



NEW JERSEY SUPREME COURT ISSUES MAJOR SENTENCING OPINIONS

In three significant opinions, the Supreme Court of New Jersey today addressed the impact of several recent United States Supreme Court rulings on this state's statutory sentencing scheme. Those federal cases -- the first of which, Apprendi v. New Jersey, arose from a criminal matter in Cumberland County -- all invoked the Sixth Amendment's guarantee of a trial by jury to substantially restrict the scope of a trial judge's traditionally broad authority to impose a particular term of imprisonment from a range established by statute. A comprehensive discussion of these cases and of their possible impact on New Jersey sentencing law and practice can be accessed at the Commission's Web site at <http://sentencing.nj.gov/publications.html>

In the state decisions handed down today, New Jersey Supreme Court of New Jersey ruled as follows:

State v. Michael Natale & State v. Abdul Abdullah: In these companion cases, the Supreme Court ruled that:

- the provision of the sentencing code, N.J.S.A. 2C:44-1f(1), that presently authorizes a judge to begin his or her sentencing determination at the mid-point (presumptive sentence) of each of the four sentencing ranges set forth in the Code of Criminal Justice is unconstitutional under the Sixth Amendment. Therefore, a sentence above the presumptive term based solely on a judge's finding of aggravating factors, other than a prior conviction, likewise violates a defendant's jury trial guarantee;
- in order to minimize disruption to the administration of the criminal justice, and to retain the essential structure of New Jersey's statutory scheme, the Court will employ judicial surgery to eliminate the offending provision;
- without presumptive terms authorized by N.J.S.A. 2C:44-1f(1), the statutory maximum for each of the four sentencing ranges is the top number applicable to each range, respectively, 18 months, five years, ten years, and twenty years;
- sentencing courts will continue to weigh aggravating and mitigating factors – a preponderance of mitigating factors will justify lower sentencing within a range while a preponderance of aggravating factors will justify higher sentences;
- the decisions will be given limited, or "pipeline," retroactivity and thus apply to defendants with cases on direct appeal as of the date of this decision and to those defendants who raised Blakely claims at trial or on direct

appeal;

- a defendant's guilty plea, standing alone, does not constitute an implicit waiver of judicial fact-finding with regard to aggravating factors;
- those provisions in the Code of Criminal Justice that authorize the imposition of mandatory terms of imprisonment (i.e., mandatory periods of parole ineligibility) do not violate the Sixth Amendment; and
- those provisions that govern whether multiple sentences imposed in the same proceeding will be served concurrently (side-by-side) or consecutively (back-to-back) do not implicate the Sixth Amendment. Consequently, such determinations do not necessitate input from a jury and remain within the sole discretion of the sentencing court.

State v. Allan Franklin: In this case the Supreme Court held that:

- the repeat offender provision of the Graves Act, which mandates the imposition of an extended term of imprisonment and mandatory period of parole ineligibility based on a judicial finding that the defendant utilized a firearm to commit an offense, violates the Sixth Amendment right to trial by jury and Fourteenth Amendment right to due process;
- as in Apprendi, any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt;
- in the future, if the State intends to seek an extended term under the Graves Act, it must obtain an indictment charging possession or use of the gun in the commission of one of the designated crimes and then submit the charge to the jury; and
- pipeline retroactivity applies to defendants with cases on direct appeal as of the date of this decision and to those defendants who raised Apprendi claims at trial or on direct appeal.

