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## Supreme Court Watch: Recent Decisions And Upcoming Criminal Cases For The 2006-2007 Docket

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## Supreme Court Watch: Recent Decisions And Upcoming CriminalCases For The 2006-2007 Docket

Erratum  
article

# SUPREME COURT WATCH: RECENT DECISIONS AND UPCOMING CRIMINAL CASES FOR THE 2006-2007 DOCKET

Andrew Myerberg\*

## DECIDED CASES

### *Cunningham v. California*

Decided January 22, 2007

#### Question Presented:

Whether a sentencing 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:

John Cunningham was convicted of child sexual abuse in the California state courts. During his sentencing hearing, the judge made an upward departure from the sentencing guidelines based on facts not determined by the jury to be true beyond a reasonable doubt. This decision was within the powers of the judge as defined by California's Determinate Sentencing Law.

The petitioner appealed the sentence citing Sixth and Fourteenth Amendment violations. The state court of appeals upheld the sentence and the U.S. Supreme Court granted certiorari to resolve the question of whether the California statute was in direct conflict with the Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004).

#### Decision:

Justice Ruth Bader-Ginsburg wrote the majority opinion for this 6-3 decision. The court held that California's determinate sentencing rule violated the petitioner's constitutional right to a jury trial by placing "sentence-elevating fact-finding" within the province of the trial judge. The Majority argued that "[t]his court has repeatedly held that, under the Sixth Amendment, any fact that exposes the defendant to a greater potential sentence must be found by the jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence." The judgment was reversed in part and remanded. Justices Kennedy, Breyer, and Alito dissented.

### *Carey v. Musladin*

Decided December 11, 2006

#### Question Presented:

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

#### Facts:

Petitioner Musladin appealed his conviction for first degree murder, among other crimes, citing the trial court's decision to deny his motion to prevent family members of the deceased sitting in the courtroom from wearing buttons with the likeness of the deceased imprinted on them. Petitioner

Musladin argued that these buttons were inherently prejudicial to the jury and deprived him of his constitutional right to a fair trial. The California Court of Appeals held that Musladin had to show actual or inherent prejudice to succeed on his claim, citing *Holbrook v. Flynn*, 475 U.S. 560 (1986), and ruled that he had not met this test.

The Ninth Circuit overruled, holding that the decision of the state court of appeals "was contrary to or involved an unreasonable application of, clearly established federal law," citing 28 U.S.C. § 2254(d)(1) as interpreted by the United States Supreme Court in *Holbrook* and *Estelle v. Williams*, 425 U.S. 521 (1976).

#### Decision:

The Supreme Court held, in a 9-0 decision (Justices Stevens, Kennedy, and Souter concurring), that because both Estelle and Holbrook dealt with "state-sponsored courtroom practices," in contrast to the spectator conduct in this case, and because of the dearth of decisions on the issue at bar, it could not be said that the California Court of Appeals' decision "was contrary to" or "unreasonably applied" established federal law. The Ninth Circuit, therefore, was wrong to reverse Musladin's conviction. The ruling of the Ninth Circuit was vacated and remanded.

### *Burton v. Waddington*

Decided January 9, 2007

#### Questions Presented:

1. Is the holding in *Blakely v. Washington*, 542 U.S. 296 (2004), a new rule or was it dictated by *Apprendi v. New Jersey*, 530 U.S. 466 (2006)?
2. If *Blakely* is a new rule, does its requirement that the facts resulting in an enhanced statutory maximum be proved beyond a reasonable doubt apply retroactively?

#### Facts:

Petitioner Burton was convicted of raping a minor, among other crimes, and was sentenced to forty-seven years in prison. The petitioner's sentence was twenty-one years longer than the maximum recommended under the sentencing guidelines. The petitioner appealed his sentence in the Ninth Circuit, arguing that *Blakely v. Washington*, which requires that evidence used by the judge during sentencing be found by the jury to be true beyond a reasonable doubt, should be applied retroactively to his sentence. Further, the petitioner argued that his sentence violated the rule of *Apprendi v. New Jersey* that factors utilized by the judge to increase a sentence beyond the maximum term in the sentencing guidelines must be proved to the jury beyond a reasonable doubt.

The Ninth Circuit held that *Blakely* was a new rule that could not be applied retroactively to the petitioner's sentence and that *Apprendi* did not apply because the sentence imposed did not exceed the statutory maximum in the sentenc-

ing guidelines. The Supreme Court granted certiorari.

**Decision:**

In a procedural ruling, the United States Supreme Court held that petitioner Burton's habeas petition was to be dismissed for lack of jurisdiction. Because the court held that the petitioner's appeal was a "second or successive petition," the petitioner was required to obtain the proper authorization before filing. The petitioner failed to do so in this case. The Supreme Court in a 9-0 per curiam opinion dismissed the case because of an invalid petition and declined to rule on the questions presented.

**Ayers v. Belmontes**

Decided November 13, 2006

**Questions Presented:**

1. Is the "unadorned factor (k)" instruction constitutionally deficient under *Boyde v. California*, 494 U.S. 370 (1990), because it would confuse a reasonable juror into thinking that post-conviction behavior of the defendant could not be considered as a mitigating factor during sentencing?
2. If the instruction is found to be deficient, may that ruling be applied retroactively?

**Facts:**

Petitioner Belmontes was tried and convicted of first degree murder in California state court and sentenced to death. During his sentencing hearing the petitioner offered mitigating evidence. During the jury instruction, the judge gave the jury the "unadorned factor (k)" instruction, informing the jury that they may consider the mitigating evidence presented and "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." The jury summarily sentenced the petitioner to death.

The California Supreme Court upheld the sentence, rejecting the petitioner's argument that the "unadorned factor (k)" instruction's ambiguity caused confusion in the jury about whether they could evaluate post-conviction behavior as a mitigating circumstance. The court held that under the U.S. Supreme Court's holding in *Boyde v. California*, the instruction was constitutional unless the petitioner could show "reasonable likelihood" of confusion. On appeal, the Ninth Circuit overturned the sentence holding that a reasonable juror could be confused by the instruction.

**Decision:**

In a 5-4 decision, the U.S. Supreme Court held that California's "unadorned factor (k)" instruction was constitutional. The majority opinion, written by Justice Kennedy, reasoned that under *Boyde*, a reasonable juror would not be confused by the instruction. The court found that the instruction was a sufficiently clear "catchall" under which the jury could sufficiently evaluate mitigating evidence of both past and future conduct. Justice Stevens wrote the dissenting opinion.

**Wallace v. Kato**

Decided February 21, 2007

**Question Presented:**

When does the statute of limitations for an 18 U.S.C. § 1983 claim for damages emanating from a false arrest begin to toll?

**Facts:**

In 1994, the petitioner was arrested for and charged with murder. He was convicted of the crime in 1996 and began serving his sentence. During his trial the petitioner asserted that he has been coerced into confessing to the crime and that there was no probable cause for his arrest. In 1998, an appeals court reversed his sentence and in 2002 all charges relating to the murder were dropped.

The next year, the petitioner filed suit in federal district court alleging that the false arrest performed by the police was a violation of his Fourth Amendment rights. The district court ruled that the petitioner could not bring the suit, stating that, because of Illinois' two-year statute of limitations, the case was barred.

The petitioner appealed to the Seventh Circuit Court of Appeals arguing that the statute of limitations did not apply until the charges against him were dropped. The Seventh Circuit affirmed the ruling of the district court, noting a circuit split, but holding that the statute of limitations began to toll at the time of arrest.

**Decision:**

In a 7-2 decision authored by Justice Scalia, the Supreme Court affirmed the judgment of the Seventh Circuit and held that the statute of limitations for a 42 U.S.C. § 1983 claim for damages resulting from a false arrest "begins to run at the time the claimant becomes detained pursuant to legal process."

**UPCOMING CASES**

**Roper v. Weaver**

Docket # 06-313  
Eighth Circuit Court of Appeals

**Question Presented:**

Did the Eighth Circuit exceed the scope of its authority under the Anti-Terrorism and Effective Death Penalty Act of 1996 by overturning a state death penalty conviction by holding that the inflammatory nature of the prosecutor's closing argument during the penalty phase of the trial deprived the defendant of Due Process of law?

**Facts:**

William Weaver was tried in Missouri state court for the murder of a prospective witness during a drug trial. He was convicted of the crime and during the penalty phase of Weaver's trial, the prosecutor made closing arguments to the jury perceived by the defendant to be inflammatory and prejudicial. Weaver was convicted of first degree murder and sentenced to death. Weaver appealed his conviction in the

Missouri state courts and was denied relief.

District Court in the Eighth Circuit granted habeas review. The District Court held that the inflammatory nature of the prosecutor's closing argument deprived the defendant of a fair trial and was a Due Process violation. The Eighth Circuit Court of Appeals affirmed. The state of Missouri appealed the judgment to the United States Supreme Court.

### *Scott v. Harris*

Docket No. 05-1631

Eleventh Circuit Court of Appeals

#### Question Presented:

1. 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?
2. Is it "clearly established" under federal law that a police officer commits a Fourth Amendment violation when that officer uses deadly force in a high-speed chase?

#### Facts:

During a high speed chase, Officer Timothy Scott rammed his vehicle into that of a 19 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 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, 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.

### *James v. United States*

Docket # 05-1575

Eleventh Circuit Court of Appeals

#### Question Presented:

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

#### Facts:

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 offenses." 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 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 con-

victions 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 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.

### *Claiborne v. United States*

Docket # 06-5618

Eighth Circuit Court of Appeals

#### Question Presented:

1. Is a sentence below the minimum of the range within the Federal Sentence Guidelines reasonable?
2. Is it permissible for the court to require that a sentence that significantly departs from the Sentencing Guidelines be justified by "extraordinary circumstances" in light of the U.S. Supreme Court decision in *U.S. v. Booker*?

#### Facts:

Mario Claiborne was arrested and charged with two felony drug crimes. Claiborne was tried in United States District Court for the Eastern District of Missouri and plead guilty to both crimes. The Federal Sentencing Guidelines suggested a sentencing range of thirty-seven to forty-six months for the crimes in question. However, during sentencing, the judge used her discretion to impose a term of fifteen months (15) in prison on Claiborne. In making her decision, the judge stated that the range set by the guidelines was merely a recommendation that did not bind her. The judge cited the defendant's youth, lack of a criminal record, and the relatively small amount of narcotics in question as circumstances influencing her decision.

The government appealed the sentencing decision to the Eighth Circuit Court of Appeals, arguing that the actual term imposed was unreasonable. The Eighth Circuit reasoned that a sentence, such as that in this case, that was substantially outside of the bounds of the Sentencing Guidelines had to be justified by "extraordinary circumstances." Further, the court held that such circumstances had not been put forward by the district court judge. The U.S. Supreme Court granted certiorari to resolve a circuit split on these issues.

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