HARMFUL TO THE STATE AND
RESTRICTING THE STATE'S
RIGHTS TO APPEAL IN THE EVENT
THE DISPOSITION OF THE 3850
MOTION REQUIRES FURTHER
ACTIVITY IN THE TRIAL COURT
AND THE UNDERLYING CRIMINAL
PROSECUTION AND NOTED THAT
THE FIFTH DISTRICT'S POSITION
WOULD CREATE BAD PUBLIC
POLICY OR BAD APPELLATE
PRACTICE POLICY IN THE SENSE
THAT IT WOULD CREATE A NEW
TYPE OF APPEAL THAT'S
CURRENTLY UNKNOWN TO FLORIDA
LAW.
ONE THAT'S PARTIALLY GOVERNED
BY RULE 1.9140 AND PARTIALLY
GOVERNED BY RULE 1.9141, THE
SENTENCING BEING THE SUBJECT
TO THE 9140 PROCEEDINGS AND
THE DISPOSITION OF THE 3850
MOTION GOVERNED BY THE 9.141
PROCEEDINGS AND THE FORMER
HAVING CONSTITUTIONAL RIGHT
AND THE LATTER NOT HAVING
CONSTITUTIONAL RIGHT TO
COUNSEL AT ALL OUTSIDE THE
CAPITAL CONTEXT.
WE ALSO NOTE IN THE BRIEF
THAT THERE -- IN THIS CASE,
AND UNDER THE PARTICULAR
FACTS OF THIS CASE THERE ARE
ALTERNATIVE GROUNDS FOR
GRANTING RELIEF TO MR.†TAYLOR
VACATING THE FIFTH'S DECISION
IN ORDER TO DECIDE THE MERITS
OF HIS APPEAL IRRESPECTIVE
HOW THE COURT RESOLVES THE
CERTIFIED CONFLICT, BASED
UPON THE MISINFORMATION OR

ERRONEOUS INFORMATION GIVEN
TO HIM BY THE TRIAL COURT IN
DISPOSING OF BOTH THE 3850
MOTION AND IN THE
RESENTENCING ITSELF UNDER
THIS COURT'S PRECEDENT GOING
BACK TO THE CASE FROM 1975.
THAT DOESN'T RESULT IN A LOSS
OF YOUR APPELLATE RIGHTS IF
YOU'RE EXPRESSLY MISINFORMED
BY THE TRIAL COURT, AND THERE
WAS ALSO THE BODY OF
ADMINISTRATIVE CASE LAW
DEALING WITH THE STATUTORY
REQUIREMENT IN CHAPTER 120
PROCEEDINGS UNDER THE A.P.A.,
THAT A PARTY BE TOLD IN THE
ORDER ITSELF ABOUT HIS, HER,
OR ITS APPELLATE RIGHTS AND
THE CASE IS SAYING
PRINCIPALLY FROM THE FIRST,
BUT THE CASE IS UNIFORMLY
SAYING THIS IF THAT LANGUAGE
IS NOT THERE THEN ANY APPEAL
FROM THAT ORDER IS PREMATURE
BECAUSE THERE HAS NOT
ACTUALLY BEEN A RENDITION OF
THE ORDER AT THAT POINT FOR
APPELLATE PURPOSES, AND THE
SAME PRINCIPLE WOULD APPLY
HERE AS WELL BECAUSE OF THE
WAY THE TRIAL COURT
MISADVISED OR FAILED TO
ADVISE MR.†TAYLOR AS TO HIS
PROPER APPELLATE RIGHTS, AT
LEAST IF THE FIFTH DCA WERE
CORRECT.
I'LL SAVE THE REST OF MY TIME
FOR REBUTTAL UNLESS THERE ARE
QUESTIONS AT THIS POINT.
>> THANK YOU.
>> THANK YOU.
>> MAY IT PLEASE THE COURT,
I'M WESLEY HEIDT, AND I
REPRESENT THE STATE IN THIS
CASE.
THERE IS REALLY TWO ISSUES,
THE BIG PICTURE QUESTION OF
WHAT'S THE TRIGGER, WHAT'S
THE PROPER FINAL RESOLUTION,

AND THAT'S THE CONFLICT
BETWEEN THE FIFTH AND SECOND
AND THE FIRST AND THE FACTS
SPECIFIC TO THE DEFENDANT,
THE PETITIONER, LAMONT
TAYLOR.
AS TO THE BIG PICTURE
QUESTION BEFORE US,
PETITIONER DOES OFFER POINTS
THAT IT'S CIVIL.
IT'S NOT.
IT'S QUASI-CRIMINAL, AND NO
MATTER WHAT LABEL YOU PUT
UPON 3850, IT DOESN'T RESOLVE
THE QUESTION WHAT TRIGGERS
THE APPEAL.
DEATH CASES, AS SAID IN OUR
BRIEF, ARE COMPLETELY
DIFFERENT.
3851 HAS A COMPLETELY
DIFFERENT PROCEDURE.
IT HAS NOTHING TO DO WITH
THIS.
AS FAR AS THE ADVERSE EFFECT
ON THE STATE, THE STATE'S
RIGHTS TO APPEALS ARE SET OUT
IN THE STATUTE.
WE HAVE CERTAIN INTERLOCUTORY
RIGHTS.
>> THIS CASE HAS SORT OF A
RING TO IT.
I GOTCHA.
I THINK THAT IS SORT OF A --
WHETHER CAN YOU JUMP THROUGH
THIS LITTLE NARROW PERIOD OR
THIS LITTLE NARROW COMMA,
THAT'S WHAT THE OVERALL
PICTURE IS.
IT SEEMS LIKE IT'S, WOW, THIS
CAN HAPPEN BECAUSE THEY DON'T
HAVE COUNSEL, AND EVEN IF AN
EXPERIENCED COUNSEL GETS
AHOLD OF IT, IT SEEMS LIKE
THIS IS WHAT YOU WOULD DO.
SO I THINK YOU NEED TO
APPROACH THAT AS WELL AS YOU
APPROACH THIS.
YOU UNDERSTAND WHAT I'M
SAYING.
>> I DO.

AND AGAIN WITH THE BIG
PICTURE, THE ONLY PART AND AS
ACKNOWLEDGED IN OUR BRIEF,
THE ONLY CONCERN THE STATE
WOULD HAVE -- WOULD BE
CONCERNED WITH HYBRID APPEAL.
3850 HAS HYBRID APPEALS.
WHEN YOU HAVE INITIAL DENIAL,
AS IN THIS CASE, SUMMARY
DENIAL, WE DENIED TWO CLAIMS.
TRIAL COURT LOOKED AT THE
FOUR INEFFECTIVE ASSISTANCE
CLAIMS AND SET A HEARING,
THAT ORDER HAS BEEN SET OUT
IN RULE AND BY CASE LAW
PREVIOUSLY AS BEING
NONAPPEALABLE.
THEN WE HAVE THE HEARING.
AT THAT HEARING, WE DETERMINE
THROUGH AN ALLEGATION OF
INEFFECTIVE ASSISTANCE THAT
WE HAVE A SENTENCING ISSUE.
I'VE REVIEWED HUNDREDS OF
3850 AND IF THERE'S A
SENTENCING ISSUE BROUGHT IN
THE 3850'S, TRIAL COURTS WILL
ADDRESS THE 3850.
HE COULD -- ARGUABLY COULD
HAVE DONE IT THAT DAY.
DEFENDANT DID NOT HAVE
COUNSEL.
HE COULD HAVE SET IT FOR THE
AFTERNOON.
IF YOU FILE AN APPEAL AND
TAKE THE APPROACH OF A SECOND
IN THAT SITUATION WITH THE
INITIAL APPEAL OF THE ORDER
DIVEST ORDER FOR THE
RESENTENCING?
IF RELATED, IT WOULD NOT.
IF THEY'RE NOT RELATED, THEN
HOW DID IT EVOLVE OUT OF
3850?
ALL THE FIFTH HELD WAS
THEY'RE RELATED.
IF THEY'RE RELATED, LET'S
TRIGGER THE APPEAL FROM THE
SENTENCING WHICH CAME A
COUPLE WEEKS LATER.
THE DEFENDANT SEEMED TO

UNDERSTAND THAT IN THIS CASE, BACK TO THE DEFENDANT HIMSELF.
WHEN YOU LOOK AT NOTICE OF APPEAL AFTER THE RESENTENCING, APPEAL SAYS 9141.
9141 IS THE TRIGGER FOR THE POST-CONVICTION APPEAL.
THE CLERK'S OFFICE IN THAT APPELLATE RECORD PUT THE ENTIRE 3850.
THERE'S THE MOTION FOR PROPOSED CONVICTION RELIEF, INITIAL ORDER, EVIDENTIARY HEARING, THE ORDER AFTERWARDS AND THE RESENTENCING.
HE HAD COUNSEL IN THAT APPEAL.
COUNSEL RAISED A TANGENTIAL SENTENCING ISSUE ARGUING THE FACT THAT THE DEFENDANT HAD GOTTEN OVER A YEAR ON MISDEMEANOR, COUNT FIVE WAS POSSESSION OF DRUG PARAPHERNALIA.
IN THIS INSTANCE, THIS COMPLETELY IS RELATED AND ALL THE FIFTH SAID WE DON'T WANT PIECEMEAL LITIGATION, WHICH IS CONSISTENT WITH THE POST-CONVICTION CASE LAW.
IF YOU TAKE THE APPROACH OF THE SECOND -- AND I LOOKED AT BOTH POSSIBILITIES -- YOU'RE GOING TO GET SPLINTERED APPEALS, OR APPEALS THAT ARE LATER CONSOLIDATED AND PUT MORE OF A BURDEN ON THE DEFENDANT.
THE SIMPLICITY OF THE FIFTH'S APPROACH, IF IT'S RELATED WAIT AND BRING ONE APPEAL.
THAT'S WHAT THE FIFTH REQUIRED IN SERVENO IN 2001.
THAT'S WHAT THE CLERK'S OFFICE DOES IN THIS CASE, THE DEFENDANT SEEMED TO UNDERSTAND THIS WAS A 9141 AND TRIGGERED APPEAL IN THIS

CASE, SO IT CAME UP UNDER THE FIFTH'S JURISDICTIONAL LAW OVER THE FIFTH'S CASE LAW IN THIS AREA CORRECTLY.
THEN HE GOES BACK AND -- OVER TWO YEARS LATER AND LOOKS AT THIS.
IT ALMOST LOOKS LIKE THE DEFENDANT IS TRYING TO HAVE CAKE AND EAT IT, TOO.
HE REVISITS THE APPEAL SITTING THERE.
IF IT'S RELATED, IT SHOULD HAVE COME UP IN THE APPEAL.
AND IT'S IN THAT APPEAL FROM THE RESENTENCING.
IF IT'S UNRELATED, WHY DID HE LET IT LANGUISH FOR OVER 2†1/2 YEARS?
WHY NOT PUT A BURDEN TO RESOLVE IT, IF THEY'RE NOT RELATED, YOU CAN HAVE JURISDICTION IN THE TRIAL COURT.
AND SO MATTERS RELATED TO 3850 CAN COME UP AND CAN YOU GO BACK AND REVISIT A 3800.
IF THEY'RE RELATED, WE WANT RESOLUTION, THESE WERE RELATED, THE CLAIM OF THE RESENTENCING CAME COMPLETELY IN AND OUT OF INEFFECTIVE ASSISTANCE COUNSEL CLAIM.
THE FIFTH SAID LET'S BRING IT UP AS ONE APPEAL.
IT CAME UP WITH THE PRESENTATION OF THE APPELLATE RECORD AS ONE APPEAL HERE, HAD COUNSEL IN THE APPEAL AND COUNSEL RAISED THE SENTENCING ISSUE, AND TRIES TO REVISIT THE HEARING AND THE TRIAL COURT SAYS TOO LATE.
I GUESS UNDER THE IMPRESSION THAT APPEARS FROM THE RECORD, IT NEVER HAD BEEN FILED OR PRESENTED.
>> THE TRIAL COURT TOLD HIM.
>> THE TRIAL COURT TOLD HIM THAT?

>> THAT THE ORDER WAS AN
APPEALABLE FINAL ORDER.
>> THE ORDER THAT CAME OUT OF
EVIDENTIARY HEARING, HE SAID
THIS IS FINAL AVAILABLE
APPEALABLE ORDER, THAT WOULD
BE AN INCORRECT STATEMENT.
BUT HE APPEALED.
>> WELL, I UNDERSTAND.
>> AND HE GOT AN APPEAL OUT
OF THAT AND THAT STATEMENT
DOES NOT CREATE JURISDICTION,
UNDER THE LAW OF THE FIFTH.
IF YOU LOOK AT LAW OF SECOND
DISTRICT COURT OF APPEALS
THAT'S THE APPEALABLE ORDER.
IF YOU TAKE THE LOGIC OF THE
PETITIONER, HIS REHEARING
WERE TOLD FOR TWO YEARS, IF
THEY'RE RELATED, BRING THEM
TOGETHER, IF YOU LOOK AT THE
MERIT STATE POSITION, THERE
WOULD BE NONE, THE CONFLICT
OF THE BETTER APPROACH.
I DO A LOT OF FEDERAL HABEAS
PRACTICE, AND BRINGING -- IF
YOU ALLOW A SEPARATE --
BIFURCATED OR SEPARATED
BRANCH APPEAL, YOU KNOW, THE
SECOND SEEMS TO BE -- IF YOU
LOOK AT THE CASE OF THE
SECOND, IT HAS ONE SENTENCE
THAT ADDRESSES THAT.
IT WAS A THROW-IN SENTENCE
THAT DID NOT ANALYZE.
THAT THE FIFTH'S OPINION HAS
GONE INTO DETAIL AS TO THE
BETTER APPROACH HERE, BUT IF
YOU ALLOW A SEPARATE APPEAL
AND THEY'RE NOT TRAVELING
TOGETHER AND NOT CONSOLIDATED
AND RESENTENCING GOES BACK
FOR YET ANOTHER SENTENCING,
THE POST-CONVICTION THEN HAS
ISSUE RELATED TO THE TRIAL.
THIS WOULD GO ON FOREVER.
THE APPROACH OF FIFTH GIVES
US ONE SIMPLE APPEAL.
IT GIVES US FINALITY, AND THE
DEFENDANT CAN GO TO FEDERAL

COURT AND SEEK WHAT RELIEF IS
APPROPRIATE THERE.
THE STATE'S CONCERN WOULD BE
TAKING THE APPROACH OF THE
SECOND ACTUALLY HURTS THE
CLERK'S OFFICE, THE DEFENDANT
ULTIMATELY, AND THE
COMPLETION OF JUDICIAL
PROCESS OF RESOLVING THIS.
AS TO THE DEFENDANT, HE WAS
TOLD HE HAD A RIGHT TO
APPEAL, THE TRIAL COURT
REVISITED THE HEARING AND
DENIED THE MERITS.
UNDER THE LAW OF THE SECOND,
HE SHOULD HAVE APPEALED FROM
THAT ORDER.
FROM THE LAW OF THE FIFTH,
SHOULD HAVE APPEALED FROM THE
FIFTH OF THE RESENTENCING, HE
FILED APPEAL AND IN THAT
APPEAL, HE -- THE ENTIRE
POST-CONVICTION RECORD IS
THERE, HE HAD COUNSEL WHICH A
LOT OF POST-CONVICTION
DEFENDANTS WILL NOT.
AND WITH THE COUNSEL THAT WAS
THERE, HE ELECTED TO RAISE
THE ISSUE, HE HAD THE
EVIDENTIARY HEARING BEFORE
HIM IN THE APPELLATE RECORD.
HE LIKES TO RAISE THE ISSUE
AND FILES A PETITION FOR WRIT
OF HABEAS CORPUS AS TO HOW HE
RAISED THE SENTENCING ISSUE.
>> DOESN'T OUR -- NOW WITH
THE NEW AMENDMENTS, THE
RULES, DOESN'T THAT CLARIFY
THAT THE PROCEDURE THAT THE
DEFENDANT FOLLOWED IS THE
CORRECT PROCEDURE?
>> AND AGAIN, IT'S NOT CLEAR
FROM THIS RECORD WHAT
PROCEDURE THE DEFENDANT
FOLLOWED.
>> THE PROCEDURE WAS HE FILED
A MOTION FOR REHEARING AS TO
THE POST-CONVICTION.
>> CORRECT.
>> IT WAS A FINAL ORDER, IT

WASN'T RULED ON.
HE WAS SENTENCED SEPARATELY.
THE ORDER SAID, YOU HAVE 30
DAYS TO APPEAL THAT SENTENCE.
HE DID THAT, AND THEN HE CAME
BACK AND TOOK THE -- AND
ASKED THEM TO RULE ON THE
MOTION FOR REHEARING.
IS THAT NOT WHAT HAPPENED?
HAVE I STATED THE -- THAT HE
FILED THE MOTION FOR A
HEARING.
>> HE DID.
>> THAT WAS NOT RULED ON.
I ASSUME HE WAS IN PRISON, SO
IT MIGHT BE†--
>>†HE WAS TRANSPORTED FOR THE
HEARING.
HE WAS PROBABLY IN PRISON.
>> THE MOTION FOR REHEARING,
HE COULDN'T SAY JUDGE.
>> RIGHT.
>> THEN HE'S SENTENCED.
>> CORRECT.
THAT OCCURRED IN ABOUT TWO
WEEKS.
>> SO NOW HE APPEALS ON THE
RESENTENCING.
>> CITING 9141 WHICH IS THE
POST-CONVICTION RULE, BUT
YES.
>> AGAIN, HE THEN COMES BACK
AND SAYS, PLEASE RULE ON MY
MOTION FOR REHEARING.
>> WHICH YOU'VE BEEN PINNING
FOR THREE YEARS.
>> I UNDERSTAND THAT, I'M NOT
TALKING ABOUT WHETHER IT'S
UNTIMELY.
THE JUDGE DENIES THE MOTION
FOR REHEARING.
>> JUST A SECOND, YES.
>> AND THEN HE THEN FILES
APPEAL FROM THAT.
>> THAT IS HOW HE -- IN THE
FIFTH.
>> IS THAT NOT SIMILAR OR THE
SAME AS WHAT WE ARE NOW
SAYING IS TO BE DONE UNDER
THE RULES AS AMENDED THIS

PAST YEAR?
>> HAVING SOME FINALITY HERE, BUT THE FIFTH'S APPROACH, I MEAN, WHAT'S THE FINAL POSTCONVICTION EVENT, THE FINAL RESOLUTION?
THE POSTCONVICTION OF INEFFECTIVE ASSISTANCE LED TO THE SENTENCING A COUPLE WEEKS LATER.
>> BUT IF WE UPHOLD WHAT THE FIFTH DID, WE WOULD HAVE TO CHANGE THE RULES THAT WE JUST ADOPTED.
>> I -- THE RULE SAYS IF YOU HAVE A RESENTENCING RELATED TO AN INEFFECTIVE ASSISTANCE --
>> I THINK IT'S GOING TO HAVE TO GO BACK THAT IT WAS ACTUALLY ADDRESSED, TO ADDRESS ANY CONFUSION THAT WHERE THERE WAS RESENTENCING, THAT THAT WAS A SEPARATE EVENT FROM THE DENIAL OF POSTCONVICTION RELIEF SO THAT THOSE WERE TWO SEPARATE EVENTS.
>> WELL, ADMITTEDLY, THE APPLICATION OF THE AMENDED RULE WAS NOT ADDRESSED BY THE FIFTH --
>> NO, NO, BECAUSE IT PROBABLY WASN'T THERE.
WE'RE JUST TRYING TO MAKE SURE THAT WE'VE GOT UNIFORM PROCEDURES --
>> WHICH IS WHAT WE ASKED FOR, FOR IT TO BE CLARIFIED IN THE RULES.
>> BECAUSE YOU DIDN'T ADDRESS THE RULE IN YOUR BRIEF.
>> CORRECT.
>> ARE YOU FAMILIAR WITH THE RULE?
>> MOST OF IT, BUT I DID NOT KNOW IT PRECLUDED THE APPEAL FOR THE RESENTENCING.
MY UNDERSTANDING WAS THE APPEAL WOULD COME FROM WHATEVER'S FINAL.
OUR ARGUMENT WOULD BE THE FINAL RESOLUTION OF THE POSTCONVICTION

EVENT WOULD BE THE RESENTENCING
WHICH WOULD --
>> YOU WOULD WAIT -- SO YOU
WOULD HAVE HAD HIM NOT WAIT,
WOULD HAVE HAD HIM APPEAL?
WHAT WOULD HAPPEN TO THE
RESENTENCING?
>> HE WOULD BE RESENTENCED AND
APPEALED, WHICH IS WHAT
HAPPENED.
>> IF -- SO WHAT YOU'RE SAYING
IS AT THAT TIME AND THE MOTION
FOR REHEARING WOULD BE
ABANDONED?
>> CORRECT.
>> BUT IF THE JUDGE TELLS HIM AT
RESENTENCING YOU'VE GOT 30 DAYS
TO APPEAL, HE'S SUPPOSED TO KNOW
THEN TO SAY BUT, PLEASE, FIRST
RULE ON MY MOTION FOR
REHEARING --
>> ANYTIME YOU HAVE A PENDING
MOTION FOR REHEARING THAT'S
RELATED -- AND, AGAIN, IT'S
EITHER RELATED AND IT'S OUT OF A
POSTCONVICTION MOTION, OR IT'S
NOT AND THEN YOU'RE SPLINTERING
A POSTCONVICTION PROCEEDING
THAT'S GOING TO BE ENDLESS.
THIS RESENTENCING CAME OUT OF AN
ALLEGATION OF INEFFECTIVE
ASSISTANCE FOR MISADVICE AS TO
DOUBLE JEOPARDY AS TO POSSESSION
AND CONSPIRACY TO TRAFFIC.
THE STATE INITIALLY, IN THE
ORIGINAL PLEA, AGREED TO NO PROS
THE PRESENTATION AND MISTAKENLY
NO PROS-ED THE PENALTY.
WHEN THIS WAS DISCOVERED AT THE
EVIDENTIARY HEARING, WE COULD
HAVE CORRECTED IT THERE, WOULD
HAVE POTENTIALLY SOLVED THE
PROBLEM.
THEY SET IT FOR A COUPLE WEEKS
LATER, APPOINT HIM COUNSEL, AND
AT THAT RESENTENCING --
>> DID A PRETTY GOOD JOB.
THEY GOT THE SENTENCE --
>> IT CHANGED THE SCORE SHEET.
HE WENT FROM 22 TO 15, MINIMUM

MANDATORY FOR THE TRAFFICKING.
SO FAR, YES, HE'S GONE FROM 22
TO 15 IN THAT INSTANCE.
BUT WHEN YOU LOOK AT THAT
APPEAL, YES, IF YOU HAVE A
HEARING THAT'S RELATED, YOU
ABANDON IT.
THE STATE'S POSITION IS BY
FILING THAT NOTICE OF APPEAL
AND, AGAIN, THE DEFENDANT SEEMED
TO UNDERSTAND THIS WAS A 914 1.
THE CLERK'S OFFICE PROVIDED THE
ENTIRE APPELLATE RECORD IN THAT
REGARD, AND THE POSTCONVICTION
RECORD CAME OUT OF THAT.
AND THAT WOULD BE CONSISTENT
WITH THE TEN-PLUS,
TEN-YEARS-PLUS LAW OF THE FIFTH
DISTRICT COURT OF APPEAL.
AND I WOULD -- I MEAN, THERE ARE
FACTUAL SCENARIOS UNDER THE
FIFTH'S CASE LAW THAT WOULD
CAUSE SOME CONCERNS.
BUT, AGAIN, RECOGNIZE THE FACT
THAT THE PETITIONER'S POSITION
OF THESE ARE COMPLETELY
UNRELATED.
IF THERE'S A SENTENCING ERROR
THAT COMES UP POTENTIALLY, THAT
THE JUDGE MAY THEN AT THAT POINT
IMPOSE TIME SERVED.
>> I DON'T THINK WE CAN DECIDE
THIS CASE BASED ON HOW CLOSELY
RELATED THEY ARE BECAUSE
OTHERWISE -- WELL, WE WANT, WE
WANT THIS TO BE, IF POSSIBLE, AS
SIMPLE AS CAN BE.
>> WELL, AND I THINK THE FIFTH'S
APPROACH IS SIMPLER.
I AGREE.
THE RELATED PART IS THE
SENTENCING CAME OUT OF THE
POSTCONVICTION.
WE MAKE THESE DECISIONS
REGULARLY.
IF THERE'S A 3850 AND THEN YOU
FILE ANOTHER 3850 BRIEF ON A
DIFFERENT, NEWLY-DISCOVERED
CLAIM, YOU DON'T HAVE
JURISDICTION IN THE TRIAL COURT

UNTIL THE 3850 APPEAL IS
RESOLVED IF THEY'RE RELATED.
IF THE 3800 COMES FORWARD AND IS
COMPLETELY UNRELATED -- I'M
SERVING FIVE YEARS ON A
MISDEMEANOR, SOMETHING LIKE
THAT -- WHILE YOU'VE GOT A
POSTCONVICTION APPEAL PENDING,
THEN THE TRIAL COURT WOULD
ARGUABLY HAVE JURISDICTION.
THIS SENTENCING CAME OUT OF THE
POSTCONVICTION.
SINCE IT'S RELATED, WE SAY BRING
THE APPEAL OUT OF THAT.
AND THE BEST ARGUMENT WOULD BE
IT CREATED SOME TYPE OF HYBRID
APPEAL.
WE ALREADY HAVE THIS NONSUMMARY.
THE CASE CITED THE CASES.
IT'S INTERESTING, WHEN YOU LOOK
AT THE FIRST, SECOND, THIRD,
FOURTH AND FIFTH, WHAT THEY DO
WITH SUMMARIES.
IF YOU HAVE A HEARING, IF
COUNSEL FILES A BRIEF, WHAT
HAPPENS IN THOSE INSTANCES?
SOME OF THE DIFFERENCES THERE
ARE PRO SE.
BUT IN THIS INSTANCE HE HAD AN
ATTORNEY, AND IT CAME UP.
AS TO THE BIG PICTURE, I THINK
THE FIFTH'S APPROACH IS SIMPLER,
BUT IF THE RULES COMMITTEE HAS
ALREADY ADDRESSED THAT, THEN
THAT WOULD RESOLVE THAT.
AND WE THINK THE DEFENDANT
HIMSELF -- WELL, AGAIN, IF YOU
LOOK AT THE APPROACH TAKEN BY
THE SECOND AND APPEAL THE ORDER
THAT SAYS IT'S APPEALABLE, HE
DIDN'T DO THAT PROPERLY EITHER.
HE COMES UP FROM THAT PROCESS
AND WAITS OVER TWO AND A HALF
YEARS.
WHEN THE MANDATE COMES TO THE
RESENTENCING IF THAT IN THEORY
RETURNS IT BACK TO THE TRIAL
COURT, HE WAITED OVER 100 DAYS
THERE.
WHAT HAPPENS IF HE DOESN'T WAIT

100 DAYS, HE WAITS TWO OR THREE
YEARS?
PETITIONER SEEMS TO TREAT WITH
LIGHT REGARD THE MANDAMUS.
I CAN REPRESENT TO THE COURT
THAT DEFENDANTS OFTEN HAVE --
>> WE CAN CONCUR WITH THAT.
[LAUGHTER]
>> IF IT'S SITTING THERE TWO
YEARS, YES.
IF THEY'RE UNREPRESENTED, MAKE
THE TRIAL COURT RULE, MOVE IT
FORWARD PRO SE OR NOT, AND THE
DEFENDANT DID NONE OF THE ABOVE.
AND WE FEEL THE FIFTH'S DECISION
SHOULD BE AFFIRMED.
SO THANK YOU.
>> THANK YOU.
REBUTTAL?
>> JUST A FEW POINTS.
YES, THE STATE DID CITE THE
CUNNINGHAM CASE IN ITS ANSWER
BRIEF AS AN ILLUSTRATION OF THE
TYPE OF APPEAL THAT ARISES ONCE
A POSTCONVICTION MOTION IS
DISPOSED OF WITH PART OF THE
CLAIMS BEING DENIED WITHOUT AN
EVIDENTIARY HEARING AND PART OF
THE CLAIMS BEING DENIED OR
OTHERWISE RESOLVED FOLLOWING AN
EVIDENTIARY HEARING.
MULTIPLE CLAIMS IN A SINGLE
MOTION.
AND THE SECOND IN THE CUNNINGHAM
CASE SAYS, WELL, WE USED TO
TREAT THOSE CASES ONE WAY.
WE REALIZE WE'RE THE ONLY DCA
THAT DOES THAT, WE'RE NOW GOING
TO TREAT THOSE CASES AS IF IT'S
SUBJECT TO B3, 9140B3 WHICH IS
WE'RE GOING TO TREAT THEM AS IF
THE ENTIRETY OF THE MOTION WAS
ONE FOLLOWING AN EVIDENTIARY
HEARING.
THIS IS NOT WHAT WE'RE TALKING
ABOUT HERE.
WE'RE TALKING ABOUT A COMPLETELY
DIFFERENT BEAST, ONE THAT'S NOT
GOVERNED BY TWO DIFFERENT
SUBDIVISIONS OF 9141, BUT

GOVERNED IN ITS ENTIRETY BY
9143.
WE'RE TALKING ABOUT A
PROCEEDING, AN APPEAL THAT WOULD
BE GOVERNED BOTH BY 9141 AND
9140.
AND THAT'S A COMPLETELY
DIFFERENT ANIMAL THAN WHAT THE
CUNNINGHAM CASE IS TALKING ABOUT
AND ABOUT THE POTENTIAL HYBRID
APPEAL THAT'S CURRENTLY
AVAILABLE AND BEING DEALT WITH
BY THE DCAS UNDER CURRENT
PRACTICE.
THIS IS A NEW BEAST, AND THERE'S
NO REASON TO AUTHORIZE ITS
CREATION AND EXPANSION.
NOW, COUNSEL SAID -- AND I'VE
NEVER QUITE UNDERSTOOD THIS
ARGUMENT -- THAT MR. TAYLOR DID
NOT EVEN FOLLOW THE SECOND DCA'S
APPROACH IN COOPER.
HE MOST CERTAINLY DID.
THE COOPER COURT SAID THAT THE
ORDER, THE DISPOSING OF THE 3850
MOTION IS THE FINAL APPEALABLE
ORDER EVEN IF THERE'S SOMETHING
ELSE THAT NEEDS TO BE DONE IN
THE TRIAL COURT AS A RESULT OF
THE DISPOSITION OF THAT MOTION.
THAT'S EXACTLY WHAT MR. TAYLOR
DID.
HE APPEALED FROM THE FINAL
RENDITION OF THE ORDER DISPOSING
OF THE 3850 MOTION WHICH
OCCURRED UPON THE RENDITION OF
THE ORDER DENYING HIS TIMELY
MOTION FOR REHEARING.
AND ABOUT THIS DIVESTITURE OF
JURISDICTION, THE COOPER COURT
EXPRESSLY SAYS ON PAGE 933 OF
ITS OPINION THAT THE PENDENCY OF
THE APPEAL FROM THE ORDER ON THE
3850 MOTION DOESN'T DIVEST THE
TRIAL COURT FROM PROCEEDING WITH
THE RESENTENCING.
ONE HAS NOTHING TO DO WITH THE
OTHER.
AND THAT'S THE POINT HERE.
AND I THINK, JUSTICE PARIENTE,

YOU MENTIONED THIS IN THE NEW RULES OR THE RULE AMENDMENT, I THINK, CONTEMPLATES THIS AS WELL.
THE DISPOSITION OF THE 3850 MOTION AND THE RESENTENCING ARE TWO DIFFERENT EVENTS.
TWO DIFFERENT PROCEEDINGS RESULTING IN TWO DIFFERENT FINAL ORDERS, TWO DIFFERENT APPEALS.
THEY HAVE INDEPENDENCE OF EACH OTHER, AND THEY HAVE INDEPENDENCE FROM EACH OTHER.
THE TEST, DESPITE WHAT THEY'VE SAID -- HE KEPT USING THE WORD "RELATED" -- THAT HAS NEVER BEEN A TEST.
THAT IS A JURISDICTIONALLY IRRELEVANT CONCEPT.
THE TEST IS WHETHER IT'S A FINAL ORDER.
AND THAT DETERMINES WHETHER IT'S APPEALABLE OR NOT.
>> WHAT ABOUT THE ISSUE OF THE MOTION FOR REHEARING HAVING BEEN FILED AND JUST SAT THERE FOR TWO YEARS?
I MEAN, IS THERE -- I DON'T KNOW IF, I HAVEN'T GONE BACK TO THE FIFTH DISTRICT, IS THERE A QUESTION OF ABANDONMENT?
I MEAN, HOW LONG -- A JUDGE ISN'T SUPPOSED TO KNOW, HOW IS HE OR SHE SUPPOSED TO KNOW THE MOTION FOR A HEARING IS THERE?
SO WHY ISN'T THIS CASE AS ABANDONMENT --
[INAUDIBLE]
TO APPEAL AS OPPOSED TO AN UNTIMELY?
>> WELL, I'M GLAD YOUR HONOR ADDED THAT LAST, BECAUSE THERE'S NO DOUBT ABOUT ITS TIMELINESS.
IN THE BRIEF THAT MR. TAYLOR, PRO SE BRIEF THAT MR. TAYLOR FILED -- EXCUSE ME, IN HIS MOTION FOR REHEARING IN THE FIFTH DCA HE REPRESENTS TO THAT COURT THAT HE MADE INQUIRIES OF THE CIRCUIT COURT ABOUT THE

STATUS OF HIS PENDING MOTION FOR REHEARING.
I THINK HE SAID HE DID IT SIX TIMES.
NOW, THE RECORD ON APPEAL DOESN'T SHOW THOSE INQUIRIES.
I DON'T KNOW IF THAT MEANS THEY WEREN'T IN WRITING OR THAT THEY JUST WEREN'T INCLUDED.
BUT YOU END UP STILL, I DON'T THINK IT MATTERS.
RENDITION IS RENDITION IS RENDITION.
AND WHETHER HE WAS AT FAULT FOR NOT -- I'M NOT SURE EXACTLY WHAT HE WAS SUPPOSED TO DO OTHER THAN, HEY, COURT, PLEASE RULE OTHER THAN THE MANDAMUS OPTION WHICH, YOU KNOW, HE COULD HAVE RESORTED TO, BUT THERE'S NO CASE LAW ANYWHERE THAT SAYS YOU ABANDON A MOTION FOR REHEARING UNLESS YOU SEEK A WRIT OF MANDAMUS COMPELLING A RULING ON THIS.
>> THERE IS CASE LAW THAT IF YOU TAKE AN APPEAL WHILE THE MOTION FOR REHEARING IS PENDING, GENERALLY, THAT'S AN ABANDONMENT.
>> AND I'M GLAD YOUR HONOR BROUGHT THAT UP, BECAUSE I WANT TO BE REALLY CLEAR ON THAT.
IF YOU FILE A MOTION -- AND THIS IS 9020I3 ABOUT THE DEFINITION OF RENDITION -- IF YOU FILE A MOTION, AN AUTHORIZED, TIMELY MOTION WHICH IS THE PHRASE USED IN THE RULE THAT HAS THE EFFECT OF POSTPONING THE RENDITION OF AN ORDER FOR APPELLATE PURPOSES --
>> RIGHT.
>> -- AND YOU FILE YOUR NOTICE OF APPEAL BEFORE DISPOSITION OF THAT MOTION, YOU HAVE ABANDONED THAT MOTION.
THAT IS A VERY DIFFERENT SITUATION FROM WHAT IS GOING ON HERE.

HE FILED A MOTION, A TIMELY AND AUTHORIZED MOTION.
AS TO THE 3850 ORDER, THAT POSTPONED THEIR RENDITION OF THAT ORDER.
AND THEN HE LATER APPEALS FROM AN ENTIRELY SEPARATE ORDER, AND THERE IS NOT A SINGLE CASE IN FLORIDA THAT SAYS THAT THE ABANDONMENT PRINCIPLE EMBODIED IN THAT RULE MEANS THAT YOU ABANDON AN ORDER -- EXCUSE ME, A MOTION THAT HAS SUSPENDED THE RENDITION OF AN ENTIRELY SEPARATE ORDER.
I MEAN, I THINK THE MOST OBVIOUS EXAMPLE TO ME -- AND THIS IS PROBABLY BECAUSE I TRAVEL FOR THE MOST PART IN THE CIVIL WORLD -- IS YOU HAVE A FINAL JUDGMENT ON THE MERITS, YOU HAVE AN APPEAL FILED AND A TIMELY MOTION BY THE PREVAILING PARTY PRESUMABLY TO TAX COST OR ATTORNEYS' FEES OR BOTH.
NOBODY ANYWHERE IS GOING TO SAY -- AT LEAST I HOPE NOBODY'S GOING TO SAY THAT THE FILING OF THAT NOTICE OF APPEAL DIVESTED THE TRIAL COURT OF JURISDICTION TO RESOLVED -- EXCUSE ME, RESULT IN AN ABANDONMENT OF THAT MOTION FOR COST AND ATTORNEYS' FEES.
IT'S AN ENTIRELY -- THAT WILL RESULT IN AN ENTIRELY SEPARATE APPEALABLE ORDER.
>> OH, YEAH.
THERE HAVE BEEN LAWYERS THAT HAVE ARGUED THAT BEFORE AND LOST.
>> I UNDERSTAND.
[LAUGHTER]
BUT THE CASE LAW IS CLEAR THAT THEY'RE WRONG, I GUESS IS MY POINT.
SO, YEAH.
IF THERE HAS BEEN, HAD BEEN SUCH A BEAST AS A MOTION FOR REHEARING DIRECTED TO THE RESENTENCING ORDER, THAT

MOTION -- WHICH MAY OR MAY NOT
EXIST, I ACTUALLY DON'T KNOW BUT
IT WAS NOT FILED HERE -- THAT
MOTION WOULD HAVE BEEN ABANDONED
BY THE FILING OF THE APPEAL FROM
THE RESENTENCING ORDER.
>> THERE'S NO CASE LAW THAT
ADDRESSES PASSAGE OF TIME?
JUST ALONE?
>> NO, CERTAINLY NOT.
AND, I MEAN, YOU KNOW, IF HE'S
RIGHT IN WHAT HE SAID IN THE
FIFTH AND HE DID INQUIRE ABOUT
THE STATUS OF THE PENDING MOTION
FOR REHEARING SIX TIMES -- AND
HE DID, YOU KNOW, IT WAS A VERY
GENTLE NUDGING OF THE COURT, IF
YOU WILL, ULTIMATELY TO FINALLY
GET A RULING ON THE MOTION FOR
REHEARING BY FINDING SOMETHING
THAT HE TITLED AS AN AMENDED
MOTION, A MOTION FOR
CLARIFICATION AFTER THE TRIAL
COURT DENIED THE ORIGINAL
AMENDED MOTION ON THE GROUNDS IT
WAS UNTIMELY.
AND, YOU KNOW, UNDERSTAND, YOU
KNOW, I'VE NEVER HEARD ANYBODY
SAY THAT MANDAMUS, A PROCEEDING
FOR THE DISCRETIONARY WRIT OF
MANDAMUS IS SOMETHING THAT'S A
PREREQUISITE TO AVOID AN
ABANDONMENT OF A MOTION.
THAT JUST SEEMS TO ME IT WOULD
BE A PREPOSTEROUS PROPOSITION.
BUT, YOU KNOW, THERE ARE VERY
GOOD REASONS --
>> IN FACT, WE REALLY DON'T WANT
TO CREATE THAT LAW BECAUSE --
>> WELL, YEAH.
I DON'T THINK YOU WANT TO
ENCOURAGE MANDAMUS PROCEEDINGS
OF THAT NATURE.
AND FROM THE PERSPECTIVE OF THE
CLIENT, I MEAN, I'VE TALKED MANY
TIMES OVER THE YEARS ABOUT THE
CONSEQUENCES OF A PENDING MOTION
FOR SUMMARY JUDGMENT THAT'S BEEN
SITTING THERE FOR YEARS WAITING
A RULING, FOLLOWING A HEARING

AND DISCUSS WITH CLIENTS THE
POSSIBILITY OF FILING A PETITION
FOR WRIT OF MANDAMUS TO COMPEL A
RULING.
AND I ALWAYS SAY DON'T DO THAT
BECAUSE --
[LAUGHTER]
IF YOU WANT --
>> THE ANSWER WILL BE NO.
[LAUGHTER]
>> YEAH.
IF YOU WANT THE TRIAL JUDGE TO
RULE ON YOUR MOTION AND YOU WANT
TO HAVE THE APPELLATE COURT TELL
THE JUDGE TO RULE ON THAT AND DO
SO RIGHT AWAY, I'LL TELL YOU
WHAT THE ANSWER TO THAT RULING'S
GOING TO BE.
SO, I MEAN, IT'S THE SAME
PRINCIPLE HERE.
YOU DON'T HAVE ABANDONMENT AS A
MATTER OF LAW, WHICH I GUESS IS
WHAT THEY'RE ARGUING, MERELY
BECAUSE THE TRIAL COURT DOESN'T
DO ITS DUTY.
AND IT IS THE TRIAL COURT'S DUTY
TO DISPOSE OF A TIMELY
AUTHORIZED MOTION FOR REHEARING.
SO I DON'T KNOW HOW -- ANY OTHER
WAY YOU GET AROUND THIS.
HE DIDN'T APPEAL THE DISPOSITION
OF THE 3850 MOTION AT THE TIME
HE APPEALED FROM HIS
RESENTENCING ORDER BECAUSE AT
THAT MOMENT IN TIME THE 3850
MOTION STILL HADN'T BEEN
RESOLVED.
THERE WAS STILL A PENDING MOTION
FOR REHEARING DIRECTED TO THAT
ORDER.
AND IF HE HAD FILED A NOTICE OF
REPEAL THAT SAID I AM APPEALING
FROM THE RESENTENCING ORDER AND
FROM THE DENIAL OF MY 3850
MOTION OR DENIAL IN PART OF MY
3850 MOTION, THAT WOULD HAVE
BEEN ABANDONMENT, BUT THAT'S NOT
WHAT HE DID.
HE QUITE CLEARLY LIMITED THE
APPEAL TO THE RESENTENCING ORDER

AS HE WAS ENTITLED TO DO.
AND AS HE WAS ALSO ENTITLED TO DO, HE WEIGHTED THE DISPOSITION OF THE MOTION FOR REHEARING, THE POSTPONED RENDITION OF THE 3850 ORDER.
FOLLOWING THAT DISPOSITION, HE FILED A TIMELY NOTICE OF APPEAL AS TO THAT.
THOSE WERE BOTH SEPARATE, FINAL APPEALABLE ORDERS.
FIFTH DCA HAD SUBJECT MATTER JURISDICTION TO DECIDE THE MERITS OF THE APPEAL, AND IT HAD A LEGAL DUTY TO DO SO.
SO I'D ASK THAT THE COURT QUASH THE FIFTH'S DECISION, DISAPPROVE ITS PRIOR DECISION IN CERVINO AND APPROVE THE FIRST AND SECOND'S DECISIONS IN COOPER AND SLOCUM.
I THANK THE COURT FOR ITS TIME.
>> THANK YOU FOR YOUR ARGUMENTS AND FOR YOUR REPRESENTATION.
COURT IS ADJOURNED.
>> ALL RISE.