CLE Handout | Felony Sentencing 101- Must Read Cases |1.23.19

Felony 101 -Must Reads - Washington State Cases:

State v. Ammons, 105 Wn.2d 175 (1986) – State must prove the existence of prior convictions by a preponderance of the evidence, not proof beyond a reasonable doubt.

State v. Ford, 137 Wn.2d 472 (1999) State bears burden of proof of existence of prior convictions and classification of prior convictions as felonies. Best evidence of a prior conviction is the judgement and sentence, but other comparable documents may be used. The defendant may object to an unlawful sentence for first time on appeal.

In re PRP Lavery, 154 Wn.2d 259 (2005) –POAA/Third strike case. State has burden of proof of priors and classification of out of state priors. Elements of a charged crime must be the cornerstone of the comparison when determining if out of state or federal offense is equivalent to Washington offense for purpose of offender score. When elements of a foreign conviction are broader than those under a similar WA statute, the foreign offense cannot be said to be comparable. Federal bank robbery is not comparable to robbery in the second degree.

State v. Hunley, 175 Wn.2d 901 (2012). After a jury found Mr. Hunley guilty of attempt to elude, the State presented an unsworn summary of criminal history listing 6 priors, no documentation, only one prior had a date of offense. The defense attorney submitted a sentencing statement but neither disputed nor affirmed the prosecutor's summary. The Washington Legislature amended the SRA in 2008 to allow a prosecutor's summary of criminal history to be considered *prima facie* evidence of a defendant's criminal history (See 9.94A.500 and 530(2)); legislation added language saying if the defendant failed to object to the prosecutor's asserted criminal history it was sufficient evidence for trial court at sentencing. *Held*, the statute results in unconstitutional burden shifting (note: the unconstitutional language is still there). Bare assertions by the State of a defendant's criminal history are not enough evidence of prior convictions, the statutes violate due process. RCW 9.94A.530 is unconstitutional on its face; RCW 9.94A.500(1) is unconstitutional as applied.

State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015) A defendant's age is not a per se mitigating factor, but youthfulness can support an exceptional sentence below the standard range and sentencing court must exercise its discretion to decide when that is appropriate. Age can mitigate a defendant's culpability, even when that defendant is over 18. Despite the scientific and technical nature of the studies underlying Roper, Graham, and Miller decisions, a defendant need not present expert testimony to establish that youth diminished his capacities for purposes of sentencing. As in a juvenile court decline hearing, where the court considers whether a juvenile's "sophistication and maturity" support his or her prosecution as an adult, lay testimony may be sufficient.

State v. Houston Sconiers, 188 Wn.2d 1, 391 P.3d. 409 (2017) The sentencing judge's hands are not tied, because 'children are different' under the Eighth Amendment and hence 'criminal procedure laws' must take the defendants' youthfulness into account, sentencing courts must have absolute discretion to depart as far as

they want below otherwise applicable SRA ranges and/or sentencing enhancements when sentencing juveniles in adult court, regardless of how the youth got there.

State v. Blazina 182 Wn.2d 187, 344 P.3d 680 (2015). The trial court may not impose a discretionary LFO without an individualized inquiry into the individual's ability to pay. RCW 10.01.160(3). Courts should use GR 34 as a guide for determining an individual's ability to pay.

Felony 101 Must Reads - US SUPREME COURT

Apprendi v. New Jersey, 530 US 466 (2000)(J. Stevens)**.**
In 1994 Mr. Apprendi fired several bullets into the home of an African American family that had recently moved into a previously all white neighborhood. He made a statement that he later retracted admitting that he shot into the house because "they are black in color and he does not want them in the neighborhood." He pleaded guilty to weapons violations in state court. The prison term for his crimes was 5-10 years, but the court imposed an extended term of 12 years under New Jersey's hate crime statute, which permitted the court to extend the term of imprisonment to between 10 and 20 years based on judicial fact finding. After Mr. Apprendi pleaded guilty, the prosecutor filed for an extended term of sentence. The court held an evidentiary hearing on the purpose of Mr. Apprendi's shooting and found that Mr. Apprendi's crime was "motivated by racial bias" and that the hate crime enhancement applied. ***Held, Any fact other than fact of a prior conviction that increases the prescribed range of penalties to which a criminal defendant is exposed is an element of the crime that must be found by a jury BRD.***

Blakely v. Washington, 542 US 296 (2004)(J. Scalia)
Mr. Blakely pleaded guilty to kidnapping his estranged wife in Grant Co, Washington. The facts admitted in his plea, standing alone supported a maximum sentence of 53 months (standard range was 49-53 months). The judge imposed an aggravated exceptional sentence and sentenced Mr. Blakely to 90 months, more than 3 years above the 53 month statutory maximum of the standard range, based on a judicial finding that Mr. Blakely acted with deliberate cruelty. ***Held, Judicial fact finding that increases the range of punishment violates the 6th Amendment. The "statutory maximum" for Apprendi purposes is the maximum the judge may impose without additional findings***.

Alleyne v. United States 133 S.Ct. 2151 (2013)(J. Thomas)– The Feds prosecuted Mr. Alleyne with using or carrying a firearm in relation to a crime of violence, which carried a 5 year minimum sentence, that increased to a 7 year minimum "if the firearm is brandished and to a 10 year minimum "if the firearm is discharged." The jury found that Mr. Alleyne had "used or carried a firearm" but not that the firearm had been "brandished." The judge found that the firearm had been brandished and Mr. Alleyne objected on 6th Amendment grounds***.*** ***Held, Any fact that increases the mandatory minimum sentence for a crime is an element that the state must prove to a jury.***