American University Criminal Law Brief

Volume 2 | Issue 1 Article 7

2006

# Supreme Court Watch: Upcoming CriminalCases On The 2006-2007 Docket

Criminal Law Brief

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*CLB Staff**

## *Wharton v. Bockting*

Docket: 05-0595
Ninth Circuit Court of Appeals

**Questions Presented:**

1. Whether the Ninth Circuit erred in holding that the Supreme Court's 2004 decision in *Crawford v. Washington*, regarding the admissibility of testimonial hearsay evidence under the 6th Amendment, applies retroactively to cases on collateral review?
2. Whether the Ninth Circuit's ruling that *Crawford* applies retroactively to cases on collateral review violates the ruling in *Teague v. Lane*?
3. Whether the Ninth Circuit erred in holding that 28 U.S.C. sec. 2254(d)(1) and (2) adopted the *Teague* exceptions for private conduct which is beyond criminal prosecution and watershed rules?

**Facts:**

In Bockting's trial for the rape of his stepdaughter, the judge declared the six year-old girl unavailable as a witness and allowed prosecutors to introduce the testimony of both the investigating detective and the child's mother regarding statements made by the child, despite the presence of hearsay evidence. Bockting had no opportunity at any point during the trial to cross-examine the six-year old complaining witness. Ultimately, the trial court convicted Bockting of rape, and sentenced him to life in prison. The Nevada courts denied his appeals and the U.S. District Court for the District of Nevada denied his petition for habeas corpus. The Ninth Circuit Court of Appeals reversed, basing its decision on *Crawford v. Washington*. The *Crawford* rule, which is aimed at upholding the Confrontation Clause, states that hearsay evidence is admissible only if (1) the witness is unavailable and (2) the defendant has had the opportunity to cross-examine the witness prior to trial. Applying *Crawford* to Bockting's case, he was entitled to a new trial; however, because *Crawford* was issued after Bockting's trial, the Ninth Circuit had to determine whether the *Crawford* rule could be applied retroactively.

In order for a rule to be applied retroactively, it must first be considered a "new rule." The Ninth Circuit Court found that *Crawford* deviated enough from the precedent in *Teague v. Lane*, which previously governed hearsay evidence, to consider it a "new rule." Second, the court determined that the new rule fell into one of two categories of exceptions to non-retroactivity—"a bedrock rule of criminal procedure"—making it retroactive. The Ninth Circuit Court subsequently determined that the Nevada Supreme Court, by failing to apply *Crawford* and dismissing Bockting's habeas claim, violated the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The Ninth Circuit Court's opinion is contrary to other federal appeals courts that have concluded that *Crawford* is not retroactive.

## *Burton v. Waddington*

Docket: 05-9222
Ninth Circuit Court of Appeals

**Questions Presented:**

1. Is the holding in *Blakely v. Washington* a new rule or was it dictated by *Apprendi v. New Jersey*?
2. If *Blakely* is a new rule, does its requirement that facts resulting in an enhanced statutory maximum be proved beyond a reasonable doubt apply retroactively?

**Facts:**

Lonnie Lee Burton was convicted of raping a 15-year old boy in 1991, and sentenced to almost 47 years in prison for rape, robbery, and burglary. Burton's sentence was approximately 21 years longer than the sentencing guidelines suggested and was to run consecutively instead of concurrently. Burton claimed that the judge should not have been allowed the discretion to increase his sentence. A decade after Burton's conviction, the U.S. Supreme court ruled in *Blakely v. Washington* that any factors increasing a sentence beyond a determined sentencing guideline must be found by jury beyond a reasonable doubt, effectively limiting judicial discretion on sentencing. Burton filed a habeas corpus petition, claiming that *Blakely* should be applied to his case. Burton also argued that his sentence violated *Apprendi v. New Jersey* which held that factors increasing the sentence beyond the statutory maximum must be proved beyond a reasonable doubt to a jury.

The Ninth Circuit Court of Appeals held that Blakely is a new rule that cannot be applied retroactively. The Court also held that, although Apprendi did apply to this case, Burton's sentence did not violate Apprendi because the sentence imposed did not exceed the statutory maximum—life imprisonment.

## *Ornoski v. Belmontes*

Docket No. 05-0493
Ninth Circuit Court of Appeals

**Questions Presented:**

1. Does *Boyde v. California* confirm the constitutional sufficiency of California's "unadorned factor (k)" instruction when a defendant presents mitigating evidence of his background and character which relates to, or has a bearing on, his future prospects as a life prisoner?
2. Does the Ninth Circuit's holding, that California's "unadorned factor (k)" instruction is constitutionally inadequate to inform jurors they may consider "forward-looking" mitigation evidence constitute a "new rule" under *Teague v. Lane*?

**Facts:**

Belmontes was charged with first-degree murder, and subsequently convicted by a jury. During the trial's penalty phase, prosecutors brought up his violent past, including prior criminal charges. Defense lawyers introduced witnesses who told jurors of Belmontes' impoverished and abusive life, and that he adjusted to prison life and embraced Christianity during a prior incarceration. During jury instructions, the trial court

judge told jurors to consider several factors in deciding whether or not Belmontes would receive life imprisonment or the death penalty including, his prior convictions, age, and "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." The last instruction is known as the "unadorned factor (k)." Jurors sentenced Belmontes to death.

In *Boyde*, the Court upheld factor (k) and rules that it didn't prevent jurors from taking into account a defendant's pre-crime background and behavior in determining death sentences. The Ninth Circuit Court of Appeals overturned Belmontes death sentence and stated that the jury instructions given in the trial court confused jurors by leading them to consider his violent past and crimes instead of his probable future as a model prisoner. Two years later, in *Brown v. Payton*, the Supreme Court again upheld "factor (k)" ruling that it did not preclude jurors from taking into account a defendant's post-crime behavior. The Court vacated the 9th Circuit's judgment and ordered it to reconsider the case in light of the *Payton* decision. The Ninth Circuit reaffirmed its decision, based on the "factor (k)" instruction. The Ninth Circuit also ruled that *Payton* did not apply because Belmontes' federal appeals predated the Antiterrorism and Effective Death Penalty Act of 1996, which curtails the ability of federal courts to hear death penalty appeals stemming from state courts.

## *Lawrence v. Florida*

Docket No. 05-8820
Eleventh Circuit Court of Appeals

**Questions Presented:**

1. Whether the one-year statute of limitations period of the Antiterrorism and Effective Death Penalty Act denies habeas relief?

2. Does the confusion around the statute of limitations–as evidenced by the split in the circuits–constitute an "extraordinary circumstance," entitling a defendant to equitable tolling during the time when his claim is being considered by the U.S. Supreme Court on certiorari?

**Facts:**

Congress passed the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) after the Oklahoma City bombing to fund anti-terrorism efforts and to limit the appeals process open to death-row inmates. AEDPA bars federal courts from considering any petition for habeas corpus unless the state court has "unreasonably" interpreted some portion of the constitution in finding the prisoner guilty. The Act has a one-year statute of limitations for habeas appeals in federal court. Lawrence was convicted of first-degree murder and the jury recommended the death penalty. The sentence was affirmed by the Florida Supreme Court. After unsuccessfully appealing his sentence twice, Lawrence sought habeas relief in federal court. Lawyers for the state argued that his claim should be dismissed because he had already exceeded the time limit on both his original and amended petition based on AEDPA. The district court held that Lawrence's petition was invalidated by exceeding the allotted time, but he was issued a certificate of appealability. Lawrence appealed to the Eleventh Circuit.

The Eleventh Circuit stated that the district court was wrong to grant Lawrence a certificate of appealability, but acknowledged a disparity among the federal circuits in how the time limit for habeas appeals is applied.

## *Carey v. Musladin*

Docket Number: 05-0785
Ninth Circuit Court of Appeals

**Question Presented:**

1. Did the appearance of the deceased's family in court with large photographic buttons of the deceased violate the constitutional rights of the defendant in a murder trial in which the defendant claimed self-defense?

**Facts:**

Matthew Musladin shot and killed one of two men who approached him during the course of his argument with his estranged wife. The two men lived with the woman and approached Musladin carrying a gun and a machete, respectively. The family members of Tom Studer, the man killed by Musladin, attended the trial wearing buttons with his image. Musladin was convicted and his conviction was upheld in federal district court. It was overturned in the Ninth Circuit Court of Appeals, and the state appealed. Musladin relied on earlier rulings holding that spectators for a trial wearing buttons proclaiming "women against rape" were prejudicial to a jury as they assumed the defendant's guilt, as well as cases that held that requiring that a prisoner appeared shackled and in prison garb could also prejudice the outcome of a trial.

## *Cunningham v. California*

Docket Number 05-6551
California Court of Appeals, First Appellate District

**Question Presented:**

1. Whether a judge is allowed to consider facts not determined by the jury or admitted by the defendant, as allowed by the California Determinate Sentencing Law, or whether this law is unconstitutional?

**Facts:**

When sentencing John Cunningham for a conviction of child sexual abuse, the judge made an upward departure from the sentencing guidelines based on facts that were not found by the jury to be true beyond a reasonable doubt. Under California law, these aggravating factors were allowed to contribute to the judge's sentencing determination. The defendant challenged his sentence under the 6th and 14th Amendments, alleging that the California statute violated his right to a jury trial and his right to due process of law. The state court of appeals upheld the sentence, and the defendant appealed, citing the U.S. Supreme Court decision in *Blakely v. Washington*, 542 U.S. 296, 301 (2004), which held that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt."

** The general staff and members of the Executive Board contributed to the compilation of material presented in this section. Extremely helpful to this compilation was Northwestern's Medill School of Journalism's U.S. Supreme Court News section, "On The Docket," which can be found at http://docket.medill.northwestern.edu.*