

Precedential Value

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Issue #82 January - February 2021

This publication is an outline of selected published cases from the Supreme Court and Sixth Circuit that may impact the practice of federal criminal law in the courts of the Sixth Circuit. Cases may be accessed electronically by clicking on any case name, which is hyperlinked to the court's official website. A combined outline of all cases published in Precedential Value since January 2015 may be found on our website at www.fpd-ohs.org, under the Precedential Value tab.

I. Sentencing Issues

A. 3553(a) factors and issues

Substantive Reasonableness

U.S. v. Milliron, 19-3720 (1/11/21)

The defendant threw a Molotov cocktail at officers during a high speed chase. He was later convicted of assaulting federal officers and drug trafficking. At sentencing, the district court imposed a 14 month upward variance from the guideline range. On appeal, the court upheld the variance. The court found that the case fell outside the mine-run case because the defendant engaged in a reckless 35 mile high speed chase where he threw flammable objects at pursuing officers. The court further noted that the defendant continued resisting arrest when he was stopped. Finding no other case with similar facts, the court ruled that the district court's 14 month upward variance was appropriate, especially given the defendant's lengthy criminal record across multiple states. As such, the sentence was affirmed.

U.S. v. Small, 20-5117 (2/10/21)

At the defendants' sentencing for kidnapping, the district court imposed 98 and 65 month upward departures. The departures were based on several uncharged, violent home invasions that the defendants had been involved in. On appeal, the

court held that the district court had properly determined based on testimony offered by the government at sentencing that the defendants had engaged in a number of uncharged violent offenses. Further, the defendants each had lengthy criminal records. Based on these considerations, the court found that the upward departures were warranted and affirmed the sentences.

D. Recidivism enhancements

4B1.2 – Career Offender

U.S. v. Jackson, 18-5676 (1/5/21)

At sentencing for drug trafficking, the district court determined that the defendant was a career offender based, in part, on a prior Kentucky conviction for felony trafficking in the second degree. On appeal, the court held that the Kentucky offense did qualify as a controlled substance offense for purposes of the career offender guideline. The court found that the Kentucky offense proscribed, among other things, a "transfer" of a controlled substance. The court ruled that a "transfer" under Kentucky law was sufficiently similar to "distribution" as defined in the guidelines. Thus, the Kentucky trafficking offense counted as a controlled substance offense for purposes of the career offender enhancement and the sentence was affirmed.

IX. Jury Issues

B. Juror Bias/Misconduct

Juror Bias

U.S. v. Brooks, 19-2283 (2/9/21)

After the defendant was convicted of being a felon in possession of a firearm, the lone black juror sent a note to the court that the juror felt pressured by other jurors to render a verdict of guilty. The district court refused to hold an evidentiary hearing or grant a mistrial. On appeal, the court held that courts may only impeach a jury's verdict where there was outside influence on the jury, a mistake occurred in the verdict, or racial bias affected the outcome. In order to prove racial bias, the defendant must show a statement "exhibiting overt racial bias" and "tending to show that racial animus was a significant motivating factor in the juror's vote to convict." Although the note in the case came from the one black juror, there was nothing in the juror's comment that suggested that race was part of the problem. As such, the court found that the district court did not err in declining to hold an evidentiary hearing or grant a mistrial. Thus, the verdict was affirmed.

U.S. v. Lanier, 16-6655 (2/11/21)

In 2017, the Sixth Circuit vacated the defendant's conviction and ordered a Remmer hearing in order for the district court to review an issue regarding juror bias. Leading up to the Remmer hearing, the same juror reached out to a state court prosecutor unrelated to the case (who had been involved in the juror bias claim at the trial) to try to discuss the trial and the upcoming hearing. The prosecutor notified the district court of the contact, but the district court did not alert the parties of the problem until during the Remmer hearing. At the hearing, it was learned that the juror had again had outside contact with the state prosecutor about the case and had potentially done internet investigation. The defense requested access to the juror's phone and computer to investigate the extent of the outside

influence. The district court did not immediately order the disclosure. After several additional orders from the Sixth Circuit, however, the district court finally provided the defense access to the devices. By the time the defense received the devices, it was learned that the juror had deleted browsing data and switched phones. Thus, it was no longer possible for the defense to investigate the matter. The district court ended up denying the defense motion and the defendant appealed. The court held that the defendant had not been given a "meaningful opportunity" to inquire at the Remmer hearing the extent of the juror's potential bias because of the district court's inaction. As such, the court found that the only appropriate remedy was to vacate the defendant's conviction and remand the case for a new trial before a different district judge.

XII. Specific Offenses

18 USC § 111(a)(1)&(b) – Assault Fed. Officer

U.S. v. Milliron, 19-3720 (1/11/21)

After pleading guilty to assaulting a federal officer, the defendant attempted to withdraw his plea on the grounds that he was not advised that the offense required proof of intent to cause injury. The district court denied the motion and the defendant appealed. The court held that neither 18 USC § 111(a)(1)(assault) nor § 111(b)(committing the (a)(1) violation with a deadly weapon) requires specific intent. The court found that neither statutory provision contains specific intent language and thus both were general intent crimes. As such, the government need only prove that the defendant knowingly and voluntarily committed an assault using a dangerous weapon. Accordingly, the defendant was properly advised and the conviction was affirmed.

18 USC § 1201 – Kidnapping

U.S. v. Small, 20-5117 (2/10/21)

Defendants used a rental car to travel from West Virginia to Tennessee. The next day, they used

the rental car to travel to the victim's house, tie her up, and steal her property. Thereafter, the defendants drove the rental car back to West Virginia and pawned the property. In their subsequent kidnapping prosecution, the defendants argued that they did not commit the offense for "ransom, reward, or otherwise," as required by the statute. Further, they argued that the interstate commerce element of the statute was not satisfied. On appeal, the court first held that committing the offense for the purpose of stealing her property satisfied the "otherwise" language of the statute. Second, the court ruled that the use of a rental car to travel from West Virginia the day before the offense, combined with the use of the car during and after the offense, was sufficient to establish the interstate nexus element of the crime. Accordingly, the conviction was affirmed.

18 USC § 2252(b)(1) – Prior Sex Offense

U.S. v. Nelson, 20-3154 (1/21/21)

At the defendant's sentencing for distributing child porn, the court imposed the statutory enhancement under 18 USC § 2252(b)(1) because of the defendant's prior Ohio attempted rape of a minor conviction. On appeal, the court held that the enhancement was proper. Pursuant to § 2252(b)(1), a defendant qualifies for the enhanced 15 year sentence where the defendant has a prior state conviction "relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." The court ruled that the "relating to" language is very broad and encompasses an attempt to commit a rape of a minor, even where no physical contact occurs with a minor. Therefore, the defendant's enhanced sentence was affirmed.

21 USC § 846 – Drug Conspiracy

U.S. v. Wheat, 19-4172 (2/12/21)

A drug trafficker accepted a sample of heroin from the defendant to test. Without the defendant's knowledge, the drug trafficker gave the sample to a third party to test. No further

interaction occurred between the defendant and the drug trafficker. Nonetheless, the defendant was charged in a broader conspiracy that involved the drug trafficker and his enterprise. Upon his conviction at trial, the defendant appealed. The court held that a mere buyer-seller relationship cannot support a conviction for conspiracy to distribute drugs. This rule derives from the common law Wharton's Rule, which holds that "two parties cannot conspire to commit a substantive crime when the crime itself requires two parties for its completion (such as dueling or prostitution)." Because no further transactions occurred between the two and the defendant had no knowledge of the heroin being transferred to a third party for testing, the court found that the single transaction was nothing more than a buyer-seller arrangement. Thus, the conspiracy conviction was reversed. Nonetheless, the court affirmed the defendant's separate conviction under 21 USC § 843(b) for using an interstate communication facility (cell phone) to facilitate a drug felony. The court found that the defendant used his cell phone to arrange the transaction involving the sample in an attempt to become a supplier for the drug trafficker. Accordingly, the case was remanded for resentencing solely on the § 843(b) count.

XIII. Post-Conviction Remedies

U.S. v. _____, 19-_____ (1/26/21)

The defendant was serving a 150 month sentence for a drug trafficking case when he cooperated with the government related to a murder investigation. As a result of the defendant's cooperation, the government filed a motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure to reduce the defendant's sentence by 12-18 months. The district court granted the motion the same day it was filed and reduced the defendant's sentence by 12 months without any input from the defense. On appeal, the court held that the district court erred by failing to permit the defense to respond to the government's motion and advocate for a greater sentence reduction based on the defendant's

cooperation. The court acknowledged that a district court is not required to hold a hearing related to a Rule 35 motion; however, a court at least must permit the defense to respond to the motion and advocate a position. Accordingly, the case was remanded.

U.S. v. Elias, 20-3654 (1/6/21)

The defendant filed a motion for compassionate release pursuant to the First Step Act and the district court denied the motion. On appeal, the court held that the policy statements of USSG § 1B1.13 are applicable to the district court's determination of whether "extraordinary and compelling" circumstances justify the defendant's request. Rather, the district courts have "discretion to define 'extraordinary and compelling' on their own initiative." Further, the court found that the district court had appropriately determined that the defendant was not entitled to compassionate release. The court ruled that the medical evidence did not sufficiently support that the defendant had hypertension or that hypertension made her more susceptible to COVID. Further, there was no evidence that the BOP facility at which she was housed had any COVID cases. Accordingly, the district court's ruling was affirmed.

U.S. v. Hampton, 20-3649 (1/19/21)

The district court denied the defendant's motion for compassionate release prior to the Sixth Circuit's rulings that USSG § 1B1.13 is not applicable to determination of compassionate release motions. Because the district court was not clear on whether it relied on § 1B1.13 in making its ruling, the case was remanded.

In re: James Hanna, 19-3881 (2/11/21)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. The petitioner filed a second federal habeas corpus petition in district court after the denial of his first petition had been fully litigated on appeal. The second petition alleged

that he had been deprived of the effective assistance of counsel at the mitigation phase of trial in various respects. The petitioner further alleged that his petition was not second or successive under 28 USC § 2244(b) because his former federal habeas counsel had a conflict of interest, and that as a result the second petition did not constitute an abuse of the writ. The district court found that the petition was second or successive and transferred it to the Sixth Circuit. The Sixth Circuit agreed and dismissed the case. To the extent the second petition raised claims that had been denied in the first petition, dismissal was required under 28 USC § 2244(b)(1). Furthermore, merely demonstrating that a claim is not an abuse of the writ is insufficient to evade the authorization requirements for a second or successive petition set out in 28 USC § 2244(b)(2). The petitioner also failed to satisfy the requirements for authorization, and as a result the petition was dismissed.

Miles v. Warden, 19-5340 (2/24/21)

The petitioner was convicted of murder and other offenses in Kentucky state court. After the petitioner was indicted the prosecution received several continuances to complete DNA testing. The trial eventually took place approximately 21 months after the petitioner had been indicted. The Kentucky Supreme Court concluded that the petitioner's Sixth Amendment right to a speedy trial had not been violated. The Sixth Circuit found that the state court's rejection of the claim was entitled to deference under 28 USC § 2254(d), and as a result the denial of habeas corpus relief was affirmed.

Miles v. Warden, 19-5340 (2/24/21)

The petitioner was convicted of murder and other offenses in Kentucky state court. At trial, the prosecutor repeatedly referenced a handgun

found in the petitioner's home that admittedly had nothing to do with the crime, and also referred to the petitioner by his nicknames during closing arguments. The petitioner alleged in his state collateral proceedings that his trial attorney had been ineffective in failing to object to the prosecutor's conduct, but the Kentucky Supreme Court concluded that there was no reasonable probability that the petitioner had been prejudiced by his counsel's inaction. The Sixth Circuit found that the state court's rejection of the claim was entitled to deference under 28 USC § 2254(d), and as a result the denial of habeas corpus relief was affirmed.