1999-2000 U.S. SUPREME COURT TERM: CASES AFFECTING CRIMINAL LAW & PROCEDURE

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Arrest, Search and Seizure, and Confession Issues

Defendant's Unprovoked Flight upon Seeing Law Enforcement Officers and His Presence in Heavy Drug-Trafficking Area Provided Reasonable Suspicion to Make Investigative Stop, Based on Facts in This Case

Illinois v. Wardlow, 120 S. Ct. 673, 145 L. Ed. 2d 570, 66 Crim. L. Rep. 306 (12 January 2000). Uniformed officers A and B were driving the last car of a four car caravan of officers who were converging on an area known for heavy drug trafficking—so they could investigate drug transactions. They anticipated encountering a large number of people in the area, including drug customers and people serving as lookouts. Officer A saw the defendant standing next to a building and holding an opaque bag. The defendant looked in the direction of the officers and fled. Officers A and B turned their car southbound, watched him as he ran through a gangway and an alley, and eventually cornered him on the street. Officer A left his car and stopped the defendant. The Court ruled that these facts—the defendant's unprovoked flight on seeing the officers and his presence in an area of heavy drug trafficking—provided reasonable suspicion to stop the defendant to investigate criminal activity.

Anonymous Phone Call Stating That Young Black Male Standing At Particular Bus Stop and Wearing Plaid Shirt Was Carrying Gun Was Insufficient to Support Reasonable Suspicion to Make Investigative Stop and Frisk

Florida v. J. L., 120 S. Ct. 1375, 146 L. Ed. 2d 254, 66 Crim. L. Rep. 594 (28 March 2000). An anonymous phone call to a police department reported that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. There was no audio recording of the call and nothing was known about the caller. Soon thereafter, officers went to the bus stop and saw three black males there. One (the defendant) of the three was wearing a plaid shirt. Officers did not see a firearm, and the defendant did not make any threatening or unusual movements. One officer stopped and frisked the defendant and seized a gun from his pocket. The Court ruled, distinguishing Alabama v. White, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990) (reasonable suspicion to make investigative stop was supported by anonymous call predicting suspect's future conduct and officers' corroboration of caller's information) and Adams v. Williams, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) (tip from known informant was sufficient to support stop and frisk for weapon), that this information was insufficient to support reasonable suspicion to make an investigative stop and frisk of the defendant. The court concluded that the tip in this case lacked the moderate indicia of reliability present in *White* and essential to the Court's ruling in that case. The tip was a bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing that he had inside information about the defendant. Responding to the state's argument that the tip was reliable because its description of the suspect's visible

attributes proved accurate, the Court stated that the reasonable suspicion at issue in this case required that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. The Court also rejected the argument that there should be a "firearm exception" to standard reasonable suspicion analysis.

The Court specifically reserved the issue whether a report of a person carrying a bomb must bear the same indicia of reliability as a report of a person carrying a firearm. The Court stated that it does not hold that public safety officials in places where the reasonable expectation of privacy is diminished, such as airports or schools, may not conduct protective searches with information that would be insufficient to justify searches elsewhere. The Court also stated that the requirement that an anonymous tip bear standard indicia of reliability to justify a stop in no way diminishes an officer's authority, in accord with Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), to conduct a protective search of a person who has already been legitimately stopped. Its ruling in this case only concerns an officer's authority to make the initial stop. The Court restated its ruling that an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams* and *Williams* does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm.

Officer's Manipulation of Opaque Canvas Bag in Overhead Storage Space on Bus Was a Search under Fourth Amendment

Bond v. United States, 120 S. Ct. 1462, 146 L. Ed. 2d 365, 67 Crim. L. Rep. 73 (17 April 2000). A Border Patrol agent boarded a commercial bus at a permanent Border Patrol checkpoint. While walking from the back of the bus to the front, he squeezed soft luggage that passengers had placed in the overhead storage space about the seats. Above the defendant's seat, he squeezed a green opaque canvas bag and noticed that it contained a "brick-like" object. The defendant admitted the bag was his and then consented to allow the agent to open it. The officer discovered a "brick" of methamphetamine. The Court ruled that the officer's squeeze of the bag was a search under the Fourth Amendment (for which the officer did not have appropriate justification). The Court stated that when bus passengers place bags in an overhead bin, they expect that other passengers or bus employees may move them for one reason or another. Thus, passengers clearly expect that their bags may be handled. However, they do not expect that others will, as a matter of course, feel a bag in an exploratory manner, as was done in this case. The Court rejected the government's argument, based on aircraft overflight cases—California v. Ciraolo, 476 U.S. 207, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986) and Florida v. Riley, 488 U.S. 445, 109 S. Ct. 693, 102 L. Ed. 2d 835 (1989)—that by exposing his bag to the public, the defendant lost a reasonable expectation of privacy that his bag would not be physically manipulated. Physically invasive inspection is simply more intrusive that purely visual inspection.

Warrantless Search of Homicide Crime Scene Violated Fourth Amendment, Based on Facts in This Case

Flippo v. West Virginia, 120 S. Ct. 7, 145 L. Ed. 2d 16, 66 Crim. L. Rep. 2050 (18 October 1999). The defendant was tried and convicted of the murder of his wife. The defendant and his wife were vacationing at a cabin in a state park. The defendant called 911 to report that he and his wife had been attacked. Officers arrived and found the defendant, who had bodily injuries,

outside the cabin. After questioning him, the officers entered the cabin and found the body of his wife, with fatal head wounds. They closed off the area, took the defendant to the hospital, and searched the exterior and environs of the cabin for footprints or signs of forced entry. When a police photographer later arrived, the officers reentered the cabin without a search warrant and processed the crime scene for over 16 hours—during this prolonged search the officers found photographs in a briefcase in the cabin that was introduced into evidence against the defendant. The trial judge upheld the warrantless search because it was a "homicide crime scene." The Court ruled that the trial judge's ruling was inconsistent with Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978), which rejected a "homicide scene exception" to the Warrant Clause of the Fourth Amendment. (The Court specifically did not decide other possible Fourth Amendment justifications, such as a consent search.)

Miranda Ruling Is Constitutionally Based and May Not Be Modified by Legislative Act

Dickerson v. United States, 120 S. Ct. 2326, 147 L. Ed. 2d 405, 67 Crim. L. Rep. 472 (26 June 2000). The Court ruled that its ruling in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) was constitutionally based and may not be modified by a legislative act (in this case, 18 U.S.C. § 3501).

Government's Use of Subpoenaed Documents at Trial Would Violate Grant of Use Immunity to Defendant for Act of Producing Them, Based on Facts in This Case

United States v. Hubbell, 120 S. Ct. 2037, 147 L. Ed. 2d 24, 67 Crim. L. Rep. 359 (5 June 2000). The government served the defendant with a grand jury subpoena requiring the defendant to produce documents. The defendant refused to produce the documents, asserting his Fifth Amendment privilege against compelled self-incrimination. The government then granted the defendant use immunity under federal law that protects the use or derivative use of the testimonial act of producing them. The government later indicted the defendant after he had produced the documents. The Court—relying on principles set out in United States v. Doe, 465 U.S. 605, 104 S. Ct. 1237, 79 L. Ed. 2d 552 (1984) and distinguishing Fisher v. United States, 425 U.S. 391, 96 S. Ct. 1569, 48 L. Ed. 2d 39 (1976)—ruled that the government's use of the subpoenaed documents at trial would violate the defendant's Fifth Amendment privilege, because the documents the government would offer against the defendant at trial derived either directly or indirectly from the testimonial aspects of the defendant's immunized act of producing the documents. In this case, the government had no prior knowledge of either the existence or the whereabouts of the documents produced by the defendant.

Miscellaneous

United States Constitution Requires That Any Fact (Other Than Fact of Prior Conviction) That Increases Punishment for Crime Beyond Statutory Maximum for That Crime Must Be Submitted to Jury and Proved Beyond Reasonable Doubt

Apprendi v. New Jersey, 120 S. Ct. 2348, 147 L. Ed. 2d 435, 67 Crim. L. Rep. 483 (26 June 2000). The defendant fired several shots into the home of a black family and later stated that he did not want the family in his neighborhood because of their race. The defendant pleaded guilty

in a New Jersey state court to second-degree possession of a firearm for an unlawful purpose. The punishment for this offense is a prison term of five to ten years. A separate statute provides for an extended term of imprisonment if the trial judge finds, by a preponderance of evidence, that the defendant committed the crime with a purpose to intimidate a person or group of people because of race, color, gender, etc. The extended term authorized in this case was imprisonment between ten and twenty years. The judge made the appropriate finding, over the defendant's objection that the finding must be proven before a jury beyond a reasonable doubt, and sentenced the defendant to a twelve-year term of imprisonment. The Court ruled that the Due Process Clause of the Fourteenth Amendment and the Sixth Amendment's right to trial by jury requires that any fact (other than fact of prior conviction) that increases the punishment for a crime beyond the statutory maximum for that crime must be submitted to a jury and proved beyond a reasonable doubt.

[Note: Although it was not an issue in this case, the Court would likely rule that the state must allege in a criminal pleading the facts to be proved to a jury beyond a reasonable doubt that increases the punishment beyond the statutory maximum.

Statutes that appear to be affected by the Court's ruling include: G.S. 15A-1340.16A (60-month enhancement for specified use of firearm for Class A-E felonies); G.S. 15A-1340.16B (life imprisonment without parole for certain convictions of Class B1 felonies); and G.S. 15A-1340.16C (enhanced sentence if defendant is convicted of felony and wore or possessed bullet-proof vest). [See also G.S. 14-3(c) (enhanced level of offense when misdemeanor committed because of victim's race, color, etc.] These statutes all provide for punishment beyond the statutory maximum for an offense and do not provide for a jury determination of the facts that increase the punishment beyond the statutory maximum. Thus, as a result of the *Apprendi* ruling, if the state seeks a 60-month firearm enhancement under G.S. 15A-1340.16A, it must allege the necessary facts in a bill of indictment and prove those facts to a jury beyond a reasonable doubt. Of course, just as with a substantive offense, a defendant may waive the right to a jury's determination of this issue and plead guilty to the facts constituting the enhancement.

Concerning the retroactivity of this ruling for defendants previously sentenced under G.S. 15A-1340.16A, see the retroactivity standard set out in State v. Zuniga, 336 N.C. 508, 444 S.E.2d 508 (1994) (note that the court in *Zuniga* did not specifically decide whether a defendant who did not assign the instruction as error on direct review waived the right to assert the *McKoy* error in a motion for appropriate relief).

The Court's ruling does not appear to affect the constitutionality of the Structured Sentencing Act or the impaired driving punishment statute (G.S. 20-179), because these statutes set out the maximum punishments for offenses and the required findings that a judge must make in sentencing within those maximum punishments.]

In Trial in Which Defendant Testified, Prosecutor Did Not Violate Defendant's Constitutional Rights During Jury Argument by Telling Jury that Defendant Had Opportunity to Hear Other Witnesses Testify and Could Tailor His Testimony Accordingly

Portuondo v. Agard, 120 S. Ct. 1119, 146 L. Ed. 2d 47, 66 Crim. L. Rep. 523 (6 March 2000). The defendant was being tried for sexual assaults in which the main issue at trial was the credibility of the victim and her friend versus the credibility of the defendant, who testified at trial. The prosecutor during jury argument essentially told the jury that the defendant had the opportunity to hear the other witnesses testify and could tailor his testimony accordingly. The

Court ruled, distinguishing Griffin v. California, 380 U.S. 609 (1965) (prosecutor may not comment on defendant's failure to testify) and other cases, that the prosecutor's argument did not violate the defendant's rights under the Fifth, Sixth, and Fourteenth amendments.

Statutory Change That Affected Sufficiency of Evidence to Prove Offenses Violated Ex Post Facto Clause When Statutory Change Was Enacted After Commission of Offenses

Carmell v. Texas, 120 S. Ct. 1620, 146 L. Ed. 2d 577, 67 Crim. L. Rep. 166 (1 May 2000). A statutory change enacted after the commission of the offenses for which the defendant was convicted authorized the conviction of certain sex offenses based solely on the victim's testimony. The prior statute required the victim's testimony plus other corroborating evidence in order to convict the defendant. The Court ruled that the statutory change violated the Ex Post Facto Clause because the statutory change was applied retrospectively to these offenses. The Court noted that the statutory change did not merely regulate the mode in which the facts constituting guilt may be placed before the jury [see Hopt v. Territory of Utah, 110 U.S. 574 (1994) (after date of murder, statute was passed to make convicted felon a competent witness; no Ex Post Facto Clause violation)], but it impermissibly affected the sufficiency of facts for the state to meet its burden of proving the offenses.

Retroactive Application of Georgia Law Permitting Extension of Intervals Between Parole Considerations Did Not Necessarily Violate Ex Post Facto Clause

Garner v. Jones, 120 S. Ct. 1362, 146 L. Ed. 2d 236, 66 Crim. L. Rep. 597 (28 March 2000). The Court ruled that the retroactive application of a Georgia law permitting the extension of intervals between parole considerations did not necessarily violate the Ex Post Facto Clause. The Court remanded the case to the court of appeals for further proceedings.

Colorado Statute Regulating Speech-Related Conduct Within 100 Feet of Health Care Facility Is Constitutional

Hill v. Colorado, 120 S. Ct. 2480, 147 L. Ed. 2d 597, 67 Crim. L. Rep. 533 (28 June 2000). The Court ruled that a Colorado statute that regulates speech-related conduct within 100 feet of a health care facility was constitutional.

Defendant Does Not Have Constitutional Right to Self-Representation on Direct Appeal of Criminal Conviction

Martinez v. Court of Appeal of California, 120 S. Ct. 684, 145 L. Ed. 2d 597, 66 Crim. L. Rep. 312 (12 January 2000). Distinguishing Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) (defendant has constitutional right to self-representation at trial), the Court ruled that a defendant does not have a constitutional right to self-representation on a direct appeal of a criminal conviction.

Defense Counsel's Agreement to Trial Date Outside Time Period Required by Article III of Interstate Agreement on Detainers Bars Defendant from Seeking Dismissal on Ground Trial Did Not Occur Within That Period

New York v. Hill, 120 S. Ct. 659, 145 L. Ed. 2d 560, 66 Crim. L. Rep. 275 (11 January 2000). The Court ruled that a defense counsel's agreement to a trial date outside the time period required by Article III of the Interstate Agreement on Detainers bars a defendant from seeking a dismissal of a criminal charge on the ground that the trial did not occur within that time period.

Court Sets Standard for Determining Ineffective Assistance of Counsel in Failing to File Notice of Appeal

Roe v. Flores-Ortega, 120 S. Ct. 1029, 145 L. Ed. 2d 985, 66 Crim. L. Rep. 492 (23 February 2000). The Court ruled that the ruling in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), will be used to evaluate whether defense counsel was constitutionally ineffective in failing to file a notice of appeal for a criminal defendant. (See the discussion in the Court's opinion of the factors to consider in determining ineffectiveness.)

Court Rules as Adequate State Procedure for Indigent Defense Lawyer to Indicate to Appellate Court That Defendant's Appeal Is Frivolous

Smith v. Robbins, 120 S. Ct. 746, 145 L. Ed. 2d 756, 66 Crim. L. Rep. 344 (19 January 2000). The Court ruled as adequate a state procedure (see description of procedure in the opinion) for an indigent defendant's appellate lawyer to indicate to an appellate court that the defendant's appeal is frivolous. The procedure set out in Anders v. California, 386 U.S. 738 (1967) is not the only method required by the United States Constitution. The Court also ruled that, on remand of this case, the defendant must satisfy both prongs of Strickland v. Washington, 466 U.S. 668 (1984) to prevail on his claim of ineffective assistance of appellate counsel. Prejudice is not presumed, based on the facts in this case.

Trial Judge Did Not Violate Constitution When Directing Capital Jury's Attention to Specific Paragraph of Constitutionally Sufficient Jury Instruction in Response to Its Question About Consideration of Mitigating Evidence; Relief Also Barred by 28 USC § 2254(d)

Weeks v. Angelone, 120 S. Ct. 727, 145 L. Ed. 2d 727, 66 Crim. L. Rep. 337 (19 January 2000). The Court ruled, based on the facts in this case, that the trial judge did not violate the United States Constitution when directing a capital jury's attention to a specific paragraph of a constitutionally sufficient jury instruction in response to its question about the consideration of mitigating evidence. The Court also ruled that, a fortiori, 28 U.S.C. § 2254(d) also precluded relief (this statute prohibits federal habeas relief on any claim "adjudicated on the merits in State court proceedings," unless that adjudication resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States").

Defendant's Exercise of Peremptory Challenge under Federal Procedural Rule Was Not Impaired under Due Process Clause When Defendant Chose to Use Challenge to Remove Juror Whom Trial Judge Should Have Been Excused for Cause

United States v. Martinez-Salazar, 120 S. Ct. 774, 145 L. Ed. 2d 792, 66 Crim. L. Rep. 357 (19 January 2000). The Court ruled that a defendant's exercise of a peremptory challenge under a federal procedural rule was not impaired under the Due Process Clause when the defendant chose to use a peremptory challenge to remove a juror whom the trial judge should have been excused for cause.

Ordinance Prohibiting Appearance in Public in "State of Nudity" Was Constitutional As Applied to Nude Dancing

City of Erie v. Pap's A.M., 120 S. Ct. 1382, 146 L. Ed. 2d 265, 67 Crim. L. Rep. 16 (29 March 2000). The Court, in four-Justice plurality opinion, ruled that an ordinance prohibiting a person from appearing in a "state of nudity" was constitutional as applied to nude dancing. The Court relied on rulings in United States v. O'Brien, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968) and Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991).

Defendant in Federal Criminal Trial Who Preemptively Introduces Evidence of Prior Conviction on Direct Examination May Not Challenge Admission of Such Evidence on Appeal

Ohler v. United States, 120 S. Ct. 1851, 146 L. Ed. 2d 826, 67 Crim. L. Rep. 312 (22 May 2000). A federal district court judge granted the government's motion in limine to admit her felony drug conviction as impeachment evidence under Federal Rule of Evidence 609(a)(1). The defendant testified at trial and admitted the prior conviction on direct examination. The Court ruled that a defendant in a federal criminal trial who preemptively introduces evidence of a prior conviction on direct examination may not challenge the admission of such evidence on appeal.

Use of Machine Gun in Federal Crime of Using Firearm in Crime of Violence Is Element of Offense

Castillo v. United States, 120 S. Ct. 2090, 147 L. Ed. 2d 94, 67 Crim. L. Rep. 368 (5 June 2000). The court ruled, interpreting 18 U.S.C. § 924(c)(1), that use of a machine gun in the federal crime of using a firearm in a crime of violence is an element of the offense.

Federal Habeas Issues

(1) Defendant's Counsel Was Ineffective in Representing Defendant at Capital Sentencing Hearing under *Strickland v. Washington*
(2) Defendant Was Entitled to Federal Habeas Relief for Ineffective Counsel Claim Because State Supreme Court Ruling Was Contrary To, and Involved Unreasonable Application of, Clearly Established Federal Law
(3) Court Interprets Federal Habeas Standard That State Court Ruling Was Contrary To, or Involved Unreasonable Application of, Clearly Established Federal Law

Williams, Terry v. Taylor, 120 S. Ct. 1495, 146 L. Ed. 2d 389, 67 Crim. L. Rep. 76 (18 April 2000). The defendant was convicted of murder in a Virginia state court and sentenced to death. His conviction was affirmed on appeal and he was denied state postconviction relief. He then sought federal habeas relief, which was denied. The Supreme Court granted review. (1) The Court, in an opinion by Justice Stevens, ruled that the defendant's counsel was ineffective in representing the defendant at the capital sentencing hearing under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The lawyer both failed to discover and failed to offer mitigating evidence at the hearing that constituted constitutionally ineffective counsel, based on the facts in this case. (2) Federal statutory law [28 U.S.C. § 2254(d)(1)] pertinent to this case provides that federal habeas relief may not be granted concerning a claim that was adjudicated on the merits in a state court unless the adjudication of the claim in state court "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." The Court, in an opinion by Justice Stevens, ruled that the defendant was entitled to federal habeas relief because the Virginia Supreme Court's ruling was both contrary to, and an unreasonable application of, *Strickland*. (3) The Court, in an opinion by Justice O'Connor, interpreted the standard set out in 28 U.S.C. § 2254(d)(1), quoted above (see the discussion in this opinion).

Defendant Was Not Entitled to Federal Habeas Relief under 28 U.S.C. § 2254(d)(1) Based on Virginia Supreme Court Ruling on *Simmons* Capital Sentencing Issue

Ramdass v. Angelone, 120 S. Ct. 2113, 147 L. Ed. 2d 125, 67 Crim. L. Rep. 394 (12 June 2000). The Court ruled that a defendant was not entitled to federal habeas relief under 28 U.S.C. § 2254(d)(1) (adjudication of the claim in state court "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States") based on a Virginia Supreme Court ruling on a *Simmons* [Simmons v. South Carolina, 512 U.S. 154, 114 S. Ct. 2187, 129 L. Ed. 2d 133 (1994)] capital sentencing issue.

Court Interprets 28 U.S.C. § 2254(e)(2) to Determine If Defendant in Federal Habeas Action Was Entitled to Evidentiary Hearing on Constitutional Claims

Williams, Michael v. Taylor, 120 S. Ct. 1479, 146 L. Ed. 2d 435, 67 Crim. L. Rep. 93 (18 April 2000). The defendant was convicted of murder in a Virginia state court and sentenced to death. His conviction was affirmed on direct appeal and his state postconviction relief was denied. He then filed a federal habeas action based on constitutional claims for which a factual basis had not

been developed in state court. The Court interpreted 28 U.S.C. § 2254(e)(2) ["If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows" (see requirements in statute)] to determine if the defendant in his federal habeas action was entitled to an evidentiary hearing on his constitutional claims. The Court stated that "failed to develop" means a lack of diligence. The Court then ruled that the defendant was entitled to an evidentiary hearing on two of his three constitutional claims, based on the facts in this case, because he did not lack diligence in pursuing those two claims in state court.

Court Rules on Procedural Default Issue in Federal Habeas Action

Edwards v. Carpenter, 120 S. Ct. 1587, 146 L. Ed. 2d 518, 67 Crim. L. Rep. 120 (25 April 2000). The Court ruled that a procedurally defaulted ineffective-assistance-of-counsel claim may serve as cause to excuse the procedural default of another federal habeas claim only if the federal habeas petitioner can satisfy the "cause and prejudice" standard concerning the ineffective-assistance-of-counsel claim itself.

Court Addresses Issues Concerning Issuing Certificate of Appealability and Successive Federal Habeas Petitions

Slack v. McDaniel, 120 S. Ct. 1595, 146 L. Ed. 2d 542, 67 Crim. L. Rep. 160 (26 April 2000). The Court ruled (1) when a district court denies a federal habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a certificate of appealability should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling; and (2) a federal habeas petition that is filed after an initial petition was dismissed without adjudication on the merits because of a failure to exhaust state remedies is not a "second or successive" petition as that term is understood in the federal habeas context. The Court stated that federal courts do, however, retain broad powers to prevent duplicative or unnecessary litigation.