Alert
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A quarterly newsletter reviewing Third Circuit opinions impacting white collar criminal lawyers

Notice of Appeal

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Related Practice Areas

- White Collar Defense & Investigations

Precedential Opinions of Note

Court Overturns Narcotics Conviction for Lack of Evidence of Drug Quantity

United States v. Rowe (April 2, 2019), No. 18-1192

http://www2.ca3.uscourts.gov/opinarch/181192p.pdf

Unanimous decision: Fisher (writing), Smith, and McKee

Background

A jury convicted Defendant for distribution and possession with intent to distribute 1000 grams of heroin. Defendant conceded that he sold 200 grams to a government cooperator, but he disputed at trial that he had possessed or distributed 1000 grams. The Government maintained that the cumulative amount over the period charged totaled at least 1000 grams. Defendant challenged the sufficiency of the evidence on appeal.

Holding

The Court vacated the conviction for 1000 grams. It held that the amount of drugs may not be combined over separate acts of distribution or possession to satisfy the quantity element of those offenses. Each act of distribution of drugs is a separate crime; a defendant must possess the entire amount of a charged drug quantity at a given point in time. The Court therefore vacated Defendant's conviction because there was insufficient evidence for the jury to conclude that he distributed or possessed 1000 grams of heroin at any one point in time.

Key Quotes:

"We agree with [other circuits'] reasoning and hold that separate acts of distribution of controlled substances are distinct offenses under 21 U.S.C. § 841(a), as opposed to a continuing crime. ... [W]e conclude that possession of 1000 grams of heroin begins when a defendant has the power and intention to exercise dominion and control over all 1000 grams, and ends when his possession is interrupted by a complete dispossession or by a reduction of that quantity to less than 1000 grams." (Slip. op. at 9 & 11 (quotation omitted).)

Legal Errors Insufficient to Overturn Doctor's Convictions for Kickbacks

United States v. Greenspan (April 17, 2019), No. 17-2458

http://www2.ca3.uscourts.gov/opinarch/172458p.pdf

Unanimous decision: Bibas (writing), Hardiman, and Krause

Background

A jury convicted Defendant, a doctor, of multiple counts of fraud and receiving kickbacks. Defendant regularly referred patients to a particular lab for blood tests in exchange for payments from the lab. The lab paid Defendant pursuant to rental and consulting agreements, which

Defendant's lawyer had reviewed. At trial, Defendant relied on an advice-of-counsel defense. Among other claims, Defendant argued on appeal that the district court erred by limiting this defense and giving an improper instruction to the jury.

Holding

The trial judge erred by limiting testimony supporting the advice-of-counsel defense and suggesting to the jury that Defendant maintained the burden of proof on that defense. In particular, the Court emphasized that the district court risked confusing the jury by instructing it about Defendant's initial burden of production, when the ultimate burden proof always rests with the Government. However, those errors were harmless because Defendant sufficiently put his defense before the jury, the jury rejected it, and the Government's evidence was overwhelming.

Key Quote

"In the face of this mountain of evidence, the jury found that [Defendant's] self-serving advice-of-counsel claims rang hollow. The advice-of-counsel instruction, testimony, and hearsay ruling made no difference." (Slip. op. at 21.)

Court Holds Solitary Confinement is Not an Arrest for Speedy Trial Purposes

United States v. Bailey-Snyder (May 3, 2019), No. 18-1601

http://www2.ca3.uscourts.gov/opinarch/181601p.pdf

Unanimous decision: Hardiman (writing), Scirica, and Rendell

Background

Defendant was serving a prison sentence for an unrelated offense when corrections officers found a homemade "shank" on his person. He was placed in isolated confinement pending an investigation. Ten months later, he was indicted for possession of a prohibited object in prison. Defendant moved to dismiss the indictment for violations of his statutory and constitutional Speedy Trial rights. The motion was denied, and Defendant was convicted after a trial.

Holding

The Third Circuit upheld the denial of Defendant's motion. As a matter of first impression, the Court concluded that placement of an inmate in solitary confinement does not constitute an arrest. Consequently, the ten-month delay between Defendant's solitary confinement and indictment did not violate his rights under either the Sixth Amendment or the Speedy Trial Act.

Key Quote

"Unlike police and prosecutors, the Bureau of Prisons does not operate in a prosecutorial posture when it decides to place prisoners in administrative segregation. Such decisions are not dependent on a decision to prosecute. ... That administrative context explains ... why administrative segregations does not constitute an arrest or public accusation for purposes of the Sixth Amendment right to a speedy trial." (Slip. op. at 6-7.)

Prosecutor's Forgetfulness is Not a Bar to Reopening Government's Case-In-Chief

United States v. Trant (May 15, 2019), No. 18-3199

http://www2.ca3.uscourts.gov/opinarch/183199p.pdf

Unanimous decision: Smith (writing), Jordan, and Rendell

Background

Defendant was tried and convicted for being a felon in possession of a firearm. Although Defendant stipulated to his prior felony conviction before trial, the Government forgot to enter the stipulation into evidence before resting its case-in-chief. Over Defendant's objection, the trial judge permitted the Government to reopen its case to enter the stipulation. Defendant renewed his objection on appeal.

Holding

Although the Government's reason for reopening its case was "hardly compelling," the district court did not err because Defendant was not prejudiced. The Court articulated the standard for deciding motions to reopen the Government's case in chief, noting that the primary consideration is whether a defendant would be prejudiced by the reopening.

Key Quote

"[P]rejudice in this context does not mean the loss of an opportunity for an unearned windfall. Prejudice results when a party experiences an unfair or unreasonable impairment of his defense." (Slip. op. at 13.)

Third Circuit Joins Majority in Circuit Split over Withdrawal of Guilty Pleas for Actual Innocence

United States v. James (June 27, 2019), No. 18-2569

http://www2.ca3.uscourts.gov/opinarch/182569p.pdf

Unanimous decision: Jordan (writing), Smith, and Rendell

Background

Defendant pled guilty to conspiracy to distribute narcotics after he attempted to sell cocaine to a DEA informant. Before sentencing, however, Defendant moved to withdraw his guilty plea, maintaining that he was innocent because he had been entrapped by the informant but had been pressured to plead by his lawyer. The district court denied the motion on the basis that only claims of factual, not merely legal, innocence were sufficient to permit withdrawal of a guilty plea.

Holding

Taking the majority side in a circuit-split, the Court held that claims of "legal" innocence, which are based on complete affirmative defenses, can justify the withdrawal of a guilty plea so long as they are adequately supported. The error was harmless in this case, however, because Defendant did not provide any facts to support his entrapment claim.

Key Quote

"Innocence has a broader meaning than factual innocence. It denotes being '[f]ree from guilt; free from legal fault[,]' which, by definition, encompasses being legally excused from any culpability. ... In short, legal innocence counts as innocence." (Slip. op. at 9-10 (quotation omitted, first and second alteration in original).)

Pretrial Release Does Not Prevent ICE Detention of Immigrants Pending Deportation

United States v. Soriano Nunez (July 2, 2019), No. 18-2341

http://www2.ca3.uscourts.gov/opinarch/182341p.pdf

Unanimous decision: Shwartz (writing), McKee, and Fuentes

Background

Defendant, an allegedly undocumented immigrant, was indicted for passport fraud and false representation of citizenship. After the Defendant surrendered, a magistrate judge denied the Government's motion for pretrial detention and set conditions for release. However, ICE executed a detainer and took Defendant into custody pending removal proceedings. Defendant argued that the pretrial release order in her criminal case precluded immigration detention, and she asked the district judge to order her release from ICE custody. The district court denied the motion, and Defendant appealed.

Holding

The Third Circuit affirmed the district court's denial of the motion. The Bail Reform Act (BRA), under which district courts set conditions of pretrial release, does not supersede or interfere with removal procedures under the Immigration and Nationality Act (INA). Consequently, district courts lack the authority to order release from immigration custody even when they conclude that pretrial release is appropriate in parallel criminal proceedings.

Key Quote

"Because (1) the BRA explicitly applies only to federal criminal proceedings, not state or immigration proceedings, (2) there is no textual conflict between the BRA and the INA, (3) these statutes serve different purposes, and (4) criminal and removal processes can proceed simultaneously ... the District Court correctly declined to hold that Soriano Nunez's BRA release order mandated her release from ICE detention." (Slip. op. at 12.)

Second Habeas Petition Filed During Appeal of Initial Petition Construed as a Motion to Amend

United States v. Santarelli (July 5, 2019), Nos. 16-4114, 18-1362

https://www2.ca3.uscourts.gov/opinarch/164114p.pdf

Unanimous decision: Restrepo (writing), McKee, and Ambro

Background

Defendant filed an initial *habeas* petition asserting that her counsel had been ineffective. The district court denied the petition, and Defendant appealed. While her appeal was pending, she also filed a motion to file a second *habeas* petition in the Third Circuit.

Holding

A second *habeas* petition is not a "second or successive" petition under 28 U.S.C. §§ 2244 and 2255 if it is filed during the appeal of a first petition. Rather, the Court will construe the new petition as a motion to amend the initial petition.

Key Quote

"[A] subsequent *habeas* petition is not a 'second or successive' petition when it is filed during the pendency of an appeal of the district court's denial of the petitioner's initial *habeas* petition ... that subsequent petition should be construed as a motion to amend the initial *habeas* petition." (Slip. op. at 19.)

Non-Precedential Opinions of Note

United States v. Persaud (May 8, 2019), No. 17-3821

http://www2.ca3.uscourts.gov/opinarch/173821np.pdf

As part of Defendant's sentence for fraud, the district court ordered Defendant to pay restitution to an insurance company, which had separately pursued a civil action against him. The Third Circuit

noted that, if Defendant can demonstrate an actual civil judgment against him, he can then move the district court "for a credit or offset to his restitution obligations." (Slip. op. at 5-6.)

United States v. Mangel (May 21, 2019), No. 18-1963

http://www2.ca3.uscourts.gov/opinarch/181963np.pdf

After executing a plea agreement, the Defendant challenged the loss amount for which he should be responsible at sentencing. In that plea agreement, the Government agreed that "as of the date" of the agreement, Defendant accepted responsibility for his offense. The Third Circuit held that the Government did not breach the agreement by objecting to acceptance-of-responsibility credit based on Defendant's challenge to the loss amount at sentencing.

United States v. Cook (May 29, 2019), No. 17-3564

http://www2.ca3.uscourts.gov/opinarch/173564np.pdf

Defendant violated the terms of his supervised release on several occasions, resulting in multiple prison terms. He appealed the last term, arguing that the cumulative prison time he served exceeded the maximum prison sentence authorized by his original offense of conviction. The Court rejected his argument, holding that the total prison time available for violations of supervised release is not limited by the maximum sentence provided by the statute of conviction.

United States v. Walker (June 5, 2019), No. 15-4062

http://www2.ca3.uscourts.gov/opinarch/154062np.pdf

The Third Circuit applied the good-faith exception to permit the admission of cell phone location data that was obtained without a warrant prior to the U.S. Supreme Court's decision in *Carpenter v. United States* (2018).

United States ex rel. Denis v. Medco Health Sols. Inc. (June 18, 2019), No. 17-3562

http://www2.ca3.uscourts.gov/opinarch/173562np.pdf

The Court affirmed the dismissal of a *qui tam* relator's False Claims Act complaint because the facts he alleged had previously been publicly disclosed and because he was not an original source with "direct and independent knowledge" of the facts. (Slip. op. at 5.)

United States v. Scott (June 25, 2019), No. 18-1157

http://www2.ca3.uscourts.gov/opinarch/181157np.pdf

The Court remanded and directed the district court to issue written findings of fact and conclusions of law to support its decision on a suppression motion where there were "troubling" discrepancies in officers' testimony "and the differing accounts were never resolved by the District Court." (Slip. op. at 2.)

United States v. Meza-Magallon (July 2, 2019), No. 18-1635

http://www2.ca3.uscourts.gov/opinarch/181635np.pdf

Defendant was convicted for illegal reentry. During the course of that offense, he collaterally attacked the underlying deportation order. The Third Circuit affirmed the denial of this attack, holding that he did not demonstrate he was prejudiced by an error in the original deportation proceeding.