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ROLLING SUMMARY OF U.S. SUPREME COURT DOCKET ON CRIMINAL LAW 2023 Term, as of 3/1/24

A. DECIDED CASES, 2023-24

McElrath v. Georgia, 601 U.S. -- (2/21/24) - The Double Jeopardy Clause, as applied through the 14th Amend, bars a state court from ordering retrial of a count on which a jury had rendered a verdict of not guilty by reason of insanity, even where the jury at the same trial found the defendant "guilty but mentally ill" on another count, notwithstanding a judicial determination that the verdicts are legally and factually "repugnant" to one another. Unan (per KBJ)

B. CRIMINAL CASES GRANTED REVIEW for decision in 2023 Term

Pulsifer v. US (granted 2/27/23) - Do criteria for "safety valve" exemption from controlled substances mandatory minimum sentencing, 18 USC §3553(f), as amended in 2018 by First Step Act, exclude those with any of five listed types of prior convictions or only those with all five?

Brown v. US (granted 5/15/23) - In applying categorical approach to determine whether felon-in-possession-of-firearm is subject to enhanced sentence as an "armed career criminal" under 18 USC §924(e) (ACCA), as of what date(s) is the scope of the prior state "controlled substances" offense to be compared with a touchstone federal drug offense?

Culley v. Marshall (granted 5/17/23) - In determining whether and, if so, when Constitution requires a prompt post-seizure probable-cause hearing prior to full statutory judicial-forfeiture proceeding, should courts apply the Sixth Amend "speedy trial" test adopted for final forfeiture hearings in US v. \$8850 (1983), or a three-part due process analysis under Mathews v. Eldridge (1976)?

US v. Rahimi (granted 6/30/23) - Is 18 USC §922(g)(8), which categorically prohibits the possession of firearms by persons subject to domestic-violence restraining orders, facially invalid under the Second Amendment?

Smith v. Arizona (granted 9/29/23) - Does the Confrontation Clause allow testimony for the prosecution by a substitute expert conveying the testimonial statements of a nontestifying forensic analyst, if (a) the testifying expert offers some independent opinion and the original analyst's statements are offered not for their truth but to explain the expert's opinion, and (b) the defendant did not independently seek to subpoena the original analyst?

McIntosh v. US (granted 9/29/23) - May a criminal forfeiture be lawfully ordered outside the time allowed under Fed.R.Crim.P. 32.2?

Gonzalez v. Trevino (granted 10/13/23) - To state a First Amendment claim for retaliatory arrest, notwithstanding the existence of probable cause, how steep is plaintiff's burden to show other cases that were not prosecuted under the same law?

Garland v. Cargill (granted 11/3/23) - Is a bumpstock a prohibited "machine gun" as defined in 26 USC §5845(b)?

Diaz v. U.S. (granted 11/13/23) - Does FRE 704(b) bar an expert witness only from opining directly on the defendant's mens rea or does it also bar opinions strongly suggesting the prohibited conclusion?

Erlinger v. US (granted 11/20/23) - To establish ACCA status under 18 USC §924(e) at sentencing for felon-in-possession, does Sixth Amend require jury determination and proof BARD that three qualifying prior offenses were "committed on occasions different from one another"?

Thornell v. Jones (granted 12/13/23) - On federal habeas review of a capital case, what deference is due conflicting factual findings following state and federal hearings concerning the performance and prejudice prongs of a Strickland analysis of counsel's investigation and presentation of mental health mitigation at the penalty phase?

Chiaverini v. City of Napoleon (granted 12/13/23) - Is a 42 USC §1983 malicious prosecution case supportable by showing a lack of Fourth Amend probable cause to support a particular accusation, or must the plaintiff show an absence of probable cause to pursue any and all charges?

Snyder v. U.S. (granted 12/13/23) - Does 18 USC §666(a)(1)(B) prohibit only quid pro quo bribery, or does it also criminalize gratuities, that is, unauthorized payments made only after and on account of an official act?

Fischer v. U.S. (granted 12/13/23) - Does 18 USC §1512(c) prohibit obstruction of an official proceeding only by acts affecting investigations and evidence, or does it reach obstruction of Congressional proceedings such as those for counting Electoral College ballots?

Glossip v. Oklahoma (granted 1/22/24) - Did state's suppression at capital trial of key witness's psychiatric history, and failure to correct witness's false denial, violate due process? Must entirety of suppressed evidence be considered in assessing its materiality under Brady? Does due process require that capital conviction be vacated where pervasive errors lead the State to decline to defend it against post-conviction challenge? Was unavailability of relief under state post-conviction law an "independent and adequate" basis for decision below?

Trump v. United States (granted 2/28/24) - Does a former President enjoy immunity from criminal prosecution for any and all acts committed in office, only for some, or for none?

C. *CRIMINAL CASES GRANTED REVIEW for decision in 2024 Term*

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