

CRIMINAL ISSUES DECIDED IN THE 2018 TERM

***Moore v. Texas*, No. 18-443.** The Texas Court of Criminal Appeals' redetermination that Bobby James Moore does not have an intellectual disability and is thus eligible for the death penalty is inconsistent with the Supreme Court's decision in *Moore v. Texas*.

***Stokeling v. United States*, No. 17-5554.** The Armed Career Criminal Act's elements clause encompasses a robbery offense that, like Florida's law, requires the criminal to overcome the victim's resistance.

***Timbs v. Indiana*, No. 17-1091.** The Eighth Amendment's excessive fines clause is an incorporated protection applicable to the states under the 14th Amendment's due process clause.

***United States v. Sims*, No. 17-766 and *United States v. Stitt*, No. 17-765.** The term "burglary" in the Armed Career Criminal Act includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation.

***Madison v. Alabama*, No. 17-7595.** The Court held that the Eighth Amendment may permit executing a prisoner even if he cannot remember committing his crime but it may prohibit executing a prisoner who suffers from dementia or another disorder rather than psychotic delusions.

***Garza v. Idaho*, No. 17-1026.** The Supreme Court held that the presumption of prejudice for Sixth Amendment purposes recognized in *Roe v. Flores-Ortega* applies regardless of whether a defendant has signed an appeal waiver.

***Nielson v. Preap*, No. 16-1363.** Respondents, who are deportable for certain specified crimes, are not subject to 8 U.S.C. § 1226(c)(2)'s mandatory-detention requirement because they were not arrested by immigration officials as soon as they were released from jail.

Bucklew v. Precythe*, No. 17-8151. *Baze v. Rees* and *Glossip v. Gross govern all Eighth Amendment challenges alleging that a method of execution inflicts unconstitutionally cruel pain. Bucklew's as-applied challenge to Missouri's

single-drug execution protocol - that it would cause him severe pain because of his particular medical condition - fails to satisfy the *Baze-Glossip* test.

Mont v. United States, No. 17-8995. The Supreme Court held that pretrial detention later credited as time served for a new conviction tolls a supervised-release term under 18 U.S.C. § 3624(e), even if the court must make the tolling calculation after learning whether the time will be credited.

Quarles v. United States, No. 17-778. The Supreme Court held that Michigan's third-degree home-invasion statute substantially corresponds to or is narrower than generic burglary for the purposes of qualifying for enhanced sentencing under the Armed Career Criminal Act.

Gamble v. United States, No. 17-646. The Supreme Court upheld the dual sovereignty doctrine, which is an exception to the double jeopardy rule. Therefore, two offenses are not the same offense for double jeopardy purposes if they are prosecuted by separate sovereigns.

Gundy v. United States, No. 17-6086. The judgment of the U.S. Court of Appeals for the 2nd Circuit that 34 U. S. C. §20913(d) – which requires the U.S. attorney general to apply the Sex Offender Registration and Notification Act's registration requirements as soon as feasible to offenders convicted before the statute's enactment – is not an unconstitutional delegation of legislative authority is affirmed.

United States v. Haymond, No. 17-1672. In considering 18 U. S. C. §3583(k)'s requirement of a minimum of five years in prison for some defendants who violate the terms of their supervised release, the Supreme Court held that “a congressional statute compelled a federal judge to send a man to prison for a minimum of five years without empaneling a jury of his peers or requiring the government to prove his guilt beyond a reasonable doubt” violated both the Fifth Amendment's guarantee of due process and the Sixth Amendment's right to a jury trial.

Flowers v. Mississippi, No. 17-9572. The Supreme Court held that the trial court at Curtis Flowers' sixth murder trial committed clear error in concluding that the

state's peremptory strike of a particular black prospective juror was not motivated in substantial part by discriminatory intent.

***United States v. Davis*, No. 18-431.** Title 18 U. S. C. §924(c)(3)(B), which provides enhanced penalties for using a firearm during a "crime of violence," is unconstitutionally vague.

***Mitchell v. Wisconsin*, No. 18-6210.** The Supreme Court ruled that the Fourth Amendment generally does not bar states from taking a blood sample from an unconscious drunk-driving suspect without a warrant.

***Rehaif v. United States*, No. 17-9560.** In a prosecution under 18 U. S. C. §922(g) and §924(a)(2), the government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.

CRIMINAL ISSUES PENDING BEFORE THE SUPREME COURT FOR THE 2019 TERM

***Kahler v. Kansas*, No. 18-6135.** Whether the Eighth and 14th Amendments permit a state to abolish the insanity defense?

***Mathena v. Malvo*, No. 18-217.** Whether the United States Court of Appeals for the Fourth Circuit erred in concluding - in direct conflict with Virginia's highest court and other courts - that a decision of the Supreme Court, *Montgomery v. Louisiana*, addressing whether a new constitutional rule announced in an earlier decision, *Miller v. Alabama*, applies retroactively on collateral review may properly be interpreted as modifying and substantively expanding the very rule whose retroactivity was in question?

***Ramos v. Louisiana*, No. 18-5924.** Whether the 14th Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict?

***Kansas v. Glover*, No. 18-556.** Whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the

registered owner of a vehicle is the one driving the vehicle absent any information to the contrary?

***Holguin-Hernandez v. United States*, No. 18-7739.** Whether a formal objection after pronouncement of sentence is necessary to invoke appellate reasonableness review of the length of a defendant's sentence?

***McKinney v. United States*, No. 18-1109.** Whether the Arizona Supreme Court was required to apply current law when weighing mitigating and aggravating evidence to determine whether a death sentence is warranted and whether the correction of error under *Eddings v. Oklahoma* requires resentencing?

***Kelly v. United States*, No. 18-1059.** Whether a public official "defraud[s]" the government of its property by advancing a "public policy reason" for an official decision that is not her subjective "real reason" for making the decision.

***Shular v. United States*, No. 18-6662.** Whether the determination of a "serious drug offense" under the Armed Career Criminal Act requires the same categorical approach used in the determination of a "violent felony" under the act.

***Banister v. Davis*, No. 18-6943.** Whether and under what circumstances a timely Rule 59(e) motion should be recharacterized as a second or successive habeas petition under *Gonzalez v. Crosby*.