

Exceptional Sentences Unconstitutional

By: Brett A. Purtzer; Nov 2004

The tandem cases of Blakely v. Washington, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (2004) and Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000), have rendered the SRAs unconstitutional to the extent that the SRAs authorize a court to grant an exceptional

As many are aware, Blakely holds that a criminal defendant has a right to have a jury decide whether the facts support an exceptional sentence beyond the standard range and that these facts must be established beyond a reasonable doubt. This holding expanded Apprendi which set forth that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” Apprendi, 530 U.S. at 490.

One of the reactions to Blakely is that some courts and prosecutors believe that a new jury can be impaneled simply to address the aggravating factors warranting an exceptional sentence. Currently, however, no statute authorizes such procedure and no legal basis exists that governs such unilateral conduct.

One of the larger issues with respect to Blakely and Apprendi is whether the holdings apply retroactively. At the time of this writing, there have been no cases that have been decided by the appellate courts or the Supreme Court, but there are cases in the pipeline that will give us an answer to those questions. Currently when a case is on direct appeal, Blakely issues can be raised in said appeal. For cases beyond the direct appeal stage, a PRP appears to be necessary in order to challenge an exceptional, and unconstitutional, sentence.

The ramifications of Blakely and Apprendi are not fully known at this time. One thing that is clear is that the Supreme Court, through both decisions, is seeking to reign in the control of the legislature that would otherwise provide a basis to impose sentences greater than those within the standard range under a sentence reform act setup. As the caselaw develops from Blakely and Apprendi, future articles dealing with this issue will be written.

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