

2007

Supreme Court Watch: Recent Decisions and Upcoming Criminal Cases for the 2007-2008 Docket

Jedidiah Sorokin-Altmann
American University Washington College of Law

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/clb>



Part of the [Criminal Law Commons](#)

Recommended Citation

Sorokin-Altmann, Jedidiah. "Supreme Court Watch: Recent Decisions and Upcoming Criminal Cases for the 2007-2008 Docket." *Criminal Law Brief* 3, no. 1 (2007): 49-53.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University Criminal Law Brief* by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

SUPREME COURT WATCH: RECENT DECISIONS AND UPCOMING CRIMINAL CASES FOR THE 2007-2008 DOCKET

Jedidiah Sorokin-Altman*

Lawrence v. Florida

127 S. Ct. 1079

Decided February 20, 2007

Questions Presented:

1. Does the one-year statute of limitations period of the Antiterrorism and Effective Death Penalty Act deny habeas relief?
2. Does the confusion around the statute of limitations, as evidenced by a circuit split, constitute an “extraordinary circumstance” that would entitle defendants to equitable tolling during the time when their claim is considered by the U.S. Supreme Court on certiorari?

Facts:

The Antiterrorism and Effective Death Penalty Act (AEDPA) limits the ability of death row inmates to apply for habeas relief. It bars federal courts from considering habeas petitions unless the state court has “unreasonably” interpreted the constitution in finding the prisoner guilty, and it carries a one-year statute of limitations on habeas appeals in federal court.

Gary Lawrence was convicted of first-degree murder in March 1995; he was given the death penalty, and the Florida Supreme Court affirmed the sentence in August 1997. The Supreme Court denied certiorari on January 20, 1998. On January 19, 1999, 364 days later, Lawrence filed an application for state postconviction relief in a Florida trial court. The court denied relief, the Florida Supreme Court affirmed the ruling on November 18, 2002, and the Supreme Court denied certiorari on March 24, 2003. While Lawrence’s petition for certiorari was pending, he filed the federal habeas application that is the subject of this case. All but one day of the limitations period lapsed during the 364 days between when Lawrence’s conviction became final and when he filed for state postconviction relief. After the Florida Supreme Court denied him postconviction relief, Lawrence waited another 113 days to file his federal habeas application, well beyond the one day he had remaining. Hence, his habeas application can be considered timely only if the limitations period was tolled during the Supreme Court’s consideration of his petition for certiorari.

Decision:

In a 5-4 ruling, with Justice Clarence Thomas writing the majority decision, the Supreme Court held that AEDPA does not toll the one year limitations period while the Court considers a certiorari petition. The majority opinion states “[r]ead naturally, the text of the statute must mean that the statute of limitations is tolled only while state courts review the application...[A] state postconviction application remains pending until the application has achieved final resolution through the State’s postconviction procedures. This Court is not part of a State’s postconviction procedures.” (internal quotations omitted). To

exhaust state remedies, petition for certiorari is not required. AEDPA is designed to “encourage litigants [to] first exhaust all state remedies and then to file their federal habeas petitions as soon as possible.”

The majority opinion held that “Lawrence ha[d] fallen far short of showing [the] ‘extraordinary circumstances’ necessary to support equitable tolling.” The Court held that the Circuits that addressed the AEDPA limitations issue at the time Lawrence’s limitations period expired all agreed that the period was not tolled by certiorari petitions. The circuit split developed later. The Court also rejected Lawrence’s argument that his attorney’s mistake in miscalculating the limit entitled him to equitable tolling because such an argument would lead to equitable toll limitations periods for every person whose attorney missed a deadline. The Court also rejected Lawrence’s claim based on mental incapacity and on the State appointing his counsel, holding that Lawrence failed to make a factual showing of mental incapacity and that a State’s assisting prisoners in postconviction proceedings does not render them responsible for a prisoner’s delay.

Justice Ginsburg, joined by Justice Stevens, Justice Souter, and Justice Bryer, dissented.

Whorton v. Bockting

127 S. Ct. 1173

Decided February 28, 2007

Question Presented:

Did *Crawford* announce a rule of criminal procedure that falls within the Teague exception for watershed rules?

Facts:

Marvin Bockting was accused of sexually assaulting his six-year-old step-daughter. At trial, the court determined that the child was too distressed to be sworn in, and the court proceeded under a Nevada statute that allowed the out-of court statements, made by a child under ten years of age describing acts of sexual assault or physical abuse, to be admitted if the court finds the child is unavailable or unable to testify and that “the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness.” Over defense counsel’s objection, a detective and the victim’s mother were permitted to recount the victim’s statements at trial.

Bockting appealed to the Nevada Supreme Court, which issued a final decision in 1993, holding that based on *Ohio v. Roberts*, the statement was constitutionally admissible because the circumstances surrounding the making of the statements provided “particularized guarantees of trustworthiness.” Bockting filed a petition for a writ of habeas corpus with the District Court, which denied his petition because the Nevada Supreme Court’s decision “was not ‘contrary to’ and did not ‘involve an unreasonable application of, clearly establish Federal law, as determined by the Supreme Court of the United

States.” Bockting appealed to the Ninth Circuit Court of Appeals. While this action was pending before the Ninth Circuit, the Supreme Court issued its opinion in *Crawford*, overruling *Roberts*, and holding that “testimonial statements of witnesses absent from trial are admissible only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.” (internal citations omitted).

On appeal from the denial of his habeas petition, Bockting contended that had the rule of *Crawford* been applied to his case, the victim’s statements would not have come into evidence and he would not have been convicted. He argued that *Crawford* should have been applied to his case under one of two theories: first, that *Crawford* was an old rule in existence at the time of his conviction, or second, that *Crawford* was a “watershed” rule that implicated the fundamental fairness and accuracy of the criminal proceedings.

A divided panel of the Ninth Circuit reversed the District Court, and held that *Crawford* does apply retroactively to cases on collateral review.

Decision:

Justice Samuel Alito wrote the opinion for a unanimous Court, holding that *Crawford* does not apply retroactively. The Court stated that *Crawford* did not merely apply an old rule; *Crawford* explicitly overturned the old rule of *Roberts*. *Crawford* and *Roberts* are directly contradictory, and hence *Crawford* is undoubtedly a new rule. As a new rule that is procedural and not substantive, *Crawford* is not applied retroactively unless it is a “watershed rule of criminal procedure.” Watershed rules are those that (1) are necessary to prevent “an impermissibly large risk of an inaccurate conviction” and (2) “alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding.” The Court held that the *Crawford* rule does not meet the first requirement relating to an impermissibly large risk of an inaccurate conviction. The Court compared the *Crawford* rule to that of *Gideon*, the only case that has qualified under this exception thus far, and held that the *Crawford* rule is “much more limited in scope, and the relationship of that rule to the accuracy of the factfinding process is far less direct and profound.” The Court stated that the *Crawford* rule was aimed at instituting the original understanding of the meaning of the Confrontation Clause and not necessarily improving the accuracy of factfinding in criminal trials. The Court also noted that the *Crawford* rule did not alter the understanding of bedrock procedural elements.

James v. United States

127 S. Ct. 1586
Decided April 18, 2007

Question Presented:

Can a conviction for attempted burglary qualify as a “violent felony” under the Armed Career Criminal Act?

Facts (written by Andrew Myerberg):

The Armed Career Criminal Act (ACCA) imposes a mandatory fifteen (15) year sentence on defendants who are arrested for possession of a firearm and have been previously

convicted of three “serious drug crimes” or “violent felonies.” In 2003, Alphonso James, Jr. was arrested and tried in federal district court in Florida for possession of a firearm. On his record, James had a previous conviction for attempted burglary and two previous convictions for drug trafficking. The government moved for enhanced sentencing because the convictions for trafficking and attempted burglary fell under the scope of the ACCA as “serious drug crimes” and “violent felonies.” James objected, arguing that attempted burglary was not a “violent felony” and that one of his drug trafficking convictions could not be classified as a “serious drug crime.” The district court ruled in favor of James, holding that because the challenged drug trafficking conviction was not a “serious drug crime,” James only had two convictions for the purposes of the ACCA and, thus, the government could not move for enhanced sentencing under the statute.

The Eleventh Circuit Court of Appeals overturned the judgment of the district court. The Eleventh Circuit held that the challenged drug trafficking conviction was, in fact, a “serious drug crime.” Further, the court agreed with the district court that attempted burglary was a “violent crime” under the ACCA, resulting in a circuit split between the Eleventh and the Fifth and Ninth Circuits. Consequently, James was deemed to qualify under the statute for enhanced punishment.

Decision:

Justice Samuel Alito wrote the majority opinion in this 5-4 ruling, affirming the Eleventh Circuit’s ruling that a criminal conviction for attempted burglary does constitute a “violent felony.” The majority rejected James’s argument that the statute’s text and structure excluded attempt offenses from the residual provision’s scope. They also rejected his reliance on the legislative history of the 1984 provision, holding that the 1986 amendments broadened the scope of the residual clause. The majority held that the risk posed by attempted burglary was no different than that of a completed burglary – the harm comes from the possibility that an innocent person might appear while the crime is in progress. Given Florida’s law, the Court held that this is sufficient to constitute a “violence felony” under the residual provision. Justices Scalia, Stevens, Ginsburg, and Thomas dissented.

Scott v. Harris

127 S. Ct. 1769
Decided April 30, 2007

Question Presented:

Does a police officer who ends a high speed chase by crashing his car into that of the suspect violate the Fourth Amendment protection against unreasonable seizures? Is it “clearly established” under federal law that an officer using deadly force in a high speed chase constitutes a violation of the Fourth Amendment?

Facts (written by Andrew Myerberg):

During a high speed chase, Officer Timothy Scott rammed his vehicle into that of a nineteen-year-old fleeing speeder, Victor Harris. The impact caused Harris’ car to crash. As a result of the crash, Harris was paralyzed from the neck

down. Harris filed suit in the District Court for the Northern District of Georgia, alleging that Scott violated his Fourth Amendment rights against unreasonable search and seizure by using excessive force. The District Court ruled for Harris, holding that his Fourth Amendment rights were violated.

The Eleventh Circuit Court of Appeals affirmed the judgment against Officer Scott, citing *Tennessee v. Garner*, 471 U.S.1 (1985), for the proposition that deadly force could not be used to perform a seizure unless the suspect's actions presented a "significant threat of death" to the public. The court held that speeding and traffic violations on mostly empty roads did not meet that threshold.

Decision:

Justice Antonin Scalia wrote the majority opinion for this 8-1 decision. The court reversed the Eleventh Circuit, and held that "[a] police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." Instead of relying on the facts as adopted by the Court of Appeals, Scalia's majority opinion relies on the fifteen minute videotape of the chase, available on the Supreme Court's website and in the Clerk of Court's case file. The majority opinion notes that the respondent's vehicle was "shockingly fast" and "[f]ar from being the cautious and controlled driver the lower court depict[ed]...the video more closely resembles a Hollywood-style car chase of the most frightening sort..."

Uttecht v. Brown

127 S. Ct. 2218
Decided June 4, 2007

Questions Presented:

Did the Ninth Circuit err by not deferring to the trial judge's observations regarding a prospective juror's views on the death penalty? Did the Ninth Circuit err by reversing the trial court on the grounds the decision was contrary to established federal law, in lieu of applying the statutory presumption of correctness?

Facts:

Cal Coburn Brown robbed, raped, tortured, and murdered one woman in Washington State, and two days later, robbed, raped, tortured, and attempted to murder a second woman in California. Once apprehended, he confessed, and pled guilty to the California crime. Washington sought the death penalty and brought Brown to trial. Several potential jurors were dismissed for cause, the ones of concern in this case were referred to in the Court's decision as Jurors X, Y, and Z. Jurors X and Y were excused over the defense's objections. Juror Z said he was capable of following the law and his oath as a juror, but the State argued that the voir dire revealed that he misunderstood his responsibilities as a juror and possessed "an attitude toward capital punishment that could have prevented him from returning a death sentence under the facts of this case," despite having no general opposition to the death penalty. The court dismissed Juror Z. Based on the jury's verdicts in the guilt and sentencing phases of the trial, the trial court sentenced Brown

to death, and his conviction and sentence were affirmed by the Supreme Court of the State of Washington.

Brown filed a habeas petition in federal district court, which denied the petition. The Ninth Circuit reversed, holding that the state trial court violated Brown's Sixth and Fourteenth Amendment rights by excusing Juror Z, despite Brown's failure to object at the time.

Decision:

Justice Anthony Kennedy delivered the court's 5-4 decision, reversing the Ninth Circuit's ruling. The Court held that the Ninth Circuit was wrong when it claimed the Washington Supreme Court applied the wrong standard of review. The trial court explicitly found that Jurors X, Y, and Z were substantially impaired or unable to follow the court's instructions and abide by their oaths as jurors, and the Supreme Court held that the Ninth Circuit was mistaken in overlooking or disregarding this finding. Justice Kennedy's majority opinion stated, "we conclude the trial court acted well within its discretion in granting the State's motion to excuse Juror Z." Justice Stevens, Souter, Ginsburg, and Breyer dissented.

Bowles v. Russell

127 S. Ct. 2360
Decided June 14, 2007

Questions Presented:

Are the time limits for filing a notice of appeal jurisdictional in nature? If so, can a defendant maintain an appeal under the extraordinary circumstances doctrine where the trial judge miscalculated the deadlines as required by Fed. Rule App. Proc. 4(a)(6) and Section 2107(c), and gave the defendant seventeen days instead of fourteen in which to file a notice of appeal?

Facts:

In 1999, Keith Bowles was convicted of murder for his involvement in a beating death. He was sentenced to fifteen years to life. He unsuccessfully challenged his conviction and sentence on direct appeal. On September 5, 2002, he filed a federal habeas petition. On September 9, 2003, the District Court denied Bowles's petition. After the entry of final judgment, Bowles had thirty days to file a notice of appeal under Fed. Rule App. Proc. 4(a)(1)(A) and 28 U.S.C. Section 2107(a), and he failed to do so. On December 12, 2003, Bowles moved to reopen the period in which he could file his notice of appeal pursuant to Rule 4(a)(6), which allows district court to extend the filing deadline for fourteen days from the day the court grants the order provided that certain conditions are met. On February 10, 2004, the District Court granted Bowles' motion, but rather than extending the time period by fourteen days as the statutes allow, the District Court gave Bowles seventeen days, until February 27, 2004, to file his notice of appeal. Brown filed his notice on February 16, within the seventeen day period allowed by the District Court, but after the fourteen day period allowed by Rule 4(a)(6) and Section 2107(c).

The Ninth Circuit held that Bowles's notice of appeal was untimely and that it lacked jurisdiction to hear his case.

Decision:

In a 5-4 majority opinion penned by Clarence Thomas, the Supreme Court affirmed the Ninth's Circuit's decision. Thomas's analysis began by noting that “[t]his Court has long held that the taking of an appeal within the prescribed time is ‘mandatory and jurisdictional.’” He distinguished statutory time limits from procedural rules, and also distinguished court-promulgated rules from limits enacted by Congress. Within the constitutional bounds, Congress has the power to determine what cases the federal courts have jurisdiction to consider, and thus it can also determine “when, and under what conditions, federal courts can hear them.” In Bowles's case, the time limit was specifically limited by Congress in Section 2107(c), and thus the Ninth Circuit was correct in ruling that his appeal was untimely and it lacked jurisdiction to hear his case.

The Court held that Bowles's untimely filing could not be excused by the “unique circumstances” doctrine. That doctrine allowed jurisdictional rules to be waived in special circumstances. The Court held that the unique circumstances exception had not been used in forty years, it saw no need to resurrect it, and the Court explicitly overruled two precedents “to the extent they purport to authorize an exception to a jurisdictional rule.”

Brendlin v. California

127 S. Ct. 2400

Decided June 18, 2007

Question Presented:

Is a passenger in a vehicle subject to a traffic stop “detained” for the purposes of the Fourth Amendment, thus allowing the passenger to contest the legality of the traffic stop?

Facts:

On November 27, 2001, police stopped a Buick to verify that a temporary operating permit that was displayed matched the vehicle, despite having no articulable suspicion. One of the officers saw a passenger in the front seat, Bruce Brendlin, who the officer recognized as one of the “Brendlin brothers.” The officer remembered that one of the two brothers dropped out of parole supervision, and so he asked for the passenger to identify himself, called for backup, and verified that Brendlin was a parole violator with an outstanding no-bail warrant for his arrest. When other officers arrived, Brendlin was ordered out of the car at gunpoint and arrested. He was searched incident to arrest, and they found an orange syringe cap on his person, and in the car, officers found tubing, a scale, and other things used to produce methamphetamine. Brendlin was charged with possession and manufacture of methamphetamine, and he moved to suppress the evidence obtained in the searches of his person and the car as fruits of unreasonable searches, arguing that the police lacked probable cause or reasonable suspicion to make the traffic stop. He asserted that the traffic stop was an unlawful seizure of his person. The trial court denied his suppression motion, finding that the stop was lawful and Brendlin was not seized until he was ordered out of the car and formally arrested. He pled guilty, subject to appeal on the suppression issue.

The California Court of Appeal reversed the denial of

Brendlin's suppression motion, holding that he was seized by the traffic stop, which they held was unlawful. The Supreme Court of California reversed the Court of Appeals, holding that although the State conceded the officers had no reasonable basis to initiate the vehicle stop, suppression was unwarranted because a passenger is not seized as a constitutional matter unless there are additional circumstances that would indicate to a reasonable person that he or she was the subject of the police officer's investigation or show of authority. The court stated that once a car was pulled over, the reasonable passenger would feel free to depart.

Decision:

Justice David Souter wrote the opinion for a unanimous court, reversing the Supreme Court of California and holding that a passenger is seized when the car in which he is riding is subjected to a vehicle stop. The Court noted that its precedents clearly held that a traffic stop entails a seizure of the driver even where the purpose of the stop is limited, and the resulting detention is quite brief. The Court also noted that in *Prouse* and *Whren*, it found no difference between driver and passenger that would affect the Fourth Amendment analysis. Looking at the *Bostick* question as to whether a reasonable person would feel free to “terminate the encounter between the police and himself” when a passenger in a vehicle stopped by the police, the Court held that any reasonable passenger in such circumstances would feel the police exercised “control to the point that no one in the car was free to depart without police permission.” (internal quotations omitted). A traffic stop curtails the travel of a passenger as much as it does a driver and just as a driver is seized when a vehicle is stopped, so are any passengers.

QUESTIONS PRESENTED IN UPCOMING CASES GRANTED CERTIORARI

Watson v. United States

Docket: 06-571

Fifth Circuit Court of Appeals

Question presented:

Where a defendant receives a gun in exchange for drugs, has he “used” the gun under the terms of federal drug laws?

United States v. Williams

Docket: 06-0695

Eleventh Circuit Court of Appeals

Question presented:

Does the First Amendment render the PROTECT Act unconstitutional where the Act prohibits pandering material in a manner reflecting a belief that the material is child pornography or is intended to cause another to believe that the material is child pornography, and where the Act includes both images of real children and images of realistic virtual children in its definition of child pornography?

United States v. Santos, Efrain, and Diaz

Docket: 06-1005
Seventh Circuit Court of Appeals

Question presented:

Under 19 U.S.C. Section 1956(a)(1), the federal money laundering statute, which makes it a crime to engage in a financial transaction using the proceeds from certain illegal activities with the intent of promoting these activities or concealing the proceeds, are proceeds the gross receipts from the illegal activities or only the profits?

Snyder v. Louisiana

Docket: 06-10119
Louisiana Supreme Court

Questions Presented:

Did a prosecutor's reference to the O.J. Simpson murder trial prejudice an all-white jury against a black defendant who was eventually sentenced to death? Did the lower court ignore the import of *Miller-El* by failing to consider probative evidence of discriminatory intent, including the prosecutor's repeat references to the Simpson trial, the prosecutor's use of challenges to purge all African-Americans from the jury, the disparate questioning of white and black prospective jurors, and the documented pattern of the prosecutor's office diluting minority presence in petit juries? Did the lower court err in holding that failure to raise a *Batson* objection can never result in prejudice under *Strickland v. Washington*?

Virginia v. Moore

Docket: 06-1082
Supreme Court of Virginia

Question Presented:

Does the Fourth Amendment require suppressing evidence obtained incident to an arrest based upon probable cause, where the arrest violated a provision of state law?
The Oyez Project, *Virginia v. Moore*, (No. 06-1082), available at http://www.oyez.org/cases/2000-2009/2007/2007_06_1082/ (last visited Oct. 31, 2007).

Begay v. United States

Docket: 06-11543
Tenth Circuit Court of Appeals

Question Presented:

Is felony driving a "violent felony" for the purposes of the Armed Career Criminal Act?
The Oyez Project, *Begay v. United States*, (No. 06-11543), available at http://www.oyez.org/cases/2000-2009/2007/2007_06_11543/ (last visited Oct. 31, 2007).

Kimbrough v. United States

Docket: 06-6330
Fourth Circuit Court of Appeals

Questions Presented:

When imposing a sentence for distributing crack cocaine, may a District Court judge consider the impact of the 100-to-1 crack/powder ratio and the Sentencing Commission's view that the ratio leads to exaggerated sentences for crimes involving crack cocaine? May a District Court judge, in an effort to avoid a sentencing disparity, impose a sentence that is below the range recommended by the 100-to-1 crack/powder ratio in the Guidelines?

The Oyez Project, *Kimbrough v. United States*, (No. 06-6330), available at http://www.oyez.org/cases/2000-2009/2007/2007_06_6330/ (last visited Oct. 31, 2007)

Logan v. United States

Docket: 06-6911
Seventh Circuit Court of Appeals

Question Presented:

Are convictions that do not result in loss of civil rights excluded from the three convictions necessary to activate the Armed Career Criminal Act's sentence enhancement?
The Oyez Project, *Logan v. United States*, (No. 06-6911), available at http://www.oyez.org/cases/2000-2009/2007/2007_06_6911/ (last visited Oct. 31, 2007).

Gall v. United States

Docket: 06-7949
Eighth Circuit Court of Appeals

Question Presented:

Must district courts justify below-guideline sentences with a finding of extraordinary circumstances? May Courts of Appeals presume that sentences falling outside the federal sentencing guideline ranges are unreasonable?

Baze v. Rees

Docket: 07-6439
Supreme Court of Kentucky

Question Presented:

Do lethal injections in capital cases create an unnecessary risk of pain and suffering in violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment's prohibition against cruel and unusual punishment?

* *Jedidiah Sorokin-Altmann is a third-year law student at American University Washington College of Law in Washington, D.C. He graduated from Dartmouth College in 2001. Extremely helpful to this compilation was Northwestern's Medill School of Journalism's US Supreme Court News Section, "On the Docket," which can be found at <http://docket.medill.northwestern.edu> as well as the Supreme Court Summaries prepared by Andrew Myerberg in the Spring 2007 issue of the Criminal Law Brief.*