

The Defender

Newsletter for CJA Panel Attorneys

Fall Frivolity Issue*

Pointless Banter

The editor feels he has provided at least several issues of marginally useful legal materials. Therefore, in the spirit of the harvest season - and I do not mean the cannabis that is occasionally grown in the Conecuh National Forest - this issue will be devoid of any helpful information, except the Reversible Errors column.

Instead, I thought I would explain, for the ten thousandth time, why normal, moral Americans would take on the vocation of defending outlaws. Most people feel that we defense lawyers are simply delaying the inevitable process of rehabilitation that occurs in our nation's prisons.

I too once held such beliefs. In fact, like Hillary Clinton, I was once a Goldwater Republican. However, I was only five-years-old at the time. My brief rebellion ended when I was spanked soundly with a copy of Dr. Spock's baby book.

* "An editor is one who separates the wheat from the chaff and prints the chaff." Adlai Stevenson.

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Since that time I have been suffering under the delusion that putting people in an environment where they have no freedom, are subjected to arbitrary rules, and are under constant fear of violence, does not build character. I realize this is wholly irrational, and if I simply listened to election campaign commercials again and again, I would be convinced that birth-to-grave imprisonment is the only solution to crime.

Still, people ask, "even with your antisocial beliefs, how can you defend crime?" I do not. I can say with complete confidence that I have never asked a jury to acquit a citizen because "he should have the freedom to rob and pillage." (Note - Pillaging is no longer a federal offense). Aside from the strategic implications of such a defense, I truly do not believe that hitting people over the head for their valuables is a form of employment to be encouraged.

I point all skeptics to the sixth amendment to the United States Constitution, which states, "...the accused shall enjoy the right...to have the assistance of counsel for his defence." Regardless of the fact that the framers misspelled "defense," this was an excellent rule. It created the only guaranteed form of lawyering in the Constitution, and thus lent moral authority to representing child pornographers. (Note- Nowhere does that document mention the right to counsel after your loved ones die in a plane crash. The framers, in their

wisdom, knew that would not be a problem).

Therefore, under the much maligned theory of original intent, I justify my livelihood as ordained by Jefferson, Adams, and Aaron Burr (who knew he would need a good lawyer later).

Reversible Errors

Eleventh Circuit

A defendant could not be ordered to pay restitution for money taken in a robbery for which he was not convicted. United States v. Santos, 1996 WL 471129 (11th Cir. 9/11/96).

Other Circuits

An anonymous call did not give officers reasonable suspicion to stop a defendant on the street merely because his clothes matched the caller's description. United States v. Roberson, 90 F.3d 75 (3d Cir. 1996).

When a defendant's sentence of imprisonment was reduced below his time already served, his supervised release began from the date he should have been released. United States v. Blake, 88 F.3d 824 (9th Cir. 1996).

A prosecutor's reference to African-American defendants, who were not from North Dakota, as "bad people," was not harmless. United States v. Cannon, 88 F.3d 1495 (8th Cir. 1996).

A defendant must be shown to know his shotgun is shorter than 18 inches in length in order to be criminally liable for failure to register the weapon. United States v. Edwards, 90 F.3d 199 (7th Cir. 1996).

Police could not ignore federal knock-and-announce law (18 U.S.C. §3109) to enter a home to arrest a fugitive. United States v. Ramirez, 91 F.3d 1297 (9th Cir. 1996).

Prejudice was presumed when trial counsel was forced to prove his own ineffectiveness at a hearing. United States v. Del Muro, 87 F.3d 1078 (9th Cir. 1996).

The government failed to prove a credit union was federally insured. United States v. Allen, 88 F.3d 765 (9th Cir. 1996).

A court failed to conduct a hearing on whether a witness should have been immunized by the government. United States v. Young, 86 F.3d 944 (9th Cir. 1996).

A firearm found in a duffle bag in a car was not carried. United States v. Mua, 87 F.3d 1101 (9th Cir. 1996).

(1) A loan's face value may not be the proper amount of loss when collateral has been pledged. (2) Court failed to make findings there was five or more participants for an enhancement.

United States v. Wester, 90 F.3d 592 (1st Cir. 1996).

A court must make individualized findings as to each defendant in a drug conspiracy. United States v. Tucker, 90 F.3d 1135 (6th Cir. 1996).

A court failed to resolve whether amounts of drugs were attributable during the time of the conspiracy. United States v. Nesbitt, 90 F.3d 164 (6th Cir. 1996).

(1) A defendant who made a single buy was not responsible for other drugs in the conspiracy. (2) Regardless how they are charged, counts based upon a quantity of

controlled substance should be grouped. United States v. McDuffy, 90 F.3d 233 (7th Cir. 1996).

Obstruction of justice enhancement is only proper when the conduct is related to the conviction. United Sisti, 91 F.3d 305 (2d Cir. 1996).

A defendant could not be denied credit for acceptance when he filed an uncounseled, pro se motion to withdraw plea after his attorney died. United States v. Garrett, 90 F.3d 210 (7th Cir. 1996).

A common modus operandi alone, did not make robberies part of a common scheme. United States v. Cowart, 90 F.3d 154 (6th Cir. 1996).

Consequential expenses may not be included in a restitution order. United States v. Sablan, 92 F.3d 865 (9th Cir. 1996).

A basis for downward departure can no longer be categorically rejected after Koon. United States v. Cubillos, 91 F.3d 1342 (9th Cir. 1996).

Failure to advise a defendant of his right to appeal was per se error. United States v. Sanchez, 88 F.3d 1243 (D.C. Cir. 1996).

Orally raising an issue at sentencing preserved it for appeal. United States v. Perkins, 89 F.3d 303 (6th Cir. 1996).

A court's application of "sentencing entrapment" allowed a sentence below the mandatory minimum. United States v. Castaneda, 1996 WL 490348 (9th Cir. 8/29/96).

(1) Failure to make findings of drugs attributable to the defendant. (2) No presumption that three drug manufacturers were equally guilty. United States v. Gutierrez-Hernandez, 1996 WL 488070 (9th Cir. 8/28/96).

Lack of evidence that the defendant controlled others precluded a leadership role. United States v. Miller, 91 F.3d 1160 (8th Cir. 1996).

A defendant should have received credit for acceptance of responsibility for his written

statement. United States v. Flores, 1996 WL 467085 (9th Cir. 8/19/96).

No restitution was available to "victims" not named in indictment. United States v. Upton, 91 F.3d 677 (5th Cir. 1996).

Sentences at two proceedings on the same day were "at the same time" for guideline calculations. United States v. Greer, 91 F.3d 996 (7th Cir. 1996).

New Hope

There are few opportunities for indigent drug addicts to get treatment, short of a 2-year+ custody sentence to BOP. So it was gratifying to learn of one program that was able to accept one of our clients. Dan Wannamaker successfully placed a client in the New Hope Home of Gulf Breeze, Florida.

For more information about their programs call them at (904) 932-3813, or at the Waterfront Rescue Mission (904) 438-4027. Rev. Gary Schauf, M.S. is the Program Director.

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