

Precedential Value

Federal Public Defender's Office, Southern District of Ohio

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Issue #80 September - October 2020

This publication is an outline of selected published cases from the Supreme Court and Sixth Circuit that may impact the practice of federal criminal law in the courts of the Sixth Circuit. Cases may be accessed electronically by clicking on any case name, which is hyperlinked to the court's official website. A combined outline of all cases published in Precedential Value since January 2015 may be found on our website at www.fpd-ohs.org, under the Precedential Value tab.

I. Sentencing Issues

A. 3553(a) factors and issues

Substantive Reasonableness

U.S. v. Lee, 18-2391 (9/4/20)

The defendant was convicted of possession of a stolen firearm. At sentencing, the district court imposed an upward variance from a guideline range of 30-37 months to a sentence of 60 months. The district court based this variance on the defendant's 15 year old prior conviction for a sex offense, his numerous probation and parole violations, and his other criminal convictions, none of which involved a firearm. On appeal, the court held that the upward variance was improper. The court found that each of the defendant's prior convictions and his parole violations had been accounted for by the sentencing guidelines, and were included in his criminal history category of V. The court noted that the upward variance almost doubled the defendant's sentencing range and that he had not been convicted of any prior firearm offense, nor had he been convicted of a serious offense in the past 15 years. Under the circumstances, the court held that the degree of the upward variance was not justified by the circumstances, and was inconsistent with sentences of similarly situated defendants. Accordingly, the court vacated the defendant's sentence and remanded for resentencing.

B. Guideline issues

2A1.5(a) – Conspiracy to Commit Murder

U.S. v. Cordero, 19-3540 (9/3/20)

The defendant was convicted of conspiracy to commit murder for hire under 18 USC § 1958. Although the guidelines specifically refer to USSG § 2E1.4 for this statute, the district court applied USSG § 2A1.5(a), which covers conspiracy or solicitation to commit murder. This guideline calls for an additional four level increase where the offense involved the offer or receipt of anything of value for the murder. The defendant argued on appeal that application of this guideline section was improper. The court held that, consistent with other circuits' rulings, application of § 2A1.5 was proper. The court found that § 2A1.5 is applicable where the murder for hire involved a conspiracy or solicitation. Accordingly, the sentence was affirmed.

2A2.2(b)(3)(B) – Serious Bodily Injury

U.S. v. Flores, 19-6011 (9/10/20)

The defendant was convicted of participating in the stabbing of another inmate five times with a shank. The inmate was hospitalized with lacerations, a fractured shoulder, and internal bleeding. At trial, however, the inmate testified that the defendant did not stab him and that the wounds were superficial. At sentencing, the

district court imposed a 5 level enhancement under USSG § 2A2.2(b)(3)(B) because the victim suffered serious bodily injury. On appeal, the court held that the injuries sustained by the inmate victim were sufficient to qualify as serious bodily injury. Further, the court discounted the inmate's testimony that the wounds were superficial because it believed his testimony, which contradicted video evidence, was tainted by fear of gang retaliation in prison. Accordingly, the sentence was affirmed.

2B1.1(b)(1) – Loss Amount

U.S. v. Bailey, 18-5607 (9/1/20)

At the defendant's sentencing for conspiracy to commit health care fraud, the district court held the defendant liable for over \$2 million in loss based on the total amount involved in the whole conspiracy. On appeal, the court held that the district court applied the improper legal standard. The loss under USSG § 2B1.1 must be based on conduct that was within the scope of the jointly undertaken criminal activity and reasonably foreseeable to the defendant. (USSG § 1B1.3). In making this assessment, the district court must consider the following: "(1) the existence of a single scheme; (2) similarities in modus operandi; (3) coordination of activities among schemers; (4) pooling of resources or profits; (5) knowledge of the scope of the scheme; and (6) length and degree of the defendant's participation in the scheme." Because the district court wholly failed to apply this standard, the sentence was vacated and the case remanded. The court noted, however, that the conspiracy theory of liability could be used for determining loss amount for purposes of restitution, so the sentence was affirmed as to the restitution amount.

2B1.1(b)(2)(A)(ii) – Mass Marketing

U.S. v. Bailey, 18-5607 (9/1/20)

The defendant was convicted for health care fraud and at sentencing the court applied a two level enhancement for mass marketing, pursuant to USSG § 2B1.1(b)(2)(A)(ii). On appeal, the court

held that word of mouth marketing of a scheme to potential customers cannot constitute mass marketing under the guideline. The court found that "fraudulent face-to-face marketing proceeds at the normal pace of fraud and is already accounted for in the statutes criminalizing fraud." Accordingly, the court vacated the sentence and remanded the case for resentencing.

2G1.3(b)(2) – Minors – Undue Influence

U.S. v. Cruz, 19-4160 (9/24/20)

The defendant met a 12 year old online and over the course of two years formed a relationship with her. When she was 14 (and the defendant was 39), he traveled from Ohio to California, picked her up, and had consensual sex with her on multiple occasions. In his subsequent prosecution, the district court applied a two level enhancement under USSG § 2G1.3(b)(2) for exercising undue influence over a minor. On appeal, the court held that the two level enhancement was appropriate. Under this section, a rebuttable presumption of undue influence arises where the defendant is more than 10 years older than the victim. The court found that the defendant had not rebutted the presumption. Further, the court rejected the defendant's argument that he did not know the minor's age because (1) she looked young in pictures, (2) she told the defendant she was in school, and (3) she claimed she told the defendant her age when he came to pick her up. Accordingly, the sentence was affirmed.

2K2.1(b)(4)(A) – Possession of Stolen Firearm

U.S. v. Palos, 19-4186 (10/15/20)

The defendant was convicted of being a felon in possession of a firearm and at sentencing the district court imposed a two level enhancement under USSG § 2K2.1(b)(4)(A) because the gun was stolen. On appeal, relying on prior precedent, the court held that the enhancement applies even where the defendant does not know that the gun was a stolen. Further, the court held that its prior decision in Havis did not change this

precedent. The language of the guideline provides for the enhancement “if any firearm was stolen.” The court held that this language does not suggest a scienter requirement. Thus, the commentary to the guideline section which states that the enhancement applies “regardless of whether the defendant knew the firearm was stolen” does not improperly alter or expand the reach of the guideline, as prohibited by Havis. Finally, the court held that the scienter requirement imposed by the Supreme Court in Rehaif to the firearm statute does not extend to guideline interpretations. As such, the application of the enhancement was affirmed.

3C1.1 – Obstruction of Justice

U.S. v. French, 20-5104 (9/30/20)

The defendant was convicted of two counts of carjacking after two victims and two codefendants testified against him. Shortly before sentencing, the defendant obtained a contraband phone in the jail. He then posted Facebook messages outing one of the codefendants as a “rat” and providing excerpts of his trial testimony. As a result, the district court imposed a two level enhancement for obstruction of justice for witness intimidation. On appeal, the court upheld the enhancement. The court found that even though the witness had already testified and the government indicated it was presenting no witnesses at sentencing, the public Facebook statements had the effect of intimidating any witness who would testify at sentencing. The court emphasized that the victims have independent rights to appear and be heard at sentencing, and the defendant’s posts had a tendency to scare those witnesses. Accordingly, the enhancement was affirmed.

U.S. v. Bailey, 18-5607 (9/1/20)

While being investigated for health care fraud, the defendant contacted a coconspirator, advised him she was being investigated, and told him to say that the money she gave him was to get a driver’s license (instead of for a kickback). At sentencing, the district court imposed an

enhancement under USSG § 3C1.1 for obstruction of justice. On appeal, the court found the enhancement was proper. The court held that, had the coconspirator lied for the defendant, it would have caused needless expenditure of government resources to disprove the lie. Accordingly, the application of the enhancement was affirmed.

D. Recidivism enhancements

USSG § 4B1.1 – Career Offender

U.S. v. Alston, 19-3884 (9/28/20)

At the defendant’s sentencing for drug trafficking, the district court determined that he was a career offender based on prior Ohio convictions for drug trafficking. On appeal, the court held that the prior Ohio drug trafficking convictions were not controlled substance offenses for purposes of the career offender provision of the sentencing guidelines. Specifically, ORC § 2925.03(A)(1) proscribes “sell or offer to sell” narcotics. The court found that this provision encompassed an attempt to traffic in drugs, which is not a controlled substance offense pursuant to the court’s prior decision in Havis. Accordingly, the defendant’s sentence was vacated.

III. Evidence

A. Article IV – Relevancy

404(b) – Consciousness of Guilt

U.S. v. Cordero, 19-3540 (9/3/20)

The defendant was charged with murder for hire and proceeded to trial. The government introduced evidence that, in addition to the charged offense, the defendant conspired to murder a coconspirator who he thought was a government informant. On appeal, the court held that the evidence of the separate conspiracy to murder a codefendant was admissible under FRE 404(b) as consciousness of guilt. The fact that the defendant believed (correctly) that the codefendant was a snitch demonstrated that he

believed he was guilty of the murder for hire scheme. Further, the court found that the evidence fit within the 404(b) exceptions for intent, knowledge, and absence of mistake. Finally, the court held that the evidence was not unduly prejudicial under FRE 403. The defendant was already charged with murder for hire so the evidence was not unduly inflammatory, and the district court gave a proper limiting instruction. Moreover, the court ruled that spoliation evidence is generally highly probative and not sufficiently inflammatory to require exclusion. Therefore, the admission of the evidence was affirmed.

404(b) – Propensity Evidence

U.S. v. Hazelwood, 18-6023 (10/29/20)

The defendants were executives in the company Pilot Flying J who were charged with conspiracy and mail/wire fraud. During trial, the defense presented evidence during cross examination that Defendant Hazelwood (who was the President) was a good businessman who would not risk the reputation of the company by committing fraud. In rebuttal, the district court permitted the government to present audio recordings of the defendant during off hours with the codefendants making horrific racial and sexist slurs while watching a football game. Upon conviction, the defendants challenged the evidence on appeal under FRE 401, 404(a), 404(b), and 403. The court first held that the audio recording evidence had no relevance to any of the charged offenses. Second, the court ruled that the evidence was not properly introduced to rebut good character evidence. The court found that the racial and sexist slurs did not prove that the defendant was a bad businessman. Further, the slurs were made in private, and thus did not show that the defendant disregarded the company's reputation. Rather, the court found that the only purpose for the evidence was to show that the defendant was a bad person for making the comments and to suggest that he was the kind of person who would commit fraud. The court held that this is the exact kind of evidence that FRE 404(b) seeks to

prevent. Similarly, the court held that the evidence should be excluded under FRE 403 because it had no probative value and was extremely prejudicial. Finally, the court found that the error in admitting the evidence was not harmless because the case against the defendant was not overwhelming and the defense presented a reasonable argument that upper management may not have been aware of the fraud. Notably the court reversed the convictions against all the defendants because the others were present when Defendant Hazelwood made the comments, they worked for him, and there was a high risk of “spillover” to them from the comments. Accordingly, the convictions were vacated and the case remanded for a new trial.

B. Articles VI-VII – Witness/Expert

611(a) – Examination of Witnesses

U.S. v. Bailey, 18-5607 (9/1/20)

During the defendant's trial for conspiracy to commit health care fraud, the government presented testimony from the same witness three separate times. The second instance was to rebut the false testimony of a witness. The third instance occurred after a long break in the trial due to the defendant's medical illness. On appeal, the court held that the district court had properly exercised its discretion under FRE 611(a) in permitting the government to recall the witness twice. The court first found that the government had given notice to the defense of the potential for recall of the witness. Further, the court found that the second instance was proper to rebut the false evidence. Finally, the court held that the subsequent recalling of the witness was not error due to the unusual circumstances of having a several month break in the middle of a trial. Accordingly, the conviction was affirmed.

C. Article VIII – Hearsay

801(d)(2)(E) – Coconspirator Statements

U.S. v. Bailey, 18-5607 (9/1/20)

At the defendant’s trial for conspiracy to commit health care fraud, the government presented a recorded conversation between two coconspirators. In the conversation, one was telling the other how well the defendant paid for fraudulent referrals for medical equipment. The district court admitted the hearsay statements, the defendant was convicted, and he appealed. The court held that hearsay statements are admissible under the coconspirator exception of FRE 801(d)(2)(E) when three requirements are met: (1) a conspiracy existed; (2) the defendant was a member; and (3) the statement was in furtherance of the conspiracy. The court found that the defendant’s participation in the conspiracy was established by the statement itself and was corroborated by evidence that the defendant participated in processing fraudulent Medicare paperwork and obtaining forged signatures. Further, the court ruled that the statements in the recorded conversation were in furtherance of the conspiracy in that one conspirator was trying to encourage the other to participate in the scheme. Accordingly, admission of the evidence was affirmed.

D. Discovery/Miscellaneous

1006 – Summaries

U.S. v. Bailey, 18-5607 (9/1/20)

The defendant was charged with health care fraud and the government introduced summaries of voluminous phone calls at trial. The district court did not provide a limiting instruction regarding the evidence. On appeal, the court held that use of the summaries was proper, however, the district court erred in failing to instruct the jury that the summaries were not evidence. The court found that the error was harmless because the underlying tape recordings were admitted into evidence, the defendant had the opportunity to

cross examine the agent who prepared the summaries, and the evidence of the defendant’s guilt was otherwise overwhelming. As such, the conviction was affirmed.

IV. Fourth Amendment

C. Warrant Exceptions

Inventory Searches

U.S. v. Snoddy, 19-6089 (9/24/20)

The defendant was stopped for speeding and arrested on open warrants. The officer repeatedly asked the defendant for permission to search the car, suspecting that there were drugs inside. The defendant was the sole occupant of the car, so his arrest left the car unattended beside the road. As a result, the officer called to have the car impounded and conducted an inventory search, which yielded drugs and guns. The district court denied the defendant’s motion to suppress and he appealed. The court held that officers may not “hide an investigative search under the pretext of an inventory search,” however “the mere fact that an officer suspects that contraband may be found in a vehicle does not invalidate an otherwise proper inventory search.” The court found that, although the officer clearly suspected drugs were in the car, the impoundment was justified because the defendant was the sole occupant and the car would not be safe left beside the road. Because the officer followed the required police policy on inventory searches for impounded vehicles, the search was proper and the district court’s ruling was affirmed.

D. Consent Searches and Seizures

U.S. v. Blomquist, 19-2111 (10/7/20)

Government agents obtained a warrant for the defendant’s property to search for his marijuana grow operation. After initially handcuffing the defendant, he was entirely cooperative, and gave the agents a tour of the entire operation, the defendant believing it was legal. During the tour, he showed them parts of the operation that were

on his cousin's adjacent property, which the defendant leased. In his prosecution for drug trafficking, the defendant moved to suppress the evidence found on his cousin's property, claiming it was outside the warrant. The district court found that the defendant consented to the extended search and he appealed. The court held that the government must prove consent to a search by a preponderance of the evidence through clear and positive testimony. The court held that, although the defendant was handcuffed initially, he was entirely cooperative with the agents, he insisted on taking them on a tour of the property, and the agents did nothing coercive or intimidating during the incident. Accordingly, the court held that the defendant voluntarily consented to the search and the district court's ruling was affirmed.

F. Arrest Related Issues

Arrest Warrants

U.S. v. Baker, 19-5636 (9/24/20)

An officer obtained an arrest warrant for the defendant from his police department and found the defendant at his pawn shop/residence. When the officer asked him for identification, the defendant went into a back room, so the officer followed him. The officer then observed a firearm and drugs. In his subsequent prosecution, the defendant moved to suppress the evidence on the grounds that the officer had no right to enter the back room and the underlying arrest warrant was unsupported by probable cause. The district court denied the motion and the defendant appealed. The court first held that entry into the back room by the officer was reasonable. The court found that an officer executing an arrest warrant may make reasonable efforts to monitor the movements of an arrestee during the course of the arrest. Once in the back room, the seizure of the evidence was justified by the plain view exception. Second, the court held that the Leon good faith exception from the search warrant context is applicable to arrest warrants. Thus, even though the underlying arrest warrant

affidavit was questionable as it related to probable cause, the court ruled that it was not bare bones. Thus, a reasonable officer could rely on it in executing the arrest warrant. Specifically, the arrest warrant was for receiving stolen property. It averred that the defendant had sold the property to a person, who then sold it to a pawn shop. The court found that the defendant's possession of the property created a sufficient inference that he knew it was stolen, at least to survive the bare bones/good faith analysis. Thus, the execution of the arrest warrant and seizure of evidence were valid and the conviction affirmed.

G. Misc. Fourth Amendment

Probation Searches

U.S. v. Fletcher, 19-3153 (10/26/20)

The defendant was discovered by his probation officer with two phones. Because the defendant was on probation for a sex offense, the probation officer requested to search his phones. The defendant then gave suspicious answers, and when the probation officer got possession of the phones, child pornography was discovered. The defendant moved to suppress the evidence and the district court denied the motion. On appeal, the court held that the probation conditions did not support the search. The conditions justified a search of the defendant and his home, but not the phone. Further, the court ruled that the search was not justified by reasonable suspicion. The court held that the possession of two phones alone could not support reasonable suspicion, even by a convicted sex offender. Additionally, the court found that the defendant's subsequent suspicious answers to the probation officer could not be considered in the reasonable suspicion analysis because the officer violated the defendant's Fourth Amendment rights by requesting to search the phone in the first place. Finally, the court held that the probation officer's actions were sufficiently deliberate such that suppression was warranted, even considering the cost of exclusion on the administration of justice. Accordingly, the

district court's ruling was reversed and the evidence ordered suppressed.

VIII. Defenses

M. Miscellaneous Defenses

Fed.R.Crim.P. 33 – New Trial

U.S. v. Burks, 19-6010 (9/4/20)

The defendant was convicted in a RICO prosecution for murdering a rival gang member. After trial, the district court granted a new trial, finding that the testimony of the three government cooperating witnesses were not credible. The government appealed. The court held that a new trial was not proper. The court ruled that a district court may only grant a new trial under extraordinary circumstances when the verdict exceeds the bounds of reasonableness. The court emphasized that a verdict is not unreasonable merely because different inferences could be drawn or another result was more reasonable. The court found that the three witnesses told “a consistent narrative that the jury could reasonably believe” about the defendant committing the murder. Further, the court held that the district court's questions about the witness' credibility were not a sufficient explanation for discounting the testimony and were actually just the kinds of inconsistencies that are “a reality in many criminal cases.” Accordingly, the district court ruling was reversed and the conviction reinstated.

XI. Appeal

Time for Filing – Compassionate Release

U.S. v. Payton, 20-1811 (10/28/20)

The defendant moved for compassionate release under the First Step Act and the district court denied the motion. The defendant failed to file a notice of appeal within the 14 days required for criminal cases, but filed within the 30 day time period thereafter. The government moved to dismiss the appeal. The court first held that a compassionate release motion is a continuation of

the criminal proceedings and thus falls under the 14 day requirement for appeals. A defendant may however move for an additional 30 days to appeal, pursuant to Fed. R. App. P. 4(b)(4). The court ruled that where a defendant files a notice of appeal outside the 14 days from the district court ruling, but within the 30 days thereafter, the court will treat it as a motion to extend the appeal time period. Accordingly, the court remanded the case to the district court for a determination of whether excusable neglect justified extending the period for appeal.

XII. Specific Offenses

18 USC § 1958 – Murder for Hire

U.S. v. Cordero, 19-3540 (9/3/20)

The defendants, some of whom were in prison, were convicted of conspiring to kill a person who had been involved in a drug robbery. The defendants challenged the sufficiency of the evidence on appeal. Further, the defendants argued that the conviction did not count as a crime of violence for career offender purposes. The court held that in order to convict under 18 USC § 1958, the government must prove that the defendants used a facility of interstate commerce, and that they acted with intent to murder in exchange for payment. The court first found that the defendants had acted with the requisite intent. It was clear from testimony that the defendants intended to kill the victim, as opposed to merely harm or scare. Second, the court ruled that the defendants acted in exchange for payment. Although the testimony suggested that the defendants only were getting paid to locate the victim, the court found that the defendants clearly intended to carry out the act of murder with the expectation of remuneration. The court ruled that the defendants' intent to commit contract murder is sufficient even if there was not evidence that an arrangement to get paid was actually made. Finally, the court held that a conviction under § 1958 does not count as a crime of violence for purposes of the career offender provisions because it does not contain an element involving

force or threat of force. Accordingly, the conviction was affirmed but the sentence was vacated and the case remanded.

21 USC § 846 – Drug Conspiracy

U.S. v. Cordero, 19-3540 (9/3/20)

The defendant was convicted of participating in a drug conspiracy under 21 USC § 846 and the district court determined that the offense qualified the defendant as a career offender under USSG § 4B1.2. On appeal, the court held that conspiracy is not a qualifying felony for the career offender enhancement. The court ruled that, pursuant to its decision in Havis, attempts and conspiracies to commit drug trafficking offenses are not controlled substance offenses for purposes of the guidelines, and thus not qualifiers for career offender consideration. As such, the defendant’s sentence was vacated.

XIII. Post-Conviction Remedies

U.S. v. Ruffin, 20-5748 (10/26/20)

The defendant filed a motion under the First Step Act for compassionate release from his 25 year prison sentence for drug trafficking. He argued that he was extraordinarily susceptible to COVID due to his poor health conditions. The district court denied the motion. On appeal, the court held that a defendant faces three statutory requirements in seeking compassionate release: (1) demonstrate an “extraordinary and compelling” reason; (2) show that he/she would not be a danger to the community if released; and (3) prove that release is warranted considering the factors under 18 USC § 3553. The court noted that there is a conflict of authority as to whether COVID may constitute an extraordinary and compelling reason to satisfy the first requirement or whether defendants are limited to proving that their medical condition “substantially diminishes” their ability to “self-care” in the institution, as provided in USSG § 1B1.13, n.1. The court determined that it did not have to decide this issue because the district court appropriately considered the factors under § 3553

(the third requirement) and denied the motion. The court found that the district court properly considered that the defendant still had half of his 25 year sentence to serve, he had committed the underlying crime while suffering from the same medical condition, the prison had adopted measures to slow the spread of COVID, and the defendant had engaged in some rehabilitation but had also gotten in additional trouble. Accordingly, the court held that the district court did not abuse its discretion in balancing the § 3553 factors and accordingly affirmed the denial of the motion.

Coleman v. Bradshaw, 15-3442 (9/4/20)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. Following trial, another individual (who would later be sentenced to death in Ohio for a separate crime) confessed to killing the victim in an interview with police. The individual also wrote an incriminatory letter to a private citizen, and subsequently executed an affidavit while on death row; the affidavit contained a confession to murdering the victim, and also confirmed that he had confessed to the police after the petitioner’s trial. The petitioner alleged that the failure to disclose the confession to police violated Brady v. Maryland, 373 U.S. 83 (1963). The state courts rejected the petitioner’s claim on the ground that the confession lacked credibility. The Sixth Circuit concluded that the state court ruling was entitled to deference under 28 USC § 2254(d), and affirmed the denial of relief.

Coleman v. Bradshaw, 15-3442 (9/4/20)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. The petitioner alleged that his trial lawyers had been ineffective at the mitigation phase of the proceedings in multiple respects. The state courts concluded that the petitioner failed to demonstrate that he had been prejudiced. The Sixth Circuit concluded that the state court ruling

was entitled to deference under 28 USC § 2254(d), and affirmed the denial of relief.

Gatewood v. United States, 19-6297 (10/29/20)

The petitioner was convicted of kidnapping and robbery in federal court and sentenced to life in prison under 18 USC § 3559(c), the federal three-strikes statute. The petitioner subsequently filed a motion to vacate under 28 USC § 2255, alleging that some of his predicate offenses no longer qualified as serious violent felonies under § 3559(c) because the residual clause of the statute was unconstitutionally vague under Johnson v. United States, 576 U.S. 591 (2015), and United States v. Davis, 139 S. Ct. 2319 (2019). The government conceded on appeal that the residual clause was unconstitutionally vague, but alleged that the petitioner procedurally defaulted his claim by failing to raise it on direct review. The petitioner alleged that his claim was sufficiently novel under Reed v. Ross, 468 U.S. 1 (1984), to excuse his default because raising the claim on direct review would have been futile. The Sixth Circuit rejected the petitioner's argument, finding that his vagueness claim would not have been decisively foreclosed by United States Supreme Court precedent at the time of his direct appeal. The denial of relief was therefore affirmed.

Keahey v. Marquis, 18-4106 (10/20/20)

The petitioner was convicted of attempted murder and other offenses in Ohio state court. The petitioner requested a self-defense instruction, but the trial court refused on the ground that the evidence would not support one. The petitioner alleged on appeal that the refusal violated his rights under the Sixth and Fourteenth Amendments, but the state court rejected the petitioner's claim. In federal habeas corpus proceedings, the petitioner argued that the state court decision was not entitled to deference under 28 USC § 2254(d)(1), but the Sixth Circuit concluded that the Ohio Court of Appeals did not contravene or unreasonably apply clearly established United States Supreme Court

precedent. The denial of relief was accordingly affirmed.

McCormick v. Butler, 17-6331 (10/6/20)

The petitioner was convicted in federal court of being a felon in possession of a firearm and sentenced to fifteen years in prison under the Armed Career Criminal Act. The petitioner's motion to vacate under 28 USC § 2255 was denied, as was his request to file a second or successive motion to vacate. The petitioner subsequently filed a habeas corpus petition under 28 USC § 2241, alleging that under the intervening decision in Mathis v. United States, 136 S. Ct. 2243 (2016), his prior convictions no longer qualified as predicate offenses under the ACCA, and as a result he was serving a sentence that exceeded the normally applicable ten-year statutory maximum for his offense of conviction. The Sixth Circuit concluded that the savings clause set out in § 2255(e) permitted the petitioner to proceed under § 2241 under the circumstances. The district court's dismissal of the petition was accordingly reversed.

Mitchell v. Genovese, 19-6070 (9/4/20)

The petitioner was convicted of rape in Tennessee state court in 1986 and sentenced to life in prison plus thirteen years. The district court previously granted federal habeas corpus relief prior to the passage of AEDPA based on a violation of Batson v. Kentucky, 476 U.S. 79 (1986); the Sixth Circuit reversed, however, concluding that the claim was defaulted and that the petitioner could not demonstrate cause and prejudice to excuse the default. On remand, the district court once again granted relief on the petitioner's related claim that his trial attorney had been ineffective in failing to raise a Batson challenge, but the Sixth Circuit reversed on the ground that this claim was also procedurally defaulted. Additional federal litigation took place but the petitioner was unable to obtain lasting relief. The petitioner subsequently filed a motion for relief from judgment under

Fed.R.Civ.P. 60(b)(6), alleging that the ineffective assistance of his state post-conviction counsel provided cause under Martinez v. Ryan, 566 U.S. 1 (2012), to excuse the default of his claim of ineffective assistance of trial counsel in failing to raise a Batson challenge. The district court denied the motion. The Sixth Circuit reversed after examining the complex procedural history of the case in detail, and granted habeas corpus relief.

Simmons v. United States, 19-1757 (9/11/20)

The petitioner pleaded guilty to federal controlled substance violations and was sentenced to a prison term. No appeal was taken. Nearly two years later, the petitioner filed a motion to vacate under 28 USC § 2255. The petitioner alleged that his motion was timely because he did not have access to federal legal materials at the law library while being held in state custody before being transferred to federal prison, and that this qualified as a governmental impediment that prevented him from filing under 28 USC §2255(f)(2), thereby making his motion timely filed. The Sixth Circuit affirmed the district court's dismissal on timeliness grounds. Even assuming that the lack of access to federal legal materials could qualify as a governmental impediment under §2255(f)(2), the petitioner's allegations were insufficiently detailed to establish a causal connection between the lack of access and his failure to file his motion earlier.