

Ridgefield High School
Final Project
2005 National Online Youth Summit, The Trial Jury
Teachers: Bob Ford and Heidi Rath

Merit Brief
US V. Thomas Tome
Respondent
Green & Lowery Attorneys At Law

Case Summary:

Thomas Tome was found guilty of drug trafficking and was sentenced to 210 to 262 months in prison authorized by the jury's verdict, based on the evidence presented in front of the jury in the court of law. Tome was violated at the sentence hearing when the judge sentenced Thomas 360 months and life in prison. Your honor this sentence hearing the judge found additional evidence during the sentence hearing that was not presented to the Jury. The judge thought that he/she had enough authority to go out of the requested sentence with out it presented in the court of law in front of a jury. The judge increased the sentence without the facts proven to the jury beyond a reasonable doubt.

How the case came to the Supreme Court:

- The District Court had to either sentence Tome within the sentencing range supported by the jury's finding or to hold a separate sentencing hearing before the jury.
- The Ninth Circuit held that this application of the Guidelines conflicted with Apprendi V. New Jersey.
- Seventh Circuit was filed a notice of appeal and a petition of certiorari for judgment in this Court.
- The US Supreme Court granted the Writ of Certiorari.

Argument:

The application for the Federal Sentencing guidelines violated the defendants, Thomas Tome, rights as stated in the Constitution under the 6th Amendment. Title 18 U.S.C.A. 3553 states that a court "shall impose a sentence of the kind, and within the range". The judge that sentenced Tome to 360 months and life was outside the acceptable guidelines. The sentencing range for Tome was 210 to 262 months, made by the jury, and the judge did not stay within the range.

The judge that held the post-trial said that Tome possessed 566 grams of crack; this evidence was presented after the trial, to only one person, the judge. The jury was not present and it was not a piece of evidence in the case. Therefore this new evidence cannot be used against Tome because it violates the 14th Amendment, which requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum be submitted to a jury and proven beyond reasonable doubt. Such as in Apprendi V. New Jersey and Blakely V. Washington; which both state that a judge may not impose more than the maximum without a juries consent.

In Ring V. Arizona the court held that Arizona capital sentencing plan violated the 6th Amendment, when Arizona permitted the judge, not the jury, to decide the critical sentencing issues in a death penalty case. The 6th Amendment state: that the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

Conclusion:

Based on the argument we request the court to rule in favor of the Respondent, the Judge violated the authority when he/she added time to the sentence based on evidence that was not presented at court. We would like the court to reaffirm the pellet court decision.

May it please the court, your honors, I am Kirian McClure. My co-counsel Homer Adams and I are defending Lee Kalb.

Kalb kidnapped his wife Yolanda, using duck tape and a knife, when captured later he admitted to elements of second-degree kidnapping and domestic-violence and firearm allegations. When the case proceeded to sentencing the presiding judge heard only elements of the case relating to the second-degree kidnapping and firearm charges. The sentence recommended by the state was a range of 49 to 53 months. Rejecting this, the judge decided to implement a much longer sentence of 90 months. The judge found facts and conclusions that gave him evidence necessary to giving this sentence. By sentencing Kalb to a longer prison sentence the state violated his Sixth Amendment rights. Kalb argued that his manner of sentencing deprived him of a protected federal constitutional right that he may have a jury determine beyond all possible reasonable doubt that all facts were essential in contributing to his sentence. The State Court of appeals agreed, yet the Washington Supreme Court refused to look at the case. Later the Supreme Court granted review of the case.

We are asking the judge's decision on the grounds that it is the job of the jury, not the judge, to determine what facts are essential.

Your honors, we ask that you reverse the sentence applied to our client, Lee Kalb. Mr. Kalb was deprived of his federally granted constitutional right to have a jury determine beyond a reasonable doubt all facts that were essential to his sentence. In his situation, it was a judge, not a jury, that decided what facts were essential for his sentencing. The defendant plead guilty to kidnapping in the second degree, as well as some charges in relation to domestic violence and firearms. Upon sentencing, only the necessary information relating to those charges were presented to the judge. Now, there was other information that could relate to first-degree kidnapping, but this information was never presented. The recommended sentence for Mr. Kalb was 49-53 months, standard for the crime of second degree kidnapping with a firearm. But the judge sentenced him to 90 months in prison, 37 months past the standard punishment. The judge's reasoning for this was that there were other information not presented at trial that was relevant to the sentencing. Your honors, it is the job of the jury, not the judge, to determine what facts are essential to the case. Since the defendant pleaded guilty, there was no jury to hear the facts. Thus, the judge should have sentenced using the facts presented to him by the prosecution. But instead of using only this, the judge went outside of the scope of evidence presented to him and found his own evidence, using this evidence as reasoning for imposing a longer sentence.

In *Williams v. State of New York* (1949), Williams was found guilty of murder in the first degree, and the recommended sentence by the jury was life imprisonment. The judge disregarded this, and sentenced Williams to the death penalty. The judge said that his reasoning for this was that there were facts not presented at trial that persuaded him to impose a worse punishment. He cited rule 482 of the New York Criminal Code saying "Before rendering the judgment or pronouncing sentence the court shall cause the defendant's previous criminal record to be submitted to it, including any reports...and may seek any information that will aid the court in determining the proper treatment of such defendant." Williams took this to the Supreme Court, stating that his due process of law was taken away because it the judge didn't follow the recommended sentence. The court decided in a vote of 7-2 that the appellant did not have his rights taken away, and that the judge had the right to view his criminal record, as well as reports from examinations in order to determine whether or not a sentence is appropriate. This case holds precedence in that it states that the judge can look outside of evidence presented at trial to determine a sentence, but he is limited to where he looks. A judge is allowed to look only in criminal

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records, and in reports from physical, emotional, and psychiatric evaluations. In our case, the judge used information from a source other than the ones allowed, and therefore, violated our client's due process of law.

In *MicMillian v. Pennsylvania* (1986), MicMillian was found guilty of aggravated assault, and sentenced to two consecutive counts of 2.5 to 5 years, on the grounds that there was a visible firearm. MicMillian appealed, stating that his Sixth Amendment rights of sentencing by jury were violated and that due process was violated. The Supreme Court decided in a vote of 5-4 that MicMillian's rights were not violated. The Supreme Court stated that the 6th Amendment doesn't guarantee that the jury does the sentencing, and that the judge is allowed to take facts that were presented as evidence to determine a proper sentence. This sets a precedent, but it doesn't apply to our case. In the case of *MicMillian v. Pennsylvania*, the judge used evidence provided at the trial to determine the proper sentence. But in our client, Mr. Kalb, the judge used evidence not presented at trial. Therefore, the precedent set by this case does not apply to our case.

In the case of *Almendarez-Torres v. United States* (1998), Almendarez-Torres was charged with returning back to the United States illegally as an alien who was already deported. Normally this carries a sentence of no more than two years. But, under a special subsection, the sentence can be extended up to twenty years if the deportation was because of a previous felony conviction. Almendarez-Torres appealed this, arguing that his maximum sentence should have been two years, since his indictment failed to mention his previous felony convictions. He argued that because of this, he did not fall under the special provision, and could not be sentenced to more than two years in prison. The United States Supreme Court in a vote of 5-4 disagreed with Almendarez-Torres, stating "Since it does not create a separate crime, the Government is not required to charge the fact of an earlier conviction in the indictment." Essentially, that the government is not required to reveal past convictions in the indictment, and that past convictions may be used to impose a longer sentence. This, however, does not apply to our client, Mr. Kalb. In our client's case, the judge did in fact use other evidence to impose a larger sentence. But this evidence was not part of a criminal record. This evidence was facts not stated at trial that a jury should have heard and decided on. Therefore, the precedent that judges can use past criminal records to impose a longer sentence does not apply to our client, as he did not have a past criminal record.

In *Jones v. United States* (1999), Jones was charged and found guilty of inter alia carjacking, which holds a 15 year sentence. However, if somebody was seriously injured during this, the sentence becomes 25 years. The second part of the clause was not included in the indictment, or was it told to the jury. Upon hearing that somebody was seriously injured during the car jacking, the judge sentenced Jones to 25 years in prison. Jones appealed the sentence, saying that his Fifth Amendment due process rights were violated, as well as his Sixth Amendment notice and trial by jury rights. He argued that since neither the jury nor he were told about the clause in his charge when they were told the charges, that his rights were violated. He argued that the judge decided what was essential for the jury to hear, and that in fact it is the duty of the jury to decide what facts are essential. The Supreme Court decided in a vote of 5-4 in favor of Jones, reversing the decision. This is similar to our case because in this case, just as ours, it was the judge, not the jury, who decided what information was essential for sentencing. The United States Supreme agreed that it is the responsibility of the jury, and that the judge should not be allowed to decide what information is essential.

In *Apprendi v. New Jersey* (2000) was charged with second-degree possession of a firearm, which usually carries a sentence of 5-10 years. He pleaded guilty to this charge. But, at

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sentencing, he was sentenced with 12 years because the crime was inter alia, grounds for imposing a harsher sentence. Apprendi appealed this, quoting this from the constitution: "Any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt." The Supreme Court in a vote of 5-4 reversed the decision. This is pertinent to our case because it was the judge, not the jury, that looked at facts which could increase the sentence. According to the constitution, the jury must be the ones to look at facts and decide if they are grounds to impose a larger than standard sentence. The judge did this in the case of our client, and thus, infringed upon his constitutional rights.

Your honors, the judge in our case went outside of his granted scope of evidence in order to determine a sentence for Mr. Kalb. Mr. Kalb had his constitutionally granted rights taken away from him. Mr. Kalb's Fifth Amendment right of Due Process of Law was violated when the judge of his case imposed a longer than standard sentence. The judge didn't look to his criminal record as he is allowed to do, but looked outside of the scope. The judge looked at evidence that was not even presented at trial in order to determine the proper sentence. This violated his Sixth Amendment right to have a jury determine what facts were essential as evidence. The Sixth Amendment states that a jury must decide whether or not a sentence longer than the standard should be applied based on facts presented. There was no jury to determine if facts supported a longer sentence. Because of this, our client's Sixth Amendment rights were violated. Your honors, we ask that you find that the imposing of a longer sentence under the circumstances in our case violated our client's Fifth and Sixth Amendment rights, and thus, was unconstitutional. We ask that you reverse the decision to give our defendant a sentence longer than normal.

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