

SUPREME COURT REVIEW AND PREVIEW
Granted/Decided 12/5/14 to 11/27/15

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I. Fourth Amendment

A. Definition of Search

***Grady v. North Carolina*, 135 S. Ct. 1368 (2015) (per curiam)**

Fourth Amendment search occurs when state places monitoring device on sex offender without his consent and for the purposes of monitoring.

B. Terry Stops and Other Detentions Short of Custodial Arrest

***Heien v. North Carolina*, 135 S. Ct. 530 (2014)**

Reasonable suspicion for a traffic stop may be based on an officer's reasonable mistake of law.

***Rodriguez v. U.S.*, 135 S. Ct. 1609 (2015)**

Police may not extend an otherwise completed traffic stop – without additional suspicion – to conduct a dog sniff of the car.

C. Searches Incident to Arrest

***Utah v. Strieff*, No. 14-1373**

Cert. issue: "Should evidence seized incident to a lawful arrest on an outstanding warrant be suppressed because the warrant was discovered during an investigatory stop later found to be unlawful?"

D. Administrative Searches

***Los Angeles v. Patel*, 135 S. Ct. 2443 (2015)**

Statute permitting warrantless, suspicionless police inspection of a hotel guest registry is facially unconstitutional because it fails to provide hotel operators with opportunity for pre-compliance review.

II. Fifth Amendment

A. Double Jeopardy

***Puerto Rico v. Sanchez Valle*, No. 15-108**

Cert. issue: "Whether the Commonwealth of Puerto Rico and the Federal Government are separate sovereigns for purposes of the Double Jeopardy Clause of the United States Constitution."

B. Due Process

***Johnson v. U.S.*, 135 S. Ct. 2551 (2015)**

Imposing an increased sentence under ACCA's residual clause violates due process.

***Luis v. U.S.*, No. 14-419**

See case listing under Sixth Amendment/Counsel of Choice.

III. Sixth Amendment

A. Counsel of Choice

***Luis v. U.S.*, No. 14-419**

Cert. issue: "Whether the pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments?"

B. Ineffective Assistance of Counsel

***Woods v. Donald*, 135 S. Ct. 1372 (2015) (per curiam)**

See case listing under Post-Conviction /AEDPA Review.

***Maryland v. Kulbicki*, 136 S. Ct. 2 (2015) (per curiam)**

Court reviewing Strickland IAC claim should not conduct post-hoc assessment of trial counsel's performance based on scientific advances that were not available at the time of trial.

IV. Trial Issues

A. Confrontation Clause

***Ohio v. Clark*, 135 S. Ct. 2173 (2015)**

Three year old child's statements to his teacher, a mandatory reporter of child abuse, were not testimonial, and so their introduction at trial does not violate the Confrontation Clause.

B. Voir Dire

***Davis v. Ayala*, 135 S. Ct. 2187 (2015)**

See case listing under Post-Conviction/AEDPA Review.

***Foster v. Chatman*, No. 14-8349**

Cert. issue: "Did the Georgia courts err in failing to recognize race discrimination under *Batson* in the extraordinary circumstances of this death penalty case?"

V. Constitutional Limits on Criminal Liability

Elonis v. United States, 135 S. Ct. 2001 (2015)

In a prosecution for transmitting a threat, the government must prove some level of the defendant's *mens rea*, beyond that a reasonable person would have regarded the communication as a genuine threat; because of holding, Court declines to address First Amendment issue.

VI. Other Criminal Law/Sentencing Issues

Whitfield v. U.S., 135 S. Ct. 785 (2015)

A bank robber "forces [a] person to accompany him," for purposes of 18 U.S.C. § 2113(e), when he forces that person to go somewhere with him, even if the movement occurs entirely within a single building or over a short distance.

Yates v. U.S., 135 S. Ct. 1074 (2015)

For purposes of 18 U.S.C. § 1519, which imposes criminal liability on anyone who "knowingly . . . destroys . . . any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States," a "tangible object" is one used to record or preserve information.

Henderson v. U.S., 135 S. Ct. 1780 (2015)

A court-ordered transfer of a felon's lawfully owned firearms from Government custody to a third party is not barred by § 922(g) if the court is satisfied that the recipient will not give the felon control over the firearms, so that he could either use them or direct their use.

McFadden v. U.S., 135 S. Ct. 2298 (2015)

Section 841(a)(1) of the Controlled Substances Act, which makes it unlawful knowingly to manufacture, distribute, or possess with intent to distribute controlled substances, requires the government to establish that the defendant knew he was dealing with a substance regulated under the Controlled Substances Act or the Controlled Substance Analogue Enforcement Act of 1986.

Ocasio v. U.S., No. 14-361

Cert. issue: "Does a conspiracy to commit extortion require that the conspirators agree to obtain property from someone outside the conspiracy?"

Musacchio v U.S., No. 14-1095

Cert. issues:

(1) “Whether the law-of-the-case doctrine requires the sufficiency of the evidence in a criminal case to be measured against the elements described in the jury instructions where those instructions, without objection, require the government to prove additional or more stringent elements than do the statute and indictment?”

(2) “Whether a statute-of-limitations defense not raised at or before trial is reviewable on appeal?”

Torres v. Lynch, No. 14-1096

Cert. issue: “Whether a state offense constitutes an aggravated felony under 8 U.S.C. § 1101(a)(43), on the ground that the state offense is ‘described in’ a specified federal statute, where the federal statute includes an interstate commerce element that the state offense lacks.”

Taylor v. U.S., No. 14-6166

Cert. issue: “Whether, in a federal criminal prosecution under the Hobbs Act, 18 U.S.C. §1951, the Government is relieved of proving beyond a reasonable doubt the interstate commerce element by relying exclusively on evidence that the robbery or attempted robbery of a drug dealer is an inherent economic enterprise that satisfies, as a matter of law, the interstate commerce element of the offense.”

Lockhart v. U.S., No. 14-8358

Cert. issue: “[W]hether § 2252(b)(2)’s mandatory minimum sentence is triggered by a prior conviction under a state law relating to ‘aggravated sexual abuse’ or ‘sexual abuse,’ even though the conviction did not ‘involv[e] a minor or ward,’ an issue that divides the federal courts of appeals.”

Molina-Martinez v. U.S., No. 14-8913

Cert. issue: “Where an error in the application of the United States Sentencing Guidelines results in the application of the wrong Guideline range to a criminal defendant, should an appellate court presume, for purposes of plain-error review under Federal Rule of Criminal Procedure 52(b), that the error affected the defendant’s substantial rights?”

Voisine v. U.S., No. 14-10154

Cert. issue: “Does a misdemeanor crime with the *mens rea* of recklessness qualify as a ‘misdemeanor crime of domestic violence’ as defined by 18 U.S.C. §§ 921(a)(33)(A) and 922(g)(9)?”

VII. Post-Conviction

A. AEDPA Filing requirements/Equitable tolling

***Christeson v. Roper*, 135 S. Ct. 891 (2015) (per curiam)**

District Court abused its discretion in denying capital prisoner's second request for substitution of habeas counsel, where first counsel had admittedly filed petition 117 days late and could not request equitable tolling due to conflict of interest.

B. Retroactivity

***Montgomery v. Louisiana*, No. 14-280**

Cert. issues:

(1) "Whether *Miller v. Alabama*, 132 S. Ct. 2455 (2012), adopts a new substantive rule that applies retroactively on collateral review to people condemned as juveniles to die in prison?"

(2) Does the Supreme Court "have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to" its decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012)?"

C. AEDPA Review

***Woods v. Donald*, 135 S. Ct. 1372 (2015) (per curiam)**

State court decision that defendant's was denied counsel under denying *U.S. v. Cronin* – because counsel was absent from courtroom during testimony about co-defendants' planning activity – was neither "contrary to" nor an "unreasonable application of" decision in *Cronin*.

***Davis v. Ayala*, 135 S. Ct. 2187 (2015)**

Court assumes violation of federal right when defense counsel was barred from *voir dire* over objection, but finds that error is harmless beyond a reasonable doubt.

***Duncan v. Owens*, No. 14-1516**

Cert. issue: "Did the Seventh Circuit violate 28 U.S.C. § 2254 and a long line of this Court's decisions by awarding habeas relief in the absence of clearly established precedent from this Court?"

D. AEDPA Appellate Review

***Jennings v. Stephens*, 135 S. Ct. 793 (2015)**

Habeas petitioner, as appellee in court of appeals, is not required to file a cross-appeal to urge an alternative theory for relief on appeal, and need not seek a certificate of appealability to defend a judgment in the court of appeals.

VIII. Eighth Amendment & Capital Cases

A. Jury Instructions/Trial Issues

Kansas v. Carr, No. 14-450 & Kansas v. Carr, No. 14-499

Cert. issues:

(1) “Whether the Eighth Amendment requires that a capital-sentencing jury be affirmatively instructed that mitigating circumstances ‘need not be proven beyond a reasonable doubt,’ as the Kansas Supreme Court held in this case, or instead whether the Eighth Amendment is satisfied by instructions that, in context, make clear that each juror must individually assess and weigh any mitigating circumstances?”

(2) “Whether the trial court’s decision not to sever the sentencing phase of the co-defendant brothers’ trial here—a decision that comports with the traditional approach preferring joinder in circumstances like this—violated an Eighth Amendment right to an “individualized sentencing” determination and was not harmless in any event?”

Kansas v. Gleason, No. 14-452

Cert. issue: Identical to Issue #1 in *Kansas v. Carr, No. 14-450 & Kansas v. Carr, No. 14-499*.

B. Capital Sentencing Statutes

Hurst v. Florida, No. 14-7505

Cert. issue: “Whether Florida’s death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of this Court’s decision in *Ring v. Arizona*, 536 U.S. 584 (2002).”

C. Appellate Review

Williams v. Pennsylvania, No. 15-5040

Cert. issues:

(1) “Are the Eighth and Fourteenth Amendments violated where the presiding Chief Justice of a State Supreme Court declines to recuse himself in a capital case where he had personally approved the decision to pursue capital punishment against Petitioner in his prior capacity as elected District Attorney and continued to head the District Attorney’s Office that defended the death verdict on appeal; where, in his State Supreme Court election campaign, the Chief Justice expressed strong support for capital punishment, with reference to the number of defendants he had ‘sent’ to death row, including Petitioner; and where he then, as Chief Justice, reviewed a ruling by the state post-conviction court that his office committed prosecutorial misconduct under *Brady v. Maryland*, 373 U.S. 83 (1963), when it prosecuted and sought death against Petitioner?”

(2) “Are the Eighth and Fourteenth Amendments violated by the participation of a potentially biased jurist on a multimember tribunal deciding a capital case, regardless of whether his vote is ultimately decisive?”

D. Methods of Execution

Glossip v. Gross, 135 S. Ct. 2726 (2015)

Petitioners cannot establish a likelihood of success on the merits of their claim that the use of midazolam (as first drug in three-drug execution protocol) violates the Eighth Amendment.