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Recent Developments: 3011 Corp. v. District Court: Corporations Charged with a Criminal Offense Have a Right to a Jury Trial

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whether the sentence was imposed "as a result of" a misapplication of the Guidelines depends on "whether the district court would have imposed the same sentence had it not relied upon the invalid factor or factors." *Id.* Applying this test, the Court noted that when a district court intentionally departs from the Guideline range, the court's sentence is "imposed 'as a result of' a misapplication of the Guidelines, if the sentence would have been different but for the district court's error." *Id.*

This decision provides substantial insight into the scope of appellate review under the Guidelines of the Sentencing Reform Act. The Supreme Court in *Williams* gave an extremely narrow reading to the scope of such review, and emphasized the deference that appellate courts are to give to a district court's exercise of its sentencing discretion. In so ruling, the Court established a national consensus on the scope of appellate review under the Sentencing Reform Act.

- Gloria A. Worch

3011 Corp. v. District Court: CORPORATIONS CHARGED WITH A CRIMINAL OFFENSE HAVE A RIGHT TO A JURY TRIAL.

In *3011 Corp. v. District Court*, 327 Md. 463, 610 A.2d 766 (1992), the Court of Appeals of Maryland held that a corporation has a right to a trial by jury when it is charged with a criminal offense carrying a maximum penalty of imprisonment in excess of 90 days. In a unanimous decision, the court interpreted section 4-302(e)(2)(i) of Maryland's Courts and Judicial Proceedings Article as providing a statutory right to a jury trial based on the maximum penalty provided for the offense itself and not the penalty likely to be imposed upon a particular defendant. Therefore, although a corporation is not subject to imprisonment, it is entitled to a jury trial.

3011 Corporation, trading as U.S. Books, and L.R. News, Inc., trading as Edgewood Books, were adult book stores in Harford County. Both corporations were charged with 100 counts of knowingly displaying sexually oriented material for advertising purposes in violation of art. 27, section 416D of the Maryland Code. Each violation was punishable by a fine of up to $1,000 or imprisonment of up to six months. Both corporations also were charged with one count of exhibiting obscene matter in violation of art. 27, section 418 of the Maryland Code. The penalty for this charge was up to a $1,000 fine and/or imprisonment up to one year. Similar charges were filed against Larry Hicks, who was an officer of both corporations.

All parties requested a jury trial. The District Court for Harford County granted Mr. Hicks's demand for a jury trial and subsequently transferred his case to the Circuit Court for Harford County. However, the district court denied both corporations' request for a jury trial and the corporations filed petitions for writs of certiorari to the Circuit Court for Harford County. After a hearing, the petitions were dismissed and the corporations appealed to the Court of Special Appeals of Maryland. While the appeal was pending, the counts for exhibiting obscene material were dismissed. Before argument in the court of special appeals, the Court of Appeals of Maryland issued a writ of certiorari to determine whether a corporation charged in district court with a criminal offense carrying a penalty in excess of 90 days had a right to a jury trial.

The corporations argued in the court of appeals that they had a statutory right to jury trial under section 4-302(e)(2)(i) of the Courts and Judicial Proceedings Article, and that they were entitled to a constitutional right to a jury trial under Articles 5, 21, and 23 of the Maryland Declaration of Rights and under the Sixth and Fourteenth Amendments to the United States Constitution. *3011 Corp.*, 327 Md. 467-68, 610 A.2d 768. The State argued that no corporation ever has the right to a jury trial under the statute because the statute requires a defendant to be subject to more than 90 days imprisonment and a corporation cannot be imprisoned. *Id.* at 468, 610 A.2d at 768. The State contested the Maryland constitutional right to a jury trial by arguing that the charge was a minor offense to which the right to jury trial does not attach. *Id.*, 610 A.2d at 768-69 (citing, e.g., *State v. Huebner*, 305 Md. 601, 608-10, 505 A.2d 1331, 1335 (1986)). The State also argued that there was no federal constitutional right to a jury trial for corporations since a corporation could not be imprisoned and the maximum fines were not substantial. *Id.*, 610 A.2d at 769.

The court of appeals found a right to a jury trial through statutory interpretation and did not reach the constitutional issues. The court ruled that if the crime with which the defendant is charged carries a penalty of imprisonment in excess of 90 days, a criminal defendant is entitled to a jury trial if he makes a timely request in district court. *Id.* at 469, 610 A.2d at 769. The court rejected the State's contention that the particular defendant must be subject to imprisonment in excess of 90 days, holding that "the maximum penalty provision relates to the *offense* itself and not the particular defendant." *Id.* (emphasis in original). The court found that the Maryland General Assembly distinguished between less serious and more serious criminal offenses by authorizing more than 90 days imprisonment for more serious crimes. *Id.* Thus, the option of a jury trial was allowed for offenses with a maximum penalty in excess of 90 days. *Id.* The court emphasized that the controlling principle guiding the constitutional right to a jury trial is the maximum sentence and place of incarceration that the legislature established for the particular offense, not the maximum sentence or place of incarceration to which this particular defendant may be subjected. *Id.* (citing *Kawamura v. State*, 299 Md. 276, 292, 473 A.2d 438, 447 (1984)). The court found that the Mary-

land General Assembly used this same principle in establishing the statutory right to a jury trial under section 4-302(e)(2)(i).

In addition, because one of the criminal violations was dismissed by the district court after a jury trial was demanded by the corporate defendants, the court of appeals clarified the effect of the dismissal on the right to a jury trial. *Id.* at 467 n. 6, 610 A.2d at 768 n. 6. The court noted that it considered the offenses charged at the time of the demand for a jury trial. *Id.* As long as the defendant was entitled to a jury trial at the time of the demand, a subsequent dismissal or nol pros of one of the charged offenses has no effect on the right to a jury trial. *Id.* (citing *State v. Huebner*, 305 Md. 601, 606-07, 505 A.2d 1331, 1334 (1986)).

In *3011 Corp. v. District Court*, the court of appeals established that a corporation has the same statutory right to a jury trial as an individual charged with the same criminal offense if the offense carries a prison sentence in excess of 90 days. In placing its focus on the statutory penalty, and not the penalty applicable to the particular defendant in a case, the court of appeals reaffirmed the fundamental nature of the right to jury trial and the principle that, although not subject to imprisonment, corporations are treated like individuals under the law.

- Kenneth A. Brown

Lee v. Weisman: COURT HOLDS NON-SECTARIAN PRAYER AT SECONDARY SCHOOL GRADUATION CEREMONY VIOLATES ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE CONSTITUTION.

In *Lee v. Weisman*, 112 S. Ct. 2649 (1992), the United States Supreme Court held that offering invocation and benediction prayers as part of the formal graduation ceremonies for secondary schools violated the Establishment Clause of the First Amendment to the United States Constitution. In so holding, the Court declined to reconsider the three-part Establishment Clause test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

In June 1989, Deborah Weisman graduated from Nathan Bishop Middle School, a public school in Providence, Rhode Island. The school principal invited a rabbi to deliver prayers in conjunction with the graduation exercises for the class. The principal provided the speaker with a pamphlet entitled "Guidelines for Civic Occasions," prepared by the National Conference of Christians and Jews. This pamphlet advised members of the clergy performing the prayers that the invocation and benediction should be non-sectarian. In this case, the invocation and benediction were non-sectarian, however, they did contained references to God.

Prior to Deborah's graduation ceremony, Deborah's father, Daniel Weisman, in his individual capacity as a taxpayer and as next friend of Deborah, sought a temporary restraining order in the United District Court for the District of Rhode Island. Weisman sought to prohibit the school officials from including the prayers in the graduation ceremony. The court denied the motion and her family eventually attended the graduation where the prayers were recited.

Thereafter, the case was submitted to the District Court on stipulated facts. The court held that the practice of utilizing prayers in the context of public school graduations violated the three-part Establishment Clause test enunciated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the *Lemon* test, in order "to satisfy the Establishment Clause, a governmental practice must (1) reflect a clearly secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) avoid excessive government entanglement with religion." *Weisman*, 112 S. Ct. at 2654 (citing *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 773 (1973)). Applying this test, the district court enjoined the Providence School Committee from continuing to employ this practice. *Id.* Specifically, the school district violated the second prong of the *Lemon* test by creating an atmosphere in which the state identified with a religion. *Id.*

The school officials appealed to the United States Court of Appeals for the First Circuit which agreed with the holding and rationale of the district court. *Id.* The United States Supreme Court granted certiorari to address the issue of whether the use of invocations and benedictions at a public school graduation violated the Establishment Clause of the First Amendment to the Constitution.

The Court began its analysis by emphasizing that even though attendance at public school graduation is voluntary, "attendance and participation [which may include] state-sponsored religious activity are in a fair and real sense obligatory . . ." *Id.* at 2655. The Court explicitly refused the invitation to reconsider its decision in *Lemon*, because the government involvement with the invocation and benediction at the public school graduation was "pervasive, to the point of creating a state-sponsored and state directed religious exercise in a public school." *Id.* The Court noted that the school principal's involvement with the composition of the prayers and the choice of a rabbi to perform the prayers was akin to the State deciding by statute that an invocation and benediction should be given. *Id.* at 2655. Along similar lines, the court reasoned that by providing the rabbi with a copy of the Guidelines for Civic Occasions, the principal ostensibly "directed and controlled the content of the prayer." *Id.* at 2656. The Court asserted that it was inappropriate for government to compose or provide official prayers for recitation at an event in part sponsored by the government. *Id.* at 2656 (citing *Engel v. Vitale*, 370 U.S. 421, 425 (1962)).

The Court next turned its analysis to the issue of coercive pressure among students in elementary and secondary public schools and the need to protect