

## **U.S. Supreme Court Criminal Law / Procedure Decisions 2018 Term**

### *Constitutional Criminal Procedure Decisions*

Fifth Amendment Double Jeopardy – “Dual Sovereignty” doctrine (state - federal successive prosecutions based on the same criminal activity) upheld

*Gamble v. U.S.* (6/17/2019) (7-1-2)

Sixth Amendment Ineffective Counsel – Attorney’s failure to file requested appeal after guilty plea violates Sixth Amendment right to counsel even when the plea includes an appeal waiver; the authority to decide whether to appeal belongs to client not counsel

*Ganza v. Idaho* (2/27/2019) (6-3)

Eighth Amendment Excessive Fines clause applies to the states as part of Fourteenth Amendment Due Process and limits civil forfeiture proceedings that are at least partially punitive (but remands for application to facts of this case)

*Timbs v. Indiana* (2/20/2019) (8-1)

*Batson* discriminatory exercise of peremptory challenges - Clear error for trial judge to conclude that peremptory challenge of 1 black juror was not based on discriminatory intent, in part because of state’s behavior in exercising challenges in earlier trials of same defendant (factors and how they apply)

*Flowers v. Mississippi* (6/26/2019) (7-2)

Fourth Amendment & DUI - Warrantless blood draw from an unconscious driver is reasonable because of exigent circumstances, distinguishing recent cases; Court does not decide on the validity of the state’s implied consent law

*Mitchell v. Wisconsin* (6/27/2019) (4-1-4)

### *Revocation of Federal Supervised Release*

Tolling the time period for revocation of supervised release

*Mont v. U.S.* (6/3/2019) (5-4)

Fifth & Sixth Amendments - Mandatory minimum sentence for supervised release revocation based on commission of certain offenses (under 18 USC § 3883(k)) requires jury to find beyond a reasonable doubt that defendant committed the offense; Judges may not impose mandatory minimum based on their finding by a preponderance of the evidence

*U.S. v. Haymond* (6/26/2019) (4-1-4)

### *Death Penalty*

Execution protocol - Method of execution must inflict unconstitutionally cruel pain, meaning it must “super-add” to the pain of execution and that requires showing of a feasible, readily

implemented alternative  
*Bucklew v. Precythe* (4/1/2019) (5-4)

Defendant competent to be executed even if they cannot remember crime because of their mental disease, where they do comprehend the reasons for punishment and the death penalty  
*Madison v. Alabama* (2/27/2019) (5-3)

Analysis and clarification of intellectual disability sufficient to render one ineligible for execution; latest in long line of cases on this point (including the Court's previous (2017) decision in this same case)  
*Moore v. Texas* (2/19/2019) (per curiam)

*Habeas Corpus (review of state proceedings)*

Meaning of "clearly established law" at time of state court decision (for purpose of determining if state court violated clearly established law to support granting federal habeas) - *Moore* clarification of intellectual disability (above) not clearly established as the time of the state court decision  
*Shoop v. Hill* (1/7/2019) (per curiam)

*Civil Suits (42 U.S.C. § 1983) against Police & Prosecutor*

Suit for retaliatory arrest (claimed retaliation for exercising first amendment speech rights) fails as a matter of law when police have probable cause to arrest (legality of arrest depends on objective reasonableness and PC makes an arrest reasonable)  
*Nieves v. Bartlett* (5/27/2019) (5-2-2)

Qualified immunity exists for forcible apprehension when the action does not violate clearly established statutory or constitutional rights, which must be defined specifically (*i.e.*, whether clearly established law prohibited the officers from stopping and taking down a man in the circumstances of this particular case)  
*Escondido v. Emmons* (1/7/2019) (per curiam)

Statute of limitations for fabricated-evidence claim against prosecutor began to run when the criminal proceedings were terminated in defendant's favor (*i.e.*, when he was acquitted at the end of his second trial) rather than when defendant learned that false evidence was used against him and he suffered a loss of liberty as a result  
*McDonough v. Smith* (6-3 6/20/2019)

*Federal Armed Career Criminal Act and other federal firearms statutes*

ACCA - Interpretation of & application to prior "remaining in" burglary offense as violent crime for purposes of enhanced sentence  
*Quarles v. U.S.* (6/17/2019) (9-0, 1 concurring)

ACCA – Prior state robbery conviction qualifies as violent crime for enhanced sentence

*Stokeling v U.S.* (1/15/2019) (5-4)

ACCA – Prior state burglary convictions qualify as violent felonies for enhanced sentences  
*U.S. v. Stitt* (12/10/2018) (9-0)

18 USC §§ 922(g) & 924(a)(2) (“knowingly”) - To convict of federal firearm possession offense, prosecution must prove beyond a reasonable doubt that defendant knew both (1) they possessed a firearm and (2) they had the status (were within the category under 922(g)) that disqualifies from firearm possession

*Rehaif v. U.S.* (6/21/2019) (7-2)

18 USC § 924(c) - Residual clause of definition of crime of violence for purpose of the using, carrying, possessing firearm during / in furtherance of crime of violence mandatory minimum sentence is unconstitutionally vague (the residual clause does not define by reference to the elements of the offense or the actual facts of the crime committed)

*U.S. v. Davis* (6/24/2019) (5-4)

#### *Federal Sex Offender Registration & Delegation Doctrine*

SORNA delegation to Attorney General to specify applicability of and prescribe rules for sex offenders convicted before enactment not unlawful under delegation doctrine.

*Gundy v. U.S.* (6/24/2019) (4-1-3)

#### *Immigration & Deportation*

Applicability of mandatory-detention requirement for illegal immigrants deportable for certain specified crimes, under 8 U. S. C. § 1226(c)(2), does not require that they be arrested by immigration officials as soon as they were released from jail

*Nelson v. Preap* (5-4 3/19/2019)

#### *Jurisdiction - Statutory Interpretation*

Neither Wyoming’s admission as a state nor the federal statute establishing the Bighorn National Forest abrogated the Crow Tribe’s 1868 federal treaty right to hunt on “unoccupied lands of the United States,” thereby precluding state criminal conviction of tribe member for subsistence hunting

*Herrera v. Wyoming* (5-4; 5/20/2019)