

Precedential Value

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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

B. Guideline issues

2D1.1 – Drug quantity

U.S. v. McReynolds, 21-1521 (5/31/23)

The defendant was convicted at trial of participating in a conspiracy to distribute drugs. In a special verdict form, the jury found that the defendant was responsible for less than 500 grams of controlled substance. Nonetheless, the district court imposed a sentence based on the amount of drugs distributed by the entire conspiracy. The defendant appealed and Sixth Circuit remanded the case for the district court to make specific findings supporting the drug amount. Upon resentencing, the district court imposed the same sentence based on testimony of witnesses from the trial. On a second appeal, the court again determined that the sentence was error. The court found that the district's court's determination of drug weight constituted "an exaggerated interpretation of the record." Specifically, the court held that the evidence from trial established merely that the defendant bought small quantities of drugs from a codefendant and sold them to customers for individual consumption. The court ruled that these transactions did not establish a common goal of criminal activity, a modus operandi with other conspirators, coordination of activities, or a pooling of resources or profits. In sum, the court

found a "significant absence of evidence linking the defendant to the conspiracy." As such, the court again vacated the sentence and remanded the case for resentencing.

U.S. v. Reed, 21-6161 (6/30/23)

At the defendants' sentencing for participation in a drug conspiracy, the district court calculated their sentence based on 4.5 kilograms of "actual methamphetamine." The defendants objected to this calculation and appealed. The court held that there are three types of methamphetamine for purposes of the guidelines: methamphetamine (meth mixture); methamphetamine (actual); and Ice (over 80% purity). A meth mixture is the total weight of the substance, including any mixture. Meth actual refers to the weight of the controlled substance in the mixture itself. The court found that the district court improperly attributed 4.5 kilos of "actual meth" to the defendants. At sentencing, only 2.66 kilos of the meth had been tested and determined to be "actual meth." Regarding the remaining amount, there simply was no credible evidence upon which the court could rely in determining whether it was actual meth or a meth mixture. As such, the district court's sentence was vacated and the case remanded for resentencing.

4A1.2 – Prior sentences

U.S. v. Messer, 22-5420 (6/21/23)

The defendant was convicted in 2018 for participating in a drug conspiracy. Subsequently, the defendant was convicted of a kidnapping related to the robbery of drug money. At sentencing for the kidnapping, the district court counted the prior conspiracy conviction against the defendant's criminal history, instead of considering it relevant conduct to the kidnapping offense. On appeal, the court held that the district court had properly counted the conspiracy conviction as criminal history. The court found that the kidnapping involved (1) a different drug supplier from a different state, (2) a "separate criminal cluster" than the general drug conspiracy, and (3) "different harms." The court weighted these factors more heavily than the factors that suggested the drug conspiracy was relevant conduct to the kidnapping: *i.e.*, the kidnapping occurred during the same time period as the conspiracy and in the same geographical area. Thus, the conspiracy conviction was not properly considered relevant conduct to the kidnapping offense, but was rather a prior sentence for purposes of the criminal history computation. The district court's ruling was affirmed.

D. Recidivism enhancements

18 USC 924(e) - ACCA

U.S. v. Smith, 21-5811 (06/09/2023)

The defendant was charged with being a felon in possession of a firearm and ammunition. The defendant was designated as an Armed Career Criminal by the district court, setting his mandatory minimum sentence at 15 years. One of the 3 prior "violent felony" offenses the district court used to justify this designation was a North Carolina state charge the defendant received for assault with a deadly weapon. On appeal, the defendant argued that the North Carolina statute did not require the requisite use of force for a violent felony, which is knowing or intentional

conduct. The court found this argument unpersuasive. First, the court found that North Carolina courts construe "intent to kill" as requiring "substantial evidence that the defendant had a specific intent to kill." Second, the court found that North Carolina allowed defendants to argue that diminished capacity or voluntary intoxication prevented them from forming the specific intent to kill. The availability of these defenses solidified for the court that "intent to kill" under the North Carolina aggravated assault statute constituted intentional conduct in satisfaction of the ACCA's elements clause.

USSG § 2K2.1 – Felon in possession

U.S. v. Carter, 22-3699 (6/2/23)

Upon his conviction for being a felon in possession of a firearm, the defendant received a sentence enhancement under USSG § 2K1.2 for his prior Ohio conviction for robbery. On appeal, the court held that the Ohio robbery offense, under ORC § 2911.02(a)(2), qualified as a generic robbery for purposes of the enumerated clause under the sentencing guidelines. Rather than analyze robbery in its generic sense, the court instead analogized to the elements of extortion, which the Sixth Circuit had previously held were "a match" for robbery. Under this standard, the court found that Ohio robbery contained the same basic elements as extortion. Thus, the court concluded that § 2911.02(a)(2) was the same as "generic" robbery, and the sentence was affirmed.

E. Fine/Restitution/Forfeiture

Forfeiture

U.S. v. Petlechkov, 22-6043 (6/28/23)

The defendant was sentenced for mail fraud and the district court imposed a final forfeiture order. That order seized three of the defendant's properties to satisfy the forfeiture. At a later point, the government realized that the value of the properties exceeded the amount needed for the forfeiture. The government then petitioned

the district court to amend the forfeiture order to permit it to use the remaining property to satisfy the defendant's outstanding restitution order. The district court granted the request, and the defendant appealed. The court first held that the defendant had standing to challenge the amended forfeiture order. Ordinarily, a defendant's property interest is extinguished at the point of the entry of the preliminary order of forfeiture. However, the forfeiture order in the case only extinguished the property interest to the extent of the money judgments, which the property values exceeded. Thus, the defendant's interest in the excess property value was not extinguished and as such he had standing. Second, the court ruled that the forfeiture statutes provided no legal basis to seize property to satisfy a restitution order. While the district court could properly base a decision in an amendment to the restitution order, a writ of execution, or a writ of garnishment, it did not do so. Accordingly, the order was vacated and the case remanded.

III. Evidence

A. Article IV – Relevancy

403 – Prejudicial impact

U.S. v. Smith, 21-5811 (06/09/2023)

The defendant was charged with being a felon in possession of a firearm and ammunition. The defendant was offered an Old Chief stipulation which he refused. As such, the government introduced evidence of his 11 prior felony convictions at trial. The defendant argued on appeal that the district court improperly allowed the government to introduce this evidence in violation of Fed. R. Crim. P. 403. The court found that the evidence of these prior felony convictions was highly probative. Moreover, the court found that the probative value of this evidence was not outweighed by the prejudicial value, in large part because the defendant himself could mitigate this prejudice by agreeing to an Old Chief stipulation. The court declined to limit the number of felony convictions that the government could utilize at trial; however, the

court noted that a defendant declining an Old Chief stipulation did not give the government "carte blanche" to introduce the defendant's felony record. District courts still maintain "significant discretion" when discerning what felony convictions are admissible. The court advised that a defendant may argue that certain felony convictions were "especially offensive" or that "some convictions [were] less probative than others" to restrict the government's introduction of certain convictions. Since the defendant in this case did not make such a showing, all convictions were admissible.

IV. Fourth Amendment

B. Reasonable Suspicion/Veh. Stops

U.S. v. Williams, 22-1024 (5/17/23)

A Michigan police officer stopped a vehicle for following too close to another car near the Indiana border. The officer observed the following: (1) the rental car had been in Houston the morning before but the defendant mentioned nothing about Houston; (2) the defendant told the officer he was in Indiana on vacation but also claimed he was a laborer; (3) the defendant claimed to be on his way to Detroit but was several hours off the most direct route to Detroit from Houston; (4) Houston and Detroit were drug source cities; (5) the passenger in the car would not make eye contact with the officer; and (6) the passenger was on probation from another jurisdiction. Based on these factors, the officer extended the stop long enough that a drug dog was used on the car, the drug dog alerted, and drugs were found in the subsequent search. In his prosecution, the defendant moved to suppress the evidence and the district court denied the motion. On appeal, the court found that the stop and search were justified. First, the court found that the traffic stop was valid, and the routine questioning about the defendant's travel was reasonable, "context-framing" questioning. Second, the court held that the extension of the stop for the dog sniff was supported by reasonable suspicion. The court found that the

facts, listed above, provided sufficient suspicion to warrant the further investigation. Finally, the positive dog sniff provided probable cause for the search of the vehicle. Thus, the district court's ruling was affirmed.

C. Warrant Exceptions

Community Caretaker Exception

U.S. v. Morgan, 22-1445 (6/26/23)

The defendant was passed out behind the wheel of a running car at 5:00 a.m. An officer was in the area helping another motorist and noticed the defendant. Rather than trying to rouse the driver from outside the car, the officer immediately opened the car door. The interaction led to the defendant being arrested and contraband being found. In his prosecution, the defendant moved to suppress the drug and gun evidence. The district court denied the motion and the defendant appealed. The court held that the community caretaker exception did not justify the officer's actions. While an officer may take actions to prevent injury or ongoing harm to the community at large, the court found that the circumstances did not permit the unannounced opening of the defendant's car door. The court focused on the "myriad of less intrusive paths available" to the officer to address concerns about the defendant, including turning on police emergency lights, shining a flashlight, calling out to the defendant, or knocking on the window. As such, the court ruled that the officer's actions were unreasonable under the circumstances. Accordingly, the district court's ruling was reversed and the evidence suppressed.

V. Fifth Amendment

D. Double Jeopardy

Smith v. U.S., 21-1576 (6/15/23)

Supreme Court

The defendant was tried and convicted in the Northern District of Florida for theft of trade secrets. On appeal, the Eleventh Circuit

determined that venue was improper, however, the court permitted the case to be retried. The Supreme Court granted *certiorari*. The Court held that a reversal for improper venue does not bar a re prosecution under the Double Jeopardy Clause. The case was remanded accordingly.

VI. Sixth Amendment

B. Confrontation Clause

Samia v. U.S., 22-196 (6/23/23)

Supreme Court

The defendant was charged in a murder-for-hire conspiracy, along with a codefendant. The codefendant made a confession in which he claimed that he was the driver and that the defendant was the shooter. At trial, the district court permitted the government to introduce the codefendant's hearsay statement by simply redacting the defendant's name from the statement and replacing it with "the other person." Further, the government was permitted to argue throughout the trial that the defendant was in the car with the codefendant. The district court provided an instruction that the codefendant's hearsay testimony "was admissible only as to [the codefendant] and should not be considered as to [the defendant]." The Second Circuit affirmed. On *certiorari*, the Supreme Court held that the practice did not violate the Court's prior holding in Bruton. The Court emphasized that Bruton only prohibits out-of-court confessions of codefendants that **directly** implicate a defendant. Here the hearsay confession only indirectly implicated the defendant and the district court provided a proper limiting instruction. Thus, the Sixth Amendment right to confrontation was not violated. Therefore, the conviction was affirmed.

VIII. Defenses

J. Speedy Trial Act/IAD

U.S. v. Hinojosa, 22-1044 (5/5/23)

The defendant was arrested on a supervised release violation and detained in custody. Months later, the government charged him with new federal offenses for the conduct underlying the violation (robbery). The defendant moved to dismiss the new charges based on violations of the Speedy Trial Act. The district court denied the motion and the defendant appealed. The court held that the 30 day time period under 18 USC § 3161(b) was not applicable in the case. Even though the supervised release violation was based on the same operative facts as the new indictment, the defendant's arrest on the supervised release violation alone did not trigger the start of the 30 day time period for the government to indict. Thus, no speedy trial violation occurred and the district court's ruling was affirmed.

L. Competency/NGRI

U.S. v. Williams, 22-5002 (06/12/2023)

The defendant was found not guilty by reason of insanity at a bench trial under 18 U.S.C. § 4243. The defendant suffered from a bipolar form of schizoaffective disorder, which led to auditory hallucinations, as well as aggressive, impulsive, and threatening behavior. After successfully completing a term of civil commitment, the defendant was released under a myriad of court-imposed conditions. The defendant violated nearly all of his conditions, refused to take his psychiatric medication, and started threatening various businesses, political figures, and family. The district court revoked his supervised release, and the defendant appealed. The court found the language and structure of § 4243(g) requires the following. First, the government bears the initial burden of proof to show that a defendant has violated the terms of release. Once the government meets its burden, it is up to the defendant to show that continued release would not "create a substantial risk to the public." A

defendant can accomplish this by showing that (1) they are safe for release, § 4243(f)(1); or (2) they are safe for release under specified conditions, § 4242(f)(2). In this case, the defendant conceded that he violated the terms of his release, but disputed that he posed a substantial risk to the public if he was released under specified conditions. The court ruled the district court did not abuse its discretion in finding that the defendant posed a substantial risk to the public based on the following evidence: his continued threats and contact with victims, multiple arrests for crimes such as aggravated assault, reports from mental-health experts who evaluated the defendant and found him to be "aggressive, impulsive and threatening," the defendant's failure to comply with his mental health regime (*i.e.*, by declining his medications), and his past history of not complying with court ordered terms of release. Accordingly, the district court's ruling was affirmed.

X. Probation/ Supervised Release

U.S. v. Morris, 22-1970 (6/22/23)

The defendant was on supervised release for drug trafficking and possession of a firearm in furtherance of drug trafficking. His supervision was violated for a number of serious infractions, and he was sentenced to 48 months imprisonment, which was within the guideline range. The Sixth Circuit reversed the sentence because the guideline computation was improper and remanded for resentencing. On remand, the district court imposed the same 48 month sentence. In reaching this result, the court imposed a sentence of 24 months for the violation of supervised release on the drug trafficking charge, and a consecutive 24 months for the violation of supervised release on the firearm charge. The district court's only explanation for the consecutive sentences was as follows: "you can pretty much reach the same result as the earlier sentencing because of the discretion to treat the sentencing of the two offenses as consecutive, which I plan to do." On appeal, the court held that the resentencing was improper.

The court ruled that a district court must provide specific reasons based on the factors under 18 USC § 3553 for a consecutive sentence. Because the district court provided no reasoning whatsoever, other than it wanted to reimpose the same sentence it had originally imposed, the sentence had to be again reversed and remanded for resentencing.

XII. Specific Offenses

8 USC § 1324(a)(1) – Inducing Immigration

U.S. v. Hansen, 22-179 (6/23/23)
Supreme Court

The defendant ran a fraudulent program where he solicited money from immigrants by falsely claiming he could get them citizenship. As a result, he was charged with inducing illegal immigration, pursuant to 8 USC § 1324(a)(1). He was convicted in the district court, but the Ninth Circuit reversed and ruled that the statute was unconstitutionally overbroad. The Supreme Court granted *certiorari*. The Court held that the statute should be read narrowly to avoid overbreadth concerns. Rather, the Court construed the terms “encourage” and “induce” in the statute to mean legal solicitation and facilitation in their “specialized criminal law sense.” The court held that this interpretation alleviated any concerns with violations of free speech that a broader reading of the terms “encourage” and “induce” may carry. Given this restriction, the Court found that § 1324(a)(1) was not unconstitutionally overbroad on its face, and the defendant’s conviction was affirmed.

18 USC § 924(j) – Firearms – Causing Death

Lora v. U.S., 22-49 (6/16/23)
Supreme Court

The defendant was convicted of drug trafficking and causing the death of another through use of a firearm, pursuant to 18 USC § 924(j). The district court determined that the § 924(j) sentence was required to run consecutive to the underlying offense based on the consecutive sentence

mandate of § 924(c). The Supreme Court ultimately held that § 924(c)’s mandate for consecutive sentences does not apply to convictions under § 924(j). Accordingly, the case was remanded for resentencing.

18 USC § 1028A(a)(1) – Agg. Identity Theft

Dubin v. U.S., 22-10 (6/8/23)
Supreme Court

The defendant worked for a company that submitted a false claim to Medicaid overbilling for psychological services that were performed on a patient. As a result, the government charged the defendant with Medicaid fraud and aggravated identity theft, under 18 USC § 1028A(a)(1). The defendant was convicted and his conviction was affirmed by the Fifth Circuit. On appeal, the Supreme Court held that the aggravated identity theft conviction was improper. The Court ruled that § 1028A only applies in cases where “the means of identification is at the crux of what makes the predicate offense criminal, rather than merely an ancillary feature of a payment method.” Thus, the statute covers “misrepresenting who received a certain service, but not fraudulent claims regarding how or when a service was performed.” The Court found that the defendant’s prosecution was not based on a misrepresentation about who the services were for, but rather how the services were performed. Accordingly, the conviction was invalid and the lower courts’ decisions were reversed.

18 USC § 1343 – Wire Fraud

Ciminelli v. U.S., 21-1170 (5/11/23)
Supreme Court

The defendant was charged with wire fraud for his scheme to rig the bid process for obtaining state funded development projects associated with then-New York Governor Andrew Cuomo's Buffalo Billion initiative. The government’s theory for the wire fraud prosecution was that the defendant schemed to deprive the victim of

“potentially valuable economic information necessary to make discretionary economic decisions,” known as the “right to control” theory of fraud liability. The defendant was convicted after trial and the Second Circuit affirmed. On *certiorari*, the Supreme Court held that the “right to control” theory was not viable under the wire fraud statute. The Court emphasized that its long-standing precedent requires that 18 USC § 1343 applies only to “money or property.” As such, the Court ruled that “the right to valuable economic information needed to make discretionary economic decisions is not a traditional property interest” covered by the wire fraud statute. Accordingly, the defendant’s conviction was reversed.

18 USC § 1346 – Wire Fraud Conspiracy

Percoco v. U.S., 21-1158 (5/11/23)

Supreme Court

The defendant was the executive deputy secretary to Governor Andrew Cuomo. The defendant was on an eight month break from government service when he accepted bribes related to assisting a company receiving state funding for a real estate project. As a result, the defendant was charged with participating in a conspiracy to commit wire fraud, among other crimes. At trial, the district court instructed the jury based on a theory of the deprivation of honest services wire fraud. Specifically, the district court instructed the jury that the defendant, as a private citizen, could nonetheless owe a duty of honest services to the public if “(1) he dominated and controlled any governmental business and (2) people working in the government actually relied on him because of a special relationship he had with the government.” While the Court found that private citizens may on occasion owe such a duty, the instruction provided by the district court was too vague and would ensnare lobbyists and a large amount of other innocent conduct. As such, the Court reversed the conviction and remanded the case.

XIII. Post-Conviction Remedies

U.S. v. West, 22-2037 (06/09/2023)

The defendant sought compassionate release, under 18 U.S.C. § 3582, for his conviction for conspiracy to murder for hire. The district court granted him compassionate release on the grounds that his sentence violated Apprendi v. New Jersey, because the jury instructions did not require the jury to find that death resulted from the conspiracy. On appeal, the court reversed the decision of the district court. Relying on the Sixth Circuit’s *en banc* decision in U.S. v. McCall, the court held that “sentencing errors cannot provide an ‘extraordinary and compelling’ reason for compassionate release[,]” and “compassionate release cannot provide an end run around habeas.” As such, compassionate release was improper and the case was remanded.

Jones v. Hendrix, 21-857 (6/22/23)

Supreme Court

The petitioner was convicted in federal court in the Western District of Missouri of being a felon in possession of a firearm. At the time, the Eighth Circuit’s precedent did not require the prosecution to prove that a defendant was aware of the status that made him ineligible to possess a firearm. Several years later, the United States Supreme Court reached the opposite conclusion and held that a defendant’s knowledge of his status is an element of the offense. Because the petitioner had previously filed a motion to vacate under 28 U.S.C. § 2255, he filed a habeas corpus petition under 28 U.S.C. § 2241 and relied on the savings clause set out in § 2255(e) as a basis for proceeding under § 2241, as opposed to obtaining authorization to file a second or successive § 2255 motion. The Supreme Court held that the petitioner could not rely on the savings clause, and that he could not obtain authorization to file a second or successive petition because his claim was purely statutory in nature. The

judgment of the Eighth Circuit was accordingly affirmed.

Corridore v. Washington, 22-1301 (6/23/23)

The petitioner was convicted of sexually abusing his granddaughter in Michigan state court and sentenced to a prison term, along with lifetime electronic monitoring and registration as a sex offender. By the time the petitioner filed his federal habeas corpus petition under 28 U.S.C. § 2254 he had already been released from prison and discharged from probation. The Sixth Circuit held that the fact that the petitioner was subject to lifetime electronic monitoring and registration was insufficient to satisfy the “in custody” requirement necessary to proceed under § 2254 and affirmed the dismissal of the petition.

Emaya v. U.S., 21-1781 (6/23/23)

The petitioner was convicted in federal court of various counts relating to having a rival in a large-scale drug conspiracy murdered; the petitioner was sentenced to three concurrent life sentences. The petitioner subsequently filed a motion to vacate under 28 U.S.C. § 2255. However, even if the court granted the petition, it would have left two of the defendant’s life sentences completely intact. The Sixth Circuit held that relief under § 2255 was unavailable under such circumstances, and the judgment of the district court dismissing the petition was affirmed.

Ganoa v. Brown, 21-2799 (5/3/23)

The petitioner was convicted and sentenced to prison in Michigan state court for assault with intent to murder and a firearm offense. In his federal habeas corpus proceedings, the petitioner alleged that his rights were violated because the state courts relied on an earlier uncounseled misdemeanor conviction that

resulted in a sentence of time served to increase his sentence in the case at issue. The Sixth Circuit concluded that the state court’s rejection of the claim was entitled to deference under 28 U.S.C. § 2254(d)(1) because the claim was not supported by clearly established Supreme Court precedent, and as a result the denial of relief was affirmed.

In re Cannamela, 23-5035 (6/12/23)

The petitioner entered an open guilty plea to child enticement and pornography offenses in federal court and was sentenced to 188 months in prison. After his initial motion to vacate under 28 U.S.C. § 2255 was denied, the petitioner filed a motion for resentencing which the district court construed as a second or successive petition. The district court transferred the case to the Sixth Circuit after appointing counsel to assist the petitioner with understanding the consequences of his motion being recharacterized as second or successive. The Sixth Circuit concluded that the petitioner failed to meet the requirements for authorization, and the case was accordingly dismissed.

Kimbrough v. U.S., 21-6208 (6/22/23)

The petitioner murdered a rival drug dealer and a witness, accepted a plea agreement and pled guilty to various federal charges; the petitioner received a 504 month prison sentence. The petitioner later filed a motion to vacate under 28 U.S.C. § 2255 and alleged that his attorney had been constitutionally ineffective in advising him to accept the plea agreement because they should have anticipated a change in precedent that would have been favorable with respect to one of the charges. The Sixth Circuit found that counsel did not perform deficiently, and further determined that the petitioner failed to demonstrate a reasonable probability that he would have insisted on

going to trial absent the alleged error, as required to demonstrate prejudice. The denial of relief was accordingly affirmed.

McCormick v. U.S., 22-5587 (6/27/23)

The petitioner entered an open guilty plea to federal drug and gun offenses and did not appeal. The petitioner subsequently filed a motion to vacate under 28 U.S.C. § 2255 alleging that his attorney had been ineffective in failing to file a notice of appeal. The Sixth Circuit rejected the petitioner's arguments and affirmed the denial of relief.

Rogers v. Mays, 19-5427 (6/5/23)

The petitioner was convicted of first-degree murder and other crimes in Tennessee state court and sentenced to death. In his federal habeas corpus proceedings, the petitioner alleged that he had been deprived of the effective assistance of counsel. The Sixth Circuit, sitting *en banc*, rejected the petitioner's arguments. The Court found that the petitioner failed to rebut the presumption that the state court had adjudicated his claim on the merits, and as a result 28 U.S.C. § 2254(d) was applicable. Furthermore, the state court's rejection of the petitioner's claim was entitled to deference under both § 2254(d)(1) and § 2254(d)(2). As a result, the denial of relief was affirmed.