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HANDBOOK ON WEST VIRGINIA CRIMINAL PROCEDURE

Publication 60852

Release 9

May 2021

HIGHLIGHTS

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RIGHTS AND PROCEDURE

Chapter 2—RIGHT TO COUNSEL

The right of a criminal defendant to assistance of counsel includes the right to effective assistance of counsel. *Jenkins v. Binion*, No. 19-0507, 2020 W. Va. LEXIS 593 (Aug. 28, 2020). A successful ineffective-assistance-of-counsel claim requires showing both deficient performance and prejudice. *Valentino v. Clarke*, 972 F.3d 560, 566 (4th Cir. 2020).

Chapter 3—ARREST, EXTRADITION AND DETAINER

An officer making an arrest under a warrant issued upon a complaint, or any person making an arrest without a warrant for an offense committed in his presence or as otherwise autho-

rized by law, shall take the arrested person without unnecessary delay before a magistrate of the county where the arrest is made. *See State v. Skidmore*, Nos. 18-0139, 18-0160, 18-0161, 2020 W. Va. LEXIS 704 (Oct. 30, 2020). *See also State v. Brad S.*, No. 19-0493, 2020 W. Va. LEXIS 822 (Dec. 7, 2020).

Chapter 4—SEARCH AND SEIZURE

In most cases, a search or seizure is unreasonable unless authorized by a warrant. The warrant requirement ensures that the inferences to support a search are drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime, and so safeguards the individual's interests in protecting his own liberty and the privacy of his home. *United States v. Brinkley*, 980 F.3d 377 (4th Cir. 2020).

Police can have a drug-sniffing dog circle a vehicle without individualized suspicion or a warrant. *Varner v. Roane*, 981 F.3d 288 (4th Cir. 2020).

Chapter 5—CONFESSIONS

The Supreme Court has conditioned the admissibility at trial of any custodial confession on warning a suspect of his rights: failure to give the prescribed warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained. *United States v. Khweis*, 971 F.3d 453, 455 (4th Cir. 2020).

Chapter 8—JURISDICTION AND VENUE

28 U.S.C.S. § 2241 vests federal courts with jurisdiction over applications for habeas corpus from persons confined by the military courts. Although a military court decision that has dealt fully and fairly with an allegation in the § 2241 application is final and binding upon all courts, this does not displace the civil courts' jurisdiction. Stated another way, the federal court possesses jurisdiction over the § 2241 petition but cannot review claims fully and fairly reviewed by the military courts. *Ward v. United States*, No. 19-6626, 2020 U.S. App. LEXIS 38663 (4th Cir. Dec. 10, 2020).

Chapter 13—GUILTY PLEAS

Plea agreements are grounded in contract law, and as with any contract, each party is entitled to receive the benefit of his bargain. Thus, when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. Because a defendant's fundamental and constitutional rights are implicated when he is induced to plead guilty by reason of a plea agreement, an appellate court's analysis of the plea agreement or breach thereof is conducted with greater scrutiny than in a commercial contract. The Government is only bound, however, by the promises that were actually made in inducing a guilty plea. *United States v. Lee*, No. 19-4834, 2020 U.S. App. LEXIS 29510 (4th Cir. Sep. 16, 2020).

Chapter 17—DEFENSES

If a person inflicts a wound upon a person who thereafter dies, it is not a defense to a criminal homicide charge that medical care in the treatment of that wound contributed to the victim's death. Only medical care that is shown to be the sole cause of death will operate to break the chain of causation and relieve the defendant of criminal responsibility. *Surbaugh v. Sallaz*, No. 19-0739, 2020 W. Va. LEXIS 680 (Sep. 23, 2020).

Chapter 18—INSTRUCTIONS TO THE JURY

A jury instruction is not erroneous if, in light of the whole record, it adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the objecting party. In reviewing a challenge to the jury instructions, an appellate court does not view a single instruction in isolation, but instead considers whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law. *United States v. Naum*, No. 20-4133, 2020 U.S. App. LEXIS 32248 (4th Cir. Oct. 13, 2020).

Chapter 25—PROSECUTORIAL DISCRETION, DISQUALIFICATION, AND MISCONDUCT

A prosecutor violates the Due Process Clause of the Fifth Amendment by exacting a price for a defendant's exercise of a clearly established right or by punishing the defendant for doing what the law plainly entitles him to do. To satisfy a prosecutorial vindictiveness claim, a defendant must show, through objective evi-

dence, that (1) the prosecutor acted with genuine animus toward her and (2) she would not have been prosecuted but for that animus. In other words, the charges must be brought solely to penalize the defendant and could not be justified as a proper exercise of prosecutorial discretion. *United States v. Doty*, No. 19-4220, 2020 U.S. App. LEXIS 33229 (4th Cir. Oct. 21, 2020).

Chapter 28—JUVENILE RIGHTS AND PROCEDURE

Miller v. Alabama, supra, announced a new substantive rule of constitutional law that applies retroactively on collateral review to juvenile offenders whose convictions and sentences were final when *Miller* was decided. Although *Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile, that sentence is disproportionate for all but the rarest of children, those whose crimes reflect irreparable corruption. *Miller's* substantive holding rendered life without parole an unconstitutional penalty for the class of juvenile offenders whose crimes reflect the transient immaturity of youth as opposed to those whose crimes reflect permanent incorrigibility. And *Miller's* procedural component requires a sentencer to consider a juvenile offender's youth and its attendant characteristics to determine whether a particular offender is among those juveniles who may be sentenced to life without parole or those who may not. *United States v. McCain*, 974 F.3d 506, 509 (4th Cir. 2020).

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Publication 60852 Release 9

May 2021

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