

CRIMINAL DEFENSE
AND INTERNAL
INVESTIGATIONS

A L E R T

AUGUST
2018

DOUBLE SCOTUS RULINGS PROVIDE GUIDANCE ON SENTENCING

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The sentencing phase of a criminal case usually attracts less public attention than the trial leading to a decision of guilty or not guilty for the defendant. However, sentencing is a crucial part of criminal proceedings and errors at this stage of the case can result in a substantial loss of liberty.

On June 18, 2018, the United States Supreme Court issued two separate decisions, *Chavez-Meza v. United States* and *Rosales-Mireles v. United States*, both of which concern modification of sentences under the Federal Sentencing Guidelines. While both cases provide for the modification of sentences to correct sentencing errors or account for new sentencing guideline ranges, the decisions each carve out a means by which a sentencing court need not offer new justification for a guideline range or may decline to adjust a guideline range, even in face of error.

In *Chavez-Meza*, Petitioner pleaded guilty to possession of Methamphetamines with intent to deliver. Originally, the sentencing guidelines provided a range of 135-168 months of incarceration, but subsequent to sentencing the approved offense guideline range was lowered to 108-135 months. Petitioner's original sentence was at the lower end of the sentencing range and fell within the guidelines.

Petitioner requested that the sentencing court reduce his sentence proportionately to the

reduction in the guidelines. The sentencing court agreed and reduced his sentence from 135 months to 114 months. Petitioner appealed the new sentence, arguing that the sentencing court did not adequately explain why the new sentence was 114 months and not a lesser sentence (such as the 108 month sentence that Petitioner had requested). The Supreme Court disagreed, and instead concluded that the original sentencing judge had previously laid out the specific reasons for Petitioner's original sentence, considered Petitioner's motion, and had taken into account the relevant guideline policy statements and the §3553(a) factors. The Court found that this explanation was sufficient reasoning for Petitioner's modified sentence.

Notably, the Court refused to consider a requirement of "proportionality" between the original sentence and the sentence as modified. The Court also refused to disregard the explanation given by the sentencing judge at the original sentencing hearing that focused on offense conduct.

Chavez-Meza does not provide sweeping change to the application of the sentencing guidelines. Instead, the import of *Chavez-Meza* is its treatment of sentencing modifications. The Court's new standards do not create a blank slate, rather the sentencing court may rely on the prior

explanation of the sentence as support, even in the event that the sentence is reduced.

In *Rosales-Mireles*, the Court provided guidance for when a sentence should be modified based on Federal Rule of Criminal Procedure 52(a) in circumstances where an incorrect guidelines calculation was relied upon during sentencing. The Court held that defendants in such cases will be permitted to raise the issue of reliance on an incorrect guideline calculation at first instance on appeal, and further, that such an error meets the requirements of *Olano* and could warrant relief under the Federal Rules of Criminal Procedure.

Federal Rule of Criminal Procedure 52(a) provides that “a plain error that affects substantial rights may be considered even though it was not brought to the [district] court’s attention.” This rule was further explained in *United States v. Olano*, 507 U.S. 725 (1993), wherein the Court provided three requirements that must be met in order for a court to exercise its discretion to fix an alleged error. The *Olano* factors include: 1) there must be an error that was not purposefully relinquished or abandoned; 2) the error must be plain, meaning clear or obvious; and 3) the error must have affected the defendant’s substantial rights. Typically, factor three requires the defendant to show that but for the error, the outcome of the proceeding would have been different. There is also a “fourth prong” of *Olano*, which requires the court of appeals to consider whether such an error requires correction, such that the fairness, integrity, and public reputation of the proceedings would not be preserved otherwise.

In *Rosales-Mireles*, it was discovered post-sentencing that the sentencing guidelines relied upon during Petitioner’s sentencing proceedings were incorrect, and therefore the sentence Petitioner had received was likely higher than what it would have been had the correct guidelines been relied upon. The Supreme Court determined that the use of the incorrect guidelines was an error that likely affected the substantive outcome of the case (in this instance, the sentence), which is the exact type of appellate relief warranted by Rule 52(a).

The Court noted, however, that although the error affected the substantive outcome of the Petitioner’s sentencing proceeding, such an error did not necessarily warrant relief. There may be instances where countervailing factors satisfy the court of appeals such that the fairness, integrity, and public reputation of the proceedings would still be preserved absent correction. Despite that caveat, the Court indicated that “in the ordinary case, proof of a plain Guidelines error that affects the defendant’s substantial rights is sufficient” to evidence a need for resentencing.

For individuals facing the prospect of sentencing for a criminal conviction, these two decisions by the Supreme Court highlight the often subjective and convoluted nature of this process. Both Chavez-Meza and Rosales-Mireles faced significant errors in their lengthy sentences. The appeals took many years to fully address the allegations of sentencing error. This kind of uncertainty affects many criminal defendants, thus emphasizing the importance of effective representation during the trial phase of the case to reach more favorable outcomes. ♦

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