>>> THE NEXT CASE FOR TODAY IS LEWIS

V. FLORIDA PAROLE COMMISSION.

[BACKGROUND SOUNDS]

>> MAY IT PLEASE THE COURT,

MICHAEL --

[INAUDIBLE]

I'D LIKE TO RESERVE FIVE MINUTES

OF MY TIME FOR REBUTTAL.

THE ISSUE IN THIS CASE IS

WHETHER THE STATUTE OF

LIMITATIONS IN SECTION 9511 AS

IT APPLIES TO MANDAMUS PETITIONS

VIOLATES THE SEPARATION OF

POWERS DOCTRINE.

AND AS I'VE ARGUED IN MY BRIEF,

I'VE SUBMITTED THAT IT DOES, AND

I'VE RELIED ON THIS COURT'S

LANGUAGE IN, FIRST, ALLEN AND

THEN JONES.

>> STATUTE OF LIMITATIONS

GENERALLY OTHER THAN IN

EXTRAORDINARY RISK ARE NOT

CONSIDERED PROCEDURAL, ARE THEY?

>> CORRECT.

>> OKAY.

SO WE REALLY HAVE GENERALLY THE

ISSUE THAT THIS IS NOT, THAT

IT'S NOT A PROCEDURE, IT'S

SUBSTANTIVE.

IT SEEMS TO ME READING ALLEN AND

THE CASES, AND JONES, THAT WHAT

WE'RE REALLY TALKING ABOUT WITH

THE SEPARATION OF POWERS IS THE,

IS THE FACT THAT EXTRAORDINARY

RISK -- AND IN PARTICULAR THE

HABEAS -- SOMETHING THAT'S

WITHIN THE COURT'S DOMAIN.

WE SET THE PROCEDURE THROUGH

38.850 OR 851.

WITH THAT IN MIND, WHEN WE PASS

THE RULE 1--

>> 630 --

>> AND SAID THAT FOR

EXTRAORDINARY RISK UNLESS WE ACT

THAT IT IS AS PROVIDED BY LAW,

AND IN THAT MANDAMUS ESPECIALLY

PRESUMPTIVE RELEASE DATE AS
OPPOSED TO THE EFFECTIVE RELEASE
DATE, WHICH YOU'LL EXPLAIN THE
DIFFERENCE, IS CONTROLLED BY
MANDAMUS.
AND I CAN TELL YOU FROM THIS
COURT'S POINT OF VIEW, FROM MY
POINT OF VIEW, 16 YEARS, A
ONE-YEAR STATUTE OF LIMITATIONS
IS GENEROUS FOR MANDAMUS.
I'D PROBABLY MAKE IT SIX MONTHS
IF I WERE DOING IT.
I DON'T GET WHERE THE SEPARATION
OF POWERS VIOLATION IS GIVEN
WHAT I JUST SAID WHICH IS THAT
STATUTE OF LIMITATIONS GENERALLY
SUBSTANTIVE, WE'RE REALLY
TALKING ABOUT EXTRAORDINARY
RISKS.
WE HAVE A RULE THAT NOW IS
ACCEPTED AT HABEAS.
THIS DOESN'T -- THIS GUY'S GOT
25 YEARS, SO HE'S NOT GETTING

OUT TOMORROW.

HE'S NOT CHALLENGING THE

ATTENTION.

HOW IS IT A SEPARATE -- AND

WE'VE SET THIS RULE THAT SAYS AS

PROVIDED BY LAW ON A VERY NARROW

BASIS, BECAUSE I THINK SOMETIMES

THERE'S EXPANSIVE LANGUAGE.

THIS IS NOT -- THE LEGISLATURE'S

REALLY DOING OUR BIDDING BY

COMING UP WITH ONE YEAR.

WE THOUGHT IT SHOULD BE TWO

YEARS, WE COULD CHANGE THE RULE

AND MAKE IT TWO YEARS OR THREE

YEARS, OR WE COULD MAKE IT SIX

MONTHS.

>> CORRECT.

BUT THAT'S NOT WHAT YOU SAID IN

ALLEN OR JONES.

>> WELL, WHEN WE GET REALLY

UPSET ABOUT SOMEONE INTERFERING

WITH HABEAS AS IT PERTAINS TO

DEATH PENALTY CASES OR PRESENT

DETENTION, I THINK WHAT WE'RE
REALLY THEN AGAIN TALKING ABOUT
IS NOT PROCEDURE VERSUS
SUBSTANCE, RULES VERSUS, YOU
KNOW, WE'RE TALKING ABOUT DON'T
INTERFERE WITH THE WAY THIS
COURT IS GOING TO PROCESS OUR
CRIMINAL CONVICTIONS,
POSTCONVICTION CASES.
WE'VE GOT TO CONTROL THAT, AND
WE DO THROUGH MANY, MANY RULES.
SO --
>> JUDGE, AGAIN, THAT ALL COULD
BE TRUE IF THE LANGUAGE IN ALLEN
AND JONES HAD BEEN THE POWER TO
ESTABLISH -- WE DID NOT SEE THE
POWER TO ESTABLISH TIME --
>> WHAT ABOUT CALLAWAY?
WE HAVE CALLAWAY WHICH SAID 30
DAYS.
>> BUT -- OKAY.
AND, AGAIN, WHAT HAPPENED IS IN
ALLEN THIS COURT CLARIFIED THE

HOLDING IN CALLAWAY.

YOU CAN'T LOOK AT CALLAWAY

WITHOUT LOOKING AT THE

CLARIFICATION TO CALLAWAY.

>> WE HAVE A RULE, THOUGH, THAT

SPECIFICALLY SAYS UNLESS WE COME

UP WITH THE TIME LIMIT, WE'RE

GOING TO LET THE LEGISLATURE SET

IT AS REQUIRED BY LAW.

SO, AGAIN, YOU WOULD AGREE THAT

TOMORROW WHEN WE ISSUE A

DECISION IN THIS CASE FOR SIX

MONTHS OR WHATEVER, THAT WE

COULD SAY, LISTEN, THERE'S -- WE

THINK THE LEGISLATURE IN THIS

CASE SET TOO SHORT A TIME LIMIT

OR TOO LONG A TIME LIMIT.

>> AND YOU COULD ADOPT THE

RULE --

>> AND ADOPT IT.

AND THEN THAT WOULD BE OKAY?

>> YES.

>> OKAY.

>> BECAUSE THAT'S WHAT

HAPPENED -- THE REVISION OF

CALLAWAY AS ESTABLISHED IN ALLEN

AND JONES, LOOKING BACK WE'RE

GOING TO CLARIFY.

THE COURT SAID WE CLARIFY OUR

HOLDING IN CALLAWAY IN ORDER TO

MAKE CLEAR THAT THIS COURT DID

NOT CEDE TO THE LEGISLATURE THE

POWER IN WHICH EXTRAORDINARY

ACTION MUST BE COMMITTED.

>> BUT THE WHOLE CONTRACT THERE

WAS HABEAS.

>> IT DIDN'T SAY HABEAS.

>> I UNDERSTAND THAT.

BUT THAT'S WHAT THE CASE WAS

ABOUT.

>> IT WAS ABOUT THE DEATH

PENALTY REFORM ACT.

>> THAT HAS TO DO WITH HABEAS.

>> WELL, IT SEEMS TO ME THAT

WE'VE GOT TO LOOK AT THAT

LANGUAGE IN THE CONTEXT.

I UNDERSTAND YOU'VE GOT AN
ARGUMENT HERE ABOUT THE LANGUAGE
THAT WAS USED, BUT LET ME ASK
YOU ABOUT THAT LANGUAGE IN THE
RULE UNLESS OTHERWISE PROVIDED
BY LAW.
WHAT DOES THAT LANGUAGE IN THE
RULE NOW MEAN?
>> THIS COURT HAS CLARIFIED THAT
LANGUAGE TO MEAN THAT THIS COURT
PROVIDES ANOTHER RULE, ANOTHER
TIME PERIOD THROUGH A RULE THEN
THAT TIME LIMIT APPLIES.
>> SO THE OTHER LAW THERE ONLY
MEANS, REFERS TO "OR AS PROVIDED
BY LAW" REALLY MEANS "AS
PROVIDED BY RULE."
>> PURSUANT TO THE VERY CLEAR
STATEMENT IN BOTH ALLEN AND
JONES THAT THIS COURT DID NOT --
>> THAT'S AN UNUSUAL, THAT WOULD
BE AN UNUSUAL WAY IN ONE OF OUR
RULES FOR US TO REFER TO OTHER

RULES.

>> BUT TWO THINGS.

>> WOULDN'T IT?

>> WHY DID, I MEAN, A PRISONER

HAS A RIGHT TO RELY UPON THIS

COURT'S LANGUAGE.

I SUBMIT THAT ANY ATTORNEY --

>> I THINK HE, I THINK EVERYONE

HAS A RIGHT TO RELY UPON OUR

HOLDINGS.

>> YES.

Xxx

ANOTHER TIME PERIOD THROUGH A

RULE AND THAT TIME IT APPLIES.

THE, SO EITHER LAW THERE MEANS,

ONLY REFERS TO THE, REALLY MEANS

AS PROVIDED BY RULE?

>> PURSUANT TO VERY CLEAR

STATEMENT IN BOTH ALLEN AND

JONES.

>> THAT WOULD BE UNUSUAL WAY IN

ONE OF OUR RULES FOR US TO REFER

TO OTHER RULES.

>> BUT THERE ARE TWO THINGS.

>> WOULDN'T IT?

>> WHY DID, A PRISONER HAS A

RIGHT TO RELY UPON THIS COURT'S

LANGUAGE.

I SUBMIT ANY ATTORNEY OF ANY

PRISONER --

>> I THINK EVERYONE HAS A RIGHT

TO RELY UPON OUR HOLDINGS.

>> YES.

>> NOT EVERYTHING THAT WE SAY

ENDS UP BEING THE LAW, ISN'T

THAT CORRECT?

>> I DON'T THINK THERE IS ANY

OTHER WAY TO LOOK AT LANGUAGE

FIRST STATED IN ALLEN AND

REPEATED IN JONES THAT THIS
COURT DID NOT GIVE THE POWER TO
THE LEGISLATURE TO SET TIME
LIMITS ON EXTRAORDINARY WRIT
ACTIONS.
COULD YOU CHANGE THAT AND
FURTHER CLARIFY THE
CLARIFICATION AND SAY WE MEAN
ONLY HABEAS, BUT IF YOU DO THAT
YOU SHOULD ONLY DO THAT
PROSPECTIVELY BECAUSE PEOPLE
HAVE BEEN TRAVELING UNDER THIS
LANGUAGE AND ASSUMING FOR
EXTRAORDINARY WRIT ACTIONS
UNLESS THIS COURT ESTABLISHES A
TIME LIMIT BY RULE WHICH WHAT
HAPPENED IN KALWAY THERE IS NO
TIME LIMITATION.
THERE WOULD BE NO REASON FOR
THIS COURT TO ADOPTED 9.100(C)(4)
IF .630 IS ENOUGH.
>> SOMETIMES IN THE CASE WE ADOPT
RULES TO REFLECT STATUTORY

REQUIREMENTS.

I MEAN THAT, THAT IS, NOW

WHETHER, WHETHER THAT'S A GOOD

IDEA OR A BAD IDEA IS ONE

QUESTION.

BUT I THINK YOU CAN FIND

EXAMPLES, IN VARIOUS RULES OF

COURT, WHERE WE ARE SIMPLY

REPEATING --

>> THAT IS AN EXAMPLE.

>> THAT IS THE PREEMINENT

EXAMPLE BUT I THINK ELSEWHERE

YOU CAN FIND PLACES WHERE WE

SIMPLY WILL PUT IN THE RULES A

PROVISION THAT IS ALREADY IN THE

STATUTORY LAW.

I THINK THAT THE RATIONALE FOR

DOING THAT IN SOME CIRCUMSTANCES

JUST TO PUT IT THERE WHERE THE

LAWYERS ARE LIKELY TO FIND IT

WHEN LOOKING AT THE RULES.

IT'S A MATTER OF EDUCATION AND

TO ELIMINATE ANY DOUBT ABOUT

WHAT THE REQUIREMENT IS.

SO I DON'T KNOW THAT, IF YOU

LOOK AT IT IN THAT CONTEXT, I

THINK IT MAY PUT THESE THINGS IN

A LITTLE DIFFERENT LIGHT THAN

YOU'RE SUGGESTING.

>> WELL WHAT I'M SUGGESTING THAT

IS THE LANGUAGE IS CLEAR IN

ALLEN AND JONES.

THERE IS NO OTHER WAY TO

INTERPRET IT.

THE FIRST DISTRICT'S

INTERPRETATION IS A, NOT A VALID

INTERPRETATION.

THE ONLY WAY YOU CAN READ THAT

LANGUAGE THAT THIS COURT DID NOT

GIVE THE POWER TO ESTABLISH TIME

LIMITATIONS FOR EXTRAORDINARY

WRIT ACTIONS.

IF YOU HAD SAID HABEAS I

WOULDN'T BE HERE.

WE CAN CHANGE --

>> TRUTH IS, FOLLOWING WHAT

JUSTICE CANADY SAYS, SAYING BY,

THE LAW, THE LEGISLATURE SETS

THE LAW.

OTHERWISE PROVIDED BY RULE WOULD

HAVE A DIFFERENT SITUATION.

NOW I NEED --

>> YOU EXCEPTED OUT HABEAS.

IN JONES, 1.630 DOES NOT APPLY

TO HABEAS ACTIONS.

>> WE REALLY NEED, THIS RULE

NEEDS TO BE MUTUAL IN MY VIEW AND

YOU AGREE IT PROBABLY SHOULD BE

RETOOLED.

GIVE ME AN ARGUMENT, OTHER THAN

LAWYERS THOUGHT THERE WAS NO

TIME LIMIT FOR MANDAMUS, FOR -- IN

THIS SITUATION, YOU'VE GOT

PRESUMPTIVE RELEASE DATE OF

2051?

>> YES.

>> HE'S SENTENCED IN 2010 AND

HE'S GOT --

>> SENTENCED MAYBE IN 1989.

THERE WAS REVIEW BY THE PAROLE

COMMISSION IN 2010.

>> WHEN IS HIS 25 YEARS, WHEN IS

THAT UP?

>> IT'S UP.

THAT IS WHY HE HAD HIS INITIAL

REVIEW TO ESTABLISH HIS

PRESUMPTIVE PAROLE RELEASE DATE.

>> HE IS PAST 25 YEARS?

>> MY UNDERSTANDING OF THE

RECORD SINCE 1989.

>> WHAT IS DIFFERENCE BETWEEN

PRESUMPTIVE AND EFFECTIVE?

>> PRESUMPTIVE WHEN YOU

INITIALLY GO FOR REVIEW IN FRONT

OF THE PAROLE COMMISSION THEY

WILL GIVE YOU A PRESUMPTIVE

PAROLE RELEASE DATE.

THAT IS THE DATE YOU SHOULD BE

RELEASED BUT NOT A GUARANTEE YOU

WILL BE RELEASED.

AS YOU GET CLOSER TO THAT DATE,

AT SOME POINT THAT WILL CHANGE

HOPEFULLY TO EFFECTIVE PAROLE

RELEASE DATE.

ONCE YOU RELEASE EFFECTIVE

PAROLE RELEASE DATE.

THAT DATE YOU WILL BE RELEASED

UNLESS THEY SUSPEND THAT ACTION.

>> HE NOW BECAUSE OF HIM, SAY

ASSUMING THAT HE HAD MORE THAN A

YEAR, HE HAS NO WAY TO CHALLENGE

THAT NEXT TIME THEY'RE GOING TO

REVIEW HIS PAROLE, IS UNTIL 2051.

>> NO, NO.

HE HAS ANOTHER INTERVIEW IN

JANUARY NEXT YEAR.

>> IN JANUARY OF NEXT YEAR YOU

CAN THEN CHALLENGE IT?

I JUST WANT TO GET, AGAIN, WE'RE

HERE, WHEN WE DEAL WITH

EXTRAORDINARY WRITS AND YOU

UNDERSTAND, IF YOU LOOK AT THE

COURT'S DOCKET, THAT PRISONERS,

NOT SOMEBODY BEING REPRESENTED

BY SOMEONE LIKE YOURSELF, FILE

A, A LOT OF WRITS PRO SE AND,

YOU SEE WHAT LED TO MATTHEWS.

>> I UNDERSTAND.

>> I WANT TO UNDERSTAND BEFORE

WE SAY, WE WANT TO DO SOMETHING

HERE, WHERE IS THE INJUSTICE, IF

HE CAN SEEK AGAIN NEXT JANUARY

REVIEW AND IF HE DOESN'T LIKE

THAT DATE, YOU THEN CAN

CHALLENGE IT WITHIN A YEAR

UNDER MANDAMUS?

>> WITHOUT GIVING THE PAROLE

COMMISSION REPRESENTATIVE SEATED

TO MY RIGHT ANY IDEAS THAT WOULD

BE A SUBSEQUENT INTERVIEW, THIS

WAS AN INITIAL INTERVIEW.

THEREFORE THERE COULD BE AN

ARGUMENT IF HE DIDN'T PROPERLY

CHALLENGE IT IN THE INITIAL

INTERVIEW HE MAY NOT BE ABLE TO

CHALLENGE THAT IN THE FUTURE.

>> WE CERTAINLY HOPE THEY WON'T

DO THAT.

>> I UNDERSTAND THE COURT'S

PROBLEM.

LET ME SUGGEST, THE ANSWER IS

WOW I WISH WE WOULD HAVE SAID IN

ALLEN WE DIDN'T GIVE THE POWER

TO THE LEGISLATURE TO PUT TIME

LIMITS ON HABEAS AND WISH WE

REPEATED THAT IN JONES AND

LIMITED IT TO HABEAS.

I UNDERSTAND THAT YOU CAN

FURTHER CLARIFY YOUR

CLARIFICATION.

IF YOU DO THAT AND THAT MAY BE

THE APPROPRIATE WAY TO GET OUT

OF THIS, YOU SHOULD NOT APPLY

THAT RETROACTIVELY.

YOU SHOULD APPLY THAT

PROSPECTIVELY.

FROM THIS POINT FORWARD ANYONE

THAT BRINGS AN ACTION THEY'RE

COVERED BY THE STATUTE OF

LIMITATIONS BECAUSE YOU'RE

LIMITING --

>> SEEMS TO ME, I DON'T
UNDERSTAND, I HEARD YOUR
ARGUMENT BUT I STILL DON'T
UNDERSTAND WHY RULE 1.630 IS NOT
APPLICABLE HERE AND WHY THAT
95.11 STATUTE IS NOT APPLICABLE
BECAUSE IT SAYS, A COMPLAINT
SHALL BE FILED WITHIN THE TIME
PROVIDED BY LAW, BY LAW, EXCUSE
ME, LET ME JUST FINISH THE
QUESTION.
BY LAW TO ME, MEANS STATUTORY
LAW.
MEANT BY WHATEVER ESTABLISHED IS
ANOTHER RULE I THINK WE WOULD
HAVE SAID TIME PROVIDED BY RULE.
SO SEEMS TO ME THAT IT'S CLEAR
THAT IF THERE'S A LAW THAT SETS
THE TIME PERIOD FOR THE
MANDAMUS, THE PROHIBITION, THAT
WOULD BE WHAT IS APPLICABLE.
>> 1.630 APPLIES TO HABEAS
PETITIONS.

THIS COURT HELD IN JONES --

>> BECAUSE IT SAYS HABEAS

PETITION DOES NOT NEGATE -- WE

HAVE TALKED ABOUT HABEAS AND

SORT OF CALLED THOSE OUT BECAUSE

OF ALL THE CONSTITUTIONAL

RAMIFICATIONS OF A HABEAS

PETITION.

AND I BELIEVE THAT WE PROBABLY

SHOULD HAVE AMENDED THIS RULE

AND MAYBE TAKEN THE

HABEAS CORPUS OUT OF IT.

HOWEVER, THAT BEING SAID, IT

STILL APPLIES TO MANDAMUS AND

PROHIBITION AND QUOTE WARRANTO.

>> AS OF JONES IT DOESN'T APPLY

TO HABEAS.

I THINK WE ALL AGREE WITH THAT.

THE ARGUMENT IS NOT TO OVERTURN

JONES.

IN JONES THIS COURT SAID --

>> I DON'T AGREE WITH THAT.

>> YOU JUST SAID, IN JONES THIS

COURT DID NOT SAY THAT THE
PROVISION, APPLY HABEAS BOTH
UNDER 95.11 AND POTENTIALLY
UNDER 1.630 CONTROLLED THE DAY
OF THE COURT SAID WHEN IT COMES
TO EXTRAORDINARY WRIT ACTIONS WE
DID NOT CEDE THE POWER TO THE
LEGISLATURE.
>> JONES WAS HABEAS, RIGHT?
>> YES, BUT YOU DIDN'T SAY
HABEAS.
I'M NOT ONLY ONE MAKING UP THIS
ARGUMENT IN THE ROBERTS CASE I
CITED FROM THE FIRST DISTRICT,
THE FIRST DISTRICT SPECIFICALLY
SAYS --
>> DOESN'T MATTER HOW MANY
PEOPLE ARE MAKING IT UP.
SEEMS TO ME IF THE RULE SAYS
THAT BY LAW, THAT THAT'S WHAT
THE RULE SAYS.
AND THE RULE DOES NOT SAY, BY
RULE.

>> YOU ABOUT YOU IN JONES

SAID -- BUT YOU IN JONES SAID

THAT THAT RULE DOES NOT APPLY,

DOES NOT GIVE THE LEGISLATURE

THE POWER TO SET TIME LIMIT

TAKES FOR --

>> IT WAS NOT JUSTICE QUINCE.

>> WHEN I SAY YOU, I MEAN THE

COURT, THE FLORIDA SUPREME COURT

SAID THAT 1.630 WHEN IT SAYS

THAT, BY LAW DOES NOT APPLY TO

EXTRAORDINARY WRIT ACTIONS.

ONLY THE COURT BY RULE CAN

ESTABLISH A TIME LIMITATION, YOU

COULD HAVE LIMITED IT TO HABEAS

ACTIONS.

YOU CAN STILL DO THAT IN

DAYS.

I UNDERSTAND THERE MAY BE AN

ARGUMENT THAT HABEAS IS

DIFFERENT FROM MANDAMUS.

THAT IS NOT WHAT YOU SAID AND TO

BE FAIR TO EVERYONE --

>> LET'S GO TO WHAT IT WAS.

YOU SAY THERE HAS BEEN THIS

RELIANCE AND I DON'T KNOW IF,

SINCE THERE WASN'T ANY

EVIDENTIARY HEARING WHAT KIND OF

RELIANCE THERE WAS IN THIS CASE,

BUT REALLY, SEEMS TO ME THAT, WE

WERE DEALING IN ALLEN AND IN

JONES WITH HABEAS.

>> YOU WERE.

>> OKAY.

SO, ANYTHING ELSE THAT WAS

BROADER IS DICTA AND YOU, YOU

STILL -- WAS THE RULE MENTIONED,

RULE 1.630, AT ALL IN ALLEN?

>> NO.

>> OKAY.

>> ALLEN, I DON'T KNOW.

>> BECAUSE WE WERE REALLY

DEALING AGAIN WITH THE WHOLE

PLIGHT OF THE DEATH PENALTY

REFORM ACT AND DUAL TRACKING AND

EVERY OTHER PROCEDURE ABOUT THE,

ABOUT THIS, ABOUT DEATH PENALTY

CASES.

>> YES.

HOWEVER, SO, TWO QUICK POINTS IF

I RUN OUT OF TIME AND THEN I SIT

DOWN AND HAVE TIME LEFT FOR

REBUTTAL.

I WANT TO GET TO THE ROBERTS

QUOTE FROM THE FIRST DCA.

IN JOHNSON UNLIKE THE 30-DAY

LIMIT IMPOSED BY RULE 9.100(C)(4),

DOC PRISONER DISCIPLINARY ACTION

THE FLORIDA SUPREME COURT NOT BY

RULE ADOPTED A SIMILAR TIME LIMIT

TO CHALLENGE A PAROLE COMMISSION

PPRD PROCEEDINGS, THEREFORE THE

QUESTION OF TIMELINESS MUST BE

RAISED BY AFFIRMATIVE DEFENSE OF

LATCHES.

THE COURTS LOOKED AT WHAT HAPPENED

IN KALWAY AND CLARIFICATIONS

THAT ONLY WAY ANYONE CAN PUT

TIME LIMITATION ON EXTRAORDINARY

WRIT ACTIONS IF THE COURT DOES
IT BY RULE WHICH IS EXACTLY WHAT
YOU DID IN KALWAY.
YOU COULD DO THAT NOW.
YOU COULD SAY WE'LL PUT A
SIX-MONTH, ONE YEAR, TWO YEAR,
LIMIT ON MANDAMUS ACTIONS AND
ADOPT IT AS PAROLE RULE LIKE IN
KALWAY.
YOU CAN RECEDE FROM JONES AND,
YOU WE DIDN'T MEAN ALL
EXTRAORDINARY WRIT ACTIONS OF
THE SEPARATE OPERATIONS OF
POWERS CLAUSE SAYS THAT COURT
HAS, CLOSE SUFFICIENT
AUTHORITIES TO ADOPT RULES AND
PRACTICE AND PROCEDURE IN ALL
COURTS INCLUDING TIME TO SEEK
APPELLATE REVIEW.
THESE ARE CONSIDERED
QUASI-APPELLATE REVIEW.
THE AGENCY ARRIVES AT ITS
CONCLUSION AND SEEK REVIEW OF

THAT --

>> THAT IS DIFFERENT ISSUE.

I WAS GOING TO ASK THAT.

MOST OF THE MANDAMUS WE GET ARE

NOT SEEKING THIS KIND OF REVIEW.

SO YOUR ARGUMENT VERY

SPECIFICALLY IS THAT THIS IS,

IS --

>> IT IS QUASI-APPELLATE

CERTAINLY.

WE KNOW THAT FROM 9.100(C)(4).

>> THAT IS DIFFERENT ARGUMENT

THAN, THAT IS PROBABLY A

STRONGER ARGUMENT FOR ME

ABOUT --

>> THAT EXPLAINS WHY THIS COURT

HAS THE EXCLUSIVE AUTHORITY --

>> WRIT OF MANDAMUS ARE NOT

SEEKING APPELLATE REVIEW OF

SOMETHING.

THEY'RE JUST CHALLENGING

SOMETHING.

>> YES.

NO, I CONCEDE THAT.

I WILL LIMIT, MY ARGUMENT IS

LIMITED TO MANDAMUS PETITIONS

THAT ARE SEEKING FURTHER REVIEW

WHICH IS EXACTLY --

>> JUSTICE QUINCE POINTS OUT IF

IT IS APPELLATE, 30 DAYS AND NOT

MORE.

>> NO, NOT 30 DAYS -- AGAIN THE

COURT HAS DIFFERENT RULES FOR

DIFFERENT PROCEEDINGS OF THE

COURT IN KALWAY ADOPTED A RULE

THAT SAYS IF YOU'RE GOING TO

CHALLENGE DISCIPLINARY RULING

FROM DOC YOU HAVE 30 DAYS.

>> WE'RE SAYING IF IT IS

APPELLATE, 30 DAYS IS THE

OUTSIDE.

>> NOTICE OF APPEAL.

THE DIRECT APPEAL RIGHT WAS

TAKEN AWAY BY THE LEGISLATURE.

ONLY WAY TO SEEK REVIEW OF THESE

ACTIONS BY NOW IS MANDAMUS.

I SUBMIT THIS IS CLEARLY A

SEPARATION OF POWERS ISSUE.

EXTRAORDINARY WRIT SEEKING

APPELLATE REVIEW FALLS WITHIN

THAT.

THIS COURT CONSISTENTLY HELD

WITHIN ALLEN AND JONES IN ORDER

TO, THAT THE LEGISLATURE KANG

NOT PUT CAN NOT PUT TIME

LIMITATION ON THAT.

THE COURT CAN.

I UNDERSTAND THE COURT CAN ADOPT

THE RULE.

WHATEVER YOU DO SHOULDN'T AFFECT

MR. LEWIS BECAUSE MR. LEWIS HAS

RIGHT TO RELY ON LANGUAGE FROM

ALLEN AND JONES.

I RESERVE MY REMAINING MINUTE

FOR REBUTTAL.

>> GOOD MORNING, MAY IT

PLEASE THE COURT.

I'M MARK HIERS, REPRESENTING

FLORIDA PAROLE COMMISSION IN

THIS CASE.

I DON'T KNOW WHERE TO BEGIN.

THIS COURT DOESN'T HAVE TO LOOK

ANY FURTHER BACK FROM KALWAY TO

SEE THIS IS NOT SEPARATION OF

POWERS VIOLATIONS.

>> THERE ARE THREE POSSIBLE

SEPARATION OF POWERS VIOLATIONS.

ONE WE MENTIONED ABOUT SEEKING

APPELLATE REVIEW WHICH CLEARLY

PUTS WITHIN THE COURT THE POWER

TO SET TIME LIMITS FOR APPELLATE

REVIEW.

>> CORRECT.

>> THE SECOND IS JUST SETTING

PRACTICE AND PROCEDURE FOR THE

COURTS WHICH MR. UFFERMAN

CONCEDED STATUTE OF LIMITATIONS

ARE GENERALLY NOT PROCEDURE.

THEY'RE SUBSTANCE.

SO IF IT WAS JUST THAT, MY VIEW

HE WOULD BE OUT.

BUT THE THIRD IS THAT

EXTRAORDINARY WRITS ARE A UNIQUE
FORM THAT IS, THAT, THIS COURT
HAS RESERVED FOR HOW WE SET
EVERYTHING TO DO WITH HOW
EXTRAORDINARY WRIT RELIEF IS, IS
SOUGHT.
SO WHY ISN'T ON THE THIRD ONE,
THAT IS, THAT IT IS WITHIN THE
EXTRAORDINARY WRIT POWER AND
WITH THESE VERY BROAD LANGUAGE
THAT WE SUBSEQUENTLY MADE IN
BOTH ALLEN AND JONES, CLARIFYING
KALWAY, THAT IN THIS CASE THAT
WE REALLY NEED TO DECIDE THAT
THIS IS, IF YOU LOOK AT ALLEN
AND JONES, THAT THE LEGISLATURE
COULD NOT SET THIS TIME LIMIT?
BECAUSE WE DID NOT CEDE THE
POWER TO SET TIME LIMITS FOR
EXTRAORDINARY WRITS, PLAIN, END
OF STORY?
>> THE WORD CEDE, WHAT DOES THAT
MEAN?

THAT'S WHERE I DISAGREE WITH

MR. UFFERMAN.

THIS COURT, DID NOT CEDE THE

POWER TO SET TIME LIMITS THAT IS

TRUE.

WE UNDERSTAND THAT.

>> IN KALWAY WE ACTUALLY ADOPTED

30 DAYS.

>> THAT MADE NO DIFFERENCE TO

THE FILINGS IN KALWAY, THE RULE

WAS ADOPTED, AFTER ALL THAT

ACTIVITY IN KALWAY TOOK PLACE

AND WAS CONSUMMATED.

THIS COURT --

>> DO WE APPLY IT TO KALWAY?

>> EXCUSE ME?

>> DID WE APPLY IT TO KALWAY?

>> APPLY WHAT?

I'M SORRY?

>> THE 30 DAYS?

>> YES.

>> WE COULD DO IN THIS CASE TO

SATISFY THE PAROLE COMMISSION,

WE COULD SAY ONE YEAR IS LIMIT

FROM MANDAMUS AND WE'RE APPLYING

IT HERE AND THAT WOULD END --

>> YOU COULD MAKE A RULE AND SAY

THAT BUT THAT DOESN'T MEAN THERE

IS SEPARATION OF POWERS

VIOLATION.

KALWAY WAS REALLY A YEAR.

KALWAY HAD NOTHING TO DO WITH

Y'ALL ADOPTING AN APPELLATE

RULE.

KALWAY TURNED EXCLUSIVELY ON THE

INTERPLAY BETWEEN THE CIVIL

PROCEDURE RULE 1.630 AND THE

STATUTE AND KALWAY SAID THAT

THEY DIDN'T SAY WE DON'T FIND

THERE'S A SEPARATION OF POWERS

VIOLATION DUE TO THE INTERPLAY

BETWEEN THE RULE, THE STATUTE

AND THE ADOPTION OF OUR RULE.

THEY DIDN'T SAY THAT AT ALL.

I MEAN THE BETWEEN THE RULE, THE

BETWEEN THE CIVIL PROCEDURE

RULE, THE STATUTE AND THE
ADOPTION OF OUR APPELLATE RULE.
THAT WASN'T SAID AT ALL
IN KALWAY.
IT WAS NOT, HOW COULD IT, YOUR
HONORS, HOW COULD IT BE A
SEPARATION OF POWERS VIOLATION
WHEN THIS COURT BASICALLY
UNDER 1.630 INVITES THE
LEGISLATURE TO MAKE, TO IMPOSE A
REASONABLE TIME LIMITATION?
HOW --
>> EVEN THOUGH IT SAYS HABEAS,
IT WENT ON TO SAY, AGAIN WITH
THE DISSENTS, THAT EVEN THOUGH
SAYS HABEAS IT IS
UNCONSTITUTIONAL WHEN IT IS
HABEAS.
AT THE VERY LEAST WE HAVE MADE A
RULE THAT IS NOT IN, THAT NEEDS
TO BE REVISED TO CLARIFY WHAT WE
MEAN IF WE, IF WE DON'T, THEN WE
HAVE TO TAKE HABEAS OUT AND WE

OUGHT TO REALLY, SINCE WE'RE
TALKING ABOUT MANDAMUS AND
PROHIBITION AND ALL WRITS, WE
OUGHT TO GIVE SOME TIME LIMITS,
WHICH MAY BE AT THE OUTSIDE ONE
YEAR.
YOU KNOW, MAYBE WE WANT TO MAKE
THEM LESS THAN ONE YEAR IN THOSE
OTHER CASES?
SO --
>> THAT IS THE COURT'S
PREROGATIVE UNDER ARTICLE 5
SECTION 2, YOU CAN DO THAT.
I DON'T THINK IT IS NECESSARY.
I DISAGREE WITH THE ENTIRE
INTERPRETATION BEHIND ALLEN AND
JONES. ALLEN AND JONES WAS
HABEAS ONLY.
>> WHAT IS THE HARM FOR THIS
TYPE OF CASE, WHEN THEY SET A
PRESUMPTIVE RELEASE DATE, WHY IS
IT THAT THE, THAT THE PAROLE
COMMISSION CAN'T RESPOND TO

WHETHER IT'S A PROPER EFFECTIVE

PRESUMPTIVE RELEASE DATE MORE

THAN ONE YEAR AFTER THEY SET IT?

THERE IS NO MEMORY ISSUE.

THERE'S NO, WE'RE TALKING ABOUT

SOMEBODY THAT HAS BEEN IN PRISON

FOR 25 YEARS, IT SHOULD BE

REVIEWED IF IT'S, YOU KNOW,

WHATEVER LEGAL BASIS THERE IS TO

REVIEW IT WHICH I SUSPECT IS,

FAIRLY LIMITED?

WHAT'S, IN THIS TYPE OF CASE, IT

DOES SEEM LIKE --

>> I'M SORRY --

>> I'M JUST GOING BACK TO THE

POLICY ISSUES.

IF WE'RE LOOKING AT JUST THE

ISSUE OF REVIEW OF PRESUMPTIVE

RELEASE DATE.

>> WHY IS IT ONE YEAR

LIMITATION?

>> WHY IS ONE YEAR A REASONABLE

LIMITATION?

>> I THINK, I'M NOT SURE, I CAN'T SWEAR TO THIS, BUT I THINK IT TRACKED ONE YEAR LIMITATIONS THAT WAS PUT UNDER THE FEDERAL --

>> THE ADPR.

>> YES.

>> THE VERY DIFFERENT THING, BECAUSE WE'RE REALLY TALKING THERE, WE SAID FOR DEATH CASES MUCH SHORTER TIME LIMIT FOR REVIEW.

WE LOOK AT THE TYPE OF CASE BUT WHEN SOMEBODY IS IN PRISON FOR ALMOST EVER, AND HAS NOT HAD A HEARING TILL 25 YEARS AFTER, WHAT IS THE HARM IN IT BEING TWO YEARS TO BE ABLE TO CHALLENGE IT?

I MEAN I'M JUST TRYING TO UNDERSTAND, IF IT SHOULD BE A 30-DAY WHICH WE SAID IN KALWAY FOR DISCIPLINARY ACTIONS.

>> SURE.

>> OR FOR HABEAS WITH EITHER ONE YEAR OR TWO YEAR, DEPENDING ON DEATH CASE OR ANY OTHER CASE.

IF WE'RE SETTING IT, IF YOU'RE MAKING THE ARGUMENT TO US WHY ONE YEAR IS THE REASONABLE TIME, WHAT'S THE REASON?

>> I THINK AS JUSTICE PARIENTE, AS YOU SAID, ONE YEAR IS PRETTY REASONABLE TIME FOR A MANDAMUS ACTION.

REALLY TWO THINGS AT ISSUE.

>> MOST MANDAMUS, BUT PAROLE COMMISSION, WHAT IS THE HARM TO A LONGER ONE FOR TWO YEARS?

>> BECAUSE THEY GET SUBSEQUENT REVIEWS.

>> AND --

>> UNLIKE THE KALWAY INMATE, ONCE BLOWS THAT 30-DAY TIME LIMIT, DOOR IS CLOSED ON HIM.

HE WILL HAVE NO OTHER AVENUE OR

RECOURSE.

HE IS EFFECTIVELY --

>> SO WHEN IT IS REVIEWED NEXT

JANUARY, YOU'RE NOT GOING TO SAY

YOU DIDN'T REVIEW IT INITIALLY

SO YOU'RE PRECLUDED FROM

CHALLENGING THE PRESUMPTIVE --

>> NO.

EVERY SINGLE REVIEW WILL

GENERATE THE POSSIBILITY THAT HE

CAN RAISE THAT --

>> EVERY YEAR HE GET AS REVIEW?

>> EXCUSE ME?

>> HOW OFTEN DOES HE GET A

REVIEW?

>> THAT ALL DEPEND ON WHAT, IT

COULD BE TWO, FIVE OR SEVEN

YEARS.

>> AND HIS IS WHAT?

>> I THINK MR. LEWIS IS EVERY

SEVEN YEARS?

>> FIVE.

>> FIVE YEARS.

EVERY FIVE YEARS.

SO --

>> WHEN WAS HE INITIALLY

CONVICTED, MR. LEWIS?

I CAN'T SEEM TO, I'M TRYING TO

DETERMINE IF HIS 25 YEAR

MANDATORY MINIMUM HAS EXPIRED

BECAUSE I THOUGHT IT WAS IN THE

1990s HE WAS CONVICTED?

>> 25 YEAR MANDATORY MINIMUM HAS

EXPIRED.

>> HAS EXPIRED?

SO HE WAS CONVICTED WHEN.

>> I DON'T HAVE THAT RIGHT IN

FRONT OF ME, YOUR HONOR.

DO YOU HAVE THAT?

>> 1988 CASE NUMBER.

>> I THINK IT WAS '88 OR '89.

>> WAS HE CONVICTED OF OTHER

OFFENSES OTHER THAN FIRST-DEGREE

MURDER?

>> FIRST-DEGREE MURDER AND I

THINK SEXUAL BATTERY.

HANG ON.

I'M SORRY.

>> GO ON.

I JUST COULDN'T FIND THAT

INFORMATION.

>> GOING BACK TO, BACK TO

JUSTICE PARIENTE'S QUESTION

ABOUT WHY ONE YEAR, I GUESS ONE

YEAR IS ARBITRARY, OKAY?

BUT AS THE FIRST DISTRICT NOTED

IN THE OLD 1982 JORDAN CASE

WHICH WAS RERATED IN THE MOBLEY

CASE WHICH ADDRESSED THAT ISSUE,

THE FIRST DISTRICT SAID

THE IMPORTANCE OF THE

PPRD ESTABLISHMENT DIMINISHES

WITH THE PASSAGE OF TIME.

BECAUSE OF THAT, THE NECESSITY

FOR JUDICIAL INTERVENTION,

LIKEWISE DIMINISHES WITH THE

PASSAGE OF TIME.

>> DOES HE GET, DOES, IS THERE

RIGHT TO COUNSEL IN THESE

HEARINGS?

>> RIGHT TO COUNSEL IN PPRD

HEARINGS? NO.

>> DOES THE PRISONER, ONCE HE

GETS, THIS IS YOUR DATE, HAVE

SOMETHING IN THERE THAT SAYS YOU

HAVE A RIGHT TO HAVE THIS

REVIEWED WITHIN ONE YEAR FROM

THE DATE SO THAT HE KNOWS THAT

THIS IS THE TIME LIMIT --

>> TALKING ABOUT ADMINISTRATIVE

REVIEW?

>> NO, THE REVIEW UP TO FILING

MANDAMUS?

LIKE, YOU KNOW, AGAIN IN EVERY

OTHER CASE WHERE THEY'RE GIVEN

30 DAYS AND THEY'RE NOT

REPRESENTED OR WHEN THEY'RE

REPRESENTED THEY HAVE TO SAY,

AND YOU HAVE TO RIGHT TO APPEAL

THIS WITHIN 30 DAYS, AND HERE'S

WHAT YOU HAVE TO DO.

IS THERE ANYTHING IN THE

DETERMINATION THAT, FOR EXAMPLE,

MR. LEWIS WOULD HAVE GOTTEN THAT

WOULD SAY, HERE'S WHAT YOUR

RIGHTS ARE.

YOU HAVE A RIGHT TO SEEK MANDAMUS

ONE WITHIN YEAR OF THE DATE

THAT THE, THAT THIS DECISION WAS

MADE?

>> I, THE WAY IT WORKS HE IS

INTERVIEWED FOR THE PPRD HE IS

INTERVIEWED.

THEY GET ALL THE INFORMATION.

THE COMMISSION SITS AND VOTES ON

THE CASE.

THEN THEY NOTIFY HIM.

I DO THINK THAT HE IS ADVISED

THAT HE HAS THE OPPORTUNITY TO

ADMINISTRATIVELY APPEAL THAT

PPRD ESTABLISHMENT TO THE

COMMISSION.

>> AND HE DID THAT IN THIS CASE?

>> YES, MA'AM, HE DID.

>> OKAY.

THEN WHAT HAPPENS?

>> I MIGHT JUST SAY UNLIKE THE KALWAY SCENARIO HE HAS TWO MONTHS IN ORDER TO BRING THE ADMINISTRATIVE APPEAL.

>> THIS IS PRETTY SIGNIFICANT, FOR THIS PRISONER AFTER HE WAITED 25 YEARS NOT THAT HE IS GETTING OUT ANYTIME SOON IS A BIG DEAL FOR HIM.

>> SURE.

ONCE THE COMMISSION RESPONDS, REVIEWS AND ASSESSES AND VOTES AND RESPONDS TO THAT CASE, TO HIS ADMINISTRATIVE APPEAL THEN HIS ONE YEAR WILL END.

>> AND HE IS NOTIFIED IN THAT PAPER HE HAS ONE YEAR TO SEEK --

>> I DON'T THINK SO, YOUR HONOR.

THERE IS --

>> IN TERMS OF TRYING TO GET THIS TYPE OF CASE, AGAIN BECAUSE I THINK, THERE IS THIS ONE.

THERE IS THE, ALL THE OTHER

MANDAMUS CASES THAT ARE SOUGHT.

>> SURE.

>> WHERE THEY TRY TO SEEK MANDAMUS

WHAT SHOULD HAVE BEEN

AN ORDINARY PETITION FOR CERT.

THIS ONE STRIKES ME BEING MORE

IN THE CATEGORY OF AN IMPORTANT

RIGHT THAN OTHER CASES.

WHY AT THE VERY LEAST SHOULDN'T

THE COMMISSION JUST HAVE A

REQUIREMENT TO NOTIFY THE

PRISONER OF THE ONE YEAR?

>> BECAUSE, IT IS IN THE LAW AND

IN THE STATUTE AND EVERYBODY,

INCLUDING INMATES ARE ON

CONSTRUCTIVE NOTICE OF THAT.

YOU KNOW --

>> WHAT MR. UFFERMAN IS SAYING HE

HAD A RIGHT TO SAY, LOOK AT

JONES, THERE AREN'T TYPE LIMITS

FOR EXTRAORDINARY WRITS?

>> I'M SORRY, YOU LOST ME, YOUR

HONOR.

>> YOU'RE SAYING, WHAT HE WAS

GOING TO READ, READS JONES AND

JONES SAYS THERE IS NO TIME

LIMIT FOR EXTRAORDINARY WRITS

OTHER THAN WHAT THIS COURT SAYS.

>> JONES DOESN'T SAY THAT.

JONES SAYS THERE IS NO TIME

LIMITS, JONES, JONES AND ALLEN

IMMUNIZED HABEAS CORPUS AND TOOK

IT OUT OF THE EXTRAORDINARY WRIT

MIX AS FAR AS APPLICATION OF ANY

KIND OF TIME FRAMES AND THAT'S

ALL THEY STOOD FOR.

>> SO DO YOU THINK THERE'S A

DIFFERENCE, THIS IS A CIVIL RULE

THAT WE'VE BEEN LOOKING AT,

1.630.

IT'S A CIVIL RULE AND SO IT'S

APPLICABLE TO ANY KIND OF

MANDAMUS, PROHIBITION OR

QOWARRANTO OF A CIVIL NATURE.

IS THERE A DIFFERENCE BETWEEN A

MANDAMUS PETITION THAT

CHALLENGES SOME KIND OF

ADMINISTRATE TIFF ACTION VERSUS

A MANDAMUS THAT ACTUALLY

CHALLENGE AS CRIMINAL CONVICTION

IN SOME WAY?

>> IS THERE A DIFFERENCE?

I'M NOT FOLLOWING THE QUESTION.

>> SHOULD THERE BE A DIFFERENT

RULE OR DIFFERENT TIME

LIMITATION, IF WE ARE TALKING

ABOUT A CIVIL ACTION THAT

CHALLENGES AN ADMINISTRATIVE

PROCEEDING, VERSUS A, AN ACTION,

A MANDAMUS ACTION, FOR EXAMPLE,

THAT MAY CHALLENGE IN SOME WAY

THE ACTUAL JUDGMENT AND SENTENCE

THAT HAS BEEN RENDERED IN A

CRIMINAL CASE?

>> THAT WOULD BE UP TO THE COURT

TO DECIDE.

TO ME, IT MAKES NO DIFFERENCE.

I MEAN, I DON'T HAVE ANY PROBLEM

WITH DISCERNING A MANDAMUS
ACTION WHICH IS CHALLENGING THE
QUASI-JUDICIAL ACTION OF THE
COMMISSION.
AND APPLYING, AND THEN, YOU
KNOW, APPLYING THE APPELLATE
RULES LIKE YOU'RE SUPPOSED TO,
WHEN HE TAKES IT UP FOR, TAKES
UP THE CERT APPEAL, CERT REVIEW
TO FIRST DISTRICT.
TO ME, I DON'T THINK, I DON'T
THINK THERE'S A PROBLEM, PROBLEM
WITH THAT.
I DON'T THINK THERE NEEDS TO BE
ANY SORT OF DISCERNING BETWEEN A
REAL MANDAMUS PETITION AND A,
AND ONE SEEKING ADMINISTRATIVE
REVIEW.
ALTHOUGH I HAD EXPERIENCE IN, IS
MANDAMUS PETITIONS WHICH
CHALLENGE ADMINISTRATIVE RULES,
SUCH AS WITH THE DEPARTMENT OF
CORRECTIONS OR WITH THE FLORIDA

PAROLE COMMISSION.

DOES THAT ANSWER YOUR QUESTION?

>> THAT'S FINE.

>> OKAY.

YOUR HONORS, I JUST, AGAIN I'M

GOING TO RESUBMIT THE KALWAY

ACTION CONTROLS THIS CASE.

HABEAS AND JONES HAVE NOTHING TO

DO WITH THIS CASE.

LANGUAGE PRESENTED IN ALLEN AND

JONES, THEY SAID, ALL THIS COURT

SAID, ALL THAT COURT SAID, WAS

WE DO NOT CEDE, WHEN YOU LOOK AT

WORD CEDE, WHAT DOES IT MEAN?

TOTALLY GIVE UP.

THAT IS NOT WHAT HAPPENED HERE.

YOU HAD YOUR 1.630 THAT SAYS

THAT YOU OUGHT TO BRING A

MANDAMUS PETITION AS PROVIDED BY

LAW.

THE LAW, I THINK THE FIRST

DISTRICT DID A REALLY GOOD JOB

IN THAT OPINION.

THE LAW THAT'S PROVIDED IS

95.11(5)(F).

THEY PUT TOGETHER AND DOESN'T

ESTABLISH A SEPARATION OF POWERS

VIOLATION.

I THINK THIS COURT NEEDS TO LOOK

NO FURTHER THAN KALWAY.

I MIGHT ADD UNDER THE KALWAY

SCENARIO THE LIMITATIONS THE

KALWAY COURT PUT ON INMATES WHO

SUFFER, ARE BEING DR'D AND WHO

MISSED THAT TIME FRAME, MISSED

THAT 30 DAYS, RAMIFICATIONS ARE

A WHOLE LOT WORSE.

OKAY, THE NEGATIVE CONSEQUENCES

OF AN INMATE WHO MISSES HIS

30-DAY TIME FRAME, OKAY, ARE A

WHOLE LOT WORSE THAN AN INMATE

UNDER OUR SCENARIO WITH THE PPRD

WHO MISSES HIS ONE-YEAR TIME

FRAME.

I SAY THAT BECAUSE OF THIS.

THE INMATE TO MISSES THE 30-DAY

TIME FRAME, HE IS GOING TO, DOOR

IS CLOSED TO HIM.

HIS SENTENCE WILL BE LENGTHY

BECAUSE HE WILL LOSE GAIN TIME.

HERE UNDER THE PPRT SCENARIO,

THE DO IS CLOSED ON HIM.

THE ONE YEAR IS PRESENT OF TIME.

THE DOOR IS NOT CLOSED.

HE WILL GET SUBSEQUENT REVIEWS

BY THE COMMISSION WHICH IS AS

YOU GOING TO PRESENT HIM WITH A

POTENTIAL OPPORTUNITY FOR

REDUCTION OF PPRD THROUGHOUT THE

YEARS.

JUSTICE PARIENTE, DID I ANSWER

YOUR QUESTION ABOUT

SATISFACTORILY?

>> I GUESS YOU WILL FIND OUT.

>> I JUST WANT TO MAKE SURE,

OKAY.

>> NO, I MEAN I APPRECIATE, I

THINK THIS IS NOT A SIMPLE ISSUE

AND I THINK WE HAVE MADE

PRONOUNCEMENTS BOTH GRANDER AND
NARROWER AND SOMETIMES WE HAVE
NEEDED TO.
I'M NOT, I GUESS MY CONCERN AS I
GO FORWARD IS JUST, WHAT JUSTICE
QUINCE WAS SAYING.
THIS IS A CIVIL, IN A CIVIL
CONTEXT THERE ARE SOME
EXTRAORDINARY WRITS THAT ARE
CIVIL IN NATURE.
HABEAS, YOU KNOW, IT IS
OBVIOUSLY CHALLENGING A CRIMINAL
CONVICTION.
IN THIS CASE, IT IS HARD FOR ME
TO SEE HOW THIS IS A CIVIL CASE.
SO I'M NOW WONDERING WHETHER,
THAT RULE EVEN APPLIES TO THIS
CASE?
MAYBE, SO THAT'S A DIFFERENT
QUESTION.
CAN YOU TELL ME, THIS IS AGAIN,
WHAT JUSTICE QUINCE WAS GETTING.
HOW IS SOMETHING THAT IS

CHALLENGING THE DATE YOU GET OUT

OF THE PRISON SYSTEM?

>> I MIGHT ADD THIS.

I DID NOT CITE TO THIS IN MY

BRIEF BUT I CAME ACROSS

PREPARING FOR THIS CASE, IS THAT

IN THE ORIGINAL DECISION, FIRST

DISTRICT COURT OF APPEALS

DECISION --

>> EXPERIENCED LAWYER, AS FAR AS

CITING A CASE, YOU CAN FILE A --

>> YES.

I WAS JUST TRYING TO RESPOND

TO --

>> YOU CAN FILE A SUPPLEMENTAL.

>> SURE.

I MEAN MAYBE YOU CAN.

WHICH IS THAT IS THE WAY TO DO

IT.

>> YOUR HONOR, I CAN'T ADD

ANYTHING MORE, ANYTHING MORE

THAN WHAT JUDGE CARROLL DOWN IN

TRIAL COURT SAID IN HIS ORDER

DISMISSING THIS CASE AND WHAT

JUDGE WOLFF IN THE FIRST

DISTRICT COURT OF APPEAL IN THAT

OPINION.

>> THANK YOU.

REBUTTAL?

>> SO.

THANK YOU VERY MUCH.

I WOULD ASK THAT THE COURT OF

COURSE AFFIRM THE DECISION OF

THE FIRST DISTRICT.

>> MAY IT PLEASE THE COURT.

MR. LEWIS WAS SENTENCED IN 1989.

IT WAS AN '88 CASE AND HE WAS

SENTENCED IN 1989.

IN THE MINUTE I HAVE LEFT JUST,

I'M REPEATING MYSELF BUT I

STILL, MY THEME TODAY IS KALWAY,

KALWAY HAS BEEN CLARIFIED TWICE

BY THIS COURT.

THIS COURT HAS THE ABILITY TO

CHANGE THAT, TO FURTHER CLARIFY

THAT AND SAY APPLIES ONLY TO

HABEAS OR TO ADOPT A RULE.

I UNDERSTAND THAT THERE'S

DIFFERENCES BETWEEN MANDAMUS AND

HABEAS AND YOU MAY WANT TO TAKE

THAT APPROACH.

I'M SIMPLY SAYING IF YOU'RE

GOING TO DO THAT, FUNDAMENTAL

FAIRNESS REQUIRES THAT DOES NOT

APPLY RETROACTIVELY TO

MR. LEWIS.

THIS COURT HAS TAKEN SIMILAR

APPROACHES LIKE IN THE

IMMIGRATION CONSEQUENCES YOU

CREATED SOME TIME OF WINDOW TO

ALLOW THOSE DEFENDANTS TO BE

ABLE TO COMPLY.

MR. LEWIS SHOULDN'T SUFFER FROM

ANY CHANGE IN CLARIFICATION

WHETHER JONES AND ALLEN DEALT

WITH --

>> UNDER YOUR THEORY THEN THEY

HAVE FOREVER.

>> LATCHES.

LATCHES AS A DEFENSE.

THIS COURT SAID THAT.

THAT'S A VALID DEFENSE.

I MEAN, AGAIN, BUT YOU COULD PUT

A DIFFERENT TIME LIMIT ON IT OR

YOU CAN SAY WE ONLY MEANT

HABEAS.

FROM THIS POINT FORWARD THE

STATUTE WOULD APPLY TO EVERYONE

ELSE.

IT SHOULDN'T APPLY TO MR. LEWIS.

THAT WOULDN'T BE FAIR.

>> UNDER THE LATCHES DEFENSE HOW

LONG WOULD THAT BE?

WOULD TWO YEARS, IF HE HAD FILED

IT TWO YEARS FROM NOW WOULD

LATCHES FROM THE TIME THAT THE

DECISION WAS MADE, WOULD LATCHES

BE APPLICABLE?

WOULD IT BE THREE YEARS, FOUR?

I MEAN THAT'S A PRETTY

NEBULOUS --

>> IT IS BUT IT'S THE DEFENSE

THAT APPLIES WHEN THERE IS NO
OTHER TIME LIMITATION AND OTHER
SIDE CAN COME FORWARD AND SAY
I'M PREJUDICED BECAUSE YOU
WAITED TOO LONG.
LEAD CASE FROM THIS COURT
SOMEONE CHALLENGED HIS
CONVICTION THROUGH BELATED A
APPELLATE PROCESS 15 YEARS AFTER
THE FACT.
COURT SAID, TOO MUCH DELAY, 15
YEARS, AND PREJUDICE TO THE
STATE.
THEY CAN'T RESPOND TO THIS LATE
DATE.
THE PAROLE COMMISSION HASN'T
ASSERTED LATCHES AS DEFENSE.
THEY CAN.
I DON'T KNOW THEY WOULD BE MARK
ZUCKERBERG FEST IF YOU RECALL,
14 MONTHS AFTER THE PAROLE
COMMISSION'S ACTION WOULDN'T BE
SIGNIFICANT DELAY AND CAN'T SHOW

THEY WOULD BE PREJUDICED BY IT.

THAT IS SOMETHING IF IT IS AN

ISSUE SHOULD BE REMANDED BACK

FOR THE TRIAL COURT TO BE

CONSIDERED.

IF YOU WANT TO CONTROL THAT

PROBLEM GOING FORWARD, YOU CAN

RECEDE FROM ALLEN AND JONES ONLY

APPLIES TO HABEAS OR ADOPT A

RULE THAT PUT AS TIME LIMITATION

ON THESE.

MR. LEWIS PROCEEDED UNDER RULE

FROM THIS COURT, THAT SAID

UNLESS WE ADOPTED RULE

SPECIFICALLY IN THE APPELLATE

RULES THERE IS NO TIME

LIMITATION FOR EXTRAORDINARY

WRITS.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.

COURT IS ADJOURNED.

>> ALL RISE.