2001-2002 U.S. SUPREME COURT TERM: CASES AFFECTING CRIMINAL LAW & PROCEDURE

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Sixth Amendment Right to Counsel for Misdemeanors

Court Extends Sixth Amendment Right to Counsel to a Misdemeanor When the Punishment Includes a Suspended Sentence

Alabama v. Shelton, 122 S. Ct. 1764, 152 L. Ed. 2d 888, 71 Crim. L. Rep. 226 (20 May 2002). Before discussing the ruling in this case, the following prior Court rulings are summarized: A defendant has a Sixth Amendment right to counsel for a misdemeanor trial in which actual imprisonment is imposed, but not when a fine is the only punishment. *See* Argersinger v. Hamlin, 407 U.S. 25 (1972); Scott v. Illinois, 440 U.S. 367 (1979). A defendant has a Sixth Amendment right to counsel for all felony trials, regardless of the punishment imposed on conviction. See the discussion in *Alabama v. Shelton* of Gideon v. Wainwright, 372 U.S. 335 (1963), and later cases.

The Court ruled in *Alabama v. Shelton* that a defendant has a Sixth Amendment right to counsel at a misdemeanor trial in which the sentence on conviction includes a suspended sentence. Thus, a judge may not impose a suspended sentence after a trial without counsel for a misdemeanor unless (1) an indigent defendant has waived his or her right to the assistance of counsel and the right to appointed counsel, or (2) a non-indigent defendant has waived the right to the assistance of counsel.

Effect of ruling. For all misdemeanor convictions, including traffic misdemeanors such as speeding over 15 miles over the speed limit, a judge may not constitutionally impose a suspended sentence unless the defendant had counsel or properly waived counsel. A judge does not violate a defendant's Sixth Amendment right to counsel if the judge orders a fine, costs, or restitution without counsel or waiver of counsel—as long as a suspended sentence is not imposed.

Of course, a defendant who currently has a suspended sentence obtained in violation of *Alabama v. Shelton* may not have that suspended sentence revoked and activated. *See also* State v. Neeley, 307 N.C. 247 (1982).

This ruling may also affect: (1) prosecuting other offenses, such as habitual misdemeanor assault and habitual impaired driving, in which prior misdemeanor convictions are offered to prove an element of these offenses, (2) impeaching a defendant at trial, or (3) sentencing the defendant. If a conviction was obtained in violation of *Alabama v. Shelton*, then it will be inadmissible at trial or sentencing. A defendant must prove the invalidity of the conviction under the procedures set out in G.S. 15A-980. (Whether a conviction may be "saved" by excising the suspended sentence—as was done by the Alabama Supreme Court in *Alabama v. Shelton* on direct appeal of the conviction—is an issue for future litigation.)

Issues not decided in *Alabama v. Shelton*. The Court did not decide whether a defendant's Sixth Amendment right to counsel would be violated if a defendant was held in contempt of court and an active sentence imposed for failing to pay a fine, costs, or restitution for a misdemeanor conviction in which the defendant did not have counsel or waive counsel. The

Court also did not decide whether its ruling is retroactive to invalidate prior misdemeanor convictions obtained in violation of the ruling.

Arrest, Search and Seizure, and Confessions

(1) Law Enforcement Officers Did Not Seize Bus Passengers During Bus Boarding Procedure
(2) Fourth Amendment Does Not Require Officers to Advise Bus Passengers of Their Right Not To Cooperate and To Refuse to Consent to Searches
(3) Bus Passengers Voluntarily Consented to Search of Luggage and Their Bodies

United States v. Drayton, 122 S. Ct. 2105, 153 L. Ed. 2d 242, 71 Crim. L. Rep. 348 (17 June 2002). Three law enforcement officers—dressed in plain clothes and carrying concealed weapons and visible badges—boarded a bus while it was stopped at a bus terminal. One officer knelt at the driver's seat (the bus driver was not in the bus) without blocking the aisle or obstructing the bus exit, while two officers went to the rear of the bus. One stayed there while the other officer worked his way toward the front, speaking to passenger as he went. To avoid blocking the aisle, the officer stood next to or just behind each passenger with whom he spoke. He explained that the officers were conducting a bus interdiction to deter drugs and illegal weapons from being transported on the bus. He did not inform passengers of their right to refuse to cooperate. Defendants Drayton and Brown were seated together. Brown consented to a search of a bag in the overhead luggage rack, which revealed no contraband. The officer noted that both defendants were wearing heavy jackets and baggy pants despite the warm weather. In the officer's experience, drug traffickers often use baggy clothing to conceal weapons or narcotics. The officer received consent from Brown to search his person after asking, "Do you mind if I check your person?," found hard objects similar to drug packages that he had detected on other occasions, and arrested him. The officer then received consent from Drayton after asking, "Mind if I check you?," discovered the same hard objects, and arrested him. The Court ruled: (1) the officers did not seize the defendants during this bus boarding procedure—a reasonable person would feel free to terminate the encounter with the officer; (2) the Fourth Amendment does not require officers to advise bus passengers of their right not to cooperate and to refuse to consent to searches; and (3) the defendants voluntarily consented to the search of their luggage and their bodies. See generally Florida v. Bostick, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

When Defendant's Probation Condition Authorized Warrantless Search by Probation Officer or Law Enforcement Officer, No More Than Reasonable Suspicion Was Required Under Fourth Amendment to Conduct Search [But Note G.S. 15A-1343(b1)(7)]

United States v. Knights, 122 S. Ct. 587, 151 L. Ed. 2d 497, 70 Crim. L. Rep. 220 (10 December 2001). The defendant was on probation, which included a condition that he submit to a search at any time—with or without a search, arrest warrant or reasonable cause—by any probation officer or law enforcement officer. An officer who was aware of this probation condition and had reasonable suspicion that evidence of a crime was in the defendant's apartment, searched it without a search warrant. The Court ruled that no more than reasonable suspicion was required to search the defendant's apartment and thus the officer's warrantless

search was reasonable under the Fourth Amendment. [Author's note: G.S. 15A-1343(b1)(7), a special condition of probation, requires that a probationer submit to a warrantless search by a probation officer under the circumstances set out in the statute. It does not authorize a search by a law enforcement officer.]

Court Disavows Method of Analysis of Reasonable Suspicion by Court of Appeals and Rules that Officer Had Reasonable Suspicion to Stop Vehicle for Illegal Activity

United States v. Arvizu, 122 S. Ct. 744, 151 L. Ed. 2d 740, 70 Crim. L. Rep. 311 (15 January 2002).A Border Patrol agent stopped a vehicle in Arizona near its border with Mexico to investigate illegal activity, drug and alien smuggling. The Court reviewed the detailed facts in this case and ruled that the agent had reasonable suspicion to stop the vehicle. (See the Court's discussion of the facts in its opinion.) The Court expressly disavowed the method of analysis of the Ninth Circuit Court of Appeals, which had ruled that seven of the ten factors used by the trial court in considering the legality of the stop carried little or no weight in a reasonable-suspicion analysis. The Court stated that the Ninth Circuit's approach departed sharply from the totality-of-circumstances analysis mandated by such cases as United States v. Sokolow, 490 U.S. 1, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989). The Ninth Circuit appeared to believe that each of the agent's observations that was by itself readily susceptible to an innocent explanation was entitled to no weight. The Court stated that although each of the factors alone is susceptible to innocent explanation, and some factors are more probative than others, taken together, they established reasonable suspicion to stop the vehicle.

Officers' Entry into Defendant's Home Without Arrest Warrant or Search Warrant Required Exigent Circumstances

Kirk v. Louisiana, 122 S. Ct. 2458, 153 L. Ed. 2d 599, 71 Crim. L. Rep. 2094 (24 June 2002). Officers entered the defendant's home to arrest him without an arrest warrant, search warrant, or consent to enter. A state appellate court ruled that the officers did not violate the Fourth Amendment because the officers had probable cause to arrest the defendant. The Court ruled that the state appellate court's reasoning plainly violated its ruling in Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). Exigent circumstances must exist if officers enter a home to arrest a defendant without an arrest warrant, search warrant, or consent to enter. The Court did not decide whether exigent circumstances existed in this case.

Requiring Suspicionless Drug Testing of High School Students Involved in Competitive Extracurricular Activities Does Not Violate Fourth Amendment

Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls, 122 S. Ct. 2559, 153 L. Ed. 2d 735, 71 Crim. L. Rep. 473 (27 June 2002). The Court ruled that requiring suspicionless drug testing of high school students involved in competitive extracurricular activities does not violate the Fourth Amendment.

Prison's Sexual Abuse Treatment Program and Consequences for Nonparticipation in Program Did Not Violate Prisoner's Privilege Against Compelled Self-Incrimination

McKune v. Lile, 122 S. Ct. 2017, 153 L. Ed. 2d 2017, 71 Crim. L. Rep. 307 (10 June 2002). A four-Justice plurality ruled that a prison's sexual abuse treatment program and consequences for nonparticipation in the program did not violate the prisoner's Fifth Amendment privilege against compelled self-incrimination. Inmates participating in the program were required to admit responsibility for the crime(s) for which they were convicted and admit to any other sexual crimes they had committed, without receiving any immunity from prosecution. In addition, a refusal to participate in the program resulted in the loss of specified prison privileges. A fifth Justice agreed that the prisoner's Fifth Amendment privilege was not violated, but did not agree with the plurality's reasoning.

Miscellaneous

Execution of Mentally-Retarded Person Violates Eighth Amendment

Atkins v. Virginia, 122 S. Ct. 2242, 153 L. Ed. 2d 335, 71 Crim. L. Rep. 398 (20 June 2002). The Court ruled that the execution of mentally-retarded person violates the Eighth Amendment. The Court stated that it will leave to the states the task of developing appropriate ways to enforce its ruling. [Author's note: Although the Court noted in footnote three of its opinion the definitions of mental retardation adopted by the American Association of Mental Retardation and the American Psychiatric Association, it did not adopt either one of them as a constitutional standard. For North Carolina's definition, see G.S. 15A-2005(a).]

Allowing Judge Without Jury to Find Aggravating Circumstance Necessary to Impose Death Sentence Violates Sixth Amendment Right to Jury Trial

Ring v. Arizona, 122 S. Ct. 2428, 153 L. Ed. 2d 556, 71 Crim. L. Rep. 424 (24 June 2002). Overruling Walton v. Arizona, 497 U.S. 639, 110 S. Ct. 3047, 111 L. Ed. 2d 511 (1990), the Court ruled that allowing a judge without a jury to find an aggravating circumstance necessary to impose a death sentence violates the Sixth Amendment right to a jury trial. [Author's note: This ruling has no direct impact on North Carolina's procedure, which requires a jury to find an aggravating circumstance necessary to impose a death sentence.]

Allowing Judge to Find Facts Necessary to Impose Mandatory Minimum Sentence, When That Sentence Does Not Exceed Maximum Sentence Authorized for Offense, Does Not Violate Sixth Amendment Right to Jury Trial

Harris v. United States, 122 S. Ct. 2406, 153 L. Ed. 2d 524, 71 Crim. L. Rep. 413 (24 June 2002). The Court ruled that allowing a judge to find facts necessary to impose a mandatory minimum sentence, when that sentence does not exceed the maximum sentence authorized for the offense, does not violate the Sixth Amendment right to a jury trial.

No Constitutional Requirement That Prosecutor Disclose Impeachment Information About Government's Witnesses Before Entering Plea Agreement with Defendant

United States v. Ruiz, 122 S. Ct. 2450, 153 L. Ed. 2d 586, 71 Crim. L. Rep. 436 (25 June 2002). The Court ruled that there is no constitutional requirement that a prosecutor must disclose impeachment information about the government's witnesses before entering a plea agreement with the defendant. The Court also ruled that a plea agreement requiring a defendant to waive his or her right to receive information in the prosecutor's possession concerning any affirmative defenses did not violate the constitution.

Court Overrules Prior Case and Rules That Defective Indictment in Federal Court System Does Not Deprive Federal Court of Jurisdiction Over Criminal Case

United States v. Cotton, 122 S. Ct. 1781, 152 L. Ed. 2d 860, 71 Crim. L. Rep. 223 (20 May 2002). The Court overruled Ex Parte Bain, 121 U.S. 1, 7 S. Ct. 781, 30 L. Ed. 849 (1887), and ruled that a defective indictment in the federal court system does not deprive a federal court of jurisdiction over a criminal case. [Author's note: This ruling only applies to criminal cases in the federal court system and does not affect North Carolina appellate court rulings (see, e.g., State v. Wallace, 351 N.C. 481, 528 S.E.2d 326 (2000), that an indictment invalid on its face deprives a trial court of its jurisdiction. However, North Carolina appellate courts often give weight to United States Supreme Court rulings in deciding or reconsidering similar issues.]

Defense Counsel's Decision To Not Present Mitigating Evidence and To Waive Final Argument in Capital Sentencing Hearing Was Governed by *Strickland v. Washington*, Not *United States v. Cronic*, and State Appellate Court's Ruling That Counsel Was Not Ineffective Was Neither Contrary to, Nor an Unreasonable Application of, Clearly Established Federal Law

Bell v. Cone, 122 S. Ct. 1843, 152 L. Ed. 2d 914, 71 Crim. L. Rep. 255 (28 May 2002). The defendant's counsel decided to not present mitigating evidence and to waive final argument in a capital sentencing hearing. After reviewing the facts in this case, the Court ruled that the defendant's assertion that his counsel was ineffective was governed by Strickland v. Washington, 466 U.S. 668 (1984) (two-part test for determining ineffective assistance of counsel), not United States v. Cronic, 466 U.S. 648 (1984) (certain actions of defense counsel are automatically prejudicial without considering effect on trial or sentencing hearing), and the state appellate court's ruling that counsel was not ineffective was neither contrary to, nor an unreasonable application of, clearly established federal law.

To Demonstrate Sixth Amendment Violation When Trial Court Failed to Inquire Into Potential Conflict of Interest About Which It Knew or Reasonably Should Have Known, Defendant Must Establish That Conflict of Interest Adversely Affected Counsel's Performance

Mickens v. Taylor, 122 S. Ct. 1237, 152 L. Ed. 2d 291, 71 Crim. L. Rep. 20 (27 March 2002). The Court ruled that to demonstrate a Sixth Amendment violation when a trial court failed to inquire into a potential conflict of interest about which it knew or reasonably should have known,

a defendant must establish that the conflict of interest adversely affected the counsel's performance.

Due Process Clause Does Not Permit Civil Commitment of Dangerous Sexual Offender Without Any Lack-of-Control Determination

Kansas v. Crane, 122 S. Ct. 867, 151 L. Ed. 2d 856, 70 Crim. L. Rep. 340 (22 January 2002). The Court ruled that the Due Process Clause does not permit a civil commitment of a dangerous sexual offender without any lack-of-control determination. There must be proof of serious difficulty in controlling one's behavior.

Missouri Rule on Requirements for Motion for Continuance Did Not Constitute State Ground Adequate to Bar Federal Habeas Corpus Review of Defendant's Claim That He Was Deprived of Due Process by Denial of Continuance

Lee v. Kemna, 122 S. Ct. 877, 151 L. Ed. 2d 820, 70 Crim. L. Rep. 345 (22 January 2002). The Court ruled that a Missouri rule concerning the procedural requirements for a motion for a continuance did not constitute a state ground adequate to bar federal habeas corpus review of the defendant's claim that he was deprived of due process by the denial of a continuance, based on the facts in this case.

Defendant's Future Dangerousness Was Placed in Issue During Capital Sentencing Hearing to Require Jury Instruction on Parole Eligibility under South Carolina Law

Kelly v. South Carolina, 122 S. Ct. 726, 151 L. Ed. 2d 670, 70 Crim. L. Rep. 305 (9 January 2002). The Court ruled that the defendant's future dangerousness was placed in issue during a capital sentencing hearing to require a jury instruction on parole eligibility under South Carolina law. *See* Simmons v. South Carolina, 512 U.S. 154, 114 S. Ct. 2187, 129 L. Ed. 2d 133 (1994). [Author's note: This ruling has no direct impact on North Carolina law because a jury instruction on parole eligibility is required by G.S. 15A-2002. Before state law required such a jury instruction, the North Carolina Supreme Court had consistently ruled that the *Simmons* ruling did not require the instruction. *See, e.g.,* State v. Skipper, 337 N.C. 1, 446 S.E.2d 252 (1994).]