

RECENT THIRD CIRCUIT AND SUPREME COURT CASES

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SUPREME COURT

I. Retroactivity of Ban Against Mandatory Life Sentences for Juveniles

Montgomery v. Louisiana, No. 14-280, 2016 U.S. LEXIS 862 (U.S. Jan. 25, 2016).

The rule announced in *Miller v. Alabama*, 567 U.S. ____ (2012) - prohibiting mandatory life sentences without parole for a juvenile convicted of a homicide offense – is a substantive rule to which federal and state courts alike must give retroactive effect on collateral review.

II. Sufficiency of the Evidence and Waiver of Statute of Limitations Defense

Musacchio v. United States, No. 14-1095, 2016 U.S. LEXIS 972 (U.S. Jan. 25, 2016).

- (1) The sufficiency of the evidence must be assessed against the elements of the charged crime, not against any added elements erroneously included in the jury instructions.
- (2) A statute of limitations defense not raised before the trial court may not be raised for the first time on appeal because it can never be plain error. When the defendant fails to raise such a defense, the government is not put to its burden of proving that it filed a timely indictment, so there is no error for an appellate court to correct, much less plain error.

III. Cert. Granted – Retroactivity of *Johnson v. United States*

Welch v. United States, No. 15-6418 (Cert. Granted Jan. 8, 2016).

ISSUES: (1) Whether *Johnson v. United States*, 135 S. Ct. 2551 (2015), which held that the Armed Career Criminal Act’s residual clause was void for vagueness, announces a new substantive rule of constitutional law that applies retroactively to cases on collateral review; and (2) Whether the district court erred when it denied petitioner’s 28 U.S.C. § 2255 motion challenging his designation as an armed career criminal based on a prior Florida conviction for “sudden snatching?”

IV. Cert. Granted – Meaning of the term “official action” under the federal bribery, Hobbs Act, and Honest-Services Fraud Statutes

McDonnell v. United States, No. 15-474 (Cert. Granted Jan. 15, 2016).

The federal bribery statute, Hobbs Act, and honest-services fraud statutes, 18 U.S.C. §§ 201, 1346, and 1951, all make it a felony to agree to take “official action” in exchange for money, campaign contributions, or any other thing of value.

The QUESTION PRESENTED is “whether ‘official action’ is limited to exercising actual governmental power, threatening to exercise such power, or pressuring others to exercise such power, and whether the jury must be so instructed; or, if not so limited, whether the Hobbs Act and honest-services fraud statutes are unconstitutional.”

V. Cert. Granted - Divisibility of Statutes and when to Use the Modified Categorical Approach

Mathis v. United States, No. 15-6092 (Cert. Granted Jan. 16, 2016).

ISSUE: Whether a predicate prior conviction under the Armed Career Criminal Act must qualify as such under the elements of the offense simpliciter, without extending the modified categorical approach to separate statutory definitional provisions that merely establish the means by which referenced elements may be satisfied rather than stating alternative elements or versions of the offense?

VI. Cert. Granted – Personal Benefit in an Insider Trading Case

Salman v. United States, No. 15-628 (Cert. Granted Jan. 16, 2016).

ISSUE: “Does the personal benefit to the insider that is necessary to establish insider trading under *Dirks v. SEC*, 463 U.S. 646 (1983), require proof of ‘an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature,’ as the Second Circuit held in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *cert. denied* No. 15-137 (U.S. Oct. 5, 2015), or is it enough that the insider and the tippee shared a close family relationship, as the Ninth Circuit held in this case?”

VII. Cert. Granted – Recalling Discharged Jurors

Dietz v. Bouldin, No. 15-408 (Cert. Granted Jan. 16, 2016).

ISSUE: Whether, after a judge has discharged a jury from service in a case and the jurors have left the judge’s presence, the judge may recall the jurors for further service in the same case?