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Legal Summaries

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**Pepperdine University School of Law
Legal Summaries***

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UNITED STATES SUPREME COURT

BP America Prod. Co. v. Burton, 127 S. Ct. 638 (2006).

LAW: 28 U.S.C. § 2415(a) does not govern the Minerals Management Service administrative payment orders regarding pre-September 1, 1996 production.

FACTS: Under 30 U.S.C. § 226(b)(1)(A), BP America Production Company (“BP”), who held federal gas leases, were required to pay minimum royalties. The Department of the Interior’s Minerals Management Service (“MMS”) ordered BP to pay additional royalties to compensate for the difference between the value of treated gas and its lesser value at the well. BP claimed that the additional payment was barred by the six year statute of limitation under section 2415(a). The district court held that section 2415(a) did not govern MMS administrative payment orders regarding pre-September 1, 1996 production. The court of appeals affirmed.

ANALYSIS: After the Court considered the plain meaning of the terms “action” and “complaint”, they held that section 2415(a) statute of limitation only applied to court actions. In doing so, they rejected BP’s claim that the term “action” in section 2415(a) also referred to administrative proceedings. The Court also disagreed with BP’s assertion that an MMS payment order constituted a “complaint” under section 2415(a).

Additionally, the Court rejected the argument that interpreting section 2415(a) as applying only to judicial actions would render section 2415(i) redundant and superfluous in contravention. Furthermore, the Court emphasized the statute of limitations is to be applied narrowly against the Government.

HOLDING: The appellate court’s judgment is affirmed.

IMPACT: Limiting section 2415(a) statute of limitation only to court actions will not make the section redundant. This decision actually reinforces the rule that the statute of limitations is to be construed narrowly against the Government.

Osborn v. Haley, 127 S. Ct. 881 (2007).

LAW: An Attorney General's certification is conclusive for the purposes of removal.

FACTS: Pat Osborn ("Osborn") sued federal employee Barry Haley ("Haley") in state court. Osborn claimed that Haley, acting outside the scope of his employment, tortiously interfered with her employment with a private contractor and caused her to be wrongfully terminated. She claimed that the Federal Employees Liability Reform and Tort Compensation Act of 1988 ("Westfall Act") did not apply, and thus the official was not immune from suit. Osborn also argued that substitution of the United States for the official and removal to federal court was not required.

The Attorney General certified that Haley was acting within the scope of his employment. Osborn then removed the case to a federal district court, and alleged that the wrongdoing never occurred.

The district court rejected the Westfall Act certification, and remanded the case to the state court. The Sixth Circuit court vacated and the court of appeals instructed the district court to retain jurisdiction over the case.

ANALYSIS: The Westfall Act accords federal employees absolute immunity from tort claims arising out of acts undertaken within the scope of their official employment. This act also empowers the Attorney General to certify that a federal employee sued for tortious acts "was acting within the scope of his office or employment at the time of the incident out of which the claim arose," 28 U.S.C. § 2679(d)(1). Upon this certification, the United State is substituted as the defendant in place of the official and the action is then governed by the Federal Tort Claims Act.

The Court held that until it was determined as a matter of fact that the official engaged in conduct beyond the scope of his employment, the Westfall Act applied. Furthermore, the scope-of-employment certification was statutorily conclusive. Thus, the Attorney General's certification that Haley acted within the scope of his employment and removal of the action to federal court was not controlled by Osborn's allegation.

HOLDING: The court of appeals' judgment reversing remand of the action is affirmed.

IMPACT: Regardless of the plaintiff's allegations, the Attorney General's ability to remove a suit to federal court under section 28 U.S.C. § 2679(d)(2) should not be disturbed. Once the Attorney General certifies that an official acted within the scope of his employment, the federal courts retains the exclusive jurisdiction over the case, and that court may not remand the suit to the state court.

Jones v. Bock, 127 S. Ct. 910 (2007).

LAW: The Sixth Circuit's total exhaustion rules are not required under the Federal Rules of Civil Procedure and the Prison Litigation Reform Act of 1995 ("PLRA").

FACTS: Jones sued six Michigan prison officials. The district court dismissed on the merits as to four of the officials and found that Jones failed to adequately plead exhaustion in his complaint regarding the remaining two claims. Petitioners also brought a section 1983 suit. The district court found that Jones did not exhaust his administrative remedies because he failed to identify the proper respondents named in the prior suit during the grievance process. Since Jones failed to satisfy the exhaustion requirement as to any single claim in his complaint, the court dismissed the entire suit under the Sixth Circuit's total exhaustion rule for PLRA cases.

ANALYSIS: Petitioners are not required to plead exhaustion under the PLRA. The screening requirement did not justify deviating beyond what was specified under the PLRA. The Court found that there was no basis to conclude that Congress expressly intended to transform exhaustion from an affirmative defense to a pleading requirement in stating that courts should screen PLRA complaints and dismiss those that did not state a claim.

Under the PLRA, failure to exhaust is an affirmative defense. Thus, the inmates were not required to plead exhaustion in their complaints. The notion that each defendant later sued must be named in initial grievance lacked textual basis in the PLRA. Additionally prison policy did not require that each defendant in a grievance had to be named in the complaint. Thus, dismissal under the total

exhaustion rule was an error since failure to exhaust one claim did not automatically affect other claims.

HOLDING: The United States Court of Appeals for the Sixth Circuit's judgment is reversed, and the cases are remanded.

IMPACT: The total exhaustion rules are not required under the PLRA. Imposing such rules would exceed the proper limits of the judicial role. Thus, a prisoner's entire complaint will not automatically be dismissed if the inmate fails to exhaust some, but not all, of the claims included in the complaint.

Lopez v. Gonzalez, 127 S. Ct. 625 (2006).

LAW: Conduct classified as a felony under state law but as a misdemeanor under the Controlled Substances Act ("CSA") is not a "felony punishable under the Controlled Substances Act" for purposes of the Immigration and Nationality Act ("INA").

FACTS: Lopez, a legal permanent resident alien, pleaded guilty to South Dakota charges of aiding and abetting another person who was in possession of cocaine. South Dakota treated Lopez's conviction as equivalent of actually possessing the drug, which is a state felony. He was sentenced to five years imprisonment. After being released, the INS started removal proceedings on the basis, *inter alia*, that Lopez's state conviction was for an aggravated felony. The immigration Judge held that despite the CSA's treatment of Lopez's crime as a misdemeanor, it was really an aggravated felony under the INA and under state law. The Judge then ordered Lopez to be removed. The Board of Immigration Appeals and the Eighth Circuit affirmed the Judge's decision.

ANALYSIS: The Court noted that the INA categorizes the illicit trafficking of a controlled substance as an aggravated felony. The relevant statutes, however, failed to define the term trafficking. Ordinarily, trafficking is defined as a part of commercial dealing. However, commerce is not part of the South Dakota offense of helping someone else to possess drugs.

The Court found that an offense that was considered as illicit trafficking according to the INA was a drug trafficking crime under

18 U.S.C. § 924(c). Therefore, because the South Dakota offense was not punishable as a federal felony, it did not qualify for removal purposes.

HOLDING: The court of appeal's judgment is reversed, and the case is remanded for further proceedings consistent with the Supreme Court's opinion.

IMPACT: There is no indication that Congress meant to change the meaning of "felony punishable under the CSA" when it incorporated that phrase into Title 8's definition of "aggravated felony". Since the applicable statutes at hand did not define the term trafficking, the Court must look to the term's everyday meaning.

CALIFORNIA STATE COURT

California Ass'n of PSES v. California Dep't of Educ., 45 Cal. Rptr. 3d 888 (Ct. App. 2006).

LAW: Post suspension or post revocation hearing satisfies due process of law requirements.

FACTS: The California Association of Private Special Education Schools ("PSES") claimed that the California Department of Education ("CDE") could not suspend or revoke the certification of a nonpublic school that provided educational service to disabled children without first providing a hearing. The PSES argued that they should have been given proper notice before any adverse administrative action could be taken against them. The school argued they were entitled to a pre-suspension or pre-revocation hearing.

The court rejected both a facial and an as applied challenge to statutory procedures in the California Education Code section 56366.6(a), (b), and 5 Cal. Code Regulations section 3068.

ANALYSIS: California Education Code section 56366.6(a), (b), and 5 Cal. Code Regulations section 3068 provide for a post suspension and post revocation hearing to private special education schools that have their certifications revoked by the CDE.

In this case, the court of appeals rejected the PSES argument based on the application of factors such as private interest, the risk of error with existing procedures, governmental interest, and California Due Process of law principles. Thus, the court concluded that a post revocation hearing was sufficient to satisfy due process of law requirements.

HOLDING: The trial court's judgment of dismissal was affirmed.

IMPACT: Post suspension hearings satisfy due process of law requirements. These types of hearings provide a reasonably prompt method to determine the validity of a revocation where there is a strong governmental interest, such as protecting disabled children.

American Liberty Bail Bonds, Inc. v. Garamendi, 46 Cal. Rptr. 3d 541 (Ct. App. 2006).

LAW: The Insurance Commissioner did not violate the agent's due process rights by suspending his license under Insurance Code section 1748(e)(1).

FACTS: A district attorney filed felony criminal complaints against a bail bonds agent and his company for criminal conduct connected with the bail bond business. Soon thereafter, the Insurance Commissioner suspended the agent and his company from participating in the business of an insurance production agency under Insurance Code section 1748.5(e)(1). The agent and his company then filed petitions for writ of mandate to challenge the decision. They argued that they had a due process right to a pre-suspension hearing.

The trial court granted the company's petitions however they denied the agent's petition since section 1748.5(e)(1) only applies to natural persons and did not apply to companies. The court of appeal affirmed the judgments.

ANALYSIS: The court of appeals upheld the constitutionality of section 1748.5(e)(1) which authorizes the insurance commissioner to immediately suspend the license of an insurer in cases where the licensee's have been charged with felony criminal offenses. Here, failure to issue a suspension order would have threatened the

solvency of the insurer, or could have caused financial injury to others. Furthermore, the information provided by the district attorney was sufficient to assure that the agent's suspension was not unjustified. Thus, the court held that an immediate post suspension hearing would satisfy due process requirement in this case.

HOLDING: The trial court's judgment was affirmed.

IMPACT: Due to a substantial governmental interest in prompt suspensions to preserve the insurance industry and the public's confidence that industry, an immediate post suspension hearing is sufficient to satisfy due process requirement.

Doe v. Saenz, 45 Cal. Rptr. 3d 126 (Ct. App. 2006).

LAW: Convicted persons who have obtained certificate of rehabilitation are entitled to proper notice and disclosure of the standards used to disqualify them from working in a certain field.

FACTS: Doe obtained a criminal record exemption and worked for ten years at community care facilities. When she changed jobs, the California Department of Social Services ("Department") determined that she had been convicted of a non-exemptible offense, thus, barring her from further employment in that field.

The trial court held that the Department could not classify a first degree burglary with a non-accomplice present as a non-exemptible offense because it was not a crime against an individual.

ANALYSIS: Occupied burglary is not a crime against an individual when determining if an applicant could seek a criminal record exemption to work in a community care facility. The Department's process of notifying those convicted of non-exemptible offenses violated constitution due process requirements. Additionally, in treating a second-degree robbery conviction as a non-exemptible offense – although the convicted person obtained a certificate of rehabilitation – violated equal protection principles.

HOLDING: The trial court's judgment was affirmed.

IMPACT: The California Department of Social Services is required to give applicants notice of the basis for a determination of ineligibility. They must disclose the standards used, the documents relied on, and the conviction charge. In doing so, the applicant would be able to adequately challenge an unjust disqualification.

People v. Garcia, 48 Cal. Rptr. 3d 75 (2006).

LAW: Subsequent criminal prosecution for the same misconduct could be precluded by collateral estoppel if the agency decision exonerated the welfare recipient of welfare fraud charges.

FACTS: Garcia omitted the fact that her sons had moved out of her home, and was convicted of fraudulently receiving welfare benefits in violation of Welfare & Insurance Code section 10980(c)(2). After an administrative decision was issued, Garcia claimed that collateral estoppel barred the district attorney from proceeding on criminal charges. The court of appeal reversed the conviction on the ground that collateral estoppel barred prosecution.

ANALYSIS: The court found that the purposes of administrative proceedings seeking restitution of welfare payments did not greatly differ from criminal prosecution of welfare fraud. Here, the appeals court did not adequately consider whether the administrative decision accurately determined whether Garcia made any misrepresentations or omission which actually caused the overpayments.

Since the administrative decision did not adequately consider whether Garcia made those misstatements or omissions, the Court reversed the court of appeal's judgment. The Court remanded the case to the court of appeal to determine whether or not the issues of fraud and perjury litigated in the administrative proceedings were the same ones litigated in the criminal proceeding.

HOLDING: The court of appeal's judgment was reversed and remanded.

IMPACT: The doctrine of collateral estoppel precludes relitigation in a criminal prosecution for welfare fraud and perjury of issues that were previously determined in an administrative proceeding.

Copley Press, Inc. v. Superior Court, 48 Cal. Rptr. 3d 183 (2006).

LAW: The confidentiality provision of Penal Code section 832.7 (making confidential peace officer personnel records maintained by the employing agency) applies to administrative appeals to county service commissions.

FACTS: Copley Press requested access to a closed hearing where a deputy sheriff was appealing from a termination notice. The Commission denied the request and withheld the deputy's name, asserting disclosure exemptions under Government Code section 6254(c), (k) and Penal Code sections 832.7 and 832.8. Copley then filed a petition for writ of mandate and complaint for declaratory and injunctive relief. Copley Press was seeking access to the records and a declaration that the Commission must hold public hearings unless closure is justified by law. The trial court denied relief and the court of appeals reversed.

ANALYSIS: The commission's files are confidential files of the employing agency according to Penal Code sections 832.7 and 832.8, because the commission is authorized to hear such appeals under Government Code section 3304(b) and the county charter.

The Court found that the officer's identity was confidential under the section 832.7. Thus, the press has no constitutional right of access to peace officer personnel records or appeal records that included the name of the deputy because there is no first amendment right to this particular government information.

HOLDING: The court of appeal's judgment was reversed and remanded for further proceedings.

IMPACT: The identity of police officers and records relating to the officer's appeal are protected from disclosure under Penal Code section 832.7. This statutory provision is not unconstitutional under California Constitution Article 1, which gives the public access to governmental meetings and records.

ARKANSAS STATE COURT

C.C.B. v. Arkansas Dep't of Health and Human Servs., No. 06-554, 2007 Ark. LEXIS 68, at *1 (Jan. 25, 2007).

LAW: When challenging an administrative procedure on the basis of a denial of due process, the appellant has the burden of proving its invalidity in order to prevail.

FACTS: C.C.B. was placed on the Child Maltreatment Central Registry for having a sexual encounter with a minor. He appeals the decision affirming his placement on the registry claiming that the system used to operate the registry is unconstitutional. He also argues that the administrative law judge erred in refusing to consider a statutory defense offered by C.C.B. and also for failing to admit hearsay evidence.

ANALYSIS: The fact that the administrative law judge (“ALJ”) and the prosecutor came from the same agency did not violate due process under the Fourteenth Amendment. The combinations of investigative and adjudicative functions are not sufficient to amount to a due process violation.

The court rejected the argument that the standard of evidence should have been changed to the higher clear and convincing standard. C.C.B did not prove that he would have prevailed at the higher standard nor did he prove that he was denied a specific employment opportunity due to his placement on the registry. He also failed to prove that the process was invalid based on the statutory scheme and the procedure applicable to this case. Furthermore, the ALJ’s failure to sustain a hearsay objection and the refusal to consider a defense under Arkansas Code Ann. Section 5-14-102(2003) was not arbitrary and capricious.

HOLDING: The circuit court judgment was affirmed.

IMPACT: The court will not set aside an agency’s decision as arbitrary and capricious unless the appellant has proven that the decision was made without consideration and with a disregard of the facts.

LOUISIANA STATE COURT

Jackson v. Louisiana Bd. of Review, 948 So.2d 327 (La. Ct. App. 2007).

LAW: An applicant will be denied unemployment compensation benefits if the applicant is fired due to misconduct.

FACTS: Jackson signed a drug and alcohol policy when he was first hired to work as a maintenance man for the Wyatt Manor Nursing Home. He was later fired due to a violation of drug policy and sought unemployment benefits. The Louisiana Department of Labor initially determined that Jackson was qualified to receive benefits, but Wyatt Manor challenged that decision arguing that Jackson was fired for misconduct. Jackson appealed the denial of unemployment benefits, but the court affirmed the Louisiana Board of Review's denial of unemployment benefits.

ANALYSIS: On review, the court of appeals found that the administrative law judge heard and fully considered testimony given during Jackson's sister-in-law's unemployment hearing which implicated Jackson in the drug exchange at the nursing home. Although Jackson denied the allegations, he admitted that he told a resident at the nursing home where the resident might be able to obtain drugs. This hearsay evidence combined with the admission of advising a resident and failing to inform Wyatt Manor about this drug-related activity, collectively, constituted misconduct under section 23:1601(2).

HOLDING: The Second Judicial District Court's judgment was affirmed.

IMPACT: There must be sufficient competent evidence that an applicant is guilty of misconduct before the applicant is denied unemployment compensation benefits.

SOUTH CAROLINA STATE COURT

Furtick v. South Carolina Dep't of Corrs., No. 26270, 2007 S.C. LEXIS 54, at *1 (Feb. 20, 2007).

LAW: The Administrative Law Judge Division obtains subject matter jurisdiction over an inmate's claim when the claim implicates a state created liberty interest.

FACTS: The Department of Corrections ("DOC") reprimanded Furtick for possessing contraband while he was in jail. As a result, he did not earn his good time credit for the month of the infraction and his work credit level was reduced. In total he lost 43 days per year due to the contraband conviction. Furtick appealed the denial of his grievance to the ALJ Division ("ALJD"), and the DOC moved to dismiss the action based on a lack of subject matter jurisdiction. The ALJD dismissed the matter for lack of jurisdiction over the claim, and Furtick appealed to the circuit court.

ANALYSIS: The Administrative Law Judge Division obtains subject matter jurisdiction over an inmate's claim when the claim implicates a state-created liberty interest. Under South Carolina Code Ann. Section 24-13-210, South Carolina created a liberty interest in good time credits which could be earned by an inmate.

Here, the allegations involved the loss of sentence related credits that had not yet been earned. Nonetheless, a protected liberty interest was still implicated.

HOLDING: The circuit court's judgment was reversed and the case was remanded to the Administrative Law Judge Division.

IMPACT: Protected liberty interests are still implicated even if an inmate is challenging good time credits that the inmate is unable to earn or failed to earn as a result of a rule violation.