The Other Access To Justice Rulings That Mattered In 2019

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As the top legal arena in the country, the U.S. Supreme Court tends to hog the public's attention to legal news. But decisions by state courts and federal appellate courts often have an even greater impact on the ways the justice system directly affects people.

Sometimes, a high court ruling calls for input from the lower courts, as happened in February, when the Supreme Court's Indiana v. Timbs ruling extended constitutional protections from excessive fines, but left it to the Indiana Supreme Court to develop a procedure by which excessiveness should be determined.

Other times, a high court ruling is only the most recent development in a dispute that's been bubbling for decades, as exemplified by this summer's Flowers v. Mississippi decision. Justice Brett Kavanaugh's opinion on racially motivated jury selection generated reams of headlines, but the underlying prosecutorial misconduct was first identified by the state Supreme Court nearly two decades ago.

This year, Law360 rounded up four key, non-U.S. Supreme Court decisions that could shape battles over topics like indigent defense, juvenile sentencing, police misconduct and more for years to come.

Indiana Outlines Excessive Test

In February's Indiana v. Timbs ruling, the U.S. Supreme Court unanimously held that state governments must follow the constitutional bar on excessive fines, a part of the Bill of Rights that had not previously been incorporated against the states.

But the high court's landmark decision stopped short of outlining how a court should determine how much is too much when it comes to fines, fees and, in the case at hand, civil forfeitures.

That task was left to the Indiana Supreme Court, which ruled in October that fines should be proportional to both an underlying offense and an offender's economic situation.

"To hold the opposite would generate a new fiction: that taking away the same piece of property

from a billionaire and from someone who owns nothing else punishes each person equally," the majority opinion by Chief Justice Loretta Rush stated.

The Oct. 28 decision emerged from a long-running legal dispute over the Land Rover that Indiana authorities seized from Tyson Timbs after he pled guilty to drug crimes. The seizure was achieved through civil forfeiture, a controversial legal proceeding in which law enforcement can take someone's property after alleging it was used in a crime. In Timbs' case, he'd used the Land Rover to transport heroin.

Civil forfeiture has generated controversy in recent years after reports that many defendants — mostly people of color — lose their property without any underlying criminal charges ever being filed. Since 2014, 33 states plus Washington, D.C., have reformed their civil forfeiture laws. North Carolina, New Mexico and Nebraska have abolished the practice entirely, relegating seizures to criminal courtrooms, where indigent defendants have the right to counsel.

The Indiana Supreme Court's ruling in Timbs did not ultimately declare whether taking Timbs' car — worth more than four times as much as the maximum fine associated with his crimes — was excessive under the Constitution, instead outlining the criteria to be considered and leaving it to a lower court to apply its test.

According to Lisa Foster, co-founder of the Fines and Fees Justice Center, the test's focus on proportionality is a big win for reformers who hope to change the way other punitive economic sanctions are meted out.

As an example, she cited a flat surcharge that is imposed on every New York traffic ticket, misdemeanor or felony.

"It's hard to argue that it's anything other than punitive, because why is that money being assessed in the justice system and not against all New Yorkers?" she said. "Well, because we are punishing people in the justice system."

Going forward, she said Indiana's test for excessiveness could be applied to such charges.

"It's a recognition of how one needs to look at money in the justice system — and that is, through a proportionality lens, both the economic consequences and the underlying nature of the offense," Foster added.

Ninth Circuit Details How to "Consider" Youth

A Supreme Court case involving the notorious "D.C. Sniper" Lee Boyd Malvo brought juvenile life sentences into national headlines in October.

But while the pending decision could lead to the resentencing of nearly a dozen Virginia lifers who were sentenced for crimes that occurred before they were 18 years old, another recent decision out of the 9th Circuit could have a potentially greater impact.

Issued en banc on July 9, USA v. Briones clarified the process by which sentencing courts must "consider the unique social and psychological characteristics of juvenile offenders," as required by two landmark Supreme Court decisions, Miller v. Louisiana and Montgomery v. Alabama.

Miller, issued in 2012, held that life sentences cannot be mandatory for juveniles because "hallmark features of youth" — like susceptibility to peer pressure, underdeveloped brains and increased likelihood of rehabilitation — reduce the justification for incarcerating them until they die. Four years later, the high court's Montgomery ruling made Miller's requirement retroactive and ordered the resentencing of an estimated 2,800 teen lifers.

One of those lifers was Riley Briones Jr., a man sentenced in 1997 at age 17 for his role as the getaway driver in a robbery that proved fatal. After Montgomery, Briones had a shot at resentencing, but U.S. District Judge Douglas L. Rayes reimposed a life sentence on the grounds that "some decisions have lifelong consequences."

His ruling noted that he considered Briones' "youth, immaturity [and] his adolescent brain at the time" of the murder as mitigating factors, but Rayes emphasized the leadership role that Briones played in organizing the crime.

An appellate panel affirmed the reissued life sentence, but an en banc Ninth Circuit vacated it after finding that the judge had failed to prioritize Briones' transformation over the past two decades.

"The district court's sentencing remarks focused on the punishment warranted by the terrible crime Briones participated in, rather than whether Briones was irredeemable," the en banc ruling states.

According to Marsha Levick, a founder and chief legal officer of the Juvenile Law Center, the July 9 decision clarified that, when resentencing men and women who received juvenile life without parole sentences, "the facts and circumstances of the crime must take a back seat to the offender's youthful characteristics, capacity for change and rehabilitation, and whether their crime reflected transient immaturity."

"The principle that must guide resentencing in these cases is that youth are different, and even those who commit heinous murders are constitutionally ineligible for a life without parole sentence unless they are permanently incorrigible and incapable of rehabilitation," Levick said.

The Department of Justice has asked the Supreme Court to take up the Briones case, pending a decision in Malvo's case. If the petition is granted, the ensuing arguments could shape the framework for resentencing hundreds of juvenile lifers who still await their court-mandated hearings.

Qualified Immunity Saves Police From Theft Allegations

Few legal doctrines generate as much bipartisan opposition as qualified immunity, a controversial concept that holds law enforcement and other government officials to be immune

from legal liability for civil rights violations as long as no previous court case on the same context and conduct exists.

Libertarian groups like the Cato Institute and The Institute for Justice have joined forces with the likes of the American Civil Liberties Union in repeated attempts to convince the Supreme Court that the doctrine needs rethinking — and may be worth abolishing altogether.

In September, the Ninth Circuit drew attention to the ways in which qualified immunity can counter common sense in its Jessop v. Fresno decision. Brought by two California residents whose properties were searched during an investigation into illegal gambling, the case involved allegations that Fresno police officers seized $225,000 more than they reported to their superiors while carrying out a warrant.

Siding with the police, the appellate court held that, even assuming the allegations were true, there was no case law on the matter.

"Whether the theft of property covered by the terms of a search warrant, and seized pursuant to that warrant, violates the Fourth Amendment is a different question from whether theft is morally wrong," the opinion states. "We recognize that theft is morally wrong ... that principle does not, however, answer the legal question presented in this case."

According to Clark Neily, vice president at the Cato Institute, the decision "really grabs the public's attention."

"The more outrageous the conduct, the less likely you'll find a preexisting case with sufficiently similar facts and the more likely the police will get away with it," he said.

Justice Elena Kagan has extended the time within which the residents must file a petition to the Supreme Court, giving them until Feb. 14 to appeal the Ninth Circuit's ruling. Neily noted that the justices may seek to stack up several qualified immunity challenges in order to handle them all at once.

Veterans Get Class Action Status

For decades, there was no court for veterans to appeal the denial of government benefits they'd been promised for their service. And even after the Court of Appeals for Veterans Claims was created in 1989, veterans could not join together to bring class actions in the court — every case had to proceed on an individual basis.

That all changed in August 2018, when the CAVC announced it would begin entertaining class actions after the U.S. Court of Appeals for the Federal Circuit said there was no reason not to do so.

In June, the CAVC made good on its promise by granting class action status to veterans alleging the U.S. Department of Veterans' Affairs violates their due process rights by delaying appeals over denied benefits for an average of three years.

The CAVC also granted class action status in another suit three months later, ordering the VA to pay out up to $6.5 billion to thousands of veterans who were wrongly denied medical reimbursements for non-VA hospital emergency care.

Together, the first two grants of class action status mark a massive improvement in access to justice for veterans, according to Bart Stichman, a founder of the National Veterans Legal Services Program who helped litigate both cases. He said veterans can now obtain relief without having to initiate a case themselves.

"These are not lawyers — these are disabled veterans," he told Law360. "A lot of them are not going to appeal things like denied reimbursements because they don't know there's a legal infirmity in the VA's decision."

Having the right to file and participate in class action litigation over benefits is particularly important for veterans. Due to the odd ramifications of Civil War-era statute that barred egregiously high legal fees — then considered to be anything more than $10 — veterans have long struggled to get representation.

The 1862 law became an economic bar on attorneys. Although specialists from organizations like the American Legion and the Disabled American Veterans stepped in to fill the gap with nonlawyers, more than 8,500 veterans had no representation at all in handling their benefits claims in fiscal year 2018.