

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCK AT
THE TIME THIS MORNING IS JACKSON
VERSUS STATE.
WHENEVER YOU'RE READY.
>> CHIEF JUSTICE LABARGA,
MEMBERS OF THE COURT, I AM NAN
FOLEY, ASSISTANT PUBLIC DEFENDER
ON BEHALF OF THE PETITIONER,
JERMAINE JACKSON.
THIS CASE IS ABOUT YOUTHFUL
OFFENDER SENTENCING.
IN THE STATUTE'S PRESENT FORM,
DEFENDANTS ARE CUT OFF, EXCLUDED
FROM YOUTHFUL OFFENDER
SENTENCING, IF THE SENTENCE IS
IMPOSED OVER THEIR 21ST
BIRTHDAY, REGARDLESS OF HOW
YOUTHFUL AN OFFENDER HE OR SHE
MAY HAVE BEEN AT THE TIME THE
CRIME WAS COMMITTED.
THIS CUTOFF, THIS EXCLUSION, IS
ARBITRARY AND THEREFORE IT
VIOLATES EQUAL PROTECTION AND
DUE PROCESS UNDER THE STATE.
>> THE LEGISLATURE IN PASSING
THE YOUTHFUL OFFENDER ACT, IT'S
MY UNDERSTANDING THAT THEY ACTED
IN CONJUNCTION WITH THE
DEPARTMENT OF CORRECTIONS' GOAL
TO BASICALLY KEEP PEOPLE UNDER
25 SEPARATE FROM THE MAIN
POPULATION, SO TO SPEAK.
SO THEY WANT -- IN YOUTHFUL
OFFENDER SENTENCES, THEY WOULD

LIKE TO HAVE THE MAXIMUM SENTENCE, WHICH I BELIEVE IS SIX YEARS.

>> THAT'S CORRECT.

>> MAXIMUM SENTENCE COMPLETED BY THE TIME THE PERSON REACHES 25 SO THAT PERSON DOESN'T HAVE TO BE PLACED IN GENERAL POPULATION IN PRISON.

ISN'T THAT A RATIONAL REASON FOR HAVING THIS ISSUE HERE AS FAR AS THE TIME OF SENTENCING BEING THE DETERMINATIVE FACTOR?

>> IN ADDITION TO BEING RATIONAL, IT MUST ALSO BE -- CANNOT BE ARBITRARY AND CAPRICIOUS.

BUT IT'S RATIONAL FOR THE LEGISLATURE TO WANT THE PEOPLE WHO ARE ACTUALLY SENTENCED AS YOUTHFUL OFFENDERS TO GET THE TREATMENT.

AND THE TREATMENT IS AVAILABLE IN THE DEPARTMENT FOR PEOPLE WHO ARE UNDER 25.

NOW, THE DEPARTMENT, ONE THING I MIGHT CHALLENGE IN HOW YOU DESCRIBED THE INTENT IS THAT THE LEGISLATURE -- I'M SORRY, THE DEPARTMENT OF CORRECTIONS DOES NOT NEED TO LIMIT AGE AT SENTENCING TO KEEP THE YOUTHFUL OFFENDER POPULATION YOUTHFUL BECAUSE IT'S -- PEOPLE OVER 25 CAN'T BE PLACED IN A YOUTHFUL OFFENDER FACILITY OR PROGRAM IN THE DOC.

AND THAT'S BEEN THE CASE SINCE 1985.

SO IT ISN'T NECESSARY TO HAVE THIS SENTENCING DEADLINE TO ENSURE THAT OLDER INMATES ARE NOT MINGLED IN WITH THE YOUTHFUL OFFENDERS.

THEY AREN'T.

THEY HAVEN'T BEEN SINCE '85.

AND THAT WASN'T THE GOAL BECAUSE THAT WASN'T THE PROBLEM.

AFTER HAVING WRITTEN THE BRIEF AND THINKING ABOUT IT A LITTLE

BIT MORE, WHAT DOES THIS ACCOMPLISH FOR DOC? AND IT LIMITS -- IT DOESN'T AFFECT, YOU KNOW, YOUTHFUL OFFENDER WITHIN THE DOC. THERE ARE TWO GROUPS. 14 TO 18, THAT GROUP'S NOT AFFECTED AT ALL BY THIS. AND THEN THERE'S A GROUP FROM 18 TO 24. SO IF YOU HAVE TO BE 21 AT SENTENCING, THEN THAT LIMITS THE NUMBER OF COURT-SENTENCED OFFENDERS BETWEEN 21 AND 24, ALL RIGHT? SO IT GIVES THE DOC DISCRETION TO CLASSIFY, HAVE MORE CLASSIFIED PEOPLE, MORE PEOPLE THEY CHOOSE IN THOSE PROGRAMS. >> LET ME ASK YOU THIS. THE LEGISLATURE DID NOT HAVE TO PASS A YOUTHFUL OFFENDER STATUTE AT ALL, CORRECT? I MEAN, THAT WAS A LEGISLATIVE DECISION TO HAVE A YOUTHFUL OFFENDER STATUTE. >> THAT'S CORRECT. >> IT'S NOT MANDATORY THAT YOU HAVE ONE. >> NO. >> IF THE LEGISLATURE HAD IN FACT -- I MEAN, I THINK ALL OF US ARE THINKING ABOUT THE PREVIOUS STATUTE WHEN WE ARE LOOKING AT THE PRESENT STATUTE. BUT IF THE LEGISLATURE HAD, WHEN IT ORIGINALLY PROMULGATED THE YOUTHFUL OFFENDER STATUTE, STARTED WITH WHAT WE HAVE NOW, THAT YOU HAVE TO BE UNDER 21 AT THE TIME OF SENTENCING, WOULD THAT HAVE BEEN OKAY? >> IT WOULD NOT HAVE BEEN A YOUTHFUL OFFENDER STATUTE. >> IT WOULD HAVE BEEN WHAT THEN? >> YOUTHFUL INMATE STATUTE AND YOUTHFUL CLASSIFICATION STATUTE. THIS IS A YOUTHFUL OFFENDER. SO YOUTHFUL GOES TO THE AGE. OFFENDER, THAT'S AS IN OFFENSE,

AND --

>> SO YOU'RE SAYING THAT THE TITLE OF THE STATUTE ITSELF GOES TO AT THE TIME IT WAS -- THE CRIME WAS COMMITTED.

>> YES.

AND THE LEGISLATIVE INTENT, THE GENERAL STATEMENT OF LEGISLATIVE INTENT IN 958.21 SAYS THE PURPOSE OF THE ACT IS TO CORRECT -- IMPROVE THE CHANCES OF CORRECTION OF YOUTHFUL OFFENDERS.

SO, AGAIN, WHEN YOU MAKE SENTENCING THE RELEVANT DATE, YOU ARE EXCLUDING PEOPLE WHO ARE YOUTHFUL OFFENDERS.

>> WELL, MY CONCERN ABOUT IT IS THE ARBITRARINESS OF WHEN SENTENCING MAY OCCUR.

BUT JUST ABOUT THIS CASE, WHEN SENTENCING OCCURRED, NOBODY EVEN BROUGHT UP THE POSSIBILITY THAT IF HE HAD BEEN SENTENCED COUPLE OF MONTHS EARLIER, HE COULD HAVE QUALIFIED FOR YOUTHFUL OFFENDER STATUS.

THE DEFENSE LAWYER ADVOCATED FOR A TEN-YEAR SENTENCE.

THE JUDGE IMPOSED LIFE.

SO IN TERMS OF YOUR CLIENT -- AND THEY -- I THINK THE STATE POSITS IT AS AN ISSUE OF STANDING, BUT IT SEEMS THAT EVEN IF WE WERE TO SAY IT WAS UNCONSTITUTIONAL AS APPLIED TO YOUR CLIENT BECAUSE IT WAS ARBITRARY AND BECAUSE THE SENTENCING -- I MEAN, THERE APPARENTLY WAS A PUBLIC DEFENDER AND MAYBE SOMEONE DIDN'T REALIZE THAT THIS TIME PERIOD HAD ELAPSED.

HOW WOULD IT -- THE JUDGE HAS DISCRETION.

IT'S NOT LIKE A JUVENILE SENTENCE WHERE THEY'VE GOT -- IF THEY'RE UNDER -- AND THEY'RE CHARGED AS A JUVENILE.

HOW -- WHAT DIFFERENCE DOES IT

MAKE?

THERE'S NO INDICATION THAT THE JUDGE WOULD HAVE EXERCISED HIS DISCRETION TO SENTENCE THIS DEFENDANT AS A YOUTHFUL OFFENDER.

SO I KNOW PUBLIC DEFENDERS MAY BE INTERESTED IN THE WHOLE WAY THE SCHEME IS GOING, BUT FOR THIS CLIENT, HOW DOES IT AFFECT HIM?

>> THERE ARE THREE LEVELS OF HARM WHERE MR. JACKSON WAS BOTH INJURED AND, IF THIS COURT GRANTS -- REVIVES THE PREDECESSOR STATUTE SO THAT HE WOULD BE ELIGIBLE, WOULD ACT TECHNICALLY, LEGALLY AND ACTUALLY BENEFIT.

SO THE THREE LEVELS -- I'LL START WITH WHAT YOU'RE CONCERNED WITH IS HE GOT LIFE IMPRISONMENT.

WHY ARE WE EVEN TALKING ABOUT A YOUTHFUL OFFENDER SENTENCE.

AND THAT GAP BETWEEN LIFE AND SIX YEARS JUST SEEMS TO END THE CONVERSATION.

AND I WOULD SUBMIT THAT THIS INCREDIBLE GAP AND THE CRAZINESS OF US EVEN CARING ABOUT YOUTHFUL OFFENDER REALLY REFLECTS THE SENTENCING RANGE ITSELF.

AND I'D LIKE TO POINT OUT THAT MY CLIENT -- THE SENTENCING RANGE FOR A YOUTHFUL OFFENDER RANGES -- I'M SORRY, FOR ARMED ROBBERY WITH A FIREARM WITH A MASK.

THE SENTENCING RANGE IF YOU'RE A YOUTHFUL OFFENDER IS AN INDIVIDUALIZED YOUTHFUL OFFENDER SENTENCE AT THE BOTTOM, WHICH COULD BE PROBATION, BUT AN INDIVIDUALIZED YOUTHFUL OFFENDER SENTENCE ALL THE WAY TO LIFE.

THAT'S ASTOUNDING.

SO MR. JACKSON, WHERE IS HE AND WHAT GUIDANCE HAS THE LEGISLATURE GIVEN US?

AND WE HAVE THE SCORE SHEET, THE BEST INDICATOR OF WHERE YOU FALL IN THAT INCREDIBLE RANGE.

>> SO YOU'RE SAYING EVEN THOUGH THE JUDGE COULD HAVE EXERCISED THE DISCRETION TO GIVE A HARSHER SENTENCE, THERE WOULD HAVE BEEN A DIFFERENT SCORE SHEET AVAILABLE TO THE JUDGE?

>> NO.

IT WOULD HAVE BEEN THE SAME SCORE SHEET.

MY CLIENT SCORED 54 MONTHS IMPRISONMENT.

THAT'S WITHIN THE YOUTHFUL OFFENDER RANGE.

THAT'S FOUR YEARS, FOUR MONTHS.

SO HIS SCORE BASED ON THE SEVERITY OF THE CRIME, THE ELEMENTS THE JURY --

>> BUT NOW IT SEEMS LIKE YOU'RE SAYING THE JUDGE BY DEVIATING -- HE WENT TO A LIFE SENTENCE.

AGAIN, YOU'RE SAYING IT'S A LEGAL MAXIMUM SENTENCE.

DOES THE JUDGE HAVE TO GIVE REASONS TO DEPART UP TO A LIFE SENTENCE?

SEE, I GUESS I'M STILL TRYING TO UNDERSTAND, IF THE JUDGE -- LEGALLY, WHETHER IT'S -- HE SCORED ONE WAY OR THE ANOTHER, CAN GIVE A LIFE SENTENCE, WHAT DIFFERENCE DOES IT MAKE FOR YOUR CLIENT?

>> THE POINT I'M TRYING TO MAKE IS BOTH -- A LIFE SENTENCE IS A LAWFUL SENTENCE WITHIN THE COURT'S DISCRETION TO IMPOSE. FOR MY CLIENT IF HE QUALIFIES FOR YOUTHFUL OFFENDER BECAUSE THE SENTENCING DATE IS UNCONSTITUTIONAL, A YOUTHFUL OFFENDER SENTENCE WOULD ALSO BE LAWFUL AND WITHIN THE COURT'S DISCRETION.

AND MY POINT IS THAT WHEN YOU'RE LOOKING AT THIS CASE, YOU'RE SAYING, MR. JACKSON, YOU GOT LIFE.

HOW CAN YOU POSSIBLY ASK FOR
YOUTHFUL OFFENDER SENTENCING.
I'M SAYING HE CAN JUST AS
REASONABLY SAY I SCORED 54
MONTHS.

I QUALIFY.

HOW COULD I GET LIFE?
SO I JUST WANT TO TIE IT
TOGETHER.

>> HE GOT A SCORE OF 54 MONTHS,
YOU MEAN THAT WAS THE
GUIDELINES.

>> THAT WAS THE LOWEST -- THE
LEGISLATURE HAS GIVEN VERY
LITTLE GUIDANCE WHERE YOU FALL.
BUT THE POINT I'M TRYING TO MAKE
IS THAT THIS --

>> WELL, THE LEGISLATURE HAS
GIVEN GREAT DISCRETION TO THE
TRIAL COURT JUDGES.

I MEAN, THEY'VE PUT SOME LIMITS
ON IT AT THE LOW END, BUT THE
STATUTORY MAXIMUM IS AVAILABLE
THERE IN THESE CASES.

THAT'S WHAT THE LEGISLATURE HAS
DECIDED UNDER THIS SENTENCING
SCHEME.

ISN'T THAT CORRECT?

>> THAT IS CORRECT.
SO LET ME GO A DIFFERENT -- MAKE
A DIFFERENT MOVE.

THE SENTENCING RANGE IF HE
DOESN'T QUALIFY AND WHAT THE
JUDGE THOUGHT WAS TEN YEARS AT
THE BOTTOM TO LIFE AT THE TOP.
THAT WAS THE SENTENCING RANGE.

A LIFE SENTENCE WAS
DISCRETIONARY.

THE COURT IN EXERCISING ITS
DISCRETION HAS TO -- AT A VERY
MINIMUM HAS TO BE AWARE OF AN
ACCURATE SENTENCING RANGE.

SO IF --

>> THIS BRINGS ME BACK TO
JUSTICE PARIENTE'S QUESTION,
WHICH IS ONCE YOU HAVE THE SCORE
SHEET SHOWING THE 4.5 YEARS OR
54 MONTHS, I GUESS IT IS, DID
THE TRIAL JUDGE -- ANOTHER TRIAL
JUDGE HAD TO DO THE TEN YEARS,

BECAUSE THAT WAS THE MINIMUM FOR THAT, EVEN THOUGH HE SCORED ONLY 4.5 YEARS.

DID THE TRIAL JUDGE IN GOING BEYOND THE TEN YEARS HAVE TO GIVE ANY REASONS FOR GIVING A LIFE SENTENCE?

>> FLORIDA COURTS HAVE HELD NO.

>> EXCUSE ME?

>> THE FLORIDA COURTS HAVE NOT REVERSED SENTENCES SIMPLY BECAUSE THE JUDGE DID NOT GIVE REASONS.

THEY URGE THE COURT TO DO THAT SO THAT IT CAN BE REVIEWED, BECAUSE EVEN A DISCRETIONARY DECISION OF A COURT IS SUBJECT TO REVIEW.

BUT FLORIDA COURTS HAVE NOT REVERSED SENTENCES ONLY BECAUSE THE JUDGE DID NOT GIVE THE REASON.

>> I GUESS I'M -- GO AHEAD.

>> SO THE SENTENCING GUIDELINES BASICALLY OPERATE TO PROVIDE A MINIMUM THAT A JUDGE CAN GIVE IN A SENTENCE, BUT AFTER THAT THE STATUTORY MAXIMUM IS THE LIMIT. JUDGE CAN DO ANYTHING HE WANTS TO AS LONG AS HE GIVES THEM THE MINIMUM.

SO IN THIS CASE YOU SAID HE WAS 54 MONTHS?

>> RIGHT.

AND I'M JUST TRYING TO MAKE THE POINT --

>> I KNOW YOU'RE TRYING TO MAKE A POINT, BUT AS YOU CAN SEE, WE'RE VERY CONFUSED ABOUT THE STATUTE, SO YOU MIGHT WANT TO CONCENTRATE ON THAT.

>> YES.

>> SO 54 IS THE MINIMUM LIMIT. SO THE JUDGE CAN STATUTORILY GIVE THIS PERSON UP TO LIFE WITHOUT EXPLAINING IT.

>> YES.

>> AND THAT'S THE POINT I THINK JUSTICE QUINCE AND JUSTICE PARIENTE WERE CONFUSED ABOUT.

OKAY.

>> AND THE OTHER QUESTION I HAD, THOUGH, GETTING BACK TO THIS CASE AND HOW IT WOULD AFFECT IT, IT SEEMS TO ME THAT -- AND I GUESS IT CAME UP IN A -- WITH A 3.800 MOTION, THAT DEFENSE LAWYERS SHOULD BE AWARE THAT SENTENCING IS NOW THE NEW DATE AND THERE DOESN'T SEEM TO HAVE BEEN ANY AWARENESS THAT THIS PERIOD FROM WHEN HE COMMITTED THE CRIME TO TRIAL WAS ELAPSING. IS THERE ANY CLAIM LIKE AN INEFFECTIVE ASSISTANCE OF COUNSEL FOR SAYING, LISTEN -- AND, AGAIN, IF WE HAD A SITUATION WHERE THE JUDGE HAD SAID I WOULD LIKE TO SENTENCE HIM AS A YOUTHFUL OFFENDER, BUT I CAN'T.

BUT, AGAIN, AS YOU SAY, THEN HE COULD HAVE GIVEN HIM A MUCH LIGHTER SENTENCE, EVEN AS AN ADULT.

BUT IS THERE ANY CLAIM MADE ABOUT THE LAWYERS BEING -- NOT DOING APPROPRIATE REPRESENTATION BY NOT REALIZING -- BY WAIVING SPEEDY TRIAL AND NOT REALIZING THAT THIS DEADLINE WAS EXPIRING?

>> YES.

AND I'LL GIVE YOU THE RECORD SIDE IF I HAVE REBUTTAL TIME. IN REREADING DEFENSE COUNSEL'S ARGUMENT AT SENTENCING, SHE SAID THERE'S NO AVAILABLE MITIGATION BELOW TEN YEARS.

SHE ALSO CALLED IT A LIFE FELONY.

AND A COMMON MISTAKE IS TO THINK THAT PUNISHMENT BY LIFE -- THAT THEY DON'T QUALIFY.

SO YES.

AND THAT COULD BE POST-CONVICTION.

BUT THAT'S WHY -- I'D URGE YOU TO KEEP THINKING ALONG THOSE LINES BECAUSE THAT'S WHY --

>> IT COULD BE POST-CONVICTION,

BUT WE'RE WAY PAST THE TWO-YEAR DEADLINE.

>> NO.

NO, BECAUSE IT'S NOT FINAL UNTIL THIS COURT --

>> I THOUGHT THIS CAME UP ON A 3.800.

>> NO, YOUR HONOR.

THIS IS A DIRECT APPEAL.

>> ALL RIGHT.

>> JUST -- BUT LET ME TIE WHAT YOU'RE SAYING.

A FACIAL CHALLENGE AND WHAT'S THE REMEDY AND SHOULD THIS BE AS APPLIED.

AND AN APPLIED CHALLENGE, THE PROBLEM WITH IT, THE REASON APPLIED DOESN'T WORK, IS IT GOES RIGHT INTO INEFFECTIVENESS. SO LET'S SAY I DID NOT RAISE THIS IN A MOTION TO CORRECT SENTENCE PENDING APPEAL.

WHY?

BECAUSE IT WOULD HAVE TURNED INTO A 38.50.

IT WOULD HAVE BEEN A HEARING ON EXACTLY WHAT YOU'RE ASKING.

AND THEN WE GET A QUESTION, WELL, THEN DOES THE STRICKLAND STANDARD APPLY.

SO KEEP THINKING ABOUT THAT BECAUSE THAT DOES SORT OF EXPLAIN WHY FACIAL INVALIDITY MAKES SENSE IN THIS CONTEXT AS OPPOSED TO APPLIED CHALLENGES.

>> I GUESS THE ISSUE ABOUT WHETHER IT MAKES SENSE -- AND IT GOES BACK TO WHAT JUSTICE QUINCE WAS SAYING EARLIER -- IS THAT THE LEGISLATURE STARTED OUT SAYING IT'S THE AGE AT THE OFFENSE, AND JUSTICE LABARGA GAVE A REASON THAT IT'S REASONABLE.

YOU SAID IT'S ARBITRARY.

BUT WHEN YOU COMMIT A CRIME, IT'S ARBITRARY.

WHAT JUDGE YOU GET IS ARBITRARY. ONE JUDGE MIGHT HAVE GIVEN THIS GUY TEN YEARS.

ANOTHER JUDGE GIVES HIM LIFE.
THERE'S UNFORTUNATELY SOME
THINGS THAT WE -- DISPARITIES
THAT WE HAVE TO SANCTION.
SO I DON'T SEE WHY -- I MEAN, I
WOULD LIKE TO HELP YOU ON THIS,
BUT I DON'T SEE WHY DATE OF THE
SENTENCING, WHEN YOU CAN
EVALUATE WHAT THAT DEFENDANT
LOOKS LIKE THEN, WHETHER THEY
SHOULD BE A YOUTHFUL OFFENDER OR
NOT, IS NOT A REASONABLE TIME TO
EVALUATE THEIR ELIGIBILITY.
I THINK YOUR BRIEF HAS SAID IT,
BUT I STILL HAVE THAT QUESTION
BECAUSE I DON'T THINK THAT YOU
ARE DEALING WITH A FUNDAMENTAL
RIGHT HERE.
I THINK YOU'RE DEALING WITH A
RATIONAL BASIS CHALLENGE.
DO YOU AGREE WITH THAT, THAT
IT'S RATIONAL BASIS?
>> I DON'T.
I AGREE THAT THE -- IF WE -- I
AGREE WITH THE FOUR DISTRICT
THAT THERE'S NO FUNDAMENTAL
RIGHT TO YOUTHFUL OFFENDER.
I AGREE WITH IF THERE'S A
FUNDAMENTAL RIGHT IT'S BECAUSE
IT UNNECESSARILY ENCROACHES UPON
ALL OF THE RIGHTS OF THE
ACCUSED.
THAT WOULD BE THE FUNDAMENTAL
RIGHTS, THE RIGHT OF THE ACCUSED
EMBODIED IN THE BILL OF RIGHTS.
THE OTHER THING I WAS GOING TO
SAY IS DISTINGUISHING PEOPLE AT
SENTENCING -- AND SENTENCING
CLASSIFICATIONS ARE ALWAYS BLUNT
INSTRUMENTS AND ALWAYS HAS
PROBLEMS BECAUSE THE LEGISLATURE
HAS TO DRAW THE LINE.
BUT THIS IS UNNECESSARY.
THE ARBITRARINESS, IF YOU --
PEOPLE WHO COMMIT OFFENSES AT 21
CAN HAVE VASTLY DIFFERENT LEVELS
OF MATURITY, ET CETERA.
BUT AT SENTENCING ASSOCIATE
ARBITRARY FACTORS DETERMINE THAT
VERY IMPORTANT CLASSIFICATION

CUTOFF DATE THAT IT'S
UNNECESSARY AND THE LEVEL OF
ARBITRARINESS CAN'T BE TOLERATED
JUST AS IT WASN'T IN HAAG.

>> YOU'RE WAY INTO YOUR
REBUTTAL.

I'LL GIVE YOU AN EXTRA TWO
MINUTES ON REBUTTAL, OKAY?

>> THANK YOU, YOUR HONOR.

>> GOOD MORNING.

ALLEN GEESEY ON BEHALF OF THE
STATE OF FLORIDA.

I THINK IT'S CLEAR IN THIS CASE,
NUMBER ONE, YOU'RE RIGHT.

STANDING WAS THE FIRST ISSUE
THAT WE RAISED BECAUSE
REGARDLESS OF WHETHER IT WAS
UNDER THE 2008 AMENDMENT OR
PRIOR TO THE 2008 AMENDMENT,
THIS DEFENDANT WAS NOT GOING TO
RECEIVE YOUTHFUL OFFENDER
TREATMENT.

>> WELL, HOW DO WE KNOW THAT,
THOUGH?

AS THIS ARGUMENT IS MADE, YOU'RE
THERE AS A JUDGE AND SOMEONE IS
ARGUING FOR TEN YEARS AND YOU'RE
GOING I'M GIVING LIFE.

WHAT SHE SAYS IS THAT IF THEY
HAD QUALIFIED FOR YOUTHFUL
OFFENDER STATUS, THERE WOULD
HAVE BEEN A WHOLE DIFFERENT
SCORE SHEET AND ALL OF A SUDDEN
THE IDEA OF THIS DEFENDANT'S
YOUTHFULNESS WOULD HAVE BEEN ON
THE TABLE.

SO IT'S NOT -- WE DON'T -- I
MEAN, AT FIRST I THOUGHT THAT
MADE A LOT OF SENSE, BUT NOW I'M
SEEING THAT THE ARGUMENT FOR
THINKING ABOUT YOUTHFUL OFFENDER
STATUS, IT MAY BE THEN THEY
DON'T GIVE THAT, BUT MAYBE THEY
GIVE A DIFFERENT SENTENCE.

SO IS THAT CORRECT ABOUT THE
SENTENCE THAT THE SCORE SHEET IS
DIFFERENT IF YOU QUALIFY FOR
YOUTHFUL OFFENDER?

>> NO.

THE SCORE SHEET IS NOT AFFECTED

BY THAT.
ALL YOUTHFUL OFFENDER IS IS IT'S
A TOOL.

IT'S A DIFFERENT -- SOMETHING
THAT'S MADE AVAILABLE TO THE
COURT TO ALLOW THEM TO TREAT
YOUNG ADULTS DIFFERENTLY THAN
OTHER PRISONERS IF THEY CHOOSE.
IT ALLOW ALSO THE COURT TO GIVE
A LESSER SENTENCE.

AND THAT'S ALL IT IS.
DOESN'T AFFECT THE SCORE SHEET
ONE IOTA.

>> IT TAKES A DEFENDANT OUT OF
THE SENTENCING GUIDELINES IS
WHAT IT DOES.

>> CORRECT.

>> TAKES A DEFENDANT OUT OF THE
MANDATORY MINIMUM IN MANY CASES.

>> CORRECT.

I THINK YOUTHFUL OFFENDER IS
APPRECIATED BY THE JUDGES,
APPRECIATED BY THE DEFENSE BAR,
IT'S APPRECIATED BY PROSECUTORS.
IT'S A VERY GOOD STATUTE.

>> WHEN DID HE TURN 21 IN
REFERENCE TO SENTENCING?

>> IT'S OUTLINED IN THE
APPELLANT'S BRIEF, THE EXACT
DATES, BUT MY RECOLLECTION IS HE
TURNED 21 JUST FIVE, SIX MONTHS
BEFORE THE SENTENCE WAS IMPOSED.

>> AGAIN, WHEN WE THINK ABOUT
ARBITRARINESS -- AND THERE'S A
LOT OF -- YOU KNOW, AGAIN,
WHETHER IT'S RATIONAL, BUT IT'S
ARBITRARY -- THAT A DEFENDANT IN
PALM BEACH COUNTY BEFORE FORMER
JUDGE LABARGA, WHO WAS SENTENCED
BEFORE HIS 21ST BIRTHDAY, MIGHT
HAVE GOTTEN A YOUTHFUL OFFENDER
SENTENCE.

LOOKING AT THE FACT THAT WHEN
THE PERSON COMMITTED THE CRIME,
THEY WERE UNDER 21 AND, YOU
KNOW, YOU STILL CAN LOOK AT THE
DEFENDANT AT THE TIME OF
SENTENCING BECAUSE, ONCE AGAIN,
THERE'S A DISCRETION THERE AS TO
WHETHER THIS DEFENDANT, QUOTE,

DESERVES THIS CHANCE, A HUGE CHANCE IN LIFE.
AND WHAT IS -- EXPLAIN AGAIN THE RATIONALE FOR WHY WHEN SENTENCING CAN BE AFFECTED, THE DATE OF SENTENCING COULD BE -- MAYBE THE JUDGE IS SICK, SO IT'S MOVED A MONTH LATER, PAST THE PERSON'S BIRTHDAY, OR MAYBE THE DEFENSE LAWYER IS SICK, THAT THERE IS -- OR THE DOCKET IS SO FULL THAT THEY CAN'T SENTENCE ONE DAY, SO THEY SENTENCE TWO WEEKS LATER AND THEY'VE BEEN IN PRISON THE WHOLE TIME, SO THEY MAY GET CREDIT FOR TIME SERVED, SO IT'S NOT EVEN AN ISSUE OF THE LENGTH OF SENTENCING.

HOW IS THAT REASONABLE FOR A SENTENCING SCHEME?

>> YOU KNOW, YOU COULD COME UP WITH A WHOLE LIST OF SCENARIOS WHERE IT WOULD APPEAR TO BE BEYOND THE DEFENDANT'S CONTROL THAT HE'S SENTENCED AFTER THE AGE OF, YOU KNOW, BY THE TIME HE BECOMES --

>> BUT IT SEEMS THERE'S A LOT OUTSIDE HIS CONTROL. THE CONTROL WHEN THEY COMMIT THE CRIME, THAT'S SET, RIGHT? SOMEONE SAYS, WELL, I WAS 21. IF I WAS ONLY 20, I COULD HAVE GOTTEN THIS.

NO.

THEY HAVE CONTROL OVER WHEN THEY COMMIT THE CRIME.

BUT DOESN'T LOOK LIKE ANYBODY HERE WAS AWARE THAT THIS VALUABLE CLOCK WAS TICKING TOWARDS A POTENTIAL AND EVENTUAL LIFE SENTENCE.

>> I WOULD DISAGREE.

I WOULD THINK IT'S MORE A REALIZATION BY DEFENSE COUNSEL THAT YOUTHFUL OFFENDER TREATMENT WAS AN UNREALISTIC POSSIBILITY.

>> WHERE DO YOU SEE THAT IN THE RECORD?

IT WAS NEVER BROUGHT UP.

THEY WAIVED SPEEDY TRIAL.
NOBODY EVER TALKED ABOUT THE
POSSIBILITY THAT HE COULD HAVE
QUALIFIED FOR YOUTHFUL OFFENDER
STATUS.

>> THE QUESTION THAT'S BEFORE
THIS COURT IS WHETHER OR NOT
THIS IS A CONSTITUTIONAL CHANGE
IN THE STATUTE, THE AMENDMENT IN
2008.

>> RIGHT, AND WHETHER IT'S
ARBITRARY AND CAPRICIOUS AND NOT
RELATED TO A REASONABLE
LEGISLATIVE PURPOSE.

>> AND THERE ARE THREE POINTS
I'D LIKE TO MAKE REGARDING THE
ARBITRARINESS.

FIRST, IT WAS ADDRESSED VERY
WELL, I THINK, BY THE JUDGE IN
THE OPINION, THAT WHILE
APPELLANT'S ARGUMENT IS
LOGICALLY COMPELLING, UNDER THE
RATIONAL BASIS TEST, THE STATUTE
MUST BE UPHeld IF THERE IS ANY
CONCEIVABLE STATE OF FACTS OR
PLAUSIBLE REASON TO JUSTIFY.

SO YOU COULD COME UP WITH ALL
THESE REASONS WHY, YOU KNOW, AGE
OF 21 AT TIME OF SENTENCING
MIGHT BE A CUTOFF THAT RESULTS
IN SOME HARM TO SOMEBODY.

BUT THAT'S NOT THE TEST.

THIS IS NOT -- WE'RE NOT DEALING
WITH A FUNDAMENTAL RIGHT.

WE'RE NOT DEALING WITH A SUSPECT
CLASSIFICATION.

WE'RE DEALING WITH SOMETHING
THAT THE RATIONAL BASIS TEST
APPLIES TO.

AND ALL YOU HAVE TO HAVE FOR A
RATIONAL BASIS IS SOME
CONCEIVABLE WAY THAT THE STATUTE
COULD POSSIBLY -- SOME
CONCEIVABLE STATE OF FACTS OR
PLAUSIBLE REASON TO JUSTIFY THE
AMENDMENT.

AND THAT'S WHAT WE HAVE.

THAT'S WHAT JUSTICE LABARGA
FIRST BROUGHT UP FIRST THING.

>> I UNDERSTAND THAT BASIS, BUT,

ON THE OTHER HAND, THERE ARE
CONFLICTING RIGHTS HERE.
WHAT HAPPENS IF A DEFENDANT
INSISTS THAT HE'S NOT GUILTY AND
INSTRUCTS HIS LAWYERS I WANT TO
GO TO TRIAL, I WANT A JURY TO
DECIDE THIS CASE.

AND LET'S SAY HE'S 19 WHEN HE
GETS ARRESTED AND IS IN JAIL
AND, AS OFTEN HAPPENS IN CROWDED
DOCKETS, IT MAY BE A YEAR OR SO
BEFORE HE GETS HIS JURY TRIAL.

I MEAN, SHOULD LAWYERS BE
CONCERNED ABOUT, WELL, MAYBE WE
SHOULDN'T WAIT THAT LONG BECAUSE
IF YOU'D WAIT THAT LONG, IT
MIGHT TAKE YOU OUT OF THE
YOUTHFUL OFFENDER POSSIBILITY?
IS THAT SOMETHING THAT LAWYERS
SHOULD BE WEIGHING?

>> YOUR HONOR, WE DO THAT ALL
THE TIME.

A LOT OF TIMES THERE WILL BE A
PLEA OFFER THAT'S EXTENDED WITH
A TIME DEADLINE.

YOU MUST ACCEPT THIS FAVORABLE
PLEA OFFER BY A CERTAIN DATE OR
IT'S GOING TO BE WITHDRAWN.
OR THEY'LL SAY YOU MUST ACCEPT
THIS FAVORABLE PLEA OFFER, BUT
YOU CAN'T DEPOSE THE VICTIM IN A
SEXUAL BATTERY CASE OR AN LEWD
AND LASCIVIOUS CASE.

LAWYERS DEAL WITH THAT ALL THE
TIME.

21 YEARS OF AGE AT THE TIME OF
SENTENCING IS NOT AN
UNREASONABLE CUTOFF POINT.
YOU HAVE TO DRAW THE LINE
SOMEWHERE.

>> WELL, LET ME ASK YOU THIS.
DOES IT MAKE ANY DIFFERENCE THAT
-- IT'S CALLED YOUTHFUL
OFFENDER.

AND WHEN THE LEGISLATURE FIRST
PASSED IT, IT WAS THE AGE AT
TIME OF OFFENSE, YOUTHFUL
OFFENDER.

THERE DOESN'T APPEAR TO BE A
REASON GIVEN -- AND I UNDERSTAND

ON A RATIONAL BASIS WE CAN TRY TO SPECULATE ON THE REASON, BUT A REASON GIVEN.

THE DOC IN CLASSIFYING, AS I UNDERSTAND IT, IF THEY WERE 20 AT THE TIME AND THEY GOT A YOUTHFUL OFFENDER SENTENCE OF SIX YEARS, TURNED 25, THEY CHANGE WHERE THEY WERE, WHAT FACILITY THEY WERE IN?

OR COULD THEY STAY IN THE YOUTHFUL OFFENDER FACILITY IF THEY'RE OVER 25?

>> THERE'S PARALLEL STATUTES. THERE'S THE YOUTHFUL OFFENDER STATUTE THAT WE'RE DEALING WITH THAT DEALS WITH THE COURTS THAT ALSO GIVES THE COURTS DISCRETION TO IMPOSE A MUCH LESSER SENTENCE, TAKES IT OUT OF THE GUIDELINES.

>> BUT IF THEY GOT A SIX-YEAR SENTENCE, WHAT WOULD HAPPEN WHEN THEY BECAME 25?

>> WELL, I'M NOT SURE HOW DOC IS CURRENTLY HOUSING YOUTHFUL OFFENDER OVER THE AGE OF 25. I DO KNOW THAT THAT'S AN ISSUE AND I DO KNOW THAT THAT'S APPARENTLY WHY THE STATUTE WAS CHANGED.

AND THEN THAT'S THE RATIONAL BASIS AGAIN TO UPHOLD THE STATUTE, IS THE DIFFICULTY IN HOUSING PEOPLE WHO HAVE BEEN DESIGNATED YOUTHFUL OFFENDER WHO ARE OVER THE AGE OF 24 YEARS.

>> OVER 24.

I GUESS, AGAIN, IT'S THIS ISSUE THAT THE REASON THAT THE LEGISLATURE ORIGINALLY WOULD HAVE SAID, YOU KNOW, UNDER 21 AT THE TIME OF THE OFFENSE IS THAT WE KNOW THAT INDIVIDUALS UNDER A CERTAIN AGE ARE LESS CAPABLE OF FORMING THEIR OWN MATURE JUDGMENT.

AND SO IT DOES SEEM THAT THE IDEA THAT A JUDGE IN LOOKING AT THE CRIME, IN LOOKING AT THE AGE

AT THE TIME OF CRIME, MAKES A LOT MORE SENSE AND IT ALMOST TO SAY AT THE TIME OF SENTENCING, AS JUSTICE LABARGA SAID, THEY MIGHT HAVE BEEN IN ADULT JAIL FOR TWO YEARS.

HOW IS THAT INFORMING AN INTELLIGENT SENTENCING DECISION ABOUT WHAT IS GOING TO REHABILITATE THIS PARTICULAR DEFENDANT?

>> THE FOCUS IS ON TREATING YOUTHFUL OFFENDERS.

AND AS POINTED OUT, WHEN THIS ACT WAS FIRST ENACTED IN '78, IT WAS TO POOL RESOURCES AND WORK TOWARDS REHABILITATION AND SEGREGATE FROM OLDER PEOPLE. THE PURPOSE OF MAKING IT 21 AT TIME OF SENTENCING IS, AS THE FOURTH SAID, TO MAKE SURE THAT THE POPULATION, YOUTHFUL OFFENDER POPULATION, IS INDEED YOUTHFUL.

WHAT HAPPENS IF THERE'S A PERSON WHO'S 25 AT THE TIME THEY'RE APPREHENDED?

>> BECAUSE THE JUDGE THEN HAS THE DISCRETION NOT TO IMPOSE THAT SENTENCE.

WHAT WE'RE REALLY DEALING WITH IS TAKING THE COMPLETE DISCRETION AWAY FROM A JUDGE TO LOOK AT THIS DEFENDANT AND SAY THIS PERSON DESERVES ANOTHER CHANCE.

BECAUSE WE KNOW THE REALITY IS THAT WHEN -- AT \$40,000 A YEAR, WE'RE HOUSING THIS DEFENDANT FOR THE REST OF HIS LIFE, BUT IT'S GOING TO COST THE TAXPAYERS, YOU KNOW, MILLIONS OF DOLLARS.

SO WE'RE LOOKING AT THINGS THAT ARE RATIONAL, WHICH IS TO GIVE THE JUDGE MORE DISCRETION, NOT LESS DISCRETION, BASED ON REASONABLE GUIDELINES.

I MEAN, AND, AGAIN, I APPRECIATE WHAT THE JUDGE SAID AND I'M CONCERNED ABOUT IT.

AND I THINK YOU PROBABLY HAVE --
I THINK PROBABLY WE RELUCTANTLY
HAVE TO UPHOLD THE STATUTE.
BUT IT DOES CONCERN ME.

>> WELL, I REALLY DON'T THINK IT
SHOULD CONCERN THE COURT.
YOU'RE DEALING -- AGAIN, DOC HAS
A PROBLEM.

HOW ARE WE GOING TO HOUSE THESE
PEOPLE.

AND THEY'RE TRYING TO DEAL WITH
THAT HOUSING PROBLEM,
APPARENTLY.

AND DOC'S THE ONE THAT SAID
LET'S MAKE IT 21 YEARS OF AGE AT
TIME OF SENTENCING BECAUSE THAT
ALLOWS THEM TO MORE EFFICIENTLY
DEAL WITH PEOPLE WHO HAVE BEEN
DESIGNATED BY THE COURT AS A
YOUTHFUL OFFENDER.

THERE IS A RATIONAL BASIS FOR
IT.

BUT IN TERMS OF GENERAL
FAIRNESS, YOU KNOW, BEING 21
YEARS OF AGE AT THE TIME YOU
ENTER -- OR THE TIME THAT THE
SENTENCE IS IMPOSED UNDER THE
AGE OF 21 IS NOT UNFAIR.

EVERYBODY, YOU KNOW, IN THE
DEFENSE BAR IS AWARE OF IT.
EVERYBODY KNOWS HOW TO DEAL WITH
IT.

THESE AREN'T -- DEADLINES AREN'T
ANYTHING UNUSUAL TO LAWYERS.

AND IF A DEFENDANT CHOOSES TO GO
TO TRIAL AND EXERCISES
CONSTITUTIONAL RIGHT TO A TRIAL,
HE HAS THAT RIGHT.

AND, YOU KNOW, BECAUSE IT MAY
HAVE SOME INDIRECT EFFECT AS --

>> FOR A LAWYER TO BE AN
EFFECTIVE LAWYER HAVE TO DISCUSS
THIS WITH THESE DEFENDANTS WHO
ARE ON THIS CUSP, ABOUT TO TURN
21?

>> I WOULD THINK SO, YEAH.
I WOULD EXPECT THAT, YES.
YOU KNOW, THAT'S -- IF YOU'RE
LOOKING FOR A SENTENCING
ALTERNATIVE TO A TEN-YEAR

MINIMUM MANDATORY, FIRST THING
DEFENSE ATTORNEY IS GOING TO
THINK ABOUT IS YOUTHFUL OFFENDER
TREATMENT.

AND THAT'S -- AGAIN, THAT'S VERY
COMMON.

THAT'S NOT UNUSUAL.

AND JUST SPEAKING ABOUT
UNFAIRNESS, YOU KNOW, HOW IT MAY
BE A SITUATION THAT APPEARS
UNFAIR, YOU KNOW, EVEN UNDER THE
OLD STATUTE YOU COULD HAVE TWO
SIMILARLY-SITUATED DEFENDANTS
AND ONE GOES IN FRONT OF ONE
JUDGE AND GETS YOUTHFUL OFFENDER
TREATMENT AND THE OTHER
SIMILARLY-SITUATED DEFENDANT
GOES IN FRONT OF A DIFFERENT
JUDGE AND HE DOESN'T GET
YOUTHFUL OFFENDER TREATMENT.

DOES THAT APPEAR TO BE UNFAIR?

YES.

DOES THAT MAKE THE STATUTE
UNCONSTITUTIONAL?

NO.

AND IT'S THE SAME WITH THE
ARGUMENT HERE.

WHEREVER YOU DRAW THAT LINE.

LIKE CAPITAL CASES.

IS IT FAIR THAT SOMEONE WHO'S
TWO WEEKS OVER THE AGE OF 18 CAN
BE SENTENCED TO DEATH, BUT
SOMEONE WHO'S PERHAPS EVEN MORE
CULPABLE BUT TWO WEEKS UNDER THE
AGE OF 18 --

>> WELL, THAT WAS A
CONSTITUTIONAL DECISION.

THIS COURT -- IT WAS THE UNITED
STATES SUPREME COURT TO TALK
ABOUT DRAWING LINES REALLY AT
THE TIME OF THE CRIME IS A
CONSTITUTIONAL RIGHT.

SO I THINK IF YOU GET INTO THOSE
ISSUES, NOW YOU'RE -- AND IF YOU
THINK ABOUT JUVENILES, EVEN WHEN
THEY'RE TRANSFERRED TO ADULT
COURT, THE DISCRETION TO IMPOSE
JUVENILE SANCTIONS GOES BACK TO
WHEN THEY COMMITTED THE CRIME,
NOT TO THE TIME OF SENTENCING.

SO, YOU KNOW, I THINK THAT WE CAN'T ELIMINATE ALL ARBITRARINESS, BUT WE CAN LOOK AT STATUTES AND JUST MAKE SURE THERE IS A RATIONAL BASIS. AND ONE OF THE THINGS -- THE THING ABOUT WITH DOC, DO WE HAVE ANYTHING IN THE RECORD THAT SHOWS THAT IT'S ACTUALLY LESS EXPENSIVE OR MORE EXPENSIVE TO HOUSE JUVENILE YOUTHFUL OFFENDERS IN A YOUTHFUL OFFENDER FACILITY THAN IN A FULL-BLOWN PRISON?

DO WE KNOW WHAT THE COSTS ARE?
>> NO.

I DON'T KNOW WHAT THE COSTS ARE. BUT I KNOW THAT THIS IS AN OBLIGATION THAT'S PUT ON DOC, THAT THEY HAVE TO PROVIDE YOUTHFUL OFFENDER FACILITIES AND TREATMENT AND EVERYTHING THAT GOES ALONG WITH THAT CLASSIFICATION.

AND IT'S SOMETHING THAT THEY WANT TO HAVE A LIMIT ON BY THE TIME THE PERSON REACHES A CERTAIN AGE, THAT THEY NO LONGER HAVE TO DEAL WITH THOSE TYPE OF CONSTRAINTS.

>> LET ME ASK YOU THIS. DO YOU AGREE THAT ONCE THE JUDGE DECIDES TO SENTENCE AS AN ADULT AND YOU HAVE THE SCORE SHEET, THAT THE JUDGE IS JUST OPEN TO UP TO THE STATUTORY LIMIT NO MATTER WHAT THE SCORE SHEET SAYS?

BECAUSE WHAT CONCERNS ME IN THIS CASE BEYOND, YOU KNOW, THE STATUTE ITSELF IS THAT HIS SCORE SHEET SAYS THAT HIS SENTENCE AT MINIMALLY SHOULD BE 4.5 YEARS AND YET THE JUDGE GIVES HIM A LIFE SENTENCE.

AND IT JUST SEEMS SUCH A DISPARATE RANGE HERE.

>> IT REALLY HASN'T BEEN BRIEFED IN THIS CASE, BUT, YOU KNOW, YES, THE JUDGE HAS THAT

DISCRETION IF IT'S WITHIN THE STATUTORY LIMITS.

LEGISLATURE SETS THE STATUTORY MAXIMUM, WHETHER IT'S FIVE YEARS, 15 YEARS, 30 YEARS OR LIFE.

>> THE SCORE SHEET REALLY NOW IS ONLY A FLOOR.

>> THAT IS ALL IT IS.

>> IF YOU GO BELOW THAT FLOOR, THE COURT HAS TO GIVE WRITTEN REASONS.

>> CORRECT.

>> NO WRITTEN REASONS TO GO ABOVE IT.

>> CORRECT.

>> THAT'S A COMPLETE CHANGE.

USED TO BE IT WAS A RANGE.

IF THEY WENT ABOVE THAT RANGE, THEY HAD TO GIVE REASONS.

>> I THINK THAT TURNED OUT TO BE A NIGHTMARE.

>> I'M NOT SURE FOR WHO?

>> FOR THE PROSECUTORS.

>> BUT, AGAIN, COMING BACK, I WOULD JUST REITERATE THAT THE LINE HAS TO BE DRAWN SOMEWHERE. THAT WAS MY POINT.

AND NO MATTER WHERE YOU DRAW

THAT LINE, YOU CAN FIND

INEQUITIES ON EITHER SIDE.

EVEN UNDER THE OLD STATUTE YOU

COULD FIND INEQUITIES ON EITHER SIDE.

AND THIS IS A GOOD STATUTE.

YOU KNOW, THIS ISN'T ANYTHING

THAT REVIVAL WOULD EVEN APPLY

TO.

YOU KNOW, IT'S NOT SUCH AN

UPHEAVAL.

IF YOU LOSE THE YOUTHFUL

OFFENDER STATUTE, THE CRIMINAL

JUSTICE SYSTEM KEEPS GOING AWAY

JUST THE WAY IT ALWAYS HAS, WITH

ALL THE CONSTITUTIONAL RIGHTS

AND EVERYTHING THAT SOMEBODY IS ENTITLED TO.

BUT WE'RE GOING TO LOSE A VERY

VALUABLE TOOL FOR THE COURTS.

>> WELL, THEY'RE SUGGESTING IF

WE WERE TO HOLD IT
UNCONSTITUTIONAL, WE WOULD
REVIVE THE OLD STATUTE, SO IT
WOULDN'T GO OUT THE WINDOW.
>> IT'S NOT A SUFFICIENT
UPHEAVAL.
IT WOULDN'T WARRANT REVIVAL.
IT'S NOT ANYTHING THAT WOULD BE
THAT DRASTIC WOULD CHANGE IN OUR
CRIMINAL JUSTICE SYSTEM.
AND I'M ASKING THE COURT NOT TO
FIND IT UNCONSTITUTIONAL.
I'M ASKING THE COURT TO GO AHEAD
AND FIND THAT THERE IS A
RATIONAL BASIS.
I THINK THE JUDGE IS A VERY
REASONED AND WELL-ARTICULATED
OPINION IN THIS CASE.
I SEE IT'S BEEN FOLLOWED BY THE
FIRST DCA RECENTLY TOO.
I DON'T KNOW IF THERE ARE ANY
OTHER QUESTIONS.
>> THANK YOU.
>> THANK YOU.
>> MISS FOLEY?
>> AT PAGES 521 AND 522 OF THE
SENTENCING TRANSCRIPT, DEFENSE
COUNSEL SAYS THAT THERE'S NO
MITIGATE -- AVAILABLE
MITIGATION.
SHE CALLS IT A LIFE FELONY,
INDICATING SHE THOUGHT HE DID
NOT QUALIFY.
THE SCORE SHEET ISSUE.
>> WHAT KIND OF -- WHAT LEVEL
FELONY IS THIS?
>> THIS IS A FIRST-DEGREE FELONY
PUNISHABLE BY LIFE.
THE WAY THE YOUTHFUL OFFENDER
STATUTE READS IS YOU'RE ELIGIBLE
FOR A FELONY.
AND THAT'S IN 958.04.
>> YOU'RE INELIGIBLE ONLY IF
IT'S A CAPITAL OR LIFE FELONY.
>> THAT'S EXACTLY RIGHT.
SO ON YOUR SCORE SHEET ISSUE,
THE SCORE SHEET IS THE SAME,
WHETHER YOU'RE A YOUTHFUL
OFFENDER OR NOT.
BUT THE --

>> EXCUSE ME.
IF YOU'RE GOING TO USE YOUTHFUL
OFFENDER, DO YOU NEED A SCORE
SHEET, TOO?
>> YOU NEED A SCORE SHEET IN
EVERY SENTENCING PROCEEDING.
>> OKAY.
>> YOU DO.
BUT WHAT HAPPENS IF YOU'RE A
YOUTHFUL OFFENDER, THE
SENTENCING RANGE CHANGES
DRAMATICALLY.
ON MY CLIENT'S 21ST BIRTHDAY THE
SENTENCING RANGE WENT FROM
YOUTHFUL OFFENDER TO TEN YEARS
DAY FOR DAY, ALL RIGHT?
SO THE SENTENCING -- ANYTIME --
HE WAS ALWAYS SUBJECT TO LIFE AT
THE TOP, BUT ANYTIME THE BOTTOM
CHANGES, LET'S SAY A SCORE SHEET
ERROR, THE JUDGE'S DECISION TO
IMPOSE LIFE, THAT DISCRETIONARY
DECISION, HAS TO BE BASED ON AN
ACCURATE UNDERSTANDING OF THE
RANGE.
SO THAT WOULD BE A REASON THAT
MR. JACKSON HIMSELF SENTENCE
SHOULD BE CONSIDERED WITHIN THE
ACCURATE RANGE.
ON COSTS, JUSTICE PARIENTE, IN
THE INITIAL BRIEF I CITED A
REPORT, YOUTHFUL OFFENDER
DESIGNATION OF THE DEPARTMENT OF
CORRECTIONS, AND THAT DOES
DISCUSS HOW MUCH EACH BED COSTS.
GENERALLY A YOUTHFUL OFFENDER
BED IS \$20 MORE.
FOR JUVENILES THEY GET FEDERAL
SUBSIDIES.
SO MAYBE IT'S OFFSET.
I ALSO WANT TO MAKE -- IN TERMS
OF HARM TO MY CLIENT, YOU KNOW,
THERE IS A HARM IN THE FACT THAT
HE WASN'T ON EQUAL FOOTING WHEN
WE'RE TALKING ABOUT STANDING TO
MAKE A FACIAL CHALLENGE.
HE WAS HARMED BECAUSE HE WAS NOT
ON EQUAL FOOTING WITH OTHER
PEOPLE WHO COMMITTED CRIMES
BEFORE THEY WERE 20.

AND HE WAS HARMED BECAUSE HE
LOST THE OPPORTUNITY FOR
CONSIDERATION AND THEREFORE THAT
IS -- THAT GIVES HIM STANDING AT
THE VERY LEAST TO RAISE THIS
ISSUE.

IN TERMS OF -- MY COLLEAGUE SAID
THAT TWO SIMILARLY-SITUATED
OFFENDERS COULD BE SENTENCED BY
DIFFERENT JUDGES AND THAT WOULD
BE AN ARBITRARY RESULT.

BUT THE DIFFERENCE IS UNDER THIS
CLASSIFICATION TWO
SIMILARLY-SITUATED DEFENDANTS
COULD BE SENTENCED BY THE SAME
JUDGE AND GET AN ARBITRARY
RESULT.

SO IT LEADS TO FAR MORE
ARBITRARY RESULTS THAN OTHERS.
AND FINALLY, YES, THE CRIMINAL
SCORE SHEET DOES GIVE A BOTTOM.
BUT EVEN SENTENCES THAT ARE
WITHIN THE RANGE ARE SUBJECT TO
DUE PROCESS.

THAT JUDICIAL EXERCISE OF
DISCRETION IS REVIEWED FOR DUE
PROCESS.

AND THE SECOND ISSUE, I CITE THE
CASES FOR THAT, BUT ONE EXAMPLE
IS CARMODY.

THIS COURT SAYS THAT'S JUST
ARBITRARY.

EVEN THOUGH IT WAS A LAWFUL
SENTENCE, IT WAS REVERSED.

THANK YOU FOR GRANTING
DISCRETIONARY REVIEW IN THIS
CASE.

WE WOULD ASK YOU TO REVERSE AND
REVIVE THE EARLIER STATUTE.

>> THANK YOU FOR YOUR ARGUMENTS.
HAVE A NICE DAY.