

Blakely

Many inmates have asked The Justice Project whether the recent United States Supreme Court case, Blakely v. Washington, might apply to their case and might require re-sentencing. For inmates whose convictions are already final and who have exhausted any direct appeal they might have to the Court of Appeals or the Arizona Supreme Court, the answer almost surely is “no.” Some inmates whose cases are still on direct appeal may be able to argue that Blakely applies, but those arguments should be made by the inmate’s private or court-appointed appellate attorneys. Since The Justice Project exists only to help inmates who may be actually innocent or who may have some significant claim of manifest injustice, and who are no longer eligible for counsel at public expense, we will limit this memorandum to cases in the post-conviction relief or habeas corpus stages.

Blakely deals with the right to have a jury – and not the judge – decide all facts necessary for a sentence. If additional fact finding is necessary in order to sentence a defendant above the presumptive sentence, that fact finding must be done by a jury. In Arizona the sentencing laws have long allowed the judge – and not the jury – to find the facts necessary to sentence an inmate to an “aggravated” sentence. Although Blakely was not an Arizona case, it does seem clear that the Arizona sentencing laws violate the 6th Amendment right to a jury trial with respect to finding the facts necessary to impose an aggravated sentence or an enhanced sentence.

The obviously important question is whether the reasoning of the Blakely case applies to cases in which the defendant has already been sentenced before June of 2004. This is generally thought of as a question of “retroactivity,” that is, whether a case that was not in

existence at the time of a defendant's sentencing might nonetheless require that the sentencing be reopened. It is our judgment that the rules of Blakely will not be retroactively applied. Our conclusion in this regard is based on several cases decided by the United States Supreme Court. The Arizona case known as Schriro v. Summerlin dealt directly with the question of the retroactivity of a case called Ring v. Arizona. Ring was the case that held that the 6th Amendment right to jury trial requires jury fact finding in capital (death penalty) cases. In a 5-4 decision, the United States Supreme Court held that Ring is not retroactive. The more recent case of United States v. Booker/Fanfan considered whether the rules of Blakely applied to the United States Sentencing Guidelines, thus making the Sentencing Guidelines unconstitutional. The Supreme Court held that Blakely did apply to the Sentencing Guidelines but refused to apply Booker retroactively. The constitutional principle under the 6th Amendment is the same in Ring and Booker as it is in Blakely. Since neither Ring nor Booker is retroactive, we cannot find a basis for believing that Blakely would be held to be retroactive.

This is not to say that inmates should give up on making this argument whenever they are filing a post-conviction relief petition or a federal habeas corpus petition. Since the case was decided by a very close vote, it is always possible that the Supreme Court at some time in the future may change its mind. Therefore, it would be wise to preserve the issue by raising it.

There is an additional argument that should be made by inmates whose convictions became final in the year 2000 or more recently. In 2000, the United States Supreme Court decided a case known as Apprendi. It is possible that the United States Supreme Court will

say that the Blakely case did not make any “new law” but that the new law was made at the time Apprendi was decided. If that is what the Supreme Court were to conclude, then any inmate whose conviction became final after the date of Apprendi would be entitled to the benefit of the ruling that the jury must find aggravating and enhancing facts. Apprendi was decided on June 26, 2000. (Remember, a conviction becomes “final” when the defendant has finished with any appeal to the Arizona Court of Appeals or the Arizona Supreme Court. The actual date upon which a conviction becomes final has technical elements and if the question is in doubt an inmate may wish to confer with counsel appointed to represent the inmate on her or his direct appeal or post-conviction relief petition.)

There is a separate question about whether inmates who entered pleas of guilty or no contest have waived the right to have a jury make these determinations. Whenever a defendant enters a plea, he or she expressly says that they are waiving all available constitutional prior rights including the right to trial by jury. It may be argued that this waiver also waives the right to have the jury find sentencing-related facts. However, in the recent Arizona appellate case of State v. Resendis-Felix, the court vacated the defendant’s aggravated sentence imposed after the defendant entered into a guilty plea. The court based its opinion on the Blakely and Apprendi cases. Therefore, defendants who have entered into a guilty plea should definitely raise Blakely and Apprendi issues in their petitions for post-conviction relief. [Please also remember that for inmates who entered pleas of guilty or no contest their “direct appeal” is the Rule 32 post-conviction relief petition to set aside the plea. Ordinarily, PCR cases only occur after the direct appeal has been exhausted but since there is no right to a “direct appeal” from a guilty plea and conviction, the first PCR and any

appeal from the denial of that PCR would constitute a part of the direct appeal during which Blakely and Apprendi issues might be raised.]

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