

CRIMINAL • Jul. 12, 2004

Felon Appeals Life Sentence Citing 'Blakely'

Inmate Contends Judicial Findings Violate Holding

By John Ryan

Daily Journal Staff Writer

LOS ANGELES - An imprisoned drug felon is challenging his life sentence under the Supreme Court's recent decision in *Blakely v. Washington*, an appeal that highlights the types of old sentences that the landmark ruling could help overturn.

John Ward, once known as Orange County's largest methamphetamine dealer, was convicted by a federal jury in Santa Ana in 2001. But Ronald Richards, who represents Ward, said Friday that the judge, and not the jury, determined the quantity of drugs at issue in the case as well as several other enhancement factors that resulted in his client's life sentence.

These judicial findings violate the high-court's holding in *Blakely* that the maximum sentence a judge can give must be based on facts found by juries or admitted to by the defendants, according to the appellate brief filed by Richards last week with the 9th U.S. Circuit Court of Appeals.

'Upheaval'

"A criminal defense attorney seeking to test the limits of the United States Supreme Court's days-old decision in *Blakely* ... could not have conjured a more fitting defendant than John David Ward," Richards contends in the brief. "Mr. Ward's case illustrates the upheaval that *Blakely* will cause in federal courts."

Since it came down June 24, the *Blakely* decision has been the source of constant buzz in the federal bar. Under the U.S. Sentencing Guidelines, judges in most cases decide the enhancements that lengthen sentences.

Several U.S. district judges have held the guidelines unconstitutional or inapplicable to their cases, while other judges have given defendants minimum sentences based solely on the facts determined by a jury or specified in guilty pleas.

Judges Delay Sentencings

Many more judges have delayed sentencings at the request of defense attorneys or prosecutors so that the parties can determine if *Blakely* applies to their cases.

Ward's appeal demonstrates that defense attorneys will seek to apply the precedent to upset sentences in old cases, too.

Thom Mrozek, a spokesman for the U.S. attorney's office in the Central District of California, said prosecutors would not respond to the issues raised in Richards' brief, other than to file their timely response with the 9th Circuit.

However, an internal Justice Department memo has laid out a strategy for dealing with *Blakely* challenges. Prosecutors have been directed to argue that *Blakely* does not apply to the federal guidelines, as Justice Antonin Scalia suggested in his majority opinion. Prosecutors also are expected to draw on distinctions between the federal guidelines and the Washington state guidelines, which were the subject of the *Blakely* case.

Many legal experts have surmised that *Blakely* likely will not apply retroactively to cases that already have gone through direct appellate review.

Richards said he agreed with this analysis. However, he said that Ward's case was on appeal at the time *Blakely* came down.

Ward was arrested in June 1999, and has been in custody since then. As the case approached trial, Richards sought to have the jury decide the issue of the quantity of drugs in the distribution conspiracy.

In a phone interview last week, Richards explained that he began filing similar motions in all his drug cases after *Apprendi v. New Jersey*, the 2000 Supreme Court

decision that is seen as the precursor to *Blakely*. In *Apprendi*, the court held that a jury had to find beyond a reasonable doubt most of the factors that bump a sentence over its statutory maximum.

In Ward's case, U.S. District Court Judge Gary Taylor denied requests to have the jury make findings for specific drug quantities. The jurist ended up determining the quantities that led both to Ward's base offense level and an upward departure. Taylor also determined that a number of enhancement factors applied to Ward's case, including possession of a dangerous weapon, the defendant's aggravated role in the offense and obstruction of justice, according to the appeal filed by Richards.

In many ways, Richards said, his earlier filings in the Ward case based on *Apprendi* anticipated *Blakely*. Not all defense attorneys made such motions in their cases.

"Richards did it exactly right," said Michael Proctor, a defense attorney and partner at Caldwell, Leslie, Newcombe & Pettit in Los Angeles. "He presented the issue and put himself in the best possible position with the appellate court. He won't have to deal with any arguments that he waived the issue."

Proctor added, though, that even attorneys who did not raise similar issues following *Apprendi* can still bring *Blakely* arguments to appeals that are pending.

After *Apprendi*, legal observers said, federal prosecutors began specifying drug quantities in indictments and jury forms. As a result, Proctor said, it's more likely that *Blakely* appeals will target white-collar cases where the amount of fraud was not admitted to or determined by a jury.

In his brief, Richards asks the 9th Circuit to remand the case to District Court for sentencing consistent with *Blakely*. Ward should be freed on time served, Richards said. He added that Ward's mother, who was convicted of money laundering charges related to the drug schemes, is joining in the appeal.

© 2004 Daily Journal Corporation. All rights reserved.

-----7d71671060d12 Content-Disposition: form-data; name="section" Articles