

Dan Siegel's
Federal Criminal Defense
Victory Newsletter

A weekly summary of newly filed,
defense-favorable, published federal decisions
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At sentencing of child porn defendant who suffers from Asperger's Syndrome, DC varies downward to 27 months home confinement.

U.S. v. Jonathan Dale Knott, 2022 WL 16571169, No. 21-CR-328, M.D. Alabama, Northern Div., Thompson, J., Nov. 1, 2022. District court rejects Guidelines framework for child pornography sentencing as “unmoored from the current reality of file sharing and unreasonable under the factors laid out in 18 U.S.C. § 3553(a).” Op. at *2. DC substitutes its own approach for calculating guideline range in child porn cases. DC then varies beneath that range for two reasons: (1) D’s Asperger’s Syndrome diminished his moral culpability; and (2) D’s condition rendered him extraordinarily vulnerable to abuse in prison. Op. at *8-9.

CA7 holds that Illinois cocaine conviction was not a “felony drug offense” under habitual offender provision of the federal drug statute.

U.S. v. Quintez L. Turner, 2022 WL 17842399, No. 21-2345, CA7, Dec. 22, 2022. Rationale: (1) Illinois defines cocaine to include “positional” isomers; (2) federal law doesn’t define cocaine to include “positional” isomers; (3) because the Illinois definition is “categorically broader” than the federal definition, DC plainly erred in enhancing D’s maximum sentence based on his Illinois conviction. Op. at *6.

CA6 remands for reconsideration where: (1) D had been ordered to pay restitution; (2) AUSA moved for order directing that monies in D’s prison account be applied toward the restitution; (3) DC granted gov motion; but (4) DC failed to make findings necessary to support ruling.

U.S. v. Adam Carson, 2022 WL 17729622, No. 21-3518, CA6, Dec. 16, 2022.

CA9 holds evidence insufficient to support conviction for “solicitation of a crime of violence” under 18 U.S.C. § 373(a). U.S. v. David Linehan, 2022 WL 17840703, No. 21-50206, CA9, Dec. 22, 2022. Rationale: (1) 373(a) requires proof that D solicited a “crime of violence;” (2) D was alleged to have solicited the crime of “using a facility of interstate commerce with intent that a murder be committed,” in violation of 18 U.S.C. 1958(a); and (3) a violation of 1958(a) is not “categorically” a 373(a) crime of violence. Op. at *10-11.

In prosecution for gang-related drug murders, Magistrate Judge recommends that DC preclude gov from introducing video showing defendants singing rap songs with violent drug-related lyrics.

U.S. v. Michael Anthony Williams, 2022 WL 17547125, No. 18-CR-1695, D. Arizona, Markovich, M.J., Dec. 9, 2022. “[T]he rap video and music are unfairly prejudicial for two related reasons. First, the rap lyrics are so highly inflammatory that they could cause the jury to convict the defendants on impermissible grounds. Second, the rap video and songs have the potential to become a feature of the trial, and as a result, confuse and mislead the jury.” Op. at *1.

In prosecution for “kidnapping resulting in death,” DC precludes government’s expert witness – a pediatric neurologist – from providing expert opinion on the specific cause of victim’s death.

U.S. v. Jany Leveille, 2022 WL 17532254, No. 18-CR-2945, D. New Mexico, Johnson, C.J., Dec. 8, 2022. Rationale: government’s expert “is not trained in forensic pathology, and his curriculum vitae ... does not indicate any experience in forensic pathology, the performance of autopsies, or other work relevant to determining cause of death ... [t]herefore, he is not equipped to testify as to the specific cause of [the victim’s] death, and the Court will not allow him to do so.” Op. at *2. Gov expert will, however, be allowed to offer testimony short of opinion on the cause of death.

Applying prosecution-favorable construction of the First Step Act, CA6 majority holds that D was ineligible for safety-valve reduction; applying defense-favorable construction, dissent would hold that D was eligible. U.S. v. Aaron M. Haynes, 2022 WL 17750939, No. 22-5132, CA6, Dec. 19, 2022.

DC grants state prisoner’s “motion for relief from judgment” under Rule 60(b) of the Federal Rules of Civil Procedure. Freddy Welch v. Darnell Vannoy, Warden, 2022 WL 16552941, No. 19-CV-2295, E.D. Louisiana, Morgan, J., Oct. 31, 2022. State prisoner filed motion for post-conviction relief under 28 U.S.C. § 2254. DC denied motion, finding that prisoner failed to meet AEDPA filing deadline. DC denied a certificate of appealability, prisoner appealed, and CA5 also denied a certificate of appealability. Subsequently, prisoner discovered that just one week after DC denied his 2254 motion, the Fifth Circuit: (1) issued an opinion regarding calculation of the AEDPA filing deadline; and (2) under this opinion, prisoner’s 2254 petition would have been *timely*. Citing the opinion, prisoner filed a “motion for relief from judgment” under Civil Rule 60(b). State prosecutor opposes relief, arguing, in relevant part, that the prisoner failed to cite the new decision when he sought the certificate of appealability from the Fifth Circuit. Op. at *7, n. 99. DC rejects government objection, grants Rule 60(b) motion, and finds that D filed his 2254 motion within AEDPA time limits. Case re-opened for a ruling on the merits. Op. at *8.

CA7 holds evidence insufficient to support two-level enhancement for “possession of a firearm during a drug trafficking offense.” U.S. v. Thomas Jones, *et al.*, 2022 WL 17842985, No. 20-1405, CA7, Dec. 22, 2022. Record reflects that: (1) D was a drug seller; (2) D met with potential drug customer; (3) the customer was accompanied by his wife; (4) D sold drugs to the customer; and (5) the customer’s wife was carrying a concealed firearm during the transaction. CA7 holds that the wife’s concealed firearm could not be attributed to D for purposes of the two-level enhancement. Op. at *28.

In prosecution for sex crimes against children, DC precludes government from introducing evidence of prior bad acts that, while sexual in nature, were not within the scope of FRE 413 and 414, and were not admissible under FRE 404(b). U.S. v. Darrel Dean Guinn, 2022 WL 17416102, No. 22-CR-201, N.D. Oklahoma, Heil, J., Dec. 5, 2022. DC precludes three categories of evidence. First, DC precludes testimony by D’s former adult girlfriend, who alleges that “[D] would rape her practically nightly” after she had gone to bed. Second, DC precludes evidence that D made improper sexual comments to minors at his place of employment, including “making comments about a 14-year-old coworkers’ breasts.” Third, DC precluded evidence of sexual misconduct in public places, including evidence that D masturbated while parked in his van, and watched porn on his laptop while at a McDonalds. Op. at *9.

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