

SUPREME COURT REVIEW AND PREVIEW
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December 5, 2008

I. Search and Seizure

A. Arrests—Lawfulness

***Virginia v. Moore*, 128 S.Ct. 1598 (2008)**

A custodial arrest for a petty state offense does not violate the Fourth Amendment even when state law bars an officer from performing a custodial arrest for that offense.

B. Vehicle Searches

***Arizona v. Gant* (argued Oct. 7, 2008)**

Must an officer actually demonstrate a threat to his safety or a need to preserve evidence in order to perform a *Belton* vehicle search incident to arrest after the occupants of the vehicle have been arrested and secured?

C. Terry Searches

***Arizona v. Johnson* (to be argued Dec. 9, 2008)**

May an officer pat down a passenger in a vehicle stopped for a minor traffic infraction based on reasonable suspicion that the passenger is armed and dangerous but without reasonable suspicion that the passenger is committing or has committed any offenses?

D. Consent Searches

***Pearson v. Callahan* (argued Oct. 14, 2008)**

Should the Court recognize the doctrine of consent-once-removed such that a defendant's consent for an undercover informant to enter his home also amounts to consent for police officers to enter the home upon the request of the informant?

E. Exclusionary Rule

***Herring v. United States* (argued Oct. 7, 2008)**

If an officer performs an arrest because of erroneous information negligently supplied by another officer, should the evidence found incident to the arrest be suppressed?

II. Confessions

A. Sixth Amendment Right to Counsel Violations

***Montejo v. Louisiana* (to be argued Jan. 2009)**

Must a defendant who has been arraigned affirmatively “accept” the appointment of counsel on the record in order to preclude the police from later initiating questioning without counsel present?

***Kansas v. Ventris* (to be argued Jan. 2009)**

Is a statement obtained from a represented defendant without a waiver in violation of the Sixth Amendment right to counsel admissible as impeachment evidence?

B. The *McNabb-Mallory* Rule

***Corley v. United States* (to be argued Jan. 2009)**

If the police fail to promptly present an arrested defendant before a magistrate and instead obtain an incriminating but voluntary statement from the defendant, must the statement be suppressed in federal court because of the *McNabb-Mallory* rule?

C. Vienna Convention

***Medellin v. Texas*, 128 S.Ct. 1346 (2008)**

The International Court of Justice’s ruling that foreign nationals are entitled to have their cases reviewed because of violations of the Vienna Convention is not directly enforceable in state court.

III. Right to Counsel

A. Attachment of the Sixth Amendment

***Rothgery v. Gillespie County, Texas*, 128 S.Ct. 2578 (2008)**

The Sixth Amendment attaches at a first appearance before a magistrate where charges are read and bail is set even if the prosecution does not participate in that first appearance.

B. Absence of Counsel at Critical Stage

***Wright v. Van Patten*, 128 S.Ct. 743 (2008) (*per curiam*)**

Participation of counsel at a plea hearing via speakerphone has not been clearly established to violate the Sixth Amendment right to counsel for purposes of habeas corpus relief.

C. The Right to Self-Representation

***Indiana v. Edwards*, 128 S.Ct. 2379 (2008)**

Since competence to stand trial or plead guilty is not equivalent to competence to represent oneself at trial, courts may refuse to allow mentally ill defendants to represent themselves at trial.

IV. Miscellaneous Trial Issues

A. Speedy Trial

***Vermont v. Brillon* (to be argued Jan. 2009)**

Do delays requested by assigned defense counsel, over the objection of a jailed defendant, count against the government for purposes of deciding whether the defendant received a speedy trial, when those delays were attributable to a “breakdown” in the public defense system?

B. Double Jeopardy

***Yeager v. United States* (to be argued 2009)**

When a jury acquits a defendant on some counts but hangs on other counts, is retrial on the hung counts barred by collateral estoppel if the acquittals indicate that the jury found reasonable doubt on elements that are also found in the hung counts?

C. Jury Selection

***Snyder v. Louisiana*, 128 S.Ct. 1203 (2008)**

Even under clear error standard of review of the trial judge’s ruling crediting prosecutor’s “race-neutral” reasons for excluding black potential jurors, those reasons were pretextual.

***Rivera v. Illinois* (to be argued Jan. 2009)**

Is a trial court’s erroneous decision upholding a “reverse-Batson” challenge to a defendant’s attempt to exercise a peremptory strike harmless error so long as any reasonable juror would have found the defendant guilty?

D. Confrontation Clause—Testimonial Statements and Forfeiture

***Melendez-Diaz v. Massachusetts* (argued Nov. 10, 2008)**

Is a forensic laboratory report “testimonial” evidence within the meaning of *Crawford v. Washington*, 541 U.S. 36 (2004)?

***Giles v. California*, 128 S.Ct. 2678 (2008)**

The defendant in a homicide case does not “forfeit” the right to confront the decedent’s testimonial statements unless the defendant killed the decedent with the intent to prevent him or her from testifying.

E. Jury Instructions—Unanimity Requirement

***Hedgpeth v. Pulido* (argued Oct. 15, 2008)**

Was *Stromberg v. California*, 283 U.S. 359 (1931), undermined by *Neder v. United States*, 527 U.S. 1 (1999), so that it is no longer structural error when a jury returns a general guilty verdict after being instructed on two theories of guilt, one of which is defective?

V. Sentencing—*Blakely* and *Booker*

A. Guidelines Departures and Reasonable Sentencing

***Kimbrough v. United States*, 128 S.Ct. 558 (2007)**

In fashioning reasonable sentence, the judge may take into account the guidelines’ disparate treatment of crack and powder cocaine.

***Gall v. United States*, 128 S.Ct. 586 (2007)**

The district judge enjoys discretion, without setting forth “extraordinary circumstances,” to impose a sentence outside sentencing guidelines range.

B. Consecutive Sentencing

***Oregon v. Ice* (argued Oct. 15, 2008)**

May a judge rely on facts not found by the jury or admitted by the defendant to impose consecutive sentences?

VI. Post-Conviction Relief

A. Access to Evidence and Innocence

***District Attorney’s Office v. Osborne* (to be argued 2009)**

Does a convicted defendant have a Due Process right to access to biological evidence that could exculpate him so that he may use Section 1983 to sue for the right to have the evidence tested for DNA?

B. Statute of Limitations

***Allen v. Siebert*, 128 S.Ct. 2 (2007)**

An untimely state petition for post-conviction relief does not toll the clock for filing a federal habeas corpus petition even if the state regards untimeliness as “non-jurisdictional.”

***Jimenez v. Quarterman* (argued Nov. 4, 2008)**

Does a state appellate court’s decision to reinstate a defendant’s erroneously dismissed direct appeal reset the AEDPA habeas clock to zero until the end of that state direct review?

C. Procedural Default

***Cone v. Bell* (to be argued Dec. 9, 2008)**

Is a constitutional claim procedurally defaulted and therefore unreviewable on federal habeas even if the state court erroneously applied its rules in refusing to hear the merits?

D. Retroactivity

***Danforth v. Minnesota*, 128 S.Ct. 1029 (2008)**

A state may, but is not required to, apply Supreme Court precedent retroactively on state post-conviction review even though such precedent cannot be applied retroactively on federal habeas review.

E. AEDPA Standards of Review

***Waddington v. Sarausad* (argued Oct. 15, 2008)**

Must a federal court defer to a state court’s conclusion that jury instructions were accurate, unambiguous and did not reduce the prosecution’s burden of proof?

***Knowles v. Mirzayance* (to be argued Jan. 2009)**

Did the Ninth Circuit defer sufficiently to the conclusions of the state court that trial counsel was not ineffective for failing to advance an insanity defense, and did the court fail to defer to the district court’s factual findings after an evidentiary hearing?