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Positive Impact of DUI Laws & Enforcement



From *Birchfield v. North Dakota*, __ U.S. __, 136 S.Ct. 2160 (2016)

Positive Impact of DUI Laws & Enforcement

Average annual fatalities in 1980's: 25,000

Average annual fatalities in 2014: Below 10,000

Implied Consent Refusal Rates 2011

National average: 20%

North Dakota: 21%

Minnesota: 12%



Chimel v. California, 395 U.S. 752 (1969)

Chimel rule:
Officers may search the arrestee & the area within his immediate control upon lawful arrest.

2 Justifications:

1. Officer safety; and
2. Looking for evidence of crime.

United States v. Robinson, 414 U.S. 218 (1973)

Circuit Court:
Found search unreasonable because neither of the Chimel justifications was present.

United States Supreme Court:

1. Though those 2 rationales are the basis for this exception – don't have to be litigated in each case.
2. It is the lawful arrest itself that provides justification for the search incident to it.

Breath Tests do not implicate significant privacy concerns:



Breath Tests do not implicate significant privacy concerns:

1. Physical intrusion is negligible.
2. Breath tests are capable of revealing only 1 bit of information – the amount of alcohol in subject’s breath.
3. Participation in breath test does not greatly enhance embarrassed beyond that inherent in any arrest.



Government’s Need to Obtain BAC Readings

- ❖ The States and federal government have a paramount interest in preserving the safety of public highways.
- ❖ Alcohol consumption is the leading cause of traffic fatalities & injuries.
- ❖ Implied consent laws are designed to provide an incentive for drunk drivers to cooperate with testing.



Birchfield's Bottom Line

Warrantless breath tests incident to arrest:
Categorically appropriate under search-incident-to-arrest exception.

Warrantless blood draws incident to arrest:
Not appropriate simply as being incident to arrest.

Would have to meet some other exception, or officers would need to get a search warrant.



Sotomayor & Ginsburg



- ❖ Agree with majority as to warrantless blood draws.
- ❖ Believe proper question is: Whether the burden of obtaining a search warrant is likely to frustrate the government's purpose behind the search.
- ❖ The delays in administering reliable breath tests generally provide ample time to obtain a search warrant.



Thomas's View

❖ Either the search-incident-to-arrest exception permits bodily searches to prevent destruction of BAC evidence, or it does not.

❖ Better (and far simpler) approach:

Adopt J. Thomas's dissent in *Missouri v. McNeely*.

That both blood and breath tests would pass constitutional muster because the natural dissipation of alcohol in the blood creates a *per se* emergency exception for those whom police have probable cause to arrest for DUI.



State v. McCormick, __ S.W. 3d __, 2016 WL 2742841 (Tenn. 2016)

Was this a Seizure?

Fourth Amendment:

A person is seized only when an officer uses physical force to detain the person, or when the person submits or yields to a show of authority.

California v. Hodari D., 499 U.S. 621 (1991)

Tennessee's Art. I. §7:

A person is seized whenever a reasonable person in that position would not feel free to leave.

State v. Randolph, 74 S.W.3d 330 (Tenn. 2002)

State v. Moats, 403 S.W.3d 170 (Tenn. 2013)

- ❖ Court refused to declare that community caretaking was an exception to the search warrant or probable cause requirements of the Fourth Amendment.
- ❖ Held that community caretaking was only proper as a consensual encounter between police & citizens.

Community Caretaking Test

To invoke the community caretaking exception, the State must establish that:

1. The officer possessed specific & articulable facts which, viewed objectively & in the totality of the circumstances, reasonably warranted a conclusion that a community caretaking action was needed.

Community Caretaking Test (cont'd)

Totality of the circumstances includes consideration of:

- ❖ nature & level of distress exhibited by the citizen;
- ❖ location;
- ❖ time of day;
- ❖ accessibility and availability of assistance other than the officer;
- ❖ risk of danger if the officer provides no assistance.

2. The officer's behavior & the scope of the intrusion were reasonably restrained & tailored to the community caretaking need.

Perfect Symmetry

Officers' traditional crime-stopping role:

1. Probable cause – to justify search or arrest
2. Reasonable suspicion – to justify brief investigative look

Officers' broader responsibility in looking out for public welfare:

1. Emergency Aid doctrine – when clear signs of distress/need for intervention.
2. Community caretaking – when there are sufficient peculiar circumstances to justify a quick look to make sure that everything is all right.

State v. William Gary Mosley
No. M2014-0253-CCA-R3-CD, 2016 WL 309837 (Tenn. Crim. App. 2016)

Facts: An unknown confidential informant told the detective that he had previously purchased pseudoephedrine pills for Mosley and then watched as Mosley cooked meth. He also gave some details about Mosley's cooking process. The detective verified prior pseudoephedrine purchases.

Plan: Officers to set up a controlled buy, sending the informant in with pseudoephedrine pills to trade for meth.

Upon informant's exit— officers would execute the search warrant.

Basis of CCA's Reversal: *Mosley*

Information in the search warrant affidavit failed to demonstrate the veracity of the informant's information.

1. Not personal credibility of informant
 - * Informant was previously unknown to the officers.
2. Not reliability of the information
 - * Nothing to verify that the informant took prior pseudoephedrine purchases to Mosley.
 - * Not an astoundingly large quantity of prior buys; only 7 in a 3-year span does not obviously demonstrate criminal activity.

Statute of Limitations

An accused who is indicted for an offense that is not barred by the statute of limitations may not be convicted of a lesser-included offense that is barred, absent the defendant's knowing and voluntary waiver of the time bar.

State v. Pearson, 858 S.W.2d 879 (Tenn. 1993)

Key Holdings in Pearson

1. Right to be prosecuted prior to expiration of the statute of limitations is not a fundamental right — not jurisdictional.
2. But, the Court concluded that the right was sufficiently substantial to apply the same waiver standards that are applied to constitutional rights — waiver must be knowing & voluntary.
3. Waiver of the statute of limitations will not be presumed where there is no evidence to indicate that the defendant was made aware of the issue.

Montgomery's Family Tree

Roper v. Simmons (2005) [5-4, Kennedy]:

Eighth Amendment prohibits capital punishment for offenders who were under 18 at time of offense.

Graham v. Florida (2010) [6-3, Kennedy]:

Eighth Amendment prohibits life-without-parole sentence for juvenile nonhomicide offenders.

Miller v. Alabama (2012) [5-4, Kagan]:

Any **mandatory** life-without-parole sentence for juveniles who commit first-degree murder violates the Eighth Amendment.

Retroactivity in General

Cases on direct appeal :

New constitutional rules are applied to cases in the pipeline — cases on direct appeal when the new rule is announced.

Cases on collateral review:

New constitutional rules are not retroactively applicable unless:

1. Substantive Rule; or
2. Watershed Rule of Criminal Procedure.

Montgomery v. Louisiana, 136 S.Ct. 718 (2016) [6-3, Kennedy]

Montgomery:

17 years old when he murdered a deputy sheriff in East Baton Rouge in 1963.

Jury's verdict - guilty without capital punishment.

Miller v. Alabama (2012):

Automatic life-without-parole sentences for juveniles violate Eighth Amendment

Montgomery filed motion to correct illegal sentence

Miller v. Alabama Rule — substantive or procedural?

Miller Rule:
Eighth Amendment prohibits mandatory imposition of life-without-parole sentences for juveniles.

Montgomery Majority's Restatement:
Miller barred life-without-parole sentence for any juvenile whose crime reflected the **transient immaturity of youth**.

Montgomery's Broad Net

Jacob Brown v. State, No. W2015-00887-CCA-R3-PC (Tenn. Crim. App. 2016) (4-15-16) (Tipton County) [Witt-Glenn-Holloway]

Background: Brown (16 at time of offense) got life-without-parole sentences for 2 counts of first-degree murder; sentences ordered to be served consecutively.

Claim: Brown's life-without-parole sentences and their being served consecutively all violated the Eighth Amendment under *Miller v. Alabama*.

Resolution: While finding that Brown's 2 life-without-parole sentences did not violate *Miller* or *Montgomery*, the court nevertheless reversed consecutive sentencing and required that the 2 sentences be concurrent.

Montgomery's Broad Net (cont'd)

Brian A. Starks v. Easterling, No. 14-6230 (6th Cir. 2016) (8-23-16) [Norris-McKeague; C-White]

Claim: Starks (17 at time of offense and sentencing) got a life sentence for felony murder. Because he will not be released until he is at least 77, which exceeds the life expectancy of incarcerated African American males, he claimed that his sentence violates the Eighth Amendment in light of *Miller v. Alabama*.

Resolution: Sixth Circuit rejected his claim under deferential standard of review for federal habeas cases.

Judge White: Concurred because of habeas standard but concluded that, had she been reviewing reviewing the claim de novo, she would have found an Eighth Amendment violation.

Quick History of Illegal Sentencing Claims:

1978: *State v. Burkhardt* - Court may correct an **illegal**, as opposed to a merely erroneous sentence, at any time
- Did not provide a procedure.

2001: *McLaney v. Bell* - Illegal sentence claim may be raised in habeas petition

2005: *Moody v. State* - State habeas is the only proper vehicle for illegal sentence claims

Placed some procedural strictures on petitions:
Must be imprisoned or restrained of liberty;
Have to provide documentation; and
Can't produce evidence outside the record.

Possible Sentencing Errors

Cantrell v Easterling (TN 2011) classified sentencing errors into 3 groups:

- Clerical
- Appealable
- Fatal

Only fatal errors render a sentence illegal

What constitutes Fatal Sentencing Error:

1. Sentence imposed pursuant to an inapplicable statutory scheme;
2. Sentence designating a release eligibility date where a release eligibility date is specifically prohibited by statute;
3. Sentence ordered to be served concurrently where statutorily required to be served consecutively; **AND**
4. Sentence not authorized for the offense by any statute.

2009 Legislative Amendment

Inmates not entitled to relief on a claim that:

- 1. Petitioner received concurrent sentencing where consecutive sentencing was required;
- 2. Petitioner's sentence included a release eligibility percentage where he was not entitled to early release; OR
- 3. Petitioner's sentence included a lower release eligibility percentage than he was entitled to.

Tenn. R. Crim. P., Rule 36.1

Rule 36.1. Correction of Illegal Sentence

- (a). Either the defendant or the state may, at any time, seek the correction of an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered. For purposes of this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.
- (b). Notice of any motion filed pursuant to this rule shall be promptly provided to the adverse party. If the motion states a colorable claim that the sentence is illegal, and if the defendant is indigent and is not already represented by counsel, the trial court shall appoint counsel to represent the defendant. The adverse party shall have thirty days within which to file a written response to the motion, after which the court shall hold a hearing on the motion, unless all parties waive the hearing.

Tenn. R. Crim. P., Rule 36.1 cont'd

- (c). (1). If the court determines that the sentence is not an illegal sentence, the court shall file an order denying the motion.
- (2). If the court determines that the sentence is an illegal sentence the court shall determine whether the illegal sentence was entered pursuant to a plea agreement. If not, the court shall enter an amended uniform judgement document see Tenn. Sup.Ct. R. 17, setting forth the correct sentence.

(3). If the illegal sentence was entered pursuant to a plea agreement the court shall determine whether the illegal provision was a material component of the plea agreement. If so, the court shall give the defendant an opportunity to withdraw his or her plea. If the defendant chooses to withdraw his or her plea, the court shall file an order stating its finding that the illegal provision was a material component of the plea agreement, stating that the defendant withdraws his or her plea, and reinstating the original charge against the defendant. If the defendant does not withdraw his or her plea, the court shall enter an amended uniform judgment document setting forth the correct sentence.

(4). If the illegal sentence was entered pursuant to a plea agreement, and if the court finds that the illegal provision was not a material component of the plea agreement, then the court shall enter an amended uniform judgment document setting forth the correct sentence.

(d). Upon the filing of an amended uniform judgment document or order otherwise disposing of a motion filed pursuant to this rule, the defendant or the state may initiate an appeal as of right pursuant to Rule 3, Tennessee Rules of Appellate Procedure.

Credits

[Adopted effective July 1, 2013.]

Editors' Notes

ADVISORY COMMISSION COMMENT [2013]

Rule 36.1 was adopted to provide a mechanism for the defendant or the State to seek to correct an illegal sentence. With the adoption of this rule, Tenn. R. App. P. 3 also was amended to provide for an appeal as of right from the trial court's ruling on a motion filed under Rule 36.1 to correct an illegal sentence.

Lessons from Brown & Wooden

State v. Brown, 479 S.W.3d 200 (Tenn. 2015) [J. Clark]
State v. Wooden, 478 S.W.3d 585 (Tenn. 2015) [J. Clark]

“At any time” addresses 2 principles:

1. Illegal sentences can be corrected even after the sentence has become final; and
2. Rule 36.1 motions are not subject to any statute of limitations.



Lessons from Brown & Wooden (cont'd)

Colorable claim for purposes of Rule 36.1:

A claim that, if taken as true and viewed in the light most favorable to the moving party, would entitle the moving party to relief under 36.1.



Brown and Wooden applied

Claim 1: Sentence illegal because trial court did not properly award pretrial jail credits in violation of the mandatory language of Tenn. Code Ann. §40-23-101(c).

Resolution: Not a colorable claim - Appealable Error, at most.

Why: Pretrial jail credits are not actually a part of the sentence. Awarding or failing to award pretrial jail credits does not alter the actual sentence in any way.



Applications (cont'd)

Claim 2: Sentence illegal because the parties agreed to 3-year sentences for 3 charges, but the trial court imposed 6-year sentences for all 3.

Resolution: Since the transcript clearly shows that the judge accepted the plea with 3-year sentences, putting the 6-year sentences on the judgment form was a clerical error. Should be corrected under Rule 36. Case remanded for that correction.

Applications (cont'd)

Claim 3: Sentence illegal because the trial court imposed a sentence above the presumptive statutory minimum without finding enhancement factors.

Resolution: Not a colorable claim.

Why: The sentence received was an available sentence for that offense and range; there was just an alleged procedural flaw in imposing the sentence. This constitutes appealable error, not fatal error.

Changes in Amended Rule 36.1 [effective 7/1/16]

1. Rule now explicitly requires filing of petition prior to expiration of the sentence under attack;
2. Petitioner must attach a copy of the judgment being challenged;
3. Petitioner must set forth any prior Rule 36.1 history for the judgment being challenged;
4. Rule authorizes the trial judge to make a preliminary review of the entire record before making initial determination on petition; and
5. If the illegality is beneficial to the defendant, he cannot obtain relief.

Wlodarz v. State, 361 S.W.3d 490 (Tenn. 2012)

- ❖ Court [Wade-Holder-Lee] concluded that a coram nobis petition was a proper vehicle for challenging a conviction based on a guilty plea.
- ❖ Court concluded that the word “trial” and the phrase, “litigated at trial” were ambiguous, in the absence of a definition for “trial.” Accordingly, the Court construed trial to include guilty-plea situations.
- ❖ Justices Koch and Clark, however, read the plain language of the coram nobis statute to apply only to challenges of convictions arising from criminal trials.



Frazier v. State, S.W.3d (Tenn. 2016)

- ❖ Court [Bivins-Clark-Kirby] overruled *Wlodarz* to hold that coram nobis relief is limited to those criminal judgements of conviction that were the result of a trial.
- ❖ Justice Lee would hold that stare decisis demands reliance on *Wlodarz v. State*. While recognizing that stare decisis is not binding, she believes that precedent must be followed, absent compelling reasons not to follow it. She found no compelling reasons here for abandoning *Wlodarz*.



Majority’s Reasons for Rejecting *Wlodarz*

1. “Trial” and “litigated at trial” are not unclear or ambiguous.
2. No evidence is presented in guilty plea proceedings.
3. Guilty plea requires a waiver of right to trial by jury. Can’t simultaneously be waiving and exercising a right.
4. Holding that a guilty plea does not equal a trial does not trivialize the importance of guilty plea proceedings.




