

Michael V. COSTELLO, Plaintiff-Appellee,
v.
Louie L. WAINWRIGHT, Director, Division of Corrections, Defendant-Appellant.

No. 75-2392.

United States Court of Appeals, Fifth Circuit.

May 31, 1977.

Robert L. Shevin, Atty. Gen., Raymond W. Gearey, Atty. for Fla. Div. of Corrections, John A. Barley, Asst. Atty. Gen., Dept. of Legal Affairs, Civ. Div., William C. Sherrill, Jr., Asst. Atty. Gen., Tallahassee, Fla., for defendant-appellant.

Tobias Simon, Miami, Fla. (court-appointed not under Act), Jack Greenberg, New York City, for plaintiff-appellee.

Brian K. Landsberg, William C. Graves, U. S. Dept. of Justice, Washington, D. C., for amicus curiae.

507 Before BROWN, Chief Judge, TUTTLE, GEWIN^[*], THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER^[*], MORGAN, CLARK, RONEY, *507 GEE, TJOFLAT, HILL and FAY^[**], Circuit Judges.

PER CURIAM:

The United States Supreme Court reversed the decision of this Court reported at 539 F.2d 547 (5th Cir. 1976), and remanded the case to this Court for further proceedings consistent with its opinion in Costello v. Wainwright, ___ U.S. ___, 97 S.Ct. 1191, 51 L.Ed.2d 372 (1977). The case was taken *en banc* for consideration of the three-judge court issue. The Court does not regard the remaining issues in the case to be *en banc* worthy. Therefore, the Court reinstates the panel opinion reported at 525 F.2d 1239 (5th Cir. 1976) as the decision in this case, and orders that the mandate be issued forthwith.

[*] Judge in active service at the time of the *en banc* hearing and decision, but has since become a Senior Judge.

[**] Judge Fay was not a member of the Court of Appeals at the time of the hearing or decision *en banc*.

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