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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins,](#)
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(with special thanks to Mark Hoover, OIDS, for contributing regularly)

“I have lived my life, and I have fought my battles, not against the weak and the poor—anybody can do that—but against power, against injustice, against oppression, and I have asked no odds from them, and I never shall.”---Clarence S. Darrow, *Attorney for the Damned* 491, 497 (Arthur Weinberg ed. 1957).

OKLAHOMA

[Aaron Struble v. State](#), No. F-2021-1220 (Ok1.Cr., February 16, 2023) (unpublished): **Sentence Modification:** Struble was convicted by jury in Osage County of Domestic A&B AFCF x 2 and the jury recommended sentence of 50 years. The Hon. Stuart L. Tate sentenced Struble to life imprisonment, stating that the 50 years exceeded the maximum (presumably treating a life sentence as 45 years). The Court vacated the sentence, holding when the jury recommends sentence in excess of the statutory maximum then the excess is discarded, but that the 50 years sentence did not exceed the statutory maximum and the district court erred in changing it.

TENTH CIRCUIT

[United States v. Ahmad Salti](#), No. 21-3183 (10th Cir., February 6, 2023) (Published) (Hartz, Kelly & Moritz): **Restitution**: Co-defendants were ordered to pay restitution joint and severally, and when a co-defendant made a payment the Court Clerk sought to refund some monies to Salti based on *pro rata* apportionment, but the Government objected and the district court affirmed. The panel affirmed,

[United States v. Shakeel Kahn](#), No. 19-8054 (10th Cir., February 3, 2023) (Published) (Matheson, Briscoe & Carson): **Jury Instructions (Scienter)**: Remand from the Supreme Court in light of *Ruan*, the panel concluded that the *mens rea* requirement 21 U.S.C. 841 of the Controlled Substances Act as applied to a physician rendered the convictions invalid and reversed and remanded.

UNITED STATES SUPREME COURT

“Only Supreme Court justices and schoolchildren are expected to and do take the entire summer off.” –*Chief Justice John Roberts (statement made while he served as a lawyer in the Reagan Administration).*

No new cases.

OTHER CASES OF NOTE

[United States v. Antwone Miguel Sanders](#), No. 21-5945 (6th Cir., February 6, 2023): **Search and Seizure (Search Warrants (Sufficiency/Good Faith))**: Search warrant for home in drug case insufficient and cannot be saved by good faith. NOTE: 2-1 with strong dissent.

[United States v. Donzell Ali McKinney](#), No. 20-6396 (4th Cir., February 16, 2023): **Waiver (Appeals Waiver); Habeas Corpus (Procedural Default)**: Successful 2255 claim based on change in law by Supreme Court concerning 18 U.S.C. 924

conviction for discharging a firearm during and in relation to Hobbs Act Robber and conspiracy.

[United States v. Ruel M. Hamilton](#), No. 21-11157 (5th Cir., February 17, 2023):

Bribery: This is a series of opinions in a case where the *en banc* Circuit voted 7-9 to deny rehearing *en banc* in a case dealing with bribery of public projects under 18 U.S.C. 666(a)(2), whether *quid pro quo* is required and whether the First Amendment applies in these cases.

VICTORIES

MICHON HUGHES, Tulsa, represented a client in the federal district of Colorado charged with Aggravated Sexual Assault. The client was from Peru and the alleged crime occurred at the United States Air Force Academy against an American cadet. This was the first federal criminal trial for Michon, so she associated with local Colorado counsel David Beller. The trial took four days and ended with a 45-minute acquittal. Cadet Jose Galiano returned to school shortly thereafter and has one year left at the Academy thanks to aggressive defense counsel. Great work, Michon & David!

HEARSAY

TIME: Inmates doing time at the Oklahoma County Jail will get more time outside their cells.

PRESENTS: The NAACP donated Valentine's Day packages to inmates at the Comanche County Jail.

NEW CHIEF: The City of Glenpool as a new Chief of Police.

STABBING: There was a stabbing at the Lawton Correctional Facility last week.

DRUGS: A large meth/fentanyl bust in Tulsa; also, the Tulsa County Jail is quickly going through its supply of [Narcan](#).

MODIFICATION: A life sentence has been modified to 25 years by Judge Heather Coyle in Oklahoma County.

EXECUTIONS: The relentless pace of executions traumatized DOC staff according to a former official.

TOURISM: There is “sex tourism” but there is now apparently “burglary tourism.”

WACKY CRIME

VEGAS, BABY! A lawyer in Vegas apparently misspent \$10 million of client money by living it up at the Wynn.

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