



Tuesday, January 12, 2010

## **Supreme Court to Hear Sex Offender Imprisonment Case**

### **Court considers whether prosecutors can hold offenders beyond their original sentences**

By *Alex Kingsbury*

Posted January 11, 2010

This week, the Supreme Court will hear two cases about the rights of defendants in the criminal justice system. One of the cases, with oral arguments slated for Tuesday, challenges a law that gives the government the authority to keep convicted sex offenders behind bars after their sentences have been completed. In another case heard today, lawyers contested the right of criminal defendants to question the lab technicians who compile forensic evidence reports.

The sex offender case is perhaps the more controversial of the two. It deals with the Adam Walsh Child Protection Act of 2006, a law named after the murdered son of *America's Most Wanted* host John Walsh. The law allows the government to detain indefinitely those who are deemed "sexually dangerous." It also established the national sex offender registry and strengthened child pornography laws. The act exceeds Congress's authority, according to the defendants. (The registry and pornography aspects of the law are not being challenged in the case before the Supreme Court.)

One of the respondents, Graydon Earl Comstock, was certified as "sexually dangerous" six days before the end of his 37-month prison sentence for receiving child pornography. As a result, he has remained imprisoned in North Carolina's Butner penitentiary for more than three years, one of more than 60 other people in that state being held because of the law. Both the district and appellate courts agreed that the law allowing him to be held without new evidence of criminal behavior was unconstitutional. The Justice Department is fighting to keep the law on the books.

The case is an interesting one in part because of the ideological coalition that opposes the current law. Liberals, conservatives, and libertarians alike have bristled at the dangerous precedent they think the law represents. The high court should overturn the "blatant government overreach," Randy Barnett and David Rittgers, both from the libertarian Cato Institute, wrote in an amicus brief.

Today, the high court heard a case dealing with the "confrontation clause" in the Sixth Amendment to the Constitution, which gives defendants the right to challenge in court those who

accuse them of crimes. The case, *Briscoe v. Virginia*, is a response of sorts to a case heard last summer, *Melendez-Diaz v. Massachusetts*, in which justices ruled in a 5-to-4 decision that defendants have the right to cross-examine the forensic lab technicians who compiled evidence for their case. Implementing that ruling has proved problematic, in part, because putting technicians on the stand reduces the time they have to work on other cases. At issue in the Briscoe case is the state of Virginia's contention that a "certificate of a forensic laboratory analysis" is enough to satisfy the constitutional requirement that a defendant can confront his accuser. Forcing the actual forensic analyst to testify is not necessary, prosecutors argue. The defendant, Mark Briscoe, was charged with possession of cocaine after the state crime lab concluded that the drug was present in the defendant's car. Briscoe disputed that the substance found in his house and car was indeed cocaine. In court, the state presented only certificates from the crime lab, rather than making the expert available for testimony.

Defense attorneys contend that the onus to provide technicians' testimony is minimal, but prosecutors disagree, saying that technicians' time already is overwhelmed with processing evidence and that their testimony is nearly always routine. Backlogs in evidence-processing at crime labs can stretch for years, a problem exacerbated by shrinking state budgets. Two months ago, 26 attorneys general from around the country said that requiring testimony is "proving unworkable." Justice Sonia Sotomayor will be a key vote in the case, particularly as a former prosecutor, but her views on the case are unclear.

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## Two subjects here

If it's true, as some say, that pedophiles cannot be "cured", then we need to find a way to deal with that. Having someone complete a sentence and then be released to likely re-offend again is a problem, isn't it?

But the other "confrontation" case above has totally different implications. A similar case was already decided 5-4 by the liberals on the high court. Then the four conservatives, as I understand it, voted to take this new case in hopes of changing the precedent because they thought Sotomayor "might" vote differently than her predecessor---her being a former prosecutor. This puts enormous pressure on Sotomayor to resist the conservatives' tricks. I hope she sends them a loud and clear message to exactly that effect.

**Muser of NM**

Jan 12, 2010 11:53:00 AM

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## A sexual offense is the only one

The state and local lawmakers have routinely created new laws that are applied retroactively to punish sex offenders beyond what they receive in the court system.

They create laws in the names of dead children, on fear created by twisted statistics, on aspirations to grandeur politically and on bold lies.

We should treat a crime as equal at all levels. If someone receives a sentence, they should serve that sentence and it should be finished. Done.

**Chuc of TN**

Jan 12, 2010 10:45:04 AM

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Why do female predators get very little/ next to nothing in their jail-time sentences versus the male predators?

Maybe the Court should look at the prosecutorial and judicial misconduct that pervades the sentencing guidelines on the basis gender discrimination for these types of crimes.

**Dis-Honorable Judge**

**Harvey of NY**

Jan 12, 2010 09:16:28 AM

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