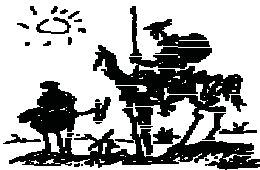


EFFECTIVE ASSISTANCE



Newsletter for CJA Panel Attorneys

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Reversed & Remanded

CHRISTOPHER KNIGHT
ASSISTANT FEDERAL DEFENDER

The opinions cited below were reversed either in whole or in part for the reasons stated. These opinions are contained in the Federal Reporter and Supreme Court Reporter Advance Sheets. They are published opinions, including significant habeas decisions, with official citations. Opinions of the United States Court of Appeals for the Eleventh Circuit are listed in bold face type for your convenience. The opinions themselves should be consulted for detailed rationale and supporting authority. The official reporters consulted are 212 F.3d through 233 F.3d and 120 S. Ct. through 121 S. Ct.

United States Supreme Court

Williams v. Taylor, 120 S. Ct. 1479 (2000)(petitioner was entitled to evidentiary hearing on his claims of juror bias and prosecutorial misconduct).

Williams v. Taylor, 120 S. Ct. 1495 (2000)(ineffective assistance denied where attorneys failed to investigate and present mitigating evidence during sentencing phase of capital murder trial).

Jones v. United States, 120 S. Ct. 1904 (2000)(owner-occupied residence not used for any commercial purpose does not qualify as property used in interstate or foreign commerce or as an activity affecting interstate or foreign commerce within the meaning of the federal arson statute).

United States v. Hubbell, 120 S. Ct. 2037 (2000)(where defendant granted Fifth Amendment immunity in prior unrelated prosecution, he was entitled to same immunity in second prosecution to the extent that the testimonial aspect of his act of producing documents in return for immunity was a first, necessary step in the discovery of the evidence supporting the second prosecution).

Continued on next page

Eleventh Circuit Judicial Conference

The Judicial Conference of the Eleventh Circuit will take place on **May 10-12, 2001**, at the Westin Savannah Harbor Resort, in Savannah, Georgia. The Conference is being convened by the judges of the Eleventh Circuit to consider the business of their respective courts (the court of appeals, and the district and bankruptcy courts in Alabama, Florida, and Georgia) and to advise means of improving the administration of justice within the circuit.

A limited number of spaces are available to any attorney admitted to practice before the court of appeals or any of the district courts of the Eleventh Circuit who wishes to attend. If an attorney is interested in attending this conference, he or she should write to the Circuit Executive, Norman E. Zoller, at 56 Forsyth Street, N.W., Atlanta, Georgia 30303. By return mail, he will forward Conference registration information, describe the Conference's hotel accommodations, room charges, and the substantive and social programs of the meetings. Preview information concerning the conference may be accessed on the internet at www.ca11.org.

Dickerson v. United States, 120 S. Ct. 2326 (2000)(Because Miranda is a constitutionally-based decision, it cannot be overruled by legislative act).

Apprendi v. New Jersey, 120 S. Ct. 2348 (2000)(Other than the fact of prior conviction, any fact that increases penalty for crime beyond prescribed statutory maximum must be submitted to jury and proved beyond a reasonable doubt).

Artuz v. Bennett, 121 S. Ct. 361 (2000)(habeas petition is “properly filed” so as to toll the limitations period under the AEDPA when properly delivered and accepted according to rules governing filings).

Indianapolis v. Edmond, 121 S. Ct. 447 (2000)(vehicle stop at interdiction point where all vehicles were stopped and searched effected a “seizure” and violated Fourth Amendment because searches not subject to individualized suspicion of wrongdoing).

United States Courts of Appeals

United States v. Martinez-Gaytan, 213 F.3d 890 (5th Cir. 2000)(absence of translator from Spanish-speaking defendant’s suppression hearing rendered English-speaking agent’s testimony about confession unreliable hearsay).

United States v. Arnold, 213 F.3d 894 (5th Cir. 2000)(date on which city court sentence was pronounced, not later date on which probation was revoked and sentence began, was determining date on issue of whether prior sentence was imposed within ten years so that it could be used in determining criminal history score).

United States v. Torres-Ramirez, 213 F.3d 978 (7th Cir. 2000)(insufficient evidence that one defendant joined in conspiracy).

United States v. Gray, 213 F.3d 998 (8th Cir. 2000)(no reasonable suspicion that criminal activity was afoot when officer frisked defendant during routine questioning).

United States v. Ramirez-Cortez, 213 F.3d 1149 (9th Cir. 2000)(Magistrate Judge failed to make factual findings regarding excluding delay from Speedy Trial Act’s time limits; defendant was entitled to additional one level reduction for acceptance of responsibility).

United States v. Giles, 213 F.3d 1247 (10th Cir. 2000)(unattached labels were not “goods” within meaning of that term as defined in the criminal trademark infringement statute).

United States v. Agne, 214 F.3d 47 (10th Cir. 2000)(defendant’s use of fraudulent documents to draw funds of buyer through letter of credit did not “affect” financial institution in prosecution for wire fraud so as to extend limitations period).

United States v. Howard, 214 F.3d 361 (2nd Cir. 2000)(insufficient evidence that defendant knew handgun in his possession had been stolen in 18 U.S.C. § 922 prosecution).

United States v. Adams, 214 F.3d 724 (6th Cir. 2000)(possession of ammunition during same incident as possession of handguns did not support separate conviction).

United States v. Webb, 214 F.3d 962 (8th Cir. 2000)(improper standard applied in sexual assault civil rights case for purpose of setting base offense level; proper standard is whether any force involved was sufficient to prevent victim from escaping sexual contact).

United States v. Jiang, 214 F.3d 1099 (9th Cir. 2000)(indictments were properly dismissed but should have been dismissed without prejudice due to unnecessary delay in bringing defendants to trial).

United States v. Gonzalez, 214 F.3d 1109 (9th Cir. 2000)(implied or express bias sufficient to justify excusing of juror for cause).

United States v. Mojica, 214 F.3d 1169 (10th Cir. 2000)(defendant’s sentence properly reduced to level 6 because shotgun he possessed was used in connection with brother’s lawful sporting activity).

United States v. Velarde, 214 F.3d 1204 (10th Cir. 2000)(error in failing to make reliability determination before admitting pediatric testimony, error in admitting psychologist's testimony, and crime of abusive sexual contact was not a lesser included offense of aggravated sexual assault).

Stouffer v. Reynolds, 214 F.3d 1231 (10th Cir. 2000)(stipulation resulted in waiver by State of any exhaustion requirement; capital defendant prejudiced by counsel's failure at guilt phase of trial to lay proper foundation for relevant evidence, to challenge state's evidence, and to set forth defensive theory).

United States v. Ginyard, 215 F.3d 83 (D.C. Cir. 2000)(district court lacked statutory authority to restrict defendant's use of computer and telephone while in prison).

United States v. McCoy, 215 F.3d 102 (D.C. Cir. 2000)(ineffective assistance found where counsel failed correctly to apply career offender provisions of Guidelines when determining sentencing range defendant would face if he accepted plea agreement).

United States v. Leone, 215 F.3d 253 (2nd Cir. 2000)(remand for further fact-finding in connection with ineffective assistance claim).

United States v. Dauray, 215 F.3d 257 (2nd Cir. 2000)(inadequate definition of "matter" in statute proscribing possession of "matter," three or more in number, "which contain any visual depiction" of minors engaging in sexually explicit conduct required reversal).

United States v. Sasso, 215 F.3d 283 (2nd Cir. 2000)(failure to make factual findings regarding amount of contribution ordered toward cost of monitorship of union required remand in RICO prosecution).

Flores v. Demskie, 215 F.3d 293 (2nd Cir. 2000)(counsel's waiver of Rosario claim, requiring prosecution to deliver witness's prior statement, was objectionably unreasonable and prejudiced defendant).

United States v. Ubakanma, 215 F.3d 421 (4th Cir. 2000)(failure to make factual findings regarding restitution required remand).

United States v. Martin, 215 F.3d 470 (4th Cir. 2000)(bank larceny is not a crime of violence for purposes of sentencing as a career offender).

Dilworth v. Johnson, 215 F.3d 497 (5th Cir. 2000)(second state habeas petition tolled limitations period for filing state petition challenging 1992 conviction, although state petition challenged 1987 petition in which sentence had expired, where challenge was brought because the 1987 conviction was used to enhance sentences on 1992 convictions).

United States v. Patterson, 215 F.3d 776 (7th Cir. 2000)(counsel's extended absences from trial warranted new trial for ineffective assistance; remand required to determine if sentencing judge understood he had discretion to depart from guidelines where he imposed life sentence).

United States v. Herron, 215 F.3d 812 (8th Cir. 2000)(search warrant was so lacking in probable cause that no reasonable officer should have relied on it).

United States v. Brooks, 215 F.3d 842 (8th Cir. 2000)(government's conduct was entrapment as a matter of law).

United States v. Arrington, 215 F.3d 855 (8th Cir. 2000)(remand for evidentiary hearing on contested fact in PSR).

United States v. Peters, 215 F.3d 861 (8th Cir. 2000)(district court should exercise discretion in determining whether prior conviction was prior felony for career offender sentencing).

Comer v. Stewart, 215 F.3d 910 (9th Cir. 2000)(evidentiary hearing required to determine petitioner's competence to withdraw appeal and voluntariness of decision to withdraw appeal).

Bribiesca v. Galaza, 215 F.3d 1015 (9th Cir. 2000)(prisoner improperly denied right to represent himself).

United States v. Mateo-Mendez, 215 F.3d 1039 (9th Cir. 2000)(timely and complete confession entitled defendant to additional 1 level reduction for acceptance of responsibility).

Hepburn v. Moore, 215 F.3d 1208 (11th Cir. 2000)(limitations period for habeas petition challenging resentencing begins to run on date of resentencing judgment).

United States v. Mathis, 216 F.3d 18 (D.C. Cir. 2000)(improper increase of offense level for commission of offense while on parole).

United States v. Collazo-Aponte, 216 F.3d 163 (1st Cir. 2000)(imposition of life sentence for attempted murder, which carries maximum of 20 years, required reversal).

United States v. Gatlin, 216 F.3d 207 (2nd Cir. 2000)(district court lacked jurisdiction over crime which occurred on property leased by the United States military in Germany).

United States v. Carmichael, 216 F.3d 224 (2nd Cir. 2000)(two-level downward departure inappropriate; plain error to rely on erroneous assumption in increasing period of supervised release from four to five years at resentencing).

United States v. Fowler, 216 F.3d 459 (5th Cir. 2000)(electronic images of sadistic sexual conduct involving minors did not warrant increase under Sentencing Guidelines).

Phillips v. Donnelly, 216 F.3d 508 (5th Cir. 2000)(equitable tolling doctrine tolled limitations period for four months between actual denial of the defendant's state habeas petition and the when he allegedly first received notice).

Hall v. Cain, 216 F.3d 518 (5th Cir. 2000)(petitioner's state habeas proceeding was properly filed so as to toll the limitations period for filing under the AEDPA).

Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000)(COA requirement does not apply to habeas actions based on prison disciplinary proceedings).

Beavers v. Saffle, 216 F.3d 918 (10th Cir. 2000)(claim of ineffective assistance not procedurally barred since state courts treated motion to appeal out of time as motion for post-conviction relief and defendant entitled to a hearing).

United States v. Guzman-Bera, 216 F.3d 1019 (11th Cir. 2000)(direct imposition of probation is not an "aggravated felony" for purposes of provision of sentencing guidelines authorizing enhancement of base offense level when a defendant reenters United States after being previously deported after a criminal conviction for an aggravated felony).

United States v. Wald, 216 F.3d 1222 (10th Cir. 2000)(mere odor of burnt amphetamine noted following traffic stop not sufficient to provide probable cause to search trunk without more corroboration).

Nyland v. Moore, 216 F.3d 1264 (11th Cir. 2000)(error in not finding that habeas petitioner's state postconviction motions were pending until the mandate issued; however, second federal habeas petition did not relate back to date of filing of first habeas petition).

United States v. Bronx Reptiles, Inc., 217 F.3d 82 (2nd Cir. 2000)(Government had burden of proving that defendant knowingly caused transportation of wild animals to the United States under inhumane conditions, which included knowledge of inhumane conditions under which they were being transported).

United States v. Norris, 217 F.3d 262 (5th Cir. 2000)(order of restitution to defendant's former law partners was improper in false declaration prosecution).

United States v. Moss, 217 F.3d 426 (6th Cir. 2000)(dismissal of original indictment without prejudice under the Speedy Trial Act was clearly erroneous because court's written factors did not address requisite statutory factors.)

United States v. Walton, 217 F.3d 443 (7th Cir. 2000)(remand for factual findings re: amount of restitution).

United States v. Halter, 217 F.3d 551 (8th Cir. 2000)(Actual punishment as determined under the guidelines, as opposed to statutory maximum, is the proper basis for identifying the "more serious charge" for purposes of requirement that defendant, in seeking to set aside guilty plea under Bailey decision for use and carrying firearm during and in relation to drug trafficking offense, must show actual innocence of any and all "more serious charges" foregone by government in the course of plea bargaining to overcome procedural default of challenge to guilty plea.)

United States v. Austin, 217 F.3d 595 (8th Cir. 2000)(court had no jurisdiction to alter sentence after seven days from entry of judgment even if legally erroneous).

United States v. Mezas De Jesus, 217 F.3d 638 (9th Cir. 2000)(nine level enhancement based on theory that firearms offense was committed during an uncharged kidnapping necessitated that proof of kidnapping be by clear and convincing evidence, not just by preponderance).

Lajoie v. Thompson, 217 F.3d 663 (9th Cir. 2000)(exclusion of evidence of victim's past sexual abuse by others due to petitioner's violation of notice requirements of rape shield statutes violated Sixth Amendment and warranted habeas relief).

United States v. Poehlman, 217 F.3d 692 (9th Cir. 2000)(government induced otherwise unpredisposed defendant through agent posing as mother seeking "sexual mentor" for her three daughters to commit crime of crossing state lines for purpose of engaging in sex acts with minor, thus sustaining his defense of entrapment).

United States v. Smith, 217 F.3d 746 (9th Cir. 2000)(refusal of court to instruct on defendant's theory of defense that he was not aware that firearm was fully automatic was not harmless).

United States v. Sauza-Martinez, 217 F.3d 754 (9th Cir. 2000)(failure of court to give limiting instruction when it admitted post-arrest incriminating statement by co-defendant directly implicating defendant was plain error).

United States v. Cherry, 217 F.3d 811 (10th Cir. 2000)(remand to determine if co-defendant was part of conspiracy of murder of witness).

United States v. Hicks, 217 F.3d 1038 (9th Cir. 2000)(remanded for factual findings regarding amount of loss in false statement case).

United States v. Houston, 217 F.3d 1204 (9th Cir. 2000)(court failed to consider whether statements were actually made, only considering whether the statements, if made, were express death threats).

McClain v. Prunty, 217 F.3d 1209 (9th Cir. 2000)(state court made unreasonable determination of facts with regard to Batson claim, since stated reasons for striking two blacks were contrary to the facts or frivolous).

United States v. Arvizu, 217 F.3d 1224 (9th Cir. 2000)(no reasonable suspicion for stop of minivan based on stops of other minivans in area).

United States v. Kithcart, 218 F.3d 213 (3rd Cir. 2000)(district court erred in allowing government to reopen suppression hearing and relitigate suppression motion).

United States v. Baird, 218 F.3d 221 (3rd Cir. 2000)(government breached plea agreement by using self-incriminating information against defendant it promised it would not use).

United States v. Hernandez, 218 F.3d 272 (3rd Cir. 2000)(certificates of disposition from county clerk did not conclusively establish predicate offenses for career offender sentencing enhancement).

United States v. Rhynes, 218 F.3d 310 (4th Cir. 2000)(sanction for defense counsel's violation of witness sequestration rule—exclusion of defense witness's testimony— was abuse of discretion).

Carter v. Bell, 218 F.3d 581 (6th Cir. 2000)(failure to present mitigating evidence fell below objective standard of reasonableness).

United States v. Fuchs, 218 F.3d 957 (9th Cir. 2000)(failure to instruct that at least one overt act in furtherance of conspiracy must have occurred during the limitations period was plain error).

Schell v. Witek, 218 F.3d 1017 (9th Cir. 2000)(petitioner was entitled to evidentiary hearing on his motion for substitute appointed counsel and on his claim of ineffective assistance of counsel).

United States v. Estrada-Macias, 218 F.3d 1064 (9th Cir. 2000)(insufficient evidence in prosecution for conspiracy to manufacture methamphetamine).

United States v. Andra, 218 F.3d 1106 (9th Cir. 2000)(tax loss calculation improperly included some penalties and interest).

United States v. Barrios-Gutierrez, 218 F.3d 1118 (9th Cir. 2000)(defendant entitled to replead or have sentence reduced to maximum stated by district court at plea colloquy where court failed to properly advise defendant of maximum possible penalty).

Thomas v. Gibson, 218 F.3d 1213 (10th Cir. 2000)(evidence was insufficient to satisfy heinous, atrocious, or cruel aggravator for imposition of death penalty under Oklahoma law).

Spence v. Superintendent, Great Meadow Cor. Fac., 219 F.3d 162 (2nd Cir. 2000)(due process violated when original enhanced sentence imposed without showing that defendant breached plea agreement; miscarriage of justice would excuse prisoner's procedural default).

Watterson v. United States, 219 F.3d 232 (3rd Cir. 2000)(no evidence that defendant distributed controlled substance within 1000 feet of school zone).

United States v. Lopez, 219 F.3d 343 (4th Cir. 2000)(error for court to use information in defendant's proffer statement as basis for drug quantity determination; evidence at trial did not provide basis for drug quantity determination).

United States v. Phillips, 219 F.3d 404 (5th Cir. 2000)(failure to prove agency in prosecution for theft from federally funded program; money laundering convictions reversed for failure to prove that any transactions involved proceeds from "specified unlawful activity").

United States v. White, 219 F.3d 442 (5th Cir. 2000)(insufficient evidence of possession with intent to distribute cocaine).

United States v. Ross, 219 F.3d 592 (7th Cir. 2000)(remanded for proper sentencing calculation and proper computation of credit for time served).

United States v. Twilley, 219 F.3d 1092 (9th Cir. 2000)(stop based on officer's mistaken belief that vehicle violated California law because it displayed only one Michigan license plate was not supported by reasonable suspicion; government failed to show that Fourth Amendment violation connection with search of car was sufficiently attenuated to dissipate the primary taint).

United States v. Granville, 219 F.3d 1214 (9th Cir. 2000)(five second wait after knocking and announcing search was insufficient to comply with knock and announce statute; exigent circumstances did not justify immediate entry).

United States v. Stuckey, 220 F.3d 976 (8th Cir. 2000)(drug offenses under UCMJ were not "serious drug offenses" for purpose of sentencing under ACCA).

United States v. Musa, 220 F.3d 1096 (9th Cir. 2000)(abuse of discretion to deny motion for substi-

tution of counsel without inquiry into defendant's complaint).

Acosta v. Artuz, 221 F.3d 117 (2nd Cir. 2000)(petitioner was entitled to notice and opportunity to be heard on limitations question in 2254 proceeding).

United States v. Thomas, 221 F.3d 430 (3rd Cir. 2000)(relation-back rule may be applied to motion to vacate to extent amendments seek to amplify or clarify timely-filed claims).

United States v. Baker, 221 F.3d 438 (3rd Cir. 2000)(officers did not have reasonable suspicion justifying search of trunk).

United States v. Russell, 221 F.3d 615 (4th Cir. 2000)(counsel ineffective in not confirming status of prior convictions used for impeachment).

United States v. Vega, 221 F.3d 789 (5th Cir. 2000)(exigent circumstances exception did not support warrantless search of home rented by defendant; consent of one of occupants did not vitiate taint of illegal search).

United States v. Beckman, 222 F.3d 512 (8th Cir. 2000)(Confrontation Clause violation due to limitation of cross-examination; prosecutorial misconduct for arguing facts not in evidence).

United States v. Henke, 222 F.3d 634 (9th Cir. 2000)(use of former co-defendant as prosecution witness created conflict of interest; inadmissible lay opinion required reversal).

United States v. Ward, 222 F.3d 909 (11th Cir. 2000)(security guard was not in position of public or private trust).

United States v. Greer, 223 F.3d 41 (1st Cir. 2000)(remand to determine if court had imposed downward departure).

United States v. Butler, 223 F.3d 368 (6th Cir. 2000)(police actions went beyond checking out suspicious circumstances so that defendant was unlaw-

fully seized under Fourth Amendment when placed in back of police car and taken to police station).

United States v. Rea, 223 F.3d 741 (8th Cir. 2000)(church's use of materials purchased in interstate commerce and use of natural gas and fact that property in question was church property insufficient bases to satisfy jurisdictional requirement of federal arson statute).

United States v. Tavares, 223 F.3d 911 (8th Cir. 2000)(no exigent circumstances existed to justify entry without compliance with knock and announce statute; good faith reliance exception did not apply).

DeRoo v. United States, 223 F.3d 919 (8th Cir. 2000)(sua sponte remand because one of predicate offenses was not a "serious drug offense" as required by 18 U.S.C. § 924(e)).

Patterson v. Gomez, 223 F.3d 959 (9th Cir. 2000)(instruction in guilty phase of capital murder trial that jury presume that defendant was sane violated due process and was not harmless).

United States v. Pierce, 224 F.3d 158 (2nd Cir. 2000)(evidence insufficient to support conviction for conspiracy to launder money in connection with wire fraud scheme).

United States v. Ubiles, 224 F.3d 213 (3rd Cir. 2000)(insufficient evidence on tip from anonymous informant to justify Terry stop of defendant who merely possessed a weapon).

United States v. Bownes, 224 F.3d 302 (4th Cir. 2000)(improper venue because essential conduct element of harboring a fugitive occurred outside district).

Brown v. Johnson, 224 F.3d 461 (5th Cir. 2000)(inadequate evidentiary hearing on claims for which state court failed to make factual findings).

Olden v. United States, 224 F.3d 561 (6th Cir. 2000)(absence of counsel at critical stages of trial re-

quired remand for determination of whether defendant suffered prejudice entitling him to new trial).

United States v. Evans, 224 F.3d 670 (7th Cir. 2000)(motion for new trial qualified as motion to vacate subject to statutory restrictions on second or successive motions).

United States v. Jolivet, 224 F.3d 902 (8th Cir. 2000)(mere act of depositing proceeds from insurance fraud insufficient to sustain money laundering conviction).

United States v. Reilly, 224 F.3d 986 (9th Cir. 2000)(obtaining oral consent to search after defendant had requested counsel not excused by inevitable discovery doctrine).

United States v. Liang, 224 F.3d 1057 (9th Cir. 2000)(reversed and dismissed for improper venue).

United States v. Arrieta, 224 F.3d 1076 (9th Cir. 2000)(waiver of right to appeal deportation order was not intelligent, thus violating his due process rights).

Saffold v. Newland, 224 F.3d 1087 (9th Cir. 2000)(limitations period under AEDPA tolled due to pending state habeas proceeding, and mailbox rule applied to state habeas filing).

Manning v. Foster, 224 F.3d 1129 (9th Cir. 2000)(cause for procedural default existed where petitioner failed to seek collateral relief in reliance on actions of attorney who failed to perfect timely appeal after petitioner made timely request that he do so, creating presumption of prejudice).

United States v. Edwards, 224 F.3d 1141 (9th Cir. 2000)(erroneous admission of bail receipt during second trial because of prosecution's tampering with evidence was not harmless and required reversal).

United States v. Vonn, 224 F.3d 1152 (9th Cir. 2000)(failure to advise defendant during guilty plea colloquy of his right to counsel at trial was not harmless).

Paredes v. Atherton, 224 F.3d 1161 (10th Cir. 2000)(COA properly granted where district court's procedural ruling was debatable and petitioner ineffective assistance of counsel in connection with entry of guilty plea).

Jones v. United States, 224 F.3d 1251 (11th Cir. 2000)(defense counsel's performance was deficient when he failed to argue suppression of wiretap evidence despite government's delay of at least 31 days in sealing such evidence).

United States v. Pena-Lora, 225 F.3d 18 (1st Cir. 2000)(insufficient evidence in hostage-taking conspiracy prosecution; mandatory sentences for using multiple weapons during single crime of violence could not be consecutive to each other).

United States v. Santo, 225 F.3d 92 (1st Cir. 2000)(court's understatement of minimum mandatory sentence violated rule governing plea hearings and affected defendant's substantial rights).

Wims v. United States, 225 F.3d 186 (2nd Cir. 2000)(limitations period under AEDPA begins when facts giving rise to claim reasonably could be discovered through exercise of due diligence).

United States v. Pedragh, 225 F.3d 240 (2nd Cir. 2000)(post-offense convictions could not be included as "prior felony convictions" for purposes of enhancing sentence).

Bacon v. Lee, 225 F.3d 470 (4th Cir. 2000)(writ granted on ineffective assistance claim).

United States v. Meshack, 225 F.3d 556 (5th Cir. 2000)(two life sentences reversed under Apprendi in light of determination of drug quantity by court by a preponderance).

United States v. Kramer, 225 F.3d 847 (7th Cir. 2000)(in prosecution of willful failure to pay child support case, defendant allowed to assert defense that underlying judgment was obtained without personal jurisdiction over him, which defense would negate element of willfulness).

United States v. Walls, 225 F.3d 858 (7th Cir. 2000)(erroneous instruction regarding firearm count was not harmless).

United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000)(failure to submit drug quantity determination to jury was plain error in light of Apprendi).

Evicci v. Commissioner of Corrections, 226 F.3d 26 (1st Cir. 2000)(improper to dismiss petitioner's Sixth Amendment claim on procedural grounds).

United States v. McSherry, 226 F.3d 153 (2nd Cir. 2000)(defendant's false grand jury testimony did not amount to obstruction of justice and did not warrant sentence enhancement).

Harris v. Day, 226 F.3d 361 (5th Cir. 2000)(constructive denial of effective assistance of counsel where Anders brief failed to mention any arguable issues on appeal).

United States v. Husband, 226 F.3d 626 (7th Cir. 2000)(remand to determine if use of anesthetic to obtain evidence was reasonable where it rendered defendant unconscious).

Vincent V. Seabold, 226 F.3d 681 (6th Cir. 2000)(Sixth Amendment Confrontation Clause violations in admitting testimony of police officer regarding post-arrest, custodial hearsay statements of co-defendant as declarations against penal interest and in admitting witness's testimony that second co-defendant told her that petitioner and former co-defendant had murdered victim).

United States v. Gee, 226 F.3d 885 (7th Cir. 2000)(insufficient evidence in wire and mail fraud prosecution; lack of buyer-seller instruction required reversal).

King v. Kemna, 226 F.3d 981 (8th Cir. 2000)(counsel's failure to pursue second mental evaluation based on diminished capacity defense was unreasonable and prejudicial).

United States v. Reid, 226 F.3d 1020 (9th Cir. 2000)(non-resident of apartment cannot give con-

sent to search; warrantless search not justified as protective sweep or by exigent circumstances).

United States v. Matthews, 226 F.3d 1075 (9th Cir. 2000)(conviction records and statutes of conviction must be introduced to justify ACCA conviction).

United States v. Recio, 226 F.3d 1087 (9th Cir. 2000)(insufficient evidence to prove drug conspiracy; counsel's failure to move for acquittal on drug possession charge after defendant's first trial was ineffective assistance).

Wyzykowski v. Dep't of Corrections, 226 F.3d 1213 (11th Cir. 2000)(remanded to determine if petitioner could make showing of actual innocence before determining if AEDPA limitations provision was unconstitutional as violation of habeas corpus Suspension Clause).

United States v. Gandia-Maysonet, 227 F.3d 1 (1st Cir.)(district court improperly told defendant at plea colloquy what it would take for government to prove scienter element of carjacking).

Mickens v. Taylor, 227 F.3d 203 (4th Cir. 2000)(habeas relief granted due to attorney's actual conflict of interest).

United States v. Carroll, 227 F.3d 486 (5th Cir. 2000)(picture of face of minor boy superimposed on body of another not shown to be a minor did not provide adequate proof of violation of 18 U.S.C. § 2251(a)).

United States v. Corrado, 227 F.3d 528 (6th Cir. 2000)(credible evidence of jury tampering and newspaper articles recounting jury tampering required remand for further investigation).

United States v. Faasse, 227 F.3d 660 (6th Cir. 2000)(Child Support Recovery Act is unconstitutional because it exceeds Congress's commerce clause authority).

United States v. King, 227 F.3d 732 (6th Cir. 2000)(officer's search of basement of duplex exceeded scope of warrant and did not fall within good-faith exception to exclusionary rule).

United States v. Eschman, 227 F.3d 886 (7th Cir. 2000)(improper to use one-to-one conversion ratio in conspiracy to manufacture methamphetamine case because it was theoretically possible to convert precursor chemicals into same amount of drug; also remanded for reconsideration of failure to give 3 point acceptance or responsibility reduction).

United States v. Ryan, 227 F.3d 1058 (8th Cir. 2000)(Supreme Court decision in *Jones v. United States* relative to standard applied in determining whether building is used in interstate commerce or in activity affecting commerce withing meaning of arson statute established the substantive reach of the statute, rather than a new rule of criminal procedure, and thus could be applied retroactively; insufficient nexus with interstate commerce in this case to sustain conviction).

United States v. Foster, 227 F.3d 1096 (9th Cir. 2000)(error to allow government to use as impeachment defendant's prior conviction for receiving stolen property without determining whether prior conviction involved deceitful or fraudulent conduct).

United States v. Sager, 227 F.3d 1138 (9th Cir.2000)(remand required to determine loss amount and appropriateness of fine without considering whether fine was undue burden to defendant's dependents).

United States v. Burton, 228 F.3d 524 (4th Cir. 2000)(officer who reached into defendant's coat during routine police-citizen encounter violated Fourth Amendment despite his concern for his own safety and safety of fellow officers).

United States v. McCleskey, 228 F.3d 640 (6th Cir. 2000)(nontestifying accomplice's statement was inadmissible both as hearsay and as Confrontation Clause violation, and erroneous admission was not harmless).

Washington v. Hofbauer, 228 F.3d 689 (6th Cir. 2000)(prosecutorial misconduct in closing argument by improperly emphasizing evidence of defendant's bad character; ineffective assistance of counsel not to object; state court's determination that trial counsel was not ineffective was unreason-

able application of federal law, and prosecutorial misconduct violated petitioner's due process rights).

United States v. Cavender, 228 F.3d 792 (7th Cir. 2000)(erroneous exclusion of witness's drug conviction was not harmless as to one defendant).

United States v. Mondragon, 228 F.3d 978 (9th Cir. 2000)(prosecutor violated plea agreement by calling attention to allegedly serious nature of defendant's prior offenses).

Boz v. United States, 228 F.3d 1290 (11th Cir. 2000)(alien's due process claim was reviewable under transitional provision established by Illegal Immigration Reform and Immigrant Responsibility Act).

United States v. Simpson, 228 F.3d 1294 (11th Cir. 2000)(plain error in calculation of drug quantity; error to downwardly depart from statutory mandatory minimum sentence in absence of a motion by the government under 18 U.S.C. § 3553(e) or unless defendant falls within provisions of safety valve statute, 18 U.S.C. § 3553(f)).

United States v. Rogers, 228 F.3d 1318 (11th Cir. 2000)(where drug quantity was neither charged in the indictment nor proven to the jury beyond a reasonable doubt, defendant had to be sentenced without reference to drug quantity, following *Apprendi v. New Jersey*, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and overruling at least in part or by implication, *United States v. Hester*, 199 F.3d 1287 (11th Cir. 2000), cert. granted, judgment vacated and remanded, 2000 WL 797322 (2000)).

Cossell v. Miller, 229 F.3d 649 (7th Cir. 2000)(state waived claim that petitioner procedurally defaulted his ineffective assistance claim; counsel ineffective for failing to object to in-court identification of defendant which lacked sufficient independent reliability).

United States v. Kroeger, 229 F.3d 700 (8th Cir.2000)(plain error to apply environmental-harm enhancement in determining offense level for count of endangering life in manufacturing methamphetamine case).

United States v. Juvenile (RRA-A), 229 F.3d 737 (9th Cir. 2000)(prejudicial violations of the Juvenile Delinquency Act occurred when agent waited four hours before advising juvenile of rights under *Miranda* and by failing to notify Mexican consulate when parents could not be contacted and by failing to wait reasonable length of time to begin interrogation).

Morris v. Woodford, 229 F.3d 775 (9th Cir. 2000)(no independent and adequate state law ground for denying relief in state court; petitioner presented colorable constitutional claims sufficient to warrant issuance of COA and to warrant evidentiary hearing).

United States v. Furrow, 229 F.3d 805 (9th Cir. 2000)(warrantless search of cabin not justified under exigent circumstances exception; remand necessary to determine if son's consent to search of father's cabin was tainted by prior illegal search).

United States v. Rodrigues, 229 F.3d 842 (9th Cir. 2000)(reversed for improper determination of restitution).

United States v. Nichols, 229 F.3d 975 (10th Cir. 2000)(findings that defendant intended to deprive lender of full amount of FHA mortgage and vehicle loans so that amount of intended loss could be considered in determining base offense level were clearly erroneous; court required to consider security deposit put up in obtaining credit card in determining amount of intended loss).

United States v. Eastern Medical Billing, Inc., 230 F.3d 600 (3rd Cir. 2000)(instruction given after jurors indicated that they may be hung on some charges was abuse of discretion and not harmless error).

United States v. Bartley, 230 F.3d 667 (4th Cir. 2000)(drug and money laundering conspiracies should have been grouped for sentencing purposes, since money laundering offense level increased based on knowledge that laundered funds were drug proceeds).

Lockett v. Anderson, 230 F.3d 695 (5th Cir. 2000)(ineffective assistance of counsel for failing to investi-

gate mitigating evidence to present during sentencing phase of capital trial).

United States v. Franks, 230 F.3d 811 (5th Cir. 2000)(enhancement for express threat of death improperly applied where defendant convicted of firearms charge where threat of death was related to possession, use or discharge of the firearm; defense counsel ineffective for failing to object).

Skaggs v. Parker, 230 F.3d 876 (6th Cir. 2000)(petitioner prejudiced by counsel's use of bizarre and eccentric forensic psychologist during penalty phase of capital trial but not prejudiced by calling him during guilty phase).

United States v. Hollis, 230 F.3d 955 (7th Cir. 2000)(reliance on outdated version of Sentencing Guidelines was error).

United States v. Willard, 230 F.3d 1093 (9th Cir. 2000)(improper application of abuse of position of trust enhancement in mother-daughter relationship which involved non-business, merely familial position of trust).

United States v. Wheeler, 230 F.3d 1194 (10th Cir. 2000)(incorrect calculation of sentence where low end of guideline range fell below mandatory minimum; court could sentence defendant to anywhere from mandatory minimum to upper end of guideline range).

United States v. Chanthadara, 230 F.3d 1237 (10th Cir. 2000)(death sentence vacated, though conviction affirmed, where trial judge referred to defense as smoke screen and where removal of juror for cause was not justified by her responses on questionnaire on death penalty views).

United States v. Johnson; 231 F.3d 43 (D.C. Cir. 2000)(remand for new sentencing occasioned by lost transcript).

Gall v. Parker, 231 F.3d 265 (6th Cir. 2000)(evidence insufficient to support murder conviction; erroneous instructions limitation consideration of mitigating factors violated due process; exclusion of venireman

who was uncertain about death penalty views was reversible).

Wilkinson v. Cowan, 231 F.3d 347 (7th Cir. 2000)(no procedural default of ineffective assistance claim where issue raised in post-conviction proceeding).

United States v. Nicholson, 231 F.3d 445 (8th Cir. 2000)(resentencing required under Apprendi where trial court, not jury, decided facts necessary to impose sentence beyond statutory maximum; given ambiguity of factual findings, one defendant should have been sentenced within statutory maximum of five years for marijuana and not under maximum for cocaine base).

United States v. Lo, 231 F.3d 471 (9th Cir. 2000)(insufficient evidence of use of mails on some counts of indictment).

United States v. Scheele, 231 F.3d 492 (9th Cir. 2000)(court did not err on side of caution as required, and remand was required for resentencing).

United States v. Jones, 231 F.3d 508 (9th Cir. 2000)(conviction for stalking in violation of California law did not constitute a crime of violence so as to increase base offense level).

Loveland v. Hatcher, 231 F.3d 640 (9th Cir. 2000)(remanded for evidentiary hearing on good cause for procedural default where trial counsel failed to file a direct appeal).

United States v. Archuletta, 231 F.3d 682 (10th Cir. 2000)(two level increase for more than minimal planning not warranted where all defendant did was deliberately open a fraudulent account and use a false name).

United States v. Drayton, 231 F.3d 787 (11th Cir. 2000)(defendant's consent to pat-down search while on cross-country bus stopped at bus depot was not sufficiently free of coercion to be voluntary).

United States v. Smith, 231 F.3d 800 (11th Cir. 2000)(insufficient evidence in violation of voter laws

case; witness's former testimony from selective prosecution hearing was inadmissible).

United States v. Colton; 231 F.3d 890 (4th Cir. 2000)(offense enhancement for deriving more than \$1,000,000 in receipts in bank fraud prosecution was not warranted).

United States v. Witherspoon, 231 F.3d 923 (4th Cir. 2000)(defendant entitled to evidentiary hearing on issue of whether counsel was ineffective for failing to file appeal).

Donahue v. Cain, 231 F.3d 1000 (5th Cir. 2000)(error for district court to rule on unasserted issue; insufficient evidence to support conviction of attempted murder).

King v. Morrison, 231 F.3d 1094 (8th Cir. 2000)(inmate eligible for early release after completing drug abuse treatment program because felon in possession of firearm is not a crime of violence for that purpose).

United States v. Hayes, 231 F.3d 1132 (9th Cir. 2000)(defendant not properly made aware of dangers and disadvantages of self-representation, rendering waiver of counsel invalid).

Sandoval v. Calderon, 231 F.3d 1140 (9th Cir. 2000)(prosecutor's invocation of religious authority during penalty phase of trial violated due process).

United States v. Rahseparian, 231 F.3d 1257 (9th Cir. 2000)(jury could not reasonably infer that defendant knew his son's telemarketing business was unlawful, precluding conspiracy and mail fraud convictions; insufficient evidence to support money laundering conviction).

United States v. Fitzgerald, 232 F.3d 315 (2nd Cir. 2000)(version of Sentencing Guidelines in effect at time of sentencing in its entirety must be applied; tax evasion, fraud and conversion charges were to be grouped).

United States v. Page, 232 F.3d 536 (6th Cir. 2000)(defendants could not be subjected to higher

maximum punishment than that authorized by jury verdict, following Apprendi but only as to charge of conspiracy).

Green v. White, 232 F.3d 671 (9th Cir. 2000)(defendant's fair trial rights violated by juror's lies on questionnaire regarding criminal history, his behavior, and his attempt to cover up his behavior).

United States v. Martinez, 232 F.3d 728 (9th Cir. 2000)(prior state conviction for transporting marijuana across international border did not qualify as predicate offense for career offender).

United States v. Garcia-Valenzuela, 232 F.3d 1003 (9th Cir. 2000)(denial of government's motion to dismiss counts of indictment was abuse of discretion).

Whelchel v. Washington, 232 F.3d 1197 (9th Cir. 2000)(out-of-court statements of unavailable co-defendants did not bear particularized guarantees of trustworthiness so that their admission violated Confrontation Clause; admission of videotaped deposition violated Confrontation Clause but was harmless).

United States v. Arvizu, 232 F.3d 1241 (9th Cir. 2000)(no reasonable suspicion to stop minivan, and taint of illegal stop was not purged by intervening events).

Raineri v. United States, 233 F.3d 96 (1st Cir. 2000)(when district court acting sua sponte characterized defendant's pro se Rule 35 post-conviction motion as a § 2255 motion, that action did not render defendant's later attempt to file a § 2255 motion second or successive).

United States v. Peterson, 233 F.3d 101 (1st Cir. 2000)(breaking and entering offense was not "burglary" or otherwise a "violent felony" as a predicate for sentencing defendant as a career offender).

United States v. Varoudakis, 233 F.3d 113 (1st Cir. 2000)(in arson case, defendant's prior burning of a leased car was not admissible to show plan, knowledge and intent in burning of building; probative

value outweighed by danger of undue prejudice, and admission was not harmless).

Mask v. McGinnis, 233 F.3d 132 (2nd Cir. 2000)(state court's use of certainty standard in evaluating ineffective assistance claim was unreasonable application of federal law; petitioner was prejudiced by counsel's failure to correct prosecution's belief that defendant was violent persistent felon).

United States v. Ventrilla, 233 F.3d 166 (2nd Cir. 2000)(where district court either refused to exercise its discretion or believed that it did not have authority to grant downward departure for diminished mental capacity, remand was required).

United States v. Moreman, 233 F.3d 379 (6th Cir. 2000)(defendant brandished, but did not otherwise use, firearm for purpose of sentencing enhancement).

United States v. Munoz, 233 F.3d 410 (6th Cir. 2000)(where defendant was incapable of delivering methamphetamine, court had to exclude methamphetamine from sentencing calculation).

United States v. Mason, 233 F.3d 619 (D.C. Cir. 2000)(defendant was entitled to instruction on innocent possession defense in firearm case).

United States v. Castro-Gomez, 233 F.3d 684 (1st Cir. 2000)(failure of district court to inform defendant that his prior criminal history, as made known by the government, would mandate a life sentence was not harmless error and required vacatur of plea).

United States v. Corduba-Murgas, 233 F.3d 704 (2nd Cir. 2000)(remanded for determination under preponderance standard whether departures were warranted).

Buhl v. Cooksey, 233 F.3d 783 (3rd Cir. 2000)(failure of state court to conduct Faretta hearing on issue of self-representation required reversal).

United States v. Sprick, 233 F.3d 845 (5th Cir. 2000)(insufficient evidence to convict for bank fraud and money laundering related to bank fraud where no proof that bank was placed at risk of civil liability).

Wilkerson v. Cain, 233 F.3d 886 (5th Cir. 2000)(limitation of cross-examination of purported eye witness violated Confrontation Clause and was not harmless).

Lipson v. United States, 233 F.3d 942 (7th Cir. 2000)(remand required because defense counsel may have been laboring under an actual conflict of interest where he allegedly deferred to wishes of co-defendant in not seeking plea agreement).

United States v. Searcy, 233 F.3d 1096 (8th Cir. 2000)(defendant entitled to consideration of his claim of sentencing entrapment under proper legal standard and by focusing on predisposition and not on outrageousness of government conduct in coaxing defendant to buy cocaine and to cook it into crack cocaine).

Schall v. Gammon, 233 F.3d 1103 (8th Cir. 2000)(admission of videotape of psychologist's out-of-court interview of seven year old rape victim violated Confrontation Clause).

United States v. Munoz, 233 F.3d 1117 (9th Cir. 2000)(nine-level difference in upward adjustment, based on whether allegedly fraudulent sales of which defendant was not convicted but which purportedly were relevant conduct, was sufficiently disproportionate to require the district court to apply the clear and convincing standard to its factual findings).

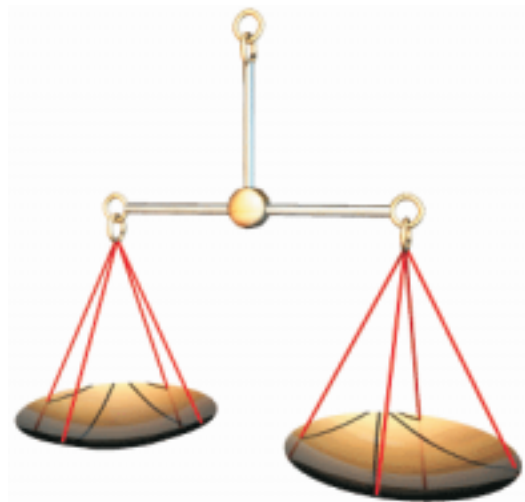
United States v. Lynch, 233 F.3d 1139 (9th Cir. 2000)(conviction of knowingly removing archeological resource from public land in violation of Archeological Resources Protection Act (ARPA) requires that defendant know that skull removed from national forest was archeological resource).

United States v. Oaxaca, 233 F.3d 1154 (9th Cir. 2000)(warrantless entry into attached garage and arrest of defendant without warrant violated Fourth Amendment; sister's consent invalid; erroneous admission of illegally seized evidence not harmless beyond a reasonable doubt).

United States v. Concha, 233 F.3d 1249 (10th Cir. 2000)(foreign convictions may not be used as predicate offenses for enhancement under ACCA).

Nuckols v. Gibson, 233 F.3d 1261 (10th Cir. 2000)(state's failure to disclose criminal allegations regarding key state witness was Brady violation).

United States v. Doherty, 233 F.3d 1275 (11th Cir. 2000)(admission of non-testifying defendant's statement violated Bruton, exclusion of impeachment evidence of agent's threat against potential defense witness was reversible error; insufficient evidence to support conspiracy convictions).



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