

THE DEFENDER

Newsletter for CJA Panel Attorneys

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Post-Mardi Gras Issue

BOP Official to Speak Here

On Friday March 21, 1997, at 3:00 p.m., in the courtroom of Chief Judge Charles R. Butler, Jr., there will be a lecture given by the Regional Inmate Systems Administrator for the Southeast Region. John A. Gaither will address issues relating to inmate custody, credit, and placement. Mr. Gaither has been with Federal Bureau of Prisons for the last 17 years and has held his current position for the last 5 years.

All local lawyers are welcome to attend. Prosecutors and probation officers are also encouraged to come.

This is a complicated and little understood area of federal criminal practice. Mr. Gaither is prepared to answer questions, so please prepare some.

This issue will also be addressed in an article to be published in March. see Bunin, Alexander, "Time and Again: Concurrent and Consecutive Sentences Among State and

CONTENTS

BOP Official to Speak Here .	1
Reversible Errors	1

Federal Jurisdictions," *The Champion*, March, 1997, v. XXI, No. 2. (Copies will be mailed with *The Defender* next month.

Reversible Errors

United States v. McMinn, 103 F.3d 216 (1st Cir. 1997) (A defendant is not in the business of selling stolen goods unless he sells goods stolen by others).

United States v. Brazel, 102 F.3d 1120 (11th Cir.), cert. denied, 118 S.Ct. 78 (1997) (A sentence may not be enhanced with convictions that are not final).

United States v. Mikell, 102 F.3d 470 (11th Cir.), cert. denied, 117 S.Ct. 1459 (1997) (A defendant who is subject to an enhanced sentence under 21 U.S.C. §841, may collaterally attack a prior conviction).

United States v. Shonubi, 103 F.3d 1085 (2d Cir. 1997) (Multiplying quantity of seized drugs by number of previous trips was an inadequate measure).

United States v. DeGovanni, 104 F.3d 43 (3d Cir. 1997) (A corrupt police sergeant was not a supervisor merely because of his rank).

United States v. Draves, 103 F.3d 1328 (7th Cir.), cert. denied, 117 S.Ct. 2528 (1997) (Fleeing from a police car was not obstruction of justice).

United States v. Myers,

104 F.3d 76 (5th Cir.), cert. denied, 117 S.Ct. 1709 (1997) (A court could not impose consecutive sentences of supervised release).

United States v. Monem, 104 F.3d 905 (7th Cir. 1997) (A court did not make sufficient factual findings to justify the fine of a defendant who claimed inability to pay).

United States v. Siegel, 102 F.3d 477 (11th Cir. 1996) (Failure to advise the defendant of the maximum and minimum mandatory sentences required that the defendant be allowed to withdraw his plea).

United States v. Shepherd, 102 F.3d 558 (DC Cir. 1996) (A court abused its discretion in rejecting the defendant's mid-trial guilty plea).

Marks v. Clarke, 102 F.3d 1012 (9th Cir.), cert. denied, 118 S.Ct. 264 (1997) (A warrant to search two residences did not authorize the officers to search all persons present).

United States v. Randolph, 101 F.3d 607 (8th Cir. 1996) (The trial court inadequately explained its drug quantity findings).

United States v. Benedict, 95 F.3d 17 (8th Cir. 1996) (The trial court should not have accepted partial verdicts).

United States v. Moit, 100 F.3d 605 (8th Cir. 1996) (The court should have sentenced a gun possession under the lawful sporting purpose provisions).

United States v. Baker, 98 F.3d 330 (8th Cir.), cert. denied, 117 S.Ct. 1456 (1997) (Evidence admissible against only one codefendant required severance).

United States v. Montgomery, 100 F.3d 1404 (8th Cir. 1996) (Codefendants should have been required to try on clothing, after defendant had to, when the government put ownership at issue).

United States v. Lecompte, 99 F.3d 274 (8th Cir. 1996) (Evidence of prior contact with alleged victims did not show plan or preparation).

United States v. Casterline, 103 F.3d 76 (9th Cir.), cert. denied, 118 S.Ct. 106 (1997) (A felon in possession charge may not proven solely by ownership).

United States v. Triplett, 104 F.3d 1074 (8th Cir.), cert. denied, 117 S.Ct. 1346 (1997) (A threat of death adjustment is double counting in 18 U.S.C. §924 (c) case).

United States v. Peterson, 101 F.3d 375 (5th Cir. 1996) (Violation of fiduciary duty is not necessarily criminal conduct for application of relevant conduct).

United States v. Williams, 103 F.3d 57 (8th Cir. 1996) (The court could reduce a sentence for a retroactive amendment even after a reduction under Rule 35).

United States v. Still, 102 F.3d 118 (5th Cir.), cert. denied, 118 S.Ct. 43 (1997) (The court failed to admonish the defendant on the mandatory minimum).

United States v. Jobe, 101 F.3d 1046 (5th Cir.), cert. denied, 118 S.Ct. 81 (1997)

(Defendant's position as bank director did not justify managerial role when he did not manage or supervise others).

United States v. Glover, 97 F.3d 1345 (10th Cir. 1996) (It was ineffective for counsel to fail to object to the higher methamphetamine range).

United States v. Cordoba, 104 F.3d 225 (9th Cir. 1997) (There is no longer a blanket prohibition of polygraph evidence).

United States v. Steinberg, 99 F.3d 1486 (9th Cir. 1996) (Exculpatory evidence, discovered by the government nine months after trial, required new trial under *Brady*).

United States v. Murray, 103 F.3d 310 (3d Cir. 1997) (Evidence that an alleged murderer had killed before was improperly admitted in a CCE case).

United States v. Lopez, 106 F.3d 309 (9th Cir. 1997) (Prosecutors' violation of ethical rule in meeting with an indicted defendant justified a downward departure).

United States v. Podde, 105 F.3d 813 (2d Cir. 1997) (The statute of limitations barred the reinstatement of charges that were dismissed in a plea agreement).

United States v. Collado, 106 F.3d 1097 (2d Cir. 1997) (An enhancement under 21 U.S.C. §851 requires the prior conviction to be obtained by indictment).

United States v. Wilson, 105 F.3d 219 (5th Cir.), cert. denied, 118 S.Ct. 133 (1997) (A coconspirator's use of a firearm does not bar application of the safety valve).

United States v. Harris, 104 F.3d 1465 (5th Cir.), cert. denied, 118 S.Ct. 103 (1997) (Actions of accessory after the fact did not justify obstruction enhancement when those same acts supported the substantive offense).

United States v. Gilcrist, 106 F.3d 297 (9th Cir. 1997) (Sentence, upon which parole began over 15 years ago, could not be counted toward criminal history).

United States v. Mangone, 105 F.3d 29 (1st Cir.), cert. denied, 117 S.Ct. 2424 (1997) (Failure to give notice of upward departure was plain error).

United States v. Alexander, 106 F.3d 874 (9th Cir. 1997) (Rule of the case barred reconsideration of a suppression order after remand).

Mockaitis v. Harclerod, 104 F.3d 1522 (9th Cir. 1997) (Clergy-communicant privilege was upheld).

Carlo v. Chino, 105 F.3d 493 (9th Cir. 1997) (A state statutory right to post-booking phone calls was protected by federal due process).

United States v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997) (Transmission of e-mail messages of torture, rape and murder do not fall within federal statute without public availability).

Okonkwo v. Lacy, 104 F.3d 21 (2d Cir. 1997) (Record did not support closure of proceedings during testimony of undercover officer).

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