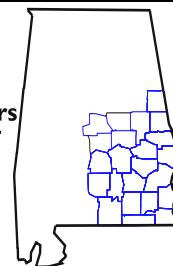




CJA News

“TOTAL CLIENT ADVOCACY”

Federal Defenders
Middle District of
Alabama



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CJA NEWS

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SUPREME COURT UPDATE

RECENT DECISIONS



***Burton v. Stewart*, 127 S.Ct. 793 (2007).**

Per Curiam: A district court does not have jurisdiction to entertain a second habeas petition if the prisoner fails to first obtain authorization from the district court to file such a petition pursuant to 28 U.S.C. §2254(b)(1).

The petitioner was first placed in custody pursuant to a 1994 sentence imposed in state court. A new state

sentence was imposed in 1998. In 1998, the petitioner filed a 28 U.S.C. §2254 petition for writ of habeas corpus in a federal district court while state review of his sentence was pending. In that petition, the petitioner challenged the constitutionality of his convictions, but did not raise any sentencing claims. In 2002, the petitioner filed another habeas petition in federal district court, this time challenging his 1998 judgment, and the constitutionality of his sentence.

In a ruling on the merits, the Ninth Circuit Court of Appeals rejected the State's arguments that the federal district court lacked jurisdiction to hear the petition because the petitioner had failed to obtain the Ninth Circuit's authorization to file a second habeas petition. The Ninth Circuit held that the petitioner had a legitimate excuse for failing to raise his sentencing claims in his 1998 petition due to those claims not being ripe for federal habeas review. Based on that reasoning, the Ninth Circuit held that the 2002 petition was not a successive petition.

The U.S. Supreme Court found that both the 1998 and 2002 petitions raised the same claims challenging the 1998 sentencing judgment. Therefore, the rules of the Antiterrorism and Effective Death Penalty Act of 1996 required the petitioner to get permission from the Court of Appeals before filing the 2002 petition. The Supreme Court further held that the Ninth Circuit's opinion was inconsistent with the Supreme Court's prior holding in *Rose v. Lundy*, 455 U.S. 509 (1982), that

district courts should dismiss 'mixed petitions' - those with exhausted and unexhausted claims- and that petitioners with such mixed petitions have two options, exhaust the remaining claims, and return to district court with a fully exhausted petition. . . . in such circumstances the later filed petition would not be 'second or successive.' (citation omitted). Alternately, prisoners filing mixed petitions may proceed with only the exhausted claims, but doing so risks subjecting later petitions that raise new claims to rigorous procedural obstacles."

Burton v. Stewart, 127 S.Ct. 793, 797 (2007). The judgment of the Court of Appeals was vacated and the case remanded.

***Cunningham v. California*, 127 S.Ct. 856 (2007).**

Ginsburg, J., joined by Roberts, C.J., Stevens, Scalia, Souter and Thomas, JJ.: California's determinate sentencing law violated defendants' rights to trial by jury by authorizing judges to make factual findings to justify elevated sentencing terms.

The petitioner was convicted of sexual abuse. Under California's determinate sentencing law ("DSL"), three terms of imprisonment, either six years, twelve years, or sixteen years, was attached to this offense. The DSL authorized the sentencing judge to sentence the petitioner to twelve years imprisonment or to sixteen years imprisonment if the judge found aggravating facts by a preponderance of the evidence. After the judge found six aggravating facts and one mitigating fact, the judge sentenced the petitioner to sixteen years imprisonment.

The U.S. Supreme Court reversed the sentence and remanded the case, holding that the DSL violates its rule pronounced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and affirmed in *Ring v. Arizona*, 536 U.S. 584 (2002), *Blakely v. Washington*, 542 U.S. 296 (2004), *United States v. Booker*, 543 U.S. 220 (2005), that "[e]xcept for a prior conviction, 'any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.'" *Cunningham v. California*, 127 S.Ct. 856, 868 (2007). California's DSL allowed aggravating facts to be found solely by a judge, not a jury, and those facts could be established by a preponderance of the evidence, instead of beyond a reasonable doubt. The judgment of the California Court of appeals was reversed in part and the case was remanded.

***Whorton v. Bockting*, 127 S.Ct. 1173 (2007).**

Alito, J., for a unanimous Court: The rule announced in *Crawford v. Washington*, 541 U.S. 36 (2004) is not retroactive to cases already on final review.

The respondent was convicted of sexually assaulting a six year old child. The child gave statements detailing the assault to police, but was too distressed to provide trial testimony. Over defense counsel's objections pursuant to the Confrontation Clause, the child's out-of-court statements were admitted at trial. In reliance on *Ohio v. Roberts* 448 U.S. 56 (1980) - which held that the Confrontation Clause allowed the admission of a hearsay statement of an unavailable declarant if the statement "bore sufficient indicia of reliability" because it either "fell within a firmly rooted hearsay exception or because there were particularized guarantees of trustworthiness," *Whorton v. Bockting*, 127 S.Ct. 1173, 1178 (2007), the Nevada Supreme Court denied the respondent's appeal, finding that the child's statements provided particularized guarantees of trustworthiness.

While the respondent's appeal was pending in the Ninth Circuit, the U.S. Supreme Court issued its opinion in *Crawford v. Washington*, 541 U.S. 36 (2004). In *Crawford*, the Court held that testimonial statements are admissible only when a witness is unavailable and the defendant has

had a chance to cross-examine the witness, overruling *Ohio v. Roberts*. Thereafter, the respondent persuasively argued to the Ninth Circuit that *Crawford* should be applied to his case. The Ninth Circuit reversed the district court, holding that *Crawford* announced a new watershed rule of criminal procedure that was retroactively applicable to cases on collateral review.

The U.S. Supreme Court explained that in its opinion in *Teague v. Lane*, 489 U.S. 288 (1989), it provided the guidelines to be used when determining whether a new Supreme Court rule is retroactive to cases that are final on direct review. Those guidelines provide that "a new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceedings." *Whorton v. Bockting*, 127 S.Ct. 1173, 1180 (2007). The Supreme Court held that although the rule announced in *Crawford* was a new rule of criminal procedure, it was not a watershed rule that could be retroactively applied because it neither related to a "large risk of inaccurate convictions," nor to a "previously unrecognized bedrock procedural element that is essential to the fairness of a proceeding." *Whorton v. Bockting*, 127 S.Ct. at 1182, 1183. The Ninth Circuit judgment was reversed and the case was remanded.

***Lawrence v. Florida*, 127 S.Ct. 1079 (2007).**

Thomas, J., joined by Roberts, C.J., Scalia, Kennedy, and Alito.: For the purposes of the tolling of the one year statute of limitations attached to the filing of a federal habeas petition pursuant to 28 U.S.C. §2244(d), time does not stop running during the pendency of a petition for certiorari to the U.S. Supreme Court that seeks review of the denial of state post-conviction relief.

On January 19, 1999, the Florida Supreme Court affirmed the petitioner's murder conviction. 364 days later, the petitioner filed an application for post-conviction relief in state court, tolling the time the petitioner had to file a federal habeas petition pursuant to 28 U.S.C. §2244(d). One day remained of this time. The Florida Supreme Court affirmed the lower state court's denial of post-conviction relief on November 18, 2002. Thereafter, the petitioner filed a writ of certiorari with the U.S. Supreme Court seeking review of the denial of state post-conviction relief. However, the petitioner waited 113 days after the Florida Supreme Court's judgment to file a federal habeas application. Both the federal district court and the Eleventh Circuit held that the federal petition was untimely. The U.S. Supreme Court denied certiorari on March 2003, but later granted the petitioner's writ of certiorari to determine whether the federal habeas "limitations period was also tolled during the pendency of [the petitioner's] petition for certiorari to the [U.S. Supreme Court] seeking review of the denial of state post-conviction relief." *Lawrence*, 127 S.Ct. At 1082.

The U.S. Supreme Court held that a natural reading of 28 U.S.C. §2244(d)(2) means that the one year statute of limitations is tolled only while a state court is reviewing an

application for post-conviction relief. Thus, after the Florida Supreme Court issued its mandate denying post conviction relief, the application was no longer pending. The Court also pointed out that once a state court issues its final judgment on the state application, it is no longer pending even if “a prisoner has additional time for seeking review of that judgment through a petition for certiorari.” *Id.*, at 1084. The Court ruled that the Eleventh Circuit was correct in holding that the filing of the petition for certiorari did not toll the statute of limitations under 28 U.S.C. §2244(d)(2). The Eleventh Circuit judgment was affirmed.

***United States v. Resendiz-Ponce*, 127 S.Ct. 782 (2007).**

Stevens, J., joined by Roberts, C.J., Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito.: An indictment alleging attempted illegal re-entry into the United States is not defective if it does not allege a specific overt act.

The respondent was charged with attempted illegal re-entry in the United States. However, the indictment did not allege any overt act on the part of the respondent. The respondent moved to dismiss the indictment on the grounds that it failed to allege an essential element of the charge. The district court denied the motion, and a jury convicted the respondent of the charged offense. The Ninth Circuit reversed the conviction, holding that the indictment was fatally flawed, and not subject to mere harmless error review because the indictment did not give the respondent notice of what overt act the government would be trying to prove at trial.

Agreeing with the Government, the U.S. Supreme Court reasoned that the indictment referred to an overt act merely by alleging that the respondent “attempted” to illegally reenter, because the word “attempt” connotes an action and includes the intent elements. The Court further found that the inclusion of the time and place of the respondent’s crime in the indictment met the two constitutional requirements of “contain[ing] the elements of the offense charged and fairly inform[ing] a defendant of the charge against which he must defend, and second enabl[ing] him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *Resendiz-Ponce*, 127 S.Ct., at 788. The Court further pointed out that pleading of detailed allegations was not contemplated when Congress enacted Federal Rule of Criminal Procedure 7(c)(1) requiring that indictments “shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” *Id.*, at 789. The Ninth Circuit’s judgment was reserved, and the case remanded.

***Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815 (2007).**

Breyers, J., joined by Roberts, C.J., Scalia, Kennedy, Souter, Thomas, Ginsburg, and Alito.: The generic theft offense for which an alien can be removed from the

United States includes aiding and abetting another to commit a theft.

The respondent, a permanent resident alien, was convicted of aiding and abetting another to steal a vehicle in violation of a California statute. Thereafter, the federal government commenced removal proceedings, claiming that the conviction was a generic theft offense for which the respondent could be removed pursuant to the Immigration and Nationality Act. The Ninth Circuit reversed and remanded the respondent’s case to the Board of Immigration Appeals (“BIA”) in reliance on its holding in *Penuliar v. Ashcroft*, 395 F.3d 1037 (2005), that aiding and abetting a theft is not a crime which falls within the generic definition of theft listed in the Immigration and Nationality Act.

The U.S. Supreme Court granted the Government’s petition for certiorari to consider “whether one who aids and abets a theft falls, like a principal, within the scope of [the] generic [theft] definition.” *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 820 (2007). The Court explained that because criminal law uniformly treats alike principals and those who historically would have been considered as accessories before the fact, that treatment would extend to an aider and abetter. As a result, just as the generic definition of theft will apply to a principal, it will also apply to an aider and abettor. The Ninth Circuit’s judgment was vacated and the case remanded.

CERTIORARI GRANTED/ CASES AWAITING ARGUMENT

***Uttecht v. Brown*, Ninth Circuit Court of Appeal, S.Ct. Doc. 06-413, Cert. Granted December 7, 2006, Set for Argument on April 17, 2007, Questions Presented:**

In *Wainwright v. Witt*, 469 U.S. 412 (1985), and *Darden v. Wainwright*, 477 U.S. 168 (1986), this Court held that a state trial judge may, without setting forth any explicit findings or conclusions, remove a juror for cause when the judge determines the juror’s views on the death penalty would substantially impair his or her ability to follow the law and perform the duties of a juror. The Court further held that a federal habeas court reviewing the decision to remove the juror must defer to the trial judge’s ability to observe the juror’s demeanor and credibility, and apply the statutory presumption of correctness to the judge’s implicit factual determination of the juror’s substantial impairment.

Did the Ninth Circuit err by not deferring to the trial judge’s observations and by not applying the statutory presumption of correctness in ruling that the state court decision to remove a juror was contrary to clearly established federal law?

***Panetti v. Quarterman*, Fifth Circuit Court of Appeal, S.Ct. Doc. 06-6407, Cert. Granted January 5, 2007, Set for Argument on April 18, 2007, Question Presented:**

Does the Eighth Amendment permit the execution of a death row inmate who has a factual awareness of the reason for his execution but who, because of severe mental illness, has a delusional belief as to why the state is executing him, and thus does not appreciate that his execution is intended to seek retribution for his capital crime?

Supplemental Briefing Has Been Ordered by the U.S. Supreme Court.

Brendlin v. California, California Supreme Court, S.Ct. Doc. 06-8120, Cert. Granted January 19, 2007, Set for Argument on April 23, 2007, Question Presented:

Whether a passenger in a vehicle subject to a traffic stop is thereby “detained” for purposes of the Fourth Amendment, thus allowing the passenger to contest the legality of the traffic stop.

Logan v. United States, Seventh Circuit Court of Appeal, S.Ct. Doc. 06-6911, Cert. Granted February 20, 2007, Question Presented:

Whether the “civil rights restored” provision of 18 U.S.C. §921(a)(20) applies to a conviction for which a defendant was not deprived of his civil rights, thereby precluding such a conviction from being considered as a predicate offense under the Armed Career Criminal Act, 18 U.S.C. §924(e)(1)?

Watson v. United States, Fifth Circuit Court of Appeal, S.Ct. Doc. 06-571, Cert. Granted February 26, 2007, Question Presented:

18 U.S.C. § 924(c)(1)(A) criminalizes the “use” of a firearm during and in relation to a drug trafficking offense and imposes a mandatory consecutive sentence of at least five years’ imprisonment. In *Bailey v. United States*, 516 U.S. 137 (1995), this Court held that “use” of a firearm under § 924(c) means “active employment.” *Id.* at 144. The question presented in this case is: Whether mere receipt of an unloaded firearm as payment for drugs constitutes “use” of the firearm during and in relation to a drug trafficking offense within the meaning of 18 U.S.C. § 924(c)(1)(A) and this Court’s decision in *Bailey*.

United States v. Williams, Eleventh Circuit Court of Appeal, S.Ct. Doc. 06-694, Cert. Granted March 26, 2007, Question Presented:

Whether Section 2252A(a)(3)(B) is overly broad and impermissibly vague, and thus facially unconstitutional.

See: <http://www.supremecourtus.gov/docket/docket>.

CASES AWAITING DECISION

Fry v. Piller, Ninth Circuit Court of Appeal, S.Ct. Doc. 06-5247, Cert. Granted December 7, 2006, Argued March 20, 2007, Questions Presented:

1. Can a trial court’s unconstitutional exclusion of reliable evidence of third party guilt be deemed harmless error?

2. This Court’s decisions in *Holmes v. South Carolina* ___U.S.___, 164 L.Ed.2d 503, 126 S.Ct. 1727 (2006), and *House v. Bell*, ___U.S.___, 2006 U.S. Lexis 4675 (2006), were handed down after the decision of the Ninth Circuit below. Should this Court issue an order in this case, directing the Ninth Circuit to reconsider its decision that the unconstitutional exclusion of reliable evidence of third party guilt can be harmless, in light of *Holmes* and *House*?

3. If constitutional error in a state trial is not recognized by the judiciary until the case ends up in federal court under 28 U.S.C. § 2254, is the prejudicial impact of the error assessed under the standard set forth in *Chapman v. California*, 386 U.S. 18 (1967), or that enunciated in *Brecht v. Abrahamson*, 507 U.S. 619 (1993)? Does it matter which harmless error standard is employed? And, if the *Brecht* standard applies, does the petitioner or the State bear the burden of persuasion on the question of prejudice?

Roper v. Weaver, Eighth Circuit Court of Appeal, S.Ct. Doc. 06-313, Cert. Granted December 7, 2006, Argued March 21, 2007, Question Presented:

Since this court has neither held a prosecutor’s penalty phase closing argument to violate due process, nor articulated, in response to a penalty phase claim, what the standard of error and prejudice would be, does a court of appeals exceed its authority under 28 U.S.C. §2254(d)(1) by overturning a capital sentence on the ground that the prosecutor’s penalty phase closing argument was “unfairly inflammatory”?

Bowles v. Russell, Sixth Circuit Court of Appeal, S.Ct. Doc. 06-5306, Cert. Granted December 7, 2006, Argued March 27, 2007, Question Presented:

Whether an appellate court may sua sponte dismiss an appeal which has been filed within the time limitations authorized by a district court, after granting a motion to reopen the appeal time under Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

See: <http://www.supremecourtus.gov/docket/docket>.

CJA Honor Roll



In *United States v. Rincón*, case number 2:06-cr-200, the client was charged with possession with intent to distribute cocaine, and a violation of 8 U.S.C. 1325(a), illegal entry. The client was a passenger in a pickup truck that was searched pursuant to a traffic stop. The search uncovered about 10 kilograms of cocaine hidden in a cabinet in the bed of the truck. There was no evidence the client knew the drugs was in the truck. The client had been in the United States for over five years, had a 12 year-old daughter who was born in the United States, and it was also clear that the client did not enter the United States from her country of origin directly to Alabama. **Attorney Jay Lewis** moved to dismiss the illegal entry charge on statute-of-limitations and venue grounds. At the motion hearing, the AUSA conceded that a Department of Justice memorandum from (approximately) 1978 opined that the crime of illegal entry could only be prosecuted in the district into which entry had been made. After discussions with the AUSA regarding the lack of evidence, the cocaine charge was also dismissed. The client is now happily residing in Mexico and looks forward to applying to enter the country legally when her United States born daughter is old enough to sponsor her.



For information regarding application to the CJA panel or regional and national CJA panel workshops please contact Lynn Colbert, CJA Panel Administrator, at the Federal Defenders office, at (334) 834-2099 or call Defender Services Division Training Branch at (800) 788-9908, or visit the website at www.fd.org.

11th Circuit Decisions

Convictions & Sentences Affirmed

***United States v. Orisnord*, 2007 WL 1062529 (11th Cir. 2007).**

One of three appellants appealing his sentence and conviction on multiple counts of drug and gun violations argued that he should not have received the career offender enhancement under U.S.S.G. §4B1.2 based on his having two prior felony convictions, one of which was fleeing and eluding law enforcement in violation of a Florida state law. In particular, the appellant argued that his conviction for fleeing and eluding was not a crime of violence.

As a matter of first impression, the Eleventh Circuit held that a state felony conviction for fleeing and eluding law

enforcement is a “crime of violence” for purposes of the career offender enhancement. In reaching its conclusion, the Court relied on opinions issued by the Sixth, Seventh, and Eighth Circuits, explaining that “the language of the guidelines makes clear that the ‘potential risk’ of injury, rather than actual violence or actual injury, is the touchstone of a ‘crime of violence.’” *Orisnord*, 2007 WL 1062529, at *11. The Court stated that attempts to flee law enforcement coupled with the use of a vehicle assuredly presented “potential risk of physical injury.” *Id.* The Court further analogized the challenged offense with the offense of escape, pointing out that escape is treated as a “crime of violence” in several circuits, including the Eleventh Circuit. *Id.* The imposition of the enhancement was affirmed.

Reversed & Remanded

***United States v. Garey*, 2007 WL 1059097 (11th Cir. 2007).**

The appellant had been charged with calling 911 and making multiple bomb threats against several businesses. A few days before trial, the appellant filed a *pro se* motion asking that his attorney be disqualified from representing him because his attorney’s law office had been a victim of the appellant’s crime. At a motions hearing, the appellant repeatedly and insistently told the court that he wanted “conflict-free counsel,” that he was *not* waiving his right to have counsel, and that he would “involuntarily” proceed without counsel if the court would not appoint him with new counsel. The district court held that the appellant had knowingly and voluntarily waived his right to counsel. The appellant later appealed his conviction based on four separate issues, one of which was that the district court erred by holding that he knowingly and voluntarily waived his right to counsel.

Agreeing with the appellant on the issue of waiver of counsel, the Eleventh Circuit explained that knowing and voluntary waiver of the right to counsel occurs when the defendant “clearly and unequivocally” asserts a desire for self-representation, and the court determines that the defendant’s decision was made “knowingly and intelligently.” The Eleventh Circuit explained that it was clear that the appellant had been “quite adamant that he was not waiving his right to assistance of counsel and that he felt he was being involuntarily forced to represent himself.” *Garey*, 2007 WL 1059097, at * 4. The Court further pointed out that “the hearing’s initial purpose was to resolve [the appellant’s] motion to replace his counsel. It was not a hearing on a motion to proceed *pro se*. At no point in the hearing did [the appellant] ever request to proceed *pro se*.” *Id.* Finding the appellant’s actions as insufficient to invoke the Sixth Amendment right of self-representation, and declining to address the other issues raised by the appellant, the Eleventh Circuit reversed the guilty verdict and remanded the case.

Robbins v. Secretary for the Dep't of Corrections, 2007 WL 968394 (11th Cir. 2007).

The appellant filed a *pro se*, motion appealing the district court's dismissal of his writ of habeas corpus. The Eleventh Circuit specifically addressed whether "[w]here a habeas petitioner, who was re-sentenced after the affirmance of his convictions on direct appeal, challenges only of his convictions on direct appeal, whether the triggering date for AEDPA's one-year statute of limitations, 28 U.S.C. §2244(d)(1)(A), is measured from the final date the re-sentencing judgement became final or from the date the original conviction became final?" *Id.*, at *1.

The Court explained that under a plain reading of 28 U.S.C. §2244(d)(1)(A), the appellant was required to file his habeas petition one year from the date that his judgment became final on direct review. The Court further explained that the judgment of conviction in this case was not final until *both* the sentence and conviction were affirmed on direct appeal, and that the district court had erred in holding that the conviction was final when *only* the conviction had been affirmed on direct appeal. Finding that the appellant's petition had been timely filed, the Eleventh Circuit reversed and remanded the case so that the trial court could address the merits of the petition.

United States v. Lett, 2007 WL 102877 (11th Cir. 2007).

The respondent pled guilty to seven counts of possession with intent to distribute drugs as a result of his selling just under eight grams of powder cocaine in seven separate sales over a five week period. Neither parties objected to the pre-sentence report, containing calculation that the respondent's guideline range was seventy to eighty-seven months imprisonment on the first two counts, and a mandatory minimum sentence of sixty months on each of the remaining five counts. At the sentencing hearing, defense counsel offered compelling evidence of the respondent's exemplary military background, need to support his three daughters, death of his fiancé, dying father, and lack of criminal history. The sentencing court concluded that although a variance was appropriate, the statutory sixty month mandatory minimum prevented the court from entering a sentence lower than five years. The court sentenced the respondent to five years imprisonment on each of the seven counts to be served concurrently. Four days after the sentencing, the court received a letter from the respondent's friend, also a law student, suggesting that the safety valve provisions in 18 U.S.C. §3553(f) and U.S.S.G. §5C1.2 "operated to free the court of the mandatory minimum otherwise required by 21 U.S.C. §841(b)(1)(B)." *Lett*, 2007 WL 1082777, at *3.

On the last day for correcting a sentence pursuant to Federal Rule of Criminal Procedure 35(a), the sentencing court issued an order discussing its understanding of the application of the safety valve provision in light of *United States v. Booker*, 543 U.S. 220 (2005). Although concluding that it was unsure of in what manner the safety valve provision should be applied in light of *Booker*, the court concluded that the respondent was safety valve eligible. The

court imposed a corrected sentence of time served, amounting to eleven days imprisonment. The government appealed, arguing that the court's corrected sentence was improper under Fed. R. Crim. P. 35(a) because the court's original finding was not an "arithmetical, technical, or other clear error." *Id.*, at *5.

The Eleventh Circuit specifically addressed whether "at the time the district court entered its Rule 35(a) order, it was clear that the court had erred in its earlier conclusion that a sentence below the mandatory minimum was not permissible in the circumstances of this case." *Id.*, at *7. In reliance on its previous opinion in *United States v. Yost*, 185 F.3d 1178 (11th Cir. 1999), that a "district court may not simply change its mind, and any error to be corrected . . . must be obvious," *Id.*, at *6, the Eleventh Circuit held that the sentencing court's "view of the mandatory minimum requirements in light of the safety valve provisions is not an obvious error or mistake that almost certainly would have caused the sentence to be overturned on appeal." *Id.*, at *9. Thus, the sentencing court's original understanding and sentence was not a clear error that could be corrected pursuant to Fed. R. Crim. P. 35(a). The court's order re-sentencing the respondent to time served was vacated, and the case was remanded.

ANNOUNCEMENTS !

Federal Defenders Brown Bag Seminars

May 9, 2007 (Montgomery)

May 18, 2007(Dothan)

"Basic Rules Regarding the Voucher Process"

Speakers:

Mr. James Naramore & Ms. Tora Freeman

from the U.S. Court of Appeals for the 11th Circuit

&

Charlene Campbell

from the United States District Court from the Middle District of Alabama

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